



Consiglio Regionale del Molise



MIGRATION AND HUMAN RIGHTS IN THE MEDITERRANEAN

A CHALLENGE FOR THE FUTURE OF THE EUROPEAN UNION

WORKING GROUP “IMMIGRATION, SOCIAL POLICIES AND HUMAN RIGHTS”

SUMMARY

- INTRODUCTION
- THE PATH FOLLOWED
- THE LEGISLATIVE FRAMEWORK
- THE PRINCIPLE OF SOLIDARITY
- THE DEBATE IN THE INSTITUTIONS OF THE EUROPEAN UNION:
THE WORK OF THE NEW EUROPEAN COMMISSION

INTRODUCTION

The tragic and repeated shipwrecks of boatloads of migrants in the Mediterranean Sea and the unknown number of refugees dead or missing along the other routes of escape from their countries of origin confirm the alarms, raised by time, about the shortcomings of the policies of the European Union and its Member States about the management of migration flows.

In 2014, 283,532 migrants have entered illegally into the European Union, through the routes of the central Mediterranean, the Eastern Mediterranean and the Western Balkans. Of these, 220,194 migrants have passed the EU maritime borders across the Mediterranean Sea (an increase of 266% compared to 2013). Half of them came from Syria, Eritrea and Afghanistan¹.

From 2000 to 2013, over 23,000 migrants have died trying to reach Europe by sea or by land going through the borders of the old continent: 50 percent more than it appears from existing estimates². A slaughter with a budget similar to that of a war for the size and number of deaths - on average more than 1,600 per year.

One of the most dangerous sea routes is that involves the stretch of water between Libya, Morocco and Italy: it is estimated³, in fact, that more than 1,700 migrants, from January to today, have lost their lives in the Mediterranean Sea while trying to reach Europe. In less than five months, the number of victims has exceeded half of the total recorded in 2014 (3279).

It should, however, recognize that does not exist only one problem "landings". The challenge of ensuring economic recovery and growth, in fact, continues to remain the focus of European leaders: despite the high unemployment, many Member States have blamed labor shortages and skilled workers in some sectors. Properly managed immigration can

¹ Annual Risk Analysis 2015", Frontex 2015.

² The Migrant Files, 2015.

³ Annual Risk Analysis 2015", Frontex 2015.

help to boost the economy, as it guarantees access to necessary skills and helps to address the weaknesses of the labor market.

The complexity of the issue of migration is widely recognized, as widely recognized are the limits of interventions as result of incomplete legislation, despite the commitments made by the institutions. Moreover, the European regional and local authorities, on which befalls the burden of social inclusion of migrants, often they find themselves with no means of action and without resources. Consequently the deep systemic noticeable gaps in the management of migration favor the assertion in European societies of xenophobic, populist and, ultimately, undemocratic movements.

The phenomenon has, therefore, local, national and international challenges that have to come urgently in European political debate: no country can hope to cope alone with the challenge of migration from Africa and Asia. Migration flows, in fact, are unstoppable, and Europe cannot barricade themselves in its borders as a fortress, ignoring the economic, political and military causes of migration. Europe must play an active role in building comprehensive and sustainable international solutions. At the same time Europe must redefine its growth model, in terms of economic and social sustainability, and make its financial resources and government institutions fully democratic.

THE PATH FOLLOWED

MIGRATORY PRIORITIES IN EUROPEAN PROGRAMMES

TAMPERE PROGRAM (2000-2005)

The European Council at Tampere called on the EU to develop common migration and asylum policies. The main fields were:

- Free movement for anyone legally in the EU to travel, work and settle anywhere they wish in the European Union;
- Recognition and protection of the fundamental rights of everyone living legally in the European Union. Citizens of any EU member state are automatically European citizens;
- Working towards a common European asylum system and towards a joint European immigration policy, so it is no easier and no harder to enter the European Union through any of its member states;
- Working together throughout Europe to prevent and combat all forms of organised crime. These include the drugs trade, illegal trafficking in people and goods, fraud and financial crime.

