

EU hotspots, relocation and absconded migrants in Italy. How to save Schengen within a failing Dublin system?

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by Giacomo Orsini and Christof Roos

Italy is the main gate of entry for undocumented migration to the EU since the EU Turkey statement from March 2016 decreased migration to Greece (EPSC 2017). Based on the number of recorded apprehensions, the Central Mediterranean route has become the most frequented by unauthorised migrants: 150,000 entries and more were counted annually since 2014. Yet, for the two decades before the massive inflow of 2015, Italy has already been on the main route for thousands of boat migrants (Frontex 2017; Frontex 2010). Persistently, the issue ranks high on the agenda of meetings of the European Council and the Council of Ministers. According to Italian authorities, the amount of entries has seriously and unprecedentedly stressed local reception capacity repeatedly motivating Italian Prime Ministers to call for EU assistance and burden sharing. The EU response to the 'frontline' fate of Italy provides resources for external migration control in North African countries as well as the stepping-up of reception facilities for migrants, especially in the southernmost Italian territories. Acknowledging that migration management at the Central Mediterranean route can only be tackled by a comprehensive or 'global' approach, this commentary limits itself to an assessment of Italian implementation of EU policy and interaction with EU agencies in dealing with irregular migration. Secondary movements of irregular migrants have challenged the Schengen area to the extent that abolishment of these movements has become a political priority with EU and national policy makers. Effective migration management in Italy, primarily in Sicily, is considered a key factor in making the Common European Asylum System (CEAS) work and to maintaining the border free Schengen area. Even though unauthorised crossings from Libya have dropped to a few hundreds due to the increased cooperation

Italy is the main gate of entry for undocumented migration to the EU which seriously stresses local reception capacity. Secondary movements of migrants to other member states have become a salient issue challenging the border free Schengen area. The EU has been responsive to this situation, introducing 'hotspots' and a relocation mechanism that are meant to support local authorities. This policy brief asks whether EU measures can effectively foster migration management in Italy and decrease migrant absconding. Our research on the implementation of EU hotspots in Sicily, the relocation mechanism, and the asylum system in Italy shows that the effectiveness of support measures is limited also because of issues related to policy design and compliance. Tackling the issue of absconding we suggest a double strategy for Italy: building capacity for migrant reception as well as the asylum infrastructure while enforcing the Dublin regulation in a 'spirit of solidarity'.

between the Italian government and the EU on the one hand, and the National Reconciliation Government of Libya State and local authorities on the other, there are reasons to believe that this arrangement will not last long. The constant violation of migrants' and asylum seekers' fundamental rights in Libya

question the legitimacy of such cooperation and the Libyan internal situation remains extremely volatile. This makes it hard to predict a stable EU Libya migration cooperation modelled after the EU Turkey statement. In addition, migratory routes seem to have already shifted westwards with more people now departing from Tunisia to land undetected in Lampedusa or the rest of Sicily (IOM 2017).

We thus ask whether EU measures can effectively support migration management in Italy. Among others, the limitation of migrant absconding and onward movements in the Schengen area serve as a proxy for achieving EU policy objectives. In this regard, we analyse data on the implementation of the EU hotspots in Sicily, the relocation mechanism and the asylum system in Italy. We also conducted few interviews with officials and observers to substantiate the findings. Our research shows that the effectiveness of support measures is limited also because of issues related to policy design and compliance. As a consequence, Italian authorities maintain practices circumventing their obligations towards the CEAS. This purposeful non-compliance seems to be the political trade-off between Italy, EU institutions, and other Member States for a Dublin system that puts disproportional strain on Italy (ENM 2015; Triandafyllidou and Dimitriadi 2014). To us, however, this trade-off seems to be unsustainable in the long run. The informal management of secondary movements has extremely high political costs that risk undermining the whole Schengen system. This is why we suggest measures that tackle the absconding of irregular migrants in Italy by reducing the double burden of Italian authorities in controlling the EU external border and providing for asylum seekers' reception.

