RESPOND

Working Papers

Global Migration: Consequences and Responses

Paper 2018/15, August 2018

Comparative Report

Legal & Policy Framework of Migration Governance

Paola Pannia, Veronica Federico, Andrea Terlizzi and Silvia D'Amato
University of Florence

Reference: RESPOND [D1.3]

This research was conducted under the Horizon 2020 project 'RESPOND Multilevel Governance of Migration and Beyond' (770564).

Any enquiries regarding this publication should be sent to us at: veronica.federico@unifi.it

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Horizon 2020
RESPOND: Multilevel Governance
of Migration and Beyond (770564)

Horizon 2020
European Union Funding
for Research & Innovation

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Acknowledgments

The present report is built on RESPOND country reports (D 1.2). We are indebted to all RESPOND national teams for their work: Uppsala Universitet (Swedish report), the Glasgow Caledonian University (Hungarian report), Georg-August Universitat Gottigenstiftung Offentlichen Rechts (German report), University of Cambridge (British report), Svenska Forkningsinstitute i Istanbul (Turkish report), Università di Firenze (Italian report and European Union report), Panepistimio Aigaiou (Greek report), Österreichische Akademie der Wissenschafte (Austrian report), Uniwersytet Warszawski (Polish report), Lebanon Support (Lebanese report), Hammurabi Human Rights Organization (Iraqi report).

The report underwent a double review process: the internal review at UNIFI and the review by RESPOND experts. We are grateful to Dr Zeynep Sahin, Dr Andreas Önver Cetrez and Dr Soner Barthoma. Their learned advises collaborated improving and fine-tuning RESPOND research. We are also grateful to Dr Susan Rottmann: without her help in the final process of editing the overall quality of the report would have suffered.

About the project

RESPOND: Multilevel Governance of Mass Migration in Europe and Beyond is a comprehensive study of responses to the 2015 Refugee Crisis. One of the most visible impacts of the refugee crisis is the polarization of politics in EU Member States and intra-Member State policy incoherence in responding to the crisis. Incoherence stems from diverse constitutional structures, legal provisions, economic conditions, public policies and cultural norms. More research is needed to determine how to mitigate conflicting needs and objectives. With the goal of enhancing the governance capacity and policy coherence of the European Union (EU), its Member States and neighbours, RESPOND brings together fourteen partners from eleven countries and several different disciplines. In particular, the project aims to:

- provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research;
- critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

The countries selected for the study are Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey and the United Kingdom. By focusing on these countries, RESPOND studies migration governance along five thematic fields: (1) Border management and security, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. These fields literally represent refugees' journeys across borders, from their confrontations with protection policies, to their travels through reception centers, and in some cases, ending with their integration into new societies.

To explore all of these dimensions, RESPOND employs a truly interdisciplinary approach, using legal and political analysis, comparative historical analysis, political claims analysis, socio-economic and cultural analysis, longitudinal survey analysis, interview based analysis, and photo voice techniques (some of these methods are implemented later in the project). The research is innovatively designed as multi-level because research on migration governance now operates beyond macro level actors, such as states or the EU. Migration management engages meso and micro level actors as well. Local governments, NGOs, associations and refugees are not merely the passive recipients of policies, but are shaping policies from the ground-up.

The project also focuses on learning from refugees. RESPOND defines a new subject position for refugees, as people who have been forced to find creative solutions to life threatening situations and as people who can generate new forms of knowledge and information as a result.

Executive summary

Building on the RESPOND national country reports [deliverable D1.2], this report discusses the most relevant trends underlying legislative and policy measures implemented between 2011 and 2017 in Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey, and the United Kingdom, in the light of critical literature and scholarly debate.

The aim is to provide a comparative legal and institutional analysis of migration governance across countries, highlighting trends and similarities, as well as differences and relevant inconsistencies in the response to mass migration. In doing so, the report offers analytical insights for evaluating the potential implications of the dynamics of migration management in the aforementioned countries.

All RESPOND countries, except Iraq and Lebanon, have signed the 1951 Geneva convention ("Convention relating to the status of Refugees") and its additional protocols, although Turkey has retained a geographic limitation to its ratification (i.e. refugee status is given only to those fleeing as a consequence of "events occurring in Europe"). Furthermore, all of the EU RESPOND countries are bound by the EU *acquis* aimed at the creation of a Common European Asylum System, with the exception of the UK, which only abides by the first phase of the Common European Asylum System, namely the 'Refugee Qualification Directive' (Directive 2004/83/EC), the 'Asylum Procedure Directive' (Directive 2005/85/EC), and the 'Asylum Reception Conditions Directive (Directive 2003/9/EC) having opted out of the 'Asylum Recast Package'. Finally, most of the RESPOND countries have incorporated the European Convention of Human Rights, together with its principle of protection against torture or inhuman or degrading treatments (art. 3 ECHR) into their Constitutions. Moreover, even though the principle of asylum is explicitly entrenched – to different degrees – only in the Constitution of Italy, Poland, and Germany, the right to asylum and related freedoms and benefits are recognised and implemented in all RESPOND countries' legal systems. However, despite these national, regional and international obligations, an overall restrictive approach can be observed. In fact, in all RESPOND countries physical measures (migrant pushbacks, border walls and securitization, border controls) and procedural measures to prevent and restrain access to international protection conflate with an overall downgrading of foreigners' entitlements.

In all countries, the legal framework concerning migration and asylum/international protection is extremely complex and hypertrophic. In each country, legislation has been changing continuously and not necessarily coherently, frequently law makers resorting to decrees instead of proper statutes/acts of Parliament. The outcome is a stratified legal framework, that is extremely fragmented and difficult to be consistently interpreted and implemented. Therefore, the legal enforcement and guarantee of fundamental rights is jeopardized, and often it largely depends on the discretionary power of single offices and individuals. Against the fundamental axiom of legal certainty and predictability, the legal status of migrants and asylum applicants is more and more based on uncertainty**.**

The fragmentation of legal guarantees and protection is further exacerbated by the multiplicity of entities involved in the "multilevel" and subsidiary-based management of migration flows: all tiers of government (from supra-national to local) are involved, with different, often overlapping, competences. Third sector actors are also part of national migration management mechanisms, making the picture even more complex and fluid.

Moreover, Courts may play a relevant role as well. Judges are crucial on the one hand, for granting remedies to those whose rights have been violated, and, on the other hand, for providing sound interpretations of legal provisions. But, their interventions may also result in a further fragmentation and personalization of rights' entitlements and guarantees.

Except for certain forms of international protection, the sole legal entry channels remain family reunification (which has been narrowed in a number of countries), highly qualified/skilled workers' permits and investor visas and residence permits. This means that opportunities for economic migrants to access countries where they may look for better opportunities are strongly narrowed.

Finally, migration has become one of the most highly politicized terrains of both European and domestic debate. This phenomenon does not contribute to effective and appropriate law and policy-making as new legal instruments and policy reforms have often been based more on short-term consensus building than on effectiveness and on long-term strategies.

1. Introduction

How have RESPOND countries responded to the recent migration crisis? This report discusses the legal and institutional factors that at macro-level are crucial for the analysis of recent migration flows management. By doing so, we aim at a better understanding of the conditions within which migration management is taking place in Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey, and the United Kingdom. This report has mainly an explanatory aim, because it intends to analyse existing trends in migration management at macro-level, but it has also, inevitably, an evaluation and policy-oriented aim. RESPOND research, in fact, assesses migration management tools and measures against the parameters of respect for fundamental rights entrenched at international level. Moreover, even though the report does not provide explicit policy-guidelines or recommendations, pinpointing and critically analysing legal and institutional responses to the migration crisis it may contribute to suggesting more sound measures and strategies.

Building on the country and the European Union reports of deliverable D 1.2, the University of Florence has prepared the present comparative report as deliverable D 1.3 of Work Package 1. Country reports were not the sole sources for the report. Further data (both concerning statistics and the legal and institutional frameworks) have been retrieved from a dataset created as part of WP1 deliverable D1.4 and by other sources to complement those gathered at national levels. Moreover, critical literature has been reviewed to analyse RESPOND outcomes and to contextualise the research with broader academic debates on migration.

The report is structured as follows. In the next section we provide insights into statistics concerning migration flows and stocks between 2011 and 2017. Next, section three analyses the complexity and the fragmentation of the legal and institutional framework of migration in RESPOND countries. In section four we examine the current trends in international protection measures. Following this, section five outlines the rights and benefits of different legal statuses. Finally, the report concludes by pointing out a stark paradox that seems to characterise the legal and institutional framework of migration governance, namely the growing uncertainty and the high discretionality concerning access to legal status. This goes against one of the most crucial pillars of democratic jurisdictions based on the rule of law: the certainty and predictability of the law.

2. Statistics and data overview

This section presents key descriptive statistics on population change, immigration and emigration flows and asylum and migration management. It is worth noticing the size of recent migration flows before discussing their legal and institutional frameworks and their governance mechanisms and logics. Numbers are always very relevant to ensure the soundness of legal and policy responses to social phenomena, but they become crucial when the perceptions of host societies considerably overestimate migrants, refugees and asylum applicants' presence, fostering and exacerbating the "invasion" threat (Ambrosini, 2018).

The main data source for the European countries and Turkey is Eurostat, which provides the most comprehensive database. Few comparable data are available for Iraq and Lebanon. For these countries, data on migrant stocks and refugee population provided by the World Bank and the United Nations are presented. Most of the data included in this overview are part of the RESPOND database created for RESPOND Work Package 1 (D1.4). Before moving into the analysis of data, the conceptual difference between the terms immigrant, refugee and asylum seekers must be emphasized. As defined by the International Organization for Migration (IOM)[1], the term immigrant refers to "any non-nationals who move into a country for the purpose of settlement". A refugee is a person who is recognized as a refugee under the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol[2]. An asylum seeker is "a person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status". Some conceptual specifications on these terms will be made when presenting the data, since these categories can have a slightly different meaning depending on the data source we refer to.

In order to analyse data on immigration and emigration flows, it is important to understand the main drivers of population change. There are two components that determine population change: the natural population change and net migration. While the natural population change is the difference between the number of live births and deaths during a given year, net migration refers to the difference between the number of immigrants and the number of emigrants. Four out of nine RESPOND countries (Germany, Greece, Hungary and Italy) have negative rates of natural change for the whole period under consideration. In 2017, deaths outnumbered live births the most in Italy – which registered the lowest birth rate in the EU –, followed by Germany, Hungary and Greece. By contrast, in the same year there was a natural increase – namely live births outnumbered deaths – in Turkey, the United Kingdom, Sweden and Austria (see Appendix, Table 1).

[1] IOM website, *Key migration terms*. https://www.iom.int/key-migration-terms.

[2] Namely, a person who, "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" (Art. 1(A)(2), Convention relating to the Status of Refugees, Art. 1A(2), 1951 as modified by the 1967 Protocol)".

As for net migration, Austria, Germany, Italy, Sweden, Turkey and the United Kingdom show positive values – meaning that immigrants outnumber emigrants – for the whole period under study. The highest positive values were registered in Italy in 2013 and Germany in 2015, while the largest negative values were registered in Greece in 2012 and 2013 (see Appendix, Table 2).

Table 1 compares the impact of natural change (the difference between the number of births and deaths) and net migration (the difference between the number of immigrants and emigrants) to population growth or decline, identifying eight types of population change for 2016. While in Turkey population growth has been mainly due to a natural increase – namely, due to the fact that live births have outnumbered deaths –, in Austria, Sweden and the United Kingdom positive net migration – meaning that immigrants have outnumbered emigrants – has had a greater impact. In Germany and Poland, positive net migration has been the *sole* driver of population growth. Finally, while in Greece and Hungary population decline has been mostly driven by a natural decrease – namely by the fact that deaths have outnumbered live births –, in Italy the natural decrease has been the *only* component determining population decline.

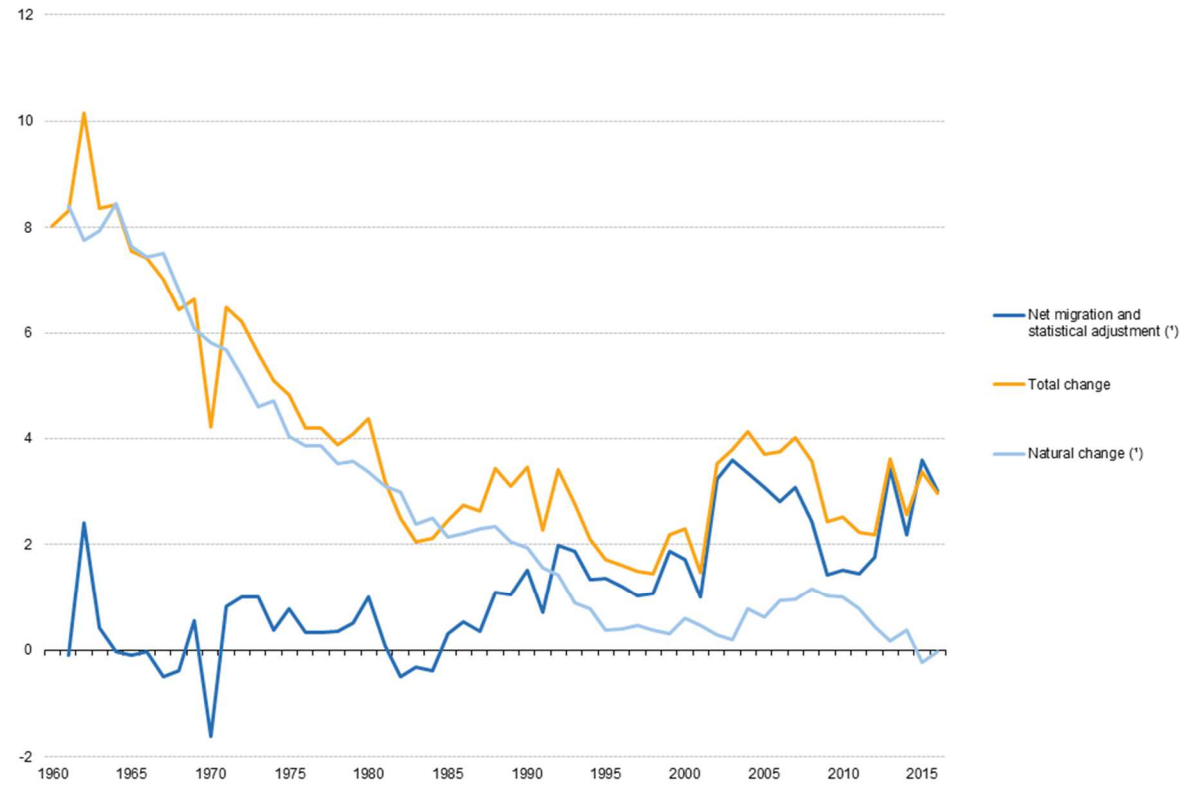
Table 1. **Contribution of natural change and net migration (and statistical adjustment) to population change, 2016**

Demographic drivers	Countries
Growth due:	
only to natural change	
more to natural change	*Turkey*
more to positive net migration	*Austria, Sweden, the United Kingdom*
only to positive net migration	*Germany, Poland*
Decline due:	
only to natural change	*Italy*
more to natural change	*Greece, Hungary*
more to negative net migration	
only to negative net migration	

Source: Adapted from Eurostat

Thus, migration is a fundamental factor affecting population change. If we consider the European Union as a whole, since the mid-1980s net migration has increased, and starting from the beginning of the 1990s the value of net migration has always been higher than that of natural change. Therefore, as shown in Figure 1, during the past three decades, net migration has constituted the main driver of population growth in the EU (Favilli, 2018). This is a first, crucial element for a sound, evidence-based discussion of migration governance.

Figure 1. **Population change by component (annual crude rates) in the EU, 1960-2016 (per 1000 persons)**



Note: Excluding French overseas departments up to and including 1997. Breaks in series: 1991, 2000-01, 2008, 2010-12 and 2014-16.
(*) 1960: not available.
Source: Eurostat (online data code: demo_gind)

Source: Eurostat

Even though RESPOND does not specifically take into exam the integration of migrants, refugees and asylum applicants in the labour market, it is worth noticing that migration flows also affect domestic labour market outcomes, with migrants concentrating in specific sectors and occupations and being often over-qualified for their jobs with respect to the national workforce. This is indeed another interesting element for the analysis of migration governance legal and institutional framework. A recent OECD report shows that in 2017 a significant share of migrants was working in services in almost all OECD countries (particularly in hotel and restaurant activities) (OECD 2018a). In terms of employment rates, a distinction has to be made between EU and non-EU migrants. Indeed "[i]n most European OECD regions, EU migrants record employment levels comparable to those of native-born. In comparison, employment rates are on average 10 percentage points lower for non-EU migrants in European OECD regions" (OECD 2018b: 29).

As for the scale of the migration phenomenon, when considering immigration[3] flows both from outside the EU and between EU countries, in 2016 a total of around 4.3 million people

[3] Eurostat defines immigration as "the action by which a person establishes his or her usual residence in the territory of a Member State for a period that is, or is expected to be, of at least 12 months, having previously been usually resident in another Member State or a third country".

immigrated to one of the EU Member States, with Germany reporting the highest numbers (1,029,852), followed by the United Kingdom (588,993), Spain (414,746), France (378,115)[4], Italy (300,823) and Poland (208,302) (Favilli, 2018). In Germany, between 2011 and 2016, there was an increase from 489,422 to 1,029,852 immigrants (+110%) (Table 2). However, in 2016 there was a drop of -33% with respect to 2015. After Germany, the country that registered the largest percentage increase in the number of immigrants during the same period of time is Greece (+94%), followed by Hungary (+91%), Sweden (+69 %), Austria (+57%), Poland (+33%) and the United Kingdom (+4%). By contrast, Italy has seen a drop of -22%. This figure demonstrates that the perception of the Italian public that Italy is being invaded by migrants, which has been fuelled by the media, is inaccurate. Indeed, by looking at the data, the common "immigrant invasion" frame can be easily confuted as it does not fit with the actual extent and real impact of the migration phenomenon.

Table 2. **Total number of immigrants in selected countries, 2011-2016 (thousands)**

	2011	2012	2013	2014	2015	2016
Austria	82,230	91,557	101,866	116,262	166,323	129,509
Germany	489,422	592,175	692,713	884,893	1,543,848	1,029,852
Greece	60,089	58,200	57,946	59,013	64,446	116,867
Hungary	28,018	33,702	38,968	54,581	58,344	53,618
Italy	385,793	350,772	307,454	277,631	280,078	300,823
Poland	157,059	217,546	220,311	222,275	218,147	208,302
Sweden	96,467	103,059	115,845	126,966	134,240	163,005
United Kingdom	566,044	498,040	526,046	631,991	631,452	588,993

Source: Eurostat

As for emigration[5] flows, a total of almost 3 million people emigrated from an EU country in 2016. As with immigration flows, these data include emigration flows both from the EU and between EU countries. In 2016, Germany reported the highest number of emigrants (533,762), followed by the United Kingdom (340,440), Spain (327,325), France (309,805) and Poland (236,441) (Favilli, 2018). Though in 2016 Germany registered the largest number of emigrants, it scored second in relative terms. Hungary – which registered the lowest value in absolute terms (39,889) (see Appendix, Table 3) – reported the highest value in terms of percentage increase between 2011 and 2016 (+164%), followed by Germany (+114%), Italy (+90%),

[4] Spain and France are not included in our country sample.

[5] Eurostat defines emigration as "the action by which a person, having previously been usually resident in the territory of a Member State, ceases to have his or her usual residence in that Member State for a period that is, or is expected to be, of at least 12 months".

Austria (+26%) and Greece (15%). By contrast, in Poland, Sweden and the United Kingdom there has been a decrease of -11%, -10% and -3% respectively.

