

# MIG RATI ON

## **KNOW**

Migration is an area where the EU sharply divides persons who have an EU passport (a passport of one of the EU member states) and those who do not.

Under the EU treaties, those with an EU passport <sup>1</sup>have the right to freedom of movement and residency in any other EU country under certain conditions, to vote for and stand as a candidate in EU and municipal elections even when living outside one's country of origin, to protection from the embassies of other EU countries when outside the EU and to petition the European Parliament and complain to the European Ombudsman.

The rights contained in the Charter of Fundamental Rights only apply when the EU is acting or when a member state is implementing EU rules. However, when the rights apply, they apply to everyone living in the EU.<sup>2</sup> This means that whether or not someone has an EU passport, the EU institutions, including the three main institutions; the Commission, Parliament and Council, but also other institutions, such as Frontex<sup>3</sup>(responsible for EU border security), the European Asylum Support Office (responsible for coordinating common European asylum policy) and Europol<sup>4</sup> (responsible for coordinating police actions), must be in compliance with the Charter.

Freedom of movement is perhaps the most well-known right in the EU. Under the EU treaties, this provides everyone with an EU passport with the right to move from their home country to another EU country for up to three months and to remain there indefinitely if they are employed or self-employed, students or can support themselves financially, under the same conditions as nationals of that country. This also includes the right for to bring family members with you to the new country, including family members who do not hold an EU passport (for students this right is limited). It also means that you can also claim social assistance, should you become unemployed in the country, under the same conditions as nationals. This right to social assistance is limited by a requirement not to become an unreasonable burden on the social assistance system. The Schengen Zone <sup>5</sup>has extended freedom of movement to include the ability to travel without having to show travel documents between some EU member states.

Outside of this, the largest area of EU level cooperation in the field of migration is on asylum. Beginning in 1999, the Common European Asylum System is primarily built around:

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<sup>1</sup> <http://ec.europa.eu/justice/citizen/>

<sup>2</sup> <http://fra.europa.eu/en/about-fundamental-rights/frequently-asked-questions>

<sup>3</sup> <http://frontex.europa.eu/>

<sup>4</sup> <https://www.europol.europa.eu/>

<sup>5</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm)

- the Dublin Regulations<sup>6</sup>, which state that persons seeking asylum should apply in the first EU state they enter and include a common European fingerprint identification system for asylum seekers,
- the Qualification Directive<sup>7</sup>, which lays down common minimum grounds for EU member states to grant refugee protection,
- the Reception Conditions Directive<sup>8</sup>, which includes rules on when it is possible to detain asylum seekers, rights to legal assistance to challenge detention, as well as rules on access to food, health care, housing and employment, as well as medical and psychological care for asylum seekers,
- the Temporary Protection Directive<sup>9</sup>, which is designed to give immediate and temporary protection in times of humanitarian emergency. The EU has never used this mechanism.
- This system has faced criticism. The Dublin Regulations<sup>10</sup> have been criticised for causing delays in assessing asylum claims, excessive use of detention to return asylum seekers, and increasing pressure in states at the EU's borders. There is also still a large difference in acceptance<sup>11</sup> rates between EU countries, despite the Qualification Directive, and in many EU member states asylum seekers are not provided with an acceptable standard of living and adequate housing<sup>12</sup>. Fundamentally, the system has been criticised for focussing on preventing irregular entry to the EU<sup>13</sup> over facilitating asylum claims, with at least 3,500 people drowning<sup>14</sup> while trying to cross the Mediterranean Sea in 2014.

Undocumented migrants are also subject to EU wide coordination. Under the Returns Directive<sup>15</sup>, persons who enter the EU without the proper papers and who do not qualify for asylum, are banned from re-entry to the EU within 5 years – even if their circumstances change, and allows for the detention of undocumented migrants for up to 18 months without a crime being committed. The EU also has a number of readmission agreements<sup>16</sup> with states

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

<sup>7</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/refugee-status/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/refugee-status/index_en.htm)

<sup>8</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/reception-conditions/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/reception-conditions/index_en.htm)

<sup>9</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/temporary-protection/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/temporary-protection/index_en.htm)

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

<sup>11</sup> <http://www.ecre.org/topics/areas-of-work/protection-in-europe.html>

<sup>12</sup> <http://www.ecre.org/topics/areas-of-work/protection-in-europe/36-reception-conditions.html>

<sup>13</sup> <http://www.ecre.org/topics/areas-of-work/introduction/35-access-to-europe.html>

<sup>14</sup> <http://www.bbc.com/news/world-europe-32376082>

<sup>15</sup> <http://www.ecre.org/topics/areas-of-work/introduction/40-returns.html>

<sup>16</sup> <http://ecre.org/component/content/article/70-weekly-bulletin-articles/619-eu-turkey-readmission-agreement-endorsed-by-european-parliament-raises-concerns-amongst-ngos.html>

on the EU border to facilitate the speedy return of undocumented migrants and failed asylum seekers when they have used the non-EU state as a transit country.

