

A short course on EU asylum law. I.

**THE EU INSTITUTIONAL BASIS
AND THE FUNDAMENTALS OF
THE AREA OF FREEDOM,
SECURITY AND JUSTICE**

Presented by Boldizsár Nagy,

HR consortium

Presented at PFUR, Moscow, 2017



(Non) arrival in Greece – Photo by Aris Messinis, 2015

CATEGORIES OF FOREIGNERS

(AND OF INTERNALLY DISPLACED PERSONS)

Migration

International

Domestic

Regular

Irregular

A longer than 1 year
presence/absence, in
accordance with the
law

No right to
enter/stay
„Illegal”

Forced migration

Regular migrant
(Worker, student, family
unifier, etc.)

Undocumented
foreigner,
Persons with no
right to enter
and/or stay

Refugee

Internally displaced
person, IDP

EUROPEAN DATA

The orders of magnitude

Stock data

At the end of 2015

- There were **65,3 forced migrants**
- Of these
 - **21,3 million** were refugees. Of the refugees **5,2 million were the Palestinian** and **16,1 million** of other nationality
 - **40,8 million internally displaced persons**
 - **3,2 million** asylum seekers
 - Of all the refugees **50 %** is below the age of 18.
 - **Syria (4.9 million) Afghanistan (2,8 million) and Somalia (1,1 million)** are the three countries wherefrom more than half of the refugees came

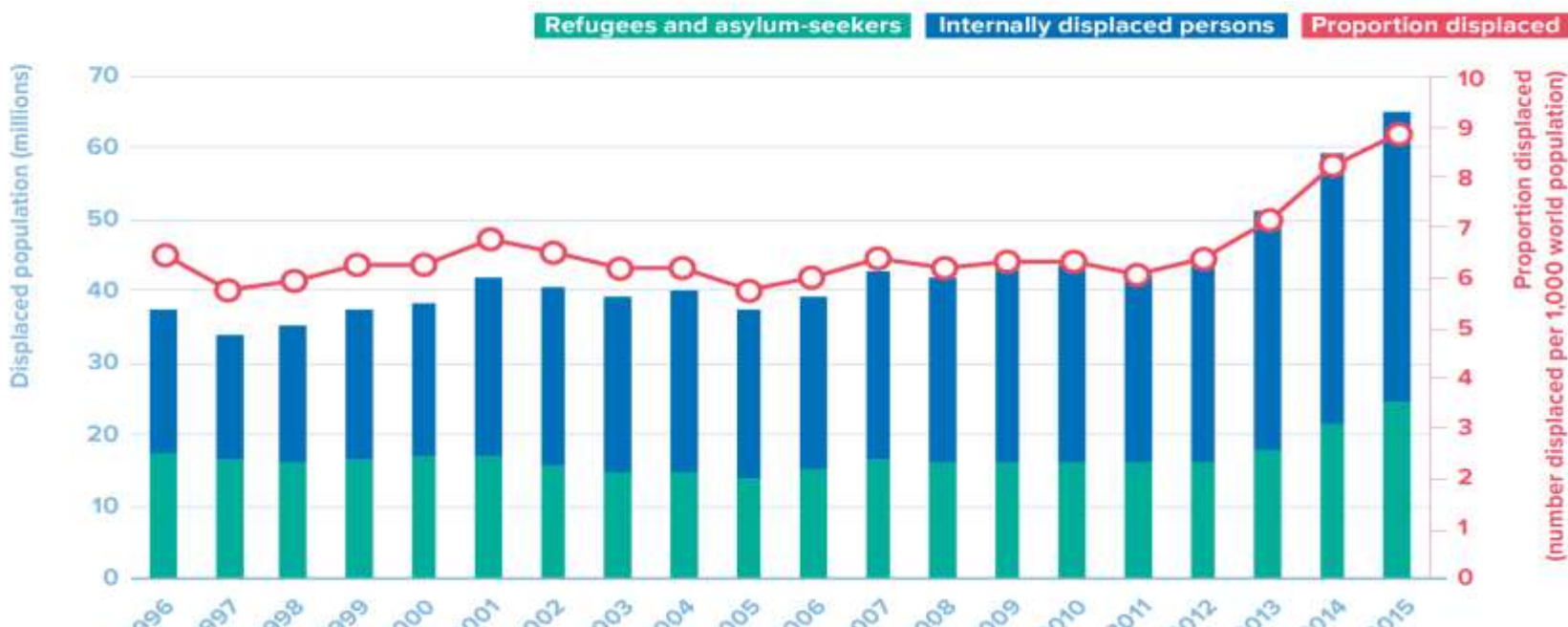
Major trends, 2015, (flow data)

During 2015

12,4 million persons were forced to flee from home. Of them 8,6 million were internally displaced and 1.8 new refugees crossing an international border. Beyond them there were 2 million new applications submitted by persons who left home earlier.

