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Self-Organisation of Third-Country Nationals in the European Union: Polycentric Governance by the 'Other'

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A discussion of polycentricity in the EU limited to EU citizens would be inherently incomplete as it would exclude the important role of the 'other', i.e. third-country nationals (TCNs). This chapter therefore sets out to identify centres of TCN self-organisation in the EU, specifically those centres that seek to increase their rights, and political and social influence. In keeping with the remainder of this volume, the premise of this exercise is that such centres are an expression, and necessary feature, of the polycentric character of the EU.[1] Moreover, as TCNs are usually excluded from formal political institutions and processes, self-organisation of TCNs points to deeper structural deficiencies and problems in their integration in the host Member States' societies. Also, mapping TCN self-governance underlines the tensions between formal and informal polycentricity.[2] For this reason, this Chapter will primarily refer to 'self-organisation' and not 'self-governance' so as to emphasise the inclusion of informal, as well as formal, processes.

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[*] I am grateful to Josephine van Zeben and Ana Bobić for their valuable comments on the text.

[1] Polycentricity refers to a complex form of governance with multiple centres of decision-making (V. Ostrom, C.M. Tiebout and R. Warren 'The Organization of Government in Metropolitan Areas: A Theoretical Inquiry', *American Political Science Review* 55 (4) (1961), 831; E. Ostrom, *Understanding Institutional Diversity* (Princeton University Press, 2005); See also, in this Volume, Chapter 1 by J. van Zeben.

[2] On case studies of political participation of certain refugee groups in Germany, Sweden, and the United Kingdom, see A. Bekaj and L. Antara, 'Political Participation of Refugees: Bridging the Gap, International Institute for Democracy and Electoral Assistance' (2018) available at: www.idea.int/sites/default/files/publications/political-participation-of-refugees-bridging-the-gaps.pdf accessed 17 May 2018.

EU law clearly distinguishes between the rights of Union citizens and third-country nationals in the EU.[3] Union citizens are provided with extensive EU-based rights and corresponding mechanisms for their exercise, whereas the status of third-country nationals remains limited, with Member States preserving partial competence to regulate this area.[4] The status of the 'third-country national' is shared between two groups of individuals. The first group refers to highly vulnerable refugees, who are granted a high level of protection based on EU asylum rules, but whose status, nevertheless, remains weak in practice. The second group is much more diverse. It encompasses all non-EU citizens, who are in general granted only a limited set of rights by EU law, when compared to the rights granted to EU citizens.[5] The latter group covers both 'desirable' migrants (e.g. tourists, students, researchers, business people and short-term visitors), TCNs who have a stronger link with the host Member State (such as long-term residents and family members of EU citizens and of legally resident TCNs) and all other migrants; who can be classified as 'non-desirable', among them primarily being non highly skilled economic migrants, whose volume of admittance remains regulated by Member States. The recent influx of migrants and refugees has magnified pre-existing challenges in EU migration and asylum law, including

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[3] On the rift between EU citizens and third-country nationals, see I. Goldner Lang, 'The European Union and Migration: An Interplay of National, Regional and International Law', (*American Journal of International Law* 111 (2017), 509, available at: www.cambridge.org/core/journals/american-journal-of-international-law/article/eur opean-union-and-migration-an-interplay-of-national-regional-and-international-law/ 7C8123D7AA60097246CA46E269DFA3BA accessed 28 March 2018.

[4] Based on Article 4(2)(j) TFEU, policies on the area of freedom, security and justice are shared competence between the Union and its Member States. Based on Article 79(5) TFEU, Member States preserve the right to determine volumes of admission of third-country nationals coming to their territories in order to seek work.

[5] Throughout the text, the term 'third-country national' is used as the general term which encompasses all persons who are not Union citizens or EFTA nationals. The term 'migrant' is used to refer to TCNs who move to the EU in order to improve their material and/or social conditions and/or prospects. On the other hand, the term 'refugee' applies to a 'third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it' (definition from Article 1A of the Geneva Convention and Article 2(d) of the Qualification Directive 2011/95).

frequent violations of TCN rights.[6] The identification of other deci-
sion-making centres and centres of power that can help to become
active and involved participants in the EU society could be a vital step
in increasing TCNs' awareness and use of their rights and available
mechanisms of protections.

This Chapter confirms that TCNs' self-organisation is indeed possible
in the EU by showing the paths through which it manifests itself. TCNs'
self-organisation can be detected at several levels; some instances of self-
organisation are informal and ad hoc, while others are formal, official and
more permanent. In some cases, self-organisation is initiated by TCNs
themselves – either individually or collectively. In other cases, it is
initiated by non-migrant organisations (typically non-governmental
organisations (NGOs)), businesses or cities and other local authorities.
In these situations, TCNs are either chosen as the target group or
beneficiaries of the activities undertaken by these actors, or they are
encouraged to directly participate in the activities and/or political pro-
cesses of these actors.

In order to portray this diverse picture, this Chapter will be divided
following the classification of TCNs' centres of power:[7] informal self-
organisation (Section I) and formal self-organisation (Section II), which
in turn will be divided into three subsections on the role of NGOs, the
role of businesses and the role of cities in TCNs' self-organisation.
The third Section will determine the causes and objectives for self-
organisation of TCNs. It will aim to discern whether TCNs' self-
organisation takes place in order to provide for basic needs, to encourage
social and political inclusion of TCNs – by empowering them as active
participants in social and political processes – or both. As such, the third
Section will examine two questions. First, does self-organisation of TCNs
aim to supplement or replace certain national and EU processes? Second,
is self-organisation of TCNs successful? That is, does self-organisation
(significantly) improve the generally weak status of TCNs or do TCNs
remain voiceless in certain or all instances where national and EU law or

[6] For a detailed account of the impact of the refugee influx on EU migration and asylum law,
see I. Goldner Lang, 'Human Rights and Legitimacy in the Implementation of EU Asylum
and Migration Law' in S. Vöneky and G. L. Neuman (eds.), *Human Rights, Democracy, and
Legitimacy in a World of Disorder* (Cambridge University Press, 2018)234-62 .

