

18 The migration issue in the EU countries: some figures analysed

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1. Introduction

This article originates from the analysis of two publications released by the Dutch and the UK Government including some statistics extremely updated about the asylum requests filed over the last years in the EU countries.

These statistics have been discussed by the authors of this article during a meeting which took place in The Hague at the beginning of September 2017 in the framework of an exchange programme organized by the judicial network European Judicial Training Network (EJTN). Before showing the data, it could be useful to read a short passage taken from the book *The comeback of the tribes (Il ritorno delle tribù)* written by Maurizio Molinari, an Italian journalist, which depicts the migration issue very well.

“The huge number of people arrived in Italy in 2016 is the result of the process of decomposition and impoverishment of the South mediterranean countries. The roots of this phenomenon are internal to the African and Middle East countries and the impossibility of founding a solution urges national policies aimed at managing the transformation of our country into a multi ethnical, multi racial and multi religious one. Two are the possible fields

of action. Firstly, it is necessary to reduce the number of the arrivals and accelerating the integration process of those who arrive. In order to reduce the number of migrants, it’s necessary to handle the issue with the cooperation of all the EU countries. Secondly, if the human traffickers fill the boats with the migrants, pushing them towards the Italian army, there is no reason why our ships should disembark them only in Italian harbours.

An example comes from the Spanish army which often accompanies the migrants to their home countries or to Morocco. Generally, it could be fair to say that since anyone who reaches an Italian ship, touches Europe, even other EU countries could host shares of migrants. The discussed creation of refugee camps near the Southern borders of Libia suggests the possibility to stem the traffic in the Sahara, where the routes are more common. But even if these efforts were successful, we should honestly maintain that the number of migrants arriving to Italy will be even larger.”

The following tables have been issued by the Dutch Ministry of Security and Justice and they show data updated by 1.8.2017 (Eurostat source).

2. Tables

Table nr. 1 shows the number of asylum applications filed in each of the EU countries from April 2016 to April 2017.

In 2017 Germany registered the highest number of applications, followed by Italy and France.

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Table 1. First asylum applications in the EU, Norway and Switzerland in 2016 and 2017
 Source: EUROSTAT, situation by August 1st 2016

EU	2016												2017												Total 2016
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Jan	Feb	Mar	Apr	Total										
Germany	66,265	59,705	78,630	76,550	92,115	76,515	32,390	25,895	18,965	527,030	16,055	14,950	18,080	13,340	62,425	722,365									
Italy	7,785	9,080	9,815	10,870	11,290	12,295	13,315	13,435	11,020	98,905	11,570	11,820	13,510	9,405	46,305	121,185									
France	5,950	5,945	6,075	6,075	7,120	6,910	6,980	6,150	7,080	58,285	7,000	6,975	7,985	0	21,960	76,790									
Greece	3,615	4,215	4,185	3,940	3,450	5,040	6,160	7,470	6,615	44,690	6,260	5,525	4,760	0	16,545	49,875									
United Kingdom	3,510	3,220	3,060	2,880	3,105	3,240	2,910	3,090	3,285	28,300	2,820	2,475	3,145	0	8,440	38,380									
Spain	1,155	1,315	1,500	1,005	1,220	1,305	1,705	1,905	1,555	12,665	2,080	2,270	2,365	0	6,715	15,570									
Austria	3,970	3,740	3,075	2,950	3,115	2,470	2,460	2,190	2,230	26,200	2,035	1,850	1,935	0	5,820	39,905									
Sweden	1,540	1,470	1,440	1,530	1,700	1,795	1,880	1,730	1,575	14,660	1,545	1,315	1,525	1,255	5,640	22,385									
Netherlands	980	980	1,110	1,530	1,755	1,875	2,035	1,920	1,540	13,725	1,245	1,160	1,220	1,025	4,650	19,285									
Belgium	930	835	780	1,035	1,255	1,100	1,295	1,175	1,155	9,560	1,150	1,080	1,210	1,085	4,525	14,290									
Bulgaria	1,045	1,080	1,385	1,505	2,790	2,065	2,550	1,730	795	14,945	375	355	505	200	1,435	18,990									
Finland	365	315	335	335	460	480	310	275	270	3,145	240	360	430	400	1,430	5,295									
Cyprus	185	170	160	225	215	265	340	405	250	2,215	255	355	505	215	1,330	2,840									
Hungary	5,685	4,625	4,605	1,750	1,260	1,055	1,155	675	580	21,390	460	355	265	190	1,270	28,215									
Poland	1,095	1,330	1,425	1,045	765	620	395	390	395	7,460	345	300	320	270	1,235	9,785									
Denmark	395	360	465	395	290	300	345	275	255	3,080	220	205	245	235	905	6,070									
Luxembourg	125	115	170	120	195	195	275	165	200	1,560	230	225	225	0	680	2,065									
Romania	85	50	80	115	140	190	415	275	290	1,640	90	125	410	0	625	1,855									
Ireland	155	140	155	160	195	220	185	225	260	1,695	165	225	215	0	605	2,315									
Malta	105	120	170	130	175	165	220	145	110	1,340	120	105	160	105	490	1,735									
Czech Republic	115	75	90	85	90	115	120	80	75	845	110	90	95	0	295	1,205									
Slovenia	30	55	30	35	120	110	85	185	130	780	30	30	130	60	250	1,265									
Portugal	50	50	60	70	60	70	80	65	60	565	65	70	115	0	250	710									
Latvia	40	5	45	25	30	25	55	60	30	315	55	45	55	50	205	345									
Lithuania	10	15	45	35	65	40	100	50	15	375	60	10	30	70	170	415									
Croatia	190	100	90	90	230	360	395	260	175	1,890	45	45	55	0	145	2,150									
Estonia	15	25	10	10	10	20	20	25	5	140	25	15	20	30	90	150									
Slovak Republic	5	5	5	0	20	15	5	20	15	90	25	20	15	0	60	100									
Total	105,395	99,140	118,995	114,495	133,235	118,855	78,180	70,265	58,930	897,490	54,675	52,355	59,530	27,935	194,495	1,205,535									
Not EU																									
Switzerland	1,625	1,790	2,215	2,370	2,315	2,090	2,010	1,845	1,660	17,920	1,490	1,385	1,495	1,250	5,600	25,875									
Norway	225	200	250	255	295	265	260	225	410	2,385	465	305	400	340	1,510	3,275									
Total	1,850	1,990	2,465	2,625	2,610	2,355	2,270	2,070	2,070	20,305	1,955	1,690	1,895	1,570	7,110	29,150									
Total	107,245	101,130	121,460	117,120	135,845	121,210	80,450	72,335	61,000	917,795	56,630	54,045	61,425	29,505	201,605	1,234,685									

Table nr. 2 shows that the largest number of applications comes from the Middle East countries; Nigeria is the first African country the asylum seekers come from.

