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**Abstract**

The current migration and refugee crises in Europe and the Mediterranean region capture the interest of politicians, journalists, researchers and experts, and inspire many questions about the causes and consequences of these massive migratory movements for the European Union, and about the effectiveness of the EU policy on migration and asylum. Currently, from the EU perspective at least two issues seem to be crucial:

1. how to solve the crisis situation already found in the EU, taking into consideration priority level(s) to face it – global, EU and/or national, the tools to be designed and implemented, the stakeholders to be involved in the problem-solving process;
2. what steps to take in order to prevent the deepening of the crisis and to halt the influx of new migrants to the EU, having in mind the interests of the Member States, the integrity of the EU, the overall political climate in the EU and respect for international law in the area of human rights and refugees.

The effectiveness of the EU migration and asylum policy has proven to be limited, because a national approach to the current problems and challenges prevails over the EU one. It is evident that, the *European Agenda on Migration* so far has been slow to be implemented, some strategic commitments have not yet been met and some others have been marginalized by different Member States. All that despite the fact that the EAM covered an immediate action plan to solve the difficulties in the Mediterranean, as well as medium and long term measures. This means that we also face a crisis of a common policy on migration and asylum in the EU – and even raises doubts whether such a policy exists, but also we are heading towards a much deeper political and institutional crisis of the EU, amplified by the potential exit of the UK from the EU (called “Brexit”) and a fundamental risk of lessened integrity and functioning of the Schengen area. The elaboration of a truly comprehensive and common migration and asylum policy at the EU level requires much more time, a revision of the legal framework (but more legal acts does not mean better); developing and sharing best (good) practices; adequate funding, but also solidarity and will to cooperate of all EU Member States. Additionally, a greater understanding and awareness of European societies in the field of migration processes, issues of human rights and mechanisms of integration of foreigners and migrants are necessary to design and effectively implement any policy.

# LOOKING BEYOND THE CURRENT MIGRATION AND REFUGEE CRISES IN EUROPE: A COMMON POLICY OF THE EU AND THE OUTLOOK FOR THE FUTURE – IN SEARCH OF SOLUTIONS

## Introduction

The current migration and refugee crises in Europe and the Mediterranean region capture the interest of politicians, journalists, researchers and experts, and inspire many questions about the causes and consequences of these massive migratory movements for the European Union, and the effectiveness of the EU policy on migration and asylum.

Migration to Europe is not a new phenomenon. It is understandable that the pursuit of safety has been pushing people to migrate to Europe for decades, to escape persecution and strife – but this process, by no means new, is now gaining momentum (Altai Consulting 2015, 11). Migration has been an important part of the history of the European integration process after 50s of the 20th century. Although the signs of a potential migrant and refugee crisis situation in Europe appeared at least as early as in 2011 with the outbreak of the Arab Spring, the numbers of people moving to the EU rose sharply in 2014–2015 and continue to rise in 2016.

Therefore the problem is not in the sudden rise of migration as a phenomenon, but rather in the changing conditions of migratory movements and their management, encompassing several factors, among others:

- an evolution of legal and institutional frameworks and the foundations of the EU (i.a. creation of the EU; creation of the Schengen zone);
- a growing number of European states involved directly in the EU project;
- a changing political and socio-economic conditions in the EU's neighborhood as well as growing instability in non-EU Mediterranean countries (especially in North Africa and Middle East) manifested in i.a. Arab Spring, civil war in Syria, war in Libya, political crisis in Egypt, etc.;
- a growing threat of terrorist attacks in Europe (France 2015, Belgium 2016).

According to the data from the UNHCR, IOM and Frontex, the European Union since 2014 has been marked by a rapidly growing number of migrants arriving especially from North Africa and the Middle East, and simultaneously faced by an increasing number of people officially applying in the EU member states for various forms of international protection or simply identifying themselves as refugees and asylum seekers without submitting any applications. To describe the current migrant and refugee situation in Europe, the term “crisis” is often used in media coverage and political and public debates, and increasingly also in scientific discourse and academic works (see: De Genova, Tazzioli 2016).

This crisis is a multilevel and multidimensional one. However, the current migration and refugee emergency situation is not limited to the EU, but it is a crisis of Europe (e.g. Macedonia is involved as a transit country or Switzerland serves as an important refugee accepting country) and the Mediterranean. The geographical scope of the crisis alone necessitates the implementation of complex solutions at different levels and in various dimensions, and requires contributions from other countries in the region and institutional stakeholders such as UNHCR or IOM.

To add to this, it is now clear that we must distinguish at least two crises – (im)migration and refugee ones – occurring at the same time in Europe. The first one, demographic in nature, manifests itself through an increasing number of people crossing both legally and illegally the EU external borders in a very short period of time, as well as through the consequences of these massive migratory movements for the transit and migrant-receiving countries. The latter refers to the issue of declared and actual legal status of the incoming population and the reasons for this influx, as a large part of people coming to Europe declare

seeking international protection, usually understood as encompassing i.a. asylum, refugee status and subsidiary or temporary protection status (Pachocka 2015).

