

STATES, INSTITUTIONS, MOBILITY
THE EU AND THE THIRD COUNTRY
NATIONALS

Presentation by
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The National and the Transnational
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THE SCHEME OF THE TALK

- Setting the scene: statistics
- An Area of Freedom, Security and Justice - conceptual frame
- Schengen
- Migration and the EU acquis – an overview
- Visas, borders, Schengen rules within the EU
- Intra-EU migration (mobility), citizenship
- Third country nationals in the EU
 - - regular migration
 - - no right to enter/stay („illegal migration”)
 - - asylum seekers, refugees
- Solidarity within the EU
- Solidarity (or not) with third states

HOW MANY?

BASIC STATISTICS

BASIC STATISTICS

EU, **total population** on 1 January 2017: **511**
million of which the UK: **65** million

	In/of another EU member state	In /of a third country	Total
Foreign- born	20,4	36,9	57,3
Foreign citizen	16,9	21,6	38,5

NON-EU AND EU CITIZENS IN EU 28

Source: Eurostat: Population on 1 January by age, sex and broad group of citizenship (migr_pop2ctz) (20180702)

CITIZEN: Non-EU28 countries (current composition) nor reported
Total UNIT: Number

TIME	2014	2015	2016	2017
GEO				
Belgium	410,127	419,822	450,827	455,108
Bulgaria	40,614	51,246	58,807	64,074
Czech Republic	261,302	272,993	280,907	302,579
Denmark	233,023	244,380	267,192	274,990
Germany (until 1990 former territory of the FRG)	3,826,401	4,055,321 ^(b)	4,840,650	5,223,701
Estonia	187,087	183,276 ^(b)	182,266	179,888
Ireland	121,149	117,015	124,709	138,315
Greece	662,335	623,246	591,693	604,813
Spain	2,685,348	2,505,196	2,482,814	2,485,761
France	2,750,594	2,870,846 ^(p)	2,877,568 ^(p)	3,050,884 ^(p)
Croatia	21,126	24,218	26,678	30,086
Italy	3,479,566	3,521,825	3,508,429	3,509,089 ^(e)
Cyprus	48,465	38,242	30,479	29,738
Latvia	298,616	291,440	282,792	273,333
Lithuania	16,039	16,573	12,311	13,313
Luxembourg	34,482	36,429	39,618	40,795 ^(b)
Hungary	59,335	64,821	71,062	71,414
Malta	13,810	18,894	23,177	24,073
Netherlands	330,382	338,773	367,744	413,401
Austria	539,292	566,370	639,645	673,207
Poland	71,543 ^(p)	76,595 ^(p)	123,926 ^(ep)	180,334 ^(ep)
Portugal	300,711	294,778	283,500	279,562
Romania	52,529	54,687	58,858	60,600
Slovenia	80,290	84,367	90,169	95,718
Slovakia	12,476	13,064	13,901	14,687
Finland	121,882	127,792	133,136	143,757
Sweden	384,947	416,246	447,664	505,332
United Kingdom	2,425,012	2,434,209	2,436,046	2,444,555

CITIZEN: EU28 countries (current composition) except reported
UNIT: Number

TIME	2014	2015	2016	2017
GEO				
Belgium	826,938	852,284	875,878	890,388
Bulgaria	12,139	12,501	13,112	13,465
Czech Republic	173,279	184,330	195,438	208,262
Denmark	160,014	173,195	189,375	202,386
Germany (until 1990 former territory of the FRG)	3,179,670	3,475,492 ^(b)	3,801,044	3,985,165
Estonia	7,830	14,335 ^(b)	15,372	16,456
Ireland	406,062	412,612	417,984	426,468
Greece	192,642	198,723	206,664	205,221
Spain	1,991,093	1,948,413	1,933,831	1,932,817
France	1,461,973	1,486,390 ^(p)	1,528,207 ^(p)	1,587,672 ^(p)
Croatia	9,816	11,690	13,474	15,091
Italy	1,441,706	1,491,865	1,517,023	1,537,224 ^(e)
Cyprus	110,871	106,357	109,127	110,646
Latvia	6,035	6,805	5,974	5,937
Lithuania	3,711	4,269	4,949	5,523
Luxembourg	214,390	222,192	229,506	240,290 ^(b)
Hungary	80,817	80,758	85,143	79,325
Malta	15,210	18,929	23,758	30,248
Netherlands	403,028	430,934	458,705	489,119
Austria	518,670	570,298	616,401	655,524
Poland	27,710 ^(p)	29,962 ^(p)	25,091 ^(ep)	29,447 ^(ep)
Portugal	100,595	100,406	105,231	118,169
Romania	20,618	33,803	48,030	53,543
Slovenia	16,318	17,165	17,597	18,720
Slovakia	45,174	47,202	50,440	53,511
Finland	83,990	90,178	94,202	97,211
Sweden	289,225	295,968	303,988	310,518
United Kingdom	2,624,265	2,988,279	3,204,628	3,626,538

FOREIGN BORN POPULATION IN THE EU 28

AGE: Total **C_BIRTH:** Foreign country **SEX:** Total **UNIT:** Number

TIME	2012	2013	2014	2015	2016	2017
GEO						
Belgium	1,677,737	1,722,265	1,748,748	1,783,488	1,845,631	1,876,720
Bulgaria	85,076	96,113	109,239	123,803	136,421	145,390
Czech Republic	390,843	387,337	396,156	416,454	433,290	465,050
Denmark	531,540	548,411	569,596	595,876	636,666	668,090
Germany (until 1990 former territory of the FRG)	9,117,874 ^(b)	9,456,225 ^(b)	9,807,877	10,220,418	10,908,255	12,105,430
Estonia	210,842	198,411	196,558	194,664 ^(b)	193,813	192,530
Ireland	772,826 ^(b)	760,960	754,664	759,256	773,649	796,410
Greece	1,312,519	1,279,516	1,265,165	1,242,924	1,220,395	1,250,860
Spain	6,294,954	6,174,740	5,958,308	5,891,208	5,918,341	6,024,690
France	7,463,157	7,543,950	7,727,393	7,874,172 ^(p)	7,899,290 ^(p)	8,155,670 ^(p)
Croatia	:	574,383	568,678	561,093	547,929	539,580
Italy	5,715,065	5,695,883	5,737,213	5,805,328	5,907,452	6,053,960 ^(p)
Cyprus	200,313	200,842	191,587	176,693	172,808	173,790
Latvia	289,018	279,227	271,126	265,418	258,889	251,460
Lithuania	143,675	140,221	137,417	136,021	129,706	127,350
Luxembourg	216,156	227,461	237,848	248,888	260,573	270,010 ^(p)
Hungary	401,769	423,317	447,029	475,508	503,787	513,640
Malta	35,121	38,815	44,149	52,642	61,632	69,570
Netherlands	1,906,295	1,927,728	1,953,436	1,996,318	2,056,520	2,137,230
Austria	1,322,656	1,364,003	1,414,215	1,483,123	1,588,209	1,649,000
Poland	630,478 ^(p)	625,363	620,308 ^(p)	611,855 ^(p)	626,396 ^(p)	651,845 ^(p)
Portugal	851,496	881,440	859,065	864,814	872,501	876,300
Romania	193,519 ^(p)	182,939	211,210	281,048	350,753	421,800
Slovenia	230,109	232,703	235,310	237,616	241,203	245,360
Slovakia	156,883	158,164	174,908	177,624	181,642	186,210
Finland	260,856	279,743	297,812	314,856	329,219	348,980
Sweden	1,426,402	1,472,353	1,532,563	1,602,522	1,675,116	1,783,170
United Kingdom	7,762,355	7,923,417	8,039,323	8,411,569	8,698,152	9,293,720

B = break in time series
P = provisional

Source:
Eurostat: Population
on 1 January by age,
sex and broad group
of country of birth
[migr_pop4ctb]
Last update: 28-06-
2018 (20180702)

