

## Chapter Twelve

# EU Integration and Policy (In)coherence towards Irregular Migration

**Nadia Petroni**

### **Abstract**

Irregular migration in the European Union (EU) dominates the current EU political agenda. It is also the top concern of European citizens, according to the latest Standard Eurobarometer (Spring 2019).<sup>38</sup> EU member states, however, are not affected to the same degree, resulting in political friction with regard to how to deal with the challenges of this phenomenon. Furthermore, the EU's failure to provide an adequate and unitary response to the unprecedented influx of irregular migrants in 2015 exposed the strength of state sovereignty within member states and led to divisions within the EU so far as to threaten the overall functioning of the Schengen Area. As a result, the EU approach to irregular migration shows clear signs of following an intergovernmental logic of cooperation, where the supranational institutions have a lesser role leaving member states in the Justice and Home Affairs (JHA) Council in the driving seat. Nonetheless, there is an apparent paradox: EU institutions and member states are more divided than ever over a common approach to irregular migration, yet at the same time they are increasingly converging towards more restrictive migration policies.

### **Introduction: Contextualisation of the problem**

The issue of irregular migration currently dominates the European political agenda. It has been at the heart of recent election campaigns across the continent and has spilled into broader debates concerning the future of Europe. According to the Standard Eurobarometer of Spring 2019 (European Commission, 2019a), the phenomenon is perceived as the most crucial issue facing the EU. It is the top concern in twenty-one EU member states, reaching its highest scores in Malta (63 per cent), the Czech Republic, Estonia and Slovenia (all 53 per cent). Irregular migration, however, has played out differently in the regions of Northwestern, Southern, and Central-Eastern Europe, resulting in different approaches across the EU member states.

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<sup>38</sup> European Commission (2019a) Standard Eurobarometer 91: Public opinion in the European Union, p. 19.

Following the unprecedented influx of migrants in 2015, when over 1.8 million irregular migrants arrived in Europe (Frontex 2018, p. 8), the prevention of irregular migration has become one of the top EU policy priorities. Consequently, Europe experienced a 'race to the bottom', with most member states introducing a series of restrictive migration policy measures to deter irregular migration. At the same time, the question of how to deal with the phenomenon has become the most divisive issue within the EU, at both national and EU level.

The diverse policy approaches to the unparalleled influx of irregular migrants indeed created a divide among EU member states and institutions, drastically altering the landscape of European politics. In essence, the migration debate brought to the forefront questions concerning the resilience of the European integration project. Given the current situation, therefore, it is uncertain whether the EU will manage to rise to the challenge of irregular migration or risk fragmentation of the European project.

This chapter proceeds as follows. First, it discusses the difficulty in developing coherent migration policies, to deal with the challenge of irregular migration, due to the heterogeneous policy preferences of the EU member states and institutions. Then it examines the impact of the absence of solidarity and fair sharing of responsibility among member states on the EU approach to irregular migration. The final section summarises the chapter, and questions whether the EU will succeed in achieving policy coherence in this domain in the future.

### **Incoherence in the EU approach to irregular migration**

Since 1999, the EU has been working to develop a common EU migration policy (Peers et al., 2015). European cooperation in the area of irregular migration, however, has been neither unproblematic nor has it automatically translated into EU integration. This stems primarily from the fact that member states have jealously guarded their sole right to admit or exclude third country nationals from their respective territories.

EU member states' reluctance to delegate decision-making in this sovereignty-sensitive policy domain beyond the national level has resulted in an ongoing tension over what should be handled at the supranational level, and what should remain in the domain of national governments (Givens, 2010). In consequence, member states have not yet succeeded in agreeing on clear political objectives for a common migration policy. Migration policy in the EU, therefore, remains a largely national endeavour, where member states continue to develop their own migration policies (Calleja Ragonesi, 2014).

