RESPOND

# European Union

## Legal & Policy Framework of Migration Governance

## D1.2 Report – May 2018


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Horizon 2020
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# 1. Statistics and data overview

On 1 January 2017, the estimated total population in the European Union (EU) amounted to approximately 512 million people. As Table 1 shows, between 2011 and 2017 the EU population increased by almost 9 million people (+1.70%).

***Table 1.*** **Population change in the EU, 2011-2017 (million persons)**

| | **Population** |
|---|---|
| 2011 | 502,964,837 |
| 2012 | 504,047,964 |
| 2013 | 505,163,008 |
| 2014 | 507,011,330 |
| 2015 | 508,540,103 |
| 2016 | 510,277,177 |
| 2017 | 511,522,671 |
| | |
| **Change (2011-2017)** | 8,557,834 |

Source: Eurostat

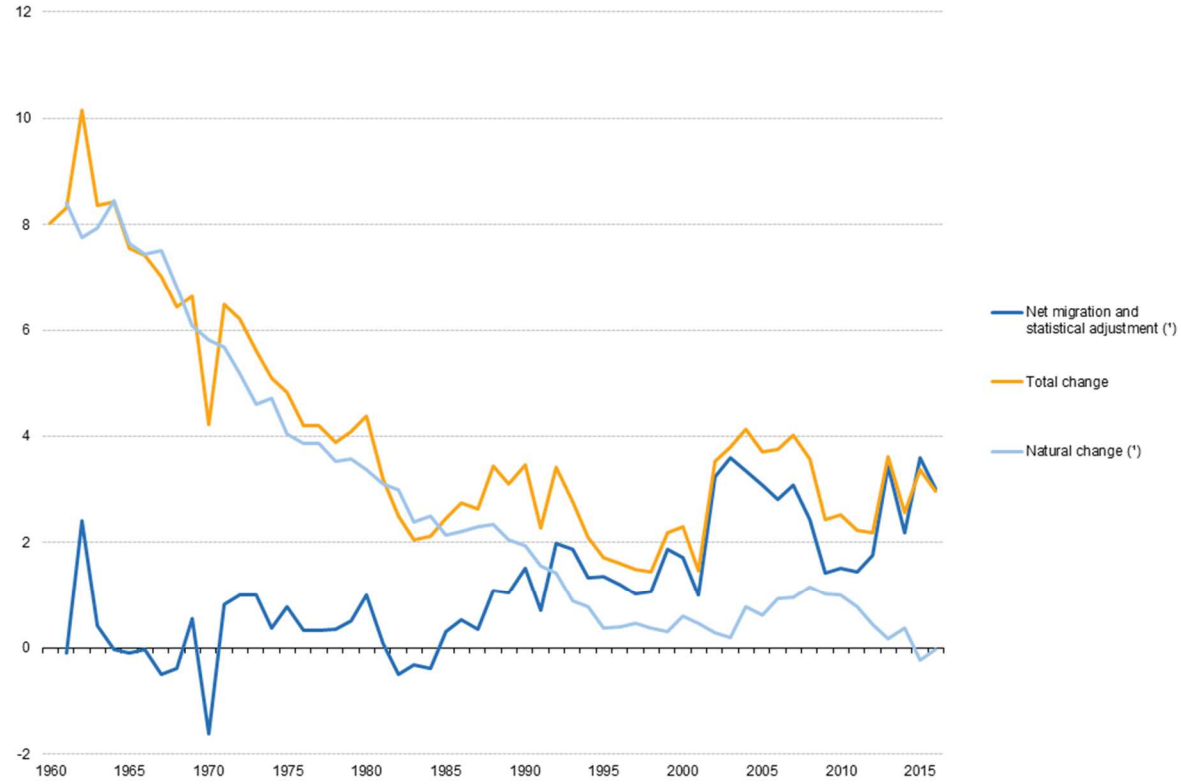
The two components that determine population change are the natural population change – namely the difference between the number of live births and deaths during a given year – and the net migration – namely the difference between the number of immigrants and the number of emigrants. As shown by Table 2, in 2015 there has been a natural decrease – namely deaths have outnumbered live births. This means that the positive population change that occurred between 2015 and 2016 (+1,737,074) (see Table 1) can be attributed to net migration (plus statistical adjustment). Migration is thus a fundamental factor affecting population change in the EU. In particular, as reported by Figure 1, since the mid-1980s net migration has increased and from the beginning of the 1990s onwards the value of net migration and statistical adjustment has always been higher than that of natural change. Therefore, during the past three decades net migration has constituted the main driver of population growth. This trend is likely to persist in the future. Indeed, since the baby-boom generation continues to age, the number of deaths is expected to increase. Thus, it is likely that population change will increasingly be affected by net migration (Eurostat 2015).

***Table 2.*** **Population change in the EU, 2011-2016 (natural population change and net migration plus statistical adjustment)**

| | Natural population change | Net migration plus statistical adjustment |
|---|---|---|
| 2011 | 395,113 | 713,631 |
| 2012 | 220,255 | 894,789 |
| 2013 | 87,468 | 1,760,854 |
| 2014 | 195,700 | 1,101,159 |
| 2015 | -117,371 | 1,854,445 |
| 2016 | 19,626 | 1,222,979 |

Source: Eurostat

***Figure 1.*** **Population change by component (annual crude rates) in the EU, 1960-2016 (per 1000 persons)**




Note: Excluding French overseas departments up to and including 1997. Breaks in series: 1991, 2000-01, 2008, 2010-12 and 2014-16.
(*) 1960: not available.
*Source:* Eurostat (online data code: demo_gind)

Source: Eurostat

If immigration flows both from outside the EU and between EU countries are considered, in 2016 a total of around 4.3 million people immigrated to one of the EU Member States, with Germany reporting the largest amount (1,029,852), followed by the United Kingdom (588,993), Spain (414,746), France (378,115), Italy (300,823) and Poland (208,302) (Table 3).

***Table 3.*** **Total number of immigrants in the EU, 2011-2016 (thousands)**

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|---|---|
| Belgium | 147,377 | 129,477 | 120,078 | 123,158 | 146,626 | 123,702 |
| Bulgaria | . | 14,103 | 18,570 | 26,615 | 25,223 | 21,241 |
| Czech Republic | 27,114 | 34,337 | 30,124 | 29,897 | 29,602 | 64,083 |
| Denmark | 52,833 | 54,409 | 60,312 | 68,388 | 78,492 | 74,383 |
| Germany | 489,422 | 592,175 | 692,713 | 884,893 | 1,543,848 | 1,029,852 |
| Estonia | 3,709 | 2,639 | 4,109 | 3,904 | 15,413 | 14,822 |
| Ireland | 57,292 | 61,324 | 65,539 | 73,519 | 80,792 | 85,185 |
| Greece | 60,089 | 58,200 | 57,946 | 59,013 | 64,446 | 116,867 |
| Spain | 371,331 | 304,053 | 280,772 | 305,454 | 342,114 | 414,746 |
| France | 319,816 | 327,431 | 338,752 | 340,383 | 364,221 | 378,115 |
| Croatia | 8,534 | 8,959 | 10,378 | 10,638 | 11,706 | 13,985 |
| Italy | 385,793 | 350,772 | 307,454 | 277,631 | 280,078 | 300,823 |
| Cyprus | 23,037 | 17,476 | 13,149 | 9,212 | 15,183 | 17,391 |
| Latvia | 10,234 | 13,303 | 8,299 | 10,365 | 9,479 | 8,345 |
| Lithuania | 15,685 | 19,843 | 22,011 | 24,294 | 22,130 | 20,162 |
| Luxembourg | 20,268 | 20,478 | 21,098 | 22,332 | 23,803 | 22,888 |
| Hungary | 28,018 | 33,702 | 38,968 | 54,581 | 58,344 | 53,618 |
| Malta | 5,465 | 8,256 | 10,897 | 14,454 | 16,936 | 17,051 |
| Netherlands | 130,118 | 124,566 | 129,428 | 145,323 | 166,872 | 189,232 |
| Austria | 82,230 | 91,557 | 101,866 | 116,262 | 166,323 | 129,509 |
| Poland | 157,059 | 217,546 | 220,311 | 222,275 | 218,147 | 208,302 |
| Portugal | 19,667 | 14,606 | 17,554 | 19,516 | 29,896 | 29,925 |
| Romania | 147,685 | 167,266 | 153,646 | 136,035 | 132,795 | 137,455 |
| Slovenia | 14,083 | 15,022 | 13,871 | 13,846 | 15,420 | 16,623 |
| Slovakia | 4,829 | 5,419 | 5,149 | 5,357 | 6,997 | 7,686 |
| Finland | 29,481 | 31,278 | 31,941 | 31,507 | 28,746 | 34,905 |
| Sweden | 96,467 | 103,059 | 115,845 | 126,966 | 134,240 | 163,005 |
| United Kingdom | 566,044 | 498,040 | 526,046 | 631,991 | 631,452 | 588,993 |
| **EU** | **3,273,680** | **3,319,296** | **3,416,826** | **3,787,809** | **4,659,324** | **4,282,894** |

Source: Eurostat

As for emigration, a total of almost 3 million people have left an EU country in 2016. As with immigration flows, these data include emigration flows both from the EU and between EU countries. Germany reported the highest number of emigrants (533,762), followed by the United Kingdom (340,440), Spain (327,325), France (309,805), Poland (236,441) and Romania (207,578) (Table 4).

***Table 4*. Total number of emigrants in the EU, 2011-2016 (thousands)**

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|---|---|
| Belgium | 84,148 | 93,600 | 102,657 | 94,573 | 89,794 | 92,471 |
| Bulgaria | . | 16,615 | 19,678 | 28,727 | 29,470 | 30,570 |
| Czech Republic | 55,910 | 46,106 | 25,894 | 28,468 | 25,684 | 38,864 |
| Denmark | 41,593 | 43,663 | 43,310 | 44,426 | 44,625 | 52,654 |
| Germany | 249,045 | 240,001 | 259,328 | 324,221 | 347,162 | 533,762 |
| Estonia | 6,214 | 6,321 | 6,740 | 4,637 | 13,003 | 13,792 |
| Ireland | 83,049 | 81,797 | 76,560 | 71,107 | 67,160 | 62,056 |
| Greece | 92,404 | 124,694 | 117,094 | 106,804 | 109,351 | 106,535 |
| Spain | 409,034 | 446,606 | 532,303 | 400,430 | 343,875 | 327,325 |
| France | 291,594 | 255,922 | 239,813 | 308,775 | 295,911 | 309,805 |
| Croatia | 12,699 | 12,877 | 15,262 | 20,858 | 29,651 | 36,436 |
| Italy | 82,461 | 106,216 | 125,735 | 136,328 | 146,955 | 157,065 |
| Cyprus | 4,895 | 18,105 | 25,227 | 24,038 | 17,183 | 14,892 |
| Latvia | 30,311 | 25,163 | 22,561 | 19,017 | 20,119 | 20,574 |
| Lithuania | 53,863 | 41,100 | 38,818 | 36,621 | 44,533 | 50,333 |
| Luxembourg | 9,264 | 10,442 | 10,750 | 11,283 | 12,644 | 13,442 |
| Hungary | 15,100 | 22,880 | 34,691 | 42,213 | 43,225 | 39,889 |
| Malta | 3,806 | 4,005 | 4,778 | 5,108 | 7,095 | 8,303 |
| Netherlands | 104,201 | 110,431 | 112,625 | 112,900 | 112,330 | 111,477 |
| Austria | 51,197 | 51,812 | 54,071 | 53,491 | 56,689 | 64,428 |
| Poland | 265,798 | 275,603 | 276,446 | 268,299 | 258,837 | 236,441 |
| Portugal | 43,998 | 51,958 | 53,786 | 49,572 | 40,377 | 38,273 |
| Romania | 195,551 | 170,186 | 161,755 | 172,871 | 194,718 | 207,578 |
| Slovenia | 12,024 | 14,378 | 13,384 | 14,336 | 14,913 | 15,572 |
| Slovakia | 1,863 | 2,003 | 2,770 | 3,644 | 3,870 | 3,801 |
| Finland | 12,660 | 13,845 | 13,893 | 15,486 | 16,305 | 18,082 |
| Sweden | 51,179 | 51,747 | 50,715 | 51,237 | 55,830 | 45,878 |
| United Kingdom | 350,703 | 321,217 | 316,934 | 319,086 | 299,183 | 340,440 |
| **EU** | **2,614,564** | **2,659,293** | **2,757,578** | **2,768,556** | **2,740,492** | **2,990,738** |

Source: Eurostat

Among the 4.3 million immigrants in the EU, in 2016 almost 2 million people (352,597 less than in 2015) were from a non-EU country. Again, Germany reported the largest number of non-EU immigrants (507,034), followed by the United Kingdom (265,390), Spain (235,632) and Italy (200,217) (Table 5). Overall, almost 22 million non-EU nationals are currently living in the EU (4.2 % of total EU population), 2 million more than in 2014. The largest share is recorded in Germany (5,223,701), followed by Italy (3,509,089), France (3,050,884), Spain (2,485,761) and the United Kingdom (2,444,555) (Table 6).