As for Iraq, Lebanon and Turkey, the World Bank provides data on net migration, which refers to the total number of immigrants less the annual number of emigrants, including both citizens and noncitizens. In 2012, the value is 463,665 for Iraq, 1,250,000 for Lebanon, and 1,627,172 for Turkey.

Among the 4.3 million immigrants in the EU, in 2016, almost 2 million people (352,597 less than in 2015) were from a non-EU country. Thus, a large share of migrants are European migrants: another relevant element for our discussion. Again, Germany reported the largest number of non-EU immigrants (507,034), followed by the United Kingdom (265,390), Spain (235,632) and Italy (200,217) (Favilli, 2018). With respect to our country sample, after Germany, the United Kingdom and Italy, the country that registered the largest number of non-EU immigrants in 2016 is Sweden (104,384), followed by Poland (80,054), Greece (69,497), Austria (54,472) and Hungary (13,261) (Table 3). In terms of percentage increase with respect to 2015, Greece registered the highest value (+297%), followed by Sweden (+34%) and Italy (+7%). In all the other countries, there has been a decrease: -48 % in Germany, -23% in Poland, -13% in Hungary, and -5% in the United Kingdom.

Table 3. **Number of non-EU immigrants in selected countries, 2013-2016 (thousands)[6]**

	2013	2014	2015	2016
Austria	32,241	39,425	86,469	54,472
Germany	252,122	372,408	967,539	507,034
Greece	16,313	13,539	17,492	69,497
Hungary	10,802	15,451	15,221	13,261
Italy	201,536	180,271	186,522	200,217
Poland	59,035	67,005	103,883	80,054
Sweden	64,186	70,734	78,158	104,384
United Kingdom	248,464	287,136	278,587	265,390

Source: Eurostat

Overall, almost 22 million non-EU nationals are currently (as of 2017) living in the EU (4.2 % of total EU population), 2 million more than in 2014. The largest share is recorded in Germany (5,223,701), followed by Italy (3,509,089), France (3,050,884), Spain (2,485,761) and the United Kingdom (2,444,555) (Favilli, 2018). After Germany, Italy and the United Kingdom, the country with the highest number of non-EU nationals in our sample in 2017 is

[6] For disaggregated data covering the whole period between 2011 and 2017, see the RESPOND Database D1.4.

Austria (673,207), followed by Greece (604,813), Sweden (505,332), Poland (180,334) and Hungary (71,414) (Table 4).

Table 4. **Number of non-EU nationals living in selected countries, 2014-2017 (thousands)**[7]

	2014	2015	2016	2017
Austria	539,292	566,370	639,645	673,207
Germany	3,826,401	4,055,321	4,840,650	5,223,701
Greece	662,335	623,246	591,693	604,813
Hungary	59,335	64,821	71,062	71,414
Italy	3,479,566	3,521,825	3,508,429	3,509,089
Poland	71,543	76,595	123,926	180,334
Sweden	384,947	416,246	447,664	505,332
United Kingdom	2,425,012	2,434,209	2,436,046	2,444,555

Source: Eurostat

As for Iraq, Lebanon and Turkey[8], data on the international migrant stock are available. In 2017, in Iraq and Lebanon the international migrant stock amounted to 366,568 (1% of the total population) and 1,939,212 (31.9% of the total population), respectively. In 2015, the number was 359,381 in Iraq and 1,973,204 in Lebanon. In Turkey, in 2015 the number of migrants amounted to 4,131,302, while in 2017 the number was 4,881,966 (6 % of total population)[9].

As far as data on refugee populations[10] are concerned, in 2016, the country reporting the highest number of refugees was Turkey (2,869,379), followed by Lebanon (1,476,618), Germany (669,408), Iraq (261,882), Sweden (230,103), Italy (147,302), the United Kingdom (118,913), Austria (93,182), Greece (46,381), Poland (11,703) and Hungary (4,691) (Table 5). With the exception of the United Kingdom, Poland and Hungary, where between 2011 and

[7] For disaggregated data covering the whole period between 2011 and 2017, see the RESPOND Database D1.4

[8] For these three countries a lack of *comparable* data has been noted. A more comprehensive national statistical overview is provided in the respective country reports.

[9] Source: United Nations, Department of Economic and Social Affairs. Population Division (2017). Trends in International Migrant Stock: The 2017 revision (United Nations database). The United Nations define the international migrant stock as "the total number of international migrants present in a given country at a particular point in time". An international migrant is defined as "any person who changes his or her country of usual residence".

[10] Data include refugees recognized under the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, people recognized as refugees in accordance with the UNHCR statute, people granted refugee-like humanitarian status, and people provided temporary protection. Asylum seekers are excluded.

2016 the number of refugees decreased, in all the other countries there has been an increase. Turkey is by far the country that registered the largest increase (+19737%), followed by Greece (+2849%), Iraq (+644%), Lebanon (+232%), Sweden (+166%), Italy (+154%), Austria (+98%) and Germany (+17%). However, not all these countries have experienced a constant growth in the number of refugees. Indeed, in Lebanon the number fell from 1,606,709 to 1,476,618 between 2013 and 2016, and in Germany it dropped from 589,737 to 187,567 between 2012 and 2013.

Table 5. **Refugee Population by country or territory of asylum 2011-2016**

	2011	2012	2013	2014	2015	2016
Austria	47,073	51,730	55,598	60,747	72,216	93,182
Germany	571,684	589,737	187,567	216,973	316,115	669,408
Greece	1,573	2,100	.3,485	10,304	24,838	46,381
Hungary	5,106	4,054	2,440	2,867	4,393	4,691
Iraq	35,189	98,822	246,298	271,143	277,701	261,882
Italy	58,060	64,779	76,264	93,715	118,047	147,302
Lebanon	445,144	575,483	1,303,874	1,606,709	1,529,223	1,476,618
Poland	15,847	15,911	16,438	15,741	14,065	11,703
Sweden	86,615	92,872	114,175	142,207	169,520	230,103
Turkey	14,465	267,063	609,938	1,587,374	2,541,352	2,869,379
United Kingdom	193,510	149,799	126,055	117,234	123,067	118,913

Source: World Bank

Statistics on asylum applications and migration management are also crucial to analyse. In 2017, the total number of asylum applications from non-EU nationals amounted to 705,705, which is approximately half the number registered in 2015 and 2016, when applications reached 1,322,825 and 1,260,910, respectively (Favilli, 2018). Therefore, asylum applications reached their peaks in 2015 and 2016, when the EU witnessed an unprecedented influx of refugees and migrants, most of them fleeing from war in Syria. Despite differences, all RESPOND countries experienced an increase in applications, although Germany displays the highest peak in 2016 (745,155). In the same year, the second highest number of asylum applications was recorded in Italy (122,960), followed by Greece (51,110), Austria (42,255), the United Kingdom (39,735), Hungary (29,430), Sweden (28,790) and Poland (12,305) (see Appendix, Table 4).

Numbers are similar if we consider data on first time asylum applicants only. Indeed, after having peaked in 2015 and 2016 (approximately 1.2 million applications in the EU per year),

the number of first time asylum applicants fell to 650,970 in 2017 (Favilli, 2018). Since a first-time applicant is a person who applied for asylum for the first time in a given country, this category excludes those who already applied once and therefore more accurately reflects the number of newly arrived asylum seekers. Again, the peak was reached in Germany in 2016 (722,265) (see Appendix, Table 4). As for the distribution by sex of first time asylum applicants, men have always constituted the majority in all of the countries during the time period under consideration (see Appendix, Table 5).

Overall, Syria has been the main country of origin of first time asylum seekers in the EU since 2013, though the number of Syrian first-time applicants fell from 362,730 in 2015 to 102,415 in 2017 (Favilli, 2018). Figure 2 provides an overview of the largest groups of first time asylum applicants by citizenship. Syrians were the largest number of first time applicants in Austria, Germany, Greece and Sweden. In Hungary, the majority of first time applicants were from Afghanistan. In Italy, Nigerians accounted for the majority. In Poland and the United Kingdom, the majority were Russians and Iraqis respectively. As for Iraq, Syrian refugees constitute the largest group (248,092) (see HHRO, 2018).

Figure 2. **Five main citizenships of (non-EU) first time asylum applicants, 2017**

Belgium	
Syria	2 625
Afghanistan	995
Palestine	815
Guinea	750
Albania	670
Other	8 180

Bulgaria	
Afghanistan	1 050
Iraq	955
Syria	940
Pakistan	205
Iran	75
Other	245

Czech Republic	
Ukraine	295
Azerbaijan	120
Armenia	115
Georgia	110
Syria	70
Other	430

Denmark	
Syria	765
Morocco	300
Eritrea	295
Afghanistan	170
Iran	145
Other	1 450

Germany	
Syria	48 970
Iraq	21 930
Afghanistan	16 425
Eritrea	10 225
Iran	8 610
Other	92 095

Estonia (1)	
Syria	80
Russia	15
Georgia	10
Ukraine	10
Iraq	5
Other	60

Ireland	
Syria	545
Georgia	300
Albania	280
Pakistan	195
Nigeria	185
Other	1 405

Greece	
Syria	16 345
Pakistan	8 350
Iraq	7 875
Afghanistan	7 485
Albania	2 345
Other	14 620

Spain	
Venezuela	10 325
Syria	4 150
Colombia	2 410
Ukraine	2 185
Algeria	1 140
Other	10 235

France	
Albania	11 395
Afghanistan	6 555
Haiti	5 565
Sudan	4 665
Syria	4 615
Other	58 275

Croatia	
Afghanistan	180
Syria	140
Pakistan	115
Algeria	70
Iran	60
Other	315

Italy	
Nigeria	24 950
Bangladesh	12 125
Pakistan	9 470
Gambia	8 705
Ivory Coast	8 380
Other	62 920

Cyprus	
Syria	1 770
India	435
Vietnam	350
Bangladesh	280
Egypt	270
Other	1 370

Latvia	
Syria	140
Russia	25
Eritrea	20
Afghanistan	15
Kazakhstan	15
Other	140

Lithuania	
Syria	170
Russia	80
Tajikistan	50
Belarus	35
Ukraine	35
Other	150

Luxembourg	
Syria	405
Eritrea	230
Morocco	205
Serbia	185
Algeria	160
Other	1 135

Hungary	
Afghanistan	1 365
Iraq	795
Syria	565
Pakistan	100
Iran	95
Other	195

Malta	
Syria	435
Libya	410
Somalia	330
Eritrea	90
Iraq	55
Other	290

Netherlands	
Syria	2 965
Eritrea	1 590
Morocco	980
Algeria	890
Iraq	845
Other	8 820

Austria	
Syria	7 260
Afghanistan	3 430
Pakistan	1 425
Iraq	1 330
Nigeria	1 130
Other	7 585

Poland	
Russia	2 120
Tajikistan	85
Armenia	65
Turkey	45
Iraq	40
Other	650

Portugal	
DR Congo	160
Ukraine	125
Angola	120
Congo	55
Guinea	45
Other	510

Romania	
Iraq	2 690
Syria	920
Afghanistan	255
Pakistan	245
Iran	200
Other	390

Slovenia	
Afghanistan	575
Algeria	190
Pakistan	140
Turkey	100
Syria	90
Other	340

Slovakia (2)	
Afghanistan	25
Vietnam	20
Cuba	10
Iraq	10
Pakistan	10
Other	75

Finland	
Iraq	1 000
Syria	740
Eritrea	435
Russia	395
Afghanistan	305
Other	1 450

Sweden	
Syria	5 250
Eritrea	1 540
Iraq	1 475
Afghanistan	1 245
Georgia	1 005
Other	11 675

United Kingdom	
Iraq	3 260
Pakistan	3 125
Iran	3 050
Bangladesh	1 980
Afghanistan	1 915
Other	19 980

Iceland	
Georgia	290
Albania	255
Iraq	110
FYR of Macedonia	50
Pakistan	35
Other	325

Liechtenstein (3)	
:	:
:	:
:	:
:	:
:	:
:	:

Norway	
Syria	1 000
Eritrea	840
Turkey	160
Iraq	140
Afghanistan	135
Other	1 075

Switzerland	
Eritrea	3 155
Syria	1 810
Afghanistan	1 180
Somalia	795
Guinea	785
Other	8 890

(1) Afghanista, Iran, Albania, Egypt, Sri Lanka, Belarus, Venezuela, Cuba: also 5.
(2) Syria: also 10.
(3) data not available
Source: Eurostat (online data code: migr_asyappctza)

Source: Eurostat

Data on first instance decisions on applications show that Germany has always been the country that has issued the highest number of decisions, and the number of decisions peaked in 2016 (631,085) (see Appendix, Table 6). Out of the total number of decisions issued in the country, 433,905 (69%) had a positive outcome. In the same year, the second largest number was issued by Sweden (95,770), followed by Italy (89,875), Austria (42,415), the United Kingdom (30,915), Greece (11,455), Hungary (5,105) and Poland (2,490). The country presenting the largest share of positive decisions compared to the total in 2016 is Austria (72%), followed by Sweden (70%), Germany (69%), Italy (39%), the United Kingdom (32%), Greece (24%), Poland (12%) and Hungary (8%).

Moreover, in 2016, grants of refugee status constituted the majority of positive decisions in Austria (24,685), Germany (256,135), Greece (2,470), and the United Kingdom (8,410). In

Italy, decisions granting permits to stay for humanitarian reasons constituted the majority of positive decisions (18,515)[11]. In Hungary, Poland and Sweden, the majority of positive decisions were grants of subsidiary protection status (see Appendix, Table 7). It is important to note that, while refugee status and subsidiary protection status are defined by EU law, humanitarian status is specific to national legislations (Favilli, 2018). Despite all efforts to maintain a harmonised approach in the management of asylum procedures through the creation of the Common European Asylum System, differences between domestic asylum laws and recognition rates still persist[12].

If only final decisions – namely those decisions taken by administrative or judicial bodies in appeal or in review and which are no longer subject to remedy – are considered, the peak was reached again by Germany in 2017 (158,085), of which 63,750 (40%) were positive (see Appendix, Table 8). The second highest number of positive decisions was issued by Sweden (18,920), followed by Italy (12,590), the United Kingdom (12,470), Greece (9,545), Austria (6,955) and Poland (1,770). In particular, in the same year, grants of refugee status constituted the majority of positive decisions in Austria (2,985), Germany (30,590), Sweden (1,890), and the United Kingdom (6,170). In Greece, decisions granting an authorisation to stay for humanitarian reasons constituted the majority (955). In Italy and Poland, grants of subsidiary protection status constituted the majority (see Appendix, Table 9).

With regards to residence permits – namely authorisations issued by a country's authorities allowing non-EU nationals to legally stay in the territory –, in the EU, almost 3.4 million permits were released. The majority of them were issued for "other" reasons (1,031,128; 31%), including international protection, residence without the right to work, or being in an intermediate stage of the regularisation process. Besides these reasons, residence permits were also issued for employment reasons (854,715; 25%), family reasons (780,429; 23%) and education-related reasons (694,287; 21%) (Favilli, 2018). As for our country sample, in 2016, the highest number of residence permits was issued by the United Kingdom (865,894; 164,237 more than 2011), of which the majority (42.2%) were permits issued for education-related reasons. In the same year, the second largest number was issued by Poland (585,969; 477,933 more than 2011)[13]. The majority of Polish permits (84.3%) were issued for employment reasons. Germany issued 504,849 permits (394,500 more than 2011), of which 282,232 (56%) were issued for other reasons. In Italy, the majority of permits (45.5%) were issued for family reasons, with 43% issued for other reasons, and in Sweden 51% of the total was granted for other reasons (see Appendix, Table 10).

Finally, statistics on the enforcement of immigration legislation are also available. These data refer to non-EU citizens (or third country nationals) who were refused entry at external borders, third country nationals found to be irregularly present on the territory, third country nationals who were ordered to leave the territory and third country nationals who were returned to their country of origin outside the EU. As for the EU in general, the highest number of non-EU citizens found to be irregularly present on the territory of an EU country was recorded in 2015 (2,154,675) (Favilli, 2018) – of which 911,470 were in Greece. The number of non-EU citizens who were refused entry into the EU reached its peak in 2017 (439,505) – 38,660 of

[11] For a focus on grants for humanitarian reasons see section 5.3.

[12] For further details, see section 5.

[13] For further details on domestic policies aimed at attracting international students and workers, see section 3.4.

which were in Poland. As for those non-EU nationals who were ordered to leave the territory of one of the EU Member States, the highest number was recorded in 2015 (533,395). In our country sample, Greece recorded the highest value (104,575). In the same year, 196,190 third country nationals were returned to their country of origin outside of the EU. The highest recorded number of returns in our country sample is from Germany (53,640) (see Appendix, Table 11).

3. The complex and fragmented legal milieu in RESPOND countries

Not all RESPOND countries abide by the 1951 Geneva Convention, and only some of them are bound by the recast Common European Asylum System, as illustrated in Table 6.

***Table 6*. General Legal Framework in RESPOND countries**

	International obligation	**Regional obligation**		**National obligation**
	Signatory of Refugee convention	Bound by the EU *acquis*	The European Convention of Human Rights	Presence of Asylum clause in the constitution
Austria	Yes	Yes	Yes	No
Greece	Yes	Yes	Yes	No
Hungary	Yes	Yes	Yes	No
Iraq	No	No	No	No
Italy	Yes	Yes	Yes	Yes
Germany	Yes	Yes	Yes	Yes
Lebanon	No	No	No	No
Poland	Yes	Yes	Yes	Yes
Sweden	Yes	Yes	Yes	Yes
Turkey	Yes, but with geographical limitation	No	Yes	No
UK	Yes	Yes but opted out from the 'Asylum Recast Package'	Yes	No

Source: Authors' elaboration on national reports

Furthermore, enormous divergences in the constitutional organization of the states and very diverse approaches to the institutional and legislative framework on migration and asylum are apparent throughout RESPOND countries. Evidence of such variety can be found in the institutional entities entrusted to carry out and implement immigration policies in each country, as shown in Table 7. For instance, while powers surrounding immigration and asylum are the purview of the Ministry of the Interior in most RESPOND countries, in Sweden, it is the Ministry of Justice which governs the field of migration and asylum (Shakra et al., 2018), whereas in countries such as Austria and Italy, migration management used to be the responsibility of the Ministry of Labour and Social Policies before switch to the Ministry of the Interior (Josipovic and Reeger, 2018; Pannia et al., 2018).

***Table 7*. Main institutions involved in immigration and asylum in RESPOND countries**

	Ministry of Interior	Ministry of Labor and Social Policies	Ministry of Justice	Separate Migration Ministry	Other Ministries
Austria	Federal Office for Immigration and Asylum	Federal Mınistry of Labour, Social Affairs, Health, Consumer Public Employment Service			Federal Ministry for Europe, Integration and Foreign Affairs
Greece		National Centre for Social Solidarity		Ministry of Migration Policy – Asylum Service	
Hungary	Immigration and Asylum Office				Minister for National Economy (work permit issuance) Minsitry of Human Resources (education of migrant children) Ministry of Foreign Affairs (co-elaboration of migration policy)
Iraq				Ministry of migration and displacement	
Italy	Ministry of Interior	Ministry of Labour and Social Policies			
Germany	Federal Mınistry of the Interior – Fedaral Office for Migration and Refugees	Federal Mnistry for Labour and Social Affairs			

Lebanon	Department of Political and Refugee Affairs General Directorate of General Security			Ministry of the Displaced	
Poland	Office for Foreigners	Ministry of Family, Labour and Social Policy			
Sweden			Ministry of Justice – Division for migration Law Division for Migration and Aylum Policy Division for Management of Mıgration Affairs		
Turkey	General Directorate of Migration Management				
UK	Home Office UK Border Force Home Office UK Visa and Immigration Home Office Immigration Enforcement				

Source: Authors' elaboration on national reports

In all RESPOND countries, the legal framework on migration and asylum is extremely difficult to navigate. This is mainly the result of complex and rapidly changing legislation and of an institutional landscape scattered with a multiplicity of actors. Moreover, as discussed below, in most RESPOND countries, governments resort to labels of migrants as "protection seekers" and "economic migrants" or "illegal migrants", in an attempt to govern the mixed flow of migrants resulting from the aftermath of the "refugee crisis". Relying on these narratives, which question the sincerity of asylum claims, restrictive policies have been enacted. Finally, this restraining tendency is further exacerbated in the field of economic-related migration, where the state's power to select and control who can enter and stay is exercised even more

openly, in an attempt to respond both to domestic electoral consensus building and also to the needs of labour markets, which require more and more highly specialised workers.

