

Europe's Migration Predicament: The European Union's Refugees' Relocation Scheme versus the Defiant Central Eastern European *Visegrád Group*

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On June 13, 2017, the European Commission — a supranational governing body of the European Union (EU) — initiated legal action against three of its Central Eastern European members which belong to the so-called Visegrád 4 group (V4). The V4 is a loose association of four Central and Eastern European (CEE) member states of the EU: Poland, Hungary, the Czech Republic and Slovakia, all of which joined the EU in 2004. While the group was established in 1991, it was only in the aftermath of the 2015 EU refugee and migration crisis that the V4 formed a more visible interest group within the 28-member states' EU aiming mainly at the thwarting of the EU's refugee relocation scheme. The EU frequently undertakes legal action against its own member states in specific policy fields, as the member states often drag their feet on the implementation of the EU law in different areas. The current procedure against Poland, Hungary and the Czech Republic has been initiated because the V4 (minus Slovakia) have refused to

take their share of asylum seekers from non-EU countries who entered the EU in Greece and Italy. Both coastal countries of the EU have experienced the largest burden of the mixed refugee- migrant influx where a large majority (in Italy 96 percent) enters the EU in irregular way and many of them as economic migrants. In order to deal with the mass migration, the EU decided to relocate 120,000 asylum-seekers from Greece and Italy to other EU countries in September 2015, a decision vigorously contested by the V4. Most of asylum-seekers tend to cross the Mediterranean on smuggler boats and private NGO rescue ships from Libya to Italy. While the NGOs actions follow from humanitarian arguments, most of them refuse any democratic control by the EU nations affected insisting on their "independence" and de facto acting against the will of large parts of the EU populations. This creates a conundrum in which both the EU and the individual EU Member States find themselves generating tensions between

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the humanitarian prescriptions and the wish of the EU populations to control the EU borders and to have a democratic influence on the sociopolitical reality on the ground including the migration issue.

1. The European Union and its irregular mass-immigration crisis

The EU procedure against the V4 represents, after the Brexit referendum the next complex issue manifesting deep disagreements within the EU, with potential consequences for the bloc's coherence. Some V4 politicians and parts of the CEE populations view the EU's migrants' relocation agreement as a forced transformation of CEE societies towards multi-religious societies (fearing that it might increase the chances of Islamist terrorism), favoring even an exit of their countries from the EU if the agreement is imposed by the European Commission. Other segments of the V4 populations instead want the V4 governments to agree at least partially since they see the EU membership as more vital for their country, both economically and politically, than any long-term cultural shift possibly connected with the acceptance of mass migration of non-indigenous cultures and religions. While the issue is splitting the already highly polarized CEE societies even further, it is also generating strong anti-EU sentiment in the field of migration, while the European Commission in turn perceives the V4 nations as still not fully at the EU-level regarding their democratic cultures. The case suggests: If the issue of irregular mass migration to Europe due to "Europe's broken borders" is not solved, the EU's falling apart might no longer be just a pessimist projection. The migration and refugee

question thus has become a defining issue for Europe's future.

In order to understand the specific sensitivity of the issue and its weight for the further development of Europe, it is necessary to explain the basics of the current political constellation.

The V4 has a low degree of institutionalization and has been of marginal political relevance for the European Union for years. However, it recently became more visible first in the context of the EU's rule of law critique of Hungary and Poland,¹ and second in the course of the European migration crisis since 2015, as the V4 countries revolted against the EU refugee and migration policies time and time again. While the revolt might be partially due to the rising populism in the whole EU including CEE, there are political arguments used by the V4 that have been part of the political discourse on migration in the EU for years now. Against this backdrop, a five-fold argument of critics both in the V4 and in other major EU countries such as Italy and Great Britain has been formulated:

(1) the EU does not differentiate in its political practice sufficiently between economic migrants and legitimate refugees in its immigration policy, thus blurring the procedures proposed by the United Nations High Commissioner for Migration (UNHCR). This applies to some EU countries more than others, as the rates of asylum application acceptance differ largely between the member states (e.g. in Bulgaria 65 percent and in Estonia and Portugal 0 percent);²

(2) the European Union ignores the difference between multi-cultural and multi-religious societal

¹ Ireneusz P. Karolewski and Roland Benedikter (2016) Poland's conservative turn and the role of the European Union. *European Political Science*, 2016, 1-20, <https://doi.org/10.1057/s41304-016-0002-x>.

