EU POLICY OPTIONS TO MANAGE THE MIGRATION AND REFUGEE SITUATION: AN INSUFFICIENT TOOLBOX?

JAN SCHNEIDER

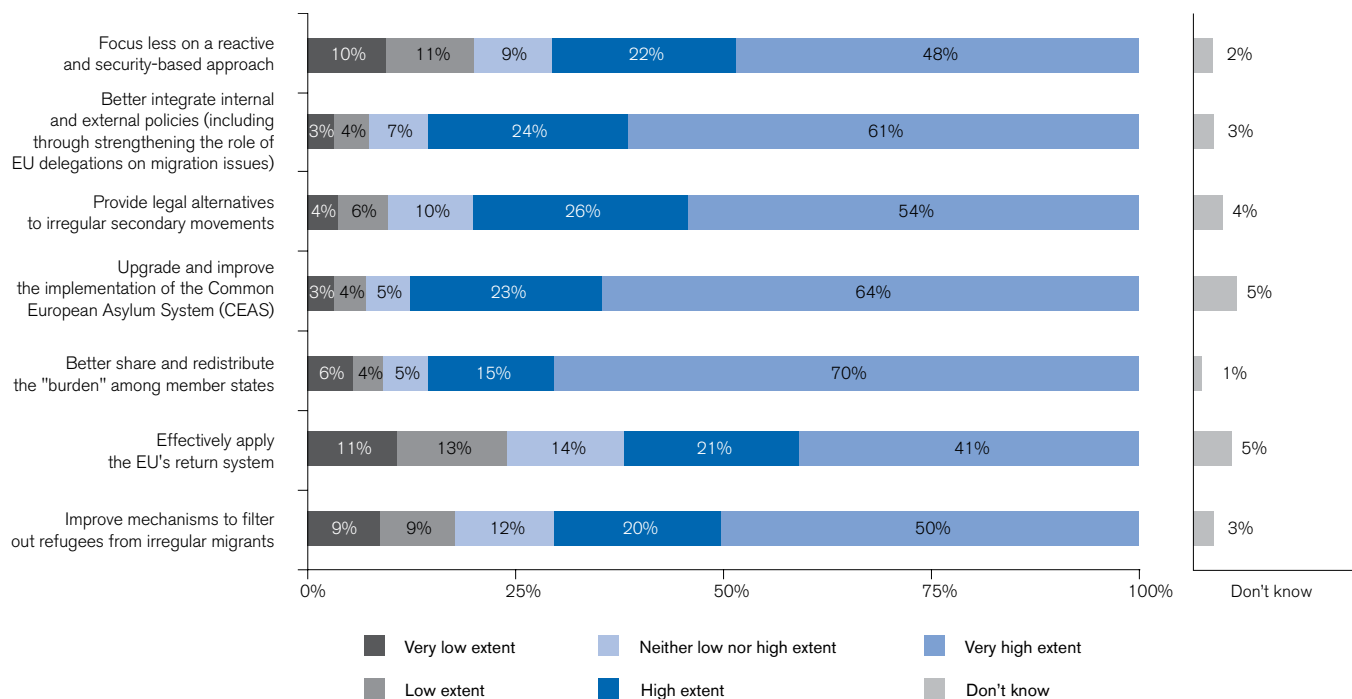Head of Research Unit, Expert Council of German Foundations on Integration and Migration (SVR)

In the light of thousands of fatalities among migrants trying to cross the Mediterranean and the ever-increasing number of asylum claims filed in EU member states, coupled with hopelessly overburdened reception systems in some countries of first arrival, the European Commission in May 2015 launched the European Agenda on Migration (EAM). It marked the baseline for different measures aiming at "a coherent and comprehensive approach to reap the benefits and address the challenges deriving from migration" (COM[2015] 240 final, p. 2). While the EAM appeared rather short and superficial, given the number of challenges identified at different ends (sea rescue, border control, human smuggling, resettlement, burden sharing, return, partnerships with third countries, addressing root causes, new policies on legal migration, completion of the Common European Asylum System – to name just the most eminent ones), it turned out to be the mere starting signal for an unprecedented cascade of policy initiatives and legislative proposals at EU level, which continued to unfold throughout 2016. The EAM differentiated "immediate actions", intended to overcome concrete situations of emergency and overburdening particularly in the "frontline" member states, structural measures to "manage migration better" in the medium term, as well as initial ideas "moving beyond" towards the finality of a harmonised European asylum and migration policy. However, much of the activity in the months to follow the launch of the EAM prioritised policy responses "driven by security (home affairs), diplomatic and military concerns and interests of the EU and its member states" (Carrera et al., 2015, p. 18); they epitomised the common piecemeal approach within a policy field that actually calls for a master plan, such as a real Common European Asylum System (CEAS) (Chetail, 2016).

