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Knowledge for INtegration Governance

EU Immigration and Integration Policies: Friends or Foes?

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The KING project's objective is to elaborate a report on the **state of play** of migrant integration in Europe through an interdisciplinary approach and to provide decision- and policy-makers with **evidence-based recommendations** on the design of migrant integration-related policies and on the way they should be articulated between different policy-making levels of governance.

Migrant integration is a truly multi-faceted process. The contribution of the insights offered by different disciplines is thus essential in order better to grasp the various aspects of the presence of migrants in European societies. This is why **multidisciplinarity** is at the core of the KING research project, whose Advisory Board comprises experts of seven different disciplines:
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The present paper belongs to the series of contributions produced by the researchers of the "EU Policy" team directed by Yves Pascouau.

The project is coordinated by the **ISMU Foundation.**

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INTRODUCTION

In 2005, almost one year after the adoption of the Common Basic Principle on Integration[1] by Ministers responsible for integration, the European Commission published a communication on "A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union"[2]. In this document, the European Commission stated "legal migration and integration are inseparable and should mutually reinforce one another". This sentence is relevant in two respects; it recalls the theoretical framework linking immigration and integration policies but also highlights the limits of this framework which addresses only legally residing third country nationals.

Theoretical framework: the link between immigration policies and integration

For more than 15 years now, the theoretical and conceptual framework establishes a link between immigration and integration policies. This movement started in 1999 with the Tampere European Council conclusions. Adopted immediately after the entry into force of the Amsterdam Treaty, the Tampere conclusions already pointed out that a common approach regarding immigration and asylum polices "must also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union".

The 2004 Hague programme, which succeeded the Tampere programme, included integration policy as part of the comprehensive approach which should be developed at EU level. More precisely, The Hague programme claimed "a comprehensive approach, involving all stages of migration, with respect to the root causes of migration, entry and admission policies and integration and return policies is needed".

The same year, the Common Basic Principles on Integration, endorsed by the November 2004 Justice and Home Affairs Council emphasised that "A critical aspect of managing migration is the successful integration of legally residing immigrants and their descendants"[3].

The Stockholm programme adopted in 2004, covering the period 2004-2009, portrayed the linkage between these two policy fields as follows "the European Council is of the opinion that the long-term consequences of migration, for example on the labour markets and the social situation of migrants, have to be taken into account and that the interconnection between migration and integration remains crucial *inter alia*, with regard to the fundamental values of the Union".[4]

The last step was reached by the Lisbon Treaty. It included and therefore "constitutionalised" the link between immigration and integration into the treaty. Sketching the broad picture of EU action, Article 67,

[1] Council Justice and Home Affairs, 19 November 2004, Doc. 14615/04.
[2] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union", COM(2005)389 final, 1.09.2005.
[3] "The Hague Programme: strengthening freedom, security and justice in the European Union", OJ C 53, 03.03.2005.
[4] "The Stockholm Programme — An open and secure Europe serving and protecting citizens", OJ C 115, 04.05.2010.

par. 2., states that the Union "(….) shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals".

Dealing more specifically with immigration issues, Article 79 of the Treaty indicates "the Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to, combat illegal immigration and trafficking in human beings". In both provisions, integration is encompassed in the wording, "fair" policy (Art. 67) and treatment (art. 79) echoing the 1999 Tampere conclusions.

While integration should be one of the goals pursed by the development of an EU common policy, the Lisbon Treaty establishes an evident link between immigration and integration by way of Art. 79, which is however, not that clear regarding asylum policy. Put differently, the link between asylum policies and integration is less relevant, with potential consequences as we will see later.

Over the last 15 years, it is apparent that immigration and integration have been conceptualised and considered as two interlinked or interconnected policy fields to the extent that they are deemed "inseparable". However, proclaiming the interconnection does not overcome the reality whereby the linkage is limited.

A limited concept: minimal action applicable to legally residing third country nationals

Broad in its framing the concept is in reality, limited. One limitation concerns the breadth of action at EU level. Indeed, and contrary to immigration and asylum policies, EU action in the field of integration is minimal. According to Article 79, par. 4, of the Lisbon Treaty, EU action is limited to the mere coordination of national policies[5].

Therefore, and from a legal point of view, the interconnection between immigration and integration policies at EU level may be difficult. Indeed, the EU has a competence to act in the field of immigration which may lead to the full transfer of national competence to the EU. Regarding integration, the situation is different since the competence remains the remit of the Member States and EU action is limited to the coordination of national rules and practices. Hence, developing an EU policy combining the two policy fields may be difficult due to competences constraints.

A second limitation should also be stressed: the link between immigration and integration only exists with respect to legal migration. This derives clearly from the Commission's communication which states "legal migration and integration are inseparable and should mutually reinforce one another". Treaty provisions follow the same line of reasoning. Article 79, par.4, of the Treaty addresses the issue of "fair treatment of third-country nationals residing legally in Member States". The Common Basic Principles on Integration developed a similar approach where it stated that immigrants "should be understood throughout the text as legally residing immigrants in the territory of the Member States have been pretty clear in this regard".[6]

[5] "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States". On this see Acosta Arcarazo, D."*EU Integration Policy: between Soft Law and Hard Law*"; *KING Project Desk Research & In-depth Study Paper n.1/July-October 2014*, available at http://king.ismu.org/wp-content/uploads/AcostaArcarazo_DeskResearchInDepthStudy.pdf .

[6] Council Justice and Home Affairs, 19 November 2004, Doc. 14615/04.

As a consequence, integration policy and measures should only target and be applied to legally residing third country nationals, i.e. those having reasonable prospects to be included in the receiving society. On the contrary, third country nationals in an irregular situation, on the territory or at the border, are excluded from integration policy because they are not meant to stay. This choice could be explained by the fact that integration policy should not per se be applicable to people whose situation should not *per se* lead to their inclusion in the receiving society but rather to their exclusion from the territory.

As a matter of principle, there is a fundamental disjunction between policies applicable to migrants in an irregular situation who should theoretically be excluded from the territory and migrants legally residing in the Member States who should theoretically be included into the receiving society. In addressing legal migrants, the Treaty portrays this distinction between exclusion and inclusion.

A misleading approach

However, the distinction "legal/inclusion" vs. "irregular/exclusion" deeply affects the way policy makers perceive and develop migration policies. The basic idea that migrants in an irregular situation should not remain on the territory, or be expelled, is accompanied with the development of detention practices. Hence, once arrived on the territory or once discovered in the territory migrants in an irregular situation are often[7], and sometimes systematically[8], subject to detention. This derives from the widely shared principle that migrants in an irregular situation should be removed and that detention is an efficient practice to ensure removal.