² http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

visions which in reality, as a variety of studies suggest such as, for example, the 2017 Chatham House Report on Islamic Immigration,³ may make a substantial difference in the long term concerning the stability of the European society and its internal conflicts. In this view, multi-religious countries such as the UK, France, Belgium and Germany are more often subject to religious terrorism than other countries;

(3) the European Union regulations provide also irregular immigrants immediately with the full social rights of a European citizen (until their status is clarified) with regard to access to welfare and to the full range of social services. This seems to be a conflictive issue for some EU citizens, as many countries of the bloc have been in deep recession, showed high unemployment and followed austerity policy imposed by the EU (e.g. Greece and Italy). The normative position of the EU on refugees and migrants shifted countries already in dire straits to the edge of their financial breakdown, as the funding of the refugee policy occurs largely from the national budgets. In particular, the Southern European countries found themselves squeezed between the austerity pressure by the EU and the migration pressure from outside;

(4) the European Union has difficulty with the application of the law as required by the bloc's own rule of law principles. For instance, the EU Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos has stated repeatedly since 2013 that in the EU international asylum laws are applied only "by half" by the current EU practice, since the large majority of rejected applicants, i.e.

those having no right to asylum, are not deported as requested by law, but simply left living in the EU without any concrete plan or vision except a rather diffuse call for "integration".⁴ Most European Union communications regarding the long-term perspective of mass-immigration start with "integration" instead of "migration policy", while "migration policy" would be the necessary first step. In the view of the V4 countries (represented by conservative governments), this is due to a leftist-liberal political correctness which has been dominating the EU for years and is preferring (widely indiscriminate) migration over the protection of the EU's outer borders and the application of the rule of law in the strict sense.

(5) As a consequence, the EU ignores the relevance of the differentiation of immigration according to the different historical contexts and needs of the European Union's member states, including particularly highly vulnerable minority protection areas such as the Autonomous Province of South Tyrol with its only 400,000 Austrian and Raeto-Roman native minorities within the Italian national state with its 60 million population. Italy and other EU nations have not been sufficiently recognizing the consequences of irregular mass immigration might have to such special areas with a very high vulnerability factor (VUCA factor). These areas have not by chance been hitherto protected, as in the case of South Tyrol by Italian constitutional law, to preserve their particular ethnic character. In this view, instead of providing these areas with special quota of refugees and migrants, the EU de facto forces them to behave like full nation-states and to accept numbers of migrants that might destabilize their peaceful,

³ Matthew Goodwin, Thomas Raines and David Cutts (2017) What Do Europeans Think About Muslim Immigration? *Chatham House Research Report*, February 7, 2017, <https://www.chathamhouse.org/expert/comment/what-do-europeans-think-about-muslim-immigration>.

⁴ Luis R. Miranda: European Commission calls for Expulsion of 1 million Immigrants. *The Real Agenda News*, March 2, 2017, <http://real-agenda.com/european-commission-expulsion-immigrants/>. Cf. Nikolaj Nielsen: EU wants rejected migrants, including minors, locked up. *EUobserver*, 02 March 2017, <https://euobserver.com/migration/137088> and Siobhan McFadyen: European migrant crisis escalates as Malta calls for ways to send back more arrivals. *Sunday Express*, January 27, 2017, <http://www.express.co.uk/news/world/759529/European-migrant-crisis-escalates-Malta-conference-deportation-camps>.

post-national ethnic coexistence concept.⁵ In the most burdened EU member nation, Italy, only a third to a half of all 300,000 illegally entering migrants arriving per year (not counting those who are unregistered, and those who arrive by legal ways) do submit an asylum request at all, since they know they have no right to stay according to the asylum laws, and of those submitting an asylum request 96% are rejected and only 4-5% are recognized as refugees, and thus as allowed to legally stay on Italian (EU) soil.⁶ All others seem to be economic migrants, rather than refugees – although the EU authorities over the past years have tended in practice to blur the lines between the concepts of “refugee” and “migrant”.

One essential point of critique in this context is that the EU was inclined to treat both categories from day one on equally like full EU citizens with regard to most social services and rights. According to critics, this does not only devalue the notion of European Union citizenship, since in contrast to countries such as Australia, Canada or Switzerland, services have not been substantially tied to a gradual system of access, based on adaptation, integration and merit. This also poses a challenge to the EU's own rule of law, since according to critics very few of the estimated more than 1 million, who do not formally have the right to stay in the EU, have ever been deported.⁷

Non-deportation has however become a core problem which undermines the credibility and, de facto, the legitimacy of the EU asylum laws. The failed fulfillment of the asylum laws and the replacement of

their regular imposition by a practice of “institutional tolerance” of rejected asylum seekers and irregular migrants has led to the application of EU asylum laws “by halve”, i.e. to the paradox that only the first part of the laws: the right to submit an asylum request is applied, but not the second: the deportation after rejection due to non-fulfillment of asylum status criteria. However, this type of “institutional tolerance”, absent in the migration law, neither at the EU nor at the national level, has been viewed by an increasing number of citizens (in particular in the most burdened EU states like Italy and Greece) as a core fallacy of the EU governance discrediting not only its practices of migration policy but also posing a challenge to the bloc's legitimacy and giving rise to the so-called Euroscepticism. In 2016 and 2017, European citizens saw the migration crisis as the biggest threat to the EU, even ahead of terrorism. While an average majority of EU citizens expected a common EU solution to the challenge (68%), the response depends strongly on the position of the citizens within the society and varies across the member states. For instance, 92% of the French ‘upper class’ supported a ‘European response’, while only 35% of the working class were in favor of it.⁸ Even before the outbreak of the migration crisis, in Germany only 29% had a positive opinion of immigration from non-EU countries in 2015, while a relative majority (45%) supported a political response on both the EU and the national level. In 2015, Germans were more critical to the non-EU migration than the average EU opinion (57%) but in some other EU countries the opposition to immigration from outside of the EU was even higher:

⁵ Cf. Thomas Benedikter: Immigration in South Tyrol and its impact on the protection of the autochthonous national minorities. *Szekler National Council*, September 29, 2005, http://sznt.sic.hu/en/index.php?option=com_content&view=article&id=191:immigration-in-south-tyrol-and-its-impact-on-the-protection-of-the-autochthonous-national-minorities&catid=18:cikkek-tanulmanyok&Itemid=24.

⁶ Paolo Lami: Immigrazione, ecco la verità: 40,000 richieste d'asilo, solo il 4% sono rifugiati. In: *Il Secolo d'Italia*, 8 giugno 2016, <http://www.secoloditalia.it/2016/06/immigrazione-verita-40mila-richieste-dasilo-4-rifugiati/>.

⁷ Gianni Rosini: "Oltre un milione di migranti da rimpatriare in tutta Europa". Il piano della Commissione UE. In: *Il Fatto Quotidiano*, 2 marzo 2017, <https://www.ilfattoquotidiano.it/2017/03/02/oltre-un-milione-di-migranti-da-rimpatriare-in-tutta-europa-il-piano-della-commissione-ue/3427594/>.

⁸ <https://www.euractiv.com/section/all/news/la-crise-migratoire-preoccupation-numero-1-des-francais/>

Italy (75%), Latvia (79%) and Slovakia (74%).⁹

2. The V4 Group and the contested European Union relocation scheme

Against the backdrop of this complex, difficult and contested debate, the European Commission's legal action has been, in the first instance, directed against three of the four nations, i.e. Poland, Hungary and the Czech Republic for refusing to take their share of refugees based on the controversial European Union relocation scheme. Nevertheless, the fourth V4 nation Slovakia has also been one of the most fervent critics of the relocation scheme.

If the three Visegrád countries do not change their opposition, EU sanctions could follow – which could in turn deepen the ongoing crisis of the European Union, given the controversial nature of the issue across the EU member states and within the EU societies. At the same time, the legal action reflects the current high degree of frustration in the EU central institutions over the slow and insufficient response of the bulk of the EU member states to the EU migration agreements. It also manifests the general policy implementation deficiencies of the EU as a bloc.¹⁰

In addition, the V4 countries criticize the quasi-repressive character of the EU's compulsory relocation scheme of September 2015. On 22 September 2015, the EU interior ministers decided to introduce compulsory quota to resettle 120,000 migrants from Greece and Italy, the main coastal EU countries, subject to the biggest refugee pressure

throughout 2015 and 2016. The decision was taken by majority vote, with the Czech Republic, Hungary, Romania and Slovakia voting against and Finland abstaining. The majority vote was controversial, since the EU uses majority voting rarely regarding controversial and conflictive issues, even though it is formally allowed.

Poland initially accepted the EU resettlement decision provoking criticism from other V4 countries for undermining their unity. Earlier in September 2015, leaders of the V4 had declared in Prague that they would not agree to any compulsory long-term quota on redistribution of immigrants following the statement of the German Foreign Minister Frank-Walter Steinmeier “if there is no other way, then we should seriously consider to use the instrument of qualified majority”.¹¹

Since then, the relocation plan has remained controversial, as almost all of the EU countries failed to fulfill the agreed targets—with only Malta accepting its entire share. The scheme is based on the continuous pledging of a certain number of refugees and their resettlement by every participating country, without Denmark, Ireland and the UK that have so-called opt-outs from the EU's migration policy, negotiated with the EU Treaty.

The examples of failed policy implementation abound. As of July 2017, Austria had not accepted any refugees in the framework of the plan but had pledged to accept 50 refugees from Italy in the future, and Slovakia had accepted 16 refugees from Greece. Both are migrant-skeptical countries and

⁹ <https://www.euractiv.com/section/justice-home-affairs/news/poll-majority-of-germans-reject-immigration-from-outside-the-eu/>

¹⁰ Massimo Bordignon and Simone Moriconi (2017) The case for a common European refugee policy. *Bruegel Policy Contribution*, Issue No. 8/2017, <http://bruegel.org/wp-content/uploads/2017/03/PC-08-2017.pdf>.

