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INTRODUCTION

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Introduction

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Abstract: This special issue of the Deusto Journal of European Studies includes seven of the contributions presented during the International Conference entitled “The EU Migration, Border Management and Asylum Reform in the Aftermath of the Refugee Crisis: Towards an Effective Enforcement”, held at the University of Deusto on June 2 and 3, 2022. This event took place within the framework of the activities of the Jean Monnet Network on EU Law Enforcement (EULEN). This Erasmus+ project’s ambition is to bring academics and practitioners together, to address the challenges for EU law enforcement in a world without territorial borders. In particular, this special issue reveals that since the 2015 “refugee crisis” the EU is experiencing an acute implementation deficit and that several enforcement and implementation discrepancies remain at the national level.

Keywords: European Union, Migration, Asylum, Migrant Smuggling, Area of Freedom Security and Justice, Enforcement, agencies.

The 2015 “refugee crisis” revealed the urge to ensure the functioning of the Schengen area and the Common European Asylum System (CEAS), the need to operationally assist those Member States most affected by the sudden and extraordinary arrival of mixed migratory flows, and the need to effectively and uniformly implement the European Union (EU) measures regarding migration, asylum and border management. It is necessary to promote a transnational dialogue among administrations at the EU, national and local level, as well as to adopt effective measures that overcome the existing implementation deficit concerning migration, asylum and border management. In this regard, for example, EU decentralised agencies in the Area of Freedom, Security and Justice (AFSJ) have emerged as key actors, not only in providing operational assistance to frontline Member States, but also in effectively and uniformly implementing the EU border management, migration and asylum laws and policies adopted. The focus of the EU in border management, migration and asylum matters is shifting from adopting measures to tackling the existing implementation deficit.

Due to the predominantly operational nature of migration, border management and asylum policies, the EU decentralised agencies stand out as the mode of administrative governance, specially indicated for providing technical expertise, exchanging information, and coordinating the operational activities of the Member States. That is, migration, border management and asylum policies have recently been amended and strengthened with a clear trend from decentralised enforcement towards developing more and more forms of transnational (i.e. the European Migrant Smuggling Centre of Europol, the reinforced cooperation of the AFSJ agencies on the ground through the hotspot approach, the Justice and Home Affairs Agencies network, etc.) and centralised enforcement (i.e. the transformation of Frontex into the European Border and Coast Guard, EASO into the European Union Agency for Asylum, the reinforcement of the mandate of Europol, etc.)

Against this background and due to the scarcity of research on these matters, this special issue of the *Deusto Journal of European Studies* includes seven of the contributions presented during the International Conference held at the University of Deusto on June 2-3, 2022. This event took place within the framework of the activities of the Jean Monnet Network on EU Law Enforcement (EULEN). This special issue thus aims to address three key questions: 1) To what extent are the operational tasks and inter-agency cooperation of the AFSJ agencies reinforced to assist the concerned Member States in effectively and uniformly implementing the migration, border management and asylum measures adopted at EU level? 2) How can the rule of law and the protection of fundamental rights be guaranteed within an AFSJ where EU and Member State agencies are expanding their operational and implementation powers? 3) To what extent will the reform of the EU migration, asylum and border management matters, in the aftermath of the “refugee crisis”, ensure a consistent and effective enforcement of the legal instruments and policy measures in place.

Regarding enforcement in border management and migration matters, **Lucas J. Ruiz Díaz** opens the special issue by analysing the European Parliament’s role in effectively scrutinising the implementation of EU law and policies by the AFSJ agencies. Lucas suggests several recommendations to enhance the accountability of these agencies to fully respect the principles of the rule of law and the values on which the EU is based. Subsequently, **Lorena Calvo Mariscal** explores the legal implications, both formal and material concerns, that exist in the application of the 2020 Memorandum of Understanding between Malta and Libya. Lorena frames this non-legally binding agreement within the strategy of the EU and its Member States to cooperate with Libya in the deterritorialisation of migration management to reduce the number of

migrants and asylum seekers arriving at Europe's external borders. Furthermore, **Eulalia W. Petit de Gabriel** wrote a paper about separated children and the related dilemma between general and individual interest in EU migration law compliance. In particular, Eulalia argues that the expansion of the legally recognised concept of family shall help in protecting interpersonal bonds not based on biological relationships, according to the European Court of Human Rights and the Court of Justice of the EU (CJEU). In addition, she understands that restrictions to the right to family life can be taken for fighting against crime, although a goal of general prevention may not comply with human rights standards on the limitation of rights.

In regards to enforcement of EU asylum law, **Julia Kienast** wrote a paper centred on analysing the language of EU leaders and its influence on the implementation of EU asylum law by triggering derogations, exceptions and amendments. She compares this process with regards to the 2015 "refugee crisis", the Belarus border crisis and the current Ukrainian crisis to portray how the reaction to similar facts differs. Julia considers that the problem lies less in sufficient contingencies for a sudden influx, but rather a lack of solidarity since refugee protection builds on the prohibition of discrimination. **Alfredo Dos Santos Soares** also analyses solidarity in his paper since he considers that the term lacks a clear definition and meaning, appearing rather as an amorphous concept. Alfredo examines the doctrinal debates on the nature, scope and abstract character of the solidarity principle and explores the role that the CJEU is playing towards an effective solidarity in asylum matters.

The last two papers of this special issue address migrant smuggling and modern slavery, respectively. **Mirentxu Jordana Santiago** assesses the "Facilitators Package". Mirentxu analyses several controversies that this framework entails, especially the excessive criminalisation and the neglect of the human rights perspective. Mirentxu contends that the eradication of migrant smuggling requires the sum of efforts and coordinated action of different actors such as national authorities and European agencies (i.e. Europol and Eurojust). **Natalia Szablewska's** paper can be framed under the securitisation of migration trend, which obscures the underlying social, economic and political "push" factors that fuel modern slavery. In this regard, Natalia maintains that a more comprehensive response is needed, which examines the issues of migration management, market regulation and development more widely. For that, her paper uses a comparative lens to examine global developments in regulating labour-related forms of modern slavery vis-à-vis migration management in the context of achieving sustainable development goals.

About the author

David Fernández-Rojo is a researcher and associate professor at the University of Deusto. David's research focuses on the European Area of Freedom, Security and Justice. He is particularly interested in the impact of the decentralised agencies' operations, in terms of the effective and uniform national implementation of the migration, asylum and border management measures adopted at the EU level. David is a key researcher in the Jean Monnet Network European Union-Asia Pacific Dialogue and coordinator at the University of Deusto of the Jean Monnet Networks EU Law Enforcement and EU Counterterrorism. David conducted postdoctoral research at the Instituto Barcelona de Estudios Internacionales (IBEI) and the University of Zürich, as well as part of his PhD research in the U.S. (Washington College of Law and Georgetown Law Center) and The Netherlands (Utrecht University, RENFORCE).