

# **REFUGEE PROTECTION IN THE EU**

**Boldizsár Nagy' presentation**

**At the course:**

**Humanitarian Action in the European Union**

**ELTE**

**12 November 2014**

# PHOTO OF JAVIER BALAUZ



# PHOTO OF JAVIER BALAUZ



# 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](http://en.wikipedia.org/wiki/Berlin_Wall) visited 25 February 2006

## List of 16264 documented refugee deaths through Fortress Europe

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](mailto:info@unitedagainstracism.org), [www.unitedagainstracism.org](http://www.unitedagainstracism.org)

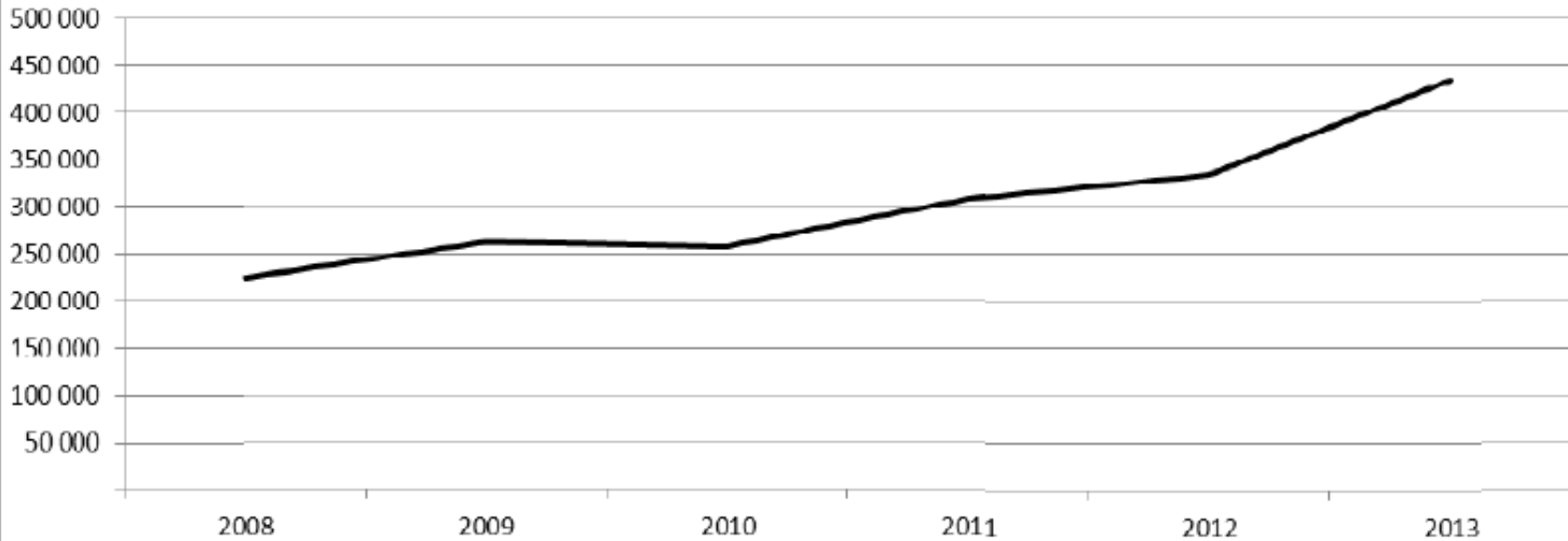
found dead	number	name	country of origin	cause of death	source
26/05/12	20	N.N.	unknown	drowned, after an inflatable dinghy on way to Italy started to deflate off the coast of Lybia	Migreurop/LRP
19/05/12	5	N.N.	Anjouan Island, Comoros	drowned, after boat of 43 migrants sank off the coast of Mayotte (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

