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Democratic Efficacy and the Varieties of Populism in Europe

Working Paper

The Populist Challenge of Common EU Policies

The Case of (Im)migration

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Abstract

One of the major conflicts between populist and non-populist forces (movements, parties, governments) as well as the European Union (EU) institutions is manifested in the area of EU immigration policy. This working paper discusses how the influx of migrants (mostly from the Middle East and North Africa region) into the EU has been used as a policy conflict ground within the EU. In this context, the paper assesses the policy responses in the selected EU Member States and analyses the challenges in implementation of the common EU policies. The paper covers the period from 2015 to 2018 and includes the following countries: France, Germany, Greece, Hungary, Italy, Poland and Slovakia.

The paper concludes that the 2015 migration crisis and the response to it led to (or reinvigorated existing) the politicisation of the topic across the EU, forcing the parties from all sides of the political spectrum to take a position on it. Simultaneously, one may also observe a process of securitisation of migration in the political debate in all analysed countries. Irregular migration was construed as a security threat by many political parties and leaders, 'requiring emergency measures and justifying actions outside the normal bounds of political procedure'. While the securitisation strategy was most visible in the discourse of the right-wing populist parties, its elements were progressively taken by the mainstream parties, arguably in response to increased salience of the issue.

The paper also finds a correlation between the ideological profile of the parties and their approach to the migration crisis and the proposed EU response. All the parties located close to the right extreme tended to take a strong anti-immigration and anti-EU stance. All of them also ranked high in the populist index. On the other hand, the populist parties located on the left side or in the centre of the political spectrum took a moderate stance on this issue.

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1. Introduction

One of the major conflicts between populist and non-populist forces (movements, parties, governments) as well as the European Union (EU) institutions is manifested in the area of EU immigration policy. This working paper presents how the influx of migrants (mostly from the Middle East and North Africa (MENA) region) into the EU has been used as a policy conflict ground within the EU. In this context, this working paper assesses the policy responses in the selected EU Member States and analyses the challenges in implementation of the common EU policies. The paper covers the period from 2015 to 2018 and includes the following countries: France, Germany, Greece, Hungary, Italy, Poland and Slovakia.

The working paper is based on seven country reports and one brief on the EU, prepared as a part of the H2020 project DEMOS (Democratic Efficacy and the Varieties of Populism in Europe).[1]

The authors of these reports used a combination of different methods, ranging from content analysis to traditional legal approaches (i.e. dogmatic analysis). Their enquiries were based on the examination of political (party) programmes, press releases of the governments and EU institutions, statements of party/movement leaders, legal and quasi-legal documents, and national and EU case law. All the experts also extensively relied on secondary sources, such as official reports and academic analyses.

The working paper has been construed in the following way: Section 2 provides a brief background on the European migration crisis and the EU response to it. This part also highlights the most important elements of the EU legal framework applicable to migration. Section 3 summarises statistical data on the size and character of migration in the covered EU countries. Section 4 looks at how the problem of migration was framed in the political discourse of the parties, while Section 5 examines how the political postulates were translated into actions, including law. The last section (6) connects the previous discussion with the problem of populism.

For the purpose of this paper we understand populism as thin-centred ideology that considers society to be ultimately separated into two homogeneous and antagonistic camps, the 'pure people' versus the 'corrupt elite', and which argues that politics should be an expression of the general will of the people (Mudde, 2004:543). In measuring the populist orientation of the parties, we use the populism index provided as part of the Populism and Political Parties Expert Survey (POPPA). The dataset measures positions and attitudes of 250 parties on key attributes related to populism, political style, party ideology, and party organisation in 28 European countries. The expert survey was fielded between April 2018 and July 2018 to 294 country-experts. The populism index is based on the factor regression scores of the following items: Manichean (i.e. the extent to which a party sees politics as a struggle between good and evil, indivisible (i.e. the extent to which a party considers ordinary people to be indivisible), general will (i.e. the extent to which a party sees the ordinary people's interest to be singular), people centrism (i.e. the extent to which a party believes that sovereignty should lie exclusively with the ordinary people), and anti-elitism (Meijers and Zaslove, 2020).

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[1] Download the country reports at: https://file.tk.mta.hu/index.php/s/GoP2MDWF7BZz8bF

2. The EU legal framework and the migration crisis

The competences of the EU in the field of asylum and immigration for third country nationals date back to the 1992 Maastricht Treaty, when it was included in the third pillar concerning intergovernmental cooperation in justice and internal affairs. A significant change was introduced by the Treaty of Amsterdam (1997), which moved asylum and immigration policies to the first pillar of the EU and empowered the Council to regulate this field. On that basis the EU adopted a series of instruments that have gradually expanded the EU asylum *acquis* (Geddes & Scholten, 2016). An important part of these developments is the Common European Asylum System (CEAS) which was created between 1999 and 2005. Further reforms were introduced as a consequence of entry into force of the Lisbon Treaty in 2008. In particular, the Treaty on the Functioning of the European Union (TFEU) now outlines a common asylum, immigration and external border control policy, which are based on solidarity between Member States, and fairness to third country nationals. The current system is largely determined by Regulation 604/2013 (Dublin III Regulation) which identifies which Member State is responsible for the examination of an application for asylum, submitted by persons seeking international protection within the EU under the 1951 Geneva Refugee Convention and the EU Qualification Directive (2011/95/EU). Although the CEAS has brought an increased level of harmonisation in applied standards, there is no 'common' or unified European asylum system but rather 27 different asylum systems with common minimum denominators.

The 2015 European migration crisis can be traced back to a series of uprisings in the MENA region in 2011 (so-called 'Arab Spring'), with some of them eventually transforming into civil wars. This resulted in a gradual increase in the migratory flows to Europe, a process that culminated in 2015-16. Alone in 2015 (particularly during the 'long summer of migration', as labelled by Kasparek and Speer, 2015) there were 1.8 million irregular border crossings into the EU, an increase of 546% compared to 2014 (European Commission, 2020). Most migrants travelled either through Turkey to Greece or through Libya to Italy (Crawley et al., 2016). The crisis placed unprecedented pressure on the existing mechanisms (which was particularly visible in the frontline Member States, such as Greece and Italy) and exposed limits of the Dublin system. For example, in 2015 856,723 irregular arrivals entered through the Greek maritime border, while an additional 153,842 arrived in Italy. Among the measures adopted by the EU was Recommendation 2015/914 of 8 June 2015 that defined an EU-wide emergency resettlement scheme to offer 20,000 places for people in need of international protection on the basis of a distribution key and allocations for each Member State.

