



University of Macedonia  
School of Economic and Regional Studies  
Department of Balkan, Slavic and Oriental Studies  
M.A in Politics and Economics of Contemporary Eastern and  
Southeastern Europe

---

“EU POLICIES ON IRREGULAR MIGRATION AND ASYLUM  
AND THEIR IMPACT ON THE EUROPEAN SOUTH:  
THE CASES OF GREECE AND ITALY”

---

Master Thesis submitted for the degree  
Master of Arts in Politics and Economics of Contemporary Eastern and Southeastern Europe

Supervisor: Christos Paraskevopoulos, Prof.

Student: Apostolia Gougousi (M 17/14)



Thessaloniki, October 2014

Word count: 12,165

*Η ολοκλήρωση της διπλωματικής εργασίας  
συγχρηματοδοτήθηκε μέσω της Πράξης Πρόγραμμα  
χορήγησης υποτροφιών ΙΚΥ για Μεταπτυχιακές Σπουδές  
Πρώτου Κύκλου (Μάστερ) – Οριζόντια Πράξη, από  
πόρους του ΕΠ “Εκπαίδευση και Δια Βίου Μάθηση”  
του Ευρωπαϊκού Κοινωνικού Ταμείου (ΕΚΤ) του ΕΣΠΑ,  
2007-2013”*

## ACKNOWLEDGMENTS

---

The completion of this thesis would not have been possible without the assistance and support of my supervisor Professor Dr. Christos Paraskevopoulos, whom I sincerely thank for his feedbacks, guidance and recommendations indispensable to adopting the correct approach and providing a comprehensive analysis of the subject.

I would further like to thank my family for providing moral support throughout my studies and for always believing in me.

Apostolia Gougousi

---

## CONTENTS

1.	EU Policy Developments at a Glance.....	8
2.	The Common European Asylum System: Failed Objectives or Troubled Implementation? .....	10
2.1	The 1990 Dublin Convention.....	11
2.2	From Convention to Regulation: Dublin I.....	13
2.3	Dublin II Revisited: Dublin III enters into force .....	15
3.	EU v. Irregular Migration: Whither Integration or Restrictive Policies? .....	18
3.1	How the EU addresses irregular migration .....	18
3.2	Integrated Border Management and the role of Frontex .....	22
4.	Case Studies .....	24
4.1	Greece .....	24
4.1.1	Domestic Governance Structure and Response to CEAS .....	24
4.1.2	Domestic Governance Structures and Response to Irregular Migration Strategies .....	29
4.2	Italy .....	33
4.2.1	Domestic Governance Structure and Response to CEAS .....	33
4.2.2	Domestic Governance Structures and Response to Irregular Migration Strategies .....	37
5.	Greece and Italy in a comparative perspective .....	42
5.1	The impact of EU policies on asylum .....	42
5.2	The response to EU policies on irregular migration .....	45
6	Concluding Remarks .....	48
7	Bibliography .....	50
	EU Related Documents .....	54
	Online Articles .....	55

## ACRONYMS

CEAS	Common European Asylum System
CFREU	Charter of Fundamental Rights of the European Union
EASO	European Asylum Support Office
ECJ	European Court of Justice
ECRE	European Council on Refugees and Exiles
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EP	European Parliament
EU	European Union
EURODAC	European Data Protection Supervisor
EUROSUR	European Border Surveillance System
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member-States of the European Union
FRA	Fundamental Rights Agency
GAMM	Global Approach to Migration and Mobility
IBM	Integrated Border Management
JHA	Justice and Home Affairs
MS	Member-State
NGO	Non-governmental Organization
OMN	Operation <i>Mare Nostrum</i>
SIS	Schengen Information System
SBC	Schengen Borders Code
TCN	Third Country National
UNHCR	United Nations High Commissioner for Human Rights
VIS	Visa Information System

## DEFINITIONS

**REFUGEE:** a person who has fled from their country because of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion;

**ASYLUM SEEKER:** is someone who left their country seeking protection in a third country but is yet to be granted refugee status;

**IRREGULAR IMMIGRANT:** a person who crosses the borders of a third country without complying with the necessary requirements for legal entry into the receiving State and may stay or work without the authorization or documents required under immigration laws.<sup>1</sup>



Source: euobserver.com

---

<sup>1</sup> Amnesty International. 2014. *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders*

## **ABSTRACT**

---

As daily tragic accidents in the sea make the headlines, and cases of inhumane treatment of asylum seekers and immigrants are documented in Member-States, the EU efforts to address the issues of irregular migration and asylum come under scrutiny. In the face of enormous challenges raised at the borders, Italy and Greece, the outposts of Europe, bear the burden of the implementation of the Europeanized strategies, and pay a high price for their contradiction in pursuing protection through securitization. In this light and due to the unprecedented number of border arrivals, the domestic structures of the two countries fail both to adhere to the minimum standards of protection set by the EU and to shield the external borders against irregular crossings. This thesis attempts to provide an overview of the EU “policies” on the issues, and a critical approach to the results they have produced so far. By taking an insight into the cases of Greece and Italy, the main gateways to Europe, we will make an assessment of the impact of these policies on the domestic governance structures. The thesis concludes with a comparative approach to the two peripheral states in view of their respective responses to EU policies and with some critical reflections on the broader implications of the latter if deficiencies are not promptly addressed.

**Key-words:** European Union; asylum; irregular migration; refugees; policies; borders; Dublin; CEAS; Schengen; burden-sharing.

# 1. EU POLICY DEVELOPMENTS AT A GLANCE

The Union's vision to become an area of free movement and integration for European citizens was fully realized through the Schengen cooperation (1985)<sup>2</sup> and the abolition of controls in its internal frontiers that allowed millions of persons to immigrate, to wit travel, work and settle in other Member-States of the theretofore European Communities. This intergovernmental agreement *inter alia* provided for the creation of a single external border, a common set of rules on border checks, shared entry conditions for third country nationals and information database, enhanced police and judicial cooperation with a view to ensure order in the crossing of the external borderline of the Union.

The Treaty of Maastricht (1992) brought the issues of third nationals migration and refugee protection under the third pillar of the new institutional structure of the Union, where states were called upon to take joint action by intergovernmental methods to ensure higher levels of safety for their citizens in an area of freedom, security and justice. The Member-States although still responsible for the national legislation implemented on the issues of (ir)regular migration and asylum, were now bound to treat such issues as “matters of common interest” and promote policies that would be the outcome of consultation and coordinated action among them.<sup>3</sup> Although not granted a binding legal effect the adoption of joint actions and positions evinced the Union's intention to incrementally bring such matters under its competence.

As the creation of the Schengen area transferred the problem of irregular migration to the external borders of the Union the need for the European institutions to take on a more active role in the legislative process arose. In this light, the Treaty of Amsterdam (1997) institutionalized the third

---

2 In June 14, 1985 the states of France, Germany, Belgium, Luxembourg and the Netherlands signed the Schengen agreement, followed by a Convention signed in June 19 1990 implementing the previous Agreement. Gradually most Member-States acceded to the Convention with the exception of Cyprus, Bulgaria, Romania and Croatia which are yet to become members of the Schengen area.

3 Fitchew, 2009.

pillar and along with that the formulation of the immigration policy pertained to the Union's shared competences. The integration of the Schengen acquis into the institutional framework of the European Union enhanced the legal basis of a number of decisions and rules adopted theretofore and ensured their direct applicability to all the signatory Member-States.<sup>4</sup>

The Treaty of Lisbon (2009) while reiterating in Title V the need for the creation of an area of freedom and security without internal borders, goes one step further and calls upon states to not just conform with minimum standards on asylum and immigration but frame common policies on the issues.<sup>5</sup> Indeed, the Treaty of Lisbon introduced a new landscape<sup>6</sup> that could support a Global Approach to Migration and Mobility (GAMM) aligned with the European Neighbourhood Policy and complementary to the EU's foreign policy.<sup>7</sup>

In the context of the Europeanization of asylum and immigration policies and the increasing influence of the EU in these matters, decision-making has moved in the province of the EU's supranational institutions, while to a large extent action has remained within the national authorities. Greek and Italian domestic governance adaptation to Europeanized policies has depended on the national capacities and the scale of the problem in the states' territory. Initially characterized by inertia in conforming with European standards and lack of decisiveness of political action, eventually both Member-States did implement EU policies, yet with questionable outcomes.

In light of the above historical overview, this thesis, based on empirical evidence and

---

4 Denmark was holding a special status with regard to the application of the Schengen provisions, maintaining its right to choose whether or not to apply certain measures under Title IV of the EC Treaty. On the other hand UK and Ireland opted out of the Schengen Agreements stating that they were willing to implement only certain aspects of the acquis.

5 See Title V art.67, 78 and 79 of the Treaty on the Functioning of the European Union.

6 *Inter alia* the pillar structure of JHA was abolished, the EU competences on the fashioning of legal immigration policy were enhanced, while the creation of the position of the High Representative for Foreign Affairs and Security Policy gave migration policy an external dimension and put it at the very centre of the Union's cooperation with third countries.

7 Carrera, Den Hertog and Parkin, 2012.

literature review, will examine the response of the domestic governance structures of Italy and Greece to the European asylum and irregular migration policies. In particular, in the following second chapter we will provide a timeline of the legislative developments in the area of asylum that led to the creation of the Common European Asylum System, known as the Dublin system, and attempt to explore its deficiencies and their implications for Member-States. In the third chapter, we will focus on the European initiatives taken in the context of curbing irregular immigration, discussing on how the EU is trying to balance between protection and prevention, while we will pay particular attention to the role of Frontex in the external border management. Chapter four is devoted to the specific cases of Greece and Italy, whose geographical position brings them at the very centre of asylum and immigration policies. The analysis will be twofold focusing on the domestic structural and operational shortcomings as a result of both the flawed adaptation to the European framework and the extended pressures exercised by the burden-allocation rules. The thesis concludes lending a comparative perspective to the states' adjustment to the European policies, and to the impact of the latter on their domestic structures and consequently on the state of those in seek of protection. The discussion ends with some critical reflections on what the priorities of the EU in the field of asylum and immigration should be in order to achieve the pursued coherence and eliminate all the perpetuating systemic deficiencies of Italy and Greece that cost the lives of hundreds of people every year.

## **2. THE COMMON EUROPEAN ASYLUM SYSTEM: FAILED OBJECTIVES OR TROUBLED IMPLEMENTATION?**

In light of the need for a common approach to asylum policy, the crucial issue was on what grounds to define the state eligible for concluding on the asylum claims raised. The international character of the status of a refugee was identified as the crux of the problem at the time, since the Member-States had to deal with phenomena of applicants succeeding in getting a visa from one

Member-State and then while traveling within the Schengen area submitting multiple applications to different countries in order to increase their chances for getting refugee protection. Hence, the rationale behind the EC's initiatives was to limit the responsibility to the state that was liable for the entry of the third country national to the Union's territory.

## 2.1. The 1990 Dublin Convention

“The Convention [was] a product of the Single European Act which created the objective of an area without internal frontiers for the movement of persons”.<sup>8</sup> Thus, the aim of this intergovernmental treaty signed by Member-States was to build a bulwark against two major phenomena attributed to the abolition of internal border controls. First the phenomenon of '*asylum shopping*'<sup>9</sup> in other words concurrent or consecutive applications lodged by asylum seekers in several Member-States, or applications made to a preferred state other than the one of first entry, due to the applicants' convictions that they stand better chances to be granted asylum there. And second the phenomenon of the so-called '*refugees in orbit*',<sup>10</sup> to wit asylum seekers circulating from the state of their first entry (where their submitted request had been most likely rejected) to the state they lodged an application due to unwillingness from all parts to take responsibility in examining their claims.