Apparently logical, this approach embeds a fundamental misleading point: all migrants in an irregular situation are not automatically subject to expulsion. And this is the situation of numerous migrants.

Many third country nationals entering the territory without authorisation or apprehended in the territory in an irregular situation (because they never had any authorisation or overstayed their residence rights) cannot be returned to their country of origin or residence due for instance to their health conditions or because they have spent several years in a Member State and have developed strong family ties.

In addition, many third country nationals arriving at the border or in the territory without authorisation claim asylum in the EU Member States. Under EU law, they are asylum seekers and should be admitted to reside in the State until the final decision on the asylum application is taken[9].

In both cases, the legal status of third country nationals may turn from irregular to legal and consequently leave the expulsion sphere and enter the inclusion zone. However, it may take a while – hours, days, weeks, months – from one situation to the other and this period of time is sometimes spent in detention. This is more particularly the case at EU's external borders, where detention is used, sometimes on a systematic fashion, for a considerable number of asylum seekers.

[7] The number of detention centres has increased over time in the EU, see for instance work undertaken by several NGO's in this regard like Migreurop http://en.closethecamps.org/2014/03/03/europe-of-camps-deploys-its-web/ and the Atlas

[8] "Invisible Suffering. Prolonged and systematic detention of migrants and asylum seekers in substandard conditions in Greece", Médecins sans Frontières, 2014, Report available at the following address: http://www.msf.org/sites/msf.org/files/invisible_suffering.pdf

[9] Article 3, par. 1, of Directive 2003/9/EC states "This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for asylum according to the national law".

In these circumstances, the link between detention practices and the fact that detained people may receive a legal status and fall therefore within the scope of integration policies is never established. In other words, the use of detention – at the border or later in the process– is never linked with the idea that the period during which people are deprived from their liberty could affect their capacity to properly integrate once admitted to reside into the receiving society. As already pointed out, the absence of linkage or connection is particularly worrying where detention is systematically applied to asylum seekers arriving at EU's external borders having reasonable prospect, due to their nationality or country of origin[10], to receive protection in the EU.

This paper tries to reconnect two policy fields following opposite objectives and coexisting like "water and oil". In practice, the use of detention in the framework of migration management policies may severely impact individuals subject to these measures and therefore hamper, or even destroy, their capacity to integrate and interact with the receiving society. The relationship between immigration and integration is in the end all but easy. Friends when it comes to legal migration, foes when it comes to irregular migration and in particular detention.

The aim of this paper is to reconcile these policy fields in highlighting on the one hand the negative impact and cost of detention on third country nationals' integration (section 1) and exploring on the other hand several solutions to overcome this structural disconnection (section 2).

1. THE COST AND IMPACT OF MIGRANTS' DETENTION ON MIGRANTS' INTEGRATION

Assessing the cost of detention is a difficult task. It may at first sight lead to consider the financial cost of detention. In this respect, the easiest answer is to provide for the real economic charge of detention which includes detention premises and human resources affected to these premises (A). However, the cost to pay is not only financial, it is also medical and social. Third country nationals may suffer from diseases linked or created by detention conditions. This is the medical impact of detention (B). Detention may also have a broader impact on individuals, regarding their behaviour towards the receiving State, and on the receiving society, in relation to the way nationals perceive detained people. This is the social impact side of detention (C). In the end, the detention aspect of immigration policy may have a very high price not only in financial terms but more broadly in terms of social integration.

1.1 The financial cost of detention

Detention, as well as deportation, has a financial cost which can be measured or at least broadly evaluated. This concerns not only premises, the human resources affected to detention centres but also all costs related to legal challenges introduced against detention decisions. While difficult to evaluate, some organisations or decision makers have tried to do so.

In her paper, Anne Bathily demonstrates the financial burden of detention in the UK. She writes "In the UK, an independent research by Matrix Evidence (Marsh and al., 2012) shows that detention of one person

[10] Eurostat pointed out for instance that 90% of asylum applicants from Syria received a positive first instance decision in 2013 in the EU28: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF.

costs the tax-payer over 59,802 Euros a year. The Home Office paid out more than 3 million Euros in 2008-09 and more than 12 million in 2009-10 in compensation and legal costs arising from unlawful detention actions. The research concludes that 95,450,000 million Euros per year could be saved if the UK Border Agency identified and released migrants in a timely manner. This is equivalent to the running costs of between three and four Immigration Removal Centres"[11].

In France, a parliamentary report has tried to evaluate to cost of administrative detention[12]. The report pointed out that the total cost of administrative retention in France was around € 190 million for the year 2008. However, this figure did not take into account a series of expenses linked to detention like interception, deportation and legal remedies. Civil society organisations have then mentioned that the cost of detention, taking solely into account human resources, is around € 394 million a year[13].

Without entering into the debate of the cost-effectiveness of detention-repatriation policies[14], detention policies developed in EU Member States constitute a significant budget. While difficult to assess accurately, this cost is borne by the entire society. However, it represents only one side of the total price the society has to pay for detention policies. Indeed, additional costs should be taken into account due to the impact of detention on individuals and the society.

1.2 The medical impact of detention

Most of the stories told by migrants arriving to receive international protection have in common a striking fact: they rapidly refer to detention practices and conditions they have experienced once arrived on the territory[15]. They may have travelled all across a continent, being subject to a series of inhumane treatments, victims of traffickers or even raped, they all mention the fact they have been detained once arrived.

This could be the immediate result of a shock between the legitimate expectations to have reached a safe heaven and the reality leading to a sudden deprivation of liberty[16]. Such a discrepancy may also be amplified by the fact that people do not always know why they are detained and at least do not consider they have committed a criminal offense justifying such a treatment, such a confinement.

In addition, detention upon arrival could create short and medium term physical and mental diseases. Many asylum seekers arriving on EU territory are fleeing persecution and are, due to this situation, already subject to serious traumas. Placing asylum seekers in detention may not constitute a disturbance at the

[11] Bathily A. "Immigration detention and its impact on integration – A European approach", *KING Project Desk Research Paper n.2/July 2014*: http://king.ismu.org/wp-content/uploads/Bathily_DeskResearch.pdf

[12] Bernard-Reymond P. « Immigration - la gestion des centres de rétention administrative peut encore être améliorée », Rapport d'information n° 516 (2008-2009), 3 juillet 2009.

