

EU Migration Governance:

**Budgeting and Spending
in times of crisis
as seen by the European Court
of Auditors**



Prof. Dr. Dimitrios V. Skiadas, LLB, MJur, PhD

Dept. of International & European Studies, Univ. of Macedonia
Jean Monnet Chair on EU Budgetary Governance and Audit



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Thessaloniki 2020

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Preface

The Jean Monnet Chair on EU Budgetary Governance and Audit is hosted at the Department of International and European Studies of the University of Macedonia in Thessaloniki, Greece. The Chair was awarded by the European Commission and the Education, Audiovisual, and Culture Executive Agency (EACEA), under the Jean Monnet Scheme within the Erasmus+ Programme of the European Union, which supports university initiatives aimed at creating teaching activities in European integration.

The purpose of the Chair is to enhance the limited, so far, academic work, in terms of teaching and research, with regard to EU Budgetary Governance and Audit, by increasing the interest and deepening the knowledge in the field of studies related to EU (legal, economic, political), as well as, to address the University's outward orientation by providing the general public and the specialised groups of stakeholders in the public and private sector, information and (when requested) specialised knowledge on issues regarding EU Budgetary Governance, as a means of interpreting the developments in the EU. Understanding at least the fundamentals of EU Budgetary Governance allows for a new look on the benefits of European integration, a look based on academically verified evidence that will enhance the dialogue and the cooperation between the academia and the civil society.

One of the tasks of the Chair is the production of materials regarding its academic topics. These materials entail a variety of texts such as Notebooks, Papers and Books. The first of these books focuses on a timely issue, the migration crisis which culminated in 2015 and has been included, since, as a main topic in the agenda of the public policy of the EU, both at public discourse level as well as at EU action level. This topic provides a unique opportunity to examine the performance of the EU institutional and budgetary architecture in addressing such a very significant issue. In order to undertake such an examination, the most useful tools entail the relevant special reports and other documents produced by the external auditor of the EU, the European Court of Auditors. The presentation is made on a thematic basis, as this basis has been structured by the Court of Auditors itself, and it follows the historical course and timeline of the development of the relevant initiatives undertaken within the context of EU migration policies. The aim of the book is to provide its readers with a concise, yet as exhaustive as possible, account of instances of soundness in EU Budgetary Governance, as well as the commentary of the Court of Auditors' experts

on their findings with regard to the migration crisis. The book makes reference also to the general framework (political, economic, and legal) of each case presented therein, so that the reader may have a global view and may be in a position to understand and appreciate all relevant aspects.

Professor Dimitrios Skiadas

Jean Monnet Chair on EU Budgetary Governance and Audit

Introduction

Migration is an activity as old as mankind itself. Throughout history there have been significant instances of individuals or entire populations migrating from one place to another for an extensive variety of reasons. Humans have moved around the globe in search of food, in flight from enemies, or in pursuit of riches, spreading their cultures and languages as well as their racial characteristics, making human presence the predominant element of identifying entire areas, such as Europe, Africa and Asia. The pace of the process was usually very slow, however this changed and the scope of migration, especially at long distance level, expanded as the means of transport improved. The “discovery” of the New World (the Americas, North and South), as well as of Australia, increased the impetus for intercontinental migration, initially for military and colonization purposes, and later – as the opportunities offered by the newly found territories were gradually unfolding – for trade and production (including also, until the 19th century, the slaves’ trade) (see Ferrie & Hatton, 2013).

Thus, several types of migration have been identified and labeled, such as seasonal migration, temporary migration, migration with the intent of permanent residence, forced migration entailing the expulsion of entire ethnic groups or the deportation of certain individuals, and migration in the form of flight caused by political persecution, civil war, famine, environmental disasters, etc. Therefore, given the events that have occurred throughout the globe, at least during the course of recorded history, it would not be erroneous to say that migration (and especially international migration) is a constant, permanent, global phenomenon, and not just a mere temporary movement (Rystad 1992).

Migration is defined as the movement of persons away from their place of usual residence, either across an international border or within a State, encompassing any kind of movement of people, whatever its length, composition and causes; it includes refugees, displaced persons, uprooted people, and economic migrants (see IOM 2019, IFRC 2012).

Migrants have been essential for the development of many modern states, as they have shaped labour dynamics around the globe, and thus they have been a cornerstone for the global economy. The linkage between migration and development has been recognized as being strong but also diverse, as it is influenced by the conditions of the process of migration. The inherent vulnerability in being a migrant cannot be overlooked, as it entails, by definition, being outside one’s place of habitual residence and

often country of origin (many times also away from his/her family), in a place where one might not understand the language and/or culture (the latter being, on several occasions, completely contrary to his/her own culture). These conditions lead to discrimination, and, in times of economic and social tensions, to racism and xenophobia. Tackling these problems has been one major concern at international level, as the international community came to realize that migration's benefits can be maximized and its drawbacks can be reduced if countries of origin form dialogues and partnerships with countries of destination, by improving the collaboration between themselves and by introducing concepts such as shared responsibility and collective benefits (IFRC 2012).

Such an endeavour would require an extensive array of public policies, all incorporated into – or at least affiliated with – an overall strategy to address the issues of migration. And of course such a strategy, both at national and international level, would require a significant budgetary support, in order to provide resources for all its aspects. And these two elements, public policies/strategy and budgetary resources, are almost always interconnected and affected by a series of factors which, in turn, depend on the nature of the actor (subnational, national, supranational, international) that takes the initiative of drafting and implementing them. The example of the European Union is a very characteristic one.

In terms of formulating and implementing a overall strategy with regard to migration, that affects also several other fields of public policy, it has been found that the relevant schemes, at international level, are quite weak. The same applies for the European Union. The various states, like the EU Member States, are reluctant to cede sovereignty over international migration and the negotiations between rich destination countries in the north and sending countries in the south must overcome asymmetries of interests. The Union's institutional complexity and political dynamics set limits to its capacity to formulate commonly accepted policy choices either amongst its Member States or with third countries. Over the years, and especially after the eruption of the migration/refugee crisis in 2015, three main factors have been identified as the causes for the Union's reduced effectiveness to tackle the relevant problems: The contrasting approaches between the European Commission and the Council of the European Union with regard to the Union's competence on its external actions; The diversity of the Member States' interests in migration policy; And the different policy agendas of the European agencies involved in this policy. The outcome of this situation is reflected in the resulting approach to the Union's migration policy which

is limited in scope and characterized by variable participation. This has led to the view that the EU, despite providing an impression of immense capability to take action, is a vehicle of limited effectiveness in the field of migration (Hampshire 2016).

Shifting focus to the budgetary aspects, one finds that when attempting to analyse the effects caused by the budgetary funding to the implementation of a public policy, one should bear in mind that our world is a world of scarcity, and at the same time we seem to seek always more than what we have. Thus the process of making choices appears as inevitable, meaning that in order to have something we have to give up something else, ie to face a trade-off (Miller, Benjamin & North, 1993). In the context of budgetary governance, these trade-offs, and the choices they entail, reflect the ideological viewpoints and the political priorities of the authorities (executive and parliamentary) which are responsible for the budget's preparation, adoption and implementation. However, these budgetary trade-offs may be quite extensively affected by external shocks which influence the authorities' behaviour and decisions in this context. The migration/refugee crisis of 2015-2016 has been such a shock and it has caused significant changes to budgetary allocations throughout Europe, as it has put the European Union's (and its Member States') institutional and budgetary structures under unprecedented strains (for an analysis of this impact see Lipsmeyer, Philips & Whitten, 2017).

The present analysis aims to approach the European Union's effort to tackle the migration/refugee crisis and its consequences through the audits and the relevant findings of the Union's institutional external auditor, the European Court of Auditors. Tackling the effects of the migration crisis has been at the epicenter of European public discourse and institutional action for more than four years, however migration problems existed long before the crisis' appearance in front of the Union's southern doorstep in 2015. Various initiatives have been undertaken in order to provide solutions to problems and answers to questions relating to migration towards the European Union. These efforts have been "translated" into the provision of funds by the Union's Budget, within the Union's array of competences, and the soundness of their management has been examined by the European Court of Auditors (ECA).

Briefly speaking, the European Court of Auditors is entrusted with the task of, *inter alia*, examining whether all the Union's expenditure are incurred in a lawful and regular manner and whether the financial management has been sound (see Art. 287 para 2 of the Treaty on the Functioning

of the European Union). The key concepts in this provision are legality, regularity, sound financial management. The Court's examination as to legality and regularity is based on checking whether individual commitments and payment operations, have been carried out in compliance with the relevant legal provisions (sectoral regulations, conventions, mandates, agreements and contracts), as well as whether the accounting systems of the Union are adequate and capable of recording all transactions correctly. Establishing the soundness of financial management entails the use of three inter-related aspects of management which are practically examined, called the three "Es": Economy, Efficiency and Effectiveness. The "Economy" relates planned input of resources to the actual input, meaning the examination of whether the least expensive means of achieving a given target have been used or not (examination of alternatives). The "Efficiency" is reflected by the relationship between actual input (resources) and actual output (results achieved), meaning the examination of whether the means adopted were employed in the most appropriate manner (examination of performance). The "Effectiveness" is measured by the comparison of actual output with planned output, meaning the examination of whether the purpose has been achieved or not (success rate). It must be pointed out though that this kind of audit should not include the evaluation of the purpose selected which is a question of political choice. The ECA must not question policy decisions but it investigates the financial and other consequences of such decisions and their implementation. In other words, the Court is not empowered to decide whether the Union should introduce a particular kind of policy but only to report as to whether that chosen line of policy is being conducted in a cost effective way (for more details see Skiadas, 2016, and the references therein).

The European Court of Auditors has produced a series of Special Reports in which it has examined various aspects of the European Union's financing initiatives with regard to migration, before and after the landmark events of 2015. The findings of these Reports are presented in this text, along with relevant analyses on issues that will provide the readers with additional information in order to allow them to formulate an as much as possible accurate point of view on the financial activities of the Union, with regard to migration. Some of the analysis included in the text refers to activities that have not been financed – at least not in total – by the EU Budget, but their inclusion has been deemed necessary for the better comprehension of the issue at hand.

1

Chapter The Crisis in figures

The term “crisis” is a catchy term. It always attracts attention, causes concerns, and provides excuses for action. It is therefore no surprise that it is used with increasing rate by policy makers and mass media, in order for each to achieve its main objectives: justification of action (including the success or failure of this action) and increase of ratings. The events of 2015 in the field of migration had all these qualifications in order to lead to the use of this term in all possible levels of public discourse. The migration/refugee crisis became the key-word for all debates and actions.

However, before examining the policies and action on this crisis, it is necessary to provide a definition in order to establish its meaning: the migration crisis entails the complex and often large-scale migration flows and mobility patterns caused by a crisis which typically involve significant vulnerabilities for individuals and affected communities and generate acute and longer-term migration management challenges. A migration crisis may be sudden or slow in onset, can have natural or man-made causes, and can take place internally or across borders (IOM 2019).

In this analysis, reference is made to the “migration/refugee crisis” as the scope of the various (especially funding) schemes used for tackling this crisis, including all groups i.e. migrants and refugees, although occasionally the legal distinction between them is made (for a detailed analysis of this distinction and its impact on the measures adopted for the crisis see Crawley & Skleparis 2018).

With regard to the European Union, such a situation that could be named as “migration crisis” was created in 2015. However, migration has always been a reality in the EU state of affairs. Even since the creation of the European Communities, in the 1960s, the overall migration policy in Europe was very liberal, with incentives to attract migrant workers and demonstrate tolerance towards irregular entries. The migration flows, at that time, came mainly from North Africa and Turkey and it was in Germany where

a new model of migrants, the so-called “guest workers” prevailed, although over time it became evident that migrants tended not to return to their own country but to settle in the host state. The 1970s saw a steady increase of migration within the Member States of the Communities due to the free movement of workers regime, while migration from third countries fluctuated depending on the upturn or downturn in national economies of the countries of origin. In the 1980s and 1990s, the steadily increasing migration flows from non-EU countries became an established trend, alongside a rise in the number of asylum seekers. Especially from 1991, with the outbreak of the conflict in the Balkans, EU countries became a refuge for over a million people who were displaced or fleeing persecution. During the same period, an increased level of cooperation between the EU Member States on migration was being developed, the culmination of which was the actual conferral of competence to the European Union through the Treaty of Amsterdam. The Union’s expansion towards the east with the accession of thirteen new Member States until 2013 was accompanied by a reframing of the Union’s policy on migration and asylum, through the enactment of legal regimes such as the Schengen system and the Dublin system, and a large number of secondary legislative acts (Regulations and, mainly, Directives) (Federico & Feroni, 2018).

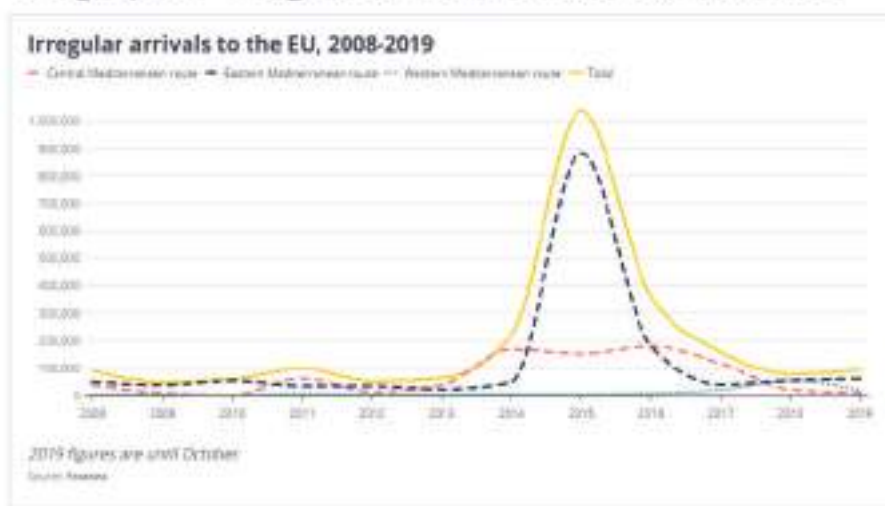
In 2009, it was estimated that the economic recession in the vast majority of EU Member States had led to a sharp increase in unemployment rates, prompting numerous governments to introduce measures to protect domestic labour markets. The measures amounted to new immigration restrictions aiming, successfully, at reducing the influx of migrants and encouraging their departure. Thus a strongly negative statistical correlation was established between rising unemployment rates in Member States and the detections of irregular migrants. Notwithstanding the complexity of the issue, the correlation could signal that irregular migration is mainly a function of labour demand in destination countries and is largely predictable. As a result, the decreasing trend in irregular migration at that time (2009) represented a kind of a pause that ended when labour demand in Member States started to rise again (2013 onwards). Also the developments in the wider area of Mediterranean (Arab Spring, civil war in Syria, etc.), the rise of political instability across the world, and the progressive reduction of regular entry channels into the EU resulted in an increase in irregular migration and created new migratory flows, both from Eastern Europe and Asia, and from Africa, largely via the so called central and eastern Mediterranean routes.

Especially the Syrian civil war (raging since 2011 but culminating in 2015) resulted in the forced movement of half of the Syrian population. From this population, almost 5 million fled to territories outside Syria, such as Jordan, Lebanon, Egypt, or Iraq, however the majority of this displaced population went to Turkey. In early summer 2015, many Syrians from these countries began to try to move to Europe, creating a “tidal wave” of migrants towards the southern European coastline and islands, namely Greece and Italy. Most of them claimed to be asylum seekers, aiming to be recognized as refugees, in order to acquire the relevant specific legal status that would facilitate their migratory course and would reduce the possibility of them being sent back to the dangerous war zones. The cause of this “wave” was three-fold: The overall European approach to forced migration has always had a strong prohibitionist tendency: asylum seekers are not allowed to travel freely throughout the EU and, at the same time, the Member States have developed a common safe third country policy, according to which, asylum seekers could be sent to these safe countries. The central notion of this approach, being of German origin, was that if asylum seekers were returned to third countries for their claim to protection to be assessed, they would figure out that it was pointless to travel to Europe and would therefore stop coming. Furthermore, the EU Member States have established cooperative policies with neighbouring third countries in order to prevent departures from there to Europe, and to prevent the entry into these countries of people who might subsequently try to travel onwards to Europe. These policies reduced significantly the options available to Syrians asylum seekers to find legal routes for entering Europe. Finally, the various policies and measures adopted to provide humanitarian and basic subsistence support to the asylum seeking populations in the third countries did not receive adequate financial resources either from the UN or the EU, thus reducing the level of assistance provided. The combination of these three elements prompted a rapid increase in the demand for means of transport for the most convenient, in terms of proximity, route, which is the Turkey-Greece route. This demand led to the provision of such services by smugglers, and a sharp increase in prices charged for these services, a development that attracted more “service providers”. This in turn led to a rapid increase in supply, which resulted in falling prices. The resulting cheap “transport facility” (smuggling) triggered people other than just Syrians (including refugees such as Eritreans or Afghans, and also non-refugees) to travel to Europe, via the Turkey-Greece route. In summary, the combination of the European prohibitive approach and the lack of provid-

ing asylum seekers a viable alternative in the region had the opposite effect of what was intended; it led to more illegal migration, not just of Syrians, but also of migrants who would not otherwise have migrated to Europe (Battjes et al., 2016).

This analysis provides a valid explanation of the data that are available on irregular migrations to Europe since 2011. The relevant developments are reflected in the following graphs. In Graph 1, the annual course of irregular arrival is presented:

Infographic - Irregular arrivals to the EU, 2008-2019

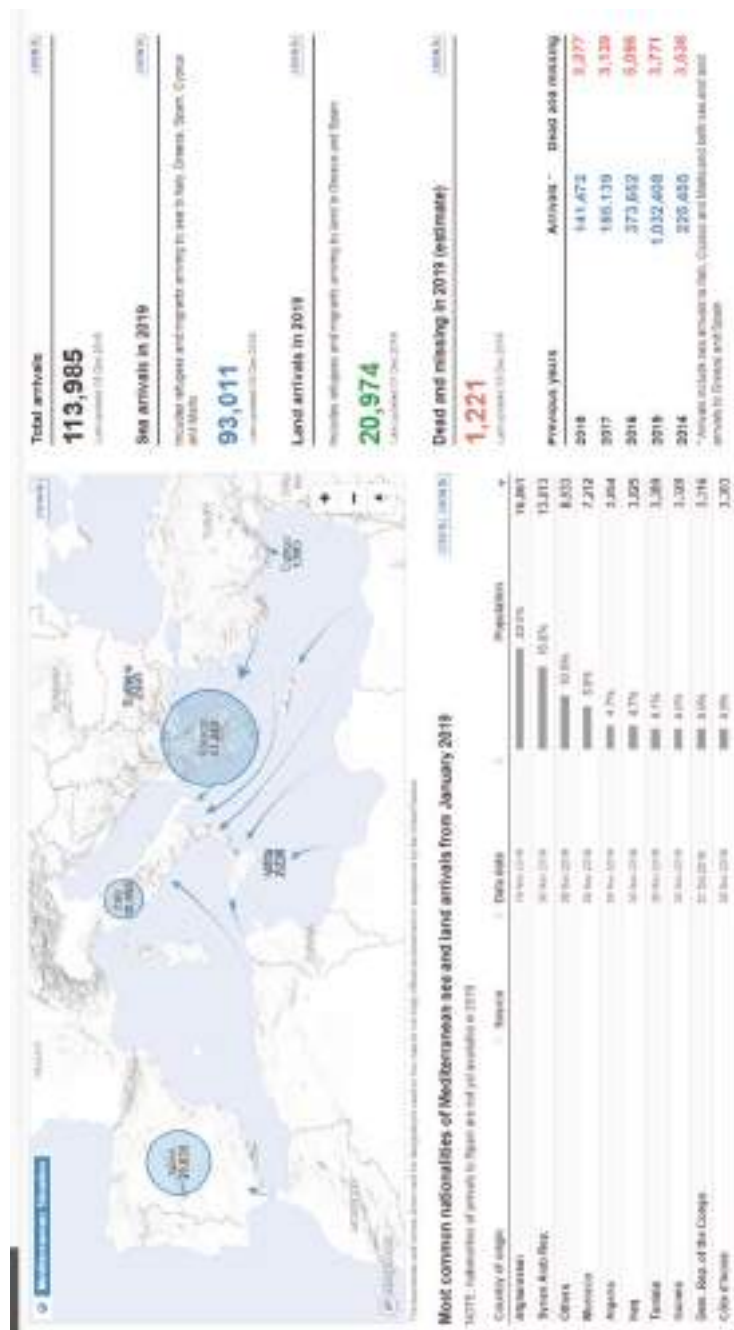


Graph 1: Annual course of irregular arrivals to the EU

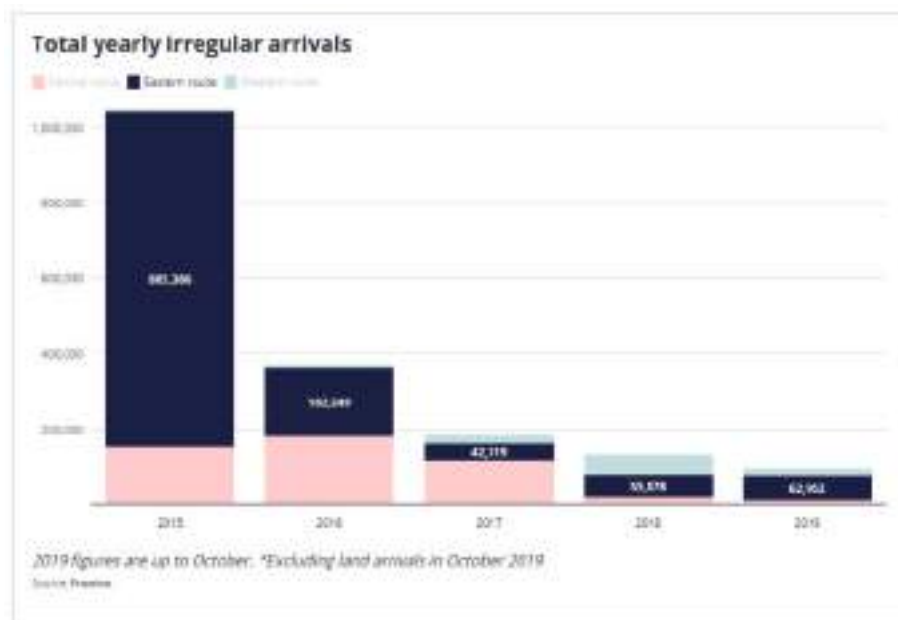
(source: Council of the EU,

<https://www.consilium.europa.eu/en/infographics/irregular-arrivals-since-2008/>
on 30.11.2019)

