EU Secondary Movements of Asylum Seekers: a Matter of Effective Protection and Solidarity

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1. Introduction

After the entrance into force of the Lisbon Treaty, in December 2009, the principle of solidarity and fair sharing of responsibility between Member States, incorporated in article 80 TFEU\(^1\), have begun to inspire immigration policies and have become a central issue in recent debates (di Napoli and Russo, 2018). Theoretically, as stressed by numerous decisions of the European Court of Justice\(^2\), solidarity between Member States should not be considered as a principle based solely on voluntary commitments, but, on the contrary, as a principle with a specific content and a binding nature. In particular, it should impose a legal duty upon Member States to act for the benefit of other ones, even when such actions are not in their own interest.

Nevertheless, especially since the so-called “refugee crisis” of 2015 and 2016, national governments’ propensity to defend their own interests have inspired a reluctant attitude to find solutions requiring more intense cooperation and sharing-responsibility. As a result, the supranational efforts in coordinating asylum policies, in view of the principle of solidarity, afford to be undermined by national differences in terms of reception conditions, status, procedures, access to integration measures and social rights (Brekke and Brochmann, 2015).

Therefore, the pervasive willingness of most of Member States not to reduce these existing disparities between them has ended up encouraging the so-called “secondary movements” within the European Union. Indeed, the broad discrepancies still existing between national legislations in reception conditions, rate of recognition of applications and integration opportunities, - so that it is very different if one application is examined in one country rather than in another -, determine migrants’ choice to move forward and avoid the identification procedures in specific Member States, to go further.

According to the definition given by the European Migration Network\(^3\), coordinated by the European Commission, the secondary movements are

\(^1\) Art. 80 TFEU states that: “The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.”


\(^3\) https://ec.europa.eu/home-affairs/content/secondary-movement-migrants_en.
The movement of migrants, including refugees and asylum seekers, who for different reasons move from the country in which they first arrived to seek protection or permanent resettlement elsewhere.

In addition, Zimmermann (2009) described these movements as:

[the] ones that occur from initial areas of safety to newer destinations for the purpose of claiming asylum, irrespective of whether persons have been officially recognized as refugees previously, and in the absence of authorization or (usually) sufficient documentation for travel.

They represent a phenomenon increased over the years and a matter of growing concern. According to UNHCR papers⁴, this concern results both from the fact that these movements are usually irregular, entailing disorderly and unpredictable flows, undesirable for States, and from the destabilizing effect that irregular movements of this kind could have on refugee regimes themselves (Scalettaris, 2009). In fact, for the European Union, preventing secondary migration constitutes a question of efficiency and well-functioning of the Dublin system⁵, which establishes the rules to determine the EU Member State responsible for examining a person’s asylum application, for (eventually) granting protection and for assuring reception and integration.

Thus, for the purpose of this paper, we assume that secondary movements consist in the migrants’ tendency to travel between several EU countries after first arriving to EU territory, driven by different push-pull factors and in breach of the Dublin Regulation.

Nevertheless, at the same time, asylum seekers’ secondary mobility may be also seen as the only means of ensuring their access to essential rights, effective protection and sustainable standards of life (Long and Crisp, 2010). It is well known that forced migrants living in Europe are a vulnerable group, who are at risk of negative health outcomes (Pernice and Brook, 1996) and low socio-economic status (Hainmueller, Hangartner, and Lawrence, 2016; Newman and others, 2017). Thus, this occurrence can be read as the direct outcome of the failure of many EU Member States in complying with their obligations under the Reception Conditions Directive and under the Qualification and Procedure Directives, so that it matters where a person asks for asylum. Indeed, the States chosen as destinations by asylum seekers and beneficiaries of international protection are the ones with higher protection recognition rates, easier access to integration processes, better employment opportunities, structured welfare systems and organised social inclusion programmes.

⁴ UN High Commissioner for Refugees Executive Committee (ExCom), Conclusion No. 58 Problem of Refugee and Asylum Seekers who Move in an Irregular Manner from a Country in Which They Had Already Found Protection, 1989. No. 58 (XL).

⁵ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. The regulation is also known as “Dublin III” (EC 604/2013), which has replaced the earlier EU Dublin regulations Dublin II (343/2003) and the original Dublin Convention, which was signed in 1990.
Then, the European Commission proposed in 2015 a comprehensive harmonization of asylum rules and a range of new measures on asylum policy, with the aim, among others, to reduce this phenomenon and to ensure solidarity among Member States. Indeed, this lack of coherence influences attempts to circumvent the Dublin Regulation, and, simultaneously, translates a lack of solidarity between European countries. The objective is to create not identical, but equivalent national asylum systems, to ensure that it would be generally indifferent the country where an application for international protection is examined (Favilli, 2015), limiting, thus, persons’ will to move throughout Europe.