> **While the EAM appeared rather short and superficial, it turned out to be the mere starting signal for an unprecedented cascade of policy initiatives and legislative proposals at EU level, which continued to unfold throughout 2016.**

Relevance of Various Policy Options

To what extent are the various policy options enshrined in the EAM relevant to experts, policy-makers and civil society representatives? The results of the 2016 Euromed Survey indicate that the current "salad bowl" approach at EU level, i.e. a mix of policy instruments addressing the issue from various ends, is generally apt. In most cases, the overwhelming majority of respondents attribute high or very high importance to the respective seven Survey items brought forward (see Graph 1).[1]

---

1. One out of these seven Survey items was framed negatively, i.e. it was asked whether the EU and its member states should focus *less* on a reactive and security-based approach. Yet, the overall approval rate (agreement on "high" or "very high extent") stood at 70%, symbolising a rather liberal and sustainability-oriented view on current policies. Interestingly, the perception of this item varied most between the two groups of Mediterranean Partner Countries. While 77% of the Maghreb respondents favoured less reactive and security-oriented policies, the respective rate was ten percentage points lower (67%) among respondents from Mashreq countries, indicating higher approval of EU ad hoc measures resulting from perceived security threats.

Graph 1: To what extent do you consider that the following options should be pursued by the EU and its member states?

	Very low extent	Low extent	Neither low nor high extent	High extent	Very high extent	Don't know
Focus less on a reactive and security-based approach	10%	11%	9%	22%	48%	2%
Better integrate internal and external policies (including through strengthening the role of EU delegations on migration issues)	3%	4%	7%	24%	61%	3%
Provide legal alternatives to irregular secondary movements	4%	6%	10%	26%	54%	4%
Upgrade and improve the implementation of the Common European Asylum System (CEAS)	3%	4%	5%	23%	64%	5%
Better share and redistribute the "burden" among member states	6%	4%	5%	15%	70%	1%
Effectively apply the EU's return system	11%	13%	14%	21%	41%	5%
Improve mechanisms to filter out refugees from irregular migrants	9%	9%	12%	20%	50%	3%

Source: Compiled by the IEMed based on the results of the 7th Euromed Survey/Question 10

While these policy options are not mutually exclusive, some stand out as pressing, among them to upgrade and improve the Common European Asylum System (CEAS), to better share and redistribute the "burden" among member states and – much in line with the envisaged important role of migration management activities within the European Neighbourhood Policy as evidenced by the 2015 Euromed Survey (Aragall, 2016) – to better integrate internal and external policies (including through strengthening the role of EU delegations on migration issues). Somewhat less approval was attributed to effectively applying the EU's return system. On the one hand, this may illustrate some scepticism towards an enhanced return policy having the potential to be a game-changer. On the other hand, it must be stated that apart from the Return Directive (2008/115/EC), which has not been defined as a genuine component of the CEAS, and an assisting role of Frontex, there is not much of a common system or policy in place, as member states or sub-national entities have considerable leeway in their approach to fostering or enforcing returns. Thus, a number of open comments from the Survey call for the need to enhance this policy tool:

> Return will not be sustainable if it is only return. There needs to be reintegration, either at the individual or community level.
>
> Respondent from an international organisation

> Pour le système de retour de l'UE il serait plutôt efficace de travailler en coordination avec les associations locales et ONG travaillant dans ces pays en relation avec les États.
>
> Algerian respondent

IEMed.

Respondents emphasised the need for the EU to follow a comprehensive approach rather than to deal with the symptoms.

Furthermore, several qualitative answers provided by the Survey respondents emphasised the need for the EU to follow a comprehensive approach, prioritising other options rather than dealing with the symptoms within the EU:

The main option should remain the coherent and sustainable management of the deep roots of the refugee crisis in the countries of origin.

Romanian respondent

Creating viable legal access to the EU is the most important and burning issue to bring forward.

