Alma Mater Studiorum – Università di Bologna
in cotutela con Radboud Universiteit

DOTTORATO DI RICERCA IN

STUDI GLOBALI E INTERNAZIONALI

Ciclo XXXII

Settore Concorsuale: 14/A2 - SCIENZA POLITICA

Settore Scientifico Disciplinare: SPS/04 - SCIENZA POLITICA

SHIFTING GOVERNANCE: MAKING POLICIES AGAINST MIGRANT SMUGGLING ACROSS THE EU, ITALY AND SICILY

Presentata da
Federico Alagna

Coordinatrice Dottorato
Prof.ssa Daniela Giannetti

Supervisori
Prof.ssa Daniela Piana
Prof. Huib Ernste

Co-supervisori
Prof. Martin van der Velde
Prof. Joris Schapendonk

Esame finale anno 2020

Shifting Governance

Making policies against migrant smuggling across the EU, Italy and Sicily

Federico Alagna

This page intentionally left blank

Contents

List of abbreviations and acronyms

AFSJ	Area of Freedom, Security and Justice
ANCI	Associazione Nazionale Comuni Italiani
ASGI	Associazione per gli Studi Giuridici sull'Immigrazione
BUDG	EP Committee on Budgets
CEAS	Common European Asylum Framework
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CoR	Committee of the Regions
COREPER	Committee of Permanent Representatives
CSDP	Common Security and Defence Policy
DDA	Direzione Distrettuale Antimafia
DG	Directorate-General
DG JUST	Directorate-General for Justice and Consumers
DJ HOME	Directorate-General for Migration and Home Affairs
DL	Decree-Law
DNA	Direzione Nazionale Antimafia e Antiterrorismo
EASO	European Asylum Support Office
EC	European Commission
ECHR	European Convention on Human Rights
ECHtR	European Court of Human Rights
EEAS	European External Action Service
EMSC	European Migrant Smuggling Centre
EP	European Parliament

EPRS	European Parliament Research Service
EU	European Union
FP	Facilitators Package
FRA	European Union Agency for Fundamental Rights
GAMM	Global Approach to Migration and Mobility
GCM	Global Compact for Safe, Orderly and Regular Migration
GDP	Gross domestic product
JHA	Justice and Home Affairs
ICHRP	International Council on Human Rights Policy
IO	International organisation
IOM	International Organization for Migrations
LIBE	EP Committee on Civil Liberties, Justice and Home Affairs
LoA	Logic of appropriateness
LoC	Logic of consequence
MEDU	Medici per i Diritti Umani
MEP	Member of the European Parliament
MLG	Multi-level governance
MP	Member of Parliament
MS	Member State
NGO	Non-governmental organisation
OCG	Organised criminal group
PETI	EP Committee on Petitions
PJCCM	Police and Judicial Cooperation in Criminal Matters
QMV	Qualified majority vote
REFIT	Regulatory Fitness and Performance Programme

RQ	Research question
SAR	Search and rescue
SPRAR	Sistema di Protezione per Richiedenti Asilo e Rifugiati
SQ	Research sub-question
TEU	Treaty on European Union
TIP	Trafficking in persons
TFEU	Treaty on the Functioning of the European Union
TUI	Testo Unico sull'Immigrazione
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime

Political Parties and Parliamentary groups *(in brackets the European affiliation of the Italian parties)*

+E	+ Europa *(ALDE)*
ALDE	Alliance of Liberals and Democrats for Europe
COR	Conservatori e Riformisti *(ECR)*
ECR	European Conservatives and Reformists
EFDD	Europe of Freedom and Direct Democracy
EPP(-ED)	European People's Party-European Democrats
FdI	Fratelli d'Italia *(ECR)*

FI	Forza Italia *(EPP)*
GAL	Grandi Autonomie e Libertà *(EPP area)*
(Greens/)EFA	Greens/European Free Alliance
GUE-NGL	European United Left/Nordic Green Left
LeU	Liberi e Uguali *(S&D – GUE-NGL)*
LN	Lega Nord *(ENF)*
M5S	Movimento 5 Stelle *(EFDD)*
PD	Democratic Party *(S&D)*
PdL	Popolo delle Libertà *(EPP)*
PES	Party of European Socialists
S&D	Progressive Alliance of Socialists and Democrats
UDC	Union of Christian and Centre Democrats *(EPP)*

Acknowledgements

The process leading to a PhD thesis is long and complex. And it would probably also be impossible, at least in this case and in my personal opinion, without the support and contribution of a number of people. Therefore, rhetorics aside, there are some people that I feel the urgency to thank, because, without them, these pages would have never been written.

I cannot but start with my supervision team. Prof. Daniela Piana, from the University of Bologna, was for long time more persuaded than me about the opportunity of starting a PhD: she kept trying to convince me, and after a few years I ended up agreeing with her. That is when my PhD adventure started, and since then she has continued to support and help me, in particular to orient myself within the complex world of the EU studies and to realise that what I was writing made actually sense, even when I had doubts about it. At the Radboud University I had the opportunity to meet and be guided by my other supervisor, Prof. Huib Ernste, and by my two co-supervisors, Dr. Martin van der Velde and Dr. Joris Schapendonk. Their contribution in broadening the horizons of my research besides a traditional political science approach was of the utmost importance. And so was their continuous reminder “not to forget about smuggling and migration”, while sometimes I was getting lost in my policy-making analysis. Not to mention the patience and the continuous presence of all of them throughout these three years, which I appreciated so much not only professionally but also, truly, from a personal point of view.

The comments and suggestions of the two external reviewers of my thesis, appointed by the University of Bologna, were also very important. They helped me in refining some aspects of this work, leading to its final version. I am therefore very thankful to Prof. Sergio Carrera and to Prof. Tineke Strik for their contribution and, clearly, for their positive evaluation.

In the framework of a joint doctorate, I have had the opportunity to carry out my activities both at the University of Bologna and at the Radboud University, meeting a number of significant people, whom I all want to thank. I am thinking, in particular, of my PhD colleagues, researchers and professors, as well as the always helpful

administrative staff, at Department of Political and Social Sciences in Bologna and at the Department of Geography, Planning and Environment (and, more broadly, at the Institute of Management Research) in Nijmegen. I have appreciated not only the very interesting exchanges with them, that have substantially helped me in improving and refining my research, but also the very good time spent together. They have been very important people to me, even more so than they have been extremely valuable and inspiring colleagues. And they have been many, which is the reason why I prefer not to mention any of them directly (also because I am sure that I would forget someone and, since scripta manent, I would rather avoid this faux pas). However, I make an exception for Iris Poelen, whom I wish to specifically name and thank for the invaluable help she gave me, by translating into Dutch the summary that is placed at the end of this thesis.

This whole research is based on a big quantity of data, including many interviews, and this is because many people and many institutions and organisations helped me in the data collection and trusted me enough to share their points of views, expertise and understanding of the issues considered. Part of this trust was based on the assurance of anonymity and I cannot therefore name any of them: but it is nevertheless important for me to express my deep gratitude. Each of them will understand and feel thanked – or at least I hope so.

But a person that I can actually name exists and is my friend Alessio Ghirlanda, extraordinary interpreter and translator, whose linguistic advice helped me – at least I hope – enhance the overall fluency of the text. However, any remaining linguistic mistake, inaccuracy or shortcoming is to be attributed exclusively to me.

Getting back to the safe ground of not naming specific persons, I want to thank also my family and my friends, from Messina, Bologna, Nijmegen or anywhere else in the world. They have supported and helped me, in this path as much as in all the others that I have walked through, with them, in my life. I mean, this is a gratitude which clearly goes much beyond this mere thesis, but I guess it is always good to make it clear and so I took the opportunity.

Some last few words of gratitude go to the *ragazzi dello Spirito Santo*, and to those of the *Pascoli*: migrants, some of them friends, but above all human beings, arrived in Sicily crossing those nightmarish places called Sahara desert and Mediterranean Sea

and that I have had the privilege of meeting at a certain point of my life. They have inspired my commitment in the migration field and, indirectly, also this work. Which is dedicated to them, who, in spite of everything, could make it. And, even more, to all those who could not.

F.A.

This page intentionally left blank

Abstract

This research seeks to understand the policy-making dynamics related to migrant smuggling within the European Union, focusing in particular on the Italian case and on the Sicilian sub-case, over the period 2014-2019.

The study is based on an operational definition of migrant smuggling which goes beyond a merely legal understanding of it and considers smuggling in its persistent tension between security and human rights. To do so, the phenomenon is unpacked into its two main components – supply and demand, the latter being often neglected in policy practices. After that, such components are brought back together into a 'smuggling spectrum', which becomes a key analytical tool: an area of complexity where the phenomenon is considered through six different layers, pointing to the existing contradictions both in empirical and policy terms.

Building upon this approach, this interpretive case study, falling within the broad field of the EU studies, combines new institutionalist and multi-level governance approaches. This analytical perspective makes it possible to answer the main research question, aimed at understanding how and why agency, influenced by institutional constraints, moves within and across governance levels in the formulation of policies aimed at countering the smuggling of migrants in the EU, Italy and Sicily. To do so, multiple data are considered and analysed, including: 23 in-depth semi-structured interviews, realised with relevant actors on different governance levels; parliamentary proceedings from 1998 to 2019; judicial proceedings; documents from the European Commission, the European Parliament, the Council of the EU, national ministries, Europol, Eurojust, UNODC, UNHCR and NGOs, among others.

The multi-level perspective is unfolded into three different levels – i.e. supranational (EU), national (Italy) and local (Sicily) – each of them being associated with a sub-research question. Moreover, the elaboration of an analytical model makes it possible to apply the conceptual combination of new institutionalism and multi-level governance on the specific case at hand and on the three governance levels connected.

Adopting a bottom-up perspective, the focus is firstly placed on local implementation patterns in Sicily, based on different arenas of agency. The consequences of these

practices on policy-making, as well as (sometimes unwanted) bottom-up dynamics in fighting migrant smuggling, influencing both national and European policies, are also discussed, disclosing the importance of certain actors in particular, such as judiciary, NGOs and intermediate bodies (institutions placed in-between governance levels), among others.

The analysis of the national level explores policy-making in relation to migrant smuggling, in the light of vertical and horizontal dynamics. The former are based on the influence of the local and EU levels, where again intermediate bodies play a crucial role, alongside parliamentary committees and unwanted effects originating at EU level. As for the latter, they consider the way in which different policy areas and different institutional and non-institutional actors placed at national level interact in the elaboration of smuggling-related policies. Here the security-based framework, the unwanted consequences caused by NGOs and the executivisation of policies are all aspects that gain primary relevance.

A very similar approach is proposed also at an EU level. In this case, vertical dynamics confirm the importance of intermediate bodies and parliamentary committees, in addition to field visits, whereas horizontal interactions help to disclose the relevance of other policy domains outside the Area of Freedom, Security and Justice, the institutional consequences of that, the interaction between supranational and intergovernmental actors as well as the important (and yet contradictory) role of research and studies.

Building upon this analysis and assessing the way in which each actor moves within and across the governance levels, influenced and limited by institutional constraints, this study makes it possible to understand (a) which actors lead the policy-making process in the field of anti-migrant smuggling in the EU, Italy and Sicily, and why this is the case; (b) what their approach to smuggling is; (c) what dynamics characterise the relationships between them; (d) how much room there is for processes of information and preference upload; (e) to what extent non-institutional actors contribute to the process of policy adoption.

Namely, what emerges in these five dimensions is the strong executivisation of policies, with a prominent role of national governments and of the Council of the EU; the widespread tendency towards a more securitising approach to migrant smuggling;

the existence of pass-the-buck dynamics (especially between national and supranational levels); the difficulty in processes of information and preference upload (mostly depending on the content to be uploaded); and, lastly, the importance of non-institutional actors in influencing the policy-making process through their practices.

The conclusions that are reached, on the one side, allow for an in-depth understanding of the specific Italian/Sicilian case, which is significant, considering this as first systematic insight into a policy domain still to be explored. On the other side, through the conceptual combination proposed, they provide a definition of a model aiming to look at similar policy-making processes in other fields and/or in other case-based and comparative studies.

This page intentionally left blank

Introduction

Migratory movements have attracted growing interest and concern, over the last decade, in political debates, public opinion discourse, research and practitioners activity all across Europe. This has been particularly true in the case of European Mediterranean countries – such as Italy – especially from 2013-14 onwards, when the migratory waves coming from North Africa and the Middle East increased substantially, at least for a few years.

Such a situation has polarised the debate within and across European countries, with the rise of xenophobic discourses and far right political parties, which have tried (in most cases successfully) to politically capitalise on the fears and concerns of the public opinion towards this issue. In such a context, the importance of deepening the research, in particular on certain aspects of the migratory process into Europe, has become crucial, in order not only to foster academic scholarship but also to provide facts and evidence for the public and political debate.

Aspects connected to the smuggling of migrants have become central in this story, for two different reasons. On the one side, most forms of migration into Europe through the Mediterranean Sea routes appear to require, to different extents, the involvement of smugglers, as shall be more thoroughly discussed in chapter 1. On the other side, the very public debate has increasingly focused on smugglers. This, however, has not always implied a true and deep concern about smuggling itself: throughout the research it shall be made clear how often the narrative of smuggling has been used to disguise restrictive migration policy preferences.

However, as a matter of fact, smuggling processes and smuggling-related narratives are crucial in order to better understand the patterns of the migration processes into Europe through the Mediterranean Sea.

This research moves from the acknowledgement of such a premise and addresses the current debate in academia concerning migrant smuggling in the Mediterranean routes, with a view not only to exploring issues not fully considered in research yet, but also to providing some considerations in a policy-oriented perspective. To do so, it focuses on a case study, i.e. Italy, and to a connected sub-case, i.e. Sicily, analysing

the characteristics of political agency in the making and implementation of smuggling-related policies across three different levels of governance – EU, national, local – in the period 2014-2019.

In such perspective, this research appears important and topical, focusing on an issue which has been relatively neglected in academic and grey literature; however, its importance is rather crucial in terms of understanding the EU migration governance, both theoretically and empirically. Furthermore, the approach chosen offers important elements of innovation, by focusing specifically on the process of making policies and suggesting a paradigm to look at it which is based on an across-the-level new institutionalist analysis.

The study consists of two main parts: Part 1 (chapters 1-3), which considers all the different theoretical, analytical and methodological aspects that gain relevance in the design of a research on the smuggling of migrants; Part 2 (chapters 4-7), where the approaches and models elaborated in the first three chapters are applied onto the case considered and the analysis stricto sensu is carried out.

In more detail, chapter 1 offers an in-depth view of the concept of migrant smuggling, unpacking its different components and proposing an approach that makes it possible to reconcile the need for an acknowledgement of the empirical complexity of the phenomenon and a viable definition, operationally and analytically relevant. In this chapter the different characteristics of smuggling, smugglers and smuggled migrants are considered, along with the different ways in which academic and grey literature have addressed them, leading to the formulation of the operational definition of smuggling – the 'smuggling spectrum' – and of the research problem.

Chapter 2 further elaborates on these aspects, offering a theoretical guidance to the research problem. It thereby calls for the combination of two different theoretical approaches – new institutionalism and multi-level governance – and, in so doing, narrowing down the research problem into a specific research question (and three connected sub-questions, one for each governance level). Based on this process, a 3-layer (institution/agency, vertical and horizontal dynamics) analytical model is proposed, which enables the above-mentioned conceptual combination and its concrete application onto the specific case. The methodological aspects of the research – including the time frame, the case selection and the specific characteristics

of case and sub-case, the source selection and their heuristic relevance – are also addressed here.

Chapter 3 briefly offers some background elements related to the applicable legislative framework, at an EU, national and local level, and the formal allocation of competences between them.

Part 2 follows a bottom-up approach, starting with chapter 4, where the focus is placed on the implementation aspects at a local level, in Sicily, mainly read through the lenses of the first layer of the analytical model. In particular, an analysis is provided of how agency makes it possible to deviate from the letter of norms and how and to what extent this contributes to making policies, both directly (at a local level) or through shifting up processes of preference upload and unwanted consequences.

Chapters 5 and 6 have very similar structures, based on layers 2 and 3 of the analytical model and considering the policy-making dynamics at the Italian and EU levels, respectively. In so doing, both vertical and horizontal dynamics are considered and, also through the consideration of the same phenomenon from multiple angles and perspectives, some preliminary analytical conclusions are offered in each chapter.

Chapter 7 finally wraps up the analysis conducted in the other chapters of Part 2, bringing the 3-layer analytical model back to unity and considering the way in which political agency moves across the different governance levels. In so doing, also a specific focus on one policy is considered, in order to better clarify and underscore the complex interaction between agency and institutions, embedded in different governance levels.

Lastly, in the Conclusions, a complete answer to the research question is provided, as well as some narrative updates and some general reflections on this specific study and on migration research more broadly.

Through the above approach, this research thus aims to contribute to the general debate on migrant smuggling into the European Union and the policy framework to tackle it. The detailed exploration and analysis of a case study and the innovations brought forward by that, as well as the proposition of a new approach to address the phenomenon, are all elements that, besides bringing important theoretical contributions, can also open new research avenues for EU scholarship.

Two disclaimers conclude this introduction.

Firstly, in such a topical and fast-changing issue, even a few months can be significant. In this perspective, the reader should keep in mind that the data collection ended in April 2019, as shall be further discussed in chapter 2. Even throughout the writing phase, in the months that immediately followed, several important facts took place, which would have definitely contributed to a better clarity, for example by giving more significant examples of some aspects, if they could have been included in the research. However, quite, intuitively, this would have entailed a never-ending process of data collection and update, which would eventually make this – and perhaps any – research impossible to conduct. Nevertheless, as was stated above, some narrative updates will be offered in the Conclusions, tracing some of the most recent events back to the patterns of policy-making emerged in the research.

Secondly, a few terminological and style issues should also be addressed. And the first aspect has to do with the acknowledgement that in the migration field, even more so than in other ones, the choice of words is never neutral. Based on this notion, this research will define the migration process in breach of the migratory legislation and/or in the lack of the required documents as 'undocumented'; the phrases 'irregular migration' or 'illegal migration' will be used exclusively when referring to legislative acts that so define unauthorised migration movements and in the context of the criminal law framework. Another terminological aspect, much less important in substantive terms but still crucial as for the understanding of the work, has to do with the reference to national institutions. Given the choice of Italy as case study within a broader EU-wide focus, the use of the adjective 'Italian' with reference to Italian national institutions (e.g. ministries, law enforcement agencies, etc.) will be eschewed. Otherwise, whenever a reference is made to national institutions of other countries, this will be explicitly stated. Lastly, as for the writing style, capital letters were used with parsimony in the case of institutions, as not to weigh on the writing process. That means that, besides quotes, where decisions were clearly made by the quoted authors, capital letters were employed only when referring to a specific institution (e.g. the Court of Cassation, the Conte Government) and not to the general institutional actor (e.g. the courts, the government). In the case of the word 'parliament', capitalisation was used as an abbreviated form of 'European Parliament', as clearly stated in the relevant chapters.

Part 1

Designing a research on the policies to fight the smuggling of migrants

This page intentionally left blank

Chapter 1

From impetus to research problem: conceptualisation and theoretical gap

1.1. Impetus for the research: the smuggling of migrants and the European case

The issue of the smuggling of migrants and, in particular, its implication within the EU polity, has been increasingly addressed over the last years, both in academic and grey literature (see Zhang, Sanchez and Achilli, 2018). Similarly, greater attention to the phenomenon has been devoted by media and public opinion in general, also in the light of the so-called 'refugee crisis[1]' and of the rise in the numbers of people crossing the Mediterranean Sea on makeshift vessels, in particular between 2014 and 2017, as well as because of the great emphasis placed by EU institutions and policy-makers on this issue (European Commission, 2015a and European Commission, 2015b).

The understanding of the overall European approach to migrant smuggling constitutes the impetus for this research.

In this framework, in order to refine the scope and objective of the research and to subsequently address the several connected analytical and methodological issues, a suitable starting point is the understanding of the characteristics of migrant smuggling. This shall be done through an unpacking process, aimed at conceptualising the phenomenon and providing an operational definition of it. Moreover, it will be important to understand how scholars have addressed smuggling with specific reference to the EU situation, in order to highlight the existing theoretical gaps.

In the light of the twofold nature of this process, paragraph 1.2. will explore the phenomenon of the smuggling of migrants based on a review of the diverse literature dedicated to the phenomenon, disclosing the tension between human rights and security and its nature in-between migration and crime. It will also propose to look at it

[1] The concept of 'refugee crisis' has been very widely used in the political discourse throughout Europe. In this research it is always referred to in terms of 'so-called' in consideration of the very arguable existence of a crisis, its duration, its connotation and the characteristic of the most affected people (with the overall distinction between migrants, refugees and asylum seekers).

through its two main components, i.e. the ‘supply side’ and the ‘demand side’, reconciling them under the conceptual umbrella of the ‘smuggling spectrum’, to be used as the operational definition of the phenomenon.

Paragraph 1.3. will then narrow the literature review down to the specific political space of the European Union, highlighting the way in which the EU approach to smuggling has been addressed so far. In so doing, the study of the policy-making patterns in relation to this specific phenomenon will emerge as the theoretical gap to address, constituting the research problem.

1.2. Unpacking migrant smuggling

It is important to notice from the very beginning how migrant smuggling (a) does not enjoy a common, shared definition and (b) it refers at the same time both to a phenomenon per se that exists in practice and, from a legal point of view, to an offence precisely defined in the corpus of national and international laws (see chapter 3). Such phenomenon has been the object of a number of studies published in the last years. And, given its twofold nature, in-between migration and crime, scholars have tended to address this issue from quite different analytical perspectives.

Baird and van Liempt (2016) offer an interesting overview (though clearly not comprising the material that has been produced over the last three years) of the most notable studies and, in particular, of the different lenses used by scholars, from pure migration approaches to pure crime/security ones. More specifically, they distinguish between five different perspectives to look at smuggling, i.e. business, crime, networks, global political economy and human rights.

But approaches tend to vary substantially also in terms of the focus chosen, from those studies starting from an analysis of the actors involved, which are often considering migration routes and smuggling patterns (such as Achilli, 2015; Collyer, 2016; Fargues and Bonfanti, 2014; Schapendonk, 2018; Shelley, 2014; Spener, 2004; Triandafyllidou, 2018; van Liempt and Doomernik, 2006; Zhang et al., 2018), to those based on an analysis of existing legislation and policies, often from a criminal law perspective (see, among others, Carrera, Vosyliute, Smialowski, Allsopp and Sanchez, 2018b; Salt, 2000; Salt and Stein, 1997; Triandafyllidou and Maroukis, 2012) or with a focus on

human rights and ethical arguments (e.g. Aloyo and Cusumano, 2018; Crépeau, 2003; Gallagher and David, 2014; Hidalgo, 2016; Müller, 2018).

Literature on migrant smuggling is relatively recent, mainly because of the late analytical conceptualisation of the phenomenon, which can be dated back only to the 1990s, even though its first empirical manifestations are difficult to define accurately, since "borders have always led to smuggling" (Gallagher and David, 2014, p. 187. See also Guiraudon, 2008, p. 5). That is, one can identify specific historical and documented circumstances and places where clear waves of smuggling took place (such as China, South East Asia, Mexico/USA border, Europe, among others. See Salt and Stein, 1997, pp. 472–476), but it is hard if not impossible to determine a single moment when the smuggling of migrants as a phenomenon came into being.

However, from an epistemological point of view, it is important to clarify the difference from the mere existence of a phenomenon and its conceptualisation, and in such perspective it is fair to say that over the 1990s both the academic community and practitioners increasingly elaborated and accepted the concept and made a wide use of it (Gallagher and David, 2014, p. 189). In order to understand the complexity of migrant smuggling, it seems suitable to start from the studies of this decade.

In academia, a first milestone in migrant smuggling studies is represented by a paper of John Salt and Jeremy Stein – "Migration as a Business: The Case of Trafficking": it was published in 1997 and it offered, for the first time, a comprehensive analysis of the smuggling of migrants. Based on the proposition of a business model of migration, smuggling (in a moment in which the distinction between smuggling and trafficking was still blurred and would be crystallised a few years later, as shown below[2]) plays a very important role. Their definition points at an "international business, involving the trading

[2] As a preview, for the sake of clarity, some definitions can already be provided. Smuggling of migrants can be very generally understood as facilitation of undocumented migration, entailing some material gain (cf. the United Nations and other bodies' definitions below), whilst trafficking in persons (or trafficking in human beings) is defined by article 3(a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol) as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal, manipulation or implantation of organs."

and systematic movement of people as 'commodities' by various means and potentially involving a variety of agents, institutions and intermediaries". Other relevant examples of important studies in these years include those of Gallagher (2002), Koser (1996 and 1997), Morrison and Crosland (2001), Salt (2000), Singer and Massey (1998) and Widgren (1994).

There is a deep interconnection between the developments in academia and those in the policy framework, and in this perspective it is useful to recall some of the key steps undertaken in those years towards a comprehensive and coherent definition of the phenomenon: the International Maritime Organization Assembly in 1993, the United Nations General Assembly Resolution of 1993, the International Organization for Migration Seminar on Migration in 1994, the Expert Group of the Budapest Group and the Europol Convention (see Gallagher and David, 2014, pp. 190–191 and Salt and Stein, 1997). These examples clarify the "growing political concern" towards a phenomenon considered "to be undermining international collaborative efforts to produce ordered migration flows" (Salt and Stein, 1997, p. 467). In these years also the so-called 'Vienna Process' began, spearheaded by Austria in 1997 and soon joined and supported by Italy with a view to developing a legal tool to tackle transnational organised crime and the smuggling of migrants. This process resulted in the adoption, in the year 2000, of the Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against Transnational Organized Crime (the Smuggling Protocol) – the first international convention to acknowledge and define such phenomenon[3] and to provide specific measures to ensure the cooperation of states (and which is comprised of 149[4] states parties today), which will be followed by other regional initiatives. More national legislations started criminalising this activity (in accordance with article 6.1. of the Smuggling Protocol) and a number of academic works, even though limited if compared to other migration issues, were published, offering diverse angles upon the issue.

Notably, also within Europe important steps were taken, with the provisions included in the 1990 Convention implementing the Schengen Agreement (the Schengen

[3] This is the moment when migrant smuggling is definitely differentiated from the trafficking in persons, even though most authors suggest that the distinction between the two phenomena is actually blurred. For an overview see Buckland (2009).

[4] Update at 15 July 2019 (retrieved from https://treaties.un.org/).

Convention), in the 2002 so-called ‘Facilitators Package’ (FP, the milestone of the EU anti-smuggling policy framework, composed of Directive 2002/90/EC and Framework Decision 2002/946/JHA) and with several criminal law acts passed in Member States (MSs) in those very years, were an approach aimed at criminalising the facilitation of undocumented migration, arguably part of the broader fight against migrant smuggling (in chapter 3 these aspects are considered in more detail).

The recent nature of the concept and the fact that, from the very beginning, a sort of overlap occurred between legal and analytical definitions, with a clear prominence of the definition provided by the Smuggling Protocol (McAuliffe and Laczko, 2016, p. 4), ended up creating a policy-driven debate which focused on some specific elements of smuggling whilst neglecting others.

Given that a universal definition of migrant smuggling does not exist, however, it is useful, for the purpose of this study, to use the Smuggling Protocol definition as a starting point, as it provides a minimum standard of criminalisation recognised by the 149 states parties to the Protocol itself. Article 3(a) of the Protocol defines migrant smuggling as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”

In a comparative perspective, one element of this definition remains quite undisputed: the nature of this process as the facilitation of an undocumented migration movement. A second element is more controversial, and is related to the material benefit of the facilitator, which is indeed not required by all legislations. A clear example of this is the Facilitators Package, where such a material gain is not necessary for migrant smuggling: this is a very long-standing controversial point, which indeed leads to also take into consideration under the umbrella of smuggling activities of humanitarian assistance (especially in the absence of a mandatory exemption from criminalisation of these activities), and whose overcoming was recently advocated also by the European Commission (2015b, p. 3). Allssopp and Manieri (2016), Carrera, Allsopp and Vosyliute (2018a), Carrera et al. (2018b), Nicot and Kopp (2018), among others, exhaustively address this point, which will actually become central in several parts of this research.

A third element leads to the shift in focus from states to migrants, i.e. migrant consent, which is assumed, even though not explicitly stated, in this definition (as opposed to trafficking, where human movement is coercive, see Doomernik, 2013, p. 120). From this interpretation at least two main consequences arise: (a) the possibility for states to criminalise not only the smuggling of migrants, but also the undocumented entry of migrants into their territories; (b) the focus on the repression of smugglers rather than on the assistance and protection of smuggled migrants. It is notable, however, how concerns in this respect were expressed throughout the drafting process, but a general consensus was eventually secured that "smuggled migrants are not 'victims' in the same way that this term can be applied to those who have been trafficked" (Gallagher 2015, pp. 196–197), considering that normally smuggled migrants voluntarily decided to be smuggled in order to reach their destination.

On the contrary, trafficking in persons (TIP) involves the coercive recruitment, movement or harbouring of someone for the purpose of exploitation (see article 3(a) of the Trafficking Protocol and footnote 2 above). Even though clear-cut definitions do not always correspond to the reality and evidence shows that overlapping between smuggling and TIP often takes place (see section 1.2.2. below), the perception of the phenomena seems still to significantly diverge.

François Crépeau, former United Nations Special Rapporteur on the human rights of migrants, drew the attention to the "striking [...] difference" between the Smuggling Protocol and the Trafficking Protocol: in the former "refugee-receiving countries are trying to strengthen their strategy of migration containment" and "[t]he protection and the assistance of the victims was not the first objective, except where it can contribute to the main objective"; in the latter, on the contrary, there are "numerous clauses dedicated to protection issues" (Crépeau, 2003, pp. 175-176).

In fact, the substantive elements of the Smuggling Protocol definition are not very different from those identified a few years earlier, in 1994, by the IOM in its first study on the topic: (a) the involvement of a smuggler; (b) his/her material gain; (c) the "illegal" nature of this migration movement; (d) migrant's consent (Salt and Stein, 1997, p. 471).

Similarly, these aspects can be detected, explicitly or implicitly, in most smuggling legal definitions on a global level (taking into account the several differences on the material gain), prioritising a security-based approach, to the detriment of a migrant (human)

rights' one. Therefore, the importance of the UN definition is crucial, not only for being the most vastly agreed upon on a global level, but also because states have built or amended their legislations upon this definition, though with minor differences, following the provisions of article 6.

Over the years, however, the limitations of a mere security-based approach have emerged, given the complex nature of the smuggling of migrants. As mentioned earlier, smuggling involves two main and strictly interconnected dimensions: on the one side, undocumented migration, i.e. the dimension of the smuggled migrants, often associated (not necessarily correctly, though, as will be shown in the next paragraphs) in policies with a passive attitude (see van Liempt and Doomernik, 2006). On the other side, crime, i.e. the dimension of the smuggler, which is very often the focus of legislative approaches, as in the Smuggling Protocol and the Facilitators Package (see Gallagher, 2002; Koser, 2005 and Shelley, 2014. See also, for some critical views: Achilli, 2015; Spena, 2016; Triandafyllidou, 2018 and Zhang et al., 2018).

By focusing on both the elements, and the connected dimensions, that characterise smuggling becomes then possible to go beyond a mere security-based approach to this phenomenon (as suggested by Castles, 2004; Düvell, 2006; Triandafyllidou, 2018 and van Liempt and Sersli, 2013 among others).

This, in turn, means to go *beyond* (but definitely not *against*) legal definitions of migrant smuggling, which tend to privilege said security perspective, as was recalled above. Legal definitions clearly matter, and in this research the Smuggling Protocol and the Facilitators Package definitions of smuggling (and their differences, especially related to the material gain and to the exemption clause for humanitarian assistance) will be central. The former definition is indeed the one most vastly agreed upon at an international level, as was explained above; the latter is the one elaborated and applicable within the EU (see chapter 3 and the analysis on the Facilitators Package in chapter 6). But, especially in works framed outside legal studies (such this one, as it is further explained in the next paragraph and in chapter 2), it is important to focus on the phenomenon per se and on the various social and political aspects, as well as policy frameworks, that this involves. It is by doing so that one can go *beyond* the way in which specific pieces of legislation define the phenomenon, still not going *against*

such definitions, as the case would be if one underestimated their importance or proposed new ones.

An abundant scholarship has followed this approach. Alpes (2016), Betts (2010), Gallagher (2002 and 2014), Koser (2005), Kyle and Koslowski (2013), Morrison and Crosland (2001), Nadig (2002), Shelley (2014), Triandafyllidou (2018), Zhang et al. (2018) offer alternative starting points, where the focus is placed on the actors involved in the process of smuggling and which, in some cases, lead to the definition of a quasi-trade-off between state security and human security of smuggled people, being the former often preferred over the latter by states (Koser, 2005, p. 13. See also Achilli, 2015 and Fargues, 2015).

Some scholars also considered how the flows of smuggled migrants are inversely related to the level of border openness and to legal migration opportunities (Koser, 2005, p. 15. See also Castels, 2004, p. 205; Kyle and Dale, 2013 and Spener, 2006, pp. 296–297) and even how some policies aimed at preventing migration have unwanted opposite consequences (Düvell, 2011). These approaches are particularly important when it comes to framing anti-smuggling policies within the broader migration policy field, and, in particular, its aspects connected with border control and undocumented migration.

Among the restrictive approaches, extraterritorial policies represent an extraordinarily heavy measure (see Morrison and Crosland, 2001, p. 31 and Väyrynen, 2003): an example is provided by the Carriers Liability regime[5], introduced in the EU with the Schengen Convention and considered by some authors as “contrary to the nature of international human rights law” (Basaran, 2008, p. 163). Other examples which have been widely considered in literature include the so-called ‘shifting out’ policies (Lavenex, 2006), where borders are de facto moved further and the control of undocumented migration is delegated to origin or transit countries (see Strik, 2019). This latter pattern of outsourcing is very common in contemporary Europe, as shall be discussed throughout the research.

[5] This policy provides that “carriers must ensure that non-EU nationals who intend to enter the territories of EU countries possess the necessary travel documents and, where appropriate, visas. (…) EU countries must impose dissuasive, effective and proportionate financial penalties against carriers in breach of their obligations. (…) EU countries may in addition adopt penalties of a different type, such as seizure of the vehicle or withdrawal of the operating license” (EUR-Lex 2010).

Keeping a focus on the EU, several studies have addressed the incomplete integration within and/or the limited effectiveness of undocumented migration and smuggling policies, as well as the different stances of MSs in this regard. It is useful to recall, among others, Achilli (2015), Carrera and Guild (2016), Collett (2015), partly Dennison and Janning (2016), Düvell (2011), Fargues (2015), Fargues and Bonfanti (2014), Nováky (2018), Shelley (2014), Toaldo (2015) and van Liempt (2016). More recently, in particular since the beginning of the so-called 'refugee crisis' in 2015, a number of works have focused specifically on the smuggling dynamics in the Mediterranean Sea (Cusumano, 2019; Cusumano and Gombeer, 2018), the connection and implication of search and rescue (SAR) activities and humanitarian assistance (Carrera et al., 2018a), shifting out policies (Strik, 2019). And all these issues shall be extensively considered in the next chapters.

This overview already shows the vast heterogeneity of approaches to smuggling, in turn stressing different aspects of the phenomenon and therefore suggesting different responses. The next two sections will focus more specifically on the various characteristics that come out from the process of unpacking migrant smuggling, through an agency-based, inductive approach, following a critical reflection on the state of the art on this phenomenon.

1.2.1. The supply side: who is the smuggler?

It seems appropriate to start unpacking the phenomenon of the smuggling of migrants by focusing on one of its protagonists: smugglers.

Numerous academic and grey literature works (for a review, see McAuliffe and Laczko, 2016, p. 8) point to the multifaceted nature of smugglers and stress the unproductivity of treating them as a unified and homogenous group. On the contrary, smugglers differ from one another in their organisation, in their connections with organised and other forms of serious crime, in the routes they choose, in the means of transportation, in their relationship with smuggled migrants, etc. (McAuliffe and Laczko, 2016, p. 8 and van Liempt and Doomernik, 2006). Differently to what is often thought among the general public – and sometimes, as we shall see, also among policy-makers – there is no such thing as an archetype of a smuggler.

In spite of this, policies (and sometimes even academic literature) do not always seem aware of that (see Crépeau, 2003 and Zhang et al., 2018) and tend to take certain dynamics and characteristics that are far from being real for granted. On the contrary, some studies, such as that of Pastore, Monzini and Sciortino (2006) or the more recent special issue of The Annals of the American Academy of Political and Social Science (2018), edited by Luigi Achilli, Gabriella Sanchez and Seldon Zhang, are particularly useful, as they are specifically aimed at critically discussing and debunking alleged myths concerning smugglers' (and more generally smuggling) characteristics, with a view to giving an evidence-based framework of the issue.

The way in which smugglers are depicted, as Baird and van Liempt (2016) notice, privileging some aspects over others, arises also from the different analytical approaches that are chosen, based in turn on the existence of different models to study migrant smuggling (see above).

And so, from one extreme to another, there are works that treat smugglers primarily from business-oriented point of view, such as the one by Salt and Stein (1997) or grey literature such as Europol reports, which all tend to privilege a perspective which facilitates the emergence of the well-structured organisation and profit-driven activity of smugglers. On the other side, alternative perspectives such as those offered by Collyer (2016), Khosravi (2010) and Watson (2015) tend to highlight the humanitarian and/or political nature of smugglers. Similar conclusions could be drawn for any of the different angles used to study the characteristics of smugglers: different analytical approaches tend to depict different types of smugglers and to make different characteristics more visible, enriching the whole knowledge of the phenomenon (insofar as one does not assume that a specific approach is the only valid one).

Exploring evidence-based studies on smugglers is therefore a useful operation in order not to challenge one or another view, but rather to acknowledge such complexity and to make it analytically fruitful in order to understand the phenomenon.

A critical reading of the relevant literature offers at least five different aspects that can shape the nature of smugglers, related to: (a) the dimension and internal organisation of the smuggling group; (b) the connection with other criminal activities; (c) the routes followed; (d) the level of coercion; (e) the very connotation of the smugglers.

Firstly, smugglers can be very different from one another depending on the dimension and the internal organisation and hierarchy of the smuggling group. Smugglers can be facilitators, such as coyotes or passeurs, i.e. individuals or members of small organisations working on a minor scale. But smugglers can also be members of cartels, networks and organised crime gangs. Evidence supports both cases, and in fact the adherence to one of the two models (or something in-between) is not only a matter of perspective but also, of course, a matter of substantial differences that take place in reality. So, for example, the border between Mexico and the United States tended to be characterised by coyotes in the past, as the very name suggests (Guiraudon, 2008 and Spener, 2004), even though there was a radical change in the last years, also due to the sharpening of US border control policies (for a more in-depth view, see Sanchez and Zhang 2018). And if other areas of smuggling are more often associated with criminal networks and organised crime (e.g. the Mediterranean Routes, see Bühler, Koelbl, Mattioli and Mayr, 2016 and Toaldo, 2015), there is also evidence of smuggling taking place even with organisations led by groups of friends or groups characterised by very low organisational level, confirming what Salt and Stein had already noticed in their first work, and namely the very existence of a variety of organisational models (Salt and Stein, 1997, pp. 476–477. For an overview: Baird and van Liempt, 2016, pp. 407–408).

The use of different analytical frameworks can play a role in the emergence of these differences, but evidence clearly shows that in fact both types exist. Nevertheless, the narrative of smuggling as organised crime is particularly widespread in policy documents and in official reports of law enforcement authorities (e.g. European Commission, 2015a, European Commission, 2015b, Europol, 2016b, 2017 and 2018). This appears very notable as policy choices are heavily influenced by these analyses, and if only one perspective is taken into consideration, this jeopardises the effectiveness of the policies chosen, as has been critically discussed by several authors, who have pointed to the “international understanding that [migrant smuggling is] part of organized crime” (Shelley, 2014, p. 3).

Secondly, there is a variable degree of connection with the perpetration of other crimes. Such connection between the smuggling of migrants and other crimes is present in some literature, such as Triandafyllidou and Maroukis (2012), and is also very

widespread in grey literature (see Europol 2016b, 2017 and 2018, among others), whereas other evidence-based studies, in particular those based on judicial proceedings, come to other conclusions. Monzini (2004), citing an IOM report of 2003, pointed at the absence of a connection between smugglers and other trafficking and illegal activities (on this point see also, for example, Pastore et al., 2006 and Sanchez and Zhang, 2018). On the other hand, the link with those criminal activities which are ancillary to migrant smuggling itself, such as corruption or passport and visa forgery, is clearly quite common and widespread (McAuliffe and Laczko, 2016, pp. 7–9).

Thirdly, routes can also be very different, as smugglers operate on short, medium and long routes and migrants often need to use several different routes to reach their destination. Each route has its own characteristics and smugglers operate also very differently depending on the route. De Bruycker, Di Bartolomeo and Fargues (2013, pp. 3–7), for example, considered the Mediterranean sea routes and highlight their structural nature and their connection to larger routes and other forms of smuggling, coming from sub-Saharan Africa. But if some have connected maritime routes with a higher level of internal organisation, Pastore et al. (2006, p. 108) pointed out that is arguable and quite speculative, as there is no definitive evidence in that regard. Just by way of another example, in other areas we find quite different situations, such as in East Africa, where migration movements happen both in a long and in a short distance, by land, air and sea and involve a number of different types of smugglers. There are chief smugglers as well as a lot of different types of middlemen, including transporters such as taxi and bus drivers as well as brokers, facilitators, recruiters and travel agents, in organisations that can be informal and independent (Majidi and Oucho, 2016, pp. 62–63). Connecting this dimension with others, small routes tend to be associated with coyotes, whereas networks and criminal organisations tend to come into play in longer routes (Väyrynen, 2003, pp. 15–16. See also Andersson, 2016 and Triandafyllidou, 2018 on the ‘professionalisation’ of smuggling).

A fourth dimension which deserves attention for its implication in terms of human rights is coercion and it is strictly related to the relationship between smugglers and smuggled migrants. For such reason, this has to do both with the characteristics of the smugglers and with those of the migrants, which will be further explored in the following section (it is clearly cumbersome to adopt a clear-cut approach to the demand and the supply

side, smuggling being a relational process between smugglers and smuggled migrants). What is important to highlight here is how evidence reveals the existence of different degrees of coercion, from a very low level, associated with 'helpful smugglers' to high level of exploitation and disregard for migrants' lives (MEDU, 2015 and van Liempt and Doomernik, 2006). The latter is particularly relevant in those cases where the drawing of a line between smuggling and trafficking proves particularly difficult (Dimitriadi, 2016).

Remarkably, the strength of border control also appears to be significant in the coercion dimension: areas where higher control by border guards and restrictive policies are in place seem to experience not only a higher level of organisation on the side of smugglers (Doomernik, 2013, p. 121; Guiraudon, 2008, p. 5 and McAuliffe and Laczko, 2016, p. 7. See also Brachet, 2018 and above), but also more violent smuggling processes, which could be one of the unintended consequences of restrictive migration policies highlighted by Düvell (2011. On this whole point see Triandafyllidou, 2018).

A fifth and last element of difference is related to the way in which smugglers are depicted and considered. Whether a smuggler is a criminal, on one end of the continuum, or a saviour, on the other end, very much depends on the combination of the elements descripted above (on the twofold nature of smugglers, see Crépeau, 2003, p. 181). The existence of "altruistic smugglers", close to the saviour profile, is acknowledged for example by McAuliffe and Laczko (2016, p. 5, including also references to other authors) as well as by "humanitarian smuggling" scholars (Watson, 2015), as briefly hinted above, and represents the cornerstone of the 'moral argument' made by Aloyo and Cusumano (2018). This perspective privileges the aspects of a smuggler who helps those in danger or who find it difficult to escape and to reach safe places (this is particularly evident in the refugee-based studies, cf. Crépeau, 2003; Fargues, 2015 and Morrison and Crosland, 2001). Smugglers have also been depicted positively when acting for political motives (Khosravi, 2010), whereas a complicated situation is that of smuggled migrants who might turn into smugglers themselves (this case is particularly relevant to the central Mediterranean route, as will be further discussed).

Issues connected to the positive view of smugglers are very complex and controversial, considering that those lines distinguishing, in legislation and in the political debate, what is humanitarian/altruistic/small scale smuggling from what is the pure criminalisation of humanitarian actors have proven to be very thin, as will be discussed throughout the study (see also Carrera et al., 2018a and Cusumano and Gombeer, 2018).

On the other side, though, smugglers are depicted as evil individuals who take advantage of difficult situations and desperate needs of the would-be smuggled migrants, and making money out of that, also putting their lives further in danger (Bühler et al., 2016 and Europol, 2016b).

1.2.2. The demand side: who is the smuggled migrant?

The agency of smuggled migrants represents most probably one of the crucial issues to address when reading the smuggling process through the lenses of the smuggled migrants. Most literature, especially when it comes to official reports issued by international organisations (IOs), governments and law enforcement agencies, tends to view migrants as just another item which can be smuggled from a place to another, denying, ignoring or anyway minimising the proactive role that they can and actually do assume in the smuggling process (Doomernik, 2013, p. 121; Schapendonk, 2018; van Liempt and Doomernik, 2006 and Watson, 2015, p. 46).

On the contrary, however, some studies, particularly those adopting a sociological or geographical qualitative perspective and making use of migrant interviews, draw a quite different picture, where migrants assume an important and active role, from the beginning of the process, i.e. the decision to make use of smuggling services and which smuggler to contact, until the end, i.e. how to proceed further through the journey and what final destination country to choose (Martínez, Slack and Martínez-Schuldt, 2018; McAuliffe and Laczko, 2016, p. 8; Schapendonk, 2018 and van Liempt and Doomernik, 2006).

Acknowledging the agency of smuggled migrants (and of would-be ones) means also understanding the existence of a demand side in the smuggling process: there is a request for smuggling services, essentially arising from the combination of two factors:

(a) the structural nature of mobility and migration (Collyer, 2016, p. 21 among others) and (b) the progressive protection of borders on the side of national states, with the implementation of measures aimed at controlling transnational mobility (Andersson, 2016; Baird, 2013 and Triandafyllidou, 2018). This point turns central as it implies that policies aimed at countering smuggling exclusively addressing the supply side, i.e. targeting smugglers and enhancing border controls, are unlikely to be the solution and, on the contrary, entail the risk of a counterproductive effect (Düvell, 2011). But acknowledging the agency of smuggled migrants, on the other side, poses some questions and problems with regards to at least two other issues: (a) their relationship with smugglers and the role of coercion in the smuggling process (as anticipated from the perspective of smugglers); (b) their status of 'victims'.

Coercion and victimisation are, in fact, the two main dimensions that mark the agency of migrants in shaping the different possible patterns of smuggling (and clearly from here other differences arise, such as in terms of repression vs. protection in destination countries, etc.).

The relationship between smugglers and migrants – and namely the degree of coercion – can be very different, depending on the specific circumstances, as already outlined in the previous section. Evidence tells us of cases of extreme violence and deaths, such as in the Mediterranean Sea, as well as of cases of more peaceful and safer smuggling, such as from Mexico to the US in a certain historical period (Spener, 2004, p. 311; see also ICHRP, 2010, p. 20 and Sanchez and Zhang, 2018) and these conditions often vary throughout the same journey. As was mentioned above, this depends very much on the characteristics of the smugglers. But in this perspective, accounts of migrants and their points of view are also clearly important and those few studies specifically focused on their stories confirm that they normally refer to smugglers as "agents or helpers" (Doomernik, 2013, p. 124). Going even further, Watson (2015, p. 40) suggests that "[c]riminalising smuggling, which is often the sole means of escape for those facing violence and endemic poverty, justifies numerous 'equally injurious acts' against vulnerable populations and those who assist them." In this way, the very criminalisation of migrant smuggling is challenged. However, even though such an approach positively brings in several elements ignored in state policies, it involves the hazard of being too simplistic, ignoring or minimising the actual risks that

smuggling processes can have for migrants, the abuses and mistreatments that, though more limited than one could imagine, do actually exist.

At the end of the day, even if one wants to assume the perspective that smuggling exists because states close their borders and that the criminalisation approach is intentionally used by states to control and reduce migration flows (both analyses seem correct, though not fully exhaustive), this does not mean that smugglers are necessarily the good ones in this story (see, among others, the section on torture and other cruel, inhuman or degrading treatment in MEDU, 2015). Much depends, also in this case, from the specific situation and, as it seems at odds with evidence to depict smugglers as the evil members of Mafia-type organisations, in the same way it seems quite incorrect to assume the idea of the Good Samaritan at any cost (see also Aloyo and Cusumano, 2018, p. 13 on the Libyan case, for example).

Coercion can indeed be a distinctive characteristic of the relationship between smugglers and migrants, as mentioned above, and this can particularly happen in those cases in-between smuggling and trafficking (which will be further explored below). The simple fact that the smuggling process begins with a voluntary choice of the would-be migrant does not exclude that s/he could eventually suffer violence and abuses from smugglers, put his or her life at risk, etc.

This brings us to the second dimension, i.e. victimisation. Here the starting question is whether a smuggled migrant is a de facto victim, or, better yet, whether someone who deliberately decided to use some illegal services can actually be regarded as a victim (see Baird and van Liempt, 2016, p. 404). Despite the tendency of states not to (fully) grant this status to smuggled migrants (Crépeau, 2003, pp. 175–176), the answer seems to be positive, considering that in some circumstances migrants could actually ignore what would eventually happen to them or could, however, be aware of that and accept the risk because this is the only option they have to escape a situation of danger and distress (UNHCR, 2000; cf. also Baird and van Liempt, 2016, p. 410).

This is particularly noticeable in the case of refugees, who sometimes have limited or no access to protection in their states of origin and need to resort to smugglers in order to escape to safety. A point that, in turn, opens a whole debate on the effectiveness of the asylum system in Western countries, in particular with reference to the possibility for asylum seekers to apply for asylum in their countries or to the lack of permanent

resettlement mechanisms and humanitarian corridors (all of these issues will be discussed in more detail throughout the research).

In the victimisation of smuggled migrants, furthermore, the boundary between smuggling and trafficking becomes crucial. Smuggled migrants can turn into victims of trafficking both "en route or on arrival" (Dimitriadi, 2016, p. 64), and this, yet again, highlights the limits of a rigid separation of smuggling and trafficking, pointing, on the contrary, at the existence of a continuum with a space for overlapping (ICHRP, 2010, p. 29; see also McAuliffe and Laczko, 2016, p.7). Applying a continuum is perhaps more complicated from a legal point of view (where strict definitions are preferred as they create pure categories), but seems to better capture the very nature of these two processes.

It should be clear, however, that even acknowledging the status of victim (or, at least, of potential victim) to smuggled migrants, in the criminalisation of smuggling the main protected asset seems not to be the safety and security of migrants. In fact, there is a certain agreement in the literature in considering state security and border protection as the goods that are defended through such a criminal law approach whereas migrants seem to be protected only in a residual way (Crépeau, 2003, pp. 180–181; Doomernik, 2013, p. 120). Here the difference between the anti-smuggling and the anti-trafficking approach becomes striking, supporting the idea of those who consider the Trafficking Protocol an important instrument for the protection of human rights and, conversely, the Smuggling Protocol a pure criminal law one with a repressive aim (Crépeau, 2003, p. 182; Doomernik, 2013, p. 120). Some, however, go even further and point out that both of them are "instruments to aid states in the fight against organized crime" rather than "human rights instruments" (Baird and van Liempt, 2016, p. 410).

1.2.3. Conveying the complexity: the 'smuggling spectrum'

Several aspects characterising the smuggling of migrants emerged in this analysis, reinforcing the assumption that no one-size-fits-all definition of smuggling exists and that the vast complexity that is actually observable in reality is often not fully perceived and taken into account.

An analytical approach which does not intend to deny such complexity but, rather, to make sense of it, now requires a last step where all the different characteristics of the smuggling of migrants are brought together and used to make such complexity analytically manageable.

Such step consists in the establishment of an operational definition (i.e. “the descriptions of the use of a given term based on an empirical check”, Morlino, 2005, p. 67), which, far from being in opposition to any existing and applicable legal definition, rather provides the necessary elements to convey the complexity, above recalled, of the phenomenon as it manifests itself and not as it is meant to be tackled in criminal law frameworks.

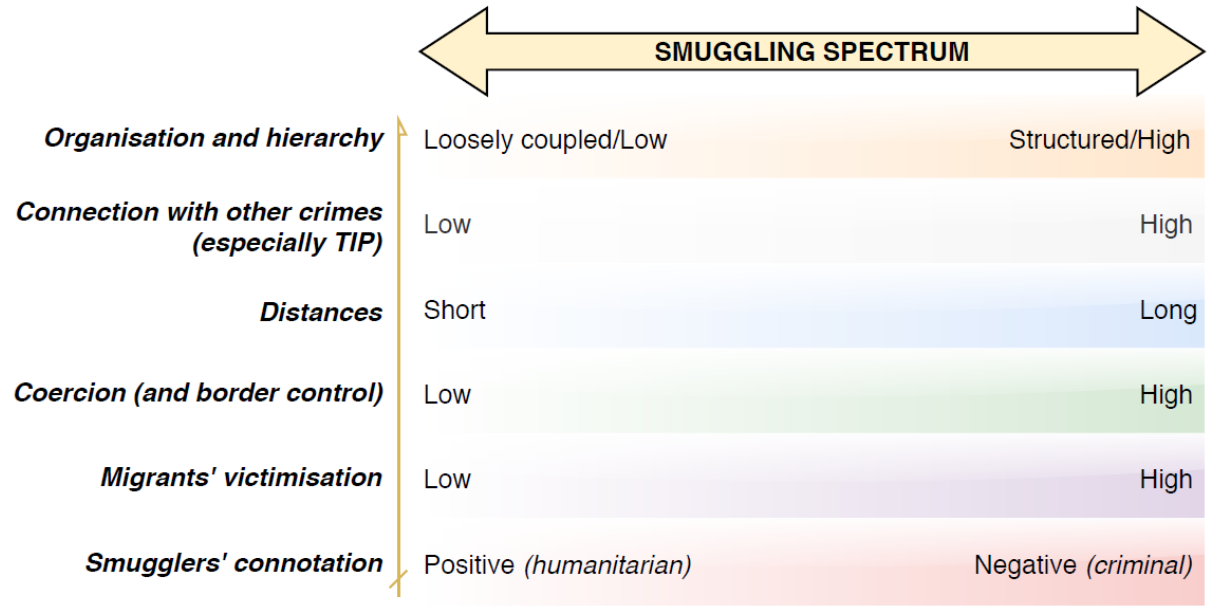
Two different pieces of grey literature, from the House of Lords (2015, p. 16) and UNODC (2017, p. 65), as well as McAuliffe and Laczko (2016, p. 7), speak of the existence of a ‘smuggling spectrum’. By borrowing such term from them – it being an expression which seems particularly significant and appropriate – the aspects considered above can be assumed as the analytical dimensions of an area of complexity, where migrant smuggling can be seen and characterised in very different ways and where those very dimensions can be combined through, yet again, an evidence- and logic-based operation.

On such bases, the different continua constituting the smuggling spectrum do not appear to be randomly distributed, but rather associated with one another.

The smuggling spectrum can then be conceived as a multi-layered continuum where, on the one side, one finds loosely coupled smuggling organisations with low hierarchy, not perpetrating other crimes and definitely far from any implication in TIP. Such organisations are mainly working on small distances, with a relatively low level of coercion (depending also on the characteristics of border control) and the absence of any victimisation of smuggled migrants, which would lead to the idea of some kind of ‘humanitarian’ smuggler.

On the other side, conversely, one can place those organisations that are structured and hierarchical, active also in other crime areas and particularly in trafficking in persons, where covered distances are larger, coercion is higher (depending, again, also on border control) and so the victimisation of migrants, and therefore smugglers are seen as criminals tout court (see Figure 1.1.).

Figure 1.1. – The smuggling spectrum[6]



Source: Elaborated by the author

The operational definition of migrant smuggling adopted in this study – far from being a catch-all one – acknowledges the existence of this area of complexity, due to the multifaceted nature of smuggling, whatever the applicable legal definition is. Building upon the smuggling spectrum, it is assumed that each individual smuggling event can be placed on a specific point within the spectrum itself[7].

The analytical consequences of such an operational definition lead (a) to look beyond those policies that are merely aimed at the criminalisation of smuggling/facilitation of undocumented migration offence (or anti-smuggling policies stricto sensu) and (b) to

[6] It should be noted that one of these dimensions – namely, coercion – was mentioned both in the analysis of smugglers and in that of smuggled migrants, but it was not double counted. For this very reason the five dimensions of smugglers and the two of smuggled migrants give a total sum of six and not, as one would arithmetically prima facie expect, seven.

[7] The smuggling spectrum is framed as an analytical tool to unpack and understand the complexity of the phenomenon and of its different empirical manifestations. Hence, it does not aim to establish what is smuggling and what is not, going beyond (but not against, as explained above) such legal dichotomy and rather providing some resources to navigate the empirical complexity. In such perspective, the spectrum is not meant to give a legal contribution to the definition of those controversial situations that are considered as smuggling by certain pieces of legislation, even if they are (or might be) not, such as the criminalisation of humanitarian assistance. However, this crucial aspect will be extensively addressed throughout the study, based on the evidence coming from the case considered.

take into account, in such analysis, the importance of migrant agency and the demand side for smuggling (cf. Achilli, 2015).

In a policy perspective, acknowledging that people want to move and that will resort to illegal ways if they cannot do it legally, means that there is a need to include also demand-related policies in the overall migrant smuggling framework. Among such policies, those connected to labour migration and other documented ways of access are clearly relevant. But a comprehensive approach to migrant smuggling needs to include also the asylum policy framework, since the situation of people in danger and distress – such as asylum seekers – implies that they will probably use illegal services if they are not granted access to international protection.

Consistently, this research shall consider as smuggling-related policies also border, migration and asylum policies, limitedly to those cases in which they have direct or indirect effects on migrant smuggling. Furthermore, this very approach also implies the possibility of looking at the substantive content of policies, when deemed necessary, in a more structured way, with a view to detecting whether and to what extent policies in this field are actually informed by the paradigm of the smuggling spectrum and of the demand side for smuggling.

1.3. The EU fight against migrant smuggling: different approaches and theoretical gaps

The second aspect of this preliminary understanding of migrant smuggling has to do, as mentioned, with the review of how the EU approach to the issue at hand has been studied so far. In so doing, it clearly emerges how these are essentially studies analysing the legislative acts approved over the years in the EU, mainly from the 1990s onwards, regarding smuggling, documented and undocumented migration, borders, asylum (see chapter 3), as well as more grounded studies that include geographical, sociological and criminological approaches.

This latter group of studies tend to offer an insight into the substantive aspects of the relevant pieces of legislation, based on the evidence coming from on-the-ground analyses and able to disclose challenges and shortcomings (see Carrera and Guild,

2016; De Bruycker et al., 2016; Dennison and Janning, 2016; Fargues, 2015; Fargues and Bonfanti, 2014; Toaldo, 2015 and van Liempt, 2016).

In more detail, some of them focus on (a) the concrete application of specific policies (such as Cusumano, 2019 and Cusumano and Gombeer, 2018 on the Italian EU-backed 'closing harbour' policies and Nováky, 2018 on Operation Sophia); (b) the side effects and consequences of general policy approaches, such as the whole policing humanitarianism argument, coming among others from Allsopp and Manieri (2016) and Carrera et al. (2016, 2018a and 2018b) or the general analysis conducted by Shelley (2014), through an understanding of the overall effects of EU anti-smuggling policies; (c) a more actor-centred perspective, addressing the relationship between the overall EU and MSs frameworks and individual agencies, such as Achilli (2015), Perkowski and Squire (2019) or Schapendonk (2018).

Notwithstanding the wide difference among these studies, in terms of specific focus, approach and objectives, the common element lies, as recalled, in their interest towards substantive aspects of the policies in themselves and of their implementation on the ground.

Quite remarkably, though, there seems to be an evident gap in studies focused on how the EU policies governing migrant smuggling are actually approved, i.e. policy-making studies. Indeed, notwithstanding the overall migration framework offers several relevant examples in such perspective (Bonjour and Vink, 2013; Guiraudon, 2018; Huber, 2015; Lavenex, 2006; Zaun, 2017a, among others. For an overview see also Bonjour, Ripoll Servent and Thielemann, 2018 and consider also the more specifically compliance-oriented review undertaken by Dörrenbächer, 2018, pp. 15–23), there seems to be a marked scarcity of studies focused on the anti-smuggling EU policy-making, with the few exceptions of those overlaps between studies focusing on broader migration policy-making and smuggling aspects, even indirectly (e.g. Guiraudon, 2018 and Maricut, 2016), as well as policy-making aspects in more substantive policy-oriented studies on smuggling (e.g. Carrera et al., 2016 and 2018b or Rasche, 2018).

Such gap is even more remarkable in the light of the growing interest in the policy-making dynamics in the Area of Freedom, Security and Justice (AFSJ) – i.e. the policy

area which includes migration and criminal policies[8] – following in particular the entry into force of the Lisbon Treaty, with a new role for the European Parliament and new patterns to be observed.

Lavenex (2015) and Trauner and Ripoll Servent (2016 and 2017) offered, among others, a detailed account of the progressive expansion of the AFSJ and of the research connected to it (in particular, Trauner and Ripoll Servent, 2017, explored the relevant state of the art very thoroughly). However, to gain a better understanding of those aspects that seem to reveal the existence of a gap in the existing studies, it seems useful to deepen the exploration of how the policy-making patterns in the AFSJ have been studied so far.

1.3.1. Studying policy-making in the Area of Freedom, Security and Justice

AFSJ policy-making scholarship has explored a number of diverse factors contributing to shaping (or determining) the policy-making and the policy outcomes, such as the role of EU agencies (Scipioni, 2018a), that of non-political actors (Caponio, 2005, p. 15) or even that of high level officials in the Council of the EU (the Council) preference formation (Zaun, 2017a, p. 10). However, a key focus in the study of the AFSJ has been, particularly in the last decade, after the Lisbon Treaty, intergovernmentalism vs. community method dynamics[9], or, more broadly, the communitarisation of the AFSJ (Trauner and Ripoll Servent, 2016, p. 1418).

Several studies have therefore considered the roles of and relationship between the European Parliament (EP, the Parliament) and the Council of the EU in this policy area, given the prominent role assigned to them by the after-Lisbon ordinary legislative procedure (formerly co-decision), considering in particular: (a) the way which their relationship has been changing throughout the progressive communitarisation of this policy field, and (b) whether and how this has influenced the shape of policy outputs.

[8] The comprehensive operational definition of smuggling that this research is based upon views migrant smuggling as a cross-cutting phenomenon that moves across the whole areas of asylum, migration and criminal law, making these specific policies even more significant.

[9] Put in simple words, whether policies in the AFSJ were exclusively the result of the bargaining process between states within the Council of the EU or they were also influenced and informed by the stances of the European Parliament and, to a certain extent, of the European Commission.

Huber (2015, p. 421), for example, argued that "[b]order policies adopted under the codecision procedure by the Parliament and the Council look very different than they would if they had been adopted by the Council alone". In this perspective, he argued, the Schengen Border Code, the first policy approved by co-decision (even though the process started as consultation) seems particularly interesting[10], as it would show a clear impact of the EP on the policy output, "in particular with regard to the rights of third country nationals and free movement within the Schengen area" (Huber, 2015, p. 425), in line with a view of the EP as "prominent fundamental rights advocate in the EU" (Maricut, 2016, p. 551).

But, on the other side, other authors focused on different characteristics of this institutional change, and in particular on how, in spite of a much more significant role on paper, some 'soft' attitudes from the European Parliament and structural factors have limited the scope of such change.

The first set of factors, some argued, has to do with the way in which the "EP has altered its positions after *communitarization* and/or has had limited impact in triggering change" (Trauner and Ripoll Servent, 2016, p. 1419, reporting also previous examples in literature). For example, if "the European Parliament does not have the possibility to go to the 'second reading' because of its own incapacity or fear of consequences in the Council, then the co-decision process cannot be considered as a fair procedure among equal institutions" (Acosta, 2009, p. 39, cited in Trauner and Ripoll Servent, 2016, p. 1424).

Ripoll Servent (2017, p. 389) further developed this argument, explaining how the introduction of co-decision in the AFSJ and other institutional arrangements connected to the legislative process have contributed to the change of the parliamentary attitude in this policy domain, towards more goal-oriented stances.

These different explanations have proven to be central in the AFSJ debate, depending also on where emphasis is placed:

[10] It is equally remarkable to note that the proposal was put forward by the Commission in 2004, the latter still being a young actor in the field, since before the Amsterdam Treaty it did not have the power of initiative in this area (Huber, 2015, p. 423).

> Some have argued that Parliament, having obtained real powers under codecision, has taken different, generally less liberal positions than previously. Lopatin (2013), for instance, argues that the EP's voting record on irregular migration and asylum proposals became more restrictive. Ripoll Servent (2012) also discusses behavioural changes in LIBE towards "more centripetal outcomes". What should be stressed in this respect is that, under a consultation procedure, Parliament was "free" to state its "ideal position", while under a codecision procedure, in order to have legislation adopted, it needs to agree on a compromise with Council (Huber, 2015, p. 433).

Secondly, as held again by Trauner and Ripoll Servent (2016) among others, structural factors contribute to explaining the limited impact of the new dynamics of governance in the field on policy outcomes: "the Council has remained de facto an advantaged policy entrepreneur in the AFSJ regardless of the *de jure* empowerment of the EU's supranational institutions", since "[n]on-agreement has automatically implied the maintenance of policies largely defined by the Council under consultation" (Trauner and Ripoll Servent 2016, p. 1420. See also Tsebelis 1995 on the relationship between policy stability and veto players). They further argued that the Council can increase this policy stability through "the co-optation of certain EP actors, mostly from the centre-right and conservative groups" (Trauner and Ripoll Servent, 2016, p. 1423) and benefitting from "the nature of the field [which] demands the coordination of national resources (e.g. border guards, police or prosecutor)" (Maricut, 2016, p. 543), making this policies field "remain intrinsically intergovernmental" (Ucarer, 2013, p. 293, cited in Maricut, 2016, p. 543).

Elaborating on the concept of "integration without supranationalisation" suggested by Fabbrini and Puetter (2016), the post-Lisbon governance of the AFSJ has therefore been depicted as 'integration [both] with and without supranationalisation'", where, "despite the gradual supranationalisation of JHA [Justice and Home Affairs], the institutional framework maintains a strong new intergovernmentalist character" (Maricut, 2016, pp. 542–552).

Lastly on the roles of the main actors of the legislative process, three further considerations can be drawn looking at the overall literature in this policy area:

1. The European Parliament can increase its influence in AFSJ policy-making also indirectly, i.e. using power in other policy areas (such as in budgetary policies)

to gain influence in a process where it would have less (Huber, 2015, pp. 429–430. See also the concept of ‘nested games’ in Tsebelis, 1990, and that of ‘arena linkages’, explored in chapter 2);

2. Some changes intervened in the very functioning of the Council, with an increasing use of the qualified majority voting (QMV) in the Committee of Permanent Representatives (COREPER), in comparison to the very first years after Lisbon and with the increasing importance of lower levels national officers (JHA counsellors in particular) as ministers tend to rely on their work, behind the scene, rather than actually negotiate themselves: JHA counsellors have become “the ‘problem-solving body’” and “are in charge of finding compromise agreements among member states on ‘outstanding issues’” (Maricut, 2016, p. 548);

3. The very ordinary legislative process (and therefore the role of the EP) has been jeopardised in the last years by the Council’s use of an emergency logic, relying on provisions falling outside AFSJ, “without parliamentary and judicial oversight”, which did not bring any innovation but rather signalled “a reversal to pre-Lisbon intergovernmental deals”, such as naval operations, two Frontex-led and one under the Common Security and Defence Policy (CSDP); the emergency relocation plan and the creation of hotspots, both adopted through Council decisions “justified by ‘an emergency situation’”; and the EU-Turkey Agreement (Guiraudon, 2018, pp. 157–158. See also Carrera and Lannoo, 2018, p. 4 and, on the growing role of EU agencies in this area, Santos Vara, 2017).

Moving past the two co-legislators, Maricut (2016, pp. 545–546) also considered the changing role of the European Council, which has experienced a reduction of its involvement, as before the communitarisation of AFSJ was in charge of the exclusive right of legislative initiative in this area. Nowadays, it is formally involved in the governance of the area under article 68 of the Treaty on the Functioning of the European Union (TFEU), establishing that “[t]he European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice”. However, its strongest role is not formally under article 68 of the Treaty but “in addressing ongoing crises through the delegation of tasks to other

institutions", providing inputs of "tremendous political pressure" but only in clear "times of crisis" (for a more detailed overview of the literature on the role of Council and European Council in the AFSJ, see Roos, 2017).

It is also particularly interesting to look at how the role of the European Commission has been considered (for an overview, see Zaun 2017b): the resulting picture is that of a body whose influence and power has grown, but not as much as it would have liked to, because of the resistance still existing in MSs, which limited the attempts of increasing the power of the Commission: "[t]he Council's attitude towards many of these early efforts by the Commission is perhaps best summarized by former German Chancellor Schroeder in stating '[t]he Commission's fantasies have been rationalised'" (Scipioni, 2018b, p. 1362).