¹¹ The Telegraph: Eastern European countries may be forced accept quotas for migrants. Germany's foreign minister says it may consider use of a “qualified majority” to force Eastern European countries to accept quotas for migrants, 18 September 2015, <http://www.telegraph.co.uk/news/worldnews/europe/germany/11873936/Eastern-European-countries-may-be-forced-accept-quotas-for-migrants.html>.

did so clearly to avoid the infringement procedure, while the EU has been consistently criticizing Vienna and Bratislava for their rather modest engagement. While in 2017 Austria is ranked among the OECD's globally most burdened nations in terms of migration and refugee influx and thus refuses to take accept more commitment, Slovakia considers itself a country too small and historically inapt to become a "multicultural society", as its government declared on many occasions. Hungary has never made a pledge, while Poland made one pledge in December 2015, but changed its position as a result of terrorist attacks in Paris, Brussels and Berlin (and a change of government to a more conservative one in October 2015). By summer 2017, the Czech Republic has accepted 12 refugees from Greece but had made no new pledges since May 2016. Until now, Hungary and Poland remained the only countries that have not accepted any refugees within the relocation scheme with other countries having accepted only a symbolic number of refugees and migrants.

3. The European Union's infringement procedure against the V4 Group and the resulting predicament between Western and Eastern EU member states

This is not the first time the European Commission reverted to the instrument of the law infringement procedure in the field of migration policy. For instance, in 2008, the EU initiated a similar procedure against Greece. Athens was criticized for the lack of sufficient legal guarantees regarding the examination

of asylum applications, which became a problem in particular after the transfer of asylum seekers from another member state to Greece under the Dublin regulation. The Dublin regulation stipulates that in principle asylum-seekers will be returned to the EU country in which they entered the EU territory for the processing their asylum application. Also, there was a similar procedure against Germany in 2012, as Berlin was dragging its feet with the implementation of the so-called "Blue-Card" directive, regulating legal third country migration into the EU. Both procedures were successful, as Athens and Berlin adopted the necessary legal adjustments and never questioned the legality of the procedure.

In contrast, the current infringement procedure is quite different, as it is of highly politicized nature. The defiant countries stress the oppressive nature of the relocation scheme and oppose the "EU dictating" and interfering with the realm of national sovereignty on the one hand. On the other hand, the procedure reflects the annoyance of Brussels over the slow response to the relocation scheme, not just in the Central Eastern European (CEE) area but in all EU countries. While the initial aim of 120,000 refugees to be relocated was not very ambitious, only around 33,000 asylum seekers have been moved by January 2018.¹² Positions on the measure also differ among Western EU member states. While in 2017 Austria has relocated no refugees at all, France had still to take in 15,015 refugees (out of the agreed 19,714), Germany 18,548 (out of the agreed 27,536), Sweden 1,091 (out of the agreed 3,766) and the Netherlands 3,431 (out of the agreed 5,947).¹³ As of 25 January, Austria relocated only 29 refugees from Italy (and

¹²https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171207_resettlement_and_legal_migration_en.pdf

¹³European Council (2017) Member State's Support to Emergency Relocation Mechanism (as of 19 October 2017): Scheme, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf

none from Greece), Czech Republic accepted only 12 from Greece (and none from Italy), while Slovakia relocated only 16 refugees from Greece (and none from Italy). Hungary and Poland continue to reject refugees from the relocation scheme altogether.¹⁴

One of the reasons for the rather lackluster response in all the EU (with the exception of Sweden) has been attributed mainly to the presidential elections in Austria in October/December 2016 and its general elections of November 2017, the elections in the Netherlands in April 2017, in France in April/May 2017 and in Germany in October 2017, with the migration-critical parties in all these countries threatening to take over central political institutions such as the presidency (in Austria and France) or challenge the established parties (such as in the Netherlands and in Germany). In the federal elections in Germany, the rightist populist party AfD received 12.6 per cent in September 2017, while in October 2017 in Austria the rightist-conservative FPÖ gained 26%, as both parties campaigned mainly with anti-immigration policies. Still, both anti-migration parties were in full compliance with the rules of democracy as stipulated by national and European laws, and both were not under observation neither by the EU nor by national democracy protection authorities, winning democratic elections at the ballot box. The popularity of both parties has been largely attributed to the EU's mishandling of the refugee crisis.

Against this backdrop, the EU seemed to be well aware of the highly politicized nature of the relocation scheme and how Eurosceptical parties may capitalize on it in order to shift political balances to the center and the center-right, i.e. towards more nationalist and partly

Eurosceptical positions in most EU member nations. Nevertheless, the EU decided to make an example of Poland, Hungary and the Czech Republic which object the scheme completely, in order to “motivate” other countries to take the plan more seriously. Not taking any steps would be acknowledging a serious political failure of the bloc. The EU has already had a problem of credibility among its member states, as it cannot effectively move against Hungary and Poland concerning the rule of law violation in both countries, as for this the bloc would need an agreement of all member states (minus the countries in question) to impose concrete sanctions. Such an agreement is however highly improbable.¹⁵

Despite the infringement procedure, the CEE governments remain critical of the relocation scheme, stressing that it was never working due to its ill-conceived nature, and – more important – that it constitutes a violation of basic EU law. There are *four* main arguments brought forward to sustain such position.

