
EPC Policy Update for the European Programme for Integration and Migration¹

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Andreia Ghimis and Yves Pascouau

Highlights

On top of the October European Council, which was dominated by migration and the refugee crisis, an increasing number of high-level meetings between the EU, member state leaders and external partners have taken place as the EU continues to search for a solution to the current situation. This included a meeting on the Western Balkans Migration Route, the Valletta Summit on migration and a meeting of EU heads of state and government with Turkey, in Brussels. The Commission has sent a letter to the US administration outlining the situation and asking for assistance.

The Commission also published an update on the situation on 11 November, demonstrating that many commitments made by member states to address the refugee crisis are still to be met.

With the ongoing crisis and recent terrorist attacks in Paris presenting an uncertain future for the Schengen agreement, the Commission, the Justice and Home Affairs (JHA) Council and certain member states have been considering tweaks and there have been suggestions of potential alternatives. However, efforts remain concentrated on finding a way of sharing asylum seekers equitably among member states.

The Council and the European Parliament reached an [agreement](#) on a 2013 European Commission proposal on the conditions of entry and residence of third country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing.

¹ This document provides a focused analysis of recent EU-level policy-making, legislation and jurisprudence relevant to EPIM's three focus areas – (1) asylum seekers; (2) undocumented migrants; and (3) equality, integration and social inclusion of vulnerable migrants and covers the period from 15 October 2015 to 10 December 2015. We kindly ask the readers to keep in mind that the present Policy Update is composed of a selection of documents and does not claim to be exhaustive.

Should you, as representatives from EPIM's Partner Foundations or EPIM-supported organisations, have questions related to the analysis provided in this document or on EU developments in the field of migration and integration in general, you are invited to contact the authors (a.ghimis@epc.eu, y.pascouau@epc.eu). The sole responsibility for the content lies with the author(s) and the content may not necessarily reflect the positions of EPIM, NEF or EPIM's Partner Foundations.

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Special Focus

The EU's refugee crisis: meetings and outcomes

Since the publication of the previous EPIM Update in October 2015, high level meetings among EU member states and between EU member states and external partners have multiplied. Leaders have been trying – on several fronts – to find a solution to the dramatic situation in the EU and its immediate neighbourhood.

October European Council

On 15-16 October a European Council took place in Brussels. The meeting tackled several topics high on the EU agenda: migration and the refugee crisis, the upcoming referendum in the UK and the report on the economic and monetary union. Given the continuing high numbers of refugees coming to Europe and the immense pressure on the Schengen area, this subject was the most debated among the EU heads of state and government, with the other two only marginally discussed. In the [conclusions](#) of the summit, member states acknowledged the need for a comprehensive strategy in order to tackle the multi-dimensional crisis Europe is facing. Several orientations were put forward: cooperating with third countries to stem the flow of refugees; strengthening the protection of EU's external borders; responding to the influx of refugees in Europe and ensuring returns; and addressing the unstable situations in Syria and Libya.

Following this high level meeting, the European Policy Centre organised a Post-Summit Briefing during which Yves Pascouau [underlined](#) how disappointing the outcomes of the meeting were. He also mentioned how little the much needed reform of the Dublin system was discussed and pointed out that the adoption of a common European safe country of origin list was not possible in the short term, particularly due to the inclusion of Turkey on the proposed list. Janis Emmanouilidis also [explained](#) that in a context in which Europe is accumulating crises (crisis in Ukraine, Eurozone crisis, refugee crisis, terrorism, etc.) without necessarily solving them, several factors are influencing the EU's capacity to respond to the challenges it is facing: distrust between member states and between national governments and EU institutions; the complexity of the crises and their interconnection; the increasing divergence within the EU in economic, social and political terms; and the disappointment of EU citizens who no longer see the EU as being able to find solutions to these challenging situations.

