

THE EUROPEAN UNION AND IMMIGRATION: COMMON RULES FOR A COMMON VISION?

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Table of contents

1. Introduction
2. A Common European Asylum System
 - The Dublin Regulation and its weaknesses
 - The 2015 refugee crisis
 - The role of Turkey in the European Asylum System
 - The 'hotspot' approach to migrant reception
 - Relocation measures
3. France
 - Background and statistics
 - France's asylum policy, procedure and regulation
 - How does one seek asylum in France: institutions and process
 - Administrative process
 - Situations in the Camps: a legal black hole?
 - Major controversies: mapping out the atmosphere of the country
 - France's stance on migration on the European level
 - Reactions to the EU quota plan
 - France's standpoint on the Turkey Agreement
 - Reactions to the Paris attacks and State of Emergency
 - Country conclusion
4. Romania
 - Background and statistics
 - Romania's asylum policy, procedure and regulation
 - Political approach
 - Legislation
 - Asylum procedure
 - Major controversies: mapping out the atmosphere of the country
 - Reactions to the European policy
 - On Relocation
 - On Security
 - Romania's standpoint on the Turkey Agreement
 - Country conclusion
5. Sweden
 - Background and statistics
 - Sweden's asylum policy, procedure and regulation
 - General policy on migration
 - Asylum policy, procedure and regulation
 - Major controversies: mapping out the atmosphere of the country
 - From "welcoming everyone" to closing borders and ID checks
 - Political reactions to immigration
 - Sweden's standpoint on European migration policy
 - Country conclusion
6. General conclusion
7. Reference

INTRODUCTION

Europe has seen a growing influx of asylum seekers in recent years. The influx of individuals increased in 2011 as the war in Syria broke out, and became significantly important in 2015. The estimated number of individuals reaching Europe by boat in 2015 is over a million. Such an influx has placed a significant burden on many countries in the European Union.

While Europe has a relatively developed refugee law, the large influx of individuals reaching Europe revealed some of the weaknesses of the current system used to implement the Union's obligations. The challenge of the current European asylum framework is twofold; on the one hand, the various regulations in place have failed to provide sufficient guarantees of protection to asylum seekers. On the other hand, the challenge is one of implementation. There are few mechanisms in place to both carry and ensure the implementation of refugee law standards in the EU, and even fewer mechanisms to harmonise the different national asylum legislations of Member States.

The increasing flow of immigration has also triggered strong nationalist sentiments; leading to resentment against people in need of protection and the rise of xenophobic political parties. While Europe as a whole faces the challenge of implementing a common immigration policy, individual countries battle increasing anti-immigration pressures.

As is evident there are several aspects of the refugee crisis currently taking place. As Europe faces common migratory pressures at its border, the need for a common immigration policy is apparent.

The following paper seeks to disentangle the legal and political aspects of the refugee crisis in Europe. It starts by looking at the European asylum framework today, and then studies the legal and political features of asylum in three different countries of the European Union; France, Romania and Sweden. From this foundation, the paper brings together three different approaches to managing refugees and looks at how they fit into a common European asylum system. Finally, we provide recommendations on the characteristics of a common immigration policy that would better serve the European Union and its obligations.

A COMMON EUROPEAN ASYLUM SYSTEM

The Treaty on the Functioning of the European Union (TFEU) requires the EU to adopt measures on asylum in accordance with the 1951 Refugee Convention, providing a uniform status of asylum throughout the Union, a uniform status of subsidiary protection and common procedures for the granting and withdrawing of those statuses. Through recent research, the UNHCR has found that EU legislation has not been consistently applied throughout the Union to date. This varied State practice can be attributed at least in part to provisions that are optional, unclear, or affording extensive discretion to Member states. Changes need to be made to improve this situation through reinforcing monitoring mechanisms¹.

¹ UNHCR (2013) <http://www.unhcr.org/cgi->

There is much legislation already in place in the EU, including the Common European Asylum System (CEAS), which is a program that has been years in the making to ensure that the rights of refugees under international law are protected in its member states. The system sets out standards which at this point many EU states have neglected to properly implement. What is in place is a patchwork of 28 asylum systems producing uneven results². While refugee law is technically harmonized at the EU level and the international level, policies and interpretations of policies are still highly nationalized.

The Dublin Regulation and its weaknesses

The Member States of the then-European Community first negotiated the Dublin Convention in 1990 in conjunction with the agreement of the Schengen Convention. The Dublin Regulation (known as Dublin II) replaced the Dublin Convention in 2003. Dublin II clarified the criteria for determining responsibility under the Dublin Convention, and brought the Dublin system fully under EU governance procedures. Dublin II was accompanied by the EURODAC regulation, which established a database for recording fingerprint data of asylum applicants to aid implementation of the Dublin system³. The Dublin Regulation is a system that establishes criteria for identifying the Member State responsible for the examination of an asylum claim in Europe. This is typically based on family links followed by responsibility assigned on the basis of the State through which the asylum seeker first entered, or the State responsible for their entry into the territory of the EU Member States, Norway, Iceland, Liechtenstein and Switzerland⁴.

The goal of the Dublin Regulation is to ensure that one Member State is responsible for the examination of an asylum application, to deter multiple asylum claims and to determine as quickly as possible the responsible Member State to ensure effective access to an asylum procedure.

A number of non-governmental organizations have published reports stating the inefficiency and flaws of the Dublin Regulation since it came into action in 2003. The faults of the Dublin Regulation include but are not limited to the lack of rapidity with which asylum seekers are able to seek protection; the potential exposure to unnecessary risks due to returns to Member States lacking the capacity to effectively process their applications or separation from family members.

In July 2013, the European Council and Parliament agreed upon a revision of the Dublin Regulation (known as Dublin III) that sought to address some criticisms of the 2003 legislation. In particular, Dublin III further clarified the hierarchy of criteria determining Member State responsibility and established a mechanism to warn of potential problems with Member States' asylum systems⁵. The recast Dublin Regulation entered into force for all applications that took place after January 1, 2014. Since the recast there has still been backlash in a number of reports, pointing out the flaws and lack of efficiency of the Dublin Regulation. The European Council on Refugees and Exiles points out that in recent years there has been a significant amount of Court litigation whereby asylum seekers challenged transfers to other Member States under the Dublin system, both for protection concerns and due to inadequate reception conditions, at the national level and at the European level⁶. While Dublin fills a crucial gap in the CEAS - by providing a mechanism to

² Open Society Foundation, (2015) <https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union>

³ Fratzke, (2015) <http://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>

⁴ ECRE, <http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html>

⁵ Fratzke,(2015)

⁶ ECRE

determine responsibility for asylum claims - the system as it currently functions is failing to achieve its goals of streamlining asylum procedures and providing swift access to protection⁷. Consequently, adjustments are needed to enable the system to live up to its potential.

The 2015 refugee crisis

The year 2015 has seen a drastic increase in the number of people seeking refuge in the European Union. In what has now come to be known as the refugee crisis, around 880,000 people arrived in Italy and Greece in 2015⁸. In Greece alone 200,000 refugees arrived from Turkey in 2015, a drastic increase from 43,000 in all of 2014⁹. With this increase in refugees arriving in Europe, pressure is placed on an already stressed immigration system. This particular refugee crisis is largely a result of Syria's civil war, which began in 2011. "Between March 2011 and the end of 2014, more than 200,000 individuals - combatants and civilians - have been killed; there are more than 3 million refugees in border countries; 7.6 million displaced within Syria; and 3.2 million Syrian refugees abroad. The country is deeply divided, with different areas being under control of various armed groups"¹⁰. Syrian refugees have found themselves in a situation where their homes and communities are destroyed, and they look towards starting a new life, with Europe as a common destination. This refugee crisis of 2015 has pulled the issue of immigration to centre stage in European politics. With the current situation, European states and politicians are left scrambling for the best way to cope with this enormous inflow of people. Currently there is an extremely high demand for refugee resettlement, however the systems in place are not necessarily prepared to deal with such numbers¹¹. European member states need to work to find a solution to this central policy challenge.

The role of Turkey in the European Asylum System

In October 2015 German Chancellor Angela Merkel offered Turkey the prospect of support for faster progress on its bid to join the European Union in return for cooperation in stemming the flow of migrants and taking back those rejected by Europe. President Tayyip Erdogan asked Merkel - as well as France, Britain and Spain - for an acceleration of Turkey's EU membership bid. Ultimately, on the 29th of December the European Union stipulated an agreement with Turkey to provide a cooperation to control the flood of refugees and migrants.