By setting forth specific criteria in hierarchical order that determine the competent state for the examination of the asylum application, the Convention put an end to the intricate process of asylum seeking that made it hard both for applicants to field their claims and for states to examine them. The main parameters of the Convention were the following:

- ensure that only one state will examine the application according to its national aliens legislation ;

---

8 Guild 1996, p.113.

9 Fitchew 2009, p.6 and European Council on Refugees and Exiles (ECRE) 2008, p. 9.

10 Ibid at 8.

- eliminate phenomena such as multiple applications lodged simultaneously or successively and refugees being “in orbit”;
- define the state responsible for considering the asylum application through an array of hierarchically formulated criteria ;

Although the intergovernmental Convention defined the sole state that would undertake the task of examining the application, yet it was in accordance with the state's national legislation that this application would be considered.

Guild (1996, p.114) points out that “the Dublin Convention was the first serious attempt of the Member-States to coordinate asylum policy within the European Union...”. Despite the unequivocal progress it brought about the Convention did not go without shortcomings, most of them deriving from the fact that its implementation depended on the national laws and the proper functioning of the national authorities of the Member-States in tandem with a comprehensive cooperation among the involved countries. Particularly, the misinterpretation of the safe third country concept, the lack of common procedures for examining and granting refugee status, the great delays in the operation of the system and the failure in distributing the burden equally among Member-States were some of the most important points of criticism. Apparently, the Dublin Convention did not solve the asylum problem within the European Communities, yet as Ferguson-Sidorenko (2007 p.18-19) remarks “although [it] did not harmonize either substantive or procedural asylum law, it gave an impetus for its harmonization”.

## 2.2 From Convention to Regulation: Dublin II

*“The European Council.....has agreed to work towards establishing a Common European Asylum System....This system should include in the short term a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status”*.<sup>11</sup>

More than a decade after their first attempt to address the issue of asylum within EU borders the Member-States agreed upon incorporating the rules and the procedures established by the Dublin Convention into EU law and consequently upon establishing the Common European Asylum System. The initiative had been part of the broader project to create an “Area of Freedom, Security and Justice” one of the three major items of the Tampere Programme initiated in 1999.

The Council Regulation 343/2003, colloquially known as Dublin II, adopted within the framework of the Tampere programme<sup>12</sup> was directed at providing a set of hierarchical criteria and mechanisms that would render a state competent for adjudicating on asylum requests. The objectives of the Regulation were no different than the ones of the Convention, nevertheless their accomplishment fell within the Union's competence, so as to make it “more feasible to achieve coherence within the CEAS”.<sup>13</sup> Tackling the issues of “*asylum shopping*” and “*refugees in orbit*” remained at the very centre of the new legal framework, while one of its greatest contributions was the acceleration of the procedures concerning the determination of the competent state, as well as

---

11 Tampere par.14

12 The Tampere Programme was the first programme adopted by the European Council aimed at the creation of an Area of Freedom, Security and Justice. It laid the groundwork for common asylum and immigration policies and established the first phase of the CEAS.

13 Ferguson-Sidorenko 2007, p.52

the submission, examination, acceptance or rejection of the asylum claim.

The Dublin Regulation, though expected to bring significant improvements in the area of refugee protection within the EU and ensure its compliance with international instruments, eventually became a source of disappointment and immense criticism the focal points of which were primarily two: First, the uneven burden sharing. Despite efforts to establish a set of objective criteria defining the MS responsible for examining asylum cases, eventually the allocation of responsibility found the southern states, the main gateways of asylum seekers to Europe, faced with an overload of applications for the proper examination of which they lacked the necessary capacities.<sup>14</sup> Despite, the Union's intentions to harmonize the asylum policies and mechanisms, and create a fair and balanced system, discrepancies between the Member-States remained and in some cases even increased. “In particular the criterion of illegal border crossing [placed] a disproportionate responsibility on States at the external borders of the Union”.<sup>15</sup> The corollary of this was more harsh domestic policies on claimants, lower recognition rates, inadequate procedures and inefficient implementation of the common standards in addition to failed guarantees for protection.

The second point of criticism was the human rights implications of the CEAS. To a large extent the Dublin II failed to ensure high levels of protection for asylum seekers in line with the states' international obligations so as to comprehensively address their needs. The divergence in reception conditions, the prolonged detentions as a result of frequent transfer procedures and the lack of procedural safeguards, were only some of the deficiencies recorded with regard to refugee treatment in the Member-States. The often inhumane conditions and cumbersome procedures prevailing in most southern Member-States, forced many claimants to launch their claims to the

---

14 By way of proof, according to the UNHCR, Greece had fewer than 1.000 reception places available in 2010, yet received over 10.000 new asylum applications.

15 Laura Kok. 2006. *The Dublin II Regulation. A UNHCR Discussion Paper*. , p.12

countries of Central and Northern Europe in quest for better protection, while refusing to be transferred back to the competent States. The judicial intervention in most of these cases did not but exacerbate the existing problems of the System.

UNHCR has often voiced concerns on the system's impact on the personal welfare of asylum claimants and on the demonstrated procedural divergences and quality deficiencies that rebut the basic principle behind the Regulation; equal access to protection in all Member-States.<sup>16</sup> As ECRE reports<sup>17</sup> the Dublin System did not succeed in resolving the duplicate applications issue, neither in ensuring clarity and efficiency in the assessment of state responsibility. Eventually, all the great operational difficulties and the time and money consuming procedures worked only to the detriment of the applicants and the States themselves, asserting, thus, that by all means the Dublin System failed to achieve its outlined objectives.

### **2.3 Dublin II Revisited: Dublin III enters into force**

The aforementioned shortcomings of the Dublin II System and the slow process of converging asylum policies opened the discourse for replacing the Regulation 343/2003 with new provisions aiming at rectifying previous deficiencies.

Following the Tampere Conclusions, and the completion of the 'first phase' of the establishment of the CEAS in 2004, Member-States agreed upon a new agenda for the future, and set out the Hague Programme for 2005-2010 as the 'second phase' of the CEAS. The Programme provided for closer cooperation in JHA with primary focus being on constructing a common immigration and asylum policy among Member-States. By the end of the Programme, the Union

---

<sup>16</sup> UNHCR comments on the European Commission's Proposal (2009)

<sup>17</sup> European Council on Refugees and Exiles (ECRE). 2008. *Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered*.

proceeded with the adoption of a new agenda under the auspices of the Stockholm Programme (2010), whereby the Union seeks the absolute convergence of asylum policies that will ensure common rules for the Member-States and uniform status for the refugees.

In response to the difficulties encountered by Member-States resulting in the divergent and deficient implementation of the CEAS, the EU proceeded in 2010 with the establishment of a new Agency, the European Asylum Support Office (EASO) assigned the task of improving the implementation of CEAS, through facilitating and coordinating cooperation among Member-States as well as providing operational support to those countries faced with disproportionate pressures on their asylum systems.<sup>18</sup> The EASO acting as the 'Frontex of CEAS', holds a coordinating role in terms of information exchange among Member-States and ensuring higher quality in asylum procedures, while it is also competent for deploying 'asylum support teams' upon request from a Member-State encountered with serious exposures.

The Regulation 604/2013 – colloquially known as Dublin III – entered into force in July 19<sup>th</sup> 2013, ten years after the first attempt of Member-States to adopt common rules towards the issue of asylum with Regulation 343/2003 and its contradictory implementation. One of the most significant new provisions of the recent instrument is article 3.2 introducing a state's right to suspend an applicant's transfer to the responsible Member-State when there is evidence that serious operational flaws may result in their inhuman or degrading treatment. The adoption of this clause was based on the numerous rulings of both the ECtHR and the ECJ, triggered by serious accusations against the reception, detention and claim examination conditions present in many southern European countries faced with surging arrivals of asylum seekers –i.e. Italy, Greece, Bulgaria– ; conditions in no way consistent with the protection standards set by the CEAS.

---

18 Regulation (EU) No 439/2010

In the Dublin III the Council in lieu of reconsidering responsibility-allocation rules, decided to adopt a new mechanism called “**early warning**”.<sup>19</sup> The Regulation further includes a number of provisions designed to eliminate human rights abuses and ensure better access of applicants to the statutory procedures recasting, thus, previous legal defaults.

In their article, Smythies and Ramazzotti (2013), characterize the Dublin System now under Dublin III as a troubled one, perpetuating the deficiencies of the past and failing by all means to address the most crucial issues confronted by both the States and the refugees. They recognize the unbalanced responsibility-allocation mechanism as the most dysfunctional within the system and they point out that “what is.....needed, in addition to changing the distribution of responsibility, is greater financial compensation for Member-States that face the pressure of mass inflows of asylum seekers, as well as strengthening the individual national systems”.<sup>20</sup>

In fact the Dublin III is a step ahead in terms of enhancing safeguards for applicants for international protection yet it fails once again to eliminate concerns over the unfair and ineffective function of the asylum system in Europe resulting in lower standards of protection, less credibility of mechanisms and far less solidarity among Member-States. While completing its first year of implementation, it still remains to be seen whether the new Regulation will hereinafter manage to address the challenges created by its predecessors.

---

19 Regulation No 604/2013, Article 33. Pursuant to this mechanism, when a particular Member-State's system is faced with high pressures caused by massive inflows it shall identify and address these pressures, before the situation degenerates, through a preventive action plan dealing with protection gaps.

20 Smythies and Ramazzotti, 2013: <http://internationalrefugeelaw.wordpress.com/2013/08/26/the-dublin-regulation-a-critical-examination-of-a-troubled-system/>

### **3. EU v. IRREGULAR MIGRATION: WHITHER INTEGRATION OR RESTRICTIVE POLICIES?**

#### **3.1 How the EU addresses irregular migration**

In discussing asylum policies and refugee protection in the EU area it is impossible to ignore the issue of immigration and vice versa, as they are utterly intertwined. Thence, the EU has approached both matters as part of its Freedom, Security and Justice domain, developing parallel policies and assisting Member-States in tackling the issues with responsibility and solidarity towards their Schengen counterparts, whose internal security has been affected respectively, subsequent to the abolishment of internal frontiers.

The abolition of internal border controls soon became the source of a security deficit and of the necessity for a comprehensive migration strategy designed for and implemented in the external borders of the Member-States. As Dublin rules brought harmonization in the area of asylum, the Schengen *acquis* introduced *inter alia* a common visa regime, alignment of certain conditions of regular immigration and unified controls at the external borders.<sup>21</sup>

*“Detailed binding provisions under EU Law regarding the carrying out of controls at border crossing posts and other observation along the EU's external border – including land and sea borders as well as airports – are laid out especially in the Schengen acquis, as further developed through the Schengen Borders Code. Member States have obligated themselves as a rule to expel persons without a valid residence permit; return policy is bound by common regulations and common implementation”.*<sup>22</sup>

In the context of EU Migration Strategy, the concept of Integrated Border Management (IBM)

---

21 Weinzierl and Lisson, 2007

22 Weinzierl and Lisson 2007, p. 27

was developed in a 2002 Communication from the Commission to the Council and the EP. That is translated into the establishment of a common corpus of legislation, a deepened operational cooperation of Member-States in border control, and a more coherent common management with a view to achieve a more effective implementation of the *acquis communautaire* and higher levels of both internal and external security.<sup>23</sup> This IBM System consists *inter alia* of the Schengen Borders Code, the Frontex, the Visa Information System (VIS), the Schengen Information System (SIS III), the Eurodac, and the Eurosur, while it further extends to all the practical measures against reducing irregular migration such as fences, border control units, coast guards and patrols.<sup>24</sup> Being currently in possession of a rather detailed legislation in the area of control of the external borders, the EU seeks to further achieve greater operational coordination of action between the national authorities of Member-States and even envisages the establishment of a European Corps of Border Guards with a remit to supervise checks and surveillance at the external borders. Within this framework, the EU ultimately foresees the convergence of policies not merely at the level of norms and standards but further in the field of personnel and infrastructure.