FOREIGN BORN POPULATION IN THE EU

Foreign-born population by country of birth, 1 January 2017

	Total		Born in another EU Member State		Born in a non-member country	
	(thousands)	(% of the population)	(thousands)	(% of the population)	(thousands)	(% of the population)
Belgium	1 876.7	16.5	876.5	7.7	1 000.2	8.8
Bulgaria	145.4	2.0	52.2	0.7	93.2	1.3
Czech Republic	465.1	4.4	181.4	1.7	283.6	2.7
Denmark	668.1	11.6	228.4	4.0	439.7	7.6
Germany	12 105.4	14.7	4 849.9	5.9	7 255.5	8.8
Estonia	192.5	14.6	20.1	1.5	172.4	13.1
Ireland	796.4	16.6	600.6	12.6	195.9	4.1
Greece	1 250.9	11.6	345.6	3.2	905.2	8.4
Spain	6 024.7	12.9	1 943.5	4.2	4 081.2	8.8
France ⁽¹⁾	8 155.7	12.2	2 220.7	3.3	5 935.0	8.9
Croatia	539.6	13.0	68.4	1.6	471.2	11.3
Italy ⁽²⁾	6 054.0	10.0	1 837.6	3.0	4 216.3	7.0
Cyprus	173.8	20.3	113.8	13.3	60.0	7.0
Latvia	251.5	12.9	27.6	1.4	223.8	11.5
Lithuania	127.4	4.5	20.5	0.7	106.8	3.8
Luxembourg ⁽²⁾	270.0	45.7	205.2	34.7	64.8	11.0
Hungary	513.6	5.2	321.9	3.3	191.7	2.0
Malta	69.6	15.1	33.7	7.3	35.9	7.8
Netherlands	2 137.2	12.5	580.6	3.4	1 556.6	9.1
Austria	1 649.0	18.8	739.6	8.4	909.4	10.4
Poland ⁽¹⁾ ⁽²⁾	651.8	1.7	220.9	0.6	431.0	1.1
Portugal	876.3	8.5	240.2	2.3	636.1	6.2
Romania	421.8	2.1	180.1	0.9	241.7	1.2
Slovenia	245.4	11.9	66.4	3.2	179.0	8.7
Slovakia	186.2	3.4	153.7	2.8	32.6	0.6
Finland	349.0	6.3	122.2	2.2	226.8	4.1
Sweden	1 783.2	17.8	540.4	5.4	1 242.8	12.4
United Kingdom	9 293.7	14.1	3 612.9	5.5	5 680.8	8.6
Iceland	46.1	13.6	31.4	9.3	14.7	4.4
Liechtenstein	24.6	65.2	8.3	21.8	16.4	43.3
Norway	799.8	15.2	351.2	6.7	448.6	8.5
Switzerland	2 391.5	26.4	1 414.2	16.8	977.3	11.6

Note: The values for the different categories of country of birth may not sum to the totals due to rounding.

⁽¹⁾ Provisional.

⁽²⁾ Break in series.

⁽³⁾ Estimate.

geo	time	2008	2009	2010	2011	2012	2013	2014	2015	2016
EU (28 countries)		2,534,671 (d)	2,344,803 (d)	2,473,018 (d)	2,176,844 (d)	2,096,623 (d)	2,356,451	2,325,977	2,622,022	3,360,559
EU (27 countries)		2,534,671 (d)	2,344,803	2,473,018	2,176,844	2,096,623	2,353,131	2,322,643	2,618,589	3,355,244
Euro area (19 countries)		:	:	:	:	:	:	:	:	:
Belgium		46,201	58,939	57,855	55,449	47,278	42,463	43,823	50,085	53,096
Bulgaria		3,933	4,383	4,051	5,030	6,418	6,436	8,795	9,595	7,942
Czech Republic		61,350	27,539	34,653	20,978	42,123	45,544	35,458	68,804	80,070
Denmark		31,655	26,409	28,577	24,707	24,812	31,311	35,886	46,153	41,440
Germany		114,289	121,954	117,202	110,349	184,070	199,925	237,627	194,813	504,849
Estonia		3,884	3,777	2,647	3,408	2,530	2,496	3,222	3,984	4,308
Ireland		28,926	25,509	22,235	24,570	26,818	32,780	36,728	38,433	41,279
Greece		40,411	45,148	33,623	21,269	16,252	18,299	22,451	37,464	44,072
Spain		399,827	290,813	258,309	282,763	223,318	196,244	189,481	192,931	211,533
France		188,723	200,649	204,321	199,581	199,500	214,346	220,599	228,687	237,218
Croatia		:	:	:	:	:	3,320	3,334	3,433	5,315
Italy		550,226	506,833	589,988	331,083	246,760	243,954	204,335	178,884	222,398
Cyprus		25,156	25,638	19,139	15,645	11,715	11,455	13,841	15,569	16,970
Latvia		7,706	2,304	2,329	3,982	5,620	7,615	9,857	6,357	6,037
Lithuania		5,298	2,659	1,861	2,429	3,696	4,601	7,252	5,178	6,750
Luxembourg		:	2,969	2,366	2,698	3,804	4,169	4,289	4,918	5,627
Hungary		37,486	14,289	14,601	14,893	13,282	16,833	21,188	20,751	22,842
Malta		4,836	3,547	2,763	3,484	4,526	6,795	9,895	9,984	8,995
Netherlands		62,589	56,488	54,473	55,074	51,162	64,739	69,569	86,691	95,753
Austria		21,783	28,035	30,596	35,442	37,852	34,308	40,062 (d)	51,282	50,066
Poland		40,896	33,427	101,574	108,036	146,619	273,886	355,521	541,583	585,969
Portugal		63,715	46,324	37,010	35,172	32,590	26,593	29,764	29,021	30,993
Romania		19,354	15,380	10,218	9,740	10,125	11,160	10,294	11,289	11,867
Slovenia		29,215	15,759	7,537	9,800	9,092	8,271	9,891	11,417	13,517
Slovakia		8,025	5,336	4,373	3,641	4,210	4,416	5,510	9,279	10,227
Finland		21,873	18,034	19,210	20,230	20,263	21,122	21,552	21,797	28,792
Sweden		84,144	91,337	79,299	75,734	90,248	99,122	107,947	110,623	146,740
United Kingdom		633,170	671,324	732,208	701,657	631,940	724,248	567,806	633,017	865,894

LONGER THAN
3 MONTHS
FIRST
RESIDENCE
PERMITS ISSUED
TO THIRD
COUNTRY
NATIONALS

Source: Eurostat, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/main-tables> (20180702)

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

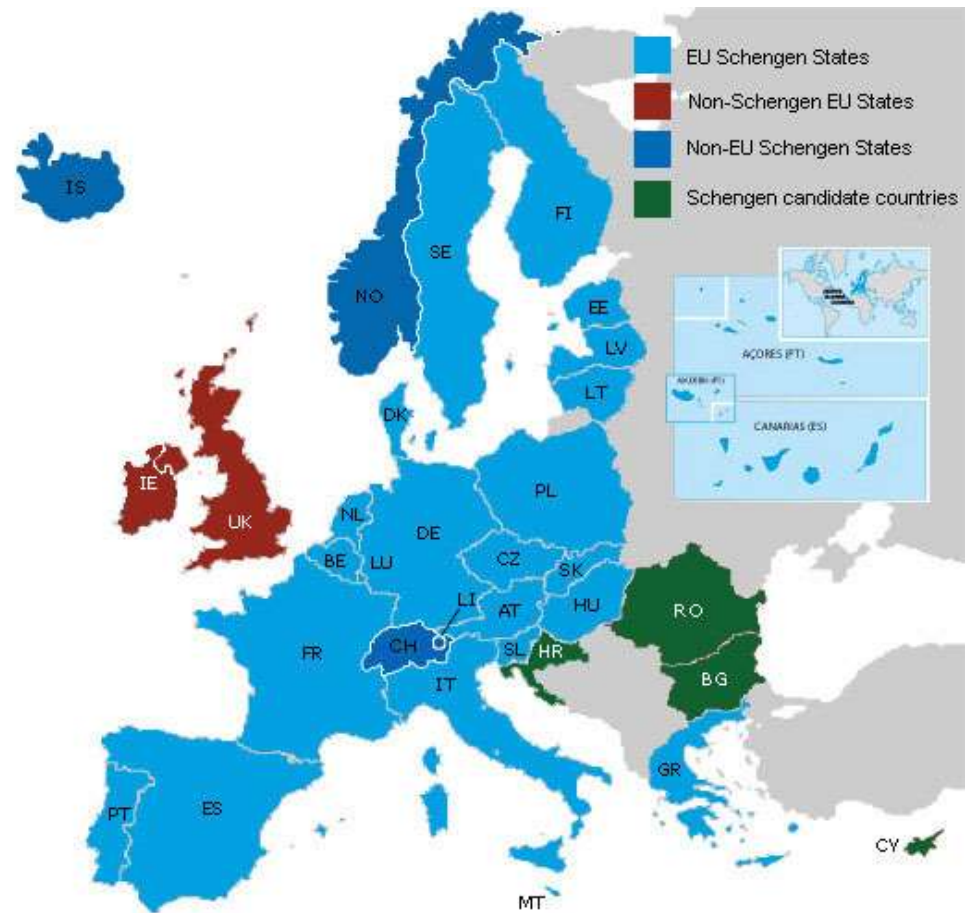
Personal: nationals of member states or “aliens”