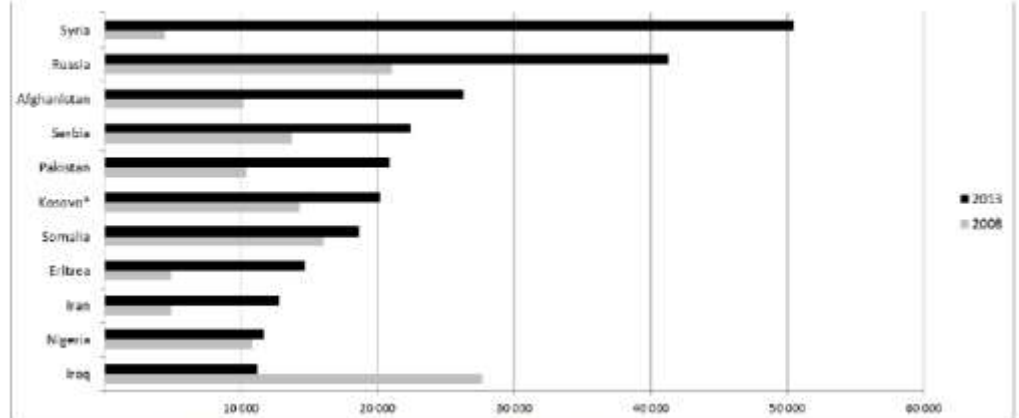
# EU, APPLICATIONS 2008 -2013

## Asylum applicants in the EU\*, 2008-2013



\* EU refers to EU27 for the years 2008 to 2012 and to EU28 for 2013

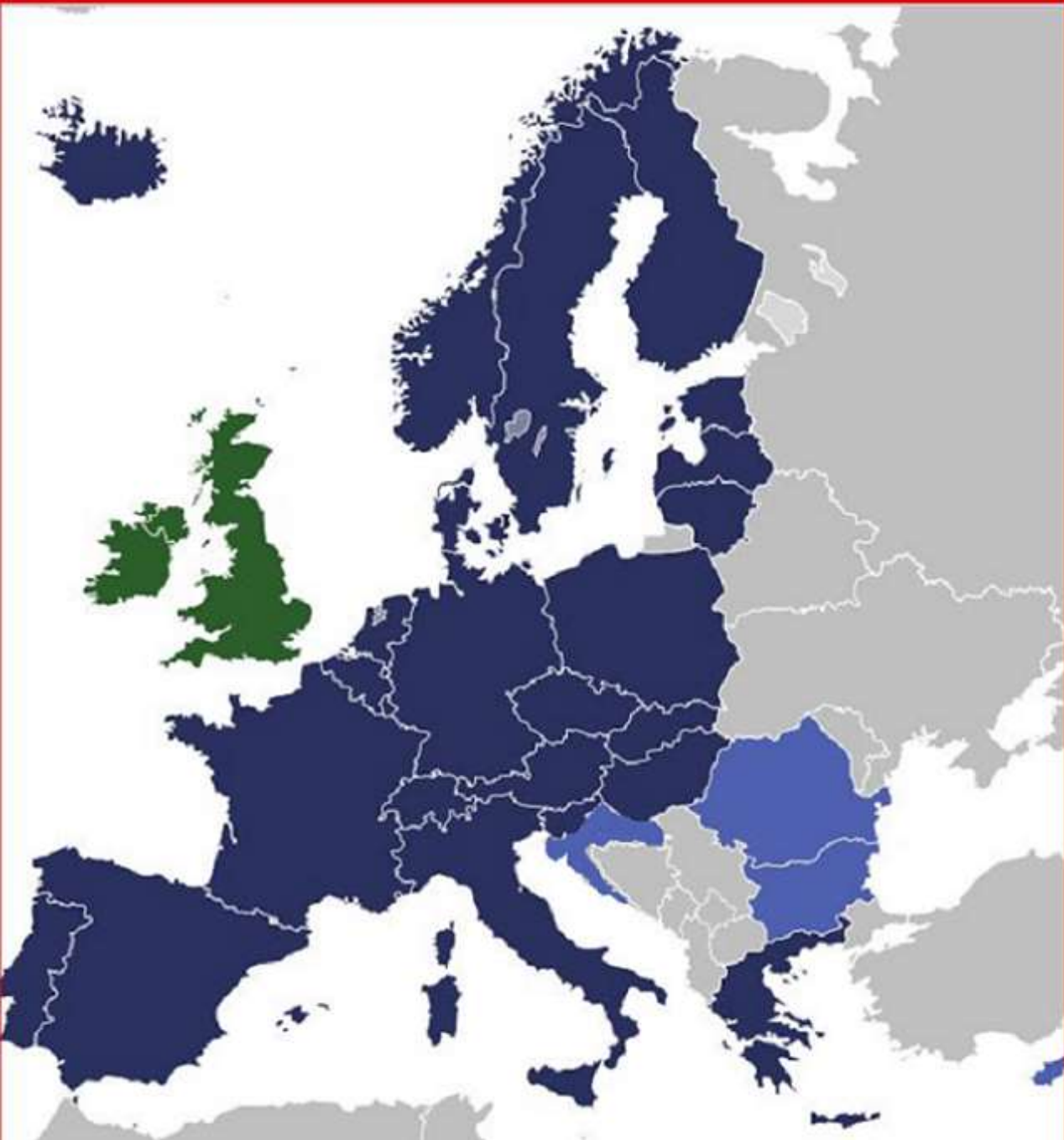
### Top citizenships of asylum seekers in the EU in 2013, compared with 2008



\* Kosovo under UN Security Council Resolution 1244; 2008 data instead of 2009

Source: Asylum in the EU28  
**Large increase to almost 435 000 asylum applicants registered in the EU28 in 2013**  
 Largest group from Syria Eurostat News release, 46/2014, 26 March 2014

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



**THE  
SCHENGEN  
AREA  
IN  
2014**

# **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 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.

Location: Title V of the „Treaty on the Functioning of the European Union”, on an „area of freedom security and justice”.

### *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**.

# ASYLUM ISSUES

## Adopted measures

1. Regulation on **Eurodac** (2000) recast: **2013**
2. Directive on **temporary protection** (2001)
3. **Reception conditions** directive (2003) recast: **2013**
4. **Dublin II** Regulation and its implementing rules (2003) recast: **2013**
5. Qualification (**Refugee definition**) directive (2004) recast: **2011**
6. **Asylum procedures** directive (2005) recast: **2013**
7. Establishment of an **European Asylum Support Office** (2010)
8. **Asylum, Migration and Integration Fund** (2014)

## OVERVIEW OF THE RECASTS

Secondary rule	Is there a recast?	State of play
<b>European refugee Fund</b> 2007/573/EK határozat	None	Replaced by a new Fund on Asylum Migration and Integration (AMIF) March 2014
<b>Temporary Protection Directive</b> Council Directive 2001/55/EC	None	Commission raised the idea of a recast in 2014
<b>Eurodac</b> Council Regulation 2725/2000/EC	Yes	Revised Eurodac Regulation: Reg. 603/2013: (OJ 2013 L 180/1) – deadline July 2015
<b>Dublin II regulation</b> Council Regulation 343/2003 EC	Yes	Revised Dublin Regulation: Reg. 604/2013: (OJ 2013 L 180/31) – applicable from 1 Jan. 2014
<b>Reception Conditions Directive</b> Council Directive 2003/9/EC	Yes	Revised reception conditions Directive 2013/33 (OJ 2013 L 180/96) – deadline July 2015
<b>Qualification directive</b> Council Directive 2004/83/EK irányelv	Yes	Revised Qualification directive 2011/95/EU 20 December 2011 transformation deadline deadline Dec. 2013
<b>Procedures directive</b> Council Directive 2005/85/EC	Yes	Revised procedures Directive 2013/32 (OJ 2013 L 180/60) – transformation deadline July 2015

# **THE COMMON EUROPEAN ASYLUM SYSTEM**

## **TEMPORARY PROTECTION, RECEPTION CONDITIONS, DUBLIN III.**

# **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**



# TEMPROARY PORTECTION 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'

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Not applied until mid-April 2014

# Reception conditions directive

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

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

# RECEPTION CONDITIONS DIRECTIVE

## Purpose:

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

and

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

## Scope:

### Obligatory

Geneva Convention applications



(This is presumed of all applications)

### Optional

Applications for subsidiary protection

**Recast!**

### Not-applicable

Temporary protection

Only the minimum is prescribed – states may overperform!

# RECEPTION CONDITIONS DIRECTIVE

## GENERAL PROVISIONS

**Information** 15 days, in writing, language!

**Freedom of movement/detention** the state may

↔  
assign an area / decide on the residence / confine to a particular place or  
make the material conditions only available in a specific place

**Family unity** maintain as far as possible

**Recast!**

**Schooling minors:** compulsory, (after 3 months) but may in accommodation centre

**Employment** optional exclusion from labour market; after 1 year: compulsory access, if no 1st instance decision yet. Ranking after EU/EEA citizens

**Material conditions: standard + asylum seekers' contribution**

„to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence” (§ 13)

The State may require the applicant to contribute to mat. cond. and health care if A. has sufficient resources. If A. had – refund  
Provision: in kind – money – vouchers or mix.