- On a daily average 34,200 persons had to flee (In 2010-ben the number was :10 900)
107,100 refugees were resettled from the country of first asylum to another state
- 201,400 returned home (since 1994 altogether 18.4 million)

Fig.1 Trend of global displacement & proportion displaced | 1996 - 2015 (end-year)



Forrás:
UNHCR
, Global
Trends
Forced
Displacement
2015,
Geneva,
2016, p.
6

Recognition rates – within the decisions on the merits

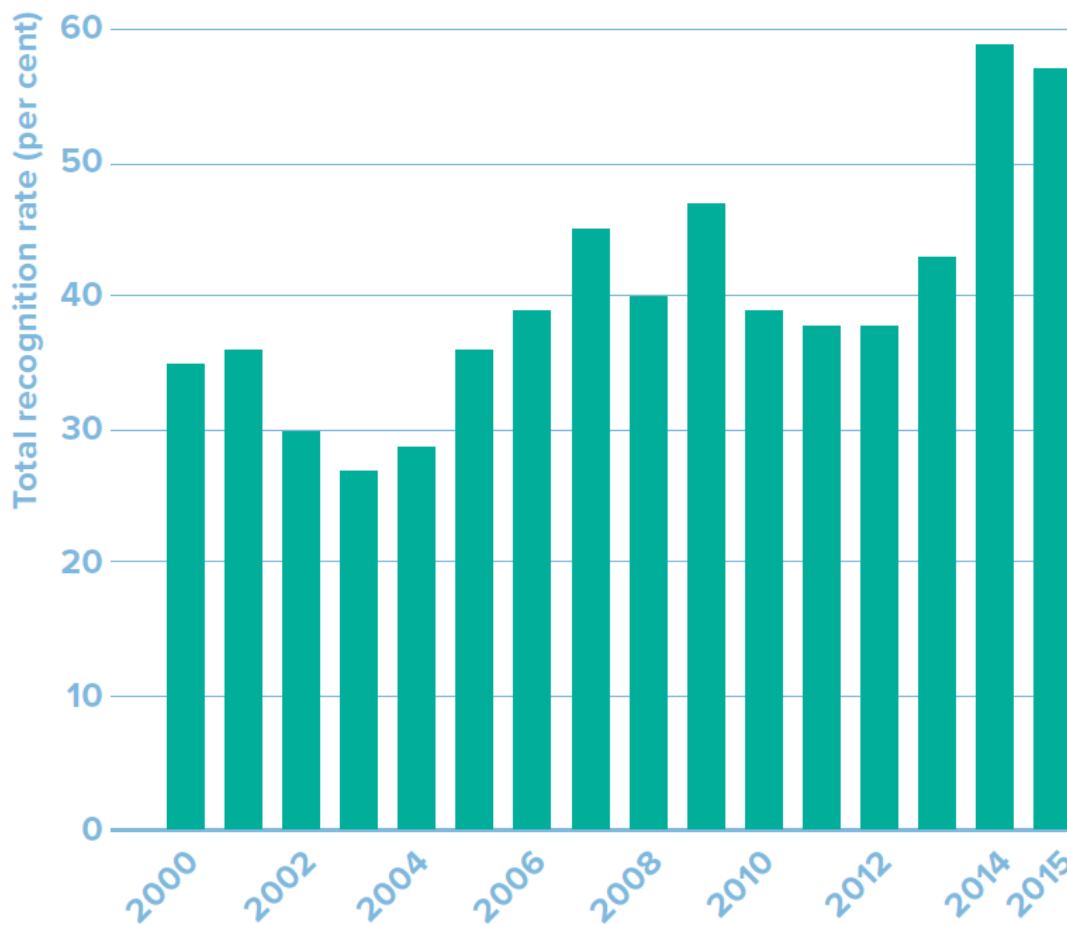
Between 2000 and 2012 yearly 0,6 - 1,0 million applications were submitted

Recognition rate within the decisions on the merit oscillated between 27% and 47 %.

In 2015-ben decision on the merit was taken on 1,18 million applications

In 2014-2015- recognition rates were above 50%

Fig.18 Global Total Recognition Rates | 2000-2015



Source: UNHCR, Global Trends Forced Displacement 2015, Geneva, 2016.

Syria! (January, 2017)

Total Persons of Concern

4,862,778

Last Updated 05 Jan 2017

Source - UNHCR, Government of Turkey

Registered Syrian Refugees

4,862,778

Last Updated 05 Jan 2017

Source - UNHCR, Government of Turkey

This figure includes 2 million Syrians registered by UNHCR in Egypt, Iraq, Jordan and Lebanon, 2.8 million Syrians registered by the Government of Turkey, as well as more than 29,000 Syrian refugees registered in North Africa.

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

Total Syrian Asylum Applications in Europe

884,461 between Apr 2011 and Oct 2016

137,798 in 2014 only

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

Top Countries



Evolution of Asylum Applications

Sources: <http://www.migrationpolicycentre.eu/migrant-crisis/focus-on-syrians/> (20170109)

<http://data.unhcr.org/syrianrefugees/regional.php> (20161107) author's assemblage