## **UNDERSTAND**

Free movement of persons is a fundamental principle of the EU, established under Article 45<sup>17</sup> of the Treaty on the Functioning of the European Union. The Charter of Fundamental Rights in Articles 15 and 45<sup>18</sup> also include the right for EU citizens to work in another EU member state under conditions equivalent to nationals of that member state. Article 18<sup>19</sup> of the Charter includes the right to asylum, in accordance with the Refugee Convention<sup>20</sup>.

## **FREEDOM OF MOVEMENT**

Freedom of movement, as mentioned above, is a right for EU citizens who comply with specific conditions, including to search for employment, to take up employment, to study and when the person can afford to live from their own resources.<sup>21</sup>

When you move to another country to live under one of these conditions, this activates a number of other rights and these rights still apply when you return to your home country. This includes the right to have a family member<sup>22</sup> who does not have an EU passport to move with you and for them to live and work under the same conditions as EU passport holders, including having the right to permanent residence after 5 years and under certain conditions to stay if your family circumstances change, for example through divorce.

Member states however have retained the right to set their own migration policies for non-EU citizens where no EU freedom of movement rights are involved. This means that each country can set its own criteria for non-EU passport holders to receive a work visa in their country and can set the rules allowing their own citizens to bring a family member who doesn't hold an EU passport to their country. As an example, Danish citizens are only allowed to bring their non-EU spouse to live in Denmark if they have the financial means to support them and Denmark is the country where both spouses combined have the strongest ties<sup>23</sup>. This high threshold

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<sup>17</sup> <http://ec.europa.eu/social/main.jsp?catId=457>

<sup>18</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

<sup>19</sup> idem

<sup>20</sup> <http://www.unhcr.org/4ec262df9.html>

<sup>21</sup> <http://ec.europa.eu/social/main.jsp?catId=457>

<sup>22</sup> [http://europa.eu/youreurope/citizens/residence/worker-pensioner/non-eu-family-members/index\\_en.htm](http://europa.eu/youreurope/citizens/residence/worker-pensioner/non-eu-family-members/index_en.htm)

<sup>23</sup> [https://www.nyidanmark.dk/en-us/coming\\_to\\_dk/familyreunification/spouses/spouses.htm](https://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/spouses.htm)

has led to a number of Danish citizens with a non-EU spouse moving to Sweden to bring into play the less strict EU and Swedish migration rules.<sup>24</sup>

## **COMMON EUROPEAN ASYLUM SYSTEM**

The most visible parts of the Common European Asylum System are often the Dublin Regulations, which set out the rules for where an asylum seeker should apply for refugee status in the EU, and actions taken by EU member states to police the EU border.

The basic rule of the Dublin Regulations is that the country in which an asylum seeker enters the EU should be the one responsible for processing their asylum claim. This system has been criticised for encouraging excessive detention of asylum seekers to deport them back to the country in which they entered the EU, the separation of families and pressure on member states in the south of Europe.

Frontex<sup>25</sup> is the EU agency responsible for coordinating the policing of the EU's borders. Since 2013, there has been a large increase in the number of asylum seekers attempting to cross the Mediterranean to reach the EU, with 3,419 people dying while trying to enter via this route in 2014.<sup>26</sup> The EU has undertaken a number of coordinated measures to rescue – and increasingly – prevent those attempting to make the crossing. This coordination<sup>27</sup> has come in the form of providing some search and rescue operations in the Mediterranean, along with a 2015 plan to use force against persons organising the transport of asylum seekers and migrants across the sea. Several EU member states have recently begun building or reinforcing walls and fences, ostensibly to prevent irregular migration but which have the effect of also preventing asylum seekers from accessing the EU, including Bulgaria<sup>28</sup>, Hungary<sup>29</sup> and the UK<sup>30</sup>.

## **QUALIFICATION DIRECTIVE**

The Qualification Directive<sup>31</sup> requires EU member states to grant refugee status to persons who are suffering certain and defined conditions equivalent to severe human rights abuses

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<sup>24</sup> <http://www.thelocal.se/20110914/36128>

<sup>25</sup> <http://frontex.europa.eu/>

<sup>26</sup> <http://www.independent.co.uk/news/world/europe/the-most-lethal-route-in-the-world-3419-migrants-died-crossing-mediterranean-this-year-9916436.html>

<sup>27</sup> [http://ec.europa.eu/priorities/migration/index\\_en.htm](http://ec.europa.eu/priorities/migration/index_en.htm)

<sup>28</sup> <http://www.nytimes.com/2015/04/06/world/europe/bulgaria-puts-up-a-new-wall-but-this-one-keeps-people-out.html>

<sup>29</sup> <http://www.theguardian.com/world/2015/jun/22/migrants-hungary-border-fence-wall-serbia>

<sup>30</sup> <http://www.bbc.co.uk/news/uk-33729024>

<sup>31</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l33176>

based on a particular or perceived characteristic or opinion of them. It also requires member states to grant a form of protection and not return asylum seekers, when there is a real risk of suffering serious harm, such as torture, the death penalty and a threat to their life. For persons claiming asylum, it gives a number of rights.