[13] http://www.lacimade.org/minisites/mesnil2/rubriques/121-L-industrie-de-l-expulsion?page_id=2151

[14] For an example concerning Greece, see for instance Danai Angeli, Anna Triandafyllidou « Is the indiscriminate detention of irregular migrants a cost-effective policy tool? A case-study of the Amygdaleza Pre-Removal Center », MIDAS Policy Brief, May 2014, http://www.eliamep.gr/wp-content/uploads/2014/05/Policy-brief_the-case-study-of-Amygdaleza-1.pdf

[15] Jesuit Refugee Service-Europe "Becoming Vulnerable in Detention", Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The DEVAS Project), 2010. Available: http://www.detention-in-europe.org/images/stories/DEVAS/jrs-europe_becoming%20vulnerable%20in%20detention_june%202010_public_updated%20on%2012july10.pdf; Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, "From Persecution to Prison: the Health Consequences of Detention for Asylum Seekers", June 2003. Available: https://s3.amazonaws.com/PHR_Reports/persecution-to-prison-US-2003.pdf.

[16] Bathily A. "Immigration detention and its impact on integration – A European approach", *KING Project Desk Research Paper n.2/July 2014*: http://king.ismu.org/wp-content/uploads/Bathily_DeskResearch.pdf

level of persecution suffered or even feared, but the decision to detain this specific category of people could nevertheless create an additional trauma or even revive previous traumatic situations.

The worsening of pre-departure trauma after detention has already been shown. Bathily mentions in her paper relevant researches in this regard[17] and reports the following evidences "In fact, the levels of anxiety, depression and Post Traumatic Stress Disorder (PTSD) observed in this sample of detained asylum seekers were substantially higher than those reported in several previous studies of refugees living in refugee camps and asylum seekers /refugees living in the community, further suggesting the detrimental effects of detention"[18].

Bathily's paper refers to a longitudinal study that was carried out by Keller *et al*[19] which demonstrates that 70% of detainees reported deterioration in their mental health while in detention. She notes "the majority of participants are found with major depression, PTSD (symptoms of PTSD include flashbacks, nightmares, severe anxiety, uncontrollable thoughts, panic attacks), suicidal thoughts, self-harm, suicide attempts and psychic illness requiring hospitalization".

In a report concerning Greek detention practices, Médecins Sans Frontières notes "Detention can be severely detrimental to the mental health of migrants and refugees. MSF's experience shows that being detained is the single most important cause of stress and frustration for the majority of migrants. Symptoms of anxiety, depression and psychosomatic manifestations were observed in many patients. Bad living conditions, overcrowding, constant noise, inactivity, dependence on other people's decisions and uncertainty about the future, all contributed to detainees' psychological distress"[20] .

The impact of detention is not only mental, it is also physical. This has mostly to do with bad detention conditions which worsen already physical problems or create the conditions for the developments of physical diseases. Referring to MSF Report on Greece, D. Angeli and A. Triandafyllidou note "the most common problems in Greek detention centres are skin diseases, respiratory infections, and gastrointestinal disorders, musculoskeletal and dental problems".[21]

While it could be assumed that detention can constitute a shock for a large number of migrants and asylum seekers, detention conditions is also to be taken into account especially regarding the worsening of mental and physical health conditions. Indeed, the length of the detention, the fact that the centre is overcrowded or not, sanitary conditions, access to healthcare are, among others, elements which could deteriorate migrants mental and physical capacities.

This short description demonstrates that detention has an impact on health which has to be managed. Avoiding detention could be the most efficient way to prevent health and mental diseases. However, and where detention cannot be avoided, providing medical support and enhancing detention conditions would

[17] Bathily A. "Immigration detention and its impact on integration – A European approach", *KING Project Desk Research Paper n.2/July 2014*: http://king.ismu.org/wp-content/uploads/Bathily_DeskResearch.pdf

[18] Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, From Persecution to Prison: the Health Consequences of Detention for Asylum Seekers, June 2003. Available from URL: http://www.physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf

[19] Keller A. S., Rosenfeld B., Trinh-Shvrin C. , Meserve C., Sachs E., Leviss J., et al. "Mental Health of Detained Asylum Seekers", Lancet, 2003, 362, 1721-3.

[20] "Invisible Suffering. Prolonged and systematic detention of migrants and asylum seekers in substandard conditions in Greece", Médecins sans Frontières, 2014, Report available at the following address: http://www.msf.org/sites/msf.org/files/invisible_suffering.pdf

[21] Angeli D., Triandafyllidou A. « Is the indiscriminate detention of irregular migrants a cost-effective policy tool? A case-study of the Amygdaleza Pre-Removal Center », MIDAS Policy Brief, May 2014, http://www.eliamep.gr/wp-content/uploads/2014/05/Policy-brief_the-case-study-of-Amygdaleza-1.pdf

help to circumvent worsening of mental and physical health conditions. While representing a financial burden for the receiving State, refusing to develop appropriate detention capacities may nevertheless be even more costly. Indeed, curing diseases and traumas which have deteriorated due to detention is an additional cost States will have in one way or another to afford. In addition, bad physical and mental health conditions may make social inclusion of migrants even more difficult.

1.3 The social cost of detention

The impact of detention on health should be considered in a broader way and more particularly regarding its social impact. In mentioning social impact, this paper takes into account the main fields which are considered crucial to enable and improve migrants' integration into the new society. This concerns more specifically: access to work, access to public services and goods delivered in the framework of integration programme and perception from the receiving society as integration is a two-way process.

1.3.1 Access to the labour market

Access to the labour market has always been considered, alongside family reunification, as a chief mean of integration. In this view, the Common Basic Principles for Integration underline "Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible".

However, it is widely acknowledged, as underlined above, that people who have experienced detention suffer from post-traumatic diseases like depression and self-depreciation. In such circumstances, accessing the labour market may be quite difficult. Indeed, people suffering from depression, or self-depreciation are not in a position to make full use of their potential and integrate into the labour market appropriately.

This could lead to two scenarios. First, people are not confident enough and therefore not in a capacity to take up the positions for which they normally could have applied for because they are qualified for or have the skills required. It may take a while for these people to fully recover and access the labour market at their level. Meanwhile, the receiving society has to provide for material and health support.

The second scenario is the worst case scenario. The level of mental and physical disabilities following detention is so high that people are simply unable to access the labour market and exercise any kind of economic activity. In this case, the recovering period is even longer and State support should be increased without always being sure that these people will perform again.