In the above context, the Council of the EU adopted two decisions (2015/1523 and 2015/1601), which provided for a temporary and exceptional relocation mechanism from Italy and Greece to other Member States of persons in clear need of international protection (temporally derogating from the rule set out in Art. 13 of Dublin III Regulation). The relocation was based on objective criteria (e.g. a country's population, gross domestic product and unemployment rate). The EU also proposed the creation of a permanent mandatory and automatically triggered relocation system to distribute those in clear need of international protection within the EU (COM/2015/0286 final).

The relocation system (both the temporary and permanent one) was strongly opposed by the Visegrad countries, but many other Members also failed to meet their quotas. This led the EU to relaunch the cooperation with third countries of origin and transit and to make further efforts to implement a policy of containment. In this regard, the agreement with Turkey was signed on 18 March 2016 with the aim to stop the flow of irregular migration via Turkey and replace it with legal channels of resettlement of refugees to the EU. In February 2017 Italy, acting independently, signed a Memorandum of Understanding with Libya that also concerned

cooperation in immigration issues. All these developments, together with a more restrictive approach taken by the EU and Member States as well as some stabilisation in at least some countries of origin, led to a significant decrease in the number of irregular migrants arriving in the EU from 2017 onwards.

3. The EU Member States and immigration

Unlike the Western European countries, all the CEE states have been historically countries of emigrants rather than immigrants. Their accession to the EU in 2004 initially strengthened this trend with many citizens leaving for Western Europe, but as the time passed a new tendency has emerged as some of them gradually have become an attractive destination for economic migrants, particularly drawing people from the former Soviet republics. For example, between 2014 and 2018 Poland has welcomed approximately 1-2 million Ukrainian citizens, while in 2015 one out of five first residence permits were issued in Poland (541,583; 20.8%). Nevertheless, the size of foreign-born population living in those countries has remained lower than in most of the 'old' EU states.

Table 12: Foreign-born population (as of on 1 January 2018)

Country	Size of foreign-born population	Percentage of population
France	8,156,208	13.06%
Germany	13,745,843	16.6%
Greece	1,277,861	11.91%
Hungary	536,128 (many of them being ethnic Hungarians)	5.48%
Italy	6,175,337	10.23%
Poland	695,850	1.83%
Slovakia	190,308	3.49%

Source: Eurostat (https://tinyurl.com/y34vhzpm)

The number of people seeking international protection (i.e. persons who apply for asylum, subsidiary protection or any other form of protection) also differed between the CEE and other EU Members covered by this paper. Except for Hungary, which witnessed a sharp increase in the applications in 2015, the numbers remained low and did not change significantly as compared to the previous years. The reason behind this divergence is the fact that all the analysed CEE countries have been transit rather than final destination states. Moreover, both Slovakia and Poland are not located on any major transit routes for irregular migrants.

Table 13: Asylum and first-time asylum applications (annual aggregated data)

Country	2015	2016	2017	2018
France	76,165	84,270	99,330	137,665
Germany	476,510	745,160	222,565	184,180
Greece	13,205	51,110	58,650	66,965

Hungary	177,135	29,430	3,390	670
Italy	83,540	122,960	128,850	59,950
Poland	12,190	12,305	5,045	4,110
Slovakia	330	145	160	175

Source: Eurostat (https://tinyurl.com/y6groeej)

Another element that differed among the analysed countries was the origin of the applicants. In the case of Poland, they mostly came from Russia (many of them from Chechnya), Ukraine and Tajikistan. For Hungary, Greece and Germany the most important countries of origin were Syria, Afghanistan, Pakistan and Iraq. Slovakia was somewhere in the middle between those two patterns. In the case of France these were Sudan, Afghanistan, and Syria, while for Italy the relevant countries included Nigeria, Pakistan and the Gambia.[2]

4. Immigration in the political discourse of the parties

The migration crisis as well as the response to it (i.e. the implementation of the EU-wide relocation system) became one of the leading political themes in all analysed countries in 2015–2016. This section looks at the positions taken by major domestic parties/movements on these two issues. For those countries that held elections during the covered period, the prominence of the topic of immigration and methods of dealing with it is also discussed. For each presented party we provide two indicators: (i) a party's overall ideology on a scale ranging from 0 (left) to 10 (right) and (ii) populism index (between 1 and 10). Both of them were taken from the POPPA dataset.

4.1. France

Since the late 1970s, the question of migration has been a controversial political issue and remains a key policy challenge nowadays (Wolff, 2017). The crisis of 2015 brought it again to the top of the French political agenda. A variety of different positions emerged. *Parti socialiste* (PS, 4.3/1.85), which was in power for most of the covered period (2012-17), took a moderate approach. On the one hand, it was for an active involvement of France in tackling the crisis and it supported the EU-wide relocation mechanism. On the other hand, its government was constrained by the growing popularity of *Front national* (FN, 8.4/9.0), led by Marine le Pen, and eventually decided to opt for limits in the number of migrants to be relocated to France.

Other parties, while taking different positions on migration, shared the critical view of the relocation mechanism. *Parti de gauche* (later transformed to *La France insoumise*: 1.5/8.44), headed by Mélenchon, argued that such a mechanism did not tackle the root causes of migration (Mélenchon, 2015). *Les Républicains* (LR, 7.5/4.43) indicated the limited capacity of France to integrate all migrants (Réaux, 2015). However, the most vocal opponent was FN. It rejected the relocation mechanism, seeing it as encroaching on national sovereignty. Instead, FN called for strengthening the national borders, systematic return of irregular immigrants to their home countries, the end of all social incentives for such immigration and drastically reduced legal

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[2] See the relevant country report prepared by AIDA (Asylum Information Database), available at https://www.asylumineurope.org (accessed 9 December 2020).

immigration (Bay, 2016). FN frequently connected immigration with terrorism and criminal activities.