Table 2. First asylum applications in the EU , Norway and Switzerland from May 2016

	2016				2017				2017				Total
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	
Syrian Arab Republic	30,055	33,015	29,830	32,755	29,115	13,745	11,890	9,730	7,545	7,695	8,665	4,225	218,265
Afghanistan	17,255	22,435	21,060	24,720	18,660	10,230	7,145	5,095	4,615	3,745	4,765	1,695	141,420
Iraq	10,920	13,070	11,580	14,190	12,215	6,425	5,125	4,210	3,430	3,640	3,775	1,690	90,270
Nigeria	3,005	4,205	4,620	5,825	5,585	5,105	5,355	4,085	4,125	3,860	3,770	2,405	51,945
Pakistan	4,175	4,770	4,185	5,350	4,570	2,995	3,155	2,575	2,435	2,520	3,045	1,225	41,000
Eritrea	2,545	4,160	4,490	4,440	4,050	3,910	3,925	3,400	2,660	2,350	2,270	1,770	39,970
Iran (Islamic Republic of)	3,270	3,985	4,520	4,765	4,270	2,740	1,985	1,700	1,685	1,355	1,550	1,130	32,955
Albania	1,960	2,450	2,635	2,900	3,630	2,375	2,560	2,200	1,795	1,550	2,200	580	26,835
Russian Federation	2,545	3,310	2,755	2,725	2,130	1,465	1,210	1,230	1,065	1,050	1,145	695	21,325
Somalia	1,735	2,245	2,195	2,200	2,215	1,875	1,475	1,230	1,160	1,070	1,165	805	19,370
Others	23,695	27,805	29,275	36,010	34,935	29,745	28,740	25,640	26,175	25,255	29,120	13,325	329,720
Total	101,160	121,450	117,145	135,880	121,375	80,610	72,565	61,095	56,690	54,090	61,470	29,545	1,013,075

Figures for May, June and July 2017 are not yet available for all EU countries. Syria, Afghanistan and Iraq are the most important countries of origin in the influx of first asylum applications in the EU.

Table nr. 3 shows the number of asylum applications received in the first half of 2017 by each EU country.

The table allows to compare the number of applications with the territorial dimension, population and GDP of each EU country.

Table nr. 4 provides an overview of the number of first asylum applications in relation to population size.

Cyprus received the most applications in the EU in relation to its population size: 1,568 applications per million inhabitants, 3,8 times the EU average (417 applications per million inhabitants). Greece and Luxembourg ranked second and third (3,7 and 2,8 times the EU average). The Netherlands ranked 10th in the EU with 342 applications per million inhabitants.

Statistics on asylums seekers and refugees in the UK are published by the Home Office in their quarterly immigration statistics

The number of asylum applications in the EU countries has reached the highest level in October 2015 (172.000); it has decreased to 101.000 in January 2016; it has increased again till 138.000 in August 2016, before decreasing to 57.000 in February 2017.

Chart 1. The number of asylum applications in the EU countries from 2009 to 2017

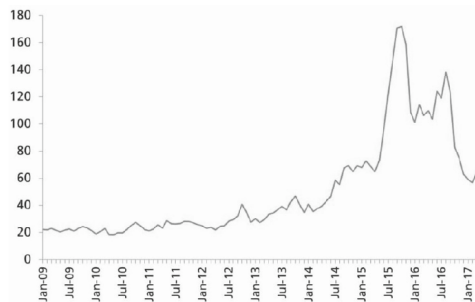


Table 3. Number of first asylum applications compared to country area, population and GDP in the first half of 2017

	Rank	Country of asylum	Number of Applications	% share in EU	Country area (sq km)	% share in EU	Inhabitants (million)	% share in EU	GDP	% share in EU
EU	1	Germany	77,520	36%	357.134	8%	82,2	16%	2,624	20%
	2	Italy	46,305	22%	301.339	7%	60,7	12%	1,541	12%
	3	France	21,960	10%	543.965	12%	66,8	13%	1,830	14%
	4	Greece	16,545	8%	131.957	3%	10,8	2%	213	2%
	5	United Kingdom	8,440	4%	248.484	6%	65,4	13%	1,742	13%
	6	Spain	6,715	3%	498.511	11%	46,4	9%	1,125	9%
	7	Austria	5,820	3%	83.879	2%	8,7	2%	281	2%
	8	Netherlands	5,805	3%	37.369	1%	17,0	3%	548	4%
	9	Sweden	5,640	3%	438.576	10%	9,9	2%	314	2%
	10	Belgium	5,605	3%	30.527	1%	11,3	2%	339	3%
	11	Hungary	1,505	1%	93.024	2%	9,8	2%	170	1%
	12	Poland	1,445	1%	312.679	7%	38,0	7%	673	5%
	13	Bulgaria	1,435	1%	110.900	3%	7,2	1%	87	1%
	14	Finland	1,430	1%	338.433	8%	5,5	1%	156	1%
	15	Cyprus	1,330	1%	9.251	0%	0,8	0%	19	0%
	16	Denmark	1,190	1%	42.895	1%	5,7	1%	180	1%
	17	Luxembourg	680	0%	2.586	0%	0,6	0%	37	0%
	18	Romania	625	0%	238.392	5%	19,8	4%	278	2%
	19	Ireland	605	0%	69.797	2%	4,7	1%	149	1%
	20	Malta	490	0%	316	0%	0,4	0%	10	0%
	21	Czech Republic	295	0%	78.865	2%	10,6	2%	216	2%
	22	Portugal	250	0%	89.089	2%	10,3	2%	203	2%
	23	Slovenia	250	0%	20.273	0%	2,1	0%	44	0%
	24	Latvia	225	0%	64.562	1%	2,0	0%	35	0%
	25	Lithuania	170	0%	65.300	1%	2,9	1%	56	0%
	26	Croatia	145	0%	87.661	2%	4,2	1%	66	1%
	27	Estonia	110	0%	45.227	1%	1,3	0%	25	0%
	28	Slovak Republic	60	0%	49.036	1%	5,4	1%	106	1%
EU - Total			212,595	100%	4.390.027	100%	510,3	100%	13,068.743	100%
Not EU		Switzerland	6,950	3%	41.285	1%	8,3	2%	326	2%
		Norway	1,915	1%	323.779	7%	5,2	1%	250	2%
Not EU – Total			8,865	4%	365.064	8%	13,5	3%	575.674	4%

