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IMPLEMENTING SELECTIVE PROTECTION

**A Comparative Review of the Implementation of Asylum Policies at National Level
Focusing on the Treatment of Mixed Migration Flows
at EU's Southern Maritime Borders**

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1. Introduction

By the end of 2013 the United Nations High Commissioner for Refugees (UNHCR) recorded 51.2 million forcibly displaced people worldwide, a figure that includes refugees, asylum seekers and internally displaced people who fled persecution, human rights violations or situations of conflict and generalised violence. This represents an increase of 6 million people in 2013 alone and amounts to the highest level of global forced displacement on records, since comprehensive statistics started being collected in 1989 (UNHCR, 2014b).

However, for victims of human rights violations it is more and more difficult to reach a safe place where to receive refuge and protection and enjoy adequate living conditions. The main reason is that most of the countries that could offer protection, European countries in particular, have been raising physical and legal barriers of different kinds, including the building of fences at land borders, use of sophisticated surveillance technologies, restrictive visa policies, absence of off-shore application procedures and lack of legal ways to enter the country. Asylum seekers are thus forced either to rely on the very limited resources offered by neighbouring developing countries, which actually host the overwhelming majority of world's refugees¹, or try to reach Europe through irregular channels and risk their lives on long and hazardous journeys over land and across the sea often at the mercy of smugglers.

The need for victims of human rights violations to resort to irregular channels in order to enter Europe is among the factors that led to an increasing migratory pressure on Southern European Member States (MSs). This kind of migration, although not very relevant in quantitative terms if compared to less visible forms of migration, is of particular concern because of its *mixed nature*. Mixed migration flows consist of various categories of migrants with different protection needs and different motivations². They generally include refugees, asylum seekers, 'economic migrants', victims of trafficking, unaccompanied minors, single adults, families, children and other vulnerable people as well as smugglers. The complex and mixed nature of these flows poses huge challenges in terms of their management, which should be simultaneously aimed at rescuing everyone whose life is in danger, combating trafficking of human beings, detecting and returning irregular migrants, ensuring access to asylum procedures to asylum seekers and providing adequate protection to vulnerable people.

On the one hand, a basic level of protection has to be granted to everyone, including economic migrants: as prescribed by a number of international human rights law instruments and the

¹ According to UNHCR, by end-2013 developing countries were hosting 86% of the world's refugees (UNHCR, 2014b). Conversely, the EU+4 (EU28 and the four Schengen associated States) were hosting only 6% of the world's refugees, despite the 30% increase in asylum applications registered in 2013 (AIDA – Asylum Information Database, 2014d).

² The concept of mixed migration (also known as 'migration-asylum nexus') entails the idea that 'migration occurs for a variety of motivations and in a mixture of flows' (EUROMED Migration III Project, 2013, 1). It is based on the acknowledgement that: 1) people may flee persecution or conflict, yet their motivations may also include hope for a better life and improved economic situation; 2) migrants' motivations and needs may change throughout their migratory process shifting from the 'migration pole' to the 'asylum pole' and vice versa; 3) victims of persecution and economic migrants may use the same networks and channels in their migratory process. On mixed migration, see also: Van Hear, 2011; Bingham, 2010; UNHCR, 2007.

international law of the sea³, the protection of migrants' right to life, especially in the maritime context, shall be a primary consideration when developing policies aimed at addressing mixed migration flows. On the other hand, different categories of migrants are legally entitled to different levels of protection and should be granted differentiated treatments. For this reason the screening of migrants in a mixed flow is a crucial, yet very demanding, phase⁴.

During the last decades, the European and national legislators have gradually multiplied and diversified the legal status of vulnerable migrants, introducing new categories of forced migrants who fall outside the scope of the 1951 Refugee Convention, but nonetheless deserve some protection⁵. The outcome of this process is a hierarchy where a different set of rights is attached to each category of vulnerable migrants, who are thus entitled to a broader or smaller level of protection⁶. Therefore, if on the one hand the protection of migrants has somehow been extended beyond the legal definition of 'international protection' and anticipated to guarantee their right to life is respected, on the other hand protection has been differentiated and hierarchized so that different groups of vulnerable migrants as defined by law are, at least in theory, granted different levels of protection. It is in this sense that the authors of this paper reflect upon the concept of 'selective protection' mentioned in the title, analysing how this concept is implemented in practice in selected European MSs.

The issues of a more effective protection and adequate management of mixed migration flows in the Mediterranean Sea has gained salience since the October 2013 shipwreck off the coast of Lampedusa (Italy) in which 386 migrants lost their life. Within the European Union (EU), Southern MSs (Italy, Greece, Spain and Malta) are called to face these issues more directly and more urgently. It is thus interesting to reflect in a comparative perspective on the ways in which asylum policies and procedures are implemented at national level by these MSs, especially with regard to the treatment of asylum seekers and forced migrants crossing the EU's maritime external borders.

In doing so, this paper moves from a brief overview on the evolution of the EU migration and asylum policy which will focus on its contentious nature (Section 2). Section 3 will then sketch an overall picture of arrivals and asylum applications in Southern MSs, providing updated figures and analysing recent trends. Section 4 is the core of this paper and is dedicated to the analysis of the implementation of asylum policies in the treatment of mixed migration flows at the EU's Southern maritime borders. Different phases of policy implementation are considered: operations at sea (Section 4.1); disembarkation, screening and first reception (Section 4.2); second reception (Section 4.3); adjudication (Section 4.4). The analysis is primarily focused on the Italian and Greek cases,

³ Universal Declaration of Human Rights, Article 3; International Covenant on Civil and Political Rights, Article 6; European Convention on Human Rights, Article 2; Charter of Fundamental Rights of the EU, Article 2; 1982 UN Convention on the Law of the Sea; 1974 International Convention for the Safety of Life at Sea; 1979 International Convention on Maritime Search and Rescue.

⁴ 'It is necessary to unpack - *un-mix* - the concept of mixed migration, because the real challenge of addressing mixed migration is to acknowledge the specific groups within those mixed migration flows' (Bingham, 2010, 8).

⁵ These categories include: beneficiaries of subsidiary protection, beneficiaries of humanitarian protection, unaccompanied minors and victims of human trafficking.

⁶ Pastore defines this hierarchy of legal status as a 'pyramid of rights' to which more and more rungs have been added (Pastore, 2014).

whilst the case of Spain is touched upon more concisely under Section 4.5. Due to substantial factual and policy differences which make full-fledged comparison less relevant for the specific purposes of this study, only selected aspects of the Spanish case have been dealt with⁷.

2. The evolution of the Common European Asylum System (CEAS): fundamental principles and issues at stake

The October 2013 Lampedusa shipwreck created a shockwave across Europe. European leaders and institutions deplored the loss of migrants' lives at sea and committed to take urgent and concrete measures to prevent such events to happen again. The European Parliament adopted a dedicated resolution⁸ and the European Commission set up an *ad hoc* expert group, the Task Force Mediterranean, entrusted to produce targeted policy proposals⁹. Although the Task Force Mediterranean's work resulted in 38 recommendations to be implemented by the EU and its MSs¹⁰, which were endorsed by the European Council in December 2013¹¹ and further reaffirmed in the 'Strategic Guidelines for the legislative and operational planning within the Area of Freedom, Security and Justice for the period 2014-2020' adopted by the European Council in June 2014¹², so far the EU as a whole has not taken any decisive action concretely aimed at preventing further deaths at sea.

In a context of substantial institutional immobility at European level, the launch of the Italian *Mare Nostrum* operation, together with the summer 2014 peak in maritime border crossings in the Mediterranean (see figures below in Section 3), fuelled a more and more polarised debate within the EU between Northern and Continental MSs on the one hand and Southern MSs (with Italy and to a lesser extent Greece in a distinct and particularly sensitive position) on the other hand, both calling into question the legal basis of the CEAS and the principles of 'solidarity and fair sharing of responsibility' (Article 80 TFEU). In order to understand the deep motivations of a debate which

⁷ This paper is the result of a study carried out between end-July 2014 and end-September 2014. It draws upon secondary sources, including recently published literature and academic articles, reports by international organisations (UNHCR, IOM) and European agencies (EASO, FRONTEX), official statistics by Eurostat and UNHCR, more recent statistics provided by national authorities, NGOs reports, grey literature, newspaper articles and online blogs. In addition, this study benefits from the fruitful collaboration with a Greek national expert and a Spanish national expert. The Greek expert consulted is Angeliki Dimitriadi, Postdoctoral Research Fellow at the Hellenic Foundation for European and Foreign Policy (ELIAMEP). A targeted questionnaire was drafted and submitted to her and she completed it providing first-hand updated and detailed information and statistics. In order to do so, she also contacted the Greek authorities, i.e. Hellenic Police - Directorate for Immigration and Aliens, Hellenic Coast Guard, First Reception Service, Asylum Service and National Centre for Social Solidarity. She translated relevant questions in Greek and forwarded them to the competent authorities; all of them provided a prompt reply in writing. The authors would like to warmly thank Angeliki Dimitriadi for her commitment and for the extremely detailed and useful results of her work. Sections 4.1.2, 4.2.2, 4.3.2, 4.4.2 are largely based on her contribution. The Spanish expert consulted is Dirk Godenau, University of La Laguna, Department of Applied Economics. He was consulted via a 2-hour Skype interview based on the authors' questionnaire and via email correspondence; he also provided the authors with recently published reports, statistics and online newspaper articles in Spanish. The authors would like to thank Dirk Godeanu for his constant availability and valuable help. Section 4.5 draws upon his contribution.

⁸ European Parliament (2013), *Resolution of 23 October 2013 on migratory flows in the Mediterranean, with particular attention to the tragic events off Lampedusa*, 2013/2827(RSP).

⁹ The Task Force Mediterranean brought together experts from the MSs, the European Commission, the European External Action Service, EASO, FRONTEX, Europol, FRA and the European Maritime Safety Agency (EMSA).

¹⁰ European Commission (2013), *Communication from the Commission to the European Parliament and the Council on the work of the Task Force Mediterranean*, COM (2013) 869 final.

¹¹ European Council (2013), *European Council 19/20 December 2013 Conclusions*, EUCO 217/13.

¹² European Council (2014), *European Council 26/27 June 2014 Conclusions*, EUCO 79/14.

should not be reduced to a quarrel triggered by contingent events, it is worth reflecting upon the origins of a common European policy on migration and asylum and on the fundamental principles it is grounded on.

For the purposes of this paper, it may be useful to focus in particular on two of the major lines along which the common European migration policy was developed. The first one may be referred to as ‘the Schengen project’, aimed at the creation (starting with the 1985 Schengen Agreement and 1990 Schengen Convention) and progressive expansion of a common space of freedom with no customs and police controls at internal borders, counterbalanced by the harmonisation and enhancement of controls at the external borders. As a consequence, the EU as a whole could benefit from having one common external border, yet the responsibility for controlling each part of that border laid on single MSs¹³. This is what has been called ‘the Schengen principle’: border countries have the duty to control the common border, implementing common standards and procedures, but mainly using their national resources (Pastore, 2014d; see also Pastore, 2014a, 2014b).

The second one may be defined as ‘the asylum project’, aimed at the creation of a harmonised asylum system throughout the EU. This project was launched in the aftermath of the early 1990s Yugoslav refugee crisis by a group of MSs with a particularly strong impulse by Germany with the key political goal to encourage Southern MSs to develop well-functioning asylum systems in order to ‘share the refugee burden’ (this questionable expression, which has now entered the informal EU jargon, started to be used in that period) within the EU. The European legislator actually succeeded in developing and adopting in a relatively short timeframe (1999-2005) a broad set of norms harmonising asylum law in the EU (Dublin Regulation, Eurodac Regulation, Qualification Directive, Asylum Procedures Directive and Reception Conditions Directive)¹⁴. Although, in theory, since the second half of the 2000s a common asylum system is in place, and despite the efforts done to establish common standards, policies and procedures, in practice, the CEAS is not yet able to guarantee fair procedures, high-quality decisions and adequate protection to those who are entitled to it in an homogenous and consistent way across the EU.

In fact, it proved to be extremely challenging for Southern MSs (and later for Eastern MSs) to properly implement EU directives and adjust their national systems to the common standards; as we

¹³ The common external border counts 644 air border crossing points, 7,702 km of land borders and 41,915 km of maritime borders (European Commission, 2014a).

¹⁴ The whole ‘asylum *acquis*’ has been recently reformed and a recast version of all the asylum Regulations and Directives has been adopted. Their implementation at national level is gradually occurring; the completion of the main part of this process is expected by July 2015. The Dublin III Regulation 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 was adopted on 26 June 2013 (Regulation n° 604/2013) and is operational since 1 January 2014. The Eurodac Regulation on the establishment of a system for the comparison of fingerprints for the effective application of Dublin III Regulation was adopted on 26 June 2013 (Regulation n° 603/2013) and will apply starting from July 2015. The Qualification Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted was adopted on 13 December 2011 (Directive 2011/95/EU) and is operational since December 2013. The Asylum Procedures Directive on common procedures for granting and withdrawing international protection (Directive 2013/32/EU) was adopted on 26 June 2013 and will apply in part by July 2015 and in part by July 2018. The Reception Conditions Directive laying down standards for the reception of applicants for international protection (Directive 2013/33/EU) was adopted on 26 June 2013 and will apply by July 2015.

will see, to a certain extent the results of this process are still largely unsatisfactory. The Southern and Eastern MSs' difficulty in complying with common rules and standards on asylum is exacerbated by the fundamental principle the CEAS is grounded on, i.e. 'the Dublin principle' or 'principle of the State of first entry', according to which the MS responsible for examining an asylum application is the one in which the applicant first enters the EU¹⁵. Again, this principle allocates to the EU's peripheral countries, which are geographically located closer to countries of origin or transit, the duty to provide assistance and protection to asylum seekers accordingly to EU law and standards but mainly relying on their own means and capacities (Pastore, 2014d).

It is evident that a migration and asylum policy based on the combination of the Schengen principle and Dublin principle is intrinsically asymmetric, as it attributes to peripheral MSs, and in the current migratory context mainly to Southern MSs -Italy and Greece in particular- the major responsibility both for controlling a crucial part of the EU's external border and for providing assistance and protection to asylum seekers¹⁶. It is perhaps superfluous, but certainly not irrelevant, to stress the fact that these same MSs are also the ones that have been affected more heavily by the recent economic crisis and whose national public budgets have undergone drastic reductions that inevitably impacted also on resources available for migration and asylum policies.

This situation is further exacerbated by two crucial factors concerning the Southern shore of the Mediterranean. The first one is the political instability that has affected Northern Africa following the 2011 Arab Spring and the fall of those pro-Western authoritarian regimes that were crucial partners of Southern European MSs (and consequently of the EU) in implementing irregular immigration and border control policies. Due to this political instability and lack of trustworthy interlocutors, in particular in Libya where political unrest turned to civil war and dissolution of the State, Southern European MSs -Italy *in primis*- cannot anymore rely on North-African countries for an effective (albeit often questionable in a rights-based perspective) cooperation on migration control and have to face foreseeable consequences in terms of increased migratory pressure, in particular on the Central Mediterranean route.

The second factor is the intensification of so-called 'push factors' in countries of origin: in the period 2013-2014 aggravated situations of conflict and generalised violence in the Middle East (primarily in Syria, but also in Palestine and Iraq) and in the Horn of Africa and South Sudan have produced more and more refugees and asylum seekers. As a consequence, it is expected that also the Eastern Mediterranean route will undergo an intensification in arrivals of asylum seekers crossing the Aegean Sea. This would expose the recently reformed and still weak Greek asylum system to the risk of a

¹⁵ Dublin III Regulation, Article 13.1 states: 'Where it is established, on the basis of proof or circumstantial evidence [...] that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection'.

¹⁶ An editorial recently published on *The Economist* stressed this very idea: 'The Schengen agreement enshrines the responsibility of the littoral states. The Dublin regulation, a building block of Schengen, says that the first EU state where a migrant arrives, his fingerprints are stored or an asylum claim is made is responsible for the asylum claim. If a migrant is processed in Greece, then he is Greece's problem. That is unfair and short-sighted. Unfair, because migrants themselves see a place like Greece as a way station, not a final destination. The allure of Europe for illegal immigrants rests primarily in rich countries; the burden of catching and dealing with them should not lie with countries simply because they happen to be en route' (The Economist, 16 August 2014, 9-10).

new 'asylum crisis' (Reuters, 2014).

The sum of these elements represents the background of a burning debate on the unbalances inherent to the CEAS that calls into question the legitimacy of the system itself and addresses the issue of burden sharing and the need for a more balanced and fair redistribution of responsibilities among MSs (Garlick, 2014; Schneider et al., 2013; Thielemann, 2014; Matrix Insight et al., 2010; Triandafyllidou, 2013; Rapoport and Fernández-Huertas, 2014). Southern MSs, Italy and Greece in particular, address explicit requests to the EU and its MSs for the concrete implementation of the principle of solidarity in the management of mixed migration flows at the maritime borders and for an increased financial as well as operational cooperation. The reaction of Northern and Continental MSs like Germany, Sweden, Austria and France has proven so far rather cold, based on the fact that these States receive the highest amount of asylum seekers in Europe, both in absolute terms and also compared either to their national population or to their national economy (EASO – European Asylum Support Office, 2014a; European Commission, 2014b; UNHCR, 2014a, 15). Therefore, generally, they do not feel they should take further responsibilities or show additional solidarity towards the EU peripheral States, as they have 'their own burden'. Evidently, in the field of asylum Southern and Northern MSs have different interests and concerns. As Triandafyllidou explains, 'Southern European countries face simultaneously the pressure of irregular migration and asylum seeking and have to find ways to effectively filter applications. Northern European countries are more "protected" from irregular migration because of their geographical position and hence face mostly the problem of processing applications rather than that of filtering them at their borders' (Triandafyllidou, 2013, 1).

A further critical aspect of CEAS is the issue of compliance of national asylum procedures and reception conditions with EU's common minimum standards, also in light of the fact that such standards have been enhanced with the recast asylum directives. Considering Southern MSs, in the case of Italy, conformity to common standards has not been completely achieved yet, in particular with regards to reception and living conditions and length of the asylum procedure. In the case of Greece, compliance with minimum standards, especially in terms of second reception, is still far from being achieved, although efforts have been done in particular towards a more effective implementation of the Qualification Directive and the Asylum Procedures Directive. Since mid-2013, when the new Greek asylum system became operational, the situation in terms of length and quality of asylum procedures seems to have improved (as it will be further discussed under Section 4). However, systematic use of detention and extremely poor reception conditions continue to prevent asylum seekers from receiving adequate protection in Greece and represent a major concern at EU level.