In addition to member states' unwillingness to transfer competences in the field of migration to the supranational level, the EU's failure to articulate a coherent approach to irregular migration can be attributed to heterogeneous national policy preferences over how to deal with the phenomenon. In practice, varying political cultures and migration traditions, together with the asymmetrical distribution of irregular

migrants across EU member states, have shaped differing national preferences in the context of irregular migration (Ruhs, 2017). Hence, they explain the challenge in achieving policy coherence in this domain.

Initially a six-member bloc, by the mid-1990s the Union comprised fifteen member states, which, with the exception of the southern states, were prosperous and of a Northwestern European cultural trope. The accessions from 2004 onwards brought the number of member states to twenty-eight with most of the new members from Central and Eastern Europe with a post-communist past. This has made the Union much more heterogeneous, bringing new preferences and challenges, raising the question of whether it is possible to have a 'one size fits all' EU law (Chalmers et al., 2014). The date of EU accession is an important factor shaping member states' approaches to irregular migration. In essence, while most of the 'older' members have had years of experience with irregular migration, those member states that joined from 2004 onwards were faced with a relatively recent phenomenon to which they have had to adapt very rapidly.

Some of these states also became entry points for irregular migration and consequently more dependent on EU support for border control, while concurrently facing the social and political complications that arise from the phenomenon, such as informal employment (Carmel, 2013). EU member states' approaches to irregular migration also vary in the context of their geographical proximity to zones of instability and conflict. Indeed, one of the principal determinants influencing a member state's approach to irregular migration concerns geographic location.

Since the different regions of the EU experience different migratory pressures, this has a significant impact on the approaches of individual member states. For instance, the focus of destination states, such as Germany and Sweden, has been on secondary movements of irregular migrants. In contrast, frontline states, such as Italy and Greece, have long called for the abolishment of Dublin's 'first country of entry' rule, which places a burden on such states.<sup>39</sup> This has resulted in a situation where some member states, particularly those staggering under the weight of irregular migration, strive for a common policy governed by solidarity, while others far removed from the issue have little incentive to standardise policy and thus are less interested in pursuing long-term durable solutions.

Another major challenge in achieving policy coherence in this domain concerns the issue of variable geometry, which formally limits the ability of the EU to establish a common policy. More specifically, this relates to those member states that joined in the first enlargement of 1973: Denmark, Ireland and the UK. With the aim of safeguarding national sovereignty, these states have obtained 'opt-outs' from the area of freedom, security and justice (AFSJ) to avoid cooperation in the

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39 Another frontline state, Malta, faced migratory pressure following EU accession in 2004. See for example, Pace (2013) and Harwood (2014).

adoption of measures relating to Justice and Home Affairs (JHA) (Adler-Nissen, 2008). The unequal application of the processes of supranationalisation in the field of JHA, therefore, reveals the difficulty in developing a coherent policy to deal with irregular migration.

An additional obstacle, in the above context, concerns the costs attached to the granting of asylum. The possibility that irregular migrants may claim asylum appears to constitute the main barrier to cooperation in this field. According to the Organisation for Economic Co-operation and Development (OECD, 2017) estimates, the average cost for processing and accommodating asylum seekers within the EU is around 10,000 euro per asylum seeker for the first year. Accordingly, the major challenge stems from the fact that most member states perceive no benefits in cooperating in matters of irregular migration, hence the tendency to 'free-ride' at the expense of the frontline states.

In the absence of a coherent policy to deal with irregular migration, member states are increasingly pursuing unilateral measures, such as concluding bilateral agreements with third states, and building walls and fences along their borders to prevent irregular migration. There has also been a visible shift towards the tightening up of national asylum and migration policies in most member states, in an attempt to decrease the attractiveness of the respective member state for irregular migrants (Zanker, 2019). Such measures, however, do not reflect the Union's fundamental values, namely the principle of solidarity and fair sharing of responsibility.