Finnish respondent

Intra-EU Relocation as an Obstructed and ill-Coordinated Policy Mechanism

In the face of a worsening reception crisis in Greece and Italy – and to quite some surprise to observers – the Council decided in September 2015 on a temporary derogation from the Dublin system. Up to 160,000 persons in clear need of protection were to be relocated to the remaining EU member states from these two countries within two years, following a binding principle. The distribution key had been suggested by the Commission and took into account for each member state the size of the population, the gross domestic product as an indicator of economic power, the unemployment rate and the intake of protection-seeking individuals over the past five years (COM[2015] 286 final).

The new emergency approach raised hopes of replacing the Dublin system, which had regularly resulted in an unfair distribution of burdens regarding the reception of asylum seekers and associated procedures, with a permanent mechanism of responsibility sharing in the long run – although the relocation quota aimed to retain that very Dublin system for the moment. However, observers raised concerns that the failure of several member states to fully comply with their obligations to provide reception conditions according to the respective EU Directive would constitute a serious practical impediment for the temporary relocation model to work – adding to the failure to envolve asylum seekers themselves in the decision about where they want to be relocated (Carrera & Guild, 2015). Furthermore, the Council decision was taken under qualified majority rule against explicit opposition by Hungary, Slovakia, the Czech Republic and Romania, with the former two challenging the legality of the decision before the European Court of Justice.

Despite slight growth rates throughout 2016, the number of migrants effectively relocated since the launch of the scheme in September 2015 until december 2016 was just above 8,000.

Despite slight growth rates throughout 2016, the number of migrants effectively relocated since the launch of the scheme in September 2015 up until December 2016 was just above 8,000 (6,212 from Greece and 1,950 from Italy), with a mere total of 18,515 places pledged by EU member states (see Graph 2). The Council decisions of 2015 provided for 160,000 relocations within two years, i.e. until September 2017. With only few months to go, less than 12% of this quota has been pledged, and only 5% has been effectively relocated. This still being perceived as a drop in the ocean, the Commission has envisaged a massive increase in the number of monthly cases, so that "as of April 2017 the number of relocation transfers should reach at least 3,000 per month from Greece and at least 1,500 from Italy" (COM[2016] 791 final, p. 16/17).

Graph 2: State of Play: Relocation of asylum seekers from Greece and Italy in 2016 (cumulated figures).
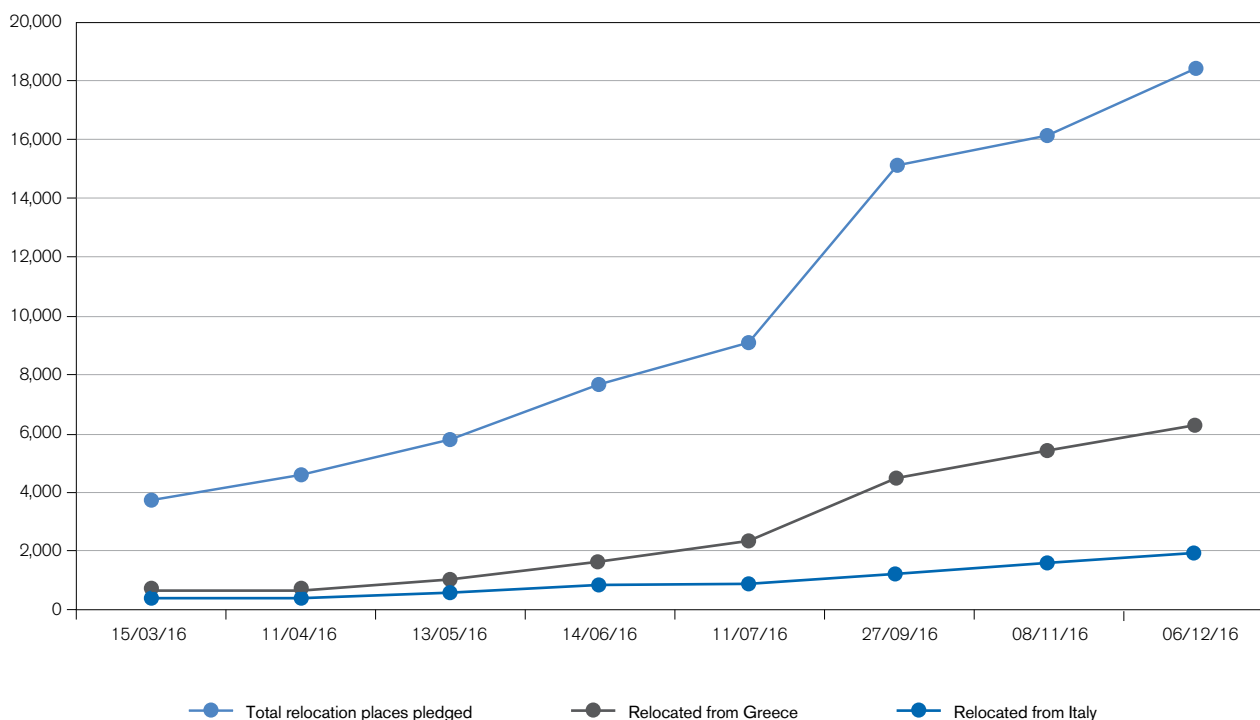
Sources: European Commission – Reports on Relocation and Resettlement and Annexes: COM(2016) 165 final, COM(2016) 222 final, COM(2016) 360 final, COM(2016) 416 final, COM(2016) 480 final, COM(2016) 636 final, COM(2016) 720 final, COM(2016) 791 final.