For Syrian refugees looking to establish themselves in Europe, Turkey has been the most common stepping stone. Though Turkey is not an EU Member State, its role throughout the crisis has been crucial, and emphasis has been placed on the relationship between Turkey and the EU, as they try to coordinate efforts to cope with the high number of refugees. One of the early responses from Turkey to the Syrian civil war was the "Temporary Protection Status" initially conferred on refugees from Syria in October 2011, guaranteeing all Syrian residents access to Turkish territory and its basic services. The principles of the Temporary Protection Status include an open border policy, no forcible returns, registration with the Turkish authorities, and support inside the borders

⁷ Fratzke, 2015

⁸ European Commission, (March 16, 2016) http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first_report_on_relocation_and_resettlement_en.pdf

⁹ Guild et al. (2015) www.ceps.eu

¹⁰ González Levaggi, (2015)

http://www.academia.edu/12799646/Forced_Humanitarianism_Turkey_s_Syrian_Policy_and_the_Refugee_Issue

¹¹ Guild et al. (2015)

of the camp displacing the UNHCR and other international institutions that are part of this process in other cases¹². Since this important step, Turkey has made a number of commitments. With high numbers of incoming Syrian citizens in Turkey, there has also been the informal employment of refugees, leading to wages being pushed down and causing an unfair competition for local people. As a solution, the “Regulation on Work Permit of Refugees Under Temporary Protection” has been issued in the Official Journal No. 2016/8375, dated 15 January 2016. This work permit can be applied for 6 months after the date when they have been registered as “under temporary status¹³”. As the situation continues to change, Turkey and the EU have continued to adapt their position and policies to the needs of an expanding refugee population.

On March 18 2016, EU Heads of State or Government and Turkey agreed to end irregular and often illegal migration from Turkey to the EU and replace it instead with legal channels of resettlement of refugees to the European Union. The goal is to replace disorganised, chaotic, irregular and dangerous migratory flows by organised, safe and legal pathways to Europe for those entitled to international protection in line with EU and international law. The agreement took effect as of 20 March 2016, and April 4 2016 was set as the target date for the start of returns of people arriving in Greece after 20 March and of the first resettlements¹⁴. Concretely, this agreement sees that all new irregular migrants crossing from Turkey to the Greek islands with applications that have been declared inadmissible will be returned to Turkey. For every Syrian returned to Turkey, another Syrian will be resettled to the EU from Turkey directly. The EU and Turkey are working closely in this agreement, with an acceleration of the visa liberalisation roadmap and a lifting of visa requirements for Turkish citizens to travel in the EU by June 2016. These talks began in October 2015, with Turkey’s President Tayyip Erdogan asking Germany, France, Britain and Spain for an acceleration of Turkey’s EU membership bid. German Chancellor Angela Merkel has engaged in this discussion, welcoming the potential acceleration of Turkey’s bid to join the European Union.

People who do not apply for asylum in Greece or whose applications for asylum have been declared inadmissible or unfounded will be returned to Turkey. The legal framework for these returns is the bilateral readmission agreement between Greece and Turkey. From 1 June 2016, this will be succeeded by the EU-Turkey Readmission Agreement, following the entry into force of the provisions on readmission of third country nationals of this agreement. People who apply for asylum in Greece will have their applications treated on a case-by-case basis, in line with EU and international law requirements and the principle of non-refoulement. There will be individual interviews, individual assessments and rights of appeal. There will be no automatic returns of asylum seekers¹⁵.

Among the legal possibilities that can be used for declaring asylum applications inadmissible, in relation to Turkey are:

1. first country of asylum (Article 35 of the Asylum Procedures Directive) where the person has already been recognised as a refugee in that country or otherwise enjoys sufficient protection there;

¹² González Levaggi, (2015)

¹³ Turkish Labour Law, (2016) <http://turkishlaborlaw.com/news/legal-news/362-turkey-grants-work-permit-for-syrian-refugees>

¹⁴ European Commission, (March 4, 2016) <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20160140.do>

¹⁵ European Commission, (March 4, 2016)

2. safe third country (Article 38 of the Asylum Procedures Directive): where the person has not already received protection in the third country by the third country can guarantee to the readmitted person effective access to the protection procedure on an individual basis and where found to be in need of protection effective access to treatment in accordance with the standards of the Geneva Refugee Convention¹⁶ .

The 'hotspot' approach to migrant reception

Greece and Italy are the two primary points of entry for refugees coming to the European Union. In order to implement proper reception, assistance, registration and screening efforts, 'hotspots' or reception points have been put into place in Greece and Italy. Due to their high numbers of reception, Greece and Italy are under pressure, and their hotspots are coordinated in partnership with Migration Management Support Teams, sent by the EU Commission to provide practical coordination and support. EU organisations such as EASO and Frontex also contribute to running the hotspots, calling for support in terms of human resources and equipment from Member States. Italy has identified six hotspot areas, while Greece has identified five. These hotspots need to include reception centres capable of housing migrants. "Part of the reception needs in 'hotspot' areas is linked to the identification and registration of irregular migrants who are not in clear need of international protection, and thus do not qualify for relocation. This requires sufficient capacity to be available with the facilities to prevent irregular migrants absconding"¹⁷ . The hotspot approach sees migrants arriving in Greece and Italy, and being greeted by systems put into place with coordination from the EU and different organisations. There needs to be enough adequate resources and personnel available to process the migrants arriving and register them into the central Eurodac database.

Relocation measures

In May 2015, the European Commission proposed to relocate people in clear need of international protection within the EU, from Member States under extreme pressure to other Member States of the European Union. In September 2015, the Council adopted two legally binding decisions which established a temporary and exceptional relocation mechanism for 160,000 applicants in clear need of international protection from Greece and Italy. These measures were the Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece¹⁸ .

At the same time, with a view to addressing the global migratory crisis, the Commission recommended an EU resettlement scheme for 20,000 people in need of international protection. On July 20 2015, 27 Member States along with Dublin Associated States, agreed to resettle over two years 22,504 people in need of international protection from the Middle East, Horn of Africa and Northern Africa¹⁹ .

¹⁶ European Commission, (March 4, 2016)

¹⁷ European Commission, (October 14, 2015) http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_on_eam_state_of_play_20151014_en.pdf

¹⁸ European Commission, (March 16, 2016)

¹⁹ European Commission, (March 16, 2016)

There are currently a large number of obstacles to be overcome by Member States in the relocation process. One significant difficulty is the insufficient and limited number of pledges. Seven Member States, (Belgium, France, Estonia, Latvia, Lithuania, Malta and Romania) have submitted 793 new indications of readiness to relocate swiftly applicants for international protection (the “formal pledges”). The total number of formal pledges by Member States of relocation amounts to 4,516 (1,573 to Italy and 2,943 to Greece), which represents 2.82% of the 160,000 relocation transfers to be implemented. Austria, Croatia, Hungary, and Slovakia have not made available any places for relocation so far. Many Member States have only made limited pledges in light of their total allocation and for a limited period of time²⁰.

Based on the information received from the participating States 5,677 people were resettled until April 11 2016 to Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, the Netherlands, the United Kingdom, Norway, Liechtenstein, and Switzerland under the scheme. A majority of States participating in the scheme indicated that their resettlement efforts were primarily, but not exclusively, directed at Syrians staying in Jordan, Lebanon and Turkey. While under the Conclusions of July 20 2015 Member States have agreed on a rather broad spectrum of priority regions for resettlement, after the EU-Turkey agreement of March 18 2016, it is expected that most of the approximately 16,800 remaining places for resettlement in the framework of this scheme should take place from Turkey²¹.

There are currently between 35,000 and 40,000 persons in Greece who would be eligible for relocation, while migration flows are also increasing in Italy. Member States of relocation need to fully implement their obligations under the Council Decisions on relocation in an effort to alleviate the pressure on the frontline Member States. There is a need for an acceleration of relocation²².

The EU is moving towards a Central European Asylum System, however with the challenges of the refugee crisis, it has been difficult to coordinate efforts and ensure that each Member State is fulfilling their obligations. The Dublin Regulation, coordination of efforts between Turkey and the EU, relocation and resettlement commitments are areas that require improvement to take the pressure off countries such as Greece, Italy and Turkey. Member States need to quickly respond to relocation requests, and the EU Commission needs to continue their work to coordinate and build a functional, efficient immigration policy.

²⁰ European Commission, (April 12, 2016) http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160412/communication_second_report_relocation_resettlement_en.pdf

²¹ European Commission, (April 12, 2016)

²² European Commission, (April 12, 2016)

FRANCE

Background and statistics

Between January and September of 2015, France received over 50,000 asylum applications, with a rejection rate of approximately 74.1%. However, it is worth mentioning that the rejection rate for Syrians stood at 3.6%.²³ In October 2015, the average waiting time for asylum applications to be processed in France ranged from 16 to 19 months²⁴. A recent report made by the Accounting Court (Cour des Comptes²⁵) noted that France performs poorly in comparison with other EU countries, such as Germany, whose asylum procedures takes one year on average.

