Innovations in Public Governance in Response to the Migration Crisis from the EU Perspective.
Institutional and Normative Solutions

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Abstract: The chapter will discuss the events making up the migration crisis in chronological order starting from 2015. The analysis will be conducted from a Public Governance perspective. The crisis will be understood not only as a humanitarian or social crisis, but primarily as a political crisis. Although the peak of the migration crisis took place in 2015–16, the crisis is actually continuing all the time, so the chapter covers events up to 2021–22.

I. Introduction – crisis as a category of analysis

Since at least the early 2010s, the European Union has been confronted with crisis situations related to the mass influx of migrants, including refugees. These situations have had various manifestations, intensities and conditions but, in the public discourse, they have been usually referred to by collective terms such as the 'migration crisis' or 'refugee crisis'. The main turning points of these crises include:

- 2014–2016 (especially 2015), i.e. the crisis situation caused by the increased influx of migrants from North Africa and Middle Eastern countries;
- 2021–2022, i.e. the period of deliberate promotion by the Belarusian authorities of a mass influx of migrants from Middle Eastern countries across the eastern border of the European Union (primarily the Belarusian–Polish border), intended to destabilize the socio-political situation in the EU;
- 2022, in which the Russian Federation attacked Ukraine triggering mass refugee flows to EU countries (primarily Poland, which borders with Ukraine).

All the situations mentioned had the features of a socio-political crisis. The term social crisis is understood here as 'a situation of accumulated

social tensions and conflicts, [which] leads to a breakthrough and major changes, often of a systemic nature. A social crisis is usually accompanied by phenomena such as instability, weakening of interpersonal ties, disruption of the social order, weakening of institutions of social control, etc.'[1] From the perspective of political science, a crisis is 'a situation in which one can observe the phenomenon of the expression of social discontent on a massive scale, having its roots in serious economic problems of the state and/or in a significant and growing level of social unrest, which is also manifested in unconventional forms of civic participation and/or in threats to the security and integrity of the country. An obvious consequence of the occurrence of a state of crisis is the inability to continue with the hitherto prevailing policy direction or style of politics (...) one should perceive in it the potential to open the way towards innovative or reforming actions (...).'[2] In this way, a crisis can be a catalyst of new ideas or concepts.

The migration situation of Europe in the 2010s and early 2020s features:

– a breakthrough, a shift, a turnaround, which affects both the EU as a whole and Member States (MS);
– an increase in political and social tensions and conflicts caused by immigration (both within the societies of MS, between host societies and immigrant groups, as well as between individual MS);
– instability, disruption of the social order, disclosure of the inefficiency of institutions of social control, including public order institutions;
– mass social discontent and increased social unrest;
– increased security risks;
– the inability to continue with the current direction of policies with respect to immigration, and simultaneously the need for significant changes in these policies, and perhaps also in the paradigm of the immigration policy itself, which results in opening the path towards innovative action.[3]

It is therefore entirely reasonable to call it a crisis situation. This chapter analyses the main features of the crisis migration situation in the EU over the last seven years (with a breakdown into three main crisis points) and

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1 Krzysztof Olechnicki and Paweł Załęcki, *Słownik socjologiczny* (Wydawnictwo Graffiti BC 2002) 104.
2 Andrzej Antoszewski and Ryszard Herbut (eds), *Leksykon Politologii* (Wydawnictwo Atla 2 2002) 197–198.
3 Łukasz Łotocki, *Kryzys imigracyjny w Europie w polskim dyskursie publicznym w latach 2015–2018* (Dom Wydawniczy Elipsa 2019) 119.

selected innovative ways of dealing with this situation. The main research questions apply to the innovations used in dealing with the crisis situation and the extent to which these innovations have addressed the various dimensions of the crisis situation (see more below).

II. 2015–2022 migration crisis

II.1. Migration crisis in 2015

The migration crisis, which culminated in 2015, was a consequence of war and the destabilization of the socio-economic situation in Middle Eastern and North African countries, as well as, among others, the search for better living conditions by citizens of the Balkan countries. According to data from the International Organization for Migration (IOM), the number of migrants worldwide in 2015 was one billion (one person in seven was a migrant). The number of foreign migrants was 244 million (3.3 % of the world's population).[4] As for the latter figure, it represented an increase of 41 % compared to 2000. According to UNHCR data, at the end of 2015, the number of forced migrants worldwide was 65.3 million (the highest since the Second World War), including 21.3 million refugees.[5]

The main migratory routes of the crisis in 2015 leading to Europe were the Eastern Mediterranean route (from Turkey to Greece), the Western Balkan route (through the Balkans, into Croatia, Slovenia and Hungary) and the Central Mediterranean route (from Libya to Italy). Other, less important routes include the Western Mediterranean route, the Eastern European route, the West African route and the Black Sea route. The Eastern Mediterranean route was mainly used by Syrians, Afghans and Iraqis, the Western Balkan route by Syrians and Afghans, and the Central Mediterranean route by Eritreans and Nigerians. The changes in the migration flows along these routes between 2011 and 2015 are illustrated in the table below.

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4 IOM's Global Migration Data Analysis Centre GMDAC, 'Global Migration Trends Factsheet 2015', 5 <https://publications.iom.int/system/files/pdf/global_migration_trends_2015_factsheet.pdf> accessed 16 March 2024.
5 UNCHR, 'Global Trends. Forced Displacement in 2015' (20 June 2016) 2 <http://www.unhcr.org/576408cd7.pdf> accessed 16 March 2024.

Table 1. Illegal EU border crossings 2011–2015
          (selected routes and total number)

Routes	2011	2012	2013	2014	2015
Eastern Mediter-ranean route	57,025	37,224	24,799	50,834	885,386
Western Balkan route	4,658	6,391	19,951	43,357	764,038
Central Mediter-ranean route	64,261	15,151	45,298	170,664	153,946
(…)					
Total	**141,051**	**72,437**	**107,365**	**282,962**	**1,822,337**

Source: *Risk Analysis for 2016*, Frontex, 2016, p 17: http://frontex.europa.eu/assets/Publ ications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf (accessed 16 March 2024).

As the data shows, the largest increase in the influx of illegal migrants crossing the border took place along the Eastern Mediterranean route leading to Greece (885,386 crossings, 49 % of the total in 2015; a change of 1,642 % compared to 2014) and the Western Balkan route (764,038 crossings, 42 % of the total in 2015; a change of 1,662 % compared to 2014). A large scale of inflows took place along the Central Mediterranean route leading to Italy, although the largest increase here was in 2014 compared to 2013 (170,664 crossings in 2014, 60 % of the total crossings in 2014; a 277 % change compared to 2013), whereas there was a slight decline to 153,946 crossings (-9.8 %) in 2015. It is worth noting at this point that the number of border crossings is not the same as the number of immigrants. Immigrants crossing the border on the Western Balkan route had previously arrived in Greece or Bulgaria, so they would actually be double-counted.

