

EUROPEAN REFUGEE LAW THE INSTITUTIONAL AND LEGAL FRAMEWORK

**Presented by Boldizsár Nagy,
at the Human rights Master's Programme
of the Consortium of Russian Universities
MGIMO, 2013**

PHOTO OF JAVIER BALAUZ



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THE BERLIN WALL 1961 – 1989 AND THE FRONTIER AROUND EUROPE

During the Wall's existence there were around 5,000 successful escapes into West Berlin. Varying reports claim that either 192 or 239 people were killed trying to cross and many more injured.

http://en.wikipedia.org/wiki/Berlin_Wall visited 25 February 2006

List of 16264 documented refugee deaths through Fortress Europe

16264

13/06/2012

Documentation on 13-06-2012 by UNITED

UNITED for Intercultural Action, European network against nationalism, racism, fascism and in support of migrants and refugees

Postbus 413 NL-1000 AK Amsterdam phone +31-20-6834778, fax 31-20-6834582, info@unitedagainstracism.org, www.unitedagainstracism.org

since 1 January 1993

found dead	number	name	country of origin	cause of death	source
26/05/12	20	N.N.	unknown	drowned, after an inflatable dinghy on way to Italy started to deflate off the coast of Lybia	Migreurop/LRP
19/05/12	5	N.N.	Anjouan Island, Comoros	drowned, after boat of 43 migrants sank off the coast of Mayotte (F)	Le Monde/AFP/Migreurop
19/05/12	15	N.N.	Anjouan Island, Comoros	missing, after boat of 43 migrants sank off the coast of Mayotte (F)	Le Monde/AFP/Migreurop
02/05/12	1	N.N. (16, boy)	Afghanistan	stowaway, suffocated in a truck into which he had hidden to avoid the border police checks	Migreurop/PICUM/AdnKMP
01/05/12	7	N.N.	Somalia	died in a boat during a week-long voyage from LY to Malta, boat came ashore at Riviera Bay	UNHCR
29/04/12	3	N.N.	unknown	died in car accident while trying to escape a FRONTEX control, 2 migrants and the smuggler	Migreurop/KTG/TF1/PICUM/Clandestina/Age
28/04/12	1	N.N. (boy)	Egypt	drowned, after being thrown off a boat of 80 by smugglers when a patrol boat approached	Migreurop/LRP
26/04/12	1	N.N. (40, man)	Afghanistan	drowned, after being thrown overboard by smugglers dozens of meters from Calabria's coast	LR/Migreurop/PUCUM/FE
12/04/12	1	Alain Hatungimana (man)	Burundi	suicide, killed himself in the Netherlands in fear of being deported with his two children	DutchN/Migreurop/RNW/PICUM/ENAR
29/03/12	1	N.N.	unknown	body found in an advanced state of decay in the rural area of Tichero, Evros Prefecture (GR)	PICUM/Age/Clandestina
17/03/12	1	N.N. (±28)	unknown	drowned while trying to cross Evros River to enter GR, body found in area of Nea Vissa	PICUM/Age
16/03/12	5	N.N.	unknown	bodies found in boat of 57 on way to Lampedusa (I) rescued by Italian auth. in Lybian waters	PICUM/LR
15/03/12	1	N.N.	unknown	drowned while trying to cross Evros River to enter GR, body found near river in area of Soufli	PICUM
12/03/12	1	N.N. (28, man)	Eritrea	rolled over by the truck he tried to hide under to leave Greece, near the new port in Patras	PICUM/patrasT
29/02/12	1	N.N. (man)	Egypt	died of hypothermia, body found in a warehouse in the area of Korinthia (GR)	PICUM/Proto
21/02/12	1	N.N. (±20, woman)	Africa	died of hypothermia while trying to leave TR via Evros River, body found near Orestiada (GR)	PICUM/Infomob/Skai/Clandestina
21/02/12	1	N.N.	Sub-Saharan Africa	drowned while trying to enter Ceuta (E) by swimming along the coast from Morocco	MUGAK
21/02/12	1	N.N. (±23, woman)	Africa	body found by border guards in the Evros River (GR)	MNS
10/02/12	1	N.N. (±40)	unknown	died of hypothermia while trying to cross Evros River to enter GR, body found near Tichero	PICUM/Rizo
07/02/12	1	N.N. (25)	unknown	died of hypothermia in Health Centre of Soufli after crossing Evros River to enter Greece	PICUM/Skai
07/02/12	3	N.N. (±20)	Afghanistan	stowaway, suffocated on an Italy-bound truck and abandoned by smugglers near Parga (GR)	MNS
06/02/12	3	N.N. (±20)	Afghanistan	stowaway, died of asphyxiation in truck on way to Igoumenitsa (GR), a port leading to Italy	PICUM/TVXS
29/01/12	1	N.N. (29, man)	Iran	suicide, found hanged in asylum seekers house in Wurzburg (D), was in cure for depression	HRS/SD/MainPU4IB/SOS/Karawane
25/01/12	15	N.N.	Somalia	drowned, after their vessel of 55 migrants sank, bodies found off the coast of Misrata (LY)	MNS
25/01/12	40	N.N.	Somalia	missing, after their vessel of 55 migrants sank off the coast of Misrata (LY)	MNS
22/01/12	1	N.N. (±25, man)	North Africa	body found floating in an advanced state of decomposition 7 miles from Cabo de Palos (E)	MUGAK/Verdad
15/01/12	15	N.N. (12women; 2men; 1baby)	Somalia	bodies found on Libyan beaches after shipwreck of boat part of 4 boats group on way to I	PICUM/FE/TimesM/AFP/JW
15/01/12	1	N.N.	Somalia	found dead alone in shipwrecked boat that was part of group of 4 boats on way from LY to I	PICUM/FE/TimesM/AFP/JW

