

STUDY GUIDE

EUROPEAN PARLIAMENT

- ★ Adjusting the Schengen Agreement to the Recent Predicament, Syrian Refugee Crisis
- ★ Refugee Crisis: Reshaping Europe's Immigration Policies



European Parliament Study Guide

European Union Simulation in Ankara (EUROsimA) 2017

www.eurosim.org

Organised by

Foreign Policy and International Relations Club

Middle East Technical University

Üniversiteler Mah. Dumlupınar Bulvarı No: 1

İktisadi ve İdari Bilimler Fakültesi B Binası Zemin Kat

06800 Çankaya, Ankara, TURKEY

EUROsimA 2017

Ankara - Turkey, 2017

This document is prepared solely for educational purposes and cannot be used for any commercial purpose. No copyright infringement intended. Please consider the environment before printing.

Letter from the Secretary-General

Esteemed Participants,

I welcome you all to the 13th session of European Union Simulation in Ankara and to the European Parliament as one of its very well-known committees. The European Parliament is the most essential center for Europe's democracy. Therefore, being a part of it in this conference will not only broaden the perspective of each participant but it will also be able to teach everyone many new ideas about democracy.

What the parliamentarians of these sessions must achieve are solutions to some of the greatest challenges of our time: mobility of the people and asylum seeking. European Parliament has a very diversified structure and it includes many political views and ideologies within it and in order to find effective solutions to the problems that the Parliament is currently dealing with, then it is obligatory for parties and groups to find a common ground.

To find solutions to many issues and to create the harmony that has been sought so far among political views, this study guide you are holding in your hands will be a milestone. It has been prepared with incredible efforts and I feel myself obliged to thank Mr. Can Baran Beder for his dedication to this highly qualified piece of academic work. Also, without the assistance of Ms. Ekin Su Yilmaz this guide would have never been realized thus I am grateful for her every single contribution to this academic work.

It is my greatest honor to be welcoming you once more and I do sincerely guarantee that the Secretariat of EUROsimA 2017 will do everything at its capacity to provide you with an unprecedented experience.

Kindest Regards,

Ali Berk İdil

Secretary-General of EUROsimA 2017

Letter from the Under Secretary-General

Dear Participants,

It is my utmost honor and pleasure to welcome you all to the European Parliament committee of EurosimA 2017. The topics have been appointed in accordance with the recent migrant crisis in the European Union. The committee will discuss this issue under two topics, first one being the affects of the crisis on the Schengen Area and the second one will be the asylum system of the European Union. For the second topic, the Parliament will be evaluating a proposal that will be sent by the European Commission committee of EUROsimA 2017, which will be a genuine simulation of the “co-decision” procedure. Bearing this in mind, the section of this guide regarding the asylum system has been created collectively with my dear colleague Ekin Su Yılmaz. I would like to once again thank her for the remarkable work.

With such fresh and yet-to-be-solved topics, I wholeheartedly believe that there will be fruitful, as well as beneficial debates in European Parliament committee. I would like to thank Umut Berkay Tetik for his assistance throughout the creation phase of this guide. Last but not least, I would like to express my gratitude to the Secretary General of EUROsimA 2017 Ali Berk İdil for putting together such an impressive academic team.

I am pleased to welcome you all once again, and looking forward to copious debate sessions that will take place in the European Parliament committee of EUROsimA 2017.

Kind Regards,

Can Baran Beder

USG, European Parliament

EUROsimA 2017

beder@eurosima.org

Agenda Item I:

ADJUSTING THE SCHENGEN AGREEMENT TO THE RECENT PREDICAMENT, SYRIAN REFUGEE CRISIS

1. Historical Background

The Schengen Area that includes 26 countries today dates back to the Schengen agreement in 1985. The agreement was named after the city it was signed in Luxembourg. When the agreement was made, the Union was called the European Economic Community, which consisted of ten member states. And out of these ten members, only five were the original signatories: Belgium, France, Luxembourg, Federal Republic of Germany and the Netherlands. The actual goal of the agreement was to create common borders for signatories so that the citizens of the community could travel easily throughout the area. The desire for free movement in the area shown by these five states was further enhanced with a convention on implementing the Schengen measures, five years later in 1990. The signatories decided the substantial implementation would take place five years later than the convention, as it did on 26 March 1995. The abolition of border controls was succeeded between signatory countries, as well as Spain and Portugal, as they signed the agreement later on. The entry process does take quite some investigation, as it was seen with Italy's case. Italy also signed the agreement in 1990, although the full implementation was possible seven years later, in 1997.

a. Single European Act Treaty

The Single European Act Treaty was a vast improvement that had its roots in the 1957 Treaty of Rome's Article 8. The termination of border controls within the Union and the free movement of the citizens were considered as an essential part of succeeding the projections of the eighth president of the European Commission, Jacques Delors, regarding the internal market. The mentioned project of the Delors Commission to create a "single market" in the Union found its legal basis on the Single European Act Treaty signed in February 1986. A harmony and competition between member states were aimed with the Single European Act Treaty, by enhancing the free trade between nations. The treaty said that the physical borders, the fiscal boundaries, as well as the professional boundaries, were to be abolished between member states to strengthen the supra-national form of the European Union. The plan was to compete with the growing markets of the United States and Japan.

Removal of these barriers gave the free movement an integral role. Maintaining the free flow between these member states would surely boost the effects of the open market. The potential mergers between companies and the influx of the workforce could be achieved through the implementation of the plan to create a supra-national industry. These projections brought pace to fulfillment of the desired Schengen protocol by bringing out the convention.

b. Schengen Vs. Brussels Types of Border Control

To fully unfold the Schengen agreement, major border control types concerning the European Union should be explained. Two main systems need to be named are the Brussels and the Schengen systems. Both systems had the goal of creating a “*Europe with no frontiers*” as well as developing the external borders of the region. These systems did not only regulate the frontiers, they were managing the relations of members with the nations outside the continent, to create a synchronized and harmonized external movement management. As this points out, these systems were not limited to the renewal of the movement regulation; they represented a big change in the external relations of the member countries combined.

“Brussels” and “Schengen” cultures of border control types were seen in the actual agreements of the Union itself. During the planning phase, the nationalist approach of member states made it hard for both systems. Representatives of the members did not want to give up on border control practices of their own, as there were tremendous differences between procedures of the states. The British side was strict with their idea, which said a common border system was not possible, since the amount of mutual trust necessary was almost impossible to acquire. As a response, other members defended that exposing an inconsistency of an applying country would be for the good of them, which would secure the external border checks of every member. Both these systems emphasized the importance of a joint-system that would be consistent towards third countries, rather than a basic agreement that any two state could have.

i. Schengen Type

The signing of the Convention raised new questions, most of them being about the implementation, as well as the possible breakdowns. Debates were heated with the Dutch government’s supreme council’s claim; the agreement was supposedly against international law, especially the 1951 convention on refugees. However, the government did not give up on the agreement and the claim was not taken into consideration. The Dutch were not the only nation with second thoughts; France was likewise questioning the agreement. The French, considering the right-wing government of the time, were a bit distant to an idea of a supra-national external borders. Main concerns being security and sovereignty, the French did not step back at the end though. These two main problems put Schengen initiative into a position that required some practical solutions, and there came the preliminary conditions to eliminate these opposing ideas.

Every member ratified the Schengen Implementing Convention by 1993. The actual problem then was the implementation of these preliminary conditions. Since the change in practice was weighty, it was going to take some time until members were able to achieve the requirements. The preliminary conditions of the Schengen initia-

tive paved the way for these members to substantiate a harmonized application when it was the time. The executive committee was established, and their first job was to discuss and examine whether these conditions were being carried out finely. The matters that the committee was checking in the first place were: External border controls, issuance of visas, establishment of the Schengen Information System, compliance with drug, asylum management system and legal protection of personal data.

Among these expectations, the external border checks had an impeccable role. All the delegations have stated the importance of these checks at the executive committee meeting, since it was a sensible issue. The delegations reached a consensus on the fact that an effective external border control procedure would minimize the risk of facing a dangerous situation. Another issue that was brought up at the meeting was that these controls had to be done for the mutual interest of members, as the legitimacy of controls made by another member lean solely on trust of others.

French, bearing in mind their suspicion beforehand, were extremely concerned by the lack of progress at the border controls. Which led the Paris government to declare that they were not for the abolition of the border controls. A French minister of the time, Alain Lamassoure, stated that lifting border checks so rapidly possessed danger and the French policemen would continue to apply controls at their frontiers. All other members' thoughts were summarized by the Dutch prime minister of the time: France was obliged with what the Schengen preliminary conditions ordered to do.

In spite of the suspicions, the Schengen criteria-meeting works took a confident step forward. The issuance of visas, asylum processing, border and consular instructions and many other achievements were met. This confident step ahead made France reconsider their position regarding the Schengen. A few months later than the statements about suspicions, French decided once again to actively join the initiative.

Overall the Schengen culture of border control was questioned a lot and it was not an easy progress to bring it to life. The issue of external border control put countries into a position where they had to either choose a humongous supra-national control, or keep their own control procedures for the sake of nationalism. Another query was about the enlargement. All in all, the system was built on trust that the members had towards each other, and a new member might make current members change their minds.

The possibility of an enlargement process was very predictable considering the article 140 of the convention, which points out that any member of the EC could join the Schengen initiative. Two main phases were important when assessing an application to the regime: The formal adhesion and debate between current members concerning the candidate's situation. This second phase made the process different in practice considering the geographical locations of candidates, even though on paper every adhesion was to be treated the same. As a result, the expansion of the Schengen was

not subject to a stable procedure. The difference between the attitude towards the Nordic and the Southern European countries' actions were clearly visible.

The external relations under the roof of Schengen were also reorganized. Although the relations with third countries were not the priority with the Schengen agreement, it is a topic that needs to be mentioned. The initiative was not a political one; it was mainly concentrated on the Western Europe by its nature. The fall of communism affected the Schengen countries greatly. The members were constrained by the possible asylum applications coming from the Eastern countries. Therefore, the implementation was delayed and the external border issue was a controversy. The external relations of every member were to decide upon the whole system's asylum granting. Illegal immigrants were sent back to the countries they entered the Schengen area first, which did strengthen the trust of members. Soon after, visa exemption was granted for some Eastern European countries, proving the Schengen members' potential in cooperation with third countries. The security measures were the most concerning issue at that time. This argument was brought up due to movements of migrants. The problem was solved with bilateral agreements, but no certain measure was brought up.

Dealing with the fall of Iron Curtain was considered a success for the Schengen region, however the external relations were still not formalized. Defining the external relations was set as an objective under the Portuguese presidency in 1997. Steps were taken carefully since the members were hesitated to create a duplicate of the European Union, bearing in mind that the initiative was not organically tied to the European Union at that time. Some signatories were pushing for a more aggressive approach though, namely Germany. Aggressive and strong approach supporters were claiming that the initiative is already for the good of the Union so it wouldn't really matter if the approach were insignificant. Another issue they stressed was that almost every member of the initiative was member of the Union. The executive committee however, decided upon the "subordinate" (how the strong approach supporters referred to it) plan. No strong change was made, as the European Union was to determine the external relations with details. The candidate countries were invited to the Executive Committee meetings at that time, with no formal contact happening until the adhesion of the agreement.

The growth of Schengen was a sign of its success. Most of the members in the Union showed a great interest in the system. It was considered as a great step towards the European project that members of the Union wanted to accomplish. The agreement started its way with five initial countries, by the end of 1990's though, number of members skyrocketed to fifteen. The raise of the number led to a change in the internal dynamics of the Schengen. Officials of the members from Home Affairs and Foreign Affairs made its daily management. Between the responsible ministers from

Interior, there was a clear shift. Although with the number of participants rising, the shifts were not happening as smoothly as it used to. Responsible members started to act unwillingly about handing over the responsibility. The clearest case about this issue was seen under French duty. The French minister of European affairs of that time stated that they would be handing over the files to the Schengen depository late. The reason of the delay was supposedly the change in the system's dynamics. The unwillingness of the ministers did not affect the working groups though. The working group members kept on working with putting the national-roots aside in order to create the safe and secure supra-national area they hoped for.

The most discussed topic of the time was migration and asylum. The British official Jack Straw stated this by saying: "Whenever two or three Interior Ministers are gathered together, they tend to talk about nothing else than asylum and migration."¹The goal of the ministers at Schengen was definitely further securing the area as the regime was growing and the internal borders were abolished. This issue raised the interest of the European Commission in the initiative. A Commission representative was able to attend a meeting after long discussions because the members were frustrated with the Commission being involved in an intergovernmental structure that they have built. Nonetheless, attendance of the Commission granted the Schengen initiative a legitimate ground in the eyes of the European Union.

ii. Brussels Type

After the signing of the Single European Act, the debate over "Europe without frontiers" was intensified. On 1989 two draft conventions were sent to an Ad Hoc Group by the French EC presidency. These two conventions were about border crossing and asylum in particular. Members accepted these texts without too much debate considering the lack of progress with the free movement issue. In the following months, the different groups were seen debating the free movement. One of them supporting the free movement totally, other one (led by the United Kingdom) opted for a different approach. The second group was claiming that the Single European Act Treaty did not obligate the abolishment of internal border controls for non-EC member country citizens. They stated that the border controls done by officials of the country is necessary since only they could carry it out accordingly. Another difference was with the single-market creation idea. This block of nations believed that a supra national formation was not necessary for a single-market. It could be achieved through simple bilateral co-operation.

Nevertheless, a final text, "Border Convention" agreed upon in 1991. A systematic implementation of it though, did not seem easy, if not impossible. The operational phase failed a lot earlier than expected, reason being the Gibraltar controversy be-

¹ (48. Testimony at UK House of Lords Select Committee on the European Communities, "Prospects for the Tampere Special European Council" (House of Lords 1999).

tween the United Kingdom and Spain. This stall caused the European Commission to take a step forward and set 1992 as the deadline for the lifting of border controls. The Commission also took an aggressive stance against the European Council because they were rather slow with encouraging members to implement the single market. The loud reaction was not only directed to the Council. Delegations were also accused by being unwilling towards reaching the goal. The British delegation was given a public warning regarding the border control abolishment. The Commission stated the border controls must be lifted, and that the lifting was obligatory. However, the United Kingdom insisted on their approach and again stressed that the border controls were necessary in order to combat terrorism and drug smuggling.

