

CHAPTER VII

CHANGES IN ATTITUDES TOWARDS MIGRATIONS



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Abstract

Migrations are always active, and it is impossible to imagine a world without them. However, migrations in the past decade have become a leading problem globally, especially in the European Union (EU). The EU migration policy and its common asylum system are undergoing tectonic changes, as negotiations between the Member States pave the road to a new and sustainable EU migration policy. Moreover, the need to remake the Dublin procedure is obvious; consequently, the European Commission is trying to satisfy national differences among Member States on the one hand and the state interest-oriented approach on the other. In all this, it is crucial that the fundamental rights of migrants and asylum seekers not be overlooked.

Keywords: migrations, legal regulation, perception, asylum, future regulation

1. Introduction

Migration is a phenomenon that originated at the time of the making of mankind. It is all present, continuous, and unstoppable. However, migrations in today's world prompt all countries to rethink their response and attitude towards them. Namely, migrations are becoming the foremost challenge for Western countries, which generally attract immigrants. This is especially so for (Western) European countries.

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Migrations in Europe can be divided into three phases.¹ The first phase involved guest workers in Western European countries. The main destination countries were Belgium, France, Germany, Luxembourg, the Netherlands, Sweden, and Switzerland. The recruited foreign workers were expected to return home after completing a stint of labour. During this period, most migrants in North-Western Europe originated from Algeria, Greece, Italy, Morocco, Portugal, Spain, Tunisia, Turkey, and Yugoslavia.² The second phase was marked by the oil crisis in 1974, which, as many authors argue, marked a sharp surge in global migration.³ The third phase started in the 1990s and was marked by the fall of communism and the “Iron Curtain” in Europe. The collapse of the Iron Curtain and opening of the borders of Eastern Europe induced new migration flows across Europe. The end of the Cold War, as well as wars in the former Yugoslavia, led to new flows of asylum seekers into Western Europe.⁴ The fourth phase of migrations in Europe began after the Syrian crisis with the subsequent deluge⁵ of migrants coming to Europe via Turkey and other migration routes. This fourth phase is marked by vast changes in the European Union (EU) legislation regulating migrations and border control. It is also marked by a sharp change in the attitude of EU citizens towards migrations and migrants. These changes demand further research, as it is necessary to safeguard migrants in need of protection and ensure that they have access to the asylum system. At the same time, it is necessary to protect the EU’s outer border and ensure that it functions as a barrier for those who do not meet the prescribed conditions for entry⁶ or the conditions to become asylum seekers. Of course, it is difficult to build such a system that would ensure that all who do not meet the aforementioned conditions are banned from entry and those who do are permitted into the EU (and the Schengen area). Therefore, we must understand who migrants are and why it is important for the EU to have jurisdiction on the way migrations are regulated. First, the Schengen cooperation in the Treaty of Amsterdam was heavily criticised for its lack of transparency, its duplicative role, and the absence of any democratic or judicial control, whereas the Maastricht Treaty’s third pillar was criticised for its ineffectiveness.⁷ These shortcomings have led to the incorporation of the former within the framework of the EU and the communitarianisation of the latter during the Amsterdam Intergovernmental Conference. The Treaty of Amsterdam undoubtedly represents a major turning point in migration policy at

1 See Van Mol and de Valk, p. 32.

2 Ibid.

3 See, e.g. Hansen, 2023; Van Mol and de Valk, p. 35.

4 Van Mol and de Valk, p. 37.

5 Only in 2015, the total number of people who entered the European Union was 1,255,600. See Mikac, Cesarec, and Jajić, 2016, p. 89.

6 Regulation 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the Rules Governing the Movement of Persons across Borders (Schengen Borders Code) (Codification); OJ 2016 L 77/5, 23 March 2016.