The vast majority of asylum seekers in France originate from countries such as Kosovo, Sudan, Syria and the Democratic Republic of Congo (DRC). Despite the dramatic increase in immigration in the wake of the European crisis, between 2014 and 2015, France's share of Europe's first time asylum application intake decreased from about 11% to 5.6%²⁶.

In terms of acceptance rates, France's approval rate of asylum claims for the year of 2015 stood at 21.2%, and 4.7% for subsidiary protection, respectively. It is interesting to note that the EU's average approval rate for the year of 2014 stood at 45%. The comparatively low refugee recognition rates of France might explain why certain individuals refuse to lodge their first time asylum in France.

Further, it is important to note that besides the population of registered asylum seekers in France, there are also migrant camps such as Calais and the growing camp in Dunkirk. In these camps, immigration and asylum laws are hardly enforced, further highlighting the deficiencies of the French central government in dealing with the crisis and the need to find suitable solutions at the EU level.

Table 1: Applications and granting of protection status at first instance: 2015 (January-September)

	Applicants in 2015	Pending applications in 2015	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
Total	50,840	34,490	11,945	2,640	41,595	21.2%	4.7%	74.1%

Breakdown by countries of origin of the total numbers

Kosovo	3,870	1,565	300	125	3,375	7.9%	3.2%	88.9%
Sudan	3,075	1,695	740	15	1,525	32.4%	0.6%	67%
Syria	2,810	1,555	1,575	780	85	64.5%	31.9%	3.6%
DRC	2,800	2,090	855	65	4,240	16.5%	1.2%	82.3%
Russia	2,495	2,280	875	60	3,850	18.2%	1.2%	80.6%
Iraq	2,350	670	2,045	25	30	97.4%	1.2%	1.4%
Haiti	2,290	1,570	60	20	1,260	4.5%	1.5%	94%
Albania	2,225	1,295	45	240	2,045	1.9%	10.3%	87.8%
Bangladesh	2,200	1,130	210	25	2,545	7.5%	0.9%	91.6%
China	2,165	815	510	0	1,465	25.8%	0%	74.2%
Somalia	830	625	55	75	485	8.9%	12.2%	78.9%
Afghanistan	790	625	195	285	90	34.2%	50%	15.8%
Eritrea	720	345	330	0	250	56.9%	0%	43.1%

Source: Eurostat (rounded).

France's asylum policy, procedure and regulation

France presented two reforms concerning the right of foreigners and asylum seekers at the Council of Ministers in July 2014. These amendments were aimed to better facilitate the right of foreigners to reside in France as well as to reform the asylum system in France and to reduce delays in the asylum process. The

²³ Aida, 2015

²⁴ Work and social welfare for asylum- seekers and refugees, 2015

²⁵ <https://www.ccomptes.fr/Nos-activites/Cour-des-comptes>

²⁶ OECD report, 2014

draft laws were adopted in first reading on July 2015, promulgated later that month, and entered into force in November of 2015.

It is worth noting that France passed these laws due to European directives that were adopted in June of 2013 (“the asylum package”). EU directives are binding in nature, and require Member States to adopt national legislation that would correspond to their content. France’s new asylum law was thus passed in the spirit of implementing the EU directives.

The law’s main aim was to reduce delays in the asylum process. The law sets the goal of reducing the time of examination of asylum application to an average of nine months. Moreover, it seeks to better ensure the living conditions of asylum seekers in France in order to prevent the establishment of arbitrary camps around the country and to avoid a high concentration of asylum seekers in one area of France²⁷.

To achieve this goal, the law requires the French government to increase accommodation places in centers for asylum seekers (CADA centre d’accueil des demandeurs d’asile) and to create 18,500 places in the CADA before 2017.

Further, in compliance with the new “crisis relocation mechanism” proposed by the Council of the European Union, France agreed to take in a quota of 30,000 refugees in a period of two years. However, it is essential to remember that there is often a gap between laws and policies and their implementation. This will further be discussed in the latter section of this paper.

How does one seek asylum in France: institutions and process

Administrative process

While the 2014 laws amended the asylum procedure in France to better accommodate asylum seekers, there are nonetheless significant gaps between the laws and their actual implementation.

Applying for asylum in France involves several institutions. Upon arrival, an asylum seeker has to fill in an asylum form within 21 days and send it to OFPRA (L’Office français de protection des réfugiés et apatrides). If the asylum claim is incomplete, the applicant receives an additional eight days to provide the office with additional information. Further, if an applicant’s claim is rejected by OFPRA, the asylum seeker can file an appeal with the National Court of Asylum (CNDA).

Statistics indicate that a large number of applicants are being granted refugee status or subsidiary protection upon appeal. While the CNDA plays an essential role in providing asylum seekers a fair asylum process, the fact that more than a quarter of appeals to the CNDA result in the cancellation of the decision to refuse asylum by the OFPRA demonstrates the inefficiency of the asylum system in France.

Further, applying for asylum requires knowledge of the French administrative system. However, most of the asylum seekers are not fluent, or do not speak French. Few civil servants and administrative staff in France can speak English, and it is therefore difficult for asylum seekers to wade through the bureaucracy of the asylum process. Additionally, due to the language barrier, some asylum seekers attempt to fill in forms they do not understand, or pay for translation out of their own pockets.

While the 2014 amendments were aimed at accelerating the asylum process and to better accommodate asylum seekers, there are nonetheless significant implementation problems. For example, Mathieu Tardis of the non-profit organization, France Terre D’Asile (FTDA), commented on the lack of resources provided to governmental institutions such as OFPRA. Tardis noted, “There is a lack of resources. I think those making the decisions in the first instance have to rule on two cases a day. That’s difficult. So the decision-making

²⁷ http://www.asylumineurope.org/sites/default/files/resources/cnda_rapport2015.pdf

process is often poor.” Due to the administrative constraints of OFPRA, non-governmental organisations such as FTDA have to step in and try to bridge the implementation gap.

Situations in the Camps: a legal black hole?

While the administrative process in France can indeed be lengthy, the condition of asylum seekers in Calais as well as the Dunkirk camp is far worse than that of asylum seekers registered with the French Government.

Asylum seekers in Calais, and to a certain extent in Dunkirk, are in a legal state of limbo. The “first country of entry rule” of the Dublin Regulation indicates that the Member State in which the asylum seeker first filed his claim is responsible for his accommodation. However, there are huge disparities between Member States in terms of standards, procedures, as well as reception conditions. The shortcomings of the French asylum system, as well as family links in other Member States (namely the U.K), lead a growing number of asylum seekers to reside in camps and to avoid registering with the French government.

The French government is preventing the construction of permanent camps, and does not provide a minimum standard of living to the camps’ residents. Further, the French government began demolishing the Calais camp, and there have been reports of police violence by activists and NGO’s such as HRW²⁸. While the French government claims that it seeks to place migrants and asylum seekers in housing centers, in reality, many individuals moved to other camps such as the nearby Dunkirk.

In March of this year, France had opened its first internationally recognized refugee camp in Grande-Synthe, Dunkirk. The French government has been working to dismantle the Calais camp and move individuals to Grande-Synthe. The new camp is the result of a joint project between *Médecins Sans Frontières* (MSF) and a local Green-run authority. While MSF and the local authority raised 3 million \$ to build the camp, the French central government, while not forbidding its construction, did not contribute financially to the development of the camp²⁹.

MSF’s Executive Director, Vickie Hawkins noted that while the new camp would provide for a temporary solution, “[it] will bring conditions up to minimum humanitarian standards, but we know that this is just a short-term solution.”

The situation in the camps would require a joint effort between France and the UK. As previously noted, many migrants and asylum seekers seek to resettle in the UK due to familial links. It is reported that over a third of Calais residents have family members in the UK³⁰.

The refusal of asylum seekers to register with the French government and their wish to cross the Channel to the UK further highlights the need to find a solution to the recent crisis on the EU level.

However, while France currently allows the UK to place border guards on its territory in order to prevent individuals from illegally crossing the Tunnel. Britain’s upcoming Brexit referendum might change the current border policing. Xavier Bertrand. A French politician of the right *Les Républicains* party, noted “If Britain leaves Europe, right away the border will leave Calais and go to Dover,” further, Bertand warned, “We will not continue to guard the border for Britain if Britain is no longer in the European Union³¹.”

Major controversies: mapping out the atmosphere of the country

The recent wave of migrants has brought about a variety of political reactions. Like other EU countries, France has struggled in finding ways to address the migrant crisis, and even more so in the aftermath of the November attacks. The French government has shown a degree of vacillation, expressing various shades of opinion in regards to accepting migrants.