The other aspect of this integrated management entails the externalization of the EU's Migration Strategy, whereby readmission agreements<sup>25</sup> and cooperation with third states of origin or transit on the curbing of irregular migration are produced; “non-arrival measures”<sup>26</sup> and close collaboration with neighbouring countries are bolstered, with emphasis being put primarily on the southern porous coastlines. In this framework, the Union transfers the responsibility for migration monitoring and arrival-detering measures in the maritime or land borders to its external partners, in

---

23 The five interdependent components of the common policy on the management of the external borders were: (a) A common corpus of legislation; (b) A common co-ordination and operational co-operation mechanism; (c) Common integrated risk analysis; (d) Staff trained in the European dimension and inter-operational equipment; (e) Burden-sharing between Member-States in the run-up to a European Corps of Border Guards.

24 Dimitriadi, 2014.

25 According to the official website of Home Affairs of the European Commission so far the it has been formally authorized to negotiate EU readmission agreements with Russia, Morocco, Pakistan, Sri Lanka, Ukraine, the Chinese Special Administrative Regions of Hong Kong and Macao, Algeria, Turkey, Albania, China, FYROM, Serbia, Montenegro, Bosnia-Herzegovina, the Republic of Moldova, Georgia, Cape Verde and Belarus, with some of them already into force.

26 These may include: visa policies, carrier sanctions, border guards training and coordinated action among Member-States.

particular its neighbouring states<sup>27</sup>, which benefit either from the financial assistance provided to them with a view to greater effectiveness in their controls, or from the development of a preferential relationship with the EU.<sup>28</sup>

In 2008, with the 'Global Approach to Migration and Mobility' (GAMM) the EU reaffirmed that migration issues are an integral part of its external relations and that new challenges in the field should be confronted through a spirit of solidarity between Member-States and cooperation with third countries. Whereas the Council set out five basic commitments in its 2008 European Pact on Immigration and Asylum, among which to control irregular migration by ensuring that irregular migrants return to their countries of origin or countries of transit; to make border controls more effective; to create comprehensive partnerships with the countries of origin and transit.

It is thus evident that EU's Migration Policy with regard to irregular border crossing is directed towards fortifying the external frontiers and expelling unauthorized immigrants rather than building a system of protection and integration according to international human rights instruments. This policy gap detected between EU immigration policies and guarantees for fundamental socio-economic rights of irregular immigrants<sup>29</sup>, along with measures to impede their access to Europe and consequently prevent them from having access to the asylum process and other forms of international protection is jeopardizing EU's "human rights frontrunner" image.

According to Dimitriadi (2014), the policy of protection through prevention is heavily invested in by the EU, and measures for the surveillance and management of the external borders continue to be in the foreground, despite reports that the majority of irregular migrants are due to

---

27 Dimitriadi 2014.

28 The latest readmission agreement signed in December 2013 between the latter and Turkey attests to that externalization policy. The two signatory parties have agreed that Turkey shall readmit all persons who do not fulfill the conditions of entry, presence or residence on the territory of an EU Member-State, upon request from the latter in exchange for visa liberalization to be achieved after a period of three years upon ratification.

29 Carrera and Merlino, 2010

visa overstays, and not due to inefficient border controls.

In this light, the policy on irregular migration consists more of measures to curb the problem<sup>30</sup> and less of guarantees for the protection of immigrants or common norms governing their status. Indeed, according to Amnesty International, EU invests millions of euros in fences, surveillance technology and detention centers as well as on creating a buffer zone outside the external borderline in cooperation with neighbouring countries. For the period 2007-2013 the EU allocated €4 billion for asylum and immigration policy objectives with more than € 1 billion allocated for strengthening border management and merely € 700 million allocated for improving the asylum systems.<sup>31</sup>

In fact, the EU has not managed to develop yet a Common European Immigration Policy equal to the standards of the Common European Asylum Policy. As Lavenex (2001) points out “...the diversity of Member-States' regulations, the domestic politicization of these policy fields, and the worry to preserve national control over these core issues of sovereignty have impeded more substantive harmonization”.

As long as the spirit of EU initiatives in the area of irregular migration revolves around intensifying border controls, and the linkage between immigration and internal security is maintained, “a 'no-policy' strategy....to address the insecurities faced by TCNs lacking a legal status [will remain] at odds with a 'Europe of Rights’”.<sup>32</sup>

---

30 Such as limitations of access to European territory and repressive responses (expulsion, detention) to the inflows of undocumented TCNs.

31 Amnesty International. 2014. *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders*.

32 Carrera and Merlino, 2010

### 3.2 Integrated Border Management and the role of Frontex

In 2004 Member-States decided to further strengthen cooperation in area of migration, asylum and security, by establishing a European Agency mandated to coordinate the actions of the national border authorities with a view to facilitate the management of the external frontiers and consequently the management of large-scale migration flows. Thus, the European Agency for the Management of Operational Cooperation at the External Borders of the Member-States of the EU, abbreviated as Frontex, established by Regulation (EC) 2007/2004<sup>33</sup> became one of the fundamental components of the external dimension of the Integrated Border Management Strategy. Some of the Agency's main areas of activity are: coordinating joint operations, conducting risk analysis, establishing common training standards, serving as a platform for research, dealing with crisis situations and assisting in joint return operations.<sup>34</sup>

“Although Frontex has insisted it is less 'actor' than 'coordinator', it has quickly developed into a powerful mechanism holding a key role in enforcing EU immigration policy”.<sup>35</sup> In fact it has been significantly active in operations with Member-States, while it has acted as the main coordinator of joint maritime operations often with non EU/Schengen countries. Frontex does play an essential role in return operations, providing both its expertise and financial assistance to the participant countries, despite its tendency to shirk responsibility for infringement of the rules governing expulsions of third country nationals and access to international protection.

Frontex has been the product of EU's securitization policy towards migration and asylum, attracting thus a lot of attention and generating sharp criticism, particularly a propos its operations

---

33 Regulation (EC) 2007/2004 has been amended twice. First, Regulation (EC) 863/2007 established a mechanism for the creation of Rapid Border Intervention Teams, introducing new provisions concerning the tasks and powers of guest officers deployed on the territory of a MS. Respectively, the amending Regulation (EC) 1168/2011 extended the Agency's mandate with a view to the gradual introduction of the concept of Integrated Border Management.

34 <http://Frontex.europa.eu/about-Frontex/mission-and-tasks>

35 Human Rights Watch, 2011. *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*.

and their linkage with serious human rights abuses. It has often been accused of disregarding the *non-refoulement* principle when forcibly returning unauthorized migrants-potential asylum seekers back to countries where they face serious danger of being mistreated. Equally the presence of Frontex in the land, air and maritime borders of EU has contributed in hampering potential refugees' access to asylum procedures, simultaneously inducing them to take unsafe and illegal routes to Europe.

The authority exercised by Frontex in practice, has often raised questions related to its legality. It's alleged facilitator role in Member-States' initiatives is at odds with what has been reported by International Human Rights Agencies. In fact Frontex plays more than a complementary role in illegally conducted returns and bears knowledge of the exposure of irregular immigrants to inhumane detention conditions. Despite being bound by the EU Charter of Fundamental Rights<sup>36</sup> it falls short of its obligation to respect fundamental human rights when it apprehends yet remains apathetic towards practices of states that constitute blatant violations of basic human rights principles.<sup>37</sup>

Pursuant to the latest amendments the mandate of Frontex has been widened, enabling the Agency to deploy European border guard teams and to possess its own equipment, while its budget is significantly increased.<sup>38</sup> This attests to the fact that despite operational deficiencies, immense criticism and the conviction that responsibility for control and surveillance lies with the Member-States, Frontex unequivocally appears to be the vanguard of EU's migration and asylum policy, the key mechanism of integrated border management, that nonetheless should put more effort on respecting the fundamental rights protection framework incorporated in its legal basis as well as

---

36 According to recital 22 of the preamble of Regulation 2007/2004 "This Regulation respects the fundamental rights and observes the principles recognized by Article 6(2) of the Treaty of the European Union and reflected in the Charter of Fundamental Rights of the European Union".

37 Human Rights Watch, 2011. *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*.

38 An initial budget of €6,2 million in 2005 reached €93,9 million in 2013.

take responsibility for its activities and their repercussions, since in reality its involvement in the management of external borders is not merely limited to coordination.<sup>39</sup>

## **4. CASE STUDIES**

### **4.1. GREECE**

It was not until recently that Greece a traditionally immigrant-exporting country transformed into the main gateway of third country nationals to Europe and into a host-country for millions of irregular immigrants and asylum seekers who seek for a new home in the old continent. The relatively small size of the country, in tandem with an undeveloped migration and asylum policy, rather inadequate infrastructure and incompetent national services found the country unprepared against the hordes of unauthorized immigrants and asylum seekers that reached or tried to reach its land and sea borders the past decades. This dramatic phenomenon in conjunction with the recent economic breakdown of the country and the administrative inability to deal with such massive influx created unprecedented challenges for both Greece and the EU with regard to border management, and put the implementation of the CEAS to the test.

#### **4.1.1 Domestic Governance Structures and Response to CEAS**

The gross humanitarian crisis recorded in Greece in 2010, brought to the fore the perennial deficiencies of the national asylum system, and the political and administrative impotence to deal with the issue effectively corollary to the contentious Dublin rules.

For decades the discrepancies between theory and practice in Greece had a negative impact on

---

<sup>39</sup> As per Article 3 of the Regulation 1168/2011 Frontex has the authority “to initiate and carry out joint operations and pilot projects in cooperation with Member-States concerned”.

the functioning of the asylum system. The Law 1975/2001 transposed the provisions of the Dublin Convention into the Greek legal order; still the national policies towards curbing the issue were designed in a rather amateurish manner, whereas the competent authorities were stifled by inertia, creating a number of practices that continued to haunt the Greek asylum system until recently.

The Europeanization of asylum policy and consequently the establishment of common standards and safeguards for refugee protection as well as the alleged strengthening of cooperation and solidarity among Member-States was expected to bring along more comprehensive solutions to a country encountered with severe strains caused by the massive applications for asylum, following the huge numbers of TCNs crossing its extensive external frontiers.

Nonetheless, the Dublin criterion defining the states of first entry as the ones responsible for examining the asylum claims raised, coupled with the obligation of Member-States to send back to the country of first entry those ending up in their territory without permission put enormous strains on a country poorly equipped to address the issue according to the standards set at a European level. This incapacity was reflected in the numerous Presidential Decrees issued in an effort to reform the national asylum system in compliance with the pertinent EU Directives. These legislative initiatives instead of guaranteeing efficiency and fairness in the refugee status determination procedure on the contrary begat the deterioration of the asylum system, stirring astringent criticism against Greece.

Prior to 2011, the **Hellenic Police** was the sole authority competent with receiving and examining asylum applications at first instance. This overload resulted in severe deficiencies translated into thousands of asylum seekers queuing to register in the central offices in Athens, many being deprived of their right to lodge an application, applicants not being offered legal aid, often being subjected to rudimentary interviews without the presence of an interpreter, unaware of their rights and thus missing the deadlines for launching an appeal against a rejecting decision or

being hastily deported while their asylum request was pending. By virtue of the lack of proper training in asylum law and procedures of the personnel and the backlog of applications, the vast majority of first instance decisions were negative, but also defective for not providing a consistent justification on the reasons for the rejection. Hence, Greece remained at the bottom of the recognition rates list among EU Member-States<sup>40</sup> which consequently caused a significant drop in asylum applications as well.<sup>41</sup>

The problem compounded when the Greek Government introduced a new system by Presidential Decree 81/2009. Pursuant to the new provisions asylum applications were assessed only once by Police officers throughout the country assisted by advisory committees. In this context, asylum seekers were deprived of the right to have their claim assessed at a second instance, a development violating blatantly the European legislation. In front of this severe setback, UNHCR refused to participate in the Advisory Refugee Committee, stating that under these circumstances “protection in Greece had become even more elusive”.<sup>42</sup>

The 2010 Greek asylum crisis “highlighted the deficits of EU policy in this field”<sup>43</sup> as well as the imperative need for the Greek authorities to reform a system lacking credibility and disregarding fundamental safeguards. The humanitarian crisis burst, brought the Greek asylum system on the verge of collapse and called the CEAS into question. Over 38.000 irregular entrants had been detected in the Greek-Turkish land border in the second half of 2010<sup>44</sup>, at the same time when the respective number of unauthorized crossings was decreasing in the rest of the EU. While lives were being lost at both the land and sea borders of the country<sup>45</sup>, the persons apprehended at the crossing

---

40 In 2007 only 140 out of 20,692 applicants were granted asylum, whereas in 2012 Greece's first instance decision rate was merely 0,9%.

41 Ivar, Berit Nising, Sylo, Kishwar, Rizakos, 2009.

42 Ibid at 33

43 Monar 2011, p.145.

44 European Union Agency for Fundamental Rights (FRA). 2011. *Coping with a fundamental rights emergency: The situation of persons crossing the Greek land border in an irregular manner.*

45 FRA reports that 45 people lost their lives trying to cross the border in Evros region: 26 of them died within the operational area of Orestiada, four at the banks of the Evros river and 15 at sea in the vicinity of Alexandroupolis.

points were faced with insufficient reception facilities, inhuman detention conditions<sup>46</sup>, severe congestion, police violence, lack of access in legal aid or interpretation and limited medical care. “The suspension of Dublin transfers by some countries could not stop an avalanche of legal cases brought against transfer decisions to Greece that had already been made”.<sup>47</sup> Paradoxically, despite the unparalleled increase in flows coming from the land border, asylum applications in Greece marked a decrease comparing to 2009 (15,930 in 2009, 10,270 in 2010) apparently generated by the gravity of the asylum situation that deterred many asylum seekers from claiming a refugee status there.

EU Commissioner Malmström characterized the situation as a case of emergency and stated that Greece will receive financial and practical assistance by Member-States and further urged the country to proceed with more sustainable reforms on the national asylum system. Indeed, according to the EU Agency for Fundamental Rights (FRA)<sup>48</sup> Greece received an emergency funding of €9.8 million from the European Refugee Fund to cover immediate and urgent needs, although it is unlikely that these resources were properly distributed. The Greek government further presented a National Action Plan on Asylum Reform and Migration Management as a basis for capacity building and adoption of sustainable measures.

Eventually Law 3907/2011 conformed with European standards, establishing new independent authorities specialized in asylum procedures, namely the **Asylum Service**, responsible for examining asylum claims at first instance; the **Appeal Authority**, as the second instance authority; the **First Reception Service**, tasked with the identification, registration, medical support and other reception services; thus making amends for past legislative and operational deficiencies.

---

46 Aside from the inadequacy of its detention facilities, Greece has been heavily criticised for detaining asylum seekers up to 18 months and thus hindering those seeking refugee protection from fielding an asylum application in fear of detention.

47 Monar 2011, p.146.

48 Ibid at 37.

The new legal framework was adopted only a few days after the ECtHR's landmark decision on the case **M.S.S vs Belgium and Greece**,<sup>49</sup> whereby for the first time a Member-State was considered indirectly responsible (in this case Belgium) for infringements of the ECHR committed by another state (in this case Greece). This ruling was a wake-up call for EU to reconsider the very basis of the Dublin criteria and the asylum system as a whole. As Monar (2011, p.147) aptly comments the Greek humanitarian crisis and the Strasbourg ruling were an embarrassing condemnation of the functioning of the Common European Asylum System and exposed the unsustainability of the EU's conviction that Member-States provide equal access to refugee protection. The same judgment by "*halting all transfers of asylum seekers back to countries where they face enormous difficulties in gaining access to the asylum procedure*" further 'pointed the finger' at Member-States for their refusal to accept a burden shifting from the countries of first entry to those possessing the capacities for appropriate protection, as a sign of solidarity and willingness to restore the malfunctions of the Dublin System, to wit ensure sufficient guarantees for refugee rights.

As Karakatsanis (2013) stresses "the obvious flaws in the Dublin II Regulation put enormous strain on an already struggling nation". The ongoing debt crisis in conjunction with the overburdening stemming not merely from massive inflows but also from a huge number of transfers, followed by the systemic deficiencies and the "dooming" geographical position of Greece do not offer much space for corrective changes in the quality of refugee protection in Greece. The recent negative developments made many talk of a possible collapse of the Dublin system. Bačić (2012, p.64) concludes:

---

49 In this case the applicant first entered Europe through Greece, but he did not apply for asylum there. He ended up in Belgium where he lodged an asylum application. The Belgian Aliens office submitted a request for the Greek authorities to take charge of the asylum application. Despite the great deficiencies recorded in the Greek asylum system Belgium transferred the applicant back to Greece, where he was placed in detention and subjected to degrading treatment. The Court ruled that both Belgium and Greece committed a violation of art.3 of the ECHR.

“...the cessation of all transfers to a certain Member-State only emphasizes that there is no real ground for a common policy on asylum in the EU: a system that would ultimately bring the highest level of protection. Partial solutions....may be effective in protection of human rights temporarily, but they cannot constitute an effective solution in the long-term”.

By all means, the Greek case evinces that the operation of the Dublin system remains inefficient, particularly in the periphery of EU where the disproportionate allocation of responsibility has caused extreme disparities between Member-States and incapability from the part of the domestic structures to maintain high levels of quality in the asylum procedure and overall conformity with the system's fundamental principles.

#### **4.1.2 Domestic Governance Structures and Response to Irregular Migration Challenges**

Greece is the main outlet of the Eastern Mediterranean route selected by a large percentage of irregular immigrants, who end up crossing the Greek-Turkish land border or the Aegean Sea in an attempt to reach European soil. Greece is further among the EU countries with an estimated annual unauthorized population of more than 100.000 persons, since its extensive land and maritime borders<sup>50</sup> make it an attractive entry point. According to the Migration Policy Institute (2011), “in 2008 the southern sea border was considered the most porous section of the European Union's external borders”, rendering Greece the state with the highest number of detected irregular immigrants among EU Member-States. Back in 2010 Frontex reported that 87% of irregular border crossings were detected in the Eastern Mediterranean frontiers of the country, with almost 350 undocumented migrants endeavouring to traverse from Turkey to Greece through land on a daily basis.

---

<sup>50</sup> Greece's external land borders extend up to 1.248 kilometers in total, whereas its territorial sea borders are estimated to a total of 8.670 kilometers.

When Greece signed the Schengen Agreement on 6 November 1992 it had already started receiving the first massive immigration waves from Eastern and Southeastern Europe, particularly Albania. At that point, the country's immigration policy was almost non-existent, while its land borders were markedly permeable due to lack of organization and efficiency in controls. The 'administrative and political confusion' as Triantafyllidou (2007 p.141) names it, was the main characteristic of the national immigration strategy towards third country nationals, who were often faced as detrimental to the local society both economically and culturally. By 1997 it was estimated that 400.000 irregular immigrants were residing in Greece. By 2001 a number of National Immigration Laws had proved inadequate in addressing such a multifaceted and complex issue. In this context, the country's attempts to shield its external borders were unsuccessful, while the capability of the domestic mechanisms to manage the migratory flows was by all means questioned.

When the EU decided to bring the issue of curbing irregular migration in the foreground, Greece benefited and lost respectively. It unequivocally benefited from EU's financial, technological and operational assistance, yet lost from the uneven burden-sharing and the inability – despite the deployment of specialized border control mechanisms – of its domestic structures to respond effectively to the challenges deriving from an integrated EU strategy towards irregular immigration.

Pursuant to the Schengen *acquis*, officially enforced in Greece since 2000, the Greek authorities engaged in combating irregular migration have been primarily the **Hellenic Police (H.P)**, assigned with the overall monitoring of land and air borders, the investigation and arrest of irregular entrants and their deportations and the **Hellenic Coast Guard (H.C.G)**, charged with sea border management, policing of vessels, ports and territorial waters, monitoring and implementing

the obligations deriving from the Schengen framework, conducting research and rescue at seas.<sup>51</sup>

Both authorities along with the legal framework and the administrative measures taken by Greece were soon identified as inadequate and often unwilling to implement the EU policies on prevention and control of irregular migration, whereas the enormous bureaucratic hurdles coupled with the eruption of the economic crisis rendered the system of immigration control and border protection extremely dysfunctional. These dysfunctions are often translated into humanitarian crises and tragedies at sea, such as the recent incident in the Greek island of Farmakonisi when 12 irregular immigrants lost their lives after the Hellenic Coast Guard pulled their boat to the Turkish shores amidst a storm.<sup>52</sup>

In application of the principles of GAMM and IBM for closer cooperation with the countries of origin and transit on eliminating irregular migration, Greece has concluded readmission agreements with its neighbouring countries of Albania and Turkey, the main sources of its migratory pressures, still with no significant results since both migration routes remain popular according to the percentages recorded in illegal crossings.<sup>53</sup>

Greece transposed Directive 2008/115/EC into national law no earlier than 2011, but fell short in abiding by the common rules and set of safeguards provided for return decisions. Greece has been repeatedly reprimanded for failing to provide proper legal aid and safeguards to TCNs, for violating the principle of *non-refoulement*, for prolonging detentions beyond the maximum period stipulated by law, or for retardation of the administration and the judiciary in issuing return

---

51 Hellenic Ministry of Interior, Multi-Annual Programme 2007-2013.

52 Survivors stated that the Greek officers are responsible for the deaths of their peers as they did nothing to rescue them after the boat capsized.

53 Regardless of Turkey's accord to receive at least 1.000 readmission requests on an annual basis and to strengthen cooperation with Greece on asylum matters and the management of migratory flows, the former has not properly comply with the provisions of the bilateral Protocol, refusing to allow irregular immigrants to return to its territory. According to Triantafyllidou and Dimitriadi (2013) for the period 2006-13 Greece submitted readmission requests concerning 122,437 people, from whom only 12,326 were accepted by Turkey, but only 3805 were eventually returned.

decisions. On the other hand, cases of irregular migrants themselves raising operational obstacles to the Greek authorities when prior to deportation they lodge asylum applications -abusing thus their right to international protection for the purpose of prolonging their stay in the country- make the situation even more mismanaged. In this light, the Greek competent bodies alone are incapable of dealing with the surging numbers of both new entrants and stayers with pending return decisions or asylum applications. As a result, inhumane detention conditions, in violation of the EU legislation, infringement of human rights and forced expulsions to the countries of origin and transit that put people at grave risk are mostly reported from Greece.

Frontex, on the other hand, the EU facilitator in the management of the external borders often plays the role of the “accomplice in crime”. Engaged in two major joint operations in Greece, Poseidon Land since 2006 and Poseidon Sea since 2007, it claims to have contributed significantly to the creation of a buffer zone around Greece's external borders that prevents aliens from reaching. Indeed, the decline in the irregular migratory flows from 2007 to 2009 was concomitant to the intensified preventive measures implemented by the Greek authorities in close collaboration with Frontex. Nevertheless that wasn't enough to prevent the humanitarian crisis that erupted one year later as a result of the immense increase in irregular crossings at the land borders with Turkey, accounting for “90 percent of all detentions of illegal border crossings to the EU” for that year.<sup>54</sup> Greece submitted the first request for the deployment of the RABIT teams<sup>55</sup>, as the last resort for the resolution of an intractable problem, although Greece's geographical exposure to migration pressures has been so high that even the externalization of the management of its external borders to Frontex is deemed to be a feeble response.<sup>56</sup>

While Greece is turning into the 'laboratory' of measures against irregular migration, the so-

---

54 Frontex, “Frontex deploys Rapid Border Intervention Teams to Greece” (October 25, 2010)

<http://Frontex.europa.eu/news/Frontex-deploys-rapid-border-intervention-teams-to-greece-PWDQKZ>

55 The Rapid Border Intervention Team (RABIT)

56 Triantafyllidou and Dimitriadi, 2013.

called “fortress Europe”<sup>57</sup> is constructed, with fences, walls, higher technology surveillance systems and enhanced security forces shielding the land and sea borders against TCNs.<sup>58</sup> What is notable though is that although responsibility for the adoption of such measures lies with the Member-States – in this case with Greece – it is EU itself that finances and supports the sealing off of the southeastern borders that eventually comes at odds with the principles it serves.

## 4.2 ITALY

Italy is another example of a southern European state that transformed from an emigrant-producing country to a targeted destination and a major transit zone for immigrants and refugees fleeing their countries of origin. It has been also another typical example -at least until recently- of a southern country with inadequate infrastructure, incomprehensive policy framework and flourishing informal economy, all constituting a serious impediment to the satisfactory addressing of the inexorable rise in the numbers of irregular entrants. Latterly, Italy has often come to the fore, in the light of the ongoing tragic incidents taking place at its sea borders, which became the source of heavy criticism against the human cost of EU's perplexing regulatory approach towards the controversial issues of migration and asylum.

### 4.1.1 Domestic Governance Structures and Response to CEAS

As political and social tumult in North Africa and the Middle East was exacerbating, Italy turned into the back door to the rest of Europe for all those willing to risk their lives crossing the perilous Mediterranean waters to reach European soil and seek refuge from violence, persecution

---

57 Amnesty International. 2014. *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders*, p.6.

58 Amnesty International. 2014. *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders*.

and war. UNHCR's figures<sup>59</sup> are indicative of the unprecedented challenges Rome has been confronted with; only in 2013 43,000 out of 60,000 irregular crossings of the Mediterranean ended up in Italy, whereas in 2014 118,000 of the 130,000 seaborne refugees and migrants disembarked in Italy as of the middle of September.

An interesting fact about Italy's position in the Dublin system is that it is seen both as a transit country and a final destination by those eligible for international protection. Deficiencies in the system of reception, welfare and integration of refugees render the country unattractive. On the contrary, the traditionally high recognition rates<sup>60</sup> and the low number of forced repatriations create favourable circumstances for those determined to seek protection in Europe no matter what.

In the post-2008 period the trend of increasing unauthorized arrivals and demands for refugee protection in Italy, has put its asylum system under the microscope, and questioned the country's capacity, under the Dublin regime, to effectively deal with the flocks of asylum seekers. The Italian legal framework on asylum matters has been limited to article 10§2 of the Constitution<sup>61</sup> and the European Directives transposed to national laws between 2005 and 2008; thus prior to the CEAS Italy had no comprehensive legal framework of her own.<sup>62</sup> Asylum procedure was centralized, reception conditions were characterized as poor, while the system was rather disorganized, with claimants waiting for roughly 18 months to receive a decision and being deprived of access to proper accommodation facilities.<sup>63</sup> Since the Dublin system was introduced, causing respectively the dramatic increase of asylum applications, Rome established a comprehensive national asylum system, creating a network of institutions entrusted with the assessment of asylum claims lodged and the coordination of the procedures required for adequate protection granted.

---

59 Amnesty International. 2014. *Lives Adrift: Refugees and Migrants in Peril at the Central Mediterranean*.

60 According to ECRE, for 2012 Italy held a 61,7% rate of first instance recognition, and a 64% rate of positive decisions on appeal.

61 "The legal status of foreigners is regulated by law in conformity with international provisions and treaties."

62 Galosi and Cecchini, 2012.

63 The Norwegian Organization for Asylum Seekers (NOAS), 2011. *The Italian Approach to Asylum: System and Core Problems*.

The main four institutions involved in the asylum procedures are: the **Border Police and Questura Police Immigration Office** responsible for receiving the asylum applications; the **Territorial Commissions** competent for issuing first instance decisions on asylum claims; the **National Commission** acting as the coordinator of the work of Territorial Commissions; and the **Civil Courts** as the authority responsible for the examination of appeals against rejecting decisions.

Overall Italian domestic structures have been aligned with European standards in terms of the unified asylum process required from Member-States. Nonetheless, the Italian system demonstrates a number of deficiencies translated primarily into delays in processing the claim, poor conditions prevailing in the reception/detention centers and lack of integration mechanisms.

After the first surge of mass arrivals of refugees from North Africa in 2009, Italy “initiated a [unilateral] “push-back policy” by intercepting people, including those who may be in need of international protection, on the high seas and returning them to Libya”<sup>64</sup> as a result of the 'Treaty of Friendship, Partnership and Cooperation' signed with the latter. The bar of refugee departures from Libya might have dramatically reduced the flow of undocumented persons to Italy, yet it has been one of the Rome's most heavily criticized policies, since interdiction at the high seas and forcible return to a state with no asylum legislation or mechanisms, entails the blatant violation of the principle of *non-refoulement* and the prevention of potential refugees from access to asylum procedures. Indeed, the Italian authorities failed to screen the interdicted persons and determine whether any of them was in need of refugee protection, on the contrary they disembarked hundreds of them<sup>65</sup> to Libyan ports and exposed them to maltreatment, in breach of international and European instruments.

---

64 Submission by the UNHCR in the Case of Hirsi and Others v. Italy, p.2.

65 UN estimates that more than 1,000 migrants were intercepted by the Italian coastguard and forcibly returned to Libya during the time the policy was in place. (Source: theguardian.com)

A series of tragic shipwrecks near Lampedusa in 2013, that cost the lives of roughly 500 people rang the alarm in both Italy and Europe with regard to the inexorable pressures exercised by TCNs' arrivals at the front door of EU and prompted a decisive unilateral response to the mounting tragedies at sea, corollary to the European clampdown on irregular crossings in the Mediterranean. Undertaking “an initiative different from simple restriction and prevention”<sup>66</sup> Rome made a major policy shift by launching Operation *Mare Nostrum*, an effort to promote humanitarian assistance in lieu of securitization policies that target those arriving in an irregular fashion and deprive them of their right to refugee protection. Deploying large units of the Italian Navy, the Army, Air Force and other Police Forces and allocating resources, Italy rescued and disembarked thousands of irregular entrants to Italian ports<sup>67</sup>, showing hence to the EU what the real focus of its asylum policies should be.

According to Amnesty International (2014):

“Italy's OMN has revealed the impracticability of Dublin arrangements in that a vast number of the people rescued and disembarked have moved on irregularly to apply for asylum in other European countries where they have family, relatives or other links; .....protection gaps and challenges in Italy....explain the growing numbers of asylum-seekers who refuse to be fingerprinted to avoid being subjected to the Dublin procedure and being stuck in Italy”.

Despite Rome's laudable attempts to comprehensively meet the needs of those eligible for international protection, the continuously increasing numbers of asylum claimants arriving to Italy through irregular channels<sup>68</sup>, the high numbers of returnees, the evident inequities emanating from

---

66 Dimitriadi, 2014 p.11

67 According to Amnesty International, since the initiation of OMN in October 2013 over 100,000 people have been rescued by Italian authorities.

68 Last April UNHCR urged the EU to help Italy provide more reception facilities and provide more durable solutions to the thousands of asylum seekers rescued by the Italian Navy.

the Dublin criteria, and the lack of coordination and financial means have been hindering Italy's ability to offer substantive protection in compatibility with international standards. Reception centers throughout the country are struggling to keep up with the influx of presumptive refugees; the camp-overcrowding results in delayed transfers and reviews of the cases; people are often waiting for almost a year to go through the interview process, remaining thus devoid of official documents that could provide them with access to welfare. Particularly, with respect to the detention conditions prevailing in Lampedusa, Italy has routinely been under scrutiny, with EU Commission even threatening of taking legal action against it.

The systemic flaws stem to a large extent from Italy's unpreparedness to keep a lid on unexpected -and largely undesired- inflows of refugees, yet the Dublin Regulation itself has taken its toll on the domestic structures of a country obligated by European law to pay a high price for its geographical position. Italy being the first state whose borders are crossed by asylum seekers is rendered responsible for controlling the influxes, providing for adequate reception, asylum procedures and welfare as well as for managing the presence of claimants in its territory. Given the continuing rises in seaborne arrivals and Italy's increased rescue operations, along with EU's inertia in revising the asylum burden-distribution among Member-States it is highly likely that the inherent deficits of its asylum system will be maintained.

#### **4.1.2 Domestic Governance Structures and Response to Irregular Migration Challenges**

The domino effect of the Arab spring upheavals caused enormous migrant traffic in the Central Mediterranean route that leads migrants from North Africa to the shores of Italy, through a very risky -often fatal- journey in the sea. Estimates of the year 2011 reveal that migration to Italy soared to an overall number of 61,000 people crossing the Mediterranean Sea mainly from Tunisia and Libya.<sup>69</sup> “This surge led to Italy reporting the highest number of detected [irregular] border

---

<sup>69</sup> Manrique, Barna, Hakala, Rey, and Claros, 2014.

crossings, the first time a country surpassed Greece since Frontex began collecting data in 2008”.<sup>70</sup>

The alarming developments tested the EU's ability to respond effectively to abrupt shifts in the mobility across its external borders, challenged the border control and surveillance mechanisms and resulted in the most serious crisis within the Schengen system since its initiation in 1985 caused by the “erratic” reaction of Italy to the high pressures exercised in its maritime borders.

When at the end of the 80's Italy was faced for the first time with mass influx of migrants from the collapsing east European states, its legislative framework on immigration was outdated, no consistent policy had been formulated, while immigration controls were nearly absent. The Martelli Law (*Legge Martelli*) in 1990, was the country's first comprehensive attempt to regulate the issue that had already fueled sharp political controversy, by providing *inter alia* rules and procedures for the deportation of undocumented migrants and by introducing sanctions for human traffickers and smugglers. The adopted legislation, aside from being a response to the emergency situation arising, it reflected Italy's intention to further comply with the Schengen framework<sup>71</sup> and respectively reassure the rest of the Europeans of its ability to effectively monitor its porous borders, and regulate the status of entrants in the Schengen space.

Despite European pressures for stricter controls, regularization became a central component in Italian immigration policies, explained to a large extent by Italy's emergency-driven approach to migration management translated into short-term emergency responses to the issue. In fact, the multiple regularization processes launched within a period of thirty years in Italy (1982-2011)<sup>72</sup> encouraged rather than halted irregular mobility.

---

70 Morehouse and Blomfield 2011, p.11.

71 Italy signed the Schengen Agreement on 27 November 1990.

72 The largest regularization ever recorded in Europe was initiated under Law *Bossi-Fini* in 2002, with the overall number of legalized immigrants reaching 634,728.

It was after the 1998 Immigration Law (*Legge Turco-Napolitano*) that Italy's Schengen participation ushered in a more systematic legislation, to wit provisions for tightened controls, policies directed towards preventing irregular entry and a long-term planning for the management of migratory flows.<sup>73</sup> The Law brought Italian policies in line with the European framework, by setting quotas for the admission of immigrants, by introducing repressive measures to curb irregular entries, and creating the Centers of Temporary Detention for undocumented migrants under expulsion.

The following Immigration Acts (*Legge Bossi-Fini* 2002, *Security Package* 2009) introduced more aggressive measures to limit unauthorized border crossings, reflecting thus both the direction of the prevalent political forces as well as the rapidly compounding dimensions of the phenomenon across the country's borderline. Incrementally, detention became mandatory for all apprehended irregular immigrants, the maximum period of detention was extended to 180 days, irregular entry and stay were criminalized, expulsions were intensified while the Italian Navy was granted the right to send back vessels carrying undocumented persons detected in the open sea. In many respects, the legislative acts raised criticism for violating fundamental human rights, promoting discrimination<sup>74</sup> and failing to provide for the protection and the integration of undocumented migrants in compatibility with European standards, bringing the Italian government on the verge of a legal battle with the European Commission.

By transposing the Returns Directive (2008/115/EC) into national law in 2011 (Law Decree No.89), although with a significant delay, Italy smoothed the rigidity of its latest policies by allowing undocumented immigrants to enjoy certain benefits in view of their deportation. Nevertheless, compliance was achieved only after the ECJ condemned Italy (*El Dridi* case) for

---

<sup>73</sup> Veikou and Triantafyllidou, 2001.

<sup>74</sup> The Security Package stipulated that the irregular status of immigrants would act as an aggravating circumstance, inducing harsher punishment for the immigrant than the one Italian citizens faced for the same type of crime.

applying coercive measures during the removal procedure -in this case imprisonment of the undocumented person for not complying with the deportation order- that were not in line with the Directive's principles. In general, the serious shortcomings of the Directive's implementation in Italy revolve around the framework for detention which has not been particularly well-received by authorities who tend to apply compulsory expulsion as the rule and voluntary repatriation as the exception. Detention in Italy is more of a form of criminalization rather than a facilitator in the deportation procedure. Italy's non-alignment with EU minimum standards is further evinced by the fact that a large number of detainees are reported to be deported while in detention and pending their removal; a blatant violation of the rights conferred to them by the Directive and the international instruments.<sup>75</sup> *Borderline-europe.de* has further reported<sup>76</sup> deficiencies in many of the 13 detention centers designed specifically for the reception and the “accommodation” of irregular immigrants prior to their repatriation, although the organization of the CIEs (Identification and Deportation Centers), often granted to private companies, is considerably better than the one recorded in other Mediterranean countries.

The surging numbers of unauthorized arrivals, particularly after 2008<sup>77</sup> found Italy amid a “state of emergency”, shielding itself from persistent influx with anti-immigration strategies such as push-backs disregarding the international human rights law<sup>78</sup> and bilateral agreements with authoritative regimes (i.e. Libya, Tunisia), begetting thus strong criticism in view of the serious implications for the human right abuses that such practices entailed.<sup>79</sup> Italy's incompatibility with EU policy lines was further reflected in the landmark ECtHR's judgment on *Hirsi v. Italy*, where the

---

75 Bertin, Fontanari and Gennari, 2013

76 Ibid at 56.

77 Euobserver.com reported that “10,600 undocumented migrants entered Italy in the first half of 2008- a figure twice as high as during the same period in 2007”.

78 During 2008-2009 it has been reported that Italy shipped back thousands of irregular immigrants before they ever officially arrived in Italy, violating the principle of *non-refoulement*. (Source:euobserver.com)

79 Despite negative reactions, the *Treaty of Friendship, Partnership and Cooperation* concluded with Libya resulted in Italy holding the largest drop in irregular arrivals within the EU with a total of 7,300 cases in 2009 compared to 32,052 cases in 2008. Whereas in the first three months of 2010 a remarkable 96% drop was recorded. (Source:euobserver.com)

Court, after pointing out infringements of international and European laws committed by Italian authorities with regard to push-back operations, affirmed the right of migrants to pursue international protection when intercepted in international waters and Italy's obligation to rescue and provide access to remedy.

Following the aforementioned events, the year 2011 came as a turning point in Italy's approach to irregular migration. The masses of Tunisians arriving at Italian coasts<sup>80</sup> caused unprecedented consternation and overcrowding primarily in the island of Lampedusa, the main gateway of TCNs to Italy. Its decision to grant six-month residence permits to 26,000 Tunisian migrants, and thus give them free pass to other European countries -particularly neighbouring France- bred a severe diplomatic episode between the two countries<sup>81</sup> that eventually endangered the existence of the Schengen zone itself, after France's decision to reinstate border checks<sup>82</sup> in order to prevent Tunisian immigrants reaching its soil. Ultimately, after the incident sparked debates over the revision of the SBC, both Italy and France pushed the EU for revising the Schengen Treaty, in particular for laying down clauses for exceptional circumstances and solidarity among Member-States.<sup>83</sup>

Italy's incapacity to address unilaterally the aggravating immigration phenomenon resulted in an official request for a Frontex intervention aiming at assisting the Italian forces in managing the inflow of migrants from North Africa and facilitating the return operations. The so-called *Hermes* operation deployed in 2011 was the second Frontex operation upon request from a Member-State,

---

80 According to the Migration Policy Institute, the number of irregular Tunisian entrants increased from 323 in the fourth quarter of 2010 to 20,492 in the first quarter of 2011.

81 Triantafyllidou and Dimitriadi (2013, p.608) argue that this “rift was a result largely of Italy's effort to 'externalise' the migration management to neighbouring France”.

82 French police blocked an Italian train carrying Tunisian migrants, accusing the latter of violating the Schengen principles for providing visa-free travel rights to thousands of Tunisians.

83 The same year the European Commission submitted two legislative proposals for adopting new rules with regard to the Schengen governance allowing for the reintroduction of controls at the internal borders of the Member-States in critical situations under the Commission's verification. The proposals did not pass after States opposed the strengthening of the Commission's supranational role in the Schengen regime.

which accentuated on the one hand the evident inadequacy of national measures and means against large-scale immigration and on the other hand the necessity of an intensified border management regime under the auspices of the Union and the *acquis communautaire* in support of the southern Member-States afflicted by rampant migration. Despite Frontex's expanded role in detection, prevention and rescue, the repeated requests from the Italian governments for greater EU assistance in intercepting boat people makes it clear that Italy cannot carry this burden alone. Hence, as long as Europe lacks a coordinated action towards weeding out the problem, Italy's unilateral responses towards the bulk of unauthorized migrants will be feeble.

## **5. GREECE AND ITALY IN A COMPARATIVE PERSPECTIVE**

There is one characteristic that makes these two countries the focal point of the EU asylum and immigration policy discourse: **geography**. Inevitably, their position in the southern borders of Europe and their vicinity with the major transit states for undocumented migrants and asylum seekers bring them to the center not only of the designing and the implementation of EU's strategies but also of criticism. In a comparative perspective the two neighbouring countries are encountered with the same challenges and share the same role within the EU asylum and migration system, yet in many respects they have adopted different structural and operational responses to deal with the mounting difficulties stemming not merely from the increasing border crossings but primarily from the EU's policy framework *per se*.

### **5.1 The impact of EU policies on asylum**

The CEAS was constructed on the concept of equal protection offered in all Member-States, albeit based on an undue burden-allocation rule that encumbered the domestic structures of the

southern Member-States and practically rebutted the presumption upon which it was built. Since the adoption of the Dublin system Greece and Italy have been under the impact of the **state-of-first-entry** criterion that –overlooking these countries' ability to effectively carry out harmonised asylum procedures– has rendered geographical position the defining factor for the responsibility attributed to them. Under this dysfunctional policy scheme and in light of a number of developments such as the economic malaise, the belated adoption of the legal framework at a domestic level and the repercussions of the Arab spring the two countries have failed to a large extent to fulfill their obligations.

Before Dublin both Italy and Greece were lacking appropriate refugee protection systems, legislation and infrastructure to cope with asylum applications in line with their international obligations. Their harmonisation processes with EU legislation were detained and when completed they only resulted in lowering the protection guaranteed<sup>84</sup> due to the unprecedented masses of asylum seekers reaching Italy's and Greece's borders. International human rights agencies have reported degrading and inhumane reception conditions, unlawful detentions, inadequate protection of the fundamental rights of asylum claimants, lack of procedural safeguards, deficiencies to a large extent stemming from the disproportional “burden-shifting”.

“The externalization of responsibilities from the northern to the southern states”<sup>85</sup> and the strains deriving from them forced Greece and Italy to follow restrictive policies such as tightening asylum procedures, not in compliance with minimum standards of protection discouraging thus claimants from lodging an application or resorting to illegal push-backs, in breach of the principle of *non-refoulement*, to Turkey and Libya and Tunisia respectively.

---

84 Bačić, 2012.

85 Triantafyllidou and Dimitriadi 2013, p. 616.

The higher recognition rates recorded in Italy<sup>86</sup> have made the state more attractive to asylum seekers, something that is further reflected in the relatively high number of applications submitted to the Italian authorities representing 6,40% of the total number of claims fielded in the EU for 2013. Regarding recognition rates in Greece, the country has been racing to the bottom<sup>87</sup>, receiving thus a very low number of applications -despite being the first EU country crossed by the majority of potential refugees from third countries- standing for merely 1,93% of the total number of claims fielded in the EU for 2013.

Additionally, the securitization approach adopted to the detriment of asylum seekers has left no room for improvement in the national asylum systems, since its focal point has been deterrence in lieu of protection. In this area Italy has differed from Greece by engaging in sustained efforts to rescue and protect those in quest for asylum<sup>88</sup>, emphasizing thus on humanitarian protection, although it is still not in possession of the appropriate infrastructure to provide for the welfare of refugees. On the other hand Greece is struggling to restore the credibility of its asylum system, nevertheless without any progress achieved in terms of its reception and detention facilities that continue to be the “Achilles heel” in the country's asylum management and to prompt widespread criticism and negative rulings by the ECtHR.

The Europeanization of asylum policy through the Dublin Regulations not only did it fail to attain high levels of protection in the two peripheral countries, but further it exposed them to massive inflows, became the cause of divergences from their peers, created asylum systems lacking credibility and even aggravated the situation with ongoing transfers of asylum claimants back to states already overburdened. Financial assistance provided to Italy and Greece may remedy any structural and material shortcomings, yet as the lack of a fair and balanced responsibility-sharing

---

86 For the period 2008-2011 Italy's average 1<sup>st</sup> instance recognition rate was above the EU average ranging from 29% to 48%.

87 For the period 2008-2011 Greece's average 1<sup>st</sup> instance recognition rate does not exceed 2%, when the respective EU average is steadily above 24%.

88 See Operation *Mare Nostrum*

mechanism remains the most serious setback of CEAS, the two countries will continue to encounter severe difficulties in managing the influx, as asylum seekers will remain in limbo.

## **5.2 The response to EU policies on irregular migration**

Irregular migration in Europe is linked with the internal security agenda. Therefore, the Union concert its efforts towards intensifying border controls and surveillance policies in the southern porous frontiers. The construction of the so-called “fortress” has been primarily assigned to Greece and Italy the main “bastions” of EU's internal security. Nevertheless, in the race towards the achievement of a homogeneous level of security, by dissuading undocumented migrants from reaching European soil, the peripheral states have faced immense implementation difficulties.

The responsibility-allocation under the Schengen regime is based on the “first host country” principle, similarly the cornerstone of Dublin.<sup>89</sup> In this context, Greece and Italy as the two major transit countries are encumbered with tightening their border security in order to prevent more irregular entries to the common territory.

Geography, economy and bureaucracy constitute three major hurdles in Italy and Greece's ability to effectively patrol their borders and coordinate the operations of their national authorities tasked with preventing mass immigration into Europe. According to the European Pact on Immigration and Asylum “those Member-States whose geographical location exposes them to influxes of immigrants, or whose resources are limited, should be able to count on the effective solidarity of the EU”. In fact Italy and Greece who bear “the brunt of adjustment in restricting immigration into Europe..... are [actually] the principal beneficiaries of EU Structural and other

---

89 Lavenex, 2001.

funds”.<sup>90</sup> The EU has provided them with significant economic and operational assistance, albeit restricted to short-sighted responses to emergency situations caused by large-scale flows of irregular immigrants.

Greece has been identified with serious systemic deficiencies that have resulted not only in flawed implementation of EU's guidelines on combating irregular immigration but also in great concerns about the humanitarian situation of migrants. These deficiencies are to a large extent corollary to the burden allocated to the country in the framework of EU's Integrated Border Management. Consequently, Greece has been allotted financial and operational resources with a view to beef up its border controls. Yet, the shifting of large-scale irregular immigration from the land to the permeable sea borders has rendered effective management extremely difficult for Greece. The deployment of Frontex has been crucial in enhancing the capacity of its domestic structures to guard the extended borders, with “positive” results yielded in the land borders with Turkey and periodically in the maritime borders as well. In light of the securitisation pressures exercised by the EU and the multiplying irregular flows the Greek authorities launched a number of operations<sup>91</sup> that albeit successful in sealing the borders, they did it to the detriment of human rights' protection.

On the other hand, Italy's reaction to the emergency situations arising across its sea borders denotes distrust towards EU anti-immigration policies. This attitude is evinced by the unilateral, emergency responses to undocumented immigration that often entail violations of the European policy principles. A dehumanizing of migration policy has also been recorded in Italy, where intensified policing of the penetrable sea borders culminated in increased traffic in the irregular routes to the country's shores, with many migrants not surviving the journey. In light of lives being

---

<sup>90</sup> Baldwin-Edwards 1997, p.506.

<sup>91</sup> Operation Aspida was financed by the the External Borders Fund in 2012 and concluded by the Greek authorities in the Evros border with Turkey. In addition, Joint Operations have been launched under the coordination of Frontex, Poseidon Land since 2006 and Poseidon Sea since 2007.

lost Rome engaged in Operation *Mare Nostrum*, a search and rescue initiative that has altered the immigration approach from deterrence to protection. Still, despite its recognized success the unaffordable cost of the Operation<sup>92</sup> mounts the pressure on the EU to carry the financial and operational burden of securitization policies.

Those who eventually manage to cross the borders of Greece and Italy through irregular and unsafe routes are faced with mistreatment, poor living conditions, long detentions or with the fear of forced expulsion at best. In the worst-case scenario they are faced with death. The critical situation in both countries denotes the lack of fair and effective procedures to prevent abuse of EU policies and consequently of human rights. Still Italy's more aggressive policy, reflected in successful national initiatives and cooperation agreements with third countries brings her once again one step ahead of Greece in terms of domestic responses to curbing the issue. Particularly, Operation *Mare Nostrum* has proved that to some extent balance between protection and efficient border patrols can be achieved. Furthermore, Italian practices aiming at indirectly shifting the burden of border management to those EU counterparts who are not faced with equally gross challenges in their external borders have put the spirit of the Schengen acquis into question sparking reaction from other Member-States as well.<sup>93</sup>

As most Member-States remain cautious about limiting supranational authority over immigration policies, Greece and Italy, while struggling with the pressures of the financial crisis, urge for more intervention by EU competent mechanisms in the management of migratory flows, that will strengthen their domestic capacities and for more solidarity to further relieve them from their heavy burden.

---

92 Operation *Mare Nostrum* has a cost of €9 million per month.

93 The Franco-Italian dispute over Tunisian refugees triggered Bavarian threats for resurgence of national border controls at the border with Austria, and enhanced border checks by the Danish authorities. In addition the Italian government

Nevertheless, EU's immigration approach is based on contradictions. "Prevention, protection and solidarity" cannot be part of the same policy, nor can the militarisation of border management or the barring of irregular arrivals save lives. EU's demand for more restrictive policies on migration has drawn southern states like Greece and Italy in a maelstrom of tragic events beyond their control. Humanitarian crises and tragic incidents in the Mediterranean Sea thus denote the ineffectiveness of the Union's migration policy, which to a large extent has been a product of its own conflicting goals: securitisation of migration and humanitarian protection. As "EU security concerns have prevailed over human rights principles"<sup>94</sup> a coherent and unified response to the problem is not likely to be achieved.

## 6. CONCLUDING REMARKS

Ongoing tragic incidents at the southern maritime borders of the EU as well as grave and persistent violations of human rights by Member-States have brought immigration and asylum policies at the top of the political agenda. Yet the severe pressures exercised to Italy and Greece in tandem with the latest developments in the Middle East generate serious questions with regard to the future of these policies.

While these lines are being written the situation in the EU is as follows: 23,000 people are estimated to have lost their lives trying to reach Europe in the period 2000-2013<sup>95</sup>; by August 2014 more than 25.000 unauthorized migrants have entered Greece, the respective number for Italy overtook 60.000 whereas it is estimated that the overall number for 2014 will exceed 100.000; asylum seekers, aware of the repercussions of the Eurodac system, choose to burn their fingers in order to have the opportunity to re-apply for asylum in another MS and seek for better living

---

94 European Parliament, 2014. *Mediterranean Flows into Europe: Migration and the EU's foreign policy.*

95 Amnesty International. 2014. *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders.*

conditions; policy-makers throughout Europe question the sustainability of the Schengen system in front of the emergency situations at the EU's external borders; the EU opts for the fortification of its borders<sup>96</sup> investing in securitization mechanisms that seal the safe routes to Europe exposing thus TCNs to life-threatening situations and reducing asylum opportunities.

A year after the tragedy in Lampedusa and while the raging war in Syria, the protracted conflicts in the Middle East and the civil wars and unrests in Africa are expected to prompt unprecedented migration waves to Europe, Italy and Greece will remain on the receiving end, bearing the brunt of the surveillance of the borders, while assisted financially and operationally by their EU counterparts. Left to carry a disproportionate burden of responsibility, their domestic structures are likely to continue being incompatible with their European and international obligations, whereas the scope for protection standards and policies to be converged is expected to be limited.

Unless the EU decides to recast its internal burden distribution and its external action with regard to irregular migration and asylum -primarily in the Mediterranean Sea gateways- more lives will be lost, more fundamental rights will be infringed and less coherent and unified will be the response of Greece and Italy in harnessing these issues. In light of Italy and Greece's inability to control the increasing hordes of irregular immigrants and asylum seekers crossing their borders, a new Europe *à deux vitesses* is emerging. Although southern Member-States, deficient in capacities and comprehensive protection systems, are at the receiving end of irregular migrants and asylum seekers, hence they should be at the heart of the shaping and implementation of EU policies, it seems that these policies are designed in the interest of their northern counterparts, that have the infrastructures and keep in line with the required standards of protection.

---

<sup>96</sup> In the context of the Solidarity and Management Migration Flows Programme (SOLID) for the period 2007-2013 the EU allocated 46% of its funds for reinforcing border security, whereas merely 17% of the budget was allocated to improving asylum protection services. (Source: Amnesty International)

The asylum situation in the two peripheral countries only strengthens the arguments of those staunchly opposing the Dublin system for failing to establish a fair and effective responsibility-allocation mechanism, since inconsistent application of the Regulation has put the achievement of a CEAS into question. Equally, the fortification of Europe's external borders -the cause and the effect of Member-States' polarization- creates an intrinsic contradiction as EU is trying to protect fundamental rights while erecting fences and blocking the legal and safe routes to its territory.

Italy and Greece have been at the centre of the securitisation and externalisation of EU's migration and asylum policies. As long as these policies remain premised on the flawed presumption that implementation will be equal to all Member-States, harmonisation will be far from being achieved. At such critical times, Europe needs to overhaul the management of these contentious issues by discarding short-sighted solutions and adopting more solidarity and protection-oriented policies from which both immigrants and Member-States will benefit.

## **BIBLIOGRAPHY**

Amnesty International. 2014. *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders*. [online].

Amnesty International. 2013. *Frontier Europe: Human Rights Abuses on Greece's Borders with Turkey*. [online].

Amnesty International. 2014. *Lives Adrift: Refugees and Migrants in Peril at the Central Mediterranean*. [online].

BAČIĆ, N., 2012. Asylum Policy in Europe – The Competences of the European Union and the Inefficiency of the Dublin System. *Croatian Yearbook of European Law and Policy*, 8(8), pp. 41-76.

BALDWIN-EDWARDS, M., 1997. The Emerging European Immigration Regime: Some Reflections on Implications for Southern Europe, *Journal of Common Market Studies*, 35(4), pp. 497-514.

BERTIN, F., FONTANARI, E., and GENNARI, L., 2013. At the limen: The implementation of the return directive in Italy, Cyprus and Spain. [online]. Available at: <[www.statewatch.org](http://www.statewatch.org)> [Accessed 21/09/2014].

CARRERA, S., DEN HERTOOG, L., and PARKIN, J., 2012. *EU Migration Policy in the Wake of Arab Spring. What prospects for EU-Southern Mediterranean Relations?*[online], MEDPRO Technical Report No.15. August 2012. Available at: <[www.medpro-foresight.eu](http://www.medpro-foresight.eu)> [Accessed 23/07/2014].

CARRERA, S., and MERLINO, M., 2010. *Assessing EU Policy on Irregular Immigration under the Stockholm Programme* [online], Center for European Policy Studies. Available at: <<http://www.coe.int> > [Accessed 27/07/2014].

COSTELLO, C., 2006. The European asylum procedures directive in legal context, New Issues in Refugee Protection, Research Paper No. 134.

DALE, I., NISING LINDEMAN, B., TARAKU, S., HANIF, K., and RIZAKOS, S., 2009. *Out the Back Door: The Dublin II Regulation and illegal deportations from Greece*. Oslo/Athens October 2009: Norwegian Helsinki Committee (NHS), Norwegian Organization for Asylum Seekers (NOAS), Aitima.

DEMMEHUBER, T., 2011. The European Union and illegal migration in the southern Mediterranean: the trap of competing policy concepts, *The International Journal of Human Rights*, 15(6), pp. 813-826.

DIMITRIADI, A., 2014. Managing the Maritime Borders of Europe: Protection through Deterrence and Prevention?, ELIAMEP, Working Paper No 50/2014.

ELEWA BADAR, M., 2004. Asylum Seekers and the European Union: Past, Present and Future. *International Journal of Human Rights*, 8(2), pp.159-174.

European Council on Refugees and Exiles (ECRE), 2008. *Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered*, [online], [www.ecre.org](http://www.ecre.org).

European Migration Network, 2012. *Practical responses to irregular migration: the Italian case*. Rome. [online] Available at: <[www.emnitaly.it](http://www.emnitaly.it)>. [Accessed 21/09/2014].

European Union Agency for Fundamental Rights (FRA). 2011. *Coping with a fundamental rights emergency: The situation of persons crossing the Greek land border in an irregular manner*. [online].

FAVELL, A., 1998. The Europeanization of Immigration Policies. *European Integration Online Papers*. 2(10).

FITCHEW G, 2009. A Survey of European Asylum Policy and Legislation [online]. UK. Available at: <<http://www.migrationwatchuk.org/briefing-paper/4.11>> [Accessed 11/7/2014].

GALOSI, A., and CECCHINI, L., 2012. *Dublin II Regulation National Report: Italy*. European Network for technical cooperation on the application of the Dublin II Regulation.

Hellenic Ministry of Interior, Multi-Annual Programme 2007-2013.

Human Rights Watch, 2011. *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*. [online].

KARAKATSANIS, S., 2013. The Greek Tragedies tearing down the Dublin II Regulation: MSS vs Belgium and Greece [online], *The Student Journal of Law*, Issue 5. Available at: <<http://www.sjol.co.uk/issue-5/the-greek-tragedies-tearing-down-the-dublin-ii-regulation>> [Accessed at 8/08/2014].

KAUNERT, C., and LÉONARD, S., 2011. *The European Union and Refugees: Towards more restrictive asylum policies in the European Union?*. Universitat Pompeu Frabra. Grittim Working Paper Series. No 8 (2011).

KOK, L., 2006. *The Dublin II Regulation. A UNHCR Discussion Paper*. Brussels:UNHCR.

LAVENEX, S., 2001. Migration and the EU's new eastern border: between realism and liberalism, *Journal of European Public Policy*, 8(1), pp. 24-42.

LENART, J., 2012. 'Fortress Europe': Compliance of the Dublin II Regulation with the European Convention for the Protection of Human Rights and Fundamental Freedoms [online], *Merkourios*, 28(75), pp. 04-19, URL: [www.merkourios.org](http://www.merkourios.org).

LÉONARD, S., 2010. EU Border security and migration into the European Union: FRONTEX and securitisation through practices, *European Security*, 19(2), pp. 231-254.

MANRIQUE GIL, M., BARNA, J., HAKALA, P., REY, B., and CLAROS, E., 2014. *Mediterranean Flows into Europe: Migration and the EU's Foreign Policy*. Brussels: Directorate General for External Policies. DG EXPO/B/PolDep/Note/2014\_5.

MONAR, J., 2012. Justice and Home Affairs, *Journal of Common Market Studies*, Vol 50, pp.116-131.

MONAR, J., 2011. Justice and Home Affairs, *Journal of Common Market Studies*, Vol. 49, pp. 145-164.

MOREHOUSE, C., and BLOMFIELD M., 2011. *Irregular Migration in Europe*. Transatlantic Council on Migration, Migration Policy Institute.

PEERS, S., 2012. The revised 'Dublin' rules on responsibility for asylum-seekers: The Council's failure to fix a broken system [online], Statewatch Analysis Available at: <<http://database.statewatch.org/article.asp?aid=31420>> [Accessed 22/07/2014].

RIJPMMA, J., 2009. EU Border Management after the Lisbon Treaty, *Croatian Yearbook of European Law and Policy*, Vol. 5, pp.121-149.

SCHUSTER, L., 2011. Dublin II and Eurodac:examining the (un)intended(?) consequences. *Gender Place and Culture*, 18(3), pp.401-416.

SMYTHIES, V., and RAMAZZOTTI, L., 2013. *The Dublin Regulation: A Critical Examination of a Troubled System*. [online] Available at: <<http://internationalrefugeelaw.wordpress.com>> [Accessed

12/07/2014].

The Norwegian Organization for Asylum Seekers (NOAS), 2011. *The Italian Approach to Asylum: System and Core Problems*. [online] Available at: <<http://www.noas.no>> [Accessed: 20/09/2014].

TOSHKOV, D., and DE HAAN, L., 2013. The Europeanization of asylum policy: an assessment of the EU impact on asylum applications and recognition rates. *Journal of European Public Policy*, 20(5), pp. 661-683.

TOSHKOV, D., and DE HAAN, L., 2013. The Europeanization of Asylum policy: an assessment of the EU impact on asylum applications and recognitions rates, *Journal of European Public Policy*, 20(5), pp. 661-683.

TRANTAFYLLOIDOU, A., 2005. *Greek Immigration Policy: Problems and Prospects*. ELIAMEP (in Greek).

TRANTAFYLLOIDOU, A., and DIMITRIADI, A., 2013. Migration Management at the Outposts of the European Union. The case of Italy's and Greece's Borders. *Griffith Law Review*, 22(3), pp. 598-618.

TRANTAFYLLOIDOU, A., and GROPAS, R., 2007. "Greece" in *European Immigration: A Sourcebook*, Aldershot: Ashgate, pp. 141-155.

UNHCR comments on the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council 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 ("Dublin II") (COM(2008) 820, 3 December 2008) and the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [the Dublin II Regulation] (COM(2008) 825, 3 December 2008). 18 March 2009.

UNHCR, 2009. *Observations on Greece as a country of asylum*. [online]

UNHCR, 2010. Submission by the Office of the High Commissioner for Refugees in the Case of *Hirsi and Others v. Italy* (Application no. 27765/90).

VEIKOU, M., and TRANTAFYLLOIDOU, A., 2001. *Immigration policy and its implementation in Italy: A report on the state of the art* [online], European University Institute Report. Available at: <[www.mmo.gr](http://www.mmo.gr)> [Accessed 20/09/2014].

WEINZIERL, R., and LISSON, U., *Border Management and Human Rights: A Study of EU Law and the Law of the Sea*. German Institute for Human Rights, 2007.

## EU RELATED DOCUMENTS

Communication from the Commission to the Council and the European Parliament 'Towards integrated management of the external borders of the Member States of the European Union', COM(2002), 233 final, 7.5.2002.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'The Global Approach to Migration and Mobility', COM(2011), 743 final, 18.11.2011.

Communication from the Commission to the European Parliament and the Council 'An area of freedom, security and justice serving the citizen', COM(2009), 262/4.

Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (92/C 254/01).

Council of the European Union, September 2008, 13440/08, European Pact on Immigration and Asylum.

Council Regulation (EC) 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, L 349/1, 25.11.2004.

European Parliament, Policy Department, Directorate-General for External Relations, March 2014, *Mediterranean Flows into Europe: Migration and the EU's foreign policy*.

Presidency Conclusions, Tampere European Council (15-16 October 1999), S/N 200/99.

Proposal for a Council Decision of [...] concerning the conclusion of the Agreement of the between the European Union and the Republic of Turkey on the readmission of persons residing without authorization, COM(2012) 239 final, 2012/0122 (NLE), 22.6.2012.

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June of 2013 establishing the criteria and the mechanisms for determining the Member State responsible for examining an application for international protection lodges in one of the Member States by a third-country national or a stateless person (recast), L 180/31, 29.6.2013

Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, L 304/1, 22.11.2011.

Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), L 105/1, 13.4.2006.

Treaty on European Union (1992), OJ C 191, 29/7/1992.

## ONLINE ARTICLES

### EUOBSERVER.COM:

Benjamin Fox. (2013). Irregular border crossing halved EU Commission says:  
<http://euobserver.com/justice/120350>

Benjamin Fox. (2014). EU mission to help Italy save boat migrants:  
<http://euobserver.com/news/125377>

Elitsa Vucheva. (2008). Hundreds of African migrants arrive amid Italy 'emergency':  
<http://euobserver.com/justice/26573>

Giacomo Filibeck. (2012). Greece struggling to manage asylum seekers:  
<http://euobserver.com/justice/116298>

Honor Mahony. (2011). France and Italy propose reform of EU border rules:  
<http://euobserver.com/news/32232>

Leigh Phillips. (2010). 50% drop in EU irregular migrant border crossings after Italy-Libya pact:  
<http://euobserver.com/news/30580>

Nicolaj Nielsen. (2014). Greece fined for violating asylum seekers' rights:  
<http://euobserver.com/justice/126171>

Nikolaj Nielsen. (2014). EU border surveillance system not helping to save lives:  
<http://euobserver.com/justice/124136>

Nikolaj Nielsen. (2014). EU migrant mission will not replace Mare Nostrum:  
<http://euobserver.com/justice/125456>

Nikolaj Nielsen. (2013). EU proposes tighter border control: <http://euobserver.com/justice/119247>

Nikolaj Nielsen. (2013). Italy asylum conditions spark EU threat of legal action:  
<http://euobserver.com/justice/122556>

The Migrants' Files: surveying migrants' deaths at Europe's door (2014):  
<http://euobserver.com/investigations/123682>

Valentina Pop. (2014). Bavarian politician calls for checks on Austria-Germany border (2014):  
<http://euobserver.com/justice/125520>

Valentina Pop. (2013). EU after Lampedusa Tragedy: More border surveillance:  
<http://euobserver.com/justice/121661>

Valentina Pop. (2011). Italy asks on EU help for blocking Tunisian refugees:  
<http://euobserver.com/news/31797>

## **OTHER ARTICLES:**

Andrea Vogt. (2012). Italy violated human rights by returning migrants to Libya, court rules:  
<http://www.theguardian.com/world/2012/feb/23/italy-human-rights-migrants-libya>

Bruno Waterfield. (2011). France threatens to 'suspend' Schengen treaty:  
<http://www.telegraph.co.uk/news/worldnews/europe/italy/8468981/France-threatens-to-suspend-Schengen-Treaty.html>

David Barrett. (2014). Illegal immigration to Europe shows sharp rise:  
<http://www.telegraph.co.uk/news/uknews/immigration/10865652/Illegal-immigration-to-Europe-shows-sharp-rise.html>

Gavin Hewitt. (2011). France and Italy push for reform of Schengen treaty:  
<http://www.bbc.com/news/world-europe-13189682>

Hariett Grant and John Domokos. (2011). Dublin regulation leaves asylum seekers with their fingers burnt: <http://www.theguardian.com/world/2011/oct/07/dublin-regulation-european-asylum-seekers>

Simon Cox. (2012). Case Watch:European Ruling Affirms the Rights of Migrants at Sea:  
<http://www.opensocietyfoundations.org/voices/case-watch-european-ruling-affirms-the-rights-of-migrants-at-sea>