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The Allocation of Competences in Migration and Asylum Matters: Lessons from Recent European Experience

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The refugee crisis in Europe, prompted by the civil war in Syria in particular, has prompted questioning of the adequacy of the existing regime of coordinating migration and asylum rules at European level, but has also raised tensions within Member States, especially federal Member States. The refugees crisis in the Mediterranean, primarily resulting from the civil war in Syria, but also from political problems in other Middle Eastern and North African States, has led to the largest mass migration in recent European history. At European level, the regime governing migration and asylum in the EU is a more recent aspect of integration, beginning at intergovernmental level and then undergoing gradual, but not complete, supranationalisation, as reflected in Article 78(3) TFEU. The Council of Europe has also developed a parallel though less extensive and more voluntary or intergovernmental set of legal norms alongside principles of good practice. Difficulties in achieving agreement at EU level on how to respond to the recent refugee crisis and especially on the issue of a fair distribution of the cost and burden of accepting refugees as long-term migrants has prompted both calls for greater European integration and for a recognition of the unreality of seeking a uniform approach across very divergent Member States. Within Member States, responses to the crisis have promoted tension between the federal and regional levels, especially in Germany. This paper examines what this recent European experience and empirical data suggest about the appropriate allocation of competence between regional a national and European levels and, in particular, whether best practice can be identified in the experience of federal States and at European level regarding both policy and the appropriate legal mechanisms of cooperation.

Paper outline

Introduction

- Migration as an example of multi-level governance
- Recent crisis situation (key statistics)
- Summary of EU competence
- Summary of Council of Europe competence
- Context of federalism at national level: Austria, Belgium, Germany, Spain

Development of EU Competences

- Introduced at Treaty of Maastricht
- Treaties of Amsterdam, Nice, Lisbon
- Current Framework:
 - o Article 3(2) TEU
 - o Articles 67(2) TFEU, 77-80 TFEU
 - o Within the ordinary legislative procedure
- Broader Context of AFSJ:
 - o Overlaps with free movement
 - o JHA v. AFSJ

Development of Council of Europe Competences

- (i) European Agreement on the Abolition of Visas for Refugees
- (ii) European Convention on the Legal Status of Migrant Workers

Relationship between the EU and Council of Europe in the context of the Recent Migration Crises

Recent Migration Crises

- Data on scope
- Impacted areas
- Cross-border implications internally in the EU

Federal Division of Competences in Member States

- Austria
- Belgium
- Germany
- Spain

Experience of Federal Member States in Recent Migration Crises

- Austria
- Belgium
- Germany
- Spain

Prospective Development of European Management of Migration

- Political v. legal dynamics
- Division of competences
- Integration or dis-integration effect
- Council of Europe
- External relations aspects