THE HAGUE PROGRAM (2005-2010)

The Hague Program came up with a new, balanced approach to deal with legal and illegal immigration, including the following priorities:

- Fighting illegal immigration and the trafficking of human beings, especially women and children;
- Developing integrated management of the Union's external borders (Frontex Agency has been set up);
- Setting up a common asylum procedure (common procedure and common status for refugees).

THE STOCKHOLM PROGRAM (2010-2014)

The Stockholm Program focused on further coordination of border management and migration and asylum policies with the following priorities:

- Developing the second-generation Schengen information System (SIS II) and Visa Information System (VIS II);
- Establishing the Common European Asylum System (CEAS) by 2012.

The incremental development of a common European asylum system has been designed by the Amsterdam Treaty and by the conclusions of the Tampere European Council in 1999.

The first decade (1999-2009) of common policy development in the area of immigration and asylum focused on the harmonization of Member States' legislation; because such policy tends to be more general, perhaps even abstract, there are often fewer obstacles to overcome. Now, however, the EU institutions are looking toward more sophisticated, and this more difficult, initiatives, aimed at amend and/or build upon first-

generation policies, in an environment that is more hostile to certain types and forms of integration.

First of all, the number of actors involved has proliferated. The enlargements of 2004 and 2007 have almost doubled the number of governments who must agree and then effectively implement policy. Meanwhile, the new post-Lisbon role of the European Parliament has lengthened the policy process: considering the intermittent friction between the European Council and the European Parliament.

Finally, the development of EU Agencies (Fundamental Rights Agency, Frontex Agency, European Asylum Support Office) focused on aspects of the immigration portfolio means that new voices are joining an increasingly dissonant chorus.

It is this not surprising that much of the work of the Stockholm Program has focused on reviewing and reforming existing legislation, rather than on developing new policy framework. For the following reasons:

- Economic reasons:
 - Policy makers at both national and EU levels have been distracted by the serious disruption to the European economy and its social effects, aggravated further by the fiscal and euro crises and the resulting relentless growth in unemployment and underemployment. For many politicians, the twin goals of reducing unemployment and attracting new economic migrants were been fundamentally incompatible, or at least difficult to achieve. Those governments – Sweden and Germany – that have managed to discuss economic migration in the public sphere are those to have maintained robust economic growth and low unemployment rates.
 - Moreover, governments no longer have the financial flexibility to implement broad-ranging initiatives at the national level. States are under pressure to reduce spending while still living up to their EU commitments (a challenge most starkly visible in Greece). This tension has also had an effect on member states' willingness to sign up to any new EU legislation that they believe will have cost implications with respect to implementation and adaptation of existing systems.

- Political reasons:
 - Populist politics and publics more skeptical toward immigration have gained momentum in a number of Member states. Populist parties, from the Netherlands to Greece, from Italy to France, have increasing shares of voters stating that their governments have lost control of the immigration portfolio, and are no longer able to manage immigration flows effectively. As a result, many national governments in Europe have weakened their collaborative position, in its turn adversely affecting the possibility of further development of European policies.
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- Geopolitical reasons:
 - The opportunity to engage with north African partners that the “Arab Springs” presented was partially realized through renewed, yet scattered, efforts to forge mobility partnerships with key states (Tunisia, Morocco)

THE LEGISLATIVE FRAMEWORK

European Union policies regarding border controls, asylum and immigration constitute the first of the four sectors that compose the area of freedom, security and justice (Title V of Part Three of the Treaty on the Functioning of the European Union, TFEU)⁴. These policies, as well as their implementation, should be governed, according to the Treaty, by the **principle of solidarity and fair sharing of responsibility between Member States, including its financial implications** (Art. 80 TFEU). This provision is intended to avoid that Member States most exposed, for geographical reasons, to migration pressures, they are having to bear alone the burden organizational and economic related to border control, flow management and evaluation of applications asylum⁵.

The legislative measures adopted by the European Union within the area of freedom are based on three distinct provisions of the Treaty on the Functioning of the European Union.