These limitations on the Commission's competences, relating in particular to its power of monitoring, sanctioning and dealing with emergency situations, are considered the result of the MSs dilemma

> of choosing to either provide more powers to an independent actor that would effectively monitor and sanction them in relation to common policies, or they could carry on with a cosmetic exercise that did not expose their own deficiencies but left them open to negative consequences arising from gaps in the Union's external borders […] Former Director General for Home Affairs Manservisi reportedly dubbed the Schengen Evaluation Mechanisms 'little more than a faceless peer review', referring also to the need for a 'Community Method' to be introduced into the governance of Schengen (Scipioni, 2018b, pp. 1363–1365).

Furthermore, some studies also considered the (limited) role of the Court of Justice of the European Union (Carrera ad Lannoo, 2018; Herlin-Karnell, 2017; Huber, 2015 and Trauner and Ripoll Servent, 2016), whereas others pointed to a few more general trends in this policy area that are particularly significant:

1. The 'failing forward' argument: besides incompleteness, ambiguity or uncertainty (Caporaso, 2007, p. 393, cited in Scipioni, 2018b, p. 1359), there are other aspects that "could have been included in adopted policies as debates alerted politicians that in their absence the resulting implementation was likely to be ineffective" (Scipioni, 2018b, p. 1359), so that "intergovernmental

bargaining between states with diverging preferences and spillovers arising from incomplete agreements" lead to frequent shortcomings in EU migration policies (Jones et al., 2016, cited in Scipioni, 2018b, pp. 1357–1360);

2. The aforementioned shifting out dynamics, i.e. the external dimension of EU migration policies, which have been a distinctive characteristic of them since the very beginning (Lavenex, 2006 and 2016, p. 5. See also Strik, 2019). This entails a progressive externalisation of EU borders and an involvement of international organisations as key partners of this approach, then becoming main actors in the EU migration governance. With substantial differences among them, since, for example, if it is true that both "the IOM and UNHCR have become key partners in the implementation of EU programmes in third countries", only UNHCR was able to maintain greater autonomy, acting sometimes "as a counterweight to EU actions" in particular for the protection of human rights of refugees (Lavenex, 2016, p. 15);
3. The continuity/inertia in EU policies, even after the 2015 so-called 'refugee crisis', essentially due to the fact that the very crisis originated from the way in which the border system of Europe was designed through the 1990 Schengen Convention, when "[l]aw and order civil servants were able to devise the policy instruments that still today are meant to prevent unwanted foreigners to arrive on European soil outside of parliamentary and judicial scrutiny" (Guiraudon, 2018, p. 155[11]). All this, in more recent times, "forced those fleeing conflict just as other migrants to resort to smugglers if they wanted to reach Europe. The EU Commission and Council of Ministers reversed this causal chain when they called for 'a war against people smugglers' as they did again recently in 2015" (Guiraudon, 2018, p. 155). This explains why, after the crisis, policies continued to be very similar to the previous ones, and even those which seem to be prima facie more innovative and progressive, such as humanitarian interventions, actually fit within a pattern of restrictive policies, through a technocratic approach of 'border management' where the EU political approach is not

[11] All states that wanted to join the Schengen Convention had to comply with these policies (Guiraudon, 2018, p. 155), and this was actually what happened, as showed in the Italian example with the adoption of the Martelli Law (see chapter 3).

questioned (on the contrary, depoliticised), often also taking advantage of the involvement of NGOs (Cuttitta, 2018, in particular pp. 634–636).

From the above AFSJ policy-making overview emerges, on the one side, the growing analytical and theoretical interest of research in this area, given not only the topicality and political leading position of the concerned phenomena, but also the substantial institutional developments experienced in this very area. On the other side, though, it appears striking the theoretical gap deriving from the marginal role of the anti-smuggling policy-making research in this broader field, and even more if considering the comprehensive approach to smuggling that this research proposes and its cross-cutting nature within the whole AFSJ. And this is precisely the research problem that this study aims to address, in so doing also partially responding to the calls, among others, of Bonjour et al. (2018) and Rhinard (2017):

> [W]e need to ascertain when, how and why different actors exert different degrees of influence in migration policymaking processes. We need to pay more attention to the institutional conditions under which policies are (re-) formulated and how this happens (that is, which actors and mechanisms drive or hinder policy emergence and change) (Bonjour et al., 2018, p. 415).

> A number of studies of individual EU institutions' roles in policy-making post-Lisbon have emerged, as described above, but few researchers systematically measure the nature of the current mode of governance now underway (cf. Trauner and Ripoll Servent 2015). The question beckoning is whether it is truly communautarized or whether some sort of modified 'intergovernmental-plus' arrangement (akin to the classic definition of 'intensive transgovernmentalism' by Wallace 2000) is now operating. Some studies have touched upon this question, and Caviedes (2016) has made some important inroads, but more work is needed to systematically assess the extent of what is also called the 'normalization' of JHA policy-making (Rhinard, 2017, p. 51).

The next chapter will then consider all the different analytical and methodological aspects deemed necessary in order to address such research problem.

Chapter 2

How to look into the EU policy-making? Research questions, analytical framework and methodology

2.1. Introduction

The definition of the research problem constituted a first element in establishing the objective and the scope of the research. The second step, which will be undertaken in this chapter, consists in the process of narrowing the scope down to the specification of the theoretical and analytical lenses that will be used, allowing for the transition from a general research problem to the concrete research questions that shall be addressed.

In this perspective, this chapter will firstly critically explore, in paragraph 2.2., the different approaches to the study of the EU policy-making, with particular emphasis on the Area of Freedom, Security and Justice (AFSJ).

Paragraph 2.3. will build upon this and formulate the research question and sub-questions, also defining the analytical model that will be used to answer them.

Paragraph 2.4. will delineate the methodological framework in terms of case selection as well as some background information and an explanation of the Italian migration policy-making.

On the basis of this process, paragraph 2.5. will finally address remaining methodological components, including source selection, data collection and analysis.

2.2. Theoretical approaches to the EU policy-making

The theoretical lenses that will be used in this research fall within the broad context of the ‘EU studies’, so defined by Bourne and Cini (2006, p. 3) as

> to distance ourselves from the term ‘European Studies’, which we understand to encompass a much broader range of subject matter than our own focus on the EU. Second, we use the word ‘studies’ to draw attention to our interest in questions of

> disciplinarity and interdisciplinarity, which we believe to be important. Third, […] we refer to the EU, and not to European integration or the EC[12]/EU.

In such perspective and based on what has already been considered in chapter 1, this study falls within the stream of works focused on the EU as a political system, rather than as a mere geographical space or as a historical product, characterised by a multidisciplinary approach in the wide and rich political research line (see Bourne and Cini, 2006, p. 6), going beyond the traditional distinction between international relations and comparative politics (Pollack, 2009, pp. 141–142).

EU studies are traditionally informed by two competing paradigms, i.e. neo-functionalism (Haas, 1958 and 1964) and intergovernmentalism (Moravcsik, 1993). Where the former is associated with a one-level, supranational game, the latter includes a two-level national/EU game. However, they both tend not to address, also for the historical reasons connected to the moment of their rise, to the EU as a full political system, rather merely reading it through the lenses of the integration process (cf. Awesti, 2007, pp. 2, 5–7). Pollack (2015), among others, provided an overview of these theories and of the most relevant scholarships, as well as of the historical evolution of the debate, also including the other major theoretical lines – for the sake of brevity they will not be recalled here.

It is interesting to note how in AFSJ and, particularly, in migration policy-making research, the intergovernmental vs. supranational approach tends to take place in terms of intergovernmentalist 'venue shopping' – where "the EU serves as a venue to which member states with restrictive policy preferences can 'escape' to circumvent domestic constraints" – and supranational 'liberal constraints' approach – where "institutions such as the Court of Justice of the European Union (the Court), the European Commission (the Commission) and the European Parliament (EP) are able to impose 'liberal constraints' on national governments" (Bonjour et al., 2018, pp. 409–410).

This research, though, operates from the notion that these two approaches – on their own – do not seem to fully grasp the entire picture of the EU policy-making in this subject matter. This calls for different perspectives that might be able to shed light on

[12] In this quote, 'EC' stands for 'European Community'.

those areas still to be explored – such as, among others, preferences, power and policy outcomes (Bonjour et al., 2018).

To such an extent, the exploration of theories connected to the study of the EU and of its policy-making, as opposed to merely looking at the integration process (cf. Pollack, 2015) seems particularly fruitful. Among such theories, new institutionalism (March and Olsen, 1984) offers the opportunity to analyse how and to what extent a great variety of institutions enables a great variety of actors to make decisions, de facto reconciling two opposite perspectives – political agency and institutional constraints – under the same pattern of institutional agency (Olsson, 2016, pp. 21–22).

The new institutionalist perspective adopted here is broadly intended as a "general approach to the study of political institutions, a set of theoretical ideas and hypotheses concerning the relations between institutional characteristics and political agency, performance, and change" (March and Olsen, 2011, p. 160). This makes it possible to disclose the patterns of decision-making in the EU and the relationship between the different organs (Pollack, 2009), incorporating the variety of political actors involved in the EU policy process, in line with the aspects considered above and in the previous chapter. In so doing, political agency is then considered as the way in which – and the reasons why – actors behave within a given institutional context (cf. Olsson, 2016).

Furthermore, this theoretical framework takes into account the need for a cross-cutting public policy approach in the AFSJ, exploring the interactions of institutions, actors and ideas, which have proved particularly relevant in the after-Lisbon communitarised AFSJ (Rhinard, 2007).

Within such broadly intended new institutionalist framework, a concept which has acquired high relevance is that of governance – defined as "co-production mode of decision making among different types of actors" (Bartolini, 2011, p. 11. On the whole point, see March and Olsen, 1984).

Considering the comprehensive approach to the smuggling of migrants of the operational definition provided in chapter 1 through the smuggling spectrum and the connected plurality of actors, *situated at different levels*, involved in the governance of this complex policy domain, the understanding of another, even more recent, theoretical approach to the EU policy-making appears potentially very useful: the multi-level governance (MLG).

MLG came out in 1992 in an article by Gary Marks “to capture developments in EU structural policy following its major reform in 1988. Subsequently, Marks and others developed the concept of multi-level governance to apply more broadly to EU decision making” (Bache and Flinders, 2004b, p. 1). This study does not aim to discuss the multiple possible definitions in detail, neither does it intend to explore the variable nature of MLG (for an in-depth view of this theoretical debate see Piattoni, 2010), but for the sake of clarity it seems important to establish how this concept will be used.

As suggested by Caponio (2017, p. 3) a good start can be Mark’s definition, which seems to have rallied a certain degree of consensus in the literature:

> [MLG is] a system of continuous negotiations among nested governments at several territorial tiers – supranational, national, regional and local – as a result of broad processes of institutional creation and decisional re-allocation that has pulled some previously centralized functions of the state up to the supranational level and some down to the local/regional level (Marks, 1993, p. 392).

Authors have made large use of the concept in the analysis of the European Union governance: from Marks onwards, MLG perspective seems indeed to “capture the nature of the EU as a unique set of multi-level, non-hierarchical and regulatory institutions, and a hybrid mix of state and non-state actors” (Hix, 1998, p. 39, cited in Börzel, 2012, p. 613).

Bevir and Philips (2017, p. 689) critically discussed the way in which scholars have explained the rise of MLG patterns in EU politics, taking the opportunity to provide their own account and analysis:

> [Member States] came to share domestic interest representation and policy influence with supranational and subnational public actors.
>
> Research on MLG has addressed the influence of supranational and subnational groups in policy-making and the breadth as well as the depth of integration, including variation across policy areas. Debates in the study of MLG include the changing role of the state, the extent to which non-public actors are involved in decision-making, the importance of networks rather than hierarchy in relations between actors, the extent to which authority across governance levels is fragmented versus interlocking and the implications of MLG for democratic accountability (Bache and Flinders, 2004; Hooghe

> and Marks, 2008). One prominent offshoot of MLG is the study of ‘‘Europeanization’’ or the interactions between the EU and member states as well as third countries. Top-down perspectives on Europeanization address the impact of European integration on national institutions, policies and politics. Alternatively, bottom-up perspectives address to what extent and through what processes domestic actors upload their preferences over EU policies, processes and institutions (Kohler-Koch, 1999; Jachtenfuchs, 2001: 250–251; Kohler-Koch and Rittberger, 2006: 38; Graziano and Vink, 2007; Ladrech, 2010; Börzel and Panke, 2013).

Focusing more specifically on the policy domain considered in this research, MLG has also played a major role in the analysis of EU migration policies, even though its application in this specific area has started only recently (Caponio and Jones-Correa, 2017, p. 1; Spencer, 2018. For a review, see also Scholten and Penninx, 2016 and, more generally on MLG-led analyses on migration, Panizzon and van Riemsdijk, 2019), giving rise to the two strands which seems “to underlie current studies and debates on the MLG of migration policies: policy analysis and studies on federalism and minority nations[13]” (Caponio and Jones-Correa, 2017, p. 6).

Among these works, some of those included in the first strand focus specifically on the local level, on the vertical relationship with the EU and the national government and the horizontal relationship with the society, taking on an actor-centred perspective (Caponio, 2017, among others), much like part of this research attempts to.

On the basis of what has been considered so far in terms of (a) operational definition, (b) research problem, (c) overview of the new institutionalism framework and (d) overview of the MLG framework, the approach here proposed seeks to establish a productive dialogue between new institutionalism and MLG (cf. Awesti, 2007) through a conceptual combination aimed at disclosing the patterns of agency in smuggling-related policy-making across different levels of EU governance, as shall be further explained in the next paragraph.

It will then be possible to make the most of the “analytical relevance” of MLG, looking at it “as an inductively generated, empirical concept” and taking into account the

[13] These two strands also encompass migration MLG in North America, another political space which is particularly prominent for this subject matter, as recalled by the two authors themselves.

caveats related to its limited theoretical power (Caponio and Jones-Correa, 2017, p. 4. See also Piattoni, 2010), which can be overcome by the connection explored above.

Furthermore, such conceptual combination provide several interesting instruments that can be used in order to understand the governance of this political space. Three of them seem particularly useful to the purpose of the present research.

Firstly, the 'principal-agent model', which is "a heuristic tool that helps to identify the key factors for understanding and explaining the politics of delegation and discretion. It allows scholars to understand why, how and with which consequences certain actors delegate the authority to execute a particular task to other actors" (Tallberg, 2002, cited in Delreux and Adriaensen, 2017, p. 3. See also Bonjour et al., 2018). Given the very nature of EU politics, this is a model that has experienced great success, since its first applications within the EU (Pollack, 2003). Delreux and Adriaensen (2017) offer un up-to-date analysis of the principal-agent model in EU studies, opening up interesting reflections that also deal with both macro and micro delegation, with the "patterns and politics of delegation" and with the "politics of discretion" (Pollack, 2017).

This concept plays a crucial role not only in relation to the supranational arena, but also for the understanding of implementation dynamics (hence in particular at a local level), associated with the 'street-level bureaucrats' (Lipsky, 1980) and their importance in bottom-up approaches (for some general considerations, see Howlett and Ramesh, 1995).

Secondly, the 'shadow of hierarchy' (Scharpf, 1994. See also, among others, the contributions of Zürn, Börzel and Levi-Faur in Levi-Faur, 2012), intended as the way in which the action of "steer[ing] democratic governmental action at the national and European level (Scharpf 1997)" can be achieved through "legislative threat or inducements" (Héritier and Lehmkuhl, 2008, p. 2). In EU governance studies, this concept has turned particularly relevant in connection with a principal-agent model based on the assumption of a bounded, limited rationality:

> Given an incomplete contract and the opportunism of the contracting partners, rules are drawn up between the contracting parties that establish a governance arrangement (Brousseau and Fares 2000; Koenig-Archibugi 2006) providing for the adjustment of the contract to changing conditions, for resolving conflicts in the

> application of the incomplete contract and for ensuring compliance with the contract (Héritier and Lehmkuhl, 2008, p. 4).

In such context, "[p]rincipal-agent theory offers a number of hypothetical answers to the question of whether a looming shadow of hierarchy is conducive to better policy perform" (Héritier and Lehmkuhl, 2008, p. 6). The shadow of hierarchy is then considered as the marking element of the EU governance (or the EU governance *mix*, according to Börzel, 2012), leading to a potential "dilemma of European governance[, which] may be that 'soft' forms appear to require a shadow of supranational hierarchy to address policy problems, which the member states refuse to make subject to 'hard' supranational forms of governance in the first place" (Börzel, 2012, p. 13).

Thirdly, the 'arena linkages', i.e. how "in a context of linked decision-making arenas, the threat of veto by an actor may allow to exert influence in another linked arena in which the actor does not have a formal voice. […] In other words, it [holds] one arena hostage to obtain influence in another arena" (Héritier and Moury, 2012, p. 653. See also the 'nested games' of Tsebelis in chapter 1). This is important in new institutionalist multi-level governance, since

> it is assumed that actors interact in a given institutional context, in this particular case in a multilevel institutional context and a multi-arena context at the same level. […] Moreover, the dynamics of multilevel governance are compounded by the fact, as Benz has elaborated in his work, that at one and the same level various actors' decisions need to be coordinated, before interacting with other actors at the higher level. This leads to a complex web of sequential interactions between actors across levels, but also at the same level that needs to be accommodated in order to come to a decision (Héritier, 2019, pp. 352–353).

The three instruments presented above are helpful to understand the reasons why such approach has been chosen and to provide those elements for the stipulation of the research question and of the analytical model – which shall be provided in the next paragraph.

2.3. Navigating the anti-smuggling policy-making within the EU: the research questions and the analytical model

The main research question (RQ) that this study intends to address, based on the interaction between the comprehensive operational definition of migrant smuggling[14], the research gaps and problem and the conceptual combinational between new institutionalism and multi-level governance, can be formulated as follows:

> ***What are the patterns of the smuggling-related policy-making across different levels of EU governance and which institutional and agency dynamics can explain them?***

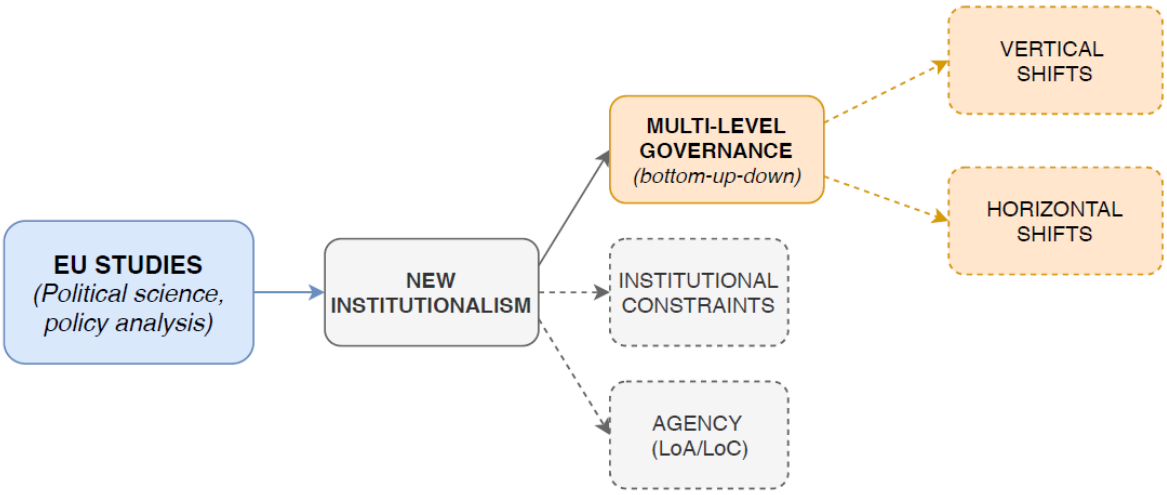
Such RQ is aimed, therefore, at disclosing the policy-making patterns against migrant smuggling within the EU, considering, on the one side, the relationship between institutions and agency and, on the other side, the multi-level governance dynamics, both in a vertical and horizontal perspective (for a schematic view of the theoretical approach toolbox and the connection between the different elements, see Figure 2.1.).

This shall bring a theoretical contribution to the overall academic debate, deriving, in the first place, from the explorative nature of this comprehensive study in this policy field and therefore allowing for a first understanding of the specific case of the smuggling of migrants within AFSJ policy-making studies.

Furthermore, the approach chosen, which combines elements of new institutionalism and MLG, has not been widely applied in AFSJ studies and this research shall therefore also be important in assessing the heuristic and explanatory power of a multi-level understanding of institutional agency in this field (as opposed to a merely one-level analysis), also with a view to offering new possibilities for understanding policy-making patterns in other migration-related areas. In this regard, the epistemological model is innovative, as it is applied through different phases and levels of policy adoption, since the specificity of the phenomenon poses pressures on the existing theoretical frames, functionally taking place throughout boundaries.

[14] It should be recalled that such a definition entails the consideration of a broader set of policies as part of the anti-smuggling-related framework (see the smuggling spectrum and the operational definition in section 1.2.3.).

Figure 2.1. – The research theoretical toolbox



Source: Elaborated by the author

Notes: Dotted lines connect the theoretical perspectives with the main analytical components that will be used for each of them

In turn, this RQ entails some research sub-questions (SQs), embedded in the different analytical levels. In particular, in line with the MLG approach, at least three levels of policy-making oriented agency can be identified – i.e. local[15], national and supranational levels – with a view to understanding the interaction between institutions and agency not only within each of these levels, but also across them (see also Table 2.1.). The definition of such levels and connected SQs, in the proposed order, follows a bottom-up perspective that can underscore the impact of 'lower' governance levels on 'upper' ones. The three research sub-questions can be formulated as follows:

> ***SQ1 – How does the response to migrant smuggling function on the ground and how does this contribute to policy-making in this field?*** *This SQ deals with the local level, with a view to disclosing the patterns of agency on the ground and how local practices contribute to policy-making. In order to*

[15] The international level was not included based on the rationale of focusing exclusively on the political space within the EU (even though several references to the international level and its importance in empirical and analytical terms will be made throughout the research). Likewise, the local level was not split into 'regional' and 'local' (cf. the definition of Marks, 1993), since the peculiarity of the AFSJ, which mostly entrusts implementation-related responsibilities on a local level, seemed to make such division redundant.

do so, besides the institutions/agency pattern, it shall also focus on the subjective interpretation that actors on the ground give to their actions.

SQ2 – What factors and dynamics are relevant to the formulation of policies against migrant smuggling on a national level? *This SQ focuses on the national level, in order to understand policy-making patterns in relation with what happens on the ground and at supranational level and based on the general theoretical approach.*

SQ3 – What factors and dynamics are relevant to the formulation of policies against migrant smuggling on a supranational level? *The last SQ moves on to the supranational level, replicating the analytical operation conducted at the national one.*

The establishment of the research question and sub-questions enables a further narrowing down of the approach, leading to the explanation of how the new institutionalist MLG framework will be concretely applied. This can be done through the elaboration of the last step of the theoretical framework, i.e. an analytical model, which will make it possible to consider under the same umbrella the three distinctive elements of this conceptual combination: institutions/agency continuum, interaction between different governance levels, interaction between different arenas. This is in turn reflected into the three different layers of the model, as follows.

Firstly the institutions/agency layer, where the way in which policy-making (and implementation) processes happen within a given institutional framework will be considered, highlighting the institutional (structural) constraints that actually exist. This will mainly allow us to understand the impact of institutional arrangements or resource allocations, among other things, in policy-making and policy implementation (for instance in those cases where norms as they are simply cannot be followed[16]).

[16] Several policy implementation studies address this point, such as Falkner, Hartlapp, Leiber and Treib (2004), which offer an analysis of EU law implementation and the role of opposition, administrative shortcomings, interpretation problems and issue linkage in the implementation failure.

Table 2.1. – Research question and sub-questions

	Research question	*Explanandum*	*Explanans*	Theoretical Contribution
RQ	What are the patterns of the smuggling-related policy-making across different levels of EU governance and which institutional and agency dynamics can explain them?	Policy-making patterns against migrant smuggling in the EU (particularly in relation to the national and local cases that will be considered)	Across-the-level political agency and institutional constraints	Explorative study in this policy field Improvement of the multi-level (as opposed to one-level) understanding of institutional constraints and political agency
SQ 1	How does the response to migrant smuggling function on the ground and how does this contribute to policy-making in this field?	Local agency How practices make policies	Institutions ↔ Agency Subjective interpretation	
SQ 2	What factors and dynamics are relevant to the formulation of policies against migrant smuggling on a national level?	Policy-making patterns against migrant smuggling at a national level	Institutions ↔ Agency Vertical MLG dynamics Horizontal MLG dynamics	
SQ 3	What factors and dynamics are relevant to the formulation of policies against migrant smuggling on a supranational level?	Policy-making patterns against migrant smuggling at a supranational level	Institutions ↔ Agency Vertical MLG dynamics Horizontal MLG dynamics	

Source: Elaborated by the author

However, in line with such framework, it will also be maintained that actors can and do exert their political agency (see the previous paragraph and Olsson, 2016). It will be then explored the way in which they move and contribute to the final outcomes, using which resources and facing which institutional limitations, and explaining the reasons and logics that govern these very processes. In this perspective, both dominant approaches in new institutionalism are considered and combined in this study, i.e. the

logic of consequence and the logic of appropriateness, considering them as complementary to one another (cf. March and Olsen, 2006, p. 9)[17].

This means that actors' agency is explained, on the one side, on the basis of a "rationality assumption" and of the research of "optimal choices", also considering the existence of a plurality of (potentially overlapping) arenas, which give rise to "nested games", i.e. those situations where "an actor is involved in a whole network of games" (Tsebelis, 1990, pp. 6–7). On the other side, the concept of appropriateness is also important, starting from the very idea that "political institutions are collections of interrelated rules and routines that define appropriate actions in terms of relations between roles and situations. The process involves determining what the situation is, what role is being fulfilled, and what the obligation of that role in that situation is" (March and Olsen, 1989, p. 160).

Both these perspectives offer explanations as to the reasoning and related incentives that in the given institutional framework actors have in order to make specific decisions, and sometimes even to move away from what they would expect to act like. So "rational action [can be conceptualised] in terms of a more realistic goal orientation, open to other sources of action than pure self-interest; bounded by the specific conditions of the actor and the situation; and extended to include both calculation and intuition. This down-to-earth view of goal orientation is more open and flexible and works well with a sociological and political understanding of action" (Olsson, 2016, p. 31).

Lastly on this aspect, also the way in which "institutional choices taken in the past can persist" (Pollack, 2009, p. 127) shall be considered, as an integrative perspective and not as a separate approach (the 'historical institutionalism'), in line with Pollack (2009). Here the concept of path dependency becomes central (Olsson, 2016 and Pollack, 2009. See also Bonjour et al., 2018, p. 416; Maricut, 2016; Ripoll Servent, 2017 and

[17] This combination also applies to the choice of policy instruments: "As a rule, decision-making theories have distinguished and categorised them into two different categories of logic: the logic of consequence (effectiveness-seeking) and the logic of appropriateness (sense-seeking). The logic of consequence drives decision makers to choose their policy instruments according to the principle of instrumentality, and thus to select instruments that are in keeping with the policy-makers' pursued goals. The logic of appropriateness encourages decision makers to choose according to the principle of legitimacy, and thus to select instruments that possess a value 'shared' by other actors and environments. Thus, by drawing from different stream of literature, this essay proposes a conceptual framework by which to order and analyse the choice of instruments by assuming that in the real world, decision makers are forced to find a balance between these two logics of choice" (Capano and Lippi, 2017, p. 271).

Zincone and Caponio, 2006) to understand how certain policy outcomes and patterns of today can be actually read and made sense of in light of decisions (and institutional arrangements) of the past. In this very framework, also unintended (or unwanted) consequences become important, as side effects of previous decisions or practices that shape the institutional environment, constrain agency or produce nevertheless specific unexpected results (see again Pollack, 2009. Cf. also Bonjour and Vink, 2013, addressing aspects of the unintended consequences within a migration framework).

The second layer is based on the interaction between different governance levels, i.e. "the centre-periphery or vertical dimension, regarding interdependence between governments at different territorial levels[18], that is, the 'multi-level' aspect of the concept" (Caponio, 2017, p. 2055, citing Bache and Flinders, 2004a). Here the perspective adopted is both top-down and bottom-up in terms of influence on the policy-making process, but it also takes notice of the "shifting down" and "shifting up" of responsibilities to different levels: in this respect, it should be noted that the shifting up tends to be far less studied in the literature (Caponio and Jones-Correa, 2017, p. 8). The combination of these two perspectives, however, is traditionally not very common in MLG studies on migration (Zincone and Caponio, 2006, p. 276), but it is crucial in order to understand the whole complexity of the phenomenon at hand. In this specific case, consistently with the adopted formulation, the interaction between local, national and supranational levels will be considered[19].

The third layer elaborates on the "state-society or horizontal dimension, emphasising the growing interdependence between public and non-public actors (Agranoff, 2014), that is, the 'governance' aspect of the concept" (Caponio, 2017, p. 2055, citing Bache and Flinders, 2004a). In so doing, it broadens the meaning of the 'horizontal' – or 'governance' – aspect of MLG, as to go beyond mere state-society or institutional-informal relationships (cf. Zincone and Caponio, 2006, pp. 274–275), which mostly

[18] It should be stressed that the focus is not placed on the allocation of different competences among levels provided by EU treaties and national legislations, but rather on the policy-making dynamics taking place across these very levels. The various competence allocation (i.e. the specific tasks and responsibilities borne by each governance level) is outlined in chapter 3 and taken for granted in the overall analysis).

[19] Such interaction will be analysed, in this layer, exclusively in terms of inter-institutional connections, since institutional/informal interactions, such as those between NGOs and policy-makers, fall within a different layer (see below).

consider the effects of non-institutional agency on the policy-making process. It also includes, indeed, within-the-institution dynamics, essentially placing the focus both on the interaction between different policy areas and between different institutions.

As already stated, the understanding of the reasons and rationales for such processes will also be crucial, clearly following the path indicated by Caponio and Jones-Correa (2017, p. 12), stating that “research has to move beyond the description of MLG […] and to finally address ‘why’ questions”.

Recalling the three instruments of the new institutionalist MLG toolbox above explored, one can appreciate how the first two (principal-agent model and shadow of hierarchy) are going to be mainly used in this research to essentially inform the analysis of the multi-level aspect, whereas the third one (arena linkages) for the governance aspect.

Table 2.2. provides a schematic summary of this whole argument, highlighting the three layers of analysis and associating to each of them those specific elements arising from the operational definition and from the nature of the EU governance in this field(s), as well as some of those theoretical tools that shall inform the analysis.

In more concrete terms, this analytical model shall be applied in the different levels of analysis (local, national and supranational), each of them corresponding to one chapter of Part 2 of this study, as follows.

At the local level (chapter 4), in the light of the non-strictly policy-making nature of the analysis, the focus will mainly be on the institutions/agency layer (layer 1), considering how the analysis is aimed at disclosing the implementation dynamics and the effects of them on the formulation of policies.

At the national and supranational levels (chapters 5 and 6) the analytical model will be applied privileging a MLG-based narrative (layers 2 and 3), highlighting both top-down and bottom-up dynamics, as well as horizontal relations. In such perspective, given the constant overlapping of levels, the decision on where to place and consider different examples shall be based on the point of view adopted (e.g. how a local dynamic influences the national policy-making will be considered within the national level).

Table 2.2. – The three-layer analytical model for the study of anti-smuggling policy-making

<table>
<tr><td rowspan="2">1</td><td colspan="3">Institutional constraints ⟷ Political agency</td></tr>
<tr><td colspan="3">(logics of agency, path dependency, unintended consequences)</td></tr>
<tr><td></td><td colspan="3">Different institutions involved, also at different levels, with different history and patterns (national governments, national and EU parliaments, ministries and EU agencies, judiciary, local government, law enforcement, etc.)
Different crucial actors (decision-makers, judges, civil servants, smugglers, migrants, etc.)</td></tr>
<tr><td rowspan="3">2</td><td colspan="3">Interaction btw. different governance levels (the ‘multi-level’ aspect)
(shadow of hierarchy, principal-agent, street-level bureaucracy, shifting up & down)</td></tr>
<tr><td>Local level</td><td>National level</td><td>Supranational level</td></tr>
<tr><td colspan="3">Policies concern different levels, based on the treaties and on the principle of subsidiarity (asylum, migration, Facilitators Package, cooperation in criminal matters, etc.)</td></tr>
<tr><td rowspan="3">3</td><td colspan="3">Interaction between different arenas (the ‘governance’ aspect)
(arena linkages, new governance, horizontal shifts)</td></tr>
<tr><td>Different policy areas</td><td>Informal-to-institutional dynamics</td><td>Between-the-institution interaction</td></tr>
<tr><td>Criminal justice policies, the demand side and the overall migration framework, asylum policies, externalisation policies, etc.</td><td>The role of civil society, NGOs, etc.</td><td>Several decision-makers, different ministries and EU agencies, judiciary</td></tr>
</table>

Source: Elaborated by the author

Evidently, the division into different layers is essentially analytical: the very same issue, actually, can be (and is) spread across different dimensions (e.g. a case of policy adoption can be read both in terms of ‘different policy areas’ and ‘between-the-institution’). Here lies the very heuristic and analytical relevance of the model, which is able to isolate (and stress) particular characteristics and patterns of the same issue, based on the different layers of analysis.

Finally, the model will be applied in its entirety in the last analytical chapter (7), where the three layers will be reconciled through an across-the-level institutions/agency

analysis, i.e. how political agency, constrained by institutions, produces effects on and across the three different levels.

2.4. The methodological approach and the case selection: Italy and Sicily

This is a case study research and it aims to answer the research question through an in-depth analysis of a specific case of multi-level policy-making in the field of migrant smuggling within the EU. In particular, given the unexplored nature of this policy area and the innovative characteristics of the approach (see chapter 1 and above), the choice of a case-based strategy seems particularly suitable, with the opportunity to "collect detailed information using a variety of data collection procedures over a sustained period of time" (Creswell, 2003, p. 15; see also Stake, 1995 and, on the theoretical relevance of the approach, Eckstein, 1975. On the application of case study analysis in a similar doctoral research, see van der Giessen, 2014, pp. 17–19).

The research follows, therefore, the logic of an "interpretive" case study (Morlino, 2005, p. 106; see also Eckstein, 1975; Lijphart, 1971 and Sartori, 1991), essentially entailing: (a) the consideration of "existing hypotheses and theories", albeit "non-systematic" and in an "applied science" perspective (Morlino, 2005, p. 106) and (b) the exploration and interpretation of a specific case, with the possibility of generating hypotheses through an inductive perspective, which prioritise internal validity (Creswell, 2007, pp. 38–39; Gerring, 2009, pp. 8 –9. See also Dörrenbächer, 2018, pp. 33–34).

This means that the phenomenon addressed in the research question – i.e. policy-making patterns in smuggling related issues across the EU, through the consideration of the interaction between different levels and actors – will be explained by focusing on a specific case of national and local systems, within the EU, interacting with the supranational level. In such perspective, Italy and, on a more grounded level, Sicily, represent a very suitable case (or a case and a sub-case at different governance levels[20]) for an in-depth analysis of these dynamics. This has to do mainly with (a) geopolitical reasons connected to their position as southern border of the EU, (b) the rise of undocumented migration waves coming in particular from Libya from 2011

[20] The characterisation of Sicily as a sub-case does not diminish its importance nor analytically subordinates it to Italy: it rather comes from its very nature of a case within the case, deriving from geographical, political and institutional reasons.

onwards and the subsequent confluence of a number of different policy measures and operations – both from the EU and the Italian government – in the Mediterranean area and in Sicily and (c) the relevance that Italy acquires within the EU from a political and institutional point of view, as founding member and being the fourth country by population and GDP.

Case selection, given the primary exploratory nature of the research, is based (a) on the salience and significance of the specific case and sub-case per se and (b) on the particular relevance of the cases considered in order to disclose patterns within the broader EU level. Rather than relying on randomised choices, therefore, it is more in line with the type of the "extreme case" as defined by Gerring (2008), in a research which is therefore strongly "case-oriented", borrowing such a concept from a work of Della Porta (2008) on comparative analysis.

Through the interaction between the Sicilian implementation dynamics and the Italian and EU policy adoption patterns, it will then be possible not only to disclose the anti-smuggling policy-making dynamics referred to the Italian/Sicilian case, but also to consider these findings insightful, given the very nature of the case considered, for the governance within the EU as a whole. In other words, the RQ the *explanandum* (see Table 2.1. above) and so the expected results are to be read, firstly, in relation to the dynamics taking place between EU, Italy and Sicily and, secondly, in connection with a first explorative understanding of the patterns of policy-making in this domain within the broader dimension of the European Union.

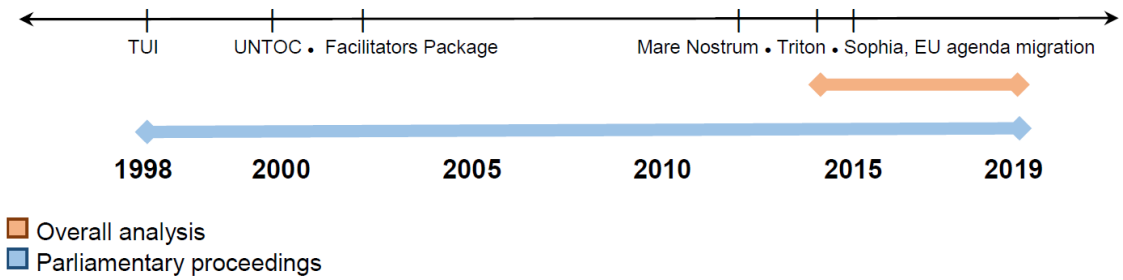
The time frame over which the Italian case and the Sicilian sub-case are considered essentially covers the eighth legislature of the European Parliament, going from 2014 to April 2019. The last days of the legislature, i.e. May 2019, were not included for a methodological reason, connected to the approaching European elections and, therefore, making that de facto part of a new political cycle.

The reason why this time frame was considered essentially has to do with the high significance it has in the understanding of the evolving patterns of EU policy-making in this field, because of the dramatic rise of the migration flows towards Europe, the launch of search and rescue (SAR) operations in the Mediterranean Sea (Mare Nostrum in October 2013, Triton in November 2014, Sophia in June 2015) and the centrality acquired by migration management and tackling of undocumented migration

and smuggling in the public debate, also in the light of the commitment of EU institutions towards a review of the overall migration and asylum framework (see the European Agenda on Migration for all).

However, such time frame was not considered in absolute and strict terms: the background research, indeed, also included data referring to an earlier period, in particular from 1998 onwards and specifically in the case of parliamentary debates of the Italian parliament and, to a lesser extent, of the European Parliament. This choice was made with a view to providing a wider context to the substantive policy processes analysed over the 2014-2019 period, understanding patterns on a larger time frame and observing the evolution of political debates and priorities, also considering how, between 1998 and 2008 in particular, a number of important pieces of legislations concerning undocumented migration were passed in Italy. However, for the sake of methodological accuracy, it must be stressed that such 1998-2013 analysis had the sole purpose of integrating the framework, whereas the answers to the research questions and the overall analysis conducted in chapter 7 and in the Conclusions are exclusively based on the time frame considered (see also Figure 2.2.).

Figure 2.2. – Time frame of the research



Source: Elaborated by the author

2.4.1. Understanding the Italian migration policy-making

Before moving on to the last methodological aspects, and owing to the fact that Italy has been selected in this case study, it is necessary to take a step back and devote a few lines to the analysis of some of the characteristics of the policy-making dynamics in the broad migration field[21], as they constitute the basis of some of the patterns that will be observed. In particular, four aspects seem to be particularly relevant: (a) the impact of EU legislation; (b) the shifting out (or, better, 'shifting south') characterisation of such policies; (c) the distance between policies and (expected) results; (d) the convergence of parties and coalitions.

Firstly, the progressive involvement of the European Union in matters of migration, borders and security (see chapter 3) led not only to the obligation for Member States to conform to the EU legislation, but also to some direct effects on their very policy formulation. In the case of Italy, this was particularly relevant as it was one of the main reasons for the progressive adoption of a securitising approach (Castelli Gattinara, 2017, p. 320), the first evident case being the so-called 'Martelli Law', following Italy's signing of the 1990 Convention implementing the Schengen Agreement (the Schengen Convention. Finotelli and Sciortino, 2009, p. 123 and Abbondanza, 2017, p. 79). As Finotelli and Sciortino further argued, it can be right this pressure "to adopt the non-immigration dogma of other EU member states", in contradiction with the structural needs of the country which would foster the demand for foreign workers, to explain the Italian difficulties in migration policies, and not, as assumed by others, some sort of state weakness. In other words, "unsatisfactory outcomes of Italian migration policy are rooted in the lack of an adequate choice of the goals that migration policy should pursue" (Finotelli and Sciortino, 2009, pp. 121, 127).

A second element, still pertaining to the external projection of the national policy-making, has to do with the progressive shifting out (Lavenex, 2006) of migration policies or, even more appropriate to this context, to their 'shifting south': over the years, migration policy-making has entered a space of overlapping with foreign policy-making, particularly through the instrument of the agreement with third countries. Such

[21] The legislative framework will not be mentioned in this chapter, seeing as it will be widely explored in chapter 3. An exhaustive historical perspective on that is offered by several authors, such as Abbondanza (2017).

approach, which is also widely used by other EU countries and by the EU itself (cf. Abbondanza, 2017, p. 84), seems particularly interesting insofar as the policies to fight smuggling in the Mediterranean Sea are concerned. This has taken the form of different agreements, in particular,

> with Tunisia (2003 and 2009) and Libya (in 2000, 2003, 2004, 2005 and 2008), to strengthen the capacity of those countries to patrol their coasts and, in the case of Tunisia, to collaborate with Italy in the identification and re-admission of undocumented Tunisian citizens. In 2008, the Bengasi Treaty with Muammar Gaddafi stipulated that Libya would have to accept all migrants leaving its coasts and expelled from Italy, allowing direct return from international waters (Caponio and Cappiali, 2018, p. 118; see also Cuttitta, 2018).

This last aspect, in particular, raised several human rights concerns (Abbondanza, 2017, p. 84), leading also to the ruling of the European Court of Human Rights in the case *Hirsi Jamaa and Others v. Italy*, whereby Italy was found liable of several violations for conducting interceptions at sea. A very similar approach is contained in the new treaty Italy signed with Libya in 2017 (Caponio and Cappiali, 2018, p. 119). This last agreement is noteworthy as it confirms the efforts of Italy (and of the EU more generally, see Strik, 2019) to target undocumented migration through this 'shifting south' of policies and borders, indicating the strengthening of Libyan coast guard – with a view to preventing crossings and facilitate forced returns – and the establishment of a Libyan SAR zone as two powerful components of this strategy (Cuttitta, 2018, pp. 649, 653). And the installation of the new Libyan government has very much facilitated this scenario (cf. Cuttitta, 2018, p. 648).

Thirdly, the distance between policies and (expected) results should also be mentioned. This has been a characteristic of the Italian approach to (undocumented) migration and smuggling since the very beginning, and arguably the inadequacy of the approach led to an increase of undocumented migration, in the years in which Italy was moving from being an emigration to an immigration country (Abbondanza, 2017, pp. 77–78). "According to migrations scholars, migration policies in democratic countries are characterised by a structural gap between stated goals and their outcomes" (Caponio and Cappiali, 2018, p. 115): it is not surprising, then, to find the same situation also in Italy. But, going even further,

> negative feedback from past policies is a recurrent factor motivating policy reforms in the field of immigration control and integration. We could call into question the very possibility of fully successful integration strategies and fully successful policies aimed at controlling the inflows. A sort of inevitable negative feedback would explain the unending process of policy reforms in this field – not only in Italy (Zincone, 2011, p. 263).

Such a gap is increased by the wide discretion in policy implementation (see chapter 4), and this could be considered as part of a broader "structural gap between formally restrictive measures and lenient implementation, especially vis-à-vis undocumented migrants" (Caponio and Cappiali, 2018, p. 116), created by the convergence of economic "client politics" (focused on the need of the labour system) and the liberal "powerful lobby of the weak", a "strange alliance" of employers' organisations, catholic NGOs and trade unions (Zincone, 2011, cited by Caponio and Cappiali, 2018, pp. 116–117).

The fourth and last characteristic of the law-making process concerning migration and smuggling has to do with a feature of the broader Italian policy process: consensualism. Notably, though, it could be surprising to find such an attitude also in an issue which has proven to be very divisive in public opinion and also in the very political debate. The work of Zincone (2011) definitely is a cornerstone in the historical analysis of this policy sector, even if slightly dated. According to the author,

> there emerges a first important feature in Italian decision-making: an inevitable partial convergence between centre-right and centre-left policies due to policymaking persistently being pulled in two directions. Decision makers in Italy have had to find a middle ground, striking a balance between the public demand for control over illegal immigration and reduced inflows, on the one hand, and employers' pressure to regularise undocumented immigrants and open the borders to immigrant labour, on the other. Different inputs produce these contradictory outputs (Zincone, 2011, p. 249; see also Finotelli and Sciortino, 2009, p. 136).

The reduction of potential divergences between centre-right and centre-left coalitions is attributable to "the presence of the same social actors and lobbies, the ubiquitous positioning of Catholic pro-immigrant parties in both majorities and the persistence of

similar problems", even if confrontational attitudes are observable in Parliament (cf. Giuliani, 2008 and Zincone, 2011, p. 257 among others).

However, this convergence, which leads also to very similar zigzagging policies, never leads to an overlapping of centre-right and centre-left: differences exist in their policy-making processes and are related, among other things, to the role attributed to experts, civil servants, informal actors and to the dependence on electoral panics. The relatively small differences in policy outcomes, rather, have been partially eroded over time by rulings of the Constitutional Court and by practical problems (Zincone, 2011, pp. 258–261 and 271–272).

In the lack of more recent studies on this specific issue, it can be noted that in-depth analyses such as those of Abbondanza (2017), Caponio and Cappiali (2018) and Castelli Gattinara (2017) do not seem to challenge this view, even though this should not be taken as conclusive, since the different main focus of those very studies.

However, it should also be noted that both Caponio and Cappiali (2018), Castelli Gattinara (2017) and Zincone (2011) stressed the peculiarity of the Lega Nord (LN), within the Italian party system, for its strong stance opposing over the years (especially undocumented) migration. Verbeek and Zaslove (2015) further considered the critical role of the LN in the shape and adoption of migration policies in the Berlusconi Governments and how "[h]olding a key ministry (Maroni at Interior) added to the LN's structural capacity to influence policy in this area" (Verbeek and Zaslove, 2015, p. 539). As was noticed by Caponio and Cappiali (2018, 127), the role and importance of the Lega Nord in migration policy-making has been exacerbated, more recently, by its new leader Matteo Salvini (Minister of Interior, as in the case of Roberto Maroni), in a context in which "a deterioration in attitudes towards migrants open the political space to a more straightforward politicisation of the issue" and where "the political strategies of the LN and the Five Star Movement (M5S, see also Tronconi 2018) are clear cases in this point".

In a political system that is characterised by the existence of a number of partisan veto players (Tsebelis, 1995, p. 316), consensualism has been the result of a policy process that need to rely on several consultations, even with opposition MPs, in order to ensure that the government itself survives and which entails the risk that only 'fragile' policies arrive at the final stage, while non-decisions and amendments continue to be of a

certain importance (see Giuliani, 2008, pp. 78–80). Interestingly, a veto-player approach to the Italian policy-making suggests, under certain conditions, policy stability – which can degenerate in immobilism – and a more independent bureaucracy (Tsebelis, 1995, pp. 314, 324).

In concluding this focus, some last reflections can be drawn on another general characteristic, alongside consensualism, of the Italian policy-making, i.e. the 'ruling by decree'.

Italian government has traditionally been considered as marked by instability (Zincone, 2011, p. 257), a characteristic which persists also in present times, even if the political system considerably changed in 1992-94 with the transition to the so-called 'second republic'. Parliamentary majorities – and therefore governments – are not more cohesive, even if there is party alternation (Giuliani, 2008, p. 62) nor do governments enjoy a better relation with their political majority in Parliament, even if in the last decades a presidentialisation process took place in Italy (Musella, 2014). Today governments are stronger, in the light of the presidentialisation occurred, but quite paradoxically they do not enjoy a more stable (and loyal) relation with their parliamentary majority (Musella, 2014, p. 6). All this matters insofar as it has led to (and/or it is confirmed by) the maintenance of a policy style coming from the mid-1970s where "a sort of 'permanent use of decrees' seems to be a common feature in the Italian republican history, due to the necessity to find a political solution to the difficult executive/legislative relations" (Musella, 2014, p. 7). Notably, also in the case of legislation by decree there is room for consensualism, as is also the case in delegated legislation (Giuliani, 2008, pp. 71–74), widely used to transpose EU acts (see Musella, 2014, pp. 10–11) and approve migration policies.

This short ad hoc analysis, far from being an exhaustive state of the art review of the Italian policy-making patterns, highlighted some interesting aspects that will emerge again in the next chapters, in conjunction with the other overall analytical component.

2.5. Sources, data and analysis

The last component of the analytical and methodological framework concerns the gathering of data and how they were analysed. The first point to be made is that this

case analysis is conducted by using qualitative methods, which allow for the explanation of complex phenomena, in-depth analyses, contextualised comparisons, interpretive inquiry and a holistic account (see Creswell, 2003, p. 15 and 2007, pp. 40–41; Gerring, 2009 and Mahoney, 2007, pp. 122–127).

Within such approach, a plurality of sources was used in data collection, in order "to seek convergence and corroboration through the use of different data sources" (Bowen, 2009, p. 28): (a) documentary sources, (b) semi-structured interviews and (c) desk research.

Documentary sources were used in order to unpack and understand the basic patterns of policy-making and implementation referred to migrant smuggling at EU, Italian and Sicilian level. This process involved the collection and analysis of several types of documents, either publicly available or with restricted access, mainly consisting of (a) official documents of local, national and supranational authorities, e.g. ministerial documents or European Council conclusions; (b) reports of institutional bodies, international organisations (IOs) and non-governmental organisations (NGOs), e.g. the European Migrant Smuggling Centre (EMSC) or United Nations Office on Drugs and Crime (UNODC) reports; (c) judicial proceedings, e.g. cases related to the 'facilitation offence' in Sicilian courts; (d) formal and informal notes and correspondence, as a residual category, e.g. a letter sent by Italian authorities to the German Ambassador concerning the involvement of Germany in the activities of an NGO.

A peculiar type of documents, mostly based on the transcription of institutional discourses, is represented by parliamentary sources, which were extensively used, also beyond the time scope of the research (see the time frame above), both at national and EU level. At an Italian level, the data collection of parliamentary proceedings was based on two different, complementary techniques: on the one side the parliamentary debates concerning the discussion and vote of the most important smuggling and migration-related laws from 1998 to 2018, including also the works of the standing committees, where available; on the other side, also parliamentary questions, motions and general debates were considered, from 1998 to 2018, through a keyword research and with a specific focus on the issue-based work of special and standing committee (see Table 2.3.).

At an EU level, instead, the use of parliamentary sources was limited to debates

concerning undocumented migration and smuggling, over the period 2014-2019, through a keyword research (see Table 2.4. The rationale for these two different approaches towards parliamentary sources will be addressed below in this paragraph).

Table 2.3. – Italian parliamentary sources

Topic/Law	Year	Branch (Plenary/ Committee)	Note
Undocumented migration, migrant smuggling, closing harbours, Libya externalisation policies – Parliamentary questions, motions, debates	1998/2019	Chamber, Senate (P/C)	Search with keywords (in Italian): “migrant / smuggling / harbours, facilitation / immigration / *clandestino*”
Law n. 106/2002	2002	Chamber, Senate (P)	
Law n. 189/2002	2001/02	Chamber, Senate (P/C)	
Law n. 271/2004	2004	Chamber, Senate (P)	
Law n. 125/2008	2008	Chamber, Senate (P/C)	
Law n. 94/2009	2008/09	Chamber, Senate (P/C)	
Special Committees hearings and proceedings	2013/18	Chamber, Senate (C)	Search for topic: NGOs SAR activities
Law n. 46/2017	2017	Chamber, Senate (P/C)	
Law n. 98/2018	2018	Chamber, Senate (P)	
Law n. 132/2018	2018	Chamber, Senate (P)	

Source: Elaborated by the author

Table 2.4. – EU parliamentary sources

Topic/Law	Year	(Plenary/Committee)	Note
Undocumented migration, migrant smuggling – Parliamentary debates	2014/2019	(P)	Search with keywords: “migration / migrant”

Source: Elaborated by the author

The second type of source used for data collection is semi-structured interviews, with a view to understanding “how subjective factors influence political decision-making, the motivations of those involved, and the role of agency in events of interest” (Rathbun, 2008, p. 2). They were realised between 26 September 2018 and 28 May 2019, for a total of twenty in-depth semi-structured interviews, plus three informal interviews/conversations. They essentially considered practitioners holding a significant experience in the subject matter and/or with a primary role either on the ground or in the policy-making process.

Interviewees included (a) high-level officers and decision-makers of the European Union and of Italian institutions; (b) officers of IOs and NGOs; (c) members of the judiciary; (d) (former) members of local governments; (e) law enforcement officers and (f) lawyers. Practitioners acting on the ground were concentrated in the metropolitan areas of Palermo and Messina, but also more widely in Eastern Sicily and in the rest of the island. All the interviewees are listed in Table 2.5., where some general background elements are provided, in order to offer some context but without jeopardising the anonymity of the sources[22]. They are cited in the research according to seven different codes: NGO_X for NGO officers, JUD_X for members of the judiciary, operating either at local or national level, LAW_X for law enforcement officers, SIC_X, ITA_X, EUR_X, INT_X for practitioners not belonging to any of the previous categories such as politicians, lawyers, private and public sector officers (IOs, EU, ministries among others), etc., according to the principal level of agency, i.e. Sicily, Italy, European Union or international respectively.

[22] For the same very sake of anonymity, interviewees are referred to in a gender-neutral language (e.g. s/he, him/her, etc.).

It should also be noted that interviewees were not selected as representative of any statistical sample, but rather on the basis of a discretional evaluation of their knowledge of the phenomenon and of their potential contribution for an in-depth analysis of it.

The interviews were conducted on the basis of an interview guide (except the informal interviews/conversations), which was in turn based on the overall framing of the phenomenon and of the preliminary results of documentary analysis and desk research, logically placing the interview phase after the completion of data collection and preliminary analysis of the specific issue addressed (see Berry, 2002, p. 680). This also helped to avoid the risks of misleading reconstructions from the interviewees themselves[23], ensuring that they were "balanced by other forms of evidence" (Bache, 2008, p. 17, citing a point made by Dowding, 2004. This very aspect was expressly considered also in another similar doctoral research, see van der Giessen, 2014, p. 18).

Table 2.5. – List of interviewees

N.	Referred to as	Position/institutional affiliation	Date and type of interview
1	SIC_1	Lawyer, Messina	*26 September 2018, phone*
2	JUD_1	Judge, Messina	*28 September 2018, in person*
3	LAW_1	High-rank Law Enforcement Officer, Messina	*1 October 2018, in person*
4	LAW_2	High-rank Law Enforcement Officer, Messina	*1 October 2018, in person*
5	NGO_1	NGO Officer, Eastern Sicily	*4 October 2018, Skype*
6	SIC_2	Former Deputy Mayor for Migration Policies, Messina	*6 October 2018, phone*
7	NGO_2	NGO Officer, Eastern Sicily	*10 October 2018, Skype*
8	JUD_2	Judge, Messina	*17 October 2018, informal conversation, in person*

[23] In order to minimise this risk, in particular in cases of potentially extremely biased actors, such as members of local governments and MEPs, interviews were mainly focusing on procedural and methodological aspects, rather than on substantive ones, which nevertheless underwent a subsequent factual check.

9	SIC_3	Lawyer, Catania and Ragusa	*17 October 2018, phone*
10	SIC_4	Former Deputy Mayor for Migration Policies, Palermo	*19 October 2018, phone*
11	NGO_3	NGO Officer, Sicily	*22 October 2018, Skype*
12	NGO_4	NGO Project Manager, Sicily	*23 October 2018, Skype*
13	LAW_3	High-rank Law Enforcement Officer, Palermo	*15 November 2018, phone*
14	INT_1	UNODC, Officer	*15 March 2019, Skype*
15	EUR_1	Governmental officer acting at EU level	*27 March 2019, phone*
16	ITA_1	ANCI, Officer	*29 March 2019, phone*
17	JUD_3	National Deputy Anti-Mafia Prosecutor	*17 April 2019, in person*
18	ITA_2	Ministry of Interior, Department for Civic Liberties and Immigration, Former top-level Officer	*17 April 2019, in person*
19	INT_2	UNODC, Officer	*25 April 2019, Skype*
20	EUR_2	Italian MEP	*2 May 2019, Skype*
21	ITA_3	Ministry of Justice, Department for Justice Affairs, Directorate-General Criminal Justice, Judge in charge	*14 May 2019, informal conversation, phone*
22	NGO_5	NGO Officer, Mediterranean Sea	*22 May 2019, Skype*
23	EUR_3	European Commission, DG HOME, Officer	*28 May 2019, informal conversation, phone*

Source: Elaborated by the author

Two different versions of the interview guide were used, one for the local level (mostly focused on implementation aspects) and one for the national/supranational level (mostly focused on policy-making aspects). According to the expertise of the interviewee, one of the two was chosen and, in certain cases, slightly adapted to the context and to the characteristics of the expert/practitioner.

At a local level, the standard interview guide was composed of five sections: (a) background, where issues related to the framing of smuggling were considered, also

on the basis of the smuggling spectrum and on the supply/demand approach (see chapter 1); (b) implementation and between-the-levels interactions, with a view to consider difference between theory and practice and the existence of bottom-up dynamics; (c) agency, in order to explore the role of actors on the ground and their process of interaction with the institutional environment; (d) recommendations, which helped to understand the points of view of the respondents (also in order to highlight and take into account potential biases) and to understand aspects related to the process of preference upload, if any; (e) final questions.

At a national/supranational level, instead, the guide was structured around four different points, connected to substantive policy fields: (a) facilitation of irregular migration, with a specific focus on the humanitarian exemption and on the financial or other material benefit (see chapter 4); (b) closing harbours and SAR operations; (c) asylum policies, also exploring the connection with the overall anti-smuggling policies; (d) general issues, related to the point of view of the respondent. For the first three layers, the objective was to disclose aspects of the policy-making process, the information upload and communication between different levels, the role of agency and substantive aspects of these policies. Remarkably, the decision to focus, among other things, on humanitarian exemption, harbour closures and SAR was exactly the result of preliminary conclusions related to document analysis and desk research, where the importance of these issues clearly emerged.

Lastly on the interviews, they proved particularly useful also in order to get information on and/or access to some documents, which were afterwards included in the overall data. Notably, though, in case of documents with restricted access, its direct use was not authorised, rather being limited to providing some context. Similarly, certain parts of the interviews and informal conversations were made objects of an explicit request by interviewees not to be cited/quoted.

A third type of source used is desk research, as in integrative tool aiming to facilitate the delineation of the background and the interpretation of the primary sources. In this perspective, legal and policy analyses (such as those related to SAR operations in the Mediterranean or the humanitarian repercussions of the anti-smuggling framework) were particularly important, as well as, in a more detailed and precise perspective,

other secondary sources addressing policy-making patterns and parliamentary voting behaviour.

As for the linguistic issues, sources in English, Italian, French, Spanish and Portuguese were used. When non-English sources are quoted in the text (including those interviews conducted in Italian), the English translation was provided by the author to the best of his ability, unless otherwise stated.

While what has been said so far explains the rationale behind the overall decision to combine these three types of sources for data collection purposes, something still needs to be said concerning the source selection strategy at the different levels of analysis. This has to do with the different heuristic validity of sources, according to the level of analysis and on the sub-research question.

At a local level, where the main objective was to understand the characteristics of the agency on the ground, the relationship with the institutional and normative framework, the influence on policy-making and on the rise of bottom-up dynamics, the main source used, by and large, was interviews. They appeared particularly suitable for the determination not only of existing patterns that are hardly detectable by merely looking at documentary sources, but also of the logics that inspire such behaviours, whether these are self-reflected or related to other actors. Furthermore, judicial proceedings proved to be particularly interesting, considering judicial activism on the ground as one of the most significant examples of agency, producing effects on the making of policies and of the rise of bottom-up dynamics. Also, this is an official and documentary source, which is not subject to the interpretation of any respondent: this made it possible to ensure a balancing of any potential bias in the data collected through semi-structured interviews (see the recommendations of Bache, 2008, in this regard, discussed above in this paragraph). In the same perspective and in ancillary way, other type of documents were also considered, such as NGO reports, desk research and newspaper articles.

At a national and supranational level, instead, where the main objective was to understand the policy-making patterns and the impact that information coming from the ground and the communication between levels has on it, documentary sources were privileged. They particularly consist of: (a) parliamentary proceedings, a documentary sui generis source (as discussed above) which was nevertheless crucial

in order to understand the issues at stake, how they were framed, and what impact factors coming from other levels have. Remarkably, they were less used at a supranational level, because their heuristic strength was somehow limited by the different role that the EP has in the legislative process as such and in the construction of the public debate, compared to the role that national parliaments have; (b) official documents and reports, widely used especially at an EU level, where they offer direct and in-depth insights into the issues considered, from multiple perspectives (consider, among others, documents of European Commission, Council of the EU, European Parliament, Eurojust, Europol, Frontex). They were used, though to a lesser extent, also at a national level, and in this case they were essentially documents from the Ministry of Interior, the National Anti-Mafia and Anti-terrorism Prosecutor's Office (DNA, from the Italian *Direzione Nazionale Antimafia e Antiterrorismo*), UNODC, UNHCR and judicial proceedings. Interviews were used as a complementary tool, mostly in order to gain some more specific knowledge about certain issues and the connected procedures, as they actually take place. So, again, even if used in a much more limited way than at a local level, interviews were important to delineate the characteristics of agency and to counterbalance the potential challenges due to the official nature of the other primary sources used. In this sense, it was often considered particularly significant to report the exact words used by the interviewees, which explains why in chapters 5 and 6 the reader will find more quotes than in chapter 4. Lastly, also newspaper articles and desk research were residually used at both levels. Table 2.6. offers a schematic view of the different sources used and their heuristic validity at different levels.

Some last considerations should be drawn on how data were analysed, on the basis of an inductive approach. Documentary sources (and, when the case was, also desk research sources) were analysed using a document analysis technique, which "combines elements of content analysis and thematic analysis" (Bowen, 2009, p. 32). That is, for each piece of data originated by primary and secondary sources, the main elements affecting the policy-making process, including the roles played and the stances taken by different institutional actors, were highlighted and isolated.

Insofar as interviews are concerned, instead, they were recorded (except for four of them, including the informal interviews/conversations) and manually analysed on the

basis of an inductive qualitative content analysis (Cho and Lee 2014; Mayring, 2000 and Hsieh and Shannon, 2005).

Table 2.6. – Multi-sources of data and their heuristic strengths

Level	Focus of research sub-question	Main sources used	Heuristic strengths
Local	Agency on the ground, influence on policy-making and rise of bottom-up dynamics	Interviews	Exploration of areas lacking documentary sources, reconstruction of agency and logics
		Judicial proceedings	In-depth understanding, official source, centrality of judicial activism on the ground
		NGO reports, desk research, newspaper articles	*(ancillary sources)*
National & Supra-national	Policy-making patterns and information upload	Parliamentary proceedings	Official source, discursive part of the policy-making, show what factors shape the debate and/or policies. N.B.: Less important at EU level, for different role of EP in legislative process and political debate
		Official documents and reports	Official source, in-depth and multiple perspectives
		Interviews	Contribute to the explanation and framing of documentary sources
		Newspaper articles and desk research	*(ancillary sources)*

Source: Elaborated by the author

Chapter 3

A legislative overview: EU and Italian norms addressing migration and smuggling

3.1. Introduction

The operational definition of migrant smuggling, based on the smuggling spectrum and provided in chapter 1, entails a clear and direct consequence in terms of assessment of the relevant legislative framework. In other words, approaching smuggling as a multifaceted, cross-cutting phenomenon requires that the relevant laws to be considered go beyond mere provisions of smuggling criminalisation (the 'facilitation' offences, see below) and include, at very least, also the documented and undocumented migration legislation, as well as the asylum framework, in order to ensure due consistency between the analytical and the legislative dimension in terms of comprehensiveness.

This short chapter therefore aims to provide the following: (a) the very distribution of competences among levels, depending on the subject matter (which in turn reinforces the very suitability of a multi-level governance approach); (b) a basic overview of the applicable legislative framework, introducing the main acts that shall be discussed in terms of policy-making in Part 2 of the research; (c) the procedural differences depending on the type of legislative acts.

3.2. A legislative operationalisation of the smuggling spectrum

Starting with the competence distribution among the different governance levels, the first aspect to be considered is that relevant policies aimed at combatting migrant smuggling, in the comprehensive approach of this research, are placed, according to the EU and national legislations, at different levels of governance, roughly on the basis of the following rationale (see Baroni, Di Agosta, Paciullo and Pintus, 2017; Ministry of Interior, 2017b; Neframi, 2011 and Panzeri, 2018):

1. The European Union, according to the Treaty on the Functioning of the European Union (TFEU), “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” (Article 67(2) TFEU), with an emphasis on “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” (Article 79(1) TFEU). The degree to which this has actually happened vary substantially between the specific different policy areas;
2. The national level, within the framework elaborated at the EU level, regulates migration, asylum and anti-smuggling and anti-trafficking policies. Whereas its room for manoeuvre is more restricted, compared to that of the EU, in asylum policies and border control, it enjoys wider discretion in terms of migration policies and criminalisation of smuggling and trafficking;
3. The regional and local levels are mostly delegated with the implementation of the applicable framework: (a) administrative authorities hold responsibilities for the integration of migrants and asylum seekers, also through voluntary and advanced systems of protection and integration, such as the *Sistema di Protezione per Richiedenti Asilo e Rifugiati* (SPRAR), and support the central government on the ground agencies for undocumented migrant reception; (b) the *Prefettura*, as decentralised office of the central government, is in charge of the overall management of migrants’ arrival and for that of reception centres; (c) law enforcement agencies act as boarder guard, investigate the facilitation of irregular migration and conduct undocumented migrants to detention and expulsion; (d) the judiciary holds responsibilities for the prosecution and adjudication of migration-related offences (such as the facilitation of irregular migration) and acts, through its Specialised Migration Sections, for granting international protection and for the enforcement of the legislation on migration and the respect of individual rights of migrants.

Based on the very principle of subsidiarity, there is an overlap of competences between governance levels. Although it is not the goal of this chapter to fully address them, it is important to acknowledge and make evident the complexity of the overall legislative

framework and the need to consider all of these different governance layers. Just to provide one example of such complexity, it is significant to consider how the general penal anti-smuggling framework is set at an EU level, as it will be considered below, but the room left to Member States (MSs) discretion is actually so wide in relation to some crucial issues (cf. Carrera et al., 2016) that the national level could even be considered as the one most prominently involved.

A last element that should be stressed is the impact of the local level, and in particular the lack of any direct legislative competence. However, its role shall be considered not only in terms of testing the actual implementation of policies, but also to understand whether and how, in the lack of a specific legislative competence, such a level is able to influence the overall policy-making in this field (see chapter 2 and the way in which the analytical model shall be applied on the local level).

3.3. The many forms (and contents) of the legislative acts

Once the centrality of both supranational and national levels of governance in the overall elaboration of policies aimed at targeting migrant smuggling has been acknowledged, it then becomes important to provide a clear understanding of (a) the types of acts where these policies are substantiated and (b) the relevant corresponding policies themselves.

3.3.1. Main types of legislative acts at an EU and national level

The EU binding legislative acts, after the deep changes brought by the Lisbon Treaty, are listed in article 288 of the TFEU:

1. Regulations, “which shall have general application [and] shall be binding in [their] entirety and [be] directly applicable in all Member States;”
2. Directives, which “shall be binding, as to the result to be achieved, upon each Member State to which [they are] addressed, but shall leave to the national authorities the choice of form and methods;”
3. Decisions, which “shall be binding in [their] entirety. A decision which specifies those to whom it is addressed shall be binding only on them.”

Two legislative acts of the past are equally relevant to the current Area of Freedom, Security and Justice (AFSJ). These are joint actions and framework decisions, based on the intergovernmental method (they were adopted by the Council) and binding for Member States. Framework decisions, like directives, left it up to MSs to choose which means to resort to in order to achieve the established goals (this is particularly important, among other things, insofar as the anti-smuggling penal framework is concerned, being a framework decision one of the two components of the Facilitators Package, see section 3.3.2.).

As for the way in which legislative acts can be adopted, the TFEU currently provides for the following legislative procedures:

> 1. The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 294.
>
> 2. In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a special legislative procedure (Article 289(1)(2) TFEU).

In particular, the ordinary legislative procedure (formerly known as co-decision), as set out under article 294 TFEU, is the main legislative procedure and requires the approval of the same legislative draft by the European Parliament (EP, the Parliament) and the Council of the EU (the Council), upon the European Commission's (EC, the Commission) proposal. Informal meetings (the 'trilogues') among EP, Council and Commission facilitate the achievement of an agreement, when necessary.

