

# ASYLUM POLICY

## TOWARDS A NEW EUROPEAN REFUGEE POLICY THAT WORKS

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### Introduction

In 2015 Europe, and the European Union (EU) Member States (EU-28) in particular, experienced an unprecedented surge of refugees, asylum seekers and other undocumented migrants. The EU-28 recorded 1,322,825 asylum applications<sup>2</sup> with 476,510 in Germany (36%), 177,135 in Hungary (13%), 162,450 in Sweden (12%), 88,160 in Austria (7%), and 83,540 in Italy (6%). However, unlike all public perceptions, the rise did not come overnight: 2013 and 2014 had already seen an exceptionally large number of asylum applications (see Figure 1).

This historic phenomenon triggered a serious threat to the existence of the Union and its principles.<sup>3</sup> It certainly gave rise to populist, nationalist, and extreme political parties that seized the opportunity to pour fear into their populations and take undemocratic, anti-union, xenophobic, and subhuman actions. Examples are the closing of the borders against the Schengen agreements, installations of barb-wired fences, subhuman treatment of asylum seekers in detention camps, Brexit, isolationism, parochialism, active hostility and opposition among the EU-States.

While receiving masses of refugees is not a new phenomenon for countries in Europe, what made this a crisis is that the EU-28 to date has no enforcing super-national power and lacks a unified humanitarian and refugee system under which all Member States abide. Moreover, within each country, there are discrepancies in the han-

dling of refugees and asylum seekers, as well as in the proper authority in charge (national or local). The evolving notion of the nation-state and the EU's incomplete Common European Asylum System (CEAS) resulted in a chaotic, divided and finger-pointing way of handling this grave humanitarian drama unfolding on the continent and the Mediterranean Sea, with a perceived flood of refugees and thousands of deaths.

The next section outlines the differences between migrants, refugees and asylum seekers and their humanitarian rights. The following section summarizes the European refugee and asylum system, while the subsequent section studies labor market access regulations. The section following afterwards reviews the strategic European asylum policy issues and the last section offers some conclusions.

### Mobility, migrants, refugees, asylum seekers and human rights

The word migrants denotes economic migrants who emigrate (leave) from their home country of their own free will to seek a better life in a foreign country. The primary motive of these migrants is jobs and money. While abroad, they enjoy protection from their home government. Refugees and asylum seekers or asylees, however, are forced to emigrate, often abruptly and overnight, fleeing war, persecution, or natural disasters and seek protection from another sovereign country abroad.

The difference between refugees and asylum seekers is that the former<sup>4</sup> arrive in the host country with a pre-approved protection refugee status either from the new host country or from humanitarian organizations that also resettle them in the new host country.<sup>5</sup> Asylees usually arrive in the new country as displaced people or illegal immigrants and immediately seek asylum and sanctuary by filing an application. If their application



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<sup>2</sup> Please note that these are lodged asylum applications; the number of refugee inflows is much larger. For a deeper analysis of the asylum flow, see Wech (2016).

<sup>3</sup> The situation has been debated among others by IMF (2016), EU (2016), Rinne and Zimmermann (2015) and Hinte, Rinne and Zimmermann (2015).

<sup>4</sup> Refugees can also be stateless people according to Directive 2011/95/EU (OECD 2016a). Another category is that of tolerated residents.

<sup>5</sup> OECD (2016c) refers to people who have applied for asylum and have been granted some sort of protection as "humanitarian migrants"; this label includes migrants resettled through UNHCR humanitarian programs or through other private organizations (as usually occurs in Australia, Canada and the US).