Egypt: 115,204

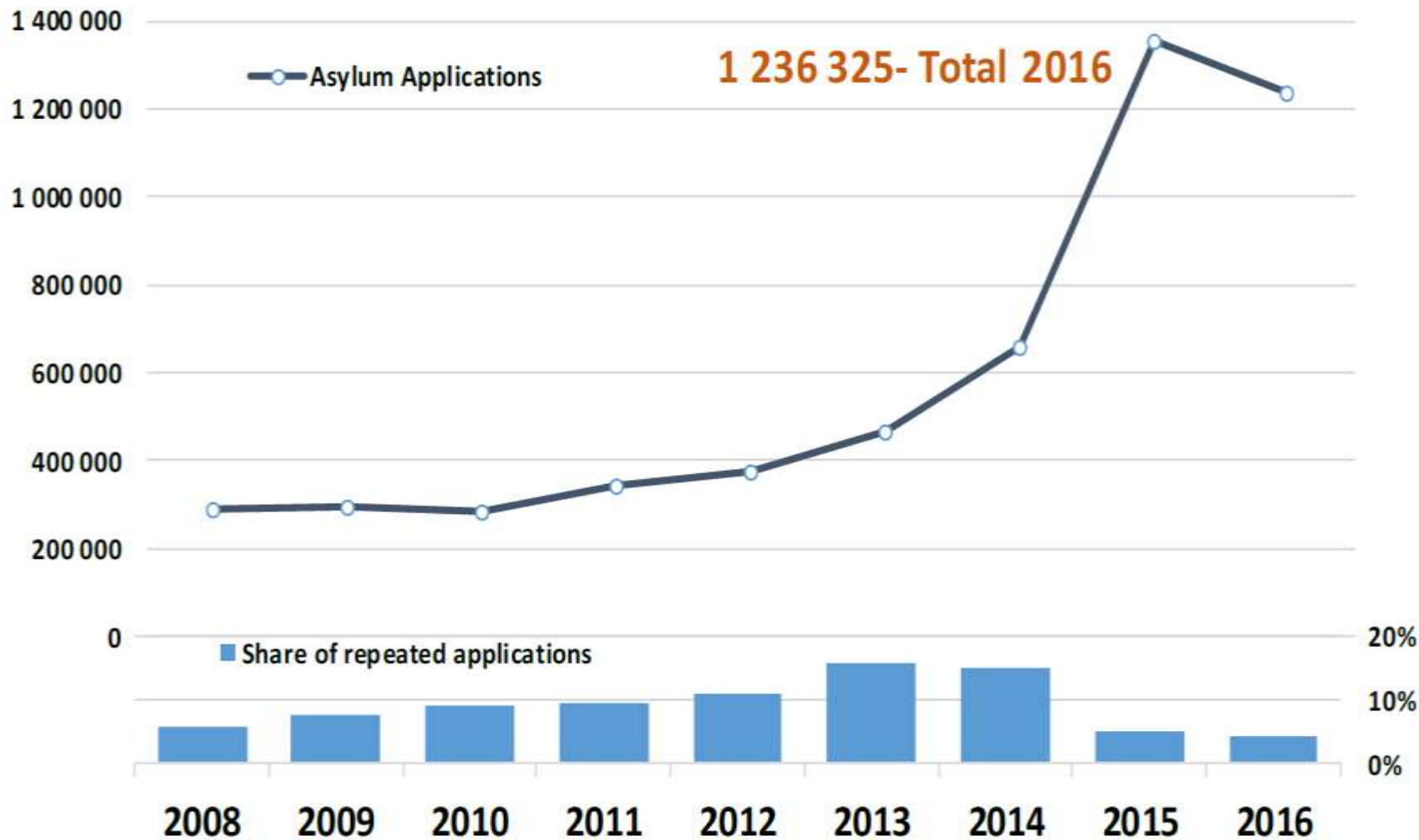
Iraq: 230,836

Jordan: 655,399

Lebanon: 1,017,433

Turkey: 2,814,631

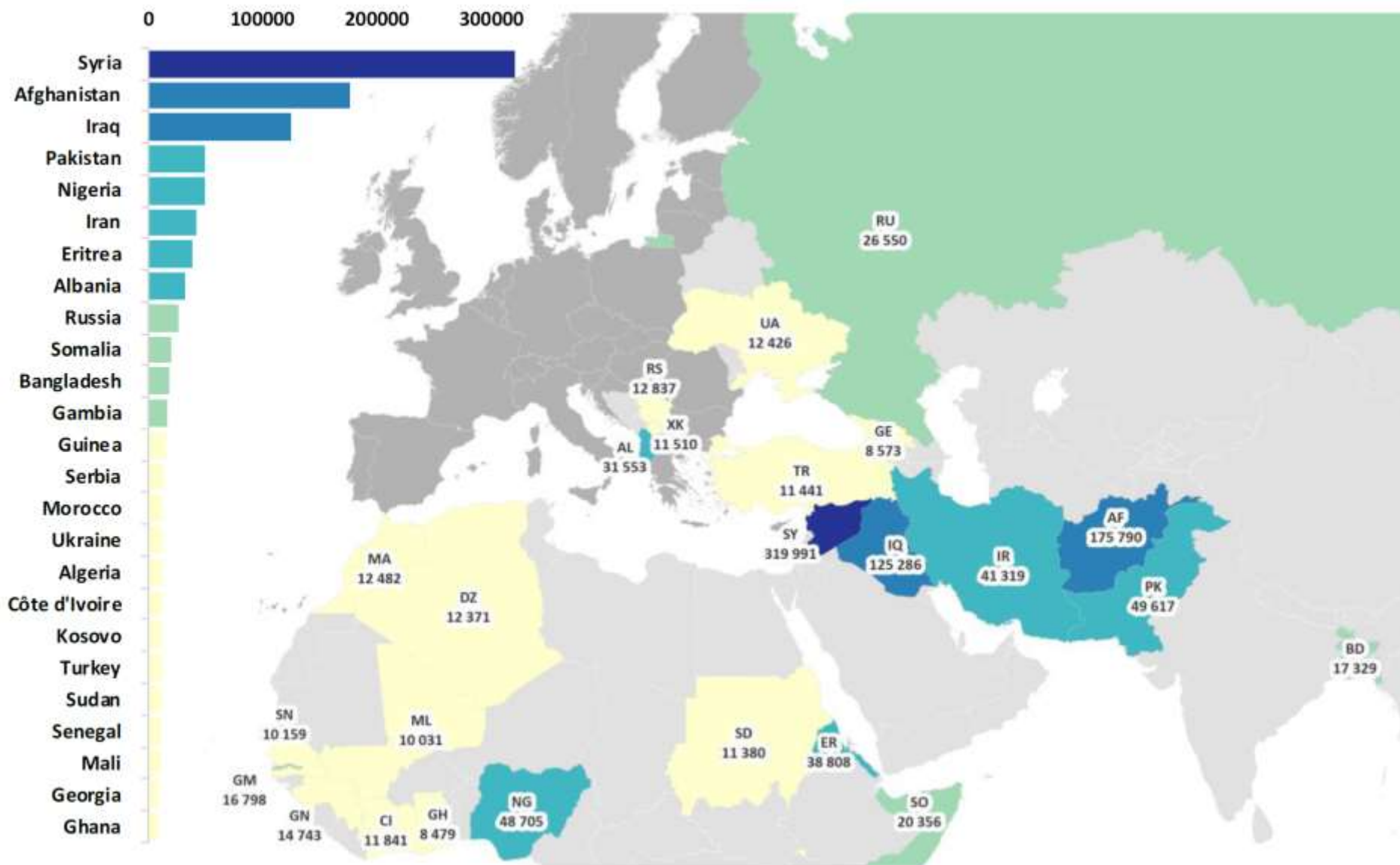
Number of asylum applications in EU+ EU 28 + Norway and Switzerland



Source: Latest asylum trends – 2016 overview, p. 1

