The External Dimension of EU Asylum Policy: Gaining Momentum or Fading Away?

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Abstract

The asylum challenge currently faced by the European Union (EU) has a clear connection with the steep increase in migration flows through the Mediterranean Sea experienced in the last couple of years. Indeed, a large proportion of migrants attempting the dangerous trip across the Mediterranean are asylum seekers, fleeing from wars and authoritarian regimes. The EU is committed to establishing a Common European Asylum System (CEAS), based on common rules and uniform standards. In this context, due to the global character of the asylum issue, the 'external' dimension of the CEAS is central to providing comprehensive and long-lasting solutions.

Against this backdrop, this paper assesses the role of the EU as a global actor in the field of asylum. Taking as a starting point insights from the literature on EU external action, the main components that build up the external dimension of EU asylum policy are taken into account: legal competences, strategic documents, and concrete policy initiatives implemented so far. Regarding the latter aspect, three areas of action are analysed: regional protection programmes, the joint EU resettlement programme, and humanitarian visas and the external processing of asylum claims. The paper concludes by highlighting Member States' lack of political commitment, inter-institutional tensions, and the overlaps between EU and national initiatives as the main challenges to increase coherence of EU external action in the field of asylum.

Introduction

The status of asylum as a global issue is aptly reflected in an estimate provided by the UN High Commissioner for Refugees (UNHCR): in 2013, the number of refugees and internally displaced persons worldwide amounted to 51.2 million, a population equal to that of the 26th largest country in the world.[1] In the same year, out of the 1.1 million requests for asylum lodged at a global level, 432,055 were presented in Europe, an increase of 28% compared to the previous year. The data for 2014 reports a further 45% increase in asylum demands, reaching 626,710.[2] This steady increase in the number of asylum seekers in Europe has gone hand in hand with an unprecedented surge in mi-

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[1] UNHCR Global Trends 2013, available: http://unhcr.org/trends2013/.
[2] Eurostat Asylum Statistics, available: http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

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gration flows through the Mediterranean, with a peak of about 170,000 irregular crossings detected in Italy during 2014. The situation in the early months of 2015 is equally alarming, with more than 10,000 migrants landing in the first three months of the year and repeated episodes of shipwrecks and tragedies occurring during the journey. Looking at the main nationalities of people landing in Italy in 2014, the link with asylum becomes clear: the majority of them were from Eritrea, Syria, Mali and Nigeria, all countries ravaged by war, conflict or authoritarian regimes.[3]

The increase in the scale of asylum flows towards Europe, however, only tells a part of the story about the current asylum crisis. In fact, the vast majority of refugees and asylum seekers worldwide currently reside in so-called countries of first asylum, which are usually developing countries, or are even internally displaced in their country of origin. The case of Syrian refugees is particularly telling in this regard: as reported by the UNCHR, of the estimated 9 million Syrians that were forced to leave their homes as a consequence of the conflict unfolding in 2011, about 3.8 million fled to neighbouring countries, primarily Jordan, Lebanon and Turkey, while more than 6 million are internally displaced within Syria. Compared to those numbers, Europe has received only a small percentage of Syrian asylum seekers, about 253,000 from April 2011 to March 2015.[4]

In light of this scenario, this paper takes into consideration the role of the European Union (EU) as an external actor in the field of asylum. The first steps by the EU to play the role of an external actor in the field of migration date back to the Tampere Summit of 1999, when the European Council put relations with third countries as its first priority in order to give substance to the new migration competencies included in the 1997 Treaty of Amsterdam.[5] Along the years, the 'Tampere Agenda' has translated into a varied set of policy instruments, including readmission agreements, visa facilitation agreements, and mobility partnerships, which have been deployed by the EU to engage third countries in the management of migration flows.[6]

External action in the field of asylum was initially not recognised as a priority by EU Heads of State at Tampere. Moreover, in spite of the comprehensive rhetoric of the Tampere Conclusions, in the years following, the EU migration agenda veered towards actions focused on controlling migration flows, and confronting irregular migration.[7] It soon became clear, however, that such an approach could no longer be considered valid for two reasons. First of all, the global character of the asylum issue out-

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[3] UNHCR Italy, 'Sea arrivals to Italy', 2015, available: http://unhcr.it/risorse/statistiche/sea-arrivals-to-italy.

[4] UNHCR, 'Syria Regional Refugee Response', available: http://data.unhcr.org/syrianrefugees/regional.php.

[5] European Council, 'Presidency Conclusions', 15-16 October 1999, Tampere.

[6] On the external dimension of EU migration policy more broadly, see C. Boswell, 'The External Dimension of EU Immigration and Asylum Policy', *International Affairs*, 79(3), 2003, pp. 619-638; S. Lavenex, 'Shifting up and out: The foreign policy of European immigration control', *West European Politics,* 29(2), 2006, pp. 329-350; A. Weinar, 'EU co-operation challenges in external migration policy', EU Immigration Systems 2011/02, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2011; R. Cortinovis, *The origin and evolution of the external dimension of EU migration policy: Modes of governance, actors and institutions*, PhD Thesis, Catholic University of Milan, 2014.

[7] Boswell, op. cit.; Lavenex, op. cit.

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lined above accentuates the limits of an exclusive, inward-looking and security-oriented approach. Secondly, it was recognised that the construction of a Common European Asylum System (CEAS), a major objective set at Tampere, needed to be accompanied by a relevant external dimension in order to assure its coherence and effectiveness. Following on from that, actions were taken in subsequent years to build an external dimension of asylum policy. Regional protection programmes (RPPs) and common efforts on resettlement, in particular, have repeatedly been pointed to as the flagship initiatives in which the EU intends to invest. At the same time, debate has been revived, in particular on the initiative of the Commission and some Member States, about the opportunity to explore common initiatives on humanitarian visas and the external processing of asylum claims, as tools to widen legal channels for accessing asylum in Europe.

This paper analyses the three above-mentioned sub-areas that make up the EU external dimension of asylum and asks the following question: has the EU been able to develop a definite and coherent external action in the field of asylum? To put it differently, has the EU been able to speak with one voice and stand out as a legitimate and credible actor at a regional and global level? Building on the literature on EU external action and, in particular, on the theorisation proposed by Thomas,[8] this paper looks at the two dimensions of *policy determinacy* and *political cohesion* to analyse the coherence of EU external action in the field of asylum.