3.1 Labyrinthine and hypertrophic legislation

In all RESPOND countries the legal framework concerning migration and asylum is extremely complex and hypertrophic. In each country, the national legislation has been changed continuously and not necessarily coherently. In the **UK**, 12 Acts of Parliament regulating immigration issues have been approved in the last 20 years (Hirst and Atto, 2018). In **Italy**, the Consolidated Law on Immigration is the result of multiple, fragmentary normative stratifications, jeopardising internal consistency and effectiveness. The very same complexity and rapid evolution is also apparent in the legal frameworks of **Germany** and **Austria**. Concerning the latter, Josipovic and Reeger report: "the Aliens Act was created in 1992 as a follow-up to the former Aliens Police Act and merged together with the Residence Act in 1997 – only to be separated again into the Foreign Police Act (FPG) and Settlement and Residence Act (NAG), which form the legal basis of current provisions since 2005" (2018: 80).

To add further complexity, in most RESPOND countries, acts of primary legislation only provide a general framework, but immigration issues are *de facto* regulated in detail and implemented by congeries of acts of secondary legislation (by-laws, regulations, ministerial circulars, administrative rules, etc). This trend reaches its peak in **Turkey** where the entire regulation of Temporary Protection status (currently the main form of protection granted in the country) is defined by acts of secondary legislation. The main act is the "Temporary Protection Regulation" issued on 22 October 2014 by a Board of Ministers, but the "Regulation on Work Permits of Foreigners under Temporary Protection" also maintains a certain relevance. Furthermore, a plethora of circulars complement the regulation of temporary protection status. However, most of these circulars are not publicly accessible, thus further broadening the discretion of authorities. This is especially the case when circulars deal with public order and security issues (Cetin et al., 2018).

Acts of secondary legislation also retain a central role in the legal frameworks of **Poland**, **Austria** and **Italy**. Even the **UK** displays such dynamics, with a number of immigration laws reportedly being rushed through Parliament once a month on average (Clayton, 2016). Moreover, secondary acts are rarely subjected to Parliamentary debate. The result of the lack of adequate parliamentary control is wide discretion with regards to the concrete regulation of important migration issues (Hirst and Atto, 2018).

The secondary role of the Parliament and the constant erosion of the possibility for democratic scrutiny can be regarded as another general trend throughout the legal *milieu* of RESPOND countries. Indeed, most countries bypass the use of ordinary legislation to manage migration and frequently resort to decrees or to other informal acts, such as communications, standard operational procedures and circulars, thereby *de facto* eliminating Parliamentary control and concentrating both decision-making and implementation into the hands of the executive. In **Italy**, there is a multitude of evidence for this tendency. The numerous readmission agreements signed by the country are a good example of this approach (which is mirrored at the EU level by the EU-Turkey agreement). The "code of conduct for the NGOs operating in the rescue of migrants at sea", which was recently issued by the Italian Ministry of the Interior in consultation with the European Commission, echoes this approach. It aims at

regulating search and rescue operations in the Mediterranean conducted by non-governmental actors, including those flying third states' flags. However, as stressed by ASGI, this 'code of conduct' "is just another example of a more general and deplorable trend towards regulating migration through atypical acts, in order to shy away from judicial and democratic checks and balances that are inherent to a society based on the rule of law". (2017; MSF 2017). Finally, the recent Law-Decree No. 47/2017 was approved *de facto* out of Parliamentary control, as the cabinet asked for a vote of confidence on the bill, thus preventing any possibility for amending it (Pannia et al., 2018, 63). Following a similar approach, a new reform was recently introduced in **Hungary**, enabling Parliament to declare a "state of terror threat" (Gyollai, 2018: 296), upon the initiative of the Government and with a two-thirds majority vote of the members present. In this event, the Government may enact extraordinary measures, suspending or waiving the ordinary procedures established by law. The "state of terror threat" is triggered in cases of a "significant and direct threat of a terrorist attack". This extremely vague definition has led to several misuses of these exceptional powers. In 2015, clashes at the Roszke border crossing were reportedly depicted by a Minister of the Prime Minister's Office as a "quasi terror threat situation". As a result, 11 migrants were arrested. Of those arrested, one was sentenced to 10 years imprisonment for terrorism (Gyollai, 2018; Kowacs, 2016; Amnesty International, 2016).

3.2 A multiplicity of actors involved in the management of migration

The fragmentation of legal guarantees and protection discussed above is further exacerbated by the multiplicity of entities involved in the "multilevel" and subsidiary-based management of migration flows. In most RESPOND countries, all tiers of government (from the national to the local) are involved with different, often overlapping, competences. As illustrated below, the most common fields where regional and local actors become more involved are usually the service sectors, such as education, health care, children's services and social welfare. In addition, in some RESPOND countries, the management of migration involves other relevant actors, such as the third sector and private companies, the Courts and also EU and UN agencies. Given the fact that adequate mechanisms of coordination are often lacking, this multiplicity of actors ends up undermining the uniformity of practices and often results in substandard services and uncertain rights. The certainty and predictability of the law, which are fundamental pillars of the rule of law that should characterise contemporary democracies are, therefore, in question.

In **Germany**, the management of migration is scattered among different levels of government. The national government retains competence over border management and protection, whereas reception and integration are the responsibility of the Lander, which sometimes delegate ample powers of implementation to local municipalities. As a result, in practice, gross disparities exist in the provision of basic services. For instance, in the Federal State of Lower Saxony, where local municipalities are totally entrusted to provide accommodation and care to asylum seekers, most cities established their own local accommodation policies. Municipalities are responsible for covering all of the expenses, since 2014, and thus they experience a significant economic strain caused by the insufficient financial contributions from by the State (Chemin et al., 2018).

In **Austria**, a high level of centralization does not reduce the fragmentation of standards and rights. Indeed, the fundamental elements of immigration and asylum, such as legal status, entrance and return, are reserved to the legislative competence of the federal level. Instead, reception within the asylum system is subjected to the shared legislative competence of the federal government and the provinces, but some other issues are entirely delegated to the competence of provinces, such as the so-called "Needs-based Minimum Benefit" - a social welfare measure granted to all persons legally residing in Austria (including citizens and beneficiaries of international protection), who have personal savings of no more than € 4.189. Since 2016, when a harmonizing agreement between the federal level and provinces imposing the same standards throughout Austria expired, the level of the needs-based minimum benefit has diverged significantly across provinces. Currently, in some federal provinces, refugees are entitled to a reduced allowances compared to nationals. Meanwhile, the province of Upper Austria subjected the needs-based minimum benefit to the duration of stay, but the normative provision has been annulled by the Constitutional Court (Josipovic and Reeger, 2018; AIDA, Country Report: Austria, 2018). Beyond the provision of social welfare services, provinces also showed regressive stances regarding the reception quota for asylum seekers. This led to the establishment of a compulsory quota system under federal constitutional law (Josipovic and Reeger, 2018).

Nonetheless, beyond these shortcomings, the 'multilevel model', involving the participation of sub-national entities in the management of migration, has also proven crucial for promoting the entitlements of foreigners. Indeed, whereas it is true that the multilevel scheme generally has exacerbated the fragmentation of migrants' rights, it is important to note that it has also paved the way for more progressive approaches in specific regions, provinces and local municipalities, in contrast with the overall tendency of the national level. For example, in **Austria**, in contrast to the federal approach, which allowed the access to civic integration programs only to refugees, the Viennese authorities decided to extend the integration courses to all applicants (Josipovic and Reeger, 2018). In the **UK**, legislative powers surrounding immigration and asylum are reserved for the central government. However, the governments of Scotland, Wales and Northern Ireland hold legislative powers in fields which are relevant to immigration and asylum, such as housing, health care, education, children's services and social welfare. The fuzzy distinction among national and subnational legislative competencies on immigration and asylum has led to conflicts between the central UK Government and Scotland, which traditionally embraces a more inclusive and safeguarding approach compared to the rest of the UK. This was the case, for instance, with the Children Act 1995 (Scotland), which collided with three pieces of UK legislation providing, among the other things, for the detention of children (Hirst and Atto, 2018). Conflicts among the central and regional tiers of government have also arisen in **Italy** where the 2001 constitutional reform allocated migration management to the exclusive competence of the central government. However, regions kept playing a decisive role in the field, retaining legislative competencies in healthcare, education, children's services and social welfare. Furthermore, an effective 'multilevel model' has been clearly promoted by the Constitutional Court (Panzeri, 2018)[14], which recalled that asylum and migration necessarily involve both central and regional interventions, even beyond the strict

[14] Italian Constitutional Court, decisions No. 300/2005; No. 269/2006; No. 156/2008; No. 50/2008; No. 134/2010; No. 269/2010; No. 299/2010; No. 61/2011.

distribution of legislative powers provided by art. 117 of the Constitution[15]. Building on these considerations, the Constitutional Court dismissed the government's requests to censor some regional laws, such as the ones which extended undocumented migrants' entitlements to health, housing and social services (Salazar 2010; Biondi dal Monte 2011; Corsi 2012; Gentilini 2012). As a result, undocumented migrants currently enjoy a wide range of rights in regions such as Tuscany, Apulia and Campania, though different standards of protection currently apply to undocumented third-country nationals across the country (Salazar 2010; Spencer Delvino 2014).

A decentralized system also applies in **Poland**, where regions have the responsibility, among other things, to grant residence permits and provide social assistance, but the overall processing of applications for international protection is centralised. **Hungary** provides an exception to the pattern of decentralization displayed in many instances by the majority of RESPOND countries. In Hungary, the entire system is subject to the authority of the Immigration and Asylum Office, under the Ministry of the Interior, and local municipalities are excluded from the management of migration (Gyollai, 2018). Also in **Turkey**, after the introduction of the Law on Foreigners and International Protection (also LFIP) in 2013, a high level of centralization began, with the Directorate General of Migration management under the Ministry of the Interior becoming the institution responsible for immigration and asylum issues (art. 103 LFIP). However, local authorities still maintain the responsibility for organizing important sectors of service delivery related to integration issues (art. 96 LFIP) (Cetin, 2018).

Together with sub-national authorities, third sector and private actors are also part of national migration management mechanisms, making the picture even more complex and fluid. Italy and the UK offer emblematic examples of such a pattern. In the **UK**, three private providers manage the entire reception system for destitute asylum applicants, namely Serco, G4S and Clearsprings Group (House of Commons Home Affairs Committee, 2017: 12). The outsourcing of immigration-related services to the private sector results in a "convoluted web of contractors, subcontractors and hundreds of private landlords", with limited coordination between the private providers, local municipalities, the central government and subnational authorities (Hirst and Atto, 2018: 856). Meanwhile, foreigners suffer uneven and often low-quality standards of reception, with two out of the three provider companies running at a loss (House of Commons Home Affairs Committee, 2017).

Similarly, in **Italy**, asylum seekers experience fragmented and highly diversified reception services. The Italian system of reception is mostly run by a complex system of local municipalities, NGOs, associations and cooperatives of the third sector and the Catholic Church (Ambrosini, 2018). As in the UK, also in Italy a smooth communication among all relevant actors is hampered by a lack of adequate mechanisms of coordination. Furthermore, the limited implementation of the 'ordinary system of reception' as designed by Legislative Decree No. 142/2015, has added new actors to the Italian reception landscape, generating broad inconsistencies in the administration of the system and subjecting asylum seekers to

[15] Art. 117 of the Italian Constitution distributes the legislative power between the State and the Regions. In particular, after the amendments of the Constitutional Law No. 3/2001, art. 117 identifies a number of policy areas divided in two lists. A first list of matters (art. 117(2)) falls under the exclusive legislative competence of the national Parliament. A second list of matters (art. 117(3)), instead, constitutes the so-called "concurrent competence" between the State and Regions, in which the State is in charge to give the guidelines regulating the subject matter, while regional authorities have to provide detailed legislation in observance of the general principles laid down in State legislation.

further uncertainty. According to arts. 9 and 14 of the D Lgs. 142/2015, asylum applicants should be channelled into a two tiered system, divided into first-line governmental accommodation for first aid and assistance and a second-line reception for long-term assistance and integration services, run by local municipalities (together with actors of the third sector) within the SPRAR network (the national system of protection for asylum seekers and refugees). Since 2015, the Italian government has made a great effort to boost the capacity of the national reception system, providing for the activation of 180000 new places (UNHCR, 2017b: 3). However, the SPRAR network still runs short of places. Thus, migrants are accommodated in Centres of extraordinary reception (CAS) activated by the Prefectures (local offices, at the provincial level, of the central government). Prefectures subcontract in turn to the private and third sectors. CAS facilities, conceived in principle as temporary measures of last resort, accounted for 80.9% asylum seekers accommodated in December 2017 (Pannia et al., 2018; Chamber Inquiry Committee 2017: 98). The transparency and accountability of the selection procedures of CAS has been strongly questioned, while inadequate organization and low-trained staff have been often pointed out (see Chamber Inquiry Committee 2017: 109, 116). As a result, the Italian system of reception is fragmented into a plurality of centres with highly diversified standards, not always respecting foreigners' fundamental rights (Banca d'Italia 2017; Oxfam 2017; Inmigrazione 2017).

Nonetheless, it would be an oversimplification to say that the interconnection between the public and the private sector has been only detrimental to the smooth and adequate management of migration. Instead, in some cases, it provides a unique contribution to the delivery of services and social innovation. In both **Italy** and the **UK**, the NGOs attempt to close the many loopholes of the reception system, which fails to adequately meet asylum applicants' needs of protection. The NGOs' activities encompass the provision of essential goods and basic services, such as emergency healthcare, legal advice and support toward integration, including training and language classes. Beneficiaries of international protection are not the exclusive recipients of NGOs intervention, which also address legally residing foreigners and undocumented migrants. In **Austria**, NGOs are actively engaged in a number of fields spanning legal advice, the provision of certain care services for asylum seekers, programs of integration and voluntary return (Josipovic and Reeger, 2018).

In some RESPOND countries, other actors, namely the UN and EU agencies, play a crucial role within the whole migration machine. In **Italy**, for instance, beyond the involvement of EU agencies in hotspots, UNHCR caseworkers are part of the Territorial Commissions, the administrative bodies in charge of examining asylum applications and determining international protection status (art. 4(3) D. Lgs. 25/2008). In **Greece**, as of 24 April 2018, under the programme for the Emergency Support to Integration and Accommodation, UNHCR supported the Greek reception system, creating more than 24.000 new places for the accommodation of refugees and newly arrived asylum seekers (Petracou, 2018).

However, in some cases, the contribution of the EU and UN agencies has proven problematic. A specific case is **Greece**, where FRONTEX[16] and EASO[17], originally meant to

[16] The European Border and Coast Guard Agency (FRONTEX) is an European Agency aimed at cooperating with national authorities to manage and control the EU external borders. For further details see https://frontex.europa.eu/

[17] The European Asylum Support Office (EASO) is an European Agency aimed at supporting the implementation of the Common European Asylum System. Its objective is "to ensure that individual

provide mere assistance, under fast-track procedures now *de facto* exercise power over identification operations and asylum applicants' interviews, respectively (Petracou, 2018). However, the involvement of these external actors, and particularly of EASO, has met fierce criticism with respect to the lawfulness of activities conducted and their compliance with fundamental rights. Indeed, EASO caseworkers, after having interviewed asylum applicants, issue a recommendation to the Greek Asylum Service which essentially founds its decision on the EASO opinion, without having direct contact with the applicant. Consequently, EASO is highly engaged in the process of refugee status determination (hereinafter also RSD), in the absence of a legal basis and exceeding the competence of the Agency. Furthermore, the quality of the interview has been strongly questioned, with EASO caseworkers, reportedly, being not fully aware of Greek legislation on asylum and sometimes lacking experience and cultural sensitivity (AIDA[18], Country Report: Greece, 2018). Despite these shortcomings, in 2018, the government presented a bill aiming to extend EASO involvement to the regular asylum procedure (AIDA, Country Report: Greece, 2018).

Finally, **Lebanon** represents another informative case. Here, two UN agencies, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA)[19] and UNHCR intervene to provide fundamental services and undertake quasi-State responsibilities, in an attempt to compensate for the absence of a coherent and complete legislation on asylum. Specifically, UNWRA is highly engaged in the provision of social services for Palestinian refugees, including public medical services, to which Palestinian refugees have no access (Jagarnathsingh, 2018). More complicated is the role attributed to UNHCR. Intended to assist the Lebanese authority in guaranteeing protection and assistance to non-Palestinian asylum seekers and refugees, UNHCR currently faces strong opposition to its activities and is increasingly confined and deprived of legal relevance. Collaboration between the Republic of Lebanon and the UNHCR was officialised in 2003, when a memorandum of understanding (MoU) was signed in light of the Iraqi refugee crisis. Under the 2003 MoU, UNHCR was entrusted with conducting refugee status determinations in specific cases and, acting as a 'State-surrogate', committed to finding durable solutions for refugees. However, in the lack of further formal agreements with the Lebanese state, Lebanese authorities attributed little significance to the UNHCR's refugee status determination. As a result, those who do not fall under the 2003 MoU, which is the majority of refugees, are not protected against the *refoulement*, neither have the right to automatic and timely issuing of residence permits (Jagarnathsingh, 2018). Furthermore, in 2015, with a view to halting the flow of Syrian refugees, the Lebanese government asked UNHCR to 'temporarily' suspend the registration of Syrian refugees and to deregister those who returned to Syria, even for a very short time. Currently, "the total figure of refugees residing in the country informally is estimated to be around 2, or even 2.5 million" (Jagarnathsingh, 2018: 503).

