



## **THE EU FACING MIGRATION CHALLENGES: THE PRINCIPLE OF SOLIDARITY AS THE NECESSARY GUIDING LIGHT TO MANAGE THE CRISIS**

IED Research Project: “Migration, borders control and solidarity: Schengen at stake?”

Francesco Luigi GATTA

PhD student in EU Law, University of Padua, Italy  
Research and teaching assistant in EU Law, University of Milan, Italy  
[gattafrancesco@libero.it](mailto:gattafrancesco@libero.it)

*Abstract: Freedom of movement is one of the most representative characteristics of the EU and probably the most enjoyed right by its citizens. However, after more than 30 years since the signature of the Schengen Agreement in 1985, this essential pillar of the European integration process is seriously at stake. Factors such as the huge migratory pressures, the threat of terrorism, and the alarming spread of xenophobic and racist feelings fomented by some populist political parties, have led to individual measures like the construction of walls or the reintroduction of strict border controls. In order to have an area of free movement with a high level of security and an orderly management of the migratory flows, it is necessary to implement the principle of solidarity, as it is explicitly prescribed by the treaties. This paper intends to analyse which are the different types of implementing measures adopted by the EU in this regard, in order to verify whether and in which terms the principle of solidarity in the field of migration can be considered implemented.*

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### **1. Introduction**

In recent years migration has increasingly gained prominence in national political agendas, becoming many governments' top priorities. The growing migratory pressure, indeed, has urged some Member States to find a remedy, looking for solidarity and international cooperation in order to effectively face the problem.

Among the multifarious processes of interstate cooperation in the field of migration undertaken at the global level, the one developed by the European Union and its Member States surely stands out: this is the most advanced legal and institutional system for the management of migration and international mobility of individuals. However, the current refugee crisis – provoked by millions of people moving towards Europe and escaping from zones of war and extreme poverty<sup>1</sup> – has raised doubts about one of the most crucial principles of the whole European integration process itself: the freedom of movement in an open area without controls and barriers.

With a massive inflow of migrants pushing against European borders, in an already critical situation, characterised by scepticism and political paralysis due to the lack of mutual trust and collaboration among Member States, terrorist attacks have further aggravated the situation.<sup>2</sup> As a direct result, many governments – unwilling to discuss and wait for a

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<sup>1</sup> According to the data provided by Frontex, in 2015 Member States reported more than 1.820.000 detections of illegal border-crossing along the external borders of the European Union. For a comprehensive and detailed analysis of the data and information regarding migratory flows, trends and routes, see *Frontex Risk Analysis for 2016*, available on the agency's official website:

[http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annula\\_Risk\\_Analysis\\_2016.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf).

<sup>2</sup> The terrorist attacks took place in Paris, first on 7 January 2015 in the offices of the French satirical weekly newspaper Charlie Hebdo and the following day in a Jewish supermarket. At a later time, on 13 November of the same year, a series of coordinated attacks, shootings and suicide bombings occurred in the French capital and in its northern suburb Saint-Denis, killing and injuring hundreds of people. On 22 March 2016 three coordinated bombings occurred in Brussels: two at Airport of Zaventem, one at Maalbeek metro station, close to the EU quarters in the city.

common and shared European response and driven by populist political parties that put the accent on the supposed link between migration and terrorism – have reacted with the adoption of individual measures, including the construction of walls and fences and the deployment of soldiers at their borders.

Other Member States, on the contrary, being geographically much more exposed to the migratory pressure, are struggling in the management of the flows and their reception capacities are collapsing. At the same time, on the one hand, xenophobia and racism are alarmingly spreading among European citizens and political parties, and on the other, migrants are discriminated against and their fundamental rights are often violated.

This complex and delicate situation puts at serious risk one of the most significant and ambitious objectives set by the Treaty on European Union (hereinafter: TEU) and the Treaty on the Functioning of the European Union (hereinafter: TFEU): the realisation of an area of freedom, security and justice, where human rights are effectively safeguarded, people can move freely and safely, and crime, racism and xenophobia are prevented and fought through collaboration and mutual trust among Member States (Articles 3 TEU and 67 TFEU).

As the following paper will try to explain, the way out of this crisis is represented by the principle of solidarity.

## **2. The principle of solidarity: the backbone of the European integration process**

The principle of solidarity, in general, constitutes the fundamental pillar of the European integration process and the driving force of its advancement. In particular, in the framework of the legal and institutional system of the European Union, it can be understood in different ways depending on the context in which it is considered. Solidarity, hence, can have significance as a supreme value of the European Union, as an essential objective to be achieved by its Institutions and Member States and, finally, as an overall element for the functioning of the whole European legal order.

Indeed, since the very beginning of the integration process, solidarity was considered as an undeniable ingredient for the construction of a strong, unified and peaceful Europe. The “founding father” Robert Schuman, in his famous declaration delivered on 9 May 1950,

clearly and rightly stated: “*Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity*”.<sup>3</sup>

Nowadays, every 9 May, we celebrate Europe Day because of this declaration, which lays the foundations for the peace and unity that we can now enjoy in the European Union. But what is crucial in Schuman’s conception of Europe is precisely the value of solidarity: this is the fundamental pillar for the establishment of the European Union and for the achievement of all its relevant and common objectives. It is worthy to note, in particular, that Schuman, already in 1950, did not speak generically of solidarity as an abstract and vague concept. On the contrary, he explicitly referred to a “*de facto solidarity*”, that is to say, a concrete and tangible cooperation among the Member States in the framework of the various areas and policies of common interest.

Furthermore, solidarity, represents not only a supreme and overall value that should always guide both the Union and the Member States in their actions, but it consists also of an essential objective to be achieved. In this sense, indeed, solidarity has always been present in the most significant stages of the development of the European legal and institutional system. With the Treaty of Maastricht, for example, Member States expressed in the Preamble their willingness “*to deepen the solidarity between their peoples while respecting their history, their culture and their traditions*” and further, where establishing tasks and functions of the Union, they also agreed that “*its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their people*” (Article A, paragraph 2).