7 Namely, the Maastricht Treaty did not include immigration policy as the question of interest for the European Community. See Popović and Petek, 2019, p. 208.

the European level, even though its innovative character is strongly contested.⁸ Migration policy at the EU level was shaped in two different policy sets: the so-called “migration *stricto sensu*” and “migration in the classic sense”. The former concerns the entry for short-term purposes and mere circulation within the common area following the abolition of internal border controls. It is mainly linked with border and visa policy issues as well as certain aspects of return policy, which are considered as the necessary “flanking measures” for the abolition of internal border controls. In addition to this first policy framework, the second framework developed progressively, most likely following the acknowledgement of related demographic and economic needs.⁹ As we know, the legal basis for today’s regulation of the EU migration policy resides in Art. 79¹⁰ and 80¹¹ of the Treaty on the Functioning of the European Union (TFEU). In that respect, the main EU legal instruments adopted following the entry into force of the Amsterdam Treaty are clearly building upon the Schengen *acquis* in this area. These measures concern those related to border controls, visa policy, and return policy,¹² all of which relate to migrants. So, who are migrants, and what is the definition of a migrant? It is necessary to highlight that there are also persons who are refugees; all such persons are migrants, but not all migrants are

8 Papagianni, 2014, p. 377.

9 Papagianni, 2014, p. 379.

10 Art. 79:

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

For the purposes of para. 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

combating trafficking in persons, in particular women and children.

The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

11 The EU policies set out in this chapter and their implementation shall be governed by the principles of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the EU acts adopted pursuant to this chapter shall contain appropriate measures to give effect to this principle.

12 Papagianni, 2014, p. 380.

refugees. The definition of a refugee is given in the Convention Relating to the Status of Refugees from 1951, and people that fit into this definition are migrants who are entitled to help and protection. However, when talking about migrations, not only the humanitarian aspects but also the security, economic, and social challenges as well as the question of mass migrations are relevant for the societies of the recipient countries.¹³ Until the 1990s, most migrants could conveniently be classified under the categories of “family reunification”, “labour migration”, and “asylum”. Since the 1990s, however, migration motives have become increasingly diversified.¹⁴ When looking at the EU law, the Qualification Directive and Asylum Procedures Directive aim at either specifically defining what constitutes a refugee or streamlining the application process.¹⁵

2. European migration programme of 2015

The momentum created by the so-called “2015 migration/refugee crisis” provided a new political impetus and led to concrete initiatives and achievements, both in forging truly comprehensive policy responses firmly embedded in the EU’s overall external relations and in enhancing the efficiency of the EU’s policymaking.¹⁶

The European Commission (or “Commission” hereafter) introduced A European Agenda on Migration,¹⁷ a 22-page document that begins with an explanation of the context and details a list of immediate and long-term measures that it proposes the Member States should undertake to effectively respond to the migration challenge.¹⁸ Moreover, the Partnership Framework approach had a significant impact on the EU’s internal policy and decision-making process, notably as regards enhancement of the links between the internal and external dimensions of the EU’s migration policy. A series of joint Foreign Affairs and Interior Ministerial Councils were organised (in November 2014 and April 2015), and migration became a recurrent subject at the Foreign Affairs Council. This was matched with the increased role of the EU’s High Representative for Foreign Policy, who was given a coordinating role at the request of the EU’s heads of state and government—a clear sign that migration was becoming an integral part of the EU’s foreign policy.¹⁹

There are four main areas targeted in the Agenda: reducing incentives for illegal migration, saving lives and securing external borders, implementing a strong asylum

¹³ Mikac, Cesarec, and Jajuć, 2016, p. 87.

¹⁴ Van Mol and de Valk, p. 40.

¹⁵ Maani, 2018, p. 96.

¹⁶ Papagianni, 2022, p. 62.

¹⁷ European Commission, 2015.

¹⁸ Šabić, 2017, p. 4.

¹⁹ Papagianni, 2022, p. 64.

policy, and developing a new policy on legal migration. The Commission stated that there is a

... need to restore confidence in our ability to bring together European and national efforts to address migration, to meet our international and ethical obligations and to work together in an effective way, in accordance with the principles of solidarity and shared responsibility. No Member State can effectively address migration alone. It is clear that we need a new, more European approach.²⁰

Accordingly, the Commission proposed immediate action focused on saving of lives at sea while targeting criminal smuggling networks, the highly controversial relocation of migrants between Member States,²¹ resettlement of displaced persons in need of protection,²² the highly important partnership with third countries to tackle migration upstream (see *infra* on the EU–Turkey agreement), and use of EU tools to help Member States tackle migrations. This agenda utilised four pillars to manage migration better: reduction of incentives for irregular migration, border management to save lives and secure external borders, implementation of a strong common asylum policy, and development of a new policy on legal migration. This agenda was a tool by which the Commission sought to offer ‘solutions that will allow Europe to move forward in these areas in the short and medium term’²³. However, the Commission also stated its resolution to complete the Common European Asylum System (CEAS), establish shared management of the European border, and create a new model of legal migration.