Courts also take part in the management of migration. Judges are crucial, on the one hand, for granting remedies to those whose rights have been violated and, on the other hand, for providing sound interpretation of legal provisions. In **Austria**, for instance, the Constitutional Court (VfGH) has repeatedly halted the regressive approach undertaken by the federal and sub-national governments. For example, the VfGH annulled provisions aimed at reducing the

asylum cases are dealt with in a coherent way by all Member States". For further details see https://www.easo.europa.eu/

[18] AIDA, Asylum Information Database. For further details see https://www.asylumineurope.org/

[19] For further details see https://www.unrwa.org/who-we-are

time to lodge an appeal in asylum procedures, and restrictive social welfare provisions approved by some Austrian Provinces (Josipovic and Reeger, 2018). In **Italy**, the Constitutional Court has represented a fundamental anchor in promoting the legal entitlements of foreigners and in preventing standards downgrading. In this regard, the Constitutional Court's consolidated case-law maintained foreigners' entitlements to social rights, such as the right to health and healthcare services (decision No. 269/2010) and to "essential social benefits", such as invalidity benefits for mobility, blindness and deafness, regardless of the foreigner's length of residence. Nonetheless, the issue of foreigners' entitlement to social rights still remains open. In fact, despite the equalitarian approach of the Consolidated Law on Immigration, Law No. 388/2000 (Framework Law for the Implementation of the Integrated System of Interventions and Social Services) reserves access to social welfare allowances for only EU long-term residence permit holders. On several occasions, the Constitutional Court has declared that the limitation is unreasonable[20]. However, since the Court has declared the constitutional illegitimacy only of specific provisions in terms of certain rights, legislation still maintains a distinction between long-term residents (with EU long-term residence permits) and migrants who have short-term permits (one or two years), who are denied a number of social welfare allowances, such as maternity allowances[21]. With reference to maternity allowances, a consistent case law has extended this right also to women holding a permit to stay for work, family or humanitarian reasons. This means, however, that access to social benefits is subject to the attorney's ability and/or to judicial authority discretion. Meanwhile, those who cannot reach the judicial arena are excluded from some social rights and face unlawful discrimination (Pannia et al., 2018). Hence, as shown by the Italian case, judges' intervention may result in a further fragmentation and personalization of rights' entitlements and guarantees, increasing the legal uncertainty for migrants

Nonetheless, against this backdrop, important measures have been undertaken by RESPOND countries to reorganize the domestic institutional landscape in an attempt to inject greater order and efficiency in the management of migration. In **Turkey**, for instance, in 2013 a new entity was established under the Ministry of the Interior: the Directorate General of Migration Management, responsible for enacting immigration and asylum policies and coordinating all relevant actors (Cetin et al., 2018). Similarly, in **Greece**, after the 2016 elections, a new Ministry of Migration Policy was established, with responsibilities encompassing asylum, migration and integration policies. Furthermore, in March 2016, a new inter-ministerial entity was created to face the many loopholes of the national system of reception. The responsibility of this new entity, headed by the Deputy Minister of National Defence, ranges from the management of flows to the establishment of reception centres (Petracou, 2018; Triandafyllidou et al., 2016). The urgency for a clearer and efficient cooperation among all the actors involved has been recently addressed also in **Sweden**, where a decentralized system applies under the responsibility of the Ministry of Justice. Reportedly, before 2013, migrants used to engage with about 40 different governmental officials during the whole asylum procedure and after (Swedish Migration Agency, 2017: 7). To solve these problems, in 2014, a memorandum of understanding was signed with all the relevant authorities in order to boost dialogue and cooperation (Shakra et al., 2018).

[20] See Constitutional Court decisions No. 306/2008; No. 11/2009; No. 187/2010; No. 329/2011; No. 40/2013; No. 22/2015; No. 230/2015.

[21] For a complete list of the social welfare allowances to which foreign workers are entitled see Guarisio 2018.

3.3 Navigating practices and the legal categorization of asylum seekers in the aftermath of the "refugee crisis"

The principle of asylum is explicitly entrenched, to different degrees, only in the Constitutions of **Italy**, **Germany** and **Poland**. In Italy, according to art. 10(3) of the Constitution, "foreigners who are, in their own country, denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law" (Pannia et al., 2018: 413). In Germany, art. 16a of the Constitution safeguards the right of asylum for persons persecuted on political grounds (Chemin et al., 2018: 160). Finally, the Constitution of Poland states that "Foreigners shall have the right of asylum in the Republic of Poland in accordance with principles specified by statute" (art. 56(1)), and that "Foreigners who seek protection from persecution in the Republic of Poland, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party" (art. 56(2)) (Szulecka et al., 2018: 595). However, all RESPOND countries, except Iraq and Lebanon, have signed the 1951 Geneva Convention and its additional protocols, except for Turkey, which has signed, but retained a geographical limitation to its ratification (i.e. refugee status is given only to those fleeing as a consequence of "events occurring in Europe"). Furthermore, all of the EU RESPOND countries are bound by the EU *acquis* aimed at the creation of a Common European Asylum System (Favilli, 2018), with the exception of the UK, which only abides by the first phase of the Common European Asylum System, namely the 'Refugee Qualification Directive'[22], the 'Asylum Procedure Directive'[23] and the 'Asylum Reception Conditions Directive'[24], while opting out of the 'Asylum Recast Package'. Finally, most RESPOND countries have incorporated the European Convention of Human Rights, together with its principle of protection against torture or inhuman or degrading treatments (art. 3 ECHR), into their Constitutions.

Despite these national, regional and international obligations, an overall restrictive approach can be observed in RESPOND countries, where physical and procedural measures prevent and restrain access to international protection and are coupled with an overall downgrading of foreigners' entitlements.

Throughout most RESPOND countries, this regressive approach seems to rely upon a specific political construal of the "bogus asylum seeker" or the "illegal asylum seeker" (Lynn and Lea, 2003; Zetter, 2007; Squire, 2009; Gabrielatos and Baker, 2008)[25]. Such a narrative

[22] Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted.

[23] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

[24] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

[25] The terms "bogus asylum seekers" and "illegal asylum seekers" are often used in political and media discoursea and can carry varied connotations depending upon their context. The term "bogus asylum-seeker" is often used in opposition to the term "genuine asylum seekers". The term "illegal asylum seeker" often refers to people who arrive by boat without documents and express the will to apply for protection. Nonetheless, as UNHCR (2018b) has pointed out, "There is no such thing as a bogus asylum seeker or an illegal asylum seeker. As an asylum seeker, a person has entered into a legal process of refugee status determination. Everybody has a right to seek asylum in another country. People who don't qualify for protection as refugees will not receive refugee status and may be deported,

finds explicit echoes, for instance, in **Poland**. Here, the main outcome of international protection procedures is the "decision of discontinuance"[26], which results after asylum seekers submit their first application in Poland and then move to another EU country and apply for asylum again. In 2017, Poland received only 1.433 asylum seekers under the Dublin III Regulation. Interestingly, this fact was often mentioned by the Polish government when developing legislative reforms curtailing access to international protection: "if asylum seekers do not stay in Poland and do not wait for a decision, it is interpreted to mean that they are seeking better economic conditions rather than protection (Szulecka et al., 2018; Szulecka, 2016).

With this narrative, the condition of 'protection seeker' is juxtaposed with the condition of being an 'economic migrant'. As a result, issues surrounding immigration are presented as economic, rather than humanitarian. In this way, by "making asylum an issue of political economy, rather than moral duty", states may more easily neglect international and national obligations that secure refugees' rights and protection (Mayblin, 2017).

Closely related to this is the tendency to merge the status of 'protection seeker' with a condition of 'illegality' or 'irregularity'. More and more frequently, governmental authorities deploy a punitive arsenal of criminal law against migrants, in an attempt to manage and control migration. Along with this, the distinction between criminal law and immigration law is also progressively blurring. This blurring has been analysed and theorized as part of what has been called "crimmigration law" (Stumpf, 2006). In this regard, **Hungary** is probably the most indicative case (Gyollai, 2018). In February 2015, the government launched an anti-immigrant billboard campaign, which preceded the National Consultation on Immigration and Terrorism. As Gyollai reports, it involved "a questionnaire sent to every household, in which asylum seekers were portrayed as "economic migrants" and threats to the welfare system, and it included statements suggesting a link between migration and terrorism" (2018: 300). The consultation was followed by regressive legislative reforms, which have made large use of criminal law and its punitive tools. In 2015, the following criminal offences were introduced by Act CXL: the unauthorised crossing of a closed border, the damaging of a closed border and the obstruction of construction work related to a border closure, each of which is punishable by 3 to 10 years imprisonment. Meanwhile, related criminal proceedings have to be prioritized over other cases, while defendants' procedural guarantees breach a number of international human rights standards, including the right to effective defence (Gyollai, 2018). In addition, after the declaration of the "crisis situation caused by mass migration" (Gyollai, 2018: 302), the army was entrusted with receiving asylum seekers' registration applications, while the police retained significant quasi-arbitrary powers in the management of migration. A similar situation can be observed in **Poland**, where the unauthorised crossing of a border is considered a criminal offence. Furthermore, the nexus between terrorism and refugees is being propagated by media and surreptitiously promoted by the government under the mantle of social security,

but just because someone doesn't receive refugee status doesn't mean they are a bogus asylum seeker". See http://www.unhcr.org/asylum-in-the-uk.html

[26] "'Discontinuance' or 'discontinuation' is the term used to describe the decision on cancelling the proceeding due to the fact that the person who initiated the proceeding (here: the foreigner applying for international protection) is no longer interested in being a part of the proceeding or cannot be reached by Polish authorities (e.g. because of a lack of valid address of the applicant)" (Szulecka, 2018: 17, note 11).

with the introduction of laws like the 2016 Law regarding counterterrorism actions (Szulecka et al., 2018).

In the **UK**, according to section 2 of the Asylum and Immigration Act 2004, asylum applicants who cannot provide identification documents may be charged with a criminal offence, punishable by a prison sentence of up to two years. As Hirst and Atto report, "In the first six months since s2 of the Act came into force, at least 230 asylum seekers were arrested, and 134 convicted of this new offence (Taylor and Muir, 2005). Multiple asylum seekers have received jail sentences (BBC, 2015)" (2018: 854).

Through these practices, which surreptitiously associate asylum seekers with economic or illegal migrants, doubts about the truthfulness of the protection needs claimed by foreigners are fostered. A close and multidimensional interplay between norms, the political context and social perceptions is explicitly manifest in these portrayals. Indeed, while the authenticity of the foreigner's asylum claim is regarded as suspicious, his/her rights and guarantees are also questioned. Governments seek to dispel any doubts by immediately distinguishing the 'bogus asylum seeker' from the 'true' one. To this end, according to the same pattern laid down by reforms aimed at simplifying the RSD process, questionable legal presumptions are provided and applied in RESPOND countries. For instance, again in **Poland**, whether an asylum claim is submitted as early as possible is of great relevance for determining refugee status. According to art. 42 of the Law on Protection, submitting an asylum application after a prolonged stay in the country is considered tantamount to applying for asylum to avoid the enforcement of an order of return (Szulecka, 2016).

Along the same vein, other categorizations and legal presumptions affect the legal status of migrants and refugees in RESPOND countries. In **Austria**, only ''asylum applicants with a high probability of approval' are admitted to the special integration programs provided by the "Integration Year Act", which aim at asylum seekers' labour integration through training courses and evaluation of competences (Josipovic and Reeger, 2018: 101). In the **UK**, only 'vulnerable' and 'at-risk' refugees are deemed eligible for the three resettlement programs put in place by the UK Government: the Syrian Vulnerable Persons Resettlement Scheme (VPRS), the Vulnerable Children Resettlement Scheme and the 'Dubs amendments' through which children are relocated. Whereas the latter programs address children specifically, the former scheme concerns other vulnerable Syrian refugees, including the elderly, the disabled, persons who experienced trauma, children, orphans and minorities (Hirst and Atto, 2018).

As a long-term, durable solution[27], resettlement undoubtedly represents a fundamental tool for providing refugees with sound legal protections and guarantees. Although the number of people effectively resettled turned out to be much lower than pledges made by States in 2017, more than 26,400 refugees were resettled to Europe, the majority of whom were transferred to the **UK**, **Sweden** and **Germany** (UNHCR, 2018a: 17; Chemin, 2018).

However, the application of durable solutions is problematic. For example, it has been observed that, in the UK, vulnerable refugees are the exclusive recipients of resettlement programs, and this risks conveying the message that the general refugee population is not

[27] A "durable solution" is a solution aimed at enabling refugees to "rebuild their life". For further details see UN High Commissioner for Refugees (UNHCR), *Framework for Durable Solutions for Refugees and Persons of Concern*, May 2003, available at: http://www.refworld.org/docid/4124b6a04.html

vulnerable. Indeed, such an approach favours the creation of two categories: the more and the less deserving refugees, where only the former ones are addressed by the State (Hirst and Atto, 2018). Meanwhile, the same EU relocation program[28] which realized the transferral of almost 22.000 asylum seekers from Greece and about 12.300 from Italy (data available as of 26 March 2018)[29] has reproduced the same scheme, whereby only asylum-seekers of nationalities with an average recognition rate of 75 per cent or higher at the EU level were considered eligible.

The above overview shows a legislative landscape of diverse categories of asylum applicants, including ones 'with a high probability of approval', ones 'with a high recognition rate' or 'vulnerable ones'. This "fractioning of the label refugees" (Zetter, 2007; Costello and Hancox, 2015) creates a quasi-hierarchy among refugees that, on the one hand, ends up reducing or slowing access to international protection, and, on the other hand, selects based on reasons which have more to do with social acceptance than with the right to asylum. Such an approach seems to reflect States' uneasiness with governing the complexity of migration as they attempt to appear simultaneously "compassionate towards refugees as well as tough on immigration control" (Hirst and Atto, 2018: 867).

3.4 Controlling and targeting economic-related migration

As we have already highlighted, there is no proper Europeanization of asylum policy and law, and immigration and asylum remain one of those domains in which states are reluctant to devolve their authority to supranational jurisdictions. Despite the numerous limitations to national sovereignty brought about by EU membership, the crucial state prerogative of modern, post-Westphalian statehood, which is the ability to decide who should be admitted into state territory and with which entitlements, still holds when the status of non-EU nationals and asylum seekers are considered. This prerogative is somehow exacerbated for economic migrants, as, in this field, states are not even bound by international instruments, such as the Geneva convention, which could provide some guarantees (Joppke 2005; Sohn 2014). Consistently, most RESPOND countries have enacted policies which screen and accept potential migrants based on certain characteristics, such as sectors of labour shortage, migrants' needs for short-term work and their income expectations and skill levels, so as to align immigration with the country's economic and political interests and needs. Meanwhile, immigration on economic grounds can be considered a breeding ground for enacting restrictive policies aimed at delivering governments' pledges to curtail overall net immigration.

In this regard, across RESPOND countries, several policies have been put into place that favour access to the labour market for two categories of migrants deemed good for the economy: highly skilled foreign workers and international students. In **Germany**, beyond

[28] The relocation programme was a two-year scheme provided by the "Provisional measures in the area of international protection for the benefit of Italy and Greece" adopted by the European Council in 2015, aimed at reducing the migratory pressure on frontline States (Italy and Greece). Provisional measures in the area of international protection for the benefit of Italy and Greece, Council decision 2015/1523 of 14 September 2015 (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2015_239_R_0011) and Council decision 2015/1601 of 22 September 2015 (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015D1601).

[29] European Commission, Member States' Support to Emergency Relocation Mechanism, 26 March 2018, https://goo.gl/HfbF8H

asylum and family reunification, the immigration of third country nationals is limited to skilled workers (holding a university degree or three years of training and job experience) and students. In particular, the student visa represents a key entry channel for migrants who want to access the German labour market. After graduating, non-EU students may obtain a permit to stay up to 18 months to look for employment. According to the statistics of the Federal Office for Migration and Refugees, about 54% of third-country students remain in Germany after graduation (Chemin et al., 2018: 172). Similarly, in the **UK**, the "Highly Skilled Migrants Programme" has allowed exceptionally talented foreigners to enter and settle in the UK, without the obligation of proving an offer of employment before arrival (Hirst and Atto, 2018). Another programme (the 'International Graduate Student Scheme') was also launched to attract international students, allowing them to work in the UK for one year after completing their course of study. In recent years, the number of highly skilled workers has significantly increased, while international students' enrolment in UK universities grew by 92% between 2000 and 2014 (Hirst and Atto, 2018: 830). Beyond these specific programmes, the selectivity of UK immigration policy is also clear if we consider the so-called points-based system (PBS), a comprehensive system based on the accumulation of points across different categories (e.g. level of English language or amount of savings), which determines the success of foreign visa applications. As Hirst and Atto report, the PBS is complex and expensive, and it "is also subject to rapid change, with work visa categories regularly being established and discontinued, reflecting the Government's attempts to both limit immigration, and be responsive to employer demands to have the skilled employees they need" (2018: 863).

Not surprisingly, the pattern above also applies at the EU level. Here, whereas the prospective of a common European policy for immigration on economic grounds soon became impracticable, Member States agreed to common rules regarding the conditions of entry and the residence of third-country nationals who work in highly skilled jobs[30] (Favilli, 2018).

In other RESPOND countries, such as **Italy** and **Austria**, controls on economic-related migration have been enacted by introducing national numerical migration limits. Through the so called "quota system", these states cap the number of migrants allowed to enter the domestic labour market and target candidates for immigration according to economic necessities and social acceptance. In Austria, the 2018 national quota was 6.120 slots, 4.000 of which were designated for seasonal workers (Josipovic and Reeger, 2018: 87). In Italy, since 2011, also due to the economic crisis, the government decided to limit the entry quota to only a few foreigners: mainly highly-qualified workers, rich entrepreneurs and "seasonal workers" in the fields of agriculture and tourism (Pannia et al., 2018).

Both in Austria and Italy, legislation provides for the possibility of obtaining a work permit "outside of the entry quota". However, the exception only addresses specific typologies of work, such as managers and highly-qualified workers (Josipovic and Reeger, 2018; Pannia et al., 2018). Furthermore, quite revealingly, again in **Italy**, the 2017 Budget Law granted foreign investors the right of entry and stay "outside of quota"[31]. Concerning the right of entry and stay for investors, the case of **Hungary** is even more striking. Here, under the 2013 'Investment Immigration Program', long-term residence permits were issued to non-EU migrants against

[30] Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

[31] Art. 26 bis of the Consolidated Law on Immigration, introduced by the Law No. 232/2016 (Budget Law 2017).

the purchase of a “state bond” worth € 250.000 (raised to € 300.000 in 2015). The sale was stopped in 2017. In total, 17.009 bonds were sold, meaning a total amount of 1.158 billion was raised (Gyollai, 2018: 322)[32].

Finally, **Poland** offers another indicative case. After its accession to the EU in 2004 and the visible outflow of Polish workers, the Polish government undertook a policy aimed at attracting foreign workers. In this phase of Polish migration, named “controlled openness,” the liberalization of foreigners’ access to the labour market mainly targeted temporary workers coming from the following countries: Belarus, Russia, Ukraine and, since 2009 onward, also Moldova, Georgia and Armenia. Under this policy, Polish employers could hire short-term foreign workers[33] by merely declaring their intent to employ a foreigner, without being required to obtain a work permit for their employees. The ‘declaration procedure’ firstly concerned only the agriculture sector and subsequently was extended to all sectors of the economy. However, after 2015 and the change in government, the system of declarations became more complex and restrictive. Despite the Polish government often mentioning the EU “refugee crisis” to validate the implementation of new measures restraining immigration, the shift in immigration policies seems to rely upon a very security-oriented approach (Szulecka et al., 2018). Evidence shows that in Poland the majority of visa holders are non-EU citizens with temporary residence permits employed in the Polish economy, whereas the number of immigrants with international protection status is negligible (Szulecka et al., 2018).

The situation in Poland mirrors a more general trend. Indeed, curiously, as already shown in the first part of this report, the growing number of foreigners in most RESPOND countries is mainly linked to work (as in the case of Poland), study (as in the UK) or family reunification (as in Italy and Sweden), rather than to asylum.

Nonetheless, recent reforms (and media attention) almost exclusively focus on asylum seekers and beneficiaries of international protection, while measures adopted are mainly aimed at economic-related migrants and specifically at restraining legal avenues to the national job market, as occurs in Italy (Pannia et al., 2018) or moving towards an increased use of temporary residence permits, as applies in Sweden (Shakra et al., 2018). In this context, migrants often resort to low-skilled and highly precarious jobs, or even to informal employment, as happens in the labour markets of Italy, Greece and Turkey (Pannia et al., 2018; Petracou, 2018; Cetin et al., 2018). The extra-legal pattern subjects migrants to risks of sanctions and/or detention and excludes them from basic rights and legal guarantees.

[32] Certain countries within the Schengen visa area in Europe offer either residence or citizenship on grounds of investment. For further details on "investment-based citizenship and residence programmes in the EU", see Dzankic 2015 and 2018.

[33] In 2006, the new regulation only targeted temporary foreign workers employed from between 3and 6 months and, since 2008, for between 6 and 12 months.

4. Preventing or restraining access to international protection

Focusing on legislation on international protection, this section discusses the tendency of most RESPOND countries to narrow and, sometimes, even to prevent third country nationals from accessing international protection processes. To this end, as illustrated below, RESPOND countries have designed and deployed a sophisticated toolbox, entailing both physical and procedural barriers.