***Table 5.*** **Number of non-EU immigrants in the EU, 2013-2016 (thousands)**

| | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|
| Belgium | 41,443 | 41,626 | 65,808 | 46,502 |
| Bulgaria | 11,984 | 15,268 | 12,850 | 10,610 |
| Czech Republic | 10,780 | 9,386 | 10,619 | 29,902 |
| Denmark | 19,624 | 24,482 | 32,256 | 28,559 |
| Germany | 252,122 | 372,408 | 967,539 | 507,034 |
| Estonia | 1,490 | 1,155 | 3,656 | 4,182 |
| Ireland | 18,344 | 20,263 | 22,524 | 27,161 |
| Greece | 16,313 | 13,539 | 17,492 | 69,497 |
| Spain | 157,823 | 164,369 | 183,675 | 235,632 |
| France | 127,360 | 130,394 | 148,686 | 158,156 |
| Croatia | 3,440 | 3,470 | 3,024 | 4,035 |
| Italy | 201,536 | 180,271 | 186,522 | 200,217 |
| Cyprus | 4,842 | 4,022 | 5,922 | 6,480 |
| Latvia | 2,604 | 3,511 | 3,795 | 2,910 |
| Lithuania | 2,357 | 4,086 | 2,919 | 5,175 |
| Luxembourg | 4,234 | 4,447 | 6,132 | 5,573 |
| Hungary | 10,802 | 15,451 | 15,221 | 13,261 |
| Malta | 4,957 | 6,655 | 7,530 | 6,700 |
| Netherlands | 40,837 | 47,785 | 61,369 | 76,680 |
| Austria | 32,241 | 39,425 | 86,469 | 54,472 |
| Poland | 59,035 | 67,005 | 103,883 | 80,054 |
| Portugal | 3,737 | 5,914 | 8,595 | 7,845 |
| Romania | 13,656 | 10,880 | 8,994 | 12,263 |
| Slovenia | 8,342 | 8,046 | 9,903 | 10,371 |
| Slovakia | 507 | 444 | 665 | 621 |
| Finland | 13,183 | 13,568 | 13,108 | 19,638 |
| Sweden | 64,186 | 70,734 | 78,158 | 104,384 |
| United Kingdom | 248,464 | 287,136 | 278,587 | 265,390 |
| **EU** | **1,376,243** | **1,565,740** | **2,345,901** | **1,993,304** |

Source: Eurostat

***Table 6.*** **Number of non-EU nationals living in the EU, 2014-2017 (thousands)**

| | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|
| Belgium | 410,127 | 419,822 | 450,827 | 455,108 |
| Bulgaria | 40,614 | 51,246 | 58,807 | 64,074 |
| Czech Republic | 261,302 | 272,993 | 280,907 | 302,579 |
| Denmark | 233,023 | 244,380 | 267,192 | 274,990 |
| Germany | 3,826,401 | 4,055,321 | 4,840,650 | 5,223,701 |
| Estonia | 187,087 | 183,276 | 182,266 | 179,888 |
| Ireland | 121,149 | 117,015 | 124,709 | 138,315 |
| Greece | 662,335 | 623,246 | 591,693 | 604,813 |
| Spain | 2,685,348 | 2,505,196 | 2,482,814 | 2,485,761 |
| France | 2,750,594 | 2,870,846 | 2,877,568 | 3,050,884 |
| Croatia | 21,126 | 24,218 | 26,678 | 30,086 |
| Italy | 3,479,566 | 3,521,825 | 3,508,429 | 3,509,089 |
| Cyprus | 48,465 | 38,242 | 30,479 | 29,738 |
| Latvia | 298,616 | 291,440 | 282,792 | 273,333 |
| Lithuania | 16,039 | 16,573 | 12,311 | 13,313 |
| Luxembourg | 34,482 | 36,429 | 39,618 | 40,795 |
| Hungary | 59,335 | 64,821 | 71,062 | 71,414 |
| Malta | 13,810 | 18,894 | 23,177 | 24,073 |
| Netherlands | 330,382 | 338,773 | 367,744 | 413,401 |
| Austria | 539,292 | 566,370 | 639,645 | 673,207 |
| Poland | 71,543 | 76,595 | 123,926 | 180,334 |
| Portugal | 300,711 | 294,778 | 283,500 | 279,562 |
| Romania | 52,529 | 54,687 | 58,858 | 60,600 |
| Slovenia | 80,290 | 84,367 | 90,169 | 95,718 |
| Slovakia | 12,476 | 13,064 | 13,901 | 14,687 |
| Finland | 121,882 | 127,792 | 133,136 | 143,757 |
| Sweden | 384,947 | 416,246 | 447,664 | 505,332 |
| United Kingdom | 2,425,012 | 2,434,209 | 2,436,046 | 2,444,555 |
| **EU-28** | **19,468,483** | **19,762,664** | **20,746,568** | **21,583,107** |

Source: Eurostat

As far as data on the acquisition of citizenship are concerned, in 2016 citizenship was granted to 994,800 people, 208,800 more than in 2011 (Table 7). Of these citizenship acquisitions, 863,341 (87% of the total) were granted to non-EU nationals. The highest number of citizenships were granted by Italy (184,626), followed by Spain (147,306), United Kingdom (131,796) and France (108,219) (Table 8).

***Table 7.*** **Number of acquisitions of citizenship in the EU, 2011-2016 (thousand)**

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|---|---|
| EU-28 | 786,000 | 822,100 | 981,000 | 889,100 | 841,200 | 994,800 |

Source: Eurostat

***Table 8.*** **Number of acquisitions of citizenship in the EU granted to non-EU nationals, 2013-2016 (thousand)**

| | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|
| Belgium | 26,310 | 13,118 | 19,842 | 23,057 |
| Bulgaria | 756 | 888 | 1,261 | 1,585 |
| Czech Republic | 1,820 | 4,033 | 2,216 | 3,559 |
| Denmark | 1,466 | 4,347 | 10,505 | 13,419 |
| Germany | 86,499 | 82,408 | 81,463 | 79,621 |
| Estonia | 1,328 | 1,610 | 897 | 1,769 |
| Ireland | 22,494 | 18,162 | 10,418 | 6,711 |
| Greece | 28,462 | 20,248 | 13,315 | 32,329 |
| Spain | 222,312 | 201,798 | 111,857 | 147,306 |
| France | 85,607 | 94,819 | 102,650 | 108,219 |
| Croatia | 866 | 622 | 1,072 | 3,703 |
| Italy | 93,538 | 120,455 | 158,885 | 184,626 |
| Cyprus | 877 | 1,526 | 2,697 | 3,399 |
| Latvia | 3,041 | 2,076 | 1,838 | 1,662 |
| Lithuania | 106 | 125 | 126 | 136 |
| Luxembourg | 479 | 579 | 649 | 653 |
| Hungary | 1,845 | 2,035 | 1,122 | 1,044 |
| Malta | 227 | 146 | 522 | 1,239 |
| Netherlands | 22,891 | 28,808 | 25,978 | 25,807 |
| Austria | 6,258 | 6,335 | 7,011 | 7,173 |
| Poland | 3,374 | 3,816 | 3,697 | 3,460 |
| Portugal | 23,413 | 20,168 | 19,647 | 24,181 |
| Romania | 2,768 | 2,388 | 2,598 | 4,514 |
| Slovenia | 1,154 | 1,002 | 1,185 | 1,230 |
| Slovakia | 151 | 178 | 202 | 278 |
| Finland | 7,799 | 7,143 | 6,728 | 7,941 |
| Sweden | 37,770 | 30,528 | 34,034 | 42,924 |
| United Kingdom | 189,668 | 115,392 | 104,792 | 131,796 |
| **EU** | **873,279** | **784,753** | **727,207** | **863,341** |

Source: Eurostat

Statistics on asylum and managed migration are also crucial to analyse. In 2017, the total number of asylum applications from non-EU nationals amounted to 705,705, namely to approximately half the number registered in 2015 and 2016, when applications amounted to 1,322,825 and 1,260,910 respectively (Table 9). Therefore, as also Figure 2 clearly displays, asylum applications reached their peaks in 2015 and 2016, when the EU has witnessed an unprecedented influx of refugees and migrants, most of them fleeing from war Syria.

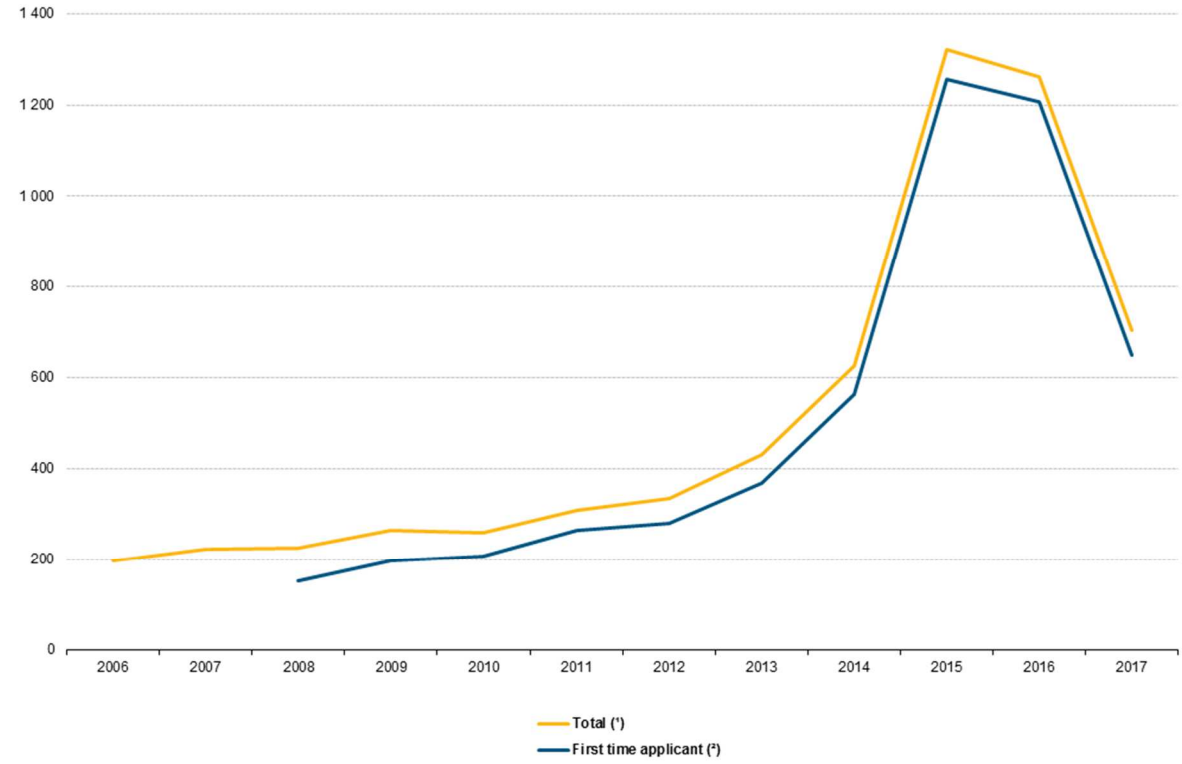
Numbers are similar if we consider data on first time asylum applicants only (Table 9). Indeed, after having peaked in 2015 and 2016 (approximately 1.2 million applications per year), the number of first time asylum applicants fell to 650 in 2017. Since a first-time applicant is a person who applied for asylum for the first time in a given country, this category excludes those people who have already applied once and therefore more accurately reflects the number of newly arrived asylum seekers.

***Table 9.*** **Number of asylum applicants (non-EU) in the EU, 2011-2017**

| | Asylum applicants | First time asylum applicants |
|---|---|---|
| 2011 | 309,040 | 263,160 |
| 2012 | 335,290 | 278,280 |
| 2013 | 431,090 | 367,825 |
| 2014 | 626,960 | 562,680 |
| 2015 | 1,322,825 | 1,257,030 |
| 2016 | 1,260,910 | 1,206,120 |
| 2017 | 705,705 | 650,970 |

Source: Eurostat

***Figure 2*. Asylum applications (non-EU) in the EU, 2006–2017 (thousands)**

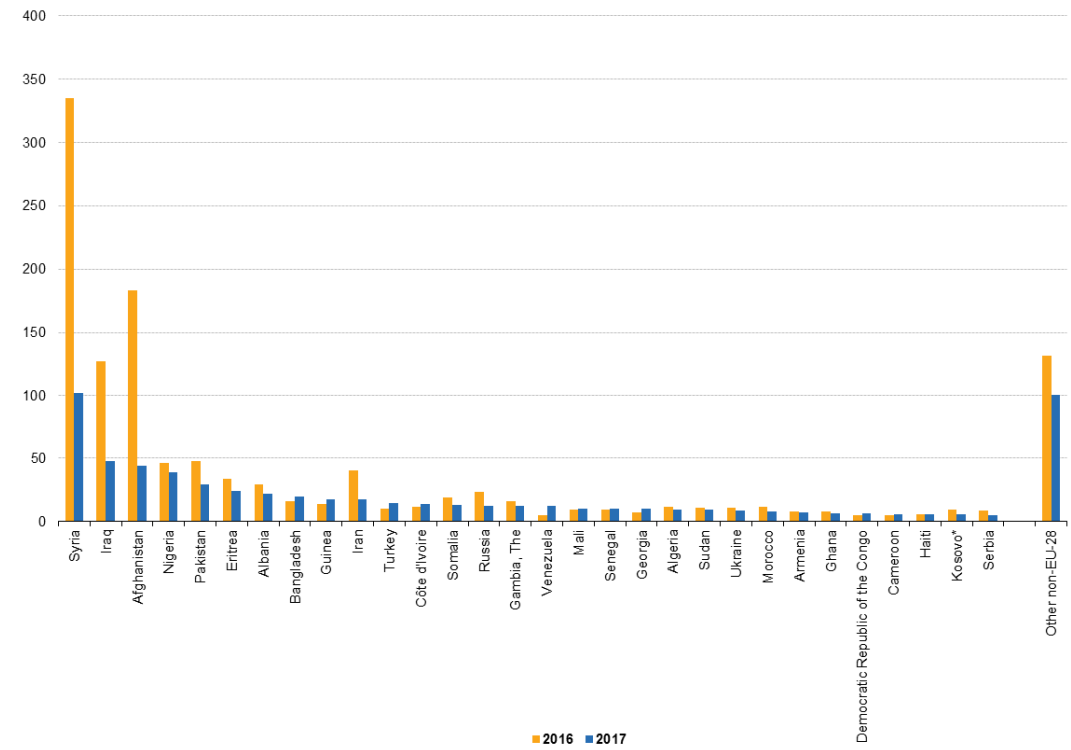



(¹) 2006 and 2007: EU-27 and extra-EU-27.
(²) 2006 and 2007: not available.
*Source:* Eurostat (online data codes: migr_asyctz and migr_asyappctza)

Source: Eurostat

As for the country of origin of first time asylum seekers, as shown by Figure 3, in 2016 most of them were from Syria, Afghanistan and Iraq. As Table 10 displays, Syria has been the main country of origin of first time asylum seekers in the EU since 2013, though the number of Syrian first-time applicants fell from 362,730 in 2015 to 102,415 in 2017.