Migration remained a central political topic in the 2017 presidential campaign. It dominated Le Pen's political message who proposed leaving the Schengen area, prohibiting naturalisation of illegal migrants, capping legal immigration and repealing the law of the soil (Le Pen, 2017). Fillon (LR), whose position was influenced by the stance taken by FN, also called for capping legal migration, restricting access to social assistance, reforming the Schengen system, and giving French nationality only to those who clearly assimilate (Fillon, 2017). Hamon, supported by PS and the Greens, took a more liberal stance, as he put the emphasis on integration incentives. However, he was also in favour of eliminating the Dublin system given its failure during the crisis (Wolff, 2017). Macron (*La République En Marche*, 6.11/3.51) supported Merkel's open-door policy and concentrated on integration, skilled migration, taking a fair share in welcoming refugees, and protecting European borders (En Marche, 2017).

4.2. Germany

In 2015, Chancellor Merkel decided to leave the German borders open to irregular migrants coming to Europe as a humanitarian necessity (the assumption was that most of them were either genuine refugees or could be classified for other type of international protection). Her move can also be seen as an emergency gesture reflecting the critical situation in the frontline and transit Members. This decision not only changed the ethnic, cultural and religious fabric of places and spaces of arrival to Germany, but also triggered an increasingly polemic discussion on security, identity and belonging within German society and had an impact on the results of the 2016 regional, and the 2017 federal, elections (Glorius, 2018). In particular, the surge in asylum applications in 2015–16 played a key role in spurring the success of the far-right *Alternative für Deutschland* (AfD, 8.94/9.43). It also created a fertile ground for the rise or revival of anti-Islam movements such as Pegida (*Patriotische Europäer gegen die Islamisierung des Abendlandes*), which called for the defence of the Judeo-Christian foundations of Western culture from islamisation (e.g. through the introduction of restrictive asylum policies) (Vorländer et al., 2016).

Eventually, all the parties represented in the Bundestag took a stance on migration, integration and asylum in their electoral programmes. The main issues around which the disagreement arose included: (i) family reunification for beneficiaries of international protection; (ii) limits on the number of immigrants/asylum seekers accepted per year; (iii) deportation of rejected applicants: (iv) character of the integration policy; and (v) age assessment of unaccompanied minors. There were serious differences over those matters between Merkel's *Christlich Demokratische Union* (CDU, 5.72/076) and its coalition partner Bavaria-based *Christlich-Soziale Union* (CSU, 7.11/3.24). The latter demanded a stricter approach (e.g. a yearly cap on new asylum seekers) and the EU-wide solution to the question of migrants and refugees subject to sanction for non-compliant Members. *Sozialdemokratische Partei Deutschlands* (SPD, 4.11/1.52) – the third coalition partner – took a moderate approach, rejecting limits on the number of accepted refugees and ending the moratorium on family renunciations for subsidiary protection recipients; it also focused on voluntary returns. *Die Linke* was even more liberal, advocating for a right to stay for anyone residing in Germany. All mainstream German parties were in favour of the relocation mechanism and a system of quotas for EU Member States.

4.3. Greece

Immigration has been politicised in Greece for a long time and the 2015 migration crisis changed little in this regard. At the same time, although immigration was one of the key issues, other concerns dominated the political discourse for most of the year. Greece was in the middle

of the financial crisis and the question of the bailout preoccupied everyone. Eventually, the snap election was won again by populist SYRIZA (2.84/7.63), which formed a government with the equally populist but right wing ANEL (8.30/8.46) (Aslanidis & Kaltwasser, 2016:5). The narrative of SYRIZA focused on helping irregular migrants and accusing EU Members States of a lack of solidarity. There was a purpose to laying the blame at Europe's door. The Euro-crisis was linked with the migration crisis, with the former utilised as a bargaining chip to gain more financial concessions (Nestoras, 2015). From 2016 until 2018, the official discourse of SYRIZA changed. Germany was no longer the 'enemy'. It was replaced by the Visegrad four, who refused to participate in the intra-EU relocation scheme. ANEL, while maintaining its anti-immigration rhetoric, in practice followed the policy proposed by its coalition partner.

Conservative New Democracy (ND, 7.23/2.59) was the main party in opposition. It put the emphasis on security and advocated for the creation of closed type pre-departure centres for irregular migrants, the strict and effective separation of refugees from migrants, and effective border controls (EfSyn, 2016). Potami (5.5/1.91) had a middle-of-the-road approach as it continuously stressed the need to respect the human and fundamental rights of migrants, but also expressed concern about the possibility of thousands being stranded in Greece. The centre-left coalition of PASOK and Democratic Left (DIMAR) (4.91/2.86) held a similar position. While most of the opposition parties were in favour of the EU-Turkey agreement, they all criticised, on different grounds, its implementation by the SYRIZA-ANEL government. Outside the mainstream parties, Golden Dawn (10/9.12) opposed the presence of migrants in Greece, claiming the policies implemented were part of the 'plans for the Islamisation of Greece' (To Pontiki, 2016). Communist KKE (0.61/7.51) had the most consistent position on migration, criticising from the early days the EU and the Greek government for policies that stood in violation of the 1951 Geneva Refugee Convention (Risospastis, 2015).

4.4. Hungary

The anti-immigration rhetoric was first used by *Jobbik* – a Hungarian far-right party (8.38/7.32) (Bíró-Nagy, 2018:272), but it was quickly adopted in 2015 by the governing party *Fidesz* (8.76/9.01). Since then, immigration and the response to it has become a key political issue, playing an important role not only in two electoral campaigns (general and local), but also in the intervening period. *Fidesz's* decision to prioritise the topic was motivated by shrinking public support for the party and the need to attract the electorate of the growing *Jobbik* party (Tóka, 2018). Immigration was also used as a polarisation mechanism that facilitated them to construe a people-elites dichotomy. 'Pro-immigration' and 'liberal' forces, including those in the EU (termed 'Brussels' in this narrative) were opposed to the genuine representatives of the people. At the same time, immigration was associated by *Fidesz* with criminality and terrorism, and pictured as the existential threat to the European, Hungarian and Christian civilisation (Bernáth & Messing, 2016). This narrative also allowed *Fidesz* to play on post-socialist ressentiment and talk about the failure of 'the West' to integrate and deal with its own post-colonial problems. The concentration of power in Hungary meant that the positions of the government and of the governing party alliance (with *Fidesz* as a leading force) were indistinguishable.