**Housing/accommodation and its modalities**

**Health care** minimum: „emergency care and essential treatment of illness” (§ 1

**Recast!**

# **RECEPTION CONDITIONS DIRECTIVE RECAST, 2013**

**DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL**

**of 26 June 2013**

**laying down standards for the reception of applicants for  
international protection (recast)**

**OJ L 180/96**

**29 June 2013.**

# MAIN RESULTS OF THE RECAST

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

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

(In words, at least) **no longer minimum standards**

**Scope extended to every applicant for international protection** (not only Geneva refugees)



# RECAST - MAJOR CHANGES COMPARED TO THE 2003 DIRECTIVE - DETENTION

The conceptualisation – a limited, exceptional tool

Preamble, para 15:

- „... a person **should not be held in detention for the sole reason** that he or she is seeking international protection, ...
- Applicants may be detained **only under very clearly defined exceptional circumstances** laid down in this Directive and **subject to the principle of necessity and proportionality** with regard to both to the manner and the purpose of such detention.
- Where an applicant is held in detention he or she should have **effective access** to the necessary procedural guarantees, such as **judicial remedy** before a national judicial authority.”

- Article 8 para 2:

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

Less coercive alternatives:

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

## RECAST - MAJOR CHANGES COMPARED TO THE 2003 DIRECTIVE - DETENTION

- Detailed new rules: §§ 8 – 11 = Grounds – guarantees – conditions – persons with special needs
- Six grounds :
  - determine or **verify** his or her **identity or nationality**;
  - determine those **elements on which the application** for international protection **is based which could not be obtained** in the absence of detention, in particular when there is a **risk of absconding** of the applicant;
  - **border procedure** (decision on entry);
  - when detained subject to **a return procedure** the application is made only in order to **delay or frustrate the enforcement** of the return decision
  - when protection of **national security or public order** so requires;
  - **Dublin** procedure

# RECAST - MAJOR CHANGES COMPARED TO THE 2003 DIRECTIVE - DETENTION

## Guarantees:

Detention only on the basis of **a written, reasoned order** by court or administrative authority

**Info in writing** on reasons and **appeal** possibilities

Detention must be **as short as possible**, and only as long as grounds are applicable.

**Appeal or ex officio review** of the administrative detention decision + **periodic review** of all detention + free legal assistance in the judicial review (but: MS may restrict access to free legal aid)

# The Dublin III regulation

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.!)

# REGULATION 604/2013/EU (DUBLIN III) CRITERIA 8 – 15. §

**Material scope:** : „ application for international protection” = a request for international protection from a Member State, under the Geneva Convention of for subsidiary protection!!

**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**

**6 Visa waived entry**

## 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

## PROCEDURE – TRANSFER (§ 29)

### Within 6 months

From **accepting the request** to take charge or take back (or **from expiry of** respective deadline to respond in both cases)

From **the final decision** in case of an **the appeal against transfer**

If transfer **does not take place within 6** months the responsible **state is relieved** from the obligation to take charge or take back.

The deadline may be **extended** to **one year** if the person is **imprisoned** and **to 18 months** if she **absconds**

## PROCEDURE – REMEDIES (§ 27)

The affected a.s. shall have the right to an effective remedy – within reasonable time - in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

Suspensive effect? – MS decides  
if for the whole appeal

or

- automatic suspension at least until „a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review” (§ 27 3. (b))

or

until a separate decision of a court or tribunal on suspending the transfer is taken when applicant submits such a request (The decision may allow transfer, while appeal is pending)

Access to legal assistance must be guaranteed. Free legal assistance on conditions only

## GENERAL CONCLUSIONS FROM LEADING CASES

- Acts of other states may also **lead to the transferring state's responsibility** if the state **could not be unaware** of what expects the transferred (removed) person there (*MSS, NS and ME, Puid*)
- **No conclusive presumption** of safety of any state may be applied (*NS and ME*)
- The **principle of mutual confidence** (and of mutual recognition) within the EU **is subordinate to** the obligation to observe **fundamental rights** – individual assessment is required (*NS and ME*)
- **Inadequate procedures** and **reception conditions** may amount to **inhuman and degrading** treatment. (*MSS, NS and ME*)

**In sum**

**A state may not escape its moral and legal responsibility by relying on (unfounded) presumptions about other states' respect for fundamental rights**

## THE RECAST AND THE LESSON FROM MSS AND ME AND NS

The suspension of Dublin mechanism not accepted by MS-s

Instead: two moves

Council conclusions on „genuine and practical solidarity towards Member States facing particular pressures due to mixed migration flows” 8 March 2012

Introduction of a „mechanism for early warning, preparedness and crisis management”

# **The Eurodac regulation(s)**

## **II.**

### **After 20 July 2015**

**REGULATION (EU) No 603/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 26 June 2013**

**on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)**

**OJ L 180/1, 29.6. 2013**

**EURODAC  
REGULATION (EU) No 603/2013 OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL  
OF 26 JUNE 2013**

Goal:

promoting **the implementation of Dublin III**,  
and

**enhancing law enforcement** by allowing Member States'  
designated authorities and the European Police Office  
(Europol) to request the comparison of fingerprint data  
with those stored in the Central System

Tool: Central storage by **the EU Agency for Large-Scale IT  
Systems** (eu-LISA, Tallin/Strasbourg) of fingerprints and  
comparison with those submitted by MS

Target group extended to **applicants for subsidiary protection**

Comparable fingerprints – extended to serious criminals

**THE COMMON EUROPEAN ASYLUM SYSTEM**

**THE PROCEDURES DIRECTIVE**



# **PROCEDURES DIRECTIVE**

**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)**

## CRITICAL ISSUES

Criticism	2013/32/EU directive
Lack of single procedure	Single procedure for GC status and subsid prot (§ 3)
No deadline for first instance decision	6 months extendable with 9 months + exceed with 3 month (12 altogether)
16 types of accelerated procedures	Same + new application w. different data + subseq. appl which is not inadmissible +denies fingerprinting
Border procedures may lack guarantees	Guarantees apply
Safe third country rules are too lax	Improved: serious harm (QD §15) added, more grounds to challenge
European („supersafe” )third country	No common (EU) list, MS may retain concept
Detention – no conditions defined	Refers to the Reception Conditions Directive recast that has rules on it - improvement
Right to remain on territory - “suspensive effect of appeal”	No improvement
Limited access to report on interview	Improved, more detailed rules (§ 17)
Free legal aid - limited	Free legal information given Free legal aid: extended optionally
Gender sensitivity	Enhanced (§ 15, e.g.)

## DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES SCOPE, DEFINITIONS, MORE FAVOURABLE RULES

*Changes in the recast are either indicated on these slides or on separate slides after the presentation of the directive in force. Where no reference to „recast” is made the two directives have essentially the same content*

**Purpose:** common minimum standards for the procedures on recognizing and withdrawing refugee status

**Recast** - „Common procedure” - not minimum standards

**Scope:**

obligatory: for Geneva Conv status applications

optional: for protection other than Geneva

**Recast:** „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 §)

# DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES BASIC PRINCIPLES AND GUARANTEES

- **Access** to procedure - each adult has the right
  - Recast - deadline** for registration of the application (3-6 days)  
Rules on minors more detailed
- **Right to stay** - until first instance decision (exception: subsequent application and European Arrest Warrant + int'l criminal courts)
  - **Counselling in detention and border zones** Organisations and persons „providing counselling and advice” must have **access** (Hungarian Helsinki Committee ground-breaking)
- Procedural requirements: **appropriate examination**:
  - = **Sequence** of examination: refugee - if not – subsidiary protection
    - = individual, objective, impartial,
    - = up to date country of origin and transit info
    - = personnel knowledgeable about asylum law
  - = Personnel is entitled to seek **expert advice** (medical, cultural, gender, child-related)
  - = appeal authorities also informed about country of orig. and transit
- **Decision: in writing**, justification if negative (!)

## DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES

### Further guarantees

**Information** on procedure and consequences (in a language the applicant „may reasonably be supposed to understand”) **Recast** - „understand or are reasonably supposed to understand”

**Interpreter** „whenever necessary”

**Access** to COI and expert information

Access to **UNHCR** or an agency working on its behalf

**Notice** of the decision **on time** in a language supposed to be understood – if not assisted by lawyer

On appeal: interpreter, access to info, access to UNHCR, timely notification

## DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES

**Obligations** of the applicant: **shall** impose the duty to co-operate with the authorities.

Report to authorities, hand over documents, report place of residence, allow search, photograph and record statement

**by same sex person**

**less**

**Interview:** Compulsory, but exceptions (Positive dec. w/out interview possible, **Dublin II, assistance at submission of request** not reasonably practicable”

/e.g. u

- Substantive interview to be made by the competent authority

Requirements.

- „steps” to ensure comprehensive gender, sexual orientation gender identity

## DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES

- interpreter to ensure „appropriate communication”, not necessarily in language preferred by applicant.
- written report: access before or after the decision
  - Same sex interviewer – if requested and not for irrelevant goals
  - During interview opportunity to eliminate contradictions, add new clarifying elements (to initial interview, or written application)
  - **Extended rules on reporting** „thorough and factual report” or transcript or recording. Applicant has the right to comment ; Lawyer also has access to the report or the transcript.

## DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES

- **Medical examination** for signs of past persecution or harm (victims).  
With the consent of the applicant, at state expenses, by qualified medical professionals ASAP.  
Applicants may also submit their evidence if state does not.  
To be assessed „with the other elements of the application” – not decisive.

- **Legal and procedural information** Free of charge, upon request

### 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
- The interview may take place without a lawyer present

- **Extended rules on legal assistance** In case of sensitive info (national security, etc) national rules must assure applicant's „right of defence” .e.g. by access to the info by security checked lawyer.



## DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES

**Free legal assistance/representation:** MS „shall ensure” *after negative decision* on conditions as to nationals + further grounds for not offering:

- only for appeal (not admin. review)
- if applicant has no means of subsistence **„no tangible prospect of success”**
- if „review is likely to succeed”
- only from among chosen representatives
  - appeal against the denial of free legal assistance (if not court denied it)
  - may limit to one appeal
  - may exclude those no longer present on territory

Ms may set time or financial limits and not exceed 60 calendar days

**Recast** – more detailed rules

**Recast** – see earlier

**Unaccompanied minors:**

must have representative before interview

**Representative** – not just legal – best interest of the child – not to be replaced unnecessarily- less grounds for non-appointing – least invasive age-determination – limits on applying accelerated and border procedures

## DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES

### Applicants in need of special procedural guarantees

Shall assess within a reasonable period of time after an application

Need **not** be an **independent** procedure (with separate appeals, etc.)

If identified as in need of special procedural guarantees be provided with **adequate support** in order to allow them to **benefit from the rights** and **comply with the obligations** of this Directive

**Accelerated and border procedures not to be applied** if adequate support not available, and in cases of torture, rape or other serious forms of psychological, physical or sexual violence,

Further **guarantees against removal**

**If need becomes apparent later in the procedure** – the special procedural guarantees are **still applicable**

## DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES

### Detention:

„shall not hold in detention for the sole reason that he/she is an applicant”

Condition, duration: not fixed, „speedy judicial review required”

**Recast** – Cross reference to Reception conditions directive

**Implicit withdrawal:** Conceivable if applicant does not report, absconds, does not appear for an interview, does not provide information

**Recast** – discontinuation. Rejection also possible, but only only after adequate examination of the substance. Absconding can be excused also („circumstances beyond control”)