The following Treaty of Amsterdam also confirmed and reiterated the concept of solidarity as a primary objective for the Union, in particular by stating that “*the Community shall have as its task ... the raising of solidarity between Member states*” (Article 2) and that “*the Member States shall work together to enhance and develop their mutual political solidarity*” (Article 11, paragraph 2). Solidarity, therefore, has permeated the whole integration process over the years, gaining relevance to such an extent that it can be rightfully regarded as general principle of the legal order of the European Union as a whole, as affirmed

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<sup>3</sup> The so called “Schuman Declaration”, delivered by the French Foreign Minister on 9 May 1950, can be found, also in other language versions, on the Robert Schuman Foundation’s website: <http://www.robert-schuman.eu/en/declaration-of-9-may-1950> .

by the Court of Justice<sup>4</sup>. A further emblematic confirmation of the significance gained by the principle of solidarity can be found in the Charter of Fundamental Rights of the European Union (hereinafter: the Charter), which states that “*the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity*”<sup>5</sup>.

As a final step the principle of solidarity has found its definitive consecration with the Treaty of Lisbon. In the TEU and at the TFEU the European legislator refers to the term solidarity 23 times. Solidarity, therefore, appears as a clear recurring element and almost, so to say, a sort of “obsession”. In this sense, all the relevance of this principle emerges from the very first provisions of the TEU: according to Article 2, solidarity is explicitly considered as one of the founding values of the European society and, in accordance with the following Article 3, it appears as one of the essential tasks of the European Union, which, indeed, shall promote the solidarity between generations and Member States (par. 3) and between peoples (par. 5).

The Treaty of Lisbon, however, insists on the concept of solidarity not only by considering it as a basic principle for the unity and the integration between European peoples and Member States. Solidarity, indeed, serves also as a decisive instrument to achieve common objectives set by the Treaties.

In other words, solidarity can be seen not just as a general and ideal value. On the contrary, it represents an essential implementing tool for the policies and initiatives that the European Union fosters in various areas. In this sense, solidarity is explicitly addressed in relevant sectors such as the Union’s external action and Common Foreign and Security Policy (Articles 21, 24, 31 TEU), economic policy (Article 122 TFEU), energy (Article 194 TFEU), worker’s rights and social assistance (Chapter IV of the Charter) and also in case of terrorist attack or calamity (so called solidarity clause, Article 222 TFEU).

Particularly remarkable is also the fact that, in addition to the above-mentioned sectors, the Treaty of Lisbon has explicitly established solidarity as a fundamental component for the European Union’s policies and actions in the field of migration and related issues, as it will be better explained in the following section.

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<sup>4</sup> See, among others, Court of Justice, Judgment of 10 December 1969, joined cases C-6/69 and C-11/69, *Commission v. France*, in particular paragraph 16, according to which “*The solidarity ... is at the basis of the whole of the Community system*”.

<sup>5</sup> Preamble of the Charter of Fundamental Rights of the European Union, solemnly proclaimed in Nice on 7 December 2000.

### 3. The principle of solidarity in the fields of migration, asylum and border controls

Migration is an area that traditionally falls into the sphere of the State's domestic jurisdiction. This reflects a basic assumption of classical international law: a State has primary sovereignty and authority over its territory and population and, consequently, it has the rights and powers to control the national borders and to decide on the entry and stay of non-nationals on its territory. Despite this assumption – that remains fully valid and has been also confirmed by different international Courts<sup>6</sup> – in the recent decades States have been induced to seek cooperation and solidarity with one another, also sacrificing portions of their sovereign powers and prerogatives in favour of supranational organisms and forms of cooperation in the field of migration<sup>7</sup>.

Indeed, the dynamics and the entity of the current migratory phenomenon together with the globalised dimension reached by the human mobility have led governments to realise that migration can no longer be managed alone at the national level. International migration continues to grow, diversify and evolve with the consequence that it can be effectively and orderly managed only through coordinated effort, cooperation and fair sharing of responsibilities and burdens. In one word: solidarity.

This is true, in particular, for the European Union that is now facing an extremely delicate challenge, with massive migratory pressures and the biggest refugee crisis since World War II. The awareness of the need of cooperation and solidarity in the management of migration, however, is not new: it was already expressed, with particular regard to the issue of asylum seekers and refugees, in the Convention relating to the status of refugees of 1951. The contracting Parties of the so called Geneva Convention, indeed, were clearly conscious “*that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem ... cannot therefore be achieved without international co-operation*”; they also considered “*that all States, recognizing the social and humanitarian*

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<sup>6</sup> See, among others, European Court of Human Rights, judgment of 28 May 1985, *Abdulaziz, Cabales and Balkandali v. United Kingdom*, applications no. 9214/80, 9473/81, 9474/81; judgment of 25 June 1996, *Amuur v. France*, application no. 19776/92; judgment of 22 September 2009, *Abdolkhani and Karimnia v. Turkey*, application no. 30471/08.

<sup>7</sup> For an overview of the complex array of international processes, institutions and legal instruments emerged around migration in the recent decades, among others, see PLENDER R., *International migration law*, 1988, Martinus Nijhoff; CHOLEWINSKI R.-PERRUCHOUD R.-MACDONALD E., *International migration law: developing paradigms and key challenges*, The Hague 2007, TMC Asser Press; GAMMELTOFT-HANSEN T., *Access to asylum. International Refugee Law and the globalisation of migration control*, 2011, Cambridge University Press; OPESKIN B.-PERRUCHOUD R.-REDPATH-CROSS J., *Foundations of International migration law*, 2012, Cambridge University Press.

*nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States”.*<sup>8</sup>

With specific regard to the EU framework, the question of solidarity and fair sharing of responsibilities emerged concretely during the 1990s in relation to the crisis in the Balkans. The significant flow of refugees and displaced persons from the war zones, in particular, drew the attention on the need to establish a coherent system for burden-sharing in order manage the situation.<sup>9</sup>

Later on, the concept of solidarity was reaffirmed as a basic and necessary principle for the construction of an effective and functioning European system of migration governance. Precisely, at the European Council held on 15 and 16 October 1999 in Tampere (Finland), the Member States put a crucial milestone in the process for the creation of an area of freedom, security and justice, especially agreeing on the necessity to operate in a supportive manner based on solidarity. As expressed in the so called “Tampere Programme”:  
*“The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity”*<sup>10</sup>.