Fidesz's dominance in the political sphere and public discourse (due to its control over the media outlets), combined with other illiberal (anti-pluralist) measures taken by the government, effectively eliminated any meaningful discussion on this issue. However, the voice of the opposition was weak not only because of this reason. While the party headed by the former socialist PM Ferenc Gyurcsány (*Demokratikus Koalíció*: 3.92/2.90) questioned *Fidesz's* narrative most vehemently, his former party *Magyar Szocialista Párt* (3.42/2.45) mostly kept a

low profile, arguably in the attempt to avoid clashing with generally anti-immigration public opinion. *Magyarország Zöld Pártja* (4.35/3.38) seemed to be torn between a classical human rights-based approach and the opposition to what they saw as globalist pro-immigration positions (Bernáth & Messing, 2016, 11). This general unwillingness of the opposition parties was visible during the 2014 general election, the 2016 quota referendum (which eventually failed to meet the required threshold) and the 2018 local elections campaigns.

Overall, the anti-immigration rhetoric of *Fidesz* helped the party win the 2014 elections, but it failed to produce expected results in the 2018 local elections when the party lost some important cities, including Budapest.

4.5. Italy

Immigration was an important political topic in Italy well before 2015. Due to its location, Italy for a long time played a frontline role in immigration, with immigrants attempting the sea crossings from Albania and North Africa. Generally, the narrative of the parties on the right side of the political spectrum was that immigration was mostly of economic character, while the inflow of immigrants contributed to the growth of organised crime. For these reasons, their entry to Italy should have been restricted. On the other hand, left-leaning parties saw migrants mainly as victims of wars and poverty (which called for their admission and reintegration). One of the results of the 2015 events was that virtually all the main parties adopted the elements of the *Lega Nord's* line, blaming Europe for a lack of solidarity with Italy and calling for stricter security rules (Hermanin, 2019:3).

In the electoral programmes of the right forces – *Forza Italia* (7.31/5.56), and far-right *Lega Nord* (LN, 8.87/8.59) and *Fratelli d'Italia* (9.18/7.43) – the issue of immigration was linked to crime and terrorism. Those parties advocated for strict borders controls, mass repatriation of irregular migrants, abolition of humanitarian protection and conclusion of agreements with countries of origin that would allow for readmission of irregular migrants. LN and FdI were the most extreme as they called for creation of regional identification and expulsion centres, and mandatory detention of migrants (Migration Voter, 2018). With the time, the LN's discourse increasingly employed an Islamophobic repertoire and emphasises the role of Catholicism in the community's history (Bulli & Soare, 2018). As the election results showed, these calls resonated well with the Italian electorate.

A different stance was taken by populist *Movimento 5 Stelle* (M5S, 5.63/9.45), which put the emphasis on the management of the EU external borders, with the provision of legal entry channels and the fight against trafficking in human beings. At the same time, M5S proposed a review of the Dublin system and setting up of an automatic and mandatory distribution mechanism of asylum seekers among all Member States. On the centre-left side of the political scene, *Partito Democratico* (PD, 4.37/2.10) argued for better control of the external EU borders. Like M5S, PD intended to review the Dublin system, introducing mandatory redistribution of asylum seekers in the EU with a corresponding sanction system. The new framework included a proposal to sign readmission agreements with the states of origin and transit and the setting up of humanitarian corridors. PD also proposed an improvement of the migrant reception system (Migration Voter, 2018).

4.6. Poland

Until 2015 the topic of immigration was largely absent in the Polish political discourse, and the problem of migration was only addressed in terms of Polish emigration (e.g. PiS, 2014:12-14). It appeared for the first time during the 2015 parliamentary electoral campaign and was used as one of the main political issues. Although the government (at that time controlled by *Platforma*

Obywatelska (PO, 6.4/2.0) was not enthusiastic about relocation of asylum-seekers from Greece and Italy to other Member States, its rhetoric was generally moderate, as reflected in the PO political programme (PO, 2015:66-7). Its strategy envisaged locating Poland within the European mainstream, by presenting it as a reliable and stable Member. On the other hand, conservative and populist *Prawo i Sprawiedliwość* (PiS, 8.8/9.19) took an openly anti-Islamic and anti-immigration stance, taking advantage of people's fears and prejudices. If refugees appeared as subjects rather than objects, the emphasis was given to (undefined) EU/national assistance on the spot, in their countries of origin. A similar approach was also taken by the populistic movement *Kukiz'15* (8.3/9.43), the third political force in the new Polish parliament. Although in both cases, this was clearly motivated by strategic pre-election reasons, it also seems that at least part of PiS (as well as *Kukiz'15*) and its electorate shared the vision of the world in which immigrants were primarily seen as a threat to security and traditional Polish culture/values, the fact that is confirmed by the post-election position of PiS as well as the policy implemented by the PiS-led government. The other parties – i.e. *Polskie Stronnictwo Ludowe* (PSL, 5.8/3.49), *Nowoczesna* (5.7/0.94), *Sojusz Lewicy Demokratycznej* (3.2/2.96) – took either moderate or pro-immigration standpoints, although this issue was not at the centre of their campaigns. The anti-immigration stance of various parties resonated well with the general mood in Polish society. For example, the summary survey for the whole of 2016 found that 67% respondents were against accepting refugees from the MENA region as a part of relocation mechanism (with only 26% in favour) (CBOS, 2017).

The issue of migration was also raised before the 2018 local election. Independent presidential candidates supported by PO mostly took either a pragmatic approach or put the emphasis on openness and memory of the Polish multicultural past (Demczuk et al., 2018:8), while PiS remained anti-immigration. Nevertheless, the issue was not as prominent as in 2016.