The first of those two dimensions, *policy determinacy*, takes into consideration the extent to which a policy specifies the Union's goals and how narrowly it restricts the behaviour incumbent on EU actors. This implies assessing both the nature of governance instruments adopted by the EU (e.g., binding versus non-binding instruments) and the scope of obligations included therein.[9] The second dimension, *political cohesion*, scrutinises the behaviour of Member States and EU institutions and the extent to which that behaviour complies with commonly agreed policies.[10] Looking at those two dimensions and at their reciprocal interaction implies focusing on how actors at the EU level define and interpret policy objectives in line with their priorities and interests. In that regard, inter- and intra- institutional dynamics unfolding at the EU level, as well as the tension that exists between the supranational and national levels are crucial elements to take into consideration when looking at the trajectory followed by EU external policy.[11] In the following section, the role these dynamics have played in the case of the external dimension of asylum, and the impact they had on the overall coherence of EU action in this field, will be shown.

This paper proceeds as follows. The first two sections describe the legal competences and the strategic priorities upon which EU external action in the field of asylum is

[8] D. C. Thomas, 'Still punching below its weight? Coherence and effectiveness in European Union foreign policy', *Journal of Common Market Studies*, 50(3), 2012, pp. 457-474.
[9] Thomas, op. cit, p. 459.
[10] Ibidem.
[11] P. Pawlak, 'The external dimension of the area of freedom, security and justice: Hijacker or hostage of cross-pillarization?', *Journal of European Integration*, 31(1), 2009, pp. 25-44.

grounded. The next sections describe the three main sub-areas within the external dimension of asylum: RPPs, the joint EU resettlement programme, and cooperation in the field of humanitarian visas and the external processing of asylum claims. A final section concludes by outlining some of the main challenges faced by the EU in this area, in light of both internal and external developments.

1. The legal and political framework

1.1 Legal competences

As recognised by Jupille and Caporaso[12] in one of the seminal works on EU external action, *authority* is a pre-condition for the EU to play a role on the external scene. In fact, the EU can act in a specific policy domain only as far as it has been delegated relevant competences by the Treaties. Prior to the Lisbon Treaty, external competences in the Area of Freedom, Security and Justice (in which migration and asylum matters are subsumed) were characterised by fragmentation and reliance on implied powers. As a consequence, EU authority to act on the external side of a specific policy matter was derived from a competence of the EU to act on that matter internally.[13] Decision-making rules and procedures were to follow those of the specific pillar in which different policy issues were placed. The entry into force of the Lisbon Treaty in 2009 reduced the fragmentation determined by the previous 'pillar' architecture, by completing the process of 'communitarisation' of EU migration policy begun at Amsterdam in 1999. As a consequence, all migration issues are now grouped together under Title V of Part III of the Treaty of the Functioning of the EU (TFEU) and subject to the ordinary legislative procedure, which places the Council and the European Parliament on an equal footing as co-legislators. The Lisbon Treaty did not establish a general external competence for the EU to act on migration matters: on the contrary, the Treaty includes two explicit external provisions in the field of readmission and asylum. While EU competence on readmission takes stock of an already well-established practice (the first EU readmission agreements date back to the early 2000s), the choice to grant the EU an explicit external competence on asylum is a novelty that should be read in conjunction with a broad set of provisions related to the establishment of the CEAS included in Article 78 of the TFEU. More specifically, the EU is granted the power to enter into 'partnerships and cooperation with third countries for the purposes of managing inflows of people applying for asylum or subsidiary protection or temporary protection'.

In light of the competences in the field of asylum stated in Article 78 of the TFEU, it would seem logical to conclude the EU authority to act in that domain is quite wide-ranging. Those competences, however, should be read within the overall legal architecture of the TFEU, which places asylum and migration issues in the list of shared

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[12] J. Jupille and J. A. Caporaso, 'States, agency, and rules: The European Union in global environmental politics', in C. Rhodes, ed., *The European Union in the World Community*, Boulder: Lynne Rienner, 1998, pp. 213-229.
[13] J. Monar, 'The external dimension of the EU´s area of freedom, security and justice. Progress, potential and limitations after the Treaty of Lisbon', SIEPS Report No. 1, 2012, p. 21.

competences. As a consequence, the EU can only act on these matters on the basis of the principle of subsidiarity, that is when it can provide recognised added value compared to policies carried out by Member States. This also implies that Member States maintain the right to act on those same issues, as far as the EU has yet to exercise its competences.[14] As it will be shown in the following part of this paper, this legal feature bears important consequences for the possibility of the EU deploying a coherent external action in the field of asylum, as it creates potential overlaps between EU and Member State initiatives and blurs the visibility and added value of EU action.

1.2 Strategic documents

Another pre-condition for the EU to be an external actor in the field of asylum is the existence of a strategy that sets out the priorities upon which EU action should be based. This is even more so in the case of the field of Justice and Home Affairs (JHA), a policy area that has traditionally advanced on the basis of multi-annual strategic documents.[15] In this section, I will take into consideration the main strategic documents currently in force at the EU level, in order to outline the priorities included therein regarding the external dimension of asylum.

The first, and possibly most relevant, strategic document that has been produced by the EU to set out its external strategy in the field of migration is the Global Approach to Migration and Mobility (GAMM).[16] The central aim of the GAMM is to 'to address all relevant aspects of migration in a balanced and comprehensive way, in partnership with non-EU countries'.[17] First adopted in 2005, it was substantially revised in 2011 under pressure from the Arab Spring events. On that occasion, it was deemed fundamental to reinvigorate the gamut of policies and instruments proposed by the EU to its southern neighbours, including in the field of mobility and legal migration, in order to make the GAMM 'truly global'.[18]

Asylum is one of the four pillars of the GAMM. Importance is accorded 'to increase cooperation with relevant non-EU countries in order to strengthen their asylum systems and national asylum legislation and to ensure compliance with international standards'. At the same time, the link between international protection and development is emphasised, as well as the need to introduce 'concepts and devices for improving the transition between humanitarian and development aid'. To achieve that aim, RPPs are accorded a central role. Resettlement is the other main priority recognised by the GAMM in the field of asylum. In particular, the GAMM mentions the objective of

[14] Ibid., p. 24.
[15] R. Bossong, 'The politics of subterfuge and EU JHA governance capacity', Challenge Working Paper, 2007, available: http://www.lse.ac.uk/internationalRelations/centresandunits/EFPU/EFPUpdfs/EFPUchallengewp8.pdf.
[16] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The Global Approach to Migration and Mobility, Brussels, 18.11.2011, COM(2011) 743 final.
[17] Ibid., p. 3.
[18] Ibid., p. 9.

establishing a joint EU resettlement programme and calls for more resettlement places to be offered in EU countries.

Another strategic document adopted at the EU level is the Task Force Mediterranean (TFM).[19] As in the case of the renewed 2011 GAMM, the TFM was a crisis-led initiative. In this case, it was the Lampedusa tragedy of October 2013 that prompted the EU to act. The aim of the TFM is the development of a coherent and comprehensive strategy to tackle the challenge of trans-Mediterranean migration. Priorities included in the TFM Communication include protection of the hundreds of thousands of migrants trying to reach Europe by sea, solidarity and the fair sharing of responsibilities among Member States, and a 'strong external dimension'.