The concept, once again, is clear: an orderly and humane management of migration can be achieved only through cooperation and solidarity among all the players involved. The importance of this approach was later confirmed in following documents such as the Hague Programme<sup>11</sup> and the Stockholm Programme<sup>12</sup> adopted in 2004 and 2009 respectively, in the

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<sup>8</sup> Preamble of the Convention relating to the status of refugees, signed in Geneva on 28 July 1951 and entered into force on 22 April 1954.

<sup>9</sup> The refugees crisis of the Balkans, in particular, led to the adoption of two documents that, although not provided with binding value, are significant in the light of the concept of solidarity applied to migration issues. These are the *Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis* (in Official Journal of the European Communities C 262, 7 October 1995, p. 1) and the *Council Decision of 4 March 1996 on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis* (96/198/JHA, in Official Journal of the European Communities, L 63, 13 March 1996).

<sup>10</sup> Tampere European Council, 15 and 16 October 1999, Presidency Conclusions, paragraph 4.

<sup>11</sup> Communication from the Commission to the Council and the European Parliament of 10 May 2005 – *The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice* [COM(2005) 184 final – Official Journal C 236 of 24.9.2005].

<sup>12</sup> The Stockholm Programme – *An open and secure Europe serving and protecting citizens*, adopted by the European Council on 11 December 2009 [Official Journal C 115 of 4.5.2010].

European Pact on Immigration and Asylum of 2008<sup>13</sup>, and in several other documents of the EU Institutions such as the Parliament<sup>14</sup> and the Commission.<sup>15</sup>

The principle of solidarity referred to in migration governance, therefore, is not new and has been enunciated in several occasions. What is unprecedented is the fact that for the first time, with the Treaty of Lisbon, the principle of solidarity was explicitly introduced in the EU legal system and provided with legal binding value. The key norms at this regard are Articles 67 and 80 of the TFEU.

According to the first of the above-mentioned provisions, the EU shall develop “*a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals*” (Article 67, par. 2). The norm has significant meaning: first of all, in an innovative way, it explicitly refers to a common European policy on migration and related issues, while the previous provision limited itself to generically allow the adoption of “measures” on asylum, refugees and immigration, without necessarily creating a common, coherent and shared policy at the EU level<sup>16</sup>. Furthermore, in addition to purpose of establishing a common, integrated and uniform system for the migration governance, the mentioned provision significantly provides that this system has to be based on the principle of solidarity.

This crucial concept is reaffirmed in an even more manifest way by the Article 80, which states: “*The policies of the Union set out in this Chapter [border checks, asylum, immigration] and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States*”<sup>17</sup>. This norm is particularly relevant considering that, on the one hand, it reiterates the concept of an organised and common system of migration governance at the EU level, and on

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<sup>13</sup> European Pact on Immigration and Asylum, adopted by the European Council on 15 and 16 October 2008.

<sup>14</sup> See, for example, European Parliament resolution of 22 April 2009 on a *Common Immigration Policy for Europe: Principles, actions and tools* (P6\_TA(2009)0257).

<sup>15</sup> See, among others, the *Green Paper on the future Common European Asylum System*, of 6 June 2007 [COM(2007)301 final], in particular point No. 4 “Solidarity and burden sharing”; and the following *Policy Plan on Asylum: An integrated approach to protection across the EU* (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 June 2008 - COM(2008) 360 final).

<sup>16</sup> See Article 63 of the Treaty establishing the European Community.

<sup>17</sup> For a detailed and accurate analysis of the principle of solidarity set in Article 80 TFEU see the study “*The implementation of Article 80 TFEU on the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States in the field of border checks, asylum and immigration*”, Directorate General for Internal Policies, Policy Department C: Citizens’ rights and constitutional affairs, European Parliament, 2011, (PE 453.167).



the other, it prescribes that not only the structure and the elaboration of the European policies on migration shall be governed by the principle of solidarity and fair sharing of responsibility, but also - and especially - their *implementation*. In other words, in order to have an effective and well-functioning system of migration governance, what is needed is not just an abstract and theoretical affirmation of the principle of solidarity at a general level but its concrete implementation through tangible and practical measures that would be able to guarantee a real and fair sharing of burdens<sup>18</sup>.

#### **4. The implementation of the principle of solidarity**

On the basis of the fundamental premise that without solidarity and cooperation objectives such as the efficient management of migration flows, the fair treatment of third-country nationals and the fight against illegal immigration cannot be achieved, the EU has tried to implement the principle of solidarity in the light of a common and integrated immigration policy, as prescribed by the Treaties<sup>19</sup>.

More in detail, by considering the set of different measures adopted by the European Institutions in order to put into practice the principle of solidarity in the field of migration, it is possible to identify three distinguishing modalities of implementation and therefore also, so to say, to classify the solidarity into three diverse types: economic, operative and humanitarian.

A first way of implementation of the principle of solidarity can be identified in the complex of the various financial measures adopted by the EU in order to deal with different migration issues. This so called “economic solidarity”, therefore, can be seen as a first, particular method to guarantee a better sharing of burdens between Member States from an economic perspective.

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<sup>18</sup> In particular, the European Parliament and the Commission, in different occasion, highlighted the need of a real implementation of the principle of solidarity. In this sense, for example, see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 April 2010 – *Delivering an area of freedom, security and justice for Europe’s citizens – Action Plan Implementing the Stockholm Programme* [COM(2010) 171 final and, in particular, paragraph no. 6; Communication from the Commission to the European Parliament, the Council, the European Economic Social and Committee and the Committee of Regions, of 2 December 2011, on *enhanced intra-EU solidarity in the field of asylum - An EU agenda for better responsibility-sharing and more mutual trust* [(COM(2011) 835 final]. With regard to the European Parliament, among others, see the Resolution of 11 September 2012 on *enhanced intra-EU solidarity in the field of asylum* (P7\_TA(2012)0310).

<sup>19</sup> The mentioned objectives are fixed in the Chapter 2 of the Title V of TFEU (in particular Articles 77 – 79).