4.7. Slovakia

Similarly as in Poland, immigration was not a political issue in Slovakia before 2015. This changed with the migration crisis and the topic became one of the most prominent issues during the 2016 general elections campaign. The governing party (*Smer-SD*, 3.83/3.96) even decided to change its electoral slogan from 'We work for Slovakia' to 'We protect Slovakia'. Refugees/migrants were presented as a security threat to Slovakia, while their rights were seen as inferior to the sense of security of the local population (Walter, 2019). Consequently, fearmongering was one of the *Smer's* main communication strategies (Štefančík & Dulebová, 2017:153). *SNS* (6.75/4.43) – a future coalition partner of *Smer-SD* – in essence shared the same viewpoint. On the other hand, *Most-Híd* (5.90/0.33) – the third coalition partner after the 2016 election – was one of the few parties with neutral or even positive attitude towards migrants, calling for solidarity and linking immigration to labour market needs (Mihálik and Jankoľa, 2016:19; Hlinčíková, 2016). The parties in opposition from different sides of the political spectrum – i.e. *SaS* (8.25/3.30), *OĽaNO* (7.36/7), *ĽSNS* (9.08/9.27), *Sme Rodina* (7.8/7.83) – mostly took an anti-immigration approach, albeit with different levels of intensity (with *ĽSNS* being the most extreme). In this narrative, the migration crisis, subsequent relocation of migrants within the EU and a mandatory quota system all constituted a threat to the security of the country. According to these parties, the correct response required closing the EU borders and transferring immigrants to camps located in transit countries outside of the Union (e.g. Bolečeková & Olejárová 2017:217-18; Štefančík & Dulebová, 2017:151; Štefančík & Hvasta, 2019). At the same time, the special declaration that was then adopted by the Slovak parliament was more empathetic towards immigrants. However, this did not prevent the parliament from rejecting, in another non-binding resolution, the UN Global Compact on Migration.

The topic of migration was again used by political parties before the local elections held in November 2018, but this time it was of much less importance than in 2015 (even for ĽSNS, the only national–populist and neo-Fascist party in Slovakia that was in the parliament).

5. Policy in action: governmental strategies and legislative developments

This section discusses how the political declarations were translated into specific actions in the covered countries. It also looks at their compatibility with EU law.

5.1. France

Initially the French reaction aimed at reforming its asylum legislation in order to improve the conditions for receiving and dealing with migrants. This reform (2015) envisaged an increase in the rights of asylum seekers and improvements in the efficiency of the procedures, as well as the introduction of administrative measures that would make it easier for migrants to request asylum in France. The country consistently supported the EU-wide relocation system (EMN, 2017).

At the same time, there were attempts, especially after the Marseille attack (2017) committed by an illegal migrant who should have been placed in detention, to increase the number of detention centres. The government also dissolved some migrant camps scattered throughout major cities. There were several cases of police pushbacks of unaccompanied children to Italy that did not comply with French law or international human rights on treatment of unaccompanied children. In six cases between 2012 and 2016, the ECtHR ruled that France's detention of children violated the prohibition on inhuman treatment or punishment (ELI, 2017)

The real change of French immigration policy occurred in 2018 (with Macron as the president), when the policymakers decided to introduce drastic reforms in view of the new situation on Europe's borders (a decreased number of irregular migrants) and due to growing internal political pressure. Despite the criticism of the UNHCR and several NGOs, France adopted the Law on migration and asylum (10 September 2018), which radically tightened the rules around asylum (Fine, 2019). The bill shortened asylum application deadlines (e.g. 90 days, rather than 120, to file an application), doubled the time for which illegal migrants can be detained (from 45 to 90 days), introduced a one-year prison sentence for entering France illegally, and restricted access of asylum seekers to non-urgent health care. The law also envisages (as of 2020) the implementation of annual quotas for skilled immigrants. Overall, the law, which took effect in 2019, made it more difficult to obtain asylum in France.

No formal legal proceeding against France was launched by the European Commission during the relevant period.

5.2. Germany

The most important pieces of German law that regulate the situation of migrants include the Immigration Act of 2005, the Asylum Act of 2015 (that replaced the previous Asylum Procedure Act), the Integration Act of 2016 and the Nationality Act of 2000. Two of those acts were adopted in reaction to the migration crisis to facilitate the admission of an increased number of applicants. As mentioned above, Germany decided to open its borders to irregular migrants that reached the EU. However, it quickly turned out that their unprecedent inflow constituted a serious challenge for the German administrative structures, raised concerns over internal security (e.g. the 2015-16 Cologne events) and negatively affected the political position of the CDU and its coalition partner the CSU. While the government always saw the European-

wide strategy as the only available long-term solution, due to political deadlock preventing the adoption of the CEAS reform, it decided to take certain actions at the national level and pushed for temporal solutions that could have eased the migration burden. Consequently, one could have seen a turn to the more conservative approach by the governing coalition (e.g. suspension of family reunification, introduction of the residence rule, possibility of pre-removal detention in regular prisons instead of specialized institutions) and use of solutions outside rather than within the EU (AIDA, 2016). In particular, Germany led the negotiations with Turkey over the new migration agreement that would allow the return of irregular migrants to that country (Tassinari & Tetzlaff, 2016). Germany also concluded in 2018 several bilateral Administrative Arrangements with other EU Members regulating the return of asylum seekers as an interim response (ECRE, 2018). Many commentators argued that those arrangements were incompatible with the basic principle of the Schengen Area (as they presupposed the existence of quasi-permanent border controls) as well as with the Dublin system (EDAL, 2019). In July of 2017, stricter regulations for those with exceptional leave to remain and for people classified as 'potential dangers' were implemented through the Law for Better Implementation of the Obligation to Leave the Country. As a consequence, it became easier to be detained prior to deportation (ECRE, 2019). Further reforms were proposed in 2018 and eventually a new package of rules on immigration and asylum was adopted a year later. The new measures opened up the labour market to skilled migrant workers on the one hand, but facilitated the return and deportation of rejected asylum seekers on the other (Mischke, 2019).

No formal legal proceeding against Germany was launched by the European Commission in the relevant period.