Western Balkans

As numerous refugees are using the Western Balkans route to make their way to European countries, the European Union has to communicate with its neighbouring countries in order to be able to better manage the effects of the refugee crisis. Thus, Jean-Claude Juncker called for a meeting between leaders from Albania, Austria, Bulgaria, Croatia, Macedonia, Germany, Greece, Hungary, Romania, Serbia and Slovenia on 25 October. The interdependence between the decisions taken in these countries is obvious. Consequently, one of the [results](#) of the meeting was the decision to exchange more information and better coordinate, which was not the case before. Furthermore, leaders agreed that there is a need to increase reception capacities in Greece and Western Balkan countries.

Since the 25 October meeting, several video conferences and workshops [took place](#) between the contact points nominated after the Western Balkans route leaders' meeting. Despite the improvement in terms of information exchange, the situation on the ground is not getting better.

As ECRE [reports](#), Slovenia, Croatia, Serbia and Macedonia decided simultaneously to prevent all refugees from entering the country (except Syrians, Afghans and Iraqis). Following these measures, many refugees have been left waiting at the borders, resulting in the situation at the border between Greece and Macedonia becoming very [worrying](#). Undoubtedly, these decisions violate the fundamental rights of people in need of international protection as their cases should be examined individually.

La Valetta Summit

As part of an effort to bring EU and African leaders together to discuss common solutions to the migratory flows coming from Africa and enhancing cooperation to boost Africa's economic development and increase its political stability, the Valetta Summit on migration took place on 11-12 November. The summit received a lot of media and political attention. Civil society (both from Europe and Africa) expected a move away from the 'business as usual' approach that characterise EU-Africa relations. In this sense they published a [joint statement](#) with several recommendations, including: tackling the causes that force people to move, while respecting the rights to mobility; ensuring safe and regular routes for migration towards Europe; strengthening the international protection of people who are fleeing for their lives; and ensuring the respect of human rights in the context of return operations.

The summit resulted in a [political declaration](#) and an [action plan](#) with five priority actions. As highlighted in this [paper](#) published by the European Parliament's Research Service, several sensitive topics were avoided due to divergent opinions among the partners, such as strengthening the reception capacities of African countries and opening legal channels for migration (only partially addressed in relation to students and researchers). Reticence was also expressed regarding the effectiveness of linking development aid to migration related issues as a way of addressing the root causes of irregular migration flows from Africa. Indeed, development aid does not always help to 'stop' migration as several decision makers might hope. The results of an EPC workshop held earlier this year in the context of the '[Forced Migration Project: how can the EU play a greater and more coordinated role?](#)' suggest that an increase in source country income coincides with an increase in the emigration rate, up to a certain level of development. The results of this project will be made available in a publication at the beginning of 2016.

Commentators agree that the results of the summit were unspectacular. For instance, Tony Bunyan (Statewatch) [considers](#) that this strategy is not new, but it is simply more of the same, expressed differently. The author highlights that the EU's main concern is to stop people from reaching its shores, which results in an externalisation of the EU's asylum responsibilities.

Nevertheless, following this summit, the European Commission [launched](#) an EU Emergency Trust Fund for stability and addressing the root causes of irregular migration in Africa. The Fund will benefit several African countries from the Sahel region and Lake Chad, the Horn of Africa and Northern Africa and is made up of €1.8 billion worth of EU instruments and contributions from member states and other donors. So far, 25 EU member states and 2 non-EU donors (Norway and Switzerland) have announced a total contribution of around

€78.2 million. Several tensions [exist](#) around this fund, but most importantly, critics highlight the fact that it is directed more towards security than development activities. Although conditionality is not included in the action plan, the rationale has not completely disappeared from the partnership.