This typology of solidarity, in particular, is explicitly addressed in the TFEU: as already seen, Article 80 expressly states “the policies of the Union ... and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, *including its financial implications*”<sup>20</sup>. The explicit inclusion of this wording in the text of the Article highlights the logical consequence of the consideration that managing flows of migrants has a cost, whose entity of course can significantly increase in parallel with the growth of the migratory pressure. Consequently, Member States that are geographically more exposed are forced to directly bear the impact of the migration crisis and its economic costs. Therefore, in order to balance the situation and to alleviate the economic weight of the migratory pressure over the peripheral States, an economic and financial support mechanism in their favour has to be guaranteed.

The economic solidarity can be realised through different financial means, such as the availability of certain amounts of money to be granted to a single Member State that is facing a particularly difficult situation, or the creation of some given European funds aimed at financing specific programmes in favour of more States. Economic resources can also either be devolved to the financing of long-term strategies or quickly made available as emergency funds in order to deal with particularly urgent and critical circumstances.

So far the EU has shown a particular favour for this type of solidarity, allocating a huge amount of money to its migration policies. Over the years in fact a considerable quantity of economic resources has been dispensed through various forms and programmes, especially by supporting single Member States (notably Italy and Greece), by exponentially increasing the budget of European agencies involved in migration issues (e.g. Frontex and EASO)<sup>21</sup>, and by establishing different European funds specifically dedicated to particular aspects and issues of the migratory phenomenon.

With particular regard to these lastly mentioned measures, as significant examples of financial solidarity instruments, it is worth recalling the Programme on Solidarity and the

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<sup>20</sup> Article 80 TFEU has its origins in the framework of the discussions in the European Convention, the organ in charge of elaborating the Draft Treaty establishing a Constitution for Europe, which never entered into force but inspired the Lisbon Treaty. The current Article 80, in particular, reproduces the text of the corresponding provision of Article III-268 of the Draft Treaty establishing a Constitution for Europe.

<sup>21</sup> See *infra* in this paragraph, page 13.

Management of Migration Flows<sup>22</sup>. According to the Programme, for the 2007-2013 budgetary period, the EU put at the disposal of Member States four funds in the fields of asylum, immigration and border control, namely the European Refugee Fund<sup>23</sup>, the European Fund for the Integration of third-country nationals<sup>24</sup>, the European Return Fund<sup>25</sup> and the External Borders Fund<sup>26</sup>.

The primary objective of these funds consists of the promotion and the facilitation of a fair and better burden sharing of the financial implications related to the different aspects of the migratory problem. These resources, hence, are meant to support Member States in sectors like external border controls, first aid and assistance to migrants, improvements of reception accommodation infrastructures or services, integration programmes for refugees and so on. In order to do so, the allocation of these financial instruments follows different criteria, combining fixed amounts of resources with variable shares in proportion to the degree of exposure to migratory inflows.

With regard to the financial framework for the period 2014-2020, the EU has also adopted a system of financial solidarity covering migration and related issues<sup>27</sup>. However, in order to facilitate a better fruition of the resources, the structure of the expenditure instruments, instead of the previous four, has been simplified by reducing the number of funds to two: the Asylum and Migration Fund<sup>28</sup> and the Internal Security Fund<sup>29</sup>.

Taking into account certain indicators for the distribution of the economic resources, the majority of the total amount of the funds is destined to shared management of migration issues, while the remaining part of the funding is allocated for the launch and the

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<sup>22</sup> Communication from the Commission to the Council and the European Parliament establishing a framework programme on Solidarity and the Management of Migration Flows for the period 2007-2013 {SEC(2005) 435} /\* COM/2005/0123 final.

<sup>23</sup> Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007.

<sup>24</sup> Council Decision 2007/435/EC of 25 June 2007.

<sup>25</sup> Decision No 575/2007/EC of the European Parliament and of the Council of 6 June 2007.

<sup>26</sup> Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007.

<sup>27</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, of 26 June 2011 – A budget for Europe 2020 [COM(2011) 500 final].

<sup>28</sup> See Proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund of 15 November 2011 [COM(2011) 751 final].

<sup>29</sup> See Proposal for a regulation of the European Parliament and of the Council establishing Internal Security Fund, of 15 November 2011 [COM(2011) 750 final].

implementation of specific actions and programmes at the national level but responding to specific Union priorities<sup>30</sup>.

Before moving to next type of solidarity, the “operative” one, it is worthy to briefly mention some measures adopted by the EU with regard to the so called “external solidarity”. Indeed, the above analysed examples of economic solidarity, like the different European funds created during the years, can be regarded as forms of an “internal solidarity”, given that they all refer and are addressed to Member States.

On the contrary the external solidarity, in general terms, can be understood as a way of projecting solidarity, cooperation and support outside the European Union. This is also, in general, a sort of natural vocation and a primary objective for the EU as an active and dynamic player on the international scene. According to Article 21 TEU, indeed, *“The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity”*.

The EU has applied the above-mentioned principle to the field of migration, being aware of the fact that international migration today has reached a level of complexity that requires a wider and coordinated approach. In this sense, therefore, supportive measures have been also brought outside the EU and extended to those third countries particularly involved with migration issues<sup>31</sup>. The different European initiatives in this sense have mainly tried to focus on the root causes of mass migratory movements, insisting on the crucial link between development and migration.

The external dimension of the solidarity in the field of migration, in particular, works from a double point of view. On the one hand, from one direct and immediate perspective,

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<sup>30</sup> More detailed information on the Asylum, Migration and Integration Fund for the period 2014-20, including data on the amount of resources and the percentages of their allocation to the different sectors and programmes, can be found in the website of the DG Migration and Home Affairs of the European Commission: [http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/index_en.htm).

<sup>31</sup> The Treaty of Lisbon has introduced a specific provision for the adoption of measures of cooperation with third countries in order to better manage the migratory flows of refugees and asylum seekers. According to Article 78, paragraph 2, letter g), the European Parliament and the Council have the faculty to adopt measures aimed at establishing *“partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection”*.

the supportive measures are primarily aimed at sustaining the countries of origin and of transit with regard to the management of the migratory flows; and on the other hand, these actions are able to indirectly produce a positive effect for the Member States in terms of a safer and more orderly inflow of migrants towards Europe.