As mentioned, a very important part of the agenda was the cooperation with third countries. Accordingly, on 18 March 2016, the European Council and Turkey reached an agreement aimed at stopping the flow of irregular migration via Turkey to Europe. According to the EU-Turkey Statement, all new irregular migrants and asylum seekers arriving from Turkey to the Greek islands whose applications for asylum were declared inadmissible should be returned to Turkey.

The agreement followed a series of meetings with Turkey since November 2015 dedicated to deepening Turkey-EU relations and strengthening their cooperation on the migration crisis. Notably, this resulted in the EU-Turkey Joint Action Plan activated on 29 November 2015 and the 7 March 2016 EU-Turkey Statement. In addition, on 15 December 2015, the Commission proposed a voluntary humanitarian admission

20 European Commission, 2015.

21 European Commission, 2015:

The EU needs a permanent system for sharing the responsibility for large numbers of refugees and asylum seekers among Member States. The Commission will table a legislative proposal by the end of 2015 to provide for a mandatory and automatically-triggered relocation system to distribute those in clear need of international protection within the EU when a mass influx emerges.

22 ‘By the end of May, the Commission will make a Recommendation proposing an EU-wide resettlement scheme to offer 20,000 places’. European Commission, 2015.

23 European Commission, 2015.

scheme for Syrian refugees in Turkey. To break the business model of smugglers and offer migrants an alternative to putting their lives at risk, the EU and Turkey decided in March 2016 to work together to end irregular migration from Turkey to the EU. For that purpose, the EU and Turkey agreed that all new irregular migrants crossing from Turkey to the Greek islands as of 20 March 2016 will be returned to Turkey. For every Syrian returned to Turkey from the Greek islands, another Syrian will be resettled to the EU. Moreover, Turkey will take any necessary measures to prevent new sea or land routes for irregular migration from Turkey to the EU. Once irregular crossings between Turkey and the EU end or are substantially reduced, a Voluntary Humanitarian Admission Scheme will be activated. Fulfilment of the visa liberalisation roadmap will be accelerated with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016. Turkey will take all the necessary steps to fulfil the remaining requirements. The EU will, in close cooperation with Turkey, further speed up the disbursement of the initially allocated €3 billion under the Facility for Refugees in Turkey. Once these resources are about to be used in full, the EU will mobilise additional funding for the facility up to an additional €3 billion by the end of 2018. The EU and Turkey welcomed the ongoing work on upgrading the Customs Union. The accession process will be re-energised, with Chapter 33 opened during the Dutch Presidency of the Council of the EU, and preparatory work on opening other chapters has continued at an accelerated pace. The EU and Turkey will work to improve humanitarian conditions within Syria.

Turkey furthermore agreed to accept the rapid return of all migrants not in need of international protection who have crossed from Turkey into Greece, and to take back all irregular migrants intercepted in Turkish waters. Turkey and the EU decided to continue stepping up measures against migrant smugglers and welcomed the establishment of activities of the North Atlantic Treaty Organization in the Aegean Sea.²⁴

3. Temporary protection: Why use it in 2022 and not 2015?

The Temporary Protection Directive 2001/55/EC²⁵ was created against the background of conflicts related to the disintegration of the former Socialist Federal Republic of Yugoslavia in the 1990s. It lays down standards for the temporary protection of persons displaced by armed conflict or human rights violations in the event

²⁴ Legislative Train, 2024, p. 1-3. This statement was subject to judicial control before the General Court, which concluded that the statement was not concluded by the European Council but by the heads of state or governments of EU Member States and the Turkish Prime Minister. Consequently, the statement could not have been deemed as an act of an EU institution pursuant to Art. 263 of the TFEU. Therefore, the court said that it lacked jurisdiction to review the statement's legality. See Goldner Lang, 2022, p. 178.

