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Some perspectives on the Reform of the "Dublin System" between "European Integration" and "Differentiated Integration", also in the light of the recent changes in the migratory phenomenon

by Mariano Manuel Bartiromo
Graduated in Law

Abstract: *This study analyses previous attempts and current prospects for the reform of the "Dublin III" regulation, taking note of the unsuccessful outcome of ten years of negotiations that have never resulted in the formulation of a new regulatory act, and questioning on the possibility of carrying out interventions under differentiated integration, in particular through the use of the enhanced cooperation procedure or the stipulation of parallel treaties. Finally, the inadequacy of the system will be discussed in the light of the recent evolution of migratory flows from Africa and southern Asia which, by increasingly blurring the difference between economic migration and the search for international protection, seem to require a revision of the entire legislative system on migration.*

1. The "Dublin system" and its crisis

Formulated on the basis of Article 78.2(e) TFEU[1], Regulation (EU) no. 604/2013, known as the "Dublin III" regulation[2], establishes the rules for determining the Member State responsible for examining applications for international protection, identifying it as the one that has assumed the most significant role in respect of the applicant's entry into the territory of the EU. Specifically, there are three established criteria, which must be applied in hierarchical order (Article 7.1): the competent Member State is primarily the one eligible to implement the family reunification of the applicant (Articles 8-11); failing that, the one that has issued the applicant with a valid residence permit or entry visa (Article 12); failing that, the one in which the first illegal entry of the applicant took place (Article 13).

The introduction of this system achieved the result of preventing the presentation of multiple asylum applications, but, in the light of the outbreak of the Mediterranean crisis, practically contextual to the introduction of the "Dublin" regulation, the third criterion soon became the most applied with the consequent overloading of the Member States located at the external borders of the Union (Malta, Italy, Greece, Spain, Portugal, France), whose reception systems ended up collapsing without ever receiving adequate support from the other Member States, in disregard of the principles of solidarity and equity established by Article 80 TFEU[3]. A reform of the "Dublin

[1] «For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising: […] criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection […]».

[2] It had in fact succeeded Regulation 2003/343/EC, known as the "Dublin II Regulation", which in turn had replaced the Dublin Convention, an international treaty stipulated on 15 June 1990 by the twelve Member States of the – at the time – European Community, entered into force for the latter on 1 September 1997 and subsequently extended to the new Member States and to some Third States.

[3] «The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle». In his speech "*The principle of solidarity and its applicative value/ Il principio di solidarietà e la sua valenza applicativa*" at the workshop "*Quo vadis UE? National identities and European values at stake*" of 5 May 2023, as part of the hybrid training lecture series "*Democracy and the Rule of Law: EU Law Issues*" at the University of Salerno, F. BUONOMENNA observed how the nature of principle of

system" immediately appeared to be necessary in order to guarantee a greater sharing of responsibilities at European level, offering due support to the geographically most exposed countries, also taking into account the essential – but to which little attention has been given – fact that many people intending to seek asylum don't intend to remain in the country of first entry, which becomes only a place of transit towards the destination of northern European countries. The following paragraphs will analyse the legislative initiatives undertaken in this regard in the context of Community[4] – or, in some cases, traditional[5] – integration and, in the light of the limited success of these, the possibilities of carrying out a reform of the "Dublin system" in the context of differentiated integration and, specifically, through the enhanced cooperation procedure or the stipulation of parallel treaties.

2. The reform proposals in the context of traditional and community integration

To start a reform process of the "Dublin system", the European Commission, in the European Agenda on Migration of 2015[6], had included among the immediate actions to be implemented for the period 2015-2019 the establishment of a "permanent common system of relocation in emergency

solidarity is left at the mercy of the political opportunism of the Member States, which now attribute to it the "strong" character of a general principle, now the "weak" one of inspiring parameter, depending on whether a matter affects the interests of all the States – as for example in the case of energy – or only some of them, such as in the case of the distribution of migrants.

[4] That is, the decision-making process based on the so-called Community method, based on the completion of the ordinary legislative procedure, in which the legislative initiative is entrusted to the Commission, after which the European Parliament and the Council discuss and approve the proposals with a qualified majority decision. In this way the role of the Parliament – the institution representing the Member States' people – is elevated to the same level as that of the Council – the institution representing the Member States' governments – reinforcing the relevance of the democratic principle.