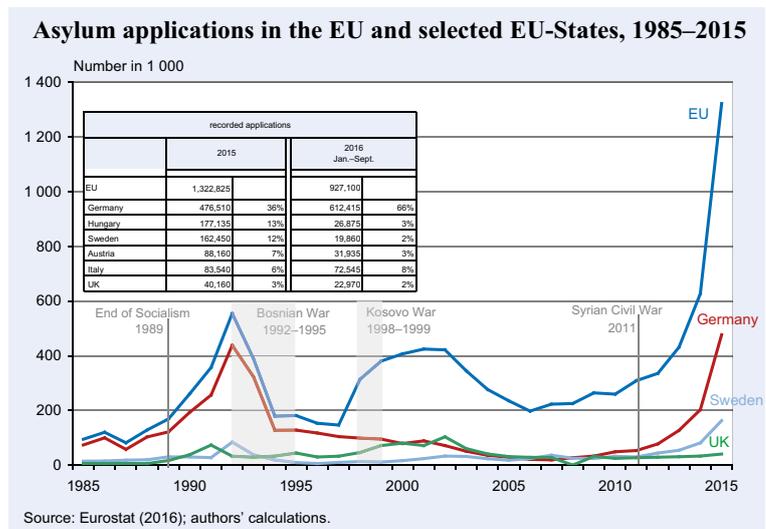
is approved by the government of the host country, asylum seekers take the status of refugees.

The 1951 Refugee Convention (RC) and the 1967 Protocol outline the rights of displaced people and the legal obligations that host countries have to protect them. The RC defines refugees as those who have a well-founded fear of persecution because of their race, religion, nationality, membership of a particular social group or political opinion, and who are unable to avail themselves of the protection of that country, or to return there, for fear of persecution. A key provision of the RC is the non-refoulement, meaning that refugees should not be returned to a country in which they fear persecution (Article 33). Moreover, Article 14 of the Universal Declaration of Human Rights of 1948 states that everybody has the right to seek and to enjoy asylum from persecution in other countries.

However, the RC does not specify how individual countries determine if a displaced person fulfills the definition of a refugee. While the EU abides by the RC and perceives asylum as a fundamental right, each EU-State develops its own rules and interpretation, resulting in discrepancies and gaps among countries. Typically, the burden of proof rests with the asylee, who has to prove that (s)he left his/her home country and cannot return because of fear of persecution. If an asylee's application is denied, the host country must explain the reasons for that denial to the asylee. In turn, the asylee has the right to appeal. In almost all European countries, granting asylum is not permanent, while it varies by country from 2 to 3 years (Germany) to 5 years (the UK). Sometimes, individuals who do not qualify for asylum may qualify to stay for humanitarian reasons. This is also a temporary status.

The status that countries grant to asylees, as well as restrictions on family reunification, are often mirrored in the behavior and integration efforts made by asylees. For example, a temporary protection status and no family allowed may be perceived by asylees as a signal that they are not welcome and will soon be deported. Thus, asylees probably will not make any effort to integrate into the society of the host country. This can further

Figure 1



negatively impact natives' perceptions of refugees and create a vicious cycle.

### The European refugee and asylum system

The EU asylum legislation involves various regulations: An *asylum procedures directive* seeks to establish a fair and efficient asylum procedure. A *reception conditions directive* establishes minimum standards of living conditions for asylees and ensures that they have food, shelter, employment and healthcare. Furthermore, a *qualification directive* establishes common grounds on granting asylum and expects rights such as residence permits, access to jobs and education, healthcare and welfare to be observed. The *Dublin Convention* of 1997, as well as its subsequent incarnations (the *Dublin II Regulation*<sup>6</sup> in 2003 and the *Dublin III Regulation* in 2013), determine that the EU-State responsible for accepting or rejecting asylees is the one in which the asylee was first fingerprinted. This is to prevent “asylum shopping” and to reduce the number of “orbiting asylees” from one to the other EU-State. The regulations also allow for “readmission,” meaning that an EU-State can return an asylee back to the first EU-State of entry. The criteria used for the responsible EU-State are tied to: (i) family considerations/unity above all other, (ii) whether the applicant has a visa or residence permit in an EU-State, and (iii) whether the asylum seeker has entered the EU legally or irregularly. The EU asylum fingerprint database, *EURODAC*, of 2003 aims to “prevent, detect

<sup>6</sup> The exception was Denmark, which applied it in 2008.

or investigate” serious crimes and terrorism, not only related to refugees.