EU-Turkey relations

Cooperation with Turkey is crucial in the context of the refugee crisis. More than two million Syrian refugees are living on Turkish territory (about 14% in refugee camps) and the pressure on the Turkish economy is very high. In this context, EU member states recognised the challenging situation in which Turkey finds itself and created an [action plan](#). On one hand, according to this action plan, the EU agrees to re-energise talks over Turkey joining the EU and further help Turkey financially in order to cope with the challenges. On the other hand, Turkey agreed to improve the socio-economic situation of Syrian refugees with temporary protection in Turkey and complete a readmission deal to take third country nationals who entered EU's territory via Turkey irregularly. However, as Guy Verhofstadt [underlines](#), according to the [statement](#) issued on 29 November following the meeting of EU heads of state and government with Turkey, it is unclear whether Turkey will finally open its job market and provide education to refugee children. Also, Turkey is supposed to increase its surveillance and patrolling activities and step up cooperation with Bulgarian authorities to prevent irregular migration.

Communication with Turkey is absolutely vital for dealing with Europe's refugee crisis and to decrease the pressure on the Schengen area, which is setting European nations against each other. European leaders are hoping for immediate results and agreed to pay the €3 billion [envelope](#) (€500 million from the EU and €2.5 billion from the member states) progressively as conditions are met. Nevertheless, EPC analysts consider that Europe's expectations to see the numbers of refugees arriving to EU's shores dropping substantively as a consequence of this agreement with Turkey might not be met in the very short term. The success of this deal (for which the EU has very small margin of manoeuvre in terms of negotiation) depends greatly on Turkey's will to implement the decisions and, in any case, it will take a while until the effects will be seen.

Help requested from the US

The refugee crisis is not only a European crisis, but a global one. Therefore, the EU has been seeking help from other international partners, most notably, from the US. The European Commission sent a [letter](#) to the Obama administration emphasising the areas in which the EU believes the US could help European countries to deal with the influx of migrants. One of the key points of this wish list is the demand that the American administration reaches out to third countries – especially the Gulf States – to persuade them into resettling more Syrian refugees. Another request put forward by the Europeans is effective information sharing between the Sixth Fleet (US operational fleet based in Naples, Italy) and the EUNAVFOR mission (see [June 2015 EPIM Update](#)). Moreover, the EU asked for help from the US in order to provide capacity building for transit countries (training, equipment) and increased humanitarian funding. As several commentators [explained](#), some of these demands are touching upon very sensitive topics, like information sharing and diplomatic relations. Therefore, it remains to be seen how keen the Obama administration will be to meet them.



Asylum seekers

Policy developments relevant to EPIM focus area 1

UNHCR – regional overview (Mediterranean)

According to UNHCR [statistics](#), very large numbers of refugees are still trying to make their way to Europe in unseaworthy vessels. Although the meteorological conditions are worsening, migrants keep arriving on EU shores in unprecedented numbers. The comparison with the situation at the same time last year is particularly relevant: September 2014 (33,944) vs September 2015 (172,845), October 2014 (23,050) vs October 2015 (220,535), November 2014 (13,318) vs November 2015 (138,665). Here are some other notable figures:

- in 2015 (up until 13 December 2015), the UNHCR registered approximately 950,000 arrivals by sea (60% men, 16% women, 24% children);
- 3,605 people are dead or missing;
- the top five nationalities of people arriving in Europe in 2015 are: Syrians (50%), Afghani (20%), Iraqi (7%) and Eritreans (4%).

Against this background, the UNHCR [warned](#) of the worrying situation at the border between Greece and Macedonia and between Macedonia and Serbia where, as mentioned above, only nationals of Syria, Afghanistan and Iraq are being allowed to cross. As the UNHCR states, this chaotic situation is likely to benefit people smugglers as desperate migrants will try anything to find a solution to this border blockage.

State of play – measures to address the refugee crisis

The European Commission regularly publishes a state of play of the measures and the commitments made by member states in order to address Europe's refugee crisis. The [latest update](#) was made public on 11 December. The figures published by the Commission highlight several interesting aspects. Despite the urgency, many of the commitments made by member states have not been met.