The following table shows the number of asylum applications received by each of the EU countries over the last five years.

The total amount of the asylum applications has increased from 336.000 in 2012 to 1,32 million in 2015 and it has decreased to 1,26 million in 2016.

In 2016, Germany received the largest number of asylum applicants among EU countries (745,000), followed by Italy (123,000), France (84,000), Greece (51,000) and Austria (42,000). Together, these top five countries received 83% of asylum applications in the EU28.

Table 4. Number of first asylum applications first half of 2017 related to population size

Rank	Country of asylum	Application per million inhabitants	In relation to Total EU 28 = 1	Number of Applications	Inhabitants (million)
1	Cyprus	1,568	3,8	1,330	0,8
2	Greece	1,534	3,7	16,545	10,8
3	Luxembourg	1,180	2,8	680	0,6
4	Malta	1,128	2,7	490	0,4
5	Germany	943	2,3	77,520	82,2
6	Italy	763	1,8	46,305	60,7
7	Austria	670	1,6	5,820	8,7
8	Sweden	573	1,4	5,640	9,9
9	Belgium	496	1,2	5,605	11,3
	TOTAL EU-28	417	1,0	212,595	510,3
10	Netherlands	342	0,8	5,805	17,0
11	France	329	0,8	21,960	66,8
12	Finland	261	0,6	1,430	5,5
13	Denmark	209	0,5	1,190	5,7
14	Bulgaria	201	0,5	1,435	7,2
15	Hungary	153	0,4	1,505	9,8
16	Spain	145	0,3	6,715	46,4
17	United Kingdom	129	0,3	8,440	65,4
18	Ireland	128	0,3	605	4,7
19	Slovenia	121	0,3	250	2,1
20	Latvia	114	0,3	225	2,0
21	Estonia	84	0,2	110	1,3
22	Lithuania	59	0,1	170	2,9
23	Poland	38	0,1	1,445	38,0
24	Croatia	35	0,1	145	4,2
25	Romania	32	0,1	625	19,8
26	Czech Republic	28	0,1	295	10,6
27	Portugal	24	0,1	250	10,3
28	Slovak Republic	11	0,0	60	5,4
	Norway	368	0,9	1,915	5,2
	Switzerland	835	2,0	6,950	8,3

The graphic below shows the number of asylum applications for every 10.000 inhabitants in each of the EU countries in 2016.

Table 6 below shows the ten largest groups of foreign nationals applying for asylum in EU countries in 2016. The largest groups were nationals of Syria (339,000), Afghanistan (187,000), Iraq (130,000), Pakistan (50,000), and Nigeria (48,000).

Table 7 shows first instance decisions on asylum applications in EU countries in 2016, including the number of grants and refusals. Here, grants include all positive decisions on asylum applications, not just those granted refugee status.

Chart 3 shows the number of positive asylum decisions granted at first instance per 10,000 population in EU countries in 2016. During this period Sweden granted the largest number of positive first instance asylum decisions per

Table 5. Number of asylum applications received by each of the EU countries over the last five years

Austria	17,400	17,500	28,100	88,200	42,300
Belgium	28,300	21,200	22,900	44,800	18,300
Bulgaria	1,400	7,100	11,100	20,400	19,400
Croatia	-	1,100	500	200	2,200
Cyprus	1,600	1,300	1,700	2,300	2,900
Czech Republic	800	700	1,200	1,500	1,500
Denmark	6,100	7,200	14,700	21,000	6,200
Estonia	100	100	200	200	200
Finland	3,100	3,200	3,600	32,300	5,600
France	61,500	66,300	64,300	76,200	84,300
Germany	77,700	127,000	202,800	476,600	745,300
Greece	9,600	8,200	9,400	13,200	51,100
Hungary	2,200	18,900	42,800	177,100	29,400
Ireland	1,000	1,000	1,500	3,300	2,300
Italy	17,300	26,600	64,600	83,500	123,000
Latvia	200	200	400	300	400
Lithuania	600	400	400	300	400
Luxembourg	2,100	1,100	1,100	2,500	2,200
Malta	2,100	2,200	1,400	1,900	1,900
Netherlands	13,100	13,100	24,500	45,000	20,900
Poland	10,800	15,200	8,000	12,200	12,300
Portugal	300	500	400	900	1,500
Romania	2,500	1,500	1,500	1,300	1,900
Slovakia	700	500	300	300	100
Slovenia	300	300	400	300	1,300
Spain	2,600	4,500	5,600	14,800	15,800
Sweden	43,900	54,400	81,300	162,600	28,900
United Kingdom	28,900	30,800	33,000	40,400	38,900