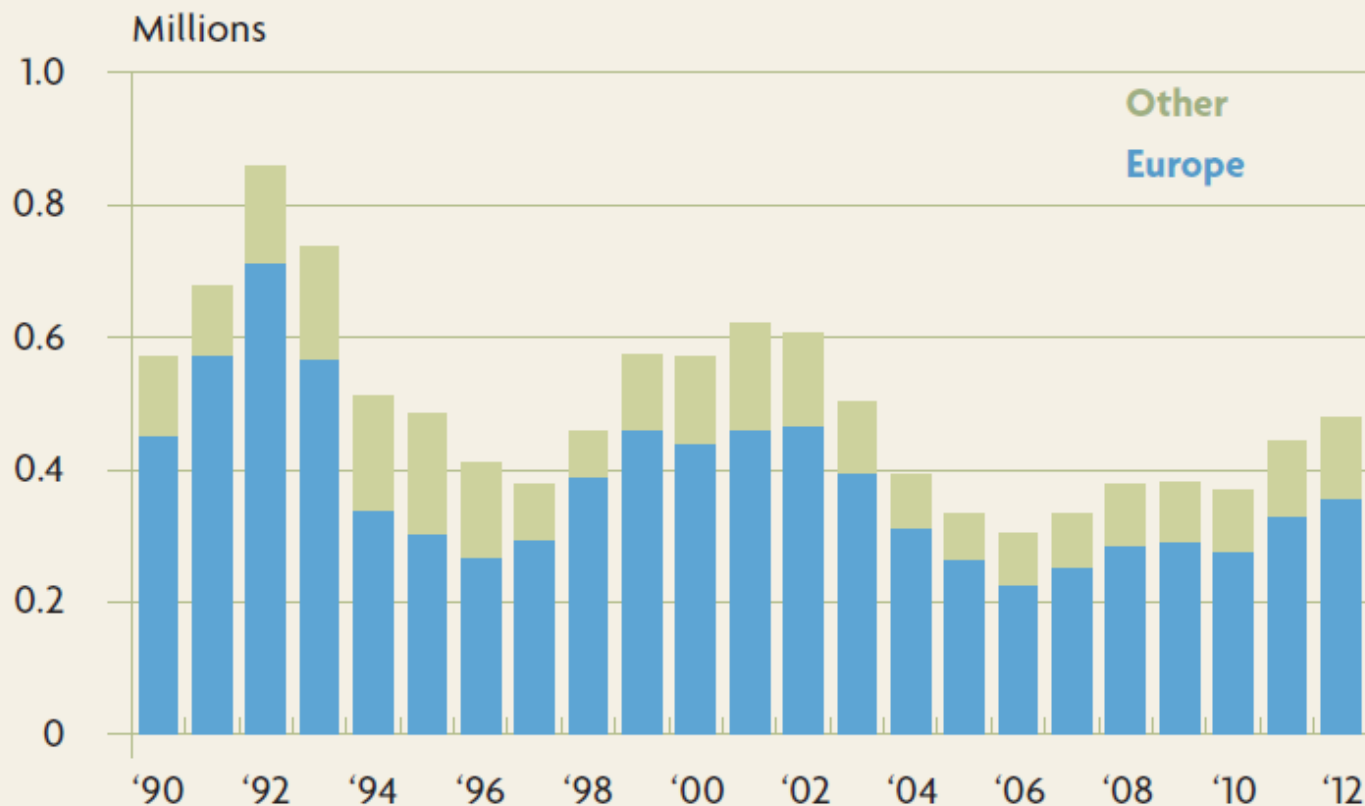
Source: <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf>

visited 13 September 2012

ORDERS OF MAGNITUDE

FLOW DATA: INDIVIDUAL ASYLUM APPLICATIONS

Fig. 1 Asylum claims lodged in 44 industrialized countries | 1990-2012



Source:
Asylum trends 2012
Levels and trends in industrialised countries

UNHCR,
Geneva,
21 March
2013

Figure 1 at
p. 7.

DESTINATION REGIONS

TABLE 1 Asylum claims lodged in selected regions

Regions	2010	2011	2012	Change '12-'11
Europe	274,710	327,640	355,550	9%
- EU-total	240,410	277,800	296,690	7%
- EU-old	224,850	262,840	275,790	5%
- EU-new	15,560	14,960	20,900	40%
USA/Canada	78,690	101,350	103,930	3%
Australia/New Zealand	12,980	11,820	16,110	36%
Japan/Rep. of Korea	1,630	2,880	3,680	28%
Total	368,010	443,690	479,270	8%

See notes in **Annex Table 1** for list of countries included.

Source: *Asylum trends 2012*

Levels and trends in industrialised countries

UNHCR, Geneva, 21 March 2013. Table 1 at p. 8.

ASYLUM APPLICATIONS – RECEIVING COUNTRIES

GLOBAL COMPARISONS, 2008 - 2012

Source: *Asylum trends 2012*

Levels and trends in industrialised countries

UNHCR, Geneva, 21 March 2013. Annex, Table 1 at p. 20.

