

# ABSTRACTS & BIOGRAPHIES

24 March 2023

## INTRODUCTION:

**Teresa Russo, *The European Union's Borders Between the 'Externalisation' of Controls, Detention Practices and Human Rights Violations***

### Abstract

This introduction intends to reflect on the changing concept of the border which, as a result of controls relating to irregular crossings, materialises in certain spaces outside the State borders, or even in *terrae nullius*, where in fact some of the border management and control policies are implemented. It then focuses on the notion of European Integrated Border Management (EIBM) in order to highlight how such management has resulted in detention practices of migrants and asylum seekers, as well as serious human rights violations.

### Biography

Ph. D., Associate Professor of European Union Law, Lecturer of European Union Law, International Law, International Organizations, EU Migration Law, International Law and

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Cyber Security (University of Salerno); 2022-2025 Jean Monnet Chair “Promoting Public Awareness on Enlargement Policy, EU Values and Western Balkans’ Accession (EUVALWEB); Scientific Coordinator of the 2019-2022 Jean Monnet Module “EU-Western Balkans Cooperation on Justice and Home Affairs” (EUWEB), University of Salerno; Director-in-Chief of the online Journal EUWEB Legal Essays. Global & International Perspectives; Delegate to Communication, Department of Legal Sciences (School of Law), University of Salerno; Lawyer. Her research activities and publications (books, book chapters, articles, etc.) focus on current issues of EU law with specific reference to the constitutional evolution of the EU integration process and the democratization of external EU action, as well as of International Law and International Organizations.

## CHAIR & CONCLUSIONS:

### Stefano Amadeo

#### Biography

Full Professor of European Union Law; former Associate Professor (2002-2012) and Lecturer (1998-2002), International Law, EC Antitrust Law, History of European Integration. Former Scientific Advisor in EU law - External and Fiscal Relations (Italian Minister of Foreign Affairs; Autonomous Region Friuli Venezia Giulia: de-centralized taxation and European Law; external relations: GATS package deals); Director or Co-Director of National Scientific Projects financed by the Italian Government; former Coordinator of the Doctorate in EU Law (2003-2010). Author of 3 books, and of more than 50 scientific publications on specialized reviews.

## KEYNOTE SPEAKERS:

### Ana Nikodinovska Krstevska, *Externalizing EU’s Migration and Asylum Policies in Neighboring Countries: The Case of North Macedonia*

#### Abstract

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Since the migration crisis in 2015 the European Union has increasingly sought to develop the external dimension of asylum and migration policy, addressing migration management through cooperation with migrant-sending countries and transit countries through which migrants and refugees travel. It involves forms of cooperation that essentially externalize national or EU migration control tools, and that engage third countries in strengthening their border control, combating illegal entry, migrants smuggling and trafficking, readmitting migrants who illegally crossed into the EU and other policies intended to control and manage the migrant flow. This is the case with North Macedonia since the country is located on the axis of the Balkan route. In that sense, the European Union in the context of asylum and migration, has established different forms of cooperation with the country, extending its policies and norms through transposition of EU law within the enlargement process, effectuating readmission of migrants on the grounds of readmission agreement, establishing bilateral cooperation for border control and border management with EU Member states, and last but not the least, establishing cooperation with EU's border and coast guard agency – Frontex. However, these set of policies and practices implemented by the EU in North Macedonia, despite being considered by the EU as successful tools in tackling migration challenges, have been questioned by the international organizations and NGOs, as they have observed systematic practices of migrant pushbacks and violence on borders in particular on the Greek-Macedonian border, where police officials of EU Member States and Frontex officials have been recognized as being involved in these acts of alleged violence. These episodes have raised serious concerns about the observance of human rights of migrants and asylum seekers by the EU Border Agency and put into question the entirety of EU's asylum and migration system whatsoever. Moreover, the work of the Agency has additionally been questioned by an internal report of the EU anti-fraud agency OLAF published in October 2022, whereby Frontex has been accused of working against its legal obligations to guarantee respect for human rights during its operations, and instead has been covering up human rights violations that took place in the Aegean Sea. On these grounds the purpose of this contribution is to examine EU's externalizing policies and practices in asylum and migration in North Macedonia in the wake of the latest concerns and against the background of respecting international human right obligations and observance of the rule of law.

## Biography

Ana Nikodinovska Krstevska is associate professor in EU Law and EU Foreign Policy and Head of Department of International Relations and EU Law at the Faculty of Law, University "Goce Delcev" of Stip. Nikodinovska Krstevska has finished BA (Bachelor of Arts) and MA.

