

SHORT COURSE ON THE EUROPEAN ASYLUM ACQUIS

**THE AREA OF FREEDOM, SECURITY AND
JUSTICE**

General Introduction

THE TEMPORARY PROTECTION DIRECTIVE

**Presented by Boldizsár Nagy,
The Urals State Law University, 2016
Ekaterinburg**

PHOTO OF JAVIER BALAUZ



PHOTO OF JAVIER BALAUZ



CNN REPORTS, 28 AUGUST, 2015



Fleeing war to be left dead in truck

Austria says 71 bodies likely those of Syrians who suffocated
[Tide of death: Migrants' bodies wash in](#) | [One migrant's journey](#) | ['Better bombed in my homeland than die here'](#)

THE BERLIN WALL 1961 – 1989 AND THE FRONTIER AROUND EUROPE

During the Wall's existence there were around 5,000 successful escapes into West Berlin. Varying reports claim that either 192 or 239 people were killed trying to cross and many more injured.

http://en.wikipedia.org/wiki/Berlin_Wall visited 25 February 2006

List of 16264 documented refugee deaths through Fortress Europe

13/06/2012

Documentation on 13-06-2012 by UNITED

UNITED for Intercultural Action, European network against nationalism, racism, fascism and in support of migrants and refugees

Postbus 413 NL-1000 AK Amsterdam phone +31-20-6834778, fax 31-20-6834582, info@unitedagainstracism.org, www.unitedagainstracism.org

found dead	number	name	country of origin	cause of death	source
26/05/12	20	N.N.	unknown	drowned, after an inflatable dinghy on way to Italy started to deflate off the coast of Lybia	Migreurop/LRP
19/05/12	5	N.N.	Anjouan Island, Comoros	drowned, after boat of 43 migrants sank off the coast of Mayotte (F)	Le Monde/AFP/Migreurop
19/05/12	15	N.N.	Anjouan Island, Comoros	missing, after boat of 43 migrants sank off the coast of Mayotte (F)	Le Monde/AFP/Migreurop
02/05/12	1	N.N. (16, boy)	Afghanistan	stowaway, suffocated in a truck into which he had hidden to avoid the border police checks	Migreurop/PICUM/AdnKMP
01/05/12	7	N.N.	Somalia	died in a boat during a week-long voyage from LY to Malta, boat came ashore at Riviera Bay	UNHCR
29/04/12	3	N.N.	unknown	died in car accident while trying to escape a FRONTEX control, 2 migrants and the smuggler	Migreurop/KTG/TF1/PICUM/Clandestina/Age
28/04/12	1	N.N. (boy)	Egypt	drowned, after being thrown off a boat of 80 by smugglers when a patrol boat approached	Migreurop/LRP
26/04/12	1	N.N. (40, man)	Afghanistan	drowned, after being thrown overboard by smugglers dozens of meters from Calabria's coast	LR/Migreurop/PUCUM/FE
12/04/12	1	Alain Hatungimana (man)	Burundi	suicide, killed himself in the Netherlands in fear of being deported with his two children	DutchN/Migreurop/RNW/PICUM/ENAR
29/03/12	1	N.N.	unknown	body found in an advanced state of decay in the rural area of Tichero, Evros Prefecture (GR)	PICUM/Age/Clandestina
17/03/12	1	N.N. (±28)	unknown	drowned while trying to cross Evros River to enter GR, body found in area of Nea Vissa	PICUM/Age
16/03/12	5	N.N.	unknown	bodies found in boat of 57 on way to Lampedusa (I) rescued by Italian auth. in Lybian waters	PICUM/LR
15/03/12	1	N.N.	unknown	drowned while trying to cross Evros River to enter GR, body found near river in area of Soufli	PICUM
12/03/12	1	N.N. (28, man)	Eritrea	rolled over by the truck he tried to hide under to leave Greece, near the new port in Patras	PICUM/patrasT
29/02/12	1	N.N. (man)	Egypt	died of hypothermia, body found in a warehouse in the area of Korinthia (GR)	PICUM/Proto
21/02/12	1	N.N. (±20, woman)	Africa	died of hypothermia while trying to leave TR via Evros River, body found near Orestiada (GR)	PICUM/Infomob/Skai/Clandestina
21/02/12	1	N.N.	Sub-Saharan Africa	drowned while trying to enter Ceuta (E) by swimming along the coast from Morocco	MUGAK
21/02/12	1	N.N. (±23, woman)	Africa	body found by border guards in the Evros River (GR)	MNS
10/02/12	1	N.N. (±40)	unknown	died of hypothermia while trying to cross Evros River to enter GR, body found near Tichero	PICUM/Rizo
07/02/12	1	N.N. (25)	unknown	died of hypothermia in Health Centre of Soufli after crossing Evros River to enter Greece	PICUM/Skai
07/02/12	3	N.N. (±20)	Afghanistan	stowaway, suffocated on an Italy-bound truck and abandoned by smugglers near Parga (GR)	MNS
06/02/12	3	N.N. (±20)	Afghanistan	stowaway, died of asphyxiation in truck on way to Igoumenitsa (GR), a port leading to Italy	PICUM/TVXS
29/01/12	1	N.N. (29, man)	Iran	suicide, found hanged in asylum seekers house in Wurzburg (D), was in cure for depression	HRS/SD/MainPU4IB/SOS/Karawane
25/01/12	15	N.N.	Somalia	drowned, after their vessel of 55 migrants sank, bodies found off the coast of Misrata (LY)	MNS
25/01/12	40	N.N.	Somalia	missing, after their vessel of 55 migrants sank off the coast of Misrata (LY)	MNS
22/01/12	1	N.N. (±25, man)	North Africa	body found floating in an advanced state of decomposition 7 miles from Cabo de Palos (E)	MUGAK/Verdad
15/01/12	15	N.N. (12women; 2men; 1baby)	Somalia	bodies found on Libyan beaches after shipwreck of boat part of 4 boats group on way to I	PICUM/FE/TimesM/AFP/JW
15/01/12	1	N.N.	Somalia	found dead alone in shipwrecked boat that was part of group of 4 boats on way from LY to I	PICUM/FE/TimesM/AFP/JW

