



Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

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MODULE 1

What is the Area of Freedom, Security and Justice?

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Reading Lecture 2

Area of Freedom

1. In this lecture you will learn about...

- migration (immigration) and asylum policy of the EU,
- the distinction between immigration and asylum policies,
- border management of the EU and
- Schengen Area and the abolishment of the person's checks at the internal border.

Learning time – approximately 3 hours



2. Core concept of Area of Freedom – Legal bases

TFEU Article 67 Subsection 2: “It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.”

Immigration Policy (migration Policy)



TFEU Article 79 Subsection 1: *The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.*

TFEU Article 80: *The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.*

Immigration policy is intended to establish a balanced approach to dealing with both regular and irregular immigration. The policy aims to establish a framework for legal migration, taking fully into account the importance of integration into host societies. The EU measures on legal immigration cover the conditions of entry and residence for certain categories of immigrants, such as highly qualified workers subject to the 'EU Blue Card Directive' and students and researchers. Family reunification and long-term residents are also provided for. The EU approach to migration also addresses the issue of integration. Successful integration of migrants into their host society is essential to maximise the opportunities afforded by legal migration and to realise the potential that immigration has for EU development. The EU is promoting European cooperation to develop common approaches and exchange information at EU level.

A forward-looking and comprehensive European immigration policy, based on solidarity, is a key objective for the European Union.

Asylum Policy



TFEU Article 78 Subsection 1: *The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.*

Article 18 of the EU Charter of Fundamental Rights: Article 18 (Right to asylum): *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 establishing the European Community.*

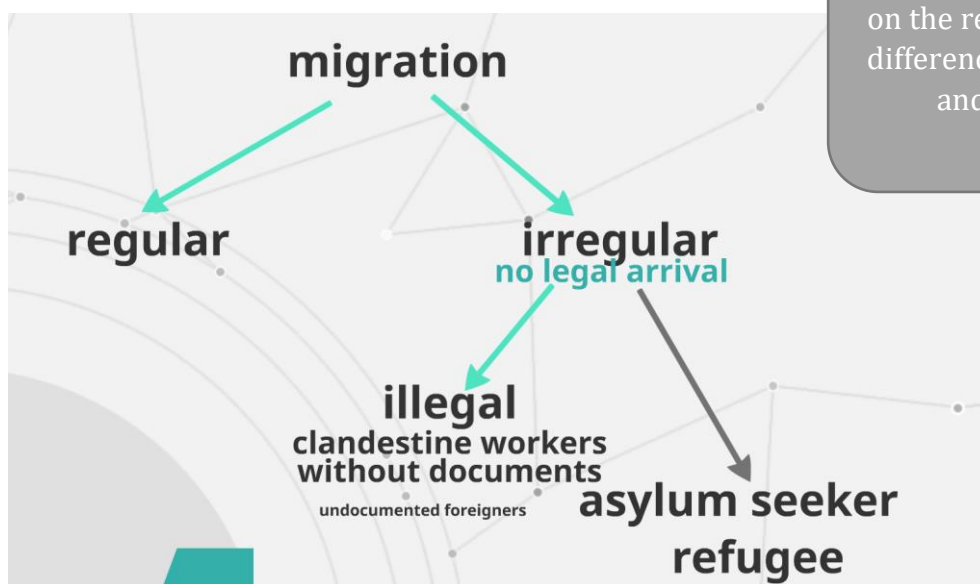
The aim of the EU's asylum policy is to offer appropriate status to any third-country national requiring international protection in one of the Member States and ensure



compliance with the principle of non-refoulement. To this end, the Union is striving to develop a Common European Asylum System. EU law does not allow for the regulated arrival of asylum-seekers, so their entry into EU territory is usually irregular, due to a lack of necessary documentation and/or the use of unauthorised border-crossing points. Therefore, the figures for illegal border crossings are for mixed flows of both irregular immigrants and possible future asylum-seekers. These mixed flows pose a large challenge for border authorities: while asylum-seekers cannot be refused entrance to a Member State, irregular immigrants can and should be refused entry, based on the Schengen Borders Code. Although asylum-seekers' entry to EU territory is, in most cases, irregular, asylum-seekers cannot be refused entrance at borders, nor be returned to a third country if there is a risk of persecution or other serious harm. This principle of non-refoulement was established by the Geneva Refugee Convention in 1951 and has been incorporated into EU law (Article 78(1) TFEU).

In the current EU asylum system, individual Member States are responsible for processing asylum applications. Through its Directives and Regulations, the EU has reinforced the standards and obligations for providing international protection, complying with the commitments taken by all EU Member States. The EU moved towards greater harmonisation of asylum rules in 2013 with the completion of the second phase of the Common European Asylum System (CEAS). CEAS is based on two aspects: a) there is only one single Member State responsible for an asylum application; and b) harmonisation of national asylum standards to prevent EU-internal movements of asylum-seekers and beneficiaries of international protection.

Check the graph. How can you best describe – based on the readings before – the differences between asylum and immigration?



(Karsai 2020)



For further understanding the complex issue of irregular migration and the multiple value-interests matrix of national or European instruments to deal with it: read the paper of Steve Peers (in Annex).



