

EU Asylum law

**Presented by Boldizsár Nagy,
George Mason University, Budapest
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**FROM JUSTICE AND HOME AFFAIRS TO AN AREA OF
FREEDOM, SECURITY AND JUSTICE**

THE AREA OF FREEDOM, SECURITY AND JUSTICE

THE METAMORPHOSIS OF CONCEPTS

1958 - 1993 = Up to Maastricht: **intergovernmental** cooperation

Schengen Agreement (1985) and Convention implementing the Sch. A. (1990)
The Dublin Convention on determining the state responsible for the asylum procedure (1990)

1993 – 1999 = Between Maastricht (1 November 1993) and Amsterdam (1 May 1999) = **Justice and home affairs** = **III pillar** = **9 matters of common interest** as in Article K (Title IV) of the **TEU** (Maastricht treaty)

1999 - 2009 = From entry into force of the A.T. till entry into force of the Lisbon Treaty (1 December 2009) = **Justice and home affairs** = **Area of freedom, security and justice** =

I pillar = Title IV. of TEC (**Visas, asylum, immigration** and other policies related to free movement of persons + civil law cooperation)

+

III pillar = Title VI. of TEU (Provisions on **police and judicial cooperation in criminal matters**)

2009 December 1 - = Area of freedom, security and justice **reunited in Title V of the Treaty on the Functioning of the European Union** = Border checks, asylum, immigration; civil law cooperation; criminal law cooperation; police cooperation = **no pillar structure but CFSP is outside** of the „normal“ EU regime

THE AREA OF FREEDOM, SECURITY AND JUSTICE

Freedom = freedom of movement + immigration and asylum+ non-discrimination+ data protection

Security = fight against organized crime (including terrorism) and drugs + police cooperation (Europol, Eurojust, Frontex)

Justice („Recht“) = cooperation among civil and criminal courts, approximation of procedures, mutual recognition of decisions, simplification of transborder actions (litigation in another member state)

**THE RATIONALE BEHIND DEVELOPING
AN EU ACQUIS:
SCHENGEN**

SCHENGEN

I. The creation of the Agreement (1985) and the **Convention**, implementing it **(1990)**

CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT OF 14 JUNE 1985 BETWEEN THE GOVERNMENTS OF THE STATES OF THE BENELUX ECONOMIC UNION, THE FEDERAL REPUBLIC OF GERMANY AND THE FRENCH REPUBLIC, ON THE GRADUAL ABOLITION OF CHECKS AT THEIR COMMON BORDERS
19 JUNE 1990 (OJ (2000) L 239/19)

II. The essence (see next slides)

SCHENGEN

Purpose:

Abolition of controls at the internal borders

Implementation of appropriate flanking measures

protecting the external borders with the same level of security including checks and surveillance

intensive co-operation in customs, police and criminal justice matters

establishing a system to determine which state is

responsible for the examination of asylum applications

How to interpret the flow of people from Greece to Macedonia (FYROM), Serbia and then across the external border of the EU to Hungary (and onwards)?!

SCHENGEN

Territorial and personal scope

Territorial - see map on next slide

Personal: nationals of member states or “aliens”

“**Internal borders** shall mean the **common land borders** of the Contracting Parties, their **airports for internal flights** and their **sea ports for regular ferry connections exclusively** from or to other ports **within the territories** of the Contracting Parties and not calling at any ports outside those territories;”

Schengen: area with no internal borders

1985: Signature of the Schengen agreement between FR, BE, NL, DE & LUX

1990 Schengen Implementing Convention

1995: abolition of the checks at the internal borders + one single external border among the 13 EU MS (except for UK IRL)

1997: incorporation of the Schengen cooperation into the EU legal framework

2001 Norway and Iceland

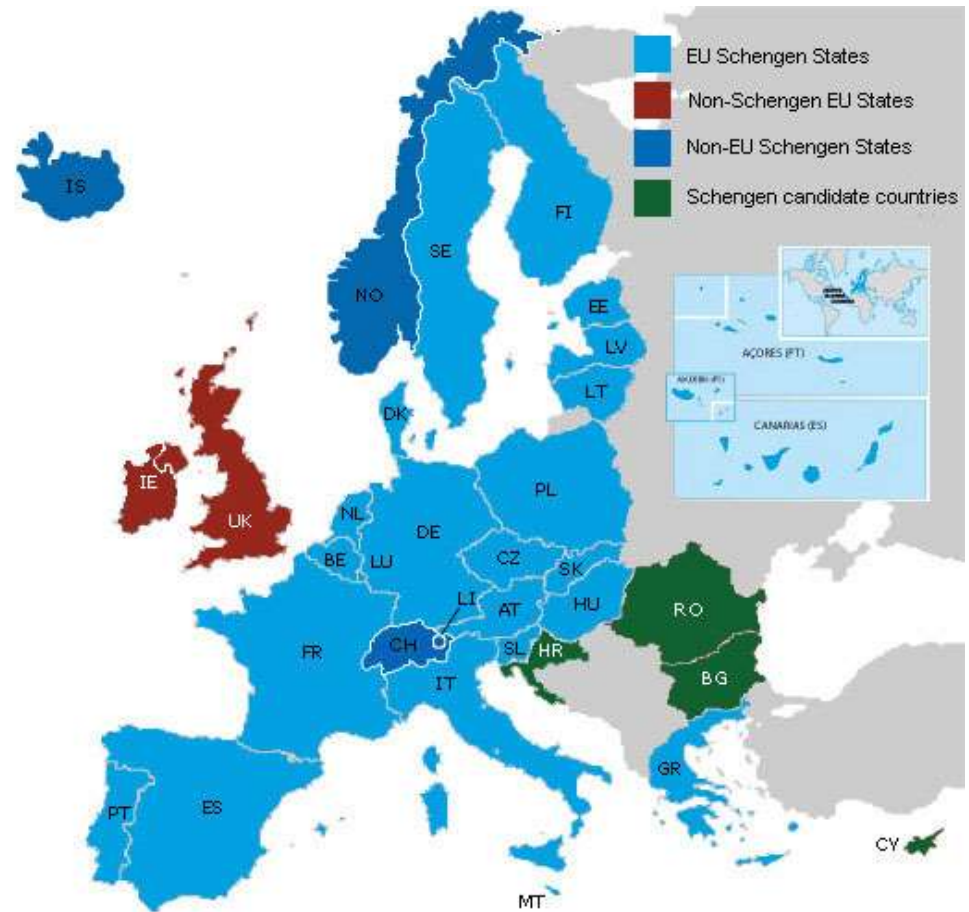
2007 Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia and the Czech Republic

2008: Switzerland

2011: Liechtenstein

Prospective Members CY, BG, RO,HR

Special status UK, IRL and DK – protocols under the Treaty of Lisbon



THE FUNDAMENTAL INSTITUTIONAL STRUCTURE AND THE BASIC NOTIONS

THE MESSAGE OF THE TAMPERE EUROPEAN COUNCIL CONCLUSIONS (1999)

2. ... The challenge of the Amsterdam Treaty is now to ensure that **freedom**, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice **accessible to all**. ...
3. This freedom **should not, however, be regarded as the exclusive preserve of the Union's own citizens**. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be **in contradiction with Europe's traditions to deny such freedom** to those whose circumstances lead them **justifiably to seek access** to our territory.

This in turn requires the Union to develop **common policies on asylum and immigration**, while taking into account the need for a consistent **control of external borders to stop illegal immigration** and to combat those who organise it and commit related international crimes.....

THE MESSAGE OF THE TAMPERE EUROPEAN COUNCIL CONCLUSIONS (1999)

4. The aim is an **open and secure European Union**, fully committed to the obligations of the **Geneva Refugee Convention and other relevant human rights instruments**, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the **integration** into our societies of those **third country nationals** who are lawfully resident in the Union.