Among the countries of origin of all migrants crossing the EU borders illegally, the main countries in 2015 were Syria (594,059 illegal crossings, 33 % of the total), Afghanistan (267,485, 15 % of the total) and Iraq (101,285, 5.6 % of the total). The country of origin was not identified in 556,432 (31 %) cases.[6]

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6 Frontex, 'Risk Analysis for 2016' (March 2016) 63, <http://frontex.europa.eu/assets/Pu blications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf> accessed 16 March 2024.

According to the European Asylum Support Office (EASO),[7] there were 1,324,215 first-time asylum applicants in EU+[8] countries in 2015 (an increase of 122 % compared to 2014 and 355 % compared to 2011). Germany (where, according to EASO, 441,800 first-time applications were made in 2015), saw an increase of 155 % compared to 2014 and 867 % compared to 2011. Germany received 33 % of all EU+ first-time applications in 2015.[9] The largest national groups applying for asylum for the first time in 2015 in the EU+ countries were Syrians (377,960, increase of 203 % on 2014 and 5056 % on 2011; 29 % of total applicants), Afghans (192,940, increase of 393 % on 2014 and 696 % on 2011; 15 % of total applicants) and Iraqis (126,755, increase of 729 % on 2014 and 840 % on 2011; 10 % of total applicants).[10] With such a large scale of influx of migrants into the EU in 2015, it was difficult for state services to control the processes taking place.

II.2. EU-Belarusian border crisis in 2021

The EU-Belarusian border crisis was the result of deliberate action by the Belarusian authorities intended to destabilize the socio-political situation in the EU. After the 2020 presidential elections, President Lukashenko was accused of falsifying the results, while the security forces were accused of serious human rights violations. The European Union started to impose packages of sanctions on Belarus and in response to these sanctions, Lukashenko started an operation of bringing citizens from Asian and African countries to Belarus by attracting them with the promise of assistance in reaching Western Europe.[11] The main field of action was the Polish-Belarusian border. In 2021, 39,697 attempts to illegally cross the Polish-Belarusian border were recorded (more than three hundred times as many as in 2020, when there were 129 cases).[12] Attempts to cross the border were mainly

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7 Currently: European Union Agency for Asylum (EUAA).

8 EU Member States plus Switzerland and Norway.

9 European Asylum Support Office, 'Annual Report on the Situation of Asylum in the European Union 2015' (2016) 128 <https://op.europa.eu/en/publication-detail/-/publication/d18854da-41a9-11e6-af30-01aa75ed71a1> accessed 16 March 2024.

10 ibid.

11 Andrzej Wawrzusiszyn, 'Kryzys migracyjny na granicy polsko-białoruskiej i jego wpływ na bezpieczeństwo Polski' [2022] Nowa Polityka Wschodnia no 2 (33) 49.

12 Ewelina Szczepańska, 'Nielegalne przekroczenia granicy z Białorusią w 2021 r.' (*Official Website of the Polish Border Guard*, 12 January 2022) <www.strazgraniczna.pl/pl/aktualnosci/11127,Na-granicy-polsko-bialoruskiej.html> accessed 16 March 2024.

made by Iraqi nationals, followed by Afghan, Syrian, Somali, and Tajik nationals.[13] Migrants were often brought to the border by Belarusian border guards and pushed towards the Polish border. Their behaviour was often aggressive. Many migrants attempted to enter Western European countries – German police recorded 11,213 migrants entering Germany illegally from Belarus in 2021 (with only 21 from January to July).[14] Attempts to cross the Polish-Belarusian border were also made in the following months, but the Polish authorities took strong measures to limit the influx, including returning illegal migrants to Belarus and building a physical and electronic barrier at the border. These measures caused controversy, including accusations by some NGOs of pursuing a policy of so-called 'push-backs', which is prohibited by the Geneva Convention on Refugees. However, fewer attempts to illegally cross the border from Belarus into Poland were recorded in 2022 than in 2021, i.e. 15,497.[15]

The influx of migrants during the border crisis was not as massive on an EU-wide scale as it was in 2015, but 2021 was the first year that the intentional use of artificially stimulated migration flows as a tool for destabilization measures became so obvious. A thesis was formulated with regard to the 2015 crisis about the threat of the deliberate use of so-called 'D-weapons' (demographic weapons) to destabilize the situation in European countries. The crisis situation that started in 2021 became an overt example of the use of such means, which is related to the so-called asymmetric threat.[16] As Witold Repetowicz concludes: 'A different philosophy with regard to human life, allowing for its instrumental treatment, rejection of humanitarianism and lack of democratic control, introduces an element of asymmetry in relation to "Western" civilization.'[17] Western democracies become easy targets for blackmail under Coercive Engineered Migration, because they need to adhere to human rights and democratic principles.[18] In this way, a migration flow understood as a large, organized group of civilians attempting to illegally cross a country's borders becomes

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13 Wawrzusiszyn (n 11) 52.

14 ibid 55.

15 Szczepańska (n 12).

16 For more on 'Coercive Engineered Migration', see Kelly M Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy* (Cornell UP 2010).

17 Witold Repetowicz, 'Broń 'D' jako zagrożenie asymetryczne' (2018) 262–263 Wiedza Obronna 109.

18 ibid 117–118.

part of an operation by one state against another.[19] In other words, states outside the EU, for instance, can exert an artificial influence on an EU country (or the EU as a whole). When analysing this border crisis, account must therefore be taken of the fact that, as Anna M. Dyner wrote:

> 'The complexity of the border crisis shows that it cannot be reduced solely to the migration and humanitarian aspects, although this is one of its key elements. Due to the artificially induced migration pressure, the party conducting the activities – Belarus, in coordination and with the significant participation of Russia – tried and is still trying to test the resilience of the three countries on NATO's Eastern Flank in the political, military, economic, social, and information spheres, as well as to test their protection of critical infrastructure, including at the border.'[20]

II.3. Refugee crisis caused by the war in Ukraine in 2022

The Russian Federation conducted a military attack on Ukraine on 24 February 2022. As a result of the brutal hostilities in breach of international conventions, thousands of civilians were killed and mass refugee movements towards Central and Western Europe started. These movements far exceeded the scale of migration flows into Europe in 2015. According to UNHCR data as of 27 December 2022, there were 7,896,825 refugees from Ukraine in Europe and 4,885,650 cases of institutional international protection. Most refugees received protection in Poland (1,546,354) and Germany (1,021,667).[21] Among the refugees – unlike in previous crises – women and children predominated by far. In addition, refugees were arriving in the European Union directly from the country where the war was taking place, where their lives and health were directly threatened. In the case of the 2015 migration crisis, the influx was largely not direct. Migrants who arrived in Europe within the framework of the 2021 Polish-Belarusian border crisis did not come to Europe directly either, but travelled through Belarus.

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19 ibid 118.

20 Anna Maria Dyner, 'The Border Crisis as an Example of Hybrid Warfare' (*The Polish Institute of International Affairs (PISM),* 2 February 2022) <https://www.pism.pl/pu blications/the-border-crisis-as-an-example-of-hybrid-warfare> accessed 16 March 2024.