²⁵ OJ L 212, 7 August 2001.

of a mass influx of these persons into the EU.²⁶ This temporary protection should be compatible with the Member States' international obligations as regards refugees. In particular, it must not prejudice the recognition of refugee status pursuant to the Geneva Convention of 28 July 1951 on the status of refugees, as amended by the New York Protocol of 31 January 1967 and ratified by all Member States. Temporary protection refers to a procedure of exceptional character to provide—in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin—immediate and temporary protection to such persons, particularly if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection (Art. 2, item a). According to Art. 1 of the Directive, its objective is twofold: (1) to provide temporary protection and (2) to promote “burden sharing” among EU Member States. The United Nations High Commissioner for Refugees (UNHCR) further explains that the idea behind the instrument is to allow for fast and simplified processing, which would reduce costs and increase efficiency for national asylum systems. The asylum systems are further relieved through a solidarity relocation mechanism and financial support as foreseen in the Directive.²⁷ According to Art. 5(1), the European Council establishes the existence of a “mass influx” situation with a qualified majority decision on the proposal from the Commission. Any Member State can request such a proposal from the Commission. If the existence of a “mass influx” is established, the Member States shall adopt the necessary measures to provide persons enjoying temporary protection with residence permits for the entire duration of protection. Documents or other equivalent evidence shall be issued for that purpose. Such persons must be given the rights prescribed by Art. 13.²⁸

It is interesting to note that the Temporary protection was instigated at the onset of the Ukrainian war²⁹ but not during the Syrian crisis. A series of commentators

²⁶ Glunns and Wessels, 2017, p. 57.

²⁷ UNHCR, 2015, pp. 1–2. See also Glunns and Wessels, 2017, p. 61.

²⁸ Art. 13:

The Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing.

The Member States shall make provision for persons enjoying temporary protection to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources, as well as for medical care. Without prejudice to para. 4, the assistance necessary for medical care shall include at least emergency care and essential treatment of illness.

Where persons enjoying temporary protection are engaged in employed or self-employed activities, account shall be taken, when fixing the proposed level of aid, of their ability to meet their own needs.

The Member States shall provide necessary medical or other assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

²⁹ See the Council Implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Art. 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection from 4 March 2022; OJ L 71.

have argued, regarding the Syrian crisis, that '[t]he case for the use of the Temporary Protection Directive is compelling', and that '[i]f ever there was a time to implement this directive this is it'.³⁰ Others have concluded that '[a]lthough not a panacea, temporary protection could be a very important part of Europe's response to the Syrian refugee crisis' and '[c]ompared to what the Syrian asylum seekers have been experiencing in the past few months and taking into account other available solutions, temporary protection looks like the only right choice from a human rights perspective'.³¹ The Temporary Protection Directive has been seen as a method that should be used (more often) as part of the EU response to the migration crisis.³² It is also seen as a method to encourage solidarity and fair sharing of responsibility among the EU Member States.³³ The Court of Justice also said that the burdens related to emergency situations characterised by a sudden influx of third-country nationals on their territory, must, in principle, be divided between all other Member States.³⁴

4. "Reinvention" of the CEAS and the common migration policy

The CEAS's goal is to offer a satisfying status and ensure implementation of the non-refoulment principle with regard to all third-country nationals in need of international protection.³⁵ The EU competences regarding asylum and creation of the CEAS policy stem from Articles 78³⁶ and 80 of the TFEU as well as

30 Glunns and Wessels, 2017, p. 59.

31 Glunns and Wessels, 2017, p. 59.

32 Meltem, 2016, p. 32.

33 Bakhtina, 2022, p. 9.

34 Joint cases C-715/17, C-718/17, and C-719/17, *Commission v. Poland, Hungary and the Czech Republic*.

35 Bježančević, 2019, p. 1232.

36 Art. 78:

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of para. 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;

(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;