<https://www.easo.europa.eu/sites/default/files/Latest%20Asylum%20Trends%20Overview%202016%20final.pdf>

Main countries of origin of applicants in the EU+ in 2016



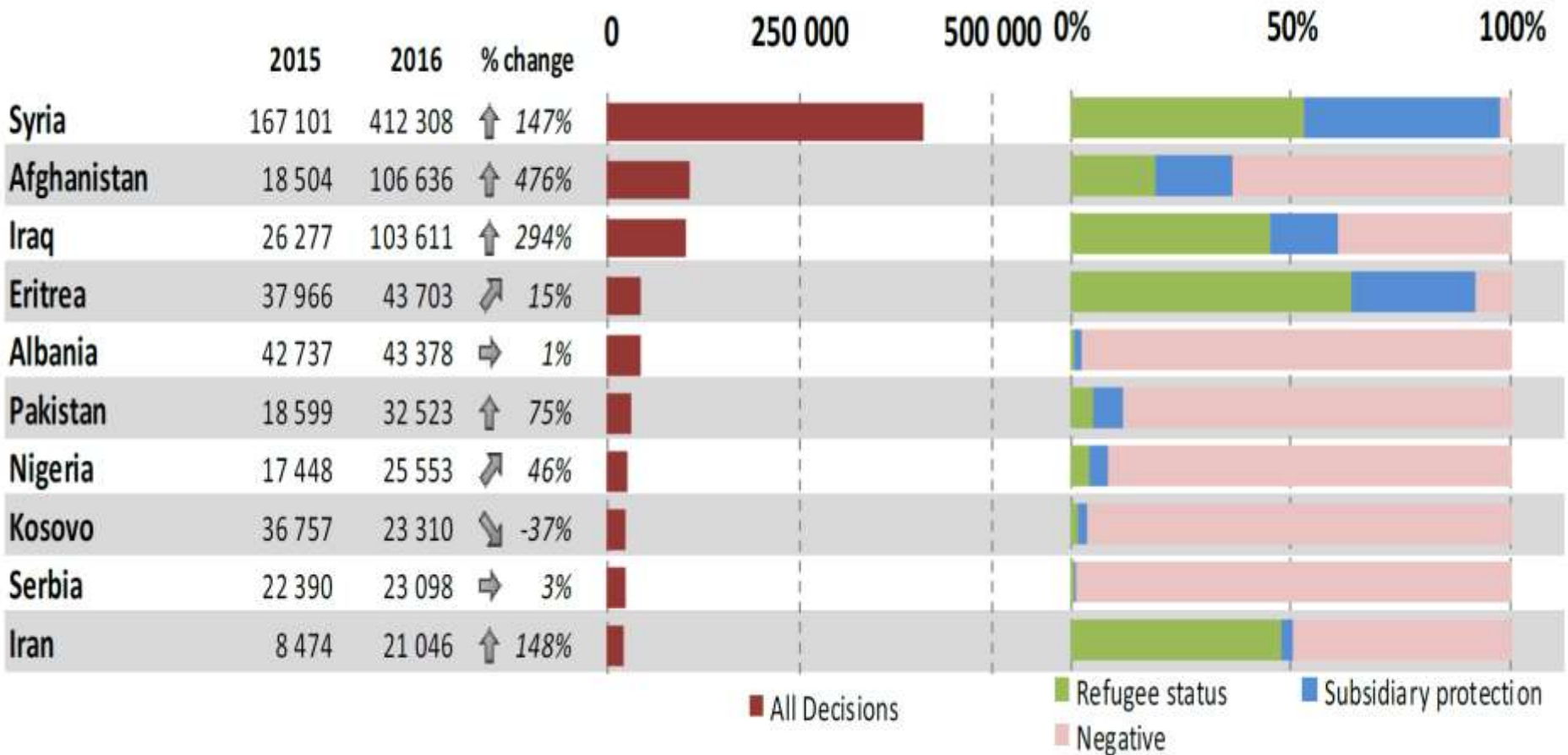
Source: Latest asylum trends – 2016 overview, p. 1