Firstly, according to Warsaw, Budapest and Prague, the scheme was politically “nonsensical” aggravating the refugee crisis, rather than solving it because the EU's relocation plan would actually represent a pull factor, encouraging more migrants to come to Europe, thus contributing to a probable collapse of the entire Schengen zone, i.e. the principle of border-free movement within the EU, since many countries would start to re-introduce border controls to prevent irregular mass-migration which continues to get 100,000s per year mainly to the shores of Italy across the Mediterranean. This argument highlights that the majority of the asylum-seekers from the MENA region

¹⁴https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf

¹⁵Robert Grzeszczak and Ireneusz Pawel Karolewski (2017) Mind the Gap! Schwierigkeiten der Rechtsstaatlichkeit in der EU. *Verfassungsblog*, 26. September 2017, <http://verfassungsblog.de/mind-the-gap-schwierigkeiten-der-rechtsstaatlichkeit-in-der-eu/>.

coming to Europe in 2015 and 2016 were actually economic migrants targeting the wealthy welfare states of the EU such as Germany and Sweden, rather than the poorer ones such as Poland and Hungary.¹⁶ This argument is also sustained by the fact that less than third of the 300,000-400,000 irregular migrants arriving in Italy per year submitted an asylum request at all since 2014. The migrants arrive with the help of the NGO ships, i.e. of private rescue organizations, controlled neither by the European member nations nor the EU and thus democratically deficient. These ships are able to professionally transfer around 1,000 irregular migrants per day across the Mediterranean, which according to the Italian authorities contributes to an illegal “transfer industry”, partly even cooperating with human traffickers. The entire ‘transfer industry’ makes business out of mass-migration to Europe worth around 35 billion US\$ annually according to the official estimates by the International Organization for Migration (IOM).¹⁷

Secondly, the three defiant countries point out that the EU decision of September 2015 to establish forced relocation to be imposed to its member states was illegal, as, among others, the Council applied a majority decision instead of unanimity and did not consult the European Parliament sufficiently. For years, the EU has applied a rule according to which with regard to highly controversial issues the member states would seek unanimity even though formally a

majority decision might be possible. If, however, a controversial majority decision is enforced on others, then according to the V4 states it would equal “a tyranny of majority”.¹⁸ This is a highly controversial issue pointing to broader discussion on whether the EU espouses a hegemonic structure of larger and more powerful states (e.g. France and Germany) at the expense of smaller and weaker member states.

Thirdly, Poland, Hungary and the Czech Republic argue that since the bulk of the refugees prefer the welfare state countries such as Germany, Italy and Sweden who give them immediate and unrestricted access to social benefits without any previous contributions, they would prefer to leave the poorer ones such as Poland, Hungary and Romania after the resettlement anyway, and these countries would need to stop them against their will and thus violate the Geneva Convention.¹⁹ In this view, the mass migration to the EU was propelled by Germany that in 2015 broke the EU borders by allowing the migrants to file asylum applications in Germany, thus questioning the external EU borders.

Fourthly, according to the V4 there might be an increased threat of terrorism and organized crime as a result of the relocation scheme, as, for instance, IS terrorists are known to infiltrate the migration routes particularly from Libya, Tunisia and Egypt across the Mediterranean to Italy and recruit young male

¹⁶Radio Poland (2017) EU ‘made wrong decision’ in refugee policy: Polish FM. The European Union “made the wrong decision” in 2015 when it qualified thousands of immigrants as “refugees”, Polish Foreign Minister Witold Waszczykowski has said, 14.06.2017, <http://www.thenews.pl/1/10/Artykul/311735,EU-%E2%80%98made-wrong-decision%E2%80%99-in-refugee-policy-Polish-FM>.

¹⁷Axel Bugge: People smugglers make \$35 billion a year on migrant crisis – International Organization for Migration (IOM) Head. *Reuters*, May 31, 2017, <https://uk.reuters.com/article/uk-portugal-migration/people-smugglers-make-35-billion-a-year-on-migrant-crisis-iom-head-idUKKBN18R26J>. In the eyes of critics, the name of the organization itself may be problematic, since it suggests that the IOM is an organization “for” migration, i.e. in favor of, instead of “concerned with”. Some see the “for” mirrored in the programs and activities of the IOM and thus criticize a lack of neutrality and objectivity.

¹⁸The Blaze (2017) The EU threatens Poland for not accepting Muslim refugees — here’s how they responded, June 19, 2017, <http://www.theblaze.com/news/2017/06/19/the-eu-threatens-poland-for-not-accepting-muslim-refugees-heres-how-they-responded/>.