After all these discussions and opposing views, the “Bangemann Wave” started to apply. This let the EC nationals pass through the United Kingdom border without any detailed check. Other delegations were not satisfied with this application and expressed their thought of letting the United Kingdom do as they wish, since a temporary solution could not be trusted. The opposing nations, led by the United Kingdom were Ireland, Denmark and Greece. Denmark accepted to be a part of the applying group if the formation of European Information System (EIS) and ratification of the Dublin Convention were completed. Greece also adapted a much relent position later on.

Although Britain was left alone in opposition, the working group of the convention was not functioning. Main reason behind the freeze was the turmoil of Gibraltar again.² The European Commission was still pushing members to agree upon a text and realize free movement in the region, although no effort was enough to overcome the problems blocking the negotiation phase. The Parliament had the toughest stance and blamed the Commission about this lack of progress, even brought up the case to the Court of Justice.³ Commission proposed a few directives, which were not adopted because of the consensus was not reached at the Council, however these proposals did calm things down between itself and the Parliament. No common rule was reached at the end and the dream of “Europe without frontiers” was still left as a dream with the Brussels approach.

c. Maastricht And Amsterdam Treaties

The Single European Act gave the European Union full power in order to create the desired internal market, as well as the free movement area. The Brussels type of border culture was also derived from this desire. This change in Europe’s framework was to be discussed by the members. Therefore, German and the French sided together and called the EC members to hold a conference about this transformation that was

² “Progress report from Presidency to Council,” 8097/1/95, June 16, 1995.

³ “Case C-445/93, European Parliament v European Commission,” Official Journal C 1/24 (1994).

going to happen. These two nations brought up the idea of a political union beside the monetary union. Many opposed these ideas. Of course, the British did not want to totally lift the border controls, whereas the community supporters found the idea far from reaching the European goal that they have hoped for. With all those different stances towards the “communitarization” (*Gemeinschaftsmethode*), a draft was submitted under the Luxembourg presidency, concerning the Home Affairs. This proposal was the first step in the pillar system.

The Maastricht Treaty founded the name “European Union”. The treaty was an outcome of the “fall of the Iron Curtain” and reunification of Germany. Alongside these external effects, the supplementation of the Single European Act was the main internal reason of the Treaty. Member states wanted to enhance the intended supra-national structure. The activity mentioned in the paragraph above, led by the Franco-German delegations stressed the need of such an agreement. Maastricht Treaty pointed out three main “pillars” for the European Union in order to divide the focused areas. These three pillars were: European Communities, Common Foreign and Security Policy and Police and Judicial Co-operation in Criminal Matters. The third pillar was named as “Justice and Home Affairs” in the Maastricht Treaty and it was the pillar where free movement was discussed under.

The Justice and Home Affairs Council (JHA) was to work in order to guarantee the fundamental rights of the citizens, assuring the free movement within the area and providing citizens the highest possible security measures. These subject matters also bring up the issue of asylum and migration in front of the JHA Council.

The importance of the Maastricht Treaty on this topic was the foundation of the Justice and Home Affairs Pillar. However, the Schengen Agreement was still not an organic piece of European legislation back then, which indicates that the free movement issue covered with this pillar was not the Schengen initiative. The main matter on free movement this council focused on was what Ruben Zaiotti refers to as: “The Brussels Type of Border Culture.” Foundation of the JHA pillar was a major step forward on implementing this initiative, however it was not as effective as the Schengen type would be. The member states formed a group called the “Reflection Group” with the aim of examining the JHA works. At the group meeting in 1994, delegations came to a conclusion, stating that the JHA was not able to deal with the situation and that there was no potential of it becoming capable either. At this point, Brussels way of border control failed alongside high hopes created with the Maastricht Treaty.

With the failure in Brussels way, eyes were on the Schengen initiative, which still was an independent project. Maastricht Treaty’s failure in organizing the Home Affairs issue, Amsterdam Treaty was expected to regulate the free movement and abolition of internal border controls. With the Amsterdam Treaty, Schengen Agreement found a place in the European Union law. With the Treaty, internal border controls were abol-

ished. United Kingdom, Ireland and Denmark were not included in this phase. The enlargement went on and the Schengen area included more nations as an organic European Union implementation. The Amsterdam Treaty was signed in 1997, and was in effect in 1999.

The Amsterdam Treaty ceased Justice and Home Affairs Pillar, renaming it as the “Police and Judicial Co-operation in Criminal Matters”. With this update, the application of Schengen rules was an issue concerning the first pillar, European Community.

d. Implementation of The Schengen Agreement

The Schengen Agreement signatories settled on the abolition of border controls. Five signatory states did abolish the border controls. However, the security measures were still ongoing, lengthening the border crossing time between the states. More decisions had to be made concerning the external border control, the visa regulation, the database and so on. The Schengen agreement was an independent agreement, which the European Union could not modify directly.

The concerned lack of regulations led the member nations to supplement the agreement with a convention. The convention was to be named the “Schengen Implementing Convention,” and it aimed to fulfill the implementation of the Schengen system in the region. This convention was signed on 1990 by the Schengen signatories, with the expectation of a system that would be fully operating in 1995. However, mainly caused by the controversy on Gibraltar between the United Kingdom and Spain, the creation of internal market failed to succeed; also, France kept a distant stance towards the idea, as the nation was concerned about the soft drug policy of the Netherlands. All in all, until then every member state of the Union except for Ireland and the United Kingdom, was associated with the Schengen agreement. As mentioned before, the agreement had no place in the legislation of the European Union; this put the deal into a confusing state, as almost every member nation, and only member countries of the EU were tied to it.

The confusion created by the legal status of the agreement was solved in 1999 with the Amsterdam Treaty. The Schengen Agreement went through a lengthy process to be a part of the European Union’s legislation via a treaty. Now the turmoil was dealt with, but there still were problems. The Schengen Agreement did not include the core regulations the full implementation demanded, so a convention followed it. With agreement’s entry into legislation, only the agreement would be binding, not the adjustments made to the convention. This situation was to raise the first dispute about the protocol that would be solved with changes in 2013.

2. Implementation Phase

With the integration of the agreement to the European Union legislation, the full-implementation was possible in the region. There have been disputes and problems, although the complicated status was solved and the rules started to apply. Since 2005, the European Union organs are making the changes. New treaties changed the applications and the requirements, although the main idea is stable up until today.

The members of the Schengen agreement were able to implement the agreement by 1995, as the innovations foreseen with the agreement required quite a lot of preliminary phase works. As mentioned, the agreement's entry into force under European Union legislation was in 1999, with the Amsterdam Treaty.

Following many enlargement procedures with different countries, there are now 26 member states of the Schengen Agreement. This means that a EU or non-EU citizen can travel throughout the Schengen area without facing any border controls, as well as going through a harmonized control when entering the Schengen area from a non-Schengen country. Police controls are carried out only when there is a suspicion regarding a crime or a threat to security. These Schengen states take responsibility for other members in the region with the controls done while entering the area, as well as issuing visas. The external border controls as well as the Schengen Information System and the Visa Information System ensure the security within the area. Schengen rules are also applied to every type of transportation: Land, sea or air. These systems are also monitored and member states go through detailed checks regarding the accuracy of implementation.

The security matter is one of the most important issues at hand. Member states rely on each other at issuing visas to non-EU citizens. Information sharing is done with conformity between member states to tackle any cross-border organized crime. Police cooperation was successfully implemented. Now, police forces are able to carry out cross border surveillances when necessary and mutual police centers were formed on the borders in order to enhance this cooperation. However, the treatment states that when under threat, any member can re-introduce internal border control.

Schengen Information System (SIS) and Visa Information System are two fundamental systems in providing security with cooperation. The Schengen Information System allows authorities of the member states to inspect people in the area. This is an essential information tool bearing in mind the internal border controls are abolished. Members can identify any person who is not allowed to be in the region for any reason. This practice is a real example of cooperation that takes place between nations. Anyone can access the Schengen Information System and examine any mistake in their personal data. The Visa Information System on the other hand, is a system that connects the consulates of member states that are outside of the area. The in-

formation on the VIS can be seen by other states to verify the visas issued and detect any fictitious visa holders. The visa information is also used by authorities at external borders to confirm the validation of the visa at entry.

Absence of internal border establishes a great area with external borders. The members of this supra-national body have to operate in harmony for establishing the security within the area. An efficient border control is necessary by nations to keep the Schengen area alive and secure. In total, the Schengen area is encircled by 42 673 km of sea borders and 7 721 km of land borders. The control at these borders is safe and adequate, however they should not be impossible to cross for non-EU members, especially for the ones who are visiting for work purposes or seeking refuge. Therefore, visas are issued following same rules by every member and any reaction to an asylum application is treated the same. All in all, a member state letting in a person into the country means they are allowing this person to travel and enter other nations in the Schengen area. Full cooperation is the most important aspect when it comes to establishing a secure zone as it can be seen through these implementations.

a. French – Italian Disagreement Over Schengen

The Schengen regime was tested in 2011 as the migrants fled from the “Jasmine Revolution” in North Africa. Refugees fled to Southern Europe and then continued their journey towards the north. This crisis was referred to as the “beginning of the end” for the Schengen regime. The Italian Island of Lampedusa was the ultimate arrival point for to-be refugees from North Africa. With the numbers rising after the revolutions in Tunisia and Libya, the Italian government decided to send back the Tunisian citizens and made a bilateral agreement with the new government of Tunisia on this matter. As a part of the agreement, Italy issued a six-month residence permit for the ones who have arrived in the Italian soil before the agreement. The problem started following these residence permits, which granted the right of free travel within the EU for these people.

Considering the language and former colonial issues, France was the best option for many of the Tunisians, and soon they started to move there. The French government, concerned with the implementation of, announced that they would not accept any refugees coming in from Italy. This was clearly a reintroduction of internal borders, although French officials stated that the agreements did give the chance of this application. On the other hand, Rome expressed that this situation did not risk the public order, and the tension elevated as the foreign minister emphasized that they would rather turn the page on free movement if France insisted on these measures.

The turmoil also affected other Schengen members like Germany as they have stated that these residence permits were against the Schengen spirit. The Commission was involved in the situation as the belief in the system was at risk. European

Commission considered this as an opportunity rather than a crisis situation. They believed that these meetings between the French and Italian authorities symbolized the spirit of cooperation that is essential in the Schengen idea. These meetings were seen as a step in the right direction, and the Schengen was not going to fail because of this crisis.

French – Italian disagreement on this matter forced the European Union to further enhance the migratory issues. Home Affairs Commissioner Cecilia Malmström stated: *“we should not leave it only up to the member states at our external borders to deal with extraordinary migratory situations”*⁴ as she admitted that there were some weak points of Schengen. By June, all the actors of this crisis had reached a common understanding of the Schengen Implementation, and this specific crisis was over. However, modifications made to migratory matters were criticized as they were brought in a rush in order to solve an individual crisis. The Commission has refused these criticisms by stating that these solutions were proposed before the crisis.

3. EU at a Crossroad: Migration Crisis in Schengen

The recent crisis in the area put the Schengen area into risk as the internal border controls were continued. The wars in the Middle East –specifically the Syrian Civil War- were prominent reasons for the asylum seeking in Europe. The number of asylum applications in Europe in 2015, was more than two times of the amount in 2014. As far as the regional wars concerned, the top three nationalities of asylum-seekers in Europe were Syrian, Afghan and Iraqi. Distribution of these asylum-seekers was a problem, as it led the Council to take measures to relocate more than one hundred thousand refugees from Greece and Italy.⁵ These relocations though were not carried out as instructed by the Council.

The arrival of these asylum-seekers was not controlled or scheduled by the European Union, which led these displaced persons to arrive at the shores of the EU with unseaworthy small boats. An orderly way of travel was not foreseen in the Common European Asylum System. Following their arrival in the Schengen zone, these asylum-seekers were not able to further move promptly and seek asylum in the area, the reason being the lack-of-documentation in the countries they have arrived firstly. As they did not have a chance to access the countries with proper asylum-management systems, the crisis broke out. The route of asylum seekers was regulated on an ad-hoc

⁴ “A well functioning Schengen,” Commissioner Cecilia Malmström Blog, May 5, 2011; available at <http://blogs.ec.europa.eu/malmstrom/a-well-functioning-schengen/>; “Ue: limiti a Schengen in casi eccezionali, ma si decide solo a livello europeo,” La Repubblica, May 4, 2011.

⁵ Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L 239, 15.9.2015 and Council (2015), Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24.9.2015.

basis and the “Balkan Route” was formed until it was shut down in 2016.

This urgently formed “Balkan Route” has revealed the incomplete nature of the Schengen zone, as the asylum-seekers should have been able to buy cheap flights in the Schengen zone. This was not the case with refugees arriving in Greece. Asylum seekers were not granted the right of free travel in the Schengen area, as the airlines were reluctant to carry people without identity checks.⁶ The Greek officials reacted to the situation by issuing a certificate of registration for asylum seekers. These certificates were given to let refugees follow the Balkan route. However, they were sufficient for catching a flight to their final destination, which was a way cheaper choice compared to the Balkan route travel. This caused shut down of the Balkan route later on.⁷

The situation unveiled the state of Common European Asylum System in the Schengen area. The system was rather seen ineffective, as the member states were not reacting accordingly to it. The members preferred the reintroduction of the internal border rather than the common system.

a. Syrian Refugee Crisis

Syrian nationals made most of the asylum applications during this time, which makes it necessary to mention the specific case of Syria. Syrian Civil War dates back to 2011 as the civil uprisings escalated against the government. Soon after the uprisings, the Free Syrian Army was formed, and the Syrian Civil War broke out. Many belligerents in the region were included in the war in following years, resulting in almost total destruction of the country. The United Nations reacted by submitting resolutions although they were vetoed, as the consensus among permanent members was not reached.

The destruction in the country threatened lives of many and forced them to flee. As of 2016, the United Nations stated that the number of displaced Syrians was 13.5 million and that these people required humanitarian aid. Almost 5 million of these displaced persons are registered refugees in the neighboring countries.⁸ Some of these registered refugees alongside asylum-seekers continued their journey towards Europe, in search of a better and safer life. The vast amount of arrivals to the European soil was unexpected, and therefore Europe failed to succeed in the implementation of the Common European Asylum System.

⁶ Peers, S. (2015), “The Refugee Crisis: What should the EU do next?” *EU Law Analysis*, 08.09.2015, at : <http://eulawanalysis.blogspot.be/2015/09/the-refugee-crisis-what-should-eu-do.html>.

⁷ European Commission (2015), Report from the Commission to the European Parliament and the Council on the follow-up to the Leaders’ Meeting on refugee flows along the Western Balkans Route, COM (2015) 676, Strasbourg, 15.12.2015.