On the issue of **border controls**, the art. 77 TFEU foresees the adoption of normative acts necessary to ensure, on one hand, the absence of any controls on persons, whatever their nationality, when crossing internal borders; on the other hand, the control and surveillance of crossing the external borders, including through an integrated border management. This includes legislative measures concerning the common policy on visas and other short-term residence permits; the controls to people crossing the external borders and the conditions under which nationals of third countries may move freely within the Union for a short period.

The task of developing a common policy on asylum, subsidiary protection and temporary protection is entrusted to the European Union by art. 78 TFEU. For this purpose, it plans to set up a **European common asylum system**, defining a uniform status of asylum for nationals of third countries, valid throughout the Union. This system also includes procedures for the granting and withdrawing of uniform status of asylum or subsidiary

⁴ The other sectors are: judicial cooperation in civil matters; judicial cooperation in criminal matters; police cooperation.

⁵ According to the "Dublin system", the jurisdiction of asylum applications is shouldered essentially to the State of migrant's first entry.

protection; criteria and mechanisms for determining the Member State responsible for examining an application for asylum or subsidiary protection; reception conditions of asylum seekers or subsidiary protection; partnership and cooperation with third countries to manage inflows of people applying for asylum or subsidiary or temporary protection.

Finally, Article. 79 TFEU gives the European Union the competence to develop a common immigration policy aimed at ensuring the effective management of migration flows, fair treatment of third country nationals legally residing in Member States and the prevention and **combating of illegal immigration** and trafficking in human beings. For this purpose, the Union may adopt legislative measures on the conditions of entry and residence and on the issue by Member States of visas and long-term residence permits, including those for the purpose of family reunification; on the definition of the rights of third-country nationals legally residing in a Member State, including the conditions governing freedom of movement and of residence in other Member States; on illegal immigration and illegal residence, including removal and repatriation of persons residing without authorization; on combating trafficking in human beings, in particular women and children.

1. BORDER CONTROLS - art. 77 TFEU

The management and the security of external borders is the core of the mandate of Frontex (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), established in 2004 by Council Regulation (EC) No. 2007/2004 of 26 October 2004, as amended by Regulation (EU) No. 1168/2011 of the European Parliament and of the Council of 25 October 2011.

The Frontex Agency began operations October 2, 2005, based in Warsaw (Poland). Its main tasks are: the coordination of operational cooperation between Member States in the field of management of external borders; assistance to Member States in the training of national border guards, including through the development of common standards for training; risk analysis; monitor the development of the research in the field of control and surveillance of external borders; assist Member States confronted with circumstances

requiring increased technical and operational support at external borders; provide the necessary support to Member States to organize joint return operations.

Since 2007 Frontex is also tasked to employ teams of Rapid Border Intervention in Member States who undergoes urgent and exceptional pressure due, for example, to the massive influx of illegal immigrants.

2. THE COMMON EUROPEAN ASYLUM SYSTEM - art. 78 TFUE

The Common European Asylum System (CEAS) establishes common procedures for handling asylum applications and basic rights for asylum seekers, according to the basic principles on asylum contained in the UN Geneva Convention of 1951 - as supplemented by the New York Protocol of 31 January 1967 - that defines, among other, the requirements for access to refugee status.

The Office of the European Asylum Support Office (EASO) has the function to strengthen practical cooperation among the countries of the European Union in the field of asylum, support EU countries whose asylum and reception systems are under strong pressure, and improve the implementation of the

common European Asylum System. The Office also provides technical and operational assistance to Member States facing particular pressures.

The common European asylum system is currently governed by:

- Directive 2013/32 / EU on common procedures for granting and withdrawing international protection status ("Asylum Procedures Directive"), whose deadline for implementation by Member States is set at 20 July 2015. The Directive introduced modifications to Directive 2005/85 / EC of the Council of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (which for reasons of clarity was recast) transposed in Italy by Legislative Decree 28 January 2008 n. 25;
- Directive 2013/33 / EU laying down provisions for the reception of applicants for international protection ("Reception Conditions Directive"). The Directive made amendments to the Directive 2003/9 / EC of the Council of 27 January 2003 on

minimum standards for the reception of asylum seekers in the Member States (which for reasons of clarity was recast), transposed in Italy by Decree legislative 30 May 2005 n. 140;

- Regulation (EU) No. 603/2013 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013 ("Eurodac Regulation");
- Directive 2011/95 / EU of the European Parliament and of the Council of 13 December 2011 on standards for third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for the persons eligible for subsidiary protection and the substance of the protection granted ("Qualification Directive"), whose deadline for implementation was set at December 21, 2013
- Regulation no. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ("Dublin Regulation III").