Source: <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf>

visited 13 September 2012

CATEGORIES OF FOREIGNERS

(INTERNALLY DISPLACED)

Migration			
International			Domestic
Regular	Irregular		
A longer than 1 year presence/absence, in accordance with the law	„Illegal”	Forced migration	
Regular migrant (Worker, student, family unifier, etc.)	Undocumented foreigner, Persons with no right to enter and/or stay	Refugee	Internally displaced person, IDP

STOCK OF REFUGEES UNDER UNHCR MANDATE

Fig. 1

Refugee population under UNHCR's mandate | 1990 - 2015*



Source: UNHCR: Mid-year trends, 2015 (published: December 2015), p. 4

<http://www.unhcr.org/56701b969.html>

2 3	Country of asylum	No. of applications		Jan-Feb 2016	Jan-Feb 2015	Total 2015
		Jan.	Feb.			
4	Albania	1		1	8	585
5	Austria	5 928	5 055	10 983	6 989	85 617
6	Belgium	2 396	1 313	3 709	2 247	38 695
7	Bosnia and H.	-	5	5	6	46
8	Bulgaria	1 908	1 153	3 061	2 084	20 163
9	Croatia	20	30	50	49	211
10	Cyprus	220	229	449	280	2 105
11	Czech Rep.	100	151	251	197	1 245
12	Denmark				1 121	21 157
13	Estonia	1	1	2	21	231
14	Finland	992	826	1 818	619	32 271
15	France	5 681	6 205	11 886	9 604	74 296
16	Germany	50 532	66 127	116 659	46 986	441 899
17	Greece	1 048	1 322	2 370	1 821	11 365
18	Hungary	337		337	28 061	174 430
19	Iceland				29	355
20	Ireland	210		210	416	3 276
21	Italy				9 817	83 243
22	Latvia				30	328
23	Liechtenstein	1	6	7	8	154
24	Lithuania	9	8	17	40	291
25	Luxembourg	257	116	373	168	2 300

**INDIVIDUAL
ASYLUM
APPLICATIONS IN
44 DEVELOPED
COUNTRIES
PROVISIONAL
DATA**

26	Malta	106	135	241	225	1 701
27	Montenegro	58	12	70	523	1 611
28	Netherlands				1 623	43 099
29	Norway				1 049	30 523
30	Poland	534	785	1 319	954	10 254
31	Portugal				139	896
32	Romania	38	91	129	187	1 267
33	Serbia and Kosovo	489		489	4 968	578 065
34	- of which Kosovo	14		14	6	70
35	Slovakia				23	269
36	Slovenia	15	260	275	29	262
37	Spain	1 097		1 097	1 687	13 366
38	Sweden	3 739		3 739	7 857	156 459
39	Switzerland	3 511	2 546	6 057	2 758	38 123
40	The former Yugoslav Republic of	173	99	272	339	1 896
41	Turkey	5 680	6 439	12 119	11 762	133 585
42	United Kingdom	3 683		3 683	4 975	38 567
43	Canada	1 738		1 738	2 308	16 067
44	USA (DHS)	10 663	11 831	22 494	16 022	127 354
45	USA (EOIR)				6 435	45 385
46	Australia	1 352	1 821	3 173	1 151	12 350
47	New Zealand	19	26	45	44	352
48	Japan	822		822	889	7 581
49	Rep. of Korea				550	5 711

**INDIVIDUAL
ASYLUM
APPLICATIONS IN
44 DEVELOPED
COUNTRIES
PROVISIONAL
DATA**

INDIVIDUAL ASYLUM APPLICATIONS IN 44 DEVELOPED COUNTRIES PROVISIONAL DATA

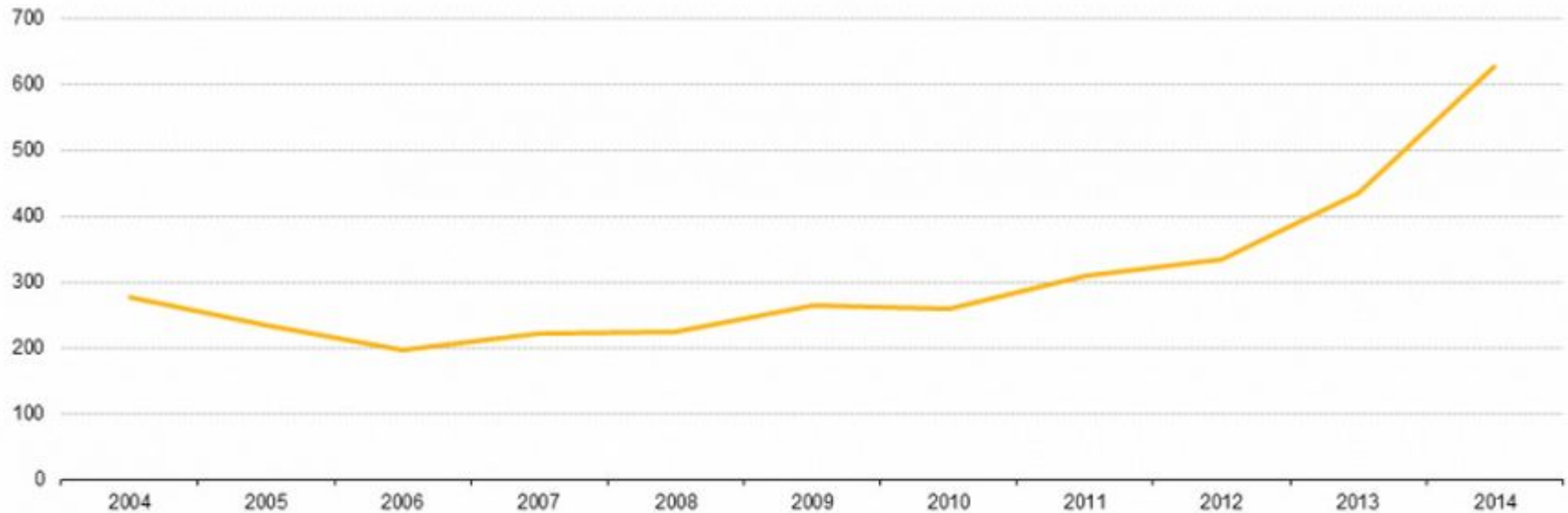
Country of asylum (region)	Jan-Feb 2016	Jan-Feb 2015	Total 2015
EU-28	162 658	128 249	1 259 263
Europe (38)	181 678	149 699	2 044 206
Canada / USA	24 232	24 765	188 806
Japan / Rep. K	822	1 439	13 292
Australia / New Z.	3 218	1 195	12 702
Total	209 950	177 098	2 259 006