The figures of the migration flows from the three main routes (eastern, central and western) employed during this crisis provide undeniable testimonies of the influx of migrant population towards Europe (see Graph 2, Graph 3):



Graph 2: Migration Situation in the Mediterranean
(source: UNHCR, <https://data2.unhcr.org/en/situations/mediterranean> on 3.12.2019)



Graph 3: Total Yearly Irregular Arrivals per route

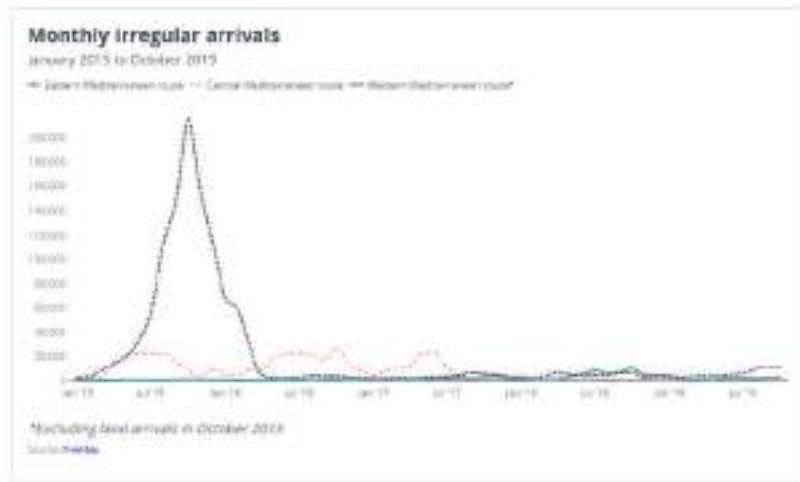
(source: Council of the EU, <https://www.consilium.europa.eu/en/infographics/eastern-and-central-mediterranean-routes-09-2017/>, on 30.11.2019)

It is evident from the above Graphs that irregular arrivals in the EU have decreased significantly since the peak of the migration crisis in 2015. Between January and October 2019, 95,820 irregular arrivals have been registered. The breakdown per migratory route is as follows:

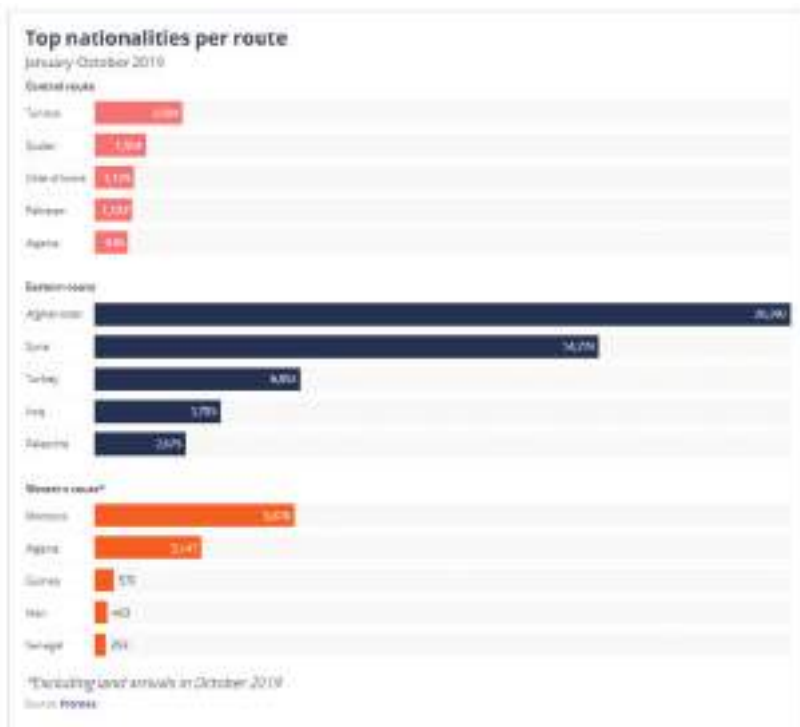
- Central route: 11,870 arrivals
- Eastern route: 62,952 arrivals
- Western route: 20,998 arrivals

Perhaps the most difficult period was the autumn of 2015, during which the highest rates of irregular arrivals were registered. The relevant monthly rates were as follows (Graph 4):

Finally, the nationalities of those seeking to enter Europe as migrants have changed and the Syrians are not the only ones in these migratory routes (only in the Eastern Mediterranean route they have a significant presence – see Graph 5):



Graph 4: Monthly Irregular Arrivals per route, 2015-2019
(source: Council of the EU, <https://www.consilium.europa.eu/en/infographics/eastern-and-central-mediterranean-routes-09-2017/>, on 30.11.2019)



Graph 5: Nationalities of migrants per route in 2019
(source: Council of the EU, <https://www.consilium.europa.eu/en/infographics/eastern-and-central-mediterranean-routes-09-2017/>, on 30.11.2019)

2

Chapter

The EU response to the Migration/Refugee Crisis

There are two main strategic approaches on migration by the EU that can be identified so far:

The first is being developed within the framework of the EU Policy on Migration, as this is a field of shared competence between the Union and its Member States, and it entails a) measures of managing migratory flows and b) measures for controlling and averting migration (see the Frontex Operations i.e. THEMIS, POSEIDON, etc)

The second tackles migration as a source of danger for the security of the EU Member States and the safety of their people, and it is being developed within the framework of the Common Security and Defence Policy - CSDP (see i.e. Operation SOPHIA). This latter approach is not financed by the EU Budget. The financial resources made available for the measures and actions under this approach are primarily provided by the national budgets of the Member States involved in these actions, thus falling beyond the scope of the European Court of Auditors' auditing competence.

The legal context, within which the EU has been called to act in order to tackle the migration/refugee crisis, entailed the following elements:

- a) Managing and providing a solution to the crisis in the EU falls within the so called “*shared*” *competences* of the EU (Art. 4 para 2 TFEU), ie both the EU and the Member States may adopt legislation or issue legally binding decisions and take legally binding actions in this sector.
- b) According to the *principle of subsidiarity* (Art. 5 para 3 TEU), in such competences, the EU shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by

reason of the scale or effects of the proposed action, be better achieved at Union level.

In this context, the EU formulated a policy aiming at leaving the operational initiative to the Member States, while the supra-national (European) action would be focused on providing the necessary financial resources for the relevant operations undertaken by the national authorities of the Member States. This choice is clearly reflected in the European Agenda for Migration.

This Agenda was presented in May 2015, by the European Commission (see European Commission, 2015a), and it was structured at two levels.

At first it comprised immediate action aiming at, for example, saving lives at sea, targeting criminal smuggling networks, and helping frontline Member States cope with the high numbers of arrivals. This entailed:

- Tripling the capacities and assets for the Frontex joint operations Triton and Poseidon in 2015 and 2016, by means of an amending budget for the necessary funds – a total of €89 million.
- The activation of the emergency mechanism to help Member States confronted with a sudden influx of migrants under Article 78(3) TFEU through the proposal of a initially temporary and later permanent distribution mechanism for persons in clear need of international protection within the EU, as well as of an EU-wide resettlement scheme to offer places distributed in all Member States to displaced persons in clear need of international protection in Europe, with a dedicated extra funding of €50 million for 2015 and 2016, and
- Working on the preparation of a possible Common Security and Defence Policy (CSDP) operation in the Mediterranean to dismantle traffickers' networks and fight smuggling of people, in accordance with international law (the operation to be later known as "Operation Sophia").

Furthermore, it provided for longer-term measures, e.g. to secure Europe's external borders (by improving border management), reduce the incentives for irregular migration (by addressing the root causes of irregular migration) and design a new policy on legal migration. The relevant measures were structured into four pillars, as follows:

- Reducing the incentives for irregular migration, notably by seconding European migration liaison officers to EU Delegations in key

third countries; amending the Frontex legal basis to strengthen its role on return; a new action plan with measures that aim to transform people smuggling into high risk, low return criminal activity and addressing the root causes through development cooperation and humanitarian assistance;

- Border management – saving lives and securing external borders, notably by strengthening the role and capacity of Frontex; helping strengthen the capacity of third countries to manage their borders; pooling further, where necessary, certain coast guard functions at EU level;
- Europe's duty to protect a strong common asylum policy: The priority is to ensure a full and coherent implementation of the Common European Asylum System, notably by promoting systematic identification and fingerprinting and with efforts to reduce its abuses by strengthening the Safe Country of Origin provisions of the Asylum Procedure Directive; evaluating and possibly revising the Dublin Regulation by 2016;
- A new policy on legal migration: The focus is on maintaining a Europe in demographic decline as an attractive destination for migrants, notably by modernising and overhauling the Blue Card scheme, by reprioritising EU integration policies, and by maximising the benefits of migration policy to individuals and countries of origin, including by facilitating cheaper, faster and safer remittance transfers.

This Agenda was examined by the European Council during an informal meeting on 23.9.2015 and was approved in essence during its formal meeting on 15.10.2015 (see European Council, 2015). An overview of this Agenda is presented in Graph 6:

The key operational measure introduced by the Agenda was to set up a new “hotspot” approach towards managing the large inflow of migrants, as an immediate response. A hotspot was defined as an area at the EU's external border which faces disproportionate migratory pressure. Most migrants enter the Union at these hotspots and, according to the Commission, it is there that the EU needs to provide operational support to ensure that arriving migrants are registered and channeled, as appropriate, into the relevant national follow-up procedures. The hotspot approach is described as follows (European Commission, 2015a): “*the European Asylum Support Office (EASO), Frontex and Europol will work on the ground with*



Graph 6: European Agenda on Migration 2015

(Source: European Commission, *Managing migration better in all aspects: A European Agenda on Migration*, Press Release IP/15/4956, Brussels, 13 May 2015)

frontline Member States to swiftly identify, register and fingerprint incoming migrants. The work of the agencies will be complementary to one another. Those claiming asylum will be immediately channeled into an asylum procedure where EASO support teams will help to process asylum cases as quickly as possible. For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants. Europol and Eurojust will assist the host Member State with investigations to dismantle the smuggling and trafficking networks.”

The hotspots have been established in Greece and Italy, as follows (see Graph 7):



Graph 7: Location of Hotspots in Greece and Italy
(Source: European Parliament, 2018a)

With regard to institutional developments, the most significant example has been the further development of Frontex, as the main tool to enhance cooperation and improve the management of the Union's external borders. Since 1999, strengthening cooperation in the area of migration, asylum and security has been a priority for the EU, and this led to the creation of the External Border Practitioners Common Unit, composed of officials from national border control services. The Common Unit coordinated national projects of Ad-Hoc Centres on Border Control, tasked with overseeing

EU-wide pilot projects and common operations related to border management. In 2002, there were six ad-hoc centres: Risk Analysis Centre (Helsinki, Finland), Centre for Land Borders (Berlin, Germany), Air Borders Centre (Rome, Italy), Western Sea Borders Centre (Madrid, Spain), Ad-hoc Training Centre for Training (Traiskirchen, Austria), Centre of Excellence (Dover, United Kingdom), Eastern Sea Borders Centre (Piraeus, Greece). These developments did not mean, however, that there was a EU Coast Guard or a Border Guard. The EU Members remained in charge of managing their external borders, which also constituted the EU's borders based on the Schengen Borders Code. The EU provided financial support to such Member States.

In 2004, with the objective of improving procedures and working methods of the Common Unit, and in order to promote cooperation and coordination between the national border guard authorities through joint operations, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) was established by Council Regulation (EC) No 2007/2004 (OJ 2004, L 349). Frontex began its operations on 3 October 2005, being the first EU agency to be based in one of the new EU Member States from 2004 (Warsaw-Poland), something that caused an initially unsuccessful recruitment for Frontex. While it remained the task of each Member State to control its own borders, Frontex was vested to ensure that they all do so with the same high standard of efficiency. Its main tasks were: a) coordinating cooperation between Member States in external border management, b) assisting Member States in training national border guards c) carrying out risk analyses, 4) following research relevant for the control and surveillance of external borders, 5) helping Member States requiring technical and operational assistance at external borders, 6) providing Member States with the necessary support in organising joint return operations. Frontex was centrally and hierarchically organised with a Management board, consisting of one person of each Member State as well as two members of the Commission. The Member States representatives were operational heads of national security services concerned with border guard management. Frontex also had representatives from, and worked closely with, Europol and Interpol. The Management Board was the leading component of the agency, controlling the personal, financial, and organisational structure, as well as initiating operative tasks in annual work programmes. Additionally, the Board appoints the Executive Director. In 2015, Frontex had 336 employees & 78 seconded officials from the Member States. This dependency of the organisation on staff secondments was identified as a risk, since valu-

able experience is lost when such staff leave the organisation and return to their permanent jobs. The organization and operations of Frontex have been examined extensively, leading to conclusions that Frontex is a significant element of the securitization of the EU migration and EU policies (ie the concept that migration has acquired a political aspect and is presented as a security threat) and that its relations with the EU institutions need to be re-assessed in that respect (see Leonard, 2010). Also, the institutional modeling of Frontex as an Agency was also questioned, as it was considered not to have any added value to its operational objectives as well as to its accountability (see Wolff & Schout, 2013). This latter issue of Frontex's accountability was raised in relation to the need for organizational independence of this agency, as well as to the fact that its operations have caused important supranational actors in the EU context and national actors to be sidelined and relevant legal rules to be ignored, thus necessitating the establishment of a balanced framework (see Pollak & Slominski, 2009).

The 2015 migration/refugee crisis prompted the EU Institutions to take swift action, as it was demonstrated that it was necessary to improve the security of the EU's external borders and that Frontex had a limited mandate in supporting the Member States to secure their external borders, had inadequate staff and equipment and lacked the authority to conduct border management operations and search-and-rescue efforts. Thus, on 15.12.2015, the European Commission put forward a proposal (see European Commission, 2015b) to establish a European Border and Coast Guard (EBCG), designed to ensure shared European management of the external borders of the European Union. The proposed European Border and Coast Guard Agency (EBCGA) would succeed FRONTEX and have increased powers, namely shared responsibility with national authorities over border management. The main concept was that the EBCGA and the national border authorities together would constitute the EBCG. The legal grounds for the proposal were Art. 77, paras 2(b) and (d), and Art. 79, para 2(c), TFEU. Article 77 grants competence to the EU to adopt legislation on a "gradual introduction of an integrated management system for external borders," and Article 79 authorizes the EU to enact legislation concerning the repatriation of third-country nationals residing illegally within the EU. The proposed EBCG scheme was to unify the EBCGA and the Member States' authorities responsible for border management, including coast guards. National authorities would continue to exercise the day-to-day management of their respective external borders. The EBCGA's proposed enhanced features included a series of elements, which have caused some concerns (for a detailed analysis of these concerns see Paul, 2017). First, it entailed

an Enhanced Supervisory Role through the establishment of a monitoring and risk analysis center that was authorized to carry out mandatory vulnerability assessments concerning the capacities of the Member States to face current or upcoming challenges at their external borders. The relevant concerns focused on the need to clarify the relationship between the Schengen Evaluation Mechanism and the Vulnerability Assessment model, to ensure that the Agency's supervisory role does not prejudice working relations in the field of operational cooperation and the need to introduce a fundamental rights component into the Assessments. Furthermore, an enhanced regulatory role was awarded to EBCGA, as Member States were obliged to provide the Agency with relevant information for its risk analysis. This necessitated a more specific explanation of what constitutes "relevant information" in order to help to clarify the extent of this obligation, as well as the establishment of conditions, taking into account the relevant data protection legislation, for the Agency's access to European databases. Finally, and more crucially, the Agency was given an enhanced operational role through a) the functioning of a European Return Office that would deploy European Return Intervention Teams composed of escorts, monitors, and return specialists to return illegally present third-country nationals, which would be given a uniform European travel document for return and b) the right to intervene at a Member State's request for joint operations, rapid border interventions, and deployment of the EBCG Teams to support national authorities when a Member State experiences an influx of migrants that endangers the Schengen area. This latter proposed competence was foreseen to be initiated after a European Commission's implementing decision on whether a situation at an external border requires urgent action at EU level, and when a Member State's action was not deemed as sufficient to handle the crisis (especially when a Member State would not follow up on the recommendations from the Vulnerability Assessment or in a situation where insufficient external border controls would put the overall functioning of the Schengen area at risk). Based on this decision, the EBCGA would be able to intervene and deploy EBCG Teams to undertake necessary measures, even without a request from the State concerned. As anticipated this formulation of the right to intervene became a point of intense contention between a number of EU Members and the Commission, especially those Members whose borders form the external borders of the EU, such as Cyprus, Greece, Hungary, Italy, and Poland, as these countries claimed that intervention by the EBCGA should be possible only with the consent of the affected Member States. Otherwise, this right of intervention posed a very serious issue from the State's sovereignty point of view, as it signi-

fied the granting of power to an EU body on an issue which is in the heart of a State's sovereign authority (border control), and arguably contravened the Member States' ultimate responsibility for internal security under the Treaties (Article 4(2) TEU and Article 72 TFEU). The negotiations on the contents of the proposal took place under enormous pressure caused by the increasing migration flows towards Europe, and resulted in finally not allowing the European Commission to acquire the competence of initiating an operation on its own initiative, without the concerned Member State's approval (see for more details Hrabalek & Burianova, 2019). Thus, with Regulation (EU) 2016/1624 of the European Parliament and of the Council (OJ 2016, L 251), Frontex evolved into the EBCG (although even today this Agency is usually referred to as Frontex) and became operational on 6.10.2016. The experience of the first three years of the European Border and Coast Guard operation lead to a complete review of the entire relevant legislative framework and the enactment of Regulation (EU) 2019/1896 of the European Parliament and of the Council (OJ 2019, L 295), which is the current legal basis of this Agency's organization and operation.

In October 2019, the European Commission presented a detailed progress report with regard to the European Agenda on Migration. The main findings of the report were the following (see European Commission, 2019): The irregular border crossings into the EU fell significantly of the last five years. The EU operations in the Mediterranean have helped to save more than half a million lives at sea. Rapid and tangible support has been provided to the Member States under pressure through the establishment and operation of hotspots. The Relocation schemes have helped 34,700 people to relocate inside the EU from Italy and Greece, under dedicated schemes while another 1,103 people have also been relocated since summer 2018 under voluntary relocations, an exercise coordinated by the Commission since January 2019. The new European Border and Coast Guard Agency has supported Member States to protect the EU external borders, with the second phase of this Agency's reform (which is under way) aiming to increase its capacity by a standing corps of 10,000 operational staff. The EU has stepped up the legal pathway of resettlement of persons in need of international protection to Member States, with almost 63,000 people resettled since 2015. Significant support has been provided by the EU for the protection of millions of refugees in third countries: a) The Facility for Refugees in Turkey provides funding to 90 projects supporting almost 1.7 million refugees on a daily basis, building 180 new schools, and providing 650,000 vaccinations to refugee children, b) The EU Regional Trust Fund in Response to the Syrian Crisis finances more than 75 projects provid-

ing health, education, livelihoods and socio-economic support to Syrian refugees, internally displaced persons and hosting communities across the region, c) The EU Trust Fund for Africa provides funding for 210 projects in 26 countries which entail the provision of basic support to over 5 million vulnerable people, including nutrition and means for income generating activities. Formal readmission agreements or practical arrangements on return and readmission have been reached with 23 countries of origin and transit, with extra support from the EU to secure effective return.

