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A CRITIQUE OF THE HOTSPOT APPROACH: THE CASE OF ITALY

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- 3) ITALY
- 4) EUROPEAN UNION
- 5) LAMPEDUSA

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## **List of Abbreviations**

AFIS: Automated Fingerprint Identification System

CEAS: Common European Asylum System

CIE: Centro di Identificazione ed Espulsione (Center for Identification and Expulsion)

EASO: European Asylum Support Office

ECHR: European Court of Human Rights

ECRE: European Council on Refugees and Exiles

EU: European Union

EURODAC: European Dactyloscopy

EUROJUST: European Union's Judicial Cooperation Unit

EUROPOL: European Union Agency for Law Enforcement Cooperation

EURTF: European Union Regional Task Force

FRA: European Union Agency for Fundamental Rights

FRONTEX: European Border and Coast Guard Agency

INTERPOL: International Criminal Police Organization

IOM: International Organization for Migration

MMST: Migration Management Support Team

NGO: Non-Governmental Organization

SOP: Standard Operating Procedure

UNHCR: United Nations High Commissioner for Refugees

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## Özet

2015 yılında, Avrupa Birliği çoğunluğunu sığınmacıların oluşturduğu rekor sayıda göçmenin gelişine tanık oldu. AB'nin sınırlarında ve Schengen Bölgesi'nde ciddi insani ve siyasi zorluklar ortaya çıktı. Yaygın bir şekilde 'Avrupa Mülteci Krizi' olarak adlandırılrsa da, biz bunun Avrupa'nın mevcut sığınma sisteminin bir krizi olduğuna işaret ediyoruz. Bu durum karşısında, AB, orantısız göç baskısı altındaki İtalya ve Yunanistan'a, AB Ajansları, Avrupa Sığınma Destek Ofisi, Frontex, Europol'un operasyonel desteğini öngören 'hotspot' yaklaşımını sundu. Bu tezde, hotspot yaklaşımının AB'nin sığınma sisteminin krizini çözüp çözemeyeceğini anlamak için, hotspot yaklaşımının İtalya'daki uygulamasının ilk yılını, Lampedusa hotspot'undan örneklerle inceliyoruz. Sonuç olarak, krizi yaratan politikalara dayanan hotspot yaklaşımının, mülteci ve insan hakları sorumluluklarına ve üye devletler arasında adil/orantılı bir sorumluluk paylaşımına öncelik vermektense, hotspotlara ev sahipliği yapan devletler ve göçmenler için zorlukları konsolide ettiğini görüyoruz.

**Anahtar Kelimeler:** göçmen, Avrupa Birliği, İtalya, hotspot, Lampedusa.

## **Abstract**

In the year 2015, the European Union has witnessed a record number of migrant arrivals composed of a great majority of asylum seekers. Serious humanitarian and political challenges have appeared at the EU external borders and within the Schengen Area. However, it is called as ‘European Refugee Crisis’ in a widespread manner, we indicate that it is the crisis of the existing asylum system of the EU. Under the circumstances, the EU presented the hotspot approach to provide the operational assistance of the EU Agencies, namely European Asylum Support Office, Frontex, Europol, to Italy and Greece under disproportionate migratory pressure. In this thesis, we examine the first year of the implementation of the hotspot approach in Italy, with the examples from the hotspot of Lampedusa in order to understand whether the hotspot approach is able to address the crisis of the EU asylum system. In conclusion, we see that the hotspot approach that relies on the same policies led to the crisis, therefore, consolidates challenges for both the host Member States and migrants, rather than prioritizing refugee and human rights responsibilities, and a fair/proportionate sharing of responsibility among Member States.

**Key-words:** migrant, European Union, Italy, hotspot, Lampedusa.



## INTRODUCTION

Since the year 2014, the number of people fleeing war, conflict, violence, persecution, human rights violations, poverty to Europe has noticeably increased. In the absence of safe and legal routes, they have moved irregularly with the use of smuggling activities, at the risk of their life. Therefore, thousands of migrants have lost their lives while trying to reach Europe; the Mediterranean Sea has become the deadliest migration route in the World (International Organization for Migration, 2014). In the year 2015, both the number of migrants over 1.8 million with a great majority of asylum seekers and the number of migrants lost their lives over 4 thousand reached a peak (Frontex, 2016) (International Organization of Migration). While migrants have faced with serious humanitarian and protection challenges during and after their long and dangerous journeys, certain EU Member States have faced with the migratory pressure (UNHCR, 2015). Italy and Greece as the first destinations for migrants to enter to Europe have faced the growing pressure on their national reception systems; the majority of migrants disembarked in Italy and Greece has continued moving irregularly to their preferred destination states, particularly Germany and Sweden, within the EU (ibid.). The responsibility sharing among the Member States and the border-free Schengen Area became highly questionable. In the light of these developments, the increased number of arrivals has taken the lid off the inefficiency of the CEAS and its non-compliance with the founding principles and values of the EU such as respect for human dignity and human rights, the rule of law, solidarity between the Member States<sup>1</sup> (Jacobs, et al., 2015) (Langford, 2013) (Heijer, et al., 2016) (Bendel, 2016) (Sciurba, 2017).

The implementation of the Schengen Area has abolished internal border controls within the EU, while strengthened controls at the EU external borders for security

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<sup>1</sup> Article 1 of the Treaty of Lisbon states that “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.” Article 61 of the Treaty of Lisbon states that “It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States.” (Official Journal of the European Union, 2007)

reasons. The common set of rules for external border management covering enhanced border checks and cross-border surveillance, a visa requirement for citizens from some non-EU countries to enter in the Schengen Area was adopted (European Commission). These practices restrict the mobility of citizens of refugee sending countries and so preclude safe and legal access to Europe for asylum seekers (Heijer, et al., 2016) (Mau, et al., 2015) (Bendel, 2016). Therefore, the Schengen Area functions as a space of migration control by reinforcing deterrence at the EU external borders (Triandafyllidou & Dimitriadi, 2014).

In the border-free Schengen Area, asylum procedures, reception conditions, qualification standards varied from one Member State to another. While Southern Member States were receiving irregular arrivals, Northern Member States were receiving the large part of asylum applications (ibid.). Therefore, since 1999, the EU has been working to harmonize common minimum standards for asylum within the border-free Schengen Area and to share responsibilities among the Member States by the creation of the Common European Asylum System (European Commission). The current legislative framework on asylum is composed of three directives, and two regulations aim to set out minimum standards at the national level: the Asylum Procedures Directive sets out procedures for granting and withdrawing refugee status; the Reception Conditions Directive determines reception conditions for asylum applicants during the examination of their claim; the Qualification Directive indicates the grounds for granting international protection and the EURODAC Regulation forms an EU asylum fingerprint database, and finally the Dublin Regulation points out which member states are responsible for examining asylum claim (ibid.).

However, the CEAS failed both to harmonize differing asylum procedures, reception conditions, qualification standards, and to share responsibilities among the Member States. The Member States gave priority to their national interests over the EU harmonization prospect; therefore the CEAS has created the low minimum standards characterized as “a race to the bottom” (Heijer, et al., 2016), while the

asylum policies of the Member States remains as “mismatched patches” (Langford, 2013).

The Dublin Regulation, the most controversial tool of the CEAS, puts the responsibility of examining an asylum application on the shoulder of the Member State where asylum seeker first enter the EU (European Commission). The EURODAC Regulation tasks Member States with the collection of asylum seekers’ fingerprints and their transmission to the EURODAC central system (European Commission). Therefore, the comparison of fingerprints in the central system ensures to detect in which Member state asylum seekers were registered firstly and to determine which Member State is responsible for examining an asylum application. These two regulations, commonly called as the ‘Dublin System’ or ‘Dublin Regime,’ rely on coercion both on the part of asylum seekers and on the part of certain Member States (Heijer, et al., 2016).

On the one hand, it disregards the interest and preference of asylum seekers and forces them to seek asylum in the Member State of first entry. However, considering the failure of harmonization, some people choose to seek asylum in a country where better asylum procedures, reception conditions, high recognition rates exist (Leerkers, 2015). Some people aim to reunite with their family or friends, while others consider integration policies and opportunities such as the presence of existing asylum communities from their country of origin, colonial and linguistic links, the levels of xenophobia, economic conditions (Neumayer, 2004) (Radjenovic, 2017). Therefore, the Dublin System, based on the coercive placement of asylum seekers and control of asylum seekers’ movements within the EU, consolidates the security-based approach of the Schengen Area against citizens from some non-EU countries. Neither safe and legal access to the EU nor a right to choose where to seek asylum and freedom of movement within the EU is provided to asylum seekers. Therefore, the Dublin System pushes asylum seekers to move irregularly both to the EU and within the EU. In the absence of safe and legal route, asylum seekers use smuggling activities to reach the EU, at the risk of their life (Bendel, 2016) (Human Rights Watch, 2016) (Vries, et al., 2016). After they reach,

they avoid being fingerprinted for fear of being returned to the Member State of first entry and continue their irregular movements to their preferred destinations within the EU that are called ‘secondary movement’ (European Commission).

On the other hand, the Dublin System puts an unfair responsibility on the Member States located at the EU external borders, in particular on the Southern Member States such as Greece and Italy where most migrants enter the EU because of their geographical proximity to countries of origin and transit (Jacobs, et al., 2015) (Langford, 2013) (Carrera, et al., 2016) (Frantziou, et al., 2014). It has created disproportionate pressure on the weakest patches Italy and Greece already hit by the financial crisis that have no adequate conditions and capacity to deal with the processing and reception of all asylum seekers (ibid.). Therefore, it brings the principle of fair sharing of responsibility and solidarity among Member States up for discussion, while existing standards for asylum in these countries raise a concern about human rights conditions. The statement of Nils Muižnieks, the Human Rights Commissioner of the Council of Europe, epitomizes the criticisms raised against the unfair/disproportionate sharing of responsibility: “The so-called “Dublin System” leaves a few frontline southern EU countries to bear a disproportionate responsibility for asylum-seekers, and in any case it doesn’t conform with international human rights standards” (Muižnieks, 2015). Italy and Greece have organized their own relief through not registering asylum seekers and stimulating their secondary movement, in other words by the purposeful non-compliance with the Dublin System (Heijer, et al., 2016) (Maiani, 2016) (Orsini & Roos, 2017).

In year 2014, 170 664 irregular border-crossing were detected on the Central Mediterranean route, mostly between Libya and Italy, only 64 625 asylum seekers were registered by Italy (Frontex, 2016) (Eurostat). In the same year, the number of irregular border-crossing detected was 51 000 on the Eastern Mediterranean route, mostly between Turkey and the Greek islands, only 9 430 asylum seekers were registered by Greece (ibid.). Germany, Sweden, France, Hungary, and the UK respectively received the big share of secondary movements and they registered the big share of asylum applications together with Italy (Eurostat). Similarly, in year

2015, the number of irregular border-crossing detected was 885 386 on the Eastern Mediterranean route, only 13 205 asylum seekers were registered by Greece (Frontex, 2016) (Eurostat). In the same year, the number of detections was 153 946 on the Central Mediterranean route, only 83 540 asylum seekers were registered by Italy (ibid). Germany, Hungary, Sweden, Austria, and France respectively received the big share of secondary movements and they registered the big share of asylum applications together with Italy (Eurostat). It is understood that the first country of entry rule of the Dublin System has not been effective; thousands of migrants have moved to other Member States without leaving any record about their arrival and movement over Greece and Italy. The big share of asylum applications is distributing among only a few Member States that are located at the EU external borders or being the preferred destination countries of asylum seekers. This is why the Parliamentary Assembly of the Council of Europe describes the regulations and implementation of the Dublin System as “a symbol of unfairness and lack of solidarity in European asylum policy” and calls for an urgent far-reaching reform (Parliamentary Assembly, 2015).

The purposeful non-compliance with the Dublin System, the increasing number of secondary movements and together with the increasing security concerns following the terrorist attack in Paris have opened the border-free Schengen Area up for discussion. Many Member States have reshaped their border policies to control migration within the EU. They have been considering or actually implementing the temporary reintroduction of border controls, the construction of border walls and the erection of barbed wire fences at the internal borders (European Commission, 2018) (Express, 2015) (Granados, et al., 2016).

In addition to the controversial responsibility sharing among Member States within the EU, the CEAS aims to outsource responsibility to countries of origin and transit of migrants, generally referred to as ‘externalization’ (Bendel, 2016) (McNamara, 2013). Starting with the Global Approach to Migration and Mobility in 2005, the EU has focused on cooperation with countries of origin and transit on the combating of irregular migration, strengthening of the external border controls to prevent

migrants' arrival and on readmission agreements to facilitate repatriation (Bendel, 2016) (d'Humières, 2018) (European Commission).

Consequently, this is not a refugee crisis called in a widespread manner, referring to the increased number of arrivals, but a crisis of the existing asylum system of the EU (Heijer, et al., 2016) (Bendel, 2016) (Jacobs, et al., 2015) (Sciurba, 2017) (Langford, 2013). The increased number of arrivals has only taken the lid off the inefficiency of the CEAS and its non-compliance with the founding principles and values of the EU (ibid.). The CEAS, both in the internal and external dimensions, reflects a security-based approach to migration management rather than a human-rights based approach (Bendel, 2016) (Frantziou, et al., 2014) (Jacobs, et al., 2015). As noted previously, it relies on deterrence, coercive placement, migration control, externalization in order to prevent migrant arrivals, keep the number of migrants low, control their stay within the EU, facilitate their return and readmission, at the cost of refugee and human rights obligations. Moreover, it clearly fails to ensure a fair sharing of responsibility and solidarity among Member States. As Den Heijer, Rijpma and Spijkerboer (2016) stated, it is “a crisis of the EU’s own making” due to the failure of the CEAS, “both in set up and implementation”.

In the given circumstances, while the EU’s response to the ongoing crisis that would prioritize refugee and human rights responsibilities and provide a system of allocation considering the interest and preferences of asylum seekers and a fair sharing of responsibility among Member States has been expected and more precisely needed, the European Agenda on Migration composed of both internal and external policy measures was presented on 13 May 2015 (European Commission, 2015). The first part of the Agenda includes immediate actions against “the human tragedy in the Mediterranean”:

- to triple the budget for the Frontex joint-operations Triton in the Central Mediterranean Sea and Poseidon in the Aegean Sea for saving lives at sea,
- to support a possible Common Security and Defence Policy operations on criminal smuggling networks,

- to activate the emergency relocation scheme,
- to make a recommendation proposing an EU-wide Resettlement scheme,
- to strengthen partnership with countries of origin and transit,
- to set up a new hotspot approach to help “Member States in the frontline of migrant arrivals” (ibid.).

In this thesis, we will focus on the hotspot approach as an EU response in order to find out whether it is able to address the crisis of the EU asylum system. For this purpose, we will examine the concept of the hotspot approach as an operational entity and a physical site, the explicit and implicit objectives of the hotspot approach and related policy measures. In the light of these, we will examine the implementation of the hotspot approach in Italy to answer the research question.

The concept of the hotspot approach was firstly introduced under the title of “using the EU's tools to help frontline Member States” by the European Agenda on Migration (ibid.). The Agenda sketched the hotspot approach as follows:

“the European Asylum Support Office, Frontex and Europol will work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants. The work of the agencies will be complementary to one another. Those claiming asylum will be immediately channeled into an asylum procedure where EASO support teams will help to process asylum cases as quickly as possible. For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants. Europol and Eurojust will assist the host Member State with investigations to dismantle the smuggling and trafficking networks” (ibid.).