[5] That is, the decision-making process based on the traditional intergovernmental method, consisting in carrying out the consultation procedure, in the context of which the formation of legislative acts takes place exclusively by the Council, with the reduction of the role of the European Parliament to simple consultation, obligatory but non-binding. In this way, the interests of the governments of the Member States are therefore privileged.

[6] European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *an European Agenda on Migration*, Brussels, 13.5.2015 COM (2015) 240 final.

situations"[7], *i.e.* a temporary mechanism for the relocation of applicants for international protection based, by way of derogation from the Dublin criteria, on the definition of compulsory quotas, in a spirit of solidarity between the Member States. This mechanism was established with two Council's decisions of the same year[8], but never entered into force due to the opposition of the countries of the Visegrád Group[9], traditionally opposed to any form of obligation in the redistribution of migrants. On 4 May 2016, the Commission then proposed a recast of the "Dublin" regulation[10], which provided for the maintenance of the three original criteria but offsetting it with the introduction of a relocation mechanism based on equity criteria, intended to be activated automatically in case of exceeding of a certain percentage threshold of asylum applications lodged in a Member State. The following year, the European Parliament amended this proposal by invoking the replacement of the three Dublin criteria with new criteria based exclusively on the existence of «meaningful links» between the applicants for protection and the country of destination and, in the absence of the conditions covered by these criteria , the automatic activation of the relocation mechanism, which was therefore released from exceeding the percentage threshold of applications and was based on quotas calculated on the basis of the population and the GDP of the various Member States[11]. However, in the context of the subsequent negotiations, the Council tried to reach a compromise between the Parliament's proposal and the position of the States reluctant to reform in a solidarity key (known as the "Bulgaria

[7] Ibid, see para. II.

[8] EU Decision 2015/1523 of 14 September 2015 and EU Decision 2015/1601 of 22 September 2015.

[9] Hungary, Poland, Slovakia and the Czech Republic. The Visegrád Group is a political agreement stipulated in 1991 by these countries for the purpose of military, cultural, economic, energy cooperation and the promotion of their integration into the European Union, which subsequently took place in 2004.

[10] European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, Brussels, 4.5.2016 COM (2016) 270 final 2016/0133(COD).

[11] The amendments were formulated in the report drafted by Swedish MEP Cecilia Wikström, voted by the LIBE Committee on 19 October 2017 and then confirmed by the European Parliament in its plenary session in Strasbourg on 6 November.

compromise" in the light of the Bulgarian presidency of the Council at that period), which replaced the automatic mechanism with intervention measures limited to critical («challenging circumstances») or «severe crises» situations, which was not accepted by many Member States. The 2015 Agenda project then foundered in five years of sterile debate and the process of the desired reform had to start from scratch in the "New Pact on migration and asylum" presented by the Commission with the Communication of 23 September 2020[12], which reaffirmed the principle according to which «no Member State should shoulder a disproportionate responsibility and that all Member States should contribute to solidarity on a constant basis»[13].

In this sense, together with the Pact, the Commission put forward the proposal for a new regulation on asylum and migration management (RAMM)[14], which maintained, like the 2016 recast proposal, the three Dublin criteria, but, unlike this, it envisaged the establishment of a flexible solidarity mechanism based on the obligation for the Member States to make, in favour of those among them who were subjected to «migratory pressure»[15], «solidarity contributions», which, at the discretion of the "contributing" States, could alternatively consist of relocation (according to the quantities defined by the Commission in an annual report) or sponsorship of the repatriation of the "irregulars", *i.e.* the offer of financial, logistical or simply consultancy support or political interlocution with the countries of return. This proposal thus ended up transferring solidarity from the level of

[12] European Commission, *Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*, Brussels, 23.9.2020 COM (2020) 609 final.

[13] Ibid, see para 1.

[14] In a larger package of five proposals. The other four concern a regulation on checks at the external borders, a regulation on crisis situations and *force majeure*, the revision of the proposal for a "Procedures" regulation and the revision of the proposal for a "EURODAC" regulation.