STRATEGIC GUIDELINES

„Strategic Guidelines”

In the form of Conclusions of the European Council (26/27 June 2014).

„Building on the past programmes, the **overall priority now is**

*** to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place.**

*** Intensifying operational cooperation** while using the potential of Information and Communication Technologies' innovations,

*** enhancing the role of the different EU agencies** and ensuring the

*** strategic use of EU funds** will be key.” (Point 3, stars added -BN)

STRATEGIC GUIDELINES, 2014 (PARA 7)

„7. The Union's **commitment to international protection** requires a strong European asylum policy based on **solidarity and responsibility**. The **full transposition** and effective implementation of the Common European Asylum System (**CEAS**) is an absolute priority. This should result in high **common standards and stronger cooperation**, creating a level playing field where asylum seekers are given the **same procedural guarantees and protection throughout the Union**. It should go hand in hand with a **reinforced role for the European Asylum Support Office (EASO)**, particularly in promoting the uniform application of the acquis. Converging practices will **enhance mutual trust** and allow to move to future next steps.”

No reference to Geneva 51,
human rights or the Charter of
Fundamental Rights!

THE RULES IN FORCE

THE STRUCTURE OF THE UNION AFTER LISBON

(SINCE 1 DECEMBER 2009)

Designation	European Union		European Atomic Energy Community
Legal Basis	Treaty of Rome, 1957 (+ SEA, Maastricht, Amsterdam Nice, Lisbon)	Treaty of Maastricht 1992 (+ Amsterdam Nice, Lisbon)	Treaty establishing the European Atomic Energy Community (1957) (+ SEA, Maastricht, Amsterdam Nice, Lisbon)
Present designation	Treaty on the Functioning of the European Union	Treaty on the European Union	Same Short: Euratom Treaty
Field of cooperation	Justice and home affairs + Economic cooperation (internal market, external action)	Common foreign and security policy Fundamental principles, Institutional rules	Nuclear
Types and forms of legal acts	Type Legislative – delegated – implementing Form: Regulation, directive, decision	No legislative acts. General guidelines Decisions on actions, positions and their implementation (TEU § 25)	Regulation, directive, decision
Court control (ECJ)	Yes	No (except: personal sanctions)	Yes

The rules in force after Lisbon

After 1 December 2009

Initiative

Only the Commission

Decision making process

Ordinary decision making according to Art. 294

Decision

**Regulation, directive, decision, recommendation,
opinion**

DECISION MAKING STRUCTURE IN ASYLUM MATTERS TITLE V TFEU

COUNCIL OF MINISTERS (JHA COUNCIL)

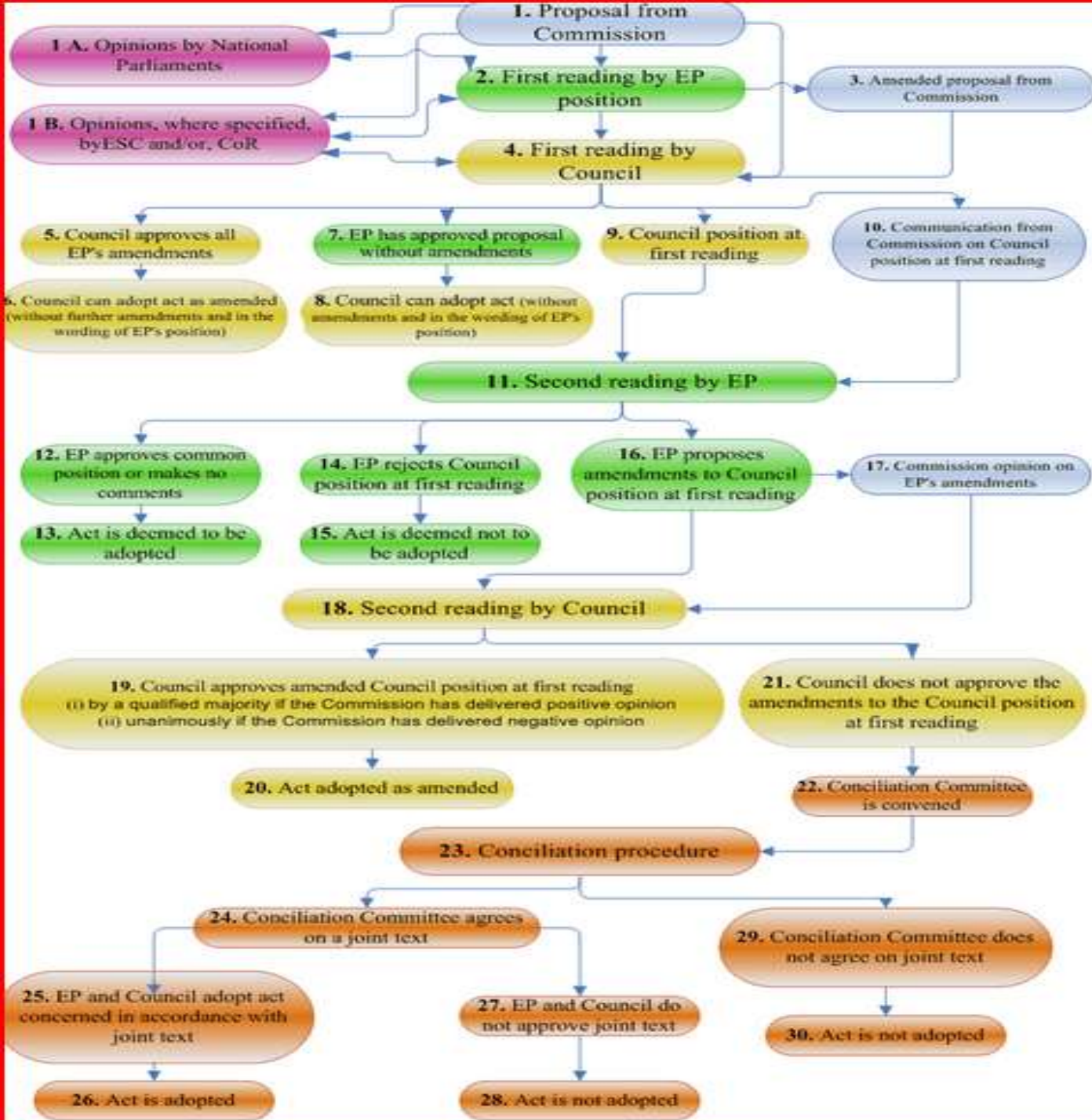
Coreper

(Committee of permanent representatives)

High-Level Working Group on Asylum and Migration

Standing Committee on Operational Cooperation on Internal Security (COSI) (see § 71 TFEU)

Asylum Working Party



ORDINARY DECISION MAKING

AS DEPICTED ON
[HTTP://EC.EUROPA.EU/
CODECISION/IMAGES/C
ODECISION-
FLOWCHART_EN.GIF](http://ec.europa.eu/codecision/images/codecision-flowchart_en.gif)

FORMS OF DECISIONS

Article 288 TFEU

...

A **regulation** shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A **directive shall be binding, as to the result** to be achieved, upon each Member State to which it is addressed, **but shall leave to the national authorities the choice of form** and methods.

A **decision** shall be binding in its entirety upon those **to whom it is addressed**.

DIRECT APPLICABILITY, DIRECT EFFECT, PRIMACY OF EU LAW

Direct applicability: a regulation „automatically forms part of the (highest) provisions of a Member State’s legal order” – without transposition Laenarts – Van Nuffel (Bray, ed), Constitutional Law of the European Union, second ed .2005, p. 764

Direct effect: if the *regulation* is clear and precise and leaves no margin of discretion then individuals can rely on it **against the state** and **against each-other**

Directive: no direct applicability (needs transposition) but *may have direct effect* if unconditional and sufficiently precise – and the state fails to transpose it on time.