The **Dublin III Regulation**, which came into force on 1 January 2014, has made a number of substantive amendments to the previous Regulation (EC) No. No 343/2003 of 18 February 2003 ("Dublin II Regulation")⁶, which established the criteria and mechanisms for determining the EU Member State competent to examine an application for asylum submitted by a third country national. The responsibility for examining an application falls primarily to the Member State which played the major role in the entry or residence of the applicant. The criteria to establish such responsibility are, in hierarchical order, family considerations, the recent possession of a visa or residence permit in a Member State, the regular or irregular entry of the applicant in the EU.

⁶ The Dublin II Regulation was adopted in 2003, effectively replacing the Dublin Convention, which established the criteria for the country competent to deal with asylum requests. The Dublin Convention was signed in Dublin, Ireland, June 15, 1990, and entered into force on 1 September 1990 for the first twelve signatories (Belgium, Denmark, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain and the UK), on 1 October 1997 for Austria and Sweden, and on 1 January 1998 for Finland. The Regulation has been implemented by all EU Member States, plus Norway, Iceland, Switzerland and Liechtenstein

The principal modifications made by the existing Dublin Regulation III include: the introduction of a mechanism for early warning, preparedness and management in times of crisis; provisions on the protection of asylum, as the mandatory personal interview, the guarantees for minors (including a detailed description of the factors necessary for the evaluation interests of the child) and further possibility of family reunification; the possibility that the appeal has a suspensive effect on the execution of the transfer for the period of judgment, together with the guarantee of the right to remain in the territory pending a court decision about the suspension of the transfer while appeal is pending; the obligation to ensure free legal assistance on request; the reduction of the reasons for the detention for the sole risk of escape, as well as the strict limitation of the duration of detention; the possibility for asylum seekers, which in some cases may be considered irregular migrants and may be repatriated under the “Returns Directive” to be treated under the Dublin procedure, offering them greater protection than the "Returns Directive"; the obligation to ensure the right to appeal the decision to transfer; the clarification of the procedures between Member States, with deadlines.

The entire Dublin procedure cannot last more than eleven months for taking charge of the person, or not more than nine months for his transfer (except in case of escape or detention).

According to Eurostat data, the number of asylum applications in the EU rose in 2014 to 626,000 (compared to 435,000 applications in 2013).

Trend for asylum requests in the European Union, 2008-2014

2008	2009	2010	2011	2012	2013	2014
226.330	266.395	260.835	309.820	336.015	432.055	626.710

Empirical data show that the "Italian emergency" proclaimed by some political parties, according to which our country is the only one (or almost) to take on irregular flows is not fully reflected. Beyond the fact that Italy is one of the first EU countries in the special

list of the funds for border management, data on the presence of asylum seekers and foreigners who enjoy international protection in Europe go in a slightly different direction.

Overall, in 2014 the highest number of asylum seekers were registered in Germany (202.645 applicants, 32.4% of the total), in Sweden (81.180, 13%), in Italy (64.625, 10.3%), in France (62.735, 10%) and in Hungary (42.775, 6.8%). These five countries have experienced different trends over the previous year. The number of asylum seekers has more than doubled compared to 2013 in Italy (+ 143%) and in Hungary (+ 126%); increased significantly in Germany (+ 60%) and in Sweden (+ 50%); decreased in France (-5%).

In proportion to the population of each Member State, the highest percentage of asylum seekers has been recorded in Sweden (8.4 applicants per thousand inhabitants).