As already underlined, detention is not always the only cause of mental and physical disabilities suffered by migrants and more particularly refugees, but it does not help and sometimes worsen their mental health. It would nevertheless be key to take this element into account before developing detention policies in particular when it comes to people arriving at EU's border and who have high chances and expectation, due to their nationality, to receive protection.

As they stand today, the Common Basic Principles on Integration do address labour market access of third country nationals as if they were in their full mental and physical capacity. But in practice this is not always the case, in particular when it comes to refugees, who are as underlined by the European Court of Human

Rights vulnerable people[22]. Hence, an adaptation of the Common Basic Principles acknowledging that access to the labour market may be difficult for some categories of third country nationals, including those having experienced detention, could help in including this dimension into Member States practices.

1.3.2 Access to public services and goods

A step further leads also to consider how released migrants do react *vis-à-vis* the Member State. This question is more precisely related to the trust migrants may have regarding a State which has detained them for reasons which are not related to any criminal action and from their perspective no objective reasons.

It should of course be underlined that this question has to do with the length and conditions of detention experienced. Without minimising the impact of the sole fact of being detained could have on mental health and consequently trust, we assume that the trust towards public authorities decreases with longer and bad detention conditions. Hence, the level of mistrust may differ according to the length and conditions of detention.

This said, the effect of detention on trust towards the receiving State and authorities could be envisaged under two specific angles. Firstly, it could be considered that people do not turn towards or use public administrations and services in an easy fashion. Are migrants motivated or incited to turn to public services where they know that these services are managed by a State which has detain them for the sole reason they have crossed a border without authorisation?

This could create a series of problems in several fields. Indeed, migrants may feel reluctant to visit health services or public hospitals which could have a negative impact on their health. Migrants may also feel reluctant to visit several public services that may help them to strengthen their integration into the reiving society such as housing services, social security services, and education services, and so on so forth. Last but not least, it may well be the case that released migrants being in a regular situation may feel a strong reluctance to turn to police or security services. The latter could be a problem if migrants are subject to threat, harassment or any kind of behaviour or discrimination which makes their stay and integration into the receiving society more difficult. In all of the cases mentioned, mistrust towards public institutions and services could have a negative impact on migrants integration.

In the end, these series of reluctances, taken together or isolated, could have a negative impact on integration policies developed by Member States. Migrants may not be willing to take up the full advantage of integration policies and measures developed to ensure their inclusion in the society. In practice they may refuse to access a wide range of services offered to them ranging from medical care, education, labour market access or even housing services. As a consequence, actions developed to enhance social inclusion may not produce their full effect due to the phenomenon of mistrust deriving from prior detention.

In the end, taking into account the aftereffects of detention on social inclusion should lead either to reconsider the use of such a practice or to design and implement integration policies with this factor in mind. More than a mere financial cost, detention may then have a social cost as released migrants may not

[22] "The Court sees no reason to depart from that conclusion on the basis of the Greek Government's argument that the periods when the applicant was kept in detention were brief. It does not regard the duration of the two periods of detention imposed on the applicant – four days in June 2009 and a week in August 2009 – as being insignificant. In the present case, the Court must take into account that the applicant, being an asylum-seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously", Case of M.S.S. v. Belgium and Greece, application n° 30696/09, 21 January 2011.

make the full use of support and policies provided to them. In this regard, the Common Basic Principle n° 6 which recalls the prohibition of non-discrimination and calls for public institutions to be open to immigrants may not work out for this category of migrants.

1.3.3 Safeguarding the two – way process principle

The Common Basic Principle n° 1 indicates "Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States". In this view, the document underlines that the involvement of the receiving society "should create the opportunities for the immigrants' full economic, social, cultural, and political participation". But detention is accompanied with a social negative representation which does not ease the promotion of social and cultural participation.

To put it concretely, pictures of people handcuffed and brought to closed detention centres fundamentally changes the perception people can have towards migrants and more specifically asylum seekers and refugees. This portrays the image of migrants being considered and portrayed as criminals. This does not help to foster a positive perception of migrants into the whole society and engage local and national population into a positive approach towards migration. In the end, it may be a high social and political cost to pay due to detention.

This section of the paper has shown that the interconnection between immigration and integration based on legally residing migrants is too narrow as it excludes from its scope migrants in an irregular situation. But, and as underlined, many migrants may in certain circumstances become legally residing third country nationals. Hence, a broader view should take place acknowledging that migrants in an irregular situation may in certain circumstances become legally residing and therefore invited to integrate. But this would require a "Copernican Revolution" which is currently not on the agenda. For the time being, immigration related policies and integration are still like water and oil, they coexist but never mix. This should be considered as a fundamental problem especially when considering the negative impact of detention on further integration of migrants. Acknowledging the major U-turn needed to fully reconcile immigration and integration policies, the second part of the paper proposes several actions to put in place starting from the implementation of existing rules to the mainstreaming of integration into immigration policies.

2. OVERCOMING DISCONNECTION: IMPLEMENTING AND MAINSTREAMING

It should immediately be underlined this section does not plead for the abolition of detention. While such a practice may have negative impact on migrants' integration, it is also one tool at Member States disposal to manage and implement migration rules and policies. However, given its negative impact on people and integration, this paper tries to explore the best balance possible between immigration detention practices and integration purposes. In this view, the paper proposes to address two different angles which could help in reconnecting the dots between immigration and integration objectives and hope that finally foes will become friends. It starts with the very basic idea that rules should be implemented (A) and follows with the proposal to start mainstreaming integration in immigration policy (B).

2.1 Implementing existing rules as a source of cohesion

The EU has adopted a series of rules to frame detention of asylum seekers and third country nationals (1). But Member States do not always apply these rules in a way that could limit or avoid detention (2) which calls for new thinking about ways to ensure better compliance in the implementation of EU rules.

2.1.1 EU legislation on detention

EU law in the field of immigration and asylum has framed Member States margins of manoeuvre regarding detention of asylum seekers[23] and third country nationals in an irregular situation.

Detention of asylum seekers

The conditions under which asylum seekers can be detained are defined by two different sets of EU legislation. The one currently in force dates from the first wave of EU asylum rules adopted between 2003 and 2005. More precisely, the Reception Conditions Directive[24] and the Asylum Procedures Directive[25], and also the Dublin II regulation[26], envisage the possibility for Member States to detain asylum seekers.