<https://www.easo.europa.eu/sites/default/files/Latest%20Asylum%20Trends%20Overview%202016%20final.pdf>

Arrivals in the EU by country of origin, 2016

| | Q4 2015 | | | Q1 2016 | | | Q2 2016 | | | Q3 2016 | | | Q4 2016 | | | Q4 2016 | Change in % | | Last 12 months |
|--------------------|---------|---------|---------|---------|---------|---------|---------|--------|---------|---------|---------|---------|---------|--------|--------|---------|-----------------------------|-----------------------------|----------------|
| | Oct. | Nov. | Dec. | Jan. | Feb. | Mar. | Apr. | May | Jun. | Jul. | Aug. | Sep. | Oct. | Nov. | Dec. | | between Q3 2016 and Q4 2016 | between Q4 2015 and Q4 2016 | |
| Non-EU | 167 190 | 154 695 | 104 440 | 97 005 | 109 450 | 101 080 | 105 285 | 99 050 | 118 970 | 114 405 | 133 120 | 118 770 | 78 095 | 70 180 | 58 880 | 207 155 | -43 | -51 | 1 204 280 |
| Syria - (SY) | 58 735 | 51 980 | 34 420 | 35 765 | 41 115 | 34 980 | 34 320 | 29 960 | 32 785 | 29 665 | 32 565 | 28 905 | 13 525 | 11 695 | 9 545 | 34 765 | -62 | -76 | 334 820 |
| Afghanistan - (AF) | 26 310 | 33 860 | 19 115 | 13 445 | 13 920 | 13 775 | 16 500 | 17 090 | 22 350 | 20 860 | 24 520 | 18 485 | 10 050 | 7 005 | 4 985 | 22 040 | -65 | -72 | 182 985 |
| Iraq - (IQ) | 24 685 | 17 755 | 11 165 | 10 945 | 13 700 | 12 590 | 12 700 | 10 835 | 12 955 | 11 520 | 14 115 | 12 105 | 6 350 | 5 045 | 4 095 | 15 485 | -59 | -71 | 126 955 |
| Nigeria - (NG) | 3 380 | 2 775 | 1 895 | 2 105 | 2 145 | 2 180 | 2 680 | 2 890 | 4 050 | 4 470 | 5 725 | 5 525 | 5 035 | 5 300 | 4 040 | 14 380 | -9 | 79 | 46 145 |
| Eritrea - (ER) | 4 365 | 2 175 | 1 615 | 1 485 | 1 965 | 1 635 | 2 075 | 2 245 | 3 670 | 3 740 | 3 640 | 3 400 | 3 390 | 3 415 | 2 750 | 9 550 | -11 | 17 | 33 405 |
| Pakistan - (PK) | 3 935 | 3 895 | 3 025 | 3 495 | 3 965 | 4 305 | 4 140 | 4 175 | 4 780 | 4 175 | 5 330 | 4 545 | 2 980 | 3 145 | 2 565 | 8 690 | -38 | -20 | 47 595 |
| Albania - (AL) | 6 300 | 4 350 | 2 845 | 2 255 | 2 245 | 1 990 | 2 210 | 1 910 | 2 335 | 2 585 | 2 865 | 3 560 | 2 305 | 2 495 | 2 170 | 6 970 | -23 | -48 | 28 925 |
| Iran - (IR) | 4 680 | 5 975 | 3 760 | 3 085 | 3 255 | 3 515 | 3 440 | 3 255 | 3 930 | 4 490 | 4 705 | 4 215 | 2 655 | 1 945 | 1 660 | 6 265 | -53 | -57 | 40 160 |
| Bangladesh - (BD) | 1 835 | 1 590 | 1 400 | 1 115 | 1 080 | 955 | 960 | 935 | 1 020 | 1 205 | 1 690 | 2 085 | 1 665 | 1 860 | 1 420 | 4 940 | -1 | 2 | 15 985 |
| Guinea - (GN) | 615 | 475 | 455 | 580 | 660 | 655 | 750 | 920 | 1 100 | 1 195 | 1 520 | 1 535 | 1 565 | 1 520 | 1 425 | 4 515 | 6 | 193 | 13 425 |
| Somalia - (SO) | 1 865 | 1 555 | 1 040 | 975 | 1 070 | 1 180 | 1 715 | 1 500 | 1 965 | 1 990 | 2 085 | 2 110 | 1 800 | 1 380 | 1 155 | 4 340 | -30 | -3 | 18 940 |
| Gambia - (GM) | 1 360 | 855 | 600 | 895 | 1 015 | 1 140 | 1 230 | 1 245 | 1 525 | 1 915 | 1 515 | 1 360 | 1 145 | 1 485 | 1 260 | 3 890 | -19 | 38 | 15 725 |