Following the Agenda, the Explanatory Note sent by Commissioner Dimitris Avramopoulos to Ministers of Migration, Home Affairs and Citizenship (2015) elaborated the concept of the hotspot approach. Accordingly, the aim and added value of the hotspot approach are “to provide comprehensive and targeted support

by the EU Agencies to frontline Member States which are faced with disproportionate migratory pressures at the external borders...to better cope with that pressure” (ibid.). Therefore, the hotspot approach as an organizational entity aims to provide the operational assistance of the EU Agencies, namely Frontex, EASO, Europol, Eurojust, to Member States under disproportionate pressure, in a rapid and integrated manner, in accordance with their area of expertise, for dealing with border management, asylum and return procedures, combatting smuggling and trafficking activities. The Explanatory Note indicated that international actors such as Interpol, IOM, UNHCR, and relevant NGOs also contribute this operational assistance. Considering that the discourse of “help”, “comprehensive and targeted support”, “operational assistance” to “Member States under disproportionate pressure” has been highlighted, the explicit objective of the hotspot approach seems to share unfair and disproportionate responsibility on Member States where most migrants arrive and to act with solidarity with them in order to relieve the pressure on them. In case that it works, it is also expected to address humanitarian and protection challenges in these countries. However, the mentioned operational assistance shall be provided under the full control of the host Member States (European Commission, 2015). The responsibilities of the EU Agencies are limited in specific areas, the main responsibility and work-load of the hotspot operations are left to Italy and Greece (Carrera, et al., 2016).

The concept of hotspot spatially is described as an area located at the external border of the EU and confronted disproportionate migratory pressure, “consisting of mixed migratory flows” where most migrants enter the EU (Avramopoulos, 2015) (ibid.) (Guild, et al., 2017). Not surprisingly, Italy and Greece became the first Member States where the hotspot approach is being implemented. At the first stage, Lampedusa, Augusta, Porte Empedocle, Pozzallo, Taranto and Trapani located at the southern border of Italy and the islands of Lesbos, Chios, Leros, Samos, and Kos at the eastern border of Greece were identified as hotspots (European Commission, 2015).



**Figure 1: The Map of the Identified Hotspots at the First Stage**



Source: (European Commission, 2015)

The hotspot approach does not envisage to provide reception facilities but builds on existing national reception facilities (Avramopoulos, 2015). Therefore, setting up adequate reception infrastructure and increasing reception capacities are seen as the responsibilities of the host Member State. Italy and Greece have already been under the criticism due to the lack of enough and adequate reception conditions and capacity, despite the dedicated EU funds and several calls for capacity increase and improving conditions<sup>2</sup> (ASGI) (Greek Council for Refugees).

Considering the abovementioned content of the operational assistance to swiftly identify, register and fingerprint incoming migrants, and the given location of

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<sup>2</sup> European Parliament resolution of 8 September 2015 called for closer monitoring of migrant reception and detention centres in southern Europe (European Parliament, 2015). Communication of 29 September 2015 pointed out that ensuring adequate reception infrastructure should be a priority for Italy and Greece (European Commission, 2015). Communication of 14 October 2015 emphasized that an increase in reception and detention capacities is essential for the 'hotspot' approach to be effective (European Commission, 2015).

hotspots at the main entry points of the EU for migrants, another objective of the hotspot approach seems to preclude the purposeful non-compliance of Italy and Greece with the Dublin System (Maiani, 2016) (Orsini & Roos, 2017) (Capitani, 2016) (Amnesty International, 2016). The State of Play Report of 14 October 2015 indicated that the EU Agencies help the Member States “to fulfil their obligations and responsibilities” (European Commission). The State of Play Report of 10 February 2016 underlined that all migrants disembarked in “frontline” Member States shall go through identification, registration, fingerprinting to avoid “all secondary movements of unidentified and unregistered migrants” and announced the target of “100% coverage of identification and registration of all entries” (European Commission). For this cause, the European Commission called the host Member States for establishing a legal framework for longer retention and the use of force if migrants resist being fingerprinted (ibid.) (European Commission, 2015). Therefore, the EU pushes the Italian and Greek authorities to comply with their responsibilities under the Dublin and EURODAC Regulations by the involvement of the EU Agencies in the hotspots to prevent secondary movements in order to secure the Schengen Area (Maiani, 2016).

The Explanatory Note on the hotspot approach of Commissioner Avramopoulos (2015) emphasized that “migratory flows at the EU’s external borders are generally characterized by mixed flows of asylum seekers and economic migrants”. The term mixed migratory flows is based on the distinction between forced and ‘economic’ migration that sharply separates migrants into two categories: asylum seekers in need of protection and ‘economic migrants’ not in need of protection (Sciurba, 2017). Besides this understanding ignores the coexistence of several factors pushing a person to leave his/her country, the individuals categorized as economic migrants are illegalized based on the lack of ‘forced’ displacement, their desire to find a job, the accusation of abusing the right to seek asylum in order to have better lives and opportunities (Tazzioli & Garelli, 2018) (Sciurba, 2017). Therefore, this distinction is used as a tool to restrict access to the right to seek asylum; the so-called economic migrants are excluded from the asylum procedure (ibid.). Considering the role of channeling migrants into an asylum, relocation or return procedure, the hotspots

were designed to function as a filtering mechanism located at the EU external borders to identify those in need of protection, those eligible for relocation, those not in need of protection based on this distinction (Papadopoulou, 2016) (Danish Refugee Council, 2017) (Tazzioli & Garelli, 2018) (Amnesty International, 2016). The State of Play Report of 10 February 2016 corroborated this function of the hotspots: “Central to the hotspots approach is that it helps to identify who is and who is not in need of international protection through a process of identification and filtering of applications. The EU and its agencies should stand ready to provide all assistance to implement this process. In this regard, links with the return system are of particular importance” (European Commission). Therefore, another objective of the hotspot approach is to identify those not in need of protection at the earliest possible opportunity to limit the number of persons entering the asylum procedure and to facilitate their returns (Papadopoulou, 2016) (Danish Refugee Council, 2017).

Beyond the loose policy framework set out by the European Agenda on Migration, the Explanatory Note of Commissioner Avramopoulos, and the State of Play and Progress Reports of the European Commission used as the reference documents throughout the thesis to define the concept of the hotspot approach, there is no dedicated legal framework for the hotspot approach, such as regulation or directive at the EU level (Capitani, 2016) (Danish Refugee Council, 2017) (Neville, et al., 2016) (Guild, et al., 2017). Therefore, it relies on the international and regional binding laws, and the existing legislation of the CEAS, namely the Asylum Procedures Directive, Reception Conditions Directive and Qualification Directive, and the national legislation in Greece and Italy (Danish Refugee Council, 2017). The absence of a dedicated legal framework poses a risk of uncertainty and arbitrariness (Guild, et al., 2017).

Like the hotspot approach, the relocation scheme is also firstly introduced in the European Agenda on Migration as an immediate action to reinforce solidarity and responsibility-sharing with “frontline” Member States, therefore, they are called as “parallel measures” (European Commission, 2015). The relocation scheme was

made clear by the Council decisions of 14 and 22 September of 2015 planning a temporary and exceptional relocation mechanism for 160,000 people in clear need of international protection from Italy and Greece to the other Member States to reduce the pressure on the most affected Member States (Official Journal of the European Union, 2015) (Official Journal of the European Union, 2015). At this point, the hotspot approach was designed as ‘enabler’ for the relocation scheme with the task of identifying those are eligible to be relocated (Guild, et al., 2017).

Another immediate action of the European Agenda on Migration is to work in partnership in regions of origin and transit, namely in North Africa, the Horn of Africa and the Middle East, to prevent irregular migratory flows towards Europe (European Commission, 2015). In addition, the Agenda underlines cooperation with countries of origin and transit to return migrants whose asylum applications are refused and residing irregularly in the EU (ibid.). Considering the role of the hotspots to identify those not in need of protection and to facilitate the return of irregular migrants, cooperation with third countries can be regarded as a related policy measure. The European Commission Communication of 7 June 2016 “establishing a new Partnership Framework with third countries under the European Agenda on Migration” envisages funding countries of origin and transit in return for cooperation on migration control (European Commission, 2016). The Communication describing partnership as “a solution to the irregular and uncontrolled movement of people” explicitly indicates that the EU aims to decrease the number of migrant arrivals and to increase the return and readmission of irregular migrants, even without formal readmission agreements (ibid.).

This thesis study started with identifying humanitarian and political challenges at the external borders and within the EU, the so-called Europe Refugee Crisis, in recent years. The EU asylum system was reviewed in this context and the EU asylum policies were identified as the reasons behind these challenges. Therefore, it was determined that this is not a refugee crisis, but a crisis of the EU asylum system. The literature on the crisis and the EU asylum system was reviewed to

comprehend the EU policies led the crisis and the context in which the hotspot approach was developed, as already demonstrated.

The unfair/disproportionate sharing of responsibility and the lack of solidarity have been one of the prominent reasons of the crisis, led to disproportionate pressure on Italy and Greece, human rights concerns due to inadequate capacity and conditions in these countries, non-compliance with responsibilities under the Dublin System, the reintroduction of border controls between the Member States, as discussed previously. The EU response to the crisis of its own making has been of vital importance to eliminate the challenges. Therefore, this thesis focuses on the hotspot approach providing the operational assistance of the EU Agencies to Italy and Greece where most migrants arrive in order to find out whether the hotspot approach as an EU response is able to contribute to overcoming the crisis of the EU asylum system. This thesis aims to provide a critique of the hotspot approach that also shows whether the EU response to the crisis is solution-oriented or repeats the same mistakes.

Considering that Italy has been the main destination for irregular sea crossings on the Central Mediterranean Route (European Commission, 2017), it came to the forefront as one of the countries most affected by the crisis with disproportionate migratory pressure, inadequate capacity and conditions for migrants, non-compliance with responsibilities under the Dublin System, France's reintroduction of border control at the Italian frontier (BBC News, 2015). While the Italian government were calling for responsibility sharing, solidarity and an EU-wide response (The Guardian, 2015) (Deutsche Welle, 2015), Italy became the first country in which the hotspot approach is being implemented. Therefore, we conduct a case study based on an in-depth investigation of the implementation of the hotspot approach in Italy, in the light of the given context in which the hotspot approach was developed and the given description and objectives of the hotspot approach. We benefit from the first hotspot, which became a model to the other hotspots (Tazzioli & Garelli, 2018) (Neville, et al., 2016), located in Lampedusa called as "the island-mark of the central Mediterranean route into Europe" in order to

exemplify practices and conditions in the Italian hotspots (Tazzioli & Garelli, 2018). Considering that the hotspot approach was presented as an immediate action, this thesis analyzes the first year of the implementation of the hotspot approach, starting from the opening of the hotspot of Lampedusa in October 2015 to October 2016.

The existing literature was reviewed to comprehend the description and objectives of the hotspot approach and the implementation and outcome of the hotspot approach in the case of Italy. The data gathered were analyzed in relation to the crisis of the EU asylum system and the responsiveness of the hotspot approach to answer the research question. Regarding the main sources, the official documents of the EU and the Italian government are used to describe the envisaged implementation of the hotspot approach in Italy. In order to find out the existing conditions and practices carried out in the hotspots, we benefit from the reports, mainly the report of ECRE written by Papadopoulou (2016), Amnesty International (2016), Oxfam written by Capitani (2016), Danish Refugee Councils (2017), based on the field-research including direct observations, interviews with migrants, statements of persons working on the ground. In order to evaluate whether these conditions and practices are allowed by the law, we often make reference to the related EU legislation, the Italian Law and Constitution, and international treaties that are legally binding. The case of *Khlaifia and Others vs. Italy* and the judgment of the European Court of Human Rights (European Database of Asylum Law) are used to demonstrate practices and conditions prior to the hotspot approach. To analyze the implementation and outcomes of the hotspot approach, we mainly benefit from the articles examining the hotspot approach. In addition, we make use of numerical data from reports and databases, based on the quantitative research, in order to support qualitative data gathered.

Regarding the structure of the thesis, it is composed of the four main chapters. In the first chapter, we will describe the background of the hotspot approach and the envisaged implementation of the hotspot approach in Italy in the light of the EU level and national documents. Finally, we point out the absence of a dedicated legal

framework for the implementation of the Hotspot Approach adopted by the Italian government.

In the second chapter, we examine the access to the asylum procedure in the Italian hotspots. We show how the oversimplified and accelerated pre-identification procedure has worked as a mechanism to limit the number of people accessing to the asylum procedure in the absence of adequate safeguards such as the identification of vulnerabilities and special needs, the provision of adequate information, legal assistance and representation. We indicate how the adoption of arbitrary practices such as the defacto authorization of the police, the use of ‘foglio notizie’, the category of economic migrant, the nationality-based approach to determine migrants’ legal status violating the main principles of non-discrimination and non-refoulement, and the prohibition of collective expulsion have undermined the right to seek asylum. We find out that the outcome of the hotspot approach has been many migrants forcibly expelled to their countries of origin and transit without any opportunity given to seek asylum and thousands of illegalized migrants within the EU in the first year of its implementation in Italy. In the light of these, we evaluate how the hotspot approach as an EU response to the crisis relies on the same policies, such as deterrence and externalization, led to the crisis and contributes their implementation.

In the third chapter, we examine the fingerprinting procedure in the Italian hotspots. We show how the EU put pressure on Italy to comply with its responsibilities under the Dublin System, with the target of 100% fingerprinting rate and the call for the adoption of a legal framework for the use of force and longer-term retention in case of refusal. In return, we point out how Italy have adopted these coercive measures to obtain fingerprints of migrants without any legal basis, led to serious human rights violations. We find out how the fingerprinting procedure has resulted in the increased number of people seeking asylum in Italy, therefore led to increasing the migratory pressure on Italy and consolidated challenges. Therefore, the hotspot approach has re-established the Dublin System through abolishing the non-compliance of Italy and the disobedience of migrants to the first country of entry

rule by force. Finally, we portray the protests of migrants against the coercive fingerprinting procedures. In the light of these, we evaluate how the hotspot approach makes certain of the implementation of the EU asylum policies based on coercive placement, migration control and an unfair/non-proportional sharing of responsibility among the Member States, led to the crisis.

In the last chapter, we show the inadequate reception conditions and capacity, especially for unaccompanied minors due to the lack of specialized reception centers. We examine how the uncertain duration and type of migrants' stay in the hotspots due to the absence of a dedicated legislative framework have resulted in the blurring of reception and detention. We point out how the use of arbitrary prolonged detention for identification and fingerprinting has been standardized in the hotspots. In the light of these, we evaluate how the hotspot approach increases the pressure on the host Member States reception systems and deteriorates the reception conditions for migrants as a result of the focus on migration control rather than a fair sharing of responsibilities among the Member States, and refugee and human rights responsibilities.

## **CHAPTER 1**

### **THE IMPLEMENTATION OF THE HOTSPOT APPROACH IN ITALY**

Since the establishment of the Schengen Area eliminating the internal borders among the Member States while strengthening the EU external borders against citizens from some non-EU countries, Italy has been one the main disembarkation place for irregular sea crossings from North Africa (European Commission, 2017). However, in the year 2014, the number of irregular border-crossings on the Central Mediterranean route reached a peak with 170 664 detections of migrants mostly departing from Libya and arriving in Italy (Frontex, 2016). In total, 280 000 irregular border-crossings were detected along the EU external borders, and the largest percentage of these detections (60%) took place on the Central Mediterranean route (ibid.). In 2014, Syrians and Eritreans followed by nationals



of Sub-Saharan countries were the main nationalities departed from Libya to Italy (ibid.).

As to the year 2015, 1 820 000 irregular border-crossings, six times more than the number detected in 2014, were detected along the EU external borders (Frontex, 2016). However, a slight decrease was observed on the Central Mediterranean route due to a shift towards the Eastern Mediterranean route; the migratory pressure has continued in the Central Mediterranean with 153 946 irregular border-crossings detected (ibid.). The great majority of migrants were Africans (89%) departed from Libya to Italy (ibid.).