Since 1999, the Common European Asylum System (CEAS) and since 2008 the Policy Plan on Asylum offer three pillars underpinning the development of CEAS: (i) harmonize standards of protection by aligning asylum legislation of the EU-States; (ii) achieve effective practical cooperation; (iii) increase solidarity and responsibility-sharing among EU-States, as well as between EU and non-EU countries. In 2011 a European Asylum Support Office (EASO) was set up to enhance cooperation among EU-States in managing asylum requests and to contribute to the implementation of CEAS. The objective is to facilitate the protection of asylees, coordinate efforts among EU-States, exchange information on countries of origin, assist in refugee relocation, and allow for a smooth transition of asylees among countries. The European Refugee Fund of 2000 provides financial support and resources to projects that integrate refugees, as well as to the reception and return of asylees. The Asylum, Migration and Integration Fund (AMIF) for 2014–2020 with a budget of 3.137 billion EUR was set up to implement and strengthen a common approach to asylum. Since 2005, Frontex has targeted cooperation between national borders and has been securing external borders according to EU rules.

In the fall of 2015 revisions were proposed to improve the Dublin Regulations (DR) and make them more functional including (i) inserting a crisis relocation mechanism clause that allows for some leeway, (ii) stipulating that the responsible EU-State would not be that of first entry, (iii) taking into consideration a common European list of Safe Countries of Origin and/or Transit as part of the criteria, (iv) introducing a permanent distribution key accounting for each EU-State’s relative size, wealth and absorption capacity. Another reform proposal has been the “early warning, preparedness and crisis management mechanism.” It entails alerting the EU immediately when the Dublin system is being endangered due to migration pressures and/or deficiencies in the asylum system(s) of one or more EU-State(s).<sup>7</sup> Key aspects of the proposal were: (i) protection of applicants via compulsory personal interviews, (ii) suspension of the transfer of asylees during their appeal, (iii) supply of free legal assistance upon request, (iv) guarantee of the right to appeal against transfer decision, (v) existence of a single ground for detention and strict limitation of the detention period, (vi) stipulation that exhaustive and

clearer deadlines such as the entire Dublin procedure cannot last longer than 11 months, or 9 months to return the asylee to his/her country of origin.

To allow CEAS to work well both at times of high migration, as well as at normal times, the EU Commission proposed in 2016 to (July 2016 EU Commission PressRelease<sup>8</sup>): (i) replace the Asylum Procedures Directive with a Regulation to simplify, clarify and shorten asylum procedures; safeguard common guarantees for asylees; guarantee stricter rules against abuse; and harmonize rules on safe countries; (ii) replace the existing Qualification Directive with a new Regulation to achieve a greater convergence of recognition rates and forms of protection; firmer rules sanctioning secondary movements; grant protection as long as it is needed; and strengthen integration incentives; (iii) reform the Reception Conditions Directive to ensure that EU-States apply the standards and indicators about reception conditions, as well as constantly update contingency plans especially facing disproportionate pressure; ensure that asylees remain available and do not escape by allowing EU-States to give them residence or impose reporting obligations; reception conditions will only be provided in the EU-State responsible and clarify rules about when entitlement to material reception conditions can be scaled back and when financial allowances may be replaced with material reception conditions provided in kind; let asylees work within six months after their application at the latest, and ensure that their labor market access fully complies with labor market standards; and have common reinforced guarantees for asylees with special needs and for unaccompanied minors.