In this respect, the jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) played a crucial role. In the benchmark judgements *M.S.S. v Belgium and Greece*¹⁷ and *N.S. and M.E. and others v United Kingdom and Ireland*¹⁸ both Courts

¹⁷ ECtHR, *M.S.S. v Belgium and Greece*, Application n° 30696/09, 21 January 2011.

¹⁸ CJEU, Joined Cases C-411/10 and C-493/10, *N.S. and M.E. and others v United Kingdom and Ireland*, 21 December 2011.

established that MSs may not transfer an asylum seeker to the MS responsible under Dublin Regulation when they cannot be unaware that systemic deficiencies in the asylum procedures and reception conditions in that MS could result in a real risk for the asylum seeker to be subjected to inhuman or degrading treatment, resulting in the violation of Article 3 of the European Convention on Human Rights and Article 4 of the Charter of Fundamental Rights of the EU. Following these decisions, a significant number of MSs or national Courts suspended in most cases Dublin transfers of asylum seekers to Greece. However, the issue is rather sensitive and might have double-edged effects: given that the Dublin principle may allegedly be perceived by Greece as imposing a disproportionate burden on the country, there is a risk that the suspension of Dublin transfers due to 'systemic deficiencies' could eventually work as a negative incentive for Greece not to over-improve its reception conditions¹⁹. The actual harmonisation of national law and practices in the field of asylum, which represents a necessary premise to the well-functioning of the CEAS, may require substantial efforts in terms of balancing the MSs' diverging interests and priorities. As Garlick puts it, 'an approach is needed which incentivises Member States to invest and use all available means to ensure their asylum systems function in an optimal way as far as possible. Solidarity, in various forms, will nevertheless be needed to assist when available resources are insufficient, or when unforeseeable pressures arise' (Garlick, 2014, 5).

3. Immigration and asylum trends in Southern European Member States: the relevance of maritime mixed migration flows

As mentioned in the introduction, this paper focuses on the relationship between asylum and mixed migration flows, but before entering more in details into this topic, a premise is needed to explain the reasons why the authors decided to pay a special attention to the implementation of asylum policies in the treatment of maritime mixed flows.

An asylum application may be submitted in a variety of places, times and modalities and national laws governing this subject differ considerably from one MS to another. Generally speaking, an asylum claim may be lodged at the moment of (or immediately after) entering the territory of a country (*early applications*) or it may be lodged some time after the entry in the country (*late applications*). 'Late applications' are usually submitted at police stations or inside immigration detention centres²⁰, while 'early applications' are usually submitted at frontier posts to border police authorities. Within the category of early applications a further distinction needs to be done. An applicant may arrive at a frontier post through a regular carrier, typically by plane, and may express his/her intention to claim asylum to border authorities at the airport. Alternatively, an applicant may

¹⁹ As confirmed by the Greek national expert consulted for this work, 'the biggest challenge is that the entire system remains geared towards removal and/or detention for the purpose of removal and the changes taking place try to strike a balance between decent reception and protection but not so good that it would become a pull factor'.

²⁰ In cases of late applications, the applicant may be regularly or irregularly staying in the country; in this latter case he/she might not have received an expulsion order or he/she might have received an expulsion order and be in immigration detention or not. In some MSs there is a time limit for submitting a late application (e.g. in Spain, one month after the entry), whilst in other MSs there is no time limit (e.g. in Italy).

arrive at the border through an irregular carrier, by land or by sea, and once detected by border police he/she may claim asylum upon arrival or immediately after. The main feature of this latter modality, in particular in the case of arrivals by sea, is that it has to deal with (bigger or smaller) groups of people where asylum seekers are mixed up with irregular migrants.

The authors' choice to focus this paper on this latter category of applications is based on three sets of reasons: a) quantitative reasons; b) technical reasons; and c) political reasons.

a) First of all, this category of asylum claims is relevant in terms of numbers: taking into account the overall amount of asylum applications submitted in Southern European MSs in the period 2011-2014, the great majority consisted in claims lodged upon the arrival or interception at the maritime borders. This is mainly due to Italy's high records of applications in the period considered and in particular in the first half of 2014²¹: as repeatedly declared by the Italian government, about 80% of migrants arriving to Italy by sea are potential asylum seekers²².

b) Secondly, the interest for this category of asylum applications stems from the procedural issues related to the management of mixed flows and mass arrivals by sea. The latter produce challenges at different levels of policy implementation and in particular in the screening phase where a first assessment of the migrant's needs, personal condition and vulnerability is carried out. Such challenges are peculiar of this kind of applications and do not affect the others.

c) Thirdly, since October 2013 the need to grant protection to an increasing number of asylum seekers who flee situations of conflicts, violence and persecution and put their life at risk crossing the Mediterranean to reach Europe has become a top priority in the EU political agenda. As mentioned in the previous section, questions about how to concretely and effectively manage mixed migration flows and how to implement EU asylum law while simultaneously protecting the fundamental human rights of migrants have animated a tough debate among MSs and between MSs and EU institutions.

Before entering into a detailed analysis of how asylum policies apply to the management of maritime mixed flows, it is worth summarising recent and current trends concerning arrivals by sea and asylum applications in Southern European MSs.

As reported by FRONTEX, the European agency for border control, detections of irregular border crossings along the EU's external borders increased of a +48% between 2012 and 2013, reaching one

²¹ As reported by EASO in its Quarterly Report Q1 2014, Italy registered a +22% increase in asylum applications between Q4 2013 and Q1 2014, i.e. the largest increase in the EU for that period (EASO, 2014b). According to recent data released by the NGOs ECRE (European Council on Refugees and Exiles) and CIR (*Consiglio Italiano per i Rifugiati*), between January and August 2014 Italy received approximately 36,000 asylum applications (AIDA, 2014c); see also Table 4 in the appendix.

²² See, for instance, the 7 May 2014 communication to the Italian Parliament on *Mare Nostrum* operation by Roberta Pinotti, Ministry of Defence: 'la tipologia dei migranti è cambiata e circa i due terzi hanno i requisiti per chiedere asilo' ['The typology of migrants has changed and approximately two-thirds of them comply with the requirements to claim asylum'] (video available at: http://www.difesa.it/Il_Ministro/attivita_parlamentare/sindacatoispettivo/questiontime/Pagine/QuestionTimeDel07maggio2014.aspx). See also the 12 June 2014 communication to the Italian Parliament on *Mare Nostrum* by Graziano Delrio, Undersecretary of the Prime Minister: 'Vorrei poi precisare che quasi l'80% delle persone identificate [...] hanno le caratteristiche per essere considerate rifugiati e non immigrati clandestini' ['I would like to stress that 80% of people identified have the characteristics to be considered refugees rather than irregular migrants'] (available at: <http://www.senato.it/service/PDF/PDFServer/BGT/772362.pdf>).

of the highest levels ever (107,000 detections) only second to the total registered during the Arab Spring in 2011 (141,000 detections) (FRONTEX, 2014c). Border crossings across the Mediterranean Sea represent the largest part of this total, the 80% on average in the period 2011-2013 (Manrique Gil et al., 2014). The 2013 rising trend was confirmed in the first quarter 2014, which marked the highest number of irregular border crossings of any first quarter since 2011, most of them being reported at the EU's Southern sea borders. Italy registered a sevenfold increase compared to Q1 2013 (detections at the Italian maritime border represented 50% of the total) while numbers in Greece doubled (FRONTEX, 2014d). Although FRONTEX data for the subsequent quarters of 2014 are not available yet, other reliable sources (national authorities and UNHCR) reveal that this trend has been more than confirmed. Following the seasonal decline of the winter months, already in March 2014 the number of arrivals in Italy reached and exceeded the already exceptionally high levels of summer 2013 (see Figure 2 in the final appendix). Therefore, the second and third quarters 2014 must have recorded the highest levels ever, since the UNHCR estimates that by the end of August more than 124,000 migrants crossed the Mediterranean, 108,000 of which arrived in Italy (UNHCR, 26 August 2014). The latter figure represents an absolute record for Italy compared to previous years (including 2011) and compared to other Southern MSs (see Table 1 and Figure 1).

These data confirm that currently the Central Mediterranean route is by large the major corridor used by migrants and asylum-seekers to cross the Mediterranean and reach the EU. The flow of migrants departing from North Africa towards Italy reached its first peak in 2011: 62,692 arrivals, almost all of them fleeing political unrest and generalised violence in Tunisia and Libya. The following year was calmer (13,267 arrivals). Conversely, a significant increase occurred in the second and third quarter of 2013 (see Figure 2) with growing numbers of Eritrean, Syrian and Somali people departing mainly from Libya, but also from Egypt (42,925 arrivals)²³. As mentioned above, after a seasonal decline in Q4 2013 and Q1 2014, this trend reached unprecedented levels in spring and summer 2014 (with a new increase in the number of Malian asylum seekers).

As concerns the Eastern Mediterranean route, in the period 2007-2009 the Greek-Turkish sea border represented the main entry point of migrants to Greece. Arrivals to the Eastern Aegean islands peaked in 2008 (31,729 detections) but diminished significantly in 2010 (6,175 detections)²⁴. This is because since 2010 a considerable number of migrants started to enter the EU through the Greek-Turkish land border, which in 2010 registered a +345% increase in border crossings (Maroukis and Dimitriadi, 2011). This shift from the sea border to the land border continued in the period 2011-2012²⁵. However, following the implementation of the Greek operation *Aspida*²⁶ aimed at

²³ The source for these data on arrivals is the Italian Ministry of the Interior; see: http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/28_2014/2014_04_16_grafici_sbarchi.pdf.

²⁴ The main islands concerned by arrivals of migrants from Turkey are: Chios, Lesbos, Leros, Kos, Samos, as well as smaller islands such as Farmakonisi and Agathonisi.

²⁵ This shift was partly due to an intensification of patrolling activities in the Aegean Sea, carried out in the framework of FRONTEX 'Poseidon Sea Operation' (which played a significant role in reducing by -79% arrivals by sea) but it was also caused by other factors, such as the reduced cost of crossing the land border and the demining of the Greek side of the Evros river (Maroukis and Dimitriadi, 2011; Marouf, 2011).

²⁶ Operation *Aspida* was launched in August 2012; it consisted in the deployment of more than 1,800 additional police officers and the erection of a 10.5 km long fence along the border (Amnesty International, 2014). According to Frontex,

intensifying border controls in the Evros region, in 2013 detections decreased to the lowest level reported since 2009 (FRONTEX, 2014d). Still, the Eastern Mediterranean route as a whole ranked second and accounted for nearly a quarter of all detections at the EU's external borders both in 2013 (27,828 apprehensions at the Greek land and sea borders) and in the first half of 2014 (17,400 apprehensions by the end of June according to provisional data provided by Greek authorities; see Table 3).

This is due to the fact that increased operational activity at the Greek-Turkish land border led in 2013, on the one hand, to a renewed increase in irregular border crossings at the Greek-Turkish sea border (see Table 3) and on the other hand, to a dramatic increase in irregular border crossings at the Bulgarian-Turkish land border (+600% in Q3 2013 compared to Q3 2012; FRONTEX, 2014a). Since the Bulgarian authorities launched a special police operation at the border with Turkey in winter 2013²⁷, the migratory flows originally displaced by *Aspida* towards Bulgaria started being redirected again, this time towards the Greek-Turkish sea border, thereby causing a further increase in arrivals in the Eastern Aegean islands in summer 2014 (14,800 detections at sea by the end of July; UNHCR, 26 August 2014). According to the Greek Coast Guard, migrant detections in the Aegean Sea are foreseen to triple to more than 31,000 by the end of the year (Reuters, 2014). This 'forced displacement' of migration flows along the EU's South-Eastern borders is of particular concern because this is one of the main corridors used by Syrian and Iraqi refugees to flee war-torn countries and seek safety in the EU. The recent developments just described are likely to hamper their journeys, forcing them to risk their life in dangerous sea crossings, and to thwart their efforts to seek international protection.

Arrivals by sea across the Western Mediterranean (mainly the Gibraltar Strait and Andalusia), which had peaked in 2000-2001, have been gradually decreasing over the past ten years (see: De Bruycker et al., 2013, Tab A1.4, 18). According to the Spanish *Guardia Civil*, figures in 2013 were very similar to 2012, with a modest +7% increase in detections in the Gibraltar Strait and a remarkable +64% increase in detections at the borders (both land and sea) of Ceuta and Melilla (RTVE, 2013). In fact, according to FRONTEX, in 2013 nearly two-thirds of overall detections on the Western Mediterranean route were reported at the land borders of Ceuta and Melilla (FRONTEX, 2013)²⁸. This increase is probably part of a general shift from the maritime to the land border on the Western Mediterranean route. This may be related to: a) a more effective prevention of departures by Moroccan authorities, resulting from a tight cooperation on migration and border control between

these developments had such an impact that number of detected illegal border-crossings rapidly dropped from about 2,000 in the first week of August to below 10 per week in October 2012 (FRONTEX, 2013).

²⁷ In winter 2013, the Bulgarian authorities deployed 1,572 additional police officers and 141 off-road patrol vehicles, and started the construction of a 30 km fence along the border with Turkey. They also increased their cooperation with the Turkish authorities through an integrated technological system for border monitoring, which involves surveillance of the Turkish side of the border with cameras. Following the adoption of these measures, the number of people irregularly entering Bulgaria from Turkey dropped dramatically in Q1 2014. Almost 8,000 migrants entered Bulgaria irregularly over the Turkish border between September and November 2013, whilst only 302 migrants crossed that border between 1 January and 26 March 2014 (Amnesty International, 2014a).

²⁸ This trend was confirmed in the first quarter of 2014, when the EU land border with the highest increase in illegal border crossings, both compared to Q4 2013 and Q1 2013, was around the two Spanish enclaves (FRONTEX, 2014d).

Spain and Morocco; and b) a strengthened surveillance at sea implemented by Spanish authorities, also thanks to an enhanced use of technology. Nonetheless, episodes of mass arrivals by sea to Spain's mainland sometimes still occur, as it was the case in the first half of August 2014 (1,429 detections) and in particular on 11-12 August 2014, when 1,200 migrants arrived to the coast of Cadiz on board of nearly 100 'toy boats' in just two days (El País, 27 August 2014; Miami Herald, 14 August 2014).

The Western African route (Canary Islands) registered its peak of arrivals in 2006, with 31,678 detections, compared to 4,715 detections in 2005 (see: De Bruycker et al., 2013, Tab. A1.4, 18). Since 2009, the migration flow on this route has strongly decreased, to the point that in the period 2011-2014 arrivals to the Canary Islands have been less than few hundreds per year and are usually limited to small and isolated episodes²⁹. Again this was mainly due to improvements in terms of border surveillance technology and to an upgrade in cooperation on irregular migration control with Morocco, Mauritania and Senegal.

As concerns asylum applications in the EU, 2013 marked the highest level of applications since EU-level data collection³⁰ began in 2008, with 435,760 applicants³⁰ (EASO, 2014a). This figure is consistent with a trend of steady increases over the past 3 years. However, between 2012 and 2013 there has been the sharpest year-to-year change ever, with +30% more applicants (EASO, 2014a). Simultaneously, asylum seekers have increasingly concentrated in the top destination countries, in particular in Germany, which received 126,705 asylum claims (+64% compared to 2012), twice as many as France (66,265 applications) and Sweden (54,270). In 2013 Italy re-entered the top five receiving countries (27,930 applications) with a +61% increase in applications compared to the previous year, following the UK (29,875 applications) (EASO, 2014a). As concerns other Southern European MSs, absolute numbers are much lower: Greece recorded 8,225 applications (-14% compared to 2012 and in steady decrease); Spain recorded 4,485 applications (+75% compared to 2012); and Malta 2,245 applications (+8%) (see Table 4 and Figure 4).

The 2013 overall growth in numbers of asylum applicants was primarily due to the increasing number of Syrian refugees seeking international protection (50,495 applications, +109% compared to 2012) (EASO, 2014a). Starting from the third quarter of 2013, Syria became the main country of origin of asylum seekers in the EU (FRONTEX, 2014d). This trend continued in the first half of 2014 with approximately 6,000 applicants per month on average (EASO, 2014b). In the first quarter of 2014, applications for international protection decreased of -9%, in line with seasonal patterns. However, the absolute number of applications was higher than in previous years (+25% and +48% compared to Q1 2013 and Q1 2012 respectively) (EASO, 2014b).

²⁹ For instance, on 11 September 2014 a small wooden boat with 8 migrants arrived in Lanzarote (Canarias7, 11 September 2014).

³⁰ Eurostat figures on asylum applications differ slightly from EASO figures (Eurostat, 2014a; European Commission, 2014b).

4. Analysis of the implementation of asylum policies in the treatment of maritime mixed flows in Southern European Member States

Even though Southern European MSs share similar socio-economic conditions and face similar challenges in terms of mixed migration flows crossing the Mediterranean Sea, in practice the implementation of asylum policies in the treatment of mixed flows arriving by sea is highly differentiated. Such differences will be analysed throughout this section, focusing on four main stages of policy implementation: operations at sea; disembarkation, screening and first reception; second reception of asylum seekers; and adjudication. At each stage EU legislation leaves margins of discretion to MSs where national practices may differ, to a larger or smaller extent.

This analysis is primarily focused on the cases of Italy and Greece, while the case of Spain will be discussed more briefly in a separate final sub-section. The decision to focus on Italy and Greece is due to two main reasons. The first one is of a quantitative kind: as highlighted by Figure 1 and Figure 2, Italy is by large the main country in terms of arrivals by sea: since the second half of 2013, it has been confronted with a huge amount of daily arrivals which reached extraordinary levels in summer 2014. Greece ranks second, with a significant increase in the first half of 2014 (which may evolve further by the end of 2014) due to the factors explained in the previous section.