⁸ (<http://data.unhcr.org/syrianrefugees/regional.php>)

b. Reintroduction of Internal Borders and The Schengen Freeze

The Schengen members re-introduced internal border controls following the migrant crisis. The first issue regarding this implementation was in 2011 between Italy and France, as explained before. However, the revised “Schengen Borders Code” is not an ad-hoc practice like the French border controls. The mentioned revision enabled the members to re-introduce abolished internal borders. Controls at internal borders were introduced as the member states have had serious concerns about the external border checks and the granted permits as seen with the case in 2011 between Italy and France. Some applications were regarded as a violation to “sincere and loyal cooperation.”⁹ Another question at hand was the identity checks at external borders as the number of terrorist attacks that have occurred in Europe rose dramatically. Reintroduction of the border controls is still ongoing in some areas as the terrorism concern is growing. This has been the ultimate reason for European institutions to seem rather oblivious to the violated free-movement principal in the Schengen area.

The European Parliament wanted to gain more power within the Schengen Evaluation Mechanism (SEM). The SEM is a mechanism to ensure the proper implementation of the Schengen agreement. Member states are given instructions as well as financial support to achieve the desired practice. The Council’s revision of the SEM eliminated the co-legislator role of the parliament regarding this mechanism. The European Parliament reacted by freezing the Justice and Home Affairs files relevant to this matter and even threatened to bring an action before the CJEU. This was the freeze of Schengen, as the system locked itself. This Schengen Freeze “revealed a pre-Lisbon mindset among member states in the Council, as did the Council’s legislative amendments that significantly watered down the ‘Union-focused’ nature of the Schengen Governance Package”¹⁰ This action of the Parliament has partially provided the institution with the power that it has demanded.¹¹

c. Temporary Solutions

- ★ Emergency Support to Member Countries: Some of the arrival countries within the European Union required financial aid in order to achieve the reception standards and to provide required humanitarian aid to the refugees. These funds can be used to provide essential necessities such as shelter, food etc. The aim is to extend the response capability of countries in providing com-

⁹ S.Carrera, E.Guild, M.Merlino and J.Parkin (2011), “A Race against Solidarity: The Schengen Regime and the Franco-Italian Affair”, CEPS paper in Liberty and Security in Europe, April 2011, p. 18.

¹⁰ Carrera, S., Hernanz, N. and Parkin, J. (2013), “The ‘Lisbonisation’ of the European Parliament: Assessing progress, shortcomings and challenges for democratic accountability in the area of freedom, security and justice.” *CEPS Paper in Liberty and Security in Europe*, No. 58, September 2013, p. 14.

¹¹ For further information on this matter: European Parliament, the Council and the Commission (2013), Statement attached to Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295/27, 6.11.2013.

pulsory aid to asylum-seekers. The first emergency support was granted to Greece as the Commission announced that 83 million euros worth of funding was made in April 2016.

- ★ **Assisting Transit Countries:** The European Union realized that the reason for Europe being the most wanted destination for these displaced persons was the facilities. Therefore, they have taken a step to reduce the number of refugees arriving in the area by funding the transit countries and helping them to provide these essential necessities. The biggest help under this goal was made to Turkey as the Union committed to funding up to 3 billion euros for the refugee facilities. Another assistance project was carried out with the case of Serbia and Macedonia as these two countries had an impeccable role in the Balkan Route.
- ★ **Humanitarian Aid Provided for Major Crises:** The support by the European Union is not limited to one geographical area. The European Union provides humanitarian aid to the originating countries of the refugees to maintain safe, yet capable areas for displaced persons within their countries. The assistance for internally displaced persons had the biggest portion of funding in 2015 by the European Union. The amount of financing was around one billion euros. These funding were not made directly to receiving countries by the European Union but through humanitarian partner institutions such as the United Nations Refugee Agency. The Union further assured to assist Syrian people in Syria by funding more than billion euros in addition to the previous amount.
- ★ **European Union Civil Protection Mechanism:** This mechanism is monitored and coordinated by the European Commission. The aim is to provide material support to the welcoming countries. In order to receive this assistance, the affected country should apply, and voluntary contributions by members would follow this request. The institution, to deal with crisis situations like the one the Union has experienced recently, put this mechanism forth.

The European Union has been supporting welcoming countries as well as the troubled countries. These funds are given to provide acceptable conditions everywhere for the ones in need. However, these aids are done on an ad-hoc basis most of the time. Which makes it seem unstable and harder to trust for members and affected countries.

4. Unknown Future: Possibility of a Crisis Proof Schengen

The Schengen Agreement has gone through many crises and disagreements between members although it is still up to date and the return to the ordinary applica-

tion is surely wanted by every member country. The European Union institutions have long been stating that the internal border controls should have been the last resort although many of these frontiers are subject to temporary checks. From the members' perspective, the Schengen is still alive. There were some weaknesses, and this is a chance to reform the system with experience. The concerns regarding the Schengen system are rising day by day, though; therefore, the European Union has to take measures to make it possible for members to implicate the agreement again. The Schengen has been tested before these crises nevertheless; this could be the first chance for nations to prove the loyalty to the European Union to the world clearly.

Schengen has shown itself to be a major part of the European idea that the contributors wanted to achieve. Abolishment of internal borders in such a big supra national body is essential and yet, impressive. The free-movement of citizens in the Union has been a primary goal, whereas free movement of third-country nationals in the Schengen zone should also be ensured. The measures that are to be taken regarding illegal entries, as well as the security standards at the external borders, should also be clarified.

The trust between member states, which once has been the firm root of the initiative, is somewhat at risk in the wake of the refugee crisis. Members should obtain each other's trust again which makes it obligatory to meet the external border check requirements. Disagreements regarding the Schengen rules should be avoided by following orders on issuing permits for the refugees. The desired cooperation can only be reached as long as every member follows the same criteria. Therefore, these measures and the requirements should further be clarified to prevent any other possible turmoil.

5. Conclusion

The Schengen regime has been around for almost 32 years, and it has been in effect for 22 years now. It has been questioned a lot and gave answers to all those questions up until today. It was seen as a proof of cooperation between European Nations as it was not forced by an organization, but it was an independent initiative when the first agreement was settled upon. The European Union integrated it into its legislation and further enhanced it. However, with the introduction of the internal borders, once a dream-come-true, the *acquis* is now in jeopardy. It is unknown if the European Union can find a solution that will satisfy every member. However, most certainly, Europe does not want to give up on Schengen.

6. Further Readings

Ruben Zaiotti: Cultures of border control: Schengen and the evolution of European frontiers

European Parliament, Study for the LIBE Committee: Internal border controls in the Schengen area: is Schengen crisis-proof?

7. References

Zaiotti, Ruben. Cultures of border control: Schengen and the evolution of European frontiers. Chicago: University of Chicago Press, 2011.

Zaiotti, Ruben. The Italo-French Row over Schengen, Critical Junctures, and the Future of Europe's Border Regime, *Journal of Borderlands Studies*, 28:3, 337-354, DOI: 10.1080/08865655.2013.862912

Guild, Elspeth, Sergio Carrera, Lina Vosyliūtė, Kees Groenendijk, Evelien Brouwer, Didier Bigo, Julien Jeandesboz, and Médéric Martin-Mazé. Internal border controls in the Schengen area: is Schengen crisis-proof? Brussels: European Union, 2016.

The Schengen acquis: integrated into the European Union. Luxembourg: Office for Official Publications of the European Communities, 2001.

El-Agraa, A. M. The European Union: Economics and Policies. Cambridge: Cambridge University Press, 2014.

Ferraro, Francesca. Schengen governance after the Lisbon Treaty. Library of the European Parliament, 2013.

"Refugee crisis in Europe - European Civil Protection and Humanitarian Aid Operations - European Commission." European Civil Protection and Humanitarian Aid Operations. Accessed March 24, 2017. http://ec.europa.eu/echo/refugee-crisis_en.

"The Syrian refugee crisis and its repercussions for the EU." Syrian Refugees: A snapshot of the crisis - in the middle east and europe. Accessed March 24, 2017. <http://syrianrefugees.eu/>.

United Nations High Commissioner for Refugees (UNHCR). "UNHCR Syria Regional Refugee Response." UNHCR Inter-agency Information Sharing Portal. Accessed March 24, 2017. <http://data.unhcr.org/syrianrefugees/regional.php>.

Trevelyan, Laura. "China and Russia veto UN resolution condemning Syria." BBC News. October 05, 2011. Accessed March 24, 2017. <http://www.bbc.com/news/world-middle-east-15177114>.

Anonymous. "Temporary Reintroduction of Border Control." Migration and Home Affairs - European Commission. December 06, 2016. Accessed March 24, 2017. https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control_en.

European Council. Council of the European Union. "Schengen: Council recommends prolongation of internal border controls." News release, November 11, 2016. Accessed March 25, 2017. <http://www.consilium.europa.eu/en/press/press-releases/2016/11/11-prolongation-internal-border-controls/>.

Anonymous. "Schengen evaluation and monitoring." Migration and Home Affairs - European Commission. December 06, 2016. Accessed March 24, 2017. https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/schengen-evaluation_en.

Agenda Item II:

REFUGEE CRISIS: RESHAPING EUROPE'S IMMIGRATION POLICIES

1. Structure

a. European Commission

The European Commission is the executive body of the European Union, established in the year 1958. As the politically independent body of the EU, the Commission upholds the interests of the EU as a whole, while also representing the union to the outside world with the exception of the common foreign and security policy. Centred in Brussels, Belgium; the Commission has Representations in all EU Member States and 139 Delegations across the globe.¹²

The European Commission is responsible for drawing up proposals for new European legislation, and implementing the decisions of the European Parliament and the Council of the EU. Specifically, the European Commission has 4 main roles: to **propose legislation** which is then adopted by the co-legislators, the European Parliament and the Council of Ministers; to **manage and implement EU policies and the budget**; to **enforce European law** (jointly with the Court of Justice); and to **represent the Union** around the world.

The term “Commission” has 2 implications. As for its composition, The European Commission consists of a team of 28 Commissioners (one from each EU country) – led by the Commission President, who decides who is responsible for which policy area. Hence, “Commission” firstly refers to the ‘Members of the Commission’ appointed by the Member States and the Parliament to run the institution and take its decisions. The College of Commissioners includes the President of the Commission, his seven Vice-Presidents, including the First Vice-President, and the High-Representative of the Union for Foreign Policy and Security Policy and 20 Commissioners in charge of portfolios¹³.

Every 5 years, a new team of 28 Commissioners is appointed within 6 months of the elections to the European Parliament. When appointing the President, the governments of Member States propose a name as the candidate for the President in the European Council. After the proposal, if the candidate gets the majority of votes in an election within European Parliament; the President-elect selects the 27 other members of the Commission, on the basis of the suggestions made by Member States. The final list of Commissioners-designate has then to be agreed between the President-elect and the Council. The Commission as a whole needs the Parliament’s consent. Prior to this, Commissioners-designate are assessed by the European Parliament committees. The current Commission’s term of office runs until 31 October 2019. Its President is Jean-Claude Juncker¹.

¹² “Organisational structure”, *European Commission*, November 23, 2016, http://ec.europa.eu/about/index_en.htm.

¹³ “European Commission - European Union Website, The Official EU Website - European Commission”, *European Commission*, 2017, https://europa.eu/european-union/about-eu/institutions-bodies/european-commission_en.

The second implication of the term “Commission” refers to the institution itself and the staff as whole. The day-to-day running of Commission business is performed by its staff (lawyers, economists, etc.), organised into departments known as Directorates-General (DGs), each responsible for a specific policy area.

The Commissioners meet as a College once a week, usually on Wednesday, in Brussels. The College agendas are determined by the President. In terms of the Committee’s strategy, Commissioners appointed to different policy areas by the President decide on strategic objectives and produce an annual work programme.

In the European Commission, every commissioner is equal in the decision-making process and equally accountable for these decisions. Decisions are taken based on collective responsibility, generally by consensus and if not; by simple majority where every Commissioner has one vote. After decisions are taken, they are directed to Directorate-General in the form of draft legislative proposals.

The current Commission’s political guidelines drafted by President Juncker are based on 10 priorities constituting the main political agenda of the Commission. These 10 priorities are: Boosting Jobs, Growth and Investment; A Connected Digital Single Market; Climate Action and Energy; A deeper and fairer Internal Market; A deeper and fairer Economic and Monetary Union; A reasonable and balanced Free Trade Agreement with the US; An area of Justice and Fundamental Rights; A new policy on Migration; Bringing together the tools of Europe’s external action; and Democratic Change within EU.

b. European Parliament

The European Parliament is the parliamentary institution of the European Union, founded in 1952. It is the European Union’s law making body and the European Union citizens elects its members every five years. The European Parliament has three main locations (Strasbourg, Brussels and Luxembourg) and three main roles: Legislative, budgetary and supervisory.

As of July 2014, there are 751 Members representing eight political parties although 17 of the members are non-attached (non-inscrits). Elections take place every five years, and the numbers of the members change accordingly. The population of the member states determines the number of seats per country. These members in the parliament elect the president of the parliament, who is expected to serve for two-and-a-half years. During his term, the president represents the parliament. The Parliament also elects the head of the European Commission.

The Lisbon Treaty extended the European Parliament’s legislative role and brought it to equal terms with the council. Now as a true lawmaker, parliament has a bigger role in legislative procedures. These procedures follow a path, which assures the necessity and accuracy of the law proposals.

The most common law making process is the ordinary legislative procedure, which involves other institutions as well. In order to start an ordinary legislative procedure; the commission must submit a proposal on its initiative or at the demand of the citizens, which makes it an exemplary form of participatory democracy. Other European institutions can request a proposal as well. There is no specific requirement regarding the source of the demand, although the final decision on whether to submit a proposal or not has to be made by the commission. If the commission turns down a demand concerning a proposal made by the parliament, it has to give an explanation for the refusal.

The parliament can have two reading sessions for a single proposal. When the first reading comes to an end, the parliament decides on its position about the proposal. It can accept it with no changes, or it can submit amendments to it. The proposal is then sent to the council, where the parliament's position will either be accepted or changed. If both institutions agree on the same position, the legislation is then adopted. If council does not agree with the parliament's first reading position, the proposal is sent back to the parliament, where the second reading will take place. If the parliament rejects the position of the council, the procedure is concluded, and the proposal is dropped. If the position is approved by the parliament, then the act is adopted.