A specific section of the TFM Communication is devoted to the external dimension of asylum, titled 'Regional Protection Programmes, resettlement and reinforced legal ways to access Europe'. The TFM Communication called for RPPs to be reinforced and further developed; on the side of resettlement, it invited Member States to increase their commitment, as a long-term solution for preventing and addressing protracted refugee situations. A third priority touched upon in the TFM Communication is the possibility of further exploring the introduction of protected entry procedures (PEPs) in the EU.[20] The Commission pointed out the two main forms that cooperation in this field could take: a) guidelines for a common approach to humanitarian permits/visas, and b) a feasibility study on the possible joint processing of protection claims outside of the EU.

The third document that has relevance for the external dimension of asylum are the Strategic Guidelines on the Area of Freedom Security and Justice approved by the European Council on June 2014.[21] The Strategic Guidelines take the place of the Stockholm Programme and, at the same time, mark a point of discontinuity with their predecessor. If the Stockholm Programme had been accused of being a 'Christmas tree', due to its complex architecture, the minimalist format of the Strategic Guidelines attracted the opposite accusation of being a collection of declaratory statements without much substance.[22] The Strategic Guidelines put the full implementation of the CEAS as one of the priorities to be achieved by the EU in the future. In line with the synthetic style of the Guidelines, priorities in the field of the external dimension of asylum are summarised in a single sentence, which stresses 'the importance of improving and strengthening regional protection programmes and increase the quantity and the quality of resettlement'.

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[19] Communication from the Commission to the European Parliament and the Council on the work of the Task Force Mediterranean, Brussels, 4.12.2013, COM(2013) 869 final.

[20] The concept of PEPs encompasses both policies in the field of humanitarian visas and external processing of asylum claims. For a definition, see section 4 below.

[21] European Council, 'European Council Conclusions', 26/27 June 2014.

[22] P. De Bruycker, 'The missed opportunity of the 'Ypres Guidelines' of the European Council regarding immigration and asylum', Migration Policy Centre Blog, 29 July 2014, available:
https://blogs.eui.eu/migrationpolicycentre/the-missed-opportunity-of-the-ypres-guidelines-of-the-european-council-regarding-immigration-and-asylum/.

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The last document to be mentioned is the European Agenda on Migration, adopted by the Commission on the 13th of May 2015.[23] As expected, the document is heavily influenced by the migration situation unfolding in the Mediterranean. In relation to that, the agenda states that: 'to try to halt the human misery created by those who exploit migrants, we need to use the EU's global role and wide range of tools to address the root causes of migration'.[24] The agenda reiterates the importance of tackling migration issues through a comprehensive approach and proposes a set of priorities for the short- and long-term. In an attempt to address the crisis in the Mediterranean, the Agenda puts a strong emphasis on asylum-related measures, both with an internal and external scope. In relation to the latter, an ambitious stepping up of resettlement efforts was announced through the proposal of a EU-wide scheme to resettle 20,000 refugees. The section, entitled 'Working in partnership with third countries to tackle migration upstream', includes as a first point further development of Regional Development and Protection Programmes (RDPPs) in the Middle East and North Africa and announces more funds to achieve that aim. Finally, the Agenda also briefly touches upon alternative legal avenues to access asylum, by inviting Member States to make full use of 'private/non-governmental sponsorships humanitarian permits, and family reunification clauses'.[25]

If we look at the strategic documents taken into consideration from an operational point of view, it appears clear that three lines of action emerge with regard to the external dimension of asylum, albeit with different emphases. Regional protection programmes and cooperation on resettlement emerge as the two building blocks upon which EU strategy is based. On the contrary, a possible exploration of initiatives related to PEPs was touched only briefly in the TFM Communication and in the European Agenda on Migration. In spite of far less attention accorded to that option, PEPs still play an important role in the broader debate on asylum at the EU level and that is the reason why they will also be addressed in this paper.[26]

2. Regional Protection Programmes

Regional protection programmes made their first appearance in the 2004 Commission Communication, 'Improving access to durable solutions'. The Commission presented

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[23] 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, Brussels, 13.5.2015, COM(2015) 240 final.

[24] Ibid., p. 2.
[25] Ibid., p. 5.
[26] For example, PEPs were addressed in a workshop dedicated to 'Legal Routes to Access Asylum in Europe' during the high-level conference 'Open and safe Europe – what's next?', organized by the European Commission in January 2014 to discuss the future of EU Home Affairs policies after the end of the Stockholm programme. See the outcomes of the Conference here: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/future-of-home-affairs/high-conference-jan-2014/index_en.htm. See also the evolution of the debate on PEPs at the EU level outlined in section 4 below.

this new instrument as a way to operationalise the call by the Thessaloniki European Council of June 2003 'to examine ways and means to enhance the protection capacity of regions of origin'.[27]

Discussions at the EU level about new instruments for international protection were at full steam at the time. A paper presented by the United Kingdom (UK) Presidency some months before, entitled 'New international approaches to asylum processing and protection', had advocated the establishment of 'regional protection areas' in region of origins in order to guarantee accessible protection and durable solutions to refugees. The UK paper, however, also included several controversial proposals: in particular, the paper envisaged that asylum seekers in European territory could be returned to their home regions where their claims would be processed.[28] Such a controversial proposal did not feature in the Commission Communication. On the contrary, the Commission made clear that all initiatives developed in third countries should be complementary to the processing of spontaneous asylum requests made in the territory of EU Member States.

In the Commission formulation, RPPs should assure complementarity, not only with the internal side of EU asylum policy, but also with the broad array of other EU external policies, in particular humanitarian and development policies. Accordingly, RPPs are presented as a toolbox to be used flexibly, their added value being, 'in the improved coordination and systematisation given to each constituent element, as well as in them being used in combination with one another'.[29]

After a formal endorsement by the JHA Council in November 2004, the Commission went on to present a Communication on Regional Protection Programmes.[30] The aim of the Communication was to set up arrangements for launching the pilot phase of RPPs. The Commission made it clear that RPPs would be routed in already existing financial frameworks, such as AENEAS programme (2004–2006) and the Thematic Programme Migration and Asylum (2007–2003) and that no additional financial line would be activated for their implementation. The primary objective of RPPs should be to deliver durable solutions (repatriation, local integration or resettlement) to refugees in targeted regions.

In the same Communication, the Commission also singled out two regions for piloting RPPs: the so-called Newly Independent States (NIS), targeting Ukraine, Belarus and Moldova, and the Great Lakes Region, focusing on Tanzania. The choice was motivated by the priority accorded to those two regions by Member States during consultations that preceded the Communication. In both cases, moreover, the Commission stressed the possibility of exploiting synergies with initiatives already underway and

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[27] Communication from the Commission. Improving access to durable solutions, Brussels, 4.6.2004, COM(2004) 410 final, p. 2.