***Figure 3*. Countries of citizenship of (non-EU) asylum seekers in the EU, 2016 and 2017 (thousands of first time applicants)**




(*) This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence

*Source:* Eurostat (online data code: migr_asyappctza)

Source: Eurostat

***Table 10*. Number of first time asylum applicants from Afghanistan, Iraq and Syria, 2011-2017 (thousand)**

| | Afghanistan | Iraq | Syria |
|---|---|---|---|
| 2011 | 22,270 | 12,785 | 6,455 |
| 2012 | 21,080 | 11,360 | 20,805 |
| 2013 | 20,715 | 8,110 | 45,820 |
| 2014 | 37,855 | 14,845 | 119,000 |
| 2015 | 178,305 | 121,590 | 362,730 |
| 2016 | 182,970 | 127,095 | 334,865 |
| 2017 | 43,760 | 47,560 | 102,415 |

Source: Eurostat

As for the distribution by sex of first time asylum applicants, Table 11 displays that males have always constituted the majority during the time period under consideration. In 2017, the share of males amounted to 434,945, while the female share to 215,770. Moreover, amongst the total number of asylum applications, 31,395 were from unaccompanied minors, namely from persons less than 18 years old who entered the EU territory not accompanied by an adult or left unaccompanied after

having entered the territory. Again, even with unaccompanied minors, applications peaked in 2015 and 2016 (95,205 and 63,245 respectively) (Table 12).

***Table 11*. Share of males and females (non-EU) first time asylum applicants, 2011-2017 (thousands)**

| | Males | Females |
|---|---|---|
| 2011 | 179,115 | 83,340 |
| 2012 | 180,085 | 96,125 |
| 2013 | 234,600 | 119,580 |
| 2014 | 398,350 | 164,155 |
| 2015 | 911,465 | 344,315 |
| 2016 | 815,025 | 389,165 |
| 2017 | 434,945 | 215,770 |

Source: Eurostat

***Table 12.* Asylum applicants considered to be unaccompanied minors, 2011-2017 (thousands)**

| | Unaccompanied minors |
|---|---|
| 2011 | 11,690 |
| 2012 | 12,540 |
| 2013 | 12,725 |
| 2014 | 23,150 |
| 2015 | 95,205 |
| 2016 | 63,245 |
| 2017 | 31,395 |

Source: Eurostat

Data on first instance decisions on applications show that the highest number of decisions was issued in 2016 (1,106,405) (Table 13). Out of the total number of decisions issued, 672,900 (61%) had a positive outcome. Moreover, 366,485 (54%) positive decisions resulted in grants of refugee status, 48,505 (7%) granted an authorisation to stay for humanitarian reasons, and 257,915 (38%) granted subsidiary protection. It is important to note that, while refugee status and subsidiary protection status are defined by EU law, humanitarian status is specific to national legislations. As for 2017, the total number of first instance decisions dropped to 973,415. Out of these decisions, 442,925 (46%) were positive, of which 222,105 (50%) granted refugee status.

***Table 13.*** **First instance decisions on (non-EU) asylum applications, 2011-2017 (thousands)**

| | Refugee status | Humanitarian status | Subsidiarity protection status | Total positive | Rejected | Total |
|---|---|---|---|---|---|---|
| 2011 | 29,035 | 10,525 | 19,975 | 59,535 | 177,860 | 237,390 |
| 2012 | 37,985 | 21,630 | 31,395 | 91,010 | 197,495 | 288,505 |
| 2013 | 49,670 | 12,505 | 45,435 | 107,610 | 206,625 | 314,235 |
| 2014 | 95,380 | 15,710 | 56,295 | 167,385 | 199,470 | 366,850 |
| 2015 | 229,460 | 22,225 | 55,890 | 307,575 | 289,005 | 596,580 |
| 2016 | 366,485 | 48,505 | 257,915 | 672,900 | 433,505 | 1,106,405 |
| 2017 | 222,105 | 62,950 | 157,870 | 442,925 | 530,490 | 973,415 |

Source: Eurostat

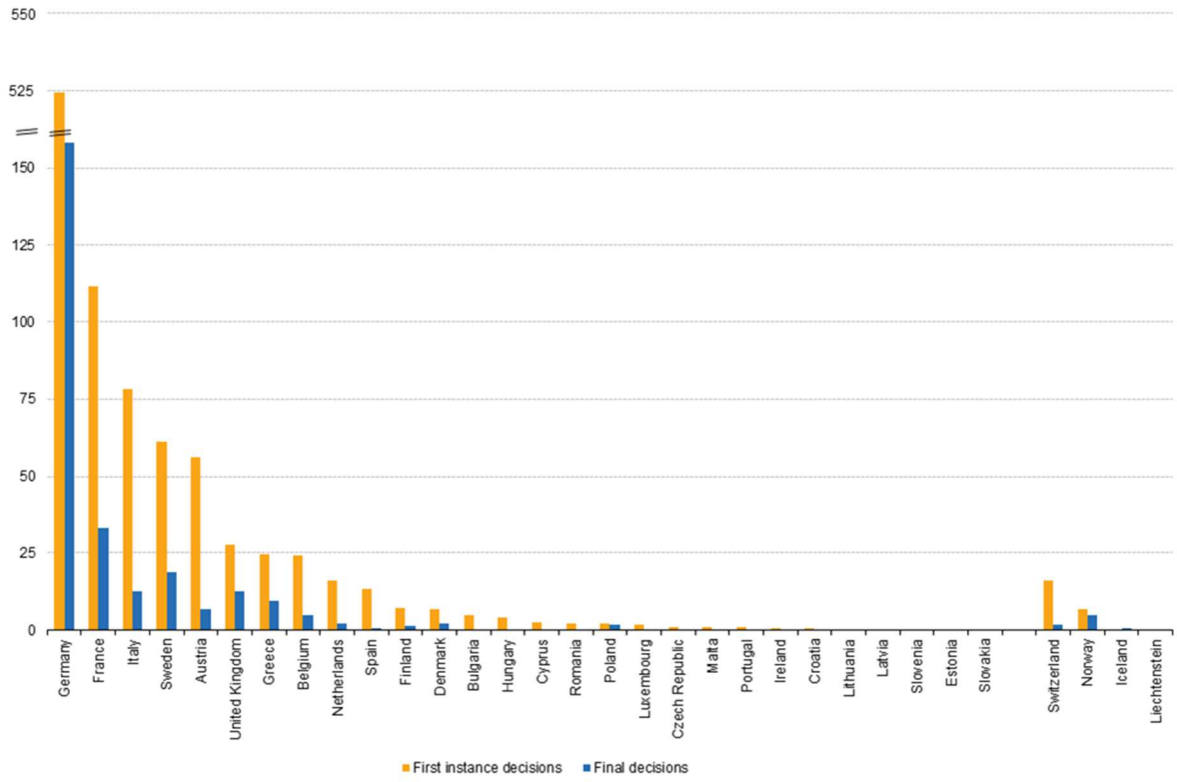
If only final decisions – namely those decisions taken by administrative or judicial bodies in appeal or in review and which are no longer subject to remedy – are considered, in 2017 267,040 decisions were issued, of which 95,310 (36%) were positive (Table 14). In particular, 49,590 (52%) granted refugee status, 14,580 (15%) granted humanitarian status, and 31,140 (33%) resulted in grants of subsidiary protection. As displayed by Figure 4, the largest amount of both first instance and final decisions was issued by Germany.

***Table 14.*** **Final decisions on (non-EU) asylum applications, 2011-2017 (thousands)**

| | Refugee status | Humanitarian status | Subsidiary protection status | Total positive | Rejected | Total |
|---|---|---|---|---|---|---|
| 2011 | 13,790 | 5,870 | 5,035 | 24,690 | 103,850 | 128,540 |
| 2012 | 13,510 | 6,255 | 5,455 | 25,220 | 106,885 | 132,105 |
| 2013 | 14,845 | 4,480 | 5,350 | 24,675 | 109,965 | 134,640 |
| 2014 | 15,990 | 4,795 | 5,415 | 26,195 | 109,835 | 136,030 |
| 2015 | 18,110 | 3,650 | 4,640 | 26,400 | 152,900 | 179,300 |
| 2016 | 23,660 | 10,700 | 8,275 | 42,630 | 188,355 | 230,985 |
| 2017 | 49,590 | 14,580 | 31,140 | 95,310 | 171,730 | 267,040 |

Source: Eurostat

***Figure 4.*** **Number of first instance and final decisions on (non-EU) asylum applications, 2017 (thousands)**




Source: Eurostat

With regards to resident permits – namely those authorisations issued by a country's authorities allowing non-EU nationals to legally stay on its territory –, data are available by reason for issuing the permits (Table 15). In 2016, almost 3.4 million permits were released. The majority of them were issued for other reasons (1,031,128; 31%) – that encompass stays without the right to work or international protection –, followed by employment reasons (854,71; 25%), family reasons (780,429; 23%) and education-related reasons (694,287; 21%).

***Table 15.*** **First residence permits issued by reason, 2011-2016 (thousands)**

| | Family | Education | Employment | Other | Total |
|---|---|---|---|---|---|
| 2011 | 719,365 | 492,938 | 523,862 | 440,679 | 2,176,844 |
| 2012 | 671,055 | 454,299 | 480,958 | 490,311 | 2,096,623 |
| 2013 | 671,572 | 463,943 | 534,214 | 686,722 | 2,356,451 |
| 2014 | 680,388 | 476,845 | 573,321 | 595,423 | 2,325,977 |
| 2015 | 760,231 | 525,858 | 707,632 | 628,301 | 2,622,022 |
| 2016 | 780,429 | 694,287 | 854,715 | 1,031,128 | 3,360,559 |

Source: Eurostat

Finally, statistics on the enforcement of immigration legislation are also available (Table 16). These data refers to non-EU citizens (or third country nationals) who were refused entry at the EU external borders, third country nationals found to be illegally present on the territory of an EU country,

third country nationals who were ordered to leave the territory of an EU country, and third country nationals who were returned to their country of origin outside the EU. The highest number of non-EU citizens found to be illegally present on the territory of an EU country was recorded in 2015 (2,154,675). The number of non-EU citizens who were refused entry into the EU reached its peak in 2017 (439,505). As for those non-EU nationals who were ordered to leave the territory of one of the EU Member States, the highest number was registered in 2015 (533,395). In the same year, 196,190 third country nationals were returned to their country of origin outside the EU. In 2016, this number increased and 228,625 non-EU citizens were returned to their country.

***Table 16.*** **Non-EU citizens subject to the enforcement of immigration legislation, 2011-2017 (thousands)**

| | Refused entry | Illegally present | Ordered to leave | Returned to a non-EU country |
|---|---|---|---|---|
| 2011 | 344,440 | 474,690 | 491,310 | 167,150 |
| 2012 | 317,170 | 439,420 | 483,650 | 178,500 |
| 2013 | 326,320 | 452,270 | 430,450 | 184,765 |
| 2014 | 286,805 | 672,215 | 470,080 | 170,415 |
| 2015 | 297,860 | 2,154,675 | 533,395 | 196,190 |
| 2016 | 388,280 | 983,860 | 493,785 | 228,625 |
| 2017 | 439,505 | 618,780 | 516,115 | 188,905 |

Source: Eurostat

# 2. The socio-economic, political and cultural context

Up until the end of the Sixties migration policy was very liberal, with incentives to attract migrant workers and tolerance towards irregular entries. The flows came mainly from North Africa and Turkey. In Germany, the model of so-called “guest workers” prevailed, although over time it became evident that migrants tended not to return to their own country but to settle in the host state. In the Seventies, the free movement of workers from EU member States steadily increased, while migration of non-EU nationals fluctuated depending on the upturn or downturn in national economies. It is since the Eighties, and particularly the Nineties, that increased flows from non-EU countries have become an established trend, alongside a rise in the number of asylum seekers. These years saw the beginnings of cooperation between member States (MS) on migration, prior to the actual conferral of competence to the then European Community which happened 'only' in 1999 when the Treaty of Amsterdam came into force. It is worth mentioning that from 1991, with the outbreak of the conflict in the Balkans, EU countries became a refuge for over a million people who were displaced or fleeing persecution. In the first ten years of the new millennium the EU saw an expansion to the East with the inclusion, between 2004 and 2007, of twelve new MS and Croatia in 2013. At the same time, the EU began to frame its policy on migration and asylum, first with the incorporation into EU law of the international conventions of Schengen and Dublin, and then with the adoption of secondary acts, especially directives.

The rise of geopolitical instability across the world and the progressive reduction of regular entry channels into the EU resulted in an increase in irregular migration, both from Eastern Europe and Asia, and from Africa, largely via central and eastern Mediterranean routes.

