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LEGAL REGULATION OF THE EXTERNAL DIMENSION OF THE COMMON EUROPEAN ASYLUM SYSTEM: CURRENT STATE AND FUTURE PERSPECTIVES

INTRODUCTION. *The article provides a thorough analysis of the external dimension of the European Union's (EU) migration and asylum policy and its main components. The primary object of the research is the external area of the EU's activities in the field of forced migration. The aim of the article is to define political and legal contours of the external dimension of the Common European Asylum System (CEAS), trace its development from 2015 to 2022, and determine future directions of its evolvement.*

MATERIALS AND METHODS. *The aforementioned objectives are achieved through deployment of the following methodological designs: descriptive, exploratory, historical and case study. The article gives a detailed overview of the programming documents of the EU, acts of the EU law concerning forced migration, and their implementation in the context of global and regional instabilities.*

RESEARCH RESULTS. *Forced migration as an object of legal and political regulation on the part of the EU is subjected to "externalization" due to inconsistent internal practices and overall deviation of the EU members from the fundamental and internationally recognized burden-sharing principle in the field of refugee law. Such an approach should be perceived as an additional reason for potential deterioration of the migration situation in Europe, not to mention other possible implications on the human rights and economic dimensions.*

DISCUSSION AND CONCLUSIONS. *The results of the analysis allow to draw significant conclusions: the external dimension of the CEAS became a top priority for the EU predominantly due to the inability of the European actors to reach consensus on the internal elements of the system; the external dimension of the CEAS may be characterized as a complex system consisting of political, legal and quasi-legal acts governing the EU's external actions in the field of forced migration; the EU's support became dependent on the willingness of its external partners to cooperate on migration-related issues; several external actors gained more bargaining power; external partnerships need to be readjusted in order to be efficient under current geopolitical circumstances.*

KEYWORDS: *migration crisis, migrants, refugees, international protection, Common European Asylum System, migration and asylum policy, external dimension, migration partnership, forced migration*

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ПРАВОВОЕ РЕГУЛИРОВАНИЕ ВНЕШНЕГО ИЗМЕРЕНИЯ ОБЩЕЙ ЕВРОПЕЙСКОЙ СИСТЕМЫ УБЕЖИЩА: СОВРЕМЕННОЕ СОСТОЯНИЕ И ПЕРСПЕКТИВЫ РАЗВИТИЯ

ВВЕДЕНИЕ. Статья содержит тщательный анализ внешнего измерения политики ЕС в сфере миграции и убежища и ее основных компонентов. Объектом исследования выступает внешнее измерение деятельности ЕС в сфере вынужденной миграции. Цель статьи заключается в определении политических и правовых контуров внешнего измерения Общей европейской системы убежища, изучении его развития с 2015 по 2023 гг. и установлении перспектив его совершенствования.

МАТЕРИАЛЫ И МЕТОДЫ. Поставленные задачи реализуются посредством применения следующих методов: описательного, исследовательского, исторического и кейс-метода. Статья представляет подробный обзор программных документов ЕС, актов ЕС, регулирующих вынужденную миграцию, и их имплементации в контексте новых глобальных и региональных вызовов.

РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ. Вынужденная миграция как объект правового и политического нормотворчества ЕС подвержена «экстернализации», обусловленной ненадлежащим состоянием внутреннего измерения Общей европейской системы убежища и уклонением госу-

дарств-членов ЕС от соблюдения фундаментальных принципов солидарности и справедливого распределения бремени в миграционной сфере. Такой подход должен рассматриваться как дополнительный фактор, способствующий ухудшению миграционной ситуации в Европе, а также создающий риски для правозащитного и экономического измерений функционирования ЕС.

ОБСУЖДЕНИЕ И ВЫВОДЫ. Результаты проведенного анализа позволяют сделать следующие выводы: внешнее измерение Общей европейской системы убежища стало приоритетным направлением политики ЕС преимущественно в связи с неспособностью европейских акторов достичь консенсуса по вопросам внутреннего измерения данной системы; внешнее измерение Общей европейской системы убежища может быть охарактеризовано как комплексная система, состоящая из политических, правовых и квази-правовых актов, регулирующих внешние действия ЕС в сфере вынужденной миграции; поддержка ЕС третьих государств стала зависима от готовности партнеров ЕС к сотрудничеству по вопросам миграции; некоторые третьи государства получили возможность оказывать давление на ЕС посредством

миграционных вопросов; международное сотрудничество ЕС с третьими государствами должно быть реформировано для обеспечения эффективности в условиях стремительно меняющегося геополитического ландшафта.

КЛЮЧЕВЫЕ СЛОВА: миграционный кризис, мигранты, беженцы, международная защита, Общая европейская система убежища, политика в сфере миграции и убежища, внешнее измерение, миграционное сотрудничество, вынужденная миграция

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Автор заявляет об отсутствии конфликта интересов

1. Introduction

The European approach on asylum issues has gone through several stages of development. Evolvement of the external dimension of the Common European Asylum System (CEAS) can be traced on the basis of EU programming documents. According to this classification, the following phases may be outlined: “Tampere” stage (from 1999 to 2001), “Seville” stage (2002-2003), “Hague” stage (from 2004 to 2010), “Global Approach to Migration and Mobility” stage (from 2011 to 2014), migration crisis stage (from 2015 to 2019) [Tardis 2018:10-13]. The EU’s institutional renovation that took place in 2019 actualized the issue of migration and asylum.

The migration crisis of 2015 demonstrated the inherent inefficiency and insufficiency of the existing Dublin legal framework which primary aim is to allocate responsibility for asylum seekers’ applications among member states according to the criteria set in the Regulation (EU) 2013/604. Due to member states’ non-compliance of their obligations under international law, lack of coordination in their actions, absence of sanctions for infringements under the Dublin system, as well as inconsistencies in decision-making of member states and EU institutions [Ivanov Iordanovski 2017:220-222]. It resulted in a partial administrative and legal change to the CEAS that is situated at the heart of the overall asylum legislation and law-enforcement. The inability of the European policymakers to agree on the internal component of the CEAS (namely, the Dublin system) led to the “externalization” of the European protection.

