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Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis

Marco Scipioni

School of Advanced International Studies, Bologna Center, Johns Hopkins University, Bologna, Italy

ABSTRACT
By advancing integration through incomplete agreements, the European Union (EU) has created the very conditions for the emergence of crises, and this has, in turn, spurred on further agreements to deepen integration. Employing this theoretical lens, this article examines EU co-operation in asylum and migration that culminated in 2015 to determine whether crises are, in fact, integral to a cyclical process of EU integration rather than occasional events caused by external shocks. This is done by examining the failures and crises that emerged in migration and asylum policy up to 2015 and the agreements struck at EU level to address them. It is found that despite nominal action to address the weak monitoring mechanisms in use to date and incremental reinforcement of the constellation of institutions operating in this area, no solution has dealt with the critical lack of solidarity and absence of centralized institutions at the root of these issues.

KEYWORDS EU integration; migration; policy failures

The asylum and migration crisis that came to a head in Europe in the summer of 2015 was years in the making. Indeed, others have argued that such crises have historically marred European co-operation in asylum and migration policies (Alink *et al*. 2001; Schierup *et al*. 2006: 4). Migration scholars have highlighted that migration policy, both at the national and international levels, seems to be particularly prone to failure (Castles 2004; Hollifield *et al*. 2014). Jones *et al.* have recently suggested that crises and policy failures are more than simple accidents encountered along the path to European Union (EU) integration (Jones *et al*. 2016). Rather, it is argued that they are an integral part of a cyclical process of integration. The logic being that, by advancing co-operation through incomplete agreements, European politicians created the very conditions for the emergence of failures and crises, which in turn spurred on the development of even more agreements to bring about deepened integration. However, exactly what kind of integration (and how to measure it) is left unspecified by the authors. Such a process might be

CONTACT Marco Scipioni mscipioni@jhu.edu
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equated to integration, as there is a sort of cumulation of agreements undersigned by member states, which incrementally adds layers of regulations and institutional capacities. The authors have clarified that, if this process takes place, the following observable implications should be recorded: (a) as a consequence of the lowest common denominator agreements reached at the EU level, 'member states should introduce incomplete governance structures'; (b) 'some national leaders involved in these bargains' should point out that the incomplete agreements being struck 'are likely to prove inadequate'; (c) these 'incomplete governance structures should generate functional spillovers that help spark future crises'; (d) this process becomes cyclic (Jones *et al*. 2016: 1017).

To investigate this premise, the first section of this article involves a documentary analysis tracing the causes of policy failures in the areas of migration and asylum policy up to 2015. The second focuses on the agreements struck at EU level, examining the extent to which they addressed the drivers of the various crises. In so doing, the article investigates whether past policy failures led to more EU integration. It argues that the crisis was brought about by a combination of weak monitoring, lack of policy harmonization, low solidarity, and absence of central institutions. In this sense, EU-level agreements were 'incomplete' as described by the failing forward argument. The policy response to the crisis to date has tackled only some of these aspects. According to the framework, this amounts to sowing the seeds for future failures, and further integration, in the future. Finally, the third section concludes by briefly analysing what sort of integration is achieved, something that proponents of the framework have not specified in detail.

The framework

Jones *et al.* have argued that incompleteness is both a key feature of EU agreements and a trigger for further integration (Jones *et al*. 2016). Member state governments introduce incomplete governance structures through lowest common denominator bargains. However, such half-baked agreements also create functional spillovers that, unless tackled, force member states into more crises and further agreements down the road. Spillovers are triggered by crises of endogenous origin, given that they are 'byproducts of incomplete governance institutions' (Jones *et al*. 2016: 1028), which is not an *ex post* assessment by commentators, but is suggested by policy-makers' own assessments at the time of negotiation. For this reason, a process-tracing approach is suitable to test for such an argument. While an account exclusively based on actors involved in negotiations could expose itself to selectivity bias – as not only these actors might have their vested interests when proffering their opinions, but the researcher might be selective in the sources consulted – this article takes a diversification approach by taking in not only politicians'

declarations, but also official documents from EU institutions as primary sources (mainly the Commission and EP), complemented with secondary literature and informed newspaper coverage to provide a more nuanced account.

By referring to liberal intergovernmentalism and neofunctionalism as defining features of EU integration, Jones *et al.* seem to imply that EU integration consists of a mix of expansion of Community competences and the centralization within EU institutions, two of the defining traits of those 'classic' frameworks (Rosamond 2000). The 'failing forward' argument seems to be borrowing also from 'incomplete contracts' metaphors in EU affairs (Pollack 2003). In those perspectives, much of EU law takes the form of incomplete contracts, with details to be filled at a later stage, as 'complete' contracts 'would have to be impossibility long', include 'every possible contingency', and cover all possible applications (Caporaso 2007: 393). Even in abstract terms, it is genuinely difficult to spell out in detail how a 'complete' migration system might or should look at the national level (let alone an EU one), as any such assessments might be called into question from a variety of normative, political and policy perspectives (for a useful comparative overview, see Hollifield *et al*. [2014]). That said, it is important to notice that the failing forward argument steers clear of any reference to incomplete contracts, instead employing the expression 'incomplete governance structures'. The ideas of incomplete governance structures and contracts partly overlap, and to understand similarities and differences it is useful to refer to how Caporaso unpacks the 'incomplete contract' metaphors by pointing out that, according to the case at hand, this might mean that something 'is missing (incompleteness), open to multiple meanings (ambiguity), or simply unknown (risk or uncertainty)' (Caporaso 2007: 393). The failing forward argument exceeds the incomplete contract metaphor by including items that, while not flowing from the letter of the law, could have been included in adopted policies as debates alerted politicians that in their absence the resulting implementation was likely to be ineffective.

While widespread, the 'classic' interpretation of EU integration outlined by new intergovernmentalism and neofunctionalism might fail to account for other trends which are particularly important in asylum and migration, such as whether national migration policies are converging or not, besides being nominally ruled by common dispositions. Indeed, important strands in EU migration policies literature have investigated the extent to which member states' policies have converged towards lower standards and rights for third country nationals (TCNs) (Hathaway 1993) or, on the contrary, have raised and strengthened those standards and rights (Thielemann and El-Enany 2010). While qualitative comparative analyses have noticed some forms of global convergence in migration policy (Hollifield *et al*. 2014), other quantitative analyses focusing on Europe have been more sceptical of the extent of

convergence and its possible determinants (Toshkov and de Haan 2012). The issue of convergence is also essential to understand towards what end point member states are 'failing'. The contention of this article is that implementation gaps and substantial divergences in policy outcomes demonstrate the limited effect of the significant policy output accumulated since the Treaty of Amsterdam. Such problems are nested in the incomplete nature of the governance structures set in motion in area of freedom, security, and justice (AFSJ), as detailed in the next two sections. If this is correct, legislative output and centralization *per se* should not be the exclusive benchmarks against which the direction and extent of integration is measured. While delegation and legislative output have historically been regarded as the hallmark of integration – as embodied by the two schools of thought upon which the failing forward argument is built upon, i.e., neofunctionalism and liberal intergovernmentalism – the perceived ineffectiveness of EU policies calls for more attention to implementation and particularly to what happens after transposition.

When transferring a framework to a policy area different from its original application, it is important to elaborate on the scope conditions for such application. Jones *et al.* encourage extending the application of their framework (Jones *et al*. 2016) because they believe that the two main components of the failing forward dynamic in EU integration – namely intergovernmental bargaining between states with diverging preferences and spillovers arising from incomplete agreements – are a typical feature of EU policies. What are the main differences between Economic and Monetary Union (EMU) and AFSJ? While there is no comparison in the AFSJ for the role played by the European Central Bank (ECB) in monetary policy, the absence of strong central institution is a common feature between economic co-ordination and budgetary co-operation in EMU and AFSJ. Borrowing from past studies on policy failures, both cases seem to be instance of 'major failures' (Howlett 2012: 544), namely policy failures featuring high salience (in terms of intensity and visibility), and large magnitude (in terms of extent and duration). Regarding evidence of diverging preferences, there is now a vast literature detailing how the structures (Arango 2012), preferences (Aus 2008), and policy-making processes (Zincone *et al*. 2011) diverge among European countries. According to liberal intergovernmentalism, upon which the failing forward argument is built, these differences are the primary reasons for incomplete agreements. Such incomplete agreements are evidenced by several waves of legislative revisions completed in the areas of asylum (currently witnessing the third revision of the entire legislative *acquis* in less than 15 years), borders (e.g., Frontex has just completed its third complete rewriting, not counting all the side modifications), and more limitedly legal migration (e.g., a revision of the Blue Card Directive is currently being discussed; the Students and Researchers Directives have been merged into a single measure in 2016). This first section

outlines in what sense agreements since Maastricht could be termed incomplete, one of the key concepts of the failing forward argument, by referring to weak monitoring, lack of policy harmonization, low solidarity and absence of central institutions.

Incomplete rules? Failing forward towards the 2015 crisis

It was immediately apparent for policy-makers and commentators that the agreements struck at Maastricht in the early 1990s were largely ineffective in dealing with asylum and migration issues (Stetter 2000). In the late 1990s, the Council clearly stated that arrangements under Maastricht were not working, and the Council and the Commission issued an Action Plan where they held that 'the instruments adopted so far often suffer from two weaknesses: they are frequently based on "soft law", such as resolutions or recommendations that have no legally binding effect. And they do not have adequate monitoring arrangements'. The Treaty of Amsterdam committed 'to use European Community instruments in the future', providing 'the opportunity to correct where necessary these weaknesses' (Council 1998: 5). These words reflect political élites' awareness that, as stated by then Deputy Minister for European Affairs Michel Barnier, arrangements in the third pillar 'did not work well' and change was necessary (Deloche-Gaudez 2002).

The decision not to undertake a more profound harmonization but to settle for minimum standards has locked several policy areas, such as asylum and legal migration, into a path of incremental changes. According to former Justice and Home Affairs (JHA) Commissioner António Vitorino, the low level of harmonization in several policy measures adopted in the early 2000s was explicitly provided for through the high number of legal exceptions incorporated into the texts (Agence Europe 2004). For this reason, despite the Council not having finished adopting the first legislative package on minimum standards on asylum yet, the Commission started to back a radical overhaul of the entire system (European Report 2004).

A further critical issue relates to weak monitoring in the context of wide discretion afforded to member states. Among other restrictions (see Peers 2011: 181), member states decided to reduce access to the Court of Justice of the European Union (CJEU) under the Amsterdam arrangements by confining references for preliminary rulings to the highest domestic courts, hence limiting harmonization from below. There is some evidence that in the years following the elimination of this restriction through the Treaty of Lisbon, references to the Court significantly increased (Acosta Arcarazo and Geddes 2013). For the first time in EU history, the Commission's role as policy initiator was curtailed by providing an equal footing to the member states in the Council (Majone 2005: 62). This agenda-setting role for the member states

was reinforced in the Lisbon Treaty, which is unparalleled in other policy areas. This curtailed role for the Commission must be placed in the context of its tense relationships with the Council on a range of policy matters, and the latter's repeated urges that co-operation on JHA policy should proceed carefully and cautiously (Uçarer 2001). Between 1999 and 2001, the Commission proposed three measures intended to capitalize on the political momentum generated at the Tampere European Council: the Directive on Employment (Commission 2001); Family Reunification (Commission 1999); and, the Asylum Procedures (Commission 2000). These measures represented defeats for the Commission, obliging it to reconsider the scope and content of its policy proposals. The Employment Directive was bold and far-reaching, as it embraced both employed and self-employed workers and provided a single procedure to govern admission and residence rights for TCNs for employment purposes. It took nearly four years and three different proposals to negotiate the Family Reunification Directive, and the Commission had to table a second proposal on the Asylum Procedure Directive after the Council spent over a year in internal wrangling over its first proposal (Commission 2002). The 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' (European Report 2002).

Within the Council, a compromise establishing weak monitoring and sanctioning measures won the support of several member states; those with longer histories of migration – such as Germany and France – did not want to replicate constraints at the EU level that had been painstakingly bypassed at home (Guiraudon 2000). After years of downward regulatory competition (Hatton 2005: 109), this translated into a preference for little monitoring and sanctioning powers over member states. At the opposite end of the spectrum, those states with only a recent history of immigration – such as Italy, Spain and Greece – signed up to EU arrangements having had little experience with asylum and migration policies (Arango 2012) or their implementation (Jordan *et al*. 2003). Importantly, the latter set of countries also featured poor records in EU policy implementation (Falkner *et al*. 2007), with weak sanctioning mechanisms translating to them as more discretion on the ground in the application of EU rules. This is reinforced by the layering of legal texts, which indicates that monitoring implementation was not a priority. For instance, the Asylum Qualification Directive established an institutionalized mechanism for co-operation that placed the Commission at the centre of a web of national contacts, whose aim was to strengthen co-operation and communication among member states and, indirectly, provide valuable information for monitoring purposes. However, the Council rejected the Commission's proposals for the creation of similar networks in respect of the Reception Conditions Directive and the Asylum Procedure Directive (e.g.,

Commission 2000: 7). Again, Frontex had the possibility of running risk analyses on member state border control capabilities, an exercise that could have contributed to monitoring the implementation of EU border law, but has refrained from doing so yet (Carrera and den Hertog 2016: 12–13). The Employer Sanctions Directive requires member states to communicate information about inspections to the Commission, contrary to the latter's desire to force member states to inspect a fixed amount of businesses each year. While this may put pressures on member states to do more in terms of controls, monitoring would have taken another turn if, as suggested in a Council revision of the legal text (Council 2008), member states would have had not only to communicate last years' inspections figures, but also commitments on current years. Finally, the 'Mechanism for Early Warning, Preparedness and Crisis Management' in the 2013 Dublin Regulation provided that a member state may draw up a preventive plan in the case of either high pressure or faulty implementation in the national asylum system. The Commission must be advised by European Asylum Support Office (EASO) in the case of high pressure, but not in the case of faulty implementation, even though EASO had a mandate to monitor implementation of EU asylum *acquis*.

Since their inception, EU policies on migration and asylum were incomplete with respect to emergency measures. No solidarity mechanisms were introduced to deal with disproportionate pressures faced by several states in the context of the internal borderless area in the Treaty of Maastricht. This changed with the Treaty of Amsterdam, wherein Article 63(2) dealt explicitly with 'temporary protection' during mass displacements. While the timing of perceived asylum and migration crises varied across member states, these developments had become an engrained element of debates surrounding migration and asylum in Germany, France, the United Kingdom (UK), Netherlands, and Sweden by the late 1990s (Alink *et al*. 2001: 291–2). In the past, member states showed little solidarity towards those bearing the most onerous consequences of inflows (EP 2000: 22). The Temporary Protection Directive saw member states pledging to prevent excessive burdens falling on individual member states (European Union 2001). This was complemented by the European Refugee Fund (European Union 2000), which provided for financial support in the event the solidarity advocated in the Directive ever saw the light of the day. However, and exemplifying the point about the absence of a central institution, the Commission has no power to enforce the solidarity mentioned in the legal text, showing the little appetite to grant any more power to the Union's executive in this area. Even after member states have taken a qualified majority vote in the Council, they 'are not bound by any concrete obligations', but simply have 'to indicate, in figures or in general terms, their capacity to receive such persons' (Barbou Des Place 2002: 22).

From the perspective of the development of a Common European Asylum Policy (CEAS), this Directive was the first effort at standardization that envisaged the establishment of minimum standards in reception conditions, qualifications for international protection status, and procedures to be followed in granting such status. This legislative mosaic was premised on the assumption that asylum seekers, as utility-maximizing individuals endowed with perfect information, would spread evenly across the continent in the belief that they would receive equal treatment anywhere in Europe, given that an application filed in any member state stood the same chance of success. The premises of this policy – asylum-seekers as utility-maximizers and achieving harmonization would eliminate disproportionate pressures on individual member states – has been questioned at several levels, mainly because of its misunderstanding of the determinants of migration dynamics (Castles 2004: 208–10).

By the end of the 1990s, it became clear that the Dublin Convention – regulating state responsibility for asylum applications – was not working properly, a fact made clear by the countless instances of dissatisfaction by member states noted in the press in the years surrounding its adoption (Agence Europe 1998, 2008; European Report 2000; The Guardian 2002). In particular, great dissatisfaction mounted in several member states over the lack of explicit solidarity clauses in the Regulation (Council 2002), while other member states were adamant that the goal of Dublin was not equitable redistribution, but the allocation of responsibility for processing applications (Council 2000). The Commission began canvassing member states to identify attitudes towards a revision of the Dublin mechanism as early as 2000, and it soon became clear that major changes were not feasible (European Report 2000; Financial Times 2001). The former French interior minister summed up the situation when he noted that 'the Dublin Convention was being applied "badly" but that it was probably better to work with this agreement than to try to formulate a new one' (Agence France Presse 1999).

Instances of weak monitoring and the intent to keep the Commission at arm's length can also be found in border control. The case of the Schengen evaluations is particularly instructive. These involved regular assessments of the efficacy of member state border controls up to the early 2010s,, wherein member states routinely conducted 'Schengen Inspections' of one another's borders. Ultimately, however, these inspections proved both ineffective and difficult to reform (Pascouau 2016). Member states were caught in the 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. Discussions over how to reform these evaluations were ongoing since 1999 (Commission 2010: 5). However,

by 2009 the Commission continued to highlight that, 'given its intergovernmental basis, Schengen evaluation has been and still is entirely in the hands of the Member States, with the Commission participating as an observer' (Commission 2009: 4). 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 (EPC 2012).

What sort of integration was achieved?

The combination of low harmonization, weak monitoring, low solidarity and lack of strong institutions in EU migration policy became increasingly unsustainable during the 2015 crisis.[1] The latter made it abundantly clear that, in the absence of strong institutions in the context of an internal borderless area, once inflows enter any state in Europe they are then able to move onwards, triggering unpredictable policy reactions. While member states can reinstate border controls under Schengen rules, the efficacy of such action and the long-term consequences 'for one of the EU's most cherished achievements' (Commission 2016a: 2) are far from positive. Germany's reintroduction of border controls in September 2015 at its frontiers with Austria triggered a domino effect. Austria re-imposed controls on its borders with Hungary, Italy, Slovakia and Slovenia only days after Germany's decision. Sweden followed suit in November 2015, in turn triggering further measures in Denmark which intensified but did not reintroduce internal controls. At the rhetorical level, the second half of 2015 and early 2016 saw several European politicians issue declarations on Schengen's numbered days (Deutsche Welle 2016), in the context of a poisonous political debate among EU leaders when it comes to migration (EurActiv 2016).

While EU rules have been gradually put in place for asylum and migration policies, national administrations are mainly in charge of their implementation, as is commonly the case for EU governance. In the case of migration policy, the compliance problem tarnishing EU policy effectiveness (Treib 2014) seems to be particularly serious. Widely acknowledged figures on disparities in asylum recognition rates show that nominal policy convergence – i.e., the adoption of EU rules – did not translate into convergence of policy outcomes. Indeed, by 2011 recognition rates varied hugely, not only among member states but also in relation to the specific nationalities of asylum seekers across Europe (ECRE 2013). Implementing reports on major legislative initiatives in legal migration, asylum and irregular migration, identified areas of incorrect or non-compliant implementation (*inter alia*, see Commission 2007; Commission 2008a, 2014b). Like previous years, the 2015 Annual Activity Reports for Directorate General (DG) Home listed limited or no improvements on key effectiveness indicators for EU action on asylum

and migration (Commission 2016e). More sophisticated analyses are also sceptical of the results achieved by the EU in some of its flagship initiatives (Toshkov and de Haan 2012). As is shown below, and looking at the facets of incompleteness as detailed in the previous section, the policy response to the crisis developed along the lines of enhanced monitoring and further empowerment of existing institutions, but fell short of putting in place adequate solidarity mechanisms and strong-enough authorities in this field.

The crisis highlighted how these gaps in national implementation posed EU-wide risks. One should not mistake the external shock of mass displacements that came to a head for Europe in the summer of 2015 with the medium to long-term determinants of the crisis, all of which was years in the making, as others as well have argued (Den Heijer *et al*. 2016). The combined effects of the 2011 *M.S.S.* and *N.S.* decisions by the European Court of Human Rights and CJEU respectively (CJEU 2011; European Court of Human Rights 2011) were critical to the fate of the entire CEAS, as they showed the essential connection between reception conditions and Dublin application in the eyes of the Courts (see also EP 2016b: 44). Eurostat data displayed radical drops in Dublin requests and transfers to Greece after the Court ruling (Eurostat 2016b). By the late 2000s, the Commission had already highlighted the connections between member states' reception conditions and the Dublin system, noting that 'poor reception conditions could even lead to a distortion of the system for determining responsibility in respect of an asylum claim (Dublin system)' (Commission 2008b: 15). It is in this context that, during the crisis, authority over Dublin implementation incrementally shifted towards EU agencies working in the context of hotspots (EP 2016c). For instance, fingerprinting proved to be critical to the working of the Dublin system, but was not properly implemented by peripheral states to the point that the Commission started infringement proceedings against several of them (Commission 2016b). Within hotspots, agencies were directly tasked with stepping up fingerprinting, which became a policy priority (Commission 2016c). This exemplifies an approach aimed at circumscribing the role of member states during implementation and instead delegate powers to EU agencies to ensure the proper functioning of the mechanism.

The EU reaction to the crisis was articulated through several phases and initiatives, some still subject to negotiation. The package adopted to date has, however, consisted of the creation of a EU Border and Coast Guard (EBCG) from the ashes of Frontex, an EU Agency for Asylum (EUAA) from EASO, and an entire third phase of asylum legislation (Commission 2016d). It also resulted in the first ever Commission recommendation to reinstate[2] internal border controls to address serious deficiencies in the external border controls of one country (Greece) (Commission 2016f). In general, and throughout the abovementioned measures, there seems to be renewed attention on the issue of monitoring. *Inter alia*, this materializes in

many provisions across several legislative acts, from the Dublin Units proposed within the recast of the Dublin Regulation to the 'mandatory vulnerability assessment' and a network of liaison officers employed by the EBCG, and a broad mandate for the EUAA in monitoring and assessing implementation of the CEAS. While it is true that both EASO and Frontex had monitoring instruments in their respective mandates, this renewed emphasis can be interpreted as reframing these tasks as priorities. However, there are lingering questions surrounding the autonomy of these newly established bodies when carrying out their monitoring duties and their other operational tasks. This is because their very governance structure is intergovernmental in nature, with management boards mainly composed of national representatives, which may create problems in decisions-making over monitoring and more intrusive actions. Indeed, both the Commission and the agency directors highlighted that these bodies should not be considered independent of member states (Commission 2014a), and the fact that their governance structures remain unaltered raises questions as to the real effectiveness of these reformed monitoring powers. In terms of operational capabilities, it is foreseen that staffing numbers for these agencies will soon increase massively. And yet, the crisis has shown that member states can simply refuse requests for national personnel, which are essential for policy responses in emergencies. These new agencies have not changed this structural weakness, as they still rely on member state contributions for personnel and equipment 'from the 'pools' under the co-ordination of the Agency' (Carrera and den Hertog 2016: 12).

An inter-policy comparison illustrates the continuing lack of strong institutions. Major institutional and policy shifts have occurred in EMU after the 2007/2008 crisis. The authority of the Commission in this policy area was further increased in the Stability and Growth Pact and the other legislative package which forms part of the Six and Two Pack (Bauer and Becker 2014). Similarly to asylum and migration policy, under the reformed Six and Two Pack the Commission is authorized to undertake several monitoring tasks. These vary in intensity and scope, and the Commission has discretion over their enforcement. In the case of asylum and migration policy, in addition to the introduction of treaty recognition for the role of the European Council, agencies now contribute to setting the agenda by proposing that the Commission trigger actions on foot of monitoring, in cases of disproportionate pressures, or by setting standards and guidelines for implementing EU law and monitoring such implementation. Considering the intent that these agencies grow larger than DG Home and are to feature a complement of specialized personnel, the ability of the Commission to adequately vet the policy proposals they advance may be called into question. Indeed, there is evidence that this is already the case at the domestic level, and it is possible that such dynamics might be replicated at the EU level (Ruffing 2015). No

comparative fragmentation is present in the economic and budgetary co-ordination, however, where policy responses to monitoring, or excessive imbalances, deficits or debts, are all retained by the Commission. In the EMU, sanctions are filtered through the Council to preserve institutional balance, but the principle of 'comply or explain' has been inserted to moderate the political discretion of the latter. Finally, while these institutions have been granted powers beyond the scope of EU law in areas related to the EMU, nothing comparable has occurred in AFSJ (Peers 2013). More broadly, there is currently no comparison with state-like executives in the EU that can trigger actions aimed at relieving pressures experienced by member states, such as enacting directly an internal distribution of asylum seekers or resettling refugees directly from regions of origin.

Finally, implementation of the two flagship initiatives relating to solidarity – the relocation of asylum seekers and resettlement of refugees from third countries – has been problematic: nearly one year after the scheme started, relocation from Greece and Italy was slightly above 2 per cent of the total 160,000 envisaged while resettlement reached approximately 40 per cent of the near 22,500 pledged (as of July 2016). Looking at policy design, doubts linger over the feasibility of such plans. Relocation is only open to those nationalities with recognition rates higher than 75 per cent. This means that, while Greece currently has strong interests in this scheme, Italy does not because of the very composition of their respective asylum inflows. While the EU aimed to streamline the adoption and implementation of this measure by counting only those nationalities with high acceptance rates, it made the system too focused on changes in migratory patterns. From an operational standpoint, between 50 and 60 per cent of the personnel requested by EASO and Frontex has been provided by member states, and has taken considerable time to materialize. And, while the EU has made unprecedented levels of funding available to member states (den Hertog 2016), this has been clearly insufficient to support a European-wide system of solidarity. To put this into perspective, it was reported that the sudden rise in inflows meant a nearly fourfold increase – to about €6.1 billion per year until 2020 – in migration-related budgetary commitments in Sweden (Jacobsen 2016), nearly doubling the current entire EU allocation to the Asylum, Migration and Integration Fund for the period 2014–2020 (€3.1 billion). While, owing to budgetary constraints, it is unrealistic to expect the EU to take over member states' expenditure on national asylum systems, there is a gulf between what is needed in emergency situations (OECD 2015) and what the EU can provide. Additionally, while less politically contentious as a form of burden sharing than relocation plans tend to be, and undoubtedly necessary in the face of the magnitude of the task at hand, the near exclusive focus on financial burden sharing raises questions as to the effectiveness of the system (Trauner 2016). Indeed, much of the current

funding thematically and geographically overlaps with the allocation for the past 17 years, i.e., building capacity in areas such as reception conditions, training, and equipment, with Italy and Greece among the main beneficiaries.

Conclusion

The failing forward framework gives no direct indication of how to detect and measure EU integration. The fact that the authors speak of liberal intergovernmentalism and neofunctionalism would suggest they see integration as a mix of the inclusion of further competences in the Community portfolio and the increasing empowerment of EU institutions. Taking integration as measured by regulatory scope, what the crisis revealed is that efforts at making co-operation binding through measures such as relocation mechanism, or stepping up previous efforts at soft policy co-ordination such as resettlement schemes, failed in achieving their objectives. If integration is interpreted as the further conferral of powers to supranational agents, this has occurred most notably by significantly upgrading agencies (Scipioni forthcoming), which would support the recent insights regarding the rising importance of *de novo* bodies in EU integration (Bickerton *et al*. 2015). However, it is far from clear whether this conferral will, in time, yield more policy convergence among EU countries. Previous studies have found that, even though a limited amount of convergence occurred in the 2000s, the extent to which it was down to EU co-operation is questionable (Toshkov and de Haan 2012). This is an important point because, 17 years after important competences were 'communitarized' through Amsterdam, questions of output legitimacy have become ever more pressing. However, and more importantly for the failing forward argument, it is also important because it impinges on the key idea that member states are failing towards something. In other words, if integration is recorded through policy convergence (Geddes 2008), it is questionable the extent to which this has taken place. In this sense, while the notion of incomplete governance structure is analytically fruitful to unpack the causes of policy failures, the very impression of failing 'forward' might be the result of a circumscribed assessment of what constitutes EU integration.

The policy failures seen in 2015 were not entirely owing to incomplete agreements between member states, but were also the product of debatable assumptions employed across policy communities and structural constraints imposed on hybrid organizations such as the EU. The debate concerning the former focuses on whether policies should be tailored to refer to migrants and asylum-seekers as individuals with quasi-perfect information, as it is often the case in the EU. There seems to be a growing consensus that this vision is too one-sided (Collier 2013), with several policy communities across several member states seemingly moving away from this. However,

this underscores EU policy-making based on the premise that harmonization will prompt flows to spread evenly across member states, even though this assumption finds limited support in empirical studies (Neumayer 2004; Thielemann 2004).

From a structural standpoint, there are pragmatic and legal limits to what the EU can achieve with its current configuration. While there have been calls as well as proposals to establish EU agencies endowed with full competences and powers (e.g., Berger and Heinemann 2016; EP 2016b: 11, 100, 2016a: 59), these are clearly unrealistic for an institution with such a small budget and strict subsidiarity limits. This imposes pragmatic limits on the use of the notion of 'incompleteness' under the 'failing forward' framework, especially when institutions and solidarity policies are analysed. On this basis, one could conclude that the EU is better suited to regulation rather than redistribution. Looking at the developments in EMU, Caporaso *et al.* argue that the EU model has shifted from a regulatory state to one that also deals with stabilization and redistribution because of the eurozone crisis (Caporaso *et al*. 2015). In the case of migration, however, while the EU has pushed through the crisis some embryonic forms of redistribution (i.e., relocation, the new Dublin Regulation), the conspicuous failure of such policies is testament that this characterization is unsuitable to portray this policy area at present. The time is ripe for a debate on the tenability of the Union's current configuration into the medium-to-long term, taking account of the challenges ahead across a range of policy areas. Nevertheless, it is undeniable that, at present, there is little appetite among the European electorate for the kinds of cessions required in relation to sovereignty, not to mention taxation, that such an organization would bring.

Notes

1. Readers might have misgivings about the very idea of labelling this as a crisis. In the aggregate, it is true that migrants and refugees have remained relatively stable as a percentage of world population in the last decades. However, narrowing down the focus to the EU: asylum applications reached a record high in 2015 (Eurostat 2016a); individuals who attempted entering one of member states' territories remained at historically high levels (e.g., Italy) or skyrocketed (Greece) (Frontex 2016); tragically, the number of deaths have reached an historic height in 2015 (IOM 2016).
2. In this case, it would be more appropriate to say prolong, as some member states had already reinstated border controls and had ostensibly no intention of lifting them.

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Notes on contributor

Marco Scipioni is a post-doctoral fellow at Johns Hopkins University, School of Advanced International Studies.

ORCID

Marco Scipioni http://orcid.org/0000-0002-1432-2970

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