Therefore, the purpose of this paper is to bring some light on this phenomenon, which is having a considerable impact, both on each Member State and on the CEAS in general. Specifically, we would try to identify the major drivers of these movements, describing the specific case of the Italian border, which has become the main gate both for asylum seekers’ comings and onward goings. Also, we would analyse the most relevant outcome of the ongoing situation, consisting in the risk of a “Schengen crisis”, originated by Member States’ decisions to re-introduce internal border controls and raise new border fences. Thus, the aim of this paper would be demonstrating how urgent is to re-build the system in compliance with the principles of solidarity and sharing-responsibilities between Member States, which have always been the cornerstone of the European legal integration process.

2. What is behind the phenomenon: the failure of national reception systems and the asylum seekers’ need for a future

The process towards harmonisation of the national asylum policies began in 1999, during Tampere Council, when Member States discussed for the first time about the creation of the Common European Asylum System, CEAS (Velluti, 2014). The idea was to create a common legislative framework to ensure the orderly processing and reception of asylum seekers. Thus, between 1999 and 2005, several legislative measures coordinating common minimum standards for asylum were approved, and after the modification of the article 78 TFUE by the Lisbon Treaty, it was established the need for the development of a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement.\(^6\)

Therefore, the European Union adopted four directives within the CEAS - to regulate the asylum procedure (Procedure Directive\(^7\)), to clarify the grounds for granting international protection (Qualification Directive\(^8\)) and to set up reception conditions and rights

\(^6\) Article 78 TFUE.
\(^8\) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast of the Directive 2004/83/CE).
for asylum seekers (Reception Directive⁹) -, together with an important regulation, the Dublin Regulation¹⁰, to establish the country responsible for processing an asylum seeker’s application. The EU States have also formulated other directives (on labour migration, irregular migration, return, family migration) to create a wider harmonized migration policy throughout the EEA region. Specifically, the Dublin Regulation was designed in order to avoid, first, the refugee-in-orbit problem (e.g. refugees failing to have a state responsible for examining their asylum applications) and, secondly, the asylum shopping issue (e.g. asylum seekers lodging their claims in several member states to increase their chances of success)¹¹.

However, despite its original ratio, the Dublin system have had to face several obstacles in controlling secondary movements of people, especially due to the fragmentation and the disparity among the different EU States in living standards, labour-market conditions, and access to government support, that push-pull asylum seekers to move from one to State to another looking for better conditions (Radjenovic, 2017). In fact, even if most asylum-seekers look for protection in places close to their countries of origin, in some cases migrants’ decisions to move to another country are based on the will to reach a specific destination (Crawley and Hagen-Zanker, 2019), chosen after an evaluation of particular circumstances, perceived risks, costs and benefits. Indeed, there are different kind of factors that influence persons’ movements and their decision to settle in a country rather than another one (James and Mayblin, 2016).

First, migration trajectories may be determined by entry, exit and transit requirements in the countries concerned and, in this regard, the “recognition rate” in a destination country - i.e. the chances of asylum applications’ positive acceptance -, can influence asylum seekers’ decisions to engage in onward movements (Keogh, 2013).

In the same perspective, secondary migration within Europe may also reflects the EU limited centralisation and leadership in managing immigration and asylum problems (Esteves, 2018) and the impact of macro-structural changes in migration policies and labour markets on individual socioeconomic patterns of integration at destination (Larramona, 2013). In fact, there are broad divergences among national reception and integration systems, which create tension between countries and increase the importance of reconsidering the common knowledge on harmonization efforts in Europe. Thus, there is a considerable discrepancy between the European Union’s ambitions to establish common rules and opportunities for asylum seekers and the realities on the ground (Brekke and Brochmann, 2015).

Moreover, secondary movements are not only affected by access to asylum procedures, differences in outcomes and the level of reception conditions, but also by future

¹⁰ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.
¹¹ These two were the purposes of the original Convention (Dublin I), modified in 2003 by the Regulation 343/2003/CE (Dublin II).
perspectives post recognition (Takle and Seeberg, 2015). Perception of opportunity, stability and security is particularly relevant in forming asylum seekers’ preferences. This circumstance is even more evident if we consider that a significant number of persons with a protection status still intend to move to another EU Member State due to the lack of integration perspectives and employment opportunities in the country of reception (Kuschminder, 2018).