Apart from the diverse policy approaches of the EU member states, the objectives of the three main institutions involved in EU legislation also differ, which explains the differences in their respective approaches to irregular migration. Nonetheless, following the unprecedented influx of irregular migrants in 2015, the Commission's stance changed significantly, from promoting the rights of asylum seekers to satisfying political interest in the Council. Likewise, the European Parliament (EP) appears to be 'going backwards' in terms of migrants' rights (Lopatin, 2013). As co-legislator, Parliament has often emphasised the need for a solidary approach to irregular migration; however, the rise of right-wing populist parties in the EP is influencing EU policy choices as support for mainstream political parties is on the wane (Lutz, 2019).

In recent years, the issue of irregular migration emerged at the centre of the debate in national elections across the EU, particularly since 2015, with right-wing populist parties gaining support in several member states. More importantly, the rise of right-wing populism is transforming member states' approaches to irregular migration. The case of Germany illustrates such a transformation. Known for its 'open-door' policy, enacted in August 2015, which allowed in over a million irregular migrants, it shifted course only the following month with Chancellor Merkel's U-turn leading to the reinstatement of border controls at the German-Austrian border. Merkel's change

in tone can be seen as a response to increasing public pressure against her ‘open-door’ policy (Dimitriadi et al., 2018).

Right-wing populist parties have made significant electoral gains across Europe, such as in Austria, Denmark, France, Germany and Italy. Some have taken office, while others have become the main opposition voice. In France, National Front<sup>40</sup> leader Marine Le Pen outpaced traditional centre-left and centre-right parties in the presidential elections of 2017, reaching the second and final election round, in which she received about a third of the votes cast. In the Netherlands, Geert Wilders’ Party of Freedom (PVV) came in second place in the national election of the same year. Meanwhile, the Alternative for Germany (AfD) shifted from being primarily neoliberal in focus to becoming an outspoken anti-immigrant populist party, receiving 12.6 per cent of the votes in the September 2017 federal elections, and becoming the first right-wing populist party to be represented in the German Bundestag since World War II. At the end of 2017, the coalition government formed by the centre-right Austrian People’s Party (ÖVP) and the far-right Freedom Party of Austria (FPÖ) resulted in the first western European state with a governing right-wing populist party (Ehmsen and Scharenberg, 2018). This continental shift towards right-wing populism also includes Italy, where the Five Star Movement (Movimento 5 Stelle) and the League (Lega) scored a major success in the March 2018 general elections, becoming coalition partners in the new government and the first populist government in Western Europe.<sup>41</sup>

The rise of the right-wing populist party, Sweden Democrats, in the 2018 elections in Sweden illustrates that this is Europe’s new normal. Since 2015, Sweden rapidly changed, from promoting one of the EU’s most open immigration policies to embracing one of its most restrictive, although it was thought to be immune from the trend to nationalistic politics (Ekman, 2018). Populist resentment towards irregular migration also played a crucial role in the victory of the pro-Brexit forces in the UK EU membership referendum, which took place on 23 June 2016 (Dinan et al., 2017).

In the aftermath of the mass influx of irregular migrants in 2015, most EU decisions taken to deal with the issue were approved at the meetings of the European Council, and taken in the Council, suggesting a shift towards intergovernmental policymaking as well as the bypassing of supranational institutions, exemplified by the 2016 EU-Turkey Statement. The controversial deal, which in practice closed all borders along the Western Balkan route, was agreed upon by EU leaders without the involvement of Parliament. The EU approach to irregular migration thus shows clear signs of following an intergovernmental logic of cooperation, where the supranational

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<sup>40</sup> Renamed ‘National Rally’ (Rassemblement National, RN) on 1 June 2018.

<sup>41</sup> The government, however, collapsed at the end of August 2019. At the beginning of September 2019 the Five Star Movement formed a government with the centre-left Democratic Party (Partito Democratico). Porro (2019) discusses the impact of the new coalition on Italy’s approach to irregular migration.

institutions have a lesser role leaving member states in the (JHA) Council in the driving seat.