[28] See the paper at the following link:
http://www.parliament.the-stationery-office.co.uk/pa/ld200304/ldselect/ldeucom/74/7415.htm.

[29] Improving access to durable solutions, p. 19.

[30] Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes, Brussels, 1.9.2005, COM (2005) 388 final.

with existing financial instruments. Regarding the RPP in the Great Lakes Region, the Commission pointed out that, while initially focusing on just one country, Tanzania, 'regionality' would nevertheless be assured by the fact that Tanzania was hosting large refugee communities from several countries across the Great Lakes Region.

In 2005, the two pilot RPPs in the NIS and Tanzania began and were subsequently prolonged by the Commission in subsequent years. In 2010, the Commission decided to launch two other RPPs, in the Horn of Africa (Kenya, Yemen and Djibouti) and in North Africa (Egypt, Libya and Tunisia). Finally, in 2013, in response to the protracted asylum crisis stemming from the conflict in Syria, the Commission launched an Regional Development and Protection Programme (RDPP) in the Middle East, targeting Lebanon, Jordan and Iraq. As described below, this later programme presents some specific features that require a discussion separate to the other programmes implemented so far.

As described by Papadopoulou,[31] RPPs have primarily taken the form of projects implemented by the UNHCR, in cooperation with local non-governmental organisations (NGOs). The focus of the projects has been on capacity-building at all stages of the asylum process, including establishment of new infrastructure and training for national authorities and civil society actors. In the RPP developed in Tanzania, a specific focus was on the provision of durable solutions for the large refugee population from Burundi and the Democratic Republic of Congo residing in the country. In the Horn of Africa, the RPP projects focused on strengthening security and living conditions for refugees residing in camps and the provision of services and special assistance for vulnerable groups, including women at risk, trafficked victims, and unaccompanied and separated children. All RPPs implemented so far included a resettlement component, which, however, was in all cases relatively modest.[32]

Looking more in-depth at the projects implemented in the contexts of RPPs, Papadopoulou concluded that such projects can barely be distinguished from other projects with the same scope and rationale, implemented by UNHCR in the same countries but through different EU funding instruments. This circumstance raises the question of 'what is that defines a project as an RPP one as such?'.[33] The issue of visibility in relation to the actions developed in the context of RPPs had already been raised by an external evaluation of the two pilot programmes conducted in 2008–2009.[34] The same evaluation also pointed out the fact that, in spite of the impetus provided by the RPPs Communication, coordination between refugee, humanitarian and development policies had proved difficult to achieve, in particular, due to the lack of strategic direction

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[31] A. Papadopoulou, 'Regional protection programmes: an effective policy tool?', ECRE Discussion Paper, 2015, available: http://ecre.org/component/downloads/downloads/982.html.

[32] R. Westerby and S. Ngo-Diep, 'Welcome to Europe! A comprehensive guide to resettlement', ICMC Europe, 2013, p. 101, available: http://www.resettlement.eu/sites/icmc.tttp.eu/files/ICMC%20Europe-Welcome%20to%20Europe.pdf.

[33] Papadopoulos, op. cit., p. 8.

[34] GHK, 'Evaluation of pilot regional protection programmes', Final Report, 2009, p. 75, available: http://ec.europa.eu/smartregulation/evaluation/search/download.do;jsessionid=1Q2GTTWJ1m0pM7kSWQ90hlv1CBzxjvJpV2CLp0BgQxQv8zyGqQ3j!1601440011?documentId=3725.

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and involvement of the relevant EU and national stakeholders. The fact that RPPs were not financed through a dedicated funding stream further emphasised coordination and visibility problems.[35] To address such shortcomings, the evaluation recommended the establishment of a coordination mechanism at the EU level to manage all the phases involved in setting up of an RPP, from selection of countries to implementation of activities, backed by a dedicated financial line and by increased advocacy action to increase ownership on the part of third countries.

An attempt to address some of the above-mentioned issues was made when devising the RDPP in the Middle East, launched by the Commission in 2013 and targeting Lebanon, Jordan and Iraq. One of the novelties of the Programme is the inclusion of a substantial development component alongside the traditional protection component. As stated by the then Commissioner for Development, Andris Piebalgs, this approach is based on the assumption that, 'using development assistance to support refugees in their host countries has the potential to mitigate the negative consequences that their presence may have on local communities and, at the same time, enhance the quality of refugee protection by helping them to become self-sufficient'.[36] The Programme also features a political dialogue and advocacy component, with the aim of developing, among other things, bilateral and multilateral dialogue on refugees' issues with host governments and the EU Member States.[37]

The new Programme is based on an innovative governance structure. The Programme is structured as a platform of six donors: the European Commission (DG DEVCO), Denmark, Ireland, the UK, the Netherlands and the Czech Republic. The programme spans a three year period and relies on an initial budget of €26 million.[38] A

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[35] As stressed by Papdopoulou, featuring financial envelopes of a few million euros each, the visibility and impact of RPPs can only be limited considering the overall funding deployed by the EU and other donors in targeted regions. Papadopoulou, op. cit., p. 16.

[36] European Commission Press Release Database, 'New EU regional development and protection programme for refugees and host communities in Lebanon, Jordan and Iraq', available: http://europa.eu/rapid/press-release_IP-13-1253_en.htm.

[37] Action Fiche for Support to the EU-Morocco Mobility Partnership, Annex 1 of the Commission Implementing Decision on the AAP 2013 Part 2 for the Thematic Programme for cooperation with third countries in the areas of Migration and Asylum, p. 32. It should be recalled that, under the guidance of the Italian Presidency in late 2014, efforts were made to involve countries of origin in regional dialogues through the reinvigoration of the Rabat Process in North Central and West Africa, and the launch of the Khartoum Process in the Horn of Africa. The Rabat Process, in particular, features an ambitious agenda in the field of asylum: the Rome Declaration, adopted by member countries in November 2014, includes the promotion of international protection as one of its four pillars, with a focus on reinforcing national frameworks on asylum and the promotion on durable solutions. See http://processusderabat.net/web/uploads/cms/EN-Rome_Declaration_&_Programme.pdf).