Asylum seekers in EU Member States⁷

	Number of requests			Percentage of the total of EU (%)
	2013	2014	2014/2013 (in %)	2014
EU	435 190	626 065	44%	100.0%
Belgium	21 030	22 710	8%	3.6%
Bulgaria	7 145	11 080	55%	1.8%
Czech Rep.	695	1 145	65%	0.2%
Denmark	7 170	14 680	105%	2.3%
Germany	126 705	202 645	60%	32.4%
Estonia	95	155	63%	0.0%
Ireland	945	1 450	53%	0.2%
Greece	8 225	9 430	15%	1.5%
Spain	4 485	5 615	25%	0.9%
France	66 265	62 735	-5%	10.0%
Croatia	1 075	450	-58%	0.1%
Italy	26 620	64 625	143%	10.3%
Cyprus	1 255	1 745	39%	0.3%
Latvia	195	375	92%	0.1%
Lithuania	400	440	10%	0.1%
Luxemburg	1 070	1 150	7%	0.2%
Hungary	18 895	42 775	126%	6.8%
Malta	2 245	1 350	-40%	0.2%
Netherlands	17 160	26 210	53%	4.2%
Austria	17 500	28 035	60%	4.5%
Poland	15 240	8 020	-47%	1.3%
Portugal	500	440	-12%	0.1%
Romania	1495	1 545	3%	0.2%
Slovenia	270	385	43%	0.1%
Slovakia	440	330	-25%	0.1%
Finland	3 210	3 620	13%	0.6%
Sweden	54 270	81 180	50%	13.0%
United Kingdom	30 585	31 745	4%	5.1%

* Resident population on January 1, 2015

⁷ Eurostat, Population and social conditions, Data in focus 3/2015

The idea (the Italian one) under which other Member States (and the European Union itself) have so far not been involved is entirely unfounded: the main burden of illegal immigration and the overall stable residence of beneficiaries of international protection is borne, broadly, by the countries in Northern Europe.

Taking into account the origin of asylum seekers, it can be seen that in 2014 20% of them were Syrian (from 50,000 in 2013, increased to 123,000 in 2014). Of these, approximately 60% were recorded only in two Member States: Germany (41,100) and Sweden (30,800).

Afghanistan, with 41,300 asylum applications (equal to 7% of the total), has become the second country of origin of asylum seekers in the European Union in 2014. With 37,900 applicants (6% of total EU) Kosovo is the third country from which it comes the largest number of asylum seekers.

3. MEASURES TO COMBAT ILLEGAL MIGRATION - art. 79 TFEU

The European Union has adopted two major pieces of legislation to fight against irregular migration:

- Directive 2008/115 / EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning third-country nationals staying illegally ("Return Directive").
- Directive 2009/52 / EC of the European Parliament and of the Council of 18 June 2009, for minimum standards on sanctions and measures against employers that employ third-country nationals staying illegally.

Regarding the fight against trafficking in human beings and the repression of unauthorized entry, transit and residence, the European Union has established a legislative framework consisting of:

- Directive 2011/36 / EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and the protection of victims, replacing Framework Decision 2002/629 / JHA;
- Directive 2002/90 / EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence;
- the Framework Decision 2002/946 / JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence.

THE PRINCIPLE OF SOLIDARITY

In order to mitigate the burden governed by the "Dublin system", the Treaty of Lisbon (2007) reaffirmed in art. 80 TFEU the unreleased principle of solidarity and fair sharing of responsibility.

Doing so, however, it has hampered the full development of the Common European Asylum System (CEAS).

Article 80 of the TFEU states the following:

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.

First, the rule does not contain a definition of the two terms "solidarity" and " fair sharing of responsibility "

EU institutions in different policy declarations have avoided pronouncing themselves on this issue and have, instead, adopted the so-called 'tool-box approach', listing different measures that operationalize solidarity:

- Solidarity as operational support: the European Asylum Support Office (EASO) assists Member States that face particular pressures on their asylum systems. EASO's potential is however currently limited by a number of factors. (First, its mandate, budgetary constraints; the deployment of national personnel).
- Financial solidarity: the Asylum, Migration and Integration Fund has been set up (Regulation EU 516/2014). The amounts are distributed taking into account certain indicators; however, they are calculated on the basis of absolute rather than relative figures and, therefore, fail to take into account the perceived 'burden' of each Member State in running an asylum system.