Another area where parliament is considered powerful is the budgetary procedure. Again, the commission prepares the final estimates taking other institutions' ideas in consideration. The draft budget is then sent to the council and the parliament. The council announces its position on the draft budget, while the parliament divides into committees and discusses the draft budget. Each committee delivers their opinion to the Budgets Committee, which determines the position of the EP. The positions of both the council and the parliament lead to a conciliation committee, where a joint text is written and voted on in the parliament.

c. Roles of The European Commission and The European Parliament Within the Legislative Structure (Ordinary Legislative Procedure)

The Lisbon Treaty announced the ordinary legislative procedure, replacing the co-decision system founded by the Amsterdam Treaty. Until 2009, the co-decision system was in effect, and some 900 legislative acts were made following this procedure. As the pillars matter, this procedure was taken into consideration under the first pillar that was set forth by the Maastricht Treaty firstly. Amsterdam and Nice Treaties revised the co-decision system and finally, Lisbon agreement changed the main regulation itself, renaming it as the "Ordinary Legislative Procedure." The Lisbon Treaty, Treaty on the Functioning of the European Union (TFEU), introduced the Ordinary Legislative Procedure in Article 294. The Article regulates the whole procedure by explaining the first reading, second reading, third reading, conciliation and special provisions.

“1. Where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.”¹⁴

The European Commission prepares and submits a proposal for a legislative act to the European Parliament and the Council. The explanation of the procedure will be followed by the criticism of Wim Voermans in this guide.

i. First Reading

“3. The European Parliament shall adopt its position at first reading and communicate it to the Council.

4. If the Council approves the European Parliament’s position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.

5. If the Council does not approve the European Parliament’s position, it shall adopt its position at first reading and communicate it to the European Parliament.

6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.”¹⁵

Following the submission of the proposal, European Parliament and the Council start their negotiations to determine a position in favour or against. A first reading agreement is adopted by the European Parliament, which is sent to the Council for their approval. If the Council approves the agreement, the proposal would be adopted. In some cases, Council would disagree with the European Union and adopt its position. This would mean that the act is not adopted and negotiations will continue. Another thing that needs to be mentioned about the first reading process is that there is no time limit for two institutions to adopt their positions.¹⁶

The Ordinary Legislative Procedure pronounces the European Parliament and the Council as the co-legislators. The Commission is not a weak actor in this procedure, though. If the Council doesn’t react, the Commission has the right to alter or withdraw their proposal. The Commission also is in the advisory position regarding any of its proposals. These powers of three institutions were agreed upon a Joint Declaration. The Commission sends the legislative presentations simultaneously to the EP and the Council.

¹⁴ “Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences . Article 294” EUR-Lex - 12012E/TXT - EN - EUR-Lex. Accessed March 13, 2017. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT>.

¹⁵ Ibid.

¹⁶ “JOINT DECLARATION ON PRACTICAL ARRANGEMENTS FOR THE CODECISION PROCEDURE (ARTICLE 251 OF THE EC TREATY)” <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:145:0005:0009:EN:PDF>

ii. Second Reading

“7. If, within three months of such communication, the European Parliament:

(a) approves the Council’s position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;

(b) rejects, by a majority of its component members, the Council’s position at first reading, the proposed act shall be deemed not to have been adopted;

(c) proposes, by a majority of its component members, amendments to the Council’s position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

8. If, within three months of receiving the European Parliament’s amendments, the Council, acting by a qualified majority:

(a) approves all those amendments, the act in question shall be deemed to have been adopted;

(b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

9. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.”¹⁷

Once the Council has announced their stance with the position of the Parliament, the clock starts ticking for the three-month period. This time can be extended for an extra month on request of any of these institutions. A committee is then formed in the parliament to assess the position of the council and submit a recommendation to the Parliament. The voting regarding the recommendation takes place in the Parliament. If the committee of the parliament advises accepting the position of the Council, and if this recommendation is approved with a simple majority in the Parliament plenary, then the act is adopted accordingly to the Council’s position. If the stance of the council is rejected by the Parliament, then the legislative act is considered not adopted, and the negotiations are over. In some cases, the European Parliament may fail to act within the time limit. This would also lead to an adoption of the act with Council’s first reading reflections. The European Parliament may also add amendments to the 1st reading position of the Council. These amendments can be accepted or rejected. If the amendments are accepted at the Council, the act is adopted without any doubt, according to the amendments. The Council, however, is not obliged to accept these amendments. If an amendment proposed by the Parliament is rejected, then the Conciliation Committee is formed with representatives from both institutions.

¹⁷ “Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences . [Article 294](#)” EUR-Lex - 12012E/TXT - EN - EUR-Lex. Accessed March 13, 2017. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT>.

iii. Conciliation

“10. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.

11. The Commission shall take part in the Conciliation Committee’s proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

12. If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.”¹⁸

The primary goal of the Conciliation Committee is to agree on a joint text. This committee has six weeks to reach a consensus on the final text. European Parliament sends 28 MEPs in total for the conciliation. These representatives hold meetings to discuss the technical aspects of the proposal as well. Before the meeting of the Committee, chairs of both institutions meet to discuss key aspects of the proposal. Once the joint text is established, the committee forwards the text to the European Parliament. The third reading then takes place. If the Conciliation Committee fails to reach a joint text, then the act is considered not adopted.

iv. Third Reading

“13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.

14. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.”¹⁹

The subject taken into consideration at the third reading phase is the joint text that has been agreed on at the Conciliation Committee. As mentioned, only 28 MEPs from the European Parliament join the conciliation process. Therefore, the text needs to be approved by the simple majority in the parliament. At the third reading phase, there is no sequence regarding the adoption of the Parliament and the Council. Both institutions have six weeks to discuss and reach a final verdict about the act proposal. The final document submitted by the Conciliation Committee can either be approved

¹⁸ Ibid.

¹⁹ Ibid.

or rejected. For the proposal to become an adopted legal act, both institutions need to accept it within six weeks.

v. Reflections on The Ordinary Legislative Procedure: Legislative Procedure of The European Union After Lisbon Treaty²⁰

To criticize the legislative procedure renewal of the Lisbon Treaty, the failed constitution attempt of 2004 must be taken into consideration alongside the regulations before the Lisbon Treaty. Firstly, there were 15 legal instruments with around 50 different procedures in the pre-Lisbon era of the European Union, which raised the question; who is the legislator? The works to unify the legislator of the European Union started with the preparation works for the European Constitution, and the necessity was already pointed out in the Laeken Declaration of 2001. Even though the European Constitution failed, the need for a clear legislator was still a question. The Lisbon Treaty was to revise this confusing lot of procedures and legislative actors.

The expectations were that the Parliament would be the primary legislator of the Union, as it was seen on the Treaty on the Functioning of the European Union Article 249. However, when compared to a legislative act in a country, it is hard to say that there is a primary legislator in this procedure. All three of the institutions are free to determine their position regarding a proposal, as well as submitting amendments when bearing in mind the powers of the Council and the Parliament. Considering the freedom given to these institutions, naming a primary legislator in this context would be hard if not impossible.

2. Refugee Status Determination

a. Historical Background

Asylum has always been an escape for people exposed to mistreatment in their countries. Over the centuries there have been many reasons leading people to flee and seek refuge in another country. The reason that triggered asylum seeking was mostly religious in the ancient times. Now in the modern world, political asylum is more of a concern. One should be able to receive protection from another country when under a threat of persecution. First examples of asylum were in the ancient Greece and Rome. In the ancient Greece, religious institutions were entitled to shelter people fleeing from slavery or criminals that were to face persecution. Law did not recognize the authority of these establishments. However, the practice shows that these temples were protecting asylum seekers to an extent. In contrast, ancient Rome has implemented asylum to expand the population of the city. The refuge provided

²⁰ *For further reading especially on this matter:* Wim Voermans, "Is the European Legislator after Lisbon a real Legislature?" Legislação (Cadernos de Ciência de Legislação) N.º 50, Outubro - Dezembro 2009

was limited to slaves mistreated by their masters rather than anyone who has faced persecution in their country. In Roman Empire, law, just like the situation in Greece, did not recognize the asylum. Nonetheless, the term asylum was codified later on. The Egyptians and the Hebrews also recognized asylum in an ethical manner; the church later adopted that. Modern asylum, though, roots back to 1948 Universal Declaration of Human Rights. The declaration stated, “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” The 1951 Geneva Convention and its protocol stressed this statement in a more detailed manner.

“Numerous principles, institutions and theories of international relations developed before that time or were passed down from the Greco-Roman world and continued without interruption even throughout the period concerned, although sooner or later they came under the influence, to a greater or lesser degree, of the new state of affairs.”²¹

Hugo Grotius, a well-known jurist and a big supporter of natural law, was one of the first who referred to the issue of asylum in 1625. He approached the subject matter from the international criminal law side, stating that fugitives fleeing had to be punished on the border of the nation that they were about entering. Considering his way of thinking, anyone who has committed a crime should be punished, no matter where they are. Punishing one for the crime they committed is a duty of the whole humanity. Of course, his sight wasn’t shallow, and he also mentioned about the “those whose mind is innocent”²² stating that they are the ones who deserve the right of asylum. Extradition was the second choice for the country of destination.

The innocent asylum issue was addressed through religious beliefs in Grotius’ books. He stated that the religious persecution would be an undeserved enmity and one who suffers from it, had the right to seek asylum. Hugo Grotius mentioned the political asylum as well, using the example of King Pepin the “Hunchback.” He also said the political persecution as an undeserved enmity and gave an example of himself too; he stated that he was “undeservedly forced out of his native land”²³ and sought asylum in France.

Grotius overall expressed his thoughts on asylum rather politically. He did mention that one fleeing from persecution should be granted asylum and receive necessary protection. Granting asylum could also mean interfering with internal affairs of a nation when granted to a fugitive. This would mean another country is becoming a judge for a crime that was committed in another land. According to Grotius, no other nation could interfere with judgment of another state. However, regimes could expose barbaric actions. When those kinds of brutal actions are taken, then the government in

²¹ Anzilotti, D. (1923) Corso di diritto internazionale (Introduzione – I soggetti – Gli organi). Lezioni tenute nell’Università di Roma nell’anno scolastico 1922–1923, Roma.

²² Grotius, *De Jure Belli ac Pacis*, II.21.5.1.

²³ Grotius, *Rights of War and Peace*, Prologomena, paragraph 30 (“Nunc quod mihi indigne e patria ... ejecto ...”).

question does not have any law to interfere with. Therefore, a nation that violated the natural law would lose the authority of judging a citizen of their country. A country which used the power to govern wrongfully had to accept other nations aiding the oppressed by granting asylum.

Samuel van Pufendorf was also an international jurist, who opposed the ideas of Grotius. His main thesis against Grotius was that a nation would not have the authority to punish a country and take away their right to judge by deciding they have breached natural law. The benefits of accepting an asylum seeker should be considered according to Pufendorf. This beneficial way of approach was considered a dangerous way since it wouldn't provide the necessary security measures. States were free to turn down an asylum seeker in this concept, as there was no binding common law regulation regarding the issue of asylum.

These ideas put forward by these precious philosophers shaped the idea of asylum in the modern world, as well as the definition of "refugee." As with every case, early thoughts were what the advancements rooted on. The refugee definition (few changes were made after the original text was published) was established in the 1951 Geneva Convention that defines refugee as: "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."²⁴ Different supra-national organizations defined the word in diversity but the first and fundamental definition was this very quote, made by the United Nations itself.

Another term that needs to be explained regarding this matter is Persecution. What would be considered as persecution according to the United Nations? Any state has the right to self-determine the way of governing; therefore, the way a judgment to take place in a country, or their regulations cannot interfere. However, a mistreatment is something that the international community would not accept. This mentioned abuse though must not be insignificant. Serious harm is a fundamental element in detecting a persecution. The decision to be made on seriousness though could be variable from judge to judge. Therefore, courts have to decide on ad hoc basis if the issue is beyond the requisite threshold of seriousness.²⁵

Two other elements of the persecution are "illegitimate reasons" and "infliction or toleration by official agents." The legitimacy of reasons with harm is necessary when determining an act of persecution. A country may cause serious damage on a citizen;

²⁴ United Nations High Commissioner for Refugees. "Convention and Protocol Relating to the Status of Refugees." UNHCR. Accessed March 13, 2017. <http://www.unhcr.org/3b66c2aa10>.

²⁵ Aguilar-Solis, 168 F.3d at 570.

however, if done accordingly to the regulations, any interference would be a breach of self-determination right of that nation. The legitimacy issue again is a hard one to call; however, on an ad hoc basis, the reason behind the harm caused by the state is usually apparent and deciding on its legitimacy is quite easier than deciding if it is serious enough.

Infliction or toleration by official agents is rather an easier element to spot in this configuration of persecution compared to other two elements. If the serious harm is done for an illegitimate reason and if an official agent does it for the state, this will point out that the persecution is done by the state and the victim needs a shelter. Examining persecution element by element makes it easier for nations to decide if the person qualifies for the refugee status or not. Therefore, a person being seriously harmed by an official agent because of their ethnicity, religion, sex or social group would be an obvious example of persecution.

b. General Information

Right of asylum is a granted right to people fleeing from mistreatment in their countries, as mentioned in the Universal Declaration of Human Rights Article 14. Granting this right has its procedure in different countries. These procedures commence following an application made by the person who requests asylum. The applicant, Asylum Seeker, must state his cause; which will then be investigated to evaluate the application.

Many reasons drag people into applying for asylums such as political causes, economic causes, and displacement. The term refugee is used to define a displaced person. However, to be recognized as a refugee, one's application must go through the Refugee Status Determination system of the relevant country. Until then, they are referred to as asylum seekers. The definition of the term on legal basis was first made in the 1951 Convention in Geneva, and then further expanded in 1967.

The refugee status is granted to asylum seekers to protect them. This aim of protection inevitably allocates some rights to the refugee. Non-refoulement is the most important right that is given to the refugee. Non-refoulement is the right not to be sent back to the country of origin. This measure was taken in order to ensure the safety of the refugee, in accordance with the intention of the refugee status.