Among these rules, Article 7, paragraph 3, of the Reception Conditions Directive states "When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law". On its side, the Asylum Procedures Directives devotes two provisions to the detention of asylum seekers; Article 18, paragraph 1, of the Asylum Procedures Directive states "Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum". It adds in its 2nd paragraph "Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review".

However, as underlined by the European Court of Justice, the specificity resides in the fact that none of the Directives mentioned above "carries out, at the present stage, a harmonisation of the grounds on which the detention of an asylum seeker may be ordered". And the Court adds "therefore, for the time being it is for Member States to establish, in full compliance with their obligations arising from both international law and European Union law, the grounds on which an asylum seeker may be detained or kept in detention"[27].

Notwithstanding the lack of common definition regarding the grounds for detention, the Court has pointed out in the same judgement that detention is possible insofar that it "does not result from the making of the application for asylum but from circumstances characterising the individual behaviour of the applicant before and during the making of that application" such as lodging an application to delay or jeopardize enforcement of a return decision and the risk of absconding the removal.

In summary, current EU law does not prevent Member States to detain asylum seekers. However, asylum seekers should not be detained for the sole reason that they have lodged an application but where it is

[23] Directive 2013/33/EU of the European Parliament and the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).
[24] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
[25] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
[26] See article 17, paragraph 2, of Council Regulation (EC) N° 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
[27] CJEU, 30 May 2013, Mehmet Arslan, Case C-534/11.

deemed necessary to detain them or keep them detained, such a decision should be based on "an assessment on a case-by-case basis of all the relevant circumstances".

Rules regarding detention of asylum seekers should be different as of 20 July 2015. Indeed, the recast reception Conditions Directive[28] devotes 4 provisions to the specific question of detention of asylum seekers. Recalling the principle upon which asylum seekers should not be detained for the sole reason they apply for international protection, the new Directive defines in a more detailed manner the conditions under which people asylum seekers can be detained.

According to the new Directive, Member States can detain asylum seekers considering three conditions are fulfilled: first, when it proves necessary, second on the basis of an individual assessment of each case and finally if other less coercive alternative measures cannot be applied effectively[29].

Then the Directive defines the grounds which can justify detention. According to article 8, paragraph 3, an applicant may be detained only:

(a) in order to determine or verify his or her identity or nationality;
(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;
(d) when he or she is detained subject to a return procedure under Directive 2008/115/(…), in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
(e) when protection of national security or public order so requires;
(f) in accordance with Article 28 of Regulation (EU) No 604/2013 [the Dublin III Regulation].

In addition to the definition of grounds enabling Member States to detain asylum seekers, the new Directive imposes Member States to grant a series of guarantees to detained asylum seekers. This concerns for instance the length of detention, which should be as short as possible and for as long as the grounds mentioned above are applicable, or the conditions of detention on the basis of which "detention of asylum seekers shall take place, as a rule, in specialised detention facilities".

Without entering into too many details, it is clear that the conditions under which asylum seekers can be detained are under EU law are clearly defined and framed in a significant manner Member States' actions and margins of manoeuvre.

Detention of irregularly staying third country nationals

Detention is a practice used to prevent irregular entry in the territory and enable the return of third country national in an irregular situation. The Schengen Borders Code[30], which deals with entry rules in the

[28] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).
[29] Article 8, paragraph 2, of Directive 2013/33/UE states "When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively".

Schengen area, does explicitly address the issue of detention. It states in Article 13, paragraph 4, "The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned", assuming then that detention is possible.

On its side Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals[31] devotes a chapter entitled "Detention for the purpose of removal". Composed with 4 provisions, this chapter establishes a set of rules which have to be implemented by EU Member States in the return procedure.

Article 15 of the Directive frames the conditions under which Member States can detain third country nationals. Its first paragraph defines the principles governing detention. It states "Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or
(b) the third-country national concerned avoids or hampers the preparation of return or the removal process."

Then, the Directive defines a series of rules Member States have to comply with. This comprises the procedure to implement judicial review and review of detention, the length of detention and also the obligation to release the persons where conditions are not or no more fulfilled or where the prospect of removal does not exist any longer.

Conditions of detention are more precisely framed by article 16. This provisions makes it obligatory for Member States to detain as a principle, third country nationals in specialised detention facilities, to establish contact with legal representatives, family members and consular authorities, to provide emergency health care and essential treatment of illness, to allow – subject to possible authorisation – visits to relevant and competent national, international and non-governmental organisations and bodies and to provide for information about rights and obligations in the detention facilities.

Finally, Directive 2008/115/EC deals with two additional specific cases. Article 17 addresses minors and families. As a principle minors and families shall only be detained as a measure of last resort and for the shortest appropriate time. Where detained, families shall be provided with separate accommodation guaranteeing adequate privacy. Article 18, deals with emergency situations and organises derogations.

It is clear that Directive 2008/115/EC limits the margins of manoeuvre of the Member States regarding detention of third country nationals subject to return procedures. This concerns, among others, the obligation to check whether other less coercive measure can be applied, the conditions for detention, the length of detention which may not be longer than 6 months, 18 months under strict conditions, and also the conditions of detention. These conditions have also been subject to the European Court of Justice case laws[32].

[30] Regulation (EC) N° 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105, 13.04.2006.
[31] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008.
[32] To access the European Court of Justice case laws, refer to the website www.EuropeanMigrationLaw.eu which classifies the case laws corresponding to each specific provision of the Directives.

In the end, detention of asylum seekers and third country nationals should respect a series of EU requirements. To sum up, it may be possible to consider that 4 principles govern the detention of third country nationals and asylum seekers under EU law. Hence, detention should:

- Pursue a precise objective
- Be decided if no alternative and less coercive measures cannot be applied effectively
- Be based on an individual assessment
- Be as short as possible and for as long as the grounds for detention are applicable

While it is clear that EU law embeds obligations Member States have to implement in their law and actions, these rules are not always put into practice and may therefore lead to unlawful detention.

2.1.2 The need to better implement existing rules

The implementation of EU rules in the Member States can be considered under two specific angles. The first one is to consider the duty of the Member States to transpose and put into practice EU rules and jurisprudence under the control of the European Commission. The second is to ensure that Member States develop in accordance with EU directives alternatives to detention. In both cases, it is not sure that results achieved so far enable the decrease of detention practices.