The migratory pressure has hit certain EU Member States, namely Italy and Greece due to their geographical positions at the EU external borders and proximity to the main countries of origin and transit. In addition to the disembarkation of thousands of migrants in their territory, the Dublin Regulation puts the responsibility of processing all asylum applications of these migrants on the shoulder of Italy and Greece while the EURODAC Regulation tasks to fingerprint them, as the countries where migrants first entered the EU. However, in the absence of a fair sharing of responsibility and solidarity among the EU Member States, Italy and Greece have not complied their responsibilities under the Dublin System purposefully to relieve the disproportionate pressure on their national protection and reception systems which could not cope with this number of people. The majority of migrants has irregularly moved to their preferred destinations where they applied for asylum, without being fingerprinted in Italy and Greece where they entered the EU. Germany, Sweden, France, Hungary, and the UK respectively received the big share of the secondary movements in 2014, while Germany, Hungary, Sweden, Austria, and France received in 2015 (Eurostat).

Until late 2015, a low percentage of incoming migrants were identified and fingerprinted by Italy; only 38% percent of all arrivals was registered as asylum seekers in 2014 while it reached 54% percent at the end of 2015 (Eurostat). In consideration of Italy's non-compliance with the Dublin System and the increased

number of secondary movements, France has reintroduced border controls at the Italian frontier to prevent incoming migrants in mid-June 2015 (BBC News, 2015). Angelino Alfano, the interior Minister of Italy at that time, described the introduction of border control as “punch in the face of Europe”, while Matteo Renzi, the prime minister of Italy at that time, took attention to the lack of responsibility sharing and solidarity within the EU states and called for an EU-wide response: “there isn’t enough room for everyone. Whoever has the right to asylum must be welcome in Europe, not just in Italy, despite the EU’s Dublin regime. But it is inconceivable that one country should tackle the entirety of this problem on its own. Responsibility and solidarity are concepts that go hand in hand” (The Guardian, 2015) (Deutsche Welle, 2015).

Under these circumstances, the hotspot approach aims to address both the responsibility sharing and solidarity calls of Italy and Greece and the failure of the Dublin System and Schengen Area. The hotspot approach is based on the operational assistance of the EU Agencies and international organizations to the Italian and Greek authorities in the identification, registration and fingerprinting of incoming migrants that presented as a measure “to help frontline Member States” (European Commission, 2015). At the same time, the EU aims to obligate Italy and Greece to perform their responsibilities under the Dublin System for the purpose of preventing secondary movement to secure the Schengen Area (Maiani, 2016) (Orsini & Roos, 2017) (Capitani, 2016) (Amnesty International, 2016).

Not surprisingly, the main disembarkation areas where most migrants enter the EU were identified as the hotspots. At the first stage, Lampedusa, Augusta, Porte Empedocle, Pozzallo, Taranto and Trapani were identified as hotspots where the Hotspot Approach is implemented in Italy (European Commission, 2015).

**Figure 2- The Map of the Identified Hotspots in Italy at the First Stage**



Source: (European Commission, 2015)

The hotspot approach has started to be implemented in Lampedusa where is “the island-mark of the central Mediterranean route into Europe” since the first of October 2015 (Tazzioli & Garelli, 2018) (European Commission, 2016). Lampedusa is a Sicilian island closer to North Africa rather than the mainland of Sicily and Italy that makes it one of the main disembarkation area for migrants departing from North Africa to Europe. Since Italy has become a part of the Schengen Area in 1997, Lampedusa as the EU external border has transformed into “one of the most iconic spots of European border management” (Orsini, 2016). Therefore, the detention of incoming migrants has started in 1998, the first aid and reception center (centro di primo soccorso e accoglienza) was built in 2007 (ibid.). This existing

center in Lampedusa was transformed into a hotspot with the involvement of the EU agencies and the implementation of the hotspot operations (Capitani, 2016) (Amnesty International, 2016). The hotspot of Lampedusa as the first one has become a model for the other hotspots (Tazzioli & Garelli, 2018) (Neville, et al., 2016).

The Explanatory Note sent by Commissioner Dimitris Avramopoulos, to Ministers of Migration, Home Affairs and Citizenship (2015) elaborates the content of operational support and the role of the EU Agencies. Accordingly, Frontex shall support the Member States in the identification and return procedures. In addition, debriefing interviews shall be conducted by Frontex to contribute the support of EUROPOL and EUROJUST on the investigation of smuggling and trafficking activities. EASO shall support the Member States in the asylum procedures, particularly in the registration of asylum seekers and preparation of case files and also together with UNHCR shall assist the Member States for swift relocation process. IOM and UNHCR shall provide the provision of information on asylum procedures. In addition to these, IOM shall provide support in assisted voluntary return. Cultural mediators /interpreters during the abovementioned tasks shall be provided by the EU Agencies and the Member States (ibid.).

The establishment of Migration Management Support Teams composed of experts from the EU Agencies was planned for the operational assistance on the ground (European Commission, 2015). The Explanatory Note of Commissioner Avramopoulos (2015) includes a roadmap elaborating on the practical implementation of the hotspot approach in Italy. Accordingly, the teams of experts to work along with the Italian authorities as follows:

- Frontex screening and debriefing teams to support the identification of the persons disembarked and to gather information on the network of smuggling and trafficking;
- EASO Asylum Support Teams for registration of asylum seekers, subsequent preparation of case files and implementing the relocation of asylum seekers;

- Europol experts working on investigations related to the network of smuggling and trafficking (ibid.).

The establishment of a joint headquarter called as EU Regional Task Force composed of representatives of the EU Agencies and also of the host Member States was envisaged in each host Member State (European Commission, 2015). The EURTF was designed to be responsible for the overall coordination of the work of the MMSTs in the hotspots and information exchange among them. The EURTF composed of representatives of the EU Agencies and Italy has established in Catania (Sicily) (European Commission, 2015).

The European Council, in the Council Decision of 14 September 2015, called Italy and Greece to present their own roadmaps for the implementation of the relocation scheme and the hotspot approach including “adequate measures in the area of asylum, first reception and return, enhancing the capacity, quality and efficiency of their systems in these areas” (Official Journal of the European Union, 2015). In return, the Italian Interior Ministry presented its own roadmap, on 28 September 2015, in which the capacity of the first reception system and the practical implementation of the hotspot approach are elaborated (Maccanico) (Ministero dell'Interno, 2015). According to the Italian Roadmap, it is envisaged that all migrants disembarked in Italy go through the following procedures:

- medical screening upon arrival,
- pre-identification interviews in which immigration authority officials fill a form called as ‘foglio notizie’ including their personal information, photograph and information about whether they wish to apply for international protection,
- the provision of information on the relocation procedure and “differentiation” between potential asylum seekers/candidates for relocation and people to be considered in an irregular status with the support of EASO,
- debriefing interviews by investigative police officers, with support from Frontex and Europol officers where necessary,

- photo-identification and registration in accordance with the national and EU legislation,
- on the basis of the outcomes, people seeking international protection will be transferred to regional hubs throughout Italy, those chosen for relocation will be transferred to dedicated regional hubs, those who do not seek international protection will be transferred to identification and expulsion centers (centro di identificazione ed espulsione) (ibid.).

The EU did not plan to provide reception facilities to Italy and Greece for the hotspots; instead, they were mainly built on the existing national reception facilities (Avramopoulos, 2015). Setting up adequate reception infrastructure and increasing reception capacities are seen as the responsibilities of Italy and Greece. According to the Italian Roadmap, the overall reception capacity of Lampedusa, Pozzallo, Porto Empedocle, Trapani are 1 500 places while setting up two more hotspots in Augusta and Taranto to provide 1 000 additional places are scheduled until the end of 2015 (Maccanico) (Ministero dell'Interno, 2015).

The Standard Operating Procedures for the Italian hotspots was prepared as an operational guide for the hotspot activities by the Italian Ministry of the Interior with the contributions of the European Commission, the EU Agencies, UNHCR, and IOM (Ministero dell'Interno, 2016). It was presented around five months later the hotspot approach has started to be implemented in Italy in February 2016; the hotspots in Lampedusa, Trapani, Pozzallo, and Taranto were already operational. The Sops have indicated the reception capacities of the operational hotspot in Italy as 1 600 places that are almost the same number previously presented by the Italian Roadmap; however, the plan to set up hotspots in Augusta and Taranto to provide 1 000 additional places until the end of 2015 has not come true.

<b>Figure 2: The Reception Capacities of the Operational Hotspots in Italy</b>		
Lampedusa	500	operational since 01.10.2015
Trapani	400	operational since 22.12.2015
Pozzallo	300	operational since 19.01.2016
Taranto	400	operational since 29.02.2016

Source: (Ministero dell'Interno, 2016)

The SOPs have presented a detailed operational sequence similar to the Italian Roadmap presented that should be followed in all hotspots:

- search and rescue and landing operations;
- medical screening and the identification of persons with specific needs upon arrival;
- security check and the delivery of information leaflets by the international organizations on entry into the hotspot;
- pre-identification interview and document checks;
- the provision of information on current legislation on their rights and duties in Italy, the possibility to apply for international protection or to benefit from the relocation scheme by the international organizations in a comprehensible language;
- identification, photo fingerprinting and database checks;

- reception in the hotspot accommodation facilities and medical examinations;
- the provision of accurate information on the international protection procedure, the Relocation Scheme and on the assisted voluntary return;
- debriefing activities carried out by Frontex;
- transfers from the hotspots to reception centers for asylum seekers (centro di accoglienza per richiedenti asilo), reception centers for relocation, centers dedicated to the reception of unaccompanied asylum-seeking children or identification and expulsion centers (ibid.).

As there is no dedicated legal framework for the hotspot approach at the EU level, Italy has not adopted any specific legislation for the hotspots procedures and practices and conditions (Papadopoulou, 2016) (Capitani, 2016). The mentioned Italian Roadmap and Sops are the only available reference document dedicated to the hotspot approach; however, both are non-legislative documents, without legal value. This poses a risk of uncertainty and arbitrariness in the implementation of the hotspot approach (Guild, et al., 2017).

## **CHAPTER 2**

### **ACCESS TO THE ASYLUM PROCEDURE**

The Agenda sketched the hotspot approach as follows:

“the European Asylum Support Office, Frontex, and Europol will work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants” (European Commission, 2015).

The hotspots was designed to function as a screening and filtering mechanism located at the EU external borders to identify those in need of protection, those eligible for relocation, those not in need of protection which should be returned at the earliest possible opportunity (Papadopoulou, 2016) (Danish Refugee Council, 2017) (Tazzioli & Garelli, 2018) (Amnesty International, 2016). As stated in the



report of ECRE, speed does not necessarily come along with procedural safeguards protecting fundamental rights (Papadopoulou, 2016).

The involvement of the EU Agencies in the identification, registration and fingerprinting procedures does not give Italy an opportunity for non-compliance with the responsibilities under the Dublin and EURODAC Regulations, as it will be discussed in the next chapter (Maiani, 2016) (Orsini & Roos, 2017). The Italian authorities have resorted to limit the number of migrants entering the asylum procedure with the aim of relieving pressure on the national protection and reception system (Orsini & Roos, 2017).

In this chapter, we will analyze the hotspot approach in the context of accessing the asylum procedure. For this purpose, we will examine the adoption of arbitrary and unlawful practices such as the defacto authorization of the police, the use of ‘foglio notizie’ and the category of economic migrant, the nationality based approach to determine migrants’ legal status, and the absence of adequate safeguards such as the identification of vulnerabilities and special needs, the provision of adequate information, legal assistance and representation. In the light of these, we will evaluate the hotspot approach as an EU response to the crisis.

## **2.1. THE PRE-IDENTIFICATION IMMEDIATELY AFTER DISEMBARKATION**

The migrants mostly flee from war, conflict, persecution and deteriorating conditions in their home countries. On the top of that, in the absence of safe and legal route, they usually go through dangerous and long migratory journeys to reach Europe. During their long journeys from their countries of origin to countries of transit and then to Europe, they are exposed to various kinds of threat including a risk of death. When we look at those who reach Italy, a large number of them go through the dangerous Libyan transit where they come over arbitrary detention in harsh conditions, robbery, and kidnapping for ransom, and then the safety-critical passage takes place in the Central Mediterranean Sea (Sakuma) (UNHCR, 2015).

Both the Italian Roadmap and SOPs envisage medical screening upon arrival for early identifying unaccompanied and separated children and victims of trafficking and persons with other specific needs (Ministero dell'Interno, 2015) (Ministero dell'Interno, 2016). Accordingly, UNHCR and IOM shall support the authorities in this stage. However, the identification of vulnerabilities and special needs remain insufficient in practice. The accelerated procedures in the hotspots do not leave sufficient time for the identification of vulnerabilities and special needs for the sake of the early identification of persons believed not to be in need of protection. The non-visible and non-declared vulnerabilities are overlooked in the hotspots; they are generally identified in the regional hubs where migrants stay longer due to the lack of dedicated areas, settings, professional support and time (Papadopoulou, 2016) (Danish Refugee Council, 2017).

After their dangerous and long journeys to Europe, when the disembarkation is supposed to make migrants feel safe, another struggle for the right to asylum starts for many of them. The pre-identification procedure comes immediately after disembarkation. The physically and mentally tired, traumatized migrants are met at the port by “an intimidating crowd of policemen, coast guards, finance police, Red Cross staff, officers and representatives of several European agencies, and even the fire department with power generators if disembarkation takes place at night... all wearing uniforms and protective masks” as described Alberto Mallardo of Mediterranean Hope (Capitani, 2016). They have gone through the procedure under the shock of their journey, without adequate psychological support.

## **2.2. THE USE OF ‘FOGLIO NOTIZIE’**

According to the operational sequence detailed by the SOPs, the identification procedure shall begin with the application of numbered bracelets by health personnel on the vessel or immediately after landing and shall continue with photographing each migrant which are essential for the next step. Right after, the initial screening interview shall be conducted by the Immigration Office of the State Police, cultural mediators, and optionally Frontex operators on the entry into the

hotspot (Ministero dell'Interno, 2016). The information such as the personal data (name, date and place of birth, nationality), place of residence, place of departure, reasons that prompted the person to leave his/her country and place of arrival in Italy shall be gathered and recorded in an information form called as “foglio notizie” during the interview (ibid.).

According to the report of OXFAM, in practice, the screening interview is applied by two Frontex experts, a cultural mediator, and a police officer assumes the coordinating role and takes only a couple of minutes (Capitani, 2016). In addition to the information already gathered by the police before the implementation of the hotspot approach, the foglio notizie includes a multiple-choice question that asks the reason for coming to Italy. The four options are listed: to work, to join family members, to escape from poverty and other motivations. As a result of the criticism of Italian non-governmental organizations and journalists, the option asylum was added, in March 2016<sup>3</sup> (Tazzioli & Garelli, 2018).

The refugee status is granted if an individual cannot return to his/her country because of a well-founded fear of persecution there and the protection of his/her government does not avail (UNHCR). Accordingly, the examination of an asylum application should focus on the risk of persecution posed by refoulement. However, the interviewers do not ask about the applicants’ reason for leaving their country, most importantly the risks they would face if they return, and directly whether they intend to seek asylum.

In the hotspot case, the foglio notizie, in particular, the question regarding the reason for coming to Italy, is used for legal status determination to ensure the fast-track screening and filtering of all migrants disembarked (Veglio, 2017) (Danish Refugee Council, 2017). In accordance to the answers given by the newly arrived migrants or marked by the interviewers, they are categorized as asylum seekers those in need of protection, candidates for relocation, and irregular/economic migrants those not in need of protection. Therefore, those believed not in need of

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<sup>3</sup> See Appendix 1.

protection are excluded from the asylum procedures at the earliest possible opportunity.