Concerning physical barriers, during the timeframe of 2011-2017, through the systematic recourse of push-back operations, as in Poland, and/or, in a more blatant way, through the construction of fences, as in the Hungarian case, migrants have been physically prevented from accessing territories and consequently submitting their asylum claims.

However, in the majority of cases, EU countries did not resort to the abovementioned practices. Rather, the effect of restraining access to international protection has been the result of the implementation of tools and procedures already provided by the EU asylum *acquis*. Specifically, domestic legislations could rely on procedures provided by the recast Asylum Procedures Directive[34] (hereinafter, APD) which aimed to streamline the RSD process, by creating: "a) an "admissibility procedure" which does not examine the merit of asylum claims protection needs, for asylum seekers who may be the responsibility of another country or have lodged repetitive claims[35]; b) an "accelerated procedure" to examine protection needs of ostensibly unfounded or security-related cases[36]; and c) a "border procedure" to speedily conduct admissibility or examine the merits under an accelerated procedure at borders or in transit zones[37]" (AIDA, 2016: 8).

On this legal basis, in the timeframe of 2011-2017, extensive reforms took place within the legal frameworks of EU countries, reshaping domestic asylum proceedings. However, as discussed below in para. 4.5, asylum policies and legislations meant to speed up the procedure, often turned out to be more oriented toward deterrence than efficiency.

4.1 The tightening of borders

Concerning the construction of physical barriers, restricting the analysis to RESPOND countries, the first wall dates to 2012, in **Greece**, when a 12 Km wall was built in the Evros area, with the aim of impeding access to the country by land. In 2015, **Hungary** erected a 175 km barbed-wire fence along the border with Serbia and subsequently extended it to the border with Croatia (AIDA, 2015). The fence was not only meant to convey a symbolic barrier, but allowed the Hungarian government to enact an extensive policy of push backs. Indeed, under

[34] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60. The Directive recast Council Directive 2005/85/EC

[35] Articles 33-34 recast Asylum Procedures Directive.

[36] Article 31(8) recast Asylum Procedures Directive

[37] Article 43 recast Asylum Procedures Directive.

the so-called "8 Km rule"[38], the police were entrusted with escorting undocumented migrants intercepted within the 8 km border area to the opposite side of the boundaries. Between 5 July 2016 and 31 August 2017, 14,438 undocumented migrants were rejected without being identified and without the opportunity to apply for asylum (HHC, 2017b). Acts of police violence and cruelty have been widely reported (Human Rights Watch, 2016). Moreover, together with fences, so-called 'transit zones' have been set up, representing the only area in which asylum seekers can submit their claims. The processing capacity of transit zones are dramatically low, severely undermining access to international protection. Reportedly, "from November 2016, only 10 persons were let in per day, and only through working days [...]. In 2017, only 5 persons were let in per day in each transit zone. From 23 January 2018 only one person is let in each transit zone per day". (AIDA, Country Report: Hungary, 2018: 17).

In 2016 another fence was constructed by **Austria** on the border with Slovenia. Meanwhile, under the Joint Action Plan (JAP)[39] agreed upon by the EU and Turkey, in a coordinated endeavour to manage border control, a wall between **Turkey** and Syria was erected as part of an integrated and hyper-sophisticated system of border control, reinforced with fibre optic sensors, cameras, observation balloons and unmanned aerial vehicles (Milliyet, 2017).

Extreme difficulties in terms of lodging an application for international protection have been observed in **Poland**, as a result of illegitimate practices put in place by border guards, particularly at the Belarus border, where the Border Guard have automatically sent back a significant number of migrants without visas, after illegitimately questioning the circumstances and purposes of their entry (Klaus, 2017).

4.2 The hotspot approach

Without any doubt, hotspots can be regarded as one of the main tools falling under the strategy of controlling access to the state and - in this case - more broadly, to Europe. First presented as part of the European Agenda on Migration, the "hotspot approach" was meant to assist frontline member States facing exceptional migratory pressure at the EU's external border. Hotspots identified a geographical space consisting of initial reception facilities. At the same time, hotspots also identified an approach whereby the European Asylum Support Office, Frontex and Europol would "work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants" [40].

As pointed out by the EU Court of Auditors, hotspots have been effective in improving the operations of identification, registration and fingerprinting. Considering the whole of 2016, Italy achieved a 97% registration and fingerprinting rate (compared to 60% in the first half of 2015).

[38] Art 5(1a) of Act LXXXIX of 2007, as amended by Act XCIV of 2016. The rule was subsequently extended to the entire territory of Hungary byArt 5(1b) of Act LXXXIX of 2007, as amended by Act XX of 2017

[39] The Joint Action Plan (JAP), Available at http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm

[40] European Commission, 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, p. 6, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

Greece witnessed a significant increase in terms of its registration rate for incoming migrants in 2016 as well, with 78% of migrants registered and fingerprinted, compared to an 8% registration rate as of September 2015. It can thus be said that "the hotspot approach contributed towards an improved management of the migration flows" (European Court of auditors 2017: 38-39). However, as the EU Court of Auditors further observes, the effectiveness of the hotspot approach is strictly linked to the proper functioning of follow-up processes, namely asylum, relocation and return. In this regard, as noted by the EU Court of auditors "implementation of these follow-up procedures is often slow and subject to various bottlenecks, which can have repercussions on the functioning of the hotspots" (European Court of auditors 2017: 7; 40-44).

More specifically, in **Greece**, the operation of hotspots' has been dramatically affected by the EU-Turkey statement[41], aimed at curtailing migratory flows in the Aegean Sea. Initially meant to channel newly-arrived migrants into procedures of international protection or return, after March 2016 hotspots were substantially transformed into closed centres of detention aimed at implementing returns to Turkey (Guild, Costello and Moreno-Lax 2017). This has reportedly led to collective expulsion and push-backs (ECRE, 2016). Harshly criticized by national and international organizations (UNHCR, 2017a), this practice has been replaced by blanket geographical restrictions imposed on new arrivals, who are obliged to reside in the identification and reception centre for indefinite periods of time (AIDA, Country Report: Greece, 2018). Meanwhile, running short on staff, the Greek Asylum service experienced many difficulties in handling the high number of asylum applications, which rose significantly after March 20. As a result, in September 2016, "the majority of migrants who arrived after 20 March had still not had the opportunity to lodge an asylum application" (European Court of auditors 2017: 41).

In **Italy**, according to the Consolidated Law on Immigration, undocumented foreigners intercepted within Italian territory and succoured during rescue operations at sea are conducted immediately to hotspots, where they are fingerprinted and receive information on international protection, relocation and assisted voluntary return[42]. However, in 2016, less than one third of incoming migrants were identified in hotspots, while others were registered in other ports of arrival. Undoubtedly, the crucial part of the identification procedure is the pre-registration, where migrants are qualified as "undocumented" or "asylum seekers". In this regard, there have been allegations of migrants being delayed or denied access to international protection (UNHCR, 2017b). In 2016, the Italian government put in place a comprehensive training program for police authorities responsible for receiving asylum applications. Nonetheless, eminent scholarly voices have reported practices, such as "profiling on grounds of nationality, treating arrivals from non-relocation countries directly as 'non-refugees', selectively (mis-)informing them about their options and swiftly expelling them" (Guild, Costello and Moreno-Lax 2017: 47).

[41] EU-Turkey Statement, 18 March 2016, available at: http://www.consilium.europa.eu/en/press/pressreleases/2016/03/18-eu-turkey-statement/

[42] Art. 10 ter of the Consolidated Law on migration, as introduced by the Law Decree. No. 13/2017, art. 17.

4.3 The proliferation of asylum procedures

Beyond hotspots and the tightening of borders, the narrowing and slowing down of access to international protection has also been a secondary effect of procedural tools, intended to streamline the RSD process. From 2011 to 2017, the growing number of arrivals and asylum applications put severe strain on the asylum system of EU states, which responded, inter alia, with legislative reforms aimed at boosting the efficiency of RSD procedures.

Building on the set of rules and procedures provided by the recast Asylum Procedure Directive[43], all of RESPOND's European countries introduced procedural tools in their domestic asylum system aimed at determining who is worthy of protection and who is not, without examining the merits of particular asylum claims. These types of procedures are briefly illustrated below:

- the 'Admissibility Procedure': According to the recast APD, Member States should be allowed to not examine asylum applications when they fall under the responsibility of another country. More specifically, the above-mentioned Directive provides 5 grounds under which the asylum claim can be declared inadmissible, namely when "(a) another Member State has granted international protection; (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35[44]; (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38[45]; (d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant; or (e) a dependant of the applicant lodges an application, after he or she has in accordance with Article 7(2) consented to have his or her case be part of an application lodged on his or her behalf, and there are no facts relating to the dependant's situation which justify a separate application" (art. 33(2) recast APD). Except for **Italy** and **Sweden**, all EU RESPOND countries plus **Turkey** have incorporated the admissibility procedure into their national asylum systems, though with gross divergences in its transposition and practical application[46]. For instance, among the states surveyed in this project, **Poland**, **Turkey** and **Greece** have transposed the inadmissibility ground connected to the dependant application (lett. e). The admissibility procedure based on the concept of the "first country of asylum" (art. 33(2) lett. b recast APD) is reflected in the national legislation of **Hungary**, **Germany**,[47] **Greece**, **Poland** and **Turkey**. In this case, the asylum claim is deemed inadmissible - and consequently not examined according to its merit - when the asylum applicant was granted refugee

[43] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60. The Directive recast Council Directive 2005/85/EC.

[44] See below in the text for further details on art. 35 and the concept of "first country of asylum".

[45] See note 28

[46] However, **Turkey** does not use the concept in practice (AIDA, 2016: 17).

[47] To be more precise, Germany's legal framework does not contain an explicit reference to the concept of "first country of asylum". However, according to the Asylum Act as amended on 6 August 2016, the asylum claim can be declared inadmissible when "the applicant may be readmitted to "another third country" ("sonstiger Drittstaat") in which he or she has been safe from persecution" (AIDA, 2016: 17).

status in a third country or when he or she could "enjoy sufficient protection" (art. 35). Among RESPOND countries, the most recurrent ground for inadmissibility is the one related to "safe third country" (art. 33(2) lett. c and art. 38 recast APD)[48], applied in the asylum systems of **Austria**, **Greece**, **Germany**, **Hungary**, **Turkey** and the **UK**. However, in practice, the concept has received extensive and significant application only in some of those states. In particular, until 2017, **Hungary** continuously issued inadmissibility decisions based on safe third country status particularly in relation to Serbia, despite the questionable compliance of the latter state with human rights and legal guarantees for asylum applicants (Gyollai, 2018). In **Greece**, the concrete application of the notion of a "safe third country" played a formidable role within the implementation of the so-called EU-Turkey Statement[49]. Indeed, asylum applicants entering Greece after 20 March 2016, saw their applications dismissed as inadmissible and were removed to Turkey, which was considered a "safe third country", under the application of art. 38 of the recast APD (Petracou, 2018). Notably, inadmissibility decisions can be issued also in relation to another EU Member Stat, within the framework of the Dublin III Regulation, when national institutions ascertain that another EU country is responsible for examining the asylum application (art. 33(2) lett. a recast APD and Dublin III Regulation[50]). In these cases, the admissibility procedure means the compression of fundamental legal guarantees for asylum applicants, as in the case of **Hungary**, where, until the end of 2016, the Dublin Unit used to forward applicants' appeals to the Court several months after requests (Gyollai, 2018). Another troubling practice is applied in **Austria** when asylum seekers do not cooperate on their return to the EU country deemed responsible for their applications under Dublin III Regulations. In this case, welfare measures, such as cash allowances, are reduced or withdrawn. Furthermore, when the appeal is accepted and the decision of inadmissibility is dismissed, the asylum claim may not be examined based on its merits if a mere procedural error has been ascertained by the Court (Josipovic and Reeger, 2018).

- the 'Accelerated Procedure': Recital 20 of the recast APD states that "In well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for in this Directive".

[48] According to art. 38 of the recast APD, the concept of "safe third country" revolves, among the others, around two main conditions: a) a requisite level of protection in the third country to ascertain based on specific criteria such as the possibility ", to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention" (art. 38 (1) e); b) specific requirements for the States, such as the provision of "rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country" (art. 38 (2) a). For further details and a comparative analysis of these conditions across EU countries see AIDA, 2016: 19 - 21.

[49] European Council, EU-Turkey statement, 18 March 2016, available at: http://goo.gl/reBVOt.

[50] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanism 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 stateless person (recast) (hereafter "Dublin Regulation"), OJ 2013 L180/31.

Although the recast APD does not offer a definition of the 'manifestly unfounded claim', art. 31(8) lays down the grounds upon which Member States may provide an accelerated procedure. Currently, following reforms introduced mainly in 2015, all RESPOND countries, except **Iraq** and **Lebanon**, apply accelerated procedures[51]. However, high divergences are observed concerning various aspects of accelerated procedures, such as the grounds on which the procedure is triggered, the time frame according to which the procedure should be conducted and the determining authorities. Although comparison is difficult, nevertheless, a convergence can be pointed out. Apart from **Turkey**, **Italy** and **Poland**,[52] all RESPOND countries applying an accelerated procedure incorporate a notion of "safe country of origin" in their domestic legislation. Based on this concept, the asylum applications of migrants coming from a specific list of countries are presumed to be manifestly unfounded, unless applicants prove otherwise. In numerous cases, a downgrading of applicants' rights and less protective procedural regimes are associated with accelerated procedures. For example, in **Germany**, pending the RSD procedure, asylum applicants from a safe country of origin are required to live in a reception centre and are not allowed to work (Chemin et al., 2018). In the **UK**, until July 2015, detention measures were imposed on migrants subjected to accelerated procedures as part of the 'Detained Fast Track procedure' (Hirst and Atto, 2018). In **Turkey**, the very short time frame within which decisions should currently be taken by responsible authorities (5 days from the personal interview) raises concerns about the quality of the RSD process, as pointed out in general terms by UNHCR (UNHCR, 2010: 53-54). In **Hungary**, the ECRE pointed out that when the accelerated procedure is grounded in concerns about public security and public order, the decision is taken by the National Intelligence Agency or by the Counter Terrorism Center, which are not the authorities responsible for determining refugee status (AIDA, Country Report: Hungary 2018). Finally, although the provision of suspensive effects as a cornerstone guarantee has been stressed by the ECHR, particularly within accelerated procedures (see for example the decision *I.M. v. France*, Application No. 9152/09[53] and *A.C. v. Spain*, Application No. 6528/11[54]), automatic suspensive effects are not provided in countries, such as **Italy**, **Germany** and **Hungary** (AIDA, 2017a). In this regard, concerns have been raised with reference to an arguable practice observed in **Hungary** before March 2017, when applicants were conducted to

[51] In Sweden, the legislative framework does not contain an explicit reference to the "accelerated procedure". However, a fast-track procedure is provided in cases of manifestly unfounded claims and when the applicant's country of origin has a recognition rate below 20%. (AIDA, 2017a: 32).

[52] In Poland, on 30th January 2018, a proposal to introduce, among others, a list of "safe country of origin" has been advanced by the Ministry of the Interior and the Administration. As of April 2018, the proposal is still under discussion (Szulecka et al., 2018: para. 6).

[53] ECtHR - I.M. v France, Application No. 9152/09, where the ECHR maintained that "The detention of asylum applicants may undermine their ability to claim asylum and that an 'effective remedy' requires an appeal with suspensive effect against refoulement in order to prevent irreparable harm, sufficient time to prepare the appeal and effective legal assistance and interpretation". See for further details http://www.asylumlawdatabase.eu/en/content/ecthr-im-v-france-application-no-915209-0

[54] ECtHR - A.C. and Others v. Spain, Application No. 6528/11, where the ECHR maintained that "Spain violated the right to an effective remedy of 30 asylum seekers of Sahrawi origin who faced removal to Morocco before a thorough examination of their asylum application". For further details see http://www.asylumlawdatabase.eu/en/content/ecthr-ac-and-others-v-spain-application-no-652811

immigration detention centres in order to be expelled, before the time limit for lodging an appeal expired (AIDA, 2018).

- 'Procedure at the border or in a transit zone': grounds listed in art. 31(8) of the recast APD for the accelerated procedure also apply to procedures conducted at the border or in transit zones. Currently, among RESPOND countries, only German and the Greek legislations provides for such a procedure. In **Greece**, a "fast-track border procedure" was introduced by art. 60(4) of Law No. 4375/2016[55], in close connection to the EU-Turkey statement implementation. This procedure applies to all asylum seekers arriving after 20 March 2016 who lodged their applications in Lesvos, Chios, Samos, Leros and Kos, where hotspots have been established (Petracou, 2018: 265). Despite the requirement of art. 43 of the recast APD[56], the "fast-track border procedure" results in the disregarding of applicants' guarantees. The procedure is characterised by very short deadlines, with a time limit of 2 weeks for concluding the entire process. The right to appeal, already hampered by a 5-day deadline, has been *de facto* jeopardized by a Police Circular issued in April 2017. Following the circular, applicants who lodge an appeal against a negative first instance decision are deprived of the possibility of benefitting in the future from the Assisted Voluntary Return and Reintegration (AVRR) program provided by the International Organisation for Migration (IOM). (AIDA, Country Report: Greece, 2018). In **Germany**, the airport procedure, regulated in section 18a of the Asylum Act, applies to asylum applicants who enter the country by air without valid documents, applicants who apply for asylum in a transit area and those who come from a "safe country of origin". The procedure features a very short time-frame (the applicant' interview should occur after 2 days from the application, while in case of rejection, an interim measure is required within 3 days), which raises concerns about the quality of the assessment and the applicants' access to effective remedy. However, in practice, the airport procedure is seldom applied, and the applicant is allowed to access the regular procedure (Chemin, 2018; AIDA, Country Report: Germany; 2018). Apart from these countries, the legislation of **Hungary** is another case worth examining. As of 28 March 2018, following the enlargement of the "crisis situation caused by mass migration", the country's border procedure was not applied anymore. This "crisis situation" is tantamount to a *quasi* "state of emergency", declared for the first time in 2015 and successively extended until it covered the entire territory of Hungary. Under the aforementioned state of crisis in effect until 6 September 2018, special rules apply to asylum applicants who, as stated, are allowed to submit their claims only in transit zones. As a result, "the asylum procedure in the transit zone is therefore a regular procedure and no longer a border procedure" (AIDA, Country Report: Hungary, 2018: 22). Manifold violations of human rights and EU law have been contested by NGOs and ascertained by the ECHR with regard to applicants' legal status and safeguards in transit zones (HHC, 2017a). Asylum seekers, including unaccompanied minors between 14 and 18 years of age, are held in the transit zone

[55] Art. 60 of the Law No. 4375/2016 regulates also another type of 'border procedure', which diverges from the regular procedure only for shortened procedural time-frames (AIDA, Country Report: Greece, 2018: 64).

[56] art. 43(1) of the recast APD states "Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on: (a) the admissibility of an application, pursuant to Article 33, made at such locations; and/or (b) the substance of an application in a procedure pursuant to Article 31(8)".

for the whole RSD procedure. In the absence of a time cap limiting their confinement in the transit zone, applicants experience a condition of *de facto* detention, while being also deprived of effective remedies to complain about their detention, as maintained by the ECHR in the *Ilias and Ahmed v. Hungary* case, Application No. 47287/15[57]. In **Poland**, on 30th January 2018, an amendment to the law on granting international protection was proposed by the Ministry of Interior, aimed at introducing, *inter alia*, a border procedure. According to the draft law, which also incorporates the concept of "safe country of origin" and "safe third country", asylum applicants may be detained pending the RSD procedure. Many concerns have been raised by NGOs against the proposal, which also reduces essential procedural safeguards, such as the right to appeal against a negative decision (Szulecka et al., 2018).