Current European policy on migration and asylum should be contemplated as a complex system of

rules and provisions covering two distinct yet conjunct areas or dimensions: legislation regulating the legal status of refugees, asylum seekers and international protection, and legislation on international cooperation in the field of forced migration. Moreover, legislation on border controls and immigration is also intrinsically linked to the CEAS. The dimension regulating international protection in the EU is comprised legally of EU regulations and directives for the most part. The international cooperation area is based on certain provisions of the EU secondary law and international obligations of the EU presented in independent agreements and deals with third states.

With the New Pact on Migration and Asylum EU legislation and action in the field of forced migration transform one step further.

2. European Agenda on Migration

According to the Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “A European Agenda on Migration”, the European approach to forced migration in the coming years was to be formed within 4 pillars: countering incentives for irregular migration, efficient border controls with the aim to save lives and provide security, improvement of the common asylum policy, reforming the policy on legal migration. The tasks of countering migration incentives and executing proper border controls are directly connected with the second dimension of the CEAS. The significant shift of the European legislators’ attention towards cooperation with third countries can be explained by two contentious arguments: firstly, member states could not reach a reasonable consensus on the redistribution of asylum seekers

and refugees among their territories — they lacked much-needed solidarity in the development of burden-sharing mechanisms; secondly, migration towards the EU was called forth by the external factors which arose outside the EU.

Further proposals of the Commission placed the issue of migration in the center of EU international negotiations and dealings. Working in partnership with third countries in tackling migration upstream was established as a top priority. In particular, the Commission set out the following measures: immediate intervention in regions of origin and transit to prevent overwhelming migratory flows; stepping up EU support to third countries bearing much of the migration burden mainly through Regional Development and Protection Programmes; setting up multi-purpose centers in countries of origin and transit that would provide information, local protection and resettlement opportunities for persons in need; rendering migration a specific element of ongoing Common Security and Defense Policy (CSDP) missions.

Each of the four levels of action for the EU migration policy contained certain provisions on the external dimension. Reducing migration incentives for third country nationals was primarily based on four particular tasks: preventing and mitigating threats feeding into migration (such as civil war, persecution, poverty and climate change) through development cooperation and humanitarian assistance; stepping up the role on migration of EU Delegations in key countries (with simultaneous seconding of European immigration liaison officers in EU Delegations); providing any possible stimulus for third countries to fulfil their obligations to readmit their nationals; reinforcing and amending the legal basis for Frontex and strengthening its role on return procedures. The second pillar of the European Agenda on Migration — improving border management — was to be enforced through constructing a unified model for future action at sea and on external borders, boosting EU coordination of coast guard functions and building up the capacity of third countries to manage their border accordingly with the help of Frontex and EU funding. In the context of establishing strong common asylum policy the Commission proposed strengthening ‘Safe Country of Origin’ principles of its legislation and law-enforcement, as well as promoting systematic identification and fingerprinting. The policy on legal migration would concentrate on supporting third countries in their development to create better economic opportunities for their nationals at home. Moreover, maximizing the benefits

of third countries was to be achieved with capacity building on effective management of labor migration and significantly lowering the costs of remittance transfers from legally residing in EU persons to their countries of origin.

According to the latest Progress report on the Implementation of the European Agenda on Migration, irregular border crossings to the EU fell to 150,000 in 2018 which has been the lowest indicator during 2015-2018. Different EU external operations led to saving as many as 783,000 people. In the period between 2015 and 2019 the EU resettled almost 63,000 migrants. The EU external action was executed by means of four major bilateral and multilateral international institutions: the Facility for Refugees in Turkey, the EU Regional Trust Fund in Response to the Syrian Crisis, the African Union-European Union-United Nations Taskforce, and EU Trust Fund for Africa. Smuggling networks on all migratory routes were disrupted by the EU activities in this field that facilitated a substantial decrease in the number of migrants entering Libya. The EU also set up 23 formal agreements or practical arrangements on readmission which provided effective returns.

However, the external dimension of the European migration policy in its new disguise attracted some critical outcry both from the European society and experts. One of the main concerns is human rights aspect which dwells upon the presumption that the EU focus on relocation, prevention of high influxes of migrants to the EU and creation of the system of ad-hoc agreements and arrangements with third countries could result in collective violations against migrants’ rights and freedoms [Moreno-Lax 2020:8]. The EU made considerable efforts to reorganize its international relations and transform them into a solid mechanism hampering any irregular movement to the EU at literally any cost. The EU funding was at times inconsistent with financial prudence due to its “emergency” nature [Tineke 2018: 20].

3. EU Migration Partnerships

A new Partnership Framework with third countries was established under the European Agenda on Migration in the Commission’s Communication released on 6 June 2016. The Commission stressed that migration should be perceived as one of the most vital interests of the EU in its external relations. The principles on which the new Partnership Framework was to be operating included focus on returns and readmission, necessity to rely on the migration toolkits of the EU’s partners, to increase financial as-

sistance to refugees, internally displaced persons and host communities, targeted support, need for operational steps in tackling migrant smuggling and human trafficking, building effective migration system internally in order to exercise proper policy in its external dimension. The aim of the new Partnership Framework was twofold: saving lives on the main migratory routes and increasing returns to migrants' countries of origin and transit in the short term; addressing the root causes of migration and improving the opportunities in these countries in the long term [Torondel 2016:8].

The European approach was to reflect the EU's interests and the partners' benefits with clear objectives and effective instruments (both positive and negative) for its appropriate implementation. This approach was embedded into compacts that became parts of negotiation processes and partnerships. Migration management transformed into the issue of utmost importance and the criterion for successful and mutually beneficial relations. European political and economic support to third countries was now solely dependent on the extent of its partners' preparedness and commitment to fully collaborate and participate in solving the EU's migration predicament [Bisson 2018: 24].