The manifold approaches within the EU to irregular migration reveal an inherent tension in the development of a common policy. Above all, they reveal the inability of EU member states to act cohesively, particularly in the face of migration pressures. Nevertheless, EU actors all seem to support the same pragmatic strategy; that is, offering benefits, notably money, to third countries, in exchange for a reduction of irregular migration. Indeed, EU member states and institutions, are increasingly converging in the ‘fight against illegal migration’, resulting in a paradigm shift characterised by more restrictive policy prescriptions across Europe, involving strengthening the bloc’s external borders, and the externalisation of migration controls. The words of European Council President Donald Tusk, following the informal meeting in Salzburg in 2018, encapsulate the prevailing focus of the EU vis-à-vis irregular migration:

The migration debate showed that we may not agree on everything, but we agree on the main goal, which is stemming illegal migration to Europe.<sup>42</sup>

An apparent paradox thus emerges. Although the EU is more divided than ever over a common approach to irregular migration, it is united in preventing irregular arrivals. Indeed, Europe is more divided than ever over how to tackle the phenomenon, resulting in deadlocked inter-institutional negotiations on the reform of the Dublin Regulation (since 2016) and prolonged internal border controls (since 2015). However, when it is a question of the goal of preventing irregular migration, the EU tends to be surprisingly ‘united in diversity’.<sup>43</sup> Still, despite convergence in the tightening up of migration policies, EU member states and institutions have not managed to overcome their differences on fundamental aspects of EU integration, in particular concerning the principle of solidarity and fair sharing of responsibility.

### **Lack of solidarity and fair sharing of responsibility in the EU approach to irregular migration**

An inherent flaw in the EU approach to irregular migration is that it lacks a long-term comprehensive strategy involving sustainable, durable solutions, governed by the principle of solidarity and fair sharing of responsibility. In practice, the EU approach is characterised by short-term ad hoc initiatives and the absence of intra-EU solidarity. A good example here is the Commission’s 2015 emergency relocation mechanism to assist Italy and Greece (Carrera and Guild, 2015), which even so resulted in most member states failing to fulfil their obligations and relocate the figures they had committed to, revealing a lack of solidarity even in times of crisis.

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<sup>42</sup> Tusk quoted in European Council Press Release, 20 September 2018.

<sup>43</sup> ‘*In varietate concordia*’ is the official motto of the EU, adopted in 2000.

Lack of solidarity in this policy domain has resulted in a political deadlock since 2016 over reform of the Dublin Regulation, largely due to political controversy as regards the inclusion of a corrective allocation mechanism to fairly distribute migrants across EU member states and thus alleviate the pressure on frontline states (Di Filippo, 2016). So far, the only form of solidarity that has been institutionalised concerns the financial aspect, specifically through the Asylum Migration and Integration Fund (AMIF) which consists of a fixed amount per member state, in addition to a variable amount, for those member states requiring emergency assistance in the event of a mass influx of irregular migrants (EP, 2018).

The failure of European solidarity calls into question the resilience of the European integration project. Schengen, one of the major achievements of European integration, has been under huge stress since 2015, following the decision of some member states to ‘temporarily’ reinstate border controls – with the aim to prevent secondary movements of irregular migrants from neighbouring member states. Previously, this measure was primarily used in connection with large sporting events or high-level political meetings and usually carried out for only a few days or weeks. Member states justified the reintroduction of border control at their internal borders on account of the unprecedented and uncontrolled influx of irregular migrants and the risk related to organised crime and terrorist threats (Guild et al., 2015).

Germany was the first member state to implement such border controls, in September 2015, which led to the reintroduction of internal border controls in other member states, such as Austria, Sweden, France and Denmark. Although these measures were authorised by the EU, they were prolonged several times, and thus amount to a major and long-term restriction of the earlier state of integration. Internal border checks are set to expire on 12 November 2019, even though since 2017 the number of irregular arrivals dropped significantly owing to the implementation of the EU-Turkey Statement in March 2016 (European Commission, 2019b).