- a large number of member states still [need](#) to match EU funding for the UNHCR, World Food Programme and other organisations (€500 million – shortfall of €58 million), the EU Trust Fund for Syria (€1 billion – shortfall of approximately €450 million) and the Emergency Trust Fund for Africa (€3.6 billion – shortfall of €1.7 billion);
- several states have not made places available for relocation of refugees from Greece and Italy. So far only 3,827 out of the 160,000 were offered. Only 184 relocations have taken place to countries such as Finland, France, Germany, Luxembourg, Spain and Sweden. Although not mentioned by the Commission's state of play document, it is important to mention that Sweden asked to benefit from the relocation scheme as well because it is among the group of member states that has welcomed the highest number of refugees. There is no precision as to the numbers of asylum seekers to be relocated from Sweden – but the Swedish authorities were targeting the 54,000 asylum seekers that were

supposed to be relocated from Hungary (in the second relocation decision) which were shared between Italy and Greece;

- member states have been more responsive in terms of offering human resources and logistical support for the hot spots, but there is still more to be done: EASO has received 176 out of the 374 experts requested and Frontex only 447 out of the 775 border guards requested;
- regarding the return policy, Frontex organised several joint return flights bringing back 658 irregular migrants to their origin countries since September. Italy also returned 153 people.



Undocumented Migrants

Policy developments relevant to EPIM focus area 2

Visa policy

Turkey

One of the commitments made by the European leaders at the Brussels summit with Turkey on 29 November is to lift visa obligation for Turkish citizens by October 2016 if certain conditions are met by the Turkish administration: strengthening the rule of law, combatting organised crime, corruption and irregular migration and improving the administrative capacity in border controls and on the security of documents. It is important to keep in mind that the visa liberalisation dialogue was initiated in December 2013 when the EU and Turkey signed a readmission agreement. Turkey is scheduled to fully implement the readmission agreement with all EU member countries as of June 2016.

According to this agreement, Turkey must take back any Turkish citizen, stateless person or third country national coming directly from Turkey who entered or stayed irregularly in the EU. The same rule applies to EU citizens or third country nationals entering Turkey irregularly. However, the majority of immigrants that reach the European Union are refugees – they are not covered by the readmission agreement. Also, for this measure to have an impact, there is a need for a very effective EU return policy, whereas for the moment the number of irregular migrants the EU is returning is very low. As a consequence, this agreement is likely to have less impact than EU leaders and citizens might expect.

Colombia

On 2 December 2015 the EU signed a short-stay visa waiver agreement with Colombia. The new visa regime provides visa-free travel for EU citizens when travelling to the territory of Colombia and for citizens of Colombia when travelling to the EU, for a stay of 90 days in any 180 day period.

Border control

EUNAVFOR MED operation

The second phase of the [EUNAVFOR MED operation](#) was launched mid-October. This phase consists of the boarding, searching, seizure and diversion of vessels suspected of use for human smuggling or trafficking on the high seas. As [underlined](#) by Thierry Tardy (Senior Analyst at the European Union Institute for Security Studies), this operation benefits from a large support from the member states. However, even if successful in dismantling smuggling networks, it must also be acknowledged that the operation has the merit of [saving lives](#): in four months 24 rescue operations have been conducted, contributing to saving more than 5000 lives. This CSDP (Common Security and Defense Policy) operation will not solve the root causes of migration (political instability, insecurity, persecution, poverty, etc.) though.

Schengen Area

A new Schengen on the way?

While several member states reintroduced temporary border controls due to the significant numbers of refugees coming to their territories - Germany, Austria, Slovenia, Sweden – the Schengen area looks more fragmented than ever. Furthermore, the terrorist attacks in Paris added an extra layer of uncertainty to the already fragile future of the borderless area.

