

EU ASYLUM LAW A BIRD'S EYE VIEW

Presentation of Boldizsár Nagy the fifth Summer School
of Human Rights of the consortium of Russian
universities
«Social vulnerability: modern challenges and
international protection»

Global figures, end of 2016

65.6 MILLION
FORCIBLY
DISPLACED
WORLDWIDE

as a result of persecution,
conflict, violence, or
human rights violations

- 22.5 million people who were refugees at end-2016
 - 17.2 million under UNHCR's mandate
 - 5.3 million Palestinian refugees registered by UNRWA
- 40.3 million internally displaced people*
- 2.8 million asylum-seekers

**51% of the
refugees are
minors**

More than half (55 per cent) of all refugees worldwide came from just three countries:

Syrian Arab Republic	(5.5 million)
Afghanistan	(2.5 million)
South Sudan	(1.4 million)

552,200 refugees returned home
in 2016

189,300 refugees were admitted
to resettlement

Source: UNHCR: Global Trends. Forced displacement in 2016. Geneva, 2017, various pages

<http://www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html> (20170627)

Syria! June, 2017

Total Persons of Concern

5,058,456

Last Updated 19 Jun 2017

Source - UNHCR, Government of Turkey

Registered Syrian Refugees

5,058,456

Last Updated 19 Jun 2017

Source - UNHCR, Government of Turkey

This figure includes 2 million Syrians registered by UNHCR in Egypt, Iraq, Jordan and Lebanon, 2.97 million Syrians registered by the Government of Turkey, as well as more than 30,000 Syrian refugees registered in North Africa.

Regional demographic breakdown below is based on available data from Egypt, Iraq, Jordan and Lebanon

Total Syrian Asylum Applications in Europe

937,718 between Apr 2011 and Mar 2017

137,798 in 2014 only

Note - Data for 37 European countries which provide monthly information to UNHCR. To the extent possible, the figures reflect first time asylum applications, but some of the statistics are likely to include repeated applications (same or different country).

Top Countries



Source: <http://data.unhcr.org/syrianrefugees/country.php?id=224> (20170627) author's assemblage

Egypt: 122,228

Iraq: 241,406

Jordan: 660,785

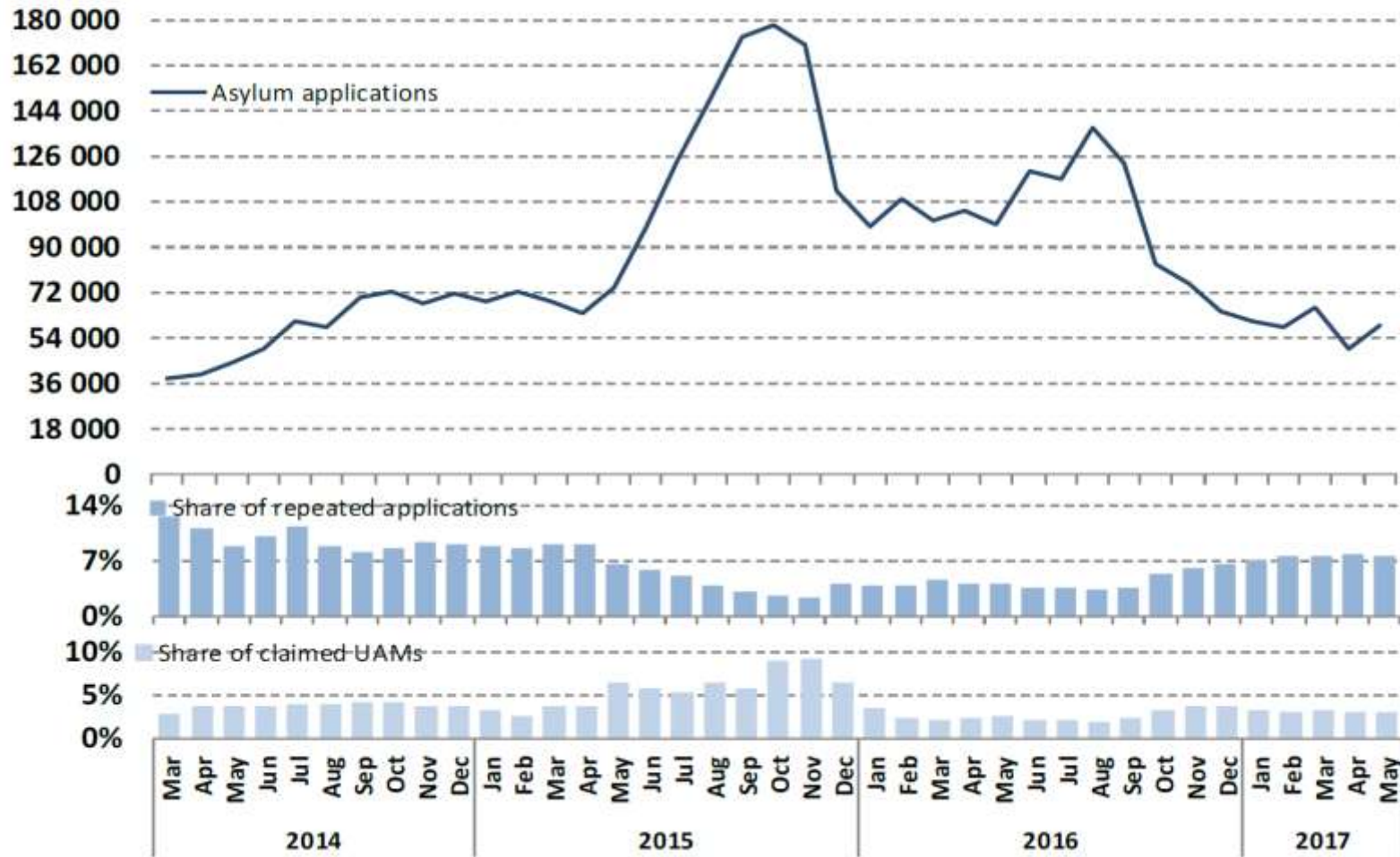
Lebanon: 1,011,366

Turkey: 2,992,567

Individual applications in the EU+

Latest asylum trends – May 2017

Number of applications for international protection in the EU+¹



Source: EASO, Latest Asylum Trends, 2017, May, p. 1.