Infographic - EU Mediterranean operations 2015-2019

509 832 lives saved since 2015

Data as of 12/11/2019 | Dead or missing: 11 671 (as of 13/11/2019)



Graph 8: Lives of migrants saved by EU Operations in the Mediterranean

Source: Council of the European Union, <https://www.consilium.europa.eu/en/infographics/saving-lives-sea-february-2018/> (30.11.2019)

The effects of the EU Agenda with regard to the EU Operations (Indalo, Themis/Triton, Sophia and Poseidon) which entail patrolling the Mediterranean to secure EU borders, target migrant smugglers, and rescue migrants at risk, and to the deployment of EU staff in areas under pressure, are reflected in Graph 8 and Graph 9:



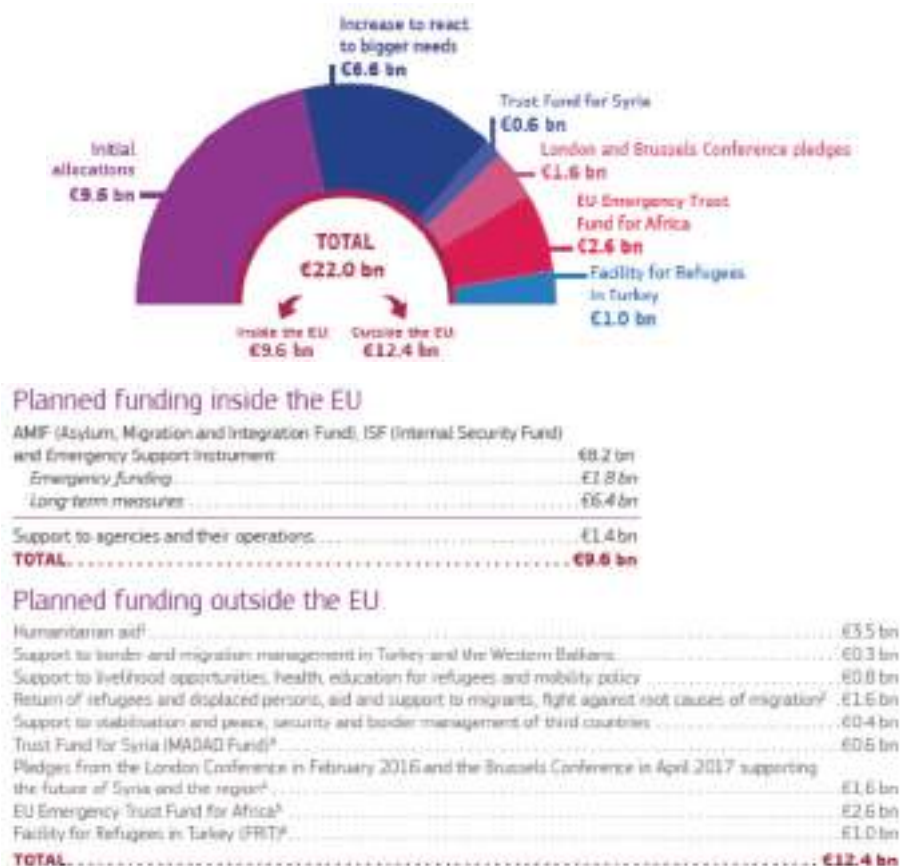
Graph 9: Deployment of EU personnel in EU Member State to provide support
(Source: European Commission, https://ec.europa.eu/commission/presscorner/detail/en/FS_19_6076, on 26.12.2019)

As for the resettlement schemes, the European Commission considers them as a successful initiative, based on the following data (Graph 10):



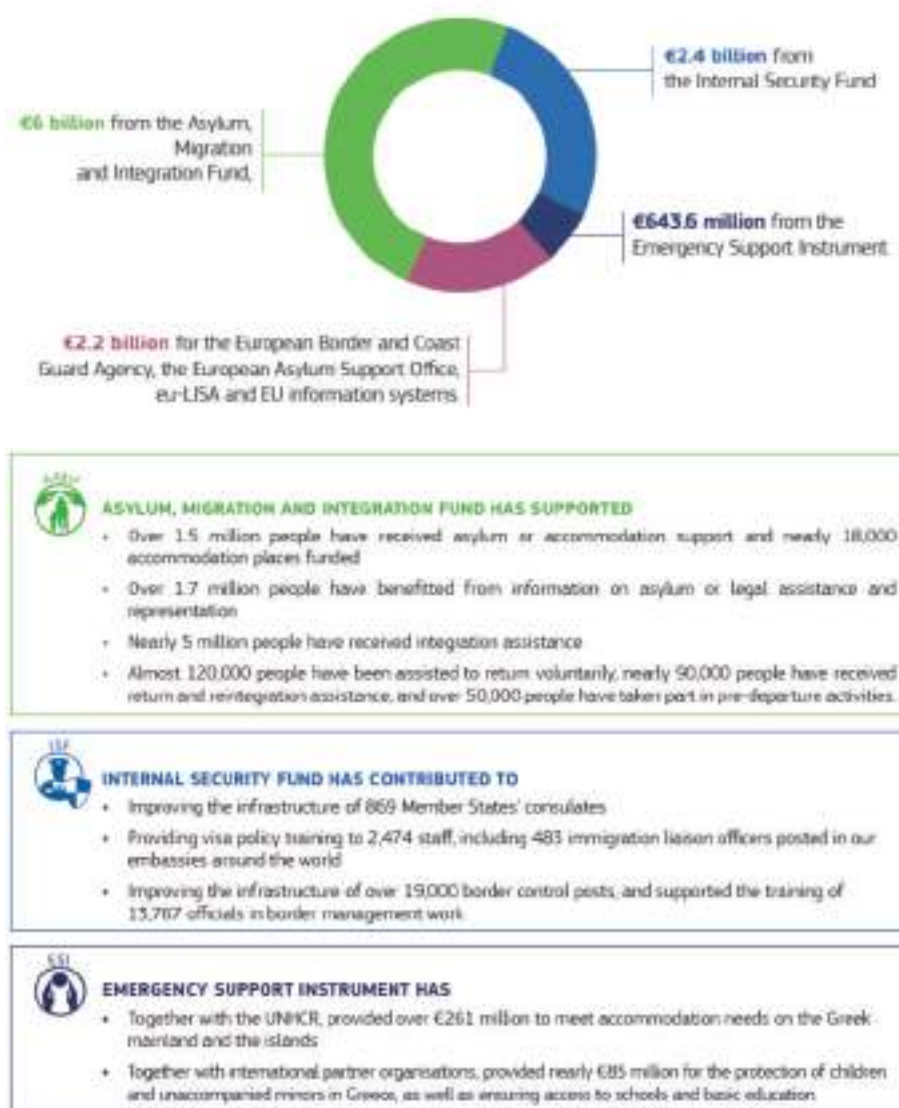
Graph 10: EU Resettlement Programmes - State of Play
(Source: European Commission, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/201912_delivering-on-resettlement.pdf, on 26.12.2019)

In addition to the policies included in the Agenda, the Union mobilised its budgetary arsenal, by providing significant sums to the Member States involved in undertaking first-line operations (mainly Greece and Italy), as well as by reinforcing the financial capabilities of the various instruments established to finance operations inside and outside the EU aiming at managing and reducing the migratory flows towards the EU. The resources from the EU Budget, aiming at meeting the increased migratory challenges for the period 2015-2018, have been more than doubled to €22 billion from the original allocation of €9.6 billion. The distribution of these amounts to specific instruments and mechanisms is demonstrated in the following Graph (Graph 11):



Graph 11: Increase and Distribution of EU funding for migration, 2015-2018
(source: European Commission, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171207_eu_budget_for_the_refugee_crisis_and_improving_migration_management_en.pdf, on 2.6.2019)

The overall amount given, since 2015, by the EU Budget through the various financial instruments to the Member States to tackle the effects of the migration/refugee crisis has exceeded €23 billion, as follows (see Graph 12):



Graph 12: Financial distributed by the EU's financial instruments on Migration
(Source: European Commission, https://ec.europa.eu/commission/presscorner/detail/en/FS_19_6077, on 26.12.2019)

With regard to funding provided to specific countries under the various instruments, the third countries benefited from the schemes mentioned in Graph 13, while the EU Member States received the assistance mentioned in Graph 14, as follows:



Graph 13: Flagship Instruments of External Assistance

(Source: European Commission, https://ec.europa.eu/commission/presscorner/detail/en/FS_19_6077, on 26.12.2019)



Graph 14: Funding provided to the EU Member States by the EU Budget to tackle the effects of the migration/refugee crisis

(Source: European Commission, https://ec.europa.eu/commission/presscorner/detail/en/FS_19_6076, on 26.12.2019)

3

Chapter **Audits and Migration** **before the crisis**

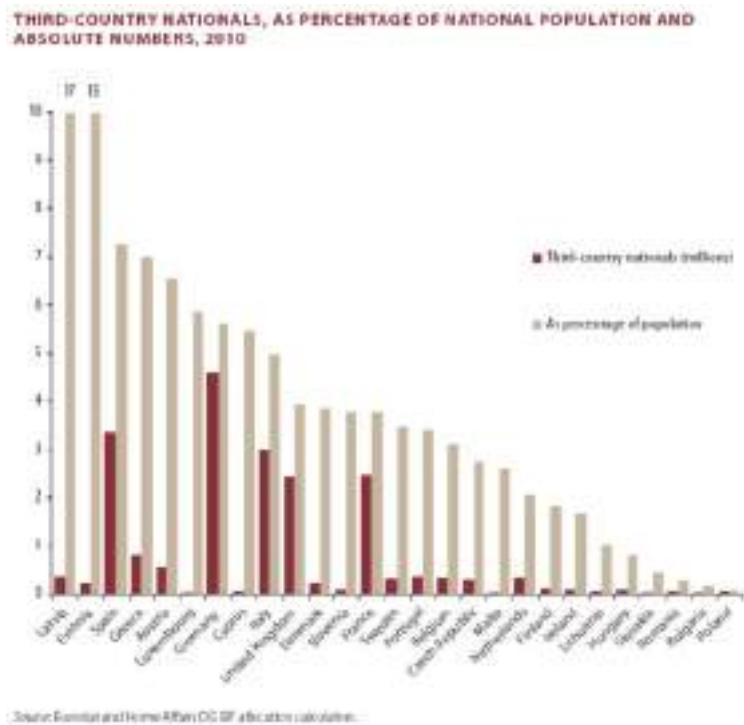
Given the significance of the policy field (migration) as well as the amounts of the EU Budget committed and spent, it was quite obvious that the relevant financial actions were going to be examined by the Union's external auditor, the European Court of Auditors, according to its mandate provided for by Art. 287 of the Treaty on the Functioning of the European Union. This chapter focuses on the audits that took place or examined data before the 2015 crisis.

3.1. The first audit on Migrants' Integration (2012)

The main concern regarding migration, for a long time, had been the integration of the migrants in EU society, as their numbers, before 2015, were deemed tolerable, both at EU level, as well as at Member State level (for the relevant analyses see for instance Baldi & Goodman 2015, Hampshire & Bale 2015, Manatschal & Bernauer 2016, Hellwig & Kweon 2016, Morgan 2017, Jopkke 2017, etc). It is interesting to note that some Member States had already high figures of migrants due to linking their migration policies with the needs of their economy, especially with regard to labour force (ie Germany and United Kingdom), or their colonial history (ie France, Spain, Italy), or their neighboring countries (ie Latvia, Estonia as destination countries for migrants from the Soviet Union, or Greece as destination country for migrants from Balkan States). The relevant figures were as follows (see Graph 15 and Graph 16):



Graph 15: Foreign Residents of the EU in 2010
(Source: European Court of Auditors, Special Report 22/2012)



Graph 16: Third Country nationals in EU Member States – Absolute Numbers & Population Percentage (Source: European Court of Auditors, Special Report 22/2012)

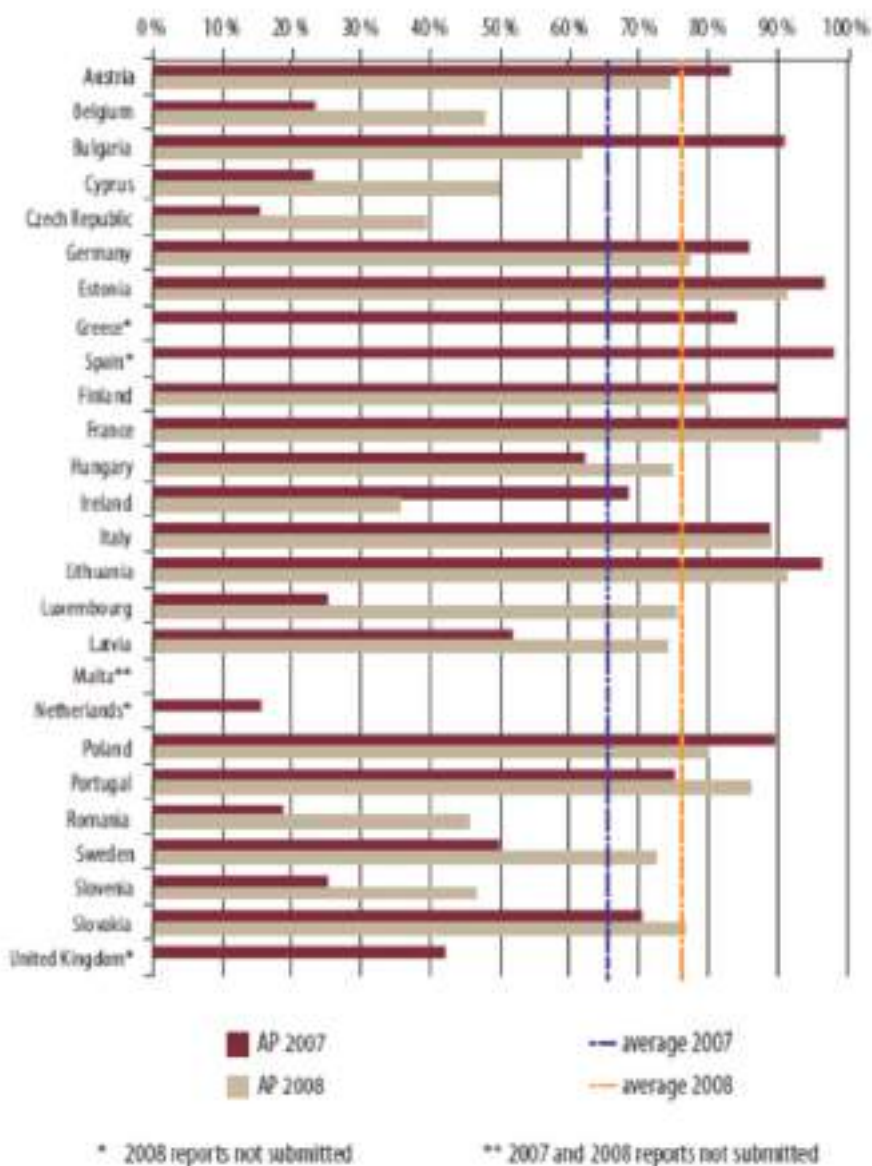
Thus, in order to meet these concerns, the European Court of Auditors examined, whether two instruments of the General Programme on Solidarity and Management of Migration Flows for the period 2007–13 (known as SOLID), ie the European Integration Fund and the European Refugee Fund contributed effectively to the integration of third-country nationals, with their resources (see Graph 17):

Financial instrument	Implementation	EU funds (million euro)
European Integration Fund (EIF)	2007–13	830
European Refugee Fund (ERF)	2008–13	623
External Borders Fund (EBF)	2007–13	1 908
European Return Fund (RF)	2008–13	681
Total		4 043

Graph 17: SOLID Programme Funds 2007–2013

(Source: European Court of Auditors, Special Report 22/2012)

The ECA, in its Special Report 22/2012 found that that it was not possible for the Commission or Member States to assess the contribution of the funds to integration because the Member States did not set proper targets or indicators for their annual programmes, and the relevant reports did not provide enough information for the Funds to be evaluated or steered. At the level of individual projects, the sample under audit showed positive results but these could not be linked to success at a higher level, not least because the implementation rate was low in the 2007 and 2008 national annual programmes, and later programmes were not yet completed, as seen in the following graph (Graph 18):

EIF BUDGET IMPLEMENTATION

Graph 18: Implementation rates of European Integration Fund, 2007-2008
 (Source: European Court of Auditors, Special Report 22/2012)

The overall management structure of the SOLID Programme entailed three levels of managerial actors, the Responsible (or Managing) Authority,

the Audit Authority and the Certifying Authority, a scheme very similar to the one of the Structural Funds within the EU Cohesion Policy. However, while in the long-established scheme of the Structural Funds, the Audit Authority was at the top of the management assurance model placing the reliance on the Certifying Authority and its works, in the SOLID scheme, this arrangement was reversed, putting the Certifying Authority at the top (see Graph 19).



Graph 19: Comparison of Management Models - the SOLID Programme & the EU Structural Funds

(Source: European Court of Auditors, Special Report 22/2012)

These differences caused misunderstandings in Member States about the roles and respective duties of the Certifying Authority and the Audit Authority, something that the Commission did not detect in its assessment of the Monitoring and Control System. The problem was identified and corrective guidance was provided only in October 2010, but the lack of a clear relationship between the three authorities had already contributed to delays in reporting of several months, resulting in late payments to final beneficiaries. Furthermore, the effectiveness of the Funds was hampered by the design of the programmes, which were fragmented, burdensome and inadequately coordinated with other EU funds. The splitting of funding for target groups with similar needs created problems for authorities and beneficiaries, as it caused the establishment of multiple chains of fund management and controls, thus leading to excessive administration, quite disproportionate to the size of the funds involved. The insufficient coherence and complementarity with other EU funds caused overlaps, missed

opportunities for synergy and risks of double-funding. The relevant legislation was delayed significantly thus causing further delays to the submission of programmes, the establishment of implementing rules and the provision of guidance (European Court of Auditors, 2012).

3.2. Examining the External Borders Fund (2014)

Given the establishment of the Schengen Area and the subsequent abolition of control in the internal borders of the EU (ie borders between EU Member States), the main feature of control focuses on the external borders of the Union (for details on the Schengen system see E. Guild et al., 2016). Due to the Member States' differing geographical situations, their responsibilities for border controls vary considerably, and for those that the control of the EU's external borders represents a heavy burden, the EU established, as a form of financial solidarity, the External Borders Fund (EBF), the financial instrument in support of external border management with a budget of €1,9 billion for the 2007–13 period. All EU Member States except for Ireland, Croatia, and UK participate in the EBF. The general aims of the EBF are to support: (a) the efficient organisation of border controls; (b) the efficient management of the flows of persons at the external borders, in conformity with the Schengen *acquis* and the principles of respectful treatment and dignity; (c) the uniform application of the relevant EU legislation; and (d) the improvement of Member States' consular services in third countries as regards the flows of third-country nationals into the territory of the Member States and the cooperation between Member States in this regard. The rates of co-financing provided by the EBF vary from 50 % of the total cost of actions (basic rates) or 75 % for actions in Cohesion Fund countries or in 'specific priority' areas, to 80 % for specific actions and 90 % for Community and emergency actions (see Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the general programme 'Solidarity and management of migration flows' OJ L 144, 6.6.2007, p. 22).

The EBF's contribution to external border management is to be achieved by focusing on five priorities, as follows (see Graph 20):



Graph 20: European Border Fund Priorities
 (Source: European Court of Auditors, Special Report 15/2014)

In order to meet these priorities the funds made available by the EBF had been allocated to each one of them, according to the plans prepared by the Member States that received the EBF assistance, as follows (see Graph 21):

EBF expenditure annual programmes 2007–10 per priority¹



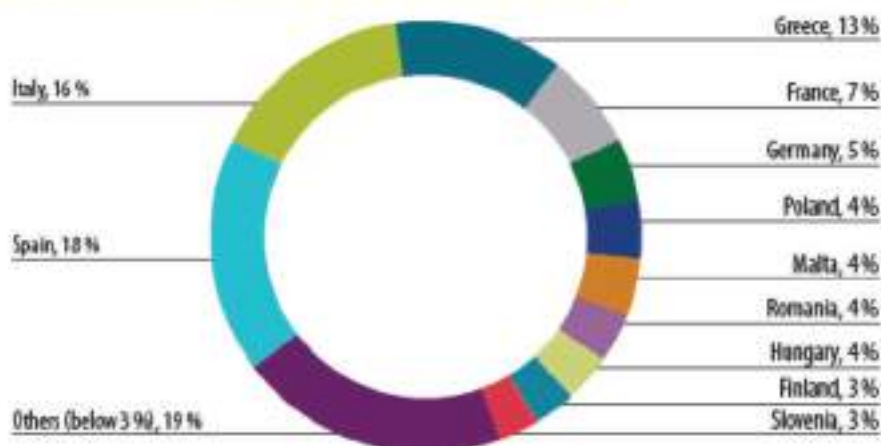
¹ The latest available final expenditure data concern the annual programme 2010. Due to the 2,5 year eligibility period, funds from this annual programme could be spent up until the end of June 2012 and had to be subsequently verified by Member States and the Commission. Reports on later annual programmes have not been finalised yet.

Source: European Commission.

Graph 21: Allocation of EBF expenditure per priority
(Source: European Court of Auditors, Special Report 15/2014)

The allocation of EBF resources per EU Member State for the 2007–2013 period was as follows (see Graph 22):

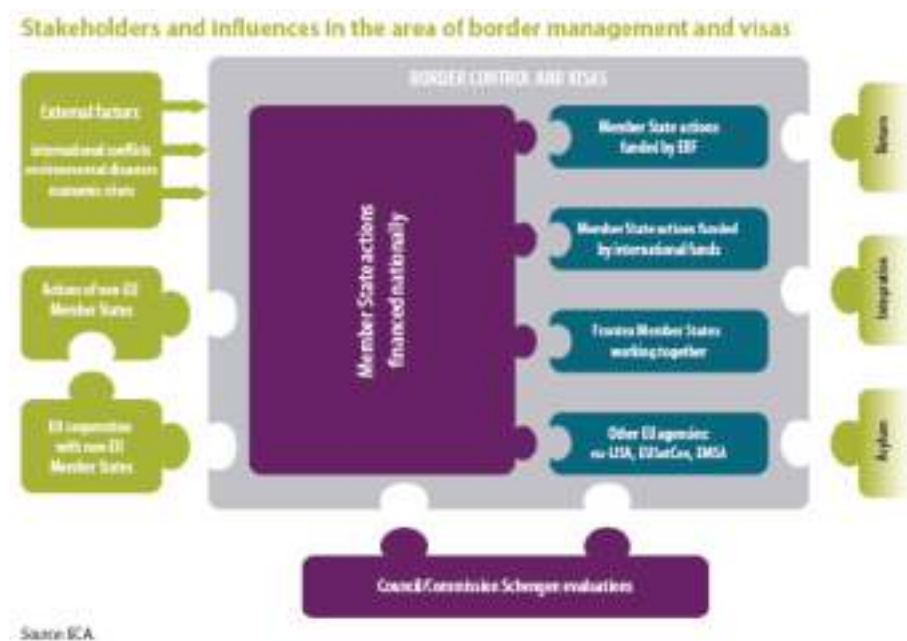
Member States' share of EBF allocations



Source: European Commission.