[38] Papadopoulou, op. cit, p. 14. It has to be pointed out here that the RDPP in the Middle East represents only a small part of a much broader effort deployed by the EU to face the humanitarian emergency within Syria and neighbouring countries. According to data provided by the Humanitarian Aid and Civil Protection Department of the European Commission, a total of €3.6 billion has been deployed so far by the Commission and the Member States in humanitarian, development, economic and stabilisation assistance, while a new comprehensive strategy to tackle the crises in Iraq and Syria has been elaborated that foresees a further €1 billion funding over the next two years. See 'Syria crisis, ECHO factsheet', available: http://ec.europa.eu/echo/files/aid/countries/factsheets/syria_en.pdf

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Steering Committee, featuring partners and relevant stakeholders, was also established with the task of providing overall strategic guidance.[39]

The model adopted for the RDPP in the Middle East includes some governance features that increase the level of policy determinacy of the instrument compared to the loose project-based approach used to implement the other programmes.[40] The fact that the new model brings it directly to Member States in the implementation of projects is surely an aspect that is likely to provide for greater political ownership and visibility of the activities. On the side of the Commission, the central role played by DG DEVCO could potentially facilitate coordination among different Directorate Generals, thus avoiding asymmetries and overlaps between competing priorities pursued by the EU in the region. However, the voluntary character of EU Member States' participation and the soft governance structure of the RDPP imply that the success of this new instrument will heavily depend on Member State commitment to investing in this instrument, both financially and politically.[41]

3. The Joint EU Resettlement Programme

Since the end of the Second World War, when massive operations were carried out to host large numbers of refugees displaced all over Europe, resettlement operations involving European countries have accompanied all major conflicts touching directly or indirectly European soil.[42] This is the case, for example, for Hungarian refugees in 1956, Czechoslovaks after 1968 and the Vietnamese 'Boat People' in the 1970s.[43] At the same time, a group of European countries, the so-called 'traditional countries of resettlement', have included resettlement for several decades as a stable component of their asylum systems, through the establishment of resettlement programmes implemented on a regular basis.[44] However, both regular and ad hoc operations have, until recently, been carried out by Member States at a bilateral level, without any involvement of the EU.

The European Commission started to make the case for resettlement in several of its asylum-related Communications from the early 2000s onwards. In the above-

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[39] Action Fiche for Support to the EU-Morocco Mobility Partnership, p. 35.

[40] The European Council Conclusions of 23 April 2015 dedicated to the migration crisis in the Mediterranean set as a priority the development of an RDPP in North Africa and in the Horn of Africa, thus pointing to the objective of upgrading the RDPP model to the programmes in place in those regions.

[41] See Communication on the Task Force Mediterranean, p. 12.

[42] Resettlement is defined by the UNHCR as the selection and transfer of refugees from a state in which they have sought protection to a third country that admits them – as refugees – with permanent resident status. Resettlement operations are usually carried out in cooperation with the UNHCR, which is responsible for the identification and referral of refugees in need of resettlement.

[43] A. Papadopoulou et al., 'Comparative study on the best practices for the integration of resettled refugees in the EU Member States', Study commissioned by Directorate General for Internal Policies of the European Parliament, 2013, available: http://www.ecre.org/component/downloads/downloads/747.html.

[44] Traditional countries of resettlement include Denmark, Finland, The Netherlands, Sweden and Norway (which, however, is not part of the EU). See E. Bokshi, 'Refugee resettlement in the EU. The capacity to do it better and to do it more', KNOW RESET Research Report 2013/04 EU Comparative Report, 2013, available: http://know-reset.eu/files/texts/00013_20140108160733_knowresetrr-2013-04.pdf;

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mentioned 2004 Communication, 'Improving access to durable solutions', the Commission envisaged the establishment of an EU resettlement scheme 'to provide international protection and offer durable solutions in the EU to those who genuinely need it and share the burden of countries in the regions of origin'.[45] The Communication also sketched the main elements on which that scheme should be based: the setting of voluntary targets for participating Member States, EU resettlement priorities, and the introduction of a budgetary mechanism to support those Member States engaged in resettlement activities.[46]

In spite of the political entrepreneurship of the Commission and the advocacy effort of NGOs and international organisations, in particular the UNHCR, the first EU common action on resettlement had to wait until 2008, when the Iraqi refugee crisis prompted a coordinated answer from Member States. After a fact-finding mission to Syria and Jordan, the JHA Council of 27–28 November 2008, 'invited the Member States to take in Iraqi refugees […] on a voluntary basis and in the light of the reception capacities of the Member States and the overall efforts they have already made to accommodate refugees'.[47] The same Council Conclusions stated the objective of resettling a total of 10,000 Iraqi refugees in the Member States. At the end of operations, in 2009, about 8,400 Iraqi refugees had been resettled in 12 Member States (compared to the six Member States involved in 2007). However, out of that total number, a large share of refugees was resettled by a single country, Germany (2,500), while 3,300 more refugees had already been resettled prior to the EU joint initiative, as part of bilateral efforts by Member States.[48]

The experience gained during the Iraqi crisis set the stage for a more stable framework of cooperation at the EU level. In the second half of 2009, under the steering of the Swedish Presidency, the Commission presented a Communication on a Joint EU Resettlement Programme.[49] The Commission acknowledged efforts made by Member States during the Iraqi crisis but underlined the small share of refugee resettled in Europe (6.7%) compared to global resettlement efforts. The Commission recognised that the limited level of EU involvement in resettlement represented an obstacle for the EU ambition to play a prominent role in global humanitarian affairs and to exercise an influence on relevant international fora. The establishment of a joint EU programme was thus presented as a first step on the way to establishing the EU as a global actor in the field of resettlement. The proposal envisaged, in the framework of voluntary participation of the Member States, a mechanism for the setting of common annual priorities on

[45] Improving access to durable solutions, p. 9.

[46] Ibid., p. 11.

[47] Press release of the 2908th meeting of the Council Justice and Home Affairs, Brussels, 27 and 28 November 2008, 16325/1/08 REV 1 (Presse 344).

[48] Papadopoulou et al., op. cit., pp. 14-15.

[49] Communication from the Commission to the European Parliament and the Council on the Establishment of a Joint EU Resettlement Programme, Brussels, 2.9.2009, COM(2009) 447 final.

resettlement linked to financial incentives, which should be introduced through an amendment of the basic act establishing the European Refugee Fund.[50]

The negotiation process for the establishment of the Joint EU Resettlement Programme was characterised by inter-institutional struggles between the Council on one side and the European Parliament on the other, which delayed its approval until mid-2012. A first point of contention was the procedure for the adoption of annual resettlement priorities envisaged by the Programme. Contrary to the Commission proposal, the European Parliament argued that, due to their strategic nature, those priorities should be adopted through delegated acts and not implementing acts, so as to give the European Parliament a say in the decision-making process. In the end, a solution of compromise prevailed, which consisted of including the priorities for the year 2013 directly in the text of the amended European Refugee Fund Decision, leaving to the negotiations of the new multiannual financial framework (2014–2020) the task of sorting out that issue for the subsequent programming years.[51]

The other major point of contention between the two institutions was the use of Article 80 of the TFEU, which provides for solidarity and fair sharing of responsibilities between Member States on asylum and migration issues, as a legal basis for the legal act under consideration. While the European Parliament insisted that Article 80 be the appropriate legal basis, the Council disagreed. In the end, the European Parliament stepped back from its initial position, considering itself satisfied with a reference to Article 80 in the Preamble of the amended European Refugee Fund Decision.[52]

After the two above-mentioned controversies had been settled, the amended European Refugee Fund Decision was finally adopted in March 2012, giving a formal launch to the Joint EU Resettlement Programme.[53] Financial incentives were introduced in the form of lump sums: €4000 for each person resettled according to the priorities set out in the Decision, €6000 for each resettled person for those Member States which shall receive the fixed amount from the Fund for the first time and €5000 for those Member States which have received the fixed amount from the Fund only once before. [54]

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[50] Proposal for a Decision of the European Parliament and of the Council of amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC.