Country/ region of asylum	2008	2009	2010	2011	2012	Total	Annual change 10-11	Share		Rank		Per 100 inhabitants		Per 1 GDP/capita	
								2012	08-12	2012	08-12	Total	Rank	Total	Rank
								2012	08-12	2012	08-12	2012	08-12	2012	08-12
Albania	10	-	10	20	20	60	0%	0%	45	45	0.0	0.0	43	43	
Australia	4,770	7,420	12,640	11,510	15,790	52,330	37%	3%	11	15	0.7	2.3	15	19	
Austria	12,840	15,820	11,010	14,420	17,420	71,510	27%	4%	3%	9	10	2.1	8.5	6	9
Belgium	12,250	17,190	21,760	26,000	18,520	95,720	-29%	4%	5%	8	8	1.7	8.9	9	8
Bosnia and Herzegovina	100	50	50	40	50	290	25%	0%	0%	43	43	0.0	0.1	43	41
Bulgaria	750	850	1,030	890	1,230	4,750	38%	0%	0%	28	28	0.2	0.6	30	29
Canada	36,900	33,250	23,360	25,350	20,500	139,160	-19%	4%	7%	7	5	0.6	4.1	16	11
Croatia	160	150	290	810	1,790	2,600	47%	0%	0%	29	32	0.3	0.6	23	31
Cyprus	3,920	3,200	3,160	1,770	1,630	13,680	-8%	0%	1%	26	21	1.5	12.4	10	5
Czech Rep.	1,710	1,360	490	490	520	4,570	6%	0%	0%	35	29	0.0	0.4	39	34
Denmark	2,360	3,820	4,970	3,810	6,140	21,000	67%	1%	1%	17	17	1.1	3.8	11	12
Estonia	10	40	30	70	80	230	14%	0%	0%	41	44	0.1	0.2	37	39
Finland	4,020	5,910	4,020	3,090	2,920	19,960	-6%	1%	1%	18	18	0.5	3.7	17	14
France	35,400	42,120	48,070	52,150	54,940	232,680	5%	11%	11%	3	2	0.9	3.7	12	15
Germany	22,090	27,650	41,330	45,740	64,540	201,350	41%	13%	10%	2	3	0.8	2.4	14	7
Greece	19,880	15,930	10,270	9,310	9,580	64,970	3%	2%	3%	14	11	0.8	5.7	13	10
Hungary	1,120	4,670	2,100	1,690	2,160	13,740	28%	0%	1%	23	20	0.2	1.4	28	22
Iceland	80	40	50	80	120	370	50%	0%	0%	40	42	0.4	1.2	20	23
Ireland	3,870	2,690	1,940	1,290	940	10,730	-27%	0%	1%	31	22	0.2	2.4	29	18
Italy	30,320	37,600	10,050	34,120	15,710	107,800	-54%	3%	5%	12	7	0.3	1.8	25	21
Japan	1,600	1,390	1,200	1,870	2,540	8,600	36%	1%	0%	21	24	0.0	0.1	42	42
Latvia	50	50	60	340	190	690	-44%	0%	0%	39	39	0.1	0.3	35	38
Liechtenstein	30	290	110	80	70	580	-33%	0%	0%	42	40	1.9	16.1	8	3
Lithuania	220	210	370	410	530	1,740	29%	0%	0%	34	34	0.2	0.5	31	33
Luxembourg	460	480	740	2,080	2,050	5,810	-1%	0%	0%	25	27	4.0	11.5	3	7
Malta	2,610	3,390	140	1,860	2,060	9,060	11%	0%	0%	24	23	4.9	23.7	1	1
Montenegro	10	20	10	340	1,530	1,810	538%	0%	0%	27	33	2.4	2.9	5	16
Netherlands	13,400	14,910	13,330	11,590	8,850	62,080	-24%	2%	3%	16	13	0.5	3.7	18	13
New Zealand	250	340	340	310	320	1,560	3%	0%	0%	36	36	0.1	0.4	36	35
Norway	14,430	17,230	10,060	9,050	9,790	60,560	8%	2%	3%	13	14	2.0	12.4	7	4
Poland	7,200	10,590	6,530	5,090	9,180	38,590	80%	2%	2%	15	16	0.2	1.0	26	25
Portugal	160	140	160	280	300	1,040	7%	0%	0%	37	38	0.0	0.1	40	40
Rep. of Korea	360	320	430	1,000	1,140	3,260	13%	0%	0%	30	30	0.0	0.1	41	43
Romania	1,170	840	860	1,720	2,510	7,900	46%	1%	0%	22	26	0.1	0.3	33	37
Serbia (and Kosovo: S/RES/1244 (1999))	90	310	790	1,320	2,770	7,280	-17%	1%	0%	19	25	0.3	0.7	22	28
- of which Kosovo	-	30	270	190	50	540	-74%	-	-	-	-	-	-	-	-
Slovakia	910	820	540	320	550	3,140	72%	0%	0%	33	31	0.1	0.6	34	32
Slovenia	240	180	250	310	260	1,240	-16%	0%	0%	38	37	0.1	0.6	32	30
Spain	4,520	3,010	2,740	3,410	2,580	16,260	-24%	1%	1%	20	19	0.1	0.4	38	36
Sweden	24,350	24,190	31,820	29,650	43,890	153,900	48%	9%	8%	4	4	4.7	16.4	2	2
Switzerland	16,610	14,490	13,520	19,440	25,950	90,010	33%	5%	4%	6	9	3.4	11.7	4	6
The former Yugoslav Republic of Macedonia	50	90	180	740	640	1,700	-14%	0%	0%	32	35	0.3	0.8	21	27
Turkey	12,980	7,830	9,230	16,000	16,730	62,790	4%	3%	3%	10	12	0.2	0.9	27	26
United Kingdom	31,320	30,670	22,640	25,900	27,410	137,940	6%	6%	7%	5	6	0.4	2.2	19	20
United States	49,560	49,020	55,530	76,000	83,430	313,540	10%	17%	15%	1	1	0.3	1.0	24	17
EU-"Old" (15)	217,240	222,130	224,850	262,840	275,790	1,202,850	5%	58%	59%			0.7	3.0		
EU-"New" (12)	21,910	25,200	15,560	14,960	20,900	98,530	40%	4%	5%			0.2	1.0		
EU-Total (27)	239,150	247,330	240,410	277,800	296,690	1,301,380	7%	62%	64%			0.6	2.6		
Nordic countries (5)	45,240	51,190	50,920	45,680	62,860	255,890	38%	13%	12%			2.5	10.0		
Western Europe (19)	248,390	254,180	248,590	291,490	311,720	1,354,370	7%	65%	66%			0.8	3.3		
Southern Europe (8)	74,400	50,100	35,760	66,790	48,610	275,660	-27%	10%	11%			0.2	1.3		
Former Yugoslavia (6)	650	770	1,300	5,270	6,390	14,380	21%	1%	1%			0.3	0.6		
Total Europe (31)	283,700	287,830	274,710	322,640	355,550	1,529,430	9%	74%	75%			0.6	2.5		
Canada/USA	86,460	82,270	78,690	101,350	101,930	452,700	3%	22%	22%			0.3	1.3		
Australia/New Zealand	5,020	7,760	12,980	11,820	16,110	53,690	36%	3%	3%			0.6	2.0		
Japan/Rep. of Korea	1,960	1,710	1,630	2,880	3,680	11,860	28%	1%	1%			0.0	0.1		
Total	377,140	379,570	368,010	443,690	479,270	2,042,480	8%					0.4	1.8		

M G I M O 2 0 1 3

TABLE 3 Origin of asylum applications lodged in 44 industrialized countries | 2011-2012

Covering all 44 countries which provided monthly data to UNHCR.