¹⁹The Telegraph (2017) EU migration showdown: Divide deepens after Brussels launches legal action against Hungary, Poland and Czech Republic, June 13, 2017, <http://www.telegraph.co.uk/news/2017/06/13/eu-migration-showdown-divide-deepens-brussels-launches-legal/>.

refugees, many of whom come to Europe without any parental company.²⁰ As the Italian authorities analyzed in July 2017, there were connections between terrorist organizations in Northern Africa and the Mafia criminal organization in Sicily and the Italian South who founded appropriate NGO's to host the migrants in its own structures paid for by the state, i.e. making a business out of the Italian law that guarantees every migrant 35 Euro per day, i.e. 1,000 Euro per month which is more than many Southern Italian pensioners obtain after 40 years of work. According to the International Organization for Migration, irregular mass migration has become the third most profitable, but much less dangerous business for the Italian Mafia after the smuggling of drugs and weapons.²¹ Italian conservative commentators have long speculated that while most bigger other EU nations were hit and although Italy accepts the largest numbers of migrants by keeping its sea borders open and as the only country which offers its ports to the NGO ships carrying mass migrant waves, there have been no terror attacks in Italy exactly because due to this policy Italy serves as an easy entry and exit area from and into the EU for fundamentalists not interested in putting the status quo at risk by attacking the Italian peninsula. That is why the European Union relocation plan, according to Warsaw, Budapest and Prague, is dangerous and could endanger not only Europe as a whole, but also the national security of their member states in particular.

4. The future of the European Union's migration predicament: Calling for solidarity instead of security?

The EU's criticism of the V4 defiance focuses mainly on lacking solidarity of these countries. Moreover, Hungary's government has been criticized by the EU for the domestic politicization of the migration crisis. While Hungary was the only V4 country on the migrant's route and subject to the highest number of asylum applications in 2015 in the entire EU,²² it has been argued that government under Viktor Orbán intentionally stirred up anti-migration xenophobia in order to boost its ailing popularity at home. The alleged goal was "to cement its own power through artificially sustaining an air of anxiety".²³ In particular, the October 2016 referendum in Hungary on the EU relocation scheme was interpreted as an instrument of domestically exploiting the migration crisis.

Nevertheless, the Polish government has backed Budapest since October 2015. This is because the migration crisis has become a central issue also for the political discourse in Poland, even though Poland was not located on the Balkan migration route. Warsaw has become an adamant critic of the relocation scheme stressing its repressive nature and pointing out that migration policy is a prerogative of the member states, and that the redistribution mechanism is a way to attract more migrants. The Budapest-Warsaw axis raised suspicion that Warsaw

²⁰UAWIRE (2017) Warsaw: Poland cannot take any more refugees since it already accepted more than 1.4 million migrants from Ukraine, June 28, 2017, <http://uawire.org/news/poland-accepted-more-than-1-4-million-migrants-from-ukraine>.

²¹Quoted for example in: Tuesday Reitano: What Pricing Tells Us About the Nature of the Smuggling Business. We are trying to combat an industry that we refuse to properly analyze, says transnational crime expert Tuesday Reitano. She argues that more and better data could inform policies that actually reduce smugglers' profits. *News Deeply*, June 9, 2017, <https://www.newsdeeply.com/refugees/community/2017/06/09/what-pricing-tells-us-about-the-nature-of-the-smuggling-business>.

²²BBC (2016) Migrant crisis: Migration to Europe explained in seven charts, 4 March 2016, <http://www.bbc.com/news/world-europe-34131911>.

²³Aneta Zachová, Edit Zgut, Krzysztof Kokoszczyński and Zuzana Gabrizova (2017) Visegrád and migration: Few prospects for a change in position. *Euractiv*, 16 January 2017, <https://www.euractiv.com/section/global-europe/news/visegrad-and-migration-few-prospects-for-a-change-in-position/>.

and Budapest play a blame game against Brussels to mobilize their supporters at home and to support each other within the EU mainly in the context of the rule of law criticism against both right-wing governments by the EU institutions.

But there is also the Czech Republic, which has been beyond any democratic backsliding critique so far. Even though the Czech Republic seems to be the least critical of all V4 countries, migration has become a dominant topic in the Czech political discourse, with the parliamentary elections that took place in October 2017. The position of Prague focuses on the protection of the EU borders, rather than the relocation of migrants, as the country sent its police units to Greece. The Czech Ministry of Interior argued that the relocation of refugees should not be obligatory, but rather more support should be given for the European Asylum Agency and the European Border and Coastal Guard *Frontex*.²⁴ After the infringement procedure was initiated, Milan Chovanec, the Czech interior minister, accused the EU of “putting its head in the sand”, as the bloc would believe that any refugees and migrants forced upon his country would stay rather in the designated countries than move to the more prosperous countries in the West of the EU such as in particular the three largest Eurozone nations Germany, France and Italy.²⁵