It is possible to detect a considerable variety of legal instruments for the cooperation with third countries in the field of migration governance, including the European Neighbourhood Policy, regional projects, specific bilateral agreements, multi-annual financing plans and resettlement programmes. More specifically, among the numerous measures falling into this category, a significant example that can be recalled is represented by the *Thematic Programme of Cooperation with Third Countries in the Areas of Migration and Asylum*: a financial support launched for the period 2007-2013 in order to share the responsibility for managing refugees with third countries which receive a far greater percentage of migrants than Europe<sup>32</sup>. Further examples can be identified in the EU's Regional Protection Programmes<sup>33</sup>, consisting in specific supportive measures and multi-annual plans aimed at improving the protection and asylum systems in specific regions of the world<sup>34</sup>.

Besides the economic and financial aspect, another way of implementing the principle enunciated in Article 80 TFEU is represented by a so called “operative solidarity”. This can be conceived, as a first and general idea, in terms of a category that gathers measures with an

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<sup>32</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions of 17 June 2008 - *Policy Plan on Asylum. An integrated approach to protection across the EU* [COM(2008) 360 final], in particular see point No. 5.2 “External solidarity”.

<sup>33</sup> See Communication from the Commission to the Council and the European Parliament on *Regional Protection Programmes* of 1 September 2005 [COM(2005) 388 final]. On this topic see also MORENO-LAX, *The external dimension of the Common European asylum policy system after Stockholm. In need of a comprehensive approach to access international protection in the EU*, in GORTAZAR C.-PARRA M.C.-SEGAERT B.-TIMMERMAN C. (eds.), *European migration and asylum policies: coherence or contradiction?*, Brussels 2012, Bruylant; GUILD E.-MORENO-LAX V., *Current challenges regarding the International refugee law, with focus on EU policies and EU Co-operation with UNHCR*, CESP Paper No. 59, September 2013, available online: <https://biblio.parlament.ch/e-docs/372301.pdf> ; PAPADOPOULOU A., *Regional Protection Programmes: an effective policy tool?*, European Council on Refugees and Exiles (ECRE), Discussion Paper January 2015, Brussels 2015, ECRE, available online: <http://ecre.org/component/downloads/downloads/982.html> .

<sup>34</sup> The first Regional Protection Programmes targeted two areas: in 2007, the African Great Lakes Region (particularly Tanzania), as a region of origin of migratory flows and, in 2009, the Eastern Europe (in particular Belarus, the Republic of Moldova and Ukraine) as a region of transit. In 2010 the EU decided to launch other Regional Protection Programmes in two new regions: the Horn of Africa (including Kenya, Yemen and Djibouti) and eastern North Africa (Egypt, Libya and Tunisia). More information can be found on the Commission's website, DG Migration and Home Affairs: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/external-aspects/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/external-aspects/index_en.htm) .

essential operative character and, therefore, aimed at offering an immediate and tangible support in the form of concrete actions and operational tools.

More concretely, if the economic solidarity provides financial support in the form of funding, financial instruments and monetary resources, the operative solidarity supplies technical equipment or personnel needed in specific sectors such as border controls or asylum systems.

In this sense, the two most significant examples of the implementation of the principle of solidarity from an operative point of view are represented by the creation of two EU specialised agencies: the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter: Frontex) and the European Asylum Support Office (hereinafter: EASO).

With regard to the sector of border control, Frontex was established in 2004 with the purpose of supporting Member States in the management of the external borders<sup>35</sup>. According to its founding Regulation (EC) No. 2007/2004, *“Effective control and surveillance of external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly, there is a need for promoting solidarity between Member States in the field of external border management”*<sup>36</sup>. Article 1, in defining the fundamental tasks of the agency, explicitly states that it shall provide Member States *“with the necessary technical support and expertise in the management of the external borders and promote solidarity between Member States”* (Article 1, par. 3).

The essential purpose of Frontex, in other words, is to provide support and to promote solidarity in order to develop a common and integrated management system for external borders, which is a fundamental component for the realisation of an European area of

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<sup>35</sup> Council Regulation (EC) No 2007/2004, of 26 October 2004, establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex Regulation), later amended by Regulation (EC) No 863/2007 of the European Parliament and of the Council, of 11 July 2007, establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers; Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union; Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur); Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

<sup>36</sup> Council Regulation (EC) No 2007/2004, recital No (5).

freedom, security and justice (Article 77, par. 1, letter C, TFEU). In order to do so, Frontex operates in strict cooperation with other relevant institutions and with the competent national authorities, providing assistance through a vast variety of services and actions.

The agency, in particular, carries out a number of activities in the field of borders management, including, among others, data collection on migratory trends and routes, processing of statistical information, elaboration of periodical reports and studies, information sharing, risk analysis, research in the field of border surveillance, formation and training of border guards and specialised personnel<sup>37</sup>. These activities, in particular, have a mostly preparatory function and serve as a necessary prerequisite for the launch of specific missions, operations and concrete actions to be carried out in certain geographic areas identified as critical and problematic from a migration management perspective.

Operative solidarity, therefore, is concretely realised through the assistance and support guaranteed in favour of Member States that are facing a significant migratory pressure against their borders. The agency's initiatives and supportive actions can take different shapes, including the deployment of staff and technical equipment or the organisation and coordination of joint operations, pilot projects and rapid interventions at the borders<sup>38</sup>.

The principle of solidarity here is guaranteed in accordance with a basic rule: the EU and every Member State has to contribute to external border management by making available resources in the form of personnel (e.g. guards, officers, experts) and/or technical equipment (e.g. boats, aircrafts, helicopters). It might be worth highlighting that, organising and putting into practice so many and different operations – surveillance, border checks, assistance in return of migrants, prevention of cross-border criminality, to be carried out at land, air and sea borders – evidently comes at a huge cost, which is growing exponentially as a consequence of the ever-increasing migratory pressure that the EU is experiencing. It is not

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<sup>37</sup> See Frontex Regulation, Articles 2, 4, 5, 6.