The reintroduction of border control, therefore, remains a prerogative of the member states. In addition, Schengen rules are strongly dominated by intergovernmental interests, reflected in the sustained unwillingness to lift internal border controls. This state of affairs raises questions concerning the absence of intra-EU solidarity and fair sharing of responsibility in the context of irregular migration, where precedence is given to national over common interests, and lack of mutual trust among member states is hindering progress towards a coherent policy. It also highlights that even those member states that were initially more liberal, namely Germany and Sweden, suspended Schengen rules in order to deter irregular migrants from entering their territory and encourage them to search for protection in other states. In addition to the reintroduction of ‘temporary’ border control at the internal borders within the Schengen area, other EU member states, such as Bulgaria, Hungary and Slovenia,



erected walls and fences along their internal borders to prevent the arrival of irregular migrants from other member states, resulting in further disunity within the EU.<sup>44</sup>

If there is one conclusion to be drawn with a relatively high level of certainty, it is that the long-term challenge of irregular migration requires more than the present ad hoc solutions based on compensatory economic solidarity. Moreover, as long as the principle of solidarity is voluntary, it will not work and hence will continue to pose a serious challenge in developing a coherent, long-term and comprehensive strategy to tackle the challenge of irregular migration. In the latter's absence, the risk is that the philosophy of each individual member state will prevail, resulting in the renationalisation of migration policies, permanent controls at the internal borders, and ultimately, the end of Schengen.

### **Conclusion: towards a coherent approach to irregular migration?**

This chapter examined the challenges related to developing a coherent policy towards irregular migration; a goal that has not yet been achieved. The issue of irregular migration dominates the current political agenda in Europe. It has been at the heart of recent election campaigns across the continent, resulting in the rise of right-wing populist parties and a decline in traditional mainstream political parties. It has also become Europe's most divisive issue due to discordant policy objectives with regard to how to deal with the phenomenon. Although at the time of writing irregular arrivals have dropped to pre-crisis levels, the issue remains highly controversial at both EU and national level. Given the circumstances, it is uncertain whether the EU will succeed in achieving policy coherence in this domain in the future.

The chapter illustrated that although the EU focus is increasingly on the prevention of irregular migration, the policy process in this sovereignty-sensitive field remains fragmented. In addition, it is marked by unilateral measures taken by individual member states to protect their domestic political interests against the perceived threats posed by irregular migration.

One of the major obstacles in formulating a coherent policy to deal with irregular migration concerns the variation in policy preferences across the EU. At the national level, policy approaches are deeply rooted in historical legacies as well as political, economic and social factors, including issues of religion and cultural identity. Moreover, the asymmetrical impact of irregular migration across EU member states, primarily the result of geographic location, has significantly influenced their respective approaches. At the EU level, discordance between the EU institutions' approaches reflects their respective objectives, even though following the influx of irregular migrants in 2015, the Commission and EP's stance changed significantly,

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44 It is also important to point out that Spain erected fences in its enclaves Ceuta and Melilla on its borders with Morocco since 1993 to prevent irregular border crossings.



from promoting the rights of asylum seekers to satisfying political interest in the Council. These powerful cleavages thus make it harder to reach consensus in this policy domain.

Interestingly, since 2015, there has been some form of convergence in the EU approach to irregular migration, as EU member states and institutions are increasingly shifting their focus towards the 'fight against illegal migration' and the externalisation of migration controls. In other words, security-oriented measures have dominated, resulting in convergence towards more restrictive migration policies in order to prevent irregular migrants from reaching Europe. Nevertheless, it is important to point out that EU cooperation in this policy domain has not automatically translated into EU integration.

Indeed, despite visible convergence in restrictive migration policies, EU member states and institutions have not yet managed to overcome their differences on fundamental aspects of migration governance, in particular, the principle of solidarity and fair sharing of responsibility. The key challenge lies in the fact that those member states not located on the EU's external borders perceive no benefits in cooperating in matters of irregular migration. Hence, the tendency to 'free-ride' at the expense of the frontline states rather than cooperate in establishing a permanent burden-sharing mechanism to fairly distribute migrants across EU member states and alleviate the burden from such states. The absence of solidarity and fair sharing of responsibility within the EU has become a major barrier to policy coherence. So long as this principle will remain voluntary, it is most unlikely that EU member states will pull together and agree on a long-term solution.