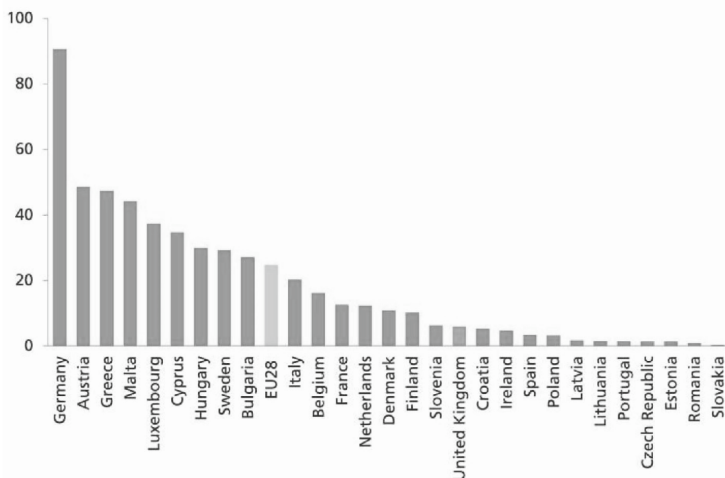
Chart 2. The number of asylum applications for every 10.000 inhabitants in each EU country in 2016

Table 6. The ten largest groups of foreign nationals applying for asylum in EU countries in 2016

	Number	As % of all applications
Syria	339,265	26.9%
Afghanistan	186,590	14.8%
Iraq	130,005	10.3%
Pakistan	49,840	4.0%
Nigeria	47,710	3.8%
Iran	41,355	3.3%
Eritrea	34,485	2.7%
Albania	32,335	2.6%
Russia	27,610	2.2%
Somalia	20,045	1.6%
All applications	1,260,350	100.0%

Table 8. The recognition rate at first instance asylum decision in 2016

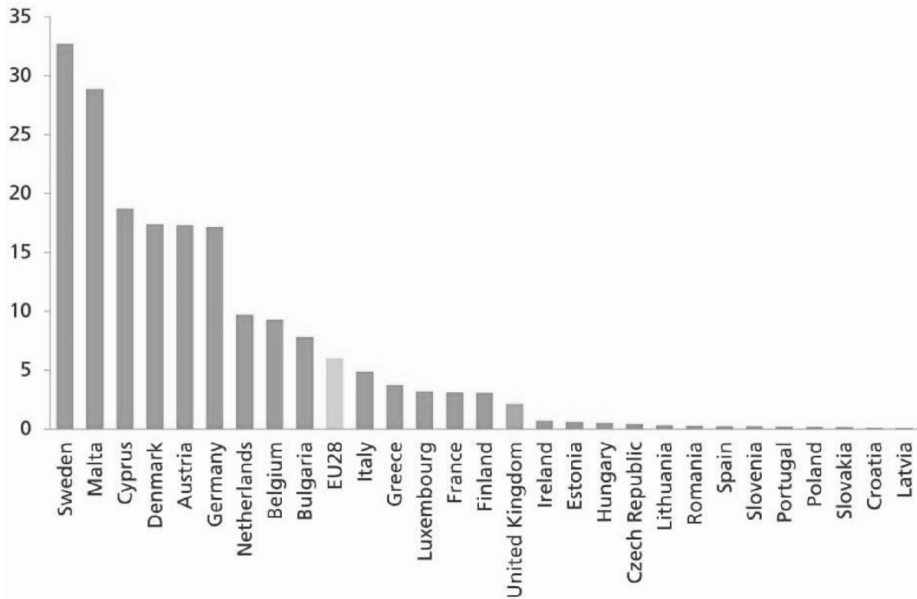
	Grants	Refusals	Recognition rate	Total FI decisions
Syria	398,110	7,575	98.1%	405,685
Afghanistan	58,410	44,515	56.8%	102,920
Iraq	63,980	36,805	63.5%	100,785
Albania	1,335	41,505	3.1%	42,845
Eritrea	33,500	2,720	92.5%	36,220
Pakistan	5,665	26,955	17.4%	32,620
Nigeria	5,680	20,510	21.7%	26,190
Kosovo A	1,135	22,085	4.9%	23,220
Serbia	395	22,480	1.7%	22,880
Iran	10,465	9,475	52.5%	19,935
Stateless	16,250	1,920	89.4%	18,175
Somalia	11,450	5,975	65.7%	17,420
Russia	3,430	13,530	20.2%	16,965
Bangladesh	2,360	11,675	16.8%	14,035
FYR Macedonia	85	13,395	0.6%	13,480
Ukraine	2,840	8,785	24.4%	11,620
Mali	3,325	6,950	32.3%	10,280
Gambia	3,010	7,100	29.8%	10,110
Algeria	495	9,070	5.2%	9,570
Sudan	4,815	4,390	52.3%	9,205

Table 7. First instance decisions on asylum application in EU countries in 2016

	Accoglimento	Rigetto	Totale
Austria	30,400	12,100	42,400
Belgium	15,100	10,000	25,000
Bulgaria	1,400	1,700	3,000
Croatia	100	200	300
Cyprus	1,300	700	2,000
Czech Republic	400	900	1,300
Denmark	7,100	3,300	10,400
Estonia	100	100	200
Finland	7,100	13,700	20,800
France	28,800	58,700	87,500
Germany	433,900	197,300	631,200
Greece	2,700	8,700	11,500
Hungary	400	4,700	5,100
Ireland	500	1,700	2,100
Italy	35,400	54,500	89,900
Latvia	100	100	300
Lithuania	200	100	300
Luxembourg	800	500	1,300
Malta	1,200	200	1,400
Netherlands	20,800	8,100	28,900
Poland	300	2,200	2,500
Portugal	300	300	600
Romania	800	500	1,300
Slovakia	200	0	300
Slovenia	200	100	300
Spain	6,900	3,400	10,300
Sweden	66,600	29,300	95,800
United Kingdom	9,900	21,100	31,000

10,000 people (33), followed by Malta (29), Cyprus (19), Denmark (17), and Austria (17). In 2016, the UK granted two positive asylum decisions at first instance for every 10,000 people. Across the EU28 there were six such grants for every 10,000 people. The UK is therefore below the average among EU countries for positive first instance asylum grants per head of population, ranking 15th among EU28 countries on this measure.