- Physical solidarity: meaning the intra-EU transfer of asylum seekers or protected persons between EU Member States (this mechanism has been extremely limited to date).

In the field of asylum, Article. 80 TFEU seems to imply the provision by the EU of forms of balanced distribution and solidarity between the Member States of the responsibility - and then burdens - arising from the implementation of CEAS. Also, the undefined character of the "necessity" mentioned by the art. 80 TFEU helps to make the principle in question merely optional, residing its practical implementation in the discretion of the European institutions.

An interpretation in this sense seems to conflict with the functioning of the entire CEAS which is based on the Dublin mechanism: the latter, in fact, provides criteria of "assignment", and not of "solidarity and fair burden sharing." These criteria of competence to examine asylum seekers requests are so rigid and unbalanced to the detriment of some countries and are likely to empty down the principle expressed by art. 80 TFEU.

This mechanism on which, ultimately, the whole of the common asylum system, does not take into account the need to share the burden between Member States, making the difficulties faced by the countries most exposed to migratory flows more heavy, especially during special emergencies or in today's historical period characterized by the economic crisis.

The "rule of the State of first entry 'envisaged by Dublin system also violates the fundamental rights of asylum seekers, insofar as considers all Member States as countries formally "safe" even if they are not substantially⁸.

⁸ European Court of Human Rights (Grand Chamber), 21 January 2011, M.S.S. c. Belgium and Greece, and the Court of Justice (Grand Chamber), 21 December 2011, Joined Cases C-411 and 493/10, N.S.c. Secretary of State for the Home Department and M. E. and other c. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform.

The entire common European asylum system cannot, therefore, be regarded as marked by the principle of solidarity and fair sharing of responsibility (and burdens) and it understands that there is still a long way to go to fully implement article. 80 TFEU: to this end, Member States should agree on a system of evaluation of their individual share of liability on the basis of objective indicators.

In this way, the EU would reach the target of devoting greater attention and resources to enhancing the capacity of protection and economic development of countries hosting large numbers of refugees, helping to relieve the pressure on national resources and avoiding the destabilization of local communities and competition with migrant communities for access to basic services and a decent standard of living.

THE DEBATE IN THE INSTITUTIONS OF THE EUROPEAN UNION: THE WORK OF THE NEW EUROPEAN COMMISSION

In light of the above the existing legal framework, the management of migration policies is among the priorities of the new European Commission led by President Jean Claude Juncker, which in the political guidelines of "*A new beginning for Europe*", identifies the following priority objectives:

- The development of a common policy on asylum;
- The promotion of a new European policy on legal migration, aimed at attracting skilled migrants;
- Countering irregular migration;
- Ensuring the border security and the fight against human trafficking

The further increase in migratory flows linked to instability in the countries of the southern Mediterranean, and the worsening humanitarian situation connected to it, has accelerated the process of reflection already initiated by the institutions of the European Union, putting in light the need to adopt effective measures of intervention to help out and provide relief and support to the countries that bear the brunt of the impact of the crisis.

The **extraordinary European Council** of 23 April 2015 has adopted a Final Declaration calling for:

- A stronger presence in the sea, enhancing the EU's operations Triton and Poseidon, for coastal patrols and protection of maritime borders, tripling the financial resources for this purpose in 2015 and 2016 and increasing the number of means in order to increase the chances of search and rescue within the mandate of Frontex;
- Further initiatives for fight against traffickers in compliance with international law, including the dismantling of networks of traffickers and the seizure of their property by a collaboration between Member State authorities, Europol, Frontex, the European support for the '(EASO) and Eurojust, and the intensification of police cooperation with third countries;
- The adoption of systematic measures to identify, stop and destroy the boats before they are used by traffickers;

- Initiatives aimed at preventing illegal migration flows, increasing support to countries of origin and transit; strengthening cooperation with African partners and with the African Union in order to address the root causes of illegal migration and combat smuggling and trafficking in human beings; inviting the Commission and High Representative to mobilize all the tools to promote the readmission to their countries of origin and transit of economic migrants not authorized; establishing, while respecting the right to seek asylum, a new repatriation program to ensure a rapid return of illegal migrants by the Member States at the forefront, with the coordination of Frontex;
- Actions to strengthen internal solidarity and responsibility, transposing quickly and giving full and effective implementation of the Common European Asylum System; increasing emergency aid to Member States in the forefront and evaluating options for the organization of a relocation of emergency in all the Member States on a voluntary basis, and setting up a first pilot project for voluntary resettlement, offering places to persons eligible for protection.