Origin	2011	2012	Total	Annual change	Share			Rank		Total 2011 including Netherlands
					2011	2012	Total	2011	2012	
Afghanistan	36,247	36,634	72,881	1%	8.5	7.9	8.2	1	1	34,362
Syrian Arab Rep.	8,495	24,755	33,250	191%	2.0	5.4	3.7	15	2	8,327
Serbia (and Kosovo: S/RES/1244 (1999))	21,349	24,340	45,689	14%	5.0	5.3	5.1	4	3	21,229
China	24,566	24,109	48,675	-2%	5.8	5.2	5.5	2	4	24,290
Pakistan	19,139	23,229	42,368	21%	4.5	5.0	4.8	5	5	19,045
Russian Federation	17,362	21,856	39,218	26%	4.1	4.7	4.4	7	6	16,971
Iraq	23,743	19,584	43,327	-18%	5.6	4.2	4.9	3	7	22,308
Islamic Rep. of Iran	18,175	19,068	37,243	5%	4.3	4.1	4.2	6	8	17,246
Somalia	16,233	17,794	34,027	10%	3.8	3.9	3.8	8	9	14,818
Eritrea	10,935	11,860	22,795	8%	2.6	2.6	2.6	10	10	10,477
Mexico	8,908	11,477	20,385	29%	2.1	2.5	2.3	12	11	8,907
Nigeria	13,920	11,303	25,223	-19%	3.3	2.4	2.8	9	12	13,791
Georgia	6,902	10,725	17,627	55%	1.6	2.3	2.0	16	13	6,713
Sri Lanka	8,561	10,119	18,680	18%	2.0	2.2	2.1	13	14	8,437
Dem. Rep. of the Congo	6,665	8,571	15,236	29%	1.6	1.9	1.7	19	15	6,647
The former Yugoslav Republic of Macedonia	5,630	7,912	13,542	41%	1.3	1.7	1.5	23	16	5,364
Albania	3,356	7,698	11,054	129%	0.8	1.7	1.2	34	17	3,336
India	6,777	6,979	13,756	3%	1.6	1.5	1.5	18	18	6,755
Turkey	6,843	6,802	13,645	-1%	1.6	1.5	1.5	17	19	6,747
Algeria	5,025	6,720	11,745	34%	1.2	1.5	1.3	24	20	5,012
Bangladesh	8,508	6,462	14,970	-24%	2.0	1.4	1.7	14	21	8,485
Bosnia and Herzegovina	2,891	5,908	8,799	104%	0.7	1.3	1.0	36	22	2,866
Egypt	3,881	5,356	9,237	38%	0.9	1.2	1.0	29	23	3,817
El Salvador	4,616	5,125	9,741	11%	1.1	1.1	1.1	26	24	4,612
Guinea	6,365	4,978	11,343	-22%	1.5	1.1	1.3	20	25	6,356
Armenia	6,230	4,622	10,852	-26%	1.5	1.0	1.2	21	26	5,739
Tunisia	8,944	4,543	13,487	-49%	2.1	1.0	1.5	11	27	8,922
Guatemala	3,656	4,303	7,959	18%	0.9	0.9	0.9	31	28	3,651
Stateless	3,369	4,261	7,630	26%	0.8	0.9	0.9	33	29	3,304
Morocco	2,775	3,933	6,708	42%	0.7	0.9	0.8	37	30	2,753
Haiti	3,918	3,653	7,571	-7%	0.9	0.8	0.9	28	31	3,918
Ethiopia	3,385	3,541	6,926	5%	0.8	0.8	0.8	32	32	3,304
Sudan ⁽²⁾	3,669	3,301	6,970	-10%	0.9	0.7	0.8	30	33	3,507
Nepal	2,910	2,864	5,774	-2%	0.7	0.6	0.6	35	34	2,778
Mali	3,945	2,836	6,781	-28%	0.9	0.6	0.8	27	35	3,933
Côte d'Ivoire	6,172	2,799	8,971	-55%	1.4	0.6	1.0	22	36	6,049
Ghana	4,694	2,679	7,373	-43%	1.1	0.6	0.8	25	37	4,658
Senegal	2,243	2,629	4,872	17%	0.5	0.6	0.5	39	38	2,234
Honduras	1,945	2,495	4,440	28%	0.5	0.5	0.5	40	39	1,944
Cameroon	2,384	2,356	4,740	-1%	0.6	0.5	0.5	38	40	2,369
Other	71,272	71,838	143,110	1%	16.7	15.5	16.1			69,272
Total	426,481	442,017	868,498		100.0	100.0	100.0			415,011

⁽¹⁾ Netherlands: January to July 2012 data includes information provided by the Dutch authorities. August to December 2012 estimated by UNHCR using a statistical model (seasonal ARIMA). No information is available on the country of origin of asylum-seekers.

⁽²⁾ Figures may include citizens of South Sudan in the absence of separate statistics available for Sudan and South Sudan.

MAJOR SOURCE COUNTRIES

MGIMO 2013

Source: *Asylum trends 2012*
Levels and trends in industrialised countries

UNHCR, Geneva, 21 March 2013. Annex, Table 3 at p.

Early history

THE ROAD UNTIL MAASTRICHT

1976: Trevi

1985: Commission proposal for a Europe without internal borders

1986- group of ministers responsible for immigration creating treaties and other documents
(e.g. , /failed/ Convention on crossing the external borders)

Cooperation in customs issues and fight against drugs

= 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)

Treaty on the European Union (Maastricht. 1992) 12 member states agree on 3 pillars of which the third („Justice and home affairs”) declares 9 fields matters of common interest

THE MAASTRICHT TREATY ON THE EUROPEAN UNION

Title VI, a single Article „K” Cooperation in justice and home affairs

Nine matters of common interest:

1. **asylum policy;**
2. **rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;**
3. **immigration policy and policy regarding nationals of third countries;**
 - (a) conditions of entry and movement by nationals of third countries on the territory of Member States;
 - (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;
 - (c) combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States;
4. **combating drug addiction in so far as this is not covered by 7 to 9;**
5. **combating fraud on an international scale in so far as this is not covered by 7 to 9;**
6. **judicial cooperation in civil matters;**
7. **judicial cooperation in criminal matters;**
8. **customs cooperation;**
9. **police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).**

Forms of decision

Consultation - without formal decision

Joint position

Joint action

International convention.

Evaluation of the Maastricht period (1993 – 1999)

Insistence on representing national interests, on the elements of sovereignty, considered inalienable..

A lack of clear goal and motivation.

Confused competences (e.g. in the field of drugs, customs)

Complicated decision making system

Dubious legal status of adopted decisions (joint positions and actions)