Graph 22: Allocation of EBF expenditure per EU Member State
(Source: European Court of Auditors, Special Report 15/2014)

The resources given to each Member State by the EBF reflected the EU's understanding of the needs that this State had to meet with regard to EU external border control management, and they were considered to be additional funds (co-financing), as most expenditure related to external border management is funded nationally and Member States are responsible for the management of their external borders, applying the common rules established in the Schengen *acquis*. Thus the EBF is one piece of the jigsaw in the area of external border management (see European Court of Auditors, 2014), which may be seen in Graph 23:



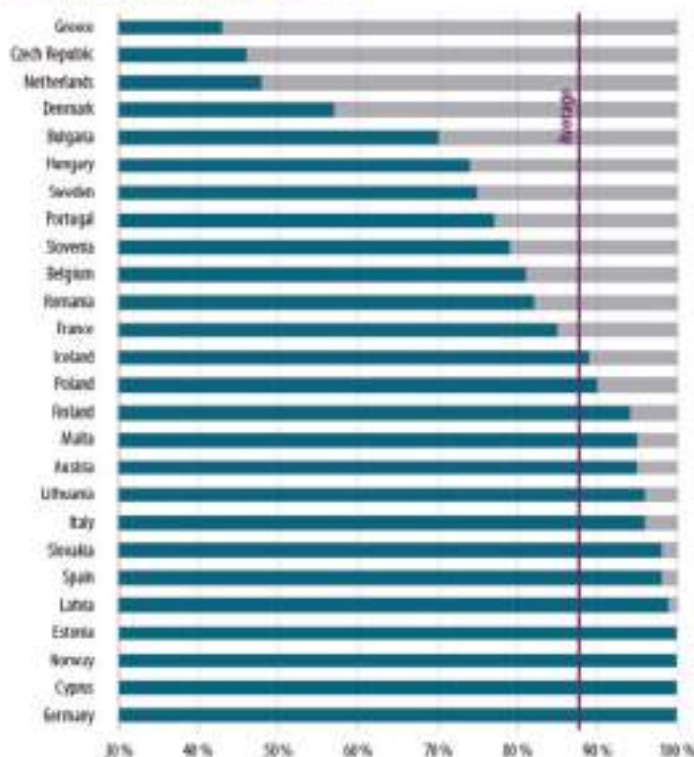
Graph 23: The jigsaw of EU External Border Management
(Source: European Court of Auditors, Special Report 15/2014)

Thus the EBF is considered to be a significant demonstration of EU solidarity towards the Member States that undertake the task of managing the Union's external borders, therefore the existence of EU added value to the actions financed by the EBF was considered of paramount importance and the audit of the ECA focused on its verification, in its Special Report 15/2014.

The implementation rate of the EBF projects in the various Member States was very high, with an average of 87,6%, but there have been some

cases with significant problems, the most notable being Greece, where planning and implementation failed to the extent that only 43 % of its EBF allocation was implemented (see Graph 24).

EBF Implementation rate 2007–10



Source: Calculation made by the Commission in the framework of the ex post evaluation on both closed programmes and, where programmes were not closed, on estimations by Member States. Bulgaria, Iceland, Norway and Romania provided data only for 2010 annual programmes. Denmark and Poland did not provide data on 2010 programme implementation. The implementation rates for Cyprus and the Czech Republic were not final. Denmark did not provide implementation rates for total budget. No data for Luxembourg and Switzerland. The Greek figure is based on the final reports of its annual programmes.

Graph 24: Implementation rate of EBF projects in EU Member States
(Source: European Court of Auditors, Special Report 15/2014)

Thus despite the high rate of project implementation, the ECA found that the EBF's further EU added value was limited due to: (a) a partially ineffective system for reinforcing EBF specific priorities; (b) little support of operational cooperation between Member States; (c) ill-designed mechanisms for responding to specific weaknesses at strategic border points and partially effective mechanisms to respond to emergencies; and (d) the support of programmes and projects which would have been financed na-

tionally in any case, lacking a proper needs assessment or containing significant ineligible costs in some of the projects audited. Furthermore, the ECA assessed the programming and project selection processes of the EBF, and found that programmes are not embedded in national strategies and lack SMART objectives (Specific, Measurable, Achievable, Relevant and Timely) and measurable indicators. The lack of SMART objectives constrained the European Commission's and the national authorities' monitoring and evaluation capabilities, leading to reports of limited reliability as to the achievement of targets, as well as delayed and descriptive evaluations, which merely presented data without analysis of their significance. Programming requirements caused an excessive administrative burden. In certain Member States, project selection procedures did not adequately ensure that the Member States' needs were met. In addition, the audit found weaknesses in procurement procedures, putting financial management at risk as, in 8 out of the 11 projects audited, there were significant violations of the relevant legislation and value for money was not achieved (see European Court of Auditors, 2014).

3.3 Auditing the External Dimension of EU Migration Policy (2016)

Although there are various definitions and approaches of externalization in the area of migration, there is an underlying feature which is commonly accepted: The external dimension of the EU's common migration policy aims to promote effective management of migration flows in partnership with countries of origin and transit, by formulating and trying to implement policies entailing the participation of EU Member States to migration missions to develop a dialogue on migration with third-country authorities, to circular migration schemes (defined as the movement of people between two or more countries, which may be beneficial to all parties), to readmission agreements ensuring that third-country nationals illegally residing in Member States can be returned to their countries of origin, to border surveillance and joint offshore patrolling operations, to operational co-operation schemes between police and judicial officials, to data exchange operations through the Schengen Information System (SIS) and to technological cooperation on fingerprinting and document fraud (for more details on these issues see indicatively Boswell, 2003 and Eisele, 2014).

The EU political agenda in this field has been set by the Council, in its Conclusions of May 2012 (Council document No 9417/12), and it was called the Global Approach to Migration and Mobility (GAMM), representing the

EU's overarching policy framework for political dialogue and cooperation on external migration policy. This non legally binding policy entails four general thematic priorities: (a) better organising legal migration and fostering well-managed mobility, (b) preventing and combating irregular migration and eradicating trafficking in human beings, (c) maximising the development impact of migration and mobility, and (d) promoting international protection and enhancing the external dimension of asylum.

One characteristic example of the action undertaken within the political framework of this approach on the external dimension of the EU migration policy is the series of agreements reached with neighboring third countries with regard to the Union's external border management. Such agreements have so far been negotiated with the following countries and are currently in force or pending signature: Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, and Serbia, as demonstrated in Graph 25:



Graph 25: Map of third countries having border management agreements with the EU
(Source: Council of the European Union, <https://www.consilium.europa.eu/en/infographics/border-management-agreements-third-countries/> on 30.11.2019)

One of the main implementing instruments of this policy was the Mobility Partnerships scheme, whose effectiveness was, however, hampered by their voluntary nature. The following graph shows the low level of their use (Graph 26):

	Cape Verde	Moldova	Georgia	Armenia	Morocco	Azerbaijan	Russia	Jordan	
Date	2010	2010	2010	2011	2011	2011	2011	2011	
EU	X	X	X	X	X	X	X	X	8
France	X	X	X	X	X	X	X	X	8
Germany		X	X	X	X		X	X	6
Italy		X	X	X	X		X	X	6
Poland		X	X	X		X	X	X	6
Sweden		X	X	X	X		X	X	6
Belgium			X	X	X		X		4
Bulgaria		X	X	X		X			4
Czech Republic		X	X	X		X			4
Netherlands			X	X	X	X			4
Portugal	X	X			X		X		4
Romania		X	X	X				X	4
Spain	X				X		X	X	4
Denmark			X				X	X	3
Greece		X	X					X	3
Lithuania		X	X			X			3
United Kingdom			X		X		X		3
Oman		X						X	2
Hungary		X						X	2
Slovakia		X				X			2
Slovenia		X				X			2
Estonia			X						1
Latvia			X						1
Luxembourg	X								1
Austria									0
Croatia									0
Finland									0
Ireland									0
Malta									0
Total Member States	4	13	16	10	9	8	10	11	

Graph 26: Mobility Partnerships between the EU, EU Member States and non-EU states
(Source: European Court of Auditors, Special Report 9/2016)

The ECA's Special Report 9/2016 examined the two main financing instruments in 6 out of the 11 Southern Mediterranean and Eastern Partnership countries, the Thematic Programme for Migration and Asylum (TPMA), and the European Neighbourhood and Partnership Instrument

(ENPI), established for the 2007-2013 period. It must be pointed out that, despite undertaking this audit in 2016, the ECA *did not examine the developments in migration after 2014*.

The funds involved in the audited schemes were as follows (Graph 27):

Amounts committed, contracted and paid in the external dimension of migration policy during the 2007-2013 period (million euro)

	Budget commitments	Contracts by value	Number of contracts	Payments
TPMA	579.78	525	254	304.30
ENPI		376	64	
ED (incl. TPMA)		180	64	
EDF		156	27	
EDHR		7	41	
IF1		5	4	
IF2		309	76	
TOTAL		1 468	534	304.30
Data not available				

Graph 27: Amounts managed within the External Dimension of EU Migration Policy (2007-2013)(Source: European Court of Auditors, Special Report 9/2016)

The EU's external migration spending was governed by a wide range of general objectives. The relevant resources were being made available through six different instruments, each of which had its own objectives and intervention framework, thus the focus on migration was not clear. The relevant provisions did not allow for the identification of how the different objectives were interlinked or what they intended to achieve at EU level with respect to the external aspects of EU migration policy. Furthermore, even when these EU spending instruments did address situations where migration was an issue, and contributed to migration spending, legally and financially they provided no clear strategy or monitoring arrangements by which to identify the scale of that contribution. Thus, the total amount of expenditure charged to the EU budget could not be established in the course of the audit. Also, it was not clear whether expenditure had been directed in line with the intended geographical and thematic priorities (see European Court of Auditors, 2016).

The arrangements for monitoring the GAMM were found to be very broadly defined. The main method of implementation of the programmes

was a comparative evaluation method which was based on identifying changes over time. Such a vague scheme was never explained and it did not employ assigned indicators, reference values or targets for evaluating the achievement of objectives, which were themselves very general. The ECA found little evidence of using precise and systematic indicators for each intervention level, and, furthermore, whenever indicators were employed, they were lacking consistency between them. Thus, the indicators did not facilitate the monitoring and evaluation schemes on the programmes' implementation. Their complexity and nature (focusing on outputs rather than results) reduced their effectiveness (see European Court of Auditors, 2016).

It was found that the effectiveness of the EU's external migration spending (TPMA and ENPI) in the Southern Mediterranean and Eastern Partnership countries could be improved. It was often difficult to measure the results achieved by EU spending because of objectives covering a very broad thematic and geographical area and the lack of quantitative and results-oriented indicators. The contribution of migration to development, one of the priorities of the GAMM, was difficult to assess, as the specific objectives set were often too ambitious, the link between migration and development was unclear (usually focusing on the latter rather than the former), and not all projects were sustainable. The effectiveness of the support measures for return and readmission was limited, as these measures were wrongly perceived by some partner countries as a component of the EU's security policy (they were seen as a trade-off for the facilitation of visa arrangements or commercial agreements), and the Member States did not effectively prepare migrants living in the EU for their return home (on several occasions the returning migrants were not aware of the assistance made available for their readmission, and the reintegration difficulties which they may had to face). As for the protection of human rights of migrants, the ECA found that in most cases they were addressed, directly or indirectly, for instance with the construction of migrant reception centres up to international standards. However, deficiencies were detected as no training was envisaged to help the authorities operating the centres to comply with international human rights standards (see European Court of Auditors, 2016).

The EU's external migration spending was implemented by a wide range of stakeholders. It necessitated coordination between the Commission's various departments, in particular its directorates-general, the European External Action Service, EU delegations in non-EU countries and a num-

ber of EU agencies, in partnership with Member States, neighborhood countries and third countries. This complex governance required stronger coordination, at all levels, and better involvement of EU delegations in migration issues. The ECA recommended that the Commission should develop clear and measurable objectives to be implemented by a coherent set of EU funding instruments supported by effective monitoring and evaluation, and by an appropriate information system. Governance arrangements should be simpler and better coordinated (see European Court of Auditors, 2016).

4

Chapter

Audits and Migration after the crisis

The 2015 migration crisis, with the eruption of migration flows towards Europe, has been a real “game changer”, with catalytic effects on the thinking, understanding and acting, with regard to migration. Key issues and questions about migration have been revisited and re-discussed. But all these procedures have taken place in conditions of tension, thus revealing frictions, inconsistencies and ambiguities that appear at all scales: subnational, national, supranational and international. This has affected the substance of the choices made, the newly established concepts, the measures and policies adopted (see Allen et al., 2018).

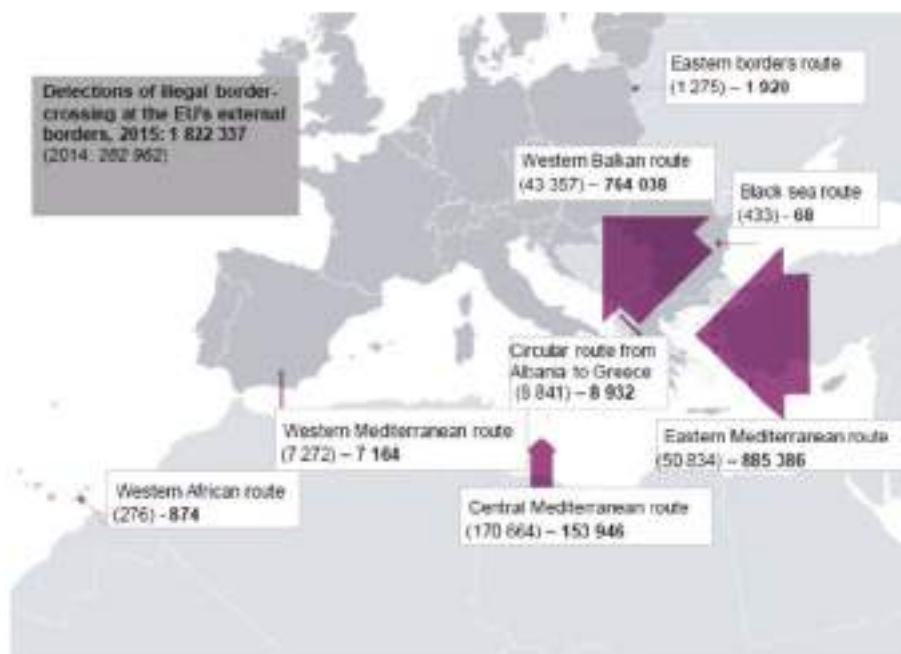
The need for renewed, timely, accurate and effective EU action in tackling the migration crisis was highlighted in the 2015 State of the Union Speech, delivered by the former President of the European Commission, Jean Claude Juncker. The focus at the time was to provide assistance to “those fleeing from war, terror and oppression”, regardless of belief, religion or philosophy. The impetus promoted was that it was necessary to have “more Union in our refugee policy”, signaling the necessity for the EU to act as an entity and work together with the individual Member States, instead of entering, once again, the game-blame between the Union and its Member States, as such a game is merely a “sign that politicians are overwhelmed by unexpected events”. (Juncker, 2015).

The resulting reaction of the European Union and its Member States to this call for action, was the adoption and implementation of the above mentioned EU Agenda on Migration, the most characteristic feature of which was the “hotspot approach”. And this approach was the first issue to be examined by the European Court of Auditors under the new state of events.

4.1. Examining the “hotspot approach” (2017)

As mentioned before, the hotspot approach was perceived as a scheme to provide assistance to the EU Member States that were at the frontline of migration flows, in order to manage these flows. The implementation of this scheme was audited by the European Court of Auditors in its Special Report 6/2017.

The radically changed reality of the volume of migration flows towards Europe in 2015, from various points along the EU’s external borders, is clearly presented in the risk analysis presented by Frontex in 2016 (see Graph 28):



Graph 28: Comparative data of illegal entries in the EU, 2014-2015
(Source: European Court of Auditors, Special Report 6/2017)

Given the geographical distribution of the migration flows, the hotspots were established in the countries which received the main volume of migrants, i.e. Greece and Italy (see Graph 29):



² For Italy, the six originally proposed hotspot locations are shown, two of which (Augusta and Porto Empedocle) were not made hotspots.

Graph 29: Locations of Italian and Greek hotspots with their capacities

Source: European Court of Auditors, Special Report 6/2017

The ECA found that this approach has helped to improve migration management in the two Member States, under very challenging and constantly changing circumstances, by increasing their reception capacities, improving registration procedures, and by strengthening the coordination of support efforts. The selection of the hotspot locations took into account the main entry points and the availability of existing structures. However, setting them up took longer than planned and the reception facilities in both countries were not yet adequate to properly receive (Italy) or accommodate (Greece) the number of migrants arriving, while for accommodating and processing unaccompanied minors the facilities did not meet international standards. Furthermore, the population capacity of the hotspots in Greece was exceeded constantly (see the indicative situation in May 2018 in Graph 30), something that worsened significantly the living conditions therein.

Hotspots in Greece ²			
	Start of operation	Total reception capacity	Occupancy
Lesvos	October 2015	3 000	8 500
Chios	February 2016	1 014	1 533
Samos	March 2016	648	3 276
Leros	March 2016	980	924
Kos	June 2016	816	968
Total capacity (May 2018)		6 458	15 201

Graph 30: Reception Capacity and Occupancy of Greek hotspots
(Source: European Parliament, 2018a)

As mentioned above, the aim of the hotspot approach was to provide operational support to Member States to ensure that arriving migrants were identified, registered and fingerprinted, and channeled into the relevant follow-up procedures. This entailed the provision of significant amounts, as seen in Graph 31.

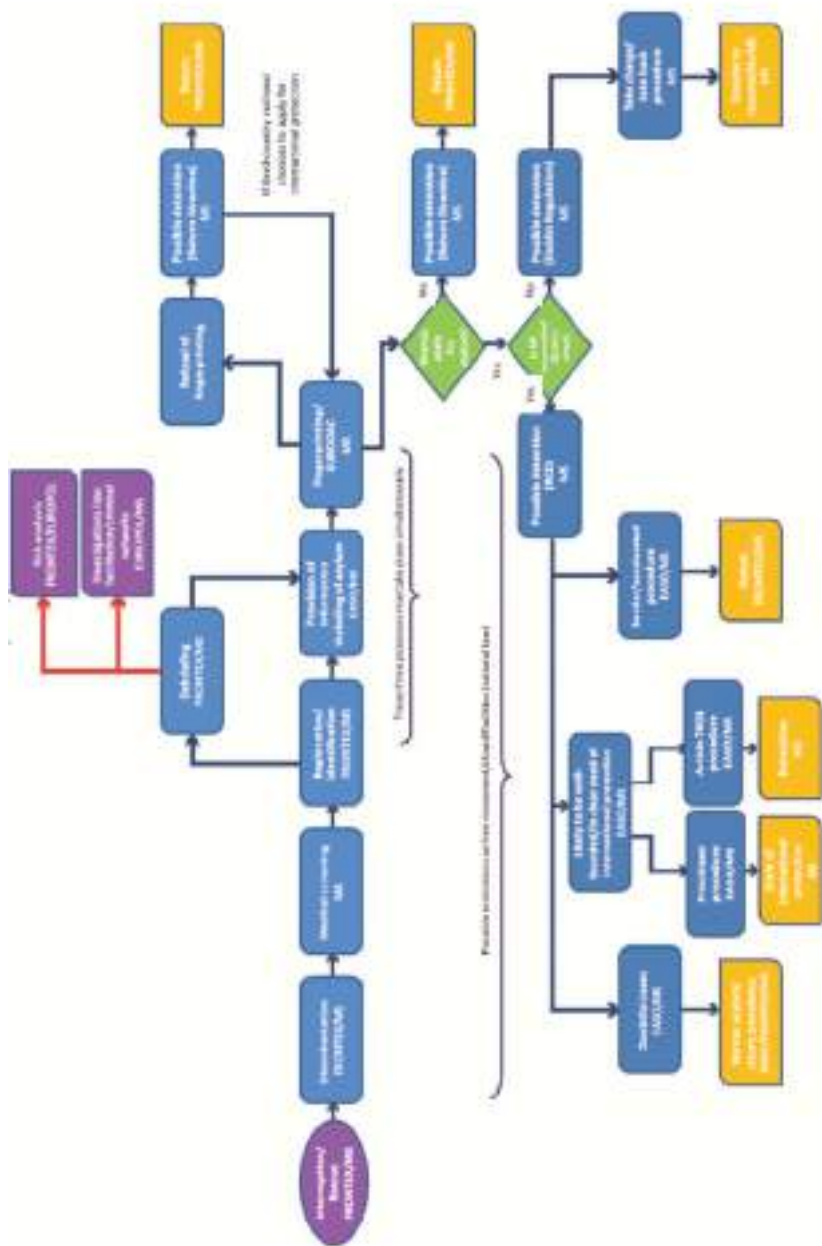
The European Commission and the relevant EU Agencies supported the efforts of the two Member States by providing experts, financial and technical resources, advice and coordination. The Agencies' capacity to provide such support was and remains very dependent on the resources offered by Member States. Additionally, the duration of expert deployments was often very short, thereby reducing the efficiency of the deployed experts. Furthermore, although standard operating procedures are an essential element for clarifying responsibilities and harmonising procedures, in particular where numerous different players are involved, as is the case for the current hotspot approach, at the time of audit only Italy had established hotspot

Programmes	GREECE		ITALY	
	Awarded	Disbursed	Awarded	Disbursed
AMIF	585	247	365	55
AMIF National Programmes 2014-2020	295	45	348	44
AMIF Emergency Assistance to MS	126	101	16	10
AMIF Emergency Assistance to IO/EU Agencies	165	101	1	1
ISF	277	75	291	36
ISF National Programmes 2014-2020	215	26	245	29
ISF Emergency Assistance to MS	52	42	46	7
ISF Emergency Assistance to IO/EU Agencies	10	7	0	0
Emergency Support instrument (contracted)	192	127	0	0
TOTAL	1 055	448	656	91

Graph 31: EU Financial Support given to Greece and Italy for managing migration flows
(Source: European Court of Auditors, Special Report 6/2017)

standard operating procedures and applied them both in the hotspots and in other disembarkation ports functioning as hotspots, while in Greece, their adoption was still pending. Coordination at the individual hotspot level was fragmented and although it had been established that the central authorities in the two Member States were responsible for the overall management of the hotspots, at least in Greece, they have yet to take on this responsibility in full. Monitoring and reporting by the European Commission on the progress and problems at the hotspots have been regular and extensive (European Court of Auditors, 2017).