On 29 April 2015, the **European Parliament**, in plenary session, has adopted a resolution "*on the recent tragedies in the Mediterranean and EU migration and asylum policies*" (2015/2660), in which:

- While welcoming the European Council commitment to reinforcing the EU Triton operation by increasing funding and assets; it urges the EU to establish a clear mandate for Triton so as to expand and increase EU search and rescue operations;
- Calls on the Member States to strengthen their contributions in favor of resettlement programs;
- Calls on the European Commission to set a binding mechanism for the distribution of asylum seekers among all Member States.

The stresses of the European Council and the European Parliament have led the Commission to speed up preparatory work of the "**European Agenda on Migration**", which was presented on May 13, 2015 (COM (2015) 240).

The ten point Action Plan provides: 1) Reinforce the Joint Operations in the Mediterranean, namely Triton and Poseidon; 2) A systematic effort to capture and destroy vessels used by the smugglers; 3) EUROPOL, FRONTEX, EASO and EUROJUST will cooperate in the fight against traffickers; 4) EASO to deploy teams in Italy and Greece for joint processing of asylum applications; 5) Member States to ensure fingerprinting of all migrants; 6) Consider options for an emergency relocation mechanism; 7) A EU wide voluntary pilot project on resettlement; 8) Establish a new return programme for rapid return of irregular migrants coordinated by Frontex; 9) Engagement with countries surrounding Libya; 10) Deploy Immigration Liaison Officers (ILO) in key third countries, to gather intelligence on migratory flows.

The contents of "immediate actions" are strongly influenced by the climate in which the Action Plan and Agenda have been developed: the first points include, in fact, those activities aimed at preventing further tragedies, both through the enhancement of life saving, and through the fight against traffickers. The Commission plans for operations Triton and Poseidon, the two operations coordinated by Frontex, an increase of budget (tripled) which allows to extend "both the capacity and the geographical area". This is extremely significant, because one of the criticisms made against the Union after the closure of the (Italian) operation Mare Nostrum, "replaced" by Triton, was aimed precisely against the absence of a warrant of search and rescue in the European operation, also severely limited in terms of the geographical area of competence (up to 30 miles off the Italian coast). To date, therefore, in addition to a substantial input of funds (26.25 billion euro for 2015, another 45 for 2016), the operation Triton can go up to 138 miles to the south of Sicily.

On the issue related to the capture and destruction of the boats used by traffickers, however, it shows that there is no international law rule allowing a State to destroy, with or without the consent of the flag State (at sea) or the coastal State (in its territorial sea), the boats used by traffickers for the "transport" of migrants. This point therefore, also forcing the terms of the Charter of the United Nations, depends on a condition (the consent of the Libyan state - as expressed by the which government?), that cannot be achieved in the short or medium term.

The Agenda is concerned, then, to give form and substance to the principle of solidarity described above. The Commission' solution envisages two different mechanisms to implement the principle of solidarity: the relocation and resettlement. The first concerns the applicants who are already in the "territory" of the Union and that they must be distributed more fairly among the Member States: now, with a temporary program to address the " emergency "; in the following, with a permanent system.

The Agenda also anticipates the absorption rates, the called "quotas" for each Member State, formulated based on criteria of population (whose weight in the determination of the share is 40%), GDP (40%), the sum of the number of applicants and of the beneficiaries, as a percentage on 1 million inhabitants, in 2010-2014 (10%) and, finally, the unemployment rate (10%). According also to the numbers highlighted above, it is noted that the mechanism of the European Commission - and it could not be otherwise - will go mainly to the benefit of those States most "burdened": not Italy (it will account a share of 11,84% against a contribution in 2014 of 10.3%), but Germany (18.42% versus 32.3%), Sweden (2.92% vs 12.9%), to name the two most evident cases. Other States will be "penalized": that is, those who today account for a very small percentage of requests (Spain, with 0.8% against 9.10% and Poland with 1.2% compared to 5, 64%).