The new Partnership Framework provided opportunities for conclusion of separate agreements and arrangements with third countries situated in Africa, Asia and the Middle East for a more efficient migration management. The Communication mentioned 16 countries that could be potentially covered by the Partnership Framework: Ethiopia, Eritrea, Mali, Niger, Nigeria, Senegal, Somali, Sudan, Ghana, Cote d'Ivoire, Algeria, Morocco, Tunisia, Afghanistan, Bangladesh and Pakistan. The Commission, however, designated 5 of these states as priority countries: Ethiopia, Mali, Niger, Nigeria and Senegal. Based on the ministerial high dialogues the Commission proposed to form a common coordinated mechanism between EU institutions and member states for making treaties with the above-mentioned countries with the establishment of special legal regimes of cooperation. Identification of positive and negative incentives that may be used by the EU as leverages in its relations with third countries was to play a key role in concluding such agreements and arrangements. The official financing of the new Partnership Framework amounted to 8 billion euro raised from different EU sources with the possibility of enhancing this budget by additional 62 billion euro in the form of direct investments for the long-term mitigation of primary migration incentives.

The criteria for nominating these five African states as priority ones dwelled upon two facts: the countries concerned bore an extraordinary extent of migration burden (refugees, internally displaced persons and other categories of migrants were abundantly present on their territories) and were also countries of origin for many migrants arriving in the EU. West Africa was (and still is) regarded as a region of vital importance to the EU due to the migratory pressure origination from this part of the continent. Migrants tended to move to North Africa to subsequently take one of the main migratory routes (Western Mediterranean (Spain), Central Mediterranean (Malta and Italy) or Eastern Mediterranean (Greece) to get to their destination. The only exemption to this line of reasoning — Ethiopia — represented both a country of origin and a country of transit for more than 750,000 people from Somalia, South Sudan, Eritrea and other neighborhood countries.

Agreements and arrangements with the priority countries were deemed as the first phase of the multi-step Partnership Framework. This experimental system of cooperation with African states, labeled by the EU as the countries of origin or transit for a massive number of migrants landing on the EU's shores and territory, functioned on the obvious barter deal that implied any support from the European states in consideration for their partners' willingness to fulfil their end of the bargain: a clear and sound obligation to hold the migratory flows within their own boundaries and to reintegrate persons relocated from the EU. In the short term member states would achieve a considerable decline of pressure on their reception and asylum systems and external borders. In a more distant perspective, these partnerships could result in the emergence of a more stable system of migration management, the functioning of which was to be a common responsibility of all the relevant stakeholders, namely the EU and its partners.

The Migration Partnership Framework (MPF) put in place in 2016 neither missed out on the necessity to cooperate with international organizations. From the standpoint of the European legislators, execution of the new Partnership Framework required «effective multilateralism» which was construed as full engagement of the EU «in any discussion on the global institutional and legal framework for migration management». The EU pledged ubiquitous support to the UN-led efforts to construct an international system in the field of forced migration based on burden sharing and solidarity among all the actors.

At the end of 2016 the EU and International Organization for Migration (IOM) launched the Joint Initiative for Migrant Protection and Reintegration with financial coverage from the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa (EUTF for Africa). The EU-IOM Joint Initiative facilitates voluntary returns of migrants to their countries of origin and provides better opportunities for reintegration of the returnees at home. As of now, the Joint Initiative is partnering with 26 African countries. Between 2017 and June 2021 the EU-IOM Joint Initiative supported 118,360 people.

In November 2017 the African Union, the EU and the United Nations established a joint Taskforce with the aim of saving and protecting the lives of migrants and refugees along the main migratory routes and inside Libya. The Joint AU-EU-UN Taskforce organizes voluntary returns of refugees to their countries of origin and conducts local evacuation operations for persons in need of international protection. 48,000 migrants were transferred from Libya to their homelands between 2017 and 2019, 4,000 refugees were evacuated from Libya and resettled with the help of the UN High Commissioner for Refugees in the same period.

EU migration-related investments in Africa resulted in a large policy change of many African states, which integrated migration into development strategies and mainstreamed it across other policy areas. International funding promotes the creation of 'migration industry' and 'migration bureaucracy' [Ilke et al. 2020:3112]. Migration from Africa to Europe declined, but it is not evident that financial support from the EU was the primary factor in this achievement.

Notwithstanding the overall positive nature of the European Agenda on Migration and the Partnership Framework, a thorough analysis of the 2017 Progress Report on the Partnership Framework and the 2019 Progress Report on the Implementation of the European Agenda on Migration (cited above) makes us contemplate on ambiguous and contradictory results of the EU's action in the external dimension of the CEAS:

1. Insufficiently supervised monetary funding of the EU's partners' domestic initiatives and programmes aimed at eliminating or mitigating the root causes of migration and its «side-effects»;
2. Small-scale relocation and returns of third country nationals;
3. Mainly advisory and operational participation of the EU institutions in the process (this aspect

should undoubtedly be reinforced as an instrument with far-reaching positive impact in the future, as should it be strengthened by the use of other levers);

4. Inconsistency of the EU support stemming from its purely conditional nature.

This set of conclusions once again proves a utilitarian, pragmatic and preventive aspiration behind the European migration policy during the 2015-2020 period. With that stated, some of the tools created and improved under the 2015 European Agenda on Migration and the Migration Partnership Framework should not be set aside. On the contrary, the experience received herewith must be reassessed, amplified and deployed hereafter benefitting all parties concerned.

4. CSDP missions

Previously it was outlined that the external dimension of the CEAS is governed by several sources of the EU law, such as regulations, directives and international agreements (or arrangements). Another source of the EU law applicable to forced migration is decisions. In 2015 in its Communication the Commission proposed to build migration-related issues into the framework of Common Security and Defense Policy (CSDP) missions.