[7] The analysis of polycentric system does not place an emphasis on the central state level, but
rather focuses equally on both state and non-state decision-making centres. In line with
this approach, the current Chapter will focus only on non-state forms of self-organisation
among third-country nationals.

practice do not protect them? In answering these questions, this research relies on new interviews with relevant stakeholders.[8] The Chapter will conclude by considering whether self-organisation by TCNs can be considered polycentric.

I Informal Self-Organisation

Taking the bottom-up approach, the smallest units of self-organisation of third-country nationals in the EU are third-country nationals themselves. Their self-organisation can take place at two levels: individually and collectively. Both individual and collective self-organisation of migrants and refugees tend to be informal and sporadic. Informal self-organisation is nevertheless an important method of migrant and refugee empowerment, as it improves their generally weak status in EU society, and provides them with valuable information they would otherwise not be able to obtain.

Informal self-organisation of refugees and migrants who came to the EU during the 2015/2016 influx, and of those who are currently arriving, takes place through word of mouth, social media and mass media. Social media and web-based services – in particular Facebook, WhatsApp, Twitter, Skype, Viber and Googlemaps – have played an enormous role in informal self-organisation of migrants in the past several years, both in Europe and worldwide.[9] Some Facebook groups function as public while others require an invitation by the group administrator. Some groups are linked to individual EU Member States, or the individual nationality of third-country nationals while others are transnational. Membership of some of these Facebook groups comprises only migrants and refugees, while others are also joined by representatives of NGOs.

Despite considerable differences between the groups, they all share a significant and multiple empowering impact on migrants and refugees.

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[8] The author has conducted a number of interviews with relevant stakeholders and she is particularly grateful to Tamim Nashed from the European Council on Refugees and Exiles (ECRE); a representative from the UNHCR office in Berlin; Max McClellan from the UNHCR Office in London; Sara Kekuš and Vanja Bakalović from the Centre for Peace Studies (CMS) in Zagreb; Sam Koplewicz who, at the time worked for the Human Rights Watch and other interviewees who preferred to stay anonymous.

[9] For example, see a Facebook page titled 'Karajat Al Mushuntiteen' www.facebook.com/groups/manmano/?ref=group_header accessed 8 June 2018; Facebook group 'I am a Syrian in Lebanon' www.facebook.com/groups/172406933094432 accessed 8 June 2018; Facebook group 'Phone Credit for Refugees and Displaced People' www.facebook.com/groups/1709109339334305/ accessed 8 June 2018.

In the first place, social media facilitates migration by enabling migrants and refugees physically to reach the EU, which would otherwise be much more difficult, if not impossible.[10] Social media and smartphones equip TCNs with the necessary information on travel routes, perils on the routes and destinations, thus making it possible for them to undertake these long and dangerous journeys on their own, at least partly avoiding the use of smugglers.[11] An example of the migrants' and refugees' exchange of information via acquaintances, mobile phones, and social media groups, with the aim to enable and facilitate their transit and journey to the EU (but also their basic needs) was the creation of several national Western Balkans Facebook groups, consisting of both migrants/refugees, and of many grassroots NGOs and activists.[12] Social media also has an important downside, as they create a means for smugglers to advertise their activities. The use of social media for human smuggling and other forms of illegal activities aimed at third-country nationals is the negative or harmful facet of migrants' and refugees' self-organisation, which is a direct consequence of the challenges in migrating to the EU in a lawful and safe way.

Second, once third-country nationals arrive in the EU, their exchange of information through social media enables them to access information they would otherwise not be able to obtain from official sources. Social media equips them with information about the asylum procedure, asylum rights; including family reunification rights, access to food, accommodation, schooling, and other daily needs.[13] Unfortunately, the speed and informal character of social media can lead to the provision of incorrect or false information and thus mislead migrants and refugees

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[10] For examples of selected messages exchanged on the Western Balkans Route through Facebook groups, see e.g. REACH, 'Migration to Europe Through the Western Balkans: Serbia and the Former Yugoslav Republic of Macedonia', Report, December 2015 – May 2016, 23 available at: www.reachresourcecentre.info/system/files/resource-documents/reach_report_consolidated_report_on_migration_to_europe_through_the_western_balkans_2015-2016_july_ 2016_0.pdf accessed 22 March 2018.

[11] On the impact of social media on smuggling into the EU, and on the variety of reasons why social media and smartphones are important for refugees, see M. Brunwasser, 'A 21st-Century Migrant's Essentials: Food, Shelter, Smartphone' (*New York Times*, 25 April 2015) www.nytimes.com/2015/08/26/world/europe/a-21st-century-migrants-checklist-water-shelter-smartphone.html, accessed 22 March 2018.

[12] See www.facebook.com/groups/nikonijeilegalan/and www.facebook.com/pg/dobrodosli.dragi.imigranti/about/?ref=page_internal accessed 19 April 2018.

[13] See D. McLaughlin, 'Mass migration guided by mobiles and social media' (*The Irish Times*, 9 September 2015) www.irishtimes.com/news/world/europe/mass-migration-guided-by-mobiles-and-social-media-1.2344662 accessed 22 March 2018.

as to their rights at a certain destination. Cases of misinformation via WhatsApp have, for example, been encountered in relation to migrants and refugees arriving to Germany.[14] This often leads to the feeling of disappointment, due to the discrepancy between the third-country nationals' expectations and reality. Another example of spreading mis-information through social media has taken place during the existence of the Western Balkans Route (one of the main migratory routes towards the EU) when social media enabled the dissemination of information that it was impossible to gain asylum in Croatia.[15]

Third, social media enables migrants and refugees to stay in touch with their families and friends from whom they are being separated or with whom they are trying to re-unite. This way, social media plays an impor-tant role not only in preserving the emotional and social ties of people on the move, but also facilitates the creation of groups of migrants and refugees who share the same nationality, language, religion, or another common denominator, such as the stage of the asylum process they have reached. The creation of such peer groups – which consist of members who support and help each other – also fosters self-organisation among third-country nationals who share a common background, characteristic, or situation. It also acts as a pull factor encouraging further migration of persons belonging to the same social group.[16]