| Russia - (RU) | 2 295 | 1 830 | 1 615 | 930 | 1 235 | 1 555 | 2 055 | 2 525 | 3 355 | 2 735 | 2 695 | 2 100 | 1 440 | 1 190 | 1 195 | 3 830 | -49 | -33 | 23 015 |
| Turkey - (TR) | 395 | 405 | 295 | 380 | 510 | 475 | 590 | 615 | 795 | 805 | 1 175 | 1 150 | 1 265 | 1 260 | 1 070 | 3 600 | 15 | 228 | 10 100 |
| Sudan - (SD) | 1 205 | 835 | 1 185 | 725 | 790 | 965 | 830 | 645 | 785 | 745 | 1 075 | 1 120 | 1 195 | 835 | 1 340 | 3 370 | 15 | 5 | 11 060 |
| Ivory Coast - (CI) | 555 | 440 | 380 | 510 | 525 | 560 | 715 | 855 | 1 045 | 1 000 | 1 365 | 1 260 | 1 240 | 1 090 | 1 020 | 3 350 | -8 | 143 | 11 175 |
| Algeria - (DZ) | 725 | 660 | 630 | 655 | 1 130 | 820 | 835 | 670 | 665 | 750 | 1 065 | 1 275 | 1 145 | 1 140 | 1 005 | 3 295 | 7 | 63 | 11 165 |
| Senegal - (SN) | 775 | 575 | 435 | 505 | 600 | 715 | 730 | 765 | 790 | 775 | 930 | 930 | 910 | 970 | 890 | 2 770 | 5 | 56 | 9 510 |
| Morocco - (MA) | 455 | 685 | 785 | 830 | 1 120 | 960 | 935 | 740 | 720 | 805 | 1 235 | 1 185 | 990 | 905 | 780 | 2 670 | -17 | 39 | 11 200 |
| Mali - (ML) | 840 | 745 | 435 | 490 | 575 | 640 | 680 | 775 | 855 | 875 | 1 030 | 980 | 990 | 860 | 745 | 2 595 | -10 | 29 | 9 495 |
| Ukraine - (UA) | 1 720 | 1 695 | 1 345 | 1 100 | 1 075 | 1 210 | 1 230 | 850 | 950 | 755 | 760 | 760 | 820 | 885 | 700 | 2 405 | 6 | -49 | 11 090 |
| Ghana - (GH) | 675 | 505 | 310 | 305 | 315 | 335 | 375 | 405 | 545 | 755 | 1 215 | 1 205 | 880 | 725 | 700 | 2 310 | -27 | 55 | 7 760 |
| Armenia - (AM) | 410 | 430 | 365 | 340 | 310 | 325 | 355 | 410 | 650 | 750 | 1 110 | 1 185 | 985 | 680 | 610 | 2 280 | -25 | 89 | 7 710 |
| Venezuela - (VE) | 110 | 155 | 135 | 150 | 155 | 170 | 290 | 295 | 420 | 370 | 390 | 455 | 600 | 810 | 585 | 2 000 | 65 | 404 | 4 695 |
| Georgia - (GE) | 585 | 640 | 500 | 470 | 545 | 530 | 495 | 495 | 650 | 805 | 775 | 700 | 710 | 615 | 535 | 1 860 | -18 | 8 | 7 330 |
| Azerbaijan - (AZ) | 140 | 145 | 190 | 145 | 165 | 180 | 235 | 235 | 460 | 400 | 730 | 920 | 780 | 540 | 535 | 1 850 | -10 | 290 | 5 315 |
| India - (IN) | 475 | 540 | 365 | 520 | 585 | 535 | 525 | 500 | 760 | 730 | 785 | 750 | 700 | 590 | 495 | 1 790 | -21 | 30 | 7 485 |
| Serbia - (RS) | 1 130 | 1 005 | 565 | 770 | 805 | 705 | 710 | 520 | 650 | 925 | 1 010 | 1 015 | 545 | 665 | 570 | 1 775 | -40 | -34 | 8 880 |
| Ethiopia - (ET) | 685 | 550 | 455 | 295 | 270 | 260 | 400 | 365 | 580 | 655 | 840 | 805 | 700 | 520 | 360 | 1 575 | -32 | -7 | 6 050 |
| Kosovo - (XK) | 1 110 | 760 | 870 | 980 | 940 | 815 | 780 | 810 | 805 | 880 | 835 | 865 | 515 | 555 | 380 | 1 455 | -44 | -47 | 9 160 |
| Other (non-EU) | 14 855 | 14 870 | 12 250 | 10 770 | 11 670 | 10 425 | 9 800 | 9 620 | 11 020 | 11 095 | 13 815 | 12 265 | 9 210 | 9 050 | 8 280 | 26 540 | -29 | -37 | 127 015 |

Decisions - recognition - numbers and rates, EU+, 2016



Source: Latest asylum trends – 2016 overview, p. 3.