5.3. Greece

The period 2015-2018 was rich in regulatory activities, focused primarily at improving the functioning of the Asylum Service to deal with an increased number of applications and implementing the EU-Turkey agreement. In 2016 the Greek Parliament adopted a law which partially attempted to regulate the establishment and function of hotspots and the procedures taking place there (L 4375/2016). However, national legislation failed to effectively address the involvement of the EU agencies, for example Frontex agents (AIDA, 2017). In practice a parallel asylum process also emerged, which was neither prescribed in the CEAS nor applied elsewhere in the EU, with a fast-track asylum applications on the islands (for asylum seekers arriving after 20 March 2016) and a regular procedure on the mainland (AIDA, 2018; Dimitriadi & Sarantaki, 2018). The law establishing the Appeals Authority was amended twice in 2016, following the reported EU pressure relating to the implementation of the EU-Turkey agreement, and 'coincide with the issuance of positive decisions of the – at that time operational – Appeals Committees which, under individualised appeals examination, decided that Turkey [was] not a safe third country for the appellants in question' (NHCR, 2016). Further amendments to the procedure before the Appeals Committees that were introduced by L 4540/2018, again in response to EU pressure to limit the appeal steps and accelerate the procedure (e.g. the possibility of replacing judicial members of the Appeals Committee in the event of 'significant and unjustified delays in the processing of appeals'). Vulnerable people and those without social security were provided with free access to public health services and pharmaceutical treatment. Yet, administrative barriers persisted due to a lack of awareness of the 2016 law by health professionals and complications with issuing social security. Lack of necessary funding was also a persistent issue (MSF, 2016).

No formal legal proceeding against Greece was launched by the European Commission during the covered period.

5.4. Hungary

All relevant pieces of Hungarian law (e.g. Act No. 80 of 2007 on asylum) witnessed extensive and recurring amendments in the 2015–18 period, which eventually led to several Court of Justice (CoJ) rulings. For example, the revised law authorised the government to designate safe third countries. On that basis, Serbia was identified as such. The new law also introduced the concept of 'immigration-related emergency'. This special legal order allows for extensive restrictions of individual rights (e.g. property rights, freedom of movement) and possibility of using the army in border protection. The amendment of Act No. 140 of 2015 introduced simplified assessment and moved the procedure to the transit zones, with the exception of vulnerable applicants (HHC, 2016a:9). Although these territories are Hungarian, they are not considered to be falling within the responsibility of the Hungarian authorities (HHC, 2016b). The law also criminalised irregular border crossings. Criminal proceedings followed, including aggravated cases, e.g. damaging the fence, where the statutory sanction is two to eight years of imprisonment (FRA, 2016:12). After a 2017 amendment, all applicants, with the exception of those under 14, had to remain in the transit zones throughout the entire administrative procedure, and asylum applications were also moved to the zones. The amendment of Act No. 94 of 2016 introduced pushbacks: apprehended asylum seekers could be pushed back to the Croatian or Serbian side of the zone within 8 km from the borders without the government registering either the applicant or the asylum request. Later the law was expanded to the entire country. The amendment of Act No. 6 of 2018, dubbed 'Stop Soros' as part of Hungary's anti-Soros, anti-EU and anti-immigration campaign running at that time, established an automatic rejection of requests from those who had arrived through countries where the applicant was not in danger. The same act criminalised 'aiding and supporting illegal immigration' (and this included providing information and legal assistance); later, the Constitutional Court found that act compatible with the Constitution.

The CoJ ruled that a central piece of the Hungarian asylum legislation – the automatic rejection of applications by asylum seekers arriving from countries where they do not face danger (most commonly, Serbia) – constituted a violation of EU law (C-564/18). The CoJ also found the practice of keeping asylum seekers in the transit zones to be a form of detention and violation of EU law (C-924/19) (UNHCR, 2020). The same conclusion was reached with respect to the law targeting NGOs receiving funding from abroad, including organisations active in the asylum field (as a form of prohibited discrimination) (C-78/18). The Commission also initiated a number of other proceedings against Hungary relating, among the other things, to the third country exclusionary rule (C-821/19) and non-provision of food in transit zones (European Commission, 2019). A procedure under Art. 7 TEU is also pending and serious violations of asylum law are among the issues listed in the proposal of the European Parliament to the Council (European Parliament, 2018).

5.5. Italy

Three decrees, which had the greatest impact on the situation of migrants in Italy, concerned the procedures for examining the applications for international protection, the reception system, and the management of arrivals by sea. In particular, Decree 13/2017 introduced the possibility of video recording of the applicant's interview before the Territorial Commissions for the Recognition of Refugee Status, and provided for the abolition of the second instance of appeal for those who had their application rejected in the first instance (note that eliminating the appeal is a violation of the right to an effective remedy set out in the EU Charter and the Asylum Procedures Directive). Even though the decree provided a legal basis for hotspots, it neither specified their nature, nor defined how and for how long an applicant may be detained for identification purposes (which is a violation of the Reception Directive). However, it was

Decree 113/2018, that was the most problematic. Instead of humanitarian protection, the Decree introduced a number of special permits and, although humanitarian protection is not formally provided at the European level, it is advocated in the Qualification Directive. The decree also contained a set of measures limiting personal freedom: from the detention of asylum seekers in hotspots to the extension of the detention of irregular migrants in pre-removal centres. The detention of asylum seekers in hotspots went against the Italian Constitution, relevant international agreements, the Asylum Procedures and Qualification Directives, while the lack of any guarantees for detainees went against the Return Directive. Equally troublesome was the lack of exemption for vulnerable persons from accelerated procedure and restrictive rules on subsequent application, both solutions apparently being incompatible with the Asylum Procedures Directive. Similarly as in Greece, there was a problem of ensuring a proper standard of living in regular reception centres and lack of any specific forms of reception for vulnerable asylum seekers (as prescribed by the Reception Directive). The last piece of legislation (Decree 53/2019) gave rights to the Ministry of the Interior to limit or prohibit vessels that violate Italian immigration laws from entering the Italian territorial sea. Removing such vessels is equivalent to collective *refoulement*, which is forbidden by the TFEU, Charter and the Qualification Directive.

No formal legal proceeding against Italy was launched by the European Commission during the covered period.

5.6. Poland

The issue of migration is regulated by several laws, the most important being the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland and Act of 12 December 2013 on foreigners. While the government had plans to amend both acts (e.g. a draft law envisaged adding information on party, religious and trade union affiliations, as well as information about sexual life to information that could be processed in proceedings conducted regarding foreigners (Projekt, 2017), eventually no changes were introduced. However, in 2016, the law on counter-terrorism activities was adopted, with controversial provision on secret operations and reconnaissance regarding foreigners who raise concerns of conducting terrorist activities. At the same time, the government put priority to immigration from the East (due to existing cultural similarities between Poles and their Eastern neighbours). In this context, the Act on the Polish Charter, aimed at foreigners of Polish origin, was amended to expand the group of people who could take the advantage of its provisions (Pacek, 2020).