Before exploring the EU legislation related to smuggling, undocumented and documented migration, asylum and border management, the historical evolutions of the law-making surrounding these subject matters should be presented, as well as some remarks that can be made regarding the contemporaneity (for a general historical overview, see Olivi and Santaniello, 2015).

The formalisation of a clear interest and commitment by the European Union to migration and border policies dates back to the Maastricht Treaty, which replaced the informal intergovernmental cooperation methods, by then active in those policy areas

that would actually be included in the second and third pillar: Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). JHA included several policy areas and relied exclusively on an intergovernmental method; however, it was a few years later, in 1999, with the European Council of Tampere and the Amsterdam Treaty, that migration, border and asylum became core policies of the EU, were moved to the first pillar, and when the Schengen *acquis* was incorporated into the EU (being the third pillar renamed Police and Judicial Cooperation in Criminal Matters, PJCCM).

In the study of EU policy-making in this subject matter, the Amsterdam Treaty is to be considered a crucial benchmark, as it opened to co-decision, providing that, "after a transition period of five years, 'the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this Title to be governed by the procedure referred to in Article 251', i.e. the co-decision procedure. This Council decision (Council 2004) was taken after considerable political pressure had been exercised by the EP". A "full involvement of the EP in border policies" then became possible "through the activation of a so-called passerelle clause provided for in Article 67(2) TEC [Treaty establishing the European Community, now TFEU], as in fact amended by the Amsterdam Treaty" (Huber, 2015, p. 422).

A few years later, the overcome of the whole pillar structure brought about by the Lisbon Treaty would eventually lead to bringing "all policies related to the creation of an area of freedom, security, and justice into one chapter of the new treaty" (Huber, 2015, p. 422).

Remarkably, however, CFSP (and the connected Common Security and Defence Policy, CSDP) remained out of the area where the EU exercise legislative powers and this led to clear consequences in terms of procedures and actors involved:

> The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court

> of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union (Article 24(1) TEU).

Certain themes that become important in this analysis herein as a part of the response to smuggling, as further discussed below in chapter 6, rely on these aforementioned instruments.

Moving to the national level, here legislative acts can take the form of laws, decrees-law or legislative decrees, as disciplined by articles 70–82 of the Italian Constitution.

The main characteristics and differences that are worth to be recalled in this context are the following:

1. Laws are passed by the two chambers of the Parliament, which enjoy the same powers and prerogatives in the legislative process. Ordinary laws may also be approved by the standing committees, rather than by the plenary;
2. Decrees-law have the force of law and are issued by the Government, exclusively “in extraordinary cases of necessity and urgency” (Article 77 of the Italian Constitution). They must be converted into law by the Parliament within 60 days, otherwise they lose effect ex tunc;
3. Legislative decrees also have the force of law and are issued by the Government. They are delegated legislation, issued upon a formal delegating law concerning a specific object, passed by the Parliament and containing “principles and directive criteria” to be followed by the Government (Article 76 of the Italian Constitution).

The distinction between these three different sources of law is important, since the choice of which tool to use can be significant in terms of the bargaining process and prevailing decision-making arena. In particular, this can affect the role of government, its relationship with the parliament and the cohesion of the very parliamentary majority.

Furthermore, in the institutional arena, a vertical relationship also holds certain importance. Besides the way in which practices, requests, recommendations uploads or downloads take place (with different degrees of success) from the local/regional and

EU levels up to the national one, which will be further considered in chapter 5, the design itself of the EU has a clear impact on the national level. This is connected with the delegation of power that the integration process entails, requesting that EU legislation be transposed, as in the case of EU directives. The transposition of these acts normally take place with legislative decrees (Presidency of the Council of Ministers, nd).

Lastly, one should consider the way in which unconventional acts have been used in these fields to set policies, both at a national and at an EU level, in these last years. The overall policy-making aimed at regulating (or targeting, depending on the stance chosen) the action of NGOs operating in the Mediterranean Sea, for example, took the form of acts with ambiguous legal status (such as the Code of conduct issued by the Ministry of Interior in 2017, see Ministry of Interior, 2017a) or non-legislative acts (such as the directives issued by the Minister of Interior in 2019, see Minister of Interior, 2019a, 2019b and 2019c). Similarly, the Italy-Libya Deal of 2017 did not take the official shape of an international agreement, likewise the EU-Turkey Deal of 2016, which was indeed called ‘statement’, although producing effects and obligations.

These issues fall within the concept of ‘new governance’, with the use of extra-legislative “tools” and “instruments”, often falling outside judicial scrutiny, as pointed out by Cardwell (2018, p. 69) and shall be given due consideration in chapters 5, 6 and 7, understanding also the possible explanations for such choices.

3.3.2. The relevant substantive law

Since the Maastricht Treaty, the Amsterdam Treaty and the European Council of Tampere, the EU has adopted over the years several pieces of legislation with the goal of having a common visa and migration policy (particularly in the Schengen Area), related to the entry and stay of non-EU nationals into the EU, according to their situation (short stay, family reunification, labour migration and asylum). The approaches chosen and the results achieved by the EU in these sectors are deeply different depending on the specific nature of the considered policy, which can be summarily subsumed into asylum, labour migration, undocumented migration and border control. In addition, the legal bases that bestow competence to the EU in these fields are different (European Parliament, 2018c).

The asylum field is one of those where progress towards a common EU approach has manifest the most, through the establishment of a Common European Asylum System (CEAS), which sets common standards and cooperation requirements. It is based on the European Convention on Human Rights (ECHR) and the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol and is composed by a number of directives and regulations, which have been recast over the years:

- Regulation (EU) 439/2010, establishing the European Asylum Support Office (EASO);
- Directive 2001/55/EC on the temporary protection in the event of a mass influx (Temporary Protection Directive, notably never applied, not even during the so-called 2015 'refugee crisis', see European Parliament, 2018c, p. 6);
- Directive 2011/95/EU (recast) for the definition of refugee status and beneficiaries of subsidiary protection (Qualification Directive);
- Regulation (EU) 603/2013 (recast) for the establishment of the Eurodac system (Eurodac Reguation);
- Regulation (EU) 604/2013 (recast) for the determination of the Member State responsible for examining an asylum application (Dublin III Regulation);
- Directive 2013/32/EU (recast) for the procedures for granting and withdrawing refugee status and subsidiary protection (Asylum Procedures Directive);
- Directive 2013/33/EU (recast) on the reception of asylum seekers (Reception Conditions Directive);
- Regulation (EU) 2016/1624, replacing Frontex with the European Border and Coast Guard Agency (EBCGA).

In the light of the aforementioned legislation, MSs must guarantee to each person reaching its territory the right to claim protection, while simultaneously being attended by appropriate personnel. The Dublin III Regulation determines the criteria to establish which MS is responsible for the protection claim (an issue which has become very contentious in these last years, as first entry MSs consider it as imposing an excessive burden on them). A number of other provisions determine the eligibility criteria for protection, the rights of asylum seekers and refugees, the procedural aspects (such as

the need for MSs to take fingerprints of applicants, to be registered in the Eurodac system), the possibility of temporary protection in cases of the arrival of a large number of displaced persons and the procedures for return and resettlements. These provisions apply to adults, while the situation of minors and unaccompanied minors differs slightly.

With the launch of the Commission European Agenda on Migration in 2015, an overall reform of the CEAS was set out, privileging also the replacement of directives with regulations and focusing on:

- Measures to simplify, clarify and shorten asylum procedures, ensure common guarantees for asylum seekers and ensure stricter rules to combat abuse, including a common list of safe countries of origin, which was originally proposed as a separate regulation;
- Who can qualify for international protection (the so-called 'Qualification Directive'), to achieve greater convergence of recognition rates and forms of protection, including more restrictive provisions sanctioning applicants' secondary movements and compulsory status reviews even for recognised refugees;
- Reception conditions […];
- Reform of the Dublin Regulation, which lays down criteria for determining the Member State responsible for examining an application for international protection (in principle the first country of entry). The proposal preserves the current criteria in the Dublin system, while supplementing them with a corrective allocation mechanism to relieve Member States under disproportionate pressure […];
- A revision of the Eurodac asylum fingerprint database […];
- Transforming the EASO from a supporting EU agency into a fully-fledged EU Agency for Asylum, which would be responsible for facilitating the functioning of the CEAS, ensuring convergence in the assessment of asylum applications across the EU and monitoring the operational and technical application of Union law, including assisting Member States with the training of national experts;
- A Union Resettlement Framework, which would provide for common EU rules on the admission of third-country nationals, including financial support for Member States' resettlement efforts, thus complementing the current ad hoc multilateral and national resettlement programmes (European Parliament, 2018c, pp. 5–6).

Such reform has not been successful so far (with the remarkable case of Dublin III recast), though, mainly as a result of the deadlock in Council (Radjenovic, 2019).

In the overall documented and undocumented migration management, EU legislation mainly sets out standards and general provisions, whereas implementation can (and actually does) vary among MSs, specifically in labour migration issues. In this field, very few relevant acts were passed as EU law (although the Lisbon Treaty explicitly provided for a shared competence between EU and MSs), being the most relevant:

- Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Blue Card Directive);
- Directive 2014/36/EU on the conditions of entry and residence of third-country nationals for the purpose of employment as seasonal workers;
- Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

Efforts on the side of undocumented migration, instead, were made, for a common approach aimed at tackling such phenomenon, focusing in particular on the fight against migrant smuggling (see European Commission, nd), against trafficking in persons and on return policies (European Parliament, 2018c, pp. 13–14).

In such framework, the 'facilitation offence', i.e. the legal provision criminalising the smuggling of migrants, is the core piece of legislation. The milestone of such an approach is, as already recalled, the Facilitators Package (FP), composed of Directive 2002/90/EC, which defines the facilitation of unauthorised entry, transit and residence, and Framework Decision 2002/946/JHA, with a view to strengthening the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

The Facilitators Package poses an obligation on MSs to criminalise the facilitation of unauthorised entry, setting also some minimum standards and a common definition. An open question, particularly relevant in the light of the debate in literature and among policy-makers and practitioners (see chapters 1, 6 and 7. See also UNODC, 2017, pp. 7–15) is connected to the lack of necessity of a material gain for the offence to take place and to the lack of a mandatory exemption for humanitarian assistance, an issue which has become central in these last years and which led the European Commission itself to express an appeal to overcome such an approach (European Commission, 2015b, p. 3). In other words, the FP enables MSs to choose whether to criminalise the

facilitation of unauthorised entry also in the lack of a financial or other material benefit, as well as it does not mandatorily provides for the exemption from punishment for those acting on humanitarian grounds. Furthermore, substantive differences in the transposition into national laws by MSs are also considered a challenging aspect of the current legislation (Allssopp and Manieri, 2016).

In the very years when the FP was approved, a wider move towards addressing migrant smuggling was taking place at a global level (see chapter 1), in particular with the 2000 Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against Transnational Organized Crime (the Smuggling Protocol), which would then be concluded also by the EU through Council Decisions 2006/616/EC and 2016/617/EC.

Notably, furthermore, the foundations of such legislation had already been laid in the 1990 Convention implementing the Schengen Agreement (the Schengen Convention), which states in Article 27: “The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens.” Consistently with this border protection approach, it should be recalled that it was the very Schengen Convention that introduced the ‘carriers’ liability regime’ in Europe (see chapter 1).

More recently, in 2015, within the framework outlined in the European Agenda on Migration and in the European Agenda on Security, the European Commission launched the EU Action Plan against migrant smuggling (the EU Action Plan). The EU Action Plan sets out a number of specific actions to undertake within 2020 through a comprehensive approach, based on a dialogue between migration and security policies. In this perspective, it is worth recalling that clear (even if quite limited and marginal in the overall document) attention has been paid to the demand side, stating that “[s]muggling networks can be weakened if fewer people seek their services. Therefore, it is important to open more safe, legal ways into the EU” (European Commission, 2015b, p. 2). Also, several actions are foreseen in order to support MSs in their capacity to address the phenomenon.

The management of undocumented migration and the fight against smuggling is strongly connected with the third migration policy area, i.e. border control and visa,

essentially based on surveillance and information sharing systems at the external borders and on a regulatory approach that provided for visa-waivers only for a limited list of countries of origin and exclusively for short stays (see European Parliament, 2018c, pp. 16–19).

Some final remarks can be made on the external dimension of migration (besides the de facto externalisation migration control policies, which will be referred to throughout the research, see also Lavenex, 2006), which is mainly included in the Commission's 2011 Global Approach to Migration and Mobility (GAMM), i.e. the overall framework of the EU relationship with third countries in the field of migration (see Strik, 2017).

Lastly, it should be recalled how to face the recent so-called 'refugee crisis', the EU has further developed some instruments (see European Commission 2015c and 2016), such as, among others:

- Council Decision (EU) 2015/1523 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece;
- Council Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece;
- Council Decision (EU) 2016/1754 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece;
- The 2016 EU-Turkey Statement, providing for the return to Turkey of asylum seekers whose request was deemed inadmissible in Greece. This was particularly criticised, among other things, for its externalisation nature and for wrongfully considering Turkey a safe country (see Gogou, 2017 and Strik, 2019);
- The establishment of the EBCGA above recalled.

These last two instruments can be read through the lenses of a wave of securitisation, which seems to be in place within the EU in legislation, in its implementation and in the policy agenda (Gabrielli, 2014; Hammerstadt, 2014; Moreno-Lax, 2018 and van der Woude, Barker and van der Leun, 2017).

As for the Italian legislative framework, since national legislations must be harmonised and comply with EU standards (see above), it has to be dealt with starting from an EU perspective. And, in fact, the milestone of the Italian legislation lies in the transposition of EU acts into the national law and much of what has been said with regards to the EU applies, of course, also in the case of Italy (see the various 'European delegation laws', i.e. the acts for the transposition of EU legislation into national law: see above and Presidency of the Council of Ministers, nd).

But besides that, as was recalled above, the national level has substantial margin to approve and implement policies, in particular in the fields of labour migration and undocumented migration and smuggling, but also asylum and border control, provided that they fit within the overall EU approach. The vast majority of the provisions related to migration, asylum and smuggling is included in the *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero* (Consolidated Immigration Act, TUI from the Italian abbreviated form *Testo Unico dell'Immigrazione*), approved with the Legislative Decree n. 286/1998 and successively amended in several occasions. It lays down for the main legislative provisions in terms of management of labour migration (determination of the maximum yearly amount of visas and residence permits for non-EU citizens, to be approved through a legislative decree, the so-called 'Flows Decree'), entry, stay and expulsion from the territory of the state (visa policy, border control, etc.), family reunification, minor rights, integration.

In the TUI the core of the anti-smuggling provisions is represented by the article which provides for the criminalisation of the facilitation of irregular migration, namely article 12 (which in turns is constituted by article 10 of Law n. 40/1998, the so-called 'Turco-Napolitano Law'. Remarkably, therefore, this provision was passed before the drafting of the Smuggling Protocol and the approval of the Facilitators Package).

Article 12 TUI provides for the imprisonment up to five years for "whoever, infringing the provisions of this consolidated act, promotes, directs, organises, finances or transports aliens in the State's territory or carries out other acts aimed at their illegal entry in the State's territory, or in another State of which the person is not citizen or

does not have the right to permanent residence[24]". Furthermore, it provides for the exemption from punishment for those facilitating the irregular stay of migrants on humanitarian grounds, a provision which in case law is broadly interpreted, according to some practitioners, as to cover also the facilitation of irregular entry. Aggravated circumstances, with a punishment up to fifteen years detention, include those cases where more than five people are smuggled, migrants' lives are put at risk or they suffer inhuman or degrading treatment, an organised criminal group (OCG) of three or more persons is involved, there is a profit element or the use of weapons. Lastly, also the carriers' liability regime is considered (on the whole provisions here recalled see in particular article 12(1)(2)(3)(6) TUI).

The TUI was substantially amended over the years by several laws, such as:

- Law n. 189/2002 (the 'Bossi-Fini Law');
- Law n. 94/2009 (the 'Security package');
- Decree-Law n. 13/2017 (the 'Minniti-Orlando Decree', converted with Law n. 46/2017);
- Decree-Law n. 113/2018 (the 'Security Decree', converted with Law n. 132/2018).

Other important pieces of legislation approved over the last years in this subject matter include (a) the Legislative Decrees of the 2000s transposing into the national law a number of EU directives (which represent a vast majority of the migration/asylum related laws passed); (b) Law n. 47/2017 (the 'Zampa Law') and (c) Decree-Law n. 84/2018, deliberating the cession of some naval units to the Libyan government.

As already pointed out in chapter 2, the parliamentary debates concerning many of these very acts (and in particular those more directly connected to migrant smuggling and undocumented migration) were considered in this research, with particular emphasis on the two pieces of legislation that affected article 12 more directly, i.e. the 2002 Bossi-Fini Law (introducing provisions on the role of the navy in targeting migrant smuggling) and the 2008/09 Security Package (tightening up the whole framework).

[24] Unofficial translation retrieved from https://www.refworld.org

In an historical perspective, it should also be recalled that before the 1998 TUI, the most important migration laws in Italy were:

- Law n. 943/1986 (the first Italian migration law);
- Decree-Law n. 416/1989 (the 'Martelli Law', converted with Law n. 39/1990);
- Decree-Law n. 451/1995 (converted with Law n. 563/1995), approved in order to face the high flow of migrants in need of assistance trying to enter the country;
- The above recalled Turco-Napolitano Law.

It is important to note this as, like in the case of the Facilitators Package, provisions criminalising the facilitation of irregular migration already existed in the Italian legislative framework even before the TUI, as they were namely introduced with the Martelli Law. This law punished the facilitation of irregular migration with up to two years detention, which became six in presence of the profit element or of an OCG to commit such offence[25] (Article 3(8)). Similarly, the same act introduced the carriers' liability regime (Article 3(9)). As said, the 'facilitation offence' was then amended and included in the Turco-Napolitano Law (Article 10), before being incorporated into the TUI. All these trends can be read within an overall rapprochement of the Italian legislation on migration to the standards set out by the Schengen Convention (cf. Finotelli and Sciortino, 2009).

Finally, as in the European case, the Italian migration policy framework has also experienced an increasing securitisation move (see also above, with regards to the securitisation of the European migration legislation and chapter 1 as for the substantive patterns of EU and Italian migration policies).

A last general remark needs to be made with regards to the scope of this chapter: not all the legislative tools and acts here briefly mentioned or explored will be analysed, in a policy-making perspective, throughout the research, but it was nevertheless deemed crucial to summarily present them in order to offer a complete framework of the legislative background of the issue under examination. In a specular manner, this chapter did not aim to provide a full legal or historical analysis of EU and Italian

[25] D.L. n. 489/95 (which became ineffective for the parliament failure to convert into law) amended the provisions of the Martelli Law, providing for more severe punishment.

migration policies, but merely another important piece of the toolkit for the analysis of the EU and Italian policy-making in this subject matter.

Part 2

Understanding policy-making and implementation against the smuggling of migrants between the EU, Italy and Sicily

This page intentionally left blank

Chapter 4

The fight against migrant smuggling in Sicily: local agency and policy-making dynamics

4.1. Introduction

The theoretical and analytical issues explored in Part 1 of this research made it clear, on the basis of the perspective chosen, how important it is to adopt also a bottom-up approach to policy-making, which firstly address the ground dimension.

Looking at local practices it is possible to disclose the role of actors on the ground in the implementation of norms, understanding (a) whether and how they distance themselves from the letter of the very norms, creating de facto policies, and (b) whether and how shifting up dynamics originate from here, in turn influencing the national and EU policy-making[26] (see Figure 4.1.).

In such perspective, most of the local level analysis is based on the role of agency of local actors within the given institutional framework, rather than focusing on multi-level governance (MLG), as will be the case with the national and supranational levels, consistently with the theoretical approach delineated in chapter 2. This chapter can indeed be considered some sort of introduction to the main analysis of policy-making dynamics that take place at a national and EU level.

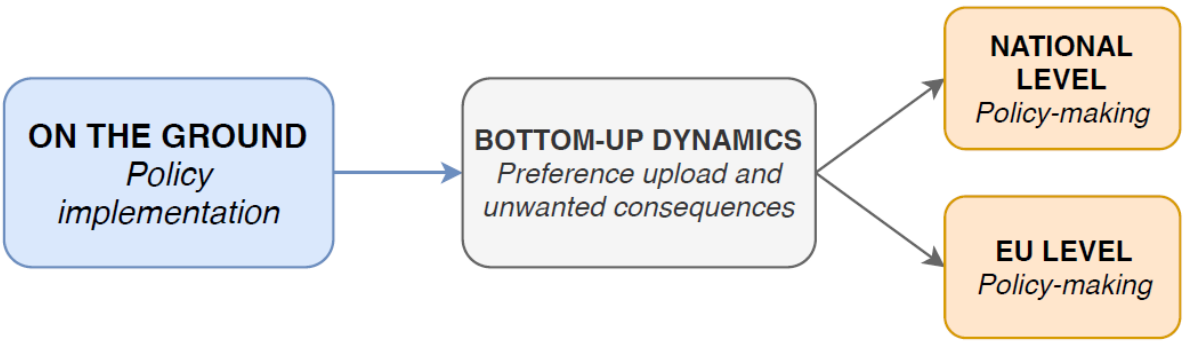
To understand the importance of local agency in creating policies and in influencing the policy-making stricto sensu at other levels, the perspective of the actors involved is central: also for this reason, unlike the other chapters, the local analysis is mostly based on interviews with relevant practitioners (see chapter 2)

Concepts such as logic of appropriateness, logic of consequences, street-level bureaucracy and principal-agent relationship, already explored in chapter 2, are central in the analysis conducted in this chapter. Here the geographical focus is on the region

[26] Top-down dynamics, on the contrary, will not be very much considered, given that the regulatory effect of the EU and national level upon the local one is taken for granted, considering that these former levels are those which make policies and/or decide to delegate powers to the local level. Indeed, the overall focus of the research having been placed on the policy-making, the explanatory power of the ground level lies in the way in which it influences norm formulation or implementation, and not vice-versa.

of Sicily, a place that has become crucial as arrival port for the undocumented migration and smuggling flows from Northern Africa, and Libya in particular. More specifically, the core of the research lay in the situation in the metropolitan areas of Palermo and Messina and, to a lesser extent, also in the broader eastern part of Sicily (see Figure 4.2., which shows the relevance of the areas considered in this research in terms of sea arrivals of migrants in 2018).

Figure 4.1. – Interaction directions at a local level



Source: Elaborated by the author

Figure 4.2. – Sea arrivals in 2018 by disembarkation site and territorial scope of the chapter

Source: Elaborated by the author on an original figure from UNHCR (2018c). Data updated at 21 October 2018 (total arrivals: 21.785)

On the basis of this analysis it will be possible to provide an answer to research sub-question (SQ)1: how does the response to migrant smuggling function on the ground and how does this contribute to policy-making in this field?

4.2. Local agency patterns in Sicily

Sicily is one of the more interesting cases to explore in order to get insights into the implementation patterns of the EU anti-smuggling framework, mainly for geopolitical reasons connected to its position as southern border of the EU, the rise of undocumented migration waves coming in particular from Libya from 2011 onwards and the subsequent confluence of a number of different policy measures and operations – both from the EU and the Italian government – in the Mediterranean area (see chapter 1).

Figures point to the crucial role played by Sicily as one of the main arrival places for undocumented migrants (see Frontex, nda; UNHCR, 2018b and 2018c). Also, the tendency has been that of a dramatic decrease of these figures in 2018 for a number of factors that include a structural reduction connected to the absorption of the flow coming from Syria, the closing of the Italian harbours to non-governmental organisations (NGOs) and specific agreements concluded with the Libyan authorities that have reinforced the gatekeeping in the Northern African country, even though with major human rights concerns (see Walsh and Horowitz, 2017 and Kingsley, 2018). Moreover, such decrease was associated with a rise in numbers on other routes (especially to Spain, see Frontex, nda, ndb and ndc; Ministry of Interior, 2018; UNHCR, 2018a and 2018c).

Academic and grey literature (as well as interviewees speaking on this point) acknowledge how all these migration flows in the Mediterranean Sea are connected, to different extents and in different ways, to migrant smuggling (see paragraphs 1.2. and 1.3. Cf. also Aloyo and Cusumano, 2018, pp. 12–14; De Bruycker et al., 2013; Fargues and Bonfanti, 2014 and Pastore et al., 2006).

Moving to what happens on the ground, upon arrival of smuggled migrants, there are clearly a number of different provisions that regulate this. However, the way in which these are implemented can be to a smaller or wider extent different from what policies

say, depending on the situation, the place and the moment. This can happen for several reasons – or their combination – such as structural reasons coming from the institutional setting, discretion of street-level bureaucrats and the logics followed in their agency (see above).

This chapter reports several cases where local practices show a substantial degree of freedom in the agency of local practitioners, discussing the reasons for it (the *why* questions recalled in chapter 2) and how such agency can essentially 'make policies', either directly or indirectly, thus activating bottom-up dynamics. Given the mainly interview-based nature of this chapter (see again chapter 2), its whole organisation and structure is based on the data coming from the very interviews.

The contrast of migrant smuggling, consistently with the operational definition and the overall analysis of chapter 1, is read through three different lenses, i.e. prevention, repression and protection (of smuggled migrants[27]). The last two appear to acquire special importance when addressing the on the ground dimension, according to several interesting examples of such agency patterns which emerged throughout the interviews.

Based on the data coming from the interviews, and in line with the methodological approach (see chapter 2), the narrative is organised around four different arenas, according to the type of actor: (a) judicial, (b) law enforcement, (c) local government and (d) non-institutional. Consistently with the overall focus of the chapter, the first two arenas are more specifically concerned with repression, the last two with protection. Reception- and asylum-related agency shall be addressed separately in section 4.2.4., as it cross-cuts different arenas.

4.2.1. The judicial arena

Some of the most relevant and widespread examples of agency on the ground come from the judiciary sector, and for this very reason is seems convenient to start the analysis by addressing this type of actor. It should be noted from the beginning that,

[27] Generally, protection is de facto perceived as a secondary objective in addressing migrant smuggling, in spite of its importance. Consider, in particular, a comparative reading between the Smuggling Protocol and the Trafficking Protocol (Crépeau, 2003 and Baird, 2013).

even though the judiciary encompasses different governance levels (see the following chapters, and in particular chapter 7), it was decided to address it mainly as a form of local agency, as a typical example of norm interpretation and implementation on the ground, on case-by-case basis, even if within a national institution and notwithstanding the broader effects that this agency can generate at different levels (see paragraphs 4.4. and 4.5.).

As explored in chapter 3, migrant smuggling is considered an offence under Italian (and EU) criminal law (Article 12 Consolidated Immigration Act, TUI, i.e. the so-called 'facilitation offence') and the repression (i.e. the tackling of the supply side) of the phenomenon very much depends on the effectiveness of the response from judicial and law enforcement authorities. The cases presented here, on the basis of a logical and relevance (according to interviewees) criterion, show how such response can vary significantly and have, in turn, an impact which goes beyond the single case addressed.

As the prosecutors and lawyers interviewed explained, one of the main issues to be dealt with by the judiciary, as soon as the routes from Libya became the most relevant ones in 2013-14, had to do with the new situation of search and rescue operations undertaken outside Italian territorial waters (SIC_1, September 2018; JUD_1, September 2018): would in this case Italy have jurisdiction over alleged smugglers?

Case law related to this aspect can be an insightful example of the wide scope of local agency. And in this study it contributes to show how Italian courts stated their jurisdiction, following the line of reasoning of the Prosecutor of Catania in one of the first cases dealing with this issue. Such view of the prosecutor's office was not supported by the local court in the preliminary proceedings but was eventually accepted by the Court of Cassation, which overturned the decision, stating that "the behaviour implemented in extraterritorial waters is ideally connected to the one brought about in territorial waters, where the action of the rescuers in the final part of the causal sequence can be defined as the action of an *autore mediato*, forced to take action in order to avoid a greater damage". Here the rescue is "artfully stimulated after putting in severe danger the migrant, instrumentally exploited" (Court of Cassation, 2014). It is important to notice that, at the end of this proceeding, such an approach would then

become enforceable within the whole Italian territory and has guided other courts in dealing with this issue[28].

By contrast, this extension of the jurisdiction is not applied by the judiciary for the misdemeanour of "illegal entry and stay into the State territory" (Article 10-bis TUI), which is not punished if the SAR operation takes place outside territorial waters. On the one side, such a difference can be explained from a legal point of view, since, in case of misdemeanours such as the one under article 10-bis TUI, the mere attempt cannot be punished (Court of Trapani, 2016 and Court of Cassation, 2016). However, as one lawyer interviewed interestingly noted, there is also a factual advantage coming from this for the judiciary: avoiding to formally investigate smuggled migrants under article 10-bis TUI allows the officers acting on behalf of the prosecutor's office to question them straight after the rescue takes place and without them needing assistance from a lawyer (SIC_1, September 2018).

At a glance, these dynamics might be perceived as the mere application of law, such as one of the prosecutors interviewed stated (JUD_1, September 2018). But it should actually be noticed that:

1. The judicial process is never a mere application of the law, since it always entails a certain degree of interpretation, especially in controversial and innovative cases, which leads to some sort of on-the-ground policy-making through judicial activism (cf. Anaya, 2014, where the case of judicial activism in Italian courts in a civil rights issue – namely same-sex couples – is explored and the whole issue of judicial activism in contemporary Italy is framed[29]);

[28] Unlike in the common law systems, verdicts of the Italian supreme court are solely binding for the case in question. First and second stages courts tend however to follow precedents, as, also in this specific issue, other verdicts considered show.

[29] "Over the past several years, the evolving role of the Italian judiciary as policy-shaper and policymaker has become a topic of interest for scholars (Marmo 2007; Pederzoli and Guarnieri 1997a, 1997b). Although the increasing importance of court decisions and the role that they play in the formulation of public policy is one of the major trends characterising contemporary democracies (Tate 1995; Vallinder 1995), the degree to which judicial activism has manifested in Italy is arguably unique (Pederzoli and Guarnieri 1997b). In Italy, the rise in judicial activism is related to what Jürgen Habermas and others have described as a crisis of legitimation (Plant 1982). When the authority of legislatures, presidents, prime ministers, civil servants and other political actors is undermined and the political process is deadlocked or otherwise blocked, the courts provide an alternative avenue for the formulation of policy choices. Judicial activism in Italy in this case is no doubt largely a response to the failure of the legislative and executive to adapt to changing social conditions" (Anaya, 2014, pp. 42–44).

2. This leads to practical, remarkable consequences, in term of criminal and migration policies (extending the criminalisation of smugglers, limiting that of migrants), not necessarily in line with the positions of the policy-makers (which shall be further discussed below and in the following chapters), as well as for investigative purposes, since migrants are questioned without a lawyer, not being investigated for any offence (see above).

The proactive role of judicial actors at a local level is further demonstrated by the decision of a prosecutor's office to release some guidelines for the deputy prosecutors and for the law enforcement agencies on the above issues (as well as on some others), in order to provide precise directives on the actions to be taken and homogenise the behaviour within the district jurisdiction (JUD_1, September 2018).

The so-called 'exoneration clause for distress' that can be applied, leading to drop charges, has become equally important in the activities of the judiciary. It is not uncommon, indeed, that those eventually accused of migrant smuggling (for steering the boat or using the compass or the satellite phone to give directions to the skipper or call the rescues) are in reality migrants forced to hold these duties at the time of boarding for the Mediterranean crossing (SIC_1, September 2018; JUD_1, September 2018; SIC_3, October 2018; JUD_2, October 2018). More about the nature of these very peculiar unwanted or "alleged" smugglers – as they are called in the #OPENEUROPE project report named "Alleged smugglers: the invisible victims of human smuggling" (Oxfam Italia, Borderline Sicilia Onlus and Tavola Valdese, 2016) – will be said throughout this chapter and further in the research. One member of the judiciary reported of a case – one of the first concerning sea smuggling from Libya to Sicily – where a broader interpretation of the exoneration clause was proposed in the preliminary stage proceeding, being rejected, though, in the second stage and eventually also by the Court of Cassation (JUD_2, October 2018)[30].

Judges had then to comply with a more restrictive interpretation, which left some of them with some sense of frustration, as reported by a judge, since they know that these 'alleged smugglers' are victims themselves of this system, but the supreme court held

[30] Remarkably, in the same period, the Court of Messina stated in two different proceedings that "it has to be excluded that [the accused persons were] entrusted with the control over the boat in a casual and extemporaneous way", since "it is not plausible that the [criminal] organisation gave to inexpert subjects the skip of the rubber boat" (Court of Messina, 2016a, p. 2 and 2016b, p. 2).

a different opinion (JUD_2, October 2018). Notably, one of the lawyers interviewed somehow supported this perspective, explaining how the very judicial proceedings – independently on the final verdict – clearly show how a wide majority of the smugglers arrested in Italy are indeed "alleged" or "forced" ones (SIC_3, October 2018[31]).

Other two cases of relevant judicial agency on the ground, connected with the interpretation of actors, have to do with two opposite situations, involving the NGOs operating in the Mediterranean and the Minister of Interior.

The first case refers to the investigations that, between 2017 and 2018, were started on the role of the NGOs working in search and rescue (SAR) operations in the Mediterranean Sea. They were accused, in different proceedings, by the prosecutor's offices of Catania, Palermo, Ragusa and Trapani, of being part of the smuggling system, de facto facilitating the illegal entry of migrants into Italy and even of being in direct contact with smugglers in Libya (Scavo, 2018). Throughout the last months of 2018 and the first ones of 2019 new proceedings were opened, also involving the Prosecutor's Office of Agrigento, but at the time of writing none of these proceedings has led to an indictment and most of them, including the most remarkable one in Catania, were dismissed (Court of Ragusa, 2018; Marsala, 2019; Open, 2019 and Scavo, 2018), even at direct request of the prosecutors (see, among others, Prosecutor's Office of Palermo, 2018).

Without entering the field of legal and judicial analysis, the core element to be noticed is the way in which actors' interpretation on the ground led to (*or* fit into *or* reinforced) the criminalisation of humanitarian actors (Carrera et al., 2018a and Cusumano and Gombeer, 2018). Although this has not had any concrete penal consequence so far, it has definitely had a strong impact in terms of policies both directly (de facto limiting and discouraging NGOs SAR activities, as explained by NGO_5, May 2019) and indirectly, namely on the Italian and EU political debate and policy-making dimension, as shall be seen in the next chapters. Notably, such effects did not seem to have been eliminated, or even mitigated, by the dismissal decisions, most likely also in the light

[31] This terminology will be further used in the research in inverted commas to refer to these specific cases. When the expression *alleged smuggler* is meant in the broader meaning of someone accused of smuggling, without the charges being proved yet, these terms shall be used without inverted commas.

of the parallel anti-NGO game played in parliamentary committees and other institutions (see Open, 2019 and paragraphs 5.2.1. and 5.3.3.).

The second case has to do with another remarkable investigation. This took place against the Minister of Interior Matteo Salvini, for having delayed the disembarkation of migrants from a ship of the Italian coast guard (the so-called 'Diciotti case'). This case provides another example of judicial interpretation, involving both the Prosecutor's Office and of the Court of Catania (having reached the stage of indictment request, see Senate of the Republic, 2019). This did not lead to any penal consequence for the accused, for the Senate did not authorise the indictment of Minister Salvini (see paragraph 5.2.1.), but it nevertheless had a very strong political impact and consequences, not so much directly as leading to policy-making on the ground, but rather indirectly, as a bottom-up dynamic into the national level. This whole case is considered in more detail in chapter 5, particularly in terms of the effects produced on the national policy-making.

Lastly and residually, the judicial arena can also play some role in purely protection matters, especially when unaccompanied minors are concerned: a very interesting example of agency was reported by NGO_4, October 2018: s/he explained how the choice of certain procedural tools by the Juvenile Court, even going beyond the letter of the law, can be particularly significant in order to deepen the integration of minors victims of smuggling. This last example can be of particular interest also in the light of the overall discourse on the victimisation of smuggled migrants conducted in chapter 1.

4.2.2. The law enforcement arena

In the repression dimension, additional key actors are law enforcement and border guard agencies. In this regard, some studies tend to stress the possibility to read their agency in connection with migration policies through the lenses of administrative discretion, at least partially:

> [P]olice re-locate borders previously set by law and re-define the mechanisms of inclusion through their discretionary power. (…) Some argue police officers behave as street-level bureaucrats, and the actual policies depend on their discretionary

> decisions (Lipsky 1980). Yet, the police cannot exercise total discretion, as they represent an institution inserted into a web of powers (Fabini, 2017, p. 50).

Some of the findings of this research confirm the applicability, albeit limited, of this framework to police officers, in particular in two cases:

1. Throughout the investigations in migrant smuggling cases: SIC_1 (September 2018) in particular reported, based on his/her experience as defence lawyer, that in the questioning of witnesses – i.e. smuggled migrants – wide discretion is applied by law enforcement as to whether to ask them if the alleged smuggler was forced to take control over the boat or not. S/he explained that this is, indeed, a key-question that sometimes is asked and sometimes not, with very relevant consequences for the start of the investigation. If one thinks about the tiredness, disorientation and confusion of smuggled migrants and alleged smugglers at their arrival, it becomes even clearer how important it is to ask the 'right' questions, since it cannot be expected that they be particularly lucid and quick-thinking at that moment.
2. Some of the interviewees also referred to a wide degree of discretion in the processes connected to the release of the residence permit, not only at the time of the process, but also for the documents requested of the migrants, that could vary according to the specific case. This particular aspect can arguably be seen, in a comprehensive approach, as a component of the effort to ensure rights and protection to smuggled migrants.

Noticeably, however, the interviewed police officers denied any degree of discretion in their action (LAW_1, October 2018; LAW_2, October 2018; LAW_3, November 2018), if not in those cases, such as the release of the residence permit, where norms are "not rigid" and should be interpreted with "good sense" (LAW_3, November 2018).

In any case, all local actors tend to agree on the importance of investigations and trials as a key element in the response to migrant smuggling and on the relevance of practical action, beyond policies. Positions are quite diverse, though, and even contradictory in some cases.

On the one side, lawyers and NGOs stress how some practices jeopardise the rights of the suspects and the very right to a fair trial, in particular because of a merely formal

respect of the guarantees provided by law. One lawyer interviewed, for example, explained how quite often the lack of preparation or even the prejudices of court-appointed lawyers as well as language barriers may represent a concrete danger for the alleged smuggler (SIC_3, October 2018).

On the other side, members of the judiciary see the action of NGOs as particularly critical (even if not necessarily going as further as the prosecutor's offices of Agrigento, Catania, Palermo, Ragusa and Trapani), showing how, since NGOs started getting involved in SAR operations, the number of cases against smugglers dramatically dropped because of their lack of preparation in collecting evidence (JUD_1, September 2018).

JUD_1 (September 2018) also shared figures related to the relation between the number of disembarkations and that of the persons arrested: in SAR operations conducted by border guards the average number of people arrested was 2.5 (2015) and 3.3 (2016) for each disembarkation. In the case of SAR operation led by NGOs, these numbers dropped to 1 (2015) and 0.4 (2016) persons arrested/disembarkation. However, this conclusion was partly challenged by a high-rank law enforcement officer investigating on migrant smuggling, who acknowledged how this is not always the case and, on the contrary, NGOs can be also very useful (LAW_1, October 2018).

Again, NGOs seem to be particularly problematic and divisive also among practitioners, due to their very existence and for falling outside any institutional hierarchy. Moreover, what happens on the ground has important consequences also at a national level: this is the case of the 2017 Code of conduct, which tried, among other things, to extend a law enforcement and border protection logic onto the action of humanitarian actors (see section 5.3.2.).

Another interviewee, a law enforcement officer with directive functions, strongly criticised the behaviour of smuggled migrants, alleging that "legal ways to come to Italy exist" and "not necessarily one has to resort to illegality" and further declaring that s/he does "not really agree" on the assertion that it is *also* the insufficiency of legal ways to migrate to Italy that produce smuggling (LAW_2, October 2018. This last aspect is more lightly supported also by LAW_3, November 2018). This is important not only because it made reference to the agency of migrants – with a negative connotation from the point of view of the interviewee(s) – but also because it partly challenges, from

the perspective of law enforcement, the idea of a demand-supply model of migrant smuggling and the whole approach of the smuggling spectrum (see chapter 1).

A last feature in the proactive role of law enforcement officers (which is shared also by the judiciary) is an effort to ensure the highest degree of information sharing and cooperation, also through informal channels and beyond what is established in policies. In such perspective, Operation Sophia, Europol, Frontex, the International Organization for Migration were referred to as some of the more significant tools/actors to ensure this kind of cooperation (LAW_1, October 2018; LAW_2, October 2018).

4.2.3. The local government and non-institutional arenas

As was already highlighted at the beginning of the chapter, data related to local agency to fight migrant smuggling seems to point quite clearly towards the repression side, and therefore it is not surprising that such an important role is played by those responsible for the law enforcement and administration. However, actors that would technically be outside the anti-smuggling activities stricto sensu still play a very important role in the light of their action in the migration field, especially in connection with the need of protecting and assuring human conditions and rights to (smuggled) migrants. It is the case of local government and agencies and organisations involved in the reception and asylum system.

First of all, local governments have a central role in the reception of migrants upon arrivals (see also chapter 3). When Mediterranean migration became particularly heavy in 2013-14, they had to deal with a number of issues related to the organisation of the "arrival mechanism" at the harbours, in a situation where there was a lack of planning and a lot of efforts were left to city administrations (SIC_2, October 2018). When the situation became more structured, both in terms of migration flows, SAR operations and reception system on the territory, the overall coordination of the disembarkation activities was taken over by the *Prefettura*, the local office of the central government, under the direct control of the Ministry of Interior. In this new situation, local governments' presence at the harbours had mainly to do with (a) humanitarian and welfare activities, also through the municipality welfare system, and (b) the protection and management of unaccompanied minors, whose responsibility falls to the mayor according to the Italian law, be they Italian or foreign.

Former deputy mayors for migration of two Sicilian major cities both stressed the importance of this activity, in particular in terms of "bringing humanity" to a place – the Italian border – where the securitisation wave has been dramatic. This has had a substantial impact not only on the experience of smuggled migrants, but also on other actors, such as in the story of a high-rank police officer who was so much affected by this experience and the way how it was dealt with by the local government, that he dared to say: "all this is unacceptable, we need to open our borders" (SIC_4, October 2018).

The role of municipalities, though, has been waning in the last months, with a more repressive and securitised environment, more centrality of law enforcement, also in the case of unaccompanied minors (SIC_2, October 2018). Notably, in one Sicilian major city an overturning of the engagement in migration after local elections and the change in government was also noted (NGO_4, October 2018).

However, local governments – and mayors in particular – can still be particularly important in terms of symbolic power and networking (NGO_1, October 2018; SIC_2, October 2018; NGO_2, October 2018). Mayors have been involved in processes of advocacy, led by examples, such as in the case of the campaign against the decision of the Minister of Interior to close Italian harbours to NGOs ships involved in SAR operations[32] or, more recently, the stances taken against the Security Decree (NGO_1, October 2018; SIC_2, October 2018; SIC_4, October 2018; NGO_4, October 2018) or, going even further, with the public support to Mediterranea – Saving Humans, the SAR and advocacy operation launched by Italian left-wing movements, parties and associations.

As for the non-institutional arena, this is also quite interesting but it will mostly be explored in 5.3.2. and 6.3.2., i.e. the sections which deal with the horizontal dimension of MLG (see chapter 2), having to do with the way in which dynamics originating by non-institutional actors affect policy-making. However, in this paragraph one can and should recall that, besides national and EU institutions, local authorities can also be targeted in advocacy: a process which is normally considered easier and more

[32] One NGO officer highlighted that this is even more remarkable, since this would entail more responsibility for the mayor and the local government more work as they would need to ensure the reception of these people on the territory (NGO_2, October 2018).

successful in terms of result (NGO_1, October 2018), even though, also in this case, much depends from the preferences of the recipient (NGO_3, October 2018), as the example of the overturning of the approach of one municipality recalled above shows (NGO_4, October 2018). In any case, interviewees tended to agree that local authorities normally show more awareness and are more keen to be influenced (NGO_3, October 2018; NGO_4, October 2018).

4.2.4. Reception and asylum: ancillary agency

Lastly, a couple of interesting agency examples also come from the reception and asylum systems, although they are not at the core of the anti-smuggling policies, but still connected to them, as outlined in the operational definition of migrant smuggling in chapter 1. Given the ancillary nature of these examples so as to understand anti-smuggling agency patterns on the ground, they will be addressed as a whole, combining elements coming from different arenas.

All the NGOs officers interviewed, who were directly involved in the reception system, confirmed how different theory and practice are from one another, explaining that officers' discretion is very wide and therefore every single reception centre, project and procedure is a unique story. A clear example of that is the discrepancy between what is on paper and what actually happens as for the time spent in different centres at different stages, where mainly cooperatives, the Ministry of Interior and the local authorities are concerned. But the same patterns of discretion apply also for the necessary time to obtain a residence permit or citizenship, which should be the same in the whole country but it is different according to the city (NGO_4, October 2018) and where a key discretional role is played by the local *Questura* (the central police station).

Also, some reported a reduction in guarantees for smuggled victims, migrants and asylum seekers – at the local agents' discretion – such as in the case of the number of components of the asylum commission, sometimes composed of only one person, with the asylum seeker's consent, as s/he is not aware of his/her rights or simply because s/he is not in the position to defend them (NGO_4, October 2018). This reinforces the conclusion of NGO_3 (October 2018) on the attitude of some migrants – even victims of smugglers – not to denounce irregularities in the reception and asylum process mainly because of a lack of awareness and/or for the fear of retaliation,

an aspect which in turn can become very important in terms of guarantees and right protection.

4.3. Why do actors behave in a certain way? Rationality, appropriateness and institutional constraints

The overall picture described above leads to reaffirm the importance of local agency in order to understand what happens on the ground in addressing migrant smuggling. The reasons why local agency assumes the characteristics discussed (and different from how policies are on paper) can be attributed to two different sets of explanations, moving along the continuum between institutions and agency, consistently with the new institutionalist theoretical approach chosen.

The first type of explanation, lying on one extreme of the continuum, is structural, i.e. stresses how local agency is strongly influenced (if not determined, in some cases) by the structure of the system, leading to an outcome which is different from how it would be supposed on paper (cf. Olsson, 2016 and, more broadly, March and Olsen, 2011). First of all, structural reasons have to do with the allocation of resources and personnel as well as the organisation on the ground, which are deemed to be limited, in particular insofar as the reception system is concerned (NGO_3, October 2018; NGO_4, October 2018). But this explanation includes also those situations in which laws are built without considering the situation of the territory (SIC_2, October 2018) or the peculiarities of the phenomenon (lawyers criticised the very construction of article 12 TUI as it was thought to target only a certain type of smuggler, very different from those who are charged now). Another element has to do with the definite hierarchy of certain local actors (e.g. the case of *Prefettura* and *Questura*), which strongly expose actors on the ground to the changes happening at the central level, being an example of that the takeover of the *Prefetture* over municipalities and non-institutional actors at disembarkations in the harbours (SIC_2, October 2018; SIC_4, October 2018; NGO_4, October 2018).

This whole scenario is considered partly unwanted and partly wanted by the upper governance levels, in order to maintain an emergency situation on the ground with all the consequences that from this arise (NGO_3, October 2018; NGO_4, October 2018).

The second set of explanations lies on the other extreme of the continuum and stresses the role of the actors, instead, and their freedom to act in a certain way, in the light of street-level bureaucracy assumptions and of the principal-agent model (cf. Lipsky, 1980 and Pollack, 2017). Throughout this analysis several examples of this have arisen (and shall be summarised below) and they are readable in the combined perspective of logics of consequences and appropriateness (March and Olsen, 2006). Here it clearly emerged indeed how in a number of cases none of the two logics could stand alone as an explanation per se (even though certain actors would so perceive their behaviour or the behaviour of someone else that they reported in the interview).

Table 4.1. summarises all the cases explored throughout this chapter, defining the characteristics of the agency, in the view of the concerned actor, of the interviewee and of the researcher.

Table 4.1. – The logics of local agency

PRACTICE	ACTOR	REPORTED BY	LOGIC (actor-interviewee-researcher)
Establishment of jurisdiction outside territorial waters	Judiciary	Judiciary Lawyers Document	*Actor*: LoA – Not discretional, but mere application of law *Interviewee*: LoA (judiciary) + LoC (lawyers) *Researcher*: Combined logic. Legislation already provides the basis for jurisdiction, which is possible, though, only through an extensive interpretation
Issuing of operational guidelines for deputy prosecutors and law enforcement agencies	Judiciary	Judiciary Document	LoC – Objective is that of a more efficient and homogenous procedure on the ground
Application of exoneration clause for distress to alleged smugglers	Judiciary	Judiciary Document	Combined logic – Perception varies according to the interviewed judge. As any extensive application of law, it implies a certain degree of discretion and adherence to law

Prosecution of NGOs for migrant smuggling	Judiciary	Document	Combined logic – *see above*
Distress-related questions during migrants questioning (Y/N)	Law enforcement	Lawyer	Structural reasons – Lack of preparation/standard protocol
Length and discretion in residence permit issue	Law enforcement	Lawyer Deputy-Mayor (Law enforcement)	*Actor*: LoC – Interpreted with good sense *Researcher*: Structural reasons + LoC – Lack of resources, not priority
Superficial legal assistance	Court-Appointed Lawyers	Lawyer	*Interviewee* + *researcher*: LoC + Structural reasons – Prejudices, perceived as surplus, lack of preparation, language barriers and lack of resources
Evidence collection in SAR operations	NGO	Judiciary (-) Law enforcement (+) Document	*Interviewee* + *researcher*: Structural reasons – NGOs not prepared to collect evidence. Less clear why they accept to do it
Disregard of migration legislative framework	(Smuggled) migrants	Law enforcement	*Interviewee*: LoC – They want to maximise their benefits and not wait, going thought the flow procedure *Researcher*: LoC + Structural reasons – Need/determination to arrive to Italy, impossibility to wait, no legal channels
Sharing of information between offices	Judiciary Law enforcement	Judiciary Law enforcement Document	Combined logic – Perceived as part of their task, positive in terms of efficacy and efficiency
Humanitarian assistance at disembarkations	Municipalities	Deputy-Mayor	Combined logic – Perceived as part of the duties of a local government, willingness to actively protect human rights of (smuggled) migrants
(Takeover in) coordination of disembarkations	Prefettura	Deputy-Mayor	*Researcher*: LoC + Structural reasons – Willingness to control the situation on the ground, strong hierarchy

Symbolic power, advocacy	Mayors	Deputy-Mayor NGOs Lawyer	LoC – Beyond the duties of the role, aim to fight for something deemed important and right, value-based
Migrants overstay in reception centres	NGOs Municipalities Prefettura	NGOs	LoC + Structural reasons – Lack of resources and other structural reasons, justification for the existence of reception centres and preserve the reception system and job roles (according to some interviewees)
Reduction N° components asylum commission	Prefettura	Lawyer	*Interviewee* + *researcher*: LoC + Structural reasons – Lack of resources, saving time and avoiding problems
Toleration towards irregular practices in reception	Smuggled migrants	NGOs	*Interviewee* + *researcher*: LoC – Willingness to obtain protection and/or right to stay, so attempt to avoid any stance against authorities
Tendency not to take 'courageous' positions	Judiciary	Lawyer	*Interviewee* + *researcher*: LoC – Not to be discriminated, isolated, blamed by colleagues and superiors
Different time for implementation of restrictive and progressive legislation	Several institutions	NGOs	*Interviewee* + *researcher*: LoC + Structural reasons – Partly in the very nature of certain acts, partly result of political choices of very hierarchised institutions, consistently with central government policy objectives
Overturning in the engagement of a city towards (smuggled) migrants reception	Municipality	NGOs Deputy-Mayor	LoC – Different political perspectives and values, clearly shows the centrality of agency in these situations
Progressive and more open procedure in a Juvenile Court	Judiciary	NGOs	*Interviewee* + *researcher*: Combined logic – Extensive interpretation and flexibility on the basis of what law allows and values and orientation

Source: Elaborated by the author

The main findings that the table shows can be encapsulated in the following points:

1. Norm implementation concerning migrant smuggling shows a certain degree of difference from what the very norms say. This has mainly to do with (a) the activity of norms interpretation and application from the judiciary (Marmo, 2007; Pederzoli and Guarnieri, 1997a and 1997b) and (b) the stretch of norms on the side of municipalities and non-institutional actors (Lipsky, 1980; more broadly on the importance of these actors in migration-related governance see Zincone and Caponio, 2006);
2. Structural limitations, especially connected to the allocation of resources, play a major role; however, even in these cases, some degree of discretion for the actors concerned still applies (cf. Olsson, 2016 and, on the overall understanding of the institutions/agency dynamics, see chapter 2);
3. Generally a hybrid logic is found. In a policy domain where a strict regulatory framework coexists with principal-agent or street-level bureaucracy dynamics, structural limitations and very sensitive and value system affecting issues, it proves difficult to find cases where actions can be explained in terms of pure rationality or appropriateness (cf. March and Olsen, 2006);
4. Judiciary and law enforcement tend to perceive and explain their own actions in terms of appropriateness, i.e. they behave in a certain way because this is what their role implies. They tend not to be aware of – or to disagree with, such as in the case of LAW_1 (October 2018), LAW_2 (October 2018) and LAW_3 (November 2018) – the existence of a certain degree of freedom they enjoy in their agency and how this can be partly driven towards one direction or another according to the point of view of the actor. This explains more clearly the difference among self-perception, perception of actors and possible explanations of agency;
5. The agency of municipalities is mainly driven by values, ethical and political considerations, and actors seem to be perfectly aware of this. Their agency tends to go beyond the limits the role would assign to local governments and it is based on a combined logic, where in particular the rational choice of the actors emerges in order to ensure the protection of certain rights and the affirmation of certain values. Their role has tended to diminish, especially in comparison with that of law enforcement and *Prefettura*, whose takeover can

be essentially explained by the shift in the government at national level (cf. March and Olsen, 2006);

6. NGOs' activities seem also to be driven by a combined logic, where rational choices emerge – in certain cases even very strategically – with a view to obtaining some specific results they are fighting for.

Furthermore, it was noted that in shaping actor's preferences and subsequent choices, context-related factors seem to play an important role. In particular, interviewees tended to stress the general securitising and criminalising approach (SIC_1, September 2018; SIC_2, October 2018; SIC_3, October 2018; SIC_4, October 2018; NGO_4, October 2018), which in turns influences agency in different contexts. One example of that is the case of those members of the judiciary who are 'discouraged' to take progressive stances, because of the risk of reputation or retaliation consequences, either or both inside and outside the legal system, as two lawyers interviewed reported (SIC_1, September 2018; SIC_3, October 2018), or for the alleged prejudices that sometime court-appointed lawyers have towards their own clients (SIC_3, October 2018).

In this scenario, some institutional actors are even considered to behave quite superficially because they consider the work related to migration as a surplus (NGO_3, October 2018). This environment can lead to a more general situation in which "you can even approve an act such as the Zampa Law[33]", which is a quite open and progressive piece of legislation, but "the real problem is the applicability of some things. That meaning that between approving a normative, a law, and apply it… when it is for the good [i.e., to protect migrants], it is almost never applied, but if you ask me whether the Salvini Decree [i.e. the Security Decree] was applied, well the answer is yes" (NGO_4, October 2018). In this sense, the issue would be not so much to what extent norms are applied, but rather what type of norms, in terms of contents and political stance, are applied.

Lastly, as one of the lawyers interviewed stated, there are also conditionings that produce effects even if the subject is unaware, at an emotional level (SIC_1, September 2018).

[33] Law n. 47/2017 for the protection of unaccompanied minors. See also sections 3.3.2. and 5.3.2.

4.4. Local agency and bottom-up dynamics: from Sicily to the national and supranational level

As was already mentioned, a second aspect that this chapter seeks to explore has to do with the indirect consequences of local agency on anti-smuggling policies, that is the way in which local practices influence decision-making dynamics at a national and EU level. In other words, the bottom-up dimension of the anti-smuggling policy-making, which can take place either or both intentionally (in terms of preference upload, information sharing, etc.) or unintentionally, through some sort of reaction in response to dynamics taking place on the ground (Caponio and Jones-Correa, 2017 and Zincone and Caponio, 2006. See also Pollack, 2009).

Chapter 1 already showed that migration, asylum and, in our specific case, anti-smuggling policies, differently from what it could be imagined prima facie, are far from being merely top-down shaped: room for the indirect effects and upload of preferences, stances and requests coming from the ground exists, instead.

In order to understand how bottom-up dynamics can nevertheless take place, the same arenas previously explored will be considered again. Remarkably, most of the examples discussed below have to do with the national level rather than with the EU one, showing a more direct connection between different governance levels within the same country. However, the impact of the local level on Brussels decision-making is not limited to what will be explored in this chapter: other dynamics of information upload take place at EU level, but will be considered in chapter 6, consistently with the framework delineated in chapter 2, as they mainly take place in the EU institutional environment (parliamentary hearings and field visits). Likewise, bottom-up dynamics taking place in the national institutional environment – i.e. parliamentary hearings, part of the action of intermediate bodies (see below) and the indirect consequence of judicial agency on the ground – shall be discussed in chapter 5.

A first case to explore is that of the judicial arena, considering how the judiciary bears a significant role in driving bottom-up change. Some case law related to migrant smuggling was already explored in the previous section, stressing interesting examples of agency at local level. From those very examples – related to the extension of jurisdiction and for the ‘exoneration clause for distress’ inter alia – also the characterisation of case law as key factor of bottom-up change can be inferred. Beyond

the mere judicial policy-making on the ground, indeed, case law can become generally applicable if confirmed by the Court of Cassation, insofar as it sets standards that would eventually be followed also by other courts (cf. Anaya, 2014 and Farrell and Héritier, 2007, cited in Bonjour et al., 2018, p. 416, on the judicialisation of certain issues and the subsequent “shadow over policymaking” cast by the judiciary).

Bottom-up effects in the judicial arena are also connected, as has been seen, to the response in terms of policy-making to investigations taking place on the ground, such as in the cases of NGOs operating in the Mediterranean Sea and of Minister Salvini (see section 5.2.1.).

One of the interviewed lawyers interestingly argued that some deeper processes could start if one went beyond the verdicts, looking at trials evidence, referring in particular to the nature and characteristics of those accused of smuggling, far from the ‘ruthless criminal’ in any case, as considered in the political debate (SIC_3, October 2018. See also the smuggling spectrum in section 1.2.3.). SIC_1 (September 2018) added that, should policy-makers actually look at such evidence, they would be much more willing to change laws, as they would understand that those who are accused of smuggling are not smugglers, actually.

SIC_3 (October 2018) further stressed how lawyers (being a lawyer him/herself) should also feel part of this and make the most in order to win cases and “create favourable case law”, as this would determine an overall improvement of human rights protection of victims and alleged smugglers who turn out to be innocent. This assumption incidentally reinforce the importance of case law in leading to bottom-up dynamics.

Another example, though less visible and less structured, of bottom-up processes was referred to by JUD_1 (September 2018) and comes from the relationship between the members of the judiciary and the National Anti-Mafia and Anti-terrorism Prosecutor’s Office (DNA, from the Italian *Direzione Nazionale Antimafia e Antiterrorismo*). The DNA is in charge of coordinating investigations in different parts of Italy for some specific offences, including migrant smuggling. Through frequent and deep coordination meeting, reports, etc. members of the judiciary can upload tendencies, challenges, recommendations and anything else arising from the work on the ground, in order to not only share it with other colleagues and harmonise practices, but also to influence

the formulation of new policies, through the frequent contacts between the DNA, ministries and the parliament. In particular, JUD_3 (April 2019) highlighted the importance of coordination meetings with the different District Anti-Mafia Prosecutor's Offices (DDAs, from the Italian *Direzione Distrettuale Antimafia*) in order to share new issues and patterns as soon as they come out and, more in general, for information sharing, such as in the remarkable case of the meeting of 25 May 2017, discussed in more detail in sections 5.2.1 and 6.2.1.

These processes are further facilitated by established informal networks and mailing lists involving judges working on migration, which provide a basic harmonised framework and information sharing. This, beyond its relevance in the overall coordination process, then reaching the DNA, is clearly helpful to the very activity of the judiciary (JUD_1, September 2018).

The DNA example highlights the importance that intermediate bodies can have in some bottom-up processes, especially for actors whose institutional duty is limited to a given territory. Another example could involve the local government arena, in particular through the Association of the Italian Municipalities (ANCI, from the Italian *Associazione Nazionale dei Comuni Italiani*), where the same dynamics already explored in the case of the DNA take place. One former deputy mayor stressed such importance (SIC_2, October 2018), in particular for the activation of the *Sistema di Protezione per Richiedenti Asilo e Rifugiati* (SPRAR, Protection System for Asylum-seekers and Refugees), which is a very advanced component of the reception of migrants and protection of victims. Still, another former deputy mayor, in turn, explained how the real impact of what happened in ANCI is arguable, since the real and main input came from the EU and not from the municipalities (SIC_4, October 2018).

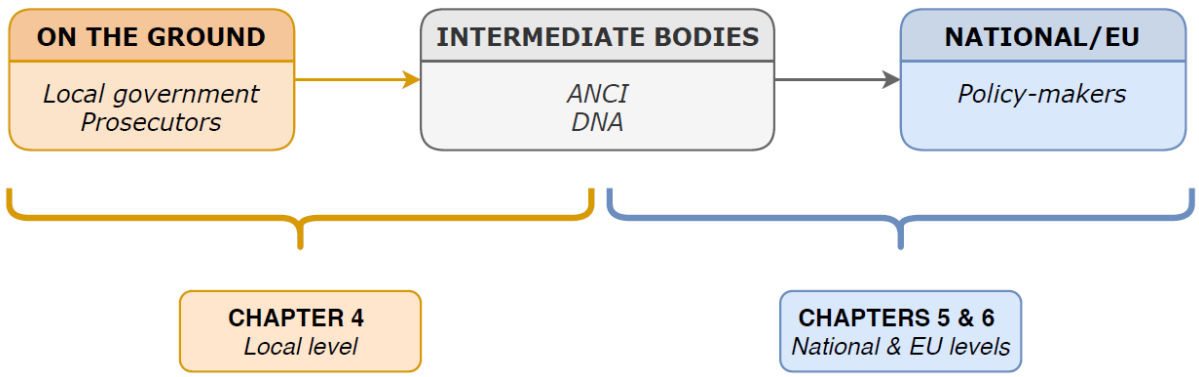
According to some, the national level is too much influenced by the EU (SIC_4, October 2018): for this very reason, municipalities have found it easier to spread dynamics horizontally among other cities, rather than insisting on the national level (SIC_2, October 2018; SIC_4, October 2018). In practice, instead of allocating time and resources to very difficult processes with a high likelihood of failure, some cities have preferred to bypass the national system, directly influencing local agency in other ways,

moving throughout discretional implementation, rather than trying to change the legislative framework.

Last but not least, in certain cases preference upload processes can also take place in the law enforcement arena, contributing to the shape of policies at national level: however, this rarely takes the form of legislative acts, rather converging into "operational protocols" from the Central Directorate for Immigration and Border Police, which are always built on examples, practices and preferences coming from the ground (LAW_3, November 2018).

Concluding this paragraph, two general considerations related to the intermediate bodies can be made, contributing to the overall debate on the bottom-up approach to migration MLG (Caponio and Jones-Correa, 2017). Firstly, it should be noted that they are active not only at a national level but also in the interaction with the EU, this being a partial exception (alongside the ones already mentioned and which will be discussed in chapter 6) to the limited direct connection ground/EU. Secondly, more in general, it should be recalled that for their very intermediate nature, they will be further analysed at the other two levels. Whereas in this chapter the focus is placed on the first part of the process, i.e. how actors on the ground upload information and practices to these intermediate bodies, in the next chapters the focus will be placed on the second part of such process, i.e. how the very intermediate bodies bring the uploaded information and practices to the policy-makers at a national and supranational level (see Figure 4.3.).

Figure 4.3. – The analysis of the intermediate bodies



Source: Elaborated by the author

4.5. General considerations

This chapter sought to offer some introductory insights and explanations concerning the agency at local level and its direct and indirect impact on the policy-making against the smuggling of migrants. Through this process, the elements needed to answer SQ1 – i.e. how does the response to migrant smuggling function on the ground and how does this contribute to policy-making in this field? – were considered.

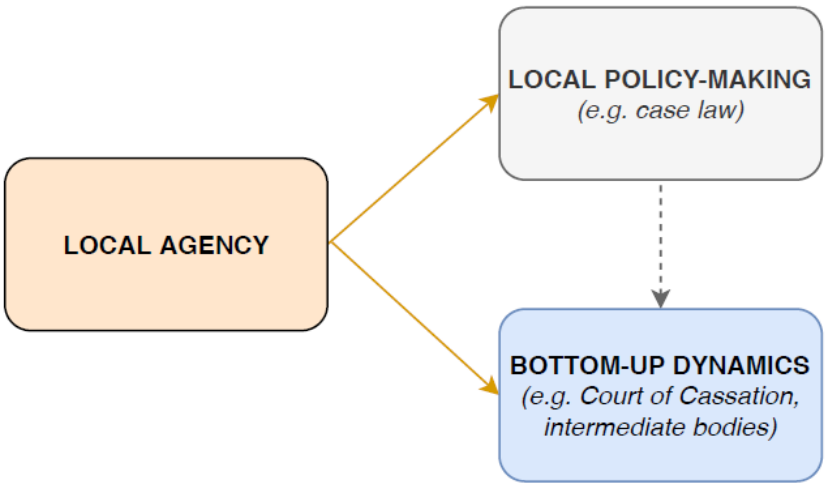
It was shown how different, under certain circumstances, theory and practice can be, also highlighting the reasons for this:

1. Structural reasons embedded in the institutions (see March and Olsen, 1984 and 2011);
2. The discretional agency of street-level bureaucracy (Lipsky, 1980), based on two distinct and complementary logics (appropriateness and consequence, cf. March and Olsen, 2006);
3. Principal-agent relationship dynamics (Bonjour et al., 2018 and Pollack, 2017).

In so doing, the perception of the actors involved was also given due attention and importance. How and to what extent all these dynamics can lead to shifting processes was also considered, with regards to both vertical and horizontal dynamics. In other words, it was shown how agency on the ground, particularly deviating from the letter of norms, creates de facto policies, in the very moment in which such process takes place or through bottom-up dynamics, which could consist in wanted as well as in unwanted consequences (see Figure 4.4.).

Among the main conclusions, it was found that agency is mainly driven by the presence of structural factors and by a hybrid logic, including both appropriateness and consequence considerations. The importance of values is deemed particularly important, especially in the agency of local governments, lawyers and NGOs. In bottom-up processes, the role of intermediate bodies proved to be particularly important. In both analyses, lastly, case law was a major changing factor.

Figure 4.4. – Local agency and policy-making



Source: Elaborated by the author

As an introduction to the substantive part of this research, this chapter sought to offer a set of points of reflection that will be further elaborated in the next chapters. Implementation and evaluation are part of the policy cycle, of course, but preliminary findings seem to point in the direction of a limited awareness of this at a policy-making level (or that certain requests, albeit based in concrete analyses and experience on the ground, are deliberately ignored). In particular clear-cut definitions of and approaches to smuggling are challenged in the everyday practice, but they are still in place in the EU and Italian frameworks (even though a certain degree of change seems to have happened in the last years), with regards to the separation between migrant smuggling and the overall migration and asylum framework, the approach to SAR operations as well as the connotation and characterisation of smugglers which seems to be one of the most critical points today. All of these issues shall be further discussed, from other perspectives, in the next chapters.

A last consideration has to do with a concrete effect that the issues explored in this chapter can have. Especially in a period where the political discourse (and policies) are becoming day after day more securitising and securitised, the space left to the action at local level and in bottom-up dynamics can represent a challenge or an opportunity, depending on the point of view and political stance of the reader, but it is in any case extremely significant and with clear practical consequences.

Chapter 5

"Between the Mediterranean and Schengen[34]": the Italian policy-making against migrant smuggling

5.1. Introduction

After exploring the main patterns of agency on the ground and the way in which this shapes policies, both directly and indirectly, it becomes important to focus on the upper, national level, to understand how policy-making dynamics work here, In so doing, this chapter seeks to answer research sub-question (SQ)2: what factors and dynamics are relevant to the formulation of policies against migrant smuggling on a national level?

In order to do so, the analytical model outlined in chapter 2 will be applied: this means that, first of all, migrant smuggling is going to be framed lato sensu, including in the analysis also connected policies (such as undocumented migration and, where applicable, asylum and other related policies). Many of the legislative acts outlined in chapter 3 will therefore be considered.

Secondly, the national level will be explored through the 'multi-level' (paragraph 5.2.) and 'governance' (paragraph 5.3.) aspects of the analytical model, also making some references to the continuum between institution and agency (layer 1), even though this aspect shall be addressed systematically and more in detail in chapter 7.

Following an essentially narrative-based description of the data gathered, the most relevant issues addressed shall be considered from multiple points of view. This, rather than constituting an unnecessary repetition, shall make the most of the heuristic relevance of the analytical model, making it possible to consider the different components of the same phenomenon and to draw comprehensive and in-depth conclusions about it.