21 UNHCR, 'Ukraine Refugee Situation' <https ://data.unhcr.org/en/situations/ukra ine> accessed 16 March 2024.

Special legislative solutions were introduced in Poland, as the main host country, to ensure that Ukrainian refugees after 24/02/2022 – apart from access to work – have access to many of the universal and social benefits to which Polish citizens are entitled. In addition, there was a very spontaneous response from the Polish public, which welcomed hundreds of thousands of refugees from Ukraine into their homes. This became a phenomenon on a European, and perhaps even global, scale.[22] Both in the social and political perception, the influx of refugees from Ukraine to EU countries (especially Poland) was unanimously perceived as actual waves of refugees. Earlier waves (both in 2015 and 2021) had raised controversy and socio-political disputes as to their nature in their mass, which resulted in different political decisions.

III. Innovations in Public Governance in the context of the migration crisis

As stated by Ari-Veikko Anttiroiko, Stephen J. Bailey and Pekka Valkama 'public governance refers to a ruling system applied in the public sector.'[23] The contemporary understanding of the public governance process refers to the coordination of multi-sectoral activities in public policy-making, taking into account the participation of different players, such as public authorities, NGOs, and private companies. It requires a flexible approach (more or less formal) to public policy-making to achieve the best possible results (objectives). Recalling again the authors mentioned:

> 'Innovation in public governance is a new mechanism or institutional arrangement which is successfully implemented to solve governance problems or to gain better governance outcomes. The public sector is keen on innovations because of the endless need to improve productivity and effectiveness. Innovation represents novelty in public action and the art of doing things in a better way than before in public administration.'[24]

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22 For details see: Grażyna Firlit-Fesnak and others, 'Inwazja Rosji na Ukrainę. Społeczeństwo i polityka wobec kryzysu uchodźczego w pierwszym miesiącu wojny' (2022) Wydział Nauk Politycznych i Studiów Międzynarodowych Uniwersytet Warszawski <https://wnpism.uw.edu.pl/wp-content/uploads/2022/04/Kryzys-uchodzczy-2022-raport-KPS.pdf> accessed 16 March 2024.

23 Ari-Veikko Anttiroiko, Stephen J Bailey and Pekka Valkama, 'Innovations in Public Governance in the Western World' in Anttiroiko, Bailey and Valkama (eds), *Innovations in Public Governance* (IOS Press BV 2011) 2.

24 ibid 3.

This chapter uses a similar understanding of 'Innovations in Public Governance' but, to some extent, it differs from the perspective adopted by the cited authors, who assume that 'the second precognition of innovation is successful implementation.'[25] It is suggested that only the last condition mentioned by the category implementation is changed (without the adjective 'successful'), whereby implementation is also understood as an attempt at implementation without the need for full implementation of all the planned actions and without the need to obtain the expected positive effects of these actions. As can be seen from the above definitions of crisis, innovative measures are particularly desirable in crisis situations, in which existing ways of shaping public policy prove inadequate in the face of the problems that have arisen. In this context, the evaluation of innovative actions should be based on problem-solving criteria. As for the said crisis situations, there can be talk of at least several – simultaneously occurring – dimensions of crisis:

– a migration crisis associated with a lack of control over the huge migratory waves, which can trigger further waves;
– a humanitarian crisis associated with the difficulty of guaranteeing humanitarian conditions to migrants and refugees (including the situation in which they become victims of instrumentalization);
– a security crisis associated with both the threat of massive migratory waves and the need to integrate them, the creation of pull factors, the subsequent difficulties of integration and the threat of infiltration with migratory and refugee waves of individuals and groups that directly threaten internal security (e.g. terrorists, criminals etc.);
– a political crisis associated with a lack of consensus resulting in conflicts between different political, axiological and ideological orientations regarding an appropriate response to the crisis situation that has arisen;
– an interstate crisis caused by overt conflicts of interest between different nation states (groups of states), as was the case in the EU in 2015;
– an institutional crisis regarding the EU institutions, the actions of which have been criticized both by the conservative-right accusing them of being incapable of countering the asymmetric threat by being stuck in a reductionist 'humanitarian paradigm' attracting successive migratory waves, and by the liberal-left accusing them in turn of not taking suf-

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25 ibid 4.

ficient account of the need to respect the fundamental rights of immigrants (as was the case in the 2015 crisis).

The evaluation of innovative actions should take into account the responses to all these dimensions. In the migration dimension, the measures taken should, therefore, reduce the pull factors for migrants and improve the system to accurately identify refugees with respect to other types of migrants (which also applies to the internal security dimension) and to pursue a more selective immigration policy. In addition, they should provide solutions to deal flexibly with mass influxes of migrants in the short term. In the humanitarian dimension, they should contribute to reducing the negative humanitarian consequences of mass migration flows, especially in circumstances of restrictive refugee policies. In the security dimension, they should take into account the social and political risks associated with migration processes and counter them effectively (which can sometimes raise questions about the humanitarian dimension of the actions taken). Politically, they should foster an open political debate enabling an exchange of arguments and the non-reductionist consideration of the different dimensions of the crisis in the search for solutions. From an inter-state perspective, they should take into account the interests of the different states, seeking flexible solutions that are acceptable to these states (especially in situations of an apparent conflict of interests) without allowing the imposition of certain solutions against the interests of specific states. In the institutional dimension, they should contribute to building trust in the EU institutions in terms of pursuing effective policies that take account of the circumstances and create efficient response and decision-making systems that satisfy all players in the decision-making process. Action on all these dimensions should contribute to a reduction of political and social tensions and conflicts caused by immigration to the EU and to the restoration of balance and stability in relation to these dimensions. The proposed innovations can refer to formal regulations, informal normative frameworks, institutional structures, as well as institutional and discursive practices.

The following part of this chapter briefly discusses five selected types of EU actions which, according to the author, meet the criteria described above for innovative actions. They apply to the various aforementioned dimensions of crisis related to migration processes from 2015–2022.

These actions are:

– the introduction of a hotspot approach during the 2015 crisis;
– the implementation of a relocation scheme and the suspension of the Dublin III Regulations following the 2015 crisis;
– arrangements with third countries to limit migration flows, including primarily Turkey and then Libya and other African countries;
– the shift to a more restrictive migration policy paradigm;
– the first ever implementation of the Temporary Protection Directive (to refugees from Ukraine in 2022).

An attempt was also made to evaluate each 'innovation' discussed.