Art. 18³⁷ of the Charter of Fundamental Rights of the EU.³⁸ However, before of the emergence of this common asylum policy, Member States participated in informal cooperation over decades, and with the implementation of the Treaty of Amsterdam, a crucial step was taken towards creating the CEAS.³⁹ The most important instrument was the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities – Dublin Convention⁴⁰ from 1990, which came into effect in 1997. The Dublin Convention obligated the first EU Member State in which an asylum seeker landed to assume responsibility to examine the seeker's asylum claim. The obligation was a kind of punishment to the Member State that made it possible for an asylum seeker to enter the EU territory by crossing the state's border either legally through the state's visa or illegally without a valid visa.⁴¹ The Treaty of Maastricht made the areas of justice and internal affairs regulating asylum policy a question of common interest for Member States, as part of the third pillar of the EU, but the states reserved their competences. However, as the number of asylum cases continued to increase, Member States recognised the need to implement joint measures and actions in the area of justice and internal affairs.⁴² Therefore, the Treaty of Amsterdam was crucial in developing the CEAS.⁴³ As one of the objectives of the EU, the treaty lists the maintenance and development of the EU as an area of freedom, security, and justice, in which free movement of persons is assured in conjunction with appropriate measures with respect to external border control, asylum, immigration, and prevention and combat of crime.⁴⁴ The Dublin Convention of 1990 was replaced by the Dublin Regulation of 18 February 2003 (Dublin II).⁴⁵ Dublin II laid down the criteria for identifying the Member State responsible for examining

(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

37 The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the TFEU.

38 OJ C 326, 26.10.2012.

39 Bježančević, 2019, pp. 1232–1233.

40 OJ C 254 19.8.1997.

41 Lalić Novak and Padjen, 2009, p. 81.

42 Bježančević, 2019, p. 1234.

43 One should also mention three programmes important for CEAS: the Tampere programme (1999–2004), Hague programme (2004–2009), and Stockholm programme (2009–2014).

44 Lalić Novak and Padjen, 2009, p. 79.

45 OJ L 50, 25.2.2003.

asylum applications lodged in one of the Member States, based on the rules ordering asylum seekers to seek asylum in the Member State whose territory they first stepped into, regardless of the current asylum policy of the respective country.⁴⁶ Dublin II was created to establish a mechanism to swiftly determine the Member State responsible for examining an asylum application and to ensure that all asylum claims received a substantive examination. It also introduced the use of Eurodac, a database for recording the fingerprint data of asylum applicants.⁴⁷ In turn, this regulation was replaced by the Dublin Regulation of 26 June 2013 (Dublin III).⁴⁸ Dublin III (now in force) was meant to ‘confirm the principles underlying Regulation (EC) No 343/2003, while making the necessary improvements, in the light of experience, to the effectiveness of the Dublin system and the protection granted to applicants under that system’.⁴⁹ Dublin III clarified the hierarchy of criteria determining Member States’ responsibility and established a mechanism to warn of potential problems with the Member States’ asylum systems. Most importantly, Dublin III prohibited the transfer of asylum seekers to states with “systemic flaws” and introduced an early warning and preparedness mechanism to identify deficiencies in Member States’ asylum systems before they developed into a crisis.⁵⁰

5. European Commission’s 2022 proposal for a new and sustainable EU migration policy

However, during the Syrian crisis, it became obvious that the Dublin system does not work. Of course, some authors argued that it did not work as planned from the beginning.⁵¹ The principal objectives of the Dublin regulations were to (1) ensure access to effective, time-efficient procedures for determining refugee status; (2) prevent exploitation of the asylum system by parties attempting to make multiple claims in different EU Member States; and (3) identify in the shortest possible time the single Member State responsible for examining a claim.⁵² However, instead of increasing efficiency and mitigating the refugee crisis, the Dublin Regulation appears to have unfairly burdened smaller countries, specifically those with fewer resources.

46 Lalić Novak and Padjen, 2009, p. 81.

47 Mitchell, 2017, p. 301.

48 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 L 180, 29.6.2013.

49 Mitchell, 2017, p. 302.

50 Ibid.

51 Maani, 2018, p. 97.

52 Langford, 2013, cited in Maani, 2018, p. 98.

As a result of the regulation, some Member States now fear for their national interests and state sovereignty. Member States are cooperating less because of the regulation.⁵³ Therefore, the EU Council set up an emergency relocation mechanism in September 2015. This mechanism was put to paper in the EU Council decision of September 2015, and it was titled “Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece”.⁵⁴ The decision entailed the relocation of 120,000 applicants from Greece and Italy to other Member States. The Council had the authority to make such a decision under Art. 78(3) of the TFEU, which says that

in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council ... may adopt provisional measures for the benefit of the Member State(s) concerned.