Another critical refugee right is the right of return. The indicated right is the right to go back to the country of origin when the conditions are adequate. The granted refugee status cannot prohibit one's right to return to their hometown. Although not stated clearly in a document, almost every country implements this procedure.

c. Asylum in The European Union

i. Historical Background

The historical background of asylum in the European Union leans on the European Court of Human Rights decisions. Treaty of Rome surprisingly does not contain any reliable or detailed regulation regarding this issue. The European Court of Human Rights has extracted the Article 3 of the European Convention on Human Rights as a safeguard to who flee from persecution. However, this interpretation does not lead to granting asylum. The Court refers to this article to prevent their removal. The interpretation of this article aimed to reach the Article 33 of the Refugee Convention that prohibits a forced return to the persecutory country. The European nations were distant to the idea of granting asylum up until this point. Few asylum examples were seen through the verdicts of the Court. The Soering Case can be an exemplary judgment of protection from the death penalty.²⁶

The fall of the Iron Curtain though has changed the procedure in the European Union. The asylum applications to the area skyrocketed after the fall of the Soviet Union. For this particular case, the taken precautions (mostly by the Schengen initiative members) were ad hoc based. Overall, these precautions proved that the abolishment of internal border controls is in close ties with the asylum procedure. Therefore, the Single European Act can be considered as a first step in establishing a common immigration system. It was the Amsterdam Treaty that integrated an asylum procedure into the European Union, as well as the Schengen Agreement. These implementations though brought up a new problem called asylum shopping²⁷, when an applicant travels around the free-movement area rather than staying at the nation that has granted the asylum.

Regulations were being made, although there still was no concrete system regarding asylum. The Dublin Convention further enhanced the procedure, but it was not included in the legislation of the European Union. Maastricht Treaty, by setting the third pillar was a huge expectation though it could not fulfil these expectations and was considered as a failure in the creation of the single market alongside abolition of internal borders. The Amsterdam Treaty has been the turning point for all these conventions since they were all integrated to European Union legislation. The Dublin Convention, containing the regulation for asylum, was also an independent document from the European Union, so the procedure stated in it was not the European Union's system until Amsterdam Treaty. Therefore, its ratification provided the Union with a solid asylum technique.

²⁶ For a detailed review on the case: Richard B. Lillich, *The Soering Case*, *The American Journal of International Law* Vol. 85, January 1991

²⁷ Documento Relativo All'indagine Conosci- Tiva Sullo Stato di Attuazione della Convenzione di Applicazione Dell'accordo di Schengen, *Stato di Attuazione della Convenzione di Applicazione- Zione Dell'accordo di Schengen*, Rome, 1997

The mentioned Dublin Convention regulated the state responsible for the asylum-seeker application, as well as the minimum standards required in reception centres. The Dublin Convention aimed to promote a balance in the efforts of member states at asylum process. The non-refoulement rule was once again emphasized, and the necessity of providing protection was standardized. Also, another question on hand regarding asylum, the qualification issue was coordinated with the convention. The goal was to establish same treatment as well as the same process between member states of the Schengen initiative. After the integration of these regulations, Lisbon Treaty further developed the procedure, and the Common European Asylum System reached its recent status.

ii. Recent Status

Eurodac

The EURODAC is a database where the fingerprints of asylum seekers are collected. For being present in the EURODAC database, the displaced person must apply for asylum and have the asylum seeker status. This data is for identification of the responsible country for the specific asylum seeker, under the Dublin Regulation. Also, the fingerprints of irregular border-crossers are stored in the same database. This enables the authorities not only detect a previous application by the same person, but also detect any irregular border crossing made by the applicant if there are any. This database was put into operation in 2003. All member states participate and rely on the system as well as Iceland, Norway, and Switzerland.

Common European Asylum System

Common European Asylum System was constituted after the Amsterdam Treaty in 1999 following the Schengen Agreement. The goal of this system was to form a joint approach to asylum seekers in the European Union. The necessity of this common approach was intensified after the free movement zone was established. A common system that would ensure the same approach towards applicants would provide the high standards of protection in the whole European Union. The CEAS is applied phase by phase. The first step of the system was brought to life in 1999 and was operating until 2005. After this had mentioned phase completion, the second phase studies were done, and the Commission proposed a policy plan in 2008, in order to improve the current system.

The Union has been developing the system since the completion of the first phase via directives. These guidelines adjust the application process, the examination of the application, the supplies/rights that will be provided to an asylum seeker and the appeal process. The European Union states the previous directives were vague, but now they became more precise with the recent modifications.

With the improvement on the procedure, regarding the contemporary directives, the application process will be faster and easier for the seekers. The acceleration on the proceedings will be economical in the long run, considering the time seekers spend in the reception centre. Adding to that, the decision-makers will go through a better training in order to quicken the decision-making process and cut back on the wrong decisions.

The recent updates on the directive also consider the seekers with a special need of help. These applicants will be provided the support they require throughout the course. The update further clarifies the rules about the appeal. With this, the candidates who received an adverse decision regarding their asylum application can appeal easily, and the cases will not end up in European Court of Human Rights. This will reduce the cost of appeal and lessen the number of cases the ECHR deals with.

Another important subject revised by directives was the reception centre conditions. The reception centres are where the asylum seekers stay until they receive a decision on their application. These reception centres were not made according to common rules before since there were no clear rules set. The last directives took these reception centres into account and set clear rules about these conditions.

Qualification is another matter taken into account by the mentioned directives. The first phase of the system contained imprecise regulations about the minimum standards at the qualification leg. The integration of the refugees used to differ from country to country regarding the national rules that were applied rather than the unclear regulations set by the European Union. With the new directives, the international protection the asylum process provides is more particular, as well as the access to healthcare and employment, is extended. Likewise, the benefit of the child is considered during the assessment phase, if the case requires so.

Overall, the new directives made the regulation far more precise and protection-focused compared to the first system that was applied. These updates also ensure that the treatment by any member country will be the same towards the asylum seeker and the ones who are recognized as refugees and granted the international protection by a member state. With the Schengen agreement, followed by the Amsterdam treaty, a joint system in this subject matter was essential. The first phase that lasted six years (1999-2005) was a step taken well, although it was not enough. The revised common system is still not satisfactory, as the problems will be stated, although it surely is an improvement. The directives that reviewed the system did not bring a new, revolutionary system, though it tried to heal the main problems that the first phase has faced.

Dublin Regulation

The main purport of the Dublin regulation is that “each EU Member State must be able to determine if and when it is responsible for handling an asylum claim.”

According to the Dublin Regulation, the responsibility of examining the application belongs to the Member State that is in charge of the entry of the asylum-seeker. The allocation of the responsible state follows a hierarchical order. This way, making multiple application in different countries is prevented, as well as reducing the number of asylum-seekers that are sent to numerous different states during the application process. The reception process is eased both for the asylum seeker and the member states with this new regulation that has been updated twice. First known as Dublin regulation, it became Dublin Regulation II and the one in effect at the moment is referred to as Dublin Regulation III.

Allocating a member state as responsible for an asylum seeker is surely beneficial for both parties. It accelerates the evaluation process along with the certainty of responsibility. However, the regulation has been criticized greatly since the 2015 refugee crisis.

Asylum, Migration and Integration Fund

All those previously stated measures are costly to implement. Member states are obliged to achieve the common asylum standards. Forcing every member state to cover their costs would be harsh, and in some cases unfair. The European Union, therefore, established a funding program to efficiently manage the asylum flow. The first fund was formed in 2007 concerning this very situation. This was called the “Integration Fund.” The establishment of the “Return Fund” and the “Refugee Fund” followed it a year later. These were in use until the merger in 2014. All those funds were merged and formed the Asylum, Migration and Integration Fund (AMIF).

The Union is planning to achieve the goal of implementing the common system until 2020, and that is when the fund regulation will expire. The goal has four different specific aspects stated by the European Union: “Asylum,” “Integration,” “Return” and “Solidarity.”

- ★ The asylum goal of this fund explicates the full implementation of the current common asylum system. This fund will help the member states to carry out the asylum process within the desired procedure. Any additional financial need of a member state while achieving the system standards will be covered by this fund. This aspect of the fund will ensure the European Union legislation is applied by every member state.
- ★ The integration subject is more complicated than the application process and could lead to tremendous financial support. This second aspect of the fund will support the migration bearing in mind the labour market needs and benefit the integration of the refugee, as well as keeping the labour market of the member state unblemished.
- ★ An appropriate return strategy will cost the state a considerable amount of

banknote. Therefore, this aspect ensures a humane and an effective return policy. Any extra financial need of a member state will be covered by this fund, so a standard procedure is applied in every member country, overlooking the economic issues.

- ★ The solidarity aspect refers to a full co-operation in the process. If a member state is affected severely by an asylum flow, they can rely on other members. This aspect ensures an equal contribution on the refugee subject matter.

iii. Migrant Crisis

Abstract

“When it comes to managing the refugee crisis, we have started to see solidarity. I am convinced much more solidarity is needed. But I also know that solidarity must be given voluntarily. It must come from the heart. It cannot be forced.”

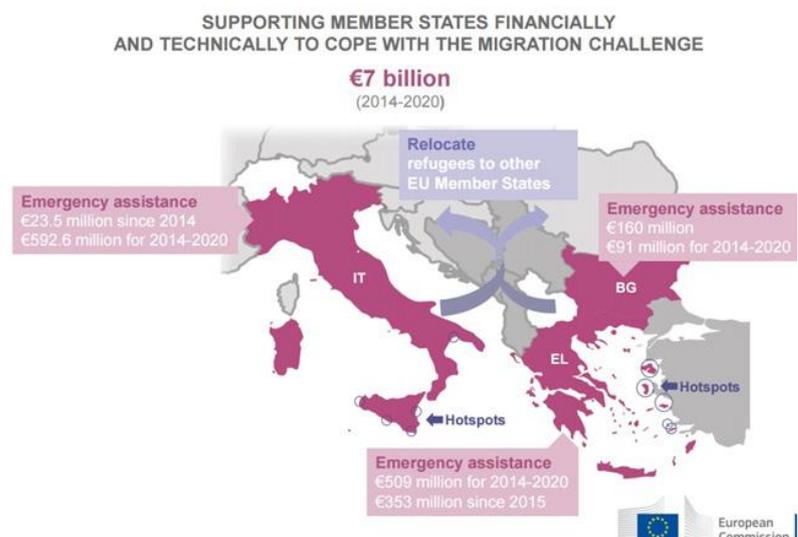
- Jean-Claude Juncker

State of the Union Address European Parliament, 14 September 2016

European Commission identifies the Refugee Crisis as the “Test of our generation.” The displacement crisis the world is facing today has left more than 65 million people to be displaced as a result of violent conflicts and natural disaster.

In the last 2 years, more than 1 million refugees have arrived to the European Union with the large majority of them fleeing from the war in Syria. The EU has taken a responsibility in dealing with the refugee crisis both in terms of an immediate humanitarian aid and with a long-term migrant policy to help integrate refugees into their society. Steps are being taken to relocate asylum seekers already in the EU, resettle people in need from neighbouring countries and return people who don't qualify for asylum. The EU is improving security at borders with a new border and coast guard, tackling people smuggling and offering safe ways for people to legally enter the EU.²⁸

At the moment, The EU and its Member States is the largest donor of the world



²⁸ “The EU and the Refugee Crisis”, *European Parliament*, 2017, <http://publications.europa.eu/webpub/com/factsheets/refugee-crisis/en/#what-is-the-eu-doing>.

with €68 billion. In 2015 and 2016, 10 billion Euros were dedicated from the EU budget in responding to the Refugee crisis of the continent. In order to support refugees in Turkey, the EU and its Member States are providing €6 billion through a dedicated facility between 2016 and 2018.²⁹

EU's efforts in that sense, are not only limited to the refugees residing in Europe. Simultaneously, the EU is not only helping assist the Member State with the highest number of refugees but also providing assistance to the refugees in Syria and in host communities such as Syria, Turkey, Lebanon, Jordan and Iraq.

To comprehend the crisis that began in 2013, the instability of the European migration policy has to be debated. As far as the external borders are concerned, the peripheral countries had the bigger portion of the effort to show to secure their borders, as well as dealing with migration. This led to an uneven shouldering of burden, the opposite of what the Dublin Convention desired. The equal effort idea was not as easy to implement in practice as the members thought it would be. Another issue, which damages the equality in the procedure, would be the Dublin principle's determination of the country responsible for the asylum application. According to this principle, the country that the asylum-seeker entered Schengen zone is the country that is responsible for assessing the application. This again puts the burden on the countries that are at the external borders. Although the aim was to prevent asylum shopping, a crisis could easily turn this procedure upside down. The inequality in the system was not visible then, as the terms did seem fair enough and in ordinary cases, the burden wouldn't be as high as it has been recently.

The first unexpectedly massive wave of migrants was seen in 2011 as a result of the Arab Spring. The number of North African asylum-seekers skyrocketed. This unexpected situation revealed the weak side of the European migration policy. Member states were frustrated about the number of asylum-seekers. Soon, the crisis began on three fronts.

- ★ The first front to be named would, of course, be the "second movement" issue. This matter was brought up when the refugees arriving in Italy stated that they wanted to go to France. This would be understandable considering the language and number of North African migrants in France although these refugees moving over to France would be a breach of the Dublin Convention. The particular issue was with the Tunisian refugees arriving at Lampedusa, Italy. Italian authorities assessed their applications, and they were granted a six-month residence permit, which would allow them to travel freely throughout the Schengen area. Authorities at their destination, the French, were hesitant. They have blocked trains coming in from some Italian towns and prevented the entry of refugees. This raised the tension between the French and the Italian,

²⁹ Ibid.

as this was a reintroduction of internal border control. The European Commission acted soon enough stating that the reintroduction of internal borders can only be done if there is an undeniable threat to national security and should be used as a last resort.³⁰

- ★ Another issue at stake was about the mobility rights of the citizens. Following the Eastern Expansion of the European Union, internal mobility rates increased in great amounts. This kind of movement within the area was referred to as “welfare shopping.” Although with this situation there was no breach or any kind, many of the member states were concerned about their workforce. Although there was no systematic statistic about the issue, political campaigns, as well as media campaigns, were started against the mobility of the citizens themselves. The debate over it is far from over, although the European Commission and Germany have stated that this is a right of the people.³¹ The discussion was already tense, and the refugee crisis worsened the situation.
- ★ The third and the last front of this heated debate were about the common asylum system, and it’s functioning. The states were acting accordingly to the Dublin Convention, a convention that did not take a crisis into consideration. As the number of arrivals rises, the number of deaths at sea also increased. It was clear that the European Union could not show an effective way of dealing with the situation. The member states wanted to end this crisis with an effective, yet legitimate way.

As the tension rose between members regarding these issues, the 2013 crisis worsened the situation. The system was already being questioned, but the worst case was still on the way.

The Outset

The on-going violence in countries was always the root of mass migration. With the situation in Syria heading for worse, people decided to flee their country. Syrian originated applications were leading the statistics since 2013. The number of applications was floating around 200.000-280.000 before the Syrian civil war. The Common European Asylum System was formed to compensate these figures. The application count rose up to 660.000 in 2014, challenging the European Union. The following year’s count skyrocketed to almost 1.400.000. This was a lot more than the system could handle.

There were three main reasons of the European Union becoming the most popular destination for migration. First and the most significant one is the situation in Syria. The civil war in Syria got extremely violent in the last years. People lost their hope in pursuit of stability and decided to leave their country because their lives were in danger. Their first options, the bordering countries, and their policies are the second

³⁰ European Commission, Third Biannual Report, and “New Schengen Rules to Better Protect”.

³¹ Mason and Oltermann, “EU Freedom of Movement Non-negotiable”.

reason

The refugees were not accepted in many Middle Eastern countries, so they decided to head to the west. There were countries in the region providing support, like Turkey, Lebanon, and Jordan. The main problem with these countries was that they did not grant the asylum seekers any official refugee status and there was almost no intention to integrate them into the society. The third element plays a role here, which is the refugee situation in the European Union.

The asylum system in the European Union is much more appealing than bordering countries, considering the integration goal and the welfare. Asylum seekers wanted to live in an environment where they can be a part of a harmonious society. The bordering countries did not provide the chance of being a part of the community, and nor the harmony that people were seeking. The tempting conditions in Europe encouraged the migrants to head there.

Partial Suspension of The Dublin Regulation

The crisis ended up putting most of the burden in particular countries according to the Dublin Regulation. This forced Hungary to suspend the European Union system on asylum. The refugees, who made it to the Balkans, travelled all the way to Hungary and entered the European Union there. This would mean that Hungary has to take care of every refugee who moved along the Balkans. Greece and Italy were also under much pressure for being the first stop of many refugees alongside Hungary.

The ban of Hungary also led some other member states to stop accepting applications as well like Austria. These countries rightfully said the Dublin Regulation would damage their country excessively, and the solidarity within the European Union in asylum receiving was not achieved. Germany was the first country to respond to this crisis alongside the Czech Republic by stating that it would accept refugees even if it did not have to, according to the Dublin Regulation.

The sacrifice made by some countries was enough to save the day, although it is now clear that the Dublin Regulation may not be fair in unexpected cases. Germany relied on the sovereignty clause of the Dublin Regulation, although this blemished almost everyone's belief in the system. Everything was planned right and accordingly to the expected. However, a crisis could easily break down the whole system.

Aftermath

This crisis urged member states to take an effective action against the situation. Member states decided to arrange a meeting to discuss recent events. The asylum seekers attracted the attention of human traffickers. German officials said that this was a human tragedy and it should be solved. Many temporary precautions were taken as the border control enhancements, and relocating refugees. However, one thing is clear that the European Union's original system failed to survive a crisis. It is now

accepted that the European Union must have regulations, which are revised and effective enough to sustain such crisis situations.

Member states now do agree that the Common European Asylum System has to be improved. The implementation of the current system aimed to equalize the effort and sacrifice between member countries. But it is obvious that the on-going procedure can put states into positions that are not equal at all. The problem is yet to be solved.

3. Integration

a. Introduction

In 2015 more than a million migrants and refugees crossed into the borders of Europe, kindling a complex variety of political, social and humanitarian crisis in the continent. The displacement crisis the world is facing has resulted in a division between Member States on how to respond to the increasing influx of the people as well as on how to resettle them.

More than 130.000 people have already reached the borders of Europe as of 2016³² with a daily average of arrivals amounting to nearly 2,000, tenfold the figure of 2015.³³ If the rate of arrivals continues at 2015's level, it is estimated that 3 million migrants will have reached Europe by 2017 in only two years.³⁴

Due to the nature of their escape from persecution or war, refugees naturally need to feel safe and accepted to better engage with a new society. However, at the same time, they are especially resilient, eager to work and restart their lives in a foreign environment. Integrating these refugees is, therefore, one of the biggest challenges Europe faces today.³⁵

Although these numbers, the scale and the effort of their integration are worrying in many aspects, it has been discussed that along with a strategic policy plan to current Europe and its needs; refugees and migrants can be turned into not only a social but also to a demographical and economic opportunity. Demographic shifts within Europe show a declining and ageing population and require that the EU working population must be increased in order to support the welfare system and pension requirements of future years. Effective integration of immigrants, including refugees, is at the heart of responding to this need.³⁶

A welcoming policy of integration combined with a protection status and labour

³² "UNHCR warns of imminent humanitarian crisis in Greece amid disarray in Europe over asylum", UNHCR, <http://www.unhcr.org/56d564ed6.html>.

³³ "Mediterranean Migrant arrivals in 2016 Pass 76,000; Deaths Top 400", International Organization for Migration, <https://www.iom.int/news/mediterranean-migrant-arrivals-2016-pass-76000-deaths-top-400>.

³⁴ "European Economic Forecast Autumn 2015", *European Commission*, http://ec.europa.eu/economy_finance/publications/eeip/ip011_en.pdf.

³⁵ Yilmaz, Ekin Su. "Academic Preparation Kit of Scodra 2016.", *9th National Selection Conference of EYP Albania*, 2016.

³⁶ "A NEW BEGINNING, Refugee Integration in Europe.", *UNHCR*, 2013, <http://www.unhcr.org/protection/operations/52403d389/new-beginning-refugee-integration-europe.html>.

market openness, embraced by the all Member States of the EU can lead to economic productiveness of refugees and hinder segregation. A society with large under-productive segments will not only be economically divided, but also socially and often geographically segregated. Getting integration right is therefore the key to both a successful Europe and to an effective protection system for refugees in Europe.³⁷

b. Integration in The Literature

United Nations High Commissioner for Refugees (UNHCR) refers to integration as “the end product of a dynamic and multifaceted two-way process with three interrelated dimensions: a legal, an economic and a social-cultural dimension” while also accepting the complexity of the term caused by its developing nature. Integration as a process is not finished unless refugees become fully included members of society. Hence for integration to be successful, a collective effort by all parties including host countries and to public institutions working to welcome the refugees is needed.

When shaping their immigration policies, European Union and its Member States have placed integration high on the policy and political agenda particularly since mid-1990s.³⁸ In order to facilitate an effective and practical integration model, many Member States have been investing in several programmes and research targeting to highlight the trajectories of migrant integration.

When examined in detail, aforementioned three interrelated dimensions are all considered as irrevocable in the process of a successful integration. While legal dimension of integration requires all regulations in practise to grant refugees a wide range of entitlements and rights; the economic dimension aims to have refugees integrate into labour market and contribute to economy of host country while being “able to pursue sustainable livelihoods”³⁹ Lastly, social/cultural dimension highlights refugees’ eventual achievement of residing as member of local communities and actively participating, without being discriminated and having to forego their own cultural identity.

The 1951 Convention and Protocol Relating to the Status of Refugees⁴⁰ also emphasises the importance of integration when combined with the 1967 Protocol Relating to the Status of Refugees.⁴¹ Article 34 of the Convention under the title of “naturalization”, expects contracting states to facilitate assimilation and naturalization of refugees while reducing costs and charges of such proceedings.

For refugees in Europe, the Qualification Directive (2011)⁴² and the rights included within are taken as a vital document. Coincidentally, also the Article 34 of the Directive

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ The 1951 Convention and Protocol Relating to the Status of Refugees: <http://www.unhcr.org/3b66c2aa10>

⁴¹ The 1967 Protocol Relating to the Status of Refugees: <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/international-refugee-law/1967-protocol-relating-to-the-status-of-refugees.html>

⁴² Qualification Directive (2011): <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>

upon Access to integration facilities states that “Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes”.⁴³ The directive also positions integration as one of the principles of development and considers its challenges both socially and economically.

Prior to the Directive, UNHCR had published recommendations on how members of the European Union could better do so after an informal meeting in May 2007 of EU Ministers responsible for integration. As an outcome of this meeting, a **Note on the Integration of Refugees**⁴⁴ in the EU was published. Highlighting the existing lacking points in European Integration Policies against refugees, the note also acts as an innovative piece of work as it consists of many policy recommendations to policies and practises in hand. Therefore, the key findings of the Note are to be explored further to understand how UNHCR perceives European efforts towards integration.

As explored in the document and within UNHCR’s direct contacts with refugee men, women and children; the key obstacles to integration as identified by refugees consist of:

- ★ Difficulties due to lack of knowledge of local languages and differing cultures;
- ★ Discrimination and unreceptive attitudes towards foreigners;
- ★ Lack of understanding within host societies of the specific situation of refugees;
- ★ Psychological impact of protracted inactivity during asylum procedures;
- ★ Limited access to rights for persons with subsidiary protection.⁴⁵

Another interesting finding of the Note on the integration is the similarity between the challenges refugees face in Europe and the challenges faced by third country nationals staying legally in the European Union. Among outstanding similarities are discrimination and xenophobic attitudes along with gender-specific, cultural and language barriers.

Isolation and separation as outcomes of a lengthy asylum procedure is also another problem area as identified by the Note and followed by lack of language and vocational training, accommodation and employment. By itself, an extended asylum procedure can be one of the main obstacles to the successful social, economic and cultural integration of spontaneously arriving refugees. The status determination procedure is often characterized by insecurity and inactivity.⁴⁶ Insecurity and inactivity may lead to mental health damages and provoke conditions such as depression, dependency syndrome, apathy and lack of self-confidence, hindering employment and

⁴³ Ibid.

⁴⁴ Note on the Integration of Refugees in the EU: www.unhcr.org/protect/PROTECTION/463b462c4.pdf

⁴⁵ Ibid.

⁴⁶ Ibid.

social skills after recognition with particular impacts on children, for whom stability is especially important.

Following these challenges, the Note also identifies specific challenges to refugees who are unlike migrants when moving to another country as they, by their reason of movement; do not necessarily and most likely share a cultural, economic or linguistic link. Specifically, these challenges are identified as challenges deriving from Refugee Status, Consequences of Trauma, Lack of Administrative Assistance and Recognition of Qualifications, Non-fulfilled Right to Work, Family Separation and Failing Naturalisation.

Last but not least, it is concluded by UNHCR in the Note that EU has to develop further its policies and practices on integration, to the benefit of persons in need of international protection and their host communities in Member States alike.⁴⁷

In this guide, refugee integration will be explored under to titles Social and Labour Market Integration, all explored in detail with their trajectories, barriers and possible recommended solutions.

c. Social Integration

Building up on this Note, along with European Refugee Fund of the European Commission, in 2013; UNHCR publishes an integration report based on an EU funded project on Refugee Integration Capacity and Evaluation (RICE). The report provides nine aspects perceived by authorities as problematic when trying to integrate refugees in European societies. Hence, 9 barriers to social integration of refugees are:

1. Education
2. Employment
3. Language
4. Social Inclusion
5. Active Citizenship
6. Housing
7. Family reunification
8. Asylum process
9. Personal Experiences Associated with persecution

As understood from the interrelatedness of the scope of the barriers, these categories can be explored in main 3 points.

i. Education and Language

Although Education and Language are separate policy areas at the national and EU level, the two are considered to be closely related and not mutually exclusive when considering their parts in refugee integration. For refugees, learning the language is

⁴⁷ Ibid.

central to integration because it facilitates employment and allows the refugee to feel part of the wider society, creates a sense of belonging, enables friendships and generally facilitates day to day living.⁴⁸ Hence, education in this context does not refer to school education, yet contains what is agreed to be “further and higher education.”⁴⁹

Typically, a refugee would arrive to the receiving country with little to no language ability. Exceptions are refugees from francophone countries arriving in France or Belgium, and those from Anglophone countries arriving in the UK or Ireland. Nonetheless, the majority of refugees in EU Member States must learn a new language. During asylum, there is often no, or limited, structured language training made available and asylum-seekers rely on informal methods of learning resulting in a long period of time during which language is acquired piecemeal.⁵⁰

So, what happens during the asylum process is that while waiting to be granted a refugee status along with rights to achieve this language, vocational and skill-based trainings, “refugees’ existing skills, experience, knowledge, qualifications and careers are put on hold”.⁵¹ Training, networking and job searching during this time are also stopped due to the lack of language and therefore the refugees’ ability to be independent financially and socially are hindered. Whatever their former status may be, the refugee becomes “grounded, made dependent, and isolated by their lack of language.”⁵² Such problem also indicates the difficulty of finding accommodation.

Data does show that refugees struggle to access further and higher education, primarily due to lost documentation to prove existing education, to non-comparability of educational standards in many refugee-producing countries, to having to learn a new language, and to the classroom context not being conducive to practicing the new language.⁵³ Although learning a new language is vital for the refugee’s future in residing Member State, it should be also noted that having to learn a language under such pressure and expectation is surely a challenge; especially one that cannot be overcome if left alone and without help.

Although many Member States, EU-related programmes and independent and individual efforts offer language training to refugees, their help and scope are open to question. Some of the problematic areas raised by stakeholders and refugees are that course levels are not high enough to facilitate, for example, labour market entry, and that courses are sometimes difficult to access due to location or timing.⁵⁴ Moreover, neither the providers of these courses nor the facilitators of the integration programmes have put in enough effort to explore the enablers or preventers of language

⁴⁸ “A NEW BEGINNING, Refugee Integration in Europe.”, *UNHCR*, 2013, <http://www.unhcr.org/protection/operations/52403d389/new-beginning-refugee-integration-europe.html>.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

acquisition. So, the refugees are left to improve their language in both a slower and informal way.

Along with language training, skill-based education; although again offered in many Member States, are limited to basic or general level IT courses. These courses are only adequate to provide refugees with lower level jobs in which it is only possible for them to barely provide a future for their children.

Specifically, it is explored by the UNHCR report once again that the factors which influence refugee language and education are:

- a. Employment:** There is considerable anecdotal evidence to show that while language facilitates employment, employment facilitates language acquisition.⁵⁵ Sweden's efforts are given as a successful example in this context while United Kingdom's are reviewed to be not working well.
- b. Agency support and provision of information:** It is noted that agency support and the information they provide serve as an important factor for refugees in their language acquisition. Agencies in France and Austria were rated as unhelpful for their unwelcoming treatment.
- c. Validation of certificates and skills:** Documents and certificates lost or left behind in the country of origin and the task of validating comparability of certificates and skills are considerable challenges.⁵⁶ Validation is normally a long-lasting procedure or not considered at all by authorities. Sweden, once again in this context is seen as a successful example.
- d. Appropriate language training:** As explored above, language along with an appropriate training is vital for refugees to shelter in the Member States. In Germany, for instance language training courses are being provided in a national level.
- e. Age:** Age becomes a problem in language acquisition especially when the mentioned refugee is above 50.
- f. Family reunification:** Stakeholders in Sweden and France noted that refugees find it hard to focus on education or language training when they have family whereabouts and safety on their minds.⁵⁷
- g. Economic situation:** Training and education remain only as aspiration as long as the refugee is not financially dependent. Austria and Sweden are given as Practise examples with their services.
- h. Health:** Many refugees suffer from Post-Traumatic Stress Disorder (PTSD) symptoms that make it difficult to concentrate on learning.⁵⁸
- i. Asylum Process:** As the nature of the transition period from being an asylum

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

seeker to a refugee is distressful, education during this term is noted to unhelpful.

ii. Social Integration, Social Inclusion and Active Citizenship

It is identified by UNHCR that the subjective character of this category makes it difficult to arrive at general conclusions as; by their nature social integration and inclusion are rather emotional states of the refugees. Nonetheless, this emotional state is proved to be influential as one step of the integration process is inevitably social.

Research suggests that refugees face challenges breaking down barriers and forming friendships or associations with members of the receiving population. This is related to language ability, cultural differences such as preferring not to socialize in pubs and bars, uncertainty of cultural norms, fear of rejection or experiences of racism, time and psychological limitations connected to concerns about finances, employment, housing and family separation, segregation in larger cities, and age.⁵⁹

Active citizenship, on the other hand is both a national and EU-level policy area just like Education and Language. An active citizen is defined as “A person who actively takes responsibility and initiative in areas of public concern such as crime prevention and the local community.”⁶⁰ It is desirable not only by Member States but by the EU that at the end of a successful migrant integration, each refugee becomes active citizens. Active citizenship is less about naturalization and closer to social integration since it is about participation. However, indicators of active citizenship focus on uptake of citizenship and voting behaviour.⁶¹

Factors which influence refugee social integration, social inclusion and active citizenship are identified as:

- a. Reception centres:** Reception centres are temporal accommodations for people in distress such as refugees. Many refugees have stated that they felt inclusive when residing in reception centres, especially the ones residing in France. Nonetheless, it should also be noted that reception centres are temporary and should not be considered as a final solution for social inclusion.
- b. Employment and Volunteering:** Stakeholders noted employment makes people feel part of the community and respondents said they did not feel part of society without employment and that employment was seen a path to acceptance by others. However, employment did not emerge as being key to social integration.⁶² Volunteering, on the other hand, provides contact and participation, helping refugees as parts of the local and national communities.
- c. Support from community, NGOs, and receiving country nationals:** In Ireland, religious communities are formed to help refugees gain support and become

⁵⁹ Ibid.

⁶⁰ Oxford Dictionary.

⁶¹ Ibid.

⁶² Ibid.

more and more included in the society.

- d. Cultural knowledge and spaces:** Socialization in cultural spaces is also essential in adapting the refugees to a less traumatic and stressful day-to-day life.
- e. Activities and schools:** Especially after-school activities for refugee children are found helpful in maintaining a healthy psychology and battling PTSD.
- f. Location:** The benefits of living in a refugee-dense area are explored as the commonality of a refugee experience, of being a newcomer, of struggling with the language can produce supportive networks and greater understanding of challenges.⁶³
- g. Financial concerns:** Parallel to its impact on education and language, the more financial concerns an individual has, the more she will be hesitant to engage in social activities.
- h. Age:** A clear correlation between age of arrival and integration is explored by Swedish authorities in a way that the younger the refugee is, the easier it will be for her to integrate.
- i. Prior experiences and family separation:** The psychological impact of prior traumatic experiences and lack of reunification with families make it harder for refugees to actively participate in another Member State.
- j. Racism, discrimination and representation:** With a focus on discrimination and racism in stakeholder meetings, both stakeholders and respondents in Ireland felt racism and discrimination were common.⁶⁴

iii. Housing

Accommodation and possible challenges refugees face during housing search are distressful and hindering in terms of their integration to social lives. Refugees seem to struggle accessing suitable, affordable, secure, independent housing. This struggle derives from many factors such as but not limited to the landlord's reception and prejudice against refugees, lack of employment or the fear of not meeting the contracts. If the refugees fail to find housing, an increased level of stress and anxiety along with many health problems risking one's physique and psychology may occur.

For those newly acquiring refugee statuses, the combinations of needing to move and being permitted to work have mutual impact and the ability to achieve one affects the ability to achieve the other in this transition phase.⁶⁵

Factors which effect refugee housing can be explored more in depth as:

- a. Landlords and landlord requirements:** In Ireland, refugees have stated that the attitude of the landlords when renting accommodation are characterised as being racist and unwelcoming. In Austria, it was stated that documentary was

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

seen as an excuse for landlords not to rent their houses to refugees.

- b. Urgency upon recognition:** When acquired the refugee status, refugees are then forced in a very short amount of time to leave their reception centres. Yet, the refugees at that period do not yet have a job to provide housing and they have the most difficult time during this transition period.
- c. Employment, secure income and personal finances:** Although employment and personal wealth are also aforementioned in their parts in social integration, a secure income also plays an important role in assuring that the refugee family is sustained to keep on affording the rent and expenses.
- d. Housing shortage and standards:** This problem is mainly particular to larger cities as more positive experiences towards housing are seen outside larger cities. Depending on location, housing becomes more or less challenging and incidences of sub-letting and precarious housing increase or decrease.⁶⁶
- e. Support to find housing:** A policy recommendation in this area is to have service providers' act as mediators between landlords and refugees in order to prevent misunderstandings.
- f. Urban preference:** As mentioned above, when preferences are accumulated in urban areas, it becomes difficult for refugees to find the suitable housing. Nonetheless, urban areas still remain as number one choice of residence.

At this point, the report is concluded with many policy recommendations, all highlighting the importance of these interconnected categories and their role in adapting the refugees to social, economic and political life. Lastly, the report is suggesting that. Understandings of what integration is underpin government direction on integration policy and integration support and vary considerably between governments, policy-makers and stakeholders. There are also differences between these understandings and refugees' understanding of what integration means to them which may lead to different perceptions of "successful" integration.⁶⁷

d. Labour Market Integration

i. Importance

Along with the social aspect, for the current refugee crisis to be tackled with a possible successful integration, integrating refugees into the labour market and consequently to the economy of the Member States remains to be the most relevant durable solution. There is a widely shared consensus among experts that labour market participation is the single most important step to a successful integration into host societies as presumably high numbers of asylum-seekers and refugees will stay in the

⁶⁶ Ibid.

⁶⁷ Ibid.

EU for years.⁶⁸ Adopted by the Justice and Home Affairs Council in November 2004, the 3rd CBP for Immigrant Integration Policy in the EU identifies employment as a key part of the integration process and central to the participation of immigrants, to the contributions immigrants make to the host society and to making such contributions visible.⁶⁹

It is a wide known fact that welcoming a large number of refugees comes with its costs to national budgets. Nonetheless, experts highlight that additional public spending on refugees has to be seen as an investment in the future.⁷⁰ To denote whether this investment will pay off in the long run with benefits solely depends on national and EU-level efforts made in terms of how well these refugees are welcomed, trained and integrated. Hence, positive economic impact through the participation of the refugees is only possible through refugees being integrated fully into the host country's economies.

ii. The Literature on Labour Market Integration of Refugees

A study by Employment and Social Affairs Committee of the European Parliament **“Labour Market Integration of Refugees: Strategies and good practices”**⁷¹ provides a review of literature to identify key elements of a strategy for labour market integration of refugees.

The study reveals that in the past On EU average, it took between five and six years to integrate more than 50 % of humanitarian migrants into the workplace and as much as 15 years to reach a 70 % employment rate converging towards the outcomes for labour migrants.⁷² Although the study also suggests that the time of entry into labour market is also an indicator in terms of integration as the national economic crisis might affect the refugees' career and employment. Yet, 15 years to integrate is not only a worrying period for refugees but also not helpful for the national economies unless certain steps are taken to accelerate the process.

Along with the period of integration, the study reveals that by OECD/EU statistics, gender is a determining factor in integrating into the market. It is explored in the study that women refugees integrate less successfully and slowly into the market, causing not only an economical but a social dispute.

When national policies are reviewed on their level of success in terms of refugee integration, many policy flaws and gaps are found by the European Parliament's report. These gaps are listed as:

- ★ Investments to humanitarian aid which often is seen as costly

⁶⁸ “Labour Market Integration of Refugees”, *EMPL Committee of the European Parliament*, 2016, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU\(2016\)578956_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU(2016)578956_EN.pdf).

⁶⁹ “Common Basic Principles for Immigrant Integration Policy in the EU”, *Justice and Home Affairs Council*, 2004, http://www.eesc.europa.eu/resources/docs/common-basic-principles_en.pdf.

⁷⁰ “Labour Market Integration of Refugees”, *EMPL Committee of the European Parliament*, 2016, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU\(2016\)578956_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU(2016)578956_EN.pdf).

⁷¹ *Ibid.*

⁷² *Ibid.*

- ★ Technical and specialised support to refugees
- ★ Specialised efforts to help refugee women integrate into labour market
- ★ Attention devoted to unaccompanied minors
- ★ Motivating employers to hire refugees
- ★ The initiatives of labour market institutions

These flaws are reflected in the Study so that they are also being recommended in many ways to be solved by the same source.

A study by the FEMM Committee of the European Parliament should be mentioned here, as the committee has recently published recommendations to overcome this gender barrier.

Surprisingly, another policy recommendation from the FEMM Committee suggests “the integration highlights that policies aimed at guaranteeing refugees’ rights and wellbeing cannot be gender-neutral, otherwise they are destined to fail.”⁷³

Recommendations on how to improve reception conditions of female refugees

- Women and children need more protection as they are a minority in comparison to the number of male asylum seekers which makes them as such a vulnerable group.
- Asylum application procedures must become more gender-sensitive.
- There must be extra attention for girls and women in order to prevent these women from becoming victims of human trafficking or sexual or gender-based violence. In reception centres, women should be housed separately from men and women should have safe access to private sanitary facilities.
- Female interviewers and interpreters should be provided. Individual interviews organized separately from family members, would allow women to speak more freely and to make the applications of women more successful.
- Special measures to protect women should be taken, especially where large numbers of asylum seekers have caused overcrowded reception centres and lengthy asylum application procedures.

Source: European Parliament (2016a).

In company with gender-based suggestions, the study also explores labour market support policies. One integral and common finding is the **early access to labour market**.

Article 15 (1) of EU Directive 2013/33 state by the Commission (DG Home) Modules for Integration states that Member States have to ensure that asylum seekers access the labour market **no later than nine months** after they apply for international protection. On the other hand, IMF and OECD offer to shorten this waiting time. In addition, OECD suggests “Lifting restriction to facilitate rapid labour market access for asylum seekers with high prospects of being allowed to stay.”⁷⁴ While, IMF also recommends

⁷³ Ibid.

⁷⁴ Ibid.

to ease the restrictions and barriers to attain employment.

Restrictions like a work ban on self-employment (in Sweden or the UK) or labour market tests (in Germany, Luxembourg, Hungary, Greece and the UK) make labour market access conditional on the proof of employers or the public employment service that no domestic worker or EU-migrant could have filled the position in question.⁷⁵

The tables below, as taken from the Study itself can serve as a set of policy recommendations which will surely be helpful to any authorities wishing to actualise labour market integration of the refugees.

Commission (DG Home) Modules for Integration	<ul style="list-style-type: none"> • Language tuition should be started within 3 months of arrival for asylum seekers with high prospects of being allowed to stay • Refugees with skills beneficial to the host country should be prioritized in language courses • Language courses should be sorted by competency level and adapted to migrants' identified needs • Set minimum requirements for language proficiency using the Common European Framework of Reference (CEFR) • Establish a specialised centre for the acknowledgement of skills • Evaluate already existing credentials and skills through interviews and practical tests • Access key personnel knowledgeable of most common occupations among third-country nationals • Mentoring is generally recommendable, in co-operation with NGOs and public services • Refugees should be informed about education opportunities
Study European Parliament (ECRE)	<ul style="list-style-type: none"> • Link language training to employment • Pre-arrival language training should be a component of pre-departure orientation in the case of resettled refugees • Services must be tailored to take into account cultural diversity, gender, age and specific needs • Skills and credentials must be fairly assessed and accredited • Flexibility to accommodate individual skills and aspirations is essential
UNHCR	<ul style="list-style-type: none"> • Language tuition should be started as soon as possible after arrival • Foster combined work and language activities (i.e. volunteering, internships, work experience and apprenticeships) • Humanitarian migrants should be assigned to language courses based on prior assessment of their competency level • Support employment agencies in recognizing skills of refugees and in directing them to appropriate employment • Introduce early post-arrival practical skills assessments • Make loan, grant and scholarship schemes for higher education available for refugees • Promote access to specialized funds or schemes

⁷⁵ Ibid.

OECD	<ul style="list-style-type: none"> • Differentiate length and level of offered language courses to take into account refugees' varying educational levels • Increase availability of on-the-job training for high-skilled refugees to improve content and delivery of skills-based language learning • Assess skills at the outset of the integration process through interviews and practical tests • Recognize already existing qualifications and experiences • Mainstream alternative assessment methods (e.g. recognition of prior learning) for refugees without documentary proof of qualifications • Provide job search assistance and well-targeted support to refugees' with diverse educational backgrounds • Increase availability of on-the-job training for high-skilled refugees to improve content and delivery of skills-based language learning • Create tailored-made programs; long-term upskill programs for illiterate and very poorly educated and comprehensive vocational skills programs for the higher-skilled • Develop language, education, skills and other support programs for unaccompanied minors who arrive past the age of compulsory schooling
IMF	<ul style="list-style-type: none"> • Provide language and job search training early • Tailor introductory programs so as to link personalized training and employment assistance to financial and housing support • Allow for temporary exemptions to the minimum wage regime where high entry wages are a concern • Provide wage subsidies to employers • Tackle "inactivity traps" by reducing marginal taxes on low wage workers and/or tapering social benefits more gradually upon entering employment
Research	<ul style="list-style-type: none"> • Language skills and credential recognition ensure a better match • Participation in language courses at the earliest opportunity pays off • Selective evidence on what ALMP work for migrants and refugees

e. A Final Remark on Integration

Although different trajectories, problems and policy recommendations are represented throughout the previous pages, it should be noted that integration still remains as a national competence. The implementation of integration policies falls under the responsibility of the Member States.⁷⁶

Hence, the main role of any EU body - let it be either European Parliament or the European Commission- is to provide a strong coordination, well-prepared analysis, policy recommendations and unifying ideas to Member States and aid them in actualising their integration policies. In return, Member States, by the nature of their commitment to the union should always respect and protect humanitarian values the union upholds and refrain from any policies clashing with the European principles.

⁷⁶ Ibid.

4. Conclusion

a. Exploring the Issue from The European Commission's Perspective

Before proposing any policy, recommendations responding the European Refugee Crisis, one must recognise and grasp the role of the European Commission, its related Commissioners, competences and actions on Migration and Refugees.

To start with, for Juncker Commission, Migration is one of the political priorities in which the Commission is working to achieve a common European agenda on. The Commission's agenda on migration defines immediate measures needed to prevent human tragedies and to strengthen emergency responses.⁷⁷ The Agenda consist of a 4-pillar aim and action project in which the following steps are aimed to be taken:

1. Reducing the incentives for irregular migration,
2. Saving lives and securing external border,
3. A strong common asylum policy,
4. A new policy on legal migration.⁷⁸

Along with an EU-level based plan, Commission is also working together with Member States in a detailed *17-point plan of action*⁷⁹ and with the African Union while also trying to tackle the root causes of migration.

Within the Commission's organisational structure, Directorate General (department) for Migration and Home Affairs is responsible for managing the studies and policies on the policy area. Specifically, the DG is responsible for policies dealing with asylum and migration, EU Agencies in supporting Member States, facilitating Networking activities and giving input to European Commission.

Among the Commissioners, Migration is among the priorities and responsibilities namely of the First Vice-President Frans Timmermans, of the High Representative Federica Mogherini and of the Commissioner Dimitris Avramopoulos. The Commissioners and their team are working both with and under the Department for Migration in tackling the Refugee Crisis, directing and supervising the Commission's policies.

Last but not least, on the topic of Migration the next steps of the Commission as explored by the Commission are:

1. Swift operationalization of the European Border and Coast Guard⁸⁰,
2. Implementation of the **EU-Turkey Statement**⁸¹,
3. Swift adoption by the co-legislators of the Commission's proposals to reform the **Common European Asylum System**⁸²,

⁷⁷ "Migration", European Commission, https://ec.europa.eu/commission/priorities/migration_en.

⁷⁸ Ibid.

⁷⁹ **17-point plan of action:** http://europa.eu/rapid/press-release_IP-15-5904_en.htm

⁸⁰ **European Border and Coast Guard:** https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/fact-sheets/docs/a_european_border_and_coast_guard_en.pdf

⁸¹ **EU-Turkey Statement:** <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>

⁸² **Common European Asylum System:** https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en

4. Implementation of the new Migration partnership framework with Third Countries Swift adoption by the co-legislators of a **new resettlement framework**.

b. Exploring the Issue from The European Parliament's Perspective

An explanation of the role of the European Parliament is necessary before stating its view on the subject. As a result of the Lisbon Treaty, The European Parliament has been the co-legislator in the Union since 2005. This puts the institution in a vital place in the adoption of legislative acts. Alongside being a legislator, the Parliament has given its necessary support to the creation of the European Asylum Support Office. The MEPs organize visits to the reception centres and detention centres to examine if the minimum requirements are met. Lastly, the European Parliament has used its power to obtain the annulment, as seen with the adoption of "Safe Third Countries List."⁸³

The European Parliament has long been working on an improvement of the Common European Asylum System since the first crisis took place. The aim is to reform both the asylum system as well as the Dublin Regulation regarding the asylum policy of the Union. The Dublin system was proven to be a source of trouble in a crisis. The studies among the European institutions are shaped around the search for a lawful, beneficial and yet efficient system for replacement. The European Community desires to reach an agreement on a text that respects the fundamental human rights and ensures the protection of those who flee to their country. A study published by the European Parliament⁸⁴ addresses the issue in three different areas.

The first area of discussion is the regulation of reception and detention centres in the area, alongside the issuance of humanitarian visas, and the implementation of the Temporary Protection Directive. The European Parliament expects to see a distinctive decline in the number of deaths at sea. For this goal, help, and support from the private sector is considered a necessity. Some of the rescuing operations should be sponsored by the private sector. The institution also expects member states to meet minimum requirements set by agreements of the European Union. Access to procedures at first reception centres should be possible.

Adverse decisions about applications are mutually recognized by the member states regarding a request for asylum. However, in the case of a positive decision, a mutual recognition of this decision is not being implemented. A mutual appreciation of the positive decisions is an obligation under the Article 78 of the Treaty on Functioning of the European Union. This recognition is necessary to create a common and harmonized asylum system in the area. This is the second aspect the studies mention.

The third issue has been a controversy ever since the Dublin Regulation was adopt-

⁸³ ECJ, judgment of 6 May 2008, Case C-133/06.

⁸⁴ Enhancing The Common European Asylum System And Alternatives To Dublin, Study fo the LIBE Committee, 2015. [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519234/IPOL_STU\(2015\)519234_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519234/IPOL_STU(2015)519234_EN.pdf).

ed; the question at hand is the regulation itself and the imbalance of financial effort expected by the member states. The asylum-seekers are considered to be under pressure with the Dublin Regulation requirements as there is no free choice in immigration according to the convention. The need for possible post-recognition relocation has long been emphasized in the studies published by the European Union. The role of Asylum Migration and Integration Fund should be clearer, and the fund must be raised as a preventive measure for possible crises.

Further Readings

- ★ *A EUROPEAN AGENDA ON MIGRATION*, European Commission, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf.
- ★ Cherubini, Francesco. *Asylum Law in the European Union*.
- ★ *EUROPE'S MIGRATION AND ASYLUM POLICY*, European Commission, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_factsheet_on_europes_migration_and_asylum_policy_-_small_steps_to_make_a_big_difference_en.pdf.
- ★ Factsheet- *A European Agenda on Migration*, European Union, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_eam_state_of_play_en.pdf.
- ★ Guide to the ordinary legislative procedure. Office of the European Union
- ★ Lavenex, Sandra. Safe third countries: extending the EU asylum and immigration policies to Central and Eastern Europe.
- ★ Pastore, Ferruccio, and Giulia Henry. "Explaining the Crisis of the European Migration and Asylum Regime." *The International Spectator* 51, no. 1 (2016): 44-57
- ★ Voermans, Wim. "Is the European Legislator after Lisbon a real Legislature?"

References

Anonymous. "Asylum, Migration, Integration." Migration and Home Affairs - European Commission. December 06, 2016. Accessed March 14, 2017. https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders_en.

"Asylum Policy | EU fact sheets | European Parliament." European Parliament. Accessed March 14, 2017. http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.12.2.html.

Cherubini, Francesco. *Asylum Law in the European Union*. New York, NY: Routledge, 2015.

"Common Basic Principles". 2004. *European Parliament*. <http://www.eesc.europa>.

[eu/resources/docs/common-basic-principles_en.pdf](#).

“Convention and Protocol Relating to the Status of Refugees.” United Nations High Commissioner for Refugees. <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>.

“CONVENTION RELATING TO THE STATUS OF REFUGEES PROTOCOL RELATING TO THE STATUS OF REFUGEES.” United Nations. http://legal.un.org/avl/pdf/ha/prsr/prsr_e.pdf.

“Convention relating to the Status of Refugees.” United Nations OHCHR. Accessed March 14, 2017. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>.

“DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL”. 2011. *European Parliament*. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>.

“DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL.” EUR-Lex - 32013L0032 - EN - EUR-Lex. June 26, 2013. Accessed March 14, 2017. <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013L0032>.

“European Commission - European Union Website, The Official EU Website - European Commission”. 2017. European Union Website, The Official EU Website - European Commission. https://europa.eu/european-union/about-eu/institutions-bodies/european-commission_en.

“Europe’s Migration Crisis.” Human Rights Watch. Accessed March 14, 2017. <https://www.hrw.org/tag/europes-migration-crisis>.

“European Union Agency for Asylum - Think Tank.” European Union Agency for Asylum - Think Tank. Accessed March 14, 2017. http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI%282016%29595849.

“Factsheet - The Common European Asylum System.” European Commission. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160406/factsheet_the_common_european_asylum_system_en.pdf.

“Germany: Halt on Dublin procedures for Syrians.” Germany: Halt on Dublin procedures for Syrians | Asylum Information Database. Accessed March 14, 2017. <http://www.asylumineurope.org/news/24-08-2015/germany-halt-dublin-procedures-syrians>.

Guide to the ordinary legislative procedure. Luxembourg: Publications Office of the European Union, 2016.

“International Migration Statistics.” Migrationpolicy.org. August 23, 2016. Accessed March 14, 2017. <http://www.migrationpolicy.org/programs/data-hub/international-migration-statistics>.

James, Paul. “Faces of Globalization and the Borders of States: From Asylum Seekers to Citizens” *Citizenship Studies*. Accessed March 14, 2017. http://www.academia.edu/7773440/Faces_of_Globalization_and_the_Borders_of_States_From_Asylum

Seekers to Citizens.

“Joint Foreign and Home Affairs Council: Ten point action plan on migration.” European Commission - PRESS RELEASES - Press release - Joint Foreign and Home Affairs Council: Ten point action plan on migration. Accessed March 14, 2017. http://europa.eu/rapid/press-release_IP-15-4813_en.htm.

Juss, Satvinder S. A guide to the Asylum and Immigration Act (Treatment of Claimants, etc.) 2004. London: Cavendish Pub., 2005.

Kingsley, Patrick. “What caused the refugee crisis? You asked Google - here’s the answer | Patrick Kingsley.” The Autocomplete Questions. December 09, 2015. Accessed March 14, 2017. <https://www.theguardian.com/commentisfree/2015/dec/09/what-caused-the-refugee-crisis-google>.

“Labour Market Integration Of Refugees: Strategies And Good Practises”. 2016. *European Parliament*. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOLE_STU\(2016\)578956_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOLE_STU(2016)578956_EN.pdf).

Lavenex, Sandra. Safe third countries: extending the EU asylum and immigration policies to Central and Eastern Europe. Budapest: Central European University Press, 1999.

“Legislative powers.” European Parliament. Accessed March 14, 2017. <http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00004/Legislative-powers>.

Lillich, Richard B. “The Soering Case.” *The American Journal of International Law* 85, no. 1 (1991): 128-49.

“Mediterranean Migrant Arrivals In 2016 Pass 76,000; Deaths Top 400”. 2016. *International Organization For Migration*. <https://www.iom.int/news/mediterranean-migrant-arrivals-2016-pass-76000-deaths-top-400>.

“Migrant crisis: Hungary migrants start walk to border.” BBC News. September 04, 2015. Accessed March 14, 2017. <http://www.bbc.com/news/world-europe-34155701>.

“Migrant crisis: Migration to Europe explained in seven charts.” BBC News. March 04, 2016. Accessed March 14, 2017. <http://www.bbc.com/news/world-europe-34131911>.

“Note On The Integration Of Refugees In The European Union”. 2007. UNHCR. <http://www.unhcr.org/protect/PROTECTION/463b462c4.pdf>.

O’Nions, Helen. Asylum - a right denied: a critical analysis of European asylum policy. Farnham, Surrey, England: Ashgate, 2014.

“Organisational Structure”. 2017. European Commission - European Commission. http://ec.europa.eu/about/index_en.htm.

Pastore, Ferruccio, and Giulia Henry. “Explaining the Crisis of the European Migration and Asylum Regime.” *The International Spectator* 51, no. 1 (2016): 44-57. doi:10.1080/03932729.2016.1118609.

“POLICY PLAN ON ASYLUM AN INTEGRATED APPROACH TO PROTECTION ACROSS THE EU .” COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE

COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS . <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0360:FIN:EN:PDF>.

Price, Matthew E. *Rethinking asylum: history, purpose, and limits*. Cambridge: Cambridge University Press, 2009.

“Reforming the Common European Asylum System: Frequently asked questions.” European Commission- Factsheet. July 13, 2016. [http://europa.eu/rapid/press-release MEMO-16-2436_en.htm](http://europa.eu/rapid/press-release_MEMO-16-2436_en.htm).

Refugees, United. 2011. “A New Beginning: Refugee Integration In Europe”. *UNHCR*. <http://www.unhcr.org/protection/operations/52403d389/new-beginning-refugee-integration-europe.html>.

“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.” EUR-Lex - 32013R0604 - EN - EUR-Lex. Accessed March 14, 2017. <http://eur-lex.europa.eu/legal-content/EN/ALL/;jsessionid=jHNlTp3HLjqw8mqGbQSpZh1VWpjCyVQq14Hgcztw4p-bfSQZffnrn!557467765?uri=CELEX%3A32013R0604>.

Selck, Torsten J. *Preferences and procedures: European Union legislative decision-making*. Dordrecht: Springer, 2006.

Than, Krisztina, and Shadia Nasralla. “Defying EU, Hungary suspends rules on asylum seekers.” Reuters. June 23, 2015. Accessed March 14, 2017. <http://uk.reuters.com/article/uk-europe-migrants-austria-hungary-idUKKBN0P31ZB20150623>.

“THE CO-DECISION OR ORDINARY LEGISLATIVE PROCEDURE.” European Commission. Accessed March 14, 2017. http://ec.europa.eu/codecision/procedure/index_en.htm.

“The EU And The Refugee Crisis”. 2017. Publications.Europa.Eu. <http://publications.europa.eu/webpub/com/factsheets/refugee-crisis/en/#what-is-the-eu-doing>.

“UNHCR Resettlement Handbook.” UNHCR. <http://www.unhcr.org/46f7c0ee2.pdf>.

“UNHCR Warns Of Imminent Humanitarian Crisis In Greece Amid Disarray In Europe Over Asylum”. 2016. *UNHCR*. <http://www.unhcr.org/56d564ed6.html>.

United Nations High Commissioner for Refugees. “Refugee Status Determination.” UNHCR. Accessed March 14, 2017. <http://www.unhcr.org/pages/4a16b1d06.html>.

United Nations High Commissioner for Refugees. “The 1951 Refugee Convention.” UNHCR. Accessed March 14, 2017. <http://www.unhcr.org/pages/49da0e466.html>.

Velluti, Samantha. *Reforming the Common European Asylum System - Legislative developments and judicial activism of the European Courts*. Heidelberg: Springer, 2014.

Voermans, Wim. “Is the European Legislator after Lisbon a real Legislature?” *Legislação (Cadernos de Ciência de Legislação)* 50 (2010): 391-413.

Whittaker, David J. *Asylum seekers and refugees in the contemporary world*. Lon-

don: Routledge, 2006.

Yilmaz, Ekin Su and Joao Moreira. 2016. "Scodra 2016 - Academic Preparation Kit". *Issuu*. https://issuu.com/joaodfx/docs/scodra_2016_-_apk.



Middle East Technical University
Foreign Policy and International Relations Club