Ensuring the correct identification, registration and fingerprinting of all incoming migrants, has always been considered to be the primary objective of the hotspot approach, as a means for both improving border management and for correctly channeling migrants towards the national asylum procedure, the Emergency relocation scheme or the return procedure. Including the identification and registration procedures (establishing personal details and nationality, fingerprinting, data crosschecking, etc) and the preliminary asylum proceedings in the hotspot schemes resulted in creating a very complex overall operational structure (see Graph 32):



Graph 32: The Hotspot Structure
(Source: European Court of Auditors, Special Report 6/2017)

Despite its complexity, it was found that in both countries, Greece and Italy, the hotspot approach ensured that most of the arriving migrants were properly identified, registered and fingerprinted and that their data were checked against relevant security databases. In this respect, the hotspot approach contributed towards improving the management of the migration flows. The hotspot approach further requires that migrants should be channeled into appropriate follow-up procedures, i.e. a national asylum application, relocation to another Member State (where appropriate) or return to the country of origin (or transit). The implementation of these follow-up procedures is often slow and subject to various bottlenecks, which can have repercussions on the functioning of the hotspots. The European Court of Auditors recommended to the European Commission to assist the Member States in improving the hotspot approach as regards hotspot capacity, the treatment of unaccompanied minors, the deployment of experts and roles and responsibilities in the hotspot approach (European Court of Auditors, 2017).

4.2 The audit of the Refugee Facility in Turkey (2018)

Turkey, due to its geographical position, has always played a pivotal role in the overall management of the migration flows in the area of Eastern Mediterranean, as it has been a country of both origin and destination, and acts as a transit country for documented and undocumented migration. Instances of irregular migration, human trafficking and human smuggling further complicate the issue and Turkey's involvement in migration policy management. Initially, Turkey did not seek for international burden sharing, because a) it assumed that the Syrian conflict would be temporary, with limited migratory repercussions and b) receiving financial or other types of international assistance would entail sharing information, opening camps to international organizations as well providing international financial transparency, issues that Turkey did not wish to touch. However, as the Syrian civil war was escalated and the cost of providing support to Syrian migrants was mounting significantly for Turkey, and in view of the fact that the international community accused Turkey of not being able to control its borders, allowing for large numbers of illegal crossings towards the EU, the Turkish stance was changed, and seeking cooperation with the EU was considered a priority (see Kale et al, 2018).

One of the main results of this cooperation was the establishment of the Facility for Refugees in Turkey, on 1 January 2016 by the European Com-

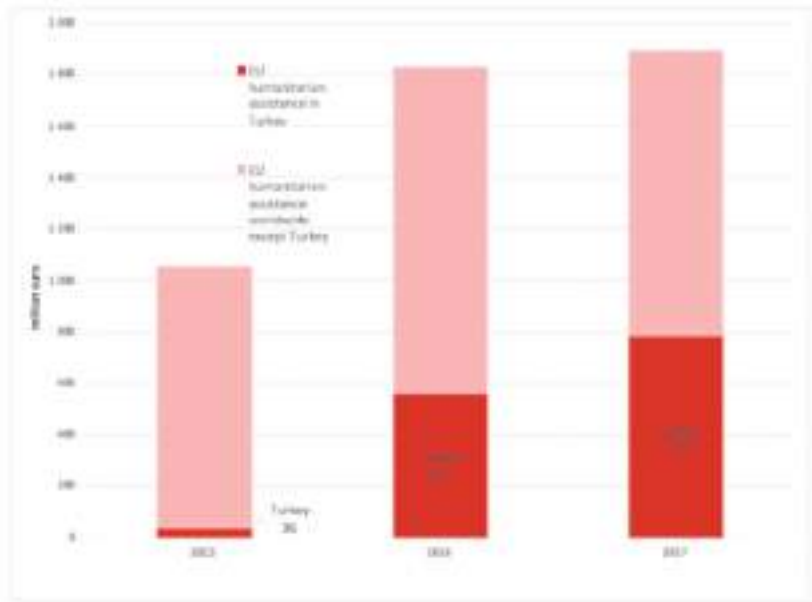
mission (see Commission Decision C(2015) 9500 final, 24.11.2015), as the institutional response to the European Council's call (see European Council, 2015) to increase cooperation with Turkey and step up the Union's and Member States' political and financial engagement substantially, in order to support Syrians under temporary protection and migration management in a coordinated effort to address the crisis. This Facility is a mechanism for coordinating and streamlining an amount of €3 billion from the EU (€1 billion) and its Member States (€2 billion). The support covers humanitarian and non-humanitarian activities, with a financial allocation of €1.4 billion and €1.6 billion respectively. The Facility aims to enhance the efficiency and complementarity of support provided to refugees and host communities in Turkey. The Facility is an innovative pooling tool that is different from other pooling mechanisms used in the EU, such as the EU Trust Funds (a Trust Fund is a legal arrangement with a distinct financial structure that pools the funds of several donors to jointly finance an action on the basis of commonly agreed objectives and reporting formats - see European Commission, 2018b). The relevant differences are presented in Graph 33:

	Facility	EU Trust Funds
Within the EU budget	X	
Pooling Mechanism	X	X
Donors' fixed contributions	X	
Open to non-EU donors		X
In charge of project selection		X
Specific results framework	X	X
Specific annual accounts		X

Graph 33: Comparison between the EU Facility for Turkey and the EU Trust Funds
(Source: European Court of Auditors, Special Report 27/2018)

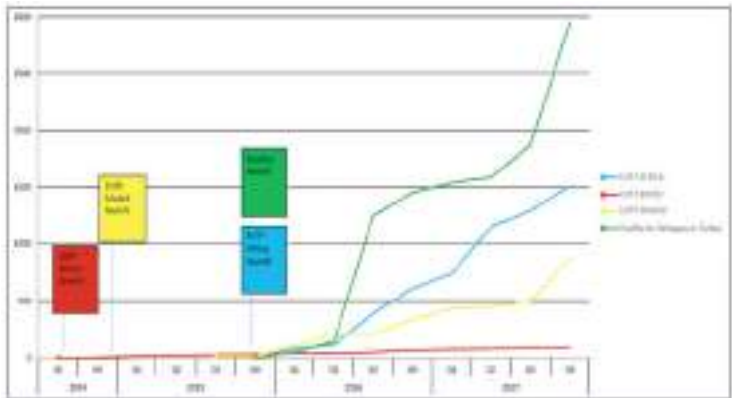
The ECA's auditing findings on this scheme are included in its Special Report 27/2018.

After the crisis's eruption, Turkey has received significant amounts from the EU with regard to humanitarian assistance, as it has been found (see Graph 34):



Graph 34: EU Humanitarian Assistance given to Turkey, 2015-2017
(Source: European Court of Auditors, Special Report 27/2018)

The Facility for Refugees in Turkey rapidly mobilised its resources to provide a swift response to the refugee crisis. The rapidity of the procedures (see Graph 35), compared with similar operations, despite the flexibility envisaged for the Facility and although desirable because of the importance of the relevant operations, caused several concerns with regard to the actual substantive adherence of EU procurement standards (see European Court of Auditors, 2018a).



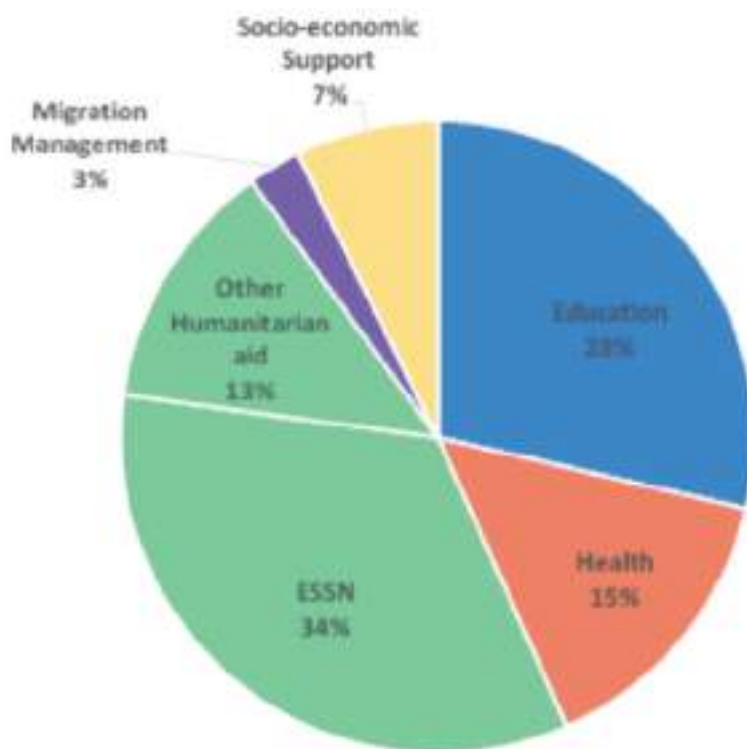
Graph 35: Contracting speed of the Facility compared to EU Trust Funds (in € million)
(Source: European Court of Auditors, Special Report 27/2018)

The entire operation of the Facility was a very challenging endeavour, taking into account the spatial distribution of migrants, refugees and asylum seekers throughout the country (see Graph 36):



Graph 36: Distribution of migrants, refugees, asylum seekers by province in Turkey – June 2018 (Source: European Court of Auditors, Special Report 27/2018)

Thus the Facility did not fully achieve its coordinating objective, despite the Commission's successful establishment of a common needs assessment, a governance structure (the Steering Committee) and a results framework covering both humanitarian and non-humanitarian support. The audited projects provided helpful support to refugees; most of them have achieved their outputs, but half of them have not yet achieved their expected outcomes and nine out of ten had to be extended. The Facility helped refugees to address their basic needs, but did not always deliver the expected value for money. The Commission had identified the priority needs of refugees based on a comprehensive needs assessment. However, disagreements between Turkey and the EU on how to address the priority needs in municipal infrastructure and socio-economic support resulted in these areas being insufficiently covered, despite being granted significant proportions of the Facility's budget, as shown in Graph 37:



Graph 37: Distribution of allocated funds to thematic priorities of the Facility

Source: European Court of Auditors, Special Report 27/2018

The Facility supported similar type of activities in the health and education sectors through different instruments. This made coordination more complex and resulted in the parallel use of different management structures to fund similar projects.

As for the efficiency of the humanitarian projects funded by the Facility, it was found that the Commission did not consistently and comprehensively assess the reasonableness of the budgeted costs. Also even if they were in line with the legal framework, the indirect costs paid to the partners implementing large cash-assistance projects were high, and the level of advance payments was not aligned with the actual cash outflows of the projects. The Commission put in place appropriate measures to monitor humanitarian projects. The main limitation was the Turkish authorities' refusal to grant access to beneficiary data for the two cash-assistance projects. In fact, neither the Commission nor the ECA was able to track the project

beneficiaries from their registration to the payment (see European Court of Auditors, 2018a).

The Facility's results framework was still under development during the audit: baselines, milestones or quantified targets for high-level indicators had not yet been completed during the audit. Public reporting was limited and its scope did not capture the whole EU assistance to refugees in Turkey. Thus the ECA provided recommendations aimed at improving the efficiency and effectiveness of the second tranche of the Facility's budget, focusing on addressing more properly the refugees' needs for municipal infrastructure and socio-economic support, improving the streamlining and the complementarity of assistance, adopting and implementing a strategy for the transition from humanitarian to development assistance, addressing with the Turkish authorities the need to improve the operating environment for (I)NGOs, and enhancing the monitoring and reporting of the Facility (see European Court of Auditors, 2018a).

4.3. The audit of the EU Trust Fund for Africa (2018)

Since January 2013, the European Commission was allowed to create and administer European Union trust funds for external actions (see Art. 187 of the Financial Regulation 966/2012, OJ 2012, L 298/1, now replaced by Art. 234 of the Financial Regulation 1046/2018, OJ 2018, L 193/1). These are multi-donor trust funds for emergency, post-emergency or thematic actions. According to the European Commission, a Trust Fund is defined as a legal arrangement with a distinct financial structure that pools the funds of several donors to jointly finance an action on the basis of commonly agreed objectives and reporting formats. EU Trust Funds have been designed to offer a number of advantages: they are EU-led tools, providing better coordination with EU Member States, better control of operations by the Union and other donors and enhanced EU visibility. These Funds benefit from fast decision-making processes and from their capacity to pool larger sums from different sources making them a flexible, proactive and adaptable tool. The administration costs of operating such Funds are furthermore often much lower than the costs of Trust Funds managed by other international entities. It has been the approach of the European Commission to employ such Funds in order to support EU action with regard to the EU migration policy (see European Commission, 2018b).

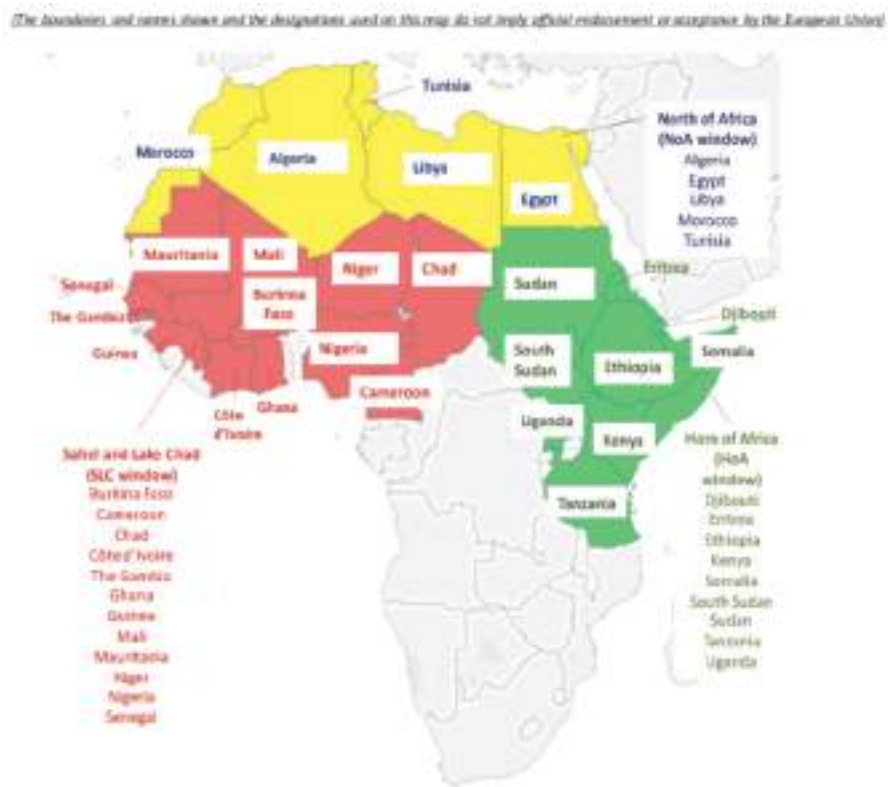
The European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa (the

‘EUTF for Africa’) is aimed at fostering stability and helping to better manage migration by addressing the root causes of destabilisation, forced displacement and irregular migration. It was agreed at the Valletta Summit on Migration in November 2015. The financial contributions forming its funding capacity are as follows (see Graph 38):

Country	Contributions pledged (euro)	Contributions received (euro)
Austria	6 000 000	6 000 000
Belgium	10 000 000	9 000 000
Bulgaria	550 000	550 000
Croatia	600 000	600 000
Cyprus	100 000	100 000
Czech Republic*	10 411 624	10 411 124
Denmark	20 045 876	20 045 876
Estonia	1 450 000	1 450 000
Finland	5 000 000	5 000 000
France	9 000 000	9 000 000
Germany	157 500 000	139 500 000
Hungary*	9 450 000	9 450 000
Ireland	15 000 000	2 600 000
Italy	110 000 000	108 000 000
Latvia	300 000	300 000
Lithuania	200 000	200 000
Luxembourg	3 100 000	3 100 000
Malta	325 000	175 000
Netherlands	26 362 000	23 362 000
Norway	8 865 361	8 865 361
Poland*	10 550 748	10 550 748
Portugal	1 800 000	1 800 000
Romania	100 000	100 000
Slovakia*	10 350 000	10 350 000
Slovenia	100 000	100 000
Spain	9 000 000	9 000 000
Sweden	3 000 000	3 000 000
Switzerland	4 100 000	4 100 000
United Kingdom	6 000 000	2 800 000
<i>Visegrád group (CZ, HU, PL, SK)*</i>	<i>35 000 000</i>	<i>35 000 000</i>
Total External Contribution	439 260 629	409 510 629

Graph 38: List of contributions for the EUTF for Africa, 31.8.2018
(Source: European Court of Auditors, Special Report 32/2018)

The EUTF for Africa supports activities in 26 countries across three regions of Africa, referred to as ‘windows’: the Sahel and Lake Chad, the Horn of Africa and North of Africa (see Graph 39):



Graph 39: Geographical scope of the EUTF for Africa
 (Source: European Court of Auditors, Special Report 32/2018)

The migration flows from these areas to the EU have been quite significant (see Graph 40):

	2014	2015	2016	2017
Sahel and Lake Chad	42 601	65 297	114 814	76 889
North of Africa	10 773	21 603	19 393	27 912
Horn of Africa	46 536	70 875	42 850	17 984
Total EUTF for Africa	99 910	157 775	177 057	122 785

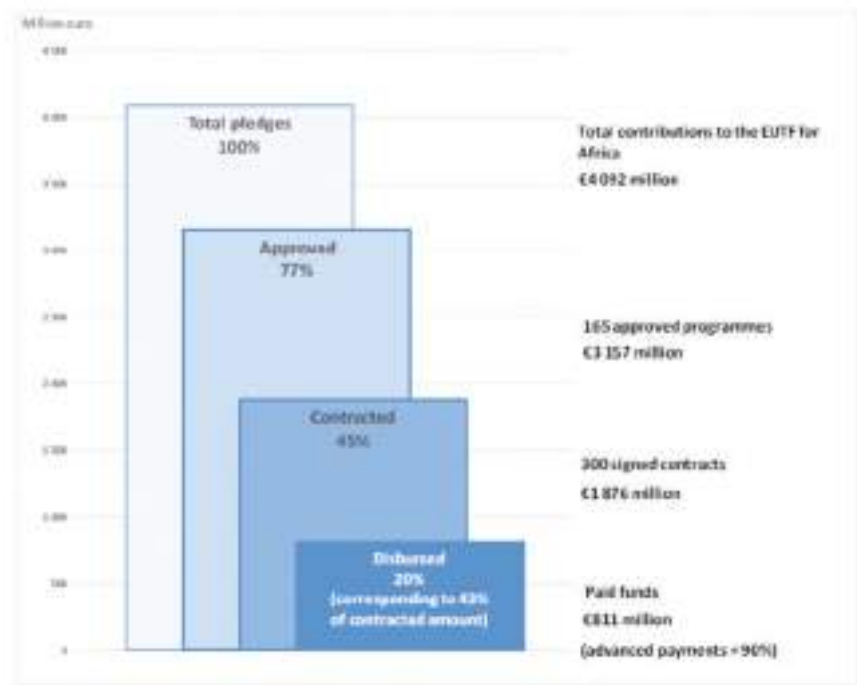
Graph 40: Illegal entries in the EU of migrants from regions covered by the EUTF for Africa (Source: European Court of Auditors, Special Report 32/2018)

The ECA examined the design and implementation of the EUTF for Africa in its Special Report 32/2018. The EUTF for Africa was found to be a flexible tool, with an overall fast rate of launching projects, signing of contracts and making advance payments, as demonstrated in Graph 41:

Phase	Definition	EUTF for Africa, all windows (in days)	EU Budget and EDF (in days)	Time saved on average (in days)
1. Identification/formulation	Average number of days between Quality Support Group and approval by OpComs or IDI/IGD Committees	13	131	100
2. Contracting	Average number of days between approval by OpComs or IDI/IGD/ECI Committees, and contract signature	176	411	235
3. First payment	Average number of days between signature of contract and authorisation of first payment	10	41	31

Graph 41: Comparison of speed of procedures between EUTF for Africa & EU Budget/ EDF (Source: European Court of Auditors, Special Report 32/2018)

However, projects face similar challenges as traditional instruments that delay their implementation and this is reflected by the low level of payments, as shown in Graph 42, which for the majority of cases (nearly 90 %) represents advance payments:



Graph 42: EUTF for Africa Budget Implementation (August 2018)
(Source: European Court of Auditors, Special Report 32/2018)

The objectives of the EUTF for Africa are broad. This has allowed flexibility in terms of adapting the support to suit different and changing situations, but is less useful when it comes to steering action across the three windows and for measuring impact. The needs to be addressed by the Trust Fund were not comprehensively analysed and quantified, nor the means at its disposal. The strategic guidance provided has not been specific enough, and the pooling of resources and capacities of donors is not yet sufficiently effective. The procedures for selecting projects varied between the windows and the criteria for assessing project proposals were not sufficiently clear or documented. While the EUTF for Africa has adopted a common monitoring system, it is not yet operational and the three windows use different systems for monitoring performance, while the indicators used for measuring project performance lacked baselines. The EUTF for Africa has contributed to the effort of decreasing the number of irregular migrants passing from Africa to Europe, but this contribution cannot be measured precisely. The ECA's recommendations focused on improving the quality of the objectives of the EUTF for Africa, revising the selection procedure for projects, taking measures to speed up implementation, and improving the monitoring of the EUTF for Africa (see European Court of Auditors, 2018b).

4.4 Examining the information systems supporting EU border control (2019)

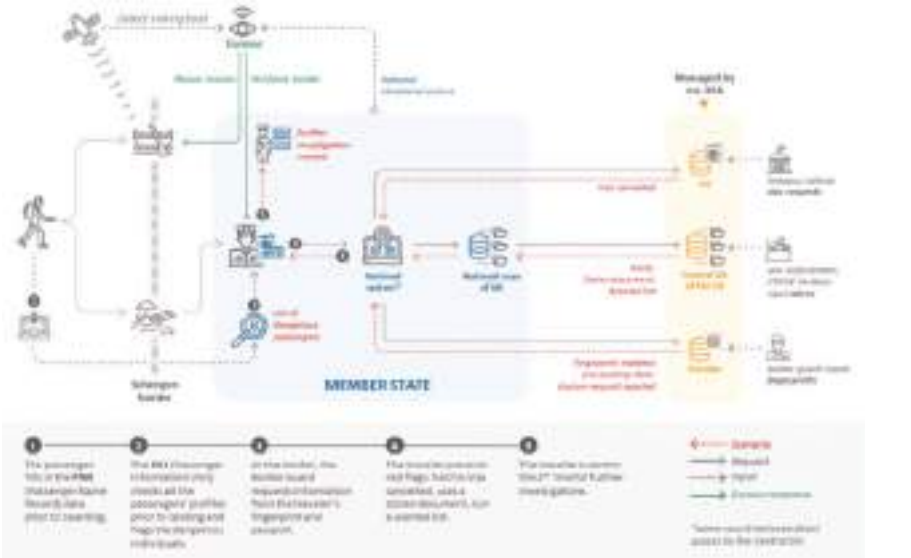
The control of the external borders of the EU is of paramount importance for the proper functioning of the Schengen system, which enables all travellers within the EU to cross internal borders without being subject to border checks. This scheme is considered to be one of the greatest achievements of the EU with regard to its internal integration (see Wang, 2016). Abolishing internal borders, however, requires effective control and surveillance of external borders in order to prevent crime and terrorism and to control migration. This effort is supported by a number of information systems for providing and exchanging data such as the Schengen Information System (SIS II), the Visa Information System (VIS), Eurodac (European Asylum Dactyloscopy Database - Fingerprint comparison system), the European Border Surveillance System (Eurosur) and the Passenger Name Record systems (PNR). The efficiency of these systems has been examined by the European Court of Auditors in its Special Report 20/2019.