# 3. The EU Competence on Migration and Asylum

Since 1 December 2009, the competence on migration is provided for in the Treaty on the Functioning of the European Union, and in particular in Title V, named “Area of Freedom, Security and Justice” (articles 67 to 89 of the TFEU), Chapter 2 of which covers “Policies on border checks, asylum and migration”.[1] This concluded the process of transfer of competence that began with the so-called third pillar of the European Union in 1992, then followed by the transitional period lasting five years after the entry into force of the Amsterdam Treaty and which in part has shaped and conditioned the development of this policy.

The EU competence is very broad, encompassing measures ensuring the free movement of people, primarily the crossing of internal borders, measures on the crossing of external borders, on the conditions of migration, stay and removal, and on the granting of refugee *status*.

On the basis of article 67(2) TFEU, the EU developed a common policy on borders, visas, migration and asylum. The status of "common policy" allows the EU to adopt legislative acts, including harmonization, in accordance with the principles of proportionality and subsidiarity, since it is of shared competence. Nevertheless, article 70 of the TFEU expressly states that the provisions of Title V of the TFEU shall not preclude exercising the responsibilities incumbent upon MS for the maintenance of public order and the safeguarding of internal security. This could allow the States to adopt acts even where there are EU regulations. The latter could, therefore, be derogated by the States, notwithstanding the fact that the notions of public order and internal security must be understood as notions of European Union law and, therefore, interpreted according to what the Court has stated on limits to the movement of people and goods where there are analogous limits to the application of the freedoms enshrined in the Treaty.

Article 67(2) TFEU also describes the policy as being based on solidarity among MS and as fair towards third-country nationals. Solidarity means at least that all MS are required to share the costs of managing the common policies in this sector which, as is known, risk overburdening the states at the southern and eastern external border.

At the procedural level ordinary legislative procedure applies, which was extended after the entry into force of the Lisbon Treaty to all matters of the area of freedom, security and justice and characterized by the intervention of the European Parliament as co-decision maker together with the Council and the adoption of resolutions by the latter with a qualified majority (articles 289 and 294 of the TFEU).

There is no limitation to the jurisdiction of the Court of Justice which will allow the Court to fully play the role of guarantor of the uniform interpretation and application of EU law. The only exception was for acts already adopted on the basis of the third pillar which, until 30 November 2014, retained the characteristics in force at the time of their adoption, including the limited role of the Court of Justice.

Article 68 of the TFEU expressly provides that the European Council defines the general strategic guidelines for legislative and operational planning within the area of freedom, security and justice. The law specifies the general competence of the Council to define general policy guidelines

[1] L. Azoulai, K. de Vries (eds.), EU Migration Law, Legal Complexities and Political Rationales, Collected Courses of the Academy of European Law, Oxford University Press, Oxford, 2014; S. Peers, EU Justice and Home Affairs Law, Oxford, 2013; Millet-Devalle (ed.), L’Union européenne et la protection des migrants et des refugiés, Pédone Paris, 2010.

in this sector and to establish the subsequent regulatory developments on the basis of a five-year schedule.

There remains a comprehensive flexibility in the subjective application of the rules: the United Kingdom, Ireland and Denmark qualify for different treatment in accordance with special protocols annexed to the treaties. Protocol no. 21 on the position of the United Kingdom and Ireland with respect to the area of freedom, security and justice excludes them from the application of all the provisions of Title V of the TFEU. Therefore, they are not bound in any way unless they decide to opt in to a single measure adopted, by giving notice within three months from the time the proposal is submitted or at any time after the adoption of the act. Both States decide independently and without mutual constraints notwithstanding the indirect constraints deriving from the existence of the area of free movement between their territories.

Slightly different is the discipline contained in Protocol no. 22 on the position of Denmark, which is entirely excluded from participating in the measures adopted within the area of freedom, security and justice, with the exception of the determination of those states whose nationals must possess visas when crossing external borders and of measures constituting a development of the Schengen acquis. In fact, unlike the United Kingdom and Ireland, Denmark is part of the Schengen Agreement on the gradual abolition of internal borders controls and its related Convention, the content of which was incorporated within the Treaty on European Union by the 1997 Treaty of Amsterdam by Protocol no. 19. The coordination between the exclusion from applying the EU's policy on visas, asylum and migration, and adhering to the Schengen Convention is obtained by giving Denmark the right to participate in the measures adopted within the framework of the European Union that constitute a development of the Schengen acquis, stating, nevertheless, that Denmark will be bound under international law. It is a position analogous to that of those states which are not part of the European Union but are part of the Schengen Convention, such as Norway, Iceland, Switzerland and Liechtenstein. However, the same Protocol (part IV) stipulates that at any time Denmark may, in accordance with its constitutional requirements, notify not to make use any longer of its differentiated regime, by surrendering it entirely or opting for a similar regime to that of the United Kingdom and Ireland, namely, the ability to choose whether or not to adhere to an act adopted by the European Union. It is expressly stipulated that, if this were to happen, already existing constraints, as well as by implication any subsequent ones, will be binding upon Denmark insofar as they are EU law.

On the other hand, as regards those states that joined the European Union in 2004 and 2007, no derogations was allowed from free movement or the area of freedom, security and justice, but a gradual application of the rules on the elimination of internal border controls, conditioned by the positive result of the periodic assessments provided for in the Schengen system.

# 4. The relevant legislative and institutional framework in the fields of migration and asylum

## 4.1 The European policy on migration and asylum

The essential features of the EU's migration policy have been outlined on the basis of the policy guidelines of the European Council. Ever since the Tampere European Council of 15 and 16 December 1999, the first after the entry into force of the Amsterdam Treaty, heads of state and government have defined the objectives and the supporting elements of this EU policy. In particular, it stated that “This freedom should not, however, be regarded as the exclusive preserve of the Union’s own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe’s traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and migration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organize it and commit related international crimes. These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union. The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union”.

In following European Councils, the Tampere Council's emphasis on the values of freedom and respect for human rights and solidarity shifted towards the need for security and control within the European area. The conclusions of the European Council were affected, in fact, both by the political affiliation of the majority of the leaders of the member countries and the unfolding of events. So, after September 11, 2001, and even more so after the Madrid attacks of 11 March 2004, the agenda of work agreed at Tampere has been radically altered, making the fight against terrorism and international crime a priority, and considering all the remaining measures mainly as functional to this. In the Hague programme, as in that of Stockholm, the prominence given to the various dimensions of the area has been re-balanced, without ever returning, however, to that opening of perspectives typical of the early days that earmarked the Tampere European Council.

Since 1999 a number of proposals of legislative acts have been submitted, and documents and studies have been published, designed to offer tools of analysis and to outline the best strategies to pursue. From the various documents presented up to now, it is evident that one of the guiding principles of the EU's migration policy, reiterated many times, is that it is necessary in order to manage a phenomenon that is destined to continue in time, both due to the economic conditions of the countries of origin and the needs of the European Union itself, characterized by a demographic decline that has to be filled to achieve the objectives agreed in the Development Agenda, known as Lisbon 2020. Migration is, therefore, considered to be a constant and ongoing phenomenon that cannot be countered, but that, on the contrary, should be properly regulated.

The European Commission has articulated the EU's migration policy in four areas for which it builds specific development strategies even within a framework of general guidelines. These sectors consist of the policies on legal migration and integration, the policies on borders, visas and cooperation with countries of origin, the combatting of irregular migration.

Under national law, legislation on migration consists of a comprehensive body of law, at times completed by specific provisions or implementation. The institutions of the European Union, on the other hand, have opted for sectoral provisions aimed, then, at regulating individual segments of what is the overall regulation of the legal status of foreign nationals.

Parallel to the adoption of legislative acts, the EU has promoted the so-called administrative cooperation between the competent services of the MS, as provided for by article 74 of the TFEU. In this context, the Council's decision was adopted that introduces a mutual information procedure on the measures of the MS in the areas of asylum and migration. This measure was designed to facilitate the exchange of information between the MS, considering that, in spite of the competence attributed to the EU, they continue to play a strong role by constantly adopting new national measures intended to influence the other MS and the European Union. This must be seen in the wider context of the mechanisms and structures of cooperation and information between the MS and the Commission, which aims to unify and simplify the existing systems, structures and networks at European Union level in order to reduce the administrative burden for the benefit of the MS.

# 5. The legal status of foreigners

## 5.1 Accessing asylum: The Dublin regulation

The need to determine the competent state for examining international protection applications emerged among European Union states already in 1990, even before the attribution to the EU of a competence in relation to migration and asylum. The result was the then 12 MS signing the Dublin Convention, an international treaty having the main objective of reducing the phenomenon of refugees "in orbit", moving between one state and another, without there being any certainty about who will be the competent state.[2] Subsequently, after the attribution of a broad competence to the European Union in relation to visas, asylum and migration, the Dublin Convention was redrawn in an EU act, which in turn was replaced by regulation 604/2013, known as Dublin Regulation III, that is still in force today.[3] Despite periodic revisions, the main rules of Dublin Regulation III has remained substantially unchanged, although the aim of the regulation is different today: no longer that of ensuring that there is at least one competent State to examine applications for protection, but that there is just one. The main objective has, in fact, become to reduce, if not to clear, the possibility of applicants for international protection choosing the state where the application is to be submitted and, thus, their movement, the so-called secondary movements, within the European Union.

The limitation of secondary movements is precisely the main objective of EU rules on asylum which, even where they redraw existing legal constraints, tend to specify them and to dictate criteria for their application in order to reduce the divergent systems among MS. Operational cooperation between national administrations also helps to achieve this aim and the European Asylum Support Office was established for this purpose.

However, the divergent national asylum systems and the creation of a large area of free movement have instead encouraged secondary movements of asylum seekers who arrived in any EU state and emphasized the phenomenon of the choice of where to seek asylum, so-called asylum shopping, which has resulted in a structural crisis of the Dublin system. This practice has clearly shown that the realization of the area of free movement of persons goes against the rules established by the Dublin Regulation: on the one hand, a genuine area of free movement of persons has been

[2] Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, 15 June 1990, OJ. 19 August 1997 C 254.

[3] The Dublin Convention is an international treaty that was converted into EU Law by EU regulation no. 343/2003, so said «Dublin Regulation II», OJ 25 February 2003 *L* 50, p. 1 ff. Another regulation followed, the Regulation no. 604/2013, so said «Dublin III», still in force at the time of writing this paper: *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*, OJ 29 June 2013 *L* 180, p. 31-59. Hailbronner, Kay, Thiery, Claus, *Schengen II and Dublin: Responsibility for Asylum Applications in Europe*, *Common Market Law Review*, 1998, p. 1047 ss; Ippolito, Francesca, Velluti, Samantha, *The Recast Process of the EU Asylum System: A Balancing Act Between Efficiency and Fairness*, *Refugee Survey Quarterly*, 2011, p. 24 ss. Strictly connected is *Regulation no. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice*, OJ 29 June 2013 *L* 180, p. 1-30.

achieved, but, on the other, some of these people, asylum seekers, refugees, but also the majority of citizens of third countries, are obliged to stay in one MS. In the EU, in fact, asylum seekers do not have the right to choose where they may apply for protection, nor do the beneficiaries of protection have the right to reside in another EU state. The Dublin Regulation, in fact, not only determines the competent member state for examining an application for international protection, but also the state in which the person is meant to stay for a long, and sometimes very long period, even in the case where international protection is recognized; in fact, no right of residence in a state other than the state responsible for the international protection is recognized under European Union law.

The central part of the system, i.e. the criteria for the determination of the competent state, have not changed substantially since 1990. Those criteria are the following: the State where family members of the applicant are already present, the one that issued the visa or residence permit, or the country where the request is submitted in the case of unaccompanied minors, who are considered a vulnerable category. A residual criterion is that of the State of first entry into the EU which is, in practice, the most widely applied. This criterion is severely criticized by external border states, including Italy, because it causes an imbalance in the responsibility of EU MS and overburdens those States that are subjected to the twofold responsibility of controlling borders in the interest of all MS and also receiving asylum seekers. Although data provide a complex picture, with numerous requests for international protection also submitted in EU internal States, the rigidity of the criteria and their practical application have contributed over the years to the creation of strong tensions between MS.

The application of the Dublin Regulation has led to the creation of responsible units in each MS which have to interact with each other to effectively identify the competent state and to proceed subsequently to the return of persons and their related taking in charge or taking back. A complex system that proved very slow and highly inefficient. What cannot be denied is the data on the actual number of returns of asylum-seekers and beneficiaries of international protection across MS, in accordance with the policies and procedures set out therein: only about 8% of accepted transfer requests are actually fulfilled.

Among the various reasons behind the low efficiency of the Dublin system, what stands out is absconding and the difficulties of practical cooperation between the administrations of the various MS. The lack of cooperation between the states not only relates to requests for taking charge coming from other MS, but also involves the identification of asylum seekers, one of the prerequisites for the main application policy, that of the state of first arrival, to actually be applied. Identification is an obligation related to the Dublin Regulation, set out in the Eurodac regulation which allows fingerprints to be compared to check whether the applicant has previously applied for asylum in another EU country, or has transited through that state and, therefore, attributing competence to it with certainty and rapidity. The increase in arrivals into Italy and Greece has irrefutably shown that identification is regularly missed, as was the case at the time of the Arab Spring. Consider that, in Italy in 2014, out of the approximately 160,000 new arrivals only about 90,000 people were identified, with a parallel increase in flows to Northern European countries. To encourage backward referrals or the taking back of applicants for protection for which Italy is competent, the European Commission has developed the so-called hotspot approach, which has been implemented by Italy and Greece. In Italy, since this approach has been adopted, the number of identifications has increased significantly, reaching almost one hundred percent of the people landed.