The duty to put EU law and jurisprudence into effect

Member States have the duty to put EU law and jurisprudence into effect. This comprises the obligation to transpose EU Directives into national law and to make sure that EU rules are effectively implemented in practice, i.e. by national authorities in their daily work. If Member States fail to do so, the European Commission has the power to launch against "failing States" infringement procedures[33].

According to specific provisions enshrined in each Directive, the European Commission has the duty to report on the application of the Directives in the Member States. These reports give the European Commission two types of information; whether Member States have transposed EU law in due time and whether transposition and practice are compatible with EU rules. Such reports enable the European Commission to have knowledge about possible violations of EU rules in the Member States and to take action against them.

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However, practice does not follow precisely this logic. Indeed, where the Commission gets the information that some Member States do not fully comply with their obligations, it does not always take action. Instead, the Commission prefers adopting a very diplomatic language in its reports warning Member States about inappropriate implementation. Both reports adopted regarding the reception conditions Directive and the return Directive are typical in this regard.

[33] Article 258 TFEU.

In the report on the implementation of the Reception conditions directive[34], the Commission recalled the rules applicable in this domain. It stated "However, given that according to the Directive detention is an exception to the general rule of free movement, which might be used only when "it proves necessary", automatic detention without any evaluation of the situation of the person in question is contrary to the Directive. Furthermore, the length of detention, except in duly justified cases (e.g. public order), which prevents detained asylum seekers from enjoying the rights guaranteed under the Directive, is also contrary to its provisions". By recalling the rules, the Commission informs Member States that it is aware of problems which may occur. In this regard, the report drafted for the European Commission on the implementation of the Directive mentioned for instance that Malta used to detain systematically almost all asylum seekers[35].

Regarding detention of third country nationals in an irregular situation, a report published in 2014 by the European Commission shows that the conditions regarding detention enshrined in Directive 2008/115/EC are not always fully implemented by all of the Member States. The Commission underlines in the conclusions of the report "Despite these positive developments, and the fact that Member States have generally ensured that the Return Directive is transposed in their national law, there is still scope for improvement in the practical implementation of the Directive and of return policies in general, ensuring respect for fundamental rights standards (e.g. detention conditions, effective legal remedies) and effectiveness (e.g. faster procedures and higher rates of — voluntary — return)".

These reports should lead to two types of actions. Member States should modify national rules where they breach EU law and jurisprudence. The Commission should take concrete actions where violations are patent. But in the field of immigration and asylum, the European Commission has been reluctant to bring Member States to the Court of justice[36]. As a consequence, asylum seekers and third country nationals are still detained and in some Member States in violation of EU law[37]. In addition, it should be recalled that lawful detention does not only concern the grounds for detention but also the conditions of detention. EU legislation[38], as well as the jurisprudence of the Court of justice[39], have underlined that detention conditions should respect the dignity of people detained.

It belongs to the Member States to make sure their national rules and practices are in line with EU rules. It is also the task of the European Commission to take States to Court where it happens that they infringe EU legislation. Time has come to overcome past behaviours and to launch legal actions against failing States in

[34] Report from the Commission to the Council and the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States, COM(2007) 745 final.

[35] Comparative overview of the implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States, report available on the European Commission DG Home Affairs website: http://ec.europa.eu/dgs/home-affairs/e-library/docs/pdf/odysseus_synthesis_report_2007_en_en.pdf

[36] See for instance Pascouau Y. "Human rights violations in the field of migration: a collective responsibility", European Policy Centre, Policy Brief, December 2012.

[37] See for instance AIDA Annual Report 2013/2014 "Mind the Gap. An NGO Perspective on Challenges to Accessing the Protection in the Common European Asylum System" (A project by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, the Irish Refugee Council and the Hungarian Helsinki Committee), 2014 http://reliefweb.int/sites/reliefweb.int/files/resources/aida_annual_report_2013-2014_0.pdf ; "The Hidden face of immigration Detention Camps in Europe", Open Access Now, 2014, http://www.migreurop.org/IMG/pdf/hiddenfaceimmigrationcamps-okweb.pdf

[38] See point (18) Preamble Directive 2013/33/EU (Reception Conditions of asylum seekers) "Applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation. In particular, Member States should ensure that Article 37 of the 1989 United Nations Convention on the Rights of the Child is applied". See also point (17) preamble Directive 2008/115/EC (Return Directive) "Third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Without prejudice to the initial apprehension by law-enforcement authorities, regulated by national legislation, detention should, as a rule, take place in specialised detention facilities".

[39] CJEU, 30 May 2013, Arslan, Case C-534/11; CJEU, 17 July 2014, Pham, Case C-474/13.

particular when it comes to abusive and unlawful detention of migrants. Linking abusive and unlawful detention with its potential impact on social integration could constitute an incentive for States and the European Commission to abide by their duties under EU law.

The new European Commission which took function as of 1st November 2014 could reverse the tide and finally launch infringement procedures against failing States. Could the appointment of a new First Vice-president responsible *inter alia* for the rule of law and the Charter of fundamental Rights be considered as a sign in this direction?

The need to develop alternatives to detention

Both Directives defining rules on migrants' detention contain one clear obligation weighing on Member States', detention is only possible "unless other sufficient but less coercive measures can be applied effectively". In other words, where alternatives to detention exist, national authorities have to check whether these alternatives can play before placing people in detention.

The European Migration Network has recently published a very useful and detailed study entitled "[t]he use of detention and alternatives to detention in the context of immigration policies"[40]. Covering 26 States, this study contains a wide range of information in particular regarding alternatives to detention.

It indicates that 24 States have developed alternatives to detention which take different form like reporting obligations; residence requirements; the obligation to surrender identity or a travel document; release on bail; electronic monitoring; provision of a guarantor; and release to care workers or under a care plan. Among the most problematic States, the study report that alternatives to detention are not currently provided and Malta and, despite their existence in national law, not applied in Greece.

In its conclusions, the study underlines that "the impact of detention and alternatives to detention on the ability of (Member) States to reach and execute prompt and fair return decisions may be rather insignificant". Combined with the obligation to cease detention "when it appears that a reasonable prospect of removal no longer exists"[41], this statement strongly calls into question the whole logic of detention practices where they are implemented with the view to return people. This also apply to asylum seekers since the recast Reception Conditions Directive stipulates that asylum seeker applicants shall be kept in detention only for as long as the grounds set out for detention are applicable[42].