Primacy/Supremacy of EC law: In case of conflict it has primacy even over later national acts, including statutes.

After 1 November 2014

1 member – 1 vote

Qualified majority = „double majority”

**On a proposal from the Commission
or the High Representative**

**55% of the ministers
(countries) (15)
representing 65% of the
population of the EU**

On any other proposal

**72 % of the ministers
(20)
representing 65 % of
the population of the
EU**

**Blocking minority : minimum 4 countries even if 3 represent more
than 35 % of the population**

VARIABLE GEOMETRY IN THE FIELD OF AFSJ

	TFEU Title V. not related to Schengen - new elements	Building on Schengen under Title V.	Schengen acquis in former title VI of the TEU	Other old elements of former Title VI	TFEU and TEU SIS, visa rules abolition of internal borders
UK Ireland	Opts in or out	Opts in or out	Opts in or out	UK opted out and then into 29 measures Ireland bound	No participation (except SIS II)
Denmark	No participation	No participation, but creates an obligation under international law	Binding, frozen	Binding, frozen	Takes part
NMS of 2004	Binding	Binding	Binding	Binding	Applied since 21 December 2007, on airports since March 2008.
Bulgaria Croatia Cyprus Romania	Binding	Binding	Binding	Binding	Not yet applied

Denmark had a referendum on opting
in to new measures under Title V
on 3 December 2015
The outcome was **NO**

Choice	Votes	%
For	1,375,862	46.89
Against	1,558,437	53.11
Invalid/blank votes	55,962	–
Total	2,990,261	100
Registered voters/turnout	4,153,041	72.00

Source: Statistics Denmark^[2]

VARIABLE GEOMETRY IN THE FIELD OF AFSJ

	TFEU Title V. not related to Schengen	Building on Schengen under Title V.	Schengen acquis in former title VI of the TEU	Other elements of former Title	TFEU and TEU SIS, visa rules abolition of internal borders
Norway, Iceland	No participation	Binding	Binding	No partici- pation	Takes part
Switzer- land Liechten- stein	No participation	Binding	Binding	No partici- pation	Takes part

NATIONAL PARLIAMENTS' SCRUTINY

Protocol 2 TFEU

2 votes each (may be 1 per chamber)

8 weeks for reasoned opinions on subsidiarity

- if **1/3 oppose a draft** (1/4 for Police Coop. / Judicial Coop. in Criminal Matters), **draft must be reviewed**,

initiator of the draft **can maintain** the draft but **has to give reasons**

- if **simple majority** opposes a proposal from the Commission under the ordinary legislative procedure, draft **must be reviewed**.

If Commission maintains proposal, **Council and Parliament take account of position** of national parliaments and either may halt procedure (**55% of Council or majority of votes in EP**)

THE COMMISSIONER



**DIMITRIS
AVRAMOPOULOS**

**Migration, Home
Affairs and
Citizenship
2014 - 2019**

Main responsibilities:

Border control, Frontex, regular access to EU territory
European policy on regular migration
Asylum policy, including solidarity and cooperation
Irregular migration, return policy
Terrorism and radicalisation,
Fight against crime (.e.g.: human trafficking, smuggling and cybercrime, corruption)
Strengthening police cooperation.

Citizenship:

- citizenship rights
- active citizens

THE ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU) IN ASYLUM AND MIGRATION MATTERS

Procedures against states

Infringement procedure = Commission against state for failure to fulfil obligations *Article 285 TFEU (ex Article 226 TEC)*

Interstate dispute = State against state for failure to fulfil obligations (*Hardly ever used*) *Article 259 (ex Article 227 TEC)*

Enforcement procedure = Commission against MS - when a state fails to implement a judgment of the CJEU *Article 260 (ex Article 228 TEC)*

Challenging the legality of an act or the failure to act

Annulment procedure = review of legality of acts *Article 263 (ex Article 230 TEC)*

MS, Parliament, Council or Commission challenging an act (of the other bodies) on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers + Natural and legal persons also, if personally and directly affected

Challenging failure to act = MS and institutions against any institution, body or organ if the latter fails to act in infringement of the Treaties

Preliminary ruling

MS's courts may (any level) must (highest level) request a preliminary ruling on

- the interpretation of the Treaties;
- the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union

PRIMARY LAW ON ASYLUM

TFEU

Article 78

1. The Union shall develop a **common policy on asylum, subsidiary protection and temporary protection** with a view to offering appropriate status to any third-country national requiring international protection and ensuring **compliance with the principle of non-refoulement**. This policy must be **in accordance with the Geneva Convention** of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and **other relevant treaties**.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:
 - (a) **a uniform status of asylum** for nationals of third countries, valid throughout the Union;
 - (b) **a uniform status of subsidiary protection** for nationals of third countries who, without obtaining European asylum, are in need of international protection;
 - (c) a common **system of temporary protection** for displaced persons in the event of a massive inflow;
 - (d) **common procedures** for the granting and withdrawing of uniform asylum or subsidiary protection status;

PRIMARY LAW ON ASYLUM

- (e) criteria and mechanisms for **determining which Member State is responsible for considering an application** for asylum or subsidiary protection;
 - (f) standards concerning the conditions **for the reception of applicants** for asylum or subsidiary protection;
 - (g) **partnership and cooperation with third countries** for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.
3. In the event of one or more Member States being confronted by an **emergency situation** characterised by a **sudden inflow** of nationals of third countries, the Council, on a proposal from the Commission, may adopt **provisional measures** for the **benefit of the Member State(s) concerned**. It shall act after consulting the European Parliament.

PRIMARY LAW ON ASYLUM

TFEU

Article 80

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of **solidarity and fair sharing of responsibility**, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

Charter of rights and fundamental freedoms

Article 18

Right to asylum

The **right to asylum shall be guaranteed** with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