[15] Defined in the letter. w) of Article 2 of the proposal as «a situation where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a burden even on well prepared asylum and reception systems and requires immediate action».

reception to that of repatriation[16], operating in an intergovernmental dimension which left too much discretion to the Member States, distancing the objective of a truly common immigration and asylum policy, and ending up in a solution of *realpolitik*[17] that left the States of first entry totally dissatisfied[18].

But in the following two years, the European Parliament worked on the Commission's proposal until it presented, on 14 April 2023, a draft legislative resolution containing radical amendments[19] that could finally bring about the turning point. Parliament's proposal provides for the disapplication of the first illegal entry criterion for applications for protection lodged by persons disembarked on the territory of the Member States following search and rescue operations or activities[20] and for the establishment of a binding solidarity mechanism in accordance with the principles sanctioned by Article 80 TFEU for the purpose of ensuring «a fair sharing of responsibility» in order to support States «under migratory pressure, including as a result of recurring arrivals by sea and through disembarkations following search and rescue operations» [21]. Furthermore, the regulation of «solidarity contributions» is modified with the introduction of the possibility for the "contributing State" to decide, in agreement with the beneficiary State, to take over the examination of applications for international protection and the elimination of the strongly criticized alternative of sponsoring repatriations, which had made the concept of solidarity flexible[22]. Finally, the possibility for Member States to ask another State (not competent according

[16] Article 45 of the proposal.

[17] German term that indicates the implementation of measures that do not offer innovative and long-term solutions but are limited to intervening on the reality of the moment.

[18] The analysis presented so far is by S. DE STEFANI, *Cosa resta di Dublino: il nuovo Patto europeo su migrazione e asilo*, in *Altalex*, 26 March 2021, available at the address https://www.altalex.com/documents/news/2021/03/26/cosa-resta-di-dublino.

[19] European Parliament, *Report on the proposal for a regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]*, (COM(2020)0610 – C9-0309/2020 – 2020/0279(COD)), available at https://www.europarl.europa.eu/doceo/document/A-9-2023-0152_EN.html .

[20] Amendment 236, concerning Article 21.2 of the Commission's proposal.

[21] Amendment 19, concerning Article 16 of the Commission's proposal.

[22] Amendment 347, concerning Article 45.1bis of the Commission proposal; and amendment 344, concerning Article 45.1(b) of the proposal.

to the Dublin criteria) to take charge of an application is extended to cases in which the applicants have links of a social nature with the other State or linguistic or «other meaningful links» and to cases where it is simply necessary to «support a Member State under migratory pressure» [23]. Negotiations between the Parliament and the Council on the new text were officially launched on 20 April.

3. A reform under differentiated integration?

Without prejudice to the hope – however shrouded in great scepticism – that this time the negotiations will be successful, the limited results achieved so far by the legislative initiatives taken in the context of community integration or the traditional one have led part of the doctrine to take into consideration the possibility of modifying the "Dublin system" under differentiated integration, *i.e.* through the formulation of rules still aimed at achieving the objectives set by the Treaties but limited to the Member States that take part in the decision-making procedure, and specifically through two of its possible articulations[24]: enhanced cooperation and the stipulation of parallel treaties.

3.1. Enhanced cooperation…

Enhanced cooperation is a procedure through which a group of at least nine Member States (one third of the total) can formulate acts concerning a specific theme, always operating within the framework of the EU, and therefore through its institutions, but with effectiveness limited to the participating States' legal spheres[25]. This procedure is used in the presence of deadlock situations in which the Union as a whole is unable to arrive at the formation of a legislative act within a reasonable period because of the lack of unanimity in the Council due to some Member States' *veto*[26]. It

[23] Amendment 247, concerning Article 25.2 of the Commission's proposal.
[24] Other forms of differentiated integration are constituted by the opting-out and opting-in clauses, by the "multi-speed Europe" and by the "European avant-garde".
[25] The regulation of enhanced cooperation is included in Article 20 TEU and in Articles 326-334 TFEU.
[26] Enhanced cooperation has so far been used for the topics of divorce, patents, and the financial transaction tax, as well as for the establishment of the European Public Prosecutor's Office for the protection of the financial interests of the Union.

requires the authorization by the Council, on a proposal from the Commission, prior approval by the Parliament.