The operating scope of these systems focuses either before or at the border as follows (see Graph 43):



Graph 43: Information systems before and at the EU external borders
(Source: European Court of Auditors, Special Report 20/2019)

The use of these systems entails the following proceedings (see Graph 44):



Graph 44: Method of use of information systems for EU border security
(Source: European Court of Auditors, Special Report 20/2019)

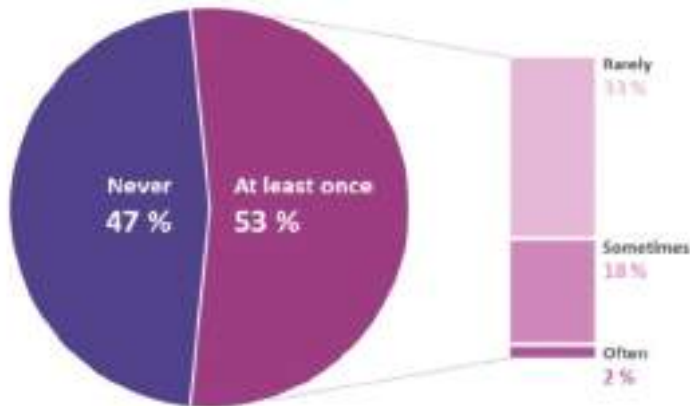
The cost for developing these systems – at least their EU level components – has been estimated to be over €600 million, while their annual operating cost has estimated at approximately €61.5 million. The Member States have also invested significant amounts from their national budgets, in developing and maintaining the corresponding national systems.

The ECA found that information systems along the EU external borders were generally in line with EU requirements but did not operate with equal efficiency, as some Member States did not make all the functions offered in the central EU systems available through their national systems, thus reducing the efficiency of border checks. Furthermore, it was found that due to legal constraints at Member State level (such as rules on data protection and national security), the efficient use of the systems was prevented as border guards visiting another Schengen country (e.g. to assist in reinforced controls during the migration crisis in Greece and Italy) were not allowed to use that country's national systems for conducting independent controls. There were also delays in the implementation of Eurosur and PNR, which prevented border authorities from sharing important information. It is indicative that PNR is not yet fully operational, as its basic legal act is a directive, thus leaving the Member States to set up their own PNR systems separately, without any common European platform. This was a decision driven by a lack of consensus on the protection, storage and disclosure of personal data, but it affected the efficiency of the border control mechanisms as it deprived border authorities in the countries with delayed implementation, of advance information about high-risk individuals crossing their borders (see European Court of Auditors, 2019a).

As for the use of the resources provided by the EU Budget (namely the Internal Security Fund) to Member States, in order to support them for the management of external borders and the common visa policy (ISF Borders), as well as for police cooperation, preventing and combating crime, including migrant smuggling (ISF Police), it was found that there were delays in spending and that not more than 30% (with varying rates below that figure) of the resources spent were allocated to the maintenance or the extension of the information systems used for EU external border control. These delays were attributed by the European Commission to the complex and lengthy procurement procedures involved (see European Court of Auditors, 2019a).

A very interesting finding was that although Member States stated officially that they are making increasing use of the systems to share information, the results of a survey conducted by the ECA itself, during the

audit, among the staff of the border control national authorities revealed that more than half of the border guards had been in a situation where they had to decide whether to let someone through without consulting the systems (see Graph 45):



Graph 45: Results of ECA survey on whether a decision about letting someone cross the border without consulting the information systems for EU border security has been made (Source: European Court of Auditors, Special Report 20/2019)

This situation was linked to the fact that although the data in the system should allow border guards to uniquely identify the person being checked and determine whether to let him or her enter the EU, it was found that, sometimes, border guards do not get adequate information from the system to make this decision, or this information is not updated due to delays in entering new information in the data bases. Furthermore, a discrepancy was noted between the number of visas issued and the number of visas checked. Thus the overall efficiency of the system is reduced. The ECA, taking into account all these findings, recommended to the European Commission to intensify the training of national border control officials, to analyse discrepancies in visa checks, to improve data quality control procedures and to reduce delays in data entry (see European Court of Auditors, 2019a).

4.5 Auditing EU action for asylum, relocation and return of migrants (2019)

After the European Court of Auditors' Special Report 6/2017 on the implementation of the "hotspots approach" (see above), the European

Parliament endorsed its conclusions and called for a follow-up report on the functioning of the hotspots, adopting a broader scope by including also an analysis of the follow-up procedures, i.e. the asylum, relocation and return procedures (see European Parliament, 2017). The Court's reaction to that request was a more extensive audit to the entire scheme of implementing the EU Migration Agenda, the findings of which were included in its Special Report 24/2019.

Some of the main channels through which the EU Budget provides support for the implementation of the EU Migration Agenda entail the Asylum, Migration and Integration Fund (AMIF), as well as the resources allocated to the European Asylum Support Office (EASO) and the European Border and Coast Guard Agency (Frontex). The implementation of the relevant budgetary appropriations for the years after 2015 is shown in Graph 46.

These figures demonstrate that by the end of 2016, the financial resources made available by the AMIF had not been used by Greece in its National Plans to address the country's needs arising from the migration crisis. The commitments' rate was improved later, but the payments' rate remained quite low. Italy caught up on delays in implementing commitments under special objectives 1 and 2, but commitments under specific objective 3 were lagging behind at the time of the audit visit. As for the EASO's deployment in Greece and Italy, the operating plans were adhered to, as spending exceeded the initial budget every year. However, the performance and effectiveness of EASO support in term of outputs and outcomes could not be verified as it was not based on preset targets/baselines for the indicators, but only on the Greek and Italian asylum authorities' testimonies, which considered EASO's support useful in both supporting asylum procedures and strengthening national capacity. The high percentage of Frontex's unused initial budget is due to the Member States' inability to exploit Frontex's potential to support return operations. Greece and Italy did not make full use of Frontex's potential due to the low number of returnees from both countries (68 and 2,089 persons respectively). Additionally, both these countries opted for streamlining return through operation financed under their AMIF National Plans instead of Frontex support for forced returns ((see European Court of Auditors, 2019b).

With regard to the operation of the hotspots, after overcoming the teething problems that were identified during the initial phase of this scheme's operation, the situation has been streamlined into a specific mode of procedure, as presented in Graph 47:

AMIF EMAS:

Annual Work Programmes	2014	2015	2016	2017	2018	2019	Total
AMIF EMAS	25.0	131.3	414.9	402.5	126.6	25.0	1 125.3

Source: EU Commission based on published Annual Work Programmes.

AMIF NP Greece:

Specific objective	NP allocation	Planned commitments end 2018 (%)	Actual commitments end 2018	Actual payments end 2018	Planned commitment level	Actual commitment level	Difference between planned and actual commitments
SOG Asylum	128.7	98.2	126.7	21.6	76 %	76 %	-8 %
SOG Integration	35.2	16.7	35.5	3.9	79 %	67 %	-13 %
SOG Return	132.9	90.6	79.8	91.3	79 %	56 %	-19 %
Total (%)	296.8	225.6	190.0	116.7			

(%) Total NP allocation for 2018 is 856.2 million (including solidarity and interim assistance).

(**) Calculated based on multi-annual planning of commitments in the National programme.

Source: ARF Responsible Authority, Greece.

AMIF NP Italy:

Specific objective	NP allocation	Planned commitments end 2018 (%)	Actual commitments end 2018	Actual payments end 2018	Planned commitment level	Actual commitment level	Difference between planned and actual commitments
SOG Asylum	214.8	97.3	91.6	11.0	75.8 %	67.8 %	-8.1 %
SOG Integration	209.0	115.2	144.3	43.6	70.2 %	90.7 %	18.3 %
SOG Return	80.4	27.2	29.9	15.3	72.3 %	33.7 %	-20.8 %
Total (%)	504.2	240.6	265.8	170.0			

(%) Total AMIF NP allocation for Italy is 696.2 million (including special visas and technical assistance).

(**) Calculated based on multi-annual planning of commitments in the National programme.

Source: ARF Responsible Authority, Italy.

EASO Operational support:

EASO		2015	2016 ⁽¹⁾	2017	2018
Greece	Initial budget		8.6	27.1	24.5
	Latest amended budget		45.6	34.0	27.6
	Executed regular budget commitments	Budget and commitments figures not available per country	25.3	38.4	26.9
	Unused initial budget		0.0	0.0	0.0
Italy	Initial budget		8.6	8.0	14.5
	Latest amended budget		45.6	14.3	19.5
	Executed regular budget commitments		0.3	14.4	22.4
	Unused initial budget		0.0	0.0	0.0

(1) In 2016, the budget was not split by countries. The 2016 initial and amended budget figures cover the entire operational support including other countries and horizontal costs.

Source: EASO.

Frontex Return support:

Budget line 18 02 03, Return support	2015	2016	2017	2018
Initial budget	9.5	66.6	66.6	53.8
Latest amended budget	13.2	38.5	53.1	49.4
Executed regular budget commitments	13.2	38.5	53.1	49.4
Unused initial budget	0.0	28.1	13.5	4.4

Source: EBCSA.

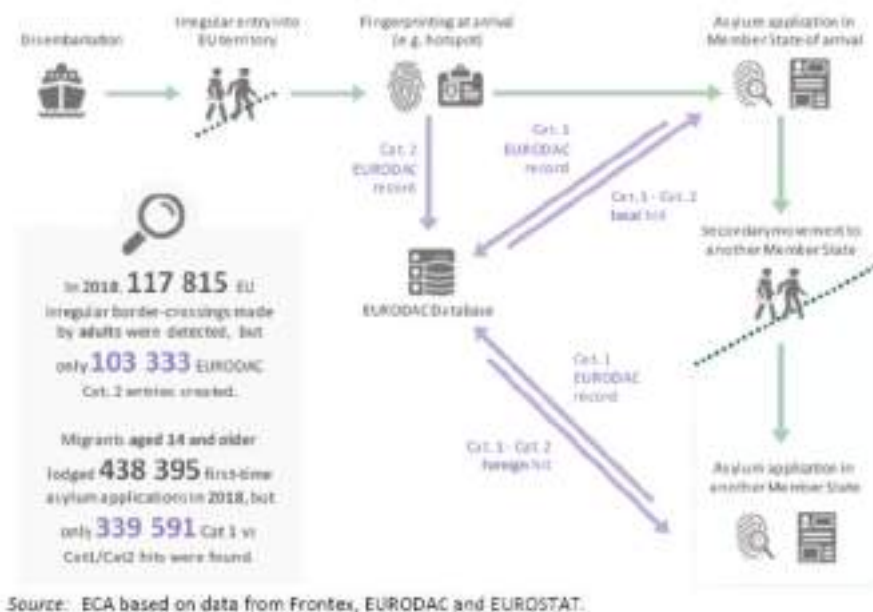
Graph 46: Implementation of EU Budget for AMIF, EASO, Frontex 2015-2018 (in € million) (Source: European Court of Auditors, Special Report 24/2019)



Graph 47: Overview of hotspot activities in Greece and Italy
(Source: European Court of Auditors, Special Report 24/2019)

The hotspots in Italy were found to be empty or almost empty, cleaned and very well equipped. In Italy attention had been shifted to the situation at sea, as several vessels had not been allowed to enter the Italian ports, and no authorized place of disembarkation had been designated. These delays had very negative effects on children – mainly unaccompanied children – as they were stranded at sea for many days, even weeks. In Greece the situation was completely different, as the living conditions in hotspots (especially those in the islands of Lesbos and Samos) were very poor, due to the overpopulation of the facilities, and the lack of medical personnel, hygiene facilities and security conditions (for instance in February 2019, the hotspots in Lesbos and Samos, having a capacity of 100 and 600 persons, were housing 5,096 and 3,745 persons respectively, with many of the migrants living in tents outside the hotspot perimeter). The situation is not to improve rapidly due to the slow procurement procedures, the delayed execution of maintenance and upgrade projects, the continuing arrivals of new migrants and the lengthy asylum procedures. Furthermore, in both Italy and Greece, the deployment of EASO and Frontex experts does not fully meet the needs identified in the hotspots' operation, both in terms of available personnel and in terms of the deployment's duration, which is short (see European Court of Auditors, 2019b).

As for the fingerprinting process and the use of the EURODAC system, these operations are well operating within the hotspots in Greece and Italy (see Graph 48):



Graph 48: EURODAC fingerprinting process
(Source: European Court of Auditors, Special Report 24/2019)

However, there is a significant number of migrants applying for asylum in other EU Member States, whose fingerprints cannot be found in the EURODAC database. As there are two categories of data entry in the EURODAC system (**category 1** data are the fingerprint sets of every applicant for international protection, aged 14 or older, who lodges an asylum application in a Member State and **category 2** data are the fingerprint sets of every third-country national or stateless person, aged 14 or older, who is apprehended by the authorities for irregularly crossing the external border of a Member State by land, sea or air, coming from a third country and not been turned back), one may conclude that the migrants in question a) entered the EU from alternative routes (not Greece, nor Italy), or b) applied for asylum after 18 months from being registered with EURODAC, thus the relevant data is not longer stored in the database, or c) entered the EU completely undetected and, consequently, unregistered. Furthermore, on several occasions, between 2015 and 2018, identical fingerprints were

registered in more than one Member States, thus demonstrating a high volume of asylum applicants moving from Greece and Italy to other Member States (for a survey and a relevant analysis regarding the reasons causing such secondary movements by the migrants, see Kuschminder & Waidler, 2019). It is obvious that the high volume of secondary movements in the EU further exacerbates the difficulty in implementing the Dublin mechanism (see European Court of Auditors, 2019b).

Another point highlighted by the ECA's audit was the limited success of the temporary emergency relocation schemes. In 2015, acting on the European Commission's proposal, the Council set a total relocation target of 160,000 persons (an initial target of 40,000 and a second of 120,000), a figure resulting mainly from political negotiations rather than an in-depth analysis of forecast migratory flows. Out of these places, 7,744 places (of the initial 40,000) were never allocated, and 54,000 (of the subsequent 120,000) were made available for resettling Syrians from Turkey after the EU Turkey statement of 2016 (see further below), while the Member States legally committed to relocate 98,256 out of 160,000 migrants. The relocation scheme from Greece and Italy is shown in Graph 49:

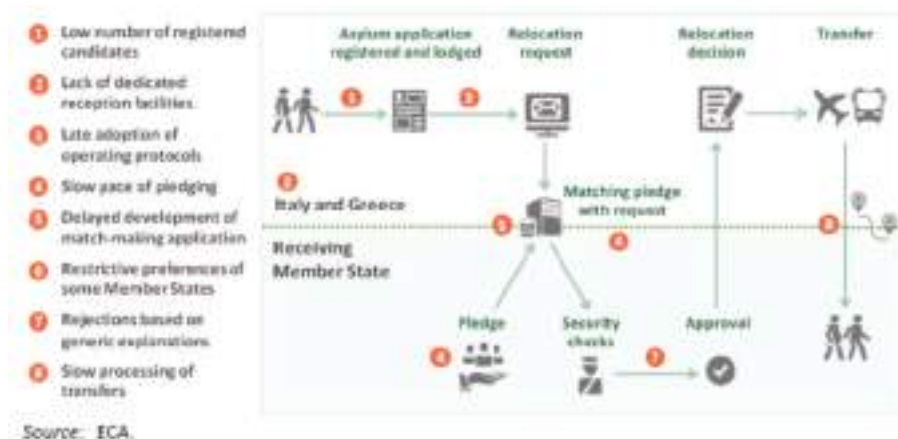


Graph 49: Relocation Scheme from Greece and Italy 2015-2017
(Source: European Court of Auditors, Special Report 24/2019)

The figures show that 34,705 eligible migrants (12,706 from Italy and 21,999 from Greece) were relocated to 22 Member States and 3 associated countries (Liechtenstein, Norway and Switzerland). The United Kingdom and Denmark exercised their opt-out rights under the Treaties. The Czech Republic relocated only 12 persons while Hungary and Poland did not relocate any migrants. Against these three countries, the Commission launched infringement proceedings for non-compliance with the Relocation Decisions. The budgetary cost for this scheme amounted to €225.6 million for all relocated migrants from AMIF, entailing €500 per migrant to Greece or Italy to cover travel costs and €6,000 per migrant to the receiving Member State for reception costs. These mandatory relocation schemes were the first solidarity initiative in the history of European migration policy aimed at the large-scale redistribution of asylum applicants among Member States, and they provided protection to a significant number of applicants who would have otherwise stayed in Italy or Greece, or who might have moved to other countries irregularly (see European Court of Auditors, 2019b).

It is noted, however, that the number of relocated asylum seekers was not sufficient to alleviate effectively the pressure on the asylum systems in Greece and Italy, as the relocated migrants did not exceed 4 % of all asylum seekers in Italy and 22 % of those in Greece. Furthermore, the closure of the Balkan route in March 2016 left many potentially eligible relocation candidates in Greece (according to European Commission's estimates 35,000 to 40,000 potentially eligible candidates for relocation were trapped in Greece at that time). This necessitated an extensive pre-registration process, in order to identify and register those still in Greece in summer 2016. Another cause for the limited success of the relocation system was that the information provided to the migrants on the countries of relocation and the benefits of orderly relocation (as opposed to irregular "selfrelocation") was not effective enough to gain their trust and convince them that the ordinary schemes were attractive. This lack of confidence was further fueled by the low number of relocation pledges and the slow pace at which transfers were processed (see European Court of Auditors, 2019b).

An overview of the issues identified as potential causes for the limited success of the relocation schemes is presented in Graph 50:



Graph 50: Operational weakness for the relocation schemes
(Source: European Court of Auditors, Special Report 24/2019)

The asylum and returns procedures in Greece and Italy are shown in Graph 51:

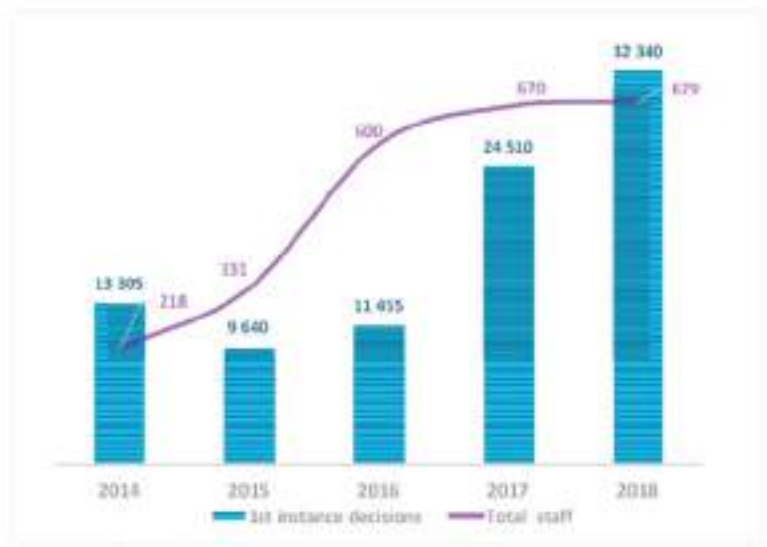


Graph 51: Asylum and Return Procedures
(Source: European Court of Auditors, Special Report 24/2019)

The entire Greek Asylum System (GAS) remains overloaded despite its major growth in processing capacity, as shown in Graph 52:

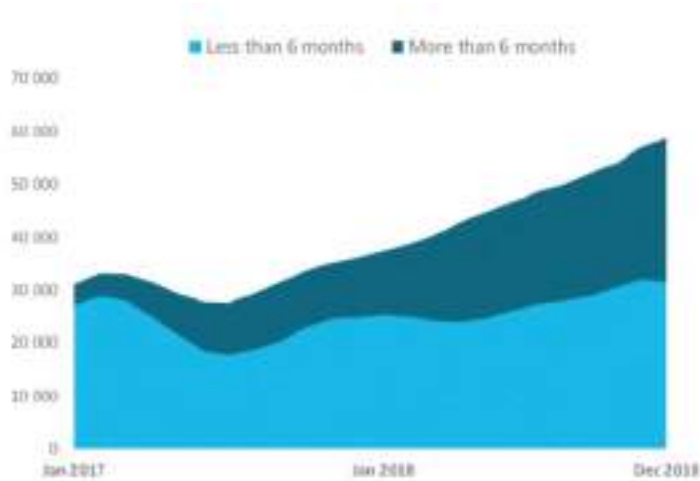
The ECA found that the current case-handling capacity of GAS employees, despite the increase of staff, still falls short in view of the rising number of asylum applications, and it estimated that the GAS would need approximately an additional 110 caseworkers just to contain the first in-

stance backlog. As for the overall number of pending cases at first instance, the figure was almost doubled during 2017 and 2018, and there was a very distinct increase in the number of cases older than 6 months, something that demonstrated significant delays (see Graph 53):



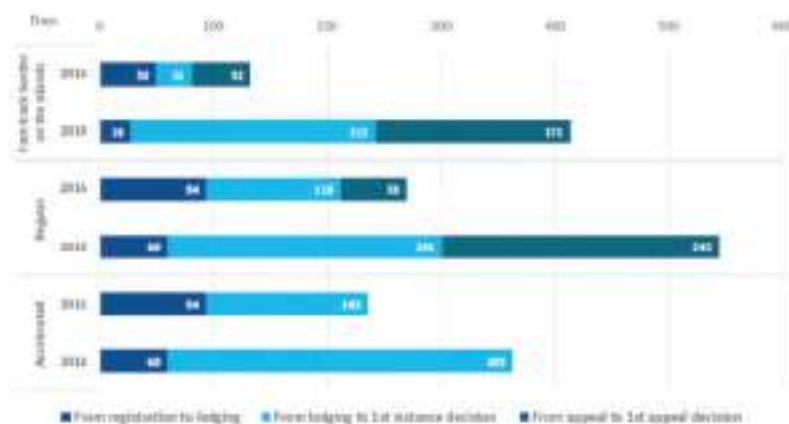
Source: ECA, Based on GAS and EUROSTAT data.