EU ASYLUM ACQUIS

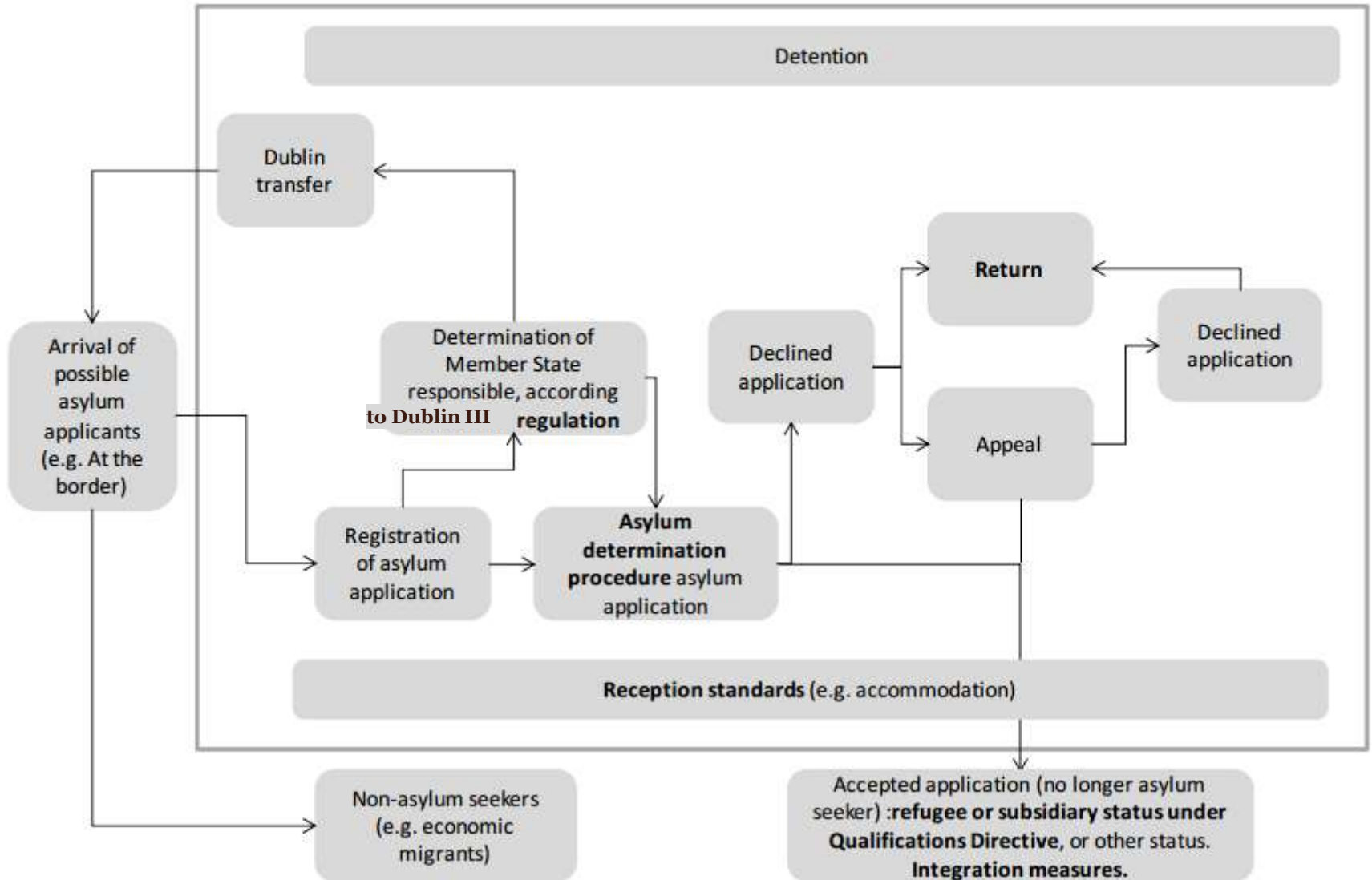
ASYLUM ACQUIS

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 ASYLUM PROCESS MODEL AS IN 2016

Figure 1: Overview of the asylum process



Source: (European Parliament:) What system of burden-sharing between Member States for the reception of asylum seekers? A study written by Dr Christina Boswell, Dr Eiko Thielemann and Richard Williams. PE 419.620.. p-34

**THE DUBLIN SYSTEM,
AND THE
RULES ON TEMPORARY
PROTECTION**

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)

The responsible state has to **be requested** as soon as possible but not later than **3 months** after the submission of the application.

If there is a **Eurodac hit**, request within **2 months**

If deadline missed: **loss of right to transfer** – the requesting state becomes the responsible state

Reply: within 2 months. Silence = agreement

In **urgent cases**: requesting state sets deadline. Min. **1 week**.
Response may be extended to **1 month** by requested state

REGULATION 604/2013/EU (DUBLIN III)

PROCEDURE - DEADLINES

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

Request:

If no Eurodac hit: **3 months for request**

Eurodac hit: **2 months**

Response: **1 month** (no hit) ; **2 weeks** (Eurodac hit)

If taking back **not requested in time**: opportunity to submit a **new application** must be given

Transfer must take place **within 6 months** from accepting responsibility

A POSSIBLE CONCEPTUAL FRAMEWORK FOR APPROACHING THE PROBLEMS RELATED TO THE DUBLIN SYSTEM

Field / Discipline Level of analysis	Moral and political philosophy	Practical, Political	Legal, Justice oriented	Social, sociological, psychological
State / Commu- nity	<p>Responsibility sharing or shifting? Allocation of „burdens“</p>	<p>What is „in the interest of the state?“</p> <ul style="list-style-type: none"> • ever fewer asylum seekers? • Minimum expenses? • Avoidance of social tensions? 	<ul style="list-style-type: none"> • Compatibility with Geneva 51? • Criteria of fairness: <ul style="list-style-type: none"> ○ Procedural rights ○ Substantive interpretation of definition ○ Material reception conditions 	<ul style="list-style-type: none"> • Social identity construction of receiving society : why to protect refugees, (or why not) • Selectivity according to country of origin
Indi- vidual / Family	<ul style="list-style-type: none"> • Freedom of movement (choice of residence) • Decreasing vulnerability 	<ul style="list-style-type: none"> • Can she reach her preferred destination? • Where is social integration the smoothest? 	<ul style="list-style-type: none"> • ECHR, Article 3, 8, 13 issues (Torture, inhuman degrading treatment or punishment, right to privacy and family, effective remedies) 	<ul style="list-style-type: none"> • Extended trauma • Loss of trust in democracy (and its superiority over authoritarian regimes)

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'

Not applied until December 2016

Syria?!

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

Requirements:

- Substantive interview to be made by the **competent authority**
- „Steps” to ensure **comprehensive account**
- **Interviewer „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)

Lawyers access to closed areas may be curtailed but not rendered impossible

- 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 **is** 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**

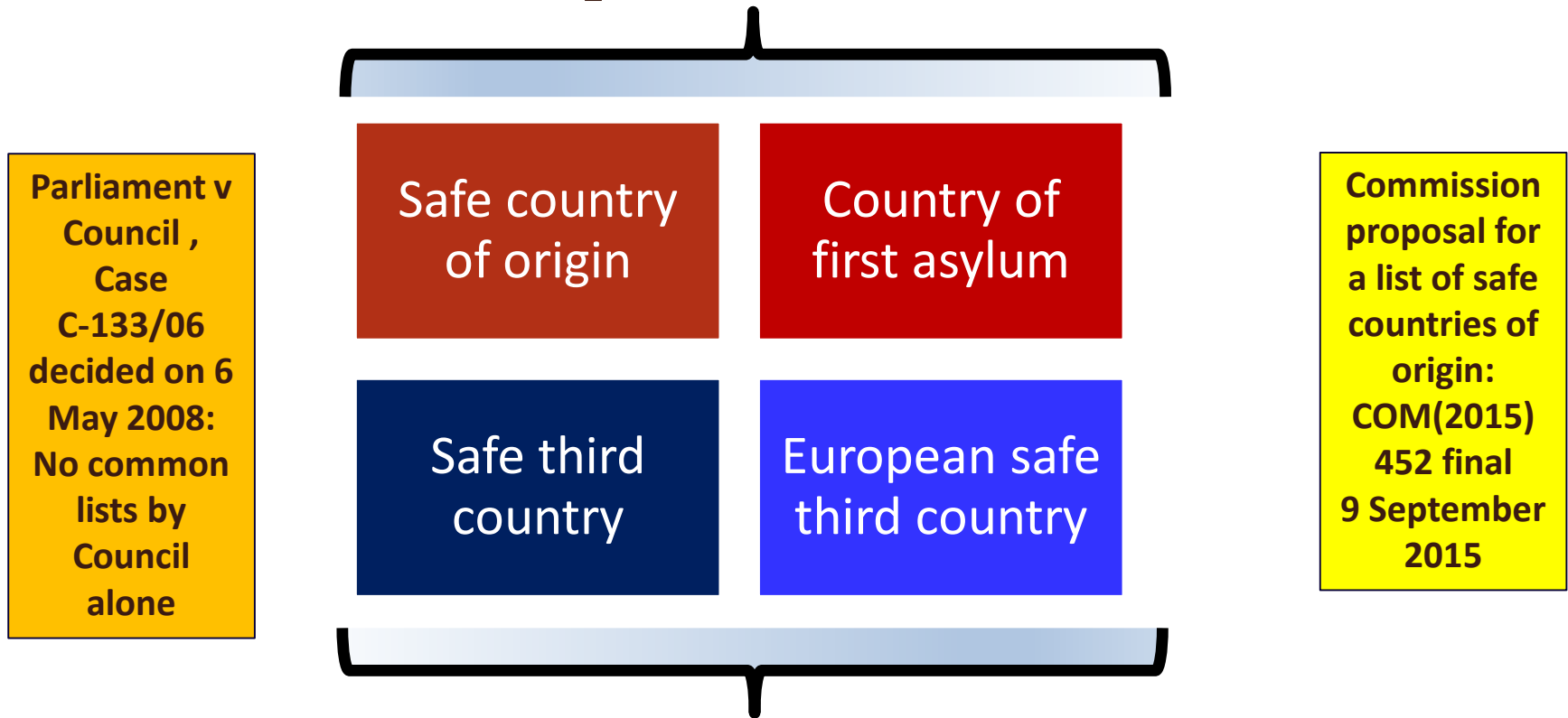
Maximum: **4 weeks** – then: entry to the country