However, the foglio notizie has no legal value in migrants' legal status determination that is also underlined by the Italian Ministry of Interior stated in the EASO meeting of 16 March 2016 held in Catania (European Asylum Support Office, 2016) (Capitani, 2016). Accordingly, in the SOPs, there is a citation from the Schengen Handbook: "The wish to apply for protection does not need to be expressed in any particular form. The word "asylum" does not need to be used expressly; the defining element is the expression of fear of what might happen upon return" (Ministero dell'Interno, 2016) (Commission of the European Communities, 2006). It also points out the obligation on the authorities to understand whether migrant intends to apply for international protection, even if she or he does not express clearly (Ministero dell'Interno, 2016). In addition, it is expressed clearly that migrants have the right to access to international protection procedure at any point, including during the pre-deportation phase: "Access to international protection must be ensured at all times within the CIEs" (ibid.).

It is stated in the report of OXFAM that the representative of the European Commission in Catania and the Prefecture in Ragusa spoke of a second interview in what migrants can express their intention to apply for asylum (Capitani, 2016). In addition, the Prefect Alessandro Pansa in the Parliamentary Commission on the 20 of January 2016 spoke of a second foglio notizie for those who did not apply for asylum in the first one as a second opportunity. Apart from these, there is no further information about the second interview (ibid.).

In addition, Article 26 of the Legislative Decree no.25 of 25 January 2008 has authorized the police to write the applicants' declarations during receiving applications and to attach it all documentation in the possession of the applicant justifying their declarations (Gazzetta Ufficiale, 2008). Accordingly, the declaration written by the Police shall be signed by the applicants and a copy shall be given the applicant. Article 25 of the Amending Decree no.142 of 18 August

2015 set a time limit of three working days from the declaration if it happens in the police headquarters, or six working days if it happens in the border police office (Gazzetta Ufficiale, 2015). In exceptional circumstances, it can be extended by ten working days (ibid.). However, the copy of the foglio notize form filled in the interview is generally not given the applicants in the hotspot practice (Veglio, 2017) (Papadopoulou, 2016) (Amnesty International, 2016) (Capitani, 2016).

### **2.3. THE DEFACTO AUTHORIZATION OF THE POLICE**

Article 3 of the Legislative Decree no.25 of 25 January 2008 acknowledged the Asylum Procedures Directive has determined the competent authorities during international protection procedure (Gazzetta Ufficiale, 2008). Accordingly, while the border police office and the police headquarters are competent to receive the application, the territorial commissions are competent to evaluate the application and to recognize the applicant's status (ibid.). It was amended shortly before the implementation of the hotspot approach by Legislative Decree no.142 of 18 August 2015 to acknowledge the revised Reception Conditions Directive as well as the revised Asylum Procedures Directive but the competent authorities and the span of authorities remained the same (Gazzetta Ufficiale, 2015).

Accordingly, before the hotspot approach, the police has conducted brief interviews only to get information about individuals' name, nationality, and age and received asylum applications and photographed each one (Amnesty International, 2016) (Papadopoulou, 2016). However, since the implementation of the hotspot approach, the police have performed the task of evaluating the application and determining the applicant's status without any change in the existing law (Veglio, 2017) (Amnesty International, 2016).

A Circular of the Ministry of the Interior of 29 December 2015 stated that the police are in charge of informing the Immigration Service within 72 hours of photo-identification and legal status determination of each person disembarked (ASGI, 2015). In parallel, the SOPs of February 2016 pointed out that the State Police Provincial Authority is responsible for handling all phases of management of

arrivals and delegating the relevant branch of the State Police for identification, determination of legal status and consequent procedure (Ministero dell'Interno, 2016). Despite the Circular and SOP confirmed defacto implementation of legal status determination by the Police in the hotspots, both are not legislative documents to authorize the police to evaluate asylum applications. Moreover, if we consider the definition and envisaged functioning of the hotspot approach identifying with the fastest way of registration, identification, channelling into the asylum, relocation or return procedure at the border, all EU documents defining the hotspot approach and the Italian Roadmap can also be accepted as other documents giving a de-facto authorization for legal status determination to the police, without legal value. However, the Legislative Decree 142/2015 determining the competent authorities in international protection procedure was amended by the Legislative Decree no.220 of 22 December 2017 during the implementation of the hotpost approach, following the Circular and the SOPs, but the competent authorities and the span of their authorities were not legally changed (Gazzetta Ufficiale, 2017). In addition to the lack of legal authorization, if we consider that the police are not generally trained to determine ‘who is and who is not in need of international protection’ or to identify vulnerabilities and special needs, the de facto functioning is ill-adapted (Amnesty International, 2016) (Papadopoulou, 2016).

#### **2.4. CATEGORIZING AS ‘ECONOMIC MIGRANT’ TO RESTRICT ACCESS TO THE ASYLUM PROCEDURE**

In the Avramopoulos’ Explanatory Note, the hotspots as physical sites are worded as follows:

“faced with disproportionate migratory pressure at the external borders...characterized by mixed flows of asylum seekers and economic migrants” (Avramopoulos, 2015).

Herein, we see that the term mixed flow simply refers to the differentiated profiles of persons followed the same routes by the same means of transportation with strong reference to the distinction between forced and economic migration (Sciurba,

2017). This understanding sharply separates migrants into two categories: Economic migrants those ‘choose’ to leave their country in order to have better lives and opportunities, and asylum seekers those are forced to flee the risk of persecution in their country to save their lives or to preserve their freedom. The individuals categorized as economic migrants are illegalized based on the lack of ‘forced’ displacement, their desire to find a job, the accusation of abusing the right to seek asylum (ibid.) (Tazzioli & Garelli, 2018). Therefore, this categorization is used as a tool to restrict access to the right to seek asylum and deployed at the EU external borders with the hotspot approach (ibid.).

In the implementation of the hotspot approach in Italy, this distinction between asylum seekers and economic migrants is used as a base for legal status determination. The migrants have been separated into categories according to the option marked as an answer to the multiple-choice question regarding ‘the reason for coming to Italy’. In the early months of the hotspot approach, there were four options listed: to work, to join family members, to escape from poverty and other motivations. In March 2016, the criticisms of Italian non-governmental organizations and journalists worked and the option *asylum* was added (Tazzioli & Garelli, 2018). If migrants give the answer ‘to work’ or ‘to escape from poverty’ or the interviewer police marks these answers on the ‘foglio notizie’, they have been categorized as economic migrants, excluded from the asylum procedure, and issued a return order (Scieurba, 2016) (Vries, et al., 2016).

However, the term mixed flow interpreted in this way ignores the coexistence of several factors pushing a person to leave his/her country. Scieurba (2016), in the article Hotspot system as a new device of clandestinisation: view from Sicily, points that poverty is often related to a lack of democracy and widespread violence in the majority of countries of origin. In parallel, it is underlined in the report of OXFAM that individuals’ desire to have better lives and opportunities is increasingly combined with persecution and violence experiences (Capitani, 2016). Therefore, individuals giving the answer ‘to work’ and ‘to escape from the poverty’ can have the need of protection due to the risk of being persecuted if they return or the need

of safeguarding due to persecution and violence experiences in their long migration journey.

Roberto Majorini from Caritas Agrigento made a statement to OXFAM that many migrants issued an expulsion order without seeing, filling and signing the foglio notizie in January and February 2016 (ibid.). He also pointed out a worrying implementation: migrants were trickily asked “Have you come here to work?” to categorize them as economic migrants by ignoring everybody including asylum seekers who want to work for a living (ibid.). Similarly, the finding from the field visit of Amnesty International (2016) to the Lampedusa hotspot took place in March 2016 confirms that the question is asked by police officers “in misleading ways” in the screening interview during the first months of implementation of the hotspot approach.

As stated previously, individuals go through the screening interview with a police officer and a cultural mediator deployed by the Ministry of Interior and two Frontex officers deployed by the EU. There is no representative of any other inter-governmental organizations or non-governmental organization dedicated to protecting the right to seek asylum accompanying individuals in the interview. Despite they are present in the hotspots, their duties remain limited with the identification of individuals with vulnerabilities and the provision of information. Therefore, there is no guarantee and monitoring mechanism in place against arbitrary treatment and violation of rights.

In the article *Misrecognizing Asylum: Causes, Modalities, and Consequences of the Crisis of a Fundamental Human Right*, the interview of Sciarba (2017) with a UNHCR agent on February 2016 in Lampedusa confirms that UNHCR only provides information on the international protection procedure but has not performed any monitoring activities on the implementation of international protection procedure. Sciarba also draws attention to the great majority of individuals issued an expulsion order after they have gone through the pre-



identification interview with the foglio notizie in the hotspot of Lampedusa, from October 2015 to February 2016 (ibid.).

## **2.5. NATIONALITY-BASED APPROACH**

Besides migrants' declaration during the pre-identification interview, the Italian authorities take the nationality of individuals into consideration to determine their legal status. Without considering individual circumstances, the oversimplified screening procedure has prioritized certain nationalities in the hotspot procedures, while other nationalities have been categorized as economic migrants, excluded from access to the asylum procedure, and issued expulsion orders (Vries, et al., 2016) (Sciurba, 2017) (Danish Refugee Council, 2017) (Papadopoulou, 2016).

People who are eligible to benefit from the relocation scheme are presumed as potential refugees and prioritized in the hotspot procedures (Danish Refugee Council, 2017). According to the Council Decision of 22 September 2015, the relocation scheme shall only be applied to those nationalities with the 75% and more EU-wide recognition rate in the procedures at first instance based on the Eurostat quarterly data (Official Journal of the European Union, 2015). Therefore, certain nationalities updated quarterly are entitled to be relocated into other Member states. However, the majority of migrants arriving in Italy does not meet with this recognition rate criteria, apart from Eritreans (Orsini & Roos, 2017) (Capitani, 2016) (Papadopoulou, 2016). The number of migrants who are eligible to benefit from the relocation scheme has remained limited. Only 1 196 people have been relocated from Italy in the first year of the implementation of the hotspot approach (European Commission, 2016).

On the contrary side, the same nationality-based approach presumes people who are not eligible to benefit from the relocation scheme due to their nationalities as 'non-refugees', leaves them uninformed about their rights, excludes them from access to the asylum procedure, and issued expulsion orders (Guild, et al., 2017) (Neville, et al., 2016). There are two types of expulsion orders widely used by Italian authorities: "deferred rejection orders" or "7 days decree" ask individuals to leave the country

on their own within seven days and expulsion orders with forcible repatriation (Amnesty International, 2016) (Tazzioli & Garelli, 2018).

The nationals from countries that have readmission or bilateral cooperation agreements with Italy or Europe are processed quickly and issued expulsion orders with forcible repatriation without a real opportunity to register their asylum applications (Amnesty International, 2016) (Sciurba, 2017). They are accommodated in ad hoc or temporary facilities until they are collectively expelled after identifying by their consulates (Sciurba, 2017). Such implementations should be read in the context of the EU external policies on migration.

The European Agenda on Migration underlines cooperation with countries of origin and transit on the return of people whose asylum applications are rejected and residing irregularly in the EU that can be regarded as a related policy measure considering the role of the hotspots to identify those not in need of protection and to facilitate their return (European Commission, 2015). Moreover, in the first progress report on the implementation of the hotspots published on 15 December 2015, the European Commission calls the Italian Authorities to strengthen cooperation with the main countries of origin of irregular migrants in order to ensure swift forced returns (European Commission, 2015). Thereafter, the Italian Government presented the Migration Compact with the sub-heading “Contribution to an EU strategy for external action on migration” in April 2016 (Governo Italiano Presidenza del Consiglio dei Ministri, 2016). The Compact points out that the migratory flows through the Central and Western Mediterranean route are composed mainly by economic migrants in reference to the mixed nature of the flows. The Italian Government calls for active cooperation with African countries of origin and transit on border control, search and rescue activities, the prevention of irregular migratory flows towards Europe, and the return and readmission of irregular migrants (ibid.). The new partnership framework presented by the European Commission in 7 June 2016 that conforms with the Italian Compact, explicitly indicates that the EU aims to increase the return and readmission of irregular migrants, even without formal readmission agreements (European

Commission, 2016). Davitti and La Chimia (2017) point out ‘a more for more approach’ with the use of more aid funds for more cooperation with countries of origin and transit on migration control since the adoption of the European Agenda that has consolidated the externalization of migration management.

Over the years, the EU has concluded many readmission agreements with countries of origins and transit to ensure an effective return of migrants who have been issued an order to leave the EU.<sup>4</sup> At the same time, individual Member States has negotiated bilateral readmission agreements. Italy has concluded bilateral readmission agreements with Egypt, Tunisia, Morocco, and Nigeria allowed the forced repatriation of thousands of nationals of those countries (Papadopoulou, 2016) (Paoletti, 2012). In the context of the new Partnership Framework, Italy has started negotiating bilateral cooperation agreements with countries of origin and transit, which are not in the form of typical readmission agreements, mainly aim to ensure police cooperation on the identification and return of migrants (Amnesty International, 2016) (Papadopoulou, 2016). In the first year of the implementation of the hotspot approach, Italy has concluded two of such agreements with Gambia and Sudan<sup>5</sup> (Amnesty International, 2016) (Papadopoulou, 2016).

The implementation of the nationality-based approach, considering that it ends up with forced return for certain nationalities, provoked an incident. On 17 May 2016, in the night time, the fire started in the hotspot of Lampedusa (Ruta & Schembri, 2016) (ANSA, 2016). Then it was reported that a group of Tunisian who heard

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<sup>4</sup> Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, the former Yugoslav Republic of Macedonia renamed as the Republic of North Macedonia, Bosnia & Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey, Cape Verde. (European Commission)

<sup>5</sup> The Memorandum of Understanding signed by the Italian and Sudanese police authorities are widely criticized in relation to the principle of non-refoulement considering worrying human rights conditions in Sudan (Singh, 2018) (Webber, 2017).

about their possible forced repatriations set fire to mattresses and furniture in their dormitory (ibid.). It is declared by the director of the center Rossana Perri that there were 531 migrants inside at that moment, none of them were injured. Only a part of the hotspot structure was damaged, 180 places were lost (Papadopoulou, 2016).

The findings show that in Italy, people coming from certain African countries considered safe are categorized as economic migrants and therefore excluded from the asylum procedure. In the shortest possible time after arrival to the hotspots, they are issued expulsion orders ask them to leave Italy within seven days (ibid.) (Amnesty International, 2016).

However, the majority of them is neither detained in centers for identification and expulsion nor expelled (Veglio, 2017). The authorities assert not to be able to expel them to their country of origin and therefore delivered them to their expulsion orders and abandoned them alone at streets, at train stations or even in remote areas, without any support (Amnesty International, 2016) (Maiani, 2016). Valerio Landri of Caritas Agrigento reported to OXFAM that migrants have received expulsion orders during their transfer from Lampedusa to the mainland. The police have accompanied them from the port to the train station in Argigento and asked them to take the first train to Rome and go back to their countries (Capitani, 2016). The people are expected to contact their countries' embassies to get an identity document, buy their own ticket and leave Italy within 7 days. Mostly these expectations do not have chance to come true because people have no thought of turning back to their countries, even if they intend to, it does not seem easy to obtain an identity document and ticket required for transportation without any form of support.

## **2.6. ILLEGALIZATION AND COLLECTIVE EXPULSIONS**

Almost none of those issued deferred rejection orders actually leaves Italy, they stay in Italy or try to move north within the Schengen borders irregularly (Orsini & Roos, 2017) (Amnesty International, 2016). Even if they achieve to reach their destination country, they are not able to apply for asylum because they are already

registered in Italy. Accordingly, Sciarba (2016) describes the implementation of the hotspot approach in Sicily as “a new device of clandestinisation”. Both in Italy and in the other Member States, they stay without any form of assistance and access to rights and services including health and education due to their irregular situation. Therefore, people are clandestinized and become vulnerable to labor exploitation, human trafficking, oppression, and abuses (Sciarba, 2017) (Amnesty International, 2016) (Capitani, 2016) (Sciarba, 2017).