The second reason is of a qualitative kind: the increased migratory pressure forced the Italian government to adopt new urgent measures and concrete actions at all stages of policy implementation (operations at sea, disembarkation, screening, first and second reception, adjudication) in order to improve the treatment of mixed flows; this represents an interesting development at national level, with possible impact at European level as well. In the same period (i.e. since mid-2013) Greece has also started implementing substantial legislative reform and institutional changes to improve its asylum system as a whole, due to strong pressures coming from the EU, following the political and judicial acknowledgement of the systemic deficiencies of its asylum system amounting to human rights violations³¹ (Triandafyllidou, 2014). Greece is thus in the process of developing a more effective asylum policy and although the way to a well-functioning system is still long, the first improvements to some stages of policy implementation are producing positive effects, which may soon be tested by the current increase in arrivals across the Aegean Sea.

4.1. Operations at sea

4.1.1. The Italian case

Operations at sea in Italy involve a variety of authorities with different responsibilities: surveillance

³¹ In 2010 Greece submitted to the European Commission and Council of the EU an 'Action Plan on Asylum Reform and Migration Management'. The Action Plan, designed on the basis of international and European law and drawing upon other MSs' experience, proposed a law reform and institutional changes. As a result, in 2011 Law 3907/2011 established three new administrative authorities: the Asylum Service and the Appeal Authority responsible for registering, examining and deciding at first and second instance upon asylum applications; and the First Reception Service responsible for the treatment of newly arrived migrants, including provision of assistance and information, identification and screening. These new authorities started to operate on 7 June 2013. Previous to this change, the sole authority responsible for the whole asylum procedure was the Hellenic Police.

and migration control activities in territorial waters and the contiguous zone³² are coordinated by *Guardia di Finanza* (a police corps under the authority of the Ministry of Economy and Finance), while the same activities in international waters are coordinated by the Military Navy. In addition, the Coast Guard (*Comando Generale delle Capitanerie di Porto* – a corps of the Military Navy) is responsible for coordinating and performing search and rescue (SAR) operations within the Italian SAR areas³³.

Before analysing the current Italian policy and practice concerning operations at sea, it is worth mentioning also the main phases in the significant policy evolution that has occurred in this field over the last few years. The year 2009 is well-known as the ‘push-backs era’. Joint Italian-Libyan patrolling, interception and push-back operations started in May 2009, following the entry into force of the ‘Treaty of Friendship, Partnership and Cooperation between Italy and Libya’ containing provisions on bilateral cooperation in the fight against irregular immigration³⁴. Joint operations took place in international waters and were mostly carried out by the *Guardia di Finanza* and Coast Guard³⁵. When Italian authorities intercepted a migrant boat, they embarked the migrants on their ships and returned them directly to Libya, where migrants were disembarked and handed over to the Libyan authorities. No identification procedure was carried out; no information was provided to the migrants about their final destination; no access to asylum procedures or to an effective remedy was guaranteed. The Italian ‘push-back policy’ raised strong criticisms and concerns both at a national and international level, due to the alleged violations of the principle of *non-refoulement* as migrants were arbitrarily returned to a country (Libya) where they risked to suffer from unhuman or degrading treatment and from where they could be then repatriated to countries they had to flee (e.g. Eritrea, Somalia) (Paoletti, 2010; Paoletti and Pastore, 2010). Such allegations were totally confirmed by the 2012 ECtHR cornerstone judgement on the *Hirsi case*, where the Court recognised the unlawfulness of such operations³⁶.

By the time of the judgement, Italy had already suspended push-backs towards Libya, as a consequence on the one hand of a substantial decrease in arrivals in 2010³⁷, and on the other hand of the outburst of the 2011 civil war in Libya which led to the fall of the Gaddafi regime and left Italy

³² The contiguous zone extends for 24 nautical miles from the territorial sea baseline (1982 UN Convention on the Law of the Sea).

³³ For more information on the Italian Coast Guard’s duties in terms of SAR operations, see: <http://www.guardiacostiera.it/organizzazione/centraleoperativa.cfm> (in IT); <http://www.guardiacostiera.it/en/index.cfm> (in EN).

³⁴ The Friendship Treaty was signed on 31 August 2008 in Benghazi by Italian Prime Minister Silvio Berlusconi and Libyan leader Colonel Gaddafi. An Additional Protocol on cooperation in the fight against clandestine immigration was signed in Tripoli on 4 February 2009; on the same date an additional protocol was stipulated on the operative and technical measures to execute the agreement. For further information on the controversial nature of the bilateral cooperation between Italy and Libya, see: Paoletti, 2010; Paoletti and Pastore, 2010.

³⁵ In 2009, 834 migrants were intercepted in international waters and returned to the Libyan authorities in 9 operations carried out jointly by Italian and Libyan authorities (Camera dei deputati, 2011).

³⁶ ECtHR, *Hirsi Jamaa and others v Italy*, Application n° 27765/09, 23 February 2012. Italy was found responsible for violating Article 3 ECHR (prohibition of torture or inhuman or degrading treatment), Article 4 Protocol n°4 ECHR (prohibition of collective expulsion of aliens) and Article 13 ECHR (right to an effective remedy).

³⁷ While in 2008 arrivals by sea were 36,951, in 2009 and 2010 they decreased to their lowest levels: 9,573 and 4,406 arrivals respectively (Ministry of the Interior, 2014e, http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/28_2014/2014_04_16_grafici_sbarchi.pdf).

without a real interlocutor for its policies of cooperation on migration control.

As mentioned above, the 2011 Arab Spring produced a steep increase in arrivals to the Italian coasts. This time the reaction in terms of policy consisted in the implementation of operations primarily aimed at rescuing migrants at sea and conducting them to a safe Italian port. The interview-based fieldwork conducted by FIERI in 2011 in Lampedusa and Mazara del Vallo (Sicily) for the EU Fundamental Rights Agency (FRA)³⁸ revealed that authorities and staff involved in maritime operations had a strong rescue-oriented attitude, as opposed to a merely control-oriented operational behaviour. Even in cases when an event was not formally declared a SAR event, the priority of rescue and safety of migrants was systematically respected; it seems that in the hierarchy of priorities saving people's life was at the top, at that time maybe in daily operational activities more than in the public discourse. This attitude was upgraded in October 2013, with the launch of *Mare Nostrum* operation, whose main features are the intensification of surveillance at high seas and the performance of search and rescue activities also in international waters.

Mare Nostrum operation was launched by the Italian government as a 'military and humanitarian operation' in the Channel of Sicily between Italy and Libya in the aftermath of the tragic 3 October 2013 shipwreck off the Lampedusa coast, in order to halt the increasing number of migrants' deaths at sea. The operation, initiated on 18 October 2013, has two official aims: to guarantee the safeguard of migrants' life at sea and to arrest and prosecute smugglers. It involves personnel and naval and aerial equipment of the Military Navy, Air Force, Army, Coast Guard, *Carabinieri*, *Guardia di Finanza* and Military Red Cross, as well as personnel of the Ministry of the Interior, Department of Public Security – Directorate for Immigration and Border Police³⁹. However, the major contributions in terms of means and staff come from the Navy, which is also responsible for the coordination of the operation⁴⁰. The operation has high costs, amounting to more than 9 million euro per month, which are mainly covered by the Navy's ordinary budget.

In terms of results, *Mare Nostrum* was successful in preventing further shipwrecks and deaths at sea, as well as in identifying and arresting smugglers, as widely acknowledged at national, European and international level⁴¹. However, its costs, which are almost entirely covered by Italy (available EU funds are limited compared to operational costs) represent a contentious issue and have fuelled a fierce debate on European contribution (or lack thereof) to the operation. A further controversial

³⁸ The FRA study *Fundamental Rights at Europe's southern sea borders* (2013) is one of the most comprehensive, detailed and reliable comparative research on this topic. FIERI was directly involved in this study and was responsible for the Italian case study.

³⁹ The unit provided for by the Department of Public Security consists of: police officers from the *Questura's* Immigration Offices; police officers from the Scientific Police, police officers from a special 'Immigration Team' operative in Sicily and two cultural mediators. These staff are on board of the *Mare Nostrum* ships and rotate every 15 days (Asilo in Europa, 2014c). In addition, NGOs volunteers providing medical assistance are also on board of the *Mare Nostrum* ships (Marina Militare, 2014).

⁴⁰ The full list of the naval and aerial means deployed by the Navy in the *Mare Nostrum* operation is published on the Navy's web site: <http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx> (in EN); <http://www.marina.difesa.it/attivita/operativa/Pagine/MareNostrum.aspx> (in IT).

⁴¹ By the end of August, *Mare Nostrum* as a whole had rescued more than 115,420 migrants since its launch and had arrested 271 smugglers (Corriere della Sera, 27 August 2014). See also the updated data on *Mare Nostrum* reported by Caffio in *Affari Internazionali*, 16 September 2014: more than 130,000 migrants rescued, almost 300 smugglers arrested, 4 mother ships confiscated.

aspect of *Mare Nostrum* is related to its transparency. While in 2011 rather detailed information was available about how operations at sea were carried out by the *Guardia di Finanza* and Coast Guard⁴², the personnel's rules of conduct and the operational procedures of *Mare Nostrum* have never been disclosed. Although the Navy offers a constant update on the ongoing operations through its Twitter account⁴³, transparency on procedural elements of *Mare Nostrum* is crucial, in particular with regard to possible on-board identification and screening procedures, as it is not clear whether they take place and with what modalities⁴⁴.

It is clear, however, that *Mare Nostrum* aerial and naval means operate at high seas and are thus able to anticipate SAR activities; when a migrant boat is detected, migrants are all rescued and transhipped on military ships; they are provided medical assistance and are conducted to an Italian port, in Sicily or in other regions in Southern Italy, where they are disembarked⁴⁵. Compared to the previous phase, there are two remarkable differences. Firstly, in 2011, unless a SAR event was declared, an operation at sea started only once the migrant boat entered the contiguous zone (closer than 24 nautical miles from the Italian coast), under the coordination of the *Guardia di Finanza*; secondly, if the migrant boat was fit to continue its navigation, migrants were not transhipped on Italian vessels, rather their boat was escorted to the closest Italian port (mainly Lampedusa) and if needed members of the Italian crew took control of the migrant boat to lead it safely into the port⁴⁶. This does not seem to happen anymore.

As concerns possible human rights violations during operations at sea, generally speaking migrants do not report ill-treatments by the Italian authorities, except for a few isolated episodes. However, there is an ongoing debate about the right to claim asylum during interception and rescue operations. If on the one hand an asylum seeker should be granted this possibility, on the other hand it is also true that in the aftermath of a rescue operation a person is likely to be traumatised by the experience of a journey at sea and may not be in proper conditions to lodge an asylum application and attend an interview with authorities. NGOs maintain that this should be done following disembarkation and with the assistance of cultural mediators and trained staff. In the framework of

⁴² See for instance the FIERI study for the FRA project *Fundamental Rights at Europe's southern sea borders*: Coslovi and Ferraris, 2011.

⁴³ See: <https://twitter.com/ItalianNavy>.

⁴⁴ NGOs and civil society highlight also the lack of personnel from international organisations such as UNHCR or IOM on board of *Mare Nostrum* ships as a further element impacting on the transparency of on-board procedures. For a critical perspective on the secrecy of *Mare Nostrum* operational procedures, see: Melting Pot, 25 March 2014.

⁴⁵ When the operation started and as long as numbers were manageable, three Sicilian ports were used (Porto Empedocle, Pozzallo and Augusta); when arrivals began to rise, more Sicilian ports were involved (Palermo, Trapani, Catania and Messina); with the summer sharp increase in arrivals *Mare Nostrum* ships started to disembark migrants also in other Southern regions, i.e. Apulia (Taranto, Brindisi), Calabria (Crotone, Reggio Calabria), Campania (Salerno, Napoli). As concerns Lampedusa, since the closure of its First Reception Centre in December 2013 (following alleged human rights violations in the treatment of migrants by the managing entity) officially the island has no more been used to disembark migrants; however, over the summer in cases of emergency *Mare Nostrum* ships have sometimes temporarily disembarked migrants also in Lampedusa (Melting Pot, 22 July 2014).

⁴⁶ An ordinary operation of migration control could turn into a SAR event in cases when a migrant boat was unable to continue sailing, when it was overcrowded, when weather and sea conditions were bad or in any other situation of imminent danger. In such cases the coordination of the operation shifted from *Guardia di Finanza* to Coast Guard. In the case of a SAR event, migrants were transhipped to the Italian boats, while their own boats were towed to the coast (Coslovi and Ferraris, 2011).

Mare Nostrum, it is not clear whether and in which cases rescued migrants undergo identification procedures already on board of the Italian ships, if they have access to asylum procedures and if they are interviewed by Italian authorities to that purpose⁴⁷.

Private actors, such as commercial ships, oil tankers and fishing vessels, may be involved in rescue operations at sea. In the Italian case, fishermen in particular have always played a relevant role in SAR activities, especially in 2011, when they often took part in operations aimed at saving migrants at sea, in cooperation with the Italian authorities⁴⁸. The ongoing *Mare Nostrum* operation may still require the involvement of private actors if needed, but given the fact that its rescue operations usually occur at high seas, it is big merchant ships and oil tankers rather than smaller fishing vessels that participate in SAR activities under the coordination of the Italian Navy.

Over the summer, parallel to the unprecedented number of migrants intercepted and rescued in the Channel of Sicily, the Italian government tried to push the issue of the future of *Mare Nostrum* up in the European political agenda and to pressure the European Commission to take concrete actions in order to prove that Italy 'is not alone' in dealing with a problem that is deemed to be a European one. The Italian government called for a reinforcement of FRONTEX, so that the agency itself could play a more decisive role in the Central Mediterranean. Italy proposed the launch of 'Frontex Plus', a new operation coordinated by FRONTEX and involving different MSs, to substitute the Italian *Mare Nostrum* operation⁴⁹. Eventually, by the end of August, the Italian Ministry of the Interior partly succeeded in its efforts and agreed with the Commission on the launch of a new operation, renamed 'Joint Operation Triton', to start in November 2014⁵⁰. 'Triton' will be the result of the merging of two existing FRONTEX operations ('Hermes' and 'Aeneas') and it will involve different MSs who should contribute with personnel, means and resources. Some MSs (France, Germany and Spain in particular⁵¹) expressed their political will to support the operation, as long as Italy commits to rigorously apply Dublin and Eurodac Regulations, but they also pinpointed that a new FRONTEX operation should focus on improving border control⁵².

In the original Italian government's intentions, 'Triton' would have progressively replaced *Mare Nostrum*; however, according to what explained by Cecilia Malmström (former Commissioner for Home Affairs) to the European Parliament at the beginning of September, 'Triton' should be

⁴⁷ For a critical perspective on this issue, see: Vassallo Paleologo, 2013.

⁴⁸ For more details on the involvement of fishermen in SAR activities conducted by Italy in 2011, see: Coslovi and Ferraris, 2011.

⁴⁹ See: EurActiv, 7 July 2014; EurActiv, 9 July 2014; Ministry of the Interior, 23 July 2014.

⁵⁰ See: EurActiv, 28 August 2014; EU Observer, 28 August 2014; Euronews, 27 August 2014. Gil Arias Fernandez, Executive Director of FRONTEX, interviewed in September 2014 by the Italian news agency *Redattore Sociale*, stressed the fact that a precise date for the launch of 'JO Triton' cannot be decided in advance because it depends on the ongoing negotiations with Italy and on the other MSs' availability (*Redattore Sociale*, 23 September 2014).

⁵¹ On the position of France and Germany, see: La Repubblica, 2 September 2014; EU Observer, 2 September 2014.

⁵² See the letter sent by Spain, France, Germany, the UK and Poland to the European Commission on 9 September 2014 (text available at the following link: http://ec.europa.eu/carol/index-iframe.cfm?fuseaction=download&documentId=090166e599a58293&title=20140909_carta%20Malmstrom%20en%20ingle_s.pdf). On the MSs' hesitant attitude towards the launch of a new FRONTEX operation, see: Zincone, FIERI, 3 September 2014; *Avvenire*, 10 September 2014.

complementary rather than alternative to *Mare Nostrum*⁵³. The new FRONTEX operation will only operate in territorial waters and contiguous zone, while the specificity of *Mare Nostrum* consisted exactly in the performance of rescue activities in international waters. This alleged downgrading in terms of protection of migrants' lives has immediately raised concerns on the part of lawyers and NGOs⁵⁴. The Italian newspaper *Avvenire* published a confidential document sent by FRONTEX to the Italian government which contains the agency's detailed proposal of what 'Triton' should consist of⁵⁵. This document seems to confirm worries about the resurgence of a control-oriented approach, as it is repeatedly stated that FRONTEX mandate entails primarily border surveillance and does not comprise a duty to face humanitarian crisis or disasters in the Central Mediterranean: according to the document, such responsibility remains with the national and international authorities responsible. Moreover, means and resources allocated to 'Triton' by FRONTEX proposal (whose budget is still to be approved) do not seem to be sufficient to carry out an operation even remotely comparable to *Mare Nostrum*⁵⁶. The same newspaper revealed the Italian authorities' disappointment for what was perceived as an unexpected about-face by the EU (*Avvenire*, 5 September 2014). Questions remain open about the fate of rescue operations in the Central Mediterranean Sea, in a moment when deadly shipwrecks of enormous proportions continue to happen⁵⁷.

The Council Conclusions proposed by the Italian Presidency and agreed by the EU Justice and Home Affairs (JHA) Ministers at the JHA Council of 9-10 October 2014 confirm that the EU has decided to implement a downscaled maritime operation (both in terms of resources and means, and in terms of operational scope, jurisdiction and mandate) focused on border control rather than search and rescue activities⁵⁸. Despite that, the Italian Minister of the Interior Angelino Alfano announced on the same occasion that *Mare Nostrum* will cease to operate when 'JO Triton' will start, following a rapid 'phasing out'. Mr Alfano explained that Italy will not have 'a double defence line' and 'JO Triton' will actually substitute *Mare Nostrum*, since the latter was born as a temporary measure to be ended when the EU stepped in⁵⁹. NGOs and international organisations expressed serious concerns about the impact such decision is likely to have in terms of protection of migrants' right to life; NGOs also push for a more substantial role of the EU in the implementation of search and rescue operations in

⁵³ See: EU Observer, 3 September 2014; EU Observer, 9 September 2014.

⁵⁴ See: ASGI - *Associazione per gli Studi Giuridici sull'Immigrazione*, 29 August 2014; CIR, 29 August 2014.

⁵⁵ The document is available at the following link: <http://www.avvenire.it/Cronaca/Documents/JOU%20Concept%20on%20EPN-TRITON%20%282%29.PDF>.