<https://www.easo.europa.eu/latest-asylum-trends> (20170627)

DEFINITIONS

European Union: subregional law

„Convention refugee”

„Political refugee”

Beneficiary of subsidiary protection

Victims of civil war or threatened with inhuman or degrading treatment or punishment or death penalty

Beneficiary of temporary protection

„Mass influx” from conflict, endemic violence or systemic violations of human rights

Details later

Asylum acquis

Adopted and proposed measures

1. Regulation on **Eurodac** (2000) recast: **2013**. Proposal for regulation **2016**
2. Directive on **temporary protection** (2001)
3. **Reception conditions** directive (2003) recast: **2013** Proposal for directive (recast 2): **2016**
4. **Dublin II** Regulation and its implementing rules (2003) recast: **2013** Proposal for regulation (recast 2): **2016**
5. Qualification (**Refugee definition**) directive (2004) recast: **2011**. Proposal for regulation: **2016**
6. **Asylum procedures** directive (2005) recast: **2013**. Proposal for regulation: **2016**
7. Establishment of an **European Asylum Support Office** (2010) Proposal for regulation on **European Asylum Agency**: **2016**
8. Decision on the new **Asylum Migration and Integration Fund** – **2014**
9. Solidarity measures, 2015: **resettlement and relocation (See also 2016 Dublin proposal)**

The Dublin Convention the Dublin II and the Dublin III regulations (1990, 2003 and 2013)

Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (1990) OJ 1997 C 254/1

and

Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national OJ 2003 L 50/1

Implementing regulation

Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222 of 5 September 2003, p. 1);

REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL **of 26 June 2013**

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)
(OJ 2013 L 180/96)

COMMISSION IMPLEMENTING REGULATION (EU) No 118/2014 of 30 January 2014

amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
OJ 2014 L 39/1

Purpose and philosophy of Dublin

Every asylum seeker **should gain access** to the procedure. There must be a MS to determine the case

Only one procedure should be conducted within the Union. **A decision** by any MS be taken **in the name of others** = no parallel or subsequent application should take place

The philosophy of Dublin:
under what conditions is taking charge by another state –without investigation of
the merits in the first state fair

Fairness preconditions

If the **substantive law** (the refugee definition) is
identical

If **procedural rules** guarantee equal level of
protection at least in terms of

legal remedies (**appeals**)

access to **legal representation**

reception conditions (support) during the
procedure (detention, e.g.!)

Criteria of identifying the responsible state (this is **the hierarchy**)

1 Minor

2 Adult applicant

3 Residence permit, visa

4 Irregular crossing of external border

5 Unnoticed stay (for 5 months)

6 Visa waived entry

7. Needy family members

Responsibility of the state terminates when the applicant leaves the territory of the EU for 3 months
See: Abdullahi case, CJEU judgment, 2013 December

Regulation 604/2013/EU (Dublin III)

Procedure - deadlines

Taking charge (Another MS, in which the applicant did not apply, is responsible for the procedure, not where the applicant submitted the application)

Taking back (Procedure is still pending in the requested state, applicant withdrew her application there or the application was rejected)

Deadlines for request (3 or 2 months) and response (2 months – 2 weeks). Transfer: within 6 months

Silence = approval of the request

The problem of non-performing countries

Greece since 2011

Bulgaria, Hungary repeatedly

Inhuman treatment of asylum seekers – transfers stopped

“Given the worsening situation of asylum-seekers in Hungary, I urge States to suspend any Dublin transfer of asylum-seekers to this country until the Hungarian authorities bring their practices and policies in line with European and international law,”

Filippo Grandi UN High Commissioner for Refugees, 2017 April 10

<http://www.unhcr.org/news/press/2017/4/58eb7e454/unhcr-urges-suspension-transfers-asylum-seekers-hungary-under-dublin.html> (20170627)

M.S.S v Belgium, and Greece, Ap. no. 30696/09, ECtHR Judgment of 21 January 2011 – return to Greece and treatment of a.s. in Greece violates Art 3.

NS contra Secretary of State /UK/ C-411/10 CJEU reference for preliminary ruling Joined with **M.E. and Others v Refugee Applications Commissioner, Minister for Justice and Law Reform** (Ireland) - CJEU judgment of 21 December 2011 – No return to Greece allowed

CJEU: AG Opinion in Cases C-490/16 **A.S** and C-646/16 **Jafari**, 8 June 2017

Humanitarian corridor – not irregular entry

Reception conditions directive

Directive 2013/33/EU of the European Parliament and of the
Council
of 26 June 2013
laying down standards for the reception of applicants for
international protection (recast)
(OJ 2013 L 180/96)

Replacing
COUNCIL DIRECTIVE 2003/9/EC
of 27 January 2003
laying down minimum standards for the reception of asylum seekers
(OJ 2003 L 31/18)

New emphasis

Preamble explicitly refers to MS „which are faced with **specific and disproportionate pressures** on their asylum systems, due in particular to their geographical or demographic situation”.

It emphasises that the EU asylum policy „should be governed by the principle of **solidarity and fair sharing of responsibility**, including its financial implications, between the Member States.”

Much **refinement** concerning **detention** and persons with special needs

Reception Conditions Directive

Purpose:

To ensure **asylum seekers a dignified standard of living** and comparable living conditions in all Member States during the refugee status determination procedure

and

by the **similarity of treatment across the EU** limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception

Only the minimum is prescribed – states may overperform

Reception Conditions Directive

Information in 15 days, in writing, language!

Family unity maintain as far as possible

Schooling minors compulsory, (after 3 months)

Employment optional exclusion from labour market for a maximum of 9 months.

Material reception conditions: „provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.” (§ 17 /2)

Housing/accommodation: in kind or allowance for it

Health care minimum: „emergency care and essential treatment of illness and of serious mental disorders” (§ 19)

Reception Conditions Directive

Detention – a limited, exceptional tool

• Article 8 para 2:

Member States may detain only detain an applicant, „**if other less coercive alternative measures** cannot be applied effectively” – **individual assessment** is required

- Less coercive alternatives:
- regular reporting to the authorities,
 - the deposit of a financial guarantee,
 - obligation to stay at an assigned place

Reception Conditions Directive

- Six **grounds** for detention:
 - verifying **identity or nationality**;
 - getting the facts forming the basis of the application if there is **risk of absconding** of the applicant;
 - **border procedure** (decision on entry);
 - application is made only in order to **delay or frustrate the enforcement** of the return decision
 - when protection of **national security or public order** so requires;
 - **Dublin** procedure

CASE OF ILIAS AND AHMED v. HUNGARY
(Application no. 47287/15)
ECtHR unanimous judgment 14 March 2017
Detention in „transit zone” without deadline
and appeal illegal

Reception Conditions Directive

Reduction/withdrawal always **optional**

Decisions „shall be taken **individually, objectively and impartially** and reasons shall be given” (§ 20/5)

Emergency health care must not be withdrawn in any case!

Appeals against all substantive decisions must be allowed

PROCEDURES DIRECTIVE

DIRECTIVE 2013/32/EU OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

on **common procedures** for granting and withdrawing
international protection (recast)

(OJ L 180/60 of 29. 6. 2013)

Replacing

Council Directive 2005/85/EC of 1 December 2005 on **minimum standards on
procedures** in Member States for granting and withdrawing refugee status
(OJ L 326/13 of 13.12.2005)

Procedures directive, 2013

Cathryn Costello: the dual vision behind the norms. Some are based on the image of **the abusive asylum seeker and others on **the vulnerable a.s.****

Purpose: common procedures on recognizing and withdrawing refugee status and subsidiary protection

Scope:

„**all applications** for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States”

(**Not on high seas** or extraterritorially but within jurisdiction!)