²⁸ <http://www.aljazeera.com/news/2016/03/refugee-crisis-france-dunkirk-camp-160309032001035.html>

²⁹ <http://www.telegraph.co.uk/news/worldnews/europe/france/12186407/Frances-first-ever-internationally-recognised-refugee-camp-opens-near-Dunkirk.html>

³⁰ <http://care4calais.org/crisis/>

³¹ <http://www.theguardian.com/uk-news/2016/mar/03/calais-border-treaty-brexit-what-is-france-saying>

In order to look at the political response of France to the migrant crisis, it is essential to distinguish between symbolic politics and actual political action. Symbolic politics are often used to publicly represent an opinion. They include media statements made by politicians and generally reflect an attitude that does not always reflect, or becomes, actual policies. Actual politics reflect the laws and policies adopted by the governments. They can both reflect the crystallisation of symbolic politics or be detached and differ from political statements.

An example of symbolic politics is statements made by the Front National (FN). In July 2015, Marine Le Pen advocated for closing the nation's borders. The recent refugee crisis fueled right wing politicians and gave such parties a lift. The Front National, for example, is largely tapping on anti-immigrant sentiment in French society by grafting economic concerns onto security concerns. "We're told to accept 160,000 illegal immigrants this year, but next year it will be 700,000 and the following it will be 1.2 million³²," Le Pen said in a speech given in the French city of Marseille in September 2015. Further, she largely rejected the Franco-German quota plan. However, while Le Pen's reaction reflects the opinion of some of the French population, her statements have not turned into actual policies.

France's stance on migration on the European level

Reactions to the EU quota plan

In October 2015, French President François Hollande announced that France would accept 30,000 refugees in the next two years as part of the EU plan to redistribute 160,000 refugees from 'hot spots' in Greece and Italy. Holland announced that he and German leader Angela Merkel wanted the 28-country EU to back a "permanent, mandatory system" under which each country would be obliged to take its fair share of a total of 160,000. In May of last year, France took a completely different stand on adapting a EU quota system. In an interview given by Harlem Desir, Minister of State for European Affairs, Desir noted "we agree on sharing the effort of taking in asylum seekers – but voluntarily, and not on the basis of quotas as the European Commission is proposing," Desir said that it's the prerogative of each EU country to decide whether or not to grant political refugee status, and that "this remains the sovereign power of states" and that France "won't go as far as a quota system." In this sense, we can observe a significant evolution in French politics in a sense that France joined Germany in advocating for a EU quota plan.

However, opinions are still divergent on the matter. For example, in February 2016 French Prime Minister Manuel Valls said that while France would stick to its pledge to take on 30,000 refugees, France would not allow for the creation of a permanent relocation mechanism. While Valls admired Merkel's efforts to accept more refugees, he did not support her attempts to create a coalition of countries for permanent relocation mechanism. Valls noted, "We [France] won't take any more," and added, "France never said come to France³³"

France's standpoint on the Turkey Agreement

In France, the judgement of the agreement is not uniform: if Francois Hollande stated that "France and Germany are working with the same spirit and the same will" on the crisis, French Prime Minister Manuel Valls said that Paris was "not in favour" of Merkel's proposal to set up a permanent system to redistribute more refugees around Europe and that Merkel's liberal refugee policy, which brought 1.1 million asylum seekers to Germany in 2015, was not sustainable in the long run.

Reactions to the Paris attacks and State of Emergency

³² <http://www.ft.com/intl/cms/s/0/62131206-5473-11e5-8642-453585f2cfcd.html#axzz48Xt1qED6>

³³ <http://www.reuters.com/article/us-europe-migrants-idUSKCN0VMONI>

On November 26th 2015 France declared a State of emergency as a reaction to the terrorist attacks on November 13th. It has since been extended twice, allowing authorities to carry out police raids without prior authorization of a judge. France's decision to extend the state of emergency was passed on the premise that it would be effective in reducing the terror threat.

Today, it is generally recognized that there is no link between the terrorist attacks and the refugee crisis. The terrorists were not refugees, but people born and brought up in the Parisian suburbs, believed to have been marginalised in terms of social and political assistance, and excluded from employment and education opportunities. The perceived terrorist threat in France is separated from the migratory crisis, even if the latter has contributed to spread a sense of fear and nationalism within the society. This has become a fertile ground for far right parties. Marine Le Pen, Front National's leader, states: "A real passport given to Islamic fundamentalist in the influx of immigrants to enter the country with the intent to commit terrorist attacks. It's a danger. And that's what happened in Paris". Her solution is to expel migrants and close the borders.

Despite all this, the State of Emergency measures have not affected the immigration policies, but rather influenced public opinion and allowed right wing parties to capitalize on xenophobic fears. While in general France adheres to European asylum policies, the securitisation discourse is likely to harden immigration and asylum laws in the future.

Country conclusion: France

While France reformed its asylum laws in 2015, there are still major implementation gaps.

It is essential for France to work on narrowing the gap by, for example, hiring more civil servants and administrative workers to process asylum claims and aid asylum seekers.

Further, the high rejection rates of asylum seekers by OFPRA (74.1%) indicate that France needs to better strengthen its asylum mechanism. The fact that the National Court of Asylum (CNDA) accepts more than a quarter of appeals lodged by asylum seekers, and cancels decisions to refuse asylum by OFPRA, shows that France's institutions need to improve cooperation in order to avoid lengthy delays in the asylum process.

The situation in the camps, however, demonstrates the need to find a solution to the recent crisis on the EU level. The fact that asylum seekers refuse to lodge claims in France and instead attempt to cross the Channel to the UK highlights the ways in which the "first country of entry" rule of the Dublin Regulations needs to be amended to better facilitate the wishes of asylum seekers.

ROMANIA

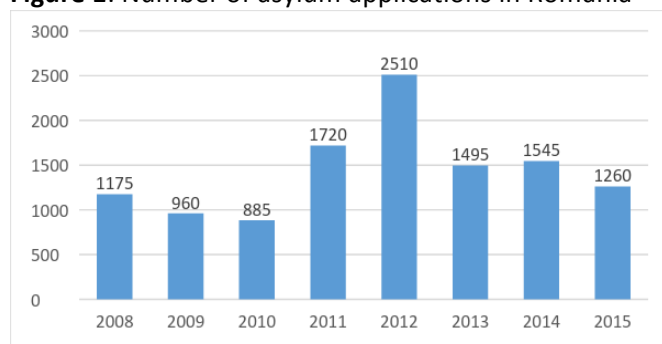
Background and statistics

The evolution of the migratory flux is intrinsically connected with international political events and is an extremely dynamic process. While Romania is not directly facing the same pressure as the other European countries in terms of refugee influx, it has to show its solidarity with the other European states. This solidarity can lead to challenges at the national level concerning the asylum policy.

Romania is a country of emigration³⁴, and became more so especially after it joined the EU in 2007. The International Migration Outlook Report of 2015 shows that in 2007, the outflow of people was six times higher than the inflow³⁵. Also, the share of immigrant population in 2015 in Romania was only 1.2, with most people coming from Moldova, Turkey, China, Syria and the US, remaining quite constant from the 1990s, when it was 0,6³⁶. This, compared to other European countries is a very low figure. Concerning the refugee flux, Romania can be identified as a country of transition, with most asylum seekers coming from Syria, Iraq, Afghanistan and Pakistan³⁷. Whereas in the 1990s Romania was just opening up its borders to the world, counting only a few hundred immigrants, it had the highest stock in 2005, with 2056 refugees, lowering to 1020 in 2010 and rising to 1996 in 2015³⁸. The number of asylum applications has also decreased since 2008. It had its peak in 2012, with 2510 applications, and in 2015 there were around 1260³⁹. This decrease may be explained by the low rate of acceptance of claims in Romania, which might in the long run discourage asylum seekers to keep Romania as a destination country⁴⁰.

Based on the relocation quotas imposed by the EU, Romania was initially supposed to receive a total of 2475 refugees, 585 from Italy and 1890 from Greece⁴¹.