Finally, social media has an important social, political, and legal func-tion, as all social media directly or indirectly provides information to both third-country nationals and the interested public (such as NGOs and activists) on cases of human rights violations across the EU. The still existent Western Balkans Route Facebook groups would again be a good example of this effect of social media. Another example would be the Facebook Group 'Are you Syrious?', created by a Croatian-based NGO, dedicated to helping refugees and to other humanitarian work – which is regularly publishing information and reports on violations of human rights of refugees both in the EU and third countries such as Turkey.[17]

Word of mouth is another important method of informal self-organisation of third-country nationals. However – unlike social media, which can connect a large number of individuals instantaneously – word

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[14] Information obtained from one of the interviewees, (see n. 8).

[15] Information obtained from one of the interviewees (see n. 8).

[16] UNESCO, 'Migration as a Development Challenge: Analysis of Root Causes and Policy Implications' (2017) MOST/REPORTS/2017/1, 10 available at:http://unesdoc.unesco.org/images/0024/002470/247089E.pdf accessed 17 May 2018.

[17] www.facebook.com/areyousyrious/ accessed 28 March 2018.

of mouth requires proximity of individuals and is, therefore, much slower
and less far-reaching. Nevertheless, word of mouth continues to be used
extensively among third-country nationals who are travelling to the EU
and among those who are already residing there. Its usage is especially
visible in places where groups of third-country nationals get together,
spend time, or live together, notably in reception centres. Reception
centres are places where refugees – who are usually in the same stage of
the asylum process – spend weeks or months living together in a rather
confined space. This enables them to share information about all aspects
of the asylum procedure including who are 'good' and 'bad' legal repre-
sentatives. They also help each other through translation in cases when
state authorities are not providing adequate support. Finally, refugees'
self-organisation in reception centres is manifest by launching mini
businesses – such as cooking food, coffee or tea, and selling it; by
providing hairdressing services and cosmetic treatments etc. – and asking
for cash or in kind payment in return.[18] This way, self-organisation
enables refugees to acquire trivial things and services on a regular basis,
which would otherwise not be available to them or which they would
otherwise not be able to afford.

Public squares in certain Member States have – just like reception
centres – become spaces of refugees' self-organisation in the past several
years. Developments at Victoria Square in Athens stand out as one of the
most striking examples of informal self-organisation.[19] Here, hundreds
of refugees have been gathering on a daily basis in order to exchange
information, charge their cell phones and get food and other resources
from NGOs, whose representatives also come to the square.[20]
Occasionally, refugees have also resorted to protests as a more political
manifestation of informal self-organisation. Two of the most striking
examples of refugees' expression of dissatisfaction with their treatment
and status was, first, the attempt of two Pakistani nationals to hang

[18] The launching of such mini businesses has, for example, been recorded in the reception
centre Porin in Croatia.
[19] See, for example, 'Athens under pressure: city races to clear port's refugee camp before
tourists arrive' (*The Guardian*, 26 April 2016) www.theguardian.com/cities/2016/apr/26/
athens-under-pressure-city-port-refugee-camp-tourists accessed 12 April 2018;
K. Papathanasiou, Afghan Refugees Remain Stranded in Athens' Victoria Square
(*Greek Reporter*, 16 September 2015) http://greece.greekreporter.com/2015/09/16/
afghan-refugees-remain-stranded-in-athens-victoria-square/ accessed 12 April 2018.
[20] See, for example, the activities on Victoria Square of the initiative 'Solidarity with
Refugees in Greece' www.facebook.com/pediontouareos/.

themselves at Victoria Square[21] and, second, a hunger strike by Syrian refugees at Syntagma Square in Athens due to delays in reunification with their family members in Germany.[22]

To sum up, informal self-organisation takes place mostly ad hoc and out of dire necessity. It is aimed at satisfying the refugees' basic needs, such as food, shelter, and medicine, and at obtaining valuable information on access to the EU and exercising their rights. Refugees have so far attained these objectives by congregating and using word of mouth, as well as through social and mass media. Informal self-organisation has only rarely taken the form of political protests, such as the cases of attempted hangings at Victoria Square and the hunger strike at Syntagma Square.

II Formal Self-Organisation

The following Section will discuss the role of NGOs, businesses and local authorities – primarily cities – as the drivers of formal self-organisation. This type of self-organisation has been extremely important as a method of giving credibility to TCNs' social and political involvement. As such, formal self-organisation has been an important means of reinforcing third-country nationals' voice and influence across the EU.

The involvement of these actors is all the more important as the EU's competence to promote TCNs' social and political participation remains extremely limited. The competence to adopt integration measures stays with the Member States, whereas the EU can only support Member States' actions.[23] For this reason, the Commission's measures aimed at integration and inclusion of third-country nationals have been limited to soft law measures, encouraging Member States to promote their integration and inclusion.

The Commission's Action Plan on the integration of third-country nationals stands out as the most important EU-level document in this

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[21] See T. Kermeliotis, 'Refugees attempt suicide by hanging themselves from tree in Greece' (Al Jazeera, 25 February 2016) www.aljazeera.com/news/2016/02/refugees-attempt-suicide-hanging-tree-greece-160225191001445.html accessed 12 April 2018.

[22] K. Tagaris and D. Kyvrikossaios, 'Refugees in Greece demand transfer to Germany, start hunger strike' (Reuters, 1 November 2017) www.reuters.com/article/us-europe-migrants-greece/refugees-in-greece-demand-transfer-to-germany-start-hunger-strike-idUSKBN1D14UQ accessed 12 April 2018.