On the other hand, it is the asylum seekers themselves who tend to avoid the application of the criteria set out in the regulation. Although there is a common European asylum system, the aim of equivalent and homogenous national asylum systems is far from being realized and there is significant divergence in the rates of acceptance of asylum applications as well as in the reception

systems. In addition to the divergent asylum systems, there is divergence in what we can simply call the "country-system", in relation to social welfare systems, to the prospects of employment and integration in general. It is this divergence, above all, that influences asylum seekers when choosing in which European country to apply for protection.[4]

In addition, the Dublin system crisis was further exacerbated by certain judgments of the European Court of Human Rights (ECtHR) which condemned those MS which, in implementing the Dublin Regulation, proceeded with transfers to Greece and Italy without excluding the risk of a violation of the rights protected in the Convention, especially in article 3. In fact, recital 3 of the Dublin Regulation states that '[...] MS, all respecting the principle of non-refoulement, are considered safe for citizens of third countries.' This is how the so-called presumption of safety of all MS is postulated which is an expression of the principle of mutual trust in national asylum systems, the necessary condition for achieving rapid transfers of people from one state to another, without, in practice, having to verify the risk of the violation of human rights, particularly the Geneva Convention on refugees and the ECHR. The ECtHR has not, however, fully harnessed this presumption of security and has reiterated its constant position on this matter which is based on the principle that transfers from one state to another should not expose people to a real risk of suffering a violation of the rights guaranteed in the Convention, especially the right not to suffer torture or inhuman and degrading punishment and treatment set out in article 3. There is no exception to this principle if the transfer is done to execute an obligation arising from the European Union and in application of the Dublin Regulation, despite the fact that the ECtHR duly takes into consideration the existence of special links between EU MS. In fact, for several years, the European Court has been referred to with claims that the Convention has been violated by MS when applying the Dublin regulation, all of which have been rejected or deemed inadmissible. Only since the *M.S.S.* ruling, condemning Belgium for transfers to Greece, has the European Court reiterated the full responsibility of EU MS with regard to the rights enshrined in the European Convention, even when transfers of third-country nationals are made to another EU member state. This was the first condemn issued by the ECtHR of what became known as "Dublin cases" which was followed by others in which the Court further reiterated that, despite a presumption between EU MS of the security of their asylum systems, the responsibility to protect the rights enshrined in the European Convention cannot be excluded.[5]

In short, to ensure compliance with the Convention, MS should adopt procedures to ensure that, for each person subject to transfer to another state, there is no risk of violating the rights set out in the Convention; MS can assume the presumption of safety of a country that is part of the Dublin

[4] Brekke, Jean-Paule, Brochmann, Grete, *Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation*, *Journal of Refugee Studies*, 2014, pp. 1-18. EASO, *Annual Report on the Situation of Asylum in the European Union 2014*, www.easo.europa.eu.

[5] ECtHR, Judgement of 21 January 2011, *M.S.S. v. Belgium and Greece*, Appl. No. 30696/09; 21 October 2014, *Sharifi and Others v. Italy and Greece*, Appl. no. 16643/09; 4 November 2014, *Tarakhel v. Switzerland*, Appl. no. 29217/12. See the report: *Doctors for Human Rights*, *Unsafe Harbour. The Readmission to Greece from Italian Ports and the Violation of the Migrants Basic Human Rights*, Summary, November 2013; Lenart, Joanna, «*Fortress Europe»: Compliance of the Dublin II Regulation with the European Convention for the Protection of Human Rights and Fundamental Freedoms*, *Utrecht Journal of Int. and European Law*, 2012, p. 4 ss.; Mallia, Patricia, *Case of M.S.S. v. Belgium and Greece: A Catalyst in the Re-thinking of the Dublin II Regulation*, *Refugee Survey Quarterly*, 2011, p. 107 ff.; GRAGL, *The Shortcomings of Dublin II: Strasbourg's M.S.S. Judgement and its Implications for the European Union's Legal Order*, *European Yearbook of Human Rights*, 2012, p. 123 ff. Saccucci, Andrea, *Diritto di asilo e Convenzione europea dei diritti umani: il ruolo della Corte di Strasburgo nella protezione dello straniero da misure di allontanamento verso Paesi «a rischio»*, in Favilli, Chiara, ed, *Procedure e garanzie del diritto d'asilo*, Padova: Cedam, 2011, p. 145 ff.

system, but will have to be particularly cautious in the case of persons belonging to vulnerable groups and, of course, where there is a risk of a lack of fundamental rights in the destination country. In any event, since the presumption of safety must be understood to be relative and not absolute, each person must be able to dispute the risk of a violation of their rights through an effective means of recourse, as required by article 13 of the Convention.

There is no doubt that the need to fully guarantee respect for fundamental rights can only have a negative impact on the speed and on the certainty of the system, as expressly pointed out by the Court of Justice. It understood, in the narrowest sense, the principle expressed by the ECtHR, with a formula substantially transposed into the current article 2 of the Dublin III Regulation aimed at excluding transfers to the competent member state when there are "systemic weaknesses in the asylum procedure and the reception conditions of applicants in that member state which entail the risk of inhuman or degrading treatment under article 4 of the European Union Charter of Fundamental Rights". On this aspect there is still a divergence between the text of the Dublin Regulation and the approach taken by the Court of Justice, on the one hand, and the approach of the ECtHR on the other. Except that it was echoed also in its opinion on the agreement on EU accession to the ECHR which the Court of Justice deemed not to comply with EU treaties as it was not enough to guarantee the peculiarities of European Union law, which also include those regulatory instruments, such as the Dublin Regulation, that are based on mutual trust between MS and that, in order to work, must involve the existence of absolute presumptions of security of their respective legal systems.

## 5.2 The European Common Asylum System

The EU has developed a common asylum policy based on two phases aimed at the creation of the Common European Asylum System.[6] In particular, the agreed strategy developed across two successive phases characterized by a different level of harmonization of national legislation governing all relevant aspects of the protection system: the reception, procedures, qualifications and decision of the competent state. To facilitate the correct application of the European asylum system at national level, the European Asylum Support Office was also created, which is currently being transformed into the European Asylum Agency.

Central to this is the notion of international protection, on the basis of which an appropriate status is offered to any citizen of a third country, not only to those fleeing from individual persecution, but also

[6] *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, OJ 10 July 2001 *L* 187, p. 45; *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection*, OJ 29 June 2013 *L* 180, p. 60-95; *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection*, OJ 29 June 2013 *L* 180, pp. 96-116; *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted,* OJ 20 December 2011 *L* 337, p. 9 s. See also *Communication from the Commission to the European Parliament And The Council 5th Annual Report on Immigration and Asylum (2013),* COM(2014)288 of 22 May 2014. Adinolfi, Adelina, *Riconoscimento dello* status *di rifugiato e della protezione sussidiaria: verso un sistema comune europeo?*, *Rivista di diritto internazionale*, 2009, p. 669 ff.; Teitgen-Colly, Catherine, *The European Union and Asylum: an Illusion of Protection, Common Market Law Review*, 2006, p. 1503 ff.; MORGESE, *La riforma del sistema europeo comune di asilo e i suoi principali riflessi nell'ordinamento italiano*, *Diritto, immigrazione cittadinanza*, 2013, p. 15-35; Zwaan, Karin, *UNHCR and European Asylum Law*, Nijmegen, 2005.

to those who, for whatever reason, cannot be rejected or returned their country of origin and require subsidiary or temporary protection (article 78 TFEU).

## 5.3 Temporary protection

Directive 2001/55/EC on temporary protection in the event of a mass influx of displaced persons was one of the first legal acts adopted by the European Union on asylum. Unlike other acts, the adoption of this directive did not raise any particular difficulties on the part of the MS which already provided legal measures designed to regulate the stay of displaced persons who cannot return to their own country under safe conditions. This legislation applies to mass influxes of people, in the case of both spontaneous arrivals and those due to evacuation plans. The cause triggering the exodus process from one's own land can be of various kinds, although article 2, section 1 c) considers in particular those fleeing areas of armed conflict or endemic violence, or persons who are at grave risk of systematic or generalized human rights violations. Although there is no precise indication in this respect, the notion of displaced persons under article 2 of directive 2001/55/EC would also include those fleeing from their own country because of environmental disasters. These are, in fact, situations in which a large number of people need to be accepted temporarily. However, in more recent situations of reception generated by a natural disaster, the mechanism of temporary protection was not used. The practice is, therefore, homogeneous as it removes the right to international protection from so-called environmentally displaced persons.

Temporary protection measures are justified as it is believed that the right to asylum is not enough to ensure adequate protection precisely because of the high number of people involved which would not allow for a careful individual assessment. The security granted by temporary protection is, therefore, collective in nature and does not require the individual to prove they are in personal danger. This different kind of protection gives rise to another type of individual legal situation: in the case of asylum, this involves a real individual right which arises the moment the person is in the situation governed by article 1 of the Geneva Convention, while in the case of temporary protection, there is an expectation of care that may grant a right only the moment it is attributed with a legal act to a group of people.

Temporary protection is granted with a qualified majority decision of the Council following a proposal by the Commission and has an initial duration of one year. If circumstances so require, it can be extended by six months after six months, and up to a total of three years, but may also be prematurely revoked if the situation in the country of origin improves. The limited duration of protection corresponds to the presumed limited duration of the situation that renders the country of origin insecure, after which the displaced persons must be repatriated. If, at the end of the maximum duration of temporary protection "a safe and stable repatriation" of displaced persons is not yet possible, the MS will have to find other protection solutions through the Council, probably by resorting to subsidiary protection under directive 2011/95/EU.

## 5.4 Refugee status

The hard core of international protection concerns those who have refugee status under the 1951 Geneva Convention, as expressly reiterated in the text of the Treaty on the Functioning of the European Union and defined in a directive as "the cornerstone of the international legal framework on the protection of refugees". Directive 2011/95/EU, in defining the concept of refugee, reformulates article 1 of the Convention according to which a refugee is one who flees from their own country or who does not want to return there for fear of persecution for reasons of race, religion, nationality,

membership of a particular social group or political opinion. Asylum seekers and refugees enjoy a special status as defined by the Convention. Over the years, the UNHCR has contributed decisively to ensuring the application of the Convention in different historical and geographical contexts from those in which it was drafted.

A new aspect is that of agents of persecution. In particular, some MS considered protection against persecution perpetrated by state bodies as admissible, while, according to others, it was enough that the State was unable to ensure protection, regardless of the source, public or private, of the persecution. Article 6 clearly states that the perpetrators of the persecution (or serious harm for the purposes of subsidiary protection) may be, in addition to the State, "political parties or organizations controlling the state or a substantial part of its territory", as well as non-state entities if it can be demonstrated that the state or other entities who control the territory, including international organizations, are unable or unwilling to provide adequate protection.

As for the entities that may offer protection, article 7 includes the State, political parties or international organizations. This list should be seen as exhaustive so that other entities may not be deemed suitable to provide protection. As noted by the Commission in its proposal to amend the qualification directive, some states have interpreted the regulation in it broadest sense to the point of risking to undermine the notion of adequate protection provided by the Geneva Convention. The Commission stipulates, therefore, that the list of entities suitable to provide protection is absolute and that all the conditions laid down therein must be satisfied; not just, therefore, being suitable to provide protection, but also to have the will to do it.

The directive has expressly codified in article 5 the right to so-called sur place protection when the need for protection arises outside the country of origin, since the events that cause the need for protection occurred after departure from the country of origin. However, article 5, section 3, grants states the right to refuse refugee status to those at risk of persecution on the basis of the specific circumstances created by the applicant themselves since leaving their country of origin.

One provision that has sparked criticism from the UNHCR is article 8, which provides for the possibility of denying international protection when there are internal areas within the country of origin where the person "does not have a well-founded fear of being persecuted or runs no real risk of suffering serious harm" despite there being technical barriers preventing their return. This provision goes against what the ECtHR stated in the Salah Sheekh case when it clearly reiterated that for internal areas to be considered secure they must ensure that the person runs no risk of being subjected to treatment prohibited by article 3 of the ECHR. The proposal to amend the directive radically alters article 8 making it conform to the ECtHR's statement and thereby providing that for the internal area to be safe it must ensure international protection by the entities described in article 7, and excluding the application of the measure when there are technical barriers to return, as well as providing for an obligation that the authorities obtain accurate and up-to-date information on the general situation in the country.

In identifying acts of persecution and reasons for persecution, the directive has substantially reproduced the provisions of the Geneva Convention with some slight variations and “timid” additional provisions. Over the years some states, spurred on by the UNHCR guidelines, have interpreted these provisions in their broadest sense to ensure protection against persecution on the grounds of gender, sexual orientation and age, in particular through the broad interpretation of the concept of "social group". So, article 9 qualifies as persecution "acts specifically directed against one gender or against children". In addition, article 10 expressly provides that "social group" could mean a group founded on the common characteristic of sexual orientation, except when criminally relevant facts come to light inside MS. It also states that gender related aspects might be considered,

"although they do not constitute in themselves a presumption of the applicability of this article". This statement was probably inserted for fear that international protection might be granted to all women in certain countries. This side issue was duly removed from the directive proposal that also made it an obligation to take account of gender considerations when evaluating the existence of a social group, which at the moment is seen as the responsibility of the states.

## 5.5 Subsidiary protection

One of the major innovations of the European asylum system is the codification of the establishment of subsidiary protection by directive 2011/95/EU. This form of protection, which is subsidiary to asylum, identifies those cases where, although not qualifying for refugee status, there is nevertheless a "real risk of suffering serious harm in the country of origin or of habitual residence". The term “serious harm” also includes those situations in which a person has the right to receive protection to prevent the denial of a right recognised in international conventions on refugees other than that of Geneva. Chief among these, as we know, is the European Convention on Human Rights and in particular article 2 on the right to life and article 3 which guarantees the right not to be subjected to torture or inhuman or degrading treatment. Article 3, in particular, has been interpreted by the European Court of Human Rights as a limit on the removal of foreign nationals whenever the return or delivery to the state of origin or to the requesting state exposes them to a serious risk of suffering such treatment or torture . This is, therefore, a different situation from that contemplated by the Geneva Convention, in which it is the existence of persecution of an individual that determines the right to refugee status. In addition, in the ECHR system the right enshrined in article 3 is absolute given that article 15 of the Convention does not allow any derogations, even in a state of war or other danger to the state. The Geneva Convention, on the other hand, provides that the right of asylum is denied in the presence of any of the reasons for exclusion provided by article 1 and expressly restated in the directive.