While EU rules address the issue of alternatives to detention, Member States should be incentivised to develop such practices. On the one hand, the existence of different practices and regimes in the Member States should help in identifying and sharing good practices. On the other hand, and the study is less affirmative on this point[43], the financial side of non-detention could also be an incentive to develop alternative schemes.

It should nevertheless be pointed out that the impact of detention on migrants' integration is not addressed in the European Migration Network Study, highlighting in this sense that there is still a gap existing between detention and integration. As an example, the study addresses the financial cost of

[40] "The use of detention and alternatives to detention in the context of immigration policies", Synthesis Report for the European Migration Network Focus Study 2014.
[41] Article 15.4 Directive 2008/115/CE.
[42] Article 9.1 Directive 2013/33/EU.
[43] The study indicates in its conclusion "placing persons in an alternative to detention is less costly than placing them in a detention centre, although direct evidence is limited and not available in all Member States".

detention, compared with the use of alternatives, but never goes beyond that approach to broaden it to the social positive impact of non-detention. This shows that there is still some efforts to engage to effectively link immigration and integration. Such a linkage could be achieved if Member States decide to mainstream integration into immigration policies.

2.2 Mainstreaming integration in immigration policies

The way integration related issues are included into migration and asylum policies is currently limited (1). It is now necessary to mainstream integration into immigration and asylum policies (2).

2.2.1 Current limited scope of mainstreaming

The idea of mainstreaming is not new. It dates from 2004 as it was included into the Common Basic Principles n° 10. Entitled "Mainstreaming integration policies and measures in all relevant policy portfolios and levels of government and public services is an important consideration in public-policy formation and implementation", this basic principle tried mainly to include the issue of integration at different levels of decision, in different policy fields which have a strong link with integration like education or social services, as well as in different spheres of private and public life.

Although this approach of mainstreaming is extremely important it follows the initial theoretical framework we pointed out at the beginning of this paper: integration is only applicable to people admitted to reside into the receiving society. This means that the way the Common Basic Principles envisage the mainstreaming of integration policies does not link up with the immigration side dealing with irregular migration.

This initial standpoint has not been overcome overtime neither in the Commission's 2005 Integration Agenda nor in the 2011 Integration agenda. In 2005, the Commission noted "Integration is not an isolated issue, it cuts across various policy fields, such as employment, education and urban policies, and it needs to be reflected in a whole range of policies"[44]. In the same document, the Commission emphasised that action needed at national level may include "Ensuring that integration is an important element of policy on economic migration". The 2011 Commission's Integration Agenda did not introduce major mind-set change. While the word mainstreaming is even not mentioned in the document, the Commission relied on existing objectives primarily based on legal migration[45].

Ten years after the adoption of the Common Basic Principles, the June 2014 Justice and Home Affairs Council agreed to adopt conclusions of the Council and the Representatives of the Governments of the Member States on the integration. The mere title of the document is self-sufficient to portray the limited scope of the conclusions which address the integration "of third-country nationals legally residing in the EU"[46].

[44] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union", COM(2005) 389 final, 01.09.2005.

[45] "The Europe 2020 Strategy and the Stockholm Programme fully recognise the potential of migration for building a competitive and sustainable economy and they set out, as a clear political objective, the effective integration of legal migrants, underpinned by the respect and promotion of human rights", Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "European Agenda for the Integration of Third-Country Nationals", COM(2011) 455 final, 20.07.2011.

[46] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/143109.pdf

A few days later, the European Council adopted the Strategic Guidelines on the Area of Freedom, Security and Justice[47]. Aimed at defining the legislative and operational planning in several fields including immigration and asylum, the Strategic Guidelines referred to integration as a national policy which should receive EU support[48]. Mainstreaming was simply not considered.

Finally, mainstreaming of integration policy was on the agenda of a Ministerial Conference on Integration held in Milan in November 2014 under Italian Presidency. Underlying "the interconnections between migration and integration policies are manifold", the conclusions nevertheless did not break the existing logic. Whereas the interconnection is extended to the asylum field, it addresses "reception conditions of beneficiaries of international protection", i.e. people having already received a status and not asylum seekers.

As a matter of fact, policy orientations at EU level are locked into a logic whereby integration policies and measures should only accompany legally residing third country nationals and are never linked with the potential fact that third country nationals in an a priori irregular situation could be granted a right to reside and therefore fall within the ambit of inclusion policies.

2.2.2 Mainstreaming within immigration and asylum policies

This part of the paper does not aim at criticising the efforts developed to mainstream integration policies with other relevant policy fields. It seeks to highlight a critical caveat whereby mainstreaming does not take place within immigration policies as a whole. Indeed, as already demonstrated, the situation of migrants falling within the broad scope of border or return policies is never linked with the idea that they may be granted the right to reside and therefore have the prospect to integrate into the receiving society.

For instance, the situation of migrants apprehended at the border is quasi-systematically managed under "security-driven" procedures. In such circumstances, the necessity to identify people or the belief that migrants would abscond lead national authorities to detain people. In some case, the use of detention in such circumstances is a well-established policy which plays as a deterrent measures towards migrants who may be willing to access the territory without authorisation[49]. But these practices, whether developed due to time constraints or implemented for political purposes, do not take into account the effects detention may have on individuals in the immediate, medium or long run and in particular regarding integration.

It is therefore necessary to think in a broader manner and accept the linkage between all policies falling under the umbrella of immigration and asylum. In this view, it becomes necessary to include an integration perspective into policies addressing irregular migration. It may seem awkward at first sight to think in this way, as the distinction irregular/exclusion-legal/inclusion is strongly anchored in our traditional way of apprehending migration policies. But mainstreaming integration policies should have started within the migration field before being extended to other interconnected policies fields. And it has not been the case so far.

[47] Strategic Guidelines on the Area of Freedom, Security and Justice, OJ C 240, 24.07.2014.

[48] "The Union should also support Member States' efforts to pursue active integration policies which foster social cohesion and economic dynamism".

[49] As pointed out by the UNHCR "Putting people in detention has become a routine – rather than exceptional – response to the irregular entry or stay of asylum-seekers and migrants in a number of countries. Some governments view detention as a means to dissuade irregular migration to or applying for asylum in their territories", in "Beyond Detention. A Global Strategy to support governments to end the detention of asylum-seekers and refugees", UNHCR 2014. Available online: http://www.unhcr.org/53aa929f6.pdf.

Another path to explore should concern the asylum field. It would firstly be for the EU and its Member States to think along the lines of the European Court of Human Rights. Indeed, the Strasbourg Court has a broader understanding of the fact that asylum seekers are vulnerable persons. In the M.S.S. case law it particularly pointed out that in the present case "the Court must take into account that the applicant, being an asylum-seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously"[50].