Since enhanced cooperation is allowed for matters for which the Union's exclusive competence[27] is not envisaged, it could be used for immigration and asylum policies (Articles 77-80 TFEU), which fall within the framework of the area of freedom, security, and justice (Title V of the TFEU), expressly included among the matters of shared competence between the Union and the Member States (Article 4.2(j) TFEU). However, considering that the Union has already exercised its competence in determining the State competent to receive the asylum request by issuing the "Dublin" regulation, applying enhanced cooperation in relation to this matter would mean calling on the Union to exercise the competence again[28] in the context of a small area of Member States: therefore, in order to evaluate the feasibility of this solution, it would be necessary to understand whether or not the Treaties allow the use of enhanced cooperation for the formulation of rules which, in relations between the States participating in the procedure would derogate from those of general application (which would instead continue to apply to non-participating States). In the light of the provisions of Article 20.1 TEU and 326.1 TFEU, according to which «enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process» and it «shall comply with the Treaties and Union law[29]», the answer can be positive, but, as is generally the case in any area of shared competence, much or all will depend on the political assessments by the Member States[30].

[27] The areas relating to the customs union, competition for the functioning of the internal market, monetary policy, the conservation of marine biological resources, the common commercial policy and the external competence of the Union (*i.e.,* competence to conclude international agreements).

[28] In fact, it should be clarified that under enhanced cooperation it is always the Union that acts and therefore in this context the limit relating to the exercise by the Member States of shared competence, which precludes the effectiveness of the States when the Union has already exercised the competence or has ceased to do so (Article 2.2 TFEU).

[29] The use of the *formula* «Union law» after the reference to the «Treaties» appears unfortunate considering that the Treaties themselves form part of the Union law. Likely, the expression in question should therefore be understood as a reference to secondary law.

[30] E. PISTOIA in her speech "*The feasibility of enhanced cooperation on the Pact on migration and asylum*" at the workshop "*Integration and Cooperation Challenges in the EU Area of Freedom,*

3.2. …Or parallel treaties?

As an alternative to enhanced cooperation, it is being discussed whether it is possible to imagine a modification of the rules of the "Dublin system" through the instrument of parallel treaties, *i.e.*, international treaties stipulated between a limited number of Member States. In this regard, since in this case, unlike what happens under enhanced cooperation, it is no longer the Union that acts but the individual Member States, it is necessary to understand whether such an instrument can be used in an area where the Union has already exercised its competence. Some Court of Justice judgements can be recalled in this regard. In the judgments *Parliament v. Council and Commission* (1993 and 1994)[31] and *Commission v. Council* (2008)[32], the Court ruled favourably on the possibility for Member States to conclude treaties inter se in the areas in which they had already exercised their competences in this way, but not also in areas of shared competence. In *Pringle v. Government of Ireland and others* (2012)[33], the Court then ruled out that the conclusion of the treaty establishing the European Stability Mechanism (ESM) [34] could be prevented by the pre-existence of an institutional tool for differentiated integration (specifically, enhanced cooperation) such as Article 20 TEU, since the Union is not assigned a specific competence on the establishment of a mechanism for financial stability. From these pronouncements it could be deduced that the only instrument for differentiated integration in the areas of shared competence is represented by enhanced cooperation, with a consequent negative answer to the question posed: parallel treaties could not be stipulated in relation to aspects already governed by the law of the EU. In this sense, moreover, the

Security and Justice" of 20 April 2023, in the context of the hybrid training lecture series "*Democracy and the Rule of Law: EU Law Issues*" at the University of Salerno, available at the address https://www.eu-draw.com/wp-content/uploads/2023/04/Prof.-Pistoia.didactic-materials.pdf.

[31] European Court of Justice, joined cases C-181/91 and C-248/91, *European Parliament v. Council and Commission*, judgment of 30 June 1993, [1993] ECR I-3685; and case C-316/91, *Parliament v. Council*, judgment of 2 March 1994 (Full Court), [1994] ECR 1-653.