More favourable provisions: MS may maintain or introduce „insofar” as are compatible with this directive (5 §)

Procedures directive, 2013

Guarantees (selected list)

- **Access** to procedure
- **Right to stay** - (until first instance decision)
- **Counselling in detention and border zone**
- Procedural requirements: **appropriate examination**: individual, objective, impartial, based on up to date country of origin and transit info, by person knowledgeable about asylum law
- **Decision: in writing**, justification if negative (!)
- **Interpreter** „whenever necessary
- Access to **UNHCR** or an agency working on its behalf

Procedures directive, 2013

guarantees

Interview: Compulsory, with exceptions

Preferably same sex interviewer who is

„sufficiently competent”, (to take account of applicant’s cultural origin and vulnerability gender, sexual orientation, gender identity)

Legal assistance:

- Applicant must have access to lawyer (at her cost)
- States shall permit the presence of lawyer at the interview

Free legal assistance/representation: after negative decision, with limits

Exceptional procedures/applications



Accelerated procedures

- no relevant issue raised
- safe country of origin
- misled the authorities by presenting false information or documents with respect to his/her identity
- in bad faith destroyed or disposed of an identity or travel document that would have helped establish identity
- the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict verified COI info

Inadmissible applications

- Dublin III applies
- Refugee status in another MS
- Non MS = first country of asylum (already recognized there as refugee)
- „Normal” safe third country applies
- Dependent repeating parents rejected application

Exceptional procedures/applications



Accelerated procedures

- **subsequent** application that is not inadmissible = new elements arouse or presented
- merely in order to **delay or frustrate removal**
- **entered** or prolonged his/her stay **unlawfully** and, without good reason, has either **not presented himself/herself** and/or **did not file an application for asylum as soon as possible**
- applicant may, for serious reasons, be considered a danger to the **national security or the public order**
- refuses to have his/her **fingerprints** taken

Inadmissible applications

- Identical **subsequent application**
- **European safe third country** (optional)

C-69/10 *Diouf v* Ministre du Travail, de l'Emploi et de l'Immigration (Luxembourg) decided: 28 July 2011.

No separate appeal against a decision to examine in accelerated procedure, 15 days for appeal are enough, one level court review constitutes effective remedy

Border procedures

(keeping persons in transit zones or at entry points)

Guarantees apply !

Limited to

- decision on **admissibility of the applications,**
- to **accelerated procedures**

Maximum: **4 weeks** – then: entry to the country

If **large numbers** arrive: border procedures (no entry) even if accommodated „at locations in **proximity of the border** or transit zone” (§ 43 (3))

Systemic detention at the Hungarian border since March 2017 ≠ border procedure

Procedures directive, 2013

key terms

Presumption: person **not in need of protection**, because

- not threatened or:
- protected elsewhere

Parliament v
Council ,
Case
C-133/06
decided on 6
May 2008:
No common
lists by
Council
alone

Safe country
of origin

Country of
first asylum

Safe third
country

European
safe third
country

Are Jordan, Lebanon and Turkey
first countries of asylum?

Commission
proposal for a list
of safe countries of
origin:
COM(2015) 452
final
9 September 2015

Presumption: **another state should determine** if the person needs
protection

No judgment on the presence of threat of persecution or harm

Procedures directive, 2013

Appeals (Effective remedy)

See H.I.D on the concept of „court or tribunal”

To: court or tribunal

Against: negative determination, inadmissibility decision, safe third country and many other)

Examination ex nunc of **facts and law** (Not merely review of legality)

Deadline for appeal: MS may set but „the time limits shall not render such exercise impossible or excessively difficult.” (§ 43/4)

Default: a right to stay „**pending the outcome of the remedy**” (if appeal submitted on time and Dublin III not applicable)

There are limited exceptions, but still with a right to have removal order reviewed

QUALIFICATION DIRECTIVE, 2011 DECEMBER

A few salient features

DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 13 December 2011

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
(recast)

Qualification directive (cont'd)

2 § Definitions:

Application = seeking refugee **or** subsidiary protection status

Refugee = GC definition applied to third country nationals

„‘refugee’ means 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 himself or herself of the protection of that country ...”

+ to whom exclusion grounds do not apply

Person eligible for subsidiary protection

See next slide

Qualification directive (cont'd)

Art 2 (f)

„‘person eligible for **subsidiary protection**’ means a third country national or a stateless person who **does not qualify as a refugee** but in respect of whom **substantial grounds have been shown for believing** that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, **would face a real risk of suffering serious harm as defined in Article 15**, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country”

Article 15: Serious harm

Serious harm consists of:

- (a) **death penalty** or execution; or
- (b) **torture** or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) **serious and individual threat** to a civilian's life or person **by reason of indiscriminate violence** in situations of international or internal armed conflict.

Conceptual scheme

International protection

new

Refugee status
status

Subsidiary protection

stateless

means the recognition of a third country national or person
(Not EU citizen!)

As a „refugee”

as a „person eligible
for subsidiary protection”

Qualification directive

Well founded fear

= Assessment of applications for international protection
(Chapter II) = objective theory

burden of proof: shared between applicant and assessing state;

assessment: individual, based on the statement of the applicant + his documents

country of origin: **law and reality** should be assessed

opening for subjectivization (4§ (3. (c)) (Taking into account the „**individual position and personal circumstances**” of the applicant ...to assess whether the acts to which (s)he could be exposed amount to persecution)

Past persecution /serious harm = serious indication of well-founded fear unless „good reasons to consider” that they „will not be repeated”.

Credibility issues - see next slide

Qualification directive Well-founded fear (cont'd)

Credibility /benefit of doubt

„where aspects of the applicant’s statements are not supported by... evidence” these need no confirmation if:

- applicant made **genuine effort** to substantiate
- **submitted all** available evidence and **explained the lack** of others
- the statement is **coherent and plausible** and does not contradict available information
- the a. has **applied „at the earliest possible time” unless** good reason for not having done so
- „the **general credibility** of the applicant has been established” (4§ 5. (e))

Qualification directive

Persecution

Acts of persecution

- (a) [„must be”] sufficiently **serious**
by their nature or repetition
as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
or
- (b) be an **accumulation** of various measures,
including violations of human rights which is
sufficiently severe as to affect an individual in a similar manner as mentioned in
(a).

Acts: violence (physical, mental, sexual), discriminatory measures and punishment,
prosecution for denial of military service in a conflict entailing crimes or acts justifying exclusion, gender specific or child-specific acts

Nexus (for reasons of) need not be with persecution

It may be with absence of protection.