Chart 3. The number of positive asylum decisions granted at first instance per 10,000 population in each EU country in 2016



The last table shows the recognition rate at first instance asylum decision in 2016

In 2016, 98% of Syrian nationals were granted a positive asylum decision at first instance. By contrast, less than 2% of Serbian nationals were granted a positive asylum decision at first instance. Among all nationalities the recognition rate at first instance was 61%.

3. Analysis of the asylum requests in EU

Beneficiary of international protection can be granted in the EU to asylum seekers who have

been granted a refugee status or a subsidiary protection status by the Member States.²

According to Article 2a of Directive 2011/95/EU (Qualification Directive) 'international protection' means persons who have a refugee status or subsidiary protection.

A 'Refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection

² Art. 2 e and g of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 of the Directive does not apply.

A ‘person eligible for subsidiary protection’ means a third- country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

The number of asylum applications in EU countries has increased during the last five years. This increase has been partly, but not wholly, driven by the refugee crisis arising from the Syrian civil war. These people included asylum seekers, but also others such as economic immigrants. An economic migrant is not a legal classification, but rather an umbrella term for a wide array of people that move from one country to another to advance their economic and professional prospects. When the term economic migrants is used, it generally refers to the unskilled and semi-skilled individuals from impoverished countries in the global south. Economic migrants are not eligible for asylum under the 1951 Geneva Convention Relating to the Status of Refugees.³ However, any migrant arriving on EU territory has the right to have their asylum claim reviewed. This is a human right in the EU

3 <http://www.independent.co.uk/news/world/europe/the-difference-between-asylum-seekers-refugees-and-economic-migrants-10460431.html>.

according to Article 18 of the EU Charter of Fundamental Rights.⁴

The ‘refugee crisis’ is a term given to a period beginning in 2015 when rising numbers of people arrived in the European Union (EU), travelling across the Mediterranean Sea or over land through South east Europe. Asylum applications in EU countries reached their highest level in October 2015 at 172,000, falling to 101,000 in January 2016.

In 2015 alone, more than one million people⁵ arrived in the EU, around 885,000 of them through Greece. The Greek asylum and reception system lacked the capacity to register and provide shelter to these migrants or asylum seekers. Only a few of the thousands of persons arriving daily in Greece were effectively registered and the vast majority of migrants and asylum seekers moved on towards central Europe, along the Western Balkans route. In 2015, the number of illegally staying third-country nationals ordered to leave the European Union amounted to 533,395. While the total return rate from 2014 to 2015 increased from 41.8% to 42.5%, the rate of effective returns to third countries dropped from 36.6% to 36.4%. Moreover, if return to

4 Art. 18 Charter of Fundamental Rights: “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as ‘the Treaties’).”

5 Annual Fundamental Rights Report 2016: In its Fundamental Rights Report 2016, the EU Agency for Fundamental Rights (FRA) examines the scale and nature of the challenge and proposes measures to ensure fundamental rights are respected across the EU.

Western Balkans is disregarded, the European Union return rate drops further to 27%.⁶

On 18 March 2016, EU Heads of State or Government and Turkey agreed on the EU-Turkey Statement to end the flow of irregular migration from Turkey to the EU and replace it with organised, safe and legal channels to Europe.⁷ Yet, one year on, the Statement continues to deliver proof of its effectiveness on a daily basis. Irregular arrivals have dropped, while the number of lives lost at sea has decreased equally substantially. The EU has delivered on its financial commitment to support Turkey in its efforts in hosting refugees and providing support on the ground and in resettling Syrian refugees directly from Turkey to EU Member States. With the closing of the Western Balkan route and the conclusion of the EU-Turkey agreement, the Central Mediterranean now acts as the main gate of entry for irregular migrants arriving in the EU by sea. Against this backdrop, there is a clear need to strengthen concerted action at EU level to better control Europe's Southern sea borders, while offering improved humanitarian assistance and protection to those in need.

Overall the final agreement with Turkey tries to address two main legal concerns. It makes clear that the EU asylum laws will apply to those who reach Greece (subject to the caveat about what happens to those intercepted in Greek waters), and that Turkey will have to meet the relevant standards when taking people back. The inten-

tion to 'make the deal legal' is clearly undermined by the extraordinary statement that 'all' irregular migrants will be returned. The key legal question will be how these commitments are implemented in practice. The main legal route to challenging what happens should be by asylum-seekers through the Greek courts. Those courts could refer questions to the Court of Justice of the EU (CJEU) about EU asylum law (the CJEU could fast-track its replies if there is urgency). Alternatively if the asylum-seekers have gone through the entire Greek court system, or cannot effectively access the Greek system, they could complain to the European Court of Human Rights (ECtHR), which is separate from the EU, and claim that there is a breach of the European Convention of Human Rights (ECHR). In practice, however, it may be that access to lawyers and courts is more theoretical than real.⁸ Important to note is that irregular migrants in the EU can only be expelled by the Member States if they take an administrative or judicial decision such as a return decision. This is an obligation which can be derived from EU law (Return Directive-2008/115/EC) and ECHR. We point out the judgement of the ECtHR from 3 October 2017 in the case of *N.D. and N.T. v. Spain*⁹ in which there had been a violation of Article 4 of Protocol No. 4 (prohibition of collective expulsions of aliens) to the ECHR and a violation of Article 13 (right to an effective remedy) taken together with Article 4 of Protocol No. 4. The case concerned the immediate return to Morocco of sub-Saharan migrants who had attempted on 13 August 2014 to enter Spanish territory illegally by scaling the barriers which surround the Melilla enclave on the North-African coast. The ECtHR noted that N.D. and N.T. had been expelled and sent back to Morocco against their wishes and that the

6 Communication from the European Commission to the European Parliament and the Council of 2 March 2017 on a more effective return policy in the European Union – A renewed Action Plan (COM(2017) 200 final). See also Commission Recommendation of 1 March 2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council, C(2017) 1600.