<sup>38</sup> See Frontex Regulation, Articles 2, 3, 8. Since its creation, Frontex has carried out a considerable number of missions and operations in several geographical areas around Europe. Among others, as significant examples of joint operations conducted under the agency's supervision, can be recalled the "Poseidon sea" operation, carried out between 2014 and 2015 in the area of the Eastern Mediterranean in order to support Greece; the "Minerva" operation in support of Spain, conducted in the area of Western Mediterranean during 2014; the operations "Hermes" and "Triton", launched in 2014 in the area of the Central Mediterranean in order to support Italy. An archive of all Frontex operations with detailed information and data concerning aspects such as typology, duration and budget, is available on the agency's official website: <http://frontex.europa.eu/operations/archive-of-operations/>.

a coincidence, therefore, if the agency's budget has been hugely and constantly increased during the years: when Frontex became operational in 2005, it had a budget of just over 6 million euros, while in 2015, ten years later, the budget amounted at over 143 million and for 2016 it is fixed at around 254 million<sup>39</sup>.

Only by considering these numbers it is possible to understand the importance gained by this agency in the field of migration management: its role has become more and more crucial, as witnessed by the increase of powers and capacities, the resources put at its disposal and the intense debate on its future and development<sup>40</sup>.

With regard to the sector of asylum, likewise, a significant role is played by EASO, the other specialised EU agency that, together with Frontex, represents the most emblematic example of operative solidarity. This organism, created in 2010 and based in Malta, has the specific mandate to *“improve the implementation of the Common European Asylum System, to strengthen practical cooperation among Member States on asylum and to provide and/or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems”*<sup>41</sup>.

Similar to Frontex in the sector of border control, EASO acts as an independent centre of expertise on asylum, carrying out a number of tasks devoted to the study and the analysis of the migratory phenomenon in the EU with particular focus on the asylum trends, problems and how to effectively face them. The agency, therefore, systematically collects, examines and processes statistics and data in order to elaborate reports, best practices and possible solutions for the development of the European and national asylum systems<sup>42</sup>.

In addition to this more theoretical and preparatory role, EASO also supports Member States with specific actions on the ground, in this way contributing to implement the principle of solidarity prescribed by the TFEU. Operative interventions carried out by the agency can

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<sup>39</sup> Detailed information and data on the agency's budget and expenditures can be found on Frontex official website: <http://frontex.europa.eu/about-frontex/governance-documents/>.

<sup>40</sup> See *infra* paragraph 5, page 19 and note No. 60.

<sup>41</sup> Article 1 of Regulation (EU) 439/2010 of the European Parliament and of the Council, of 19 May 2010, establishing a European Asylum Support Office (EASO Regulation). See also recital no. (7), according to which: *“For Member States which are faced with specific and disproportionate pressures on their asylum and reception systems, due in particular to their geographical or demographic situation, the Support Office should support the development of solidarity within the Union to promote a better relocation of beneficiaries of international protection between Member States”*.

<sup>42</sup> See EASO Regulation, Article 9.



be classified into the two categories of “special support” and “emergency support”<sup>43</sup>. The first one consists of a form of tailor-made assistance, providing high quality expertise, specialised personnel and tools with the purpose to assist and “accompany” a Member State in an orderly and effective functioning of its national asylum system. The second form of support consists in a sort of emergency solidarity mechanism, which can be activated in favour of Member States that are suffering from an unexpected and intense migratory influx. This emergency support, in particular, can lead to the adoption of measures such as the deployment of experts and specialised staff, technical equipment such means of transport and medical assistance and the shipping of so called “asylum support teams”<sup>44</sup>.

As a conclusive and general remark on EASO, it can be observed that the agency surely represents a relevant form of implementation of the principle of solidarity referred to the field of migration. EASO has a significant and ambitious mission and carries out useful tasks fulfilling existing needs. It cannot be omitted, however, that EASO’s potential and role are limited, with the consequence that its real impact in practice is largely scarce and insufficient.

This can be related to a number of factors. First of all, the agency’s budget, which is clearly inadequate in order to carry out actions able to produce a real positive and tangible effect in the framework of the current refugee crisis. A comparison of the EASO’s budget with the above-mentioned resources provided for Frontex will be eloquent enough to understand the point: around 15,7 million euros allocated to EASO for 2016<sup>45</sup>, whereas Frontex can count on around 254 million for the same year.

Further limitations to the EASO’s capacity to produce a more effective impact are also to be found in its characteristics and mandate. On the one hand, the deployment of supportive tools and personnel depends on the will of the Member States, which also have to agree on the launch and the execution of operative actions within their territories; on the other, EASO lacks the authority to decide on the processing of the applications for

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<sup>43</sup> During the years EASO has launched a number of operational missions and supportive actions. Examples of EASO support actions include those carried out in favour of Sweden (2012-2013), Italy (2013-2014), Cyprus (2014-2015), Greece (through different phases between the periods 2011-2013 and 2013-2014), Bulgaria (2013-2016). An archive of the EASO support operations, with detailed data and information, is available on the agency’s official website: <https://easo.europa.eu/about-us/tasks-of-easo/operational-support/>.

<sup>44</sup> See EASO Regulation, Article 10 and Chapter 3.

<sup>45</sup> Budgetary information on EASO are available on the agency’s official website: [https://easo.europa.eu/about-us/budget\\_and\\_accounts/](https://easo.europa.eu/about-us/budget_and_accounts/).

international protection<sup>46</sup> and its guidelines and technical documents are not able to produce a binding effect or even just to serve as instructions for the Member States<sup>47</sup>.

Positively the European Commission, being aware of these and other weaknesses, on 6 April 2016 presented an important proposal for the reform of the Common European Asylum System in order to obtain a better working system and aiming at “*ensuring a high degree of solidarity*”.<sup>48</sup> Among the measures indicated to address the current structural shortcomings, the Commission’s proposal intends to reform EASO by transforming the current organism into a strong EU-level first-instance decision-making Agency, provided with a strengthened operational mandate and sufficient financial resources and legal means in order to play a new policy-implementing role<sup>49</sup>.