Democratic deficit, lack of democratic control, especially by the ECJ

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

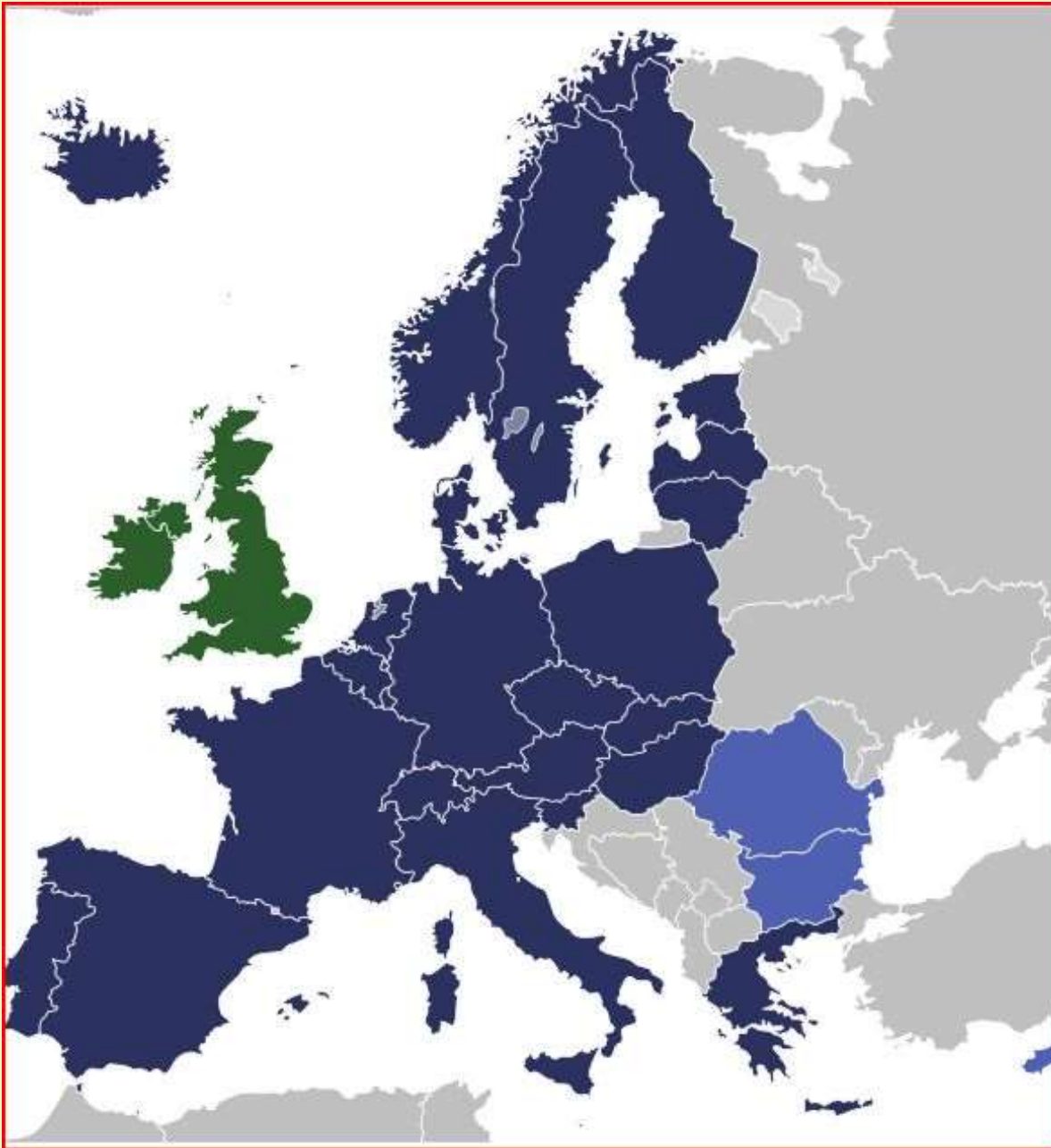
SCHENGEN

Territorial and personal scope

Territorial - see map on next slide

personal: nationals of member states or “aliens”

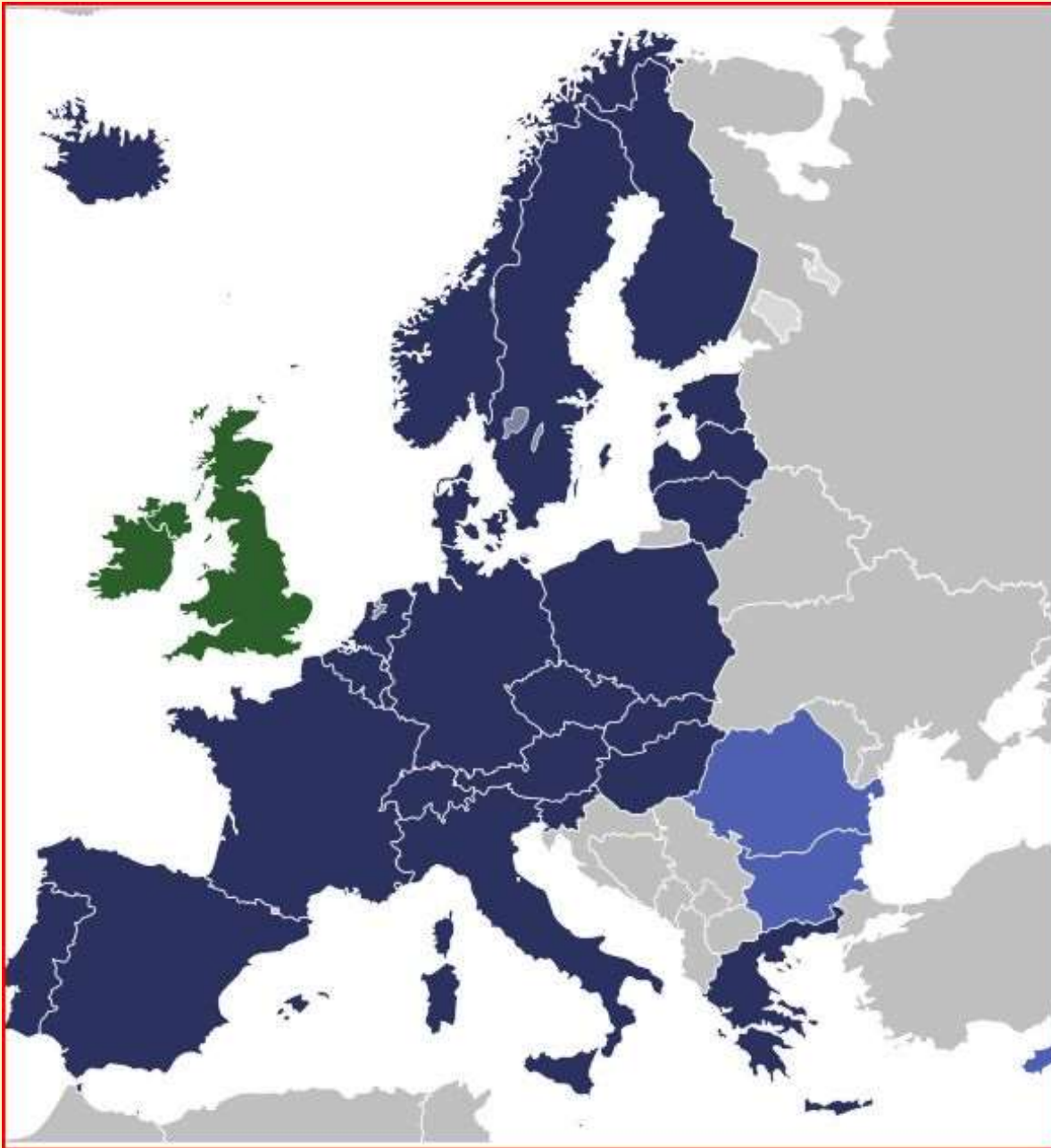
“Internal borders shall mean the common land borders of the Contracting Parties, their airports for internal flights and their sea ports for regular ferry connections exclusively from or to other ports within the territories of the Contracting Parties and not calling at any ports outside those territories;”



**SCHENGEN
AFTER
SWITZERLAND'S
ACCESSION**

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



**SCHENGEN
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THE FUNDAMENTAL INSTITUTIONAL STRUCTURE AND THE BASIC NOTIONS

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, External Border Agency)

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 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.

THE STOCKHOLM PROGRAM PROGRAM, 2009

The development of a Common Policy on Asylum should be based on a **full and inclusive application** of the 1951 Geneva Convention relating to the Status of Refugees and other relevant international treaties.

THE ACTION PLAN IMPLEMENTING THE STOCKHOLM PROGRAMME, 2010 APRIL

...the European Union has more than ever the duty to **protect and project our values** and to **defend our interests**. Respect for the **human person and human dignity, freedom, equality, and solidarity** are our everlasting values at a time of unrelenting societal and technological change. These values must therefore be at the heart of our endeavours.