7 <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

8 <http://eulawanalysis.blogspot.nl/2016/03/the-final-euturkey-refugee-deal-legal.html>.

9 Judgment ECtHR of 3 October 2017, applications nos. 8675/15 and 8697/15 (*N.D. and N.T. v. Spain*).

removal measures were taken in the absence of any prior administrative or judicial decision. At no point were N.D. and N.T. subjected to any identification procedure by the Spanish authorities. The ECtHR concluded that, in those circumstances, the measures were indeed collective in nature. The applicants' version of the attempt to scale the barriers towards Melilla was corroborated by numerous statements, gathered by various witnesses and journalists as well as by the UN High Commissioner for Refugees or by the Human Rights Commissioner. Lastly, the ECtHR noted the existence of a clear link between the collective expulsion to which N.D. and N.T. were subjected at the Melilla border and the fact that they were effectively prevented from having access to a remedy that would have enabled them to submit their complaint to a competent authority and to obtain a thorough and rigorous assessment of their requests before their removal.

The Turkey deal has faced withering criticism from human rights groups including Amnesty International and Human Rights Watch and members of the European Parliament, who say that it has not led to any improvement in conditions for most refugees, especially the tens of thousands of people trapped in camps on outlying Greek islands, who are living in increasingly squalid and dire conditions. The agreement rests according to HRW on the flawed premise that Greece and the EU need not evaluate the individual protection needs of those arriving via the Aegean Sea on the grounds that Turkey is a 'safe third country' or 'safe first country of asylum.' This is not, however, the case. Turkey ratified the 1951 Refugee Convention, but maintained an important geographic limitation that excludes any non-Europeans from full refugee status. Syrian asylum seekers can only benefit from a temporary protection regime in Turkey, allowing them to live there, but not granting them the convention's full protection. They continue to face many obstacles to registration,

access to education, employment, and health-care. A January move by the Turkish government to allow Syrians to apply for work permits, while a positive step, has benefitted only a few thousand people. Asylum seekers from other countries, such as Iraq and Afghanistan, do not even have access to temporary protection status in Turkey. And while Turkey has been generous in hosting over 2.7 million Syrian refugees, it has effectively sealed its border with Syria and has shot at and forcibly returned women, men, and children fleeing violence, persecution and human rights abuse in that country.¹⁰ Human rights abuses are according to Amnesty International an intrinsic part of the EU-Turkey deal, under which people who have a legal right to claim protection are sent to a country in which their safety and basic rights cannot be guaranteed. Equally, refugees stranded on the Greek islands have been automatically detained, subjected to squalid living conditions and live in fear for their security. Access to asylum procedures remains problematic, with many waiting for months to even register an asylum claim. Amnesty International has also documented unlawful returns of asylum seekers to Turkey in a flagrant breach of their rights under international law.¹¹ Also Turkish officials complain that the agreement has not delivered promised financial aid fast enough and has failed to significantly reduce the number of Syrian refugees — nearly 3 million — living in Turkey. The General Court of the CJEU has finally ruled that it has no competence to judge the legality of the EU-Turkey deal on migrants and refugees as "neither the European Council nor any other institution of the EU decided to conclude an agreement with the Turkish Government on the

¹⁰ <https://www.hrw.org/news/2016/11/14/qa-why-eu-turkey-migration-deal-no-blueprint>.

¹¹ <https://www.amnesty.org/en/latest/news/2017/02/europes-cruel-migration-policies-weaken-its-trump-criticism/>.

subject of the migration crisis.”¹² The case was brought by three individuals seeking asylum in Greece, who sought to challenge the legality of the deal as it posed a risk that they might be returned to Turkey.

In 2016, Germany received the largest number of asylum applicants of the EU countries (745,000), followed by Italy (123,000), France (84,000), Greece (51,000) and Austria (42,000). Together, these top five countries received 83% of asylum applications in the EU28. This means some Member States have more problems than others regarding the procedures of asylum seekers, providing them shelter, and try to integrate them in the society.¹³ This causes more financial efforts for these Member States. Tensions in the EU have been rising because of the disproportionate burden faced by some countries, particularly the countries where the majority of migrants have been arriving: Greece and Italy. In this way the Member States should create solidarity and try to relocate asylum seekers. Furthermore we can conclude that the current EU legislation in the Dublin regulation is not working. The Dublin Regulation establishes the Member State responsible for the examination of the asylum application. The criteria for establishing responsibility run, in hierarchical order, from family considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered EU

irregularly, or regularly. Most asylum seekers arrive in the EU in Greece or Italy and these countries are because of the Dublin Regulation responsible for the asylum requests. In that way it is not logic that Germany has the most asylum applications and that France and Austria are in the top 5. In practice we see that in several East European countries there is not a strict registration of asylum seekers and that these asylum seekers try to apply for a request in countries as Germany and France. We draw the attention on the recent judgment of the CJEU of 26 July 2016 in the cases *A.S.* and *Jafari*.¹⁴ The two cases raise a series of questions concerning the determination of responsibility under the Dublin III Regulation (Regulation 604/2013) for processing asylum claims by Syrian refugees who, during the migration crisis in 2015-2016, arrived in unusually large numbers at the Serbia-Croatia border without possession of an appropriate visa. The Croatian authorities organised transport for them en masse through Croatia to the Croatia-Slovenia border, with the aim of assisting them in moving on to other EU Member States in order to make an application for international protection there. The individuals in *A.S.* subsequently made such an application in Slovenia, and those in *Jafari* did so in Austria. Both Slovenia and Austria contended that, as they had entered Croatia unlawfully, Croatia was responsible pursuant to the Dublin III Regulation for determining their applications. The individuals concerned contended that their crossing from Serbia into Croatia was not an “irregular crossing” within the meaning of Article 13 of the Dublin III Regulation (a term which is not defined in the Regulation), because it had been tolerated by the Croatian authorities, and therefore Croatia did not bear responsibility for determining their applications. This argument gave rise to several related issues which the

12 Orders of the General Court (CJEU) of 28 February 2017, in cases T-192/16, ECLI:EU:T:2017:128 (*NF*); T-193/16, ECLI:EU:T:2017:129 (*NG*, *Bulgaars Spaans Tsjechisch Deens Duits Ests Grieks Engels Frans Italiaans Lets Litouws Hongaars Maltees Nederlands Pools Portugees Roemeens Slowaaks Fins Zweeds Kroatisch*); T-257/16, ECLI:EU:T:2017:130 (*NM*).