QUALIFICATION DIRECTIVE PERSECUTION (CONT'D)

Persecutor / serious harm doer

the State;
parties or organisations
controlling the State
or a substantial part
of the territory of the
State;
non-State actors, if the
state or other agents
are **unable** or
unwilling to provide
protection

Protector

the State; or

parties or organisation , **including international organisations**,
controlling the State or a substantial
part of the territory of the State.

Protection means at least that

- an effective legal system for the detection, prosecution and punishment of persecution or serious harm is operated
- the applicant has access to such protection.

Protection **must be effective and non-temporary** and can only be provided by the above mentioned actors if they are **willing and able to enforce the rule of law**.

Internal relocation alternative (8§)

- Optional! (MS „may” determine)
- In a **part of the country** of origin
 - there is **no well-founded fear** of being persecuted / **no real risk** of suffering serious harm
 - The applicant **has** (actual) **access** to protection
 - the applicant can **„safely and legally” travel** there **and gain admittance** and **„reasonably be expected to stay** in that part of the country”
- „Have regard” to – general circumstances + personal circumstances of the applicant
- Authorities must have up-to-date info

Qualification directive
Procedure, including revocation of refugee status

MS **must** „grant” (i.e.: recognise) refugee status to those who qualify! (13 §)

MS **must** „revoke, end or refuse to renew” refugee status if **cessation grounds** apply or „he or she **should have been or is excluded** from being a refugee” (14 § 3. (a)) or his or her **misrepresentation or omission of facts**, including the use of false documents, were decisive for the granting of refugee status.

MS **may** „revoke, end or refuse to renew” status **when GC exceptions to non-refoulement** (33§ (2)) apply, i.e. national security or danger to the community

Burden of proof:

cessation: MS „demonstrate” on an individual basis

Exclusion: „establish”

See: CJEU - C-57/09 and C-101/09 Bundesrepublik Deutschland v B and D – Grand Chamber judgment of 9 November 2010

Qualification directive

Subsidiary protection

See **definition (2§ and 15§)** above

(death penalty, execution; torture, inhuman, degrading treatment, punishment; serious indiv. threat to life or person by reason of indiscriminate violence in armed conflict)

Applies to anyone, not only to those who are threatened with the harm for the five grounds

Should **not be used to replace** Geneva Convention refugee status

Individual threat in generalized violence?

See Elgafaji judgment, Case C-465/07, judgment of 17 February 2009

What about non armed conflict situations?

Important cases: „*Elgafaji*”, CJEU, „*AH and QD v SSHD*” Court of Appeal, UK, „*Abdullah and others*”, CJEU, „*Diakite*”, CJEU

The Elgafaji case – C-465/07 ECJ – Judgment, 17 February 2009

The case:

Case C-465/07, Reference for a preliminary ruling under Articles 68 EC and 234 EC from the Raad van State (Netherlands), in the proceedings **Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie** . The Grand Chamber deciding, Netherlands and seven other MS (+ the Commission) making observations

Importance: clarifying what „individual” means in 15 § c; settling the relationship among a, b, and c by stating that c goes beyond a and b.

Facts:

Mr Elgafaji, is a Shiite Muslim his wife is Sunni. He had worked from August 2004 until September 2006 for a British firm providing security for personnel transport between the airport and the ‘green’ zone. His uncle, employed by the same firm, had been killed by a terrorist act of the militia.

Claimants’ reasons for believing that there was a serious and individual threat

- The killing of the uncle
- A short time later, a letter threatening ‘death to collaborators’ fixed to the door of their residence

1. Does Article 15(c), in comparison with Article 3 of the [ECHR], offer **supplementary or other** protection?

Court: **Yes**

2. If the answer is affirmative, **when** does a person run „**a real risk of serious and individual threat** by reason of indiscriminate violence”

(see next slide)

It does not refer to specific acts of violence, but to the **threat** of the applicant's life and person.

That threat is **triggered by violence**, which is indiscriminate (34. §)

Indiscriminate: it extends to the person „**irrespective of her/his personal circumstances**” (34 §)

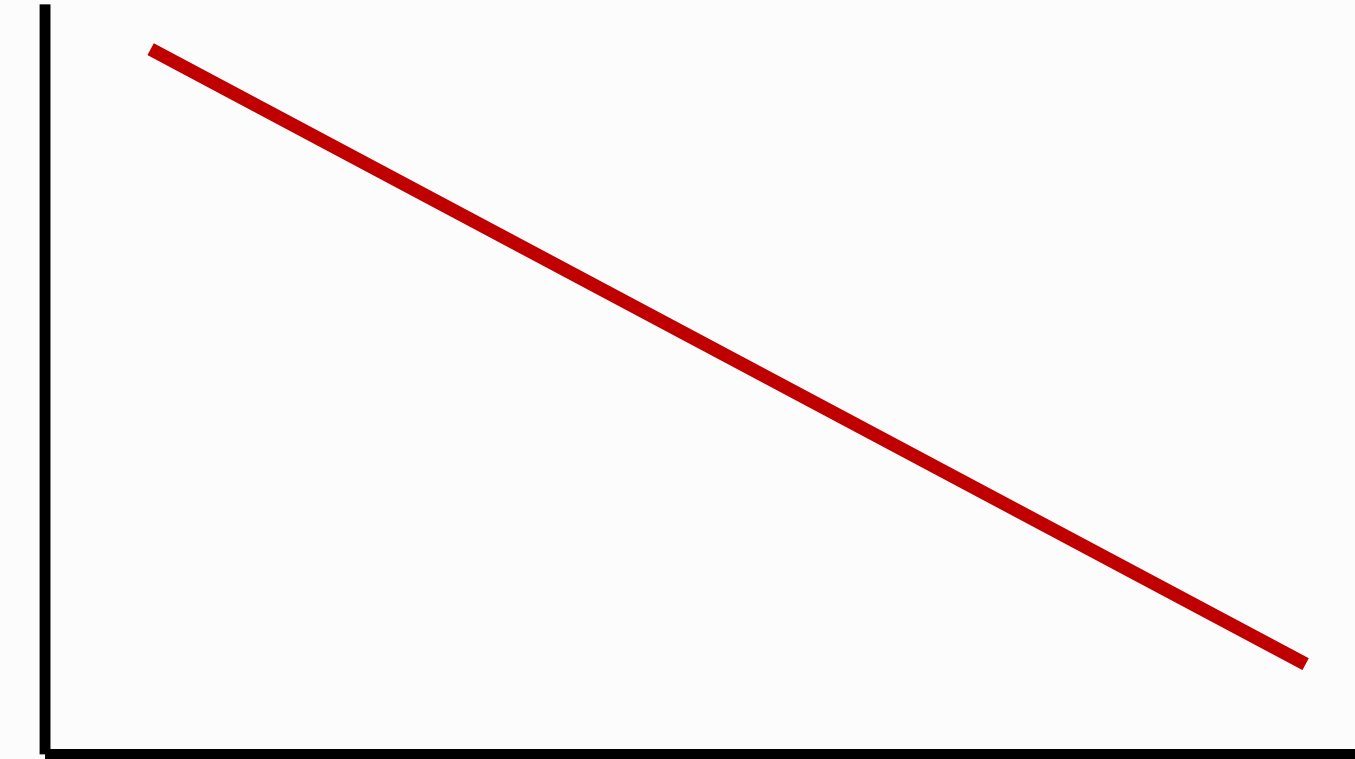
„...[T]he word '**individual**' must be understood as covering harm to civilians **irrespective of their identity**, where the **degree of indiscriminate violence** characterising the armed conflict taking place ... reaches **such a high level** that substantial grounds are shown for believing that **a civilian**, returned to ..., would, **solely on account of his presence on the territory** ..., face a real risk of being subject to the serious threat referred in Article 15(c) of the Directive” (115 §)

The measure of individualisation and the level of violence Elgafaji, para 39.

