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NATIONAL IDENTITY OF A MEMBER STATE IN EUROPEAN UNION LAW IN THE CONTEXT OF RELOCATION OF MIGRANTS

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ABSTRACT

This paper addresses the issue of national identity, a legal concept found under Article 4(2) of the Treaty on European Union, while assessing the so-called 'relocation' regime, introduced by the European Union to address the recent migratory pressure on Italy and Greece. Descriptive approach is used in regard to methodology and attention is given to the case law of the CJEU.

Key words: European Union, National Identity, Migrants

INTRODUCTION

By the letter of the Treaty on European Union[1], the notion of national identities of Member States that the EU shall respect – has been present in EU law at least since the advent of the Treaty on the European Union. Yet, despite its place among principal provisions of the TEU (original-

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[1] The consolidated versions of the Treaties and the Charter of Fundamental Rights of the European Union, hereinafter, respectively, 'TEU', 'TFEU' and the 'CFR'), consolidated versions published at 7th of June 2016, OJ C 202, 7.6.2016, p. 1–388.

ly, in Article F-1, through Article 6(3), to what is now, after significant expansion, Article 4(2) TEU), it has not been accorded a great amount of attention. This has been so neither by way of secondary legislation, nor any voluminous jurisprudence of the Court of Justice of the European Union, *e.g.* at the level of fundamental freedoms, European citizenship or fundamental rights. However, the revision of the Treaties, effected by the Treaty of Lisbon, has detailed the scope of the principle. Member States – in particular, constitutional courts of Member States - have gradually begun to utilise that principle rather more often. This paper aims to address recent developments in the field of national identity in European Union law, having regard in particular to the jurisprudence of the Court of Justice of the European Union. In addition, the specific area to be analysed hereunder would be the one of the so-called 'relocation measures' adopted under Article 78(3) TFEU, a part of the common policy on asylum, subsidiary protection and temporary protection. Apart from analysis and assessment of those relocation measures in and of themselves, this paper would also consider their legality under specific provisions of the Area of Freedom, Security and Justice (AFSJ) that are related to national identity. Methodology-wise, this paper leans towards a descriptive approach that is the hallmark of legal positivism[2], yet the author – in a manner somehow excused by his profession – includes a normative dimension where individual rights are at stake. This paper takes account of the state of the law as it stood at 17th of May 2016. However, the author incorporated some later developments in case-law where it appeared necessary.

NATIONAL IDENTITY AND CURRENT PRIMARY LAW OF THE EUROPEAN UNION

It is important to note a difference in wording when discussing the content of the principle in question, namely whether it is more appropri-

[2] Cf. Rob Cryer, Tamara Hervey, Bal Sokhi-Bulley, Alexandra Bohm, *Research Methodologies in EU and International Law*, Oxford-Portland, Oregon: Oxford University Press 2011, p. 37.

ate to use "national identity" over "constitutional identity" in regard to the content of EU law. Article 4(2) TEU is worded as follows :

"The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State". As it can be seen, nowhere in that provision does the term 'constitutional identity' appear. It remains that "national identity" is the term used by the actual Treaty provision.

Article 4(2) TEU both qualifies it by stating that it is supposed to be "inherent in [Member States'] fundamental structures, political and constitutional, inclusive of regional and local self-government" and adds to it that essential State functions are to be respected as well, in which "national security remains the sole responsibility of each Member State".

Despite the above, it would seem that the two are sometimes used interchangeably, as can be seen in Opinion of AG Poiares Maduro in *Marrosu-Vassallo*[3], wherein the two are equated. It is also submitted in the academia that, according to constitutional courts of the Member States, there is no difference between the two[4], although academic opinion remains

[3] Joined opinion of Mr Advocate General Poiares Maduro delivered on 20 September 2005, *Cristiano Marrosu and Gianluca Sardino v Azienda Ospedaliera Ospedale San Martino di Genova e Cliniche Universitarie Convenzionate* (C-53/04) and *Andrea Vassallo v Azienda Ospedaliera Ospedale San Martino di Genova e Cliniche Universitarie Convenzionate* (C-180/04), EU:C:2005:569, para. 40. *Marrosu* has been referred to in Order of the Court of 1 October 2010, case C-3/10 *Franco Affatato v Azienda Sanitaria Provinciale di Cosenza*, EU:C:2010:574, para. 51, wherein it has been held that Article 4(2) TEU has no bearing on the prevention and, as necessary, penalisation of the abusive use by the public administration of successive fixed-term employment contracts or relationships.

[4] Krystyna Kowalik-Bańczyk, *Tożsamość narodowa – dopuszczalny wyjątek od zasady prymatu?* [in:] *Prawo Unii Europejskiej a prawo konstytucyjne Państw Członkowskich*, (ed.) Sławomir Dudzik, Nina Półtorak, Warszawa:Wolters Kluwer, 2013, p. 45. Also to that effect, Bruno de Witte, *Direct Effect, Primacy and the Nature of the Legal Order*, [in:] *The Evolution of EU Law, Second Edition*, (ed.) Paul Craig, Gráinne de Búrca, Oxford: Oxford University Press, 2012, p. 357, wherein Art. 4(2) TEU is invoked *verbatim* when discussing constitutional identity.

divided on that particular matter, also stating that constitutional identity (arguably) forms part of the national one[5], that national identity has been appropriated by the constitutional courts into what has become known as constitutional identity[6], and that the concepts do have different origins, yet largely correspond to each other[7].

Given that, for EU law, national identity in question must be 'inherent in fundamental structures, political and constitutional, inclusive of regional and local self-government', it arguably may not, as EU law currently stands, be successfully found outside such fundamental structures (as, textually speaking, could be the case before Treaty of Lisbon has come into force). It can hardly be disputed that these fundamental structures are found in national constitutions[8]. Furthermore, Article 4(2) TEU now contains an additional passage, not found in original wording. It is the assertion that 'in particular, national security remains the sole responsibility of each Member State'. The phrase 'sole responsibility' would imply that the area of national security is to remain outside any kind of EU competence. At the same time, it would follow from case-law that the decisions of the CJEU refer to the concept of 'national identity' as comprising the substance of Article 4(2) TEU, without any material distinction between the part of the first sentence Article 4(2) TEU that alludes to national identity and latter sentences.

Therefore, for the purposes of the paper and duly noting the differences in the doctrine, it is assumed herein that 'national identity' is to mean the entirety of Article 4(2) TEU, save where a separate element of 'equality' between Member States would be involved. As such, this would mandate a close scrutiny of case-law of the Court to find the legal contents of the provision at issue.

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[5] Franz Mayer, *The European Constitution and the Courts*, [in:] *Principles of European Constitutional Law*, (ed.) Armin von Bogdandy, Juergen Bast, Oxford-Portland, Oregon: Oxford University Press, 2006, p. 310.

[6] Krzysztof Wójtowicz, *Zachowanie tożsamości konstytucyjnej państwa polskiego w ramach UE – uwagi na tle wyroku TK z 24.11.2010 r. (K 32/09)*, Europejski Przegląd Sądowy, 11(2011), p. 6.

[7] Hermann-Josef Blanke, *The Treaty on European Union – a Commentary*, (ed.) *idem*, Stelio Magniameli, Berlin-Heidelberg: Springer, 2013, p. 212.

[8] Cf. H. Blanke, *op. cit.*, pp. 198-199.

NATIONAL IDENTITY AND JURISPRUDENCE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Given that the Treaties lack a legal definition of either national or constitutional identity, it is primarily (and legally) for the Court of Justice of the European Union to interpret it. As such, jurisprudence of the CJEU is of paramount importance for interpreting the notion at issue.

The notion of a national identity appeared in a judgment of the Court of 28 November 1989, handed down in *Groener*[9]. This decision has been adopted before the conclusion of the Treaty on the European Union, and signifies the early state of case-law. The Court accepted therein an argument that the protection of a national language is part of Irish national identity, yet it added that in order to justify the restriction on the free movement of workers it must be applied "in a proportionate and non-discriminatory manner". Therefore, in the view of the Court from the outset, the use of national identity could not be without oversight.

Under the TEU, the notion reappeared in *Commission v Luxemburg*[10]. The Court agreed that "the preservation of the Member States' national identities is a legitimate aim respected by the Community legal order". Yet, The Court engaged in review and found the national requirement of nationality of primary and secondary school teachers unjustified, by stating that "the interests pleaded can still be effectively safeguarded otherwise than by a general exclusion of nationals from other Member States". It is therefore apparent that a plea of national identity cannot in itself confer a derogation from fundamental freedoms where the measure is discriminatory.

Furthermore, in *Germany v Commission*[11] it has been suggested (para. 77-78) that the duty to respect national identity, with the view to respect

[9] Judgment of the Court of 28 November 1989, case C-379/87 *Anita Groener v Minister for Education and the City of Dublin Vocational Educational Committee*, EU:C:1989:599, para. 18.

[10] Judgment of the Court of 2 July 1996, case C-473/93 Commission of the European Communities v Grand Duchy of Luxemburg, EU:C:1996:263.

[11] Judgment of the Court of 4 March 2004, case C-344/01 *Federal Republic of Germany v Commission of the European Communities*, EU:C:2004:121.

municipal divisions within a Member state of federal nature (namely, Germany and its *Länder*) influences the duty of sincere cooperation between the EU and Member States. The Commission accepted that the duty exists, yet responded that an obligation to take into consideration the federal structure of a Member State under the duty of cooperation in good faith does not apply without restriction. The Court itself did not expressly address that line of argument, at least therein.

Spain v United Kingdom[12] marked the relation of national and EU citizenship and national identity. In para. 58 of the judgment, the Commission described the concept as "fundamental to the Union", on par with European citizenship. In para. 79, the Court noted that the United Kingdom, when according the right to vote, acted out of its constitutional traditions, and it subsequently held that the requirements introduced for expressing a specific link with the territory (that is, territory of Gibraltar) in respect of which the elections for European Parliament are held were not precluded by EU law in its state of development at that moment.

The next development came in *Sayn-Wittgenstein*[13]. Therein, the Member State concerned – the Republic of Austria – has pleaded its national identity to justify a restriction on the freedom of movement and residence enjoyed by citizens of the Union (Art. 21 TFEU). The case concerned the refusal, under national constitutional law, to recognise a nobiliary particle for a surname (that is, the title of *Fürstin*) pursuant to the Law on the abolition of nobility in Austria. The Court has agreed, stating in regard to Article 4(2) TEU (para. 92 onwards) that "the European Union is to respect the national identities of its Member States, which include the status of the State as a Republic (…). It does not appear disproportionate for a Member State to seek to attain the objective of protecting the principle of equal treatment by prohibiting any acquisition, possession or use, by its nationals, of titles of nobility or noble elements which may create the impression that the bearer of the name is holder of such a rank". The Court

[12] Judgment of the Court of 12 September 2006, case C-145/04 *Kingdom of Spain v United Kingdom of Great Britain and Northern Ireland*, EU:C:2006:543.

[13] Judgment of the Court of 22 December 2010, case C-208/09 *Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien*, EU:C:2010:806.

did qualify its answer in that the restriction was supposed to be justified on public policy grounds, necessary and proportionate.

Apart from the Court of Justice, the General Court also had an occasion to rule on the issue at hand. In *Région Nord-Pas-de-Calais*[14] a municipal body pleaded that 'constitutional identity' should have influenced the conduct of State aid proceedings that had been carried out by the Commission. According to the General Court, constitutional identity does not reverse the position that it is the Member State itself (and not a unit of municipal government, regardless of its autonomy under domestic constitutional law) that could plead rights of defence as a party thereto.

The Court returned to the issue in *Runevič-Vardyn*[15], which involved different spelling of Lithuanian and Polish surnames. The Lithuanian government asserted (para. 84) that "national language constituted a constitutional asset which preserves the nation's identity, contributes to the integration of citizens, and ensures the expression of national sovereignty, the indivisibility of the State, and the proper functioning of the services of the State and the local authorities". The Court, recalling *Groener* and *Sayn-Wittigenstein*, responded that 'the provisions of European Union law do not preclude the adoption of a policy for the protection and promotion of a language of a Member State which is both the national language and the first official language' and that Article 4(2) TFEU 'includes protection of a State's official national language'. Given that the measure was not discriminatory, but applied in a general manner, the Court guided the referring national court to conduct a review of proportionality, hinting (para. 92) that drafting one certificate of civil status in accordance with foreign spelling, but at the same time, refusing to amend another, would have been disproportionate.

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[14] Judgment of the General Court of 12 May 2011, joined cases *Région Nord-Pas-de-Calais (T-267/08) and Communauté d'agglomération du Douaisis (T-279/08) v European Commission*, EU:T:2011:209, para. 88, upheld on appeal. The reasoning of the GC has been rather brief; in *Italy v Commission* (EU:T:2008:519, case T-185/05, held 20.11.2008) the issue of national identity has been ignored outright (para. 38).

[15] Judgment of the Court of 12 May 2011, case C-391/09 *Malgožata Runevič-Vardyn and* Łukasz *Paweł Wardyn v Vilniaus miesto savivaldybės administracija and Others*, EU:C:2011:291.

National identity has been referred to again in *Commission v Luxemburg II*[16]. The case concerned a nationality condition for public notaries; it was therein pleaded that (para. 72) such a requirement "had been intended to ensure respect for the history, culture, tradition and national identity of Luxembourg within the meaning of Article 6(3) TEU", as it then was. The Court referred (para. 124) to its decision in *Commission v Luxemburg*, stating that "the preservation of the national identities of the Member States is a legitimate aim respected by the legal order of the European Union, as is indeed acknowledged by Article 4(2) TEU", yet it can be effectively safeguarded otherwise than by a general exclusion of nationals of the other Member States. This time, the Court openly declared (para. 126) that "the nationality condition required by Luxembourg legislation for access to the profession of notary constitutes discrimination on grounds of nationality" and thus is contrary to the fundamental freedom of establishment.

Furthermore, the Court in *O'Brien* has been faced with an argument that Article 4(2) TEU forbids the EU from the application of European Union law to the judiciary, as it would have the result that the national identities of the Member States were not respected, contrary to Article 4(2) TEU. However stated that the application of EU rules on part-time work to judges cannot have any effect on national identity *per se*, without any detailed consideration[17].

The decision in *ZZ*[18] addressed the issue whether national security – being 'sole responsibility' of a Member State – would function as a derogation from EU law, given that this particular sentence has been added to Article 4(2) TEU after the Treaty of Lisbon came into force. The Court disagreed, stating that 'although it is for Member States to take the appropriate measures to ensure their internal and external security, the mere fact

[16] Judgment of the Court of 24 May 2011, case C-51/08 *European Commission v Grand Duchy of Luxemburg*, EU:C:2011:336. In many ways, it has been a continuation of *Commission v Luxemburg*.

[17] Judgment of the Court of 1 March 2012, case C-393/10 *Dermod Patrick O'Brien v Ministry of Justice*, EU:C:2012:110, para. 49.

[18] Judgment of the Court of 4 June 2013, case C-300/11 *ZZ v Secretary of State for the Home Department*, EU:C:2013:363.

that a decision concerns State security cannot result in European Union law being inapplicable[19]'.

The case of *Anton Las*[20], wherein the Court has been called on to rule on compatibility of Dutch requirements to draft employment contracts in Dutch on pain of nullity - expanded upon *Runevič-Vardyn.* The Court has affirmed, in no equivocal terms, that in accordance with Article 4(2) TEU the Union must respect the national identity of its Member States, which 'includes protection of the official language or languages of those States'. As such, according to the Court, the objective of promoting and encouraging the use of Dutch, which is one of the official languages of the Kingdom of Belgium, constitutes a legitimate interest which, in principle, justifies a restriction on the obligations imposed by Article 45 TFEU. However, the Court found that legislation requiring all employers whose established place of business is located within the territory of a municipal entity within a given federated Member State (*i.e.* Belgium in that instance) to draft cross-border employment contracts exclusively in the official language of that federated entity, failing which the contracts are to be declared null and void by the national courts of their own motion, to be disproportionate due to not being strictly necessary.

In *Digibet*[21], the Court attempted to analyse the concept of national identity in the context of a federal structure of a Member State (that is, Germany). The case concerned a division of competences between federal entities themselves, namely between German *Länder*. The Court ventured that (para. 34 *et seq.*) the division of competences between the *Länder* cannot be called into question, since it benefits from the protection conferred by Article 4(2) TEU, according to which the Union must respect

[19] *ZZ*, para. 38. An earlier case, *Commission v Italy* (C-387/05, EU:C:2009:781) has been referenced; however, it should not have been deemed useful to reasonably address the new contents of 4(2) TEU, given that it is a pre-Lisbon case, whose main thrust was that there had been no *general* provision that could at that time be used as 'derogation on grounds of national security'. By virtue of Article 4(2) TEU having been amended at the time when *ZZ* was decided, that reasoning appears unconvincing.

[20] Judgment of the Court of 16 April 2013, case C-202/11 *Anton Las v PSA Antwerp NV*, EU:C:2013:239.

[21] Judgment of the Court of 12 June 2014, case C-156/13 *Digibet Ltd and Gert Albers v Westdeutsche Lotterie GmbH & Co. OHG*, EU:C:2014:1756.

national identities, inherent in their fundamental structures, political and constitutional, including regional and local self-government". Therefore, according to the Court, the Union is bound to respect the *horizontal* constitutional relationship between the *Länder* having their own legislative powers within a Member State that has a federal structure. It followed that a fact of a single *Land* maintaining legislation that was more liberal in comparison to that of other *Länder* does not imply that all that other *Länder* would be forced to adjust their legislation to match, provided that proportionality had been complied with.

The latest entry in case law would perhaps be the decision in *Bogendorff von Wolffersdorff*[22]; in a sense, that decision constituted a continuation for the line of case-law that began with *Sayn-Wittgenstein*, relating to transmission of titles of nobility. The Court accepted that the 'German constitutional choice', found under the third subparagraph of Article 109 of the Weimar Constitution, read together with Article 123 of the German Basic Law (*Grundgesetz*) on abolition of 'all privileges and inequalities connected with birth or position' may be taken into account as a ground of public policy, while considering a possible justification for a restriction of the freedom to move and reside in Member States held by a EU citizen possessing a surname containing a nobiliary element. As such, it has been deemed by the Court to be an application of the principle of equal treatment[23].

Apart from the above, the notion at issue has been raised *obiter* several times. In *Hungary v Slovak Republic*[24] Article 4(2) TEU has been employed by Slovak Republic in support of its defence under Article 259 TFEU, wherein it has been claimed by Hungary that a refusal of entry for the

[22] Judgment of the Court of 2 June 2016, case C438/14 *Nabiel Peter Bogendorff von Wolffersdorff v Standesamt der Stadt Karlsruhe, Zentraler Juristischer Dienst der Stadt Karlsruhe*, ECLI:EU:C:2016:401.

[23] Paras 61-84 therein. In addition, the German provisions at issue did not contain a *strict* prohibition of titles of nobility (as the Austrian ones did), for it would still be possible to retain a title held before the date when the Weimar Constitution came into force; such a title became a part of personal status of a person and might be transmitted to children (including adopted children, see para. 75). The Court also stressed the need for review of proportionality (leaving it to competent national courts) and added that the public policy considerations did not apply to *forenames*, as opposed to surnames (para. 83).

[24] Judgment of the Court of 16 October 2012, case C-364/10 *Hungary v Slovak Republic*, EU:C:2012:630, para. 35.

President of Hungary into Slovakian territory has been made illegally by the defendant. While the Court did rule in favour of Slovakia, it based its decision in international law instead of Article 4(2) TFEU. A similar situation of the Court declining to address the issue (while at the same time ruling in favour) emerged in *Italy v Commission*[25], a case which concerned language requirements. In *Torresi*[26] it has been held not to influence the possibility of obtaining professional legal qualification abroad in order to practise law in a Member State whose citizenship is held by the applicant (without going through domestic pupillage).

THE SO-CALLED 'RELOCATION OF MIGRANTS'

As seen above, the notion at issue has been referred to a number of times in the jurisprudence of the Court, but certainly not as often as *e.g.* conferral[27] or subsidiarity[28]. The question remains whether it would be in any way applicable in the context of 'migrant relocation'.

The issue at hand concerns the action of the Council, in the form of decisions, that is, 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 (OJ L 239, 15.9.2015, p. 146–156), Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection

[25] Judgment of the Court of 27 November 2012, case C-566/10 P *Italian Republic v European Commission*, EU:C:2012:752, para. 36.

[26] Judgment of the Court of 17 July 2014, joined cases *Angelo Alberto Torresi* (C-58/13) and *Pierfrancesco Torresi* (C-59/13) *v Consiglio dell'Ordine degli Avvocati di Macerata*, EU:C:2014:2088, para. 58.

[27] Which yields, as of 19.05.2016, 59 judgments of the Court, viz. http://eur-lex.europa.eu/search.html?textScope0=ti-te&qid=1463691913668&CASE_LAW_SUMMARY=false&DTS_DOM=ALL&type=advanced&lang=en&andText0=conferral&SUBDOM_INIT=ALL_ALL&DTS_SUBDOM=EU_CASE_LAW .

[28] Which yields, respectively, 149 judgments : http://eur-lex.europa.eu/search.html?textScope0=ti-te&lang=en&SUBDOM_INIT=ALL_ALL&DTS_DOM=ALL&CASE_LAW_SUMMARY=false&type=advanced&qid=1463692088685&andText0=subsidiarity&DTS_SUBDOM=EU_CASE_LAW.

for the benefit of Italy and Greece (OJ L 248, 24.9.2015, p. 80–94) and Council Implementing Decision (EU) 2016/408 of 10 March 2016 on the temporary suspension of the relocation of 30 % of applicants allocated to Austria under Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ L 74, 19.3.2016, p. 36–37), all of which relate to the current 'migrant crisis' in Europe[29]. The legal basis for the adoption of the two former decisions has been Article 78(3) TFEU, whereas the latter, implementing decision is founded on Decision (EU) 2015/1601 (specifically, Arts 4(5) and 4(7) therein). These measures have been referred to in some 'soft law' acts, before and after their adoption[30]. The two 'Article 78(3)' Decisions are not in a hierarchical relationship with one another, although Decision 2015/1601 references the former; their periods of application differ slightly (viz. Articles 13 therein).

Article 78(3) TFEU stipulates that, in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It is added therein that the Council shall act after consulting the European Parliament. According to M. Kotzur[31], this legal basis is applicable as a clause of '*ordre public*' and 'solidarity', for when a specific case of a threat to safety of the general public (that is, a sudden inflow) would appear. It may be added at this point that there is a certain disagreement as to whether Article 78(3) TFEU may validly be used to amend existing legislation[32].

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[29] See e.g. http://www.unhcr.org/europe-emergency.html (accessible as of 19.05.16).

[30] Which include :

1. The European Agenda for Migration (COM/2015/0240 final),
2. Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe (COM(2016) 197 final),
3. Commission Recommendation (EU) 2015/914 of 8 June 2015 on a European resettlement scheme (C/2015/3560).

[31] Markus Kotzur, *European Union Treaties*, (ed.) *idem*, Rudolf Geiger, Daniel-Erasmus Khan, Markus Gehring Münich: Hart Publishing, 2015, p. 432.

[32] Steve Peers, *EU Justice and Home Affairs Law, 3e*, Oxford: Oxford University Press, 2011, p. 312, wherein it is (albeit tentatively) submitted that 78(3) TFEU may not be used to amend existing EU law, as long as EU has specific ('on the shelf') legislation relevant to

Decision 2015/1523 is aimed at establishing 'provisional measures in the area of international protection for the benefit of Italy and of Greece in view of supporting them in better coping with an emergency situation characterised by a sudden inflow of nationals of third countries in those Member States (Article 1 therein)' Identical subject-matter is found under Article 1(1) of Decision 2015/1601. This 'reproduction' of provisions found under Decision 2015/1523 in the text of Decision 2015/1601 is rather preponderant. Therefore, this paper would omit needless repetition of provisions reproduced *verbatim*, bringing attention to any amendments where necessary.

The two Decisions refer to 'applicants' as subject to the regime introduced by them. The word 'migrant' is not used in the Decisions proper, yet is commonplace under EU policies[33]. The legal term 'applicants' is going to be used for the sake of precision.

Under Decision 2015/1523, Art. 2(b), 'applicants' are to be understood as 'third-country nationals or stateless persons who have made an application for international protection in respect of which a final decision has not yet been taken'; the same meaning is adopted in Decision 2015/1601, 2(b) therein. However, 'international protection' within the meaning of these provisions is to mean either refugee status or subsidiary protection status, as provided by Arts 2(c) of these Decisions; an explicit reference to Art. 2 (e) and (g) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons

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the issue of mass influx of migrants (in particular, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof); on the other hand, Decisions 2015/1523 and 2015/1601 effect precisely that - a temporary derogation of 'ordinary' rules, an approach deemed possible elsewhere (cf. Katarzyna Strąk, *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Tom I (art. 1-89)*, (ed.) Dawid Miąsik, Nina Półtorak, Andrzej Wróbel, available online: LEX 2012, para. 78.7).

[33] Cf. the EC Migration Policy, at http://ec.europa.eu/priorities/migration_en (accessible as of 13.06.2016).

eligible for subsidiary protection, and for the content of the protection granted[34] is made.

A further reference is made under Arts 2(d) of the Decisions to 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[35]; the definition of a 'family member' is taken from the latter. Regulation 604/2013 is also referenced under definitions of 'relocation' and 'Member State of relocation'. These are to mean, respectively, 'the transfer of an applicant from the territory of the Member State which the criteria laid down in Chapter III of Regulation 604/2013 indicate as responsible for examining his or her application for international protection to the territory of the Member State of relocation' and 'the Member State which becomes responsible for examining the application for international protection pursuant to Regulation 604/2013 of an applicant following his or her relocation in the territory of that Member State' (Arts 2(e) and (f) of the Decisions).

However, the Decisions do not merely *reference* Regulation 604/2013. Rather, they constitute a *derogation* from that *legislative* Union act; this is directly confirmed in recital (18) of the Preamble to Decision 2015/1523. Moreover, that recital of the Preamble refers to Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decision No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC[36], stating that the consent of appli-

[34] OJ L 337, 20.12.2011, p. 9–26, hereinafter 'Directive 2011/95'.

[35] OJ L 180, 29.6.2013, p. 31–59, hereinafter 'Regulation 604/2013'.

[36] OJ L 150, 20.5.2014, p. 168–194, hereinafter 'Regulation 516/2014'. A further, 'limited' derogation from that Regulation is found under (24) of the Preamble to Decision 2015/1523, which lifts the requirements of Article 18 of Regulation 516/2014, as payments made under the 'relocation' regime are connected with applicants, rather than beneficiaries. According to the Decision, it is a 'a temporary extension of the scope of potential recipients of the lump sum', which 'appears to be an integral part of the emergency scheme'.

cants, as provided in Article 7(2) of Regulation 516/2014, is *not* required for relocation purposes.

Peculiarly, at the same time, recital (19) of the Decision stipulates that 'relocation measures do not absolve Member States from applying in full Regulation (EU) No 604/2013', which is patently untrue, as this is precisely what a derogation is – a possibility *not* to apply (a part of) Regulation 604/2013, stated thereinabove in no equivocal terms. Identical measures are found in recitals (24) and (30) of Decision 2015/1601.

In order for the regime set up by the Decisions to operate, the applicants need to fulfil additional criteria. First, an applicant must have lodged his or her application for international protection in Italy or in Greece and for whom those States would have otherwise been responsible pursuant to the criteria for determining the Member State responsible set out in Chapter III of Regulation (EU) No 604/2013 (Arts 3(1) of the Decisions). As such, if an applicant currently remains in Italy or Greece, but either has not lodged an application with these Member States or these States would not be otherwise responsible, the regime would not apply. Furthermore, as the Decisions refer to 'applicants' – *i.e.* persons that have made an application – it would follow that the 'relocation' regime is not applicable to migrants that have *not* (or *not yet*) made an application, but are otherwise subject to Regulation 604/2013 (*e.g.* an unaccompanied minor that has not yet made an application for international protection and is, for the time being, assisted by officials of a Member State).

A further delineation of the notion of an eligible applicant would lie with Arts 3(2) of the Decisions, for the regime is only to be applied 'in respect of an applicant belonging to a nationality for which the proportion of decisions granting international protection among decisions taken at first instance on applications for international protection as referred to in Chapter III of Directive 2013/32/EU is, according to the latest available updated quarterly Union-wide average Eurostat data, 75 % or higher', while, in the case of stateless persons, the country of former habitual residence is to be taken into account.

Such an attempt does not constitute a qualitative approach to each and every person that applies for international protection, entailing an individual examination of his or her case. Rather, it is a quantitative solution, aimed at introducing a somewhat notional 'aggregate' resolution of

the present migrant crisis. Therefore, it may be validly doubted whether this satisfies Article 19(1) CFR ('Collective expulsions are prohibited'). As such, Article 19(1) CFR should be, as a matter of principle, interpreted as having the same meaning and scope as Article 4 of Protocol No 4 to the Convention ('P4') on the Protection of Fundamental Rights and Freedoms ('ECHR') concerning collective expulsion[37]. Its purpose is to 'guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State'.

If Article 19(1) CFR was supposed to mirror Article P-4-4 to the ECHR, one could submit that P-4-4 ECHR required that 'any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group' would have to be prohibited thereby[38]. Undoubtedly, the 'relocation' regime does not allow for an individual examination of each case. Quite the contrary - recitals (30) and (35) of the Preambles to the Decisions stress that applicants do not 'have the right under EU law to choose the Member State responsible' for their applications, and by virtue of this, may not challenge the very act of 'relocating' them under the regime. As such, the regime at issue remains highly controversial; however, it would possibly take an express decision by the European Court of Human Rights (ECtHR) applying the ECHR or the Court of Justice of the European Union adjudicating on the basis of the CFR to find an infringement of fundamental rights. As to the former, it would have to be borne in mind that the protection of fundamental rights under EU law does not have to be identical to that what exists under the ECHR, but it merely needs to be *equivalent*[39]. As to the latter, there is no decision of the Court as of yet, but it has been known

[37] Explanations relating to the CFR, Article 19, 2007/C 303/02.

[38] William Schabas, *The European Convention of Human Rights – a Commentary*, Oxford: Oxford University Press, 2015, 1077; ECtHR in *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §167, and in *M.A. v. Cyprus*, no. 41872/10, §245.

[39] *Bosphorus Airlines Hava Yolları Turizm ve Ticaret Anonim* Şirketi *v. Ireland*, no. 45036/98, §155.

to set the level of protection lower than national laws and the Convention would have it[40].

The Decisions fix quantitative limits for relocation – these are found under Arts 4 and 4(1), respectively. However, there is a difference between Decisions 2015/1523 and 2015/1601 in that the latter specifies these numbers in regard to each and every Member State to which the regime is applicable, while the former merely refers to Resolution of 20 July 2015 of the Representatives of the Governments of the Member States meeting within the Council on relocating from Italy and from Greece 40 000 persons[41]. The Resolution stipulates specific amounts of persons to be relocated in an Annex, but does not refer to any particular method of calculating these amounts. However, while Decision 2015/1601 refers to 120000 persons to be relocated, with Annexes I and II fixing specific quotas appended to it as an integral part of the Decision, it similarly does not contain any specific method of allocation. Apart from a brief mention of a 'fair burden sharing' (recitals 21 and 26 under the Decisions)[42], there is no consideration of the manner by which migrants are supposed to be relocated.

Decision 2015/1601 sets up an additional mechanism (i.e. not provided for in Decision 2015/1523) under Articles 4(5) and 4(7). By virtue of that provision, a Member State might have, in exceptional circumstances and by 26 December 2015, notified the Council and the Commission that it would have been temporarily unable to take part in the relocation process of up to 30 % of applicants allocated to it in accordance with paragraph 1, at the same time giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union. One such notification has been made - by Austria – which resulted in Council Implementing Decision (EU) 2016/408 of

[40] Cf. judgment of the Court of 26 February 2013, case C-399/11 *Stefano Melloni v Ministerio Fiscal*, EU:C:2013:107, judgment of the Court of 26 June 2007, case C-305/05 *Ordre des barreaux francophones et germanophone and Others v Conseil des ministers*, EU:C:2007:383.

[41] Available at http://data.consilium.europa.eu/doc/document/ST-11131-2015-INIT/en/pdf (accessible as of 9.06.2016).

[42] One can only wonder why zero applicants for some Member States (i.e. Austria and Hungary) in regard to Decision 2015/1523 or rather arbitrary amounts across the entirety of the regime would be 'fair burden sharing'.

10 March 2016 on the temporary suspension of the relocation of 30 % of applicants allocated to Austria under Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece[43]. It may be observed that it was the *Council* that has made the Implementing Decision, despite the fact that Article 291(2) TFEU normally vests implementing powers in the Commission. It appears that the Commission and the Council attempted to avail themselves of the 'duly justified specific cases' referred to under 291(2) TFEU[44].

The Decisions establish a procedure for relocation, found under Articles 5 therein. This is an 'administrative cooperation' within the Area of Freedom, Security and Justice (AFSJ); as such, it remains within the shared competence (Art. 4(2)(j) TFEU), even given that administrative cooperation proper is situated within competence to carry out actions to support, coordinate or supplement the actions of the Member States (Art. 6(g) TFEU). Member States are supposed to set up national contact points to facilitate swift relocation and indicate the number of applicants who can be relocated swiftly to their territory, along any other relevant information. According to Articles 5(7) of the Decisions, 'Member States retain the right to refuse to relocate an applicant only where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Articles 12 and 17' of Directive 2011/95. These provisions contain two exceptions to relocation of migrants which may be raised by Member States. As such, the first limb of these exceptions relates to 'a danger to (…) national security or public order'. A correlation with Article 72 TFEU ('maintenance of law and order and the safeguarding of internal security') and Article 4(2) TEU ('maintaining law and order and safeguarding national security', the latter or which remains 'the sole responsibility of each Member State') is therefore apparent. However, 'national'

[43] OJ L 74, 19.3.2016, p. 36–37.

[44] Be that as it may, the only 'duly justified' and specific' reasons given for selection of the Council over the Commission are found under recital 28 of the Decision 2015/1601, which stipulates that 'the conferral of those powers upon the Council is justified in view of the politically sensitive nature of such measures, which touch on national powers regarding the admission of third country nationals on the territory of the Member States and the need to be able to adapt swiftly to rapidly evolving situations'.

security appears to be a wider term than just its internal aspect, for security has to be ensured directly at border and externally as well. Therefore, the Decisions are more aligned with the wording of 4(2) TEU, rather than 72 TFEU. The second limb of the exceptions is related to Directive 2011/95 and Articles 12 and 17 thereunder, referring to, *inter alia*, serious non-political crimes and constitution of a danger to the community or to the security of the Member State in which a person is present. However, while the first limb requires 'reasonable grounds' to apply, the second necessitates 'serious reasons' for applying exclusion provisions referred to therein. While it may be redundant to enclose such a wording in regard to Article 17 of that Directive, a referral of that sort also in regard to Article 12 *in extenso* might be viewed as a certain widening of the exclusions found under Article 12(1) thereunder, which contains clear-cut exclusions that cannot be said to be 'seriously able to be reasoned'. Furthermore, the two limbs overlap as to the issue of security, but it appears that the first limb has been framed more widely[45] than the other.

Otherwise, according to Articles 5(4), second sentence, a Member State may not refuse an applicant.

An additional exclusion from the regime is found under Art. 5(9) of the Decisions. According to these provisions, applicants that elude the relocation procedure shall be excluded from relocation. This is perhaps counter-productive, as migrants may circumvent the relocation procedure by simply evading its operation. For a procedure that was supposed to be mandatory this is perhaps surprising.

While the Decisions contain a provision on 'rights and obligations' of the applicants under Articles 6 therein, these 'rights' are neither exhaustive nor preclude the application of the CFR or the general principles of law of the European Union, which apply in all situations governed by EU law[46]. These Articles detail Article 24(2) CFR in regard to 'the best interests of a child' being of primary consideration and introduce an obligation for Member States to relocate families to the territory of a Member State

[45] Which, above all, does not contribute to legal certainty and standards of sound legislation.

[46] Judgment of the Court of 26 February 2013, case C-617/10 Åklagaren *v Hans* Åkerberg *Fransson*, EU:C:2013:105, para. 21.

together, provided such persons fall within the scope of the regime (6(2) therein)[47]. Articles 6(3) and 6(4) refer to rights of defence and effective judicial protection of the applicant – as such, he or she must be informed of the procedure under the relocation regime and notified of the decision in writing. Again, these provisions may not be read as altering the rights of defence and the right of effective judicial protection under primary Union law.

The Decisions under 6(5) introduce an obligation incumbent on participating Member States to require applicants that enter their territory 'without fulfilling the conditions for stay' to return to their Member State of relocation (which must take them back). In addition, Articles 7 of the Decisions refer to an obligation to 'increase operational support' to Italy and Greece 'in particular by providing, as appropriate, national experts' for issues provided therein[48]. These provisions are complemented with financial provisions and reporting requirements.

[47] This is in contrast to Article 16(1) of Regulation 604/2013, whereunder it is stated that dependents are to be 'normally' kept with their families, provided that 'family ties existed in the country of origin, that the child, sibling or parent or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing'; hence, not at all times. Furthermore, such a stipulation seems to conflict with 6(1) in that it may not always be within a child's best interest to remain with a family member (*e.g.* where said member committed or regularly commits an offence to which the child fell or falls victim).

[48] That is : '(a) the screening of the third-country nationals arriving in Italy and in Greece, including their clear identification, fingerprinting and registration, and, where applicable, the registration of their application for international protection and, upon request by Italy or Greece, their initial processing;

(b) the provision to applicants or potential applicants that could be subject to relocation pursuant to this Decision of information and specific assistance that they may need;

(c) the preparation and organisation of return operations for third-country nationals who either did not apply for international protection or whose right to remain on the territory has ceased'.

Against this background, it must be ascertained whether Article 4(2) TEU and more specific norms of EU law connected therewith would influence such 'relocation'.

Given that Article 78(3) TFEU is concerned with national security, it would be that primary 'responsibility' rested with Member States. However, the approach taken by the Court in *ZZ* suggests that Article 4(2) TEU may not be used as a general derogation of EU law on grounds of 'national security'. As such, it would not justify a *general* refusal to implement Decisions 2015/1523 and 2015/1601, without fulfilling any additional conditions.

However, it may be validly assessed whether any *particular* requirements imposed by Decisions 2015/1523 and 2015/1601 would be influenced by Article 4(2) TEU, either independently or in conjunction with any other provisions of EU law. This is all the more true given the fact that Article 72 TFEU is connected with Article 4(2) TEU[49]. The former is viewed as an 'overlapping' provision with Article 4(2) TEU[50]. At the same time, there appears to be a disagreement in the doctrine as to whether Article 72 TFEU constitutes a derogation[51]. For the purposes of the analysis,

[49] Which reads : 'This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security'; cf. Agnieszka Grzelak, [in:] D. Miąsik *et al.*, *op. cit.*, para. 72.4 *ab initio*.

[50] S. Peers, *op. cit.*, p. 56.

[51] S. Peers considers that it does not (see *op. cit.*, p. 156), while at the same time submitting that Article 4(2) TEU does not bring any 'further limitation' than Article 72 TFEU (*infra* p. 56). On the other hand, according to M. Kotzur, 'substantial perils for law and order and the internal security of a Member State' may legitimise a deviation from the law of the Union under Article 72 TFEU. Even further, according to A. Grzelak (*op. cit.*, para. 72.3) this provision is concerned with the issue of division of competence; as such, Member States retain their general competence in the field of *carrying out* their responsibilities as to maintenance of law and order and the safeguarding of national security. However, this provision is – according to that author – *not* concerned with *definition and designation* of competence (cf. *op. cit.*, para. 72.4 *in fine*). In regard to these views, it must be stressed

necessarily, account must be taken of the fact that Decision 2015/1601 has been challenged under Article 263 TFEU by Slovak Republic[52] and Hungary[53], although the actions for annulment are still pending.

Perhaps the most salient feature of the relocation regime that is susceptible to the above analysis would be the issue of refusing to relocate an applicant. The regime stipulates that, on assumption that it is applicable, refusal to relocate is possible 'only where' either of the two limbs of the exception under Art. 5(7) exist. However, *Sayn-Wittigenstein*, *Runevič-Vardyn*, *Anton Las* and *Bogendorff von Wolffersdorff* suggest that EU law may 'take into account' either a certain 'constitutional situation' within a Member State (especially when there is a connection with a general principle of law, viz. equality) or protect an element of national identity over strict application of its norms (viz. protection of national languages). These 'primary law exceptions' under primary law require a fairly high threshold to be satisfied, however. It follows from *Sayn-Wittigenstein* and *Bogendorff von Wolffersdorff* that such an element not only would have to be included in a national constitution, but also possess a certain universal gravity in law (*e.g.* equality before law). However, secondary law – to which the 'relocation regime' belongs – may not vanquish this possibility brought by primary law and, as such, Art. 5(7) must be interpreted as meaning 'only where following exceptions exist, and provided that primary law does not stipulate otherwise'. Nevertheless, it is at the same time difficult to pinpoint which elements of the regime would be susceptible to either of these 'primary law exceptions'. Certainly, it would be hard to envisage an element of national identity *forbidding* to consider an application for international protection under the relocation regime in general manner. In addition, the regime contains no provisions on languages.

