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Future challenges in immigration and asylum policies



The reform of the Common European Asylum System (CEAS)

Training of Lawyers on European Law relating to Asylum and Immigration
Athens, 8-9 December 2016



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Background - the “refugee-migrant crisis”

1,015,078 arrivals by sea in 2015

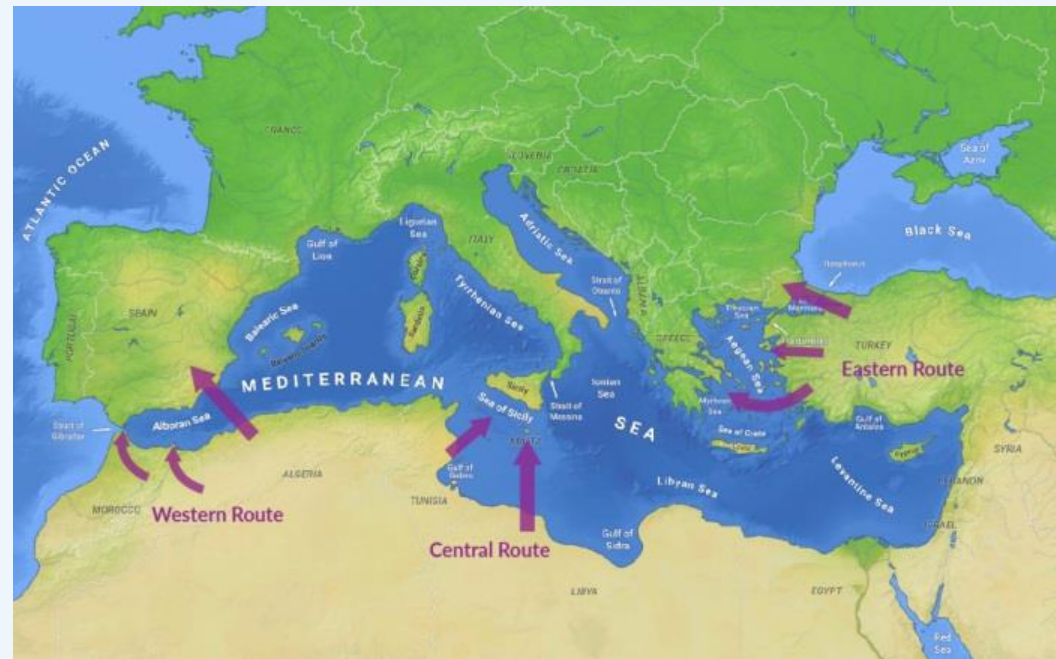
350,679 arrivals by sea in 2016

- 173,799 in Italy

- 171,909 in Greece

4,715 dead / missing in 2016

Approx. 20,000 arrivals in Greece
after the EU – Turkey deal





EU response – Immediate response

- Triple the capacities and assets for the Frontex joint operations Triton and Poseidon in 2015 and 2016
- Relocation schemes to release pressure to national asylum systems in Italy and Greece
- An new “hotspot” approach
- Resettlement scheme
- Mobilizing emergency funding for frontline member states





EU response – The way forward

A common European Agenda on Migration with 4 Pillars

- Reducing the incentives for irregular migration
- Securing external borders
- A new policy on legal migration
- A strong asylum policy



**A EUROPEAN
AGENDA
ON MIGRATION**



A strong asylum policy

The **EU Commission** has tabled **7 legislative proposals** for the reform of the Common European Asylum System (CEAS):

- ✓ Regulation establishing a **European Union Asylum Agency**
- ✓ **Recast Eurodac** Regulation
- ✓ **Dublin IV** Regulation
- ✓ **Qualification** Regulation
- ✓ **Asylum Procedures** Regulation
- ✓ **Recast Reception Conditions** Directive
- ✓ Regulation establishing a **Union Resettlement Framework**



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Future challenges |
The reform of the CEAS

Proposal for a Regulation establishing a European Union Asylum Agency



Aims to strengthen the role of EASO and develop it into an agency which facilitates the implementation and improves the functioning of the CEAS



A European Union Asylum Agency

The **Agency will not replace national** administrations, **but will play a bigger role** coordinating them

Main changes

- ✓ **Obligation of MS to exchange information** with the Agency
- ✓ **A stronger role in analysis** of situation in countries of origin, including advice on alleged “safe countries of origin”
- ✓ **Development of guidance** on applying **EU Asylum law**
- ✓ **Monitoring** Common European Asylum System, including the capacity of MS to apply it
- ✓ **Increased** operational and technical **assistance for MS**



Proposal for a new EURODAC Regulation



Establishes an EU asylum fingerprinting database. When someone applies for asylum in the EU, their fingerprints are transmitted to the EURODAC central system



EURODAC Regulation

- ❑ **Increase** in the amount of **personal data** that will be **taken and stored**
 - Facial images as well as fingerprints
 - Names, nationalities place and date of birth, travel document
 - EU asylum number application
 - Information on the allocated MS under Dublin rules
 - Date of removal for irregular border crossers

- ❑ **MS** will be **obliged to take** and store **information**

- ❑ **MS** will have to **take information on children from the age of 6** (rather than 14)

- ❑ **Fingerprinting can be conducted** not only by national officials but also by the new EU Border Guard and **EU Agencies**



EURODAC Regulation

- ❑ **Data will be retained for**
 - **10 years for asylum seekers**
 - **5 years for irregular border crossers**

(At present 18 months)

- ❑ **More data for Police and EUROPOL to access**
- ❑ **Eurodac data will be available to third countries for the purposes of return, on certain conditions, including a refusal to disclose if a person has applied for asylum**

But the **non EU country might guess** that the person has applied for asylum!