EU support measures for 'frontline' states

The European Agenda for Migration from 2015 called for the better support of 'frontline' states in receiving irregular migrants and asylum seekers, the systematic identification of new arrivals by registration of their biometric data in the EURODAC system, and a more evenly distribution of asylum seekers among EU Member States (COM 2015 (240)). Until late 2015, only a small percentage, roughly one third, of those reaching Italy from its shores were properly identified (COM 2016). Here, non-registration signified the purposeful non-compliance of various Italian governments with the Dublin

regulation incentivising secondary movements of irregular migrants to other Member States. The establishment of so-called 'hotspots' in Mediterranean Member States is supposed to prevent these practices. Migration management support teams that include staff from various EU agencies, the European Asylum Support Office (EASO), Frontex, and Europol support the Italian law enforcement authorities in dealing with first identification and status definition of migrants (COM 2015 (240): 6). Teams of EU officials are available and work in selected disembarking ports. There, many of those rescued at sea are landed by state or private carriers according to the indications given by 'the Maritime Rescue Coordination Centre (MRCC) of Rome, run by the Italian Coast Guard' (Cuttitta 2017: 11). The establishment of hotspots and designated disembarking ports attempt at combining the humanitarian objective of offering first reception with the functions of the border, the control of entry and registration of the migrants' identity. In this process, the admissibility of the migrant to the asylum procedure or their return to the country of origin is determined (Ministero dell'Interno 2017). Overall, hotspots are meant to bring order and EU oversight into the management of arrivals at the EU external border.

The ill-designed EU relocation mechanism cannot undo the failure of Dublin

Italy faces the double burden of controlling the external EU border and running asylum procedures in accordance with the first country of asylum principle determined in the Dublin regulation (604/2013). The establishment of EU hotspots aimed at partly taking off this double burden from the frontline countries by channelling migrants into a relocation mechanism. In fact, this temporary mechanism was a response to uneven refugee distribution in the EU and also an effect of a Dublin regulation that despite reform efforts does not yet include Southern Member States' call for sharing the burden of hosting refugees. The relocation scheme was effective for two years, 2015 to 2017, but had serious design problems that contradicted the idea of supporting frontline states and the hotspot system. To name the most important problem, the eligibility for relocation depended on the nationality of the migrants and their latest recognition rates for international protection in the EU. Only if this rate was above 75 per cent the migrant qualified for relocation to another EU member

state (Council Decisions (EU) 2015/1523 and 2015/1601, Art. 3). According to recognition rates from 2017, only Syrians and Eritreans were eligible for relocation. In contrast, migrants from Afghanistan, Iraq, Iran, Sudan or Somalia could not be considered (Eurostat 2017). The 75 per cent threshold did not only limit the application of the relocation mechanism but also contradicted the reality that Italian authorities are still facing. Most irregular migrants rescued in the Strait of Sicily and brought to disembark at one of the ports of the island, are of a nationality that does not qualify for relocation. In fact, Eritreans, the main nationality qualifying for relocation in Italy, only represented 3.6 per cent of all arrivals in December and January of 2016-17 (COM 2017 (74): 2).

An additional major problem of the scheme was the slow response of member states to accept relocation. We identify non-compliance with the two Council decisions on relocation (Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision 2015/ 1601 of 22 September 2015). From roughly 40,000 places allocated for Italy in September 2015, only 9,754 migrants had been relocated until October 2017. The implementation of the scheme picked up faster in 2017 compared to none or slow response in 2016. However, some countries openly rejected the scheme or asked for exemptions. We find that the hotspot can only function as a migration management tool if it is able to channel irregular migrants into procedures for asylum, relocation, or return. The idea of channelling was blocked by stringent eligibility criteria, slow member state response to relocation, and the fact that the number of arrivals way exceeds the registration and detention capacity of the four Italian hotspots located in Pozzallo, Trapani, Lampedusa and Taranto (COM 2017 (74): 9). In the first quarter of 2017, more than 35,000 migrants arrived in Sicily via the Central Mediterranean route, counting for an average of almost 3,000 people per week. Of course, these numbers fluctuate and seem to have decreased in the second quarter of 2017. However, the hotspots can only receive 1,600 migrants at a time while registration takes weeks (Dutch Council for Refugees 2016).