Article 3 of the ECHR and the interpretive jurisprudence of the European Court were carefully considered when directive 2004/83/EC was adopted. Despite the fact that MS are all bound by both the Geneva Convention and the ECHR, in the absence of procedural and applicative regulations, the way it is implemented is widely diverse. EU directives have, therefore, codified the system of international protection within the MS, systematising the various rights and defining their respective scope of application, as well as their resulting status. It is a well-known fact that, in relation to the rights guaranteed to beneficiaries of international protection, including refugees under the Geneva Convention, there is a huge divergence between MS. Internal legislation tends to differ considerably also with regard to aspects that are sometimes central to the treatment of foreign nationals. This is even more evident in those forms of protection that are based on the protection of the rights enshrined in human rights conventions that impose limits on the removal of a person. The case of article 3 of the ECHR is paradigmatic from this point of view, but we could also include the analogous regulation in article 13 of the Covenant on Civil and Political Rights. These regulations do not provide for a positive obligation to recognise a certain status, but “only” an obligation not to remove persons who are likely to be denied their rights. The directives not only codify the prerequisites for the recognition of protection (i.e. the denial of the rights of the protected person), but also specify its characteristics and the rights associated with it.

Despite being inspired by the ECHR, the codified language in directive 2011/95/EU is entirely original, given that the expression "serious harm" does not appear either in the text of the Convention or in the jurisprudence of the European Court. Article 15 of the directive specifies what is meant by "serious harm", distinguishing three cases: a) the death penalty or execution; b) torture or other

forms of inhuman and degrading treatment; c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. Cases a) and b) are clearly also inspired literally by articles 2 and 3 of the ECHR, as well as articles 2 and 19 of the Charter of Fundamental Rights. What is new is article 15 (c) as is clear from the preparatory works of the directive. Recognising a right to protection in cases of risk arising from situations of indiscriminate violence, the directive greatly expands the possibilities of protection of asylum seekers; one of the most complex points in the examination of asylum applications is that of evaluating the existence of an individual risk in relation to which the applicant must provide as much proof as possible, which could also be presumptive, but nevertheless conclusive. The question is, in fact, crucial in the light of the divergence between the MS who have understood, in a more or less narrow sense, what the ECtHR stated on the matter. The European Court has effectively tended to exclude the application of article 3 of the ECHR in cases where the applicant had not proven individual risk of ill-treatment or torture; even though the Court has taken into consideration the general situation of the country, it has, at least up to 2008, considered the condition of the individual person to be decisive. More recently, the Court has for the first time stated that, even in the absence of evidence of individual risk, the situation of generalised disorder and violence in the destination country, especially when the person belongs to a vulnerable group, may be such as to risk violating article 3 of the ECHR.

The directive codifies and clarifies, therefore, a highly relevant aspect of the protection of people at risk of having their human rights violated in the destination country. The Court of Justice, when called upon to interpret article 15, stated what should be the correct interpretation of the three different cases of serious harm referred to therein. Doubts about interpretation could have arisen due to the apparent contradiction with article 15 (c) of recital no. 26 of the same directive. According to it: "The risks to which the population or a section of the population of a country are generally exposed do not normally constitute an individual threat to be defined as serious harm". The Court expressed its opinion on this point with the Elgafaji judgment. This involved an appeal by an Iraqi married couple against the denial of a temporary residence permit by the Netherlands; the permit had been requested due to the risks to which the couple would have been exposed if returned to Iraq. The Dutch authorities had rejected the request, maintaining that the couple had not demonstrated individual risk, in other words, they had not proved they ran an individual risk of death, torture or inhuman and degrading treatment.

The Court set out a number of criteria for interpreting what is meant by individual risk. According to the Court, the key to correctly interpreting article 15 is the identification of a separate and distinct application for each of the three cases provided for therein. So a) and b) correspond to the cases included in articles 2 and 3 of the ECHR, as traditionally interpreted by the ECtHR. In particular, cases (a) and (b) refer to the specific exposure to a risk of a particular type of harm (death, execution, torture, punishment or ill-treatment). Case c), on the other hand, consists in the serious and individual threat to the life or the person of the applicant and, therefore, is concerned with the risk of a more general kind of harm, by reason of a situation of armed conflict and indiscriminate violence. In a situation of this type, the person returned to their country of origin is exposed to a real risk of a serious threat regardless of their specific personal situation. The Court overcomes the apparent contradiction with recital no. 26 by emphasizing the presence in the sentence of the adverb “normally”. In the opinion of the Court this means that there may be exceptional situations characterised by "a degree of risk so high that there would be reasonable grounds to believe that the person would be exposed individually to the risk in question". In particular, the more individualisation can be demonstrated, the less a high degree of indiscriminate violence will be required. The Court stated that if there is individual risk, there is no need to have recourse to demonstrating the gravity of the general situation of the country; whereas, if there is no individual

risk or if it is difficult to prove, then proof of indiscriminate violence could be decisive. In addition, according to the Court, account must be taken of the geographical extent of the situation of indiscriminate violence and of certain indications, such as those mentioned in article 4, section 4 of the directive, i.e. the fact that the applicant has already been subject to persecution, serious harm or direct threats. In the drafting of the proposed amendment to the directive in force, the European Commission, having been asked to clarify article 15 (c), stated that "taking into account the interpretive guidance provided by the aforesaid judgment and the fact that the relevant provisions were deemed compatible with the ECHR, it was not considered necessary to amend article 15 (c)".

## 5.6 Regular migrant

Despite the fact that controlling the entry of foreign nationals for economic reasons might be seen as the fulcrum of any migration policy, there is no significant European legislation in this regard. The main reason was the reluctance of the member states to give the EU the role of regulator of this segment, maintaining that it was strictly the domain of the member states.

A concrete attempt was made by the European Commission a few months after the entry into force of the Amsterdam Treaty, with the publication of a communication laying down the general lines of development of future immigration policy and, then, of a proposal on entry for work reasons in 2001. This proposal provides a common procedure for the request of an entry permit and a combined residence and work permit. The proposal also provides for the setting of common prerequisites for the acceptance of immigrants for economic reasons; the availability of rapid action instruments on the part of the states in relation to changes in economic and demographic circumstances A residence permit for work reasons should be issued for a maximum period of three years and should be renewed for a further maximum of three years.

Left in a dead end, the proposal was finally withdrawn in 2005, in the light of the clear opposition of Governments and the change in priorities seen since the end of 2001. The new course was then marked by the presentation of the Green Paper on immigration for economic reasons, resulting in the adoption of an action plan on legal migration which was substantially confirmed by the Stockholm Programme, approved in December 2009.

A sign of the states' position on immigration for economic reasons is also found in the provisions of the Treaty on the Functioning of the European Union where it is expressly stated that the jurisdiction of the EU shall not affect the right of states to determine the number of entries of citizens from third countries for the purpose of looking for employed or self-employed work (article 79, section 5 of the TFEU). The narrow interpretation of the law, aimed at recognizing the jurisdiction of the state solely with regard to entry to look for employed or self-employed work found no response, either in theory or in practice. Indeed, the European Pact on Immigration and Asylum states that “it is up to each member state to decide the conditions of admission into its territory of legal migrants and, if required, fix the number”. According to this document, which was solemnly agreed by EU heads of state and government, it is the competence of the states to also define the prerequisites for entry, an aspect which, however, may be governed by EU regulations if and when a common control might be required.

Having abandoned any prospect of realizing a genuine European policy on immigration for economic reasons, the Commission, following the guidelines of the European Council and the Council, adopted only certain regulations, the only ones on which the governments of the member states were willing to agree common rules.

This led to the approval of directive 2009/50/EC on the conditions of entry and residence of third-country nationals who intend to perform highly skilled jobs, and the establishment of the European Blue Card. The scope of the directive was to increase the EU's capacity to attract third-country nationals who intend to perform highly skilled jobs, by facilitating entry and improving the legal status of those residing in the EU. To be admitted, the directive requires, among other things, that applicants possess a contract of employment or an offer of highly qualified employment lasting at least a year. The directive is without prejudice to national legislation on entry quotas which are decided independently by the individual member states. The authorization for entry and residence is certified by the so-called “Blue Card”, which is usually valid from one to four years. After eighteen months of legal residence in a country, the worker gains the right to move to another member state to perform highly qualified work, subject, however, to the limits fixed by the authorities of that state with regard to the number of citizens who can be admitted.

Not only is there no control over the entry and residence of third-country nationals for economic reasons, but there is also no control over the conditions under which legally resident third-country nationals can move to another member state and work there. Indeed, according to the directive on long-term residents, citizens who obtain this status can reside in another member state only if they meet the requirements and conditions established by the member states, that is to say in accordance with the rules on entry and residence of third-country nationals. States may provide for a privileged path of entry for "long-term residents" already residing in a member state, but entirely at their discretion, without any obligation under EU law.

Among the legal acts adopted following complex and long negotiations what stands out in particular is directive 2003/86/EC on the right to family reunification; the original proposal had been submitted for the first time in 1999 and finally approved in 2003, with a text widely different from the original. After four years of negotiations, two amended proposals and numerous modifications to the original text, this act is the paradigmatic example of the effects that the procedure under article 67 of the EC Treaty can produce on the content of a legal act. It belongs to the category of provisions aimed at introducing minimum standards and not harmonization. Once again, however, these rules are so minimal as to introduce restrictions that are too limited for the national legislator. With respect to the Italian legal system, the directive is not strict enough when it comes to the notion of family, the condition of children over 12 years of age and the nature of the residence permit for family reasons, the relative activities required and the dependence on the permit of the family member making the reunification. During the difficult job of composing national interests in the Council, which lasted about four years, the Commission's original proposal was extensively amended, both by transforming into powers many of the obligations originally provided for and by introducing provisions to the main purpose of allowing the maintenance of specific national measures which would otherwise have had to be repealed once the directive was implemented. The latter ends up having mainly the function of identifying the lowest common denominator, making it a cornerstone of community legislation, while refusing, however, to introduce new elements that would force the states to modify or repeal national law, unless on individual aspects of it. The most innovative provisions were formulated as so-called “may provisions”, according to which states may regulate aspects of the right to family reunification under the directive; just as in the other cases national provisions, which would otherwise not be compatible with the directive, may still be applied. The final result was, therefore, a directive that was not harmonizing and allowed the states to maintain their national legislation substantially unchanged. However, since in the last twenty years the European states with a high level of immigration have adopted regulations aimed at reducing the possibility of legal entry, including family reunification, the adoption of the directive at least sets a minimum level of protection which cannot be reduced further and is independent of the states. Furthermore, it widens the "scope of European Union law” which defines the area within which states must act in

respect of all community law, including general principles and fundamental rights, as protected by the Court of Justice.

The Court of justice ruled on the legality of the directive after an action for annulment brought by the European Parliament in relation to articles 4, no. 1 and no. 6, and 8. The Parliament argued that the directive's provisions authorizing derogations from the right to family reunification (integration conditions, the minimum number of years before applying for family reunification), went against fundamental rights, in particular, the right to family life and the principle of non-discrimination. The Court, although considering the directive to be legal, stipulated that, in applying the provisions of implementation, the states must always take into account the respect of fundamental rights, including the right to family life, as protected by the European Convention on Human Rights, and the best interests of the child.

According to the article 79, point 4, of the TFEU, the EU can take measures to encourage and support the action of the member states in order to facilitate the integration of third-country nationals legally residing in their territory. Therefore, the adoption of any measure of harmonization of the member states' legislation is excluded, which entirely precludes the formation of a common policy on integration. However, what is not excluded is that the coordination of national policies can lead to significant results, also in terms of the harmonization of national policies, even if only in the medium and long term, and always without any constraint imposed on the states (article 2, section 5 of the TFEU).

The principles of integration have been expressed by the European Commission in its Communication COM(2005)38 of 1 September 2005 on a common agenda for integration, then renewed up to 2017. Supplementary to this is the Handbook on Integration that contains examples of best practices related to the integration of migrants that have been tried in various EU countries.

The binding measures which can be understood as a means to foster integration include regulation no. 859/2003 of 14 may 2003 on the extension of the provisions of regulation no. 1408/71 to third-country nationals who legally reside in the Community to whom these provisions are not already applicable solely on the grounds of nationality, and directive 2003/109/EC on the status of third-country nationals who are long-term residents. The purpose of this latter directive is to align the treatment of European Union citizens and third-country nationals as the key element for the promotion of economic and social cohesion, a fundamental objective of the European Union. The directive provides that, after five years of legal residence in a member state, the foreign national acquires the right to be granted the status of long-term resident. Once acquired, the status is permanent, except in cases of revocation, even though the permit must be renewed after five years. One of the characteristic aspects of this status, in addition to reducing cases of removal and equivalence with European Union citizens with regard to accessing certain services, is the right to move and reside in another member state for a period longer than three months. This right is also functional to the full realization of the free movement of workers governed by the Treaty and recognized up to now only to citizens of member countries. This freedom, however, in respect of third-country nationals does not constitute a fundamental right. One of its most obvious limitations is the fixing of state quotas by the member states for the access of third-country nationals according to the legislation in force, that may also relate to long-term residents from other member states. These may also be refused the preference clause of EU citizens. One should consider, however, that a quota system of a member state, which systematically blocks the access of long-term residents from other member states, is not compatible with the directive.

The European Council also requires the creation of equal opportunities for a better integration and full participation in society. The obstacles to integration must be actively removed; common

fundamental principles underlying a coherent European framework on immigration must not be established. The European Handbook on the Integration of Migrants, published by the Commission on 10 November 2004, and the Conclusions of the Council of 11 November 2004, which identify common principles for the integration policies on immigrants, are texts giving a useful insight into this topic.

## 5.7 Undocumented migrants

The final piece of the EU's migration policy consists of the actions to combat irregular migration, human trafficking and people smuggling. The European institutions have based action in this sector on the assumption that an effective policy to combat irregular migration is an essential condition to ensure the credibility of migration policy, as well as to reduce the exploitation conditions in which irregular migrants find themselves and which, after all, is damaging to the economy of the European Union. The MS were also particularly diligent in adopting the measures proposed by the European Commission or state initiatives.

The same cooperative spirit was shown in the adoption of the measures on the removal of third-country nationals in an irregular situation, aimed at defining a regulatory framework on the removal operations implemented by the national authorities of the individual MS.

More complex, however, was the adoption of directive 2008/115/EC on the repatriation of third-country nationals in an irregular situation following a proposal of the European Commission. The approval of the directive was accompanied by harsh criticism on the part of many non-governmental organizations at European level which defined it as the “directive of shame”, especially in view of the long detention times while awaiting expulsion, which, under certain conditions, can be up to eighteen months. In reality, the directive introduced a complex system in which the primary objective of removal is balanced with the respect for human rights and the dignity of the foreign national, stressing the need to respect the proportionality of the measures employed for the purposes pursued.

The directive repealed two articles of the Schengen Convention, contributing to the process of replacing Schengen regulations with EU acts that began with the incorporation of the Convention into the European Union. The return directive does not harmonize and does not diversify the perquisites for expulsion, but simply removes persons in an irregular position according to common rules and procedures. The first new aspect of EU law is the obligation to remove foreign nationals residing irregularly, with the exception of the humanitarian cases expressly provided for by article 6 of the directive.

The directive requires states to provide a plurality of ways to perform removal that are characterized by a gradual increase in the use of coercive measures, ranging from voluntary departure to compulsory accompaniment, with a preference for voluntary departure whenever there is no reason to believe that this could jeopardize the purpose of the return procedure (recital 10). In particular, states are called upon to assess whether there is a risk of absconding, which, if slight, can determine the safeguards during the period granted for voluntary departure (article 7, section 3); otherwise it may result in the issuance of a removal order, possibly accompanied by coercive measures, in accordance with the principle of proportionality and on the basis of a reasonable use of force (article 8, section 4).

Under article 11 of the directive, every return decision is accompanied by a re-entry ban when the period for voluntary departure has not been granted or, once granted, the foreign national has not complied with the return order; this ban may be applied to other cases. In any case, the duration is a maximum of five years, which can only be increased if there is a "danger to public order, public

security or national security". In the system of the directive the re-entry ban is a kind of sanction against the foreign national who has not complied with the repatriation order and is intended to be an incentive to adhere to this instrument of removal that does not preclude subsequent re-entries, even after short period of time, if the required conditions are met.

As to detention, while providing a maximum term of 18 months (article 15), it is expressly stated that it should be for as short a period as possible and should last only for the time necessary to carry out the repatriation. To this end, there is a system of periodic control of the conditions surrounding the decision to deprive a person of their personal freedom and it is established that the detention should end when there are no more reasonable grounds for removal, both of a legal or other nature. Furthermore, recital no. 16 specifies the rationale and principles of detention, which "should be limited and subject to the principle of proportionality with regard to the means employed and the objectives pursued" and justified only if other less coercive measures are not sufficient.

Finally, under article 13 of the directive, those being removed have the right to an effective remedy, the concept of which has been developed by the Court of Justice and the European Court of Human Rights. The right to an effective remedy is also established by article 47 of the Charter of Fundamental Rights of the European Union, which is, in turn, based on article 13 of the European Convention. The European Court of Human Rights has developed an interesting jurisprudence on the right to an effective remedy, including in relation to appeals against the expulsion of foreign nationals, especially when they claim article 3 of the European Convention has been violated. In particular, the Court has stated that, for the action to be effective, it must be able to suspend the execution of the expulsion. Because the rights enshrined in the Charter that correspond to the rights recognized in the European Convention must have the same meaning and the same scope as those conferred by the Convention, the Court of Justice could decide to strengthen the protection of the fundamental rights of foreign nationals, helping to ensure the effective application of the rights enshrined in the European Convention.

If the general system of the directive is clear (administrative sanctions, the preference for voluntary repatriation, proportionality and reasonableness of the measures used), each provision has clauses that give the states a degree of flexibility, making the directive's harmonizing effect extremely tenuous. Article 7, which provides for voluntary departure, allows states to establish that this period be granted upon request of the foreign nationals concerned; furthermore, the directive does not codify the notion of “risk of absconding”, the declination of which is left to the discretion of the states and the judgement of the administrative and judicial authorities. Since this concept is crucial, as it is the basis on which the form of executing the expulsion is decided (voluntary departure or immediate execution with possible detention), its non-codification greatly undermines the uniform application of the directive, at least until an official interpretation by the Court of Justice. Lastly, the directive fails entirely to regulate the status of third-country nationals who have not been removed despite still being irregular. The directive contains only a vague reference in recital no. 12 on the basis of which MS should define the basic conditions for the existence of such persons, but does not contain any regulatory provision in this regard. The only certain fact is that these people cannot be detained beyond the eighteen months deemed to be the maximum period of detention for the execution of the expulsion.

Among the more recent legal acts adopted within the framework of combatting irregular migration is directive 2009/52/EC, which introduced minimum standards on sanctions and measures against employers who employ third-country nationals residing irregularly. This is a measure that has a significant impact also in the area of employment. In fact the directive tends to impact one of the many factors that feed the irregular flows of entry and residence of third-country nationals. As we know, the chances of finding a job in the informal market, with wages still higher than those in

the country of origin, is one of the reasons that encourage emigration, even if irregular. The thorny issue of the informal economy is addressed by the EU in the context of competency on employment, the exercise of which has furnished a number of studies and has started a process of coordination and comparison of the policies of the states on the matter.

The directive prohibits the employment of third-country nationals residing irregularly and establishes common minimum standards on sanctions and measures applicable in MS against employers who violate this prohibition. It applies to third-country nationals residing irregularly in an EU member state, whether they have entered regularly and overstayed or have entered irregularly. However, it does not consider the employment of those who, although legally residing, have no right to work or have a limited right to work. In fact, in the Treaty these situations have a different legal basis and, therefore, these guidelines could not be regulated here.

This, and all the acts adopted up to this point, were now beginning to be implemented and/or applied by the MS who are ultimately responsible for ensuring the effectiveness of the EU's measures, on the basis of the principles of loyal cooperation and uniform interpretation. The difficulties seen in this phase that is so crucial to the effectiveness of EU law and to the achievement of the objectives pursued by the adoption of the acts, are an indication of a certain reluctance that still characterizes many of the MS who are unwilling to afford the European Union the role of legislator in this matter.

# 6. Refugee crisis driven reforms

The crisis of migrants and asylum-seekers, which has become a crisis of the European area of free movement, has revived the never-dormant debate on the effective application of the principle of solidarity among MS enshrined in article 80 of the TFEU Institutions and governments have understood this principle only in terms of technical and financial assistance to the countries most involved in the reception of asylum seekers.[7]

There has been no room for the application of the provisions of the directive on temporary protection which was approved in 2001 when the memory of the crisis caused by the migration of more than a million people fleeing from the conflict in the former Yugoslavia was still fresh. Temporary protection, in fact, provides for the distribution of people into a member country when a massive influx of migrants could affect the functioning of the asylum system. Although the instrument is already in force and fully suitable to be applied in the present case, its application has never been adequately proposed, so much so that the European Commission has even thought of repealing it.

Also excluded is the promotion of mutual recognition and a flexible management of the transfer of beneficiaries of international protection, although present in numerous Commission documents and proposed by the Italian Presidency of the Council in the second half of 2014.

Instead, the choice was issuing a new instrument, relocation, “fixing” the Dublin regulation and investing considerable resources in cooperating with third countries to stem the flow towards the European Union.

During weeks of heated debate, with repeated summits of the Heads of State and Government now directly involved in examining the detail of the solutions to be adopted, two decisions were approved on the temporary relocation of people in obvious need of international protection who had arrived in Italy and Greece up to September 2018. Based on article 78, section 3 of the TFEU, these decisions provided for a temporary mechanism to transfer a total of 160,000 people, out of which 54,000 Syrian citizens to be admitted into EU countries was then subtracted following the agreement with Turkey which will be discussed shortly.[8]

The most innovative aspect of the decisions was the setting of mandatory quotas on the basis of which to distribute international protection applicants between MS, with the exception of the United Kingdom, Ireland and Denmark. For the first time objective criteria were established to identify the number of people that each member state can potentially accept, depending on the country's population, the number of applicants already present, the gross domestic product and the unemployment rate. The setting of mandatory quotas according to objective parameters was the most innovative aspect of these decisions and was the most difficult one to be accepted by the MS, with some strongly opposed to it, to the point that the second decision, that of 22 September, was adopted with a qualified majority, with Romania, the Czech Republic, Slovakia and Hungary voting against it. The latter two states have also raised an action for annulment before the Court of Justice,

[7] European parliament, *The Implementation of Article 80 TFEU on the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States in the field of border checks, asylum and immigration* (edited by Vanheule, van Selm, Boswell); German Bar Association, AWO Workers´ Welfare Association, Diakonia Germany, Pro Asyl, National Working Group for Refugees, The Paritätische Welfare Association, Neue Richtervereinigung, Jesuit Refugee Service, *Memorandum*, *Allocation of refugees in the European Union: for an equitable, solidarity-based system of sharing responsibility*, March 2013; ECRE, *Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered*, March 2008.

[8] Council decision 2015/1523 of 14 September 2015 *establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, OJ L 239, p. 146; decision 2015/1601 of 22 September 2015 of 22 September 2015 *establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, in OJ L 248, p. 80.

based largely on procedural grounds, but also on the violation of the principle of proportionality and article 78, section 3 of the TFEU, as a legal basis suitable for adopting an act of this kind. The Court, with a comprehensive and robust judgment, dismissed all the grounds of appeal raised and also reiterated the centrality of the principle of solidarity referred to in article 80 of the TFEU, from which a rule of burden-sharing between the MS derives in principle, according to the discretionary choices made by the EU institutions.[9]

However, conceiving relocation as an expression of the principle of European solidarity raises several concerns. First of all, its practical application proved to be largely unsatisfactory. If it is true, as pointed out by the President of the European Council, that 93% of people who were in need of international protection have been relocated, it is equally true that the absolute figure is around 30,000 as opposed to the 120,000 envisaged by the decisions. The reason is that the decisions identified as eligible subjects only people belonging to those nationalities who obtain a status in at least 75% of cases based on data provided by the MS and processed by the EASO (such as Syrians, Afghans or Eritreans). For Italy, it was evident that the decisions could not have led to an effective lightening of the burden, since these nationalities make up a small minority of the total number of applicants for international protection.

Moreover, along with redistribution, the decisions provided for a strengthening of the existing identification obligation under the Eurodac regulation, with operational support measures for Italy and Greece aimed at improving identification procedures and the start of procedures for granting international protection with the dispatch of experts coordinated by the EASO and other relevant agencies where appropriate. At the same time, the European Commission agreed with Italy and Greece a roadmap for the creation of reception and first care facilities managed according to the hotspots approach, in other words closed centres to ensure the effective implementation of identification, registration and fingerprinting procedures. For Italy this meant a dramatic increase in identifications and, therefore, of the people for whom it was responsible in terms of the protection application under the Dublin regulation, in the face of a redistribution of barely 10,000 people. Other governments and institutions have basically achieved compliance with the obligations which Italy breached for years, by stemming the relocation facilitated by the lack of identifications in exchange for an “official” relocation of a tiny minority of the people that arrive in Italy.

It is not surprising, therefore, that after the expiry of the term of their application, given the divisions between the states and the limited success in terms of their intended purpose, the Commission has abandoned this tool and has withdrawn a proposed amendment to the Dublin Regulation which would have introduced some kind of permanent relocation system. Instead, a proposal to amend the Dublin regulation was presented following the publication on 6 April 2016 of a communication in which two reform options were envisaged: one of minimum reform and one that was rather more robust and based on the distribution of all applicants for international protection between MS through a procedure managed directly by the new European Asylum Agency. Needless to say, the proposal presented was based on the first option, a sort of Dublin plus that left the current system unchanged, particularly with respect to the policy of the state of first arrival. Except for some extension to the application of the criterion of the presence of family members in other MS (not just spouses and minor children, but also brothers and sisters, and the express consideration of family ties that arose after leaving the country of origin), the proposal was presented as a general tightening of the criteria and rules already laid down, particularly in order to prevent secondary movement; in

[9] Court of Justice, 6 September 2017, C-643/15, *Slovak Republic and Hungary v Council of the European Union.*

fact, it clearly set out the obligations of applicants for international protection and the consequent penalties for non-compliance, including possible exclusion from the reception system.

A new aspect was the introduction of the corrective mechanism of distribution of asylum seekers when a member state has a disproportionate influx of applicants for international protection and resettled people, namely greater than 150% of the national quota defined for each state through a reference key based on two criteria: the number of inhabitants and the gross domestic product. States are allowed not to participate in the redistribution mechanism by declaring their opposition and paying the sum of € 250,000 for each person not accepted. As we know, on 16 November 2017 the European Parliament in its first reading examination adopted by a large majority several amendments on the basis of which the criterion of the country of first arrival was exceeded with the introduction of an automatic transfer system using a method of fixed distribution, not conditional on exceeding 150% of the quota considered sustainable for each state. In addition, the choice of the country of transfer should be based on the exploitation of existing social ties between applicants and the destination country: family ties (extended to dependent adult children, brothers and sisters), having taken a course of study in the country or even just having lived there should be taken into consideration when choosing the country where to transfer the applicant for international protection.

Transfers of people, even in the case of extradition or expulsion, tend to always be very difficult to achieve, even more so when they cover tens of thousands of people. For this reason, the voluntary participation of applicants for international protection is essential, and the Parliament's proposal to introduce additional criteria enhancing the links with the competent state is going in the right direction, the only viable one remaining within the logic of the Dublin system.

Agreement between the Parliament and the Council imposed by ordinary legislative procedure seems impossible to reach given the stellar distance between the positions of the two institutions, to which also that of the Commission can be added. The Council, which represents EU governments, locked in a traditional approach aimed at tightening and eliminating all the derogations in the Regulation to ensure that the criteria are finally applied in a rigorous way, threatens severe sanctions for applicants for international protection. The Parliament, on the other hand, which represents the people of the EU, proposes to abandon the traditional system and, while still within the framework of the system of Dublin, innovates it profoundly.

## 6.1 Cooperation with third countries: stemming of flows of migrants and asylum seekers

While waiting for the second reform of the European asylum system to be approved, cooperation on stemming the flows of migrants and asylum seekers with third countries of origin and transit is constantly advancing. This has strengthened the external dimension of asylum and migration policies, which has been increasingly present since the Seville European Council held in June 2003. At the time, the governments asked the European Commission to introduce into its external relations with third countries systematic mechanisms of control of the activities to combat irregular migration. During the same summit, the UK government drew up a proposal for the construction of reception centres for asylum seekers in third countries, so as to admit only those whose application was deemed admissible. A proposal that was initially rejected, it has at times re-emerged in the agendas of the institutions or in informal meetings between ministers. For several years it has been defined in its mildest form of encouraging countries in the areas of origin and transit to make every effort to ensure adequate protection for asylum seekers, first of all by ratifying the Geneva Convention, and then developing protection programs with the regions concerned in cooperation with the United Nations High Commissioner for Refugees (UNHCR).

With the crisis of migrants and asylum seekers, this proposal was reintroduced in the context of the renewed framework of cooperation with third countries which have been given a systematic framework with the communication of 6 June 2016.[10] Thus, a new phase opened aimed at intensifying relations with third countries on the basis of the principle of "more progress and more aid". The underlying belief is that third countries need to be persuaded to cooperate with the EU to combat the smuggling of migrants, repatriate irregular migrants and receive asylum seekers, with any economic incentive at the disposal of the EU and the states: the more cooperation, the more funding and support from the EU. One of the many reasons which led the EU institutions and governments to opt for this mode of cooperation is represented by the difficulties so far encountered in formal readmission agreements and the lack of effectiveness of those already into force. With the new partnership framework for cooperation with third countries, on the one hand the EU acts in parallel and at the same time as the states, on the other economic incentives are boosted to the maximum through the use of trade, investment and development cooperation to obtain the cooperation of countries of origin and transit.

The "model" of this new strategy was cooperation with Turkey, which has become the key country for stemming the flow of Syrian citizens to the Greek islands. After several preliminary meetings, the "declaration" of 18 march 2016 announced that various interconnected measures had been agreed on. Turkey is committed to guaranteeing reception and protection to approximately three million Syrian citizens in exchange for massive funding from the EU and the MS (a total of six billion euros are estimated) and of the unblocking of negotiations on the agreement for visa liberalisation for Turkish citizens. For the first time the return of asylum seekers was also regulated by declaring Turkey a safe country and a country of first asylum for Syrian citizens.

Even with all of the uncertainty about the maintenance of the agreement in the long term, the significant reduction of arrivals in the Greek islands has made it a model of relations with countries of origin and transit along the central Mediterranean route, in particular with Niger and Libya. Bilateral cooperation is also a feature on this exciting front, which sees Italy involved first and foremost. After the signing of the Memorandum of Understanding with Libya on 2 February 2017, a partnership began that was promoted directly by the Ministry of the Interior with local Libyan municipalities in order to obtain the cooperation of those who actually control parts of the territory at local level. In addition, huge efforts have been made to operationalize the Libyan coast guard, so as to reduce the presence of European ships in the Mediterranean and thus avoid being directly involved in the activities of search and rescue at sea. This obviously allows European ships not to intervene thereby avoiding having to take rescued migrants to a safe port, usually a port in Italy, in compliance with the obligations of international law of the sea and the principle of non-refoulement.

The cooperation to stop arrivals along the central Mediterranean route also extends to the Southern border of Libya and to all of states of origin and transit and involves existing military missions which have been included in the large external dimension of migration and asylum policies. Within the framework of a broader mandate, they also relate to supporting the control and management of migration flows and to combatting human trafficking and people smuggling. Cooperation with Niger is of particular importance, as it is one of the main transit states to Libya and has become the destination country for the few who are taken from Libyan detention centers and returned there, and who should return to their countries of origin in the absence of alternative destinations. The EUCAP Sahel Niger mission has been operational since 2012 and the Italian government has deployed a military mission.

[10] *Partnership Framework with third countries under the European Agenda on Migration*, COM (2017) 350 final of 13.6.2017.

A cooperation that has rid itself of the traditional form typical of readmission agreements and has developed informally and flexibly. Just as cooperation with Turkey was sealed not with a formal agreement but with a "declaration", this is also true of other ongoing collaborations that can take on different names, such as deals or dialogues, but do not assume the form of a true international agreement.

A similar tendency is also seen in Italy, with the widespread practice not only of agreements in simplified form, but of informal policy agreements or arrangements. Indeed, there are readmission agreements which are signed directly by the heads of administrations, without the intervention of ministers or governments. This obviously allows much faster changes in duties and also less attention to be paid to constitutional constraints or treaties. At procedural level, then, all the steps required for the signing of formal or simplified agreements are removed, always precluding the intervention of parliaments, but also publication in the Official Journal.

Also interesting is the interplay between EU action and that of the states. Cooperation with Turkey was achieved through direct action by Heads of State and Government and financed with resources coming from a mix of national budgets and the EU budget. In this context, controlling the activities performed by national parliaments becomes the only way to avoid circumventing democratic safeguards; avoiding, in other words, that through the EU governments are even freer on the international scene than they would be if they were acting outside the EU. However, such control is very difficult, both due to the mix of EU and national measures and the non-adoption of formal acts, subject to political and/or legal control. The cooperation between the EU and Turkey, for example, lacked any EU agreement, so much so that the European Parliament decided not to contest the violation of its own requirements and did not raise an appeal for annulment before the European Court of justice. But there appears to be not a single agreement of the MS, because if there were, the internal procedures on the competence to be stipulated would have to be followed, something that does not seem to have happened in this case.

Elsewhere it is has been shown, however, that the cooperation between the EU and Turkey should have been concluded with an international agreement which, since it would have impacted on EU rules, would have had to have been signed by the European Union. The limits of sovereignty accepted by the states in favour of the EU are justified if EU treaties are respected along with all of the rules related to competencies, procedures and requirements of the institutions.

# 7. Conclusion

The EU, therefore, attributes competence on asylum based on a body of regulations and jurisprudence of various origin, which are not directly binding on the EU but are binding on the MS and, therefore, indirectly also relevant for the European institutions. The obligation to comply with the constraints already arising from international law derives expressly from article 78 of the TFEU, under which the EU must develop a “common European asylum system” in accordance with the Geneva Convention (1951 convention and 1967 protocol), the principle of non-refoulement and other relevant treaties; the first is an international agreement to which all MS are party, but not directly the EU and the second is a rule of general international law.

Despite the fact that the Geneva Convention is a treaty binding all MS, having been broadly interpreted by the UNHCR that for decades has supported the states in the implementation of the convention, the divergences in practice are many. The same can be said of the obligations arising from the European Convention on Human Rights or the conventions against torture, all relevant to the subject of the treatment of foreign nationals, particularly in relation to the limits on removal.

EU law has, therefore, been grafted onto this body of rules, international jurisprudence and practice, becoming a leading player of the right to asylum both on the continent of Europe and the international arena.

The common European asylum system has the merit of having put together the various protections arising from international law on international protection through what we can term as “codification”. At the same time, it also represents a “progressive development”, both for the codification of the interpretations of how the Geneva Convention should evolve and the express inclusion in the European system of those cases other than the right of asylum which have not yet been independently and fully regulated at international level nor, often, at national level. We refer in particular to the limits to removal arising from the European Convention of Human Rights which are now largely "covered" by the notion of subsidiary protection, changing merely negative obligations into actual positive obligations of protection and recognition of a specific status.

If EU law tends to be textually compliant with international law and the ECHR, there is one aspect where there is a discrepancy. This concerns those cases where the causes of the termination or exclusion of protection apply. In these cases, the person will have to be repatriated using the expulsion procedures in force in each individual country. Similarly, this happens when the person is a beneficiary of international protection but the government decides to remove them for reasons of national security or public order. Even the Geneva Convention acknowledges that protection may be rescinded and that the contracting states can expel a refugee residing regularly in their territory. However, in accordance with article 3 of the ECHR, as interpreted by the European Court of Human Rights, the protection offered by it is absolute and not subject to any exclusion, withdrawal or termination unless there is a change in circumstances such as to eliminate the risk of being subjected to a treatment prohibited by the regulation. In other words, having ascertained the existence of the prerequisites provided for by article 3 of the ECHR there can be no limitation of the guaranteed right, even when there may be a risk to public order or the security of the state. It is surprising, then, that in the text of the directive there is no reference to the absolute nature that subsidiary protection can assume, at least in the case in which the right being protected is the same as that deriving from article 3 of the ECHR. It is evident that the states should continue to apply the principles established by the European Court and, therefore, not proceed with the assessment of the exclusion of protection in cases where same legal position that is protected by article 3 of the ECHR exists.

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# ANNEX I: Overview of the legal framework on migration, asylum and reception conditions

| **Legislation title (original and English) and number** | **Date** | **Type of law** (i.e. legislative act, regulation, etc…) | **Object** | **Link/PDF** |
|---|---|---|---|---|
| Dublin Convention | Signed on 15/06/1990<br>Entered into force on 1/09/1997 and 1/10/1997 | Treaty | Determining the State responsible for examining applications for asylum lodged in one of the Member States | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A41997A0819%2801%29 |
| Directive 2001/55/EC | 20/07/2001 | Council Directive | Minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001L0055 |
| Regulation No 859/2003 | 14/05/2003 | Council Regulation | Extension of the provisions of regulation no. 1408/71 to third-country nationals who legally reside in the Community to whom these provisions are not already applicable solely on the grounds of nationality | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003R0859 |

| | | | | |
|---|---|---|---|---|
| Directive 2003/86/EC | 22/09/2003 | Council Directive | Right to family reunification | https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32003L0086 |
| Directive 2003/109/EC | 25/11/2003 | Council Directive | Status of third-country nationals who are long-term residents | https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32003L0109 |
| Directive 2004/83/EC | 29/04/2004 | Council Directive | Minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection | https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32004L0083 |
| European Pact on Immigration and Asylum | 24/09/2008 | | Legal immigration: control of irregular immigration; border management; asylum | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:jl0038 |
| Directive 2008/115/EC | 16/12/2008 | Directive of the European Parliament and of the Council | Common standards and procedures in Member States for returning illegally staying third-country nationals | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115 |
| Directive 2009/50/EC | 25/05/2009 | Council Directive | Conditions of entry and residence of third-country nationals for the purposes of highly qualified employment | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0050 |

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|---|---|---|---|---|
| Directive 2009/52/EC | 18/06/2009 | Directive of the European Parliament and of the Council | Minimum standards on sanctions and measures against employers of illegally staying third-country nationals | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0052 |
| Treaty on the Functioning of the European Union (Title V, articles 67 to 89 ) | Since 1/12/2009 | Treaty | Freedom, security and justice<br><br>Border checks, asylum and migration | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT |
| The Stockholm Programme | 12/2009 | | Framework for EU action on the issues of citizenship, justice, security, asylum, immigration and visa policy for the period 2010–2014. | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52010XG0504(01) |
| Directive 2011/95/EU | 13/12/2011 | Directive of the European Parliament and of the Council | Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0095 |
| Dublin III Regulation (No 604/2013) | 26/06/2013 | Regulation of the European Parliament | Determining the Member State responsible for examining an application for | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604 |

| | | | | |
|---|---|---|---|---|
| | | and of the Council | international protection lodged in one of the Member States by a third-country national or a stateless person | |
| Eurodac Regulation (No 603/2013) | 26/06/2013 | Regulation of the European Parliament and of the Council | Comparison of fingerprints for the effective application of Regulation No 604/2013 (Dublin III Regulation) | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0603 |

# ANNEX II: List of authorities involved in the migration governance

| **Authority** (English and original name) | **Type of organisation** | **Area of competence in the fields of migration and asylum** | **Link** |
|---|---|---|---|
| Court of Justice | EU institution | Guarantor of the uniform interpretation and application of EU law | https://curia.europa.eu/jcms/jcms/Jo2_7024/en/ |
| European Council | EU institution | Defines the general strategic guidelines for legislative and operational planning within the area of freedom, security and justice | http://www.consilium.europa.eu/en/european-council/ |
| European Asylum Support Office | EU agency | Contributes to the development of the Common European Asylum System by facilitating, coordinating and strengthening practical cooperation among Member States; it helps Member States fulfil their European and international obligations | https://www.easo.europa.eu/ |