One of the main reasons for the scheme's agony is that most member states are phlegmatic with regard to providing openings in line with their binding quota, with some of them boycotting it completely. Other hurdles encountered over the first months included a high level of scepticism among stranded migrants in Italy and Greece to apply for the programme in the first place, as it also implies some degree of coercion and generally disregards their country preferences. Furthermore, all participating actors continue to face operational and logistical problems in trying to coordinate very complex allocation, verification and transfer processes, which are also linked to the "hotspot" approach. The latter have been malfunctioning in multiple ways, as the pooling of capacities from the national asylum administrations, European Asylum Support Office and seconded experts from other member states proved difficult and was numerically insufficient; access to the asylum procedure turned out to be hampered rather than fostered in some instances; and reception conditions in several centres fell short of the EU aquis (see EP, 2016; Dutch Council for Refugees et al., 2016).

At the time the Euromed Survey was in the field, the odds of the relocation scheme to becoming a success story looked even grimmer than stated above. Consequently, the majority of respondents called for improving coordination between the European Commission and the member states as the most promising remedy (see Table 1).[2]

One of the main reasons for the low performance of the relocation scheme is that most member states are phlegmatic with regard to providing openings in line with their binding quota, with some of them boycotting it completely.

2. The Survey items regarding the relocation scheme were only responded to by individuals, who self-identified as availing themselves of "advanced knowledge of specific elements of migration policies," which amounted to a total of 234 individuals.

Table 1: Measures to be prioritised regarding the relocation plan.
(1st: most important, 3rd: least important)

	1st	2nd	3rd	Total
Penalising member states for failing to fully implement the Common European Relocation Mechanism	64	54	116	**234**
	27%	23%	50%	**100%**
Modifying the relocation scheme breakdown per member state	43	109	82	**234**
	18%	47%	35%	**100%**
Improving coordination between the European Commission and the member states	127	71	36	**234**
	54%	30%	15%	**100%**

Source: Compiled by the IEMed based on the results of the 7th Euromed Survey/Question 11

Second place in the total sample, 27% prioritised restrictive measures for non-compliant member states. Interestingly, however, there is a clear divide in the perception between "frontline" and central/northern member states. While in the former group, 35% of respondents indicated a priority for penalising member states to fully implement the Common European Relocation Mechanism, only 20% did so in the latter group. The controversy over how to secure compliance with the relocation scheme, both regarding the member states fulfilling their quota as well as the relocated refugees, which ought to abstain from irregular secondary movements within the EU, also elicited a significant number of open answers:

> The relocation scheme is based on coercion of member states and also of protection seekers, thus it is bound to be problematic in implementation. It could be more effective to explore possibilities to move the money around Europe to compensate the countries which have a higher burden or financially encourage the member states to accept more refugees.
>
> Lithuanian respondent

> Each member state should be bound by the system in place, which should be made effective through imposition of sanctions if not respected.
>
> Belgian respondent

> Relocation can only work on a consensus basis, not on a compulsory basis. Financial penalties are irrelevant and counterproductive.
>
> French respondent

> You need to have carrots more than sticks and this will include a comprehensive policy focusing on the different needs of the member states. A southern state may have different needs than a northern state.
>
> Turkish respondent

The relocation plan is in any case not enough to face the nature and the magnitude of the crisis.