**Explicit withdrawal** – MS may reject or discontinue

**UNHCR** (and organizations acting on its behalf):

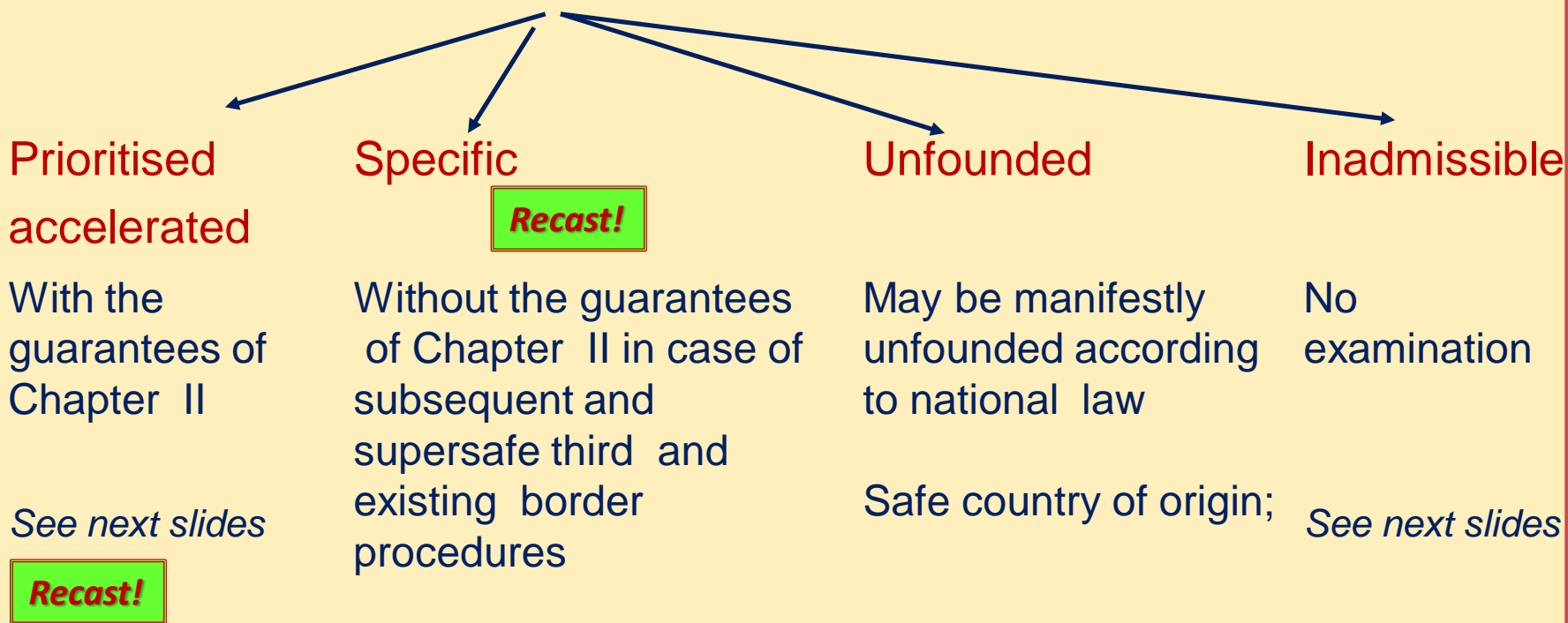
access to: applicant, information

right to present its view

# DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES

- Normal „examination” procedure (Art 23, 1-2)
  - no deadline prescribed „as soon as possible” - after 6 months „information” on the delay and expected time frame
- Other procedures and applications

**Recast! Fixed deadlines: 6 + 9 + 3 months**



# Directive on minimum standards on procedures

## Accelerated or prioritized procedures zone

## Accelerated or border or transit zone

PD of 2005 (23/4)

1. **no relevant issue** raised
2. the applicant **clearly does not qualify** as a refugee
- 3 **safe country of origin**
4. **safe third** country (non MS)
5. **mised the authorities** by presenting false information or documents with respect to his/her **identity**
6. **filed another** application for asylum **stating other personal data**; or
- 7 in bad faith **destroyed or disposed of an identity or travel document** that would have helped establish his/her identity or nationality; or
- 8 the applicant has made **inconsistent, contradictory, unlikely or insufficient representations**

PD of 2013 (31/8)

1. Same
2. ∅
3. Same
4. ∅
5. Same
6. ∅
7. Same
8. the applicant has made **clearly inconsistent and contradictory, clearly false or obviously improbable** representations which contradict sufficiently **verified** country-of-origin information, thus making his or her claim clearly unconvincing

## Directive on minimum standards on procedures

### Accelerated or prioritized procedures zone

### Accelerated or border or transit

PD of 2005 (23/4) continued

- 9 subsequent application raising no relevant new elements
- 10 failed to make his/her application earlier,
- 11 merely in order to delay or frustrate removal
- 12 violations of behavioural rules (reporting, handing over documents, etc..)
- 13 entered unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or did not file an application for asylum as soon as possible

PD of 2013 (31/8)

9. subsequent application that is not inadmissible = new elements or findings arouse or were presented
10. ∅
11. Same
12. ∅
13. Same

## Directive on minimum standards on procedures

### Accelerated or prioritized procedures zone

### Accelerated or border or transit

PD of 2005 (23/4) continued

14 the applicant is a danger to the  
**national security or the public order**

15 refuses to have his/her **fingerprints** taken

16 the application was made by an **unmarried minor** after the application of the parents responsible for the minor has been rejected

PD of 2013 (31/8) continued

14. applicant ~~is~~ may, for serious reasons, be considered a danger to the **national security or the public order**

15. Same

16. ∅

### Ten grounds for accelerated procedures left

These may qualify as **manifestly unfounded** according to national law if determined to be unfounded (rejected) on the merits (§ 32)

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

# DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES SPECIFIC PROCEDURES - UNFOUNDED – INADMISSIBLE APPLICATIONS

Specific	Unfounded	Inadmissible	<b>No change</b>
Subsequent application	safe country of origin	Dublin III applies	
Border procedures	<b>Unfounded „ the determining authority has established that the applicant does not qualify „ for protection = not a refugee or eligible for subsid. prot. § 32</b>	Refugee status in another MS	
Supersafe" third country cases „European safe third countries" 36 § - CJEU abolished common list in 2008		Non MS = first country of asylum (already recognized there as refugee)	
"		„Normal" safe third country applies	
<b>No longer called specific procedures - Guarantees apply to border procedures</b>		European safe third country (optional)	<b>No need for Council decision!</b>
		Other title to stay, with at least refugees' rights pending the determination of that other title	
<b>In case of subsequent application: „preliminary procedures:" to find out if there are new facts or elements –must not render access impossible or effectively annul (§ 42/2</b>		Dependent repeating parents rejected application	
		identical subsequent application	



## DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES SPECIFIC PROCEDURES

**Subsequent application** = preliminary examination to find out if there are new facts since withdrawal or decision on previous application. May be purely written procedure. If there are no new facts or if appeal was not submitted in the previous procedure – no further examination.

**Border procedures:** existing rules may be maintained even if deviate from guarantees Detention at the border for a maximum of four weeks!

**Guarantees apply !**

**Limited to**

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

**DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES  
UNFOUNDED APPLICATIONS – SAFE COUNTRY OF ORIGIN**

Parliament  
v Council ,  
Case  
C-133/06  
decided  
on 6 May  
2008

common list of safe countries of origin to be  
adopted by qualified majority - *ECJ annulled the procedure for  
adoption*

**Recast** – removed – no European list

+

MS may

adopt new legislation in accordance with Annex II  
or retain existing legislation with less than Annex II  
guarantees

**Recast** Annex I

and so designate further countries or parts of countries as s.c.o.

Annex II to the directive identifies the criteria of safe  
countries of origin

(see next page)

**DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES  
UNFOUNDED APPLICATIONS – SAFE COUNTRY OF ORIGIN**

A country is considered as a safe country of origin where, 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**

**Recast** – No change

**DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES  
INADMISSIBLE APPLICATIONS – KEY CONCEPTS – FIRST  
COUNTRY OF ASYLUM**

**First country of asylum (§ 26)(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.

**Recast** – applicant may challenge

# DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES INADMISSIBLE APPLICATIONS – KEY CONCEPTS – SAFE THIRD COUNTRY

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

- life and liberty are not threatened **+ no risk of serious harm** on Geneva Convention grounds; and
- 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.

## DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES INADMISSIBLE APPLICATIONS – KEY CONCEPTS – 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 a.s.to challenge the safety** at least when torture and inhuman or degrading treatment or punishment is threatening the a.s.