**THE RULES IN FORCE AFTER THE
ENTRY INTO FORCE OF THE
LISBON TREATY**

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

DECISION MAKING IN MATTERS RELATED TO ASYLUM

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During the first five years (1999-2004)

After 1 May 2004

After 1 December 2009

Initiative

Commission and
Member State

Only the Commission
(M. S. may request that the
Commission submit a
proposal to the Council)

Only the Commission

Decision making process

Unanimous, after
consultation with
Parliament

Ordinary legislation according
to Art. 251 after adoption of
common rules and basic
principles (practically **since
December 2005**)

Ordinary decision making
according to Art. 294

Decision

Regulation, directive,
decision,
recommendation,
opinion

Regulation, directive,
decision,
recommendation,
opinion

Regulation, directive, decision,
recommendation, opinion

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 EC LAW

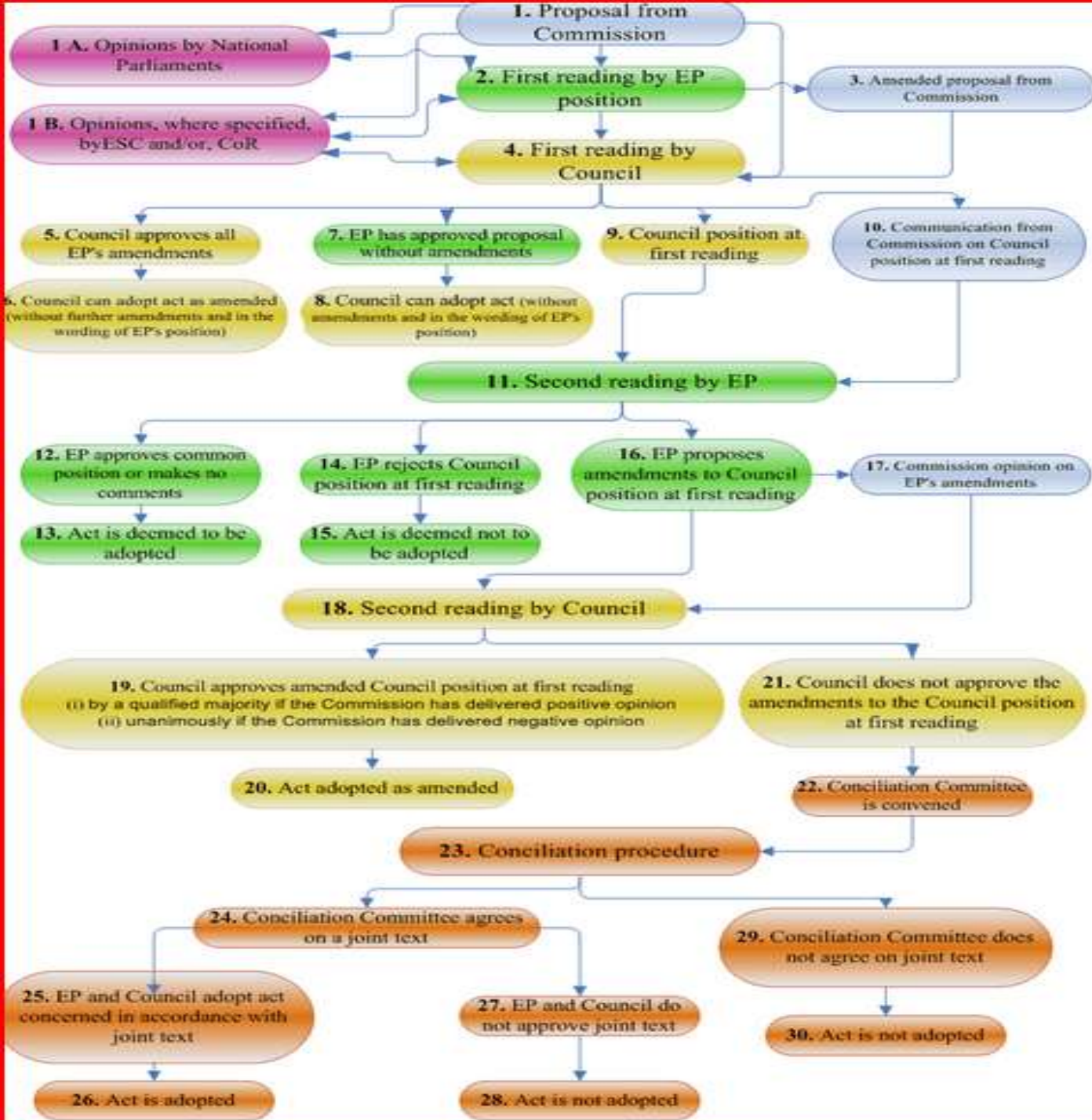
Direct applicability: a regulation „automatically forms part of the (highest) provisions of a Member State’s legal order” – without transposition

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.



ORDINARY DECISION MAKING

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

DECISION MAKING STRUCTURE IN THE EU TITLE V TFEU

COUNCIL OF MINISTERS (JHA COUNCIL)

High-Level Working Group on Asylum and Migration	COREPER		Standing Committee on Operational Cooperation on Internal Security (COSI) (see § 71 TFEU)
Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)	Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS)		Working Party on Civil Law Matters
Working party on Integration Migration and Expulsion	Law Enforcement Working Party	Working Party for Schengen Matters	Working Party on Fundamental Rights Citizens Rights and Free Movement of Persons
Visa Working Party	Working Party on Cooperation in Criminal Matters	Working Party on General Matters including Evaluation	Working Party on Civil Protection
Asylum Working Party	Working Party on Substantive Criminal Law	Working Group on Information Exchange and Data Protection	JAI -RELEX Working Party
Working Party on Frontiers	Working Party on Terrorism		Customs Cooperation Working Party

Votes distribution – qualified majority

	Before accessions of 2004, 2007	Now, with Bulgaria and Romania until 2014	After 1 November 2014			
France	10	29	1 member – 1 vote			
Germany	10	29				
Great Britain	10	29				
Italy	10	29				
Spain	8	27				
Poland	-	27				
Romania	-	14				
The Netherlands	5	13				
Belgium	5	12				
Greece	5	12				
Portugal	5	12	Qualified majority = „double majority”			
Czech republic	-	12				
Hungary	-	12				
Ausztria	4	10				
Sweden	4	10				
Bulgaria	-	10				
Denmark	3	7				
Finland	3	7				
Ireland	3	7				
Lithuania	-	7				
Slovakia	-	7	<p>On a proposal from the Commission or the High Representative</p> <p>On any other porposal</p> <p>55% of the ministers (countries) (15) representing 65% of the population of the EU</p> <p>72 % of the ministers (20) representing 65 % of the population of the EU</p>			
Luxembourg	2	4				
Cyprus	-	4				
Estonia	-	4				
Latvia	-	4				
Slovenia	-	4				
Malta	-	3				
Total	87	345				
Qualified majority	62 (71,26%)	255 (73,91 %)			Blocking minority : minimum 4 countries even if 3 represent more than 35 % of the population	
Blocking minority	26	91				