EU legislation in this regard is less open. Indeed, vulnerability is not consubstantial to the status of asylum seeker. The recast reception conditions directive indicates "Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive"[51]. The following provision of the Directive mentions that "Member States shall assess whether the applicant is an applicant with special reception needs"[52].

In summary, where the Strasbourg Court considers that asylum seekers are vulnerable persons, EU law identifies some categories of asylum seekers who are obviously vulnerable – like minors, disabled persons, pregnant women, etc. - and those who fall within this category after assessment – like victims of human trafficking, persons with mental disorders, etc. As a consequence, asylum seekers are not automatically presumed and therefore apprehended as vulnerable persons. Hence, they may be detained before the assessment of their vulnerability is undertaken. The EU and Member States may well be inclined to think along the lines of the ECtHR in order to limit the use of detention when it comes to asylum seekers.

In addition, the EU and its Member States could also broaden up the scope of reflection and include an integration dimension in the Dublin Regulation[53]. Indeed, the criteria implemented to determine which Member States is responsible for examining an asylum application are not based on integration purposes. In practice, the application of the hierarchy of criteria[54] has the effect to designate responsible Member States which have taken the largest share in letting migrants' in, i.e. EU State located at the periphery.

However, Eurostat has demonstrated that different reasons motivate asylum seekers to lodge an application in a specific Member State. It indicates "a number of factors play a role in determining where an asylum seeker will lodge his/her application. These include historical ties between countries of origin and destination (former colonies for instance), a certain knowledge of the language used in the host country, the presence of established ethnic communities, and the economic situation of the destination country"[55].

[50] Case of M.S.S. v. Belgium and Greece, application n° 30696/09, 21 January 2011.
[51] Article 21 Directive 2013/33/EU.
[52] Article 22 Directive 2013/33/EU.
[53] Regulation (EU) n° 604/2013 if the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180, 29.06.2013.
[54] "The criteria for determining responsibility set out in Articles 6-14 are to be applied on the basis of the situation existing when the asylum seeker first lodged his or her application with a MS and in the following order: principle of family unity, issuance of residence permits or visas, illegal entry or stay in a MS, legal entry to a MS, and application in an international transit area of an airport. If no MS can be designated on the basis of the criteria listed, the first MS with which the asylum application was lodged will be responsible for examining it", European Asylum Support Office, "Annual Report. Situation of asylum in the European Union in 2013", July 2014.
[55] http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Asylum_statistics.

Whether it is historical links, language, existing communities or the opportunity to access the labour market, all of the criteria have a link with integration. Hence, taking these elements into consideration within the whole functioning of the Dublin Regulation could lead to a different distribution of asylum seekers between Member States and help improving asylum seekers, refugees and beneficiaries of international protection integration[56]. Up until now, modifying Dublin rules in this direction has always been rejected.

It derives from the analysis above that integration has so far not been mainstreamed at the level it should be. Efforts should now be developed to reconnect the dots between all areas covered by immigration, asylum and integration. Specific attention should also be given to the fact that all asylum seekers are vulnerable persons and should therefore be treated as such. With this in mind, mainstreaming integration into immigration related policies requires an institutional move which could take the form of a three-step approach:

- ✓ The European Commission should start gathering all relevant evidences regarding the negative impact of detention on social inclusion of migrants in the widest sense possible.

- ✓ Once this done, through research and exchange of evidences and practices through existing forums like the National Contact Point for Integration and the Integration Forum, the European Commission should produce a communication to EU institutions and Member States highlighting the link between detention and integration.

- ✓ Finally, on this basis, the Council and the Representatives of the Governments of the Member States should agree to adopt conclusions linking in a stronger manner integration with immigration and asylum issues, including irregular migration issues. In this context, States may recognise the impact of detention on integration and accept to change their practices by decreasing detention and using alternatives to detention as much as possible.

CONCLUSION

Over the last 15 years, the discourse regarding the interconnection between immigration and integration has been a one-sided approach. Integration is only open to legally residing migrants. Migrants in an irregular situation, notwithstanding their potential capacity to receive a legal status are ab initio considered as persons to expel and therefore excluded from the scope of integration policies.

The paper has demonstrated that such an approach may become problematic where irregular migration is accompanied with the use of detention practices. Indeed, detention may have extremely negative impacts on released individuals which may in the short, medium and sometimes long run hamper migrants' capacity to integrate in the society. While economic, when it comes to the management of detention centres, the paper has more precisely highlighted the social impact of detention. It has been underlined that the prize to pay to overcome the social impact may well be far more significant than expected.

On this basis, the paper has provided for some solutions to limit the use of detention. This requires firstly to ensure that EU rules are properly put into practice by the EU Member States, in particular regarding the use of alternatives to detention. While necessary, this approach even with the help of the European

[56] On this see also, Néraudau E. « La réception du droit européen de l'asile en droit Belge : le Règlement Dublin », EDEM (Equipe Droits Européens et Migrations), Université Catholique de Louvain.

Commission launching infringement procedures is not enough. Indeed, the paper recognises that there is an emergency to mainstream integration in migration related policies. This calls for a radical change of "software" or "mind-set" to debunk integration from the legal field and broaden it. This requires three types of actions: including an integration perspective in irregular migration policies; considering that asylum seekers are vulnerable people and should deserve as such a specific treatment different from immigration management and finally, launching a wide discussion at EU level about mainstreaming integration policies with the European Commission taking the lead and using existing bodies to exchange views and practices.

The distinction "legal migration = inclusion" and "irregular migration = exclusion" is firmly rooted in EU and Member States policies. It has had the consequence to create an artificial disconnection between policy fields with the effect to exclude integration policies from an entire side of immigration and also asylum policy. Hence, the fight against irregular migration has validated the use of detention as a tool to hamper people to enter as well as to deter people to migrate. In this context, a big chunk of migrants, asylum seekers and refugees have been detained and released, bearing the physical and psychological scars of detention sometimes a long time after.

Immigration and integration policies are friends when it comes to legally residing migrants. They are foes when it comes to irregular migration. The paper sheds light on this artificial construction and shows on the contrary how detrimental such a Manichean position could be. It pleads for the mainstreaming of integration policies all across the board and more particularly regarding the use of detention in the field of irregular migration. In doing so, with some specific recipes, it hopes that foes would become friends again.