[23] Based on Article 79(4) TFEU, the EU can adopt measures 'to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing in their territories', excluding any harmonising measures.

area.[24] It sets five policy priorities that need to be undertaken at the EU and Member State level in order to support integration of third-country nationals: pre-arrival/pre-departure measures; education; labour market integration and access to vocational training; access to basic service; active participation and social inclusion. The fifth priority entitled 'Active participation and social inclusion' is the most important from the perspective of refugees' self-organisation. Here, the Commission sets out to develop handbooks and launch projects under different EU funds promoting active participation of third-country nationals 'in political, social and cultural life and sports' in the host societies. It also encourages Member States to 'increase third-country nationals' participation in local democratic structures'.[25] The division of the tasks into two groups – the first one setting out the tasks which the Commission undertakes to achieve on its own, and the second one setting out the activities which the Commission only encourages Member States to undertake – reflects the fact that the integration of third-country nationals stays primarily within the Member States' competence.

The EU-level financial instrument used for the purpose of integration and inclusion of refugees is the Asylum, Migration and Integration Fund (AMIF).[26] One of the objectives set by the Fund is the integration of third-country nationals, and its beneficiaries can be Member States' national and local authorities, NGOs, private and public companies as well as education and research organisations. However, the funding rules for AMIF have created significant barriers to AMIF participation for civil society organisations.[27] Also, it is questionable whether the amount available is actually spent for integration purposes, as there is no publicly available data on actual spending patterns.[28]

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[24] See, for example, the Commission's Action Plan on integration of third-country nationals, (2016) COM 377 final https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0377 accessed 18 April 2018.

[25] ibid., 13.

[26] For the details about the Asylum, Migration and Integration Fund https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en accessed 18 April 2018.

[27] R. Westerby, 'Follow the Money: Assessing the Use of EU Asylum, Migration and Integration Fund (AMIF) Funding at the National Level' (2018) ECRE, 41.

[28] N. Nielsen, 'Athens Mayor Wants Direct Access to EU Migration Fund' (EUobserver, 21 May 2018) https://euobserver.com/migration/141863 accessed 21 May 2018.

A   NGOs as Champions of Refugees' Rights

Political inclusion of third-country nationals is not an EU competence, which means that Member States have discretion as to whether to allow for third-country nationals' political participation and other forms of formal self-organisation. National laws frequently exclude third-country nationals from political participation. Within this broader group of people, roughly composed of refugees and (economic) migrants, NGOs have been the most important actors regarding the formal self-organisation of refugees. The involvement of NGOs has been twofold. First, they provide material, legal and other support to refugees. Second, NGOs are crucial in promoting refugees' political and social empowerment by enabling their participation in political processes and other activities carried out by NGOs.

Depending on the type of involvement of NGOs and their relations with refugees, refugees have taken either a passive role of mere beneficiaries of NGOs' activities, or a more active role of active participants in the activities provided by NGOs and in political processes. The majority of NGOs views themselves as 'charity organisations', thus treating refugees as passive beneficiaries of their assistance. NGOs' activities targeted at promoting refugees' active participation have been rare. This is probably partly due to the actual needs of refugees and the logic that one first has to satisfy basic needs before promoting refugees' civic and political rights. NGOs' mandates reflect the problems encountered by refugees in a particular Member State. For example, NGOs in Greece have primarily targeted refugees' basic needs, whereas the work of NGOs in Austria and the Scandinavian countries has also included education and the promotion of inclusive policies and non-discrimination.

Second, the small number of participatory programmes might partly be the result of a mistrust in refugees' skills and capabilities, which could suggest the existence of an unconscious bias and point to the need for a shift in our mindset.[29] It highlights the importance of viewing refugees not only as passive recipients of aid, but as active participants who should be included in all areas of social life, thus preventing their segregation and stigmatisation.[30] Some NGOs have indeed promoted active refugee

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[29] This point has been raised in the course of the interview with Tamim Nashed, the Policy Officer on Refugee Inclusion at the European Council on Refugees and Exiles (ECRE). On the importance of learning see also, in this Volume, Chapter 12 by S. Garben.

[30] In order to prevent segregation and stigmatisation, the recent tendencies are to apply the term 'inclusion' instead of 'integration'. For a discussion on the advantages of inclusion,

participation by including persons with a refugee or migrant background in their work. The Greek Forum of Refugees is an example of a network whose members are refugees and which is aimed at providing assistance to refugees in Greece.[31] The Forum also stands out as an example of a multinational network, unlike the majority of other refugees' formal self-organisations which are typically nation-based and do not communicate with each other.

The Greek Forum of Refugees, with the support of the European Council on Refugees and Exiles (ECRE), also created the forum Refugees, Ideas and Solutions for Europe (RISE) in August 2016. RISE is a transnational network aimed at representing refugees across the EU.[32] It consists of approximately 20 network members in 14 different European states, where each state is represented by a national contact point. The objectives of the RISE network are the refugees' social political and economic empowerment; raising awareness about refugee issues among different stakeholders, and inclusion of refugees into their host societies.

The Open City Fellowships, initiated by the Open Society Foundations, are another important initiative aimed at promoting refugees' active participation in the host Member State society.[33] The Open City Fellowship Programme is aimed at promoting leadership among refugees and migrants and at supporting their inclusion in the host city of their residence. The Programme functions through collaboration with four partner cities – Amsterdam, Athens, Barcelona, and Berlin – and a host organisation in Brussels. It enables people with a refugee or a migrant background to represent their respective communities by improving refugee and migrant integration policy or practice at the city level. RISE and the Open City Fellowships are two rare examples of

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in comparison to integration of refugees, see the interview with the ECRE policy officer Tamim Nashed entitled 'Why inclusion rather than integration?', available at: www .ecre.org/why-inclusion-rather-than-integration-interview-with-ecre-policy-officer-on-refugee-inclusion-tamim-nashed/ accessed 18 April 2018. On the finding of school segregation of migrant children, taking place in half of EU Member States, see European Union Agency for Fundamental Rights, 'Together in the EU: Promoting the Participation of Migrants and Their Descendants' (2017), 39 available at:http://fra .europa.eu/sites/default/files/fra_uploads/fra-2017-together-in-the-eu_en.pdf   accessed 19 April 2018.