Individualisation

High

Low



The level of indiscriminate violence

Low

High

Qualification directive: substantive rights of refugees and of subsidiarily protected

MS shall ensure family unity (23 §)

(definition – see there, unity and benefits according to national law)
national security or public order: grounds for refusal, reduction or withdrawal of benefits from fam. members

MS may extend to other close relatives, who lived together and were dependent on the beneficiary of ref or subsid prot status before his/her departure

Residence permits: min 3 years for refugees 1 year for subsid. prot.

Travel document: refugees: as in GC, subsid. prot: „document” which enables travel outside MS territory

Qualification directive: substantive rights

Employment, self employment, vocational (further) training:

Refugees: subject to rules applicable to the profession

Subsidiary protection beneficiaries: the same

Education: Minors: full access; adults: as third country nationals.

-MS must facilitate (by grants and loans) access to **employment related education and training**

-Access to procedures for **recognition of qualifications** of those, who do not have documents to prove it

Qualification directive: substantive rights

Social welfare and health care:

national treatment, but for subsid. prot. beneficiaries MS may limit to core benefits

Accommodation:

As legally resident third country nationals

Allowing „national practice of dispersal”

Freedom of movement: As legally resident third country nationals

Integration: MS must create integration programmes. Access may be dependent on pre-conditions

Repatriation: MS *may* provide assistance to voluntary return.

Unaccompanied minors: 31 § details the protection of their special interests

Entry into force: **10 January 2012**

Transition: by **21 December 2013.**

INTRA-EU SOLIDARITY

THE TEMPORARY PROTECTION DIRECTIVE, EASO, AMIF, HOTSPOTS,
RELOCATION

SOLIDARITY WITH THIRD STATES,
COOPERATION, EXTERNALISATION

Temporary Protection Directive, 2001

2001/55 EC Directive on Giving Temporary Protection in
the Event of a Mass Influx of Displaced Persons and on
Measures Promoting a Balance of Efforts Between Member
States in Receiving Such Persons and Bearing the
Consequences Thereof
2001 July 20, OJ L 212/12

TEMPORARY PROTECTION DIRECTIVE

Goal:

minimum standards for giving temporary protection in the event of a mass influx of displaced persons

+

to promote a **balance of effort** between Member States

Basic principles:

Neither replaces nor excludes recognition as Convention refugee

Any **discrimination** among persons with temporary protection is **forbidden**

Temporary Protection Directive

Beneficiaries = 'displaced persons'

who

have had to leave their country or region of origin,
or have been evacuated,
and are unable to return in safe and durable conditions

in particular:

- (i) persons who have fled areas of armed conflict or endemic violence;
- (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights;

Temporary Protection Directive

Mass influx means arrival in the Community
of a large number of displaced persons,
who come from a specific country or
geographical area

The **Council decides by qualified majority** the start and end
of T.P.

Duration

1 year + max **two times 6 months**
= total max: **2 years**

Council may end it earlier, but must not exceed two years'

Temporary Protection Directive

The voluntary burden sharing model

Preamble: „It is therefore necessary ...to take measures

to promote a balance of efforts between the

Member States in receiving and bearing

the consequences of receiving

such persons.” ...

Provision should be made for

a solidarity mechanism

.... The mechanism should consist

of two components.

The first is financial and the second concerns the actual reception of persons in the Member States.”

Financial: European refugee Fund (§ 24) and in case of „sudden and massive influx” Council may recommend additional support.

Reception of persons: (§ 25) Council decision announcing TP includes voluntary offer of places by MS. Dual consent to relocation within the EU: the person and the receiving state must agree.

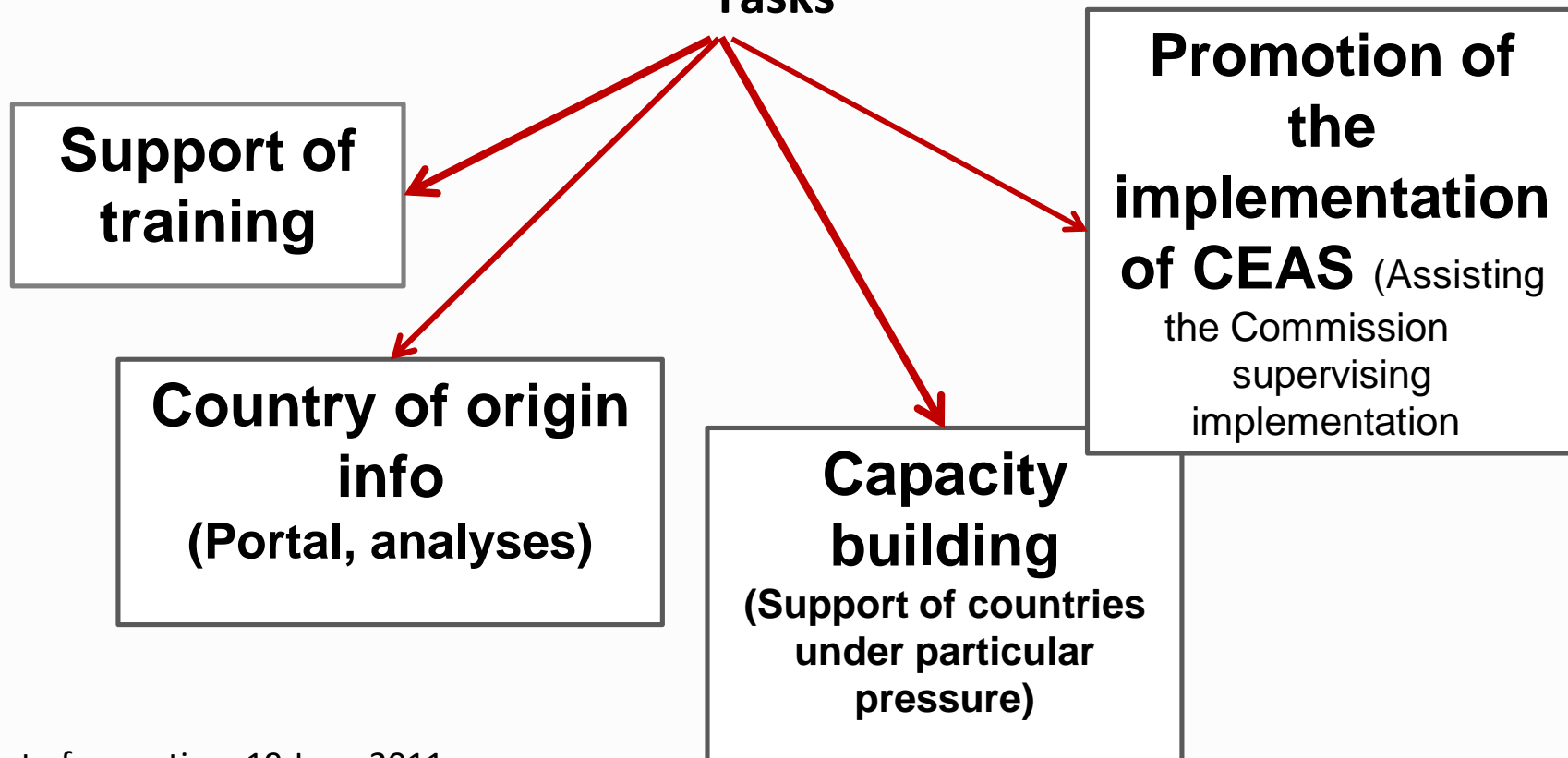
The Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. (§ 25)