Furthermore, other personal elements may play a key role in shaping mobility trajectories within Europe: they concern historical or cultural ties to specific countries and the presence of family or other social networks. Indeed, the fact that relatives and friends are living in a specific country serves as an incentive in asylum seekers’ settling decisions (Lindley and Van Hear, 2007). In particular, this factor could have a double role in influencing people’s movements: it could represent both a facilitation, because connections assist migrants in their journeys by helping them avoid exploitation or abuse, and a source of inspiration, because social contacts also give rise to new destination aspirations, through the sharing of information (Schapendonk, 2012). Nevertheless, as proved by the experience, the role played by rumours of opportunities in determining migrants’ onward movements may be a double-edged sword: if, on one side, the everyday reality of migrants could represent a positive example and a beneficial driver for others asylum seekers, on the other side, it could also result in unnecessary mobility and perpetrate in vain the instability of migrants’ situation (Wyss, 2019).

3. Main routes to final destinations: the Italian gate

Facing the dramatic Mediterranean migration crisis, Italy, due to its geographical position, has resulted one of the key crossroads of migratory routes within the European territory. Moreover, since the launching of operation Mare Nostrum in October 2013, Italy allowed for the disembarkation in its territory of all the migrants rescued in the Maltese and Libyan SRR (Panebianco, 2016; Cuttitta, 2017). Consequently, the Italian reception framework has had to confront with a deep humanitarian emergency since 2014, when arrivals of migrants from the Mediterranean Sea reached an unprecedented high. According to statistics published by the Italian Ministry for Home Affairs\(^\text{12}\), Italian borders registered and identified 170.100 new arrivals in 2014, 153.842 in 2015, 181.436 in 2016 and 119.369 in 2017 (while statistics have recorded a decrease since 2018). This situation has led to the formation of a system in disarray, with inadequate integration conditions\(^\text{13}\) compared to other European States’ standards (Annalisa Busetta, Daria Mendola, Ben Wilson and Valeria Cetorelli, 2019) and significant variation in asylum seekers’ experiences.


\(^{13}\) For an overview of the Italian reception system, especially after the entrance into force of the Decree Law 113/2018, see: [https://www.asylumineurope.org/reports/country/italy/reception-conditions/short-overview-italian-reception-system](https://www.asylumineurope.org/reports/country/italy/reception-conditions/short-overview-italian-reception-system).
within the Italian territory itself, even regarding the access to relocation procedures\textsuperscript{14} (Kuschminder, 2019).

Moreover, even the organisational measures put in place by Italy (and Greece) to channel and discipline migrants’ arrivals, the so called “hotspots”, have come to nought. The “hotspot approach” was presented by the Commission as part of the European Agenda on Migration of April 2015. The Agenda does not provide a definition of a “Hotspot” but rather describes how the “Hotspot” approach is to be applied:

the European Asylum Support Office, Frontex and Europol will work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants. The work of the agencies will be complementary to one another. Those claiming asylum will be immediately channeled into an asylum procedure where EASO support teams will help to process asylum cases as quickly as possible. For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants. Europol and Eurojust will assist the host Member State with investigations to dismantle the smuggling and trafficking networks.

Officially, thus, they are first reception facilities aimed at coordinating EU agencies (Frontex and EASO) and national authorities on initial reception, identification, registration and fingerprinting of asylum-seekers and migrants, at the external borders of the EU. However, more than control in terms of surveillance and tracking people, the hotspot system has contributed to enforce forms of “containment through mobility” (Tazzioli, 2018), that ended up stimulating asylum seekers’ onward movements to other Member States, rather than reducing them. Indeed, due to the fact that the hotspots system is connected to channels of forced mobility, aimed at controlling migration by obstructing and decelerating asylum seekers’ movements, the consequent lack of choice, that enacts people’s right to choose where to go and claim asylum, has resulted in migrants’ refusals of being fingerprinted (Tazzioli, 2018) and, so, has led to an increase of this phenomenon, instead of its containment.

Therefore, according to Eurodac statistics\textsuperscript{15}, out of about 633.000 asylum seekers registered and identified in Europe in 2017, more than 257.000 (40\%) had already made an application for international protection in a different Member State. Among these 257.000 people, 93.000 had been found in Germany and more than 24.000 of them were from Italy.