Graph 52: Rates of increase of staff and cases in the Greek Asylum System
(Source: European Court of Auditors, Special Report 24/2019)



Graph 53: First Instance Cases pending in Greece
(Source: European Court of Auditors, Special Report 24/2019)

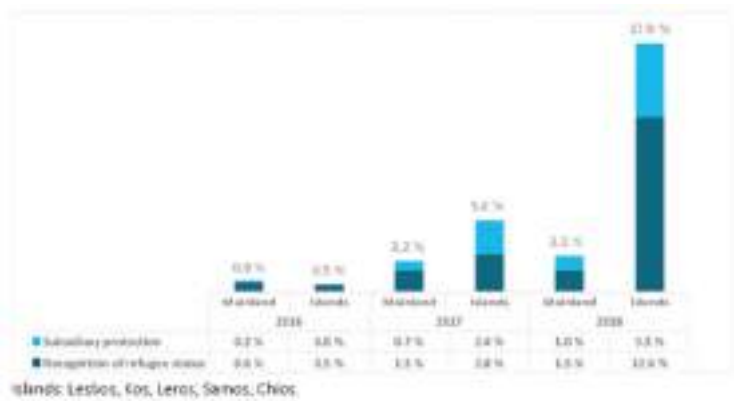
The situation is particularly difficult in the islands, with a backlog of 24,533 first-instance cases pending at the end of March 2019 (at pre-registration stage: 2,389 cases, at scheduled interview stage: 14,132 cases, at the end of process: 8,012 cases). Despite the EU-Turkey's Statement's impact on reducing the migration flows towards the Greek islands, and the establishment of accelerated and fast-track proceedings (these entail GAS or EASO staff conducting the interviews, with very tight deadlines - the asylum interview should be conducted within one day of lodging the asylum application and the first-instance decision should be taken within one day of the interview), asylum processing times were lengthened in 2018, as seen in Graph 54:



Graph 54: Time length of Asylum proceedings in Greece
(Source: European Court of Auditors, Special Report 24/2019)

One interesting point arising from these figures, is that those eligible for the accelerated procedure (applicants from Syria, Palestine or without nationality), although they have had their geographical restriction lifted and can leave the islands, they have to wait much longer for their case to be examined on merit on the mainland than if they had stayed in the fast-track border procedure on the islands (see European Court of Auditors, 2019b).

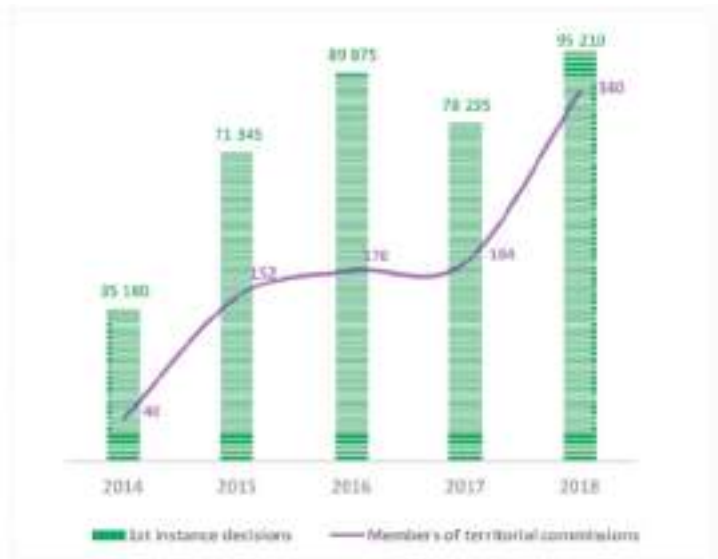
A final issue regarding the asylum proceedings in Greece refers to the appeals against first-instance decisions. The number of the competent committees was increased from 12 to 20, however there are still cases pending on appeal since 2013. A potentially indicative measure for the quality of first-instance decision is the percentage of overturned decisions among the appeals lodged with the appeal authorities (see Graph 55):



Graph 55: Rate of first instance asylum decisions overturned on appeal
(Source: European Court of Auditors, Special Report 24/2019)

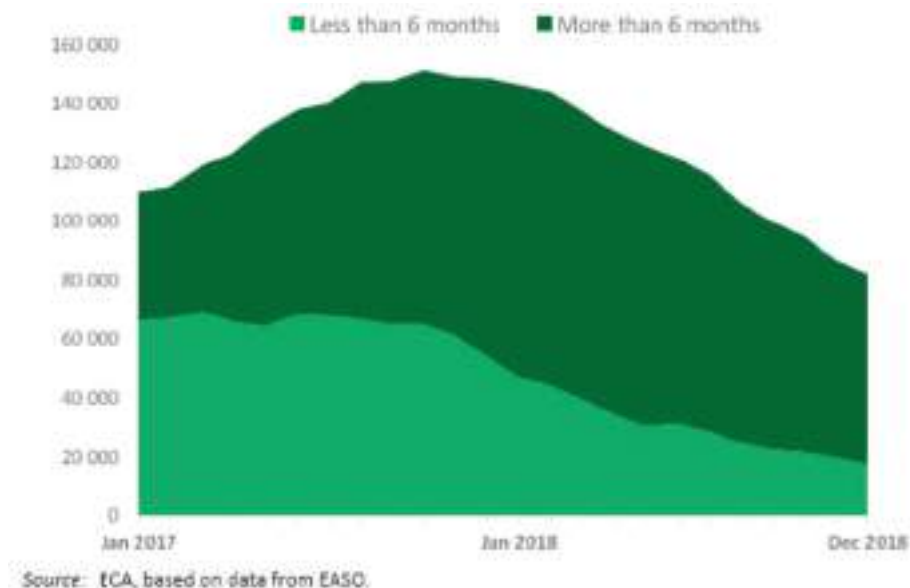
According to these figures, the percentage is low for cases examined in mainland, while in the islands the percentage is much higher, demonstrating the dramatic and difficult conditions under which the first instance procedure takes place (see European Court of Auditors, 2019b).

In Italy, the reinforcement of the staff of the competent authorities increased the capacity of processing applications at first instance, as follows (Graph 56):



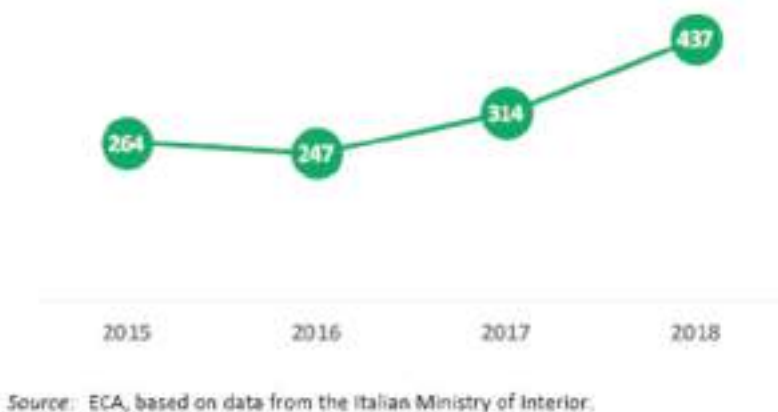
Graph 56: Rate of increase of competent staff compared to Rate of increase of first instance decisions (Source: European Court of Auditors, Special Report 24/2019)

The resulting situation marked a significant reduction of pending cases (more than 45% in 2018) which was further influenced by a significant drop in arrivals, as seen in Graph 57:



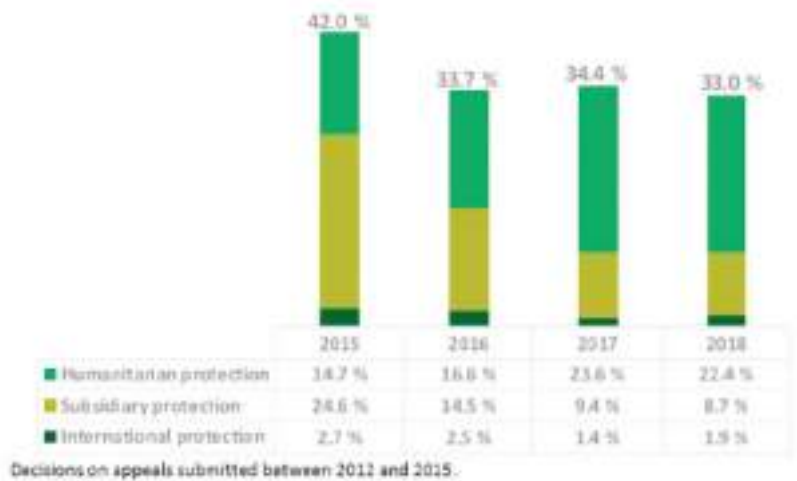
Graph 57: First instance cases pending in Italy
(Source: European Court of Auditors, Special Report 24/2019)

However, the average time length of procedure for first instance decision was increased as shown in Graph 58:



Graph 58: Average processing time for first instance cases in Italy (in days)
(Source: European Court of Auditors, Special Report 24/2019)

A final issue with regard to the Italian asylum system refers to the duration of the appeals process and the rate of overturned first instance decisions. Given the increasingly tougher national migration policy adopted by the Italian authorities (abolishment of humanitarian protection and sliding recognition rate for asylum beneficiaries), a large caseload of rejections is expected to move to the appeal stage, which is already overloaded (see European Court of Auditors, 2019b). The average time to reach a final decision on an asylum application, after lodging an appeal against a first instance decision is 3.5 years. And the rate of overturning first instance decisions is steadily very high, exceeding 30%, as shown in Graph 59:



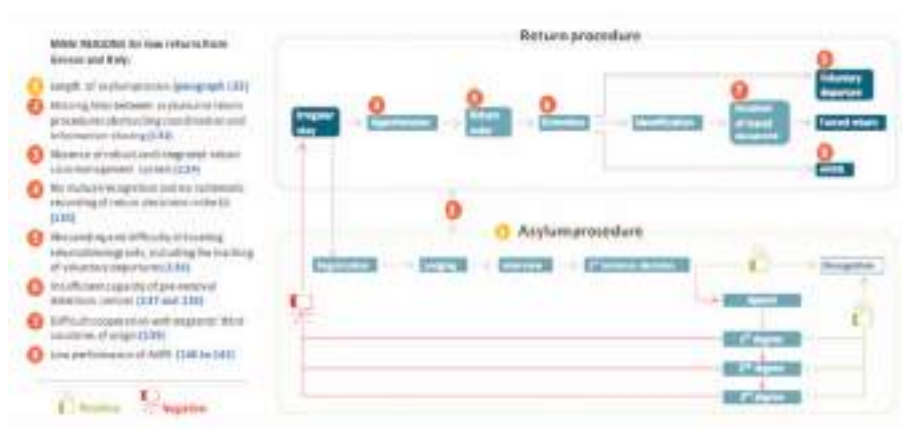
Graph 59: Rate of first instance decisions overturned on appeal
(Source: European Court of Auditors, Special Report 24/2019)

The final finding of the ECA focused on the returns of migrants to their countries of origin. The rate of returns throughout the EU has been low, even in the case of schemes that have been deemed as successful, such as the EU-Turkey Statement. The relevant figures are shown in Graph 60:



Graph 60: Rate of Returns (2014-2018)
(Source: European Court of Auditors, Special Report 24/2019)

There is a multitude of reasons for this low rate of returns, most of them being relevant to the asylum procedure or the various stages of the return procedure itself. This situation is particularly indicative in the case of Greece and Italy, as these were the countries which bore the burden of the migration flows. A complete list of the relevant reasons is presented in detail in Graph 61:



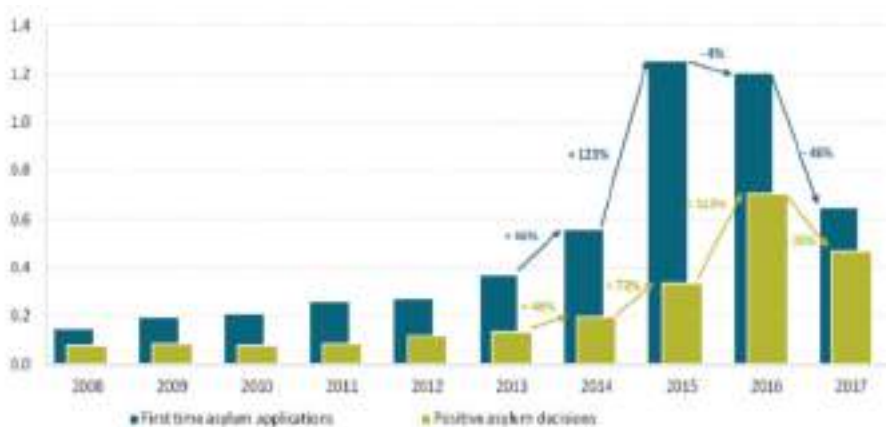
Graph 61: Main reasons for low returns from Greece and Italy
(Source: European Court of Auditors, Special Report 24/2019)

Based on its findings, the European Court of Auditors addressed a series of recommendations to the European Commission and the EU Agencies involved in the implementation of the EU migration policy, entailing the use of the experience acquired to establish more effective voluntary relocation mechanisms in the future, the strengthening of the management of emergency assistance and national programmes under the Asylum Migration and Integration Fund, enhancing EASO's operational support to asylum procedures and adjusting Frontex's return support and experts' deployment in the hotspots, the reinforcement of the management of the national asylum systems and the provision of further support to national return procedures. In an interesting development, the European Court of Auditors has set timeframes within which the auditees have to take implementing action with regard to its recommendations. Most of the timeframes expire on 31 December 2020. After the expiration of these timeframes, the Court will re-assess the issues identified and will report on them (see European Court of Auditors, 2019b).

4.6 Challenges identified from audit results (2018)

Further to its audits, the ECA, based on the variety of data collected and the relevant analysis, issued a Briefing Note, in May 2018, in which several challenges were identified, with regard to the integration of migrants outside the EU. These entailed the following (European Court of Auditors, 2018c):

Challenge 1: Reducing delays in the start of integration. The earlier integration starts, the more likely it is to be successful. Factors that delay the start to the integration process (such as when migrants move on to another EU Member State because of, for example, divergences in national rules regarding entry and residence conditions, or long waiting periods to process applications) may affect the effective integration of migrants into society. The importance of this finding is further highlighted by the amount of first time applications for asylum and the rate of their approval, as seen in Graph 62:



Graph 62: First-time asylum applications and rate of approval, 2014-2017
(Source: European Court of Auditors, Briefing Paper – May 2018)

Challenge 2: Guaranteeing equal rights and non-discrimination. Equal rights and non-discrimination are important factors in helping migrants integrate successfully. Ineffective anti-discrimination policies towards migrants might hinder their successful integration into society.

Challenge 3: Sound and comprehensive assessment of needs and funding. Integration policies require a sound and comprehensive assessment of migrant and host society needs and funded by adequate resources made

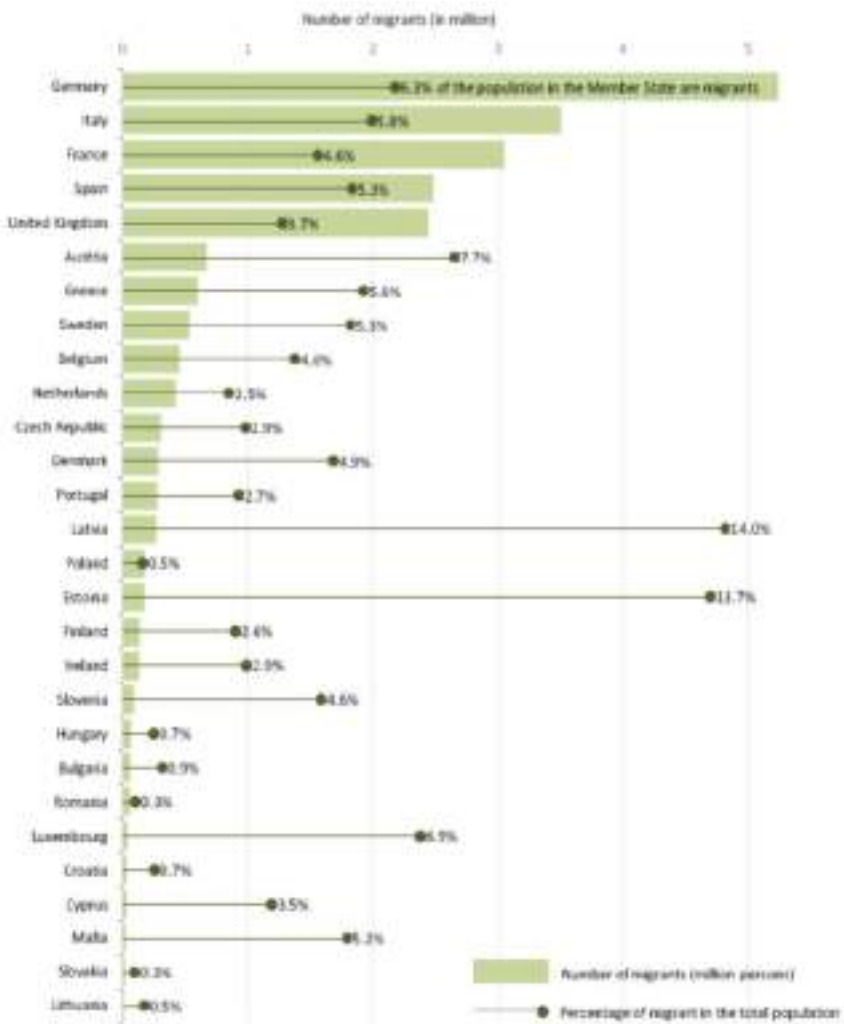
available when needed. However, even now, the exact overall amount of the resources provided for this objective is not known. Without a robust estimate of the funding needed at national level and how EU funding can complement national interventions, there is a risk that policies might be ineffective.

Challenge 4: Commitment of Member States to implement the Action Plan. In 2016, the European Commission developed an Action Plan on integration with 52 measures to be undertaken at EU level. As of December 2017, 23 actions had not been completed. The effective implementation of Action Plan measures relating to Member States depends on their commitment. The lack of monitoring of these measures by the Commission may limit its ability to provide additional support to Member States.

Challenge 5: Supporting all migrants across all relevant policy areas. Most Member States have established integration policies in various frameworks. However, such integration policies at national level require a comprehensive framework to support all migrants across all relevant policy areas. Integration policies that do not address all relevant policy areas for all groups of migrants may lead to less effective integration. This is crucial, as the population of migrants has risen, in some EU Member States, to a significant share of the entire population of the country (see Graph 63), thus posing horizontal challenges in the various public policy fields.

Challenge 6: Effective monitoring of integration outcomes to measure progress and adapt policies if needed. Most Member States still do not have a complete picture on the number of migrants receiving assistance or the amounts spent for integration actions. Monitoring integration outcomes allows stakeholders to measure the progress in the implementation of integration policies, identify limitations and adapt policies if needed. Lack of good data or inappropriate monitoring may prevent measures from being redirected and/ or policies from being redesigned to address the real needs of migrants.

Challenge 7: Effective coordination of funding at EU and national level. It has been established that actions of the same type, focusing on the same target group, may be financed by several EU financial instruments. Without effective coordination at EU and national level, there is the risk that the complexity of funding arrangements may lead to inefficient policy implementation (less complementarity, fewer synergies, difficulties in accessing funds, risk of double funding).



Graph 63: Migrant Population in the EU Member States as share of the overall population (2017)
(Source: European Court of Auditors, Briefing Paper – May 2018)

The overall approach suggested by the ECA, based on the findings of its audits can be summarized in eleven common principles, as follows (Graph 64):



Graph 64: Common Basic Principles for the integration of migrants
(Source: European Court of Auditors, Briefing Paper – May 2018)

5

Chapter

Reflections based on the findings of the European Court of Auditors

Using the resources of the EU Budget has been the main instrument employed by the European Commission in order to formulate and implement policies during the period of the migration crisis. As mentioned above, this was the result of the understanding of implementing the principle of subsidiarity on migration policy, the latter being a shared competence of both the EU and its Member States.

Such an approach should not come as a surprise, given the mentality that has prevailed over the functions of the EU in times of crisis. It has been argued very convincingly that the post-2008 economic crisis has altered profoundly the notions about the operations and means employed by the Union when trying to establish crisis management mechanisms that will meet the relevant needs. Especially with regard to decision making, any situation that may be perceived as crisis – albeit the lack of standards for such a perception – has led the European heads of state and government to take action, having in mind not only the substantive resolution of the problem at hand, but also the dissolution of the impression of a far-reaching loss of control in their respective countries. This approach – called very successfully a “Council mania” (see Bertocini & Pascouau, 2016) – has resulted in a centralisation and nationalisation of political decision-making in the European Council. In the same vein, the European Commission limited its authority of initiative with regard to the various proposals put forward before the Council of the European Union, or even the European Council. The subsequent tendency entailed an element of renationalisation with regard to the substantive issues concerning distribution and setting standards in relation to refugees and asylum seekers, as well as an element of closer coordination of national sovereignty rights by European agencies in relation to coastguards and protection of the external borders, as well as – in-

creasingly – with regard to registration and administration in hotspots (see Bendel, 2017).