In addition, the Commission proposed an EU Resettlement Framework along with the long-term policy on better migration management stated in the European Agenda on Migration. While the EU will act as a whole, it will be the EU-States that decide on the number of resettled people per year. Future resettlements will be implemented through annual EU resettlement plans, which set the broad geographical priorities from where the resettlement will take place, the maximum total number of persons to be resettled in the following year based on the participation and contributions made by the Member States and Associated Schengen countries in the specific annual resettlement plan. A European Border and Coast Guard Agency with a stronger role and command was proposed in December 2015 to replace Frontex.

<sup>7</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm)

<sup>8</sup> [http://europa.eu/rapid/press-release\\_IP-16-2433\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2433_en.htm)

It is clear that, while these are steps in the right direction, the EU lacks a common European framework, common governance and a supra-national power to impose the same rules on all of its members.

In September 2015 the EU adopted the *Emergency Response Mechanism*<sup>9</sup> to distribute and relocate some 160,000 of the 2015 migrants to different EU Member States using quotas based on (i) 40% of the size of the population, (ii) 40% of the GDP, (iii) 10% of the average number of past asylum applications, and (iv) 10% of the unemployment rate. Relocation was planned to be applicable to nationalities with an EU-wide average recognition rate of 75% or higher (such as Syria and Iraq). States receiving refugees received 6000 EUR per relocated person. EU-States unable to participate in the emergency relocation mechanism were expected to contribute 0.002% of their GDP to the EU budget. However, this concept was not widely implemented due to resistance from Member States.

**Asylees’ and refugees’ right to work**

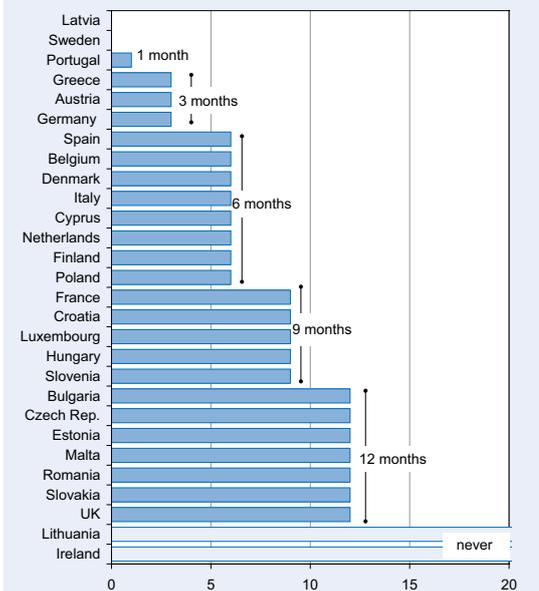
There is wide variation among EU-States about allowing asylees to work while their application is pending.<sup>10</sup> Some countries impose a time-limit, while others add labor market restrictions and institutional limitations. In most countries, asylees are not allowed to be self-employed. If asylees are granted asylum they become refugees and are allowed to work immediately under the 1951 RC. However, it often takes from several months up to a year from the moment a person arrives and claims asylum until an application can be lodged. Some countries also allow some work access during this period.

Figure 2 provides a classification and overview of the situation in the EU-28 for asylees. Immediate admission to the labor market is provided by Latvia and Sweden, while Portugal imposes a waiting period of 1 month; Greece, Austria and Germany (with some qualifications) impose 3 months. Lithuania and Ireland do not allow for work during the asylum application period. All other countries have 6, 9 or 12-month waiting periods.

In addition, there may be numerous other restrictions to taking up work, which vary substantially across countries.<sup>11</sup> For instance, in the UK the job needs to be on

**Figure 2**

**Waiting period after the asylum application is lodged until allowed to work**



Note: When an application is lodged and while it is under consideration a person is called an asylee. If asylees are granted asylum they become refugees and are allowed to work immediately under the 1951 Refugee Convention. However, it often takes several months to a year from the moment a person arrives and claims asylum until s/he can lodge an application.  
Source: AIDA - Asylum Information Database (2016); authors' calculations.

the *Shortage Occupation List*, and the work permission only applies to jobs with a minimum of 30 hours/week workload that pay an occupation-specific minimum salary. Asylees in Sweden have to provide proof of their identity, need a working permit and are not allowed to work in sectors and jobs that require skills certification. In 2015, Sweden launched new initiatives such as fast-tracking in order to integrate skilled refugees into shortage occupations (OECD 2016b). In Cyprus, asylees can only work in low-skilled jobs (fishing, waste management industries, etc.). In Austria, employment is limited to seasonal work in tourism, agriculture or forestry.