\textsuperscript{14} The relocation mechanism was active for two years, from 2015 to 2017, with the aim of supporting Italy (and Greece) in better coping with the migratory emergency (Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601). Nevertheless, his functioning revealed serious design weaknesses that hindered its effectiveness. Two of the major problems encountered in practice have been the eligibility for relocation depended on the nationality of the migrants, and the slow response of Member States to accept relocation. According to recognition rates from 2017, only Syrians and Eritreans were eligible for relocation, while most irregular migrants rescued in the Strait of Sicily and brought to disembark at one of the ports of the island, were of a nationality that does not qualify for relocation. Also, even if the Council Decisions provided that 39,600 asylum seekers would be relocated from Italy until September 2017, only 9,078 applicants had been relocated by the end of the programme on 27 September 2017. Even if the implementation of the scheme picked up faster in 2017 and the number rose to 11,464 at the end of the year, some countries continued to reject the scheme or asked for exemptions anyway.

\textsuperscript{15} \url{https://www.eulisa.europa.eu/Activities/Large-Scale-It-Systems/Eurodac}.  

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In the same way, out of 9,000 people found in Austria, 1500 had already applied for a protection status in Italy. Even in France, out of 58,000 migrants, 13,000 were from Italy. Not to mention the number of people who irregularly come to Italy, who avoid the fingerprinting and registering asylum claims procedure at arrival and who pass over national borders to reach different countries destinations.

However, despite the concrete ongoing situation, from a legal perspective secondary movement are considered as an illegitimate practice and each Member State is formally required to document irregular arrivals and accept back such arrivals that migrate onwards within the European Union\textsuperscript{16}. Moreover, this is exactly what the spokesperson of the European Commission, Natasha Bertaud, has reminded to the Italian Minister for Home Affairs, Matteo Salvini, who, speaking during an intergovernmental conference, has considered a political success the achievement of a huge number of migrants who irregularly crossed Italian borders in 2018, moving on to other countries\textsuperscript{17}.

In this regard, the main controversial issue is that, even if Dublin III Regulation establishes a hierarchy of criteria (such as family unity, possession of residence documents or visas, irregular entry or stay, and visa-waived entry) to individuate the EU country responsible for examining an asylum application, in practice, the most frequently applied criterion is the irregular entry, provided by article 13, meaning that the Member State through which the asylum-seeker first entered the EU is responsible for examining his or her asylum claim. The system also provides a mechanism of take charge and take back requests\textsuperscript{18}, which can be triggered by each Member State when it becomes aware that another Dublin country may be responsible for an asylum application. Therefore, the system designed in this manner clearly implies a broad and not proportionate responsibility for those States, including Italy, which are located at the external European borders. As recorded by Eurostat statistics on Dublin requests, in fact, EU-border countries receive many incoming take charge and take back requests for asylum seekers.

\textsuperscript{16} There are two exceptions to this allocation principle, which both follow from case-law of the Court of Justice of the European Union. First, responsibility for unaccompanied minors (with no family member or relative present in a Member State) rests with the member state where the minor lodged the application (CJEU \textit{M.A. a.o. v SSHD}, C-648/11). Second, if transfer would result in a breach of Article 4 Charter due to systemic failures in the asylum procedure and reception systems of the receiving Member State, transfer is not allowed (CJEU \textit{N.S. v SSHD and M.E. a.o. v Refugee Applications Commissioner}, C-411/10 and C-493/10; CJEU \textit{C.K. v Slovenia}, C-578/16 PPU). In addition, a Member State may decide to assume responsibility voluntarily and examine the application itself. This is what happened in Germany in 2015, when German Chancellor Angela Merkel decided to engage in an open-door policy toward the newcomers and to suspend the Dublin Procedure for Syrians, which meant that refugees from that country no longer had to be sent back to the first EU country that they entered.

\textsuperscript{17} The Italian Minister of Interior referred to 268,000 people; v.: \url{http://www.interno.gov.it/it/notizie/vertice-viminale-sicurezza-terrorismo-e-immigrazione}.

\textsuperscript{18} According to article 21 of the Dublin Regulation, where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may request that other Member State to take charge of the applicant. In addition, article 23 states that where a Member State with which a person has lodged a new application for international protection considers that another Member State is responsible for the examination of this application, it may request that other Member State to take back that person.
who first entered the EU through their borders. For examples, as illustrated in the table below, in 2017 Italy received more than 25,000 take charge and take back requests:

In addition to that, the Italian Ministry for Home Affairs published the numbers of transfers both from and to Italy. Data reveal a huge discrepancy between incoming and outgoing requests:

<table>
<thead>
<tr>
<th>Year</th>
<th>Transfers from Italy to other Member States</th>
<th>Transfers from other Member States to Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>47</td>
<td>2,658</td>
</tr>
<tr>
<td>2010</td>
<td>113</td>
<td>2,739</td>
</tr>
<tr>
<td>2011</td>
<td>14</td>
<td>4,645</td>
</tr>
<tr>
<td>2012</td>
<td>25</td>
<td>3,551</td>
</tr>
<tr>
<td>2013</td>
<td>5</td>
<td>2,966</td>
</tr>
<tr>
<td>2014</td>
<td>13</td>
<td>3,344</td>
</tr>
<tr>
<td>2015</td>
<td>126</td>
<td>2,963</td>
</tr>
<tr>
<td>2016</td>
<td>1,086</td>
<td>4,512</td>
</tr>
</tbody>
</table>

The Italian Dublin Unit has not provided statistics on the operation of the Dublin system in 2017, but according to Eurostat database, Italy received 5,678 incoming transfers, but realized only 75 outgoing ones. Also, according to Dublin statistics provided by the Italian Ministry of Interior, these are the numbers registered in the period between January 1 and November 30, 2018:

<table>
<thead>
<tr>
<th>Country</th>
<th>Outgoing Requests</th>
<th>Outgoing Transfers</th>
<th>Ingoing Requests</th>
<th>Ingoing Transfers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>3,424</td>
<td>135</td>
<td>31,000</td>
<td>5,919</td>
</tr>
<tr>
<td>Germany</td>
<td>1,423</td>
<td>48</td>
<td>13,000</td>
<td>2,150</td>
</tr>
<tr>
<td>Austria</td>
<td>288</td>
<td>0</td>
<td>11,000</td>
<td>1,570</td>
</tr>
<tr>
<td>France</td>
<td>295</td>
<td>0</td>
<td>1,634</td>
<td>594</td>
</tr>
<tr>
<td>Sweden</td>
<td>2,014</td>
<td>0</td>
<td>1,480</td>
<td>863</td>
</tr>
</tbody>
</table>

Thus, Italy remained the main recipient of Dublin requests from other Member States, mainly Germany and France.

Moreover, Germany has increased the number of Dublin transfers since 2018 and Italy is the State that received and continues to receive the highest numbers of transfers. As described by a report published by the Italian newspaper, “La Repubblica”, in the first quarter of 2019, the German Interior Minister, Horst Seehofer, addressed 4,602 requests of transfer of displaced persons to Italy. This is a rather worrying number, if we consider that it represents the 33% of the total number of requests submitted to all EU partner states. A trend that determined an increment of the 50%, compared to the previous months: indeed, requests arrived in Rome between October and December 2018 were only 2,979. Furthermore, while there were 2,150 effective transfers from Germany to Italy from January 2018 to November 2018, the number increased to 1,114 between November 2018 and March 2019.

Facing this situation, Italy calls for a modification of the allocation responsibility regime, pointing out the necessity for an effective “sharing-responsability” mechanism, which would entail an equal distribution of asylum seekers between Member States. Indeed, it would be essential to find measures that could contain the absconding of irregular migrants from Italy to other destinations by reducing the double “burden” of Italian authorities in controlling the EU external border and providing for asylum seekers’ reception (Orsini and Roos, 2017). For instance, it could be useful to dispose a temporary and

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22 In 2017, Italy also transferred 8,808 migrants to other countries, in application of the relocation mechanism.
selective suspension of Dublin transfers to Italy\textsuperscript{26} as an alternative measure to mandatory relocation. Obviously, this approach would achieve some results only if Italy simultaneously makes efforts to build better reception facilities.

In this regard, nevertheless, the securitarian approach emerged from the Decree-Law\textsuperscript{27} adopted by the Italian Council of Ministers on 24 September 2018 and approved by the Parliament on 4 October 2018\textsuperscript{28}, does not seem to properly answer this need for cooperation. Indeed, the Decree Law 113/2018, implemented by L 132/2018, has brought radical changes to the design of the Italian Reception system, leading to a lowering of its standards - which have already been recognized as inadequate to provide necessary reception conditions to asylum applicants\textsuperscript{29}, rather than to their improvement. As a result, this approach, premised on a logic of security and control no longer a logic of protection, would probably only increase the reasons for migrants to travel in search of destinations that offer more opportunities.

In particular, the 2018 reform introduced a clear division between the treatment given to asylum seekers and the one to beneficiaries of international protection. It transformed System of Protection for Applicants and Beneficiaries of International Protection (SPRAR)\textsuperscript{30} into the System of Protection for Beneficiaries of Protection and Unaccompanied Minors (Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati, SIPROIMI), which is directly available only to unaccompanied children and to already recognized refugees and beneficiaries of subsidiary protection\textsuperscript{31}. On the contrary, asylum seekers will therefore be only hosted in collective reception centers (CARA, CDA) or in temporary reception centers (CAS) where only basic levels of reception conditions have to be met.