Acceptance of asylum claims however remains extremely variable across the EU<sup>32</sup>. In 2014, asylum approval rates varied from Bulgaria, which accepted 94% of all asylum claims, to Sweden, which accepted 77%, the UK that accepted 39%, Croatia that accepted 11% and Hungary, which accepted only 9% of all claims. The origin of asylum seekers also affected acceptance rates differently in 2014 across the EU: Cyprus, Germany, Sweden, Poland, Bulgaria and the Czech Republic accepted 100% of all Syrians claiming asylum, while Hungary only accepted 65%, Italy 64% and Greece 60%. At the same time Italy approved 94% of all Afghan asylum claims, while Bulgaria and Romania only approved 19%. In other cases, there are extreme outliers. For example, most EU member states approve most Eritrean asylum claims, while France accepts only 15% of Eritreans claiming asylum.

## RECEPTION CONDITIONS

The Reception Conditions Directive<sup>33</sup> requires that asylum seekers are provided with material support during their application period, including housing, food, medical care and education. Conditions however can be extremely poor for those seeking asylum. In Italy<sup>34</sup> for example, first accommodation centres are often overcrowded and in remote locations., while housing for asylum seekers was attacked in Germany throughout 2014 and 2015<sup>35</sup>.

## DETENTION CENTRES

Detention centres<sup>36</sup> are being increasingly used for asylum seekers, which limits their rights set out in the Reception Conditions Directive<sup>37</sup>. Conditions within these detention centres have also often been heavily criticised. In the UK for example, the Yarl's Wood detention centre<sup>38</sup> has faced on-going and official criticism for its poor conditions and excessive detention of asylum seekers.

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<sup>32</sup> <http://newirin.irinnews.org/dataviz/2015/7/21/playing-the-eu-asylum-lottery>

<sup>33</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/reception-conditions/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/reception-conditions/index_en.htm)

<sup>34</sup> <http://www.asylumineurope.org/reports/country/italy/reception-conditions/access-forms-reception-conditions/forms-and-levels>

<sup>35</sup> [https://www.washingtonpost.com/world/europe/germany-unnerved-by-scores-of-xenophobic-attacks-against-refugees/2015/08/16/eada9284-3fb1-11e5-b2c4-af4c6183b8b4\\_story.html](https://www.washingtonpost.com/world/europe/germany-unnerved-by-scores-of-xenophobic-attacks-against-refugees/2015/08/16/eada9284-3fb1-11e5-b2c4-af4c6183b8b4_story.html)

<sup>36</sup> <http://www.ecre.org/topics/areas-of-work/protection-in-europe/82-detention.html>

<sup>37</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/reception-conditions/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/reception-conditions/index_en.htm)

<sup>38</sup> <http://www.bbc.com/news/uk-33871283>

Access to detention centres is limited in many EU countries, causing concerns about a lack of media and civil society oversight.<sup>39</sup>

## UNDOCUMENTED MIGRANTS AND FAILED ASYLUM SEEKERS

Those who enter the EU without a valid visa or remain after a valid visa has expired and have not applied for or are not eligible for asylum are entitled to the protection of their fundamental rights and EU action with respect to undocumented migrants must be in compliance with the Charter of Fundamental Rights.

A 2013 report<sup>40</sup> of the Fundamental Rights Agency however found that the Returns Directive lacked detailed guidance for guaranteeing the rights of those not returned, leading to residence classifications that give wide variation in access to fundamental rights. It also found several gaps in the protection of the fundamental rights of undocumented migrants across EU member states, with enforcement measures taken by states having a negative effect on undocumented migrant rights, abuses of labour rights, and insecure and precarious housing situations. It also found very different approaches on healthcare and education across member states, with some member states restricting healthcare to emergencies and others providing full health coverage, and with varying degrees of access to education for children in law and in practice.

EU coordinated action on irregular migration and returns however focuses primarily on action against those who assist in undocumented migrants crossing borders, sanctioning of persons who employ persons without a valid visa and border control coordination.<sup>41</sup>



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<sup>39</sup> <http://www.euroalter.com/projects/open-access-now>

<sup>40</sup> [http://bookshop.europa.eu/en/fundamental-rights-of-migrants-in-an-irregular-situation-in-the-european-union-pbTK3012815/?CatalogCategoryID=\\_kaep2OwrVMAAAEE8WAtiz3EK](http://bookshop.europa.eu/en/fundamental-rights-of-migrants-in-an-irregular-situation-in-the-european-union-pbTK3012815/?CatalogCategoryID=_kaep2OwrVMAAAEE8WAtiz3EK)

<sup>41</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/irregular-migration-return-policy/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/irregular-migration-return-policy/index_en.htm)