In this context, the EU Justice and Home Affairs Ministers met on 20 November and [discussed](#) possible solutions. One of such concerns a targeted revision of the Schengen Borders Code to provide for systematic controls of EU nationals, including the verification of biometric information, against relevant databases at external borders of the Schengen area. The European Commission has therefore been invited to present a proposal in this sense. This dossier will nevertheless be negotiated with the European Parliament, where several MEPs are against systematic controls of EU citizens.

More recently – although not with the intention of modifying, but rather implementing the Schengen borders code – according to a leaked Council (COREPER 2 – committee of permanent representatives) [document](#), the European Commission is invited to consider presenting a proposal taking into consideration article 26 of the Schengen Borders Code. This legal provision would allow the Council to recommend member states to maintain or introduce border checks on their internal borders with one another for a maximum period of two years, in the case of “serious deficiencies in external border controls” and when the entire functioning of the area without internal border control is being put at risk. Steve Peers (University of Essex) [seereads](#) this document as an attempt to convince Greece to agree to further measures relating to border control but considers this indirect threat as being politically dangerous.

In addition, another idea is starting to take shape in the minds of several leaders: that of a mini-Schengen, a scaled-down version of the area without internal border checks, which would include Germany, Austria, Belgium, the Netherlands and Luxembourg. Whereas the pursuit of this goal has not been confirmed officially, it is important to note that the revision of the Schengen agreement is attracting more and more advocates and it is even more dangerous, as the idea is coming from some Dutch politicians in a context in which the Dutch will hold the Presidency of the Council, starting from 1 January 2016. In addition, this trend could

increase if no solution is found on sharing the asylum seekers equitably among member states. However, as underlined by Pieter de Gooijer (Permanent Representative of the Netherlands to the EU) at a Breakfast Policy Briefing organised by the European Policy Centre on 30 November, for the time being efforts are concentrated on finding this solution.

ECJ – Case law

Skerdjan Celaj, C-290/14, 1 October 2015

This ruling concerns Mr. Celaj (a third country national) who was arrested in 2011 in Italy. He was sentenced to a term of imprisonment and a fine – the judgement became final in 2012. Mr. Celaj was also issued a removal order by the police of Florence and an entry ban for three years. In September 2012 Mr Celaj left the Italian territory but returned in February 2014. In this context, the public prosecutor's office brought criminal law proceedings against Mr Celaj, seeking a sentence of eight months of imprisonment. The Tribunale de Firenze decided to question the European Court of Justice whether this sentence is compatible with [Directive 2008/115](#) on common standards and procedures in member states for returning third-country nationals who are illegally staying in the country.

The ECJ underlines that the abovementioned Directive provides the possibility – in certain cases the obligation – for the authorities of a member state to couple return decisions with a re-entry ban. Therefore, in principle, authorities are also allowed to impose criminal law sanctions for the unlawful re-entry of a third country national. However, the ECJ states that the imposition of a criminal law sanction is admissible only if the entry ban against Mr. Celaj complies with article 11 of the [Directive 2008/115](#), which establishes the conditions in which an entry ban can be imposed. The Court also explains that this case is different from other cases in which it had stated that the Directive also precluded imprisonment as a criminal law penalty for irregular stay itself if ordered prior to starting removal proceedings or during such proceedings – because in these cases the irregular migrants were subject to a first return procedure.

However, Izabella Majcher, Associate Researcher at Global Detention Project [argues](#) that the circumstances are not clearly distinct because every return procedure regulated by the Directive has the same objective, i.e. the swift removal of the non-EU citizen concerned. For the researcher, it appears irrelevant whether return is pursued because of irregular entry or irregular re-entry.



Equality, Integration and Social Inclusion of Vulnerable Migrants

Policy developments relevant to EPIM focus area 3

Both the refugee crisis and the Paris terrorist attacks prompted discussions on migrant integration. Whereas discussions currently focus on the pressure of redistributing refugees equitably among member states, there seems to be a lack of a more long-term vision: what will happen to these refugees once settled in one member state? Successful integration is key and will occupy the national and European agendas for decades to come. The task will be difficult, not only because of the challenges it presents, but also because of the division of competences within the EU. Several key areas related to integration – access to education, social security services, and labour markets – are still a national competence. Local authorities will therefore be at the forefront of reception and integration efforts.