Figure 1: Number of asylum applications in Romania



Source: Data compiled from Eurostat

³⁴ Focus Migration: Romania, available online at <http://focus-migration.hwwi.de/Romania.2515.0.html?&L=1>

³⁵ International Migration Outlook 2015, available online at http://dx.doi.org/10.1787/migr_outlook-2015-en

³⁶ International Migrant Stock, 2013, available online at <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimatestotal.shtml>

³⁷ International Migration Outlook 2015, available online at http://dx.doi.org/10.1787/migr_outlook-2015-en

³⁸ Trends in International Migrant Stock: The 2015 revision available online at <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml>

³⁹ International Migration Outlook 2015, available online at http://dx.doi.org/10.1787/migr_outlook-2015-en

⁴⁰ Focus-Migration: Romania, available online at <http://focus-migration.hwwi.de/Romania.2515.0.html?&L=1>

⁴¹ Blăjan, 2015, available online at <http://cursdeguvernare.ro/comisia-europeana-obliga-romania-sa-accepte-1705-de-migranti-aflati-acum-in-grecia-si-italia-pentru-fiecare-primeste-6000-de-euro.html>

Romania's asylum policy, procedure and regulation

Political approach

According to the General Inspectorate for Immigration (IGI), "Migration is a process that must be managed, not a problem to be solved."

Romania has been applying the asylum legislation since 1991, when it ratified the UN Convention and Protocol Relating to the Status of Refugees. The country saw major modifications in its asylum system in 1996 and 2000, before preparing for harmonisation with EU standards in 2006⁴². One of the Internal Affairs Ministry's main responsibilities is the implementation of the Common European Asylum System, to ensure the national legislation is in conformity with the European standard.

It is a policy that offers the people who received a form of protection in Romania the same economic and social rights as Romanian citizens (right to employment, right to medical and social care, social security, education)⁴³. There is no quota imposed by the government for the asylum policy.

The National Immigration Strategy for the period 2015-2018 contains several general recommendations on how the Romanian authorities can deal with immigration (based on other European countries' good practice), for a country such as Romania, who has never experienced major inflows of foreign citizens⁴⁴. However, EU countries have different means of managing immigration, none of which can be considered as best practice.⁴⁵ The government stresses the need for cooperation among EU countries and the importance of offering help to countries of origin. In October 2015, the former prime minister decided to initiate a dialogue between the central and local authorities and NGOs as an answer to the current migratory flux, which led to the creation of the inter-ministerial national coalition for the integration of refugees, as a call launched by the civil society⁴⁶. Due to the lack of institutional experience in the area of immigration, the Committee provides expertise for the asylum policy⁴⁷.

Contrary to other European countries, Romania does not face a strong populist movement, which makes it easier for the main discourse taken by these extremist parties related to the rejection of refugees not to be adopted by the public. This then cannot affect much the national political positions on the immigration policy negatively, since the public will not try to influence it in a rejectionist way. This is also true at parliamentary level, since there are no extremist parties to influence the vote on immigration policies.

However, the position of former Romanian president, Traian Băsescu, on the crisis is strongly linked with the constitutional principle according to which "No foreign populations may be displaced or colonized on the territory of the Romanian State."⁴⁸ Trying to win the support of the electorate, he has a rather rejectionist attitude towards the acceptance of refugees, using a nationalistic approach.

⁴² *Focus-Migration: Romania*, available online at <http://focus-migration.hwwi.de/Romania.2515.0.html?&L=1>

⁴³ Ordinance 44/2004: section 1, articles 4-6 concerning work, social benefits and housing, section 2 concerning medical assistance benefits, pension benefits, social assistance; education rights, section 3.

⁴⁴ *National Immigration Strategy for the period 2015-2018, and the Action Plan for 2015, approved by the Government*, September 2015, available online at <http://gov.ro/en/news/national-immigration-strategy-for-the-period-2015-2018-and-the-action-plan-for-2015-approved-by-the-government>

⁴⁵ *Focus-Migration: Romania*, available online at <http://focus-migration.hwwi.de/Romania.2515.0.html?&L=1>

⁴⁶ *Decizia nr. 312/2015 privind înființarea Comitetului Interministerial Coaliția Națională pentru Integrarea Refugiaților*, 2015, available online at: <http://lege5.ro/Gratuit/ha2tsmbzgg/decizia-nr-312-2015-privind-infiintarea-comitetului-interministerial-coalitia-nationala-pentru-integrarea-refugiatilor>

⁴⁷ *Decisions on the nationwide management of the refugee flow*, October 2015, available online at <http://gov.ro/en/news/decisions-on-the-nationwide-management-of-the-refugee-flow>

⁴⁸ Article 3(4), *Constitution of Romania*, available online at http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=1#t1c0s0sba3

Legislation

The national legislation was adapted by the European legislation in order to better integrate the needs of asylum seekers and those who received refugee status. It brought benefits such as monetary allocations, shortening the length of the asylum procedure, and providing a quicker access to the labour market. The main law concerning asylum in Romania is the Law 122/2006 and the Ordinance 44/2004, which set the rights and procedures for asylum seekers⁴⁹.

There are 6 accommodation and reception centres for asylum seekers in Romania, with a total capacity of approximately 1000 places. They are organized in accordance with European standards. In case of an influx, bunk beds can be set up, in order to increase the capacity to approximately 1800 persons, and another centre is currently being built. Asylum seekers usually stay for 3 months in the centres. Statistically speaking, in one year there could be a maximum of approximately 7000 persons crossing into Romania for asylum. According to IGI, there has not been a 100% occupation so far. Once they become refugees, the persons can apply for additional 6 months on well-founded reasons⁵⁰.

The modifications brought by the Directive 2013/33 in the national law are meant to improve the financial conditions for asylum seekers. The allowance would be of around 1100 LEI/person/month (equivalent to approximately 250 EUR), and of a maximum of 450 LEI/month (equivalent to approximately 100 EUR) rent in case of overcrowded centres, excluding utilities; but also the possibility of involving the asylum seekers in community work, within the centre, and a 5 LEI/day/person (equivalent to approximately 1 EUR) extra for food. Until 2015, during the period of the processing of the application for the asylum seeker, the person could not apply for a job. However, since the process could sometimes be lengthy, since 21st December 2015, the law changed so that the asylum seeker can work after the first three months of his application.

Legislation and policy therefore seem to be comprehensive, quite harmonised with the general European asylum policy. However, a more common vision is lacking at different stages.

Romania has not been so successful in terms of implementation of the Common European Asylum System, since it was one of the countries which was sent a letter for non-communication of transposition, and later saw an infringement procedure brought to it on 23rd September 2015⁵¹ for not having fully implemented Directives 2013/32⁵² and 2013/32⁵³.

The problems that refugees face in Romania reveal the shortcomings of the asylum policy in the country, as well as the need for better coordination at the European level. Things such as the labour market, demography, and education, can greatly influence the way the asylum policy is constructed in Romania. If the goal is to have a harmonized long-term vision, these problems should also be approached in a different manner, at the European level.

⁴⁹ Article 17 sets the rights for asylum seekers, such as free medical assistance, healthcare, education.

⁵⁰ Ordinance 44/2004, article 21(2)

⁵¹ *More Responsibility in managing the refugee crisis: European Commission adopts 40 infringement decisions to make European Asylum System work*, September 2015 available online at http://europa.eu/rapid/press-release_IP-15-5699_en.htm

⁵² *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 (recast)*, available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN>

⁵³ *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*, available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0033>

Asylum procedure

The main institution which deals with the implementation of the national policies on asylum (and migration in general) in Romania is the General Inspectorate for Immigration.

In Romania, anyone can apply for asylum. The administrative phase takes up to three months. Within two months the request is processed, and then it takes up to one more month to issue the papers (also for work permit). With the current regulations, the procedure is much better defined. There are many improvements, such as the reception of the residence permit and work authorization at the same time, and since 2014, the possibility to submit the application online via IGI's website.

The process includes an interview, registering fingerprints, photographing the asylum seekers, and then issuing travel and residence documents. All asylum seekers have their fingerprints registered in the EURODAC database. If Romanian authorities reject the asylum request, the applicant can appeal the decision, what can lengthens the process up to one or even two years.

However, linguistic barriers in administration often hinder the asylum procedure, since much of the information is not translated from Romanian. In addition, many civil servants are not aware of all the applicable rights and legislation related to foreigners, and the lack in specialised staff makes it difficult to offer efficient information to the applicants⁵⁴.

Major controversies: mapping out the atmosphere of the country

Reactions to the European policy

Press conferences and declarations of the president from 2014-2016 show that political reactions to immigration policies were balanced. The Romanian President Klaus Iohannis sees solidarity as a powerful instrument in Romania's asylum policy, as well as all the other actions Romania contributes for in terms of Frontex, peacekeeping missions and financial help. He reiterates that the main problem is not accepting the asylum seekers, but integrating them. It is already difficult to integrate the few existent hundreds, but if it comes to thousands, the process will be much slower.⁵⁵

The former prime minister's approach to the policy was also one of solidarity with the European states, by continuing to offer financial support to those countries who have a higher influx⁵⁶.