**Recast** – Challenge also possible on the basis of lack of connection to stc.

If inadmissible because of s.t.c. :

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

# **QUALIFICATIONS DIRECTIVE, 2011 DECEMBER**

**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

## Purpose

- Guaranteeing (a minimum) of protection
- Closing the protection gap concerning persons not threatened with Geneva Convention type persecution
- Prevention of asylum shopping and abuse of the asylum system

## Scope of application

- 25 Member states of the EU. The UK and Ireland who opted out (Denmark is not bound)
  - UK and Ireland participated in the earlier (2004) version and are bound by it

## Minimum standards

- According to Art 3. states may introduce or retain more favourable standards. The directive represents the (bare) minimum



### Major features compared to earlier state practice and doctrine

- Introduction of „**subsidiary protection**” and identification of rights accompanying it.
- **Non-state actors** may qualify as persecutors in a Geneva Convention sense
- **Internal relocation alternative** is an exclusion ground.
- The directive not only offers detailed definition (as the common position of 1996), but also identifies the rights of the protected persons.

## QUALIFICATIONS DIRECTIVE (CONT'D)

### 2 § Definitions:

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

**Refugee** = GC definition applied to third country nationals

„‘refugee’ means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country ...”

+ to whom exclusion grounds do not apply

**Person eligible for subsidiary protection**

» See next slide

## QUALIFICATIONS DIRECTIVE (CONT'D)

### Art 2 (f)

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

## QUALIFICATIONS DIRECTIVE (CONT'D)

### Article 15: Serious harm

Serious harm consists of:

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

# CONCEPTUAL SCHEME

International protection

Refugee status  
protection status

new

Subsidiary

means the recognition of a third country national or  
stateless

*(Not EU citizen!)*

As a „refugee”

as a „person eligible  
for subsidiary protection”

# QUALIFICATIONS 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.**

Added by  
the recast

## QUALIFICATIONS 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

Added by the recast incorporating the Salah Sheek judgment of the ECtHR, 2007

Added by  
the recast

# QUALIFICATIONS DIRECTIVE

## PERSECUTION (CONT'D)

### 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.

Added by  
the recast



# QUALIFICATIONS DIRECTIVE

## CESSATION, EXCLUSION

### Cessation

**Usual GC grounds** (re-avaiement of protection, re-acquiring nationality, acquiring new nationality, re-establishment in country of origin, circumstances justifying ref. status cease to exist)

The change of circumstances must be of such a **significant and non-temporary nature** that the refugee's fear of persecution can no longer be regarded as well-founded.

---

Questions:

Durability

Justified grounds to resist return solely for memories of past persecution

Exception to ceased circumstances if „a refugee who is able to invoke **compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality**”

Added by  
the recast

# QUALIFICATIONS DIRECTIVE

## CESSATION, EXCLUSION

GC grounds:

protection by other UN organ (UNRWA)

enjoying rights equivalent to those of nationals

crime against peace, war crime, crime against humanity

a serious non-political crime outside the country of refuge

**prior to the issuing of residence permit** based on refugee status; **particularly cruel actions**, - even if committed with political objective - may be classified as serious non-political crimes;

Acts contrary to the purposes and principles of the UN

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*Exclusion ≠ return: non refoulement may apply!*

# QUALIFICATIONS DIRECTIVE

## PROCEDURE, INCLUDING REVOCATION OF REFUGEE STATUS

MS **must** „grant” (i.e.: recognize) 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”

---

Confusion of cessation, cancellation and revocation

Cessation – normal end of status – changed circumstances

Cancellation – should not have been recognized

Revocation – after recognition engages in 1 F (a) and (c) activities

Ending status = in fact ending asylum, not refugee quality in the Geneva 33(2) cases

## QUALIFICATIONS 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 GC ref. status**

**Individual threat in generalized violence?**

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

**What about non armed conflict situations?**

## The Elgafaji case - Judgment, 17 February 2009

### The key sentence

- ...[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 the relevant country or, as the case may be, to the relevant region, **would, solely on account of his presence on the territory** of that country or region, **face a real risk of being subject to the serious threat** referred in Article 15(c) of the Directive