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

PROCEDURES DIRECTIVE, 2013

KEY TERMS

Presumption: person **not in need of protection**, because
- not threatened or:
- protected elsewhere



Presumption: **another state should determine** if the person needs protection
No judgment on the presence of threat of persecution or harm

SAFE COUNTRY OF ORIGIN

it can be shown that there is **generally and consistently no persecution** and no torture or inhuman or degrading treatment or punishment; and no threat by reason of indiscriminate violence in situations of international or internal armed conflict

This is proved by **the legal situation**, the **application of the law** within a democratic system and the **general political circumstances**.

Account shall be taken of the extent to which **protection** is provided **against persecution or mistreatment** through:

the relevant **laws and their application**;

observance of the **European Convention of Human Rights** and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture,

respect of the **non-refoulement** principle

provision for a system of **effective remedies**

FIRST COUNTRY OF ASYLUM

First country of asylum (§ 35) the a.s. has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection,

or

he/she enjoys otherwise sufficient protection in that country, including benefiting from the principle of non-refoulement,

provided

that he/she will be re-admitted to that country.

Applicant may challenge FCA

„Normal” **safe third country** (defined nationally) (§ 27)

- **life and liberty are not threatened** on account of 5 Geneva Convention grounds; and no risk of serious harm
- the principle of **non-refoulement** is respected; and
- the prohibition on removal in breach of the right to freedom from **torture and cruel, inhuman or degrading treatment** as laid down in international law is respected; and
- the **possibility exists to request refugee status** and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

SAFE THIRD CONT'D

Minimum requirements concerning national rules on determining that a state is safe for a particular applicant:

meaningful link between applicant and s.t.c.

investigation if a particular country is safe for the particular a.s.(or national designation of s.t.c.)

a right of the asylum seeker **to challenge the safety**

If application inadmissible because of s.t.c. :

- inform asylum seeker accordingly,
- **provide asylum seeker with document informing the s.t.c.** that the application has not been examined in substance

EUROPEAN SAFE THIRD COUNTRY

Member states may designate European countries as European Safe Countries

Conditions

A **Non-EU member European** country

„has ratified and observes the provisions of the **Geneva Convention** without any geographical limitations;

it has in place **an asylum procedure prescribed by law**; and

it has ratified the **European Convention for the Protection of Human Rights and Fundamental Freedoms** and **observes its provisions**, including the standards relating to effective remedies.”

Consequence

No examination of the application or **no full examination**+no right to stay during appeal

Applicant has **right to challenge**

If returned there: **info that no examination „in substance”** took place

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

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 organisations, **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.**

QUALIFICATION DIRECTIVE PERSECUTION (CONT'D)

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: SUBSTANTIVE RIGHTS

Without prejudice to GC

Same rights to refugees and beneficiaries of subsid. prot - **unless otherwise** indicated!

Specific attention to **vulnerable groups** + best interest of the child

In „manufactured cases” (refugee and subs. prot.) MS „**may reduce the benefits**”

21 § **confirms non-refoulement** both for asylum seekers and recognized refugees

QUALIFICATION DIRECTIVE: SUBSTANTIVE RIGHTS

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.**

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

THE ELGAFAJI CASE - JUDGMENT, 17 FEBRUARY 2009

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“**

THE ELGAFAJI CASE - JUDGMENT, 17 FEBRUARY 2009

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



CJEU C-285/12, *DIAKITE*, [30 JAN. 2014]

On the notion of internal armed conflict: key question is it the same as in international humanitarian law the notion of armed conflict not of an international character.

Answer: no. It has an independent meaning derived from the directive's context.

„ On a proper construction of Art. 15(c) and the content of the protection granted, it must be acknowledged that **an internal armed conflict exists**, for the purposes of applying that provision, **if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other.**

It is not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict."

QUALIFICATION DIRECTIVE

SUBSIDIARY PROTECTION: PROCEDURE, INCLUDING REVOCATION OF STATUS

MS **must** „grant” (i.e.: recognize) subsidiary protection status to those who qualify! (18 §)

Cessation: A person shall cease to be eligible for subsidiary protection when the **circumstances** which led recognition **have ceased to exist** or **have changed to such a degree** that protection is no longer required.

the change must be **significant and of a non-temporary nature**, therefore the person no longer faces a **real risk of serious harm**.

If **compelling reasons** to refuse protection, **arising out of previous harm**

QUALIFICATION DIRECTIVE: SUBSIDIARY PROTECTION: PROCEDURE, INCLUDING REVOCATION OF STATUS (CONT'D)

Exclusion

A person „**is excluded** from being eligible for s.p. if there are serious reasons for considering that:”

- (a) he or she has committed a crime against peace, a war crime, or a crime against humanity,
- (b) he or she **has committed a serious crime**;
- (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations
- (d) he or she **constitutes a danger to the community or to the security of the Member State** in which he or she is present.

Member States **may** exclude a person from being eligible for subsidiary protection, if prior to admission the person has committed **one or more (non-serious) crime**, punishable by imprisonment in the Member State concerned, **and** if the person **left** his or her country of origin **solely in order to avoid sanctions resulting from these crimes**.

EASO, AMIF, HOTSPOTS, RELOCATION

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

Purposes

Coordinate and strengthen **practical cooperation** among Member States and improve the implementation of the CEAS;

Operative support to MS subject to **particular pressure** on their asylum and reception systems

Scientific and technical assistance in regard to the policy and legislation of the Union

EASO

Priorities

Support of training

Country of origin info
(Portal, analyses)

Capacity building
(Support of countries under particular pressure)

Promotion of the implementation of CEAS (Assisting the Commission in supervising implementation)

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>

ASYLUM SUPPORT TEAMS

ASTs are multidisciplinary teams of EU experts deployed by EASO in a Member State for a limited time in order to support the asylum system of that Member State.

Experts are made available by MS-s. They appear in EASO 'asylum intervention pool'.

Deployment is upon request and based on agreement between the State and EASO.

ASTs may provide expertise in relation to, among other matters, reception, training, information on countries of origin and knowledge of the handling and management of asylum cases, including those of vulnerable groups.

Costs are born by EASO

Deployments, so far:

Greece, 2011-; Italy, 2013-, Cyprus 2014-, Luxembourg, 2012, Bulgaria, 2013-2015;

EASO PRIORITIES, 2016

Hotspots: increased presence of staff and of teams of Member States experts on site, aiming to support in particular Italy and Greece in addressing the increased pressure on their asylum systems.

EU-Turkey Statement: support to the Greek Asylum Service in the implementation of the 2016 March EU-Turkey Statement through various activities.

Relocation - support the relocation measures agreed at EU level, such as the relocation of 160 000 persons in clear need of protection from Italy and Greece.

THE ASYLUM AND MIGRATION AND INTEGRATION FUND

THE ASYLUM MIGRATION AND INTEGRATION FUND (AMIF)

Replaces European Refugee Fund, the European Fund for the Integration of third-country nationals and the European Return Fund

2014-2020 (seven years)

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

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 tries + transfer of beneficiaries of international protection from one Member State to another.