IV. Introduction of a hotspot approach during the 2015 crisis

In 2015, the European Commission announced a document entitled 'European Agenda on Migration'. This document envisaged the establishment of so-called hotspots, i.e. places located in the EU countries of the first line of migration (Italy and Greece), to identify and register incoming migrants and fingerprint them.[26] The hotspots were to be staffed by EASO support teams, consisting of experts from the European Asylum Support Office, Frontex and Europol (the EU's police agency). Four hotspots were set up in Italy (in Lampedusa, Trapani, Pozzallo and Taranto) and five in Greece (on the islands of Lesbos, Chios, Samos, Leros and Kos).[27] The operation of the hotspots was already problematic from the moment they were established. Many migrants refused to actually reveal their identities. These people feared that, by revealing their identity, they would have to apply for asylum in the first country of immigration, making it difficult for them to travel to northern Europe. Some immigrants, hoping for better living conditions in Germany, Sweden or the UK, mutilated their fingertips to destroy their fingerprints so they could reapply for international protec-

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26 Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration' COM (2015) 240 final, p 6 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240&from=EN> accessed 16 March 2024.
27 European Asylum Support Office, 'Annual Report on the Situation of Asylum in the European Union 2016' (2017) 80 <https://op.europa.eu/webpub/easo/annual-report-2016/en/> accessed 16 March 2024.

tion in another country.[28] According to the European Commission, only 23 % of people irregularly crossing EU borders were fingerprinted.[29] The vast majority of migrants continued their journey to the north-west of Europe (mainly to Germany) and therefore formally 'ceased to be' refugees from the point of view of the next country of immigration. Indeed, the motivation for further migration was most often economic (even in the case of those who left their country because of persecution).

The idea of setting up the hotspots was, on the one hand, an attempt to control the mass influxes into Europe, including identifying the reasons for the migration of individuals before they migrated in an uncontrolled manner to other European countries, which they considered their destinations (such as Germany), and in this sense it should be assessed positively. On the other hand, the effectiveness of the hotspots proved to be rather low. There have been real difficulties in identifying migrants (including verifying the asylum criteria), and dangerous incidents have taken place in overcrowded camps, such as the fire at the Moria camp on the Greek island of Lesbos in 2020. In addition, the researchers note that the hotspot approach was not clear with regard to both its legal and operational frameworks.[30] However, the hotspot approach still appears to be relevant. In 2018, the European Council recognized, among other things, that a concept involving the creation of 'regional disembarkation platforms' should be explored in close cooperation with relevant third countries, as well as with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). 'Regional disembarkation platforms' were to be located outside the EU, where migrants (rescued at sea) would await a decision on asylum.[31] However, a barrier here is the unwillingness of North African countries to set up such platforms. In turn, in the negotiated draft New Pact on Migration and Asylum

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28 Patrycja Sasnal (ed), *Niekontrolowane migracje do Unii Europejskiej – implikacje dla Polski* (The Polish Institute of International Affairs 2015) 17 <https://pism.pl/upload/i mages/artykuly/legacy/files/20992.pdf> accessed 16 March 2024.

29 Janusz Balicki, 'Unia Europejska jako podmiot polityki wobec uchodźców' in Konstanty A Wojtaszczyk and Jolanta Szymańska (eds), *Uchodźcy w Europie* (ASPRA-JR 2017) 110, 121.

30 Karl Heyer, 'Keeping migrants at the margins. Governing through ambiguity and the politics of discretion in the post-2015 European migration and border regime' (2022) 97 Political Geography no 102643, 4.

31 European Council, 'European Council Meeting (28 June 2018) – Conclusion' EUCO 9/18 <https://www.consilium.europa.eu/media/35936/28-euco-final-conclusions-en. pdf> accessed 16 March 2024.

announced in September 2020, the European Commission made a proposal 'to establish a seamless procedure at the border applicable to all non-EU citizens crossing without authorization, comprising pre-entry screening, an asylum procedure and where applicable a swift return procedure,'[32] which also resembles a hotspot approach in its assumptions.

The effectiveness of the hotspot approach depends on the actual ability to verify the identity of migrants and the ability to efficiently and immediately return to countries of emigration those who clearly do not meet the criteria for asylum. It is worth noting that, in the situation of the more obvious refugee influx we faced in 2022 from Ukraine, the creation of hotspots was completely unnecessary despite the larger size of the influx. This shows clear differences between the 2015 and 2022 migration waves and suggests some uncertainty about the dominant nature and structure of migration from the Middle East and North Africa compared to refugee migration from Ukraine. The inflow in 2015 was much more diverse – both in terms of countries of origin, migration routes and the nature of the migration itself. In fact, the proportions between people seeking protection (refugees) and economic migrants were unknown. It was very difficult to reliably verify the real status of many newcomers. And even the establishment of hotspots could not guarantee that the problem would be resolved.

V. Implementation of a relocation scheme during the 2015 crisis

EU immigration policy has been developed since 1 May 1999, when the Treaty of Amsterdam entered into force.[33] The basis for EU action in the area of migration is currently the Treaty on the Functioning of the EU (Title V. Area of freedom, security and justice, Chapter 2. Policies on border checks, asylum and immigration, Articles 77–80). According to Article 78(1) of this Treaty:

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32 Commission, 'Proposal for a Regulation Introducing a Screening of Third Country Nationals at the External Borders' COM (2020) 612 final; Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum' COM (2020) 609 final, p 4.

33 Justyna Godlewska-Szyrkowa, 'Unia Europejska wobec kryzysu uchodźczego' in Grażyna Firlit-Fesnak, Łukasz Łotocki, Piotr W Zawadzki (eds), *Europejskie polityki imigracyjne. Stare dylematy, nowe wyzwania* (ASPRA-JR 2016) 22.

'The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.'[34]

Paragraph 3 of the same article states that

'In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the [EU] Council, on a proposal from the [European] Commission, may adopt provisional measures for the benefit of the Member State(s) concerned [whereby] the Council shall act after consulting the European Parliament.'[35]

According to Article 80, EU policies on border control, asylum and immigration and their implementation 'shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.'[36] The latter provision served as a justification for the establishment of a relocation mechanism of migrants to EU countries proposed in September 2015.

In the context of the migration crisis, EP and EU Council Regulation No. 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person[37] (the so-called Dublin III) is relevant. This regulation constitutes the basis for returning an applicant in another Member State to the State responsible for examining that applic-

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34 Consolidated Version of The Treaty on the Functioning of The European Union [26 October 2012] OJ C326/49 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri =CELEX:12012E/TXT:en:PDF> accessed 17 March 2024.

35 ibid.

36 ibid.

37 Regulation (EU) 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) OJ L180/31 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R 0604&from=PL> accessed 17 March 2024.

ation (most often, the first Member State on the territory of which the foreigner has crossed the EU border).[38] Faced with an influx of immigration in waves, this regulation has practically ceased to function, and it has become necessary to look for other, more flexible ways of dealing with the crisis situation.[39]

On 20 April 2015, the EU Member States adopted a Ten Point Action Plan on Migration[40] at a joint meeting of the Foreign Affairs Council and the Home Affairs Council in Luxembourg in response to the worsening immigration crisis. Among other things, the plan included the consideration of options for an emergency relocation mechanism. The 'European Agenda on Migration' of 13 May 2015 states that a temporary system and then a permanent system needs to be developed for sharing the responsibility for large numbers of refugees and asylum seekers among the Member States (so-called 'relocation'), in order 'to ensure a fair and balanced participation of all Member States to this common effort.'[41] The distribution key was based on criteria such as:[42]

– the size of the population (40 %);
– the GDP (40 %);
– the average number of spontaneous asylum applications and the number of resettled refugees per million inhabitants over the period 2010–2014 (10 %);
– unemployment rate (10 %).