The V4 countries are not just critical of the relocation scheme domestically and at the EU level. Both Slovakia and Hungary (with later support of Poland) in turn sued the Council of the EU for law infringement due to the “illegal” nature of the

relocation scheme. That is why the EU was facing two lawsuits on the same issue in parallel for some time showing the high level of controversy surrounding the issue. During a hearing on 10 May 2017 at the Court of Justice of the European Union Hungary and Slovakia defended their refusal to accept refugees and migrants under the compulsory quota system against German and French arguments pertaining to European solidarity. The Polish envoy to the Court argued in addition that the accepting of the migrants poses a threat to national security.²⁶ The Hungarian lawsuit comprised a ten point-list of legal arguments highlighting that the decision to assign quotas was illegal under the EU law or violated formal EU procedures. One of the arguments criticizes that the EU's relocation scheme was defined under the concept of “provisional measures”, as the relocation should end on 17 September 2017. Still, the consequences of the measures are long-term ones, as the migrants and refugees are supposed to stay in the assigned countries for a longer period of time and de facto have to be “integrated” permanently since there is no working deportation mechanism in the EU to apply the law with those whose asylum request is refused. Thus, according to Poland and Hungary, the concept of “provisional measures” has been wrongly applied in this context.

Another point was a formal one, as the European Council failed to consult the European Parliament, after substantial changes were made to the text of the proposal. Also, Hungary criticized that the EU decision is contrary to the Geneva Convention, “since it deprives applicants of their right to remain

²⁴Ibid.

²⁵The Telegraph (2017) EU migration showdown: Divide deepens after Brussels launches legal action against Hungary, Poland and Czech Republic, loc cit.

²⁶Official Journal of the European Union (Eur-Lex) (2016) Hungary v Council of the European Union. Action brought on 3 December 2015, Case C-647/15, (2016/C 038/56) 01.02.2016, http://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2016.038.01.0043.01.ENG.

in the territory of the Member State in which they made their application”.²⁷ Moreover, Slovakia argued in a similar way stressing alleged numerous breaches of procedural requirements by the European Council as well as the violation of the principle of representative democracy, institutional balance and sound administration.²⁸

5. Outlook: Potential consequences of the controversies for the European Union

On July 26, 2017, a general advocate of the Court of Justice of the European Union issued a first formal opinion on the Slovak and Hungarian lawsuit. The opinion recommended that the European Court should dismiss the lawsuit initiated by Slovakia and Hungary against the mechanism of the mandatory relocation of asylum seekers and reject all the procedural and formal points brought up by Slovakia and Hungary.²⁹

This opinion signaled the direction, to which the EJC would lean, as it in fact did on September 6, 2017. The Court dismissed all lawsuits brought by Slovakia and Hungary and even argued that the “[relocation] mechanism actually contributes to enabling Greece and Italy to deal with the impact of the 2015 migration crisis and is proportionate”.³⁰

Even though this was bad news for the defiant countries, in particular since both governments of Slovakia and Hungary said clearly that they would accept the ruling, it does not mean automatically they will be willing would to accept the migrant and refugee quota assigned to them, as the issue has become highly politicized in the domestic politics and would go against the anti-migrant sentiments in the respective societies. More probable is a symbolic acceptance of a very low number of refugees to avoid financial punishment, as Slovakia and Austria did.

Still, the issue is bound to remain conflict-ridden with potentially risky consequences for the EU as a whole. First of all, the question is in how far the infringement procedure will be effective against the V4 countries and how the final European Court decision on the Slovak and Hungarian lawsuit will affect it in the long run. As the Court of Justice of the European Union decided in favor of the EU decision on relocation and against the Slovak and Hungarian governments, the key arguments of the V4 about the illegality of the resettlement decision and procedural violations are debunked. This will certainly increase pressure by the EU and make EU sanctions against the defiant V4 more likely.

On the other hand, there are voices stressing that any

²⁷Official Journal of the European Union (Eur-Lex) (2016) Hungary v Council of the European Union. Action brought on 3 December 2015, Case C-647/15, (2016/C 038/56) 01.02.2016, http://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2016.038.01.0043.01.ENG.

²⁸Official Journal of the European Union (Eur-Lex) (2016) Slovak Republic v Council of the European Union. Action brought on 2 December 2015, Case C-643/15, (2016/C 038/55), 01.02.2016, http://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2016.038.01.0041.01.ENG.

²⁹Court of Justice of the European Union (CURIA) (2017) Advocate General Bot proposes that the Court should dismiss the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers. That mechanism is actually a proportionate means of enabling Greece and Italy to deal with the impact of the 2015 migration crisis. Advocate General’s Opinion in Cases C-643/15 and C-647/15, Court of Justice of the European Union Press Release No 88/17, Luxembourg, 26 July 2017, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-07/cp170088en.pdf>.