Proposal for a new DUBLIN IV Regulation



Establishes determines which Member State is responsible for examining a given asylum application



DUBLIN IV Regulation

- ❑ **Broad definition of “family member”** (siblings and families formed after leaving country of origin)
- ❑ **Obligation to assess the inadmissibility** of an application on “safe third country” or “first country of asylum” grounds **before applying rules on responsibility** (*currently optional for MS*)



**Prioritization of inadmissibility rules over family reunion rules
even for unaccompanied minors!**

- ❑ **Sanctioning secondary movements**
 - Asylum procedure will be accelerated
 - Applicants lose benefits (health, education, welfare and accommodation) except for emergency health care



DUBLIN IV Regulation

- ❑ **Limits both substantive and procedural remedies**
 - Applicants will only be able to challenge a decision on the responsible MS on the ground that the asylum system has broken down
 - 7 days time limit for lodging an appeal
- ❑ **Limits to the discretionary “sovereignty” and “humanitarian” clauses for MS (currently unlimited)**
- ❑ **Current rules which limit MS obligations will be dropped**
 - Longer periods of responsibility after issuing a visa or residence permit
 - **Endless responsibility** for irregular border crossers or those who abscond or who leave EU and then come back!



DUBLIN IV Regulation

- ❑ **Corrective allocation mechanism** activated automatically

WHEN

more than 50% of the asylum **applications** which objective criteria based on income and population indicate that the MS **“should” be responsible for**

MS may opt-out of relocating asylum seekers, **but have to pay 250,000€ per asylum-seeker**

HOWEVER

The mechanism does not include a suspension of Dublin

Transfers of persons **back to the MS can still be carried out at the same time** that “solidarity” measures are in place!



Proposal for a Qualification Regulation



Establishes common grounds for granting international protection and foresees a series of rights for its beneficiaries (residence permits, travel documents, employment, education, social welfare and healthcare)



Qualification for and content of international protection

- Further harmonization of the common criteria** for recognizing applicants for international protection
- New **obligation** (currently optional) for authorities **to assess** the possible **internal protection alternatives**
- Further harmonization** of the **rights of beneficiaries** of international protection (in particular as regards the duration and format of residence permits)
- Stricter rules sanctioning secondary movements**
 - the **5 year period** after which beneficiaries are **eligible for long term residence** status **restarts each time you move irregular** to another MS



Qualification for and content of international protection

- ❑ **More convergence of asylum decisions** across EU – **Obligation to take into account common COI** by EASO
- ❑ **Compulsory systematic status reviews** ensuring that protection is granted only as long as it is needed – Obligation for MS to carry out reviews
 - **when they renew residence permits**
for the 1st time for refugees and for 1st and 2nd time for subsidiary protection
 - **when triggered by a change in EU level COI or guidance**
- ❑ **Strengthening integration**
 - **Clarification of the scope of rights and obligations** as regards **social security and assistance**
 - Granting certain **social assistance conditional on effective participation in integration measures**

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Proposal for an Asylum Procedures Regulation

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Establishes common standards of safeguards and guarantees to access a fair and efficient asylum procedure



Asylum Procedures

❑ Shorter time limits

- **6 months benchmark** time limit for a first decision
- **Shorter time limits** in case of **unfounded and inadmissible claims**
 - Max. **2 months** for the examination of the **merits**
 - Max **1 month** for **admissibility** examination
 - Max **10 days for admissibility** examination where the applicant comes from a **“first country of asylum”** or a **“safe third country”**
- **Extended time limits** in case of **disproportionate increase** in numbers of **applications** or **complex cases** (3 months)
- Possibility of **“Freezing”** the examination of applications **due to “an uncertain situation in the country of origin”**



Asylum Procedures

❑ Shorter time limits at appeals stage

- For lodging appeals
 - For **decision** at the first appeal stage
- 
- 1 week to 1 month
 - 2 to 6 + months

❑ No automatic suspensive effect for appeals

- inadmissibility decisions
- rejections of decisions as implicitly withdrawn
- all decisions taken in the accelerated examination procedure or border procedure.

BUT ONLY if certain conditions are already met

i.e. access to interpretation, legal assistance, “sufficient time” to request for suspensive effect and that the court examines both facts and points of law.