Also regarding the resettlement, the Commission sets a scheme that provides for a system of quotas of 20,000 people a year, until 2020. And even here the distribution of quotas should be for the benefit of the Member States more "virtuous": Germany (26.6% vs. 15.43%), Sweden (13.7 versus 2.46%), France (24.2% vs. 11.87%), while many other states will suffer a more weight (including Italy: 4.4% vs. 9.94%).

The further missed opportunity of the EU to show their unity in the political and social immigration challenge has occurred in the **European Council of last June 25**. At the end of an intense night of negotiations it has been approved the redistribution of 40,000 asylum seekers from Italy and Greece in all other countries, adding to the text a reference to the extraordinary European Council on 23 April, where they talked about the voluntary basis. It is expected that by July all countries agree on a number of migrants to be received, but the contrary countries have achieved to not explicitly place the "mandatory" mechanism

in the text (but in text either the "voluntary" adjective will not appear). It was furthermore agreed to exclude from the mechanism Hungary and Bulgaria, two countries that receive many migrants from the East and from Turkey. In addition to 40,000 from Italy and Greece, Europe will host, in this case on a voluntary basis, 20,000 people from the refugee camps in third countries (the so-called "resettlement").

For weeks border countries, Italy in the lead, increasingly congested by migratory flows, hoped for a supportive and spontaneous attitude fellow Member States. But in front of the word 'quotas' shields were not long in coming. In reading the statements that individual countries had made in recent days was It was just a matter of time that Europe would decide with reservation. France, while saying to be "ready to give the means to proceed with the registration of some populations" closes the borders with Italy in front of Ventimiglia. The tension and concern in London for events in Calais, and lastly even the announcement by Hungary of a new curtain of 175 kilometers to prevent the entry of migrants across borders with Serbia

The result of the Council is therefore a document-compromise in which nothing is said on the most awaited detail - namely the duty of solidarity among States. The document certainly confirms the indication of a valid system for all states, but since the government action will take place on a voluntary and non-binding mechanism - given the precedents – it is easy to expect less cooperative attitude from states also for the future. Besides the redistribution and resettlement, among other novelties, there is also the creation of "structured centers in the border areas of forefront Member States, with the active support of experts from EASO, Frontex and Europol, to ensure the early identification, registration and fingerprinting of immigrants"; as well as "the immediate provision of financial assistance to the States in the front line to help to alleviate the costs" of acceptance and processing of applications for temporary protection.

As for the issue of cooperation with the countries of origin and transit, the European Council postpones decision to the Conference on immigration to be held in La Valletta in the coming months, where Europe will try to get more support from partner countries in the fight against traffickers, more effective cooperation in the return policies and will also try to

develop a more focused approach to development cooperation and increased investments in Africa (to address the root causes of migration and to provide economic and social opportunities).

In short, a European summit in which it was decided in mid and with reference to the future, revealing a Europe influenced by self-interest and unjustified fears.

In conclusion, if on one hand it is not known if the above measures will actually be put into practice, on the other hand it must be emphasized how those measures are all limited to the short term and marked by the logic of emergency.

It is clear that much more may need to be done in the future, including addressing the root causes of the phenomenon. In the midst of the greatest global crisis of forced migration in modern times, it is essential that States work together to draw up answers and that Europe shows leadership and vision to meet the challenge of protecting thousands of refugees who are now on the run by wars.

As for the agreement on the transfer of 40,000 people in need of international protection, the participation of all Member States will be the key to the success. These measures should be expanded to suit the current needs. This initiative can help relieve some of the pressure on Italy and Greece, but it must also be accompanied by a better functioning of the Dublin system. It is necessary, in this regard, to strengthen at European borders the attention to recognize new faces and stories of refugees fleeing from environmental disasters, violence, trafficking, to avoid rejections and returns that fail to protect the lives and dignity of people.