The area in which the tension with the EU was the most visible was the relocation mechanism. Initially, the new PiS government agreed to implement the scheme approved by its predecessor (the PO-PSL coalition), but later it suspended the process arguing that the verification procedures were insufficient to guarantee the Polish national security. The lower chamber of the Polish Parliament even adopted a non-binding resolution entitled 'Defending the sovereignty of the Republic of Poland and the rights of its citizens', in which it rejected the proposed mechanism. Poland was not involved in developing a common EU policy apart from suggesting strengthening of EU external borders and advocating for European support of policies adopted individually by Member States. Poland was also a party (together with Czech Republic and Hungary) to the non-compliance proceeding concerning the temporary relocation mechanism for applicants for international protection. Ultimately, all three countries lost the case in the CoJ (C-715/17, C-718/17 and C-719/17).

5.7. Slovakia

The two key legal documents regulating migration in Slovakia (Act 480/2002 on asylum and Act 404/2011 on the residence of foreigners) were also amended several times in the period

2015-2018. The former regulates asylum, while the latter defines the details of migration policy, including entry requirements, visas, expulsion, and immigration detention. Unlike in Hungary, these amendments were not a consequence of the migration crisis but were adopted due to technical reasons (e.g. in order to implement Directive 2013/32/EU), except for new rules for international students provided by Act 179/2017 that tightened the existing regime. Some changes introduced during the covered period actually improved the situation of migrants, particularly those with supplementary protection. These developments were apparently the result of the concerted efforts by various NGO's (Androvičová, 2017). The practice of the Slovak courts also had a positive impact on the situation of migrants.

Overall, if one looks at the whole body of the national law pertaining to immigration, no significant change was introduced. However, at the more general level, one should also mention a package of anti-terrorist laws adopted at the end of 2015 (just three months before the general elections) that vested police, law enforcement agencies and the judiciary with more powers. In 2016, an amendment to the Act on freedom of religious faith was also passed, which effectively blocked Islam from gaining official status as a religion in Slovakia. In particular, the new law stipulated that registration of churches required at least 50,000 members (up from 20,000) to qualify for state subsidies and to run their own schools. Although both changes were aimed (indirectly) at migrants, they did not attract any attention from the EU. Slovakia also took legal steps in 2015 (together with Hungary and with the support of Poland) against the compulsory relocation of refugees, under which Slovakia was expected to accept 802 asylum seekers (joined cases C-643/15 and C-647/15), but eventually lost its case in the CoJ. At the same time, Slovakia avoided the 2017 (ultimately successful) legal action of the European Commission against the Czech Republic, Hungary and Poland (Rios, 2020) on the failure to participate in the reallocation mechanism when it decided to accept a part of allocated refugees from Italy and Greece (Geist, 2017). Overall, Slovakia adopted the approach that can be called a 'Janus-faced' policy.

6. Populism, politicising and securitising irregular migration

The 2015 migration crisis and the response to it led to (or reinvigorated existing) the politicisation of the topic across the EU. For all three CEE countries analysed here, this was the first time that immigration emerged as a political issue.

Politicisation is understood here as an increase in salience and diversity of opinions on a specific societal topic. Salience can be defined as the importance attributed to an issue, while polarisation indicates that there are different attitudes to the issue and the 'solutions' proposed (De Wilde, 2011; Pasetti, Garcés-Mascareñas, 2018). As discussed above, in all analysed countries, the migration crisis and strategies employed to deal with it became (or returned as) one of the most important political topics, forcing the parties from all sides of the political spectrum to take a position on it. The right-wing populist parties were the ones that were mostly interested in keeping the topic in the centre of the public discussion. The level of polarisation was high, ranging from the fairly liberal approaches (e.g. granting a right to stay for anyone residing in Germany as proposed by *Die Linke*) to the Islamophobic and racist positions (e.g. migration as an element of the broader plan for the Islamisation of Greece as argued by Golden Dawn), with many intermediate views in-between. This variety of views also reflected division in the respective societies (with proponents of closed borders dominating in the CEE region and Italy). It also appears that the importance of the issue of migration does not necessarily relate to the number of arriving asylum seekers. The examples of Poland and Slovakia – which did not witness any increase in migration during that period – show that salience of the issue may depend more on the media exposure and deliberate politicisation of the topic by the parties

(Smer-SD and PiS). At the same time, it should be acknowledged that the silence of the issue faded away with time, reflecting both decreasing number of irregular migrants in Europe and changes in the strategies of those parties that previously exploited the topic. This was particularly visible in the CEE countries.

One can also observe a process of securitisation of migration in the political debate in all analysed countries. Irregular migration was construed as a security threat by many political parties and leaders, 'requiring emergency measures and justifying actions outside the normal bounds of political procedure' (Buzan, Waever & de Wilde 1998, 23-24). While the securitisation strategy was most visible in the discourse of the right-wing populist parties, its elements were progressively taken by the mainstream parties, arguably in response to increased salience of the issue (DE, IT, FR). The case of the CEE countries (HU, PL, SK) is particularly interesting as security constituted one of the main arguments for rejecting the relocation scheme proposed by the European Commission and advocated by the front-line states, Germany and France. While this is what one could expect from the right-wing populist governments of Hungary and Poland, also Slovakia, with its fairly moderate government (both in terms of ideological orientation and level of populism), took the same approach. At the same time, one has to acknowledge that regulatory responses in Slovakia and Poland were very different from what was introduced in Hungary.

It seems that securitisation had mainly instrumental character as it allowed to mobilize the supporters and polarise the political scene, thus politicising the topic further (e.g. Majtényi et al., 2019; Mudde, 2016, cited in Wiczanowska, 2017, 70). In this context, it also should be noted that securitisation increased society's interest in this problem, which under the influence of the nature of the political debate was becoming more and more critical and unwilling to accept refugees, particularly if they come from countries with different traditions, cultures and religions (Podgórzańska, 2019:68).