One of the examples of CSDP missions is the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) which is based on the Council Decision 2013/233/CFSP of 22 May 2013. EUBAM Libya is a civilian crisis management operation that is aimed at supporting the Libyan authorities in securing Libya's borders and developing Integration Border Management strategy (art. 2). The tasks of the operation are training, monitoring and advising the Libyan authorities in strengthening border security and operational capacity (art. 3). The concealed and primary goal of the EUBAM Libya is to prevent unlawful movement of persons through the EU borders. According to the Strategic Review of Operation EUBAM Libya — 2021, issued by the European External Action Service (EEAS), the underlying objective of the mission is to provide assistance to the Libyan authorities in border management, law enforcement and criminal justice with a view of disrupting illegal activity in smuggling migrants, human trafficking and terrorism in the country and in the region on the whole. The pillars of EUBAM Libya are concentrated in 4 vital areas: a) overall cooperation area (strategic cooperation between the main actors); b) border management area; c) law enforcement area; d) criminal justice area. In

all these areas EUBAM Libya provides support and assistance, helps in capacity building and strategic planning, facilitates the development of a sound border management system. EUBAM's progress has been hindered by two sets of challenges: challenges arising from the coronavirus pandemic and artificial obstacles caused on the Libyan side (institutional weaknesses of state structures, inconsistencies and divergences of views, governmental crisis, insufficient attention of the authorities to human rights and gender equality. Generally, the EEAS considers EUBAM activities to be successful to the extent possible under current conditions as it has delivered tangible results in key areas of its functioning, mentioned above.

On 31 March 2020 the Foreign Affairs Council of the EU issued the Council Decision (CFSP) 2020/472 on a EU military operation in the Mediterranean (EUNAVFOR MED IRINI). The core task of this military crisis management operation is to support the implementation of the UN arms embargo on Libya. This objective is exercised mainly through gathering and sharing information with partners on the trafficking of arms and related items as well as inspections of vessels with the powers to seize and dispose of the restricted objects (art. 2). Its secondary mission, however, includes contribution to the disruption of human smuggling and trafficking networks via information gathering and patrolling aerial space (art. 5). Operation EUNAVFOR MED IRINI assists in capacity building and training of the Libyan Coast Guard and Navy to prevent human smuggling and trafficking (art. 4).

Since its inception till August 2021, the operation has resulted in inspection of 18 vessels (one vessel out of 18 was directed to a EU member state port, its cargo was confiscated), investigation of 3,789 merchant vessels via radio calls (174 of them were visited), checking 574 suspect flights, issuance of 41 recommendations of inspection of suspect vessels in EU ports (32 of them conducted).

Migration-related issues covered by the CSDP missions should be perceived as yet another evidence of the securitization of asylum and migration – the EU considers asylum and migration to be security issues [Léonard, Kaunert 2022:731]. Therefore, the overall preventiveness of the EU's migration policy can also be derived from this general securitization that has taken place in recent years as the bloc's response to certain internal and external threats.

5. New Pact on Migration and Asylum and latest legislative proposals.

In November 2019 the EU underwent institutional and political changes. Four major institutions responsible each for its considerable share of the European integration process were reset in terms of the personnel and high hierarchy positions. The structural renewal and arrival of new political leaders and powers entailed a serious revision of previous practices, especially in the spheres of vital significance such as migration. Political and societal agenda constituting the foundation for legal developments were to be altered in order to live up to the European citizens' expectations and to respond accordingly to emerging global challenges.

On 23 September 2020 the Commission issued its Communication on a new Pact on Migration and Asylum. Much of the emphasis of this programming, political and legislative document was made on the need to establish an effective return policy with a high level of EU coordination. Thus, the EU is bound to reinforce its international cooperation with allies and partners to improve migration management using all the possible instruments pertaining to the EU and its partners. In the Commission's opinion, the 2018 proposal amending the Return Directive should once again become a negotiation point in the future decision-making process with the European Parliament. New solidarity mechanism within the EU, if agreed upon, will be primarily grounded on relocation or return sponsorship which gives the member states some flexibility in determining a form of their participation in such common schemes. The Commission takes into account the necessity to build more reliable partnerships with third countries to execute its common return policy swiftly. Adopting the 2018 Return Directive with the integration of the return sponsorship option into the system will enable the EU to reduce unauthorized secondary movements inside the EU. Effective return policy includes operational support from the EU to the member states through Frontex which mandate will be reinforced and that will play a leading role in the process from the very beginning to readmission and reintegration of an irregular migrant in a country of origin. On 22 April 2021 the Commission adopted the EU strategy on voluntary return and reintegration. It aims at increasing the number of voluntary returns, making the process more dignified and providing better support for reintegration measures. One of the key areas that should be reinforced is cooperation with migrant's countries of origin [Le Coz 2021:1].

Another cornerstone of the European migration policy is resettlement. Both relocation and resettlement as major tools of the European approach were named in the 2015 European Agenda on Migration. This time the Commission proposes to enact a Union Resettlement and Humanitarian Admission Framework Regulation which can clarify to the external actors the contribution that the EU is willing to make in global terms. Resettlement of vulnerable groups, especially children, is a priority.

The third building block of the newly reformed external dimension of the CEAS is linked with search and rescue operations (SAR operations). The Commission proposes Counter Migrant Smuggling Partnerships (either independent or as part of the broader partnerships) that will deliver on several goals: capacity building, operational support, encouraging effective action by police and judicial authorities, exchange of information with partners, action on the ground through support to common operations and joint investigative teams, information campaigns on the risks of irregular migration and on legal alternatives and pathways. The majority of these goals resemble CSDP missions. However, these are to be continued separately as well, despite the persistent similarity of the tasks proscribed in each of the two concepts.

Section 6 of the Communication sheds some light on the details of the international cooperation area of the CEAS in its seemingly new formation. Efficient migration management system is described as beneficial for all parties alike. Migration goes on being embedded to the EU's partnerships as the core issue. The partnerships themselves are entered into on the basis of preliminary assessment of the parties' mutual interests and the possibilities of adjusting and arranging necessary provisions. Though the principle of «effective multilateralism» was not strictly stated by the Commission, the foundation for cooperation with third countries and international organizations continues to lie with bilateral agreement, combined with regional and multilateral commitment.

One of the novels introduced by the Commission is the change of the perspective on potential beneficiaries of the EU external policy on migration. The EU will equip its neighbors, future member states with all the required tools and instruments to develop their capacities and bring up their legal and law-enforcement framework in migration to the European standards. Moreover, the Commission noted its increasing interest in setting up practical arrangements and political agreements with other third countries from Asia and Latin America that have

lately climbed up in the EU's list of migrant-donor countries.

The EU funding to the migration-related projects and initiatives should be available in case of unexpected events that may put an overwhelming extent of pressure on the European migration systems.

