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Policy Brief WP7
Key Knowledge Questions Migration Governance

Key Migration
Questions

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Migration Studies

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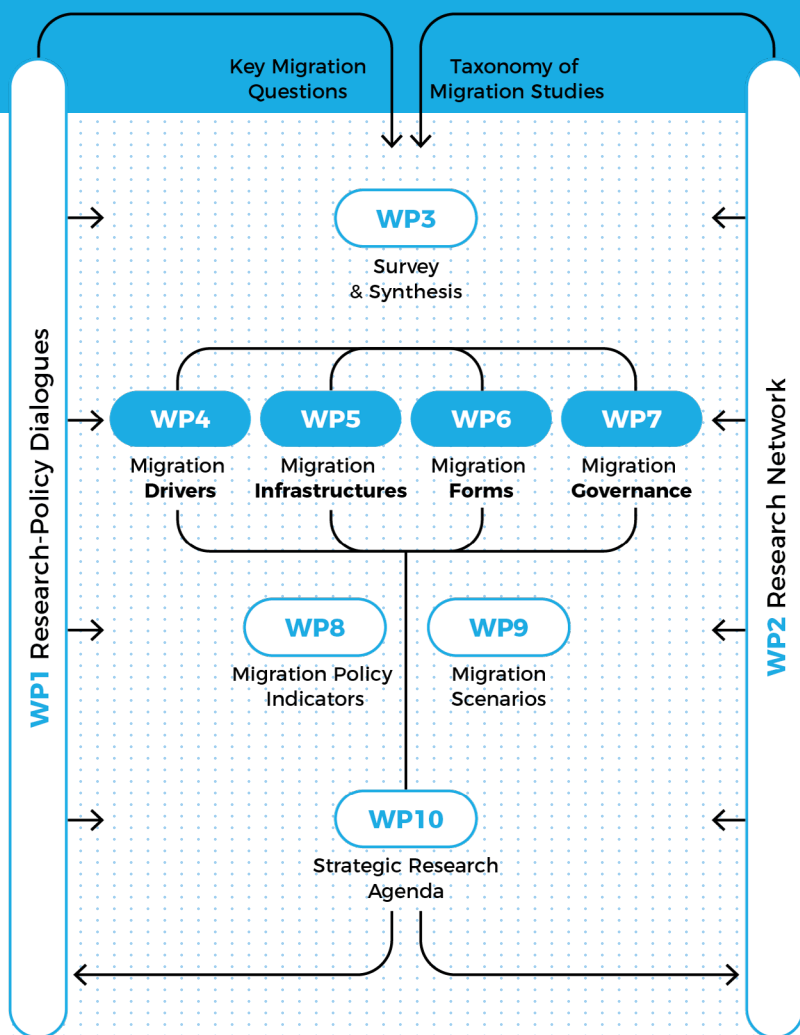
Policy Briefs WP7
Key Knowledge Questions
Migration Governance

The Future of Schengen Area and the European Common Asylum System

by
Alexandra Ricard-Guay and Andrew Geddes
European University Institute

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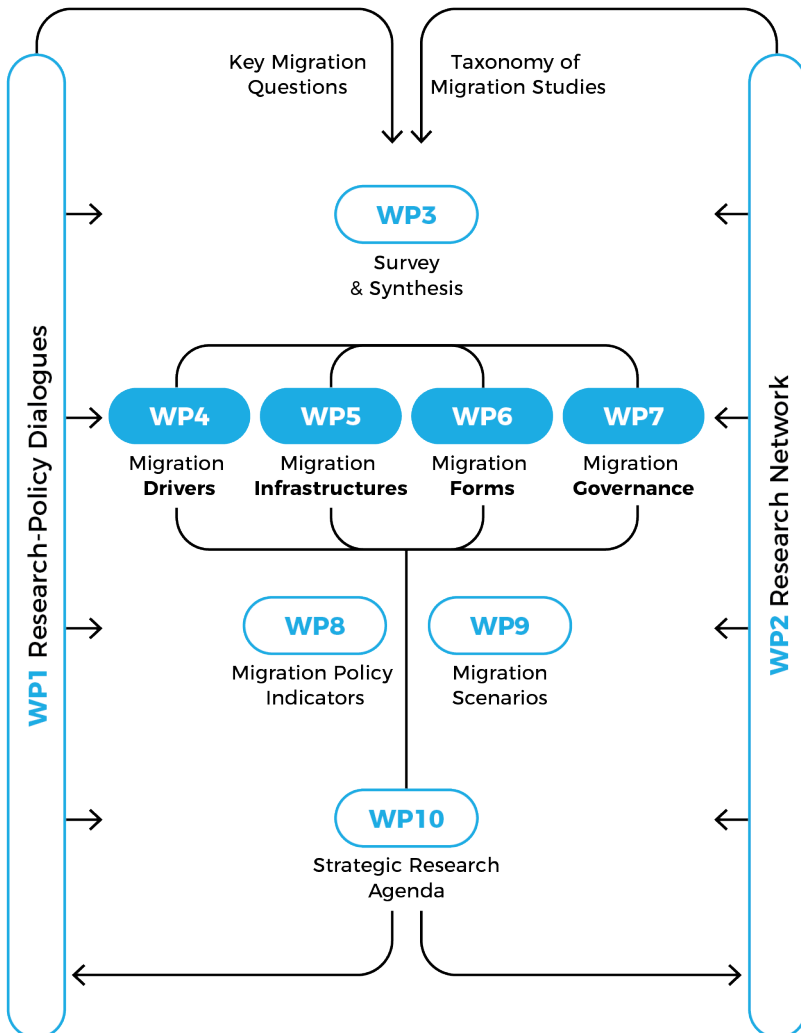February 2020

About the project

These policy briefs about key knowledge questions on migration are the result of a collaboration between Work Packages 1, 4, 5, 6, and 7 of the Horizon 2020 project, CrossMigration. They are intended to introduce new policymakers to what insights existing research can offer for understanding and addressing pressing questions on the topic.

Led by MPI Europe, Work Package 1 set out to define a set of empirical questions that are at the heart of major policy decisions that European policymakers are currently facing and will face in the coming decade. These questions synthesise the key areas of interest based on consultations with over 30 policymakers at EU, national and local level and the CrossMigration research partners. These questions are forward-looking, focusing on what knowledge will be needed to inform policymaking in the field of migration in the next 5 to 10 years.

Work Packages 4-7 bring together leading experts on the themes of Migration Drivers, Migration Infrastructures, Migration Forms, and Migration Governance. They were led by Danube University Krems (DUK), the Deutsches Zentrum für Integrations- und Migrationsforschung (DeZIM), the Peace Research Institute Oslo (PRIO), the University of Lisbon (IGOT-UL), the Centre of Migration Research Warsaw (CMR), and the Migration Policy Centre at the European University Institute (EUI), along with members of the IMISCOE research network:

Migration drivers are structural elements that have the potential to facilitate, enable, constrain, or trigger migration. Migration drivers might increase or decrease the salience of migration, the likelihood of certain migration routes, and the desirability of different destinations. The term is more encompassing than 'migration determinants' or 'root causes' of migration, which generally ignore human agency in the decision to migrate and assume a deterministic and causal relationship between one or more structural factors and migration. Migration drivers, however, affect migration directly but also, and most importantly, indirectly and in combination with other migration drivers, in complex migration driver configurations. While the migration driver environment might be the same for two individuals, different migration drivers affect them differently depending on individual characteristics.

Figure 1
Overview Work Packages

Key Migration Questions

Taxonomy of Migration Studies

WP3
Survey & Synthesis

WP1 Research-Policy Dialogues

WP2 Research Network

WP4
Migration **Drivers**

WP5
Migration **Infrastructures**

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The emerging field of **migration infrastructures** sheds light on the processes that occur between the decision to migrate is made and arrival in the receiving country. It primarily asks the question of how people migrate, taking the perspective of the receiving country in three different angles: First, it focuses on regular and irregular, commercial and non-commercial actors facilitating migration, including visa brokers, work recruitment agencies, marriage migration platforms, human smugglers and humanitarian organisations. Then, it looks at the logistics of migration, exploring the role of routes, transit hubs and means of transportation. Finally, it investigates how digital technologies like the internet and social media shape mobility and influence migratory pathways.

The notion of **migration forms** concerns the question of who migrates. Global migration forms, or flows, include regular and irregular migrants who migrate for a broad array of reasons. Different migration forms are characterized by multiple and dynamic aspects. The differences between migration forms relate to variations in migration drivers, infrastructures, policies and experiences that shape migrants' journeys. The Migration Research Hub encompasses a research on a range of different migration forms – a specific set of migration forms are included in the database as they reflect the existing body of knowledge and focus regarding f migration research on forms. While these are differentiated in a categorical manner, migration forms – and motivations – are rarely straightforward. Indeed, migration forms and flows are increasingly highlighted as mixed, as individuals' motivations can be multiple and constantly developing throughout migration processes.

Migration governance includes, but is broader than, migration policies. While the latter refers to laws, regulations, decisions or other government directive related to migration, governance encompasses these elements as well as the factors related to decision-making processes and implementation. While the term governance is frequently used in the field of migration studies, it remains ill-defined. Definitions of governance typically focus on the observable outputs of governance processes.: i) norms, rules, policies, laws and institutions that can be binding or non-binding norms and frameworks, at the global, national or subnational levels.; ii) actors, institutions and institutional mechanisms; and iii) processes or methods of decision-making and of governing processes (including implementation and monitoring) that can be formal or informal and occur at different levels (local, national, global) and among diverse actors.

Figure 2
Simplified overview of project conceptual framework
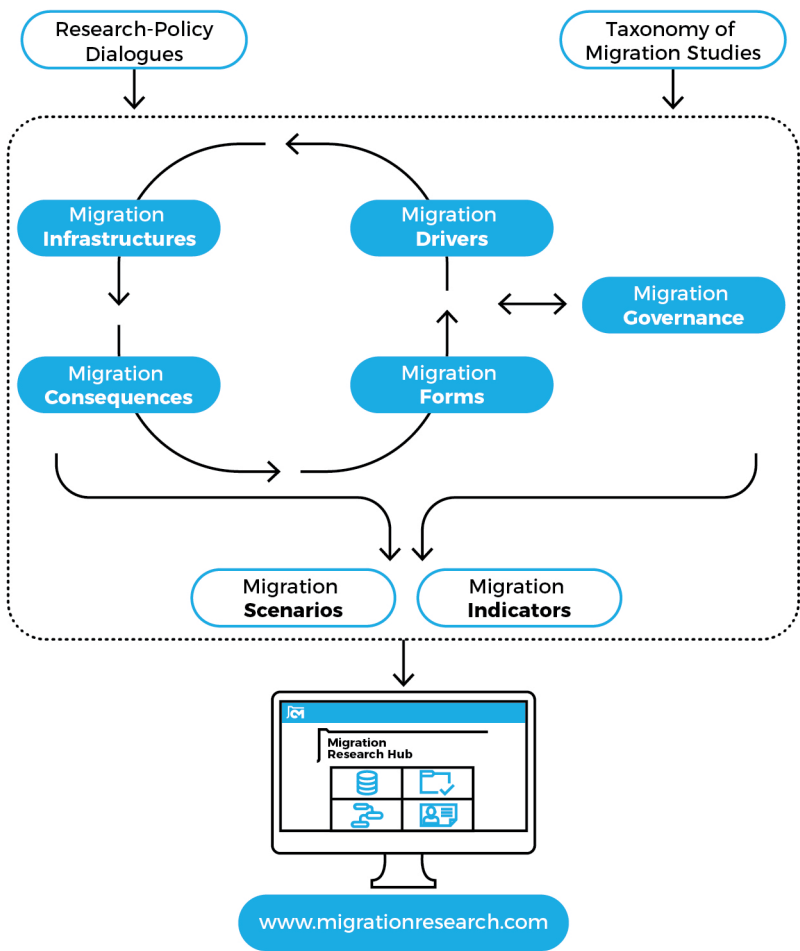
We hope that you find these guides useful for navigating these key questions. For more information on the knowledge accumulation work of CrossMigration, please visit the YouTube channel to watch interviews with the authors. To find an index of knowledge and experts on migration all under one roof, be sure to visit and register at the Migration Research Hub (migrationresearch.com).

WP7
Key Knowledge Questions
on Migration **Governance**

The Future of Schengen Area and the European Common Asylum System

Introduction

This document aims to providing guidance to policymakers when approaching key questions and current debates regarding migration governance in the European Union (EU). We focus specifically on questions about the future of the Schengen area and the Common European Asylum System (CEAS). By so doing, we attempt to capture key lessons that can be learned from the existing knowledge base and guidance when addressing these questions going forward. The aim is thus to synthesise existing knowledge and to think about its implications for future actions.

Migration governance/policies: definitions and conceptualisation

Migration governance includes but is broader than migration policies. The latter refers to laws, regulations, decisions or other government directive related to the management of migration, while governance encompasses these elements and the factors related to the decision-making process and implementation. The emergence of the concept reflects a shift away from state-centred analyses of policies and a general recognition of the role of non-state actors in governing a specific policy field.

Definitions of governance commonly comprise components related to: i) norms, rules, institutions; ii) processes or methods of decision-making and of governing; and iii) processes or mechanisms of implementation and monitoring. Another common element is the recognition of the multiplicity of actors involved in shaping governing processes, ranging from public and state actors and private actors (i.e. private companies) to non-governmental and civil society representatives (voluntary and community sectors) or research and academic actors.

A key related conceptual development, which emerged in the 1990s in relation to the process of European integration, is the concept of multilevel governance (MLG). MLG enables analysis of the different levels or sites

Alexandra Ricard-Guay and Andrew Geddes
European University Institute

where policy making occurs, the multiple layers of government and the interactions between various types of public and private actor. It is highly relevant in the EU framework and context, and it is used in the study of migration governance, both at local and national levels. When considering global migration governance, the EU is simultaneously an actor in the global governance arena, and it constitutes in itself the most developed example of regional and supranational migration governance and interactions between national, regional and international norms.

Migration governance is a very broad term that refers to different categories of migration with different policy frameworks: labour migration (high skill, low skill, temporary), family migration, migration for study, refugee and international protection status, or irregular migration. These categories are not regulated in the same way and do not involve the same actors and institutions. In the context of the EU, there is also another fundamental distinction between mobility and migration; mobility refers to the intra-regional free movement of EU nationals within the Schengen area, and migration to movement from outside the EU by non-EU or third-country nationals (TCNs). Furthermore, matters of migration of third-country nationals (TCNs), mobility and asylum are distinct areas of EU governance, and they are not the subject of the same level of Europeanisation. While the admission of TCNs is a national competence, asylum management is more Europeanised (to varying degrees), and while the supranational dimension of Schengen is strong, the external border controls are largely intergovernmental. Despite these differences, the issues of asylum, border controls and intra-EU free movement are inextricably interconnected.

Policy relevance
The EU institutions have flagged the need to think beyond the migration/ refugee crisis and to identify the scope for future development of EU migration

and asylum policies. In 2019, the appointment of a new Commission as well as the renewal of the European Parliament could provide an opportunity to rethink EU migration governance. In such a context, research findings can be helpful as research can adopt a longer-term, systemic perspective whereas policymakers are typically confronted with more immediate and pressing short- and medium-term questions. Research can also offer insights into lessons that can be learned from the effects of past interventions to inform future directions. A further important role for research on migration governance is that it can highlight good practices at national, sub-national and city-level that can inform future policymaking.

Not surprisingly, there has been significant growth in research on EU asylum governance since the 1990s. In general terms, this research evaluates how, why and with what effects migration and asylum have become a central component of EU action. Key moments and building blocks of the CEAS prompted an increased interest and research on the topic, such as during the first and then the second phase of development of the CEAS. Since the so-called migration or refugee crisis of 2015, matters of asylum, border controls and the Schengen area are at the top of the EU political agenda and have generated an increasing amount of research.

Reflecting political debate, much academic research that focused on the migration/refugee crisis of 2015 exposed the deficiencies (if not failures) of the EU asylum system and has coincided with high political salience. The 'crisis' revealed underlying divisions between member states (MS) about the scope, purpose and operation of common rules on the protection of asylum-seekers and refugees, particularly the Dublin regulation. With the large influx of arrivals through the Mediterranean Sea, the Schengen area has also reached a crisis point. Temporary internal border controls were reinstalled by few countries (Austria, Germany, Denmark, Sweden and Norway, and France), crystallising a loss of trust in external border controls.

This has been interpreted as a crisis of policies, of institutions, and of solidarity and trust. It has refocused attention, gathered more resources and new actors. Prominent strands in the research literature deal with the question of whether institutional changes have led to policy changes. For example, has the empowerment of supranational institutions such as the European Parliament and the Court of Justice led to new policy directions? The research evidence would tend to be sceptical about the extent to which there has been a change in the underlying direction of policy. This is not to question that there has been significant institutional change, greatly increased resources and a much stronger political focus, but research

evidence suggests that the basic direction of travel for EU migration and asylum policy was established in the 1990s and 2000s and that the priorities established then have remained consistent components of EU actions and interventions since then. Research thus tends to emphasise 'path dependencies' and the shaping effects of policy legacies on current interventions. This does not mean that the future will replicate the successes and/or failures of the past, but that the range of possible approaches and interventions will be shaped by past approaches and interventions.

While it is not possible to predict future developments, research evidence on the effects of past and current approaches can usefully be used to contextualise the extent to which responses to the crisis can lead to basic reform of the EU migration and asylum system and the content of such reforms. For example, it is well known that there are significant divisions between member states, but there are some areas of potential agreement that draws from an existing emphasis on border controls and security. A criticism of such an approach that is prominent in the research literature is that this brings with it the significant risk of lowest common denominator approaches that focus on strengthened border controls and also on the continued externalisation of EU interventions to non-EU member states.

Overview of the key questions in the field
Key factors and dynamics
A core underlying question for research has been the motives for MS to cede aspects of their sovereign authority. Delegating authority to supranational institutions can be seen as a states' loss of control in response to increased interdependence and globalisation. Alternatively, it could be understood as an interest-driven response that allows states to maintain or even extend their power, capacity and authority. While there is debate in the research literature about the causes and effects of delegation, there is a basic agreement that cooperation on migration and asylum exposes core tensions around state sovereignty. For example, when assessing the driving forces behind the creation of the CEAS, research offers different perspectives and interpretations. On the one hand, a supranational dynamic can be seen as an impelling cooperation resulting from the spillover effects created by the establishment of the Schengen area (1985) and the Single European Act (1986). By this logic, the abolition of internal borders required common policies at external borders and measures to regulate asylum-seeking. In contrast, an intergovernmental alternative posits that cooperation was driven by a strong state-level dynamic where intergovernmental factors are important (in the 1990s with very strong influence from the German government).

Research does also suggest that this supranational versus intergovernmental dichotomy may be misplaced. In particular, there is significant research evidence of what is called 'transgovernmentalism' which highlights how cooperation and integration can lead to new kinds of networks that bring together national level officials as well as a wide range of other actors and that have established new ways of working on migration. An effect of this has been that participants have developed an enhanced understanding of the views and positions of their EU colleagues. This can mean that a strict intergovernmental perspective is undermined because of the frequency and intensity of interaction. At the same time, national level officials remain central to this process and can at times be resistant to supranational dynamics that might not be consistent with approaches at national level.

The result of this is:
- A vertical dynamic linking member states to the EU and its institutions
- A horizonal dynamic linking member states to each other

Within this horizontal dynamic there is also scope for smaller groups of 'likeminded' member states to work together.

Another key strand in research explores the ongoing effects of EU migration governance on (core) policy orientation and accounts for changes in strategic contexts and how different levels of governance interact and shape (or not) the policies. The key idea here is to look at how the organisation of governance itself can shape outcomes and approaches. This means analysis of the impacts and implications of the interactions between supranational institutions, member states (and their representatives, mainly Ministries of the Interior) on core migration policies (change or status quo), intergovernmental mechanisms, EU agencies, non-governmental organisations and a range of other actors, including scientific researchers. This strand of research is particularly of relevance today as it touches upon the core of the debates around the proposals of reforms of the CEAS, including differentiated speeds of EU integration and the future role and involvement of EU agencies.

Insights from the academic study of governance highlight that governance systems themselves can have powerful shaping effects on the issues with which they deal. This means that migration is not simply an external shock to which governance systems must respond, but also, through their operation and effects, governance systems shape the challenges that they face.

The 2015 'crisis' has powerfully shaped the discussions around asylum, border controls and Schengen. While there are frequent references to the crisis, there are scholarly debates about the meaning and relevance of the term 'crisis'. There is a fairly widespread agreement that it was not only a crisis of numbers (unprecedented number of arrivals), but a wider crisis of politics, institutions and political leadership that predates 2015. While the 'crisis' is part of the factors and dynamics shaping governance of migration and asylum, there is research evidence suggesting that responses to the 2015 crisis were shaped by previous responses and by the policy priorities set during the 1990s. Research on migration governance traces how policy legacies shape current responses, in order to explore how the 'shadow of the past' could shape responses to new challenges in the future.

Research has also highlighted how the understanding of migration phenomena amongst policymakers is influenced and informed by the perception that the current and future EU migration context is one of increased migratory pressure and migration arrivals. Understandings and perceptions affect what is considered 'normal' and, in turn, shape the policy actions. This is a relevant insight for policymaking: acknowledging the impact of how policymakers make sense of migration and in turn how this can frame responses. For example, while research findings highlight that there is new thinking among policymakers and a recognition of the need for new responses (e.g. more multi-institutional responses and new ways of thinking international action), it is still the case that interventions are constrained by understandings of migration that are predominantly influenced by destination countries' perspectives and less by the views of non-EU countries.

In addition, there is research on migration governance that accounts for the entry into the field of new actors and assesses the impact they have on how particular fields of migration are governed. There is a consensus that migration has become a 'whole of government' concern and that this brings new voices to the debate including governmental and non-governmental organisations. This array of new actors means that different understandings of the causes and effects of 'crisis' have been used to justify particular kinds of intervention which, in turn, have influenced migration governance across governance levels (sub-national, national, regional and international). The 2015 crisis had various impacts on the modes of governance, such as emergency-type modalities, on the framing and the discourses of migration issues and the emergence of new and diverse actors. This emerging line of research is relevant for policymaking as it helps to further delineate the new

roles and new influences of multiple actors in governing and responding to migration. For example, in times of emergency, states may increasingly devolve power and responsibilities to local governments and cities in the management of arrivals, notably concerning the reception of migrants. In the same vein, non-state actors also broadened their action and role during emergencies, or new actors stepped in, either international organisations or local and national civil society actors. Importantly, the crisis revealed an increased informalization of modes of governance (e.g. resorting to extra-treaty and extra-EU law instruments and to non-legal instruments outside of the EU framework).

Further, research on migration governance explores how emergency measures – while aimed at containing the effects of the emergency – also contributed to maintain a status quo and to safeguard the core of the system (i.e. hot spots, relocation scheme, new EU funding streams, or the revised mandate of EU agencies). An example is the delegation of more power and competences to agencies to Frontex, which has been transformed into the European Border and Coast Guard Agency (2016). While the role of the European Asylum Support Office (EASO) remains more limited, its future role is also under discussion and in the process of changing considerably.

Remaining gaps in the literature on migration governance

There is a comprehensive knowledge base on the causes and effects of the creation of the common asylum system. A key gap is not the lack of knowledge or evidence, but rather the need for an enhanced understanding of how existing knowledge relates to the 'real world' of decision-making, and how to better bridge and connect knowledge production and decision-making.

There is a tendency in the literature on EU migration governance to focus on the outputs or outcomes of governance processes (such as law, policies and the like). At the same time, research devotes less attention to the organisational processes of migration governance and policymaking. This gap can lead to shortcomings in a comprehensive understanding of the causes and effects of decision-making processes.

Linked to this is scope for an enhanced understanding of the shaping effects of governance itself, including, the effects of interactions between supranational institutions, intergovernmental agencies, MS and the other formal and informal sites of interaction between MS representatives; and, of the ways in which governance processes themselves can shape, affect or alter the decisions of migrants and would-be migrants. In that regard,

another gap in the literature is the lack of research based on original empirical data, such as original empirical data obtained through fieldwork. A deeper understanding of decision-making also includes an analysis of the effects of shifts in strategic contexts. For example, changes of composition of the European Commission and European Parliament could be addressed in research to assess more how these changes will influence the development of future policies and agreements.

In response to these gaps, one aspect that should be better integrated in research and considered by policymakers, is to look at good practices, at practices, policies and measures that are working well, at national, sub-national and city levels. Such good practices – some of them developed during the crisis – can also be applied at other governance levels. It would be relevant to look at specific and recent research on sharing best practices, research that is often based on the well-needed empirical evidence and fieldwork data (e.g. interviews, surveys).

In conclusion, in order to engage with questions about the future of the CEAS and the Schengen area, we need to understand the past and the evolution of knowledge in the field. The core priorities and competencies that have been decided in the context of EU integration will most likely remain (what is known as 'path dependency'). Further, there is a need for better understanding of the dynamics of decision-making, considering the everyday reality of compromises and trade-offs that characterise policy-making, at times of conciliation between competing or opposing objectives in response to a phenomenon that has a high level of uncertainty and to which significant risks are attached. In sum, policymakers can turn to research that do address these gaps and provide insights about good practices as well as a deeper understanding of policy making processes.

References to the main EU policy frameworks

- The Schengen Agreement signed on June 14, 1985, initially signed by five EU countries, led to the abolishment of the national borders between MS signatories within what is known as the "Schengen Area".
- EU Treaty Framework: With the Amsterdam Treaty (1999) migration and asylum became matters of common policy as they passed to the third pillar of community governance. Lisbon Treaty (2009) marked the full incorporation of migration and asylum within the Treaty framework as the Common European Asylum System (CEAS) is incorporated. Treaty on the Functioning of the European Union (TFEU), article 80 provides for the principle of solidarity and fair sharing of responsibility, including any financial burdens, between Member States.
- The Dublin III Regulation: Regulation (EU) No 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
- A set of Directives regulating asylum: Asylum Procedures Directive (2013 recast), Reception Conditions Directive (2013 recast), the Qualification Directive (2011 recast.
- The EU Agenda on Migration, adopted in May 2015, provides a series of measures to address immediate challenges of migration flows and foresees tools for med- and long-term management of migration and asylum. Measures included the introduction of the hot spots and the emergency relocation mechanism.

Recommendations for key readings

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Note on references: For a complete list of references to academic and research work used for this paper, please consult the knowledge accumulation report.

The Migration Research Hub, developed in the CrossMigration project, supports the systematic accumulation of knowledge in migration studies. It aims to be the go-to resource for finding knowledge on migration, from the latest literature to the most appropriate topical experts.

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