VARIABLE GEOMETRY IN THE FIELD OF AFSJ

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	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 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	Opts in or out	No participation
Denmark	No participation	No participation, but creates an obligation under international law	Binding, frozen	Binding, frozen	Takes part
Norway, Iceland	No participation	Binding	Binding	No partici- pation	Takes part
Switzer- land	No participation	Binding	Binding	No partici- pation	Applied since 12 De- cember 2008 (on air- ports since 29 March 2009)
NMS of 2004	Binding	Binding	Binding	Binding	Applied since 21 December 2007, on airports since March 2008.
Bulgaria Romania Cyprus	Binding	Binding	Binding	Binding	Not yet applied

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

THE COMMISSIONERS



Cecilia
Malmström

Home affairs

Borders, visa, immigration asylum
Fight against economic, cyber and financial crimes;
Organised crime, trafficking of men and drugs, drug-trade,
corruption;
Fight against terrorism;
Police and criminal justice co-operation (e.g. FRONTEX,
EUROPOL)



Viviane
Reding

Vice president of the
Commission
Access to law, fundamental
rights, EU citizenship

Access to law

Judicial co-operation in civil and commercial matters
Co-operation in criminal law matters
Contract law and consumer rights

Fundamental rights

Charter of Fundamental Rights and the Fundamental Rights Agency (Vienna)
Rights of the child
Gender issue, discrimination (Roma issues)

Union citizenship

Rights of an EU citizen
Active citizenship

ASYLUM PROVISIONS

Location: the new Title V of the „Treaty on the Functioning of the European Union”, on an „area of freedom security and justice „ re-uniting I. and III. pillar

Article 78 (1)

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**.

MAIN NOVELTIES

Uniform status

„asylum” = Convention refugee status
subsidiary protection

Common procedure

No longer minimum standards! Goal: to adopt them in 2012

↔ recasts 2008, 2009! NOT creating uniform status and common procedure

Partnership with third countries

Not mentioned in the Lisbon treaty: European Asylum Support Office

DECISION MAKING PROCEDURES AND MAJORITIES IN TITLE V, TFEU, CONCERNING ASYLUM AND MIGRATION

Numbers refer to TFEU articles and paras	Majority	Procedure	Start	Legal basis
Common polucy on visas and short stay permits 77 § 2 (a)	Qualified majority	Ordinary legislation	1 Dec. 2009	Lisbon treaty
Checks on persons at external borders 77 § 2 (b)	Qualified majority	Ordinary legislation	1 Jan. 2005	Council decision 15 Dec 2004
Third country nationals - short term travel within the EU 77 § 2 (c)	Qualified majority	Ordinary legislation	1 Jan. 2005	Council decision 15 Dec 2004
Gradual establishment of integrated border management 77 § 2 (d)	Qualified majority	Ordinary legislation	1 Dec. 2009	Lisbon treaty
Absence of controls on persons at internal borders 77 § 2 (e)	Qualified majority	Ordinary legislation	1 Jan. 2005	Council decision 15 Dec 2004
Passport, ID card and residence permit rules implementing TFEU § 20 (2) (a) on the EU citizen's right to move and reside freely	Unanimous	Special legislative procedure	1 Dec. 2009	Lisbon treaty
Uniform status of asylum and subsidiary protection for third country nationals 78 § 2 (a) and (b)	Qualified majority	Ordinary legislation	1/12/2009 (1/12/2005)	Lisbon (Nice)
Common system of temporary protection in case of mass inflow 78 § 2 (c)	Qualified majority	Ordinary leg.	1 /12/2009 (1/12/2005)	Lisbon (Nice)