According to the Communication, asylum policy is a limited area of cooperation with third countries. The latter is a prerequisite for the efficient execution of returns and readmissions [Rybakov 2021]. The EU's efforts will be concentrated on returns, both voluntary and involuntary. To this end, the EU will proceed with concluding readmission agreements and arrangements, as well as reinforcing and supporting reintegration measures in partner countries. The other edge of the new European approach on migration and asylum is resettlement that will be strengthened by the introduction of Talent Partnerships with the aim of attracting talented, highly skilled professionals from third countries to the EU. These partnerships will be a combination of mobility schemes for work or training with investments in third countries in related policy areas.

All in all, the new Pact on Migration and Asylum contains only small fraction of provisions that are intrinsically distinct from the stipulations of the 2015 European Agenda on Migration, and they are mainly centered around external borders control. Proposed measures do not revolutionize the European approach on migration and asylum as they are aimed at reaching relative consensus among member states at minimal cost [Zvereva, Karpovich 2021:102]. The scope of external cooperation with developing countries is once again dependent on the commitment of the EU's partners to the migration cause of the Union. The EU will continue to provide financial and operational support with existing mechanisms (the Facility for refugees in Turkey, EU Regional Trust Fund in Response to the Syrian crisis, Emergency Transit Mechanisms in Niger and Rwanda and others) and the new ones to those partners who are willing to participate in the burden-sharing process. The main principle on which the EU operates its external framework in the field of forced migration, that has not been altered since 2015, is better execution of its interests with the use of positive and negative incentives and leverages in negotiations and dealings with partners.

The new Pact on Migration and Asylum consists of several legislative proposals and practical arrangements that had to be installed in 2021. However, the institutional negotiations in the EU continue. As of January 2023, only two of the Commission's propos-

als were agreed upon: the revised Blue Card Directive and the European Union Agency for Asylum Regulation. As regards to the international dimension of these approved initiatives, there are few provisions regulating cooperation with third countries.

The revised Blue Card Directive will apply to beneficiaries of international protection (refugees). Beneficiaries of international protection will be able to obtain an EU Blue Card like other third country nationals. However, according to articles 15 and 16 of the Directive, their relatives (family members) will not be eligible for family reunification indulgences. The Directive also covers third country nationals to be resettled in the EU, who will be equal in their rights to beneficiaries of international protection. These novelties will ensure a more efficient labor market allocation across the EU.

The Regulation on the European Union Agency for Asylum (EUAA) creates a new authority within the EU built on the experience of the European Asylum Support Office (EASO). Article 35 of the Regulation on the EUAA enumerates the Agency's powers and obligations in the external area of its functioning:

1. Facilitating and encouraging operational cooperation between member states and third countries.

2. Establishing working agreements with the authorities of third countries with prior approval of the Commission and the Agency's duty to report to the European Parliament and the Commission on any pre-agreement developments.

1. Supporting member states in the implementation of resettlement schemes.

2. Submission of annual reports to the European Parliament with an assessment of the cooperation with third countries.

Article 35a of the same Regulation broadens the scope of external cooperation by allowing the EUAA to deploy liaison officers in third countries. These experts will be sent to third countries that are part of the European framework on asylum-related migration. Liaison officers will be responsible for the carrying out of two tasks — gathering information and facilitating access to legal pathways for persons in need of international protection (resettlement being the main option). Deployment of liaison officers needs prior reception of the Commission's opinion. In contrast, in the Regulation (EU) № 439/2010 establishing a European Asylum Support Office external dimension of EASO activities covers facilitation of operational cooperation between European and third countries and technical cooperation with

authorities of third countries. The creation of the EUAA deepens the external relations opportunities for the EU and its partners.

Moreover, the Commission issued three recommendations as part of the new Pact. Recommendation 2020/1364 on legal pathways to protection in the EU promoting resettlement, humanitarian admission and other complementary pathways is a document that contains some guidelines and non-obligatory provisions for member states being stipulated in anticipation of the adoption of the Union Resettlement and Humanitarian Admission Framework Regulation. There are six work areas listed in the Recommendation: increasing the number of states taking part in resettlement schemes and humanitarian admission programmes; boosting resettlement in the medium term; improving quality of resettlement programmes; strengthening humanitarian admission; promoting complementary legal pathways linked to education and work; reinforcing cooperation between member states and supporting global resettlement efforts. The resettlement target for a two-year period (2020-2021) amounts to 29500 people from Turkey, Lebanon, Jordan, Libya, Niger, Chad, Ethiopia and Sudan. Resettlement programmes should be based on efficient high-standard pre-departure, reception and post-arrival activities with integration and social inclusion plans as their integral parts and be subject to internal monitoring and evaluation. Family reunification assistance programmes and community sponsorship should be incentivized and carried out on a frequent basis. Access to education and work for potential participants of resettlement programmes can be achieved by their integration in the labor market (access to re- and upskilling programmes, international labor mobility schemes and others) and admission of youth into universities. Cooperation between member states should be a derivative result of the functioning of the EU Resettlement and Humanitarian Admission Framework as member states will be more readily taking part in this joint venture. As to the cooperation with third countries, member states could share their experience and best practices in order to build resettlement programmes in developing partner countries. Despite the optional nature of the Recommendation, member states are obliged to inform the Commission upon its request on the number of people resettled on their territories with all the additional data, namely country of origin, executed admissions and other pathways offered to third country nationals. The accomplishment of the resettlement target is facilitated by the financial support from the Asylum, Migration and Integration

Fund and other EU funding opportunities.