[31] http://refugeegr.blogspot.hr/ accessed 19 April 2018.
[32] http://refugees.gr/rise/ accessed 16 April 2018.
[33] See www.opensocietyfoundations.org/sites/default/files/open-city-fellowship-20170718 .pdf accessed 16 April 2018.

transnational self-organisation of TCNs, whereas local and nation-level initiatives remain more frequent. This is, again, due to the fact that the competence to integrate TCNs stays primarily with the Member States.

B   The Role of Businesses in Third-Country Nationals' Self-Organisation

The link between third-country nationals and the private sector has been twofold. First, there have been examples of good business practices regarding the hiring of refugees and supporting their access to education. Some of these practices have been initiated by businesses themselves, whereas others were initiated and financially supported by a Member State or EU institution. Second, third-country nationals are sometimes successful in starting their own businesses, which in turn hire other third-country nationals.

Private initiatives have taken place in a number of European states[34] as well as transnationally. A number of large companies – including IKEA,[35] Deutsche Telekom, NCC, Accenture, bpost, Scandic hotels, ADECCO, Microsoft, and Goldman Sachs –[36] have committed to fostering refugees' and other migrants' access to the labour market. Some of them are offering jobs to refugees, while others are awarding grants aimed at enabling refugees to start their own businesses, enter university, undergo a language course or vocational training.

Member State initiatives tend to encourage private businesses to hire refugees by offering financial support to the company which employs refugees. The Danish 'integration basic education scheme' (*integrationsgrunduddannelse* – IGU) enables companies to employ refugees in short-term jobs at an apprentice salary for up to two years, while at the same time offering refugees skill development or education courses.[37] In return, companies qualify for a financial bonus. In addition to creating jobs for refugees and thus integrating them into the labour market and their host society, the IGU system creates a twofold benefit for the

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[34] For example, see the initiative 'Wir zusammen' in Germany www.wir-zusammen.de/.

[35] For the activities taken in this regard by IKEA see www.architecturaldigest.com/story/why-swedish-design-brands-hiring-syrian-refugees-ikea accessed 17 May 2018.

[36] For the initiative 'Goldman Sachs Gives' see www.goldmansachs.com/citizenship/goldman-sachs-gives/ accessed 17 May 2018.

[37] 'Denmark has new plan to get refugees into work' (*The Local*, 18 March 2016) www.thelocal.dk/20160318/denmark-has-new-plan-to-get-refugees-into-work accessed 1 May 2018.

municipality. First, the municipality saves on welfare payments if a refugee receives income rather than a welfare payment. Second, the municipality receives a results-based bonus from the state when a refugee completes six months of IGU apprenticeship.[38] By January 2018, at least 34 refugees had been engaged in the IGU scheme, but the potential is much higher.[39]

The European Commission has been trying to coordinate the efforts of different private and public-sector stakeholders. In 2015, it launched the 'European Dialogue on Skills and Migration', a platform aimed at fostering dialogue between different stakeholders on issues of labour migration and labour market integration of third-country nationals.[40] On 23 May 2017, at the second meeting of this platform, the Commission launched the 'Employers together for integration' initiative, aimed at promoting employers' efforts to support the integration of refugees and other third-country nationals.[41]

Despite these praiseworthy initiatives, the 2016 employment rate of foreign-born migrants for the whole EU was only 66%, compared with 71.8% for the native-born population.[42] The employment rate for refugees is even lower. In 2014, only 56% of refugees in the EU were employed,[43] whereas the employment rate of refugees in Germany in 2017 stood at only 17%.[44] Some businesses have encountered administrative problems in hiring refugees. In addition, most openings have been for low-skilled jobs, which is partly due to the language barrier and the fact that manual jobs usually do not require language proficiency.

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[38] 'Scrapping refugee apprenticeships could cost councils millions': Report (*The Local*, 8 January 2018) www.thelocal.dk/20180108/populist-move-against-refugee-apprenticeship-programme-could-cost-councils-millions-report accessed 1 May 2018.

[39] 'Scrapping refugee apprenticeships could cost councils millions': Report (*The Local*, 8 January 2018) www.thelocal.dk/20180108/populist-move-against-refugee-apprenticeship-programme-could-cost-councils-millions-report accessed 1 May 2018.

[40] Available at https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/european-dialogue-skills-and-migration_en accessed 17 May 2018.

[41] Available at https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/european-dialogue-skills-and-migration/integration-pact_en accessed 17 May 2018.

[42] Eurostat statistics http://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant_integration_statistics_–_labour_market_indicators accessed 1 May 2018.

[43] European Commission and OECD, 'How are refugees faring on the labour market in Europe?' (2016) Working Paper 1 available at https://publications.europa.eu/en/publication-detail/-/publication/87a8f92d-9aa8-11e6-868c-01aa75ed71a1/language-en accessed 1 May 2018.

[44] G. Chazan, 'Most refugees to be jobless for years, German minister warns' (*Financial Times*, 2017) available at www.ft.com/content/022de0a4-54f4-11e7-9fed-c19e2700005f accessed 1 May 2018.

The end result of offering mostly low-skilled jobs to refugees, though not explicitly or intentionally discriminatory, has been effectively discriminatory in comparison to EU citizens. It is also extremely challenging for refugees to start their own businesses. This is due to a number of challenges faced by refugees, such as language barriers, non-recognition of foreign qualifications, problems in accessing bank loans, insufficient knowledge about the local market, administrative problems encountered in the process of registering the business, discrimination, etc.[45] Nevertheless, there have been examples of successful businesses initiated by refugees in different Member States, who in turn hire other refugees.[46]

C   The Role of Cities in Formal Self-Organisation

Cities and other local authorities have been playing an ever-growing role in TCNs' lives and self-organising activities, as the vast majority of TCNs live in urban areas and as TCNs' needs can be best addressed locally.[47] For these reasons, the role of cities in assisting TCNs and in promoting their political participation is expected to increase further in the future. As stated by Georgos Kaminis, the Mayor of Athens, '[the central] government is a very remote instance for those very crucial issues that have to do with integration' of refugees and, for this reason, the 'EU funding needs to be organised in such a way that local authorities are entitled to distribute it'.[48]

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[45] For the discussion of different obstacles encountered by refugees who want to establish businesses in Germany, see C. Copley, 'Refugees Bring Entrepreneurial Spirit to Risk-Shy Germany' (Reuters, 2016) available at www.reuters.com/article/us-europe-migrants-germany-entrepreneurs/refugees-bring-entrepreneurial-spirit-to-risk-shy-germany-idUSKCN0VA2D8 accessed 11 June 2018.