Unlike Dublin III, the Council decision addresses the unequal burden on the southern border States.⁵⁵

After this, knowing that the current CEAS setup does not work, the Commission introduced its proposal to reform the CEAS (May and July 2016). This would reform the Dublin system towards a better and more just reallocation of asylum cases between the Member States, strengthen the Eurodac Regulation, establish a real asylum agency, etc.⁵⁶ The reform proposal for Dublin III appears to prioritise two objectives: enforcement of allocation rules and prevention of secondary movements within the EU.⁵⁷ Furthermore, the interest of the Dublin IV Proposal in discouraging secondary movements is reflected in measures that include far-reaching sanctions for secondary movements. The difference between the Commission’s and European Parliament’s focus as regards the ruling of secondary movements is that the Commission is reactive in penalising the movement already realised, and the European Parliament appears proactive in dissuading asylum seekers from moving to a second Member State.⁵⁸ As some authors argue, the core problem of Dublin III comprises the national differences among Member States on the one hand and the State interest-oriented approach on the other.⁵⁹

In September 2020, the Commission issued its Communication on a new Pact on Migration and Asylum.⁶⁰ In this document, the Commission undertook the following tasks: (1) launch work immediately to develop and deepen tailor-made

53 Maani, 2018, p. 98.

54 Council Decision 2015/1601, Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece, 2015; OJ (L 248) 80.

55 Mitchell, 2017, p. 320.

56 Bježančević, 2019, p. 1239.

57 Abrisqueta Uriarte, 2019, p. 264.

58 Abrisqueta Uriarte, 2019, p. 269.

59 Abrisqueta Uriarte, 2019, p. 271.

60 European Commission, 2020.

comprehensive and balanced migration dialogues and partnerships with countries of origin and transit, complemented by engagement at the regional and global levels; (2) scale up support to help those in need and their host communities; (3) increase support for economic opportunity and address the root causes of irregular migration; (4) step up the place of migration in the programming of the new instruments in the next Multiannual Financial Framework; (5) ensure full and effective implementation of existing EU readmission agreements and arrangements and examine options for new ones; (6) make use of the Visa Code to incentivise and improve cooperation to facilitate return and readmission, as well as work through the Asylum and Migration Management Regulation when in place; and (7) take forward the recommendation on legal pathways to protection in the EU, including resettlement, and develop EU talent partnerships with key partner countries to facilitate legal migration and mobility.

After this communication, the Commission issued the Communication Attracting Skills and Talent to the EU.⁶¹ This initiative will, according to the Commission, improve the EU's legal migration framework, help attract skills and talent from non-EU countries, and respect Member States' right to decide on the number of workers they admit.

There were also other initiatives such as the Proposal for a Directive of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast)⁶² and the Proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast).⁶³

On 8 June 2023, the Member States at the Home Affairs Council brokered a successful political agreement on the New Pact on Migration and Asylum, which the Commission had presented in September 2020. A general approach was reached for two key pillars of the pact: the Asylum and Migration Management Regulation and the Asylum Procedure Regulation. This is in addition to the agreement already achieved on other pillars of the pact. These proposals will allow a fairer, more efficient, and sustainable system for asylum and migration management. The pact provides for a common solution that ensures a balance between solidarity and responsibility among Member States.⁶⁴ The four key parts of the deal—the asylum and border procedure, increase in the EU's capacity, new solidarity mechanism, and Asylum and Migration Management Regulation—are expected to replace the Dublin Regulations. Furthermore, on 19 January 2022, the new mandate of the EU Agency for Asylum⁶⁵ entered into force following an agreement in 2021 between the European

61 European Commission, 2022a.

62 European Commission, 2022b.

63 European Commission, 2022c.

64 European Commission, 2023.

65 Established by Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No

Parliament and the Council of the EU on the European Commission's proposal. This agency should work in close cooperation with the national authorities responsible for asylum and immigration and other relevant services, drawing on the capacity and expertise of those authorities and services, and with the Commission. The Member States should cooperate with the agency to ensure that it is capable of fulfilling its mandate.