In addition to the priority of developing a system for relocating people from the EU, a commitment was made to formulate a proposal for a resettlement programme from third countries encompassing 20,000 places. Furthermore, this Agenda mentions the use of a 'wide range of tools' and

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38 Justyna Godlewska-Szyrkowa (n 33) 23.
39 See Micheline van Riemsdijk, Marianne H. Marchand and Volker M. Heins, 'New actors and contested architectures in global migration governance: continuity and change' (2021) 42 Third World Quarterly 1, 2.
40 Joint Foreign and Home Affairs Council, 'Ten point action plan on migration' (Luxembourg, 20 April 2015) <http://europa.eu/rapid/press-release_IP-15-4813_en.htm> accessed 17 March 2024.
41 Commission, 'European Agenda On Migration' (n 26), 4.
42 ibid 19.

'all policies and tools at our disposal',[43] which goes beyond traditional legislation and is an excellent example of the practice of Public Governance.[44]

On 27 May 2015, the European Commission presented a proposal for relocating Syrian and Eritrean nationals in need of international protection from Italy and Greece. It was to apply to 40,000 people (over the next 2 years) who arrived in Italy or Greece after 15 April 2015 or were due to arrive there after the mechanism was activated. 24,000 people were to be relocated from Italy, while 16,000 were to be relocated from Greece.[45] These arrangements were confirmed by EU Council Decision 2015/1523 of 14 September 2015.[46] A resolution of the representatives of the governments of the Member States meeting in the Council of the EU of 20 July 2015 agreed on the relocation of 32,256 people in the first phase. In addition, an agreement was reached on the resettlement of 22,504 people.[47]

The document entitled 'Annexes accompanying the Proposal for a Council decision establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary' of 9 September 2015 envisages the relocation of 120,000 people (representing countries of origin with an EU average recognition rate of at least 75 %, i.e. Syria, Iraq and Eritrea, according to the date of adoption of the document), of whom 15,600 would be from Italy, 50,400 from Greece and 54,000 from Hungary.[48] As the Central and Eastern European countries disagreed with the quota allocation of the 120,000 migrants in question, the Luxembourg Presidency used a qualified majority mechanism to make the decision.[49] It

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43 ibid 2.
44 Paul James Cardwell, Tackling Europe's Migration 'Crisis' through Law and 'New Governance' (2018) 9 Global Policy 67, 71.
45 Council of the European Union, 'Outcome of the Council meeting, 3405th Council meeting Justice and Home Affairs Brussels' (20 July 2015) 11097/15 (OR. En) Provisional Version Presse 49 PR CO 41, pp 3–8 <www.consilium.europa.eu/media/22985/st11097en15.pdf> accessed 17 March 2024.
46 Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece [2015] OJ L239/146.
47 Council of the European Union (n 45) 3–8.
48 Commission, 'Annexes accompanying the Proposal for a Council decision establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary' COM (2015) 451 final Annexes 1 to 4 <www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2015/0451/COM_COM(2015)0451(ANN)_EN.pdf> accessed 17 March 2024.
49 Balicki (n 29) 120.

was possible to circumvent the unanimity rule of the Member States in the European Council by making a decision at the Home Affairs Council level.

In accordance with EU Council Decision 2015/1601 of 22 September 2015 establishing interim measures in the area of international protection in favour of Italy and Greece,[50] following Hungary's withdrawal from the relocation scheme, it was considered that 15,600 people were to be relocated from Italy and 50,400 from Greece. The number of people to be relocated under this decision was therefore to be 66,000. The 54,000 places originally envisaged for relocation from Hungary were changed in favour of relocation from Italy and Greece or from another country (if a justified need arose), with the exact relocation amounts within this figure to be determined in the future. In summary, of the 40,000 migrants agreed upon in May 2015, it was decided in July that 32,256 would be relocated, leaving 7,744 to be relocated. In September 2015, it was decided that 66,000 immigrants (50,400 from Greece and 15,600 from Italy) and a target of an additional 54 000 would be relocated. This amounts to a total of 160,000 immigrants planned for relocation, with specific commitments made up to that time for 98,256 people. A Member State was to receive €6,000 for each person relocated. A plan of the implementation of the relocation and resettlement quotas was set out for the coming two years. The decisions that were made had the effect of temporarily suspending the Dublin III Regulation.

The idea of relocation and the way it was adopted (by a qualified majority in the EU Council) resulted in a dispute within the EU. The V4 countries objected to the implementation of such a scheme and ultimately failed to meet the allocated quotas. There was an obvious conflict of interests between the states here. States that were not migration destinations (and often not even on migration routes) did not want to participate in the implementation of this mechanism. These states felt that this could expose them to the same large migration waves as those already faced by Western European states. In doing so, it was pointed out that countries such as those in the V4 group, were not ready to host as many non-European refugees as their Western counterparts did. As they criticized Germany for its 'open borders approach', which they believed had created a pull factor

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50 Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2015] OJ L238/80 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CE LEX:32015D1601&from> accessed 17 March 2024.

for refugees, they were not ready to bear the consequences of what they considered to be 'misguided' policies by relocating refugees who had subsequently arrived in Europe. Finally, 34,710 people in need of international protection were relocated from Italy and Greece under the Relocation Scheme.[51]

EU decision-makers have been looking for very innovative, yet according to some Member States radical, ways of enforcing compliance with the relocation mechanism. An example is the draft EP and Council 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 provided for the introduction of an automatic mechanism for the redistribution of refugees between Member States – the so-called corrective allocation mechanism (Chapter VII 'Corrective allocation mechanism'), which would be triggered in situations of migratory pressure.[52] The mechanism would be triggered automatically in favour of a Member State when the number of applications for international protection for which that Member State is responsible exceeds a threshold of 150 % of the so-called 'reference number' (to be determined annually for each Member State [Article 34(3)]). This number would be based on two criteria: the population of the given Member State (50 % of the weight) and the total GDP of the given country (50 % of the weight). According to Article 37 of the proposed regulation, each Member State would have to pay a so-called solidarity contribution of EUR 250,000 per applicant who would have otherwise been allocated to that Member State during the respective twelve-month period. The proposal thus envisaged a permanent refugee distribution system that would be triggered automatically in a crisis situation. However, this idea was not supported by a sufficient majority of the Member States.

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51 Commission, 'Communication from the Commission to the European Parliament, the European Council and the Council Progress report on the Implementation of the European Agenda on Migration' COM (2019) 126 final, p 1 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0126&from=EN> accessed 16 March 2024.

52 Commission, 'Proposal for a Regulation of The European Parliament and of The Council 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 (recast)' COM(2016) 270 final/2 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0270(01)&from=EN> accessed 17 March 2024.