“**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

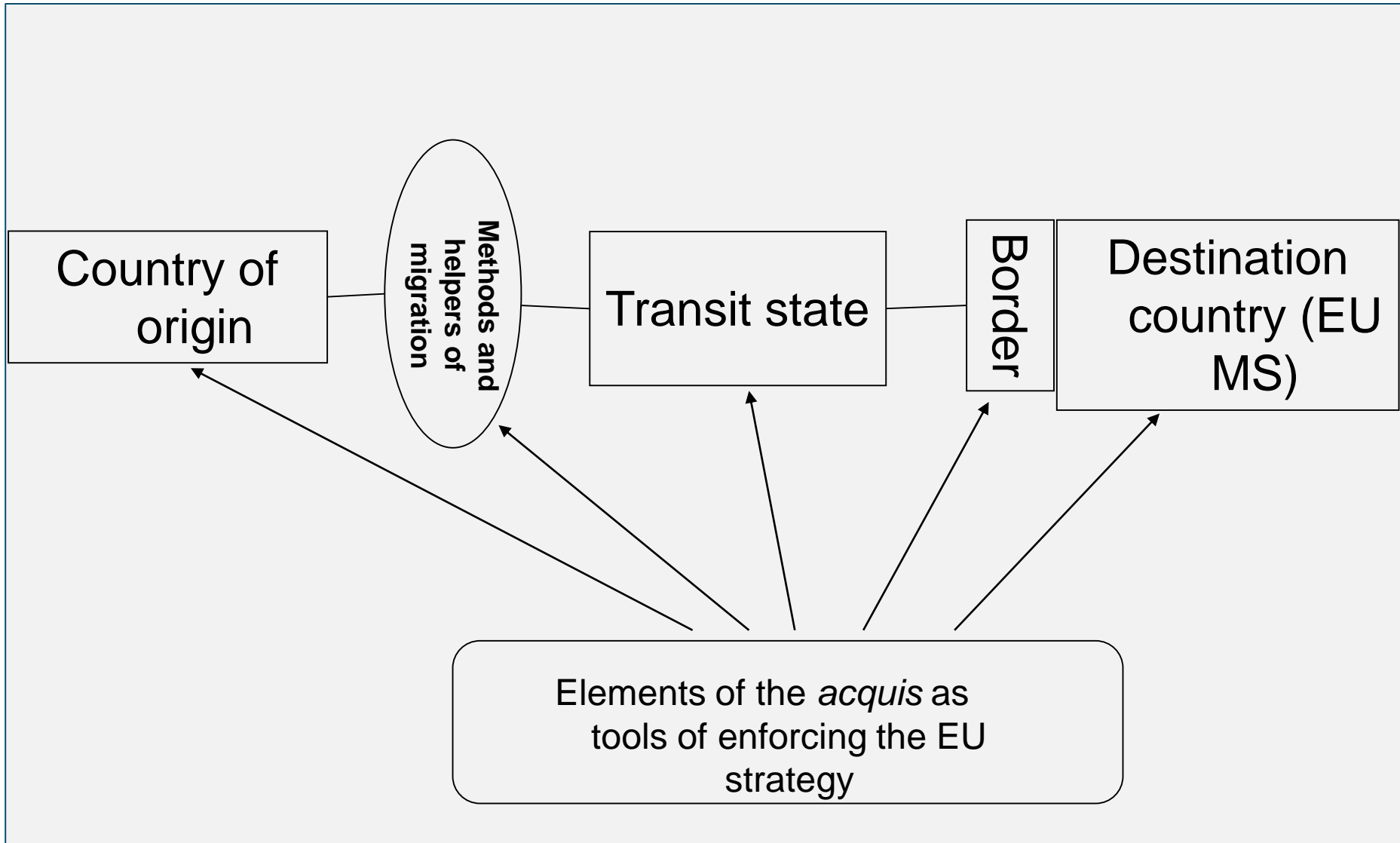
Special status UK, IRL and DK – protocols under the Treaty of Lisbon



MIGRATION

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

PHASES/SITES OF MIGRATION



DIMENSIONS OF THE ANALYSIS – MAIN ELEMENTS OF THE MIGRATION ACQUIS



Immigration rules and emigration (their impact on the country of origin's society);	Human smuggling, Fight against trafficking		External border Surveillance conditions of crossing; abolition of internal borders European Border and Coast Guard Eurosur	EU mobility and immigration policy <ul style="list-style-type: none"> - workers, - service providers - EU citizens - researchers, students, trainees, volunteers - „blue card” – highly skilled - family unification - intra corporate transferees - seasonal workers
	Carrier sanctions	Transit visa	Visa; Alerts (Schengen)	Integration Fight against racism, xenophobia and discrimination
Tackling the root causes of asylum seeking	Interception in international waters	Safe third country		Asylum acquis Burden and responsibility sharing
Safe country of origin	Document protection	Return agreements		Cooperation in removal/return

DIMENSIONS OF THE ANALYSIS – OVERVIEW OF THE JUNCTURES)

Type of migrant ↓	The position of the migrant from the EU's point of view →	Preferred	Reservations	Pawn in the game	Unwanted
Regular		National of the EU MS or of the EEA MS or of Switzerland	New MS, Europe Agreements, Associated states (Turkey)	ACP and Maghreb countries; nationals of states with return agreements; Eastern Europe	Visa rejected
	S. Peer's category:	Market citizen	Worker	„Alien”	
Irregular	Refugee	Resettlement „Quota refugees” „protected entry”	Asylum seeker arriving directly from the territory of persecution	Asylum seeker arriving through third countries	Intercepted outside the EU; Arriving from safe country of origin; Rejected claimant
	Migrant without the right to stay			Regularisation Victims of trafficking	Those to be removed or already removed

VISAS,
BORDERS, BORDER GUARDS,
SCHENGEN ENTRY,
RESTORATION OF INTERNAL BORDER CONTROLS

EXTERNAL BORDERS

The virtualisation and delocalisation of the border

- Visa policy
- Liaison persons in third countries, capacity building, info sharing, direct assistance (Libya, e.g.!)
- Carrier sanctions
- Interception on high seas
- Border management
 - control at entry points,
 - surveillance between them - fences!
- In-country controls for immigration purposes

The dialectic of the restoration of internal border controls under the Schengen Border Core – internal becomes external

VISA POLICY

COUNCIL REGULATION (EC) No 539/2001 visa list (consolidated in 2017)

Determining third country nationals who need a visa to cross the external border.

Immoral - Visas are collective stigmas / prevents asylum seekers from arriving

Ineffective – No serious threat may be discovered with the help of a mere questionnaire. (Now, photo and fingerprint may be more helpful)

Obstacle – hinders the economy and cheap travel by making voyage cumbersome and expensive

But: **one Schengen** visa valid in **26 countries**

Border control could be used to screen out the unwanted.

Schengen Borders Code (Regulation (EU) 2016/399)

In essence:

- Codifies Schengen: **abolition of internal border** controls (and rules on **temporary reinstallation** as amended in 2017 (Articles 25 – 35)
- Determines **conditions for entry** of persons
- Regulates **checks** at border crossings, **surveillance** between border crossing points

(In harmony with the Visa list regulation, the Visa code and SIS, Interpol, national data bases)

BORDER MANAGEMENT - EBCG

European Border and Coast Guard regulation (Earlier „Frontex”).
Regulation 2016/1624/EU)

- Implements the Schengen Border Code
- EBCD = **EBCD Agency (EU) + National authorities**
- Risk analysis - Joint operations - Rapid response - Research - Training- Joint returns - Information-sharing
- **Specific intervention** (Arts 13, 19): management board prescribes **compulsory measures** – if MS does not act: Council decides measures, including **deploying border guard teams**. **MS must cooperate** – if not **restoration of border control** restored **against it** at the internal border according to the Schengen Border Code

The cost of „non-Schengen”

„According to the Commission analysis **of direct economic cost of non-Schengen i.e. the situation where the border controls have been reintroduced** for a longer period of time delays at the borders would have a substantial impact on cross-border transport (notably through road), tourism, public administrations and cross-border workers and travellers. For those categories, **the direct costs are estimated to range between €5 and €18 billion per year (or 0.06%-0.13% of GDP)**, depending on the time spent due to delays. **The medium-term indirect costs of non-Schengen may be considerably higher** than those direct estimates, as the impacts on intra-community trade, investment and mobility would be unprecedented if rolling-back Schengen puts at risk the economic integration.”

Source: COM (2017) 571 Final Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of border control at internal borders, p. 5, fn 5

- Taking care of **1 million persons with 500 euros / head / month entails 6 billion Euros cost, which is all spent in the national economy**

NATIONAL?

Are there tasks, which by definition must be performed by the state concerning borders?

Is „statehood” and „sovereignty separable?”

Is statehood/sovereignty undermined if the rules on entry rights, border checks and surveillance are adopted at EU level?

Where is the „final control” in the scheme created by the Visa regime and the border regime adopted by the EU?

FREEDOMS WITHIN THE EU
THE PREFERRED GROUP

MIGRATION WITHIN THE EU („MOBILITY“)

In the beginning: workers and service providers

„Citizenship“: introduced in the Maastricht treaty, amending the Rome Treaty (TFEU)

Not an unlimited right! (Directive 2004/38/EC)

Only: workers, self employed, persons with sufficient means, students

„Union citizenship is for all Europeans who are not poor or sick“ Chalmers- Davies –Monti, 2104, 478

After 5 years: permanent residence

THIRD COUNTRY NATIONALS,
REGULAR (IM)MIGRATION

THIRD COUNTRY NATIONALS – REGULAR MIGRATION INTO THE EU

Article 79 TFEU

„1. The Union shall develop **a common immigration policy** aimed at ensuring, at all stages, the **efficient management** of migration flows, **fair treatment** of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to **combat, illegal immigration** and trafficking in human beings.”