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(Master of Arts) studies in Italy (L’Orientale – Naples and Alma Mater – Bologna), and she has attained her PhD in Studies for European integrations at the University Ss. Cyril and Methodius in Skopje. She has been a visiting fellow at the Catholic University in Leuven in 2010/2011 and a visiting fellow at the University of Naples ‘L’Orientale’ in 2018/2019. She works as associate professor in EU Law and EU Foreign Policy at the Faculty of Law, University “Goce Delcev” of Stip, since 2008. She is a coordinator for the University “Goce Delcev” of Stip in two Jean Monnet projects, “Migration and Asylum Policies Systems – MAPS”, led by Prof. Cataldi (University of Naples “L’Orientale”) and “New European Borderlands – BORDEURS”, led by Prof. Szalai (Central European University). She is also the coordinator of the activities for the University “Goce Delcev” in the Jean Monnet Module “EU – Western Balkans: Cooperation on Justice and Home Affairs”, led by Prof. Russo (University of Salerno). Her current research is focused on European asylum and migration policies vis-à-vis national approaches of Western Balkan states, with specific emphasis to cooperation in migration, prevention, and combat of illegal migration, outsourcing and externalization of European security towards third countries.

## **Maria Adelaide Massimi, *The External Dimension of the Pact: Between Tackling the Root Causes of Migration and Aid Conditionality***

### **Abstract**

In the presentation *The External Dimension of the Pact: Between Tackling the Root Causes of Migration and Aid Conditionality*, I would like to contribute in better understanding the scope of the Pact in the context of migration management cooperation policies with third countries. The Pact places a certain emphasis on the importance of the external dimension. Since the so-called refugee crisis in 2015-2016, maintaining a low number of arrivals on EU territory is considered a necessary prerequisite for a smooth functioning of the internal asylum and reception system. Indeed, the discursive assumption from which the Commission's elaboration starts is that there is an excessive number of asylum applications with low chances of being accepted and that these applications overburden the asylum and migration system rendering it inefficient. The second point in the Commission's discourse then concerns the inability of Member States to return irregular foreign nationals. The Commission responds to these problems through two distinct mechanisms: the first, which concerns the management of arrivals at the borders and asylum applications, is managed through a strengthening of the selective procedure and an integration of the different stages

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of the procedure, from identification to repatriation, which should preferably be carried out at the border, before migrants are considered to have entered the territory; the second mechanism concerns cooperation with the countries considered to be the countries of origin or transit of migrants to improve the selection and blocking systems in these countries and to facilitate returns, both forced and so-called "voluntary". The presentation will therefore attempt to situate the Pact within its context to analyse continuity and discontinuity in relation to the policies adopted in previous years. In particular, an attempt will be made to analyse the effectiveness of the Pact in intervening on the gaps identified, in particular in relation to the lack of coherence of Member States' actions in cooperating with third countries and to the difficulties in implementing returns. A specific focus will explore the main changes in the action and perspectives of the European Border and Coast Guard Agency (Frontex), particularly in relation to the possibility of deploying its forces outside European territory. In order to better understand the impact and potential impact of these new agreements, we will briefly look at the action carried out by Frontex in the Balkans and the negotiations for the signing of a Status Agreement with Senegal. Finally, we will look at recent developments in cooperation with countries considered strategic such as Tunisia and Libya.

## Biography

Maria Adelaide Massimi works as project coordinator with the Association for Legal Studies on Immigration (ASGI) analyzing and developing strategic litigation on external border management policies. In particular, she has worked on the hotspot approach and on the externalisation and delegation policies of asylum and migration control to third countries. Previously she coordinated social, medical and legal assistance projects for migrants with different organizations and conducted research on migration dynamics in Italy.

## Rossana Palladino, *Return Directive: Jurisprudential Orientations and Regulatory Trends*

### Abstract

Directive 2008/115/EC (so-called Return Directive) establishes a corpus of rules and common procedures to apply in Member States for the return of illegally staying third countries nationals. Specifically, this has to be carried out "in accordance with fundamental rights as general principles of Community law as well as international law, including refugee

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protection. and human rights obligations” (art. 1). The core of the Return Directive revolves around its Chapter II, which sets out the rules relevant for the termination of illegal stay of a third-country national. Said rules feature a two-phased procedure comprising a voluntary return and a forced return. By virtue of the tight bond to the respect of fundamental rights of migrants, expressed in the recitals as well as in its proper text, the Directive identifies more than one way of removal of an individual. Indeed, these are characterized by an increasing gradation of coercive measures that range from voluntary departure to forced escorting. It is well-known that under the then art. 63, para.3, let. b) of the Treaty establishing the European Community (TEC) – currently art. 79, para. 2, let. c) of the Treaty on the Functioning of the European Union – Directive 2008/115/EC delivered a compromise text in dealing with particularly delicate aspects of the Member States’ migration policy. The text nonetheless brings with it some criticism, even the harshest, doubting the effective capability of such legal instrument to strike a fair balance between State logic and protection of migrant’s fundamental rights and dignity. By questioning the endurance of this balance, some remarks will be drawn with regard to the evolution of the caselaw from the Court of Justice of the European Union, only to compare it with the rethinking of the Return Directive in the light of the priorities set by the European Commission – as anticipated in the “New Pact on Migration and Asylum”.

## Biography

Rossana Palladino is Associate Professor of European Union Law at the Department of Legal Sciences of the University of Salerno. JM Module Coordinator ‘Democracy and the Rule of Law: A New Push for European Values (EU-DRAW)’; member of the Research projects of relevant national interest (PRIN) “International Migrations, State, Sovereignty and Human Rights: open legal issues”. She is author of 3 peer-reviewed books and more than 60 articles and studies in EU law. The main topics of her research include EU Law; the EU Area of freedom, security and justice; fundamental rights; migration law; social rights. Editorial Board-Coordinator of the online Journal “Freedom, Security & Justice: European Legal Studies”.

## Giuliana Postiglione, *Application Aspects and Critical Issues in the Reception of Migrants*

### Abstract

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The situation of the arrivals and reception of refugees and migrants in Italy has highly complex aspects. On the one hand, the glow of arrivals is extraordinarily high and is growing; on the other, criminal practices have entered the immigration “business”. These difficulties are worsened by the need to undertake adequately and promptly the reception, administrative processing and support to such a large number of persons, that is to say refugees and migrant. In international law the term refugee refers to persons fleeing from wars and all types of persecution, who may make an application for international protection to a State where such fears do not exist. The State to which this application should be made is the first country where the person arrives and can benefit from the consequences deriving from the guarantee of protection. The guarantee of protection is, however, subject to acceptance of the asylum application. If there are no elements for according the status of refugee to a foreigner, there may be recognition of the status of subsidiary protection. This is recognized by the Italian State, as well as by other States, to a foreign citizen who does not possess the legal requisites to be recognized as a refugee, but for whom there are well-founded reasons to believe that if that person returned to his country of origin, he or she would run an effective risk of undergoing serious harm and who, due to such risk, cannot or does not wish to apply for protection to his or her own country. In any case, this form involves the acceptance of the application for international protection. The ordinary management of reception comes under the Ministry of the Interior, Department for Civil Liberties and Immigration, funding the reception system for migrants and asylum seekers. The migrants for whom initial rescue must be provided are hosted in reception centers, set up and managed by the Central Directorate of Civil Services for Immigration and Asylum, through the Prefecture having geographical jurisdiction, in order to avoid their dispersion in the local area and to allow the authorities to check the legal position of the migrants. This checking could result in an order of expulsion or access to the procedure for application for international protection. Those who receive expulsion orders are hosted in the Centers of Identification and Expulsion (CIE) and set up and managed by the Prefectures having jurisdiction - in order to undertake identification, the validation of detention and subsequent measures for expulsion. On the other hand, the asylum seekers are hosted in the reception centers for asylum seekers, or also in temporary facilities. In these centers, they are fully provided with the services required for the maintenance and assistance to foreigners, as well as essential health services, socialization measures and the guarantee of freedom of worship and correspondence. In the work, the unaccompanied foreign minors question could not but be included. An unaccompanied foreign minor is defined as citizen of non-EU countries or stateless person aged less than eighteen who enter the territory of Member States without being accompanied by an adult who is responsible for him/her in accordance

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with the law or customs, until he/she has come under the effective custody of a person responsible for him/her, or that minor who has been left without accompaniment once he/she has entered the territory of the Member States. The rules on the status of unaccompanied foreign minors in Italy ensures a high level of protection and safeguarding from the time of initial contact with the Police or local social services, which are required to place them in a safe place. This is the beginning of the process of protection of foreign minors, who under current legislation, have full equality with Italian minors. In 1991, Italy did ratify the UN Convention on the rights of children (Law n. 176 of 27 May 1991), introducing into the Italian legal system the full recognition of the specific nature of the status of being minors, and adopting the principle by which the superior interest of minors must be considered as prevalent. This ensures that an unaccompanied foreign minor cannot be expelled, pursuant to the art. 19 current Immigration Law – L.D. no. 286/98 and the consequent right to the attribution of a permission to stay which makes their presence on Italian territory legal.

## Biography

Giuliana Postiglione was born in Salerno on 22/03/1973. She graduated in law at the University of Salerno (final grade 110/110). She has bachelor in Labor Law at Naples University. She graduated in II level Master in Criminology and Criminal Law, Criminal Analysis and Urban Security Policies (Final grade 110/110) University "Federico II", Naples (Italy). She joined the Police in 1999. On 01/01/2018 she was appointed Deputy of the Questore. Throughout her career she has managed the air and sea borders of Luino (VA), Milano and Salerno. She worked in border Police in port and airport and also in border with Switzerland. She attended various specialization courses and participated in numerous seminars on gender-based violence, domestic violence, stalking, transport of dangerous materials by rail and sea. She participated as a speaker in various conferences held at the University of Salerno, Schools and Municipalities of the Province of Salerno, such as on prevention of domestic and gender violence, Migrants and Immigration, Criminalization of immigration and network legality. She has published books on Port security and the Right of Police personnel to strike.

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