EUROPEAN ASYLUM SUPPORT OFFICE (EASO)

REGULATION (EU) No 439/2010 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
of 19 May 2010
establishing a European Asylum Support Office
OJ L 132/11, 29.5.2010

EASO

Tasks



Start of operation: 19 June 2011.

For developments check: <http://easo.europa.eu/>

Last annual report: [Annual Report on the Situation of Asylum in the European Union, 2015](#)

Latest asylum trends: <https://www.easo.europa.eu/latest-asylum-trends>

COI: <https://www.easo.europa.eu/latest-publications>

EASO Priorities, 2017

Enhancing operational support

Deployment of staff and experts to countries under particular pressure.
Implementing the relocation decisions.

Information, analysis and knowledge development

Producing country of origin info, especially in light of safe countries of origin and safe third countries. Acting as a clearing house for national COI by coordinating national COI production. Developing EASO Information and Documentation System (IDS) as a new systematic monitoring tool on the CEAS,

Improving the quality of asylum processes and reception conditions

National procedures quality improvement, Dublin procedures consistent application

Training and professional development

European Asylum Curriculum – continuous renewal, trainings

External dimension

Support the approach of renewed partnerships with Third Countries, through tailored "compacts,,. Focus: Western Balkans, Turkey, North Africa

THE ASYLUM AND MIGRATION AND INTEGRATION FUND

The Asylum Migration and Integration Fund (AMIF)

2014 -2020 (seven years)

Total: **3 137 million** Euros (in current prices)

385 million set aside for Union actions, emergency assistance, the European Migration Network and technical assistance of the Commission

Member states may use **2 752 million** Euros **of which 360** million to cover specific actions (e.g.. joint processing centres, joint returns) + Union Resettlement Programme from third countries + transfer of beneficiaries of international protection from one Member State to another.)

Of the remaining **2 392** million

Nationally **20 %** must go to measures to support **legal migration** and promote the effective integration of migrants and **20 % to asylum measures**

For **resettlement** MSs will receive a lump sum of **6,000 euros** for each resettled person, which can be increased up to €10,000 for vulnerable persons or persons coming from priority areas.

THE EXCEPTIONAL YEARS
2015 - 2017

FAILURE OF THE SYSTEM, EFFORTS
TO RESCUE SOLIDARITY WITHIN THE
EU

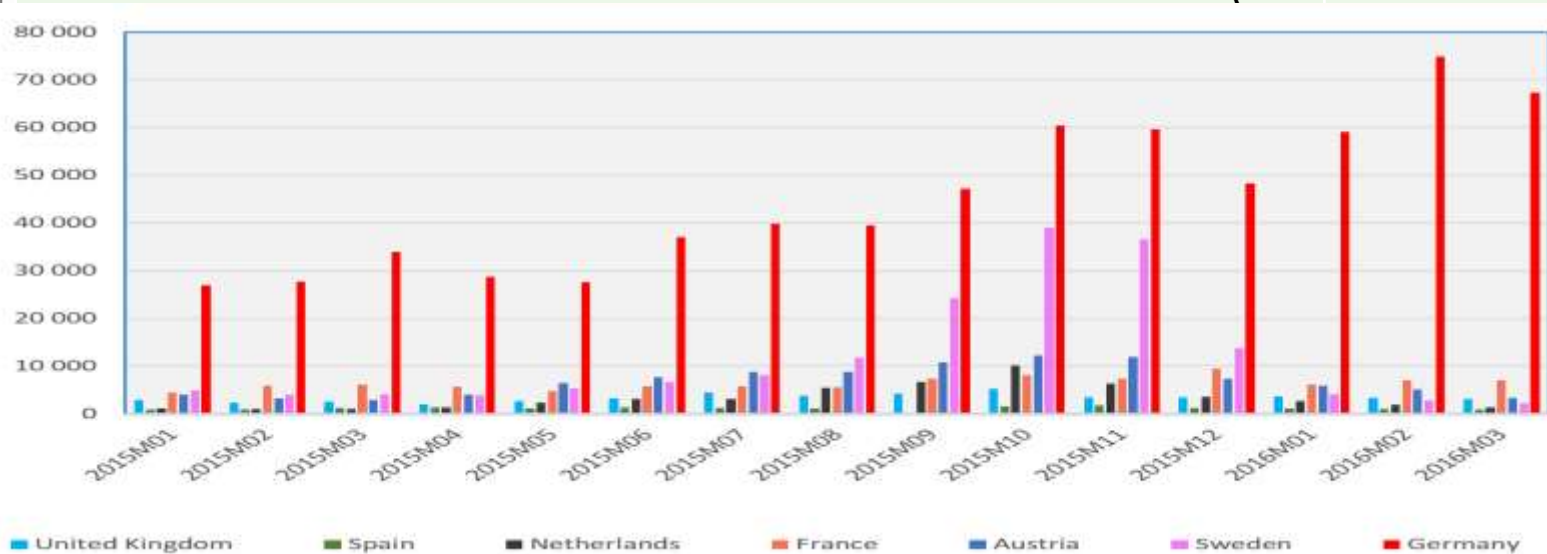
Good source on recent info:

<http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/table-view/03-2017>

SOURCES OF MALFUNCTIONING OF THE CEAS

- 1) Bad design - Dublin + the role of coercion
- 2) Overload – unequal distribution

2011	2012	2013	2014	2015	2016
341,795	373,550	464,505	662,165	1,322,145*	1,236,325



- 3) Free riders: Greece, Italy, Hungary, Croatia, Slovenia, Austria

WHAT SOLIDARITY IS CONCEIVABLE *AMONG* EU
MEMBER STATES GOING BEYOND TEMPORARY
PROTECTION, EASO AND AMIF,?