[34] This phrase is inspired by the title of a previous work of the author, originally in Spanish – "La cuestión fronteriza en Italia: entre el Mediterráneo y Schengen" – in the volume edited in 2017 by Beatriz Zepeda, Fernando Carrión and Francisco Enríquez and titled "El sistema fronterizo global en América Latina: un estado del arte" (Quito: FLACSO Sede Guatemala, FLACSO Sede Ecuador, IDRC – CDRI).

Again, it should be stressed how this differentiation is mostly analytical: therefore, elements of 'governance' might be in background in the 'multi-level' layer and vice versa, and the same might happen within the same layer between different arenas.

Within each section of the different paragraphs, the narrative is relevance-based, rather than merely chronological.

Lastly, an analytical synopsis will conclude the chapter (paragraph 5.4.), highlighting those aspects that characterise the policy-making at a national level. This synopsis will be recalled and analysed in more depth in the research (namely in chapter 7), in an overall approach which will bring together the local, national and supranational levels, analysing the institution/agency dynamics across the different levels and also focusing on some specific aspects emerged throughout the research.

5.2. Multi-level dynamics

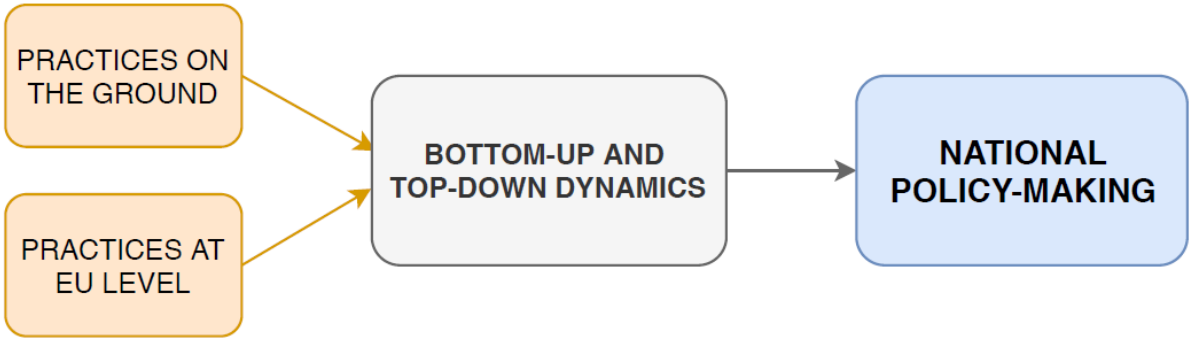
In the understanding of the policy-making patterns at a national level, the vertical dimension of multi-level governance (MLG) is interesting in relation to what happens both at a local and at an EU level.

As was already pointed out in chapter 2, such interaction is analysed beyond the different allocation of responsibilities descending from EU treaties and national legislation: it has rather to do with the agency of actors among these different levels, and with how what happens at a given governance level has an influence on the agency of actors situated at other levels, in absence of normative hierarchy.

In the case of national policies, such influence and interaction is considered in two different political spaces: (a) the 'connection with the ground' and (b) the 'Europeanisation[35]' layers. As for the direction of this interaction, in this chapter this aspect is considered both from the local and EU level uniquely towards the national level (Figure 5.1.). For each layer, the main actors are highlighted, disclosing the main patterns and challenges, as well as the substantive issues mostly addressed.

[35] In this context the term 'Europeanisation' is used broadly, in line with Vink and Graziano (2007, p. 7), as "the domestic adaption to European regional integration."

Figure 5.1. – Interaction directions at a national level



Source: Elaborated by the author

5.2.1. Uploading from the ground: intermediate bodies and parliamentary committees

The impact of the practices taking place on the ground on national policy-making was already partly sketched in chapter 4: as widely pointed out in different parts of the research, these upload processes can be read and observed from a double perspective, and this is exactly what shall be done here, integrating the local perspective of chapter 4 with a national one.

This interaction process mostly has to do with the information exchange and preference upload, which take place in arenas where the two levels (or, more precisely, actors operating in two levels) meet. In the considered cases, this happens in particular in the special committees of the Italian parliament, established with specific investigative or in-depth analysis tasks on given subject matters, and in those intermediate bodies – National Anti-Mafia and Anti-terrorism Prosecutor's Office (DNA) and the Association of the Italian Municipalities (ANCI) above all – recalled in the previous chapter.

Furthermore, the judiciary also plays an important role, bringing an impact on national discourse and policy-making with specific peculiarities that go beyond a mere information upload, much like in the other cases considered at the implementation level.

Starting off with the role of the parliamentary committees – as they seem to offer some of the most relevant examples over the time frame considered – their interest for information upload and direct connection between actors operating at different levels

appears to be crucial. This is particularly the case of special committees such as the Parliamentary Committee of Control for the Enforcement of the Schengen Agreement (the Schengen Committee), the Parliamentary Committee of Inquiry into the reception, identification and expulsion system as well as into the migrant detention conditions and on the allocated public resources (the Reception Committee) and the Parliamentary Committee of Inquiry into Mafia-related and other criminal organisations (the Anti-Mafia Committee). They are characterised by a work of in-depth analysis aimed at giving the two houses of the parliament a clearer understanding of a given phenomenon and thanks to numerous hearings of experts, which provide Members of Parliament (MPs) with direct and highly valuable information regarding the implementation of given policies. But it is also the case of standing committees, such as in the case of the Fourth Standing Committee of the Senate of the Republic (Senate Defence Committee).

Such crucial role was particularly clear throughout the XVII Legislature (2013-2018), and specifically in the last two years, in association with the emergence of a strongly divisive political debate in Italy on undocumented migration, search and rescue (SAR) operations and smuggling.

The Senate Defence Committee dedicated an ad hoc “Fact-finding inquiry on the contribution of the Italian army on the control of migratory flows in the Mediterranean Sea and the impact of non-governmental organisation activities”, lasting one month, from Session n. 217 of 6 April 2017 to Session n. 236 of 16 May 2017 of the XVII Legislature. Throughout the inquiry, the following experts and practitioners were heard: Operation Sophia commander-in-chief; representatives of Proactiva Open Arms, SOS Méditerranée, Life Boat, Save the children, Doctors without borders, MOAS, Jugend Rettet, Sea Watch, Sea Eye; Frontex executive director; law enforcement agencies, navy, coast guard officers; Prosecutors of Catania, Siracusa and Trapani. In the conclusive report, unanimously approved by the Senate Defence Committee in Session n. 236 of XVII Legislature of 16 May 2017, it is acknowledged that “there are not any ongoing investigations on non-governmental organisations as such but only an investigation of the Prosecutor’s Office of Trapani regarding, among others, single persons involved in the operations”. Nevertheless, a recommendation is expressed to elaborate “ways of accreditation and certification that exclude at the origin any suspect”

(Senate of the Republic, 2017, pp. 15–17), in a sort of burden of proof reversal. This case is notable, as (a) it represents one of the first examples of a refocus of the political debate on SAR-engaged NGOs and (b) it happened before those formal investigations on NGOs (which were recalled in the previous chapter) would even start.

Zooming in on this issue, in special parliamentary committees, key players of these hearings were in particular prosecutors working on the aforementioned issues – and namely the National Anti-Mafia and Anti-terrorism Prosecutor and the Prosecutors of Catania and Catanzaro. Likewise in the Senate Defence Committee, they were able (especially the first and the second one, much less the latter) to provide MPs with direct information on some of the most urgent, and somewhat controversial, issues, including:

1. The possible risks that humanitarian actors – and namely NGOs leading SAR operations – would be punishable under article 12 Consolidated Immigration Act (TUI), given the lack of a humanitarian exemption and the creation of de facto humanitarian corridors;
2. The problems arising from the Common Security and Defence Policy (CSDP) mandate of EUNAVFOR MED Operation Sophia, especially in terms of investigation and prosecution of smugglers, such as the long-standing issue of the possibility to embark Italian law enforcement officers;
3. The inherent different nature of humanitarian and security operations, with different priorities (saving lives vs. fighting criminals) and subsequent differences in operational protocols, such as the proximity to the Libyan coasts[36] (on all these aspects see Schengen Committee, XVII Legislature, Session n. 41, 22 March 2017, Session n. 49, 23 May 2017 and Session n. 50, 31 May 2017; Senate Defence Committee, XVII Legislature, Session n. 227, 3 May 2017; Reception Committee, XVII Legislature, Session n. 83, 9 May 2017; Anti-Mafia Committee, XVII Legislature, Session n. 203, 9 May 2017).

[36] In this perspective, the Prosecutor of Catania explained how they managed, in a DNA coordination meeting, to slightly change the approach of Operation Sophia, making it move back and avoiding to be an alleged pull factor for migrants and smugglers (Schengen Committee, XVII Legislature, Session n. 41, 22 March 2017).

The Prosecutor of Catania, Carmelo Zuccaro[37], was particularly present. He also often expressed his point of view as to the priorities to be addressed with regard to some of the aforementioned issues, stressing (a) the need of embarking investigative police on NGOs and Operation Sophia ships in order to strengthen the fight against smugglers; (b) the importance to focus on high-level smugglers, actually pivotal in the smuggling organisation, and not on mere facilitators; (c) the priority to avoid de facto corridors, through SAR operations in Libyan territorial waters (Schengen Committee, XVII Legislature, Session n. 41, 22 March 2017; Reception Committee, XVII Legislature, Session n. 83, 9 May 2017; Anti-Mafia Committee, XVII Legislature, Session n. 203, 9 May 2017).

In an era where the migratory debate is so particularly polarised, it does not come as a surprise that Prosecutor Zuccaro's declarations had an enormous impact within the very committees (and in the whole political debate afterwards). Here the two main trends saw the centre-right coalition supporting Prosecutor Zuccaro's views and widely targeting the NGOs, whereas the centre-left parties (even if the then governing Democratic Party to a lesser extent) showed a more critical attitude, asking also for further clarifications (see, among others, Schengen Committee, XVII Legislature, Session n. 41, 22 March 2017; Senate Defence Committee, XVII Legislature, Session n. 227, 3 May 2017).

Some extracts from the parliamentary debates in plenary session are also useful to understand the impact on the overall political discourse, also in terms of the tone of it, of the process taking place in the committee hearings in terms of targeting NGO-led activities:

> [W]e found out that some of the ships in the Mediterranean Sea, those managed by NGO missions, that are provoking a scandal, and it surprises me that the Government has not said anything at all. Today there is an inquiry committee opened by the Defence Committee, which will highlight how these missions, falsely humanitarian, are purely profit-driven missions, aimed at fostering that clandestine migration

[37] Since the early months of 2017, the Prosecutor of Catania made himself known nationwide for some public and official statements as well as interviews, that focused on possible and alleged connections between NGOs and smugglers. As to April 2019, none of the investigated NGOs has been indicted and, with the exception of those cases where investigation is still ongoing, all the other ones were dismissed (See Il Post, 2017 and Open, 2019. See also Chapter 4 and the Conclusions).

> business […] that is clearly destabilising not only our country, but Europe as a whole (MP Nicola Molteni, LN, Chamber of Deputies, XVII Legislature, Session n. 779, 12 April 2017).
>
> These organisations have a very ambiguous role: they work in cahoots with human smugglers, reaching Libyan seas, warning people smuggling organisations and fostering the illegal activities. Is it possible that no member of the Government have read the statements of the Prosecutor of Catania, Mr Zuccaro, in the Schengen Committee? (MP Rocco Palese, CoR, Chamber of Deputies, XVII Legislature, Session n. 779, 12 April 2017).
>
> [These are] news reported by all newspapers: if it is indeed true that there exist NGOs which work in cahoots with human smugglers and that are in contact with them, once this has been ascertained, the Italian Government must immediately interrupt its relationships with these organisations and stop funding them (MP Carlo Giovanardi, GAL, Senate of the Republic, XVII Legislature, Session n. 795, 29 March 2017).

The work of the Anti-Mafia Committee appears even richer – though less NGO-focused. Several issues coming from the experience on the ground (especially through hearings and field visits) were acknowledged and became part of the policy background information. They include the operational difficulty in the fight against smuggling, the overlapping between smuggling and trafficking in persons (TIP) – with the possibility of some sort of transformation en route – and the need to think of an integrated approach that overcomes such a strict separation. Notably, given the overall political climate and some of the issues already considered in chapter 4 as for the distance between policy-makers approach and what actually happens on the ground, the committee unanimously accepted the view that: (a) smuggled migrants are victims; (b) sometimes they have to steer the vessel themselves; (c) the migratory pressure itself leads to more business for smugglers and more structured organisations (Anti-Mafia Committee 2017. See also the smuggling spectrum in section 1.2.3.).

The question which remains open is to what extent these analyses have led to a concrete impact on the national policy-making (cf. Zincone and Caponio, 2006), as will be further discussed in the next paragraphs. In parallel, a concern on the basis according to which experts are invited to be heard in committees also arises, considering the possible existence of a guest selection bias. It is notable, in this

perspective, that the Prosecutor of Catania and his views on the NGOs dominated the debate in special committees, in turn reinforcing the echo of such views in the general political debate, in spite of other issues supported by stronger evidence.

A second important arena related to the connection of policy adoption dynamics with the agency on the ground is that of intermediate bodies, as was partly already explored in the previous chapter. Also in this case, the richest bodies in terms of cases are ANCI and DNA (see chapter 4), which act at a national level both institutionally (especially through hearings in parliamentary standing and special committees and in ad hoc tables, meetings and fora) and through the presence in the general debate. This allows them to exercise influence over the public opinion, which makes them quite powerful, even if with a clear mandate that limit them from an institutional point of view (ITA_1, March 2019; JUD_3, April 2019).

The role played by the DNA in this layer has mainly to do with the gathering of information and expertise, coming mainly (but not exclusively) from the repressive activity, towards decision-makers.

This happens mainly through the issuing of reports, the organisation of coordination meetings with the District Anti-Mafia Prosecutor's Offices (DDAs, which are meant to deal with new issues and patterns as soon as they come out, see also chapter 4), ad hoc meetings with experts coming from different agencies and institutions and specific contacts with the decision-makers, such as the hearings of the National Anti-Mafia and Anti-terrorism Prosecutor in parliamentary committees (JUD_3, April 2019) and the sharing in those arenas of all the analyses and guidelines realised on migrant smuggling (Schengen Committee, XVII Legislature, Session n. 50, 31 May 2017).

Focusing in particular on these last two points, JUD_3 (April 2019), on the one side, expressed the perception of a progressively more limited connection of the DNA with decision-makers, proved also by the lack of recent hearings on this subject matter in parliamentary committees.

On the other side, though, the importance of these inter-agencies meetings comes out clearly, not only in terms of operational coordination (which would then be marginal at this point of the analysis, where the focus is on the policy-making), but also in terms of potential information upload processes. This is the case, for example, of an important inter-agency meeting that took place on 25 May 2017 (briefly recalled in the chapter 4)

and involved numerous actors such as DDAs, law enforcement agencies, Frontex, Eurojust, Europol, EUNAVFOR MED Operation Sophia, among others. The fact that the National Anti-Mafia and Anti-terrorism Prosecutor decided to share the proceedings of the meeting with the Schengen Committee (Schengen Committee, XVII Legislature, Session n. 50, 31 May 2017) is remarkable as specific case of information upload, concerning a very in-depth point of view, shared by several practitioners.

Indeed, in this 25 May meeting a number of the most critical issues concerning the smuggling of migrants into Italy were discussed, with the overall goal to update knowledge on the modus operandi of criminal organisations. In such context, the National Anti-Mafia and Anti-terrorism Prosecutor thought it important to improve the horizontal cooperation between Prosecutors' Offices and to understand possible interferences of NGOs in smuggling and related investigations; the head of EUNAVFOR MED Operation Sophia focused on the value of keeping contacts at high level with the Libyan coast guard to facilitate rescue at sea (as well as to invite also the head of Libyan police at a follow-up meeting); other actors stressed the "political nature" of the problems at hand, the need to focus on big smugglers and not on the individual facilitator, the importance of Eurojust's involvement (JUD_3, April 2019).

Through these very processes, the DNA was able to provide decision-makers with clear and in-depth information on the patterns of migrant smuggling into EU and Italy, which, as a national deputy anti-Mafia prosecutor reaffirms (JUD_3, April 2019), takes into account:

1. The actual existence of a plurality of forms of smuggling (in line with the smuggling spectrum elaborated in chapter 1);
2. The extensive horizontal cooperation between the above mentioned institutions participating in the meeting;
3. The cooperation with third countries, both within and outside the EU, such as Nigeria, Libya (through an agreement with the Attorney General for judicial cooperation and where cooperation can also be important to stop violence in detention centres) and the Netherlands (in particular for a Dutch NGO-related case);

4. How the modus operandi of smugglers, within the same central Mediterranean route, has changed over the years: until 2013 mother ships were used to transport migrants up to the limits of Italian territorial waters. Then, the launch of governmental SAR operations first, and NGO-led ones afterwards, introduced changes in smuggling dynamics, with the use of smaller vessels that would be rescued in high seas. Similarly, also the routes that were followed changed, according to changes in policies both in Africa (Tunisia, then Egypt, then Libya) and in Europe (see the closing harbours policy below), also showing a high reaction and adaptation capacity from smugglers, as confirmed also by NGO_1 (October 2018).

The second intermediate body – ANCI – is rather working to represent, at a central level, interests and priorities of the municipalities. Given the municipality limited competency in this subject matter, already recalled in chapter 4, ANCI mainly works on reception and integration rather than on migration and smuggling policies stricto sensu, but it nevertheless plays a central role in the construction of the overall migration discourse at a national level and provides an institutional space for the upload of local government priorities (ITA_1, March 2019), as, again, pointed out in chapter 4.

To that end, ANCI has used a plurality of institutional arenas, such as the National Coordination Table (institutionalised by the Legislative Decree n. 142/2005), i.e. a permanent table on migration at Ministry of Interior, representing a "very interesting transmission belt" in terms of successful upload processes, but that from 2016 onwards has been less frequent. Across-the-board tools, such as the Unified Conference State-Regions or ad hoc ANCI instruments like the Immigration Committee or the Anti-trafficking Control Room have also been used (ITA_1, March 2019).

In fact, TIP (whose importance in a smuggling perspective is widely acknowledged, see chapter 1) has represented an ANCI priority: here the national association has met the requests coming from local authorities, even if they have progressively reduced the efforts at national level in this area, in which commitment is still very variable, depending on administrators' sensitivity (ITA_1, March 2019). The same officer recalled how the technical role of ANCI in this area used to be important, also stressing the importance of a public governance anti-TIP, but was not successful. Among the

most notable challenges, it was mentioned that this issue is dealt with by the Equal Opportunities Department at the Presidency of the Council of Ministers (and not by the Ministry of Interior, as the overall migration policies).

Notably, no coordination has taken place at ANCI level among those cities at the frontline for disembarkations, even though this situation entails a high level of complexity in terms of vertical relationship between national and local level (see chapter 4). Also, those mayors who took a clear stance against the closing harbours policy did not try to invest ANCI with this issue, considering it unlikely to bring any substantive change and it falling outside the mandate of the institution (ITA_1, March 2019), given also its 'technical' nature, therefore showing some sort of non-suitability for dealing with highly politicised and divisive issues.

However, ITA_1 (March 2019) made clear that the role of ANCI has been very important in informing the policy-making in migration-related issues, though with a fluctuating impact. In the past ANCI's voice was definitely heard, whereas today the situation is much more complex (e.g. the same interviewee, who is an ANCI officer, referred that the National Coordination Table gathered only once in the first nine months of the Conte government).

The officer explained that often, for policy-makers, "at the end of the day, reality matters little, so technique is also a little bit snubbed" and, for example, alleged connections between migratory flows and criminality supersede what data say about it (ITA_1, March 2019). This gives new centrality both to ANCI and to the bureaucratic structure of ministries: on the one side, indeed, ANCI tries to fill the existing information gap, being its activities very much evidence-based, whereas ministry bureaucrats do a crucial work in terms of consistency, logic. They continue to be the same, no matter which government is in power, and are aware of how important is "to work very much with us [ANCI], because we are the only ones able to bring the real, concrete needs of the territories". And even if it is very difficult to stay grounded in reality in this field and not even scientific and technical issues are fully neutral, the overall idea is that by sort of keeping a low profile is still possible to work effectively (ITA_1, March 2019).

Lastly, the role of the judiciary (cf. Marmo, 2007) in facilitating upload processes from the implementation level to the national policy-making level also deserves some attention. Namely, those situations in which its agency does not modify the application

of a norm or its impact (as those cases considered in chapter 4), but where their agency has some substantial impact on the national policy discourse and making. The judicial proceeding against the Minister of Interior Matteo Salvini, related to the so-called 'Diciotti case' are emblematic of this.

The case – which was quickly mentioned in the previous chapter and which will also be analysed in relation to other arenas, being emblematic of the overall complexity and cross-cutting nature of this field – has to do with the decision of the Ministry of Interior to delay the assignment of a place of safety (POS) for the disembarkation of 177 migrants, rescued in a SAR operation by the ship of the Italian coast guard "Ubaldo Diciotti" in August 2018, by five days (Barone, 2019 and D'Amato, 2018). Considering that these events were the result of the conduct of the Minister himself, the Court of Catania – notwithstanding a request for dismissal presented by Prosecutor Zuccaro – decided to indict Minister Salvini for 'aggravated kidnapping' and, according to the Italian law, requested the Senate to authorise the indictment[38].

Minister Salvini, according to the judges, "acting as Minister" and "in breach of the international conventions on maritime rescue" did not allow "without any reasonable ground the Department for Civil Freedom and Immigration in charge […] to assign in a timely manner a place of safety". Such a decision "halted the disembarkation procedure of migrants, so consciously determining the unlawful deprivation of their personal freedom, forcing them to remain in critical psycho-physical conditions on board the ship 'U. Diciotti', docked in Catania harbour from 23:49 of 20 August until late night of 25 August" (Senate of the Republic, 2019, p. 49. See also Barone, 2019).

Leaving aside any consideration related to the indictment itself, which would lead to a criminal law analysis falling outside the scope of this research, what appears of clear interest here is the effects that this judicial decision had on the national policy-making

[38] This procedure is laid down in Article 96 of the Italian Constitution, which states: "The President of the Council of Ministers and the Ministers, even if they resign from office, are subject to normal justice for crimes committed in the exercise of their duties, provided authorisation is given by the Senate of the Republic or the Chamber of Deputies, in accordance with the norms established by Constitutional Law" (unofficial English translation retrieved from https://www.senato.it). Constitutional Law n. 1/1989 states at Article 5 that "the authorisation provided for in Article 96 of the Constitution is entitled to the House that the persons [object of the proceeding] belong to", which in the case of Minister Salvini is the Senate. This very Constitutional Law further clarifies, at Article 9(3), that the House must ascertain whether the accused "acted for the safeguard of a constitutionally relevant interest of the State or in pursuit of a primary public interest in the scope of the Government function."

process. This took place in terms of (a) policy focus and (b) choice of policy instruments (besides the expected impact on the political debate, in particular in the parliamentary arena, which will be further explored below).

Notwithstanding the decision of the Senate to deny the indictment authorisation (Senate of the Republic, XVIII Legislature, Session n. 100, 20 March 2019), the Diciotti case made indeed clear to the decision-makers the risks of such an approach to the management of SAR operations and disembarkations, both in judicial and public opinion terms.

Since the Conte Government took office in June 2018, Minister Salvini – leader of the far right party Lega Nord, whose political discourse has focused on strict migration control and xenophobic stances since the beginning (see chapter 2) – made the issues of closing harbours and having a stricter, Rome-led control over disembarkations after SAR operations some of his priorities.

Between June 2018 and January 2019 (when the Court of Catania requested the indictment authorisation to the Senate), several cases regarding the denial or delay of the docking authorisation were top news in Italian newspapers and polarised the political debate. In the vast majority of cases such episodes concerned NGO ships (Aquarius in June and August 2018, Open Arms in December 2018, Sea Watch 3 and Sea Eye in December 2018/January 2019, see Shah Povia, 2019). Few exceptions were made with some timid attempts at intervening in government-led operations, such as in the case of the disembarkation of 106 migrants in Messina from the Irish navy ship “Samuel Beckett” in July 2018, after which the Minister of Interior declared that he would have urged a change in the mandate of Operation Sophia, considering such disembarkations in Italy unacceptable (Albanese, 2018); or, again in July 2018, an early case involving the Italian coast guard ship “Ubaldo Diciotti”, halted in the harbour of Trapani again by a decision of Minister Salvini (RaiNews, 2018a).

The Diciotti case of August 2018 was actually the first case where a strong stance was adopted by the Minister of Interior towards a government-led operation.

During the following months, little changed in the action of the Italian government on the harbour issue, which was characterised by the persistence of a policy mainly based on political declaration, without any formal written order or directive, which could have

entailed, in expert opinions, problems of competence and legitimacy (Tommasone, 2019a).

But the long effects of the Diciotti case and of the connected judicial proceeding against Matteo Salvini had concrete impact on that. Indeed, on the one side, in terms of policy focus, after the Diciotti case, the target of the closing harbour over the period considered returned to be NGOs, arguably in the light of the very understanding of the different consequences arising when government-led operations are involved, in the absence of grounded reasons for that and in protracting this for numerous days.

On the other side, policy instruments changed drastically (cf. Capano and Lippi, 2017). Starting in March 2019, in the very days in which the Senate denied the indictment authorisation, Minister Salvini issued a number of 'directives' (see chapter 3 on the legal nature of these acts), addressing either in general terms or on a case-by-case basis the situation of NGOs, providing specific instructions to law enforcement and border control agencies (Minister of Interior, 2018a, 2018b and 2018c). It appeared then that the political and verbal approach previously chosen was considered no longer effective and suitable, opening up to possible judicial consequences (even in the lack of a written policy directive), and where, on the contrary, the absence of such a clear statement could become counterproductive.

5.2.2. Europeanisation and its (unwanted) consequences

Considering the other between-the-level interaction within this MLG approach, it becomes important to focus on the impact of EU politics on the national policy-making related to the smuggling of migrants. The issue at stake is not the impact of EU legislation on the national one, which is taken for granted in the light of the commitments of Italy as a Member State (MS) of the European Union (see chapter 3). Rather, it is interesting to understand how the EU influences the Italian policy-making, in terms of the political process taking place in Brussels and not merely in terms of the actual legislation arising from it (cf. Vink and Graziano, 2007).

Firstly, the overall EU policy-making and political discourse have an impact on the national policy-making, beyond the actual legislation eventually passed.

This is the case of the missed reforms, such as those concerning the Common European Asylum Framework (CEAS) or the Facilitators Package, which left Italian decision-makers with some policy problems open, related, for example, to the relocation mechanisms in the Dublin III Regulation (as will be considered in chapter 6) or to the alleged 'pull factors' entailed in the Qualification Directive and in the Reception Directive, where the persisting differences in the grounds for asylum and in the reception conditions can and, allegedly, are considered throughout the smuggling process for 'asylum-shopping' (EUR_1, March 2019). Something similar happened with the missed reform of the Facilitators Package, which then left Italy with the unsolved issues of the material benefit and humanitarian exemption (see chapters 3, 6 and 7).

This reinforces the narrative, particularly relevant in the political debate in the last years, of a sort of 'blame Brussels' game[39], even though this very narrative often goes much beyond the real responsibilities of the EU and of other MSs and cannot be taken as an excuse for the inaction of Italy (EUR_2, May 2019. E.g. the very material benefit and humanitarian exemption issues, which, even if the EU failed to make them mandatory, could still be included in legislation at national level, see Carrera et al., 2016 and 2018b; UNODC, 2017, pp. 38–42).

Another interesting example has to do with the (light) pressure to address some specific issues coming from EU bodies, such as the case, reported by EUR_1 (March 2019), who is a governmental officer acting at EU level, of the European Commission (EC, the Commission) encouraging MSs to consider the option of reopening legal channels for economic migrants, also with a view to positively impacting on undocumented migration.

The lack of harmonisation of some procedures, such as in the case of joint investigations teams to target smugglers (JUD_3, April 2019), as well as the failure or the unwillingness in carrying out specific initiatives, albeit previous commitments to do

[39] Another example affecting the attitude of Italian policy-makers towards EU institutions in this direction can be seen in the failed negotiations, which took mostly place only a few months before the time frame considered in this research, for a takeover of the EU in the Italian-led SAR operation Mare Nostrum (see Novaky, 2018, pp. 200–202).

so[40], also contribute to the delineation of the present framework. Here, the shortcomings at EU level entail, aside from a direct and quite expected impact on the implementation level, some degree of impact on the national policy-making, at least in terms of setting the agenda and the policy goals, leaving certain issues unsolved and the responsibility to address them upon MSs.

The Diciotti case, already explored above in the previous chapter, can be interesting also in order to understand the Europeanisation dynamics (confirming the analytical relevance of the model applied here, enabling the isolation of different components of the same phenomenon, which can then be explored from a plurality of perspectives, see chapter 2). Putting aside the consequences of the very case previously mentioned and focusing on the reasons that led to it, instead, the EU political debate becomes central in order to understand the origin of such case.

Throughout the summer of 2018 one of the main issue that were debated had to do with the mandate of EUNAVFOR MED Operation Sophia and with the possibility of waiving the norms on the first point of irregular entry logic (RaiNews 2018b), with a clear and specific commitment in this regard by Minister Salvini. And the emergence of the Diciotti case – or, rather, the policy choices of Italy that would then lead to the emergence of the Diciotti case – need to be read in the light of such debate and as a way of intervening in it, as is apparent from the declarations to the judges of Catania made by the chief of staff and the deputy chief of staff of Minister Salvini (Senate of the Republic, 2019, pp. 30, 37–38) and by the two very main actors of the case:

> The Italian government opened a dialogue with the European institutions, with a view to sharing a plan for the relocation of migrants […]. Once the attempt to solve the issue at European level was over, on 25 August, i.e. the day after the meeting in Brussels, the disembarkation of migrants in Catania harbour was anyway authorised. […] What changed, compared to the past, is that Italy is no longer available to indiscriminately receive migrants, contributing, even just accidentally, to increase and incite the smuggling of human beings and compensating for a responsibility which is of the European Union, dulling the bond of solidarity which rests on each Member

[40] Such as those fourteen development-based projects designed by Libyan communities to address the root causes of the smuggling industry, dropped by the EU for the electoral phase in other MSs (ITA_2, April 2019. See also declarations of Minister Minniti in Senate of the Republic, Foreign Affairs and Defence Committees, XVII Legislature, Joint Session, 30 July 2017).

> State (Giuseppe Conte, President of the Council of Ministers, Senate of the Republic, XVIII Legislature, Session n. 35, 12 September 2018).
>
> We opened a controversy: sea of another sovereign State, obligations assumed at European Council level. We started with phone calls, minutes, written notes from the Italian Permanent Representation, from the Presidency of the Council of Ministers, from the Ministry of Foreign Affairs, from the Ministry of Interior […] It is clear and manifest, indeed (and it is also on the record) that those four days staying in an Italian harbour […] were necessary […] to wake up someone that was clearly sleeping. Those four days were actually decisive, but clearly not enough for someone. […] We wanted to involve the international community that up until one month before did not lift a finger, and we made it (Matteo Salvini, Minister of Interior, Senate of the Republic, XVIII Legislature, Session n. 100, 20 March 2019).

Such EU-related ultimate goal of the agency of Italian government in the Diciotti case, confirmed by the above declarations of President Conte and Minister Salvini, was also clearly acknowledged by practitioners (ITA_2, April 2019; JUD_3, April 2019; EUR_2, May 2019). They tended to share a negative opinion about it, significantly illustrated by a former top-level Ministry of Interior officer: "Thinking that through a 'muscular' policy towards Europe relocation can be obtained or rewarding goals for the country can be achieved, in my opinion, is dull, blind […] and the result is for all to see: we are completely isolated" (ITA_2, April 2019).

Besides the policy-making process and the overall political debate, two other potential Europeanisation dynamics emerged throughout the analysis.

Firstly, NGO_5 (May 2019) stressed the role of agencies, which have been pivotal in bringing certain issues forward. The most evident case is that of the confidential report issued by Frontex in 2016, disclosed by the Financial Times and then published by The Intercept, which played a central role in the opening of investigations against NGO activities on the central Mediterranean route, though shortly afterwards its content was clarified by Frontex itself, scaling down the scope of the allegation (Campbell, 2017 and Floris and Bagnoli, 2017).

Secondly, a few reflections can be made on the impact of the EU jurisdictional arena on national policy-making, broadly considered both in terms of Commission 'infringement procedure' and judgements of the Court of Justice of the European Union

(CJEU). Over the period considered, such impact seemed to be quite limited and happened exclusively in terms of infringement procedure, rather than through the CJEU[41].

The most remarkable example connected to the issue at stake, indeed, took place throughout 2016, with an infringement procedure brought by the Commission upon Italy and Greece for failing to collecting and transmitting, through the Eurodac system, the fingerprints of undocumented migrants accessing the EU through the external borders of these two countries. Such procedures were closed after one year, given the fulfilment of the obligation by the relelvant MSs (Custodero, 2016) and did not seem to have any other impact on national policy-making. On the contrary, none of the judgements of the CJEU appeared to have substantial influence on policy-making in Italy: in this perspective, the applicable patterns are dissimilar from those that will be explored below in relation to the rulings of the Italian Constitutional Court, which do not only have direct effect on the implementation level, but also contribute to setting the agenda at a policy-making level (see section 5.3.3.).

5.3. Governance dynamics

Consistently with the analytical model proposed in chapter 2, the horizontal dynamics pertaining to the 'governance' part of MLG shall now be considered (Caponio, 2017 and Zincone and Caponio, 2006). This will be done, methodologically, by replicating the operation conducted in the previous paragraph, i.e. through the unpacking of the national policy-making dynamics emerged in the analysis into its different components: interaction between different policy areas, between formal and informal actors and between different institutions.

5.3.1. A mix of policy areas

Anti-smuggling policies are at the centre of an intersection of different policy areas for the very structural characteristics of this subject matter. The nature of smuggling as a phenomenon in-between migration and security was already analysed in chapter 1,

[41] Whereas the relationship with the European Court of Human Rights, albeit definitely interesting in the light of the case law, falls outside the scope of this research.

and the very operational definition of the phenomenon, based on the smuggling spectrum, points in that direction. In this sense, a broader approach that includes these different policy areas in the understanding of the anti-smuggling policy adoption dynamics is the direct consequence of the smuggling spectrum elaborated in section 1.2.3.

A good starting point for the understanding of such complexity can be the point of view of INT_2 (April 2019), in whose words the complicated and potentially contradictory aspects of the very concept of migrant smuggling clearly emerge:

> I don't know how to present it, whether to present it as a problem or something actually that is not an issue. […] Smuggling per se […] is a criminal justice issue, that cannot be dealt on its own because that's very linked to migration at large. […] I believe that policies that address migration in general should have smuggling in there, as part of it, but policy against smuggling is somehow a little bit limited.

In other words, on the one side smuggling is a criminal phenomenon, but on the other side it is part of a broader migration discourse, which also includes a demand side, affects the very concept of smuggling, the policies to tackle it and the way in which policy-makers address smuggling (perfectly in line with the smuggling spectrum, see again section 1.2.3.). At a very minimum, the fact that no criminal phenomenon can be defeated exclusively through the penal response is notably further stated by a member of the judiciary as JUD_3 (April 2019).

Following this perspective and going beyond a merely repressive approach to smuggling, practitioners find, first of all, quite clear a connection with the overall migration framework, starting with the issue of the lack of possibility to access Italy in a lawful manner, as affirmed by INT_2 (April 2019) and ITA_2 (April 2019): Italian embassies abroad do not release visas (NGO_1, October 2018) and only highly-skilled migrants have this possibility. Furthermore, the Flows Decree (see chapter 3) has been de facto hardly been used in the past ten years, since "in terms of political consensus, passing a [proper] Flow Decree would be unpopular. […] But now it is already time to overcome this very approach, in my opinion" (ITA_2, April 2019).

In the shaping of the current approach, also situational factors, such as the economic crisis, contributed to stopping the programmed flows and then making documented

immigration more difficult (if not impossible), causing substantial effects on smuggling. Recently, though, at an EU level the possibility of reopening of legal channels has started to be debated again and this would have a positive impact in the fight against undocumented migration (EUR_1, March 2019).

Also EUR_2 (May 2019) confirmed this view:

> The connection is quite evident. […] There is a demand for migration, which clashes with the complete inadequacy of the migration and asylum policies. […] Migration policies of MSs are particularly restrictive […] If we take as example even just the Italian case, it is clear that we have a legislation – the TUI, as then amended in particular by the Bossi-Fini Law – which does not actually provide for any regular access channel.

These considerations seem perfectly in line with the operational definition of this study (i.e. the smuggling spectrum) and its analytical toolbox, conencting demand and supply for migration and by so doing offering an integrated perspective on the rise of undocumented migration. Furthermore and most notably, they explain the complexity of the policy-making aimed at countering smuggling, to be read within a broader migration policy approach, where the decision to widen or reduce the opportunities for documented migration has direct effects on migrant smuggling and its policy framework.

But smuggling policies are also structurally connected with the asylum framework, again in line with the smuggling spectrum and the operational definition provided in section 1.2.3. A connection which is even more notable, as in the asylum framework the EU itself gains a primary role (as will be discussed in the following chapter, referring in particular to the missed CEAS reforms), therefore entailing both an inter-arena and inter-level connection.

EUR_1, who is a practitioner acting at the junction of these arenas and levels, acknowledged the situation and the connection between these policies, further suggesting that the start of resettlement programmes in these last years, albeit limited and concerning small numbers, can also be read in this direction. However, s/he also warned on how a more effective asylum policy would not necessarily lead to eliminate smuggling (at least to an improvement of the situation, though), considering that there

would anyway be a selection and, therefore, someone who remains out (EUR_1, March 2019).

Partly in line with this, JUD_3 (April 2019) argued how more resettlements and humanitarian corridors would not necessarily lead to a reduction of smuggling flows, as there would still be economic migration and a lack of legal opportunities to access Italy. EUR_1 (March 2019), on the other side, stressed how the very increase of asylum seekers (also of "specious" ones) was one of the causes that led – jointly with the economic crisis and with the political consensus logics above recalled by ITA_2 (April 2019) – to halt economic migrant flows to Italy and the EU. A circular paradox that explains the complex tripartite relationships between migration, asylum and smuggling policy-making and that leads back to the question on how is possible to enter lawfully into Italy (JUD_3, April 2019).

Indeed, in spite of the structural complexity of the issue, the current framework appears to be strongly security-based, with the result that decision-making in the migration and asylum arenas, instead of having positive side effects on anti-smuggling policies, has further complicated the situation (NGO_3, October 2018, stressed how, conversely, smuggling is often approached in a comprehensive way on the ground by NGOs).

Actually, going even further, the situation appears to be turned upside down: the general migration and asylum policies are not used to reduce the demand side for smuggling whereas, on the contrary, smuggling policies are used to manage migration. In the words of a UNODC officer, "we talked about the sliding effect that has been of using it as a migration management instrument, which is not. […]The intent, rather than fighting smuggling, is to manage migration better" (INT_2, April 2019). Politics of externalisation and militarisation of SAR are all expressions of such limited approach (EUR_2, May 2019). Notably, such security-based approach has had a direct negative influence also on local policy-making: even those which were defined as "reasonable" policies are difficult to be implemented because of the climate. They need to be "disguised" (ITA_1, March 2019).

But besides migration and asylum, smuggling policies are also structurally connected to other policy areas, such as foreign affairs. Here issues such as readmission agreements (EUR_1, March 2019; ITA_2, April 2019), development cooperation (ITA_2, April 2019; JUD_3, April 2019; EUR_2, May 2019), judicial cooperation (whose

bases need to be built at an intergovernmental level and which can play a major role, enabling the identification of the real leaders of smuggling network and not merely the facilitator, JUD_3, April 2019; ITA_2, April 2019) and capacity building arise.

As for the latter, it is particularly thought-provoking to look at the case of those policies aimed at offering opportunities to people involved in the smuggling industry to live lawfully, such as in the attempt made in 2017 by then Minister of Interior Marco Minniti with mayors and ethnic leaders in Southern Libya (Senate of the Republic, Foreign Affairs and Defence Committees, XVII Legislature, Joint Session, 30 July 2017, reported also by ITA_2, April 2019). Such an attempt was based on the idea that, as pointed out by the smuggling spectrum (see section 1.2.3.), smuggling is a complex phenomenon where different levels of involvement and responsibilities coexist and that there are people who "survive" thanks to small facilitation. This logic is supported also by INT_2 (April 2019), who stresses the importance of crime prevention actions to prevent more people from joining the smuggling industry, whereas NGO_5 (May 2019), had a completely different understanding of the work conducted by then Minister Minniti in Libya, sarcastically defined it a "masterpiece", explaining how

> Minniti did what, I believe, no Lega Nord politician would have been able to do, i.e. as a man of the intelligence[42] he was able […] to go to Libya, to understand the connections between militias, pseudo-governments and smugglers and to make everybody substantially agree on the fact that if before one would take money to make people go forward towards Europe, money could be used now to stop them, this would be absolutely uninfluential.

Former Minister Maroni (Lega Nord), s/he continued, did "direct pushback towards Libya, leading to very explicit convictions, for example, by the European Court of Human Rights (ECtHR), whereas this whole new thing of truly delegating the whole dirty job to the Libyans […] opened a new playing field". This shows the potential ambiguity even of comprehensive approaches to smuggling, meaning that the acknowledgement of the interaction between different policy areas does not necessarily entail more progressive stances and policy goals.

[42] Marco Minniti is broadly acknowledged as a long-time intelligence expert. He also served as Undersecretary of State for Intelligence Services (2013–2016) and established the ICSA (Intelligence Culture and Strategic Analysis) Foundation. See also Fattorini (2017).

Capacity building and development cooperation are, in fact, the areas that have been most controversial (the inherent risk of a 'shifting south' approach was widely discussed also by NGO_1, October 2018), considering in particular the agreements between Italy and Libya, such as the 2017 Italy-Libya Deal (defended instead by ITA_2, April 2019) and the 2018 agreement to provide vessels to the Libyan coast guard (De Giovannangeli, 2018a and Genoviva, 2017) or the issue of "disguised development cooperation" (EUR_2, May 2019). This refers to the reallocation of resources from genuine development cooperation to the management and control of borders, and, what is more, ignoring the importance not only of building better living conditions for would-be migrants and asylum seekers, but also for those involved in the smuggling industry (EUR_2, May 2019 and ITA_2, April 2019. NGO_1, October 2018, points out that third countries-related policies depend very much on their substantive content).

Among the effects of such policy areas interaction there has been, notably and in particular throughout the Conte Government, some tension between the Ministry of Interior and the Ministry of Foreign Affairs, connected to the very approach to smuggling and its relationship with Italy's foreign policy (see De Giovannangeli, 2018b), moving the interaction from merely inter-policy areas to inter-institutional.

The defence policy area has also shown to have an interesting relationship with anti-smuggling policies. ITA_2 (April 2019), based on his/her experience as former top-level officer at the Ministry of Interior, stressed the importance, for example, of taking action in Africa for the stabilisation of Libya, which became a particularly important issue after the deterioration of ISIS territory. In this perspective, it is notable that the framework chosen at EU level for EUNAVFOR MED Operation Sophia is namely CSDP, as will be further discussed in the next chapter.

Such a connection, similarly to the case of foreign policy, has created some tension in those cases in which the Ministry of Interior was perceived to 'invade' the domain of security and defence policy, such for the revision of the mandate of Operation Sophia (Albanese, 2018) and the Salvini Directive of 16 April, deemed an illegitimate attempt to determine the action of the defence corps (Palmerini, 2019 and Sarzanini, 2019).

A residual way in which migrant smuggling policies have been affected by the interaction between different policy areas has to do with the logics of parliamentary policy-making: the overlapping between migration legislation and other measures in

the same bill, i.e. a heterogeneous parliamentary policy-making. This is a dynamic which used to very much affect anti-smuggling related legislation in the past, whereas it seems to be doing so to a much lesser extent today (essentially, and only partially, in the Minniti-Orlando Decree). However, it can be still meaningful to understand these dynamics as an important corollary to the policy-making in this domain: for this very reason, Box 5.1. offers a quick digression into the past, out of the time frame considered, without jeopardising the overall methodological validity of the research, whose results are based over the time frame explicitly considered (see also chapter 2).

Box 5.1. – Heterogeneous parliamentary policy-making

Heterogeneous parliamentary policy-making, even if it does not relate directly to the content of smuggling-related legislation, clearly has an impact on the policy-making process, on the basis of two alternative patterns.

The first one is the little attention given in the parliamentary debate to the migratory phenomenon, deemed as marginal in comparison to other issues contained in the same bill. This is the case, for example, of the Senate parliamentary debate for the conversion of Decree-Law n. 92/2008, where an amendment of the rapporteurs MP Carlo Vizzini and MP Filippo Berselli (both of Popolo delle Libertà party, PdL), arguably aimed at suspending ongoing trials involving the then President of the Council of Ministers Silvio Berlusconi, monopolised a significant part of the debate (La Stampa, 2008; Grevi, 2008. See also, in particular, Senate of the Republic, XVI Legislature, Session n. 20, 17 June 2008).

A second pattern consists in using certain previsions as an excuse to gather favourable votes towards a bill, even through a confidence vote, and is particularly useful to secure the approval of contested laws (see the parliamentary debates for the approval of Law n. 94/2009, where both issues – heterogeneity and confidence vote – and their combination are extensively addressed, and in particular: Chamber of Deputies, XVI Legislature, Session n. 176, 13 May 2009; Session n. 177, 14 May 2009; Senate of the Republic, XVI Legislature, Session n. 232, 2 July 2009).

5.3.2. Non-institutional actors: the unwanted consequences of NGO agency

Getting to informal-to-institutional dynamics (see paragraph 2.3.) in the making of national anti-smuggling policies, the key-actor which seems to come out from the evidence considered are NGOs, as for the number of examples in which they were involved and relevance and impact of them. In the previous chapter, some practices generating MLG horizontal effects at a local level were considered; here the focus is

instead on how these very actors can and actually do influence the national policy-making through (a) advocacy and (b) unintended consequences.

Advocacy is a typical – often statutory – mandate of these bodies, sometimes implemented with good results, such as in the policy-making process of the Zampa Law, for the protection of unaccompanied minors, including those victims of smuggling (NGO_1, October 2019; NGO_3, October 2018).

Advocacy processes can be very important, in spite of the difficulties they present (NGO_1, October 2019; NGO_3, October 2018; NGO_4, October 2018), and eventually depend very much on the willingness and the availability of the recipient (in most cases the national government). Interviewed NGO officers highlighted the difficulty emerged in particular with the Conte Government, not only because of the deep difference of points of views, but also because of the unpreparedness of NGOs to actively and effectively bring their issues concerning some policies, such in the remarkable case of the Security Decree (NGO_4, October 2018). However, as s/he further reported, “you can advocate, but there is where it ends up. The real tool is […] to find and realise legal political stratagems on the ground”: a point which, in turn, leads us back to the discrepancies between theory and practice existing on the ground – this was widely discussed in chapter 4 – and on how local authorities tend to be more open to advocacy processes (NGO_3, October 2018; NGO_4, October 2018).

NGO_1 added that “there is a point where the different pressures are blocked. […] We have a ‘below’ which is extremely active […] and also a very high level” which is so, whereas the EU and the national level are completely “blocked” (a view which is more broadly shared also by SIC_3, October 2018, and SIC_4, October 2018).

Still, in this process two factors can become problematic and should be given due attention:

1. The points of view adopted by the NGOs and uploaded in bottom-up processes are not necessarily (and normally are not) those of smuggled migrants (NGO_3, October 2018), which entails the risk of leaving them voiceless;
2. NGOs can sometimes face the risk of losing credibility – towards migrants, practitioners, the public opinion – if and when they accept some conditions

imposed by governments, which in turn also affects their impact (and willingness to be engaged) in bottom-up dynamics (NGO_1, October 2019).

Dynamics of informal-to-institutional agency can also be the result of unintended consequences (Pollack, 2009. See also Bonjour and Vink, 2013), originated by NGO practices, as in the case of one of the widest and strongest examples of impact that informal actors appeared to have on the national policy-making: policing humanitarianism.

Italian policies targeting humanitarian actors are not unique: on the contrary, they are consistent with a general pattern that has spread throughout Europe in the last years (Carrera et al., 2018b, pp. 51 – 87). In this specific case, as unforeseen result of the agency of NGOs in SAR operations in the Mediterranean Sea, mostly launched since 2015 in response to the perceived insufficient effort of governments to save lives, they have taken the shape of the 2017 Code of conduct and of the 2018 closing harbour policy (NGO_4, October 2019).

The Code of conduct, strongly wanted by then Minister of Interior Marco Minniti, was conceived as a way of disciplining NGOs, in the light of the inquiry conducted in the Defence Committee of the Senate (Senate of the Republic, Foreign Affairs and Defence Committees, XVII Legislature, Joint Session, 30 July 2017) and arguably of the criticisms brought forward by Prosecutor Zuccaro (also on the basis of the confidential report issued by Frontex in 2016) and widely debated in Special and Standing Committees of the Italian Parliament (see above).

Strongly criticised and even rejected by most NGOs as a way to curb their agency and to impose law enforcement and border protection logics on pure humanitarian action, the Code of conduct was eventually signed by five NGOs. However, the effects were merely political, considering how no direct consequence followed for those NGOs which decided not to sign it (ASGI, 2017; Cusumano, 2017 and Scavo, 2017).

This is not surprising, since the very unclear nature of the Code has been highlighted since the first moments, making it look more like a political manifesto aimed at a delegitimising NGOs (cf. Cusumano, 2017). However, in order to respond to such criticism and to overcome internal opposition on it, Minister Minniti sought the support of the EU on it, which was eventually granted, again not making it clear which was the

actual legislative shape and value of it (RaiNews, 2017 and European Parliament, 2018a).

Nevertheless, the importance of the Code of conduct in the Italian policy-making cannot be denied, at least for two reasons. Firstly, as was already outlined, because it shows an interesting pattern, it being the result of the combination of the unintended consequences of NGOs agency, information spread by EU agencies and the bottom-up processes in intermediate bodies such as parliamentary committees. Secondly, because its delegitimising effects opened up (or at least reinforced) a political space that would eventually make possible, following the line of policing humanitarianism, the much more affecting closing harbour policy.

Some extracts of parliamentary proceedings of the XVII and XVIII legislature can be significant to this extent, showing the anti-NGO point of view of several MPs, even in the lack of any hard evidence connecting them to smugglers (see above):

> [There are] non-governmental organisations that go rescue smugglers' rubber boats offshore Libya […]. I think that the Ministry of Interior should do something with regard to these self-styled non-governmental organisations. I think that these ships should be seized; I think that these people should be reported for facilitation of illegal immigration (MP Giorgia Meloni, FdI, Chamber of Deputies, XVII Legislature, Session n. 779, 12 April 2017).

> We worked together in Parliament throughout last legislature with the then Government […] and I claim for Forza Italia, opposition party also by then, the credit for urging a fact-finding inquiry on NGOs and for determining a regulation that limited their action (MP Maurizio Gasparri, FI, Senate of the Republic, XVIII Legislature, Session n. 11, 13 June 2018).

> And so someone has to explain why NGOs […] seem to have as exclusive landing place Italy. I do have a very clear idea: perhaps one of these organisations' funders has a very clear plan in mind, which is that of destabilising this country, of creating a social emergency […]. NGO pirate ships, that smuggle people in cahoots with those who organise smuggling on the Libyan coasts, are criminal (MP Riccardo Molinari, LN, Chamber of Deputies, XVIII Legislature, Session n. 20, 27 June 2018).

> [We say] 'no' to the blackmail of NGOs, that very often rescue migrants directly on Libyan coasts (MP Francesco D'Uva, M5S, Chamber of Deputies, XVIII Legislature, Session n. 20, 27 June 2018).
>
> So I think that this House should show solidarity for the shameful campaign of criminalisation of NGOs; NGOs and volunteers that, in these years, under the coordination of the Italian authorities in charge, have saved dozens and dozens of women, men and children at seas. It is not acceptable to generalise, it is not acceptable to support a propaganda campaign aimed at criminalising these associations (MP Federico Fornaro, LeU, Chamber of Deputies, XVIII Legislature, Session n. 20, 27 June 2018).
>
> [MP Salvatore Deidda:] Perhaps not all NGOs are like this, but the State has to take its responsibility back, this is what I keep saying, [SAR operations] cannot be delegated to organisations that we do not know anything about and it cannot be delegated to organisations that are funded by multinationals, that, above all, smuggle, that have economic benefits from smuggling human beings […]
>
> [MP Federico Fornaro:] Who would these organisations be? Give us the names! You can give the names yourself! (MP Salvatore Deidda, FdI, and MP Federico Fornaro, LeU, Chamber of Deputies, XVIII Legislature, session n. 38, 3 August 2018).

However, former Minister Minniti tried to distance himself from the allegations of a continuity in these policies (Partito Democratico, 2018) and also ITA_2 (April 2019), former top-level officer of the Ministry of Interior, pointed to the substantial difference between these two approaches, according to his point of view. But the arguments of those who support this continuity seem to be more convincing (Cusumano and Gombeer, 2018), considering also how the option for harbour closures was already there in 2017, as Cusumano (2019, p. 112) himself recalls: "the Italian Minister of Interior, backed by the European Commission, reinstated the threat of closing Italian ports to non-signatory organizations[43]."

Moving on to the closing harbours policy, its essence was already explored in the previous sections and can be recalled by saying that starting 10 June 2018, a few days

[43] On the arguable continuity between Marco Minniti's and Matteo Salvini's approaches, more will be said also in the following sections and in chapter 7.

after swearing in, the new Minister of Interior Matteo Salvini decided to prohibit the docking in Italian harbours of any NGO ships transporting migrants. The first case was that of the Aquarius ship, carrying 629 migrants, but a number of others followed in the next months, such as the one concerning Proactiva Open Arms in December 2018 or those of Sea Eye and Sea Watch 3 in January 2019, among others (Il Tempo, 2018; SkyTg24, 2018 and Tommasone 2019a).

Still today, however, it is unclear in which way it was possible to apply what appears to be a 'policy without legislation': as previously explored, indeed, until the developments of the Diciotti case and the issuing of first Salvini Directive on 18 March 2019, no official act was actually passed and numerous controversies came out about the very legitimacy of this policy (Cusumano and Gombeer, 2018; Scavo, 2019; Tommasone, 2019a and 2019b. Cf. also Cardwell, 2018 and his concept of 'new governance').

The first Salvini Directive aimed to set out some sort of reinforced protocol for law enforcement and border guard agencies, on the basis that "there is a need to crystallise and sanction those conducts explicitly aimed at the breach of the international maritime rescue law and of the national and European immigration law, which are perpetrated in a continuative and methodical way" (Minister of Interior, 2019a, p. 3).

On such bases, Minister Salvini stated that non-Italian NGO ships (to which this directive expressly applies) were not free to navigate in Italian seas, since this would clearly constitute a threat to "the order and security of Italian state", being their aim that of "introducing irregular migrants, in breach of the applicable immigration law, without identification documents and proceeding from foreign countries exposed to a terrorist threat" (Minister of Interior, 2019a, pp. 6–8).

In this perspective, the 18 March 2019 Directive can be considered as an interpretation of the ongoing situation to be used by law enforcement and border guard agencies, but whose legitimacy and legal value were questioned (Ansa, 2019 and Lania, 2019).

After a second directive issued on the 28 March, amending the first one, two other directives were issued on 4 April 2019 and 16 April 2019, dealing with two specific cases, respectively the Alan Kurdi ship of the NGO Sea Eye and the Mare Jonio ship of the Italian Operation Mediterranea, being this last one particularly notable as

involving a ship registered in Italy, belonging to an Italian organisation, and therefore more difficult to target (Minister of Interior, 2019a, 2019b and 2019c).

Again, legitimacy and legal values of these directives were strongly questioned by practitioners, former navy officers and ministry officials, experts, insisting in particular on the lack of competence of the Ministry of Interior and the right of foreign vessels to navigate in territorial seas (Ansa, 2019; Lania, 2019 and Morcone, 2019).

The closing harbour policy and the Salvini Directives became central in the political debate, within and outside Italy, involving also other policy areas, e.g. the foreign policy implications of the Alan Kurdi case, where a *note verbale* was sent to the German Embassy in Rome in order to request that the situation be taken care of. They also caused a strong reaction of those who were referred to by the Ministry of Interior in order to legitimise the directives, and namely IOM (whose presence in Libya would "guarantee the respect of migrants' rights and, at the same time, quicker rescues") and the European Commission. The latter, according to the Ministry, would have stated that "Libya can and must rescue migrants at sea, and has then to be considered a trustworthy country" (RaiNews, 2019). All declarations denied by EC, IOM and also by UNHCR, which expressed concerns on Libya, further urging, through the High Commissioner Filippo Grandi himself, not to refer to UNHCR activities in Libya in a specious way so as to deny reception in Europe (Ziniti, 2019).

As one of the NGO officers who were interviewed noted, a key-actor in this chain of unintended consequences has been Operation Mediterranea and its ship Mare Jonio, which decided to openly challenge the closing harbours policy in October 2018, reopening a game which seemed to be already closed, with the abandonment of the central Mediterranean Sea by other NGOs, following Italian policies. The launch of this challenging practice was at the basis of the reaction of the Italian government, whereas, on the other side, stimulated other NGOs to get back to sea (NGO_5, May 2019).

5.3.3. Executivisation of policies and inter-institutional interaction

A last dimension to understand the national policy-making in this subject matter relates to the interaction between different institutions. This has firstly to do with the interaction

between parliament and government – the most prominent actors – which essentially happens in relation to the legislative process for the approval of norms and to the overall political debate, both key-components of the policy-making at national level.

Smuggling-related policies appear to be definitely executive-centred, with the government dominating the legislative process, whereas the parliament continues to experience a greater importance in the overall political debate (cf., also more broadly on the roles of governments and parliaments, Capano and Giuliani, 2003; Capano, Howlett and Ramesh, 2015; Rasch and Tsebelis, 2013 and Zucchini, 2013).

The time perspective adopted to analyse such interaction is broader than the in the rest of the research, again without compromising the methodological accuracy, but merely with the objective to widen the empirical description (any argument or conclusion is going to be built on cases before 2013, see also chapter 2). This can be useful in order to observe the institutional agency of government and parliament in the approval of the most important policies related to smuggling and undocumented migration (including all the laws substantially amending the provisions on facilitation of irregular migration) since 2002, when the first substantive changes of the TUI took place, until 2019 (see Table 5.1. and also the parliamentary sources listed in chapter 2).

The government role was central in all of the eight main legislative acts that were approved in this subject matter throughout these years. Firstly, six out of eight were decrees-law, approved by the government and then converted into law by the parliament, being the remaining two laws of governmental legislative initiative. And the recent recourse to non-orthodox instruments such as for the 2017 Code of conduct or the 2018 closing harbours policy also contributes to the marginalisation of the parliament.

The prominence of the government was further expressed in the decision to call for a confidence vote either in one or both of the houses in three of these laws, and namely in two of the most recent ones (the 2017 Minniti-Orlando Decree and the 2018 Security Decree): a parliamentary procedure that de facto impedes any amendment to the bill.

A further element substantially constraining, at least historically, the role of parliament is the heterogeneity of the bills where these migration provisions were included, as anticipated in Box 5.1., confirming the cross-cutting and overlapping nature of the anti-

smuggling policy-making. This was the case, in particular, in two of the acts composing the Security Package (Decree-Law n. 92/2008, converted by Law n. 125/2008; Law 94/2009), where important anti-Mafia measures were approved and, within the proper time frame of the research, of the Minniti-Orlando Decree, bringing important changes into the judicial organisation. This issue – especially when in conjunction with a confidence vote – could lead MPs to vote in favour of a bill even if in disagreement on the migration-related aspects, after balancing them with the other provisions contained in the bill.

Table 5.1. – Laws on migrant smuggling-related issues

Law	Year	Initiative	Parliament impact
Law n. 106/2002	2002	Converting DL n. 51/2002	Minor changes
Law n. 189/2002 (Bossi-Fini Law)	2001/02	Government	Tension in the government coalition between Lega and Christian Democrats: no amendment on amnesty, but motion (then in fact realised)
Law n. 271/2004 (Correction to Bossi-Fini Law)	2004	Converting DL n. 241/2004	Minor changes
Law n. 125/2008 (Part of the Security Package)	2008	Converting DL n. 92/2008	Minor changes Anti-Mafia measures
Law n. 94/2009 (Part of the Security Package)	2008/09	Government	Confidence vote Anti-Mafia measures Article 10-bis of TUI, modified in the Senate and softened
Law n. 46/2017 (Minniti-Orlando Decree)	2017	Converting DL n. 13/2017	Maxi-amendment to soften some of the critics (both inside and outside) but only very partially and superficially. However necessary confidence vote

Law n. 98/2018 (Vessels cession to Libya)	2018	Converting DL n. 84/2018	Almost unanimity at Senate, much more controversial at Chamber: rejected all the amendments of PD on human rights (after many criticisms from NGOs for unanimity at Senate)
Law n. 132/2018 (Security Decree)	2018	Converting DL n. 113/2018	Confidence vote both houses

Source: Elaborated by the author

However, even if subordinate to government, the role of parliament in the legislative process is not insignificant. Besides those minor changes that were brought into almost all the bills considered and the peculiar case of Law n. 98/2018, which was passed without any significant amendment with an almost unanimous vote at the Senate and the rejection of all the amendments presented at the Chamber (De Giovannangeli, 2018a and la Repubblica, 2018), the role of parliament clearly emerged in the following cases:

1. Law n. 189/2002: amendment of MP Bruno Tabacci (Union of Christian and Centre Democrats, UDC, majority coalition) to include an amnesty of undocumented migrants, supported by the oppositions. After a long debate and tensions within the majority coalition and the government, the amendment was transformed into a motion to commit the government to actually make the amnesty (which would eventually be realised with Decree-Law 195/2002), avoiding also a confidence vote threatened by Minister Umberto Bossi (Senate of the Republic, XIV Legislature, Session n. 200, 27 June 2002; Jerkov, 2002 and la Repubblica, 2002);
2. Law n. 94/2009: criminalisation of the illegal entry. The provision of the bill was changed during the debate in Senate and softened, after strong criticisms from the oppositions and from the judiciary (Chamber of Deputies, “L’attività parlamentare e di governo in materia di immigrazione nella XVI legislative”, *sic*);
3. Law n. 46/2017: maxi-amendment of the government at the Senate to change some of the criticism highlighted by oppositions, NGOs and other non-institutional actors (Margheri, 2017).

These examples, anyway, cannot challenge the primary and absolute role acquired by the government in migrant smuggling-related legislation, often creating also political and institutional conflicts for the complete marginalisation of parliament, such as those arising in these parliamentary speeches, regardless the political orientation of the government:

> [I]n this moment a façade is taking place in this House: that of having to debate on the whole of the amendments when we all know that, given that a confidence vote was called, in reality there will be no room to talk about the proposed amendments. We even have to thank for this, because otherwise there would not have even been room to leave something on the record of this House in the very moment in which the latter is going to approve, through a confidence vote, some norms that will impact (heavily) on the future of our country (MP Rita Bernardini, PD, Chamber of Deputies, XVI Legislature, Session n. 175, 12 May 2009).

> The amendments could have been discussed for their content, whereas a negative opinion was issued on all of them with a simple motivation: there is no time to discuss them, a confidence vote is going to be called in this House, the bill is secured, in fact (MP Fabiana Dadone, M5S, Chamber of Deputies, XVIII Legislature, Session n. 779, 12 April 2017).

> What happened […] is that the Government, this majority and, regrettably, even the Presidency […] took on the gravest responsibility of restricting the parliamentary debate and of placing a motive of political interest fully connected with the majority internal dynamics before the centrality of the Parliament, so often declared […]. This bill has in fact flown over the Chamber of Deputies, because, as you all are aware of, a confidence vote will be called in a few hours also in this House of our Parliament (MP Riccardo Magi, +E, Chamber of Deputies, XVIII Legislature, Session n. 90, 26 November 2018).

> President, colleagues, Government, the majority today brings into this House the conversion into law of Decree-law n. 113/2018, clumsily called “Security Decree”. It does so after having forced the Senate to a confidence vote, and then, here at the Chamber, fully abolishing the time for debate in the Standing Committee and being about to call for another confidence vote. Hence, the role of parliament has been fully abolished, erased, reduced to mere paper pusher of what originates and comes from

the Senate (MP Giuseppina Occhionero, LeU, Chamber of Deputies, XVIII Legislature, Session n. 90, 26 November 2018).

A significant case, as for the marginalisation of the parliament, is the appeal to the Constitutional Court presented in 2018 by four MPs of the left wing coalition Liberi e Uguali (LeU), in a procedure for a "[conflict] arising from allocation of powers of the State[44]" (article 134 of the Italian Constitution), for the government not having brought the 2017 Italy-Libya Deal to parliamentary ratification, as any international treaty would require under article 80 of the Italian Constitution (ASGI, 2018).

The point of view of ITA_2 (April 2019) is worth recalling, as s/he explained how the situation concerning the role of parliament is "particularly serious". Referring to the role of the two houses in the legislative process, s/he "would have expected a different attitude in parliament, how to say, an outrage towards this dramatic involution" experienced with the Conte Government, which is "strongly weakening the institutional and constitutional structure of our country".

It should be further noted that a progressive abandonment of an economic and welfare approach to migration occurred, with a move of migration provisions towards security-related legislation (also in terms of political debate, see below), essentially falling within the right side of the smuggling spectrum (see section 1.2.3.). In such perspective, the political affiliation to the Lega Nord party of the Ministers presenting or de facto promoting five of these acts is significant (cf. Verbeek and Zaslove, 2015. See also section 2.4.1.). It remains controversial, in the view of practitioners, depending very much also on the role and the political stance, whether some continuity in the approach can be found also with the only legislative act coming from a PD-led government. Such continuity is openly challenged by a former top-level officer of the Ministry of Interior (ITA_2, April 2019), more timidly contested by a progressive MEP (EUR_2, May 2019), considered possible by an ANCI officer (ITA_1, March 2019) and strongly supported by an officer of an NGO operating in the Mediterranean Sea (NGO_5, May 2019), who said that "Salvini would not exist without Minniti". At least under certain points of view, namely those related to the 'shifting south' policies and the policing of humanitarianism,

[44] Unofficial English translation retrieved from https://www.senato.it

such continuity seems uncontested[45] (cf. Carrera et al., 2018a; Cusumano, 2019 and Cusumano and Gombeer, 2018), in line with the findings of this research (see also below on the political positioning of government parties in the political debate on these very issues, whose importance was stressed also by ITA_1, March 2019).

As was already anticipated, the parliament still has a very important role in terms of definition of the political discourse. This is the institutional space where it is possible to understand how migrant smuggling is the subject of political tension and how it is (re)framed and (re)worded in the institutional agenda: parliamentary communication is a political act as it contributes to (de)legitimising a specific issue (cf., also for a historical understanding of the issue, Capano and Giuliani, 2003).

Adopting, again, a broader time perspective (and holding all the methodological disclaimers previously mentioned), based on the observation of how this subject matter has been framed in the parliamentary arena since 1998, through an analysis of the parliamentary proceedings (see chapter 2 for a more detailed understanding of the sources used to reach these conclusions), the following five aspects can be highlighted.

Firstly, there has been a progressive securitisation of the migration debate, with the emergence of a centrality for issues connected to border protection and management, repression of undocumented migration, and migrant smuggling. The initial coexistence of this debate with a focus on economic opportunities connected to the influx of migrants dropped over the years, together with a substantive change in the policies passed (cf. the proceedings for the approval of the Bossi-Fini Law in 2002 – where, notwithstanding the strong security-based approach, the economic-related approach is still present in background, and those of Law n. 271/2004 or Law n. 94/2009).

Secondly, the main issues debated in the smuggling-related legislative processes have been the ‘shifting south’ approach, the need to promote development cooperation in

[45] Consider also that the PD-led Government in 2016 decided not to pass delegated legislation on the abolishment of the offence of illegal entry, considering the “particularly sensitive character of the concerned interests” and that “in the lack of a broader and more systematic intervention, the repressive criminal instrument appears, in fact, necessary” (Ministry of Justice, 2016).

Africa to stop big influxes of migrants, the offence of illegal entry, the role of the EU, the Dublin III Regulation and the role of NGOs[46].

Thirdly, as for the very role of the EU and other MSs, its characterisation has been changing over the years, moving from initially being some term of reference, somehow to imitate, to a defaulting party (with different degrees of responsibility, depending on the political stance) to be recalled to its responsibility. The debates and motions that precede the meetings of the European Council bear particular significance, serving as sort of 'shopping lists' of obligations to be fulfilled by the supranational actor and its Member States (see, among others, Chamber of Deputies, XVIII Legislature, Session n. 20, 27 June 2018; Senate of the Republic, XVIII Legislature, Session n. 47, 16 October 2018 and the attached motions).