- Rules on **entry and residence** conditions, on **visas** and residence permits

- Defining the **rights of legally residing t.c.n.** including the right to move to another MS

- Measures on **„illegal immigration and unauthorised residence”**, including removal and repatriation

- Combating **human trafficking**

Incentives for **integration** may be adopted, but **no harmonisation of rules**

Only the MS have right to **determine „volumes”** of workers and self-employed to be admitted

TEH PENDULUM: WANTED – UNWANTED - MANAGED

Until late 1960s – workers **welcome**

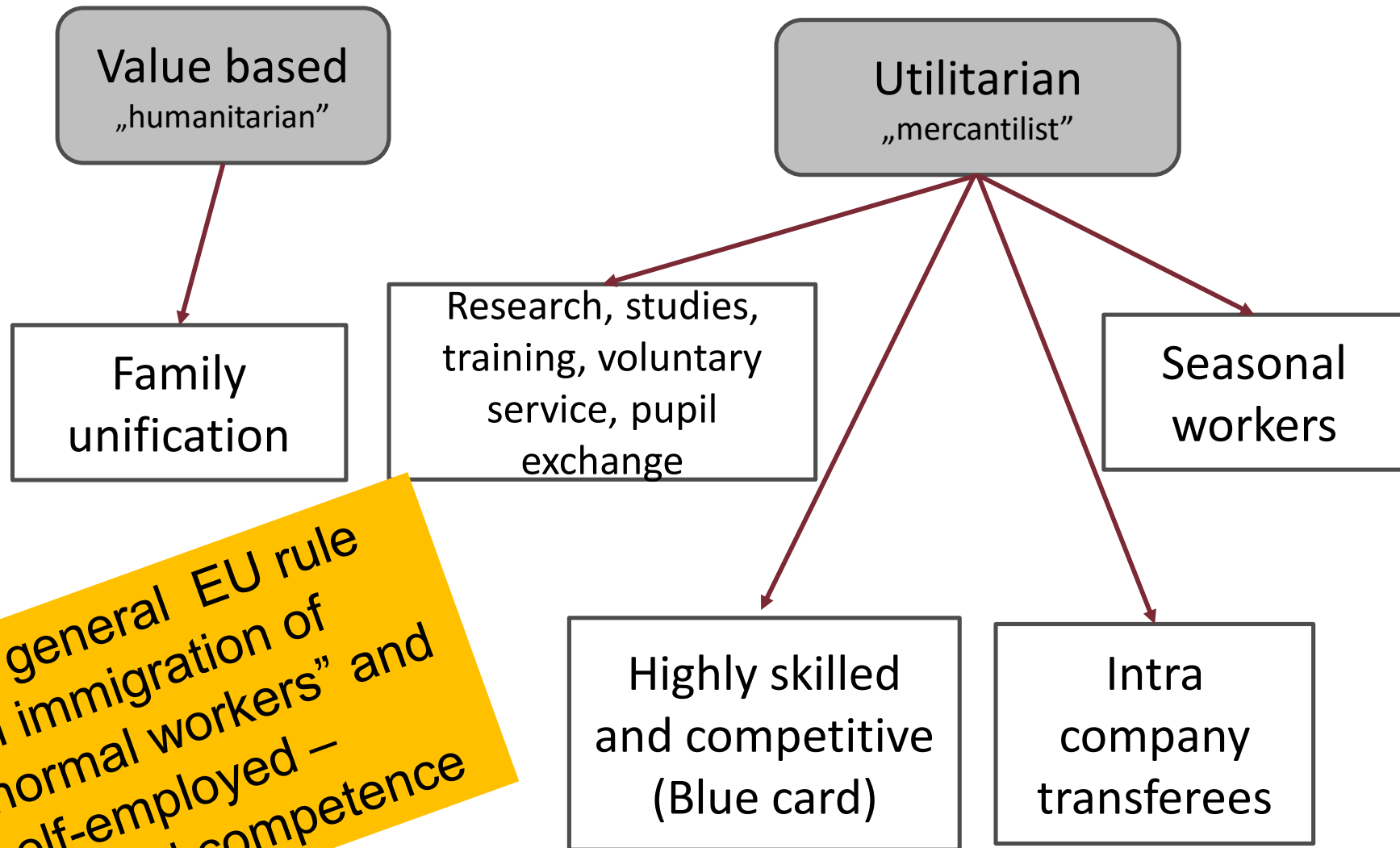
1970-s (crises) –late 1990s – excluded
Priority for own and EU citizens.

Work permit for t.c.n: the exception

Since early 2000 – selective welcome –“**managed migration**” –
global competition for skills



AVENUES OF REGULAR MIGRATION INTO THE EU



No general EU rule on immigration of „normal workers” and self-employed – national competence

FAMILY

COUNCIL DIRECTIVE 2003/86/EC of 22 September 2003
on the right to family reunification

Regular migrant's family (entitled to unification):

- spouse
- the minor, unmarried (common) child of the sponsor (migrant) and of his/her spouse, including children adopted
- minor, unmarried child of either of them, if they have custody and the child is dependent on them

Optional (states may allow)

parents, if dependent on the migrant
adult unmarries child, if unable
to provide for herself/himself
Partners if in lon-term stable and/or
registered partnership

Researchers: same definition, less conditions

Refugees: optionally broader, and less conditions for the first 3 months

To what extent is the concept
of family culturally
determined? Or is it simple
reductionist political
convenience?

SUMMARISING THE BASIC RIGHTS

Table 1: Basic provisions in EU Directives on authorised immigration

Category guarantee	Right of residence	Family unity	Movement to another MS	Special remuneration
Seasonal workers	< 9 months	No	No	No
Students	at least 1 year	No	Yes (for studies)	-----
Researchers	at least 1 year	Open (member state discretion)	Yes (for research)	-----
ICTs	1-3 years	Yes with labour market access	Yes	Yes
Blue Card	1-4 years	Yes with labour market access	Yes	Yes

Source: Georgia Mavrodi
 COMMON EU POLICIES ON
 AUTHORISED IMMIGRATION PAST,
 PRESENT AND FUTURE
 LSE IDEAS Strategic Update 15.2
<http://cadmus.eui.eu/bitstream/handle/1814/36115/Common-EU-Policies-on-Authorised-Immigration%20%281%29.pdf?sequence=2>

THIRD COUNTRY NATIONALS,
WITHOUT THE RIGHT TO STAY
„ILLEGAL MIGRATION”

THE OVERALL APPROACH TO ENTRY AND STAY WITHOUT PERMIT

Political discourse  EU law in force

The engine behind entry/stay without permission is either the unbearable situation in the country of origin (economy, climate, persecution) or the willingness of the employer to exploit the irregular worker, or both

EU law: dual face

Visa, border regime, detention before removal: following political preferences

Employer's sanctions, preferring voluntary departure, protecting victims of trafficking - the migrant is victim
applying the legally protected values of a democratic society
respecting the dignity of all

THE RETURN DIRECTIVE

DIRECTIVE 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals

Personal scope

Obligatory: third-country nationals staying illegally on the territory of a Member State

Optional:

- those refused at the border or intercepted on land, sea or air
- subject to return as a criminal law sanction

Limits: **MS must respect** rights of persons entitled to free movement under community law and the principle of *non-refoulement*

+ „due account of” best interest of the child, family life, state of health of the person

Member States may retain more favourable provisions

RETURN DIRECTIVE, 2008

Member states **must** issue the return decision to any illegal stayer (exceptions exist, like right to reside in other MS or humanitarian reasons)

Preferred return: **voluntary return** within 7-30 days

Exceptions:

risk of absconding,

manifestly unfounded or fraudulent application for stay permit

or if the person concerned poses a risk to public policy, public security or national security,

States **must** take all necessary measures to enforce the return decision if the third country national does not depart voluntarily or if the exception to voluntary departure is applicable

Compulsory entry ban (max five years) if no voluntary return within time

Proportionate coercive measure against resisting persons

Detention: max 18 months (if danger of absconding or hampering preparation of return or process of removal)

Strong critique (ECRE, UNHCR, NGO-s)

EMPLOYERS' SANCTION

Directive 2009/52/EC

providing for minimum standards on **sanctions and measures against employers of illegally staying third-country nationals**

„**illegally staying third-country national**” = who does not fulfil, or no longer fulfils, the conditions for stay or residence in that Member State

Obligations of the employer:

- see the valid residence permit of the tcn;
- keep a copy or record of it
- notify the competent authority of start of employment

If done, can not be sanctioned

Effective, proportionate and dissuasive sanctions must be imposed on the employer:

Financial sanctions which shall increase in amount according to the number of illegally employed

Payments of the **costs of return** of illegally employed third-country nationals

Paying the **difference** between the remuneration of the illegally employed and the legally employed **to the illegally employed**

An amount equal to any **taxes and social security contributions** that the employer would have paid

EMPLOYERS' SANCTIONS

Further sanctions

- Exclusion from public aid or subsidy
- Exclusion from participation in
- a public contract
- Recovery of recent (max 12 months) public benefits, aid, or subsidies
- Temporary or permanent closure of the establishments that have been used to commit the infringement
- Temporary or permanent withdrawal of a licence to conduct the business activity in question



**For a maximum
of 5 years**

Criminal sanctions in „severe“ cases

- The infringement continues or is persistently repeated;
 - Simultaneous employment of a significant number of illegally staying third-country nationals;
 - The infringement is accompanied by particularly exploitative working conditions;
 - The employed person is victim of trafficking
 - The employed is a minor
- Transposition date: 20 July 2011.

VICTIMS OF TRAFFICKING

Smuggling ≠ Trafficking

DIRECTIVE 2011/36/EU ...on preventing and combating trafficking in human beings and protecting its victims...

