



SIRIUS

Skills and Integration of Migrants,
Refugees and Asylum Applicants
in European Labour Markets

Legal Barriers and Enablers WP2 Report

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August 2018 – Delivery 2.2

Horizon 2020
SIRIUS (770515)



Co-funded by the Horizon 2020 programme
of the European Union

Reference: SIRIUS [D 2.2] – Integrated report on socio-cultural, institutional and legal framework

This research was conducted under the Horizon 2020 project 'SIRIUS' (770515).

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Executive Summary

This report assesses how far legal frameworks of migration and asylum work as enablers or obstructers of non-EU migrants, refugees and asylum applicants' (MRAAs) integration in European labour markets across the seven countries studied in SIRIUS (the Czech Republic, Denmark, Finland, Greece, Italy, Switzerland, and the United Kingdom). To fulfil such a main objective, the work has been organised in three principal streams of activities: (1) gathering and critically analysing information on the political, legal and institutional context of migration governance, and illustrating national cases through country reports, and the EU framework legislation in the EU report; (2) comparing the national case-studies and discussing the outcome in a comparative report; and (3) retrieving and systematizing a number of indicators available in the most relevant databases in order to create an ad hoc dataset on socio-economic, cultural, political and legal indicators on migration covering all SIRIUS countries. This report is the product of the first two streams of activities.

When legal issues are at stake, MRAAs integration heavily depends from the country they settle in and from the legal status that is recognized to them. In fact, entry and settlement in European countries is subject to strict limitations to non-EU nationals, but such limitations take different shades according to a given European country and a given migrant status.

Starting from the latter aspect, in the last decade a plethora of legal acts, and the spirit of border closure and securisation inspiring them, have created a hierarchy among migration statuses in terms of rights and entitlements related to labour market (and not only). At the 'top' of the hierarchy are refugees and beneficiaries of subsidiary protection, along with long-term economic migrants, who are endowed with the stronger sets of rights, including those related to accessing the labour market and workers' rights and benefits. In other words, refugees, beneficiaries of subsidiary protection and long-term economic migrants are those that go closer to nationals concerning fundamental rights (except political rights that fall beyond the field of analysis of SIRIUS research) and integration into labour markets. At the bottom of the hierarchy are asylum seekers, and below them irregular migrants, who can count on a much stricter set of rights and entitlements. When rights and entitlements are mentioned here with reference to labour market we do not refer only to accessing work but also services that are conducive to employment such as skills and educational attainment recognition, but also access to vocational education and training.

However, worth noticing here the size of the migrant population to which each status applies. In fact, among the SIRIUS countries -except in Denmark and in Switzerland- just a minority of people applying for protection are recognised a status conferring access to a broad set of rights, including those connected to labour market participation, and even a smaller number is recognised the Geneva convention status (asylum and subsidiary protection). Hence, most of the non-EU migrants that de facto stay in a given host country remain at the 'bottom' of the rights' hierarchy. We should therefore appreciate the agency capacity of migrants, refugees, and asylum applicants that manage to find an occupation, despite such a strict and sometimes even obstructive legal framework.

Concerning the other aspect, the diversity of norms among States, a paradigmatic case we have analysed concerns asylum seekers access to the labour market. Among the seven

SIRIUS countries we have met with seven different jurisdictions: asylum seekers are entitled to work since lodging their application in Greece, after 60 days from it in Italy, after 3 months in Finland (if possessing valid travel documents) and Switzerland, after 5 months in Finland if without valid documents, after 6 months in Denmark, after 1 year in the Czech Republic, and after one year in the UK although only if they meet the criteria set by an ad hoc list (the Shortage Occupation List). Such a diversity of treatment and rights among Member States points to the deep lack of harmonisation and coordination on such a relevant issue (even though EU legislation is consistent in this policy domain, as well illustrated in the EU report), and it is also indicative of the different capacity of economic and social integration among member states. Given that evidence suggests that the sooner an immigrant or asylum seeker/refugee enters the labour market, the quicker and smoother her/his integration path would be, obviously apart from the case of Greece and Italy, and apart from other reasons obstructing employment such as language proficiency, the large although discrepant time-limits do not work as enabling factors.

The convergence we notice among European countries—and in particular among the SIRIUS studied ones—is a convergence towards limiting access and long-term settlement to all categories of non-EU migrants, including those who used to be preserved from stricter limitations, such as asylum seekers and refugees. Widening the access to the more right-encompassing and therefore ‘integrative’ statuses or enlarging rights and benefits connected with other statuses would represent a way to make legal systems enabling rather than obstructing labour market integration of the different types of migrants. It would also avoid the creation of a migrant winner-looser divide, which would be at odds with any human rights, and solidarity based understanding of what a modern society should be.

Acknowledgements

The present integrated report represents the collective work of the following SIRIUS national teams: the Glasgow Caledonian University (UK report), Université de Genève (Swiss report), European University Institute (EU report), Università di Firenze (Italian report), Univerzita Karlova (Czech report), Roskilde Universitet (Danish report), Jyväskylän Yliopisto (Finnish report), National Technical University of Athens (Greek report). The activities of this Work Package (WP2) have been coordinated by the University of Florence. We are indebted to all the authors for the competence and enthusiasm with which they fulfilled their tasks and for their collaborative approach.

Each report underwent a double review process: the internal review by national teams, and the review by the WP leader. We are grateful to all national experts that collaborated enhancing the quality of the SIRIUS research. Finally, UNIFI is indebted to professor Simone Baglioni, SIRIUS coordinator, for his learned review of the comparative report and to Dr. Francesca Calò, SIRIUS project manager, without her support the overall task of preparing this delivery would have been much heavier.

About the project

Despite the polarization in public and policy debates generated by the post-2014 fluxes of refugees, asylum applicants and migrants, European countries need to work out an evidence-based way to deal with migration and asylum rather than a prejudice-based one. **SIRIUS**, Skills and Integration of Migrants, Refugees and Asylum Applicants in European Labour Markets, builds on a multi-dimensional conceptual framework in which host country or political-institutional, societal and individual-related conditions function either as enablers or as barriers to migrants', refugees' and asylum seekers' integration via the labour market.

SIRIUS has three main objectives: A descriptive objective: To provide systematic evidence on post-2014 migrants, refugees and asylum applicants especially women and young people and their potential for labour market employment and, more broadly, social integration. An explanatory objective: To advance knowledge on the complexity of labour market integration for post-2014 migrants, refugees and asylum applicants, and to explore their integration potential by looking into their spatial distribution (in relation to the distribution of labour demand across the labour market), while taking into account labour market characteristics and needs in different country and socio-economic contexts. A prescriptive objective: To advance a theoretical framework for an inclusive integration agenda, outlining an optimal mix of policy pathways for labour market integration including concrete steps that Member States and other European countries along with the EU can take to ensure that migrant-integration policies and the broader system of workforce development, training, and employment programmes support new arrivals' access to decent work opportunities and working conditions.

SIRIUS has a mixed methods approach and innovative dissemination plan involving online priority action networks, film essays, festival, job fair and an applied game along with scientific and policy dialogue workshops and conferences.

Part I – Comparative Report

1. Legal Barriers and Enablers: a comparative approach

Veronica Federico – University of Florence

1.1 Introduction

The Work Package 2 (WP2) “Legal barriers and enablers” discusses the legal and institutional framework of migration and asylum, integrated with critical insights on the cultural and socio-economic environment of the SIRIUS countries. Through the analysis of the different legal status, rights, and entitlements of migrants, refugees and asylum applicants, WP2 reveals differences and similarities in the legal regimes concerning migrants, refugees and asylum seekers and discusses how, and to what extent, the legal and institutional regimes of the Czech Republic, Denmark, Finland, Greece, Italy, Switzerland and the UK play as enablers or barriers to effective capacity of those countries to integrate migrants, refugees and asylum applicants into their labour market. Specific research is devoted to the scrutiny of the legal framework of the European Union.

To fulfil WP2’ main objective, the work has been organised in three principal streams of activities: (1) gathering and critically analysing information on the political, legal and institutional context of migration governance, and illustrating national cases through country reports, and the EU framework legislation in the EU report;; (2) comparing the national case-studies and discussing the outcome in a comparative report; and (3) retrieving and systematizing a number of indicators available in the most relevant databases in order to create an ad hoc dataset on socio-economic, cultural, political and legal indicators on migration covering all SIRIUS countries.

Deliverable D2.2 is the product of the first two streams of activities. In compliance with the Grant agreement, the University of Florence team (UNIFI) drafted the WP2 national report guidelines, which were discussed in the kick-off meeting in Bruxelles (12-13 February 2018), then reviewed by UNIFI and circulated among all partners, and finally submitted to the European Commission as Milestone MS2. Once national chapters drafted, they underwent a double peer review process, the first by national teams and national experts, and the second by UNIFI.

In order to offer a comprehensive presentation of the legal and institutional framework of migration and labour market access and integration in the different countries, the national and the EU reports tend to follow the same structure: (1) an overview and discussion of national (and European) data and statistics on migration (the research project covers the period 2014-2016 but previous years and 2017 data have been presented as well when available to contextualise the analysis); (2) the discussion of the national socio-economic, political and cultural hosting societies, with special attention devoted to the migration history of the country; (3) the analysis of the constitutional organization of the state (in particular of the federal/regional/decentralised structure of the system of government that defines the tier of government responsible for the different dimensions of migration governance, and of the

role of the judiciary, that may be relevant for the effective definition and entrenchment of fundamental rights) and of the eventual principles on asylum and labour (with special attention to landmark constitutional case-law in these fields); (4) the analysis of the legislative and institutional framework in the fields of immigration and asylum; (5) the critical discussion of the framework legislation on migrants, refugees and asylum applicants' integration in the labour market; (6) a critical assessment of the compliance with the standards developed and crystallized at the supranational level.

Data for this research was collected through a combination of desk research of various sources (e.g. legal and policy documents, national and EU case law, research reports and scientific literature), information requests to relevant institutions, and semi-structured interviews with legal and policy experts and academics held from March until May 2018. The multidisciplinary approach of WP2 emerges from the structure, the content and the findings presented in the report: building on the analysis of the constitutional and legal framework, the research has enlarged the spectrum of the analysis and integrated the social sciences perspective with the discussion of data, societies' cultural and social traits.

The seven countries examined – the Czech Republic, Denmark, Finland, Greece, Italy, Switzerland, and the UK – provide us with a variety of important insights into migrants, refugees, and asylum applicants (MRAA) integration in the labour markets. Despite the harmonisation effort at the EU level, the variety among SIRIUS countries persist. This is not only due to these countries having been affected differently by the migration flows, so that numbers of refugees, beneficiaries of subsidiary and humanitarian protection and of asylum applicants on the one hand, and of economic migrants, on the other, largely differ. These countries also have different legal and political systems which impact on how authorities, citizens and organizations reacted to the migration inflows. The SIRIUS countries present a very diverse constitutional organization of the State, and in fact they were explicitly selected to encompass a wide spectrum of variability, while remaining in the general frame of contemporary Western liberal democracies. They mirror the diversity of European landscapes in terms of the structure of the State, the system of government, rights enforcement and litigation, the political system and the cultural and socio-economic background, while allowing, at the same time, for systematic comparison. The cleavage between the sole country belonging to the common law system (the UK) and the others, characterized by civil law systems, is nuanced and, at the same time, enriched and made more complex by the intertwining with other cleavages: centralized versus federal States; symmetric versus asymmetric decentralization (or devolution); constitutional monarchies versus republics; parliamentary (in various typologies) versus semi-presidential and directorial systems of government; diffuse versus centralized (with the presence of a Constitutional Court) systems of judicial review. All countries except Switzerland are EU member states, and so they relate to the EU legal framework. Moreover, very diverse mechanisms of rights enforcement and litigation among the SIRIUS countries add further complexity to the analysis of the constitutional and legal framework.

Diversity is the keyword also in the discussion of the political systems, counting bi-party systems, pluri-party systems, even-multiparty systems, fragmented party systems; as well as in the discussion of the democratic model: majoritarian and consensus democracies, semi-direct and consociational ones. The socio-economic background of the countries is no less so in terms of diversity, as the Czech Republic, Denmark, Finland, Greece, Italy, Switzerland, and the UK are characterized by the whole range of variation, with Greece

representing the most deprived economic landscape and Denmark and Switzerland holding the most affluent positions. Diversity describes also the labour markets, as it has been discussed in Work Package 1. *Sufficit* here to recall that the unemployment rate in the Czech Republic, United Kingdom and Switzerland in 2016 was under 5%, well below the EU28 average of 8.6 percent, while Finland had an unemployment level close to the EU28 average, whereas Italy and Greece are above EU28 average: 11,7% in Italy and 23.6% in Greece.

Building on a brief discussion of the most relevant data on migration in the SIRIUS countries against the backdrop of EU28 data, the report discusses first the legal and institutional framework of migration, differentiating between protection legislation and institutional governance on the one hand, and “ordinary” migration on the other, but focusing on the former, where the most crucial reforms took place in the last few years. Subsequently, some reflections on MRAA integration on the labour markets are elaborated, distinguishing between legal provisions deemed to grant access to the labour markets and those that ensure MRAA to work as nationals do. Finally, in the concluding remarks the report develops four streams of considerations in terms of barriers and enablers to MRAA integration in SIRIUS labour markets.

1.2 Migrants, Refugees and Asylum Applicants in SIRIUS countries

According to the United Nations, the estimated number of international migrants worldwide has been constantly increasing since 2000, reaching 258 million in 2017. During the period of 2000-2017, the international migrant stock grew by an average of 2.3 per cent. Nonetheless, despite the increase in absolute numbers, the share of international migrants in proportion to the world’s population has remained relatively stable in the last four decades, at around 2.2 to 3.5 per cent (UN 2017).

On the contrary, what have changed are the international migration trends, so that the number of migrants as a fraction of the population residing in high-income countries rose from 9.6% in 2000 to 14% in 2017, and high-income countries host 64%, or nearly 165 million, of the total number of international migrants worldwide. If we consider solely the 85 million migrants added to the overall number since 2000, 64 million were directed and are now hosted in a high-income country. Of the 250 million international migrants, about 26 million are refugees or asylum seekers, that is slightly more than 10%. However, refugees and asylum seekers have different migrations trends: 84% of them are hosted in low and middle-income countries (UN 2017).

Interesting for SIRIUS research, in 2017, about 74% of all international migrants were between 20 and 64 years of age, that is of working age, compared to 57% of the global population. This means that, on the one hand, in principle, a net inflow of migrants decreases the proportion of inactive population (children and elderly people), and, on the other hand, integration starts from gaining a place in the labour markets, as these are the *loci* where the larger shares of migrants begin a new economic and social life in the host country.

A final *caveat* is required before entering into the discussion of SIRIUS countries’ data: in European public debates, the words “international migrants” (either asylum seekers or

economic migrants) often refer to extra-European people moving to Europe in search for protection or a better future. Yet, data clearly show that in 2017 Europe was the second region of origin for the largest numbers of international migrants (61 million), after Asia (106 million). Africa comes just fourth, with little more than half of European migrants, “only” 36 million (Latin America and Caribbean come third with 38 million). Thus, as we will see, talking about migrants in Europe often means talking about other EU member states nationals.

On 1 January 2017, the estimated total population in the EU¹ amounted to approximately 512 million people. As Table 1.1 shows, between 2013 and 2017 the EU population increased by more than 6 million people (+1.25%)²

Table 1.1 Population change in the EU, 2013-2017 (million persons)

	Population
2013	505,163,008
2014	507,011,330
2015	508,540,103
2016	510,277,177
2017	511,522,671
Change (2013-2017)	6,359,663

Source: Eurostat

The two components that determine population change are the natural population change – namely the difference between the number of live births and deaths during a given year – and the net migration – namely the difference between the number of immigrants and the number of emigrants. As shown by Table 1.2, in 2015 there has been a natural decrease – namely deaths have outnumbered live births. This means that the positive population change that occurred between 2015 and 2016 (+1,737,074 million) (see Table 1.1) can be attributed to net migration (plus statistical adjustment). Migration is thus a fundamental factor affecting population change in the EU. In particular, as reported by Figure 1.1, since the mid-1980s net migration has increased and from the beginning of the 1990s onwards the value of net migration and statistical adjustment has always been higher than that of natural change. Therefore, during the past three decades net migration has constituted the main driver of population growth. This trend is likely to persist in the future. Indeed, since the baby-boom generation continues to age, the number of deaths is expected to increase. Thus, it is likely that population change will increasingly be affected by net migration (Eurostat 2015).

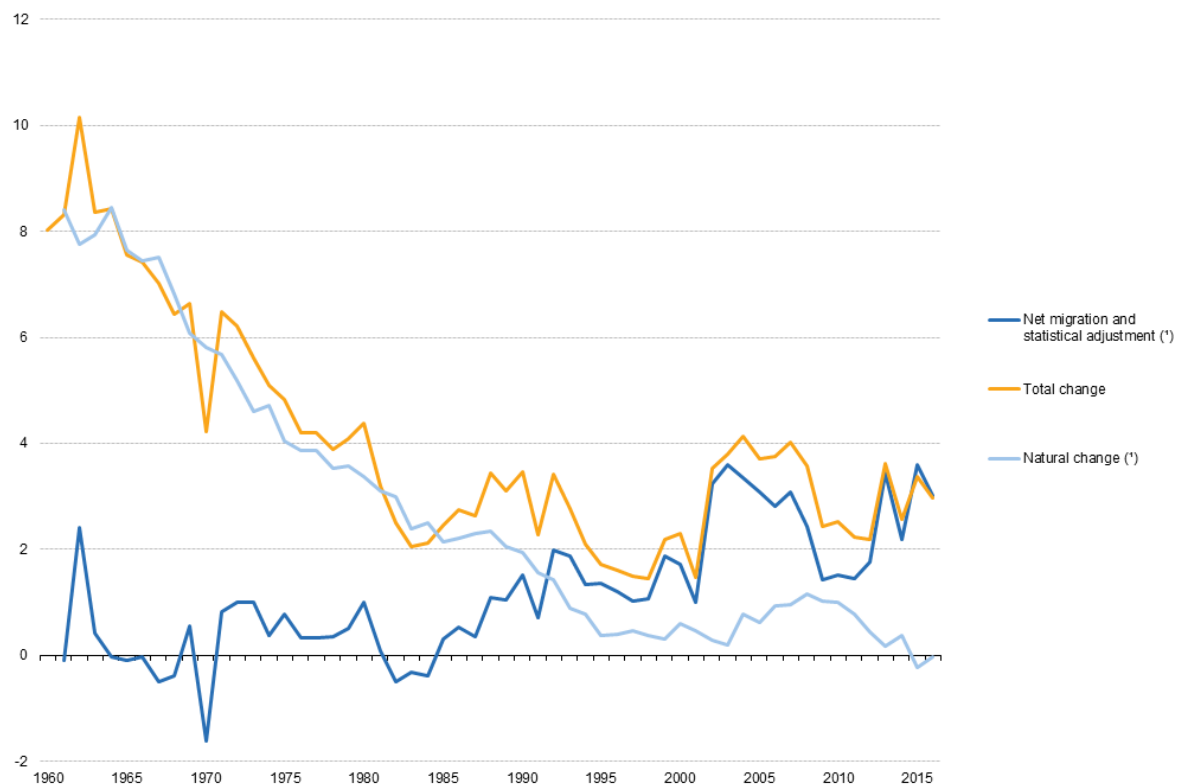
¹ In this section we mainly use Eurostat data integrating them with the Swiss ones when possible. Moreover, even though SIRIUS focuses on 2014-16, often we included in the discussion also 2013 and 2017 data, as to provide a wider timeframe to contextualise the analysis and to make trends clearer.

² Migration data are often affected by problems of comparability, consistency and accuracy. For WP2 analysis, it has been decided to use Eurostat data in this section, for a comparative discussion, whereas country reports are based on national data. This may create further discrepancies, but the two-track strategy tries to combine on the one hand the need for consistency for a cross-country discussion, and, on the other, the need for an explanatory use of data, as the national ones are those that inform public discussion, as well as law and policy-making.

Table 1.2 Population change in the EU, 2013-2016³

	Natural population change	Net migration plus statistical adjustment
2013	87,468	1,760,854
2014	195,700	1,101,159
2015	-117,371	1,854,445
2016	19,626	1,222,979

Source: Eurostat



Note: Excluding French overseas departments up to and including 1997. Breaks in series: 1991, 2000-01, 2008, 2010-12 and 2014-16.
 (*) 1960: not available.
 Source: Eurostat (online data code: demo_gind)

Figure 1.1 Population change by component (annual crude rates) in the EU, 1960-2016 (per 1000 persons)

Source: Eurostat

³ Natural population change and net migration plus statistical adjustment

If immigration flows both from outside the EU and between EU countries are considered, in 2016 a total of around 4.3 million people immigrated to one of the EU Member States, with Germany reporting the largest amount (1,029,852). Among SIRIUS countries, the United Kingdom hosts the largest number (588,993) and Finland the smallest (34,905) (Table 1.3).

Table 1.3 Total number of immigrants in the EU + CH, 2013-2016 (thousands)

	2013	2014	2015	2016
Belgium	120,078	123,158	146,626	123,702
Bulgaria	18,570	26,615	25,223	21,241
Czech Republic	30,124	29,897	29,602	64,083
Denmark	60,312	68,388	78,492	74,383
Germany	692,713	884,893	1,543,848	1,029,852
Estonia	4,109	3,904	15,413	14,822
Ireland	65,539	73,519	80,792	85,185
Greece	57,946	59,013	64,446	116,867
Spain	280,772	305,454	342,114	414,746
France	338,752	340,383	364,221	378,115
Croatia	10,378	10,638	11,706	13,985
Italy	307,454	277,631	280,078	300,823
Cyprus	13,149	9,212	15,183	17,391
Latvia	8,299	10,365	9,479	8,345
Lithuania	22,011	24,294	22,130	20,162
Luxembourg	21,098	22,332	23,803	22,888
Hungary	38,968	54,581	58,344	53,618
Malta	10,897	14,454	16,936	17,051
Netherlands	129,428	145,323	166,872	189,232
Austria	101,866	116,262	166,323	129,509
Poland	220,311	222,275	218,147	208,302
Portugal	17,554	19,516	29,896	29,925
Romania	153,646	136,035	132,795	137,455
Slovenia	13,871	13,846	15,420	16,623
Slovakia	5,149	5,357	6,997	7,686
Finland	31,941	31,507	28,746	34,905
Sweden	115,845	126,966	134,240	163,005
United Kingdom	526,046	631,991	631,452	588,993
EU	3,416,826	3,787,809	4,659,324	4,282,894
Switzerland	160,157	156,282	153,627	149,305

Source: Eurostat

Among the 4.3 million that migrated in the EU in 2016, almost 2 million people (352,597 less than in 2015) were from a non-EU country. Again, Germany reported the largest number of non-EU immigrants (507,034). Among SIRIUS countries, it is once again the UK heading the list (265,390) and Finland having the smallest number (19,638) (Table 1.4). Overall, almost

22 million non-EU nationals are currently living in the EU (4.2 % of total EU population), 2 million more than in 2014. The largest share is recorded in Germany (5,223,701), whereas among SIRIUS countries Italy hosts the largest number (3,509,089) (Table 1.5).

Table 1.4 Number of non-EU immigrants in the EU & in CH, 2013-2016 (thousands)

	2013	2014	2015	2016
Belgium	41,443	41,626	65,808	46,502
Bulgaria	11,984	15,268	12,850	10,610
Czech Republic	10,780	9,386	10,619	29,902
Denmark	19,624	24,482	32,256	28,559
Germany	252,122	372,408	967,539	507,034
Estonia	1,490	1,155	3,656	4,182
Ireland	18,344	20,263	22,524	27,161
Greece	16,313	13,539	17,492	69,497
Spain	157,823	164,369	183,675	235,632
France	127,360	130,394	148,686	158,156
Croatia	3,440	3,470	3,024	4,035
Italy	201,536	180,271	186,522	200,217
Cyprus	4,842	4,022	5,922	6,480
Latvia	2,604	3,511	3,795	2,910
Lithuania	2,357	4,086	2,919	5,175
Luxembourg	4,234	4,447	6,132	5,573
Hungary	10,802	15,451	15,221	13,261
Malta	4,957	6,655	7,530	6,700
Netherlands	40,837	47,785	61,369	76,680
Austria	32,241	39,425	86,469	54,472
Poland	59,035	67,005	103,883	80,054
Portugal	3,737	5,914	8,595	7,845
Romania	13,656	10,880	8,994	12,263
Slovenia	8,342	8,046	9,903	10,371
Slovakia	507	444	665	621
Finland	13,183	13,568	13,108	19,638
Sweden	64,186	70,734	78,158	104,384
United Kingdom	248,464	287,136	278,587	265,390
EU	1,376,243	1,565,740	2,345,901	1,993,304
Switzerland	37,247	35,713	37,382	37,585

Source: Eurostat

Table 1.5 Number of non-EU nationals living in the EU & in CH, 2014-2017 (thousands)

	2014	2015	2016	2017
Belgium	410,127	419,822	450,827	455,108
Bulgaria	40,614	51,246	58,807	64,074
Czech Republic	261,302	272,993	280,907	302,579
Denmark	233,023	244,380	267,192	274,990
Germany	3,826,401	4,055,321	4,840,650	5,223,701
Estonia	187,087	183,276	182,266	179,888
Ireland	121,149	117,015	124,709	138,315
Greece	662,335	623,246	591,693	604,813
Spain	2,685,348	2,505,196	2,482,814	2,485,761
France	2,750,594	2,870,846	2,877,568	3,050,884
Croatia	21,126	24,218	26,678	30,086
Italy	3,479,566	3,521,825	3,508,429	3,509,089
Cyprus	48,465	38,242	30,479	29,738
Latvia	298,616	291,440	282,792	273,333
Lithuania	16,039	16,573	12,311	13,313
Luxembourg	34,482	36,429	39,618	40,795
Hungary	59,335	64,821	71,062	71,414
Malta	13,810	18,894	23,177	24,073
Netherlands	330,382	338,773	367,744	413,401
Austria	539,292	566,370	639,645	673,207
Poland	71,543	76,595	123,926	180,334
Portugal	300,711	294,778	283,500	279,562
Romania	52,529	54,687	58,858	60,600
Slovenia	80,290	84,367	90,169	95,718
Slovakia	12,476	13,064	13,901	14,687
Finland	121,882	127,792	133,136	143,757
Sweden	384,947	416,246	447,664	505,332
United Kingdom	2,425,012	2,434,209	2,436,046	2,444,555
EU-28	19,468,483	19,762,664	20,746,568	21,583,107
Switzerland	663,337	674,074	689,304	716,052

Source: Eurostat

As far as data on the acquisition of citizenship are concerned, in 2016 citizenship was granted to 994,800 people, 208,800 more than in 2011 (Table 1.6). Of these citizenship acquisitions, 863,341 (87% of the total) were granted to non-EU nationals. This datum could open an interesting debate on the role of the EU in effectively opening the frontiers and tearing down legal, economic and maybe also cultural barriers among Member states so that EU migrants in other EU Member states do not need to acquire the nationality of the host country. But this would entail further research and it exceeds by far the scope of the present discussion. The highest number of citizenships was granted by Italy (184,626), followed by Spain (147,306), the United Kingdom (131,796) and France (108,219) (Table 1.7).

Table 1.6 Number of acquisitions of citizenship in the EU, 2013-2016 (thousand)

	2013	2014	2015	2016
EU-28	981,000	889,100	841,200	994,800

Source: Eurostat

Table 1.7 Number of acquisitions of citizenship in the EU & CH granted to non-EU nationals, 2013-2016 (thousand)

	2013	2014	2015	2016
Belgium	26,310	13,118	19,842	23,057
Bulgaria	756	888	1,261	1,585
Czech Republic	1,820	4,033	2,216	3,559
Denmark	1,466	4,347	10,505	13,419
Germany	86,499	82,408	81,463	79,621
Estonia	1,328	1,610	897	1,769
Ireland	22,494	18,162	10,418	6,711
Greece	28,462	20,248	13,315	32,329
Spain	222,312	201,798	111,857	147,306
France	85,607	94,819	102,650	108,219
Croatia	866	622	1,072	3,703
Italy	93,538	120,455	158,885	184,626
Cyprus	877	1,526	2,697	3,399
Latvia	3,041	2,076	1,838	1,662
Lithuania	106	125	126	136
Luxembourg	479	579	649	653
Hungary	1,845	2,035	1,122	1,044
Malta	227	146	522	1,239
Netherlands	22,891	28,808	25,978	25,807
Austria	6,258	6,335	7,011	7,173
Poland	3,374	3,816	3,697	3,460
Portugal	23,413	20,168	19,647	24,181
Romania	2,768	2,388	2,598	4,514
Slovenia	1,154	1,002	1,185	1,230
Slovakia	151	178	202	278
Finland	7,799	7,143	6,728	7,941
Sweden	37,770	30,528	34,034	42,924
United Kingdom	189,668	115,392	104,792	131,796
EU	873,279	784,753	727,207	863,341
Switzerland	17,590	15,770	18,443	19,740

Source: Eurostat

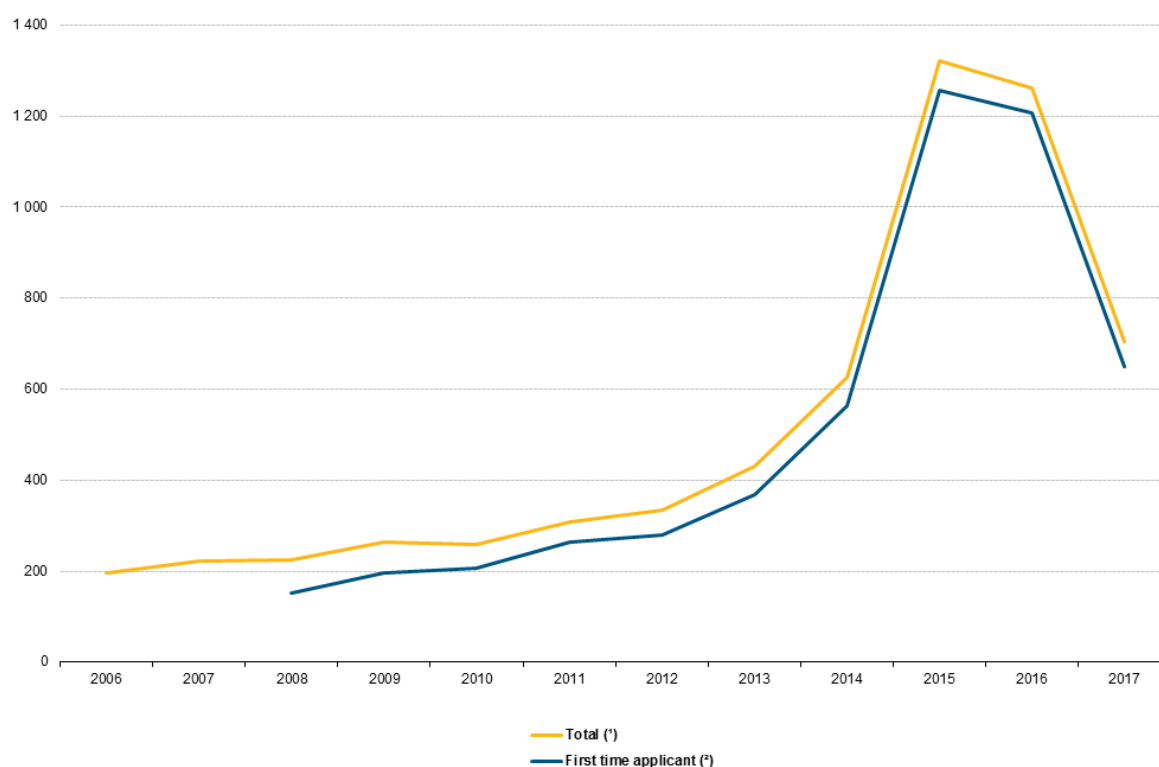
We now turn to statistics on asylum. In 2017, the total number of asylum applications from non-EU nationals amounted to 705,705, namely to approximately half the number registered in 2015 and 2016, when applications amounted to 1,322,825 and 1,260,910 respectively

(Table 1.8). Therefore, as also Figure 1.2 clearly displays, asylum applications reached their peaks in 2015 and 2016, when the EU has witnessed an unprecedented influx of refugees and migrants, most of them fleeing from war in Syria.

Table 1.8 Number of asylum applicants (non-EU) in the EU, 2013-2017

	Asylum applicants	First time asylum applicants
2013	431,090	367,825
2014	626,960	562,680
2015	1,322,825	1,257,030
2016	1,260,910	1,206,120
2017	705,705	650,970

Source: Eurostat



(*) 2006 and 2007: EU-27 and extra-EU-27.

(*) 2006 and 2007: not available.

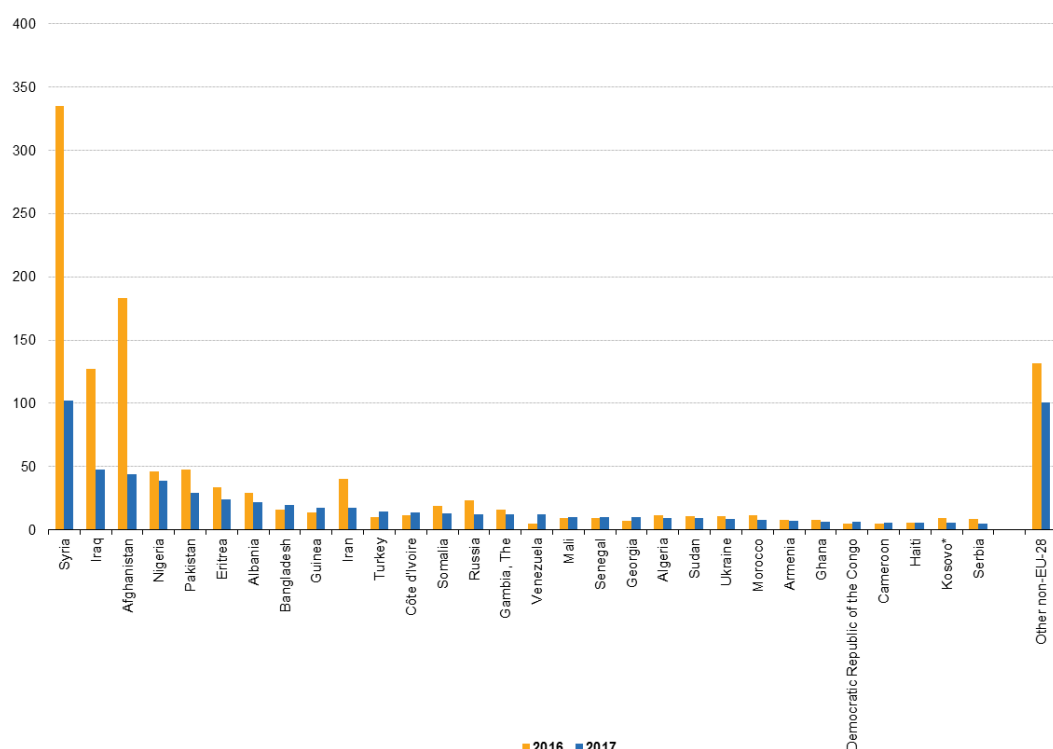
Source: Eurostat (online data codes: migr_asyctz and migr_asyappctza)

Figure 1.2 Asylum applications (non-EU) in the EU, 2006–2017 (thousands)

Source: Eurostat

As for the country of origin of first time asylum seekers, as shown by Figure 2.1, in 2016 most of them were from Syria, Afghanistan and Iraq. As Table 1.9, Syria has been the main

country of origin of first time asylum seekers in the EU since 2013, though the number of Syrian first-time applicants fell from 362,730 in 2015 to 102,415 in 2017.



(*) This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence

Source: Eurostat (online data code: migr_asyappctza)

Figure 1.3 Countries of citizenship of (non-EU) asylum seekers in the EU, 2016 and 2017 (thousands of first time applicants)

Source: Eurostat

Table 1.9 Number of first time asylum applicants from Afghanistan, Iraq and Syria, 2013-2017 (thousands)

	Afghanistan	Iraq	Syria
2013	20,715	8,110	45,820
2014	37,855	14,845	119,000
2015	178,305	121,590	362,730
2016	182,970	127,095	334,865
2017	43,760	47,560	102,415

Source: Eurostat

As for the distribution by sex of first time asylum applicants, Table 1.10 displays that males have always constituted the majority during the time period under consideration. In 2017, the share of males amounted to 434,945, while the female share to 215,770.

Table 1.10 Share of males and females (non-EU) first time asylum applicants, 2013-2017 (thousands)

	Males	Females
2013	234,600	119,580
2014	398,350	164,155
2015	911,465	344,315
2016	815,025	389,165
2017	434,945	215,770

Source: Eurostat

Data on first instance decisions on applications show that the highest number of decisions was issued in 2016 (1,106,405) (Table 1.11). Out of the total number of decisions issued, 672,900 (61%) had a positive outcome. Moreover, 366,485 (54%) positive decisions resulted in grants of refugee status, 48,505 (7%) granted an authorisation to stay for humanitarian reasons, and 257,915 (38%) granted subsidiary protection. It is important to note that, while refugee status and subsidiary protection status are defined by EU law, humanitarian status is specific to national legislations. As for 2017, the total number of first instance decisions dropped to 973,415. Out of these decisions, 442,925 (46%) were positive, of which 222,105 (50%) granted refugee status.

Table 1.11 First instance decisions on (non-EU) asylum applications, 2013-2017 (thousands)

	Refugee status	Humanitarian status	Subsidiarity protection status	Total positive	Rejected	Total
2013	49,670	12,505	45,435	107,610	206,625	314,235
2014	95,380	15,710	56,295	167,385	199,470	366,850
2015	229,460	22,225	55,890	307,575	289,005	596,580
2016	366,485	48,505	257,915	672,900	433,505	1,106,405
2017	222,105	62,950	157,870	442,925	530,490	973,415

Source: Eurostat

If only final decisions – namely those decisions taken by administrative or judicial bodies in appeal or in review and which are no longer subject to remedy – are considered, in 2017 267,040 decisions were issued, of which 95,310 (36%) were positive (Table 1.12). In particular, 49,590 (52%) granted refugee status, 14,580 (15%) granted humanitarian status, and 31,140 (33%) resulted in grants of subsidiary protection. As displayed by Figure 1.4, the largest amount of both first instance and final decisions was issued by Germany.

Table 1.12 Final decisions on (non-EU) asylum applications, 2013-2017 (thousands)

	Refugee status	Humanitarian status	Subsidiary protection status	Total positive	Rejected	Total
2013	14,845	4,480	5,350	24,675	109,965	134,640
2014	15,990	4,795	5,415	26,195	109,835	136,030
2015	18,110	3,650	4,640	26,400	152,900	179,300
2016	23,660	10,700	8,275	42,630	188,355	230,985
2017	49,590	14,580	31,140	95,310	171,730	267,040

Source: Eurostat

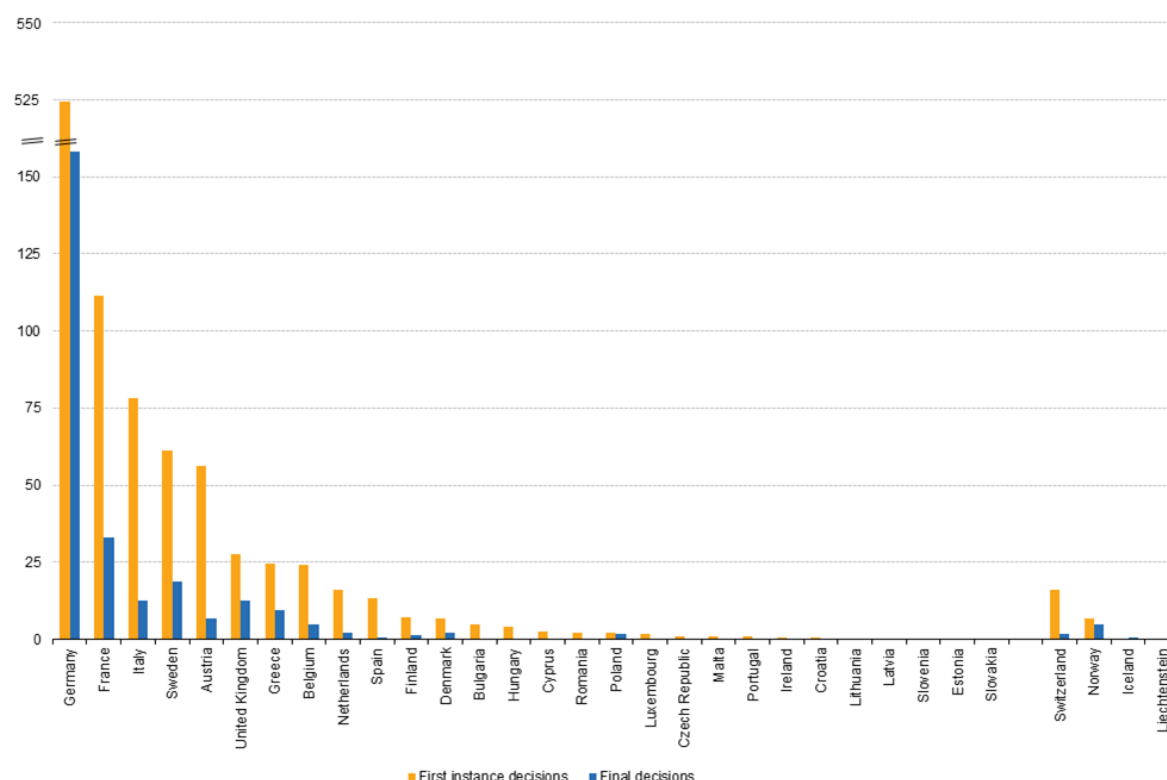


Figure 1.4 Number of first instance and final decisions on (non-EU) asylum applications, 2017 (thousands)

Source: Eurostat

It is interesting to focus on 2016 data to highlight the success rate of international protection application in SIRIUS countries, as shown in Table 1.13. Less than 4 applications out of 10 are successful in Greece, whereas almost 7 are in Denmark. Switzerland is by far closer to Denmark, followed by Italy. Finland, The Czech Republic and the UK lie in between. People applying in Denmark and in Greece might have different characteristics and different life paths, but such a wide gap in the success rate is likely to depend also from different legal provisions and interpretation of protection standards.

Table 1.13 Success rate of international protection application in 2016

	Number of applications	Positive decisions	Success rate
Czech Republic	1.300	435	33,5%
Denmark	10.410	7.125	68%
Greece	11.455	2.715	23,7%
Finland	20.750	7.070	34%
Italy	89.875	35.405	39,3%
Switzerland	22.580	13.185	58,3%
UK	30.915	9.935	32%

Source: Eurostat

Differences among SIRIUS countries become even wider when taking into consideration solely the positive decisions granting Geneva convention status (i.e. either asylum or subsidiary protection) and not considering national forms of temporary protection, as illustrated for 2016 in Table 1.14. Figures drop dramatically and vary from 41% of Denmark to 5,5% of Italy. The country where the difference is minimal is Greece, where national forms of temporary protection are residual (as it will be illustrated in the country report), and the maximum difference is Italy, where in 2016 were granted almost exclusively humanitarian protection status. Obviously, not all status are entitled with the same rights and benefits. Differences may be important and they heavily impact on people's lives, as we will discuss in the following sections.

Table 1.14 Success rate of Geneva convention status in 2016 (first instance)

	Number of applications	Positive decisions	Success rate
Czech Republic	1.300	140	10%
Denmark	10.410	4275	41%
Greece	11.455	2.470	21,5%
Finland	20.750	4.320	20,8%
Italy	89.875	4.800	5,3%
Switzerland	22.580	5.850	25,9%
UK	30.915	8.410	27,2%

Source: SIRIUS calculations on Eurostat data

With regards to resident permits – namely those authorisations issued by a country's authorities allowing non-EU nationals to legally stay on its territory –, data are available by reason for issuing the permits (Table 1.15). In 2016, almost 3.4 million permits were released. The majority of them were issued for other reasons (1,031,128, 31%) – that encompass stays without the right to work or international protection –, followed by employment reasons (854,715, 25%), family reasons (780,429, 23%) and education-related reasons (694,287, 21%).

Table 1.15 First residence permits issued by reason, 2013-2017 (thousands)

	Family	Education	Employment	Other	Total
2013	671,572	463,943	534,214	686,722	2,356,451
2014	680,388	476,845	573,321	595,423	2,325,977
2015	760,231	525,858	707,632	628,301	2,622,022
2016	780,429	694,287	854,715	1,031,128	3,360,559

Source: Eurostat

Finally, statistics on the enforcement of immigration legislation are also available (Table 1.16). These data refer to non-EU citizens (or third country nationals) who were refused entry at the EU external borders, third country nationals found to be illegally present on the territory of an EU country, and third country nationals who were ordered to leave the territory of an EU country. The highest number of non-EU citizens found to be illegally present on the territory of an EU country was recorded in 2015 (2,154,675). The number of non-EU citizens who were refused entry into the EU reached its peak in 2017 (439,505). As for those non-EU nationals who were ordered to leave the territory of one of the EU Member States, the highest number was registered in 2015 (533,395). In the same year, 196,190 third country nationals were returned to their country of origin outside the EU. In 2016, this number increased and 228,625 non-EU citizens were returned to their country.

Table 1.16 Non-EU citizens subject to the enforcement of immigration legislation, 2013-2017 (thousands)

	Refused entry	Illegally present	Ordered to leave	Returned to a non-EU country
2013	326,320	452,270	430,450	184,765
2014	286,805	672,215	470,080	170,415
2015	297,860	2,154,675	533,395	196,190
2016	388,280	983,860	493,785	228,625
2017	439,505	618,780	516,115	188,905

Source: Eurostat

Against these numbers, other data are very relevant for the analysis of the legal barriers and enablers for migrant, refugees and asylum seekers integration in European labour markets. They deal with European citizens' perceptions of inflows of foreign population as a positive or negative social factor. These perceptions may be disconnected from real data, but they do

count for both law and policy-making. Figure 1.5 illustrates the attitude of SIRIUS EU member states towards the immigration of people outside the EU in the latest Eurobarometer survey in November 2017 (Switzerland data are unfortunately missing here). Positive attitudes prime over negative ones solely in the UK, whereas in all other countries negative perceptions prevail, with the Czech Republic presenting the most negative attitudes.

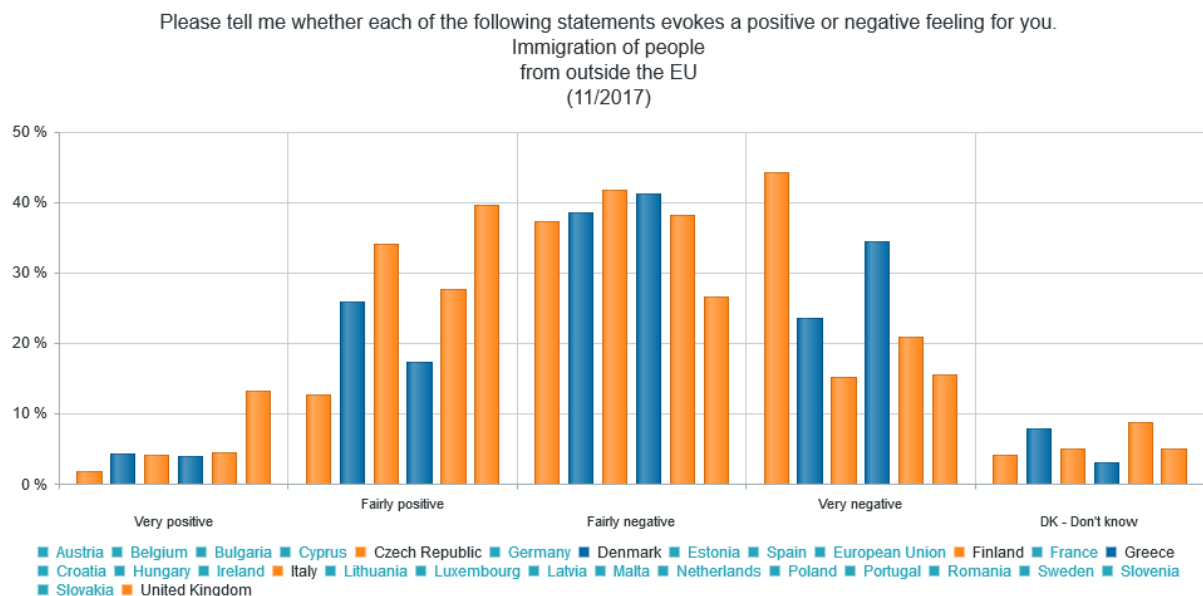


Figure 1.5 Europeans attitude towards the immigration of people outside the EU (2017)

Source: Eurobarometer 87

1.3 History hardly teaches something

“Thirty days' sailing by steamship/ we've landed so far as in America,/ we've landed so far as in America./ We didn't find there straw or hay,/ we used to sleep on the bare ground,/ we took our rest like animals do,/ we took our rest like animals do./ America happy, America beautiful/ everyone calls it America our sister,/ everyone calls it America our sister,/ [...] America is long, America is wide/ and all encircled with mountains and plains/ and by the industry of us Italians/ we've built up villages and towns/ and by the industry of us Italians/ we've built up villages and towns./ America happy, America beautiful/ everyone calls it America our sister,/ America happy, America beautiful.....”

The lyrics of this traditional Italian song date back the late XIX century and describe the long journey of Italian emigrants towards Latin America, and the hard conditions of newly arrived there. Very similar traditional songs, images or narratives are part of a number of SIRIUS countries' recent past. The Czech Republic, Finland and Greece share with Italy the fact of having been, till recently, emigration country. By contrast Denmark, Switzerland and the UK have a tradition of host country, even though they experienced quite diverse immigration flows.

If the migration history of the country has an impact on the structure and demography of contemporary SIRIUS countries' societies (in Switzerland foreign residents represent almost 25% of the whole population), its influence on contemporary legislative and policy framework is rather meaningless. As we will discuss in the rest of this report and as it will clearly emerge from the country analysis, among the SIRIUS countries there is a convergence, surely boosted also by the "thickening" of EU legislation in this field, towards a severe tightening of migration laws and of their implementation through public policies and law interpretation in courts.

Thus, country studies encourage thinking that emigration countries have not learnt from the experience of their emigrants to be a safe and welcoming place for people in search for protection and opportunities, but they have not even learnt from the countries that hosted their nationals to "profit" from immigrants that might contribute building new "villages and towns" with their industry.

Moreover, from the analysis of the case-studies there are no evidences that the existence of minorities (national, linguistic, religious) and their accommodation in the legal and institutional systems through legal pluralism or strong equality measures has played a role in opening the systems to new-comers. However, more specific research on this topic would be required to draw significant and robust correlation between the presence of measures to accommodate minorities and a more "migrant friendly" legal system.

1.4 Reflecting on the legal and institutional framework

All SIRIUS countries are signatories of the 1951 Geneva Convention, some signed already in 1952 as Denmark, others only in 1993 as the Czech Republic (after the post-cold war transition), and all of them are bound also by the 1967 Protocol, whereas only some of them are bound by the recast Common European Asylum System. Switzerland, even though not obliged to do so, decided to participate to the European Asylum Support Office (EASO) in March 2014 (with the agreement coming into effect on 1 March 2016). Furthermore, all the EU SIRIUS countries are bound by the EU *acquis* aimed at the creation of a Common European Asylum System, with the exception of the UK, which only abides by the first phase of the Common European Asylum System, namely the 'Refugee Qualification Directive'⁴, the 'Asylum Procedure Directive'⁵ and the 'Asylum Reception Conditions Directive'⁶, while opted out from the 'Asylum Recast Package'. Finally, most of the SIRIUS countries, such as Denmark, Finland and Italy have incorporated the European Convention of Human Rights, together with its principle of protection against torture or inhuman or degrading treatments (art. 3 ECHR), in their Constitutions, which should offer a shelter to all migrants, and not solely to people escaping from persecution.

⁴ 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.

⁵ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

The principle of asylum is explicitly entrenched, to different degrees, only in the Constitution of Italy and of the Czech Republic. However, the lack of constitutional entrenchment has not prevented all other SIRIUS countries to recognise and enforce the right to international protection and to grant, at least *de jure*, a number of rights, from fundamental freedoms to socio-economic rights to migrants, asylum seekers and refugees (see National Frameworks of MRAA's Rights and Benefits in the SIRIUS country reports, later in this document).

Nonetheless, despite these national, regional and international obligations, an overall restrictive approach can be observed, and physical and procedural measures to prevent and restraining the access to the international protection conflate with an overall downgrading of foreigners' entitlements and a growing complexity of the legal and institutional framework that makes it difficult for foreigners to navigate it.

1.4.1 Narrowing the access to SIRIUS countries

A common trend in all SIRIUS countries consists in the narrowing of the access to both international protection and legal entry for working reasons. This is pursued through physical restrictions (migrant pushbacks –either at the borders as all SIRIUS countries experienced or at the sea – as it is the case in Italy and Greece-; increasing borders securisation and border controls - best exemplified by the Swiss case-; physical conditions on application lodging –for example since 2002 asylum seekers can only lodge an application on Danish soil), and, less blatantly but more widely and effectively, through procedural restrictions that take the form of reforms of both international protection procedures (hotspots, “safe third countries”, admissibility test; accelerated asylum procedures; border procedures, suppression of levels of guarantees), and the reduction of working permits and foreign workers' quota.

The effect of restraining the access to the international protection has been reached through the implementation of tools and procedures already designed within the EU asylum *acquis*. Specifically, domestic legislations could rely on procedures provided by the recast Asylum Procedures Directive⁷ (hereinafter also APD) with the aim to streamline the refugee status determination (hereinafter also RSD) process, namely: “a) an “admissibility procedure” which does not examine the merit of asylum claims protection needs, for asylum seekers who may be the responsibility of another country or have lodged repetitive claims⁸; b) an “accelerated procedure” to examine protection needs of ostensibly unfounded or security-related cases⁹; and c) a “border procedure” to speedily conduct admissibility or examine the merits under an accelerated procedure at borders or in transit zones¹⁰” (see EU report and AIDA, 2016: 8). Intended to inject greater efficiency in the management of migration and, particularly, in the RSD process, legal and procedural devices examined in detail in the country reports in practice seem to serve also objectives of containment and control of flows, ending up with curtailing the access to the international procedure (Zetter, 2007:181).

⁷ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60. The Directive recast Council Directive 2005/85/EC

⁸ Articles 33-34 recast Asylum Procedures Directive.

⁹ Article 31(8) recast Asylum Procedures Directive

¹⁰ Article 43 recast Asylum Procedures Directive.

On this legal basis, extensive reforms have involved the legal frameworks of SIRIUS EU countries, reshaping domestic asylum proceedings. However, asylum policies and legislations meant to speed up the procedure, thus having an enabler role for Asylum seekers as determining migrants' status usually entails more rights (see National Frameworks of MRAA's Rights and Benefits) often turned out to be more oriented toward deterrence than efficiency, and thus turning into barriers.

The "admissibility procedure", under which EU Member States should be allowed to not examine asylum applications when they fall under the responsibility of another country, finds in the "safe third country" (art. 33(2) lett. c and art. 38 recast APD)¹¹ notion the most recurrent ground for inadmissibility, and in Greece, the concrete application of the notion of "safe third country" played a formidable role within the implementation of the so-called EU-Turkey Statement¹². Indeed, asylum applicants entering to Greece after 20 March 2016 saw their applications dismissed as inadmissible and were removed to Turkey, considered as a "safe third country", under the application of art. 38 of the recast APD (see Greek country report).

Another clear example is once again provided by Greece, where a "fast-track border procedure" has been introduced by art. 60(4) of the Law No. 4375/2016¹³, in close connection to the EU-Turkey statement implementation. Indeed, this procedure applies to all asylum seekers arrived after 20 March 2016 who lodged their applications in Lesbos, Chios, Samos, Leros and Kos, where hotspots have been established. Despite the requirement of art. 43 of the recast APD¹⁴, the "fast-track border procedure" may results in the disregarding of applicants' guarantees. The procedure is characterised by very short deadlines, with a time limits of 2 weeks to conclude the entire process. The right to appeal, already hampered by a 5-days deadline, has been *de facto* jeopardized by a Police Circular issued in April 2017. Following the circular, applicants who lodge an appeal against a negative first instance decision are deprived of the possibility to benefit in the future from the Assisted Voluntary Return and Reintegration (AVRR) provided by the International Organisation for Migration (IOM). (AIDA, Country Report: Greece, 2018: 66 ss.).

1.4.1.1 The Hotspots

Without doubts, hotspots can be regarded as one of the main tools which fall under the strategy of controlling the access to the State and - in this case - more broadly, to Europe.

¹¹ According to art. 38 of the recast APD, the concept of "safe third country" revolves, among the others, around two main conditions: a) a requisite level of protection in the third country to ascertain based on specific criteria such as the possibility "to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention" (art. 38 (1) e); b) specific requirements for the States, such as the provision of "rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country" (art. 38 (2) a). For further details and a comparative analysis of these conditions across EU countries see AIDA, 2016: 19 - 21.

¹² European Council, EU-Turkey statement, 18 March 2016, available at: <http://goo.gl/reBVQt>.

¹³ Art. 60 of the Law No. 4375/2016 regulates also another type of 'border procedure', which diverges from the regular procedure only for shortened procedural time-frames (AIDA, 2017: 66).

¹⁴ art. 43(1) of the recast APD states "Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on: (a) the admissibility of an application, pursuant to Article 33, made at such locations; and/or (b) the substance of an application in a procedure pursuant to Article 31(8)".

Firstly presented in the European Agenda on Migration¹⁵, the “hotspot approach” was meant to assist frontline member States facing an exceptional migratory pressure at the EU external border. Hotspots identified at the same time an approach and a geographical space, that is facilities where the European Asylum Support Office, Frontex and Europol “work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants” (European Commission 2015:6).

As pointed out by the EU Court of Auditors, the hotspots have been proven effective in improving the operations of identification, registration and fingerprinting. Considering the whole 2016, Italy could count for a 97% registration and fingerprinting rate (while it was 60% in the first half of 2015). Greece witnessed a significant increasing of the rate of registration of incoming migrants as well, with 78% of migrants registered and fingerprinted, compared to the 8% registration rate of September 2015. Thereby, “in this respect the hotspot approach contributed towards an improved management of the migration flows” (European Court of auditors 2017:38-39). However, as the EU Court of Auditors further observes, the effectiveness of the hotspot approach is strictly linked to the proper functioning of the follow-up process, namely asylum, relocation and return. Nonetheless, in this regard, as noted by the EU Court of auditors “implementation of these follow-up procedures is often slow and subject to various bottlenecks, which can have repercussions on the functioning of the hotspots” (European Court of auditors 2017:7; 40-44).

More specifically, in Greece, hotspots’ state of play has been dramatically affected by the EU-Turkey statement¹⁶, aimed at curtailing the migratory flow to the Aegean Sea. Indeed, initially meant to channel newly-arrived migrants into procedures of international protection or return, after March 2016 hotspots were substantially transformed into closed centres of detention aimed at implementing returns to Turkey (Guild, Costello. Moreno-Lax 2017: 48). This has reportedly led to collective expulsion and push-backs (ECRE, 2016: 14 ss.). Harshly criticized by national and international organizations (UNHCR, 2017), migrants’ detention has been substituted by an order of blanket geographical restriction imposed to newly arrivals, which are obliged to reside in the identification and reception centre for indefinite period of time (AIDA, Country Report: Greece, 2018: 127). Meanwhile, running short of staff, the Greek Asylum service experienced high difficulties to handle the high number of asylum applications, significantly raised after 20 March. As a result, in September 2016, “the majority of migrants who arrived after 20 March had still not had the opportunity to lodge an asylum application” (European Court of auditors 2017: 41).

In Italy, according to the Consolidated Law on Immigration, undocumented foreigners intercepted within the Italian territory succoured during rescue operations in the sea are conducted to hotspots, where they are fingerprinted and receive information on the international protection, the relocation and the assisted voluntary return¹⁷. However, in 2016,

¹⁵ European Commission, Communication from the commission to the European Parliament, the Council, the European Economic Social Committee and the Committee of the regions, a European Agenda on Migration 13.05.2015, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

¹⁶ EU-Turkey Statement, 18 March 2016, available at:

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

¹⁷ Art. 10 ter of the Consolidated Law on migration, as introduced by the Law Decree. No. 13/2017, art. 17.

less than one third of incoming migrants were identified in hotspots, while others were registered in the other ports of arrival. Undoubtedly, the crucial part of the identification procedure is the pre-registration, where migrants are qualified as “undocumented” or “asylum seekers”. In this regard, there have been allegations of migrants who have been delayed or denied access to the international protection (UNHCR, 2017: 1). In 2016, the Italian government has put in place a comprehensive training program for police authorities responsible to receive asylum applications. Nonetheless, eminent voices have reported practices such as “profiling on grounds of nationality, treating arrivals from non-relocation countries directly as ‘non-refugees’, selectively (mis-)informing them about their options and swiftly expelling them” (Guild, Costello, Moreno-Lax 2017: 47).

Hotspots have been firstly presented in the 2015 EU Agenda on Migration as a measure to relieve frontline Member States, helping them to cope with the unprecedented number of arrivals. Hotspots were also conceived as an operational support to the relocation program, aimed - this too - at reducing the pressure on frontline Member States by redistributing persons in ‘clear need of protection’ among EU Member States (EU Commission, 2015: 4, 6). However, the hotspots approach has failed to reduce the migratory pressure, while its contribution to relocation has remained far below expectations (Guild, Costello, Moreno-Lax 2017: 50-51). Moreover, due to the limited outflow of incoming migrants, combined with a growing number of arrivals and long waiting time for identification and registration, hotspots have been reportedly affected by a ‘bottleneck effect’ (EU Court of Auditors, 2017).

1.4.2 Legal and institutional fragmentation

SIRIUS countries’ legal and institutional frameworks on migration and asylum are extremely difficult to navigate (see Annexes I and II of country reports). This is mainly the result of a complex and rapidly changing legislation and of an institutional landscape scattered in a multiplicity of actors and along different layers of government.

In each country, the national legislation has been changed continuously and not necessarily coherently. In the UK, an impressive number of Acts of Parliament regulating immigration issues have been approved in the last 20 years; in Denmark, in between 2002 and 2016 immigration laws changed 68 times and permanent residency regulations 10 times; in Italy, the Consolidated Law on Immigration is the result of multiple, fragmentary normative stratifications and this jeopardises internal consistency and effectiveness. The very same complexity and rapid evolution is also shown in the legal framework of Finland, of the Czech Republic and in Greece.

To add further complexity, in most countries the acts of primary legislation only provide for the general framework, but immigration issues are *de facto* regulated in detail and implemented by a congeries of acts of secondary legislation (by-laws, regulations, ministerial circulars, administrative rules, etc). This is the case, for example, of the fees introduced in Finland for family reunification, that were imposed by a decision of the Ministry of Interior in 2016. Such complexity does not simply make the legal framework more complex, but reduces the level of democratic control over migration legislation. In fact, secondary acts are rarely subjected to Parliamentary debate. Hence, in the lack of an adequate parliamentary control, once again, a wide discretion, concentrating into the hands of the executive both decision-making and implementation, features the concrete regulation of important migration issues. In Italy, this tendency finds multiple evidence. The numerous readmission

agreements signed by the country represent a good example of this approach (which is mirrored at the EU level by the EU-Turkey agreement). The “code of conduct for the NGOs operating in the rescue of migrants at sea”, which aims at regulating the search and rescue operations in the Mediterranean, recently issued by the Italian Ministry of the Interior in consultation with the European Commission, echoes this approach.

This fragmentation is further exacerbated by the multiplicity of entities involved in the “multilevel” and subsidiary-based management of migration flows. All tiers of government (from the national to the local) are involved with different, often overlapping, competences in Denmark, Finland, Italy, the UK and Switzerland. In addition, the management of migration often involves other relevant actors, such as the third sector (as it is the case in Denmark, Finland, Italy, The UK, for example) and private companies (as it happens in the UK), the Courts and also EU and UN agencies, as it is the case for Greece. Given the fact that adequate mechanisms of coordination often lack, this multiplicity of actors ends up undermining the uniformity of practices and often results in substandard services and uncertain rights. The certainty and predictability of the law, which are fundamental pillars of the rule of law that should characterise contemporary democracies, are therefore in question.

In the UK, legislative powers surrounding immigration and asylum are reserved to the central government. However, the governments of Scotland, Wales and Northern Ireland hold legislative powers in fields which are relevant to immigration and asylum, such as housing, health care, education, children’s services and social welfare. The fuzzy distinction among national and subnational legislative competences on immigration and asylum has led to cases of conflicts between the central UK Government and Scotland, which traditionally embraces a more inclusive and safeguarding approach compared to the rest of the UK. Conflicts among the central and regional tiers of government have also arisen in Italy. Here, the 2001 constitutional reform allocated migration management to the exclusive competence of the central government. However, Regions kept playing a decisive role in the field, retaining legislative competences in healthcare, education, children services and social welfare. As a result, undocumented migrants may currently enjoy of an ampler range of rights in Regions such as Tuscany, Apulia and Campania, though different standards of protection currently apply to undocumented third-country nationals across the country. This phenomenon is even more emphasized in Switzerland, where cantonal authorities have a great flexibility regarding the interpretation of the law in hardship cases (a Swiss form of protection derogating from the admission requirements of asylum), that allows cantons to interpret selecting criteria more or less strictly.

Nonetheless, it would be an oversimplification to say that the multiplication of government layers and the interconnection between the public and the private sector has been only detrimental to a smooth and adequate management of migration. Instead, in some cases, it gave a unique contribution to the delivery of services and social innovation. Both in Italy and the UK, the vivid intervention of NGOs attempts to close the many loopholes of the reception system, which fails to adequately meet the asylum applicants’ needs of protection. The NGOs’ activities encompass the provision of essential goods and basic services, such as emergency healthcare, legal advice and support toward integration, including training and language classes. In Switzerland, the “Operation Papyrus” implemented by the canton of Geneva brought the regularization of more than 1000 people. No doubts, these examples are to be considered enablers.

Finally, also Courts take part to the management of migration. Judges have been proved crucial, in the large majority of SIRIUS countries, on the one hand, to grant remedies to those whose rights have been violated and, on the other hand, to provide sound interpretation of legal provisions. In Italy, the Constitutional Court has represented a fundamental anchor in promoting the legal entitlements of foreigners and in preventing standards downgrading. In this regard, a Constitutional Court's consolidated case-law maintained foreigners' entitlement to social rights, such as the right to health and healthcare services (decision No. 269/2010) and to "essential social benefits", such as invalidity benefits for mobility, blindness and deafness, regardless of the length of residence. In the Czech Republic, the Constitutional Court elaborated a consistent case-law on MRAs fundamental and social rights, and recently in an interesting ruling, it granted people holding international protection status from other EU member states the same rights as people granted international protection by the Czech State, and thus forbade extradition to the country of origin (*II ÚS 1260/17*). In Finland, very interestingly, the Supreme Court ruled that asylum applications of couples shall be processed and decided together, as not to breach fundamental rights to private and family life (27.6.2018/3126). These are all positive advancement of guarantee and protection. Yet, those who cannot reach the judicial arena might be excluded from fundamental rights and unlawfully discriminated, and judges' intervention may result in a further fragmentation and personalization of rights' entitlement and guarantee, increasing migrant's legal uncertainty.

1.4.3 Rights downsizing

The curtailment of migrants' rights and legal guarantees may be considered as the secondary effect of reforms conceived for other purposes (i.e. expedite the RSD process). However, in certain cases, the reduction of rights is openly pursued as the very aim of asylum policies and legislations on the basis of clear deterrence concerns. Since the early 2010s, as it will be discussed in the country reports and highlighted in Part III tables, several SIRIUS countries have enacted legal and policy interventions eroding rights and benefits, especially of asylum applicants, and economic migrants. The right to family unit is one of the most severely downsized, as illustrated in Table 1.17.

Table 1.17 Right to family unity- SIRIUS Countries

	Asylum Applicants	Refugees	Subs. Prot	National form of temporary protection	Econ. migrants, short term	Econ. migrants - long term	Undocum migrants
Czech Rep.	YES	YES	YES	YES	YES	YES	YES
Denmark	NO	YES	NO	NO	YES	YES	NO
Finland	NO	YES (econ. cond.)	YES (econ. cond.)	--	YES (econ. Cond.)	YES (econ. cond.)	NO
Greece	NO	YES	NO	NO	NO	YES - After two years	NO
Italy	NO	Yes	YES	NO	NO	YES (econ. & housing cond.)	NO
Switzerland	NO (but if family arrives together they can apply together)	YES	YES, after 3 years and econ. & housing cond.	YES, after 3 years and econ. & housing cond.	YES (econ. & housing cond.)	YES	NO
UK	May be included in the application	YES	YES	YES	YES	YES	No with exceptions

Source: Sirius MRAA tables

Except for people having a refugee status, that have a generalised right to family unity, in the large majority of the other status in the majority of SIRIUS countries there are denials or limitations (in terms of time constraints of economic and housing conditions) that attempt to the *right* to respect for one's private and family life (as art. 8 of the European Convention of Human Rights states).

For Asylum applicants, pending the procedure, applicants are not allowed to apply for family reunification, given the temporary nature of their status, except in the Czech Republic. In the UK and Switzerland, a way of providing some degree of guarantee is ensured by the possibility of having a sort of “family” application. Yet, as the waiting time for the conclusion of the asylum process may last long, the fundamental right of family unity may be severely hindered for long time.

1.5 Integration in the labour markets?

There is broad consensus that whether and how migrants, asylum applicants and refugees integrate into the labour market, and the time it takes for them to do so, will determine not only their long-term impact on European economies, but their prospects for integrating socially and economically into European societies and therefore their capacity to contribute to the overall wellbeing of the continent. The UNHCR experience reveals that early integration would be highly desirable for at least three reasons: it is the most effective, efficient and meaningful method of facilitating this target group’s integration into European societies; it can alleviate pressure on the public purse; it can help address current and future labour market shortages in the EU (UNHCR 2013).

When considering the refugees, asylum applicants and migrants integration in the labour markets there are at least two dimensions to be considered: access to the labour market (translated into a rights language means the right to work) with its corollaries (recognition of qualifications, vocational training, etc.), and non-discriminatory working conditions (that translated into a rights language means right to both formal and substantial equality) and its corollaries of benefits and duties deriving from the fact of being part of the labour market.

1.5.1 Accessing the labour market

Accessing the labour market means being entitled to work. In principle, allowing asylum applicants, refugees and migrants to work should be a “win-win” game: it empowers MRAAs in both economic and socio-cultural terms, and it benefits hosting societies that can profit from skills, energy, competences, and also taxes produced by MRAAs activities (Kahanec and Zimmermann 2009, 2016; Zimmermann, 2014; Blau and Mackie 2016). But jobs have become a scarce resource in a number of countries, especially as a consequence of the recent economic crisis, and migrants (with no distinctions between refugees and economic migrants) are sometimes perceived and portrayed in public discourses as “job stealers” from native-born workers.

Yet, limits on the right to access national labour markets pre-existed the economic crisis. For example, the Italian Constitution recognises only to citizens the right to work (art. 4), which means that Italian workers have a preferential access to the labour market and that before applying for a sponsorship of a foreign worker, employees have to prove that there is no workforce available in the country. The same happens, for example, in Switzerland, where according to the “precedence provision” of the Federal Act on Foreign Nationals, third country workers can be admitted in the Swiss labour market only if no Swiss citizen or foreign national with a long-term residence permits or EU/EFTA national can be recruited. Also in Finland, law No. 1218/2013 provided for the “availability test” to grant to Finnish and EU/EEA citizens priority in entering employment.

There are different limitations on the right to access the labour market: limitations based on the nationality of the worker (as it is the case of the aforementioned limits in Italy, Switzerland and Finland); limitations based on the foreign legal status (as it will be illustrated in Table 1.18) and limitations based on workers' skills and qualifications, as it will be discussed further down.

Table 1.18 Right to work- SIRIUS Countries

	Asylum Applicants	Refugees	Subs. Prot	National form of temporary protection	Econ. migrants, short term	Econ. migrants - long term	Undocum migrants
Czech Rep.	YES after 1 year stay	YES	YES	YES	YES if the worker has a contract prior to entering the country	YES	NO
Denmark	YES after 6 months stay	YES	YES	YES	YES but with a work permit	YES but with a work permit	NO
Finland	YES after 3 months stay if they have travel documents/5 months without them	YES	YES	--	YES but with a work permit	YES but with a work permit	NO
Greece	YES since the application	YES	YES	--	YES subject to the labour market's demand	YES	NO
Italy	YES after 60 days from application of refugee status	YES	YES	YES	YES subject to the labour market's demand	YES subject to the labour market's demand	NO – but if they work, they have certain labour rights
Switzerland	YES, after 3 months if the labour market allows	YES	YES.	YES, after request for work permit	YES if allowed by the conditions for permit to stay	YES	NO – but if they work, they have certain labour rights
UK	YES, after 12 months but only in Shortage Occupation List	YES	YES	YES	NO	YES with specific visa	NO

In principle, in no SIRIUS country refugees, beneficiaries of subsidiary protection and of other forms of national protection are limited in accessing the labour market. This means that *de jure* they can work, if they wish so, and they do not need further work permits. However, this does not mean that, *de facto*, they do access national labour markets, as they may experience other forms of constraint as language barriers, spatial barriers (they may live in areas where there are no available suitable vacancies, for example, and their effective mobility in the country may be more limited than nationals experience), and qualifications and skills barriers (their qualifications may not be recognised in the host countries and the skills required for specific tasks may be different from those they used to in their country of origin). A more critical insight into *de facto* barriers and enablers to access the labour markets will be provided into subsequent SIRIUS research that will build on WP1 and 2 findings. Moreover, as it will be studied in WP3, specific policies may target the gap between the formal and the substantial right to work, i.e. mitigating the *de facto* barriers to enter the national labour markets.

Asylum applicants experience time limitations, except in Greece, where they are allowed to as soon as they lodge their asylum application. Obviously, the same considerations on the *de facto* barriers persist in this case, once asylum applicants are allowed to enter the labour market. Yet, it is interesting to have a graphical representation of the time barriers to asylum applicants' entry into national labour markets (Figure 1.6), as it may be considered, with a number of other indicators, a good indicator of the country's openness to MRAAs integration, given that evidence suggest that the sooner an immigrant or asylum seeker/refugee enters the labour market, the quicker and smoother her/his integration path would be. Moreover, Figure 1.6 is self-explaining for what it concerns harmonisation at the EU level: seven jurisdictions present 7 different time-limits for asylum applicants to access domestic labour markets. No surprise that people try to choose the best possible opportunity.

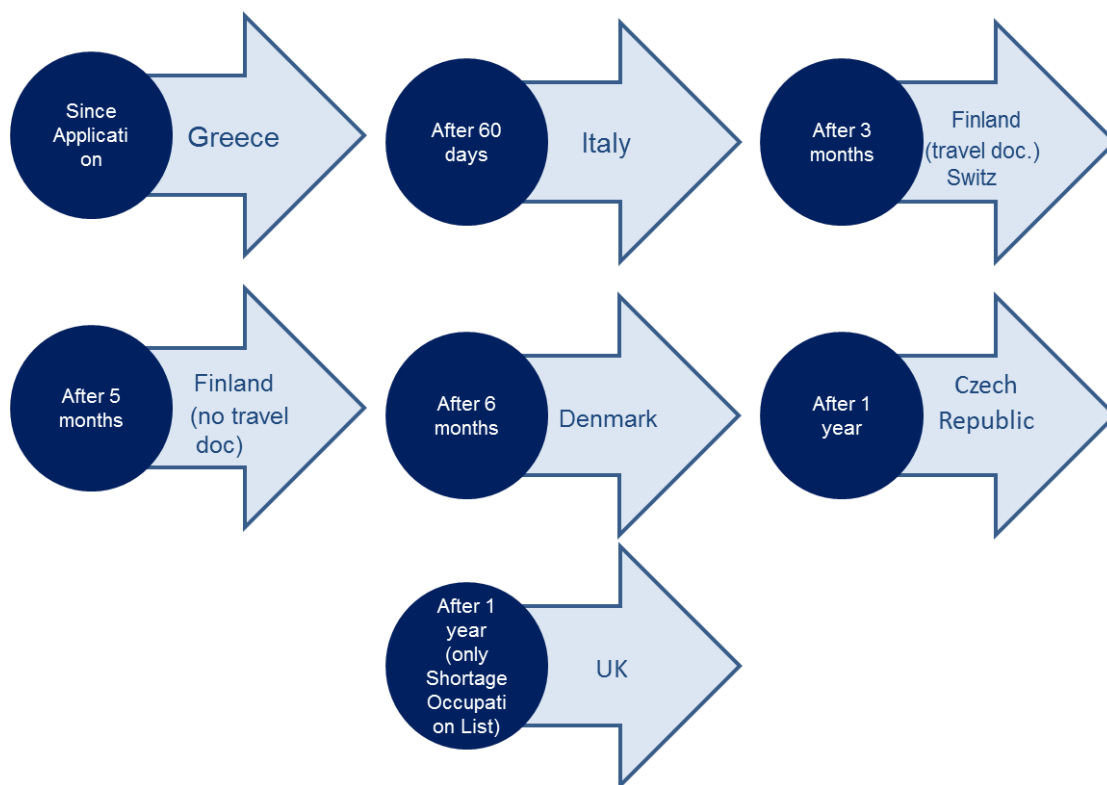


Figure 1.6 Time limit to Asylum applicants' access to national labour markets

More complex the position of economic migrants, that is people that leave their countries exactly to work. No SIRIUS country opens its labour market unconditionally to foreign workers. Work permits are required in every country for extra EU citizens, and the possibility of working in SIRIUS countries depend on the triangulation between national labours' needs (determined on a yearly base by specific policy documents issued either by the Ministry of Interior or by the Ministry of Labour (as in Italy for example), or on a case-by case approach, as it is the case in Finland) and migrants' skills and qualifications. Curiously, but not surprisingly, limitations do not apply to highly specialised workers, that benefit from special conditions of entry, quite often beyond the implementation of the Blue Card directive 2009/50/EC. In Denmark, for example, a number of job schemes aim at attracting high skilled labour that facilitate quick and facilitated employment. In Finland they receive their residence permits straight from the Finnish Immigration Service without having to go through the whole process, in the UK Tier 1 visas are reserved for people with exceptional talents in the field of science, humanity, engineering, medicine, digital technology and art, or if they aim to invest at least £2 million in the UK.

Interestingly, in some jurisdictions the position of undocumented migrants is not fully overlooked. In Greece, for example, a 2016 circular opens the access to the labour market in specific sectors (agriculture, domestic work, animal husbandry) to immigrants in between legality and illegality. In Italy, no formal access to undocumented migrant exists, but the law offers some forms of protection to them, even though, as illustrated in the Italian country report, the recent law to contrast labour exploitation and exploitative labour intermediation could provide more instruments to fight against informal employment.

1.5.2 Working as nationals do

Once entered the labour markets, all SIRIUS countries enforce the principles of equality in working conditions and benefits, and of non-discrimination. In the field of non-discrimination, a number of European directives (*Directive 2000/43/EC against discrimination on grounds of race and ethnic origin*; *Directive 2006/54/EC on equal opportunities and equal treatment of women and men in employment and occupation*; *Directive 2000/78/EC against discrimination at work on grounds of religion or belief, disability, age or sexual orientation*) have played a crucial role in harmonizing legislation in the different jurisdictions.

Yet, the formal absence of discriminations at the workplace and unequal working conditions does not naturally lead MRAs working as nationals do, as they may encounter significant barriers that elude legal provisions focusing on formal equality (everyone is equal before the law) and on non-discrimination, because they pertain to the sphere of substantial equality, as subsequent work packages' research will highlight and analyse. However, we focus here on several aspects related to the concrete enforcement of the right to work, sometimes incorporated on framework immigration legislation, sometimes provided for in specific regulations, that contribute to overcome substantial barriers.

Needless to spend additional words to argue on the linguistic barrier. And in fact, all SIRIUS jurisdictions acknowledge the importance of language skills as first step to integration into the host society. Nonetheless, not everywhere language courses are offered for free - this is one of the field where larger space is left for the collaboration with non-state entities, both non-profit and for profit companies. More interestingly, attending language courses is rarely a duty. The duty exists solely in those countries where attending civic integration programs is compulsory: in Denmark for all MRAs except economic migrants-but it is required to apply for permanent residency; in Finland for refugees, beneficiaries of subsidiary protection as well as for short and long staying economic migrants some welfare benefits, such as unemployment benefits are conditional on participation in integration programs that include language courses – and this de facto creates a duty, whereas it is not compulsory for asylum applicants; in Italy language proficiency is requested for both integration agreements (for refugees and beneficiaries of humanitarian protection) and integration programs (for long-staying economic migrants), whereas for asylum applicants some reception centres impose a duty on language course attendance. No duty exists in the Czech Republic, Greece, Switzerland (except for short time economic migrants in those cantons where signing an integration convention is required to access social assistance), and in the UK.

The recognition of qualifications and competences is crucial to work as nationals do, yet the majority of SIRIUS countries lag behind what substantial equality would entail in this field, as Table 1.19 clearly shows. Just Denmark, Switzerland and Italy (with the exception of asylum seekers) are open to the recognition of foreign titles and qualifications –even though in Italy the recognition process may be long and complex, substantially jeopardising legitimate expectations of migrants. The UK recognises exclusively qualifications from selected countries of origin, on the basis of a common table of conversion. In the Czech Republic and in Greece the formal equalisation of qualifications is substantially undermined by the requirement of the official certificates issued by competent authorities. Of course, this may be considered fair towards economic migrants, who, in principle, can plan their migration trajectory, whereas people fleeing from their country will hardly bring proofs of their diplomas, and requiring them to national authorities once in a host country sounds

undoubtedly odd. In between lies Finland, where not diplomas but proof of citizenship is required, as to allow for fair conversions. Noticeably, in all countries where this is allowed, MRAAs have to apply for the recognition, in the most favourable of cases, as in Finland, this is done during the application process.

Table 1.19 Recognition of qualifications/skills

	Asylum Applicants	Refugees	Subs. Prot	National form of temporary protection	Econ. migrants, short term	Econ. migrants - long term	Undocum migrants
Czech Rep.	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	NO
Denmark	NO	YES	YES	YES	YES	YES	NO
Finland	YES but with proof of citizenship	YES but with proof of citizenship	YES but with proof of citizenship	--	YES but with proof of citizenship	YES but with proof of citizenship	NO
Greece	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	--	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	NO
Italy	YES upon evidence of formal qualifications	YES	YES	YES	YES	YES	NO
Switzerland	YES	YES	YES.	YES	YES	YES	NOs
UK	Depending from country of origin and/or qualification	Depending from country of origin and/or qualification	Depending from country of origin and/or qualification	Depending from country of origin and/or qualification	Depending from country of origin and/or qualification	Depending from country of origin and/or qualifications	NO

Source: MRAA tables

Another relevant field we can take into consideration when discussing whether foreigners work as national do is vocational training. Vocational education and training is a relevant

component of current active labour market policies, useful to ease young people access to the labour market. It is equally a useful tool to facilitate migrants, refugees and asylum applicants' integration in their host societies (Flisi, Meroni and Vera-Toscano 2016). Vocational qualifications can be particularly valuable for skilled refugees and economic migrants to find adequate employment, while for illiterate and poorly educated refugees (and migrants), long-term vocational programmes could be a strategic target for investment. But do SIRIUS countries offer access to vocational training to foreigners?

In Greece and Finland all migrants, except undocumented people, can access vocational training on the same base as Greek and Finnish citizens. In Italy and in Switzerland in addition to the undocumented migrant exception, asylum applicants may be restrained from vocational training either because there are no courses available in the reception centres (Italian case), or because the courses length exceed the temporary permit to stay of Asylum applicants. In Denmark, only refugees, beneficiaries of subsidiary protection and of temporary protection status (the Danish national form of temporary protection) are entitled to vocational training, from which economic migrants are excluded, whereas in the UK, even though not formally entitled to by specific legal provisions, vocational training is open to refugees, beneficiaries of subsidiary protection and of humanitarian protection (the British form of national temporary protection), by contrast, asylum applicants are excluded, but not in Scotland, where sub-national legislation opens the door of vocational training also to asylum applicants. Economic migrants may benefit from these measures, but with limits due to the kind of visa they hold. Finally, in the Czech Republic neither asylum applicants nor short term economic migrants nor beneficiaries of national forms of temporary protection can access vocational training, that is open to refugees, beneficiaries of subsidiary protection and long-term economic migrants, who, in case of unemployment, can participate in the retraining schemes available to nationals.

Unemployment benefits are another important element for understanding legal barriers and enablers for MRSA integration in the labour market. Switzerland and Italy are the countries that present less restrictions in accessing unemployment benefits: all are entitled as nationals do, except undocumented migrants and asylum applicants not allowed to work in Switzerland, and asylum applicants after two years of contributions- which is a tricky condition to be imposed on people with a temporary status. In Denmark, only refugees and long-term economic migrants holding a permanent residency permit can receive unemployment benefits. In Finland unemployment benefits are made conditional upon permanent residency in Finland (this entails that neither applicants nor short-time economic migrants are included), in Greece refugees, beneficiaries of subsidiary protection and long-term economic migrants can access the Unemployment register and receive all benefits and services as Greek citizens do, whereas asylum seekers can do so only after having completed the application procedure. Not very different the situation in the UK, where refugees and beneficiaries of subsidiary and humanitarian protections are equalised to British citizens, but long term economic migrants must be granted the indefinite leave to remain in the UK. Similarly, in the Czech Republic solely refugees, beneficiaries of subsidiary protection and long-term economic migrants are entitled to.

Finally, we will have a comparative assessment on the right to self-employment and to work in the public sector, as illustrated in Table 1.20.

Table 1.20 Right to self-employment and to work in the public sector

		Asylum Applicants	Refugees	Subs. Prot	National form of temporary protection	Econ. migrants, short term	Econ. migrants - long term	Undoc migrants
CZ.	Self empl.	NO	YES	YES	NO	YES	YES	NO
	Public sector	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	NO
DK	Self empl.	NO	YES	NO	NO	NO	NO (unless permanent resident)	NO
	Public sector	NO	YES	YES	YES	YES	YES	NO
Fin	Self empl.	YES after 3 months & with valid documents	YES	YES	--	YES	YES	NO
	Public sector	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	--	YES (with exceptions)	YES (with exceptions)	NO

Gr	Self empl.	NO	YES	YES	--	NO	YES	NO
	Public sector	NO	NO	NO	NO	NO	NO	NO
It	Self empl.	YES	YES	YES	YES	NO	YES	NO
	Public sector	NO	YES exceptions) (with	YES exceptions) (with	YES exceptions) (with	NO	YES only EU (with exceptions)	NO
CH	Self empl	NO	YES exceptions) (with	YES exceptions) (with	YES exceptions) (with	YES exceptions) (with	YES	NO
	Public sector	YES exceptions) (with	YES exceptions) (with	YES exceptions) (with	YES exceptions) (with	YES exceptions) (with	YES exceptions) (with	NO
UK	Self empl.	NO	YES	YES	YES	YES (with limits)	YES (with specific visa	NO
	Public sector	NO (only if in Tier 2 shortage list)	YES	YES	YES	NO	YES	NO

Source: Sirius MRAAs tables

Except in Greece, where the public sector is fully reserved to nationals only, in all jurisdictions refugees can both work as public officers (with exceptions as some crucial – apex or extremely delicate in terms of national security, for example- positions may be reserved to nationals) and as self-employers, and the same applies to long-term economic migrants. The strongest restrictions exist for asylum applicants and short-term economic migrants, which may be explained by the precariousness of the status for the formers and by the time element for the latter.

Considering all the variables described so far, not all foreign workers can enjoy the very same rights and benefits as national workers. They may be excluded from certain positions because they are reserved to nationals, or because their qualifications and skills are not recognised, or not fully recognised, or because they do not speak the language fluently enough, or because they have limited access to vocational training. Lowering the barriers that prevent MRAAs to work as nationals do would release important energies and capacities that could positively contribute to host societies economic growth, social well-being and peaceful coexistence.

1.6 More barriers than enablers? Concluding remarks

Migrants, refugees and asylum applicants occupy a central position in public and political debates – needless to emphasize that the “migration issue” was the object of the headlines of all SIRIUS countries’ media at least once a fortnight, if not more frequently, in the past five years and much of the political tensions at the EU level have been stemming from this topic. MRAAs represent an asset for European ageing societies and labour demanding economies, as WP1 findings have shown; and they have become central also in the functioning of contemporary European societies, as without their contribution, for example in the domestic work and in the care services, social structures would have been very different (Ambrosini, 2013). Yet, when we focus on their legal status we realise how their centrality is at odds with their peripheral, and often precarious, position in terms of substantial rights and entitlements.

The comparative analysis of their right to be legally recognised a status (and subsequently a permit to stay) in SIRIUS countries on the one hand, and to have a number of other rights stemming from their status -first of all the right to work and the right to do it as nationals do- on the other, demonstrates the legal marginalization of MRAAs in European jurisdictions, despite narratives of inclusiveness. Interestingly, scholars describe this phenomenon as “production of legal peripheries or places in which law as discursively represented and law lived are fundamentally at odds” (Chouinard, 2001:187). Similarly to spatial and geographical peripheries, legal ones may have a detrimental effect on the well-being of both people populating, physically and metaphorically, the peripheries and those populating the “centres”. Analysing how the frontiers between centres and peripheries are being built and consolidated is one of the *foci* of the SIRIUS research, to point out possible strategies to empower MRAAs and to advance those rights aiming at social inclusion and participation in the same spaces of life as nationals do.

The first, already known but cutting, finding emerging from the analysis of the status quo of MRAAs related legislation and of their rights and entitlements in the policy-domain of labour

in SIRIUS jurisdictions is the deep unevenness existing among countries. On the one hand, this is obvious and legitimate: there is no proper Europeanization of asylum policy and law, and immigration and asylum remain one of those domains in which states are reluctant to devolve their authority to supranational jurisdictions. Despite the numerous limitations to national sovereignty brought in by EU membership, the crucial state prerogative of modern, post-Westphalian, statehood, that is the decision about who should be admitted in the state territory and with which entitlements, still holds when non-EU nationals and asylum seekers are at stake. More specifically, the EU fundamental principle of non-discrimination in the labour markets is at odds with the reality of MRAAs because of both their differentiated legal statuses (as not all legal statuses give access to the same rights) and the different approaches that countries adopt concerning each migrant status. On the other hand, this lack of homogeneity among countries makes it difficult for people, both foreign workers and employers, to understand who has the right to do what, when, how and where in Europe. Moreover, legal uncertainty favours secondary movements, i.e. MRAAs moving from one host country to another in search for better life and working conditions (Moret, Baglioni and Efionayi 2006), which is one of the phenomena the Dublin Convention in 1990 and the Dublin Regulations II and III aim to avoid. In turn, this makes the overall migration management more complex and difficult and it can provide arguments for political and social entrepreneurs willing to capitalise on anti-migration attitudes. In sum, the lack of homogeneity among EU member states about the rights associated to specific categories of migrants constitutes a barrier for MRAAs integration in labour markets and societies, even though sometimes it may create comparative advantages for determined people or categories of people in given situations.

The second observation pertains the complexity of the legal frameworks. In all SIRIUS countries, the legal framework on migration and asylum is extremely difficult to navigate. This is mainly the result of a complex and rapidly changing legislation and of an institutional landscape scattered in a multiplicity of actors at different levels of government (from supranational to local). Instead of reducing complexity, recent measures undertaken in several SIRIUS countries have privileged celerity at the detriment of rights enforcement. And legal statuses do not equalise in terms of rights and benefits, so that being recognised as refugee makes a difference in terms of general fundamental rights (we have examined the right to family right) and in terms of both accessing the labour market and working as nationals do. Complexity is definitely not an enabler.

The third observation pertains to the narrowing of the access to both international protection and legal entry for working reasons in SIRIUS countries. Erecting physical and legal barriers to foreigners' entry is coupled with current discourses on migration which tend to consider "protection seekers", "economic migrants" and "illegal migrants" as the same type of subjects. Relying on these narratives, which question, for example, the sincerity of asylum claims, restrictive asylum policies are enacted. Moreover, this restrictive trend is further exacerbated in the field of the economic-related migration, where the state power to select and control who can entry and stay is exercised even more firmly, more to favour a supposedly anti-migration public opinion, than to respond to the needs of the economies. Again, we are talking about barriers.

Fourthly, despite the differences among countries, if we compare legal statuses across types of migrants, in all SIRIUS countries we can see the creation of a hierarchy in terms of access to rights and therefore in terms of capacity and opportunity of integration. Refugees and, to a

smaller extent, beneficiaries of subsidiary protection and long-term economic migrants are at the top of the hierarchy, endowed with the broader and stronger sets of rights, including those related to accessing the labour market, workers' rights and benefits. In other words, refugees, beneficiaries of subsidiary protection and long-term economic migrants are those that go closer to nationals concerning fundamental rights (except political rights that fall beyond the field of analysis of SIRIUS research) and integration into labour markets. Moreover, the legal status may allow refugees, beneficiaries of subsidiary protection and long-term economic migrants to benefit from further important opportunities of integration (language courses, vocational training) that are neglected to other types of migrants, strengthening their chances to join the labour market. This means that legal statuses play a crucial role in enabling people to become full members of the host societies and to contribute to the overall well-being of those societies through, among others, a full participation into national labour markets. At the bottom of the hierarchy we find irregular migrants, and just above them, asylum seekers, both categories of migrants with the most restrictive access to rights and entitlements allowing them entering an integration path.

When discussing the enabling potency of specific legal statuses, and the hierarchy legal statuses create, we should bear in mind the size of the population each status apply to. For example, except in Denmark and in Switzerland, just a minority of people applying for protection are recognised a status conferring access to a broad set of rights, including those connected to labour market participation, and even a smaller number is recognised the Geneva convention status (asylum and subsidiary protection). Widening the access to these statuses or enlarging rights and benefits connected with other statuses would multiply the enabling effect of a legal status easing integration of foreign workers. It would also avoid the creation of a migrant winner-looser divide, which would be at odds with any human rights, and solidarity based understanding of what a modern society should be.

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Part II – EU and Country Reports

2. European Union

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2.1 Introduction

Since 2000, the number of immigrants and mobile EU citizens living in the EU Member States has increased from 34 million (or 6.9 % of the total EU population) in 2000 to 57 million (or 11.1%) in 2017. Among these, approximately 20 million came from another EU Member State, while the remaining 37 million are third country nationals and naturalised EU citizens with place of birth outside the EU (EPSC 2017). As a result, immigration and integration policies have gained political salience in a number of EU member states and have come to the top of the EU agenda. While a lot of attention has been paid to immigration flows and how to regulate them, migrant integration remains perhaps the most important challenge for European societies in the present and future. Improving conditions for the integration of third country nationals living and working in Europe is indeed an important priority for both the EU as a whole and for single member states.

Immigration has attracted significant interest in public debate in the last 20 years. Arguments in favour of immigration have underlined the ageing of the EU population and the contribution that migrants make to the productive capacities of the receiving economies as well as to the social and cultural fabric of receiving countries. But recent policy debates, amidst heightened economic insecurity and cultural anxieties, have also emphasised the need to prevent violent radicalisation, particularly among migrant and second generation youth, as well as the importance of improving migrants' participation in the labour market and ensuring that they espouse the civic values of the destination country.

During the last ten years, EU member states have experienced some common trends in issues of both migration and migrant integration. First of all, intra-EU mobility has grown, both in terms of numbers and in terms of diversity. Second, Member States with long-established or growing migrant populations have increasingly pursued civic integration policies while civic citizenship courses and tests have become mandatory in a number of countries like the Netherlands or France. There is a shared emphasis on migrants' learning the national language of the country of settlement, and its core civic values, often even before the migration 'journey' is undertaken, for visas to be granted.

However, integration approaches differ greatly, ranging from multicultural accommodation, to civic assimilation, to ethnic exclusion of the immigrant population. Citizenship acquisition policies also differ, required length of residence varies greatly and so does the level of discretion in accepting or rejecting naturalisation applications in the different EU countries. And thirdly, lengthy asylum procedures and low return rates of migrants without appropriate residence status have led a considerable part of the migrant population to be in an irregular or insecure status.

It is in this context that this report seeks to provide an overview of the EU policy and overall legal framework on migration and labour-market integration. This report is based on desk research notably literature review and analysis of legislative documents (EC Directives and

European Court of Justice case-law). In the following section we start by providing an overview of the migrant population in Europe. Section 2.3 provides the background information on the EU as a political subject and an international regime of governance. This section offers an overview of the EU structure and functioning and shows the dynamics of its migration-and-integration policy space.

Section 2.3.1 and 2.3.2 give an overview of the legislative and institutional framework around asylum and immigration in the EU. They analyse the dynamics of the Dublin Convention, which has become the main legislative EU platform for resolving asylum- and other (broader) immigration claims. Then we introduce the main institutional actors who specifically support migrants' labour-market mobility, and who interpret and facilitate implementation of EU primary and secondary laws on migrants' employment integration. Section 2.5 refers to the nuances of law and institutional practices around labour-market integration. It introduces main Directives on labour-market integration and practical issues of their implementation. The section also refers to the role of the European Court of Justice (CJEU) in relation to TCNs and looks at the most critical issues that are brought to the CJEU: indirect discrimination, legislative contamination, legislative intersectionality and proportionality.

2.2 The Migrant population in the EU

The latest Eurostat statistics show that migration flows to Europe have been rising in recent years. According to Eurostat (2018), in 2017 there were in total 37 million people in the EU who were born outside of the EU-28, the majority of whom (22 million) were third-country nationals (TCN). The latter group accounts for 4% of the overall EU population. Their absolute majority – 76% of all EU TCNs – now reside in the five countries that make 63% of the overall EU-28 population: Germany (9 million TCNs), the UK (6 million TCNs), Italy (5 million TCNs), France (4.6 million TCNs) and Spain (4.4 million TCNs). Only in 2017, the inflow of TCNs to the EU was 2 million people (ILO 2017).

These figures have of course to be understood against the backdrop of increasing citizenship acquisitions. Thus in 2016, while over 2 million TCNs entered the EU-28 (an annual increase of 150% compared to 2015), there were 900,000 third country nationals who acquired the citizenship of their member state of residence (and hence also EU citizenship) (a 20% increase compared to 2015).

Recent flows towards the EU include a relatively high number of people seeking international protection (see Figure 2.1 and Figure 2.2 below). Asylum applications increased by 50% between 2013 and 2014 rising from approximately 400,000 to 600,000 and then doubled from 2014 to 2015 to over 1.3 million (1,322,000). They remained high at 1,260,000 in 2016 even if the flows significantly diminished as there was a 'delayed' effect between new arrivals and them applying for asylum. In 2016, there were over 600,000 positive decisions, notably at an acceptance rate of 50% (European Parliament 2017a, 2017b). Asylum applications fell to just under 650,000¹⁸ in 2017, hence a 50% decrease compared to the previous year (Eurostat data).

¹⁸ <http://ec.europa.eu/eurostat/news/themes-in-the-spotlight/asylum2017> accessed on 1 August 2018.

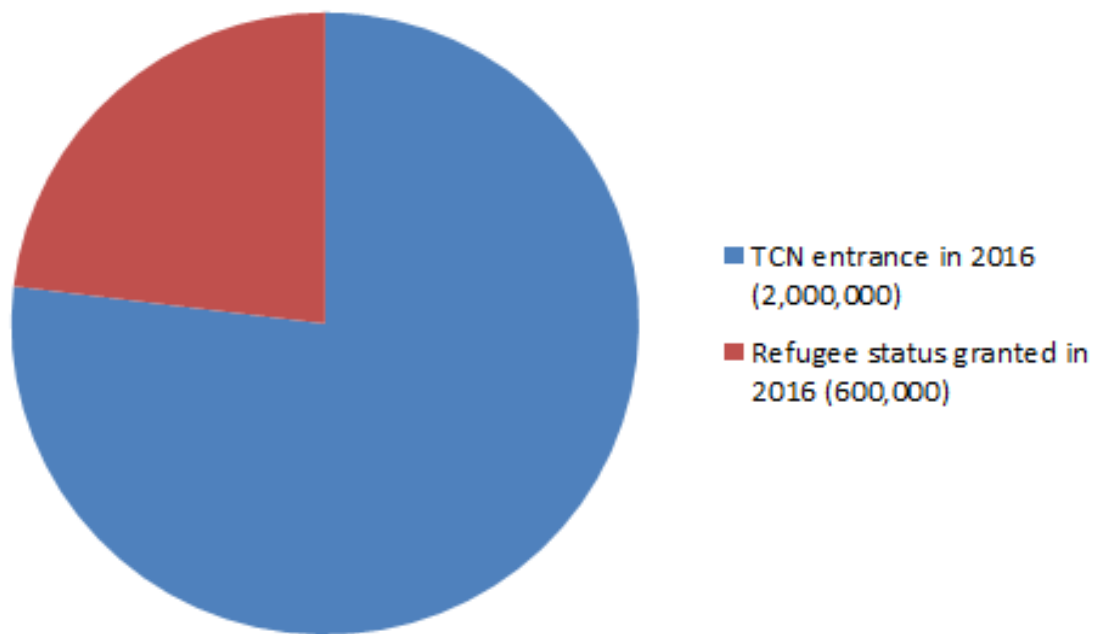


Figure 2.1 TCNs and Asylum Seekers in the EU in 2016

Adapted from: Eurostat (2018)

At the same time, a comparative analysis of asylum application success rates over the last three years points to a 20% decrease. Moreover, the total inflow of asylum-seekers to Europe has dropped by 50% over the last year: thus in 2016 the EU accepted 363,000 asylum seekers while in 2017 only 172,000 asylum seekers. There is an indication that the EU acceptance policy is becoming more restrictive and thus more resonant with the sharpening national security rhetoric (Krzyzanowski, Triandafyllidou and Wodak 2018).

Asylum applications (non-EU) in the EU-28 Member States, 2006–2017

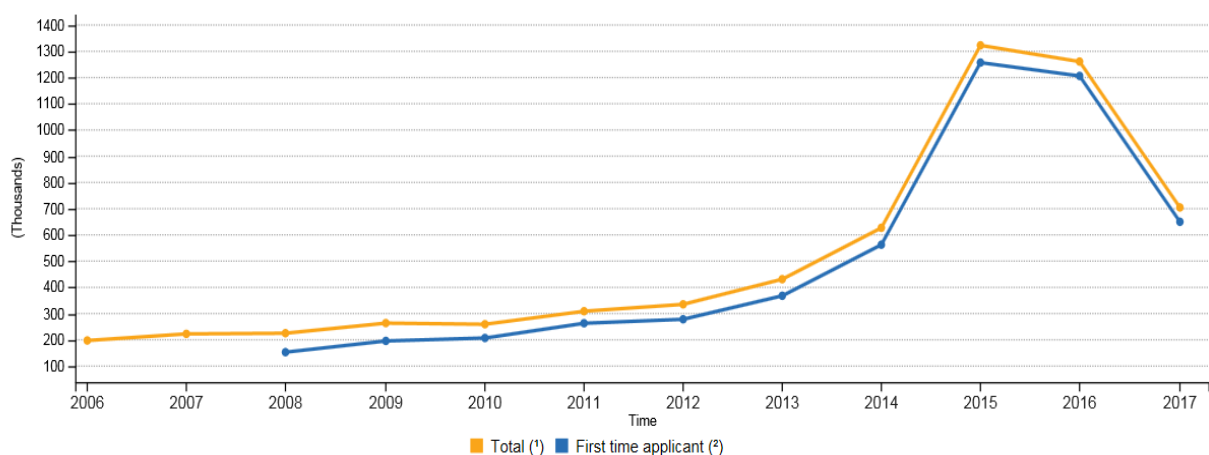


Figure 2.2 Dynamics of Asylum Applications, 2006-2017

Source: Eurostat (2017)

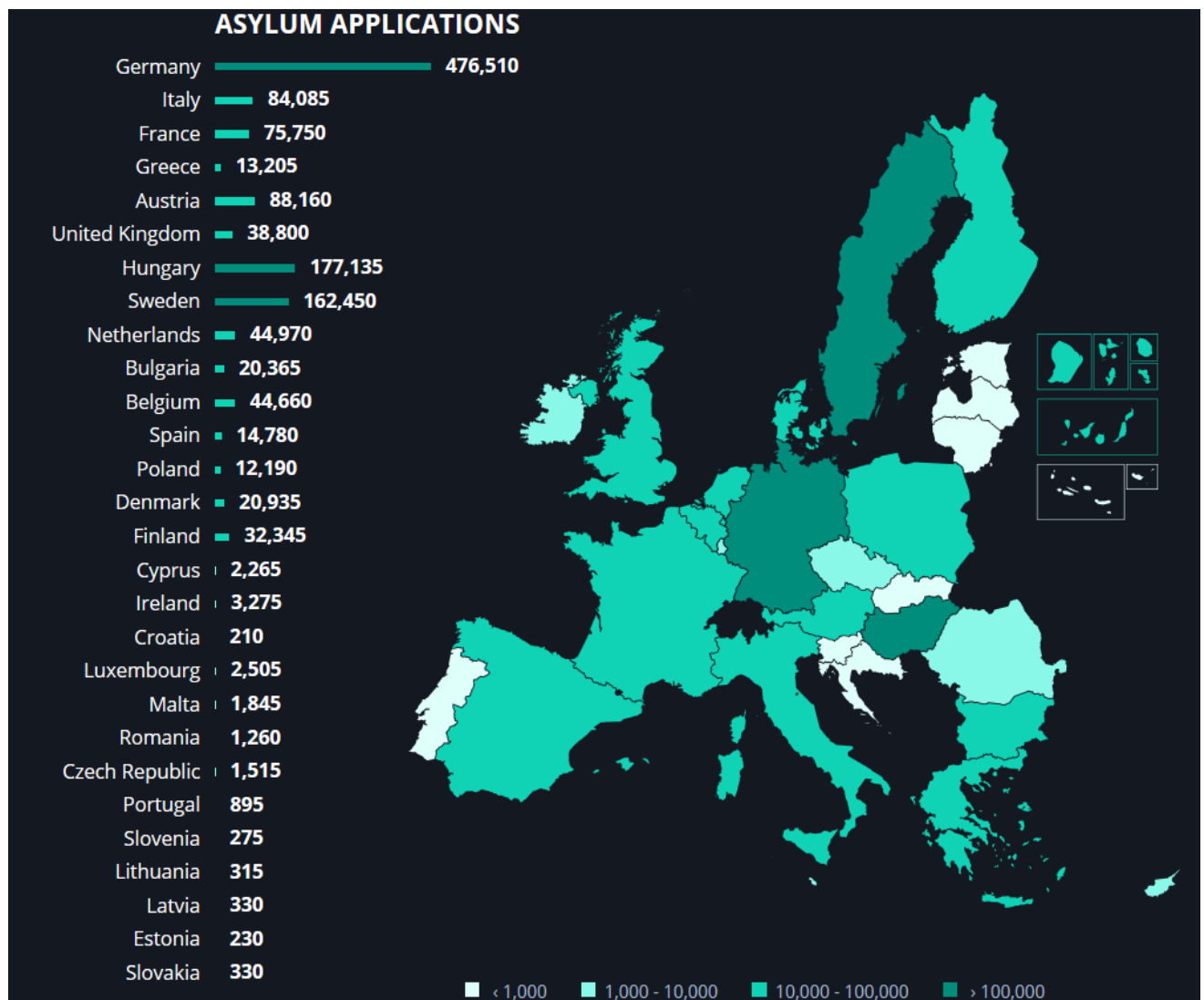


Figure 2.3 Geography of Asylum Applications in the EU in 2015

Source: European Parliament (2017b)

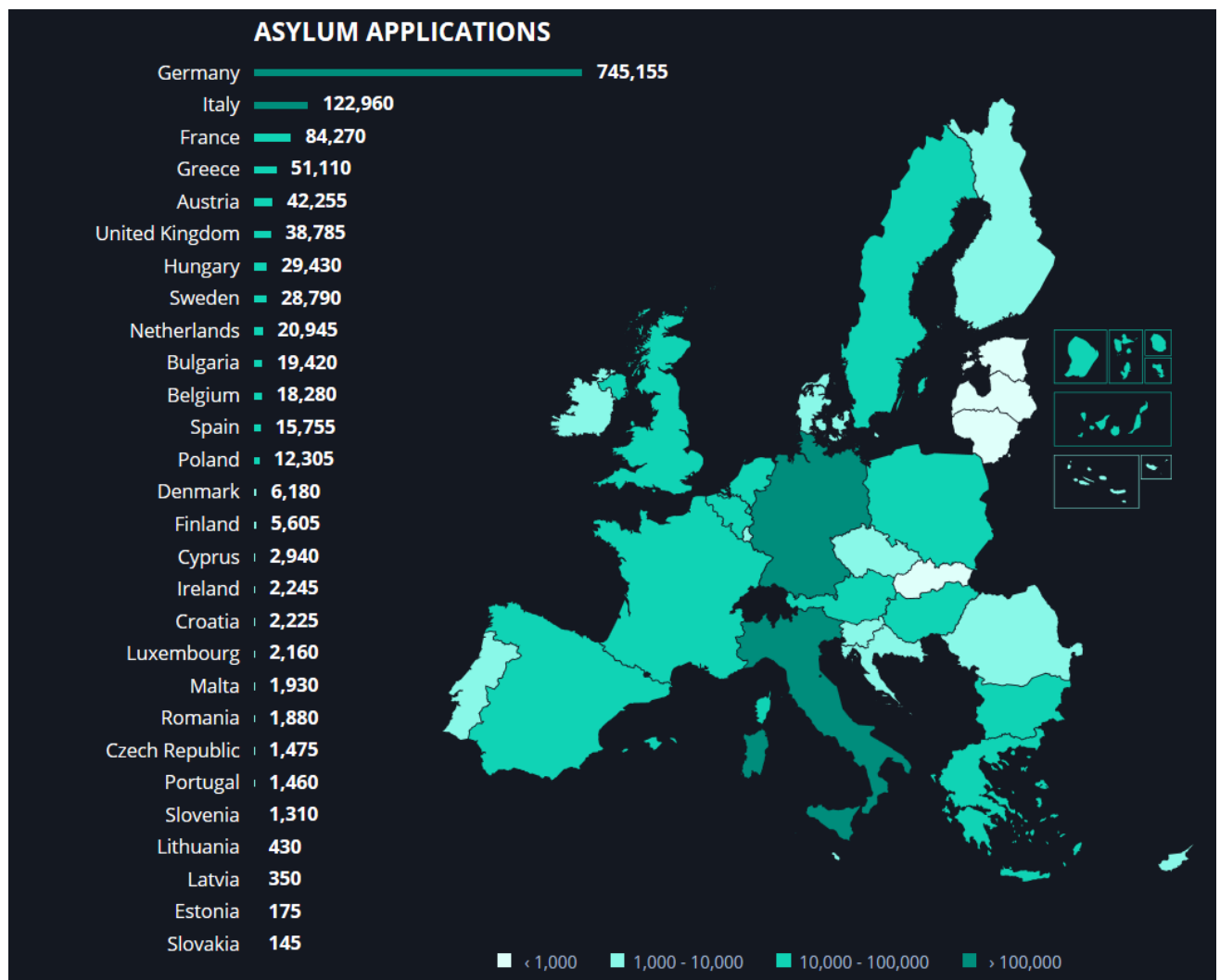


Figure 2.4 Geography of Asylum Applications in the EU in 2016

Source: European Parliament (2017b)

2.3 The Political and Policy Context of the EU Migration Policy Development

While migration was not a policy area included in the European Economic Communities from the start, it became an issue of concern as the free movement of people among member states was necessary for the completion of the Single Market. After the Maastricht Treaty (1992) that created the European Union and most importantly the Amsterdam Treaty (1997 but entered into force in 1999), migration policy was integrated into the EU legal order. While reviewing the full genealogy of the EEC and later EU's migration policy goes beyond the scope of this chapter (see also Stetter 2000, Papagianni 2012) we provide below a brief overview of the EU's constitutional setup and of the evolution of migration and asylum policy to this day. Our aim is thus to provide the background that sets also the context within which the institutional and legal provisions on migrant integration have developed. The overview below refers to the wider area of EU migration and asylum policy. The sections that follow, by contrast, focus then on migrant integration, more specifically.

2.3.1 The constitutional framework of the EU

The European Union (EU) is a political and economic entity grounded in international treaties that foster the socio-economic and political integration among member states. The main EU institutions are the European Commission, the European Council, the European Parliament and the European Court of Justice. The origins of the EU are to be found in the 1957 Treaty of Rome which established the European Economic Communities (EEC), with a focus on economic exchange and cooperation in post-war Europe. The constitutional basis of the EU today is formed by two main treaties: the Treaty of the European Union (TEU) signed in 1992 in Maastricht (also known as the Treaty of Maastricht), the Amsterdam Treaty of 1997, and the Treaty of the Functioning of the European Union (TFEU) signed in 2009 in Lisbon (the Lisbon Treaty).

The Treaties of Maastricht and Amsterdam (TEU 1992 and TFEU 1999) have become the two main sources of the current European law: while TEU focuses on human rights and institutional responsibilities for their protection, TFEU elaborates on the EU legislation (including issues related to migration policy). The Maastricht Treaty confirmed in 1992 the establishment of a European Union (which replaced the EEC) and created an EU citizenship. The Maastricht Treaty also carried forward the notion of the Single Market as a common internal space for the mobility of goods, services, capital and labour.

The Amsterdam Treaty introduced the notion of the EU as an Area of Freedom, Security and Justice (AFSJ) in its argument that the EU must 'maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime' (*Amsterdam Treaty* 1999, Article 1(5)).¹⁹ The AFSJ thus introduced free movement of people, asylum and immigration of

¹⁹ See: <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf> .

TCNs in the jurisdiction of the European Community and provided the legal basis for a policy to develop in this field.

2.3.2 The development of an EU migration and asylum policy

We can identify four phases in the development of an EU migration and asylum policy, which follow the overall dynamics of European integration while also responding and being shaped by relevant socio economic and political challenges.

- 1) **1974 -1985** – the early phase. During this phase, migration concerns were peripheral to the EEC integration process and were mainly guided by the wish to ensure the smooth mobility of citizens of the member states within the EEC and hence to facilitate further economic integration.
- 2) **1985-1999** – the emergence phase. It became gradually apparent to member states that further economic and political integration required also integrating migration issues into EU policies and legislation. The first steps were particularly hesitant as migration is a domain close to the heart of national sovereignty. Albeit the slow and inefficient progress of inter-governmental consultations paved the way for the communautarisation of migration and asylum policies in the Amsterdam Treaty (signed in 1997, entering into force in 1999).
- 3) **1999-2009** – the Communautarisation phase; this phase was marked by intense legislating activity and led to several important Directives and Regulations that today form a well developed policy framework for both migration and asylum management, and migrant integration.
- 4) **2010-present** – the ‘crises’ phase. Developments in this period have been more conservative, fine tuning instruments rather than making breakthroughs. This period is marked also by two crises: the global financial one and the refugee ‘crisis’ which led to a ‘defensive’ mode of management rather than a proactive one.

It was only in 1974 and with the advent of the oil crisis that member states realized that it would be useful to consult each other with regard to their migrant worker recruitment policies. In addition and as the policies to ensure the free movement of member state nationals had been put in place, they realized there was a need to consider international migration issues as these interfered with further economic integration. During the period between 1974 and 1985 The TREVI group was established – an intergovernmental working group – to discuss common concerns but the European Commission and the European Parliament were excluded from this cooperation (Stetter 2000).

It was the renewed interest in further economic and political integration from the mid-1980s onwards that brought to the fore the need to cooperate more closely on migration issues too. Hence the European Commission published its communication to the Council on ‘Guidelines for a Community Policy on Migration’ in 1985, as a corollary of the White Paper on the completion of the internal market (also published in 1985) which stressed the importance of abolishing the internal borders of the EC, including controls over the movement of persons (European Commission 1985a; 1985b; Stetter 2000; Callovi 1992).

While several intergovernmental initiatives were taken up in the period 1985-1992, also prompted by the implosion of the Communist regimes in 1989 and the re-connection of western and Eastern Europe, little progress was achieved at the Community level. By

contrast, during this period, two inter-governmental agreements were signed which institutionalized cooperation in migration related policies. These were the Schengen agreement started in 1985, and the Dublin convention signed in 1990. The Schengen agreement aimed at abolishing internal border controls and initially only included a small number of countries but was gradually expanded (through the years and to this day) to include most member states (for a detailed discussion see Papagianni 2012 and [http://europa.eu/rapid/press-release MEMO-10-564_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-10-564_en.htm?locale=en)).

The Dublin Convention introduced a system for managing asylum applications within the EEC by clearly establishing which state has responsibility over an asylum applicant. While both agreements were important and pioneering they both stumbled into the problems of their very inter-governmental character. It took ten years, till 1995, for the Schengen agreement to be ratified by national parliaments of the participating states and enter into force, while it took 7 years for the Dublin convention to enter into force, in 1997 (Stetter 2000: 87).

It was only in 1992 with the Maastricht treaty that asylum and migration policies became part of the EU (as the EEC was transformed into the EU by the same treaty) policy framework but even then in an incomplete manner. They became part of the third pillar where inter-governmentalism was still strong while only visa policies were integrated into the First Pillar (Stetter 2000: 89). However it soon became apparent that this only partial integration of migration policies into EU policy was not functioning well (European Commission 1995; Reflection Group 1995). The decisive step was thus taken in the Amsterdam Treaty (1997) to integrate migration policies in the EU framework albeit with a transition period of five years (1999-2004). At the end of the transition period and as cooperation would have been established, the member states would confirm the full integration of migration policies into the EU legal framework with qualified majority voting, co-decision procedure between the Commission and the European Parliament, and full CJEU jurisdiction. The transition did take place in 2004 while however several important Directives had been voted in this 5-year period (see below).

These migration policy developments at the EU level were integrated into the main political goal of creating a European Area of Freedom, Security and Justice. As explained by Papagianni (2006), this idea had become the overall framework for the European migration policy and legislation. The Amsterdam Treaty had introduced the idea of 5-year multi-annual policy development and implementation programmes with a view of monitoring achievements in both policy making and implementation and setting up roadmaps. Three such five year programmes were set up: the Tampere Programme (1999-2004); the Hague Programme (2004-2009); and the Stockholm Programme (2009-2014).

The main EU policy priorities which characterize EU policy to this day were already setup in Tampere:

- Internal security – combatting irregular migration through stricter border controls;
- Ensuring the smooth movement of TCNs within the internal EU area – ensuring their fair treatment in terms of entry and integration; and
- The external dimension – notably developing an EU partnership with countries of origin.

During the period 1999-2004, seven important directives were issued. First of all the two 'RED' directions in year 2000: the Race Directive 2000/43/EC and Anti-Discrimination/Equality Directive 2000/78/EC.²⁰ Second the Family Reunification Directive 2003/86/EC and the Long-Term Resident Status Directive 2003/109/EC. These four directives were particularly important in communautarising important aspects of the life of third country nationals in the EU and creating to the extent possible a level-playing field for the enjoyment of their social, economic, civic and political rights. In many respects, these directives set up a framework for migrant integration.

Further to these developments in 2004, the Ministerial Conference in Groningen formulated the Eleven Common Principles of Integration, which can be summarized as the following six main ideas [adapted from Huddleston (2010)].²¹

- 1) **Reciprocity** (Integration is 'a dynamic, two-way process of mutual accommodation by all immigrants and MS residents...which involves frequent interaction between immigrants and member state citizens...and promotion of cultural and religious diversity');
- 2) **Employment** (including access to education) is a key part of the integration process;
- 3) **Anti-discrimination** ('Access for immigrants to institutions, as well as to public goods and services, on a basis equal to national citizens and in a nondiscriminatory way is an essential foundation');
- 4) **Integration exam** (to measure knowledge of and respect to culture of the host society and EU);
- 5) **Participation** (of immigrants in the democratic process); &
- 6) **Integration policy** (at all levels of government).

During this same period, the European Commission sought to introduce also a common framework for managing labour and other forms of immigration albeit with little success. While it managed to achieve a consensus on specific, numerically small, categories of third country nationals and their admission to the EU (notably students and trainees with the Study/Training Directive 2004/114/EC and Researchers with the Researchers Directive 2005/71/EC), it failed to create a framework for employed third country nationals and for third country nationals entering the EU to exercise a profession. The failed Directive proposals had to be abandoned and the Commission issued instead in January 2005 a Policy Plan for Legal Migration seeking to set a road map for further measures (European Commission 2005). After intense negotiations and given the labour market shortages experienced in the second half of the 2000s the Blue Card Directive (2009/50/EC) was also issued to regulate highly skilled immigration to the EU.

²⁰ Directive 2000/43/EC provides the legislative rationale and outlines measures to fight racial and ethnic discrimination in the sphere of employment. Directive 2000/78/EC expands the legal rationale of the former Directive to combatting other types of discrimination (on the grounds of sex, disability, age, religion) and to the scope beyond employment. Altogether, these two directives present a legislative background for fighting discrimination practices against migrants in employment.

²¹ Over the consequent years, these principles were continuously repacked at the ministerial conferences in Potsdam in 2007, in Vichy in 2008, and in Zaragoza in 2010; as well as through a number of 2008-2009 Directives [for more detail, see Acosta Arcarazo (2011) and Papagianni (2014)].

During this same period of 1999 to 2009, the Commission took initiative to create a common framework for the processing of asylum applications (Qualification Directive 2004/83/EC on Refugees & Asylum Seekers) and also issued two directives that aimed at stepping up the fight against irregular migration, notably the Returns Directive 2008/115/EC on the conditions of return of illegally staying third country nationals and the Employer Sanctions Directive 2009/52 sanctioning those who employ illegally staying third country nationals.

We should include in our brief overview of this period, the introduction of the Citizenship Directive 2004/38 on intra-EU mobility which while targeting EU citizens, became a powerful interpretive tool (or a case-law buffer) in litigation over issues of long-term residence, family reunification and legal employment of TCNs (as it will be explained further). In 2006 the so-called Schengen acquis was integrated into the EU legal framework (Regulation (EC) 562/2006 on Schengen Borders Code). The Dublin convention was integrated into the EU legal framework in 2003 with the Dublin II Regulation (Regulation (EC) 343/2003).

Thus by 2009, the main tools of an EU migration policy regarding both migration and asylum management/control and issues of integration had been set up. Overall this period was marked by easy negotiations for directives aimed at combatting irregular migration, where member states were highly in agreement with one another, and by difficult and prolonged negotiations for directives concerning the rights of third country nationals (family reunification and long term resident status). Such difficult negotiations ended at the watering down of the initial Commission proposals leaving a lot of room for manoeuvring to member states in the implementation phase. The directives regulating labour migration were confined to the small and relatively uncontroversial cohorts of students, trainees or intracompany transferees with the exception of the seasonal workers directive which touched upon more sensitive issues. However, there, too, consensus was driven by the wish to implement stricter monitoring and controls ensuring that temporary migrants would not overstay. Even the Blue Card Directive which was pushed by concerns for highly skilled labour shortages in several large countries (such as Germany) ended up watered down and ill implemented (Triandafyllidou and Isaakyan 2014).

The current phase of EU migration policy development, notably from 2010 to this day has been marked by, on one hand, two important crises – the global financial and Eurozone crisis, and the refugee emergency - and, on the other hand, by the further refinement of the relevant policy tools. In line with the 2005 plan, the Commission has continued to seek to regulate specific labour migrant categories thus issuing the Seasonal Workers Directive (2014/36) and the Intra Company Transferees Directive (2014/66) with a view to furthering a common labour migration framework. In addition in 2011 the Single Permit directive was issued (2011/98) with a view of streamlining the procedures and rules for entry and employment in the EU of third country nationals. It was clear that the global financial crisis and the more recent refugee emergency left little political support for bolder initiatives (Carrera 2009; Papagianni 2016; Triandafyllidou & Isaakyan 2014).

During the last few years, the EU migration policy has proceeded with hesitant steps to reform the Blue Card Directive and the Family Reunification Directives. There have been

efforts to streamline movement and short-term stay²² with selected third countries such as Canada, Australia and the USA.

A controversial issue throughout this period has been the question of the Dublin reform and of the management of asylum claims. The Dublin regulation determines the responsibility of a particular member state for processing an asylum application in the EU under the Geneva Convention and the EU Qualification Directive. Based on the 'first safe country' principle, a third country national who seeks international protection must apply for asylum in the first EU member state where s/he arrives. The aim of the Dublin Convention in 1990 and of the Dublin Regulations II and III to this day has been to restrict the power of asylum seekers to choose their country of application and to avoid secondary movement within the EU (from the first country of arrival to another EU country).

Dublin has been severely criticised as over-burdening countries at the external EU borders and for failing to distribute responsibility for international protection fairly among member states. In addition there have been important criticisms that the Dublin system contributed to the violation of asylum seekers' human rights as these border countries were unable to process the applications speedily and in a fair manner and also left often the asylum seekers without shelter and support during the process (Costello 2016). Thus the Dublin II regulation of 2003 was reformed in 2013 (Regulation Dublin III (EU) 604/2013) aiming to respond to these failures and criticisms by introducing further criteria for the treatment of asylum applicants (family integrity, residence documents, irregular entry), yet it maintained intact the first safe country principle for allocation of the asylum examination responsibility.

Following from the significantly large refugee inflows of 2015 and 2016 and the de facto interruption of the Dublin III regulation for some months (between fall 2015 and spring 2016) the European Commission issued a new proposal for reform of the Common European Asylum System (Brussels, 4.5.2016 COM(2016) 270 final 2016/0133 (COD)). The new proposal offers a more equitable system of allocation, with more country choices in submitting the application but still restricts the applicant's mobility within the EU. In addition the new proposal suggests to implement the EURODAC system (the EU wide system for taking and registering the fingerprints of asylum applicants, Eurodac Regulation 603/2013) to other migration streams, thus making fingerprinting a legal tool for labour migration management too. This Dublin IV proposal for a reform was severely criticised by civil society actors (ECRE 2018, Amnesty International 2016) and is at the time of writing (July 2018) still under negotiation (AIDA and ECRE 2018).

EU migration and asylum policy is today again at a turning point. While both migration and asylum pressures remain high, member states views and realities on the ground starkly differ. Central Eastern European member states have little experience in welcoming migrants or asylum seekers and remain largely reluctant to admit any even if their citizens have been

²² Thus in December 2017, the full visa reciprocity with Canada was achieved, following its abolition of visa requirements for Romanians and Bulgarians. This had actually become a sequel of the earlier established reciprocity with Australia and Brunei. At the moment, the Commission is negotiating a full visa reciprocity with the USA. There have already been two EU-U.S. Justice and Home Affairs Ministerial Meetings in February and May 2018, with the prospective final discussion in October 2018. Further developments will be reported by the Commission at the end of 2018.

emigrating in large numbers and many face important demographic challenges for the future. Western and Southern European member states are also divided in their views. While many among them have admitted large numbers of both migrants and asylum seekers, western and northern member states privilege the status quo and the first safe country principle while the southern member states press for a redistribution of asylum responsibility upon entry, through relocation mechanisms.

2.4 Main Institutional Actors in EU Migration Policy with regard to labour market integration

Having reviewed the development of the EU migration policy we turn now to sketching the contours of the institutional framework. Reviewing all relevant institutional actors goes beyond the scope of this paper so we offer here an overview of the actors that are involved in policy issues related to migrant and asylum seeker labour market integration.

The key actor in the development of EU legislation is the **European Commission**, headquartered in Brussels. It is a politically independent body that designs new proposals for incoming European legislation to be further endorsed by the European Parliament and the Council of Europe, and controls the implementation of their decisions after a proposal becomes the law.

The primary interpreter of the European law is the **Court of Justice of the European Union (CJEU)**, which is based in Luxembourg and is often referred to as the 'Luxembourg Court'. It is the official supreme enforcement organ of the EU. Its main goal is to enable harmonization in the implementation of EU law across member states (Acosta Arcarazo 2011; Papagianni 2004). By resolving litigations between their governments (and also individuals and companies) on the one hand and EU institutions on the other, the CJEU translates and often amends the existing EU law. The CJEU both enforces the EU law (by sometimes invoking penalties on MS governments for having disobeyed it) but mostly *interprets* it. However, its nuanced implementation in relation to labour market integration of migrants remains within the jurisdiction of MSs, who further need additional rounds of interpretation.²³

It is very important not to confuse the CJEU with the other European court – the European Court of Human Rights (ECtHR), seated in Strasbourg (or the Strasbourg Court), which is an international courts for addressing claims on human rights violation of members of the countries who have signed the European Convention of Human Rights (ECHR). Their list includes all EU countries and a number of other countries located in Europe that are not part of the EU. The court deals specifically with violation of human rights that are within the scope of the convention and has a solid case-law for asylum seekers on the subject of refoulement and detention (Costello 2016; Papagianni 2012).

However, broader issues of integration and labour-market mobility have been addressed mostly by the CJEU. Its status in the EU is akin to that of the domestic court of a MS (Costello 2016). On the other hand, the ECtHR is not an institutional actor in the EU. At the same time, the Lisbon Treaty of 2009 has declared that the CJEU should accede to the ECHR, which means that it should respect and use the standards from the ECtHR case-law,

²³ https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en.

while also expanding them. Although the time frame for this accession remains unclear, the CJEU does make references to existing ECtHR case-law, especially on the issues of asylum seeking and illegal stay.

Although the CJEU is the only supreme legal organ of the EU, the ‘case-law pluralism’, or the existence of the other European court, makes it problematic for MSs to follow the case-law standards of the CJEU (Costello 2016).

Apart from the European Commission and the European Court of Justice (which are the main legislators and interpreters in European law), a number of decentralized EU agencies are involved in an informative advisor role.²⁴ Relevant agencies concerning migrant integration are:

- 1) **Fundamental Rights Agency (FRA)**, responsible for anti-discrimination strategies;
- 2) **European Centre for the Development of Vocational Training (Cedefop)**, with its focus on the recognition and improvement of migrants’ skills; and
- 3) **European Foundation for the Improvement of Living and Working Conditions (Eurofound)**, with its overall rationale of improving living and working conditions and also a more specific accent on policy coordination with local partners in the implementation of labour market integration.

The **Fundamental Rights Agency (FRA)**,²⁵ based in Vienna, is responsible for data collection and analysis on all the rights enshrined in the EU Charter of Fundamental Rights (2012/C 326/02). Grounded in the prior work of the European Monitoring Centre on Racism and Xenophobia, the FRA actively engages in various research- and dissemination activities that draw public attention specifically to the issues of racism, xenophobia and anti-Semitism.²⁶ It collects and analyzes data on equality and anti-discrimination, communicates the findings and provides consultations on the issue to European institutions (including the European Commission) and national governments. For example, in 2010 FRA evaluated the impact of the Racial Equality Directive in its special report to the European Commission. Another important FRA publication has been the 2015 report on *Severe Labour Exploitation: Workers Moving Within or Into the EU*,²⁷ which alerted against the prevailing social climate of tolerance to severe labour exploitation, and evaluated institutional facilities to combat exploitation and enable victims’ access to justice. By referring migrants to the CJEU on issues of discrimination and also by further interpreting the CJEU decisions, FRA acts as an important intermediary between the CJEU and the TCN. For example, the FRA’s case-law database offers a transparent compilation of the CJEU and national case-laws that challenge the Racial Equality Directive.²⁸

Another EU agency that aims to carefully study and consult on labour-market integration and overall employment climate is the **European Foundation for the Improvement of Living and Working Conditions (Eurofound)**, seated in Dublin. One of its influential projects has

²⁴ Decentralized agencies have been founded for an unlimited period of time in order to enable the implementation of EU policies and a better dialogue between the Commission and MS’s national authorities.

²⁵ <http://fra.europa.eu/en/about-fra>

²⁶ For FRA’s mandate, see: Council (2007).

²⁷ Available at: fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf.

²⁸ For detailed analysis of FRA’s work, see their *Second External Independent Evaluation* conducted by Optimity Advisors in 2017 (Optimity Advisors 2017). See also: FRA (2013, 2017).

been their study of *Migration, Labour and Effective Integration of TCNs* (2016), which addresses the importance of policy makers' collaboration, the role of social partners in promoting and ensuring the integration of third country nationals. Its earlier work in 2006-2010 engaged with a rich network of 30 European cities that promoted local integration policies for migrants (CLIP). Brought together by the Eurofound, the CLIP network facilitated informational exchange - during seminars and workshops - between individual cities on a number of issues related to labour market integration of TCNs, including the topic of ethnic entrepreneurship.²⁹

Another important actor is the **European Centre for the Development of Vocational Training (Cedefop)**, based in Thessaloniki, which aims to enable the vocational training policy on the EU-wide level.³⁰ It assists to the Commission, MSs, employers and trade unions in connecting their training programmes to labour market needs. Cedefop conducts research and consults the Commission on the design of vocational- and in-service training programmes for all people who live in the EU and for migrants, in particular. For example, the *Working Group on learning Providers and Migration* (set in Vienna in 2017) has stressed the recognition of migrants' qualifications as an important factor that can support their labour market integration.

While EU agencies play an important role in research and policy analysis, the legislative process is driven by EU law and the European Commission and the CJEU.

2.5 Legal framework on labour-market integration: Directives and case-law

Migration and Asylum are regulated in the EU through its **primary** and **secondary laws**. Specifically on the theme of asylum, **the primary EU law** is grounded in the Charter of Fundamental Rights (Articles 18 and 19(2)) and the Treaties of Rome (Article 78), Amsterdam (Articles 73i and 73k) and Lisbon (Article 61(2)). Secondary legislation encompasses Regulations (such as the Dublin System) and Directives that further elaborate on various specific aspects related to migration (Costello 20016; Regulation 2013).

2.5.1 Overview of the relevant Directives

The Directives adopted in the period 1999-2004 form the main body of EU law concerning the labour market integration of migrants (Acosta Arcarazo 2011; Carrera 2009; Papagianni 2014). Some of these directives (like the 'RED' directives) aim to protect the human rights of all people who live on the EU territory, while others (such as the long term resident status or family reunification directives) apply only to TCNs. Some directives can thus be conceptualized as migrant-focused because they articulate policies and legislative standards that specifically aim at the integration of migrants. Other directives aim at the protection of human rights of all people who reside on the EU territory. TCNs are thus not the primary subject of such Directives but one of the many social groups covered by their scope.

²⁹ For more detail, see: https://europa.eu/european-union/about-eu/agencies/eurofound_en.

³⁰ https://europa.eu/european-union/about-eu/agencies/cedefop_en

The basic EU rights are explained in the following three Directives: the Employment Equality Directive, the Racial Equality Directive and the EU Citizenship (or Freedom of Mobility) Directive. It is difficult to collect data on and to assess the impact of these directives specifically upon the migrant because the majority of litigation cases in the CJEU courtroom that challenge these directives are represented by claims of EU nationals.³¹ That is why such parameters as the number of work-and-entry permits and asylum applications, family reunification rates and return rates are often used as proxies for measuring the integration of TCNs (Niessen et al. 2015); while data on the discrimination of migrants are always difficult to obtain, process and translate to proxies for their integration (Acosta Arcarazo 2011).

The cornerstone law on EU rights is represented through the Racial Equality Directive and the Employment Equality Directive, in which migrants do not appear as central subjects. The impact of these two directives upon the migrant's integration is often added (either positively or negatively) by another (migrant-focused) directive. Our research will show that this may create the effect of legislative contamination (in the negative sense) or legislative umbrella (in the positive sense).

In relation to migrants' employment and other rights in the EU, we will review the following six Directives that:

1. ***The Race Equality Directive;***
2. ***The Employment Equality Directive*** (These two directives offer legal guidelines/standards for societal protection against various forms of discrimination in the sphere of work.);
3. ***The (Asylum) Qualification Directive*** (Migrant-centred, this directive is applicable to a large, although case-specific, stream of TCNs in the EU, addressing challenging issues with regard to their employment and social benefits.);
4. ***Directive on the status of non-EU nationals who are long-term residents;***
5. ***The Family Reunification Directive*** (Migrant-centred, the Long-Term Residence Directive and the Family reunification Directives apply to all migrants in the EU. Although not specifically related to the sphere of their employment, these directives outline fundamental rights and procedures on which secure and stable employment will be based.);
6. ***The Citizens' Rights Directive*** (Not migrant-specific, it mostly applies to those migrants who have become EU citizens or who are the spouses/parents of EU citizens. Although it is not work-focused, it often indirectly effects migrants' future employability and functions as a powerful interpretive tool in the European Court of Justice/CJEU).

An interesting fact is that, while applying to either all migrants or to their most representative segment, the most powerful migrant-centred directives address employment issues only indirectly.

³¹ Based on our analysis of the CJEU database.

2.5.2 European Anti-Discrimination Policy: The Racial- and Employment Equality Directives 2000/43 and 2000/78

These two Directives are the backbone of European landmark decisions on TCNs' rights specifically in the area of employment. They have almost identical logic and main procedures, although touching upon different aspects of discrimination (Groenendijk 2006; Tymowski 2016). The Race Equality Directive 2000/43 focuses on racial discrimination in general, with the main prerogative of combatting racism in employment.³² The Employment Equality Directive 2000/78³³ was adopted as a logical continuation of 2000/43 a few months later. Its purpose is to extend the anti-discrimination campaign beyond the limits of fighting racism, and to focus specifically on the sphere of work (Acosta Arcarazo 2014; Groenendijk 2006). This Directive uses the same provisions as the Race Equality Directive and offers new parameters to look at work-related discrimination such as gender/sex, religion/belief, and age and disability.

Article 2 in both Directives identifies four forms of discrimination and provides their definitions: direct discrimination, instruction to discriminate from the personnel manager (which is considered a form of direct discrimination), indirect discrimination and harassment. Although MSs have achieved consensus, to a certain extent, on conceptualizing these types of discrimination, there is a huge divergence in national cultures on criteria for classifying something as indirect discrimination and harassment (Niessen et al. 2015; Tymowski 2016).³⁴

Direct discrimination is the only traumatic experience that can be supported by reliable evidence in court and thus the only legal category against which people are protected by the Directives (ibid). Direct discrimination is defined as a comparable situation of treating someone in a more diminishing way than another social group on the basis of race/ethnicity, gender/sex, age, physical ability or religion/belief. In the cases of harassment and indirect discrimination, the unequal treatment becomes difficult to prove. In fact, harassment different countries have different practices of conceptualizing and penalizing for harassment. As for indirect discrimination, it is often justified by exceptional cases, which raise offenders' immunity against accusations (ENAR 2015).

In fact, there is no consensus on what can actually be qualified as harassment when someone has not been officially dismissed from work or a training/education programme (Carrera 2009; Tymowski 2016). Indirect discrimination is also a difficult legal field as what is considered indirect discrimination in some situations (a visibly neutral condition that still produces a discriminatory impact) may be justified as legitimate in others (in specific organizational subcultures). Employers are often permitted (by the same Directives) to hire people on the basis of their age, gender or religion when so required by the organizational ethos, which becomes a strong interpretive tool in court (even for the CJEU) to refute the claim of discrimination (ibid).

Article 3 of the directives describes various contexts where discrimination at work can occur in the private and public sector: access to employment, dismissals, payment, vocational

³² See: Council (2000a).

³³ See: Council (2000b).

³⁴ See: Article 2 in both Council (2000a) and Council (2000b).

training and involvement in a professional organization.³⁵ These conditions of discrimination fall into two basic categories: recruitment- and workplace- discrimination. In recruitment, discrimination against migrants manifests itself as absence of public job postings, selection on the grounds of names and addresses, requested picture of the applicant and failure to recognize foreign qualifications (Groenendijk 206, 2016; Tymowski 2016). In the workplace, TCNs are often underpaid, placed in difficult working conditions, subjected to harassment and unfair dismissal, or discriminated on the grounds of having clothes with religious connotation (Tymowski 2016).

Although both directives prohibit such actions, the major conceptual problems make it difficult to interpret the law correctly. Many employment relationships of the private nature are not explicitly covered by the directives, thus leaving much space for harassment and indirect discrimination. Moreover, Articles 4 and 6 of the 2000/78 Directive explicitly support justified exceptions of unequal treatment in all dimensions (ibid).

Although Article 5 specifically requests that employers should provide individual accommodation in recruitment and employment for a disabled person, this provision does not exist in national law of all MSs. Therefore, it is often neglected in national courtrooms (Tymowski 2016).

The emphasis on the domain of work placed by these two Directives creates both a legal and a public space outside the sphere of work where gender-, religion- and disability discrimination remain *de facto* neglected as courtroom issues and therefore misinterpreted and abused without consequences. This becomes a rather complex feature of today's integration, given that sex and religion have been traditionally taboo themes and therefore another subject to silencing and misinterpretation (Staiano 2017). In addition, litigation over discrimination in the conditions of dismissal also becomes *financially* challenging for the dismissed migrant (Carrera 2009; Papagianni 2006, 2016; Rubinstein 2015; Tymowski 2016).

Some national policies combat discrimination in employment only indirectly or in relation to specific segments of workers (ENAR 2015). Victims do not go to court because of the lack of evidence, costly procedures and fear of repeated discrimination. Although there are in place such institutional actors as Equality Bodies and Labour Inspectorates (which offer legal assistance to migrants discriminated at work); their activity is limited by both the high costs and people's lack of knowledge about legal procedures and the discrimination phenomenon as such (ibid; Huddleston 2015).

In general, this twin-directive offers the EU a legislative framework for combatting discrimination on various grounds. However, there are exceptional circumstances in which *indirect discrimination* actually becomes permitted by the Directive itself while the CJEU cannot do anything to change this.

2.5.2.1 Indirect discrimination

The unresolved CJEU cases clearly point to *indirect discrimination* on the grounds of religion or nationality. They therefore become very difficult to prove as the cases of abuse because

³⁵ See: Article 3 in both Council (2000a) and Council (2000b).

they pass the so-called proportionality test, or reasonable justification case (Groenendijk 2007; Romic 2010; Rubinstein 2015). When this test applies in court, it means that the marginalization should be reasonably justified by or to be proportionate to certain requirements of organizational ethos such as avoiding religious symbols, hiring people with very specific qualifications (including work permits) and preferring specific anthropomorphic stereotypes for a specific type of job (often the case in entertainment industry) (Acosta Arcarazo 2011). Indirect discrimination also occurs when people cannot reach job postings because they are unaware of them due to their impeded access to Internet or specific networks (and not necessarily because the employer conceals the posting from the general public) (ibid).

According to ENAR (2013) and UNHCR (2016), all TCNs are vulnerable to discrimination in employment but the most frequent cases of indirect discrimination are: undocumented migrants and refugees (because they need work permits and often lack formally recognized qualifications), and also Muslim and ethnic minority migrants (because they may possess specific religious symbols in contradiction with the neutrality of the work). Within the discriminated groups, migrant women face a double disadvantage (because of their ethnicity/religion or migration status and because they are women). They have less access to job postings, often come as dependent migrants following their husbands and have been the target of religious discrimination because they wear visible religious symbols such as the headscarf.

For example, in the *Achbita* case C-157/15 (with the final CJEU judgement in March 2017), the Muslim woman Samira Achbita was fired for refusing not to wear the Islamic headscarf at the workplace on the grounds of the organizational dress-code prohibiting a dress that would signify a political, philosophical or religious symbol at work. Such a dress would be viewed as compromising the neutrality ethos of the organization. The CJEU refuted her claim and confirmed the case of indirect discrimination as objectively justified by the legitimate aim.³⁶

However, the French litigation case *Bougnaoui v. Micropole* (on the same issue as Achbita) was decided by the CJEU in favour of the claimant as the case of non-legitimately justified indirect discrimination. The woman (who was a professional consultant) was fired for having refused to put off her headscarf as requested by a private client. In this case, the court decided that it was not within the organizational rationale to prohibit wearing religious symbols. Moreover, such client's private request was violating the organizational ethos of multiculturalism. The court accentuated that, without any legitimate ground for exclusion, indirect discrimination would be translated into direct discrimination.

However, the question here could be which attributes are allowed to make the organizational ethos neutral. This dilemma (as well as the inability of the CJEU to manage cultural prejudice) is illuminated by another³⁷ CJEU case, in which the Muslim woman nutritionist was excluded from a cooking course in Denmark for having refused to taste pork as a prerequisite for her exam (Acosta Arcarazo 2011). Her claim was not supported by the CJEU since the graduation requirements by the cooking school were recognized as a legitimate reason (ibid; Howard 2007, 2009). At that moment, the judge, for whatever reason, failed to consider that cooking and tasting pork is only one little aspect of the culinary curriculum.

³⁶ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015CJ0157>.

³⁷ Case C-188/15. For the case analysis, see also Giles (2017).

Given a variety of vegetarian restaurants and cuisines, she could be easily allowed to pass that exam *without* tasting pork.

Racial discrimination in the workplace remains one of the most blatant forms of discrimination that should be straightforwardly punished in the courtroom of any MS and the CJEU when the claimant is EU-national (Acosta Arcarazo 2011). In the majority of migrants' cases, there are always multiple opportunities to link the person's race or ethnicity to his/her religion or nationality and justify the exclusion on the grounds of the latter (ibid; EC 2015; Rubinstein 2015). The implication is that race may be difficult to prove as a discrimination variable for migrants.

Because the opportunities of a migrant's employment are demarcated by the provisions of his/her stay permit (or nationality), s/he can be adversely affected by such seemingly irrelevant practices as under-payment and organizational downsizing. For the migrant being made redundant can lead to the loss of her/his stay permit. The problem is that, from the very beginning, the European Anti-Discrimination Policy allows the marginalization of TCNs, leaving the details of their pay and contract duration at the discretion of the MS. Therefore, in the cases *Mehmet v. Aduma 2007* (underpaid and overworked Nigerian student in the UK) and *Onu/Taiwu v. UK 2013* (under-paid domestic workers in the UK), the discrimination was recognized by the CJEU as 'indirect' because 'on the grounds of nationality' (an objective criterion for sidelining in all legislations) rather than 'race' and therefore not considered as 'discrimination' as such within the framework of Race Equality- and Researcher- Directives.³⁸

2.5.3 EU Family Reunification Policy: Directives 2003/86 and 2003/38

Family reunification may significantly affect the migrant's labour market integration and overall wellbeing in terms of sustaining work-life balance and providing additional (moral and financial) support. The presence of spouse and children may resolve the emotional tension around the migrant's prior separation with his/her family. On the other hand, spouses have the right to work in the country of destination, thus providing the migrant and the household with an additional source of income and herein adding to the EU workforce (Acosta Arcarazo 2009, 2010; Groenendijk 2007; Groenendijk et al. 2007; O'Cinneide 2015; Staiano 2017).

The multitude of cross-border marriage patterns in Europe leads toward a recognition of the overall EU Family Reunification Policy. The Family Reunification Policy consists of two EC Directives: the Family Reunification Directive 2003/86³⁹ and the European Citizens' Rights Directive (also known in press as the Free Movement- or EU Citizenship- Directive),⁴⁰ the latter complementing the former on the issue of family reunion. The reunification of family members of TCNs (both temporary and long-term residents) is covered by the provisions in the Family Reunification Directive (FamReu) 2003/86. As for TCNs who are spouses or overseas spouses of intra-EU mobile citizens, the EU Citizenship (EuCit) Directive 2003/38 comes into force.

³⁸ For the cases *Mehmet v. Aduma* and *Onu/Taiwu v. UK*, see: Staiano (2017: 57-59).

³⁹ See: Council (2003a).

⁴⁰ See: Council (2004a).

Van den Broucke et al. (2016) explain that the beneficiaries of the Family Reunification Strategy can be divided into two distinct reunification categories (notwithstanding other, more subtle, nuances). The Family Reunification Directive entitles married spouses and unmarried under-age children of non-EU nationals who reside legally for at least one year in a MS to reunite with them exactly in this MS. The only entry condition is sponsorship, or the adequate financial support of the principle migrant for his/her incoming family. Within this scheme, the reunifying family members (dependent migrants) have the right to work and access educational and vocational programmes immediately upon arrival, and also the right for an independent residence permit after five years of legal residence. This directive does not cover the reunification of family members of refugees and EU nationals.

However, such nuances as the sponsor's financial threshold (for inviting his/her overseas-based family to the EU) and the composition of his/her immediate family are decided individually by national laws of MSs (Acosta 2009; Bonjiur 2014; Bonjour & Block 2013; Bonjour & Vink 2013; Van den Broucke et al. 2016). Moreover, the Directive grants MSs optional provisions to extend some parameters while restricting others. Thus MSs are allowed to include unmarried partners, dependent parents and dependent unmarried adult children into the 'immediate family' category for reunification. At the same time, MSs are also allowed to make more stringent the already existing criteria and even add new parameters to their requirements for economic resources and accommodation, integration exams, and minimum resident period for the sponsor (on the basis of which he/she can invite his/her family to the EU). MSs differ significantly along the family reunification conditions' continuum, while the CJEU cannot force them to modify these additional parameters.

There are also ambiguities in relation to provisions for specific visa categories of sponsors such as Blue Card holders, diplomatic visa holders and long-term residents (Acosta Arcarazo 2011). The Directive does not include further specifications for those categories. At the same time, such challenging issues as duration of status and exemption from long-term residence, for example, for diplomatic workers; or more benevolent conditions for a prospective long-term residence of Blue Card holders also remain ambivalent. While the Directive gives no guidance on this, the MSs often decide such cases not in favour of the migrant. It is especially unclear whether, in terms of family reunification, long-term residents should be treated as the average TCN with a limited period of stay or as the EU national. What type of permit should be granted to their family members is another unanswered question.

The research conducted by Van den Broucke et al. (2016) shows that the reunification of overseas TNCs with their EU national spouses (children and parents) is covered by the European Citizenship Directive if the EU national sponsor has experience of intra-EU mobility. His/her family members can join him/her in the EU and live or travel with him/her all the time. In other words, if the EU national sponsor has worked, is now working or going to move to another MS, his family members will be allowed to join him/her in the EU – given that they reside in a place of the sponsor's basement. To illuminate how it works, we would like to present a few hypothetical cases. For example, if Russian woman X lives in Russia or Germany (in the latter case wanting to switch her permit to stay) and marries a German man who resides in Russia or Germany and from time to time moves for work to France or Austria (a EU MS different from his home country) or wants to take a job in France or Spain, X is eligible to enter Germany under the jurisdiction of this Directive. But if her husband has never worked in an EU MS and is not going to move to a EU MS other than Germany, she

cannot reunite with him in Germany under this Directive. She should apply under the national law.

Van den Broucke et al. (2016) argue that there is no European law on the harmonization of reunification procedures for TCNs who are family members of non-mobile EU nationals. Such cases are often decided within the national law framework and are not resolved positively by the CJEU (Lanaertz (2015)). There is, however, a special survival tool applied by such couples (as the cases analyzed below will show): to preserve the family integrity, the EU-national spouse finds a job in another EU MS to where he/she can invite his/her TCN family. The European Citizenship Directive is, however, not clear about the dependent's right to work in the new MS. Neither does it make obvious whether the EU-national sponsor's periods of study or vocational training in another EU country can count toward his/her intra-EU mobility experience.

This European Citizenship Directive makes the process of family reunification fast and effective – yet fragmented because some categories of migrants (older children, elderly parents, long-term residents, specific visa holders and spouses of non-mobile EU nationals) are marginalized within this scheme both as sponsors and as dependents.

2.5.3.1 Proportionality

One of the most contested laws in Europe is the Family Reunification Directive, which both opens and restricts the access of TCNs to Europe. The Directive allows member states to refuse family reunification on security grounds. But it also gives the member states a large margin of appreciation concerning the establishment of pre-departure integration exams. By doing so, the Directive and the CJEU seem to suggest that these measures of pre-departure integration serve to scan a potential future threat coming from those TCNs who may have no connection with Europe or who may damage the public health of the European society through their being foreign and different. At the same time, the Directive stresses the principle of *proportionality*, or reasonable justification of refusal, by emphasizing that suggested integration measures should be proportionate to the real threat. Without an exaggeration, they should be individually decided in each case, with respect to individual circumstances (Acosta Arcarazo 2011; Romic 2010).

This includes the person's right for disability adjustments during the integration exam, which is guaranteed by the Anti-Discrimination Directive yet frequently disrespected by national laws. However, in practice, the balance of these two features of the Family Directive may not be achieved. Below are a few cases that were resolved, on the grounds of the herein mentioned proportionality, in favour of the applicant: *Dogan v. Germany* (2014), *Genc v. Denmark* (2010) and *K/A v. Netherlands* (2014).⁴¹

Mrs Dogan was a Turkish national and the wife of another Turkish national living and working in Germany for 20 years. Mrs A. and Mrs K. were respectively the wives of a Turkish and Nigerian nationals living and working in Netherlands. When those 3 women applied for family reunification with their EU-based husbands (who were already EU citizens), their applications were rejected by national authorities on the grounds of not having passed the integration (including language) test. Moreover, the national authorities stated that the

⁴¹ For detailed analysis of these cases, see: Dabrowska-Klosinska (2018).

principal migrant should actually choose between his family back home and his current career in Netherlands, which is the implicated damage to his employment integration. All three cases were brought to the CJEU and decided eventually in favour of the applicant with reference to both the Family Reunification Directive and Employment Equality Directive (specifically the article concerning disability accommodation). The CJEU confirmed the right of these women for the individuation of the integration exam conditions. The CJEU also stressed that the fact of whether the family was built long before the principle's migrant departure from home or during his life in the EU should not be counted by national law.⁴²

In the *Genc* case, the fourteen-year old Caner Genc wanted to reunite with his divorced father in Denmark and was refused visa on the grounds that neither himself nor his father had stable friends or other intimate connections in that country. The most frustrating administrative detail was that had Caner applied for his visa a few months earlier, this newest requirement would not be applicable to his case. The CJEU decided that such bureaucratic details should not affect the overall decision on family reunification.⁴³

2.5.4 Long-Term Residence Directive 2003/109/EC

Directive 2003/109 on Long-Term Resident Status (European Council 2003b) gives this status to TCNs who have been legally residing, without an interruption, in an EU MS for at least five years. The acquisition of this status is subject to evidence of the applicant's financial resources and integration exams established in the MS. The migrant has to prove that, having lived legally on the territory of this MS for at least five consecutive years, he/she has an income-generating job (or substantial savings) and knowledge of the country's language and culture.

These three criteria of eligibility for long-residence (duration of legal stay, stability of financial resources, and competence on integration exams) point out to the contradictions within the Directive and complications around its implementation in MSs (Acosta Arcarazo 2010; Romic 2010). The period of absence from the MS must not exceed six consecutive months and ten months in five consecutive years. Although MS are allowed to consider cases with longer periods of absence due to extreme circumstance [e.g.: cross-border service, illness], this flexibility can also have the boomerang effect as some national laws presuppose preliminary residence periods of up to ten years. The Directive clarifies that the five-year residence must be legal prior to the application (CJEU cases *Głosczyk* and *Panayotova*) (see Acosta Arcarazo 2011).

Stability and regularity of financial resources of the applicant is usually verified by the MS, who has the right to establish the national threshold. Financial thresholds and verification practices vary among member states, thus making some EU countries (such as Sweden) more welcoming of migrants than others (Niessen et al. 2015; Romic 2010).

In addition, it remains obscure whether certain categories of migrant (with formally limited or temporary status of residence) can be exempted from the jurisdiction of this Directive. Their list includes (Acosta Arcarazo 2011): Students and vocational trainees; Those with a

⁴² See: *Dogan v. Germany*, Case C-138/13, EU:C:2014:2066.

⁴³ *Genc v. Denmark*, Case C-561/14, EU: C:2016:247. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62014CJ0561>.

temporary protection status; Refugees: Temporary workers: seasonable workers and cross-border providers; Professionals with diplomatic status (working in international organizations). However, these cases may be decided individually by the CJEU, and there have been precedents supporting the personal claim of recognizing the applicant's eligibility (ibid).

Unfortunately, the Directive does not set unified standards for the integration exam and leaves the elaboration of its specific requirements at the discretion of the MS. At the same time, MSs are obliged by the Directive to respect the personal request for disability accommodations during the exam as well as to confirm to reasonable justification of assessing a particular parameter on a case by case basis (Acosta 2010; Romic 2010). The Directive thus promotes harmonization in terms of restrictions (no less than five years of legal residence and minimum guidance on selected issues such as disability), albeit the main practical elements and procedures remain the prerogative of the MS.

2.5.4.1 The 'security' stance

Another problematic area is represented by the case law within the jurisdiction of the Long-Term Residence Directive. The majority of cases rejected by national courts of MSs and then transferred to the CJEU are justified on the basis of 'national security', or 'public health'. Cases are decided not in favour of the claimant on the grounds of his/her behavior not conforming to the member states' concerns over public health or national security.

This is not surprising because the overall migration-and-integration policy over the last years has been repackaging the theme of national security but within the framework of 'protecting European borders'. Although the Dublin Regulation (2013) stresses the importance of preserving the Schengen zone despite improving the border management, the latter remains priority number one and points to the strongly skewed character of the EU migration policy in favour of border protection measures.

In this contradictory milieu, the number of measures to assess integration is limited to ambiguous integration tests while the overall justifying rhetoric is mostly presented by the expanding discourse of national security. In this discursive milieu, migrants are represented, through various court interpretations and decisions, as a potential threat because they do not know the culture or because they are not prepared to live in Europe. In this reference, scholars ask a number of questions and look for answers through the CJEU decisions (Acosta Arcarazo 2011: 107).

1. Should certain categories of TCNs (artists, chefs) be excluded from being beneficiaries of the long term resident (LTR) Directive? Looking at the *Gunaydin v. Germany* case, the CJEU decided in favour of Mr Gunaydin, a Turkish chef entering Germany on a temporary permit many times. Recognizing the fact that Gunaydin's visas should be counted toward his LTR prerequisite, the CJEU stated that such mobile professionals do not contradict the national security of Europe but, on the contrary, do strengthen it. The CJEU also recognized the multiple re-entries of Gunaydin as a prove of his reliability for the German nation.⁴⁴

⁴⁴ See: Case C-1/97, ECLI:EU:C:1998:568. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61997CJ0001>.

2. Is the migrant's consent to enter the MS for a temporary job with a specific employer a justification for the MS to reject such migrant's application for a LTR permit? Looking at the *Ertanit v. Land Hessen* case, the EJC said no (Acosta Arcarazo 2011). The case was decided in favour of the migrant on the grounds that his continuously renewed temporary permit as a proof of the employer's consideration of the migrant as a long-term employee. In other words, there is a consistent European case-law (a series of precedents) that places temporary workers within the scope of this Directive. On the other hand, the Directive itself does not state precisely that such workers cannot be excluded either. The problematic issue is how this case law is interpreted by member states on each case.

2.5.5 Asylum Qualification Directive 2004/83⁴⁵

It is seen from the discussion above that employment and family reunification of refugees are among the most under-researched topics; although the asylum seeker population in Europe is rapidly growing, with a potential of their contribution to the MS national workforce. European legislation asserts that **even without residence permit, the refugee** is entitled to benefits [e.g.: family unity, employment, education, social welfare]. Nevertheless, MSs are allowed to set the resident permit as a pre-requisite for these benefits while employers remain unaware of the European law. The Qualification Directive does not provide for and the CJEU has not yet pronounced a decision on the **derivative status** for family members: they are not automatically reunited (Peers 2012).

As part of Common European Asylum System (CEAS), the initial Qualification Directive was adopted in 2004 and replaced in 2011(2011/095) by the Recast Qualification Directive, which may be replaced by a relevant regulation in line with the Commission's 2016 proposal (EPRS 2017). According to this proposal, family members of refugees would be entitled to receive the residence permit (though it is unclear to what extent it may conflict with the existing Family Reunification Directive). The Commission also aims at harmonising the rules on the stay permit, making it mandatory to use the EU standard residence permit for refugees (Peers 2017).

In many cases, the unpredictability of the duration of refugees' stay that obstructs their employability may actually discourage hiring practices. At the same time, initiatives to link businesses with local recruitment agencies in order to facilitate refugees' employment are still very small. In many cases, refugees find their jobs through personal contacts; and female refugees are particularly hard to be included on the job market (UNHCR 2016).

2.5.5.1 Legislative intersectionality and positive contamination

When the CJEU considers cases of migrants, the decision is often taken as a result of the *intersectionality* of Directives and consequent legislative contamination. Intersectionality means that the issue can be interpreted by two directives (Romic 2010). For example, the question of family reunification of family members of long-term residents may be covered by

⁴⁵ See: Council (2004b).

the Directive on Family Reunification and Long-Term Residence. The suggested term 'legislative contamination' means that the decision can be influenced by an article from the additional directive when imposed upon the primary directive. *Positive contamination* means that the decision is in favour of the applicant, and negative – vice versa. The most common intersectional cases involve the application of provisions from the EuCit Directive to those from the Long-Term Residence Directive, and a combination of Employment Equality- and LTR Directives.

Negative contamination can be illuminated by the most recent case *Rothwangl v. Austria* (2016).⁴⁶ Mr Rothwangle was a US national who, having resided in Austria for more than 40 years, eventually got the Austrian citizenship. He became EU citizen immediately before his official retirement and was denied the transfer of the pension benefits accumulated during his years in the USA. At first sight, it may seem that he falls under the Disability Article of the Equality in Employment Directive. On the other hand, the LTR Directive makes him ineligible for this transfer (since such issues are covered entirely by the Austrian law) while there is Directive on the rights of naturalized EU citizens. As a result, the CJEU did not decide the case in his favour.

An interesting example of legislative contamination is the *Zambrano v. Belgium* case (2011).⁴⁷ In this case, the applicant Ruiz Zambrano (a Colombian national and an irregular migrant in Belgium) married to an EU citizen and formed a family so as to seek to regularise his situation. However his application for long term resident status was rejected by the Belgian authorities and he was ordered to leave the country. He applied to the CJEU and was supported by the CJEU's decision to grant him a work permit on the grounds of being the father of minor Belgian-national children. Article 20 of the EuCit Directive prohibits any action that deprives EU nationals from an opportunity to travel around Europe. If he had left the country, he should have taken his children with him because they were his dependents. This would mean that they would not be able to exercise their right of free movement around the EU. But in the case of *Dereci v. Germany* (2011) which included five TCNs, the CJEU did not support the identical claim of the irregular migrants who were married to an EU national but did not have under age children to support. In resonance with the EuCit Directive, the Court argued that the claimants' wives had never exercised the privilege for the intra-EU mobility.⁴⁸

Together with the *Rottman case*, *Zambrano* became the precedent toward the application of the EuCit Directive. Mr Rottman [the case *Rottman v. Germany* 2010] was an Austrian who once committed a crime and left the country for Germany, where he concealed his criminal record. When years later, Austrian authorities notified Germany on his past, he immediately lost his German citizenship while having not yet retrieved his Austrian citizenship and having

⁴⁶ Case C-465/14, EU:C:2016:820. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62014CJ0465>.

⁴⁷ See: Ruiz Zambrano, C-34/09, EU:C:2011:124. For case analysis, see also: Lenaertz (2012, 2013, 2015).

⁴⁸ *Dereci v. Germany*, CJEU-C-256/11. Available at: <http://www.asylumlawdatabase.eu/en/content/cjeu-c-25611-murat-dereci-and-others-v-bundesministerium-für-inneres>. For case analysis, see also: Bierbach (2017: 405-407).

thus become a stateless person.⁴⁹ The CJEU obliged Germany to resume his citizenship on the grounds of preserving his right for intra-EU mobility.

2.6 Concluding Remarks

There is no solid EU law on labour market integration of third country nationals that would provide the basis for further court decisions. On one hand, such law derives from asylum law and general European law. On the other hand, this law does not rely on valid transposition mechanisms from the EU to the national level. The problem is that the EU unavoidable allows for a large margin of appreciation for member states in implementing relevant CJEU landmark decisions.

As noted by Acosta Arcarazo (2011), the 2000-2009 Directives, which underpin the EU law on labour-market migration, have been to some extent successful yet limited in scope, especially in relation to their application on the labour-market integration of larger streams of TCNs. In particular:

1. First, their impact shows that the European space has not yet evolved as an entity: it remains geographically divided into policy segments. Thus such directives became an important factor in shaping new policies and raising standards of protection for the Southern and Central Eastern European states. In fact, they have introduced some minimum standards and notions of justice that did not exist before in these countries because they have new migration regimes.
2. Yet for the older immigrant states such as Germany, France or Netherlands, these directives may have no positive effect because such countries have their own stable systems of national immigration law.

The degree to which the EU legislation really supports TCNs' totally depends on how such directives are processed by individual MSs. To this day each MS implements each directive individually. As Bonjour (2016) explains, they may be influenced by the EU (vertical implementation) or by each other's examples (horizontal implementation), or even by both (in rather complex two-axe patterns). Optional provisions (on establishment and regulation of integration measures), which are outlined in each directive, open ample space for multiple interpretations by each MS. The Directives clearly state that they only give minimum requirements to be further developed and interpreted by MSs in accordance with their national laws. For example, in *Romer* (Case C-147), the CJEU stressed that the Employment Equality Directive only provides very general guidance on combatting discrimination, without subtle nuances and that the harmonization of anti-discrimination measures has not been within the scope of the directive.⁵⁰

The major problem is that the enforcement mechanism for the EU legal order remains decentralized to a large extent. Within this framework of implementation, the judicial formulas of equality, anti-discrimination, reunification and naturalization may not only foster compliance of MSs but also – and for the most part – their resistance to integration through

⁴⁹ For more details, see: Rottman, C-135/08, EU:C:2010:104. For case analysis, see also: Lenaertz (2012, 2013, 2015).

⁵⁰ For further detail, see: *Jürgen Römer v Freie und Hansestadt Hamburg*, C-147/08. URL: http://ec.europa.eu/dgs/legal_service/arrets/08c147_en.pdf.

individually constructed interpretation tools and case-law practices. Scholars point out that the success of the implementation of these Directives depends largely on the mediating role of supranational courts such as the CJEU, and their ability to balance the EU requirements for integration with those of MSs' national laws. As Papagianni (2014) observes, among the factors impeding this equilibrium effect is the existence of two distinct and separate supranational courts in Europe, whose policies and procedures digress from each other: the CJEU's role can be obstructed by that of the ECtHR.

This is added by the fact, that, by its nature, the CJEU will never be able to settle down all existing cultural tensions about religion, belief, gender/sex perception and family institutions in Europe as those are invariably governed by subtle mechanisms underpinning their cultures for many years (ibid; Rubinstein 2015). Given this, tensions arise in the supranational litigation of such challenging issues as the migrant's religion, race/nationality and family reunification. There are occasional claims of employment discrimination but they are rarely raised by migrants (and especially by refugees) because of their inability to sustain financial expenses of litigation.

Although we have identified a few European court cases of migrant's success, this success is very sectorial. In the majority of cases, applications to the CJEU are filed by EU nationals and there are scarce data on all cases raised by TCNs.

The European Commission frequently and effectively forwards MSs [including the most recent case of Belgium in July 2017] to the CJEU for failing to deliver the provisions of the Single Work Permit Directive 2011/98, which offers work-and-residence permits via unified procedure and enriches the EU policy on niche-labour migration [e.g.: Blue Card-, Intra-Corporate Transferees- and Seasonal Workers-Directives] (EC 2017).

In 2016, the European Commission presented a proposal to modify the Blue Card Directive 2009/50/EC in order to address its failures (related to the duration of stay as a prerequisite for LTR, financial thresholds and slow-track processing) and also to include new beneficiaries such as asylum seekers under international protection and non-EU family members of EU citizens. Thus some of the challenges discussed above have been addressed through this work-in-progress project (EC 2016).⁵¹

Summing up, the overall EU labour market integration policy has been dynamic while still remaining conservative to a certain extent: some policy changes have been implemented - although not in a systematic way. There have been a few important Directives on migrants' rights. However, their implementation has not been harmonized, and many issues still remain at the discretion of MSs. In reality, there is no institutional actor with the capacity to mobilize national political structures of integration and, consequently, to make a substantial change on the EU level. For example, it has been noted that even FRA engages only to a limited scope in outreach activities that involve such powerful decision-making bodies as MSs' parliamentary committees (FRA 2013, 2017; Optimity Advisors 2017). EU agencies such as FRA, Eurofound, Cedefop or even the Commission and the CJEU are only marginally related to making a change because the labour-market remains a prerogative of

⁵¹ For the Blue Card Directive 2009/50/EC, see: Council (2009). See also: Triandayfllidou and Isaakyan (2014). For details on the Blue Card Revision Proposal, see: EC (2016).

MSs. This has been stated in the Directives, revealing their intrinsic epistemological contradiction.

In fear of financial and emotional risks, migrants often find it challenging to start a litigation process, especially in the CJEU. However, the Directives' intersectionality creates the effect of positive contamination and encourages TCNs to appeal to the CJEU. At the same time, the winning case precedents do not play the central role in the litigation process, which by now remains episodic. This is explained by the fact that the 'national security' argument, frequently deployed in the courtroom, is usually a stronger interpretive mechanism than the proportionality test (pronounced in the Directives). However, the EU Citizenship Directive, with its focus on intra-EU mobility, may become a more powerful tool in the courtroom logic, often helping illegal migrants obtain their work permit as a way toward long-term residence.

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Annexes

Annex I: Overview of the EU Legal Framework on Migration, Asylum and International Protection

Legislation title	Date	Type of law	Object	Link/PDF
<i>Treaty of Rome</i> – the Treaty of the Functioning on the European Union (TFEU). Article 78.	1957	International Agreement	All TCNs	https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf
<i>Treaty of Amsterdam</i> – the Treaty of the Functioning of European Union (TFEU 2). Articles 73i and 73k.	1999	International Agreement	All TCNs	http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf
<i>Charter of Fundamental Rights</i> . Articles 18 and 19(2).	2000 (signed), 2009 (enacted)	International Agreement	All TCNs	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT
<u>Directive 2001/55 on minimum standards for giving Temporary Protection</u> to displaced persons	2001	Directive	TCNs who are displaced persons	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001L0055
Dublin Convention 1	1990	EU legislative Act - Council Regulation	Asylum seekers and refugees	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A41997A0819%2801%29

Council Regulation 2725/2000 on the establishment of EURODAC	2000	Council regulation	Asylum seekers and refugees	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0603
<u>Directive 2001/40 on the mutual recognition of decisions on the expulsion of third country nationals (Directive on Mutual Recognition of Expulsion)</u>	2001	Directive	TCNs who violated the law and illegal migrants	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0040
<u>Directive 2001/51 on Carriers Liability</u>	2001	Directive	Returning TCNs	https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:187:0045:0046:EN:PDF
<u>Directive 2002/90 defining the facilitation of unauthorised entry, transit and residence (Directive on Facilitation of Unauthorized Entry and Stay)</u>	2002	Directives	Illegal migrants	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0090
Dublin Convention 2	2003	EU legislative Act - Council Regulation	Asylum seekers and refugees	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3AI33153
Directive 2003/9 on minimum standards for the reception of asylum seekers (Reception Directive)	2003	Directive	Asylum seekers and refugees	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32003L0009
Family Reunification Directive 2003/86/EC	2003	Directive	All TCNs	https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF

Long-Term Residence Directive 2003/109/EC	2003	Directive	Legal migrants	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32003L0109
Qualification Directive 2004/83	2004	Directive	Asylum seekers and refugees	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0083
<u>Directive 2004/81 on Victims of Trafficking</u>	2004	Directive	TCNs who are victims of trafficking	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0081
Directive on admission of third-country nationals for study and training 2004/114/EC (Study Directive)	2004	Directive	Foreign students and trainees	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0114
Directive 2005/71/EC on admission of researchers for scientific studies (Researchers Directive)	2005	Directive	Foreign researchers	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32005L0071
Directive 2008/115/EC on conditions of return of illegal third-country nationals (Return Directive)	2008	Directive	Illegal migrants	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115
<i>Treaty of Lisbon</i> . Article 61(2).	2009	International Agreement	All TCNs	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT
Directive 2009/52 on sanctions for employers of illegal third-country nationals (Sanctions Directive)	2009	Directive	Illegal migrants and their	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L005

Directive)			employers	2
<u>Directive 2009/50/EC — Conditions of entry and residence of non-EU nationals for the purposes of highly-qualified employment</u> (EU Blue Card)	2009	Directive	High-skill migrants	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A14573
Directive 2011/98 on simplified rules for entry and employment (Single Permit Directive)	2011	Directive	All legal migrants	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2016_132_R_0002
Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection (Qualification Directive Revised)	2011	Directive	Asylum seekers and refugees	https://www.easo.europa.eu/sites/default/files/public/Dve-2011-95-Qualification.pdf
Dublin Regulation (Dublin 3)	2013	EU legislative Act - Council Regulation	Asylum seekers and refugees	https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013R0604
Directive 2013/32/EU on common procedures for granting and withdrawing international protection (Recast Directive)	2013	Directive	Asylum seekers	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013L0032
Directive 2014/36 on seasonal workers	2014	Directive	TCNs who come to the EU for seasonal work	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0036

Annex II: List of main institutions involved in EU governance of migration

Institution	Tier of Gvt.	Type of Institution	Area of Competence in the Field	Link
European Parliament	Third, Supranational	EU	Legislates together with the Commission and the Council	http://www.europarl.europa.eu/portal/en
Court of Justice of the European Union (CJEU)	Third, Supranational	EU	Interpreting and enforcing EU law	https://curia.europa.eu/jcms/jcms/j_6/en/
European Commission	Third, Supranational	EU Executive branch (equivalent to government?)	Prepares legislative proposals, monitors implementation of EU legislation, acting as the executive of the EU	https://ec.europa.eu/commission/index_en
Fundamental Rights Agency (FRA)	Third, Supranational	EU Agency	Body responsible for monitoring equality and anti-discrimination legislation: data collection/analysis	http://fra.europa.eu/en
European Foundation for the Improvement of Living and Working Conditions (Eurofound)	Third, supranational	EU Agency	Policy coordination with local partners on labour-market integration	https://www.eurofound.europa.eu/
European Centre for the Development of Vocational Training (Cedefop)	Third, transnational	EU Agency	Recognition of migrants' skills	http://www.cedefop.europa.eu/
European Asylum Support Office (EASO)	Third, transnational	EU Agency	Support to the Commission and Member States on asylum policy development and implementation, assistance on the ground in processing of asylum applications	https://www.easo.europa.eu/

Annex III: EU legal framework on labour and anti-discrimination law

Legislation title	Date	Type of law	Object	Link/PDF
European Convention of Human Rights (ECHR)	1950	First and parallel law on human rights in Europe (but not the EU law), which sometimes guides the CJEU decisions and to which the EU should eventually accede.	Human rights in Europe, including: wellbeing and work (ECHR Article 2), discrimination (ECHR Article 14, ECHR Protocol Article 12), and education (ECHR Article 2).	https://www.coe.int/en/web/human-rights-convention/
Racial Directive 2000/43	2000	Secondary EU law: EC Directive	Racial discrimination in employment	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0043
Employment Equality Directive 2000/78	2000	Secondary EU law: EC Directive	Discrimination in employment	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0078
Charter of Fundamental Rights of the European Union (also known as European Convention).	2000 (created), 2009 (ratified)	EU Primary law on political, social and economic rights in the EU, which guides the CJEU decisions.		http://www.europarl.europa.eu/charter/pdf/text_en.pdf

3. Czech Republic

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3.1 Introduction

This text gives an overview of the current state of international migration in the Czech Republic with an emphasis on legislative framework and regulation of migration. Although migrants and refugees from non-EU countries are in the centre of our attention, the data from the Czech Statistical Office which are used in the first section do not distinguish between these categories. The positions of these two groups are different in the Czech legislation but often migrants from EU countries such as Poland, Romania and Bulgaria might find themselves in a similar position in the labour market (working in unqualified manual jobs). The term “migrant” is not appropriate for all the groups that are covered by this text, especially for foreign nationals with temporary residence. The text covers the years 2014 to 2016. In the Czech Republic, this period was characterised by higher attention paid to migration in the public debate but not by significantly higher numbers of incoming migrants.

3.2 Statistics and Data Overview⁵²

Since 1990, the number of foreign nationals in the Czech Republic has been highest among the neighbouring post-socialist countries. In the period of 2014–2016, the net migration rate was 57,702 people (including EU nationals).

Table 3.1 Migration rates (including EU nationals)

	2014	2015	2016
Immigration	41,625	34,922	37,503
Emigration	19,964	18,954	17,439

Source: Czech Statistical Office. Vývoj počtu cizinců available at: https://www.czso.cz/csu/cizinci/1-ciz_pocet_cizincu (own calculation).

⁵² Migration data for the Czech Republic are available on the website of the Czech Statistical Office and have been aggregated from figures provided by other government bodies, mainly the Ministry of the Interior, the Ministry of Labour or the Foreign Police. However, the data are often not divided by the main demographic categories or are already aggregated. Most of the data are available also in English at https://www.czso.cz/csu/cizinci/1-ciz_pocet_cizincu.

The share of women in the migrant population has been growing: whereas women accounted for 40.5% of all foreigners in 2009, it was 46.2% in 2016.

Table 3.2 Arrival of non-EU migrants

Year	Total	Male	Female	Age 0–14	Age 15–64	Age 65+
2014	24,176	12,548	11,628	2,769	21,141	266
2015	18,095	9,075	9,020	2,603	15,243	249
2016	20259	10,579	9,680	2558	17,513	188

Source: Czech Statistical Office (own calculation) https://www.czso.cz/csu/czso/rocenky_souhrn.

The number of foreigners from non-EU countries living in the Czech Republic grew slightly in the given period, namely from 265,872 to 277,277 (without asylum seekers). Officially, they comprise around 55% of all foreign nationals and 2.6% of the whole population but their share within the entire migrant population has been decreasing.

The national structure of incoming migrants is stable: the main routes are from post-socialist countries (Ukraine, Russian Federation, Moldova) and from Vietnam (see below for the reasons)⁵³. Furthermore, US citizens represent a significant group of migrants.⁵⁴ The biggest groups by nationality are consistently Ukrainians, Vietnamese and nationals of the Russian Federation, who altogether constitute around 75% of this group of migrants (Czech Statistical Office, Data on Number of Foreigners, available at: <https://www.czso.cz/csu/cizinci/number-of-foreigners-data#rok>).

⁵³ It is worth noting that the mobility between these countries and the Czech Republic is two-way. For example, for the nationals of Vietnam, the net migration rate was negative in 2015.

⁵⁴ For statistics by country, see: <https://www.czso.cz/csu/czso/cizinci-v-cr-2015>.

Table 3.3 Third-country foreigners by nationality

Country of origin/year	2014	2015	2016
Ukraine	104,272	105,153	108,220
Vietnam	56,855	56,659	57,806
Russia	34,438	34,757	35,475
USA	6,583	6,483	7,818
China	5,556	5,702	5,960
Mongolia	5,397	5,884	4,487

Source: Czech Statistical Office, Data on Number of Foreigners, available at: <https://www.czso.cz/csu/cizinci/number-of-foreigners-data#rok>.

The majority of foreigners are in the economically active age. Recently, the population has been ageing, with growing number of foreigners over 65 years, but the number of children enrolling in schools has been growing as well.

Table 3.4 Selected age groups of foreigners (including EU nationals)⁵⁵

Year	0–19	65+
2014	62,414 (14%)	20,446 (4.5%)
2015	65,332 (14%)	20,750 (4.5%)
2016	69,988 (14.2%)	25,205 (5.1%)

Source: Czech Statistical Office, Život cizinců v ČR, available at: <https://www.czso.cz/csu/czso/zivot-cizincu-v-cr-2016>

Since 2012, the majority of foreigners in the Czech Republic have held the status of permanent residence.

⁵⁵ Data for third-country migrants are not available.

Table 3.5 Foreigners by migrant status and gender

Year	Total	Females	Permanent residence	Females	Long-term residence	Females	Asylum	Females
2014	267,412	123,834	178,597	83,726	6,396	3,294	2,556	1,044
2015	272,063	126,876	185,313	86,954	6,008	3,156	2,892	1,206
2016	288,244	135,068	192,901	90,592	13,147	7,191	2,972	1,255

Source: Czech Statistical Office. *Cizinci v ČR*. <https://www.czso.cz/csu/czso/cizinci-v-cr-2015>

Data on purposes of stay are only available for foreigners with long-term visa (83,858). Among those, business/employment is the most common purpose (44.6%), followed by family reunification (28.3%) and study (18.7%). Humanitarian or other purposes apply to only a minority of this group of migrants (8.4%) (figures for 2015)⁵⁶. The Czech Republic is surrounded by other Schengen countries and entry can be denied only to persons travelling by air. Therefore, the number of denied entries is low: 167 in 2014, 194 in 2015 and 197 in 2016⁵⁷. The number of recognised refugees is very low and only a minority of asylum applications are successful. Asylum holders form less the 1% of the immigrant population⁵⁸.

Table 3.6 Asylum administration

Category/year	2014	2015	2016
Asylum seekers	1156	1525	1478
Granted refugee status	82	71	148
Granted subsidiary protection	295	399	202

Source: Czech Statistical Office. *Foreigners: International Protection*. Available at: https://www.czso.cz/csu/cizinci/1-ciz_rizeni_azyl

Women comprise a minority among asylum seekers: 37% in 2014, 35.2% in 2015 and 38% in 2016. The age structure of asylum seekers is rather stable.

⁵⁶ Czech Statistical Office. *Život cizinců v ČR v roce 2015*. available at: <https://www.czso.cz/documents/10180/20550363/29002615.pdf/8b37aeb6-f079-4de9-a211-32af9d0b80cb?version=1.>

⁵⁷ Czech Statistical Office. *Data on Illegal Migration of Foreigners*. available at: <https://www.czso.cz/csu/cizinci/data-on-illegal-migration-of-foreigners#rok>

⁵⁸ Czech Statistical Office. *Foreigners: International Protection*. available at: https://www.czso.cz/csu/cizinci/1-ciz_rizeni_azyl

Table 3.7 Asylum seekers by age

Year/age group	0–19	20–49	50+
2014	319	710	127
2015	309	1073	143
2016	311	1020	147

Source: Czech Statistical Office. *Foreigners: International Protection*. Available at:
<https://www.czso.cz/csu/cizinci/data-on-international-protection#cr>

Ukrainians, the biggest groups of foreigners in general, dominate also among the asylum seekers.

Table 3.8 Asylum applications by nationality

Year	Nationality (number of applicants)				
2014	Ukraine (515)	Syria (108)	Vietnam (64)	Russia (43)	Cuba (42)
2015	Ukraine (694)	Syria (135)	Cuba (128)	Vietnam (80)	Armenia (44)
2016	Ukraine (507)	Iraq (158)	Cuba (85)	Syria (78)	China (68)

Source: Czech Statistical Office. *Foreigners: International Protection*. Available at:
<https://www.czso.cz/csu/cizinci/data-on-international-protection#cr>

There are two types of expulsion according to Czech law. *Administrative expulsion* applies to unsuccessful asylum seekers and *expulsion inflicted by courts* is a type of legal penalty for foreigners who committed a crime. There is a large discrepancy between issued and actually implemented expulsions.

Table 3.9 Expulsions

	2014	2015	2016
Issued decisions on administrative expulsions	2,149	3,009	3,539
Actually implemented administrative expulsions	175	172	207
Issued decisions on expulsions inflicted by court	985	1,013	1,278
Actually implemented expulsions inflicted by court	276	255	261

Source: Czech Statistical Office. Nelegální vstup a pobyt osob na území ČR. available at: <https://www.czso.cz/csu/czso/7-nelegalni-vstup-a-pobyt-osob-na-uzemi-cr-d0u9tk4s9j>

3.3 Socio-economic, Political and Cultural Context

Due to its location, the area of the Czech Republic has been a crossroad for various migrant flows since the medieval era. Its multi-ethnic nature came to end during and after WW2 when Jewish and Roma communities disappeared almost completely and more than three million ethnic Germans were expelled. During the communist regime (1948–1989), Czechoslovakia was a sending country (an estimated 200,000 citizens left) and the important migration flows were domestic. Slovaks and minorities from the Slovak part of the federation (Roma, Hungarians) were moving to Czech industrial cities. Nowadays, Slovaks are the second biggest group of foreign nationals but their status is special both in the legal system and in perceptions of the society (there is no major language or cultural difference). Roma are the largest autochthonous minority and suffer from low social status and discrimination in the educational system and labour market. Therefore, they are hesitant to declare their ethnicity in official statistics and their estimated number is around 200,000 (Kalibová 1996, Langhamrová, Fiala 2003, Hůle et al 2015).

In terms of international migration, Czechoslovakia was an industrial country with a need for workforce, and therefore, migration from other socialist countries (Yugoslavia, Cuba, Vietnam) was organised in the 1970s and 1980s. These workers were not integrated in the Czechoslovak society and most of them left after the so-called Velvet Revolution in November 1989. However, a strong presence of Vietnamese immigrants is a legacy of networks that were established in this period. Currently, the strongest migrant flows are also from other post-socialist countries because of the close cultural, language and personal bonds. These migration flows started in the early 1990s and, until nowadays, workers from post-socialist countries have been living mostly in Prague and other industrial centres.

The highest share of foreigners (including EU nationals) lives in Prague (14.5%). Prague's migrant population is also the most diverse. The three biggest migrant communities (Ukrainians, Vietnamese, Russians) comprise only half of the foreigners in Prague.

The second highest share of foreigners in the population is in the Karlovy Vary region (6.5%) and the third highest share in Plzeň region (5.1%) in the west of the Czech Republic, close to the border with Germany. Migration flows to these regions have deeper historical reasons. Especially migrant communities from Vietnam developed their businesses through cross-border trade in the 1990s. A sizable population of foreigners, mostly males, can be found in the city of Mladá Boleslav (7.9%), the seat of the Škoda car factory. The map below shows detailed regional distribution of foreigners (including EU nationals), with visible dominance of northern and western regions.

There are significantly fewer migrants in Moravia and Silesia, the eastern parts of the Czech Republic which are less attractive even for Czech citizens (due to higher levels of unemployment and worse infrastructure). Brno, the country's second largest city, represents an exception, with a proportion of migrants higher than 4.5%.

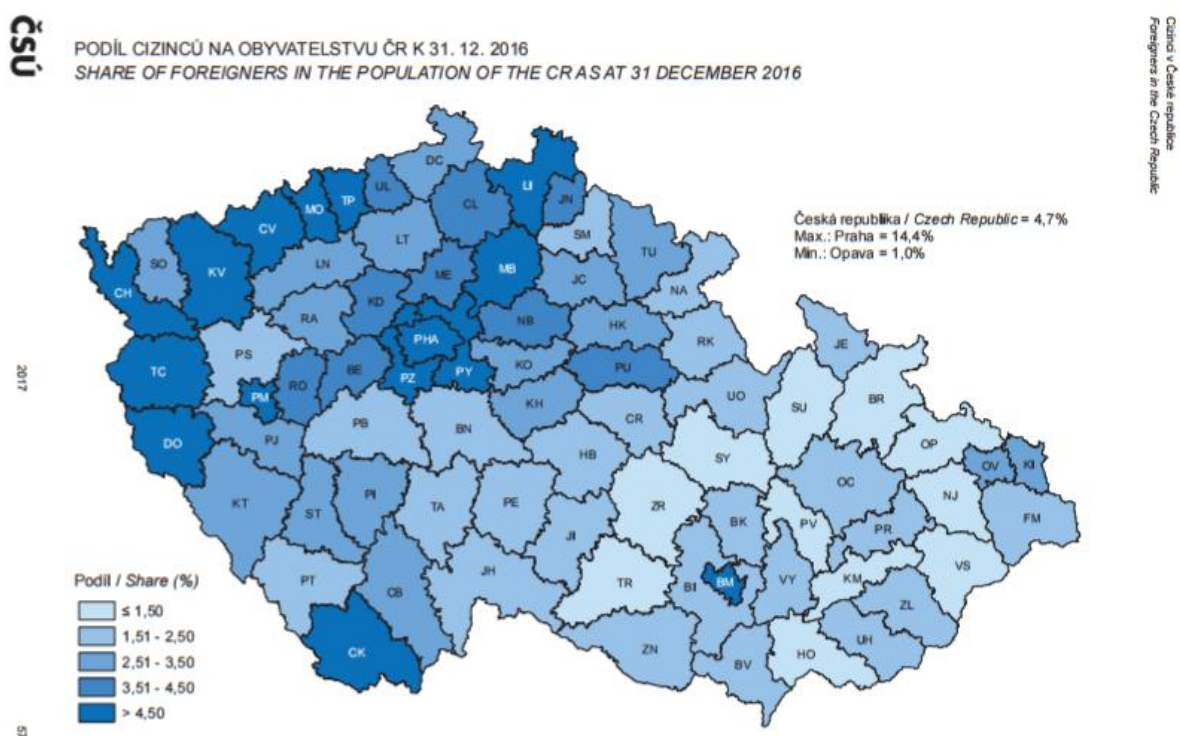


Figure 3.1 Share of Foreigners in the Population

Source: Czech Statistical Office. *Život cizinců v ČR 2016*. available at: <https://www.czso.cz/csu/czso/zivot-cizincu-v-cr-4e8zpr5hif>.

Because of direct foreign investments, the Czech Republic remained a strongly industrialised country after the dissolution of Czechoslovakia in 1993; recently, there has been a lack of workforce (the unemployment rate sank from 6 to 4% in the period of 2014–2016). The Czech Republic is also rated among countries with a very high level of human development (0.878 in 2016). However, there is a major cleavage between this perpetual need for a workforce, that is also emphasized by various actors from the business sector, and a general hesitant relationship to foreigners in the Czech society. The Czech Republic is one of the

most atheist countries in the world. Only 20% of the population are members of a church⁵⁹ and 35% declared themselves as atheist in the last census of 2011.

The system of migration laws can be a result of a legacy of the closed communist political system and of the historically homogeneous population. Expansion of xenophobic attitudes in the majority of Czech population could be observed during the recent refugee crisis although the number of actual refugees was very low in country (Čada, Frantová 2017). The general rejection of responsibility for refugees and a wave of anti-Muslim sentiment are common features in all post-socialist countries of the EU (Pachocka 2016). In last decade, anti-migration rhetoric became part of the discourse of established mainstream political parties namely the Social Democrats on the left and the Civic Democratic Party and the TOP 09 on the right. Traditionally, anti-migration extremist parties did not score very well but the parliamentary elections in October 2017 changed the distribution of the political power remarkably. A centrist populist party, “ANO” (meaning Yes), founded in 2012 by billionaire Andrej Babis, won the 2017 elections with almost 30% of the vote. Third was the Pirate Party (10.79%) with mixed attitudes toward migration policy. The Pirate Party opposes the EU plan for refugee quotas, on one hand, and calls for solidarity with refugees, on the other hand. An unprecedented rise in popularity was seen by the far-right party, “Freedom and Direct Democracy” (10.64%) which uses a strong anti-immigrant and anti-Muslim rhetoric. Current Government is composed of the ANO and the Social Democrats (7.27 %). Both parties refuse the refugee quota scheme and promote the strengthening of border protection of both the Czech Republic and the EU.

3.4 The Constitutional Organisation of the State and Constitutional Principles on Immigration and Asylum and Labour

The Czech Republic is a unitary parliamentary constitutional republic in which the President is the head of state and the Prime Minister is the head of government. Executive power is exercised by the government which is accountable to the lower house of the Parliament. The legislature is bicameral, with the Chamber of Deputies (*Poslanecká sněmovna*) consisting of 200 members and the Senate (*Senát*) consisting of 81 members. Deputies are elected for a term of four years or and senators for six years – one-third of the latter are elected every two years.⁶⁰

Since 2000, **the regional level of government in the Czech Republic** has been formed by 13 regions (*kraje*) and the capital city of Prague as the 14th region. The regions exercise some tasks of the government administration and possess their competencies and independent powers. The regions have a relatively high level of discretion in policy making and implementation, especially in regional development, education, health and social care. They also play an important role in the coordination of different actors and levels of government (Nekola, Veselý 2016: 125–6). Regional governments are responsible for secondary schools, including vocational ones, health care and social care facilities. With respect to integration of foreigners, there are regional cooperation platforms which coordinate integration policies in each region. These regular meetings of regional actors

⁵⁹ Catholic church is historically the strongest one.

⁶⁰ See Constitution of the Czech Republic (*Ústava České republiky*), https://www.constituteproject.org/constitution/Czech_Republic_2013.pdf?lang=en.

(regional and municipal authorities, non-profit organizations, Labour Offices and other organizations and institutions) are organised by Regional Integration Centres (see below) and should contribute to cooperation, sharing of information and experience and addressing topical issues. However, the platforms do not have any executive powers.

Generally speaking, **local governments** have independent responsibilities in local housing policy, govern the process of social services planning, are responsible for pre-schools and elementary schools, and possess multiple mechanisms to support local NGOs working in the field of social inclusion. Even though there are no legal obligations for municipalities to include migrants in their integration policies or strategic plans, there have been attempts to include foreigners in community planning of social services.

The Constitution of the Czech Republic was adopted on 16 December 1992 (Act No. 1/1993 Coll. – as amended by acts No. 347/1997 Coll., No. 300/2000 Coll., No. 395/2001 Coll., No. 448/2001 Coll., and No. 515/2002 Coll.). Article 3 of Chapter one, “Fundamental provisions”, incorporates the Charter of Fundamental Rights and Freedoms as adopted on 16 December 1992 (No. 2/1993 Coll. – as amended by Act No. 162/1998 Coll.) as a component of the constitutional order. The Charter includes, among other important rights, guarantees of citizens’ economic, social and cultural rights. Among those are also the right to free choice of occupation (Article 26/1), the right to acquire the means of one’s livelihood by work (Article 26/3), the right of employees to fair remuneration for work and satisfactory working conditions (Article 28/3), the right of women, young persons and persons with disabilities to increased safety and health at work, including special working conditions and assistance in vocational training (Article 29), the right to freely associate with others with a view to protecting economic and social interests (Article 27/1), or the right to strike (Article 27/4).

Independent courts exercise the **judicial power**. The court system is made of the Supreme Court, the Supreme Administrative Court and superior, regional and district courts. The jurisdiction and the organization of courts are defined by Act No. 6/2002 Coll. on courts and judges, as amended. The Supreme Court is the supreme judicial body of the Czech Republic. The Supreme Court plays an important role in labour disputes by producing case law in this area and publishing it in the Collection of Court Judgments and Judicial Opinions.

The Constitutional Court, established by Act No. 183/1993 Coll., as amended, is a judicial body responsible for the protection of the constitutional rule. It has the authority to repeal laws or other legal regulations or individual provisions thereof, and to rule on constitutional complaints filed against illegal interventions by the state, against final decisions violating constitutionally guaranteed fundamental rights and freedoms, etc.

With respect to migrants, asylums seekers and refugees and the labour market, the six Constitutional Court cases are described in detail below represent the most significant pieces of case law between 2014 and 2017.

First, foreign workers were reportedly victims of the organized criminal activity of labour exploitation in forestry in the Czech Republic.⁶¹ In December 2015, a ruling of the

⁶¹ In 2009 and 2010, several companies (e.g. Affumicata a.s., Wood service Praha s.r.o.) ran common networks of actors that employed hundreds of workers in forestry work. The workers came from a number of countries,

Constitutional Court (*II. ÚS 3626/13*) annulled the decision of the police authority (Praha I) and the Public Prosecutor's Office to defer the case and described the procedure as incomplete and inconsistent. According to the Court, the police authority failed to carefully investigate these accusations although they bear features of severe violation of human rights. The case was returned for investigation. This case demonstrates both exploitation of foreign labourers (including ones from the EU) and how Czech authorities might tolerate this kind of exploitation.

Second, in November 2016, the Constitutional Court (*II. ÚS 443/16*) ruled in favour of a graduate of the Jagiellonian University in Krakow (Poland) whose application to be included in the register of lawyers had been rejected by the Czech Bar Association. The Czech Bar Association did not recognize his Polish university education as sufficient for inclusion in the list of trainees, even though this university education had been previously recognized by the Ministry of Education. The Constitutional Court ruled that it would be more appropriate for the Czech Bar Association to enrol him in the list and examine his knowledge of national law after the trainee period.⁶²

Third, in December 2016, the Constitutional Court found systemic deficiencies in the process of expulsion of foreigners (*I. ÚS 630/16*). It stated that the deadlines for both lodging an asylum application (seven days) and for appeal against administrative expulsion (five days) are unusually short. Even though these rules are in accordance with the constitutional order, it is essential that access to qualified legal assistance during these periods be guaranteed. The Constitutional Court also found that the practice of the Ministry of the Interior posed serious questions as to whether the Ministry fulfilled its duty not to expel a person who is at risk of death or ill-treatment in the country of origin.

Fourth, in May 2017, the Czech Constitutional Court handed down a landmark ruling (*II. ÚS 3289/14*) in the case of a Kosovan family with two children who had been held in the Detention Centre for Foreigners in Bělá Jezová. According to Czech laws, undocumented migrants can be detained in such centres up to 180 days (or 90 in the case of children under 15 or families). However, in the years 2014–2016, asylum seekers were also detained in these centres. According to the Czech ombudsman or the European Court of Human Rights, detention of children should be avoided in general. The Constitutional Court stated that the detention had violated rights of the family. The decision was meant to be a signal for the future, so that children would, as far as possible, not be put in detention centres at all (see People in Need 2017).

Fifth, in May 2017, the Constitutional Court (*Pl. ÚS 2/15*) refused to recommend changes to the country's public health insurance rules in the face of claims that the public health insurance system discriminated against foreigners. Temporary residents do not participate in the public health system and they have to use services of several private insurance companies, which seek to maximize their profit and also cover only a limited selection of services – excluding especially prenatal and postnatal care. Two aspects of the existing rules which affected Ukrainians giving birth in the Czech Republic and medical care for their

including Vietnam, Slovakia, Ukraine, Mongolia, Romania and Bulgaria. They did not any pay or received just deposits. They were also forced to work and subjected to extortion (see Čaněk 2016).

⁶² The decision relied on the principle of proportionality, arguing that the measure had gone beyond what was required to attain a legitimate goal.

newborns had been challenged. In both cases, the mothers had to cover the costs of care themselves. The court ruled that it is not exceptional for insurance coverage to vary according to citizens' links with the state.

Finally, In August 2017, the Constitutional Court (*II. ÚS 1260/17*) ruled that holders of international protection granted in another EU Member State must be regarded as holders of international protection also in the Czech Republic and such persons cannot be extradited to the country of origin.

These cases demonstrate that the rights of migrants and asylum seekers often have to be asserted in court. They exemplify features of migrant policies or bureaucratic practices that had been criticized by NGOs for a long time. These legal cases are exceptional because the victims (often with support from NGOs or human rights organisations) decided to question the practices at the court.

3.5 Legislative and Institutional Framework in the Fields of Migration and Asylum

Since 1999, the immigration has been regulated by Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic, and by Act No. 325/1999 Coll., on Asylum. As Čižinský et al. (2014) note, due to numerous amendments, the Residence Act has become a rather unclear and chaotic piece of legislation. Restrictive government measures against migrants strengthened in the context of the economic crisis after 2009. In 2010, for example, labour offices were asked to act much more strictly in issuing employment permits to foreigners: "They were asked not to issue employment permits to foreigners for such job positions that can be filled by persons with free admission to the Czech labour market. The length of the stay or the level of integration of individual foreigners was completely disregarded." (Čižinský et al. 2014: 47) The attempts to make work permits more restrictive continued in 2012 when the granting of employment permits for low-qualified positions were heavily discussed among politicians and involved employer organisations.

A fundamental change was represented by Act No. 101/2014 Coll., which came into effect in June 2014. This Act amended Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic, and other specific pieces of legislation, notably Act No. 435/2004 Coll., on Employment, Act No. 262/2006, the Labour Code, and Act No. 18/2004 Coll., on the Recognition of Professional Qualifications. The reason for the amendment was to implement Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

The crucial point of the single permit concept is represented by a combined document, an employee card, which would authorize migrants to stay and perform a specific job. The single permit should be of help to migrants and their employers by simplifying procedures and facilitating controls concerning the authorization to stay and the legality of employment. Whereas two separate applications had to be delivered in previous system (work permit and residence permit), only one is needed for the employee card. The only condition is that there is preliminary arrangement with the employer after the working position has been promoted on a special website operated by the Ministry of the Interior. Advertised can be only positions

that approvingly could not be taken by Czech citizens or other groups with free access to the labour market.

In 2017, the Parliament approved an amendment to Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic. The amendment was initially presented as a mandatory transposition of the European law, but many other changes were made subsequently. The amendment was heavily criticized by NGOs and the Czech ombudsman for a variety of reasons: (1) abolition of the public prosecutor's supervision of detention facilities. These are run by the Refugee Facilities Administration (www.suz.cz), an agency subordinated to the Ministry of the Interior. The detention centres were especially criticized by the Czech ombudsman (see above); (2) discrimination against Czech citizens in mixed marriages with foreigners; and (3) exclusion of judicial review of the actions of the Ministry of the Interior and many others.

The entry of migrants to and residence in the Czech Republic, as well as their leaving the territory, are primarily governed by Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic, as amended (hereinafter "the Residence Act") and by directly applicable EU regulations, for example by Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

In the context of the Residence Act, it is necessary to distinguish between (1) EU nationals; (2) family members of EU citizens and Czech citizens; (3) visa-free third-country nationals; and (4) nationals of third countries with visa requirements.

EU citizens can stay on Czech territory without any limitations. In case of a stay which is longer than 30 days, they have the right to apply for a certificate of temporary residence. Following five years of uninterrupted stay in the territory (2 years for family members of EU residents with permanent residency), they have the option to apply for a permanent residence permit.

A visa-free foreigner (according to European legislation EC No. 539/2001) can reside in the Czech Republic for a 90-day period every 180 days. If he or she wants to engage in gainful activities in the Czech Republic (be it entrepreneurship or employment), he or she has to arrange for a respective visa or residence permit.

With respect to the category of **foreigners with visa requirements**, one can distinguish four categories of permit: (1) *short-term visas (for stays of up to 90 days)*, (2) *long-term visas (for stays of over 90 days)*; (3) *long-term residence (for the purpose of doing business, employee card, for the purpose of a family living together in the Czech Republic)*; and (4) *permanent residence*.

*Short-term visas*⁶³ are valid for one or more entries and give the right to stay in the Schengen area for the period indicated in them. The length of continuous residence or the total length of successive stays in the Schengen area must not exceed 90 days within any 180-day period. The application must be filed with a Czech embassy in the country of origin, or in another country where the applicant has either long-term or permanent residence.

⁶³ See Regulation (EC) No 810/2009.

Czech law distinguishes *long-term visas*⁶⁴ for the purposes of business, family reunification, studies, exceptional leave to remain and other. The application can be filed with a Czech embassy in the country of origin, or in another country where the applicant has either long-term or permanent residence.⁶⁵

The foreigner must apply for long-term visa 14 days before his or her visa expires at the latest. The Ministry is very restrictive and, with the exception of serious health problems or proved impossibility to contact public administration, the Ministry does not accept applications lodged after the deadline. The Ministry is also highly restrictive in applying an extensive interpretation of legal reasons for the denial of long-term visa (Koldinská et al. 2016: 144).⁶⁶

*Long-term residence for business purposes*⁶⁷ can be applied for if a foreigner is a self-employed person in the Czech Republic, a statutory authority (executive director, manager) or a member of the statutory bodies of a company or cooperative. The application is to be filed either at a branch of the Ministry of the Interior according to one's place of residence, or at a Czech embassy.

Since June 2014, instead of long-term visas for employment purposes, long-term residence for employment purposes and green cards, *employee cards*, have been issued (see below).

*Long-term residence for the purpose of family reunification*⁶⁸ may be applied for by: (1) a spouse of a foreigner with permitted residence or of an asylum seeker; (2) the minor or adult dependent child of a foreigner with permitted residence or of an asylum seeker; (3) the minor or adult dependent child of the spouse; (4) a minor in the foster care (or a similar type of custody) of a foreigner with residence permit or of an asylum seeker, or of his or her spouse; (5) a parent, grandparent or guardian of a minor; (6) a lonely foreign national over the age of 65 or, regardless of age, a lonely foreigner who cannot take care of himself or herself for health reasons, if it is the case of family reunification with a parent or child legally staying in the territory; (7) a foreigner who, prior to entering the territory of the Czech Republic, has resided in the territory of another EU Member State as a family member of a blue card holder (long-term residence permit for the purposes of highly qualified employment). The person with whom the foreigner reunites should have a long-term or permanent residence permit. Moreover, the person should have stayed in the territory of the Czech Republic for a minimum period of 15 months (in the event of the reunification of spouses, each of them

⁶⁴ See Section 30, Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic.

⁶⁵ From 2009 to 2017, applications were managed through the electronic system, *Visapoint*. The applicant could book the application interview electronically. Due to a limited number of time slots, there were long waiting periods and suspicion of manipulation and corruption. The Supreme Administrative Court of the Czech Republic questioned this practice as a limitation of access to public authority (see 9 Aps 6/2010 - 106). In 2017, the Visapoint system was abolished but the problems persisted, especially in Ukraine. There are long waiting periods for application and applicants use services of unofficial gatekeepers or chose the easier way of obtaining Polish visa and working illegally in the Czech Republic.

⁶⁶ Reasons for denial are listed in Section 56 and Section 13, Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic. The long-term visa can be denied because of false information in the application or when the applicant is registered in the records of undesirable person.

⁶⁷ See Sections 42, 44, and 45, Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic.

⁶⁸ See Section 42a, b, Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic.

must have reached the age of 20 years) or the person should be a blue card holder or a successful asylum seeker.⁶⁹

With respect to family reunification policy, migrants face a number of obstacles to the realization of their right to family life such as unreasonably long deadlines for processing their application and poor information about the processing of their applications.⁷⁰

*Permanent residence*⁷¹ can be applied for after 5 years of uninterrupted temporary stay in the territory of the Czech Republic. Without compliance with the condition of 5 years of uninterrupted temporary stay, permanent residence can still be applied for under certain exceptions, e.g. for humanitarian reasons, for reasons deserving special consideration, in some cases following the conclusion of proceedings on international protection, etc. The application can be submitted at a branch of the Ministry of the Interior, or in some cases at a Czech embassy. The foreigner must pass Czech language exams (A1 level).⁷²

Proceedings on individual types of residence follow the Code of Administrative Procedure, with a few exceptions such as visa granting or verification of invitation. The applicant has the right to appeal a negative decision of the competent administrative body within 15 days of the delivery of the decision. The appeal is made to the Appeal Commission on the Residence of Foreign Nationals.

Administrative proceedings for granting international protection are held by the Ministry of the Interior of the Czech Republic.⁷³ These proceedings are launched by the foreigner's declaration to apply for the granting of international protection. The asylum seeker is obligated to appear at a reception centre within twenty-four hours of making the declaration, where he or she files an application for international protection and the Foreign Police performs identification processes. The asylum seeker is also required to undergo a medical examination. The Ministry may secure the applicant at the reception centre for up to 120 days if his or her identity has not been verified (he or she does not have a valid travel document, or the identity document is falsified) or there is a danger to state security, public health or public order.

The application for international protection is used to determine the reasons that led the refugee to depart from the country where he or she was staying. When the required tasks are completed, the applicant is transferred to an accommodation centre, where he or she awaits the first instance decision. The Ministry grants asylum to the applicant if it is proved that the foreigner was persecuted for the exercise of political rights and freedoms or has a justified fear of persecution on the basis of race, gender, religion, nationality, membership in a particular social group or certain political views in the state of which he or she is a national or, if he/she is a stateless person, in the state of his/her last permanent residence.

Over the course of this period, an interview is conducted with the applicant, which is intended to verify the reasons for international protection that were stated in the application.

⁶⁹ Implementation of Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification.

⁷⁰ https://www.opu.cz/wp-content/uploads/2016/06/Slučován%C3%AD_rodin_cizinců.pdf.

⁷¹ See Section 63, Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic.

⁷² See Decree of the Ministry of Education, Youth and Sports No. 348/2008 Coll., on Instruction and Examinations in the Czech Language for the Purposes of Obtaining a Permanent Residence Permit in the Territory of the Czech Republic.

⁷³ See Act No 325/1999 Coll., on Asylum.

The ministry issues a decision on the matter within 6 months of the date on which the proceedings started. If a decision cannot be made within this timeframe due to the specific nature of the matter, the Ministry can extend it appropriately, up to 18 months. As the Consortium of Migrants Assisting Non-Governmental Organizations points out⁷⁴, undocumented refugees routinely wait up to 120 days in special detention facilities, which house families with children, traumatised people, and torture victims. In addition to detention, undocumented refugees are added to a database to prevent them from applying for any form of visa in the Czech Republic or the EU for several years.

There is no **regularization of irregular migrants** in the Czech Republic. Irregular migrants are deported from the country. Compared to other EU countries, cases of irregular migration are relatively exceptional. The Ministry of the Interior listed in its Migration Policy Strategy⁷⁵ as fundamental instruments in this area effective control of the territory and return policy, cooperation with third countries, fight against human trafficking and consistent sanctions against its organizers.

Coordination of the migration and integration policies falls under the remit of the Czech Ministry of the Interior. The Ministry of Labour and Social Affairs is responsible for policies related to the labour market. Short-term and long-term visa applications are submitted at embassies, and thus, this area partly falls within the remit of the Ministry of Foreign Affairs. The Ministry of Industry and Trade deals with economic migration, including aid to foreign investors and special projects focusing on highly qualified migrants.

The Ministry of the Interior (Mol) is the main body responsible for the immigration and asylum policies in the Czech Republic, namely at the legislative, strategic and implementation levels. The Department for Asylum and Migration Policy is responsible for carrying out these tasks within Mol. The Department executes public administration in the field of international protection and entry and residence of migrants. The Department is supported by the Analytic Centre for Border Protection and Migration. Other key actors are as follows: The Refugee Facilities Administration of the Ministry of the Interior, the Foreign Police Service, the Ministry of Foreign Affairs and the Ministry of Labour and Social Affairs. The Department for Asylum and Migration Policy has its branches in every region of the Czech Republic which deals with foreigners' applications for residential permits.

The efforts of the Ministry of the Interior to transfer specific measures concerning integration to the level of the regions are reflected in its support for the establishment of **regional Centres to Support the Integration of Foreigners**. These centres are operated on the basis of projects, partially funded from the European Fund for the Integration of Third-country Nationals (EIF) from 2009 to 2015; and the European Asylum, Migration and Integration Fund (AMIF) starting from the year 2015. From July 2016 to June 2019, such centres have been operating in all of the Czech regions under individual projects. Nine of them are funded by the Asylum, Migration and Integration Fund (AMIF) whereas four others are operated by NGOs or regional governments and only co-financed from this fund.

The task of each centre is to ensure the formation of regional counselling platforms, which will be addressing the current problems of foreign nationals. In each region, the Centre

⁷⁴ https://aa.ecn.cz/img_upload/6334c0c7298d6b396d213ccd19be5999/mm_aj_web_final.pdf

⁷⁵ Ministerstvo vnitra. Strategie migrační politiky České republiky. 2015.

cooperates mainly with the regional government and municipalities, the Foreign Police, state and municipal police, labour offices, tax authorities, trade licence offices and other entities. The goal is to create opportunities for improved information exchange and to stimulate measures responding to the current demand concerning the issues of integration of foreign nationals.

All services are provided free of charge. They are not limited to the city in which each centre is established, and should cover the entire region instead. The centres offer: (1) social counselling; (2) legal advice (by external providers); (3) Czech language courses; (4) translation and interpreting services (mostly by Vietnamese, Mongolian, Ukrainian and Russian interpreters); (5) socio-cultural courses (fostering orientation mainly in the social security, health and educational systems); (6) internet point and library; and (7) community outreach.

The Ministry of the Interior initiated implementation of municipality projects. Funded predominantly from its subsidies, these projects are implemented by local governments, particularly in municipalities with significant numbers of foreign nationals, in direct collaboration with the foreign nationals living in the municipality, with non-governmental organisations, schools and other local integration actors. The projects aim to provide comprehensive support for integration at the local level, to prevent the potential risk of or to mitigate the tension between foreign nationals and other inhabitants of the municipalities as well as to prevent the risk of residential segregation.

The Ministry has supported municipal projects in Pilsen, Pardubice, Havlíčkův Brod (where extremist actions had occurred such as burning the Mongolian flag, dissemination of hate leaflets, etc.), or in Prague's district of Libuš (where the biggest Vietnamese open market, "SAPA", is located⁷⁶).

The Ministry of Labour and Social Affairs implements the so-called *integrative mainstreaming*, an effort to include integration in all policies that affect a foreigner's life and society. The Ministry, in cooperation with other administration bodies, provides the necessary legislative arrangements for the conditions of employment of foreigners and the conditions of access of foreigners to the social security system – e.g., it coordinates labour law with other legislation. The Ministry provides subsidies to support the integration of foreigners, including immigrants and asylum seekers, both from the state budget and from the European Social Fund. It actively participates in projects supporting, for example, the prevention of labour exploitation, formation of the socio-cultural mediator's profession, development of counselling capacities in labour offices, or social interpreting⁷⁷.

The Ministry of Labour and Social Affairs manages **the Labour Office of the Czech Republic (Úřad práce České republiky)** and is its superior administrative authority. The

⁷⁶ Located on the outskirts of Prague, the Sapa Trade Centre is a private marketplace and a hub of the Vietnamese community in the Czech Republic. In addition to businesses with goods typical for small entrepreneurs from this community (clothes, electronics), it also hosts services for the community – lawyers, a cultural centre, insurance companies or a Buddhist temple.

⁷⁷ In 2014–2015, together with the Austrian Ministry of Social Affairs and the International Organisation for Migration (Sofia Office), the ministry conducted a project to prevent labour exploitation of workers from EU countries. In addition to a conference and best practices sharing, the ministry organised a campaign (leaflets, spots, booklets) for Bulgarian workers in the Czech Republic. (see http://portal.mpsv.cz/sz/zahr_zam/ukoncene-projekty/projekt_prevence_vykoristovani).

labour office has regional branches and contact points in various smaller towns and municipalities throughout the country. It carries out tasks in the following areas: employment, protection of employees in the case of employer insolvency, social security benefits, benefits for people with disabilities, care allowances, inspection of the provision of social services, and material assistance in occasions of material need. With respect to migration, the labour office grants employment permits, tests the labour market, deals with social security benefits and offers vocational training.

The control of irregular migration falls within the competence of **the Foreign Police of the Czech Republic** (Sections 163 and 164 of Act No. 326/1999 Coll.). Irregular migrants have only very basic rights. Only primary education is granted to all children living in the Czech Republic regardless of their status. In emergency cases, undocumented migrants obtain basic medical care or simple cash benefits. But they face the danger of expulsion and the Foreign Police organises regular searches at working places.

3.6 The Legal Framework of the Integration of MRA in the Labour Market

In the legislation of the Czech Republic, the posting of employees in the framework of the provision of services is regulated, in particular, by Act No. 262/2006 Coll., Labour Code, as amended (hereinafter referred to as “the Labour Code”), and Act No. 435/2004 Coll., on employment, as amended by later regulations (hereinafter referred to as “the Employment Act”).

Employers are obliged to ensure equal treatment of all employees with respect to their working conditions, remuneration for work, provision of any other emoluments in cash and in kind (of monetary value), vocational training, opportunities to achieve a professional or other promotion, etc. (Article 16/1). The employer must avoid making differences in pay between individual employees who perform the same work or work of the same value.⁷⁸ The employer also cannot differentiate between employees when granting various benefits (e.g., meal vouchers, insurance contributions, etc. (Article 110/1). An employee has the right to be treated equally as other employees and not to be discriminated against because of race, ethnic origin, nationality, sex, sexual orientation, age, handicap, religion, belief or world opinion (Article 16/2).

Employment is established by an employment contract between an employee and an employer. **The employment contract**⁷⁹ shall be made in writing; must define an agreed job title, place of work and the date of commencement of the employment. If the employment contract does not define the rights and obligations arising out of the employment, the employer is obliged to notify the employee of them in writing within one month of the formation of the employment. The trial period shall not be longer than three consecutive months from the date of the formation of the employment, or six consecutive months for chief

⁷⁸ As journalist Saša Uhlová showed in a series of reports on unqualified workers (see <https://a2larm.cz/tag/hrdinove-kapitalisticke-prace/>), this duty is very often ignored in cases of workers employed through employment agencies. These workers tend to have lower salaries than permanent staff. Also, the gender pay gap in the Czech Republic is the second largest in the EU (http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics).

⁷⁹ See Sections 33 to 39 of Act No. 262/2006 Coll., Labour Code.

officers. It cannot be extended and its duration cannot be longer than one-half of the agreed period of the employment.

Czech law distinguishes between **two types of employment**:⁸⁰ *employment for an indefinite period*, i.e. permanent employment where the duration of the employment is not limited, and *fixed-term employment* where the duration of the employment is limited. Both give same rights to the employee. An employment contract may only be altered in writing and upon mutual agreement of the employer and the employee.

The employer and the employee may enter into **an Agreement to Complete a Job**⁸¹ for a maximum of 300 hours per year or **an Agreement to Perform Work**⁸² provided that the scope of such work does not exceed one-half of the set weekly number of working hours. Both agreements must be concluded in written form. Agreements to Complete a Job do not impose an obligation for employers to pay health and social insurance contributions. This makes them preferable over employment contracts, even where employment on the basis of a employment contract is adequate or for the work which is the employer's main activity.

An employment contract can be terminated by a written **agreement on termination**,⁸³ which tends to be the preferred way. Other possibilities include expiration of the period for which employment was concluded, expiration of work/residence permit of a foreign employee, or termination of employment during the probationary period. Only employees may unilaterally terminate employment without a reason. Employers may only terminate employment by notice for reasons explicitly stated in the Labour Code – organizational grounds, health grounds, poor performance, breach of an obligation or gross breach of the regimen prescribed to an employee temporary incapable of work. Immediate termination is possible for both the employer and employee, but only in extraordinary cases specified by the Labour Code (e.g., an especially serious breach of obligations, non-payment of salary).

The normal length of weekly working hours is 40 hours per week.⁸⁴ For employees under 18 years of age, the length of a shift on individual days must not exceed 8 hours. In certain labour relationships, the weekly working hours must not exceed 40 hours per week in total.⁸⁵

The maximum length of a shift is 12 hours.⁸⁶ After a maximum of 6 hours of continuous work, the employer is obligated to provide their employee with a break from work for meals and rest for at least 30 minutes. The break is not provided at the beginning or end of the day and it is not included in the working hours. **Overtime work**⁸⁷ can be performed only in exceptional cases. Compulsory overtime for an employee must never exceed 8 hours per

⁸⁰ See Section 39 of Act No. 262/2006 Coll., Labour Code.

⁸¹ See Section 75 of Act No. 262/2006 Coll., Labour Code.

⁸² See Section 76 of Act No. 262/2006 Coll., Labour Code.

⁸³ See Part 2, Chapter 4 of Act No. 262/2006 Coll., Labour Code.

⁸⁴ See Sections 34b, 86, 87 of Act No. 262/2006 Coll., Labour Code.

⁸⁵ The set weekly working hours shall be: (1) 37.5 hours per week for employees working in underground coal mining, with ores or non-metallic raw materials, in mining construction and geological survey mining sites, and for employees working in three shifts and in a continuous operation working mode; and (2) 38.75 hours per week for those working in a two-shift mode.

⁸⁶ See Section 97 of Act No. 262/2006 Coll., Labour Code.

⁸⁷ See Part 4, Chapter 5 of Act No. 262/2006 Coll., Labour Code.

individual week or 150 hours per calendar year. Work exceeding this range of time can only be performed with the consent of the employee, whereas an average overtime work of maximum 8 hours a week in an adjustment period is permitted. For a period of overtime work, the employee is entitled to wages and a supplement amounting to at least 25% of their average earnings unless the employee has agreed with his employer to have a compensatory leave equal to the sum of overtime work performed instead of the supplement. **Between the end of one shift and the start of the following shift, employees are entitled to uninterrupted rest of at least 11 hours.**⁸⁸

The Labour Code grants employees with the right to **an annual leave**⁸⁹, calculated per a calendar year or its proportionate part, of at least 4 weeks (5 weeks in the case of employees of employers in Section 109 (3) of the Labour Code and 8 weeks in the case of educational staff and university academic staff).⁹⁰

Any employee declared sick (i.e. incapable of his/her work) by a doctor's certificate is entitled to **sickness benefits**⁹¹. During the first 21 calendar days of illness, compensation of salary is paid by employers (starting from the 4th working day of illness). Starting on the 22nd calendar day of illness, the Social Security Administration begins paying sickness compensation. Female employees are entitled to 28 weeks of **maternity leave**⁹² (37 weeks for multiple births). Leave can begin as early as the eighth week before the expected delivery date. During maternity leave, the Social Security Administration pays maternity benefits to the employee.

Parental leave⁹³ must be granted to any parent-employee who requests it at any time from the end of maternity leave (for mothers) or the date of birth (for fathers) until the child reaches the age of 2, 3 or 4 years (the length of parental leave depends on the parent's decision, whereas the sum of money the parent receives in each type of parental leave remains the same). During parental leave, the employee is entitled to parental benefits paid by the state.

⁸⁸ This rest may be reduced to a minimum of 8 hours during 24 consecutive hours in the case of employees over 18 years of age provided that the following uninterrupted rest period will be extended by a period of the shortened rest. Such shortening is only possible in continuous operations, if the working hours are unevenly distributed, and with overtime work; in agriculture; in industries providing services to the population (e.g., in public catering, in telecommunications and postal services), for urgent repair work required to avert a threat to life or health of employees; or in natural disasters or other similar extraordinary cases. In the case of seasonal work in agriculture, the rest period can be shortened to one continuous instance in a period of three weeks. The employee is also entitled to a continuous resting period of at least 35 hours, which may be shortened in accordance with the conditions laid down in the Labour Code whereas the following rest must always be extended by such reduction.

⁸⁹ See Part 9, Chapter 2 of Act No. 262/2006 Coll., Labour Code.

⁹⁰ An employee who has worked for at least 60 days in a calendar year in continuous employment with the same employer is entitled to annual leave or its proportional part. A day is considered as worked if the employee has worked the majority part of his shift; parts of shifts worked on different days are not cumulated. The proportionate part of annual leave due per each completed calendar month of continuous work is equal to one-twelfth of the annual leave entitlement.

⁹¹ See Act No. 187/2006 Coll., on Sickness Insurance.

⁹² See Title 4 of Act No. 187/2006 Coll., on Sickness Insurance.

⁹³ See Part 3 Chapter 5 of Act No. 117/1995 Coll., on State Social Support.

From the January 2018, **the basic minimum wage rate**⁹⁴ for a 40-hour week amounts to CZK 12,200 per month or to CZK 73.20 per hour. Payments for overtime work and supplements for work on a public holiday, on Saturday and/or Sunday, at night, or in a difficult working environment are not considered when determining the minimum wage amount. Apart from the minimum wage, the Czech legal order also uses the concept of **guaranteed wage**,⁹⁵ which means a wage to which the employee is entitled in accordance with to the Labour Code, contract, internal regulation or payroll assessment. The regulation defines eight occupational groups and determines the lowest level of guaranteed hourly and monthly wages for each of them.

The employer is **obligated to ensure the safety and protection of health of employees**⁹⁶ in the workplace with regard to potential threats to their life and health related to performing work. The costs related to ensuring safety are paid by the employer and must not be transferred to the employee.

Employees can organize themselves and elect **representatives** to enforce labour rights and ensure good working conditions on behalf of employees towards an employer. These representatives may be: (1) a work council; (2) a representative for health and safety at work; (3) a trade union organization. **Work council**⁹⁷ can be elected by employees to exercise their right to statutory information and to be consulted by management over statutory workplace matters. **A representative for health and safety at work**⁹⁸ may be elected by employees to exercise their right to information and to discuss matters related to this area. Employee representatives are obliged to pass on information in an appropriate manner among employees at all workplaces, i.e. to inform of their activities, the content and outcomes of the information received from and given to the employer (e.g., by presenting it on a notice board, through circular letters, by holding meetings, or by informing on an individual basis). **Trade unions**⁹⁹ have the right to act on behalf of employees in employment relations, including collective bargaining, under conditions stipulated by law or by a collective agreement. Of the three types of employees' representatives, only trade unions are granted the right to conclude collective agreements with the employer on behalf of employees, the right to scrutiny, to co-decision and decision-making. In practice, thus, trade union bodies ensure the rights of employees to receive certain information to have certain measures discussed (e.g., matters related to work schedules), or to reach an agreement (e.g., issuance of internal labour regulations, determining the vacation schedule).

A collective agreement is entered into by the employer and a trade union organization, or by several trade unions (or a trade union federation) and several employers (or an employers' federation). In a collective agreement, it can be concluded that the staff will have more rights than those granted by law or than an individual employee had arranged in his or her individual employment contract. A collective agreement shall be concluded for at least a year. When bargaining the collective contract, the trade union organization may declare a

⁹⁴ See Section 111 Act No. 262/2006 Coll., Labour Code, the basic minimum wage rate and the minimum wage provision are laid down in Decree No. 567/2006 Coll., On Minimum Wage.

⁹⁵ See Section 112 of Act No. 262/2006 Coll., Labour Code.

⁹⁶ See Part 5 of Act No. 262/2006 Coll., Labour Code.

⁹⁷ See Part 12 Chapter 3 of Act No. 262/2006 Coll., Labour Code.

⁹⁸ Ibid.

⁹⁹ See Part 12 Chapter 4 of Act No. 262/2006 Coll., Labour Code.

strike under certain conditions. It is possible to conclude **two kinds of collective agreements** in the Czech Republic, i.e. a company collective agreement and a sectoral collective agreement. A higher-level collective agreement may become, upon agreement of its parties, binding for other employers with prevailing activity in the sector for which the higher-level collective agreement is concluded – a list of such agreements is available at a government website, <http://www.mpsv.cz/cs/3856>. In the Czech Republic, approximately 40% employees are covered by collective agreements.¹⁰⁰

If an employer or a user do not follow their duties imposed upon them by the legal order, a complaint can be submitted to the **State Labour Inspectorate** (<http://epp.suip.cz/epp/index.php>). However, the office has been chronically understaffed and thus its inspections are not effective and not systematic enough.

Temporary residents whose access to the labour market is restricted need a valid work permit issued by a regional labour office and a valid residence permit for the Czech territory or an Employee or Blue Card to be employed.

Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic, stipulates which foreign nationals are required to have an **employment permit**. Such an employment permit is required for all employment relationships in terms of the Labour Code.¹⁰¹ The fundamental **condition for issuing an employment permit** is the labour market situation and the fact that, given the required qualifications or temporary lack of available workforce, the vacancy cannot be filled otherwise. An employment permit has to be applied for at the regional branch of the Labour Office within whose remit one plans to work. An employment permit is valid only for a specific employer (who is mentioned in the decision) and for a specific type and place of employment (if one plans to work for one employer on two job positions, then one needs an individual employment permit for each job; if one wants to perform the same job position for another employer, then one must obtain a new employment permit as well). An employment permit is non-transferable (another person cannot make use of it) and it is issued for a fixed period of time, two years maximum. An employment permit can be applied for repeatedly.

An **Employee Card**¹⁰² works as a permit for a long-term residence, granting the foreigner temporary residence in the territory for a period exceeding 3 months and allowing work performance on the position for which the Employee Card was issued, or on a position for

¹⁰⁰<https://www.czso.cz/documents/10180/20568755/11002615A07.pdf/04586929-6efa-41f3-b075-62f386935f61?version=1.0>.

¹⁰¹ An employment permit is needed in the following cases: (1) a foreigner stays in the territory of the Czech Republic on a short-term visa; (2) a foreigner is posted to work in the Czech Republic by a foreign employer who is based outside the territory of the EU, Iceland, Liechtenstein, Norway or Switzerland; (3) a foreigner stays in the territory of the Czech Republic on a long-term residence permit for the purpose of doing business and he or she wants to work or is a partner, member or a statutory body of a commercial enterprise or a cooperative; (4) a foreigner wants to carry out “seasonal” work for a maximum of 6 months per year; (5) a foreigner works as an intern in an employment relationship with an employer in the Czech Republic (6 months maximum); (6) a foreigner is an applicant for international protection and has been a party to the proceedings on the granting of international protection status for 12 months; (7) a foreigner has been granted an exceptional leave to remain; (8) a foreigner is not older than 26 years and he or she does occasional jobs as part of a school exchange; (9) a foreigner is covered by an applicable international treaty.

¹⁰² See Sections 42g, h of Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic.

which the Ministry of the Interior has granted consent. Those foreigners who need a work permit according to the Employment Act, as well as those who do not need a work permit for performing work, are granted a residence permit for the purpose of employment through the Employee Card. The Employee Card can be either dual (combining a work-permit and a residence permit) or single-purpose (it grants the foreigner only residence in the territory).

A foreigner may apply for the dual Employee Card if he or she wants to stay in the territory of the Czech Republic for more than 3 months for the purpose of employment and if the job position is listed in the Central Register of Job Vacancies available to employee card holders. This list of such vacancies is available on the website of the Ministry of Labour and Social Affairs of the Czech Republic (http://portal.mpsv.cz/zahr_zam/zamka/vm). If the job position is listed and cannot be filled by domestic labour force, the labour office is obliged to issue a work permit.¹⁰³

In the case of the dual-purpose Employee Card, the foreigner must demonstrate his or her professional competence. In justified cases, especially when there is reasonable doubt whether the foreigner has the required education or whether this education corresponds to the character of the job, the foreigner is obliged to prove – upon request of the Ministry of the Interior – that his/her education was recognized as equivalent by a competent authority of the Czech Republic, in a process called **nostrifikace**.¹⁰⁴

A foreigner may apply for the single-purpose Employee Card if he or she wants to stay in the territory of the Czech Republic for more than 3 months for the purpose of employment and he or she is: (1) a foreign national who is obliged to apply for an employment permit; or (2) a foreign national with free access to the labour market. The application may be filed either at a Czech embassy, or at a branch of the Ministry of the Interior according to the place of residence. In such cases, the job position in question is not listed in the Central Register of Job Vacancies and the Ministry of the Interior does not look into the professional competence of the applicant: it is monitored either by the labour office as a part of the proceedings for granting an employment permit, or it is up to the employer to decide whether or not it is required.

For both types of cards, it is required that a form of labour-law relationship exists between the foreigner and the employer, which the applicant must prove by submitting an employment contract, an agreement to perform work or a letter of intent. In all cases, the weekly working hours must amount to at least 15 hours and the monthly wage, salary or remuneration may not be lower than the basic monthly rate of the minimum wage.

Blue Cards¹⁰⁵ were introduced in the Czech legislation through implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (“EU Blue Card”). They are a special type of permit

¹⁰³ See Supreme Administrative Court decision 6 Ads 139/2011.

¹⁰⁴ Sometimes, documents certifying professional competence required for the job must be superlegalized (or bear the apostille) and recognized. Superlegalization and the apostille verify the fact that the document has been issued by the competent authority of the foreign state. Thus, the authenticity of the official stamp and signature on the document, not the content of the document as such, is checked. Recognition is a complicated process in which universities, the Ministry for Education, Youth and Sport, the Ministry of the Interior or the Ministry of Defence are included.

¹⁰⁵ See Section 42i of Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic.

for long-term residence for the purpose of highly qualified employment, combining both a residence permit and an employment permit (having dual purposes). The job position always has to be included in the register of job vacancies which can be taken by Blue Card holders.

In 2009, the Czech Republic adopted **anti-discrimination legislation (Act No. 198/2009 Coll.)** which guarantees the right to equal treatment and bans discrimination in access to employment, business, education, healthcare, social security etc. on the grounds of sex, age, disability, race, ethnic origin, nationality, sexual orientation, religious affiliation and faith or worldview. The passing of the Anti-Discrimination Act by the Czech Chamber of Deputies was a necessary step to avoid an infringement procedure by the European Commission for failure to implement the EU Race Equality Directive (Council Directive 2000/43/EC) and the Employment Equality Directive (Council Directive 2000/78/EC).

Subcontracting, either through recruitment by temporary work agencies or by informal intermediaries, represents a significant factor contributing to migrants' labour exploitation. Research and experience of non-governmental organisations assisting migrant workers confirm frequent incidents of high work intensity, long working hours, unsafe working environments, unpaid wages or other kinds of labour rights violations in the secondary labour market (Dobiášová and Hnilicová 2010; Leontiyeva and Tollarová 2011). Subcontracting in the Czech Republic has been an important form of employment for migrant workers in low-skilled jobs. A Labcit Country Report (Čaněk et al. 2016) informs us that agency employees are often disadvantaged compared to other employees regarding fixed-term contracts;¹⁰⁶ many of the workers worked without a contract, signed a contract that they did not understand, or were given an Agreement to Complete a Job, which legally allows them to work for only 300 hours per year per employer and forces them to pay medical insurance on their own.

3.7 Conclusion

Since 1990, the Czech Republic has been an immigration country and the number of foreign nationals has been the highest of the post-socialist countries in the region. The main routes are from post-socialist countries (Ukraine, Vietnam, Moldova) and Vietnam and the share of foreigners in the population is growing, currently being around 3%. It is mostly labour migration since the Czech Republic is an industrial country with low unemployment, and regional differences in the residence of foreigners can be also explained by the distribution of industry.

On the other hand, the number of asylum applicants and refugees is very low and did not grow significantly during the migrant crisis in the years 2014–2016. Discrepancy between the perpetual need for workforce and a generally low willingness to accept migrants expressed by politicians in the given period.

After a liberal period of migration policy in the 1990s, policies became stricter but, on the other hand, became more integration-oriented after 2008. The Czech migration policy is

¹⁰⁶ A case study of conditions for agency workers included in the report (LABCIT 2016), the percentage of agency workers is between 30% to 50% of the firm's assembly line staff. They have far less job security than the company's own employees, and a difference in wages exists between directly hired staff and agency workers, even though they may be performing the exact same task. Agency workers are required to have a higher degree of flexibility, which places them under a considerable amount of stress.

often criticized both by non-governmental organizations and by associations of employers for being too restrictive and highly centralized.

The employers and local governments are not actively involved in policy-making and implementation. Lack of social housing is a general problem in the Czech Republic, so foreign workers often inhabited substandard hostels and dormitories. Health insurance represents another problem. In contrast to EU nationals who are covered by public health insurance, third-country nationals have an obligation to obtain a commercial policy. As a consequence, the insurance contracts are full of exclusions, and different prices are paid by different age categories of foreigners. Commercial insurance intermediaries often rely on foreigners' lack of knowledge of the Czech law. The chaotic and loosely regulated system of subcontracting via employment agencies creates conditions for labour exploitation and lowering standards of safety and security.

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List of Cases

1. II. ÚS 3626/13
2. II.ÚS 443/16
3. I. ÚS 630/16
4. ÚS 3289/14
5. Pl. ÚS 2/15
6. II. ÚS 1260/1

Annexes

Annex I: Overview of the Legal Framework on Migration, Asylum and International Protection

Legislation title (original and English) and number	Date	Type of Law	Object	Link/PDF
<p>1. <i>Zákon č. 326/1999 o pobytu cizinců na území České republiky</i></p> <p>Act No. 326/1999 Coll. on the Residence of Foreigners in the Territory of the Czech Republic</p>	<p>23.12.1999 (last amendment 2017)</p>	Legislation	Regulates and sets conditions of stay of foreign nationals in the territory of the Czech Republic, defines different legal statuses and types of residence of foreigners. Defines competences of Ministry of Interior, Ministry of Foreign Affairs and Police of the Czech Republic regarding migration.	http://www.mvcr.cz/mvcren/article/immigration.aspx
<p>2. <i>Zákon č. 325/1999 Sb., o azylu a o změně zákona č. 283/1991 Sb., o Policii České republiky, ve znění pozdějších předpisů</i></p> <p>Act No. 325/1999 Coll., on asylum and amendments to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended</p>	<p>11.11.1999 (last amendment 2013)</p>	Legislation	Defines conditions for granting asylum status and the legal status of asylum seeker and asylum holder. Defines competences of Ministry of Interior and Police of the Czech Republic regarding migration. Constitutes state integration programmes and regulates the functioning of refugee facilities.	http://www.mvcr.cz/mvcren/article/procedure-for-granting-international-protection-in-the-czech-republic.aspx

<p>3. Zákon č. 101/2014, kterým se mění zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů, ve znění pozdějších předpisů, zákon č. 435/2004 Sb., o zaměstnanosti, ve znění pozdějších předpisů, a další související zákony</p> <p>Act. No. 101/2041 Coll., amending Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic, and other related acts</p>	23.4.2014	Legislation	Amends several other laws to implement Directive 2011/98/EU of the European Parliament and Council in Czech legal system. Establishes employee card and therefore changes legislation on employment, social security and qualifications.	https://www.zakonyprolidi.cz/cs/2014-101
<p>4. Decree of the Ministry of Education, Youth and Sports No. 348/2008 Coll., on Instruction and Examinations in the Czech Language for the Purposes of Obtaining a Permanent Residence Permit on the Territory of the Czech Republic</p>	9.9. 2008	Ministerial decree	Defines the knowledge of Czech language necessary for obtaining permanent residency, lists schools and institutions with the right to organise exams for permanent residency applicants and determines the means of proving the passing of the exam	http://www.vzdelavacisluzby.cz/dokumenty/legislativa/placena-sekce/platne-zneni-pravniho-predpisu/19.9.2008.pdf

ANNEX II: List of Institutions involved in Migration Governance

Institution – Tier of government	Type of institution	Area of competence in the field of MRAA	Link
1. Ministry of the Interior	Ministry	The main body responsible for immigration and asylum policies in the Czech Republic, both at legislative and strategic levels	http://www.mvcr.cz/mvcren/
2. Department for Asylum and Migration Policy	Department of the Ministry of the Interior	Executes public administration in the field of international protection and entry and stay of aliens. It has its branches in every region of the Czech Republic which deals with foreigners' applications for residence permits.	http://www.mvcr.cz/migration/
3. Foreign Police	Body of the Police of the Czech Republic	Is in charge of irregular migration – monitoring and implementation of repressive tools. Has the right to execute checks of foreign citizens and expulsions.	http://www.policie.cz/sluzba-cizinecke-policie.aspx
4. Refugee Facilities Administration	Government agency subordinated to the 1 st Deputy Minister of the Interior for Internal Security	Operates several types of facilities and provides services for applicants for international protection, international protection holders and detainees. Is in charge of integration services for international protection holders and third-country nationals.	http://www.suz.cz/en

4. Centres to Support the Integration of Foreigners	Project of the Refugee Facilities Administration	Operate in 13 (out of 14) regions of the Czech Republic and provide services to international protection holders third-country nationals – social and legal counselling, translation services, language and socio-cultural courses	http://www.integracnicentra.cz/
5. Ministry of Labour and Social Affairs	Ministry	Provides the necessary legislative arrangements for the conditions of employment of foreigners and the conditions of access of foreigners to the social security system. Provides subsidies to support the integration of foreigners, including immigrants and asylum seekers.	https://www.mpsv.cz/en/
6. Labour Office of the Czech Republic	Government agency subordinated to the Ministry of Labour and Social Affairs	Implements employment policies. Is in charge of distribution of unemployment allowances and provides counselling and requalification and arranges job offers for the unemployed.	https://portal.mpsv.cz/upcr/oup

Annex 3 –Overview of the Legal Framework of Labour Relations and Anti-discrimination Laws

Legislation title	Date	Type of law	Object	Link
<i>Zákon č. 262/2006, Zákoník práce</i> – Act No. 262/2006 Coll., Labour Code	21.4.2006	Legislation	Defines and regulates rights and duties of employers and employees – types of contract, working conditions, safety regulations, annual leave and parental leave.	https://www.zakonyprolidi.cz/cs/2006-262
<i>Zákon č. 435/2004 Sb., o zaměstnanosti</i> – Act No. 435/2004 Coll., on employment, “The Employment Act”	13.5.2004	Legislation	Defines tools for implementation of government’s employment policies – anti-discrimination provisions, counselling services and benefits for the unemployed, and regulation of employment of foreigners	https://www.zakonyprolidi.cz/cs/2004-435

4. Denmark

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4.1 Statistics and data overview

Denmark has been a net-migration country since the 1960s. Today, the foreign-born population makes up 10 percent of the total population. Of these, 25 percent have Danish citizenship, and 3.9 percent are born in other EU/Nordic countries. The majority of the foreign-born population originates from Syria, Turkey, Iraq, Bosnia & Herzegovina, Iran, Pakistan, Afghanistan, Lebanon, Somalia and China¹⁰⁷. A smaller share of the foreign-born population (as compared to the Danish-born population) falls within the age groups <18 years and 60 + years, while a greater share falls within the working age (Table 4.1).¹⁰⁸

Table 4.1 Foreign-born¹ population 2014-2017

		2014	2015	2016	2017
Total population, Denmark		5627235	5659715	5707251	5748769
Share of foreign-born (% of total population)		8.5	8.9	9.5	9.9
Total population of foreign-born		476059	501057	540503	570581
Share of EU/Nordic citizens (% of foreign born)		3.3	3.5	3.7	3.9
Gender					
<i>Men (% of foreign-born)</i>		49.0	49.4	49.9	50.1
<i>Women (% of foreign-born)</i>		51.0	50.6	50.1	49.9
Age (% of foreign-born, DK pop in parenthesis)					
<i><18</i>	6.1 (22.3)	6.4 (22.1)	7.1 (21.9)	7.5 (21.7)	
<i>18-29</i>	24.5 (14.2)	24.1 (14.5)	24.1 (14.7)	23.8 (14.9)	
<i>30-39</i>	22.8 (11.2)	23.3 (10.9)	23.6 (10.6)	24.0 (10.4)	
<i>40-49</i>	19.3 (13.9)	18.9 (13.7)	18.4 (13.5)	18.0 (13.1)	
<i>50-59</i>	13.4 (13.1)	13.6 (13.2)	13.4 (13.4)	13.4 (13.6)	
<i>60-69</i>	8.0 (12.7)	7.9 (12.6)	7.7 (12.4)	7.6 (12.1)	
<i>70+</i>	5.8 (12.5)	5.8 (13.0)	5.7 (13.5)	5.7 (14.1)	

¹**Foreign-born:** A person born abroad whose parents are both (or one of them if there is no available information on the other parent) foreign citizens or were both born abroad.

Source: Statistics Denmark (2018), table: FOLK2 and own calculations.

¹⁰⁷ Of those coming from outside of the EU-28. Within the EU-28, the main source countries are Poland, Germany and Romania.

¹⁰⁸ Getting data on the presence/stock of non-EU citizens proved to be difficult. Data on ancestry is available combined with country of origin, but not with citizenship (only foreign/Danish). We therefore refer to the population of foreign-born instead.

Since 2014, more than 65,000 foreigners arrived in Denmark each year, with a peak in 2015 with more than 75,000 arrivals (see Figure 4.1 below). The 2015 peak is mirrored in the sub-population of immigrants who are non-EU¹⁰⁹ citizens. In 2015 38,353 non-EU citizens immigrated to Denmark compared to 29,019 in 2014 and 34,564 in 2016 (Table 4.2). This peak is primarily a result of the increase in the number of asylum seekers as shown in Figure 4.1 below.

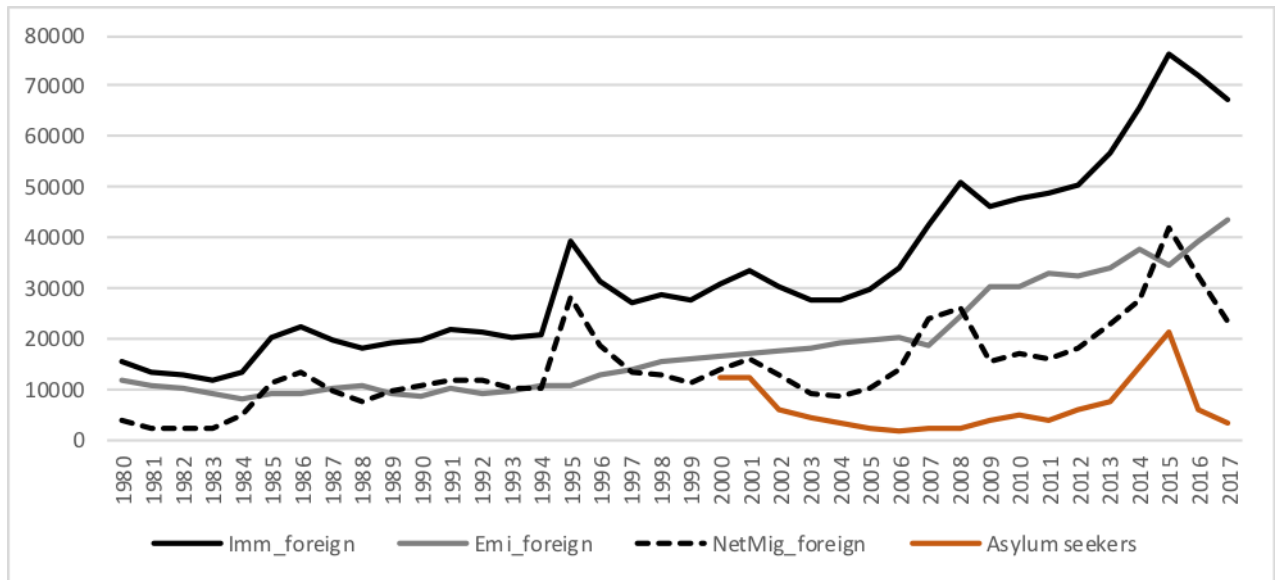


Figure 4.1 Immigration, emigration and net migration, Denmark 1980-2017

Immigration: Persons, who took up residence in Denmark during the year and who had residence abroad before¹¹⁰ **Emigration:** Persons, who have given up their residence in Denmark during the year and moved abroad¹¹¹ **Net migration:** The difference between the number of immigrations and emigrations (immigration minus emigration). **Foreign:** non-Danish citizens. **Asylum seekers:** People who have applied for asylum in Denmark, regardless if their case is processed in Denmark or not¹¹².

¹⁰⁹ These numbers also exclude persons who hold a Danish or Nordic citizenship.

¹¹⁰ Asylum seekers who obtain residence permits are included in the figures for immigration, when they have their residence permit and are registered in the Danish population register. In Denmark persons who come to Denmark from abroad are required to register in the population census/register when they intend to stay for at least 3 months. Only persons registered in the population register are counted in the figures for immigration. In the figures for immigration and emigration the same person can be counted several times. For example, a person can immigrate in February, emigrate in June and re-immigrate in November. In a case like the latter, the person's migration counts as 2 in the number for immigration and 1 in the number for emigration. The correct numbers for emigration are estimated to be about 15-20 percent higher than the published figures. Immigration numbers are underestimated by about 1-2 percent.

(<https://www.dst.dk/en/Statistik/dokumentation/documentationofstatistics/migration-to-and-from-denmark/statistical-presentation>)

¹¹¹ In Denmark persons who intend to move abroad for at least 6 months are required to report this to the population register, where they will be deregistered. Only deregistered persons are counted in the figures for emigration. In the numbers for immigration and emigration the same person can be counted several times. The correct numbers for emigration is estimated to be about 15-20 percent higher than the published figures. Immigration numbers are underestimated by about 1-2 percent.

(<https://www.dst.dk/en/Statistik/dokumentation/documentationofstatistics/migration-to-and-from-denmark/statistical-presentation>)

¹¹² The number hence includes people who are returned to a "safe" third country, transferred or re-transferred to another EU Member State under the Dublin Regulation as well as disappearances and withdrawals, etc., during the preliminary asylum procedure.

Source: Statistics Denmark (2018), tables: INDVAN, UDVAN, VAN5 and own calculation

Looking at the immigration of non-EU citizens¹¹³, the majority of the new immigrants came from non-western countries, the U.S. or were stateless (see Table 4.2). The gender composition was about fifty-fifty for the years 2014-2016, with a slight majority of males in the years 2014 and 2015, and a slight majority of females in 2016 (table Table 4.2). The majority came to Denmark to study (approx. one third), while a bit over one fifth came to work, claim asylum or arrived as family migrants, respectively (in 2016) (see Table 4.2). The share of both family and asylum immigrations were higher in 2015 than in the previous and preceding year (also in absolute numbers), meaning that family migration adds to the 2015 immigration peak shown above. Yet, not everyone making it to the Danish border was allowed to immigrate. Since Denmark re-introduced border controls on January 4, 2016, 5150 persons have been refused entry at the external borders (Dagbladet Information, February 2018).

Table 4.2 Immigrations of non-EU citizens by citizenship (top-10 in 2016), gender and residence permit 2014-2016

		2014		2015		2016	
Non-EU citizens, Total		29019		38353		34564	
Citizenship							
#1	Syria	5350	Syria	11587	Syria	8902	
#2	USA	3375	USA	3770	USA	3869	
#3	India	2081	Eritrea	2806	India	2763	
#4	China	1826	India	2289	China	2097	
#5	Ukraine	1610	China	1920	Ukraine	1493	
#6	Philippines	1541	Stateless ²	1457	Philippines	1209	
#7	Iran	1099	Philippines	1420	Nepal	1192	
#8	Pakistan	818	Ukraine	1335	Stateless ²	1118	
#9	Somalia	782	Iran	1061	Eritrea	1004	
#10	Stateless ²	683	Nepal	855	Iran	926	
Gender							
Men (%)		50.1	51.5	47.5			
Women (%)		49.9	48.5	52.5			
Residence permit							
Asylum ¹ (%)		21.1	27.2	21.2			
Family reunification (%)		17.6	25.0	21.0			
Study (%)		33.1	27.3	33.2			
Work (%)		24.8	17.4	20.8			
EU/EEA (%)		2.8	2.6	3.2			
Other reasons (%)		0.5	0.5	0.6			

¹ The asylum figure here includes only persons, whose asylum case is processed in Denmark.

² Stateless: person without citizenship

Source: Statistics Denmark, table: VAN8A and own calculations.

¹¹³ These numbers also exclude persons who hold a Danish or Nordic citizenship.

With regards to people applying for international protection, more than 21,000 people applied for asylum in 2015, while only half of these (10,472) had their case processed in Denmark. By 2017, these numbers had decreased to 3,479 and 2,390 applications, respectively, i.e. a more than an 80-percentage fall in the gross number of applications. This is possibly a result of attempts by European and their neighboring countries to shut down the so-called Balkan route, the EU-Turkey deal of March 2016 and the more than 70 migration policy restrictions Denmark has introduced since 2015 (Udlændinge- og Integrationsministeriet's webpage 2018). Of those having their case processed in Denmark, Syrians have been the largest group since 2014. Eritreans were second in 2014 and 2015, dropping to sixth in 2016, but were back as second in 2017. During 2015 and 2016, the number of Afghans and Iranians increased, and in 2017 the top-five nationalities were: Syrian, Eritrean, Afghani, Stateless and Iranian (Table 4.3).

In 2017, almost 50 percent of asylum seekers were <19 years old. This was an increase of 24.1 percent from 2014 (Table 4.3). Potential explanations could be an increase in the level of conflict and violence in the source regions, forcing not only men but also women and children to flee (CARE 2016), a now-or-never impulse of having to migrate before it is too late/before all routes to Europe will be closed (Faiola 2016) or the fact that children and women tend to have a higher chance of receiving protection in EU countries (Robinson 2016). This might also explain the increase in the share of women from about 25 percent in 2014 and 2015 to 35.8 percent in 2016 and more than 45 percent in 2017 (Table 4.3). Another reason could be Denmark's more restrictive family reunification policy. As family reunification is being restricted, women and children have to look for alternative entry routes, asylum being among their options.

Table 4.3 Asylum seekers¹ by type of asylum, citizenship (top-10), gender and age 2014-2017

		2014		2015		2016		2017	
Gross application figure		14792		21315		6266		3479	
Asylum cases processed in Denmark		10192		10472		12722		2390	
Citizenship									
	#1	Syria	5384	Syria	5253	Syria	4921	Syria	789
	#2	Eritrea	1473	Eritrea	1818	Iran	2151	Eritrea	305
	#3	Stateless	807	Stateless	924	Afghanistan	1938	Afghanistan	211
	#4	Somalia	613	Iran	382	Stateless	1266	Stateless	176
	#5	Russia	367	Iraq	260	Iraq	908	Iran	110
	#6	Afghanistan	191	Afghanistan	258	Eritrea	425	Morocco	71
	#7	Iran	169	Somalia	239	Kuwait	134	Somalia	67
	#8	Iraq	103	Russia	149	Somalia	116	Albania	62
	#9	Serbia	89	Kosovo	103	Morocco	68	Iraq	58
	#10	Ethiopia	72	Ethiopia	92	Albania	59	Serbia	34
Gender									
	Men (%)	74.7		72.6		64.2		53.9	
	Women (%)	25.3		27.4		35.8		46.1	
Age (%)									
	<19	24.1		28.5		40.6		48.1	
	20-29	35.1		37.1		31.5		24.0	
	30-39	25.3		21.9		17.0		15.6	
	40-49	11.1		8.5		6.7		7.1	
	50-59	3.1		2.9		2.7		3.2	
	60-69	1.0		0.8		1.2		1.5	
	70+	0.4		0.3		0.4		0.4	

¹ All people who have applied for asylum in Denmark are included in the number of *Asylum seekers*, i.e. not just people arriving but also people already in the country on other types of visa applying for asylum. **Gross application figures:** include all people who have applied for asylum in Denmark, regardless if their case is processed in Denmark or not, hence including people, who are returned to a "safe" third country, transferred or re-transferred to another EU Member State under the Dublin Regulation as well as disappearances and withdrawals, etc., during the preliminary asylum procedure. Source: Statistics Denmark (2018), table: VAN5, VAN5KA, VAN8A and own calculations.

The success rate (recognition rate) of applications processed in Denmark has dropped in recent years. It reached a record high of 85% in 2015, dropped to 72% in 2016 and came down to 36% in 2017 (Table 4.4), primarily reflecting the source countries of the applicants (the percentage of Syrians and Eritreans dropping, meaning that a greater share now come

from other countries, who have a smaller chance of being granted refugee status)¹¹⁴ (Bendixen 2018a).

Since February 2015 there has been three different asylum statutes: convention status¹¹⁵, protection status¹¹⁶ and temporary protection status¹¹⁷. The largest share of refugees was granted the convention status (56.4 % in 2017). However, this share has decreased in recent years as the share of protection status/de facto status and temporary protection has increased, with the weaker status of temporary protection granted to about one third in 2016 and 2017 (Table 4.4).

With regards to those whose claim has been rejected, numbers are difficult to get. According to the Danish Refugee Council (2018), 1,009 rejected asylum claimants were awaiting repatriation on 1 January 2018. However, several rejected claimants cannot be returned due to the violent conditions in their home country, lack of a valid passport/recognition of the country of origin or due to the risk of execution or torture. In the meantime, they are located at deportation centers with very few activities and without access to education, particularly for children (Michelle Pace, interview with Red Cross case worker for the project: 'Change in Exile: Re-invigorating principles of reform and social stability amongst young Syrian refugees in Denmark and Lebanon'.¹¹⁸). Furthermore, an unknown number of people "disappear" during or after their case has been processed. In January 2017, 1.600 rejected asylum applicants were registered as having disappeared from the Danish authorities' radar (Patscheider 2017). Some of these people have left Denmark for neighboring countries while others have gone underground. It is estimated that about 18.000 people lived illegally in Denmark in 2015 (Clausen & Skaksen 2016). In 2017, 583 rejected asylum seekers were deported. In 2016 the number was 491. The total number of deported people is significantly higher, 2,806 in 2017, if one includes asylum seekers whose case files have been rejected, people, who are returned to "a safe third country", transferred or re-transferred to another EU Member State under the Dublin Regulation as well as disappearances, withdrawals and undocumented immigrants (Danish Refugee Council 2018). Although allegedly returned to safety, personal stories have shown a different picture, among others the story of two Afghan brothers sent back to Kabul in 2015 against recommendations from experts. After a few days, the younger brother disappeared, presumably killed (Rasmussen 2015; Pettersen 2015).

¹¹⁴ As the total amount of applications has dropped, this also means that a relatively small number of rejections of e.g. minors from Morocco has a greater impact on the total recognition rate today compared to for example 2015.

¹¹⁵ Convention status: UN Refugee Convention. Art. 7(1). 2 years temporary permit with option of permanent stay (Bendixen 2018a).

¹¹⁶ Protection status: refers to the other human rights conventions and the ban against torture Art.7(2). 1-year temporary permit with option of permanent stay (Bendixen 2018a).

¹¹⁷ Temporary protection: people at general risk (art. 7(3)), introduced in February 2015. 1-year temporary permit with no right to family reunification for 3 years (Bendixen 2018a).

¹¹⁸ Professor Michelle Pace was awarded an 8-month Ministry of Foreign Affairs (Denmark) large FACE grant for a research project entitled 'Change in Exile: Re-invigorating principles of reform and social stability amongst young Syrian refugees in Denmark and Lebanon.' The project aimed at 1) Generating knowledge on the role of education in promoting democratic principles to support social stability between young Syrian refugees and host communities in Denmark and Lebanon and 2) Enabling dialogue and cooperation between academia, municipalities, NGO practitioners and UN agencies from Denmark and Lebanon and other countries neighbouring Syria to share learning experiences and to inform policies that support social stability. The project was successfully completed in December 2017.

Table 4.4 Decisions on Asylum

	2014	2015	2016	2017
Number of residence permits granted to refugees (all types of cases, all authorities)	6104	10849	7493	2750
- of which convention status (%)	68.8	76.5	60.9	56.4
- of which protection status/de facto status (%)	31.2	13.0	5.5	14.5
- of which temporary protection status (%)		10.5	33.6	29.2
Numbers from immigration service				
Asylum cases processed in Denmark	10192	10472	12722	2411
Recognition rate (%)	74	85	72	36

Convention status: UN Refugee Convention. Art. 7(1), **Protection status:** refers to the other human rights conventions (primarily the European convention on human rights) and the ban against torture, Art 7(2), **Temporary protection:** people at general risk (due to a particularly serious situation in the home country characterized by arbitrary violence and assault on civilians), art. 7(3), introduced in February 2015.

Source: Udlændinge og integrationsministeriet (2018).

4.2 The socio-economic, political and cultural context

4.2.1 Brief migration history

While Denmark has been a net-migration country since the 1960s and has otherwise been demographically homogenous, its history of immigration precedes (and exceeds) the implementation of the guest workers program of the 1960s and early 1970s (Nannestad 2004). For instance, in the 17th century Denmark witnessed the arrival of Catholic refugees fleeing the European Thirty Years' War. As a response, the practice of Catholicism was forbidden in Denmark and, in 1624, a death penalty was introduced for Catholic missionaries. Other migrants were treated much more favorably and, following the Great Northern War of 1720, the Danish king Frederik IV invited refugee French Huguenots to come to Denmark. Despite the open-ness adopted towards French Huguenots, Denmark passed an ordinance in 1828 to "prevent wanderings of itinerant journeymen in the country". This ordinance was followed-up with the 1875 Aliens Act and this law was specifically intended to limit foreign immigration to Denmark. This Act allowed for the deportation of immigrants who did not have the sufficient financial means to support themselves. Later regulations on the deportation of foreigners have been developed on the basis of this law. In the second half of the 19th century Denmark saw the influx of Swedish laborers. While the arrival of Swedish migrants was seen as somewhat unproblematic, the arrival of Polish farm workers around 1900 was heavily criticized by the Danish trade union movement. The arrival of unorganized labour was seen to "underbid organized Danish workers" (Jønsson and Petersen 2012: 98). Swedes did not face significant levels of discrimination in Copenhagen neighborhoods like Nørrebro that were populated by other migrant groups and internal migrants from other parts of Denmark, who saw themselves as immigrants. That said, they were still considered "strange and different". Swedish men, who were largely railroad construction workers, were considered bullies. Swedish women who worked predominantly

as maids were seen as prostitutes (Schmidt 2017: 45). From the beginning of the 20th century Denmark has also seen a significant influx of refugees, specifically of Russian and other European Jews fleeing persecution. At the end of the Second World War Denmark was home to approximately 250,000 German refugees. The presence of the large German minority in Denmark was first successfully addressed in the Bonn-Copenhagen Declarations of 1955. These agreements guaranteed the rights of minorities “both north and south of the border” between Germany and Denmark, allowed minorities to choose their nationality and contributed to a shift in attitudes whereby (German and Danish) minorities came to be regarded as a source of societal cultural enrichment (Pace 2017: 7). In the years following World War II there was a growing enthusiasm in Denmark “for everything Nordic”. In 1946 Denmark and Sweden signed a labour agreement that was eventually expanded to apply to all of Scandinavia. From 1954 onwards all Nordic citizens were able to freely live and work in Nordic countries. The last significant influx of migrants before the 1960s came following the Soviet invasion of Hungary in 1956, when a number of Hungarian citizens were granted refugee status in Denmark. Since this influx occurred in the context of the Cold War this entrance of Hungarian refugees was considered uncontroversial (Jønsson and Petersen 2012: 99).

4.2.2 Geography of migrants

Migrants (both of Western and Non-Western Origin) are largely concentrated around the national capital and the suburban areas in its vicinity. The five cities with the largest number of migrants from non-Western countries are Copenhagen, Aarhus, Ishøj, Høje-Taastrup and Brøndby (in descending order of population). With regard to immigrants from Western countries the five cities with the largest number of migrants are Copenhagen, Aarhus, Frederiksberg, Odense and Hvidovre. Apart from Aarhus (located on the island of Jutland) and Odense (located on the island of Funen), cities with the largest number of migrants (Western and Non-Western) are located within the Capital Region of Denmark that includes Copenhagen and 28 other neighboring municipalities (Statistics Denmark 2018).

Of late, Danish lawmakers have been increasingly focused on the prevalence of “ghettos” in Danish cities. The Ministry of Transportation and Housing publishes a yearly list of “ghettos” defined as areas with high-levels of unemployment and criminality, low-levels of education and places where a majority of residents have non-western heritage or nationality (Act on General Housing No. 1103 of 15 August 2016, article 61.a, Ghattolisten 2017). The current Danish government has announced plans to completely “end the existence” of “ghettos” in Denmark. The plan was first mentioned by Prime Minister Rasmussen in his 2018 New Years speech and includes tougher punishment for crimes committed in designated (“ghetto”) zones. Housing companies will be given the right to refuse housing to individuals with criminal records. Municipalities will have easier access to the personal information of individuals living in designated underprivileged areas. An individual receiving social welfare, who relocates to a “ghetto area”, will see a reduction in welfare benefits. Children living in “ghettos” will be required to attend daycare for at least one year. Finally, municipalities that are able to secure jobs for non-Western immigrant residents will receive financial bonuses. Similarly, students with non-Western backgrounds who demonstrate an improvement in school grades will also earn financial bonuses for their respective municipalities (The Local 2018)

Denmark also imposes a policy of geographically distributing refugees across Denmark (Integration Act No. 1115 of 23 September 2013, Chapter 3). The assumption is that refugee integration is best facilitated in smaller local communities, especially with regard to the integration of young refugees into Danish society. Living in urban areas, amongst other co-ethnics, refugees and immigrants is expected to hamper refugees' successful integration into Denmark. In 1999 the spokesperson of the Social Democratic Party confirmed this assumption about the benefits of the spatial dispersal of refugees when she said, "This placement helps the refugee groups become part of the surrounding society, and not an [ethnic] enclave placed outside society". While Birgitte Romme Larsen goes to demonstrate that this is not always the case and that migrants are often considered a threat by local rural communities, the assumption nonetheless is that "social relations between the members of the refugee family and those of the surrounding Danish local community will [naturally] develop in the course of everyday life as the refugees interact with the local population" (2011: 337).

4.2.3 Brief description of the society of hosting country

Denmark falls under a very high human development (HDI) category. As of 2016 Denmark had a HDI index of 0.925 and was ranked 5th out of 188 countries and territories. It has seen a steady increase in its HDI index since 1990 when its HDI index was 0.799. Denmark's HDI is significantly higher than the average HDI of countries in the very high human development group (0.892) and higher than the average for OECD countries (0.887). Denmark has a life expectancy at birth of 80.4 years, average expected years of schooling of 19.2 years, GNI per capita of \$44,519, adjusted inequality of 0.858 (IHD), Gender Development Index of 0.970 (Human Development Report 2016) and a low unemployment rate (5.7 percent). Adding all of these factors together, Denmark appears as an interesting destination country, being able to provide a high level of security and opportunities to improve one's life situation, which are among the top reasons for immigrants for choosing a specific destination country, according to a Norwegian Study (Brekke & Aarset 2009: 84). Furthermore, as a rich country, one would expect Denmark to have the resources to successfully integrate immigrants. Yet, at the same time, the high quality of life in Denmark also translates to high demands in terms of what counts as integrated. As an immigrant and social worker pointed out in an op-ed in one of the leading national newspapers, successful integration is not defined in Denmark, yet it means not just having a job, speaking the language or eating rye bread. It always means something more: "I do not just have to contribute to society on an equal footing with everyone else. I have to work harder than ethnic Danish citizens. Unlike them, everything in my behavior can be linked to my integration process." (Salih 2016). The constitution of 1849 grants citizens full religious freedom. This said, while 80% of Danes are members of the Church of Denmark (Evangelical Lutheran), a 2010 Pew Research Center study found that 650.000 Danes considered themselves religiously unaffiliated. The same study estimates that there will be 4.640.000 Christians, 290.000 Muslims, 680.000 Religiously unaffiliated people, 20.000 Hindus and 10.000 Buddhists in Denmark by 2020 (Pew Research Center 2015).

Given the positive level of all the above mentioned indicators, one might expect Denmark to be a country with a pronounced humanitarian immigration policy, like their neighbour to the east. Yet, as we will show in the following sections, Denmark's immigration policy has become more restrictive across time, and most recent policy changes have given Denmark

the reputation of one of the hardliners when it comes to immigration policy. Rather than being brought forward by humanitarianism, the perception that migrants are a burden to the Danish Welfare state seems to be driving recent immigration policies. This is evident, for instance, in the manner in which non-Western heritage, social benefits and unemployment (alongside educational levels and criminality) are key indicators used for the designation of an area as a “ghetto”.

4.3 The constitutional organization of the state and the constitutional principles on (a) immigration and asylum; (b) labour

4.3.1 System of government

Denmark is a constitutional monarchy and a parliamentary democracy under the 1953 Constitution. The Head of State is the Monarch and the Government is led by the Prime Minister. The Parliament (*Folketing*) is unicameral. As in many other Western democracies, the Danish political and legal system is founded on a tripartition of power i.e. a division between the legislative, the executive and the judicial powers (Folketinget 2005: 10). The three powers are independent of one another and yet control one another in order to prevent abuse of power (Folketinget 2014: 5). Together with the Government, the Parliament exercises legislative power and is the only branch of power authorized to adopt legislation (Folketinget 2014: 5). Denmark has a multi-party system, where several parties are represented in the Parliament. The system is known as negative parliamentarianism, which means that the Government does not need to have the majority in the Parliament, but it cannot have a majority against it. If the latter is the case, the Government must resign (Folketinget 2014: 5). The ultimate power of the Parliament thus rests with its ability to unseat an incumbent government (Bergman 1993: 288). The Parliament is made up of 179 Members, elected by proportional representation, with 175 Members elected in Denmark, two in the Faroe Islands and two in Greenland (Legislative Council Secretariat 2014: 3). Denmark is a unitary state organized on a decentralized basis. It has three levels of governance: national, regional and municipal.

4.3.2 Decentralization

The Danish government structure is a three-tier system comprising the state, the region, and the municipality, as mentioned above. At the national level, the Government has general legislative powers in the following areas of national sovereignty: police, defence, administration of justice, foreign affairs and development aid. Moreover, it is responsible for: Higher education, secondary education, vocational training and research, unemployment insurance and labour inspection, sick pay, child benefits and elderly pensions, certain cultural activities, trade and industry subsidies, citizen service regarding taxation and collection in cooperation with State tax centres, food control, and administration at national level, over and above administrative responsibilities exercised at regional and local levels (European Committee of the Regions 2018, Danish Ministry of Finance 2018). A major municipal reform in 2007 transferred power to the municipalities, and the Danish Municipalities are entrusted with more fiscal, political and administrative autonomy than in any other country (Ivanyna and Shah 2012 in Emilsson 2015). The municipalities are now responsible for: Specialized social services, employment policies (local job centers), social

welfare (social services), child care, integration and language education for immigrants, education, care for the elderly, healthcare, civil protection, environment, planning, tourism, transport, culture and sports (European Committee of the Regions 2018, Danish Ministry of Finance 2018). Thus, the municipalities are in charge of implementing integration policy (housing for refugees, integration/introduction programmes, welfare benefits and finding jobs/education), yet “all the municipalities can do is *administer* the rules and procedures and advise migrant newcomers on the best way forward” (Emilsson 2015). At the same time as the municipalities’ powers were enhanced the regions became less important, with fewer responsibilities and no power to tax their citizens (Emilsson 2015). The Regions have responsibilities in the areas of: Public health, regional development (among others in regard to environment, tourism, employment, education and culture), certain social services, special education, and transport (European Committee of the Regions 2018).

The shift from a centralized to a decentralized system was further codified under the 2010 *Act of Local Government* and much like the 2007 ‘shift’ this act set up a framework for the decentralization of the adaptation, implementation and monitoring of laws put in place by the central government. This was especially important in relation to discretion and independence in the implementation of integration policies at the local level. All 98 municipalities in Denmark have complete discretion and independence in interpreting, managing and adapting integration policies, which further allows them to cater for the specific needs of local communities. The 2010 act was politically motivated and was seen as a solution to the practical challenge of implementing integration strategies (devised at the level of the central government) in local communities. With an interest in ensuring that social (integration) programming reaches as many people with migrant backgrounds as possible, municipalities are thus seen as best suited to address their communities’ needs especially with regards to employment, education and language skills (Jørgensen 2014). The discretionary power in regard to the implementation of the law allows for diverging strategies and measures across municipalities, which might result in different outcomes. A memo from The Danish Agency for International Recruitment and Integration (2017) shows significant municipal differences in the employment rate of female refugees arriving 2015-2017, potentially as a consequence of differences in the administration of the integration law. However, these differences could also be attributed to other factors. e.g. differences in the refugees’ countries of origin across municipalities.

Danish immigration policy is drawn up at the national level and municipalities, non-governmental organizations and civil society organizations have to follow and implement national policy. Thus, subnational legislation is not relevant in the Danish context.

4.3.3 Constitutional value of labour

Often considered the constitution of the Danish labour market, the so-called September Compromise was signed on 5 September 1899. The agreement was signed after a four-month conflict (Jensen 2002: 77) and was seen as a national agreement for Danish industrial relations. The agreement was signed between the Danish Employers’ Confederation (DA) and the Danish Confederation of Trade Unions (LA). The intention of the agreement was to end long periods of strikes by employees and lock-outs. Considering the industrial cost of these negotiation ‘tactics’ the settlement was to both secure the employers’ right to regulate the work environment and to establish a bargaining system that had an embargo on strikes

and lockouts. Through the September Compromise employers were able to secure their right to regulate the work environment. Additionally, both parties recognized each other's right to implement work stoppages. However, work stoppages needed to be approved by three-quarters of the members and sufficient notice would need to be given prior to work stoppages. The agreement thus resulted in a centralized bargaining system whereby negotiations would take place between the two confederations representing the employers and the unions (Jørgensen 2015). This system of labour market regulation as well as its implications for the integration of immigrants will be spelled out in section 5 on "The national labour standards/fundamental principles of labour law". Here it is however worth mentioning that although there is a high degree of unionization in Denmark, the share of immigrants that are members of a union is significantly lower (27 percentage point in 2015 (Redder 2015)).

In Denmark, access to the labour market is considered an important pillar for integration. Article 1 of the Integration Act explicitly states "making newly arrived aliens self-supporting as quickly as possible through employment" as a key objective of integration efforts (Integration Act No. 1115 of 23 September 2013).

4.3.4 Constitutional milestone case law on migrants, refugees and asylum seekers access to labour and migrant labour conditions

Alongside frequent changes to Danish laws with regards to migrants (cf. section 4), the following are four recent milestone cases:

Back in 2000, a trainee was turned away from the Danish department store Magasin for turning up to work wearing a headscarf. The store claimed that the headscarf did not comply with their rules governing employee clothing. The case was instantly taken up in the courts and the high court (Østre landret) ruled that Magasin's reason had no legal foundation and therefore constituted indirect discrimination (U2000.2350). The girl received compensation. The high-court decision resulted in many companies having to change their employee clothing policies. Following the ruling, employees now had the right to wear a headscarf at work (Lukowski 2010).

In 2005, the Danish Supreme Court ruled in the so-called "Føtex case", where a woman had been fired for refusing to take off her headscarf at work in the department store (U 2005.1265 H). The unanimous verdict stated that the dismissal was justified and not a case of illegal discrimination. The ruling potentially has tremendous implications for labour market integration of immigrants wearing a headscarf or other religious symbols as it limits not only their freedom of expression but the range of potential workplaces. In addition, employers are hereby provided with an "easy tool" to dismiss employees who carry religious symbols.

In 2016 a Danish-Turkish Dual Citizen lost his citizenship for fighting for ISIS. According to Danish law if an individual has been deemed to have engaged in terrorist activities under chapters 12 and 13 of the Criminal code he or she would lose his or her citizenship (as long as this doesn't mean that they are made stateless). An individual would not lose his or her citizenship if it is deemed that the consequences of losing citizenship are much more severe than the gravity of their criminal offense (Højesteret 2016). Later, on November 14, 2017, the Danish Supreme Court (Højesteret Dom) stripped a Danish-born Danish-Turkish citizen of his citizenship because he travelled to Syria and joined ISIS. Case No. 119/2017 was the first time that a Danish-born citizen lost his/her citizenship (Højesteret Dom 2017). This was

also done in accordance with Sections 12 and 13 of the Danish Criminal Code. Both rulings bear witness to a growing securitization of the integration ‘problem’ in Denmark and attaches a (securitized) ‘otherness’ to the figure of the immigrant, not withstanding their Danish citizenship. The cases cited above specifically sets a legal precedence whereby Danish citizenship is not permanent and legally revocable in situations where there is considered to be a security (terrorism-related) threat and when it can be proved that the accused has a substantial connection with another country. This was the case with regard to the Danish-Turkish citizen who, according to the Danish Supreme Court, had a substantial cultural and familial connection to Turkey.

4.3.5 The judiciary

The Danish Courts exercise the judicial powers of government. The Danish Courts are composed of the Supreme Court, the two high courts, the Maritime and Commercial Court, the Land Registration Court, 24 district courts, the courts of the Faroe Islands and Greenland, the Appeals Permission Board, the Special Court of Indictment and Revision, the Danish Judicial Appointments Council and the Danish Court Administration (for further information on the specific courts, see Domstol.dk 2018).

The legality of specific immigration regulations can (and are) regularly brought to the courts for adjudication of their legality. For example, along with the cases mentioned above where Danish citizens lost their citizenships, in January 2010 the Danish Supreme court upheld a rule with regards to family reunification that requires the partner resident in Denmark to have lived in the country for at least 28 years before he or she can avail of family reunification as this would indicate greater ‘connection’ to Denmark compared to their country of birth (case 478/2007)¹¹⁹. This led to legal challenges to the law with many deeming it discriminatory, and in 2016, a Grand Chamber judgement of the European Court of Human Rights backed this belief as it found that there had been a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights (application no. 38590/10).

4.4 The relevant legislative and institutional framework in the fields of migration and asylum

4.4.1 The national legislation on immigration and asylum

In Denmark, immigration is, for the most part, regulated by the Aliens Act, the Integration Act, the Repatriation Act as well as through a number of executive orders and guidelines (New to Denmark 2018a) (See also Annex I).

¹¹⁹ The case concerned the complaint by a naturalised Danish citizen of Togolese origin, Ousmane Biao, who was denied family reunification with his Ghanaian wife as the couple did not comply with the requirement under the Alian Act that they must not have stronger ties with another country, Ghana in their case, than with Denmark (known as the “attachment requirement”). In addition, they complained that an amendment to the Aliens Act in December 2003 – lifting the attachment requirement for those who held Danish citizenship for at least 28 years – resulted in a difference in treatment between those born Danish nationals and those, like Mr Biao, who had acquired Danish citizenship later in life.

The **Aliens Act** includes, inter alia, rules on immigrants' entry and residence in Denmark, visas, asylum, family reunification, permanent residence, expiry and withdrawal of residence permits, expulsion and refusal of aliens, as well as accommodation and financial support of asylum seekers. The **Integration Act** includes, inter alia, rules on housing placement of refugees, integration programs for refugees and family migrants as well as introductory courses for immigrants¹²⁰, while the **Repatriation Act** includes rules on counseling of foreigners on repatriation, payment of assistance for repatriation and payment of reintegration assistance (New to Denmark 2018a).

The Aliens Act has been changed numerous times (see also Annex I). Most often within the last couple of years, and to the extent that even practitioners find it difficult to follow all these changes (Mortensen 2016). In the period from 1985 to 2000, the Act was changed 25 times, while it was changed 57 times from 2002 to 2011 (Gammeltoft-Hansen 2014), and more than 85 times since 2015 (The Ministry of Immigration and Integration 2018a). Here we discuss the main features and most significant changes.

Since 1952, inhabitants of the other Nordic countries have had the right to live and work in Denmark (Tølbøll 2016). For a short spell between the late 1960s and early 1970s, Danish companies brought in so-called guest workers primarily from Turkey, Pakistan and the former Yugoslavia (Nannestad 2004: 757, Hedetoft 2006: 2). The recruitment of guest workers ceased in 1973 as part of a general stop to immigration in response to the first oil crisis (Nannestad 2004: 757) that resulted in an economic recession and large-scale unemployment (Olwig 2011: 183). The halt targeted non-EU/EEA citizens as citizens from the other member states were granted the right to live and work in Denmark, together with social rights, when Denmark entered the European Community (now European Union) in 1973, (Tølbøll 2016).

While Denmark has been resettling refugees since 1956, a Danish refugee resettlement program was officially instituted in 1979¹²¹. The legal basis of this program is outlined in section 8 of the Aliens Act¹²². In 1983, the immigration ban for workers was slightly reversed

¹²⁰ The integration of immigrants is seen as an integral facet of the welfare state's responsibilities towards newcomers in Denmark (Olwig 2011: 85). To this effect, as outlined by the Integration Act, municipalities have the responsibility for supporting immigrants' integration through formal education, including their language education. Language schools are under the jurisdiction of the Danish Education Act. While the Integration Act does not specify what this support entails, language education has been free of charge thus far. That said, a new tax law has been agreed upon on February 6th, 2018 that will require students to put up a co-pay and deposit which would be returned after the successful completion of their language education. Since these courses are still heavily subsidized and the fee students will be required to pay is termed as a 'co-pay', this new tax agreement still fulfills the requirement (as stipulated by the Integration Act) that municipalities must *support* immigrants' language education (Gadd 2018; Aftale om lavere skat på arbejdsindkomst og større fradrag for pensionsindbetalinger 2018).

¹²¹ From the mid-1970s onwards, with the end of the guest worker program, Denmark saw a steady flow of refugees from places like Vietnam, Sri Lanka, Iraq, the Balkans, Iran, Lebanon and Somalia that, at the time, were facing political instability (Olwig and Paerregaard 2011: 3). It could then very well be that the instability in the 1960s and 1970s led Denmark to have an official resettlement program – especially one that clarifies issues of country of first asylum. (Kjaerum 1992)

¹²² In cooperation with UNHCR, Denmark offers refugees resettlement. The Danish parliament approves funding for the Danish resettlement quota within the annual budget. For many years the funding has covered an annual allocation of 500 resettlement places for refugees (UNHCR 2016: 2). In 2016 however, the Danish government suspended the resettlement program and an amendment to the Aliens Act was passed in 2017, leaving the decision on resettlement refugees to the Minister of Immigration and Integration alone, potentially closing the door for resettlement to Denmark.

while the legal situation for refugees was greatly improved. An automatic right to family reunification¹²³ was introduced, and residence permits were offered to Convention refugees, de facto refugees as well as to persons not fulfilling the conditions for asylum but admitted for special humanitarian reasons (DEMIG 2015, Hedetoft 2006: 6). All categories of refugees were offered an 18-month programme of integration¹²⁴ (DEMIG 2015). The 1983 Alien's Act was one of the most liberal immigration laws in Europe (Danmarkshistorien.dk 2018). It was passed by the parliament expressing a wish for Denmark to become a humanitarian pioneer country. This was then reflected in Danish domestic policy as well as immigration policy (Danmarkshistorien.dk 2018).

As a result of a rising number of immigrants, with the former guest workers and refugees bringing their families to Denmark, the Aliens Act was tightened in 1986. It became more difficult to obtain asylum and citizenship. Spontaneous asylum seekers could be refused admission at the Danish border when arriving either from a country regarded by Denmark as a safe country or not in possession of a valid passport or visa (Hedetoft 2006, DEMIG 2015). At the same time, it was made easier to deport immigrants who had engaged in fraudulent or criminal activities in that asylum seekers who engaged in criminal activity could be denied refugee status and be deported (Hedetoft 2006: 6, Aliens Act no. 686 of 17 October 1986, section 5.2.b): Furthermore carrier sanctions were introduced (Aliens Act no. 686 of 17 October 1986, Article 59a). In the early 1990s, changes were spurred by the civil war in the former Yugoslavia and a wish to help those fleeing the conflict. This led to the so-called 'Yugoslav Law' of 1992¹²⁵. At the same time, family reunification regulations were tightened. The law imposed a "breadwinner" condition on resident spouses together with a residence requirement of five years, and removed the automatic right to family reunification, dating back to 1983 (Hedetoft 2006: 6).

In the period from 1997 to 2001, Danish immigration policy was influenced by the introduction of the Dublin Convention (in 1997) and by the tightening of the Aliens Act in order to prevent fraud and restrict family reunification (Hvidtfeldt & Schultz-Nielsen 2017: 47, DEMIG 2015). Among other areas affected were the residency requirement for the sponsoring spouse which was raised to 6 years¹²⁶ in 1998 (Act no. 473 of 2 July 1998, Article 2), and it was made easier to reject applications on the grounds of a sham marriage as applications could now be rejected if there was reason to believe that the purpose of the marriage is residency or if the marriage is a result of an agreement made by other people than the spouses themselves (Hvidtfeldt & Schultz-Nielsen 2017: 48, Act no. 473 of 2 July 1998, Article 9). Housing requirements for family reunification were introduced in 2000

¹²³ Family reunification was already common practice in Denmark – since 1973, European citizens were granted the right to family reunification, regardless of the nationality of the family members, as a result of Denmark's ratification of the European Commission Decree No 1612/68 regarding worker's freedom of movement together with the Treaty of Accession (DEMIG 2015) – but the 1983 Aliens Act established the legal entitlement to family reunification for refugees (Danmarkshistorien.dk 2018).

¹²⁴ The 1983 integration program included Danish language training for one year, financial and residential support and a work permit (DEMIG 2015).

¹²⁵ The 'Yugoslav Law' was passed in 1992 and introduced a temporary residence permit to people fleeing a war zone (Hvidtfeldt & Schultz-Nielsen 2017: 47, DEMIG 2015). In 1995 the so-called 'Bosnian-law' was introduced, granting temporary residence to Bosnian refugees whose asylum claims were rejected (Hvidtfeldt & Schultz-Nielsen 2017: 47).

¹²⁶ The resident spouse must have a permanent residence permit for at least three years (and thus minimum 6 years stay in total) (Hvidtfeldt & Schultz-Nielsen 2017: 48).

together with the so-called 'attachment-requirement'¹²⁷ in family reunification cases which represented crucial changes to the possibility of staying in Denmark (Hvidtfeldt & Schultz-Nielsen 2017: 48, 54).

In 1999 the Integration Act entered into force. The act transferred the responsibility for integration of immigrants to the municipalities and made participation in an integration program¹²⁸ obligatory for all newly arrived refugees and individuals admitted into Denmark for family reunification in order to be eligible for social security benefits. An introduction program¹²⁹ was also offered to migrant workers, accompanying family members, students, au pairs and EU-citizens, but was not compulsory (Mouritsen & Jensen 2014: 11, DEMIG 2015). The Act also stated labour market integration as an explicit goal for the first time¹²⁹ (Emilsson 2015). Some of the most significant changes to the law occurred in 2002, when a 'legislative package' was passed, making it harder for refugees and family members of migrants to stay in Denmark: Tougher requirements on access to permanent residence and citizenship were introduced: Amendments to the Aliens Act entered into force in July 2002 required refugees to have resided in Denmark for seven years (previously three years) in order to be granted permanent status (DEMIG 2015) and the Circular on naturalisation of 12 June 2002 raised the residence requirements by two years. Furthermore, steps were taken to ensure the loyalty of newcomers to Danish values and to speed up the integration of immigrants as an amendment to the Integration Act in 2002 made the Introduction Programme mandatory for newly arriving immigrants (DEMIG 2015, Tølbøll 2016). Furthermore, the *de facto* refugee status was abolished and a protection status (B status)¹³⁰ was introduced, and the "24-year rule" for family reunification was introduced. The latter stipulates that Danish citizens cannot marry a non-EU or Nordic foreign national and settle in Denmark with his/her spouse unless both parties are 24 years or older (Hvidtfeldt & Schultz-Nielsen 2017: 49, DEMIG 2015). The rule was meant to reduce forced marriages and immigration on the basis of family reunification (Rytter 2012: 92). At the same time, the 'package' also made immigration to Denmark easier for students and jobseekers (Hvidtfeldt & Schultz-Nielsen 2017: 49, Rytter 2012). A special scheme for shortage jobs was introduced, facilitating access to work and

¹²⁷ The attachment requirement means that both spouses' combined attachment to Denmark must be greater than their combined attachment to another country (Hvidtfeldt & Schultz-Nielsen 2017: 48). According to the Danish Immigration Service, attachment is evaluated by the following factors: How long you and your spouse/partner have lived or stayed in Denmark, Your attachment to others in Denmark, such as family, Whether you have minor children in Denmark, Whether you have gone to school or taken classes in Denmark, How long you have worked in Denmark, Whether you speak Danish, Your attachment to other countries. Yet, in the case mentioned above (cf. ruling by the Danish Supreme Court on family reunification) the applicant, a Danish citizen of Togolese origin, was unable to bring his Ghanaian wife to Denmark since he had received his education from Ghana, in five years he has been to Ghana five times, his wife doesn't have family in Denmark, and they speak the local languages together. Danish immigration authorities therefore deemed that he had greater connection with Ghana than Denmark and therefore he could not avail himself of the family reunification law (Jyllands-Posten 2010).

¹²⁸ The integration program (as well as the introduction program) encompassed instruction in Danish, courses on social conditions in Denmark, courses on Danish culture and history as well as job related activities (Mouritsen & Jensen 2014: 11).

¹²⁹ Article 1 of the Integration Act states "making newly arrived aliens self-supporting as quickly as possible through employment" as a key objective of integration efforts (see also section 5 on the national legislation on access to the labour market).

¹³⁰ Article 1 of the Integration Act states "making newly arrived aliens self-supporting as quickly as possible through employment" as a key objective of integration efforts (see also section 5 on the national legislation on access to the labour market).

residence permits for immigrants employed in sectors with a shortage of skilled labor (DEMIG 2015). In the period until 2011, the Aliens Act was frequently changed and tightened¹³¹. Among other changes, a points system¹³² was introduced for obtaining permission for permanent residency and family reunification, and an integration test was put in place for family reunification (Hvidtfeldt & Schultz-Nielsen 2017: 50-51). Following a change of government in October 2011, some of the recent restrictions to the Aliens Act were rolled back (among others the points system), and from May 2013, asylum seekers who had stayed for at least 6 months in Denmark were allowed to live and work outside asylum centers¹³³ (Hvidtfeldt & Schultz-Nielsen 2017: 52).

Since the beginning of the so-called refugee crisis of the summer of 2015, Denmark introduced the aforementioned temporary protection status (cf section 1), together with other restrictions making it less attractive for refugees to come to Denmark. Among others, the discretionary powers of the police were expanded to handle asylum seekers (Hvidtfeldt & Schultz-Nielsen 2017: 53). The police were given greater power to withhold people, for example in order to ensure his/her presence during the asylum phase and during any appeal, and they could now prohibit train, bus and ferry operations across Danish borders. A new and lower integration benefit system replaced social assistance for those who have not been in Denmark for more than seven of the last eight years¹³⁴ (Kvist 2016); (We will further elaborate on the benefit system for migrants and its consequences below in section 5 on The national labour standards/fundamentals of labour law). Fines for irregular stay, entry and work were raised in 2015, along with fines for aiding so called “irregular immigrants” cross the border (Hvidtfeldt & Schultz-Nielsen 2017: 52). Moreover, carrier sanctions (Schengen internal)¹³⁵ and border controls have been introduced (Hvidtfeldt & Schultz-Nielsen 2017:

¹³¹ The requirements for permanent residency were changed in 2003 from 7 years of residence to 5 years (or 3 years if the applicant has been employed for the three-year period preceding the application) (Hvidtfeldt & Schultz-Nielsen 2017: 50). In 2005, applicants for family reunification and their spouses now also had to sign a “declaration of integration” (DEMIG 2015), and labour migration was eased in 2007 and 2008: In 2007, the current job card scheme was expanded, opening up 15 new occupations, the green card¹³¹ was created, a second track was added to the Job Card Scheme¹³¹, and in 2008 the Corporate Scheme was introduced, allowing employees from a company’s foreign department to obtain a corporate residence permit in Denmark (DEMIG 2015).

¹³² The point system required non-EU spouses of legal Danish residents and citizens to earn the right to stay in Denmark by amassing ‘points’ for higher education, full-time work, Danish language skills, community service, and other criteria (e.g. if the applicant does not settle in an “vulnerable residential area”). The criteria were so strict – and the minimum number of points needed to qualify for residency were so difficult to achieve – that a number of highly-educated, top-earning spouses were unable to make the cut (CPH Post 2012).

¹³³ In Denmark, asylum seekers have to stay in an asylum center. Immigration Service decides which one, and they can be moved from one center to another with only short notice. The centers are now divided between different functions. Center *Sandholm* is reception center, and while the asylum case is pending, the applicant will be moved to one of the accommodation centers in Jutland. If the application is rejected, the applicant will be moved to the return center *Avnstrup*, where it will be assessed whether or not he/she cooperate on return or not. If not, the applicant will be moved to one of the deportation centers (*Sjælsmark* for families and *Kærshovedgård* for singles). In addition, there is center *Thyregod* for people with special needs and a number of centers for unaccompanied minors only (Refugees Welcome 2018).

¹³⁴ Since September 2015, the government implemented a new kind of start assistance, which now is called Integration Allowance (*Integrationsydelse*). The low benefits are now applied to everybody who has not resided legally in Denmark for 7 years or more. The allowance is roughly half of the normal social allowance (*Kontanthjælp*) (Bendixen 2018c).

¹³⁵ Carrier Sanctions – meaning that air carriers as well as bus, train and maritime carriers can be subject to criminal liability if they bring a foreigner without the required travel ID across external Schengen borders – have been in place since the late 1980s. What is however new is that, as of 2015, there are now carrier sanctions for bringing people across an internal Schengen border (Hvidtfeldt & Schultz-Nielsen 2017: 53).

53). In February 2016 the right to family reunification for people with temporary protection status was restricted. Now it can only be availed after three years of residence, as opposed to the previous residency requirement of one year (Hvidtfeldt & Schultz-Nielsen 2017: 53, Kvist 2016). At the same time, the controversial “jewellery law” was introduced. The law allows the police to search asylum seekers’ clothes and luggage and to confiscate cash and valuables worth more than DKK 10,000 (app. 1,340 Euro). The law was intended as yet another deterrent as well as a strong signal in the national debate, but its actual impact seems limited. The Danish police federation initially rejected the proposal of confiscating valuables from refugees before the law was voted on in the Danish parliament. After it passed, the chief of the police federation said that the plan was ‘unworkable’, adding, *“I can’t imagine that we would go in and take away, for example wedding rings from refugees who come to the country”* (DW 2015). Within the first year, the police had only used the law four times, and a total of DKK 117,600 (app. 15,800 Euro) had been confiscated (Olsen 2017; Pace 2017). More stringent eligibility requirements for permanent residency were also introduced. Non-EU citizens can now apply for permanent residency only after eight years in Denmark. The employment requirements have been raised to 3½ years of employment within the last 4 years (Hvidtfeldt & Schultz-Nielsen 2017: 54). Individuals can apply for permanent residency after 4 years if they fulfill additional supplementary requirements with regards to their average yearly income, active citizenship¹³⁶, period of employment in the four years prior to permanent residency application and Danish language proficiency.

Nordic citizens still have the right to reside, study and work in Denmark without acquiring permission. EU/EEA citizens and Swiss citizens may freely enter Denmark (without a visa) and remain in the country for up to three months without an EU residence document (registration certificate). If looking for a job, EU/EEA citizens may stay up to six months without a registration certificate. Citizens from a country outside Scandinavia, the EU/EEA or Switzerland, can only enter legally with a valid residence and work permit (or tourist visa, if the stay is for less than three months, unless coming from a visa-exempt country). They have to apply for a residence and work permit in their home country or place of legal residence through a Danish mission, i.e. a Danish Embassy or a Danish Consulate General (Life in Denmark 2018). As a general rule, a residence permit carries with it the right to work in Denmark (The Ministry of Immigration and Integration 2016: 35).

Since 2002 asylum seekers can only lodge an application on Danish soil, meaning that immigrants have to either enter illegally or on different grounds, e.g. as a student or on a tourist visa, in order to apply for asylum. Once within the country, it is possible to change status. The Danish Aliens Act does not preclude a person with a valid residence permit from seeking and obtaining a residence permit on different grounds if he or she fulfils the relevant conditions for the (second) residence permit (The Ministry of Immigration and Integration 2016: 35). To give an example: A person who holds a valid residence permit based on study may apply for asylum and will be granted refugee status if he/she fulfils the conditions. As of today, there is also no legislation in place precluding a person to “surface from irregularity”,

¹³⁶ An applicant can demonstrate active citizenship by either serving on a board/being a member of an association for a period of one year or by passing a written exam (i.e. active citizen exam). The exam is designed as a 25-question multiple choice exam about Danish democracy, everyday life in Denmark, Danish culture and Danish history. The study material is prepared by the Ministry of Immigration and Integration.

meaning that a person entering Denmark without documents may apply for asylum and will be granted refugee status if he/she fulfils the conditions. However, foreign nationals working in Denmark without a work permit may be deported (Aliens Act: section 2, The Ministry of Immigration and Integration 2016: 41).

The Danish immigration policy is in many ways shaped by the preeminence of the Danish welfare state as a national, inviolable paragon (Nannestad 2004). What Denmark is and stands for is inextricably linked to the establishment and development of the Danish welfare state since the Social Reform Act of 1933. As all facets of Danish society, economy and politics were put under the canopy of universal welfare schemes, the welfare state also serves to unify the population. Of course, the conception of the welfare state as a force of unification draws on the assumption that, under the guise of the welfare state, the entire population would form a “natural unity” driven not only by a “mutual interest in a compromise” but also in terms of an ethnically, linguistically and socially homogenous demographic (Johncke 2011: 37-38). However, what is seen as a national achievement also became a national/ist accomplishment that stands as a vanguard against a fast globalizing/globalist world order. To this end, ethnic diversity in Danish society is considered a personification of this globalist world. And, the immigration of non-Europeans to Scandinavia that began during the 1960s is seen as challenging the “solidaristic roots” of the welfare state since immigrants have not been socialized under the universal schemes of the welfare state (Einhorn and Logue 2003: 311). Non-European immigrants have also been more in number than those fleeing Nazi or the Soviet atrocities. Therefore, while most immigrants have become productive members of Scandinavian societies, they are still generally perceived as “seeking to exploit the collective generosity of the Nordic countries” (Einhorn and Logue 2003: 312, see also Fietkau & Hansen (2018) for a similar argument on a general Danish perception of immigrants as exploiters of the welfare state). This perception is further buttressed by the understanding of solidarity in welfare state as taking root in small groups or communities. The appearance of people from outside this group is therefore seen as a challenge to the fundamental principles of the welfare state in Scandinavia (also see: Crepaz 2008).

Here it is important to add that while the sanctity of the welfare state is often the overarching concern, the public and political rhetoric on immigration also frequently traverses notions of integration, state security and the public order. For instance, it was governmental concern with the pace and extent of immigrants’ integration into Danish society that was presented as the pretext for the introduction of tougher requirements in 2002 with regards to access to permanent residency and citizenship (Tølbøll 2016). For the same reasons, refugees and reunified families are now required to sign both a compulsory Contract of Integration and a Declaration on Integration and Active Citizenship (the Integration Act 2018: section 19). The integration contract will be further assessed below. Here it is just worth mentioning that the Declaration on Integration on Active Citizenship¹³⁷, is a “brilliant example of “we rationales,

¹³⁷ The Declaration on integration and active citizenship in Danish society entails among others several points on compliance with the Danish law and active commitment and contribution to the Danish society by supporting one self, learning the language and by taking up work, just to mention a few examples. For a copy of the declaration see: https://www.nyidanmark.dk/NR/rdonlyres/7A32FAD0-E279-467C-91E3-3074249ED586/0/integrationserklaering_engelsk.pdf.

you Jane"¹³⁸ thinking, because we already have laws against criminal behavior", as Wolfgang Zank so nicely puts it (2009: 177), and thus can create an "us" and "them" instead of promoting integration. Moreover, refugees' presumed inability to integrate into Danish society was also used as an argument to change the resettlement program, i.e. potentially close access to Denmark for resettlement refugees (Bjerre 2017). Similarly, foreigners who are considered a threat to state security due to their involvement in criminal activities cannot be granted a residence permit (section 10 of the Aliens Act), and according to Chapter 3a of the Aliens Act a residence permit will always be revoked if the foreigner in question is considered a threat to national security or a serious threat to public order. Additionally, section 25 of the Aliens Act allows the Justice Minister to deport a person who is deemed to be a threat to state security or the public order (Aliens Act).

4.4.2 The institutional framework of immigration and asylum management

Several state-, municipal- and non-governmental organizations/institutions are involved in migration governance in Denmark (see Annex II).

Together with The Danish Agency for International Recruitment and Integration (*Styrelsen for international rekruttering og integration*) and the Danish Immigration Service (*Udlændingestyrelsen*) the Ministry of Immigration and Integration is in charge of all matters related to entry and stay in Denmark, naturalization, integration, Danish as a second language, tests for foreigners, prevention of extremism and radicalization, prevention and management of honor-related conflicts (The Ministry of Immigration and Integration 2018b). The ministry also supports companies and educational institutions in the acquisition of well-qualified employees and students (The Ministry of Immigration and Integration 2018c).

The Danish Immigration Service deals with cases of immigrants' rights to visit and stay in Denmark, including applications for asylum, provision and accommodation of asylum seekers and persons on tolerated stay¹³⁹, processing of visa applications for short stays¹⁴⁰, applications for family reunification and applications for permanent residency. Moreover, they collaborate with the police on cases of administrative expulsion and write statements for the prosecution in criminal proceedings concerning foreigners (The Ministry of Immigration and Integration 2018d).

The Danish Agency for Labour Market and Recruitment (*Styrelsen for Arbejdsmarked og Rekruttering*) is in charge of processing applications for residence permits based on employment, as well as permits for studying, au pair positions and internships, and for conducting control checks to ensure compliance with immigration laws (e.g. reviewing public registers, contacting other authorities, such as tax authorities or municipalities or contacting employers or places of study) (The Ministry of Employment 2018).

¹³⁸ Wolfgang Zank hereby reference the famous misquote from the classic film "Tarzan the Ape Man" from 1932: "Me Tarzan, you Jane", to show the distinction between the immigrants and the rest of the Danish society, with the Danish society as the self-appointed rational person.

¹³⁹ This status is given to individuals who do not have a legal residence permit but cannot be deported because they are at risk of facing violence and persecution in their home country.

¹⁴⁰ Tourist visa, business visa and visa for cultural events. The processing of the visas is carried out with The Ministry of Foreign Affairs and the Danish representation offices abroad.

While the Immigration Service is in the first instance responsible for assessing a claim for asylum, the Danish Refugee Appeals Board (*Flygtningenævnet*) is the second port of call. If the asylum applicant is rejected, the case is automatically referred to the Refugee Appeals Board: Unless the case is considered manifestly unfounded¹⁴¹. In such a situation the case is referred to The Danish Refugee Council (*Dansk Flygtningehjælp*) (Danish Refugee Appeals Board 2018). The Danish Refugee Council is a humanitarian, non-governmental, non-profit organisation, which, as part of its overall efforts, performs a number of tasks based on government grants. Among others, the Danish Refugee Council must provide legal assistance to persons wishing to appeal against a decision to transfer to another Dublin country pursuant to section 29b of the Immigration Act, and it can impose veto in all Manifestly Unfounded cases. However, if the refugee council agrees with the Immigration Service, the application will be rejected and cannot be appealed to the Refugee Appeals Board. If the Danish Refugee Council disagrees, the Immigration Service will generally still reject the application, but will nevertheless refer the matter to the Refugee Appeals Board for a final decision (Danish Refugee Appeals Board 2018). Applications for a humanitarian residence permit are dealt with by the Ministry of Immigration and Integration (The Ministry of Immigration and Integration 2017: 3).

Whereas the Refugee appeals board considers appeals of decisions on asylum, the Immigration Appeals Board (*Udlændingeneævnet*) considers appeals of decisions on family reunification, permanent residence permits, administrative expulsion or refusal of entry, or decisions relating to residence on the basis of occupation and employment, studies or au pair positions (The Immigration Appeals Board 2018).

The Danish national police also play a role in regard to migration management. The Police's National Aliens Centre (*Nationalt Udlændingecenter*) is in charge of the first step of the asylum procedure – registration –as well as border control and deportation of rejected asylum seekers and migrants involved in criminal activities (expelled by the Danish courts) (Rigspolitiet 2015).

As mentioned above, municipalities are tasked with the implementation of Danish integration policies (cf. section 3) (Mouritsen & Jensen 2014: 10). Denmark has 98 municipalities. They have independence in managing and adapting integration policies (Jørgensen 2014: 5). For example, larger cities in Denmark have strived to support diversity in the urban population (Jørgensen 2014: 5). Since the 1999 Integration Act, so-called Integration Councils (*Integrationsråd*) can be set up in municipalities. The Councils are advisory bodies for integration efforts in the municipalities (Liebig 2007: 24). Yet, in several municipalities, elections to the Integration Council have been cancelled due to a lack of candidates, and several councils have had to be closed down (Erichsen 2010), which bare witness to a lack of integration of the Councils in this political work. Each local integration council elects one representative to the Council for Ethnic Minorities (*Rådet for etniske minoriteter*). The Council for Ethnic Minorities advises and offers guidance to the Minister of Immigration and Integration on issues of importance to immigrants and refugees (The Council of Ethnic Minorities 2018).

¹⁴¹ This occurs when the Immigration Service concludes that the applicant clearly cannot be granted asylum in Denmark (Danish Refugee Appeals Board 2018).

NGOs and migrant organizations play a more limited role in Denmark than in other countries (Liebig 2007: 24). Yet, it is worth mentioning some of those who do play a significant role. The Danish Refugee Council mentioned above is a major provider of integration services that include, among others, free counselling to all asylum seekers. Refugees Welcome, a small humanitarian organization, also offers free legal counselling and assistance to asylum seekers. Another important actor in the field is the Danish Red Cross which not only operates the majority of the accommodation centers but also offers integration activities across Denmark. The Danish Red Cross also operates health clinics for undocumented immigrants (located in Copenhagen and Aarhus). The health clinics were established in collaboration between The Red Cross, the Danish Medical Association and the Danish Refugee Council. However, they are administered by the Red Cross¹⁴²

In recent years, there have been several instances of unlawful practice and misinformation with regards to immigration and integration. In 2008, the Danish Immigration Service was accused of violating the Danish Public Administration Act by refusing to disclose information on rules that make it possible to circumvent the strict Danish requirements for family reunification (Berlingske 2008). In 2014, the immigration service was criticized for having failed to notify minors that they could have applied for Danish citizenship on more favorable terms (Geertsen & Fischer 2014). In 2017 and in 2018 the Ministry of Immigration and Integration was accused of unlawful practice and misinformation, for having sent out instructions to the Immigration Service that married asylum seekers should be separated if one spouse is a minor (Geist 2017). More recently, the Ministry of Immigration did not grant humanitarian status to sick asylum seekers. Instead, they were sent to their home country without the possibility of receiving vital treatment and thus violated a verdict from the European Court of Human Rights (Paposhvili v. Belgium, Lund & York 2018). Not all violations are in favor of more restrictions. The municipality of Silkeborg, violated the Integration Act in 2017 by putting 40 young newly arrived migrants through an education program instead of into work within four weeks after arrival (Olsen 2017).

Another gap exists with regards to the manner in which immigration policy is implemented. Through the course of the process from the policy on paper to the policy in action, there is often a certain degree of discretionary power available to the individuals and institutions implementing these policies. From the processing of applications to the street level bureaucrats in the municipalities administering the different integration policies or the policemen stopping some and not others at the German-Danish border. To our knowledge, no all-encompassing analysis of the implementation of Danish immigration and integration policy exists. Yet, several cases have made it to the media spotlight, among others the story of a 60 year-old lady, recently retired, who has been living and working in Copenhagen most of her life, but has been denied a permanent residence permit because she does not have a family in Denmark which was interpreted as lack of attachment, and the story of a 13 year-old girl who was removed by the police from her classroom and sent for deportation after her request for family reunification was denied on account that she would not be able to 'achieve

¹⁴² Other organizations helping refugees are Venligboerne, Grandparents for Asylum (*Bedsteforældre for asyl*), Danish Refugee Youth (*Dansk Flygtningehjælps Ungdom*), the LGTB society (*Landsforeningen for bøsser, lesbiske, biseksuelle og transpersoner*), Grandchildren for asylum (*Børnebørn for asyl*), and Right to Asylum (*Asylret*).

the necessary attachment to Denmark that is required for a successful integration' (Careja 2018: 15-16). Both decisions were reversed after widespread popular outrage and media pressure (Careja 2018: 15-16).

While this applies to Scandinavian countries in general, it is important to continue with the theme of Danish welfare state as a national(ist) and nationalizing project, which enjoys a certain level of unchallenged sacrosanctity. One of the gaps outlined by Engebriksen (2011) pertains to the case of a young Somali refugee who disappeared from Norway to look after his aunt in Italy. Because he did not stay in Norway – as refugees are required to – he lost his housing, his seat at an educational institution and his place in Norwegian welfare society in general. While pertaining to Norway, Olwig (2011) has argued that this intransigence of the 'systems' and 'bureaucracies' of/in the interest of the welfare state is a significant weakness/gap in the immigration policy as this often fails to account for the gulf that may exist between the personal interests, responsibilities and aspirations of MRAs and the aspirations of the welfare state. Related to this, there is a lack of any significant consideration at the bureaucratic level of the particular needs of the incoming population. Often the bureaucracies that MRAs encounter have little to do with their specific situation but are more indicative of the political trends at the time. The frequently changing immigration rules in Denmark, for example. Here, policy has little to do with the needs of the incoming population and more to do with the interests of the political parties at the helm of legislative bodies (Eastmond 2011). This, one can argue, limits the possibilities for enforcing long-term legislations and provisions for the successful integration of MRAs into the Danish labour market.

4.5 The framework legislation on the integration of migrants and asylum seekers in the labour market

4.5.1 The national labour standards/fundamental principles of labour law

In Denmark, wage and work conditions are primarily regulated by collective agreements (or individual employment contracts) and not by law. This system of labour market regulation is referred to as **The Danish Labour Market Model** and is characterized by the fact that "the social partners themselves (that) determine the rules of the game on the labour market" (The Danish Ministry of Employment 2018a). The underlining assumption here is that employers and employees are organized in associations and unions that protect their interests during collective agreement negotiations. This means that pay and work conditions are agreed freely between employers and employees through the various employers' organizations and trade unions (3F 2015). In general, the Danish government does not intervene in labour market relations as long as the labour market parties are able to solve problems themselves in a responsible manner (3F 2015). If the parties are unable to reach an agreement, the Conciliation Board will be involved. The Board will assist the parties of the labour market to enter an agreement and avoid work stoppage. Conciliation between the labour market parties is regulated by the Act on Conciliation in Labour Disputes (The Danish Ministry of Employment 2018b, see also Annex III). However, since the state does not intervene in this matter and there is no statutory minimum wage, the Danish model is potentially vulnerable to low-wage competition as it is "up to the unions to locate any firm not following the wage-level set in the collective bargaining and take the necessary measures to force these firms into

compliance” (Refslund & Thörnquist 2016: 66). The risk of social dumping¹⁴³ is especially high in sectors with low levels of unionisation, high shares of low-skilled work and with geographically dispersed, small and mobile worksites (like cleaning or agriculture) (Refslund & Thörnquist 2016: 74).

Expectedly, high rates of unionization are a precondition for the success of the collective bargaining system. This is “the reason why statutory regulation of labour market matters has [only] been introduced in relation to those groups in the labour market which have traditionally not been covered by collective agreements such as, for instance, white-collar workers” (The Danish Ministry of Employment 2018a). A few examples of such regulations suffices here: The Act on Salaried Employees, the Civil Servants Act, and the Act on certain working conditions in agriculture (for the full list see Annex III). In addition to the labour market laws regulating the terms that apply to special groups of employees, there are a number of laws applying to special situations, among others the Holiday Act, the Act on Equal Pay for Men and Women and the Act on Entitlement to Leave and Benefits in the Event of Childbirth (for a full list see Annex III). These laws cover employers and employees in both the public and private sectors (Moderniseringsstyrelsen 2011: 6). The social partners of the labour market are also given a platform when key decisions affecting labour market integration are taken (such as the framework for job subsidies and the creation of new job categories) as these decisions generally are taken through consensus (Liebig 2007: 23). In this context, it is worth mentioning again that immigrants are largely under-represented in the bodies of the social partners (Liebig 2007: 24). Not only does this mean that there is a chance that any special needs or concerns that immigrants might have are not included in the agreements; furthermore, if this trend continues, it might result in a worsening of the conditions in the labour market for all as the trade unions will be weakened with an increasing share of immigrants in the Danish labour market.

Furthermore, the Danish labour market can be characterized by a combination of flexibility and security, that has been termed the **flexicurity model**. According to this model the employer has flexibility in the hiring and firing of employees. At the same time those in the labour market are guaranteed security by way of generous social protection, that includes high levels of unemployment benefits (Vinding 2014: 4). With the introduction of the so-called “integration allowance” in 2015 (and its wider application in 2016¹⁴⁴), the government (re-)introduced¹⁴⁵ a seven-year qualification period for access to cash benefits, i.e. only persons having resided in Denmark for at least seven out of the last eight years qualify for regular assistance (*kontanthjælp*)¹⁴⁶ (cf. section 4). During this period, benefits for a family are

¹⁴³ Social dumping is defined as “the practice, undertaken by self-interested market participants, of undermining or evading existing social regulations with the aim of gaining a short-term advantage over their competitors” (Bernaciak in Refslund & Thörnquist 2016: 64).

¹⁴⁴ Initially, integration allowance was applied to all immigrants who were granted asylum and moved to a municipality after September 1st 2015. But after July 1st 2016, the integration allowance is applied to everybody who has not resided legally in Denmark for 7 out of the last 8 years (native Danes as well as immigrants).

¹⁴⁵ The so-called “introduction allowance” (*starthjælp*) introduced in 2002, already had a seven-year qualifying period for access to full cash benefits (Liebig 2007: 20).

¹⁴⁶ Social assistance (*kontanthjælp*) is offered when an adult person is temporarily without sufficient means to meet his/her needs or those of his/her family, due to particular circumstances (e.g. sickness, unemployment). The benefit is family-based and depends on age, dependent children and period of residence and this applies to any person lawfully resident in Denmark. To obtain social assistance (*kontanthjælp*) residence in Denmark during seven of the last eight years is required. The calculation basis of social assistance is rather complex, but just to

generally about 50% of regular social benefits (Liebig 2007: 20; The Danish Ministry for Immigration and Integration 2018e; Kaarsen 2016). The lower rates are meant to enhance work incentives for immigrants (Kristiansen 2016). Since the introduction of the integration allowance, the employment rate among immigrants from non-western countries has increased, yet, this increase might very well be due to several other factors (e.g. other integration efforts such as the job-oriented employment efforts or the overall progress in the Danish economy). That the allowance has a direct effect on the living conditions of immigrants is however very likely.

According to an analysis by the Rockwool Foundation (2016) on so-called minimum budgets (how much it costs to live at an absolute minimum level in Denmark), those on social security have just enough to survive in Denmark. The amounts are roughly equivalent to the current social security benefits. Since integration allowance equates to about half the amount, the allowance does not allow for a decent living in Denmark, and will most likely complicate an already difficult situation further by adding additional stress and by limiting the possibilities of engaging in social events, sports activities etc.

4.5.2 The national legislation on access to the labour market

In Denmark access to the labour market is considered an important pillar for integration as mentioned above. Yet, **asylum seekers** are not allowed to take up work the first six months after their arrival, meaning that they have little chance of an everyday life outside the asylum center. **Refugees and family reunified persons**, on the other hand, are obliged to take part in an integration programme (cf. section 4), with a clear focus on labour market participation (The Danish Ministry of Immigration and Integration 2016: 51). The program consists of Danish education and employment-oriented offers in the form of guidance and upgrading, business practice, and employment with wage subsidies (The Danish Ministry of Immigration and Integration 2018f). The integration programme is implemented in the municipalities and goes hand in hand with an integration contract that must be signed in order to receive benefits (above mentioned integration allowance). The integration contract must entail a description of the immigrant's employment and education goals together with a detailed description of the activities ensuring that the goals are met. Thus, the contract is tailored to each individual and specific goals and the specific means leading to employment must be described in the contract (The Danish Ministry of Immigration and Integration 2018g).

The Integration programme is a one-year programme, as the intention is to get the immigrants into employment within one year. It can, however, be extended with up to four additional years if employment is not achieved (The Danish Ministry of Immigration and Integration 2016: 51). The guiding principle is 'work from day one' (The Ministry of Immigration and Integration 2016: 52), and refugees and family reunified persons in the integration programme are automatically regarded as "job-ready" meaning that they should be enrolled in job training unless considered ineligible (due to health issues etc. The Ministry of Immigration and Integration 2016: 51). However, as a three-year pilot programme, the

give a few examples: Over 30 years old, children at home: DKK 14,993 per month (app. 2000 Euro), Over 30 years old, no children at home DKK 11,282 per month (app. 1500 Euro), 25-29 years old: DKK 7.272 per month (app. 1000 Euro) (numbers for 2018 according to the Ministry of Employment). There is no maximum duration for receiving the benefit.

Integration basic education scheme (IGU) was introduced in 2016. The 2-year IGU consists of employment in a paid internship position in a company combined with a study allowance and aims to “enhance qualifications and thus employment opportunities for refugees and family reunified persons, whose skills level is not yet fully matching the requirements of the labour market” (The Ministry of Immigration and Integration 2016: 51). The efforts to make refugees and family reunified persons self-supporting through employment have thus increased while the permit validity for refugees has decreased (c.f. section 1 on the share of refugees receiving protection status/de facto status or temporary protection status increasing). This opens up the question of *temporary integration* and sets refugees “on a collision course between their efforts to integrate and the municipalities’ actions to help them along this path on the one hand, and the discretion of national authorities to dismiss these efforts on the other hand”, as Careja succinctly puts it (2018: 13).

While migrants with a humanitarian residence permit or with a residence permit on the grounds of family reunification can take up any job, non-Nordic/EU/EEA **migrant workers** access to Denmark is conditional upon the existing job schemes (c.f. section 4). The current job schemes aim at attracting high-skilled labour and include among others: The Fast-track Scheme, the Pay Limit Scheme, the Positive List, schemes for researchers, employed PhDs and guest researchers and Start-up Denmark (scheme for self-employment) (for a full list of job schemes see New to Denmark 2018c). While persons with skills in one of the occupations for which there is a lack of qualified workers in Denmark can obtain a residence and work permit under the Positive List, applicants with a job offer from a Danish employer that pays more than DKK 417,793.60 (approximately 56,000 Euro) is eligible for a work and residence permit under the Pay Limit scheme¹⁴⁷ (for detailed information on the individual schemes see New to Denmark 2018c). The Fast-track scheme facilitates a quick and flexible job start for high qualified foreign labour, who have been offered employment in a certified company, and where the employment lives up to one of the following conditions: 1) The foreigner is employed on the conditions of the pay limit scheme, 2) the foreigner is employed as a researcher, 3) the employment involves education at a high level or 4) the employment corresponds to a short-term stay of less than 3 months (The Ministry of Immigration and Integration 2016: 42, New to Denmark 2018c). Thus, the main entry routes for migrant workers are reserved for high-skilled professionals. Yet, a report from the Nordic Council of Ministers from 2010 concludes that Denmark fares very poorly in comparison to the other Nordic countries in regard to attracting high skilled workers. “An immediate explanation for this may be the tightening of the regulatory framework for access to Denmark from countries which were implemented in 2002”, as stated in the report (Kornø 2010). As shown above, the access to Denmark has only been further restricted since 2002 (c.f. section 4), potentially worsening Denmark’s chances of recruiting high-skilled labour. A more recent study furthermore shows that the constantly changing and strict migration rules in Denmark creates an uncertain and alienating environment which scares off highly educated foreigners (The Local 2016).

¹⁴⁷ A minimum salary of DKK 417,793.60 per year is relatively high in a Danish context (remember that social assistance for a person over 30 years old and with children at home was DKK 14,993 per month (=DKK 179,916 per year), and it is higher than the average salary of a teacher, a policeman or a physiotherapist (Jensen 2015), just to give a few examples. The salary thus corresponds to a skilled job.

Students pursuing higher educational programmes in Denmark are allowed to work part-time besides following their studies. Students are allowed to work for a maximum of 20 hours per week and full time during June, July and August¹⁴⁸, while **Au Pairs** can only work for their host family. Their residence permit is linked to the work as an au pair with a host family and they are not to undertake paid work in addition to the tasks set by the host family (The Ministry of Immigration and Integration 2016: 45). The Socialist People's Party has recently proposed an abolition of the au pair scheme since studies show that a great share of au pairs is being exploited, e.g. not being paid their salaries or holiday pay, working long hours and/or facing a difficult psychological work climate/harassment/physical abuse (Stenum 2011: 57, Wøhlk et al 2016, Ingvorsen 2018). The proposal is put forward together with the Danish People's Party although their reasoning is based on a wish to close the au pair scheme as an entry route to Denmark as some au pairs overstay their visa and continue to reside in Denmark without documents (Jørgensen 2018).

Another way for foreign nationals to work in Denmark is by being granted a residence and work permit to work as an **intern**. The application must include an approval of the place of internship, documentation of the on-going education, and salary and employment conditions must correspond to Danish standards (The Ministry of Immigration and Integration 2016: 45). Finally, Denmark has so-called **Working holiday** agreements with Argentina, Australia, Canada, Chile, Japan, New Zealand and South Korea, meaning that citizens from these countries can get a residence permit for up to 12 months and work while residing in Denmark in order to earn supplementary funds to support themselves (New to Denmark 2018d).

In Denmark, the **Assessment of Foreign Qualifications Act** entitles all holders of foreign qualifications to an assessment¹⁴⁹ through the central recognition agency (OECD 2017: 13). Both holders of foreign qualifications as well as authorities responsible for the integration of foreigners can obtain an assessment free of charge from the Danish Agency for Higher Education (*Styrelsen for Institutioner og Uddannelsesstøtte*) (The Ministry of Immigration and Integration 2016: 58). This applies to all levels (The Ministry of Immigration and Integration 2016: 58), and *Denmark is among the relatively few countries with special recognition of prior learning procedures for humanitarian migrants with no documentary proof of their qualification* (OECD 2017: 39). Even immigrants who do not formally require recognition (i.e. because they intend to work in a non-regulated profession) are encouraged to use this offer (OECD 2017: 13). Time is essential when it comes to the recognition of foreign degrees in order to avoid that immigrants remain out of employment or are overqualified for long periods (OECD 2017: 19). Denmark has taken the following steps to speed up the process: 1) a fast track service offered to employers to help them translate the qualifications of foreign applicants, 2) systematic identification and recognition of newly arrived refugees' qualifications and competences by assessing refugees' educational background at their allocated accommodation centres and transmitting the information to the

¹⁴⁸ Special rules apply to Nordic nationals and nationals who are covered by the EU rules on freedom of movement (The Ministry of Immigration and Integration 2016: 45).

¹⁴⁹ In most cases, the assessment is a brief statement comparing a foreign certificate, diploma or degree with a level of the Danish educational and training system and pointing out any similar Danish field of education. In the labour market, the assessment can be used as a guideline for an employer who needs to consider foreign qualifications. For the purposes of continuing education, the assessment can document that a foreign qualification has the overall level required for access to a Danish programme of education (The Ministry of Immigration and Integration 2016: 58).

municipality if asylum is granted and 3) a hotline set up to assist accommodation centres and local authorities with fast-track assessments and other advice on foreign qualifications recognition (The Ministry of Immigration and Integration 2016: 58). For access to professions that are regulated by law in Denmark, e.g., a number of health care professions, foreign qualifications must be approved by the public authority that is responsible for the profession in question (The Ministry of Immigration and Integration 2016: 58). A maximum processing period is laid down in the law: 90-120 days for EU/EEA professional qualifications in regulated professions, and 120 days for higher education credentials covered by the Lisbon Recognition Convention (OECD 2017: 22). While these official processing times exist, in practice foreign higher education credentials of refugees are rarely recognized by Danish authorities. As a consequence, many have been forced to begin their education in Denmark at a high school level, despite them having secured a graduate level education in their home country (Salem 2017).

4.5.3 Anti-discrimination legislation

Since the Danish labour market leaves its regulation to the social partners, focus on anti-discrimination at the national level has not been strong in Denmark (Jørgensen 2014: 18). As a result of Denmark's (lack of) anti-discrimination policies, the Migrant Integration Policy Index (MIPEX) ranks Denmark number 27 out of 38 countries in the field of anti-discrimination policies, among others because Danish anti-discrimination legislation is split into several acts (Huddleston et al. 2015).

Section 70 of the Danish Constitution states that nobody can be deprived of any civil or political rights on grounds of faith or origin, but there is no general prohibition against discrimination in the Danish Constitution. According to Jørgensen, this lack of a general prohibition against discrimination allows the state to promote the majority culture in specific areas, for example religion (2014: 18). In 1971, the Act on Prohibition of Discrimination due to Race etc. was introduced, followed by the Act on the Prohibition of Differential Treatment within the Labour Market in 1996 (see Annex III), and Denmark has implemented the EU equal treatment directives (dir. 2000/43/EC and 2000/78/EC). In 2003, the Act on Ethnic Equal Treatment was adopted and the Act on Prohibition of Differential Treatment within the Labour Market was amended in 2004. In 2003, the Danish Institute for Human Rights furthermore became the National Equality Body and established the Complaints Committee for Ethnic Equal Treatment to review individual complaints on discrimination because of racial or ethnic origin ¹⁵⁰ (The Ministry of Immigration and Integration 2016: 64). By the end

¹⁵⁰ The Danish Institute for Human Rights (DIHR) is an independent national human rights institution in accordance with the UN Paris Principles, with a mandate to promote and protect human rights in Denmark. Furthermore, the DIHR is a specialised equality body and is entrusted with the specific task of safeguarding effective protection against discrimination and the promotion of equal treatment in three areas: 1) Ethnic equal treatment, 2) Equal treatment of women and men and 3) Equal treatment of persons with disabilities. The Complaints Committee for Ethnic Equal Treatment is responsible for addressing complaints about discrimination concerning violations of the prohibition of direct and indirect differential treatment, harassment and instructions to differential treatment on the grounds of race and ethnic origin. The Complaints Committee can only express non-binding opinions on issues related to the labour market, social protection, including social security and healthcare; social advantages; education; access to and supply of goods and services which are available to the public, including housing; and membership of and involvement in an organisation or association, including the benefits provided for by such organisations or associations. The Complaints Committee can recommend that legal aid

of 2008, a new complaints Board of Equal Treatment was established by law (Act no. 387 of 27 May 2008). The Board is competent within all discrimination strands in Danish anti-discrimination legislation (racial, social, national or ethnic origin, gender, colour of skin, religion or faith, political observation, sexual inclination, age or disability, and may award compensation and invalidate dismissals (Act no. 387 of 27 May 2008, section 2) (The Ministry of Immigration and Integration 2016: 64).

Furthermore, an Anti-Discrimination Unit (*Enheden for Antidiskrimination*) was established in the Ministry of Children, Equality, Integration and Social Affairs in April 2014, to combat discrimination based on ethnicity or disability in all spheres of society (The Ministry of Immigration and Integration 2016: 64). The unit has among other things launched the campaign “Say yes (to ethnic equal treatment)” in Spring 2015 and carried out a mapping on ethnic discrimination in the private housing sector in 2015, showing that applicants with Middle Eastern-sounding names have to send 27% more applications on average than applicants with Danish-sounding names in order to have the same chances of receiving a positive reply on an application (Ankestyrelsen 2015). The unit was however closed in 2015 following the change of government. This does not mean that the problem of differential treatment is less pressing today than when the unit was established. The number of cases brought to the complaints Board of Equal Treatment has been relatively stable since the Board was established in 2008 (Ankestyrelsen 2018).

While not a legislation, the Copenhagen Municipality has developed an app called Stemplet for the anonymous reporting and registering of discrimination and racism. It is administered by the Center of Inclusion and Employment within the municipality. The underlying logic of the initiative is that racism and discrimination can only be controlled and dealt with if they are reported to the appropriate authorities.

4.5.4 Legal instruments to fight informal employment, workers' exploitation and *caporalato*

Residing in Denmark without residency documentation is extremely difficult. There is a general societal belief that undocumented immigration challenges the Danish universalist welfare tradition as undocumented immigrants do not enjoy any protection, have no right to social benefits, have extremely limited access to health care, have no democratic rights and do not pay into the system (Tranæs & Jensen 2014: 7). In Denmark, the personal ID number (*CPR*) is furthermore the gateway to basically everything, from healthcare to opening a bank account, getting a Danish phone number, registering at a Danish language school or even getting a gym membership¹⁵¹ (Bahgat 2018). In this way, the Danish system can be said to work in favour of legal stay and against undocumented migration. At the same time, however, the total lack of access to Danish society without proper documents puts the undocumented population in Denmark under pressure and makes them vulnerable to exploitation and abuse as they become dependent on employers and/or alternative sources of income and assistance in a “shadow” society (Tranæs & Jensen 2014: 74).

should be granted in cases where the Committee deems that there has been a violation of the prohibition of differential treatment on the grounds of race and ethnic origin (Council of Europe 2018).

¹⁵¹ All residents in Denmark are legally required to have a CPR number.

The thoroughly regulated Danish labour market is, however, a significant barrier to forced labour (Korsby 2010: 7), and Denmark has a strong record of combatting forced labour (ILO 2017). Denmark was one of the first countries to ratify the Forced Labour Convention (1930, No. 29) in 1932, and the Abolition of Forced Labour Convention (1957, No. 105) in 1958, and on 14 June 2017, Denmark deposited the instrument of ratification of the Protocol of 2014 to the Forced Labour Convention of 1930 (ILO 2017). Denmark has been engaged in curbing trafficking for a long time and has a strong legal and institutional framework in this area (ILO 2017). Yet, in their latest evaluation report of Denmark, the Council of Europe criticised Denmark for not doing enough to identify and support victims of trafficking, for not providing victims of human trafficking with a recovery and reflection period as recommended by the convention on action against the trafficking of human beings, and for rarely granting residence permits to victims and instead send them back to their home countries as soon as possible (among other points of concern raised) (Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings 2016: 44-47).

The Danish authorities also have a number of measures to prevent exploitation of workers and to fight illegal employment. The measures can be grouped into four types: 1) penalties, 2) control, 3) information and 4) international cooperation.

Both employers and employees may be fined or imprisoned for having employed a foreign national without a residence permit or working illegally (The Ministry of Immigration and Integration 2016: 49, The Aliens Act section 59). Employers may be subject to a fine or imprisonment for up to 2 years for employing a foreigner without the required work permit or will do so in violation of the conditions laid down for the issuance of a work permit, while a foreign national employee who works without a permit may risk being liable to a fine or imprisonment for up to one year (The Aliens Act, section 59). While one might ask what kind of deterrence effect a fine or one year of imprisonment is expected to have on a one person who is willing to risk his or her life to immigrate to Denmark, it is worth mentioning that expulsion is a possibility if sentenced to imprisonment according to section 24 of the Aliens Act. When it comes to domestic work and the case of au pairs, sanctions are in place against host families in case of abuse (Stenum 2011: 46).

In order to ensure compliance with immigration laws, the Danish Agency for International Recruitment and Integration performs control checks as mentioned above (cf. section 4). Control checks may involve “reviewing public registers, contacting other authorities, such as tax authorities or municipalities, contacting employers or places of study or through outbound checks¹⁵². One of the measures is register consolidation, where the Danish Agency for International Recruitment and Integration can systematically compare information contained in the register of the immigration authorities with records held by the Central Office of Civil Registration, the Buildings and Housing Registry or the income registry in order to check whether a foreigner with an active residence permit continues to meet the requirements of the residency permit and to check whether a foreigner with a previous residency permit from

¹⁵² The Danish Agency for International Recruitment and Integration participates in outbound checks at company visits in cooperation with other authorities. The Danish Agency for International Recruitment and Integration assists the police by checking the foreigner’s residence and work permit and guides employers on the rules accordingly. Only the police have the authority to perform outgoing control on immigration, and the Danish Agency for International Recruitment and Integration will therefore only take part in actions together with the police (The Ministry of Immigration and Integration 2016: 49).

the Danish Agency for International Recruitment and Integration continues his or her stay in Denmark and works illegally” (The Ministry of Immigration and Integration 2016: 50). If a foreigner is employed without the right to work, the Danish Agency for International Recruitment and Integration will report the employee and the employer to the police (The Ministry of Immigration and Integration 2016: 50). In addition, the Immigration Service conducts random checks of the au pair scheme through interviews with au pairs (Stenum 2011: 52). As pointed out by Stenum, asking the au pairs themselves does not very often reveal any abuse, possibly due to the fact that termination of the employment and loss of the residency permit may be the consequence of reporting violations of the rules to the authorities (Stenum 2011: 52).

In regard to information, the Danish Agency for International Recruitment and Integration provides information and guidance to employers on how to avoid violating immigration rules. Furthermore, they have regular meetings with citizens, companies, trade organizations and educational institutions (The Ministry of Immigration and Integration 2016: 50). Last but not least, the Danish Agency has an international knowledge-sharing network with the immigration authorities in the Netherlands, Norway and the UK. The international network shares information about methods, patterns and other trends to be aware of (The Ministry of Immigration and Integration 2016: 50).

4.6 Conclusion

4.6.1 National Framework's compliance with european and international standards

With regards to the System on International Labour Standards Denmark has ratified all 8 of the fundamental conventions, all 4 of the governance conventions, 60 out of 177 of the technical conventions. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) was ratified by Denmark on 13 June 1951 and it is currently in force. Right to Organise and Collective Bargaining Convention, 1949 (No. 98) was ratified on 15 August 1955 and remains in force. Denmark ratified the Forced Labour Convention, 1930 (No. 29) on 11 February 1932 and the convention remains in force today. Abolition of Forced Labour Convention, 1957 (No. 105) was ratified on 17 January 1958 and is currently in force. Minimum Age Convention, 1973 (No. 138) was ratified on 13 November 1997 and is in force. Denmark specifies the minimum age as 15 years. Worst Forms of Child Labour Convention, 1999 (No. 182) was ratified on 14 August 2000 and is also in force. Equal Remuneration Convention, 1951 (No. 100) was ratified on 22 June 1960 and is in force. Discrimination (Employment and Occupation) Convention, 1958 (No. 111) was ratified on 22 June 1960 and is currently in force. Denmark has not ratified the Migration for Employment Convention, 1949 (No. 97). The convention stipulates guidelines for national policies, laws and regulations with regards to emigration and immigration and with regards to work conditions and livelihoods of migrants in the labour market.

As a Nordic welfare state, Denmark's immigration and integration policy was traditionally built on liberal humanitarian principles. The 1983 Alien's Act was one of the most liberal immigration laws in Europe, as mentioned above, and Denmark has a strong record of ratifying international treaties and agreements, again as shown above. Yet, while Sweden, albeit until recently, was considered the humanitarian superpower, the perception of

immigration as undermining the welfare state, especially if combined with multicultural integration policies, have gained a strong foothold in Denmark (Brochmann 2014: 287), and Denmark is today known as one of the hardliners when it comes to immigration. Since 2015, Danish immigration and integration policy has been tightened more than 85 times, and Denmark is today ranked number 27 out of 38 countries by the Migrant Integration Policy Index, as mentioned in the beginning.

This said, access to the labor market is at the core of the Danish integration policy, as active labour market policies have been a basic characteristic of the Scandinavian welfare model from early on (Pace 2017), and the guiding principle of the recent integration programme is support to work from day one (at least for recognized refugees, family and labour migrants). This focus on employment as a path towards integration has meant that despite the difficulties in accessing the Danish labor market, following entrance migrants have their fundamental rights protected in accordance with international labour conventions. In general migrants are protected from abuse and exploitation, although exploitation of workers and social dumping still is possible, especially in sectors with low levels of unionisation, high shares of low-skilled work and with geographically dispersed, small and mobile worksites. Denmark also has a strong legal and institutional framework that has assisted in the curbing of human trafficking and forced labor. Moreover, the focus on migrants' labor market integration today has led to the most celebrated aspect of Danish migration policy – namely, its work-training program (Basic Integration Education program or IGU) for refugees which has been implemented since 2016, as mentioned above. Social Partners, including the Danish Trade Union and the Danish Employers' Confederation, and the governmental authorities that in turn include the municipalities have agreed upon an integrated vocational training program that helps refugees find traineeships in Danish companies. The hope is that such programs will assist in improving refugees' Danish language skills, familiarize them with the Danish work environment and finally provide them with experience that would eventually lead refugees to find permanent forms of employment. The program lasts for two years during which refugees are employed at Danish companies and receive paid trainee wages. Simultaneously, refugees also take Danish language lessons. 500 refugees were employed through this program during the first six months of 2017.

Despite these positive developments with regard to migrants' integration into the Danish labor market, we propose five policy recommendations. First, initial fieldwork among members of the non-profit sector, academics and refugees indicate that there is the risk that the two-year work training program is being used by the private sector to simply employ 'cheaper' labour. We recommend a placement of 'checks and balances' that ensure that companies that avail themselves of the IGU program permanently employ a significant percentage of the trainees. Ensuring that there is a stipulated *percentage* as opposed to a *number* would ensure that the company's commitment to permanently employing trainees is proportional to the extent of their availing themselves of the IGU program. Second, migration policy in general (as discussed in section 4) is contingent on its perceived impact on the sanctity of the Danish welfare state. This means that migration policy is determined not by the migrants' needs, interests and aspirations with regards to their material, cultural and political life in Denmark but on the 'needs' of the welfare state. The result is that migrants' integration becomes 'market driven', whereby the needs of the labour market (say, for instance, the labour needs of a specific sector of the economy) determines the manner in

which migrants are integrated as opposed to ‘leveraging’ migrants’ own educational background, employment experiences and career aspirations. With regards to refugees this often means that they are only employed in specific sectors (for example, hotel, cleaning, restaurant and other service industries).

With regards to non-refugee migrants ‘fast track’ visa programs are instituted only for specific sectors where there are gaps in the existent Danish labour market. Alongside researchers and highly paid professions, there is a ‘Positive List’ that includes specific positions within sectors of the economy. If an individual is offered a job that is included in the positive list his or her visa will be processed within 1 month (New to Denmark 2018). Here we recommend that there needs to also be a focus on profiling the skills, knowledge and experiences that migrants bring to Denmark. At the very outset of their integration training there should be skills profiling exercise, especially of refugees and asylum seekers. Subsequently, their integration into the Danish labour market should account for their ‘profile’ and career goals in order assist migrants find employment in sectors best suited to their individual skills and aspirations.

Third, a significant gap in Danish migration policy(-making) is the frequency with which immigration law in Denmark has been changed and continues to change up to the time of writing. According to the Danish daily newspaper *Information* immigration laws were changed 68 times between 2002 and 2016. During the same period Danish permanent residency regulations were changed 10 times (Mortensen 2016). Such unpredictability is a significant bureaucratic challenge for migrants and renders legal paths of immigration and processes of integration ever-more incomprehensible and inaccessible to them. Additionally, frequent changes in immigration regulations also leads to uncertainty for employers and can possibly discourage them from employing migrants in the future. We therefore recommend stability in migration policy making and possibly the inclusion of a moratorium period after the implementation of a law during which immigration regulations would not be altered. This moratorium period would allow policymakers to sufficiently assess the successes/failures of the recently implemented law and would also allow migrants to familiarize themselves with the most recent immigration laws and bureaucratic regulations.

Fourth, the global competition on attracting the best and the brightest has also affected the Danish labour migration policies which aim at attracting high-skilled labour. Leaving limited room for low skilled labour migration, however, affects the possibilities for low-skilled migrants, and could potentially push immigrants into undocumented residence or to other entry routes, e.g. the one of asylum. We therefore recommend entry routes for low-skilled labour migration. Finally, reduction of potential workplaces has been an on-going strategy to further limit opportunities for migrants to work illegally in Denmark. This strategy, we believe, may not necessarily help those already working illegally, as they might be pushed into even more unsafe and exploitative work environments. A potential solution could be schemes like the former Dutch “scheme” for the so-called “white illegals” who worked “white” and paid

taxes although they didn't have a residence permit¹⁵³, which could help bring people out of the shadow and into Danish society.

¹⁵³ The Dutch “white illegals” were people who had come to the Netherlands before 1992 and thus had obtained a social security number with which they worked “white” and paid taxes, although they did not have a residence permit.

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Annexes

Annex I: Overview of the legal framework on migration, asylum and international protection

Legislation title (Danish / English) and number	Date	Type of law	Object	Link/pdf
<p>Udlændingeloven / Aliens Act</p> <p>No. 412 of 6 May 2016 as amended by Act No. 661 of 8 June 2016, Act no. 612 of 8 June 2016, Act no. 664 8 June 2016, § 10 in Act no. 665 of 8 June 2016, Act no. 1561 of 13 December 2016, Act no. 1743 of 27 December 2016, Act no. 1744 of 27 December 2016, § 1 i Act no. 1745 of 27 December 2016, § 2 in Act no. 81 of 24 January 2017, Act no. 188 of 27 February 2017, § 1 i Act no. 189 of 27 February 2017, Act no. 228 of 7 marts 2017, Act no. 235 of 14 marts 2017, Act no. 249 of 20 marts 2017, Act no. 436 of 9 May 2017, Act no. 476 of 17 May 2017, Act no. 504 of 23 May 2017, Act no. 505 of 23 May 2017, Act no. 506 of 23 May 2017, Act no. 701 of 8 June 2017, § 1 i Act no. 702 of 8 June 2017, Act no. 703 of 8 June 2017 and § 2 in Act no. 704 of 8 June 2017</p>	8 June 2017	Act	Immigrants' entry and residence in Denmark, visas, asylum, family reunification, permanent residency, expiry and withdrawal of residence permits, expulsion and refusal of aliens, as well as accommodation and financial support of asylum seekers (among others)	<p>https://www.retsinformation.dk/Forms/R0710.aspx?id=194003</p> <p>(Last accessed on 31 May 2018)</p>
<p>Lov om integration af udlændinge i Danmark (Integrationsloven) / Integration Act</p> <p>No. 1115 of 23 September 2013 as amended by § 3 in Act no. 894 of 4 July 2013, § 4 in Act no. 895 of 4 July 2013, § 6 in Act no. 1610 of 26 December 2013, § 3 in Act no. 1612 of 26 December 2013, § 1 in Act no. 167 of 26 February 2014</p>	25 June 2014	Act	Housing placement of refugees, integration programs for refugees and family migrants as well as introductory courses for immigrants (among others)	<p>https://www.retsinformation.dk/forms/R0710.aspx?id=163323</p> <p>(Last accessed on 31 May 2018)</p>

and § 4 in Act no. 722 of 25 June 2014				
Repatrieringsloven/ Repatriation Act No. 1052 of 28. August 2013 as amended by Act no. 307 of 29 March 2014, Act no. 308 of 29 March 2014 and § 3 in Act no. 722 of 25 June 2014	25 June 2014	Act	Counseling of foreigners on repatriation, payment of assistance for repatriation and payment of reintegration assistance (among others)	https://www.retsinformation.dk/forms/R0710.aspx?id=164351 (Last accessed on 31 May 2018)
Bekendtgørelse om udlændinges adgang her til landet / Executive order on aliens' access to Denmark No. 412 of 9 May 2016, as emended by Act no. 572 of 31 May 2010 and Act no. 612 of 8 June 2016	8 June 2016	Executive order	Aliens' access to Denmark (i.e. entry and exit regulations)	https://www.retsinformation.dk/Forms/R0710.aspx?id=184081 (Last accessed on 31 May 2018)
Bekendtgørelse om udlændinges adgang til Danmark på grundlag af visum / Executive Order on aliens' access to Denmark on the basis of a visa No. 3 76 of 20 March 2015	20 March 2015	Executive order	Aliens' access to Denmark on the basis of a visa	The Visa executive order, downloaded from: https://www.nyidanmark.dk/en-GB/Legislation/Legislation (Last accessed on 31 May 2018)
Bekendtgørelse om ændring af visumbekendtgørelsen / Execute order on changes of the execute order on Executive Order on aliens' access to Denmark on the basis of a visa No. 202 of 27 February 2017	27 February 2017	Executive order		Amendment to the Visa executive order, downloaded from: https://www.nyidanmark.dk/da/Lovstof/Lovgivning (Last accessed on 31 May 2018)
Bekendtgørelse om ophold i Danmark for udlændinge, der er omfattet af Den Europæiske Unions regler (EU-opholdsbekendtgørelsen) /	18 August 2010	Executive order	Residence in Denmark for foreigners who are subject to the rules of the	https://www.retsinformation.dk/Forms/R0710.aspx?id=137179

Executive order on residence in Denmark for foreigners who are subject to the rules of the European Union No. 1061 of 18 August 2010, and § 2, in Act no. 963 of 9 December 1992 as amended by Act no. 264 of 20 April 2004			European Union	(Last accessed on 31 May 2018)
Bekendtgørelse om opfyldelse af boligkravet i familiesammenføringssager og om kommunalbestyrelsens udtalelse om referencens boligforhold / Executive Order on compliance with the housing requirement in family reunification cases and on the municipal council's statement on the availability of housing No. 1021 of 19 September 2014	19 September 2014	Executive order	Housing requirements for family reunification	https://www.retsinformation.dk/forms/R0710.aspx?id=170549 (Last accessed on 31 May 2018)
Bekendtgørelse om sikkerhedsstillelse / Executive Order on collateral to cover public expenses under the Act on Active Social Policy or the Integration Act. This collateral includes a financial sum that those one a family reunification visa need to pay to the municipality to cover any social benefits individuals may access. The amount is reduced if the applicant passes a Danish exam. No. 947 of 24 August 2011, as amended by Act no. 418 of 12 May 2012 and Act no. 567 of 18 June 2012	18 June 2012	Executive order	Financial requirements for family reunification	https://www.retsinformation.dk/Forms/R0710.aspx?id=142566 (Last accessed on 31 May 2018)
Bekendtgørelse om meddelelse af opholds- og arbejdstilladelse til studerende / Executive order on the issue of residence and work permits for students No. 1021 of 19 September 2014, as amended by Act no. 1488 of 23 December 2014	23 December 2014	Executive order	Residence and work permits for students	https://www.retsinformation.dk/forms/R0710.aspx?id=166588 (Last accessed on 31 May 2018)
Bekendtgørelse om indbetaling og tilbagebetaling af gebyrer for at indgive ansøgninger og klager på områderne vedrørende familiesammenføring, tidsubegrænset opholdstilladelse og religiøse forkyndere m.v. /	9 May 2016	Executive order	Payment and reimbursement of fees	https://www.retsinformation.dk/Forms/R0710.aspx?id=185794 (Last accessed on 31 May 2018)

Executive order on payment and reimbursement of fees for submitting applications and complaints in the areas of family reunification, permanent residence permits and religious preaches ¹⁵⁴ etc. No. 412 of 9 May 2016				2018)
Bekendtgørelse om indvandringsprøven / Executive order on the immigration test No. 984 of 2 October 2012	2 October 2012	Executive order	Immigration test	https://www.retsinformation.dk/Forms/R0710.aspx?id=145605 (Last accessed on 31 May 2018)
Bekendtgørelse om danskprøve på A1-niveau og danskprøve på A2-niveau for familiesammenførte udlændinge / Executive Order on A1-level Danish and A2-level Danish level for family migrants No. 984 of 2 October 2012	2 October 2012	Executive order	Language requirements for family reunification	https://www.retsinformation.dk/Forms/R0710.aspx?id=145602 (Last accessed on 31 May 2018)
Bekendtgørelse om indbetaling og tilbagebetaling af gebyrer for at indgive ansøgninger og klager på studie- og erhvervsområdet / Executive Order on payment and reimbursement of fees for submitting applications and complaints for study and work No. 1117 of 2 October 2017	2 October 2017	Executive order	Payment and reimbursement of fees	https://www.retsinformation.dk/Forms/R0710.aspx?id=196787%20 (Last accessed on 31 May 2018)

¹⁵⁴ One can receive a residence permit as a member of the clergy, as a missionary or to perform religious functions as a member of a religious denomination, for example as a monk or nun.

<p>Bekendtgørelse om meddelelse af opholdstilladelse med henblik på au pair-ophold /</p> <p>Executive Order on the issue of residence permits for au pair stays</p> <p>Section 9 j. 11 of the Immigration Act, cf. Act No. 1117 of 2 October 2017</p>	2 October 2017	Executive order	Residence permits for au pair stays	<p>https://www.retsinformation.dk/Forms/R0710.aspx?id=196788</p> <p>(Last accessed on 31 May 2018)</p>
<p>Cirkulære om opholdstilladelse i forbindelse med adoption /</p> <p>Guidelines on residence permits in respect to adoption</p> <p>Pursuant to section 39 of the Immigration Order, cf. Executive Order No. 810 of 20 June 2007</p>	20 June 2007	Guideline	Residence permits? in respect to adoption	<p>https://www.retsinformation.dk/Forms/R0710.aspx?id=29078</p> <p>(Last accessed on 31 May 2018)</p>
<p>Cirkulære om behandling af sager om ophold for udlændinge, der er omfattet af EU-opholdsbekendtgørelsen eller EU/EØS-bekendtgørelsen /</p> <p>Guidelines on the processing of cases of residence for foreigners covered by the EU residence Order or the EU / EEA Decree</p> <p>In accordance with Section 26 of Order No. 1255 of 28 November 2005 and Section 32 of Order No. 358 of 21 April 2006</p>	21 April 2006	Guideline	Foreigners covered by the EU residence Order or the EU / EEA Decree	<p>https://www.retsinformation.dk/Forms/R0710.aspx?id=29070</p> <p>(Last accessed on 31 May 2018)</p>
<p>Vejledende retningslinjer for honorering af tolke inden for Justitsministeriets område /</p> <p>Guidelines for the payment of interpreters working within the areas of competence of the Ministry of Justice</p>	n.a.	Guideline	n.a.	<p>https://www.retsinformation.dk/Forms/R0710.aspx?id=185393</p> <p>(Last accessed on 31 May 2018)</p>
<p>Udlændinge- og integrationsministeriets oversigt over rejsedokumenter, visumforhold og grænseovergange /</p> <p>Ministry of Immigration and Integration's overview of travel</p>	n.a.	Overview	n.a.	<p>Downloaded from:</p> <p>https://www.nyidanmark.dk/d/a/Ord-og-begreber/US/Visum/Visum---</p>

documents, visas and border crossings				Oversigt-over-rejisedokumenter.-visumforhold-og-grænseovergange/?anchor=6D9208AAB2164C77BE5413A2A1711DD5&callbackItem=438EFF4F5C1F4F11825873503FFA40A0&callbackAnchor=CEF1101BC4F04C2DB236A815BE40D1C2 (Last accessed on 31 May 2018)
Vejledning om behandling af ansøgning om visum til Danmark / Guidelines on the Processing of Applications for Visas for Denmark No. 9201/2017 of 27 February 2017	27 February 2017	Guideline	Processing of Applications for Visas for Denmark	https://www.retsinformation.dk/Forms/R0710.aspx?id=186981 (Last accessed on 31 May 2018)
Lov om danskuddannelse til voksne udlændinge m.fl. / Act on Danish Language Courses for Adult Aliens Act no. 375 of 28 May 2003 as emended by section 4 of Act no. 1380 of 20 December 2004 and section 1 of Act no. 402 of 1 June 2005.	1 June 2005	Act	With this act, all foreigners above the age of 18 – regardless of their permit category, the length of their stay in Denmark and prior language training – were, in principle, entitled to participate in a three-year language course. Some Danish nationals have access to this legislation. This includes residents of Greenland and Faroe Islands who are over the	https://www.retsinformation.dk/Forms/R0710.aspx?id=29023 (Last accessed on 31 May 2018)

			age of 18 and, for some reason do not have sufficient Danish language competencies to function in Danish society. Additionally, Danish nationals over the age of 18 who have lived abroad for a significant length of time and therefore lack sufficient Danish language skills are also covered by this legislation. This includes nationals born to Danish citizens who reside abroad	
Bekendtgørelse om kontrol af ulovligt ophold efter indrejse / Executive order on illegal stay after entry Pursuant to section 38 paragraph 9, and section 60 paragraph 2 of the Aliens Act, cf. Act No. 1021 of 19 September 2014, as amended by Act No. 271 of March 25 2015.	March 25 2015	Executive order	Sanctions for aiding and abetting so-called illegal immigrants.	https://www.retsinformation.dk/eli/ta/2015/640#id20d4ffb-d-fad8-4ad5-9418-2a46a42b1cb6 (Last accessed on 31 May 2018)
Almenboligloven Act on General Housing No. 1103 of 15 August 2016, section 61.a As amended by section 45 of Act no. 628 of 8 June 2016, section 1 of Act no. 1559 of 13 December 2016 and section 1 of Act no. 389 of 26 April 2017.	15 August 2016	Act	General Housing	https://www.retsinformation.dk/Forms/r0710.aspx?id=192386

n.a.: Not available

Annex II: List of institutions involved in migration governance

Institution	Tier of government	Type of institution	Area of competence in the field of MRAA	Link
Ministry of Immigration and Integration	National	Ministry	Entry and stay in Denmark, naturalization, integration, Danish as a second language, tests for foreigners, prevention of extremism and radicalization, prevention and management of honor-related conflicts and negative social control and for integration	http://uim.dk/ (Last accessed on 31 May 2018)
Danish Immigration Service	National	Agency	Processing of cases of immigrants' right to visit and stay in Denmark.	http://uim.dk/us www.nyidanmark.dk (The official portal for foreign nationals who wish to visit, live or work in Denmark) (Last accessed on 31 May 2018)
Danish Agency for International Recruitment and Integration	National	Agency	Support companies and educational institutions in the acquisition of well-qualified employees and students, support the integration efforts in the municipalities and coordinate and advise on action against extremism, radicalization, honor-related conflicts and negative social control.	http://uim.dk/siri (Last accessed on 31 May 2018)
Danish Agency for Labour Market and Recruitment	National	Agency	Process applications for residence permits based on employment, study, au pair and internship. Control checks to ensure compliance with immigration laws.	https://www.star.dk/ (Last accessed on 31 May 2018)
The Danish Refugee Appeals Board	National	Quasi-judicial body / considered to be a court within the	Re-consider rejected asylum cases.	http://www.fln.dk/ (Last accessed on 31 May 2018)

		meaning of article 39 of the EU Council Directive on asylum procedures (2005/85/EC)		2018)
Danish Refugee Council	n.a.	NGO	Re-assessment asylum cases rejected by the Danish immigration services. Provides integration services, e.g. counselling to asylum seekers.	https://drc.ngo/ (Last accessed on 31 May 2018)
Immigration Appeals Board	National	Quasi-judicial administrative body	Considers appeals of decisions relating to immigration.	http://udln.dk/ (Last accessed on 31 May 2018)
Danish National Police - National Aliens Centre	National	Law enforcement agency	Initial registration of asylum seekers, border control and deportation of rejected asylum seekers and criminal migrants.	https://www.politi.dk/en/servicemenu/home/ (Last accessed on 31 May 2018)
Danish Municipalities	Municipal	n.a.	In charge of the implementation of the Integration Act	For example, municipalities in Denmark are responsible for language training and employment of refugees. In association with NGOs they organize training programs that assist refugees find employment. Municipalities also coordinate with private businesses in need for workers and attempt to secure short-term positions. The hope is that such short

				term positions would eventual lead to full time positions
Integration Councils	Municipal	Council	Advisory bodies for the integration efforts of the municipalities.	Links to the municipal integration councils available here: http://rem.dk/netvaerk/integrationsrad/links-til-de-lokale-integrationsrad (Last accessed on 31 May 2018)
The Council for Ethnic Minorities	National	Council	The Council advises and offers guidance to the Minister of Immigration and Integration.	http://rem.dk/ (Last accessed on 31 May 2018)
Refugees Welcome	n.a.	NGO	Offers free legal counselling and assistance to asylum seekers	http://refugeeswelcome.dk/ (Last accessed on 31 May 2018)
JuraRådgivningen	n.a.	NGO	Offers legal assistance to refugees in their family reunification cases	https://www.facebook.com/JuraR%C3%A5dgivningen-862673643824575/ (Last accessed on 31 May 2018)
Danish Red Cross	n.a.	NGO	Runs (some of) the accommodation centers and the health clinics for undocumented immigrants. Offers integration activities in the accommodation centers as well as all over the country.	https://www.rodekors.dk/ (Last accessed on 31 May 2018)
Venliboerne	n.a.	Volunteer Org.	Group of volunteers who are based across Denmark and	https://www.facebook.com/v

			work towards minimizing the 'gap' between Danish society and refugees. They help with integration processes as well as with a variety of other matters that effect the everyday lives of refugees	enligboerne (Last accessed on 31 May 2018)
Bedsteforældre for Asyl	n.a.	Volunteer Org.	A group of senior citizens who engage in activism in support of asylum seekers and refugees. Among other activities they organize demonstrations, engage in public debates, deliver lectures, write letters to the press and distribute leaflets on the streets of Copenhagen mainly or across the country?	https://www.bedsteforaeldreforasyl.dk (Last accessed on 31 May 2018)
Dansk Flygtningehjælp Ungdom	n.a.	Volunteer Org.	A youth organization that works towards improving the conditions of refugees in Denmark and abroad. They arrange volunteer social activities for young asylum seekers.	http://www.dfunk.dk (Last accessed on 31 May 2018)
Børnebørn for Asyl	n.a.	Volunteer Org.	A volunteer non-profit organization that works to create greater awareness and improve the living conditions of asylum seekers in Denmark	https://www.facebook.com/pg/bbforasyl/about/?ref=page_internal (Last accessed on 31 May 2018)
Asylret	n.a.	Volunteer Org.	A group of left-wing activists who provide legal counselling for rejected asylum seekers, and help out with humanitarian residence permit applications and family reunification applications. They also organize lectures on Danish and EU refugee policy.	http://www.asylret.dk/viewpage.php?page_id=2 (Last accessed on 31 May 2018)
Trampoline House	n.a.	Community Center	The center provides assistance to asylum seekers, refugees and other migrants in Denmark. It provides job training and education, familiarizes non-Danes with Danish democratic traditions and systems, builds awareness on Danish asylum regulations, assists migrants with building a social network in Denmark and helps foster strategic partnerships through collaborations with companies,	https://www.trampolinehouse.dk (Last accessed on 31 May 2018)

			unions, non-governmental organizations, foundations, the press, municipalities, and the state.	
Student Refugees	n.a.	Volunteer Network	The network includes a group of Danish university students who volunteer to help refugees gain access to higher education in Denmark. They help with bureaucracies, overcoming language barriers and, in general, work towards increasing refugees' eligibility to enter Danish higher education institutions.	http://studentrefugees.dk (Last accessed on 31 May 2018)

n.a.: not applicable

Annex III: Overview of the legal framework on labour and anti-discriminatory law

Legislation title (Danish / English) and number	Date	Type of law	Object	Link/pdf
Lov om mægling i arbejdsstridigheder / Act on Conciliation in Industrial Disputes No. 192 of 6 March 1997 with the amendments following Act no. 1078 of 29 December 1999.	29 December 1999	Act	Settlement between the labour market parties, especially when entering into new agreements	https://www.retsinformation.dk/forms/r0710.aspx?id=29527 (Last accessed on 31 May 2018)
Lov om retsforholdet mellem arbejdsgivere og funktionærer / Act on Salaried Employees No. 68 of 21 January 2005 as amended by section 7 of Act no. 542 of 2. June 2005, section 58 of Act no. 566 of 9 June 2006 and Act no. 312 of 30 April 2008.	30 April 2008	Act	The Act lays down rules for salaried employees employment conditions, such as termination, wages during sick leave and severance pay.	https://www.retsinformation.dk/Forms/R0710.aspx?id=123029 (Last accessed on 31 May 2018)
Lov om Tjenestemænd / Civil Servants Act No. 511 of 18 May 2017	18 May 2017	Act	Employment conditions for Civil Servants.	https://www.retsinformation.dk/Forms/R0710.aspx?id=191861 (Last accessed on 31 May 2018)
Lov om tjenestemandspension / Civil Servants' Pension Act No. 489 of 6 May 2010 as amended by section 3 of Act no. 1365 of 28 December 2011, section 1 of Act no. 1371 of 28 December 2011, section 11 of Act no. 628 of 8 June 2016 and section 2 page Act no. 1551 of 13 December 2016.	13 December 2016	Act	Pension of Civil Servants.	https://www.retsinformation.dk/Forms/R0710.aspx?id=189925 (Last accessed on 31 May 2018)

<p>Lov om søfarendes ansættelsesforhold / Act on Seamen</p> <p>No. 73 of 17 January 2014, as amended by section 3 of Act no. 251 of 30 March 2011, section 4 of Act no. 724 of 25 June 2014 and section 4 of Act no. 740 of 1 June 2015.</p>	1 June 2015	Act	Employment conditions of seamen.	https://www.retsinformation.dk/eli/ta/1973/607 (Last accessed on 31 May 2018)
<p>Lov om visse arbejdsforhold i landbruget / Act on certain working conditions in agriculture</p> <p>No. 415 of 1 June 1994 as amended by Act no. 1023 of 22 November 2000.</p>	22 November 2000	Act	Employment conditions in agriculture.	https://www.retsinformation.dk/forms/r0710.aspx?id=29519 (Last accessed on 31 May 2018)
<p>Lov om erhvervsuddannelser / Vocational Trainees Act</p> <p>No. 1077 of 8 July 2016, as amended by section 9 of Act no. 1746 of 27 December 2016 and section 2 of Act no. 1747 of 27 December 2016.</p>	27 December 2016	Act	Employment conditions of vocational trainees (among others).	https://www.retsinformation.dk/Forms/R0710.aspx?id=186661 (Last accessed on 31 May 2018)
<p>Lov om arbejdstid for mobile lønmodtagere, der udfører grænseoverskridende tjenester i jernbanesektoren / Act on working hours for mobile workers carrying out cross-border services in the railway sector</p> <p>No. 459 of 17 June 2008</p>	17 June 2008	Act	The Act contains rules for mobile workers carrying out cross-border services in the railway sector. For example, rights and regulations for night work, rest periods and breaks.	https://www.retsinformation.dk/Forms/R0710.aspx?id=117415 (Last accessed on 31 May 2018)
<p>Lov om arbejdstid for mobile lønmodtagere inden for vejtransportsektoren / Law on working hours for mobile workers within the road transport sector</p> <p>No. 395 of 1 June 2005.</p>	1 June 2005	Act	The Act contains rules for mobile employees who participate in road transport activities. For example, rights and regulations on maximum weekly working hours and breaks.	https://www.retsinformation.dk/Forms/R0710.aspx?id=30262 (Last accessed on 31 May 2018)

<p>Lov om ferie / The Holiday Act</p> <p>No. 202 of 22 February 2013, as amended by section 3 of Act no. 790 of 28 June 2013, Act no. 512 of 26 May 2014, section 7 of Act no. 720 of 25 June 2014, section 8 of Act no. 1286 of 9 December 2014, Act no. 1368 of 16 December 2014, section 29 of Act no. 174 of 24 February 2015, section 2 of Act no. 685 of 27 May 2015 and section 6 of Act no. 1000 of 30. August 2015.</p>	30. August 2015	Act	The law ensures employees' basic vacation rights in connection with the earning and holding of holiday.	https://www.retsinformation.dk/Forms/R0710.aspx?id=174358 (Last accessed on 31 May 2018)
<p>Lov om lige løn til mænd og kvinder / Act on equal pay for men and women</p> <p>No. 906 of 27 August 2006 as amended by Act no. 558 of 17 June 2008.</p>	17 June 2008	Act	The law ensures that there is no wage discrimination based on gender.	https://www.retsinformation.dk/Forms/R0710.aspx?id=121176 (Last accessed on 31 May 2018)
<p>Lov om Arbejdsmiljø / Working Environment Act</p> <p>No. 1072 of 7. September 2010, as amended by Act no. 1538 of 21 December 2010, Act no. 597 of 14 June 2011, section 30 of Act no. 155 of 20 February 2013, section 1 of Act no. 356 of 9 April 2013, section 4 of Act no. 639 of 12 June 2013, section 1 of Act no. 238 of 18 March 2014, section 9 of Act no. 736 of 25 June 2014, Act no. 54 of 27 January 2015, Act no. 1869 of 29 December 2015, section 7 of Act no. 395 of 2 May 2016, section 37 of Act no. 426 of 18 May 2016, section 1 of Act no. 1717 of 27 December 2016 and section 5 of Act no. 285 of 29 March 2017.</p>	29 March 2017	Framework Act	General objectives and requirements in relation to the working environment.	https://arbejdstilsynet.dk/da/regler/love/sam-1072-arbejdsmiljolooven (Last accessed on 31 May 2018)
<p>Lov om ret til orlov og dagpenge ved barsel (Barselloven) / Act on Entitlement to Leave and Benefits in the Event of Childbirth</p>	12 June 2013	Act	Regulations on maternity leave.	https://www.retsinformation.dk/forms/R0710.aspx?id=152510 (Last accessed on 31 May 2018)

No. 1070 of 14 November 2012 as emended by section 6 of Act no. 1380 of 23 December 2012, section 4 of Act no. 357 of 9 April 2013 and section 5 of Act no. 652 of 12 June 2013.				2018)
Lov om gennemførelse af dele af arbejdstidsdirektivet / No. 248 of 8 May 2002 as amended by Act no. 258 of 8 April 2003.	8 April 2003	Act	The Act regulates working hours for employees who are not covered by the corresponding collective bargaining rules.	https://www.retsinformation.dk/Forms/R0710.aspx?id=30093 (Last accessed on 31 May 2018)
Lov om brug af køberet eller tegningsret til aktier m.v. i ansættelsesforhold / Act on Stock Options No. 309 of 5 May 2004	5 May 2004	Act	The Act regulates schemes that allow an employee to buy or subscribe for shares in the context of an employment relationship.	https://www.retsinformation.dk/eli/Ita/2004/309 (Last accessed on 31 May 2018)
Lov om brug af helbredsoplysninger m.v. på arbejdsmarkedet / Act on the use of health data etc. on the labour market No. 286 of 24 April 1996	24 April 1996	Act	Prevention of the use of health data to limit the possibilities of employees for obtaining or maintaining work.	https://www.retsinformation.dk/Forms/R0710.aspx?id=81200 (Last accessed on 31 May 2018)
Lov om lønmodtageres ret til fravær fra arbejde af særlige familiemæssige årsager / Act on Employees' Entitlement to Absence from Work for Special Family Reasons No. 223 of 22 March 2006	22 March 2006	Act	Entitlement to absence from work for special family reasons	https://www.retsinformation.dk/eli/Ita/2006/223 (Last accessed on 31 May 2018)
Lov om arbejdsgiverens pligt til at underrette lønmodtageren om vilkårene for ansættelsesforholdet / Act on an Employer's Obligations to Inform Employees of	12 June 2009	Act	Information on the conditions of the employment.	https://www.retsinformation.dk/Forms/R0710.aspx?id=130583 (Last accessed on 31 May

the Conditions Applicable to the Employment Relationship No. 1011 of 15 August 2007 as emended by section 5 of Act no. 482 of 12 June 2009.				2018)
Lov om udstationering af lønmodtagere mv. / Act concerning the Posting of Workers etc. No. 342 of 3 April 2014 with the amendments following from section 1 of Act No. 175 of 24 February 2015, section 1 of Act No. 626 of 8 June 2016 and section 3 of Act No. 1717 of 27 December 2016.	27 December 2016	Act	Posting of workers.	https://arbejdstilsynet.dk/da/regler/love/udstationering-%20rut (Last accessed on 31 May 2018)
Lov om barseludligning på det private arbejdsmarked (barseludligningsloven) / Act on Maternity Equalisation in the Private Labour Market No 417 of 8 May 2006	8 May 2006	Act	Maternity Equalisation in the Private Labour Market.	https://www.retsinformation.dk/Forms/R0710.aspx?id=31712 (Last accessed on 31 May 2018)
Lov om Arbejdsmarkedets Fond for Udstationerede / Act on the Labour Market Fund for Posted Workers No. 613 of 8 June 2016	8 June 2016	Act	Labour Market Fund for Posted Workers	https://www.retsinformation.dk/Forms/R0710.aspx?id=181821 (Last accessed on 31 May 2018)
Lov om ansættelsesklausuler / Act on Restrictive Employment Clauses No. 1565 of 15 December 2015	15 December 2015	Act	Employment Clauses	https://www.retsinformation.dk/Forms/R0710.aspx?id=176313 (Last accessed on 31 May 2018)
Cirkulære om arbejdsklausuler i offentlige kontrakter / Circular on Labour Clauses in Public Contracts	30 June 2014	Circular	The law ensures that employees of enterprises that pro-vide services to public authorities and	https://www.kk.dk/sites/default/files/edoc/ee79d8e3-bb48-4c71-8779-

No. 9471 of 30 June 2014			contracting entities are granted common pay and working conditions through the use of labour clauses in accordance with the ILO Convention No. 94	84e859c070cf/8416352d-1d5e-42ec-8dea-b783b0645c1f/Attachments/11468845-11846676-1.PDF (Last accessed on 31 May 2018)
Lov om Arbejdsmarkedets Tillægspension (ATP)/ Act on Labour Market Supplementary Pensions (ATP) no. 942 of 2 October 2009, with the amendments following from Act no. 117 of 17 February 2009, section 1 of Act no. 1263 of 16 December 2009, section 16 of Act no. 429 of 28 April 2010, section 5 of Act no. 573 of 31 May 2010, section 10 of Act no. 579 of 1 June 2010, section 27 of Act no. 639 of 14 June 2010, section 16 of Act no. 718 of 25 June 2010, section 8 of Act no. 1556 of 21 December 2010, section 233 of Act no. 456 of 18 May 2011, section 1 of Act no. 599 of 14 June 2011, section 3 of Act no. 152 of 28 February 2012, section 17 of Act no. 326 of 11 April 2012, section 45 of Act no. 1231 of 18 December 2012, section 8 of Act no. 1287 of 19 December 2012, section 8 of Act no. 1380 of 23 December 2012, section 2 of Act no. 472 of 13 May 2013, section 6 of Act no. 615 of 12 June 2013, section 6 of Act no. 639 of 12 June 2013, section 2 of Act no. 894 of 4 July 2013, of Act no. 1610 of 26 December 2013, section 15 of Act no. 268 of 25 marts 2014, section 15 of Act no. 403 of 28 April 2014 and section 6 of Act no. 720 of 25 June 2014.	25 June 2014	Act	The Act contains regulation on ATP, which is responsible for the processing of old-age pension, early retirement pension, housing support, maternity benefits and family benefits.	https://www.retsinformation.dk/Forms/R0710.aspx?id=164210 (Last accessed on 31 May 2018)
Deltidsloven / Act on part-time work No. 443 of 7 June 2001 as amended by Act no. 433 of 10	10 June 2002	Act	The Act ensures that there is no unjustified discrimination of part-time employees. In addition, the Act aims at facilitating the	https://www.retsinformation.dk/Forms/R0710.aspx?id=29516 (Last accessed on 31 May

June 2002.			possibility of part-time work.	2018)
Lov om foreningsfrihed på arbejdsmarkedet / Act on freedom to unionize in the labour market No. 443 of 13 June 1990 as emended by Act no. 359 of 26 April 2006.	26 April 2006	Act	The Act ensures that union membership or non-membership is not taken into account when a person is hired or fired.	https://www.retsinformation.dk/Forms/R0710.aspx?id=30701 (Last accessed on 31 May 2018)
Lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse m.v. / Act on equal treatment of men and women in employment, etc. No. 734 of 28 June 2006 with the amendments following from section 2 of Act no. 182 of 8 March 2011.	8 March 2011	Act	Act on forms of discrimination based on gender.	https://www.retsinformation.dk/Forms/R0710.aspx?id=137042 (Last accessed on 31 May 2018)
Lov om information og høring af lønmodtagere / Act on information and consultation of employees No. 303 of 2 May 2005.	2 May 2005	Act	The Act ensures that employees are informed of matters of major importance for their employment and are allowed to express their views.	https://www.retsinformation.dk/Forms/R0710.aspx?id=30249 (Last accessed on 31 May 2018)
Lov om tidsbegrænset ansættelse / Act on fixed-term employment No. 370 of 28 May 2003 as amended by section 3 of Act no. 1155 of 19 December 2003.	19 December 2003	Act	The Act contains regulations to improve the quality of fixed-term employment.	https://www.retsinformation.dk/Forms/R0710.aspx?id=121276 (Last accessed on 31 May 2018)
Lov om vurdering af udenlandske uddannelseskvalifikationer m.v. / The Assessment of Foreign Qualifications Act No. 371 of 13 April 2007, as amended by section 5 of Act	6 June 2007	Act	The Act is about the assessment of foreign qualifications.	https://www.retsinformation.dk/forms/r0710.aspx?id=163397 (Last accessed on 31 May 2018)

no. 561 of 6 June 2007.				
<p>Lov om forbud mod forskelsbehandling på grund af race m.v. /</p> <p>Act on Prohibition of Discrimination due to Race etc.</p> <p>No 289 of 9 June 1971 as amended by Act no. 357 of 3 June 1987</p>	3 June 1987	Act	The law prohibits any form of discrimination when providing goods, services or access to any place, performance, exhibition, meeting or the like within a trade or business or non-profit undertaking.	<p>https://www.retsinformation.dk/forms/r0710.aspx?id=59249</p> <p>(Last accessed on 31 May 2018)</p>
<p>Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v.</p> <p>Act on the Prohibition of Differential Treatment within the Labour Market</p> <p>No. 31 of 12 January 2005 as emended by Act. No. 240 of 27 March 2006, Act no. 1542 of 20 December 2006 and section 17 of Act. No. 387 of 27 May 2008.</p> <p>(Originally: Act no. 459 of 12 June 1996 on prohibition of differential treatment within the labour market etc.)</p>	27 May 2008.	Act	The law prohibits discrimination on the labour market because of race, color, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin.	<p>https://www.retsinformation.dk/Forms/R0710.aspx?id=122522</p> <p>https://www.retsinformation.dk/eli/ft/199512K00181</p> <p>(Last accessed on 31 May 2018)</p>
<p>Lov om etnisk ligebehandling /</p> <p>Act on Ethnic Equal Treatment</p> <p>No. 374 of 28 May 2003 as amended by section 11 of Act no. 554 of 24 June 2005 and section 16 of Act no. 387 of 27 May 2008.</p>	27 May 2008	Act	The aim of the act is to prevent discrimination and to promote equal treatment of all employees irrespective of racial or ethnic origin.	<p>https://www.retsinformation.dk/forms/r0710.aspx?id=141404</p> <p>(Last accessed on 31 May 2018)</p>
<p>Lov om Ligebehandlingsnævnet /</p> <p>Act on the Board of Equal Treatment</p> <p>No. 387 of 27 May 2008 as emended by Act no. 1570 of 15 December 2015.</p>	15 December 2015	Act	The Board considers complaints about differential treatment on the grounds of gender, race, colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin.	<p>https://www.retsinformation.dk/eli/Ita/2016/1230</p> <p>(Last accessed on 31 May 2018)</p>

<p>Lov om ændring af lov om Ligebehandlingsnævnet / Act on the amendment of the Act on the Board of Equal Treatment</p> <p>Act no. 1570 of 15 December 2015.</p>	<p>15 December 2015</p>	<p>Act</p>	<p>The Act contains regulations stating that The Board must be able to process a complaint if complainant has an individual and current interest in the specific case.</p>	<p>https://www.retsinformation.dk/Forms/R0710.aspx?id=176316 (Last accessed on 31 May 2018)</p>
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n.a.: Not available

List of national Experts

Anja Weber Stendal, Senior Advisor, Danish Refugee Council

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5. Finland

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5.1 Statistics and data overview

The percentage of the Finnish population which is of foreign origin has historically been small, and it continues to be quite minor compared to many other European countries. Finland has, however, become a country of net immigration (see Figure 5.1). In 1990, c. 1.3 % of the population of Finland was born abroad. Due to a steady rise in migration flows the percentage had grown to 6, 5 % in 2016 (Statistics Finland – Population by country of origin, 2018.) In 2017, there were 249 452 individuals with a foreign nationality living in Finland, which is about 4.5 % of the entire population (Statistics Finland – Number of individuals with foreign background, 2018). The largest migrant groups by country of origin are Russians and individuals from the former Soviet Union (14 227 + 56 696), Estonians (46 022), Swedes (32 424), Iraqis (16 254), and Somalians (11 437) (Statistics Finland, 2018 – Population by country of origin, 2018).

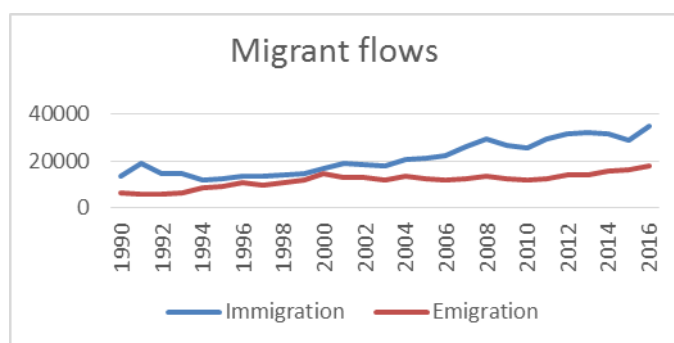


Figure 5.1 Emigration and Immigration flows, 2017

Source: Data from Statistics, Finland

Arrivals of non-EU citizens: In recent years, a significant increase in the numbers of incoming asylum seekers has led to a change in the composition of arriving migrants. Although many non-EU citizen migrants still arrive from traditional origin countries, such as Russia, India and China, which have mostly not arrived as asylum seekers, other nationalities have started to rise as well. Especially the number of Iraqi, Afghanistan and Syrian migrant arrivals has been growing. Altogether in 2016 there were 21 754 non-EU citizen arrivals and 12 913 EU-citizen arrivals. Out of the 21 754 non-EU citizen migrants 12 225 were men and 9529 were female. Non-EU citizens are thus more often men than women. (Statistics Finland – Migrant flows by country of origin, 2018.) Migrant Arrivals to Finland (total numbers), top 5 nationalities:

Table 5.1 Migrant Flows by Country of Origin

2014		2015		2016	
Estonia	4810	Estonia	3413	Iraq	3113
Russia	2364	Russia	2058	Estonia	2688
India	796	India	754	Russia	2574
Iraq	742	China	676	Afghanistan	1105
Sweden	699	Iraq	660	Syria	1044

Source: Statistics Finland, 2018

Presence of non-EU citizens: At the end of 2017, there were altogether 239 341 individuals living in Finland, who have arrived from non-EU countries. Of these individuals 119 206 were male and 120 135 were female. Moreover, 27 681 were 0-17 years old, 201 990 were 18-67 years old and 9670 were aged 67+ (Statistics Finland – Population by country of origin, 2018.) The largest group of non-EU migrants is thus of working age. Of the non-EU migrants living in Finland in 2017, most originally come from Asia or other European countries that are not part of the European Union.

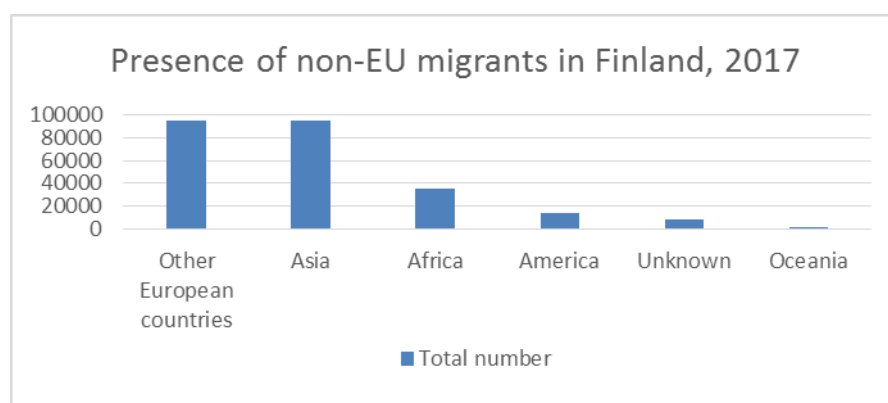


Figure 5.2 Population by country of origin

Source: Statistics Finland, 2018

Table 5.2 Population by country of origin and by nationality

The most common non-EU countries of origin (2017)		The most common foreign nationalities in Finland (2017)	
Former Soviet Union	56,696	Russian	29,183
Iraq	16,254	Iraq	11,729
Russia	14,227	China	8,742
Somalia	11,437	Thailand	7,533
China	10,862	Somali	6,667

Data: Statistics Finland 2018

Residence permits: In 2017, 64 484 residence permits were applied for in Finland. Of the applications, 92.2 % were approved and 7.8 % rejected. The bulk of applications were for residence permit extension (46.6%), whereas 39 % were for first residence permits to Finland. First residence permits were rejected about 15 % of the time. In 2017, Russians (10 149), Chinese (4530), Indians (4204), Vietnamese (3801) and Iraqis (3731) represented the largest groups applying for permits. The most common reason to apply for a first residence permit was on family grounds (43.6 %), after which came work (31.4 %), studies (22.9%) and other grounds (2 %). Of the applications, 47.8 % were by women and 52.1 % by men. Men were slightly more likely to get a negative decision on their application (9.1 % vs. 6.3%). Of those applying for a residence permit, c. 21 % were under 18 years old, c. 78 % were 18-64 ergo of working age and less than one percent were over 65 years old. Especially the age group of 18-34 was prominent in applying for residence. (Migri – Statistics on Residence Permits, 2018.)

International protection: In 2017, 9418 asylum applications were left in Finland. In 2016, the number was noticeably higher at 28 208 and in 2015 it was 7463. Of the applications left in 2017, 40.2 % received a positive decision, and 42.4 % a negative decision. 11.3 % of the cases were dismissed and 6.1 % expired. Positive decisions were made in c. 67 % of the cases on grounds of international protection, in c. 19 % on grounds of subsidiary protection, and in c. 15 % on other grounds. The largest bulk of asylum applications were submitted by those aged 18-34 years (57.5 %). After this the age groups of 0-13 years (19.3 %) and 35-64 years (17.7 %) applied most often for asylum. Only 0.3 % of all the asylum applications were made by individuals older than 64 years old. More male migrants (72.6 %) applied for international protection than women (27.4 %) (Migri – Statistics on International Protection, 2018.)

Table 5.3 Asylum applications according to citizenship

2015		2016		2017	
Iraq	3720	Iraq	16 308	Iraq	4337
Albania	667	Afghanistan	5192	Afghanistan	1590
Somalia	662	Somalia	1548	Syria	739
Afghanistan	328	Syria	1244	Somalia	525
Russia	214	Iran	482	Iran	323

Data: Migri – Statistics in International Protection, 2018

Expulsion: Grounds for removal from Finland are laid down in section 148 of the Alien Act (2004/301 148 §). The main grounds are invalid residence permits, being found guilty of a criminal offence, or being found to be a danger to public safety or Finland's national security. In 2017, 1614 individuals were refused entry into Finland and 1134 individuals were deported. Romanians, Russians, Estonians, Iraqis and Turks were the nationalities most often refused entry. The largest numbers of deportations were persons of Iraqi, Russian, Somali, Filipino and Vietnamese nationality. Of all the individuals deported in 2017, c. 85.9 % were deported for unauthorized stay, whereas 14.1 % had been found guilty of a criminal offense. According to the Immigration Service the number of deportations and refusals of entry has remained about the same in recent years. (Migri – Removal, 2018) (See further discussion on this in conclusion section). In Finland, a person may be placed in administrative detention only in situations that are specified in the legislation (FINLEX 116/2002). There are two detention centres in Finland¹⁵⁵.

5.2 The socio-economic, political and cultural context

5.2.1 Description of host society and migration history

Finland has a sparse population of c. 5.5 million habitants who are culturally, linguistically and religiously homogeneous when compared to most other European states. In 2017, 70.9% of the population belonged to the Evangelical Lutheran church and 87.9% spoke Finnish as their native language. Whereas, 5.2% of the population spoke Swedish and 1.1% of the population belonged to the Greek Orthodox Church (Statistics Finland – Population 2017) The population of Finland is concentrated in cities in the southern parts of the country, in which live about 70% of the population (Statistics Finland – Kaupungistuminen, 2017). The human development index score of Finland in the 2016 report is 0.895. This puts Finland in the very high human development category (Human Development Report 2016 – Finland.) The Finnish economy struggled during the financial crises and recovery has been slower than in most EU-countries. In 2017, the economy however finally started to pick up. In the

¹⁵⁵ The Finnish Immigration Service steers, plans and supervises the practical side of the detention unit operations. One of the detention centre is situated in Metsälä, Helsinki and the other one is connected to the reception centre in Konnunsuo, Joutseno. The detention units are closed areas which the detained persons cannot leave. (Migri – Detention, 2018.) Yearly around 1500 individuals are located into a detention centre in Finland (Amnesty International, 2015).

beginning of 2018, the unemployment rate was c. 8, 6 % (Statistics Finland – Työttömyysaste, 2018).

History of migration: Finland was an emigration country for a long time. Up to until the 1980's, there were more people migrating out of Finland than migrating to Finland. Following the Second World War, the number of migrants moving to Finland remained small for decades and Finland was a sending of labour market emigrants (Forsander, 2007, 315). The general trend in Europe, of labour migrants migrating from Southern Europe to Western European countries, did not affect Finland. This is because Finland had sufficient numbers of available work force on its own. (Kyhä, 2011, 20.) In the 1950's, the Finnish borders were opened for Nordic citizens. This made moving to Sweden easier and more Finnish people decided to emigrate. Finland however did not become a popular destination for other Nordic citizens. (Saukkonen, 2013, 87.)

In the 1990's, migration to Finland began to rise. This was in part because Finland joined the European Union in 1995 and because of the freer foreign policy atmosphere brought about by the collapse of the Soviet Union (Kyhä, 2011, 21). Whereas before almost half of the immigrants to Finland had been from Western countries, now greater numbers of migrants came from countries in the former Soviet Union and Asia. The share of immigrants arriving from the former Soviet Union was exceptionally high in Finland (Hämäläinen & Sarvimäki, 2008, 3). After the collapse of the Soviet Union, ethnic Finns living in former Soviet countries started migrating to Finland (Yijälä, 2014, 6). This stream of migrants into Finland increased once Ingrian Finns¹⁵⁶ and their descendants were granted the status of return migrants. As returning migrants, Ingrians could apply for residence permits and later citizenship according to the general citizenship regulations. Into the population statistics, Ingrians were registered mostly as citizens of Russia, Estonia and the Former Soviet Union.

Generally, Finland is not considered a country with a long **history of refugees**. The First World War and the Russian revolution however, brought tens of thousands of refugees to Finland (Martikainen, Saari & Korkiasaari, 2013, 35). In the 1920's and in the 1940's, altogether c. 400 000 refugees from areas ceded to the Soviet Union, were relocated to other parts of Finland. This refugee group consisted mostly of Finnish language and culture groups, which differentiates this group from subsequent refugee migrations to Finland. (Pentikäinen, 2005, 19.)

A few hundred refugees from Chile and Vietnam migrated to Finland during the 1970's and in the beginning of the 1980's (Kyhä, 2011, 21). The first official refugee quota was set in 1988 (Saukkonen, 2013, 87). During the 1990's, the number of asylum seekers grew due to international conflicts. Finland received asylum seekers mainly from Somalia and Yugoslavia and between 1990-1994 Finland granted asylum to about 5000 individuals (Sarvimäki, 2017, 3). By the end of the 1990's, c. 18 000 refugees and their family members were living in

¹⁵⁶ Ingrian Finns are descendants of people who have migrated from Finland to Ingrian land. Ingrian land is a rural area surrounding present-day St. Petersburg. Many Finns migrated to this area in the beginning of the 17th century when it was a part of Sweden (of which Finland was also a part during that time). The right to move to Finland as returning migrants was closed for Ingrians in 2016. Altogether c. 30 000–35 000 Ingrians moved to Finland during 1990-2016.

Finland (Sarvimäki, 2017, 3). In the beginning of the 21th century, Finland took refugees from e.g. Afghanistan and Iraq (Martikainen, Saari & Korkiasaari, 2013, 37).

5.2.2 Geography of migrants' presence

Migrants do not just integrate into their host country but also locally. Migrants in Finland are concentrated in the bigger cities and specifically the capital area. The thirteen biggest cities host 70% of the migrant population but only 43% of the entire population (Hirvonen & Puustinen, 2016). More than half¹⁵⁷ of all foreign-born individuals in Finland live in the region Uusimaa (Statistics Finland – Immigrants in Population, 2017), in which the Greater Helsinki area is situated. Within the capital area, migrants are concentrated in certain neighbourhoods. The Helsinki eastern major district hosts most people with a foreign background. In 2017, 28.7% of all migrants in Helsinki lived in this area (Helsinki – Ulkomaalaistaustaiset Helsingissä, 2017).

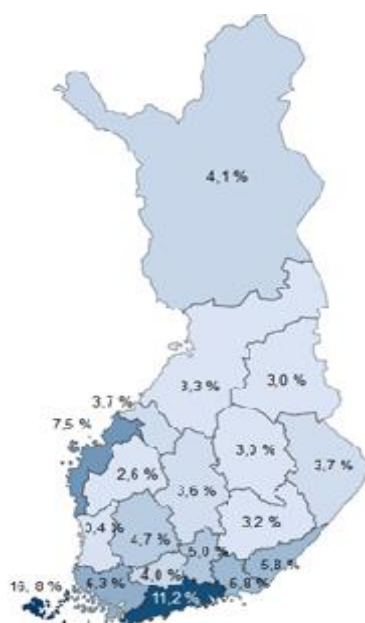


Figure 5.3 Percentage of foreign born, 2016

Source: Statistics Finland, Immigrants in Population, 2017

In the vast majority of all municipalities in Finland, Russians are the biggest migrant group. Only in a few municipalities scattered around Finland are other migrant groups the dominant migrant group. Roughly divided, the second biggest migrant group are Somali in the eastern parts of Finland and Estonians in the middle and southern parts of Finland (Saari, 2013).

Most migrants in Finland end up living in centres of growth that attract new inhabitants from surrounding areas and offer employment opportunities. This is also the case of refugees. For the time of the processing of the asylum application, asylum seekers can live in the asylum

¹⁵⁷ (2016 ratio 183 459/ 174 082)

centre that is assigned to them. Asylum seekers cannot freely choose in which asylum centre they get to live. Asylum seekers can however also choose to live with relatives or friends during the processing time. When the decision of asylum is made, refugees are assigned to a living place in a municipality that has made a contract about receiving refugees (FINLEX 746/2011) This decision is however not permanent and refugees can decide to move somewhere else within the country. Eventually, refugees often move away from their first assigned living places towards centres of growth (Rasinkangas, 2013, 134 –135).

There are significant differences in terms of migrant integration into the labour market among different areas of Finland. The highest employment rates are found among migrants living in the Åland Islands whereas the lowest levels are found in Central-Finland (Eronen et al., 2014, 38).

5.3 The organization of the state and the constitutional principles on immigration and asylum and labour

5.3.1 Brief overview of the system of government

Finland is a parliamentary representative democratic republic. The system is party-based and consensus oriented, which is why political coalitions are sometimes large and unconventional in composition (Laine, 2015). The head of state is the President, while the Prime Minister is the head of government. The parliament consists of 200 representatives, whom are chosen every four years. The main legislative power is vested in the Parliament, which also decides about the state budget. The government exercises executive power and has limited rights to amend or extend legislation. The President executes foreign policy in cooperation with the government. Under the constitutional reform of 2000, the President's power in other political areas was limited, so that the power of the Finnish president is less than that of, for example the American or French president (Laine, 2015). In Finland, employers' and labour organisations have a political role, particularly in issues concerning work and social security, even though they are not among the classical parliamentary actors (Laine, 2015). The role of trade unions is observable in e.g. the role they have in collective labour agreement negotiations. More on this topic will follow in chapter 4.

The state bureaucracy is formed of central, regional and local administrations. The central administration consists of about 100 organizations, which include the ministries and the various national agencies and institutions governed by the ministries. The regional administration is formed by the Regional State Administrative Agencies (AVI) and the 15 Centres for Economic Development, Transport and the Environment (Ely-keskus) (Ministry of Finance – Administrative structures, 2018).

5.3.2 Structure and independence of Judiciary

The sources of law in Finland are national legislation, international sources of law and European Union law. There is no subnational legislation. Juridical power in Finland is vested in independent courts, which are bound only by the law in force. The independence of the courts is guaranteed by the Constitution. Finland has been ranked, according to the World Economic Forum's Global Competitiveness Index, as the country with most judicial

independence in the world (The Global Competitiveness Report 2017–2018: Judicial independence). Finland also scores highest on the protection of fundamental rights according to the Rule of Law Index (Rule of Law Index, 2018).

The judiciary consists of three systems: regular (district) courts, administrative courts and special courts. The district courts deal with criminal cases, civil cases and petitionary matters (Oikeus.fi – District courts, 2018). The administrative courts review the decisions of the authorities. This stems from the fact the Constitution of Finland requires that the law be conscientiously observed in all public activity (Oikeus.fi – Administrative courts, 2018). Decisions regarding the right to enter and stay in Finland are judicially managed within the field of administrative justice (Nykänen et al., 2012, 23). There are also special courts, which include the Market court, the Labour court, the Insurance court and the High Court of Impeachment.

There are five Courts of Appeal in Finland: Helsinki, Eastern-Finland, Rovaniemi, Vaasa and Turku (Oikeus.fi – Courts of appeal, 2018). The Courts of Appeal mainly deal with appeals against decisions of the district courts. They also supervise the operations of the district courts in their jurisdiction on a general level. (Oikeus.fi – Courts of appeal, 2018.) The Supreme Court defines its most important function to be the establishment of judicial precedents in leading cases, thus ensuring uniformity in the administration of justice by the lower courts. Decisions of Courts of Appeal, Land Courts, District Courts, the Insurance Court and the Market Court, may be appealed to the Supreme Court, if the Supreme Court decides to hear the case (Korkeinoikeus.fi– Supreme Courts, 2018). The decisions of the administrative courts can be appealed in the Supreme Administrative Court (Oikeus.fi – Finnish courts). Before all decisions involving international protection had to be appealed to the Helsinki district administrative court, due to it having exclusive competence in these matters (Nykänen et al., 2012, 23). Since 2017 decisions involving international protection are also processed in other administrative courts (FINLEX 121/2018).

There is no constitutional court in Finland and the constitutionality of a law can be contested only as applied to an individual court case. The amending of the Finnish constitution is rigid: A two-thirds majority agreement in Parliament is needed to amend a constitutional law. Moreover, two consecutive Parliaments have to adopt the changes. In urgent cases, a five-sixths majority can push through the amendment in the same Parliament (Laine, 2015; FINLEX 731/1999 73 §.)

5.3.3 Powers and functions of the different tiers of government in MRA management

Migration and integration issues have in Finland been dealt with cross administratively e.g. by the Ministry of the Interior, the Ministry of Education and Culture, Ministry of Social Affairs and Health, the Ministry of Economic Affairs and Employment and the Ministry of the Environment (Saukkonen, 2013, 93). For example the Ministry of Education and Culture is responsible for the education of migrants whereas the Ministry of Social Affairs and Health is responsible for the health care of migrants. The Act on Administration (FINLEX 434/2003) regulates the administrative procedures carried out by the authorities dealing with

immigration (Nykänen et al., 2012, 21). General legislation on administrative procedures and administrative juridical procedures apply in immigration procedures (Nykänen et al., 2012, 21).

In Finland, the Ministry of the Interior is responsible for preparing legislation related to immigration and for steering immigration management. The Ministry is also responsible for the Finnish Immigration Service. The Ministry states its aim is “to develop a more forward-looking migration policy and managed migration, and to make Finland a safe and open country, where everyone can find a role to play” (Ministry of the Interior – Migration, 2018). In 2007–2010, the Ministry of the Interior was in charge of coordinating the integration process in Finland. Since 2012, the main responsibility for integration has been at the Ministry of Economic affairs and Employment. Other migration issues however, have remained at the Ministry of the Interior. In 2013, the ministry published the first overall integration report of Finland¹⁵⁸. (Saukkonen, 2013, 94; Saukkonen, 2017, 39–40.) The Finnish Immigration service has the main responsibility for carrying out decisions on immigration related issues. The office was established in 1995 (Aer, 2016, 40).

According to the expert interviewee Ville Punto¹⁵⁹ co-operation between the different tiers of government in Finland functions sufficiently well. According to him the quality of co-operation has varied and that at times it has been better than what it was during the “refugee crises”¹⁶⁰. He also brings up that according to his observations the “refugee crises” has affected the thoroughness with which asylum application are investigated, and that time and resource constraints have led to some cases and documents not being investigated as well as they should have been.

According to Saukkonen (2013), the problem of Finnish integration has been in how to get municipalities to implement the official state policies set by the central government. This is due to the fact that the controlling instruments of the government and the financial resources have been limited (Saukkonen, 2013, 94). The integration laws in Finland however require municipalities to form local integration programmes, to be able to receive state funding to cover some of the costs related to accepting refugees (1386/2010 32 § & 33 §).

5.3.4 Overview of constitutional milestone case-law

The Supreme Court makes landmark rulings on cases in which the law does not give a clear answer. These prejudicates are given to guide future cases. The purpose is to ensure that courts in different parts of the country interpret the law in a similar manner (Korkeinoikeus.fi–Supreme Courts. (2018). All the prejudicates since 1980 can be found on the website of the Supreme Court. The keyword search indicates that many decisions have been made regarding migration, foreigners and asylum seekers. Besides the decision regarding MRAs

¹⁵⁸ (“Kotouttamisen kokonaiskatsaus”)

¹⁵⁹ Telephone interview realised 04.05.2018 with Ville Punto, who is a lawyer specialized in residence permits and citizenship issues.

¹⁶⁰ The refugee crises refers to the fast and significant increase of asylum seekers arriving to Europe that started in 2014-2015. Many use scare quotes to indicate that the definition of crises is contested. For some it's the crisis of the refugee regime in Europe, for some it is a crises because of the humanitarian situation many migrating individuals are enduring, whereas for other it's a crises because of the increase of people entering Europe.

of the supreme courts also the decision made e.g. by the supreme administrative courts have an effect on how legislation is implemented.

In Finland the most visibly and debated landmark decision regarding migration have been cases regarding the countries and locations that migrants, who are not permitted to stay in Finland, can be returned to. In other words, the courts rule which areas are safe to return to and which not. These cases are generally discoursed in the media. The position on the safety situation of e.g. Hungary (KHO 2016:53), Iraq (KHO:2016:194, KHO:2016:193), Yemen (KHO:2016:220) and Afghanistan (KHO:2018:94, KHO:2017:72, KHO:2017:74) has been shifting according to landmark decision. In 2016 for example a court ruling (KHO 2016:53) defined that it was not safe for asylum seeker to be returned to Hungary in accordance with the Dublin agreement because the situation of the treatment of asylum seekers was unclear. In some landmark decisions, only certain groups of people are found not to be able to return safely to certain areas. Such case is for example the case (HAO 18.11.2016 16/1267/71) of an Iraqi Sunni Arab from Mosul who was ruled in 2016 not to be able to safely returned to Bagdad. Also the way that the asylum application process should be conducted has been affected by landmark decision. Most recently for example a landmark decision by the Supreme Court (27.6.2018/3126) stated that the asylum applications of couples should be processed and decided on together (2018).

Other issues regarding MRA that have been affected by landmark decision are e.g.: the right to enter Finland (KKO:2012:24, KKO:2010:6), the providing of wrongful information in cases of residence permits and asylum applications (KKO:2005:84, KKO:2013:21, KKO:2017:62, KKO:2016:92), the need for asylum/credibility of reason for asylum application (KHO:2018:90, KHO:2018:87, KHO:2018:52, KHO:2017:148, KHO:2017:120, KHO:2017:99, KHO:2016:199), family reunification (KHO:2017:41, KHO:2017:61, KHO:2016:204, KHO:2016:171, KHO:2016:167, KHO:2016:166, KHO:2016:79) citizenship proceedings (KHO:2018:66, KHO:2017:200, KHO:2017:199, KHO:2017:89, KHO:2017:40, KHO:2017:3, KHO:2016:179, KHO:2016:178, KHO:2016:136, KHO:2016:55), the granting of residence permits (KHO:2017:204, KHO:2018:48), deportation (KHO:2017:189, KHO:2017:172, KHO:2017:137, KHO:2018:47), converting to Christianity (KHO:2017:63), victims of trafficking (KHO:2017:42, KHO:2017:43), the need to a sufficient income in residence permit applications (KHO:2017:6, KHO:2016:198), migrant children/a child's best interests in MRA proceedings (KHO:2017:81, KHO:2016:168, KHO:2016:165, KHO:2016:75), the Dublin III procedure (KHO:2016:157, KHO:2016:83, KHO:2016:53, KHO:2017:77, KHO:2017:119), passports and alien's passports (KHO:2016:64, KHO:2016:54) and about legal proceeding fees (KKO:1996:45, KKO:1985-II-111, KHO:2018:95, KHO:2017:56).

The overall number of benchmark cases that have to do with the working of foreign citizens in Finland and their labour market position is rather small, compared to the other reasons cited above. Most cases regarding the labour market position of migrants have to do with workers' permits:

- KHO:2016:99= A Third country national was denied an employment based residence permit due to the fact that in the residence permit interview it was found that the person lacked information about her employment contract and its central stipulations.

The persons language knowledge was also found lacking. She was thus denied a residence permit based on the fact that she did not have sufficient information about her residence permit grounds nor the employment circumstances in which she was supposed to work in in Finland.

- KHO:2016:31= An individual eluded his prohibition of entry into the country and came anyway and worked in Finland without legal permits to do so. When he then applied for a residence permits after staying in Finland illegally for years he was denied it.
- KHO:2016:98,=A individual was denied entry because she was found to have applied for a work based residence permit in order to evade family reunification regulation. The person was supposed to work as a home aid and nanny in her daughter's family. The person was also given prohibition on entry into the country for two years.

5.3.5 Constitutional fundamental principles on MRA labour market integration

The Ministry of Economic Affairs and Employment has gathered, on its website focusing on integration (Kotouttaminen.fi), a list of constitutional laws regarding migrant integration:

- Finnish citizens and foreigners legally resident in Finland have the right to freely move within the country and to choose their place of residence. Everyone has the right to leave the country. (9 §.)
- Everyone's private life, honour and the sanctity of the home are guaranteed. Everyone should have the right to live their own life without the unnecessary interference from authorities and other actors. (10 §.)
- Everyone has the right, as provided by an Act, to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. The public authorities shall take responsibility for the protection of the labour force. The public authorities shall promote employment and work towards guaranteeing for everyone the right to work. Provisions on the right to receive training that promotes employability are laid down by an Act. No one shall be dismissed from employment without a lawful reason. (18 §.)
- Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. This applies if there is no subsistence from anywhere else and in practice this indispensable subsistence is channelled through income support. (19 § 1 mom.)
- The self-government of municipalities set in the constitution affects the services that are being offered to migrants. The basic principles and responsibilities of municipalities are set in law but municipalities can themselves decide how they choose to arrange the necessary services in their region. (121 § 2 mom.)

(Kotouttaminen.fi – Suomen perustuslaki, 2018; The Constitution of Finland, 1999.)

5.4 The relevant legislative institutional framework in the fields of migration and asylum

5.4.1 The national legislation on immigration

In Finland, the basis for legislation related to immigration is found in the Aliens Act (FINLEX 301/2004) which constitutes the backbone of the regulation of immigration in Finland. The Aliens act contains rules on entry and stay in Finland, removal from Finland in relation to different forms of immigration, rights and obligations of foreigners in Finland, and procedures in matters of immigration (Nykänen et al., 2012, 21.) The **first Aliens act** came into force in 1984. Before this, issues regarding foreigners were ordained by decrees, the last of which was given in 1958 (Aer, 2016, 16). The law set in 1984, was soon found outdated and it was reformed in 1991, 1999 and 2004 (Makkonen & Koskeniemi, 2013, 71; Aer, 2016, 17) and 2016 (FINLEX 646/2016). During the preparations for the 2004 reform, the public discussion had started to shift towards labour migration (Aer, 2016, 19). Finland joined the EU in 1995 and the Schengen agreement was introduced in 2001 (Makkonen & Koskeniemi, 2013, 69). All Finnish migration policies are in accordance with the principals set by the European Union regarding integration in 2004¹⁶¹ (Saukkonen, 2017, 17).

In 1997, the government's **first migration- and refugee programme** was published (Kyhä, 2011, 16; FINLEX 493/1999). A general aim was set, that migrants should be effectively and flexibly integrated into Finnish society and into the labour market (Saukkonen, 2017, 16). Before this, there was no official migration policy (Kyhä, 2011, 22). The framework for migrant's integration in Finland is set in the integration law. The **first law on migrant integration came into force on May 1st 1999** (Saukkonen, 2013, 92; VATT-Research group, 2014, 42; Makkonen & Koskeniemi, 2013, 78). The Finnish Integration Act is similar to integration programmes introduced in other countries, such as the TANF in the US, the New Deal in the UK, the SSP in Canada and the welfare-to-work policies adopted in Denmark and the Netherlands (Hämäläinen & Sarvimäki, 2008, 3). The focus of the integration law in Finland has been on humanitarian migration and on the integration of unemployed migrants (Makkonen & Koskeniemi, 2013, 78). When the act was introduced, it brought along various reforms:

- The responsibility of immigrant integration was placed with the central administration and municipalities were given the responsibility for coordinating existing resources at the local level (Hämäläinen & Sarvimäki, 2008, 4; FINLEX 493/1999. This also obliged all municipalities to prepare their own integration programmes and follow their execution and impact (Saukkonen, 2013, 94; FINLEX 493/1999).
- The law set a new focus on the preparation of **individualized integration plans**. The content of these integration plans depends on the personal factors of the immigrant. According to individual needs the integration plans can for example include measures

¹⁶¹ The Common Basic Principles for Immigrant Integration Policy in the EU:
https://www.eesc.europa.eu/resources/docs/common-basic-principles_en.pdf

for acquiring language skills, career counselling, preparatory and/or vocational training, rehabilitation and/or work practice. Labour administration is responsible for preparing and implementing the integration plans of 18–64 year old migrants, whereas municipalities take care of other age groups. (Hämäläinen & Sarvimäki, 2008, 4; FINLEX 493/1999.)

- In addition, the communication between caseworkers and immigrants and the importance of training courses specifically designed for immigrants, such as language courses, increased as a result of the reform. Moreover, the importance of learning one of the local languages (Finnish or Swedish) was emphasised. Resulting from these reforms, the time spent in courses specifically designed for migrants and in language courses increased, whereas time spent in traditional activating labour-market programmes, such as job-seeking courses decreased. (Sarvimäki & Hämäläinen, 2016, 480, 482–483, 498; VATT-research group, 2014, 46; FINLEX 493/1999.)
- As part of the integration act, welfare benefits were made conditional on participation in activation measures. Refusal to participate or to follow the integration plan was made sanctionable by a reduction or withdrawal of integration benefits. (Hämäläinen & Sarvimäki, 2008, 2, 4; FINLEX 493/1999.)

Only those migrants who had arrived after May 1st. 1997, and who were registered as unemployed job seekers or living in a household that received social assistance were affected by the new policies in the 1999 law (Hämäläinen & Sarvimäki, 2008, 2, 4). Neither rules on the use of sanctions nor funding systems changed during this reform (Sarvimäki & Hämäläinen, 2016, 483).

The law on integration was changed several times to improve it. **In 2006**, migrants were also given the right to extend their integration plan by up to two years. In addition, the schedule for making the first integration plan was expedited so that integration plans are made earlier. (VATT- research group, 2014, 46.)

The law on the integration of immigrants and reception of Asylum seekers was **reformed in 2010** and the new law (1386/2010) came into force the following year (Saukkonen, 2016). During this reform, the main content of the law remained the same (Saukkonen, 2013, 95; Saukkonen, 2017, 16). However, the focus of the law shifted somewhat towards work and family-based migration. Due to this, more people became entitled to integration services. (Makkonen & Koskenniemi, 2013, 78–79.) Before only those that were unemployed jobseekers and living on income support, were included into the integration policies, whereas since 2011 all migrants were included (Eronen et al., 2014, 26). Integration services were made available to all that need them, regardless of which category of migrant the individual belonged to (Saukkonen, 2013, 95). According to the renewed law, all individuals migrating to Finland, have to be informed about their rights in society and in the labour market (FINLEX 1386/2010 7§).

At the moment, the migrant integration law is being revised to meet the needs of the ongoing health, social services and regional government reform in Finland. In the future, the focus areas of the law will be on structuring the education paths and entering of migrants into the labour market, and on family orientated integration. Special attention will also be given to the different needs of various migrant groups. Municipalities will still have the main responsibility in integration services (Ministry of Economic Affairs and Employment –Briefing 5.5.2017.)

5.4.2 Legislation and management of asylum

The **number of asylum applications filed in Finland greatly increased** in 2014-2015, causing the Finnish government to take a number of measures. The first was to cope with the situation at hand by establishing new reception centers, and hiring new Immigration Service staff. (Sarvimäki, 2017, 7.) Regulation on establishing reception centers is set in the Act on the Reception of Individuals in Need of International Protection and on the Recognition and Helping of Victims of Human Trafficking (FINLEX 746/2011 9 § & 10 §) The government also responded to the increase in migration by publishing an action plan “to stop uncontrolled migration”¹⁶². The idea was to try to make Finland a less attractive destination by changing various policies considered as “pull factors”. The government, for example, tightened the requirements for family reunification and reduced social benefits¹⁶³. (Sarvimäki, 2017, 7; FINLEX HE 43/2016.) Due to these changes in policy, it has for example become more difficult for many migrants to bring their families to Finland. This was affected especially by changes made in 2016, according to which also those individuals who have been granted subsidiary protection or refugee status must prove that they have sufficient income to cover each family member’s living expenses. Fees were introduced for family reunification applications¹⁶⁴ in 2016 by a decision by the Ministry of the Interior (FINLEX 872/2017). Besides making Finland seem less attractive, the government also rethought integration policies. On this note, an action plan was published by the government in May 2016¹⁶⁵. The action plan included measures such as improving recognition of education certificates obtained abroad, the integration of language studies into other studies and the streamlining of the starting phase of integration services (Sarvimäki, 2017, 7.)

In Finland the **right to international protection** is set out in the Alien act (2004/301 87 §). An asylum seeker may enter the country even if she/he is not able to present travel documents or permission for entry, since the application for asylum is in itself a sufficient reason for entry (Nykänen, 2012, 45, 58; FINLEX 2004/301 35 §). In 2011, a law on *the reception of individuals in need on international protection and on the recognition and helping of victims of human trafficking* was introduced (FINLEX 746/2011). The aim of the law is to secure protection and income for those seeking international protection, for those in need of temporary protection and to victims of human trafficking. (Martikainen, Saari & Korkiasaari, 2013, 75.) In Finland the residence permit based on asylum is granted for four

¹⁶² Hallituksen turvapaikkapoliittinen toimenpideohjelma 8.12.2015

<https://valtioneuvosto.fi/documents/10184/1058456/Hallituksen%2Bturvapaikkapoliittinen%2Btoimenpideohjelma%2B8.12.2015/98990892-c08e-4891-8c23-0d229f1d6099>

¹⁶³ The central change that was made to make Finland less accessible was related to income requirement. Since the 2016, all migrants including those receiving subsidiary protection or with refugees status need to prove that they have sufficient means to provide for their family. This has made family reunification harder for many. The purpose of the reform was to make sure that the society does not have to pay for foreigners residing in Finland but that instead the expenses would be taken care of by the residing person or his/her family (FINLEX HE 43/2016.) Before the sufficient income requirements only applied to other migrants than those seeking protection.

¹⁶⁴ 455 € for adult and 230 € for child

¹⁶⁵ Hallituksen kotouttamista koskeva toimintasuunnitelma:maahanmuuttajat kuntiin, koulutukseen ja työhön
<https://vnk.fi/documents/10616/1266558/Kotouttamisen-toimintasuunnitelma-030516.pdf/c600bd8f-7c5c-43b6-aba4-5aade9aafe0d>

years. After this the individual has to apply for an extended residence permit. (Migri – Asylum, 2018; FINLEX 2004/301.)

The **reception of asylum seekers** is steered by the Act on the reception of individuals in need on international protection and on the recognition and helping of victims of human trafficking (FINLEX 746/2011). Asylum can only be applied for in Finland, and not for example at Finnish embassies in other countries or through a letter or email. Asylum applications always need to be left personally with the police or border control. (Migri – Asylum in Finland, 2018; FINLEX 2004/301 95 §.) Once the asylum application has been left, the individuals are referred to a refugee centre where he/she can live and wait for the asylum interview. The refugee centres takes care of needed subsistence for living and offer accommodation and guidance regarding getting legal aid. The centres also organizes the necessary social and health care services as well as work and study activities and if the needed interpreter services (Kotouttaminen.fi – Vastaanottokeskukset, 2018). The applicant can also find accommodation her/himself for example with family or friends (FINLEX 746/2011 18 §). The Finnish Immigration Service conducts the asylum investigation and interview. The purpose of this investigation is to establish the identity and travel route of the applicant, as well as the reason for applying for asylum and the evidence to substantiate the reason. In 2016 the asylum application process took on average 8 months (Ministry of the Interior, Usein kysytyt kysymykset turvapaikanhakijoista, 2018). Once asylum is granted, the person will receive a residence permit card (Migri – Information for asylum seekers, 2018). If the decision on the application is negative, the applicant can appeal the decision to the Administrative Court and if needed to the Supreme Administrative Court (Pakolaisneuvonta, 2018). Once the procedure is over, the applicants who are allowed to stay in Finland are placed in municipalities that have made arrangements to receive refugees (FINLEX 2010/1386, chapter 5). The local level coordination of receiving refugees is done by the Centres for Economic Development, Transport and the Environment (ELY Centres), who negotiate with the municipalities of their area about municipality places for refugees, living arrangements and needed services (Kotouttaminen.fi – Pakolaisten kuntaan osoittaminen, 2018). Although there is effort to settle migrants around the country, so they are not concentrated in certain areas, most migrants still eventually end up living in growth centres (Rasinkangas, 2013, 134 –135) since all people in Finland are free to choose where they reside (FINLEX 731/1999 9 §). Those individuals who are not allowed to stay can apply for assisted voluntary return (Migri – Information for asylum seekers, 2018; FINLEX 2010/1386 85 §).

The decision about the number of **quota refugees**¹⁶⁶ is made annually by the Parliament in connection with the approval of the state budget. The proposal is made by the ministry of the Interior together with the Ministry of Foreign Affairs and the Ministry of Economic Affairs and Employment (FINLEX 2004/301 91 §). Since 2011, 750 quota refugees have been accepted

¹⁶⁶ Through the refugee quota, Finland receives individuals that are assessed by the UNHCR as being in need of international protection. The UNHCR presents a group of people from which Finnish authorities choose the quota refugees that can come to Finland. The selection is done by interviewing (Ministry of the Interior – Quota refugees, 2018.) Yearly 100 places of the quota are reserved for acute cases and for those that UNHCR has estimated to be in need of hasty replacement. These emergency cases are chosen directly based on UNHCR documents (Migri - Quota refugees, 2018).

annually. In 2014 and in 2015, the quota was however increased to 1050 refugees a year due to the situation in Syria (Migri - Quota refugees, 2018). Quota refugees are granted residence permits and other rights on the same basis as refugees recognized in the asylum procedure (Nykänen et al., 2012, 102). Quota refugees are placed directly into municipalities, which take care of their reception and integration (Pakolaisten vastaanotto – Tietopaketti kunnille, 2016).

5.4.3 Right to enter the country and stay in Finland

According to the constitution, only Finnish nationals have the undisputed right to reside in Finland and the right of foreigners to stay in Finland is governed by law (Aer, 2016, 24; FINLEX 2004/301). When a foreigner enters Finland, he/she needs to have the required travel documents. What constitutes a valid travel document depends on the citizenship of the person (Nykänen et al., 2012, 36). The visa regulations in Finland have their background in common Schengen-area norms (Nykänen et al., 2012, 39). Visas are issued for a maximum of 90 days and they do not give the right to work in Finland (Juvonen, 2013, 17). If foreigners entering the country intend to stay for longer than 90 days, they need a **permit of residence**. In general, the residence permit must be applied for in the country where the foreigner resides lawfully before entering Finland (Nykänen et al., 2012, 59; FINLEX 2004/301 60 §). This however is not imperative and the first residence permit can also be applied for in Finland (FINLEX 2004/301 60 §). A residence permit needs to be applied for personally and it cannot be done by e.g. a spouse or employer. EU-citizens as well as citizens from Iceland, Norway or Liechtenstein do not need a residence permit but they do instead need to register their residence (Migri – Residence permit, 2018).

The residence permit can either be temporary or permanent (FINLEX 2004/301 33 §). The first residence permit is always for a fixed-term, which is generally one year (Nykänen et al., 2012, 55; FINLEX 2004/301 53 §). The residence permits are always issued for a particular purpose, such as, for example, working or studying in Finland or on the grounds of international protection. Because of this, the applicants must meet the requirements for the permit she/he is applying for. In general, the family members of person (defined as nuclear family) who reside in Finland by virtue of a residence permit may be issued a residence permit on the basis of family ties. In this case the family must have sufficient income to cover each family member's living expenses (Nykänen et al. 2012, 56–57, 63, 67; FINLEX 2004/301 39 §). Those individuals that have lived in Finland continuously for four years with a continuous residence permit may get a permanent residence permit (Migri – permanent residence permit, 2018; FINLEX 2004/301 56 §). If an EU citizen resides continuously in Finland for five years they receive the right to permanently stay in Finland (Makkonen & Koskeniemi, 2013, 73–74; FINLEX 2004/301 161 g §). Marriage does not automatically grant a residence permit (Säävälä, 2013, 108). The affirmation of a residence permit opens up the Finnish social security system for foreigners, since social security is based on living in Finland permanently (Aer, 2016, 75; FINLEX 1993/1573). In general, the legal position of long-term residents in Finland is fairly strong. A continuous fixed-term residence permit provides its holder with a stronger legal status, including a wider range of rights and freedoms, than that provided by a temporary fixed-term residence permit (Nykänen et al., 2012, 55, 71). A continuous fixed-term residence permit for example provides its holder with a permanent right to work in Finland (FINLEX 2004/301 78 §). Foreigners who reside in

Finland have the right to move freely in the country and to choose their place of residence (Nykänen et al., 2012, 63; FINLEX 731/1999 9 §).

Access to citizenship is a part of the integration process. Having the host country's citizenship can even facilitate integration e.g. by signalling motivation and an intention to stay (OECD, 2017, 84). The basis of Finnish citizenship is in hereditary practices (*ius sanguinis*) (Aer, 2016, 26; FINLEX 731/1999 5§; FINLEX 359/2003 9 §). Finnish citizenship may be applied for after an individual has lived in Finland for a sufficient time. Generally, the past five years without interruption is considered as sufficient time. Other requirements are the knowledge of either one of the official languages¹⁶⁷, integrity, means of support, established identity and fulfilled payment obligations. (FINLEX 359/2003 13 §) The application cost is c. 350-440 euro. Finland accepts multiple citizenship (Migri– Finnish citizenship, 2018; Migri – Citizenship application, 2018; FINLEX 2003/359).

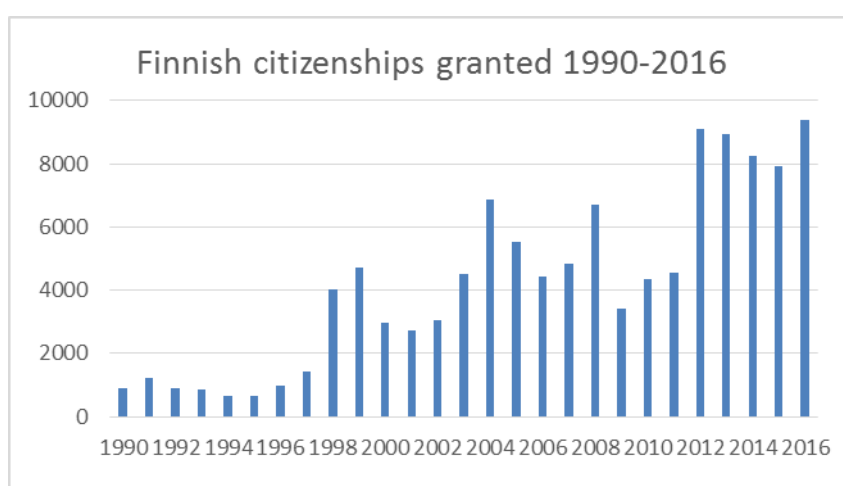


Figure 5.4 Citizenship granted 1990-2016

Source: Statistics Finland

5.4.4 The role of local municipalities, the third sector and NGOs

Associations are an important channel for minorities to bring up and define their own political, cultural and religious traditions (Pyykkönen & Martikainen, 2013, 283). Registered associations have an important recognized position in Finland and Finland has often been called the “Promised Land for associations” in media discourse. The increase in migration in Finland since the 1990's is reflected in the civil society becoming more multicultural (Pirkkalainen, 2015, pp. 52). In Finland, both migrant led associations, non-governmental organizations focusing on migrant issues as well as various religious communities, influencing on the local and the national level, have a significant role in setting the migration policy and in the integration of migrants. Organizations for example help migrants with finding suitable living facilities which can also include e.g. helping with furnishing apartments.

¹⁶⁷ Finnish or Swedish

Organizations have for example provided furniture, toys and clothing to migrants. Organizations also organize activities in migrants' own languages and provide a support person to help with the integration process. The official website of integration support by the Ministry of Economic Affairs and Employment, states that important tasks of organizations in the integration process include supporting and creating interaction, offering peer support and involvement, offering possibilities to have influence, providing information and the sharing of skills (Kotouttaminen.fi –Järjestöjen tuki, 2018). In Finland the official institutions often work together with non-governmental organizations in matters of integration.

Until the 1990's, the rights of migrants in Finland were very limited. This was because basic rights only belonged to Finnish citizens. Due to this, also the freedom of association and freedom of assembly of migrants was limited. The basic rights system of Finland had fallen behind international norms of human rights, which is why in 1995, the regulation on basic rights was reformed (Perusoikeusuudistus 1995; FINLEX HE 309/1993). During this reform, all individuals under Finnish jurisdiction were included and thus received the same rights (FINLEX 731/1999 chapter 2). Only a few differences in the equality of the rights of foreigners and Finnish citizens remained. Such differences are for example the right of only Finnish citizens to vote in national elections. In addition, a few official positions are such that only Finnish citizens can occupy them: e.g. the highest government positions as well as judges and the police (Makkonen & Koskeniemi, 2013, 76). The renewed basic rights were included into the reformed constitution in 2000. After the reform on basic rights, the number of migrant associations increased greatly, simultaneous with the number of migrants generally, and the variety of different groups and the size of the communities also increased (Pyykkönen & Martikainen, 2013, 287).

5.5 The framework legislation on the integration of MRA in the labour market

5.5.1 The national labour standards & fundamental principles of labour law

Finland, in common with the other Nordic countries, is an individualistic market society based on paid labour. An individual's social status is generally not determined by family status, number of children or possessions, but rather by labour market position. (Forsander, 2007, 316.) Finland as part of the Nordic countries has been a free-trading nation with a low level of tariff protection for more than a century (Andersen et al., 2007, 17). There are some common **features that characterise The Nordic labour market** model, such as flexible hiring and firing rules, generous social safety nets and active labour market policies (Ho & Shirono, 2015, 17, 35). Besides these, also strong unions and a collective bargaining system ascribe the Nordic labour and welfare systems. These different factors have led to wage stability, equity and competitiveness. They have however also led to limited cross-sectional wage flexibility, e.g. by reducing the possibilities of adjusting wages to local conditions at the firm level. (Ho & Shirono, 2015, 17, 25.) The Nordic countries have also relied heavily on the IT revolution for their economic growth (Andersen et al., 2007, 58).

In Finland, the ministry of Employment and the Economy is responsible for legislation regarding labour (Ministry of the Employment and the Economy – Labour Legislation, 2018). The most important laws on labour, for individuals in an employment relationship in Finland, are the Employment Contracts Act (FINLEX 55/2001), Working Hours Act (FINLEX

605/1996) and the Annual Holidays Act (FINLEX 162/2005). The most central laws regarding collective labour rights on the other hand are the Collective Agreement Act (FINLEX 436/1946) and the Act on Co-operation within Undertakings (FINLEX 334/2007). The Finnish law on employment, at least in regards to its minimum requirements, applies to all work done in Finland regardless of what the nationality of the employee is. (Ministry of the Employment and the Economy – Report, 2015, 5–6.) When the work is done in Finland the **same laws and labour agreements apply** to both Finnish and foreign employees (Finnish Institute of Occupational Health, 2014, 17).

There are several mandatory regulations in the labour legislation that cannot be breached by a local contract, especially not in such a way that it would be harmful to the employee. All employers must for example comply with the regulations of the **collective labour agreements** (Ministry of the Employment and the Economy– Report, 2015, 5; FINLEX 436/1946.) A collective agreement may be universally binding or normally binding (Occupational Safety and Health Administration, 2017). Each sector follows its own collective agreement and those sectors that do not have their own agreement must follow the nationally applicable and binding agreements of that sector (Ministry of the Employment and the Economy – Report, 2015, 7). Unaffiliated employers are obliged to comply with the universally binding collective agreement for the sector, if there is one, in regards to minimum terms and conditions of employment (Occupational Safety and Health Administration, 2017; FINLEX 55/2001 chapter 2 §7). The government appoints a board which decides which collective agreements are universally binding, based on the overall representativeness of the unions in that sector. (Ministry of the Employment and the Economy – Report, 2015, 7–8.)

The Collective Agreement Act (FINLEX 436/1946) regulates the rights of employers, employer associations and labour unions to negotiate binding agreements on the responsibilities of employees and employers in an employment relationship. Collective agreements establish working time, payment for work, overtime and sickness pay, holidays, and other terms of employment (Finnish Institute of Occupational Health, 2014, 22). A typical feature of the Nordic labour market has been the **uniformity of pay increases** within industries. Instead of negotiating wage adjustments separately in each firm, adjustments are negotiated collectively at the sectoral level. This means that all members of a particular union receive the same wage increase, in relative terms (Andersen, 2007, 105, 120.)

Enforcing compliance with the labour legislation is mostly the responsibility of The Occupational Safety and Health (OSH) authorities. The Occupational Safety and Health are part of OSH Divisions of the Regional State Administrative Agencies, which come under the Ministry of Social Affairs and Health (Ministry of the Employment and the Economy – Labour Legislation, 2018.)

5.5.2 Worker's rights and duties

In Finland, **employees are entitled** to remuneration for their work in accordance with the collective agreement and other minimum provisions. Employees also have the right to join a union and work in a healthy and safe working environment (The Infopankki website – Employee's rights and obligations, 2018; FINLEX 2001/55.) On the other hand, the employee has a **responsibility** to perform her/his work carefully, to observe the agreed-upon working hours and to follow the instruction of the management. Employees must also

keep business and trade secrets and take into account the employer's interests. This means that employees must for example decline to participate in activities which compete with those of the employer (The Infopankki website – Employee's rights and obligations, 2018; FINLEX 2001/55 4 § & 5 §.) Workers are also entitled to receive a written certificate of employment from their employer after their employment has ended (Finnish Institute of Occupational Health, 2014, 66; FINLEX 2001/55 7 §). Workers in Finland are also required to pay taxes (FINLEX 1995/1558).

The law (FINLEX 1996/605) regulates the maximum working time set in the collective labour agreement, which is approximately 8 hours per day or 40 hours per week. The Annual Holidays Act (FINLEX 162/2005) regulates the amount of holidays accrued. (Finnish Institute of Occupational Health, 2014, 55–56).

The employer decided how things are done at the workplace. The most important responsibilities of employers are the responsibility to pay for work, the responsibility to take care of employee's safety (FINLEX 2002/738 8 §) and to treat employees equally (FINLEX 1325/2014) (TE-Office, 2018). The employer cannot order employees to do anything against the law or against generally accepted good customs. The employer must supervise the work that is done in order to ensure safety (Occupational Safety and Health Administration - Rights and responsibilities at work, 2016; FINLEX 2002/738; FINLEX 2001/55 3 §). The employer is also responsible for the prevention of discrimination and for the organization of occupational health services for all employees. This is also the case when there is only one employee at the workplace. Larger workplaces must also have an occupational safety official or an occupational safety committee (Finnish Institute of Occupational Health, 2014, 34–36, 50; FINLEX 2006/44).

The Employment Contracts Act (FINLEX 55/2001) regulates when the employer has the right to terminate employment. The employment contract of a regular employer may only be terminated on pressing grounds. Such pressing grounds are for example a weakened financial situation, an operational restructuring, or violating or not adhering to the obligations set out in the employment contract or the law (Finnish Institute of Occupational Health, 2014, 64).

In Finland, workers are also entitled to many statutory benefits and paid leaves. **The family benefits** in Finland include: maternity leave, special maternity leave, paternity leave, fulltime and part time parental leave, fulltime, part time or temporary nursing leave, the right to take absence due to compelling family reasons and leave to take care of a family member or someone else close (FINLEX 2001/55, chapter 4). The purpose of family related leave is to help employees adjust the responsibilities of working life and family life together. They for example give parents of small children the possibility to stay at home to take care of the child for a certain period of time (Ministry of the Employment and the Economy – Report, 2015, 8). In Finland the sole breadwinner model is not very common due to e.g. fairly high tax rates and price levels combined with a relatively low wage level in occupations demanding expertise (Forsander, 2007, 327). This also has an effect on migrants who may be used to a different livelihood or family model.

5.5.3 Work contract

The framework for work contracts in Finland is set in the Employment Contracts Act (FINLEX 55/2001). Generally, employment contracts in Finland can be freeform documents. The Employment Contracts Act (FINLEX 55/2001), the Working Hours Act (FINLEX 605/1996) and the Annual Holiday Act (FINLEX 162/2005) however restrict the things that can be agreed upon within the contract (Occupational Safety and Health Administration, 2018).

A work contract can be made orally, in written format or electronically (FINLEX 2001/55 3 §). The law states that an employee must also be informed in writing about his/her central working terms (Ministry of Economic Affairs and Employment – Työsopimuslaki, 2017, 6; FINLEX 2001/55 4 §). Work contracts can be made for a fixed-term or indefinite. A fixed-term contract can only be made if there is a justifiable reason, such as for example being employed as a replacement for a certain time or work being seasonal. A fixed term employment contract is binding for both the employer and employee. A fixed term contract may only be ended due to justified substantial cancellation grounds (Ministry of Economic Affairs and Employment – Concluding an employment contract, 2018; FINLEX 2001/55). The minimum age limit for signing an employment contract independently is 15 years (Occupational Safety and Health Administration, 2018; FINLEX 1993/998 2 §).

5.5.4 Trade unions, employers' association regulation and dispute settlements

In Finland about 70 % of employees belong to a **trade union** and 95% of employees work under a collective labour agreement negotiated by a labour union (The Finnish Confederation of Professionals, 2018). The right to join a union is protected legislatively (FINLEX 2001/55, Chapter 13 1 §) and employers cannot treat their employees differently on the basis of union membership (FINLEX 1325/2014 8 §). Trade unions try to improve their members' benefits and rights, wages, job security and quality of working life (The Infopankki website –Trade Unions, 2018). An important task of trade unions is to represent workers in collective labour agreement negotiations. The membership fee for belonging to a trade union is usually c. 1-2 percent of an employee's gross pay (Finnish Institute of Occupational Health, 2014, 22).

Union membership entitles a worker to access to that unions' **unemployment fund** (Finnish Institute of Occupational Health, 2014, 22). The so called "Ghent system" is thus in place, in which unions have responsibility for managing unemployment insurance schemes, which are supplemented by tax subsidies (Andersen, 2007, 106). The union membership and unemployment insurance is voluntary. It is also possible to join a non-union unemployment fund. If an individual is a member of an unemployment fund she/he pays a membership fee to the fund while she/he is employed (The Infopankki website –Trade Unions, 2018). In case of involuntary unemployment, individuals who have been member of an unemployment fund for at least 26 weeks receive an earnings-related unemployment benefit (Finnish Institute of Occupational Health, 2014, 22). A shop steward, who is elected by the workers, represents the trade unions and members the workplace (The Infopankki website –Trade Unions, 2018).

There are three main central trade union confederations. These are the SAK (the Central Organisation of Finnish Trade Unions), STTK (the Finnish Confederation of Professionals) and Akava (the Confederation of Unions for Professional and Managerial Staff in Finland) (The Infopankki website –Trade Unions, 2018).

The shop steward, who is the union representative at the workplace, is generally the first person to go to in case of work disputes. If the disputes have to do with the collective agreement, such as for example the agreement being broken or there are problems with its interpretation, solving the dispute usually begins with negotiations at the workplace. First the matter will try to be solved between employees and employer and if this does not bring a solution the negotiations will continue between the employer and the shop steward representing the trade union. If no solution is found, the matter will be negotiated between the employer and the representing union. If no solution is found, if the matter is related to the collective agreement it can be taken to the Labour Court. If it does not concern the collective agreement it can be taken to public courts for settlement (Expat Finland, 2018).

The system for settling work related disputes is defined in the Act on Mediation in Labour Disputes (1962/420). According to the Act e.g. the National Conciliator's Office must be informed in writing about plans to strike or to extend a strike at least 14 days in advance (The National Conciliator's Office, 2018.) The Ministry of Social Affairs and Health is responsible for steering the national mediation in criminal and civil cases services. Mediation is a free-of-charge public service where volunteer mediators mediate between the parties to a crime or a dispute and assist them in their negotiations (Ministry of Social Affairs and Health, 2018).

5.5.5 The national legislation on access to the labour market

The integration of migrants into the labour market is important considering both their individual life and the public economy of the state. By working migrants earn money to take care of themselves and they participate in funding public services through paying taxes. Employment also provides migrants with networks, social contacts and information about how the society functions (Saukkonen, 2017, 18).

Regulation for work-based migration is set in migration law. To work in Finland, foreign citizens must first have their working rights in order and the employer has the responsibility to check that the foreign citizen has the permit to work in Finland (2004/301 86 a §). The right to work depends on how long the individual intends to stay, what kind of work he/she is coming to perform and what country citizenship he/she has. Nordic citizens, EU-citizens and individuals from Liechtenstein or Switzerland do not need to apply for a special permission to work in Finland (Occupational Safety and Health Administration – Foreign Employee, 2018; FINLEX 2004/301 chapter 5). There are also other excepted groups such as seasonal workers and certain defined professions such as researchers, interpreters, professionals, athletes, etc. (FINLEX 2004/301 79 §). Third country national in general cannot work in Finland without a valid work permit (Aer, 2016, 179).

Individuals who want to move to Finland from the European Union or the European Economic Area (EEA) are not required to apply for a work permit. Third Country Nationals (TCNs), in general, need a residence permit which allows work. There are **specific residence permit applications for certain types of work**. Migrants coming for dependant employment can apply for a *residence permit for an employed persons* and self-employed persons can apply for a *residence permit for Self-employed persons* (FINLEX 2004/301 11 §). To be able to apply for a *residence permit for an employed person*, you must have a confirmed job waiting and your salary must be enough to support you for the entire time that

your residence permit is valid (Migri – Working in Finland, 2018). To get a *residence permit for an employed person* you must register your business with the Trade Register and you must have secure means of support yourself in Finland. Moreover, you must actually work in the business enterprise and the work must be done in Finland. In practice this means that ownership in a company is not sufficient grounds for issuance of a residence permit. (Migri–EnterFinland, 2018.) Even though the workers’ residence permits are in principle the main category issued for employment in Finland, other types of residence permits can be issued for employment (Nykänen et al., 2012, 147). The adequacy of the work agreement and the employer’s ability to function as an employer will be checked, as well as the migrant’s qualifications and his/her possibilities to earn an adequate livelihood (Kyhä, 2011, 27). Families of those that have been granted a residence permit for work may usually apply for a residence permit on the basis of family ties (Migri – Working in Finland, 2018).

For residence permits based on work for third country nationals, the Employment and Economic Development Offices (TE Offices) will estimate whether there is a labour market need for the type of job the migrant is filling (the “**availability test**”) (The Central Organisation of Finnish Trade Unions, 2017; FINLEX 1218/2013 73 §). This availability test is made so that EU and European Economic Area (EEA) citizens have priority to get employed (Nykänen et al., 2012, 140). Albert Mäkelä¹⁶⁸ notes in the expert interview, that the availability policy restricts the possibilities that enterprises have for hiring workers and slows down the process of finding suitable employers. Also Ville Punto¹⁶⁹ brings up that the availability consideration clause is interpreted strictly and that it is actually quite difficult to indicate which sectors need labour and which do not. The availability test is done only for manual labour jobs such as cleaning personnel, chefs, car drivers or construction workers. It does not apply to experts or professionals who receive their residence permits straight from the Finnish Immigration Service without having to go through this process. An estimation of the workforce need always uses a case-by-case approach. Individuals wanting to come from outside of EU or EEA will only receive a working permit if it is estimated that there is not enough domestic workforce in their field (The Central Organisation of Finnish Trade Unions, 2017). The availability consideration has been the subject of controversy.

The Employment and Economic Development Offices (TE-offices) are in practice responsible for the integration of migrants into the labour market at the local level. If found useful, an initial mapping is fulfilled with individual migrants who are not part of the labour force, or who register as job seekers. **Based on the initial mapping an individual integration plan is made** (FINLEX 2010/1386 10 §). The integration plan is not compulsory, neither for employed nor unemployed migrants (FINLEX 2010/1386 11 §). The integration plan can include e.g. language training, internships, education, courses preparing for working life, and career counselling (Eronen et al., 2014, 25). When the new act on public employment and business services (FINLEX 916/2012) came into force in 2013, the employment and business services of Employment and Economic Development Offices (TE Offices) were also reformed (Eronen et al., 2014).

¹⁶⁸ Interview realised 04.05.2018 with Albert Mäkelä, who is a lawyer for the Federation of Finnish Enterprises.

¹⁶⁹ Telephone interview realised 04.05.2018 with Ville Punto, who is a lawyer specialized in residence permits and citizenship issues.

In many OECD countries, the time during asylum procedures actively used to facilitate integration by for example offering applicants language training, skills assessment and labour market preparation (OECD, 2017, 87). An **asylum seeker can work** in Finland three months after arrival if her/his travel documents are in order. This means that asylum seekers must present a valid and authenticated passport or other travel document to the authorities upon arrival. Those asylum seekers that do not have the needed travel documents can start working after five months has passed in Finland (FINLEX 2004/301 79 §). An employed asylum seeker can also apply for a residence permit based on work during the same time that the asylum application is being processed (Ministry of the Interior – FAQ asylum seekers and employment, 2018).

5.5.6 Anti-discriminatory legislation

Whether migrants are treated equally to each other and to the native population has a significant role on their labour market position and integration. In practise, equality on the labour market means that only those kinds of qualities that are meaningful for conducting the work tasks are demanded of the job applicants (Forsander, 2013, 236, 238).

In Finland, the law (FINLEX 1325/2014; FINLEX 2001/55 2 §) demands that **employers must treat their employees equally**, unless there is a reason not to do so. Reasons not to do so include, inter alia, different positions or different tasks (Ministry of the Employment and the Economy –Report, 2015, 7). Also positive discrimination can however be a reason for treating employees differently (Ministry of the Employment and the Economy – Report, 2015, 17). The Non-Discrimination Act (FINLEX 1325/2014), The Act on Equality between Women and Men (FINLEX 1329/2014) and the Employment Contracts Act (FINLEX 55/2001) together regulate the equality and parity of employees (Ministry of Economic Affairs and Employment – Työsopimuslaki, 2017, 13). The Non-Discrimination Act (FINLEX 1325/2014), prohibits discrimination on the basis of age, ethnic or national origin, nationality, language, religion, conviction, opinions, health, disability, sexual orientation or any other personal quality. The Act on Equality between Women and Men (FINLEX 1329/2014) on the other hand prohibits discrimination on the basis of sex. According to the law (1325/2014, Chapter 2, 7 §) all employers must promote equality between women and men in work life and ensure that both sexes have the same opportunities for career progression (Finnish Institute of Occupational Health, 2014, 50). The law also includes a discrimination prohibition and it requires that public officers must advance equality in all their actions (FINLEX 1325/2014, Chapter 2, 5 §). Discrimination has also been criminalized in the criminal law (FINLEX 39/1889).

It is however important to note that integration does not only concern migrants but instead it is a two-ways street in which also the native population has a role. Members of society have an effect on the integration of migrants by their choices regarding e.g. their attitudes, values and use of language (Latomaa et al., 2013, 164). The native population is expected to avoid discrimination and tolerate diversity within the norms of society (Saukkonen, 2013, 86, 93).

5.5.7 Education & recognition of qualifications

According to Andersen (2007) Nordic countries spend more than other countries on active labour market policies such as job intermediation, training and subsidized employment. He

also notes that the active labour market policy investment in recent years has had poor outcomes and their effect on unemployment have been weak. The effects may however be greater for specific groups (Andersen, 2007, 106, 115 –116.)

In Finland, a wide **range of vocational courses as well as language courses** are offered to migrants by municipalities, learning institutes, secondary schools, Non-governmental organization, civil society organizations, employment office and enterprises. Employment offices for example provide migrants with services that will help them develop their vocational skills, move into a new occupation and familiarise themselves with Finnish working life through e.g. work try-outs, and vocational courses (The Employment Office, 2018). Asylum seekers may also take part in comprehensive education in schools and after this they may apply and accept a study place if they meet the general selection criteria (Opintopolku.fi, 2018). Attending comprehensive education is not compulsory for adults. In Finland, all children living in Finland permanently have the liability to participate in compulsory education (FINLEX 1998/628).

In Finland, information about citizen's education is gathered into the **national degree register** ("tutkintorekisteri") (FINLEX 2017/884). This register is however lacking considerable information especially regarding degrees obtained abroad (Saukkonen, 2017, 63; Eronen et al., 2014, 39). Officials get the information about migrant's education only when migrants register at the employment office, when they complete a degree in Finland or when their degrees are officially being recognized (Busk et al., 2016, 32, 51; Eronen et al., 2014, 31). Due to this, in many cases the information about migrant's education never reaches the database since some migrants e.g. are employed directly without the help of officials to take down their information. This might also be the case with student migrants. In the case of refugees on the other hand, their education may not end up in statistics because they have not been able to take their certificates with them. These factors represent inadequacies in the migrant education database (Kyhä, 2011, 36 –38).

The overall **education level of migrants varies** greatly according to their background. In general, refugees and especially refugee women have the lowest level of education. This partly reflects these women's social position and lack of opportunities in their countries of origin (Forsander, 2007, 318). Besides lacking education and recognition of qualifications, the weak labour market position of migrants in Finland is partly also explained by the fact that degrees and knowledge obtained in other countries are often **not easily transferrable** into the labour market. Migrants often face devaluation or lack of recognition of their degrees (Buzdugan & Halli, 2009, 383; Battu & Sloane, 2004, 550; Eronen et al, 2014, 16). Higher education schooling especially seems to be less portable across countries (Friedberg, 2000, 247). Finnish employers have for example been found to value work experience and degrees acquired in Finland the most (Eronen et al., 2014, 16). Therefore, **further attending school in the host country** may better the labour market position of migrants by providing them with e.g. much needed language skills and country specific human capital (Friedberg, 2000, 227).

5.5.8 Institutional challenges & legal instruments to fight informal employment and workers' exploitation

In 2016, the government published a new strategy for preventing the growth of the black economy and financial crime for the years 2016-2020. Traditional areas where the black economy in Finland is thought to be relevant include, in particular, labour intensive sectors that use informal employment, and where there are opportunities for failing to record revenue. Informal employment is curbed by targeted control projects. For example, the tax administration has performed intensified checks in the restaurant sector (Valtioneuvoston periaatepäätös 28.4.2016, 3). Even though Finland ranks highly in governmental transparency and corruption is generally not a big issue, the black economy involves the kinds of exclusive networks that are not openly discussed, and are very difficult to disrupt (Forsander, 2007, 330).

Employers who violate the provisions of the Alien Act relating to employment can receive administrative or criminal sanctions (Nykänen et al., 2012, 151). As Albert Mäkelä¹⁷⁰ brought up in the interview, informal employment and workers' exploitation is fought by giving employers the responsibility to check (2004/301 86 a §) that foreign employees are eligible to work (more on this on page 22). If the employer does not comply with the responsibility to check, on purpose or due to negligence, he or she may be sanctioned. Generally, sanctions punish the employer and not the employee. In some severe cases a foreigner working in Finland without the right to gainful employment, may be fined for violation of the Aliens Act (Nykänen et al., 2012, 153).

5.6 Conclusion

In the concluding chapter, the Finnish national framework's compliance with the European and international standards and the discrepancies between national legislation and practice are discussed. In the end, some national best-practices and policy-recommendations are singled out.

Finland is signatory to most international agreements and legal instruments relating to immigration, free movement, human rights and non-discrimination (Nykänen et al., 2012, 24). Finland has ratified all the fundamental conventions of the International Labour Organization, as well as all of the governance conventions (International Labour Organization, 2018). The ratified conventions include:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
Ratified 20 Jan 1950
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
Ratified 22 Dec 1951
- Forced Labour Convention, 1930 (No. 29);
Ratified 13 Jan 1936

¹⁷⁰ Interview realised 04.05.2018 with Albert Mäkelä, who is a lawyer for the Federation of Finnish Enterprises.

- Abolition of Forced Labour, Convention, 1957 (No. 105);
Ratified 27 May 1960
- Minimum Age Convention, 1973 (No. 138);
Ratified 13 Jan 1976
- Worst Forms of Child Labour Convention, 1999 (No. 182);
Ratified 17 Jan 2000
- Equal Remuneration Convention, 1951 (No. 100);
Ratified 14 Jan 1963
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
Ratified 23 Apr 1970

Finland has not, as of 15.06.2018, ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and members of their Families (18 December 1990). Nor has Finland ratified the Migration for Employment Convention (1949) or the Migrant Workers (Supplementary Provisions) Convention No. 143 (1975). According to former foreign minister Erkki Tuomioja Finland did consider ratifying the UN International Convention on the Protection of the Rights of All Migrant Workers and members of their Families in the 1990's when the convention was passed. Finland did according to him however not ratify the convention because some problematic elements were found in it. Tuomioja notes that the convention does not correspond to a present-day understanding of the reasons for migration or the status of migrants. He also notes that signing the convention would not bring significant new benefit to the realization of migrant workers' rights. (Tuomioja's answer to written question from Member of Parliament Rosa Meriläinen, 2004.) In 2011, the Central Organisation of Finnish Trade Unions (SAK), The Finnish Confederation of Professionals (STTK) and the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) informed that they support the ratification of the UN International Convention on the Protection of the Rights of All Migrant Workers and members of their Families. (Akava, 2011.)

A recent development regarding national compliance with EU standards is related to the Court of Justice of the European Union ruling¹⁷¹ from April 2018. According to the ruling asylum seekers who have arrived as minors retain their right to family reunification even if they turn 18 years old during the asylum processing. The appliance of Finnish migration law has not been compatible with this ruling and the Finnish Immigration Service has stated that the application of the law will change immediately, to comply with the Court of Justice of the European Union's decision. This reflects the precedence of EU legislation compared to national legislation.

Regarding the discrepancies between national legislation and practice, it can be noted that the Finnish legal framework concerning MRAs is for most parts functioning and up to date. The two central acts are the Aliens Act (FINLEX 301/2004) and the Act on the Promotion of Immigrant Integration (FINLEX 1386/2010). The Aliens act functions as the backbone of the general regulation of immigration into Finland and the Act on the Promotion of Immigrant Integration sets the backbone to the way migrants are integrated into Finland. Various

¹⁷¹ Court of Justice of the European Union (CJEU), Case C-550/16 A and S, 12 April 2018

integration measures have constantly been moulded and some aspects have been found more effective than others, which is also reflected in the changes of the integration law. The increased amount of asylum seekers coming to Finland since 2015 has not caused major changes in legislation regarding migration and integration. The interpretation of migrant legislation seems to however have somewhat tightened according to general overview and public opinion. A central cross-cutting aspect of labour market legislation regarding migrants is that when work is done in Finland the same laws and labour agreements apply to both Finnish and foreign employees. Overall, the integration of migrants into the Finnish labour market has not always been very successful. Although there may be some aspects of the Finnish legislation (e.g. the availability tests) that may at times hinder the labour market integration of some migrants it seems that other factors in society may have a larger role in this. It seems that even though urging equality and prohibiting discrimination are taken seriously in the legislation the practical reality may not always respond to the laws in place. No singular major legal obstacles for the integration of migrants into the labour market were identified.

Our analysis suggests that there do not seem to be many discrepancies between national legislation and practice. The expert interviewee Ville Punto however brought up that in some cases the intended purpose of migration law is no longer effective due to e.g. stricter interpretations of the law. He notes that the immigration law in Finland is such that it leaves a lot of room for interpretation and discretion. During the latest “refugee crises” this discretion has according to him been used to push the application of the legislation into a stricter and more migration-restrictive direction. As an example he notes that it is very difficult to bring family members to Finland, if they are not a part of the nuclear family. Although the law offers a possibility to do this, and there are forms for this, in practise these applications very rarely go through.

Also expert interviewee Pirjatanniemi, who is a law professor from Åbo Akademi, notes that the migration law leaves quite a lot of room for interpretations. However, she notes that it is rather complicated to prove that legislation has been pushed into a stricter interpretation and research would be needed to make that case. In an empirical pilot research by Åbo akademi, the Institute for Human Rights at Åbo Akademi University and the Non-Discrimination Ombudsman the changes in decision on international protection were researched. The research focused on decisions made in 2015–2017 on international protection regarding 13-34 years old Iraqi nationals. According to the research the decisions made by the Finnish Immigration Service on international protection became stricter during the researched period. The research report notes that the tightening of decision cannot be explained by changes in the migration law but rather it is explained by stricter decision made by the Finnish Migration Service (Saarikkomäki et al., 2018). The tightening of decision made about asylum has also been discussed in the media and the public opinion of people working with migration issues seems to be of the same opinion. The Migration institute however has denied that the legal protection of migrants, in this case Iraqi migrants, has weakened and that their decisions are not affected by political control or pressure (Interview by the chief director of the Migration Institute Jaana Vuori for the newspaper *Etelä-Suomen sanomat* 22.3.2018). Since the project undertaken by the Åbo Akademi and partners was only a pilot research, this issue is something that should be looked at more specifically and comprehensively. The effect of political pressure is something that has been discussed increasingly since the recent increase in asylum application, not just in Finland but in other European countries as well.

Since this is a serious case of possible decreasing of legal protection it is something that requires further research.

As final remarks it can be noted, following Nykänen et al. (2012), that Finnish legislation on immigration can be characterized by a rather late awakening to the requirements of democratic principles and human right concerns. It reflects modern standards and a pragmatic approach to the needs of society (Nykänen et al., 2012, 20). Finnish compliance with EU regulation is described by the expert interviewees as responsible and in compliance with international and EU standards regarding migration and labour.

During the expert interview Pirjatanniemi maintained that the mechanisms of migration law and administration in Finland are in order. She notes that Finland is a strongly constitutional state that has law-abiding, independent and educated public officials. Issues regarding migration and migrant administration are discussed openly and critically. Open discussion also functions as an instrument of control since officials know that they do not just have to answer to the next instance but also to civil society at large.

According to scholars, the Finnish integration laws and the policies that have followed from them, have been successful. Sarvimäki and Hämäläinen (2008) and the VATT-Research group (2014) for example have found that the changes that were made in 1999 had a positive and significant effect on the integration of migrants into the labour market. They have found that the integration plans have increased participation and that they have decreased the use of social benefits (Hämäläinen & Sarvimäki, 2008, 2, 9). Researchers have attributed the enhancements to the more efficient use of existing resources, since it did not bring any new funds for active labour market policies (Sarvimäki & Hämäläinen, 2016, 480).

Another practice that has been appraised, e.g. by the expert interviewee Punto, is the fact that asylum seekers have the right to work in Finland during their application process after certain time limits (described on page 24). Because of this many asylum seekers can work and live somewhat normal working lives during their application process

This report has provided a general overview on the migration legislation and the legislation on migrants in the labour market in Finland. Based on this the central policy recommendation would be regarding the implementation of the migration legislation. Since migration legislation seems to be mostly up-to date, also according to the expert interviewees, it seems to be more important to do research and possibly change the policies regarding how the legislation is actually implemented. Another point is that, based on earlier research, the reforms that the integration legislation, adopted in the end of the 1990's, brought seem to have had a positive effect on the labour market integration of migrants. Especially the individual integration plans are of interest and could also be considered as a possible policy recommendation for other countries.

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FINLEX 998/1993 Laki nuorista työntekijöistä
<https://www.finlex.fi/fi/laki/ajantasa/1993/19930998>

FINLEX 1558/1995 Laki verotusmenettelystä
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FINLEX 605/1996 Working Hours Act
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FINLEX 55/2001 Employment Contracts Act
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FINLEX 738/2002 Työturvallisuuslaki <https://www.finlex.fi/fi/laki/ajantasa/2002/20020738>

FINLEX 434/2003 Hallintolaki <https://www.finlex.fi/fi/laki/ajantasa/2003/20030434>

FINLEX 359/2003 Nationality Act
https://www.finlex.fi/fi/laki/kaannokset/2003/en20030359_20070974.pdf

FINLEX 301/2004 Ulkomaalaislaki
<https://www.finlex.fi/fi/laki/ajantasa/2004/20040301>

FINLEX 162/2005 Annual Holidays Act
<https://www.finlex.fi/fi/laki/kaannokset/2005/en20050162.pdf>

FINLEX 44/2006 Laki työsuojelun valvonnasta ja työpaikan työsuojeluyhteistoiminnasta.
<https://www.finlex.fi/fi/laki/ajantasa/2006/20060044>

FINLEX 334/2007 Act on Co-operation within Undertakings
<https://www.finlex.fi/fi/laki/ajantasa/2007/20070334>

FINLEX 1386/2010 Act on the Promotion of Immigrant Integration
<https://www.finlex.fi/fi/laki/ajantasa/2010/20101386>

FINLEX 746/2011 Laki kansainvälistä suojelua hakevan vastaanotosta sekä ihmiskaupan uhrin tunnistamisesta ja auttamisesta
<https://www.finlex.fi/fi/laki/ajantasa/2011/20110746>

FINLEX 1218/2013 Laki ulkomaalaislain muuttamisesta
<https://www.finlex.fi/fi/laki/alkup/2013/20131218>

FINLEX 1325/2014 Non-discrimination Act
<https://www.finlex.fi/fi/laki/kaannokset/2014/en20141325.pdf>

FINLEX 1329/2014 Act on Equality between Women and Men
https://www.finlex.fi/fi/laki/kaannokset/1986/en19860609_20160915.pdf

FINLEX 646/2016 Law on Changing the Aliens Act.
<https://www.finlex.fi/fi/laki/alkup/2016/20160646>

FINLEX HE 43/2016 Hallituksen esitys eduskunnalle laiksi ulkomaalaislain muuttamisesta
<https://www.finlex.fi/fi/esitykset/he/2016/20160043>

FINLEX 872/2017 Sisäministeriön asetus Maahanmuuttoviraston suoritteiden maksullisuudesta
<https://www.finlex.fi/fi/laki/alkup/2017/20170872>

FINLEX 884/2017 Laki valtakunnallisista opinto- ja tutkintorekistereistä
<https://www.finlex.fi/fi/laki/ajantasa/2017/20170884>

FINLEX 121/2018 Act on changing the Aliens Act.
<https://www.finlex.fi/fi/laki/alkup/2018/20180121>

Annexes

Annex I: Overview of the legal framework on migration, asylum and international protection

Legislation title (original and English) and number	Date	Type of law	Link/PDF
Hallintolaki 434/2006 Administrative Procedure Act 434/2006	6.6.2003	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2003/20030434
Ulkomaalaislaki 301/2004 Aliens Act 301/2004	30.4.2004	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2004/20040301
Kansalaisuuslaki 359/2003 Nationality Act 359/2003	16.5.2003	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2003/20030359
Valtioneuvoston asetus kansalaisuudesta 293/2013 Government Decree on nationality 293/2013 (unofficial translation)	18.4.2013	regulation	https://www.finlex.fi/fi/laki/ajantasa/2013/20130293
Laki ulkomaalaisrekisteristä 1270/1997 Aliens' register Act 1270/1997 (unofficial translation))	19.12.1997	legislative act	https://www.finlex.fi/fi/laki/ajantasa/1997/19971270
Laki kotoutumisen edistämisestä 1386/2010 Act on the Promotion of Immigrant Integration 1386/2010	30.12.2010	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2010/20101386
Laki Maahanmuuttovirastosta 156/1995 Act on Immigration Service 156/1995 (unofficial)	3.2.1995	legislative act	https://www.finlex.fi/fi/laki/ajantasa/1995/19950156
Valtioneuvoston asetus Maahanmuuttovirastosta 193/2002	13.3.2002	regulation	https://www.finlex.fi/fi/laki/ajantasa/2002/20020193

Government Decree on Immigration Service 193/2002 (unofficial translation)	2		0020193
Laki kansainvälistä suojelua hakevan vastaanotosta sekä ihmiskaupan uhrin tunnistamisesta ja auttamisesta 746/2011 Act on the reception of individuals in need on international protection and on the recognition and helping of victims of human trafficking 746/2011 (unofficial translation)	17.6.2011	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2011/20110746
Laki säilöön otettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköstä 116/2002 Act on the treatment of foreigners in detention and on Detention Centres 116/2002 (unofficial translation)	15.2.2002	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2002/20020116
Yhdenvertaisuuslaki 1325/2014 Non-discrimination Act 1325/2014	30.12.2014	legislative act	https://www.finlex.fi/fi/laki/alkup/2014/20141325
Laki yhdenvertaisuusvaltuutetusta 1326/2014 Act on Non-Discrimination Ombudsman 1326/2014 (unofficial translation)	30.12.2014	legislative act	https://www.finlex.fi/fi/laki/alkup/2014/20141326
Laki yhdenvertaisuus- ja tasa-arvolautakunnasta 1327/2014 Act on National Non-Discrimination and Equality Tribunal of Finland 1327/2014 (unofficial translation)	30.12.2014	legislative act	https://www.finlex.fi/fi/laki/alkup/2014/20141327
Laki kolmansien maiden kansalaisten maahantulon ja oleskelun edellytyksistä kausityöntekijöinä työskentelyä varten 907/2017 Act on Third Country Nationals Entry and Residence Conditions for Seasonal Work 907/2017 (unofficial translation)	14.12.2017	legislative act	https://www.finlex.fi/fi/laki/alkup/2017/20170907
Laki kolmansien maiden kansalaisten maahantulon ja oleskelun edellytyksistä yrityksen sisäisen siirron yhteydessä 908/2017 Act on Third Country Nationals Entry and Residence Conditions Related to Intra-Company Transfers 908/2017 (unofficial translation)	14.12.2017	legislative act	https://www.finlex.fi/fi/laki/alkup/2017/20170908

Sisäministeriön asetus Maahanmuuttoviraston suoritteiden maksullisuudesta 872/2017 Ministry of the Interior's Decree on the Remunerativeness of Services by the Immigration Service 872/2017 (unofficial translation)	14.12.2017	regulation	https://www.finlex.fi/fi/laki/alkup/2017/20170872
Laki asumiseen perustuvan sosiaaliturvalainsäädännön soveltamisesta 1573/1993 Act on the Application of Residence-Based Social Security Legislation 1573/1993	30.12.1993	legislative act	https://www.finlex.fi/fi/laki/ajantasa/1993/19931573
Valtioneuvoston asetus ilman huoltajaa olevan lapsen edustajalle maksettavasta palkkiosta ja kulukorvauksesta 115/2012 Government Decree on the Payment of Reward and Expenditure allowance for the Representative of a Child without Custodian 115/2012 (unofficial translation)	1.3.2012	regulation	https://www.finlex.fi/fi/laki/ajantasa/2012/20120120115
Laki ulkomaalaislain muuttamisesta 121/2018 Act on changing the Aliens Act 121/2018 (unofficial translation)	30.1.2018	legislative act	https://www.finlex.fi/fi/laki/alkup/2018/20180121
Laki ulkomaalaislain muuttamisesta 1218/2013 Act on changing the Aliens Act 1218/2013 (unofficial translation)	30.12.2013	Legislative act	https://www.finlex.fi/fi/laki/alkup/2013/20131218

List partly based on:

Migri, legislation, 2018: <http://migri.fi/lainsaadanto>

Faktaa maahanmuutosta, 2018: <https://www.maahanmuutto.net/5>

Sisäministeriö, 2018: <http://intermin.fi/maahanmuutto/lainsaadanto>

Nykänen et al., 2012 pp. 21

Annex II: List of institution involved in the migration governance

Institution	Tier of government	Type of institution	Area of competence in the field of MRAA	Link
Ministry of the Interior (Migration Department)	Ministry	Ministry	Immigration policy is directed by the Minister of the Interior in accordance with the guidelines laid down by the Government. Drafting legislation on migration, guides and develops the immigration administration, performance management of the Finnish Immigration Service	http://intermin.fi/en/areas-of-expertise/migration
Ministry of Economic Affairs and Employment	Ministry	Ministry	Responsible for the integration of immigrants, integration legislation and promotion of employment among immigrants	https://tem.fi/en/integration-of-immigrants
Ministry of Education and Culture	Ministry	Ministry	Migrant's education	http://minedu.fi/en/frontpage
Ministry of Foreign Affairs	Ministry	Ministry	Reception of visas and residence permits	http://formin.finland.fi/public/default.aspx?culture=en-US&contentlan=2
Ministry of Social Affairs and Health	Ministry	Ministry	Taking care of basic security, health and wellbeing of migrants	http://stm.fi/en/frontpage
Finnish National	Under the Ministry of	National	Education serves for migrants	http://www.oph.fi/english

Agency for Education	Education and Culture	Agency		
Centres for Economic Development, Transport and Environment (15 x ELY-centers)	Under the Ministry of Employment and the Economy	National Agency	Regional implementation and development tasks of the central government, integration, placement of quota refugees and asylum seekers who have been granted a residence permit into municipalities.	https://www.ely-keskus.fi/en/web/ely-en/frontpage
Finnish Embassies	Under the Ministry of Foreign Affairs	Network of 90 offices	Reception of applications and proof of identity abroad	http://formin.finland.fi/public/default.aspx?nodeid=49529&contentlan=2&culture=en-US
Employment and Economic Development Offices (TE Offices)	Under the Ely-centers and thus under the Ministry of Employment and the Economy	15 local TE Offices with c. 120 branches	A selection of services to support jobseeking of migrants and offers early phase integration services: guidance and advice for immigrants, an initial assessment, an integration plan & integration training	http://www.te-palvelut.fi/te/en/index.html
The Finnish Border Guard	Under the Ministry of the Interior	Internal security agency	Guard Finland's borders on land and at sea, carry out border checks on persons at land border crossing points, ports and airports, and perform search and rescue operations, particularly at sea	https://www.raja.fi

Police	Under the Ministry of the Interior	Police	Prevention of illegal immigration, surveillance of aliens and dealing with detected illegal immigrants and asylum-seekers, removal of aliens refused entry and deportations.	https://www.poliisi.fi
Finnish Immigration Service	Under the Ministry of the Interior	National Agency	Grants residence permits to foreign nationals entering Finland, registers the right of residence of EU citizens, processes asylum applications, steers and plans the practical reception of asylum seekers, issues alien's passports and refugee travel documents, decides on refusals of entry and deportations, processes citizenship applications, maintains the Register of Aliens, produces information services for international needs and for Finnish decision-makers and authorities	http://migri.fi/en/home
Municipalities	Self-government autonomy, Ministry of Finance monitors the activities and the finances of municipalities in general	311 municipalities	Implement the official state policies set by the central government	http://vm.fi/en/municipal-structure

Non-Discrimination Ombudsman	Autonomous	Independent authority	The task of the Non-Discrimination Ombudsman is to promote equality and to prevent discrimination. The Ombudsman works for groups at risk of discrimination, such as foreign nationals. The Ombudsman further supervises the removal from the country of foreign nationals and is the National Rapporteur on Trafficking in Human Beings.	https://www.syrjinta.fi/web/en/ombudsman
National Non-Discrimination and Equality Tribunal of Finland	Impartial and independent judicial body appointed by the Government	Tribunal	Monitors compliance with both the Non-Discrimination Act and the Equality Act	http://yvtltk.fi/en/index.html
Administrative court, Supreme Administrative Court	Independent courts	Court	Decision on migration can be appeal to administrative courts	https://oikeus.fi/tuomioistuimet/hallinto-oikeudet/en/index.html

Partly based on:

Makkonen & Koskeniemi, 2013 Muuttoliikkeen ja maahanmuuttajien aseman oikeudellinen sääntely

Faktaa maahanmuutosta, 2018: <https://www.maahanmuutto.net/4>

Maahanmuuttoviraston tehtävät ja maahanmuuttoasioiden tehtäväjako <http://migri.fi/maahanmuuttoasioiden-vastuunjako>

Annex III: Overview of the legal framework on labour and anti-discrimination law

Legislation title (original and English) and number	Date	Type of law	Link/PDF
Henkilöstörahasolaki 934/2010 Act on Personnel Funds	5.11.2010	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2010/20100934
Laki henkilöstöedustuksesta eurooppayhtiössä (SE) ja eurooppaosuuskunnassa (SCE) 758/2004 Act on Employee Involvement in European Companies	13.8.2004	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2004/20040758
Laki henkilöstön edustuksesta yritysten hallinnossa 725/1990 Act on Personnel Representation in the Administration of Undertakings	24.8.1990	legislative act	https://www.finlex.fi/fi/laki/ajantasa/1990/19900725
Laki itsenäisyyspäivän viettämisestä yleisenä juhla- ja vapaapäivänä 388/1937 Act on celebrating Independence Day as a national Holiday (unofficial translation)	26.11.1937	legislative act	https://www.finlex.fi/fi/laki/ajantasa/1937/19370388
Laki koulutuksen korvaamisesta 1140/2013 Act on Compensations for Training	20.12.2013	legislative act	https://www.finlex.fi/fi/laki/alkup/2013/20131140
Laki laivaväen luetteloinnista 1360/2006 Act on Registering of Ship's Crew	22.12.2006	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2006/20061360
Laki lasten kanssa työskentelevien rikostaustan selvittämisestä 504/2002 Act on checking the criminal background of persons working with children	14.6.2002	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2002/20020504
Laki maanpuolustusvelvollisuutta täyttävän työ- ja virkasuhteen jatkumisesta 305/2009 Act on the Continuation of Contractual and Public-Service Employment Relationships of People Fulfilling Their National Defence Obligation	8.5.2009	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2009/20090305
Laki nuorista työntekijöistä 998/1993 Young Workers' Act	19.11.1993	legislative act	https://www.finlex.fi/fi/laki/ajantasa/1993/19930998
Laki suoran lisäeläkejärjestelyn turvaamisesta työnantajan maksukyvyttömyyden varalta 209/2015 Act on Safeguarding Direct Pension Promises in the Event of Employer Insolvency	6.3.2015	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2015/20150209

Lakitaloudellisesti tuetusta ammatillisen osaamisen kehittämisestä 1136/2013 Act on Financially-Supported Development on Professional Skills	20.12.2013	legislative act	https://www.finlex.fi/fi/laki/alkup/2013/20131136
Laki tilaajan selvitysvelvollisuudesta ja vastuusta ulkopuolista työvoimaa käytettäessä 1233/2006 Act on the Contractor's Obligations and Liability when Work is Contracted Out	22.12.2006	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2006/20061233
Laki työajasta kotimaanliikenteen aluksissa 248/1982 Act on Working Hours on Vessels in Domestic Traffic	26.3.1982	legislative act	https://www.finlex.fi/fi/laki/ajantasa/1982/19820248
Laki työehtosopimuksen yleissitovuuden vahvistamisesta 56/2001 Act on Confirmation of the General Applicability of Collective Agreements	26.1.2001	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2001/20010056
Laki työneuvostosta ja eräistä työsuojelun poikkeusluvista 400/2004	19.5.2004	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2004/20040400
Lakityöntekijöiden lähettämisestä 447/2016 Act on the Labour Council and Derogation Permits Concerning Labour Protection	17.6.2016	legislative act	https://www.finlex.fi/fi/laki/alkup/2016/20160447
Laki työriitojen sovittelusta 420/1962 Act on Mediation in Labour Disputes	27.7.1962	legislative act	https://www.finlex.fi/fi/laki/ajantasa/1962/19620420
Laki valtion varoista korvattavista merimiesten matkakustannuksista 1068/2013 Act on Compensation for Seamen's Travel Expenses from State Funds (unofficial translation)	20.12.2013	legislative act	https://www.finlex.fi/fi/laki/alkup/2013/20131068
Laki vapunpäivän järjestämisestä työntekijäin vapaapäiväksi eräissä tapauksissa 272/1944 Act on Celebrating First of May as a Day off for Employees in some occasions (unofficial translation)	27.4.1944	legislative act	https://www.edilex.fi/lainsaadanto/19440272
Laki yhteistoiminnasta suomalaisissa ja yhteisönlaajuisissa yritysryhmissä 335/2007 Act on Co-operation within Finnish and Community-wide Groups of Undertakings	30.3.2007	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2007/20070335
Laki yhteistoiminnasta yrityksissä 334/2007 Act on Co-operation within Undertakings	30.3.2007	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2007/20070334
Lakiyhteistoiminta-asiamiehestä 216/2010 Act on Cooperation Ombudsman	30.3.2010	legislative act	https://www.finlex.fi/fi/laki/alkup/2010/20100216
Laki yksityisyyden suojasta työelämässä 759/2004 Act on the Protection of Privacy in Working Life	13.8.2014	legislative act	https://www.finlex.fi/fi/laki/ajantasa/2004/20040759
Laki leipomotyölain muuttamisesta 916/1993 Act on changing the Bakery work law (unofficial translation)	5.11.1993	legislative act	https://www.finlex.fi/fi/laki/alkup/1993/19930916

Merityösopimuslaki 756/2011 Seafarers' Employment Contracts Act	17.6.2011	legislativ e act	https://www.finlex.fi/fi/laki/alkup/2011/20110756
Merimiespalvelulaki 447/2017 Seamen's Service Act	13.4.2017	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/2007/20070447
Merimiesten palkkaturvalaki 1108/2000 Seamen's Pay Security Act	15.12.2000	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/2000/20001108
Merimiesten vuosilomalaki 433/1984 Seamen's Annual Holidays Act	1.6.1984	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/1982/19840433
Merityöaikalaki 296/1976 Seamen's Working Hours Act	9.4.1976	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/1976/19760296
Opintovapaalaki 273/1979 Study Leave Act	9.3.1979	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/1979/19790273
Palkkaturvalaki 866/1998 Pay Security Act	27.11.1998	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/1998/19980866
Työaikalaki 605/1996 Working Hours Act	9.8.1996	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/1996/19960605
Työehtosopimuslaki 436/1946 Collective Agreements Act	7.6.1946	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/1946/19460436
Työsopimuslaki 55/2001 Employment Contracts Act	26.1.2001	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/2001/20010055
Vuosilomalaki 162/2005 Annual Holidays Act	18.3.2005	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/2005/20050162
Vuorotteluvapaalaki 1305/2002 Act on Job Alternation Leave	30.12.2002	legislativ e act	https://www.finlex.fi/fi/laki/ajantasa/2002/20021305
Yhdenvertaisuuslaki 1325/2014 Non-discrimination Act	30.12.2014	legislativ e act	https://www.finlex.fi/fi/laki/alkup/2014/20141325
Laki naisten ja miesten välisestä tasa-arvosta annetun lain muuttamisesta 1329/2014 Act on Equality between Women and Men	30.12.2014	legislativ e act	https://www.finlex.fi/fi/laki/alkup/2014/20141329

List largely based on list provided by the Ministry of Economic Affairs and Employment, 2018:

<http://tem.fi/tyolainsaadanto2>

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6. Greece

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Acknowledgements

The authors would like to thank Maria Sitara for collecting and analyzing the bibliography and statistical data used in the report and for her contribution to previous versions of the report.

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6.1 Statistics and data overview

2014-2016 was a period of significant transformations in the migratory landscape of Greece. The overall migration crisis, mainly related to war refugees, has modified the role of Greece as a migrant-receiving country. Immigration, either in terms of transit or of settled immigrants, has become a major policy issue; additionally, it has mobilized national authorities, international bodies as well as formal and informal civil society organizations.

Around 1.1 million third-country nationals arrived in Greece during the 2014-2016 period, almost 850,000 in the year 2015 alone (IOM 2017, 2016, 2015; Kotzamanis and Karkouli 2016; Ministry of Citizen Protection 2018; UNHCR 2018a, b). Arrivals were mainly composed of males (more than 70%) and of young persons (6 out of 10 were aged between 18 and 33 years), mainly originating from Syria (54%), Afghanistan (24%) and Iraq (11%). They crossed the sea borders between Greece and Turkey with the objective of reaching other EU countries. According to UNHCR (2018b) only 50,000¹⁷² remained in Greece as of December 2017, whereas there had been 64,000 in the country in December 2016. At the same time, non-EU 28 immigration flows (people entering and remaining in Greece for at least one year) are estimated at 100,500 for the entire 2014-2016 period (EL.STAT. 2018a).

An increasing number of non-EU citizens has been refused entry at the external borders. During the overall three-year period, 31,500 persons were refused entry to Greece, with the figures shifting from 6,500 in 2014 to 18,000 in 2016 (Eurostat 2018a). Nearly 77% of them originated from Albania, 6% from Turkey and 4% from FYROM.

¹⁷² 35,200 persons arrived in Greece during the year 2017 (UNHCR 2018a).

Over the same period, due to the longstanding economic recession, outflow migration has continued to persist. Thus, more than 120,000 non-EU nationals left the country over the years 2014 to 2016 (EL.STAT. 2018a; Eurostat 2018b).¹⁷³ Consequently, a negative net migration of around 20,000 persons from non-EU 28 countries has been estimated for the whole period, although figures for the year 2016 alone indicate a positive net migration of 30,000 persons. Despite the lack of reliable estimations by citizenship, it seems that the negative migration balance is mainly related to the return migration of people from Albania, Ukraine, Moldova and Russia (EL.STAT. 2013).

Estimations relative to stocks of migrants, based either on citizenship or on country of birth (EL.STAT. 2018c, d) indicate a downward trend in the total number of non-EU citizens or of persons born in a third country. Thus, between 2014 and 2016, the non-EU citizen population decreased from 660,000 to 590,000, whereas the foreign-born non-EU population fell from 925,000 to 870,000. Although detailed data by citizenship or country of birth are not available for the period under examination, it can be said that, although Albanians remain the dominant migration group among the non-EU citizens,¹⁷⁴ the number of Syrians and, to a lesser extent, that of Afghans has most likely increased. By taking into account the number of asylum applications (see below) and the results of the 2011 census (Bagavos 2015), one can argue that the percentages of immigrants originating from Pakistan, Syria and Afghanistan in the total non-EU population in Greece could be quite close to 7% for the two first countries and to 3% for Afghanistan in 2016.

As for legal migration, the number of residence permits steadily increased from 540,000 in 2014 to 585,000 in 2016 (Eurostat 2018c; Ministry of Migration 2018a), partly because of a similar trend in the number of first residence permits (from 22,500 to 44,000 between 2014 and 2016). Over the entire 2014-2016 period, 43% of the total number of permits was granted for family reasons, a figure which is quite close to that of “other” reasons, with long-term residence permits accounting for more than 30% of the total permits; the percentage of remuneration activities as the reason for a residence permit was only 13% and that of education was less than 0.5%. Residence permits were largely granted to persons aged between 35 and 49 years (46% of the total) and with slightly more going to men (52%) than to women (48%). Moreover, 70% of the total number of permits were issued to migrants from Albania, whereas for the next 7 countries of citizenship the percentages ranged from 2% (Philippines) to 3.5% (Ukraine).

Following the migration crisis, the number of asylum applications rose significantly over the 2014-2016 period (Eurostat 2018d; Ministry of Migration 2018b). From 9,400 in 2014 and 13,000 in 2015, it reached a level of approximately 51,000 in 2016. Over the whole period under examination, almost 7 out of 10 applicants were males. In addition, they were largely concentrated in the 18-34 age group (48% of the total). It is also worth noting that the percentage of applicants aged less than 14 years steadily rose over time (from 7.4% in 2014 to 29% in 2016). For the whole period, applications by people from seven countries of

¹⁷³ Data on immigration and emigration flows must be interpreted with caution, since they are mainly based on estimates rather than on administrative data regarding exits from and entries to the country.

¹⁷⁴ In 2011, Albanians accounted for 68% of the total non-EU population.

citizenship accounted for more than 80% of the total number of applications. The largest majority consists of people originating from Syria (42%), followed by migrants from Pakistan (11%), Afghanistan (10.6%), Iraq (7.7%), Albania (4.1%), Bangladesh (3.5%) and Iran (2.3%).

There has also been an increase in the total number of decisions made on asylum applications (Ministry of Migration 2018b). Thus, the number of first instance decisions increased from 8,500 in 2014 to 12,800 in 2015 and to 26,900 in 2016. However, although decisions in substance have also risen, they accounted for a gradually decreasing proportion of the number of total decisions (from 70% in 2014 to 35% in 2016). A total number of 8,500 positive decisions was registered over the three-year period; around 87% involved the granting of refugee status and the remaining 13% of subsidiary protection status. Recognition rates¹⁷⁵ varied from 29% to 47% and to 29% in 2014, 2015 and 2016 respectively (around 35.5% for the whole period). Moreover, recognition rates are closely related to citizenship (Ministry of Migration 2018b): they are the highest for applicants originating from Syria (almost 100%), Palestine (95%) and Eritrea (85.7%) and the lowest for those from Georgia (0%), Albania (0.2%) and Pakistan (2.4%).

Last, there was a significant number of 68,000 expulsions of third-country nationals in the 2014-2016 period (Ministry of Citizen Protection 2018). This figure is much lower than the number of third-country nationals who were ordered to leave (approximately 212,000, Eurostat 2018e). The largest proportions of expulsions concern Albanians (63.5%) and migrants originating from Pakistan (10%).

6.2 The socio-economic, political and cultural context

Greece, historically seen as a typical emigration country, experienced two significant periods of outward migration: the first one took place in the early 20th century (1900-1920) and the second one extended from the end of World War II to the first half of the 1970s (Bagavos 2015; Hassiotis 1993; Lazaretou 2016). The United States were by far the main destination country over the first period whereas in the second period the largest majority of emigrants moved to the Federal Republic of Germany. Between 1900 and 1920 around 400,000 people emigrated abroad; during 1955-1975 the figure was almost 1.2 million (Bagavos 2015).

The 1990s mark a turning point in the history of Greek migration since the country had by this period clearly transformed from an emigration to an immigration country. Although the second half of the 1970s and the whole of the 1980s can be considered as the starting period of migration inflows to Greece,¹⁷⁶ the last decade of the 20th century is marked by the unprecedented immigration waves of foreigners coming mainly from the Balkans and to a lesser extent from Asian countries. Consequently, the foreign population increased substantially from 167,000 to 760,000 between 1991 and 2001 (Bagavos 2015) and the share of foreigners went from 1.6% to 7% (from 1% to 5.9% for third-country nationals).

¹⁷⁵ Calculated on the basis of the sole decisions in substance.

¹⁷⁶ The immigration of that period was composed of Greek citizens, especially returning emigrants from the post-World War II period and repatriated Greeks from the ex-Soviet Union and Eastern Europe as well as of foreign immigrants, in particular from the Philippines, Egypt and Pakistan.

From the beginning of the 21st century to the onset of the economic recession (2009-2010) Greece continued to be a net immigration country (ELSTAT 2013; Eurostat 2018f). However, economic hardship has radically changed the migration landscape of the country; adverse economic conditions caused a new phase of emigration for both Greek and non-Greek citizens and outward flows were barely counterbalanced by inflows due to the recent refugee crisis. In practice, this third phase of emigration (Cavounidis 2015; Lasaretou 2016) differs from the previous two in terms of the age composition, the educational level and the professional experience of the emigrants¹⁷⁷ (Lambrianidis and Pratsinakis 2016; Triantafylidou and Mantanika 2016). In addition, outflows largely concern the non-citizen population as well. Estimations for the period 2010-2015 indicate that around 320,000 Greek and 290,000 non-Greek citizens left the country and that over 70% of the non-Greek emigrants were third-country nationals (Bagavos 2018; Eurostat 2018b). Despite the concerns about the recent Greek “brain drain”, immigration and the settlement of third-country nationals remain major topics on the policy agenda.

One significant feature of the foreign population in Greece is that foreign citizens are more concentrated than Greeks in urban areas (ELSTAT 2014a). In particular, for third-country nationals the percentages of the population living in urban areas vary between 72% and 98% for those originating from India and the Philippines respectively. In terms of distribution in regional administrative units, foreigners are overrepresented in comparison to Greeks in the island regions, in particular in the Northern Aegean, Crete and the Ionian Islands and in mainland regions such as Attica and Peloponnesus (ELSTAT 2014b). By contrast, they are significantly underrepresented in the region of Eastern Macedonia and Thrace as well as in that of Western Macedonia.

After the restoration of democracy in 1974, Greece enjoyed a long period of political normality. The political options were dominated by the centre-right and centre-left parties, who rotated power between them and consolidated a bipartisan political system. This reproduction of the political system was accompanied by a lack of political consensus and strong party polarization (Vernardakis 2011). Political stability and the economic revival of the period led to remarkable social development, especially after 1980 (increase in employment and wages, establishment of the National Health System, democratization of higher education, etc.) (Petmesidou and Mossialos 2006). This development was marked by the phenomenon of the corporate influence wielded by various occupational groups through the system of political power and practices of clientelism in the distribution of social benefits (Venieris 2013). Furthermore, the rise in social spending coexisted with high poverty and social exclusion rates, a fact that highlighted the inefficiency of the social administration system in redistributing resources (Papatheodorou and Papanastasiou 2010). State inadequacies in the provision of social protection were over time replaced by forms of informal solidarity centred on the institution of the family (Petmesidou 1996).

¹⁷⁷The current crisis-driven emigration shows that the brain drain has acquired great momentum in the past few years. According to Lambrianidis and Pratsinakis (2016) more than half of the total outflow of professionals recorded in the post war period took place after 2010 and over two out of three of the post-2010 emigrants are university graduates. In addition, one fourth quarter of the total outflow is comprised of people who hold postgraduate degrees or are graduates of medical and polytechnic schools.

In the early 1990s, Greece became a pole of attraction for mass migratory and later of refugee flows. The transformation of the country from a sending to a migration receiving country raised issues on the socio-economic integration of migrant population (Bagavos and Papadopoulou 2006) and resulted in the manifestation of racism and xenophobia within Greek society. Such phenomena are reinforced by stereotypical depictions of the 'immigrant-criminal' that appear in the dominant mass media (Karydis 1996). Within the political program of Europeanization that was implemented in the period 1996-2004, the integration of immigrants into Greek society has evolved with difficulties. The first institutional initiatives on the legal residence of migrants developed during this period. These initiatives required immigrants to pay insurance contributions in order to ensure their legal residence. By 2010, however, there had been substantial progress in building bonds with Greece for most of the migrant population (Hellenic League for Human Rights 2012).

The economic crisis and the increase in unemployment rates (Eurostat 2018g) are being used as a pretext for fomenting opposition to economic migrants by far-right organizations. The Neo-Nazi Golden Dawn party has found political support among the disappointed voters of the two traditional government parties (PASOK and New Democracy) (Psarras 2012). In the 2012 elections Golden Dawn managed to obtain a parliamentary share of 6.97%. The murder of young Pakistani worker Shahjad Lukman by members of Golden Dawn in 2013 is a telling example of the many acts of aggression that Golden Dawn systematically commits against immigrants and refugees.

The inability to implement policies that could manage the increased refugee flows since 2014 has strengthened the racist speech of extreme-right groups. However, in a direct contrast to this, an unprecedented wave of solidarity from local communities, left-wing collectives, NGOs, and a part of the Church has embraced refugees in the Aegean islands and the port of Piraeus. This is perhaps the first major manifestation of solidarity by Greek civil society, which in past decades was particularly weak (Sotiropoulos 2017). The solidarity shown by civil society provided valuable support to refugees when the Greek state was in the throes of the economic and refugee crises. According to the findings of the EU 2020 project TransSOL (2018), the debate over solidarity with refugees is dominated by political representatives, who at the same time were less supportive. Civil society actors, in contrast, are less visible but are promoters of solidarity with refugees.

6.3 Constitutional organization of the state and constitutional principles on immigration, asylum and labour

6.3.1 Constitutional principles of the state

According to Article 1 of the Constitution of Greece (Greek Parliament 2008) the country's form of government is that of a parliamentary republic. The separation of powers (legislative, executive and judicial) is a fundamental principle of government that is to be found in all Greek constitutions since the first one of 1844 as well as in the latest revision of 2008.

Executive power is exercised by the government and the President of the Republic, although the concentration of power in the head of government, i.e. the prime minister, is a general trend, which characterizes the functioning of this system of government (Mavrias

2014). The government, the highest collective body of the state, is responsible for the implementation of the general policy of the country. The prime minister has the authority to appoint and dismiss the ministers, who are obligated to follow his or her lead, either to ensure that all government policy is implemented or to apply the decisions of the cabinet on a specific issue that may have arisen (Mavrias 2014).

Legislative power is exercised by parliament and by the President of the Republic. It is the office of the President of the Republic that issues and publishes the laws that have been passed by the parliament within one month of the vote. Furthermore, the President of the Republic has the authority to reject a proposed legislation that has been voted by parliament, detailing the reasons for this action. According to Article 73 of the Constitution the right to introduce Bills belongs to the government and the parliament.

The independence of judicial power is also provided for by the Constitution. In this respect, justice derives from the courts of law which are comprised of regular judges who have functional and personal independence. As is clearly stated in Article 87, the judges during their exercise of their duties are subject exclusively to the principles of the Constitution and the law.

6.3.2 Powers and functions of the different tiers of government as regards migration and asylum

The policy on migration and asylum procedures is exercised mainly at a centralized level apart from few decentralized institutions (for more information on the institutional aspects of immigration, see Section 4). The Ministry of Migration Policy is mostly responsible for Greek migration policy, in particular for those aspects relating to legal migration and to refugee and asylum management. Issues relating to the acquisition of citizenship fall under the Ministry of Interior. The mass arrival of refugee and asylum applicants required, however, the establishment of autonomous structures (such as the Asylum Service and the Appeals Authority), which report directly to the Minister of Migration Policy. Decentralization of the functions relating to migration and asylum is not the rule but rather the exception. Thus, the Aliens and Immigration Departments at the Decentralized Administrations lodged the applications for residence permits through the one-stop service. In addition, regional Asylum Offices and Asylum Units, operating under the supervision of the Central Asylum Service, are fundamental instruments for the effective management of asylum. But, as the refugee crisis persists the views that call for more decentralized actions for migration management, through Municipalities, Regions and Decentralized Administrations, are, however, becoming more important.¹⁷⁸

¹⁷⁸ In this context the local authorities are undertaking more responsibilities. Specifically, in 2016 the Municipality of Athens was the first local authority to intervene and take action through the “ESTIA” programme, which is implemented with the UNHCR and is funded by the European Union and the European Civil Protection and Humanitarian Aid Operations. The ESTIA program provides accommodation to asylum seekers and refugees. As of 2 May 2018, 24,494 places of accommodation have been created (UNHCR 2018c). An increasing number of municipalities operates the ESTIA programme, including the municipalities of Thessaloniki, Livadia, Nea Filadelfia, Trikeon, Larissa, Karditsa and four municipalities in Crete.

6.3.3 Constitutional principles on migration and labour

The constitutional organization of the state strengthens some of the fundamental rights that apply to every person irrespective of nationality, age or other distinction. These rights consist of the Bill of Human Rights and they refer not only to Greek nationals but also to migrants. According to Article 5 of the Constitution every person who is on Greek territory has the right to the absolute protection of his or her life, honour and freedom without any discrimination regarding nationality, race or language and religious or political beliefs. The value of labour is also a fundamental principle. The right to work is constitutionally protected by Article 22 and constitutes a more narrowly defined facet of the general principle of economic freedom. Moreover, there is no recognition of the right to asylum as such in the Greek constitution. However, the legal system has elaborated such a legal status through compliance with international conventions and the ordinary legislation (see below sections 4 and 5).

6.3.4 Case law and protection of labour rights

Legal provisions on the protection of the labour rights of immigrants are closely related to both common labour law and migration law. In this respect, the national legal system in Greece follows the “protection with consequences approach”¹⁷⁹ which sets common objectives in labour and migration laws and protects the immigration law at the expense of the objectives of labour law (Dewhurst 2014). This approach was introduced by the judicial system as a result of case law (Dewhurst 2014, Tziliavakis 2007). The Greek Supreme Court (Decision No 1148/2004) ruled in favour of two Albanian farm workers who claimed (once they had obtained regular status) that they had not been paid legal wages and overtime pay for the entire duration of their regular and irregular employment. The two immigrants had been working from 1998 until 2003, but from 1998 until 2001 they had irregular residence status. The Court recognized the rights of these workers from 1998, despite the fact that they were irregularly in Greece. According to the Court decision, labour rights are applicable to all workers regardless of their legal status and despite the fact that according to Greek immigration law it is illegal to employ an irregular migrant. However, it is worth noting that both workers claimed their rights after having obtained regular status, further highlighting the “protection with consequences approach” (Dewhurst 2014).

Although the Greek legal system has recognized the protection of labour rights as a universal right for every person, the case law of *Chowdury and Others v. Greece*, which was adjudicated by the European Court of Human Rights (ECHR 2017), provides a counter example as regards the protection of labour rights. The case concerned 42 Bangladeshi nationals who did not have work permits when they were recruited between October 2012 and February 2013 and were subjected to forced labour. Their employers had recruited them to pick strawberries on a farm in Manolada (Peloponnese) but failed to pay the applicants’ wages and obliged them to work in difficult physical conditions under the supervision of

¹⁷⁹ According to Dewhurst (2014), this reflects the fact that irregular migrants are “entitled to the protection of the labour laws of the state, but the state will not protect the irregular immigrant from the consequences of their irregularity, such as detection, detention and deportation, which might arise when the irregular immigrant attempts to enforce these labour law protections.”

armed guards. This situation resulted in serious incidents and the two employers and one of the armed guards were arrested and tried. Despite the fact that the Assize Court of Patras acquitted the accused of the charge of trafficking in human beings, the European Court of Human Rights unanimously held that there had been a violation of Article 4 § 2 (prohibition of forced labour) of the European Convention on Human Rights on account of the State's failure to fulfil its positive obligations under that provision, namely to prevent the human trafficking situation complained of, to protect the victims, to conduct an effective investigation into the offences and to punish those responsible for the trafficking. The Court also noted that the domestic courts had interpreted and applied the concept of trafficking in human beings in a very restrictive manner.

6.4 The legislative and institutional framework in the fields of migration and asylum

6.4.1 Developments in the legislative framework of migration

The Immigration and Social Integration Code (Law 4251/2014¹⁸⁰) that was voted in by parliament in April 2014 was the most significant development in managing migration over the period under consideration. The new Code aims to consolidate previous legislation – which was fragmented due to the various Presidential Decrees and Ministerial Decisions that were adopted from 2005 onwards – on the entry, residence and social integration of third-country nationals in Greece (Greek Parliament 2014; The Greek Ombudsman 2015a.). It also transposes into national law the relevant EU directives on various aspects, such as the migration of researchers and students, family reunification and the Blue Card directive (Tryandafillidou 2015). The modifications that were introduced aim to simplify the procedures, revise the terms for access to the labour market, encourage investment by third-country nationals, modify the terms and conditions for granting long-term residence permits, and ensure the legal stay of the second generation of third-country migrants.

One of the most relevant aspects of the Code is that it tends to simplify and better manage the procedures as regards residence permits, with the aim of reducing the risks of irregularity for a significant number of migrants, in particular within the context of the persistent economic recession (Kapsalis 2017; The Greek Ombudsman 2013). Thus, the Code reduces the number of types of stay permits, promotes the one-stop service for completing all procedures concerning the issuance of residence permits and accelerates decisions on their renewal (Greek Parliament 2014). Moreover, as will be discussed further in the following section, it reduces the financial and employment requirements (namely the obligation to present a work contract and a minimum number of social security stamps and to receive a minimum income) for several types of residence permits.

The promotion of the legal stay of migrants is reflected in various provisions, such as the increase in the length of the validity of the initial and the renewed residence permit, from one to two years and from two to three years respectively, and the issuing of a document, in

¹⁸⁰ All relevant legislation (Laws, Presidential Decrees...) are presented in Appendices I and III.

practice a temporary stay permit which is valid for 12 months, that certifies that a third-country national has submitted a complete application for the issuing or renewal of a stay permit (Tryandafillidou 2015).

The Code also promotes the status of the long-term resident for third-country nationals who have lived in Greece for a long period, enabling the holder to move to and work in all EU countries, a right which is not granted to holders of the ten-year residence permit. In addition, a second-generation residence status has been adopted (Article 108), which grants a five-year residence permit that can be renewed simply by presenting the previous residence permit to adult third-country nationals born in Greece or who have successfully completed six Greek school grades in Greece before their 21st birthday, and who are legally resident in Greece.

The Code's provisions, further strengthened by Law 4332/2015,¹⁸¹ offer also a two-year residence permit and access to the labour market to third-country nationals on the basis of exceptional grounds (The Greek Ombudsman 2015b). This permit is granted if the interested third-country national had procured a visa issued by a Greek consular authority at least three years before submission of the application, or a permanent residence permit even if it had expired in the previous ten years, or that he or she can prove by way of dated documents the actual fact of his or her residence in the country for at least seven instead of ten consecutive years as foreseen by the Code. In the above cases, the third-country national must prove that he or she has long-lasting ties¹⁸² with the country unless he or she had a residence permit for Greece for at least five years in the decade prior to the application (Spyrou, 2017).

Another important aspect is that the Migration Code and Law 4332/2015 regulate the entry and residence of seasonal¹⁸³ migrants in order to work in agriculture and the fisheries industry (EMN 2015; Tryandafillidou 2015). On the basis of a simplified entry procedure, permits are provided to third-country nationals for seasonal residence and work and several guarantees are foreseen as regards social rights (for more details see sub-section 5.2.1 above).

Visas are granted by the consular authority of the third-country applicant's place of legal residence,¹⁸⁴ the code does not mention any permission, under more specific provisions, for the entry of certain persons who do not meet the conditions. Exceptionally, the Minister for Public Order and Citizen Protection may allow a visa to be granted by the passport control agencies upon arrival at the controlled border crossings and the temporary transit points,

¹⁸¹ Although Law 4332/2015, voted in July 2015, mainly concerns issues regarding the acquisition of Greek Nationality for the second generation, providing the possibility of acquiring citizenship due to birth or school attendance in Greece. It also contains provisions relating to migration policy and to the Migration Code (Law 4251/2014) in particular.

¹⁸² Very good Greek skills, attendance of a Greek primary or secondary education school by the applicant or his or her children, duration of residence, primarily legally, in Greece, social security contributions, fulfilment of tax obligations and blood relations with a Greek national or expatriate are factors that are considered as proving strong ties with the country.

¹⁸³ Seasonal work refers to activity performed in Greece for up to six months in total within a twelve-month period, in a field related to provisional and seasonal employment.

¹⁸⁴ A noticeable exception has been applied to Albanian nationals from 2010 onwards, since a visa is no longer required to enter Greece (Kapsalis 2017).

despite the existence of a prohibitive reason, if there are serious grounds of public interest or force majeure (Zanni, 2016).

Finally, while the Migration Code contains many references to national security and public order as a reason for refusing to issue or renew a residence permit, we can take a positive view of the two-month deadline in which the competent agencies of the Ministry of Public Order and Citizens Protection must give their opinion, while any delays will not slow down or impede the issuing of a decision as to whether to grant the residence permit (The Greek Ombudsman, 2013).

Further provisions were introduced by the Joint Ministerial Decision 30651/2014 and Law 4332/2015 which regulate the reasons and procedures for granting a two-year residence permit¹⁸⁵ on humanitarian grounds to several categories of third-country nationals, such as victims of trafficking, crime and domestic violence, or those who work in inappropriate working conditions, or suffer from serious health problems or follow an approved mental health treatment programme. Those provisions are also applied to victims of violations of Article 3 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms or Article 3 of New York Convention against Torture and Other Cruel, Inhuman or Degrading Treatment etc.¹⁸⁶

The legislative framework for migration, which was implemented in the context of a long-standing economic recession, led to a simplification of the procedure and the extension of the legal residence of third-country nationals. In this respect, there is no doubt that the legislation has contributed to regularizing the stay of a significant number of irregular migrants even on humanitarian or exceptional grounds. Nevertheless, developments in the legal and institutional aspects of migration issues reflect mainly the efforts to manage existing migration rather than to provide a perspective for facilitating and sustaining legal labour migration.

6.4.2 Developments in the legislative framework of asylum

Changes in the legislation on asylum over the period under consideration were mainly related to four distinct developments: a) the increase in (sea) refugee flows; b) the closure of the so-called Balkan route in March 2016; c) the EU-Turkey agreement also in March 2016;¹⁸⁷ and d) the transposition into Greek law of the EU Directive (2013/32/EU) on common procedures for granting and withdrawing international protection. Those developments resulted in new asylum legislation, in particular Law 4375/2016, adopted in

¹⁸⁵ According to Law 4332/2015 (Part III, Article 19A, Subparagraphs 1 and 2), for some categories (such as victims of trafficking of human beings and victims and important witnesses of criminal actions), the initial residence permit is of one year duration and can be renewed for two years while for some other (such as adults who are not able to take care of their affairs due to severe mental or physical health issues and victims of labour accidents and other accidents covered by Greek law) the initial permit is valid for two years and can be renewed for up to two years each time.

¹⁸⁶ It is also worth noting that with Law 4228/2014 the Greek Ombudsman was designated as the National Torture Prevention Mechanism (The Greek Ombudsman 2017a).

¹⁸⁷ The EU-Turkey agreement contains actions to address the refugee and migration crisis, including the return of all persons irregularly entering Greece after 20 March 2016 to Turkey.

April 2016 and amended in June 2016 (Law 4399/2016, Article 86).¹⁸⁸ This law aimed to implement the aforementioned EU-Turkey deal and the recast Asylum Procedures Directive (AIDA 2016; Greek Parliament 2016).

Through various provisions, the new asylum legislation reforms reception and asylum procedures, introduces a special regime applicable at border areas, regulates the backlog of cases (in particular those of the “old regime”¹⁸⁹), restructures the Appeals Committees and regulates matters relating to beneficiaries of international protection. A main aspect of the implementation of the new legislation is the different asylum procedures for those applicants who arrive in Greece after 20 March 2016 as compared to those who were relocated to the mainland and had reached the country before this date (Koulocheris 2017; GCR 2016a).

In particular, between 8 June and 30 July 2016, a pre-registration procedure¹⁹⁰ was launched on the mainland by the Asylum Service (Ministry of Interior and Administrative Reform et al. 2016a) with the assistance of UNHCR and EASO, in order to conduct a “first” registration of intentions to apply for asylum in Greece, be transferred to another European country, or join a family member in another European country. According to this procedure, those who pre-registered received a text message containing the date and location of their appointment at the Asylum Service for proceeding with a lodged asylum application. Due to the high number of pre-registered applicants, the waiting time for the first appointment at the Asylum Office could take a few months. A new appointment through Skype was foreseen for asylum seekers who missed the first appointment. The procedure, which had been concluded by 1 August 2016 (Ministry of Interior and Administrative Reform et al. 2016b), resulted in 27,592 pre-registration applications; it is estimated that around 4,000-6,000 persons did not participate in this procedure (ECRE 2016). By the end of 2016, 12,905 of the pre-registered applicants had been fully registered (AIDA 2016), while reaching 100% of the fully registered application was expected to be achieved in April 2017 (Ministry of Migration Policy 2017a).

In the context of the EU-Turkey agreement, the Asylum Service has also applied a fast-track border procedure based on the provisions of Law 4375/2016 (Article 60(4)). According to these provisions, if there are a large number of arrivals of third-country nationals or stateless persons¹⁹¹ applying for international protection at the borders or of persons staying in the Reception and Identification Centres, then a special, exceptional fast-track procedure will be activated. This procedure, which applies to those who arrived after 20 March 2016, has been implemented in the Reception and Identification Centres on the islands of Lesbos,

¹⁸⁸ A Decision by the Director of the Asylum Service on the duration of the validity of the cards of applicants for international protection for a 6-month period was also adopted in 2018 (<http://asylo.gov.gr/wp-content/uploads/2018/03/%CE%94%CE%B9%CE%AC%CF%81%CE%BA%CE%B5%CE%B9%CE%B1-%CE%B9%CF%83%CF%87%CF%8D%CE%BF%CF%82-%CE%B4%CE%B5%CE%BB%CF%84%CE%AF%CF%89%CE%BD.pdf>)

¹⁸⁹ Asylum procedure governed by Presidential Decree 114/2010, applicable to claims lodged before 7 June 2013 (AIDA 2016).

¹⁹⁰ Pre-registration was for those people who entered Greece between 1 January 2015 and 20 March 2016, i.e. those who were exempt from the EU-Turkey Agreement.

¹⁹¹ Law 4375/2016 recognizes for the first time the status of stateless person with the Asylum Service competent for the application of the New York Convention of 28 September 1954 on the legal status of stateless persons (NCHR, 2017)

Chios, Samos, Leros and Kos. In order to implement the procedure in a rapid and effective way, the Asylum Service, in accordance with the provisions of the law, is assisted by staff and interpreters from EASO, as well as by the Hellenic Police. Geographical restrictions, i.e. the obligation to remain on the island, are imposed on applicants who legally entered those islands after March 20, 2016. These restrictions are stated on the cards issued to them. The procedure, which concentrates mainly on admissibility, started to be applied to those originating from Syria in April 2016 and was only applied to other nationals (with a rate of over 25%) such as Afghans or Iraqis at the beginning of 2017 (AIDA 2016). Recent information provided by the Asylum Service (Ministry of Migration Policy 2018c) indicates that 42,425 applications were fully registered and 39,650 final decisions at first instance were issued. Full registrations registered on the five islands account for 36.2% of the total applications submitted to all Asylum Offices/Units in Greece.

As for the regulation process for pending cases under the “old regime”, Law 4375/2016 (Article 22) foresees a two-year residence permit on humanitarian grounds, which can be renewed, for those who have had asylum claims pending up to five years before 3 April 2016 (i.e. the date of the entry into force of the aforementioned Law). The number of pending cases under the “old regime” was around 18,500 (AIRE and ECRE 2016) and by the end of 2016, 4,935 decisions granting humanitarian residence permits had been issued (AIDA 2016).

Following EU pressure on Greece “to respond to an overwhelming majority of decisions rebutting the presumption that Turkey is a ‘safe third country’ or ‘first country of asylum’ for asylum seekers” (AIDA 2016), the composition of the Appeals Committees that examine appeals against asylum decisions made by the Asylum Service was modified by Law 4399/2016 in a manner that facilitated the returns to Turkey. In accordance with the relevant provisions the Appeals Committees are comprised of two judges from the administrative courts and a member designated by UNHCR, instead of the three members selected by a Selection Committee as foreseen in the previous legislative framework. In addition, the Law removed the previous option for the appellant to be granted an oral hearing before the Appeals Committees (AIDA 2016). It also allowed EASO officials to conduct interviews with applicants with a view to clarifying the Agency’s role in the asylum procedure, whereas the previous framework had only enabled EASO to assist the Asylum Service (AIRE and ECRE 2016).

Developments in the legislative framework of asylum over the period 2014-2016, as reflected in particular in Law 4375/2016 and which resulted from the EU-Turkey deal, resulted in a clear division between reception and asylum procedures for those entering the country before and after 20 March 2016 and consequently for those staying on the mainland or on the islands. Thus, the Greek administration faced a double challenge (The Greek Ombudsman 2017b): a) to enable people who were transferring to and living in temporary accommodation facilities on mainland Greece to access the asylum process; and b) to rapidly evaluate the asylum applications of those who crossed the sea borders after 20 March and were being held in the hotspots for readmission to Turkey.

The Administration addressed the first challenge in a quite satisfactory way since, as has been mentioned, over 27,000 one-year legal certificates for residence in the country were granted through the pre-registration procedure.¹⁹² In contrast, the fast-track border procedure has not operated adequately. One of the reasons for this was the limited number of national and EASO staff, which was not sufficient to tackle the number of applications they received (AIDA 2016; The Greek Ombudsman 2017b). Another reason is the lack of coordination and insufficient distribution of competencies between public agencies, services, international organizations, NGOs and local authorities (Koulocheris 2017). Furthermore, the fast-track border procedure has predominantly taken the form of an admissibility procedure to examine whether applications may be dismissed (AIDA 2016), and asylum seekers were practically excluded from relocation. Moreover, due to the priority of nationality for the lodging and evaluation of the asylum applications, the asylum procedure has been severely delayed for non-prioritized nationalities. Consequently, the hotspots were overcrowded, reception conditions deteriorated in terms of sanitation and hygiene, and access to health care was limited, in particular for vulnerable groups (ECRE et al. 2016; NCHR 2017). There is no doubt that reducing the risk of the Reception and Identification Centres being transformed into permanent detention centres remains a major challenge.

There is also concern about the restructuring of the Appeals Committees (AIRE and ECRE 2016; GCR 2016b) and its impact on the efficiency and fairness of the asylum procedure in Greece.¹⁹³ The Committees of the Appeals Authority have rejected 533 appeals from the islands at the second instance on substance (The Greek Ombudsman 2017b) since the restructured Appeals Committees started operating (21 July) until December 2016 and issued only two positive decisions (i.e. a recognition rate lower than 0.4%). This is a rather worrying development, especially when compared with a recognition rate of over 80% for decisions made by the old Appeals Committees in the period from January to 20 July 2016, which is most probably related to political rather than to legal reasons.

6.4.3 Developments in the institutional framework on migration and asylum

Important institutional developments in management issues relating to migration and asylum took place over the period under consideration.¹⁹⁴ The most noticeable of them was the establishment of the Ministry of Migration Policy (Presidential Degree 123/2016), initially constituted from several administrative units of the former Ministry of Interior and Administrative Reform.

According to the current organizational structure (Presidential Decree 122/2017), two of the bodies that comprise the new Ministry are the General Secretariat for Migration Policy

¹⁹² By May 2017 (i.e. four years since the Asylum Service became operational) more than 102,000 claims for international protection had been registered by the Asylum Service (Ministry of Migration Policy 2017b). As the Asylum Service has also reported, the waiting time between the pre-registration and the full registration of asylum claims, from 2013 until June 2017, was on average 102 days. The waiting time between the full registration of the claim and the issuing of the decision on the claim at the first instance was on average 107 days, while the average time from the lodging of an appeal until the issuing of the decision at the second instance was 118 days.

¹⁹³ It is worth noting that the restructuring of the Appeals Committees resulted in an application for judicial review before the Supreme Administrative Court (Conseil d'Etat).

¹⁹⁴ For the institutional framework prior to the period under consideration, see EMN 2012.

and the General Secretariat for Reception. The first contains the General Directorate for Migration Policy, which includes the Directorate for Migration Policy that deals with legal migration issues, the Directorate for Social Integration, the Directorate for Digital Residence Permits and the Directorate for the Protection of Asylum Seekers.

The mission of the General Secretariat for Reception, which contains the Reception and Identification Service is the effective management of third-country nationals who have crossed the border illegally, by placing them in first reception procedures. Furthermore, the Secretariat is responsible for the coordination of administrative actions undertaken by the Asylum Service, the Appeals Authority and other relevant Services of the Ministry. The Reception and Identification Service consists of the Central Service and the Reception and Identification Regional Services. The Central service is responsible for monitoring, planning and ensuring that good practices are implemented by the Regional Services. The Central Service is in close collaboration with the UN Refugee Agency, the International Organization for Migration (IOM), the Intergovernmental Consultations on Migration Asylum and Refugees (IGC) and the European Asylum Support Office (EASO). The Regional Reception and Identification Services are the Reception and Identification Centres (RIC) and the Reception and Identification Mobile units.

The Asylum Service, which operates as an autonomous body and reports directly to the Minister of Migration Policy, is responsible for examining claims for international protection. The Asylum Service consists of the Central Administration and the Regional Asylum Offices and Asylum Units.¹⁹⁵ The autonomous Appeals Authority is responsible for examining appeals at second instance, lodged against first instance decisions issued by the Asylum Service, and also reports directly to the Minister of Migration Policy. Last, the autonomous Directorate for the Financial Services of Immigration Policy is also part of the Ministry of Migration Policy.

Other Ministries are also involved in the management of migration and asylum. In particular, the Special Secretariat for Citizenship of the Ministry of Interior is responsible for setting the legal framework and defining the procedures for the acquisition of citizenship, and the General Secretariat for the Coordination of Aliens, Non-EU Nationals and Irregular Migration Affairs responsible for supervising and coordinating issues related to border protection and to irregular migration. Moreover, the Ministry of Foreign Affairs is responsible for issuing national and Schengen visas. The Ministry of Justice, Transparency and Human Rights is responsible for the legal guardianship of third-country nationals. The Ministry of Shipping and Island Policy is responsible, along with the Hellenic Police and the Hellenic Coast Guard and with the collaboration of FRONTEX, for effective border management. The Special Secretariat for the Coordination and Management of Programs under the Asylum, Immigration and Integration Fund, the Internal Security Fund and other funds of the Ministry of Economy, Development and Tourism is responsible for the effective coordination, supervision and acceleration of the actions relative to the use of the emergency support funds, intended for the management of the migration flows. In addition, the Ministry of

¹⁹⁵ By the end of December 2016, 7 Regional Asylum Offices and 11 Asylum Units were in operation (AIDA 2016).

Education, Research and Religious Affairs is responsible for Action Plans for the education of refugee and migrant children and the Greek language courses that are offered to adult refugees/migrants. The Ministry of Labour, Social Security and Social Solidarity is responsible for issues relating to the participation of third-country nationals in the labour market, while the Ministry of National Defence heads the Coordinating Body for the Management of the Refugee Crisis.

Furthermore, there is no doubt that the role of two independent bodies, namely, the Greek Ombudsman and the National Commission for Human Rights¹⁹⁶ (NCHR) is of significant importance in monitoring the implementation of the (human) rights of vulnerable groups.

Recent asylum legislation (Law 4375/2016) additionally predicts the institutional involvement of NGOs. In particular, if a Regional Asylum Office, Reception and Identification Centre, Temporary Reception Structure or Temporary Accommodation Structure has problems in operating smoothly, the processing of some tasks can be entrusted for a set period of time to civil society actors that meet appropriate standards of quality and safety and have received the necessary permission. To this end, a National Register of the Greek and International NGOs working in international protection, migration and social integration issues was created in 2016 by the Ministry (Ministry of Migration Policy 2018d). Exceptions to this option include those tasks that involve the exercise of public authority, such as the issuance of administrative acts, the examination of applications for international protection, the conduct of interviews and providing applicants with travel or identity documents.

6.4.4 Migrants, refugees and the EU-Turkey deal

The impact of the EU-Turkey Agreement on internal legislation has been outlined in previous sections. In this part we briefly discuss the agreement in relation to the number of arrivals, the protection of a migrant's fundamental rights and the compliance with international standards. According to the deal, all people irregularly arriving in the Greek islands will be transferred back to Turkey. For each Syrian returning to Turkey from the Greek islands, another Syrian will be relocated from Turkey to the EU (the "One for One" procedure). In addition, the agreement includes a commitment for the EU to cooperate with Turkey in order to facilitate the provision of reception services to refugees returned to Turkey and to establish the so-called "safe areas" inside Syria.

The agreement has been criticized for being legally problematic, impractical to implement, and in contravention of refugee law (Amnesty International 2017, Kourachanis 2018). The deal, without being a convention of the Union with a third country, from a legal aspect, introduced a host of derogations from the EU regulatory framework (The Greek Ombudsman 2017). It was also seen as unclear on how individual needs for international protection would be fairly assessed during the mass expulsions (Amnesty International 2017). Indeed, Turkey

¹⁹⁶ The Greek Ombudsman is an independent authority which acts as the guardian of people's rights in both the public and private sectors, with a special emphasis on monitoring and promoting the implementation of the principle of equal treatment, the rights of the child and the rights of vulnerable groups. The National Commission for Human Rights, established and functioned in accordance with the UN Paris Principles, is the independent advisory body to the State specialising in human rights issues.

has ratified the 1951 Refugee Convention, but only by applying a geographical limitation whereby only Europeans can be granted refugee status in the country, making the EU's recognition of Turkey as a safe third country rather problematic (Spyropoulou and Christopoulos 2016). At the same time, the scope for establishing "safe areas", in the current situation, seems to be unrealistic.

On the other hand, daily arrivals and the number of lives lost in the Aegean Sea have significantly dropped compared to the period prior to the deal and progress has been made as regards the practical support to refugees and the delivery of host communities in Turkey under the Facility for Refugees in Turkey ("the Facility"). However, shortcomings persist. In particular, the pace of returns from the Greek islands to Turkey has not improved (European Commission 2017) and the number of returns remains much lower than the number of arrivals, thus continuously adding pressure on the hotspot facilities on the islands (Niemann and Zaun 2017). Practically, the EU, through its executive branch, the Commission, "is called upon to implement the terms of a transnational agreement that lies, to a great extent, outside the regulatory framework of the EU itself, in terms of both its legal and humanitarian culture" (The Greek Ombudsman 2017) and Greece found itself at the centre of both an economic and humanitarian crisis that are "testing Europe's cohesion, as an economic and cultural entity" (The Greek Ombudsman 2017).

6.5 The framework legislation on the integration of migrants, asylum seekers and refugees in the Greek labour market

6.5.1 National labour standards/Fundamental principles of Greek labour law

The Greek labour market has undergone a number of major changes in recent years due to the economic crisis and the fiscal adjustment programs. The emergence of the economic crisis and austerity policies has had a double social impact. On the one hand, unemployment is rising sharply and significantly and GDP is steadily falling. Indicatively, unemployment rates among the labour force increased from 7.8% in 2008 to 24.9% in 2015 and reached 23.6% in 2016 (Eurostat 2018g). Long-term unemployment rates as a percentage of the total unemployment rose from 47.0% in 2008 to 73.4% in 2014, reaching 71.8% in 2016 (Eurostat 2018h). In addition, GDP has decreased by around 28% between 2008 and 2016 (Eurostat 2018i).

On the other hand, the institutional protection framework for the labour market is not regulated. The main changes that have taken place since 2010 are based on five key axes: first, the decline in the role of full employment and the expansion of flexible industrial relations. Secondly, the weakening of collective agreements and the shrinkage in wages. Thirdly, the spread of flexible working hours, fully adapted to the needs of markets. Fourth, the gradual liberalization of the institutional framework of redundancies. Fifth, the convergence of working conditions in the public and private sectors, leading to significant cuts in the employment protection of civil servants (Kouzis 2016: 9).

The signing of a new memorandum by the SYRIZA/ANEL¹⁹⁷ coalition government in 2015 continued the deregulation of labour protection even further. In particular, the Troika¹⁹⁸ have been exerting even more stifling control over the shaping of labour law. The situation in the Greek labour market and labour relations, after eight years of austerity, is still one where deregulation is taking place.

In the context of the new memorandum, articles 16, 17, 18, 19 and 20 of Law 4472/2017 mean that the process of making labour relations even more flexible continues. In particular, retail stores are now permitted to open on Sundays for six months a year, in a major erosion of the Sunday holiday. The abolition of the veto¹⁹⁹ by the Ministry of Labour has facilitated collective redundancies. There have also been restrictions relating to absence from work for trade union activities and an increase in the possible ways by which to dismiss trade unionists. Lock out is set up. That is, the ability of the employer to remove or replace the staff of a company in the event of a strike by the employees or to cease company activities on the basis of certain reasons (financial, abusive strike, etc.). Lastly, the possibility of expanding collective agreements has been suspended indefinitely. Another important change that was voted for in early 2018 (Law 4512/2018) was an increase in the required percentage of votes needed for trade unions to take strike action. From now on the decision to call a strike must be voted for by 50% +1 of the workers represented in the trade unions. As a result, strikes by trade unions are clearly becoming more difficult.

On the other hand, despite the significant changes in migration law, there are differences in how natives and migrants access the labour market, which are inherently linked to the issuing of residence permits. Greek migration policy and the subsequent access of migrants to the labour market was for long connected to the issuing of two permits, for work and residence, and this is seen as unique to Greece, particularly since the work permit was a prerequisite for a residence permit for work purposes (Kapsalis 2018b). In addition, migration law aimed mainly to regularize illegal migration rather than to promote legal migration for employment purposes. Practically the two options for legal migration (which are very often interconnected), recall/*metaklisis*²⁰⁰ and seasonal work, as applied from 1991 to date, almost exclusively concern the agriculture industry and are questionable as regards their effectiveness (Triandafyllidou 2014).

¹⁹⁷ The coalition of SYRIZA and ANEL emerged in opposition to the two memoranda signed by PASOK (Social Democrats) and New Democracy (Conservatives) between 2010 and 2012. This is a paradoxical governmental collaboration. SYRIZA is a party that comes from the radical left. ANEL is a nationalist right-wing party that broke away from New Democracy after the signing of the second memorandum in 2012.

¹⁹⁸ The Troika is composed of the European Commission, the European Central Bank and the International Monetary Fund. This mix was created to provide fiscal adjustment programs to countries that had unsustainable public debt (Greece, Ireland, Portugal and Cyprus). The Troika was the main regulator of the public policies of these countries during the implementation of the memoranda. The memoranda were designed under the influence of a highly technocratic mentality. Their adoption aimed to serve multiple targets. Some of the targets were to reduce budget deficits and achieve surpluses, to ensure the sustainability of public debt, to rescue and stabilize the financial system, to boost the competitiveness of national economies, and to restore trust so as to enable public lending on global markets.

¹⁹⁹ Until 2017 the Ministry of Labour had the right to prohibit collective redundancies in large enterprises. By virtue of Law 4472/2017 the Ministerial Veto has been replaced by an early warning system for collective redundancies.

²⁰⁰ A procedure which enables a non-EU national to enter and reside in Greece in order to provide paid work to a specific employer, in a specific field of employment.

Consequently, the economic recession in relation to the subsequent changes in the labour market, to legislative initiatives aiming to offer the possibility to regain legal status for illegal migrants and to a more effective management of asylum procedures have led to the following paradox: there is a trend towards a greater convergence of the labour relations of Greek workers with those of migrants, asylum seekers and refugees than in the past. However, this trend is not necessarily due to any improvement in the working conditions of foreign workers. On the contrary, it is the shrinking of the labour rights and the deregulation of the labour market that have exacerbated the working conditions of Greek citizens. As a result, there is a kind of convergence of common labour law with migration law, in a downward spiral (Kapsalis 2018a).

6.5.2 The national legislation on access to the Greek labour market

6.5.2.1 The national legislation on migrant access to the Greek labour market

Since the beginning of the 1990s and the transformation of Greece from a sending to a receiving migration country, migration laws have clearly connected the stay of immigrants with their employment status and their financial resources. In reality, the basic requirements for the legal residence of immigrants in Greece were, and remained to a lesser extent, structured around the existence of a job, the filing of a formal employment contract, the compulsory presentation of a minimum number of social security stamps²⁰¹ per year and the obligation to have an annual minimum income.

The Migration Code was discussed in a previous section. Here we will concentrate on its provisions on the employment dimension. The Code (Articles 11 and 12) keeps the method of *metaklissis*, firstly introduced by Law 1975/1991, largely intact (Triandafyllidou 2014). The method of *metaklissis* remains one of the main paths to legal immigration in Greece, despite the fact that its previous application in the main sectors where migrants are employed (construction, catering, small factories and retail services) proved quite unrealistic (Triandafyllidou 2014). In this procedure there is a pre-approval of the entry of a foreign worker for a specific employer and for a specific type of work. Individual employment contracts are then concluded, with state control being exerted at all stages of their implementation. In the last quarter of each second year, the maximum number of dependent jobs allocated to Non-EU nationals per region and occupation is determined. The same decision may provide for an increase in the maximum number of positions by up to 10% in order to cover unforeseen and emergency needs.

In the context of the economic recession, the Code aimed to reduce the risk of increasing irregularity among migrants by increasing the validity of residence permits and reducing financial and duration of employment requirements for their renewal. In particular for paid employment, Article 15 of the Code provides that, if an immigrant comes to Greece for dependent work, and in order to obtain a first residence permit, he or she must present a contract of employment showing that his/her remuneration is at least equal to the monthly

²⁰¹ The completion of a minimum number of welfare stamps is a prerequisite for the renewal of a residence permits for employment purposes. More details on this issue are given below.

salary of an unskilled worker. As for the renewal of a residence permit for the purpose of paid employment, the Code, by keeping unmodified the Joint Ministerial Decision 15055/546/201, reduces the required annual number of social security stamps (i.e. the number of working days) to 120. One of the most significant innovations brought about by the 2014 Code was the abolition of the obligation to produce a written employment contract as a condition for renewal of a residence permit for the purposes of paid employment. Thus, the reduced number of welfare stamps, the fulfilment of tax obligations and the existence of a valid health booklet are the main requirements for the renewal of the residence permit related to employment. It is worth noting that, with the adoption of a Joint Ministerial Decision (51738/2014), the number of stamps needed for the renewal of legal residence becomes equal to the number of stamps required for the renewal of health insurance (50 stamps). Those developments entail moving from a framework of work-centric immigration legislation to a framework geared towards maintaining legal residence due to the long-standing social ties immigrants may have developed (Kapsalis 2018a).

It is also worth noting that the Code regulates the situation of migrant investors wishing to settle in Greece. Thus, Article 16 states that Non-EU nationals are permitted to enter and stay in Greece in order to make an investment that will have a positive impact on national growth and the economy. A prerequisite for allowing them to enter and reside in Greece is a motion from the Department of Intragroup Services and Direct Investments to the Ministry for Development and Competitiveness.

The following year (2015) a new law sought improvements to issues related to the participation of migrants in the labour market. More than the amendments of the Code of Greek Citizenship and the Migration Code (see sub-section 4.1 above for the relevant amendments), the new Law (4332/2015) aimed at incorporating two EU directives into national legislation. Directive 2011/98/EU²⁰² concerned the single application procedure for a single residence and work permit, already introduced by previous national legislation (Law 3386/2005), to be issued to Non-EU nationals, and a common set of rights for third-country workers legally residing in a Member State. It also incorporates Directive 2014/36/EU on the conditions of entry and residence of Non-EU nationals for seasonal work. The most relevant provisions of Law 4332/2015 are related to the equal treatment for workers, holders of a single permit and seasonal workers with nationals (see also sub-section 4.1). Thus (in Articles 21A and B), both categories of Non-EU workers are entitled to equal treatment with nationals as regards the terms of employment (including minimum working age, working conditions, working hours and leave and holidays), the right to strike and take industrial action, education and vocational training, as well as recognition of diplomas, certificates and other professional qualifications. The following year a new law sought improvements to issues related to the participation of migrants in the labour market. More than the amendments of the Code of Greek Citizenship and the Migration Code (see above sub-section 4.1 for the relevant amendments), the new Law (4332/2015) aimed at the implementation into national legislation of two EU-directives. Directive 2011/98/EU concerned the single application procedure for a single residence and work permit, already

²⁰² See the EU chapter

introduced by previous national legislation (Law 3386/2005), to be issued to Non-EU nationals and a common set of rights for third-country workers legally residing in a Member State. It also incorporates Directive 2014/36/EU²⁰³ on the conditions of entry and residence of Non-EU nationals for seasonal work. The most relevant provisions of the Law 4332/2015 are related to the equal treatment of workers, holders of single permit and of seasonal workers with nationals (see also sub-section 4.1). Thus (Articles 21A and B), both categories of Non-EU workers are entitled to equal treatment with nationals as regards the terms of employment (including minimum working age, working conditions, working hours and leave and holidays), the right to strike and take industrial action, education and vocational training, as well as recognition of diplomas, certificates and other professional qualifications.

In 2016 the Greek state issued the special Circular 27430/2016, which gives access to the labour market to those immigrants who are in a situation between illegality and legality, known as “para-legality” (Kapsalis 2018b). This intermediate category includes irregular immigrants, whose order to leave the country was postponed for humanitarian reasons and so they were granted a special certificate to remain in the country for six months, without the right to access social integration programs, and which is renewable for 6 months. The status of “para-legality” offers limited access to the labour market in specific sectors (such as agriculture, animal husbandry and domestic work) and geographical destinations (mainly rural).

Since 2014, there has been an inherent shift in the Greek immigration law, the aim of which was to reduce the employment requirements that immigrants have to fulfil in order to renew their residence permits. There is no doubt that the alleviation of those requirements, in the context of a significant increase in unemployment, has contributed to facilitate migrants’ legal stay. However, in the absence of additional professional and social support, this does not appear to have been sufficient to significantly reduce the risks of migrants’ social exclusion.

6.5.2.2 The national legislation for the participation of asylum seekers and refugees in the Greek labour market

Aside from migrants, the beneficiaries of international protection and asylum seekers are the target groups (along with the holders of a residence permit for humanitarian reasons) for which national legislation aims to regularize their access to the labour market.

In particular, refugee legislation is based on the Geneva Convention (1951) and mainly on Articles 17, 18, 19 and 24 which refer to the social rights of recognized refugees to social security and employment. In Greek legislation those rights are currently extended to persons who have been granted residence on subsidiary protection grounds. A relevant special regulation for the access of the two groups of beneficiaries of international protection to the labour market is contained in Presidential Decree 141/2013. This Presidential Decree aims to incorporate Directive 2011/95/EU²⁰⁴ into domestic law. Article 27 of the Presidential Decree (incorporating Article 26 of the Community Directive) provides that beneficiaries of

²⁰³ See the Chapter on the EU

²⁰⁴ See the Chapter on the EU.

international protection are permitted to engage in employed or self-employed activity, in accordance with the provisions of Presidential Decree 189/1998 (A 140). This means that the beneficiaries of international protection must hold a work permit, in the case of a salaried activity, or prove the existence of the necessary capital in the case of an independent economic activity. Although Presidential Decree 141/2013 does not contain new elements as regards the preconditions for access of the beneficiaries of international protection to the labour market, it provides clear improvements in other relevant issues. In particular, articles 27-31 foresee that persons who have been recognized as refugees or beneficiaries of subsidiary protection can participate in employment-related adult education programs, vocational training, including training courses for upgrading skills, workplace practice and counselling by employment services under the conditions applicable to Greek citizens. These articles also provide for access to procedures for the recognition of diplomas, certificates and other formal qualifications as well as for the application of the same conditions as Greek citizens in respect to the social security system, working conditions and health care.

The access of beneficiaries of international protection to the labour market was further facilitated by Law 4375/2016. The Law, which governs the current legislation on access of all three aforementioned groups to employment, is an adaptation of Greek Legislation to the provisions of Directive 2013/32/EU. The most important change brought about by the law is the abolition of the requirement for the possession of a work permit as a condition for their participation in the labour market (Ministerial Circular 17131/313/12-04-2016). Thus, beneficiaries of international protection and their families have the right of access to employment under the same conditions as nationals. The only condition for fulfilling their participation in the labour market is the possession of the required residence permits, as appropriate. The Law also contains similar provisions (Article 69) as those of the Presidential Decree 141/2013 in relation to the provision of the same work conditions and access to services for beneficiaries of international protection and nationals. In practical terms, the labour rights and obligations of beneficiaries of international protection are defined under the same legal regime as for Greek workers. This arrangement concerns both the individuals themselves and the members of their families (Marouda and Sarandi 2016: 299-300).

International organizations and NGOs are the main actors that provide vocational training actions targeting the beneficiaries of international protection. Language teaching, which is not provided for free by the state (AIDA 2016), is probably the only policy area where labour market and social integration support is provided more consistently (Karandinos 2016). These policies concern the national affirmative action schemes that provide support to third-country nationals so that they can effectively access their rights, such as vocational training, professional orientation schemes and the validation of the professional/academic qualifications of refugees (Koulocheris 2017). To this purpose, the General Secretariat for Lifelong Learning and Youth of the Ministry of Education, Research and Religious Affairs has assigned the implementation of the "ODYSSEUS" programme to the Public Institute of Youth and Lifelong Learning (CERD 2017). The project aims at supporting students to acquire the language as well as the social and intercultural skills required for the social inclusion of the students and their families. In addition, the aforementioned Ministry, in cooperation with the Council of Europe and the ENIC/NARIC (a network for the recognition of educational and academic qualifications) of the UK, Norway and Italy, initiated in 2016 an effort to develop a

“passport” for the recognition of refugees’ higher education qualifications, the so-called Qualifications Passport for Refugees (CERD 2017).

As for asylum seekers, Law 4375/2016 also facilitates their access to the labour market. As already mentioned, the law abolishes the requirement for the possession of a work permit as a condition for their participation in the labour market, a provision which was foreseen by Presidential Decree 189/1998. Thus, according to article 71, asylum seekers have access to salaried employment and to the provision of services or work if they are in possession of the “international protection applicant card” or “asylum seeker’s card”. Practically, there is no time restriction that applies from the moment of lodging the application to when the applicant can access the labour market. However, the Law does not modify the provisions of Presidential Decree 189/1998, which foresees that asylum seekers do not have access to the exercise of an independent activity, to vocational training and to employment services. In addition, provisions for their families are not foreseen by Law 4375/2016. A last important point is that, in the context of providing free access to all public functions of health for the provision of medical treatment to uninsured citizens and to the vulnerable population (Joint Ministerial Decision 25132/4-4-2016), asylum seekers have access to health services on the same terms as the nationals.

Despite the formation of an institutional framework that gives asylum seekers and beneficiaries of international protection access to the Greek labour market, the reality is that these people remain mostly in the camps, with only a minority in social apartments (Niemann and Zaun 2017; The Greek Ombudsman 2017b). The development of mechanisms to diagnose labour market needs that are compatible with their professional skills and the formation of coherent employment policies are key challenges for their integration into Greek society (Koulocheris 2017).

6.5.3 Anti-discrimination legislation

Law 4443/2016 (Article 14) aims to promote the principle of equal treatment and anti-discrimination a) on grounds of race, colour, national or ethnic origin and generations; b) on religious or other beliefs, disability or chronic illness, age, or social status, sexual orientation, gender identity or gender in the field of employment and work; and (c) on the exercise of workers' rights in the context of the free movement of labour.

Under the 2016 law, the principle of equal treatment concerns: (a) conditions of access to employment and in the area of employment in general; (b) access to all types and levels of vocational guidance, apprenticeship, vocational training, retraining and vocational retraining, including the acquisition of practical professional experience; (c) working and employment conditions, in particular with regard to remuneration, dismissal, health and safety at work and, in the event of unemployment, reintegration and rehabilitation, as well as re-employment; and (d) membership of and participation in a workers' or employers' trade union or in any professional organization.

According to a report by the Greek Ombudsman (2016a), migrants are excluded in a direct or in an indirect way from access to a range of professional activities, such as those of economist, geo-technician, psychologist, doctor, skipper, security guard, etc., that are protected by Greek law. Although the differences in treatment on the basis of citizenship in

the choice, access to and pursuit of a particular occupational activity is not, in the first place, prohibited, the large number of complaints lodged raises questions regarding discrimination against migrants in terms of access to the labour market and in employment services as well²⁰⁵. This is even more relevant since the complaints often refer to long-term residence or to persons who are granted a second-generation residence permit. A relevant case (215085/2016) which is still pending is that of a holder of a second-generation residence permit whose right to long-term unemployment benefits was not recognized by the Manpower Employment Organization (OAED) on the grounds of non-Greek citizenship.

6.5.4 Legal instruments to fight informal employment and workers' exploitation

In the period 2010-14, the Greek state was more actively involved in the fight against undeclared work, an issue of significant importance for country's labour market (ILO 2016). The introduction of the method of payment and retention of insurance contributions on the basis of the "*ergosimo*" was introduced for the first time in Greek legislation with Law 3863/2010. This is a kind of a special pay check which concerns workers exercising non-fixed or casual work (form of employment in which the worker is not entitled to the regular provision of work) with one or more employers. The *ergosimo* does not focus on businesses or individual employers, but on workers, in particular those in specific disciplines, occupations or jobs (such as domestic workers, construction workers and agricultural workers). Consequently, it is in fact a means of combating undeclared work, and in particular tax evasion and it is as such that it has been classified in the Greek legal order. It mainly concerns providers of services to households, such as domestic workers, (Kapsalis 2015: 11). Several modifying interventions for the worker's measure were made in the following years. These amendments are mainly related to procedures for extending the measure of *ergosimo* to other sectors of employment as well as the procedures for monitoring its implementation. It is also worth noting that Article 2 of Law 4225/2014 attempts to include *ergosimo* as a subject of labour inspections exercised by IKA (Social Insurance Institute). A large proportion of recipients who were targeted by this measure were immigrants, both domestic and farm workers.

At the same time, in 2012, the Greek state incorporated EU Directive 2009/52/EU with Law 4052/2012. This Directive is concerned with imposing minimum standards on the sanctions and measures against employers who illegally employ third-country nationals. The aim is to combat illegal immigration by preventing the illegal employment of migrants without residence permits in the member states of the European Union. In Greek law this is reflected in Article 79 of the relevant law, which explicitly mentions the ban on the employment of illegally residing third-country nationals. Infringement of this prohibition is subject to the

²⁰⁵ A recent decision by the Board of Directors of OAED (Labour Force Employment Organization) has made it possible to register on the OAED's unemployment registers for those who have been thus far excluded as it was not possible for them to prove they had a permanent place of residence, although they met other conditions for registration. Social groups such as migrants holding a residence permit, refugees, beneficiaries of international protection and applicants for international protection or persons eligible for subsidiary protection status are covered by this decision (OAED 2018).

sanctions and measures laid down in the provisions of this Act, as we will mention further down in the report.

In order to secure this ban, Article 80 details the obligations of employers. Firstly, employers must request that third-country nationals possess a valid residence permit to take up employment and that they must present it to them. Secondly, employers are obliged to maintain a copy of the residence permit or other permit in order to present it to the competent authorities during any inspection that may take place, at least during the period of employment. Third, they must inform the competent authorities whenever a third-country national is recruited and at the start of their employment. Employers will be penalized if they employ a foreigner who does not have an up-to-date residence permit, in particular with a penalty of 5,000 euros per illegally employed third-country national. If an employer is again found to be employing workers illegally within four years of the initial audit, then the amount of the financial penalty per employee is doubled (Law 4052/2012).

Other administrative penalties include the exclusion of employers from all or certain public benefits, aids or subsidies, including EU funds, for up to five years. They are also excluded from all public contracts as defined in Article 1 of Directive 2004/18. With regard to criminal sanctions, the employment of immigrants without a residence permit may, under certain conditions, result in a prison sentence of at least five months (Kapsalis 2015: 38), whereas there are no sanctions for workers.

6.6 Conclusion

The period 2014-2016 was characterized by consolidation and concerns about the extent to which the national framework complied with certain Fundamental Conventions (Ministry of Labour, Social Security and Social Solidarity 2018), in particular the Forced Labour Convention, 1930 (No. 29, ratified by Law 2079/1952), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98, ratified by Law 4205/1961), the Equal Remuneration Convention, 1951 (No. 100, ratified by Law 46/1975), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111, ratified by Law 1424/1984), and the Worst Forms of Child Labour Convention, 1999 (No. 182, ratified by Law 2918/2001). There were no specific developments as regards the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87, ratified by Law 4204/1961), Abolition of Forced Labour Convention, 1957 (No. 105, ratified by Law 4221/1961) and Minimum Age Convention, 1973 (No. 138, ratified by Law 1182/1981). The two conventions on working migrants (No. 97/1949 and No. 143/1975) continue to be non-ratified, probably because the full protection of labour rights for migrants is still lacking.

There have been a number of legislative initiatives that have affected, either directly or indirectly, the application of some of the above-mentioned conventions. In particular, Law 4198/2013 (see below) on preventing and combating trafficking in human beings and protecting its victims is related to the Forced Labour Convention (No. 29). In addition, Law 4336/2015, passed as a requirement of the third loan agreement, through the abolition of the amendments of Law 4331/2015 aiming at safeguarding all the terms of expired collective agreements, is related to the Right to Organize and Collective Bargaining Convention (No.

98). In addition, two main legislative initiatives related to the Discrimination (Employment and Occupation) Convention (No. 111) were adopted. The first is the Joint Ministerial Decision 10060/15858/606/7/10/2014, which aims to activate Law 4097/2012 on the right to a maternity allowance for the self-employed in the private sector, while the second is Law 4443/2016 on the promotion of the principle of equal treatment and anti-discrimination. Lastly, Presidential Decree 178/2014 on upgrading the Sub-directorate for the Prosecution of Cybercrime was a legislative initiative related to the Worst Forms of Child Labour Convention (No 182).

Changes in the legal framework have been followed by a number of new initiatives at the institutional level. In particular, the Office of the National Rapporteur, which is responsible for launching and implementing the national strategy on the prevention of human trafficking, the prosecution of its perpetrators and the protection of its victims, has been established. A Coordination Mechanism for working with public authorities and a National Referral Mechanism have also been established in order to support the Office of the National Rapporteur's activities (Anagnostou and Kandyla 2015). Moreover, new legislation (Law 4198/2013) has introduced new provisions on the liability of legal persons and new investigative tools to deal with organized crime. This law brought further amendments in the Penal Code in order to cover for these crimes, in particular those related to a child's engagement in forced labour. Another initiative has been the creation of a Statistical Information Tool (ERGANI) that aims, among other things, to provide comprehensive information on the level of remuneration and wages of men and women and to monitor the working arrangements for individuals returning from maternity leave. In addition, a significant and prominent development is that the introduction of Law 4443/2016 makes the Greek Ombudsman, and specifically its Department of Equal Treatment, the national body for equality, with a mandate to combat discrimination and promote the principle of equal treatment. Institutional changes have also occurred in relation to the worst forms of child labour. More than the aforementioned upgrading of the Sub-directorate for the Prosecution of Cybercrime, a new Anti-Crime Policy Programme for 2015–19 was elaborated, aiming at implementing a strategy for combating trafficking in persons, including children.

The implementation and effective application of these new legislative initiatives must undoubtedly be seen in the context of the measures deriving from the stability programmes and the obligations contained in the country's memorandums of understanding as well as the persistence of high levels of unemployment. In that respect, austerity measures and the subsequent legislative framework have had an impact on the promotion of collective bargaining. According to the existing legislative framework (Law 3845/2010 and Law 4024/2011) "the clauses of professional and enterprise collective agreements can deviate from the relevant clauses of sectoral and general national agreements, and the clauses of sectoral collective agreements can deviate from the relevant clauses of national general collective agreements" (CEACR 2018). In this respect, several concerns have been expressed (CEACR 2018; ILO 2011 and 2014) regarding the implementation of these Acts, since the high share of small enterprises in the country's labour market carries a risk that is detrimental to the foundations of collective bargaining in Greece. There can be no doubt that the way in which collective bargaining is evolving in Greece is a source of concern. Indeed, whereas in 2009, 85% of employees were covered by collective agreements, the corresponding figure for 2016 was estimated only at 10-20% (ILO 2017). Despite the

initiatives of the government elected in January 2015, and the corresponding amendments aiming at safeguarding all the terms of expired collective agreements (Law 4331/2015), the third loan agreement and the ensuing Law 4336/2015 led to the abolition of these amendments (Koukiadaki and Grimshaw 2016). In practice, austerity measures and structural labour market reforms have led to the absence of union organization at company level and to the low incidence of company level bargaining (Koukiadaki and Grimshaw 2016) which in turn increase the risk of transforming the pre-crisis Greek system of collective bargaining into a kind of model of absent or single-employer bargaining. In addition, these developments in collective bargaining risk further increasing forms of exploitation in employment against migrants, refugees and asylum seekers.

A certain number of issues can be detected in terms of discrepancies between national legislation and practice. First, the delay between ratification and the effective implementation of the law is significant. The recent example of the provision of maternity allowance for the self-employed in the private sector is quite relevant here (The Greek Ombudsman 2014). Although this issue was regulated by law in 2012 (Law 4097/2012), the Joint Ministerial Decision necessary for activating the Law was issued only in 2014 (10060/15858/606/7/10/2014). Second, not only are people not fully aware of their labour rights, but the administration fails to respond thoroughly in time to people's requests regarding those rights (The Greek Ombudsman 2015c). This is clearly reflected in the relatively high number of requests for information on labour rights submitted to the Greek Ombudsman, as compared to the number of cases relative to the violation of law. Third, legislative initiatives very often reflect societal stereotypes, which reduces the effectiveness of the application of the law. Legislation on the reconciliation between family and working life offers a telling example here. Even in the public sector where the balance between family and professional life is more of a concern than in the private sector, parenthood is still stereotypically associated with mothers while fathers therefore face difficulties in taking parental leave (The Greek Ombudsman 2015a).

Policy recommendations may contain a valuable assessment of austerity measures. These measures, as well as structural reforms, have been implemented without any evaluation of their impact on fundamental labour rights (CEACR 2018; Kouzis 2016; Koukiadaki and Grimshaw 2016), in particular for vulnerable groups such as migrants, refugees and asylum seekers who are at risk of being more greatly affected by economic recession and the labour market 'reforms' package of the Greek bailout agreements (Maroukis 2016). This will allow for an effective monitoring of wage differentials between migrants and natives, working migrants at risk of discrimination, as well of practices related to migrant representation in collective bargaining. In addition, this assessment will be a valuable input when addressing the segmented landscape of the Greek labour market, which has become more complex during the economic crisis, as well as the risk of normalizing the trafficking of people for the purposes of labour exploitation (Maroukis 2016) and the transition towards an absent or single-employer bargaining model.

Recommendations may also be made for elaborate measures as regards the identification, protection, support and compensation of victims, in order to prevent trafficking in persons and to better assess the legal proceedings initiated in accordance with the Penal

Code for criminalizing trafficking in human beings for labour and for sexual exploitation in the context of the Forced Labour Convention (CEACR 2017).

Special efforts must be undertaken for children at risk. Over the period 2014-2016, three main groups were considered as being the most vulnerable: a) street children; b) unaccompanied minors; and c) Roma children. A number of initiatives has been undertaken, such as the Mobile School Programme for street children (PRAKSIS 2016), the creation of centres for unaccompanied minors in collaboration with the IOM, and the implementation of the “Education Roma Children” project in the so-called Education Priority Zones. Despite the initiatives undertaken, which are related to the Worst Forms of Child Labour Convention, it is worth noting that there is still a need for further specifications on measures to monitor and combat child pornography through the Internet and on information regarding the number of street children who have benefited from the Mobile School Programme as well as the number of children who have been withdrawn from the streets (CEACR 2016). In addition, there is still room for improving the conditions in which unaccompanied minors find themselves in the accommodation centres (United Nations 2016) and for further facilitating the access of Roma children to free basic education (ECRI 2015, The Greek Ombudsman 2016; 2015d) through a more concrete national strategy closely coordinated with regional and local authorities.

On the whole, the implementation of European and international legal texts has undoubtedly enriched the national legal framework. Nevertheless, there is a need for further efforts to consolidate, disseminate and further evaluate implementation practices.

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Annexes

Annex I: OVERVIEW OF THE LEGAL FRAMEWORK ON MIGRATION, ASYLUM AND RECEPTION CONDITIONS

Title of law (original and English) and number	Date	Type of law (i.e. legislative act, regulation, etc.)	Object	Link/PDF
<p>Law 3838/2010. Current provisions for Greek citizenship and political participation of repatriated Greeks and lawfully resident immigrants and other adjustments. Gazette 49/A/24-03-2010 Amended by: Law 4332/2015</p> <p>Νόμος 3838/2010. Σύγχρονες διατάξεις για την Ελληνική Ιθαγένεια και την πολιτική συμμετοχή ομογενών και νομίμως διαμενόντων μεταναστών και άλλες ρυθμίσεις. ΦΕΚ 49/A/24-03-2010</p> <p>Τροποποίηση από: Νόμος 4332/2015</p>	24/03/2010	Law	Citizenship Law	<p>https://ec.europa.eu/migrant-integration/librarydoc/law-3838/2010-current-provisions-for-greek-citizenship-and-political-participation-of-repatriated-greeks-and-lawfully-resident-immigrants-and-other-adjustments (EN)</p> <p>http://www.et.gr/ids-nph/search/pdfViewerForm.html?args=5C7QrtC22wGYK2xFpSwMnXdtvSoClrL8mLbN9MULyzrtII9LGdkF53UIxsx942CdyqxSQYNuqAGCF0IfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsLuV-nRwO1oKqSe4BIOTSpEWYhszF8P8UqWb_zFijB9UlgXvF7adz4j0BgDMm_MGDvIFgwiKJHMwNyW089aQ (GR)</p>
Law 3907/2011. On the	26/01/201	Law	Asylum Seeker and Refugee Law	http://www.refworld.org/docid/4da6ee7e2.html

<p>establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC, "On common standards and procedures in Member States for returning illegally staying third country nationals" and other provisions. Gazette 7/A/26-01-2011</p> <p>Amended by: Presidential Decree 133/2013, Gazette 198/A/25-09-2013 Law 4058/2012, Gazette 63/A/22-03-2012 Law 4375/2016, Gazette 51/A/3-4-2016</p> <p>Νόμος 3907/2011. Ίδρυση Υπηρεσίας Ασύλου και Υπηρεσίας Πρώτης Υποδοχής, προσαρμογή της ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2008/115/EK «σχετικά με τους κοινούς κανόνες και διαδικασίες στα κράτη-μέλη για την επιστροφή των παρανόμως διαμενόντων υπηκόων τρίτων χωρών» και λοιπές διατάξεις ΦΕΚ 7/A/26-01-2011</p> <p>Τροποποίηση από: Προεδρικό Διάταγμα 133/2013, ΦΕΚ 198/A/25-09-2013 Νόμος 4058/2012, ΦΕΚ 63/A/22-</p>	1			<p>(EN) http://asylo.gov.gr/wp-content/uploads/2014/06/3907.pdf (GR)</p>
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03-2012 Νόμος 4375/2016, ΦΕΚ 51/Α/3-4-2016				
<p>Law 4251/2014. Immigration and Social Integration Code and other provisions. Gazette 80/Α/01-04-2014</p> <p>Amended by: Law 4332/2015, Gazette 76/Α/09-07-2015</p> <p>Νόμος 4251/2014. Κώδικας Μετανάστευσης και Κοινωνικής Ένταξης και λοιπές διατάξεις. ΦΕΚ 80/Α/01-04-2014</p> <p>Τροποποίηση από: Νόμος 4332/2015, ΦΕΚ 76/Α/09-07-2015</p>	01/04/2014	Law	Migration Law that collates and codifies the existing legislative framework concerning legal immigration, aligns the Greek legislation with provisions 2011/51/EU of the European Parliament, which extends the scope of Directive 2003/109/EC to beneficiaries of international protection and introduces important reforms in the field of residence permits for third-country nationals.	<p>http://www.ypes.gr/UserFiles/24e0c302-6021-4a6b-b7e4-8259e281e5f3/metanast-N4251-2014.pdf (EN)</p> <p>https://www.synigoros.gr/resources/docs/n4251_2014.pdf (GR)</p>
<p>Law 4285/2014. Amendment of Law 927/1979 (Α 139) and adaptation to the decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (L 328) and other provisions. Gazette 191/Α/10-09-2014</p> <p>Νόμος 4285/2014. Τροποποίηση του Ν. 927/1979 (Α' 139) και προσαρμογή του στην απόφαση -</p>	10/09/2014	Law	Anti-racism law that aims to strengthen the existing anti-racism criminal legislation and criminalizes denial of Genocide, hate speech, and other acts of racism.	http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=lk2xQr3jlkq%3D&tabid=132 (GR)

πλαίσιο 2008/913/ΔΕΥ της 28ης Νοεμβρίου 2008, για την καταπολέμηση ορισμένων μορφών και εκδηλώσεων ρατσισμού και ξενοφοβίας μέσω του ποινικού δικαίου (L 328) και άλλες διατάξεις. ΦΕΚ 191/Α/10-09-2014				
<p>Law 4228/2014. Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of the General Assembly of the United Nations. Gazette 7/Α/10-01-2014</p> <p>Νόμος 4228/2014. Κύρωση του Προαιρετικού Πρωτοκόλλου στη Σύμβαση κατά των βασανιστηρίων και άλλων μορφών σκληρής, απάνθρωπης ή ταπεινωτικής μεταχείρισης ή τιμωρίας της Γενικής Συνέλευσης των Ηνωμένων Εθνών. ΦΕΚ 7/Α/10-01-2014</p>	10/01/2014	Law	The Law ratifies the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 and entered into force on 22 June 2006.	http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/100564/120678/F1976624225/GRC100564%20Grk.pdf (GR)
<p>Joint Ministerial Decision 30651/2014. Establishment of the category of residence permit for humanitarian reasons, its type and the procedures for granting it. Gazette 1453/Β/05-06-2014</p> <p>Κοινή Υπουργική Απόφαση 30651/2014. Καθορισμός</p>	05/06/2014	Joint Ministerial Decision	Residence permit for humanitarian reasons	https://www.synigoros.gr/resources/docs/kya-adeia-diamonis.pdf (GR)

κατηγορίας άδειας διαμονής για ανθρωπιστικούς λόγους, καθώς και του τύπου, της διαδικασίας και των ειδικότερων προϋποθέσεων χορήγησής της. ΦΕΚ 1453/Β/05-06-2014				
Joint Ministerial Decision 7315/2014. Procedure for granting uniform format residence permits to beneficiaries of international protection. Gazette B/2461/16-9-2014 Κοινή Υπουργική Απόφαση 7315/29.8.2014. Διαδικασία χορήγησης Άδειας Διαμονής Ενιαίου Τύπου (ΑΔΕΤ) στους δικαιούχους διεθνούς προστασίας. ΦΕΚ Β/2461/16-9-2014	16/09/2014	Joint Ministerial Decision	Residence permits to beneficiaries of international protection	http://asylo.gov.gr/wp-content/uploads/2014/09/KYA-ADET1.pdf (GR)
Law 4332/2015. Amendment of the provisions of the Greek Nationality Code – Amendment of Law 4521/2014 to transpose to Greek law Directive 2011/98/EU of the European Parliament and of the Council, “On a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State” and Directive	09/07/2015	Law	Migration and Citizenship Law. Law 4332/2015 amended certain provisions of Law 4521/2014 regarding residence permits, transposed to Greek law Directive 2011/98/EU and Directive 2014/36/EU and gave the possibility of acquiring citizenship due to birth or school attendance in Greece.	http://www.ypes.gr/UserFiles/24e0c302-6021-4a6b-b7e4-8259e281e5f3/metan-n4332-2015.pdf (EN) https://www.synigoros.gr/resources/4332.pdf (GR)

<p>2014/36/EU, "On the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers" and other provisions. Gazette 76/A/09-07-2015</p> <p>Νόμος 4332/2015. Τροποποίηση διατάξεων Κώδικα Ελληνικής Ιθαγένειας- Τροποποίηση του Ν. 4251/2014 για την προσαρμογή της ελληνικής νομοθεσίας στις οδηγίες του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου 2011/98/ΕΕ σχετικά με την ενιαία διαδικασία υποβολής αίτησης για τη χορήγηση στους πολίτες τρίτων χωρών ενιαίας άδειας διαμονής και εργασίας στην επικράτεια κράτους μέλους και σχετικά με κοινό σύνολο δικαιωμάτων για τους εργαζομένους από τρίτες χώρες που διαμένουν νομίμως σε κράτος μέλος και 2014/36/ ΕΕ σχετικά με τις προϋποθέσεις εισόδου και διαμονής πολιτών τρίτων χωρών με σκοπό την εποχιακή εργασία και άλλες διατάξεις. ΦΕΚ 76/A/09-07-2015</p>				
<p>Law 4375/2016. Organization and functioning of the Asylum Service, Appeals Authority, Reception and Identification Service, establishment of General Secretariat for</p>	<p>03/04/2016</p>	<p>Law</p>	<p>Asylum and Refugee Law that facilitates the implementation of the EU-Turkey Statement and describes the operation of the Asylum Service, the Appeals Authority, the Reception</p>	<p>http://asylo.gov.gr/en/wp-content/uploads/2016/05/GREECE_Law_4375_2016_EN_final.pdf (EN) http://asylo.gov.gr/wp-content/uploads/2016/06/N.4375.pdf (GR)</p>

<p>Reception, transposition of Directive 2013/32/EU of the European Parliament and of the Council, "On common procedures for granting and withdrawing international protection (recast)" (L 180/29.6.2013), provisions on employment of beneficiaries of international protection and other provisions. Gazette 51/A/3-4-2016</p> <p>Amended by: Law 4399/2016, Gazette 117/A/22-6-2016 Law 4485/2017, Gazette 114/A/4-08-2017</p> <p>Νόμος 4375/2016. Οργάνωση και λειτουργία Υπηρεσίας Ασύλου, Αρχής Προσφυγών, Υπηρεσίας Υποδοχής και Ταυτοποίησης σύσταση Γενικής Γραμματείας Υποδοχής, προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2013/32/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου «σχετικά με τις κοινές διαδικασίες για τη χορήγηση και ανάκληση του καθεστώτος διεθνούς προστασίας (αναδιατύπωση)» (L 180/29.6.2013), διατάξεις για την εργασία δικαιούχων διεθνούς προστασίας και άλλες διατάξεις.</p>			<p>and Identification Service, the establishment of the General Secretariat for Reception and the transposition into Greek legislation of the provisions of Directive 2013/32/EC.</p>	
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ΦΕΚ 51/A/3-4-2016 Τροποποίηση από: Νόμος 4399/2016, ΦΕΚ 117/A/22-6-2016 Νόμος 4485/2017, ΦΕΚ 114/A/4-08-2017				
Law 4399/2016. Institutional framework for establishing Private Investment Aid schemes for the country's regional and economic development - Establishing the Development Council and other provisions. Gazette 117/A/22-6-2016 Νόμος 4399/2016. Θεσμικό πλαίσιο για τη σύσταση καθεστώτων Ενισχύσεων Ιδιωτικών Επενδύσεων για την περιφερειακή και οικονομική ανάπτυξη της χώρας – Σύσταση Αναπτυξιακού Συμβουλίου και άλλες διατάξεις. ΦΕΚ 117/A/22-6-2016	22/06/2016	Law	Development Law. Amendment to the asylum Law 4375/2016 (Article 86), modifying the composition of Appeals Committees and the right of asylum seekers to be heard in appeals against negative decisions	https://www.espa.gr/elibrary/n4399_2016_FEK_117A_Anptyxiakos.pdf (GR)
Presidential Degree 123/2016. Reestablishment and renaming of the Ministry of Administrative Reform and Electronic Government, reestablishment of the Ministry of Tourism, establishment of the Ministry of Immigration Policy and of the Ministry of Digital Policy, Telecommunications and Media, renaming of the Ministry of Interior	04/11/2016	Presidential Degree	Establishment of the Ministry of Migration Policy	http://www.immigration.gov.gr/documents/20182/0/%CE%A6%CE%95%CE%9A+A+208.pdf/f99b5269-914b-42a8-868c-3937c20330e0 (GR)

<p>and Administrative Reconstruction, Economy, Development and Tourism and Infrastructure, Transport – Networks. Gazette 208/A/4-11-2016</p> <p>Προεδρικό Διάταγμα 123/2016. Ανασύσταση και μετονομασία του Υπουργείου Διοικητικής Μεταρρύθμισης και Ηλεκτρονικής Διακυβέρνησης, ανασύσταση του Υπουργείου Τουρισμού, σύσταση Υπουργείου Μεταναστευτικής Πολιτικής και Υπουργείου Ψηφιακής Πολιτικής, Τηλεπικοινωνιών και Ενημέρωσης, μετονομασία Υπουργείων Εσωτερικών και Διοικητικής Ανασυγκρότησης, Οικονομίας, Ανάπτυξης και Τουρισμού και Υποδομών, Μεταφορών και Δικτύων. ΦΕΚ 208/A/4-11-2016</p>				
<p>Joint Ministerial Decision οικ. 13257/2016. On the implementation of the special border procedure (Article 60(4) L 4375/2016). Gazette B/3455/26.10.2016</p> <p>Κοινή Υπουργική Απόφαση οικ. 13257/2016. Εφαρμογή των διατάξεων της παραγράφου 4 του άρθρου 60 του Ν. 4375/2016 (Α 51).</p>	26/10/2016	Joint Ministerial Decision	Fast-Track Border Procedure	http://bit.ly/2maKUeC (GR)

ΦΕΚ Β/3455/26.10.2016				
<p>Joint Ministerial Decision οικ. 12205/2016. On the provision of legal aid to applicants for international protection. Gazette 2864/B/9-9-2016</p> <p>Κοινή Υπουργική Απόφαση οικ. 1220/2016. Παροχή νομικής συνδρομής σε αιτούντες διεθνή προστασία. ΦΕΚ Β/2864/9-9-2016</p>	09/09/2016	Joint Ministerial Decision	Legal aid to applicants for international protection	http://asylo.gov.gr/wp-content/uploads/2016/10/apofasi-12205-9.9.16-FEK-2864.pdf (GR)

Annex II: LIST OF INSTITUTIONS INVOLVED IN MIGRATION GOVERNANCE

Institution	Tier of government	Type of institution	Area of competence in the field of MRA	Link
Ministry for Migration Policy Υπουργείο Μεταναστευτικής πολιτικής	National	Ministry	It consists, among other sections, of the General Secretariat for Migration Policy, the General Secretariat of Reception, the autonomous Asylum Service, the autonomous Appeals Authority and the autonomous Directorate for Financial Services of the Immigration Policy.	http://www.immigration.gov.gr/web/guest/home .
Reception and Identification Service (RIS) Υπηρεσία Υποδοχής και ταυτοποίησης.	National	Independent agency under the Deputy Minister of Migration Policy, General Secretariat of Reception.	The mission of the Reception and Identification Service is the effective management of third-country nationals who cross the borders without legal documents and/or procedures, under conditions that respect their dignity, by placing them in first reception procedures. The Central Service in Athens has the responsibility of programming, planning and coordinating the activities that are implemented by the Regional Services.	http://www.firstreception.gov.gr/content.php?id=1 .
Regional Reception and Identification Services	Regional	Regional Reception and Identification Services are	Regional Reception and Identification Services are the Reception and Identification Centres (RIC) and the Mobile Units and they implement procedures of first reception within the boundaries	http://www.firstreception.gov.gr/content.php?id=13&pid=2 .

Περιφερειακές Υπηρεσίες Υποδοχής και Ταυτοποίησης.		under the Central Reception and Identification Service.	of their regional jurisdiction to the immigrants who came to the country without legal formalities.	
Asylum Service Υπηρεσία Ασύλου	National	Autonomous Service that reports directly to the Minister of Migration Policy.	The asylum Service is in charge of the examination of international protection claims. The Central Asylum Service plans, directs, monitors and controls the action of Regional Services and guarantees the existence of the necessary conditions for the exercise of their tasks.	http://asylo.gov.gr/en/?page_id=39 .
Regional Asylum Offices, Asylum Units. Περιφερειακά Γραφεία Ασύλου, Μονάδες Ασύλου	Regional	Regional Asylum Offices and Asylum Units are under the Central Asylum Service.	The function of the Regional Asylum Offices and the Asylum Units is to ensure the implementation of international protection legislation, within the limits of their local jurisdiction	http://asylo.gov.gr/en/?page_id=49 .
Appeals Authority Υπηρεσία Προσφυγών	National	Autonomous Service reporting directly to the Minister of Migration Policy.	It examines at second instance the administrative (quasi-judicial) appeals lodged against decisions issued by the Asylum Service (first instance)	http://asylo.gov.gr/en/?page_id=52 .
Ministry of Interior Υπουργείο Εσωτερικών	National	Ministry	It consists among other sections of the Special Secretariat for Citizenship and the General Secretariat for the Coordination of Aliens, Non-EU Nationals and Irregular Migration Affairs.	http://www.ypes.gr/en/Ministry/ .

Special Secretariat for Citizenship Ειδική Γραμματεία Ιθαγένειας	National	Special Secretariat under the Ministry of Interior	The Special Secretariat for Citizenship is responsible for setting the legal framework and defining the procedures for the acquisition of citizenship.	http://www.ypes.gr/en/EidGramlthageneias/
General Secretariat for the Coordination of Aliens, Non-EU Nationals and Irregular Migration Affairs. Γενική Γραμματεία για τον συντονισμό θεμάτων αλλοδαπών, υπηκόων τρίτων χωρών και παράτυπης μετανάστευσης.	National	General Secretariat under the Ministry of Interior	The General Secretariat is responsible for supervising and coordinating issues related to border protection and to irregular migration.	http://www.minocp.gov.gr/index.php?option=ozo_content&perform=view&id=5452&Itemid=407&lang=GR&lang=&lang=GR?option=ozo_search&lang=EN
One-Stop-Service Υπηρεσία μιας στάσης	Regional	Aliens and Immigration Department of the Decentralized Administrations.	Institutional structures of the decentralised administrations, responsible for lodging applications for the residence permits through the one-stop service.	http://www.immigration.gov.gr/web/guest/yperesies-mias-stasis .
Hellenic Police Ελληνική Αστυνομία	National	Under the Ministry of Citizen Protection	Responsible for tackling irregular migration and border control, detention and return of irregular migrants, registration procedures and guard of the Reception and Identification Centres.	http://www.hellenicpolice.gr/index.php?option=ozo_content&perform=view&id=34&Itemid=13&lang=EN .

Ministry of Foreign Affairs Υπουργείο Εξωτερικών	National	Ministry	Responsible for issuing, renewing and/or revoking Schengen and national visas	https://www.mfa.gr/en/visas/ .
Ministry of Education, Research and Religious Affairs Υπουργείο Παιδείας Έρευνας και Θρησκευμάτων.	National	Ministry	Educational actions for refugee and migrant children and recording of the academic qualifications of third-country nationals.	http://www.minedu.gov.gr/prosf-ekpaideusi-m .
Ministry of Labor, Social Security and Social Solidarity. Υπουργείο Εργασίας Κοινωνικής Ασφάλισης & Κοινωνικής Αλληλεγγύης	National	Ministry	Responsible for the evaluation of labour market needs, for the determination and implementation of labour legislation regarding third-country nationals and for social protection issues.	http://www.ypakp.gr/ .
Ministry of Justice, Transparency and Human Rights Υπουργείο	National	Ministry	Development of institutional actions for the protection of human rights and fundamental freedoms of migrants, asylum seekers and refugees.	http://www.ministryofjustice.gr/site/el/%CE%91%CE%A1%CE%A7%CE%99%CE%9A%CE%97.aspx .

Δικαιοσύνης, Διαφάνειας και Ανθρωπίνων Δικαιωμάτων.				
Ministry of Shipping and Island Policy Υπουργείο ναυτιλίας και νησιωτικής πολιτικής.	National	Ministry	Responsible for sea/border surveillance	https://www.yen.gr/home .
Ministry of Economy, Development and Tourism. Special Secretariat for the Coordination and Management of Programs under the Asylum, Immigration and Integration Fund, the Internal Security Fund and other funds Υπουργείο Οικονομίας, Ανάπτυξης και Τουρισμού.	National	Ministry	Responsible for the effective coordination, supervision and acceleration of the actions relative to the use of the emergency support funds, intended for the management of the migration flows.	http://www.amifisf.gr/uperesia-asulou/

Ειδική Υπηρεσία Συντονισμού και Διαχείρισης Προγραμμάτων Ταμείου Ασύλου, Μετανάστευσης και Ένταξης και Ταμείου Εσωτερικής Ασφάλειας, και άλλων πόρων				
United Nations High Commissioner for Refugees (UNHCR) Έγπατη Αρμοστεία του ΟΗΕ για τους Πρόσφυγες	International	International Organization	International protection and reception procedures	www.unhcr.org/ http://www.unhcr.org/gr/
International Organization of Migration (IOM) Διεθνής Οργανισμός Μετανάστευσης	International	International Organization	International protection and reception procedures	https://www.iom.int/ https://greece.iom.int/
European Asylum Support Office (EASO)	International	International Organization	International protection and asylum procedures	https://www.easo.europa.eu/

Ευρωπαϊκή Υπηρεσία Υποστήριξης για το Άσυλο				
Intergovernmental Consultations on Migration Asylum and Refugees (IGC) Διακυβερνητικές διαβουλεύσεις αναφορικά με την μετανάστευση, το άσυλο και του πρόσφυγες	International	International Forum	Informal, non-decision-making forum for intergovernmental information exchange and policy debate on issues of relevance to the management of international migratory flows.	https://igc.ch/
The Greek Ombudsman Συνήγορος του Πολίτη	National	Independent body	Monitoring and promoting the implementation of the principle of equal treatment, the rights of the child and the rights of vulnerable groups.	https://www.synigoros.gr/?i=stp.en
National Commission for Human Rights (NCHR) Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου	National	Independent advisory body to the State	Human rights	www.nchr.gr

NGOs and other Civil Society Organizations Μη-κυβερνητικές οργανώσεις και οργανώσεις κοινωνίας πολιτών	National and International	Formal and Informal Organisations	Reception and social integration issues	A National Register of the Greek and International NGOs is available at: https://mko.ypes.gr/home_in_mitroo_report
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Annex III: OVERVIEW OF THE LEGAL FRAMEWORK ON LABOUR AND ANTI-DISCRIMINATION LAW

Title of law (original and English) and number	Date	Type of law (i.e. legislative act, regulation, etc.)	Object	Link/PDF
<p>Law 3863/2010. New Insurance System and related provisions, working relationships adjustments.</p> <p>Gazette 115/A/15-07-2010</p> <p>Νόμος 3863/2010.Νέο Ασφαλιστικό Σύστημα και συναφείς διατάξεις, ρυθμίσεις στις εργασιακές σχέσεις</p> <p>ΦΕΚ 115/A/15-07-2010</p>	15/07/2010	Law	Insurance Law	http://www.ggka.gr/latest/n3863-2010.pdf (GR)
<p>Presidential Decree. 141/2013. Transposition into Greek legislation of the provisions of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 (L 337) on the requirements for the recognition and status of aliens or stateless persons as beneficiaries of international protection for one Uniform Status for refugees or persons enjoying subsidiary protection and the content of the protection granted</p>	21/10/2013	Presidential Decree	Transposition of EU directive. Aliens, stateless and beneficiaries of international	https://www.synigoros.gr/resources/docs/p-d--141_2013.pdf (GR)

<p>(recast).</p> <p>Gazette 226/A/21-10-2013</p> <p>Προεδρικό Διάταγμα 141/2013. Προσαρμογή της ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2011/95/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 13ης Δεκεμβρίου 2011 (L 337) σχετικά με τις απαιτήσεις για την αναγνώριση και το καθεστώς των αλλοδαπών ή των ανιθαγενών ως δικαιούχων διεθνούς προστασίας, για ένα ενιαίο καθεστώς για τους πρόσφυγες ή για τα άτομα που δικαιούνται επικουρική προστασία και για το περιεχόμενο της παρεχόμενης προστασίας (αναδιατύπωση).</p> <p>ΦΕΚ 226/A/21-10-2013</p>			protection.	
<p>Law 4225/2014. Upgrading and improving the recovery mechanisms of insurance institutions, fines for uninsured and undeclared work and other provisions of the Ministry of Labour, Social Security and Welfare.</p> <p>Gazette 2/A/7-01-2014</p> <p>Νόμος 4225/2014. Αναβάθμιση και βελτίωση των μηχανισμών είσπραξης των ασφαλιστικών φορέων, πρόστιμα για την ανασφάλιστη και αδήλωτη εργασία και λοιπές διατάξεις αρμοδιότητας Υπουργείου Εργασίας,</p>	07/01/2014	Law	Insurance Law	https://www.kodiko.gr/public_html/uploads/document_attachments/79030/4225.pdf (GR)

Κοινωνικής Ασφάλισης και Πρόνοιας. ΦΕΚ 2/Α/7-01-2014				
<p>Joint Ministerial Decision 51738/2014. Determination of the minimum wage or the minimum insurance period by insurance institutions, as well as of requirements for renewal of residence permits for third-country nationals and adjustment of other issues.</p> <p>Gazette 2947/B/3-11-2014</p> <p>Κοινή Υπουργική Απόφαση 51738/2014. Καθορισμός του ελάχιστου αριθμού ημερομισθίων ή ελάχιστου χρονικού διαστήματος ασφάλισης ανά ασφαλιστικό φορέα, των αποδεικτικών στοιχείων για την ανανέωση άδειας διαμονής πολιτών τρίτων χωρών καθώς και ρύθμιση άλλων σχετικών θεμάτων</p> <p>ΦΕΚ 2947/B/3-11-2014</p>	03/11/2014	Joint Ministerial Decision	Requirements and conditions for renewal of residence permits for third-country nationals.	https://www.synigoros.gr/resources/docs/kya-gia-enshma.pdf (GR)
Law 4443/2016. Integration of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and Directive 2014/54/II on measures to facilitate the exercise of workers' rights within the framework of the free movement of workers, II), measures necessary to	09/12/2016	Law	Anti-discrimination Law	https://www.synigoros.gr/resources/N4443_2016.pdf (GR)

<p>comply with Articles 22, 23, 30, 31 (1), 32 and 34 of Regulation 596/2014 abuse of the market and the repeal of Directive 2003/124 / EC, 2003/125 EC and 2004/72/EC and incorporating Directive 2014/57 / EU on criminal sanctions for market Implementation of Directive 2014/62, on the protection of the euro and other currencies against counterfeiting through criminal law and the replacement of Council Framework Decision 2000/383 / JHA and IV). Establishment of a National Emergency Response Investigation Facility in Safety Bodies and staff of detention facilities and other provisions.</p> <p>Gazette 232/A/9-12-2016</p> <p>Νόμος 4443/2016. Ι) Ενσωμάτωση της Οδηγίας 2000/43/EK περί εφαρμογής της αρχής της ίσης μεταχείρισης προσώπων ασχέτως φυλετικής ή εθνικής τους καταγωγής, της Οδηγίας 2000/78/EK για τη διαμόρφωση γενικού πλαισίου για την ίση μεταχείριση στην απασχόληση και την εργασία και της Οδηγίας 2014/54/ΕΕ περί μέτρων που διευκολύνουν την άσκηση των δικαιωμάτων των εργαζομένων στο πλαίσιο της ελεύθερης κυκλοφορίας των εργαζομένων, ΙΙ) λήψη αναγκαίων μέτρων συμμόρφωσης με τα άρθρα 22, 23, 30, 31 παρ. 1, 32 και 34 του Κανονισμού 596/2014 για την κατάχρηση της αγοράς και την κατάργηση της Οδηγίας 2003/6/EK του Ευρωπαϊκού Κοινοβουλίου και</p>				
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<p>του Συμβουλίου και των Οδηγιών της Επιτροπής 2003/124/EK, 2003/125/EK και 2004/72/EK και ενσωμάτωση της Οδηγίας 2014/57/ΕΕ περί ποινικών κυρώσεων για την κατάχρηση αγοράς και της εκτελεστικής Οδηγίας 2015/2392, III) ενσωμάτωση της Οδηγίας 2014/62 σχετικά με την προστασία του ευρώ και άλλων νομισμάτων από την παραχάραξη και την κιβδηλεία μέσω του ποινικού δικαίου και για την αντικατάσταση της απόφασης - πλαισίου 2000/383/ΔΕΥ του Συμβουλίου και IV) Σύσταση Εθνικού Μηχανισμού Διερεύνησης Περιστατικών Αυθαιρεσίας στα σώματα ασφαλείας και τους υπαλλήλους των καταστημάτων κράτησης και άλλες διατάξεις.</p> <p>ΦΕΚ 232/Α/9-12-2016</p>				
<p>Ministerial Circular 17131/313/12-04-2016. Conditions of access to employment of persons recognized by the Greek State as beneficiaries of international protection, applicants for international protection, persons granted a residence permit in Greece for humanitarian reasons.</p> <p>Ministry of Labour, Social Security and Social Solidarity</p> <p>Υπουργική Εγκύκλιος 17131/313/12-04-2016. Προϋποθέσεις πρόσβασης στην απασχόληση των αναγνωρισμένων από την ελληνική πολιτεία ως δικαιούχων διεθνούς προστασίας, των αιτούντων διεθνή προστασία, των προσώπων στους οποίους έχει</p>	12/04/2016	Ministerial Circular	Conditions of access to employment for asylum seekers, refugees and beneficiaries of international protection.	https://www.synigoros.gr/resources/160812-eggrafo.pdf (GR)

χορηγηθεί καθεστώς παραμονής στην Ελλάδα για ανθρωπιστικούς λόγους. Υπουργείο Εργασίας Κοινωνικής Ασφάλισης και Κοινωνικής Αλληλεγγύης				
Law 4472/2017. Pension provisions for public sector and amendment of the provisions of Law 4387/2016, measures for the implementation of financial targets and reforms, social support measures and working arrangements, medium-term financial strategy 2018-2021 and other provisions. Gazette 74/A/19-05-2017 Νόμος 4472/2017. Συνταξιοδοτικές διατάξεις Δημοσίου και τροποποίηση διατάξεων του ν.4387/2016, μέτρα εφαρμογής των δημοσιονομικών στόχων και μεταρρυθμίσεων, μέτρα κοινωνικής στήριξης και εργασιακές ρυθμίσεις, Μεσοπρόθεσμο Πλαίσιο Δημοσιονομικής Στρατηγικής 2018-2021 και λοιπές διατάξεις. ΦΕΚ 74/A/19-05-2017	19/05/2017	Law	Insurance Law	https://www.kodiko.gr/public_html/uploads/document_attachments/264637/4472.pdf (GR)
Law 4251/2014, Νόμος 4251/2014 (see Annex I)				
Law 4332/2015, Νόμος 4332/2015 (see Annex I)				
Law 4375/2016, Νόμος 4375/2016 (see Annex I)				

7. Italy

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7.1 Introduction

This report critically illustrates the Italian legal and institutional factors at the macro-level that contribute defining the effective capacity of the country to integrate migrants, refugees and asylum applicants into the labour market. This will allow to highlight legal and institutional barriers and enables underpinning integration measures (at legislative and policy level) for migrants, refugees and asylum applicants (MRAA). First, the report discusses statistic data concerning the migration inflows and stocks since 2011, with special emphasis on the period between 2014 and 2016. Providing an insight on evidence while studying social phenomena is always crucial, and discussing the reasons why is trivial, but in the field of migration studies this is not the case. As pointed out by critical literature, the discrepancy between perceptions and reality of immigration and asylum is huge, and often law and policy-making are conceived as to respond to the former instead than to face the latter (Ambrosini, 2017c; Lafleur, Marfouk, 2017). Next, the report provides a brief overview of the social and cultural context of migration in Italy, firstly by looking at the history of migration and the social and political instabilities of the country. We then examine the constitutional enforcement of basic principles for MRAA integration, highlighting both the role of the Italian Constitution and the importance of case law. Furthermore, we focus on the framework legislation on migration first, and on labour market access second, pinpointing how the recent developments have contributed exacerbating some critical aspects of the migration legal and institutional framework. We then conclude by highlighting that Italy has proven to be a very complex case of migration management that has developed in the grip of structural national limits, as well as a case of slow and inadequately controlled process of integration of the foreign population residing in the country for the last three decades. In the last few years, Italy has faced increasing difficulties in addressing MRAA needs and rights while accommodating natives' fears.

7.2 Statistics and data overview

According to the National Institute of Statistics (ISTAT) the resident population in Italy in 2017 totalled 60,589,445, while the foreign resident population counted 5,047,028 individuals, representing the 8.32% of the total population. In 1998 the foreign population resident in Italy totalled less than one million. In 2015 it was five times more, representing a rise of the +405%. This arguably represents the most conspicuous relative increase among European states, considering that the rest of notable increases in 2015 reached the +357%

in Ireland, the +171% in Finland and the +143% in the United Kingdom (Eurostat data). However, if the data are weighted with the total population, the picture seems to change. Indeed, the Italian percentage (8.32%) is similar to the United Kingdom (8.4%), higher than France (6.6%) but less than Germany (9.3%), Belgium (11.6%), Ireland (11.9%) and Austria (13.2%).

The real watershed in terms of migration flow for Italy has been 2014. Indeed, since then, Italy is receiving the highest number of non-EU citizens looking for economic opportunities and for international protection in its history. Therefore, new practices and policies have been developed in the past few years to respond to this challenge. Following a first peak in 2011 (when 62,692 people arrived in Italy pushed by the turmoils in North-Africa), migration flows have temporarily decreased in 2012²⁰⁶, but increased again²⁰⁷ to reach the second most important peak in 2016, when 181,436 non-EU citizens landed Italian coasts²⁰⁸ (Table 7.1).

Table 7.1 Arrivals of Non-EU Citizens by the sea

	Total
2011	62,692
2012	13,267
2013	42,925
2014	170,100
2015	153,842
2016	181,436
2017	119,310

Source: Department of Public Security, Ministry of the Interior, Italy and ISMU²⁰⁹

However, with the rise in arrivals, rejections rose as well. According to the Report released by the 2017 Italian Special Parliamentary Commission on Reception of Migrations, border push-backs constitute the primary type of rejection. As Table 7.2 shows, in 2015 border rejections totalled almost threefold the deferred push-backs, and in 2017 the 61% of the refusals of entry were in fact rejections at the border reaching a total of 10.496 (Chamber Inquiry Committee, 2017:74).

²⁰⁶ The decrease in arrivals in 2012 is mostly due to two factors: on the one hand, the bilateral agreement signed between Italy and the Tunisian government that concerned Tunisian but also Sub-Saharan citizens from Libya. On the other hand, both the elections in Tunisia and the formation of the National Transitional Council government represented two moments of temporal stability and control of the fluxes.

²⁰⁷ According to the Bank of Italy, in the two-years period 2014-2015, the cost of management of arrivals and sea-rescues totalled 1.7 billion euros to which reception in infrastructures for Italy totalled 1.5 billion euros (Ballatore et al. 2017).

²⁰⁸ Among these numbers, unaccompanied children do account for a significant extent. According to the available data (Italian Ministry of the Interior and ISMU), more than ten-thousands non-accompanied children arrive to Italy each year (13,026 in 2014 and 15,371 in 2017). Proportionally, the peak of arrivals in 2016 of non-accompanied children was actually higher than the rest of arrivals.

²⁰⁹ Iniziative e Studi sulla Multietnicità (ISMU).

Table 7.2 Number of Non-EU Citizens refused entry at the external border

	Border Push-Back	Deferred Push-Back
2014	7,573	2,573
2015	8,736	1,345
2016	-	-
2017	10,496 ²¹⁰	-

Source: Chamber Inquiry Committee (2016 and 2017, http://www.camera.it/leg17/465?tema=centri_di_identificazione_ed_espulsione)

It is also to be considered that in the last few decades, Italy — traditionally an emigration country — has gradually turned *also* into an immigration country. Italy is indeed in the process of stabilising aliens, the majority of which appears interested in staying for good. Among the migrants arrived in 2012, for instance, the 53.4% was still present in Italy in 2017. A slightly less percentage concerns those migrants with political asylum permits (51.5%), while the 65.8% of the migrants recognised for family reunification remained. With respect to the migratory balance of the country, there is an interesting dynamic deserving closer attention. As confirmed by Table 7.3, Italy shows a positive migratory balance during the period under investigation, meaning that the number of immigrants between 2014 and 2016 has been constantly larger than the number of Italian leaving the country. Yet, the Italian migratory balance remains lower than the overall EU average, as well as other European countries.

Table 7.3 Migratory Balance across Europe

	2014	2015	2016
EU average	1,101,159	1,854,445	1,222,979
Germany	583,503	1,165,772	464,734
Greece	-47,198	-44,934	10,332
Spain	-94,976	-7,490	87,422
France	23,804	68,310	68,310
Italy	108,712	31,730	65,717
Finland	15,437	12,575	17,098
Sweden	76,560	79,699	117,693
UK	316,942	331,917	247,286
Norway	39,916	29,353	26,168

Source: Eurostat (2018)

²¹⁰ As of 31 October 2017.

In addition to that, it is worth noticing that Italy is experiencing an overall decreasing trend, despite mixed results per year (108,712 in 2014; 31,730 in 2015; 65,717 in 2016²¹¹). Arguably, migration flows in Italy are indeed crucial to contribute to a positive demographic balance. As a matter of fact, Eurostat confirms that, while Italian population is on average elderly, the foreign population in Italy is quite young (average age under 34). Overall, the percentage of young people among 0 and 14 years old is five points higher than Italians of the same age range. The range of foreigners between 15 and 39 years old does represent almost the 45% percent of the total foreign population in Italy, while the Italian counterpart represents the 26.2%. On the contrary, foreigners older than 65 years old represent the 3%, against the 23.7% among Italian citizens.

Among the foreign population resident in Italy, non-EU migrants represent the majority (Table 7.4). According to ISTAT, the first ten non-EU nationalities resident in Italy, namely Morocco, Albania, China, Ukraine, Philippines, India, Egypt, Bangladesh, Moldova and Pakistan, account for 61.6% of presence (ISTAT 2017b).

Table 7.4 Stock of Non-EU Migrant Population residing in Italy

Year	Non-EU migrants	Total Migrants	% of Non-EU migrants
2013	3,711,835	4,922,085	75.4
2014	3,515,466	5,014,437	70.1
2015	3,508,429	5,026,153	69.8

Source: Authors' adaptation from Caponio and Cappiali (2018: 120)

In addition, the number of non-EU citizens acquiring the Italian nationality is also increasing. While between 1998 and 2002 a total of 53,889 new Italian citizens were recognised, between 2012 and 2016 a total of 541,000 non-EU citizens became Italian, with 184,638 new citizens only in 2016. Among them, the majority were Albanians (36,920) and Moroccans (35,212)²¹². As displayed by Table 7.5, since 2011 the general trend of the legal reason for acquiring the permit to stay has been changing as well. For instance, residence permits for working reasons represented almost the 50 per cent of the total permits released, while they have been decreasing consistently every year, under the pressure, inter alia, of the economic crisis, reaching the lowest level in 2016 with 12,873 working permits released, meaning a total of 346,267 less than 2010.

²¹¹ In this regard, it is worth considering that a good proportion of Italian emigrants living in EU countries does not acquire the residency of the host country.

²¹² According to the D.P.R. 18 April 1994 n. 362, the waiting time is not supposed to exceed 730 days after the submission. Yet, it is worth considering that the timescale to be granted the Italian citizenship is quite extensive. In fact, not only applications can be submitted after ten years of residence and six years holding a long-stay resident permit, but due to the complicated and slow bureaucratic proceeding process, institutions usually employ between three and four years to give an answer to the applicant, exceeding the total waiting time by thirteen/fourteen years on average (Cappiali 2018).

Table 7.5 Resident Permit of Non-EU Citizens in Italy per reason of stay

	Work	%	Family	%	Study	%	Asylum and Humanitarian reasons	%	Other Reasons	%	Total
2011	124,544	34.4	140,846	38.9	31,295	8.65	42,672	11.8	22,333	6.17	361,690
2012	70,892	26.8	116,891	44.2	31,005	11.74	22,916	8.68	22,264	8.43	263,968
2013	84,540	33	105,266	41	27,321	10.6	19,146	7.4	19,373	7.5	255,646
2014	57,040	22.9	101,422	40.8	24,477	9.8	47,873	19.2	17,511	7	248,323
2015	21,728	9	107,096	44.8	23,030	9.6	67,271	28	19,811	8.2	238,936
2016	12,873	5.6	102,351	45	17,130	7.5	77,927	34.3	16,653	7.3	226,934

Source: ISTAT (2018)

On the contrary, resident permits for asylum or humanitarian reasons have significantly increased. In 2016, migrants with their permit recognised for this type of reason were 77,927, approximately seven times what they were in 2010. Nonetheless, the main channel to obtain the permit of residence seems to be constantly represented by family reunification which consistently represents between 40% and 45% of permits granted between 2011 and 2016. In fact, despite some annual differences, since 2008 the total never decreased below the 100,000 units, exceeding more than a half the permits granted for asylum and humanitarian reasons (Ambrosini 2017a). These data seem to confirm an overall shift in the nature of the permits granted, which stress the impact of the economic crisis and humanitarian emergencies on migration flows (Caponio and Cappiali 2018).

Table 7.6 Number of Applications for International Protection per gender

	Male	Female	Total
2014	58,703	4,753	63,456
2015	74,280	9,690	83,970
2016	105,006	18,594	123,600

Source: Ministry of the Interior, 2018

However, while it has been mentioned that the number of permits related to humanitarian reasons has been constantly raising in the last years, it seems fair to argue that such an increase mirrors the increasing trend registered with respect to the number of applications for international protection. As Table 7.6 displays, in 2014 the number of applications (63,456) were more than twofold the applications presented in 2013 (27,930), while in 2015 the total reached 83,970. The net increase overlaps with the overall increase of arrivals,

especially in 2016 when 123,600 applications were filled corresponding to more than 47% increase with respect to 2015²¹³. In addition, the female component represents around the 40% of the new flows. Female immigrants with successful applications for humanitarian reasons or political asylum do represent a relative small percentage, accounting for 11.6% in 2016. Interestingly, however, female incidence increases when considering resident permits for family reunification (around the 59%) and for study (57.3%) or work reasons (36.3%).

The number of applications for International Protection, however, does not suffice to illustrate the complex picture of the Italian status quo. First, because not all applications are successful. Second, as we will discuss later in the report, because there are three different legal status: refugee status, subsidiary protection and humanitarian protection²¹⁴.

Table 7.7 Final Decision on Applications for International Protection

	Refugee Status	%	Subsid. Prot.	%	Humanit. Protection	%	Other Decision	%	Non-Recog	%	Total
2014	3,641	10	8,338	23	10,034	28	40	0	13,122	39	36,270
2015	3,555	5	10,225	14	15,768	22	66	0	37,400	58	71,117
2016	4,808	5	12,873	14	18,979	21	188	0	51,170	60	91,102

Source: Ministry of the Interior, 2018

As illustrated in Table 7.7, within an overall increasing trend in absolute numbers among the different forms of protection ('refugee status', 'subsidiary protection' and 'humanitarian protection'), humanitarian protection displays the highest growth. However, the rejection of applications increased significantly as well, both in absolute and percentage terms. These data should lead to the reflection on the reasons for this marked increase: on the one hand for sure there has been a tightening of both legislation and interpretation of existing rules; on the other a growing number of request for protection, used by migrants as paramount ground for entering the country. Quite interestingly, according to the 2017 UNHCR report on International Protection in Italy, on average 6 over 10 applicants from the African continent are rejected, while the 22.2% of cases gains 'humanitarian protection'. Among European and American applicants, 'humanitarian protection' prevails (40.5% and 38.1%) over the 'non-recognition' (37.1% and 33.2%). Finally, applications from Asian migrants are mostly rejected (47.3%) or recognised as 'subsidiary protection' status.

²¹³ However, in this respect, it is worth noting that the processing time between the submission of the application and the permit acceptance and release is usually quite extensive.

²¹⁴ For a detailed explanation of these three different status in Italy, see paragraph 5.1.

Overall, according to the data offered by the Bank of Italy, Italy displays an acceptance rate of asylum applications of the 43.5% over the three years period 2014-2016. With respect to the general EU average (54%), it is the country that more likely grants the status of humanitarian protection (50% of the total of positive outcomes). On the contrary, it is among the countries that are less likely to recognise the refugee status (14% against an EU average of 60.2%) (Ballatore et al. 2017).

Differently from a general picture of increasing numbers linked to migration flows to Italy, the final amount of repatriations per year appears to remain stable over the years (Table 7.8).

Table 7.8 Non-EU Citizens Repatriation in Italy

Year	Total
2014	5,310
2015	4,670
2016	5,715

Source: Eurostat (2018)

Overall, the displayed data seem to suggest that the challenge of migration that Italy is currently facing is not necessarily an alone-standing emergency. The growing presence of foreign population on the Italian territory is not exclusively related to current international conflicts or crises, but also to a slow process of stabilisation of the migratory phenomena of the last two decades. Certainly, a comprehensive account of the contemporary Italian approach to migration does require a deeper analysis of the social and political context, in order to understand the characterizing trends and highlight the implications related to the data. Hence, in the following section, an overview of the history of the migration phenomena in Italy is displayed. Consequently, the report offers insights on the Italian socio-political and cultural framework so as to gain a stronger sense of the national setting and an exhaustive picture of the surrounding conditions to the politics of migration.

7.3 The socio-economic, political and cultural context

Migrations do not happen *in a vacuum* or *in a terrae nullius*. Migrants inevitably enter into communities and societies characterised by a set of cultural, religious or traditional features (Geertz 1973; Aime 2004; Benhabib 2004) and into countries characterised by different legal, political and economic systems. In order to understand the complex network of bilateral relations that migrants (both as group and as individuals) establish with receiving communities, it is crucial to provide a brief insight on the most important traits of Italian society. Nonetheless, stereotypization of the relative immobility of receiving countries and societies and of the capacity of immigrants to adapt should be avoided. Migration dynamics, indeed, always entail a constant process of multidirectional interactions which should never be neglected.

Similarly to other European countries, migration trends and developments have been influenced by the geographical, economic, political and sociocultural peculiarities of the Italian context in many regards. It goes without saying that the geographical position of the Italian peninsula and its close proximity to North African coasts plays a big role, making of

Italy a country of transit and but also of destination. As we are witnessing today, the crossing of the Mediterranean Sea became the main route to Europe, especially since other routes gradually faded and the political turmoil in Libya weakened the country capabilities to control its borders. However, a more comprehensive understanding of the implications of this contemporary unfolding of events for Italy does require a brief overview of the main historical dynamics of migration in the country.

7.3.1 Brief Italian migration history

For a long time Italy has been considered an emigration country. Since its unification in 1861 until the post-World War II millions of Italians migrated to North and South America, and to a number of European Country (mainly Belgium, Switzerland and Germany), accounting for the largest voluntary migration in recorded history (Ben-Ghiat and Hom 2015). Nonetheless, according to data on residence permits provided by the Ministry of the Interior, from the mid-1970s the trend started to reverse. In order to explain this shift, scholars usually consider the reduced capacity to attract migrant workers by Northern European countries' labour markets — due to the 1973 oil crisis — as a key explanatory factor (Sciortino 2000; Bonifazi 1998). However, Colombo and Sciortino (2004), who purged the official data from the number of expired residence permits raise some interesting additional points. The authors underline that, despite the fact that Italy has mostly been a transitory country, it became more attractive for migrants already during the 1960s as a result of the post-war economic boom. Indeed, the first immigration wave was concerned with seasonal workers and female domestic workers especially from Eastern Africa (such as Somalia, Eritrea and Ethiopia, which were former Italian colonies), the Philippines and former Portuguese territories (Andall 2000; Calchi-Novati and Vanzetti 2016). This means that Italy was not chosen as a backup option, but rather as an independent destination. Moreover, Colombo and Sciortino (2004) underlined that official data did not account for undocumented migrants, which – as it will be highlighted later in the report – represented the bulk of migration to Italy in 1970s and 1980s, “in a context of large-scale closure of legal entry points”. Indeed, at least until 1998, when the Consolidated Law on migration was published, “phases of growth in the number of residency permits coincides with amnesties for the legalization of status” of foreigners who have previously entered Italy illegally in response to labour demand (Colombo and Sciortino 2004: 54). Interestingly, the first immigration flows concern also students and self-employee migrants. However, since the very beginning the Italian migratory influx has been characterised by high diversification with regard to nationality, gender, type of work, and length of stay.

Alongside migrant workers and students, the trend of refugees and asylum seekers has somehow followed the same pattern. After 150 years of emigration, Italy was considered as a small, poor and overpopulated country, and therefore as a country of transit or temporary sojourn (Hein 2010). Besides, until 1990 the right of asylum was limited to European citizens, since Italy had ratified the Geneva Convention with this “geographical limitation”. Nonetheless, asylum claims began to grow with the flow of Albanians approaching the Italians shores by sea in 1991 consequently to the collapse of the Hoxha regime, and again in 1999, reaching the number of more than 37,000 asylum applications (compared to the 4,573 requests of 1990) (Ministry of the Interior 2018). Finally, following the 2011 “Arab Spring”, Italy started to play a paramount role in the so-called “refugee crisis”. In 2011, over

50,000 foreigners approached the Italian shores, with around 37,000 requests for asylum. Number of arrivals diminished on 2012, but kept increasing again in the following years, until reaching another pick in 2016. Amongst these new arrivals to Italy, a significant component is covered by the unaccompanied foreign children.

The 2008 economic crisis has, once again, induced high numbers of Italians to emigrate. However, the new emigration wave is socially and demographically different: the new Italian migrants are mainly young and, for the most part, highly educated (around one-third). This is why the new emigration wave has been labelled “brain-drain”, which entails an enormous and worrying human, social and economic cost for the Italian state²¹⁵.

7.3.2 The socio-economic context

The relevance of the Italian geographical element juxtaposes with some peculiar economic and demographic traits. In particular, research has often emphasized the link between immigration and the extended informal sector of the country and of other Southern European states (Testai 2015; Ambrosini 2013). However, also the formal sector, with its unmet labour demand, has contributed to attract foreign workers. Thus, it is not a coincidence that the majority of foreign workers are concentrated in the highly-industrialized and developed Northern regions, while only a small quota, mainly seasonal workers, resides in the less-developed and more agriculture-dependent Southern ones. Quite interestingly, foreigners’ participation to the Italian economic life remained high even after the economic crisis of 2008. Indeed, it has been shown (Ambrosini and Panichella 2016; Sciarra and Chiaromonte 2014) that the crisis had a lower impact on the foreigners’ employment rate, except for the sector of manufacturing and construction. Nonetheless, the crisis did enhance the structural criticalities and problems of Italian labour market such as segmentation, disparities and pay gaps.

Moreover, it has to be highlighted that “in the Italian labour market, foreigners easily face discriminatory behaviours, widespread risk of informal employment and high mobility. But foreign workers are strongly labour-oriented, so that the phenomenon of the so-called “disheartenment”, that is the renounce to search employment, is very uncommon. In fact, unemployed foreigners can be constrained to accept the first job they find, under the pressure to maintain themselves and their families and/or renovate the residence permit” (Italian Ministry of Labour, 2017: 41). Furthermore, studies report that foreigners are often over-educated with respect to job qualification. In addition, the Italian labour market is characterised by a strong professional segmentation, with foreigners mainly employed in low-skilled sectors, namely agriculture, tourism, constructions and domestic work.

Domestic work, which is one of the most important sectors for immigrant participation in the Italian labour market, reflects some of the prominent features of the Italian society. In fact, it has been shown (Ambrosini 2008) that the high number of foreigners employed in the domestic service can be explained by looking at a twofold dynamic. On the one hand, by the

²¹⁵ “From 2010 to 2020 it is estimated that Italy stands to lose about 30,000 researchers, which will have cost the country €5 billion, considering just the public spending necessary for their training” (Bergami 2017).

relative population ageing due to a low birth rate, as well as the growth of elderly in need of assistance. On the other hand, by cultural changes such as the higher rate of Italian female workers, coupled with a general unwillingness of Italians to work in the social care sectors and the inadequacy of the national welfare system which is more and more under strain.

7.3.3 The political and cultural context

The Italian political discourse started to focus on immigration only in the early 1990s²¹⁶. However, the public debate in those years was dominated by the unfolding of a series of severe corruption scandals, commonly known as *Mani Pulite* (literally, 'clean hands'). