RESPOND

Working Papers

Global Migration: Consequences and Responses

Paper 2019/27, December 2019

Refugee Protection Regimes

Italy Country Report

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Reference: RESPOND WP3

This research was conducted under the Horizon 2020 project 'RESPOND Multilevel Governance of Migration and Beyond' (770564).

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This document is available for download at www.respondmigration.com

Horizon 2020

RESPOND: Multilevel Governance of Migration and Beyond (770564)

Co-funded by the Horizon 2020 programme of the European Union

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Acknowledgements

In the academic year 2018/2019, the UNIFI Unit of RESPOND organized a Seminar Series about the “Paths of integration in the contemporary society” in the BA degree in Political Science of the University of Florence (https://www.scienzepolitichetriennale.unifi.it/vp-179-i-percorsi-dell-integrazione-nelle-societa-contemporanee.html). The conversations with experts of refugee law and officials of the Territorial Commission of Florence provided important information this report. We are grateful to all the speakers who accepted to take part in this initiative. Moreover, special thanks are due to the students of the University of Florence for their active and informed participation. We are grateful to Ginevra Cerrina Feroni, Veronica Federico and Cecilia Corsi of UNIFI RESPOND team for their insights and internal review. Last but not least we are grateful to Professor Marco Balboni for his learned review and to Dr. Ela Gokalp Aras and Prof. Hlektra Petrakou for their guidance and review.

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CARA: Centre of Reception for Asylum Seekers (Centri di Accoglienza per Richiedenti Asilo)

CAS: Emergency Acommodation Centre (Centri di Accoglienza Straordinaria)

CDA: Centre of Reception (Centri Di Accoglienza)

CEAS: Common European Asylum System

Const.: Constitution

CPSA: First Aid and Reception Centre (Centri di Primo Soccorso e Accoglienza)

ECHR: European Convention of Human Rights

EU: European Union

NGOs: Non-governmental Organizations

RESPOND: Respond / Multilevel Governance of Mass Migration in Europe and Beyond Project

SPRAR: National System of Protection for Asylum Seekers and Refugees (Sistema di protezione per I richiedenti asilo e rifugiati)

UNHCR: United Nations High Commissioner for Refugees

About the project

RESPOND is a Horizon 2020 project which aims at studying the multilevel governance of migration in Europe and beyond. The consortium is formed of 14 partners from 11 source, transit and destination countries and is coordinated by Uppsala University in Sweden. The main aim of this Europe-wide project is to provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research and to critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

RESPOND will study migration governance through a narrative which is constructed along five thematic fields: (1) Border management and security, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. Each thematic field is reflecting a juncture in the migration journey of refugees and designed to provide a holistic view of policies, their impacts and responses given by affected actors within.

In order to better focus on these themes, we divided our research question into work packages (WPs). The present report is concerned with the findings related to WP3, which focuses specifically on asylum procedures and refugee protection.

Executive summary

The report explores the impact of the recent migration flows on the asylum and international protection regimes in Italy during the years 2011-2017 and also seeks to identify some best practices and policy recommendations. Through empirical evidence, statistics, expert interviews, discourse analysis and an overview of academic literature, the report examines the response of the Italian authorities to the growing number of applications for international protection (and therefore, the consequent growth of a strong anti-immigrant narrative).

In particular, when comparing the legal framework and its effective implementation, the report stresses the existence of 3 different dimensions of the concept of protection in the Italian experience:

- the constitutional dimension: at the top of the Italian system of the sources of law, Art. 10, par. 3 of the Italian Constitution recognizes the right of asylum for every foreigner who, in his/her country, is denied the effective exercise of the democratic freedoms established by the Constitution itself;
- the international and supranational dimension: for the purpose of implementing the Geneva Convention of 1951 as well as EU Law (inter alia, Art. 18 of the Charter of Fundamental Rights and Directive 2004/83/EC), Italian legislation introduced 2 forms of international protection: refugee and subsidiary protection (in particular, Legislative Decrees nos. 251/2007 and 142/2015);
- the domestic legislative dimension: in addition to the types of protection deriving from international and supranational law, domestic legislation has introduced some specific forms of protection, and in particular humanitarian protection (Art. 5 of the Consolidated Act of provisions concerning immigration introduced humanitarian protection). In 2018, Decree-Law no. 113/2018 abolished the humanitarian protection. Currently, the art. 20 of the Consolidated Act identifies 7 cases in which a national temporary permit to stay could be issued for specific reasons.

Against this general background, the report is structured as follow: first of all, it analyses the Italian legal and policy framework regarding international protection, as well as the role of the main actors. Secondly, it provide a brief overview of basic statistics concerning the Italian protection regime. Of course, Italian refugee law does not operate in isolation: therefore, it discusses the compliance of the Italian regulations with EU and international law. Moreover, the report identifies the key themes and narratives associated with international protection. The results of the meso-level analysis allow the potential gap between laws/policies and their effective implementation to be “measured”. At the micro level, the perceptions and evaluations of migrants regarding international protection programmes are then analysed. Finally, the last part concludes by highlighting the main issues at stake and formulating policy recommendations.

In particular, the report suggests to exploit the need of a legislative implementation of the article 10, par. 3 of the Constitution with the aim to ensure the comprehensibility of the legal regulations concerning the protection regime through a recast of the overall matter. Moreover, it identifies some solutions which could reduce the margin of discretion of the various players and the fragmentation of the legal framework (e.g., strengthening the coordinating role of the National Commission). Finally, the report recommends reviewing the recent policies which

hinder the effective exercise of the right of asylum or the submission of asylum or protection applications, as well as the right of appeal against decisions to reject such applications.

1. Introduction

The general aim of the report is to analyse the impact of the recent migration crisis on asylum and international protection regimes in Italy during the period 2011-2017, also taking into consideration the economic and broader political landscape. The report also provides some updates and insights with regard to the year 2018, in light of the most recent legal and political development.

Although the perception concerning an invasion of immigrants is inaccurate to say in the least, the statistics analysed in the report show a growing number of applications for international protection during the period under consideration (see *infra* 3.3). The increasingly widespread anti-immigrant narratives and negative representation of these data have contributed to putting the Italian protection regime under pressure (see *infra* 5). Against this background, the Italian authorities have responded to the recent massive refugees' inflow by downgrading the rights of applicants and beneficiaries of protection, especially by introducing new physical and procedural barriers.

The report adopts a broad definition of protection, that is, "all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law and refugee law".[1]

This definition is sufficiently broad to also include the right of asylum established by Art. 10, par. 3 of the Italian Constitution, which ensures protection to foreigners who, in their home countries, are denied the effective exercise of democratic freedoms (see *infra* 3.1).

The definition also embraces the stricter concept of "international protection", that is, the "refugee status and subsidiary protection status" granted by the Geneva Convention of 1951 and EU Law.[2]

Eventually, the definition can further include the specific types of protection deriving from national legislation: humanitarian protection in the years 1998-2018 (Art. 5 of the Consolidated Act of provisions concerning immigration introduced humanitarian protection), temporary protection for humanitarian reasons (Art. 20 of the Consolidated Act) and now the 7 grounds for eligibility for temporary protection for humanitarian reasons established by Decree-Law no. 113/2018 (transposed by the Parliament into Law No. 132/2018)[3].

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[1] UNHCR (2011). "The Fundamentals of Protection", available at http://www.unhcr.org/47949ec92.pdf; European Commission (2016). "Humanitarian Protection", available at http://ec.europa.eu/echo/sites/echo-site/files/policy_guidelines_humanitarian_protection_en.pdf.

[2] See Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF. Moreover, see Art. 18 of the Charter of Fundamental Rights of the European Union, according to which "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community."

[3] According to Art. 77 of the Italian Constitution, in special cases of necessity and urgency the Executive Power can adopt, under its own responsibility, a Government decree having the force of law. However, this decree will lose effect from its inception if it is not transposed into a Legislative Act by Parliament within sixty days of its publication.

As we will see, the "key word" to understanding the asylum and international protection regime in Italy is "fragmentation". Fragmentation of the legal framework, which is composed of several layers (the Consolidated Act of 1998, the legislation transposing EU Law, secondary legislation[4] and soft law instruments), some of which are not easily accessible and/or understandable either by nationals or migrants. Fragmentation of governance, with a lack of coordination among the various (public and private) authorities involved in the asylum and international protection system.

This fragmentation entails two main consequences: the strengthening of the role of the Executive Power based on an emergency logic, which has penalized the opportunity for public debate and democratic scrutiny in this field; the expansion of the interventions of private actors, which have tried to remedy the inefficiencies and delays of the public authorities.

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[4] An example of secondary legislation in this field is the Ministry of Interior Directive of 5 May 2016, which regulates the access of asylum seekers and beneficiaries of international protection and their relatives in the SPRAR system.

2. Methodology and sources

The report aims to explore the asylum and international protection regime in Italy through an interdisciplinary approach, based on legal, historical, political and socio-economic investigations, interviews, statistics and discourse analysis.

The period under consideration will be 2011-2017, although some reference will also be made to the phase after Decree-Law no. 113/2018, which reorganized the Italian international protection system.

The report follows a multi-level analysis, examining the regime of protection at the macro- (supranational, national), meso- (subnational, local, NGOs) and micro- (individual) level. Indeed, the international protection and asylum system engages both national/supranational authorities (government, parliament, EU agencies, etc.) and meso- and micro-level actors. This latter group of players cannot be considered as merely passive recipients of the immigration policies implemented by the macro-level actors.

Data and statistics have been reviewed in order to contextualise the development of the legal framework and the policies related to the international protection regime and asylum system. For example, Eurostat statistics help to verify, inter alia, the overestimation or underestimation of the number of applications in light of the public debate concerning international protection.

Similarly, the critical literature will be considered. The existing assessments and analyses concerning the Italian protection regime have been developed both in an academic context – in some cases also through handbooks on immigration law (see, for example, Di Muro L. and Di Muro A. 2018) – and in non-academic literature (reports of NGOs, research promoted by institutions and public authorities, etc.).

Moreover, discourse analysis will complement the research, in particular by examining speeches, statements and press releases issued by institutions, political parties and stakeholders.[5]

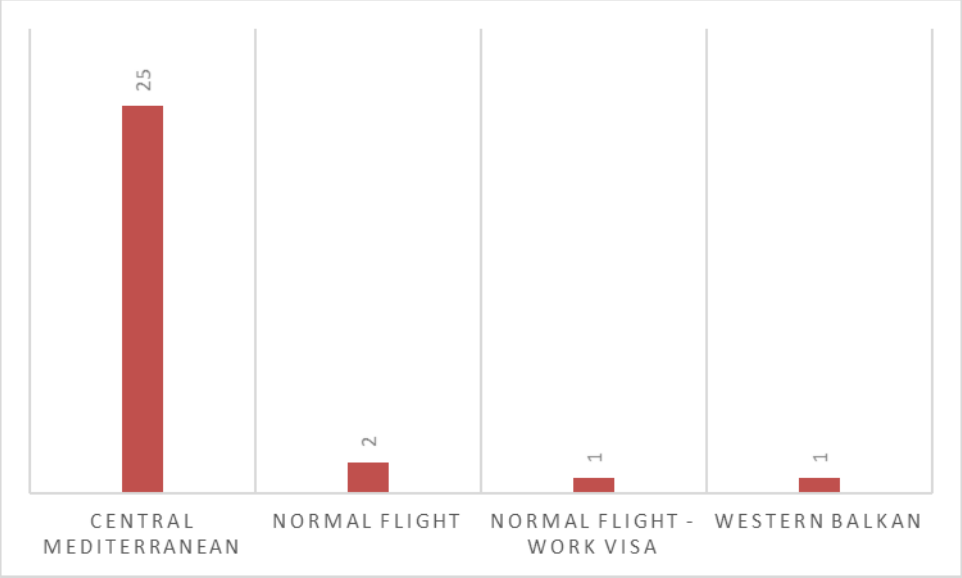
With regard to the meso- and micro-level analysis, the most important source will be a set of interviews carried out in accordance with the ethical principles of the RESPOND consortium and University of Florence ethical criteria.

As for the meso level, 15 interviews were conducted between May 2018 and January 2019. Interviewees were selected through snowball sampling, where the starting point was relevant experts and informants in the field of migration. Selected interviewees included legal experts, activists, migration experts from universities and research institutes, NGO office managers, social workers, officials and decision-makers. Interview questions, elaborated by the RESPOND consortium, were open ended, adjusted to the interviewees' profile, and covered several aspects of the refugee protection regime in Italy, as well as aspects related to border management, the reception system, and integration practices. As regards micro-level interviews, 29 semi-structured interviews were conducted between May 2018 and April 2019. The relevant migration flows in the Italian case are essentially determined by the country's geographical position in the Mediterranean. More specifically, Italy is mostly impacted by

[5] Regarding the methodological approach of discourse analysis, see Lupton, 2010. For a study concerning the analysis of media discourse concerning refugees and migrants, see Chouliaraki, Georgiou, & Zaborowski, 2017; Parker, 2015; Parker, Naper, & Goodman, 2018.

migration flows from Sub-Saharan African countries. Accordingly, the sample of interviewees mainly encompasses asylum seekers, refugees, and migrants from this region who came to Italy through the Central Mediterranean route (n=25).

Figure 1. Micro-level interviewees: Route

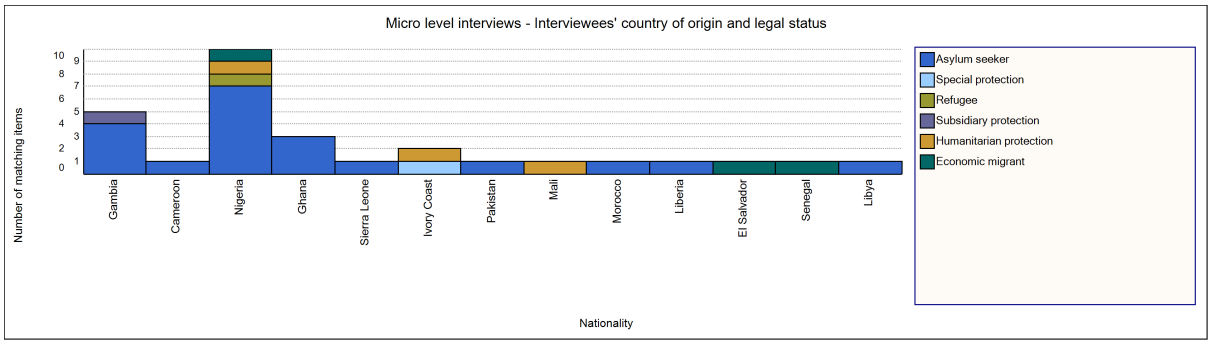


In particular, the interviewees' countries of origin include Nigeria (n=10), Gambia (n=5), Ghana (n=3), Ivory Coast (n=2), Sierra Leone (n=1), Cameroon (n=1), Mali (n=1), Liberia (n=1) and Senegal (n=1). The sample also includes two interviewees from North African countries (Morocco and Libya), and two interviewees from Pakistan and El Salvador. With respect to legal status, 3 out of 29 interviewees had not applied for asylum at the moment of the interview and were therefore classified as economic migrants. The majority of the interviewees were asylum seekers. Participants' ages ranged from 18 to 37 and they had arrived in Italy between 2011 and 2018[6]. One of the main limitations regarding micro-level interviews is the fact that almost all of the interviews (26 out of 29) were conducted in reception centres.[7] This might have affected the interviewees' objectivity during the interview. Figure 2 matches the micro-level interviewees' country of origins against their legal statuses. As for the questionnaire, it included questions regarding the interviewee's life in the country of origin, the experience of crossing borders, the asylum procedure, and the reception conditions.

[6] Only 1 interviewee ('economic' migrant) arrived in Italy in 2001.

[7] 22 in Temporary Reception Centres (*Centri di Accoglienza Straordinaria*, CAS) and 4 in reception facilities of the National System for the Protection for Asylum Seekers and Refugees (*Sistema di Protezione per Richiedenti Asilo e Rifugiati*, SPRAR)

Figure 2. Micro-level interviewees: Country of origin and legal status



Interview transcripts were analysed using NVivo, a qualitative data analysis software application that helps to structure, organize, manage and query a large amount of data. Through qualitative content analysis, the material was systematically interpreted and described, and all the meanings in the text data that were relevant to the analysis were translated into categories of a coding scheme. In particular, the main categories of the coding scheme, namely, the key aspects on which the analysis was focused, were the key actors, problems, and solutions related to the refugee protection regime in Italy.

3. Background of the National Legal and Institutional Framework

3.1. National legal and policy framework regarding "international protection"

3.1.1 Dimensions of protection in the Italian legal order

The Italian framework is characterized by 3 different dimensions of the concept of protection:

- the **constitutional dimension**: at the top of the Italian system of the sources of law, Art. 10, par. 3 of the Italian Constitution recognizes the right of asylum for every foreigner who, in his/her country, is denied the effective exercise of the democratic freedoms established by the Constitution itself (for more details, see 3.1.2);
- the **international and supranational dimension**: for the purpose of implementing the Geneva Convention of 1951 as well as EU Law (inter alia, Art. 18 of the Charter of Fundamental Rights and Directive 2004/83/EC), Italian legislation (in particular, Legislative Decrees nos. 251/2007 and 142/2015) has introduced 2 forms of international protection: refugee and subsidiary protection (for more details, see 3.1.3);
- the **domestic legislative dimension**: in addition to the types of protection deriving from international and supranational law, domestic legislation has introduced some specific forms of protection, and in particular humanitarian protection (Art. 5 of the Consolidated Act of provisions concerning immigration introduced humanitarian protection). In 2018, Decree-Law no. 113/2018 abolished the humanitarian protection. Currently, the art. 20 of the Consolidated Act identifies 7 cases in which a national temporary permit to stay could be issued for specific reasons. (for more details, see 3.1.4).

The Figure 3 clarifies this taxonomy.

Figure 3. Taxonomy of the dimensions of protection in Italy (2011-2017)

The concept of protection in the Italian legal order	Constitutional dimension	Right of asylum in case of violation of democratic freedoms (Art. 10 Const.)
	International and supranational dimension (Geneva Convention, CEAS)	Refugee protection Subsidiary protection
	Domestic legislative dimension	Humanitarian protection ex art. 5 Legislative Decree no. 286/1998 Temporary protection ex art. 20 of Legislative Decree no. 286/1998

Source authors' elaboration

3.1.2 The constitutional dimension

Italy is one of the few countries in Europe which has established a protection of the right of asylum at constitutional level.[8] Indeed, according to **Art. 10, par. 3 of the Italian Constitution**,[9] "A foreigner who, in his/her home country, is denied the effective exercise of the democratic freedoms guaranteed by the Italian Constitution shall be entitled to the right of asylum under the conditions established by law."[10] The relevance of the provision is confirmed by its "position" in the part of the Constitution headed "Fundamental Principles".

The Italian Parliament did not fully implement the constitutional right of asylum in an organic legislative act, as required by art. 10, par. 3 Const[11]. However, the Supreme Court of Cassation (inter alia, Decision 4674/1997 S.U.) has clarified that, in principle, the lack of a legislative act does not exclude the possibility of a direct application of this constitutional right by the judges[12]. Following this interpretation, for example, the Court of Rome recognized the right to protection of the Kurdish leader Ocalan in October 1999.

The Italian Constitution takes into account the right of asylum (and more in general the concept of protection) also in the distribution of legislative competences between the State and Regions. Indeed, **Art. 117 Const**. – after the constitutional reform of 2001[13] – classifies legislation on immigration, right of asylum and legal status of non-EU citizens as matters subject to the exclusive legislative competence of the State. However, the Constitution confers upon the Regions other competences which can affect the management of applicants and beneficiaries of protection (education, healthcare, housing, etc.). Accordingly, the Constitutional Court has recognized the possibility of extending some social rights of migrants through regional actions and interventions, such as, for example, in the field of healthcare (Decision No. 299/2010 and 61/2011 Const. Court.).

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[8] See Cerrina Feroni – Federico 2018.

[9] The English translation of the Italian Constitution is available at https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

[10] On the constitutional implications of the right of asylum in the Italian legal order, see Benvenuti, 2007; Rescigno, 2011.

[11] Article 7 of Law 154/2014 enables the government to adopt – through a Legislative Decree – an organic set of provisions concerning the implementation of Art. 10, par. 3 Const., consistent with EU Law. The government can adopt such a decree by 20 July 2019.

[12] A potential overruling of this settled case-law might be found in Supreme Court of Cassation Decision No. 4455 of 2018. It clarifies that the area of implementation of Article 10, par. 3 Const. coincides with the 3 forms of protection established by the Italian legal order (refugee, subsidiary and humanitarian protection), without the possibility of direct application of the Constitution by judges. However, after this judgment, Decree-Law no. 113/2018 abolished humanitarian protection. At the same time, according some authors, it could reintroduce the possibility of direct application of Art. 10, par. 3 Const. (see Benvenuti, 2019).

[13] Before the constitutional reform of 2001, the Regions only had some concurring legislative competences. In the subject matters within the scope of concurring legislation, legislative powers are vested in the Regions, except for the determination of the fundamental principles, which are laid down in State legislation. After the reform of Title V of the Constitution, however, the Regions have legislative powers in all subject matters that are not restricted to the exclusive legislation of the State or concurring legislation. Regarding Italian regionalism, see, *ex multis*, Caretti, Tarli Barbieri, 2016.

Although the Constitution includes only a few provisions directly addressing the asylum and protection regime, other pivotal constitutional principles contribute to strengthening the rights of applicants and beneficiaries of international protection. In particular, the Italian Republic recognizes and guarantees "inviolable human rights" (**Art. 2 Const.**). Secondly, power to enact national and sub-national legislation is vested in the State and Regions compliance with the constraints deriving from EU Law and international obligations (**Art. 117, par. 1 Const.**). Moreover, **Art. 10 Const.** establishes that "the legal status of foreigners shall be regulated by law in conformity with international provisions and treaties" (second paragraph) and that a foreigner may not be extradited for a political offence (fourth paragraph). The Constitutional Court has eventually come to interpret the principle of equality in an extensive way, applying the principle also to foreigners, although **Art. 3 Const.** makes references to citizens only (see, for example, Decision No. 249/2010).[14]

3.1.3 The international and supranational dimension: the implementation of international protection in Italian legislation

The second dimension of the concept of protection derives from the need to ensure the compliance of the Italian legal order with international and EU Law (for more details, see *infra* 3.4 and 3.5). Indeed, the Italian Republic – through Law no. 722/1954 – ratified the 1951 Geneva Refugee Convention.

Moreover, Italy is part of the Common European Asylum System (CEAS), the legal framework established by the European Union with the aim of regulating and setting common standards in the field of international protection.

Legislative Decree 142/2015 – implementing Directive 2013/33/EU laying down standards for the reception of asylum applicants and Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection – reorganized the asylum and international protection regime in Italy.

First of all, Article 2, par. 1 provides a legal definition of the concept of **applicant for international protection,** i.e. any third-country national who has "formally applied for international protection, pending a final decision", or "stated his/her intention to apply for protection".

Article 2 also provides a definition of "**beneficiaries of international protection**", i.e. foreigners who have obtained the refugee status or entitlement to subsidiary protection. In the Italian protection regime system, both these statuses are granted by Territorial Commissions[15], through the same quasi-judicial procedure (*rectius*, an administrative procedure characterized by a strong right to be audited).

People eligible for **refugee protection** are foreigners, who – due to a well-founded risk of their being persecuted for reasons of religion, race, political opinion, citizenship, or membership in a particular social group – are outside the territory of their own country of origin.

[14] See Nania – Ridola, 2006, pp. 277 ff.

[15] The Territorial Commission are the administrative bodies competent to examine international protection applications (see *infra* 3.2).

Subsidiary protection, by contrast, is a form of protection that can be granted to people seeking protection when they cannot prove a risk of personal persecution, but only a risk of serious physical harm in the country of origin (e.g. torture, death penalty, etc.).

Refugee and subsidiary protection ensure a residence permit of five years, renewable if the reason for its issuance persists. The residence permit entitles the holder to various civil and social rights, and in particular access to the national health service and the education system, with the same treatment as offered to Italian citizens. Moreover, within the National System for the Protection for Asylum Seekers and Refugees (SPRAR), the beneficiaries of international protection lacking sufficient financial means are granted accommodation for 6 months and the possibility of access to vocational training, language courses and job placement services.[16]

3.1.4 The domestic legislative dimension

Before the recent Decree-Law no. 113/2018 on immigration and public security, Italian legislation identified a third form of protection, namely, **humanitarian protection**. It was granted to foreigners who did not meet the eligibility requirements for the two main types of protection, but who were deserving of protection because of "serious reasons, of a humanitarian nature, or resulting from constitutional or international obligations" (Art. 5 Consolidated Law on Immigration). According to the interpretation of this "open catalogue" proposed by the Supreme Court of Cassation (also in light of Judgment No. 381/1999 of the Constitutional Court), the requirement for obtaining humanitarian protection was a situation of special vulnerability which jeopardised the person's fundamental rights.

The beneficiaries of humanitarian protection obtained a two-year (renewable) permit to stay. However, they had access to a smaller set of rights in comparison with the beneficiaries of international protection. In particular, they were excluded from the right to family reunification.

A further domestic type of protection which did not derive from international and supranational law is **temporary protection** ex art. 20 of the Legislative Decree no. 286/1998. According to this provision ("Consolidated Act of provisions concerning immigration and the condition of third-country nationals"), a decree of the Executive Power can authorize measures of temporary protection in case of conflicts, natural disasters or further events of special relevance in extra-EU countries. Therefore, Art. 20 enables the government to waive the ordinary regime of protection.

3.1.5 Main milestones regarding the protection of migrants

The main milestones regarding the protection of migrants are Law nos. 722/1954 and 189/2002, Legislative Decrees nos. 286/1998, 251/2007, 142/2015, and Decree-Law no. 13/2017 (ratified by the Parliament through Law no. 46/2017) and 113/2018 (ratified through Law no. 132/2018).

[16] According to Art. 14, par. 3 of Legislative Decree no. 142/2015, the criteria for determining the inadequacy of financial means are based on the amount of social allowance (5,953 Euro in the year 2019).

As seen previously, Law no. 722/1954 authorized the ratification of the 1951 Geneva Refugee Convention.

Law no. 48/1998 (the so called “Turco-Napolitano Law”) introduced humanitarian protection. It was granted to foreigners who did not meet the requirements for the international protection if there were serious grounds justifying protection at domestic level.

Implementing the Law no. 40/1998, the Government approved the Legislative Decree no. 286/1998, which is titled “Consolidated Act of provisions concerning immigration and the condition of third-country nationals”. It provides, in a unitary legislative framework, a set of rights (education, health, social integration, etc.) and duties of foreigners and migrants.

The Consolidated Act was amended by Law No. 189/2002 (the so called “Bossi-Fini Law”), which established more restrictive provisions concerning the expulsion and detention of migrants. It introduced the Territorial Commission for the recognition of refugee status. The procedures for the recognition of international protection were modified by Legislative Decree no. 25/2008.

Legislative Decree no. 251/2007 implemented Directive 2004/83/EC on “minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted”. It introduced the subsidiary protection. Directive 2004/83/EC was amended by Directive 2011/95/EU. The latter directive was implemented in the Italian legal order through Legislative Decree No. 18/2014.

After the 2008 election, won by the centre-right coalition, the new Government promoted the adoption of Law No. 125/2008 (the so-called “Security Package”), which introduced the crime of irregular migration and the aggravating circumstance of irregular migration (the latter provision was declared unconstitutional 2 years later by the Constitutional Court in its Decision No. 249/2010 of).

3.1.6 Important development since 2011

Another milestone regarding international protection is Legislative Decree No. 142/2015, which entirely reorganized the Italian system of reception. In particular, it transposed into the Italian legal order EU Directive 2013/33/EU laying down “standards for the reception of asylum applicants” as well as the Directive 2013/32/EU on “common procedures for granting and withdrawing international protection”. Legislative Decree No. 142/2015 also introduced a “National Coordination Board”, an interinstitutional network which adopts plans for improving the reception system and defines quotas for the distribution of migrants among the Regions.

Some relevant legislative acts were approved in 2017. Decree-Law No. 13/2017 (converted, with amendments, by Law No. 46/2017) removed one level of appeal within the international protection system and introduced a specialized court division within the ordinary jurisdiction which is tasked with examining specific matters in the area of asylum law. Moreover, it modified the procedure for the identification and expulsion of illegal migrants as well as the international recognition procedure.

In the same year, the Law no. 47/2017 introduced new provisions on the protection of unaccompanied foreign minors.

Finally, Decree-Law No. 113/2018 (the so-called “Salvini Decree”), converted into Law No. 132/2018 abolished the humanitarian protection. Currently, the art. 20 of the Consolidated Act identifies 7 cases in which a national temporary permit to stay could be issued for specific reasons (*supra* 3.1.4). It widened the range of criminal offenses which justify the revocation of international protection and introduced measures to reduce new arrivals and contain irregular immigration.

The temporary protection

Decree-Law no. 113/2018 provides for the abolition of humanitarian protection. Currently, the art. 20 of the Consolidated Act confirmed 4 specific forms of temporary protection:

- **temporary permit to stay for social protection reasons** (e.g. a situation of a serious exploitation by a criminal organization): The Police Headquarters (*Questure*) – on the advice of the Public Prosecutor (*Procuratore della Repubblica*) – may issue a six-month residence permit, which can be extended for an additional year.
- **temporary permit to stay for the victims of domestic violence**: The Police Headquarters – on advice of the judicial authorities – may issue a one-year residence permit.
- **temporary permit to stay in special cases of labour exploitation**: The Police Headquarters (*Questure*) – on the advice of the Public Prosecutor (*Procuratore della Repubblica*) – may issue a six-month residence permit, which can be extended for an additional year.
- **temporary permit to stay for special protection purposes**: this concerns foreigners who cannot be returned to a country where they risk being persecuted or subjected to torture. In this case, the Police Headquarters may issue a one-year residence permit, with the possibility of an extension.

Moreover, after the Decree-Law no. 113/2018, the art. 20 of the Consolidated Act establishes 3 new further forms of temporary protection:

- **temporary permit to stay for medical care**: the Police Headquarters may issue temporary residence permit for up to year, with the possibility of an extension;
- **temporary permit to stay for victims of natural disasters**: The Police Headquarters may issue a six-month residence permit, which can be extended for an additional six months.
- **temporary permit to stay to reward acts of civic valour**: The Police Headquarters – upon the authorization of the Minister of the Interior – may issue a two-year residence permit, with the possibility of an extension.

3.2. Institutional framework and actors regarding international protection

As pointed out in the literature, the Italian experience is characterized by fragmentation of the institutional framework and difficult coordination among the various levels of government and

private actors involved in the governance of migration processes (see, *inter alia*, Oxfam 2016; Chiaromonte, Pannia, Federico, D'Amato, Maggini 2018).

The constitutional reform of 2001 confirmed the allocation of migration management (and therefore asylum law) to the exclusive competence of the national State. At the same time, **Regions** can play an indirect role within the institutional framework in areas regarding international protection, in particular through their competences in the field of healthcare, education, children's services and social welfare. In this perspective, the Constitutional Court has clarified that asylum and migration necessarily involve both national and sub-national interventions, even beyond a strict interpretation of the constitutional provisions concerning the distribution of legislative competences. The Constitutional Court also dismissed the government's complaints against regional laws which have extended some social rights (health, housing, etc.) to undocumented migrants.[17]

Further actors – such as, for example, EU agencies and the UN – play a role within the international protection machine. In particular, some **EU agencies** (the European Asylum Support Office – EASO, the EU's law enforcement Agency – Europol and the European Border and Coast Guard Agency – Frontex) are involved in the hotspot system. Indeed, their experts in the hotspots support national authorities in registering and screening applicants for international protection.

At local level, a mechanism of coordination should be ensured by the **Territorial Councils of Migration**, which are composed of the Prefecture, regional and other sub-national authorities, migrants' organizations, employers' associations and trade unions. The Territorial Councils monitor and analyse migration processes and promote coordinated interventions. However, the real impact of these bodies is still very limited.[18]

The main actor of the migration governance "machine" is the **national government**. However, the management of these processes does not fall under the responsibility of a unitary institutional entity. On the contrary, it is allocated among several governmental departments, in particular the Presidency of the Council of Ministers, the Ministry of the Interior and the Ministry of Labour. Each of these entities is responsible and competent for single apparatus of the system of reception and migration governance.

Within the **Ministry of the Interior**, an important role is played by the Department of Civil Liberties and Immigration. In particular, it is competent for the affairs concerning religious confessions, citizenship and the civil rights of immigrants and asylum seekers. Moreover, it is responsible for the first reception and assistance of asylum seekers and manages the European Asylum Migration and Integration Fund (AMIF).

At provincial level, the Ministry of the Interior acts through the **Prefectures** (*Prefetture*), peripheral offices which perform relevant functions in the sector of immigration, security and public order, as well as supervising the activity of the Territorial Commissions. In each Prefecture, a special immigration office (*Sportello Unico per l'Immigrazione*) issues entry clearance ("*nulla osta*") for family reunification and recruitment of foreign workers in accordance with the immigration quotas.

[17] See, for example, Decision Nos. 299/2010 and 61/2011 Const. Court.

[18] See W. Chiaromonte – P. Pannia – V. Federico – S. D'Amato – N. Maggini, Italy, Sirius report, 322.

Moreover, at local level, the Department of Public Security of the Ministry of the Interior has a **Police Headquarters**, which registers the asylum applications and issues and renews residence permits. After the introduction of Decree-Law no. 113/201, the Police Headquarters acquired responsibility for issue the 7 types of temporary permits to stay for humanitarian reasons which replaced the humanitarian protection regime.

The planning, coordination and monitoring of migration quotas are instead under the direct responsibility of the **Ministry of Labour and Social Policies** (and in particular the General Directorate of Immigration and Integration Policies), which manages the financial resources for integration policies. This office also coordinates protection for unaccompanied foreign minors.

A great deal of evidence confirms the trend towards a constant erosion of the possibility for parliamentary scrutiny in the governance of migration processes. In particular, relevant aspects are regulated by the Executive Power through atypical acts, without any democratic control.[19]

Moreover, on several occasions the government has asked for a vote of confidence on bills concerning the field of migration, thus preventing any possibility for the Parliament to modify the cabinet's proposal. This is what occurred, for example, in the case of Law No. 47/2017 (new provisions on the protection of foreign unaccompanied minors) and Law No. 132/2018, which ratified Decree-Law No. 113/2018 (the so-called "Salvini Decree").[20]

A partial attempt to strengthen the **role of Parliament** can be seen with the formation of special parliamentary inquiry committees with oversight powers in the field of migration. Within the legislative process itself, the Standing Committee competent to examine bills in the sector of immigration is the Standing Committee on "Constitutional Affairs".[21]

UNHCR caseworkers, by contrast, are part of the **Territorial Commissions**, which are the independent administrative bodies competent to examine international protection applications.

Currently, 20 Territorial Commissions operate across the Italian territory. Each Territorial Commission includes representatives of the Prefectures, State Police, Municipalities and a member appointed by the United Nations High Commissioner for Human Rights.

The orientation and coordination of the 20 Territorial Commissions is ensured through the **National Commission**, which also organizes the training and updating of Territorial Commission members. The National Commission is composed of representatives of the Ministry of the Interior, the Ministry of Foreign Affairs, the Presidency of the Council of Ministers and UNCHR.

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[19] Regarding the implications of the expansion of decree-laws in this field, see Costanzo, P. (ed.) (2008), La decretazione d'urgenza (il caso dei c.d. decreti "sicurezza"), Rome.

[20] About the procedural aspects of this *iter legis*, see Ruotolo, M., (2018), *Brevi note sui possibili vizi formali e sostanziali del d.l. n. 113 del 2018*, in *Oss. cost.*, 3.

[21] About the relevance of the Standing Committees in the Italian constitutional order, see Fasone, C. (2012), Sistemi di commissioni parlamentari e forme di governo, Padova, Cedam.

With the goal of strengthening the mechanisms of governance, Legislative Decree No. 142/2015[22] introduced a new interinstitutional network, the "**National Coordination Board**", chaired by the Ministry of Interior and composed of the main organizations promoting the right of asylum (both institutional players and associations). In particular, the Board is competent to adopt plans for improving the reception system as well as for defining quotas for the distribution of migrants' quotas among the Regions. More in general, the Board aims to bring together the voices of civil society involved in the reception and protection of migrants.

3.3. Brief statistics regarding national international protection

Before analyzing the specific statistics regarding national international protection, this section will discuss the general context of the debate about migration processes, assessing, in particular, the overestimation or underestimation of migration flows in the Italian public debate concerning the international protection[23]. In this perspective, a first useful statistical indicator can be drawn from the summary data concerning the impact of migration processes on population change.

The two components that determine population change are the natural population change – namely the difference between the number of live births and deaths during a given year – and the net migration – namely the difference between the number of immigrants and the number of emigrants. If we consider the EU as a whole, as shown by Table 1, in 2015 there has been a natural decrease – namely deaths have outnumbered live births. This means that the positive population change that occurred between 2015 and 2016 (+1,737,074 million) (see Table 2) can be attributed to net migration. Migration is thus a fundamental factor affecting population change in the EU. In particular, as reported by Figure 4, since the mid-1980s net migration has increased and from the beginning of the 1990s onwards the value of net migration and has always been higher than that of natural change. Therefore, during the past three decades net migration has constituted the main driver of population growth (see Favilli, 2018).

[22] Legislative Decree 142/2015 ("Implementation of Directive 2013/33/EU laying down standards for the reception of asylum applicants and Directive 2013/32/EU on common procedures for granting and withdrawing international protection").

[23] The overestimation of the number of migrants, refugees and asylum applicants present in Italy is highlighted, inter alia, by Ambrosini, 2018.

Table 1. Population change in the EU, 2011-2017 (natural population change and net migration plus statistical adjustment)

	Natural population change	Net migration plus statistical adjustment
2011	395,113	713,631
2012	220,255	894,789
2013	87,468	1,760,854
2014	195,700	1,101,159
2015	-117,371	1,854,445
2016	19,626	1,222,979
2017	.	.

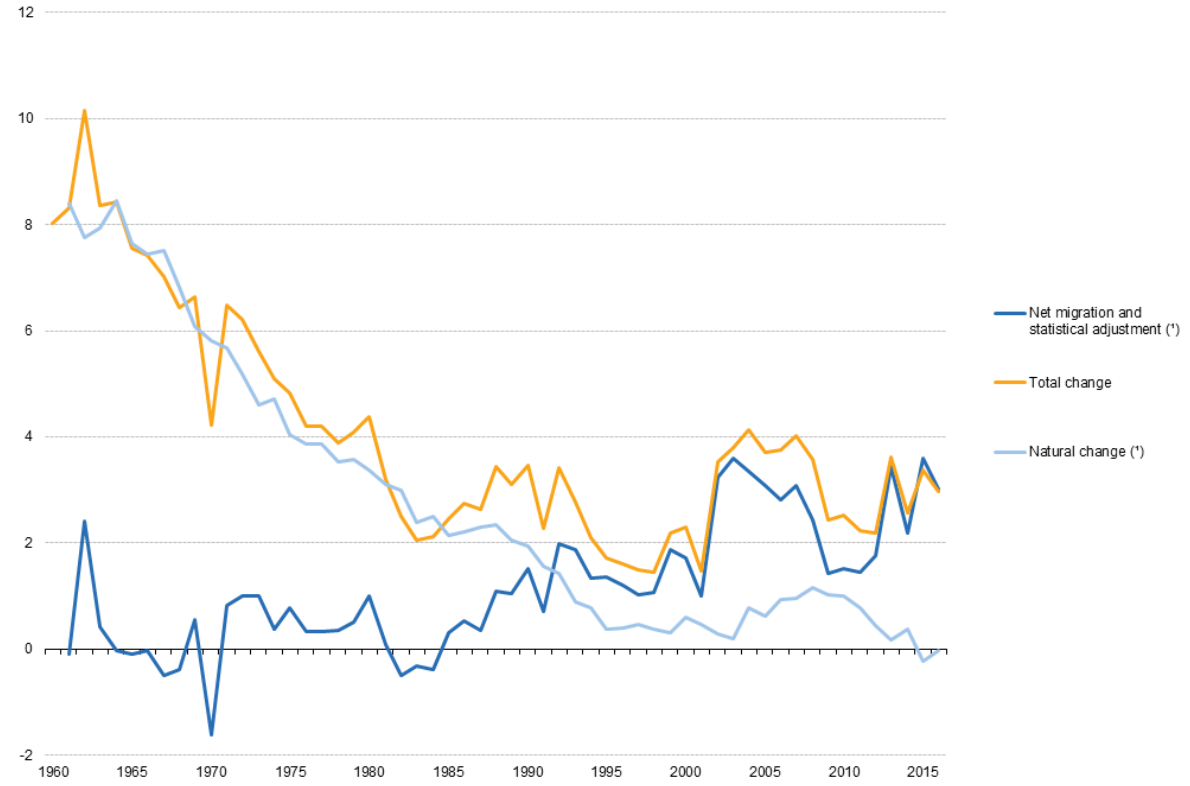
Source: Eurostat

Table 2. Population change in the EU, 2011-2017

	Population
2011	502,964,837
2012	504,047,964
2013	505,163,008
2014	507,011,330
2015	508,540,103
2016	510,277,177
2017	511,522,671
Change (2011-2017)	8,557,834

Source: Eurostat

Figure 4. Population change by component (annual crude rates) in the EU, 1960-2016 (per 1000 persons)



Note: Excluding French overseas departments up to and including 1997. Breaks in series: 1991, 2000-01, 2008, 2010-12 and 2014-16.
(*) 1960: not available.
Source: Eurostat (online data code: demo_gind)

Source: Eurostat

If we consider the RESPOND country sample, four out of nine countries (Germany, Greece, Hungary and Italy) have negative rates of natural change the between 2011 and 2017. In 2017, deaths outnumbered live births the most in Italy – which registered the lowest birth rate in the EU. As for net migration, Austria, Germany, Italy, Sweden, Turkey and the United Kingdom show positive values – meaning that immigrants outnumber emigrants – for the whole period under study. The highest positive values were registered in Italy in 2013 and Germany in 2015. Table 3 compares the impact of natural change and net migration to population growth or decline, identifying eight types of population change for 2016. While in Turkey population growth has been mainly due to a natural increase – namely, due to the fact that live births have outnumbered deaths –, in Austria, Sweden and the United Kingdom positive net migration – meaning that immigrants have outnumbered emigrants – has had a greater impact. In Germany and Poland, positive net migration has been the *sole* driver of population growth. Finally, while in Greece and Hungary population decline has been mostly driven by a natural decrease – namely by the fact that deaths have outnumbered live births – , in Italy the natural decrease has been the *only* component determining population decline.

Table 3. Contribution of natural change and net migration (and statistical adjustment) to population change, 2016

Demographic drivers	Countries
Growth due:	
only to natural change	
more to natural change	*Turkey*
more to positive net migration	*Austria, Sweden, the United Kingdom*
only to positive net migration	*Germany, Poland*
Decline due:	
only to natural change	*Italy*
more to natural change	*Greece, Hungary*
more to negative net migration	
only to negative net migration	

Source: Adapted from Eurostat

Table 4 shows the population change, the number of emigrants and the number of immigrants in Italy. Although the net migration shows positive values, data demonstrate that the perception of an "invasion" of immigrants is inaccurate to say in the least (*amplius* Pannia, Federico, Terlizzi, D'Amato, 2018, pp. 11 ff.).

Table 4. Population change and number of emigrants and immigrants in Italy, 2011-2017

	2011	2012	2013	2014	2015	2016
Natural population change	-46,842	-78,697	-86,436	-95,768	-161,791	-141,823
Total number of emigrants	82,461	106,216	125,735	136,328	146,955	157,065
Total number of immigrants	385,793	350,772	307,454	277,631	280,078	300,823

Source: Eurostat

Among the 300,823 immigrants in Italy (year 2016), 200,217 were from a non-EU country (see Favilli, 2018). In the same year, the non-EU nationals living in Italy totalled more than 3 million (see Table 5).

Table 5. Number of non-EU immigrants, 2013-2016

	2013	2014	2015	2016
Number of non-EU immigrants in Italy	201,536	180,271	186,522	200,217
Number of non-EU nationals living in Italy		3,479,566	3,521,825	3,508,429

Source: Adapted from Eurostat

With regard to the refugee population, in the year 2016 Italy reported a total of 147,302 refugees; the refugee population grew steadily in the period under consideration (see Table 6). Indeed, in the year 2011 the number of refugees in Italy was less than half.

Table 6. Refugee population in Italy 2011-2016

2011	2012	2013	2014	2015	2016
58,060	64,779	76,264	93,715	118,047	147,302

Source: World Bank

In the period under consideration, within the context of the recent massive refugees inflow, the number of applications for protection (and more in general the amount of people who left their countries of origin and tried to reach Italian territory) significantly increased. In particular, according to the Department of Civil Liberties and Immigration of the Ministry of the Interior, the number of applications for international protection in Italy in 2017 totalled 130,119, approximately five times the number of applications received in 2011 (see Table 8).

Among the three main forms of protection regulated by Italian legislation (see *supra* 3.1), humanitarian protection showed the highest growth. While in 2011 5,662 permits were granted) on grounds of humanitarian protection, in 2017 they reached a total of 20,166 (Table 7).

Table 7. Decisions[24] on applications for protection, 2011-2017

	Total number of decisions	Refugee status	Subsidiary protection	Humanitarian protection	Rejection
2011	25,626	2,057 (8%)	2,596 (10%)	5,662 (22%)	11,131 (44%)
2012	29,969	2,048 (7%)	4,497 (15%)	15,486 (52%)	5,259 (17%)
2013	23,634	3,078 (13%)	5,564 (24%)	5,750 (24%)	6,765 (29%)
2014	36,270	3,641 (10%)	8,338 (23%)	10.034 (28%)	13,122 (36%)
2015	71,117	3,555 (5%)	10,225 (14%)	15,768 (22%)	37,400 (53%)
2016	91,102	4,808 (5%)	12,873 (14%)	18,979 (21%)	51,170 (56%)
2017	81,527	6,827 (8%)	6,880 (9%)	20,166 (25%)	42,700 (52%)

Source: Ministry of the Interior

These data explain the decision of the new government formed after the 2018 election to issue ministerial circular no. 8819/2018. Through this administrative act, the Minister of the Interior urged the Territorial Commissions to grant humanitarian protection only if absolutely necessary. At a later stage, a Decree-Law abolished humanitarian protection altogether.

While Table 7 shows the number of decisions by status, Table 8 matches the number of arrivals (by sea) and the number of applications for a given year. As for asylum applications, the peak was reached in the years 2016 and 2017.

[24] Since some cases were classified as “untraceable” (the applicant was unreachable) or “other outcome”, the sum of the different statuses recognized does not total the number of decisions.

Table 8. Number of arrivals (by sea) and asylum applications in Italy, 2011-2018

Year	Arrivals by sea	Asylum applications
2011	62,692	37,350
2012	13,267	17,352
2013	42,925	26,620
2014	170,100	63,456
2015	153,842	83,970
2016	181,436	123,600
2017	119,310	130,119
2018	23,730	53,596

Source: Ministry of the Interior

While in the rest of European Union, Syrians accounted for the majority of first-time protection applicants (see Pannia, Federico, Terlizzi, D'Amato, 2018), Nigeria is the main country of origin of first-time asylum seekers in Italy. The other main countries of origin (non-EU) of first-time protection applicants are Bangladesh, Pakistan, Gambia and Senegal (Table 9).

Table 9. Five main countries of origin of asylum applicants, 2017

Country	Number of asylum applicants (% of the total)
Nigeria	25,964 (20%)
Bangladesh	12,731 (10%)
Pakistan	9,728 (7%)
Gambia	9,085 (7%)
Senegal	8,680 (7%)

Source: Ministry of the interior

As emerges from Table 10, the majority of residence permits issued by Italian authorities allowing non-EU nationals to reside legally in Italy were issued for family reasons (45.5% in 2016).

Table 10. First residence permits issued broken down by reason and selected years

	Family	Education	Employment	Other	Total
2011	141,403 (42.7%)	30,260 (9.1%)	119,342 (36%)	40,078 (12.1%)	331,083
2015	109,328 (61.1%)	22,870 (12.8%)	17,370 (9.7%)	29,316 (16.4%)	178,884
2016	101,269 (45.5%)	16,847 (7.6%)	9,389 (4.2%)	94,893 (42.7%)	222,398

Source: Eurostat

Finally, the statistics on the enforcement of immigration legislation show that 2017 was the year in which the number of migrants refused entry, ordered to leave or returned to a non-EU country reached a peak (Table 11).

Table 11. Non-EU citizens subject to the enforcement of immigration legislation

	Refused entry	Irregularly present	Ordered to leave	Returned to a non-EU country
2011	8,635	29,505	29,505	6,180
2015	7,425	27,305	27,305	4,670
2016	9,715	32,365	32,3625	5,715
2017	11,260	36,230	36,240	7,045

Source: Adapted from Eurostat

3.4. Compliance with International Law

The Italian Republic has ratified several international conventions which impact, directly or indirectly, on the protection of refugees and migrants, such as the European Convention on Human Rights of 1950 (ECHR), the UN Convention Relating to the Status of Refugees of 1951, and the International Covenant on Civil and Political Rights of 1966.

The Italian Constitution contains some provisions which aim to ensure the compliance of Italian legislation with international law, and therefore to guarantee the effective enforcement of these conventions. In particular Art. 117, par. 1 Const. subjects both national and regional legislation to the constraints deriving from international obligations; Art. 2 Const. recognizes and guarantees inviolable human rights, which the Italian Constitutional Court identifies and interprets also in the light of international law. With specific regard to the right of asylum and the legal status of foreigners, the requirement that Italian legislation comply with international law is reiterated by Art. 10 Const. Accordingly, every violation of international conventions concerning the migrant protection regime (and more in general of international law) can also imply a potential violation of the Italian constitutional order. According to the Constitutional

Court's Decisions nos. 348 and 349 of 2007, the violation of an international treaty should imply, in principle, the unconstitutionality of the domestic legislative act concerned. In particular, the Italian Constitutional Court has often invoked the ECHR (as interpreted by the case-law of the ECHR) to protect the fundamental rights of migrants.[25]

Despite these legal tools, what has occurred in practice reveals some violations of the fundamental rights of migrants.

First of all, according to several NGOs, the Italian authorities have been making arbitrary distinctions between irregular migrants and asylum/international protection seekers at border crossings, thereby hindering the possibility of submitting protection applications. Witnesses have also reported episodes of intimidation and/or violence during fingerprinting operations (Oxfam, 2016).

A violation of the fundamental rights established by the ECHR was recently recognized – in January 2019 – in the so-called "Sea Watch case".[26] The European Court of Human Rights requested the Italian authorities "to take all necessary measures, as soon as possible, to provide all the applicants with adequate medical care, food, water and basic supplies as necessary. As far as the 15 unaccompanied minors are concerned, the Government are requested to provide adequate legal assistance (e.g. legal guardianship)".[27]

Secondly, the situations of prolonged and generalized legal uncertainty concerning the protection of refugees as well as the living conditions at the reception centres have been strongly questioned (see Banca d'Italia, 2017; Oxfam, 2017; Inmigrazione, 2017). According to the report of the Committee of Enquiry the reception centres are chronically overcrowded and managed by an inadequate organization and low-trained staff (see Committee of Enquiry of the Chamber of Deputies, 2017, pp. 109, 116).of the Chamber of Deputies, new arrivals on Italian territory are stuck in hotspot centres for several weeks, and sometimes subjected to "de facto" detention for long periods. More in general,

3.5. Compliance with EU protection system/Regional Protections Systems and their justifications (2011-2017 period)

Italy is one of the six "founding countries" of the European Communities. Its membership in the European Union has an indirect constitutional basis in Article 11 Const. ("Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy shall promote and encourage international organisations furthering such ends"). Moreover, after the previously mentioned constitutional reform of 2001, a clearer constitutional basis for Italian EU

[25] See, for example, Decision No. 187/2010. Making explicit reference to the case-law of the European Court of Human Rights, this decision of the Constitutional Court identified the fact of limiting access to social benefits aimed at satisfying basic human needs to foreigners with an EC residence permit for long-term residents amounted to "unreasonable discrimination".

[26] On January 2019, the Italian authorities rejected the request of a ship run by the Sea-Watch NGO with 47 rescued asylum seekers aboard to be allowed to land at a safe harbor. The applicants complained that the migrants were detained on board without any legal basis and suffered inhuman and degrading treatment.

[27] See press release ECHR 043 (29.1.2019).

membership is contained in Article 117, par. 1 Const., according to which legislative power is vested in the State and in the Regions in compliance with the constraints deriving from EU Law.[28] In light of these provisions (as interpreted by the Italian Constitutional Court), as well as the principle of the primacy of European Union Law, in the event of a violation of a norm of European Union law, in principle, Italian courts must disapply the domestic provision.

Moreover, Italian legislation has introduced some special procedures to ensure the full implementation and a correct transposition of EU law (especially directives). According to Law no. 234/2012 ("General Norms on the Italian Participation in the Formation and Implementation of European Union Law and Policies"), each year the government must propose two specific bills with the aim of transposing EU Law into Italian legislation and more in general to deal with the backlog of European obligations.[29]

With specific regard to international protection regimes, Italy is bound by the commitment to creating a Common European Asylum System (CEAS), the legislative framework established by the EU, which regulates and sets common standards in the field of international protection in accordance with the Convention relating to the Status of Refugees.
In particular, the main domestic measures implementing EU Law are:

- Legislative Decree no. 251/2007 ("Implementation of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted");
- Legislative Decree no. 25/2008 ("Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status");
- Decree-Law no. 89/2011 ("Urgent provisions for the full application of Directive 2004/38/EC on the free movement of EU citizens and for the transposition of Directive 2008/115/EC on returning illegally staying third-country nationals");
- Legislative Decree no. 24/2014 ("Prevention and repression of trafficking in persons and protection of the victims", implementing Directive 2011/36/EU");
- Law 154/2014 ("Annual European Delegation Law 2013");
- Directive of the Minister of the Interior (04/08/2015) on the implementation of activities aimed at controlling the bodies managing reception services for non- EU citizens;
- Legislative Decree 142/2015 ("Implementation of Directive 2013/33/EU laying down standards for the reception of applicants for international protection and Directive 2013/32/EU on common procedures for granting and withdrawing international protection").

[28] *Amplius*, see Bin, Caretti, Pitruzzella 2015.

[29] On the transposition and implementation of EU Law in the Italian legal order, see Ibrido 2017; Moavero Milanesi, Piccirilli 2019.

4. Asylum Procedure and Refugee Protection: Key Actors, Problems, and Solutions

In light of the results of the meso-level interviews (MEIs), we can say firstly that the actors that are considered to be crucial in the refugee protection regime are the EU and the national government. As one interviewee commented, "one of the major challenges is the correct adaptation of Italian legislation to European legislation […]. Everything that has to do with the protection of asylum seekers comes from the EU" (MEI no. 1). However, the legal framework and the governance of the overall system are deemed to be too fragmented. The legal framework is composed of several layers, some of which are not easily accessible and/or understandable by citizens and migrants (MEI no. 1). The governance of the asylum and international protection system sees the participation of several authorities which often have difficulties in coordinating their activities (MEIs no. 5 and 9). This fragmentation entails two main consequences: (1) the strengthening of the role of the Executive Power based on an emergency logic, which has affected the quality of the public debate and reduced democratic scrutiny in this field; (2) the expansion of the interventions of private actors in everyday activities, which have sought to remedy the inefficiencies and delays of public authorities (MEIs no. 9 and 13).

Some interviewees suggested reorganizing the governance of the protection system, reducing the role of the Ministry of the Interior. For example, a suggestion was made to create a new ministerial department in the field of integration which would be responsible, for example, for the protection of fundamental rights: an institution that would "break the link between migration and security" (MEI no. 9). Another suggestion was to create an ad hoc Italian agency for international protection, an institution with "its own characteristics and specific rules, both international and European, and with its own dedicated professional staff" (MEI no. 10).

An important aspect that emerges from the meso-level analysis is the existence of a discrepancy between norms and practice. In particular, as highlighted by one of the interviewees, "Italy is a country that, compared to other European countries, could potentially offer a very high level of protection" (MEI no. 5). This is due to

> Article 10 of the Constitution, which states that any person may apply for protection in Italy if he or she does not have access to the same democratic freedoms in his or her own country […]. However, this article has never been fully implemented by the legislator. [Therefore], we find this very 'expansive' and 'open' article which has not resulted in an appropriate form of protection. Our [legislation on] protection derives from European and international legislation. [In this sense] there is a discrepancy between the potential (given by the constitution) and the practice" (MEI no. 5). Moreover, more in general, it has been observed that "the notion of international protection and refugee is outdated and it should be updated because the geopolitical dynamics have changed. Sometimes there are no longer the clear differences of persecution linked to ethnicity, religion, language, citizenship, but there can also be discrimination leading to the violation of human rights that originate from contexts of poverty" (MEI no 1).

A further aspect of the gap between the legal framework and practice is represented by the attempt of Italian authorities to hinder the submission of protection applications. Indeed, our analysis of the interviews highlights that, in some cases, the recent intensification of border

controls has coincided with an arbitrary distinction between international protection applicants and economic migrants at border crossings (MEI no. 3). It has been observed that, within the hotspots, migrants have often been "classified as asylum seekers or economic migrants based on a summary assessment and in the absence of cultural mediators […], preventing them from regular access to the asylum procedure" (MEI no. 8). The interview data are confirmed by some judicial decisions of the European Court of Human Rights, which has requested the Italian Government to provide all applicants with adequate legal and humanitarian assistance. Moreover, violations of the fundamental rights of asylum seekers and beneficiaries of international protection have been reported with regard to the poor living conditions in the hotspots (MEI no. 2). As seen above, problems related to the hotspots have been amply addressed by the Committee of Enquiry of the Chamber of Deputies (see *supra* 3.4).

Interviewees also highlighted the weakness of legal channels providing access to international protection (MEI no. 1). 'Legal channels' for asylum seekers attempting to access Italian territory are in effect guaranteed solely by the so-called 'humanitarian corridors' (*corridoi umanitari*) project (MEIs no. 5, 8, 12). The project was launched in 2015 with a Memorandum of Understanding between the Ministry of Foreign Affairs, the Ministry of the Interior, the Community of Sant'Egidio (*Comunità di Sant'Egidio*), the Federation of Protestant Churches in Italy (*Federazione delle Chiese Evangeliche in Italia*) and the Waldensian Evangelical Church (*Chiesa Evangelica Valdese*). The legal basis of the project – which is not a government initiative and does not receive public financing – rests upon Article 25 of Regulation (EC) No 810/2009, according to which Member States can issue humanitarian visas valid for their territory. The aim is to facilitate the safe, legal arrival in Italy of potential beneficiaries of international protection, in particular the most vulnerable ones (Terlizzi, 2019).

Other crucial aspects that were stressed by our interviewees concern the need to amend the Dublin regulation, according to which the Member State responsible for examining an asylum application is the one through which the asylum seeker first entered the EU. As a legal expert has commented,

> since there is no legal channel of access at European level, the first irregular access takes place, obviously, in the countries that constitute the gateway to Europe. It is therefore a system that needs to be modified and linked to the specific needs of the asylum seeker. For example, if the asylum seeker has family members or a strong community in a French-speaking country, it is obvious that he or she would prefer Belgium or France. We need to respect the needs of the asylum seeker! (MEI no 1).

Almost all of the interviewees agreed that the Dublin regulation, as it stands, is not sustainable (MEIs no. 1, 2, 3 ,4, 5, 8, 9, 10, 12, 13): "The management of applications for international protection cannot be solely an Italian problem […]. The rule of the 'first country of arrival' is not sustainable!" (MEI no. 3).

As one migration expert also commented:

> The maintenance of the Dublin system creates management problems and it is difficult to effectively guarantee international protection. […]. This is also due to the

> fact that our Dublin Unit[30] at the Ministry of the Interior is very 'meagre' […] The Dublin system is based on the rule of the first country of arrival, but also on others such as the verification of the presence of a family member in another country or a person who has already requested or obtained protection in another country. The fact is that Italy very often does not verify these opportunities (MEI no. 5).

What is needed is more solidarity between all Member States and therefore a fair distribution of responsibilities between all Member States.

The Dublin Regulation

The need to determine the competent state for examining international protection applications emerged among European Union states already in 1990, even before the attribution to the EU of a competence in relation to migration and asylum. The result was the then 12 Member States signing the Dublin Convention, an international treaty having the main objective of reducing the phenomenon of refugees "in orbit", moving between one state and another, without there being any certainty about who will be the competent state. Subsequently, after the attribution of a broad competence to the European Union in relation to visas, asylum and migration, the Dublin Convention was redrawn in an EU act, which in turn was replaced by regulation 604/2013, known as Dublin Regulation III, that is still in force today. Despite periodic revisions, the main rules of Dublin Regulation III have remained substantially unchanged, although the aim of the regulation is different today: no longer that of ensuring that there is at least one competent State to examine applications for protection, but that there is just one. The main objective has, in fact, become to reduce, if not to clear, the possibility of applicants for international protection to choose the state where the application is to be submitted and, thus, their movement, the so-called secondary movements, within the European Union.

The central part of the system, i.e. the criteria for the determination of the competent state, have not changed substantially since 1990. Those criteria are the following: the State where family members of the applicant are already present, the one that issued the visa or residence permit, or the country where the request is submitted in the case of unaccompanied minors, who are considered a vulnerable category. A residual criterion is that of the State of first entry into the EU which is, in practice, the most widely applied. This criterion is severely criticized by external border states, including Italy, because it causes an imbalance in the responsibility of EU Member States and overburdens those States that are subjected to the twofold responsibility of controlling borders in the interest of all Member States and also receiving asylum seekers. Although data provide a complex picture, with numerous requests for international protection also submitted in EU internal States, the rigidity of the criteria and their practical application have contributed over the years to the creation of strong tensions between Member States.

The application of the Dublin Regulation has led to the creation of responsible units in each Member States which have to interact with each other to effectively identify the competent

[30] The Dublin Unit of the Department for Civil Liberties and Immigration at the Ministry of the Interior is the national authority responsible for the Dublin procedure in Italy. All asylum applicants are photographed and fingerprinted by police authorities, who store their fingerprints in Eurodac. When there is a Eurodac hit, the Dublin Unit within the Ministry of Interior is contacted.

state and to proceed subsequently to the return of persons and their related taking in charge or taking back. In Italy, the national authority responsible for the Dublin procedure is the Dublin Unit within the Department for Civil Liberties and Immigration at the Ministry of the Interior. All asylum applicants are photographed and fingerprinted by police authorities who store their fingerprints in Eurodac. When there is a Eurodac hit, the Dublin Unit within the Ministry of Interior is contacted. The Dublin Unit – entrusted to identify the responsible Member State – has to inform the competent Territorial Commission and the *Questura* that is competent to organize the transfer (Extracts from Favilli 2018; Pannia, Federico, and D'Amato 2018)

With regard to the recent reorganization of the protection regime (Decree-Law no. 113/2018), the majority of interviewees expressed concerns both about the reduction of financial resources (MEIs no. 5, 13 and 14) and the withdrawal of the 'humanitarian protection' status. The elimination of this domestic form of protection could also violate the constitutional principles concerning the protection of the foreigners (MEIs no. 5, 10). This negative evaluation tends to coincide with the position expressed by the UN's special rapporteurs on human rights, according to which the new measures approved in 2018 will certainly lead to violations of international human rights.[31]

RESPOND roundtable of the Italian Migration Governance Network: Implication of the 'Salvini Decree' on humanitarian protection[32]

On the 2nd of July 2019, the second RESPOND roundtable of the Italian Migration Governance Network was held at the University of Florence, eight months after the first one. On that occasion, the purpose was to discuss some key issues relating to governance of the migration phenomenon in Italy. In particular, the discussion revolved around three main migration policy areas: border management, reception, and integration policies. Participants were encouraged to share different points of view and approaches and were free to raise new points for reflection. Specifically, they were asked to focus on the main changes that have occurred since 2011 and the most important actors involved in policy formulation and implementation.

This roundtable maintained the same framework. Participants, including lawyers, legal experts, decision makers, social workers, and activists, were asked to focus on two main topics: *a*) changes occurring after the approval of the so-called "Salvini Decree" in October 2018[33] and *b*) the role of labour market policies in favouring integration processes. The first part was largely a follow-up to the previous event, and aimed to shed light on the practical implications of the new legislation on reception practices, as well as the activities carried

[31] See the press release: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23908&LangID=E

[32] Exctract form the RESPOND blog post by Andrea Terlizzi and Mattia Collini, availbale at https://www.respondmigration.com/blog-1/roundtable-italian-migration-governance-network#_ftnref

[33] Decree-Law no. 113/2018, known as the "Salvini Decree" on immigration and public security (converted into Law no. 132/2018), amended previous legislation on immigration and reception by introducing more restrictive criteria for granting humanitarian protection (previously granted to those who could obtain neither refugee status nor subsidiary protection, but could not be repatriated).

out by the Territorial Commissions for the Recognition of International Protection (*Commissioni Territoriali per il Riconoscimento della Protezione Internazionale*). The second topic explored mostly regarded the importance of work and labour oriented policies for a successful social integration of migrants, with a focus on the relevance of civil society associations in orienting migrants and especially in helping them to gain access to the labour market.

As far as the 'Salvini Decree' is concerned, according to the participants it had large practical implications for the Territorial Commissions evaluating asylum requests. In particular, the new legislation abolished the permits to stay under the humanitarian protection regime, which were largely used before. Several special permits issued by the *Questure*[34] – and not by the Territorial Commissions – have been instituted to replace humanitarian protection, which can be granted for health reasons, to victims of natural disasters, victims of human trafficking, victims of violence and for special acts of bravery and civic valour. However, such permits are now rarely granted and there is a *vacuum* – previously covered by the humanitarian protection regime – that is becoming extremely problematic. In short, Italy has gone from a situation where there was possibly an overuse of the instrument of humanitarian protection to a complete lack of residual protection. This is worsened by the absence of clear directives as to the way the new provisions should be interpreted and implemented, which results in very different practices among *Questure* in different provinces due to a lack of coordination or limited informal exchanges. This is also evident from the different interpretation of the law by the Territorial Commissions operating in different regions. Moreover, the weakness of safe and legal channels for migration (also for work purposes) was frequently stressed during the discussion. This might have led to an inconsistent implementation of the asylum procedure in the past few years.

Overall, Table 9 shows the main actors, problems and solutions identified by the meso level interviewees.

Table 12. Meso-level analysis: Key actors, problems, and solutions

Category	Subcategory
Key actors	EU
	National government
Problems	Absence of safe and legal channels
	Alignment between Italian and EU legislation
	Discrepancy between norms and practice
	Distinction between 'economic migrant' and asylum seeker

[34] The *Questure* are police authorities that mainly deal with public safety and security, as well as performing some administrative functions.

	Dublin regulation
	Legislative confusion
	Recent abolition of the 'humanitarian protection' regime
Solutions	Burden-sharing
	Create an ad hoc Italian agency for international protection
	The EU should increase its powers
	Stop framing migration as a security issue
	UNCHR and IOM should be more involved

Another important problem that emerges from the meso-level analysis – and which was confirmed by the micro level interviews (MIIs) – is the duration of the asylum procedure, which is too long (MEIs no. 1, 2, 6). As stressed by one legal expert, "the greatest problem [asylum seekers] perceive is the length of time they wait. It might happen that [asylum seekers] apply in 2015, the Territorial Commission schedules a meeting in 2016, and gives them an answer in 2017... this is social exclusion" (MEI no. 1). In fact, the sample of micro level interviewees encompasses 20 (out of 29) asylum seekers who arrived in Italy between 2015 and 2017 and their decision is still pending. The majority of them got a negative first instance decision and therefore submitted an appeal. Some of the interviewees (MIIs no. 1,16, and 17) complained about the lack of support and clear information about the asylum procedure at the point of arrival (hotspots): "to me [the asylum procedure] was not well explained […]. It was a 'rough' explanation. They just listened to the story in order to decide about us" (MII no.1). As another interviewee commented, "I didn't even know I was applying for international protection!" (MII no. 16). Some of them could not even distinguish the type of actors they were dealing with (whether governmental or from UNHCR or IOM staff). Though almost all of the interviewees declared that the asylum procedure was clear to them,[35] some of them expressed concerns which were mainly tied to difficulties in communication and translation, and to the understanding of what legal assistance entailed (MIIs no. 2, 3, 4, 6, 9).

[35] Answers might have been influenced by the fact that the interviews were conducted in reception centres. Several interviewees decided not to answer questions regarding the asylum procedure.

5. Key narratives regarding international protection

Similarly, to other European countries affected by the economic crisis, and in line with the overall global trend, the Italian debate has been characterized by a strong increase in anti-immigrant narratives, especially during pre-electoral periods (Korkut, Bucken-Knapp, McGarry, Hinnfors et. al., 2013).

In this respect, in November 2018 a statement of the UN's special rapporteurs on human rights expressed concern about the climate of hatred and discrimination, against both migrants and other minorities:

> During the most recent electoral campaign, some politicians fuelled a public discourse unashamedly embracing racist and xenophobic anti-immigrant and anti-foreigner rhetoric. Such speech incites hatred and discrimination (…) We are also concerned about the continuing smear campaigns against civil society organisations engaged in search and rescue operations in the Mediterranean Sea, as well as the criminalisation of the work of migrant rights defenders, which have become more widespread in Italy[36].

The special rapporteurs stressed that this climate of intolerance could not be separated from the escalation in Italy of hate incidents against groups and individuals, including children, based on their actual or perceived ethnicity, skin colour, race and/or immigration status. During the year of the last national election campaign, civil society organisations recorded 169 racially motivated incidents, 126 of which involved racist hate speech and propaganda, including in public demonstrations. Nineteen cases were reportedly violent, racially motivated attacks.[37]

The polarization of the political discourse concerning international protection has highlighted the existence of two main narratives: protection as an "obstacle" and protection as a "responsibility".

Taking the stance that protection is an obstacle, the centre-right parties argue that there is a need to put "Italians first" through more controlled and better enforced migration and welfare conditions.[38] With specific regard to the protection regimes, the Northern League – in its electoral manifesto for the 2018 general election – clearly proposed the abolition of humanitarian protection, identifying this form of protection as an "Italian anomaly". Moreover, our analysis of the speeches, statements and press releases of centre-rights leaders serves to highlight a tendency to blur the distinction between international protection applicants and irregular migrants.[39]

The Five Star Movement also lays emphasis on controlling migration. In particular, it is worth mentioning an interview in which the leader of the Five Star Movement, Luigi di Maio (accused

[36] https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23908&LangID=E

[37] See the press release: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23908&LangID=E

[38] See, inter alia, the manifestos of the Northern League for the 2013 and 2018 general elections and the 2014 European Parliament Elections.

[39] See, for example, the Facebook post of Matteo Salvini, leader of the Northern League: https://www.facebook.com/salviniofficial/posts/migranti-profughi-richiedenti-asilopolitici-e-giornalisti-hanno-cancellato-la-pa/10152424358998155/ (2 October 2014).

NGOs of lacking transparency, asking for verification as to whether they are saving or ferrying migrants.[40]

At the same time, however, the Italian political arena is not characterized only by the demand for a progressive reduction of migrants' rights and the closure of borders. Indeed, international protection – and more in general migration processes – are represented in a radically different manner in the political manifestos, speeches and statements of the leaders of centre-left parties, which promote the idea of protection as a responsibility.

For example, in a UN Summit for Refugees and Migrants, the then Minister of Foreign Affairs, Paolo Gentiloni (Democratic Party), proposed the extension of the international protection to new categories of refugees, such as people fleeing disasters caused by climate change[41]. The former Minister for Integration of the Letta Cabinet, Cécile Kyenge (Democratic Party), asked that the EU Regulation concerning statistics on international protection be amended. She pointed out that the current statistical methods have led to a negative media representation of international protection.[42]

Despite being permeated by these alternative narratives, the Italian public debate has also shown a constant emphasis on the need for solidarity and a fair sharing of responsibilities (burden-sharing) among EU Member States. This demand is a common feature of the manifestos and political positions of all the major Italian parties with parliamentary representation.

The President of the Republic, Sergio Mattarella – in his address to a joint session of the Italian Parliament marking the sixtieth anniversary of the Treaties of Rome – also emphasized this concept. In the face of migration processes which have undermined Europe's capacity to meet the expectations of its citizens, he called for a common spirit of solidarity among the Member States, rather than a return to a past of walls.[43]

[40] See http://www.dpa-international.com/topic/threat-europe-says-leader-italy-five-star-movement-180129-99-848476

[41] See https://www.unric.org/it/attualita/31510-discorso-del-ministro-degli-affari-esteri-e-della-cooperazione-internazionale-paolo-gentiloni-in-occasione-del-vertice-onu-su-rifugati-e-migranti

[42] See https://www.cecilekyenge.it/2018/11/su-migrazione-e-protezione-internazionale-servono-statistiche-migliori-e-piu-accurate/

[43] The speech of the President of the Republic is available here: https://www.quirinale.it/elementi/1242

6. Examples of positive/best national practices

As regards the **positive practices**, the system for the protection of unaccompanied foreign minors ensures that all unaccompanied minors are provided with adequate legal and humanitarian assistance. First of all, Italian legislation establishes a total ban on the refoulement of unaccompanied minors. Secondly, unaccompanied minors can access the national health service and the education system. Moreover, the system for the protection of asylum seekers and refugees (SPRAR) ensures the reception of unaccompanied minors through its centres. Within this second level of the reception system, the cooperation between local authorities and non-profit and third sector organizations has guaranteed an integrated assistance (cultural mediation, legal counselling, teaching of the Italian language, psychological and healthcare support), which goes beyond the simple provision of accommodation and food. The Italian Roadmap 2015 – a policy document that expresses the position of the Interior Ministry – defined the interinstitutional cooperation within the SPRAR as an Italian "best practice" in the field of reception.[44] The results of the meso-level analyses allow us to confirm this evaluation.

In the academic literature, a further best practice that has been identified is **the programme of assistance and social inclusion "*Non si tratta*"** (Facchi, 2018). The programme contains a set of measures aimed at protecting and reintegrating women who have been victims of illegal trafficking and serious exploitation. The government invested € 9,608,005 in this project, which started in the August 2016, for a duration of 34 months. Specific actions are dedicated to unaccompanied foreign minors (educational paths, internships, etc.).

Name	Description	Further information
System for the protection of unaccompanied foreign minors	Legislative Decree 142/2015 and Law no. 47/2017 provide for all unaccompanied minors to be given adequate legal and humanitarian assistance. In particular, they ensure access to the National Health Service and education system, special procedural guarantees and reception within the SPRAR centres. Moreover, Italian legislation establishes a total ban on the refoulement of unaccompanied minors.	https://www.camera.it/temiap/documentazione/temi/pdf/1104665.pdf

[44] The publication of the Italian Roadmap was required by Council Decision (EU) 2015/1523 of 22 September 2015. The document is available at https://www.meltingpot.org/IMG/pdf/roadmap-2015.pdf

Programme of assistance and social inclusion “Non si tratta”	A set of measures through which the Italian Government tries to protect and reintegrate women who have been victims of illegal trafficking and serious exploitation	https://ponlegalita.interno.gov.it/progetti/non-si-tratta-azioni-linclusione-delle-vittime-di-tratta

7. Policy Brief and Policy Recommendations

Regarding the **policy recommendations**, the report suggests restoring an effective role of the Parliament (thereby improving the quality of the democratic debate) in the governance of migration processes as well as increasing the transparency of the legal framework. These two goals are closely linked: the fragmentation of Italian refugee law in several layers (the Consolidated Act of 1998, administrative directives, soft law instruments, etc.), some of which are opaque and not easily comprehensible by the "rule followers", de facto ends up concentrating strategic decisions only in the hands of the Executive Power. The best way to simultaneously strengthen democratic legitimacy and the comprehensibility of legal regulations concerning the protection regime could be a "return" to the original spirit of Art. 10, par. 3 of the Constitution of 1948. By exploiting the need to implement this provision, which was never put fully into effect in Italian legislation, the Parliament could overcome the traditional emergency logic which characterizes the interventions of the Executive Power in this field, by "re-legislating" and recasting the overall subject matter.

Moreover, the report stresses the importance of strengthening the governance of asylum and international protection, in particular by reducing the margin of discretion of the various players and the fragmentation of the legal framework. An example of a measure which could enhance governance is the strengthening of the coordinating role of the National Commission, also through the possibility of defining binding guidelines for the granting of refugee or subsidiary protection. Indeed, this measure could serve to render the criteria adopted by the Territorial Commissions more homogeneous.

Finally, the report recommends reviewing the recent policies which hinder the effective exercise of the right of asylum or the submission of asylum or protection applications, as well as the right of appeal against decisions to reject such applications. This approach implies avoiding any arbitrary distinction between irregular migrants and asylum/international protection seekers at border crossings and the reinforcement of the system of judicial appeal against decisions concerning international protection.

Name	**Description**	**Further information**
Implementation of the constitutional right of asylum	By implementing the right of asylum in an organic unitary law, as called for in Art. 10, par. 3 Const., the Italian Parliament could "re-legislate" and recast the overall area, which is currently fragmented in several layers.	Text of Art. 10 Const.: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf
Empowerment of the governance	Strengthening of coordination among the various authorities involved in the governance of asylum	

	and international protection. In particular, enhancement of the coordinating role of the National Commission, also through the possibility of defining binding guidelines for the granting of refugee or subsidiary protection.	
Reduction of the barriers which jeopardize the procedural rights of migrants	Review of the policies and legal framework which hinder the effective exercise of the right of asylum or the submission of asylum or protection applications as well as the right of appeal against decisions to reject such applications.	

8. Conclusion

How has the Italian asylum and international protection regime responded to the recent migration 'crisis'. From 2011 to 2017, the growing number of arrivals and applications for international protection (see *supra* 3.3) undoubtedly put the Italian system for governing migration processes "under pressure". Suffice it to say that in the year 2017, a total of 130,119 applications for domestic and international protection were submitted, approximately five times the number submitted in 2011.

The negative representation of these data has contributed to foment a strong anti-refugee and anti-asylum seeker narrative (see *supra* 5). As seen above, the UN's special rapporteurs on human rights expressed concern about the climate of hatred and discrimination against foreigners and civil society organizations involved in the protection of migrants.[45]

These tensions have reached their peak during pre-electoral periods. In particular, the political manifestos of the "securitarian" political parties have defined humanitarian protection as an "Italian anomaly". This status – which derived solely from domestic law – was granted to foreigners who did not meet the requirements for the two main forms of protection, but for who were deserving of protection because of "serious reasons, of a humanitarian nature, or resulting from constitutional or international obligations" (see *supra* 3.1). From the perspective of the anti-immigration parties, this "open catalogue" of conditions justifying domestic protection was the main factor of the strong growth in new arrivals in Italy. Indeed, among the 3 types of protection, humanitarian protection status showed the highest increase. After the good results of the Northern League in the last legislative elections, the new cabinet adopted Decree-Law no. 113/2018, which fulfilled its electoral promise to abolish humanitarian protection.

More in general, the legal reforms and policies developed by the public authorities have addressed the recent massive refugee inflows through an overall downgrading of refugees' and applicants' rights. In particular, the Italian authorities have strengthened the physical and procedural barriers, which preclude or limit access to international protection.

With regard to the "**physical barriers**", the meso-level analysis confirms that the intensification of border controls (*rectius*, the arbitrary distinction between international protection applicants and irregular migrants at border crossings) has in many cases physically prevented migrants from being able to submit their asylum or protection application. These episodes have led to several interventions of the European Court of Human Rights, which requested the Italian Government to provide all applicants and unaccompanied minors with adequate legal and humanitarian assistance (see *supra* 3.4).

A second strategy for downgrading the rights of refugees and applicants is the introduction of **procedural barriers**. Although in some cases conceived to simplify and speed up the domestic asylum proceedings, in practice these reforms have jeopardized the guarantees to which applicants are entitled in the name of the efficiency. An example of this approach is the removal, in 2017, of one level of judicial appeal against the decisions concerning international protection (Decree-Law no. 13/2017, converted, after amendments, by the Law No. 46/2017).

[45] See the press release: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23908&LangID=E

Against this background, the report questions and discusses the Italian political and normative strategies on asylum and international protection, stressing the increasing gap between the legal framework (national and supranational) and actual practices. At the same time, the report tries to identify some national best practices and policy recommendations.

As regards the **positive practices**, the system for the protection of unaccompanied foreign minors ensures that all unaccompanied minors are provided with adequate legal and humanitarian assistance. In the academic literature, a further best practice that has been identified is **the programme of assistance and social inclusion "Non si tratta"** (Facchi, 2018), which contains a set of measures aimed at protecting and reintegrating women who have been victims of illegal trafficking and serious exploitation.

Regarding the **policy recommendations**, the report suggests to exploit the need of a legislative implementation of the article 10, par. 3 of the Constitution with the aim to ensure the comprehensibility of the legal regulations concerning the protection regime through a recast of the overall matter. Moreover, it identifies some solutions which could reduce the margin of discretion of the various players and the fragmentation of the legal framework (e.g., strengthening the coordinating role of the National Commission). Finally, the report recommends reviewing the recent policies which hinder the effective exercise of the right of asylum or the submission of asylum or protection applications, as well as the right of appeal against decisions to reject such applications.

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Appendices

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Decree-law no. 13/2017, converted, after amendments, by the Legislative Act No. 46/2017: www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17;13!vig=

Legislative Act 47/2017: www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-07;47!vig=

Decree-law no. 113/2018, converted, after amendments, by the Legislative Act No. 132/2018: www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2018-10-04;113!vig=

List of meso level interviews (MEI)

Interview number	Organization	Role
1	Legal association	Legal expert
2	Intercultural association	Activist
3	Legal association	Legal expert
4	Research institute	Migration expert
5	University	Migration expert
6	NGO	Office manager
7	Social cooperative	Social worker
8	NGO	Office manager
9	Social and artist collective	Activist
10	University and Territorial Commission	Migration expert
11	Reception center	Manager
12	Law enforcement	Decision-maker
13	Legal association	Legal expert
14	Social cooperative	Social worker
15	Ministry of the Interior	Official

List of micro level interviews (MII)

Interview number	Nationality	Status
1	Gambia (Man)	Asylum seeker
2	Gambia (Man)	Asylum seeker
3	Gambia (Man)	Asylum seeker
4	Gambia (Man)	Asylum seeker
5	Camerun (Man)	Asylum seeker
6	Nigeria (Man)	Asylum seeker
7	Nigeria (Man)	Asylum seeker
8	Nigeria (Man)	Asylum seeker
9	Ghana (Man)	Asylum seeker
10	Nigeria (Man)	Asylum seeker
11	Nigeria (Man)	Asylum seeker
12	Ghana (Man)	Asylum seeker
13	Sierra Leone (Man)	Asylum seeker
14	Ivory Coast (Man)	Special protection
15	Morocco (Man)	Asylum seeker
16	Liberia (Man)	Asylum seeker
17	Libya (Man)	Asylum seeker
18	Pakistan (Man)	Asylum seeker
19	Ghana (Man)	Asylum seeker
20	Nigeria (Woman)	Asylum seeker
21	Nigeria (Woman)	Asylum seeker
22	Nigeria (Woman)	Refugee
23	El Salvador (Man)	Migrant
24	Senegal (Man)	Migrant
25	Gambia (Man)	Subsidiary protection
26	Mali (Man)	Humanitarian protection
27	Nigeria (Man)	Humanitarian protection
28	Nigeria (Man)	Migrant
29	Ivory Coast (Man)	Humanitarian protection