INDIVIDUAL APPLICATIONS IN THE EU, 2004 - 2014

File:Asylum applications (non-EU) in the EU-28 Member States, 2004–14 (1) (thousands) YB15 II.png



File File history File usage



(*) 2004–07: EU-27 and extra-EU-27.

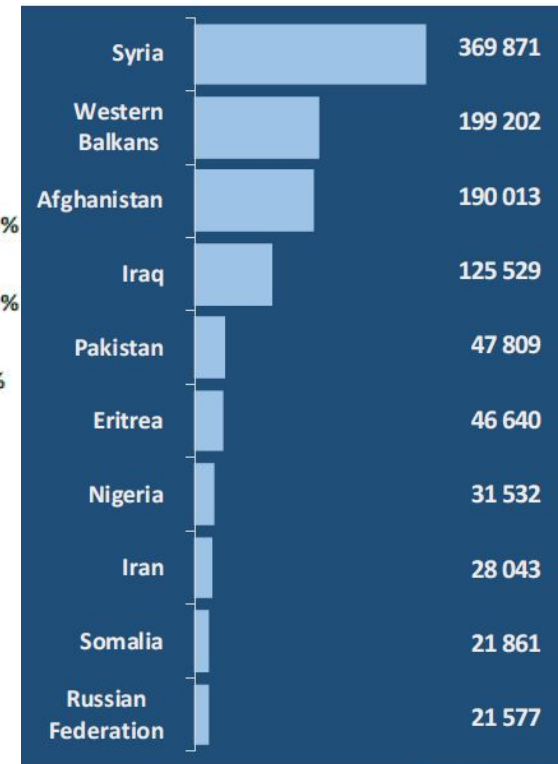
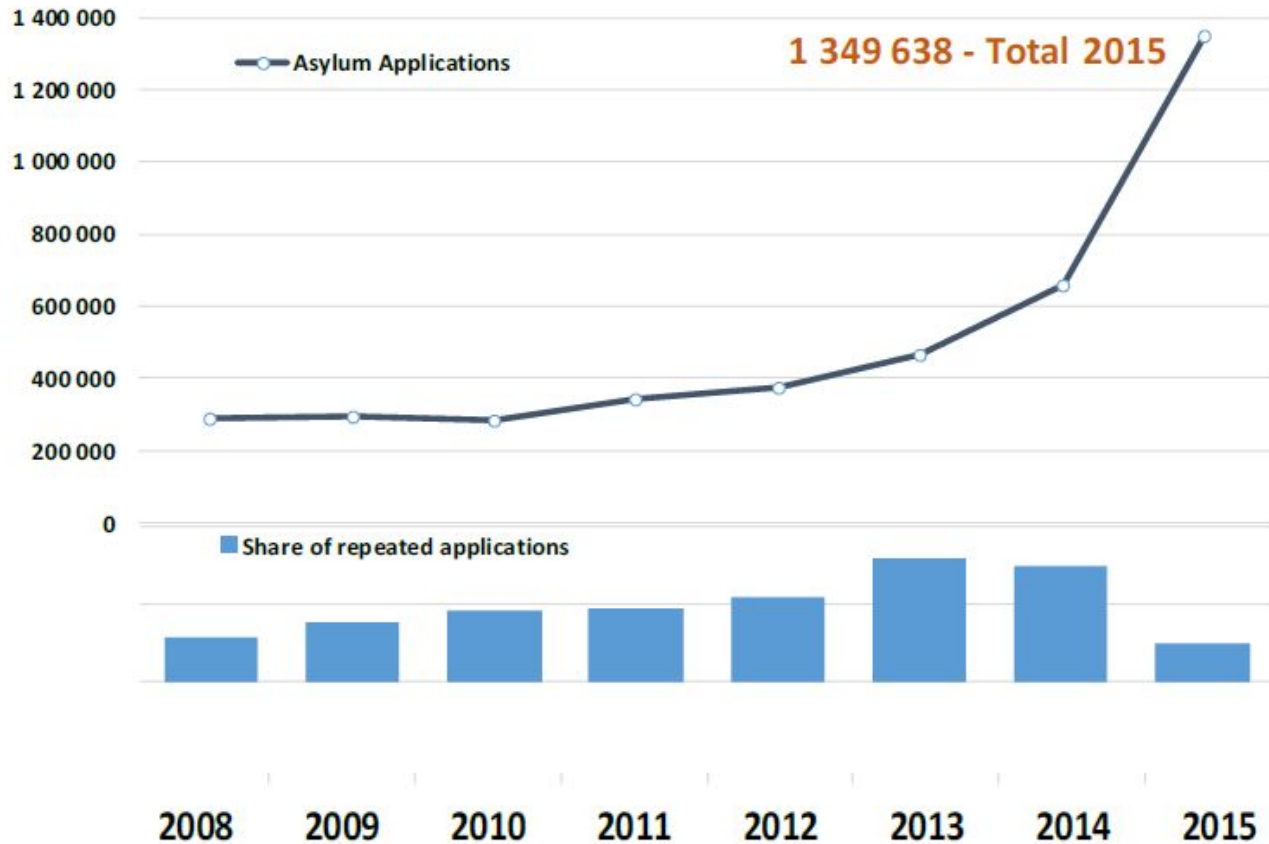
Source: Eurostat (online data codes: migr_asuwb and migr_asuanetra)