THE ASYLUM MIGRATION AND INTEGRATION FUND (AMIF)

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.

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

THE ASYLUM MIGRATION AND INTEGRATION FUND (AMIF)

Activities to be funded

- **Asylum systems – reception (non-exhaustive list)**

E.G. The provision of material aid, support services, health and psychological care; translation and interpretation, the provision of legal assistance and representation; alternative measures to detention; accommodation infrastructure and services;

- **Member States' capacity to develop, monitor and evaluate their asylum policies and procedures**

Collect, analyse and disseminate qualitative and quantitative data among others for the early warning mechanism in the Dublin regulation

- **Resettlement and relocation**

E.g. establishment and development of national resettlement and relocation programmes;

THE ASYLUM MIGRATION AND INTEGRATION FUND (AMIF)

Allocation

Minimum amount (5 or 10 million) + % average of 2011-2013 allocations European Refugee Fund + Integration Fund + Return Fund

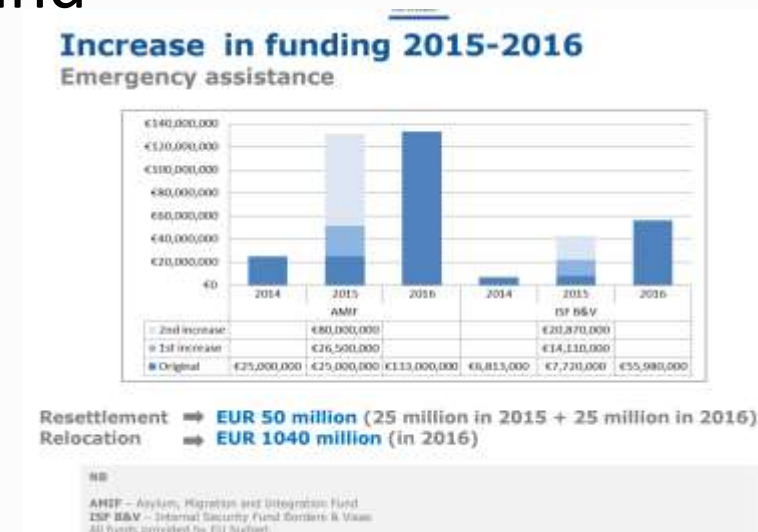
Examples:

France: 265 565 577

Germany: 208 416 877

Greece: 259 348 877

Hungary: 23 713 477



http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/details/state_of_play_and_future_actions_20160113_en.pdf (20160308)

Union agencies (EASO, Frontex) will also receive financial support from the fund

THE EXCEPTIONAL YEARS 2015 - 2017

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

SYMPTOMS OF MALFUNCTIONING OF THE CEAS

- Thousands of **deaths** at sea and inland
- The overall **impression of a „crisis”**, which is **seen as a European crisis**
- The increasing **tension between Member States** (e.g. Sweden-Denmark, Austria – Greece, Hungary – Austria, Slovenia, Croatia, etc.)
- **The uneasy relationship with Turkey**
- The grossly **unfair participation in the provision of protection** to refugees reaching EU territory
- The repeated, but **largely fruitless sweeping legislative and political efforts**, including negotiations with transit countries (Western Balkan conference) and states of the regions of origin (Valetta summit), decisions to resettle and relocate refugees and asylum seekers
- **The breakdown of the Dublin system**
- **Fences at the external and internal borders & reintroduction of border controls at Schengen internal borders**

THE CAUSES OF FAILURE - DESIGN

Dublin: after family and visa/residence permit the external border crossed → perimeter states exposed to large numbers of application → Greece defaults in 2011, Hungary and others in 2015

Minimal tools of **solidarity** before 2015

- AMIF - monetary
- EASO – sending expert teams
- Temporary protection: voluntary offers to take over (never used)

The Dublin regime on determining the state whose duty is to conduct RSD: **manifestly unjust**, NOT burden sharing but shifting

THE CAUSES OF FAILURE - OVERLOAD

Overload number of (first) applications, EU 27 or 28 + Iceland, Liechtenstein, Norway and Switzerland:

2011	2012	2013	2014	2015	2016
341,795	373.550	464,505	662,165	1,322,145	1,236,325

Source: Eurostat data (20160313 and EASO 2017 0220)

But:

- **highly uneven distribution!** 2015: UK 39,000, Poland 12,190
Spain: 14,785 applications
- Germany 476,620*, Sweden 162,550, Austria 88,180
(All data from Eurostat as reported on 13 March 2016)
- Major groups with **unlikely claims** (Serbia, Kosovo, BiH, etc.)

* *Only the formal applications are included. Primary registration includes a further 600000 persons (altogether: 1.091.894)*

<http://www.n-tv.de/politik/Fast-1-1-Millionen-Fluechtlinge-registriert-article16687996.html> (20160313)

THE CAUSES OF FAILURE – FREE RIDING

Free rider member states

Greece, Italy, Hungary, Croatia, Slovenia, Austria

Ought to: register claim, submit fingerprint to Eurodac + start RSD procedure + keep within territory

Instead: **allowing to leave** or **actively transporting** to next MS

**WHAT SOLIDARITY IS CONCEIVABLE *AMONG* EU
MEMBER STATES GOING BEYOND AMIF?**

=

RELOCATION, HOTSPOTS, DUBLIN RECAST

Possible goals and venues of responsibility sharing/solidarity (or denial of them)



Goals

- Addressing root-causes
- Impact on routes, denial of entry, diverting arrivals
- Harmonisation of rules
- Allocation of persons
- Financial contribution instead of receiving persons
- Sharing of costs and benefits



Venues

- Global
- Inter-regional
- Regional
- Subregional
- Bilateral
- Intra-state (e.g. in a federation)

Possible criteria of responsibility sharing/solidarity

Applied by  Criterion 	Commission COM (2015) 450 final Crisis relocation mechanism	EU Council Relocation decision	Commission Dublin recast COM(2016) 270 final Corrective allocation mechanism	Germany Königsteini key
Total GDP	Yes	Yes	Yes	No
GDP/fperson	(Yes)	(Yes)	No	No
Tax income	No	No	No	Yes
Population (size)	Yes	Yes	Yes	Yes
Territory	No	No	No	No
Population density	No	No	No	No
Unemployment	Yes	Yes	No	No
Number of earlier applicants	Yes	Yes	No	No
Physical proximity to country of origin (Neighbour, same region)	No	No	No	No
Cultural proximity	No	No	No	No

Possible criteria of responsibility sharing/solidarity

Applied by Criterion  	Schmuck 1997	Hathaway & Neve, 1997	Schneider; Engler; Angevendt 2013
Total GDP	Yes (wealth")	No (Yes – external supporter)	Yes (five years average –within EU average)
GDP/fperson	(Yes)	No (Yes – external supporter)	No
Tax income	No	No	No
Population (size)	No	No	Yes
Territory	No	No	Yes (Compared to EU total)
Population density	No	No	No
Unemployment	No	No	Yes
Number of earlier applicants	No	No	No
Physical proximity to country of origin (neighbour, same region)	Yes	Yes	No
Cultural proximity	No	Yes	No

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**)

RELOCATION AS OF 7 FEBRUARY 2017

RELOCATION (state of play as of 7 February 2017)

11 966 people have been relocated since the launch of the scheme

Member States	Relocated from Italy	Relocated from Greece	Member States	Relocated from Italy	Relocated from Greece
Austria	X	X	Lithuania	X	229
Belgium	29	177	Luxembourg	61	164
Bulgaria	X	29	Malta	46	34
Croatia	9	10	Netherlands	422	939
Cyprus	10	55	Poland	X	X
Czech Republic	X	12	Portugal	267	690
Denmark	X	X	Romania	45	523
Estonia	X	87	Slovenia	23	101
Finland	359	560	Slovakia	X	9
France	282	2445	Spain	144	600
Germany	700	1342	Sweden	39	X
Hungary	X	X	Liechtenstein	X	10
Ireland	X	280	Norway	415	204
Latvia	9	188	Switzerland	340	78
	Relocated from Italy		Relocated from Greece		
TOTAL	3 200		8 766		

Source: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170208_factsheet_on_relocation_and_resettlement_en.pdf (20170220)

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.**

ECRE conclusion, December 2016

„The hotspots have **certainly not helped in relieving the pressure from Italy and Greece** as was their stated objective: instead, they have **led to an increase in the number of asylum applicants waiting in Italy and Greece**, consolidating the challenges and shortcomings already inherent in the Dublin system. The **hotspots approach has also led to more repressive measures, often disrespecting fundamental rights**, which are applied by national authorities as a result of EU pressure to control the arrivals; yet despite EU pressure, it is the Member States that are held ultimately responsible for this implementation. The implementation of the EU-Turkey deal is a prime example of this EU pressure shifting responsibilities to the national level.”