Taking the policy design and compliance problems with relocation into account, the four operating EU hotspots in Sicily and Apulia can hardly deliver on lifting pressure from the Italian authorities and de-congest reception facilities in Sicily

and the rest of Southern Italy. Despite the support that was provided by EU agencies as well as EU financial contributions, the task of detaining non-admissible asylum seekers, their return as well as the obligation to provide for an asylum procedure mainly remain the responsibility of Italy (i.e. law enforcement authorities and the military). We researched how Italy deals with these multiple challenges and how the country provides for the asylum procedure and eventual return of those that do not receive any international protection in Italy.

Institutions in Italy ill-functioning

Given the involvement of EU agencies in the registration and identification process, Italian authorities are left with little room for non-compliance with the Dublin regulation. The Member State can hardly shirk its responsibility as the first country of asylum for boat people. In fact, the European Parliament reports that fingerprinting in Italy has risen to almost 100 per cent (EP 2016: 10). Thus, the former practice of purposeful non-compliance by non-registration was abolished. However, evidence suggests that Italian authorities still aim at limiting the number of people entering the national protection system by way of issuing deferral of entry orders.

Corresponding to the opening of the first hotspots in Sicily, a significant increase in the number of deferred refusal of entry orders was recorded. Such an order is addressed to many of those unauthorised migrants apprehended at the border who do not apply for asylum. According to Italian law enforcement, such orders are issued immediately after rescue or disembarkation. Individuals that receive the order to leave are not registered nor do they remain in the hotspots since the order states that the person had no right to cross the border. As a consequence, they are set free with the obligation to leave the country within 7 days. Between the 1 September 2015 and the 13 January 2016, about 18 per cent of the 4,597 persons that went through the hotspot in Lampedusa were given such orders. The Special Commission for the Protection and Promotion of Human Rights of the Italian Senate expressed its concern for the sudden increase in the use of such orders according to a report it had issued in 2017 (Senato della Repubblica 2017). In a previous report from 2016, the same Commission stated that, besides increasing the rate of registrations the only other tangible result of the

establishment of the hotspot system was 'a substantial growth of the number of deferred refusals of entry' due to few relocations (Senato della Repubblica 2016).

Not only the increase in issuance but also the rapidity with which these orders were released generated further concerns, to the extent that the practice was denounced as illegal by many NGOs, but also by members of the Italian Parliament (McMahon 2016; Camera dei Deputati 2016). The organisations criticised that asylum applications were assessed collectively, based on declared nationality. Both, in Pozzallo and Taranto migrants were given these orders even before they could apply for asylum and before they received adequate legal assistance. A report of the Italian Parliament links the increase in the issuing of such orders explicitly to recently introduced 'directives issued by the Italian Ministry of Interior' (Camera dei Deputati 2015). For this reason, the Department of Civil Liberties of the Italian Ministry of the Interior had to reprimand the Italian police with an internal memo calling for a limit on the use of such orders and treating all asylum applications on an individual basis (Consiglio Italiano per i Rifugiati 2016).

The rapid increase in deferred refusal of entry orders has several explanations. Among other factors, by issuing deferred refusal of entry orders, Italian authorities are able to keep many unregistered and out of the Italian reception system – thus decreasing the burden on reception. In fact, those who did not receive a deferred refusal of entry order will enter the Italian reception system either as asylum seekers or, in case no application for asylum is submitted, simply as undocumented migrants. As for undocumented migrants and those whose asylum application is rejected, they will enter detention until they receive an expulsion order.

It is important to note that few of those that receive the deferred refusal of entry order and almost none of those with an expulsion order actually leave Italy and the EU: rather, the opposite happens. When receiving deferred refusal of entry or expulsion orders, people are simply left free to move around in Italy with the obligation to leave the territory of the country within 7 days (Debarge 2016). Hardly anybody takes a boat or a flight back to Libya or their country of origin, many simply remain within the Schengen territory and try to move north. This explains why so many unauthorised migrants keep crowding the Italian border areas of Brennero or Ventimiglia,

waiting to cross into Austria and France (Statewatch Observatory 2016). Another indicator for the ill-functioning of the asylum system in Italy is the exponential development of requests for Dublin transfers. In 2016 Italy received by far most 'take charge' and 'take back' requests (64,844) of asylum seekers apprehended in other Member States. Two thirds of these requests were justified as take back requests. A take back request means that the asylum claim of the migrant is still under investigation or has been rejected in the country of first entry. Requests addressed to Italy rose by 1,460 per cent comparing the number of requests from 2008 (4,447) to 2016 (64,844) (Datamarket 2017).