[46] For example, see the success stories of the African Cuisine & Bar in Zagreb, Croatia www.africancuisineandbar.com/ accessed 17 May 2018, and of the Taste of Home catering service in Zagreb, Croatia www.okus-doma.hr/en accessed 17 May 2018. See the story of a Syrian family in the UK www.theguardian.com/small-business-network/2017/feb/28/refugees-turned-entrepreneurs-future-business-perserverance accessed 11 June 2018. Also, see the Enterpreneurial Refugee Network in the UK www.wearetern.org/ accessed 11 June 2018.

[47] According to the OECD Study, two-thirds of migrants live in metropolitan areas. The Study found that 'while migrants tend to concentrate in urban areas, however, asylum seekers are more spread across urban-rural areas than are the rest of the resident population.' See OECD Study 'Working Together for Local Integration of Migrants and Refugees' (OECD Publishing, 2018), 24 available at: www.oecd.org/publications/working-together-for-local-integration-of-migrants-and-refugees-9789264085350-en.htm A survey of migrant integration policies across European cities, accessed 12 June 2018.

[48] N. Nielsen, 'Athens Mayor Wants Direct Access to EU Migration Fund' (EUobserver, 21 May 2018) <https://euobserver.com/migration/141863> accessed 21 May 2018; see

The European Commission has been playing a significant role in pulling together relevant stakeholders and promoting integration activities in urban areas. The Partnership on Inclusion of Migrants and Refugees initiative places cities at the forefront of refugee integration activities in the EU.[49] The objective of the Partnership is to promote cities' management of the integration of migrants and refugees. The Partnership has been set within the framework of the Urban Agenda for the EU[50] and it encompasses different types of stakeholders. Key members are five major European cities: Amsterdam (as coordinator), Athens, Barcelona, Berlin, and Helsinki. In addition, members include four Member States,[51] the European Commission, the European Investment Bank, organisations of local and municipal governments, and programmes aimed at them (Council of European Municipalities and Regions (CEMR), EUROCITIES and URBACT) as well as refugee-assistance organisations (ECRE and the Migration Policy Group).

The added value of the Partnership is that it targets refugees and other third-country nationals as both beneficiaries of assistance and active participants, thereby promoting their self-organisation. With regard to its latter objective, the Partnership sets forth the establishment of the European Migrants Advisory Board whose members would be the representatives of the host cities and 'first-generation migrants and former refugees holding a status or a European nationality'.[52] The establishment of the Board aims to address the problem that migrants and refugees are typically not directly involved in policy making. The Board, therefore, serves two crucial purposes. First, its objective is to provide an objective viewpoint on the work of the Partnership. Second, it serves to facilitate third-country nationals' civic engagement.[53] The establishment of the Board is linked to the Open Society Fellowships (see above), as the selected fellows automatically become members of the Board.[54]

J. van Zeben, 'Local Governments as Subjects and Objects of EU Law' in E. Fahey, S. Bardutszky (eds.), *Objects and Subjects of EU Law* (Edward Elgar, 2017), and in this volume, Chapter 4 by J. van Zeben and K. Nicolaïdis.

[49] https://ec.europa.eu/futurium/en/inclusion-of-migrants-and-refugees accessed 19 April 2018.

[50] https://ec.europa.eu/futurium/en/urban-agenda-eu/what-urban-agenda-eu accessed 19 April 2018.

[51] Denmark, Greece, Italy, and Portugal.

[52] P. 27 of the Action Plan.

[53] P. 26 of the Action Plan.

[54] P. 27 of the Action Plan.

The establishment of the European Migrants Advisory Board is not the only example of a consultative body that includes representatives of migrants. Such bodies have been established at national, local, or regional level in a number of Member States. Their aim is to foster structured dialogue between migrant groups and national governments and they usually include representatives of the largest migrant groups in that Member State. However, the successful representation of different migrant groups depends on the level of self-organisation of migration communities.[55] Namely, it is expected that the migrants selected for the board represent and successfully network within their migratory group.[56] Consequently – and paradoxically – while third-country nationals' con-sultative/advisory boards foster third-country nationals' self-organisation, they are, at the same time, conditioned upon the existence of migrants' previous successful self-organisation, which is most often rather low. Such an interrelation between third-country nationals' involvement in consul-tative boards and their self-organisation – whereas self-organisation is, at the same time, a precondition and the objective of the membership in the board – creates a vicious circle, as it is difficult if not impossible to join an advisory board without self-organising in the first place.

On the other hand, initiatives of individual cities in Europe (and worldwide) show the importance of the role of cities in granting certain rights and access to local services to refugees and other individuals (e.g. undocumented migrants and the homeless) who would otherwise not have these rights based on state-level rules.[57] Paris is one of the European cities taking the lead in developing active citizenship for all its residents, no matter what is their status. The *carte citoyenne* grants to all individuals residing in Paris access to municipal services and enables them to take part in cultural events in Paris and meet with the elected officials.[58]

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[55] European Union Agency for Fundamental Rights, 'Together in the EU: Promoting the Participation of Migrants and Their Descendants' (2017), 57–58 available at: http://fra .europa.eu/sites/default/files/fra_uploads/fra-2017-together-in-the-eu_en.pdf   accessed   19 April 2018.