[32] European Court of Justice, case C-91/05, *Commission of the European Communities v Council of the European Union*, judgment of 20 May 2008 (Grand Chamber).

[33] European Court of Justice, case C-370/12, *Thomas Pringle v Government of Ireland and Others*, judgment of 27 November 2012 (Full Court).

[34] Signed on 2 February 2012 by seventeen Member States.

provisions of Article 2.2 TFEU and of the protocol n. 25 to the TFEU and to the TEU, according to which – respectively – in the areas of shared competence the Member States can exercise their own competences to the extent that the Union has not exercised its own or has ceased to exercise it and, when the Union acts in a given sector, the scope of its competence covers only the elements governed by the acts it adopts and not the entire sector[35].

However, on 23 September 2019, France, Germany, Italy and Malta, in the presence of the Finnish presidency of the Council, had gone in the opposite direction to the conclusions reported by concluding the Malta agreement, with which they had introduced new provisions as regards the determination of the State responsible for the asylum request, despite the fact that it was an area of shared competence in which the Union had already exercised its competence. This agreement intended to overcome the criterion of the country of the first illegal entry with the provision of the offer of a safe port in rotation among the Member States and a rapid solidarity mechanism («fast track») for the redistribution of migrants which implied the transfer to a maximum time of four weeks or, where applicable, immediate repatriation after disembarkation, attributing the responsibility for the application for protection, reception and possible repatriation in the event of a negative outcome of the asylum request to the definitive State of destination. However, it was a temporary system[36] that always operated on a voluntary basis and was limited to arrivals resulting from search and rescue operations in the central Mediterranean, thus not covering autonomous arrivals and arrivals from other routes[37]. But, beyond the obvious limits, the Malta agreement has never entered into force.

[35] *Idem* 30.

[36] It was envisaged for a renewable six-month period, and it was expected to be suspended if the arrivals situation did not remain stable: therefore, paradoxically, it was an emergency measure destined to be suspended precisely in the event of an emergency.

[37] The above mentioned analysis is by ICR, *Accordo di Malta sui migranti. Scheda Tecnica*, 2019.

4. Some Perspectives

The present study cannot reach conclusions. These remain conditional on the evolution and outcome of the ongoing negotiations on the proposal for a regulation on asylum and migration management as amended by the European Parliament[38]. The introduction of the derogation from the country of first illegal entry criterion in case of disembarkation following search and rescue operations could represent the first turning point after ten years of fruitless debates, but optimism must remain cautious in the light of the systematically poor outcomes of previous initiatives, as well as the imminence of the new European elections which, by changing the composition of the European Parliament, could overwhelm the legislative processes in progress. Even if the proposal currently under examination were to fall on deaf ears, the paths of differentiated integration could then represent a solution to give an answer to a reality that is increasingly distant from the negotiating tables and from the purposes of the Treaties. But, more broadly, it should be noted that – like the directives respectively about the procedures for granting and withdrawing international protection and the reception of the applicants[39] – the "Dublin" regulation limits its scope of application to applications for international protection presented "on the territory of the Member States", excluding those presented at the relative foreign representations[40]. Thus, the regulation ratifies the principle of the territoriality of the asylum application, which is at the basis of the paradox of the right of asylum in EU law, for which the recognition of this right (Article 18 of the Charter of Fundamental Rights of the EU) is not supported by an institutionalized system of legal channels of entry into the Member States' territory for the purpose of submitting the asylum application. The creation

[38] Above, para. 2

[39] Article 3.1-2 of Directive 2013/32/EU establishes that «this Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection», while it «shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States». The same provisions are set out in Article 3.1-2 of Directive 2013/33/EU.