ECRE: *The implementation of the hotspots in Italy and Greece*, p.
<http://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016..pdf>

THE STATE OF PLAY WITH THE HOTSPOTS

EARLY FEBRUARY 2017

GREECE

HOTSPOTS IN GREECE						
	LESVOS	CHIOS	SAMOS	LEROS	KOS	
Total Reception Capacity	1500	1100	850	1000	1000	
EU Presence	<p>Frontex: 139 Officers (Debriefing, screening, fingerprinters and registration teams, Border Surveillance Officers, Advance Level Document Officer, Team Leaders, Frontex Supporting Officers)</p> <p>66 Officers under the EU-Turkey Statement</p>	<p>Frontex: 104 Officers (Debriefing, screening and Advance Level document expert teams, Border Surveillance Officer)</p> <p>2 Officers under the EU-Turkey Statement</p>	<p>Frontex: 100 Officers (Screening and debriefing teams, Border Surveillance Officer and Advance Level Document Officer)</p>	<p>Frontex: 54 Officers (Screening and debriefing teams, Border Surveillance Officer and Advance Level Document Officer)</p>	<p>Frontex: 61 Officers (Screening and debriefing teams, Border Surveillance Officer and Advance Level Document Officer)</p>	
	<p>EASO: 19 Member State experts under the EU-Turkey Agreement, 27 interpreters, 5 EASO staff and 7 interim staff seconded to the Greek Asylum Service</p>	<p>EASO: 19 Member State experts under the EU-Turkey Agreement, 23 interpreters, 3 EASO staff and 4 interim staff seconded to the Greek Asylum Service</p>	<p>EASO: 14 Member State experts for preparation of the EU-Turkey Agreement, 12 interpreters, 3 EASO staff and 2 interim staff seconded to the Greek Asylum Service</p>	<p>EASO: 8 Member State experts under the EU-Turkey Agreement, 9 interpreters, 2 EASO staff and 2 members of interim staff seconded to the Greek Asylum Service</p>	<p>EASO: 9 Member State experts under the EU-Turkey Agreement, 9 interpreters, 2 EASO staff and 2 interim staff seconded to the Greek Asylum Service</p>	



ITALY

HOTSPOTS IN ITALY				
	LAMPEDUSA	POZZALLO	TARANTO	TRAPANI
Total Reception Capacity	500	300	400	400
EU Presence	<p>Frontex: 23 experts</p> <p>EASO: 2 Member State Experts</p> <p>EASO: 3 cultural mediators (Arabic, Tigrinya)</p>	<p>Frontex: 23 experts</p> <p>EASO: 2 Member State Experts</p> <p>EASO: 2 cultural mediators (Arabic, Tigrinya)</p>	<p>Frontex: 13 experts</p> <p>EASO: 3 Member State Experts</p> <p>EASO: 3 cultural mediators (Arabic, Tigrinya)</p>	<p>Frontex: 21 experts</p> <p>EASO: 2 Member State Experts</p> <p>EASO: 2 cultural mediators (Arabic, Tigrinya)</p>



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**

TRADITIONAL MULTILATERAL COOPERATION FORMS IN MIGRATION MANAGEMENT AND CONTROL

Cotonou Agreement (2000): 79 African, Caribbean and Pacific states and the EU. (Expiry: 2020)

Article 13 (5) of the consolidated text:

„ each of the ACP States shall accept the return of and readmission of any of its nationals who are illegally present on the territory of a Member State of the European Union, at that Member State's request and **without further formalities**”

Khartoum process = EU-Horn of Africa Migration Route Initiative started in 2014, aimed at fighting irregular migration, human smuggling and trafficking

Rabat process = EU – Central and Western Africa + Tunisia and Algeria (observer) Established in 2006 – broad dialogue on migration and development

<https://processus-de-rabat.org/en/>

BILATERAL RETURN AGREEMENTS

Return Agreements between the EU and other states (and territories)

Covering own nationals and third country nationals, who irregularly one party to the other or have no right to stay and may be returned to the other party

Hong Kong (2004), Macau 2004), Sri Lanka (2005), Albania (2006), Russia (2007), Ukraine (2008), Bosnia&Herzegovina (2008), Montenegro (2008), Serbia (2008), Moldova (2008), Georgia (2011), Armenia (2014) Azerbaijan (2014), Turkey (2014), Cape verde (2014)

Year of entry into force in the brackets

https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en

PARTICULAR BILATERAL RELATIONSHIPS

Afghanistan

EU – Afghanistan declaration „**Joint Way Forward**”
soft law (non legally binding) document, Kabul, 2 October
2016

„The EU and the Government of Afghanistan intend to cooperate closely in order to organize the **dignified, safe and orderly return of Afghan nationals to Afghanistan** who do not fulfil the conditions to stay in the EU.”

Libya

Italian – Libyan Memorandum of understanding of 2 February
2017

Turkey (see separate slides later)

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

G E O R G E M A S O N B P 2 0 1 7

13 968 people have been resettled under both schemes so far*

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	1501	x
Belgium	597	102
Czech Republic	52	x
Denmark	481	x
Estonia	11	11
Finland	293	162 (outside of 20 July scheme)
France	1088	456 (228 within 20 July scheme + 228 outside of 20 July scheme)
Germany	1213	1213
Ireland	519	x
Italy	673	117
Latvia	10	10
Lithuania	25	25
Luxembourg	x	98 (outside of 20 July scheme)
Netherlands	1000	557
Portugal	12	12
Spain	289	57
Sweden	491	278 (269 within 20 July scheme)
United Kingdom	2200	x
Iceland	50	x
Liechtenstein	20	x
Norway	2924	x
Switzerland	519	x
TOTAL	13 968**	A total of 3 098 people were re- settled from Turkey under the 1:1 mechanism; 2 601 of whom through the scheme of 20 July

* Based on information made available by Member States and Associated Countries as of 6 February 2017.

** The figure published in the previous report had to be adjusted due to revised information subsequently received from the resettling states. Instead of 13,887 resettlements reported, the correct number of people resettled by 5 December 2016 was 13,055.