This data clearly shows that today the Italian asylum system cannot cope with the amount of people seeking protection in the country, let alone those entering for other reasons than international protection. The data also raises concerns about the applicability of the Dublin regulation at a time when Italy has limited incentives and means to comply with EU obligations. A situation that has certainly not improved with the recent reform of the asylum reception system introduced by the Italian Minister of Interior Marco Minniti, in April 2017. In fact the change in legislation introduced cutting the time foreseen to examine asylum requests and the right to legal assistance in appealing decisions (Virgo 2017). Arguably, this will increase the number of rejected applications, with even more individuals receiving an order of expulsion that will not be executed.

Concluding recommendations

Summing up the analysis of implementation of EU hotspots and the asylum system in Italy we conclude that the country maintains shirking its obligations towards Dublin and the CEAS. Our tentative explanation for this account is that an ill-designed relocation mechanism cannot rectify the problems and failure of the Dublin regulation. If relocation does not function it negatively impacts on the idea of the hotspot to orderly manage mixed migration flows at the EU external border. Our assumption is that frontline Member States will do anything they can to promote burden sharing by shirking their responsibility towards the CEAS, as long as responsibility for providing international protection is not shared. As such, the CEAS is incomplete and persistently bound to

fail. Our suggestion for a policy response to the dilemma of responsibility shirking is twofold. On the one hand, we propose to invest in the Italian asylum infrastructure. On the other hand, we suggest other Member States that can barely agree on reforming Dublin to at least apply the regulation in a 'spirit of solidarity'. Both ways, incentives for shirking responsibilities could be suppressed.

The Italian reception system has been reformed several times, most recently in April 2017 (COM 2017 (1882)). In general, asylum seekers go through a 3-tier reception system, as reception provides for (1) first assistance facilities (so called CPSA) and hotspots; (2) reception facilities including first reception centres (the so called CIE, now CPR), CARAs (centres for the accommodation of asylum seekers) and CAS (temporary centres for emergency reception) now both incorporated into regional hubs; and (3) second-tier reception facilities, so-called SPRAR centres (System of Protection for Applicants and Beneficiaries of International Protection) that are run by the National Association of Italian Municipalities. While CPSA and hotspots are present in border areas to provide for the first reception and registration of unauthorised migrants and asylum seekers apprehended at the border, CPR and regional hubs exist primarily to detain undocumented third-country nationals who have been caught within the Italian territory. These CPRs are also the places where unauthorised migrants are transferred to after they have left the hotspots or the disembarking ports, and before receiving an order of expulsion. Similarly, CARAs serve to host asylum seekers waiting for their application to be evaluated. If successful, they enter the SPRAR system based on local and relatively small facilities (EP 2015).

Thus we recommend for the EU to invest in better reception facilities in Italy by concentrating the effort on the SPRAR system. As recorded by many stakeholders (e.g. COM 2015), such a localised approach constitutes a good practice, especially if compared to the CARA system that is instead composed mainly of big centres whose establishment and management has often created tensions with local communities (FRA 2016). Moreover, given the size of CARAs and the available public funding, 'the mafia infiltrated [their] administration' (Goffredo and Meret 2017) significantly decreasing the quality of services provided to detainees.

On the contrary, in the SPRAR smaller groups of asylum seekers are accommodated in 'small facilities scattered on the territory and organised in medium-sized collective centres or apartments, which sometimes are self-managed' (EMN 2013). There, due to the reduced size of the facilities, asylum seekers can better and more easily integrate in local communities. Thus, while on the one hand the SPRAR system helps reducing the social costs of asylum, on the other this model might also help avoiding the mismanagement of public funding. Investing in the SPRAR system while also providing material support for migrants, and swifter processing of applications, can de-incentivise refugees from trying to move elsewhere in Europe as secondary movements would become less attractive in comparative terms. However, in order to de-incentivise Italian authorities' from circumventing their Dublin obligations anyway, the Italian asylum system must be upgraded while simultaneously pushing for a more efficient relocation system that could be part of the currently negotiated Dublin IV regulation. Despite contention and disagreement on mandatory relocation in the Council of the EU, a coalition of the 'willing' could spearhead putting solidarity into practice. As the situation in 'frontline' Member States constantly changes a flexible approach should be key to these efforts.