[51] Position at first reading with a view to the adoption of a Decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC = Draft statement of the Council's reasons, Inter-institutional File: 2009/0127 (COD).

[52] Ibid.

[53] European Parliament legislative resolution of 18 May 2010 on the proposal for a decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC, OJ 161 E/161, 31.5.2011.

[54] The priority categories include refugees from countries designed for the implementation of RPPs, persons belonging to vulnerable groups (such as women and children at risk, unaccompanied minors, etc.) and persons indicated in the list of geographic EU priorities for 2013 included in the annex to the Decision.

The Joint EU Resettlement Programme surely constitutes a step forward towards a more structured cooperation at the EU level but it should be mentioned that the European Parliament had advocated a much more ambitious programme since the beginning of negotiations. In a Report issued in 2009, the European Parliament stressed that funding made available through the European Refugee Fund was not sufficient to establish a real EU-wide resettlement programme and urged Member States to underpin it with private funding mechanisms and public-private initiatives. The European Parliament also advocated the establishment of a permanent resettlement unit, which should be included in the framework of the European Asylum Support Office (EASO). The Parliament also focused on the integration of resettled refugees: in particular, the Report stressed that, 'the success of resettlement must be defined not only in terms of the physical displacement of refugees from a third country to a Member State but also in terms of the implementation of measures that allow the integration of refugees in the host country'.[55]

The Asylum Migration and Integration Fund (AMIF), which spans the period 2014–2020, further institutionalises the Joint EU Resettlement Programme. The AMIF Regulation keeps and upgrades the system of financial incentives already in place: Member States now receive €6,000 for each resettled refugee and €10,000 for resettled refugees belonging to priority categories and vulnerable groups. Amounts are allocated to Member States following a biannual pledging mechanism, while the Commission and the EASO have been tasked with monitoring the effective implementation of resettlement activities financed through the Fund.[56]

The provisions included in the AMIF Regulation testify to the enduring willingness of the Member States to continue and possibly strengthen their resettlement operations in the future. However, some features of the current framework deserve further consideration. First of all, the low level of political cohesion testified by the varying level of Member State commitment: while some Member States have had formal resettlement programmes for several decades, other Member States (such as Germany) have only recently launched formal resettlement programmes and several other countries still do not take part regularly in any kind of resettlement activity.[57] This plurality of approaches was reiterated in the case of resettlement operations set in place to address the large number of Syrian refugees displaced in neighbouring countries in the last few years: while several Member States have participated in resettlement operations, contributions vary greatly from the 20,000 places pledged by Germany under a special

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[55] European Parliament, 'Report on the establishment of a joint EU resettlement programme', (2009/2240(INI)), Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Rui Tavares, 2009.

[56] Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No. 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, OJ L 150/168, 20.5.2014.

[57] For a detailed overview of resettlement practices in EU Member States, see the website of the KNOW RESET Project: http://www.know-reset.eu/.

humanitarian admission programmes, to much small numbers pledged by other Member States.[58]

The new Agenda on migration launched by the Commission proposes a change of gear in the field of resettlement. In particular, the Commission announced that it will soon propose to the Member States an EU-wide resettlement scheme with the objective of offering 20,000 additional places.[59] The scheme will allocate responsibility to Member States through a redistribution key based on parameters such as GDP, size of population, unemployment rate and past numbers of asylum seekers and of resettled refugees. The Commission added that, if necessary, such a mechanism would be followed by a proposal for a binding and mandatory legislative proposal beyond 2016, a solution that will substantially increase the policy determinacy of the mechanism.[60] This last point is indeed crucial, as it raises the issue of the level of policy determinacy necessary for the system to deliver the expected results: in fact, initiatives developed so far, based on voluntarism, leave the Member States free to decide whether to engage in resettlement or not, relying only on financial incentives to spur their commitment.[61] However, there are numbers which question the validity of this approach: in 2014, approximately 7, 525 persons were resettled in EU Member States, 47,795 in the United States and 11,117 in Australia. At the same time, in spite of an increase in Member States' decisions to start resettlement programmes in recent years, the EU share of global resettlement has only increased slightly, from 7.9% in 2007 to 9% in 2013.[62] The EU thus has a long way to go to catch up with major resettlement players at the global level. The quota of 20,000 refugees per year envisaged in the new migration Agenda constitutes a step forward compared to the current situation but its achievement will, crucially, depend on Member State political willingness to go forward in this direction.

4. Humanitarian Visas and the External Processing of Asylum Claims

From a conceptual point of view, humanitarian visas and the external processing of asylum claims are included within the broader category of PEPs. According to a commonly accepted definition, PEPs allow a non-national:

– To approach the potential host state outside its territory with a claim for asylum or other forms of international protection;

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[58] European Resettlement Network, 'Focus on Syria', available: http://www.resettlement.eu/news/focus-syria

[59] The Agenda does not specify if this mechanism will be implemented on a yearly or multiannual basis. However, a reference is made to the UNHCR recommendation of establishing a target of 20,000 resettlement places for the EU per year by the year 2020, which let to assume that, at least in the long run, the mechanism is meant to be implemented on an annual basis.

[60] A European agenda on migration, p. 5.

[61] In this regard, the Commission has announced that an extra €50 million will be made available in 2015/2016 in order to implement the scheme.

[62] European Resettlement Network, 'Introduction to resettlement in Europe', available:
http://www.resettlement.eu/page/introduction-resettlement-europe.

– To be granted an entry permit in case of a positive response to that claim, be it preliminary or final.[63]

The central difference between humanitarian visas and external processing is in the degree to which asylum procedures are placed outside state territory. While external processing implies that relevant phases of the asylum procedure are carried out by diplomatic representations in the territory of the third country, humanitarian visas presuppose only a first screening to be conducted in the territory of the third country, after which a visa is issued to the applicant so that they can reach the territory of the issuing state and there access the normal asylum procedure.