<https://www.easo.europa.eu/sites/default/files/Latest%20Asylum%20Trends%20Overview%202016%20final.pdf>

Irregular border crossings into the EU 2009 - 2016

Illegal border crossings into the EU 2009-2016

Source: Frontex²⁴

| | Eastern Med. route (Greece) | Central Med. route (Italy) | Other routes* | Total* |
|------|--------------------------------|-------------------------------|----------------|-----------|
| 2009 | 39,975 65 % | 11,043 18 % | 10,242 17 % | 61,260 |
| 2010 | 55,688 84 % | 4,450 7 % | 6,245 9 % | 66,383 |
| 2011 | 57,000 43 % | 64,300 49 % | 9,800 8 % | 131,100 |
| 2012 | 37,200 61 % | 15,200 25 % | 8,200 14 % | 60,500 |
| 2013 | 24,800 32 % | 45,300 58 % | 8,600 11 % | 78,700 |
| 2014 | 50,800 22 % | 170,700 74 % | 9,300 4 % | 230,800 |
| 2015 | 885,400 84 % | 154,000 15 % | 10,000 1 % | 1,049,400 |
| 2016 | 182,534 49 % | 181,126 48 % | 10,658 3 % | 374,318 |

* In this table, the "other routes" and totals do not include detections of illegal border crossings on the Western Balkan route since virtually all refugees and migrants detected there had already entered, and then again left, Greece or Bulgaria before they reached the Western Balkans, so they would be double-counted. They also do not include the circular route from Albania to Greece, which is used by Albanians who go to Greece for seasonal work and then return again to Albania.

Frontex believes that virtually all illegal crossings of EU borders are detected.

CROSSING THE MEDITERRANEAN 2015 – 2016

DEATHS

COUNTRIES OF ORIGIN

EU: Deaths in the Mediterranean 2015 and 2016

Source: Frontex and IOM³⁶

Crossing the Central Mediterranean sea and the Aegean sea is dangerous. Unscrupulous smugglers provide refugees and migrants with boats that are hardly seaworthy, and in addition they overload them. Many boats deflate or capsize, with refugees drowning. The passage from Libya to Italy is much longer so that the death toll on this route is proportionally higher.

| | Eastern Med. route (Greece) | Central Med. route (Italy) |
|---------------|-----------------------------|----------------------------|
| 2015 arrivals | 885,400 | 154,000 |
| 2015 deaths | 806 (0.1 %) | 2,869 (1.9 %) |
| 2016 arrivals | 182,500 | 181,000 |
| 2016 deaths | 434 (0.2 %) | 4,579 (2.5 %) |

EU: Top nationalities of arrivals in Greece and Italy in 2016

Source: UNHCR³⁷

The nationalities of the refugees and migrants using the Eastern and Central Mediterranean migration routes are different, so closure of one route does not mean that the refugees switch to the other route. This is difficult for geographical reasons.

| | Greece | Italy | |
|-------------|--------|-------------|-----|
| Syria | 47% | Nigeria | 21% |
| Afghanistan | 24% | Eritrea | 12% |
| Iraq | 15% | Guinea | 7% |
| Pakistan | 5% | Ivory Coast | 7% |
| Iran | 3% | Gambia | 7% |
| Other | 6% | Senegal | 6% |
| | | Mali | 5% |
| | | Sudan | 5% |
| | | Bangladesh | 4% |
| | | Somalia | 4% |
| | | Other | 22% |

Source: European Stability Initiative THE REFUGEE CRISIS THROUGH STATISTICS, A compilation for politicians, journalists and other concerned citizens
30 January 2017, p. 19, <http://www.esiweb.org/pdf/ESI%20-%20The%20refugee%20crisis%20through%20statistics%20-%2030%20Jan%202017.pdf> (20170424)

**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

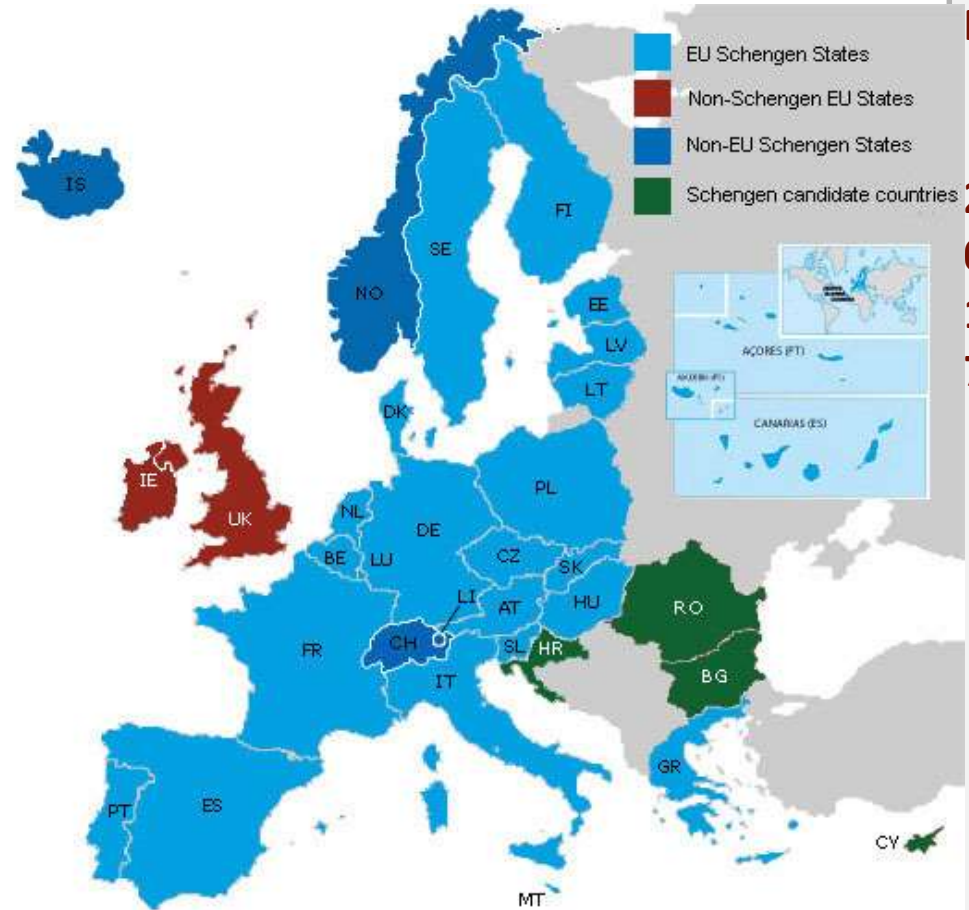
Personal: nationals of member states or “aliens”