4.4 Additional restrictive procedural reforms

Other reforms in the field of asylum proceedings have been enacted by EU Member States with the aim of streamlining the RSD process. Although conceived to achieve procedural simplification, these reforms often result in the reduction of procedural guarantees. In most RESPOND countries, these reforms mainly affect procedural rights relating to the appeal stage. In **Hungary**, only a single instance of judicial review is provided for considering a negative decision on an asylum application (art. 68(6) of Asylum Act). Meanwhile, the short deadline to lodge an appeal (8 days from the communication of the decision, as provided by art. 68 Asylum Act) seriously jeopardises applicants' right to an effective remedy (Gyollai, 2018). Between 1993 and 2007, in the **UK**, applicants' appeal rights were successively eroded (Hirst and Atto, 2018). In 2017, acts removing one appeal stage from the international protection procedure were approved in **Germany** (Act to Enforce the Obligation to Leave the Country) and **Italy** (Law Decree No. 13/2017, art. 6(13). Italy also eliminated the automatic suspensive effect over a first instance negative decision. Moreover, in some RESPOND countries, the introduction of a so-called 'leapfrog appeal' was accompanied by further limitations of applicants' rights and legal guarantees. Indeed, the Law Decree No. 13/2017 in Italy provided that the appeal judge should found his/her decision upon a video recording of the first instance of the asylum applicant interview conducted by the determining authority, without cross-examination, admitted only in exceptional cases (art. 6). In **Greece**, no legal aid is provided to applicants willing to appeal a second instance negative decision (AIDA, Country Report: Greece, 2018). A *de facto* restriction of applicants' rights during the appeal process can be also observed in **Poland**, where a negative decision causes the automatic withdrawal of social benefits. Due to the tendency of the Appeal Courts to refuse suspensions, asylum seekers appealing a first instance negative decision often remain without any support (Szulecka et al., 2018). The **Austrian** Constitutional Court has clearly ruled that these

[57] ECHR, *Ilias and Ahmed v Hungary*, 14 March 2017, Application No. 47287/15. The Cout ruled that "the applicants' confinement for more than three weeks in a guarded compound which could not be accessed from the outside (even by their lawyer), had amounted to a de facto deprivation of their liberty. It dismissed the government's argument that the applicants could voluntarily leave the zone in the direction of Serbia, as this could potentially be used against their asylum claims and could amount to refoulement. Furthermore, the Court held that the detention did not have a precise legal basis, which made impossible for the applicants to initiate a proceeding contesting the lawfulness of the detention". Fur further details see http://www.asylumlawdatabase.eu/en/content/ecthr-ilias-and-ahmed-v-hungary-no-4728715-articles-3-and-5-%C2%A7%C2%A7-1-and-4-14-march-2017

practices are unlawful , when in 2004 the Court annulled the major part of a package of new provisions, which restricted appeal periods and applicants' rights during the appeal process. On this occasion, the Constitutional Court ascertained manifold violations of human rights, such as "the right to an effective remedy (new facts and evidence were not allowed in the second instance), physical and mental integrity (immediate enforceability of decisions), family life and property (confiscation of clothing and personal belongings)" (Josipovic and Reeger, 2018: 76). However, meanwhile, another reform that significantly prevents access to international procedures was passed. Indeed, in 2016, the federal government introduced an annual quota of asylum applications, which allows the government to suspend asylum proceedings once the quota limit is reached. Although the limit has not yet been exceeded in 2018, this measure dangerously threatens refugees' human rights, while disregarding national and international obligations (Obwexer, 2016).

Table 8 presents evidence of the growing restrictive approach throughout RESPOND countries. To avoid an overly simiplistic reading of the Table, it is worth noting that while the data on hotspots is self-explanatory, the interpretation of some of the other measures is more complex. For instance, with regards to push-back operations, Eurostat data clearly show that in 2017 all European RESPOND countries refused entry to non EU-citizens, but to a different extent (see Appendix, Table 11). And, as already highlighted, the size of the phenomenon matters, both in terms of governance and for people's lives. The same caveat on over-simplification applies to evaluating the admissibility and the accelerated procedures implemented. As we have described, each country has implemented these mesasures through different tools, generating variation in outcomes (see also AIDA 2016 and 2017).

***Table 8*. Evidence for a growing restrictive approach from 2011 to 2017**

	Main physical measures			**Procedural measures**			**Additional reforms affecting procedural rights related to the appeal stage**
	Push-backs	Hotspots	Border walls-fences	Admissibility Procedure	Accelerated Procedure	Procedure at the border or in transit zone	
Austria			Yes	Yes	Yes	No	
Greece	Yes	Yes	Yes	Yes	Yes	Yes	
Hungary	Yes		Yes	Yes	Yes	Yes	Yes
Iraq				No	No	No	
Italy		Yes		No	Yes	No	Yes
Germany				Yes	Yes	Yes	Yes
Lebanon				No	No	No	
Poland	Yes			Yes	Yes	No, but draft law aims to introduce it	Yes
Sweden				No	Yes	No	
Turkey			Yes	Yes	Yes	No	
UK				Yes	Yes	No	Yes

Source: Authors' elaboration

4.5 Security, streamlining or deterrence concerns?

Based on an analysis of the legal and physical barriers enacted in RESPOND countries, and particularly in terms of their concrete application, some relevant observations can be drawn. As discussed below, often tools intended to ensure security or conceived for smoothing and expediting the RSD procedure not only prove to be ineffective, but also evidence a strongly deterrent approach.

To this end, concerning physical barriers, the fence between **Hungary** and Serbia can be regarded as an illustrative case. Although it undoubtedly diverted a massive number of migrants towards Croatia, it constituted one of the main gateways to Europe (AIDA, Country Report: Hungary, 2018).

With reference to procedural legal devices, **Poland** provides an example of scarce efficacy. Here, the total duration of the accelerated procedure is limited to 30 days, with a further time limit of 7 days to appeal the decision. However, in practice, "the conditions for accelerated processing of a given application are often not ascertained until long after the 30-day window has already lapsed, which results in the procedure lasting the same amount of time as a standard application" (Szulecka et al., 2018: 613). Similar effects can be observed in **Greece**, where the very short time limits of the "fast-track border procedure" are in practice only effective against asylum applicants. Indeed, according to Law No. 4375/2016, appeals against first instance negative decisions must be submitted within 5 days (art. 61(1)d) and the Appeal authority must take a decision within the following 3 days. Despite these normative provisions, the decision-making at the appeal stage is, reportedly, extremely slow (EU Commission, 2017:6)[58]. Also time-frames for first-instance decisions are far above the ones proscribed by law in practice. While the 1-day deadline assigned to the applicant to prepare for the interview is always enforced, the 7-day time limit to complete the entire procedure is totally disregarded by authorities. Indeed, in December 2017, the average time for concluding the "fast-track border procedure" from pre-registration to the final first instance decision was 83 days (AIDA, Country Report: Greece, 2018: 69).

Additional data confirms the overall inefficacy of the special procedures mentioned above, coupled with a gross reduction in applicants' legal guarantees. **Hungary**, for instance, clearly displays such a dynamic. Until 2017, based on the "safe third country" concept, the Immigration and Asylum Office (IAO) kept declaring the inadmissibility of applications of third country nationals if they had stayed in or travelled through the territory of Serbia, as already mentioned, despite Serbian refusal to readmit them. The asylum act provides that, in this case, the IAO has to withdraw the inadmissibility decision and readmit the applicant (art. 51/A). However, the IAO failed to comply with this provision. As a result, asylum seekers had to submit their applications multiple times, with their application being admitted sometimes only after the fourth attempt. In the absence of legal support, some applicants did not understand the reasons for rejection, while others were subject to detention, pending removal to Serbia (AIDA, Country Report: Hungary, 2018). A similar situation can be observed in **Austria**, where asylum procedures are organized along a two-tier process, starting with the admissibility procedure. Pending the admissibility procedure, applicants are left in a "no-rights status". Indeed, during this phase, applying persons have to cooperate with institutions at any time, "have no legal residence and are merely tolerated within the territory of their Distribution or Reception Centre's district" (Josipovic and Reeger, 2018: 88). The violation of the district's borders is punished as an administrative offence and, in some cases, may lead to detention (Rossl and Fruhwirth, 2016).

The shortcomings that are evident - the failure to effectively expedite the RSD procedure; the compression of migrants' legal guarantees and the uncertainty of applicants' legal status - become even more visible in hotspots in **Italy** and **Greece**. Hotspots were first presented as part of the 2015 EU Agenda on Migration as a measure to relieve frontline Member States, helping them to cope with the unprecedented number of arrivals (Favilli, 2018). Hotspots were also conceived to be an operational support for relocation programs, aimed at reducing

[58] European Commission, Seventh report on the progress made in the implementation of the EU-Turkey statement, COM(2017) 470, 6 September 2017 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20170906_seventh_report_on_the_progress_in_the_implementation_of_the_eu-turkey_statement_en.pdf

pressure on frontline Member States by redistributing persons in 'clear need of protection' among EU Member States (EU Commission, 2015: 4, 6). However, the hotspots approach has failed to reduce any migratory pressures, while its contribution to relocation has remained far below expectations (Guild, Costello, Moreno-Lax 2017). As already mentioned, due to the limited outflow of incoming migrants, combined with a growing number of arrivals and a long waiting time for identification and registration, hotspots have reportedly been affected by a 'bottleneck effect' (EU Court of Auditors, 2017).

While intended to inject greater efficiency into the management of migration and, particularly, in the RSD process, the legal and procedural devices examined here in practice seem to also serve the objectives of containment and control of flows, with the end result that access to international protection procedures are curtailed (Zetter, 2007)[59].

[59] The author specifically refers to "a variety of extraterritorial instruments for interdiction - for example offshore processing, third country readmissions, bilateral return agreements, airport liaison officers". However, the analysis can be easily transposed also to the battery of legislative and policy reforms which have been enacted by European countries at national level during the last years.

5. Exploring the legal status provided to applicants and to beneficiaries of international or national forms of protection in RESPOND countries

The curtailment of migrants' rights and legal guarantees may be considered a secondary effect of reforms conceived for other purposes (i.e. expediting the RSD process). However, in certain cases, the reduction of rights is openly pursued as the very aim of asylum policies, and legislation has clearly been passed on the basis of deterrence concerns. From 2011 to 2017, as discussed below, several RESPOND countries enacted legal and policy interventions, which steadily eroded the rights of asylum applicants, refugees and the beneficiaries of international protection, sometimes even beyond the standards provided by the EU Qualification Directive.

In this regard, the **Swedish** case is particularly revealing. In 2016, new measures were proposed, aimed, among other things, at levelling down the rights of refugees and, particularly, of beneficiaries of subsidiary protection. These measures were heralded by the Swedish government as a means "to temporarily adjust the asylum regulations to the minimum level in the EU so that more people choose to seek asylum in other EU countries"[60]. The downgrading of rights and guarantees was explicitly founded on deterrence concerns and with the aim of staunching the flow of newcomers seeking protection. Indeed, although strongly criticized by scholars (Thielemanne, 2004; Mayblin and James, 2016), the slogan 'stricter rules - lower asylum applications' seems to have found wide support among RESPOND countries[61].

In the same vein, figures on recognition rates for asylum claims show a trend that is consistent with the overall downgrading of rights, specifically related to the status of beneficiaries of subsidiary protection. Indeed, in some RESPOND countries, the reduction of rights associated with the status of subsidiary protection is gradually being associated with a growing and preferential recourse to this form of protection. To this end, **Sweden** again offers a relevant example. In 2016, grants of subsidiary protection constituted the majority of positive decisions in Sweden. The same situation also applies in **Austria**, where a "pronounced shift from asylum to the more temporary forms of subsidiary and humanitarian protection" has been reported (Josipovic and Reeger, 2018: 67).

Section 5.3 explores national forms of protection across RESPOND countries, in an attempt to show their ambiguous nature. These specific forms of protection, provided in almost all RESPOND countries, undoubtedly offer a complementary protection to those who do not qualify for international protection. However, at the same time, what is offered is actually a "second-class" protection. Indeed, as we shall see, holders of national protection are granted a restricted number of rights compared to the number attached to the status of refugee or to beneficiaries of subsidiary protection. Furthermore, these forms of protection are conceived as

[60] Government Offices of Sweden, Government proposes measures to create respite for Swedish refugee reception, 24.11.2015, available at https://www.government.se/articles/2015/11/government-proposes-measures-to-create-respite-for-swedish-refugee-reception/.

[61] Karageorgiou, Downgrading asylum standards to coerce solidarity: Sweden as a case in point, 13.05.2016, available at http://eumigrationlawblog.eu/downgrading-asylum-standards-to-coerce-solidarity-sweden-as-a-case-in-point/

temporary and exceptional. Consequently, very short permits to stay and ample discretionary decision-making are often associated with the attribution of this particular status.

5.1 Downgrading the rights attached to the status of asylum applicants

As stated above, the majority of RESPOND countries' legislations converge toward the reduction of asylum applicants' rights.

In this sense, hotspots may be regarded as one of the main examples of this tendency, in which security considerations are combined with containment objectives. However, as has been said, hotspots do not represent an isolated case. In **Hungary**, according to recent data, 94% of asylum applicants are detained in transit zones or in detention centres, while "open reception centres are almost empty" (AIDA, Country Report: Hungary, 2018: 11). This is the result of the extension of the "8-Km rule" provided by Act XX of 2017, under which all asylum seekers, including unaccompanied minors over 14 years of age, are subject to a blanket transferral and *de facto* detention in the so-called "transit zones". In **Austria**, asylum seekers whose applications have been deemed admissible are obliged to register in a Province and to reside there for the whole RSD process. If applicants want to move to another province, a formal permission must be requested. In some cases, such as reiterated applications or when the concept of "safe country of origin" applies, applicants can be delegated to specific provinces by competent authorities (Josipovic and Reeger, 2018). In **Germany**, following Section 56 of the Asylum Act, asylum applicants are assigned to a reception centre and obliged to reside within the assigned district of the federal state, according to the so-called "residence obligation" (*Residenzpflicht*) (Chemin at al., 2018: 165). The same geographical restriction also applies in **Turkey**. According to art. 17 Law No. 5683, non-EU asylum applicants are required to reside in so-called 'satellite cities' assigned by the Ministry of Interior and have to seek permission in order to move outside the city. If this rule is contravened, the application is considered "implicitly withdrawn" and, as a result, applicants may be subject to deportation (Cetin et al., 2018: 773).

Beyond freedom of movement, asylum seekers are denied other fundamental rights, such as access to the right to work and welfare measures. Concerning the former, almost all RESPOND countries designed and implemented legislations which truncated the right to work for asylum seekers, though to very different extents. Hence, at the extreme end of the spectrum, there is **Hungary** where, following March 2017 amendments (Section 80/J(4) Asylum Act), a simple restriction in applicants' access to employment applies, infringing art. 15 of the EU Reception Directive. Instead of a general ban on access the labour market, in **Austria** asylum seekers are only allowed to engage in unpaid volunteering activities or to conduct small occupations within their reception centres. However, after special authorization by the Public Employment Service (*Arbeitsmarktservice*) and after 3 months of their application being deemed admissible, asylum applicants may be hired as seasonal workers, or they may obtain a work permit for an apprenticeship if they are below the age of 25. Since April 2018, applicants are also allowed to conduct small jobs in private households (Josipovic and Reeger, 2018; Biffl, 2017). A similar regulation can be observed in **Sweden**, where the right to work is granted to asylum seekers under certain conditions, namely: a) if applicants are able to identify themselves by providing identity documents or otherwise; b) if Sweden is the EU State

responsible for determining their asylum application approval; c) if the asylum seeker has a well-founded claim and did not receive a refusal of entry decision that was immediately enforceable. Moreover, it is noteworthy that in Sweden, asylum seekers may benefit from a package of 'early actions', which are meaningful activities aimed at promoting their knowledge of the Swedish language, society and job market. Concerning the latter, the Swedish public employment service also plays a crucial role, mapping the competencies of asylum seekers and providing them with services, including digital tools, aimed at improving their labour integration (Shakra et al, 2018: 681).

Other RESPOND countries impose time limits on access to the labour market. For instance, in **Poland** and the **UK**, asylum seekers are not allowed to work during the whole RSD procedure. However, this rule does not apply if the decision on an application has not been taken after a certain period of time (six months in Poland and one year in the UK) and if the delay cannot be attributed to the applicant. In **Germany** and **Italy** by contrast, asylum applicants are allowed to work after three and two months, respectively, from their applications.

Within the EU landscape, only **Greece** seems to represent an exception. In fact, according to Law No. 4375/2016, asylum applicants are entitled to the same rights to work and to welfare benefits as Greek citizens. However, in practice, this provision finds a very low application: asylum seekers struggle with the reluctance of Greek employers, who give priority to Greek citizens and EU nationals, and with some bureaucratic obstacles, such as the difficulty of opening a bank account. As a result, applicants largely resort to illegal employment, which automatically cuts them off from the enjoyment of a series of rights, such as social benefits, welfare allowances and child-care allowances (Petracou, 2018; Karantinos, 2016:3; Skleparis, 2018:3).

Conversely, no restriction to the right to work applies in **Iraq** in the Kurdistan region and in **Turkey**. In Turkey, foreigners under temporary protection (TP) are allowed to work under specific conditions established by the 'Regulation on Work Permits of Foreigners under Temporary Protection'. With the exception of seasonal workers, employers who want to hire holders of TPs have to apply for a work permit after having checked that there are no Turkish citizens who could be employed in that job. Foreigners under TP can be hired only in the same province where they are registered, provided that their number does not exceed "10% of the total workforce in any workplace" (Cetin et al., 2018: 767). However, in practice, as statistics show, obtaining a work permit is extremely difficult (Cetin et al., 2018: 736).

While the right to work involves different regulations, a blanket ban is in force on asylum seekers' right to family unification. Indeed, in all RESPOND countries, pending the RSD procedure, applicants are not allowed to apply for family unification, given the temporary nature of their status. However, what often happens is that the waiting period for the conclusion of the RSD process may last a year or even more. As a result, the fundamental right of family unity may be severely hindered for a long time.

5.2 Downgrading the rights attached to beneficiaries of international protection

Beyond asylum applicants' level of rights, the restrictive trends of the 2011-2017 reforms have also involved both refugee status and subsidiary protection holders.

Concerning refugees, a severe erosion of their fundamental rights can be observed, particularly with reference to the right to family reunification.

In **Turkey**, a blanket suspension of this right is in place as of 2017. In **Sweden** and **Greece**, refugees are entitled to family reunification, but they have to submit their application within 3 months from the granting of their refugee status. The same deadline is also provided by legislation in **Germany** and **Austria**. If a refugee fails to meet this deadline, further requirements are imposed in order to enjoy the right to family unity, namely the so-called material conditions.[62]

Even harsher reforms have affected the level of rights attached to the status of subsidiary protection, increasing the disparity in legal treatment when compared to rights associated with refugee status (AIDA, 2017b). Among RESPOND countries, a unified approach to beneficiaries of subsidiary protection and refugee status holders has been embraced only by **Italy** (except for rules on the acquisition of nationality) and the **UK**. Instead, in other countries, many differences in legal treatment between these two legal statuses occurs. As an example, only in 4 out of 10 RESPOND countries are holders of refugee status and subsidiary protection entitled to receive a residence permit of equal duration (5 years in **Italy** and the **UK**, 3 years in **Greece** and **Hungary**).

Even stricter restrictions have been imposed on the right to family reunification. In **Greece**, the legislation does not mention holders of subsidiary protection among those entitled to family reunification (Petracou, 2018). Currently, also in **Sweden**, beneficiaries of subsidiary protection who apply for asylum after 24 November 2015 are fully excluded from the right to family unity (Shakra et al., 2018). The same applies in **Germany**, where the right to family reunification has been suspended for beneficiaries of subsidiary protection who have been granted the status between 17 March 2017 and July 2018.