This change in law has clearly compromised asylum seekers’ conditions at arrival in Italy: in fact, considering the length of asylum procedures in the country, asylum seekers could remain months (or in some cases even years) in facilities which are often inadequate in terms of both capacity and structural and safety conditions. Therefore, despite the Italian Minister for Home Affairs has presented this reform as “a step forward to make Italy safer”, it seems more like “a step back”, which won’t help the harmonization process

\textsuperscript{26} V.: CJEU, cases C 490/16 and C 646/16, in which the Court reaffirms Member States' obligations under the Dublin regulation, but at the same time it suggests that the rules should be applied in a "spirit of solidarity" if Member States evoke the "sovereignty clause" (Art. 17(1), Regulation 604/2013), like Italy did.


\textsuperscript{28} Law 132/2018.

\textsuperscript{29} See: European Court of Human Rights, Tarakhel v. Switzerland (Application no. 29217/12), 4 November 2014.

\textsuperscript{30} The so-called SPRAR centers were reception facilities, operated by local institutions, in cooperation with non-governmental and voluntary organizations. The Italian system was structured, under the Reception Decree (LD 142/2015), on three phases of assistance and reception: (1) first assistance facilities (so called CPSA) and hotspots; (2) reception facilities, including first reception centres (the so CPR), CARAs (centres for the accommodation of asylum seekers) and CAS (temporary centres for emergency reception), incorporated into regional hubs; (3) SPRAR centres.

\textsuperscript{31} Local authorities can also accommodate in SIPROIMI victims of trafficking, domestic violence and particular exploitation, and persons issued a residence permit for medical treatment, due to a natural calamity in the country of origin, or for acts of particular civic value (articles 18, 18-bis, 19(2)(d-bis), 20, 22(12-quater) and 42-bis TUL.).
between Member States’ frameworks. Thus, this reform is only going to raise the number
of people who would try to move from Italy to other (better) destinations.

4. An immediate outcome: the Schengen crisis

The Dublin Regulation and the related provisions of the Schengen Convention, signed
on 19 June 1990, originated as a cooperative and defensive response to the growing num-
ber of asylum seekers in Europe (Pastore, 2017). In particular, the Schengen Convention
implemented the Schengen Agreement, previously signed, on 14 June 1985, by Belgium,
France, Germany, Luxembourg and the Netherlands to gradually remove controls at their
common borders and introduce freedom of movement for all nationals of the signatory
EU States, other EU States or non-EU countries. Politically, this regime was considered for
a long time as a considerable win, measured by its effectiveness and its rapid expansion,
even beyond European borders.

However, Schengen’s success started being questioned in 2011 with the Arab spring,
and it declined even more after the wars in Syria, in 2012, and in Libya, in 2014, culminat-
ing in the current crisis (Guild, Brouwer, Groenendijk and Carrera, 2015). The combina-
tion of these two conflicts produced both a growth in forced migration and the collapse of
“externalised” migrations controls (Lazaridis and Wadia, 2015), broadly affecting EU
Member States’ asylum policies. This situation stretched host country facilities, created
political division within and between the Member States and led to an EU-initiated collec-
tive securitisation of the Schengen space, by re-introducing internal border controls,
derogating from the Schengen regime, and building new border fences.

Thus, these measures have been the principal response not only to the influx of mi-
grants from Africa and the Middle East since 2015, but also to the related onward move-
ments of these people. Today, there are six EU Schengen members conducting systematic
internal border controls (Carrera, 2019): according to the latest available information
from the European Commission Department for Migration and Home Affairs, Austria,
Norway, Sweden, Denmark, Germany and France have triggered the mechanism provided
by Article 25 et seq. of the Schengen Borders Code. And the main reasons invoked to
justify the reintroduction on border checks are the security situation in Europe and
threats resulting from the continuous significant secondary movements.

