

# Contents

<b>1</b>	<b>Conceptualising the Criminalisation of Migration</b> . . . . .	1
	References. . . . .	3
<b>2</b>	<b>Before Entry: Criminalisation as Prevention</b> . . . . .	5
2.1	Introduction . . . . .	5
2.2	The Rise of Extraterritorial Immigration Control . . . . .	6
2.3	Delegation of Immigration Control to Specialised Agencies: The Case of FRONTEX . . . . .	11
2.3.1	The 2004 FRONTEX Regulation . . . . .	12
2.3.2	The 2007 RABITS Regulation . . . . .	13
2.3.3	The 2011 FRONTEX Regulation . . . . .	16
2.3.4	FRONTEX and Rules on Sea Border Operations and Search and Rescue at Sea . . . . .	18
2.4	Delegation and the Privatisation of Immigration Control . . . . .	23
2.4.1	Carriers' Liability . . . . .	24
2.4.2	The Collection and Transfer of Passenger Name Record (PNR) Data . . . . .	25
2.5	Immigration Control as Security Governance . . . . .	29
2.5.1	Migration and Security in EU Law and Policy . . . . .	29
2.5.2	The Visa Information System . . . . .	31
2.5.3	The Entry-Exit System and Registered Traveller Programme . . . . .	33
2.5.4	EUROSUR . . . . .	36
2.5.5	Pre-emptive Surveillance, Privacy and the Rule of Law . . . . .	37
2.6	Conclusion. . . . .	42
	References. . . . .	44

<b>3</b>	<b>In the Territory: The Use of Substantive Criminal Law to Regulate the Presence of Migrants.</b> . . . . .	47
3.1	Introduction . . . . .	47
3.2	The Criminalisation of Migration in the Law of the European Union . . . . .	48
3.2.1	Criminalisation as Securitisation: The Criminalisation of Human Trafficking. . . . .	48
3.2.2	Criminalisation as Securitisation: The Criminalisation of the Facilitation of Unauthorised Entry, Transit and Residence . . . . .	52
3.2.3	Criminalisation as Privatisation: The Introduction of Employers' Sanctions . . . . .	54
3.3	European Union Law as a Limit to the Criminalisation of Migration by EU Member States. . . . .	57
3.3.1	The Limits of EU Law on National Criminal Law . . . . .	58
3.3.2	The Limits of EU Migration Law on National Criminal Law—the El Dridi Ruling. . . . .	60
3.3.3	The Limits of EU Migration Law on National Criminal Law—the Case of Achughbabian. . . . .	65
3.3.4	The Limits of EU Migration Law on National Criminal Law—the Case of Sagor. . . . .	70
3.3.5	The Compatibility of National Criminal Sanctions with the Returns Directive in the Context of the Imposition of Re-entry Bans—Filev and Osmani . . . . .	72
3.4	Conclusion: The Protective Function of European Union Law. . . . .	74
	References. . . . .	75
<b>4</b>	<b>After Entry: Criminalisation as Risk Management, Detention and Removal.</b> . . . . .	77
4.1	Introduction . . . . .	77
4.2	The Exclusion of Asylum-Seekers. . . . .	78
4.2.1	Exclusion from Refugee Status. . . . .	79
4.2.2	Intra-EU Transfers of Asylum-Seekers: The Dublin Regulation . . . . .	81
4.2.3	Removal of Asylum-Seekers Outside the EU: From the Management of Risk to the Safe Third Country Concepts. . . . .	90
4.3	Detention, Removal and the Management of Risk Under the Returns Directive. . . . .	93
4.3.1	The Returns Directive: Background and Content. . . . .	93
4.3.2	Detention and Risk Under the Returns Directive—the Case of Kadzoev. . . . .	97

Contents	ix
4.3.3 Detention and Asylum Under the Returns Directive—the Case of Arslan . . . . .	99
4.3.4 Detention and Undocumented Migrants Under the Returns Directive—the Case of Mahdi . . . . .	101
4.3.5 Detention and Defence Rights Under the Returns Directive—the Case of M.G. . . . .	103
4.3.6 Detention and Imprisonment Under the Returns Directive—the Cases of Thi Ly Pham and Brero and Bouzalmate . . . . .	104
4.4 Conclusion. . . . .	106
References. . . . .	107
<b>5 Decriminalising Migration in EU Law: Upholding Human Rights and the Rule of Law After Lisbon . . . . .</b>	<b>109</b>