3. Schengen Area

Watch the video!

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https://www.youtube.com/watch?v=SBOZkq4vFvo&feature=emb_logo

The free movement of persons is a right guaranteed by the EU to its citizens. It enables every EU citizen to travel, work and live in any EU country without special formalities **as a component of the internal market**.

Schengen cooperation enhances this freedom by enabling citizens to cross internal borders without being subjected to border checks. The border-free Schengen Area guarantees free movement to more than 400 million EU citizens, as well as to many non-EU nationals, businessmen, tourists, or other persons legally present on the EU territory.

Originally, the concept of free movement was to enable the European working population to freely travel and settle in any EU State, but it fell short of abolishing border controls within the Union. A break-through came in 1985 when cooperation between individual governments led to the signing, in Schengen (a small village in Luxembourg), of the Agreement on the gradual abolition of checks at common borders, followed by the signing

The implementation of the Schengen Agreements started in 1995, initially involving seven EU States.

in 1990 of the Convention implementing that Agreement. Born as an intergovernmental initiative, the developments brought about by the Schengen Agreements have now been incorporated into the body of rules governing the EU. Any person, irrespective of nationality, may cross the internal borders without being subjected to border checks. However, the competent national authorities can carry out police checks also at the internal borders and in border areas, provided that such checks are not equivalent

to border checks. This is valid for cases when the checks do not have border control as an objective and are based on general police information and experience. It is also valid when the checks are carried out in a manner clearly distinct from systematic border checks and on the basis of spot-checks. Under such circumstances, the police may for example ask you to identify yourself or pose questions regarding your stay, depending on the purpose of the check. If there is a serious threat to public policy or internal security, a Schengen



country may exceptionally temporarily reintroduce border control at its internal borders for, in principle, a limited period of no more than thirty days. If such controls are reintroduced, the other Schengen countries, the European Parliament and the Commission should be informed, as should the public.

The Schengen Treaties (1985, 1990) were signed by the State parties under international public law and not within the EC institutional legal framework, because at that time such development could have been introduced only if every Member States would have agreed. However later on, with the amendments of the Amsterdam Treaty (1997, in force 1999) the entire Schengen law was incorporated into the EU law and the participating countries established an 'enhanced cooperation' for the gradual abolition of the person's checks at the internal borders. This enhanced cooperation today covers the 'Schengen Area' but does not include all MS. It is important to note, that there are some rules of the Schengen Treaties that do not belong to this specific enhanced cooperation but rather are part of EU law without geographical restrictions. These rules shall be applied in all MS not only in the states of the Schengen Area. For example Article 54 of the Schengen Implementation Agreement (1990) prohibits a second criminal procedure against a person for the same case in another country, if the offence was already finally adjudicated and the person already served his or her punishment.

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4. Latest news within this policy

Watch the news!

Watch the summaries of EURONEWS from 23. September 2020 and from 24. September 2020.

<https://www.euronews.com/2020/09/23/watch-live-eu-announces-new-policy-aimed-to-streamline-asylum-process>

<https://www.euronews.com/2020/09/24/what-is-the-eu-s-new-migration-pact-and-how-has-it-been-received>

Briefly summarize what the videos are about.

What will the new elements (and new aims) of the Pact be?

Describe the possible difficulties resulting from the Pact



5. Questions for review

1. Who is a refugee?
2. What is the competence of the MS regarding asylum?
3. What is the Schengen Area?
4. Who are the irregular migrants?
5. What is the return directive about?

References:

<https://www.europarl.europa.eu/thinktank/infographics/migration/public/?page=migration>

https://ec.europa.eu/home-affairs/e-library/documents/policies_en?policy=416

https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en



ANNEX

Steve Peers: Irregular Migrants: Can Humane Treatment be Balanced against Efficient Removal? November 2015. European Journal of Migration and Law 17(4):289-304 DOI: 10.1163/15718166-12342083

BRILL

The screenshot shows the Brill website interface for the article. The main title is "Irregular Migrants: Can Humane Treatment be Balanced against Efficient Removal?". The author is Steve Peers. The article is published in the European Journal of Migration and Law, Volume 17, Issue 4, in November 2015. The page count is 289-304. The DOI is 10.1163/15718166-12342083. The article type is Research Article. Keywords include "cjeu case law; immigration detention; irregular migration; Returns Directive". The price is €25.00 / \$30.00. There are buttons for "Login via Institution", "Add to Cart", "Rent on DeepDyve", "Redeem Access Token", and "Get Permissions". The sidebar includes social media icons, a search bar, and subject categories like "Human Rights and Humanitarian Law" and "Human Rights".



https://brill.com/view/journals/emil/17/4/article-p289_1.xml

Preprint of the article - free to read

[https://www.researchgate.net/publication/284879298 Irregular Migrants Can Humane Treatment be Balanced against Efficient Removal](https://www.researchgate.net/publication/284879298_Irregular_Migrants_Can_Humane_Treatment_be_Balanced_against_Efficient_Removal)

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The block contains three logos: Széchenyi 2020, Hungarian Government, and European Union. The European Union logo includes the text "European Union European Social Fund" and "INVESTING IN YOUR FUTURE".