Particularly in the first months of the implementation of the hotspot approach, thousands of people have been issued expulsion orders immediately after disembarkation and these orders were sometimes adopted against a large number of people at a time (Amnesty International, 2016). These automatic and collective issuances of expulsion orders are based on nationality, without an individual assessment. Considering the fast-track procedure and the authorities’ intention to channel them directly to the return procedure, they are issued expulsion orders without being informed on asylum possibilities (ibid.) (Papadopoulou, 2016) (Caritas Europa, 2016). Despite they should be specifically informed due to the high risk of return, the access of the international organizations to them are restricted by the police (Amnesty International, 2016).

However, the principles of non-refoulement and non-discrimination are underlined by the existing refugee law. Article 3 of the 1951 Refugee Convention clearly states that the provisions shall be applied without discrimination based on country of origin (UNHCR). The states should provide the same access to asylum procedures and reception conditions regardless of nationality (ibid.). Article 33.1 of the 1951 Refugee Convention, Article 3 of the Convention against Torture and Article 19.2 of the Charter of Fundamental Rights of the European Union clearly states that a refugee shall not be expelled or returned to a territory where his or her life or freedom would be under threat (ibid.) (Official Journal of the European Communities, 2000) (UNHCR, 1984). The refugee status must be determined based on individual assessment of whether she or he individually fears to be persecuted (UNHCR, 1992). The collective expulsion is prohibited by Article 19.1 of the

Charter of Fundamental Rights of the European Union and Article 4 of Protocol 4 to the European Convention of Human Rights (Official Journal of the European Communities, 2000) (European Court of Human Rights, 1950). Accordingly, refugee status determination based on nationality and collective issuance of expulsion orders are unlawful.

The reports on the implementation of the hotspot approach point out that nationality based determinations and collective expulsion orders issued without any individual assessment were standardized, in particular from the beginning of the implementation of the hotspots approach to mid-2016 (Amnesty International, 2016) (Danish Refugee Council, 2017) (Papadopoulou, 2016). However, the implementation of the nationality-based approach to access the right to seek asylum has started prior to the hotspots approach but it has consolidated with the fast-track operation and oversimplified screening procedure in the hotspots (Amnesty International, 2016).

The judgment of European Court of Human Rights in the case of *Khlaifia and Others vs. Italy* delivered a few days ago the first aid and reception center in Lampedusa has become the first Italian hotspot is a case in point (European Database of Asylum Law). Accordingly, the three Tunisian complainants were rescued and transferred to the mentioned centre in Lampedusa on 17 and 18 September 2011. They were identified by the Tunisian Consul and returned to Tunisia on 27 and 29 September 2011. The ECHR found a violation of Article 4 Protocol 4 that prohibits the collective expulsions of aliens. Despite the complainants were identified and issued expulsion orders individually, the orders did not include any personal situations, considering the bilateral agreements with Tunisia for the return of irregular migrants and the presence of a large number of Tunisians received the same order around that time, the ECHR concluded that the complainants had been subject to collective expulsion (*ibid.*).

The Extraordinary Commission for the Protection and Promotion of Human Rights of the Italian Senate reports that the number of people issued deferred rejection

order has increased and those people have continued staying irregularly in Italy as a result of the first five months of the implementation of the hotspot approach (Commissione Straordinaria Per la Tutela e la Promozione dei Diritti Umani, 2016). At the beginning of 2016, Prefect Mario Morcone, the Head of the Department for Civil Liberties and Immigration adopted a circular reminding the procedural guarantees for the newly arrived individuals to ensure an effective international protection system including the right not to be rejected or expelled based on nationality (Ministero dell'Interno, 2016). Following the Circular, Amnesty International (2016) reported “a slight improvement in the overall situation”. Similarly, FRA, in the opinion paper published on 29 November 2016, reported improvements in ensuring access to international protection to new arrivals in comparison with the worrying findings reported between the end of 2015 and early 2016 (European Union Agency for Fundamental Rights, 2016). However, the following reports of the Extraordinary Commission for the Protection and Promotion of Human Rights of the Italian Senate showed that the number of negative asylum decisions and the rate of negative asylum decisions in total decisions in Italy have increased in 2015 and 2016 compared to the year prior to the hotspot approach: 55 000 (61%) in 2016, 42 000 (58%) in 2015, and 14 000 (39%) in 2014 (December 2017) (January 2017). The number and rate of negative asylum decisions in Greece have not increased during the implementation of the hotspot approach, considering the very high numbers and rates reached 12 580 (96%) in 2013 and 11 340 (85%) in 2014 prior to the hotspot approach, but remained high with 5 610 (58%) in 2015 and 8 740 (76%) in 2016 (Migration Policy Institute).

Consequently, the nationality based treatment, the use of foglio notizie through benefitting from the distinction between asylum seekers and economic migrants has excluded the great majority of migrants from the asylum procedure in the absence of any safeguard and monitoring mechanism. The Italian authorities have not hesitated to undermine the right to seek asylum to limit the number of migrants entering the national protection system. The implementation of the hotspot approach has resulted in the illegalization of tens of thousands migrants by way of

issuing collective expulsion orders in the pre-identification procedure defined as “a preventive illegalization” by Tazzioli and Garelli (2018).

## **2.7. THE RIGHT TO LEGAL ASSISTANCE AND REPRESENTATION**

The legal assistance and representation are the crucial legal safeguards against arbitrary and unlawful practices and decisions in the asylum procedure. Article 20 of the Asylum Procedures Directive states that the Member States shall provide free legal assistance and representation in the appeals procedure (Official Journal of the European Union, 2013). Accordingly, Article 16 of the Italian Legislative Decree no.25 of 28 January 2008 states that foreigner can be assisted by a lawyer, at his/her own expense but free legal aid shall be provided in the case of appeal if foreigner meets the income level criteria and his/her case is not deemed manifestly unfounded (Gazzetta Ufficiale, 2008).

However, neither lawyers’ access to asylum seekers in detention nor asylum seekers’ access to legal assistance in the hotspots is guaranteed (Danish Refugee Council, 2017). At the beginning of 2016, Prefect Mario Morcone, the Head of the Department for Civil Liberties and Immigration adopted a circular reminding the procedural guarantees for the newly arrived individuals to ensure an effective international protection system including the right to legal assistance and representation (Ministero dell'Interno, 2016). The Ministry of Interior and the Italian Council for Refugees have signed a memorandum of understanding to provide legal counseling in the Trapani hotspot, but it does not include the other hotspots (Danish Refugee Council, 2017).

The legal assistance and representation particularly work to suspend the effects of unlawful expulsion orders such as refoulement and illegalization for those people in need of international protection, and to be readmitted to the asylum procedures. Considering the lack of accessing to legal assistance in the hotspot facilities, nationals from countries that have agreements collectively expelled in a very short span of time, and the number of people left at streets, at train stations or in remote areas on their own with expulsion orders to leave the country within 7 days, only a



few of those people have a chance to find a lawyer or NGO to assist them (Sciurba, 2017). Even if they achieved to reach legal assistance and to suspend their expulsion order and to be readmitted to the asylum procedure, they stay without any support, such as accommodation and food which are granted to asylum seekers, for several months (Amnesty International, 2016). Except for a few people who managed to appeal expulsion order and be readmitted to the asylum procedure, nationals from countries that have bilateral agreements are collectively expelled and a large number of people issued 7 days decree and left at streets, at train stations or in remote areas have been largely “clandestinized” (Sciurba, 2017).

## **2.8. THE PROVISION OF INFORMATION**

In addition to receiving application, Article 10 of the Legislative Decree no.25 of 28 January 2008 and Article 3 of of the Amending Decree no.142 of 18 August 2015 are tasked the police office with providing information and delivering information leaflets to the applicant (Gazzetta Ufficiale, 2008) (Gazzetta Ufficiale, 2015). Accordingly, the verbal information shall be about the procedure to be followed; the rights and duties of the applicant during his stay in Italy; time-limits and means to support the application. It shall be provided at the time of the submission of the application, in case of necessity with an interpreter or cultural mediator. The leaflet shall include the phases of the procedure for the recognition of international protection; the main rights and duties of the applicant during her/his stay in Italy; health and reception services and methods for receive them; the address and telephone number of UNHCR and other main organizations for international protection applicants, in the first language of the applicant or in English, French, Spanish or Arabic (ibid.).

Additionally, Article 25 of the Amending Decree no.142 of 18 August 2015 requires the aforementioned police officers to be trained for their duties and responsibility (Gazzetta Ufficiale, 2015). It also states the Ministry of the Interior’s authorization to have special agreements with the UNHCR and other main organizations with consolidated experience in the field to guarantee the provision

of information on the procedure for examining the application by the Territorial Commissions, the procedures for revocation and the methods of appeal of judicial decisions (ibid.).

The Italian SOPs also underline the provision of information as an important component of the hotspot activities (Ministero dell'Interno, 2016). The international organizations are supposed to provide information in accordance with their respective mandates if needed with the support of cultural mediators (Ministero dell'Interno, 2016). Accordingly, on entry into the hotspot, the leaflets translated into several languages such as English, French, Tigrinya, and Arabic about the current legislation on immigration and asylum shall be distributed by UNHCR and IOM. Thereafter, UNHCR shall provide accurate information on the international protection procedure; the rights and duties of applicants during their stay in Italy including the obligation of providing fingerprints and the possibility to apply for international protection; how to access to services; the Dublin Regulation for determining the competent State; the priority of vulnerable cases and family reunification. EASO and UNHCR shall provide accurate information on the EU relocation scheme. IOM and Italian authorities shall provide accurate information on assisted voluntary return (ibid.).

In practice, the information is provided by the international organizations having special agreements with the Ministry of the Interior in the Italian hotspots, the police do not play an active role despite the law assigns responsibility (Amnesty International, 2016) (Papadopoulou, 2016). The main information activities are carried out by UNHCR, while the other organizations, Save the Children and IOM, provide information according to their area of specialization such as unaccompanied minors, victim of human trafficking, assisted voluntary returns (Amnesty International, 2016).

The report of ECRE shows the implementation of information activities in the hotspot of Lampedusa (Papadopoulou, 2016). Accordingly, information activities are carried out by UNHCR, EASO, Save the Children and IOM in practice. The

beforementioned information leaflets required by the Italian Law and the EU Directive are distributed by EASO, instead of the Police. The leaflets translated in Italian, English, Kurmanji, Sorani, Arabic, Tigrinya includes the procedure to be followed, the possibility to seek asylum, the consequences of refusing fingerprinting, irregular entry and stay, the safeguarding system for individuals with vulnerabilities, and the return procedure (ibid.).

The number of international organizations' personnel to provide information remains limited (Amnesty International, 2016). The cultural mediators/interpreters, who have a vital role to get the information across and to understand whether individuals have understood the information provided, are remained limited in terms of the number and the variety of languages they speak (Danish Refugee Council, 2017) (Amnesty International, 2016) (Papadopoulou, 2016). The Extraordinary Commission for the Protection and Promotion of Human Rights of the Italian Senate, in its report published in 2016, lists the personnel of international organizations and their position deployed for providing information in the hotspot of Lampedusa: an official and three interpreters from UNHCR, an IOM operator, a lawyer and an interpreter from Save the Children (Commissione Straordinaria Per la Tutela e la Promozione dei Diritti Umani, 2016). The Commission also recommends an increase in the number of mediators/interpreters (ibid.). In a similar manner, the Save the Children legal expert working in the Lampedusa hotspot interviewed by ECRE underlined that the Italian Authorities employ cultural mediators but the variety of languages they speak is not sufficient to meet the need in the field (Papadopoulou, 2016). There is a lack of less common languages, particularly the Sub-Saharan languages in the Italian case. (Ibid) Mediterranean Hope operators in Lampedusa reported to OXFAM that sometimes the information is provided by three or four operators to two hundred people altogether (Capitani, 2016). Therefore, many migrants have remained unaware of the procedure to be followed, their own legal status and their rights and duties during their stay in Italy, although the information was provided.

The provision of information plays a vital role in migrants' access to international protection, but there is no specific time and place envisaged for the provision of information in the hotspot procedures. At the beginning of 2016, Prefect Mario Morcone, the Head of the Department for Civil Liberties and Immigration adopted a circular reminding the procedural guarantees for the newly arrived individuals to ensure an effective international protection system including the right to get a timely information on their rights and duties during the procedure to be followed, and the right to the assistance of an interpreter (Ministero dell'Interno, 2016). Shortly afterward, the Italian SOPs underlining the provision of information was published but it provides neither specific time nor specific place for information activities in the hotspots (Ministero dell'Interno, 2016). Moreover, the operational sequence detailed in the SOPs has consolidated the implementation of fast-track procedures. Accordingly, the screening process takes place immediately after disembarkation. The time period between them is very short but it is very important to inform the newly arrived migrants about the procedure to be followed, their rights and duties, and the possible consequences of their declarations before the pre-identification procedure (ibid.).

The international organizations can carry out information activities if they have access to individuals. Before the pre-identification procedure, the information activities can only take place in the port during the disembarkation, in the bus during the transfer to a hotspot area, or in the queue for receiving basic assistance or to be screened on their entry into the hotspot (Amnesty International, 2016). At a sitting, the information is provided to a bevy of people involving hundreds of people and it just takes a few minutes (ibid.) (Capitani, 2016). Due to the limited time, the provision of accurate information and the special information sessions for individuals with vulnerabilities can be carried out after the pre-identification procedure.

The IOM legal officer working in Lampedusa interviewed by ECRE points out that the preliminary information activities are provided in the bus during the transfer to a hotspot area, or in the queue for receiving basic assistance or to be screened on

their entry into the hotspot of Lampedusa (Papadopoulou, 2016). It is worried about the sufficiency of information activities to the individuals disembark at night (ibid.).

Considering the legal status of individuals is mainly determined in the pre-identification phase in the Italian hotspots, the provision of accurate information and interpreting service at the right time are all-important. The fast-track procedures in the hotspots do not leave sufficient time for the provision of information. The number of cultural mediator/interpreters and the variety of languages they provide information is limited. The information before the pre-identification procedure can only be provided in the port, the bus or the queue if the Italian authorities allow. In sum, the newly survived, traumatized migrants are provided information very quickly without a suitable environment and adequate interpretation support for everyone. A great many individuals have gone through the pre-identification procedure without receiving accurate information about the procedure to be followed, the purpose of the 'foglio-notizie' form, their right to apply for international protection and the legal consequences of their declarations (ibid.) (Amnesty International, 2016)

The European Court of Human Rights, in the case of *M.S.S. v. Belgium and Greece*, underlines the lack of access to information as a "major obstacle" in accessing to asylum procedures (European Court of Human Rights, 2011). Similarly, the Italian Court of Cassation underlined the importance of the provision of information and the interpretation support to access to the asylum procedure: "If these duties are not fulfilled, the decree of removal and the decree of detention are void" (Court of Cassation, 2015). However, the report of Amnesty International (2016) points out the worrying implementation in late 2015 that the expulsion orders were issued to groups of people shortly after their disembarkation before they had received information on the right to apply for international protection in Italy. Similarly, in his interview with OXFAM, Riccardo Campochiaro, a lawyer assisting individuals in their appeal against return orders in Catania, reports that many individuals have been issued a return order without receiving information about their rights and having any idea what the order in their hands means (Capitani, 2016).

The case of the Somali woman interviewed by OXFAM is a great example of the lack of access to information: She has arrived in the Lampedusa hotspot at the end of 2015 (ibid.). Immediately on arrival, she was fingerprinted and photo-identified. Her name and nationality were taken. She was not provided any information nor in the port neither in the center. Thereafter, she was given a return order on a ferry from Lampedusa to Porto Empedocle. She has learned that she could apply for asylum for the first time when she met a lawyer in Catania (ibid.).