On 28 June 2018, the European Council recognized, among other things, that future relocations and resettlements 'will be on a voluntary basis, without prejudice to the Dublin reform.'[53] However, in the negotiated New Pact on Migration and Asylum announced in September 2020, the European Commission has not given up on the idea of relocation as such. It was stated that 'Member States will have the flexibility to decide whether and to what extent to share their effort between persons to be relocated and those to whom return sponsorship would apply. There would also be the possibility to contribute through other forms of solidarity.'[54] However, the plan to make individual states responsible for the arrangement of the return of migrants (which is an extremely difficult issue) in practice could mean relocating people who do not meet the criteria for asylum. Therefore, it seems that, because of the controversy surrounding relocation, on the one hand, its optionality is being made manifest, while on the other attempts are being made to continue to introduce it as a permanent mechanism by the 'back door'.

The imposition of a relocation mechanism was problematic. The concept of relocation does not take into account the interests of the various MS and can create an additional pull factor for migrants. The point is that it may be interpreted as a declaration of acceptance of the further opening of Europe's borders to immigration (including irregular immigration) in a situation of massive increases in inflows. Furthermore, it does not give refugees any say in or choice as to where they will receive protection, which is likely to lead to dissatisfaction and subsequently secondary movements. Indeed, many migrants did not succumb to the relocation decision and left for their intended destination, which also calls into question the effectiveness of the mechanism as such.

It is also worth noting that Poland, the country that finally did not accept a single migrant under the 2015 relocation scheme, accepted more refugees from Ukraine in 2022 than the EU as a whole in 2015 of all the refugees, while consistently also remaining opposed to the relocation mechanism as such in this situation. Other solidarity measures, such as financial streams flowing to the countries most affected by the influx of refugees, would be more appropriate here, according to the Polish government. It is also worth mentioning that, in the circumstances of large migratory inflows in 2021 and 2022, the use of the Dublin procedures was intensified, with Western

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53 European Council, 'Meeting (28 June 2018)' (n 31) 2.
54 Commission, 'New Pact on Migration and Asylum' (n 32) 5.

European countries (mainly Germany) starting to send immigrants back to Poland (mainly from Iraq and Afghanistan) who had crossed the EU's eastern border.

As Natascha Zaun stated, the refugee crisis in 2015 had 'the potential to fundamentally harm the European integration project.'[55] However, the concept of relocation and the way it was pushed through proved to be particularly threatening in this context. Above all, this situation has highlighted overt conflicts of interest between states and the consequences of asymmetric treatment of these interests. Referring to negotiation theory, as the researcher mentioned above wrote regarding non-destination countries of incoming wave migration in 2015, 'having a better alternative to the negotiated agreement, these Member States blocked the introduction of a refugee quota system.'[56] This was an important case of a decision-making process in which the relatively new EU states, such as the V4 countries, played such a fundamental role.[57] It is worth noting at this point that the majority of EU countries ultimately failed to fulfil their relocation commitments.

The 2015 migration crisis highlighted that there was no shared European vision of a common migration policy and that decisions and reforms would be adopted in a reactive rather than proactive manner.

VI. Arrangements with third countries to reduce migration flows following the 2015 crisis

The EU–Turkey 'Statement' was announced on 18 March 2016 to reduce the numbers of immigrants coming to Europe. The most important provisions of this 'Statement' included:[58]

– all irregular migrants who cross the border from Turkey into Greece after 20 March 2016 will be returned to Turkey at the EU's expense;
– for every irregular Syrian migrant withdrawn, another Syrian national meeting the criteria to be granted international protection will be re-

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55 Natascha Zaun, 'States as Gatekeepers in EU Asylum Politics: Explaining the Non-adoption of a Refugee Quota System' (2018) 56 Journal of Common Market Studies 44.
56 ibid 45.
57 ibid 58.
58 European Council, 'EU-Turkey statement' (18 March 2016) Press Release 144/16, <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf> accessed 17 March 2024.

settled from Turkey to Greece (in the first instance, within the limit agreed upon at the EU Council meeting on 20 July 2015 – up to 18,000 people, and then based on an extension of resettlement on a similar basis for a further 54,000 people); the total number of people planned for resettlement from Turkey to the EU was 72,000;

– the EU will pay Turkey €3 billion in the first tranche and, once these resources are exhausted and Turkey fulfils its commitments, a further €3 billion in a second tranche payable by the end of 2018.

In the 'Statement', the EU made the commitment to open further chapters on accession negotiations with Turkey and to accelerate visa liberalization. In addition to closing the Western Balkan route, the 'Statement' has contributed to a significant reduction in the influx of migrants from Turkey (the so-called Eastern Mediterranean route). Two years after the agreement was signed, there was a 97 % reduction in irregular immigration along this route.[59]

In February 2017, at an informal EU summit in Malta, EU leaders agreed to adopt a package of measures to strengthen Libya so that the country ceases to be a gateway to Europe for migrants from Africa. These measures were to include, among other things, additional training and the transfer of equipment, which would support the Libyan coast guards. Cooperation with the Libyan border guards and the battle against smugglers was seen as a priority in reducing migration from Africa.[60] A decision was made in November 2017 at the European Union – African Union summit in Abidjan that the EU, the African Union, and the UN would set up a joint task force to protect the lives of migrants and refugees along migration routes, particularly in Libya. A plan for the voluntary evacuation of migrants from Libya to their countries of origin was also approved. The Libyan authorities agreed to allow UNHCR and IOM representatives access to the camps where migrants were staying.[61] A summit of seven southern European countries (Italy, Spain, France, Portugal, Malta, Greece, and Cyprus) was

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59 Commission, 'Eu-Turkey Statement Two years on' (April 2018), p 1 <https://home-a ffairs.ec.europa.eu/system/files/2020-09/20180314_eu-turkey-two-years-on_en.pdf> accessed 17 March 2024.

60 European Council, 'Informal meeting of EU heads of state or government, Malta, 3 February 2017' <http://www.consilium.europa.eu/en/meetings/european-council/2 017/02/03/> accessed 17 March 2024.