Furthermore, the long-term challenge of irregular migration requires more than the present ad hoc solutions based on compensatory economic solidarity. Policy development has so far proven to be reactive rather than forward-looking. Particularly, since 2015, EU member states and institutions are increasingly opting for ad hoc policy solutions which operate outside legislative frameworks including intergovernmental agreements and soft policy approaches, exemplified by the EU-Turkey Statement, agreed upon by the heads of state or government of the EU member states and their Turkish counterparts. EU policymaking in this field thus shows clear signs of following an intergovernmental logic of cooperation where the supranational institutions have a lesser role leaving member states in the JHA Council in the driving seat.

The direction in which EU policy towards irregular migration will develop hence remains uncertain. Will the EU split further and pursue a policy strategy aimed exclusively at preventing irregular arrivals, or will it manage to find a way out of the current impasse and reform the Dublin Regulation in accordance with the principle of solidarity and fair sharing of responsibility? Taking into consideration the current political climate, the likelihood is that common positions will not be found in the near future. The development of a long-term comprehensive strategy will require

political will, mutual trust, and genuine solidarity. If undertaken successfully, however, these common efforts could re-energise European integration and have positive spillover effects in other policy areas.

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# Index

## A

- agriculture 97, 98, 105
- Alliance of Liberals and Democrats for Europe (ALDE) 80, 82
- Arab Spring 23, 24, 108, 109, 111, 112, 113, 118, 121, 126, 137
- Asylum Seekers 26, 113, 119, 214, 215, 216, 217, 218, 219, 220, 222, 224, 225, 228, 229, 233, 238

## B

- Border Control 232, 236, 240

## C

- Civilian Power 24, 147, 149, 156, 157, 160, 162, 165
- Civil Society Facility (CSF) 111, 113, 115, 116, 118
- Common Agricultural Policy (CAP) 96, 98, 100, 114
- Common European Asylum System (CEAS) 11, 90, 211, 214
- Common Foreign and Security Policy (CFSP) 18, 132, 147, 149, 151, 164, 189, 197
- Common Security and Defence Policy (CSDP) 24, 132, 147, 149, 151, 172, 197
- Conflict resolution 23, 108, 109, 117, 123, 124
- Council of the EU 26, 70, 86, 120, 149, 159, 163, 173, 191, 192, 193, 195, 196, 197, 206, 207
- Cyber Maastricht 25, 174, 186, 194, 202, 203, 204, 205
- Cyber resilience 166, 167, 172, 187, 202
- Cybersecurity 10, 25, 105, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 178, 179, 180, 181, 182, 183, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 204, 205, 208, 209

## D

- Defence 9, 11, 20, 24, 25, 33, 41, 66, 70, 74, 86, 87, 88, 89, 90, 91, 128, 129, 131, 132, 133, 135, 136, 137, 138, 139, 140, 141, 142, 143, 147, 148, 149, 150, 151, 153, 154, 155, 156, 157, 158, 161, 162, 163, 164, 167, 172, 173, 174, 175, 176, 177, 179, 180, 181, 182, 183, 184, 185, 187, 188, 191, 193, 196, 197, 201, 202, 204, 205, 208
- Deterrence 129, 132, 141, 177, 187, 203
- Dublin Regulation 212, 216, 220, 224, 226, 228, 229, 235, 236, 238