The Socialist Ponta government was replaced in November by the Dacian Cioloş independent government. It has the same position on the asylum policy⁵⁷. After a Council meeting, Dacian Cioloş reiterates the fact that it is more important to fight the source of the problem than the cause⁵⁸.

⁵⁴ Iris Alexe, Bogdan Păunescu, 2011

⁵⁵ *Press conference of Klaus Iohannis*, September 2015, available online at <http://www.presidency.ro/ro/media/agenda-presedintelui/conferinta-de-presa-sustinuta-de-presedintele-romaniei-domnul-klaus-iohannis1449683916> ["este nevoie de solidaritate, dar este mai bine ca fiecare stat membru să stabilească singur câți refugiați poate să primească. Este ceea ce se numește cote voluntare."]. ["we need solidarity, but it is best for every member state to set individually the number of refugees it wants to receive, what is called "voluntary quotas."]

⁵⁶ *The speech delivered by Prime Minister Victor Ponta in the plenary of the Chamber of Deputies at "Prime Minister's Hour"*, October 2015, available online at <http://gov.ro/en/news/the-speech-delivered-by-prime-minister-victor-ponta-in-the-plenary-of-the-chamber-of-deputies-at-prime-minister-s-hour>

⁵⁷ *Programme for Government*, available online at <http://gov.ro/en/objectives/programme-for-government>

⁵⁸ *Dacian Cioloş, despre cotele obligatorii de refugiați: Solidaritatea României vine în anumite condiții*, December 2015, available online at <http://www.caleaeuropeana.ro/dacian-ciolos-despre-cotele-obligatorii-de-refugiati-solidaritatea-romaniei-vine-in-anumite-conditii/>

On Relocation

Romania was one of the countries who voted against the compulsory quota system at the JHA Council in September, as the President had made it clear it would, before the official meeting⁵⁹. In a press conference he confirmed Romania's solidarity with the other European states on this problem, but did not agree with compulsory quotas, which Romania does not see as a long-term solution⁶⁰. The people relocated through the quota system are usually chosen for those who have 75% or higher chances to receive refugee status.

On Security

Any immigration policy automatically depends on the security policy. Combating illegal migration and controlling the frontiers is every country's concern, which also rests closely with state sovereignty.

There were no radical measures taken by Romania after the recent terrorist attacks in Europe. It will continue to support the actions at European level concerning illegal migration and protection of borders.⁶¹ It also seems that NATO support is more appreciated in terms of peacekeeping operations and the fight against the causes of immigration⁶².

The Government Emergency Ordinance 53/2015 provides the measures applied in case of a significant immigration influx. It has been taken with the purpose of preventing and ousting the threats to national security, as well as maintaining a safe public sphere. The present act creates an integrated coordination instrument of the Romanian authorities' actions relevant in the area⁶³. Following the building of the fence in Hungary to stop refugee inflows, Romania had the same position as the EU, seeing this as an unnecessary, exaggerated response⁶⁴.

Romania's standpoint on the Turkey Agreement

Romania seemed to be in favour of the Turkey refugee relocation agreement, for which it showed strong support from the beginning, perceiving it as a solution to the reduction of refugee inflow. The President reiterated this in a press conference with the Turkish president⁶⁵.

⁵⁹ ANALIZĂ: Consiliul JAI analizează propunerile CE privind imigranții. România respinge cotele obligatorii, 2015, available online at: <http://www.mediafax.ro/politic/analiza-consiliul-jai-analizeaza-propunerile-ce-privind-imigrantii-romania-respinge-cotele-obligatorii-14710768>

⁶⁰ Conferință de presă susținută de Președintele României, domnul Klaus Iohannis, September 2015, available online at <http://www.presidency.ro/ro/media/agenda-presedintelui/transcrierea-conferintei-de-presa-sustinuta-de-presedintele-romaniei-domnul-klaus-iohannis>

⁶¹ Declarația de presă a Președintelui României, domnul Klaus Iohannis, February 2016, available online at <http://www.presidency.ro/ro/media/declaratii-de-presa/declaratia-de-presa-a-presedintelui-romaniei-domnul-klaus-iohannis1455925984>

⁶² Declarația de presă comună a Președintelui României, domnul Klaus Iohannis, cu Președintele Republicii Polone, domnul Andrzej Duda, November 2015, available online at <http://www.presidency.ro/ro/media/declaratii-de-presa/declaratia-de-presa-comuna-a-presedintelui-romaniei-domnul-klaus-iohannis-cu-presedintele-republicii-polone-domnul-andrzej-duda>

⁶³ Zulean, Marian, 2016, available online at <http://www.contributors.ro/administratie/strategia-%E2%80%9Diohannis%E2%80%9D-strategie-de-securitate-sau-%E2%80%9Ebilete-de-papagal%E2%80%9D/>

⁶⁴ "Romanian Government's position on the treatment of immigrants by the Hungarian authorities is in line with the positions expressed by the EU states, EU institutions and other international bodies", September 2015, available online at <http://gov.ro/en/news/romanian-government-s-position-on-the-treatment-of-migrants-by-the-hungarian-authorities-is-in-line-with-the-positions-expressed-by-the-eu-states-eu-institutions-and-other-international-bodies>

⁶⁵ Declarație de presă comună a Președintelui României, domnul Klaus Iohannis, cu Președintele Republicii Turcia, domnul Recep Tayyip Erdoğan, March 2016, available online at <http://www.presidency.ro/ro/media/declaratii-de-presa/declaratie-de-presa-comuna-a-presedintelui-romaniei-domnul-klaus-iohannis-cu-presedintele-republicii-turcia-domnul-recep-tayyip-erdogan>

Country conclusion: Romania

A more harmonized European asylum policy could exist if a win-win policy can be negotiated between all states and the EU. However, the EU needs to think what kind of policy it wants to implement - a more economic, or a more humanitarian one?

International migration institutions could have a more relevant role in dealing with immigration at EU level. Further negotiations between the EU and the UNHCR should take place in order to allow relocations in such crisis situations at a more international level.

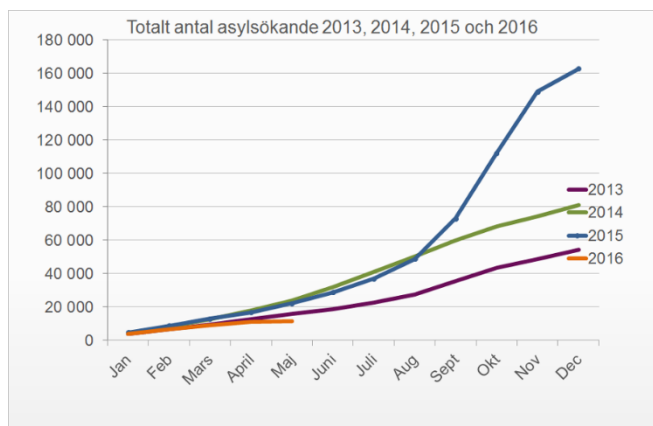
Even if Romania is not facing the same pressure as other European countries, it is still affected by the recent crisis. While Romania continues to show its solidarity, it nonetheless makes it clear that the answer is not necessarily a common system for all EU countries. The response to the current crisis has to be adapted to the specific context of each country. However, strengthening border controls, providing financial help, as well as addressing the root causes which lead individuals to seek asylum, are policy decisions that have to be made on the EU level.

A common European vision is still a distant ambition, but countries seem to get closer to it by adopting common rules and procedures. A balance has to be struck between economic and security interests, as well as the respect of human rights.

SWEDEN

Background and statistics

Sweden has among the largest immigrant populations of the European OECD countries, with 16 percent of its population born abroad.⁶⁶ 163 000 asylum seekers arrived in Sweden during 2015, which is the highest per capita inflow registered during the refugee crisis and the highest ever registered in an OECD country. During the years 2011-2015, most asylum seekers came from Syria, Afghanistan and Iraq.⁶⁷



Total number of asylum applications [in Sweden] 2013, 2014, 2015 and 2016.⁶⁸

There has been a substantial difference in number of asylum applications and number of approved asylum applications in Sweden during the past years, in 2015 there was a rejection rate of 34.3 percent.⁶⁹

Sweden's asylum policy, procedure and regulation

The Swedish government states on its website: "The objective for [Sweden's] migration policy is to ensure a long-term sustainable migration policy that safeguards the right of asylum and, within the framework of managed immigration, facilitates mobility across borders, promotes needs-based labour migration, harnesses and takes into account the effects of migration on development, and deepens European and international cooperation."⁷⁰

In Sweden, immigration is regulated and asylum legislation is based on international conventions and EU law.⁷¹ The Aliens Act constitutes the national law that regulates migration, and it conveys under which terms and conditions foreign nationals may reside in Sweden.