13 Judgment CJEU of 1 March 2016, joined cases C-443/14 and C-444/14, ECLI:EU:C:2016:127 (*Alo and Osso*): a place-of-residence condition may be imposed on beneficiaries of subsidiary protection if they face greater integration difficulties than other non-EU citizens who are legally resident in the Member State that has granted such protection.

14 Judgment CJEU of 26 July 2017, case C-646/16, ECLI:EU:C:2017:586 (*Jafari*), and CJEU 26 July 2017, case C-490/16, ECLI:EU:C:2017:585 (*A.S.*).

CJEU also had to consider. Departing in some respects from the position taken by Advocate General Sharpston in her Opinion, the CJEU rejected the individuals' arguments and held that their crossing from Serbia into Croatia had indeed been "irregular" and therefore Croatia was responsible for determining their applications for asylum.¹⁵ In reaching this conclusion, the CJEU amongst other things accepted (which AG Sharpston had rejected) that the term "irregular crossing" in Article 13 of the Dublin III Regulation cannot be interpreted by reference to what was said by some of the parties to be similar provisions in the Schengen Borders Code, because certain Member States who are bound by the Regulation are not bound by the Code.

In the judgment of the CJEU in the joined cases *Slovakia and Hungary v. Council* it dismisses the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers.¹⁶ That mechanism actually enables Greece and Italy to deal with the impact of the 2015 migration crisis and is proportionate. In response to the migration crisis that affected Europe in the summer of 2015, the Council of the European Union adopted a decision¹⁷ in order to help Italy and Greece deal with the massive inflow of migrants. The decision provides for the relocation from those two Member States to other EU Member States, over a period of two years, of 120 000 persons in clear need of international protection. Moreover, the Court considers that the relocation mechanism provided for by the

contested decision is not a measure that is manifestly inappropriate for contributing to achieving its objective, namely helping Greece and Italy to cope with the impact of the 2015 migration crisis.

The largest groups of foreign nationals applying for asylum in EU countries in 2016 were nationals of Syria (339,000), Afghanistan (187,000), Iraq (130,000), Pakistan (50,000) and Nigeria (48,000). If we look at the recognition rate at first asylum decisions the Pakistani nationals are granted in 17,4% of the cases an asylum permit, the Nigerians nationals in 21,7%. The question rises whether migrants make abuse of the asylum procedure. Looking at other nationals in the top 20 of asylum seekers in the EU the conclusion is that there is abuse of the asylum procedure in the EU. There are also asylum seekers from European countries such as Albania (granted in 3,1% of the cases), Kosovo (granted in 4,9% of the cases), Serbia (granted in 1,7% of the cases) and Macedonia (granted in 0,6% of the cases). And also African and Asian nationals from more or less safe countries such as Algeria (granted in 5,2% of the cases) and Bangladesh (granted in 16,8% of the cases).

These asylum requests put pressure on the judiciary in asylum cases in the Member States with a high number of asylum requests such as Italy. Regarding the asylum procedure it is necessary that manifestly unfounded applications are reviewed. The CJEU made it clear in the judgment of 26 July 2017 in the case of *Sacko*¹⁸ that in case of a manifestly unfounded application within the meaning of Article 32(2) of Directive 2013/32, there is no need for a hearing where the case does not raise any questions of fact or law that cannot be adequately resolved by refer-

15 <http://www.landmarkchambers.co.uk/news.aspx?id=4962>.

16 Judgment CJEU of 6 September 2017, joined cases C-643/15 and C-647/15, ECLI:EU:C:2017:631 (*Slovakia and Hungary v. Council*).

17 Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ 2015 L 248, p. 80).

18 Judgment CJEU of 26 July 2017, case C-348/16, ECLI:EU:C:2017:591 (*Moussa Sacko*), par. 46 and 47.

ring to the file and the written submissions of the parties.¹⁹

Between 2011 and 2016, some 630,000 irregular migrants and refugees reached Italy via the Central Mediterranean. Some were successfully smuggled across, while others were rescued at sea and disembarked in Italy. More than 13,000 lost their lives attempting the crossing, and many more died on their journey through the Sahara.²⁰ Against this backdrop, there is a clear need to strengthen concerted action at EU level to better control Europe's Southern sea borders, while offering improved humanitarian assistance and protection to those in need. Given the complexity and scale of the problem, the current situation can only be properly addressed through a systemic solution that incorporates sending and transit countries, as well as all relevant European actors.

4. Solutions

We draw the attention on the following three solutions. The first option is to make similar agreements with some safe North African countries and the EU Member States as were made in the Turkey deal. In this option safeguards should be made in these deals such as the recognition of the UN Refugee Convention and the principle of 'non refoulement'. The expulsion of irregular migrants from the EU to these safe North African countries by the Member States is only possible if the Member States have made a return decision according to EU law (the Return Directive) and the ECHR. This means that the irregular person is given an administra-

tive or judicial decision or act, stating or declaring the stay is to be irregular and imposing or stating an obligation to return.