In conclusion, the case of Italy shows that the hotspots have functioned as a filtering mechanism located at the EU external border, as designed. The objective of identifying those not in need of protection at the earliest possible opportunity in order to limit the number of persons entering the asylum procedure and to facilitate their returns was achieved. Moreover, the Italian authorities were obliged to comply with the responsibilities under the Dublin System have resorted to limit the number of migrants entering the asylum procedure with the aim of relieving pressure on the national protection and reception system (Orsini & Roos, 2017). Therefore, the oversimplified and accelerated pre-identification procedure of the hotspots has been used to exclude most migrants from the asylum procedure by the way of illegalizing them as economic migrants and issuing expulsion orders (Guild, Costello, & Moreno-Lax, 2017) (Papadopoulou, 2016). In the absence of a dedicated legal framework for the hotspot approach at the EU and national levels, the adoption of arbitrary and unlawful practices such as the defacto authorization of the police, the use of foglio notizie and the category of economic migrant, the nationality-based approach to determine migrants' legal status has violated the main principles of non-discrimination and non-refoulement, and the prohibition of collective expulsion. Considering the absence of adequate safeguards for migrants, such as the identification of vulnerabilities and special needs, the provision of adequate information, legal assistance and representation, in practice, the implementation of the hotspot approach has undermined the right to seek asylum. The new partnership framework took the externalization of migration management a step further; the EU has given particular importance to cooperation with countries of origin and transit

in order to facilitate the return and readmission of migrants. Therefore, the outcome of the hotspot approach has been the systematic violation of the right to seek asylum, migrants forcibly expelled to their countries of origin and transit without any opportunity given to seek asylum and thousands of illegalized migrants within the EU in the first year of its implementation in Italy (Sciurba, 2017) (Tazzioli & Garelli, 2018). The increased number of negative decisions and expulsion orders and cooperation with countries of origin and transit to facilitate returns aims to deter migration as much as to limit the number of migrants.

In the light of these, it is understood that the hotspot approach as an EU response to the crisis, in the context of accessing the asylum procedure, has re-enforced the same policies based on deterrence, migration control, externalization, led to the crisis. The hotspot approach prioritizes to limit the number of migrants entering the asylum system over refugee and human rights responsibilities, as it was in the past. Rather than addressing the crisis of the EU asylum system, it has standardized arbitrary and unlawful practices such as nationality based determinations and collective expulsion orders make difficult to access to the asylum procedures.

### **CHAPTER 3**

#### **FINGERPRINTING: RE-ESTABLISHING THE DUBLIN SYSTEM**

The Dublin Regulation puts the responsibility of examining an asylum application on the shoulder of the Member State of first entry (European Commission). To facilitate the application of the Dublin Regulation, the EURODAC Regulation charges Member States with the collection of asylum seekers' fingerprints and their transmission to the EURODAC central system (European Commission). The comparison of fingerprint in the central system ensures to detect whether an asylum seeker is already registered by another Member State and which Member State is responsible for examining an asylum application.

The Dublin System is based on coercion both on the part of certain Member States and on the part of asylum seekers (Heijer, et al., 2016). On the one hand, it relies

on the coercive placement of migrants in the Member State of first entry that disregards the interest and preference of migrants. It pushes migrants to avoid to be fingerprinted for fear of being returned to Member State of the first entry and move irregularly to their preferred destinations within the EU (European Commission). On the other hand, the Dublin System puts disproportionate pressure on the Member States located at the EU's external borders, namely Greece and Italy, where most migrants enter the EU because of their geographic proximity to countries of origin and transit. Therefore, Italy and Greece have organized their own relief through not registering asylum seekers and stimulating their secondary movement, in other words by the purposeful non-compliance with the Dublin System (Maiani, 2016) (Orsini & Roos, 2017).

The purposeful non-compliance with the Dublin System, the increasing number of secondary movements and together with the security concerns due to repeated terrorist attacks, the border-free Schengen Area became highly questionable. Many Member States have been considering or actually implementing temporary border controls, border walls and razor wire fences (European Commission, 2018) (Express, 2015) (BBC News, 2016).

Under these circumstances, the hotspot approach is presented by the EU to push the Italian and Greek authorities to comply with their responsibilities under the Dublin and EURODAC Regulations (Maiani, 2016) (Orsini & Roos, 2017). The involvement of the EU Agencies, namely European Asylum Support Office, Frontex and Europol in the identification, registration and fingerprinting procedures on the ground does not give Italy and Greece an opportunity for non-compliance. Therefore, with the implementation of the hotspots in the frontline states, the EU aims to re-establish the Dublin System to secure the Schengen Area (Maiani, 2016).

In 2014, the number of irregular border-crossing detected was 170 664 on the Central Mediterranean route, mostly between Libya and Italy, only 64 625 asylum seekers were registered by Italy (Frontex, 2016) (Eurostat). Similarly, in 2015, the number of irregular border-crossing detected was 153 946 on the Central



Mediterranean route, only 83 540 asylum seekers were registered by Italy (Frontex, 2016) (Eurostat). Considering the low rate of registration, the EU has started to put the pressure on Italy to increase fingerprinting rates. Shortly after the implementation of the first hotspot in Italy, on 10 December 2015, the European Commission sent a Letter of Formal Notice as the first step of infringement proceeding to Italy for failure in fingerprinting of migrants and transmission of fingerprints to the EURODAC System (European Commission, 2015).

In this chapter, we will examine the EU's pressure on Italy to reach 100% fingerprinting rate, the use of force and arbitrary prolonged detention to obtain fingerprints in case of refusal, the outcomes of the fingerprinting procedure and the protests of migrants against the coercive fingerprinting procedures. In the light of these, we will evaluate the hotspot approach as an EU response to the crisis.

### **3.1. THE USE OF FORCE AND ARBITRARY DETENTION TO OBTAIN FINGERPRINTS**

Immediately after the European Agenda on Migration, the European Commission has submitted a working document to provide guidance for full compliance with the EURODAC Regulation (European Commission, 2015). It states that “detention for as short a time as possible and necessary” and “coercion as a last resort” can be applied in the case of a person who refuses to cooperate in being fingerprinted (*ibid.*). Similarly, in the Progress Report on the Implementation of the hotspots in Italy of 15 December 2015, the Commission portrayed a 100% fingerprinting rate as a target needs to be done in the short term while underlining the Letter of Formal Notice and the discrepancies between the number of arrivals and the EURODAC fingerprinting statistics (European Commission, 2015). In line with this target, Italy was explicitly urged to adopt a more solid legal framework allowing the use of force and longer-term retention for migrants who resist to be fingerprinted. In addition, the Report shows that the fingerprints have been only entered and checked in the Italian Automated Fingerprinting Identification System (AFIS), the Commission

points out the need of the interconnections between national and EU/international databases to ensure a full check of migrants (ibid.).

In response to the Commission pressure on Italy to fulfill the fingerprinting duty, the Italian Sops of 8 February 2016 define fingerprinting as the only reliable way to identify a citizen from a third country. (Ministero dell'Interno, 2016) The Italian Forensic Police with the support of Frontex experts is tasked with the collection, transmission, and comparison of fingerprints. It is clearly stated that migrants shall be informed on the obligation of fingerprinting, the purpose of fingerprinting, and how the fingerprints will be processed by the police officers and Frontex experts, if needed, with the support of cultural mediators, as required by the Eurodac Regulation (Ministero dell'Interno, 2016) (European Commission). According to the operational sequence detailed, the fingerprints together with personal data shall be entered in the Italian AFIS. Then they shall be compared with the data entered in the central AFIS database, in the EURODAC system and in the INTERPOL AFIS database (Ministero dell'Interno, 2016)

According to the SOPs, in case of refusal to be fingerprinted, the police officers and Frontex experts are tasked with counseling to find out the reason for refusal, if needed with the support of cultural mediators (ibid.). In addition, short-term retention is allowed to take fingerprints later if a migrant has damaged or altered his/her fingerprints. In case of persisting refusal, the use of force with full respect for the physical integrity and dignity of the person is allowed with reference to Ministry of the Interior Circular of 25 September 2014 (Ministero dell'Interno, 2014). According to the Circular, the refusal to provide personal details, fingerprint or to be photographed is defined as a crime results in judicial charges (ibid.). Therefore, the police are allowed the use of force to obtain the necessary data for identification, if necessary. However, neither the Circular nor the SOPs is legislative documents.

As it is understood from the European Commission's call for the adoption of a legal framework, the use of force and longer-term retention in order to identify

uncooperative migrants are not permitted by Italian law. The non-penalization is one of the fundamental principles of the Geneva Convention, accordingly Article 31 prohibits penalizing on account of refugees' illegal entry or stay. On the contrary, illegal entry or stay in Italy is recognized as a crime by Italian Law no 94 of 15 July 2009 that is still in force (Gazzetta Ufficiale, 2009). Accordingly, on the use of force, Article 349(2 bis) of the Italian Criminal Procedure Code only allows the criminal police to take hair or saliva sample from a suspected person, even without her or his consent, for the purpose of identification, after receiving authorization by the Public Prosecutor (Italian Criminal Procedure Code).

When it comes to detention, if a suspected person refuses to be identified or provides identification documents which are believed to be false, Article of 11 of the Decree-Law n.59 of 21 March 1978 authorizes police officers to detain her/him for identification in any case for no longer than 24 hours (Melting Pot Europa, 1978). Similarly, Article 349(4) of the Italian Criminal Procedure Code allows the criminal police to detain her/him only for the time needed for identification for no longer than twelve hours or, after informing the Public Prosecutor, no longer than twenty-four hours if the identification is complex, the support of the consular authority or an interpreter is needed (Italian Criminal Procedure Code). Therefore, even if the identification or fingerprinting could not be completed, the police must release the person after 24 hours. In addition, Article 13 of the Italian Constitution explicitly prohibits any restriction of personal liberty without the Judiciary order and any violence against a person in detention (Senato della Repubblica). It clearly states that the maximum duration of detention is limited with 48 hours (ibid.).

In spite of the Commission pressure and the previous Ministry of the Interior Circular, the law allowing long term detention of migrants for the purpose of identification and fingerprinting was adopted after around one and a half year later from the implementation of the hotspot approach in Italy. According to Article 17(3) of Decree-Law n.13 of 17 February 2017, the persistent refusal to be identified and fingerprinted is considered 'risk of absconding' in such a case the foreigner can be transferred to a permanent repatriation center and detained for a maximum of thirty

days, with an order issued case by case (Gazzetta Ufficiale, 2017). However, the law does not envisage a comprehensive legal procedure; neither the definition of persistent refusal and what will happen if the foreigner could not be identified and fingerprinted within the time specified are legally clarified (Asylum in Europe). In addition, it does not allow the detention of migrants in the hotspots but stipulates their transfer to a permanent repatriation center.

The lack of a legal basis has not prevented the Italian authorities to follow more aggressive strategies, particularly between late 2015 and mid-2016. The Fundamental Rights Agency (2015), in the paper published almost at the same time with the implementation of the first hotspot, warns about the risk of the use of force and detention to obtain fingerprints in case of refusal: first of all, the provision of information and counselling must be carried out with the support of cultural mediator, retention must be as an exceptional measure on condition that it should not target vulnerable migrants, the use of force should be avoided due to a high risk of violating fundamental rights. However, the use of force and prolonged detention have become the standard practices to obtain the fingerprint of uncooperative migrants in the hotspots (Amnesty International, 2016) (Papadopoulou, 2016). Even the General Union of Police Workers sent a letter to the Head of Police to raise concern about possible criminal, civil and administrative liabilities police officers could face due to the use of force for photo-identification and fingerprinting without any legal basis (Unione Generale Lavoratori di Polizia, 2016).

Worryingly, in some cases, ill-treatment and torture have accompanied the excessive use of force and prolonged detention against uncooperative migrants. (Amnesty International, 2016) According to UNCHR Senior Protection Associate interviewed by ECRE, some migrants who refuse to provide fingerprints, especially certain nationalities, are transferred to the Immigration Office of the Police, called Questura. (Papadopoulou, 2016) The several individuals interviewed by Amnesty International (2016) reported that they were subjected to excessive use of physical force, ill-treatment, torture for fingerprinting by the police either in the hotspots or police stations. One of them being an Eritrean woman passed through the

Lampedusa hotspot in 2016 reported to Amnesty International that after her refusal to provide fingerprints she was transferred to Porto Empedocle where her fingerprints were taken by force and she was subjected to violence: “Then they took our fingerprints by force. I said I didn’t want to. They put my hand on [the machine], I retracted it. There was a woman behind a computer, and four men – all in police uniform. One of the men slapped me on the face, I don’t remember how many times. I was too scared, so I gave my fingerprints”. Another of them being a 16-year-old boy from Sudan arrived in Sicily in June 2016 reported to Amnesty International that he has refused to be fingerprinted and then he was transferred to a police station where he was detained. He was subjected to torture by means of electrical batons many times and he was fingerprinted by force. However the ill-treatment and torture are prohibited by the Italian law and several international treaties binding on Italy, these violations have not been submitted to the jurisdiction due to the lack of trust or the concern that it may prevent their movement to other European countries (ibid.).

The target of a 100% identification rate has pushed Italian authorities to adopt coercive measure without legal basis. As a result, the rate of fingerprinting has measured up in a short time. The European Commission’s State of Play Report of 10 February 2016 shows that even though the interconnections between national and EU/international databases were still found limited, the fingerprinting rate has almost reached 100% in the operational hotspot areas in Italy (European Commission). Similarly, the fingerprinting rate has increased from 8% in September to 78% in the operational hotspot areas in Greece (ibid.).

Consequently, the hotspot approach has re-established the Dublin System in a more coercive way, led to “exacerbate Dublin shortcomings” (Guild, et al., 2017). The use of coercive measures has not only resulted in deteriorating human rights and protection standards, but also increased the number of people seeking asylum in the host Member States, considering that people could not avoid being fingerprinted in order to seek asylum in their preferred destination, and the pressure on the national protection and reception system of the host Member States (Amnesty International,

2016) (Maiani, 2016) (Webber, 2015) (ibid.). The number of asylum applications and the rate of asylum applications in total arrivals in Italy and Greece have substantially increased since the implementation of the hotspot approach: In Italy, while the number and rate of asylum applications were 64 625 (38%) in 2014, they reached 83 540 (54 %) in 2015 and 122 960 (68%) in 2016. Similarly, in Greece, while the number and rate of asylum applications were 9 430 (18.5%) in 2014, they reached 13 205 (1.5%) in 2015 and 51 110 (28%) in 2016 (Frontex, 2016) (Frontex, 2016) (Frontex, 2017) (Eurostat).

OXFAM points out that those who resist to provide fingerprinting in Italy generally from the Horn of Africa and especially from Eritrea because they know with the basic principles of the Dublin Regime, therefore, they avoid being registered not to stay in Italy. (Capitani, 2016) However, Eritreans are eligible to benefit from the Relocation mechanism in accordance with the 75% EU-wide recognition rate required, they avoid to be fingerprinted. Because the mechanism does not rely on the migrants' choice of their country of destination, migrants are relocated in accordance to the decision of the host Member States. (UNHCR, 2016)

The Extraordinary Commission for the Protection of Human Rights of the Italian Senate, in the report published in February 2016, shows that 184 Eritreans and some Ethiopians refused to be fingerprinted because they did not want to seek asylum in Italy on contrary they intended to reach their destination countries without leaving no trace of evidence (Commissione Straordinaria Per la Tutela e la Promozione dei Diritti Umani, 2016). They have been detained in the hotspot of Lampedusa for weeks. None of them were allowed to leave from the hotspot until they provide their fingerprints (ibid.).

There is no legal basis to clarify the duration of migrants' accommodation in the hotspots. Considering that the hotspots took the place of the pre-existing first aid and reception centers and they are envisaged for short term accommodation. In addition, the hotspots are defined as closed centers by the Italian Roadmap (2015) and the accommodation should not exceed 48 hours. However, they have been used

for prolonged accommodation without a legal basis, a judicial order and a chance to remedy. Amnesty International (2016) reported from the multiple visits to Lampedusa and Pozzallo in 2014 and 2015 that the great majority of detention for the purpose of identification and fingerprinting longer than 48 hours. Tazzioli and Garelli (2018) define the implementation of arbitrary detention against uncooperative migrants, in the case of the hotspot of Lampedusa, as “a sort of punitive entrapment of migrants on the island”; migrants because of their non-compliance with the obligation of fingerprinting are indefinitely detained and excluded from the protection system within this period.