61 '5th African Union – EU Summit, 29–30 November 2017' <www.consilium.europa.eu /en/meetings/international-summit/2017/11/29-30/> accessed 17 March 2024.

held in Rome on 10 January 2018. The participants of the summit argued in favour of a unified EU policy on migration. The resulting document states that the southern European countries 'are strongly committed to a common European migration policy, to prevent irregular flows and to address the root causes of mass migration in dialogue and cooperation with the countries of origin and transit' and they 'are determined to strengthen (...) partnerships with those countries, particularly in Africa'.[62]

Furthermore, the participants of the summit supported the full implementation of the EU-Turkey Statement. European and African countries signed the so-called Marrakesh Political Declaration on 2 May 2018 (as part of the so-called Rabat Process launched in 2006 for the European-African dialogue on migration and development). The declaration emphasized the benefits of legal immigration, including a particular desire to promote the mobility of specific groups of immigrants (e.g. professionals). At the same time, the promotion of legal immigration from Africa is to be accompanied by the prevention of irregular immigration. It was also declared, among other things, that the objective of strengthening the protection and integration of refugees and other forced migrants would be pursued.[63] The conclusions of the European Council meeting of 28 June 2018 stated that 'The European Council agrees on launching the second tranche of the Facility for Refugees in Turkey and at the same time on transferring 500 million euro (...) to the EU Trust Fund for Africa.'[64] It was explicitly acknowledged that 'tackling the migration problem at its core requires a partnership with Africa aiming at a substantial socio-economic transformation of the African continent building upon the principles and objectives (...) defined by the African countries (...).'[65]

Cooperation with third countries in reducing migration to Europe seems necessary. For example, the EU-Turkey Statement has clearly reduced the influx of migrants. The search for effective solutions on migration routes from Africa is much more difficult. However, there are some doubts about the measures in question. As far as the EU-Turkey Statement is concerned, there is a risk of an instrumental use of migrants by Turkey to achieve political aims. In addition, with regard to both Turkey and other partners (e.g., Libya), there are doubts about the conditions guaranteeing the rights

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62 ibid.
63 See <www.rabat-process.org/en/> accessed 17 March 2024.
64 European Council, 'Meeting 28 June 2018' (n 31) 3.
65 ibid.

of refugees residing there. It seems that the key in EU arrangements with third countries is to provide a quick fix and to show the EU is taking the concerns of Member States about migration seriously without considering the humanitarian implications of the implementation of the provisions. On the one hand, this raises objections from humanitarian organizations, while on the other, cooperation with third countries is widely perceived among Member States as a necessary tool for reducing future waves of migration to Europe. So it seems for now that there is no fully satisfactory solution.

In conclusion, it is worth mentioning that the formal and legal status of the agreement with Turkey remains unclear. The non-transparent formula of a 'statement' (rather than, for example, an agreement[66]) seems to be a model example of a flexible, less formalized, ad-hoc[67] tool for migration management typical of the 'innovative approach' in Public Governance. Furthermore, such a 'flexible' search for political solutions through negotiations and deliberation may be an example of the implementation of a kind of new intergovernmentalism in the European Union's activities.[68]

VII. Shift to a more restrictive migration policy paradigm

The migration crisis initiated a gradual shift by the EU to a paradigm of a more restrictive, controlled, and selective migration policy focusing on the protection of the EU's external borders. At the end of 2015, the EU tripled its spending on external border protection.[69] In 2016, the institutional manifestation of this trend was the EU Council decision on the Frontex Agency. The Agency was strengthened relatively quickly and transformed into the European Border and Coast Guard Agency. The Agency's most important new competence became the ability to intervene in a country experiencing an increased migratory influx and being unable to deal with the

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66 See Cardwell (n 44) 72.
67 See Zeynep Sahin-Mencutek and others, 'A crisis mode in migration governance: comparative and analytical insights' (2022) Comparative Migration Studies no 12, 12.
68 About new intergovernmentalism, see more Christopher J Bickerton, Dermot Hodson and Uwe Puetter, 'The New Intergovernmentalism: European Integration in the Post-Maastricht Era' (2014) 53 Journal of Common Market Studies 703–722.
69 Bridget Anderson, 'Towards a new politics of migration?' (2017) 40 Ethnic and Racial Studies 1527, 1529.

threats at the external border on its own.[70] The extension of the Agency's mandate and the increase in its resources were driven by the need for tighter controls and a more restrictive entry policy. It is worth noting that the extension of Frontex's remit applied to areas of activity reserved to date for nation states, and the trend towards further strengthening the Agency is continuing today. The potentially restrictive nature of the Agency's activity is also sometimes criticized. For example, in 2022, there were accusations of so-called 'push backs' on the Greek-Turkish border in the context of Frontex's activities.[71]

It is also worth noting that an EP and Council Regulation was adopted on 15 March 2017, according to which EU countries were obliged to conduct systematic checks on everyone crossing the external borders of the EU (including EU citizens).[72] Another example of radical moves to reduce uncontrolled migration was the temporary reintroduction of border controls and therefore the suspension of the Schengen regime taking place since September 2015. For example, Germany reintroduced border controls at its border with Austria, Austria at its borders with Slovenia, Italy, Hungary and Slovakia, and Hungary at its border with Slovenia. Temporary border controls have also been reintroduced by Norway and Denmark.[73] Control procedures were introduced at Danish ports with ferry crossings to Germany, at the land border between Germany and Denmark, at Swedish ports in the south-western region of the country and at the bridge over the Sund, as well as at Norwegian ports with sea crossings to Denmark, Germany and Sweden.[74] The migration crisis has undermined one of contemporary foundations of the EU, i.e. the free movement of persons and the abolition

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70 Council of the European Union, 'European Border and Coast Guard: final approval, Press Release' (14 September 2016) <www.consilium.europa.eu/en/press/press-releas es/2016/09/14/european-border-coast-guard/> accessed 17 March 2024.

71 See <https://fragdenstaat.de/en/blog/2022/10/13/frontex-olaf-report-leaked/>; <https://frontex.europa.eu/media-centre/news/news-release/statement-of-frontex-e xecutive-management-following-publication-of-olaf-report-amARYy> both accessed 17 March 2024.

72 Regulation (EU) 2017/458 of The European Parliament and of The Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders, Official Journal of the European Union [2017] OJ L74/1.

73 Frontex, 'Risk Analysis for 2016' (n 6), 33.

74 See Marta Pachocka, 'Uchodźcy a wybrane państwa Europy Zachodniej, Francja' in Konstanty A Wojtaszczyk and Jolanta Szymańska (eds), *Uchodźcy w Europie* (AS-PRA-JR 2017).

of internal borders, clearly demonstrating that even such a foundation can be suspended under crisis management.[75]

Awareness of the lack of control over migration flows has also contributed to the transformation of the European Asylum Support Office (EASO) into a strengthened, fully-fledged EU Asylum Agency in 2022. Among other things, the new regulation is to make it easier to send experts to Member States that have requested operational assistance. More support is also to be provided for cooperation between EU Member States and third countries.[76] Asymmetric hybrid threats (see earlier) also seem to be leading to a paradigm shift at a less formal level. For example, the EU-Belarusian border crisis was condemned by EU leaders in the context of 'any attempts by third countries to instrumentalize migrants for political purposes.'[77] In October 2021, these leaders stated that 'the EU will continue countering the ongoing hybrid attack launched by the Belarusian regime, including by adopting further restrictive measures against persons and legal entities, in line with its gradual approach, as a matter of urgency.'[78] In December 2021, Lithuania, Latvia and Poland were temporarily given the right to apply temporary measures significantly restricting the existing rights of refugees and migrants.[79] These included the possibility to:[80]

– identify registration points for applications for international protection close to the border;
– extend the deadline for registering applications for international protection to four weeks;

75 Özer Binici, 'European integration theory in times of crises: Updating 'The Old Debate' with a morphogenetic approach' (2022) 16 Europolity no 1.