The definition of trafficking:

„The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, **by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation**

Trafficked persons are victims, entitled to different source of protection (impunity, special care, victim's protection)

According to Council Directive 2004/81/EC residence permit and assistance to those who co-operate with the authorities

INTERNATIONAL PROTECTION

(ASYLUM SEEKERS, REFUGEES, BENEFICIARIES OF SUBSIDIARY PROTECTION, ASYLUM, SOLIDARITY WITHIN THE EU, COOPERATION WITH THIRD STATES)

Global figures, end of 2017, UNHCR data

68.5

MILLION
FORCIBLY
DISPLACED
WORLDWIDE

as a result of
persecution, conflict, or
generalized violence

25.4 million refugees

19.9 million refugees under UNHCR's mandate

5.4 million Palestine refugees under UNRWA's mandate

40.0 million internally displaced people¹

3.1 million asylum-seekers

**52% of the
refugees are
minors**

68%

Altogether, more than two-thirds
(68 per cent) of all refugees worldwide
came from just five countries:

Syrian Arab Republic	6.3 million
Afghanistan	2.6 million
South Sudan	2.4 million
Myanmar	1.2 million
Somalia	986,400

4,4 million internationally
displaced in 2017

667,400 refugees **returned** home
in 2017

102,800 refugees were admitted
to **resettlement**

Source: UNHCR: Global Trends. Forced displacement in 2017. Geneva, 2018, various pages