⁵⁶ FRONTEX plans to use in 'JO Triton' 2 airplanes, 1 helicopter, 2 motor vessels, 2 patrol boats, for a total amount of 2.3 million euro per month. For *Mare Nostrum* the sole Navy is deploying 5 ships, 5 helicopters, 3 airplanes and 920 officers and the operation's cost amount to 9 million euro per month.

⁵⁷ See: UNHCR, 16 September 2014; EurActiv, 15 September 2014; EU Observer, 17 September 2014.

⁵⁸ See: Council of the European Union, Press Release 3336th Council Meeting Justice and Home Affairs, Luxembourg 9-10 October 2014, 14044/14, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/145033.pdf; Council of the European Union, Council conclusions on 'Taking action to better manage migratory flows', Justice and Home Affairs Council Meeting, Luxembourg, 10 October 2014, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/145053.pdf.

⁵⁹ See the Italian Ministry of the Interior Press Release of 9 October 2014 at the following link: http://www.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/2014_10_09_Alfano_GAI_Lussemburgo_operazione_Triton.html.

the Mediterranean⁶⁰.

4.1.2. The Greek case

Differently from Italy, both interception and rescue operations in Greece are under the primary responsibility of a unique authority, the Hellenic Coast Guard. Daily patrols take place aiming firstly at patrolling the maritime border, dealing with cross-border crimes, irregular border crossing and smuggling of goods and people. Therefore, as reported by the national expert consulted, Coast Guard activities are first and foremost focused on border surveillance. Interception operations may turn into rescue operations when the intercepted vessel is in distress, damaged, sinking or in danger of sinking, but it is unclear how many operations actually start as SAR. Thus, the hierarchy of goals pursued by the Coast Guard places migration control at the top, although search and rescue may become a priority when this is needed.

In responding to the national expert's questions⁶¹, the Coast Guard stressed that it *'has the bulk of its forces, personnel, facilities and equipment dedicated to the surveillance of maritime borders and defence of the supreme right of third country nationals to life'* and further highlighted that *'the right to life is not only a fundamental right but also a primary task for all members of the Hellenic Coast Guard'*. In fact, also data collected during the 2011 fieldwork carried out by ELIAMEP as part of the above-mentioned FRA study on the treatment of third country nationals (TCNs) at the EU's external borders confirm the Coast Guard's efforts not only to save lives but to do so in a timely and appropriate manner. In responding to the national expert, the Coast Guard also explained that, to this purpose, their operations are committed to the *'early identification of vessels attempting illegal entry to the Greek maritime border space'*, as this is considered to be also the best way to promptly identify vessels in distress or people at sea. However, the concept of 'early identification' is counter-balanced by a procedural framework which limits the operational area of the Coast Guard to Greek territorial waters.

When an incoming boat from Turkey is spotted, the Hellenic Coast Guard may inform the Turkish Coast Guard, but they do not try to prevent its entry into Greek waters: all they can do is to monitor the boat's progress. Once it enters Greek waters, the procedure adopted varies depending on the conditions of the boat and its passengers, as well as the weather and sea. If the vessel is damaged or the situation is dangerous for the migrants' safety, the latter are transhipped in the Greek patrol boat, while if the vessel's conditions are good and there is no passenger in critical situation or if transhipping is hampered by weather conditions, the migrant vessel is roped and towed to the nearest port. It should be noted that the majority of Coast Guard patrol boats are of small or medium size and have limited capacity to carry passengers, therefore if the intercepted vessel carries a lot of

⁶⁰ Amnesty International and Human Rights Watch, 9 October 2014; ECRE, 10 October 2014; Redattore Sociale, 16 October 2014; ECRE, 17 October 2014; UNHCR, 17 October 2014.

⁶¹ The national expert consulted forwarded some of the questions posed by the authors to the Hellenic Coast Guard, which responded in writing on 4 August 2014.

migrants it is unlikely that they will be transferred on board of the Greek boat⁶². If migrants are embarked on the Coast Guard patrol boat, a standard procedure requires the crew to conduct individual searches for travel or identity documents, illegal substances and weapons. Migrants are provided with water (and sometimes food and clothes) while health assistance is provided only after disembarkation (Maroukis and Dimitriadi, 2011).

The 2011 interview-based fieldwork conducted by ELIAMEP revealed that since 2009 most interception operations turn automatically into rescue operations as soon as a migrant vessel is approached. This is due to the fact that migrants, probably instructed by smugglers, tend to destroy their own boat when the patrol boat comes closer, to make sure that they will be transhipped on board of the Coast Guard vessel and disembarked in Greece. Migrants consider this as a way to avoid being pushed back to Turkey, but of course it exposes them to the serious risk of drowning at sea. With regards to access to the territory and migrants' safety, the situation has been worsening with the 2014 resurgence of arrivals by sea. The UNHCR expressed concerns about alleged informal push-backs carried out by the Greek Coast Guard, consisting in towing migrant boats back into Turkish territorial waters even though they had already entered Greek waters. The UNHCR collected testimonies from asylum seekers reporting more than 100 episodes of such push-backs to Turkey for the period August 2013-May 2014, as reported by the national expert and *The Economist* (16 August 2014, 17-18). These informal forced returns, performed outside the legal framework of the existing readmission agreement between the two countries, if confirmed, would amount to a clear violation of international human rights law and EU law. However, Greek authorities have always denied that such push-backs take place. The 2014 reorientation of mixed flows to the sea border has also been marked by an increase in shipwrecks and incidents where the alleged misconduct of the Coast Guard has been invoked, e.g. the incident which occurred in January off the island of Farmakonisi⁶³. The increase in shipwrecks is partly related to the fact that smugglers tend to use smaller (and more risky) boats so to reduce the chances of being picked up on the radar of a Greek patrol boat (*The Economist*, 16 August 2014, 17).

Besides the Coast Guard, other national agencies that may be involved in interception and rescue operations are the Hellenic Navy and Air force. In recent years, the Air force has increasingly been contributing to SAR operations with its aerial means. Moreover, during the first weeks of August 2014, Greek press reported that the Navy was participating in border patrols and rescue operations, assisting the Coast Guard with two gunboats and one frigate. Also private and commercial vessels may assist the Greek authorities in SAR operations, when needed. Despite the potential involvement of a variety of actors, the leadership and overall responsibility in all operations at sea remains with the Coast Guard. Finally, a relevant role in maritime operations is also played by FRONTEX. The European agency has a long-standing presence in Greece, which dates back to the 2006 pilot

⁶² Alternatively, in case the Coast Guard intercept a vessel carrying a large number of migrants, they may ask for the assistance of other boats to embark passengers.

⁶³ In January 2014, 12 people died near the island of Farmakonisi when a boat carrying 28 migrants overturned while being towed by a Coast Guard vessel. Survivors accused the Coast Guard of having towed their boat at high speed with bad weather conditions towards Turkish waters with the intention to push them back instead of rescue them (BBC News, 22 January 2014).

operation 'Poseidon Sea'. This operation was initially meant to be temporary, however, due to the increased migratory pressure on the Greek-Turkish sea border, starting from 2008 it became permanent. Each year, experts and operational tools provided by different MSs participate in operations targeting specific areas of the Greek border⁶⁴. The Coast Guard seems to have responded positively to the presence of FRONTEX and cooperation is considered to be fruitful. In terms of costs, in summer 2014 the Coast Guard announced that the total cost for maritime operations at the Greek border in 2013 was 63 million euros, out of which only 2.6 million euros were co-financed by FRONTEX (The Economist, 16 August 2014, 9).

4.1.3. Comparative considerations

When faced with mixed migration flows, maritime operations may simultaneously pursue different objectives, including border surveillance, migration control, search and rescue, protection of human rights, fighting against human smuggling. The major difference between the current Italian and Greek policies concerning operations at sea consists in the different hierarchy of goals pursued. While the Italian *Mare Nostrum* operation is aimed at proactively avoiding loss of lives at sea by means of the intensification and geographical expansion of patrolling and rescue activities to cover international waters, Greek operations are primarily border control and interception operations that may turn to rescue operations due to contingent factors. However, this discrepancy in attitude and goals is most probably due not only to a divergent political will, but to a variety of factors including: quantitative and qualitative features of migration flows⁶⁵; smuggling models⁶⁶; operational procedures adopted, authorities involved, available means and equipment⁶⁷.

4.2. Disembarkation, screening and first reception

4.2.1. The Italian case

As mentioned under Section 4.1.1, within the framework of *Mare Nostrum*, migrants rescued at sea are no more systematically disembarked in the island of Lampedusa, as it was the case until the end of 2013. The big military ships of the Italian Navy, carrying more than 1,000 migrants at a time,

⁶⁴ As repeatedly stressed by FRONTEX, its role is complementary to that of the Hellenic Coast Guard: it acts in an advisory capacity, assisting with procurement, providing extensive training and participating in operations, but without any operational responsibility. The Coast Guard remains the sole authority responsible for maritime operations.

⁶⁵ As noticed, the Central Mediterranean route saw a huge increase in arrivals in 2014 (see Table 1 and Figure 1) reaching numbers which are not comparable to those registered on the Aegean Sea; however both flows include a high rate of people in need of protection who should be granted access to the territory.

⁶⁶ Libyan smugglers use different kinds of vessels, usually of medium-large size which may carry hundreds of passengers and are steered by persons who have been instructed and paid to do so; Egyptian smugglers use a system based on a mother ship at high seas and smaller boats often steered by unexperienced drivers to reach Italian or Maltese waters; Turkish smugglers use small boats (often wooden or inflatable rowing boats) with which passengers have to reach on their own the Greek coast following directions given by the smugglers.

⁶⁷ *Mare Nostrum* operates in international waters while Greek operations take place in territorial waters only. *Mare Nostrum* is coordinated by the Navy, whose means and resources are bigger than the Coast Guard and *Guardia di Finanza* ones and also benefit from contributions from different corps; conversely, in Greece operations are coordinated by the Coast Guard, which has limited means at its disposal (e.g. small patrol boats) although the Air force and Navy involvement has been recently increasing.

disembark their passengers in a port in Sicily or in another region in Southern Italy (see footnote 45). The decision on the port is taken on a case-by-case basis by the Ministry of the Interior upon consultation and with the consent of the competent *Prefettura*⁶⁸ and local authorities.

Upon disembarkation, given the high number of migrants, medical staff carry out only a quick check focusing on serious injuries and infectious diseases⁶⁹. Emergency health care is guaranteed, as well as specific assistance targeted to children and pregnant women. In case this was not done on board of the Navy ships, migrants are asked basic personal information, i.e. their name, age and nationality⁷⁰. At that point, migrants are relocated as soon as possible in different facilities across the country according to the availability of places. This relocation is usually immediate (migrants may leave by bus -sometimes by plane- towards another Italian region immediately after disembarkation) or may occur in one or two days; in the latter case migrants usually stay in buildings in the port area which are currently used for this specific purpose. A rapid relocation of rescued migrants is crucial in order to facilitate further disembarkations of newly arrived migrants, since *Mare Nostrum* rescue operations occur on a daily basis.

When sorted, a migrant may be placed:

- a) in one of the 14 governmental reception centres (including First Aid and Reception Centres – CPSA as an Italian acronym, Reception Centres – CDA, and Reception Centres for Asylum Seekers - CARA);
- b) in one of the numerous smaller facilities belonging to the SPRAR (System for the Protection of Asylum Seekers and Refugees) whose accommodation capacity has been recently extended; or
- c) in one of the ‘temporary facilities’ activated at the beginning of 2014 following a decision by the Ministry of the Interior (*Circular n° 104 of 8 January 2014* and *Circular n° 2204 of 19 March 2014*⁷¹): due to the overcrowding of existing facilities, the Ministry requested local *Prefetture* to identify temporary reception facilities for rescued migrants and sign agreements with local entities and NGOs for their management⁷².

In practice, the majority of newly arrived migrants have so far been relocated either to governmental centres or to temporary facilities, because the SPRAR system should normally be dedicated to the second reception of asylum seekers who are waiting for a final decision on their application. Nonetheless, efforts are made in order to place newly arrived unaccompanied minors, pregnant women, families and other vulnerable people in SPRAR facilities, subject to availability of places.

As concerns the procedures carried out in this phase, it must be noted that screening is a key

⁶⁸ The *Prefettura* is the local branch of the Ministry of the Interior and it represents the national government at a local level. In each of the 110 Italian provinces there is a *Prefettura*. *Prefettura* offices manage issues such as public order and security, immigration, civil rights, voting matters.

⁶⁹ However, as mentioned under Section 4.1.1, basic medical assistance is also offered on board of the Navy ships.

⁷⁰ As mentioned under Section 4.1.1, the procedures that are carried out on board of *Mare Nostrum* vessels are not disclosed: it is unclear whether rescued migrants are asked basic information and/or interviewed and/or asked about their will to claim asylum and/or identified through fingerprints and photos already on board of the Navy ships.

⁷¹ The texts of both Ministerial Circulars are available at the following links: http://www.meltingpot.org/IMG/pdf/circolare_gennaio_2014.pdf; http://www.meltingpot.org/IMG/pdf/1_000014_sbarchi_itcircolari.pdf.

⁷² A more detailed description of these three types of reception facilities will follow under section 4.3.1.

element in the treatment of mixed migration flows. Identification procedures represent the moment when migrants communicate officially to the authorities (i.e. the Immigration Office of the competent *Questura*⁷³) their personal identity (name, age, nationality), they are photographed and fingerprinted. In addition, an identification interview is held, where migrants are asked information about their journey, their country of origin and transit, their intended country of destination, the reasons why they came to Italy and whether they intend to claim asylum. At this stage of the process authorities are supposed to identify asylum seekers and other categories of vulnerable people, such as unaccompanied minors, victims of trafficking, disabled people, who should be referred to appropriate protection mechanisms.

In the period 2011-2013, screening and identification procedures took place either in the CPSA of Lampedusa or in the one of the governmental centres (CARA or CDA) where migrants were relocated immediately after disembarkation. Since the launch of *Mare Nostrum*, the situation is unclear. As mentioned in Section 4.1.1, information about procedures that are carried out in the Navy ships is confidential, so it is unclear whether screening and identification already start on board or not⁷⁴. If not, it is evident that such procedures do not take place upon disembarkation at the port, because migrants are very rapidly sorted and transferred to other facilities. Allegedly, in many cases it is here, i.e. in reception facilities, that identification procedures take place; the authority responsible is the Immigration Office of the local *Questura* and the procedure is usually carried out a few days after the arrival of a group of migrants in the facility. This delayed identification of rescued migrants, although never confirmed by the Ministry of the Interior, poses a number of problems and has been fuelling a harsh debate at European level.

Some asylum seekers, mainly Syrians, Eritreans and Somalis, are reluctant to be fingerprinted because they plan to move on to another EU country and claim asylum there. Therefore, in order to avoid being returned to Italy due to Dublin Regulation, they refuse or try to avoid being fingerprinted and wait for the first opportunity to abscond⁷⁵. Indeed, the asylum applications registered in Italy in the period January-August 2014 are about 36,000, a strikingly low number compared to the about 108,000 arrivals by sea registered in the same period (AIDA, 2014c). As noticed, not all rescued migrants are transferred to the governmental centres, which should represent the structures designated for first reception and identification and which are detention-like facilities, but many of them are located in temporary facilities, from where it is fairly easy to get away⁷⁶. Alternatively,

⁷³ *Questura* is the Police office competent for the territory of the province where it is located. It is under the authority of the Ministry of the Interior.

⁷⁴ As reported by the independent blog *Asilo in Europa*, it seems that some migrants undergo identification procedures (including photograph and fingerprints) on board of *Mare Nostrum* ships, while other migrants do not. By the end of 2013, the Police published statistics saying that 'from 18 October to 23 December 2,330 migrants were rescued, 1,246 of which were identified'. These data reveal that even in the least intense period of *Mare Nostrum* operation, the rate of people who were not identified on board amounted to more than 40% of the total. It is unclear according to what criteria one migrant is immediately identified, while another one is not. According to the blog, and on the basis of what reported by operators working in reception facilities, the authorities tend to avoid identifying people whose intention is to continue their journey towards another EU country and claim asylum there. (*Asilo in Europa*, 2014c).

⁷⁵ This phenomenon was already registered in summer 2013 both in Lampedusa and in other CARA across the country, by the *Praesidium* project partner organisations (see footnote 81) and by CIR operators working in CARA (AIDA, 2014a).

⁷⁶ It should be noted that Italian law does not foresee a general limit to the personal freedom of asylum seekers (unless

asylum seekers may undergo identification procedures and sometimes also formally register their asylum application in Italy, but leave the country before their case is examined, as reported by the Italian Refugee Council (CIR) (AIDA, 2014a). From this point of view, the case of Syrian asylum seekers is particularly concerning: in 2013 the total number of Syrians who arrived in Italy was 11,307⁷⁷, while only 695 among them (6%) lodged an asylum application (UNHCR, 2014a, 39); in addition CIR affirms that the number of those among them who actually attended the personal interview with the determining authorities is even lower.

These flaws in the identification phase, which have never been explicitly recognised by the Italian Ministry of the Interior, have been nonetheless pointed out by a number of Continental and Northern MSs (mainly Germany, Austria, Sweden and France) which accused Italy of intentionally avoiding fingerprinting a large part of asylum seekers who enter the EU crossing the Italian maritime border but intend to move to other MSs in order to claim asylum⁷⁸. According to these allegations, Italy would be somehow ‘boycotting’ the CEAS, and in particular the Dublin principle, as part of a ‘bargaining strategy’ pursued in order to obtain from the EU and its MSs an upgrade in their involvement in rescue operations at sea, in exchange for a stricter implementation of Dublin Regulation⁷⁹. The Italian government responds to these allegations explaining that flaws in identification and fingerprinting procedures may occur due to the huge number of arrivals, which Italy is striving to manage properly, but which does not always allow for the immediate identification of migrants at the border⁸⁰.

The German *Land* of Bavaria has recently radicalised the issue, threatening the temporary suspension of the Schengen Convention and the reactivation of controls at the internal border between Austria and Bavaria, which according to the Bavarian authorities would be extensively used by often unidentified asylum seekers coming from Italy to irregularly enter Germany⁸¹. Although such a decision does not compete to Bavaria but to the German federal government and would require the authorisation of the European Commission and Council, these statements represent a new attack to the Schengen principle, after the 2011 French decision to temporarily reactivate controls at the border with Italy⁸².

they apply when they are inside CIE, centres for the identification and expulsion of irregular migrants). However, if they want to leave (temporarily) the reception facility where they are hosted, they need prior authorisation from the managing entity.