“**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.

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

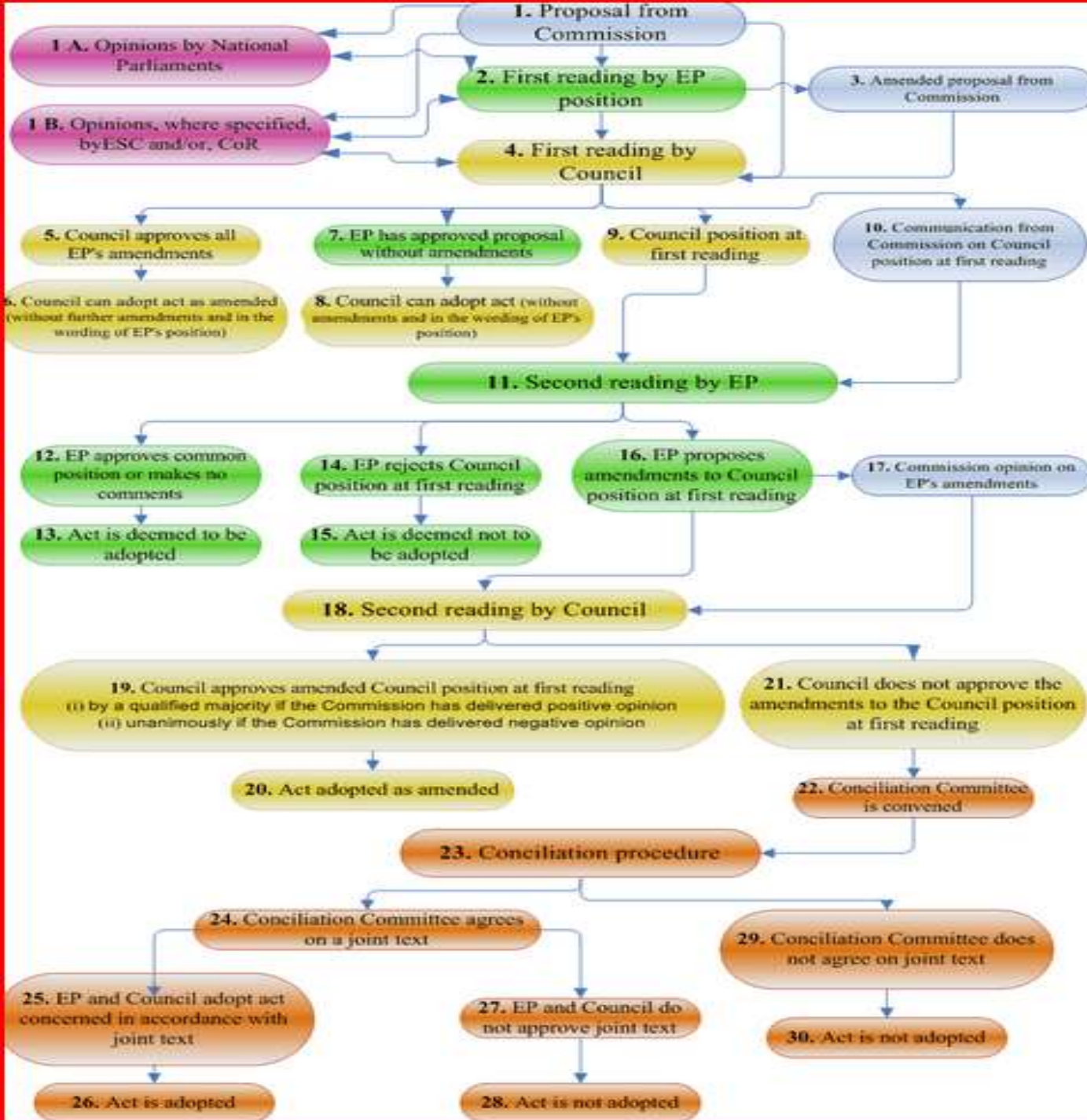
(Committee of permanent representatives)

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 of them may halt the procedure** (55% of Council or majority of votes in EP)

CJEU has jurisdiction on subsidiarity disputes

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').

THANKS!

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