³⁰Court of Justice of the European Union (CURIA) (2017) The Court the provisional mechanism for the mandatory relocation of asylum seekers. That mechanism actually contributes to enabling Greece and Italy to deal with the impact of the 2015 migration crisis and is proportionate. Judgment in Joined Cases C-643/15 and C-647/15, Court of Justice of the European Union Press Release No 91/17, Luxembourg, 6 September 2017, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-09/cp170091en.pdf>.

sanctions or penalties would backfire and cause more problems for the EU than offer solutions. For instance, an attempt by the EU to punish a member state in 2000 ended in chaos when diplomatic quasi-sanctions were enforced against Austria after the country's conservative party decided to form a coalition government with the right—conservative Freedom Party (FPÖ). However, the measures were quickly dropped after they encouraged anti-EU sentiment in Austria and other EU countries. The governments of the Central Eastern European countries and the populist politicians in the Czech Republic reject the European mass-immigration policy calling it “no refugee policy as the EU falsely brands it, but an immigration policy”,³¹ as former—and still influential—Czech Republic president Vaclav Klaus put it publicly asking to his country's exit from the EU over the migration dispute.³² They can rely on strong anti-immigration sentiments in their societies. This means that sanctions following the infringement procedure are likely to produce a further popular backlash against the EU in Central Eastern Europe. This becomes the more probable, the louder and the more often Brussels threatens to cut EU funds to the disobedient Eastern member states because of their anti-migration policies.

In 2018, the EU risks the next crisis over a blocked budget, should the bloc decide to punish the V4

financially. Some experts argue that the publics in Central Eastern Europe might classify any sanctions—or even a talk about sanctions—as an attack on their country's sovereignty³³ and as a proof of an alleged oppressive nature of the EU. This issue thus could add to the already present Euroscepticism in the Central Eastern member states. Consequently, even with the positive European Court decision, made in September 2017, the EU will still be between a rock and a hard place vis-à-vis the defiant V4 countries.

If there was any further need to prove both the emotional and the politicized dimension European voters ascribe to the issue of irregular mass immigration, the action of the Polish Catholic church on October 7, 2017 was a sign on the wall. October 7, 2017 was the Memorial Day of the victory of Christian armies over the Islamic armies of the Ottoman Empire in the sea battle of Lepanto in 1571. On that day 446 years later, the Polish Catholic Church organized collective prayers frequented by thousands of citizens on hundreds of specific spots all precisely located at the outer borders of Poland, thus “protecting” the borders of the nation through prayers in order to, as the official saying went, “to save Poland and Europe”.³⁴ Even though the organizers denied it, many observers read the action as an event dedicated to manifest against the forced “import” of migrants into the V4 countries by the EU, indirectly including

³¹Alimuddin Usmani: Interview with Václav Klaus: Quotas are not a protection against immigration, but their exact opposite. *Visegrad Post*, 13 April 2016, <https://visegradpost.com/en/2016/04/13/interview-with-vaclav-klaus-quotas-are-not-a-protection-against-immigration-but-their-exact-opposite/>; and Václav Klaus: Former Czech president Klaus: EU elites aim to destroy European society as we know it. *Valdai Discussion Club*, 23.01.2017, <http://valdaiclub.com/a/highlights/klaus-eu-elites-aim-to-destroy-europe/>. Cf. Michael Brendan Dougherty: Listen to Eastern Europe. EU bureaucrats should hear the message loud and clear: Muslim migration waves are a pressing problem, and the public is fed up. *National Review*, June 19, 2017, <http://www.nationalreview.com/article/448749/eu-sanctions-punishing-poland-eastern-europe-are-mistaken-muslim-migration-serious>.

³²Darren Hunt: ‘It's time for Czexit!’ Former Czech President blasts Eurocrats for ‘blackmailing’ country: The former Czech Republic President has blasted the European Union insisting it is time for the country to exit the bloc. *Express*, June 15, 2017, <http://www.express.co.uk/news/world/817481/Brexit-latest-Former-Czech-President-Eurocrats-Czexit-European-Union-EU-Poland-Hungary>.

³³The Telegraph (2017) EU migration showdown: Divide deepens after Brussels launches legal action against Hungary, Poland and Czech Republic, loc cit.

³⁴BBC World: Poland Catholics hold controversial prayer day on borders, 7 October 2017, <http://www.bbc.com/news/world-europe-41538260>.

protest against the formal action of the EU against the V4. The action manifested the symbolic and politicized dimension of the issue, also with regard to the legitimacy of the EU, and in particular of the European Commission.

Against this background, the European Commission will be well advised to critically take into account such popular mobilization and give particular attention to dialogue and consensus-finding on the topic, including the increasing contextual political value of symbolic politics, as well as of the politics of populism. The EU is still missing one of the decisive “classical” assets of cohesion and resilience, that is, civil religion, a symbolic kit that unifies polities at the emotional level.³⁵ Thus, the European Commission should recognize the importance of the particular emotional dimension involved with the issue, and to be considerate of the multi-level complexity of the migration topic when proceeding with the dialogue with the V4.

³⁵See Heinz Kleger and Alois Mueller (eds.) (2011) *Religion des Bürgers: Zivilreligion in Amerika und Europa*, Berlin: LIT Verlag, 2nd edition.