In Germany, the adoption of a new law in October 2015 imposed new restrictions on the previously newly introduced 3-month waiting-period. Asylum seekers from safe countries of origin are completely excluded from access to work. All others who stay at initial reception centers also have no access to the labor market until they have reached the maximum period of 6 months of an allowed stay, and they have to leave. If they manage to leave earlier for legal or practical reasons (e.g. due to overcrowding), they may have access to work if (i) their waiting period since the asylum application was filed is longer than 3 months and (ii) they receive an employment permit from the labor office. The employment permit requires a concrete job offer by a company should the permit be granted

<sup>9</sup> See [http://europa.eu/rapid/press-release\\_MEMO-15-5698\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5698_en.htm)  
<sup>10</sup> See <https://www.migrationwatchuk.org/briefing-paper/316>  
<sup>11</sup> See <https://www.migrationwatchuk.org/briefing-paper/316>. The following are illustrative examples.

and a detailed job description. The job center pursues a *priority review*, to see if there is another job-seeker who is a better match for the job such as a German citizen or a foreigner with a residence permit. Job centers also carry out *reviews of labor conditions* to examine whether labor rights and wages are in line with standards.

Spatial dispersal is important for labor market integration. Typically, the early asylum procedure focuses on a strict geographic allocation of refugees with local residence obligations. Mobility within the host country, or even across EU-States, is initially ruled out. This is naturally a potential problem for taking up work and has been identified as a cause of long-term labor market integration failure.<sup>12</sup> For this reason countries like Germany and Austria began to allow asylees to follow the geographical location of the acquired jobs.

Furthermore, the importance of mapping skills with labor market needs has been recognized. For instance, through *early intervention* Germany maps the skills of asylum seekers with the labor market at a very early stage. Case workers assess the asylees' competencies at reception facilities through a "work package" and the federal employment office develops individual employment strategies to match asylees' skills with local labor market needs. A similar scheme is just recently used in Finland, where interviews occur at reception camps, but matching skills are considered only after geographic settlement is chosen (OECD 2016b).

### A strategic European asylum policy

The world will continue to generate conflict and asylum seekers and Europe needs to be prepared to take its fair share based on the Geneva 1951 Refugee Convention and balanced across the Member States. Having survived after reaching the soil of an EU-State, all refugees and asylum seekers also have economic motives. They want to live a good life together with their families. It is in the best interest of migrants and host countries for refugees to move as soon as possible and politically acceptable to the geographic location where they can best earn a living through work or obtain education. Those individuals not recognized as refugees need to be relocated to their country of origin as fast as possible.

Asylees and refugees are temporary migrants by definition. A substantial share of these individuals migrates

on when the situation in their country of origin has improved, or a different long-term perspective in another country comes up. However, they should have the option from the very beginning to transfer to a regular labor migration or permanent immigration scheme if they qualify. This would require a transparent immigration system, leading to a short- or long-term work permit, or even citizenship. Point systems relying on categories like job offers, education, language proficiency, labor market experiences, qualifications, and social engagement have been shown to effectively guide mobility and decisions.

The Dublin system has exacerbated imbalances among EU-States and placed enormous burdens on the Southern-European gateway countries (Greece, Italy, Malta, and Spain). Ultimately, it has turned EU-States against each other, as is the case of Germany versus Hungary and Austria. It undermined solidarity and harmony across the EU-States. It failed because, even at times of small numbers, there was neither the effective first registration and initial decision about the asylum request needed, nor any willingness on the part of other European countries to take in their fair share of asylees.