⁷⁷ Figures reported by Filippo Bubbico, Deputy Minister of the Interior, to the Parliamentary Assembly of the Council of Europe on 5 February 2014 (see: http://www.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/2098_500_viceministro_bubbico/2014_02_05_bubbico_audizione_ue.html).

⁷⁸ See: *Il Mattino*, 3 July 2014.

⁷⁹ See: *Linkiesta*, 26 June 2014.

⁸⁰ NGOs also highlight that by law a person cannot be forced to give their fingerprints, unless with the authorisation of a judge and it is impossible for a judge to issue enough decisions to cover the large number of daily arrivals (*L’Huffington Post*, 23 August 2014).

⁸¹ See: *Rai News*, 22 August 2014; *EU Observer*, 9 Sept 2014; *EurActiv*, 17 Sept 2014.

⁸² As reported by some Italian newspapers, at the end of September 2014 the Ministry of the Interior issued a circular ordering all *Questure* to enhance the identification procedures and to fingerprint all newly arrived migrants without exceptions, including those asylum seekers who are reluctant and/or express the intention to continue their journey and claim asylum in other EU countries. This ministerial circular seems to admit that in the previous period, due to the high

As concerns screening of rescued migrants, it seems that upon disembarkation this is not a priority. In fact, basically all rescued migrants are immediately located in reception facilities before a preliminary assessment of their needs and motivations is carried out. Therefore, economic migrants have access to reception facilities as much as asylum seekers, and at that point they may also decide to lodge an asylum application, using the latter as an opportunity to receive a temporary residence permit, avoid an expulsion order and have access to accommodation⁸³. At the same time, the opposite is also reported to happen. Egyptian and Tunisian migrants, once disembarked, are usually not allowed access to the asylum procedure: they are issued a repatriation order and are either immediately returned to their countries of origin (on the basis of existing bilateral readmission agreements) or end up in pre-removal detention inside CIE (Centres for Identification and Expulsion) waiting for their forced return. However, this unlawful practice (access to asylum procedures cannot be denied on the basis of a person's nationality) is not to be related to the '*Mare Nostrum* era' because it existed also in previous years (especially in 2011) and has been repeatedly denounced by the *Praesidium* project partner organisations⁸⁴, UNHCR in particular (UNHCR, 2013; CIR, 2013).

A further critical element is represented by a structural feature of the procedure: the identification and preliminary registration of a person's intention to claim asylum does not coincide with the formal registration of the international protection application, which consists of filling in a form called *Modello C/3* (including all relevant information about the applicant's personal history) and submitting it to the local *Questura's* Immigration Office. Italian law does not establish a timeframe for the formal registration: in practice, due to high numbers of asylum seekers and shortage of police staff, it may take place weeks (sometimes even months) after the applicant first expressed their intention to claim asylum (AIDA, 2014a).

4.2.2. The Greek case

As mentioned under Section 4.1.2, upon transportation to the nearest port, disembarkation of rescued migrants takes place. The Hellenic Coast Guard responsibility in this phase is limited to the registration of migrants personal information (name, age, nationality). The Coast Guard is also responsible for ensuring that migrants undergo health checks and are provided medical assistance upon disembarkation. The procedure may vary depending on the place of arrival: in the islands where First Reception Centres or First Reception Mobile Units are present, migrants are immediately

numbers of arrivals, Italian authorities had to face 'objective difficulties' in carrying out properly the identification procedures; but due to the increasing complaints of some MSs, the Ministry now require all *Questura* to improve this stage of the procedure. This recent circular seems to mark a significant change in the Italian policy and practice concerning the identification and fingerprinting of rescued migrants (Avvenire, 27 September 2014; Avvenire, 29 September 2014; La Repubblica Milano, 29 September 2014; Stranieri in Italia, 30 September 2014). A part of the circular's text is available at the following link: http://www.meltingpot.org/IMG/pdf/circolare_impronte.pdf.

⁸³ In this regard, NGOs highlight the pitfalls of a mechanism that distorts the real meaning and function of asylum (Asilo in Europa, 2014b).

⁸⁴ The *Praesidium* project operates since 2006 mainly in Lampedusa, Sicily (but also in other points of arrival in Italy) involving international organisations (UNHCR and IOM) and NGOs (Italian Red Cross and Save the Children) in the provision of assistance and information to migrants during the phase of disembarkation, screening and first reception. The *Praesidium* project plays also a crucial function in identifying and referring vulnerable persons and monitoring the compliance of procedures and reception conditions with international standards.

transferred to first reception facilities for health checks, identification and screening, whilst if disembarkation takes place in remote islands with no facilities, a larger Coast Guard vessel is brought to transport migrants to the closest equipped island; during this process a Mobile Unit is usually deployed.

One of the main problems Greece had faced in the period 2010-2012 was the sheer absence of any kind of first reception system⁸⁵. Law 3907/2011 introduced the 'First Reception Service', consisting of the First Reception Headquarters in Athens, First Reception Centres in border areas and First Reception Mobile Units to be deployed in remote areas or in cases of sudden inflows of migrants. However, the actual opening of Regional First Reception Centres was significantly delayed, due to the political instability of the country at that time and the serious economic crisis that resulted in a complete overhaul of the government spending. The first Regional Reception Centre opened in Fylakio, in the Evros region (Greek-Turkish land border) in March 2013. In addition, two Mobile Units have been operating in the islands of Lesbos, Samos and Chios since July 2013 covering arrivals at the Eastern Aegean islands. As reported by the national expert consulted, the second Regional Reception Centre is expected to open in Lesbos at the beginning of 2015.

The First Reception Service is in charge of providing for migrants' basic needs (water, food and clothes), medical assistance, psychological support, interpretation, information on their rights and obligations as well as on asylum procedures. All these services are offered in cooperation with international and European organisations (UNHCR, EASO, IOM – International Organisation for Migration) and Greek NGOs⁸⁶. The First Reception Service is also responsible for screening procedures, which are nonetheless conducted by trained officers of the Hellenic Police or Hellenic Coast Guard, who are either permanently contracted by the Service or temporarily provided by local Police or Coast Guard offices⁸⁷. First Reception Centres host rescued migrants for a period of 15 to 24 days. Since by now there is only one Regional Reception Centre, at other entry points, e.g. at the Greek-Turkish maritime border, intercepted migrants are held in detention facilities under the responsibility of the Hellenic Police until they are screened. According to information provided by the Hellenic Police to the national expert in January 2014, there are 3 screening centres at the maritime borders: in Samos (285 places), in Chios (120 places) and in Lesbos (90 places) which have been operational since April/May 2013. The two Mobile Units operate in these centres.

Upon their arrival all migrants are detained. While in detention they undergo an identification and registration procedure which includes being fingerprinted and photographed. In addition, they go through a preliminary interview with Coast Guard officers under the supervision of a Public

⁸⁵ Rescued migrants were recorded by the Coast Guard and, following a hasty screening by the Police, they were either sent to Athens to apply for asylum or detained for a period lasting from a few days to some weeks and then released with an expulsion order. In practice almost everyone ended up in Athens waiting to continue their journey onwards.

⁸⁶ The First Reception Service has subcontracted to NGOs many of the services it offers. For instance, the NGO *Medical Intervention* provides for health care and psychological support, while the NGO *Metadrasis* is responsible for the interpretation service. The national expert consulted highlighted the high dependence of the Service on its collaboration with NGOs as a limitation and an obstacle to potential development of the Service.

⁸⁷ In the period 2010-2012, screening in Greece was carried out by FRONTEX personnel assisted by Greek officers; this was an intermediate step until the latter received specific training as screeners.

Prosecutor and at the presence of an interpreter. According to the national expert, this interview is mainly aimed at gathering intelligence information about smuggling and trafficking networks. Testimonies from migrants are compiled together with a report on the rescue operation and the file is submitted to the Public Prosecutor, the Police and other relevant authorities.

A screening interview follows, aimed at gathering more personal information on migrants' individual cases, assessing their vulnerability and personal conditions, and on the basis of these elements referring and transferring them to the appropriate service, authority or facility. First of all, this interview aims at identifying vulnerable people, such as unaccompanied minors, single parent families, victims of trafficking, victims of torture, disabled people. These vulnerable categories generally stay for a short term in first reception facilities, as they are soon referred either to the appropriate state service (e.g. the National Centre for Social Solidarity -NCSS- for unaccompanied minors) or to NGOs (e.g. in case of disabled people) or hospitals (e.g. in cases of psychophysical distress). Secondly, screening is aimed at identifying asylum seekers: migrants who express their intention to apply for international protection during their interview are referred to the 'Asylum Service', the new authority responsible for processing and deciding upon asylum applications which was established by Law 3907/2011 and is operational since mid-2013. The Asylum Service currently operates in nine locations across Greece; three of them are at the Greek-Turkish maritime border: a Regional Asylum Office (RAO) in Lesbos, an Asylum Unit in Chios and another RAO in Rhodes. It is in one of these locations that the asylum seeker will eventually have their application formally registered. Migrants who are not considered neither vulnerable people nor asylum seekers, are transferred to Police custody, issued an expulsion order and brought to pre-removal detention facilities, where they will stay until their repatriation.

According to the national expert consulted, as well as the *EASO Annual Report 2013*, the new First Reception Service, despite its small staff and limited resources, has succeeded in improving the treatment of mixed migration flows in Greece. In particular, first reception now allows for early access to health care and psychological support as well as adequate information on rights, obligations and procedures, in a comprehensible language. Rescued migrants now have the chance to meet UNHCR and IOM personnel and be assisted by NGOs and interpreters. First Reception Service staff and Police officers involved in screening procedures have undergone rigorous training in order to carry out interviews in the most accurate and sensitive way possible and as a result screening and registration of migrants improved significantly. None of these services was provided in the period 2010-2012: at that time, insufficient coverage of basic needs and lack of adequate interpretation, medical assistance and legal aid throughout the first reception phase had undermined extensively the identification and referral of persons at risk.

4.2.3. Comparative considerations

A common flaw characterising both the Italian and Greek first reception phase, is the existing gap between identification procedures and formal registration of an international protection application:

in both countries there is a significant delay between the moment when a person first manifests his/her intention to claim asylum and the moment when such intention is formalised with registration in the national asylum system. This delay may cause a number of difficulties to asylum seekers due to the fact that their legal status remains undefined until the formal registration occurs.

A further critical element common to both countries is related to the implementation of screening procedures. Both in Italy and Greece, despite efforts made towards a prompt and effective identification of vulnerable categories such as unaccompanied minors and victims of trafficking, in practice well-functioning identification and referral mechanisms have not been accomplished yet. In the Italian case, this is mainly due to operational difficulties in dealing with large numbers of migrants arriving in a very concentrated timeframe, leading to a situation where persons at risk may slip through the cracks (e.g. minors may end up in CARA and spend weeks there before being transferred to a SPRAR facility). In the Greek case, while screening procedures have been considerably improved, major deficiencies still exist in terms of referral, second reception and overall monitoring and assistance to unaccompanied minors and victims of trafficking.

However, at the present moment screening of mixed migration flows *per se* seems to be working relatively well in Greece, for some respects better than in Italy. In Greece a clear distinction is rapidly made between on the one hand vulnerable people and asylum seekers who are referred to the appropriate state services, and on the other hand economic migrants who are not legally entitled to stay in the country and are referred to a repatriation procedure. In Italy, at the present moment, due to quantitative and qualitative features of current migration flows and deriving operational hurdles, such a neat separation is more difficult to pursue and is in any case postponed to the relocation of all rescued migrants in first reception facilities.

4.3. Second reception: reception conditions while pending application

4.3.1. The Italian case

In Italy there is no uniform reception system and no homogeneous legislation on reception conditions. By law, asylum seekers may present an accommodation request when they file their asylum application; this request is transmitted by the *Questura* to the *Prefettura*, which is in charge of finding a place in a reception facility. *Prefettura* should first of all consult the SPRAR (System for the Protection of Asylum Seekers and Refugees, whose main features are described later in this paragraph) and in case there are no places available in the SPRAR system, asylum seekers may be referred to CARA.

However, in practice, upon arrival most asylum seekers are placed in CARA (Reception Centres for Asylum Seekers) or, depending on availability, in CPSA (First Aid and Reception Centres) or CDA (Reception Centres) in view of a subsequent transfer to a SPRAR facility or a CARA. In Italy there are 4 CPSA and 10 among CDA and CARA. These governmental first reception centres are generally big buildings where high numbers of migrants and asylum seekers are accommodated; they are located

in remote areas and are often overcrowded. They are managed by different entities (social cooperatives, private companies, etc.) through *ad hoc* agreements valid for a renewable 3-year period. The quality of services offered vary from one centre to another mainly depending on the expertise, skills and attitude of the running entity; in general, governmental centres offer more basic services compared to those offered in SPRAR facilities. Their total accommodation capacity is of approximately 8,500 places⁸⁸.

The SPRAR (System for the Protection of Asylum Seekers and Refugees) was established in 2002 by the so-called *Bossi-Fini Law* (Law 189/2002) as a publicly funded network of small second reception projects managed by local authorities under the coordination of ANCI (National Association of Italian Municipalities) together with NGOs, which offer accommodation, assistance and integration services to asylum seekers waiting for a final decision on their application, as well as to refugees and other beneficiaries of international protection. The SPRAR projects ensure information, support and guidance aimed at fostering the socio-economic integration of asylum seekers and refugees in the local context⁸⁹. The SPRAR system is characterised by a highly decentralised multi-level and multi-stakeholder organisational model coordinated at national level by a Central Service under the authority of the Ministry of the Interior.

By law, asylum seekers should remain in CARA from 20 to 35 days and then in SPRAR for 6 months. In practice, their stay in these facilities may last several months, on average about 8 to 10 months in CARA and 6 to 12 months in SPRAR (AIDA, 2014a). This is due to the fact that the asylum procedure often lasts more than 6 months and asylum seekers have the right to stay in reception facilities until a final decision on their case is taken (including the appeal phase). Asylum seekers may be transferred from CARA to SPRAR facilities depending on the availability of places and on how their personal condition and vulnerability is assessed. Vulnerable categories are granted priority.

In fact, there are many factors which jeopardise the actual possibility for asylum seekers to access adequate reception conditions in Italy. In particular, the combination of on the one hand a reduced availability of places compared to the current needs and on the other hand the increase in arrivals by boat of large numbers of asylum seekers is taking the national asylum system to the limit. A first response to the problem is the enlargement of the SPRAR system, decided by the Ministry of the Interior with two decrees in July and September 2013. The SPRAR total accommodation capacity was initially extended as an emergency measure from 3,000 to about 9,500 places for the year 2013, and then formally extended for the period 2014-2016 up to 13,000 financed places, plus further 6,500 which may become operational upon request by the Ministry of the Interior if needed⁹⁰. The

⁸⁸ As mentioned above the CPSA of Lampedusa is currently closed. As concerns CARA and CDA, although their accommodation capacity on the paper is of 7,866 places, in March 2014 they were hosting 9,600 asylum seekers. Overcrowding has been an issue in particular in the CARA of Bari, Catania and Crotona. See the Ministry of the Interior web page listing the three kinds of reception centres (<http://www.interno.gov.it/mininterno/export/sites/default/it/temi/immigrazione/sottotema006.html>) and a map locating them (http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/28_2014/2014_03_24_CARTINA_CDA-CARA.pdf).

⁸⁹ SPRAR projects offer socio-psychological support, legal counselling, cultural mediation services, language courses, recreational/sport/cultural activities, guidance on services available at the local level, job placement, etc.

⁹⁰ On 17 September 2013, the Ministry of the Interior issued a decree that foresaw an increase in the accommodation

enlargement of the SPRAR system to potentially almost 20,000 places is a remarkable step forward in the right direction; however, in the current framework this measure does not seem to be sufficient.

In January and March 2014, the Ministry of the Interior issued the two above-mentioned ministerial circulars (see footnote 68) to order the urgent activation of ‘temporary reception facilities’ across the country. This decision was taken due to the fact that the 2014 extension of the SPRAR system, although validated by the end of January, received the necessary funding and became operational only in July. Meanwhile, since the existing facilities were overfilled and especially the situation in some CARA had become critical due to overcrowding, the Ministry requested local *Prefetture* to identify temporary reception facilities (preferably not hotels) and sign agreements with local entities and NGOs to run them. The accommodation capacity of these ‘temporary facilities’ in April 2014 was of approximately 9,000 places.

The UNHCR, CIR and other NGOs have repeatedly expressed concerns about the Italian authorities’ propensity to adopt an ‘emergency approach’ when dealing with immigration and asylum issues. In 2013-2014, just as in 2011 with the so-called ‘North Africa Emergency’, governments of different political orientations have resorted to temporary but rather short-sighted and overall expensive solutions, based on the *ad hoc* and time-limited activation of reception facilities (which could range from abandoned schools and parishes to hotels and campings). International organisations and NGOs called for longer-term solutions, which should consider mixed migration flows and the increase in asylum seekers as part of structural global dynamics rather than as a periodic humanitarian emergency for Italy. These requests were actually endorsed also by institutional actors: since mid-2012 the ‘National Platform for the Coordination of Reception Policies’⁹¹ has been working at a proposal for a comprehensive plan of reform aimed at establishing a more stable and harmonised reception system primarily focused on the enlargement of the SPRAR network towards a progressive dismissal of CARA.

On 10 July 2014 the national government together with regional and local authorities (in the framework of the so-called ‘Unified Conference State-Regions’, a permanent forum of multi-level coordination) agreed upon the adoption of a ‘National Plan for Reception’⁹². This three-year plan acknowledges the need for a unified reception system based on three levels: 1) first aid – in CPSA in Southern regions of arrival; 2) first reception and screening – in regional and interregional ‘hubs’ that

capacity of the SPRAR system up to 16,000 places for the period 2014-2016 (text available at the following link: http://www.serviziocentrale.it/file/server/file/DecretoCapoDip-capacit%C3%A0%20SPRAR%202014_2016.pdf). A public call was launched and on 29 January 2014 the ranking of approved projects was published (see: http://www.interno.gov.it/mininterno/site/it/sezioni/servizi/bandi_gara/dip_liberta_civili/2014_29_01_Graduatoria_SPRAR.html). A total of 456 projects in 19 Italian regions were approved for a total of 13,020 financed places (among which 691 reserved to unaccompanied minors and 253 to disabled people); 6,490 additional places were approved in order to be ready for potential activation upon request by the Ministry of the Interior. Thus, the SPRAR network can now count on a total of 19,510 places. For further details, see the document ‘SPRAR. Il nuovo triennio 2014-2016’ available at the following link: <http://www.anci.it/index.cfm?layout=detttaglio&idDett=45958>. See also: Asilo in Europa, 2014a.