Additionally it is possible to identify one more aspect of the current crisis situation in Europe—the Mediterranean – the humanitarian one. This dimension refers to the situation in Syria, which is affected by civil war and to the Syrian forced migrants fleeing to other countries in the Mediterranean region (Amnesty International 2015; Coalition for the Responsibility to Protect; EC 2016b; OCHA). The humanitarian crisis is also mentioned in relation to the situation in some refugee and migrant camps as well as the areas where refugees and migrants gather in large numbers e.g. in Greece (e.g. on the island of Lesbos or in the small Idomeni village near the Greek border with the former Yugoslav Republic of Macedonia) (UNHCR 2016a) and in France (on the coast of northern France next to the English Channel – around Calais and Dunkerque) (RT France 2015; Taub 2016).

Migration and refugee crises affect EU countries unevenly in terms of numbers and consequences. Moreover, their socio-economic, geographical, political and cultural circumstances are different. Also, the EU members are diverse in terms of their historical migration and asylum experience as well as the existing (if at all) policy tools. These factors have a large impact on both the official positions taken by the governments of EU members towards the crises and the attempts to solve them at the EU level.

In this article I briefly describe the legal basis for the common migration and asylum policy of the EU, then I present the overview of selected proposals how to solve the current migrant and refugee crises in Europe and the Mediterranean region provided by different entities – UNHCR, IOM, OECD, EU as well as Overseas Development Institute and Altai Consulting. To conclude, I discuss some obstacles and constraints to the effective implementation of a truly comprehensive EU policy on migration and asylum.

## **1. EU policy in the field of migration, asylum and border management – overview of the legal basis**

A detailed legal basis for the EU policy on migration and asylum is written in the *Chapter 2 Policies on border checks, asylum and immigration* of the *Title V Area of freedom, security and justice* of the TFEU. According to the title of this Chapter, there are three (sub-)policies, respectively focused on: 1) border management and control, 2) asylum and 3) immigration. In practice, the term “EU/common migration and asylum policy” is widely used by the EU, its Member States, and researchers, encompassing all the issues and topics related to immigration, asylum, international protection, EU borders, and EU internal security.

With reference to the **asylum and international protection**, according to article 78 par. 1: “The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28<sup>th</sup> of July 1951 and the Protocol of 31<sup>st</sup> of January 1967 relating to the status of refugees, and other relevant treaties”. Consequently, to meet the afore-mentioned objective specific measures need to be adopted for a common European asylum system, including (art. 78 par. 2 TFEU):

- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
- (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
- (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

- (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
- (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

Noteworthy is paragraph 3 of article 78 of the TFEU discussing the provisional measures that may be adopted by the Council for the benefit of Member States experiencing an emergency situation understood as a sudden influx of nationals of third countries. As we can see, in the light of this article, this situation called “an emergency one” is considered in the context of common asylum policy.

A common **immigration** policy is mentioned in article 79 of the TFEU. Its purpose is to ensure at all stages “the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings” (art. 79 par. 1 TFEU). The measures to be adopted in order to achieve such an objective comprise:

- (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
- (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
- (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
- (d) combating trafficking in persons, in particular women and children.

Another issue is the policy focused on **internal and external border management** developed in article 77 of the TFEU, whose goals are as it follows:

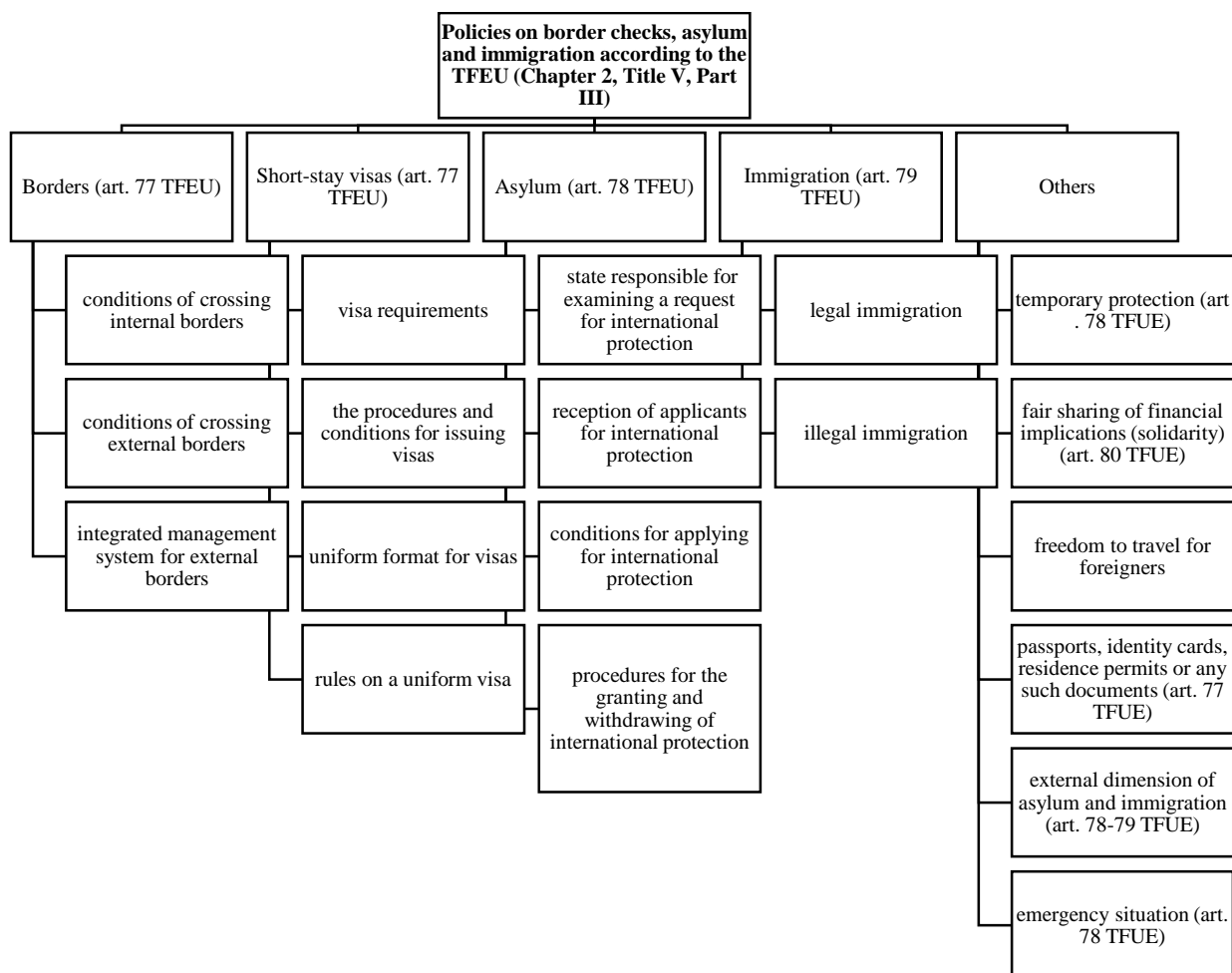
- (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
- (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
- (c) the gradual introduction of an integrated management system for external borders.

Fulfilling these aims assumes adoption of measures such as (art. 77 par. 2 TFEU):

- (a) the common policy on visas and other short-stay residence permits;
- (b) the checks to which persons crossing external borders are subject;
- (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
- (d) any measure necessary for the gradual establishment of an integrated management system for external borders;
- (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

While articles 77–79 of the TFEU contain the detailed characteristic of the EU policy in the field of migration, asylum and border checks, article 80 states that: “The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle”. These words are of special importance in the light of the current EU migration and refugee crises. Scheme 1 shows the material scope of the EU policy discussed, in fact three (sub-)policies, specified in the *Chapter 2* of the TFEU.

*Scheme 1 The material scope and measures of the EU policies on border checks, asylum and immigration according to the TFEU*



*Source: own work based on: (Borawska-Kędzierska, Strąk 2011, 22)*

The personal scope of this policy is a consequence of the rules outlined in article 67 par. 2 of the TFEU, so it refers to: citizens of EU Member States, third-country nationals and stateless persons (Borawska-Kędzierska, Strąk 2011, 21). The territorial scope of the cooperation in the field of migration, asylum and border management in the EU is defined by the borders of the area of freedom, security and justice, which is mentioned in the article 3 par. 2 TEU<sup>1</sup> and in article 26 par. 2 of the TFEU<sup>2</sup>. This area is marked by external borders of the one territory of the EU Member States. Territorial scope is subject to modifications, as it may exclude certain EU members such as UK, Ireland, and Denmark or include some non-EU states such as Norway, Iceland, Switzerland and Lichtenstein (Borawska-Kędzierska, Strąk 2011, 18, 21).

<sup>1</sup> “The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime” (EU 2012a).

<sup>2</sup> „The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties” (EU 2012b).

## 2. How to solve the crises – overview of selected proposals

Currently, from the EU perspective at least two issues seem to be crucial:

1. how to solve the crisis situation already found in the EU, taking into consideration priority level(s) to face it – global, EU and/or national, the tools to be designed and implemented, the stakeholders to be involved in the problem-solving process;
2. what steps to take in order to prevent the deepening of the crisis and to halt the influx of new migrants to the EU, having in mind the interests of the Member States, the integrity of the EU, the overall political climate in the EU and respect for international law in the area of human rights and refugees.

Since early 2014 many comments on migration and refugee crises have been communicated by different entities (international organizations, countries, associations, institutions, etc.) and individuals (policy makers, experts, researchers, etc.), many different positions were presented, many declarations were made and a number of possible solutions were suggested. Here, I would like to present the overview of selected proposals how to solve the current migrant and refugee crises in Europe and the Mediterranean region provided by different entities – UNHCR, IOM, OECD, EU as well as Overseas Development Institute and Altai Consulting.