This evidence clearly shows how this phenomenon is threatening the Schengen acquis
and it is undermining one of the major successes of European integration process

32 By December 2015, France, Germany, Austria, Slovenia, Hungary, Sweden and non-EU Norway had rein-
troduced temporary controls at internal borders.
33 See: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduc-
tion-border-control_en.
34 The Schengen Borders Code provides Member States with the capability of temporarily reintroducing
border control at the internal borders when there is a serious threat to public policy or internal security.
The reintroduction of border control at the internal borders must remain an exception, must be limited in
time and must respect the principle of proportionality. Reintroducing border control at the internal border
should only ever be used as a measure of last resort (see: https://ec.europa.eu/home-affairs/what-we-
The value of Schengen, indeed, was at the time and continue to be evident: within the Schengen area the absence of internal borders has produced positive economic externalities and efficiency gains by enhancing the mobility of labour and the free movement of persons has been formally elevated to a fundamental right. So, the EU is called to formulate an urgent policy response, which would simultaneously take into account three competing claims: those of its Member States, that want to reduce secondary movements; those of the European Union, that needs to preserve the integrity of the Schengen space; and those relating to universal human rights.

5. Dublin IV: a possible solution?

As explored above, the current migration and refugee crisis has revealed the structural weaknesses in the design of the Dublin regime. Thus, Member States most “burdened” by the system, together with the European institutions, started calling for a reform of the Dublin system and for a new EU asylum policy in general. What they have individuated as a cornerstone for this reform is the need to achieve an agreement on the balance between responsibility and solidarity regarding the distribution of asylum-seekers.

In this perspective, in 2015 the Commission submitted a project with seven legislative proposals, including a rebuilding of the Dublin Regulation, specifically designed both to stop secondary movements and to ensure solidarity for Member States of first entry. Notably, the “Dublin IV Proposal”, presented on 4 May 2016, suggested as main legislative change the provision of a fairness mechanism to address and alleviate asylum pressure. In this view, according to the project, if the number of asylum applications made in a Member State is above 150% of the reference share, this mechanism will be automatically triggered, and all new asylum applications will be relocated across the EU. This instrument correlative needs an automated system to monitor the number of asylum applications received by each Member State and a reference key (based on two criteria: the size of the population and the total gross domestic product) to show when a country has disproportionate number of arrivals.

On the contrary, the proposal does not mention the possibility to modify the criteria provided by Dublin III to individuate the EU country responsible for examining an asylum application, by placing more emphasis, for instance, on asylum seekers’ desires or offering them the possibility to choose where to lodge the protection claim. Thus, following this

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35 Legal basis: article 3(2) of the Treaty on European Union (TEU); Article 21 of the Treaty on the Functioning of the European Union (TFEU); Titles IV and V TFEU; Article 45 of the Charter of Fundamental Rights of the European Union.


approach, we must assume that it won’t probably change the fact that the allocation rule most applied across the EU will be the first irregular entry principle\textsuperscript{38}.

Therefore, this proposal, based on the introduction of several corrections, rather than on a general renew of the Dublin III Regulation, has been harshly criticised both by stakeholders \textsuperscript{39} and academics (Hruschka, 2016; Gauci, 2016; Di Filippo, 2016; Progin-Theuerkauf, 2017). One of the most controversial points of the project is the insistence on the criterion of the country of first entry, not considering the possibility to focus on the preferences or characteristics of asylum seekers. Commentators (Di Filippo, 2016) pointed out that the Commission perspective does not consider that merely subjective preferences are different than objective personal characteristics and that, while the “free choice” approach may be questioned as a solution for allocating people, the verification of a reasonable connection with a country could be useful in view of persons’ speedy and satisfactory integration. Moreover, about the potential applicability of this new “fairness mechanism” (Hruschka, 2016), it seems that it will most likely never be applied, as the reference numbers will never be exceeded.

More consistent with this point of view appears the so-called “Wikström report”\textsuperscript{40} (Maiani, 2017), a document drawn up by the European Parliament, which suggests setting up the hierarchy of Dublin criteria on the “genuine links” that applicants may have with determined Member States. It also builds an allocation mechanism with two central characteristics: an element of choice, because the applicant has the possibility to choose among the four least-burdened States at the moment of the application, and the faculty for applicants to register as groups of maximum 30 persons (the family would be allocated together in all circumstances).

Anyway, until now, EU leaders have failed to achieve an agreement on this reform\textsuperscript{41} and the most controversial aspect is just the solidarity mechanism and its balance with responsibility.

6. Conclusions: better ways to solidarity

The above-mentioned difficulties in finding a compromise for a new Dublin Regulation have led the foundation for the research of better solutions to face the ongoing situation and control secondary movements. In this sense, other ideas contained in the project initiated by the Commission in 2015 have reached completely different results, encountering the consensus of all Member States and becoming ready to be concluded. These proposals concern in particular the European Commission’s attempt to realize a harmonization of the reception conditions, the protection standards and the relocation patterns throughout

\textsuperscript{38} We refer to the disposition of article 13, par. 1 of the Dublin Regulation: where it is established that an applicant 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 international protection.


the European Union, creating a European Asylum Agency\textsuperscript{42}, to provide a greater convergence in the assessment of applications for international protection across the Member States.