Fourthly, the importance of the political spectrum: a clear-cut difference between right-wing and left-wing parties has arisen in the debates on migrant smuggling and undocumented migration. This becomes particularly clear in the most controversial issues such as the offence of illegal entry, human rights in Libya, the existence of a right to migrate and the role of NGOs, where the positioning of MPs on the political spectrum is very definite. It could be noted also the existence of some connection with the smuggling spectrum, where right-wing policy-makers tend to have a view of smuggling falling in the right end of the continuum, whereas left-wing ones tend to embrace a more comprehensive view of the phenomenon (see the smuggling spectrum in section 1.2.3.). On other issues – namely a deeper involvement of the EU, the need of development cooperation, the importance of humanitarian corridors and the fight against smugglers – there seems to be a shared sensibility and a stronger inclination to find an agreement. Still, nuances and logics are very different and in several cases some stances can appear to be specious or anyway subordinated to other logics. In this perspective, the analysis further showed:

1. The progressive decrease in the political distance between the Democratic Party (PD) and the centre-right coalition on certain issues (namely 'shifting south', the role of NGOs, the goal of a drop of the migrant arrival numbers),

[46] This aspect is based on and exclusively related to the legislative debates, which were analysed in their entirety. Parliamentary motions and questions are excluded from this aspect, since the selection of which motions and questions to consider was based on a keyword research (see chapter 2) and this would therefore jeopardise the validity of a generalisation of said aspect.

especially during the PD-led government. Conversely, this rapprochement did not seem to involve those parties on the left side of PD;

2. The difference between the stances in the political-symbolic arena and the actual policies passed, as the latter tend to be less polarised and more in continuity with one another (see above).

Both of these points are substantially in line with the findings on the overall migration policy-making in Italy (Caponio and Cappiali, 2018; Giuliani, 2008 and Zincone, 2011; see also section 2.4.1.) and were to a certain extent acknowledged by the same decision-makers, who even talked about PD and centre-right policies in terms of convergence and continuity:

> There was no need for the President to tell us that the bill is partly in continuity with what the previous Government, and namely Minister Minniti, did. We did know that. I would rather call it plagiarism, or, perhaps, embezzlement (MP Alessia Rotta, PD, Chamber of Deputies, XVIII Legislature, Session n. 39, 6 August 2018).

> Disembarkations today are at historic low, although Salvini is telling that they are an emergency, but they are at a historic low. There was a Minister of this Republic, whose name is Marco Minniti, who made disembarkations dropping by 80% and there is no need for Salvini's propaganda of these days to say that "thanks to him disembarkations dropped". This is the usual Salvini's lie (MP Alessia Morani, PD, Chamber of Deputies, XVIII Legislature, Session n. 39, 6 August 2018).

> I deal with immigration, I closely observed what Minister Minniti did: he did neither more nor less than what the centre-right has been saying for three years that it should have been done. It is clear that at a certain point disembarkations dropped (MP Giorgio Silli, FI, Chamber of Deputies, XVIII Legislature, Session n. 39, 6 August 2018).

> Today […] we witness a split personality of that party [PD], which even repudiates those actions undertaken one year ago, when it was in government. But there is a clear reason for that: going at any cost against the yellow-green government. Mr President, do you want to know what the oppositions are demonstrating? That, if we had an immediate solutions for the wars all over the world, they would start cheering for conflicts, just to row against us (MP Sabrina De Carlo, M5S, Chamber of Deputies, XVIII Legislature, Session n. 39, 6 August 2018).

> [Talking about agreements with Libya and the cession of patrol boats to the Libyan coast guard] We need to have the courage to say thing as they are: the point is not that Libya does not want to sign the Geneva Convention; rather, it cannot. Because in Libya the conditions to have access to the Geneva Convention are not met. We will vote for this amendment [but] I ask you, though – since this is a serious conversation – to take this out propaganda. I ask also the colleagues of the Democratic Party, because in the past legislature, just almost one year ago, you voted against this very same question, with regard to the first decree conceding patrol boats. So please, let's stop with this human rights rhetoric (MP Erasmo Palazzotto, LeU, Chamber of Deputies, XVIII Legislature, Session n. 39, 6 August 2018).

Fifthly, the tendency to lack evidence-based debates: data are cited very rarely, as well as the information coming from the ground, if not quite partially and in an instrumental way to support pre-existing opinions (being particularly significant the NGO-related debates), whereas concepts are very often mixed up (e.g. the persisting confusion between migrant smuggling and trafficking in persons. Cf., among others, Chamber of Deputies, XVIII Legislature, Session n. 20, 27 June 2018; Session n. 38, 3 August 2018).

A more specific focus on the XVIII legislature (started in 2018) confirms the previous findings and increase in particular two of them:

1. The polarisation of the debate, with a stronger role for the Lega Nord and the other far-right party Fratelli d'Italia (FdI), calling for a naval blockade against Libya (see, among others, Chamber of Deputies, XVIII Legislature, Session n. 38, 3 August 2018. Cf. also Caponio and Cappiali, 2018; Tronconi, 2018 and Verbeek and Zaslove, 2015). On the other side, the PD seemed to regain more pro-migration stances, once left the government, with some notable exceptions (i.e. the claim to be them the ones responsible for the achievement of a drop in arrival numbers, as above recalled). The debate on the signature of the Global Compact for Safe, Orderly and Regular Migration (GCM) is particularly significant in this perspective, showing the extreme anti-immigration attitudes of some MPs:

   > The most dangerous […] is the principle based on which immigration is a fundamental right of any human being. Now, you understand, colleagues, that if we establish the principle that immigration – be careful, any sort of migration,

> and this means that who is fleeing from war, who is fleeing from violence, but also who is fleeing from famine, who is fleeing from the heat, who moves because [s/he] is up to, anybody *(sic)* – is a fundamental right of the human being, it means, President Carfagna, that means that the borders of nation states no longer exist, that nation states no longer exist (MP Giorgia Meloni, FdI, Chamber of Deputies, XVIII Legislature, Session n. 92, 28 November 2018);

2. The recall for a deeper involvement of the EU, with (undocumented) migration as the central topic in European Council debates (with the partial exception of December 2018, because of the issues related to the Budget Law). Here the most concerning issues have been the reform of Dublin III Regulation, the need for more solidarity, investment programmes in Libya, the redefinition of the Operation Sophia mandate, the support to the hypothesis of an Italian naval blockade and the relationship with the Visegrád Group (see, among others, Chamber of Deputies, XVIII Legislature, Session n. 20, 27 June 2018; Senate of the Republic, XVIII Legislature, Session n. 47, 16 October 2018 and the attached motions).

In a political space that is widely dominated by the parliament, the government, however, still plays an important role.

Firstly, the government is central in setting the parliamentary agenda (see Rasch and Tsebelis, 2013 and, in particular, the chapter of Zucchini, 2013), by submitting specific bills, which (regardless the actual policy output) in turn determine the focus of parliamentary debates. For example, when in 2008 the government decided to propose to the parliament a bill including the criminalisation of illegal entry, this was the basis for the subsequent parliamentary debate, which actually focused very much on this very issue, strongly polarising the different parties and coalitions.

Secondly, the government takes part in the parliamentary debates, both those related to the legislative discussion and those connected to the general function of scrutiny of governmental action, for example answering parliamentary questions or motions.

Furthermore, the government plays a central role also outside of the parliamentary arena, shaping the political debate around migration and smuggling.

Hence, even if the parliament seems to gain much importance and political space in the political-symbolic arena, if compared to the legislative one, quite paradoxically the government still plays a central role in setting the rules of the game or anyway participating in the debate.

A last element of reflection, based on the very unbalance between these two institutions, has to do with the deliberate parliamentarisation of certain issues, decided by the government in order to overcome difficulties and divisions within the government itself. This has been the case, for example, of the signature of the GCM, parliamentarised by the government parties for this very reason, and paradoxically criticised by opposition MPs:

> [N]o, the Government will not take a position on the Global Compact, because this matter is too important, we need to parliamentarise the decision. There, that's too bad that we cannot make a 360 degrees panoramic photo to see how this Government parliamentarises the decision on the Global Compact. This absence is embarrassing, loud, and we should probably realise and infer that there is, in other places, a gathering of intelligences to bring about, unbelievably, a majority motion on the Global Compact which says everything and its opposite. Because on the Global Compact this majority will generate an example of extraordinary fence-sitting: 'we are against, but not entirely", or 'we are in favour, but not completely'. […] We find it extremely serious that the Government did not expressed itself, we believe that if Italians could see the image of this House sadly empty and grey, under thousands of perspectives, then Italians would realise the difficulty of this government to find a solution, differently from all the other sovereign governments in Europe, that already said 'no', no ifs and buts, to the Global Compact and to the constitutionalisation of the invasion towards them, reclaiming the right to govern migratory flows, reclaiming the right to say that immigration is controlled by the state (MP Andrea Delmastro Delle Vedove, FdI, Chamber of Deputies, XVIII Legislature, Session n. 102, 18 December 2018).

Still, in case of divisions on these matters, the parliamentary game can be risky, as again has been the case throughout the XVIII legislature, with those differences between Movimento 5 Stelle (M5S) and Lega Nord (from a political point of view, even though they are not reflected in the voting behaviour) that Forza Italia and Fratelli d'Italia attempted to exploit to weaken the government cohesion (see, in particular, Chamber of Deputies, XVIII Legislature, Session n. 90, 26 November 2018; Session

n. 91, 27 November 2018; Session n. 92, 28 November 2018; Session n. 99, 11 december 2018; Session n. 102, 18 December 2018).

Besides the twofold game between government and parliament in said arenas, a third institutional actor needs to be considered at a national level: the judiciary. The approach chosen in this research already acknowledged the importance of it as an actor in the policy-making, but placed it mostly in the multi-level layer, stressing the role of judges on the ground:

1. In adjudicating individual cases, applying and interpreting the law;
2. In initiating that process of judicial review which would eventually produce its effects on a national level upon a pronunciation of the Court of Cassation, but that could not take place without the proactive role of the judiciary on the ground (see chapter 4);
3. In impacting on policy-makers decision as an indirect consequence, such as in the Diciotti case.

However, even following such approach, there is one judicial actor that still needs to be considered at a national level tout court: the Constitutional Court. Over the years, the Court has issued important rulings related to migration laws, assessing their consistency with the Italian Constitution.

The most relevant rulings – or, better, the two rulings with the strongest impact on the political debate and on the relationships with the legislative actors – which should therefore be recalled are those concerning the aggravating factor of “illegally being on the national territory” and the offence of “illegal entry and stay in the territory of the state”. Following the same rationale, based on the distinction between the illegitimacy of a more severe punishment based on personal qualities unrelated to the offence (Judgement n. 249/2010), on the one side, and the discretion of decision-makers in criminalising a specific conduct (Judgement n. 250/2010), on the other side, the Court declared the unconstitutionality of the aggravating factor, but not that of the offence.

Besides that, as previously recalled, the Constitutional Court plays a role also in deciding about conflicts on the allocation of powers among different organs of the state, which can become an important issue also in this subject matter (see above).

Acting as guardian of the Constitution and as a referee in conflicts between institutions, the Constitutional Court becomes then an important actor in the overall governance of the subject matter, whose discretion is nevertheless limited by the ways of access to it, i.e. a posteriori judicial review or directly from the concerned power of the state, but in no case motu proprio or through a direct access of citizens (see Rebessi and Zucchini, 2018 and Volcansek, 2000, also more broadly on the role of the Constitutional Court in the policy-making process).

5.4. Policy-making dynamics at a national level: an analytical synopsis

This conclusive paragraph intends to draw some general analytical conclusions referred to the national level as a whole, considered in terms of multi-level dynamics and with a view also to highlight the agency patterns of different actors, which shall be discussed more in detail in chapter 7 (see also chapter 2).

Data related to the national level have been organised and presented according to the analytical model of the research, considering them under five different components, constituting the 'multi-level' and the 'governance' layers. It should be recalled, in such perspective, that the analytical relevance of such model lies exactly in the capacity of isolating and stressing certain elements over others, while in real life the same phenomenon presents a complex set of aspects and empirical connections: this explains the various overlapping and repetitions throughout the chapter.

On such bases it is possible to provide an answer to SQ2 – i.e. what factors and dynamics are relevant to the formulation of policies against migrant smuggling on a national level? – in the light of both vertical and horizontal dynamics.

Starting with the multi-level dynamics (layer 2 of the model, see chapter 2), the cases considered show a substantial difference between the interaction of the national level with the local and the EU one. As a first general consideration, a number of different cases of bottom-up dynamics were showed, compared to the more limited scope of the top-down examples coming from the European Union. Such a difference becomes even more definite if considering 'wanted' consequences, i.e. processes of preference upload or download, being most of the cases coming from Brussels readable in terms

of unwanted consequences (as side effects of Europeanisation, cf. Vink and Graziano, 2007).

This first conclusion is in itself quite significant, in particular considering that the exploration of bottom-up dynamics in migration studies and, even more, the combination of that with an understanding also of top-down dynamics have traditionally been neglected (Zincone and Caponio, 2006).

However, this does not tell us much yet as for the effectiveness of these very processes, i.e. to what extent and why these shifts are able to inform national policy-making dynamics. In order to understand that, it is necessary to zoom into the actors that take leading role in these processes, the main patterns in terms of policy-making as well as the substantive issues concerned.

In the connection with the ground, besides decision-makers (MPs and ministries), as the recipients of the information and preference coming from the local level, key roles are those of the judiciary (both in terms of prosecutor's offices and courts) and local governments. The role of both of them in influencing the policy adoption has been widely considered in this and in the previous chapter, as well as in relevant literature (Caponio and Jones-Correa, 2017 and Marmo, 2007); however, what is crucial in the understanding of the existing patterns is the way in which these processes are particularly facilitated by two institutional arenas: (a) the parliamentary committees and (b) the intermediate bodies (see also chapter 4).

This element acquires particular relevance in terms of information and preference upload, since they essentially work as a collector and organiser of local actors and information, providing also an institutional support for their voices to be heard. In this sense, the case of the judiciary is emblematic, being able (for example as for the role assumed by the Prosecutor of Catania) to play a substantial role even far outside the judicial arena (meant as the institutional space tasked with the judicial function). Furthermore, in particular in the case of intermediate bodies, they represent a typical example of institutions in the broader meaning of March and Olsen (1984 and 2011), enabling local agency to unfold even beyond and in deeper ways than the letter of norms would provide for (e.g. the lobbying of municipalities through ANCI).

However, even beyond the actual impact on policies (which shall be discussed below), a big challenge in the overall influence of the on-the-ground actors onto the national

policy-making is represented by the qualitative information selection. In other words, it appears that not all type of information is successfully uploaded, opening the possibilities of severe shortcomings in it. This is basically explained in the light of:

1. The lack of representativeness and/or proportionality in guest selection in committee hearings: again, the case of the Prosecutor of Catania can be an interesting example, given his stance on NGO-led SAR operations, in comparison, for example, with other actors examined in chapter 4 or even in this very chapter, pertaining to the judiciary or to other institutions. Nevertheless, the debate was 'dominated' by his views;
2. The institutionally divisive nature of migrant smuggling and (undocumented) migration: as emerged in the overall analysis of this chapter (and of the previous one), besides personal preferences, expertise and experiences, the institutional membership also seems to influence the individual stance on the concerned issues, in line with the new institutionalist argument (cf. Olsson, 2016).

If these challenges are strictly connected with the overall institutional architecture, two more contingent issues that emerged still have an impact on these processes, i.e.

1. The reported decrease of meetings and non-institutional tables over the years, which can clearly jeopardise the overall shifting up process;
2. The discretionary and potentially creative role of bureaucracy, also besides the one already explored on the ground (Fabini, 2007 and Lipsky, 1980), also at a national level, as reported in the case on negotiations between intermediate bodies and the government, and can be essentially read in terms of the room left for agency by the institutional delegation coming from the principal, i.e. the government itself (Tallberg, 2002).

Lastly, as for the unwanted consequences, they mainly refer to typical forms of judicial activism, widely considered in literature (Anaya, 2014 and Marmo, 2007).

In the Europeanisation arena, as was briefly mentioned, the situation appears to be different and much less rich in examples. Here the main actors are EU institutions and agencies (which can be very effective in influencing the policy-making on specific issues) on the one side and the national government on the other side, with a much

more marginal role of the judiciary function, of the EC (for the infringement procedure) and of the CJEU.

The interaction between the two levels appears much less organised in terms of arenas and the relevant cases analysed fall more within the scope of unintended consequences (see Pollack, 2009) and there seems to be little room for any 'shadow of hierarchy' (Scharpf, 1994). This can be mostly explained in terms of the institutional nature of this relationship, i.e. the legislative competence attributed to the EU (see chapter 3) and, partly, to the twofold role of national government as de facto policy-maker in Italy and co-policy-maker in Europe.

In such perspective, in anti-smuggling policies, the basis of the EU influence on national policy-making, rather than in terms either of 'venue shopping' (Guiraudon, 2000) or 'liberal constraints' (Kaunert and Léonard, 2012, among others. See also Bonjour et al., 2018), can be read in terms of (a) side effects of EU missed reforms or policy failures (cf. Scipioni 2018b); (b) 'excuse shopping', i.e. the 'blame Brussels' game above recalled, offering a political space of getaway to be used as a scapegoat.

All this is not always consistent with the Italian agency at a supranational level and sometimes does not even reflect the actual room for manoeuvre that would persist at a national level. This last aspect can be better understood by turning the principal-agent model upside down, as mostly considered in EU literature. Here national policy-makers could act as agents of an EU principal, intervening in all those policy areas where MSs would be free to legislate. But Italian policy-makers actually tend not to use this legislative discretion at national policy level, even though there would actually be room for it, and tending instead to make a political issue on the shortcomings of EU policy-making (EUR_1, March 2019; EUR_2, May 2019).

Overall, the relationship between the levels seems characterised by an ambivalent role and perception of the EU (cf. Abbondanza, 2017, for example, on the Italian dissatisfaction with EU commitment and, on the other side, the "wide margin of appreciation in the hands of EU Member States" on certain key aspects, Carrera et al., 2016, p. 61).

As for the main substantive issues addressed, much of the between-the-level communication (either wanted or unwanted) concerned:

1. SAR operations, both in terms of the role of NGOs, the humanitarian vs. security based logics (in particular considering Operation Sophia), and the closing harbours policy (Cusumano, 2019; Cusumano and Gombeer, 2018 and Cuttitta, 2018);
2. Aspects of the 'facilitation offence', in particular related to the humanitarian exemption and the difference between smugglers and facilitators (Carrera et al., 2018b).

Other aspects residually addressed include: (a) the need of international cooperation (as a request coming in particular from the judiciary); (b) the multifaceted nature of smuggling (consistently with the smuggling spectrum in section 1.2.3.), again brought forward by the judiciary but emerged also in institutional dialogues with Brussels, in particular as for an ambivalent perception of the demand side for smuggling; (c) the burden sharing among MSs as for the reallocation of asylum seekers.

Substantive issues are important to consider, even if the policy content is not the explanandum of the research, as they can offer an interesting perspective in order to understand the impact that this process of information upload (and download) actually has in terms of the policies eventually formulated. The tendency that has been witnessed is that of a more successful between-the-level communication in cases of restrictive policy preferences, regardless the specific issue, as part of a general securitising approach (cf. Abbondanza, 2017), falling essentially on the right side of the smuggling spectrum (see section 1.2.3.) and selectively reinforcing pre-existing policy options (cf. path dependency dynamics in Pollack, 2009).

This can happen in two different moments:

1. During the shifting up/down dynamic, such as limiting access to intermediate bodies or more generally ignoring requests or evidence coming from the supranational or the local level (e.g. the whole parliamentary committees work on NGO-led SAR);
2. Throughout the policy formulation and adoption stricto sensu, as was observed in the 'governance' dynamics and shall be further discussed below (to provide an immediate example, the comprehensive approach to smuggling in the report

of the Anti-Mafia Committee can be recalled, though it has not led to any specific policy).

This argument, in turn, leads on to the question of evidence-based policy-making (Baldwin-Edwards, Blitz and Crawley, 2019), in relation to the influence of the local level (in terms of practices, challenges and expertise) onto the national policy-making. The criticism of such situation can be best expressed through the words of a UNODC officer (INT_2, April 2019):

> I think we need really more evidence-based approaches to develop these policies or to test their impact. [Member States] do not seem to be necessarily able to critically assess the effectiveness of their action and especially the side effects it could have. I mean because, in a way, that's also the way you would unveil or confirm the fact that the primary motives for the action were flows [of migrants]; that it was not organised crime that was being targeted but unwanted migration, most likely.

This aspect constitutes a major issue in the national policy-making, posing a relevant question as to the actual possibility of a bottom-up influence in smuggling-related policy-making.

Insofar as the 'governance' aspect (layer 3 of the model, see chapter 2) is concerned, the analysis conducted allowed to focus, in turn, on different policy areas, on the external interaction of policy-makers and on internal dynamics within the institutional framework. The same issue has, in certain cases, been addressed by these multiple perspectives, again stressing the analytical relevance of the model proposed.

The main actors considered have been national decision-makers, and namely the government and the parliament. The relationships between and within them have been highlighted in particular in the first and third dimension of the layer. Also other institutional (Constitutional Court, law enforcement agencies) and, even more, non-institutional actors (NGOs) have been considered as for their influence on the national policy-making process, but definitely to a lesser extent if compared to the two decision-makers.

Numerous different patterns have arisen through this multiple perspective, and shall be briefly discussed.

Firstly, the focus on the different policy areas included in the anti-smuggling framework, arising from the smuggling spectrum and confirmed by several sources, has allowed to consider the consequences of such structural overlapping and interaction, in particular in terms of:

1. Complexity of the policy-making process;
2. The ambivalence of such complexity, sometimes used also instrumentally (e.g. in the 'shifting south' policies, see Lavenex, 2006), whereas deliberately ignored in other cases (the demand side for smuggling, see the smuggling spectrum in section 1.2.3. and Perkowski and Squire, 2019);
3. Effects on institutional dynamics, in particular in terms of conflicts within policy-makers (cf. Zincone, 2011);
4. Shape and nature of bills and legislative acts, which appear very heterogeneous, composite and not necessarily matching the policy goals (Finotelli and Sciortino, 2009).

Secondly, as for the non-institutional dynamics, the importance of policy practices has been the central element. On purpose informal-to-institutional dynamics take actually place only very limitedly, and in quite unsatisfactory ways, such as in the case of the maxi-amendment to the Minniti-Orlando Decree. Differently, they assume the form of unintended consequences, rather than being the deliberate result of a process aimed at influencing the national policy-making (Carrera et al., 2018a). From here some responses arise, often taking the form of 'new governance' extra-legislative tools (Cardwell, 2018), through a careful choice (Capano and Lippi, 2017), also raising concern in terms of lawfulness and effectiveness (Cusumano, 2019 and Cusumano and Gombeer, 2018). The clearest examples in this perspective are the 2017 Code of conduct and the 2018/19 closing harbours policy. They in turn bring another important issue forward, i.e. the continuity within the political spectrum between these two policies and their respective legislators, i.e. a centre-left and a right wing government (see Cusumano and Gombeer, 2018; Giuliani, 2008 and Zincone, 2011).

Lastly, insofar as the inter-institutional relations are concerned, the following aspects have emerged:

1. The dominant role of the government, in terms of executive-centred policies, as well as a very important actor also in the political debate;
2. The yet important role of the parliament, crucial in the political discourse and to a lesser extent also influential in the policy adoption stricto sensu;
3. The importance of the political spectrum, in a highly politicised and divisive issue, but still a certain continuity between centre-left and centre-right (or right wing) parties (Giuliani, 2008 and Zincone, 2011);
4. The lack of major evidence-based debates (Baldwin-Edwards et al., 2019, see also above);
5. The importance of issues of effectiveness and accountability in the parliamentary debates and in the policy evaluation;
6. The role of the Constitutional Court, as an influential actor in this subject matter (cf. Rebessi and Zucchini, 2018 and Volcansek, 2000), even if clearly more limited compared to the decision-makers.

Very rarely arena linkages take place, mainly due to the hardly challenged leading role of the government, to the detriment of the parliament. Few cases of arena linkages have happened through the combination of heterogeneous bills and confidence vote, by so doing de facto limiting the freedom of actions of majority MPs, 'taking them hostage' through another policy arena or, more broadly and deeply, threatening a government crisis (cf. Héritier, 2019 and Tsebelis, 1990).

Differently form layer 2, in this specific case the analysis of the policy content is not relevant in order to explain the greater or lesser success of processes of information upload or download. However, an understanding of the content of bills and policies, or, more broadly, of the overall political debate is nevertheless important, in particular in order to better assess the degree of success of between-the-level communication and to what extent policies are actually evidence-based.

In this perspective, in spite of the multifaceted nature of smuggling, at the basis of the operational definition used in this research and widely acknowledged by practitioners (the smuggling spectrum, see section 1.2.3.), as reported throughout the research and explored in the interaction between the different policy areas, smuggling-related policy-making appears to be strongly security-oriented (cf. Abbondanza, 2017).

This takes the shape of the use of anti-smuggling as a migration management tool, policing humanitarianism (and in particular SAR NGO-led activities), 'shifting south' approach (which is arguably comprehensive, as including a foreign policy and development cooperation dimension, but still extremely security-based), a much less economic-based migration debate and a focus on the offence of illegal entry.

Besides that, another last very important issue mostly addressed, especially in parliamentary debates, was the role of the European Union, often perceived in very contradictory ways, and the overall process of reform of Dublin III Regulation in particular (see chapter 6).

Table 5.2. summarises and highlights the most relevant aspects here discussed, according to the different layers.

Table 5.2. – Policy-making dynamics at a national level (layers 2 and 3)

	Main actors	***Main substantive issues involved or addressed***	***Main policy-making patterns and challenges***
GROUND	MPs Prosecutors Intermediate bodies (i.e. ANCI, DNA) Ministries Local governments Judiciary	SAR operations (different nature, role of NGOs) Need of international cooperation Multifaceted and adaptable nature of smuggling (incl. facilitators vs. smugglers) Closing harbours	Intermediate bodies institutionally limited but politically powerful Role of judiciary outside judicial arena Smuggling not only politically but also institutionally divisive Role of bureaucracy Guest selection bias in Committees Shortcomings in information upload and impact on policies
EU	EU institutions and agencies National government (EC, CJEU)	Different effects of missed reforms Burden sharing Role of NGOs in SAR Ambivalent perception of the demand side	Ambivalent role and perception of the EU 'Blame Brussels' Limited impact of the judicial arena Role of agencies Unwanted consequences

POLICIES	National decision-makers	Multifaceted nature of smuggling and connection with other policies Securitisation (anti-smuggling as migration management) Facilitation vs. smuggling	Overlapping with other policy areas (structural/instrumental) Overlapping/heterogeneity bills Primacy of Ministry of Interior Limited scope of decision-makers' choices Mismatch between policy goals and tools
INFORMAL	National decision-makers Law enforcement agencies NGOs	SAR Securitisation Policing humanitarianism	Centrality of informal practices and their unintended consequences 'New governance' tools to address NGOs practices in the Mediterranean Potential limited scope of advocacy Continuity right-left Effectiveness and lawfulness
INSTITUTIONS	Government Parliament Constitutional Court	Securitisation Less economic-based migration policies 'Shifting south' approach Development cooperation Offence of illegal entry Role of the EU (ambivalent perception) Dublin III Regulation Role of NGOs in SAR	Executive-centred policies Parliament crucial for political discourse Government still influential on political debate (agenda-setting) Importance of the political spectrum Lack of evidence-based debates Limited role of judiciary Continuity right-left Effectiveness and accountability

Source: Elaborated by the author

Chapter 6

Multiple levels, policy areas, informal and institutional actors: making policies in the anti-smuggling domain at an EU level

6.1. Introduction

To conclude the analysis of the different layers of governance, this chapter focuses on the multi-level and governance dynamics taking place at an EU level, similarly to the analysis of chapter 5 on the Italian level, in order to understand how policies are actually designed and what factors matter. In this regard, besides the widely acknowledged supranational vs. intergovernmental dynamics (see chapter 1), attention will be given again to the information and preference upload processes, as well as to the various policy areas involved, considering both non-institutional and institutional dynamics.

Processes of vertical communication shall consider the interaction between Sicilian, Italian and EU actors, based on the case selection for this research. Again, in line with the smuggling spectrum (see section 1.2.3.) and the applicable legislative framework (see chapter 3), a broader set of policies will be considered, rather than those specifically addressing the smuggling of migrants, including, among others, demand-oriented policies and the Common European Asylum System (CEAS) reform.

The overall analysis shall be based, such as in the previous chapter, on the analytical model elaborated in chapter 2, and in particular on layer 2 (‘multi-level’ dynamics, paragraph 6.2.) and layer 3 (‘governance’ dynamics, paragraph 6.3.), whereas elements of layer 1 (agency/institutions) will be addressed case by case throughout the chapter and in a more complete and comprehensive way in paragraph 6.4. and in chapter 7. Policy-making processes will be presented according to the different layers and following an impact/relevance assessment, which does not always correspond to a chronological one.

Finally, paragraph 6.4. will be dedicated to an analytical synopsis of the issues addressed throughout the chapter and to answer research sub-question (SQ)3: what factors and dynamics are relevant to the formulation of policies against migrant

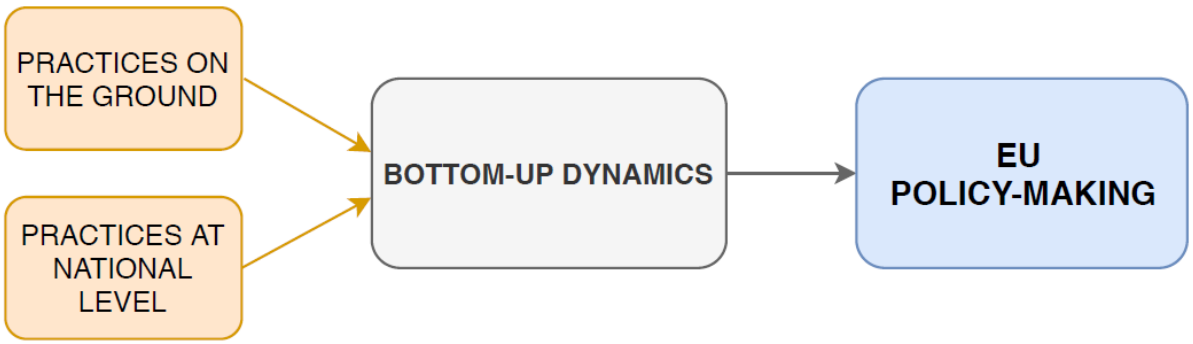
smuggling on a supranational level? As in chapter 5, the most theoretical and analytical perspective of the chapter will lie there, compared to a more narrative style, presenting the data collected, in the rest of it.

It should be recalled again, lastly, that the application of the analytical model will make it possible to analyse and address the same phenomenon or policy-making process from multiple points of view, in so lying its high heuristic power. On the other side, though, this entails the risk of a feeling of repetition and/or overlapping in the reader, within this very chapter and with aspects already considered in chapters 4 and 5, which is nevertheless unavoidable in order to disclose and navigate through the overall complexity of the subject matter.

6.2. Multi-level dynamics

The exploration of the multi-level dynamics, involving both the ground and national dimensions (see Figure 6.1. below), that affect the EU policy-making on migrant smuggling and related policies show several similarities to the national level, both in terms of patterns and of substantive issues addressed. However, one remarkable difference, that should be underscored from the very beginning, has to do with the way in which policy-makers gather information: in particular to (a) the different role of parliamentary hearings, both in terms of number and impact of them; (b) the use of a very peculiar instrument, i.e. field visits; (c) the role of research (experts and academia) in shifting up dynamics. All these issues turn central in the analysis of these processes.

Figure 6.1. – Interaction directions at a supranational level



Source: Elaborated by the author

6.2.1. Intermediate bodies, parliamentary committees and field visits: the connection with the local level

Direct institutional connection between the Sicilian and the supranational level (hence bypassing the national one), in terms of influence of the EU policy-making process, takes first of all place through the intermediate bodies[47].

Here the main role is that of the Association of the Italian Municipalities (ANCI), which besides the activities undertaken at a national level, is quite active also at an EU level. This happens, specifically, in the work that ANCI conducts with the Committee of Regions (CoR), which encompasses a double track. On the one side, there is an interest from the EU and Member States (MSs) to better understand migration-related issues in Italy, and in particular the reception system (which, as seen, is nevertheless peripheral in this analysis); on the other side, through the CoR, ANCI seeks to gain more power for Italian municipalities, in particular securing direct management over EU funds for migration-related programmes (ITA_1, March 2019).

It is particularly interesting to take note of one of the main advantages of this last aspect, in the opinion of ITA_1 (March 2019): there are migration issues that are "neutral" for mayors, regardless their political affiliation, such as part of the reception/protection policies (see section 4.2.4.). Therefore, a direct management on the local level would ensure less polarisation and a better adherence to the reality of policy responses.

Eurojust and Europol, mostly in connection with the National Anti-Mafia and Anti-terrorism Prosecutor's Office (DNA), also play a central role in the intermediate bodies arena. In particular, JUD_3 (April 2019), who is a member of the judiciary acting at national level, recalled the efforts that Italian authorities undertook (also) through Eurojust to strengthen judicial cooperation with third countries and within the EU, also with information sharing and joint investigations team, and to overcome, from a

[47] The intermediate bodies, consistently with the approach chosen, at an EU level could be considered either in the section analysing the connections with the ground or in the one dedicated to the connections with the national level, depending on where the stress is placed between the local and the national sides of intermediate bodies' activities. The choice to place them in this section emphasise the local origin (and consequences) of the issues brought forward by the intermediate bodies, consistently with the findings presented in chapter 4.

legislative point of view, those shortcomings that jeopardise the effectiveness of these very efforts, such as different procedural rules in MSs.

The DNA meeting of 25 May 2017 – already mentioned in the previous chapters – is significant in this regard, with the presence of practitioners situated at three different levels, including Europol and Eurojust (as well as other EU bodies such as Frontex and EUNAVFOR MED Operation Sophia), with a view to facilitating the interaction between the different levels and the understanding of actual existing smuggling patterns (JUD_3, April 2019).

In this whole line of cooperation and information upload there is an involvement also of Operation Sophia, which, besides the meeting of 25 May 2017, signed in 2017 a protocol with the DNA aimed at information sharing (JUD_3, April 2019 and EUNAVFOR MED, 2018), even though the ultimate nature of the EU mission is different, as it shall be further discussed.

The cooperation between DNA and Operation Sophia made it also possible to realise a report where some very important facts and evidence-based analyses on smuggling were provided, such as the strong impact of the 2017 Code of conduct on the extent of the involvement of NGOs in search and rescue (SAR) operations or the organisational aspects of smuggling networks, often very structured in Libya, whereas the actual facilitator falls outside it (JUD_3, April 2019 and EUNAVFOR MED, 2018).

Likewise at a national level, also European Parliament (EP, the Parliament) standing committees – Civil liberties, Justice and Home Affairs (LIBE) in particular – carried out very relevant activities for the processes of information and preference uploads over the period considered, namely through hearings and field visits. Differently from the Italian case, though, the EP did not show to use hearings for systematic inquiry of issues related to migrant smuggling, also because of different institutional arrangements, privileging the use of the European Parliament Research Service (EPRS), providing substantive information on “delicate dossiers” (EUR_2, May 2019. See also 6.3.2.).

Nevertheless, a few hearings relevant to the subject matter took place and should therefore be recalled, such as (a) the hearings organised between April and July 2015, in preparation for the Strategic Report on Migration, and which involved several MS local practitioners, including Italian ones (namely the navy); (b) the hearing titled

“Search and rescue in the Central Mediterranean” of 12 July 2017, where alongside Frontex and NGOs, also the Italian coast guard was heard (European Parliament, 2017a).

However, more significant – and remarkable, if compared to the activities of the national parliament – events were the field visits organised by the LIBE Committee, that allowed Members of the European Parliament (MEPs) to meet several local institutions, in different occasions, and to get to know personally some of the most relevant issues at local level, such as in these examples:

1. The joint visit with the Committee on Budgets (BUDG) to Sicily of 22-24 July 2015, where EU policy-makers could meet the *Prefetti* of Agrigento and Ragusa and the Vice-*Prefetto* of Catania, as well as the heads of the Italian police (*Questori*) of Catania, Agrigento and Ragusa and other national institutions, NGOs and field officers of EU agencies (European Parliament, 2015c);
2. The EP LIBE delegation to Lampedusa (Italy) on search and rescue, in the context of the strategic own-initiative report on “the situation in the Mediterranean and the need for a holistic EU approach to migration” of 17-18 September 2015, where MEPs could meet the Mayor of Lampedusa, some navy officers (and NGOs) and assist to a migrant disembarkation (European Parliament, 2015b);
3. The mission to Italy of 18-21 April 2017, which enabled MEPs to meet *Prefettura*, judicial, police and navy authorities in Catania as well as several national institutional and non-institutional authorities in Rome, besides visiting a reception centre (European Parliament, 2017b).

In the latter case, in particular, several issues related to smuggling (also in line with the smuggling spectrum, see section 1.2.3.) were brought to the attention of MEPs, such as the difference between smugglers and facilitators, the issue of ‘forced’ smugglers, as well as the role of NGOs and the lack of any proof of connection with smugglers in Libya – an issue which was most likely addressed also in a following meeting with Prosecutor Zuccaro, which was kept confidential, though (European Parliament, 2017b, pp. 6, 12-15).

This layer as a whole does not seem particularly rich in examples of information and preference upload. However, this does not necessarily mean that EU policies are not evidence-based (Baldwin-Edwards et al., 2019), but it could rather be the effect of a different institutional architecture (as we shall see below, in section 6.3.2., paragraph 6.4. and chapter 7), privileging those other forms of information collection above recalled. As EUR_1 (March 2019) put it, EU policies are supported by a knowledge of the phenomena. The European Commission (EC, the Commission), for example, has its own sources and a method based on different knowledge tools and the legislative procedure as such includes actors that enjoy an in-depth knowledge of the phenomenon. EUR_2, based on his/her direct experience as MEP, confirmed that this view is applicable also to the European Parliament, pointing out, in particular, the existence of the EPRS above recalled, which provides MEPs with substantive expertise, coming also from the ground, through ad-hoc research works. A different story is that of the Council of the EU (the Council), where "everything is very little transparent, differently from the Parliament" (EUR_2, May 2019).

6.2.2. The ambiguous impact of the national level

The Italian political debate and legislative process also have an impact on the EU policy-making in smuggling-related issues. The way in which the debate at a national level influences the decision-making process of the European Union, in particular, needs to be considered. This seems to happen through (a) direct connection between the two levels; (b) influence of the national political debate in the preference shaping of actors situated at a supranational level (both in the EP and in the Council).

Hearings and field visits play an important role in establishing a connection between the national and EU level, in the same way as this happens in the relationship with the local level explored above. They include, in particular:

1. The inter-parliamentary committee meetings "A holistic approach to migration" of 23 September 2015, "The Third Reform of the Common European Asylum System – Up for the Challenge" of 28 February 2017 and "The European Agenda on Migration – What about Legal Avenues and Integration?" of 24 January 2018;

2. The hearing “The reform of the Dublin System and Crisis Relocation” of 10 October 2016;
3. The 2015 LIBE/BUDG Committees visits to Sicily and the 2017 LIBE Committee visit to Italy, already mentioned in the previous section. This enabled MEP to meet and discuss relevant issues for EU policies with Italian Members of Parliament (MPs), high-level public administration officers and members of the government.

However, what was said in the previous section on the different role and importance that hearings assume at an EU level stands true also with regard to the national level, limiting also the explanatory power of the substantive issues addressed in this upload processes. Likewise, also here the mediated contribution of research and academia plays a crucial role, which will be further discussed in section 6.3.2.

Also the national parliament is an important actor in Italy-EU dynamics, either directly or indirectly. As for the first, this is the case, among others, of the reasoned opinions, based on the principle of subsidiarity, issued on the Dublin III Regulation reform proposals: the Italian Parliament expressed its negative evaluation, considering in particular the lack of sufficient mechanisms in order to ensure a fair sharing of responsibilities among MSs and stronger cooperation, so as to relieve external border countries (Chamber of Deputies, 2016 and Senate of the Republic, 2016). A topic which has definitely shaped the Italian debate and stance on asylum and the overall migration management and fight towards undocumented migration (see, for example, the Diciotti case).

Indirect influence has more broadly to do with the overall national political debate, which contributes to shape the preferences of actors situated at a supranational level. An example in this perspective is the influence that the stances of the national government (and, in turn, the political debate) have on MEPs, in determining their course of action, as stated by EUR_2 (May 2019). S/he also reported the possibility of having an opposite process, in particular with MEPs trying to influence their national government on asylum issues, without great success, though. S/he stressed, however, how in the EP is still possible to build transversal majorities, also differently from the national arena (on the connection between MEPs policy preferences on asylum and the national party affiliation see also Frid-Nielsen, 2018).

In this scenario, the national political actor which acquires more relevance is definitely government (over parliament), and its role is clearly twofold: on the one side, it is a national actor expressing its own preferences and sharing relevant information with supranational actors; on the other side, it is acting, together with the other MSs, as co-legislator, within the Council. It is the type of action considered, therefore, that makes it clear at what level and in which capacity the government is acting, and so also in what analytical layer such an action falls.

Two recent cases clearly show some patterns of governmental action towards the EU in this subject matter. The first one has to do with the 2017 Code of conduct (and, to a lesser extent, to the Italy-Libya Deal of the same year). In this circumstance, the influence of Italian dynamics on the EU policy-making came in terms of a request of support and endorsement towards national policies that had been very controversial in terms of legitimacy and effectiveness (see chapter 5). A sort of request of burden and responsibility sharing with EU institutions from the PD-led government, which was eventually granted by the European Union (Cusumano, 2019; European Council, 2017; European Parliament, 2018a and RaiNews, 2017).

The second example is related to the strong request coming, in 2018, from the M5S/Lega Nord government of changing the mandate of Operation Sophia (and, more in general, the relocation system within the Dublin system) and which would have led to the Diciotti case, as was widely explored in the previous chapter. In this case, therefore, the request of an EU action was not going towards the (even merely political) support of existing national policies, but rather in the opposite direction of changing an EU policy, under the threat of a national assertive action on disembarkations. The EU did not substantially amend its policies in this field and the Diciotti case and the wider closing harbours policy did not seem to produce the desired effects on the EU level (Council of the EU, 2019 and Frenzen, 2018. See also Rasche, 2018).

The opinion of ITA_2 (April 2019) on this “muscular policy” was already reported in chapter 5, as well as the effects in terms of isolation, and they are worth being recalled here. S/he further added, however, how this isolation is also the result of not having sought an agreement at an EU level with countries such as Germany, France, Sweden or Spain, that could have been keen to open a dialogue on this issue. Bringing the point into the Council debate and building alliances there would have been a solution,

therefore, rather than trying to exercise pressure from the national level, seeking the political support of the Visegrád Group.

The approach to the EU of the last two Italian governments – and of their two respective Ministers of Interior, Marco Minniti and Matteo Salvini – seems rather different. In the words of EUR_2 (May 2019), Minniti, “even if too timidly, […] was trying to assert the principle that Italy must not be left alone, whereas Salvini plays both sides […] and this policy ends up by worsening the relationships with those partners who could be the first to help Italy in relocations”. S/he explained that Minister Minniti, indeed, although not pushing at all for Dublin III Regulation reform, was extremely active on “the externalisation policies with Libya [at an EU level], then also supported by the whole Council and also by the European Commission”, whereas, in the case of Minister Salvini, “since the Diciotti case he contrasted not really the “right ones”, […] but against the ones who […] have given some signals of solidarity”.

Besides the opinion of EUR_2 (May 2019), who, as a progressive MEP, could be somehow biased, these views are supported also by ITA_2 (April 2019), who recalled also the example of the Libyan-based development cooperation projects, on which Italy unsuccessfully tried to involve also the EU. More generally, strong criticism was directed against Minister Salvini for not participating in Justice and Home Affairs (JHA) Councils, inconsistently with the political discourse conducted (Montalto Monella, 2019).

Lastly on Ministers Minniti and Salvini, it should be clear that even if some differences in the type of vertical relationship between national government and EU institutions exist, this is not conclusive in terms of substantive difference in the political and policy approach of the two at a national and EU level, as was already explored in chapter 5, where the issue of continuity was already sketched, and as it will be further discussed in the next sections and chapter.

As a general conclusive remark on the national level influence on EU policy-making, all the practitioners responding on this issue agreed on the substantial influence that MSs (and Italy in particular) have on the EU, also besides the mere presence of the national government in the Council and European Council. “This rhetoric according to which Brussels decides alone is false”, and this applies not only to the role of national governments but also to that of national parties on their affiliated MEPs (EUR_2, May

2019). INT_2 (April 2019) further explained how the EU approach reflects what happens at a national level, although s/he has seen “more caution at the European Commission’s side nowadays” than in MSs in using “instruments to fight migrant smuggling to actually fight irregular migration, […] responding to the concerns that we have seen emerging in many EU countries in the past years”. Last but not least, EUR_1 (March 2019) stressed that even though Italy tends to complain considerably about the lack of influence on EU policies, it is important to always assess to what extent choices are good for the EU as a whole, beyond the individual MSs, since choices at an EU level need to balance all the interests at stake and something will be necessarily sacrificed.

6.3. Governance dynamics

Horizontal dynamics, involving institutional and informal actors, are particularly salient at an EU level, also considering the deeply complex governance structure of this institution. In this perspective, this paragraph clearly falls within the overall debate reported in chapter 1 on the institutional evolution of the EU policy-making in the Area of Freedom, Security and Justice (AFSJ, see Bonjour et al., 2018; Huber, 2015; Maricut, 2016 and Trauner and Ripoll Servent, 2016) Not surprisingly, therefore, the analytical distinction among different components of the layer often overlap, in particular between different policy areas and different institutions, as shall be clear from the first lines of the next section.

6.3.1. Beyond the Area of Freedom, Security and Justice: other policies and governance consequences

Similarly to the national level, also at an EU level the very nature of migrant smuggling favours the connection between different policy areas, essentially within the law-making arena. In this case, the overlapping occurs mainly with (a) asylum policies (rather than general migration policies, consistently with the competence division between EU and MSs) and, as at a national level, with (b) defence and foreign policies and (c) criminal policies.

In fact, the very need for an integrated approach, encompassing different areas of policy, is acknowledged by the EU in all the key-documents regarding migrant smuggling (European Commission, 2015a and 2015b and European Parliament, 2016). The issue at stake, therefore, is to what extent and in which manner this comprehensive approach, which would be consistent with the smuggling spectrum elaborated in section 1.2.3., has actually taken place and how these different areas have interacted.

The centrality of asylum policies came clearly out as early as in 2015, in (a) the Working Document on Developing safe and lawful routes for asylum seekers and refugees into the EU, including the Union resettlement policy and corresponding integration policies and in (b) the Working Document on tackling criminal smuggling, trafficking and labour exploitation of irregular migrants, focusing on the importance of resettlement, humanitarian visas, temporary protection directive and drawing some considerations on legal migration and on the fragmented scenario (European Parliament, 2015d, pp. 1–2 and European Parliament, 2015e, p. 5). In the second document, the remarkable opinion of UN Special Rapporteur on the human rights of migrants, François Crépeau, on the need to open new entry channels as a tool to fight against smuggling is also reported (European Parliament, 2015e, p. 5).

In the same year, the European Parliament resolution of 10 September 2015 on migration and refugees in Europe (2015/2833(RSP)) further stressed this aspect:

> [The European Parliament r]ecalls that the possibilities for people in need of protection to legally enter the EU are very limited, and deplores the fact that they have no other option but to resort to criminal smugglers and dangerous routes to find protection in Europe, as a result of, among other factors, the building of fences and sealing-off of external borders; considers it therefore a high priority that the EU and its Member States create safe and legal avenues for refugees, such as humanitarian corridors and humanitarian visas; stresses that, in addition to a compulsory resettlement programme, Member States should agree to provide other tools, such as enhanced family reunification, private sponsorship schemes and flexible visa arrangements, including for study and work; believes that it is necessary to amend the Visa Code by including more specific common provisions on humanitarian visas; asks Member States to make it possible to apply for asylum at their embassies and consular offices.

Such an approach was confirmed in the European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)), where it is stated that:

> [C]riminal networks and smugglers exploit the desperation of people trying to enter the Union while fleeing persecution or war […], safe and legal routes for refugees to access the Union are limited, and many continue to take the risk of embarking on dangerous routes[. Therefore] the creation of new safe and lawful routes for asylum seekers and refugees to enter the Union, building on existing legislation and practices, would allow the Union and the Member States to have a better overview of the protection needs and of the inflow into the Union and to undermine the business model of the smugglers.

The overall commitment of the European Parliament towards humanitarian visas and its struggle, over the whole legislature, with the Council in this respect (see below) goes exactly in this very direction. Key elements, in this regard, are the 2016 Report on the proposal for a regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast) (COM(2014)0164 – C8 0001/2014 – 2014/0094(COD)), where the EP proposed some amendments to include humanitarian visas in the reform process, the subsequent deadlock and the 2018 Report with recommendations to the Commission on Humanitarian Visas (2017/2270(INL)).

The words of a MEP are significant in making the shared approach of the majority of the house clear in this respect and the tone of the debate, disclosing those elements of a moral debate (not always consistent with policy outcomes) that characterise this supranational arena, as we shall see below:

> Do we realise that the southern border of Europe is the most dangerous border in the world for irregular migrants? Do you think it is possible to go on with this irresponsible management of a complex and unstoppable phenomenon such as immigration? Do you think it is wise to continue building walls around this fortress called Europe, letting that the Mediterranean become a big cemetery? […]. Let's increase and make more efficient the legal access channels for asylum-seekers, for family reunifications, for those looking for a job (MEP Laura Agea, EFDD, 8th European Parliament, Session of 25 November 2014).

Furthermore, the centrality of the issue was widely stated also by several practitioners, in different ways and with different nuances. EUR_1 (March 2019) spoke extensively about this point, starting by drawing a clear connection between smuggling and some sort of 'asylum shopping', definitely pointing in the direction of asylum policies as a pull factors both for smugglers and for smuggled migrants. In his/her opinion, policy choices have a substantial impact in determining the organisation and reorganisation smugglers (s/he spoke of this in terms of "resilience"). Answering a question on the demand side for smuggling, s/he pointed out that such a demand is facilitated by wrong information and frauds, and s/he referred to UNHCR and IOM reports supporting this conclusion.

These processes are facilitated, according to EUR_1 (March 2019), by the internet and social networks, and it is then notable that the Italian Ministry of Interior and the European Asylum Support Office (EASO) decided to use these very systems in order to disseminate counter-information.

The whole EU asylum framework (with the partial exception of the Procedures Directive) has a significant impact on this. The Qualification Directive and the different transposition into national laws establish the grounds for granting asylum, that, once known, could arguably be used by smugglers to prep migrants and orientate flows towards those countries where better conditions of protection are offered (e.g. the protection for persecution on sexual orientation grounds, which is acknowledged in Italy and not in other countries, EUR_1, March 2019). The same interviewee, who is a governmental officer acting at EU level, further stated that the Reception Conditions Directive would also entail pull factor in terms of different reception systems, whereas the Dublin III Regulation would lead smugglers to instruct smuggled asylum-seekers on how the EU asylum system works as such and in different countries, explaining the possibility of a legal application after a secondary movement if they were not reachable by competent authorities for one year. Consistently, to avoid this, the whole CEAS reform and Dublin III Regulation recast are all about avoiding secondary movements.

But the issue can (and should) be addressed also from another perspective, i.e. that of smuggled migrants, who in fact end up in the hands of smugglers, if they lack legal ways to reach the EU and apply for asylum (or to do so in origin or transit countries), consistently with the demand-side component of the smuggling spectrum (see section

1.2.3.). Such a situation was acknowledged by EUR_2 (May 2019), who clearly stated how “also in the *acquis communautaire* there is a lack of legal and safe channels of access” and how the demand for smuggling needs an answer, insofar as asylum is concerned, also at an EU level. INT_2 (April 2019) added that “you will continue having smugglers as long as you don’t have legal channels” and this opinion is shared by ITA_2 (April 2019), who further stressed the impossibility to get a visa from embassies abroad. In this perspective, the failure to provide for a mandatory system of humanitarian visas within the EU is particularly significant (European Parliament, 2019).

However, EUR_1 (March 2019) reported that these are “recurrent issues in the different discussions” and “this connection [with smuggling] is made also in the asylum subject matter”; there is an effort in this sense by EU institutions, in particular to widen the access to asylum through resettlements and humanitarian readmissions. However, in his/her opinion, there are three critical issues connected to the policies in this field:

1. There is, nevertheless, a selection of those who will be admitted. Hence, broader access to asylum would not be “sufficient to cover all the needs and therefore there will always be those who will resort to smugglers”, so the phenomenon cannot be completely eliminated in this way, even though the situation can improve;
2. The increase of asylum seekers contributed (alongside the economic crisis) to halt legal economic migration opportunities, then opening up a problem on another side;
3. The EU approach has not been rigorous, mostly for human rights considerations.

The increase in asylum applications, according to him/her, was mostly specious and such a generous approach ended up encouraging smugglers, in the lack of a counterbalance: “we can let them enter, but then we need to be very quick in assessing the cases – the individual cases – and be also able to promptly manage the responses […]: quick case evaluation and also quick repatriation […] of those people who are not entitled to be granted protection” (EUR_1, March 2019).

The potential limits of humanitarian corridors as a tool also to fight smugglers were discussed also by JUD_3 (April 2019), again making a connection with the persistence

of economic migration and the connected problem of the substantial lack of legal opportunities for economic migration. This led him/her to reaffirm the importance of addressing the migratory phenomenon at the very origin (with the involvement of foreign – development cooperation – policies). Such a comprehensive "policy aimed at reducing […], containing and tackling the smuggling of migrants", in the view of ITA_2 (April 2019), took actually place, especially by strengthening the humanitarian presence in Libya and the very opening of humanitarian corridors, thanks to the Italian efforts.

This last point helps, in turn, to build a connection with another policy area which is extremely relevant in the EU fight against migrant smuggling: defence and foreign policy, being the overall 'shifting south' and development cooperation policies a great part of it. In this very context, ITA_2 (April 2019) explained that "the primary interest of Europe is definitely to stabilise Libya" and this "not only for the migration issue, but also for geopolitical relations, also for the energetic issue [… and because] there definitely is a security issue". A stance which seems quite shared by EU policy-makers, considering, among other things, the overall support brought to Italian externalisation policies towards Libya (European Council, 2017) or the conclusions of the Joint Communication "Migration on the Central Mediterranean route – Managing flows, saving lives" (JOIN (2017) 4 final) of 25 January 2017. Here a set of comprehensive operational actions is set out, including: (a) cooperation with other potential departure states, (b) protection of the southern border of Libya, (c) financial support for North Africa (European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 2017).

Such an approach towards North Africa – and Libya in particular – is not surprising if one recalls how the EU dealt with the so-called Balkan route and the shifting out agreement signed with Turkey (EUR_2, May 2019), which demonstrate a rooted and persistent rationale, from the policy-makers' perspective, in the EU externalisation policies (cf. Strik, 2019).

EUR_1 (March 2019) strongly stressed the importance of having effective tools in this external domain at an EU level, being readmission agreements some of the most important ones. Namely, s/he complained about the limited number and effectiveness

of the existing agreements, explaining how in her opinion they can indirectly be a pull factor for would-be migrants.

Yet, the existing framework in this field is strongly criticised by practitioners such as NGO_1 (October 2018), NGO_5 (May 2019) and EUR_2 (May 2019), among others. The latter, in particular, elaborating on his/her criticisms of the existing of a “disguised” international cooperation in Africa, explained the whole limits in terms of long term sustainability and effectiveness of this part of EU foreign policies in Africa, which, focusing on the tackling of undocumented migration, but not proving any real alternative policy for the economic system of countries affected by the smuggling system, are destined to fail (such an approach was more broadly shared by other practitioners such as ITA_2, April 2019).

Also EU SAR operations prove to be particularly important in this policy area, being established as Common Security and Defence Policy (CSDP) operation (Sophia) or led by Frontex jointly with relevant MSs (Operations Themis and Poseidon). Focusing in particular on Operation Sophia, criticism was brought concerning the fact that the legislative framework chosen ended up placing it outside the scrutiny of the Parliament (Carrera and Lannoo, 2018, p. 4. This view is supported also by EUR_2, May 2019). This opens up a whole, broader area of debate concerning the direct effect that the choice of a particular framework has in terms of the activation of different procedures, involvement of different actors and, in particular, limitation of the parliamentary and judicial scrutiny over policies. In such perspective, EUR_2 (May 2019) further referred, for example, based on his/her direct experience as MEP, of the criticisms concerned to the decision of the European Council not to bring to the EP the 2016 agreement with Turkey for ratification as a strategy to marginalise the Parliament. Carrera and Lannoo (2018, p. 6) – and partly also EUR_2 (May 2019) as well as, to a broader extent, also other interviewees – stressed in such context the importance of an integrated approach to SAR and asylum, placing it under clear judicial review.

Lastly, the criminal law framework is of utmost importance. As was already considered at a national level, rather than being one of the components of the overall approach to migrant smuggling (considered stricto sensu as on offence in itself, as pointed out already in the smuggling spectrum and in the definition of the analytical framework, cf

chapters 1 and 2), it appears to be the main component and leading rationale followed by policy-makers.

A criminal and security-based approach to migrant smuggling is quite clear in particular in the stances of the Council (Council of the EU, 2016 and 2018), especially as opposed to a wider approach chosen by the EP. Similarly, Europol suggested in its 2017 and 2018 EMSC reports the penal approach as the core element of the way forward in targeting smuggling. This would not be surprising, given the very nature of Europol, but it becomes striking:

1. When said in the context of the general proposition that "migrant smuggling requires a multidisciplinary approach, the law enforcement cooperation being just one of the several areas in need of further coordination and strengthening" (Europol, 2017, p. 18);
2. For the very decision of the EC of embedding the European Migrant Smuggling Centre (EMSC) into Europol, rather than in or in-between other EU agencies or institutions (Europol, 2016a).

This leads the issue back to the view of some practitioners – in particular those coming from an international organisation (IO)-background – according to whom, through this mostly repressive approach, the EU would have actually used the anti-smuggling tools to control undocumented migration. In such perspective, INT_1 (March 2019) explained that the EU pointed out the difference between smuggling and facilitation of irregular migration, arguing that the EU approach on facilitation had a wider scope, which would explain why UN Smuggling Protocol provisions were not actually translated into EU legislation. But – INT_1 further noted – this proves particularly problematic, since, for example, the provision of a material benefit is crucial in order to "criminalise only criminals", whereas having a wider scope and risking of criminalising also non-profit-driven activities, would lead to something completely different from the spirit of the United Nations Convention against Transnational Organized Crime (UNTOC) and the protocols thereto. In the words of INT_2 (April 2019), "the goal pursued seems to be different if you drop the benefit element".

The same view, as was already pointed out in other sections, is generally shared by other practitioners and is particularly emblematic, again from an international point of view, the perspective of INT_2 (April 2019) on the ongoing debate in the EU and in

other destination countries: “Why should we make our life harder by sticking to the international definition that has been agreed upon?”.

Therefore, rather than having broader provisions, the EU seems to have an approach which fails to differentiate enough conducts that are actually clearly different, such as those of smugglers and facilitators (INT_2, April 2019. This point was extensively discussed also with judges operating at different levels, such as JUD_2, October 2018 and JUD_3, April 2019).

INT_2 noted that this approach is quite common in destination countries (such as US, Australia, Canada) and that, even though there have been attempts to counterbalance it with a positive discourse about tackling trafficking in persons (TIP) – “it was more acceptable to tackle trafficking” – and, sometimes, with some generosity towards refugees, the main problem persists: “Smuggling is more a criminal justice topic, the people dealing with it have this criminal justice background” (INT_2, April 2019). Therefore, when it is used as a tool for migration management, problems arise. Going even further, and assuming the perspective that there are other crucial, connected components of the phenomenon, if these are neglected and the criminal justice response is the only relied upon, shortcomings and failures become even more evident and foreseeable.

Following such rationale, what is really relevant within the criminal law policy area is not its connection with smuggling, which actually lies in its very nature, but rather the dominance of such component in the overall approach and its peculiar repressive nature.

It should be noted, in conclusion, that the centrality of the criminal law component in anti-smuggling policies has not led to a leading role for the Directorate-General for Justice and Consumers (DG JUST), as, at a national level, has not led to a centrality of the Ministries of Justice. Interviewees responding on this point, clearly confirmed the main role of the Directorate-General for Migration and Home Affairs (DG HOME) and of the Ministry of Interior, placing this criminal law approach back into the overall migration field (see also 6.3.3.)

Having a comprehensive view on how these different policy areas interact, EUR_2 (May 2019) expressed the need of having different responses, at different levels, in different periods. Namely, s/he called for a combination of the three levels of

governance, in different policy areas, and providing responses in the short, medium and long term, from SAR to internal and external solidarity, from humanitarian visas to a real commitment to address the root causes of migration. For the time being, though, such a comprehensive approach, albeit sought in political declarations (European Commission, 2015a and 2015b), does not seem to have been truly achieved (see paragraph 6.4. and chapter 7).

Furthermore, as was partly hinted at, the analysis of the interaction between different policy areas remains central also for the understanding of how this entails the competence of different organs at an EU level and the activation of different legislative procedures: moving from one policy area to another leads to substantial institutional and procedural consequences (which builds a strong and clear connection with the dimension considered in 6.3.3.).

6.3.2. Non-institutional actors: the role of research in the EU policy-making

Horizontal processes involving the role of non-institutional actors in policy-making (see paragraph 2.3.) are important at the EU level. They show, indeed, the centrality of research and consultation processes in the law-making arena (as partly recalled above in exploring the connection with the ground of the European Parliament), in so marking a clear peculiarity of this governance level.

There are different relevant examples in this subject matter of processes of dialogue between informal and institutional actors, mediated by research bodies and/or consultations. In this sense, it is particularly significant to look at the process for the assessment of the need for a revision of the Facilitators Package (FP), which involved both the Commission and the Parliament, in different procedures, at different times, making it interesting not only the comparative analysis of the two processes, but also of their outputs (even though other examples exist, in a broader context, such as Abdoulaye Diallo et al., 2018).

On the side of the Commission, a Regulatory fitness and performance programme (REFIT) was launched in order to assess the suitability of a legislative reform on the facilitation of unauthorised entry. It was mainly based on two studies (being one of them ICF, 2016, see below) and several consultations, which were conducted between

2014 and 2016 (European Commission, 2017a). On the side of the European Parliament, two other studies were produced, in 2016 and 2018, respectively at request of the LIBE committee and of the EP committee on petitions (PETI), titled “Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants” and “Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update”. The former was a general study on the legislative framework of the EU in this subject matter, its impact on MSs legislation and its shortcomings, whereas the latter was an update which took in consideration, in particular, cases of criminalisation of humanitarian actors.

Both processes were characterised by a substantial contribution from informal actors, bringing knowledge and preferences into the institutional level, enabling not only NGOs and other practitioners, but also academia and experts more in general to be taken into account in the policy-making process.

Even more interestingly, the REFIT was accompanied in 2016 by a 12-week open public consultation titled “Tackling migrant smuggling: is the EU legislation fit for purpose?”, which allowed the EC to collect 2425 standard contributions from private individuals as well as, to a lesser extent, member of academia, organisations and other formal or informal institutions (European Commission, 2017b, pp. 1–2).

The Commission public consultation showed that the wide majority of respondents believed that the Facilitators Package (a) was not effective, (b) did not protect humanitarian help, (c) did not protect smuggled migrants, (d) did not define smuggling clearly enough (European Commission, 2017b, pp. 5–8). Likewise, the very large majority of respondents, respectively the 87.85% and 92.6%, “considered that facilitation of unauthorised entry or transit should only be criminalised when committed for financial gain” and “were in favour of EU law making it obligatory for Member States not to sanction those that facilitate unauthorised entry or transit for humanitarian reasons” (European Commission, 2017b, pp. 10–11). Also, one international organisation expressed the opinion that the objectives of the FP target more undocumented migration than the smuggling of migrants (European Commission, 2017b, p. 9).

The 2016 Fit for purpose study drew similar conclusions, in particular for the unintended consequences that the Facilitators Package had in terms of criminalisation of humanitarian help and negative perception of undocumented migrants and those who assist them. It further noted the profound gap between the EU legislation in this field and the UN framework and the problematic issue of the use of the financial gain element. Lastly, it underscored the existence of an information gap as to the actual implementation of these instruments (Carrera et al., 2016).

The 2018 Fit for purpose update was quite similar in terms of approach, but it is particularly interesting as it offered an update based on the developments occurred after the beginning of the 2015 so-called 'refugee crisis', in particular in terms of (a) use of anti-smuggling legislation as migration management tool and (b) policing humanitarianism (Carrera et al., 2018b, pp. 22–23). The study offers several examples, regarding also Italy, where the formal exemption of humanitarian assistance did not impede the development of climate of intimidation and harassment towards humanitarian actors, with a particular focus on SAR in the Mediterranean Sea (notably, the authors show how even MSs providing for humanitarian exemption policed NGOs, such as in cases of judicial harassment in Italy in connection with the 2017 Code of conduct. Carrera et al., 2018b, pp. 30–31, 67–68). Lastly, it is noted how the lack of information from the ground has had substantial effects on the conceptualisation of smuggling and smugglers, based on unchallenged assumptions (criminal professionals working in highly organised criminal groups, based on 'business model') that have been taken for granted by EU agencies (Carrera et al., 2018b, p. 96).

Moving to the Commission REFIT, several issues were considered, such as the jurisdiction in high seas or the counterproductive effectives of criminalising the illegal entry (European Commission, 2017a, pp. 10, 24), but one of the main focus was again on the humanitarian exemption.

In this regard, the EC acknowledged that "[t]he lack of a mandatory humanitarian exemption has been the subject of ongoing criticism from scholars, European and international institutions and NGO coalitions such as the European Social Platform". It also acknowledged that "[t]he great majority of the individuals, academics, associations and NGOs who responded to the public consultation have also considered that EU law should impose a mandatory humanitarian exemption". The Commission also took into

account the criticisms of the EP-commissioned study of Carrera et al. (2016) and that "[f]or a minority of Member States, the Package has not been effective in creating clarity and legal certainty over the distinction between criminal facilitation and humanitarian assistance" (European Commission, 2017a, pp. 20–21). In spite of all of this, it concluded that "as of today there appears to be rather limited evidence that social workers, family member or citizens acting out of compassion have been prosecuted or convicted for facilitation of unauthorised entry, transit or residence" and that also the connected fear is diminishing, even in country were humanitarian exemption is not provided for (European Commission, 2017a, pp. 21–22).

As for another issue widely debated in this arena, i.e. the element of financial again, the Commission did not properly address it, limiting itself to explain the rationale for not including it in the FP, in particular on the basis of the difficulty of proving that an actual economic transaction took place, as in the opinion of an Italian prosecutor reported by INT_1 (March 2019), but without going more in-depth as to possible alternative approaches (European Commission, 2017a, pp. 8–9).

The REFIT conclusions merely state that "there is no sufficient evidence to draw firm conclusions about the need for a revision of the Facilitators Package at this point in time" and only acknowledging that "[t]he main areas for improvement that have emerged as a result of the evaluation concern the perceived risk of criminalisation of humanitarian assistance" (European Commission, 2017a, p. 35).

The different impact of the REFIT and Fit for purpose processes in terms of policy-making appears manifest: the European Commission assumed a position of non-intervention, though it seems in contradiction with the overall analysis conducted and available evidence. The EP, on the other side, consistently with the findings of the studies commissioned, voted in favour of a resolution in order to avoid the criminalisation under the smuggling framework of humanitarian activities (European Parliament, 2018b).

Table 6.1., elaborated by Carrera et al. (2018b, pp. 28 – 29) is particularly interesting, as it analytically compares the main studies undertaken into the FP in the last years (including the ones considered in this section), highlighting the key challenges pointed out by each of them. It appears manifest that a great difference between the REFIT evaluation and the other studies (including those conducted by or for other EU

institutions, and the ICF study in particular, which was prepared for the European Commission itself, within the framework of the very REFIT) exists.

Table 6.1. – Key challenges of the Facilitators Packages in the main studies

Key challenges	FRA (2014)	House of Lords (2015)	Carrera et al. (2016)	ICF (2016)	UNODC (2017)	REFIT (2017)
Lack of financial or other material benefit requirement	√	√	√	√	√	X
Non-obligatory exemption of the humanitarian clause	√	√	√	√	√	X
Legal uncertainty among bona fide service providers	√	√	√	√	X	X
Legal uncertainty among actors providing humanitarian assistance	√	√	√	√	√	X
Criminalisation of migrants who are victims of smuggling	√	X	√	√	X	X
Disproportionate sanctions and penalties	√	X	√	√	X	X
Heterogeneous implementation by Member States	√	X	√	√	√	√

Source: Carrera et al., 2018b, pp. 28–29

However, holding the EC the power of legislative initiative, the impact of the REFIT was therefore more immediate and evident in terms of policy-making. Such an aspect seems consistent with the opinion of a MEP, who pointed out that the Commission appeared to be back in 2015 more inclined to progressive and ambitious positions, in line with the Parliament, in terms of migration policies, but it progressively moved towards more security-based positions, in line with the Council (EUR_2, May 2019).

These aspects are particularly relevant and shall be further considered in paragraph 6.4. and in chapter 7.

Lastly, the EC non-intervention decision seems even more striking if put in a historical perspective, recalling the very concerns expressed by the Commission at the time of the approval of the Facilitators Package in 2001. At that time, the European Commissioner Vitorino backed some of the concerns of the Parliament and expressed doubts as for the overall approach chosen by the Council, namely focusing on some of the most concerning elements – material gain and humanitarian exemption:

> Our second concern involves the scope of Article 1(a) of the draft directive. In its current wording and as matters stand today, this measure in the French proposal contains no reference to the objective of financial gain. The Commission is willing to study this approach, in other words, not to lay down the requirement of financial gain, but this would have to be balanced by a carefully worded exemption clause for cases where illegal entry, movement and residence are subject to assistance for humanitarian reasons. This is the only way it will be possible to distinguish clearly between humanitarian assistance under international commitments, specifically respect for the Geneva Convention, and the trafficking of human beings which is punishable by law (António Vitorino, European Commissioner for Justice and Home Affairs, 5th European Parliament, Session of 14 February 2001).

Even though these processes seem to be characterising non-institutional dynamics at an EU level, hearings and field visits still play an important role, in particular enabling MEPs to have direct contacts with NGOs and other leading (non-institutional) actors, such as in the case of the LIBE meetings of 6 May 2015, 4 June 2015, 25 June 2015, 10 October 2016, 12 July 2017; the inter-committee meeting of 15 September 2015 and the inter-parliamentary committee meeting of 24 January 2018; the 2015 LIBE/BUDG committees mission to Sicily, the 2015 LIBE mission to Lampedusa and the 2017 LIBE mission to Italy (see the analysis of the ‘multi-level’ layer in paragraph 6.2.).

However, based on the analysis of relevant sources and what said by interviewees, one of the most important actors in informal-to-institutional dynamics – and namely NGOs – seems to mostly act at an EU level in a mediated way, such as through parliamentary hearings/visits or, mostly, through consultation in research processes,

as in the cases above explored, rather than through direct advocacy. This reinforces the points of view of EUR_1 (March 2019) and EUR_2 (May 2019), among others, as for the knowledge-based policy-making process at an EU level, but leaving it open the issue of the actual impact that such knowledge eventually has on policy outputs.

6.3.3. "Integration without supranationalisation[48]"? The complex interaction between EU institutions

The interaction between different institutions at an EU level takes place within the space of the political debate, legislative process and, more limitedly, in the judicial arena, the most significant actors being the EP, the Council of the EU, the Commission and, to a lesser extent, the European Council and the Court of Justice of the European Union (CJEU). In this paragraph it is interesting to understand the main patterns of this interaction, not only based on what actors do, but also on the substantive content of the issues they bring forward.

Starting off with the interaction between EP and Council, i.e. the co-legislators of the EU, as was already noticed in section 6.3.1. the very involvement of different policy areas with different institutional mechanisms as well as the very architecture of the EU policy-making process, make this relationship central.

Practitioners tend to agree in depicting the Parliament as having a more progressive approach to migration and asylum, being at the same time marginalised in the decision-making process by the Council, though (for a more critical perspective, in particular on the role of the Parliament, see Trauner and Ripoll Servent, 2016). ITA_2 (April 2019) expressed the idea that the EU did not prove to be politically courageous enough on migration (partly different from asylum, where a common framework exists) because national governments (and so the Council) did not want to, whereas the EP was always willing to act, but had limited power.

On the same page is also EUR_1 (March 2019), who explained that, in his/her opinion, the Parliament improved Council's approach in many occasions, caring more about rights. Not surprisingly, this point of view is shared also by EUR_2 (May 2019), who

[48] The phrase is taken from Fabbrini and Puetter (2016). See also Maricut (2016) and section 1.3.1.

talked extensively about the role of Parliament and its relationship with the Council, stating in particular that (a) the role of the Parliament has definitely grown over the last years, after the Lisbon Treaty; (b) it tries to negotiate and balance different interests in the view of a higher EU interest; (c) it acts as a constraint to the positions taken by the Council.

S/he added, furthermore, some reflections on the marginalisation of the Parliament on certain issues, in spite of its great commitment. One example is the recast of the Dublin III Regulation, for which "the Parliament negotiated for 2 years, 22 meetings, approving a very ambitious resolution and with a very large majority, then blocked by Council, which did not find an agreement." Another one is the 2016 EU-Turkey Deal, officially called a 'statement' in order not to go through parliamentary ratification (striking, in this case, the similarity with the case of the 2017 Italy-Libya Deal and the appeal to the Constitutional Court, see 5.3.3.) and as part of an overall strategy to marginalise the Parliament (EUR_2, May 2019).

In such a context, besides marginalisation, the EP seems to have a very limited impact on Council bargaining and decision-making, as the rare cases in which MEPs tried to make pressure on governments were not quite successful (EUR_2, May 2019).

A direct example of the above two aspects (progressive stance and marginalisation) was provided in a few words by INT_2 (April 2019): "What I feel is that in Brussels there was a lot of appetite to try and make the humanitarian clause compulsory – including the European Parliament – but it didn't work". And in fact, looking more closely at the content of anti-smuggling legislation, proposal, resolutions, etc., the stance and, at the same time, the limited scope of the EP agency clearly come out.

Focusing, in particular, on the legislation on the smuggling of migrants stricto sensu, i.e. on the Facilitators Package[49], it is useful to start by making another digression out of the time frame considered (again, as in the cases in the previous chapter, only in order to provide a more detailed empirical background and maintaining all the methodological cautions previously recalled). The parliamentary debate on the French proposal concerning the would-be Facilitators Package already offers an overview of

[49] Not much can be said about the role of the EP in the ratification of the conclusion of the Smuggling Protocol, which was shorter, easier and less divisive (see also the debate which took place in the 6th European Parliament, Session of 4 July 2006).

some clear tendencies, which become particularly interesting in a comparative perspective over the years, showing the historical evolution of the different stances today witnessed.

The 2000 Ceyhun Report[50] is therefore crucial, proposing a series of amendments where one can clearly appreciate a general attitude towards a more comprehensive approach to migration, solidarity principles as well as a critical reflection about the financial gain issue and the humanitarian exemption. Among other things, indeed, the report clearly states the ineffectiveness of harsher border management, the call for a "common immigration and asylum policy", raising concerns about the lack of clarity towards the profit-driven nature of the offence and the lack of a mandatory humanitarian exemption. It concludes with a clear opinion that "the European Union must as a matter of urgency adopt a European policy on immigration promoting legal immigration into its territory" (European Parliament, 2000, pp. 20–23).

The parliamentary debate preceding the vote on the French proposals and on the amendments of the Ceyhun Report is interesting in showing (a) the biggest concerns regarding the issues of the criminalisation in itself and of the possible exemptions; (b) the rise of a debate on Fortress Europe, including also the aspect of carriers liability and the lack of an overall migration and asylum regime, reflected also in the proposed amendments:

> I ask you, ladies and gentlemen, is it a criminal act to help a persecuted person in this situation? Quite frankly, I am glad that there are courageous people who help those who are being persecuted. For this reason, it was very important to define facilitation and the honest facilitator precisely. The text of the French initiative did not distinguish between individual and organised facilitation or between commercial and moral facilitation. That is why a correction was crucial. I would not like to overlook the fact that trading in human beings is a lucrative business for criminals. But it would be a fatal mistake to believe that this problem can only be solved with restrictive measures. Police and judicial measures must be accompanied by a common European asylum

[50] The EP Report on the Facilitators Package, whose rapporteur was MEP Ozan Ceyhun, officially named the "Report on the initiative of the French Republic with a view to the adoption of a Council Directive defining the facilitation of unauthorised entry, movement and residence and on the initiative of the French Republic with a view to the adoption of a Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence" (A5-0315/2000).

and immigration policy (MEP Ozan Ceyhun, *rapporteur*, PES, 5th European Parliament, Session of 14 February 2001).

I realise, however, that carriers cannot be held liable for transporting persons who request political asylum immediately upon arrival within the territory of a Member State. Carriers have neither the ability nor the authority to assess the admissibility of an application for asylum, and hence I understand that under no circumstances can they be directly or indirectly persuaded through these instruments to carry out an assessment of suitability. Sanctions must be proportionate and balanced and the punishment must be made to fit the crime (MEP Carmen Cerdeira Morterero, PES, 5th European Parliament, Session of 14 February 2001).

As early as in the 2000s, the Parliament was already the arena for in-depth political and moral debates on migration, basic liberties and human rights, as already briefly mentioned in section 6.3.1. and as it shall be further considered below in this section and in the next paragraph, understanding also how this pattern has changed over time.

In such a context, challenges to a Party of European Socialists (PES)-led report, which aimed to correct the shortcomings of the French proposals, came both from the right and the left, for opposite reasons:

It is important for me to emphasise straight away that the EPP is in agreement with the aim of the French initiative. It is vitally important to curb illegal immigration and to deal with the criminals who are exploiting poor people to their own advantage, both financially and in other ways. However, […] it seems to me difficult to try to decriminalise the facilitation of illegal immigration for some groups rather than others. The notion that those acting with humanitarian intentions should be immune from prosecution is very problematic and certainly subjective (MEP Timothy Kirkhope, EPP-ED, 5th European Parliament, Session of 14 February 2001).

It is said that trafficking in human beings is a lucrative business, but I maintain that, with projects like this, it will become still more lucrative. The price will rise, and the Mafia will, of course, add the cost of their fines to it. […] I have to say that the rapporteur has done his best to temper the proposal. He has really made an effort, but it is nonetheless still a matter of treating the symptoms. We are not treating the disease (MEP Pernille Frahm, GUE-NGL, 5th European Parliament, Session of 14 February 2001).

> Both the Commission proposal and the report admit that illegal entry can lead to an application for asylum being approved. […] The conclusion is that separating commercial from humanitarian facilitation serves no useful purpose because the policy of isolation is increasingly being promoted and aid for refugees is becoming more of a financial burden (MEP Ilka Schröder, Greens/EFA, 5th European Parliament, Session of 14 February 2001).

Based on the above criticism, the EP eventually rejected the French proposals in the session of 13 February 2001, assuming since the very beginning the role of prominent opponent of the Facilitators Package. Such role would be kept also in the following years, in particular on the issues of material gain and humanitarian exemption, even if abandoning some of the most progressive approaches, such as the exemption for carriers liability for transporting asylum seekers into the EU (see Carrera et al., 2018b, p. 55 and, more broadly, pp. 53–58, where the most relevant acts passed by EP calling for a review of the criminalisation of smuggling and humanitarian exemption are briefly considered).

Not surprisingly, therefore, these issues have regained an utmost importance in these very last years (and in particular in the time frame considered in this research), also due to the overall evaluation of the Facilitators Package above recalled. Following a question put forward by MEP Claude Moraes on behalf of LIBE committee, recalling that "instances of unintended consequences of the 'Facilitators Package' have occurred, affecting citizens and residents providing humanitarian assistance to migrants" (European Parliament, 2018d), the EP approved the non-legislative resolution of 5 July 2018 (Guidelines on humanitarian assistance Resolution) asking the Commission to issue guidelines for Member States to prevent humanitarian assistance from being criminalised.

Here all the shortcomings and unintended consequences concerning humanitarian assistance were clearly stated and the Commission was therefore urged to take action in such respect (European Parliament, 2018b).

In the parliamentary debate, though, the overall feeling was quite different, and next to those progressive views calling for such guidelines – namely coming from the left, green, liberal and socialist areas – also strong criticisms were brought forward by

conservative and right-wing MEPs, being the following two particularly significant as brought to the plenary by MEPs on behalf of their respective political groups:

> Another issue equally important, in my humble opinion, is to guarantee that, with the excuse of a humanitarian action, the passage of illegal migrants not be facilitated (MEP Frank Engel, on behalf of EPP Group, 8th European Parliament, Session of 3 July 2018).

> Mr President, yes, people should be helped when in distress. But sometimes people get themselves in distress in order to be rescued. […] These people take to the sea on rubber boats and other unseaworthy vessels because they know they have a good chance of being picked up by NGO ships that are waiting close to the Libyan coast, and of being ferried to Europe. […] This maritime taxi service should not be able to operate with impunity (MEP Jussi Halla-aho, on behalf of the ECR Group, 8th European Parliament, Session of 3 July 2018).

It should be therefore noted that the Parliament seems to have kept, over the years, this more open and human-rights-sensitive approach, in light with the morally-oriented debate above recalled, even if the terms of this have started to change over the last years, also in the light of the overall political climate (a point which was discussed also with ITA_2, April 2019 and EUR_2, May 2019).

The way in which all this interacts with the Council is hard to say, the last being an institution more difficult to be analysed because of the lack of publicly available data and sources and the subsequent need of resorting to interviews to fully explore its internal dynamics[51]. Its positions may be more inferred than observed (as pointed out by EUR_2, May 2019, in terms of less transparency at Council level) and the law-making process shows how the concerns and criticisms raised by the Parliament did not impact on the approval of the Facilitators Package, given also the fact that the act was approved under the consultation procedure.

In the present time, after the changes brought by the Lisbon Treaty, the relationship seems to be still more favourable to the Council, which is able to halt legislative reforms coming from the Parliament (see again Trauner and Ripoll Servent, 2016 on the

[51] More on this aspect and on the heuristic relevance of the internal dynamics of the Council in this policy domain will be said in the Conclusions.

advantageous situation of the Council in maintaining the status quo created before the communitarisation of JHA, as was already discussed in chapter 1). EUR_2 (May 2019), in particular, explained that there is a higher likelihood in finding an agreement and a compromise in the Parliament, where transversal majorities (different from those of the national arenas) can be built, rather than in Council: “Not being able to find a minimum agreement on internal solidarity, it has only done externalisation policies. Only on externalisation policies governments have been able to find an agreement”. S/he put it in terms of institutional constraints: “There is a weakness, that the Parliament is paying for, for how the present European system is built”.

These points of view are generally extended by the same MEP interviewed to the overall activity and relationship EP/Council in the migration and asylum field (EUR_2, May 2019). And, in fact, EP more openness on the one side and marginalisation with respect to the Council in the impact on the policy-making process on the other side are aspects that seem to apply not only with the reforms of the FP, but also on other issues in the migration and asylum agenda.

Throughout the legislature 2014-2019, in particular, the EP approved several significant acts in this field. Three of the most important ones can be recalled, being they two resolutions, particularly prominent in terms of disclosing the general approach to the issue, and a report on the Commission proposal for the reform of Dublin III Regulation, crucial for the concrete impact on the asylum system of the EU:

1. The European Parliament resolution of 10 September 2015 on migration and refugees in Europe[52] (2015/2833(RSP));
2. The European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration[53] (2015/2095(INI));

[52] The resolution passed with 432 ayes (68%), 142 noes (23%) and 9 abstentions (7%). It should be noted that it proved particularly divisive for the EFDD (35.71% cohesion index) and, to a lesser extent, the EPP Group, with a 61.29% (data retrieved from http://votewatch.eu).

[53] The resolution passed with 459 ayes (64%), 206 noes (29%) and 52 abstentions (7%). It proved particularly divisive for some political groups, namely the GUE-NGL, which showed a cohesion index of 17.35%, the EFDD (40.79%) and, to a lesser extent, the EPP, with a 65.78% (data retrieved from http://votewatch.eu).

3. The Report on the proposal for a regulation of the European Parliament and of the Council 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) [COM(2016)0270 - C8-0173/2016- 2016/0133(COD)].

The two resolutions, in particular, confirm the aforementioned aspects in terms of overall stance and effectiveness, with the understanding, among other things, of the lack of safe and legal routes and its consequence on smuggling, the importance of SAR, the need to revise the FP and to include exoneration for victims of smuggling as a safeguard for those smuggled migrants who decide to collaborate (European Parliament, 2016, pp. 10–21):

> [The European Parliament r]ecalls that the Member States should lay down strong criminal sanctions against human trafficking and smuggling, both into and across the EU; calls on the Member States to combat criminal networks of smugglers, but in the meantime not to penalise those who voluntarily help migrants on humanitarian grounds, including carriers, by asking the Commission to consider revising Council Directive 2001/51/EC; takes note of the EUNAVFOR Med operation against smugglers and traffickers in the Mediterranean; [r]egrets that the leaders of some Member States and the far-right parties are using the current situation to fuel anti-migration sentiments while blaming the EU for the crisis, and that this is giving rise to growing numbers of violent actions against migrants.

The debates preceding the adoption of the resolutions are also interesting in contributing to:

1. The delineation of the different stances in the house, besides those fully in line with the report, i.e. mainly the Progressive Alliance of Socialists and Democrats (S&D), the Greens/European Free Alliance (EFA) and the Alliance of Liberals and Democrats for Europe (ALDE). Those of the European United Left/Nordic Green Left (GUE-NGL), on the one side, and of the European Conservatives and Reformists (ECR), on the other side, are particularly significant in criticising the approach for opposite reasons (cf., among others, the speeches of MEPs Marina Albiol Guzmán, GUE-NGL, and Jussi Halla-aho, ECR, 8th European Parliament, Session of 12 April 2016);

2. The difficult relationship with the Council:

> [T]he European Parliament has tried to reach a unitary position for a holistic approach to migration, but it is also true that on the other side the complete powerlessness of the European Parliament emerged, with regards to the selfishness of Member States (MEP Ignazio Corrao, EFDD, 8th European Parliament, Session of 12 April 2016).
>
> This own initiative report is the nth call to action that we launch to Member States to act together for the general good of all (MEP Barbara Matera, EPP, 8th European Parliament, Session of 12 April 2016).
>
> Too often we have spent hours of our time in this Parliament to discuss, debate and welcome with great satisfaction some choices made by the Juncker Commission, but then having to observe their failure, due to insensibility and incapacity especially of the Council (MEP Salvatore Domenico Pogliese, EPP, 8th European Parliament, Session of 12 April 2016)*;*

3. The rise of a more pragmatic attitude of the Parliament, especially in a historical perspective:

> The text offers some general balanced guidelines, avoiding extremist pushes on any side, which could definitely tear apart the moderate sense of cooperation and compromise that this report is dripping with (MEP Barbara Matera, EPP, 8th European Parliament, Session of 12 April 2016).
>
> Mr President, the shortcoming of the solutions proposed by both the Commission and Parliament is that they focus on the question of how we could make irregular immigration more regular (MEP Jussi Halla-aho, ECR, 8th European Parliament, Session of 12 April 2016).

Also the case of the 10 September 2015 resolution is particularly relevant as the whole debate of the day before was focused on MEPs fear and scepticism towards the forthcoming Council of 14 September 2015, in spite of the reassurances of the Luxembourg presidency (being the very resolution part of the special legislative procedure concluded by Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit

of Italy and of Greece). The overall game between Parliament and Council (and Commission) is expressed by these words of First Vice-President Timmermans:

> I just want to use this opportunity, when three institutions are coming together to talk about this issue, to call upon the European Parliament to strongly support the Commission's proposals today. That would be a clear signal in the preparation for the Council on Monday, where we know that some Member States still have a number of steps to take before they can agree with the Commission's proposal. The stronger Parliament can be today in coming out with its position, the better we are prepared for the Council on Monday (Frans Timmermans, First Vice-President of the Commission, 8th European Parliament, Session of 9 September 2015).

Not surprisingly, the overall tone of the debate, a few days later, discussing the JHA Council conclusions, went in the same direction, highlighting Council's shortcomings, and the challenges of this inter-institutional relationship:

> Mr President, we have to tell the truth to the public: the meeting of the ministers of the interior was a failure. We did not reach an agreement even though, in my opinion, it is in fact a topic that could be decided with a qualified majority, and I am very doubtful that on 22 September we are going to get a deal. In my opinion, it is an issue that has to be tackled at the level of Heads of State or Government and no longer on the level of ministers of the interior alone (MEP Guy Verhofstadt, on behalf of the ALDE Group, 8th European Parliament, Session of 16 September 2015).

Consistently with the general feeling of the house, the Council conclusions were further defined as "one of the most shameful page in the history of the European Union", "outrageous" and a "disgrace", respectively by MEPs Laura Ferrara, on behalf of the Europe of Freedom and Direct Democracy (EFDD) Group; Barbara Spinelli, on behalf of the GUE-NGL Group and Ska Keller, of Greens/EFA (8th European Parliament, Session of 16 September 2015). In this perspective, the characterisation (and self-perception) of the house as a lieu of morally-oriented debate, focusing on basic liberties and human rights, appears even stronger when compared to the EU intergovernmental bodies, even though this has not always necessarily been translated by the EP itself into consistent policy outputs.

All this was only very limitedly balanced by right-wing MEPs, sustaining the reasons of an intergovernmental approach:

> Those Member States who believe there is more than one solution are currently accused of being less European than others (MEP Timothy Kirkhope, on behalf of the ECR Group, 8th European Parliament, Session of 16 Spetember 2015).

Also the Commission criticised the outcome of the Council meeting, even if trying to mitigate the institutional clash and showing trust towards the Council (consistently with its pivotal role):

> Yes, I expressed my frustration at the outcome of the recent Council but, with your support and the excellent work done by the Luxembourg Presidency, we will all go this extra mile united (Dimitris Avramopoulos, EU Commissioner for Migration, Home Affairs and Citizenship, 8th European Parliament, Session of 16 September 2015).

Again on the unequal relationship with the Council and on the way in which progresses made in Parliament are halted there, the legislative process of the Dublin III Regulation recast offers some further elements of reflection. In this case, the long process of negotiation and agreement in the European Parliament, in spite of the higher polarisation of the debate and the dissatisfaction with the proposal of the Commission, led to a common text, which tried to ensure a balance between burden sharing and avoidance of secondary movements (European Parliament, 2017c). An agreement eventually frustrated by the incapability of the Council to find in turn a compromise (EUR_2, May 2019 and ITA_2, April 2019. See also European Council, 2018).

The parliamentary debate of 15 January 2019 is particularly significant in this regard, since a general blame towards the Council for the asylum deadlock took place (with the notable exception, as in the cases previously considered, of right-wing MEPs). Again, the words of the Commission perhaps exemplify this criticism against the Council best, and somehow introduce the stance of this third, relevant actor, which will be further in-depth explored:

> I said this in December, and I will not stop making this point until we succeed: now is the time to finalise the reform of the European Union's asylum rules, now is the time for the governments to take up their responsibilities in the Council and stop blaming the Commission. I count on this House's continued support and before I close my remarks, I would like to express my gratitude to Parliament for its support during all these four years (EU Commissioner Dimitris Avramopoulos, 8th European Parliament, Session of 15 January 2019).

Two more examples of this institutional tension can be recalled:

1. The already mentioned issue of the humanitarian visas, when, "[i]n September 2017, following the deadlock in trilogue negotiations, due to the Commission and Council's opposition to including provisions for a humanitarian visa, Parliament withdrew its amendments" (European Parliament, 2019);
2. The signature of the Global Compact for Safe, Orderly and Regular Migration (GCM), where the lack of agreement in the Council and, in particular, the alleged incapacity of the Austrian presidency of representing the EU as a whole were debated (8th European Parliament, Session of 13 November 2018).

A last issue which helps to understand the relationship between EP and Council is SAR policy-making, and specifically the launch of Operation Sophia, which followed the massive shipwreck which took place in April 2015, when almost 700 migrants lost their lives (Reuters, 2016).

The operation was launched in May 2015 with the following objective:

> The Union shall conduct a military crisis management operation contributing to the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean (EUNAVFOR MED), achieved by undertaking systematic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers or traffickers, in accordance with applicable international law, including UNCLOS and any UN Security Council Resolution (Article 1 of Council Decision CFSP 2015/778).

The main criticism that came out from the very beginning had to do, as previously mentioned, with its very nature of CSDP operation. Being established under article 42(4) of TEU, indeed, Operation Sophia and its mandate were actually approved (unanimously) by the Council of the EU (upon identification of the EU strategic interests from the European Council, see below) and placed "outside EU rule of law and democratic scrutiny by the European Parliament" (Carrera and Lannoo, 2018, p. 4). Such an approach, which entails substantive issues in terms of privileging a military-security based approach (see section 6.3.1.), implied SAR activities not because they were the main goal of the operation itself, but merely because of the existing obligations under international maritime law (cf. Bevilacqua, 2017; Carrera and

Lannoo, 2018 and Rasche, 2018). This, in turn, had substantial operational implications: if the main objective is to save lives, then ships will be placed at the limit of Libyan territorial waters; if it is that of countering smuggling, they will be placed closer to the limit of EU waters (see the outcomes of the Italian parliamentary committee hearings on this point, in section 5.2.1.). The non-existent role of the EP was clear and important also in all the subsequent issues concerning its extension and mandate, which were heavily challenged and discussed by Italy (Frenzen, 2018 and Rasche, 2018. See also section 5.2.2.), eventually solved exclusively at intergovernmental level (Council of the EU, 2019, among others).

Considering the overall analysis of the two co-legislators now concluded, the roles of the European Commission, the European Council and the CJEU will now be analysed.

Starting off with the Commission, it is immediately interesting to look more closely at the tripartite relationship with the EP and the Council, where the EC agency needs to balance different (and even opposite) pulls coming from the other two bodies and its own point of view.

EUR_2 (May 2019), for example, talked about the way in which, throughout the eighth EP legislature, the EC position dramatically changed: “The Commission had started with a quite ambitious stance on the migratory issue and on how to deal with it, it had presented in 2015 a European Agenda on migration, which, albeit not perfect […], had this kind of sort of a holistic approach to the migratory issue”. An approach which got lost along the way, according to him/her: “The Commission itself, even if it was first courageous in 2015, then substantially bent very much to the divisions among governments and even its language changed, its stance changed, we saw it no longer defending legislative proposals coming from the Commission itself”.

Following this perspective, it seems that in the very moment in which the policy-making in anti-smuggling related issues became extremely controversial and polarised at an EU level, the Commission tended to move towards MSs positions, rather than those of Parliament.

ITA_2 (April 2019) supported this view, saying that “the Commission would even want to act – or at least there were some signals that it wanted to act – but then the Council is that really decides”. And in fact, an overview of the approach proposed by the Commission itself in 2015 – European Agenda on Migration and EU Action plan against

migrant smuggling (the EU Action Plan) in particular – showed a more open, advanced stance (even though in an overall security-based framework), with an integrated approach to undocumented migration and smuggling which even included the issue of the demand side and smuggled migrants protection (see the smuggling spectrum in section 1.2.3.), but which was apparently eventually dropped. The following extracts are representative of the initial stance of the Commission on these points:

> Smuggling networks can be weakened if fewer people seek their services. Therefore, it is important to open more safe, legal ways into the EU. […] The EU should step up efforts to provide smuggled migrants, in particular vulnerable groups such as children and women, with assistance and protection (European Commission, 2015b, pp. 2–7).

> We all share a common objective. We all agree that the time has come to replace chaotic, irregular and dangerous migratory flows with organised safe and legal pathways to Europe. Like the European Agenda on Migration, your report rightly stresses the need to work on all aspects of migration […]. We cannot work on one of the aspects and ignore the others. We cannot pick and choose what to focus on […]. We also need to enhance safe and legal pathways to Europe to stop migrants from embarking on dangerous journeys. This is why we will put forward a horizontal mechanism for resettlement (Dimitris Avramopoulos, EU Commissioner for Migration, Home Affairs and Citizenship, 8th European Parliament, Session of 12 April 2016).

Not surprisingly, in the first years of the eighth legislature a clear sense of cooperation between Commission and Parliament emerged, exemplified by the EP debate of 20 May 2015 on the European Agenda on Migration, one of the highest point of this sort of political honeymoon. In this occasion, First Vice-President Timmermans strongly stressed the parliamentary contribution to the Agenda and majority groups showed unchallenged support to the Commission and criticised the selfishness of Member States:

> I strongly support the Commission's proposal of last week on migration, because I think the Commission has assumed your responsibility, and that is not the case with the Council. The Commission has, in fact, taken a stance that is absolutely necessary because it promotes the interest of all, rather than focusing on single Member States (MEP Guy Verhofstadt, ALDE, 8th European Parliament, Session of 20 May 2015).

> Now I can say that the work of the Commission met our expectations, with forward-looking proposals, consistent with what adopted in this House. At this time, we only have to monitor […] above all so that the alliance between Commission and Parliament not be broken (MEP Cécile Kashetu Kyenge, S&D, 8th European Parliament, Session of 20 May 2015).

However, although the initial approach of the EC in those years included elements of openness in a holistic and integrated perspective, appreciated by the Parliament, the overall framework was, as mentioned, definitely a security-based and border control one, as other extracts of the same EU Action Plan and Commissioner Avramopoulos 12 April 2016 speech above considered demonstrate:

> Also, efforts to crack down on migrant smuggling must be matched with strong action to return the migrants that have no right to stay in the EU to their home countries. An effective return policy is a strong deterrent, as migrants are less likely to pay a high price to smugglers to bring them to the EU if they know that they will be returned home quickly after reaching their destination. […] The Commission will develop, by 2017, a handbook on prevention of migrant smuggling, including, possibly, codes of conduct for drivers and operators of merchant and fishing vessels (European Commission, 2015b, pp. 2–7).

> The agreement reached between the European Union and Turkey should also be seen in this broad context. Implementing this agreement is a challenge. We are working tirelessly to put in place all the legal, practical, logistical and financial arrangements to implement it. […] Europe has to adapt its migration policy to provide orderly and safe pathways to the European Union for those who need protection and those who can contribute with their skills and talents to the European Union's economic development. We need to share responsibility, reduce irregular arrivals, and prevent and sanction secondary movements (Dimitris Avramopoulos, EU Commissioner for Migration, Home Affairs and Citizenship, 8th European Parliament, Session of 12 April 2016).

It is remarkable that the EU-Turkey Deal is here brought by EU Commissioner Avramopoulos as part of an example of a successful holistic approach, whereas it was targeted as one of the strongest cases of shifting out policies, also jeopardising human rights of migrants (Gogou, 2017 and Strik, 2019, among others).

Content-wise, in fact, the general approach of the EC appears to be stable over the years, alternating elements of a holistic approach, including the demand side for migration and smuggling, with harsh repressive and border control policies, as these other extracts from some parliamentary speeches of First Vice-President Timmermans and Commissioner Avramopoulos help to show:

> We need to build a stronger criminal justice response to stop this crime [i.e. smuggling], investigating and prosecuting those in charge more severely. The EU plan that we intend to develop to counter migrant smuggling will focus both on dismantling the criminal networks […], and on prevention, […]. The response to the migratory pressures at the borders and smuggling should include a strengthened role for Frontex (Dimitris Avramopoulos, EU Commissioner for Migration, Home Affairs and Citizenship, 8th European Parliament, Session of 25 November 2014).

> Let me be clear: this [migration pressure] is not due to any 'pull factor'. This is because our immediate neighbourhood is on fire. It is because we are living in a time of instability and Europe is seen as a refuge in times of crisis. It is time we started being responsible about it, recognising that we need to start acting together in Europe (Dimitris Avramopoulos, EU Commissioner for Migration, Home Affairs and Citizenship, 8th European Parliament, Session of 20 May 2015).

> For that reason, we need to make a clear distinction between those who deserve our solidarity because they flee from war and persecution, and those who might have genuine feelings about seeking a better future but should not abuse the asylum system to attain that goal. To do that, we need a combination of solidarity and responsibility: […] the responsibility to better guard our borders; the responsibility to make a swift registration of those who arrive at the borders so we can distinguish between those who have the right to asylum and those who do not; responsibility to create list of safe third countries so that we can be swifter in returning people who have no right to stay; responsibility to organise the reception of refugees in a way that respects their human dignity (Frans Timmermans, First Vice-President of the Commission, 8th European Parliament, Session of 9 September 2015).

Rather than an upside-down turn in the substantive stance of the Commission, what did happen appears to be the progressive decline, in a policy-making perspective, of the capacity of positively interacting with the more moderate – arguably the European People's Party (EPP), S&D, ALDE majority – part of the European Parliament. This

was the case especially on Dublin III Regulation-related and humanitarian issues, where the Commission failed to stress those stances supported by the majority in EP, in favour of a more Council-bound position (EUR_2, May 2019), losing those elements part of a holistic approach, which were meant to balance (at least in the eyes of the majority political groups) harsher policy outputs.

Another example referred by this MEP is the attempt of MSs, together with the Commission, to place mandatory controls on the safe country (which is a "very political concept", s/he stressed) of origin of asylum-seekers, i.e. the 'inadmissibility ground', which, s/he explained, would have been contrary to the Geneva Convention. A request accepted by the Commission, which is arguably problematic in terms of balancing between co-legislators, considering in particular the extreme influence on legislative drafting that the EC holds (EUR_2, May 2019).

However, the difference between the EP and the Commission approaches had already become clear in the assessment of the existing anti-smuggling frameworks conducted in the previous section and in the clear move towards Council's positions in concluding for the lack of sufficient evidence for a reform of the Facilitators Package. Notably, in spite of the importance of the issue and of a clear request in this direction, the EC did not even issue guidelines for MSs regarding humanitarian exemption, as requested by the Parliament (see above), limiting itself to an 'understanding of the concerns':

> We do not want in any way to prosecute citizens and organisations that provide genuine assistance to those in it. […] The Commission understands Parliament's concerns about how the EU legislative framework might impact citizens providing humanitarian assistance. So we take note of your request for guidelines to be issued on this delicate matter. […] Our objective is to create and maintain an ongoing dialogue and exchange with interested stakeholders. We want to gather evidence and foster a dialogue on the implementation of the Facilitators Package precisely to avoid criminalisation of humanitarian assistance (Dimitris Avramopoulos, EU Commissioner for Migration, Home Affairs and Citizenship, European Parliament, 3 July 2018).

Other significant examples, in such perspectives, are the issues of:

1. The training of the Libyan coast guard and the overall support to Libya, which saw the Commission and the Council as substantially aligned, whereas it was strongly criticised in the EP, also by majority groups, namely S&D and ALDE "a

solution for migration flows is certainly not dirty deals with shady regimes" (MEP Sophia in 't Veld, on behalf of the ALDE Group, 8th European Parliament, Session of 12 September 2017; see, more in general, this whole session and Session of 1 February 2017);

2. The externalisation policies, again matter of inter-institutional division during the debates on the GCM, in particular in Session of 17 April 2018 and Session of 13 November 2018.

Lastly on the Commission, and keeping the focus on the Facilitators Package, a UNODC officer discussed about the long dialogue between his/her office and the EC (mainly at working level, as was already mentioned, with officers working on the issue in Brussels, but also with other specialists from Europol and Eurojust), especially aimed to change the profit element or to make "at least the humanitarian clause […] mandatory" in EU legislation, but without any success. So "there is a strong responsibility of Member States there but we also had a long dialogue with the European Commission", which eventually, de facto, aligned to those policy preferences, and where, in his/her opinion, a decisive word came from MSs practitioners (INT_2, April 2019). A responsibility which EUR_2 (May 2019) considered as mainly political and not attributable to the DGs: even if the latter do have political influence (an aspect which is definitely interesting, and criticised by EUR_2, May 2019, when it is used to influence the legislative process on the basis of national stances), in this case, "on the whole, the political level got stuck on migration and asylum policies in these years".

The above examples offer a clear view of the importance of the EC in these policy areas and of the sometimes-contradictory role assumed, in particular, in the persisting inter-institutional tension between EP and Council. Moving now to the other two institutions recalled – European Council and CJEU – there definitely are less data to be analysed, even though this is far from meaning that their role is marginal (especially for the European Council) and some interesting issues can still be considered.

As for the European Council, in a policy area where the intergovernmental game has preserved strong importance, this institution has evidently showed a clear centrality firstly in terms of definition of "the strategic guidelines for legislative and operational planning within the area of freedom, security and justice" (Article 68 Treaty on the

Functioning of the European Union, TFEU). The conclusions of the June 2014 or October 2017 meetings, among others (European Council, 2014 and 2017), or those above recalled of June 2018 (European Council, 2018) are clear examples of this, showing how the subsequent intergovernmental bargaining at Council of the EU level is informed and influenced by this.

An even clearer role was played under Article 26(1) of Treaty on European Union (TEU)[54], in particular related to the launch of the EUNAVFOR MED Operation Sophia. The whole political and legislative procedure above recalled, indeed, was de facto started by the European Council in the special meeting of 23 April 2015, right after the mentioned massive shipwreck, by inviting the High Representative "to immediately begin preparations for a possible CSDP operation" which would then become Operation Sophia (European Council, 2015).

In this very occasion, just a few days after the European Council special meeting, the European Parliament resolution of 29 April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies[55] (2015/2660(RSP)) was approved, showing only partial satisfaction with the conclusion of the 23 April meeting and calling for a deeper commitment from European Council, Commission, Council and MSs. In the connected debates of 29 and 30 April 2015 the points of view of the different actors involved clearly emerged, showing, besides the mentioned critical stance of the vast majority of the house, providing one more example of moral debate on migration and human rights, also an advanced position of the Commission (later abandoned or, at least, mitigated, as showed throughout the chapter), in contrast with the defensive attitude of the European Council:

> The European Council response to the human tragedy that we have just witnessed in the Mediterranean was immediate, but it remains insufficient. […] I mean that the conclusions that we adopted at the extraordinary Council remain lower that the level

[54] Which states: "The European Council shall identify the Union's strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications. It shall adopt the necessary decisions."

[55] The resolution passed with 449 ayes (67%), 130 noes (19%) and 93 abstentions (14%), with a majority composed of S&D, ALDE, Greens/EFA and, to a lesser extent, EPP (data retrieved from http://voetwatch.eu). Notably, GUE-NGL MEPs either abstained or voted against, as "this report […] seems to us an attempt of the majority groups to clean their image" (MEP Marina Albiol-Guzmán, GUE-NGL, 8th European Parliament, Session of 30 April 2015).

> of ambition which should be ours. […] Solidarity has to be shared. We urgently have to deal with issues related to notion of legal immigration. If we do not open, even in half, the entry door, we cannot be surprised when some of the unfortunate ones of the whole planet break into through the window. It is necessary to open the doors in order to avoid that! (Jean-Claude Juncker, President of the Commission, 8th European Parliament, Session of 29 April 2015).
>
> Europe did not cause this calamity. It is caused by poverty, war, instability, failing states and a population boom in Africa. […] We are going after the smugglers, who are the real culprits – criminals, in fact – and we have already sent an important message about our readiness to act. […] According to many of your interventions, our meeting last week decided too little. Prime Minister Renzi said after the meeting, and I quote, 'Europe has shown serious commitment. For the first time, there is a shared strategic approach'. Similarly, Joseph Muscat of Malta said, 'There is a new sense of resolve. What happened last week has definitely changed the mood in the European Council and in Member States'. In this case, I will respect the opinions of the leaders in the countries most affected (Donald Tusk, President of the European Council, 8th European Parliament, Session of 29 April 2015).

It appears, altogether, that the impact of the European Council on the EU policy-making related to undocumented migration and smuggling becomes more important on particularly controversial or highly prioritised issues. Otherwise, it is *limited* to the general setting of the political space where the Council of the EU will eventually move. Limited and ancillary evidence as to the role of the European Council in this research seems in line with the findings of Maricut (2016, pp. 545–546), where besides (and more) than in agenda-setting, the role of the European Council becomes important in JHA with its "ad hoc involvement in addressing ongoing crises" and its input that "creates tremendous political pressure on the other institutions."

Lastly, as for the role of the Court of Justice of the European Union, those interviewees that talked about it highlighted the marginal role in the policy-making concerning undocumented migration and smuggling. There are several cases on asylum policies (being two of the most interesting ones C-643/15 and C-647/15, jointly adjudicated by the Court, establishing the duty of solidarity between MSs in migration policies), but almost none specifically connected to the issues at stake and with a significant impact on policy-making. Some (EUR_2, May 2019, for example) argued that this is partly due

to the willingness of MSs to avoid judicial scrutiny and creating the conditions to impede it, such as in the EU-Turkey Deal. Interestingly, in one of the last debate of the legislature on migration, MEP Spinelli stated that, in her opinion, “the Council is guilty over negligence and the Court should take care of it” (MEP Barbara Spinelli, GUE-NGL, 8th European Parliament, Session of 15 January 2019).

A greater impact, in terms of judicial policy-making, would be that of the European Court of Human Rights (see also section 6.2.2.), such as for those cases related to the principle of non-refoulement and push-back in high seas like *Hirsi v. Italy*, but they fall outside the EU institutional scope. Nevertheless, they could be object of further research, including a fourth international level of governance, such as shall be discussed in the next paragraph.

6.4. Policy-making dynamics at a supranational level: an analytical synopsis

In concluding this chapter, some analytical observations can be drawn regarding the overall policy-making dynamics at a supranational level, in a similar way to what was already done in the previous chapter. This will make it possible to provide an answer to SQ3: what factors and dynamics are relevant to the formulation of policies against migrant smuggling on a supranational level?

Applying the three-layer analytical model it was possible to disclose several elements that characterise the process of policy adoption in Brussels, even if this sometimes caused some overlaps and repetitions (e.g. the Diciotti case, among others).

Focusing in particular on layer 2, i.e. the ‘multi-level’ dimension, the patterns of a twofold bottom-up perspective were presented (Caponio and Jones-Correa, 2017), considering the direct connections both with the local (Sicilian) and the national (Italian) levels. The combination of this bottom-up perspective with other top-down elements already assessed in previous chapters substantially contributed to the understanding of MLG dynamics in migration policies (Zincone and Caponio, 2006).

The main actors that emerged were, in the case of the local arena, intermediate bodies (ANCI and DNA, whose activity remarkably goes beyond the national boundaries) and EP standing committees, very similarly to what seen in chapter 5, even if in a less

systematic way. As for the latter, their activity involved an interaction with local governments, law enforcement agencies and the judiciary, among others.

Read from an EU point of view, intermediate bodies worked with several institutions and agencies, but a direct connection (field visits and hearings) mostly happened with the Parliament. The Commission and the Council appear therefore to be marginal in this specific dimension, on the one side for the very institutional architecture of the European Union, but also for a different attitude of the actors. The relationship between MEPs and their constituencies could be significant, if considering for example the role played by Sicilian (and, more generally, Italian) MEPs in the planning of field visits. This, in turn, leads the whole discourse back to the coexistence of institutional and agency explanations (Olsson, 2016) which shall be deepened in the next chapter, exploring layer 1 of the analytical model.

Overall, the way in which these dynamics are able to provide evidence for the policy-making (Baldwin-Edwards et al., 2019) is more limited if compared to other channels, such as the mediated connection through research and academia (see the 'governance' layer). The consideration of the substantive issues addressed, that will be done below, shall help in the understanding, however, of the extent to which these processes were anyway significant in order to inform the policy adoption.

The dynamics of connection with the national level, on the other side, showed an involvement of all the three main actors at an EU level (EP, Council, Commission), also due to the very twofold nature of the national government. Also the national parliament appears quite significant, within the overall framework established by the EU treaties.

Here, besides field visits and hearings, that took place similarly as in the ground dimension, an important factor was the overall influence coming from the national debate, referred both to the Council and to Italian MEPs (on similar dynamics, cf. Frid-Nielsen, 2018).

In an arena where evidence of direct connections is quite limited, two interesting elements can nevertheless be noted:

1. The ambiguity of the national government stance, alternating requests for a support of national policies (such as in the case of the 2017 Code of conduct) with the use of the very national policies in order to make pressure on the EU

(such as in the Diciotti case). Here an important variable can be the different political stance of the government and of the Minister of Interior (in the first case Marco Minniti, in the last one Matteo Salvini), reinforcing also in an external dimension the argument about the persisting difference in agency of centre-left and centre-right in Italy on migration policies, even in presence of very similar outcomes (cf. Zincone, 2011);

2. The contradiction between governmental discourse at a national level, often based on the 'blame Brussels' argument, in particular throughout the Conte Government, and the actual political stances assumed at EU level.

One should consider, furthermore, the peculiar role of EU agencies and bodies (Europol, Eurojust, Frontex, EUNAVFOR MED) involved in the bottom-up interactions, in terms of principal-agent relationship (Pollack, 2017). They indeed have a clear operational mandate from MSs and EU institutions but, in the fulfilment of this mandate, they send back information and upload preferences that in turn influence the policy debate and making (e.g. in relation to smugglers' characteristics and judicial cooperation, where requests and recommendations coming from these actors seem to be particularly proactive, according to the accounts of JUD_3, April 2019).

Content-wise, the issues addressed vary substantially, going from the sharing of evidence coming from the ground to the advocacy in order to get more resources and a direct management of them or to assume stances more favourable to Italy.

Several of the issues already considered in the multi-level dimension of the national level (see chapter 5) are present also here, such as smuggling characteristics, the relationship with other policies, SAR operations, 'shifting south' policies.

Remarkably, in spite of the importance suggested by the evidence considered, the NGO-related debate and the closing harbours issue (including the open harbours campaign) seem to have less room than at a national level or within other layers and arenas of the supranational dimension (see below). The overall issue of the reform of the Dublin III Regulation appears, on the contrary, to be one of the crucial aspects addressed, given its (perceived) utmost urgency and importance for a better solidarity among MSs.

The difficulty in finding in-depth and systematic information on these interactions – especially those concerning the Europeanisation arena – is in fact a clear characteristic of this shifting up level. As widely clarified throughout the paragraph, this is compensated by the role of research, experts and academia, as discussed in section 6.3.2.

A last remark with regards to layer 2 of the analytical model should be done on the potential oversimplification of a mere three-level governance analysis (see chapter 2). In fact, evidence clearly points in the direction of the strong importance of another level in shaping EU policies, i.e. the international one. For the sake of clarity and consistency, this was not included in the overall analysis, which insists throughout the entire research on the three – local, national and supranational – levels. However, some concise remarks can and should be done, in order to briefly explore also the impact of this level on the EU policy-making.

INT_2 (April 2019), in particular, explained the strong interaction between the EU (especially at the working level of EC) and UNODC, which was also involved in the REFIT and which is trying to ensure a balance in the approach towards migrant smuggling, “aligning the directive at the EU level with the international framework”, whereas “a lot of the action taken to target or tackle the smuggling of migrants is actually done on grounds [and seems] to depart a little bit from the international framework”.

To do so, the UN tends to implement “an activity of moral suasion, so to say, through our publications, when we interact in working groups”, etc., rather than in terms of technical assistance, as it happens in developing countries (e.g. with legislative drafting), since in general “in western countries […] there are other institutions, it is clear. Normally, in Europe, the European Union acts or in any case Member States do not ask, so to speak, and they neither see favourably, say, a United Nations activity in general” (INT_1, March 2019).

Notwithstanding these difficulties, UNODC is considered by INT_2 (April 2019) as having a central role in ensuring cooperation between origin, transit and destination countries (the existence of the Smuggling Protocol is not sufficient in itself), through the intergovernmental conference, and trying to bring clarity, good practices and ensuring a holistic approach and the protection of smuggled migrants.

Moving to layer 3, i.e. the governance dynamics of the analytical model, the data presented in this chapter allowed to understand several interesting patterns in the process of policy adoption.

Starting with the focus on the different policy areas (the first dimension of the layer), the three main actors involved are the two co-legislators (Parliament and Council) and the Commission, essentially on the basis of what provided for in the EU treaties. The main patterns highlighted in this dimension have essentially to do with the structural overlapping of the overall smuggling of migrants field with other policy domains, such as asylum, migration and criminal law. On the other side, also the approach chosen (mostly security-based) in turns foster the dialogue between different policy areas, as in the example of EUNAVFOR MED Operation Sophia, established under a CSDP framework.

Asylum is central in this story, not only for general considerations related to the smuggling spectrum and to the demand side for smuggling (see section 1.2.3.), but also in the light of the experience of the last legislature, were this issue dominated the EU debate, causing also severe institutional frictions (see below).

As anticipated, another policy domain which assumed a major role since the very beginning is criminal law. Over the period considered, even though no significant related legislation was passed, the debate around a reform of the existing instruments was quite crucial. It also showed an attitude to use criminal law instruments in order to manage migration (see the Special Issue on Crimmigration in Europe of the European Journal of Criminology 2017 and, in particular, van der Woude et al., 2017).

In this perspective, it seems something very similar to what already witnessed at a national level but with a remarkable difference: at an EU level the dialogue and overlapping between policy areas – both wanted and unwanted, including also the deliberate 'misuse' of policy instruments – entails also substantial institutional and procedural consequences, in terms of the actors involved and the legislative, or non-legislative, procedures to be followed (see the inter-institutional dynamics in section 6.3.3. and those that shall be discussed below).

In this overall framework, no significant example of arena linkages from the side of the EP emerged, essentially in line with the view of a more 'responsible' and cooperative attitude of the house and in particular of its majority (Frid-Nielsen, 2018; Ripoll Servent,

2017 and Trauner and Ripoll Servent, 2016), in spite of the big differences and dissatisfaction showed from the EP towards the positions of the Council, especially on the asylum agenda (see above).

Besides different institutional and procedural arrangements, the current situation also leads to different degrees of guarantees and protection, considering in particular the exclusion of judicial review and the leading role of the Council especially in Common Foreign and Security Policy (CFSP) and CSDP (cf. Carrera and Lannoo, 2018 on Operation Sophia. See also Guiraudon, 2018 and Herlin-Karnell, 2017).

All of this gives a certain centrality to the European External Action Service (EEAS) in anti-smuggling policy-making, alongside DG HOME, whereas other DGs, agencies and bodies remained more marginal in the overall process.

Commission and Parliament are the leading actors, from the institutional point of view, also in the second dimension of the governance layer, i.e. that of informal-to-institutional dynamics. The role of Council appears more difficult to be assessed (as in the case of shifting up dynamics above explored), mainly for institutional reasons, connected to the intergovernmental nature of the body. This reinforces the need for the development of a research line related to the preference formation also in the Council (Bonjour et al., 2018), with a specific focus on the potential influence of non-institutional actors in it. Experts and NGOs are the main actors from the society point of view, instead.

The main pattern observed in this dimension, where information exchange and transfer into institutions is very extensive and inclusive (cf. the methodological notes in Carrera et al., 2016 and 2018b, among others), has to do with the mediated nature of this process. Rather than a direct involvement of societal actors in the policy-making, the cases observed showed a strong connection through the research and hearing work, conducted by the different EU bodies, namely Commission and Parliament, mostly. The leading role of researchers and academics is peculiar and potentially very important for evidence-based policies (cf. Baldwin-Edwards et al., 2019).

The relevant and interesting case of the reform of Facilitators Package and the way in which civil society interacted with EC and EP about this clearly showed, on the one side, the challenges connected to the stance of the Commission, particularly in terms of consequentiality with the evidence collected (cf. Badwin-Edwards et al., 2019 and

Carrera et al., 2018b). On the other side, it offers a very interesting reflection as to the different degree of success that non-institutional dynamics can have, considering the different outcome of the REFIT and of the Fit for purpose processes. This last aspect shall be further considered when dealing with the substantive policy contents at the end of this paragraph.

Lastly, the dimension of interaction between different institutions, where EP, Council and Commission were mostly concerned, even though also the European Council and the CJEU have been important actors.

The interaction between these actors is one of the most considered dynamics at an EU level (see Trauner and Ripoll Servent, 2017), and in this perspective findings related to this aspect clearly fall within this debate.

The overall complexity of the existing interactions, not only between the two co-legislators, but also including the Commission and other actors, to a lesser extent, is mainly due to the very institutional structure of the EU, and of the AFSJ in particular. In the analysis of that, the following aspects, in particular, emerged:

1. The role of the European Parliament appears somehow ambivalent and variable over time. Within the overall debate regarding its role in the post-Lisbon AFSJ, in anti-smuggling policies the Parliament seems to be at the same time a more 'responsible' actor, in terms of willingness to achieve a concrete result in the negotiations with Council (in line with Frid-Nielsen, 2018; Ripoll Servent, 2017 and Trauner and Ripoll Servent, 2016). This is particularly true for the majority groups of the house such as EPP, S&D, which are "more willing to shift preferences into the security-focused mainstream" (Frid-Nielsen, 2018, p. 358) and also ALDE to a lesser extent. The case of S&D is remarkable, if compared for example with the stance assumed in the Ceyhun Report of 2000, namely on issues such as the financial or other material benefit or the carriers liability regime. However, the Parliament is still capable of playing an important role in counterbalancing the Council, such as in those cases related to the humanitarian exemption, the humanitarian visas or the overall Dublin Regulation III reform, in line with the perspectives of Huber (2015);
2. The role of the Council is much more difficult to be assessed, lacking access to the internal dynamics, apart from some aspects disclosed by some

interviewees. One of the aspects that would be more interesting to explore would be, in fact, the preference formation within the Council itself, also in relation to the shifting up and informal-to-institutional dynamics. Nevertheless, the analysis conducted still points in the direction of a leading role in smuggling-related policies of the Council and its national-based, intergovernmental dynamics. This has to do with the institutional (lato sensu) dynamics, such as for the consensus-based logic, even in a domain where qualified majority vote (QMV) apply (Roos, 2017, pp. 424–427), or the relative advantage in terms of maintenance of the status quo in a situation of deadlock (Trauner and Ripoll Servent, 2016. See also Olsson, 2016 and Pollack, 2009 on path dependency), such as for the Dublin III Regulation missed reform;

3. National logics apply, even if in a more limited way, also in the agency of MEPs, especially in terms of loyalty to the national party (Frid-Nielsen, 2018) and relationship with the constituency;

4. The Commission has a pivotal role, not only as legislative process initiator, but also in the facilitation of a dialogue between the two co-legislators. Remarkably, its role has appeared variable over the years and, as in the case of the Parliament, it appears today more security-oriented than at the time of approval of the FP. Over the last legislature, it showed to be rather stable content-wise, suggesting a comprehensive approach to migration and smuggling and incorporating also several elements of the smuggling spectrum (see section 1.2.3.), but always within a very security-based general framework. In an alternating approach, the Commission was sometimes closer to the EP and sometimes to Council; but showing a tendency to reduce progressive stances, also in light of the changing dynamics, even more securitising, within the Council (cf. Huber, 2015; Maricut, 2016 and Ripoll Servent, 2017);

5. Besides the specific role of MEPs, the parliamentary arena is a crucial institutional space for a supranational political debate. Also in comparison to the national parliament dimension, it can be firstly observed how the debates appear to be less extreme (especially in terms of rise of far-right arguments) and polarised than at a national level. This can be explained not only in terms of political composition of the house, but also because of the different role of the

national and European parliamentary arenas, in the overall political debate (in this perspective, the stance of EUR_2, May 2019, is very interesting and clear, about the lack of media coverage and public opinion interest towards what happens in the EP). Secondly, the European parliamentary arena is the place where the EU moral debate takes place, on very relevant and divisive issues that, besides the actual legislation to be passed, have to do with the very nature of the EU and the self-perception of it (in particular of MEPs, cf. the cited debates) as a moral power (see, more broadly, the concept of 'normative ethics of the EU' in Manners, 2008). The existence of room for such moral and fundamental arguments is remarkable if compared not only to other EU institutions, but also to the debate taking place in the Italian parliament, also besides the less polarised characterisation of them above recalled. However, morally-oriented debates are not always consistent with the actual policy outputs, considering also the more 'responsible' attitude of the Parliament, more incline to find an agreement with the Council;

6. The CJEU, even if very rarely involved in the overall governance of this policy field, can be very important in order to limit the securitisation of the anti-smuggling framework, likewise courts at a national level (cf. Herlin-Karnell, 2017);
7. International organisations can have an interesting role in establishing privileged relationships with some institutions and trying to foster the debate, as well as bureaucrats can do, especially within the Commission staff, again in continuity with what seen at national level.

Lastly, on the policy content, the whole layer is very rich of different debates and policy-making processes, that involve a number of policy areas and actors, in a widely security-based approach. One can observe, in this regard, that the idea of a "comprehensive" or "holistic" approach to migration and smuggling, which is the basis of the most important EU documents in this field, is to be meant, always, within such a security-based approach. There is a language issue from this point of view, which involves also the concept of SAR, of humanitarian help and many others. This is in turn connected with the moral debate and with the self-narration of the EU itself which is

not always coincident with the substantive aspects of policies approved and on how they are perceived on the ground (cf. Cusumano, 2019).

The main issues addressed have to do with: (a) the criminal law approach to smuggling (in particular the FP, also in comparison with the UN Smuggling Protocol) and smugglers' characteristics; (b) SAR policies and the role of NGOs and of the EU; (c) quite limitedly, also the demand side for smuggling, both from the perspective of economic migrants and asylum seekers (asylum policies are by far the most extensively considered in the EU migration debate); (d) externalisation and 'shifting south' policies.

Over the considered period, the most significant policies related to the anti-smuggling framework lato sensu were actually adopted within the SAR and externalisation domains (Operation Sophia and the EU-Turkey Statement, respectively). Notably, both of them without a legislative procedure, but within the CFSP/CSDP area, i.e. by the Council acting alone. On other relevant policy proposals, instead, deadlocks in Council and/or the lack of an inter-institutional agreement led to the preservation of the status quo, such as in the case of the Dublin III Regulation reform (see Guiraudon, 2018 and Trauner and Ripoll Servent, 2016).

As for the non-institutional dynamics, lastly, they mostly had to do with the reform of the Facilitators Package, and in particular the aspects of material gain and humanitarian exemption. The overall failure of this reform process is significant in terms of the limited impact of the civil society, researchers, NGOs on the overall policy-making process in this field.

Table 6.2. below offers a schematic summary of all these different aspects.

Table 6.2. – Policy-making dynamics at a supranational level (layers 2 and 3)

	Main actors	*Main substantive issues involved or addressed*	*Main policy-making patterns and challenges*
GROUND	Intermediate bodies (ANCI, DNA) EP standing committees Local governments Law enforcement Judiciary	Smuggling characteristics Relationship with other policies Migrant reception Direct fund management by local authorities	Requests from the ground, information upload, field visits Secondary importance compared to studies Arguable actual impact Non-systematic Role of intermediate bodies
NATIONAL	National parliaments Government EP Council EC	SAR operations Libya agreements Dublin III relocation Anti-smuggling operations	Direct connection (field visits, hearings) Influence of the national debate Ambiguity: support request for national policies vs. use of national policies to make pressure on the EU (depending on the political stance) Contradiction between discourse at a national level and agency in the EU
POLICIES		Smuggling characteristics SAR (NGOs and Operation Sophia in particular) 'Shifting south' approach Differences with UN Smuggling Protocol Criminal law approach Anti-smuggling as migration management Demand side: safe routes and asylum shopping	Structural overlapping (institutional and procedural consequences, arena linkages in the EP, judicial review and different guarantees) Overlapping for approach chosen Primary role of Council Misuse of policy instruments Dominated by DG HOME (and EEAS)

INFORMAL	EC EP Experts NGOs	Smuggling characteristics (humanitarian exemption and material benefit)	Horizontal information upload (extensive and inclusive) Limited translation into policy goals Centrality and inconsistency EC (also changing over time) Role of researchers, practitioners and civil society
INSTITUTIONS	Council EP EC European Council CJEU	Smuggling characteristics Asylum (much more discussed than smuggling or undocumented migration) General migration framework, leading to a very strong moral debate, involving also the EC FP: discussion on humanitarian exemption, abandoned the issues of material gain and carriers liability in EP SAR and the different rationale of Sophia and other operations	High complexity Bargaining Central role of Council and intergovernmental deadlocks More limited role of EP, ambivalent and changing over time (divisive, more responsibility, still counterbalancing the Council) Pivot role EC (sometimes closer to EP sometimes to Council; stable content-wise, but less dialogue with majority MEPs) CJEU as judiciary at a national level can be important to limit securitisation (very little so far) International organisations establish privileged relationship with some institutions Parliamentary arena as a crucial political space also for moral debate Role of bureaucrats Prevailing of national logics over EU ones (not only in Council)

Source: Elaborated by the author

Chapter 7

Wrapping up: multi-level agency and institutional constraints in the anti-smuggling policy-making between the EU, Italy and Sicily

7.1. Introduction

This chapter builds upon the data presented and the analysis conducted throughout the study, with a view to offering new angles and a comprehensive perspective on the issues considered.

To do so, it will firstly address in paragraph 7.2. the institution/agency dimension (layer 1) of the analytical model (see paragraph 2.3.). This analysis will show how the three levels interact with one another and how and why agency moves within and across them, shaped by institutional dynamics. In so doing, some reference shall also be done to the extent to which the multifaceted nature of migrant smuggling is taken into consideration throughout the policy-making process by each actor, building a connection with the smuggling spectrum elaborated in section 1.2.3. and highlighting, where possible, the specific dimension/continuum of the spectrum which is mostly considered by actors.

Secondly, to reinforce the heuristic relevance of the model and to provide substantive examples of the complexity of the policy-making process, paragraph 7.3. will focus on one specific policy, i.e. the 'facilitation offence' or, in other terms, the criminal law anti-smuggling framework (provided for by article 12 Consolidated Immigration Act, TUI, and by the Facilitators Package, FP. See chapter 3), that appeared to be relevant throughout the research. In so doing, the way in which institutional constraints and agency move vertically across levels and horizontally within levels will be assessed in their entirety, in a process which has proven to be very complex and sensitive.

A final comment in this introductory part should be dedicated to the purely analytical nature of this chapter, which entails a continuous reference to data and analysis conducted in the previous ones. Once again, repetitions and overlaps are not accidental and, in most cases, rather than referring directly to the sources, a cross-

reference shall be done to those chapters and paragraphs of the research where the issue is more thoroughly addressed (and where sources are cited explicitly).

7.2. Between institutions and agency: how and why actors move within and across levels

The heuristic relevance of the analytical model presented in paragraph 2.3. lies in the combination of a new institutionalist and of a multi-level governance (MLG) perspectives, enabling a one-dimensional analysis to shift into a three-dimensional one. This is a key aspect, considering that the whole complexity of the policy-making process related to anti-smuggling policies lato sensu can be properly understood only considering the multi-dimension nature of agency and institutional constraints. Going even further, it is interesting to notice how in certain situations the agency of an actor within one level becomes an institutional constraint for another actor on another level (see paragraph 2.3.). And yet, this structural variable embedded at other levels, which cannot be entirely modified as such, can be adapted (or even not applied, such as in the case of norms), in a continuous process of reshaping and relayering, whose understanding is crucial in order to make sense of the whole policy adoption in this area.

The analysis conducted in the previous chapters highlighted the importance of several actors, each of them embedded in one specific governance level (with a few exceptions, that shall be discussed), and yet able to move across also other levels. The very way in which actors move within and across levels, influenced by institutions and making sense of the complexity nature of migrant smuggling, shall now be discussed, separately addressing each of the actors previously emerged, answering both ‘what’ and ‘why’ questions (Awesti, 2007; Caponio and Jones-Correa, 2017 and March and Olsen, 1989 and 2006).

Starting with the EU level[56], the first actor that can be considered is the European Commission (EC, the Commission). This is indeed a key actor of the EU policy-making,

[56] In this wrapping up chapter, as well as in the Conclusions, it seems appropriate to address the different governance levels starting with the EU. This has essentially to do with the ultimate nature of this research, falling within the EU studies (see chapters 1 and 2). The bottom-up approach, which was used throughout the study, allowed for the consideration (also) of the impact of lower governance levels on the EU policy-making and was reflected in the order of the research sub-questions and connected

de facto leading the legislative initiative in the Area of Freedom, Security and Jusitce (AFSJ) after the reforms brought by the Lisbon Treaty (Maricut, 2016).

The first aspect emerged concerning EC agency has to do exactly with the way in which it exercised such power over the years. It could be observed, over the period considered, that an initial approach was adopted which appeared quite comprehensive and ambitious, in particular through the European Agenda on Migration, the EU Action Plan against migrant smuggling and the Dublin III Regulation recast proposal (see paragraph 6.3.), also reacting to a particular moment in the history of the EU, with the beginning of the so-called 'refugee crisis'. In that moment, within the overall institutional framework established, the Commission seemed to be very proactive and fully using its role according to the overall perception of the "appropriate actions in terms of relations between roles and situations [based on an understanding of] what the situation is, what role is being fulfilled, and what the obligation of that role in that situation is" (March and Olsen, 1989, p. 160).

In this very moment, the highest point of institutional cooperation with the European Parliament (EP, the Parliament) – or, better, with the parliamentary majority – was reached (see paragraph 6.3.). However, from 2017 onwards, a progressive shift from original preferences to stances more oriented towards the Council of the EU (the Council) could be observed: this appeared to be the result, in an institutionally stable environment, of the need to keep the Council 'on board' in the legislative reforms, bargaining with the overall more restrictive and securitising positions expressed there (see section 6.3.3.), still without substantially compromising the relationship with the Parliament[57]. This rationality-bound move, acknowledged by some of the actors involved, was also determined by the pivotal role of the Commission within the post-Lisbon Treaty AFSJ governance system (see Huber, 2015; Maricut, 2016 and Ripoll Servent, 2017), in turn reinforcing the idea of a continuative interaction between institution and agency (Olsson, 2016).

governance levels. Such approach, however, can now make room for an overall understanding of the multi-level agency and institutional dynamics from an EU point of view, consistently with the research question and the theoretical lenses chosen.

[57] However, it should be also recalled that the comprehensive and innovative aspects of the initial EU proposals are to be seen still in an overall security-based approach (see chapter 6).

The second aspect of Commission's agency concerns evidence-based policies. Here a contradiction seems to exist between the overall process of collection of evidence in order to inform policies (appropriate behaviour in light of the institutional rules) and the very limited use that is made of such evidence. This last aspect can be read through the pursuit of a conducive policy-making process, considering also the preferences of the Council and of part of the EP and, arguably, also of the very Commission. In such respect, the inconsistency between evidence collected and policy outcomes in the REFIT process for the Facilitators Package is emblematic (see section 6.3.2.). The words of Baldwin-Edwards et al. (2019, p.10) probably best describe the political implications of the use that is made of evidence in policy-making, particularly in this field:

> Policymaking is, as Sutcliffe and Court suggest, 'neither objective nor neutral; it is an inherently political process' (2005, iii). Although this has implications for EBP [evidence-based policy] across all policy domains, the politics of policymaking is perhaps nowhere more evident than in the area of migration and asylum.

The Commission acts also at national level, mostly through top-down dynamics. Even if institutional constraints limit its action (see the example of the infringement procedures in chapter 6), there is still room for a direct influence on the national policy-making in terms of soft power, related to (a) the encouragement to broader approach in migration policies (EUR_1, March 2019); (b) the endorsement of specific policies, in order to strengthen their perception also by national public opinion (see paragraph 5.2.).

Lastly, it should be noted how the overall approach of the Commission to migrant smuggling lato sensu is consistent over time with a comprehensive understanding (in particular acknowledging the demand side for smuggling), even though within a stable security-based framework (see paragraph 6.3.).

Moving to the European Parliament, its agency in the policy-making process is twofold. On the one side, it acts as arena of political and moral debate, consistently with the institutional framework of the EU. Here, the collective agency of the Parliament (as the result of the individual agency, mostly but not exclusively, of the different Members of the European Parliament, MEPs) is mostly value-based and shapes the overall debate at EU level. In this perspective, the EP emerges as one of the few institutional spaces

where the smuggling of migrants – and, more broadly, the entire migration issue – is framed in the most comprehensive way, considering and embracing the multifaceted nature of smuggling, smugglers and smuggled migrants. This becomes clear both in the parliamentary debate and in the resolutions approved, even if a tendency to a more security-based (and hence less comprehensive) approach seems to have increased throughout the last legislature (see paragraph 6.3.).

The comprehensive approach is even more significant when read in comparison with the Italian parliament (see paragraph 5.3. and the section on national parliament below) where such a wide understanding of smuggling and undocumented migration seems much more limited. Lastly on this, a connection between the smuggling spectrum and the political spectrum could also be observed, where right-wing parties tend to adhere to the right area of the smuggling spectrum, whereas the left-wing ones tend to adopt a broader and more comprehensive approach, in particular related to the victimisation of migrants and the demand side for smuggling (see paragraph 6.3.).

On the other side, the EP has also a very important role in the legislative process, as co-legislator. However, such a role is less powerful than the one of the Council, which acts as a de facto veto player (Trauner and Ripoll Servent, 2016 and Tsebelis, 1995, see also below), essentially on the basis of path dependency dynamics that facilitate the maintenance of the status quo in the lack of an agreement for policy change (see also Bonjour et al., 2018, p. 416; Olsson, 2016; Pollack, 2009). In such capacity, the EP shows traces of consensualism as it seems keener to find an agreement in a mediation between different national interests and political preferences (cf. Frid-Nielsen, 2018), and appears to be less securitising than the Council in its approach against smuggling, albeit more than it used to be in the past. The data considered allows for a reconciliation of the diverging perspectives on the role of the EP in the AFSJ after the Lisbon Treaty (Maricut, 2016 and Ripoll Servent, 2017), considering how, in spite of a more goal-oriented attitude of the majority political groups aimed at finding an agreement with Council, bills adopted by this house offer some important – albeit limited – elements of de-securitisation, if compared to the restrictive stances prevailing in Council (see chapter 6 and, in particular section 6.3.3.). In this game, the Parliament appears to be guided by a plurality of logics, and a more in-depth approach would need to unpack the decision-making-related agency at MEPs level, considering

at least two different variables, i.e. the political group and the nationality, taking into account also the role of constituencies and their relationship with MEPs (cf. also Frid-Nielsen, 2018).

The European Parliament also moves across the levels:

1. Collecting information for evidence-based policies, even though this is not always a completely satisfactory process in terms of upload into legislative bills. In this process, MEPs' constituency appears relevant, in particular in case of field missions (see the review of the Facilitators Package and the field missions in chapter 6);
2. Through a two-way influence between MEPs and national governments, though the institutional background determine a stronger influence from government to MEPs rather than the opposite (cf. again the study of Frid-Nielsen, 2018).

The other co-legislator, i.e. the Council of the EU, is the key actor of the legislative process, de facto being a veto player (mostly for national interest reasons), through two main dynamics:

1. Deadlocks in decision-making, in spite of the qualified majority vote (QMV), being still a consensus-based decision-making in light of institutional non-formal agreements and where the "shadow of vote" (Golub, 1999, cited in Roos, 2017, p. 426) is not sufficient in order to overcome divisions in such a sensitive policy arena (cf. the Dublin III Regulation recast deadlock);
2. Using other (non-)legislative tools (see the concept of 'new governance' in Cardwell, 2018 and also Capano and Lippi, 2017 for the logics used in the choice of policy instruments), such as the Common Security and Defence Policy (CSDP)-based Operation Sophia or, on other sides, the EU-Turkey Statement, marginalising the EP and the Court of Justice of the European Union (CJEU. See Carrera and Lannoo, 2018 and Guiraudon, 2018).

These findings are in line with the approach of Ripoll Servent (2017), who extensively considered the privileged role of the Council, in so disclosing also some elements of path dependency within the AFSJ policy-making (Bonjour et al., 2018, p. 416; Olsson, 2016; Pollack, 2009). Furthermore, these results are in line with a view of the Council

as a privileged actor, in particular when the goal is that of preserving the status quo, making the most of its room for agency in different policy areas (and of the even paradoxical 'inaction agency'), mostly based on constraints determined by the institutional framework and on the rational used that is made of them. However, the knowledge about the actual policy-making process within Council in this specific policy domain needs to be strongly extended and deepened.

As for the substantive component, the Council shows a strongly security-based approach to smuggling, essentially falling within the extreme right part of the smuggling spectrum: this aspect is even more clear if compared to the approach of the Parliament (see above).

Moving to Council's agency across levels, this is very limited. The actual impact of the Council mostly consists in an indirect influence on the national level in terms of missed reforms (see section 6.2.2.), to be mostly read in terms of unintended consequences (Pollack 2009. Cf. Bonjour and Vink, 2013) and in turn enabling the 'blame Brussels' or 'excuse shopping' dynamics extensively considered in the previous chapters.

Focusing then on the European Council, this research indicates that it mainly acts in the anti-smuggling domain as crisis manager, gaining a prominent role through the use of (non-)legislative acts and with its capacity of exercising strong political pressure (Maricut, 2016). This is in line with the approach of Guiraudon (2018) and resulted particularly clear in the case of the 2015 shipwreck and the subsequent launch of Operation Sophia (see chapter 6). Goal-oriented rationality seems to drive its agency, in which institutional constraints exist mainly in terms of the relatively more marginal role assigned to it in comparison with the pre-Lisbon situation (see Maricut, 2016).

Likewise, these constraints limit European Council's action also at the Italian level, where there is still room, though, for some forms of soft power in terms of endorsement of specific policies, such as in the case of the 2017 Malta Declaration (see section 6.2.2.). The European Council is active at national level also indirectly, by influencing parliamentary and, more widely, political debates, as emerged throughout the analysis of parliamentary proceedings in chapter 5. As for its understanding of migrant smuggling, this appears to be in line with the Council of the EU above explored.

The impact of the agency of other EU bodies, such as the CJEU, is even more limited. It is constrained, in particular, by the institutional architecture of the EU, both in its

supranational action and in the one related to the national level, where only limited evidence of its activity was reported. EU agencies, considered as a whole, are a very interesting example of political agency unfolded across the three different levels, mostly in terms of information sharing (also horizontal one), with a view to bettering the coordination of existing policies and practices, as well as to providing elements for evidence-based policy-making. Within the overall EU analysis, also the role of EU civil servants emerged as potentially interesting, in particular in the mostly technical work conducted with other levels (see also the situation of national civil servants below as well as section 5.2.2. and chapter 6). The role of these three actors could be deepened in future research, which would clearly need a different framework from the one used in the present one, considering in particular the extent of their room for manoeuvre, which seems limited on paper but is still intuitively of some potential interest.

Moving to actors mostly situated at the Italian national level, the first one to consider is the national government. This is the key actor of the legislative process, mainly because of the executivisation of policies in this domain (for a broader understanding, see Capano and Giuliani, 2003; Capano, Howlett and Ramesh, 2015; Rasch and Tsebelis, 2013 and Zucchini, 2013). In this sense, the government does not seem to face particularly severe constraints, besides the overall framework of EU, international and constitutional obligations. Even the role of the parliament as a counterbalance seems to have been decreasing, with an increasing legislation by decree and use of confidence vote (see in this perspective the historical analysis conducted in chapter 5. See also Musella, 2014).

This actor has proven to be stable over the years in terms of an overall security-based approach in the policy outcomes, because of a rational-choice-bound agency, which includes also an understanding of the cost of changes (see section 5.3.3. and Olsson, 2016; Pollack, 2009 and Zincone and Caponio, 2006 on aspects of path dependency). The closing harbours policy is one very clear example of this continuity, where also a form of selective evidence-based policy arose, i.e. only specific aspects coming from the ground, mostly the more security-oriented ones, were taken into consideration in the policy formulation (see sections 5.2.1. and 5.3.3. and paragraph 5.4. See also Baldwin-Edwards et al., 2019).

As for the internal dynamics, the leading role of the Ministry of Interior is essentially unchallenged, with the notable examples of Marco Minniti and Matteo Salvini as absolute leaders of the anti-smuggling agenda in their respective governments. This even caused, in particular during the Conte Government, some tensions between different ministries.

Government's agency moves across the three different levels of governance concerned, mostly following the same rationality-bound dynamics. On the one side, the government interacts with the local level, reshaping policies based on the influence coming from the ground. This happens in terms of (a) effects of NGOs activity (see the closing harbours policy) and (b) effects of judicial proceedings (see the Diciotti case): both of them can be read in terms of unintended consequences (Pollack, 2009).

On the other side, the relationship with the EU is structurally influenced by the twofold nature of the government in this arena, as national government in itself and member of the Council. Government EU-agency mainly takes three forms:

1. 'Excuse shopping', within the overall 'blame Brussels' argument, i.e. strategically using existing institutional constraints (or alleged/perceived ones) to justify shortcomings or contested decisions in policy formulation and implementation at national level (see the overall issue of the Dublin III Regulation reform);
2. The use of national policies as leverage for negotiations at EU level (which can be considered as a case of multi-level arena linkage, see Héritier and Moury, 2012), such as in the Diciotti case;
3. The call for EU support to national policies, which, when granted by EU institutions, is essentially political, because of the limitations of the institutional framework and of the political costs of the operation (see the case of the 2017 Code of conduct). Furthermore, the government, as was explored above, has a two-way influence with MEPs, with a prominent role as influencer, again in light of the institutional framework.

In terms of smuggling perception, the Italian government maintains a security-based perspective and tends to focus on aspects connected to the very negative connotation of smugglers and their connection with other crimes.

The second leading actor is the national parliament, which in the cases considered seems to be relevant as an arena for political debate, where the differences across the political spectrum become evident and acquire a specific importance (see Giuliani, 2008 and Zincone, 2011 on the apparent contradiction between continuity/consensualism and the divisive nature of the migration domain). The parliament clearly has an important role also in the legislative process, but appears to be more limited than the one of the government, in particular specifically insofar as smuggling – within the overall migration policies – is concerned, mostly because of the executivisation of policies taking place in this area (see above and paragraph 5.3.).

Moving across levels, the parliament shows a relationship with the ground marked by selective evidence-based policies, similarly to what was considered with regards to government's agency. This affects not only the policy outcomes but also the very parliamentary debates, as emerged in those related to the NGO activity in search and rescue (SAR, see chapter 5). Even though some biases exist also at parliamentary committee levels in terms of what evidence to consider (see section 5.2.1. and paragraph 5.4.), the critical juncture appears to be in the transmission belt from committees to plenary, where several pieces of information are dropped and only the more 'functional' ones in terms of policy preferences are kept, in line with a mostly rationality-bound approach, in particular from the majority political groups (see again the SAR-related NGO activity or the smuggling characteristics in the Anti-Mafia Committee Report in section 5.2.1.). More broadly on the characteristics of the parliament's agency, what said above referring to the European Parliament holds true. The observed coexistence of different logics in such a complex collective actors would suggest the need to unpack the analysis, considering the different agency in this policy domain according to the political group and to the different institutional roles within the house (such as in the case of the presidency of parliamentary committees).

As in the EP, also for the national parliament a connection between smuggling spectrum and political spectrum can be observed. However, in this case there seems to exist a less comprehensive understanding of the issue, also from progressive political groups (such as the Democratic Party, PD), with the mere exception of those political groups affiliated (or in line) with the GUE-NGL at a European level. Differently from the EP moral debate, the national parliament exposes a much more polarised and

confrontational attitude, where the decisive factors seem to be the different relationship with the government in terms of loyalty and responsibility (compared to the tripartite dynamics EP-Council-Commission), as well as the accountability and the public opinion's perception (see paragraph 5.3.).

Finally, it should be noted that the parliament limitedly acts also at EU level, providing in turn information and opinions for evidence-based and informed policy adoption in an ancillary way.

Another important actor, explored in different parts of this research, are intermediate bodies (i.e. the National Anti-Mafia and Anti-terrorism Prosecutor's Office, DNA, and the Association of the Italian Municipalities, ANCI). They move across the three levels, mostly in a bottom-up perspective, with a view to (a) building relationships between other actors tasked with implementation and policy-making; (b) uploading information from the ground to the national and EU level and lobbying. In so doing, they tend to have a comprehensive approach to smuggling, embracing the spectrum in its fullness, also understanding (especially in the case of DNA) the multifaceted nature of smugglers and smuggling segments, within the same migration movement, as well as aspect connected to the victimisation of migrants and the diverse perceptions of smugglers (see section 5.2.1. and the smuggling spectrum in section 1.2.3.). Institutional aspects limit their substantive role in policy-making, but they are still able to exercise it (moved by a more appropriateness-bound logic) through political pressure, in so disclosing a peculiar element of their agency in anti-smuggling policy-making. Such influence can be even bigger, in particular in the case of ANCI, when the interaction takes place with bureaucratic actors, far from the political scene stricto sensu (see the perspective of ITA_1, March 2019, in chapter 5).

The role of national civil servants – which, as in the case of European ones, could be further explored in new research – is very much connected to this last point. According to the available evidence, they are able to use, also at a national level, a certain degree of discretion, with the possibility to work keeping a low profile and de-politicising issues (see again the point of view of ITA_1, March 2019, in chapter 5).

Considering actors at a local level, it is important to highlight, first of all, how the general characteristics of the agency patterns at a local level were already explored in chapter

4[58]. Here the main actors and their main agency characteristics will therefore be briefly recalled, in particular in relation to other levels, whereas for a more detailed description of agency and institutions in Sicily, one should refer to chapter 4. The *Prefettura* is the key actor within the reception system and bears the biggest responsibilities when migrant disembarkations take place. Likewise law enforcement and border guard agencies, the evidence in this research related to its role indicates a limited implementation discretion at a local level, being all of them governmental actors strongly hierarchised (cf. Fabini, 2017). They tend to follow an appropriateness-based logic and seem not to have a broad understanding of migrant smuggling (see in particular the point of view of some law enforcement officers in section 4.2.2., falling on the right side of the smuggling spectrum). Lastly, these institutions are particularly important in providing information to EU/national levels for evidence-based policies, in particular through hearings and field visits. More in-depth (possibly comparative) studies, also able to disclose the evolution and changes over time and space, would make it possible to fully appreciate the room for discretional agency of the *Prefetture* and of law enforcement and border guard agencies, specifically in anti-smuggling practices. Also, another aspect which would be interesting to further explore has to do with the internal relationship of these bodies with the Ministry of Interior, in particular in terms of potential shifting up processes.

The agency of municipalities is limited by the institutional framework, also considering the shift towards a more Rome-led management through the *Prefettura* takeover. Still, these actors are able to exert a strong symbolic power and political pressure, which often go beyond the role formally assigned to local government (as in the case of closing harbours policies, among others), depending on their stance. However, the degree of success of this type of agency in influencing policy-making is arguable. They also try to gain power and influence at EU and national levels, mainly through ANCI, which is crucial in the upload of policy preferences and requests. Still, the actual impact that this process can have is more limited in the case of very sensitive and politically salient issues (see section 5.2.1.). In the cases considered, municipalities tend to behave on the basis of a combined logic, where elements of appropriateness

[58] This choice, as widely explained throughout the research, is to be read in light of the different nature of the local level, compared to the national and supranational ones, as mostly implementation level.

connected to their role are mixed with a strong rationality approach, aimed at the protection of rights and values (again depending on the political stance of the actors). Limited available evidence seems also to point in the direction of a wide approach to smuggling, understanding the different elements that shape the phenomenon.

Two last actors need to be addressed separately, since they are not embedded in any specific tier, but they encompass the whole multi-level system.

Firstly, the Italian judiciary. At national level, findings suggest that the Constitutional Court can play an important role in tempering the harsher effects of national policies (Zincone, 2011, see also section 5.3.3.). However, the institutional framework seems of crucial importance in this perspective, considering the specific and very strict procedures needed in order to access the Court. Also the Court of Cassation is embedded at a national level, but the approach followed in this research has taken into account case law entirely as coming from the ground, considering the possible final stage of the Court of Cassation as the last step of a process mostly embedded at a local level (see chapter 4). More broadly, judges can have a clear impact on policy-making in this domain (see Bonjour et al., 2018, pp. 415–416), applying discretion in the interpretation of the norms and originating direct and indirect bottom-up processes (see Anaya, 2014 and Marmo, 2007), also in terms of unwanted consequences. In this perspective, agency dynamics can be very broad, and to be mostly read in term of appropriateness, whereas limits come mainly from the very norms – substantive and procedural ones – to be applied. The same holds true also for prosecutors, as the various evidence considered confirm. However, in this latter case, two elements allow for a wider scope of agency, and namely (a) the fact that prosecutors can start investigations freely, on the basis of any type of information discretionally deemed relevant by the prosecutor him/herself; (b) the tendency of prosecutors to act also outside the judicial arena stricto sensu, participating in the public debate, either with interview or the information publicly shared in parliamentary committees (see the case of Prosecutor Zuccaro). This allows prosecutors to move also outside the institutional constraints of their role and any connected logic of appropriateness, following a goal-oriented approach through information and preference upload. Overall, the judiciary shows a comprehensive understanding of smuggling, as in the case of DNA, embracing the complexity of the spectrum in its different components, on the basis of

the evidence coming from specific smuggling events considered in the judicial activity. Prosecutors, however, appear to adhere to a more restrictive approach, especially in those cases considering the potential connection with smuggling activities of NGOs.

The second actor which is located at and move across the three different levels is NGOs. They exercise wide discretion and substantive influence on policies at a local level, from overstay in reception centres to actions of civil disobedience (see chapter 4), being able to move without any major institutional constraints. They also tend to resist, to different extents, processes of limitation and/or co-optation in their work, which are those very elements that could in fact constitute the most relevant external constraints to their action (see the 2017 Code of conduct or the closing harbours policy), so originating also indirect effects on policies through unwanted consequences (Pollack, 2009). They also provide information to EU/Italian levels for evidence-based policies, either directly or indirectly, but with a relatively limited degree of success in terms of policy outputs (such as in the hearings in parliamentary committees or the involvement in the process of evaluation of the Facilitators Package). NGOs take also part in advocacy processes both at a local (more successful) and at a national level. Their actions seem to be oriented by a combined logic, where appropriateness elements connected to their role are merged with very rational and strategic decisions aimed at the protection of the values at the core of their organisations. Lastly, NGOs appear to have a comprehensive approach to smuggling, that incorporates different elements of the smuggling spectrum, with particular emphasis on the victimisation of migrants (see chapter 4).

All these different actors and their main agency patterns are synthetically reported in Table 7.1.

A last remark should be made, however, regarding the institutional constraints that can somehow limit or shape agency. Indeed, besides the specific examples provided for the different actors, there are other broader constraints coming from the very existence of a (multi-level) institutional environment, applicable to and affecting all the different actors and should therefore be recalled. They mainly are: international obligations, the constitutional framework, the task allocation among different actors and the material resources (see chapter 3) and it is crucial that an overall understanding of the policy-making dynamics in this area be informed also by their existence.

Table 7.1. – Institutional constraints, agency and smuggling perception across the governance levels

Actor	Levels	Agency & logics		Smuggling perception (the spectrum)
		What?	*Why?*	
Commission	**EU**, ITA ↓	Leading EU legislative initiative Limited evidence-based policies Shift from majority EP to Council Soft power at national level	Combined logic (shift from LoC to LoA) Institutionally central after Lisbon Institutional constraints at national level	Comprehensive (*demand side*), but security-based CR
EP	**EU**, ITA ↓↑	Subordinated to Council in legislative process Arena of political and moral debate Consensualism Collecting information across the levels for evidence-based policies	Path dependency Two-way influence with national governments Combined logic (prevailing LoC in majority groups) Relationship with constituencies	Comprehensive Limitedly security-based, but more than in the past Interconnected with political spectrum
Council of the EU	**EU**, ITA ↓	Key actor of the legislative process De facto veto player Use of other (non-) legislative tools Missed reforms influence national level	Path dependency Mostly rational logic Unintended consequences	Strongly security-based approach R
European Council	**EU**, ITA ↓	Crisis manager Soft power at national level Use of non-legislative acts	Strong political pressure Institutional constraints at national level Mostly rational logic	R
CJEU	**EU**, ITA ↓	-	Institutional constraints limit action	-

EU agencies	**EU**, ITA, SIC ↓↑	Provide information for evidence-based policy Fully embracing the three levels	-	-
EU civil servants	**EU,** ITA ↓↑	Technical work with other levels	-	-
National government	**ITA**, EU, SIC ↓↑	Key actor of the legislative process Continuity Indirect influence of the ground on policies Selective evidence-based policies Primacy of Ministry of Interior EU agency: (a) 'excuse shopping', (b) national policies as a leverage, (c) asking support to policies	Path dependency Executivisation of policies Unintended consequences Two-way influence with MEPs Twofold nature at EU level Arena linkages Mostly rational logic	Strongly security-based approach R (*negative connotation of smugglers, connection with other crimes*)
National parliament	**ITA**, EU, SIC ↓↑	Subordinated to government in legislative process Limited and selective evidence-based agency Discontinuity between committees and plenary/policy outcomes Arena for the political debate (polarised) Provides information for EU evidence-based policy	Combined logic (prevailing LoC in majority groups) Executivisation of policies	Interconnected with political spectrum (*limitedly comprehensive*)
Intermediate bodies (DNA, ANCI)	**ITA**, EU, SIC ↑	Twofold role in (a) building horizontal relationships, (b) uploading information to national and EU level and lobbying Work with bureaucracies:	Institutionally limited, but can exert political pressure Mostly appropriateness logic	Comprehensive (*embracing spectrum in its fullness; victimisation of migrants, diverse connotation of smugglers*)

		continuity and possibility to de-politicise issues		
National civil servants	**ITA,** EU, SIC ↓↑	Can use some discretion Possibility to keep low profile and de-politicise issues	-	-
Prefettura	**SIC**, (EU), ITA ↑	Progressively stronger role over the time Information to EU/national levels for evidence-based policies	Strong hierarchical relationship with government (LoA)	-
Law enforcement & border guards	**SIC**, (EU), ITA ↑	Limited implementation discretion Information to EU/national levels for evidence-based policies	Strong hierarchical relationship with government (LoA)	R
Municipalities	**SIC**, EU, ITA ↑	Inform political debate outside institutional competence Try to gain influence also at EU/national level Strong symbolic power, but arguable impact on policies	Institutionally limited, but can exert political pressure Combined logic	(Comprehensive)
Constitutional Court	**ITA**	De-securitising impact on national policies	-	-
Judges	**SIC**, ITA ↑	Impact on policies through interpretation of norms and bottom-up processes	Street-level bureaucracy Unwanted consequences Mostly appropriateness logic	Comprehensive

Prosecutors	**SIC**, (EU), ITA ↑	Impact on policies through interpretation of norms and bottom-up processes Information to EU/national levels for evidence-based policies (active outside the judicial arena)	Combined logic	Comprehensive, but more oriented towards CR
NGOs	**SIC, EU, ITA ↓↑**	Substantive influence on policies at a local level Resist to processes of limitation and/or co-optation Information to EU/national levels for evidence-based policies (either directly or indirectly) Advocacy	Very limited institutional constraints Unwanted consequences Combined logic	Comprehensive (*victimisation of migrants*)

Source: Elaborated by the author

Notes: The level in which actors are mainly embedded is in bold. Arrows highlight the main direction of multi-level dynamics. The position of the actor on the smuggling spectrum is referred to with L, CL, C, CR, R, progressively indicating the space from the left to the centre to right of the spectrum (see the smuggling spectrum in section 1.2.3.)

7.3. Policy focus: the 'facilitation offence'

The analysis conducted throughout the research showed that certain issues pose substantive problems to policy-makers and to those tasked with the implementation on the ground. Among them, one of the domains of biggest concern for different reasons at different levels was connected to the criminal law framework, i.e. to the so-called 'facilitation offence' (see chapter 3). Actors on the ground repeatedly highlighted critical issues connected with this provision, whereas policy-makers at the Italian and EU levels extensively discussed about different policy options to change the existing framework, often from very different perspectives. In the present paragraph, therefore,

this policy – crucial element of the whole anti-smuggling framework – shall be taken as an example of how the different actors above recalled move across levels, exercising influence on the overall policy adoption process.

In this perspective, this paragraph, rather than offering new data, evidence and cases[59], aims to suggest a different, policy-based perspective, which will allow to make the most of the analytical model, disclosing the different agency, multi-level and governance dynamics, taking this very policy as a significant example.

Chapter 3 (and, to a lesser and different extent, also chapter 1) offered a description of the existing anti-smuggling criminal law framework, essentially based on the EU Facilitators Package and on the Italian article 12 TUI. Such framework clearly is the basis of this policy focus, since it represents the applicable legislation for actors tasked with implementation as well as the norms to be assessed by policy-makers in view of a possible substantial change of this very framework.

Namely starting with the local level, the analysis conducted in chapter 4 showed that the application of article 12 TUI posed some challenges, depending on the perspective of the different actors (see chapter 4 for sources and references) and on the way in which they were able to exert agency within the different institutional frameworks :

1. Members of the judiciary had to deal, in particular, with aspects related to (a) the establishment of the Italian jurisdiction at high seas, (b) cases of 'alleged' or 'forced' smugglers, in order to establish whether and to what extent the 'exoneration clause for distress' could be applied and (c) those cases involving NGOs in SAR operations, in particular with reference to the possible infringement of article 12 TUI in certain circumstances. Within the judiciary, the agency of prosecutors and judges showed some differences in particular in relation to points (b) and (c): judges tended to be more cautious than prosecutors in the application of the framework, granting the 'exoneration clause for distress' (even if with the mentioned overturning in the Court of Cassation) and dismissing the cases against NGOs (even upon direct requests of the prosecutors, after extensive investigations). These differences have been

[59] For this very reason, as already explained in the introduction to this chapter, there will clearly be extensive references to the previous chapters as well as overlaps and repetitions.

explained, besides the judicial analysis, in terms of different institutional constraints and of a more appropriateness-oriented attitude of judges;

2. NGOs were actually very important actors in terms of concrete practices implemented, with their SAR operations in the Mediterranean Sea that had a very important impact on the application of the penal framework, not only for said investigations, but also in relation with their involvement in the very application of the criminal law (such as agreeing on the presence of law enforcement on board). This was based on the little institutional constraints faced by NGOs in setting their actions;
3. Lawyers were also very important, in particular addressing the issue of the 'alleged' or 'forced' smugglers, not only in court but also in the public debate, suggesting the inadequacy of the existing penal framework, exerting agency also outside the institutional arena dedicated to their action.

Besides the direct effect in terms of implementation and on the application of laws (see the aspects of judicial policy-making, again in chapter 4), this situation produced significant effects also in the relationship with the other levels and for the effects it brought.

The connection with the national level happened mainly through two institutional channels: this aspect reinforces the assumptions about the importance of the institutional setting in shaping the different behaviours and forms of agency (see March and Olsen, 2011).

The first institutional channel is the DNA, which, as intermediate body, allowed for an institutional space where the judiciary could upload information, challenges and preferences, with a view not only to ensuring a stronger horizontal coordination but also to reach legislators. The main issues that were transferred to decision-makers at national level in this specific regard had to do with the different natures of people charged with the 'facilitation offence', with some sort of distinction between smugglers and facilitators, in line also with the smuggling spectrum approach of this research and broadly recalling also the issue of 'alleged' or 'forced' smugglers. This aspect was connected with the broader debate on the financial or material benefit as a (non-)constitutive element of the offence (see section 5.2.1.).

The second institutional channel are the parliamentary committees, where the main actors addressing these aspects were prosecutors and NGOs, often heard as experts and focusing on the potential relationship between NGOs and smuggling networks and on the very nature of NGO-led SAR operations. The entire issue here was connected, at least in part, with the humanitarian exemption concerns (see sections 5.2.1. and 5.3.3.). The debate in this arena was really long and extensive, but prosecutors substantially failed to bring conclusive evidence related to any widespread illegal activity of NGOs (see section 5.2.1.). However, for the very characteristic of this institutional arena, the lack of evidence – which would have become, and actually became, crucial in a judicial arena – could be somehow neglected.

Both of these institutional upload arenas were directly connected with (or, in the case of committees, were even part of) the parliament. This is remarkable as it allowed Members of Parliament (MPs) to gain direct evidence about existing issues in this specific policy sector. Still, the debate in parliament, analysed in chapter 5, showed how the primary focus in criminal law anti-smuggling policies was on (a) NGOs and their potential connection with smugglers and/or liability for the 'facilitation offence' (even in absence of any conclusive evidence, as above recalled) and (b) a one-way perception of smugglers as evil criminals, essentially falling at the right extreme of the smuggling spectrum (see section 1.2.3.), with only few exceptions.

This can be understood on the basis of the selective evidence-based policy-making (see paragraphs 5.4. and 6.4. as well as above. See also Baldwin-Edwards et al., 2019), where a rationality approach, responding to the fulfilment of a political agenda, overcomes the pursuit of policies responding to the actual needs (in this specific case, evidence calling for more restrictive and securitising approaches have shown a stronger capacity of inspiring policies). But also inter-institutional dynamics between the parliament and the government can contribute to explaining the missing aspects of this information upload: the government, still clearly connected to parliamentary committees by an indirect relationship, is the leading actor of the legislative process and mainly responds to rational choice approaches, with a substantial degree of continuity over the years (see chapter 5 and paragraph 7.2.). On the one side, therefore, the main legislative actor is less exposed to direct connection with those institutional spaces where information is uploaded. On the other side, it responds to

different logics, where the priority is not necessarily to ensure that information and preferences coming from the actors tasked with the implementation of existing measures be taken into account.

But this process is further complicated by a parallel process which happened at EU level, where the general framework of article 12 TUI approach is set (namely in the Facilitators Package, see chapter 3). In spite of the room for manoeuvre left to MSs insofar as the aspects considered above were concerned (see European Parliament 2016, 50–54 and chapter 3), missed reforms of the FP had indeed a clear impact on the Italian situation, as we shall see below.

The potential review of the Facilitators Package was based on a number of interactions, again coming from the ground and where evidence arising from the Sicilian case was of crucial importance. The above-explored issues concerning the implementation of the criminal law framework in one of the most important smuggling arenas could move from the Sicilian to the EU level through three institutional arenas. Firstly, the DNA, which allowed to upload some of the main smuggling agency patterns, in the perspective of judges and prosecutors, into the EU arena, mainly in connection with EU agencies (see section 6.2.1.). Secondly, the arena of informal-to-institutional dynamics, where in particular research and studies could inform policy-makers of the points of view not only of the members of the judiciary, but also of NGOs operating on the ground, in broader connection also with civil society and experts. Here the main elements considered had to do with the financial or material benefit and with the humanitarian exemption (see section 6.3.2.). Thirdly, also parliamentary hearings and field missions were crucial in uploading information, mainly from prosecutors and NGOs, in particular related to ‘alleged’ smugglers, humanitarian exemption and smuggling patterns (see sections 6.2.1. and 6.2.2.).

If the DNA was essentially connected with EU agencies in general, research and informal arena had a direct relationship both with the EP and the Commission, whereas EP hearings and field visits were clearly directly related to the Parliament itself.

The legislative process at EU level to reform the FP, however, never started, and there was no room even for minor improvements. The Commission, indeed, concluded quite contradictorily for the lack of any conclusive evidence for a revision of the FP, arguably acknowledging the tepid approach of MSs towards a reform that would actually focus

on these issues coming from the ground, such as financial or material benefit and humanitarian exemption (INT_1, March 2019; INT_2, April 2019). These conclusions are not confirmed by any hard evidence coming from the Council, but it appears significant that, on the contrary, the other co-legislator repeatedly called upon the Commission for some interventions on the issue on humanitarian exemption[60] (at least in the form of soft law guidelines) but without any success (see section 6.3.3.). This can be explained, in turn, with the veto player nature of the Council in AFSJ, aimed at maintaining a status quo grounded in a pre-Lisbon policy-making (see Maricut, 2016 and Ripoll Servent, 2017. See also Bonjour et al., 2018; Olsson, 2016 and Pollack, 2009 on path dependency in new institutionalist approaches).

Coming full circle, dynamics taking place between the Italian and the EU level also mattered. If, on the one side, the missed reform had an impact on the Italian policy-making, even though room for agency still existed (see above and chapter 3), such relationship mattered also in the opposite direction. In particular, this was the case (a) because of the involvement of MPs in the hearings and field visits of EP, (b) for the very role of the national government within Council, as well as (c) for the request of legitimising support brought forward by the Italian government to the Commission (and granted by the latter) concerning the 2017 Code of conduct (see sections 5.2.2. and 6.2.2.).

It should be noted that, as an external actor, also international organisations contributed to this final result, in particular through an engagement with the Commission (see paragraph 6.4.).

This three-layered policy-making process related to the possible reform of the existing criminal law framework to counter the smuggling of migrants led to the following policy outputs (see chapter 3):

1. At a national level, there was no reform of article 12 TUI, where any potential challenge connected to the lack of differentiation between smugglers and facilitators, the financial or material gain as well as the humanitarian exemption was not addressed. On the contrary, three non-legislative tools (with all the

[60] As was already recalled, the issue of the financial or other material benefit, that still was very important for the Parliament at the moment of the approval of the Facilitators Package, was actually neglected in the more recent reform debate.

implication in terms of inter-institutional agency, see paragraph 5.4.) were developed, going exactly in the opposite direction: the 2017 Code of conduct, aimed at constraining the agency of NGOs; the 2018 closing harbours policy for NGO vessels; the 2019 directives of the Ministry of Interior, again aimed at forbidding the docking/entry into territorial seas of NGOs, being these last two essentially connecting the NGO activities with the violation of norms on the 'facilitation of illegal immigration' (cf. Carrera et al., 2018b; Cusumano, 2019; Cusumano and Gombeer, 2018 and Morcone, 2019);

2. At an EU level, in a specular way, there was no reform of the FP, nor any direct intervention limited at least to provide some guarantees to humanitarian actors. On the contrary, the only active intervention, even if not in terms of act but rather in terms of public declaration, was the support to the 2017 Code of conduct.

In such a context, where (a) several critical aspects were highlighted on the ground, (b) most of them were brought to the attention of policy-makers, (c) part of them were also extensively discussed at national level, the final policy output both at national and EU level seems at odd with the whole process, reinforcing the assumptions of the "failing forward" argument (Scipioni, 2018b; see also Caponio and Cappiali, 2018 and section 1.3.1.). It is not surprising, therefore, how the final outcome based on the situation and on the decisions take at different levels eventually led to:

1. The persisting uncertain situation of 'alleged' or 'forced' smugglers (see chapter 4);
2. The persisting uncertain situation of NGOs operating in the Mediterranean Sea (see chapter 5).

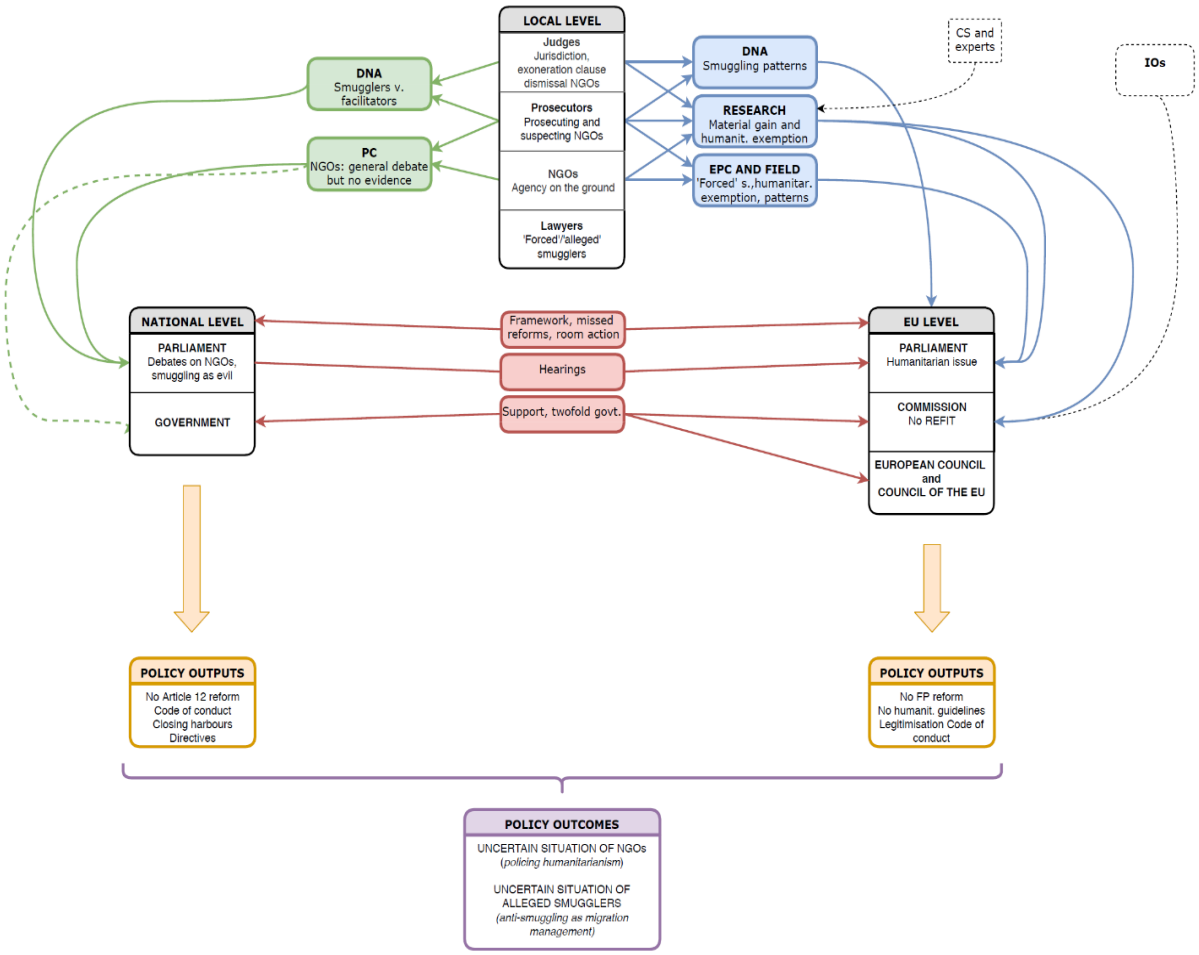
The failure to address those aspects – financial or other material benefit and humanitarian exemption – that would be crucial to provide a meaningful answer in the light of the criticisms emerged, seems to reinforce (a) the idea of the anti-smuggling framework as a tool to manage migration, rather than fighting against smuggling (SIC_1, September 2018; SIC_2, October 2018; INT_2, April 2019 among others) and (b) the overall tendency to police humanitarianism (see Carrera et al., 2018a and Cusumano and Gombeer, 2018 among others). It should be noted, lastly, that the inclusion of the financial or other material benefit as constitutive element of the offence is nevertheless controversial and opposed by certain institutional practitioners, also in

Italy (see UNODC, 2017, p. 41). Arguably, it is not necessarily able to solve concerns related to 'alleged' or 'forced' smugglers (in those cases in which they actually receive some form of discount on the price of the crossing). However, in conjunction of the 'exoneration clause for distress' and with the humanitarian exemption constitutes one of the tools to address the 'grey area' of smuggling. Furthermore, the overall debate over the material benefit could nevertheless inform a reform of article 12 TUI, providing for meaningful, different degrees of responsibility for facilitators and smugglers (SIC_3, October 2018; JUD_3, April 2019; ITA_2, April 2019. See also Escobar Veas, 2018).

In concluding this chapter, Figure 7.1. tries to sum up all these arguments and to provide a more intuitive image of the whole process considered above[61].

[61] In spite of how complex it may look, this process is still oversimplified, insofar as it assumes a T_0 and a T_1, without considering as every intermediate step, especially in terms of policy outputs, had side effects back onto other actors (e.g. the 2017 Code of conduct had an impact on the agency of NGOs on the ground, which adapted to the new situation through new forms of agency – as reported by JUD_3, April 2019, citing an EU report – that in turn would lead to the closing harbours policy, etc.).

Figure 7.1. – Across-the-level agency dynamics in the review of the 'facilitation offence'



Source: Elaborated by the author

Abbreviations used exclusively in this figure: (E)PC = (European) parliamentary committees; CS = civil society

Conclusions

At the end of a journey made of continuous shifts and movements across the anti-smuggling governance levels, the time has come to draw some conclusions, briefly recalling the path travelled and answering the research question (RQ). On such bases, also an understanding of the way forward and of the potential avenues opened by this research shall be offered.

After doing so, there will be still some room for a short narrative update, shedding light on the main events happened in the period between the end of the data collection and the completion of the writing phase.

Some reflections will also be shared, concerning on the one side one key analytical tool of this research, i.e. the smuggling spectrum, and, on the other side, the research in itself, considering their implications besides academia and, more broadly, what means to research on migration issues in Europe at the end of the 2010s.

Answering the research question

This research aimed to offer an up-to-date, in-depth understanding of an often overlooked component of the migration framework in the EU – i.e., smuggling-related policy-making – making use of an innovative analytical model, based on the conceptual combination of existing approaches.

To do so, Part 1 of the study was dedicated to a complex process of establishment of an operational definition, based on the definition of a smuggling spectrum, and to the identification and formulation of the research problem and connected questions. In order to answer these questions, the combination of new institutionalist and multi-level governance (MLG) approaches was sought, through the delineation of a 3-layer analytical model, able to disclose the across-the-level interaction of actors involved in the anti-smuggling policy-making (and implementation) in Europe, focusing on the specific cases of Italy and Sicily. This research tried to contribute to the EU studies and to the overall knowledge of the migration field by (a) focusing on a phenomenon – migrant smuggling – which, in spite of a growing attention by scholars, appears to be still overall understudied; (b) choosing to focus on a specific aspect of it, i.e. the policy-making within the European Union, that, albeit important and topical, was only very

limitedly explored; and (c) suggesting a way of looking at it by combining an institution/agency approach with the understanding of the ultimate multi-level nature of the process.

Part 2, based on the application of the analytical model onto the Italian/Sicilian case, made it possible to disclose the characteristics of the implementation and making processes of those policies aimed at targeting the smuggling of migrants at a local, national and supranational level, in chapters 4, 5 and 6 respectively. Chapter 7 eventually wrapped up all these different components and highlighted the patterns in the across-the-level interactions of the involved actors.

Bringing together all the aspects discussed throughout the research, and in the previous chapter in particular, these final remarks enable to answer the main research question that has informed this study, i.e. what are the patterns of the smuggling-related policy-making across different levels of EU governance and which institutional and agency dynamics can explain them?

On the basis of the multiple perspectives adopted to study the policy-making related to migrant smuggling within the EU, focusing on the Italian/Sicilian case in the period 2014-2019, and in particular (a) on agency and bottom-up processes at the implementation level, (b) MLG dynamics at national level, (c) MLG dynamics at EU level, (d) across-the-level agency and institutions analysis, the following answer can be provided:

> ***The analysis of the Italian/Sicilian case indicates that policy-making in the anti-migrant smuggling domain in the EU is strongly executive-centred and involves a plurality of institutional actors, embedded at an EU, national and local level, who tend to share, to different extents, a progressively securitising approach. The complexity of the governance systems allows for pass-the-buck dynamics, in particular between the Italian and EU levels. Furthermore, notwithstanding the significance of dynamics taking place on the ground in a policy-making perspective, processes of information and preference upload prove to be difficult and dependent on the specific stance of the concerned information. Lastly, non-institutional actors significantly contribute to the process of policy***

adoption, mostly through their practices (and even in unwanted manners) rather than by processes of advocacy.

The complexity of the answer to the research question, albeit unavoidable given the complexity of the question itself, necessarily calls for some deeper explanations of its different components, which shall be provided below.

1. The analysis of the Italian/Sicilian case indicates that policy-making in the anti-migrant smuggling domain in the EU is strongly executive-centred and involves a plurality of institutional actors, embedded at an EU, national and local level, who tend to share, to different extents, a progressively securitising approach. The national government and the Council of the EU (the Council) lead the policy-making process, showing a certain continuity in the overall approach, even between governments of different colour (Zincone, 2011), as well as in the choice of policy tools (see Capano and Lippi, 2017): there is a progressive shift towards 'new governance' tools, which create even more room for manoeuvre for governments, in the framework of a rational-oriented approach (Guiraudon, 2018 and Olsson, 2016. See also Cardwell, 2018). Veto-player dynamics, within path dependency frameworks, also apply (Pollack, 2009. See also Maricut, 2016; Ripoll Servent, 2017 and Tsebelis, 1995). At a supranational level, this reaffirms the importance of intergovernmental dynamics, to the detriment of supranational ones (Maricut, 2016).

The other side of this process entails a progressive marginalisation of parliaments, which tend to respond to different logics of agency and to ensure a stronger connection with actors on the ground (crucial in the overall policy-making, see below), but are de facto relegated into arenas of political debate where the overall discourse is framed. In this perspective, the Italian parliament appears to be more confrontational and the issue is more divisive (see Giuliani, 2008 and Zincone, 2011), whereas the debate in the European Parliament (EP) seems to be more morally oriented. Yet, the actual degree of influence on substantive policies appears to be limited, excluding those processes, in particular at EU level, where Members of the European Parliament (MEPs) reshape and reshuffle their preferences, agreeing to a more Council-oriented position (cf. Huber, 2015).

Also the European Commission (EC, the Commission) plays a crucial role, as it tips the scale between Council and Parliament. Albeit consistent in the balancing of

securitising and holistic approaches, the Commission showed a progressive shift towards the Council in the legislative process, in some sort of subordination, even if apparently contradicted by the debates in the parliamentary arena (cf. Scipioni, 2018b and, in a wider perspective, Zaun, 2017b).

Lastly on this point, all policy-makers appear to share a security- and criminal law-based approach, even if to a very different extent, where prevention and demand side policies are marginal. The overall policy-making and implementation in this field seems, thus, only very limitedly informed by the multifaceted nature of smuggling and by the existence of the smuggling spectrum, as defined in section 1.2.3. In this perspective, policy-makers also tend to use the deep complexity of this policy areas to partly disguise this approach and make it more 'acceptable' (see, for example, the paradoxical convergence between "the humanitarianization of migration and border management" and its securitisation in the Mediterranean Sea in Cuttitta, 2018, p. 636). Independently on the political stance, this approach seems to be more accentuated in the national government and in the Council (cf. Guiraudon, 2018).

2. The complexity of the governance systems allows for pass-the-buck dynamics, in particular between the Italian and EU levels. This second aspect has to do with the way in which policy failures or, more broadly, problems and shortcomings can actually be attributed – rightly or wrongly – to other governance layers or actors. Besides horizontal dynamics (e.g. between EP and Council/European Council, see chapter 6), the most interesting pattern involves the changing role and perception of the EU as a whole from the national level. Leaving behind the 1990s and 2000s dynamics, where EU policies and policy approaches de facto revolutionised the Italian migration and smuggling policy (see Abbondanza, 2017; Castelli Gattinara, 2017 and Finotelli and Sciortino, 2009), the recent situation exposes a clear contradiction. On the one side, national policy-makers do not use the room for manoeuvre they actually have to intervene on anti-smuggling policies, within the overall framework set at an EU level (see above), as well as failing to contribute to this policy changes in the supranational arena itself (mainly within Council). On the other side, though, missed reforms (or alleged ones) are used as scapegoat to justify shortcomings in the implementation of smuggling-related policies, through those dynamics defined as 'blame Brussels' or 'excuse shopping' (cf. Finotelli and Sciortino, 2009).

3. Furthermore, notwithstanding the significance of dynamics taking place on the ground in a policy-making perspective, processes of information and preference upload prove to be difficult and dependent on the specific stance of the concerned information. The third point highlights the importance of the ground level, in particular insofar as the agency of a plurality of actors at this level affects the existing framework, through the exercise of discretion and through an impact on the policy-making process, which can be either direct (local policy-making) or indirect (bottom-up dynamics, see chapter 4). In particular, among the different actors, the role of the judiciary is crucial, considering both prosecutors and judges (see above. Cf. also Anaya, 2014 and Marmo, 2007).

However, the upload of information and preferences from the ground proves particularly difficult, both in relation to the national and EU levels. In this perspective, the concept of 'selective evidence-based policies' was introduced, considering how information and preferences coming from the ground are more likely to be incorporated in the policy adoption process if they fall within a security-based logic (cf. Guiraudon, 2018, among others), covering only a very limited part of the smuggling spectrum. A critical aspect of this is the understanding of the point at which these upload processes stop. In this respect, it should be noted that available evidence shows that, at least in the case of national parliament, EP and Commission, information and preferences reach a preliminary stage of the decision-making. Such process, therefore, rather than being blocked by the lack of appropriate communication channels (which exist and are particularly important, such as intermediate bodies, parliamentary committees and expert research), appears to be affected by institutional dynamics at the level of decision-makers (see paragraph 7.2.). Issues, indeed, tend to be also institutionally divisive, as actors respond to different logics and different perspectives: the executive-centred nature of the policy-making in this domain seems to heavily affect the process of information and preference upload and its incorporation into policies. However, the degree to what this actually happens is difficult to establish, given the black box related to the information upload and to the actual decision-making, which characterises the national government and the Council.

4. Lastly, non-institutional actors significantly contribute to the process of policy adoption, mostly through their practices (and even in unwanted manners) rather

than by processes of advocacy. This last element has to do, mainly, with the role of NGOs, especially those involved in search and rescue (SAR) operations in the Mediterranean Sea (even though other non-institutional actors are also involved). Their impact on policy-making dynamics is very deep and strong, mostly in terms of (unintended or at least secondary) consequences arising from their practices. The 2017 Code of conduct or the closing harbours policy are clear examples of that.

The way forward

As an interpretive case study in a policy domain still to be explored, in particular with reference to the policy formulation and adoption dynamics, this research has sought to provide some first systematic insights into the patterns of policy-making within the EU, through the understanding of rather significant case(s), i.e. Italy and Sicily.

The approach proposed, based on the smuggling spectrum and on the 3-layer analytical model, might offer, in this perspective, interesting potentialities in order to look at similar dynamics in other European countries. The most important contribution that this research can offer to the overall scholarship in this field, besides the in-depth understanding of the specific Italian/Sicilian case, probably lies in the definition of a model to look at the interaction between institutions and political agency across different governance levels.

Besides that, the analysis conducted and the conclusions here presented also suggest further specific research avenues that would significantly improve the knowledge and understanding of the way in which policies aimed at countering migrant smuggling are shaped. Among them, three are particularly worth recalling:

1. The impact and influence of a fourth governance layer, i.e. the international framework/international organisations (see paragraph 6.4.);
2. The understanding of the role of national and EU bureaucracy and civil servants as de facto game changers, as they are able to ensure continuity in time and between governance levels, also through their capacity of moving more freely and discreetly in a policy domain so divisive and contentious (see paragraphs 5.2. and 6.3.);

3. The unpacking of the black boxes of Council and government, both in terms of policy adoption and in terms of connection with the ground and processing of information and preference coming from this level (also through the work of the intermediate bodies), as well as from non-institutional actors (see paragraphs 5.3., 6.3., 7.2. and 7.3.).

Comparative studies or other case studies focused on other countries and dynamics, as well as future research on the above issues, shall allow researchers to build upon the findings of this work and to contribute to a deeper understanding of the patterns and the logics that govern the elaboration of policies against the smuggling of migrants within the EU.

Hopefully, this study may also provide an empirical contribution, based on the extensive information and analyses concerning the policy-making dynamics in a quite unexplored field. In so doing, it has tried to offer some material and food for thoughts and reflection also for those actively engaged in attempts to influence the policy-making process and, potentially, changing the existing policies.

The extent to which an empirical contribution actually exists is not for the author to say: practitioners engaged in policy-making, implementation and advocacy would rather be the ones to assess that. In very broad terms, it can however be observed that some of the aspects that have emerged are quite intuitive – such as the centrality of the government and the Ministry of Interior – and in such perspective this could be seen as reinventing the wheel. On the other hand, however, other dynamics that were analysed are far less evident or considered in existing studies: among them, the role of bureaucracy, that of intermediate bodies and of the judiciary, the selective information upload and evidence-based policy-making, the 'blame Brussels'/'excuse shopping' games or the complex interactions between different policy areas.

Hence, even though some further research is definitely necessary, the hope of the author is that the analysis emerged in this research can already offer some interesting reflections for the general public and in an advocacy and policy advisory perspective, in terms of production and implementation of migration policies and for potential changes of the existing framework.

A narrative update

As explained in the first lines of these conclusions, another important aspect to consider in these last pages is a brief narrative update, focusing on the significant events which took place in the period between the end of data collection (April 2019) and the conclusion of the writing phase (September 2019). A few lines were further added at the end of this section in February 2020, in the occasion of the finalisation of the thesis with some small changes and clarifications based on the comments of the external reviewers appointed by the University of Bologna. This last addition briefly covers the period September 2019 – February 2020.

In such a topical field, meaningful events take place almost on a daily basis and these last months have offered several new examples of dynamics similar to those that had already emerged in the analysis conducted, in particular with regards to SAR operations. A new directive was issued on 15 May 2019 by Minister Salvini and in the following weeks the confrontational nature of the interaction between NGOs and the Ministry of Interior dramatically increased, in turn further polarising the public debate. This included a new decree-law (the 'Security Decree-*bis*', i.e. Decree-Law n. 53/2019, converted with Law n. 77/2019), which exacerbated the rationale of the Security Decree, but also new judicial proceedings, the seizure and release of NGO boats, new bans for NGOs to access the territorial sea issued again by the Minister of Interior, and even the intervention of an administrative court to suspend the enforceability of the Security Decree-*bis* and allowing the entrance of an NGO boat into the Italian waters. In May, meanwhile, the main still ongoing judicial proceeding of Prosecutor Zuccaro related to NGO-led SAR operations, was dismissed.

Furthermore, the case of the halt to the docking of the coast guard Gregoretti ship also took place. It closely resembled the Diciotti case, but, on this occasion, Minister Salvini seemed to want to avoid bringing the case to its extreme consequences.

These events offer several examples, also in these last months, of dynamics that were extensively analysed throughout the research, including institutional clashes between the Ministry of Interior and other ministries and law enforcement and border guards and the always controversial – at least for policy-makers – role of NGOs.

Finally, throughout the month of August a governmental crisis was opened by Minister Salvini, migratory issues being central also in this case. The crisis ended in early

September, with the formation of a new government led again by President Conte, but supported by a different majority, bringing together the Five Star Movement and the Democratic Party (PD) and opening the doors of the Ministry of Interior for Luciana Lamorgese, former *Prefetto* in Venice and Milan and former chief of staff of then Ministers of Interior Angelino Alfano and Marco Minniti, in a PD-led government. The political agency on undocumented migration and smuggling of the new Minister and of the new government will be of utmost interest, also in order to assess the degree of continuity and to highlight and analyse potential differences in the approach and in the policy outputs and outcomes.

The events that took place between the end of the writing phase, in September 2019, and the month of February 2020, when this thesis came to its final version, are significant in this perspective. Continuity has indeed been shown with regards to shifting out policies (renewal of the 2017 Italy-Libya Deal) and with the failure to abrogate the Security Decrees (which have not even been amended, so far, though the new government committed to it). Significant changes were brought, instead, by the Malta Declaration on SAR and relocation of September 2019, where Italy played a central role and achieved an important success at an EU level. Equally remarkable has been the start of two other judicial proceedings against former Minister Salvini, one for the Gregoretti case mentioned above and one for another similar case involving the NGO vessel Open Arms. The political scenario concerning the authorisation of his indictments appears now to be different: the new parliamentary majority seems inclined to authorise the indictments, and so is the Lega Nord (at least in the Gregoretti case, having voted in favour in an intermediate stage in committee), in a strategic attempt to politically capitalise on an alleged judicial persecution against Matteo Salvini. Lastly, new attention to Operation Sophia and a re-deployment of naval assets has arisen due to the ongoing Libyan conflict, even if SAR aspects have appeared to be marginal in the policy debate and negotiations between EU governments.

Researching on migration governance in troubled times

Moving towards the conclusive remarks, two reflections are worth sharing. The first one has to do with one of the key analytical elements of this study, i.e. the smuggling spectrum, cornerstone of the operational definition of migrant smuggling.

Notwithstanding its potential analytical value and its importance, which the reader might have appreciated throughout the research, it appears striking how little empirical relevance it has assumed in the agency of a wide majority of policy-makers and practitioners. Even if with some exceptions, most of them have seemed to fail catching the overall complexity of the phenomenon of the smuggling of migrants, its multifaceted nature and the impossibility of a one-size-fits-all response. And, even when this complexity was caught, the policy outcomes have rarely been consistent with such an awareness. These aspects were partly recalled throughout the research, especially in chapter 7, but what can be added here is how all this has substantial – and sometimes very serious or even dramatic – consequences for the recipients of these policies. Occasional facilitators may be mixed with organised, “ruthless” (in the very words of the European Commission) smugglers; smuggled migrants are rarely perceived – and treated – as victims; humanitarian actors are targeted as accomplices of smuggling networks. These are but a few concrete examples of the direct and indirect consequences arising from the lack of policies informed by that complexity expressed in the smuggling spectrum.

And this very awareness somehow leads to the second consideration, which has to do with the overall meaning of this research and to what researching into migration entails, especially in this historical moment. The methodological rigour and accuracy, as well as the technical arguments embedded in the analysis of policy-making dynamics, cannot make one forget about the concrete impact and empirical consequences of these policies and of these processes. This element has been very present under different points of view: from the difficulty which was experienced at times in addressing very sensitive issues with some of the interviewees, to the delicate process of unbiasedly reconstructing and connecting data out of the political debate, to the very awareness that besides policies, processes and institutions there are real people, who face the consequences, sometimes even in dramatic terms, of the policies adopted. And this last element of awareness, in particular, though not always easy to manage, has accompanied the author throughout the entire research.

Messina, 8 February 2020

Appendix 1

List of main legislative acts, treaties, international conventions and their respective abbreviations

European Union

Directive 2001/55/EC on the temporary protection in the event of a mass influx *(Temporary Protection Directive)*

Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (2002/946/JHA) *(Facilitators Package)*

Council Decision of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of this Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community (2006/616/EC)

Council Decision of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community (2006/617/EC)

Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment *(Blue Card Directive)*

Regulation (EU) 439/2010, establishing the European Asylum Support Office (EASO) *(EASO Regulation)*

Directive 2011/95/EU (recast) for the definition of refugee status and beneficiaries of subsidiary protection *(Qualification Directive)*

Regulation (EU) 603/2013 (recast) for the establishment of the Eurodac system *(Eurodac Regulation)*

Regulation (EU) 604/2013 of 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 *(Dublin III Regulation)*

Directive 2013/32/EU (recast) for the procedures for granting and withdrawing refugee status and subsidiary protection *(Asylum Procedures Directive)*

Directive 2013/33/EU (recast) on the reception of asylum seekers *(Reception Conditions Directive)*

Directive 2014/36/EU on the conditions of entry and residence of third-country nationals for the purpose of employment as seasonal workers

Council Decision (EU) 2015/1523 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece

Council Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

Regulation (EU) 2016/1624, replacing Frontex with the European Border and Coast Guard Agency (EBCGA)

Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing

Council Decision (EU) 2016/1754 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

Italy

Law n. 943/1986

Decree-Law n. 416/1989, converted with Law n. 39/1990 *(Martelli Law)*

Decree-Law n. 451/1995, converted with Law n. 563/1995

Law n. 40/1998 *(Turco-Napolitano Law)*

Legislative Decree n. 286/1998 *(Consolidated Immigration Act, TUI)*

Law n. 189/2002 *(Bossi-Fini Law)*

Law n. 125/2008 and Law n. 94/2009 *(Security Package)*

Decree-Law n. 13/2017, converted with Law n. 46/2017 *(Minniti-Orlando Decree)*

Law n. 47/2017 *(Zampa Law)*

Decree-Law n. 84/2018, converted with Law n. 98/2018

Decree-Law n. 113/2018, converted with Law n. 132/2018 *(Security Decree)*

Treaties and international conventions

United Nations Convention against Transnational Organized Crime and the Protocols thereto *(UNTOC)*

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime *(Trafficking Protocol)*

Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against Transnational Organized Crime *(Smuggling Protocol)*

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts *(Amsterdam Treaty)*

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community *(Lisbon Treaty)*

Treaty on European Union *(Maastricht Treaty, TEU)*

Treaty on the Functioning of the European Union *(TFEU)*

The 18 March 2016 EU-Turkey Statement *(EU-Turkey Statement, Deal, Agreement)*

The 2 February 2017 Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic *(Italy-Libya Deal)*

Appendix 2

List of interviewees

N.	Referred to as	Position/institutional affiliation	Date and type of interview
1	SIC_1	Lawyer, Messina	*26 September 2018, phone*
2	JUD_1	Judge, Messina	*28 September 2018, in person*
3	LAW_1	High-rank Law Enforcement Officer, Messina	*1 October 2018, in person*
4	LAW_2	High-rank Law Enforcement Officer, Messina	*1 October 2018, in person*
5	NGO_1	NGO Officer, Eastern Sicily	*4 October 2018, Skype*
6	SIC_2	Former Deputy Mayor for Migration Policies, Messina	*6 October 2018, phone*
7	NGO_2	NGO Officer, Eastern Sicily	*10 October 2018, Skype*
8	JUD_2	Judge, Messina	*17 October 2018, informal conversation, in person*
9	SIC_3	Lawyer, Catania and Ragusa	*17 October 2018, phone*
10	SIC_4	Former Deputy Mayor for Migration Policies, Palermo	*19 October 2018, phone*
11	NGO_3	NGO Officer, Sicily	*22 October 2018, Skype*
12	NGO_4	NGO Project Manager, Sicily	*23 October 2018, Skype*
13	LAW_3	High-rank Law Enforcement Officer, Palermo	*15 November 2018, phone*
14	INT_1	UNODC, Officer	*15 March 2019, Skype*
15	EUR_1	Governmental officer acting at EU level	*27 March 2019, phone*
16	ITA_1	ANCI, Officer	*29 March 2019, phone*
17	JUD_3	National Deputy Anti-Mafia Prosecutor	*17 April 2019, in person*
18	ITA_2	Ministry of Interior, Department for Civic Liberties and Immigration, Former top-level Officer	*17 April 2019, in person*

19	INT_2	UNODC, Officer	*25 April 2019, Skype*
20	EUR_2	Italian MEP	*2 May 2019, Skype*
21	ITA_3	Ministry of Justice, Department for Justice Affairs, Directorate-General Criminal Justice, Judge in charge	*14 May 2019, informal conversation, phone*
22	NGO_5	NGO Officer, Mediterranean Sea	*22 May 2019, Skype*
23	EUR_3	European Commission, DG HOME, Officer	*28 May 2019, informal conversation, phone*

Appendix 3

List of figures, tables and boxes

References

Abbondanza, G. (2017). Italy's migration policies combating irregular immigration: From the early days to the present times. *The International Spectator*, 52(4), 76–92. https://doi.org/10.1080/03932729.2017.1384606

Abdoulaye Diallo, A., Ward-Booth, G., Knoll, A., Luda di Cortemiglia, V., Hauck, V., Le Boulch, M., Ibukun Akinyemi, A. and Konan Yao, S. (2018). *Needs assessment study for the development and implementation of legislation and strategies to counter migrant smuggling covering Côte d'Ivoire, the Gambia, Guinea and ECOWAS*. European Commission, Directorate-General for Migration and Home Affairs; IBF International Consulting. Retrieved from http://publications.europa.eu

Agranoff, R. (2014). Local governments in multilevel systems: Emerging public administration challenges. *The American Review of Public Administration*, 44(4S), 47S–62S. https://doi.org/10.1177/0275074013497629

Achilli, L. (2015). The smuggler: Hero or felon?, MPC 2015/10, Robert Schuman Centre for Advanced Studies. San Domenico di Fiesole (FI): European University Institute. https://doi.org/10.2870/36445

Albanese, F. (2018). Salvini: "Porti chiusi anche alle navi delle missioni internazionali". La Difesa: "Non ha nessuna competenza". *La Stampa*, 8 July 2018. Retrieved from http://www.lastampa.it

Allsopp, J. and Manieri M. G. (2016). The EU anti-smuggling framework: Direct and indirect effects on the provision of humanitarian assistance to irregular migrants, in S. Carrera and E. Guild (Eds.). *Irregular Migration, Trafficking and Smuggling of Human Beings – Policy Dilemmas in the EU*. Brussels: Centre for European Policy Studies, 81–91.

Aloyo, E., and Cusumano E. (2018). Morally evaluating human smuggling: the case of migration to Europe. *Critical Review of International Social and Political Philosophy*. https://doi.org/10.1080/13698230.2018.1525118

Alpes, M. J. (2016). *Brokering high-risk migration and illegality in West Africa*. London: Routledge.

Anaya, L. A. (2014). Policymaking in the Italian courts. *Anthropological Journal of European Cultures*, 23(1), 40–58. https://doi.org/10.3167/ajec.2014.230103

Andersson, R. (2016). Europe's failed 'fight' against irregular migration: Ethnographic notes on a counterproductive industry. *Journal of Ethnic and Migration Studies*, 42(7), 1055–1075. https://doi.org/10.1080/1369183X.2016.1139446

ANSA (2019). Ammiraglio: "Direttiva Salvini illegittima. E' abuso". *Ansa*, 19 March 2019. Retrieved from http://www.ansa.it

Anti-Mafia Committee (2017). Relazione su mafie, migranti e tratta di esseri umani, nuove forme di schiavitù. Chamber of Deputies, Senate of the Republic, XVII Legislature, Doc. XXIII, n. 30. Retrieved from http://www.senato.it

ASGI (2017). ASGI: il Governo riveda la sua linea politica, il codice di condotta mina l'efficacia delle attività di soccorso. *ASGI*, 1 August 2017. Retrieved from http://www.asgi.it

ASGI (2018). Nota tecnica in ordine al ricorso per conflitto di attribuzione tra poteri dello Stato presentato dinanzi alla Corte costituzionale dai deputati onorevoli Brignone, Civati Maestri, Marcon. *ASGI*, 27 February 2018. Retrieved from http://www.asgi.it

Awesti, A. (2007). The European Union, new institutionalism and types of multi-level governance. *Political Perspective*, 2(8). Retrieved from http://politicalperspectives.org.uk

Bache, I. (2008). Researching multi-level governance. The governance of the European Union: theories, practices and myths conference, Brussels, 25–26 January 2008.

Bache, I. (2012). Multi-Level Governance in the European Union, in David Levi-Faur (Ed.). *The Oxford Handbook of Governance*. Oxford: Oxford University Press, 628–641. https://doi.org/10.1093/oxfordhb/9780199560530.013.0044

Bache, I. and Flinders, M. (Eds.) (2004a). *Multi-level governance*. Oxford: Oxford University Press.

Bache, I. and Flinders, M. (2004b). Themes and issues in multi-level governance, in I. Bache and M. Flinders (Eds.). *Multi-level governance*. Oxford: Oxford University Press, 1–14. https://doi.org/10.1093/0199259259.003.0001

Baird, T. (2013). Theoretical approaches to human smuggling. DIIS Working Paper, August 2013. Retrieved from hhttp://www.ethx.ch

Baird, T. and van Liempt, I. (2016). Scrutinising the double disadvantage: Knowledge production in the messy field of migrant smuggling. *Journal of Ethnic and Migration Studies*, 42(3), 400–417. https://doi.org/10.1080/1369183X.2015.1103172

Baldwin-Edwards, M., Blitz, B. K. and Crawley, H. (2019). The politics of evidence-based policy in Europe's 'migration crisis'. *Journal of Ethnic and Migration Studies*, 45(12), 2139–2155. https://doi.org/10.1080/1369183X.2018.1468307

Barone, N. (2019). Diciotti, ecco che cosa rischia Matteo Salvini e perché. *Il Sole 24 Ore*, 18 February 2019. Retrieved from https://www.ilsole24ore.com

Baroni, A. M., Di Agosta, E., Paciullo, G. and Pintus, G. (2017). *Il nuovo diritto dell'immigrazione dopo il decreto Minniti-Orlando*. Rome: DIKE Giuridica Editrice.

Bartolini, S. (2011). New modes of European Governance: An introduction, in A. Héritier and M. Rhodes (Eds.). *New modes of governance in Europe: Governing in the shadow of hierarchy*. Basingstoke: Palgrave Macmillan, 1–18.

Basaran, E. (2008). Evaluation of the "carriers' liability" regime as a part of the EU asylum policy under public international law. *Uluslararasi Hukuk ve Politika Cilt*, 4(15), 149–163.

Berry, J. (2002). Validity and reliability issues in elite interviewing. *Political Science and Politics, 35*(4), 679–682. Retrieved from http://www.jstor.org/stable/1554809

Betts, A. (2010). Global migration governance – The emergence of a new debate. Global Economic Governance Programme Briefing Paper, November 2010. Retrieved from http://www.imi-n.org

Bevilacqua, G. (2017). Exploring the ambiguity of Operation Sophia between military and search and rescue activities, in G. Andreone (Ed.). *The Future of the Law of the Sea*. Cham: Springer, 165–189.

Bevir, M., and Phillips, R. (2017). Genealogies of European Governance. *Comparative European Politics*, 15(5), 685–704. https://doi.org/10.1057/s41295-016-0080-8

Bonjour, S. and Vink, M. (2013). When Europeanization backfires: The normalization of European migration politics. *Acta Politica*, 48, 389–407. https://doi.org/10.1057/ap.2013.11

Bonjour, S., Ripoll Servent, A. and Thielemann, E. (2018). Beyond venue shopping and liberal constraint: a new research agenda for EU migration policies and politics. *Journal of European Public Policy*, 25(3), 409–421. https://doi.org/10.1080/13501763.2016.1268640

Börzel, T. A. (2012). The European Union – A Unique Governance Mix?, in D. Levi-Faur (Ed.). *The Oxford Handbook of Governance*. Oxford: Oxford University Press, 613–627. https://doi.org/10.1093/oxfordhb/9780199560530.013.0043

Bourne, A. K. and Cini, M. (2006). Defining boundaries and identifying trends in European Union studies, in M. Cini and A. K. Bourne (Eds.). *Palgrave Advances in European Union Studies*. Basingstoke: Palgrave Macmillan, 1–18.

Bowen, G. A. (2009). Document Analysis as a Qualitative Research Method. *Qualitative Research Journal*, 9(2), 27–40. https://doi.org/10.3316/QRJ0902027

Brachet, J. (2018). Manufacturing smugglers: From irregular to clandestine mobility in the Sahara. *The ANNALS of the American Academy of Political and Social Science*, *676*(1), 16–35. https://doi.org/10.1177%2F0002716217744529

Buckland, J. S. (2009). Human trafficking & smuggling: Crossover & overlap, in C. Friesendorf (Ed.). *Strategies against human trafficking: The role of the security sector*. Geneva and Vienna: National Defence Academy and Austrian Ministry of Defence and Sports, 137–165.

Bühler, A., Koelbl, S., Mattioli, S. and Mayr, W. (2016). On the trail of African migrant smugglers. *Spiegel Online*, 26 September 2016. Retrieved from http://www.spiegel.de

Campbell, Z. (2017). New evidence undermines EU report tying refugee rescue group to smugglers. *The Intercept*, 2 April 2017. Retrieved from http://theintercept.com

Capano, G. and Giuliani, M. (2003). The Italian parliament: In search of a new role? *The Journal of Legislative Studies*, 9(2), 8–34. http://doi.org/10.1080/1357233032000250617

Capano, G. and Lippi, A. (2017). How policy instruments are chosen: patterns of decision makers' choices. *Policy Sciences*, 50, 269–293. https://doi.org/10.1007/s11077-016-9267-8

Capano, G., Howlett, M. and Ramesh, M. (2015). Bringing governments back in: Governance and governing in comparative policy analysis. *Journal of Comparative Policy Analysis: Research and Practice*, 17(4), 311–321. http://doi.org/10.1080/13876988.2015.1031977

Caponio, T. (2017). Immigrant integration beyond national policies? Italian cities' participation in European city networks. *Journal of Ethnic and Migration Studies*, 44(12), 2053–2069, https://doi.org/10.1080/1369183X.2017.1341711

Caponio, T., and Cappiali, T. M. (2018). Italian migration policies in times of crisis: The policy gap reconsidered. *South European Society and Politics*, 23(1), 115–132. https://doi.org/10.1080/13608746.2018.1435351

Caponio, T. and Jones-Correa, M. (2017). Theorising migration policy in multilevel states: the multilevel governance perspective. *Journal of Ethnic and Migration Studies*, 44:12, 1995–2010. https://doi.org/10.1080/1369183X.2017.1341705

Cardwell, P. J. (2018). Tackling Europe's migration 'crisis' through law and 'new governance'. *Global Policy*, 9(1), 67–75. https://doi.org/10.1111/1758-5899.12537

Carrera, S. and Guild, E. (Eds.) (2016). *Irregular migration, trafficking and smuggling of human beings – Policy dilemmas in the EU*. Brussels: Centre for European Policy Studies. Retrieved from http://www.ceps.eu

Carrera, S. and Lannoo, K. (2018). We're in this boat together. Time for a Migration Union. CEPS Policy Insights, No 2018/09. Retrieved from http://www.ceps.eu

Carrera, S., Allsopp, J. and Vosyliute, L. (2018a). Policing the mobility society: The effects of EU-anti-migrant smuggling policies on humanitarianism. *International journal of migration and border studies*, 4(3), 236–276. https://doi.org/10.1504/IJMBS.2018.10015101

Carrera, S., Vosyliute, L., Smialowski, S., Allsopp, J. and Sanchez, G. (2018b). *Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update*. Study requested by the PETI Committee, Brussels: European Union. Retrieved from http://europarl.europa.eu

Carrera S., Guild, E., Aliverti, A., Allsopp, J., Manieri, M. G. and LeVoy, M. (2016). *Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants*. Civil Liberties and Justice and Home Affairs (LIBE) Committee of the European Parliament, Brussels: European Union. Retrieved from http://europarl.europa.eu

Castelli Gattinara, P. (2017). The 'refugee crisis' in Italy as a crisis of legitimacy. *Contemporary Italian Politics*, 9(3), 318–331. https://doi.org/10.1080/23248823.2017.1388639

Castles, S. (2004). Why migration policies fail. *Ethnic and Racial Studies*, 27(2), 205–227. https://doi.org/10.1080/0141987042000177306

Chamber of Deputies (2016). I Commissione Permanente, Documento finale, a norma dell'articolo 127 del Regolamento, sulla proposta di Regolamento del Parlamento Europeo e del Consiglio che stabilisce i criteri e i meccanismi di determinazione dello Stato membro competente per l'esame di una domanda di protezione internazionale presentata in uno degli Stati membri da un cittadino di paese terzo o da un apolide (rifusione) (COM(2016) 270 final). XVII Legislature, Doc. XVIII, n. 52. Retrieved from http://europarl.europa.eu

Cho, J. Y., and E. Lee (2014). Reducing confusion about grounded theory and qualitative content analysis: similarities and differences. *The Qualitative Report*. Vol. 19(32), 1–20. Retrieved from https://nsuworks.nova.edu

Collett, E. (2015). The development of EU policy on immigration and asylum. Migration Policy Institute, Policy Brief Series, 8. Retrieved from http://www.migrationpolicy.org

Collyer, M. (2016). Cross-border cottage industries and fragmented migration, in S. Carrera and E. Guild (Eds.), *Irregular migration, trafficking and smuggling of human beings – Policy dilemmas in the EU*. Brussels: Centre for European Policy Studies, 17–23. Retrieved from http://www.ceps.eu

Council of the EU (2016). Council conclusions on migrant smuggling − Council conclusions (10 March 2016), 6995/16.

Council of the EU (2018). Enhancing the response to migrant smuggling networks: a comprehensive and operational set of measures – Approval (6 December 2018), 15250/18.

Council of the EU (2019). EUNAVFOR MED Operation Sophia: mandate extended until 30 September 2019. 29 March 2019.

Crépeau, F. (2003). The fight against migrant smuggling: Migration containment over refugee protection, in J. van Selm, K. Kamanga, J. Morrison, A. Nadig, S. Spoljar-Vrzina and L. van Willigen. *The Refugee Convention at Fifty. A View from Forced Migration Studies*. Lanham: Lexington Books, 173 – 185.

Creswell, J. W. (2003). *Research design. Qualitative, quantitative and mixed methods approaches. (2nd Ed.)*. Thousand Oaks: SAGE Publications.

Creswell, J. W. (2007). *Qualitative inquiry and research design: Choosing among five approaches (2nd Ed.)*. Thousand Oaks: SAGE Publications.

Custodero, A. (2016). Migranti, Ue: chiusa procedura contro Italia e Grecia su raccolta impronte. *la Repubblica*, 8 December 2016. Retrieved from http://www.repubblica.it

Cusumano, E. (2019). Straightjacketing migrant rescuers? The code of conduct on maritime NGOs. *Mediterranean Politics*, 24(1), 106–114. https://doi.org/10.1080/13629395.2017.1381400

Cusumano, E., and Gombeer, K. (2018). In deep waters: The legal, humanitarian and political implications of closing Italian ports to migrant rescuers. *Mediterranean Politics*. https://doi.org/10.1080/13629395.2018.1532145

Cuttitta, P. (2018). Repoliticization through search and rescue? Humanitarian NGOs and migration management in the central Mediterranean. *Geopolitics*, 23(3), 632–660. https://doi.org/10.1080/14650045.2017.1344834

D'Amato, A. (2018). Come Salvini è finito nei guai per la Diciotti (e come potrebbe cavarsela). *Next*, 27 August 2018. Retrieved from https://www.nextquotidiano.it

De Bruycker, P., Di Bartolomeo, A. and Fargues, P. (2013). Migrants smuggled by sea to the EU: facts, laws and policy options. MPC RR2013/06, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute. Retrieved from http://cadmus.eui.eu

De Giovannangeli, U. (2018a). Il voto “bulgaro” sulle motovedette alla Libia. Associazioni e Ong: “Soli contro tutti”. *HuffPost*, 26 July 2018. Retrieved from http://www.huffingtonpost.it

De Giovannangeli, U. (2018b). Salvini affonda Moavero. *HuffPost*, 19 August 2018. Retrieved from http://www.huffingtonpost.it

Della Porta, D. (2008). Comparative analysis: case-oriented versus variable-oriented research in D. Della Porta and M. Keating (Eds.). *Approaches and methodologies in the social sciences: a pluralist perspective*. Cambridge: Cambridge University Press, 198–222. https://doi.org/10.1017/CBO9780511801938.012

Delreux, T., and Adriaensen, J. (Eds.) (2017). *The principal agent model and the European Union*. Basingstoke: Palgrave Macmillan.

Dimitriadi, A. (2016). The Interrelationship between Trafficking and Irregular Migration, in S. Carrera and E. Guild (Eds.). *Irregular Migration, Trafficking and Smuggling of Human Beings – Policy Dilemmas in the EU*. Brussels: Centre for European Policy Studies, 64–69. Retrieved from http://www.ceps.eu

Dennison, S. and Janning, J. (2016). Bear any burden: How EU governments can manage the refugee crisis. European Council on Foreign Relations – ECFR, 167. Retrieved from http://ecfr.eu

Doomernik, J. (2013). Migrant smuggling between two logics: Migration dynamics and state policies. *The International Spectator*, 48(3), 113–129. https://doi.org/10.1080/03932729.2013.815027

Dörrenbächer, N. (2018). Europe at the frontline of migration law: Legal discretion, bureaucratic context and individual attitudes (Doctoral thesis). Retrieved from https://repository.ubn.ru.nl/handle/2066/190085

Düvell, F. (2006). *Illegal Immigration in Europe*. Basingstoke: Palgrave Macmillan.

Düvell, F. (2011). Paths into irregularity: The legal and political construction of irregular migration. *European Journal of Migration and Law*, 13, 275–295. http://doi.org/10.1163/157181611X587856

Eckstein, H. (1975). Case study and theory in political science, in F. I. Greenstein and N. W. Polsby (Eds.). *Handbook of Political Science*. Reading: Addison-Wesley, 79–138.

Escobar Veas, J. (2018). Il fine di profitto nel reato di traffico di migranti. Analisi critica della legislazione europea. *Diritto Penale Contemporaneo*, 1, 111–120. Retrieved from http://penalecontemporaneo.it

EUNAVFOR MED (2018). Operation Sophia and Italian National Antimafia and Counterterrorism Prosecutor meeting. 24 April 2018. Retrieved from http://www.operationsophia.eu

EUR-Lex (2010). Financial Penalties on Carriers. 3 May 2010. Retrieved from http://eur-lex.europa.eu/

European Commission (2015a). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European Agenda on migration, COM(2015) 240 final, 13.5.2015.

European Commission (2015b). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Action Plan against migrant smuggling (2015 – 2020), COM (2015) 285 final, Brussels, 27.5.2015.

European Commission (2015c). Communication to the European Parliament, the European Council and the Council – Managing the Refugee Crisis: Immediate Operational, Budgetary and Legal Measures Under the European Agenda on Migration, COM (2015) 490 final/2, Brussels, 29.9.2015.

European Commission (2016). Communication from the Commission to the European Parliament and the Council on the state of play of implementation of the priority actions under the European Agenda on migration, COM (2016) 85 final, Brussels, 10.2.2016.

European Commission (2017a). Commission staff working document. REFIT evaluation of the EU legal framework against facilitation of unauthorised entry, transit and residence: the Facilitators Package (Directive 2002/90/EC and Framework Decision 2002/946/JHA). SWD(2017) 117 final, Brussels, 22.3.2017.

European Commission (2017b) Summary of replies to the public consultation on "Tackling migrant smuggling: is the EU legislation fit for purpose?". 21 March 2017. Retrieved from http://ec.europa.eu

European Commission (nd). Irregular Migration and Return, Migration and Home Affairs. Retrieved from https://ec.europa.eu/ (Accessed on 25 June 2019).

European Commission and High Representative of the Union for Foreign Affairs and Security Policy (2017). Joint communication to the European Parliament, the European Council and the Council: Migration on the Central Mediterranean route. Managing flows, saving lives, JOIN(2017) 4 final, Brussels, 25.1.2017.

European Council (2014). European Council, 26/27 June 2014, Conclusions. EUCO 79/14.

European Council (2015). Special meeting of the European Council, 23 April 2015 – statement.

European Council (2017). Malta Declaration by the Members of the European Council on the External Aspects of Migration: Addressing the Central Mediterranean Route. 3 February 2017.

European Council (2018). European Council meeting (28 June 2018) – Conclusions. EUCO 9/18.

European Parliament (2000). Report 1. on the initiative of the French Republic with a view to the adoption of a Council Directive defining the facilitation of unauthorised entry, movement and residence (10675/2000 – C5-0427/2000 – 2000/0821(CNS)); 2. on the initiative of the French Republic with a view to the adoption of a Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence (10676/2000 – C5-0426/2000 – 2000/0820(CNS)). FINAL A5-0315/2000.

European Parliament (2015a). European Parliament resolution of 10 September 2015 on migration and refugees in Europe (2015/2833(RSP)).

European Parliament (2015b). Mission report of the EP LIBE delegation to Lampedusa (Italy) on search and rescue, in the context of the strategic own-initiative report on “the situation in the Mediterranean and the need for a holistic EU approach to migration” 17-18 September 2015. Committee on Civil Liberties, Justice and Home Affairs.

European Parliament (2015c). Report on the joint BUDG-LIBE mission to Sicily 22-24 July 2015. Committee on Civil Liberties, Justice and Home Affairs, Committee on Budgets.

European Parliament (2015d). Working document on Developing safe and lawful routes for asylum seekers and refugees into the EU, including the Union resettlement policy and corresponding integration policies (INI report on the situation in the Mediterranean and the need for a holistic EU approach to migration), Committee on Civil Liberties, Justice and Home Affairs, 15 July 2015.

European Parliament (2015e). Working document on tackling criminal smuggling, trafficking and labour exploitation of irregular migrants, Committee on Civil Liberties, Justice and Home Affairs, 19 October 2015.

European Parliament (2016). European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)).

European Parliament (2017a) Draft programme – Hearing “Search and rescue in the Central Mediterranean”, Committee on Civil Liberties, Justice and Home Affairs. LIBE(2017)0712_1.

European Parliament (2017b). Mission report following the mission to Italy (18 - 21 April 2017), Committee on Civil Liberties, Justice and Home Affairs, 12 June 2017.

European Parliament (2017c). Report on the proposal for a regulation of the European Parliament and of the Council 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) (COM(2016)0270 – C8-0173/2016 – 2016/0133(COD)). A8-0345/2017.

European Parliament (2018a). Answer given by Mr Avramopoulos on behalf of the Commission. E-005646/2017, 16 January 2018.

European Parliament (2018b) European Parliament resolution of 5 July 2018 on guidelines for Member States to prevent humanitarian assistance from being criminalised (2018/2769(RSP)).

European Parliament (2018c). Migration and Asylum: A challenge for Europe. PE 600.414, European Union. Retrieved from http://europarl.europa.eu

European Parliament (2018d) Question for oral answer to the Commission, Rule 128, Claude Moraes, on behalf of the Committee on Civil Liberties, Justice and Home Affairs, O-000065/2018.

European Parliament (2019). Legislative train 05.2019 – Towards a new policy on migration. Humanitarian visas – Amendment of the EU visa code. Retrieved from http://europarl.europa.eu

Europol (2016a). Europol launches the European migrant smuggling centre. 22 February 2016. Retrieved from https://europol.europa.eu

Europol (2016b). Migrant Smuggling in the EU, February 2016. Retrieved from https://europol.europa.eu

Europol (2017). European Migrant Smuggling centre. Activity Report – First Year. Retrieved from http://europol.europa.eu

Europol (2018). European Migrant Smuggling centre. Activity Report – Two years of EMSC. Retrieved from http://europol.europa.eu

Fabbrini, S. (2014). After the Euro crisis: A new paradigm on the integration of Europe. ARENA Working Paper, No. 5, 1 –21. Retrieved from http://sv.uoi.no

Fabbrini, S. and Puetter, U. (2016). Integration without supranationalisation: studying the lead roles of the European Council and the Council in post-Lisbon EU politics. *Journal of European Integration*, 38(5), 481–495, https://doi.org/10.1080/07036337.2016.1178254

Fabini, G. (2017). Managing illegality at the internal border: Governing through 'differential inclusion' in Italy. *European Journal of Criminology*, 14(1), 46–62. https://doi.org/10.1177/1477370816640138

Falkner, G., Hartlapp, M., Leiber, S. and Treib, O. (2004). Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor?. *West European Politics*, 27(3), 452–473. https://doi.org/10.1080/0140238042000228095

Fargues, P. (2015). 2015: The year we mistook refugees for invaders. MPC 2015/12, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute. https://doi.org/10.2870/093089

Fargues, P. and Bonfanti, S. (2014). When the best option is a leaky boat: Why migrants risk their lives crossing the Mediterranean and what Europe is doing about it. MPC 2014/05, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute. Retrieved from http://cadmus.eui.eu

Fattorini, M. (2017). Marco Minniti, l'ascesa felpata dell'uomo forte dei Servizi. *Linkiesta*, 18 January 2017. Retrieved from https://www.linkiesta.it

Finotelli, C. and Sciortino, G. (2009). The importance of being southern: The making of policies of immigration control in Italy. *European Journal of Migration and Law*, 11, 119–138. https://doi.org/10.1163/157181609X439998

Floris, F., and Bagnoli, L. (2017). Accuse alle Ong: cosa c'è di falso o di sviante. *Open Migration*, 10 May 2017. Retrieved from htttp://openmigration.org

Frenzen, N. (2018). 90-day extension for EUNAVFOR MED Operation Sophia under consideration. *Migrants at sea*, 12 December 2018. Retrieved from http://migrantsatsea.org

Frid-Nielsen, S. S. (2018). Human rights or security? Positions on asylum in European Parliament speeches. *European Union Politics*, 19(2), 344–362. https://doi.org/10.1177/1465116518755954

Frontex (nda). Migratory Routes. Central Mediterranean Route. Retrieved from https://frontex.europa.eu (Accessed on 24 October 2018).

Frontex (ndb). Migratory Routes. Eastern Mediterranean Route. Retrieved from https://frontex.europa.eu (Accessed on 24 October 2018).

Frontex (ndc). Migratory Routes. Western Mediterranean Route. Retrieved from https://frontex.europa.eu (Accessed on 24 October 2018).

Gabrielli, L. (2014). Securitization of migration and human rights: Frictions at the southern EU borders and beyond. *Urban People / Lidé Města*, 16(2), 311–322. Retrieved from http://lidemesta.cz

Gallagher, A. T. (2002). Trafficking, smuggling and human rights. Tricks and treaties. *Forced Migration Review*, 12, 25–28. Retrieved from http://fmreview.org

Gallagher, A. T. (2015). Migrant Smuggling, in N. Boister and R. J. Currie (Eds.). *Routledge Handbook of Transnational Criminal Law*. London: Routledge, 187–209.

Gallagher, A. T. and David, F. (2014). *The International Law of Migrant Smuggling*. Cambridge: Cambridge University Press.

Genoviva, F. R. (2017). Tutto quello che c'è da sapere sull'accordo Italia – Libia. *Open Migration*, 24 April 2017. Retrieved from http://openmigration.org

Gerring, J. (2008). Case selection for case-study analysis: Qualitative and quantitative techniques, in J. M. Box-Steffensmeier, H. E. Brady, and D. Collier (Eds.). *The Oxford handbook of political methodology*. Oxford: Oxford University Press, 645–684. https://doi.org/10.1093/oxfordhb/9780199286546.003.0028

Gerring, J. (2009). The case study: What it is and what it does, in C. Boix and S. C. Stokes (Eds.). *The Oxford Handbook of Comparative Politics*. Oxford: Oxford University Press. https://doi.org/10.1093/oxfordhb/9780199566020.003.0004

Giuliani, M. (2008). Patterns of consensual law-making in the Italian Parliament. *South European Society & Politics*, 13(1), 61–85. https://doi.org/10.1080/13608740802005777.

Gogou, K. (2017). E.U.-Turkey Deal hinges on fate of Syrian locked up on Lesbos: Amnesty. *News Deeply*, 20 March 2017. Retrieved from http://newsdeeply.com

Grevi, V. (2008). Il male minore. *Corriere della Sera*, 10 July 2008. Retrieved from http://www.corriere.it

Guiraudon, V. (2000). European integration and migration policy: Vertical policy-making as venue shopping. *Journal of Common Market Studies*, 38(2), 251–271. https://doi.org/10.1111/1468-5965.00219

Guiraudon, V. (2008). Lutte contre les passeurs : une politique qui ne protège pas les victimes de l'immigration illégale. *Recueil Alexandries, Collections Esquisses*, November 2008. Retrieved from http://www.reseauterra.eu

Guiraudon, V. (2018). The 2015 refugee crisis was not a turning point: explaining policy inertia in EU border control. *European Political Science*, 17, 151–160. https://doi.org/10.1057/s41304-017-0123-x

Haas, E. B. (1958). *The uniting of Europe: Political, social, and economic forces 1950–57*. Stanford: Stanford University Press.

Haas, E. B. (1964). *Beyond the nation-state. Functionalism and international organization*. Stanford: Stanford University Press.

Hammerstadt, A. (2014). The securitization of forced migration, in E. Fiddian-Qasmiyeh, G. Loescher, K. Long and N. Sigona (Eds.). *The Oxford Handbook of Refugee and Forced Migration Studies*. Oxford: Oxford University Press, 265–277.

Héritier, A. (2019). Hidden power shifts: Multilevel governance and interstitial institutional change in Europe, in N. Behnke, J. Broschek and J. Sonnicks (Eds.), *Configurations, dynamics and mechanisms of multilevel governance, comparative territorial politics*. Cham: Palgrave Macmillan, 351–367. https://doi.org/10.1007/978-3-030-05511-0_19

Héritier, A., and Lehmkuhl, D. (2008). Introduction: The shadow of hierarchy and new modes of governance. *Journal of Public Policy*, 28(1), 1–17. Retrieved from http://www.jstor.org

Héritier, A. and Moury, C. (2012). Institutional change in European governance: The Commission's implementing powers and the European Parliament, in D. Levi-Faur (Ed.). *The Oxford Handbook of Governance*. Oxford: Oxford University Press, 642–655. https://doi.org/10.1093/oxfordhb/9780199560530.013.0045

Herlin-Karnell, E. (2017). The European Court of justice as a game-changer, in A. Ripoll Servent and F. Trauner (Eds.). *The Routledge handbook of Justice and Home Affairs Research*. Abingdon: Routledge, 396–408.

Hidalgo, J. (2016). The ethics of people smuggling. *Journal of Global Ethics*, 12(3), 311–326. https://doi.org/10.1080/17449626.2016.1245676

Hix, S. (1998). The study of the European Union II: The 'new governance' agenda and its revival. *Journal of European Public Policy*, 5(1), 38–65. https://doi.org/10.1080/13501768880000031

House of Lords (2015). *EU Action Plan against Migrant Smuggling*. London: The Stationery Office Limited.

Howlett, M. and Ramesh, M. (1995). *Studying Public Policy: Policy Cycles and Policy Subsystems*. Oxford: Oxford University Press.

Hsieh, H., and Shannon, S. E. (2005). Three approaches to qualitative content analysis. *Qualitative Health Research*, 15(9), 1277–1288. https://doi.org/10.1177/1049732305276687

Huber, K. (2015). The European Parliament as an actor in EU border policies: its role, relations with other EU institutions, and impact. *European Security*, 24(3), 420–437. https://doi.org/10.1080/09662839.2015.1028188

ICHRP (2010). *Irregular Migration, Migrant Smuggling and Human Rights: Towards Coherence*, Geneva: ICHRP.Il Post (2017). Le accuse contro le ong, smontate. *Il Post*, 3 May 2017. Retrieved from http://www.ilpost.it

Il Tempo (2018). Salvini blocca la nave Open Arms: "Porti italiani chiusi". *Il Tempo*, 22 December 2018. Retrieved from http://www.iltempo.it

Jandl, M. (2007). Irregular migration, human smuggling, and the eastern enlargement of the European Union. *International Migration Review*, 41(2), 291–315. https://doi.org/10.1111/j.1747-7379.2007.00069.x

Jerkov, B. (2002). Sulla sanatoria lite Lega-Udc Bossi minaccia il voto di fiducia. *la Repubblica*, 30 May 2002. Retrieved from http://www.repubblica.it

Kaunert, C. and Léonard, S. (2012). The development of the EU asylum policy: Venue-shopping in perspective. *Journal of European Public Policy*, 19(9), 1396–1413. https://doi.org/10.1080/13501763.2012.677191

Khosravi, S. (2010). *Illegal Traveller. An Auto-Ethnography of Borders*. Basingstoke: Palgrave Macmillan.

Kingsley, P. (2018). Migration to Europe is down sharply. So is it still a 'crisis'?. *The New York Times*, 27 June 2018. Retrieved from https://www.nytimes.com

Koser, K. (1996). Information and refugee migration: The case of Mozambicans in Malawi. *Tijdschrift voor economische en sociale geografie*, 87, 407–418. https://doi.org/10.1111/j.1467-9663.1998.tb01573.x

Koser, K. (1997). Negotiating entry into 'Fortress Europe': the migration strategies of 'spontaneous' asylum seekers, in P. Muus (Ed.), *Exclusion and inclusion of refugees in contemporary Europe*. Utrecht: European Research Centre in Research on Migration and Ethnic Relations, 157–170.

Koser, K. (2005). Irregular Migration, State Security and Human Security. Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005. Retrieved from http://iom.int

Kyle, D. and Dale, J. (2013). Smuggling the state back in: Agents of human smuggling reconsidered, in D. Kyle and R. Koslowsky (Eds.), *Global human smuggling: Comparative perspectives*. Baltimore and London: The Johns Hopkins University Press, 29–57.

Kyle, D. and Koslowski, R. (2013). *Global human smuggling: Comparative perspectives*. Baltimore and London: The Johns Hopkins University Press.

La Repubblica (2002). Tabacci ritira l'emendamento. Oggi al voto la legge Bossi-Fini. *la Repubblica*, 4 June 2002, Retrieved from http://www.repubblica.it

La Repubblica (2018). Camera, decreto per motovedette alla Libia è legge: il Pd non partecipa al voto. *la Repubblica*, 6 August 2018. Retrieved from http://www.repubblica.it

La Stampa (2008). Al via l'emendamento blocca-processi. Stop al dibattimento Berlusconi-Mills. *La Stampa*, 17 June 2008. Retrieved from http://www.lastampa.it

Lania, C. (2019). Esperti contro la direttiva Salvini: «Solo propaganda politica, non ha valore». *il manifesto*, 20 March 2019. Retrieved from http://www.ilmanifesto.it

Lavenex, S. (2006). Shifting up and out: The foreign policy of European immigration control. *West European Politics*, 29(2), 329–350. https://doi.org/10.1080/01402380500512684

Lavenex, S. (2015) Justice and Home Affairs: Institutional change and policy continuity, in H. Wallace, M. Pollack and A. Young (Eds.). *Policy-Making in the European Union, seventh edition*. Oxford: Oxford University Press, 367–387. https://doi.org/10.1093/hepl/9780199689675.003.0015

Lavenex, S. (2016). Multileveling EU external governance: The role of international organizations in the diffusion of EU migration policies. *Journal of Ethnic and Migration Studies*, 42(2), 554–570. https://doi.org/10.1080/1369183X.2015.1102047

Levi-Faur, D. (Ed.) (2012). *The Oxford handbook of governance*. Oxford: Oxford University Press.

Lijphart, A. (1971). Comparative politics and the comparative method. *The American Political Science Review*, 65(3), 682–693. http://doi.org/10.2307/1955513

Lipsky, M. (1980). *Street-level bureaucracy: dilemmas of the individual in public services*. New York: Russell Sage Foundation.

Mahoney, J. (2007). Qualitative methodology and comparative politics. *Comparative Political Studies*, 40(2), 122–144. https://doi.org/10.1177/0010414006296345

Majidi, N. and Oucho, L. (2016). East Africa, in M. L. McAuliffe and F. Laczko (Eds.). *Migrant Smuggling Data and Research: A Global Review of the Emerging Evidence Base*. Geneva: IOM, 55–84.

Manners, I. (2008). The normative ethics of the European Union. *International Affairs*, 84(1), 45–60. https://doi.org/10.1111/j.1468-2346.2008.00688.x

March, J. G. and Olsen, J. P. (1984). The new institutionalism: Organizational factors in political life. *American Political Science Review*, 78(3), 734–749. https://doi.org/10.2307/1961840

March, J. G. and Olsen, J. P. (1989). *Rediscovering institutions: The organizational basis of politics*. New York: Free Press.

March, J. G. and Olsen, J. P. (2006). The logic of appropriateness, in M. Rein, M. Moran and R. E. Goodin (Eds.). *The Oxford handbook of public policy*. Oxford: Oxford University Press, 689–708.

March, J. G. and Olsen, J. P. (2011). Elaborating the "new institutionalism", in R. E. Goodin (Ed.). *The Oxford handbook of political science*. Oxford: Oxford University Press, 159 – 175. https://doi.org/10.1093/oxfordhb/9780199604456.013.0008

Margheri, M. (2017). Il decreto Minniti-Orlando spiegato per bene. *Lenius*, 6 July 2017. Retrieved from http://www.lenius.it

Maricut, A. (2016). With and without supranationalisation: The post-Lisbon roles of the European Council and the Council in justice and home affairs governance. *Journal of European Integration*, 38(5), 541–555. https://doi.org/10.1080/07036337.2016.1178253.

Marks, G. (1992). Structural policy in the European community, in A. Sbragia (Ed.) *Euro-politics. Institutions and policy making in the "New" European Community*. Washington: The Brookings Institution, 191–224.

Marks, G. (1993). Structural policy and multilevel governance in the EC, in A. Cafruny and G. Rosenthal. *The State of the European Community*. New York: Lynne Rienner, 391–410.

Marmo, M. (2007). The Empowering of the Italian Judiciary: The shift towards activism. *International Journal of Comparative and Applied Criminal Justice*, 31(1), 101–18. https://doi.org/10.1080/01924036.2007.9678762

Marsala, A. (2019). Guerra alle Ong, le «prove» di Salvini. *il manifesto*, 24 January 2019. Retrieved from http://www.ilmanifesto.it

Martínez, D. E., Slack, J. and Martínez-Schuldt, R. D. (2018). Repeat migration in the age of the "unauthorized permanent resident": A quantitative assessment of

migration intentions postdeportation. *International Migration Review*, 52(4), 1186–1217. https://doi.org/10.1177/0197918318767921

Mayring, P. (2000). Qualitative content analysis. *Forum: Qualitative Social Research*, 1(2), Art. 20. http://dx.doi.org/10.17169/fqs-1.2.1089

McAuliffe, M. L. and Laczko, F. (2016). Report overview, in M. L. McAuliffe and F. Laczko (Eds.). *Migrant Smuggling Data and Research: A Global Review of the Emerging Evidence Base*. Geneva: IOM, 1–24.

MEDU (2015). Move or die. Migratory routes from sub-Saharan countries to Europe. Medu. Retrieved from https://mediciperidirittiumani.org/

Miller, R. and Baumeister, S. (2013). Managing migration: Is border control fundamental to anti-trafficking and anti-smuggling Interventions. *Anti-Trafficking Review*, 2, 15–32. https://doi.org/10.14197/atr.20121321

Minister of Interior (2019a). Direttiva per il coordinamento unificato dell'attività di sorveglianza delle frontiere marittime e per il contrasto all'immigrazione illegale ex articolo 11 del d.lgs. n. 286/1998 recante il Testo Unico in materia di Immigrazione. N.14100/141(8), 18 march 2019.

Minister of Interior (2019b). Intervento dell'assetto "Alan Kurdi" (ONG Sea Eye) iniziato in 3 aprile 2019. Direttiva ex articolo 11 del d.lgs. n. 286/1998 recante il Testo Unico in materia di Immigrazione. N.14100/141(8), 4 April 2019.

Minister of Interior (2019c). [Minister directive on the Mare Jonio case], 16 April 2019.

Ministry of Foreign Affairs and International Cooperation (2019). Note verbale to the Embassy of Germany in Rome, prot. 62604 of 4 April 2019.

Ministry of Justice (2016). Schema di D.lgs – Disposizioni in materia di depenalizzazione, a norma dell'art. 2, comma 2, della l. 28 aprile 2014, n. 67 – Relazione. Retrieved from http://www.giustizia.it

Ministry of Interior (2017a). Codice di condotta per le ONG impegnate nelle operazioni di salvataggio dei migranti in mare. 7 August 2017. Retrieved from http://www.interno.gov.it.

Ministry of Interior (2017b). *Le iniziative di buona accoglienza e integrazione dei migranti in Italia*. Rome: Rodorigo Editore.

Ministry of Interior (2018). Sbarchi e accoglienza dei migranti: tutti i dati, 15 October 2018. Retrieved from http://www.interno.gov.it/

Monar, J. (2012). Justice and Home Affairs, in E. Jones, A. Menon and S. Weatherill (Eds.). *The Oxford handbook of the European Union*. Oxford: Oxford University Press. https://doi.org/10.1093/oxfordhb/9780199546282.013.0043

Monzini, P. (2004). Migrant smuggling via maritime routes. CeSPI Working Paper. CeSPI – Centro Studi di Politica Internazionale. Retrieved from http://researchgate.net

Montalto Monella, L. (2019). A Bruxelles si parla di immigrazione ma Salvini non c'è (di nuovo). È un problema? *Euronews*, 7 March 2019. Retrieved from http://it.euronews.com

Moravcsik, A. (1993). Preferences and power in the European Community: A liberal intergovernmentalist approach. *Journal of Common Market Studies*, 31(4), 473–524. http://doi.org/10.1111/j.1468-5965.1993.tb00477.x

Morcone, M. (2019). Ong, una direttiva basata sull'ipocrisia. *il manifesto*, 17 April 2019. Retrieved from hhttp://www.ilmanifesto.it

Moreno-Lax, V. (2018). The EU humanitarian border and the securitization of human rights: The 'rescue-through-interdiction/rescue-without-protection' paradigm. *Journal of Common Market Studies*, 56(1), 119–140. https://doi.org/10.1111/jcms.12651

Morlino, L. (2005). *Introduzione alla ricerca comparata*. Bologna: Il Mulino.

Morrison, J. and Crosland, B. (2001). The trafficking and smuggling of refugees: The end game in European asylum policy? *New Issues in Refugee Research*, UNHCR, Working Paper No. 39. Retrieved from http://unhcr.org

Moses, J. W. (2012). The shadow of Schengen, in E. Jones, A. Menon and S. Weatherill (Eds.). *The Oxford handbook of the European Union*. Oxford: Oxford University Press. https://doi.org/10.1093/oxfordhb/9780199546282.013.0042.

Müller, J. F. (2018). The ethics of commercial human smuggling. *European Journal of Political Theory*. https://doi.org/10.1177/1474885118754468

Musella, F. (2014). A premier without parliament: the legislative process in the Italian Second Republic. *Journal of Comparative Politics*, 7(1), 4–17. Retrieved from http://jofcp.org

Nadig, A. (2002). Human smuggling, national security, and refugee protection. *Journal of Refugee Studies*, 15(1), 1–25. https://doi.org/10.1093/jrs/15.1.1

Neframi, E. (2011). *Division of competences between the European Union and its Member States concerning immigration*. Directorate General for Internal Policies, Brussels: European Parliament. Retrieved from http://europarl.europa.eu

Nicot, M. and Kopp, B. (2018). Policy perspective. *The ANNALS of the American Academy of Political and Social Science*, 676(1), 223 – 225. https://doi.org/10.1177/0002716218755345

Nováky, N. (2018). The road to Sophia: Explaining the EU's naval operation in the Mediterranean. *European View*, 17(2), 197–209. https://doi.org/10.1177/1781685818810359

Nyikos, S. A. and Pollack, M. A. (2003). Researching the European Union: Qualitative and quantitative approaches, in T. A. Börzel and R. A. Cichowski (Eds.). *The state of the European Union, 6: Law, politics, and society*. Oxford: Oxford University Press. https://doi.org/10.1093/019925740X.001.0001

Olsson, J. (2016). *Subversion in institutional change and stability*. Basingstoke: Palgrave Macmillan.

Olivi, B. and Santaniello, R. (2015). *Storia dell'integrazione europea*. Bologna: Il Mulino.

Open (2019). La resistenza delle Ong: 1 milione di donatori nonostante la campagna di delegittimazione. *Open*, 24 March 2019. Retrieved from http://www.open.online

Oxfam Italia, Borderline Sicilia Onlus, Tavola Valdese (2016). *Presunti scafisti: le vittime invisibili del traffico di esseri umani*. Progetto #OPENEUROPE.

Palmerini, L. (2019). Lo scontro Salvini-Difesa e l'attenzione del Quirinale. *Il Sole 24 Ore*, 18 April 2019. Retrieved from http://www.ilsole24ore.com

Panizzon, M. and van Riemsdijk, M. (2019). Introduction to Special issue: 'Migration governance in an era of large movements: A multi-level approach'. *Journal of*

Ethnic and Migration Studies, 45(8), 1225–1241. http://doi.org/10.1080/1369183X.2018.1441600

Panzeri, L. (2018). Fenomeno migratorio e ruolo degli enti locali: prime note. Osservatorio Costituzionale, 1, 17 January 2018. Retrieved from http://osservatorioaic.it

Partito Democratico (2018). Minniti: “Mai chiuso i porti. Da Salvini un azzardo politico a urne aperte”, 11 June 2018. Retrieved from http://www.partitodemocratico.it.

Pastore, F., Monzini, P. and Sciortino, G. (2006). Schengen’s soft underbelly? Irregular migration and human smuggling across land and sea borders to Italy. *International Migration*, 44(4), 95–119. https://doi.org/10.1111/j.1468-2435.2006.00381.x

Pederzoli, P. and Guarnieri, C. (1997a). The Judicialization of politics, Italian style. *Journal of Modern Italian Studies*, 2(3), 321–336. https://doi.org/10.1080/13545719708454956

Pederzoli, P. and Guarnieri, C. (1997b). Italy: A Case of judicial democracy? *International Science*, 49(152), 253–270. https://doi.org/10.1111/j.1468-2451.1997.tb00020.x

Perkowski, N. and Squire, V. (2019). The anti-policy of European anti-smuggling as a site of contestation in the Mediterranean migration ‘crisis’. *Journal of Ethnic and Migration Studies*, 45(12), 2167–2184. http://doi.org/10.1080/1369183X.2018.1468315

Piattoni, S. (2010). *The theory of multi-level governance: Conceptual, empirical, and normative challenges*. Oxford: Oxford University Press.

Pollack, M. A. (2003). *The engines of European Integration: Delegation, agency and agenda-setting in the EU*. Oxford: Oxford University Press.

Pollack, M. A. (2009). The new institutionalisms and European integration, in A. Wiener and T. Diez (Eds.). *European Integration Theories (2nd Ed.)*. Oxford: Oxford University Press, 125–143.

Pollack, M.A. (2015). Theorizing EU policy-making, in H. Wallace, M. Pollack and A. Young (Eds.). *Policy-Making in the European Union, seventh edition*. Oxford: Oxford University Press. https://doi.org/10.1093/hepl/9780199689675.003.0002

Pollack, M. A. (2017). Foreword, in T. Delreux, and J. Adriaensen (Eds.). *The principal agent model and the European Union*. Basingstoke: Palgrave Macmillan, v – x.

Presidency of the Council of Ministers (nd). La legge di delegazione europea. Department for Euroepan Policies. Retrieved from http://www.politicheeuropee.gov.it/ (Accessed on 24 June 2019).

Radjenovic, A. (2019). Reform the Dublin system. EPRS, European Parliament Research Service, European Parliament. Retrieved from http://europarl.europa.eu

RaiNews (2017). Migranti, commissione UE: “Sosteniamo il codice di condotta per ONG”. *RaiNews*, 9 August 2017. Retrieved from http://www.rainews.it

RaiNews (2018a). Sbarcati a Trapani i migranti della nave Diciotti. Mattarella sblocca lo stallo. *RaiNews*, 13 July 2018. Retrieved from http://www.rainews.it

RaiNews (2018b). Migranti, Conte e Salvini cercano accordo con UE: redistribuzione o niente sbarco. *RaiNews*, 14 July 2018. Retrieved from http://www.rainews.it

RaiNews (2019). Salvini e nuova direttiva sulle frontiere: “Libia può soccorrere”. Commissione EU: non porto sicuro. *RaiNews*, 29 March 2019. Retrieved from http://www.rainews.it

Rasch, B. E. and Tsebelis, G. (Eds.) (2013). *The role of governments in legislative agenda setting*. London: Routledge.

Rasche, L. (2018). In troubled waters. What does the future hold for Operation Sophia? Policy Brief, Jacques Delors Institute, Berlin. Retrieved from http://www.delorsinstitut.de

Rathbun, B. C. (2008). Interviewing and qualitative field methods: pragmatism and practicalities, in J. M. Box-Steffensmeier, H. E. Brady, and D. Collier (Eds.). *The Oxford handbook of political methodology*. Oxford: Oxford University Press. https://doi.org/10.1093/oxfordhb/9780199286546.003.0029

Rebessi, E. and Zucchini, F. (2018). The role of the Italian Constitutional Court in the policy agenda: Persistence and change between the First and Second Republic. *Italian Political Science Review/Rivista Italiana Di Scienza Politica*, 48(3), 289–305. http://doi.org/10.1017/ipo.2018.12

Reslow, N. and Vink, M. (2015). Three-level games in EU external migration policy: Negotiating mobility partnerships in West Africa. *Journal of Common Market Studies*, 53(4), 857–874. https://doi.org/10.1111/jcms.12233

Reuters (2016). Italy says up to 675 migrants died in April 2015 shipwreck. *Reuters*, 14 July 2016. Retrieved from http://www.reuters.com

Rhinard, M. (2007). Public policy approaches and the study of the European Union justice and home affairs, in A. Ripoll Servent and F. Trauner (Eds.). *The Routledge handbook of Justice and Home Affairs Research*. Abingdon: Routledge, 41–55.

Ripoll Servent, A. (2017). The European Parliament in justice and home affairs, in A. Ripoll Servent and F. Trauner (Eds.). *The Routledge handbook of Justice and Home Affairs Research*. Abingdon: Routledge, 385–395.

Roos, C. (2017). The Council and European council in EU justice and home affairs politics, in A. Ripoll Servent and F. Trauner (Eds.). *The Routledge handbook of Justice and Home Affairs Research*. Abingdon: Routledge, 421–433.

Salt, J. (2000). Trafficking and human smuggling: A European perspective. *International Migration*, 38(3): 31–56. https://doi.org/10.1111/1468-2435.00114

Salt, J. and Stein, J. (1997). Migration as business: the case of trafficking. *International Migration*, 35(4), 467–494. https://doi.org/10.1111/1468-2435.00023

Sanchez, G. E. and Zhang, S. X. (2018). Rumors, encounters, collaborations, and survival: The migrant smuggling–drug trafficking nexus in the U.S. Southwest. *The ANNALS of the American Academy of Political and Social Science*, 676(1), 135–151. https://doi.org/10.1177/0002716217752331

Santos Vara, J. (2017). The EU's agencies, in A. Ripoll Servent and F. Trauner (Eds.). *The Routledge handbook of Justice and Home Affairs Research*. Abingdon: Routledge, 445–457.

Sartori, G. (1991). Comparing and miscomparing. *Journal of Theoretical Politcs*, 3(3), 243–257. https://doi.org/10.1177/0951692891003003001

Sarzanini, F. (2019). I vertici militari e la direttiva Salvini: dipendiamo dalla Difesa. Il Viminale: «In mare decidiamo noi». *Corriere della Sera*, 19 April 2017. Retrieved from http://www.corriere.it

Scavo, N. (2017). Migranti. Torna il sereno tra Ong e governo: modifiche al codice di condotta. *Avvenire*, 11 August 2017. Retrieved from https://www.avvenire.it

Scavo, N. (2018). Soccorsi in mare. Un anno dopo cadute le accuse di legami tra Ong e scafisti. *Avvenire*, 14 August 2018. Retrieved from https://www.avvenire.it

Scavo, N. (2019). Migranti. Ecco le carte con cui il governo smentisce Salvini: «Porti mai stati chiusi». *Avvenire*, 8 January 2019. Retrieved from https://www.avvenire.it

Schapendonk, J. (2018). Navigating the migration industry: migrants moving through an African-European web of facilitation/control. *Journal of Ethnic and Migration Studies*, 44(4), 663–679. http://doi.org/10.1080/1369183X.2017.1315522

Scharpf, F. W. (1994). Games real actors could play: Positive and negative coordination in embedded negotiations. *Journal of Theoretical Politics*, 6(1), 27–53. https://doi.org/10.1177/0951692894006001002

Scholten, P. and Penninx, R. (2016). The multilevel governance of migration and integration, in B. Garcés-Mascareñas and R. Penninx (Eds.). *Integration Processes and Policies in Europe*, IMISCOE Research Series. Cham: Springer, 91–108.

Scipioni, M. (2018a). De novo bodies and EU integration: what is the story behind EU agencies' expansion? *Journal of Common Market Studies*, 56(4), 768–784. https://doi.org/10.1111/jcms.12615.

Scipioni, M. (2018b). Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis. *Journal of European Public Policy*, 25(9), 1357–1375. https://doi.org/10.1080/13501763.2017.1325920.

Senate of the Republic (2016). Resolution of the 1st standing committee adopted at the sitting of 5 October 2016 on the proposal for a regulation of the European Parliament and of the Council 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) (COM(2016) 270 FINAL) pursuant to Senate Rule 144(1) and (6). XVII Legislature, Doc. XVIII, n. 156. Retrieved from http://europarl.europa.eu

Senate of the Republic (2017). Documento approvato dalla 4ª Commissione permanente (Difesa) nella seduta del 16 maggio 2017 a conclusione dell'indagine conoscitiva sul contributo dei militari italiani al controllo dei flussi migratori nel Mediterraneo e l'impatto delle attività delle organizzazioni non governative. XVII Legislature, Doc. XVII, n. 9. Retrieved from http://www.senato.it

Senate of the Republic (2019). Domanda di autorizzazione a procedere in giudizio ai sensi dell'articolo 96 della Costituzione nei confronti del senatore Matteo Salvini nella sua qualità di Ministro dell'Interno pro tempore. XVIII Legislature, Doc. IV-*bis*, n. 1. Retrieved from http://www.senato.it

Shah Povia, S. (2019). Cronache di navi e di porti chiusi: cosa è cambiato dal caso Aquarius al caso Sea Watch. *Associazione Carta di Roma*, 28 January 2019. Retrieved from http://www. cartadiroma.org

Shelley, L. (2014). Human smuggling and trafficking into Europe: A comparative perspective. Migration Policy Institute. Retrieved from http://www.migrationpolicy.org

Sigona, N. (2015). The politics of counting people at borders. 13 October 2015. Retrieved from http://nandosigona.wordpress.com/

Singer, A. and Massey, D. S. (1998). The social process of undocumented border crossing among Mexican migrants. *International Migration Review*, 32(3), 561–592. https://doi.org/10.1177/019791839803200301

SkyTg24 (2018). Migranti, Salvini chiude porti e sfida Malta. Conte invia motovedette. *SkyTg24*, 11 June 2018. Retrieved from https://tg24.sky.it

Spena, A. (2016). Human smuggling and irregular immigration in the EU: From complicity to exploitation?, in S. Carrera and E. Guild (Eds.). *Irregular migration, trafficking and smuggling of human beings – Policy Dilemmas in the EU*. Brussels: Centre for European Policy Studies, 33–40. Retrieved from http://www.ceps.eu

Spencer, S. (2018). Multi-level governance of an intractable policy problem: migrants with irregular status in Europe. *Journal of Ethnic and Migration Studies*, 44(12), 2034 – 2052. https://doi.org/10.1080/1369183X.2017.1341708

Spener, D. (2004). Mexican migrant smuggling: A cross-border cottage industry. *Journal of International Migration and Integration*, 5(3), 295–320. https://doi.org/10.1007/s12134-004-1016-8

Stake, R. (1995). *The art of case research*. Thousand Oaks: SAGE Publications.

Strik, T. (2017). The Global Approach to Migration and Mobility. *Groningen Journal of International Law*, 5(2), 310–328. http://doi.org/10.21827/5a6afa49dceec

Strik, T. (2019). Migration deals and responsibility sharing: Can the two go together? *Nijmegen Migration Law Working Papers*, 2019/02. Retrieved from http://repository.ubn.ru.nl

Tallberg, J. (2002). Delegation to supranational institutions: Why, how, and with what consequences?. *West European Politics*, 25(1), 23–46. http://doi.org/10.1080/713601584

Toaldo, M. (2015). Libya's migrant-smuggling highway: Lessons for Europe. European Council on Foreign Relations – ECFR 147, 1–9. Retrieved from http://ecfr.eu

Tommasone, G. (2019a). «Odissea» della Sea Watch, Pietro Spirito: non ci sono divieti agli sbarchi. *Stylo24*, 4 January 2019. Retrieved from http://www.stylo24.it

Tommasone, G. (2019b). Porti chiusi, il «trucco» di Salvini per dribblare le inchieste delle Procure. *Stylo24*, 5 January 2019. Retrieved from http://www.stylo24.it

Trauner, F., and Ripoll Servent, A. (2016). The communitarization of the Area of Freedom, Security and Justice: why institutional change does not translate into policy change. *Journal of Common Market Studies*, 54(6), 1417–1432. https://doi.org/10.1111/jcms.12397

Trauner, F., and Ripoll Servent, A. (2017). Justice and home affairs research, in A. Ripoll Servent and F. Trauner (Eds.). *The Routledge Handbook of Justice and Home Affairs Research*. Abingdon: Routledge, 3–15.

Triandafyllidou, A. (2018). Migrant smuggling: Novel insights and implications for migration control policies. *The ANNALS of the American Academy of Political and Social Science*, 676(1), 212–221. https://doi.org/10.1177/0002716217752330

Triandafyllidou, A., and T. Maroukis (2012). *Migrant smuggling: Irregular migration from Asia and Africa to Europe*. Basingstoke: Palgrave Macmillan.

Tronconi, F. (2018). The Italian Five Star Movement during the crisis: Towards normalisation?. *South European Society and Politics*, 23(1), 163–180. http://doi.org/10.1080/13608746.2018.1428889

Tsebelis, G. (1990). *Nested games: Rational choice in comparative politics*. University of California Press. Retrieved from http://www.jstor.org

Tsebelis, G. (1995). Decision making in political systems: veto players in presidentialism, parliamentarism, multicameralism and multipartyism. *British Journal of Political Science*, 25(3), 289–325.

UNHCR (2000). Summary Position on the Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, 11 December 2000. Retrieved from http://www.unhcr.org

UNHCR (2018a). Refugees and Migrants Arrivals to Europe in 2017. 16 February 2018. Retrieved from http://www.unhcr.org

UNHCR (2018b). Europe Keydata 2017. Arrivals in Europe. 2 March 2018. Retrieved from http://www.unhcr.org

UNHCR (2018c). Italy Weekly Snapshot – 21 Oct 2018. 21 October 2018. Retrieved from http://www.unhcr.org

UNODC (2011). *Smuggling of Migrants. A Global Review and Annotated Bibliography of Recent Publications*. New York: United Nations.

UNODC (2017). *The Concept of "Financial or Other Material Benefit" in the Smuggling of Migrants Protocol*. New York: United Nations.

van der Giessen, M. (2014). Coping with complexity. Cross-border cooperation between The Netherlands and Germany (Doctoral thesis). Retrieved from: https://repository.ubn.ru.nl/handle/2066/125128

van der Woude, M., Barker, V. and van der Leun, J. (2017). Crimmigration in Europe. *European Journal of Criminology*, 14(1), 3–6. https://doi.org/10.1177/1477370816639814

van Liempt, I. (2016). A critical insight into Europe's criminalisation of human smuggling. European Policy Analysis – SIEPS, 3. Retrieved from http://dspace.library.uu.nl

van Liempt, I. and Doomernik, J. (2006). Migrant's agency in the smuggling process: The perspectives of smuggled migrants in the Netherlands. *International Migration*, 44(4), 165–189. https://doi.org/10.1111/j.1468-2435.2006.00383.x

van Liempt, I. and Sersli, S. (2013). State responses and migrant experiences with human smuggling: A reality check. *Antipode*, 45(4), 1029–1046. https://doi.org/10.1111/j.1467-8330.2012.01027.x

Väyrynen, R. (2003). Illegal migration, human trafficking, and organized crime. WIDER Discussion Papers // World Institute for Development Economics (UNU-WIDER), 72. Retrieved from http://hip.lisboa.ucp.pt

Verbeek, B. and Zaslove, A. (2015). The impact of populist radical right parties on foreign policy: The Northern League as a junior coalition partner in the Berlusconi Governments. *European Political Science Review,* 7(4), 525–546. http://doi.org/10.1017/S1755773914000319

Vink, M. and Graziano, P. (2007). Challenges of a new research agenda, in P. Graziano and M. Vink (Eds.). *Europeanization. New research agendas*. Basingstoke: Palgrave Macmillan, 3– 20.

Volcansek, M.L. (2000). *Constitutional politics in Italy: the Constitutional Court*. Basingstoke: Palgrave Macmillan.

Walsh, D. and Horowitz, J. (2017). Italy, going it alone, stalls the flow of migrants. But at what cost? *The New York Times*, 17 September 2017. Retrieved from http://www.nytimes.com

Watson, S. (2015). The criminalization of human and humanitarian smuggling. *Migration, Mobility & Displacement*, 1(1), 27–41. https://doi.org/10.18357/mmd11201513273

Widgren, J. (1994). Multinational co-operation to combat trafficking in migrants and the role of international organisations. Eleventh IOM Seminar on Migration. International responses to trafficking in migrants and the safeguarding of migrant

rights, Geneva, 26–28 October 1994. Retrieved from http://repository.forcedmigration.org

Wunderlich, D. (2012). The limits of external governance: Implementing EU external migration policy. *Journal of European Public Policy*. 19(9), 1414–1433. https://doi.org/10.1080/13501763.2012.672106

Zaun, N. (2017a). *EU asylum policies*. Basingstoke: Palgrave Macmillan.

Zaun, N. (2017b). The European Commission in justice and home affairs, in A. Ripoll Servent and F. Trauner (Eds.). *The Routledge Handbook of Justice and Home Affairs Research*. Abingdon: Routledge, 409–420.

Zhang, S X., Sanchez, G. E. and Achilli, L. (2018). Crimes of solidarity in mobility: Alternative views on migrant smuggling. *The ANNALS of the American Academy of Political and Social Science*, 676(1), 6–15. https://doi.org/10.1177/0002716217746908

Zincone, G. (2011). The case of Italy, in G. Zincone, R. Penninx, and M. Borkert (Eds.). *Migration policymaking in Europe*. Amsterdam: Amsterdam University Press, 247–290.

Zincone, G. and Caponio, T. (2006). The multilevel governance of migration, in R. Penninx, M. Berger and K. Kraal (Eds.). *The dynamics of international migration and settlements in Europe*. Amsterdam: Amsterdam University Press, 269–304.

Ziniti, A. (2019). Migranti, Salvini: “Libia porto sicuro”. La Commissione Ue smentisce: “Nessuna nave sbarchi là”. *La Repubblica*, 29 March 2019. Retrieved from http://www.repubblica.it

Zucchini, F. (2013). Italy: Government alternation and legislative agenda setting, in B. E. Rasch and G. Tsebelis (Eds.). *The role of governments in legislative agenda setting*. London: Routledge, 53–77.

Zürn, M. (2012). Global governance as multi-level governance, in D. Levi-Faur (Ed.). *The Oxford handbook of Governance*. Oxford: Oxford University Press. https://doi.org/10.1093/oxfordhb/9780199560530.013.0051

Parliamentary proceedings

5th European Parliament, Session of 14 February 2001

6th European Parliament, Session of 4 July 2006

8th European Parliament, Session of 25 November 2014

8th European Parliament, Session of 29 April 2015

8th European Parliament, Session of 30 April 2015

8th European Parliament, Session of 20 May 2015

8th European Parliament, Session of 9 September 2015

8th European Parliament, Session of 16 September 2015

8th European Parliament, Session of 12 April 2016

8th European Parliament, Session of 1 February 2017

8th European Parliament, Session of 12 September 2017

8th European Parliament, Session of 17 April 2018

8th European Parliament, Session of 3 July 2018

8th European Parliament, Session of 13 November 2018

8th European Parliament, Session of 15 January 2019

Anti-Mafia Committee, XVII Legislature, Session n. 203, 9 May 2017

Chamber of Deputies, XVI Legislature, Session n. 175, 12 May 2009

Chamber of Deputies, XVI Legislature, Session n. 176, 13 May 2009

Chamber of Deputies, XVI Legislature, Session n. 177, 14 May 2009

Chamber of Deputies, XVII Legislature, Session n. 779, 12 April 2017

Chamber of Deputies, XVIII Legislature, Session n. 20, 27 June 2018

Chamber of Deputies, XVIII Legislature, session n. 38, 3 August 2018

Chamber of Deputies, XVIII Legislature, Session n. 39, 6 August 2018

Chamber of Deputies, XVIII Legislature, Session n. 90, 26 November 2018

Chamber of Deputies, XVIII Legislature, Session n. 91, 27 November 2018

Chamber of Deputies, XVIII Legislature, Session n. 92, 28 November 2018

Chamber of Deputies, XVIII Legislature, Session n. 99, 11 December 2018

Chamber of Deputies, XVIII Legislature, Session n. 102, 18 December 2018

Reception Committee, XVII Legislature, Session n. 83, 9 May 2017

Senate Defence Committee, XVII Legislature, Session n. 227, 3 May 2017

Senate of the Republic, XIV Legislature, Session n. 200, 27 June 2002

Senate of the Republic, XVI Legislature, Session n. 20, 17 June 2008

Senate of the Republic, XVI Legislature, Session n. 232, 2 July 2009

Senate of the Republic, XVII Legislature, Session n. 795, 29 March 2017

Senate of the Republic, XVIII Legislature, Session n. 11, 13 June 2018

Senate of the Republic, XVIII Legislature, Session n. 35, 12 September 2018

Senate of the Republic, XVIII Legislature, Session n. 47, 16 October 2018

Senate of the Republic, XVIII Legislature, Session n. 100, 20 March 2019

Senate of the Republic, Foreign Affairs and Defence Committees, XVII Legislature, Joint Session, 30 July 2017

Schengen Committee, XVII Legislature, Session n. 41, 22 March 2017

Schengen Committee, XVII Legislature, Session n. 49, 23 May 2017

Schengen Committee, XVII Legislature, Session n. 50, 31 May 2017

Judicial Proceedings

Constitutional Court (2010a). Judgment n. 249/2010

Constitutional Court (2010b). Judgment n. 250/2010

Court of Cassation (2014). I section, V. n. 18354/2014

Court of Cassation (2016). I section, V. n. 25215/2016

Court of Justice of the European Union (2015). Judgment in Joined Cases C-643/15 and C-647/15

Court of Messina (2016a). Order n. *(omissis)*, 20 June 2016

Court of Messina (2016b). Order n. *(omissis)*, 21 November 2016

Court of Ragusa (2018). G.I.P. Proc. N. 1216-1282/2018 R.G.N.R.

Court of Trapani (2016). G.I.P., V. n. 1129/2016

European Court of Human Rights (2012). Hirsi Jamaa and Others v Italy [GC], Application No. 27765/09

Prosecutor's Office of Palermo (2018). Proc. N. 9039/2018 R.G.N.R.

Dutch summary – *Nederlandstalige samenvatting*

Aandacht voor en zorgen om migratie zijn in het laatste decennium gegroeid, zowel in politieke debatten, publieke opinie, wetenschappelijk onderzoek, als in praktijkgerichte werkvelden rondom migratie. Vooral Europese landen rondom de Middellandse zee, waaronder Italië, hebben hier vanaf 2013 en 2014 mee te maken gekregen. Migratiestromen uit Noord-Afrika en het Midden-Oosten namen toen – in ieder geval voor een aantal jaren – sterk toe in omvang.

Deze toename in migratie en de aandacht ervoor heeft nationale en Europese debatten gepolariseerd. Xenofobische discoursen sloegen meer aan bij het publiek en extreemrechtse politieke partijen hebben – veelal met succes – geprobeerd angst en zorgen over migratie te benutten voor hun eigen politieke doeleinden. In deze context is het cruciaal geworden om diepgaand gefocust onderzoek te doen naar specifieke aspecten van het migratieproces naar Europa. Dit is niet alleen belangrijk voor de ontwikkeling van academisch onderzoek naar migratie, maar ook om publieke en politieke debatten rondom migratie van feiten en bewijzen te voorzien.

Aspecten die gelinkt zijn aan het smokkelen van migranten zijn centraal komen te staan in dit verhaal. Daar zijn twee belangrijke redenen voor. Aan de ene kant blijkt dat veel vormen van migratie naar Europa over de Middellandse Zee in verschillende mate betrokkenheid van smokkelaars vereisen. Dit wordt uitgebreider besproken in hoofdstuk 1. Aan de andere kant focust het publieke debat steeds meer op smokkelaars. Dit impliceert echter niet dat er een oprechte en diepliggende zorg over het smokkelen zelf bestaat. Gedurende dit onderzoek zal het duidelijk worden hoe vaak het narratief over smokkelen gebruikt is om voorkeuren voor restrictief migratiebeleid te verhullen.

Het staat echter vast dat smokkelprocessen en narratieven gerelateerd aan migrantensmokkel cruciaal zijn om patronen van migratie naar Europa over de Middellandse Zee beter te begrijpen.

Dit onderzoek vertrekt dan ook vanuit deze stelling en behandelt het huidige academische debat rondom migrantensmokkel op de Middellandse Zee routes, met een blik die niet alleen onderbelichte kwesties in onderzoek verkent, maar de lezer ook

voorziet van overwegingen vanuit een beleidsperspectief. Om dat te doen, focust dit onderzoek naar anti-smokkel beleid op een casestudie, namelijk Italië, met een gelinkte sub-case: Sicilië. Het onderzoek analyseert de kenmerken van politieke *agency* in het maken en implementeren van beleid dat verband houdt met migrantensmokkel. Het focust op dergelijk beleid op en tussen verschillende bestuurslagen: dat van de EU, de nationale en de lokale overheid, in de periode 2014-2019.

Dit onderzoek is belangrijk en actueel omdat het focust op een kwestie die onderbelicht is in academische en grijze literatuur. Het belang van dit onderzoek schuilt echter met name in het begrijpen van migratiebeheer (*migration governance*) op EU-niveau, zowel theoretisch als empirisch. Verder biedt de gekozen aanpak belangrijke elementen van innovatie, doordat deze specifiek focust op het proces van beleidsvorming, gebaseerd op een denkwijze die voortkomt uit de zogenoemde *new institutionalist analysis*.

De studie bestaat uit twee hoofdonderdelen: Deel 1 (hoofdstuk 1-3), dat alle verschillende theoretische, analytische en methodologische aspecten beschouwt die relevant zijn in het ontwerpen van onderzoek naar migrantensmokkel; Deel 2 (hoofdstuk 4-7), waarin de aanpakken en modellen die in de eerste drie hoofdstukken besproken worden, toegepast worden op de casus.

Meer specifiek: Hoofdstuk 1 biedt een diepgaande kijk op het concept ‘migrantensmokkel’. Het pakt de verschillende componenten van het concept uit en stelt een nieuwe aanpak voor die de behoefte aan erkenning van de empirische complexiteit van dit concept verzoent met de behoefte aan een operationele en analytisch werkbare definitie ervan. In dit hoofdstuk worden de verschillende kenmerken van smokkelen, smokkelaars en gesmokkelde migranten beschouwd, samen met de verschillende manieren waarop academische en grijze literatuur deze termen aanhaalt. Deze beschouwing leidt tot de formulering van de operationele definitie van smokkelen – *the smuggling spectrum* (het smokkelspectrum) – en het onderzoeksprobleem. Met name het *smuggling spectrum* is een complex terrein waar het fenomeen smokkelen beschouwd wordt door zes verschillende lagen die wijzen op de bestaande tegenstellingen in zowel de empirie als het beleid omtrent mensensmokkel.

Hoofdstuk 2 werkt deze aspecten verder uit en beschrijft de theoretische leidraad naar het onderzoeksprobleem. Hier wordt in het bijzonder onderzocht hoe deze interpretatieve casestudy – die binnen het brede veld van EU-studies valt – nieuwe institutionele en *multi-level governance* benaderingen combineert. Op die manier scherpt het het onderzoeksprobleem aan tot een specifieke onderzoeksvraag en drie gelinkte deelvragen: een voor elk bestuursniveau. De onderzoeksvraag richt zich op hoe en waarom *agency* – beïnvloed door institutionele beperkingen – zich binnen en over bestuursniveaus beweegt bij het formuleren van beleid dat bedoeld is om het smokkelen van migranten in de EU, Italië en Sicilië tegen te gaan. Gebaseerd op dit proces wordt er een drieledig (institutie/*agency*, verticale en horizontale dynamieken) analytisch model voorgesteld dat de hierboven genoemde conceptuele combinatie en zijn concrete toepassing op de specifieke casus mogelijk maakt. De methodologische aspecten van het onderzoek – waaronder het tijdsbestek, de casusselectie en de specifieke kenmerken van de casus en sub-casus, de bronnenselectie en hun heuristische relevantie – worden hier ook aangehaald. Verschillende data worden overwogen en geanalyseerd. De data omvatten onder andere: 23 semigestructureerde diepte-interviews, gerealiseerd met relevante actoren op verschillende bestuursniveaus; parlementaire notulen van 1998 tot 2019; gerechtelijke notulen; en documenten van onder andere de Europese Commissie, het Europese Parlement, de Raad van de Europese Unie, nationale ministeries, Europol, Eurojust, UNODC, UNHCR en ngo's.

Hoofdstuk 3 bespreekt kort de relevante achtergrond van het wetgevende raamwerk dat hier van toepassing is, op een EU-, nationaal- en lokaal niveau, en bespreekt de formele verdeling van verschillende bevoegdheden over deze bestuursniveaus.

Deel 2 volgt een bottom-up aanpak: Hoofdstuk 4 focust op aspecten van implementatie op lokaal niveau – in Sicilië – en gebruikt hier vooral de eerste laag van het analytische model voor. Ten eerste laat het hoofdstuk een analyse zien van hoe *agency* het mogelijk maakt om af te wijken van de *letter of norms*. Ten tweede volgt er een bespreking van hoe en in welke mate dit bijdraagt aan het maken van beleid, zowel direct (op lokaal niveau) of door het bedoeld of onbedoeld *shifting up processes*. Dit onthult het belang van specifieke actoren, zoals onder andere justitie, ngo's en

bemiddelende instanties (*intermediate bodies*, instituties tussen verschillende bestuurslagen in).

Hoofdstuk 5 en 6 hebben een vergelijkbare structuur, maar nu gebaseerd op laag 2 en laag 3 van het analytische model, en beschouwen de dynamiek van beleidsvorming op respectievelijk het Italiaanse- en het EU-niveau.

De analyse van het nationale niveau verkent beleidsvorming in relatie tot migrantensmokkel, in het licht van verticale en horizontale dynamieken. Verticale dynamieken zijn gebaseerd op de invloed van lokale en EU-niveaus, waar de bemiddelende instanties weer een belangrijke rol spelen, naast parlementaire commissies en ongewenste effecten die hun oorsprong hebben op EU-niveau. Horizontale dynamieken beschouwen de manier waarop verschillende beleidsterreinen en verschillende institutionele en non-institutionele actoren op het nationale niveau op elkaar inwerken in de uitwerking van smokkel gerelateerd beleid. Hierin zijn het veiligheid-gebaseerd raamwerk, de ongewenste gevolgen veroorzaakt door ngo's en de uitvoering van beleid allemaal aspecten die primaire relevantie krijgen.

Op EU-niveau bevestigen verticale dynamieken het belang van bemiddelende instanties en parlementaire commissies, in aanvulling op veldbezoeken. Horizontale interacties daarentegen helpen de relevantie van andere beleidsdomeinen buiten de Ruimte van Vrijheid, Veiligheid en Recht en de institutionele consequenties daarvan naar voren te brengen. Op het horizontale niveau wordt ook de interactie tussen supranationale en intergouvernementele actoren en de belangrijke (maar tegengestelde) rol van onderzoek aangekaart.

Hoofdstuk 7 rondt de analyse in de andere hoofdstukken van deel 2 af: het maakt het 3-ledige analytische model weer tot een eenheid en beschouwt de manier waarop politieke *agency* zich over verschillende bestuursniveaus beweegt. Daarbij wordt een specifieke focus op een beleid beschouwd, om het complexe samenspel tussen *agency* en instituties, ingebed in verschillende bestuursniveau, te verduidelijken en te onderstrepen.

Tot slot wordt er in de conclusie volledig antwoord op de onderzoeksvraag gegeven en worden een aantal narratieve updates en algemene overdenkingen over deze specifieke studie en migratieonderzoek in het algemeen gepresenteerd. Er wordt

voortgebouwd op de analyse en de manier waarop elke actor zich binnen en tussen verschillende bestuursniveaus beweegt – en daarbij beïnvloed en beperkt wordt door institutionele restricties – wordt geëvalueerd. Daarmee wordt uitgelegd (a) welke actoren het anti-smokkel beleidsvormingsproces leiden in de EU, Italië en Sicilië en waarom dat zo is; (b) wat hun kijk op mensensmokkel is; (c) welke dynamieken de relaties tussen hen karakteriseren, (d) hoeveel ruimte er is voor processen van informatieoverdracht; (e) in welke mate non-institutionele actoren bijdragen aan het proces van het aannemen van beleid. Deze conclusies zorgen voor diepgaand begrip van de specifieke Italië/Sicilië casus. Dit is significant aangezien dit de eerste systematische inzichten zijn in een beleidsdomein dat reeds verkend moet worden. Verder maakt de conceptuele combinatie in dit onderzoek de weg vrij voor nieuwe onderzoeksrichtingen in EU-studies: het geeft een definitie van een model dat bedoeld is om te kijken naar vergelijkbare beleidsvormingsprocessen in andere werkvelden of in – vergelijkende – studies over andere casussen.

This page intentionally left blank

About the author

Federico Alagna holds a Bachelor's degree in Political Sciences (cum laude) and a Master's degree in International Relations (cum laude) from the University of Bologna. He also holds a Master of Laws (LL.M.) in International Crime and Justice (cum laude) from UNICRI – United Nations Interregional Crime and Justice Research Institute.

In his professional life, he has mostly researched on migration and anti-organised crime policies in Europe and worked as project officer in a non-profit organisation, publishing in academic journals, general public magazines and edited books and reports. In 2016 he was admitted to the PhD programme in "Global and International Studies" of the University of Bologna, Department of Political and Social Sciences, and he subsequently developed and carried out his research under a joint doctorate agreement with the Radboud University of Nijmegen.

He has been socially and politically engaged for more than ten years, in Italy and abroad, mostly in the area of municipalism, right to the city, participatory practices, migration and the fight against the mafia. From 2017 to 2018 he served as Deputy-Mayor for Culture and Public Education of the City of Messina, Sicily.