Apart from adhering to international and EU law on the rights of refugees, Sweden has made national rule amendments which extends the right of protection. By this, a person who

- cannot return to the country of origin due to armed conflict or political difficulties,
- fear being subjected to severe abuse or

⁶⁶ OECD (2016), Working Together: Skills and Labour Market Integration of Immigrants and their Children in Sweden, OECD Publishing, Paris

⁶⁷ Migrationsverket 2016 <http://www.migrationsverket.se/Om-Migrationsverket/Statistik/Oversikter-och-statistik-fran-tidigare-ar.html>

⁶⁸ Migrationsverket 2016 <http://www.migrationsverket.se/Om-Migrationsverket/Statistik.html>

⁶⁹ AIDA 2015 <http://www.asylumineurope.org/reports/country/Sweden/statistics>

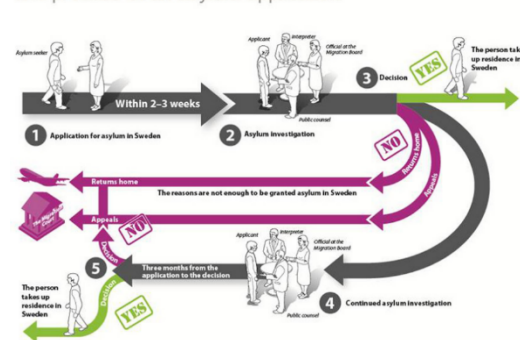
⁷⁰ Government Offices of Sweden 2015 <http://www.government.se/government-policy/migration/migration-policy-objectives/>

⁷¹ Government Offices of Sweden 2015 <http://www.government.se/opinion-pieces/2015/02/establishment-of-new-arrivals-to-sweden-to-be-reformed/>

- cannot return to the country of origin due to an environmental disaster has the right of protection under Swedish law.⁷²

A person will apply for asylum with the Swedish Migration Agency. Shortly after, an asylum investigation is initiated, during which the applicant tells the agency the reason he/she is seeking protection in Sweden. After that a decision is made, or in some cases there is a need for further investigation. Everyone has the right to appeal a decision made by the Swedish Migration Agency within three weeks, whom will then reassess the application. If the decision is the same, the agency will hand over the appeal to the Migration Court to make the final judgement.⁷³

The process of an asylum application



With the relatively large inflow of asylum seekers during 2015, it now takes on average 152 days before an application investigation is initiated. This is twice as long as the average time one year ago. Additionally, the Migration Agency predicts that the average total processing time of an application will be prolonged to up to two years from 2016.⁷⁴

The cornerstone of the Swedish integration policy is a two-year introduction programme for newly-arrived migrants. It's the municipalities of Sweden and the Public Employment Service who are responsible for the programme, and it offers asylum seekers who either have or have not yet been granted residence permits, together with their families, Swedish language training and civic orientation.⁷⁵ The objective of these activities is to promote job readiness and labour market integration, so that they can eventually provide for themselves. Furthermore, asylum seekers have right to Swedish health and dental care, and children under 18 years of age have access to it for free.⁷⁶ This procedure of integration is one of the pull factors to Sweden, as the system put in place goes beyond the requirements of the European Union.

Major controversies: mapping out the atmosphere of the country

From “welcoming everyone” to closing borders and ID checks

As the influx of migrants to Europe heavily increased during the summer of 2015, the Swedish government chose the standpoint of welcoming refugees from the war affected countries of the Middle East. On September 5th, Prime Minister Stefan Löfven held a speech underlining the path of empathy and solidarity taken by Sweden in the current migration crisis, and he stressed the importance of taking a shared responsibility throughout the nation and Europe.⁷⁷

Nationally, media reported heavily on the steady stream of refugees arriving in Sweden. The government kept focusing on enabling and finding solutions to the migration situation, for example through the Program for Sweden together where actors from the municipalities, government agencies, private

⁷² Flyktingfakta 2016 <http://www.flyktingfakta.info/doku.php?id=lagar>

⁷³ Migrationsverket 2016 <http://www.migrationsverket.se/English/About-the-Migration-Agency/Facts-and-statistics-/Facts-on-migration/Facts-about-the-process.html>

⁷⁴ SVT Nyheter 2016 <http://www.svt.se/nyheter/inrikes/asylsokande-far-vanta-allt-langre>

⁷⁵ OECD (2016), Working Together: Skills and Labour Market Integration of Immigrants and their Children in Sweden, OECD Publishing, Paris

⁷⁶ Flyktingfakta 2016 <http://www.flyktingfakta.info/doku.php?id=lagar>

⁷⁷ Government Offices of Sweden 2015 <http://www.regeringen.se/tal/2015/09/tal-av-stefan-lofven-vid-manifestationen-for-flyktingar-den-5-september/>

companies, unions, the civil society etc. gathered in order to “together create even better conditions for the newly arrived in Sweden”.⁷⁸ But in the course of a month, the political climate changed.

On the 12th of November, the government imposed ID checks on the Swedish borders. This change was motivated by the challenges the country was facing due to the relatively large number of refugees entering the country. The Swedish Migration Agency was estimating that up to 190 000 people would apply for asylum during the year, compared to 81 000 asylum seekers in 2014.⁷⁹ Assessments from different public authorities held that the country’s internal order and security was threatened, and that important public agencies were heavily strained.⁸⁰ One of the most visible examples was the pressure the Migration Agency underwent, as they were unable to provide enough beds and housing for the asylum seekers. The ID checks were prolonged on the 19th of November and have since been renewed every ten days.

On the 24th of November, the government presented an agenda on migration utterly different from the previous. During the coming three years, the Aliens Act would be set at the EU minimum level, all refugees except for those from the resettlement quota would only be granted temporary residence permits, and family reunifications would be limited and include stricter requirements on financial provision ability.⁸¹

On the 4th of December a law proposition was made, named the “Act allowing special measures in order to prevent serious threats to the general system or national security.” With this law, the government would be able to

- Require ID checks on passenger transports with buses, trains or ships to Sweden from abroad
- Close roads used for motor traffic between Sweden and another state
- Impose sanctions to ensure compliance with ID checks

The law was limited in time to three years. On January 4th 2016 the regulation on ID checks on public passenger transport came into work, and was set to be applicable for six months. In effect, ID checks were imposed with the purpose to limit the possibility for people to seek asylum, as a substantial proportion of asylum seekers do not present an ID when registering at the Swedish Migration Agency.⁸²

Political reactions to immigration

Similar to many European countries, Sweden has experienced increased political support for its nationalistic, far-right wing party, Sverigedemokraterna (Sweden Democrats) during the past years. In December 2015, a prominent poll named it the second largest political party in the country.⁸³ Following the policy change, polls continued showing that political support for the Swedish Democrats was increasing. In February however, the party’s vote share dropped, and it has continued to do so over the past months. From the all-time high of 22% in December, the same polling institute now reports a vote share of 17% in May.⁸⁴

⁷⁸ Government Offices of Sweden 2015 <http://www.regeringen.se/pressmeddelanden/2015/09/statsministern-bjuder-in-till-sverige-tillsammans/>

⁷⁹ Migrationsverket 2015 <http://www.migrationsverket.se/Om-Migrationsverket/Nyhetsarkiv/Nyhetsarkiv-2015/2015-01-02-Fler-fick-skydd-under-2014.html>

⁸⁰ Government Offices of Sweden 2015 <http://www.regeringen.se/artiklar/2015/11/regeringen-beslutar-att-tillfalligt-aterinfora-granskontroll-vid-inre-grans/>

⁸¹ Sveriges Radio 2015 <http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6310099>

⁸² Migrationsverket 2015 <http://www.migrationsverket.se/download/18.2d998ffc151ac387159be6/1451644259863/%C3%96versikt+statistik+2015-12-31.pdf>

⁸³ Novus väljarbarometer December 2015 <http://novus.se/wp-content/uploads/2015/12/Novus-V%C3%A4ljarbarometer-17-december-2015.pdf>

⁸⁴ Novus väljarbarometer February 2016 <http://novus.se/valjaropinionen/tv4novus-valjarbarometer/2016-2/novustv4-valjarbarometer-maj-bottennotering-for-mp/>

There is an ongoing debate on whether refugees increase the rate of crime in Sweden. The debate took off after the events in Cologne on New Year's Eve, after which it was revealed that a similar event had taken place in Sweden in August 2015, but had been concealed from the public.⁸⁵ Since then there have been local outbreaks, for example at municipality meetings regarding building asylum housing, where groups of private individuals have expressed their concerns for safety within their communities.