The second solution is to establish immigrant-processing centers outside the EU for the first time, in a radical policy change aimed at stemming the movement of hundreds of thousands of people across the Mediterranean.²¹ In this solution EU offices and embassies could be used in third 'countries of origin' to process applications for asylum and refugee status before the migrants reach Europe. The aim would be to reduce the numbers of migrants illegally landing on EU shores. Migration professionals say that EU processing "abroad could only be used as a complementary instrument in dealing with refugee flows and not as an alternative to existing procedures within the EU; the proposal raises big issues about capacity and expertise. EU offices abroad do not have the staff to cope with large numbers of applicants, nor does the Commission have a large cadre of immigration officers and asylum specialists."²²

It is not clear whether a refugee would still be able to lodge an application in Europe if he or she has already had a request rejected in a third country. For the system to work and to decide where successful applicants are going, there would need to be a new, agreed system of burden-sharing or a 'distribution key' for taking in migrants in the 28 Member States. The EU would also need to strike bilateral agreements with the governments of countries hosting the new application centers. These countries could become magnets for regional migrant flows with the refugees reluctant to return to their

¹⁹ Judgment CJEU of 4 June 2015, case C-682/13 P, EU:C:2015:356 (*Andechser Molkerei Scheitz v. Commission*), not published, par. 46, which refers to the judgment of the ECtHR of 12 November 2002, JUD002839495, ECLI:CE:ECHR:2002:1112 (*Döry v. Sweden*) par. 37.

²⁰ https://ec.europa.eu/commission/sites/beta-political/files/irregular-migration-mediterranean-strategic_note_issue_22_0_en.pdf.

²¹ <https://www.theguardian.com/world/2015/mar/05/european-commission-third-country-immigrant-processing-centres>.

²² <https://www.theguardian.com/world/2015/mar/05/european-commission-third-country-immigrant-processing-centres>.

native countries after having an EU application rejected. In that way the illegal group of migrants will be shifted from the EU to third countries and the problem of returning irregular migrants is still a problem.

This solution is based on the construction Australia has with the Nauru Islands. When asylum seekers reach Australia by boat, they are not held in Australia while their claims are processed. Instead, they are sent to an offshore processing centre. Currently Australia has one such centre on the Pacific island nation of Nauru and another on Manus Island in Papua New Guinea. Even if these asylum seekers are found to be refugees, they are not allowed to be settled in Australia. They may be settled in Nauru or Papua New Guinea, and four were settled in Cambodia at a reported cost of A\$ 55 m (£ 28 m, \$ 42 m). Human rights group say conditions in the PNG and Nauru camps are totally inadequate, citing poor hygiene, cramped conditions, unrelenting heat and a lack of facilities.²³ This is an important element to keep in mind in this solution. Solution number 2 will at least lead to new EU legislation.

The third option is to arrange more readmission agreements between the EU and third countries regarding the return of irregular migrants from the EU to these countries. In this solution the EU Member States should also contribute in the economy of some countries because the economic situation is quite often a reason for migrants to leave their country and go to Europe.

5. Final comments

The statistics have shown that in 2017 Germany registered the highest number of asylum applications, followed by Italy and France. In practice we see that the legal rules from the Dublin

²³ <http://www.bbc.com/news/world-asia-28189608>.

Regulation are not working because Germany and France are often not the first Member States where asylum seekers enter the European Union. Most asylum seekers arrive in the EU in Greece or Italy and these countries are because of the Dublin Regulation responsible for the asylum requests. The ruling from the CJEU in the cases of *A.S.* and *Jafari* will be welcomed in central European countries like Austria and Slovenia, where there is considerable political resistance to letting in more migrants. But it will cause concern in the countries where most migrants first enter the EU, Italy and Greece, which complain the system leaves them to shoulder too much of the burden. The Dublin system is what we have, and the Luxembourg judges give us no other.²⁴ The states on the external borders remain, in principle, alone with the responsibility to manage refugee figures in the six and seven digits range in the case of a crisis. Politically, that is disappointing – but on the other hand, as far as the function of the CJEU as a court is concerned, this result, unsatisfying as it may be, still has quite a lot going for itself. The CJEU, as Ferdinand Weber puts it, has kicked the ball back into the field of politics.²⁵ And this is where, according to Constantin Hruschka, it belongs: “The court demonstrates a calming responsibility towards the rule of law in the overheated asylum debate by not trying to read solutions for unresolved, fundamental problems into the legal norms. Progressive solutions must come from the legislature, which on the European level is the European Parliament and the Council.”²⁶ To create a real effective EU asylum system solidarity is necessary in the EU.

²⁴ <http://verfassungsblog.de/beyond-dublin/>.

²⁵ <http://verfassungsblog.de/gestaltung-und-verantwortung--asyl-entscheidungen-des-eugh-als-rueckspiel-an-die-politik/>.

²⁶ <http://verfassungsblog.de/klarheit-im-gemischtwarenladen-fluechtlingskrise-zu-den-urteilen-des-eugh-in-den-faellen-jafari-und-a-s/>.

To manage in a better way the still high influx of migrants to the European Union, we have formulated three solutions for the future in which new legislation has to be created by the EU legislator.

The first option is to make similar agreements with some safe North African countries and the EU Member States as were made in the Turkey deal. The second solution is to establish immigrant-processing centers outside the EU for the first time, in a radical policy change aimed at stemming the movement of hundreds of thousands of people across the Mediterranean. The third option is to arrange more readmission agreements between the EU and third countries regarding the return of irregular migrants from the EU to these countries of origin.

Finally we point out that a Dutch former left wing politician, Mrs. Femke Halsema, recently published a book titled *Nowhereland* (in Dutch: *Nergensland*), in which she unfolds a plan to deal with the current refugee crisis.²⁷ In her plan she proposes to fund ‘city-states’ where refugees could be offered shelter. Inhabitants would acquire a city-citizenship and have civil rights and passports. For us it is not clear where she situates these self-providing and economically independent ‘miniature states’ and how realistic it is to build up such city-states. To realise this idea there would have to be international support from existing states. Furthermore the question rises how people from these city-states would be allowed to travel in a legal way to the EU.

²⁷ <http://www.amboanthos.nl/boek/nergensland/>.