⁹¹ The ‘*Tavolo di coordinamento nazionale per le politiche di accoglienza*’ was established in mid-2012 by the Ministry of the Interior, following the ‘North Africa Emergency’. The authorities involved are the Ministry of the Interior, the Ministry of Employment and Welfare Policy, the Ministry of Economy and Finance, as well as representatives from the regions, provinces and municipalities and the UNHCR as participant observer.

⁹² The text of the plan is available at the following link: http://viedifuga.org/wp-content/uploads/2014/07/Accordo_P_naz_accoglienza.pdf.

will substitute CARA; 3) second reception and integration – in the SPRAR system. The plan also states that possible temporary emergency facilities should have a residual role and in any case should be inspired to the SPRAR model. 370 million euros are allocated for the year 2014 to the implementation of the plan, 70 million of which are dedicated to unaccompanied minors⁹³.

However, since the adoption of the National Plan, the situation does not seem to have progressed substantially. In practice, the organisation of the first reception phase and the procedures carried out during this phase have remained the same. Regional and interregional hubs are not operative yet, therefore, as mentioned above, migrants disembarked from *Mare Nostrum* ships are still sorted and relocated either in CARA, or in SPRAR facilities or in temporary facilities. In practice a clear-cut distinction between facilities exclusively devoted to first reception and facilities exclusively devoted to second reception is not in place yet.

According to data released on 15 August 2014 by the Ministry of the Interior, by the end of July 2014 the three kinds of reception facilities (governmental centres, SPRAR system and temporary facilities) were accommodating a total of 53, 243 asylum seekers and refugees in almost all Italian regions (except for Valle d'Aosta); still, the majority (28%) were located in Sicily⁹⁴.

4.3.2. The Greek case

Second reception of asylum seekers is still the most critical part of the Greek asylum system. As explained by the national expert consulted, there is no reception process *per se* for those who apply for asylum, unless they submit an accommodation request. If they do not submit such request, they will have to fend for themselves in finding housing, employment, etc. The Greek Council for Refugees (GCR), civil society and NGOs are committed to assist those asylum seekers who fall outside the very limited scope of state services, but they are not able to provide a comprehensive and adequate support across the country. Moreover, it is worth recalling that these options are valid only for those who claim asylum before detention. Asylum seekers who apply once in detention, remain inside the detention facility, because although their removal order is suspended, their detention order remains valid until a decision on their application is taken, including the appeal stage. This means that even though the asylum claim enters a referral process (being referred to the new Asylum Service) the asylum seeker does not⁹⁵.

Asylum seekers who submit an accommodation request are referred to the National Centre for Social Solidarity (NCSS), an autonomous state body responsible for providing housing to all unaccompanied minors (TCNs, Roma, EU citizens, etc.) and to asylum seekers. The NCSS becomes involved in the

⁹³ See: La Repubblica, 10 luglio 2014; Il Sole24Ore, 10 luglio 2014; Vie di Fuga, 17 luglio 2014.

⁹⁴ See the document 'Rapporto di Ferragosto sull'attività del Viminale' available at the following link: http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/28_2014/2014_08_15_slides_CNOSP_15_AGO.pdf.

⁹⁵ In practice, asylum seekers who apply in detention are treated the same, or even worse, than all other detained migrants, since they very often remain in detention longer than irregular migrants, who at some point may be repatriated. As highlighted by a number of academics as well as NGOs and international organisations, Greek asylum policy aims at penalising or punishing asylum seekers (see among the others: Triandafyllidou, Angeli and Dimitriadi, 2014).

process when it receives an accommodation request issued by one of the competent authorities (i.e. the First Reception Service, the Police, the Public Prosecutor's Office for Minors) or by an NGO (i.e. the GCR). When the NCSS is forwarded a request, it lodges it into a national database, it assesses the vulnerability of the applicant and if need be it prioritises their request; it then verifies the availability of places in the existing housing units; if a place is available, it issues an order of placement to that specific facility. As reported by the national expert, the NCSS generally has a high success rate in finding housing for applicants.

There are approximately 19-20 accommodation facilities across the country. Two of them are funded by the state budget: one is a 'reception camp' for families and adults, the other one a hotel transformed in housing unit. All other facilities are managed by NGOs, which receive funding via the European Refugee Fund as well as the EEA and Norway Grants⁹⁶: NGOs do not receive consistently state funds to manage these facilities. The NCSS is a state-run centralised service exclusively in charge of managing accommodation requests; therefore it does not have any supervisory or monitoring role with regards to the NGOs that run the reception facilities. As highlighted by the national expert, it is extremely concerning that the existence of housing facilities for asylum seekers and unaccompanied minors in Greece depends totally on the work of NGOs, which in turn depends on outside sources, i.e. EU projects which notably have expiry dates. At any given time, NGOs may cease to operate due to lack of funding and this would result in the closing of housing units.

Due to a raising awareness about this and other critical aspects of a largely deficient second reception system, the First Reception Service has recently undertaken the responsibility for opening and managing additional accommodation units for vulnerable categories of migrants. Interestingly, as announced by the Ministry of Citizens Protection to the Greek Parliament in June 2014, these should be open entry/exit facilities that would host vulnerable asylum seekers for the period where their application is examined. The first one should open in Attica (Athens) and others should follow across the country. These facilities will be managed by the First Reception Service but in parallel also the NCSS is expected to be strengthened. For the first time ever, and maybe also as a consequence of the international dismay which followed the *M.S.S. case* (see above Section 2), reception of asylum seekers is becoming an issue of public debate in Greece and it is gradually starting to be perceived as a priority. But there is still a long way to go before Greece will be able to offer adequate reception conditions to its asylum seekers.

It is worth noting, indeed, that additional but crucial services which should be part and parcel of second reception, such as information, legal counselling, medical services, and language courses, are offered only by NGOs (the GCR, *Aithma*, *Médecins sans Frontières*, Doctors of the World, etc.) and civil society groups on a voluntary basis or through EU-funded projects.

⁹⁶ The EEA Grants and Norway Grants represent the financial contribution of Iceland, Liechtenstein and Norway to reducing economic and social disparities within the European Economic Area (EEA) and strengthening bilateral relations with 16 EU countries in Central and Southern Europe, among which Greece. The EEA and Norway Grants are set up for five-year periods. The EEA Grants are jointly financed by Iceland, Liechtenstein and Norway; of the 993 million euros set aside for the period 2009-2014, Norway provides 95.8%, Iceland 3.0% and Liechtenstein 1.2%. The Norway Grants are financed by Norway alone and amount to approximately 804 million euros in this period. 150 projects were financed in the period 2009-2014. For more details, see: <http://eeagrants.org/>.

4.3.3. Comparative considerations

Discrepancies between the Italian and Greek second reception systems are probably still too wide for a meaningful comparison. Interestingly both systems are in the process of evolving and implementing positive changes. In Italy, the main problem consists in managing appropriately large numbers of asylum seekers providing accommodation and assistance to all of them. The shift from big governmental centres to a decentralised system based on small reception projects grounded at the local level represents a step forward aimed at enhancing dynamics of integration and cohesion. In Greece, a large part of asylum seekers have no access to any kind of second reception. Those who have access to it, benefit only from housing and do not receive any other service, except for those provided by NGOs and civil society groups. In particular, integration is far from representing a goal to be pursued, when many asylum seekers live in detention facilities and overall material reception conditions are extremely poor. Nonetheless, the fact that the improvement of second reception is on the agenda of the Greek government is undoubtedly a promising sign.

4.4. Decision: adjudication procedure and recognition rate

4.4.1. The Italian case

Since 2002 the asylum adjudication procedure in Italy is based on a decentralised model. The administrative authorities competent in examining and taking a first instance decision on international protection applications are the 'Territorial Commissions for the Recognition of International Protection'. In 2002 the *Bossi-Fini Law* first established seven Territorial Commissions; in 2008 three more Commissions were added, for a total of 10 permanent decision-making bodies. A 2013 law reform also provided for the possibility to create up to 10 additional sub-commissions for limited periods of time, in cases when a considerable increase in asylum applications is registered; the creation of new sub-commissions is ordered via a decree by the Ministry of the Interior⁹⁷. Between September-October 2013 and January 2014, due to the rise in arrivals by sea and consequent increase in asylum applications (see footnote 21), all 10 sub-commissions have been activated; they will be operational until the end of December 2014⁹⁸.

Each Commission is composed of four members: two representatives from the Ministry of the Interior (out of which one is a senior police officer), one representative from the local authority (municipality, province or region) and one representative of the UNHCR. By law, decisions on asylum claims must be taken by three members, however in practice only one member conducts the

⁹⁷ For further details, see the web page of the Ministry of the Interior: [http://www.interno.gov.it/mininterno/export/sites/default/it/temi/asilo/sottotema0021/Le Commissioni Territoriali funzioni e composizione.html](http://www.interno.gov.it/mininterno/export/sites/default/it/temi/asilo/sottotema0021/Le_Commissioni_Territoriali_funzioni_e_composizione.html).

⁹⁸ Five sub-commissions have been established in Sicily, one in Apulia, one in Calabria, two in Rome and one in Northern Italy. See a document issued by the Ministry of the Interior on 27 January 2014 listing all 10 Territorial Commissions and 10 additional sub-commissions (called *Sezioni*): http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/28_2014/2014_06_26_COMMISSIONI_TERRITORIALI_PER_IL_RICONOSCIMENTO.pdf.

personal interview with the applicant and then presents the case to the other members to take the decision jointly. The collective nature of the decision is prescribed by law: if on the one hand this should represent a guarantee for a fairer decision beneficial to the asylum seekers, on the other hand it produces detrimental effects on the overall length of the asylum procedure. The personal interview should be carried out within 30 calendar days from the moment when the competent Territorial Commission receives the asylum application from the *Questura*; the Commission should then take a decision within 3 working days. In practice both time limits are usually much longer: the procedure as a whole typically lasts for several months (from 6 to 10 months) varying from one Commission to another.

The personal interview is not public. Applicants have the right to receive interpretation services in their own language or in a language they understand. Lawyers may be present during the personal interview, but they do not play the same role as in a judicial hearing: it is the applicant who answers questions, while the lawyer may intervene to clarify the statements made by the applicant. However, the vast majority of applicants attend the personal interview without the assistance of a lawyer⁹⁹. Vulnerable asylum seekers may be accompanied by supporting personnel, such as social workers, psychologists or doctors. Interviews are transcribed in a report that is given to the applicant at the end of the interview; applicants have the opportunity to make further comments and corrections before the final official report is handed over to them.

There are four possible outcomes to the first instance examination of an asylum application: recognition of the refugee status (and issuance of a 5-year renewable residence permit); granting of the subsidiary protection status (and issuance of a 5-year renewable residence permit¹⁰⁰); denial of any form of international protection, but recommendation to the Police to issue a 1-year residence permit for humanitarian reasons; rejection of the application (and issuance of a removal order). The applicant may appeal before the territorially competent Civil Tribunal (a judicial body) against a negative decision, against a decision to grant subsidiary protection instead of refugee status or to request the issuance of a residence permit for humanitarian reasons. The appeal has to be lodged by a lawyer within 30 calendar days (15 days for asylum seekers who are inside CIE or CARA) from the moment when the applicant receives notification of the first instance decision and it generally has a suspensive effect on the removal order¹⁰¹. By law, the Tribunal shall issue a judgement within 3

⁹⁹ Asylum seekers may benefit from legal assistance throughout the first instance of the asylum procedure at their own expenses. In practice they are usually supported by legal advisors or lawyers working *pro bono* or financed by NGOs. Legal assistance provided by NGOs depends on the availability of funds deriving from national public funding (i.e. the 'National Fund for Asylum Policies and Services', financed by the Ministry of the Interior), European programmes or private foundations. Legal assistance before the personal interview is crucial in order to prepare asylum seekers to the questions they will be asked by the Commission. Legal advisors may also gather information about the personal history of the applicant, about their country of origin, or about their medical and psychological condition (in particular with regards to vulnerable people, victims of torture, etc.); such information may be gathered in a report and submitted to the competent Commission. However, available funds are not sufficient to offer legal assistance to all asylum seekers during the first instance phase. Conversely, in the appeal phase free legal aid funded by the State is granted to all appellants, as provided by law.

¹⁰⁰ Duration of residence permits issued to both refugees and beneficiaries of subsidiary protection has been recently equalised, following the transposition of the Recast Qualification Directive into Italian law. This led to the extension of the validity of a residence permit for subsidiary protection from 3 to 5 years.

¹⁰¹ The suspensive effect is automatic, with some exceptions, including cases of asylum seekers who are inside CIE or CARA

months (based on facts and points of law), but in practice it usually takes 6 months. If the first appeal is dismissed, the applicant can appeal to the Court of Appeal and in case of a second negative judgement to the Supreme Court in Rome¹⁰².

Due to the persistently high number of boat arrivals in Southern Italy (a mixed flow characterised by high percentages of Syrian, Eritrean, Somalian and Malian asylum seekers), the Italian asylum system is experiencing renewed pressure. Major challenges to be addressed include not only access to the territory and to the asylum procedure, and effective identification and referral mechanisms for vulnerable people, but also the length of the asylum procedure, which systematically exceeds the time limits prescribed by law (6 months) and affects in turn the second reception system producing a structural lack of places.

As concerns asylum decisions, it must be noted that Italy is among the MSs with the highest recognition rate, i.e. the share of positive decisions out of the total number of decisions taken on international protection. In 2013, the Italian recognition rate for first instance decisions was 64%, the EU average being 34.4%. Italy ranked third among the 28 MSs, following Bulgaria (87%) and Malta (84%) and with the same share as Romania (64%). Looking at recognition rates disaggregated by type of protection granted, 12% of the total number of decisions recognised to the applicant the refugee status, 22% granted the subsidiary protection status, and 30% a residence permits for humanitarian reasons. Italy stands out together with the Netherlands (31%) with the highest rate of humanitarian residence permits granted, the EU average being 5.4% (Eurostat, 2014a, 11-12). As concerns final decisions on appeal, the Italian recognition rate was 78%, the EU average being 18%. Italy ranked second in EU28, following Bulgaria (93%). At the appeal stage 71% of decisions consisted of recognising either refugee or subsidiary protection status (Eurostat, 2014b).

4.4.2. The Greek case

As mentioned at the beginning of Section 4, the Greek asylum system underwent a radical change in June 2013, when the 2011 law reform was finally put in practice and the new asylum system began to operate. Adjudication procedure, together with first reception, are probably the elements which were subject to the most remarkable developments.

The two new administrative authorities responsible for examining asylum applications became operational on 7 June 2013. Both created by Law 3907/2011, the new 'Asylum Service' became responsible for registering all new asylum applications and taking a first instance decision upon them, while the new 'Appeal Authority' became responsible for all appeals lodged from that date onwards. Until June 2013, the sole authority responsible for asylum applications was the Hellenic Police. In an

or who have crossed the border irregularly; in those cases the applicant has to individually request the suspension of the removal order to the competent judge.

¹⁰² The applicant has to appeal to the territorially competent Court of Appeal within 10 calendar days. By law, the Court of Appeal shall take a decision within 3 months, but in practice it takes at least 5 months. This second appeal has no suspensive effect, unless differently decided by the Court upon an *ad hoc* request by the applicant, based on serious and well-founded grounds. A final appeal before the Supreme Court in Rome (*Corte di Cassazione*) may be lodged within 30 days.

effort to allow the new asylum system to operate unhampered from the beginning, it was decided that the backlogged cases (i.e. all pending applications until 7 June 2013) would remain under the Hellenic Police purview and its Appeal Committees. Therefore, the old asylum system is still active for backlogged cases only; despite the large number of unprocessed asylum applications¹⁰³, the Police and its Committees are expected to complete the examination of all pending cases by the end of 2014. At that point, the old system will be completely obsolete.

The old asylum system was hyper-centralised, as all asylum applications were registered in Athens, at the *Petrou Ralli* headquarters of the Hellenic Police, Directorate for Immigration and Aliens¹⁰⁴. In light of the manifest unsuitableness of the old asylum procedure, the 2011 law prescribed the shift to a decentralised model for decisions at first instance. Due to financial constraints, decentralisation took some time to be implemented, thus at the beginning the new Asylum System had only one Regional Asylum Office in Athens. Nevertheless, more offices were gradually opened and by the end of July 2014 the new Asylum Service was operating in 9 different locations across Greece: in Attica (Athens), Northern Evros, Southern Evros, Lesbos and Rhodes with Regional Asylum Offices (RAO); in Amygdaleza, Chios, Thessaloniki and Patras with Mobile Asylum Units (AU). Asylum seekers are now able to lodge their claim in each of these locations: international protection applications are registered *in situ* and examined and decided upon by locally-based case workers¹⁰⁵.

The personal interview represents the crucial part of the examination of an asylum claim. One of the major achievements of the new system is the presence of an interpreter during the interview, which has now to be conducted in a language that the asylum seeker understands. Applicants have also the right to be assisted by an advisor of their choice, i.e. a lawyer, a social worker, a psychologist, an NGO representative or even a relative. At the end of the interview, the advisor can pose questions to the asylum seeker with the aim to clarify or supplement the information provided. The case worker compiles a final report which ends either with a recommendation to grant refugee or subsidiary protection status or with a rejection of the application.

In the latter case, the applicant may decide to appeal. The Appeal Authority, is an administrative body (not a judicial one) consisting of 19 Appeal Committees. Differently from the first instance, the appeal phase is centralised: the Appeal Authority is based in Athens and its Committees convene there to examine the appeals made across the country. Appeal Committees are composed of three members: the chair and one member are appointed by the Ministry of Public Order and Citizens Protection from a list submitted by the National Commission on Human Rights; the third member is proposed by the UNHCR. The Appeal Committees are serviced by the Appeal Authority through a

¹⁰³ As reported by the national expert, in June 2013, when the new Asylum Service became operational, the Police had a record of 45,000 unprocessed asylum cases.