Source:

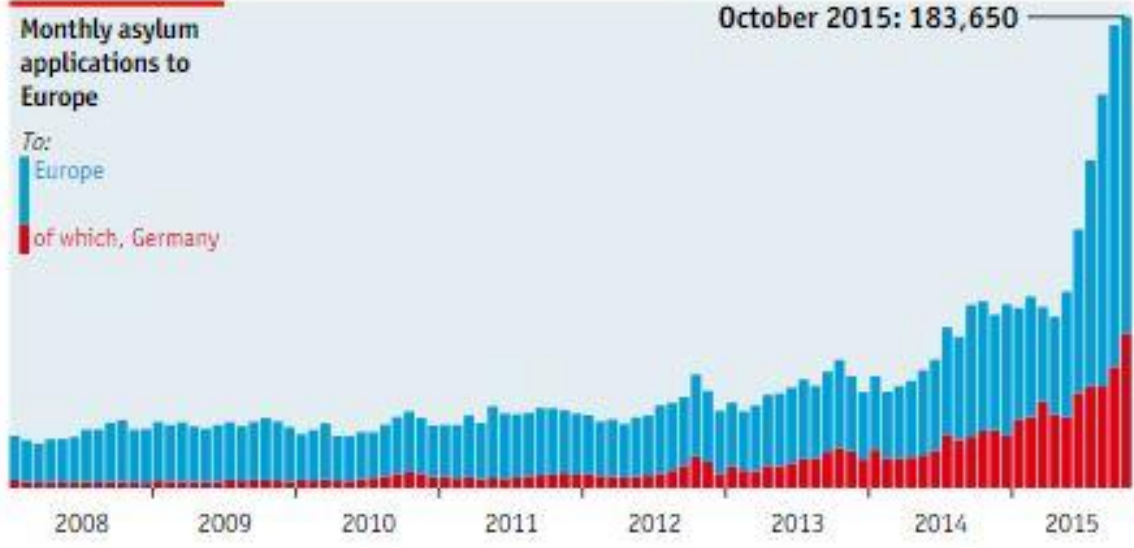
Eurostat,

[http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Asylum_applications \(non-EU\) in the EU-28 Member States, 2004%E2%80%9314 \(%C2%B9\) \(thousands\) YB15 II.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Asylum_applications_(non-EU)_in_the_EU-28_Member_States,_2004%E2%80%9314_(%C2%B9)_thousands)_YB15_II.png)

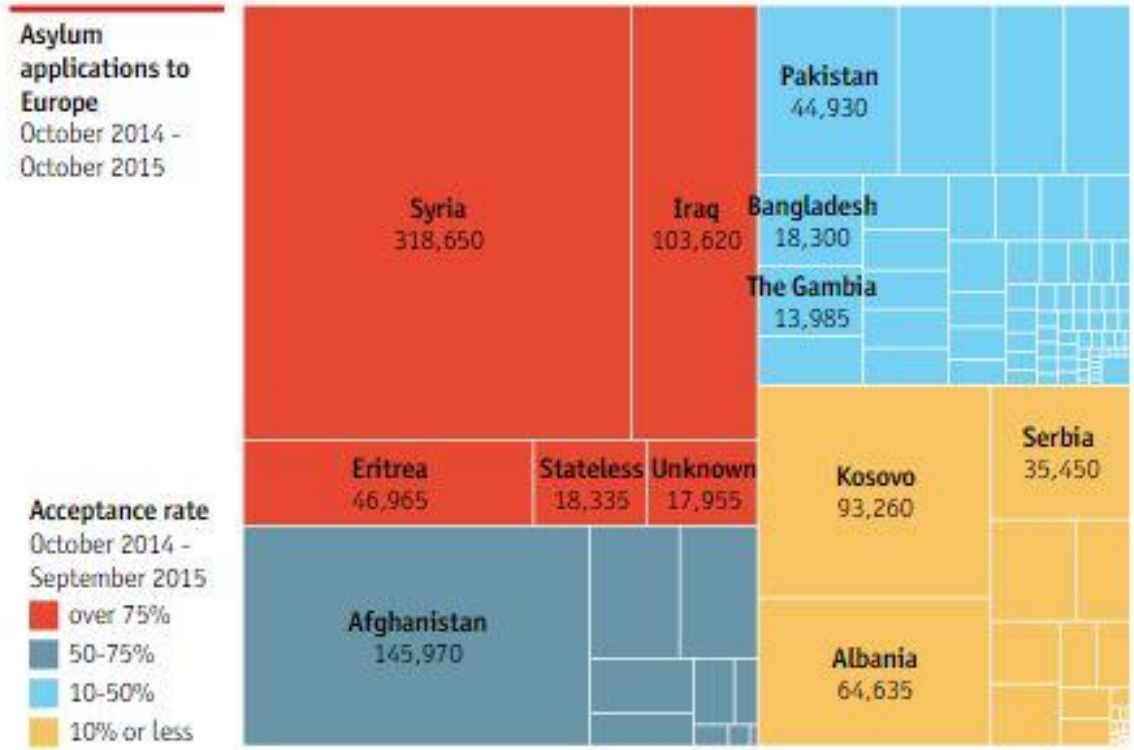
INDIVIDUAL APPLICATIONS IN THE EU+, 2015



Source: EASO Latest asylum trends – 2015 overview



**2014
OCTOBER
– 2015
OCTOBER**



Sources: Eurostat; Frontex; *The Economist*

**FROM JUSTICE AND HOME AFFAIRS TO AN AREA OF
FREEDOM, SECURITY AND JUSTICE**

THE AREA OF FREEDOM, SECURITY AND JUSTICE

THE METAMORPHOSIS OF CONCEPTS

1958 - 1993 = Up to Maastricht: **intergovernmental** cooperation

Schengen Agreement (1985) and Convention implementing the Sch. A. (1990)
The Dublin Convention on determining the state responsible for the asylum procedure (1990)