### **3.2 THE PROTESTS OF MIGRANTS AGAINST THE FINGERPRINTING PROCEDURE IN LAMPEDUSA**

On 17 December 2015, a group of 250 migrants, mainly Eritreans, held in the hotspot of Lampedusa due to their refusal to be fingerprinted, organized a demonstration to protest the identification procedure followed (Agrigento Notizie, 2015) (The Local, 2015). The migrants wanted to reach other countries, for this reason, they avoided being registered in Italy. The migrants marched from the hotspot to the Town Hall while chanting slogans and holding placards that said "freedom, freedom", "we must move", "we are refugees, no footprints". Some of them declared that they went on a hunger strike until they are allowed to leave Lampedusa (ibid.).

Not long after, on 5 and 6 January 2016, around 200 Eritreans and a small group of Sudanese gathered in the church square again to protest their prolonged stay in Lampedusa and the fingerprinting procedure for two days and one night (Giornale di Sicilia, 2016). They repeated their demands: "no fingerprints, freedom, we want to move", "Respect our rights". As Sciorba and Tazzioli stated “the same people still shouting the same words” (Sciorba & Martina Tazzioli, 2016).

On 6 May 2016, a group of 70 Ethiopian, Eritrean, Somali, Sudanese and Yemenite migrants, not allowed to leave Lampedusa for months due to their refusal to be fingerprinted, left the hotspot of Lampedusa and started to sleep in the church

square (Zandonini, 2016). The migrants declared that they will not eat and drink anything until they are transferred to Sicily. They put their demands on paper: "We are refugees, we need freedom", "We want to leave this prison." An Ethiopian boy interviewed by the journalist from Repubblica, Giacomo Zandonini, indicates that they do not want to provide his fingerprints because they want to go to other countries where they have acquaintances. He also added that he has been held in Lampedusa since January without any documents and any rights. The migrants also reported the use of violence and intimidation against those people who refuse to be fingerprinted (ibid.). The next day, a public statement was issued by the migrants to call attention to their protest and their demands:

“We are refugees/asylum seekers, we have come here because we had to flee our countries which are at war. We come from Somalia, Eritrea, Darfur (Sudan), Yemen, Ethiopia. The way they treat us in the center in Lampedusa is inhuman, in some cases, the police forces mistreated people to force them to comply with fingerprinting operations. If we do not accept fingerprinting, center operators become verbally and physically aggressive towards us, there are discriminations in food distribution and playing football in the courtyard is forbidden” (Capitani, 2016).

In conclusion, despite the explicit objective of the hotspot approach was presented as providing the operational assistance of the EU Agencies to Italy and Greece to relieve the disproportionate pressure, the case of Italy clearly shows that the objective of precluding the purposeful non-compliance with the Dublin System came into prominence during the implementation. As Maiani (2016) stated: “frontline states are in fact “assisted” to better shoulder the full extent of their responsibilities under the existing Schengen and Dublin arrangements”. Considering the involvement of the EU Agencies in the hotspots where most migrants enter into the EU, the target of 100% fingerprinting rate and the European Commission’s explicit call for the use of force and longer-term retention to obtain fingerprints in case of refusal, the hotspot approach has mainly worked to push Italy and Greece to fulfil their responsibilities under the Dublin System. Rather than



abolishing the policies based on coercive placement, migration control and an unfair/non-proportional sharing of responsibility among the Member States led to the crisis, the hotspot approach as an EU response to the crisis makes certain of the implementation of them through re-establishing the Dublin System in a more coercive way in order to preclude secondary movements and to secure the Schengen Area that became questionable.

On the one hand, the use of force and prolonged detention to obtain fingerprints of uncooperative migrants have become standard practices without any legal basis and led to serious human rights violations. On the other hand, the adoption of coercive measures has increased the number of people seeking asylum in the host Member States, led to an increase in the migratory pressure, and consolidated challenges. In the light of these, the hotspot approach epitomizes that the EU persists in prioritizing the security-based approach to migration management and in maintaining the existing asylum system over human rights responsibilities, and the principles of solidarity and a fair sharing of responsibility.

## **CHAPTER 4**

### **THE INADEQUATE RECEPTION CONDITIONS AND CAPACITY**

The hotspot approach does not envisage to provide reception facilities but builds on existing national reception facilities (Avramopoulos, 2015). Setting up adequate reception conditions and increasing reception capacities for the hotspots are seen as the responsibilities of the host Member State. Italy and Greece have been under criticism due to the lack of adequate reception facilities prior to the implementation of the hotspot approach (Greek Council for Refugees) (ASGI). The case of *Khlaifia and others vs. Italy* came to the European Court of Human Rights points up an inadequate living standard provided for migrants (European Database of Asylum Law). The three Tunisian complainants of the Case had been rescued at the sea and transferred to the first aid and reception center in Lampedusa in September 2011, before the center was transformed to the first Italian hotspot. The conditions of the center became one of the subjects of the Case. The complainants stayed for three to

four days there report that the center was overcrowded and lack of hygiene and they were obliged to sleep on the floor due to lack of available beds and to eat on the ground. The Court found the mentioned conditions in the center amounted to inhuman and degrading treatment and so a violation of Article 3<sup>6</sup> (ibid.). Therefore, they were several calls for increasing reception capacity and improving conditions to ensure the hotspot approach to be effective.

However, in the hotspots, reception conditions supposed to guarantee migrants' subsistence and to protect their physical and mental health still remain inadequate, while reception capacity remains limited considering the number of arrivals. Due to the insufficiency of reception capacity in Italy, the hotspot facilities are used for mixed purposes, accommodating unaccompanied minors, asylum seekers, relocation candidates, people detained for fingerprinting or those people categorized as irregular migrants (Danish Refugee Council, 2017) (Papadopoulou, 2016). Despite there is no legal basis to determine the duration of migrants' residence in the hotspots, the hotspots took the place of the pre-existing first aid and reception centers and they are envisaged for a short term accommodation. However, they are used for prolonged accommodation when there is no place in regional hubs or in permanent repatriation centers due to lack of capacity and overcrowdedness (Capitani, 2016). The unaccompanied minors accommodate in the hotspots the longest because of the limited availability of specialized reception facilities for unaccompanied minors (Amnesty International, 2016) (Papadopoulou, 2016).

The living standard provided for migrants does not meet the need for safety, health, and hygiene (Papadopoulou, 2016). In the case of Lampedusa, it seems that the pre-existing first Aid and reception centre was transformed into a "hotspot", without

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<sup>6</sup> Article 3 of European Convention of human rights – Prohibition of torture “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” (European Court of Human Rights, 1950)

any measure being adopted by the Italian authorities to address the legislative gaps, inhuman conditions, inadequate capacity that put human rights of migrants and compliance with the law at risk. The group including the Member of European Parliament Elly Schlein made a visit to the Lampedusa hotspot in January 2016 reported that migrants were obliged to sleep in camp beds with the poor quality of mattresses without sheets and toilets were squalid (Ballerini, 2016). According to the representatives of the organizations working in the Lampedusa hotspot that ECRE interviewed, there were no doors in toilets and there were some compounds where the lights went out. They also reported that there were no communal spaces where migrants could come together (Papadopoulou, 2016). Similarly, Amnesty International reported the observations from the visits to the hotspots of Lampedusa and Taranto carried out in March and May 2016 that the centers were overcrowded and there was the lack of communal spaces, even of a dining table (Amnesty International, 2016). All reports are consistent with each other and point up the need for better dormitories, communal spaces, hygiene, and accommodation capacity in proportion to the number of migrants.

In the rest of this chapter, we will examine the inadequate reception conditions and capacity for unaccompanied minors, the blurring of reception and detention in the absence of a dedicated legislative framework, the use of arbitrary prolonged detention to obtain fingerprints in case of refusal.

#### **4.1 THE LACK OF SPECIALISED RECEPTION CENTERS FOR UNACCOMPANIED MINORS**

The unaccompanied minors are the most affected ones by the inadequacy of the reception system in Italy. There is a lack of specialized reception centers of unaccompanied minors. Therefore, the European Commission calls Italy to improve the availability and quality of specialized reception for unaccompanied minors (European Commission, 2016). Despite they should not be placed in reception centers for adults, they are accommodated in the hotspots. In the Lampedusa hotspot, there is a separated compound for unaccompanied minors'

accommodation. The group including the Member of European Parliament Elly Schlein made a visit to the Lampedusa hotspot in January 2016 reported that there were only sixty beds, four toilets and four showers in the compound dedicated to unaccompanied minors while there were eighty-seven minors accommodated there during their visit (Ballerini, 2016). ECRE reported that these showers and toilets were often broken therefore they often had to stay in other compounds with adults (Papadopoulou, 2016).

The number of unaccompanied minors arriving in Italy increased in 2016 compared to the previous year. While the number of unaccompanied minors was 16 478 in 2015, it reached 28 223 in 2016 (Demurtas, et al., 2018). Considering that the relocation scheme has not implemented for unaccompanied minors that pushed the limits of the Italian reception capacity. According to the Report on the Implementation of the Relocation Scheme of 12 April 2017, there is no unaccompanied minor has been relocated from Italy to another Member State in the first year of the implementation of the hotspot approach (European Commission, 2017). The European Commission called Italy to make the procedures clear to ensure the relocation of unaccompanied minors, to facilitate the appointment of guardians, and to establish dedicated relocation hubs for unaccompanied minors (ibid.). Under the circumstances, while newly arrived adults are generally accommodated for a few days in the hotspot facilities, unaccompanied minors have to stay for weeks to be transferred due to the lack of space in second level reception system for unaccompanied minors (Papadopoulou, 2016) (Human Rights Watch, 2016).

#### **4.2. THE BLURRING OF RECEPTION AND DETENTION IN THE HOTSPOTS**

The EU Reception Conditions Directive defines detention as confinement of an individual in a certain place where an individual is deprived of her or his freedom of movement and underlines that an individual should not be detained just because he or she is seeking international protection, with reference to Article 31 of the

Geneva Convention (Official Journal of the European Union, 2013). The detention of third-country nationals as a regular border procedure is against the principle of non-penalization on account of refugees' illegal entry or presence underlined by Article 31 (UNHCR). However, the Italian Law no 94 of 15 July 2009 recognizes illegal entry or stay in Italy as a crime (Gazzetta Ufficiale, 2009). Article 349(4) of the Italian Criminal Procedure Code authorizes the criminal police to detain a suspected person for identification in any case for no longer than 24 hours, within the knowledge of the Public Prosecutor (Italian Criminal Procedure Code). Similarly, Article of 11 of the Decree-Law no 59 of 21 March 1978 allows detention for the purpose of identification for no longer than 24 hours (Melting Pot Europa, 1978). In addition, Article 13 of the Italian Constitution prohibiting any restriction of personal liberty without the Judiciary order and limits the maximum duration of detention with 48 hours (Senato della Repubblica).

However, from the very beginning, the Italian Roadmap defines the hotspots as closed centers for identification and screening activities (Ministero dell'Interno, 2015). The migrants are deprived of their freedom of movement during their stay in the hotspots, as standard practice, without the Judiciary order, in case of refusal to be fingerprinted for far more longer than 48 hours. Therefore, reception and detention are blurred in the hotspots (Danish Refugee Council, 2017) (Guild, et al., 2017).

The operator of Mediterranean Hope interviewed by OXFAM reported on the Lampedusa hotspot that it was impossible to keep migrants locked inside due to their prolonged stay and related tension, therefore, the authorities allowed them to go out during winter but it would not be deemed during the tourist season (Capitani, 2016). Similarly, the report of ECRE underlined that the Lampedusa hotspot is a closed center but the authorities tolerate when migrants exit from a hole in the fence (Papadopoulou, 2016). The implementation of the arbitrary detention of migrants in Lampedusa has started prior to the hotspots approach. For example, in the case of *Khlaifia and others vs. Italy* came to the European Court of Human Rights, the detention of 3 tunisian complainants was among other issues (European Database

of Asylum Law). The complainants reported that they were under police surveillance during their stay in the center, they were not allowed to contact with the outside World. The Court pointed out that there was a first aid and reception center, not a detention center recognized by domestic law. The Court found that migrants were exposed to unlawful detention and so Italy violated Article 5(1) prohibiting an unlawful deprivation of liberty (ibid.). A short time before the Lampedusa first aid and reception center was transformed to a hotspot, in July 2015, the police official in charge of the centre told Amnesty International delegates that migrants were not detained and “they did not go out only because they did not want to”, even though the delegates clearly observed how the authorities did not allow migrants to go out (Amnesty International, 2016).

#### **4.3 ARBITRARY PROLONGED DETENTION FOR IDENTIFICATION AND FINGERPRINTING**

The use of detention for the purpose of identification and fingerprinting has not started with the hotspot approach, but increased as a result of its implementation. As discussed in the previous chapter, since the implementation of the hotspot approach, the use of prolonged detention has become a standard practice to pressure uncooperative migrants to provide their fingerprints, without a legal basis, a judicial order and a chance to remedy. The duration of arbitrary detention in the Lampedusa first aid and reception center was not linked to the fingerprinting procedure, contrary to this, in the hotspot of Lampedusa, the duration depends on the cooperation of individuals for fingerprinting. The migrants who refuse to be fingerprinted are detained until they accept to provide their fingerprints, they are threatened not to be released if they do not cooperate (Amnesty International, 2016).

Particularly, in the first years of the implementation of the hotspot approach, in 2015 and 2016, arbitrary detention to obtain the fingerprint of migrants has been widely implemented. Amnesty International reported that a group of migrant was not allowed to leave Lampedusa for several months at that time (ibid.). One of them being an Oromo woman who arrived in the Lampedusa hotspot in late 2015 and has

been detained for four months because she has refused to provide her fingerprints. Another member of the group who gave an interview has been detained for four months because she has not cooperated to provide her fingerprints. Both of them told Amnesty International that prolonged detention broke them.

Considering the envisagement of the hotspots as closed centres and the arbitrary prolonged detention for the purpose of fingerprinting, migrants have been deprived of their freedom of movement unlawfully as standard practice, in the hotspots. Accordingly, despite reception and detention are different policies, the difference between them is blurred within the implementation of the hotspot approach (Danish Refugee Council, 2017) (Papadopoulou, 2016).

As mentioned in the previous chapter, there were several protests against the obligation of fingerprinting and the use of prolonged detention in the hotspot of Lampedusa against people who refuse to be fingerprinted. In the protest took place on 6 May 2016 and in the following public statement, migrants also highlighted the inadequate conditions of the hotspot of Lampedusa (Zandonini, 2016) (Melting Pot Europa, 2016). The migrants reported that some of them have been held in Lampedusa for 2 months while the others for 4 months. The mattresses on which they had to sleep were wet because of the water leak in the bathrooms that caused diseases. They did not receive adequate health care. The migrants declared that they refused to be fingerprinted, they wanted to leave the hotspot of Lampedusa that they called as “prison” and to move somewhere they would have more dignified living conditions (ibid.).

In conclusion, neither the reception conditions and capacity for migrants nor the disproportionate burden on the Italian and Greek national reception systems has been addressed by the hotspot approach. However, their reception conditions and capacity were already under the disproportionate pressure and did not meet requirements and needs prior to the hotspot approach, setting up adequate reception conditions and capacity were left to Italy and Greece as the host Member States. Moreover, the implementation of the hotspot approach has led to an increase in the

number of registration due to the use of coercive measures and in the number of people seeking asylum in the host states, as discussed in the previous chapter. Therefore, neither the reception conditions nor the reception capacities in the hotspots meet with requirements and needs. In addition, the absence of a dedicated legislative framework for the duration and type of migrant's stay in the hotspots has resulted in the blurring of reception and detention and standardized the arbitrary practice of prolonged detention to obtain fingerprints of migrants in case of refusal. Therefore, rather than sharing the disproportionate responsibility on Italy and Greece and providing adequate reception conditions to meet with refugee and human right responsibilities, the hotspot approach as an EU response to the crisis has consolidated challenges. The hotspot approach, in the context of migrant reception, has caused to standardize arbitrary detention of migrants, to deteriorate the reception conditions for migrants and push the limits of the Italian and Greece national reception capacities.