¹⁰⁴ As described by the national expert, when applications were lodged at the *Petrou Ralli* Police headquarters, an average of only 20 applications per week were accepted and they could be lodged exclusively on Saturday. Because only a limited number of asylum seekers would be allowed to enter, queues would start as early as Thursday midnight and would include vulnerable categories such as unaccompanied minors. There was no transparency in the process and it was unclear whether and how priority was given.

¹⁰⁵ Only in Chios and Patras personal interviews with case workers are conducted through teleconferencing, as clarified by the Asylum Service in its written response to the national expert on 31 July 2014.

secretariat and through rapporteurs who prepare each case before it is examined by one of the Committees. Rapporteurs receive the case and prepare a preliminary report recommending a decision; the Committee may either ignore or endorse the rapporteur's recommendation¹⁰⁶. The Committees' decision may consist in rejecting the appeal; accepting the appeal and granting refugee status or subsidiary protection; or referring the case to the Ministry of Citizens Protection recommending that the case is examined for the purpose of issuing a residence permit for humanitarian reasons.

In terms of procedural timeframes, as reported by the national expert, the average time elapsing from the registration of an asylum application to the issuance of a first instance decision is 79 days, while the average time between the lodging of an appeal to the issuance of a second instance decision is 45 days. This is an extraordinary improvement both in absolute terms (4 months on average to complete the entire adjudication procedure) and in comparison with the previous situation, when, under the Police purview, the procedure could last several years (even a decade, as reported by the national expert). Another improvement concerns training. All personnel involved in the new asylum procedure, i.e. first instance case workers and second instance rapporteurs and members of committees, have received extensive training, mostly conducted by the UNHCR and EASO, during the one-year period prior to the new Asylum Service becoming operational. Despite the specialised training, early identification of victims of trafficking and vulnerable persons remains a difficult task to pursue.

A critical issue is represented by decentralisation. The new Asylum Service seems to be still very much focused on Athens: since June 2013, the Regional Asylum Office of Attica, which hosts also the headquarters of the Service, has recorded 81% of all asylum applications. In the long run this may cause serious problems, leading to lower-quality decisions, longer procedures and practical hurdles for asylum seekers¹⁰⁷. A further concerning issue is the forthcoming reduction of the Appeal Committees from 19 to 8; this measure was announced by the Ministry of Citizens Protection in June 2014 and was motivated by budgetary cutbacks. Undoubtedly, the more than halving of the Appeal Committees risks to have a negative impact of the length and quality of adjudication procedures.

With regards to the outcome of the adjudication procedure, since the shift to the new asylum system, recognition rates have improved vastly, especially in comparison to previous years, when Greece had an overall disproportionate record of rejected applications. The new Asylum Service has actually highlighted that *'as is evident from the relevant statistical data, the recognition rates of the Asylum Service and the Appeal Committees, both overall and by nationality of claimants, are very close to the average of the EU and associated countries'*¹⁰⁸. Data reported by the EASO *Annual Report 2013* and more recent figures provided by the Asylum Service prove this positive development (see

¹⁰⁶ Rapporteurs are civil servants in the Appeal Authority and are supervised by the Ministry of Citizens Protection.

¹⁰⁷ In summer 2014 access to the RAO in Athens became more difficult with night queues forming outside of the building. Applicants who succeed in entering the office, receive a number with an appointment date for the asylum claim to be registered; this means that they need to return and until that time they remain vulnerable to police apprehension and detention.

¹⁰⁸ Asylum Service's written response forwarded to the national expert on 31 July 2014.

also Table 5 and Figure 5).

In 2013 the recognition rate at first instance in Greece was 4%, higher than previous years (2% in 2011, 0,84% in 2012), but still the lowest in EU28. However, this figure aggregates decisions issued under both the old and the new asylum systems: looking at it more in detail, it emerges that the recognition rate has risen from below 1% in the first semester 2013 (the responsible authority being the Hellenic Police) to 15.4% in the second semester 2013 (the responsible authority being the new Asylum Service)¹⁰⁹. In April 2014 the Greek recognition rate at first instance stood at 19% (EASO, 2014a, 24) and by the end of June 2014 it reached 25% (statistics provided by the Asylum Service, 31 July 2014). Evidently this figure is getting closer to the EU average recognition rate, although it must be noted that in 2014 the latter has also increased (45% in Q1 2014, +11% compared to 2013; EASO, 2014b). Interestingly, first instance recognition rates disaggregated by nationality show the accomplishment of a substantial harmonisation with the EU average: in the first semester 2014, 99% of Syrians, 78% of Eritreans and 68% of Somalis who claimed asylum in Greece received a positive decision (either refugee or subsidiary protection status)¹¹⁰. The Greek recognition rate at second instance has also improved: by the end of June 2014 it was 17.4%, very close to the 2013 EU average of 18%.

However, despite all positive changes implemented on the Greek asylum system, a decrease in asylum applications has been recorded (see Table 4 and Figure 4). As noted by the national expert, while in the past a significant number of migrants would try to apply for asylum in Greece as an expedient to 'legalise' their stay until they transited to another country or found employment, at the present moment critical nationalities like Syrians struggle to avoid submitting an asylum application in Greece. Besides the asylum seekers' personal preferences in terms of country of destination, this is probably due to a number of reasons related to the previous and current Greek asylum policy. Crucial factors that have enhanced the image of Greece as a country of transit rather than a country of asylum are:

- the long period of mismanagement of the asylum system by the Hellenic Police, which the new asylum system has not yet been able to distance itself from (difficult access to, and length and lack of transparency of, asylum procedures; extremely low recognition rates; etc.);
- the almost complete absence of second reception services provided by the state to support and assist asylum seekers while their application is pending, the sole exception being housing, for those who request it;
- the fact that asylum seekers in Greece may be detained for up to 18 months, as much as irregular migrants, and have to stay in detention until a final decision on their case is taken.

¹⁰⁹ Data reported in the EASO Annual Report 2013 (EASO, 2014a, 23-24) and figures provided by end-July by the Asylum Service coincide.

¹¹⁰ Figures provided by the Asylum Service, 31 July 2014. The 2013 EU average recognition rates for these nationalities are: 90% for Syrians, 76% for Eritreans and 62% for Somalis (EASO, 2014a).

4.4.3. Comparative considerations

Comparisons between overall recognition rates of different MSs should be drawn very cautiously. Firstly, the aggregation of recognition rates corresponding to different countries of origins received by a MS into one overall recognition rate provides no indication of the general propensity of that MS to offer protection, since MSs receive different proportions of asylum applications from different countries of origin. MSs with the highest positive decision rates are usually receiving applications almost exclusively from nationals of countries which are widely recognised as likely to be in need of protection (e.g. in 2013 Bulgaria and Malta received mostly Syrians, Somalis, Eritreans and their recognition rate was 88% and 84% respectively). Secondly, variations in recognition rates corresponding to applicants with the same nationality may occur but are usually related to different factors: the profiles of applicants from the same country may differ in different MSs (e.g. certain clans and ethnicities heading to certain MSs only); asylum claims from certain countries of origin may be so complex that their treatment could differ in different MSs; MSs' determining authorities may adopt different approaches to and interpretations of certain issues¹¹¹. Therefore, the existing discrepancies in recognition rates across the EU cannot be simply attributed to a lack of harmonisation in asylum decisions or to diverging foreign policy priorities¹¹².

That said, it may still be useful to reflect upon structural features characterising different national asylum systems that may contribute to produce discrepancies in recognition rates. The adjudication procedure represents a stage of the asylum proceeding where MSs retain a large discretion in institutional, organisational and operational terms. The following is an open list of factors which may impact on asylum decisions and contribute to determining their differentiated outcome:

- the determining authorities may be administrative bodies, judicial bodies or both;
- the adjudication system may vary from highly centralised to highly decentralised, with even substantial differences between first and second instance;
- there may be one, two or even three levels of appeal;
- the composition of the bodies/authorities responsible for decisions may vary in quantity (e.g. at first instance, from one single case worker in Greece to four commission members in Italy) and quality (they may or may not include police officers, civil servants, representatives from the national and/or local governments, members of international organisations, ordinary judges, judges specialised in asylum law, etc.);
- the members of determining authorities may have or have not a specific background and competences in asylum law, human rights and humanitarian issues and they may have or have not received training in these areas.

¹¹¹ For instance, a situation of generalised violence and political instability that could be interpreted as a civil war, or the ill-treatment of a minority that could be interpreted as persecution.

¹¹² As suggested by the Spanish national expert consulted, in order to rigorously evaluate harmonisation in asylum decisions one should examine a sizeable sample of individual cases that exhibit a similar profile across different MSs.

A further element, mentioned by the Spanish national expert consulted in relation to Spain but which could also apply to Greece and in part to Italy, is the lack of an 'asylum tradition'. In general, Southern MSs do not perceive themselves as countries of asylum: public opinion and political discourse tend to frame asylum simply as 'another way for migrants to get in' rather than a right granted to people who flee war and persecution. This is in most cases an implicit mental attitude, which may nonetheless influence the concrete behaviours of civil servants, street-level bureaucracy and administrative authorities, eventually affecting asylum decisions and recognition rates.

4.5. The Spanish case: some comparative remarks based on selected features

As mentioned under Section 3, Spain registered the highest numbers of arrivals by sea through the Gibraltar Strait in the early 2000s (ca. 12,800 and 14,500 arrivals in 2000 and 2001 respectively) and in the Canary Islands in the mid-2000s (ca. 31,700 and 12,500 arrivals in 2006 and 2007 respectively)¹¹³ but it has been able to gradually reduce migration flows along both routes, so that since 2010 arrivals at the Canary Islands amount to less than few hundreds per year, while border crossings at the Gibraltar Strait never exceeded 5,000 per year again¹¹⁴. As noted above, this outcome was the result of a twofold strategy based on the one hand on the improvement of border surveillance through technology and on the other hand on the strengthening of cooperation on irregular migration control with countries on the southern shore of the Mediterranean (i.e. Morocco, Mauritania, Senegal).

As concerns asylum, Spain hosts approximately 4,600 refugees (4,637 at January 2014) over a total population of 46.7 million (0,01%)¹¹⁵. Moreover, since 2008 the number of asylum claims has been gradually decreasing, fluctuating between 4,500 and 2,500 applications per year¹¹⁶ (CEAR, 2014, 169). Spain is not among the top 10 receiving countries in the EU: its number of asylum applications is rather low not only in absolute terms, but also in comparison to its population¹¹⁷, size and economic strength¹¹⁸. In 2013, statistics marked a relevant increase in asylum seekers from Mali and Syria compared to the previous year (CEAR, 2014, 162); in fact, the main countries of origin in 2013 were Mali (44% of asylum applicants) and Syria (22% of asylum applicants)¹¹⁹.

This sub-section summarises the main features of the Spanish asylum policy focusing, as in the

¹¹³ See: De Bruycker et al., 2013, Tab A1.4, 18.

¹¹⁴ For figures on overall arrivals by sea to Spain in the period 2006-2013, see the UNHCR infographics at the following link: <http://www.larutinaesfantastica.org/activity/infografia-asilo/>.

¹¹⁵ See the UNHCR web page on Spain at the following link: <http://www.unhcr.org/pages/49e48eed6.html>.

¹¹⁶ For more details, see the section 'Cifras y Estadísticas' on the CEAR (*Comisión Española de Ayuda al Refugiado*) web site at the following link: <http://www.cear.es/que-hacemos/cifras-y-estadisticas>.

¹¹⁷ Spain has 96 applicants per 1 million inhabitants; see the European Commission infographics on 'Asylum in the EU' at the following link: http://ec.europa.eu/dgs/home-affairs/e-library/docs/infographics/asylum/infographic_asylum_print_a_en.pdf.

¹¹⁸ As highlighted by the SVR study on burden sharing in the EU, Spain (together with Portugal and the Central-Eastern EU countries) is among the MSs that received only a small fraction of the number of asylum seekers that they could have taken according to their population, area, economic strength and unemployment rate. According to the model proposed by SVR, based on these 4 criteria, Spain should be the fifth asylum seekers' receiving country in EU28, after Germany, France, UK and Italy (Schneider et al., 2013).

¹¹⁹ See the UNHCR infographics at the following link: <http://www.larutinaesfantastica.org/activity/infografia-asilo/>.

previous sub-sections, on the treatment of mixed migration flows arriving by sea and describing limited aspects of the four stages of policy implementation identified in this paper, i.e. operations at sea, first reception, second reception and adjudication.

As concerns operations at sea, the main responsible authorities are: *Guardia Civil*, in charge of border surveillance, cross-border crime detection and migration control activities in Spanish territorial waters, and the Spanish Maritime Safety Agency (SASEMAR), responsible for SAR operations within the Spanish SAR zones. The two authorities cooperate in carrying out maritime operations, following a model similar to the one used in Italy before *Mare Nostrum*: *Guardia Civil* usually leads operations and in case coordinates other authorities (SASEMAR, FRONTEX, etc.) or private actors involved; only in cases when a SAR event is declared, the leading role shifts to SASEMAR.

The national expert identifies three different time periods in terms of approaches and operational procedures implemented. The first one (2000-2005) was characterised by a control-oriented attitude, similar to the one described for Greece: the priority was border control and detection of irregular border crossings; if a situation of danger occurred, then, authorities would react implementing a rescue operation primarily aimed at guaranteeing migrants' safety. The second period (2006-2007) marked a change in priorities and operational procedures, caused by the large inflow of migrants crossing the Atlantic to the Canary Islands. The shift from the Western Mediterranean route to the Western African route led to increased dangers for migrants' lives, due to the fact that they had to cover a broader distance, navigating more risky waters and using as a typical means of transport wooden boats, known as *pateras* (smaller boats, more frequently used in an earlier phase) or *cayucos* (larger boats designed for fishing in Senegal more often used in this second period). This situation caused an inversion in priorities, with SAR becoming the top one in the public discourse as well as in the operational behaviour. This led in turn to the implementation of new operational procedures (which included patrolling at high sea¹²⁰), the involvement of different actors¹²¹ and the creation of a new organisational structure consisting of a number of Regional Centres for Maritime Surveillance of Coasts and Borders coordinated by a National Coordination Centre in Madrid¹²². However, despite these improvements, the third period (2008-onwards) was marked by a step backwards to a more control-oriented approach. Due to the overall decrease in arrivals by sea, in particular along the most dangerous route, the goal to save migrants' life was pursued less proactively and resources specifically allocated to search and rescue operations were downscaled compared to the previous period.

The national expert noted that nowadays, when talking about migration from the African continent,

¹²⁰ Larger vessels were positioned between the African coast and the Canaries, while patrol boats were used in SAR operations; rescued migrants were first conducted to the large vessels and then carried to the islands of Tenerife and Gran Canaria.

¹²¹ The actors involved were: *Guardia Civil* (with a leading role), SASEMAR, National Police, FRONTEX and Spanish Red Cross. The Spanish Military Navy was not involved, although the issue was discussed at a political level, with right-wing parties pushing for the participation of the Navy. Conversely, the Moroccan Navy cooperated in the operations patrolling Moroccan territorial waters.

¹²² Regional Centres for Maritime Surveillance of *Guardia Civil* were established in Las Palmas (Canary Islands), Valencia (Mediterranean) and Algeciras (Gibraltar Strait).

the Spanish government has an explicit agenda and a hidden agenda: in the explicit agenda, protection of migrants' fundamental human rights and dignity is a primary consideration when implementing operations at land and sea borders. However, in the hidden agenda, Spain's major interest remains migration control: this is the objective pursued not only in all operations carried out at the borders but also through an intense cooperation with third countries, in particular with Morocco. Within this framework, human rights obligations are of course recognised and formally respected, but they may not always be a priority, especially when it comes to Ceuta and Melilla¹²³.

With regards to first reception and screening procedures, the national expert highlighted that the main difficulties were registered during the 2006 peak in the Canary Islands, in Tenerife in particular, where all rescued migrants were disembarked and gathered in military facilities and tents. Problems were caused on the one hand by the sudden boom in arrivals and on the other hand by the authorities' lack of experience as to how to deal with a mixed flow of considerable dimensions¹²⁴. In the following years mismanagement at this stage became rare, due to both decreased arrivals and skills and expertise developed during the peak phase. However, although in theory standard procedures related to screening, identification and registration of asylum claims are homogeneously implemented across Spain, in practice territorial variations do occur, with Ceuta and Melilla representing the most critical situation.

According to the national expert, territorial variations characterise also second reception. Asylum seekers may receive a different treatment and level of services and assistance (i.e. basic needs, medical and psychological support, legal counselling, etc.) depending on the region where they lodge their claim and the facility where they are hosted¹²⁵. In Spain asylum seekers are usually hosted in big governmental centres managed by the National Police, where also NGOs usually operate providing information, assistance and activities. Small facilities managed by private actors and NGOs do exist and are dedicated to unaccompanied minors, families and vulnerable persons. Asylum seekers in Spain have the right to be assisted by a lawyer (free of charge in case they do not have sufficient resources) throughout the whole procedure.

As concerns the adjudication phase, differently from Italy and Greece (under the new asylum system), in Spain the examination of and decision upon international protection are centralised. The asylum claim may be lodged in different locations: at border posts, in the territory of the country (at Police stations, at Foreigner Offices, at the Office of Asylum and Refuge) or inside immigration

¹²³ There are various extremely concerning human rights issues related to the situation in Ceuta and Melilla which could be raised. As an example, given that the focus of this paper is on maritime borders, it is worth recalling the incident that happened on 6 February 2014 off the coast of Ceuta. A group of 200 migrants tried to reach the coast of Ceuta by sea, swimming around the breakwaters; *Guardia Civil* officers fired rubber bullets and teargas against them causing the death of 15 migrants. The use of anti-riots weapons by border police in Ceuta and Melilla to stop migrants from crossing the borders is a highly contested practice. For more details on the incident, see: CEAR, 2014, 58-61; International Business Time, 13 February 2014; Human Rights Watch, 24 March 2014.

¹²⁴ Arrivals to the Canary Islands increased from 4,715 in 2005 to 31,678 in 2006 (De Bruycker et al., 2013, Tab A1.4, 18). In 2007 asylum applications submitted in Spain reached the peak of 7,664, the highest level since 2000-2001, which has never been reached again (CEAR website, 2014, <http://www.cear.es/que-hacemos/cifras-y-estadisticas>).