Moreover, the Commission Recommendation (EU) 2020/1365 of 23 September 2020 on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities⁶⁶ should be mentioned. This recommendation improves cooperation among EU Member States in managing private vessels involved in search and rescue operations. It has set the ground for regular meetings of the European Contact Group on Search and Rescue. Member States should cooperate with each other in relation to operations carried out by privately owned or operated vessels for search and rescue activities, with a view to reducing fatalities at sea, maintaining navigation safety, and ensuring effective migration management in compliance with the relevant legal obligations.

6. Attitude towards migrations and integration of migrants as EU citizens

Today, around 5% of the EU's total population comprises third-country nationals.⁶⁷ According to a Standard Eurobarometer survey conducted in November 2017, immigration is seen as the most important issue the EU faces by nearly a fourth (39%) of the respondents; this percentage had peaked in the autumn 2015 survey (at 58%).⁶⁸

The recent Eurobarometer survey "Integration of Immigrants in the European Union"⁶⁹ reveals public opinion on the topic, providing useful insights for the integration policy. Between 2 November and 3 December 2021, 26,510 citizens from all 27 EU countries participated in the survey. People tended to overestimate the

439/2010; OJ L 468, 30 December 2021. It replaced the European Asylum Support Office (EASO): Having regard to the structural weaknesses of the CEAS, which were brought to the fore by the large-scale and uncontrolled arrival of migrants and asylum seekers to the Union, and the need for an efficient, high and uniform level of application of Union law on asylum in the Member States, it is necessary to improve the implementation and functioning of the CEAS by building on the work of EASO and further developing it into a fully-fledged agency. Regulation, para (6).

⁶⁶ OJ L 317, 1.10.2020.

⁶⁷ Eurostat, 2022.

⁶⁸ Special Eurobarometer 2018, p. 3.

⁶⁹ Special Eurobarometer, 2022.

number of third-country nationals as a proportion of the population of their country (68%). Only 38% of Europeans considered themselves well informed about migration and integration. More than half of respondents (56%) received information on these topics through traditional media (television, radio, and newspapers), while the second largest information source was social media and networks (15%). At the same time, a strong majority of Europeans (70%) viewed integration as a two-way process, in which both host societies and immigrants play an important role. Half of the Europeans agreed that integration of migrants is successful in their city or local area, while slightly fewer (42%) thought the same about integration in their country. Just over half of the Europeans (53%) agreed that their national government is doing enough to promote the integration of migrants into the society. A clear majority (69%) of respondents agreed that it is necessary for their country to invest in integrating migrants. Moreover, three out of four Europeans (75%) believed that the integration needs of migrants should be considered when designing measures to fight the effects of the COVID-19 pandemic.

In contrast, in the last such survey in 2018, respondents from all countries except Croatia and Estonia overestimated the proportion of immigrants living in their country. Just over half (54%) of the Europeans agreed that integration of immigrants has been a success in their local area, city, or country, but this figure varied widely between countries. A clear majority (69%) of respondents agreed that fostering integration of immigrants is a necessary investment for their country in the long run. Nearly 7 in 10 (69%) respondents—and a majority in all but one Member State—said that successful integration is the responsibility of both immigrants and the host society, while a fifth (20%) said that immigrants are mostly responsible. Over half (57%) of the respondents said they feel comfortable with having social relations with immigrants in any of the situations explored in the survey. Nearly 4 in 10 (38%) Europeans thought that immigration from outside the EU is more of a problem than an opportunity. Just under a third (31%) saw it as equally a problem and an opportunity, while only a fifth (20%) saw it more as an opportunity.

The Eurobarometer surveys show that the attitude towards migrations and the need to integrate migrants in the EU did not change from 2018 to 2022, and that the citizens feel that integration is crucial for migrants.