The **UN Refugee Agency** in early March 2016 issued its latest recommendations aimed at helping to solve the refugee situation in Europe, having declared its readiness to support both the EU and its Member States to “stabilize the situation and reduce onward movements of refugees and migrants in Europe” (UNHCR 2016b, 1). UNHCR’s proposal included six main steps to be followed which were (UNHCR 2016c):

1. implement fully the so-called ‘hot spot’ approach and relocation of asylum seekers out of Greece and Italy and, at the same time, return individuals who don’t qualify for refugee protection, including under existing readmission agreements;
2. step up support to Greece to handle the humanitarian emergency, including for refugee status determination, relocation, and return or readmission;
3. ensure compliance with all the EU laws and directives on asylum among Member States;
4. make available more safe, legal ways for refugees to travel to Europe under managed programmes – for example humanitarian admission programmes, private sponsorships, family reunion, student scholarships and labour mobility schemes – so that refugees do not resort to smugglers and traffickers to find safety;
5. safe-guard individuals at risk, including systems to protect unaccompanied and separated children, measures to prevent and respond to sexual and gender-based violence, enhancing search and rescue operations at sea, saving lives by cracking down on smuggling, and countering xenophobia and racism targeted at refugees and migrants;
6. develop Europe-wide systems of responsibility for asylum-seekers, including the creation of registration centres in main countries of arrival, and setting up a system for asylum requests to be distributed in an equitable way across EU Member States.

In turn, **the International Organization for Migration (IOM)** on the 7<sup>th</sup> of April 2016 announced its recent *Europe/Mediterranean migration response Situation Report*, presenting the current situation overview in the region and IOM’s response encompassing specific activities undertaken (IOM 2016). These *Situation Reports*, which are published periodically, are not intended to propose a comprehensive action plan to face the crisis at strategic level, but they sum up the actions implemented by the IOM in connection to the migration and refugee crises in Europe–Mediterranean region in order to fulfill IOM’s purposes and carry out its functions defined in the IOM Constitution.

An important part of IOM activities is releasing publications on different issues related to broadly understood migration. Some of them discuss the actions needed to face the current migration and refugee situation in the Mediterranean region, such as: *The Middle East and North Africa Annual Reports*. So called MENA region is nowadays the main place of origin of people migrating to Europe in large numbers in recent years, including Syrians. As stated in *The MENA Annual Report 2014* the IOM's objectives in the Middle East and North Africa are to (IOM 2015, 5):

1. enhance capacity, knowledge and dialogue on migration, migration management, and migration policymaking among States, civil society and other stakeholders in the region;
2. contribute to safe, protected and regular migration, in full respect of the human rights of all migrants, and with a view to improving development outcomes of migration for migrants and societies in countries of origin and countries of destination;
3. improve preparedness for and responses to the migration dimensions of humanitarian crises, with a focus both on vulnerable mobile populations and affected communities.

Another key IOM document is the study on *Migration Trends across the Mediterranean: Connecting the Dots* prepared by Altai Consulting (2015) for IOM's Regional Office for the Middle East and North Africa. It discusses in detail the context of the dynamics of migration flows across the Mediterranean Sea on the basis of the fieldwork conducted in seven countries in the MENA region and Europe (Egypt, Libya, Morocco, Tunisia, Italy, Malta, Spain) between November 2014 and February 2015. In the section on *Cross-cutting issues & cross analysis* of the study a general overview of the migration situation in the region, including the EU, is presented together with conclusions and recommendations towards better migration management (Altai Consulting 2015, 107).

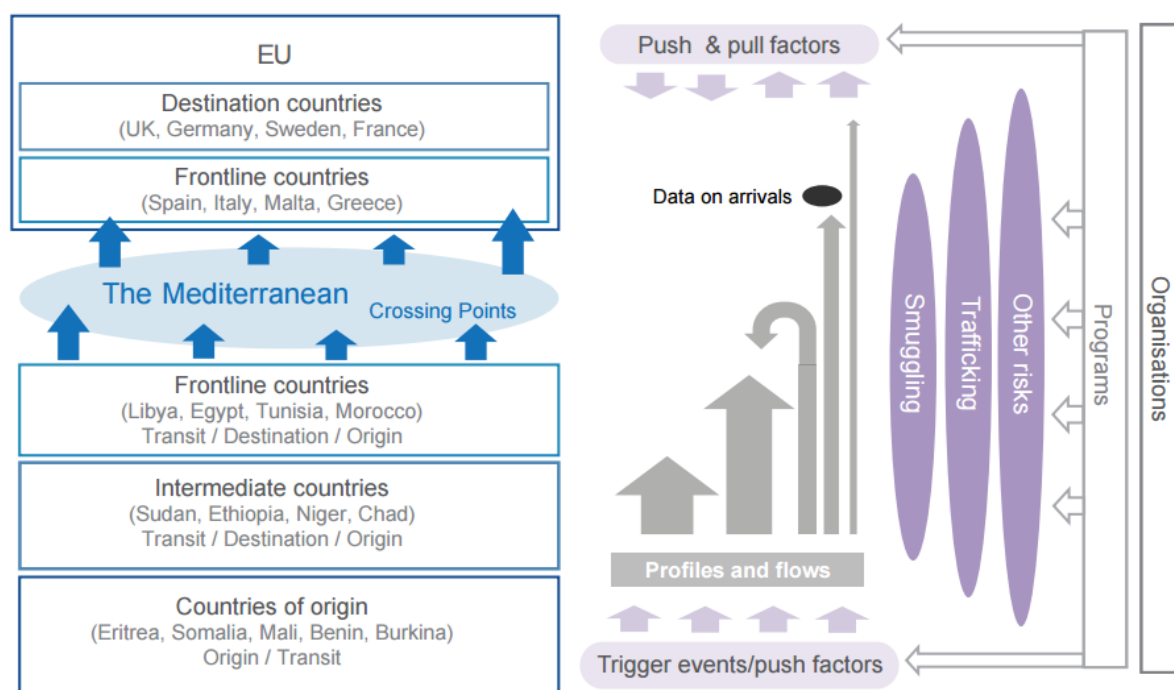
Keeping in mind that the study was focused on the in-depth analysis of two selected migratory routes from MENA to Europe – the Western Mediterranean route from Morocco to Spain and the Central Mediterranean route from North Africa (Libya or Egypt) to Italy or Malta – it is indicated in the report that to control the influx of migrants via the Mediterranean one needs to launch a coordinated effort which will consider the different countries of transit, their internal circumstances and the dangers and difficulties these may pose to the migrating people (Altai Consulting 2015, 112).