Preventive nature of the EU's efforts in the field of forced migration is further evidenced by the contents of the Commission Recommendation (EU) 2020/1366 on an EU mechanism for preparedness and management of crises related to migration. Remembering the past notorious experience of massive migration flows in 2015 and unconditional failure of national migration systems, the Commission strongly suggested establishing a special framework providing a more coherent use of the EU legislation in adequate anticipatory response to potential crises in the future. The Recommendation sets up the EU Migration Preparedness and Crisis Blueprint Network that may be defined as a common framework for cooperation between major European institutions (the Council and the Commission), the EU agencies and member states with the purpose of ensuring situational awareness and preparedness and promoting effective governance and timely response. The founding principles of the Migration Preparedness and Crisis Blueprint (MPCB) itself are anticipation, solidarity and fair sharing of responsibility, coordination, timely reaction and flexible resource allocation. The MPCB outlines two stages: monitoring and preparedness stage (or Stage 1) and crisis management stage (or Stage 2). In its first stage, the MPCB Network gathers information that allows for early warning or forecasting of migration crisis situations both inside the EU and in third countries. The second stage is likewise data-driven and provides for comprehensive and knowledgeable decision-making during crises. Stage 1 is active on a permanent basis, whereas Stage 2 is applicable in the situations of extraordinary danger or already unfolding migration flow bursts. The crisis stage is activated by the Commission in agreement with the affected member state and is effectuated by the exchange of the emergency information between all the Points of Contact. This stage is furnished with a toolbox for management and response in 4 areas: third countries, external borders, member states under pressure and EU-level measures. Thus, the MPCB Network is designed to guarantee a desirable extent of information exchange. The MPCB also envisages an ad-hoc participation of third countries in the Network when and where relevant. The Network is to function through appointed by the actors Points of Contact that will be established basically to share information for purposes of preparing migration management reports and situational reports on the EU level.

Furthermore, the Commission introduced four regulations and amended its previous proposals for

a regulation on the establishment of «Eurodac» and for a regulation on a common procedure for international protection in the EU.

Regulation on asylum and migration management is supposed to replace the Dublin III Regulation adjusting it with accordance to new circumstances in the field of migration with targeted changes:

- the existing criteria for determining a responsible member state are preserved, with exclusions promoting family unity and taking into account the best interests of a child;
- clarification of responsibilities of member states following SAR operations;
- establishment of the new criterion — possession of educational diplomas;
- deletion of certain rules on cessation or shift of responsibility between member states;
- establishment of procedural rules to facilitate relocation and return sponsorship.

Migration management will be based on a new flexible solidarity mechanism that is to be deployed in consistency with the gravity of the migratory situation. Basically, the Commission lays down three options or ways in which each member state can contribute to mitigation of main migratory risks for the EU: relocation, return sponsorship, strengthening capacities of other member states in asylum, reception and return and in the external dimension. Relocation will include applicants for international protection that are not subject to the border procedure pursuant to Asylum Procedure Regulation and, in cases of pressure, beneficiaries of international protection for up to 3 years from when such persons were granted international protection. Return sponsorship lies in exercising any activities to return certain third country nationals from the benefitting member state. The sponsoring member state indicates in advance the nationality of third country nationals for which it is willing to support the return. In the context of the external dimension of the CEAS, the sponsoring member state may offer support through diplomatic channels and ties where it has deep and strong relations with definite third countries. The sponsorship covers many aspects: counselling on or assisting returns, reintegration using their resources and tools, leading or supporting the policy dialogue with third countries on readmission and its legal facet. In situations of immense migratory pressure, the solidarity mechanism becomes compulsory and requires member states to take necessary measures collectively in order to provide support for the benefitting member states. This compulsory solidarity mechanism is initiated by the Commission's implementing act reflect-

ing quantitative information on returns or return sponsorship and identifying shares of each member state (including specification of probable measures to be taken in the external dimension). Article 7 of the proposed Regulation envisages a special assessment report conducted by the Commission that evaluates cooperation with third countries. If by any reason this report finds such cooperation to be failing, the Commission immediately communicates the state of affairs to the Council for the identification of the appropriate measures to be executed by the Union in its relations with the relevant third countries.

Regulation addressing situations of crisis and force majeure in the field of migration and asylum gives a legal definition of the term «crisis» — an exceptional situation resulting from mass influx of arrivals or disembarkations of third country nationals (or stateless persons) in a member state of such a magnitude and nature that it threatens the integrity of or breaks down the member state's migration system that may cause a disruption of the Common European Asylum System as a whole. Any member state may request the application of the compulsory solidarity mechanism that is triggered by the Commission upon examination of the requesting member state's situation. The Commission then adopts an implementing act that prescribes specific compulsory measure and their scope (the mechanism dwells upon relocation and return sponsorship). Relocation in situations of crises is wider and may also be applied to applicants for international protection in the border procedure, irregular migrants and persons granted immediate protection under this Regulation. If the situation of crisis is established by the Commission, the member state concerned will be eligible for the application of derogatory rules laid down in articles 3, 4, 5 and 6, which grant a valid legal excuse for non-compliance with the standard asylum border procedures, return requirements and time-limiting provisions on registering applications for international protection.

Regulation establishing a common procedure for international protection in the Union, pursuant to article 1, sets out conditions for granting and withdrawing international protection status. In the context of the external dimension of the CEAS, the Regulation contains certain provisions on safe country concepts. Articles 44-50 clarify the concepts of first country of asylum, safe third country, safe country of origin and designation of third countries under these headings at Union and national levels (as well as suspension and removal of the designation) for the purposes of activating solidarity mechanism measures.

The concept of safety of third country or country of origin in each case is primarily dependent on the respect for international law standards, basic legal principles and human rights (including the standards, principles and rules of the Geneva Convention of 1951) in countries of transit or origin accordingly.

Regulation introducing a screening of third country nationals at the external borders establishes a system of checks on persons and efficient monitoring of the external border crossings. The main goal of the Regulation is to facilitate preliminary and timely identification of persons who are not likely to receive international protection of the EU. The screening procedure is therefore built in the process of controls at the external borders allowing for fruitful synergy with asylum and return procedures. The pre-entry screening is comprised of several stages: a) a health and vulnerability check; b) an identity check (or verification) in the European databases; c) registration of biometric data; d) a security check (to identify possible threats to internal security). These new tools will be applied to all third country nationals crossing external borders that have not been subjected to fingerprinting, third country nationals who appear at border crossing points after SAR operations and third country nationals crossing external borders without fulfilling the entry conditions and who apply for international protection.

The Commission, as it was stated above, also amended the proposal for a Regulation establishing «Eurodac» bringing it in line with the provisions of the new Pact.

