

## Free movement across the European Union and the refugee crisis

Border-crossing offers numerous possibilities for hard-pressed populations to earn money through both legal and illegal means. The main problems of the EU integration are often seen as migration and cross-border crime, although they cannot be causally linked. It is not easy to estimate the real scale of the economic potential of the East-West migration after 1990 because the main migration strategies are the ones motivated by economic opportunities, and because it includes also transit migration across EU by the third-country nationals (TCNs). Europe is the 2<sup>nd</sup> destination for migrants after North America. It is estimated that Europe currently hosts 70 million international migrants, representing 9.5 per cent of Europe's population<sup>1</sup>. Immigration to Europe represents 32.6 per cent of the total migratory flows in the world<sup>2</sup>.

The European Union (EU) currently hosts around 31.8 million migrants, representing 6.4 per cent of the total EU population<sup>3</sup>. The number of third country nationals (TCNs) in the EU represents 4 per cent of the total EU population. Among them, 37 per cent come from other European countries, 25 per cent from Africa, 20 per cent from Asia, 17 per cent from the Americas and 1 per cent from Oceania<sup>4</sup>.

In the interval of January-August 2014, more than 350,000 migrants were detected at the EU's borders, compared with 280,000 detections for the whole period of 2014. That 350,000 number, as estimated by the International Organization for Migration (IOM) does not include the migrants that got in undetected. With the crisis in Gaza, the rise of Islamist militants in Iraq and Syria and the international stand-off on-going in Ukraine, Europe faces the largest number of refugees to receive

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<sup>1</sup> Trends in International Migrant Stock: The 2008 Revision (United Nations database, POP/DB/MIG/Stock/Rev.2008), p. 2.

<sup>2</sup> *ibid*

<sup>3</sup> These include EU citizens and third-country nationals: Migration and migrant population statistics, Eurostat, October 2010,

[http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Migration\\_and\\_migrant\\_population\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Migration_and_migrant_population_statistics).

<sup>4</sup> Migration and migrant population statistics, Eurostat, October 2010, *op. cit*

since the World War II. The largest migrant group by nationality in 2015 is by far represented by Syrians, as people flee the country's brutal civil war. Afghans and Eritreans come next, with continuing and escalating conflicts in the area. People from Nigeria and Kosovo also make up large groups. They are often also fleeing poverty and human rights abuses, thus the terminology to be associated with, going from economic migrants to refugees.

For years the EU has been struggling to harmonise asylum policy. That is difficult with 28 member states, each with their own police force and judiciary. Championing the rights of poor migrants is difficult as the economic climate is still gloomy, many Europeans are unemployed and wary of foreign workers, and EU countries are divided over how to share the refugee burden. The latest press release from the European Commission shows that a new agenda on migration is to be taken into consideration. Thus, the new set of measures will alleviate pressure from Member States most affected – notably Greece, Italy and Hungary – by proposing to relocate 120,000 people<sup>5</sup> in clear need of international protection to other EU Member States. This number will be on top of the 40,000 that the Commission proposed in May to relocate from Greece and Italy and for which the decision by the Council is still to be adopted.

More detailed joint rules have been brought in with the Common European Asylum System<sup>6</sup>, but rules are one thing, putting them into practice EU-wide is another challenge. Under EU rules, an asylum seeker has the right to food, first aid and shelter in a reception centre. They should get an individual assessment of their needs. They may be granted asylum by the authorities at "first instance", according to Dublin Regulation. If unsuccessful, they can appeal against the decision in court, and may win or leave the country towards the place of origin.

Asylum seekers are supposed to be granted the right to work within nine months of arrival. In 2014, the EU statistics agency Eurostat reports that 45% of first instance asylum decisions were positive - that is, authorities granted refugee or subsidiary protection status, or permission to stay for humanitarian reasons. Thus, the number of asylum claims in the EU rose to 626,065 in 2014, up from 435,190 in 2013, as stated by the European Commission. Nearly 104,000 got refugee status in the EU last year, nearly 60,000 subsidiary protection status and just over 20,000 authorizations to stay for humanitarian reasons. The highest number of positive asylum decisions in 2014 was in Germany (48,000), followed by Sweden (33,000), then France and Italy (both 21,000) and the UK (14,000).