## **5. The relocation mechanism of asylum seekers and other recent measures adopted by the EU in the framework of its migration policy**

Besides the above presented forms of economic and operative solidarity, a third one can be identified and designated as “humanitarian solidarity”. It represents a way of implementation of the principle of solidarity and fair sharing of responsibility, which consists - instead of distributing economic resources or making available operational support - in the physical relocation of beneficiaries of international protection among the Member States<sup>50</sup>. Therefore, the essential idea at the basis of the relocation system and humanitarian solidarity is that through an intra-EU redistribution mechanism that allows for the transfer of migrants from one Member State to another, it is possible to balance the allocation of burdens and responsibilities and to alleviate the workload of those countries that are receiving the largest amounts of migratory flows and asylum applications.

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<sup>46</sup> See EASO Regulation, Article 2, paragraph 6, which states: “*The Support Offices shall have no powers in relation to the taking of decisions by Member States’ asylum authorities on individual applications for international protection*”.

<sup>47</sup> See EASO Regulation, Article 12, paragraph 2, which states: “*The Support Office may adopt ... technical documents on the implementation of the asylum instruments of the Union, including guidelines and operating manuals ... The documents shall not purport to give instructions to Member States about the grant or refusal of applications for international protection*”.

<sup>48</sup> See Communication from the Commission to the European Parliament and the Council, of 6 April 2016, *towards a reform of the Common European Asylum System and enhancing legal avenues to Europe* [COM(2016) 197 final], in particular, part I.2, letter a).

<sup>49</sup> See COM(2016) 197 final, part I.2, let. e) “A new mandate for the EU’s Asylum Agency”.

<sup>50</sup> The European Parliament, in its Resolution of 23 October 2013 on migratory flows in the Mediterranean, with particular attention to the tragic events off Lampedusa, expressively stated that “*the relocation of beneficiaries of international protection and asylum seekers is one of the most concrete forms of solidarity and responsibility-sharing*” (Resolution of 23 October 2013, P7\_TA (2013) 0448, paragraph 8).

This form of solidarity, however, although theoretically and potentially positive and effective, represents quite a new option among the possible solutions explored by the EU and has received a very limited application so far. Indeed, except for a small precedent *ad hoc* project undertaken in favour of Malta<sup>51</sup>, a real effort to establish and launch a structured relocation mechanism on the EU scale has been done – and not without troubles and difficulties - only in the recent period<sup>52</sup>.

In 2015 the Commission guided by its President, Jean-Claude Juncker, came up with the European Agenda on Migration, setting out a comprehensive strategy for the management of migration and its related issues<sup>53</sup>. The Agenda was later developed with a series of packages of implementing measures which, among the other solutions envisaged, proposed the creation of relocation mechanisms as ways of implementation of the principle of solidarity<sup>54</sup>. In synthesis, the agreed relocation scheme provides the transfer of a total of 160,000 individuals from the most affected countries in terms of received asylum applications (Italy, Greece and Hungary) to other Member States according to particular distribution criteria<sup>55</sup>.

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<sup>51</sup> The pilot project for Intra-EU re-allocation of beneficiaries of international protection from Malta (EUREMA) was launched in 2009 and lasted until 2011. Co-financed by the EU, the project brought to the relocation of 227 individuals from Malta to six other Member States. Following the implementation of this first initiative, a second similar project (EUREMA II) was launched for the period 2012-2013. On these projects see the Communication from the Commission to the European Parliament and the Council, of 17 June 2013, *4th Annual Report on Immigration and Asylum (2012)* [COM(2013) 422 final], in particular, page 13, where the relocation mechanism is defined as “one of the most tangible acts of solidarity available to Member States wishing to relieve pressures on other Member States’ asylum systems”. More detailed data, information and statistics on the projects are available on the website of the Ministry of Home Affairs of Malta, namely:

for EUREMA: <https://homeaffairs.gov.mt/en/MHAS-Information/EUREMA/Pages/EUREMA-I.aspx> ;

for EUREMA II: <https://homeaffairs.gov.mt/en/MHAS-Information/EUREMA/Pages/EUREMA-II.aspx> .

For further information see also the *EASO fact finding report on intra-EU relocation activities from Malta*, July 2012, available online at: <http://www.refworld.org/pdfid/52aef8094.pdf> .

<sup>52</sup> On the topic see DE BRUYCKER P.-TSOURDI E., *EU Asylum Policy: in search of solidarity and access to protection*, European University Institute, Migration Policy Centre, May 2015, available online:

[http://cadmus.eui.eu/bitstream/handle/1814/35742/MPC\\_PB\\_2015\\_06.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/35742/MPC_PB_2015_06.pdf?sequence=1) .

<sup>53</sup> See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, of 13 May 2015, *A European Agenda on Migration* [COM(2015) 240 final].

<sup>54</sup> A first package of implementing measures was presented by the Commission on 27 May 2015 [Proposal for a Council decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece, of 27 May 2015, COM(2015) 286 final]; the second one was presented on 9 September 2015 [Proposal for a Regulation of the European Parliament and the Council, of 9 September 2015, establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person, COM(2015) 450 final].

<sup>55</sup> Following the Commission’s proposals, the Justice Home Affairs Council adopted the decision to relocate 160.000 asylum seekers over two years, with the EU budget providing financial support to the Member States

By looking at the official data provided by the Commission, it is easy to understand how extremely limited the implementation of this type of solidarity has been so far<sup>56</sup>. The Commission itself has recognised that “*overall, progress on relocation has been unsatisfactory*”<sup>57</sup> also specifying that “*the unsatisfactory level of implementation ... is due to a variety of factors, including the lack of political will of Member States to deliver in a full and timely manner on their legal obligations to relocate*”<sup>58</sup>. Indeed, the political fragmentation and the lack of a common understanding between Member States on the migration policies have led to a paralysis. This new mechanism of humanitarian solidarity itself, just created, is already at risk. Two cases, in fact, are pending before the Court of Justice in the form of applications for annulment brought by Hungary and Slovakia against the Council decision that approved the Commission’s proposal to establish the relocation mechanism<sup>59</sup>. The main legal arguments brought by the applicants in order to contest the legitimacy of the Council decision include the breach of some essential principles of the EU legal order, such as the principles of proportionality, representative democracy, institutional balance and sound administration.