=

RELOCATION, HOTSPOTS, DUBLIN RECAST

Actual relocation decisions

Relocation: distributing among Member States those asylum seekers who are already within the EU and have a good chance of being recognised – i.e. members of groups with 75% recognition rate in the previous quarter (Syrians, Iraqis and Eritreans)

2 decisions:

- COUNCIL DECISION (EU) 2015/1523 of **14 September** 2015
40 000 persons **24,000 from Italy, 16,000 from Greece**
- COUNCIL DECISION (EU) 2015/1601 of **22 September** 2015
120 000 persons First year: **15,600 from Italy and 50,400 from Greece** Second year: 54,000 either from the same two or from other Member States.

No relocation to Denmark, Ireland, UK, Greece and Italy – 23 MS take up the 40 plus 120 thousand

Difficult cases (not „in clear need“) **remain in** the competence of the **frontline states**

Relocating MS get **6000 Euros/head**

In exchange: Greece, Italy must develop „roadmap“

How many – the key behind the compulsory relocation decision

- a) **Population** - 40% weighting
- b) **Total GDP** - 40% weighting
- c) Average number of **asylum applications over the 5 preceding years** per million inhabitants with a cap of 30% of the population and GDP - 10% weighting (**reducing the share**)
- d) **Unemployment rate** with a cap of 30% of the population and GDP - 10% weighting (**reducing the share**)

20 869 people have been relocated since the launch of the scheme (*state of play as of 9 June 2017*).

Member States	Relocated from Italy	Relocated from Greece	Member States	Relocated from Italy	Relocated from Greece
Austria	X	X	Luxembourg	110	216
Belgium	121	502	Malta	47	90
Bulgaria	X	47	Netherlands	612	1295
Croatia	18	36	Poland	X	X
Cyprus	34	55	Portugal	299	1 075
Czech Republic	X	12	Romania	45	589
Estonia	X	130	Slovenia	35	164
Finland	653	987	Slovakia	X	16
France	330	3 148	Spain	144	742
Germany	2 715	2 943	Sweden	228	X
Hungary	X	X	Liechtenstein	X	10
Ireland	X	459	Norway	812	533
Latvia	27	290	Switzerland	649	344
Lithuania	17	290			
TOTAL					
Relocated from Italy			Relocated from Greece		
6 896			13 973		

Relocation as of 9 June 2017

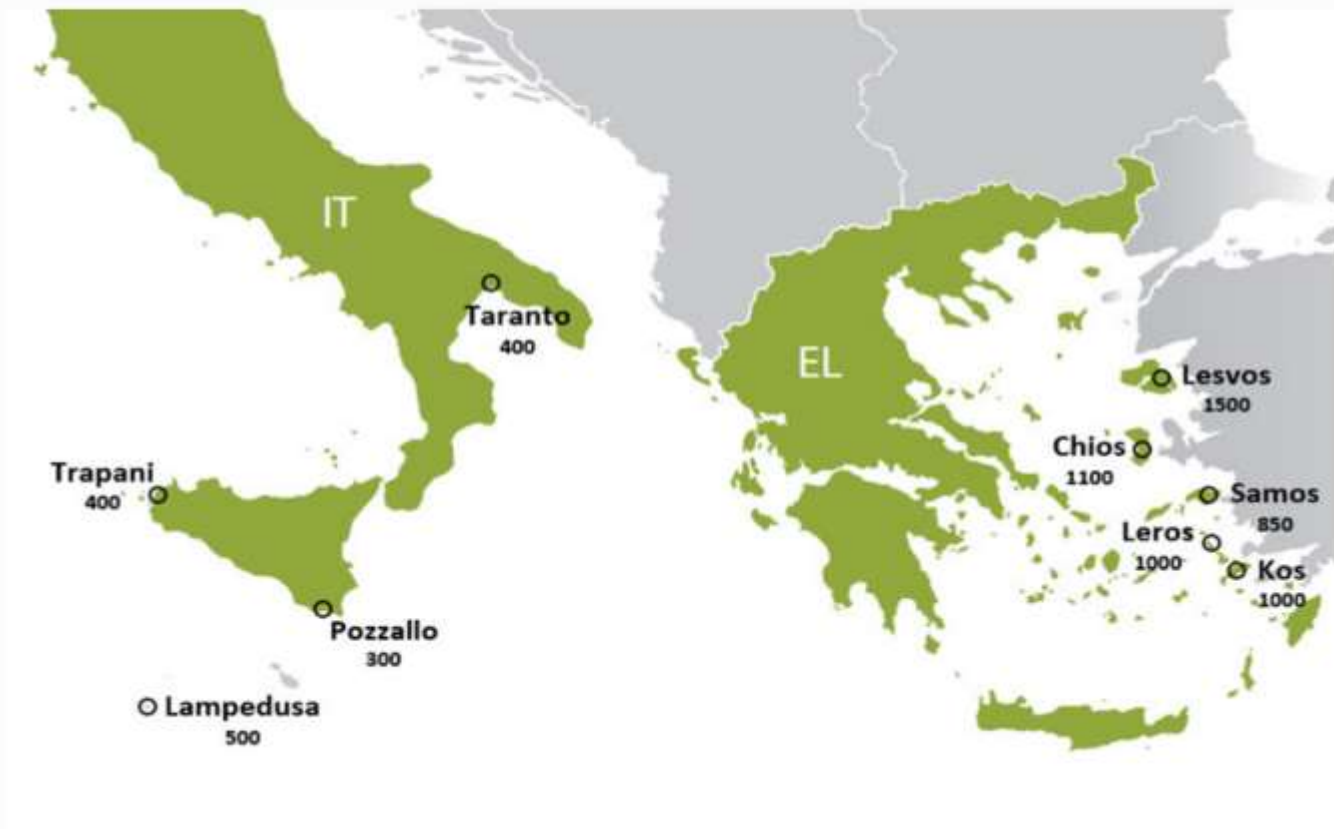
Source:
https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/background-information_en
 (20170627)

On 14 June 2017 the Commission announced the start of infringement procedures against the Czech Republic, Hungary and Poland for not complying with their respective obligations

Hotspots

Hotspots = in Italy and Greece: **complex sites** where experts from different EU MS work together in receiving and screening the applications and organising the return of those not in need of international protection. **4 in Italy, 5 in Greece.**

Map of hotspots in Greece (5) and Italy (4) and their reception capacity (No. of persons) as of November 2016



Efforts to recast the CEAS - overview

New asylum acquis package, 2016 Spring and Summer

Priorities

- 1) Establishing a **sustainable and fair system for determining** the Member State responsible for asylum seekers

Adapting the Common European Asylum System to deal better with the arrival of a high number of asylum seekers/refugees → amend the Dublin Regulation → corrective fairness mechanism based on a distribution key.