1993 – 1999 = Between Maastricht (1 November 1993) and Amsterdam (1 May 1999)
= **Justice and home affairs** = **III pillar** = **9 matters of common interest** as in Article K (Title IV) of the **TEU** (Maastricht treaty)

1999 - 2009 = From entry into force of the A.T. till entry into force of the Lisbon Treaty (1 December 2009) = **Justice and home affairs** = **Area of freedom, security and justice** =

I pillar = Title IV. of TEC (**Visas, asylum, immigration** and other policies related to free movement of persons + civil law cooperation)

+

III pillar = Title VI. of TEU (Provisions on **police and judicial cooperation in criminal matters**)

2009 December 1 - = Area of freedom, security and justice **reunited in Title V of the Treaty on the Functioning of the European Union** = Border checks, asylum, immigration; civil law cooperation; criminal law cooperation; police cooperation
= **no pillar structure but CFSP is outside** of the „normal“ EU regime

THE AREA OF FREEDOM, SECURITY AND JUSTICE

Freedom = freedom of movement + immigration and asylum+ non-discrimination+ data protection

Security = fight against organized crime (including terrorism) and drugs + police cooperation (Europol, Eurojust, Frontex)

Justice („Recht“) = cooperation among civil and criminal courts, approximation of procedures, mutual recognition of decisions, simplification of transborder actions (litigation in another member state)

**THE RATIONALE BEHIND DEVELOPING AN EU
ACQUIS:
SCHENGEN**

SCHENGEN

I. The creation of the Agreement (1985) and the **Convention**, implementing it (1990)

C O N V E N T I O N IMPLEMENTING THE SCHENGEN AGREEMENT OF 14 JUNE 1985 BETWEEN THE GOVERNMENTS OF THE STATES OF THE BENELUX ECONOMIC UNION, THE FEDERAL REPUBLIC OF GERMANY AND THE FRENCH REPUBLIC, ON THE GRADUAL ABOLITION OF CHECKS AT THEIR COMMON BORDERS
19 JUNE 1990 (OJ (2000) L 239/19)

II. The essence (see next slides)

SCHENGEN

Purpose:

Abolition of controls at the internal borders

Implementation of appropriate flanking measures

protecting the external borders with the same level of security including checks and surveillance

intensive co-operation in customs, police and criminal justice matters

establishing a system to determine which state is

responsible for the examination of asylum applications

How to interpret the 2015 flow of people from Greece to Macedonia (FYROM), Serbia and then across the external border of the EU to Hungary (and onwards)?!

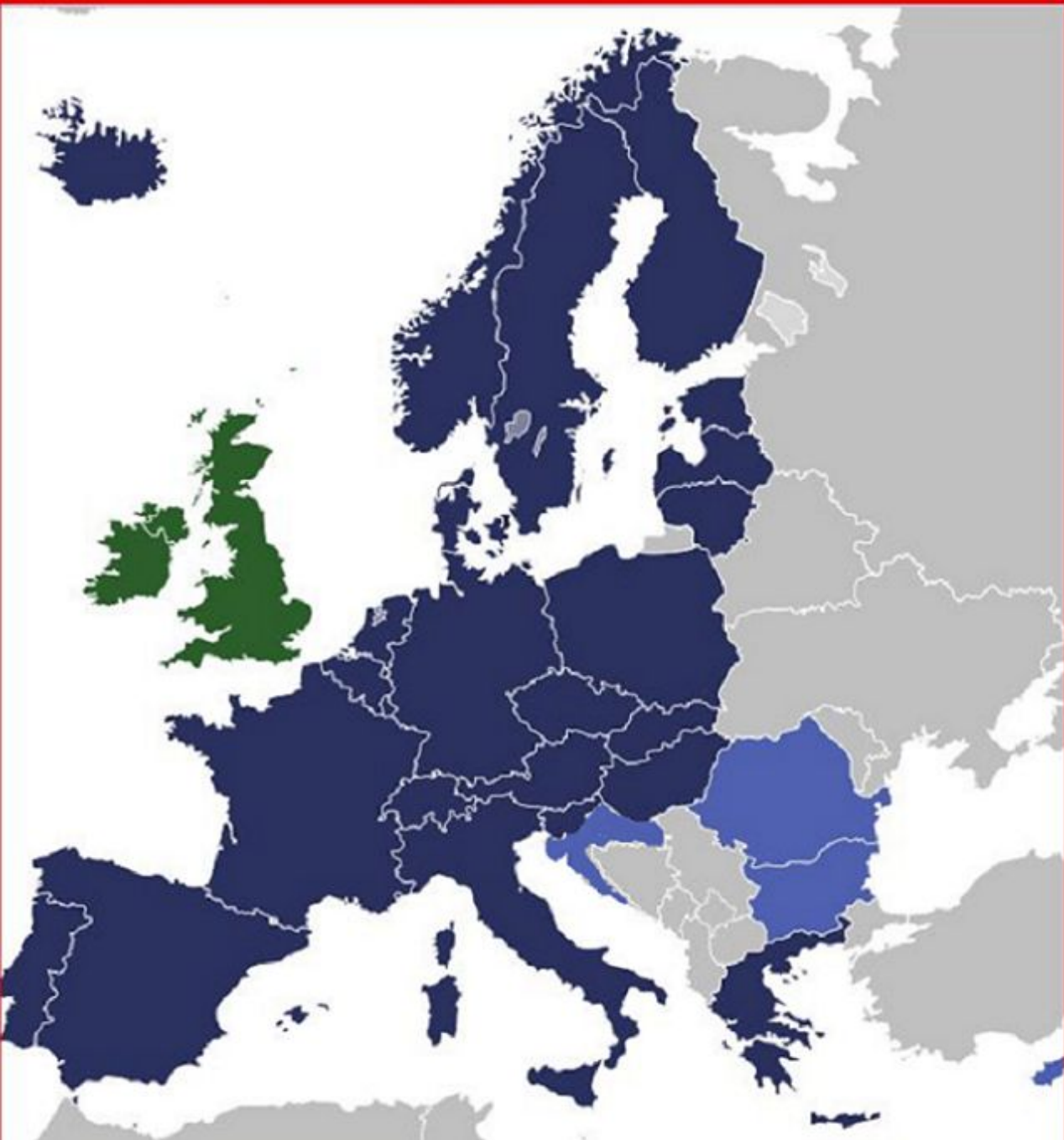
SCHENGEN

Territorial and personal scope

Territorial - see map on next slide

Personal: nationals of member states or “aliens”