[56] For example, see the criteria for the selection of migrants for the European Migrants Advisory Board https://ec.europa.eu/futurium/en/inclusion-migrants-and-refugees/ workshop-european-migrant-advisory-board-amsterdam-2-november-2017   accessed 20 April 2018.

[57] For the research on how local governments in Europe welcome and integrate refugees, see 'Cities of Refuge' research project led by B. Oomen available at: http://citiesofrefuge.eu/ accessed 12 June 2018.

[58] On *carte citoyenne*, see www.paris.fr/cartecitoyenne accessed 12 June 2018; 'New York helps Paris integrate vulnerable migrants after terror attacks' (Apolitical, 19 May 2018)

The Belgian city of Mechelen has started a 'speed dating programme' which fosters migrants' and refugees' integration by pairing each TCN with a city resident and the two sides meet once a week for six months. As stated by the Mayor of Mechelen, Bart Somers, who was awarded the 2016 World Mayor Prize, regular meetings with a designated city resident enable the TCN to learn about the city, practise their language skills and create a human relationship.[59] Through its 'Plan Einstein' the city of Utrecht enables refugees to live in the same buildings as local Dutch people, and offers them language, entrepreneurship and coaching classes.[60] Apart from Utrecht, a number of other cities – such as Amsterdam and Leverkusen – are promoting decentralised housing for asylum seekers.[61] These are worthy initiatives, which show the power local authorities have in promoting refugees' rights and self-organisation, as well as the ability of local authorities to adapt and develop the state-level system for the betterment of refugees.

III   Causes and Objectives of Self-Organisation

Two developments associated with migration into the EU can be considered as the crucial causes of migrants' and refugees' self-organisation. First, the refugee influx into the EU in the past several years has put EU asylum law and national practices under strain and brought to the surface a number of its deficiencies. Refugees' self-organisation aims to counterbalance these deficiencies and provide for the basic needs and for civil and political rights of refugees, where such needs and rights are not satisfied and protected by law and/or practice of Member States' authorities.

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https://apolitical.co/solution_article/new-york-paris-municipal-id-terror-attacks/ accessed 12 June 2018.

[59] N. Nielsen, 'Belgian mayor invites Orban to migrant diverse town' (EUobserver, 14 June 2018) https://euobserver.com/migration/142078 accessed 14 June 2018.

[60] On 'Plan Einstein', see https://plan-einstein.nl/wp-content/uploads/2018/03/Folder_Engels_def.pdf accessed 12 June 2018. A. Valez, 'Breaking down barriers between locals and refugees in Utrecht' (Euronews, 23 May 2018) www.euronews.com/2018/05/23/breaking-down-barriers-between-locals-and-refugees-in-utrecht accessed 12 June 2018.

[61] On the Startblok housing project in Amsterdam see www.startblok.amsterdam/en/overview/ accessed 12 June 2018. On the model in Leverkusen see M. Popp and S. Roebel, 'Asylum Seekers Embrace Alternative Housing' (Spiegel Online, 30 August 2013) www.spiegel.de/international/germany/asylum-seekers-alternative-housing-approach-in-leverkusen-a-success-a-919007.html accessed 12 June 2018.

Second, the rights of entry residence, and access to the labour market of economic migrants as well as their integration and political participation are mostly excluded from EU law. Member States preserve the right to control the number of economic migrants entering their territories, while EU law takes a sectoral approach to migrants, only regulating the rights of certain 'desirable' categories of TCNs. On the other hand, national laws often exclude TCNs from political participation, thus leaving such initiatives to their self-organising activities.

These developments have had three important consequences in terms of TCNs' (both refugees' and migrants') self-organising tendencies. First, TCNs' self-organising activities are targeted at two separate but mutually supportive goals. First, they aim to satisfy TCNs' basic needs, such as food and accommodation. Second, they are the reflection of TCNs' desire not to be marginalised: to become accepted and integrated members of the host society, capable of being treated as equals, of acquiring a job, of building relationships with domestic population and of influencing and contributing to the social and political life of the host Member State. In other words, TCNs' self-organisation can be viewed primarily as a mechanism of supplementing or substituting EU-level or national-level protection of their basic needs and civil and political rights, in cases when these right and needs are not protected by EU/Member States' law and practice.

Second, self-organisation is more likely with regard to categories of TCNs in a particularly vulnerable position (such as refugees) and TCNs who are not granted an extensive set of rights by EU law or national practice. This primarily applies to 'non-desirable' categories of economic migrants who do not qualify as highly qualified employees or intra-corporate skilled transferees. Finally, the frequent exclusion of TCNs from political participation in EU Member States means that self-organisation is typically informal rather than formal.

IV   Polycentric Self-Organisation?

This Chapter provides an overview of key developments with respect to the self-organisation of TCNs in the EU. These developments themselves raise important questions regarding the position of TCNs and the sustainability of the patterns of exclusion and marginalisation that came to the surface in many cases. Within the context of this research project, we also need to wonder whether the emerging pattern of formal and informal self-organisation qualifies as polycentric.

In order to answer this question, one needs to ascertain whether the attributes of polycentricity and its institutional essentials are present in different manifestations of formal and informal self-organisation of TCNs, discussed in this Chapter.

All three attributes of polycentricity (multiple independent centres of decision making; continuous competition, cooperation and conflict resolution; and overarching shared system of rules) can, to a certain degree, be detected in the context of TCNs' self-organisation. The existence of 'multiple independent centres of decision making' can be attributed to all the formal manifestations of TCNs' self-organisation: NGOs, private businesses, and cities and other local authorities. These entities have decision-making powers within their respective spheres of activities. The status of informal centres of self-organisation of TCNs is much more complex. However, even though one cannot characterise TCNs' self-organisation via social media, mass media and the word of mouth as centres of decision making in the narrow sense of the word – as their ability to make binding decisions is limited – informal centres of self-organisation reflect choices of their members who share common interests and goals. In this sense, the existence of 'multiple independent centres of decision making' can be attributed both to formal and informal centres of TCNs' self-organisation.