76 Council of the European Union, 'Migration and asylum pact: Council adopts EU asylum agency regulation, Press release' (9 December 2021) <www.consilium.europa. eu/en/press/press-releases/2021/12/09/migration-and-asylum-agency-adopts-e u-asylum-agency-regulation/> accessed 17 March 2024.

77 European Council, 'European Council Meeting (24 and 25 June 2021) – Conclusions' EUCO 7/21, p 3 <www.consilium.europa.eu/media/50763/2425-06-21-euco-conclusio ns-en.pdf> accessed 16 March 2024.

78 European Council, 'European Council Meeting (21 and 22 October 2021) – Conclusions' EUCO 17/21, p 6 <www.consilium.europa.eu/media/52622/20211022-euco-conc lusions-en.pdf>.

79 Wawrzusiszyn (n 11) 56–57.

80 Commission, 'Proposal for a COUNCIL DECISION on provisional emergency measures for the benefit of Latvia, Lithuania and Poland' COM(2021) 752 final <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0752& from=EN> accessed 17 March 2024.

– apply an accelerated border procedure for all applications and extend the
duration of the border procedure to sixteen weeks;
– make certain facilitations for deporting illegal migrants.

It seems that, since 2015, the main emphasis of the EU migration policy
– despite clear declarations on the need to respect the fundamental rights
of migrants – has increasingly shifted from humanitarian issues towards
security issues. There has been a normalization of the securitization of
migration in EU decision-making, which can also be regarded as something
new.[81]

VIII. The first ever implementation of the Temporary Protection Directive

The Council of the EU unanimously adopted an implementing decision
introducing temporary protection in connection with the massive influx
of persons fleeing Ukraine as a result of the war on 4 March 2022 on the
basis of Directive 2001/55/EC.[82] This was the first such decision made by
the Council since the adoption of that Directive and thus represented a
doubtless innovation.

As stated in the decision:

'Temporary protection is the most appropriate instrument in the current
situation. Given the extraordinary and exceptional situation, including
the military invasion of Ukraine by the Russian Federation and the scale
of the mass influx of displaced persons, temporary protection should
allow them to enjoy harmonised rights across the Union that offer an
adequate level of protection. Introducing temporary protection is also ex-
pected to benefit the Member States, as the rights accompanying tempor-
ary protection limit the need for displaced persons to immediately seek
international protection and thus the risk of overwhelming their asylum

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81 Moa Nalepa, 'EU migration policy changes in times of crisis' (2018) Malmö Institute
for Studies of Migration, Diversity and Welfare (MIM) Malmö University, MIM
Working Paper Series 18:4, 1.

82 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving
temporary protection in the event of a mass influx of displaced persons and on
measures promoting a balance of efforts between Member States in receiving such
persons and bearing the consequences thereof [2001] OJ L212/12 <https://eur-lex.eur
opa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0055&from=EN> accessed
17 March 2024.

systems, as they reduce formalities to a minimum because of the urgency of the situation. Furthermore, Ukrainian nationals, as visa-free travellers, have the right to move freely within the Union after being admitted into the territory for a 90-day period. On this basis, they are able to choose the Member State in which they want to enjoy the rights attached to temporary protection and to join their family and friends across the significant diaspora networks that currently exist across the Union. This will in practice facilitate a balance of efforts between Member States, thereby reducing the pressure on national reception systems'.[83]

The duration of temporary protection should be for an initial period of one year. If the conditions defined in the Directive are met 'that period should be extended automatically by six monthly periods for a maximum of one year.'[84] These harmonized rights apply to issues such as residence, access to the labour market and housing, medical assistance, and children's access to education. The award of temporary protection to refugees from Ukraine was a very good solution. With such a massive migratory flow in such a short time, the application of regular asylum procedures would have had to lead to inefficiencies in the national systems for receiving applications for international protection in the main destination countries of the refugees.

The implementation of Directive 2001/55/EC in the case of refugees from Ukraine again suggests the different nature of the current crisis compared to that in 2015. Refugee migration from Ukraine is perceived as more transparent about its causes and closer in both territorial and cultural terms. It does not raise as many doubts and concerns among state authorities and the EU public opinion as previous crisis waves. Immigrants from the Middle East and North Africa are perceived much more through the framework of insecurity and threats, and so the reactions to the 2015 crisis were also different. Undoubtedly, the implementation of the Directive with regard to refugees from Ukraine was also facilitated by the visa-free regime between the EU and Ukraine. Another facilitating factor was the positive perception of Ukrainian refugees by European societies. However, in view of the aforementioned differences, the Directive should not be expected

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83 Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection [2022] OJ L71/3 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0382&from=EN> accessed 17 March 2024.

84 ibid L71/4.

to become the basis for a new solidarity mechanism in the EU asylum policy.[85] Perhaps advantage will be taken of selected experiences from its application. Rather, it has become evidence of a selective and flexible tailoring of tools to address the mass migration crisis to specific circumstances. The more diverse and problematic nature of migration from African and Asian countries mentioned above seems to preclude the adoption of such 'automatic' solutions.

IX. Conclusions

Recent years have shown the difficulty of Europe's migration situation and the difficulty of finding a compromise on a common migration policy at the EU level. The crises discussed differed significantly from each other – both in terms of their factors, dynamics, shape, and effects, as well as the reactions and political decisions at various levels that they caused. They also affected different Member States to differing extents. For example, while Poland was neither a destination country of crisis migratory waves nor located on any significant migration route in 2015, in 2022, it became a major destination country for refugees, receiving more people seeking international protection than the whole of the European Union in 2015.

The turbulent, dynamic, and internally diverse but simultaneously equally challenging migration situation in Europe over the past seven years has given rise to the search for new solutions to respond to it. They have been selectively tailored and have sometimes found themselves outside the traditional formal and institutional framework. Some of these solutions have proved pertinent and effective (e.g. the application of the Temporary Protection Directive to refugees from Ukraine in 2022); others yielded some of the expected results but also had questionable human rights implications and made the EU dependent on cooperation with external partners and therefore susceptible to blackmail (the hotspot approach, EU arrangements with third countries, shift to a more restrictive migration policy paradigm); again others have definitely failed (such as top-down relocation with a quota mechanism that had a poor implementation record). Given the difficulty in finding a compromise between Member States on

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85 Jolanta Szymańska, 'EU Weighs Lessons of the Temporary Protection Directive for the Future of Asylum Policy' (*The Polish Institute of International Affairs (PISM)*, 1 September 2022) <https://pism.pl/publications/eu-weighs-lessons-of-the-temporary-protection-directive-for-the-future-of-asylum-policy> accessed 16 March 2024.

a common asylum and migration policy, including the fact that successive attempts to find solutions at the EU level do not satisfy all participants in the negotiation process, it will be all the more important to be ready to respond flexibly to crises based on the principles of public governance and taking into account the interests of various states and political players.