<http://www.unhcr.org/5b27be547.pdf>

Syria! May, 2018

5,645,914

Registered Syrian refugees (abroad)
As of 10 May 2018

970,316 between Apr 2011 and Jul 2017

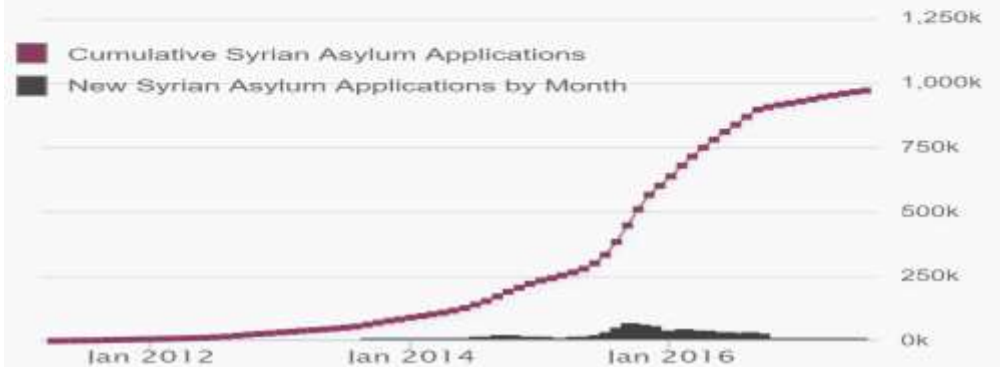
137,798 in 2014 only

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

Top Countries



Evolution of Asylum Applications



Egypt: 128,507

Iraq: 248,382

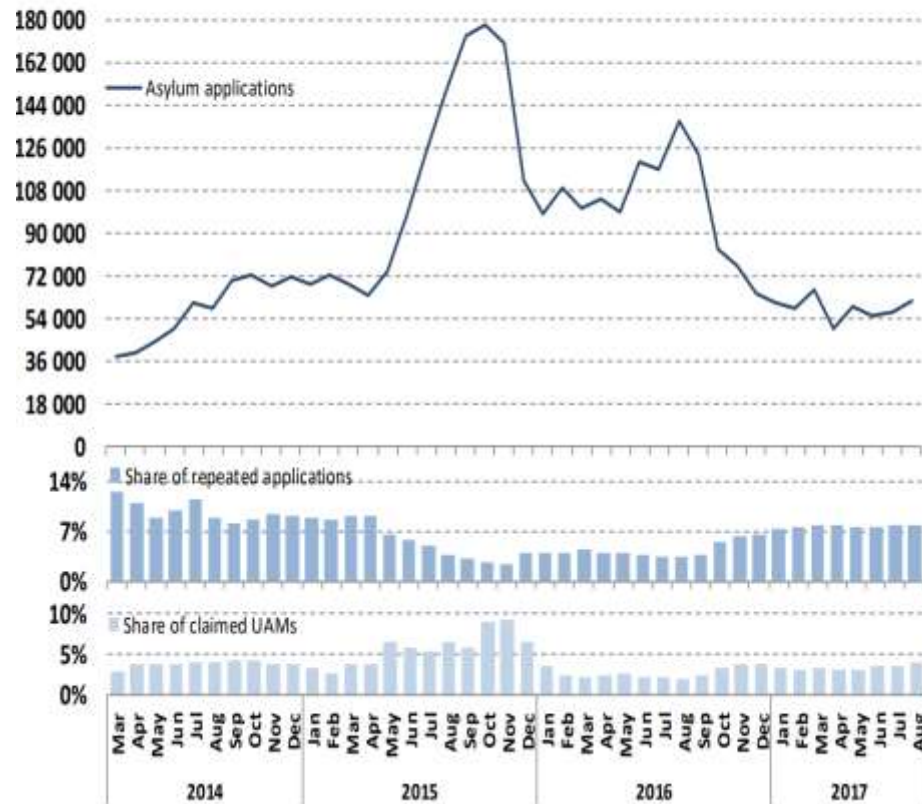
Jordan: 661,859

Lebanon: 986,942

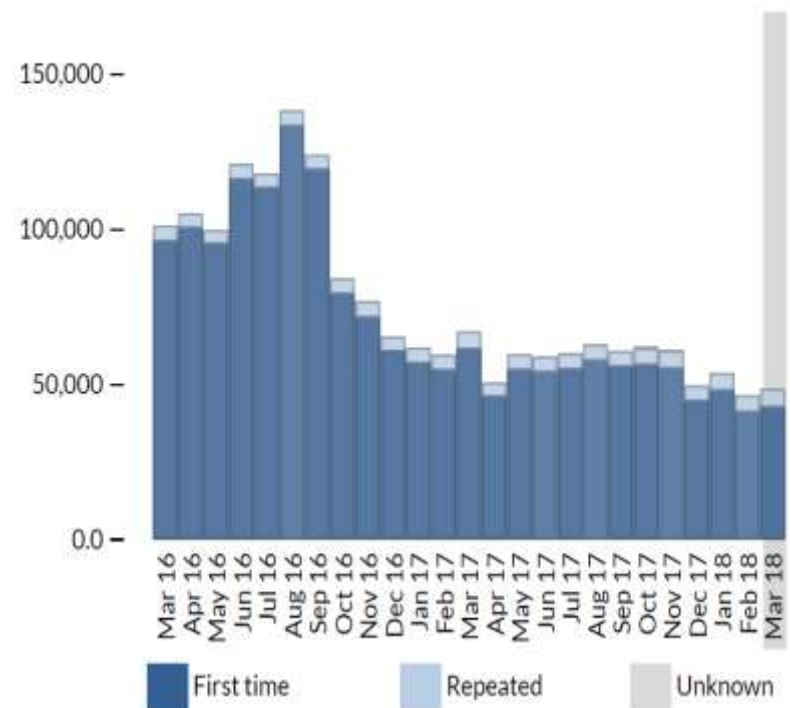
Turkey: 3,586,679

Individual applications in the EU+

Number of applications for international protection in the EU+¹



Asylum applications, EU+



Countries of origin 2016-2017 in the EU

	Q4 2016			Q1 2017			Q2 2017			Q3 2017			Q4 2017			Q4 2017	Change in %		Last 12 months
	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.		between Q3 2017 and Q4 2017	between Q4 2016 and Q4 2017	
Non-EU	78 160	70 285	58 945	57 485	54 945	51 445	46 170	53 710	52 960	55 445	57 875	55 755	55 905	54 750	43 405	154 065	-9	-26	649 855
Syria - (SY)	13 535	11 695	9 550	8 610	8 615	9 345	6 700	8 570	7 815	9 570	10 680	9 055	8 590	8 520	6 310	23 420	-20	-33	102 385
Iraq - (IQ)	6 355	5 045	4 110	3 730	3 900	3 935	2 810	3 665	3 340	3 560	4 675	4 995	5 035	4 445	3 435	12 915	-2	-17	47 525
Afghanistan - (AF)	10 055	7 020	4 985	4 795	3 910	4 860	3 145	3 595	3 345	3 200	3 780	3 250	3 300	3 610	2 835	9 745	-5	-56	43 625
Nigeria - (NG)	5 045	5 310	4 045	4 120	3 835	3 755	2 820	3 345	3 750	3 775	3 210	2 990	2 925	2 735	1 825	7 485	-25	-48	39 090
Pakistan - (PK)	2 985	3 145	2 575	2 445	2 515	3 020	2 245	2 555	2 485	2 385	2 495	2 490	2 670	2 360	1 900	6 930	-6	-20	29 570
Turkey - (TR)	1 270	1 260	1 070	1 025	960	1 010	865	955	895	1 095	1 525	1 670	1 830	1 815	980	4 625	8	28	14 630
Albania - (AL)	2 310	2 510	2 175	1 835	1 555	2 190	2 030	2 005	1 950	2 045	2 185	1 700	1 540	1 620	1 415	4 575	-23	-35	22 075
Eritrea - (ER)	3 375	3 410	2 750	2 315	2 255	1 985	1 755	1 765	2 435	2 320	2 370	2 810	1 680	1 295	1 365	4 340	-42	-54	24 355
Iran - (IR)	2 660	1 945	1 665	1 665	1 340	1 545	1 590	1 430	1 290	1 305	1 335	1 525	1 550	1 485	1 200	4 235	2	-33	17 260
Bangladesh - (BD)	1 665	1 860	1 420	1 385	1 495	1 870	1 635	1 930	1 960	1 650	1 625	1 560	1 630	1 390	1 150	4 170	-14	-16	19 280
Venezuela - (VE)	600	810	585	880	985	1 045	830	915	950	775	850	1 090	1 330	1 370	930	3 625	34	81	11 945
Georgia - (GE)	710	615	535	605	610	730	620	775	745	745	730	760	1 010	1 210	1 390	3 610	62	94	9 925
Guinea - (GN)	1 565	1 520	1 425	1 650	1 630	2 070	1 410	1 575	1 625	1 600	1 385	1 285	1 285	1 185	1 010	3 480	-18	-23	17 705
Somalia - (SO)	1 800	1 385	1 160	1 165	1 095	1 150	955	1 080	995	1 105	1 140	1 005	1 020	1 145	845	3 010	-8	-31	12 710
Russia - (RU)	1 445	1 200	1 200	1 105	1 055	1 185	985	940	1 020	1 150	1 220	1 075	1 005	980	850	2 835	-18	-26	12 570
Ivory Coast - (CI)	1 240	1 090	1 020	1 160	1 355	1 600	945	1 370	1 305	1 315	1 135	1 040	1 095	935	745	2 775	-21	-17	13 995
Algeria - (DZ)	1 150	1 145	1 005	870	805	830	635	655	585	655	765	770	795	965	910	2 665	22	-19	9 235
Mali - (ML)	990	860	745	900	950	1 055	705	865	900	1 015	850	795	895	845	515	2 250	-15	-13	10 290
Gambia - (GM)	1 145	1 485	1 260	1 295	1 365	1 570	1 105	1 115	1 065	980	885	875	830	845	575	2 250	-18	-42	12 505
Sudan - (SD)	1 170	840	1 340	660	695	805	785	775	660	805	940	815	1 020	630	585	2 240	-13	-33	9 185
Ukraine - (UA)	820	885	700	740	805	815	635	805	860	770	600	710	820	810	575	2 205	6	-8	8 945
Morocco - (MA)	985	910	780	640	655	660	610	660	510	680	765	650	650	735	585	1 965	-6	-27	7 790
Senegal - (SN)	910	970	890	1 025	1 020	1 190	775	975	1 020	885	725	740	745	590	515	1 850	-21	-33	10 200
Armenia - (AM)	985	680	610	865	600	620	405	390	370	560	580	680	525	660	540	1 725	-5	-24	6 790
CD - (CD)	495	445	420	495	650	790	505	545	645	470	425	485	485	485	650	1 620	17	19	6 630
Serbia - (RS)	545	665	570	455	435	590	435	350	325	380	290	290	480	545	480	1 505	57	-15	5 055
Unknown - (UNK)	730	730	630	440	430	590	415	470	450	515	500	550	495	575	410	1 480	-5	-29	5 845
Cameroon - (CM)	500	475	430	440	435	465	380	535	545	645	535	480	560	490	395	1 445	-13	2	5 910
China - (CN)	570	410	335	360	405	345	270	360	370	395	420	420	470	460	495	1 420	15	8	4 760
Haiti - (HT)	85	100	250	600	485	420	305	415	555	495	500	450	540	590	265	1 395	-3	219	5 615
Other (non-EU)	10 460	9 860	8 705	9 210	8 095	9 400	6 865	8 335	8 190	8 585	8 745	8 745	9 105	9 430	7 740	26 280	1	-9	102 455

Source: Eurostat Asylum Quarterly Reports , 19 March 2018

[/index.php/Asylum_quarterly_report](#) (20180514)

DEFINITIONS

European Union: subregional law

„Convention refugee”

„Political refugee”

Beneficiary of subsidiary protection

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

Beneficiary of temporary protection

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

Definitions

Geneva Convention relating to the status of refugees – 1951

Article 1. *Definition of the term “refugee”*

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(1) Has been considered a refugee ...[according to the interwar arrangements and the IRO constitution]

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that

country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Definitions

Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

Article 1

Definition of the term "Refugee"

1. [Geneva definition]

2. The term "refugee" shall also apply to every person who, **owing to external aggression, occupation, foreign domination or events seriously disturbing public order** in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Definition

Cartagena Declaration on Refugees,

Colloquium on the International Protection of Refugees in Central America, Mexico and Panama

Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia from 19-22 November 1984.

The Colloquium adopted the following conclusions:

.....

3. To reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, **in addition to** containing the elements of the **1951 Convention** and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened **by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.**

Definition

EU Temporary Protection Directive

(Council Directive 2001/55/EC OJ L 212/14)

Article 2

For the purposes of this Directive:

- (a) 'temporary protection' means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;
- (b) ...
- (c) 'displaced persons' means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, 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

Definitions – EU

Council Directive

2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304/12 2004 09 30,)

EU Qualification Directive

2004/2011

Art 2 2004:(e) 2011: (f)

„person eligible for subsidiary protection” [means someone], „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,is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

Art 15 (in both)

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”**

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

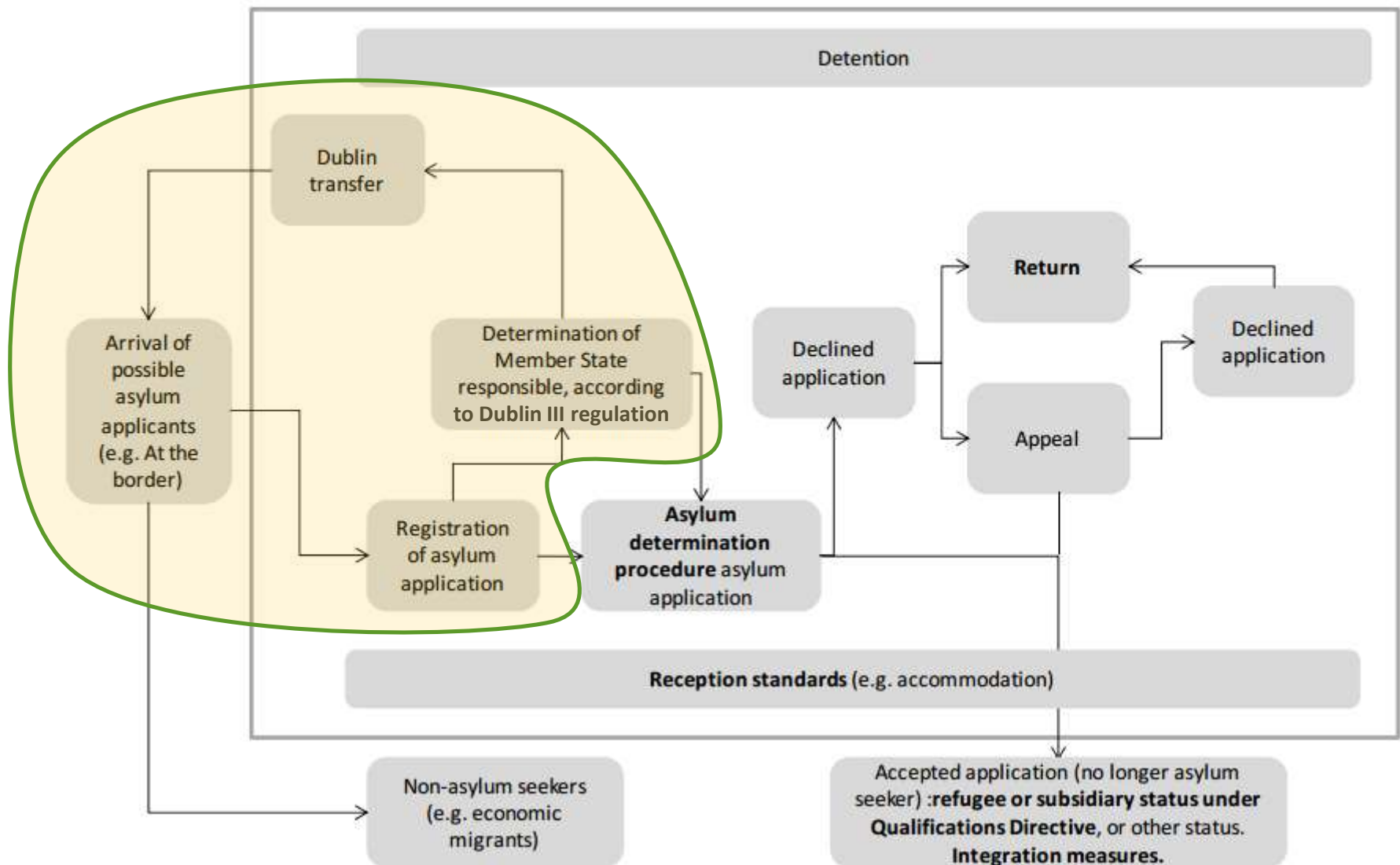
Asylum acquis

Adopted and proposed measures

1. Regulation on **Eurodac** (2000) recast: **2013**. Pproposal for regulation **2016** (recast 2)
2. Directive on **temporary protection** (2001)
3. **Reception conditions** directive (2003) recast: **2013** Pproposal for directive (recast 2): **2016**
4. **Dublin** Regulation and its implementing rules (2003 DublinII) recast: **2013 (Dublin III.)**
Proposal for regulation (recast 2): **2016**
5. Qualification (**Refugee definition**) directive (2004) recast: **2011**. Proposal for regulation: **2016**
6. **Asylum procedures** directive (2005) recast: **2013**. Proposal for regulation: **2016**
7. Establishment of an **European Asylum Support Office** (2010) Proposal for regulation on **European Asylum Agency: 2016**
8. Decision on the new **Asylum Migration and Integration Fund** – **2014**
9. Solidarity measures, 2015-2018: **resettlement and relocation (See also 2016 Dublin proposal)**