Several researchers focused their activity on the integration aspect of migration. Although not published recently, this “[Comparative study on the best practices for the integration of resettled refugees in the EU Member States](#)” conducted under ECRE’s coordination presents examples that may be of use to authorities, NGOs and volunteers, especially those who do not have experience in resettling and integrating migrants. Whereas the pre-departure measures are not relevant in this context of crisis, here are some best practices related to the post-arrival measures:

- **Portugal** offers training for employers who hire refugees;
- **Sweden** has an extensive two to three year introductory programme, drawn up in close cooperation with the individual;
- **The Netherlands** encourages former refugees involved in supporting integration initiatives;

Students and researchers Directive

The Council and the European Parliament reached an [agreement](#) on a [proposal](#) put forward by the European Commission (in 2013) on the conditions of entry and residence of third country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing. It merges two existing directives (one on students and one on researchers). They ensure that:

- students and researchers have the right to stay at least nine months after finishing their studies or research in order to look for a job or to set up a business;
- they can move more easily within the EU during their stay without applying for a new visa and waiting for the new application to be processed – so simply by notifying the new member state where they are moving;
- researchers have the right to bring their families to the EU and their families can access the job market in the EU;
- students have the right to work at least 15 hours a week.

Member states will have two years to transpose this Directive into their national legislation starting from the date of publication in the Official Journal of the EU.

EUROSTAT – Residence permits (2014)

In October, Eurostat published statistics related to the number of residence permits issued by EU member states in 2014. Several points deserve to be highlighted:

- 2.3 million first residence permits were issued in the European Union (EU) to non-EU citizens in 2014 (2.2% less than in 2013);
- half of first residence permits were issued in the United Kingdom, Poland and Germany;

- the nationalities that were granted most of the residence permits are: Ukrainians (13,1%), Americans (8,6%), Chinese (7,4%) and Indians (5,8%)
- Ukrainians were granted residence permits mostly for employment purposes, Chinese for education and Moroccans for family reasons.



EU Calendar

Upcoming events



Council of the European Union – Presidency and JHA Council

The Netherlands will take over the Presidency of the Council in the first half of 2016. Pieter de Gooijer (Permanent Representative of the Netherlands to the EU) came to the EPC on 30 November and presented three main themes for how the Netherlands plan to run the Presidency.

Firstly, it will aim to implement the principle of subsidiarity on a practical day to day basis, focusing on those things that must be done at the EU level. Secondly, the Dutch Presidency will aim to reconnect with citizens. Thirdly, the Presidency will focus on sustainable innovation in order to achieve the jobs and growth agenda. Finally, during the six months of the Dutch Presidency there will be an intense legislative process in the area of migration. Therefore, there will be six – rather than the usual three – JHA Council meetings.



European Parliament

Next LIBE Committee meetings will take place on **17, 21 and 22 December 2015**.

Next EP Plenaries will take place between **18 - 21 January and 1 - 4 February 2016**.



Other Events

21-22 January 2016

Eurodiaconia is organising:

First [networking meeting](#) on migration, in Brussels.

28 January 2016

Université Saint Louis – Brussels is organising:

Conference: L'UE et ses voisinages, in Brussels.

18- 19 February 2016

Université Saint-Louis de Bruxelles is organising:

[Conference](#): What's wrong with Free Movement? Regulating and Deregulating Mobility in Europe, in Brussels.

17-19 March 2016

European Economic and Social Committee is organising:

Conference: Your Europe, your say! with more than 130 young people and their teachers from the 28 member states of the European Union (EU) and the 5 EU accession countries in Brussels. The debate will focus on migrants in Europe, especially on the integration dimension.