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that Article 4(2) TEU – as S. Peers would construe it – may not be equated with 'national security', for it is but one of the aspects of that legal norm. As such, it would follow that the notion of 'overlap' or 'connection' is perhaps more accurate and fortunate.

[52] Case C-643/15: Action brought on 2 December 2015 — Slovak Republic v Council of the European Union, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1463742679933&uri=CELEX:62015CN0643 (accessible as of 20.05.2016).

[53] Case C-647/15: Action brought on 3 December 2015 — Hungary v Council of the European Union, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1463742679933&uri=CELEX:62015CN0647 (accessible as of 20.05.2016).

However, it may, for instance, be validly inferred that Article 4(2) TEU and national identity could feature in refusing to treat a pair of migrants as spouses, where one is a minor below an age eligible for marriage in a given Member State (*e.g.* 10-years old, where an age eligible for marriage would be at least 16 years). As such, the concept of 'family' under the Decisions would have to take these considerations into account, provided that they find sufficient constitutional basis. Apart from that, Article 4(2) TEU along with Article 72 TFEU might plausibly come into play if 'national experts' provided by another Member State were to discharge responsibilities of the host Member State in matters of national security, especially while screening third-country nationals.

Furthermore, it appears necessary to examine the allegations raised by Slovak Republic and Hungary in actions for annulment mentioned above, insofar as they relate to national identity. It must be said that neither of these actions expressly refer to 4(2) TEU. However, both of these actions allege various infringements of EU law (and, in one instance, Geneva Convention of 28 July 1951 relating to the Status of Refugees, as supplemented by the New York Protocol of 31 January 1967), some of which relate to performance of State functions[54], as maintenance of law and order carried out by a Member State would include policing applicants as to their place of residence. For the purposes of the regime, applicants are required to stay in the Member State of relocation, and – if found to have left that territory without fulfilling conditions for stay in another Member State – returned to that territory. However, the determination of the conditions for free movement is the province of Article 79(2)(b) TFEU (and hence, ordinary legislative procedure), and not Article 78(3) TFEU, which refers to non-legislative procedure. It may not at the same time be denied that Articles 6(5) of the Decisions cover not only applicants, but also beneficiaries of international protection, that is refugees and beneficiaries of subsidiary

[54] Others allege a rather varied mix of breaches of EU primary law on institutions along with certain procedural defects. Out of those, in particular it may be mentioned that both actions allege an infringement of Article 293(1) TFEU, as the Commission proposal has been amended by the Council (e.g. removing Hungary from the regime). However, the contents of the vote are not available online (see http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2015/0209(NLE)&l=en#tab-0, accessible as of 13.06.2016).

protection. Therefore, in that regard, allegations of Slovak Republic and Hungary, to the effect that legislative procedure should have been used, appear well-founded. It also appears doubtful whether the Council might have validly imposed obligations on other Member States as to the discharge of their State functions under Article 78(3). That provision alludes to the *benefits* that may be introduced for a Member State concerned, yet does not mention any *obligations*. This is expressly raised under the action brought by Hungary. For the sake of completeness, it must be added that the time limit under Article 263 TFEU in regard to the Decisions has expired and one must await the decision of the Court, barring any additional indirect challenges under Article 267(b) TFEU, possibly on behalf of a concerned applicant, either challenging a relocation decision taken as regards him or her or applying for review of any measures taken pursuant to the obligation to return him or her to the Member State of relocation.

CONCLUSIONS

The 'relocation regime' applicable to third-country nationals has been designed to address the migratory pressure on Italy and Greece by way of a temporary, provisional measure. However, the above passages show that a number of issues exist in regard to its legality; in addition, Decision 2015/1601 itself, while attempting to give reasons for choosing Council as an implementing body, notes that 'political considerations' are at play. It is therefore not surprising that the regime proves to be difficult to execute in practice. The Commission has so far adopted three Reports on relocation and resettlement[55], the keyword used therein appearing to be 'unsatisfactory'. In fact, since the beginning of the implementation less

[55] First Report (COM(2016) 165 final, available at: http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0165/COM_COM(2016)0165_EN.pdf (accessible as of 13.06.2016), Second Report COM(2016) 222 final, under http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0222/COM_COM(2016)0222_EN.pdf , and Third Report on Relocation and Resettlement (COM(2016) 360 final):

than 2500 applicants have been relocated (viz. Third Report, p. 6). For a grand total of 160.000, it speaks volumes of the unwillingness on part of certain Member States to actively take part in the regime. It remains to be seen how this would have to be remedied – the Commission vowed to 'raise concerns with those Member States that so far have not complied with their obligations (viz. Third Report, p. 7)' and reserved 'the right to take action where Member States are not complying with their obligations (*ibidem*, p. 10)'. While this would hint at a possibility of proceedings under Article 258 TFEU, no such case has been brought as of yet. It therefore remains to be seen how specifically this issue will be resolved. In addition, interplay between national security and the 'relocation regime' under the Decisions is (hopefully) going to be addressed by the Court in cases C-643/15 and C-647/15, giving Article 4(2) TEU and Article 72 TFEU another important judicial development. As to the general notion of national identity, the position taken in *Sayn-Wittigenstein* appears to have been accorded the status of settled case-law of the Court, as *Runevič-Vardyn*, *Anton Las* and *Bogendorff von Wolffersdorff* show.

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