The asylum process model as in 2018

Figure 1: Overview of the asylum process



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

THREE LEVELS OF REGULATION

- International law (1951 Geneva Convention, 1950 European Convention on Human Rights, etc.)
 - European Union Law (in EU member states)
 - National law – implementing both
-

Control (enforcement):

UNHCR

European Court of Human Rights („Strasbourg“)

Court of Justice of the European Union („Luxembourg“)

Domestic courts

KEY QUESTIONS

1. Who should decide if the person is a refugee? = which is the responsible state for the asylum procedure = Dublin
2. Can the asylum seeker be returned to a non EU member state (instead of applying Dublin) = safe third country
3. What to do if the refugee found protection in a non-EU country (e.g. Turkey, Lebanon, Jordan), but after some time moves on = first country of asylum, „secondary movement”
4. Does the refugee have a choice as to the country of asylum? (see also answers to 2 and 3)
5. Can states close their borders, claiming „too many came, the country is full” = non-refoulement
6. Why is the temporary protection directive not applied?
7. Are there persons, who can be excluded („terrorists”)? = exclusion grounds and procedure
8. What solidarity is conceivable among EU member states? = relocation, hotspots, AMIF
9. What solidarity with those state who host or are transit countries for most refugees? (Statement with Turkey, Resettlement, EU Trust Fund for Syria, Emergency Trust Fund for Africa)

1. WHO SHOULD DECIDE WHETHER THE
PERSON IS A REFUGEE? WHICH IS THE
RESPONSIBLE STATE FOR THE ASYLUM
PROCEDURE? =
THE DUBLIN SYSTEM

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 as if **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.!).

„Coupling principles” = criteria identifying the responsible state (simplified list)

1. Family (narrowly defined)
2. Visa or residence permit
3. External border crossed in irregular fashion
4. Place of submission

BURDEN SHIFTING

**NOT BURDEN
SHARING !**

DUBLIN

Taking charge: no application in the responsible state

Taking back: departure after application

Eurodac not decisive, but **shorter deadlines**

(2 instead of 3 months to request take charge or
back)

No response = acceptance of responsibility

THE LESSON TAUGHT BY GREECE'S NON-PERFORMANCE
ARTICLE 3 (2)

Where it is impossible to transfer an applicant to the responsible Member State „because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and reception conditions for asylum applicants in that Member State resulting in risk of inhuman or degrading treatment” the determining Member State may search for another responsible state or must proceed itself.

Particular pressure on a member state or systemic failure: Commission to call for a preventive action plan

Serious risk of crisis – compulsory crisis management action plan upon invitation of the Commission

Last resort: instead of Dublin resort to Art 78 (3) of TFEU:

„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.”

Two decisions on relocation of September 2015 moving from Italy and Greece 40 + 120 thousand persons

2. CAN THE ASYLUM SEEKER BE RETURNED TO A NON EU MEMBER STATE (INSTEAD OF APPLYING DUBLIN) = SAFE THIRD COUNTRY

THE NOTION OF THE SAFE THIRD COUNTRY (§ 38 PD)

- **Life and liberty are not threatened** on account of the 5 Geneva Convention grounds (race, religion, political views, nationality, belonging to a particular social group) and there is no risk of torture, inhuman or degrading treatment or punishment, or threat because of indiscriminate violence in armed conflict; and
- the principle of **non-refoulement** is respected; and
- the **prohibition of removal** in breach of the right to freedom from **torture and cruel, inhuman or degrading treatment and punishment** 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.

THE NOTION OF THE SAFE THIRD COUNTRY

- **meaningful link** between applicant and the safe third country.
- **investigation if a particular country is safe** for the particular asylum seeker
- **a right** of the asylum seeker **to challenge the safety** at least when torture and inhuman or degrading treatment or punishment is threatening the asylum seeker

If inadmissible because there is a safe third country:

- inform the asylum seeker accordingly,
- provide the asylum seeker with document informing the safe third country that the application has not been examined in substance

3. WHAT TO DO IF THE REFUGEE FOUND PROTECTION IN A NON-EU COUNTRY (E.G. TURKEY, LEBANON, JORDAN), BUT AFTER SOME TIME MOVES ON = FIRST COUNTRY OF ASYLUM, „SECONDARY MOVEMENT”

FIRST COUNTRY OF ASYLUM

The application is **inadmissible** (no examination of the merits) if there is a **first country of asylum** (§ 35 PD).

Definition

If the asylum seeker has been **recognised** in that country as a refugee and he/she can **still avail** himself/herself of that protection,

or

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

provided

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

Applicant has a right to challenge inadmissibility on the basis of country of first asylum.

Turkey, Lebanon, Jordan?

4. DOES THE REFUGEE HAVE A CHOICE AS
TO THE COUNTRY OF ASYLUM?
(SEE ALSO ANSWERS TO QUESTIONS 2
AND 3)

THE CHOICE OF THE REFUGEE

- Family, friends, acquaintances (own diaspora)
- Language
- Past time spent
- Labour market, right to establish a venture (self-employment)
- Reception conditions
- Integration assistance
- Vicinity / distance to country of persecution (fast return / distance from danger, less competition with other refugees)

The **more the refugee chooses** the **less social assistance** (s)he will need.

5. CAN STATES CLOSE THEIR BORDERS,
CLAIMING „TOO MANY CAME, THE
COUNTRY IS FULL” = NON-REFOULEMENT

NON - REFOULEMENT

Narrow meaning: Geneva Convention Article 33

„No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

Exception (33 (2)): national security danger or final sentence for serious crime in country of asylum (amounting to danger to society)

Broad meaning: Art 3 of the European Convention of Human Rights:

„No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

- ground irrelevant
- applies to any person, not just to refugees
- prohibition is absolute.

But, what if extremely large number of refugees come („mass influx” - Lebanon, Jordan, Turkey) - prevailing view: still applies

6. WHY IS THE TEMPORARY PROTECTION DIRECTIVE NOT APPLIED?

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

TEMPORARY PROTECTION DIRECTIVE

Beneficiaries = 'displaced persons'

who

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

in particular:

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

TEMPORARY PROTECTION DIRECTIVE

Mass influx means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area
The **Council decides by qualified majority** the start and end of T.P.
Duration

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

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

Not applied until January 2016

Why?

- The Member States ought to **assist the obtaining of the necessary visas**, including transit visas. Formalities ought to be reduced to a minimum. Visas should be free of charge or their cost reduced to a minimum (§ 8 /3/ TPD)
- The Temporary Protection Directive includes **a solidarity mechanism** (even if voluntary) on the relocation of refugees
- **Right to work**, self-employment and **to family unification** are recognised

7. ARE THERE PERSONS, WHO CAN BE
EXCLUDED („TERRORISTS“)? = EXCLUSION
GROUNDS AND PROCEDURE

EXCLUSION OF TERRORISTS

- Terrorists are **unlikely to come as refugees**, as they have to be photographed, give 10 fingerprints and give detailed account about their life
- Before the 2015 November Paris attacks **some returned** to Europe with the mixed flow
- Terrorists **can be excluded from protection** (and returned to their country of origin, unless Art. 3 of the ECHR would be violated)

Exclusion grounds: crimes against peace, war crimes, crimes against humanity, serious non-political crimes, acts contrary to the principles and purposes of the UN.

See QD Preamble, para 31 „**Acts contrary to the purposes and principles of the United Nations are** ... embodied in the United Nations resolutions relating to measures combating terrorism, which declare that ‘**acts, methods and practices of terrorism** are contrary to the purposes and principles of the United Nations...’”

8. WHAT SOLIDARITY IS CONCEIVABLE
AMONG EU MEMBER STATES? =
AMIF, EASO, RELOCATION, HOTSPOTS,
the 2018 June European Council proposal

EASO, AMIF

European Asylum Support Office since 2010

(Regulation (EU) No 439/2010)

Training – Country of origin information – Capacity building and direct assistance to MS – Assistance to the Commission controlling implementation

To be transformed into a European Asylum Agency - moving from coordination and assistance to authority

The Asylum and Migration and Integration Fund (

(Regulation (EU) No 516/2014)

2014-2020 (seven years) Total: **3 137 million** Euros (in current prices)

Member states may use **2 752 million** Euros.

Of that **360** million cover specific actions (e.g. joint processing centres, joint returns) + Union Resettlement Programme from third countries + transfer of beneficiaries of international protection from one Member State to another.