The new Pact on Migration and Asylum is a programming document that consists of some of the old and new proposals of the Commission aiming at improving the CEAS in its major facets. It still remains to be seen whether this reform package will be successful. As of now, only two proposals have been agreed upon [Peers 2021]. One of the major stumbling blocks that hampers any future improvement of the CEAS is the implementation of the principle of solidarity. On the other hand, further reinforcement of the external dimension of the CEAS seems to be unanimously supported.

6. The external dimension of the CEAS in light of new developments in international relations

The proposed reform of different components of the CEAS is yet to be finalized and agreed on by the European institutions and member states. The experience demonstrates that the process of coordination might take years or come to a dead end. However,

the revised legislation mostly concentrates on the external borders and international dimension, introducing only slight changes and amendments to the core element of the CEAS — the Dublin system of criteria for determining member states responsible for examination of international protection pleas, reception of irregular migrants and their temporary or permanent settlement in the EU. Hesitation on the part of the latter renders the CEAS potentially inefficient and functionally incapacitated in cases of extreme and overwhelming intensification of migration pressure as emergency situations tend to emerge throughout the European external perimeter sporadically and unexpectedly due to the general instability of the global political and socio-economic architecture.

One of the recent crises has been unfolding lately in Afghanistan. Constitutionally formed Afghan government fell under the Taliban siege which triggered a larger influx of migrants and refugees fleeing from Afghanistan. According to the United Nations High Commissioner for Refugees (UNCHR), some 550,000 Afghans have been displaced inside the country bringing the total number of displaced persons closer to 3,5 million people. 2,2 million of Afghans are externally displaced in Iran and Pakistan (90 per cent of Afghan refugees). The overall number of people affected by the long-standing crisis has reached more than 5,7 million people. 65 per cent of the displaced Afghan population are children and youngsters. Afghan refugees mainly take the Eastern Mediterranean Route to enter the EU (this path is partially secured by the EU-Turkey joint statement of March 2016). Afghan nationals also use the corridors of the Western Balkan Route and the Eastern Borders Route (borders with Belarus, Moldova, Ukraine and Russia) representing the second largest group of migrants. During 2015 migration crisis Afghans held the same position in these «rankings». Globally Afghans represent the third largest population of forced migrants.

The EU Home Affairs Commissioner Ylva Johansson stressed the utmost importance of earlier intervention of the EU as a united bloc to prevent the reoccurrence of the migration crisis of 2015. One of the key measures named by the Commissioner is financial support of the displaced persons and vulnerable Afghans via close cooperation with the UNHCR and neighboring states (Pakistan, Iran, and Tajikistan). The fact that the most immediate country of destination for Afghan refugees has been under EU sanctions for many years now turns the EU's financial support into an immensely controversial and ticklish

issue. Another possible solution was suggested by the High Representative of the EU for Foreign Affairs and Security Policy Josep Borrell and the EU Commissioner for Economy Paolo Gentiloni — activating the temporary protection mechanism, envisioned by the Temporary Protection Directive. Johansson rejected this option and insisted on resettlement.

Experts of the European Policy Centre (EPC) maintain that resettlement is the EU's best option under current circumstances: firstly, it is a chance for the European actors to demonstrate their unanimity in response to the external humanitarian emergency; secondly, common resettlement efforts will bring more predictability and supervision over arrivals; thirdly, resettlement has legally and operationally strong grounds that allow for an immediate agreement on the issue between member states.

On 31 August the Council issued the Statement on the situation in Afghanistan which outlined the following steps of the EU in relation to the external crisis:

1. Evacuation of Afghan nationals who have collaborated with the EU will continue;

1. The EU will reinforce its financial support to relevant international organizations to ensure that humanitarian aid reaches the vulnerable groups of the Afghan populations;

2. The EU will strengthen its support to the neighboring and transit countries hosting large numbers of migrants, boosting their capacities in all respective areas, especially in border management and asylum capacity by means of EASO;

3. Support could be provided in the form of resettlement on a voluntary basis, prioritizing women and children;

4. Ensuring adequate protection of persons in need primarily in the region, not outside;

5. Disincentivizing illegal migration and disrupting smuggling networks;

6. Reinforcing security checks with the deployment of EU databases and Eurodac as well as activating relevant provisions of the readmission agreements with third transit countries.

The Council's conclusions on Afghanistan described the situation in Afghanistan as bearing a negative impact on efforts in the fields of forced and illegal migration. Strong attention of the Council is paid to the rights of women and girls as the most vulnerable groups. The EU will intensify its cooperation with relevant international partners and authorities, such as the UN, the World Bank and other actors, and prioritizes its joint activities with NATO, the G7 and the G20 blocs. In Afghanistan the EU

will maintain its minimal presence that will pave the way for humanitarian aid to the internally displaced persons and allow for the free passage of Afghans to be received in member states. These reception decisions of member states will be made voluntarily by the national governments. The EU plans to set up a regional platform of cooperation with Afghanistan's immediate neighbors that will build on the existing relations with the main stakeholders in the region and on the other initiatives (e.g. the Team Europe Initiative on the Afghan regional displacement crisis, the Regional Refugee Preparedness and Response Plan of the UN etc.). The platform will be operated by the EEAS with the help of the Commission.

Even this superficial analysis gives an undeniable testimony to the preemptive nature of the EU's response to the evolving external humanitarian crisis. The European approach is practically based on the idea of preventing any migratory flows penetrating the EU, containing massive waves of migrants and refugees in the neighboring regions and providing only targeted support. The abovementioned characteristics of the CEAS allow to use the term "externalization" to describe the EU's policy on migration and asylum [Potyomkina 2017:71]. The EU tends to shift responsibility for asylum seekers to third states, thus "outsourcing" migration-related problems [Potyomkina 2020:105]. In the meantime, the geopolitical peripeteia may pose hybrid risks (especially arising from the actions of Iran, Turkey and the new Taliban regime in Afghanistan itself).

7. Conclusion.

The external dimension of the CEAS has become a priority policy area for the EU in its international relations with third countries and intergovernmental and nongovernmental organizations. One of the key factors of the aforementioned metamorphose is the protracted inability of the European leaders to reconcile their contrasting and opposite views on the internal components of the CEAS [Tagaliapietra 2019:2]. The geopolitical and socio-economic turbulence in the world should be considered a complementary incentive for the EU to look for long-lasting solutions of the migration predicament in the international sphere and its regional programmes and schemes outside the communitarian space, although the external dimension undoubtedly does play a vital role and partly conditions the ultimate outcome of the EU's efforts in the fields of forced and illegal migration.