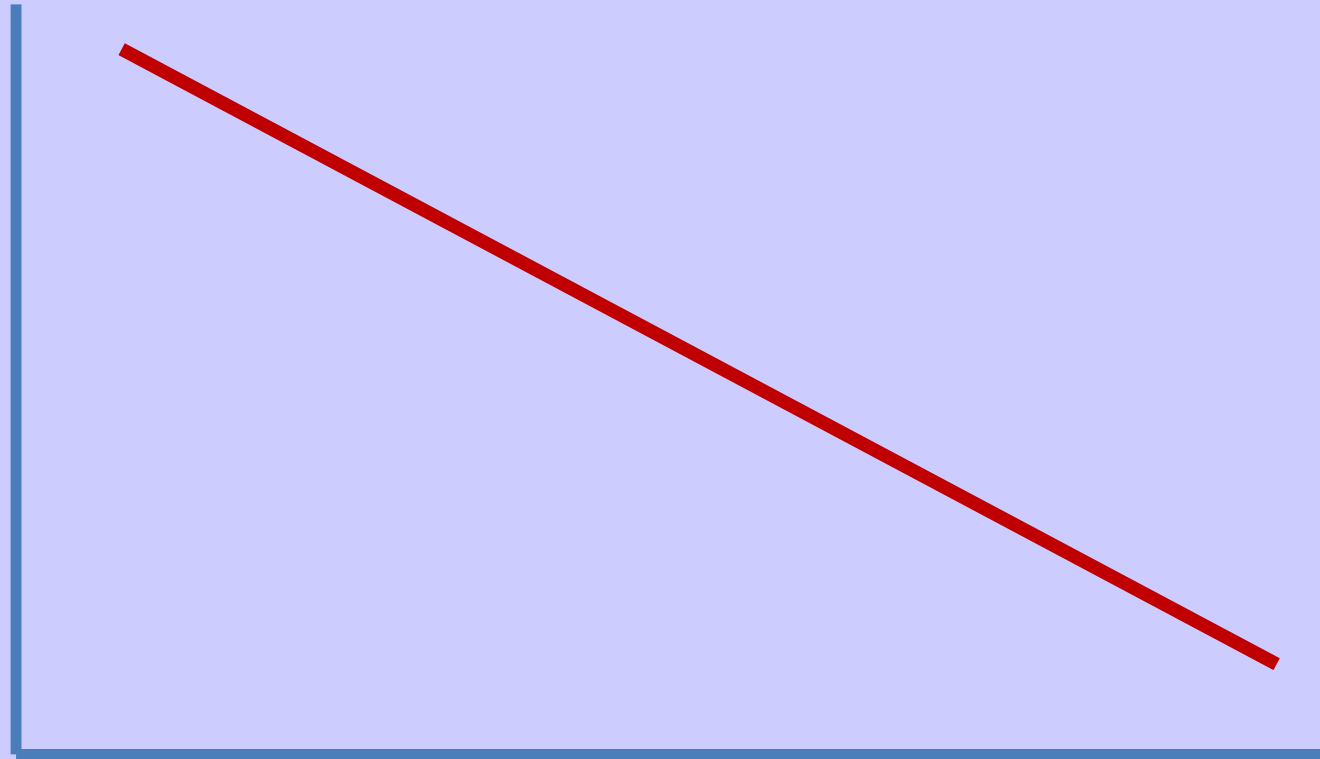
# THE MEASURE OF INDIVIDUALISATION AND THE LEVEL OF VIOLENCE

## 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.**”

# The recast summarised



# Suggested changes to QD

- **Restrict the broad interpretation of the concepts "actors of protection" and "internal protection"** by specifying the criteria for assessing the accessibility and effectiveness of protection
- Ensure a **more inclusive interpretation of the concept "particular social group"** in line with the standards of the Geneva Convention, by better defining the significance to be attached to aspects arising from the applicants' **gender** and thus enhancing access to protection in particular for women.
- **Approximate the rights of beneficiaries of subsidiary protection to those of refugees** by removing all differences
  - regarding the duration of their residence permit;
  - access to employment and employment-related education activities;
  - access to social welfare, health care and to integration facilities;
  - access to benefits for their family members.

- Done – see new Art 7
- Extended
- Done, see e.g. Arts 20 (2) and 26

## Suggested changes to QD

- Enhance the **integration of beneficiaries of protection** taking into account their specific needs:
  - enhance recognition of their qualifications;
  - vocational training and employment support;
  - accommodation and integration programmes
- Enhance respect the protection to family life: **broaden the definition of family members** so as to address the case where a beneficiary is a minor and the wide range of situations where a minor might be considered dependent, while ensuring the best interest of the child.

- Done, see e.g.. New Art 28.
- Done, see new Art 2 (j) third French para

# **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**

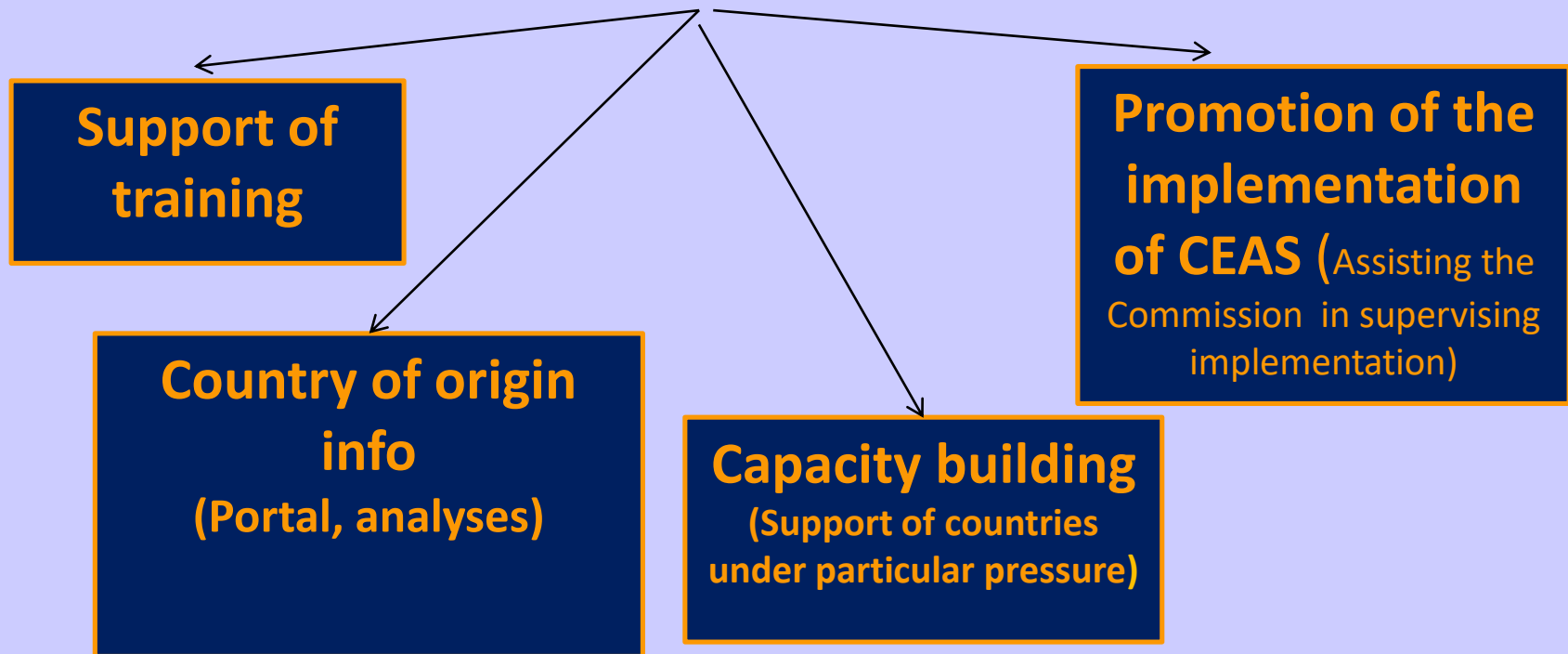
## Purposes

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

## Priorities



First meeting of the Management Board : Malta, 25-26 November 2010

Start of operation: 19 June 2011.

For developments check: <http://easomonitor.blogspot.com/>

and <http://easo.europa.eu/>

## 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, 2011-2013, 2014- Luxembourg, 2012, Bulgaria, 2013-2014

# **THE ASYLUM MIGRATION AND INTEGRATION FUND**

**REGULATION (EU) No 516/2014 OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL**

**of 16 April 2014**

**establishing the Asylum, Migration and Integration Fund,  
amending Council Decision 2008/381/EC and repealing  
Decisions No 573/2007/EC and No 575/2007/EC of the  
European Parliament and of the Council and Council  
Decision 2007/435/EC**

**OJ L 150/168, 20.5.2014**

# THE ASYLUM, MIGRATION AND INTEGRATION FUND

EUR 2 752 million for national programmes of Member States;  
EUR 385 million for Union actions, emergency assistance, the European Migration Network and technical assistance of the Commission,

## Allocation

Fix 5 million to each MS

**Basic amount:** first asylum applications, positive decisions granting refugee or subsidiary protection, number of resettled refugees, stock and flows of legally residing third-country nationals, number of return decisions issued by the national authorities and the number of effected returns

**Variable amount** e.g. joint processing of asylum applications, joint return operations, setting up of joint migration centres, the implementation of resettlement and relocation operations.