Notably, the Commission has submitted a reform of the Reception Directive\textsuperscript{43}, which would ensure a dignified treatment of applicants across the EU, in accordance with fundamental rights. In particular, it would increase applicants’ self-reliance and possible integration prospects, granting them access to the labor market no later than six months after an application for asylum is registered. Also, it would discourage asylum seekers from absconding by introducing the possibility for Member States to assign a residence and impose reporting obligations.

About the project for a new Qualification Directive\textsuperscript{44}, it would assure more convergence of the asylum decisions across the EU and would introduce sanctions and disincentives to discourage secondary movements\textsuperscript{45}. In addition, the proposal refers to a new binding EU resettlement scheme\textsuperscript{46}, which would provide safe and legal ways into the EU for displaced persons in need of international protection.

Finally, the European Parliament and the Council\textsuperscript{47} are on the process of negotiating updated rules aiming to reinforce the EURODAC system, designed to store and search data on asylum applicants and irregular migrants. The new EURODAC system would help immigration and asylum authorities to better control irregular immigration to the EU, detect secondary movements (migrants moving from the country in which they first arrived to seek protection elsewhere) and facilitate their readmission and return to their countries of origin\textsuperscript{48}.

However, despite all these proposals, it is just one the instruments that EU Member States would really need to build a functional mechanism, adequate to manage this situation: the principle of solidarity: this element puts the issue of relocation back at the heart of the discussions. Indeed, everyone should remind the words used by Robert Schuman, during the so called “discours de l’horloge”\textsuperscript{49}:

\textsuperscript{42}The proposal (amended in 2018; see: COM(2018) 633 final, 12.9.2018, 2016/0131 (COD)) aims to transform the existing European Asylum Support Office into a European Union Agency for Asylum with the necessary tasks, tools and financial means needed to provide a full support to Member States in times of increased migratory pressure, including through a rapid deployment of asylum experts.


\textsuperscript{44}COM(2016) 466 final, 13.7.2016, 2016/0223 (COD).

\textsuperscript{45}For example, the clock will be restarted on the 5-year waiting period needed to apply for EU long-term resident status each time the refugee is found in a Member State where he/she does not have the right to stay or reside.


\textsuperscript{47}COM(2016) 272, 4.5.2016,2016/0132 (COD).


\textsuperscript{49}Declaration made by the French Foreign Minister Robert Schuman on 9th May 1950 in which the creation of the European Community of Steel and Coal (ECSC) is first spoken of. This text is considered to be the starting point of the European Union.
L’Europe ne se fera pas d’un coup, ni dans une construction d’ensemble: elle se fera par des réalisations concrètes, créant d’abord une solidarité de fait.

Looking at the past, the principle of solidarity was originally conceived as one of the founding values of the European Union and as a motor for social cohesion (Michailidou and Trenz, 2018). Nowadays, instead, the crises – concerning not only high migration flows, but also terrorism and economic downturn -, have stepped up the pressure on European institutions and on national governments to promote cooperation among Member States and have led to the marginalization of the role of solidarity in many countries. Member States, thus, struggling with such challenges, have predominantly adopted individualist and protectionist strategies which undermine the character of the Union.

On the contrary, if we consider that solidarity is inextricably linked with the principle of responsibility - because solidarity gives rise to responsibility and is a desired consequence of responsibility (Morano-Foadi, 2017) -, it is evident that rethinking the system in compliance with these values is the only solution that will create effective practices in meeting the humanitarian needs of refugees and sharing responsibilities between Member States (Moreno-Lax, 2017).

In this perspective, it is essential to recognise that a well-working asylum system constitutes a public good at the EU level. Therefore, some asylum-related issues, including the reception, registration and hosting of asylum seekers, the asylum procedures themselves, and the return of rejected applicants, might be centralised and handles by the European institutions themselves, creating a system operated and financed by the EU. Thus, rethinking solidarity in asylum law requires not only more responsibility sharing among States and an understanding of the varying visions each country has, but also a continuous dialogue and a broad cooperation among EU institutions and Member States. Until they both won’t be aware of this, it would be impossible to figure out how to handle the actual migratory emergency and its implications. We need a different perspective, shaped by the European humanism, by the principle of equality and by the respect of the fundamental rights, and we need a global and coordinated managing of the phenomenon, which would put at the center the respect of human dignity.

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