## E

- Economic partnership 113
- EU-Arab States relations 109
- EU citizens 23, 64, 66, 68, 74, 91, 112, 148, 156, 161
- EU Cybersecurity Strategy 169, 170, 171, 172, 196, 200
- EU Global Strategy (EUGS) 135, 147, 148, 149
- European Commission 8, 11, 15, 16, 28, 40, 56, 57, 62, 63, 65, 66, 68, 73, 76, 77, 84, 89, 90, 92, 99, 101, 102, 106, 107, 111, 112, 117, 125, 139, 148, 152, 163, 164, 167, 171, 172, 179, 183, 191, 192, 193, 200, 201, 204, 207, 208, 213, 226, 227, 230, 236, 240
- European Conservatives and Reformists 82, 90, 93
- European Endowment for Democracy (EED) 111, 113, 115, 116, 126
- European identity 37, 38
- European Neighbourhood Policy (ENP) 112, 190
- European Parliament 9, 23, 24, 26, 29, 33, 36, 56, 57, 68, 73, 76, 77, 78, 80, 84, 85, 86, 87, 88, 89, 91, 92, 93, 94, 108, 109, 114, 117, 120, 121, 125, 147, 153, 155, 160, 162, 163, 164, 165, 182, 183, 184, 185, 191, 192, 206, 207, 208, 212, 213, 226, 227, 228, 233, 240

European People's Party (EPP) 57, 80, 89, 90, 93, 94

EU's external trade policy 96

EU values 65, 72, 74, 172, 200

## F

Federalism 41, 52

Future of Europe debate 23, 78, 79, 83, 84

## G

Global Value Chains (GVC) 23, 97, 102, 106

Governance 12, 166, 182, 189, 195, 206

Greens/European Free Alliance (G-EFA) 80

## H

Human rights 10, 19, 23, 24, 74, 104, 108, 109, 112, 120, 121, 122, 123, 156, 159, 160, 165, 200, 203, 217, 221, 223, 224

## I

Irregular migration 11, 25, 26, 230, 231, 232, 233, 234, 235, 236, 237, 238

## J

Japan 97, 98, 99, 100, 102, 104, 106, 140, 200

Jean-Claude Juncker 16, 22, 56, 57, 76, 83, 88, 92, 93

Justice and Home Affairs 9, 217, 230, 233

## M

Migration policy 32, 231

## N

NATO 12, 24, 36, 64, 110, 119, 128, 130, 131, 132, 133, 135, 136, 137, 138, 139, 140, 141, 142, 143, 145, 148, 149, 150, 151, 153, 158, 162, 164, 184, 191, 192, 197, 201, 204, 209, 210, 217

## P

Preferential treatment 96, 98, 100

## R

Refugees 19, 25, 30, 32, 70, 112, 113, 119, 218, 222, 223, 229

Rights of asylum seekers 26, 233, 238

## S

Security 9, 10, 16, 18, 21, 23, 24, 25, 29, 30, 34, 36, 62, 64, 65, 68, 72, 73, 74, 85, 87, 89, 90, 107, 108, 109, 116, 117, 118, 119, 121, 122, 123, 124, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 139, 140, 141, 142, 144, 145, 148, 149, 151, 155, 157, 158, 159, 161, 166, 167, 168, 169, 170, 171, 172, 173, 174, 176, 177, 178, 179, 180, 181, 182, 183, 187, 188, 191, 192, 193, 195, 196, 197, 199, 201, 204, 207, 208, 209, 210, 214, 219, 221, 232, 238

Single currency 17, 29, 31, 36, 71, 88, 91

Single market 63, 68, 70, 84, 171, 187, 188, 190, 191, 192, 195

Socialists and Democrats 81, 89, 90, 94

Social policy 86, 239

Solidarity 44, 49, 50, 51, 61, 66, 76, 141, 159, 214, 215, 216, 218, 220, 222, 224, 228, 231, 232, 233, 235, 236, 237, 238, 239

Sovereignism 22, 28, 29, 39

Sovereignty 22, 29, 32, 35, 36, 37, 38, 39, 44, 46, 47, 48, 49, 50, 120, 135, 143, 148, 173, 192, 208, 230, 231, 232, 237

State of the Union Address 56, 57, 58, 67, 76, 84, 92

Symbiosis 42, 43, 45, 48, 50, 51, 53

## U

USA 19, 23, 24, 97, 98, 100, 102, 103, 104, 106, 120, 122, 123, 124, 148, 150, 191, 195, 199

## W

White House 133, 134, 135, 141, 145

World Trade Organization (WTO) 96