- 2) **Reinforcing** the Eurodac system

- 3) Achieving **greater convergence** in the EU asylum system

Strengthening and harmonising further the Common European Asylum System rules, so as to ensure more equal treatment across the EU and reduce undue pull factors to come to the EU.

→ Regulation establishing a single common asylum procedure, → a new Qualification Regulation

→ replacing targeted modifications of the Reception Conditions Directive.

- 4) **Preventing secondary movements** within the EU

Sanctions in the new regulations and the reception condition directive to discourage and sanction irregular moves to other Member States.

- 5) Creation of a **European Asylum Agency**

with new policy-implementing role as well as a strengthened operational role and providing sufficient financial resources and legal means for that purpose.

THE PROPOSED CHANGES AFFECTING INTER-STATE SOLIDARITY IN DUBLIN IV.

- In take back situations – only notification – no request – duty to take back. (Responsibility does not expire with time)
- Chapter VII: **Corrective allocation mechanism**
 - Disproportionate number of applications (after eligibility)
 - Exceeds **150 %** of reference key (including resettled refugees)
 - **Reference key** = total of application in EU – share by MS based on
 - population size
 - total GDP

} 50 -50 % weight

If unwilling to participate **250 000 Euros/per each applicant**, who would have been allocated

Automated system

SOLIDARITY WITH THIRD STATES, COOPERATION, EXTERNALISATION

RESETTLEMENT FROM THIRD STATES

The **ad hoc decision** of 20 July 2015 of the „Representatives of the Governments of the Member States meeting within the Council” (EU Doc 11130 /15) = Conclusions of the on **resettling through multilateral and national schemes 20 000 persons** in clear need of international protection

EU –Turkey Statement of 18 March 2016
1 : 1 Scheme – for a Syrian taken back from Greece another Syrian refugee from Turkey to be resettled to the EU

Union Resettlement Framework – Commission Proposal of 13 July 2016

(COM (2016) 468 final)

Council – in „Annual Union resettlement Plan”- sets

- Annual maximum total number

- Number of persons to be taken by each MS (based on their offers)

- Geographic priorities

Commission - in „Targeted Union resettlement schemes” – sets

- The actual number to be resettled by each state

- Details of regions, specificities of co-operation

MS choose the actual persons, who have to consent to the resettlement

Actual resettlement

22 504 people have been resettled under both schemes so far (based on information made available by Member States and Associated Countries as of 9 June 2017).

Member State/ Associated State	Total resettled under the 20 July scheme, including under the 1:1 mechanism with Turkey	Total resettled under the 1:1 mechanism with Turkey (since 4 April 2016)	Member State/ Associated State	Total resettled under the 20 July scheme, including under the 1:1 mechanism with Turkey	Total resettled under the 1:1 mechanism with Turkey (since 4 April 2016)
Austria	1 730	57	Latvia	10	10
Belgium	892	311 (242 within 20 July scheme + 69 outside of 20 July scheme)	Lithuania	25	25
Czech Republic	52	X	Luxembourg	X	98 (outside of 20 July scheme)
Denmark	481	X	Netherlands	1 000	1 411 (556 within 20 July scheme + 855 outside of 20 July scheme)
Estonia	20	20	Portugal	12	12
Finland	293	504 (outside of 20 July scheme)	Spain	418	186
France	1664	803 (228 within 20 July scheme) + 575 Outside of 20 July scheme)	Sweden	491	279 (269 within 20 July scheme)
Germany	1 600	2 270 (1600 within 20 July scheme + 670 outside of 20 July scheme)	United Kingdom	2200	X
Ireland	520	X	Iceland	50	X
Italy	1 006	257	Liechtenstein	20	X
			Norway	3 416	X
			Switzerland	519	X

TOTAL	
Total resettled under the 20 July scheme, including under the 1:1 mechanism with Turkey	Total resettled under the 1:1 mechanism with Turkey (since 4 April 2016)
16 419	A total of 6 254 people were resettled from Turkey under the 1:1 mechanism; 3 462 of whom through the scheme of 20 July

Source: https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/background-information_en (20170627)

Financial assistance

Emergency Trust Fund for stability and addressing **the root causes** of irregular migration and displaced persons **in Africa.**

Goals:

foster **stability** in the regions;
contribute to **better migration management.**

by **addressing the root causes** of destabilisation, forced displacement and irregular migration, by **promoting economic and equal opportunities, security and development.**

2 556 million Euros pledged

EU Regional Trust Fund in **Response to the Syrian Crisis**

Countries covered: Egypt, Iraq, Jordan, Lebanon, Turkey, but also some Western Balkan states

Improving education, livelihoods and health

Goal: **1 000million Euros** by 2017

The EU-Turkey „statement” – the deal of 18 March 2016

- „[A]ny application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with UNHCR”
- „All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion.”
- „[T]emporary and extraordinary measure”
- „Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey”

Turkey suspended the implementation of that point in March 2017

The EU-Turkey „statement” – the deal of 18 March 2016

- „For **every Syrian** being returned to Turkey from Greek islands, **another Syrian** will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria”
- **Visa liberalisation** among Schengen states for Turkey by the end of June 2016
- **Opening Chapter 33** in the accession negotiations
- **3 + 3 billion Euros** for the Facility for Refugees in Turkey

CONCLUSION

**DEMISE OR
SOLIDARITY**

Geographic proximity is morally irrelevant – then who should provide the public good of protection globally and regionally?

Why would Lebanon be more obliged to protect Syrian refugees (or Iran to protect Afghanis, or Kenya Somalis, etc.) than Italy, Germany or Finland?

Protection globally is a public good to which every member state of the global community should contribute. Free riding is immoral and antisocial

Demise of solidarity

EU at present

Increases coercive tools

(keeping out, penalizing for entry, detaining, transferring between countries by force = more of the policy which did not work

Pursues **externalisation**

Struggles with finding a principle for (flexible) **solidarity**

EU should „Sollen“

See itself as a **unified protection space**

Introduce significant **resettlement quotas** and/or **humanitarian visas**

Contribute more to **stopping the crises** in the countries of origin

Open up wider routes of **regular immigration**

Effectively **remove** those **without the right to stay**

(Some) Available options

Decision making on asylum requests **at the European level** by EU agencies, on behalf of the EU (K. Hailbronner, G Goodwin-Gill)

Decision making **at national level** under national law, but with the active and **intensive participation of EU staff** (Heijer, Rijpma, Spijkerboer)

Conceivable arrangement: **asylum seekers choose their country** of preference which conducts the RSD. All **costs associated** with the reception, the procedure, the integration or the removal are **aggregated and redistributed across the EU**

THANKS!

BOLDIZSÁR NAGY

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