Instances of violence have been reported weekly, although less during the past three months, where newly arrived migrants and asylum seekers are the subject of attacks.⁸⁶ The media is talking about a rise in xenophobic violence by extremist right-wing organisations.⁸⁷ Asylum houses have been attacked and some burnt down in several places throughout the nation since the influx of migrants increased during the summer. In December, the journal Expo reported a dramatic increase in attacks during 2015 compared to previous four years. During October, an average of one attack per day took place on asylum housing.⁸⁸

Sweden's stance on migration on the European level

Sweden's standpoint on the European Commission's agenda on migration

The Commission's agenda in large reflects the Swedish government's position on how the large flow of migrants should be handled.⁸⁹ In particular, the government agrees with the importance of protecting and upholding international asylum law as well as the Commission's approach to migration and inter-state mobility as positive for economic growth, trade, development and cultural exchange. The internal EU solidarity is a priority for the government, such that the European common migration policy develops into a more equal system of relocation of asylum seekers, where all countries take responsibility to protect people in need of refuge.

The government would have liked to see that the commission's migration agenda had communicated that it intends to look into alternative ways for asylum seekers to legally find their way within the EU. A potential way that has been mentioned is the issuing of humanitarian visas. The government would also like to underline the importance of increased cooperation with countries of origin and transit to create institutional capacity in dealing with migration.

For the long term, the government sees it as crucial that a common European asylum policy is developed, in order to achieve an equivalent level of protection within the European Union, with high standards for asylum procedures. At the same time, it is important that individual member states can have more generous approaches to accepting asylum seekers than that of the EU.

Sweden's agenda on national security

There is a national strategy in place to protect Sweden from terrorism. As part of this plan the Migration Agency can refer cases to the national security service, which can inform whether a person applying for a

⁸⁵ Svenska Dagbladet 2016 <http://www.svd.se/polisen-morkade-massovergrepp-i-stockholm>

⁸⁶ The Independent 2016 <http://www.independent.co.uk/news/world/europe/hundreds-of-masked-men-beat-refugee-children-in-stockholm-a6843451.html>

⁸⁷ Svenska Dagbladet 2016 <http://www.svd.se/medborgargarden-vaxande-verktyg-for-nazister/om/det-framlingsfientliga-valdet>

⁸⁸ EXPO 2015 http://expo.se/2015/mest-intensiva-attackvagen-mot-asyloenden-nagonsin_6986.html

⁸⁹ Information provided during an interview with Oliver Larsson, Desk officer at the Swedish Ministry of Justice. 1 February 2016.

residence permit has connections to any terrorist groups or are expected to pursue activities threatening national security.⁹⁰

The government has assessed the current situation with a large influx of people into the country in a relatively short period of time, to constitute a serious threat to the general system and national security, which motivates ID checks for a limited period of time. These measures have the purpose of giving breathing space and ensuring the function of fundamental social services.

Sweden's standpoint on the Turkey Agreement

The Prime Minister represented Sweden at the European council meeting on the 17th of March. He afterwards stated that this agreement could be the first step towards a sustainable system for legal routes for refugees into the EU. For the agreement to work, he underlined the importance of border control and member states taking collective responsibility of refugees under the principle of solidarity.⁹¹

Country conclusion: Sweden

The prevailing situation where Sweden takes a disproportionately large responsibility is not sustainable. Europe must strengthen the capacity to receive migrants in member states that are under the most pressure, in order to prevent the risk of a humanitarian crisis.

Additionally, borders should be strengthened to prohibit an unsustainable situation where countries cannot take care of or support asylum seekers. This should be both a national responsibility and the responsibility of Frontex. It is Sweden's stance that the plans on a relocation and a resettlement scheme under a quota must be carried out, accompanied with an operative support through "hot spots". Still, today's system is not enough. The European commission must present a proposal for a new asylum system with a permanent relocation mechanism.

What becomes evident from comparing the three countries is that they have different priorities in terms of what they see as the needs of their country in a common European asylum system. However, all of them are looking for new European regulation to facilitate the individual challenges they are facing. It will be difficult to move forward to finding a common asylum policy if countries maintain their individualistic approaches and neglect to focus on collaboration and working towards more unified strategy.

⁹⁰ Information provided during an interview with Oliver Larsson, Desk officer at the Swedish Ministry of Justice. 1 February 2016.

⁹¹ Government Offices of Sweden 2015 <http://www.regeringen.se/artiklar/2016/03/EU-och-Turkiet-ar-overens-om-samarbete-i-migrationsfragorna/>

CONCLUSION

General recommendations for immigration and asylum policy on the EU level

While the Dublin Regulations created the Common European Asylum System (CEAS) with the aim of guaranteeing a fair asylum procedure, the recent influx of asylum seekers and migrants into Europe has revealed significant structural shortcomings. The question remains as to how the EU can balance the protection of asylum seekers (in accordance with the 1951 Refugee Convention and the 1967 Protocol) and Member States' burden. While Member States are indeed required to implement EU laws, the current system places uneven pressure on certain EU countries. A heavy burden has been put on Mediterranean arrival states such as Greece and Italy, as well as the states with general policies of asylum such as Sweden and Germany. The current policy is generating a "race to the bottom", where states attempt to be as unattractive as possible to asylum seekers and impose the minimum level of refugee protection without defying EU and international law. Sweden is a clear example of this, as borders have been closed and the government is attempting to limit number of granted residence permits, while the Calais and Dunkirk camps in France are practically uninhabitable.

One interesting solution is the "crisis relocation mechanism" proposed by the Council of the European Union. This proposed mechanism seeks to amend Regulation (EU) No 604/2013 (Dublin III). The Council identified that "situations of extreme pressure being placed on a Member State's asylum system may jeopardize the application of regulation," and seeks to establish a crisis mechanism for relocation of asylum applicants that are in need of international protection. The relocation plan would transfer 160,000 asylum seekers from countries such as Greece and Italy to other Member States. The plan is a positive step towards a more equitable European asylum system. However, as indicated in a Human Rights Watch press release, the implementation of the Directive is quite weak. HRW indicated that only a handful of countries made offers to accept relocations⁹². Further, a report issued by the European Commission on April 12th indicates that thus far, only 5,677 asylum applicants were relocated from Greece and Italy⁹³. The model currently enforced is the one of the Dublin Regulations and the Relocation Plan, but how can combining two systems that do not function help us? While the relocation Directive is indeed a good first step, its implementation (or lack thereof) reveals the weaknesses associated with its execution. Divergent levels of development of national asylum systems has led to divergent outcomes, legal harmonization is potentially a better way to ensure equitable implementation, and improve burden-sharing. As long as the EU does not ensure strict enforcement of asylum laws, the situation is unlikely to change. The European Commission should therefore develop better monitoring mechanisms and conduct infringement proceedings, and when necessary, legally sanction Member States that fail to comply with EU procedures and asylum standards. Raising the standards on the EU level would better guarantee genuine responsibility sharing between Member States. It is however essential to note, that in the face of potentially big responsibilities, there needs to be enough guarantees in the Common European Asylum System to ensure Member States that the burden will be shared equally.

An additionally important aspect of the EU asylum system should be the connections, or links, of asylum seekers with Member States. For example, if an asylum seeker has familial or community affiliations in a given member state, his preferences should be taken into account. The first country criteria should

⁹² Human Rights Watch (2015). <https://www.hrw.org/report/2015/11/16/europes-refugee-crisis/agenda-action#page>

⁹³ European Commission (April 12, 2016). http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160412/communication_second_report_relocation_resettlement_en.pdf

therefore disappear as it hinders the integration of asylum seekers. Member states should realize that it is often futile to send people where they do not want to go. Earlier this year, Kris Pollet of the NGO ECRE (European Council on Refugees and Exiles) noted at Odysseus conference that if we refuse to take into account the opinions and wishes of asylum seekers we risk further encouraging them to take unsafe routes: “they will find a way to move. Human trafficking is happening in the EU.” Pollet further asked, “Why is free choice not a choice (for asylum seekers)?” It is therefore essential to develop preference matching with more in-depth processes. It is clear, perhaps more than ever, that the EU is in need of a system that does not keep asylum applicants in limbo.

The first step into an improved EU asylum system is financial solidarity and burden sharing. There is a need to replace, or amend, the Dublin Regulations, and to create a permanent, centralized mechanism. A well-functioning EU asylum system should be based on rational criteria, taking into account member states capacity, and balancing it with the wishes of asylum applicants. There will never be solutions that please all the parties involved. In addressing the root causes in Europe’s asylum system requires cooperation and diplomacy between Member States and EU Institutions. There needs to be an effort put towards the prevention and resolution of conflicts that displace so many people from their homes. What is certain, however, is that if the EU asylum system does not change, asylum seekers will only put more pressure on political systems, imposing an unfair burden on EU countries, which will result in further weakening protection of those in need.

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