Irrespective of the outcome of these cases and of the judgments that the Court of Justice will deliver, this is just another episode that witnesses the level of tension and discordance between the Member States, which are the main factors at the basis of the current incapability of the EU to effectively tackle the migration crisis. This scarce cohesion and lack of mutual trust between Member States risks also to compromise the effectiveness of other

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participating in the mechanism. Relocation system applies to applicants for which the average recognition rate of international protection at the EU level is above 75% (such as Syrians, Eritreans and Iraqis). The relocation is based on a distribution key calculated upon criteria such as Member State’s size of population, total GDP, average number of asylum applications received in the past years and unemployment rate.

<sup>56</sup> According to the statistics provided by the European Commission, as of May 2016, only 1500 people have been relocated since the launch of the scheme. France has taken the highest number of beneficiaries of international protection (499), followed by Finland (259) and Portugal (211). The statistical data regarding the relocation state of play as of May 2016 are available online:

[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_relocation\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf);

[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160518/factsheet\\_relocation\\_and\\_resettlement\\_-\\_state\\_of\\_play\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160518/factsheet_relocation_and_resettlement_-_state_of_play_en.pdf).

<sup>57</sup> See Report from the Commission to the European Parliament, the European Council and the Council, *Second report on relocation and resettlement*, of 12 April 2016 [COM(2016) 222 final], Introduction, page 2.

<sup>58</sup> See Report from the Commission to the European Parliament, the European Council and the Council, *First report on relocation and resettlement*, of 16 March 2016 [COM(2016) 165 final], Introduction, page 2.

<sup>59</sup> Application for annulment brought on 2 December 2015, Case C-643/15, *Slovak Republic v Council of the European Union* and Application for annulment brought on 3 December 2015, Case C-647/15, *Hungary v Council of the European Union*.

initiatives recently undertaken by the EU in order to put in place a successful remedy for the refugees crisis. These include a particularly ambitious proposal for the creation of a new European Border and Coast Guard Agency and specific forms of international cooperation with neighbour countries such as Turkey.

The first measure refers to a proposal recently put forward by the Commission, which would lead to a considerable reform of Frontex, turning it into a much stronger and effective agency, provided with a broader yet more incisive mandate, wider powers and its own resources, with the possibility to use them in certain territorial area even without or against the will of the respective Member State<sup>60</sup>. This surely represents a challenging and brave initiative by the Commission that could potentially lead to, if not the solution, at least to the mitigation, of the problem of the migratory pressure which has become huge and unbearable. Several Member States, however, have already shown their displeasure, harshly criticising the Commission's proposal and labelling it as an unacceptable attack to their national sovereignty.

Another way recently chosen by the EU to try to face the refugee crisis is international and regional cooperation. The European institutions have intensified the dialogue and the collaboration with third countries, expanding the approach to migration issues outside the EU in order to elaborate a coherent and shared strategy.

Significant examples of this consultative process are represented by two recent international meetings: the Eastern Mediterranean - Western Balkans route conference<sup>61</sup> and the Valletta Summit on Migration<sup>62</sup>. Both of these events constituted a positive example of

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<sup>60</sup> On 15 December 2015 the Commission presented a so called "borders package", consisting in a set of proposals of reform with a particular focus on the borders control sector. Among the measures suggested by the Commission, particularly relevant appears the one related to the creation of a new European border and coast guard agency. See Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC, of 15 December 2015, [COM(2015) 671 final].

<sup>61</sup> The conference took place in October 2015 and gathered EU ministers for home affairs and for foreign affairs together with their counterparts from several third countries, including Turkey, Lebanon, Jordan and those of the area of Western Balkans. The associated countries, Switzerland, Norway, Liechtenstein and Iceland also attended, together with representatives from international players such as UNHCR, International Organisation for Migration, World Food Program. Following the Conference a Declaration was adopted, whose content is available on the website of the Council:  
<http://data.consilium.europa.eu/doc/document/ST-12876-2015-INIT/en/pdf>.

<sup>62</sup> The Valletta Summit took place in November 2015 and brought together European and African Heads of State and Government in an effort to develop a constructive dialogue and cooperation in order to address the root causes of the migration crisis. More detailed information on the outcomes of the Summit together with, in particular, the Declaration and the Action Plan adopted by the participants can be found on the website of the Council: <http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/>.

cooperation and offered the opportunity to gather together Member States, EU institutions, international organisations and extra-European partners, in order to encourage a stronger collaboration among receiving countries and those of origin and transit of the migratory flows.

## **6. Conclusion**

As this paper has attempted to illustrate, the principle of solidarity is at the core not only of the EU integration process in general but it represents also and especially a fundamental prerequisite for the construction of a common European system of migration governance. Indeed, EU policies in the fields of immigration, asylum and borders control have to be governed by the principle of solidarity and fair sharing of responsibility as explicitly prescribed by the TFEU.

However, the intra-EU solidarity mechanisms adopted to date have guaranteed only a partial implementation of this principle. So-called economic solidarity, in particular, appears to be the preferred option chosen by the EU so far, with the distribution during the years of a huge amount of money among programmes, agencies' budgets, special funds and other actions.

Operative solidarity could be much more incisive if the two main players - Frontex and EASO - will be reformed and provided with adequate competences, tools and resources in order to face the biggest and most problematic migration crisis since World War II. In order to do so, they should be able to count on more powers, autonomy and their own resources, being more independent from the Member States.

Finally, with regard to so-called humanitarian solidarity and its implementation through the recently introduced relocation mechanism, one cannot deny that the outcomes have been disappointing and extremely limited thus far. The reluctance to cooperate demonstrated by some Member States, the lack of mutual trust and the open contrast over some crucial aspects of a common migration governance have led to a deadlock situation, which the scarcely convincing measures recently introduced - such as the EU-Turkey agreement or the so called "Hotspots" approach - appear to be unlikely to solve, at least for the moment.



In conclusion, the principle of solidarity referred to migration, although explicitly introduced in the EU legal order and provided with a legal binding value by the Treaty of Lisbon, today remains still insufficiently realised and identified more by a theoretical and abstract value rather than a truly concrete and tangible one. In other words, more than sixty years later, Schuman's lesson on *de facto solidarity* appears to be, today more than ever, still extremely current and contemporary. A lesson, therefore, that still needs to be fully learnt and absorbed by the EU and its Member States.