What becomes evident is that policy-makers and experts in particular do not want to put all their eggs in one basket and rely on relocation as a key policy tool. The great majority thinks that the relocation plan is in any case not enough to face the nature and the magnitude of the crisis; just representatives of civil society organisations stand out to some degree as they seem to put more trust in the new cumbersome mechanism (see Graph 3).

Graph 3: To what extent do you think that the relocation plan is in any case not enough to face the nature and magnitude of the crisis?
(The graph below shows the % of high and very high extent answers)
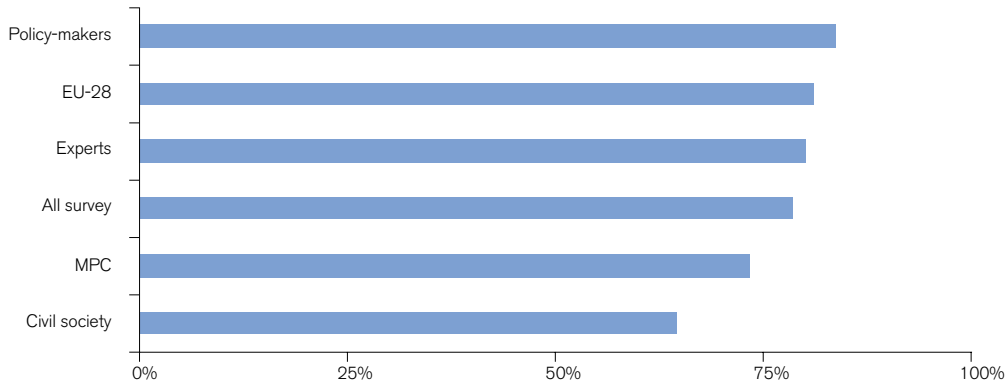
Source: Compiled by the IEMed based on the results of the 7th Euromed Survey/Question 11b

Despite the fact that participants had been confronted with a broad choice of policy options at an earlier stage in the Survey (see Graph 1), quite a number came up with additional ideas in the open comment section of this item. Some were clustered around the issue of whether sub-national, i.e. regional or municipal, entities might be more appropriate actors to deal with refugee reception and provide openings for relocation, as opposed to national governments:

> There are so many possibilities that the EU has not even taken into account. For example, involving cities and local governments instead of countries. All in all, big cities will be the entities that will need to integrate migrants.
>
> Italian respondent

> Top-down imposition of a given destination to refugees and of a given quota of refugees to destination states cannot work on a significant scale and in a sustainable way. An incentive-based system directly targeting refugees and receiving communities is […] an alternative worth experimenting.
>
> Italian respondent

Most likely, the continued struggle to swiftly implement top-down prescribed policy schemes such as the relocation mechanism will foster the experimental implementation of policy alternatives of that kind – and there should be no limits to innovative imagination.

Conclusions and Outlook

Undoubtedly, the Commission since 2015 has diligently worked towards tabling policy proposals that could mark a way forward for the common policy on asylum and migration in the EU. However, by taking into account the rather short-sighted goals of the Council and trying to comfort member states opposing a more coherent approach, most capacities have been geared towards "crisis management", i.e. reducing migratory pressure by securing borders, fighting traffickers and cooperating with third countries to contain irregular migration, such as through the EU-Turkey Agreement (see Üstübici, A., "The EU and Turkey Cooperation on Migration", p. 54). Without doubt, the relocation scheme for up to 160,000 migrants in need of protection in Italy and Greece, combined with the establishment of "hotspots" to register boat arrivals, was one of the most spectacular and contested instruments launched to tackle the crisis of refugee policy from within the European Union (EP, 2016).

Sub-national entities may be appropriate actors to deal with refugee reception according to some respondents.

The Commission since 2015 has diligently worked towards tabling policy proposals that could mark a way forward for the common policy on asylum and migration in the EU.

IEMed.

But due to rather short-sighted goals of the Council and member states opposing a more coherent approach, most capacities have been geared towards "crisis management".