“**Internal borders** shall mean the **common land borders** of the Contracting Parties, their **airports for internal flights** and their **sea ports for regular ferry connections exclusively** from or to other ports **within the territories** of the Contracting Parties and not calling at any ports outside those territories;”



THE
SCHENGEN
AREA
IN
2016

**THE FUNDAMENTAL
INSTITUTIONAL STRUCTURE AND
THE BASIC NOTIONS**

THE MESSAGE OF THE TAMPERE EUROPEAN COUNCIL CONCLUSIONS (1999)

2. ... The challenge of the Amsterdam Treaty is now to ensure that **freedom**, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice **accessible to all**. ...
3. This freedom **should not, however, be regarded as the exclusive preserve of the Union's own citizens**. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be **in contradiction with Europe's traditions to deny such freedom** to those whose circumstances lead them **justifiably to seek access** to our territory.

This in turn requires the Union to develop **common policies on asylum and immigration**, while taking into account the need for a consistent **control of external borders to stop illegal immigration** and to combat those who organise it and commit related international crimes.....

THE MESSAGE OF THE TAMPERE EUROPEAN COUNCIL CONCLUSIONS (1999)

4. The aim is an **open and secure European Union**, fully committed to the obligations of the **Geneva Refugee Convention and other relevant human rights instruments**, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the **integration** into our societies of those **third country nationals** who are lawfully resident in the Union.

STRATEGIC GUIDELINES

„Strategic Guidelines”

In the form of Conclusions of the European Council (26/27 June 2014).

„Building on the past programmes, the **overall priority now is**

*** to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place.**

*** Intensifying operational cooperation** while using the potential of Information and Communication Technologies' innovations,

*** enhancing the role of the different EU agencies** and ensuring the

*** strategic use of EU funds** will be key.” (Point 3, stars added -BN)

STRATEGIC GUIDELINES, 2014 (PARA 7)

„7. The Union's **commitment to international protection** requires a strong European asylum policy based on **solidarity and responsibility**. The **full transposition** and effective implementation of the Common European Asylum System (**CEAS**) is an absolute priority. This should result in high **common standards and stronger cooperation**, creating a level playing field where asylum seekers are given the **same procedural guarantees and protection throughout the Union**. It should go hand in hand with a **reinforced role for the European Asylum Support Office (EASO)**, particularly in promoting the uniform application of the acquis. Converging practices will **enhance mutual trust** and allow to move to future next steps.”

No reference to Geneva 51, human rights or the Charter of Fundamental Rights!

**THE RULES IN FORCE AFTER THE ENTRY INTO
FORCE OF THE
LISBON TREATY**

THE STRUCTURE OF THE UNION AFTER LISBON

Designation	European Union		European Atomic Energy Community
Legal Basis	Treaty of Rome, 1957 (+ SEA, Maastricht, Amsterdam Nice, Lisbon)	Treaty of Maastricht 1992 (+ Amsterdam Nice, Lisbon)	Treaty establishing the European Atomic Energy Community (1957) (+ SEA, Maastricht, Amsterdam Nice, Lisbon)
Present designation	Treaty on the Functioning of the European Union	Treaty on the European Union	Same Short: Euratom Treaty
Field of cooperation	Justice and home affairs + Economic cooperation (internal market, external action)	Common foreign and security policy Fundamental principles, Institutional rules	Nuclear
Types and forms of legal acts	Type Legislative – delegated – implementing Form: Regulation, directive, decision	No legislative acts. General guidelines Decisions on actions, positions and their implementation (TEU § 25)	Regulation, directive, decision
Court control (ECJ)	Yes	No (except: personal sanctions)	Yes