7. Role of Schengen rules and the Eurodac system in managing migrations

The Schengen Borders Code (SBC) regulates border checks and, to a lesser extent, border surveillance along the EU's external borders. It lays down the entry conditions third-country nationals should satisfy to be allowed entry into the Schengen area (Art. 6(1)). The SBC provides for the derogation from entry conditions for three

categories of persons (Art. 6(5)).⁷⁰ One of these categories is third-country nationals whose entry may be authorised on humanitarian grounds or because of international obligations. Under Art. 14(1) of the SBC, a third-country national who does not satisfy the entry conditions under Art. 6(1) and does not belong to any of the categories of persons referred to in Art. 6(5) should be refused entry into the territories of the Member States. However, the refusal of entry should be without prejudice to the application of special provisions concerning the right of asylum and international protection. Further, Art. 4 provides that when applying the SBC, Member States should act in full compliance with the relevant EU law, including the Charter of Fundamental Rights of the EU; relevant international law, including the Convention Relating to the Status of Refugees; obligations related to access to international protection, particularly the principle of non-refoulement; and fundamental rights. Moreover, Art. 3(a) stresses that the SBC applies without prejudice to the rights of refugees and persons requesting international protection, particularly as regards non-refoulement. Hence, Member States cannot refuse entry to a person requesting international protection without assessing whether or not they are in need of protection.⁷¹ To ensure this, the Eurodac⁷² system is very important. This system was envisaged in the late 1990s as the Commission started to prepare the “Eurodac” project, an EU initiative to use biometrics (specifically finger printing) for controlling illegal immigration and border crossings by asylum seekers.⁷³ This system was somewhat controversial from the beginning, as some argued that the obligation to surrender one’s biometric data violates certain human rights.⁷⁴ Nevertheless, the Eurodac regulation was adopted by the Council of the European Union in 2000 and came into force on 15 January 2003.⁷⁵ Especially after the Syrian crisis, efficient border management through better use of information technology (IT) systems and technologies was a top policy priority for the Commission. By making full use of these systems, the EU wanted to

70 European Council on Refugees and Exiles, 2021, p. 14.

71 Ibid.

72 European Asylum Dactyloscopy Database, a large-scale information technology system that helps with the management of European asylum applications since 2003.

73 Van der Ploeg, 1999, p. 295.

74 Van der Ploeg, 1999, p. 301; Queiroz, 2019, p. 159.

75 The basic application is a combination of biometric identification technology and computerised data processing. The Central Unit, managed by the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security, and Justice, contains an automatic fingerprint identification system that receives data and replies “hit–no hit” to the Member States’ national authorities who are responsible for the quality of data and security of their transmission. The database contains information on three categories of persons who (1) seek asylum, (2) cross borders irregularly, or (3) are found to stay “illegally” within the EU territory. Collectable data include fingerprints of all persons aged 14 years and above, dates of collection, sex, place and date of the application for asylum or apprehension, reference number, date of transmission to the Central Unit, and user identification of the person who transmitted the data. Data on asylum seekers are compared against data in the database and stored for 10 years. Data on irregular border crossers are stored for 18 months. Fingerprints of the third category of individuals are checked against previous asylum applications but are not stored. Bredström, Krifors, and Mešić, 2022, p. 69.

not only improve border management but also reduce irregular migration and return illegally staying third-country nationals.⁷⁶ Of course, data must only be used for legitimate purposes, equivalent to a “ban on aimless data collection”.⁷⁷ Additionally, these legitimate purposes must be specified before collection, and use or disclosure of the data must be compatible with the specified purposes. Finally, the principle of purpose limitation entails that data should not be retained for any period longer than necessary for the purpose for which they were collected and stored.⁷⁸

8. Conclusion

It is safe to conclude that the attitude towards migration in the EU has changed dramatically in the past decade. The biggest facilitator was the Syrian crisis. This crisis showed that the then in force legal regulation for migrations and asylum was not up to the task. The crisis also showed the obvious differences in the approach to migrations between the Member States. Therefore, the legal regulation was changed in 2016 (SBC), Frontex was strengthened, and the Commission is now in the process of “reinventing” the CEAS and common migration policy. It is obvious that the EU migration policy had undergone a change in the past 20 years towards increasing “securitisation”, and, during this discourse, migration has turned into “risk management”.⁷⁹ Therefore, it is important to also be careful not to amend the EU migration and asylum policies in a way that would have detrimental effects on the fundamental rights of migrants and asylum seekers. Equilibrium is, of course, hard to achieve.

⁷⁶ Queiroz, 2019, p. 158.

⁷⁷ Queiroz, 2019, p. 163.

⁷⁸ Ibid.

⁷⁹ Bredström, Krifors, and Mešić, 2022, p. 75.

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