While discussion on the possibility of adopting PEPs at the EU level began in the early 2000s, so far, this option has only been explored at the national level, primarily through the issue of different typologies of visa permits. Looking at European States' practice in the field of PEPs, studies have recognised a broad spectrum of practices, ranging from very formalised procedures to very informal and ad hoc ones. In any case, the scarce statistics available on the issue of visas for humanitarian claims show that these instruments have benefited a very small number of individuals.[64]

The previous circumstance points to the debate on the pros and cons of PEPs, in particular, from the point of view of the issuing states. Indeed, past experience shows that States have generally been reluctant to develop PEPs on a regular basis. Moreover, those states that have introduced formalised procedures in their legal systems have usually been reluctant to publicise them. The reasons for this approach range from fear of an uncontrolled increase in the number of applications to logistical and financial problems related to the management of applications on the part of embassies.[65] In spite of that, from the early 2000s, the European Commission, backed by NGOs and other humanitarian associations, started to advocate the use of PEPs as a component of the CEAS. The Commission, in particular, recommended the use of PEPs as an instrument to ensure an orderly and managed arrival of asylum seekers in the EU and as an alternative to irregular entry channels, thus as a way to counter the activity of migrants smugglers.[66]

It is no coincidence that discussions related to the use of PEPs at the EU level have resurfaced in recent times, in parallel with a massive increase of arrivals through the Mediterranean Sea. Consequently, the 2013 TFM Communication recommended the further exploration of the issuing of guidelines on humanitarian visas, and a pilot pro-

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[63] G. Noll et al., 'Study on the feasibility of processing asylum claims outside the EU against the background of the Common European Asylum System and the goal of a common procedure', Final Report, The Danish Centre for Human Rights, 2002, p. 3.

[64] C. Hein and M. de Donato, *Exploring avenues for protected entry in Europe*, Rome: Italian Council for Refugees; Iben Jensen U. (2014) 'Humanitarian visas: option or obligation?', Study commissioned by the Directorate General For Internal Policies of the European Parliament, 2012, available:
http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509986/IPOL_STU%282014%29509986_EN.pdf

[65] G. Noll et al., op. cit., p. 80.

[66] Communication from the Commission to the Council and the European Parliament. Towards more accessible, equitable and managed asylum systems, Brussels, 3.6.2003, COM(2003) 315 final, p. 15.

ject in the external processing of asylum claims.[67] The Post-Stockholm Communication, 'An Open and Safe Europe. Making it Happen', stated that PEPs 'enabling people to request protection without undertaking a potentially lethal journey to reach the EU border - could complement resettlement, starting with a coordinated approach to humanitarian visas and common guidelines'.[68]

In spite of the above-mentioned statements, political cohesion on the part of the Member States to move on in this area has, so far, been lacking. During the Second Resettlement and Relocation Forum, held on 25 November 2014, it emerged that Member States were not in favour of a EU approach to PEPs and that they preferred them to be dealt at the national level.[69] The reluctance of Member States to consider the use of PEPs is compounded by the fact that moving in that direction would necessarily raise the related issue of internal redistribution of asylum seekers from Member States most affected by asylum requests. On this point, however, discussions are still at a preliminary stage, despite the inclusion in the European Agenda on Migration of a temporary relocation scheme for persons in clear need of international protection.[70]

The negative approach taken by Member States in relation to PEPs, however, can be questioned on the basis of legislative instruments currently in force. Article 25(1) of the EU Visa Code, in particular, states that, 'a visa with limited territorial validity shall be issued exceptionally when the Member State concerned considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations'.[71] Examining the wording of Article 25(1) in light of recent European Court of Justice Case law, some analysts have concluded that the above-mentioned formulation already includes an 'implicit' obligation for Member States to issue a visa in the case where an applicant is found to have a well-founded protection need, which stems from Member States refugee and human rights obligations.[72] However, the same analyses recommend, due to the ambiguity that surrounds the current rules, the introduction of a clearer legal framework, in the first place through the introduction of common guidelines on limited territorial visas issued for humanitarian reasons.

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[67] Communication on the work of the Mediterranean Task Force Mediterranean, p. 13.

[68] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An open and secure Europe: making it happen, Brussels, 11.3.2014, COM(2014) 154 final, p. 7.

[69] See the European Commission Home Affairs news: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2014/20141126_03_en.htm.

[70] The mechanism should be activated within the framework of the emergency response envisaged under Article 78(3) TFEU. Redistribution of asylum seekers among Member States will be based on the same set of parameters used for the resettlement scheme as proposed in the Agenda and described above. The Commission will then follow that up with a proposal for a mandatory and automatically-triggered relocation system by the end of 2015. See A European agenda on migration, p. 4.

[71] A visa with limited territorial validity (LTV) is a visa that is not valid in all Schengen states, as is the case of the uniform Schengen visa, but usually only in the Member State that issues it.

[72] For a detailed analysis of the legal aspects related to issuing humanitarian visas in the current Visa Code, see U. Iben Jensen, *Humanitarian visas: Option or obligation?*, Study commissioned by the Directorate General For Internal Policies of the European Parliament, 2014, p. 25; S. Peers, 'External processing of applications for international protection in the EU', *EU Law Analysis*, 2014, available: http://eulawanalysis.blogspot.it/2014/04/last-autumns-huge-loss-of-lives-near.html.

The previous point underlines an existing 'crack' in the EU law on humanitarian visas, which should be interpreted as a sign of a larger fracture in the EU asylum construction as a whole. This fracture relates to the structural absence of legal channels for access to the asylum procedure in EU Member States. As a consequence, 90% of applicants for asylum currently enter Europe through irregular channels.[73] This state of affairs raises several questions. The legal dimension, briefly touched on above, is surely of concern but the political and ethical dimensions of the problem are extremely relevant as well. Starting with the political considerations, the current lack of legal entry channels for asylum in the EU undermines the overall coherence and sustainability of the CEAS. The arrival of massive numbers of people by boat, which continue unabated during the first quarter of 2015, are putting the reception systems of southern Member States under heavy strain, resulting in poor reception conditions, and in the disorderly arrivals of unregistered asylum seekers in other European States. From an ethical point of view, the repeated tragedies occurring at sea are also not sustainable for the EU: not answering such events with clear and credible action would imply the EU is reneging on those fundamental values which are an integral part of its identity and which it is committed to uphold worldwide.[74]

In spite of the huge costs of inaction, common initiatives at the EU level on PEPs have remained so far only on paper. Lack of political cohesion between EU institutions has been a major obstacle towards further exploration of this option. In particular, while both the Parliament and the Commission have generally favoured the use of PEPs, advocating their use also in relation to the current migration crisis in the Mediterranean, the Member States have repeatedly shown their reluctance to take concrete steps towards, for example, a common approach on humanitarian visas. The absence of any reference to PEPs in the statement of the Special Meeting of the European Council held on 23 April 2015 is a further proof that a common vision to move forward in this area is still missing.[75]

Conclusion

The aim of this paper was to address the following question: has the EU been able to develop a definite and coherent external action in the field of asylum? The EU is, without doubt, a *sui generis* foreign policy actor, so describing the scope and characteristics of its external action requires taking into consideration the specificities of its legal and institutional functioning. This is particularly true in the field of asylum and migration, policy areas that remain highly sensitive from the point of view of Member States' sovereignty and internal politics. To accomplish that task, this paper took, as a toolbox, some concepts developed by the literature on EU external action. In particular, the co-

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[73] Hein and de Donato, op. cit., p. 17.

[74] Commission, 'European Commission Statement on developments in the Mediterranean', Brussels, 19 April 2015, available: http://europa.eu/rapid/press-release_STATEMENT-15-4800_en.htm.

[75] S. Peers, 'Don't rock the boat: EU leaders do as little as possible to address the migrant crisis', *EU Law Analysis*, 2015, available: http://eulawanalysis.blogspot.it/2015/04/dont-rock-boat-eu-leaders-do-as-little.html.

herence of EU external action on asylum has been assessed against the dimensions of policy determinacy, i.e., the level of obligation and precision of governance instruments adopted by the EU, and political cohesion, i.e., the level of converge/divergence of Member States and EU institutions' positions on the main issues at stake.

The paper started by outlining the legal framework in which EU external action in the field of asylum is developed. While the Lisbon Treaty clarified EU competences on asylum and also provided for an explicit external competence in this field, the EU continues to share its competence on asylum with Member States, a circumstance that has been recognised as a structural limitation on the possibility of the EU acting, and doing so in a coherent way. Turning to priority setting, it was shown that the external dimension of asylum was included in a major programmatic document adopted by the EU in the field of migration, including the GAMM, the TFM, the Strategic Guidelines on JHA policy, and the recently adopted European Agenda on Migration. Regional protection programmes and increased cooperation on resettlement have been recognised as central pillars of EU action. Possible initiatives in the area of humanitarian visas and the external processing of asylum claims have also been proposed by the Commission as instruments to allow people to seek protection without putting their lives in the hands of smugglers.

The next sections of the paper analysed these three main lines of action, trying to uncover their genesis and development, as well as their main legal and institutional features. Regional protection programmes have been deployed by the EU since 2005 and increasingly have been at the centre of EU action on asylum. Five programmes have been developed so far in some of the regions most affected by protracted refugee situations. While RPPs have been presented as a tool that should assure coordination between EU refugee, humanitarian and development policies, such an objective has proved hard to achieve. On the side of policy determinacy, the lack of governance instruments, including a coordination mechanism at the EU level, adequate financial resources, and clearly established advocacy strategy in front of targeted countries, have exacerbated the lack of political cohesion among institutional actors at the EU level.

The recent launch of an RDPP in the Middle East represents an attempt to address some of the previously mentioned weaknesses. The RDPP features a new governance structure, based on a partnership between the Commission and a group of interested Member States, and includes a focus on development and advocacy towards targeted countries. Recently, the Commission has announced its willingness to also use the RDPP formula in the Horn of Africa and in North Africa. However, in light of the scale of the asylum challenge in targeted regions, stronger investments at the political and financial level appear necessary in order for the RDPP model to translate into a truly comprehensive framework of cooperation with the third countries most affected by asylum flows.

The following section took into consideration the Joint EU resettlement programme. First launched in 2013, the programme is made up of financial incentives for Member States to resettle refugees falling into priority categories established at the EU level.

Under the AMIF framework, the Joint EU resettlement programme is organised around a biannual pledging mechanism, which allocates funds on the basis of Member States' voluntary commitments to resettle refugees. The Joint programme represents a first step towards the involvement of the EU in an area that has traditionally been dealt with at the national level. However, the current level of commitments by Member States show that the EU is still not able to play a major role in the field of resettlement or compete with major global players, such as the United States or Australia. The adoption of the Joint programme, moreover, highlighted a lack of political cohesion among EU institutions, with the Parliament calling for effort on the part of Member States and also for a more stable and structured governance framework to be established at the EU level. The new Agenda of migration goes precisely in this direction by proposing an EU resettlement scheme to allocate refugee quotas to Member States on the basis of a redistribution key. However, at least in the pilot phase, such instruments will continue to rely on the voluntary participation of Member States and only after 2016 will the Commission, 'if necessary', move forward with a binding legislative approach.[76] This implies that the success of the initiative will depend crucially on the broad participation of the Member States in the scheme proposed by the Commission.

The last area taken into account in the paper includes cooperation on humanitarian visas and the external processing of asylum claims. Those two options have been debated at the EU level for several years now, without that debate resulting in any concrete policy initiatives. Recently, Member States confirmed their reluctance to explore common initiatives at the EU level, in spite of repeated calls from the Commission and the Parliament on the importance of opening up legal channels to access asylum in Europe. This position, however, can be questioned from several points of view. Firstly, the current Member States human rights commitments, which are enshrined in relevant EU legislation, such as the EU Visa Code. Secondly, it preludes opening up a channel to access the EU in a regular way, thus reinforcing demands for smugglers' services and forcing asylum seekers to attempt dangerous, often lethal, journeys. Thirdly, as testified to by the recent events in the Mediterranean, the arrival of significant numbers of people put the asylum systems of frontline Member States under untenable pressure, resulting in poor reception conditions and large-scale movement of unregistered asylum seekers across the EU.

The importance of building an effective external dimension of asylum is thus crucial, not only in building a sustainable and comprehensive CEAS but also in answering the dramatic challenges posed by trans-Mediterranean migration. As a result of yet another tragedy, occurring off the Channel of Sicily on 19 April 2015, when a boat carrying 950 migrants sank, EU leaders announced strong and bold initiatives. After a Special European Council meeting held 23 of April 2015, a set of priorities were agreed to confront the tragedy unfolding in the Mediterranean, including stepping up RDPPs

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[76] As further clarified in the Agenda, the United Kingdom, Ireland and Denmark shall not be bound by the envisaged measures, due to opt-out clauses granted to them under Protocols 20 and 21 in the TFEU. See A European agenda on migration, footnotes 3 and 8.

and increasing resettlement across the EU. Later, the European Agenda of migration added further substance to these commitments by increasing available financial resources and envisaging new governance mechanisms, such as a redistribution key to allocate resettlement places in the Member States. Theses are relevant improvements on which to build a stronger and more comprehensive EU action. However, due to the magnitude of the asylum crisis currently unfolding, it appears clear that, for the external dimension of EU asylum policy to gain speed (and not fade away) a much stronger and resolute commitment on the part of the Member States' governments towards more cooperation at the EU level will be required in the future.

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