Other countries impose more restrictive conditions for family reunification on beneficiaries of subsidiary protection, compared to refugees. For example, in **Austria**, beneficiaries of subsidiary protection who want to apply for family reunification have to wait three years after having been granted the status. Further criteria to apply for family reunification also concern material conditions, such as accommodation, income and health insurance. Of RESPOND countries, only **Italy** and the **UK** do not impose material conditions on beneficiaries of subsidiary protection who want to apply for family reunification (AIDA, 2017b).

Finally, restrictions of rights also include freedom of movement. Among RESPOND countries, an emblematic example is offered by **Germany**, where beneficiaries of international protection are obliged to reside in the same Federal State where their application has been processed under the 'residence rule' (*Wohnsitzauflage*) (Section 12a Residence Act). At the federal level, several states also impose the requirement of residing in a specific local municipality. In both cases, the residence rule lapses after three years from the granting of international protection (Chemin et al., 2018).

[62] Under the EU Family Reunification Directive (Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification), the material conditions which the sponsor is required to demonstrate in order to apply for family reunification are: a) "accommodation regarded as normal for a comparable family"; b) "sickness insurance"; c) "stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned" (art. 7(1)).

5.3 Delving into the fragmented universe of the national forms of protection and relative status

National protection is a residual form of protection for those who are not eligible for refugee status or subsidiary protection, but cannot be removed from the country. Although provided in almost all EU countries, national forms of protection fall outside the purview of the Common European Asylum System and its harmonization aim. This explains the high variety of regulation throughout RESPOND countries. Significant differences encompass, among others, the grounds on which national protection is granted, the length of related permits of residence and the spectrum of rights attached to the status of beneficiaries of national protection.

Despite such a diversified landscape, some relevant commonalities can nonetheless be outlined. National forms of protection in RESPOND countries may be organized under the following categories: a) forms of "humanitarian protection", which are strongly linked to the principles entrenched in the Geneva Convention and the EU *acquis*; b) forms of "tolerated stay" or similar measures, which rely upon the principle of *non-refoulement* and are connected to the deprivation/violation of rights the migrant will suffer in the case of return to the country of origin; c) "other forms of national protection", ranging from national protection bestowed on the grounds of "national interest" to national protection granted to victims of trafficking (EMN, 2010: 4-6).

Forms of "humanitarian protection" are granted in Italy, Poland and the UK. In **Italy**, the status is granted to foreigners who do not meet the requirements for international protection, but for whom there are "serious reasons, of a humanitarian nature, or resulting from constitutional or international obligations" that require protection (art. 5 Consolidated Law on Immigration). A 2 year (renewable) permit to stay is issued to beneficiaries of humanitarian protection, who also benefit from a reduced range of rights compared to beneficiaries of international protection. Designed for temporary protection only, the humanitarian permit of stay does not allow migrants to obtain the so-called "EC permit for long-term residents" (art. 9(3)) of the Consolidated Law on Immigration). Moreover, foreigners who obtain the status of "humanitarian protection" are excluded from the right to family reunification. Due to highly discretionary administrative practices, beneficiaries of humanitarian protection experience extreme difficulties enjoying social assistance and social benefits, despite the fact that they should be entitled to the same social rights as Italian citizens (arts. 34 (5) and 27 (1) of the Consolidated law on Immigration) (Pannia et al. 2018). In **Poland**, a permit to stay for "humanitarian protection" is granted to foreigners whose return cannot be enforced due to "humanitarian" reasons (chapter 3 of part VIII of the Law on Foreigners), encompassing family issues, children's rights, the risk of being tortured or forced to work or the risk of being deprived the right to a fair trial upon return. Beneficiaries of humanitarian protection have reduced access to social assistance (Szulecka et al., 2018). Conversely, in the **UK**, beneficiaries of humanitarian protection have the same social rights and the same rights to family reunion as British nationals. However, in practice, difficulties effectively accessing these rights are reported also in this case (AIDA, 2018; Willman and Knafler, 2009:35). According to the UK legal framework, humanitarian protection is bestowed upon foreigners who do not meet the criteria for international protection, but who would nevertheless face serious harm if they were returned to their country of origin (Immigration Rules, Part 11 paras 339c and 339a). A permit to stay for five years is granted to holders of humanitarian protection, and they may also apply for an indefinite leave to remain (Hirst and Atto, 2018).

Beyond humanitarian protection, the **UK** also provides for other forms of national protection: namely "discretionary leave" and "restricted leave". Based on "exceptional humanitarian or compassionate grounds," discretionary leave may be granted to foreigners who do not qualify for international or humanitarian protection. The granting of discretionary leave encompasses a wide range of cases, such as situations of severe illness when return would constitute inhuman or degrading treatment under art. 3 of the ECHR and situations involving victims of trafficking or unaccompanied foreign minors who do not qualify for other statuses of protection and cannot be returned to their country of origin. The duration of stay granted depends on the individual case, but generally does not exceed 30 months. A short duration of stay is also provided in cases of "restricted leave", when the length of time granted is usually a maximum of six months (renewable). This other form of national protection is bestowed on foreigners who are not eligible for international protection (e.g. because they committed a serious crime), but whose human rights will be undermined in the case of a removal to their country of origin. This status entails a significant curtailment of rights: overall, holders of restricted leave are not entitled to reuniting with their family, to study or to work (or in some cases can access employment only under severe restrictions). Neither the right to housing nor the right to social benefits are afforded to them. Freedom of movement can also be restricted, and permission has to be granted in order for the individual to move houses (Hirst and Atto, 2018).

As for discretionary and restricted leave, the national form of protection of "tolerated stay" in **Hungary** also relies upon the principle of *non-refoulement*. According to art. 25/A of the Asylum Act, this national protection is granted to foreigners who do not meet the requirements for international protection, but who, in case of return, "would face a real risk of persecution for reasons of race, religion, ethnicity, membership of a particular social group, political opinion, or would be exposed to danger of being sentenced to death, being tortured or subjected to other inhuman treatment or punishment" (Gyollai, 2018: 320). Similarly, the so called "National Ban of Deportation" provided in **Germany** pertains to the same category of national protection. Under Section 60 V and VII of the Act on Residence, deportation is prohibited under the terms of the European Convention of Human Rights or when the foreigner is at risk of "substantial concrete danger to his/her life and limb or liberty" (Chemin et al., 2018: 161). In practice, this form of protection is often granted on health grounds and beneficiaries are entitled to a residence permit of at least one year (AIDA, Country Report: Germany, 2018: 47). In **Austria**, the so-called "toleration card" is issued when an order of removal cannot be enforced due to a variety of reasons, including family unity, personal integrity, health issues, but also technical obstacles to the transfer. Aside from access to integration programs, beneficiaries of this form of national protection are entitled to an ample range of rights, including the right to work and to access social welfare measures. However, in practice, these rights are often disregarded by authorities (Josipovic and Reeger, 2018; Rosenberger and Küffner, 2016). Another form of "tolerated stay" is also provided in **Poland**. Here, a permit for "tolerated stay" is granted to foreigners who do not meet the criteria for international and the humanitarian protection, but for whom removal is impossible due to technical obstacles or because the foreigner would face threats to his/her life, torture or be forced to work in the country s/he would be sent. Holders of this national form of protection have limited access to social assistance compared to beneficiaries of international protection. Finally, Poland also grants another form of national protection: the so-called "asylum", which is granted when "a good interest to the Republic of Poland" justifies the foreigner's stay (art. 90 of the Law on Protection). This particular form of

national protection has been granted to Ukrainians with Polish roots fleeing the military conflict in Western Ukraine (Szulecka et al., 2018: 616).

In **Turkey** two national forms of protection have been set up to complement the 'geographical limitation' policy on the 1951 Geneva Convention: "temporary protection" and "conditional refugee status". Temporary protection (hereinafter also TP) is a status bestowed to foreigners who fled their country of origin and arrived in Turkey "in a mass influx situation seeking immediate and temporary protection" (art. 91 of the Law on Foreigners and International Protection). Thus far, it has been granted only to Syrian nationals. Conceived as an emergency measure, *de facto*, the TP is currently the main legal tool for Turkey's response to migration flows from Syria. Holders of temporary status have access to health, education, employment, social assistance and interpretation services. However, less comprehensive rights and a less secure status are a basic feature of this legal condition when compared to refugees (Cetin et al., 2018). The second national form of protection is "conditional refugee protection", which is granted to foreigners who qualify for refugee status, but come from a non-EU country. Beneficiaries of this status are entitled to a short stay (1 year) and a reduced set of rights compared to the one afforded to beneficiaries of refugee and subsidiary protection status. In particular, the right to family reunification is excluded together with "the prospect of long-term legal integration in Turkey" (AIDA, Country Report: Turkey, 2018: 97). Freedom of movement, as well, is restricted for holders of "conditional refugee" status who are required to reside in specific provinces and to regularly report to local authorities.

What is observed in Turkey may be considered an overall trend in terms of national forms of protection across RESPOND countries. Indeed, the overview above demonstrates a clear pattern, whereby short-time permits of stay and low standards of rights are attached to the status of national forms of protection. An even more extreme case can be observed in **Sweden**. According to section 2a, chapter 4 of the Swedish Aliens Act, a residence permit for "persons otherwise in need of protection" is granted to foreigners who do not qualify as refugees or beneficiaries of international protection, but, in cases of return, risks being subjected to human trafficking or environment disaster or very serious health issues (Shakra et al., 2018). However, since July 2016, the right to access this national form of residence has been almost removed (AIDA, 2018).

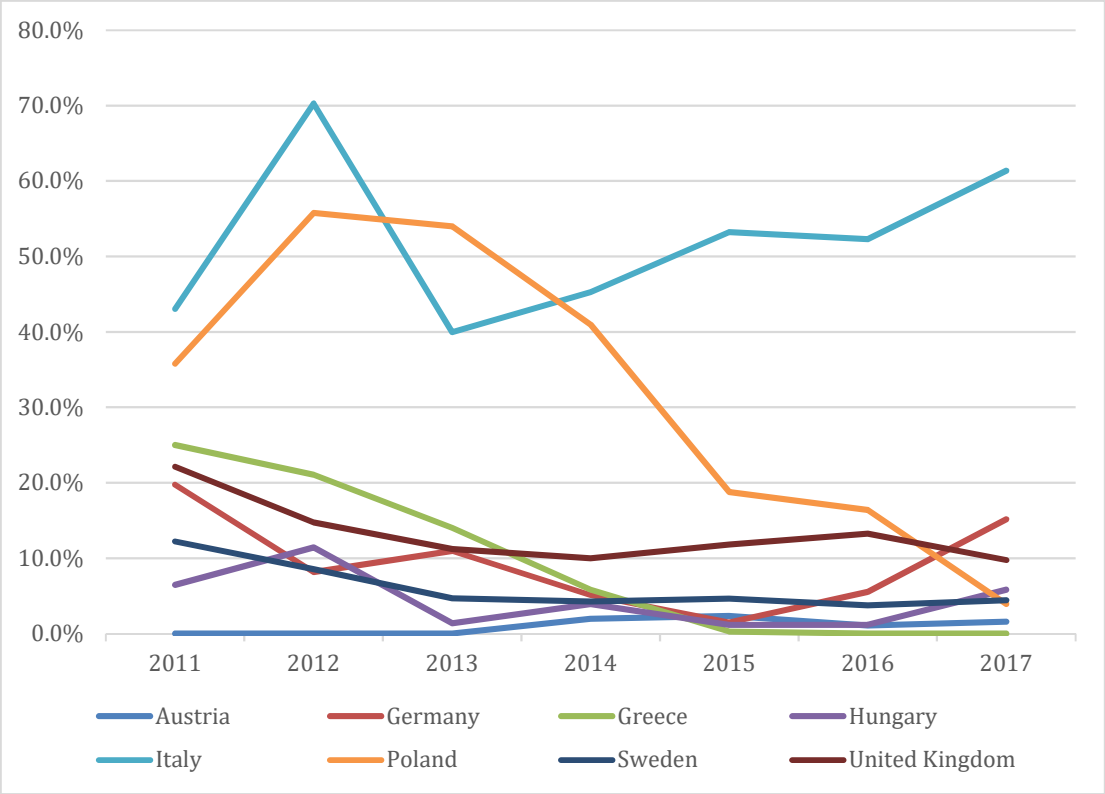
Hence, whereas it is undeniable that "the national forms of protection continue to play an important complementary role to the protection system created at the EU level (EMN, 2010:7), a very real gap of protection still needs to be effectively addressed. Indeed, beneficiaries of statuses such as "humanitarian protection" or "tolerated stay" are entitled to a reduced set of rights. Moreover, national forms of protection provide for temporary status, with documents valid often for only a few months. Finally, a condition of legal uncertainty strongly affects the granting of this status.

In this regard, it can be observed that grounds underpinning the granting of national forms of protection are often not clearly and thoroughly specified by legislative provisions. The terms used in the normative provisions regulating national forms of protection are very vague. Clear examples of such dynamics are, for instance: the "serious reasons of humanitarian nature" required to obtain humanitarian protection in **Italy**; the "exceptional humanitarian or compassionate grounds" required to obtain discretionary leave in the **UK**; the "substantial and concrete danger to his/her life and limb or liberty," which has to occur for granting the national ban on deportation in **Germany**; and the "good interest to the Republic of Poland" to be present

in the case of asylum status recognition in **Poland**. In all these cases, the potential applicants falling within this status have to rely on decision-makers' discretion.

Interestingly, an increasing recourse to these national forms of protection can be observed in some RESPOND countries. In this regard, Figure 3 shows that first instance decisions granting a permit to stay on humanitarian reasons have increased in **Hungary**, **Germany** and **Italy**.

Figure 3. **First instance decisions granting an authorisation to stay for humanitarian reasons (% of total positive decisions)**



Source: Authors' elaboration on Eurostat data

The overview sketched above reveals the fragmentation of national forms of protection across RESPOND countries, the low level of rights afforded, and the legal precariousness of this status coupled with a growing recourse to this form of protection (EMN, 2010).

6. Caught in a legal limbo

On 25 June 2018, a rescue ship of the non-governmental organization Lifeline was refused permission to dock at Italian and Maltese harbours. The migrants rescued by the ship were stuck at sea for several days, under the threat of bad weather and in urgent need of medical care. Weeks before, the rescue ship Aquarius was stranded at sea without permission to anchor on Italian coasts. There were more than 600 migrants on the Aquarius, constrained in a limbo for days.

These events paradigmatically point to the condition of uncertainty that characterizes the legal status of migrants throughout all RESPOND countries.

In some cases, the uncertainty mainly results from a lack of sound legal norms to secure the status of asylum seekers and refugees. This is the case in **Lebanon**, for instance, where a comprehensive framework to regulate the presence and the entitlements of refugees and asylum seekers is still lacking. On 31 December 2014, following the so-called "October Policies", Syrians were admitted to Lebanon only as migrant workers or under the so-called "humanitarian exception". However, both these statuses have *de facto* been almost impossible for Syrians to access. On the one hand, the "humanitarian exception" was reserved for "unaccompanied and/or separated children with a parent already registered in Lebanon, persons living with disabilities with a relative already registered in Lebanon, persons with urgent medical needs for whom treatment in Syria is unavailable, and persons who will be resettled in third countries" (Jagarnathsingh, 2018: 526). On the other hand, the regularization channel based on work was extremely hard to obtain in practice, due to bureaucratic requirements (such as a valid passport and entry slip) and increased residency fees, difficult to meet for displaced people. A high discretionality on the part of authorities reportedly further complicates the possibility of obtaining legal status. Meanwhile, Syrians already registered at UNHCR could not regularize their legal status and were forced to 'pledge to not work', thus remaining excluded from the Lebanese labour market. In 2016, the pledge not to work was substituted with a "pledge to abide by Lebanese laws," and, in 2017, residency fees were waived for Syrians who wanted to regularize their status. Nevertheless, thus far, the situation remains highly precarious, with about 76% of Syrians reportedly being without legal status. As a result, a vast number of Syrians are in a legal limbo, with no access to basic rights and social services, such as healthcare. This condition of legal uncertainty is automatically transmitted to children, who are born into statelessness. Meanwhile, Syrians without legal status are subject to high risks of exploitation and/or abuse (Jagarnathsingh, 2018).

The absence of a refugee status also means it is difficult to collect and access reliable and comparable data[63], and consequently an effective analysis on asylum applicants and refugees in Lebanon is hindered.

A similar situation of a legal gap also applies in **Turkey**, as a consequence of the specific geographical limitation ratified by Turkey as part of the 1951 Convention. The two legal statuses of "temporary protection" and of "conditional refugee status"[64], intended to complement international protection status, do not offer a sound framework for upholding the

[63] See section 2.

[64] For further details on the "temporary protection" and on the "conditional refugee status", see above para 5.3.

rights of refugees and asylum seekers. On the one hand, as observed by Cetin et al., "temporarily protected individuals face the risk to be subject to an insecure status for an indefinite time, given that TPR the main driver of the temporary protection, is a secondary legal source and enables the administration to use a flexible and wide discretion. Therefore, there is a significant risk of protracted refugee situations where there is no available durable solution other than repatriation" (2018: 790). Meanwhile, on the other hand, the "conditional refugee status" only provides refugees with a reduced set of rights, including the right to temporarily stay in Turkey until resettlement in a third country. However, in practice, due to the decreasing quotas of safe third countries, refugees under conditional refugee status stay in Turkey for a long time and remain "in limbo" (Cetin et al., 2018: 788).

European RESPOND countries offer some revealing cases as well. Quite interestingly, the more blatant and open forms of legal uncertainty are imposed on newly arrived immigrants or those caught immediately at the border. For instance, this is the case if we consider the "no-rights status" to which newly arrived asylum applicants are subjected in **Austria**. As already observed[65], immediately upon arrival, pending the admissibility procedure, asylum applicants receive a "procedure card", meaning that their stay in Austria is "tolerated" and this "toleration" only applies to the district of the reception centre, from which migrants are not allowed to move. Another indicative case can be found in **Hungary**. As already mentioned[66], as of March 2017, asylum seekers may only submit their application in a transit zone where they have to remain for the whole duration of the procedure, without a permit authorizing their stay in the territory of Hungary. Emblematically, the Hungarian government has named the transit zone a "no man's land", arguing that it is not part of Hungarian territory, thus putting migrants' legal status under severe threat. Following this pattern, for instance, the Hungarian government has denied that push-backs of migrants in the transit zone can be qualified as forced returns. The ECHR has already ruled that confinements in transit zones are tantamount to unlawful detention (*Ilias and Ahmed v Hungary*, 14 March 2017, Application No. 47287/15)[67]. Currently, the government's appeal is pending against this judgment before the Grand Chamber of the ECHR.

Further evidence of legal uncertainty affecting newly arrived immigrants can be found in the hotspots. In **Greece**, as already mentioned[68], following the EU-Turkey statement, hotspots turned into closed detention centres after 20 March 2016, where new arrivals were confined, waiting for removal to Turkey if they did not seek asylum or their application was rejected. In 2017, the practice of detention was replaced by a blanket geographical limitation, requiring migrants to remain on the island on which they were placed and to reside at the hotspot centre. Waiting periods may last up to 1 year, during which asylum applicants suffer not only from substandard conditions, but also from uncertainty about their status and their future (AIDA, Country Report: Greece, 2018; Petracou et al.: 2018; Guild, Costello and Moreno-Lax, 2017).

Further uncertainty also derives from a lack of clear and comprehensive legal frameworks. In **Italy**, new arrivals are stuck in hotspot facilities for long periods, sometimes subjected to a "de facto" detention" for several weeks (Chamber Inquiry Committee 2016 a and b). This

[65] See above section 4.5.

[66] See above sections 4.1. and 4.3.

[67] See above note 43.