These positive incentives can be supported by other Member States' mindful management of Dublin transfers as long as the situation affords it and Italians build up capacity. What we mean by mindful is a unilateral or bilateral, temporary and selective suspension of Dublin transfers to Italy that can be an alternative to mandatory relocation. In this regard, we follow the suggestion of recent jurisdiction of the Court of Justice (C 490/16 and C 646/16) (Court of Justice of the European Union 2017). The Court's decision reaffirms Member States' obligations under the Dublin regulation. At the same time it suggests that the rules can be applied in a 'spirit of solidarity' if Member States evoke the 'sovereignty clause' (Art. 17(1), Regulation 604/2013). This clause determines that Dublin transfers are not mandatory and Member States may decide to examine a claim for international protection even if this is not their responsibility under the Regulation. Along these lines, Italy has already shown resistance to accepting take back requests. As such, the country acts against Dublin pushing for the sovereignty clause to be enforced by other Member

States. Nevertheless, we hold that incentives created for onward movements of irregular migrants can be toned down by the select and temporary suspension of Dublin transfers, if simultaneously efforts are made to build better reception facilities in Italy. This seemingly contradictory approach could substitute for ill-functioning or non-existent relocation and create incentives for Italian authorities to improve their reception infrastructure while abstaining from excessively issuing deferred refusal of entry orders.

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About the authors



With a focus on the most empirical outcomes of European integration, **Dr. Giacomo Orsini** has conducted much fieldwork research along the European external border in Melilla, Malta, Lampedusa and Fuerteventura, and is now working as Senior Research Officer of the Department of Sociology of the University of Essex for the ESRC funded project 'Bordering on Britishness: an Oral History Study of 20th century Gibraltar'. Since 2015 he also works as Maître de Conference of the Institut d'Etudes Européennes of the Université Libre de Bruxelles, where he teaches the postgraduate course 'International Migrations in Europe'. In 2017 he became Associate Researcher of the Institute for European Studies of the Vrije Universiteit Brussel. His major research areas are concerned with borders – being them real or symbolic, migration and asylum, contemporary governance systems and governmentality, maritime sociology and the sociology of everyday life. During his academic career, he has collaborated with several European as well as non-European universities, and became member of various international research networks. In 2011 he was awarded the prestigious GUF-100 Prize as the Student of the Year of the Faculty of Arts of the University of Groningen. Later that year, he also received the University of Essex's studentship to conduct his doctoral research there.



Prof. Dr. Christof Roos recently joined the University of Flensburg as an Assistant Professor for European and Global Governance. He stays an associate researcher at IES and its Migration and Diversity Cluster in which he worked from 2014 to 2017. At University of Bremen and its International Graduate School for Social Sciences he received his PhD in 2012 where he researched EU integration in Justice and Home Affairs. His focus is on EU immigration politics as well as single market issues such as freedom of movement, Schengen cooperation, and the common European asylum system. Contributions include: *In Cracks in the Walls of Fortress Europe? The EU and Immigration Policies* (2013) with Palgrave Macmillan as well as the co-authored monograph *Liberal States and the Freedom of Movement. Selective Borders, Unequal Mobility* (2012). He studied political science at Free University Berlin (2000-2006) and at York University Toronto (2003-2004). He currently teaches in the European Studies programme of Flensburg University and gives lectures on EU migration, asylum, and border policies at the Collège of Europe (Bruges).

Outside of academia Christof Roos worked for the European Commission's DG Joint Research Centre in Ispra (Italy). There he contributed to a study on emigration from West African countries (2006-2007). In 2013 and 2014 he worked on the European strategy on Roma Inclusion and on the European Smart Cities and Communities Initiative in the European Affairs Department of the Senate Chancellery of the city of Berlin.