In 2018 Mid term review

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



## ASYLUM ACTIVITIES TO BE FUNDED

### Article 7 **Resettlement** (from outside the EU) and **relocation** (within the EU)

Establishment and development of **national resettlement and relocation programmes**;

Establishment of **appropriate infrastructure and services** to ensure the smooth and effective implementation of resettlement and relocation actions;

**Missions** to the third countries and/or other Member States, to carry out **interviews, medical and security screening**;

**Information and assistance upon arrival**, including interpretation services;

**Strengthening** of infrastructure and services in the countries designated for the implementation of **Regional Protection Programmes**

## SUMMARY

### PROGRESS OR SLOW MOTION?

Common asylum procedure and a uniform status has not been achieved. The recasts are still minimum standards, decision making is national and divergent

The CJEU has embarked on a genuine harmonisation but it is a slow and fragmented process

Intra-EU solidarity is minimal, neither and agreed intra EU relocation rule exists nor does the Dublin III regulation address effectively the real problems of periphery states exposed to large pressures

The EU does not have its fair share in alleviating the global (and especially the North African) refugee situation

Attention on third countries, the externalisation of asylum policy is increasing, with a dual agenda: on the one hand enhancing rescue at sea, human rights guarantees, and exceptionally regularised access to the EU territory (resettlement), on the other hand increasing control and shifting RSD to transit countries.

# Thanks!

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# **ANNEX**

## **WHY TO PROTECT REFUGEES?**

# 10

## POSSIBLE ARGUMENTS

**SUPPORTING THE VIEW THAT REFUGEES ARE (SHOULD  
BE) ENTITLED TO PROTECTION EVEN IN TIMES OF  
IMMIGRATION CONTROL**

## WHY NOT EVERYONE WHO IS IN NEED?

- Arguments for the exceptional treatment
    - Refugee law: part of the political struggle – alleviating poverty etc. – not (Price)
    - Centrality of the human right violated (Hathaway)
    - Communitarianism – migration would put qualitatively larger pressure on the community than refugee admission
  - In fact:
    - root causes,
    - human security,
    - moral duty of development assistance
- lines of thinking all wish to address this, assuming the existence of the moral duty

# THE SCHOLARLY CONTEXT OF THE ARGUMENTS FOR REFUGEE PROTECTION

Essentially  
liberal universalism (cosmopolitan, or impartialist approach)

v.

communitarian (/ethno/nationalist, partialist) approach

The two most engaged authors (C. Boswell and M Gibney) find the liberal universalist approach practically untenable

Christina Boswell's answer: overcome the dichotomy of liberal and nationalist ethical claims, by „abandoning the universalist foundations of liberalism” and basing the mobilisation on the Western liberal states' own tradition, on the „group's pride in affirming shared liberal values” (Boswell, 2006, p. 676)

## THE SCHOLARLY CONTEXT OF THE ARGUMENTS FOR REFUGEE PROTECTION

Matthew J. Gibney's answer is „humanitarianism” or „humanitarian principle”

„Humanitarianism can be simply stated: the principle holds that states have an obligation to assist refugees when the costs of doing so are low. This responsibility recognises, like impartial theories, the existence of duties that stem from membership in a single human community, However, it is less comprehensive in scope than most impartial theories – specifying obligations only to those in great need” (Gibney, 2004, p. 231)



# IDENTITY

Brubaker and Cooper: Identity: overburdened – three clusters of meaning

A) *Identification and categorization (pp.14-16)*

*External categorisation (e.g. by the state) or self identification*

*Relational (e.g. kinship) categorical (e.g. profession)*

B) *Self-understanding and social location*

„It is a dispositional term...one's sense of who one is, of one's social location, and of how (given the first two) one is prepared to act.” (p. 17)

C) *Commonality, connectedness, groupness (part of self understanding)*

„'Commonality' denotes the sharing of some common attribute, "connectedness" the relational ties that link people. Neither commonality nor connectedness alone engenders "groupness" – the sense of belonging to a distinctive, bounded group involving both a felt solidarity or oneness with fellow group members and a felt difference from or even antipathy to specified outsiders.” (p. 20.)

## IDENTITY BASED I. SHARED IDENTITY (IMAGINED COMMUNITY)

1. global: altruism – member of human race (liberal egalitarian arguments)
2. ethnically/culturally determined „one of us” (communitarian, ethno-nationalist)
3. „ The bank of history” repaying historic debt accumulated by own community (remembering predecessor refugees who found asylum)

# **IDENTITY BASED II. CONSTRUCTION OF THE SELF (IDENTITY) BY SEEING THE REFUGEE OR HER PERSECUTOR AS „THE OTHER”**

## Constructing the self

- by helping the refugee (the other)
- or protecting the refugee as one of us escaping the persecutor, which is then „the other”

## IDENTITY BASED II.

### CONSTRUCTION OF THE SELF (IDENTITY) BY SEEING THE REFUGEE OR HER PERSECUTOR AS „THE OTHER”

4. Indigenous – foreigner (hospitality)

5. Rich – poor

6. Democratic, law respecting – persecutory, totalitarian

## RECIPROCITY – UTILITARIAN

7. Reciprocity („insurance policy”) Today’s refugee may become tomorrow’s asylum provider and vice versa

This is a utilitarian, rational choice approach.

- Europe, last 70 years:

Spanish, French, Germans, Austrians, Baltic people, Italians, Polish, Greek, Hungarians, Czechs and Slovaks, Romanians, Russians, Moldavians, Armenians, Azerbaijanis, Georgians, Croats, Bosnians, Serbs, Albanians, (and other nationalities) had to flee

## POLITICAL CALCULATION – UTILITARIAN, POLITICAL CHOICE

8/a conflict prevention / domestic political pressure

8/b window dressing

(utilitarian, state level)

## HISTORICAL – NATIONAL RESPONSIBILITY

9. If persons were persecuted by a given state or because of the acts of a given state, then the state who is responsible for the persecution ought to offer protection

(Germany before and after WWII; US, Australia - South Vietnamese)

## **SEMI LEGAL - NON-REFOULEMENT**

10. A wider conception of non-refoulement based on the prohibition to expose to ill treatment by way of return (Article 3 of the ECHR as interpreted by the EctHR and beyond.)

## **PURELY LEGAL**

Duty only to the extent of

- undertaken treaty obligations
- binding customary law
- European law
- national rules



## EXCLUSION OF REFUGEES

In order to argue in favour of limiting the arrivals/excluding refugees the actor must:

- be consequently egoist (welfare chauvinist)
- have no historic memory
- blindly trust stability
- be a realist (willing to violate law if it is in the perceived national interest and no sanctions threaten or interests outweigh harm caused by sanctions)

## HINTS FOR FURTHER READING

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