EMERGENCY TRUST FUND FOR AFRICA

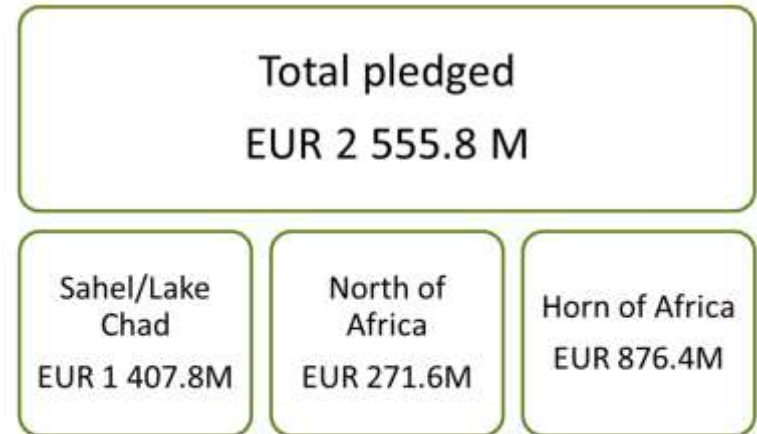
Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa. „The Commission considers that national contributions should match the €1.8 billion EU funding.”

COM(2015) 510 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration, p. 10.)

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.



COMMITMENTS AND PAYMENTS

As of 31 January 2017, a total of 106 projects worth EUR 1,5 billion have been approved under the Sahel/Lake Chad, the Horn of Africa and the North of Africa regions. Of the total amount approved, more than EUR 6 million have been contracted to implementing partners.

Of this: Member states 152 Million by 31 December 2016

For details, see: http://ec.europa.eu/europeaid/regions/africa/eu-emergency-trust-fund-africa_en

EU REGIONAL TRUST FUND IN RESPONSE TO THE SYRIAN CRISIS

Madad Fund to support Syrian refugee hosting countries originally: 500 million Euros from the budget of the EU in 2015, to be matched by another 500 million donated directly by the MS) (See also the later Turkey – EU deal)

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

„With **contributions and pledges from 22 Member States, amounting to €92.60 million**, and contributions from various EU instruments, **the Fund will reach a total volume of €1 billion** by early 2017. Projects focusing on education, livelihoods and health have already been approved, covering a total of €767 million. €232 million have been contracted to the Trust Fund’s implementing partners on the ground.”

For details check: https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/syria/madad_en

SOLIDARITY WITH THOSE HOSTING REFUGEES AND SUPPORT FOR OTHER AFFECTED STATES

Member State	EU Emergency Trust Fund for Africa	EU Regional Trust Fund in Response to the Syrian Crisis ¹	Facility for Refugees in Turkey ²
Austria	3	11.5	45.6
Belgium	10	3	X
Bulgaria	0.05	0.1	5.9
Croatia	X	X	5.9
Cyprus	X	X	2.3
Czech Republic	0.74	5	20.4
Denmark	6	10	38.4
Estonia	0.15	0.25	2.8
Finland	5	3	28.4
France	3	3	309.2
Germany	3	5	427.5
Greece	X	X	25
Hungary	0.7	3	14.7
Ireland	3	X	22.9
Italy	10	8	224.9
Latvia	0.05	0.05	3.5
Lithuania	0.05	0.1	5.2
Luxembourg	3.1	X	4.3
Malta	0.25	0.02	1.1
Netherlands	15	5	93.9
Poland	1.1	3	X
Portugal	0.25	0.2	24.4
Romania	0.1	0.08	X
Slovakia	0.6	3	10.5
Slovenia	0.05	X	5.2
Spain	3	X	152.8
Sweden	3	3	61.3
United Kingdom	3	3	327.6
<i>Norway</i>	3	X	N/A
<i>Switzerland</i>	4.62	X	N/A
Total pledged	81.81	69.30	1,863.7
Contribution from EU financing	1,800	640	1,000
		24.6 (Turkish co-financing for IPA contribution)	
Total required	3,600	1,000	3,000
Shortfall	1,718.2	266.1	136.3

Source: ANNEX 4 to the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL AND THE EUROPEAN INVESTMENT BANK on establishing a new Partnership Framework with third countries under the European Agenda on Migration Strasbourg, 7.6.2016 COM(2016) 385 final

THE STEPS IN THE EU – TURKEY ARRANGEMENTS

First step: 29 November 2015

EU's offer: More frequent summits, **high level dialogue** on economic and other matters, **accession negotiations** revived, **visa** liberalisation accelerated + establishment of a Refugee Facility for Turkey with an extra **3 billion euros**.
Turkey's offer: common fight against irregular entry (into Turkey and into the EU) and intention to improve the socio-economic situation of the Syrians under temporary protection. (No obligation to take back third country nationals!)

Second step: 7 March 2016:

The European Council meeting (with Turkey) New elements beyond 2015 November:

Return all new irregular migrants (not in need of international protection!) crossing from Turkey into the Greek islands with the costs covered by the EU;

Resettle, for every Syrian readmitted by Turkey from Greek islands, **another Syrian from Turkey** to the EU Member States, within the framework of the existing commitments

THIRD STEP: 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”

- right to stay till first instance decision, unless inadmissible
- right to appeal

„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.”

- Contradicts to the promise to process every claim
- EU law: return directive = voluntary departure preferred, appeal against removal decision, strict conditions for detention

„[T]emporary and extraordinary measure”

- For how long? Does extraordinariness waive rights?

„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”

- So far very few applied in Greece (11 370 out of 880 000), now they will
- Inadmissibility: is Turkey a safe third country and/or a country of first asylum?!

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”

- How can Syrians be returned if they applied for asylum (recognition rate in EU above 98% in Q4 of 2015)?

- What about Dublin and the right to join family and be processed there?

„[R]esettlement under this mechanism will take place, ... honouring the commitments [of 20 July 2015], of which 18.000 places for resettlement remain. Any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54.000 persons.” ... The Commission's will propose an amendment to the relocation decision of 22 September 2015 to allow for any resettlement commitment undertaken to be offset from non-allocated places under the decision... Should the number of returns exceed the numbers provided for above, this mechanism will be discontinued.”

- A mechanism up to 72 000 resettlements. No plan for afterwards

- Purely voluntary

Visa liberalisation among Schengen states for Turkey by the end of June 2016

Opening Chapter 33 in the accession negotiations

17 March 2017 Turkey announces the suspension of taking back persons from Greece!

THE NEW PARTNERSHIP FRAMEWORK COM(2016) 385 FINAL 7 JUNE 2016

The short term objectives:

- save lives at sea;
- increase the rate of returns to countries of origin
- avoid embarking on dangerous journeys to reach Europe.

-

Long term objectives

- Address the root causes of irregular migration and forced displacement
- Provide reinforced EU support to third countries for capacity building and by advancing their political, social and economic situation.

New York v. Valetta

OUTCOME DOCUMENT FOR 19 SEPTEMBER 2016 HIGH-LEVEL MEETING TO ADDRESS LARGE MOVEMENTS OF REFUGEES AND MIGRANTS

The New York Declaration, 19 September 2016

The word „illegal” does not appear

„4.5 We underline the **centrality of international cooperation** to the refugee protection regime. We **recognize the burdens** that large movements of refugees place on national resources, especially in the case of developing countries. To address the needs of refugees and receiving States, **we commit to a more equitable sharing of the burden and responsibility** for hosting and supporting the world's refugees, while taking account of existing contributions and the differing capacities and resources among States.”

Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route, 3 February 2017

The words „refugee”, „asylum” do not appear

Priorities:

- a) Training and equipping Libyan border guard
- b) Disrupting smugglers' models and routes
- c) Enhancing resilience of local communities
- d) Reception capacities and conditions in Libya
- e) Support for IOM for voluntary returns
- f) Info campaigns in Libya and countries of origin
- g) Enhancing Libya's land border protection with neighbours
- h) Surveilling alternative routes
- i) Supporting Italy- Libya bilateral deals
- j) Dialogue and cooperation with Libya's neighbours on preventing departure and managing returns

THANKS!

BOLDIZSÁR NAGY

**E-mail: nagyboldi100 - at - gmail.com
www.nagyboldizsar.hu**

**CEU IR and Legal
Budapest, 1051
Nádor u. 9.**

Tel.: +36 1 242 6313, Telefax: +36 1 430 0235