Asylum Procedures

❑ Common guarantees for every applicant

- Free legal assistance at all stages of the procedure (*currently only at appeals stage*)

❑ Stricter rules to combat abuse

- **Obligations** for applicants to **provide information** necessary to establish their identity and to examine their applications
- **Stricter consequences** in case of **non – compliance** (i.e. no fingerprinting leads to withdraw of the claim)
- Current optional **procedural rules** for **sanctioning abusive behavior** are made **compulsory**
- **Exhaustive** and **compulsory grounds** for an **accelerated or admissibility procedure**



Asylum Procedures

❑ Harmonized rules on safe countries

- Applicants who have already found a **“first country of asylum”** where they enjoy protection

OR

Where their applications can be examined by a **“safe third country”**



Applications must be declared inadmissible (currently optional)

- Change in the **notion** of **“first country of asylum / safe third country”** allowing significantly **broader application** as currently possible under EU law
- **Full harmonization:** In 5 years’s time from the entry into force of the Regulation, **full replacement of national lists or designations with common European at Union level**



Proposal for a recast Reception Conditions Directive



Establishes minimum common standards of living conditions for asylum applicants ensures that applicants have access to housing, food, employment and healthcare



Reception conditions for asylum seekers

Objectives

- **further harmonisation** of reception conditions in the EU;
- **reducing incentives** and asserting **greater control** over secondary movements;
- promoting **integration** and enhancing asylum seekers' self-sufficiency
- **Strengthening** the resilience and preparedness of **national reception systems**
 - MS must take into account common standards and indicators on reception when monitoring and controlling their reception system
 - MS are required to draw up and update contingency plans to ensure adequate reception in cases where they are confronted with a disproportionate number of applicants



Reception conditions for asylum seekers

New rules for access to the labor market

- The **time limit** is **reduced** from 9 to **6 months** from the **lodging** of the **application** (when a decision on the application has not been taken)
- When **application** is likely to be **well-founded**, MS are encouraged to grant **access no later than 3 months from lodging** an application
- When the **application** is likely to be **unfounded**, applicants are **excluded from access** to the labor market
- **Equal rights** with nationals (subject to certain restrictions regarding family or unemployment benefits) and third country nationals:
 - Working conditions
 - Social security
 - Recognition of professional qualifications



Reception conditions for asylum seekers

Reducing incentives for secondary movements within EU

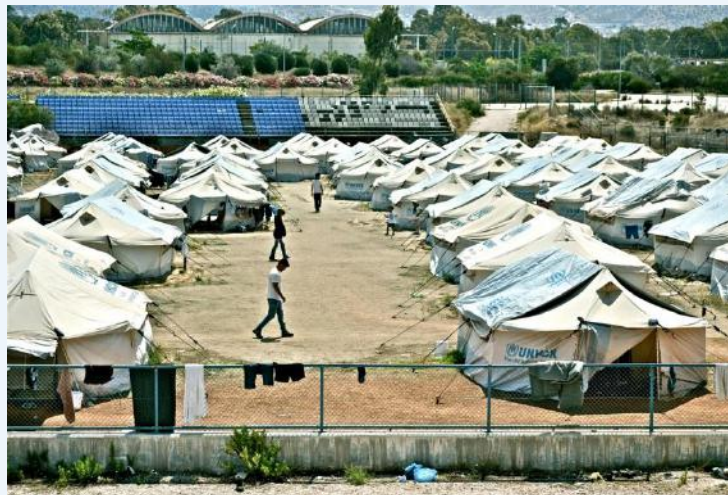
- Introducing **targeted restrictions** to applicants' **freedom of movement**, such as the designation of the residence and reporting obligations
- When an **applicant is not in the MS is required to be**, he/she is **not entitled** to:
 - material reception conditions
 - Employment and vocational training

However, they will always be entitled to healthcare and dignified standard of living

- Introducing **additional grounds for detention**
 - **In case** an applicant has been **assigned a specific place of residence** and **not complied with, and**
 - there is a **continued risk of absconding**



Proposal for a Regulation establishing a Union Resettlement Framework



Aims to establish a Union Resettlement Framework with common procedures for the admission of persons in need of international protection from a selected third country, to which or within which they have been displaced to EU MS



Resettlement

❑ Resettlement numbers may not rise

- The proposed framework will no longer finance resettlement outside the EU scheme
- Recital 31 of Proposal: National programs should not jeopardize EU priorities

❑ Migration management approach to resettlement

- Priority regions are selected on the basis of political cooperation of hosting countries with EU

❑ Negative impact on status and eligibility criteria

2 procedures: ordinary and expedited. Refugees admitted through:

- Ordinary procedure may receive either refugee or subsidiary status
- Expedited procedure only subsidiary procedure

❑ Arbitrary and disproportionate exclusion criteria. exclusion due to previous irregular entry into EU in the previous 5 years or if already rejected by another MS



EU Asylum Policy – A few critical remarks

- ✓ Primarily focuses on curbing migration, shifting responsibility for preventing irregular migration into Europe to countries of departure or transit
- ✓ Packaging bilateral readmission agreements as ‘statements’ or ‘political agreements’ in a format, bypassing the EP and the necessary legal procedures
- ✓ The tightening of border controls encourages migrants to take even more dangerous routes
- ✓ Lowering the standards for international protection, re-shaping contemporary international refugee law



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Thank you for your attention!!