[68] See above section 4.2.

limitation of liberty in the lack of a law regulating it, raises severe problems of constitutional legitimacy, under art. 13 of the Constitution[69]. Indeed, hotspots in Italy are currently regulated only through standard operating procedures (SOPs)[70], while a detailed regulation of operations conducted in hotspots is still lacking at the legislative level (Neville, Sy and Rigon 2016). Only recently, Law No. 47/2017 introduced an explicit reference to hotspots, without providing, however, a clear and standardised procedure. Hence, as pointed out by the Council for the Judiciary (CSM 2017), and ASGI and Magistratura Democratica (2017), the problem of a legal basis remains open, thus boosting legal uncertainty and arbitrariness, with a high fragmentation of practices performed across hotspot facilities (OHCHR 2016).

As the Italian experience reveals, serious legal voids in hotspot regulations have contributed to creating and boosting a condition of prolonged and generalized legal uncertainty about applicants' protection and their rights. The same can be argued in the case of **Greece**, where Law No. 4375/2016 failed for a long time to regulate the nature and extent of the involvement of EU agencies in different procedures. This contributed to a confusion of roles and responsibilities (Guild, Costello, Moreno-Lax 2017) leading to low-quality and discretionary practices, particularly in asylum proceedings, such as the already mentioned involvement of EASO caseworkers in asylum applicants' interviews (AIDA, Country Report: Greece, 2018).

[69] The SOPs clearly states that "the person can leave the Hotspot only after having been photoprinted as envisaged by current regulations and if all the security checks in national and international police databases have been completed" (p. 8). However, according to the art. 13 of the Constitution, "No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law. In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the police may take provisional measures that shall be referred within 48 hours to the Judiciary for validation and which, in default of such validation in the following 48 hours, shall be revoked and considered null and void".

[70] STANDARD OPERATING PROCEDURES (SOPs) applicable to ITALIAN HOTSPOTS, 2015, p. 15, available at http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf

7. Concluding remarks

The condition of precariousness in which migrants are embedded can be regarded as a common thread running throughout this whole comparative report, tying together all RESPOND countries. This pervasive uncertainty encompasses, in many instances, every stage of the national migration system, from the operations of rescue and succour, to the RSD and the set of entitlements bestowed on migrants after the obtainment of protection or of a permit to stay.

In the aftermath of the "refugee crisis", states have attempted to inject greater order and efficacy into the management of migration. However, this has often resulted in a rapidly evolving legislation and in a complex and fragmented legal framework, difficult to correctly and consistently implement and to duly interpret and apply. The institutional landscape has added further complexity, given the multiplicity of entities involved in the "multi-level" and subsidiary-based management of migration, with different, often blurring, responsibilities. As a consequence, the legal enforcement and guarantee of fundamental rights is jeopardised and too often it depends largely on the discretionary power of single offices and individuals.

Furthermore, a toolbox of new measures and procedures has been enacted by States, with the aim of streamlining and smoothing out the RSD procedure. However, often, the procedural simplification has been realized at the price of the principles of transparency and predictability, through the introduction of exceptions, such as the "crisis situation caused by mass migration" put in place in Hungary. This is also clear if we consider the restrictions of rights and legal guarantees, such as the reduction of appeal rights and the elimination of automatic suspensive effects in many RESPOND countries.

Caught in a limbo, as of December 2016, about a million asylum seekers still wait to know if they are deemed in need of protection or not[71]. Meanwhile, the suspension of rights, such as the right to family reunification in Sweden and the uneven standards recognized for applicants on the basis of specific forms of protection, further boost the uncertainty of migrants' legal status and contribute to creating what has been called "the asylum lottery" (AIDA, 2017b)[72]. Putting people in limbo as such, also has severe psychological health consequences, a topic to be further studied in WP5 within RESPOND.

In sum, the legal uncertainty that asylum applicants face in various RESPOND countries can sometimes be seen as a formidable tool of migration containment and control. Furthermore, the precariousness of legal statuses not only weakens asylum applicants, raising frustration and anxiety, but also broadens the discretion of authorities, paving the way to a legal twilight zone.

[71] Pew Research Center, Still in Limbo: About a Million Asylum Seekers Await Word on Whether They Can Call Europe Home, http://www.pewglobal.org/2017/09/20/a-million-asylum-seekers-await-word-on-whether-they-can-call-europe-home/

[72] According to AIDA, "European countries make widely different determinations as to who needs international protection, what form of protection is needed and what rights should be attached thereto" (2017b, 6).

Appendix

Table 1. **Population change (natural population change) in selected countries, 2011-2017 (thousand)**

	2011	2012	2013	2014	2015	2016	2017
Austria	1,630	-484	-196	3,470	1,308	7,006	4,363
Germany	-189,643	-196,038	-211,756	-153,429	-187,625	-118,765	-148,000
Greece	-4,671	-16,297	-17,660	-21,591	-29,336	-25,887	-36,007
Hungary	-40,746	-39,171	-37,153	-33,013	-39,440	-31,737	-37,231
Italy	-46,842	-78,697	-86,436	-95,768	-161,791	-141,823	-190,910
Poland	12,915	1,469	-17,736	-1,307	-25,613	-5,752	-870
Sweden	21,832	21,239	23,191	25,931	23,963	26,443	23,444
Turkey	866,045	876,864	910,968	947,383	920,565	887,636	865,274
United Kingdom	255,544	243,946	203,413	207,068	175,474	178,731	147,871

Source: Eurostat

Table 2. **Population change (net migration plus statistical adjustment) in selected countries, 2011-2017 (thousand)**

	2011	2012	2013	2014	2015	2016	2017
Austria	31,327	44,223	56,122	73,670	114,237	65,388	45,039
Germany	295,478	391,884	455,473	583,503	1,165,772	464,734	476,347
Greece	-32,315	-66,494	-59,148	-47,198	-44,934	10,332	6,682
Hungary	12,755	16,044	5,720	11,219	14,354	-1,187	18,041
Italy	76,359	369,717	1,183,877	108,712	31,730	65,717	85,438
Poland	-11,841	-2,726	-26,943	-10,935	-12,792	11,507	4,593
Sweden	45,453	51,799	65,780	76,560	79,699	117,693	101,645
Turkey	135,236	26,251	129,512	80,657	124,584	186,182	130,380
United Kingdom	217,227	166,048	242,445	316,942	331,917	247,286	230,000

Source: Eurostat

Table 3. **Total number of emigrants in selected countries, 2011-2016 (thousands)**

	2011	2012	2013	2014	2015	2016
Austria	51,197	51,812	54,071	53,491	56,689	64,428
Germany	249,045	240,001	259,328	324,221	347,162	533,762
Greece	92,404	124,694	117,094	106,804	109,351	106,535
Hungary	15,100	22,880	34,691	42,213	43,225	39,889
Italy	82,461	106,216	125,735	136,328	146,955	157,065
Poland	265,798	275,603	276,446	268,299	258,837	236,441
Sweden	51,179	51,747	50,715	51,237	55,830	45,878
United Kingdom	350,703	321,217	316,934	319,086	299,183	340,440

Source: Eurostat

Table 4. **Number of asylum applicants (non-EU) in selected countries, 2011-2017**

	2011		2012		2013		2014		2015		2016		2017	
	Asylum applicant	First time applicant	Asylum applicant	First time applicant	Asylum applicant	First time applicant	Asylum applicant	First time applicant	Asylum applicant	First time applicant	Asylum applicant	First time applicant	Asylum applicant	First time applicant
Austria	14,420	.	17,415	.	17,500	.	28,035	25,675	88,160	85,505	42,255	39,875	24,715	22,455
Germany	53,235	45,680	77,485	64,410	126,705	109,375	202,645	172,945	476,510	441,800	745,155	722,265	222,560	198,255
Greece	9,310	9,310	9,575	9,575	8,225	7,860	9,430	7,585	13,205	11,370	51,110	49,875	58,650	56,940
Hungary	1,690	.	2,155	.	18,895	18,565	42,775	41,215	177,135	174,435	29,430	28,215	3,390	3,115
Italy	40,315	40,320	17,335	17,170	26,620	25,720	64,625	63,655	83,540	83,245	122,960	121,185	128,850	126,550
Poland	6,885	4,985	10,750	9,175	15,240	13,970	8,020	5,610	12,190	10,255	12,305	9,780	5,045	3,005
Sweden	29,650	29,630	43,855	43,835	54,270	49,225	81,180	74,980	162,450	156,110	28,790	22,330	26,325	22,190
United Kingdom	26,915	25,870	28,800	27,885	30,585	29,640	32,785	32,120	40,160	39,720	39,735	39,240	33,780	33,310

Source: Eurostat

Table 5. **Share of males and females (non-EU) first time asylum applicants, 2011-2017 (thousands)**

	2011		2012		2013		2014		2015		2016		2017	
	Males	Females	Males	Females	Males	Females	Males	Females	Males	Females	Males	Females	Males	Females
Austria	.	.	.	.	.	.	19,395	6,280	61,845	23,660	26,530	13,350	13,240	9,215
Germany	28,840	16,805	39,745	24,610	69,305	40,010	115,000	57,830	304,675	136,265	472,615	247,755	119,700	78,390
Greece	7,155	2,130	7,925	1,655	.	.	5,950	1,640	8,240	3,130	30,995	18,875	38,625	18,320
Hungary	.	.	.	.	13,020	1,005	31,295	9,915	138,510	35,905	21,700	6,515	1,880	1,230
Italy	35,380	4,940	14,745	2,425	22,195	3,525	58,900	4,760	73,660	9,580	102,945	18,245	106,075	20,475
Poland	2,610	2,375	5,040	4,135	7,165	6,805	2,960	2,645	5,145	5,105	5,030	4,750	1,635	1,370
Sweden	18,930	10,700	27,745	16,090	31,150	18,075	50,455	24,525	110,135	45,980	12,955	9,375	13,045	9,145
United Kingdom	17,070	8,775	18,425	9,440	19,730	9,890	21,275	10,810	29,100	10,590	26,970	12,245	22,095	11,170

Source: Eurostat

Table 6. **First instance decisions on (non-EU) asylum applications, selected years (thousands)[73]**

	2011			2015			2016			2017		
	Total positive	Rejected	Total	Total positive	Rejected	Total	Total positive	Rejected	Total	Total positive	Rejected	Total
Austria	4,085	9,155	13,240	15,045	6,050	21,095	30,370	12,045	42,415	30,000	26,285	56,285
Germany	9,675	30,605	40,280	140,910	108,370	249,280	433,905	197,180	631,085	261,620	262,565	524,185
Greece	180	8,490	8,670	4,030	5,610	9,640	2,715	8,740	11,455	10,455	14,055	24,510
Hungary	155	740	895	425	2,915	3,340	430	4,675	5,105	1,290	2,880	4,170
Italy	7,145	16,960	24,105	29,615	41,730	71,345	35,405	54,470	89,875	31,795	46,440	78,235
Poland	475	2,740	3,215	640	2,870	3,510	305	2,185	2,490	510	1,550	2,060
Sweden	8,805	17,895	26,700	32,360	16,210	48,570	66,585	29,185	95,770	26,775	34,285	61,060
United Kingdom	7,235	15,715	22,950	13,950	24,115	38,065	9,935	20,980	30,915	8,560	19,205	27,765

Source: Eurostat

[73] Here and in the following tables, we display data for key years: 2011 and 2017, which represent the starting and ending years of the analysis conducted within the RESPOND project, and 2015 and 2016, which have been selected as representative of the most critical years in terms of arrivals and applications. For a complete overview (2011-2017) see the RESPOND Database D1.4.

Table 7. **First instance positive decisions on (non-EU) asylum applications by status, selected years (thousands)**

	2011			2015			2016			2017		
	Refugee status	Humanitarian status	Subsidiary protection status	Refugee status	Humanitarian status	Subsidiary protection status	Refugee status	Humanitarian status	Subsidiary protection status	Refugee status	Humanitarian status	Subsidiary protection status
Austria	2,480	.	1,605	12,590	355	2,100	24,685	330	5,355	21,335	470	8,195
Germany	7,100	1,910	665	137,135	2,070	1,705	256,135	24,080	153,695	123,895	39,655	98,065
Greece	45	45	85	3,665	10	355	2,470	0	245	9,420	0	1,035
Hungary	45	10	100	145	5	275	155	5	270	105	75	1,110
Italy	1,805	3,075	2,265	3,575	15,770	10,270	4,800	18,515	12,090	5,895	19,515	6,385
Poland	155	170	155	350	120	165	110	50	150	150	20	340
Sweden	2,335	1,075	5,390	12,740	1,495	18,125	16,875	2,500	47,210	13,330	1,185	12,265
United Kingdom	5,515	1,600	125	12,175	1,650	125	8,410	1,315	210	7,475	835	250

Source: Eurostat

Table 8. **Final decisions on (non-EU) asylum applications, selected years (thousands)**

	2011			2015			2016			2017		
	Total positive	Rejected	Total	Total positive	Rejected	Total	Total positive	Rejected	Total	Total positive	Rejected	Total
Austria	1,780	7,540	9,320	2,705	2,390	5,095	1,380	2,100	3,480	3,925	3,030	6,955
Germany	3,370	21,200	24,570	7,305	86,535	93,840	11,305	112,395	123,700	63,750	94,335	158,085
Greece	410	215	625	1,845	5,810	7,655	5,830	6,655	12,485	1,560	7,985	9,545
Hungary	50	275	325	40	435	475	5	765	770	0	0	0
Italy	325	1,175	1,500	20	5	25	4,770	5,000	9,770	3,335	9,255	12,590
Poland	100	2,175	2,275	55	1,820	1,875	85	1,200	1,285	50	1,720	1,770
Sweden	1,820	11,375	13,195	2,245	7,435	9,680	3,175	8,950	12,125	4,460	14,460	18,920
United Kingdom	7,250	10,415	17,665	4,695	7,735	12,430	7,145	6,595	13,740	7,085	5,385	12,470

Source: Eurostat

Table 9. **Final positive decisions on (non-EU) asylum applications by status, selected years (thousands)**

	2011			2015			2016			2017		
	Refugee status	Humanitarian status	Subsidiary protection status	Refugee status	Humanitarian status	Subsidiary protection status	Refugee status	Humanitarian status	Subsidiary protection status	Refugee status	Humanitarian status	Subsidiary protection status
Austria	1,325	.	460	1,740	115	850	835	190	355	2,985	335	605
Germany	1,680	1,340	350	5,170	1,615	525	8,515	1,935	855	30,590	10,765	22,395
Greece	195	135	80	1,355	140	355	770	4,900	160	510	955	95
Hungary	5	5	40	25	0	15	5	0	0	0	0	0
Italy	65	260	0	0	5	10	385	2,020	2,365	385	500	2,450
Poland	5	40	55	10	15	30	20	15	50	0	20	30
Sweden	455	640	725	745	1,175	325	1,120	875	1,180	1,890	1,240	1,330
United Kingdom	4,010	3,060	175	4,030	485	180	6,170	595	375	6,170	550	370

Source: Eurostat

Table 10. **First residence permits issued by reason, selected years (thousands, percentage of total in parenthesis)**

	2011					**2015**					**2016**				
	Family	Education	Employment	Other	Total	Family	Education	Employment	Other	Total	Family	Education	Employment	Other	Total
Austria	13,729 (38.7%)	5,031 (14.2%)	3,244 (9.2%)	13,438 (37.9%)	35,442	15,529 (30.3%)	7,063 (13.8%)	3,598 (7.0%)	25,092 (48.9%)	51,282	15,635 (31.2%)	5,770 (11.5%)	3,337 (6.7%)	25,324 (50.6%)	50,066
Germany	46,782 (42.4%)	27,568 (25%)	18,659 (16.9%)	17,340 (15.7%)	110,349	133,893 (68.7%)	16,683 (8.6%)	13,451 (6.9%)	30,786 (15.8%)	194,813	136,982 (27.1%)	46,083 (9.1%)	39,552 (7.8%)	282,232 (55.9%)	504,849
Greece	12,724 (59.8%)	1,297 (6.1%)	5,568 (26.2%)	1,680 (7.9%)	21,269	19,175 (51.2%9	871 (2.3%)	1,111 (3.0%)	16,307 (43.5%)	37,464	23,598 (53.5%)	902 (2.0%)	2,133 (4.8%)	17,439 (39.6%)	44,072
Hungary	4,165 (28%)	4,067 (27.3%)	3,785 (25.4%)	2,876 (19.3%)	14,893	5,715 (27.5%)	5,876 (28.3%)	4,209 (20.3%)	4,951 (23.9%)	20,751	4,730 (20.7%)	7,874 (34.5%)	5,851 (25.6%)	4,387 (19.2%)	22,842
Italy	141,403 (42.7%)	30,260 (9.1%)	119,342 (36%)	40,078 (12.1%)	331,083	109,328 (61.1%)	22,870 (12.8%)	17,370 (9.7%)	29,316 (16.4%)	178,884	101,269 (45.5%)	16,847 (7.6%)	9,389 (4.2%)	94,893 (42.7%)	222,398
Poland	2,662 (2.5%)	6,995 (6.5%)	76,525 (70.8%)	21,854) (20.2%)	108,036	1,010 (0.2%)	39,308 (7.3%)	375,342 (69.3%)	125,923 (23.3%)	541,583	8,416 (1.4%)	32,676 (5.6%)	493,960 (84.3%)	50,917 (8.7%)	585,969
Sweden	35,934 (47.4%)	6,766 (8.9%)	16,455 (21.7%)	16,579 (21.9%)	75,734	46,354 (41.9%)	8,975 (8.1%)	15,726 (14.2%)	39,568 (35.8%)	110,623	47,697 (32.5%)	8,803 (6.0%)	15,632 (10.7%)	74,608 (50.8%)	146,740
United Kingdom	118,680 (16.9%)	246,992 (35.2%)	108,187 (15.4%)	227,798 (32.5%)	701,657	89,936 (14.2%)	229,097 (36.2%)	118,080 (18.7%)	195,904 (30.9%)	633,017	89,341 (10.3%)	365,455 (42.2%)	117,076 (13.5%)	294,022 (34%)	865,894

Source: Eurostat

Table 11. **Non-EU citizens subject to the enforcement of immigration legislation, selected years (thousands)**

	2011				2015				2016				2017			
	Refused entry	Irregularly present	Ordered to leave	Returned to a non-EU country	Refused entry	Irregularly present	Ordered to leave	Returned to a non-EU country	Refused entry	Irregularly present	Ordered to leave	Returned to a non-EU country	Refused entry	Irregularly present	Ordered to leave	Returned to a non-EU country
Austria	445	20,080	8,520	3,765	560	86,220	9,910	.	460	49,810	11,850	5,895	740	26,660	8,850	5,715
Germany	3,365	56,345	17,550	14,120	3,670	376,435	54,080	53,640	3,775	370,555	70,005	74,080	4,250	156,710	97,165	44,960
Greece	11,160	88,840	88,820	10,585	6,890	911,470	104,575	14,390	18,145	204,820	33,790	19,055	21,175	68,110	45,765	18,060
Hungary	11,790	9,655	6,935	4,180	11,505	424,055	11,750	5,755	9,905	41,560	10,765	780	14,010	25,730	8,730	685
Italy	8,635	29,505	29,505	6,180	7,425	27,305	27,305	4,670	9,715	32,365	32,365	5,715	11,260	36,230	36,240	7,045
Poland	20,225	6,875	7,750	6,920	30,245	16,835	13,635	12,750	34,485	23,375	20,010	18,530	38,660	28,470	24,825	22,165
Sweden	155	20,765	17,600	9,845	615	1,445	18,150	9,695	1,405	1,210	17,585	10,160	880	2,145	20,525	6,845
United Kingdom	16,150	54,150	54,150	44,630	14,950	70,020	70,020	40,965	14,480	59,895	59,895	36,445	14,280	54,910	54,910	29,090

Source: Adapted from Eurostat

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