Equally, the existence of 'continuous competition, cooperation and conflict resolution' can be attributed to both formal and informal centres of TCNs' self-organisation. These attributes are visible in the work of NGOs, businesses, and cities, whose efforts in promoting TCNs' rights and self-organisation can be viewed as an endeavour to both cooperate and compete with each other. Similarly, by providing information to TCNs who share common interests, different social media and mass media often compete with each other to get more attention from the same group of stakeholders.

Finally, centres of TCNs' formal self-organisation do function under an 'overarching shared system of rules', albeit one that corresponds to the shared system of rules in the EU only to a limited extent.[62] The overlap is visible in EU-based rules (e.g. those on the funding possibilities for NGOs, private and public companies and national and local authorities from the Asylum, Migration and Integration Fund (AMIF)) but less so in state-based rules which diverge across the EU. Refugees are protected by a number of international legal instruments, most notably the Geneva

[62] Discussed by A. Bobić, Chapter 6 in this Volume.

Convention. They are also protected by EU primary law (TFEU and the Charter) and a number of EU secondary law instruments which stipulate who qualifies for international protection,[63] what are the procedural guarantees in the asylum proceedings,[64] which Member State is responsible for examining an asylum application,[65] and what are the standards of reception of asylum applicants.[66] However, due to the fact that asylum matters are mostly regulated by directives, Member States retain certain flexibility in terms of the form and method of putting in place these rules at the national level. In reality, national practices vary significantly and often deviate from EU rules. Finally, the EU's overarching set of rules is even less applicable to manifestations of TCNs' informal self-organisation, carried out through social and mass media, and especially through the word of mouth.

Furthermore, the EU also sets rules for certain categories of economic migrants (highly skilled workers, seasonal workers, intra-corporate transferees), for family members of EU citizens and legally residing TCNs, for researchers and students, and for TCN long-term residents.[67] However, Member States retain the competence to determine

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[63] European Parliament and Council Directive 2011/95 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (2011) OJ L 337, 9–26.

[64] European Parliament and Council Directive 2013/32/EU on Common Procedures for Granting and Withdrawing International Protection (2013) OJ L 180, 60–95.

[65] European Parliament and Council Regulation 604/2013 on 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) (2013) OJ L 180/31, 31–59.

[66] European Parliament and Council Directive 2013/33 laying down standards for the reception of applicants for international protection (2013) OJ L 180, 96–116.

[67] Rights of third-country nationals are codified in a number of sectoral directives, e.g. on family members of EU citizens (European Parliament and of the Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (2004) OJ L 158/77), on family members of legally resident third-country nationals (Council Directive 2003/86 on the right to family reunification (2003) OJ L 251/12), on long-term residents (Council Directive 2003/109 concerning the status of third-country nationals who are long-term residents (2003) OJ L 16/44), on highly qualified employees (Council Directive 2009/50 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (2009) OJ L 155/17), on third-country nationals workers legally residing in a Member State (European Parliament and Council Directive 2011/98 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (2011) OJ L 343/1), on students, pupils, researchers and au pairing (European Parliament and Council Directive 2016/801

the number of economic migrants entering their territories, as well as to adopt rules on integration of TCNs. In conclusion, apart from certain narrow categories of TCNs, such as family members of EU citizens, TCNs are generally granted a much lower level of EU-based rights than EU citizens. Thus, TCNs are only partially subject to an overarching shared set of EU-based rules, and in this context, can be perceived as 'outsiders' in the EU society.

The existence of institutional essentials of polycentricity (freedom and ability to enter and exit; enforcement of shared systems of rules; and peaceful contestation) in the context of self-organisation of TCNs is highly debatable and at times even non-existent. TCNs are free to enter and exit different self-organising groups discussed in this chapter, such as social media groups, NGOs or businesses. However, the very reason for TCNs' self-organisation is their inability to enter other formal ways of representation available to EU citizens. From this perspective, self-organisation of TCNs is a direct consequence of the lack of this institutional essential.

As regards the TCNs' ability to enforce a shared system of rules, EU law enables TCNs to rely on directly applicable EU rules before national judicial and administrative authorities, and binds national authorities to respect and apply EU law. However, in reality there are at least four problems in this context. First, there are a number of EU-level 'legal gaps' in relation to TCNs, which enable divergent and discriminatory national and local rules and practices. Second, as stated previously, national practices with regard to TCNs often deviate from EU rules. Third, it is difficult to control and monitor national judicial and administrative authorities in order to ensure that they apply EU law to each individual case. Finally, TCNs (and refugees, in particular) are extremely vulnerable, marginalised individuals with scarce means and a weak social position. For all these reasons, the TCNs' ability to enforce the rules that apply to them is often limited to non-existent.

on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (2016) OJ L 132/21), on seasonal workers (European Parliament and Council Directive 2014/36 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (2014) OJ L 94/375), on intra-corporate non-EU skilled transferees (European Parliament and Council Directive 2014/66 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (2014) OJ L 157/1).

Finally, TCNs self-organisation can be understood as a form of peaceful contestation of their marginalised and discriminated social and legal status. Different forms of both informal and formal self-organisation are an attempt to challenge and resist the system which treats TCNs as outsiders, who are both legally and socially disadvantaged. However, different centres of TCNs' self-organisation do not enable or enforce peaceful contestation between various groups of TCNs. Different groups of TCNs – clustered based on their nationality, religion, language, status, or common interests – generally do not mix with other groups, partly due to a lack of trust. For this reason, there is no or little room for peaceful contestation between different groups of TCNs.

Due to the lack, or incompleteness, of institutional essentials, it is questionable whether self-organisation of TCNs in the EU can be considered sufficiently polycentric. This suggests that polycentric governance in the EU remains reserved for 'insiders' – EU citizens – and a significant and growing number of individuals on the EU territory remains only partially included or even excluded. This points to a structural deficiency within the EU and raises the question whether the EU can be polycentric without including all individuals present on the EU's territory.[68]

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[68] For a more detailed discussion on this, see the concluding Chapter of this Volume.