The international dimension of the CEAS represents a complex system of the EU law and politics, comprised of various types of legal and quasi legal sources: regulations, directives, decisions, recommendations, communications, guidelines of the European institutions, different acts of EU agencies and international agreements, arrangements and deals (as well as the founding treaties of the EU, of course) [Gukepshev 2022: 2]. In 2015-2016 this area was subjected to thorough scrutiny and revision, which resulted in the emergence of a completely new set of tools and instruments of the EU. One of the novelties was the establishment of the Migration Partnership Framework or MPF, that introduced a reformed programme or approach of the EU and member states in their relations with external stakeholders. The shift of the European policy's focus towards outer actions and activities of EU agencies, cooperation between member states and third countries in the unified manner is a positive result of the reevaluation of the CEAS and the migration management system of the EU in general. Relative control over external factors and «over-the-fence» supervision of the neighborhood level down the pressure on asylum and reception national systems in the short term and provide sustainable growth of the economy and stabilization of the geopolitical landscape outside the EU. Nevertheless, the functioning of the MPF as a core element of the EU migration policy has illuminated certain drawbacks of the whole external dimension of the CEAS:

1. The MPF is founded on the transaction-based relations with prioritization of the short-term goals and deployment of both positive and negative stimuli with a view to incentivize third countries to follow the vector, dictated by the EU for its own mercenary ends. In essence, the EU plainly and simply carries one task only — to prevent migrants and refugees from getting to the EU territory and return those who do not comply with the criteria for international protection.

1. Efficiency of the MPF is measured by specific indicators of migrants and refugees returns and readmissions. The usage of these indicators is explained by the assumption of containing effect of the procedures for potential migrants and refugees, which has not been proven so far.

2. Partnerships under the MPF contribute even more to the distancing of the EU from the fundamental principles of fairness and equality of the participants of such relations.

3. The MPF cannot be characterized as a unified approach of the EU as it has been witnessed that

it frequently gives grounds for the development of conflicting interests between member states, external partners, institutions and agencies of the EU and third country authorities, responsible for the implementation of the MPF. For some member states a bilateral cooperation with African partners is more beneficial due to historical ties, strong diaspora connections, developed political and judicial collaboration on the basis of individual agreements. Moreover, member states that suffered severely from the migration pressure (e.g. Italy) prefer immediate and short-term arrangements with certain countries, whilst other European actors obtain benefits from systematic and long-term cooperation, as they are not in obvious danger. African states repeatedly claimed that bilateral cooperation with concrete member states was preferable due to its flexibility in adjusting the specific terms and conditions of such cooperation.

4. Return and readmission have become the priority object of cooperation with third countries. Excessive amounts of time and political efforts are drawn to facilitate cooperation in the field of migration, driving other vital areas into oblivion.

5. Law enforcement aspect of initiatives under the MPF also raises a number concerns. Firstly, toughening of rules on external border crossings and restrictions on migration movement deprive migrants of their fundamental right to seek asylum, prevent them from reaching a safe place with adequate living conditions. Secondly, sometimes partner states deliberately violate migrants' rights and freedoms (e.g. freedom of movement) in order to be eligible for the financial support, provided by the EU [Castillejo 2017:6-16].

6. Strengthening border controls and law enforcement agencies activities, tightening measures of migration management may cause damage to the ecosystem of border economy. There is a constant economic communication between the subjects of legal and shadow economies at the external borders of neighboring states. For the purpose of proper and painless transformation of the economic conjuncture of local and regional communities living and conducting business activities in the border areas, it is required to create alternative cost-effective opportunities. Moreover, regional migration between third countries, which does not harm the EU, should be taken into account in the implementation of appropriate migration cooperation and be provided with the necessary measures of protection and support from the interested actors.

7. Lack of sufficient analytical and expert information on the effectiveness and efficiency of the

financing transferred to third countries may lead to an unjustified spending and expenditures of the European funds, which entails financial support for ineffective programs and results in depressing figures in the field of migration.

8. The conditional nature of the financial support has undergone significant erosion. Previously, the main conditions for various forms of support from the European authorities were to ensure the protection of human rights and freedoms, the rule of law, good governance and the adequate functioning of other democratic and legal principles. Nowadays, the main factor in making a decision on economic or political support to third countries is the degree or extent of their collaboration on migration issues, the effectiveness of third countries in dealing with potential migration problems of the EU. Other external interests in relations with third countries have become subordinate or inferior to the migration issues [Collett, Ahad 2017:23-30].

Currently, the multilateral platform for migration cooperation with various actors of international relations definitely requires adjustments in its problematic aspects. In particular, it is necessary to intensify cooperation with transit countries in order to improve the socio-economic climate in such transit states, which will ensure a significant decrease in migration flows to the EU due to the expansion of opportunities for comfortable living and labor employment in these countries. Development of an intra-European migration policy and a reform of the internal dimension of the Common European Asylum System, further carefully prepared and coordinated alterations and adjustments of the Dublin principles for the distribution of responsibility among the European states for migrants and persons in need of international protection from the EU, changing the rules and regulations on the procedure for examining applications for asylum, or other forms of international protection on the territory of the EU member states should be regarded as the top priority issues for the EU with simultaneous work on the external front of this system.

Unfortunately, latest proposals of the Commission under the New Pact on Migration and Asylum are narrowed to targeted changes that fail to reorganize the internal components of the CEAS and to achieve far-reaching benefits for the EU. Moreover, strong opposition from some member states (like Hungary, Poland, Slovenia and others) is capable of hampering any joint or common initiatives in the field of forced migration, diminishing the significance of the term «solidarity», frequently used by the

European legislators and politicians. This, in turn, leads us to the question whether the CEAS is truly common. One-sided approach of the EU, aimed at containing all of the potential threats outside the EU by stepping up its financial machinery, paradoxically

makes the EU vulnerable in the face of future crises and gives up the steering wheel on the migration and asylum agenda to many intrinsically unknown external players.

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