However, there is a case for an effective European asylum policy. In a common market and open society, there are so many spill-overs of costs across EU-members that make cost-minimizing strategies by coordination beneficial. Besides, Hatton (2015) argues that granting asylum to displaced people is similar to locally produced public goods. Countries provide asylum based on humanitarian principles, as well as on their legal obligations as signatories of the Geneva Convention. Knowing that refugees are protected from persecution in one country makes people in another country feel better, since they do not have to host any refugees. But if there is no cooperation between countries, this public good is underprovided.

If refugees are mainly a "burden", then a quota system seems appropriate following criteria like population size, GDP, unemployment and existing diaspora (Rinne and Zimmermann 2015). If countries take more than their fair share, they should be compensated for their extra costs from the EU budget. As Fernández-Huertas Moraga and Rapoport (2015) suggest, this can be optimized using a system of tradable refugee-admission quotas supplemented by a matching scheme that takes into account the preferences of both refugees and host countries. Some countries are willing to pay others in order to receive fewer refugees, and some countries are

<sup>12</sup> See Hatton (2013) and Zimmermann (2016) for intensive discussions and reviews of this point.

willing to receive compensation for having more refugees. Therefore, a good policy that mitigates the inefficiencies inherent in free-riding is to apportion refugee quotas to countries and let them trade freely.

However, refugees are not just a burden, as people are concerned about their fate, volunteer to help and donate money. Refugees can and are willing to re-finance their costs through work, and they may be useful in the economies of the host countries; making this transparent could substantially allay public concerns about refugees. Education and the provision of work experience may emerge as effective, long-term development policies and foster trade. Refugees can also be a mobility reserve to better allocate labor within and between Member States; as migrants are perceived to be more mobile than natives and tend to follow labor market needs. This requires opening up the labor market as early as possible marking a substantial regime switch in European refugee policy, which traditionally did not allow asylees to work.

Europe should adopt a proactive strategy. Therefore, education and training such as language and other civic courses should be offered as soon as people are recorded in reception centers. In addition, adult education should be provided to those low-skilled who are ready and willing to work. Particular attention should be paid to the most vulnerable group, the unaccompanied child migrants.<sup>13</sup> Besides physical health checks, countries should provide mental health check-ups starting at the reception camps. Displaced people not only flee traumatic conditions, violence and abuse, but they also go through a painful and agonizing journey before arriving in a safe host country. They often suffer from family separation, uncertainty over the success of their application, and inactivity and jobless limbo in the camps. Countries should simplify and expedite the labor market entry of asylees while they are still in reception camps. An early profiling about labor market characteristics is imperative, as is the ability to move with jobs to other geographic areas in the host countries. Refugees should be freely mobile across Europe after being granted refugee status. This would have a lasting effect on social integration and labor market success. Furthermore, host countries should mobilize the diaspora<sup>14</sup> from the refugees' origins and involve them in the integration, acculturation and adjustment of refugees.

<sup>13</sup> The number of unaccompanied child migrants seeking asylum in Europe reached 96,000 in 2015 (<http://ec.europa.eu/eurostat/web/main/home>).

<sup>14</sup> For an introduction to diaspora economics and its potential, see Constant and Zimmermann (2016).

## Conclusions

While Europe is inundated by the 2015 refugee waves, the policy responses of the European Union and its member countries exhibit signs of helplessness. The Dublin system assigning responsibility to the country of first-entry has failed. Identifying true asylum seekers effectively and distributing them fairly across Europe requests loyalty to once-accepted humanitarian standards and solidarity with the principles of Europe. A turnaround in European asylum policy is needed: commonly organized registration, selection and distribution systems have to be followed by an early access of asylum seekers to European labor markets.

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