Moreover, these two migratory routes are distinguished by the so called mixed migratory flows, which can be defined as: “mixed complex population movements including refugees, asylum seekers, economic migrants and other migrants” (IOM's approach) or “people travelling in an irregular manner along similar routes, using similar means of travel, but for different reasons” (UNHCR's approach)” (Altai Consulting 2015, 13). Having abovementioned remarks in mind, a package of coordinated responses to be implemented in the short, medium and long term was proposed. The key points of this proposal covered: 1) short-term responses focused on protection at sea and access to asylum; 2) medium-term responses concentrated on counter-smuggling and anti-trafficking measures, information campaigns and regularisation campaigns; and 3) long-term responses dealing with increased legal alternatives to dangerous journeys, coordination and cooperation, regional mobility schemes, new approaches to a coordinated European asylum system, integration of migrants and asylum seekers at destination, as well as new approaches and alternatives to camp management (Altai Consulting 2015, 113–119).

In addition, a new model of the ongoing monitoring of migratory flows in the Mediterranean was proposed by Altai Consulting to be developed by the IOM and other stakeholders involved. It would be a more comprehensive system to collect the existing data on flows from different sources such as IOM, UNHCR, Frontex, local NGOs and CSOs (civil society organisations). This system would be focused on analysing migration trends, main push and pull factors (rationale for migration), risks and vulnerabilities to be addressed along the way across the Sea, as well as the impact of different programs and interventions

implemented (Altai Consulting 2015, 120–122). Scheme 2 sums up this approach by presenting the matrix of factors to be monitored on an ongoing basis.

*Scheme 2 The matrix of factors to be monitored on an ongoing basis*



*Source: (Altai Consulting 2015, 121).*

A valuable contribution to the analysis of a today’s emergency situation in Europe–Mediterranean was published by the **Organization for Economic Cooperation and Development** in its series on “Migration Policy Debates”. In September 2015 the OECD stated that the current humanitarian migration crisis – here also interchangeably referred to as a refugee crisis – in Europe is unprecedented due to “appalling and unacceptable human cost” and is markedly different from previous ones since World War II. The approach adopted by the OECD is rooted in socio-economic conditions and the perspective of labour market and economies of migrant-receiving countries in the EU. It is stressed that “refugee flows tend to concentrate in countries with the most favourable economic conditions” and “a strong jobs market seems to be the most important determinant of flows for main refugee groups”. Taking into account large-scale influx of people to Europe in recent years and the fact that for some EU Member States (Hungary, Poland or Bulgaria) it is a new experience. The long- and short- term economic cost or benefit of accepting migrants entirely depends on actions which will follow: “in the short run, processing and supporting such large numbers of asylum seekers will be costly. In the long-run, much will depend on how well successful asylum seekers are integrated. This will require early and intensive efforts to provide language training, assess individual skills, provide school access, address health and social problems, and work with employers to help boost refugees’ chances of employment” (OECD 2016, 1).

The **European Union** had no crisis management plan in place for the immense scale of migratory movements into its territory observed in recent years, especially since 2014. In response to escalating migrant and refugee crises, the European Commission launched its work on the *European Agenda on Migration* in early March 2015, and announced it as a package of short-, medium- and long-term measures in mid-May 2015. The aim of the EAM was to put together “the different steps the European Union should



take now, and in the coming years, to build up a coherent and comprehensive approach to reap the benefits and address the challenges deriving from migration” (EC 2015, 2). The key actions and priorities proposed in the EAM are presented in the Table 1.

*Table 1 Key actions and priorities proposed in European Agenda on Migration in 2015*

<b>I. Immediate action</b>	<b>II. Four pillars to manage migration better</b>			
	<b>1. Reducing the incentives for irregular migration</b>	<b>2. Border management – saving lives and securing external borders</b>	<b>3. Europe’s duty to protect: a strong common asylum policy</b>	<b>4. A new policy on legal migration</b>
<ul style="list-style-type: none"> <li>• A funding package to triple the allocation for Triton and Poseidon in 2015-16 and to finance an EU-wide resettlement scheme.</li> <li>• Immediate support to a possible CSDP (Common Security and Defense Policy) mission on smuggling migrants.</li> <li>• A legislative proposal to activate the emergency scheme under Article 78(3) TFEU by the end of May, on the basis of the special distribution key proposed in Agenda</li> <li>• A proposal for a permanent common EU system for relocation for emergency situations by the end of 2015.</li> <li>• A Recommendation for an EU resettlement scheme by the end of May followed if required by a proposal for more permanent approach beyond 2016.</li> <li>• EUR 30 million for Regional Development and Protection Programs.</li> <li>• Pilot multi-purpose center established in Niger by the end of 2015.</li> </ul>	<ul style="list-style-type: none"> <li>• Addressing the root causes through development cooperation and humanitarian assistance.</li> <li>• Making migration a core issue for EU delegations.</li> <li>• An action plan on smuggling in May 2015.</li> <li>• Stronger action so that third countries fulfil their obligations to readmit their nationals.</li> <li>• Adoption of a Return Handbook and monitoring of the implementation of the Return Directive.</li> <li>• Reinforcement and amendment of the FRONTEX legal basis to strengthen its role on return.</li> </ul>	<ul style="list-style-type: none"> <li>• Strengthening FRONTEX’s role and capacity.</li> <li>• Union Standard for border management.</li> <li>• Strengthening EU coordination of coast guard functions.</li> <li>• A revised proposal on Smart Borders.</li> <li>• Strengthening the capacity of third countries to manage their borders.</li> </ul>	<ul style="list-style-type: none"> <li>• Establishing a new monitoring and evaluation system for the Common European Asylum System and guidance to improve standards on reception conditions and asylum procedures</li> <li>• Guidelines to fight against abuses of the asylum system.</li> <li>• Strengthening Safe Country of Origin provisions of the Asylum Procedure Directive to support the swift processing of asylum applicants from countries designated as safe</li> <li>• Measures to promote systematic identification and fingerprinting.</li> <li>• More biometric identifiers passed through EURODAC.</li> <li>• Evaluation and possible revision of the Dublin Regulation in 2016.</li> </ul>	<ul style="list-style-type: none"> <li>• Modernization and overhaul of the Blue Card scheme.</li> <li>• A platform for dialogue with social partners on economic migration.</li> <li>• Stronger action to link migration and development policy.</li> <li>• Re-prioritizing funding for integration policies</li> <li>• Cheaper, faster and safer remittance transfers.</li> </ul>

*Source: own work based on: (EC 2015).*

In its communication on the 10<sup>th</sup> of February 2016 the EC summed up the progress of implementation of the priority actions under the European Agenda on Migration in the following words: “Over the last six months, the European Commission has consistently and continuously worked for a swift, coordinated European response. It tabled an extensive series of proposals designed to equip Member States with the tools necessary to manage the large number of arrivals, many of which have already been adopted by the European Parliament and the Council. From tripling our presence at sea; through a new system of emergency solidarity to relocate asylum seekers from the most affected countries; via an unprecedented mobilisation of the EU budget of over €10 billion to address the refugee crisis and assist the countries most affected; providing a new coordination and cooperation framework for the Western Balkan countries; starting a new partnership with Turkey; all the way to an ambitious proposal for a new European Border and Coast Guard, we are bolstering Europe’s asylum and migration policy to deal with the new challenges it is facing. While important building blocks of a sustainable system of migration management are now in place on paper, it is their swift, full implementation on the ground that has been lacking” (EC 2016a, 2–3).

The effectiveness of the EU migration and asylum policy has proven to be limited, because a national approach to the current problems and challenges prevails over the EU one. It is evident that, the *European Agenda on Migration* so far has been slow to be implemented, some strategic commitments have not yet been met and some others have been marginalized by different Member States (EC 2016a, 3). All that despite the fact that the EAM covered an immediate action plan to solve the difficulties in the Mediterranean, as well as medium and long term measures. This means that we also face a crisis of a common policy on migration and asylum in the EU – and even raises doubts whether such a policy exists, but also we are heading towards a much deeper political and institutional crisis of the EU, amplified by the potential exit of the UK from the EU (called “Brexit”) and a fundamental risk of lessened integrity and functioning of the Schengen area.

An interesting and up-to-date analysis of the EU response to migrant and refugee crisis was provided by one of the UK’s leading independent think tanks on international development and humanitarian issues. **Overseas Development Institute** in its report from December 2015 on *Challenges to a comprehensive EU migration and asylum policy* suggested a number of steps the EU could take to overcome the obstacles it still faces. However, their effective and successful implementation would require “far greater political recognition of the fact that a joint response is in the interests of EU Member States and the EU as a whole”. ODI proposed the following measures (Raphaëlle et al. 2015, 21–22):

1. appoint a senior political advisor to build bridges between the external and internal dimension of migration and asylum policies across the EU system;
2. establish an overarching EU strategy for international migration and asylum policy to overcome the disconnect at strategic levels between the internal and external dimensions of the EU’s policies on migration as well as security;
3. ensure better information exchange and coordination of national policies at the EU level on both the internal and external dimensions of asylum and migration policy;
4. strengthen the EU institutions’ arbitration role so that they have the authority to ensure that EU rules are interpreted and applied consistently across Member States;
5. move towards a more permanent relocation system of asylum seekers within the EU over the longer term;
6. address the fragmentation of the EU’s financial instruments through short, medium and long-term approaches;
7. be clear in communicating the strategy and rationale behind the creation of new financial mechanisms, such as the EU Trust Funds;

8. devolve responsibility for oversight and management of the different in-country programmes and funding streams to EU Delegations (EUDs).

While some of these steps overlap with steps and actions proposed by entities discussed before, some of them are new, but still amount to general recommendations to improve upon the existing system's efficiency, information flow and managing responsibility.

## Conclusions

The EU has already worked out a complex *acquis*, important achievements, know-how and (good) practices in the field of migration and asylum with the cooperation and support of various stakeholders (Member States and third countries, international organizations, NGOs, scientific associations, research centers and networks dealing with migration, etc.), even despite the constraints resulting from the lack of a truly common migration and asylum policy. Moreover, recent developments in Europe and the Mediterranean region as well as the migrant and refugee crises have had and continue to have their impact on the accelerated growth of the EU's knowledge and experience in this area.

However, it seems that we do not appreciate enough what the Union with its institutions and bodies have done so far in the field of migration and asylum. The common policy in its current form is a kind of a political hybrid, conditioned in practice by international law, EU *acquis* and national regulations. Both crises suddenly and brutally verified this policy and its foundations, conditions, tools and mechanisms, proving the need for a new, revisited one which will play to EU's strengths.

Legal acts, official documents and institutional actions are key to the creation of common policies, however, other, less formal, initiatives are equally important. Because the migration and refugee crises in Europe are gaining momentum and the EU Member States are unable to implement formal solutions at the EU level within the framework of common migration and asylum policy, it seems reasonable to utilize the tools of non-formalized cooperation with other national or international organizations, NGOs and other entities.

Current migrant and refugee crises along with their course, determinants and consequences are becoming better and better understood, researched and analyzed. Solutions ranging from immediate actions to the medium and long term measures are proposed by different international organizations, including the UNHCR, IOM and EU.

However, for now, the full development and implementation of solutions to both crises at the EU level seems impossible. The EU members continue to search for solutions at the national level or even avoid them at all, which weakens the common policy further. In the absence of a sufficiently timely and effective cooperation between Member States at the EU level, facing simultaneously the intensifying migration movements, the EU uses other instruments in its hands and relies on outside help. An example is the agreement negotiated with Turkey.

From the perspective of the EU, it is not the lack of a comprehensive, multi-dimensional approach to the crises or the lack of a coherent proposal of response to the crisis that is the problem. In case of the EU, the problem lies in the implementation of the solutions that is limited and slowed down due to the insufficient cooperation among Member States inside the EU as well as due to the external factors that have to be taken into consideration such as: instability in third countries in the EU neighborhood or negotiations of the terms of cooperation with the countries of transit such as Turkey having and acting upon own goals and interests. Also the fact that it is a part of the area of freedom, security and justice, which is subject to shared competence between the EU and the Member States (art. 4 par. 2 (j) TFEU), can be considered as a limiting factor to the effective implementation of migration and asylum policy.

Since the migrant and refugee crisis situation is more complex than first thought – cooperation between EU Member States is not only recommended, but it is necessary. The migrants are gradually passing deeper into the continent, through transit countries on their way to Germany, the UK or Sweden. All countries that were initially not considered to be affected are experiencing the effects of the crisis: either directly through the influx of migrants (Italy, Greece), their passage via their territory (Hungary, Austria) or indirectly, via the changing political climate in the EU.

While discussing the barriers impeding the delivery of a comprehensive and effective EU approach to the current migration and refugee crisis three factors undermining the common policy can be singled out (Raphaëlle et al. 2015, 21):

1. the system of parallel competences that allows Member States to pursue their own policies alongside EU policy;
2. the co-existence of too many actors who want their say in policies and who come from very different policy areas with varying – if not conflicting – interests;
3. fragmented, and in some cases overlapping, funding instruments.

It was clearly stated in the introduction to the EAM that no EU member state can effectively address migration alone. The observed crisis situation requires a new, more European approach, what entails the use of all internal and external policies and tools at EU disposal. Moreover, all actors concerned defined as “Member States, EU institutions, international organizations, civil society, local authorities and third countries” need to work together to make it a reality (EC 2015, 2).

The elaboration of a truly comprehensive and common migration and asylum policy at the EU level requires much more time, a revision of the legal framework (but more legal acts does not mean better); developing and sharing best (good) practices; adequate funding, but also solidarity and will to cooperate of all EU Member States. Additionally, a greater understanding and awareness of European societies in the field of migration processes, issues of human rights and mechanisms of integration of foreigners and migrants are necessary to design and effectively implement any policy.

## References

1. Altai Consulting (2015), *Migration Trends across the Mediterranean: Connecting the Dots*, IOM’s Regional Office for the Middle East and North Africa (MENA), June 2015, <http://publications.iom.int/books/migration-trends-across-mediterranean-connecting-dots>
2. Amnesty International (2015), *Syria: The worst humanitarian crisis of our time*, 07.04.2015, <https://www.amnesty.org.nz/syria-worst-humanitarian-crisis-our-time>
3. Borawska-Kędzierska E., Strąk K. (2011), *Zarządzanie granicami, polityka wizowa, azylowa i imigracyjna*, Instytut Wydawniczy EuroPrawo, Warszawa 2011
4. De Genova N., Tazzioli M. (eds.) (2016), *New Keywords Collective „Europe/ Crisis: New Keywords of ‘the Crisis’ in and of ‘Europe’”*, Near Futures Online 1 “Europe at a Crossroads”, March 2016: <http://nearfuturesonline.org/europecrisis-new-keywords-of-crisis-in-and-of-eu-rope/>
5. EC (2015), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘A European Agenda on Migration’*, 13.05.2015, COM(2015) 240 final, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)
6. EC (2016a), *Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration*, 10.02.2016, COM(2016) 85 final, <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european->

- agenda-migration/proposal-implementation-  
package/docs/managing\_the\_refugee\_crisis\_state\_of\_play\_20160210\_en.pdf
7. EC (2016b), *Crise syrienne*, Fiche-info ECHO, mars 2016, [http://ec.europa.eu/echo/files/aid/countries/factsheets/syria\\_fr.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/syria_fr.pdf)
  8. EU (2012a), *Consolidated version of the Treaty on European Union (TEU)*, 26.10.2012, OJ C 326
  9. EU (2012b), *Consolidated version of the Treaty on the Functioning of the European Union (TFEU)*, 26.10.2012, OJ C 326
  10. International Coalition for the Responsibility to Protect, *The Crisis in Syria*, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria>
  11. IOM (2015), *The Middle East and North Africa Annual Report*, Geneva 2015, [http://publications.iom.int/system/files/pdf/mena\\_annual\\_report\\_2014.pdf](http://publications.iom.int/system/files/pdf/mena_annual_report_2014.pdf)
  12. IOM (2016), *Europe/Mediterranean migration response Situation Report*, 07.04.2016, [https://www.iom.int/sites/default/files/situation\\_reports/file/Europe-Med-Migration-Response\\_Sitrep18-7April2016.pdf](https://www.iom.int/sites/default/files/situation_reports/file/Europe-Med-Migration-Response_Sitrep18-7April2016.pdf)
  13. IOM, Constitution, <http://www.iom.int/constitution>
  14. OCHA, Syrian Arab Republic, <http://www.unocha.org/syria>
  15. OECD (2015), *Is this humanitarian migration crisis different?*, Migration Policy Debates, No 7, September 2015, <https://www.oecd.org/migration/Is-this-refugee-crisis-different.pdf>
  16. Pachocka M. (2015), *The European Union and International Migration in the Early 21st Century: Facing the Migrant and Refugee Crisis in Europe*, in: *Facing the Challenges in the European Union. Re-thinking EU Education and Research for Smart and Inclusive Growth (EuInteg)*, eds. E. Latoszek, M. Proczek, A. Kłos, M. Pachocka, E. Osuch-Rak, Polish European Community Studies Association – Elipsa, Warsaw 2015, p. 531–557
  17. Raphaëlle F., Gavas M., Knoll A. (2015), *Challenges to a comprehensive EU migration and asylum policy*, Overseas Development Institute, December 2015, <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10166.pdf>
  18. RT France (2015), *Migrants de Calais, une crise humanitaire au cœur de la France selon les associations*, 10.07.2015, <https://francais.rt.com/france/4180-migrants-calais-crise-humanitaire>
  19. Taub A. (2016), *The humanitarian crisis in Calais is a symptom of the EU's biggest failure*, Vox, 08.03.2016, <http://www.vox.com/2016/3/8/11180232/jungle-calais-refugee-camp>
  20. UNHCR (2016a), *UNHCR warns of imminent humanitarian crisis in Greece amid disarray in Europe over asylum*, 01.03.2016, <http://www.unhcr.org/56d564ed6.html>
  21. UNHCR (2016b), *Stabilizing the situation of refugees and migrants in Europe: Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016*, 03.03.2016, <http://www.unhcr.org/56d94f7e9.html>
  22. UNHCR (2016c), *6 steps towards solving the refugee situation in Europe*, Press Releases, 04.03.2016, <http://www.unhcr.org/56d957db9.html>