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<sup>5</sup> [http://europa.eu/rapid/press-release\\_IP-15-5596\\_en.htm#\\_ftn1](http://europa.eu/rapid/press-release_IP-15-5596_en.htm#_ftn1)

<sup>6</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm)

The Directive 2004/38/CE, which replaces the Council Regulation 1612/68 (art. 10 and 11) as well as most of the previous Directives dealing with this issue, simplifies and strengthens the right of free movement and residence of all EU citizens and their family members, putting European citizenship at the centre of the system. The Directive also codifies the principles and definitions recognised by the case law of the EU Court of Justice that became consistent in this area. Romanian and Bulgarian citizens had already had their rights as European citizens (free residence and work) limited from January 2007, following the argument that the massive entry of newcomers was provoking a negative impact on the labour market in times of economic crisis.

Nevertheless, several critical aspects still exist, depending on both unsatisfactory transposition of the Directive and the failure of Member States to ensure the real application of freedom of movement and residency rights. More specifically, the Directive is still misapplied as far as non-EU family members' right to entry into EU territory are concerned, especially due to the unjustified request of an entry visa for family-reunification and to long delays in processing applications.

Free movement of workers is a fundamental principle of the Treaty established in Article 45 of the Treaty on the Functioning of the European Union and developed by EU secondary legislation and the Case law of the Court of Justice. According to the above mention treaty, EU citizens are equally entitled to look for a job in another EU country, work there without needing a work permit, reside there for that purpose, stay there even after employment has finished, enjoy equal treatment with nationals in access to employment, working conditions and all other social and tax advantages.

EU nationals may also have certain types of health and social security coverage transferred to the country in which they go to seek work, mainly done by the coordination of social security systems. EU social security coordination provides rules to protect the rights of people moving within the EU, Iceland, Liechtenstein, Norway and Switzerland. Free movement of workers also applies, in general terms, to the countries in the European Economic Area: Iceland, Liechtenstein and Norway.

The rules above apply to jobseekers (EU nationals who move to another EU country to look for a job, under certain conditions), EU nationals working in another EU country, EU nationals who return to their country of origin after having worked abroad and family members of the above. These apply to people who exercise their right to free movement for work purposes. According to the same Treaty there are limitations based on considerations of public security, public policy, public health grounds

and employment in the public sector. Also, nationals of Croatia may face temporary restrictions, the same as Romanians and Bulgarians faced until 1st of January 2014.

But what is going to happen within European borders as long as immigration is running at record levels of between 300,000 and 400,000 a year? As showed by far, the refugee crisis will place a severe strain on the EU's institutions, and even concepts, for handling migration. The Dublin III regulation, which requires all asylum seekers to be fingerprinted and sent back to their first country of arrival in the EU, is effectively suspended along with the rest of the European migration system, with Austria and then Germany imposing border controls starting with mid September 2015. The choice Europe has is dual, from either turning the EU into a fortress (as it was already called by many), while still allowing free movement within its borders, or by letting each country to reach its own accommodation, taking into account economic prosperity, public acceptance and tolerance and, of course, geography.

And last but not least, the question rising is what is going to happen with the free movement with half a million of asylum seekers given leave to remain in a continent where there is stagnation and mass unemployment. Some countries – Italy, Greece, Hungary – are overwhelmed simply because they happen to be en route to the refugees' preferred destinations, mainly Germany and Sweden. Others are resistant because they are already submerged with mass unemployment, lack of cultural and religious diversity and shrinking GDPs due to recent economic crisis.

The principle of free movement within the EU – as stated above - was conceived in a different era, when the EU was a smaller, more homogenous customs union, rather than the sprawling one it has become. The “great migration” as it was named didn't yet reach its peak and it would be better to acknowledge that the facts have changed and EU should negotiate a new treaty that fits the geopolitical times we are living in.