Immigration was an attractive topic for the right-wing populist parties as it allowed them to construct more easily the opposition between the 'people' and the 'elites'. In this narrative, the elites were represented by the domestic governments and the EU that attempted to reengineer the Christian and national fabric of Europe in order to construct a new type of multicultural polity. On the other hand, in this narrative, the populist right-wing parties were representing the will of the people: silent national majorities that were doomed to lose their subjectivity in this new political arrangement. Highlighting ethnicity and Christianity also allowed them to distinguish the group of people from the others (migrants, Muslims, etc.) Of course, for those countries in which the populist right-wing parties were in power (PL, HU) the main enemy was the EU (particularly after the relocation system was proposed) and the local liberal forces, pictured as the fifth column of Brussels.

At the same time, there appears to be a strong correlation between the ideological profile of the parties and their approach to the migration crisis and the proposed EU response. All the parties located close to the right extreme tended to take a strong anti-immigration and anti-EU stance. All of them also ranked high in the populist index. On the other hand, the populist parties located on the left side or in the centre of the political spectrum (e.g. SYRIZA and M5S) took a moderate stance on this issue. They also tended to be in favour of the relocation mechanism, but this might relate to the fact that they were active in the front-line states. Therefore, it seems that a populistic character of a party as such does not pre-determine its position on the issue of migration and the required policy response, as it is rather the ideological orientation of a party (right/left). Consequently, for left-wing populist parties, the construction of the people-elite dichotomy goes along different lines (e.g. the existing political classes, previous governments). This finding corresponds well with the conceptualisation of populism as a thin ideology. Since populism is defined in negative terms, as 'opposition to', it has a limited core set of beliefs and

can be combined with a variety of political positions, from nationalism to socialism, so long as the political movement allows for a focus on the needs of the 'authentic people' and an antagonism against the 'elite' (Gruszczynski & Lawrence, 2019:22). Again, Slovakia appears to be a unique case as both *Smer-SD* and *SNS* are moderate parties and rank low on the scale of populism, yet they adopted relatively aggressive anti-immigration rhetoric (which, however, was only partially reflected in the implemented legal changes).

One may also identify some common lines of arguments used for and against migration in the political discourse of all analysed countries. Of course, there are also some differences, reflecting the positioning of each country as a 'frontline or final destination', past experiences of hosting migrants (or lack thereof) and current challenges, including existing Euro-scepticism (Triandafyllidou, 2018). Moral obligation ('humanitarian necessity') and general respect for human rights were frequently referred to as a basis for a decision to accept asylum seekers and other people in need of international protection (DE, FR, GR, IT, PL, SK). Interestingly, the legal arguments pertaining to the specific EU and international law obligations were rarely raised in this context. Equally frequent were the arguments relating to the European solidarity and burden sharing between the EU Member States (DE, FR, GR, IT, PL). In the Western European countries, the need for skilled immigrant workers, who could, after integration, contribute to the local economic development, was also highlighted (DE, GR, IT). Those arguments were, however, rarely made in the CEE region (at least not with respect to MENA migrants).

On the other side of the spectrum, one may find the arguments relating to security, culture, national identity and religion. These arguments were increasingly instrumentalised by right-wing populist parties (both inside and outside of the governments), but as the time passed, they were also absorbed by the mainstream forces. As explained above, the most common argument used in the political discourse relates to the protection of national security. In this narrative, some immigrants were not genuine refugees but rather disguised terrorists who would continue their illegal activities in Europe (DE, HU, FR, GR, IT, PL, SK). Those arguments gained traction after the terrorist and sexual attacks in Western cities in 2015-16. This approach is well captured in the official statement of the Polish Minister of Internal Affairs and Administration, who said (explaining the decision of his government to reject the relocation mechanism); '[t]here would be [now] almost 12,000 refugees (...), then after a few years there are tens of thousands, then several hundred thousands, then several millions. These communities form closed enclaves that constitute a natural terrorist base' (TVN24, 2017).

The cultural and identarian narratives were strongly present in Hungary, Poland and Slovakia (arguably due to the homogenous and peripheral character of these societies). In most cases, they were based on simplified statements and focused on abstract issues like 'national identity', 'ethnic homogeneity', 'defending Christian culture', and 'liberalism as new totalitarianism'. In Poland, failures of the multiculturalism as a form of social policy promoted by the liberal elites were also frequently referred to, while in Slovakia multicultural society was seen as a threat to the ethnic, cultural, religious and social integrity of Slovaks. This would suggest that culturally grounded arguments for the rejection of migration are particularly pronounced in countries with a low share of foreigners (and hence limited exposure to such contacts).

Poland and Hungary also questioned the European character of the crisis, suggesting it was just a German problem as the country decided to open its borders, attracting the migrants from different parts of the world. Similarly, in Slovakia the crisis was pictured as primarily of frontline states. In Western Europe one can also find more pragmatic arguments (at least on their face) relating to societal costs of migration in receiving countries. In this context, references were made to limited financial resources available to states, potential disruptions in job market, and abuse of the welfare system.

It seems that the anti-immigration rhetoric – based mostly on people's fears and prejudices – met expectations of large segments of the respective societies and eventually was translated into political success of those parties that took a strong anti-immigration stance (DE, HU, PL, SK and FR- in terms of public support for FN).

The countries under investigation reacted to the migration crisis in different ways. The minimum harmonisation approach that function in the EU made the divergences even easier. While those differences did not disappear, one may observe progressive tightening of the relevant migration rules in most of the investigated countries (DE, FR, GR, HU, IT), including those which initially took a very open approach. In this context, one can see that the boundaries between detention, restriction on freedom of movement and reception have been unclear in legislations, purposefully bypassing the obligation to ensure access to key procedural safeguards stemming from EU and international law. Many analysed countries also made it harder for rejected asylum seekers to avoid deportation (e.g. DE, FR, IT). In some countries, the anti-immigration stance also found its reflection in the adoption of new laws on combating terrorism (PL, SK) or regulating religion (SK).

Arguably, while some countries took harder regulatory steps on immigration in order to "avoid a radicalisation of public opinion," by dislodging the far right's monopoly on immigration issues (e.g. FR), other governments (e.g. DE) used a mixture of softer measures to tackle issues that the far-right hijacked to attract the public. On the other side of the spectrum are those countries that used immigration issues (HU, PL, I) to polarise the political scene and strengthen their positions. Surprisingly, despite their though rhetoric, both Poland and Slovakia have changed very little their applicable national legal regimes. In both countries, the discursive dimension seemed more important.

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