The rules in force after Lisbon

After 1 December 2009

Initiative

Only the Commission

Decision making process

Ordinary decision making according to Art. 294

Decision

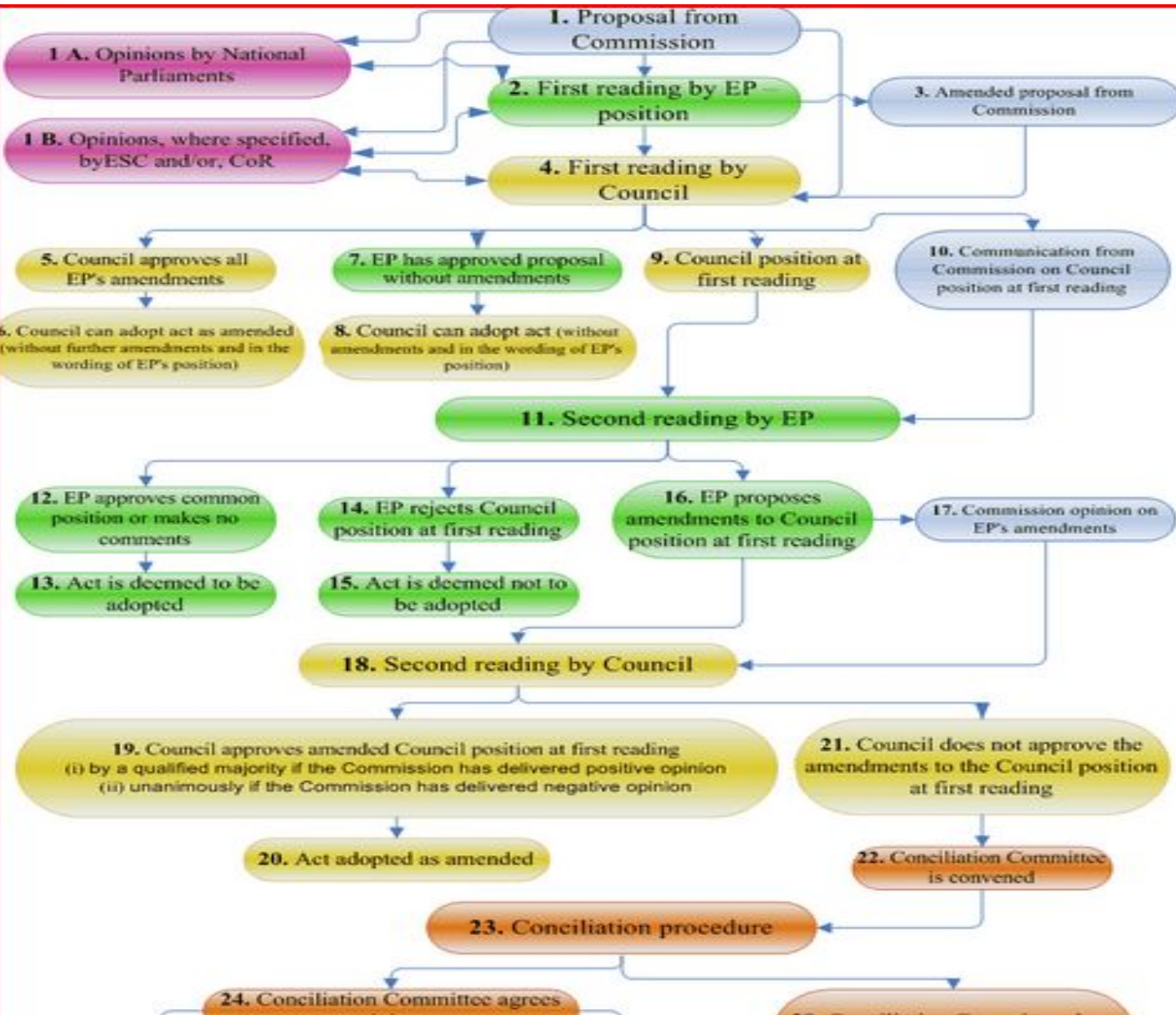
**Regulation, directive, decision, recommendation,
opinion**

DECISION MAKING STRUCTURE IN TITLE V TFEU

COUNCIL OF MINISTERS (JHA COUNCIL)

High-Level Working Group on Asylum and Migration	COREPER		Standing Committee on Operational Cooperation on Internal Security (COI) (see § 71 TFEU)
Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)	Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS)		Working Party on Civil Law Matters
Working party on Integration Migration and Expulsion	Law Enforcement Working Party	Working Party for Schengen Matters	Working Party on Fundamental Rights Citizens Rights and Free Movement of Persons
Visa Working Party	Working Party on Cooperation in Criminal Matters	Working Party on General Matters including Evaluation	Working Party on Civil Protection
Asylum Working Party	Working Party on Substantive Criminal Law	Working Group on Information Exchange and Data Protection	JAI -RELEX Working Party
Working Party on Frontiers	Working Party on Terrorism		Customs Cooperation Working Party

ORDINARY DECISION MAKING



AS DEPICTED ON
[HTTP://EC.EUROPA.EU/CO
DECISION/IMAGES/CODECI
SION-FLOWCHART_EN.GIF](http://ec.europa.eu/cod/decision/images/codecision-flowchart_en.gif)

FORMS OF DECISIONS

Article 288 TFEU

...

A **regulation** shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A **directive shall be binding, as to the result** to be achieved, upon each Member State to which it is addressed, **but shall leave to the national authorities the choice of form** and methods.

A **decision** shall be binding in its entirety upon those **to whom it is addressed**.

DIRECT APPLICABILITY, DIRECT EFFECT, PRIMACY OF EU LAW

Direct applicability: a regulation „automatically forms part of the (highest) provisions of a Member State’s legal order” – without transposition Laenarts – Van Nuffel (Bray, ed), Constitutional Law

of the European Union, second ed .2005, p. 764

Direct effect: if the *regulation* is clear and precise and leaves no margin of discretion then individuals can rely on it against the state and against each-other

Directive: no direct applicability (needs transposition) but *may have direct effect* if unconditional and sufficiently precise – and the state fails to transpose it on time.

Primacy/Supremacy of EC law: In case of conflict it has primacy even over later national acts, including statutes.

After 1 November 2014

1 member – 1 vote

Qualified majority = „double majority”

**On a proposal from the Commission
or the High Representative**

**55% of the ministers
(countries) (15)
representing 65% of the
population of the EU**

On any other proposal

**72 % of the ministers
(20)
representing 65 % of
the population of the
EU**

**Blocking minority : minimum 4 countries even if 3 represent more
than 35 % of the population**

VARIABLE GEOMETRY IN THE FIELD OF AFSJ

	TFEU Title V. not related to Schengen -new elements	Building on Schengen under Title V.	Schengen acquis in former title VI of the TEU	Other old elements of former Title VI	TFEU and TEU SIS, visa rules abolition of internal borders
UK Ireland	Opts in or out	Opts in or out	Opts in or out	UK opted out and then into 29 measures Ireland bound	No participation (except SIS II)
Denmark	No participation	No participation, but creates an obligation under international law	Binding, frozen	Binding, frozen	Takes part
NMS of 2004	Binding	Binding	Binding	Binding	Applied since 21 December 2007, on airports since March 2008.
Bulgaria Croatia Cyprus Romania	Binding	Binding	Binding	Binding	Not yet applied

Choice	Votes	%
For	1,375,862	46.89
Against	1,558,437	53.11
Invalid/blank votes	55,962	–
Total	2,990,261	100
Registered voters/turnout	4,153,041	72.00

Denmark had a referendum on opting
in to new measures under Title V
on 3 December 2015
The outcome was **NO**

Source: Statistics Denmark^[2]