This development signified a stark departure from a long-standing model characterized by a “democratic settlement” in which the Commission, the Council, and the European Parliament all contributed in their different ways to decision-making via the so called “Community Method”. The Union has embraced governance schemes which combine excessive intergovernmentalism – as EU Member-State leaders decided on all issues while the Commission merely provided support to their deliberations – with increased supranationalism, allowing the relevant institutions (namely the ECB and the Commission) to impose policies and procedures on the national authorities. Thus a model of “governing by rules and ruling by figures” was established, in which budgetary rules and numerical targets have become embedded in all thinking, discourse and practice of the EU institutions (see Schmidt 2015).

Furthermore, in its effort to tackle both crises (economic and migratory), the EU sought to safeguard the core of its asylum policy by adding new layers of policy instruments in order to provide its Member States facing high migratory pressures and/or financial constraints with additional support. In other words, the Union tried to maintain the legal status quo on migration and refugee protection by providing additional funds. This endeavour, however, has caused an adverse result that cannot be overshadowed by the amounts spent: the implementation of the existing EU asylum rules may overburden southern Member States while the perpetuated ignorance of these rules risks overburdening northern Member States (see Trauner 2016).

It is undeniable that the migration/refugee crisis caused enormous pressure to the entire EU institutional scheme to provide responses. Based on the above mentioned shift of notions, the EU used its legal powers to regulate migration to a very small extent (certainly disproportionate to the magnitude of the problem) and opted for the use of policy documents and the establishment of funding tools and instruments, thus creating instances that may be labeled as “new governance”. This new governance, although not unknown to the EU reality, entails serious risks as the new non-legal tools are employed in a policy area, such as migration, with extremely important consequences for individuals. Although the innovative development of tools which facilitate responses to the challenges of migration might have the advantages of expediency and the beauty of novelty, it also entails the risk of undermining the values the EU upholds (such as the

rule of law, fairness, openness and transparency), causing in turn the loss of credibility both with populations in the Member States, international organisations and third countries. The substantive appropriateness of the measures employed to meet the challenges caused the migration/refugee crisis should not jeopardise the adherence of values and principles that form the Union's core of action and shape its identity as an entity for the benefit of the peoples of Europe, and beyond (see Cardwell, 2018).

In these developments the catalytic factor was the sense of “emergency” which prevailed at the time, allowing for a re-organization and re-prioritization of the EU Budget's appropriations and of the aims of the funding tools, something which has been emphatically expressed with the establishment of schemes such as the EU Emergency Trust Fund for Africa and the Facility for Refugees in Turkey. It should be noted, however, that these funding activities by the EU to tackle the migration crisis have created a situation of contradicting public interests. On the one side, there is the need for flexible action to meet urgent humanitarian and operational needs and on the other side there is the override of the legislation and the audit procedures. This is an “*instrumentalization*” of EU funding for immediate priorities, beyond the medium and long term objectives foreseen in the statutory texts of the various funding schemes employed, e.g. in the case of humanitarian assistance resources which were initially committed to be given to third countries, but they were eventually used to cover the needs of migrants in the EU (see Hertog, 2016).

The European Commission's persistence in using mainly the EU budget in its efforts to tackle the migration/refugee crisis is seen as an effort to cover the gaps caused by the complexity of its competences in this field, or by the difficulties it encountered when it tried to exercise any additional competences it acquired during the crisis, especially with regard to border management and to asylum and migration policies. The capability of providing funding replaces the inability to take legal or political action. Furthermore, all these funding activities have been a useful and critical tool in terms of communicating information in order to reassure the national authorities as well as the peoples of the Member States that the EU has been mobilized in order to tackle the problem. This symbolic function of funding activities justifies also the fact that the European Commission often refers to them and invokes them as proof of its actions. Thus, a “*monetisation*” of legal and political issues regarding asylum and migration policies is being identified (see Hertog, 2016).

A very characteristic example of these considerations is the EU-Turkey “Statement”. This “Statement” reflects the agreement reached, on 18 March 2016, by the EU Heads of State or Government and the Prime Minister of Turkey, aiming to end the flow of irregular migration from Turkey to the EU and replace it with organised, safe and legal channels to Europe. Initially the relevant document was known as the EU-Turkey “Agreement”, and its core principle was that all new irregular migrants or asylum seekers crossing from Turkey to the Greek islands would be returned to Turkey, after an individual assessment of their asylum claims in line with EU and international law, Turkey being considered a “safe country” under international humanitarian law. For every Syrian being returned to Turkey, another Syrian will be resettled to the EU from Turkey directly (1:1 mechanism). In parallel, the EU would make available significant resources under the Facility for Refugees in Turkey to support refugees in Turkey (see above), it would re-examine the visa regime for Turkish nationals to enter the EU, it would upgrade the EU-Turkey customs union, and it would open Chapter 33 (budget) of the negotiations on Turkey’s accession in the EU. All applications for asylum in Greece would be treated on a case-by-case basis, entailing individual interviews, individual assessments and rights of appeal, in line with EU and international law requirements and the principle of *non-refoulement*, and no blanket or automatic returns of migrants or asylum seekers would be employed.

The implementation of the EU Turkey-Statement had a great impact on the hotspots in the Aegean islands. With the introduction of the EU-Turkey Statement, the hotspot facilities were transformed into defacto closed centres, and thus people arriving on the Aegean islands were detained on hotspot premises, to facilitate their re-admittance to Turkey in cases where they did not apply for international protection or their applications were rejected. Asylum-seekers subjected to the EU – Turkey Statement are issued with a ‘geographical restriction’, preventing them from leaving the islands. Asylum-seekers that receive a positive first or second instance decision can move to the mainland, whereas those who do not are directed towards the procedure for readmission to Turkey. Both the European Commission and the European Council have characterised the EU-Turkey Statement to be a success, underlining the decline in the number of arrivals on the Greek islands (see European Parliament, 2018a). The figures made available by the European Commission confirm this view with regard to the effectiveness of the Statement (see Graph 65):



Graph 65: Effects of the EU-Turkey Statement 2016-2018

(Source: European Commission, Fact Sheet on the EU-Turkey Statement – 2 years on, April 2018)

However, this Statement was challenged by three migrants before the General Court of the EU which delivered its judgment on 28 February 2017 (Cases T-192/16, T-193/16 & T-257/16), stating that this document despite its expressed wording, according to which “...*the EU and Turkey today decided to end the irregular migration from Turkey to the EU. In order to achieve this goal, they agreed on the following additional action points...*”, was actually a “Statement” that it is was not part of EU Law, but a simple international law agreement, which imposes no obligations on the EU itself but only on the EU Member States and Turkey, as signatory parties. Thus any violation of this agreement’s terms must be examined by the national courts of the signatory parties or the International Court of Justice. This judgment was challenged before the Court of Justice of the EU, but the relevant appeals were dismissed as inadmissible (they were considered to be “incoherent” as they made “general assertions that the General Court disregarded a certain number of principles of EU law, without indicating with the requisite degree of precision the contested elements in the orders under appeal or the legal arguments specifically advanced in support of the application for annulment.” – see Order of the Court on 18 September 2018 in Joined Cases C208/17 P to C210/17 P).

The judicial development with regard to the EU-Turkey Statement did not prevent the expression of severe criticism against it. The legal nature of this document was extensively examined and it was found to be “a new mode of action at the European level”, “providing recourse to various le-

gal engineering to mask the mandatory nature of the commitments”, thus “representing a dangerous precedent”, for which the silence of the European Parliament is even more worrying (see Matusescu, 2016). In another point of view it was established that this document cannot be considered an international treaty, as it was not concluded – at least on the part of the EU – by the appropriate authority, given the European Council has no such competence (see Arribas, 2017). Even the point of view adopted by the Court of Justice itself (which accepted the arguments put forward by the European Council, the Council of the European Union and the Commission) in its judgments, was criticized as problematic, as the Statement constitutes a measure that produces severe legal effects for the rights of asylum seekers and fundamentally alters the course of EU formulating and implementing external migration policy, and by choosing to conduct major policy decisions through “press releases” (Statements) and refusing to take legal responsibility for them, the EU institutions themselves put at risk the Treaty-based framework that aims to ensure democratic rule of law and fundamental rights (see Carrera et al., 2017).

The contents of the “Statement” cause significant reservations with regard to the protection of human rights within the various operational schemes on asylum and returns procedures foreseen therein as well as the acknowledgement of Turkey as a safe country (and not taking into account Turkey’s poor record of adhering international law on respecting human life and dignity) and the EU’s voluntary dependence of the successful implementation of a European policy regarding the migration crisis on the activity of a third country, having as the most basic point the funding of this country by the EU (see for instance Hellenic National Committee for Human Rights, 2016, and Alpes et. al, 2017).

Taking into account the above mentioned judicial development on the legal nature of the “Statement”, which entails the conclusion that this is not even an act of the EU, there are serious concerns on the legality of providing funding to Turkey based on this particular “Statement” on the grounds of lack of legal basis.

This case exemplifies how establishing new funding instruments to meet current needs under the pressure of these needs sets the conditions of overriding the mechanisms of control (judicial, political, financial) for such instruments. If the inevitability of their establishment is verified and the existing instruments do not suffice to cover the needs, it is imperative for the EU to take the necessary action ie to undertake feasibility studies, impact assessments, ex ante evaluations etc in order to establish the result-

ing added value for the EU from the establishment of a new funding instrument as well as the adherence of the principles of economy, efficiency and effectiveness.

And the actions to that effect must be proper, as this entire scheme of the EU's activities with regard to meeting the challenges set by the migration/refugee crisis has been presented as being based on rational choices which are supported by evidence. However, the findings of the audits performed, as well as the actual results and achievements of the policies and the relevant financial tools have lead to the conclusion that there is a substantial 'gap' between the evidence examining migration processes and European Union policy responses. Even the contents and the actual concept of "evidence" have been questioned with regard to the justifications provided by the EU, as it has been found that EU policymaking and the resulting policies are based on underlying assumptions and vested interests rather than research evidence, even where this evidence is funded directly by European governments (see Baldwin-Edwards, Blitz & Crawley, 2018).

It should be noted that under the EU-Turkey Statement, a second installment of €3 billion for the Refugee Facility was provided, before the €3 billion initially allocated had been fully used up. This was a political but premature choice, as no evidence of the resources' efficient and effective use had been provided. The above mentioned ECA's findings necessitate the improvement of the overall scheme.

Overall the EU-Turkey Statement seemed initially as a promising driver for advanced cooperation between Turkey and the EU, especially through the financial support and visa liberalization conditions included therein, as well as the perspective to open several negotiation chapters with the framework of the discussions of Turkey's accession to the EU. However, the various considerations raised with regard to the refugee and migrant protection standards applied in practice by Turkey, as well as the fact that the negotiations on the visa regime did not advance according to Turkish expectations, caused severe tensions between EU and Turkey, demonstrating the need to establish such arrangements on strong ethical, moral and legal grounds (see Kale et al., 2018). It has been, however, rightly noted that the difficulty or even the impossibility of actually implementing certain of this arrangement's terms should have been known to all participating parties, thus leading to the conclusion that its aim was – at least, on the EU's part – the temporary reduction of migration flows towards Europe rather than the provision of a stable framework of cooperation for the resolution of the crisis (see Perrakis, 2016).

In another case, that of Africa, providing support to African states has been identified, by the European Council, as one of the pillars in the future of EU Migration policy. More specifically, it has been agreed that providing support to the African countries in their efforts to achieve a substantial socio-economic transformation of the African continent building upon the principles and objectives as defined by the African countries in their Agenda 2063, has been identified as a major tool in tackling the migration problem in its roots. Additional development funding is to be provided, as well as support for enabling a substantial increase of private investment from both Africans and Europeans, in fields such as education, health, infrastructure, innovation, good governance and women's empowerment (see European Council, 2018).

However, despite the significance of this approach, especially within the framework of the Joint EU-Africa Strategy (for this strategy see Pirozzi et al., 2017), all such initiatives and the resulting agreements have been criticised for their tendency to unilaterally impose on behalf of the EU more conditionalities on third countries. It has been found that, during these proceedings, too little attention is paid to the position and the views of the third states themselves, for which the readmission of migrants is scarcely a priority. The EU tends to describe such arrangements as “win-win” partnership projects, as more returns to the third countries are “rewarded” with more cooperation. However, when the return objectives are not met, the third countries are being “punished” with the imposition of conditionalities for development cooperation. This situation cannot be considered as a partnership on an equal footing, but rather that the EU implementing a “carrot and stick policy”. Consequently, the strong security and containment elements that derive for the EU's positions during these discussions and the relatively weak concessions made by the Europeans on the priorities put forward by the African states have caused a notable degree of discontent within the African continent and a weakening of trust between Africa and Europe, more broadly (see Bendel, 2017 and the references therein).

Conclusions - Future Considerations

The findings of the European Court of Auditors demonstrate that the migration governance scheme adopted by the European Union has been in a constantly transitional status, which has been revealed even more intensively by the migration/refugee crisis since 2015. And in order for the Union to achieve the formation of a stable governance scheme, it should, first of all, take stock of the global experience of governing migration flows.

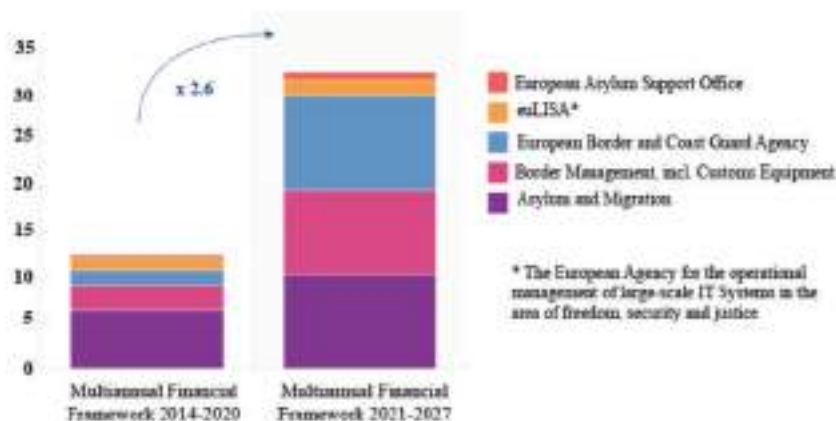
Global migration governance is defined as the norms and organizational structures that regulate and facilitate states' and other actors' responses to migration. Its primary purpose is to ensure that states work collectively in ways that make them better able to fulfil their objectives than they would be by acting alone. Its main constraint has been the states' perception that an increase in global governance on this issue entails a decrease of state sovereignty. Today, though, the growing recognition of the importance of international cooperation to ensure that states can collectively maximize the benefits and minimize the costs associated with migration, while simultaneously meeting human rights obligations, has created a renewed willingness to consolidate and enhance global migration governance at the multilateral level (see Betts & Kainz, 2017).

This approach should be sought within the EU context as well. The rapid increase in human mobility across the Union's external borders necessitates the formulation of a European migration governance with solid bases, that will allow all actors involved to operate in a manner of mutual completion instead of competing reaction.

The EU's effort in that direction has focused on the use of the EU budget's resources for financing the institutional schemes (Agencies, Funds, etc) that are employed in order to implement the political choices made within the EU Agenda on Migration.

In the context of the next Multiannual Financial Framework (2021-2027), the European Council underlined the need for flexible instruments, allowing for fast disbursement, to combat illegal migration. The internal security, integrated border management, asylum and migration funds should therefore include dedicated, significant components for external migration management. Thus more resources are to be expected for such policies, at the expense of more traditional choices such as CAP or Cohesion. This has been the approach adopted by the European Commission in its proposal,

according to which the EU budget for the management of external borders, migration and asylum will be significantly reinforced, overall, for the period 2021-2027, reaching more than €34.9 billion, compared to €13 billion for the period 2014-2020 (see Graph 66):



Graph 66: Comparison of the Multiannual Financial Frameworks 2014-2020 & 2021-2027 (in €billion)
(Source: European Commission, 2018a)

The European Parliament's approach is similar, asking for a further increase of 4,4% (see European Parliament, 2018b).

The example of Frontex/EBCGA is also very characteristic of the Union's intention to mobilize financial resources in the field of migration. The development of this Agency's budget is quite revealing. The first budget after the Agency's creation in 2004 amounted to about €6.3 million. In 2016, when Frontex evolved to EBCGA, its budget was about €232.7 million. The initial provision for the "new" Agency's development was that its staff would increase gradually from 417 persons in 2016 to 1,000 in 2020 and its budget would reach €322 million. This projection was verified as in 2018 the Agency's budget reached almost €288.7 million and in 2019 it exceeded €333.3 million. All these reflect also the increase of competences and responsibilities attributed to this Agency. For the next programming period (2021-2027), the above mentioned increase of the budget made available to EBCGA (estimated at about €11.3 billion for the entire period, or €1.6 annual average) will serve the deployment of up to 10,000 border guards at the EU's external borders and the use of the Agencies extended compe-

tences in returning irregular migrants and countering organized crime and smuggling of human beings. All these consolidate EBCGA's position as a central component of the EU migration governance. However it has been argued that focusing solely on the Agency's capacities entails the risk of creating a "capability-expectation gap", whereby the public may develop conflated expectations towards the Agency, and these expectations may not be met. Regulating migratory flows effectively requires a more comprehensive approach than merely strengthening border management schemes further, an approach that would entail also a functioning asylum policy with a clear idea of how to distribute asylum seekers within Europe and contribute to international burden sharing (see Angelescu & Trauner, 2018).

All these points are expressions of an integrationist approach that the EU itself seeks to promote, something which is completely justifiable due to the Union's supranational nature. This is not the case, however, with most of the heads of state and government of the EU Member States, whose positions remain blurred and without clarification, especially with regard to the future and the desired effects of the EU Migration policy (see Wolf & Ossewaarde 2018).

Taking into account all the above reflections, it is obvious that the main concern facing the EU because of the migration/refugee crisis is not only the amount of the resources made available and spent by the EU budget for this issue, but also whether these resources contribute substantively to the achievement of the objectives for which they are being committed and paid.

The findings of the European Court of Auditors demonstrate that *in some occasions value for money has not been achieved, or at least verified*. The EU can boast that it has mobilised a substantive amount of resources, both for the Member States involved, as well as for the third countries that play a significant role in managing the migratory flows towards the EU, however the actual outcomes of this very expensive effort cannot be yet established. The variety of instruments established demonstrate a extensive capacity and creativity on behalf of the Union and its Agencies in employing and committing large amounts of money for addressing multifaceted crises such as the migration/refugee crisis, however the resulting reality is not as colourful. After all, the success or failure is not going to be measured by the money spent but by the lives saved and the provision of viable opportunities for a new start (see Skiadas, 2019).

The 2015 migration/refugee crisis provided another opportunity, after the 2008-2009 financial crisis, to the European Union to reflect and formu-

late a new model of governance, as the existing one proved to be inadequate with regard to tackling such critical instances. The EU must not be seen by all those concerned through the traditional prism of either the intergovernmentalist coalition of states or the federal multi-level super state. The EU, –as it demonstrated itself with its actions during the crises, thus revealing also its limitations– should be seen as an increasingly complex polity with a new political dynamics of interaction in which all EU actors have developed ‘new’ ways of wielding power and influence on top of the ‘old’ ones (see Schmidt, 2018).

These new ways may be sometimes disappointing in terms of substantive policies. In the field of migration for instance, a significant solidarity deficit between the various Member States with regard to the implementation of European standards in the reception of refugees, asylum procedures and acceptance rates has been clearly established. However, there are also a number of developments that may be causes for hope and create new perspectives. The example of EBCGA with the significant transfer of competences to this Agency is such a development. A similar perspective refers to establishing a European Union Asylum Agency, as proposed by the European Commission (see European Commission, 2018c), which would signify the expansion of the existing European Asylum Support Office towards a genuinely European migration and protection Agency with competences entailing the provision of the full range of support activities on asylum procedures, and the formation of joint EU migration management teams in order to support EU Member States upon request in the hotspots and controlled centres and carry out all necessary tasks (receiving arrivals, distinguish between *persons in need of protection and those not and carry out asylum and return procedures*). Such a development would contribute to the convergence of standards of migration policy, and the consistent implementation of European human and refugee rights standards (Bendel, 2017). The resources proposed for this new scheme entail a *budget of €321 million for the period 2019-2020 and €1.25 billion for the period 2021-2027*.

This development, as well as similar ones throughout the field of EU migration and refugee policy, will serve as drivers to express the above identified “new political dynamics of interaction” between the two paradigms that the EU seeks to adopt: the “Community of Law” paradigm serving the concept of the rule of law (“Rechtsgemeinschaft” paradigm) and the “Capable Union to play a role in global affairs” (“Weltpolitikfähigkeit” paradigm). This interaction will combine the need to protect human rights with the capacity given to the EU and its institutions and agencies, as well as the

upholding of the rule of law with the exercise of crisis-induced discretion and flexibility (see Vitiello, 2018).

Thus a new model of EU migration governance will be created and supported by the resources provided by the EU Budget. And, as demonstrated throughout this text, the findings of the European Court of Auditors may provide an invaluable contribution to the capacity of this model to provide value for money with regard to its operation.

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The migration crisis which culminated in 2015 and has been included, since, as a main topic in the agenda of the public policy of the EU, both at public discourse level as well as at EU action level, provides a unique opportunity to examine the performance of the EU institutional and budgetary architecture in addressing such a very significant issue.

In order to undertake such an examination, the most useful tools are the relevant Special Reports and other documents produced by the external auditor of the EU, the European Court of Auditors, as well as the corresponding replies provided by the European Commission as the institution responsible for the implementation of the relevant measures on behalf of the EU. The book entails a presentation of the findings of the Court of Auditors. The presentation is made on a thematic basis, as this basis has been structured by the Court of Auditors itself, and it follows the historical course and timeline of the development of the relevant initiatives undertaken within the context of EU migration policies. The aim of the book is to provide its readers with a concise, yet as exhaustive as possible, account of instances of soundness in EU Budgetary Governance, as well as the commentary of the Court of Auditors' experts on their findings with regard to the migration crisis. The book makes reference also to the general framework (political, economic, legal) of each case presented therein, so that the reader may have a global view and be in a position to understand and appreciate all relevant aspects.



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