¹²⁵ Reception centres in northern regions (richer and characterised by a smaller presence of migrants) are deemed to offer better living conditions, compared to centres in southern regions and in Madrid.

detention centres. However, all applications are forwarded to the 'Office of Asylum and Refuge' (OAR) based in Madrid, which is the main administrative authority responsible for registering the asylum applications, interviewing asylum seekers and preparing cases before the 'Inter-ministerial Commission for Asylum and Refuge'¹²⁶. If the person submits the application in another region (not in Madrid) the local police officers register the case, collect the personal information and any document or piece of evidence that the person may have, request the assistance of a lawyer for the interview and submit the cases to the OAR for the evaluation of the case. Decisions on applications are taken by the Ministry of the Interior at the proposal of the Inter-ministerial Commission for Asylum and Refuge. If an asylum application is rejected, the applicant has the right to appeal to a judiciary authority based in Madrid (*Audiencia Nacional de España*).

The national expert stressed the fact that the outcome of an asylum application may be influenced by the place where a person lodged their claim, i.e. at the OAR in Madrid or somewhere else across the country. This could simply be due to composition effects (certain nationalities are more concentrated in some localities than in other ones) and/or to the fact that a claim submitted at a police station is initially processed by police officers who may not have received specific training on asylum and whose biased attitude towards an asylum seeker may impact on their chances to receive protection. A more circumstantial and grounded explanation of such variations would require targeted fieldwork. In any case, statistics prove that a large majority of asylum seekers apply once in the territory rather than at the border¹²⁷ (80% of all asylum applicants in 2013) and more precisely they apply in Madrid (40% of all asylum applicants in 2013) directly at the Office of Asylum and Refuge¹²⁸ (CEAR, 2014, 168).

The overall recognition rate in Spain in the period 2011-2014 has been rather stable, fluctuating between 26% and 20%. In 2013 it was 23%, 11 points lower than the EU average.

5. Final remarks

The analysis conducted in this paper identified substantial discrepancies in the way EU asylum law is implemented in practice by those MSs that, being located at the Southern periphery of the EU, have to simultaneously manage two highly complex tasks. On the one hand, controlling the common European borders and detecting irregular migration; on the other hand, providing access to the territory and to asylum procedures to those who seek protection in Europe and have no alternative

¹²⁶ Law 12/2009 establishes that the national authority mainly responsible of the asylum issues is the Office of Asylum and Refuge, which depends on the General Sub-Direction of Asylum of the Ministry of the Interior. Besides registering and examining asylum applications, the OAR also refers asylum seekers and refugees to refugee reception centers. For additional information on the Spanish asylum system and procedure, see the section 'Asilo y Refugio' on the Ministry of the Interior web site at the following link: <http://www.interior.gob.es/es/web/servicios-al-ciudadano/extranjeria/asilo-y-refugio>.

¹²⁷ Spanish law establishes a timeframe for submitting an asylum application: if a person is on the Spanish territory, they can apply for asylum within one month from the moment when they entered Spain or the events justifying their request began.

¹²⁸ For more details on these figures, see the section 'Cifras y Estadísticas' on the CEAR web site at the following link: <http://www.cear.es/que-hacemos/cifras-y-estadisticas>.

way to get there but through an irregular carrier, putting their lives in the hands of smugglers and mixing their destinies with those of economic migrants. This paper uncovered also the existence of different and often conflicting interests, priorities and approaches to mixed migration and asylum across the EU, not only, as already known, between Northern MSs and Southern MSs, but also between different Southern MSs.

The key challenge is undoubtedly that of finding a balanced compromise between migration management priorities and protection priorities, between a control-oriented approach and a rights-oriented approach. As long as the phenomenon of mixed migration will continue to grow, such balance will be difficult to find, because even if in terms of political will one goal may be prioritised over the other one, in practice there is an inherent tension between limiting irregular immigration and guaranteeing appropriate reception and protection to asylum seekers. As noted, the screening phase is crucial to this purpose, but it often reveals shortcomings related to lacking identification and referral mechanisms for vulnerable people or to a straightforward labelling of migrants of certain nationalities as irregular migrants. In this context asylum seekers may be stigmatised as 'illegal' migrants and may even risk criminalisation and detention.

The focus of the political debate today is on who should face the challenge posed by mixed migration by sea in a moment when it is becoming a more and more relevant phenomenon in terms of numbers and complexity: Southern MSs alone, Southern and Northern MSs together, the EU institutions, a combination of the three of them? Dealing with this issue in a durable and effective way certainly requires a strong dose of political courage and a forward-looking attitude on the part of the actors involved, but it is crucial to the purpose of building a common European asylum policy.

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Appendix - Tables and figures

Arrivals and detections

Table 1. Arrivals and detections at the maritime borders in Italy, Greece and Spain in the period 2011-2014 (until 31/07/2014 or 31/08/2014)

	2011	2012	2013	2014
Italy	62,692*	13,267*	42,925*	108,172** <i>until 24/08/2014</i>
Greece	757***	1,627***	9,357***	14,800*** <i>until 31/07/2014</i>
Spain	5,441****	3,804****	3,237****	ca. 2,600** <i>until 31/08/2014</i>

* SOURCE: Italian Ministry of the Interior, 2014e.

** SOURCE: UNHCR, 2014c.

*** SOURCE: Hellenic Police, Directorate for Immigration and Aliens (obtained through national expert consultation)

* Hellenic Police provided the national expert with a different figure for 2014 (until 31/07/2014), i.e. 12,280 detections.

**** SOURCE: UNHCR, 2014f.

** This figure is an estimate by the authors. It is the sum of the arrivals occurred in 2014 until 31/06/2014 (UNHCR, 2014c) and the arrivals occurred during the sole month of August 2014 (El País, 2014): 1,100 (January-June 2014) + unknown (July 2014) + 1,429 (August 2014) = ca. 2,600 arrivals.

Figure 1. Arrivals and detections at the maritime borders in Italy, Greece and Spain in the period 2011-2014 (until 31/07/2014 or 31/08/2014)

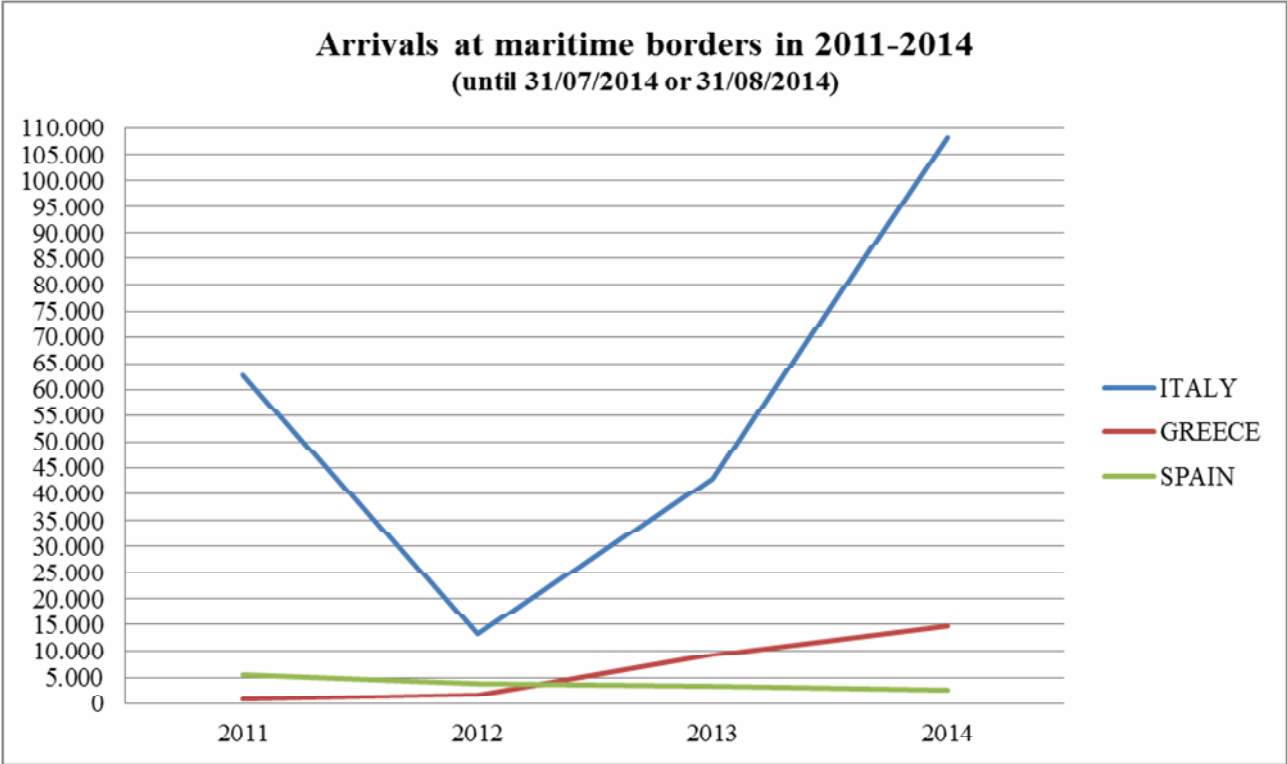
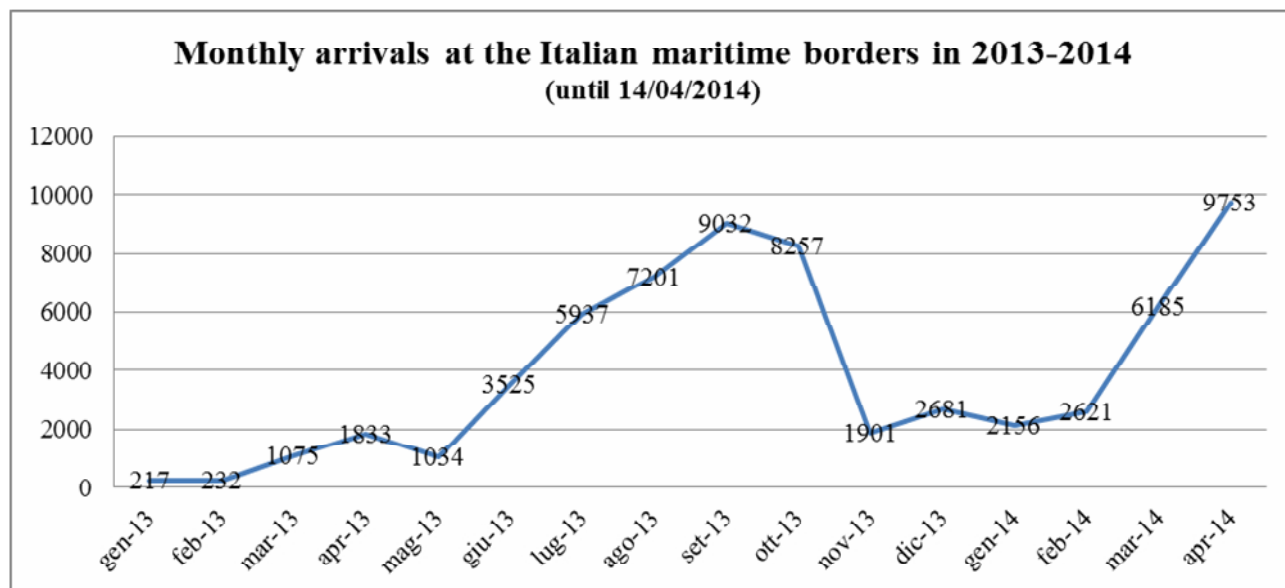


Figure 2. Monthly arrivals at the Italian maritime borders in the period 2013-2014 (until 14/04/2014)



SOURCE: Italian Ministry of the Interior, 2014e.

Table 3. Detections of irregular border crossings in Greece in 2011-2014 (until 31/07/2014)

Border Areas	2011	2012	2013	2014
Land border*	98,611**	75,251**	18,471	5,120 <i>until 30/06/2014- mainly refers to the Greek Albanian border</i>
Sea border	757	1,627	9,357	12,280*** <i>until 31/07/2014</i>
Total	99,368	76,878	27,828	17,400

SOURCE: Hellenic Police, Directorate for Immigration and Aliens (obtained through national expert consultation).

* Refer to detections at the border areas with Albania, Turkey, Bulgaria and FYROM.

** For 2011 and 2012, data are not limited to detections at the borders but also include apprehensions that took place within the territory of the country.

*** The UNHCR reports 14,800 arrivals by sea to Greece in 2014 (until 31/07/2014); see Table 1.

Asylum applications

Table 4. Asylum applications in Italy, Greece and Spain in the period 2011-2014 (until 30/06/2014 or 31/03/2014)

	2011	2012	2013	2014
Italy	40,315*	17,335**	27,930**	25,026***** <i>until 30/06/2014</i>
Greece	9,310****	9,575****	8,225****	4,858*** <i>until 30/06/2014</i>
Spain	3,420*****	2,565*****	4,495*****	1,045**** <i>until 31/03/2014</i>

* SOURCE: EASO, 2014a.

* Eurostat (2013) reported a different figure (15,717 applications), probably due to the use of different recording criteria. In this case the authors decided to use the figure provided by EASO because it is closer to the figure reported also by UNHCR (La Repubblica, 2014b) and AIDA, 2013 (i.e. 17,350 applications).

** SOURCE: EASO, 2014a; Eurostat, 2014a.

*** SOURCE: UNHCR, as reported by La Repubblica, 2014b.

** According to a recent update by AIDA (2014d), asylum applications recorded in Italy in 2014 (until 31/08/2014) were approximately 36,000.

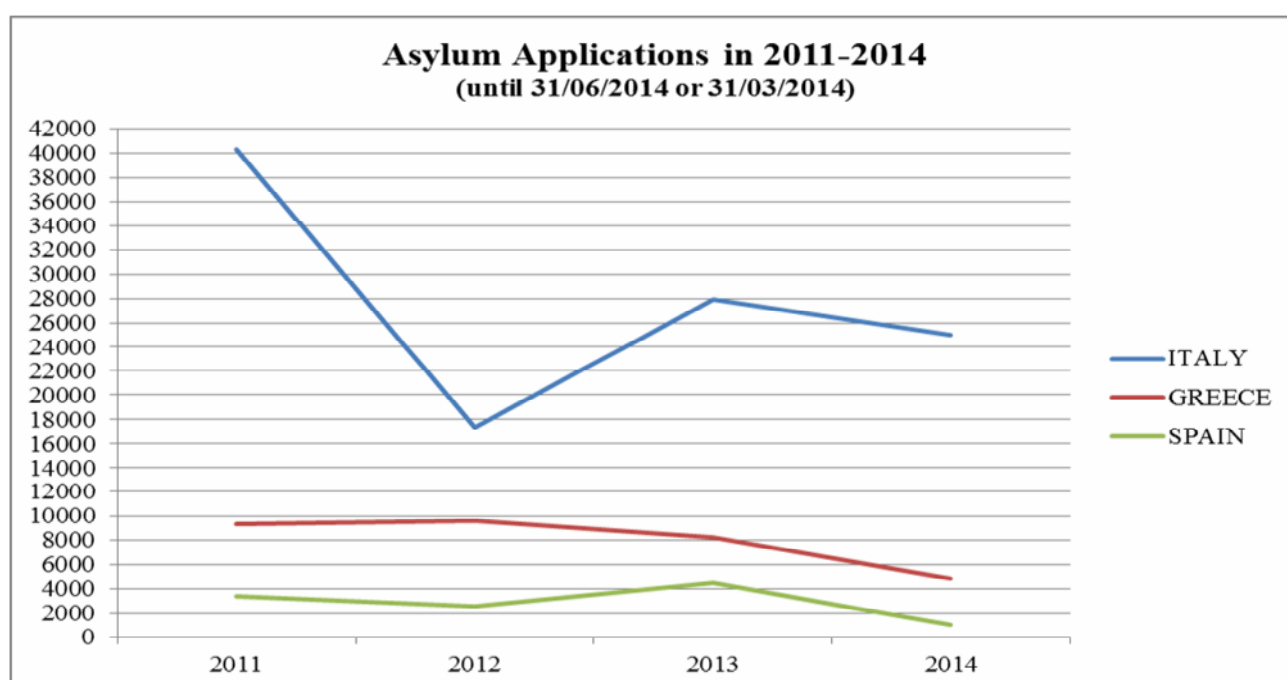
**** SOURCES: EASO, 2014a; Eurostat, 2013; Eurostat, 2014a. Figures provided by Greek authorities to the national expert substantially coincide.

*** SOURCE: Greek authorities, i.e. Hellenic Police and Asylum Service (obtained through national expert consultation).

***** SOURCES: EASO, 2014a; Eurostat, 2013; Eurostat, 2014a. Figures reported by CEAR (2014) and the Spanish Ministry of the Interior (2012; 2013) substantially coincide.

**** SOURCE: Eurostat, 2014c.

Figure 4. Asylum applications in Italy, Greece and Spain in the period 2011-2014 (until 30/06/2014 or 31/03/2014)



Recognition rate

Table 5. Recognition rate at first instance in Italy, Greece and Spain in the period 2011-2014 (until 30/06/2014 or 31/03/2014)

	2011	2012	2013	2014
Italy	30%*	62%*	64%**	63%*** <i>until 31/03/2014</i>
Greece	2%**	0,9%****	4%***	25%** <i>until 30/06/2014</i>
Spain	26%****	20%*****	23%**	25%*** <i>until 31/03/2014</i>

* SOURCE: Figure based on Eurostat statistics available at: <http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=0&pcode=tps00192&language=en> (last accessed on 6 October 2014).

* SOURCE: AIDA, 2013.

** SOURCE: Eurostat, 2014a. Other sources indicate Italy's recognition rate in 2013 at 61% (Eurostat, 2014b; AIDA, 2014).

*** SOURCE: Eurostat, 2014c.

** SOURCE: Greek authorities, i.e. Hellenic Police and Asylum Service (obtained through national expert consultation).

**** SOURCE: Eurostat, 2013 and Greek authorities (obtained through national expert consultation).

*** SOURCE: Eurostat, 2014a. This figure aggregates decisions issued under both the old and the new asylum systems; however, in the first semester 2013 (old asylum system) the recognition rate was below 1% while in the second semester 2013 (new asylum system) the recognition rate was 15.4% (EASO, 2014a) as also proved by the statistics provided by the new Asylum Service to the national expert consulted.

**** SOURCE: Spanish Ministry of the Interior, 2012.

***** SOURCE: Eurostat, 2013 and Spanish Ministry of the Interior, 2013.

Figure 5. Recognition rate at first instance in Italy, Greece and Spain in the period 2011-2014 (until 30/06/2014 or 31/03/2014)