## **CONCLUSION**

In the year 2015, a record number of migrant arrivals, composed of a great majority of asylum seekers, has taken the lid off the inefficiency of the Common European Asylum System, particularly the Dublin System that puts disproportionate responsibility on the shoulder of the Member State where most migrants enter the EU. Italy and Greece as the main entry points into the EU, due to their geographical positions at the EU external borders and proximity to the main countries of origin and transit, have faced with the growing migratory pressure and organized their own relief by the purposeful non-compliance with the Dublin System. The non-compliance of Italy and Greece has stimulated the secondary movement of migrants within the EU and led to the reintroductions of internal border controls within the Schengen Area.

The EU has faced with humanitarian and political crisis at its external borders and within the Schengen Area. It is a crisis of the EU asylum system based on a security-based approach to migration management over refugee and human rights



responsibilities. Considering that the CEAS relies on deterrence, coercive placement, control of movement, externalization in order to prevent migrant arrivals, keep the number of migrants low, migration control, and facilitate their return and readmission. Moreover, it fails to ensure a fair/proportionate sharing of responsibility and solidarity among the Member States.

Under the circumstances, while the EU's response was expected to prioritize refugee and human rights responsibilities, and a system of allocation considering the interest and preferences of asylum seekers and a fair sharing of responsibility among the Member States, the European Agenda on Migration composed of internal and external policy measures was presented by the EU. In this thesis, we examined the concept of the hotspot approach, the objectives of the hotspot approach and related policy measures. In the light of these, we analyzed the implementation of the hotspot approach in Italy to find out whether the hotspot approach is able to address the crisis of the EU asylum system.

The hotspot approach was presented as the operational assistance of the EU Agencies, namely Frontex, EASO, Europol in order to help Member States under disproportionate migratory pressure. Therefore, the explicit objective of the hotspot approach seems to share unfair and disproportionate responsibility on Member States where most migrants arrive and to act with solidarity with them in order to relieve the pressure on them. In case that it works, it is also expected to address humanitarian and protection challenges in these countries. The main disembarkation areas in Italy and Greece where most migrants enter the EU were identified as the hotspot areas.

Beyond the discourse of “help”, “comprehensive and targeted support”, “operational assistance” to “Member States under disproportionate pressure”, considering the abovementioned content of the operational assistance, and the given location of hotspots, another objective of the hotspot approach seems to preclude the purposeful non-compliance of Italy and Greece with the Dublin System.

Since the beginning of the implementation of the hotspot approach, the EU has put pressure on Italy to reach 100% fingerprinting rate and even urged Italy to use force and prolonged detention against migrants who resist to be fingerprinted. Italy has adopted more coercive measures towards migrants. Even though there was no legal basis for the use of force and detention longer than 48 hours to obtain fingerprinting, they have become the standard practices to obtain the fingerprint of uncooperative migrants in the hotspots. In the short term, the fingerprinting rate has almost reached 100% in the operational hotspot areas but the unlawful practices of the Italian authorities to obtain fingerprinting have resulted in serious human rights violations; several excessive uses of force, prolonged arbitrary detention, ill-treatment, and torture cases were reported.

The compliance with the obligation of fingerprinting under the EURODAC Regulation has re-established the Dublin System in a more coercive way. Italy as the Member State of first entry has started fingerprinting incoming migrants and processed their asylum claims. The asylum seekers previously avoided to be fingerprinted in Italy and moved to their preferred destinations where they applied for asylum, but the implementation of forced fingerprinting has made impossible them to avoid to be fingerprinted in Italy and to apply for asylum in another Member States. Even if they achieve to reach their preferred destinations, they are not able to seek asylum there because they are already fingerprinted and moreover they face the possibility being returned to Italy. Therefore, the EU has ensured to control the cross-border movement of migrants within the EU while pushed Italy to shoulder its responsibilities under the Dublin System. The number of secondary movement has decreased while the number of migrants who seek asylum in Italy has increased compared to the previous years.

The relocation scheme presented as a parallel measure envisages to relocate a certain number of asylum seekers from Italy and Greece to another Member States with the aim of relieving migratory pressure on these countries. However, it has not been implemented successfully for the first year of the implementation of the hotspot approach. The nationality based selection criteria of the scheme stipulating

the 75% and more EU-wide recognition rate has not matched the nationalities of most migrants arriving in Italy.

Consequently, both the hotspot approach and the relocation scheme have not achieved to relieve the disproportionate migratory pressure on Italy and Greece, instead they have consolidated challenges through re-establishing the Dublin System based on coercion and an unfair/non-proportional sharing of responsibility. The asylum procedure and inadequate reception conditions of Italy and Greece have already raised concerns about human right conditions prior to the hotspot approach. The increased number of fingerprinting due to the coercive measures and a low number of relocation have led to an increase in the number of asylum applications and heavier pressure on their asylum and reception system.

Italy and Greece have already been under criticism due to the lack of adequate reception conditions and capacities prior to the implementation of the hotspot approach. However, the hotspot approach does not envisage to provide reception facilities but builds on existing national reception facilities. The responsibility to provide adequate reception conditions and capacities is completely left to the host state. In Italy, the pre-existing first aid and reception centres were transformed into hotspots at the first stage. In the case of Lampedusa, we see that the pre-existing first aid and reception centre was transformed into a hotspot, without any measure being adopted by Italy. The living standards in the hotspot centers have not met the need for safety, health and hygiene. The accommodation capacity has not been in proportion to the number of migrants. The increased number of registration and a low number of relocated asylum seekers have pushed the limits of the Italian reception capacity and deteriorated reception conditions for migrants. However, the hotspots are envisaged for a short term accommodation, they have been used for prolonged accommodation when there is no place in regional hubs or in permanent repatriation centers due to lack of capacity and overcrowdedness. The unaccompanied minors are the most affected ones by the inadequacy of the reception system in Italy. They have been obliged to stay longer in the hotspots due to the lack of specialized reception centers of unaccompanied minors.

In the absence of a legislative framework dedicated to the implementation of the hotspot approach, the duration and type of migrants' stay in the hotspots are not clear. The reception and detention are arbitrarily blurred in the hotspots. The Italian Roadmap defines the hotspots as closed centers for identification and screening activities, therefore migrants are deprived of their freedom of movement during their stay in the hotspots, as standard practice, without the Judiciary order and in case of refusal to be fingerprinted for far more longer than 48 hours.

Considering the role of channeling migrants into an asylum, relocation or return procedure, the hotspots were designed to function as a filtering mechanism located at the EU external borders where most migrants enter the EU. Therefore, the other objective of the hotspot approach is to identify those not in need of protection at the earliest possible opportunity to limit the number of persons entering the asylum procedure and to facilitate their returns.

In parallel, the Italian authorities who could not continue their previous purposeful non-compliance with the Dublin System due to the involvement of the EU Agencies in the hotspots procedure and the EU pressure on the 100% fingerprinting rate, resorted to limit the number of people accessing to the asylum procedure with the aim of relieving pressure on the national protection system. The oversimplified and accelerated pre-identification procedure in the hotspots has been used as a filtering mechanism to minimise the number of migrants accessing to the asylum procedure by the way of illegalizing most of migrants and issuing expulsion orders.

The pre-identification procedure comes immediately after the disembarkation. Following their dangerous and long journey to Europe, the newly arrived migrants have gone through the pre-identification interview under the shock of their journey, without adequate psychological support. The accelerated procedures do not leave sufficient time for the identification of vulnerabilities and special needs.

The information activities are carried out by the international organizations having special agreements with the Ministry of the Interior in the Italian hotspots. However, the number of personnel dedicated to providing information remains

limited, in particular, the number of the cultural mediators/interpreters and the variety of languages they speak. The information could be provided by three or four operators to two hundred people all together in a few minutes. Many migrants have remained unaware of the procedure to be followed, their own legal status and their rights and duties during their stay in Italy, even if the information was provided. Moreover, there is no specific time and place envisaged for the provision of information in the hotspots. The information activities could only take place in the port during the disembarkation, in the bus during the transfer to a hotspot area, or in the queue for receiving basic assistance or to be screened on their entry into the hotspot. The migrants have gone through the pre-identification interview without receiving accurate information on the procedure to be followed, the possibility to seek asylum and the possible consequences of their declarations.

According to Italian law, the police is competent to receive asylum applications while the territorial commissions are authorized to evaluate these applications and to recognize applicants' status. Accordingly, the police had conducted brief interviews to get personal information such as name, nationality, and age, received asylum applications and photographed each migrant prior to the hotspot approach. However, since the implementation of the hotspot approach, the police has started evaluating the application and determining the applicant's status without any change in the existing law.

The migrants have gone through the screening interview with a police officer and a cultural mediator tasked by the Ministry of Interior and two Frontex officers tasked by the EU. There is no representative of international organizations or non-governmental organization accompanying migrants against any arbitrary treatment in the interview. The information provided by migrants in the pre-identification interview has been recorded in the information form called 'foglio notizie' by the police officers. However, the 'foglio notizie' has no legal value, it is used for legal status determination to ensure the fast-track screening and filtering of all migrants disembarked. The 'foglio notizie' includes a multiple-choice question that asks the reason for coming to Italy, according to the answers given by migrants or marked

by the interviewers, migrants are arbitrarily categorized as asylum seekers those in need of protection, candidates for relocation, and irregular/economic migrants those not in need of protection.

The Italian authorities benefit from the distinction between asylum seekers and economic migrants with an interpretation ignoring the coexistence of several factors pushing a person to leave his/her country in legal status determination. If migrants give the answer 'to work' or 'to escape from poverty' or the interviewer police marks these answers on the 'foglio notizie', migrants are categorized as irregular/economic migrants who are not in need of protection. Those migrants categorized as irregular/economic migrant are excluded from the asylum procedures and issued expulsion orders at the earliest possible opportunity. Therefore, this categorization is used as a tool to restrict access to the asylum procedure.

Moreover, the Italian authorities take the nationality of migrants into consideration to determine their legal status. The nationalities with the 75% and more EU-wide recognition rate who are eligible to benefit from the Relocation Scheme have been presumed as potential refugees and prioritized in the hotspot procedures while other migrants have been presumed as irregular/economic migrants and excluded from the asylum procedure. The nationals from countries that have readmission agreement or bilateral cooperation agreement have been processed quickly and issued expulsion orders with forcible repatriation and expelled within the shortest time. Such implementations should be read in the context of the EU external policies on migration that have pushed the Member States to work in partnership with countries of origin and transit, particularly on the return and readmission of irregular migrants. Similarly, migrants coming from certain African countries considered safe have been categorized as economic migrants, excluded from the asylum procedure and issued expulsion orders that ask them to leave Italy within seven days. Almost none of those migrants actually leaves the EU, they stay in Italy or move their destination countries irregularly. Even if they reach their destination countries, they cannot apply for asylum because they were already fingerprinted in

Italy. They are illegalized and left without any form of assistance and access to rights and services. Only a few of those people have a chance to find a lawyer or NGO to appeal these unlawful expulsion orders and apply for asylum.

The nationality based determinations and collective issuance of expulsion orders without any individual assessment have been violated the principles of non-refoulement and non-discrimination, and the prohibition of collective expulsion. However, such implementations have started prior to the hotspots approach, they are consolidated with the oversimplified and accelerated pre-identification procedure in the hotspots. The implementation of the hotspot approach has arbitrarily prevented most migrants to access to the asylum procedure and created thousands of illegalized migrants within the EU.

If we get back to the question of whether the hotspot approach is able to address the crisis of the asylum policies of the EU, the case of Italy clearly shows that the hotspot approach is not able to address the crisis moreover consolidates challenges both for the host states and migrants. The hotspot approach relies on the same security-based approach to migration management and an unfair/disproportionate sharing of responsibility that created the crisis, rather than prioritizing refugee and human rights responsibilities, and a fair/proportionate sharing of responsibility. The rationale and design of the hotspot approach prioritize to re-establish the existing asylum system in order to secure the Schengen area rather than being solution-oriented.

However, the discourse of “help”, “comprehensive and targeted support”, “operational assistance” to “Member States under disproportionate pressure” has been highlighted, the hotspot approach has not served to share unfair and disproportionate responsibility on the Host Member States and to act with solidarity in order to relieve the pressure on them. The case of Italy clearly shows that the objectives of precluding the purposeful non-compliance with the Dublin System, limiting the number of persons entering the asylum procedure and facilitating returns came into prominence during the implementation.

Rather than abolishing the policies led to the crisis, the hotspot approach has made certain of the implementation of them through re-establishing the Dublin System in a more coercive way. The adoption of coercive measures to obtain fingerprints has increased the number of people seeking asylum in the host Member States, led to an increase in the disproportionate migratory pressure. Considering that the hotspot approach does not envisage to provide reception facilities, its implementation has caused to deteriorate the reception conditions for migrants and push the limits of the Italian and Greece national reception capacities.

The hotspots have functioned as a filtering mechanism. The outcome has been migrants forcibly expelled to their countries of origin and transit without any opportunity given to seek asylum and thousands of illegalized migrants within the EU in the first year of its implementation in Italy. In the absence of a dedicated legal framework for the hotspot approach at the EU and national levels, the use of arbitrary and unlawful practices and the absence of adequate safeguards in practice have standardized. Therefore, the implementation of the hotspot approach has undermined the right to seek asylum and led to serious human rights violations.

In conclusion, we see that the hotspot approach as EU response to the crisis epitomizes that the EU persists in prioritizing the security-based approach to migration management and in maintaining the existing asylum system over refugee and human rights responsibilities, and the principles of solidarity and a fair sharing of responsibility. The failure of the hotspot approach clearly demonstrates the need for new asylum policies.



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**APPENDIX 1- The Sample of 'Foglio Notizie'**



*Questura di*  
*Ufficio Immigrazione*  
**-FOGLIO NOTIZIE**  
 صفحة التعريف الشخصية

Nr.	/P
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NUCLEO PARENTELA	

	Informazioni rese dall'interessato	seSSO
COGNOME - SURNAME - اللقب		
NOME - NAME - PRENOM - الإسم		
DATA DI NASCITA - DATE OF BIRTH - DATE DE NAISSANCE - تاريخ الميلاد		
CITTA' DI NASCITA - CITY OF BIRTH - VILLE DE NAISSANCE - مكان الولادة		
PATERNITA' - NAME OF FATHER - PRENOM DU PERE - الأبوة		
CITTA' DI RESIDENZA - PLACE OF RESIDENCE- VELLE DE RESIDENCE - مكان الإقامة		
NAZIONALITA - NATIONALITY-NATIONALITE'- الجنسية		
LOCALITÀ DI PARTENZA - LOCATION OF DEPARTURE -PLACE DE DEPARTURE - الموقع المغادرة		

VENUTO IN ITALIA PER:

- LAVORO - OCCUPATION - TRAVAIL - العمل
- RAGGIUNGERE I FAMILIARI - TO JOIN RELATIVES - SE REUNIR AUX FAMILIERS - التجمع العائلي
- FUGGIRE DALLA POVERTA' - ESCAPING FROM POVERTY- FUIR LA PAUVRETE'- الهروب الفقير
- ASILO - ASYLUM - ASILE - اللجوء
- ALTRI MOTIVI - أسباب أخرى

Firma del mediatore linguistico      Firma dell'operatore      Firma dello straniero  
 .....      .....      .....

A seguito di verifica da parte del mediatore linguistico è stata rilevata la seguente nazionalità di appartenenza

	Firma del mediatore linguistico
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Source: (ARCI, 2016)