DECISION MAKING PROCEDURES AND MAJORITIES IN TITLE V, TFEU, CONCERNING ASYLUM AND MIGRATION

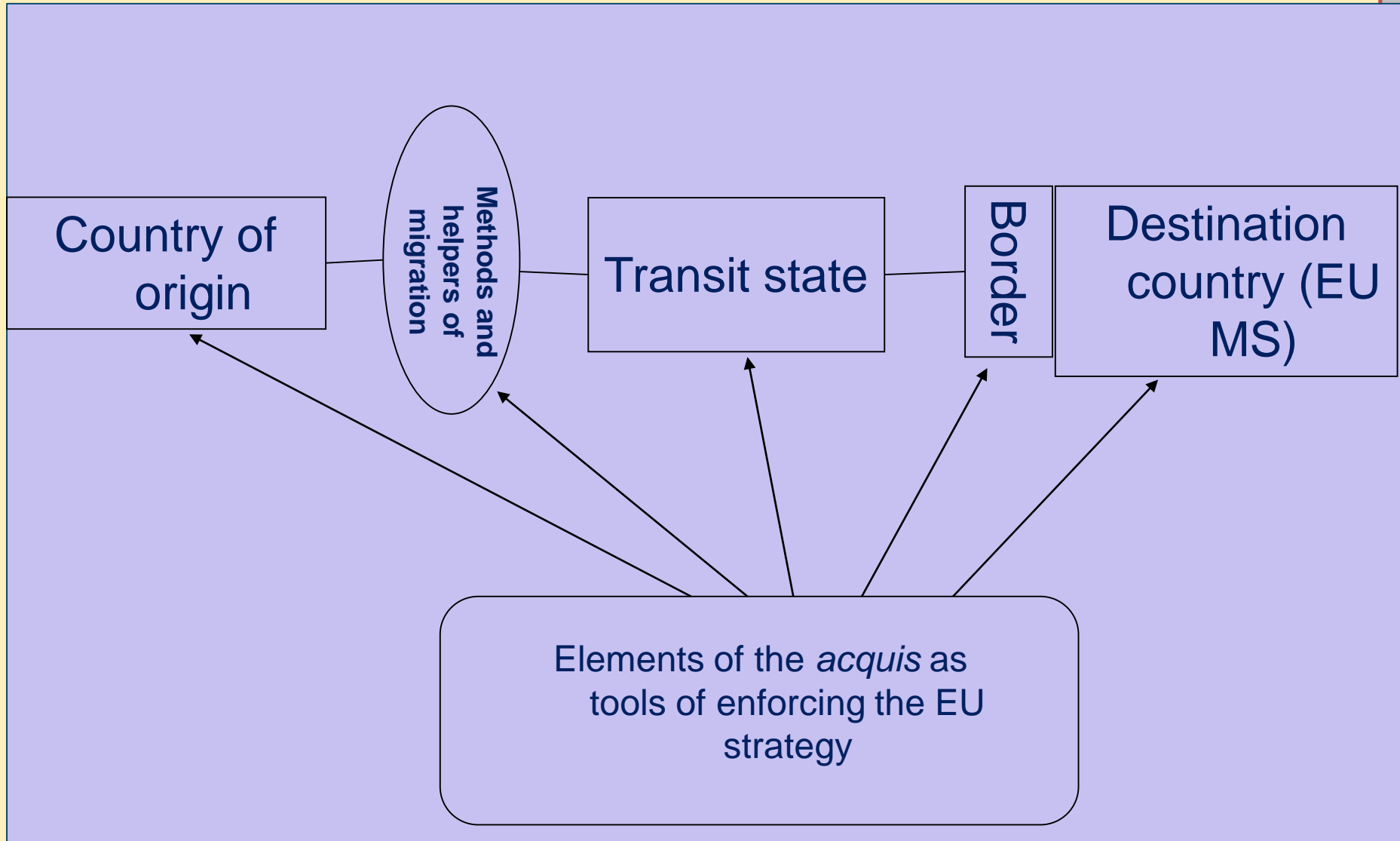
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Common procedures for granting and withdrawing status 78 § 2 (d)	Qualified majority	Ordinary legislation	1 /12/2009 (1/12/2005)	Lisbon (Nice)
Criteria and mechanisms for determining which Member State is responsible for considering an application („Dublin”) 78 § 2 (e)	Qualified majority	Ordinary legislation	1/12/2005	Nice
Standards concerning reception conditions during asylum and subsid prot . procedures 78 § 2 (f)	Qualified majority	Ordinary legislation	1 /12/2009 (1/12/2005)	Lisbon (Nice)
Partnership and cooperation with third countries for the purpose of managing inflows of asylum seekers 78 § 2 (g)	Qualified majority	Ordinary legislation	1 Dec. 2009	Lisbon treaty
The conditions of entry and residence + standards on the issue by MS of long-term visas and residence permits, including those for the purpose of family reunification 79 § 2 (a)	Qualified majority	Ordinary legislation	1 Dec. 2009	Lisbon treaty
The definition of the rights of third-country nationals residing legally in a MS including the conditions governing freedom of movement and of residence in other Member States 79 § 2 (b)	Qualified majority	Ordinary legislation	1 Dec. 2009	Lisbon treaty
Illegal immigration and residence , including removal and repatriation (79 § 2 (c)	Qualified majority	Ordinary legislation	1 Jan. 2005	Council decision 15 Dec 2004
Combatting trafficking in persons, in particular women and children	Qualified majority	Ordinary legislation	1 Dec. 2009 (1 Jan. 2005)	Lisbon treaty (Council decision 15 Dec 2004)

MIGRATION

AN OVERVIEW OF THE SITES, LEVELS AND TYPES OF EU RESPONSES

PHASES/SITES OF MIGRATION



DIMENSIONS OF THE ANALYSIS –MAIN ELEMENTS OF THE MIGRATION ACQUIS



Immigration rules (their impact);	Man smuggling, Fight against trafficking		External border Surveillance conditions of crossing; abolition of internal borders Frontex Eurosur	EU Immigration policy - workers, - service providers - researchers, - students - „blue card” – highly skilled - family unification -intra corporate transferees - seasonal workers
Co-operation with third states in the management of migration	Carrier sanctions	Transit visa	Visa; Alerts (Schengen)	Integration Fight against racism, xenophobia and discrimination
Tackling the root causes of asylum seeking	Interception in international waters	Safe third country		Asylum acquis Burden and responsibility sharing
Safe country of origin	Document protection (from falsification)	Return agreements		Cooperation in removal/return

DIMENSIONS OF THE ANALYSIS – OVERVIEW OF THE JUNCTURES)

Type of migrant ↓	The position of the migrant from the EU's point of view →	Preferred	Reservations	Pawn in the game	Unwanted
Regular		National of the EU MS or of the EEA MS or of Switzerland	New MS, Europe Agreements, Associated states (Turkey)	ACP and Maghreb countries; nationals of states with return agreements; Eastern Europe	Visa rejected
	S. Peer's category:	Market citizen	Worker	„Alien“	
Irregular	Refugee	Resettlement „Quota refugees“ „protected entry“	Asylum seeker arriving directly from the territory of persecution	Asylum seeker arriving through third countries	Intercepted outside the EU; Arriving from safe country of origin; Rejected claimant
	Illegal migrant			Regularisation Victims of trafficking	Those to be removed or already removed

The Common European Asylum System (CEAS)

- Goal: Common European Asylum system
 - First phase: harmonized rules (minimum standards)
 - Second phase common procedure and uniform status

(Majority decision-making only after first phase complete – from 2005 December)

-

Asylum issues

Adopted measures

1. Regulation **on Eurodac** (2000)
2. Directive on **temporary protection** (2001)
3. **Reception conditions** directive (2003)
4. **Dublin II** Regulation and its implementing rules (2003)
5. Qualification (**Refugee definition**) directive (2004)
6. **Asylum procedures** directive (2005)
7. Decision on the (third) **European Refugee Fund** (2007)
8. Establishment of an **European Asylum Support Office** (2010)

Two (and a half) packages of amendments 2008 and 2009 (and 2010-2011)

First: 3 December 2008

- COM(2008) 820 final –recasting the **Dublin** regulation
- COM(2008) 825 final –recasting the **Eurodac** regulation
- COM(2008) 815 final – recasting the **Reception conditions** directive

Second: 21 October 2009

- COM(2009) 554 final: Recasting the **procedures** directive Complemented by two staff working papers
- COM/2009/551 final: recasting the **qualification** directive Complemented by two staff working papers

+ Half:

11 October 2010

COM(2010) 555 final: recasting (for the third time) the **Eurodac** regulation

7 June 2011

COM(2011) 319 final: second recast of the **Procedures** directive

COM(2011) 320 final: second recast of the **Reception conditions** directive

Overview of the recasts

Secondary rule	Is there a recast?	State of play
European refugee Fund 2007/573/EK határozat	None	To be replaced by a new Fund on Migration and Return
Temporary Protection Directive Council Directive 2001/55/EC	None	
Eurodac Council Regulation 2725/2000/EC	Yes	Text negotiated but impasse
Dublin II regulation Council Regulation 343/2003 EC	Yes	November 2012 political agreement see doc. 16332/12
Reception Conditions Directive Council Directive 2003/9/EC	Yes	September 2012. political agreement see doc. 14112/1/12 REV 1
Qualification directive Council Directive 2004/83/EK irányelv	Yes	Published as directive 2011/95/EU 20 December 2011
Procedures directive Council Directive 2005/85/EC	Yes	March 2013 still political agreement 7695/13

Thanks!

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