VARIABLE GEOMETRY IN THE FIELD OF AFSJ

	TFEU Title V. not related to Schengen	Building on Schengen under Title V.	Schengen acquis in former title VI of the TEU	Other elements of former Title	TFEU and TEU SIS, visa rules abolition of internal borders
Norway, Iceland	No participation	Binding	Binding	No participation	Takes part
Switzerland and Liechtenstein	No participation	Binding	Binding	No participation	Takes part

UK SPECIAL POSITION AFTER 1 NOVEMBER 2014

UK concern: after 5 years of transition from the entry into force of the Lisbon Treaty (i.e. after 1 December 2014) full CJEU control and ordinary legislation in police and criminal matters

Two opts out:

- A) **first from the whole criminal law and police acquis** adopted before 1 December 2009 (which did bind it!) (See Article 10 of Protocol 36 to the Treaties)
- B) from **any new measure** adopted under Title V. (Protocol 21)

Ad A) :The block opt out (and selected opt back)

24 July 2013 notification of block opt-out

Later: letter informing Council and Commission to opt in into certain measures

Negotiations during 2014

Council and Commission decisions of **1 December 2014** (2014/857/EU and 2014/85/EU, OJ L 345/1 and 6, 1.12.2014)

Result UK is **back to 29 measures** adopted before 1 December 2009, including Eurojust, Europol and the framework decision on the European Arrest Warrant

Ad B) UK exercised several opt ins, including to amendments to pre-2009 rules (thereby losing the right to opt out from them) E.g.? 2015: debate on opting in into resettlement scheme

Acommodation of new UK demands – see European Council on 18 – 19 February 2016 Referendum on in – out of Britain at the end of 2017

NATIONAL PARLIAMENTS' SCRUTINY

Protocol 2 TFEU

2 votes each (may be 1 per chamber)

8 weeks for reasoned opinions on subsidiarity

- if 1/3 oppose a draft (1/4 for Police Coop. / Judicial Coop. in Criminal Matters), draft must be reviewed,

initiator of the draft can maintain the draft but has to give reasons

- if simple majority opposes a proposal from the Commission under the ordinary legislative procedure, draft must be reviewed.

If Commission maintains proposal, Council and Parliament take account of position of national parliaments and either may halt procedure (55% of Council or majority of votes in EP)

THE COMMISSIONER



**DIMITRIS
AVRAMOPOULOS**

**Migration, Home
Affairs and
Citizenship
2014 - 2019**

Main responsibilities:

Border control, Frontex, regular access to EU territory
European policy on regular migration
Asylum policy, including solidarity and cooperation
Irregular migration, return policy
Terrorism and radicalisation,
Fight against crime (.e.g.: human trafficking, smuggling and cybercrime, corruption)
Strengthening police cooperation.

Citizenship:

- citizenship rights
- active citizens

THE ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU) IN ASYLUM AND MIGRATION MATTERS

Procedures against states

Infringement procedure = Commission against state for failure to fulfil obligations *Article 258 TFEU (ex Article 226 TEC)*

Interstate dispute = State against state for failure to fulfil obligations (*Hardly ever used*) *Article 259 (ex Article 227 TEC)*

Enforcement procedure = Commission against MS - when a state fails to implement a judgment of the CJEU *Article 260 (ex Article 228 TEC)*

Challenging the legality of an act or the failure to act

Annulment procedure = review of legality of acts *Article 263 (ex Article 230 TEC)*

MS, Parliament, Council or Commission challenging an act (of the other bodies) on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers + Natural and legal persons also, if personally and directly affected

Challenging failure to act = MS and institutions against any institution, body or organ if the latter fails to act in infringement of the Treaties

Preliminary ruling

MS's courts may (any level) must (highest level) request a preliminary ruling on

- the interpretation of the Treaties;
- the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union

Temporary Protection Directive, 2001

**2001/55 EC Directive on Giving Temporary Protection in
the Event of a Mass Influx of Displaced Persons and on
Measures Promoting a Balance of Efforts Between
Member States in Receiving Such Persons and Bearing the
Consequences Thereof**

2001 July 20, OJ L 212/12

TEMPORARY PROTECTION DIRECTIVE

Goal:

minimum standards for giving temporary protection
in the event of a mass influx of displaced persons

+

to promote a **balance of effort** between Member
States

Basic principles:

Neither replaces nor excludes recognition as
Convention refugee

Any **discrimination** among persons with temporary
protection is **forbidden**

TEMPORARY PROTECTION DIRECTIVE

Beneficiaries = 'displaced persons'

who

have **had to leave** their country or region of origin,
or have been **evacuated**,
and are unable to return in safe and durable conditions

in particular:

- (i) persons who have fled areas of **armed conflict or endemic violence**;
- (ii) persons at **serious risk of**, or who have been the victims of, **systematic or generalised violations** of their **human rights**;

TEMPORARY PROTECTION DIRECTIVE

Mass influx means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area
The **Council decides by qualified majority** the start and end of T.P.

Duration

1 year + max **two times 6** months
= total max: **2 years**

Council may end it earlier, but must not exceed two years'

Not applied until mid-April 2014

TEMPORARY PROTECTION DIRECTIVE

Rights of beneficiaries:

Entry **visa** for free

Residence permit, identity paper,

Employment, self employment under the same conditions **as recognized refugees**

Suitable **accommodation** or the means to obtain housing.

Social **welfare and means of subsistence**, if they do not have sufficient resources

Medical care in emergency cases and illness

Specific assistance to **vulnerable groups**

TEMPORARY PROTECTION DIRECTIVE

Further rights:

if **minor** aged: **schooling** like the nationals

family unification (partner also, broader family) if

if they had lived together

parted due to circumstances surrounding the
mass influx

extends to spouse (partner) , dependent
non-married child, exceptionally to other
traumatized close relative.

TEMPORARY PROTECTION DIRECTIVE

Relation to Convention status

Temporarily protected **may qualify as Convention Refugees**

Access to determination procedure must be guaranteed

The decision on status **may be suspended** for the time of T.P.

Non-recognition of Conv. status does not affect T.P.

Thanks!

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