[40] Article 3.1: «Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones».

of these channels is basically left to the Member States' independent initiatives and frequently, within these, to private entities' initiatives[41]. Indeed, in the various regulations on international protection, «asylum seekers» are defined as those who (already) «have lodged an application for protection»[42], therefore assuming that they are already on the territory of the Union, without dealing with the modalities of transfer. It follows that the majority of people intending to seek asylum reach the territory of the Member States through illegal channels, relying on criminal organizations and thus ending up entering the circuits of smuggling of migrants or trafficking in human beings, seriously jeopardizing their life on the way. As reported by the European Parliament, it is estimated that 90% of people who have obtained recognition of refugee status or other title of international protection have entered the Member States with irregular means through potentially deadly routes[43]. Such a situation not only suggests the need to institutionalize legal channels of entry for persons in need of international protection for the purpose of submitting the application – if not even an overturning of the principle of the territoriality of the application[44] – but

[41] The so-called private or community sponsorships are programs based on cooperation agreements (partnerships) entered into force between state authorities and civil society organizations under which the latter fully finance the projects and are directly involved in all phases of the implementation procedures. They are at the basis of modern humanitarian corridors in the recent Italian, Belgian and French experience, referred to by the European Commission in Recommendation (EU) 2020/1364 of 23 September 2020 relating to legal protection pathways in the EU (considerating 25-30). See on this subject ICR, *Ponti, non muri. Garantire l'accesso alla protezione nell'Unione europea*, Roma, 2015; e Vv. Aa., *Private sponsorship per l'integrazione: verso il modello europeo,* policy brief curated by Eurodiaconia. FCEI, FEP, OXFAM Italia and funded by AMIF, December 2020.

[42] Article 2(i) of directive 2011/95/EU; Article 2(c) of directive 2013/32/EU; Article 2(b) of directive 2013/33/EU; Article 2(c) of regulation (EU) 604/2013. About the paradox of the right of asylum, see F.L. GATTA, *La "saga" dei visti umanitari tra le Corti di Lussemburgo e Strasburgo, passando per il legislatore dell'Unione europea e le prassi degli Stati membri*, in *Dirittifondamentali.it*, 12 june 2019, pp. 1-9; and C. SICCARDI, *Quali vie di ingresso legale per i richiedenti protezione in Europa? Contesto europeo e costituzionale*, in *Diritto, Immigrazione e Cittadinanz*a, file n. 2/2022, pp. 77-80.

[43] European Parliament, resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas (2018/2271(INL)), considerating E and point 3 of the annex.

[44] Making the presentation of applications to the foreign representations of the Member States ordinary or, even better, establishing the authorities in charge of examining them in these offices would allow legal access to deserving people and completely prevent it from undeserving ones, without giving them the possibility of reaching the country or subjecting them to immediate refoulement in case of interception at sea.

allows us to go even further observing how the problem of determining the competence for examining applications for international protection constitutes only one of the critical aspects of the regulatory system on migration, which should probably be reviewed in its entirety in the light of the recent evolutions of the phenomenon, which show a growing blurring of the lines between economic migrants and people in need of international protection. By limiting the field of investigation to the Mediterranean routes and the Balkan route (travelled by people from central-northern Africa, Syria, southern Asia and now also from Afghanistan), in which the now more than ten-year "migration crisis" in fact is substantiated and exhausted, it should be noted that – with the exception of Syrians and Afghans – at the offices of the national authorities in charge of examining asylum applications it's easy to see the influx, rather than of people in need of international protection who migrate, of migrants seeking international protection. It is a fact that the European institutions should consider recognizing that for a long time the problem of the "Dublin" rules has gone beyond the field of international protection.

For combating illegal immigration, it might therefore be appropriate to establish legal channels of entry that are easier than the existing ones (types of visas envisaged by the Visa Code[45], "flow" decrees) and not necessarily connected to the needs of international protection, whose system has been overloaded by the examination of cases increasingly distant from its original *ratio*. In this way, economic migrants who give the necessary guarantees in terms of social security could reach Europe without risk and without implementing the activities of transnational crime. And at this point an extreme bill could also be shared, such as the British one, to deny the possibility of requesting international protection and the *non-refoulement* principle's protection to those who arrive illegally or to immediately reject those who, having made use of the procedure for legal entry have received a refusal, because in that case recourse to traffickers would no longer be a desperate alternative to the absence of legal avenues but an offense to all intents and purposes committed by people who would choose not to make

[45] Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 *establishing a Community Code on Visas*.

use of easy and free routes and on whose protection needs or on whose merits of entry and stay on European territory it would therefore be legitimate to doubt.