Responsibility and burden sharing - Concepts

Responsibility sharing - distributing affected persons

Burden sharing – contributing to the material reception conditions, with finances, equipment, services


	Sharing of		
Voluntarily	Norms	Resources	People
Compulsorily	(Harmonising laws)	(Money)	„Quota” relocation, resettlement

Possible criteria of responsibility sharing/solidarity

Applied by → Criterion ↓	Commission COM (2015) 451 final Emergency relocation (120 000) COM (COM(2016) 270 final Dublin, Corrective allocation mechanism	EU Council Relocation decision	Germany Königsteini key
Total GDP	Yes/Yes	Yes	No
GDP/person	No/No	(Yes)	No
Tax income	No/No	No	Yes
Population (size)	Yes/Yes	Yes	Yes
Territory	No/No	No	No
Population density	No/No	No	No
UNemployment	Yes/No	Yes	No
Number of earlier applicants	Yes/No	Yes	No
Physical proximity to country of origin (Neighbour, same region)	No/No	No	No
Cultural proximity	No/No	No	No

Possible criteria of responsibility sharing/solidarity



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

Actual relocation decisions

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

2 decisions:

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

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

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

Relocating MS get 6000 Euros/head

How many – the key behind the compulsory relocation decision

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

Relocation – outcome

Member States' Support to Emergency Relocation Mechanism

(As of 31 May 2018)

From Greece: 21,999

From Italy: 12,690

Total: 34,689

Member States	Relocation	
	Relocated from Italy	Relocated from Greece
Austria	43	*
Belgium	471	700
Bulgaria	10	50
Croatia	22	60
Cyprus	47	96
Czech Republic	*	12
Denmark	*	*
Estonia	6	141
Finland	778	1,202
France	635	4,394
Germany	5,434	5,391
Greece	*	*
Hungary	*	*
Ireland	*	1,022
Italy	*	*
Latvia	34	294
Lithuania	29	355
Luxembourg	249	300
Malta	67	101
Netherlands	1,020	1,755
Poland	*	*
Portugal	356	1,192
Romania	45	683
Slovakia	*	16
Slovenia	81	172
Spain	235	1,124
Sweden	1,392	1,656
United Kingdom	*	*
Norway	816	693
Switzerland	920	580
Liechtenstein	*	10
Iceland	*	*

Hotspots

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

5 in Italy, 5 in Greece.

Overcrowded (Greece,
15 thousand for 7 thousand
capacity

Closed, inhuman

State of play in the EU hotspots in Greece and in Italy

Hotspots in Greece and in Italy



Source: European Union Agency for Fundamental Rights

European Council Conclusions 25 June 2018

- „To save lives and break smuggling circles”

new approach

- „based on **shared or complementary actions** among the Member States to the **disembarkation** of those **who are saved in Search And Rescue operations**”
 - not extending to those coming on land, in air, or make it to the shore/territorial waters without being rescued*
- In that context, the European Council calls on the Council and the Commission to swiftly **explore the concept of regional disembarkation platforms**, in **close cooperation with relevant third countries** as well as UNHCR and IOM. Such platforms should operate distinguishing individual situations, in full respect of international law and without creating a pull factor.
 - To explore” -?? Platform –new legal concept. Both in the EU and in Libya and elsewhere . „Distinguishing situations –may only mean the separation of those who do not apply for refugee status or have been denied earlier. Are they closed installations (probably yes).*
- **On EU territory, those who are saved**, according to international law, should be taken charge of, on the basis **of a shared effort**,
 - Only those saved. Shared effort only within EU. Who shares, on what basis?*
- through the **transfer in controlled centres set up in Member States**, only **on a voluntary basis**,
 - „Controlled centres” closed or semi closed? Prison like? Which states will volunteer? Any standard to the centre, and the treatment within? (Certainly: Reception Conditions Directive)*

European Council Conclusions 25 June 2018

- where rapid and secure **processing** would allow, with full EU support, to **distinguish between irregular migrants, who will be returned, and those in need of international protection,**

*Whole refugee status determination procedure in the centre. Court appeal?
Years?*

- **for whom the principle of solidarity would apply.**

Principle of solidarity applied to refugees and beneficiaries of subsidiary protection. Quota? Flexible solidarity? Involving all the MSs?

- All the **measures in the context of these controlled centres, including relocation and resettlement,** will be on a **voluntary** basis, **without prejudice to the Dublin reform.**

Resettlement – bringing in from third countries. Relocation = voluntary. Who will offer, and how many places. Without prejudice to Dublin that is compulsory and may entail a compulsory corrective mechanism

9. What solidarity with those state who host or are transit countries for most refugees? Or: externalisation?!

(Statement with Turkey, Resettlement, EU Trust Fund for Syria, Emergency Trust Fund for Africa)

Traditional multilateral and Bilateral cooperation forms in migration management and control

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

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

Rabat process = EU – Central and Western Africa + Tunisia and Algeria (observer)

Established in 2006 – broad dialogue on migration and development <https://processus-de-rabat.org/en/>

Afghanistan

EU – Afghanistan declaration „**Joint Way Forward**”

soft law (non legally binding) document, Kabul, 2 October 2016

Libya

Italian – Libyan Memorandum of understanding of 2 February 2017

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

Eastern Partnership mobility agreements

RESETTLEMENT FROM THIRD STATES

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

EU –Turkey Statement of 18 March 2016

1 : 1 Scheme – for a Syrian taken back from greece another Syrian refugee from Turkey to be resettled to the EU

Union Resettlement Framework – Commission Proposal of 13 July 2016 (COM (2016) 468 final)

Council – in „Annual Union resettlement Plan”- sets

- Annual maximum total number

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

- Geographic priorities

Commission - in „Targeted Union resettlement schemes” – sets

- The actual number to be resettled by each state

- Details of regions, specificities of co-operation

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

Recommendation of 27.9.2017

50 000 persons

Actual resettlement and the plans

RESETTLEMENT – A SUCCESS STORY

Since 2015, two successful EU resettlement programmes have helped **25,980** of the most vulnerable refugees find shelter in an EU Member State, 18,563 of those under the 20 July 2015 programme.

€500 million set aside for Member States' resettlement efforts in the next two years – **€10,000 for each resettled** person from the EU budget.

RESETTLEMENT UNDER THE CURRENT EU PROGRAMME



Total of **22,500** pledged

THE WAY FORWARD

A new, more ambitious target for the resettlement of 50,000 persons in need of international protection set by President Juncker in September 2017 is within reach. A particular focus should be put on resettlement from North Africa and the Horn of Africa, notably **Libya, Egypt, Niger, Sudan, Chad and Ethiopia**, whilst ensuring continued resettlement from **Turkey, Jordan and Lebanon**.



By February 2018:

Member States to submit pledges for at least 50,000 resettlements.



By October 2018:

Member States to ensure that 50% are effectively resettled.



By May 2019:

Member States should complete the remainder of the resettlements.

Financial assistance

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

Goals:

- foster stability in the regions;
- contribute to better migration management.
 - ✓ by addressing the root causes of destabilisation, forced displacement and irregular migration, by
 - ✓ promoting economic and equal opportunities, security and development.

2 556 million Euros pledged



3.3 Bn

EUR pledged



46 111

Number of jobs created



3 200 K

Number of people receiving basic social services



95 232

Number of migrants in transit and forcibly displaced people protected or assisted



96 494

Number of people participating in conflict prevention and peace building activities

Source https://ec.europa.eu/trustfundforafrica/content/homepage_en

EU Regional Trust Fund in Response to the Syrian Crisis

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

Improving **education, livelihoods and health**

With contributions and pledges from **22 EU Member States and Turkey**, amounting to **€150 million**, and **contributions from various EU instruments**, [**1,25 billion**] the Fund has reached a total volume of almost

€1,4 billion to date.

€1.213 million have already been allocated to concrete assistance programmes for refugees and host communities in the region. These programmes support basic education and child protection, training and higher education, better access to healthcare, improved water and waste-water infrastructure, as well as support to resilience, economic opportunities and social inclusion

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

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

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

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

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

The new partnership Framework

COM(2016) 385 final 7 june 2016

The short term objectives:

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

-

Long term objectives

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

Council Conclusions 25 June 2018

- Migratory pressure: „a challenge not only for a single Member State, but for Europe as a whole”
- Goal ”stem illegal migration on all existing and emerging routes”
- Central Mediterranean (Libya): EU standing by Italy and other „frontline” states. Support for Libyan and Sahel actors, and for „humane reception conditions, voluntary humanitarian returns, cooperation with other countries of origin and transit, as well as voluntary resettlement” (NGO) vessels must not obstruct „operations of the Libyan Coastguard” and must respect laws.
- Eastern Mediterranean Route reinforced cooperation with Turkey in exchange expectation for swift returns and prevention of new sea routes

Council Conclusions 25 June 2018

- Western Balkans region: support to „prevent illegal migration, increase the capacities for border protection and improve return and readmission procedures.”
- Western Mediterranean: Financial support to Spain and Morocco „to prevent illegal migration”
- Turkey gets the second 3 billion Euros, the Trust Fund for Africa 500 million, and MS are called on to voluntary contribute.
- „Africa is our neighbour”: new level of cooperation. More development funding and private investment, „increased exchanges and contacts amongst the peoples of both continents on all levels of civil society.”
- Efforts to be made to increase returns

THANKS!

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