With regard to structural solutions to overcome the pitfalls of the Dublin system and sustainably improving the CEAS, the Commission went on a hesitant zigzag course. In its April 2016 communication "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe" (COM[2016] 197 final) it undertook an experimental move. It drafted a more or less coherent picture of a harmonised asylum system, including a fundamental change of the mechanism applied to determine the member state responsible for an asylum claim – suggesting a fixed distribution key reflecting reception capacities – and the long-term perspective of transferring responsibility for the processing of asylum claims at the EU level (see Guild & Ansems de Vries, "Strengthening the Common Asylum Policy", p. 13). However, this draft of a post-Dublin system was only "Option 2", and it hardly received any advance praise by member states. Consequently, "Option 1" quickly materialised into a May 2016 Commission proposal for a recast regulation, leaving the basic "Dublin" principle for determining responsibility untouched and adding a complex "corrective allocation mechanism" in case individual member states are disproportionately burdened by the inflow of asylum seekers (COM[2016] 270 final). Surging forward, the Commission also tabled proposals for a Regulation to transfer the EASO into a more competent "European Union Agency for Asylum" (COM[2016] 271 final), a recast Eurodac Regulation (COM(2016) COM[2016] 272 final), a recast of the Reception Conditions Directive (COM[2016] 465 final) and two new Regulations replacing the Qualification Directive (COM[2016] 466 final) and the Asylum Procedures Directive (COM[2016] 467 final) in order to safeguard more uniformity within the CEAS. What lies ahead for 2017, and most likely 2018, is fierce and lengthy debates between the European Parliament and the Council over the proposed legal acts. The outcome of these negotiations is completely uncertain. In the wake of successful populist and eurosceptic movements across the EU, which aggravate the overall crisis of European integration, many member states' governments put strong emphasis on domestic politics and show little appetite for further changes or concessions in this sensitive policy area.

There is a plethora of relevant and potentially effective policy options brought up at EU level.

However, this toolbox is insufficiently harnessed to produce sustainable outcomes, as the relevant actors in the EU and its member states until now have proven unable to pull together and go beyond short-sighted and vote-seeking policies.

In conclusion, the 2015/16 frenzy of launching various new policy tools and reform proposals at EU level did not imply a departure from the established regime, let alone a new paradigm. Rather, they marked superficial changes in order to maintain a policy core that would continuously produce sub-optimal outcomes (Trauner, 2016). The all but failure of the relocation scheme epitomises the dubiousness of these second-order changes. They struggle to be more than an embellishment to the restrictive and far-reaching measures taken at the level of most EU member states' national asylum systems to contain spontaneous migration of asylum seekers, either by watering down the standards of reception and protection or by erecting border fences to close migration routes. Clearly, there is a plethora of relevant and potentially effective policy options brought up at EU level. However, this toolbox is insufficiently harnessed to produce sustainable outcomes, as the relevant actors in the EU and its member states until now have proven unable to pull together and go beyond short-sighted and vote-seeking policies in the wake of a perceived "migration crisis".

Jan Schneider, Head of SVR's Research Unit, Expert Council of German Foundations on Integration and Migration.
PhD at Giessen University's Institute of Political Science. Former research positions included the German Federal Office for Migration and Refugees (BAMF), where he worked for the national contact point for the European Migration Network (EMN), and the Hamburg Institute of International Economics (HWWI).

Bibliography

ARAGALL, X. (2016). What Place for Migrations in the ENP Agenda? In European Institute of the Mediterranean (Ed.), *Euromed Survey of Experts and Actors 06, European Neighbourhood Policy Review: European Union's Role in the Mediterranean,* pp. 78-82. Barcelona: IEMed.

CARRERA, S., BLOCKMANS, S., GROS, D., & GUILD, E. (2015). The EU's Response to the Refugee Crisis: Taking Stock and Setting Policy Priorities. *CEPS Essay,* 20.

CARRERA, S., & GUILD, E. (2015). Can the new refugee relocation system work? Perils in the Dublin logic and flawed reception conditions in the EU. *CEPS Policy Brief*, 334.

CHETAIL, V. (2016). The Common European Asylum System: Bric-à-brac or System? In V. Chetail, P. De Bruycker, & F. Maiani (Ed.), *Reforming the Common European Asylum System. The New European Refugee Law*, pp. 3-38. Leiden: Brill-Nijhoff.

DUTCH COUNCIL FOR REFUGEES, ECRE, ITALIAN COUNCIL FOR REFUGEES, GREEK COUNCIL FOR REFUGEES, PROASYL (2016). *The implementation of the hotspots in Italy and Greece*. A study. Amsterdam.

EP – EUROPEAN PARLIAMENT (2016). *On the frontline: The hotspot approach to managing migration.* Study at the request of the LIBE Committee. Strasbourg.

TRAUNER, F. (2016). Asylum policy: The EU's 'Crises' and the Looming Policy Regime Failure. *Journal of European Integration*, 38 (3), pp. 311-325.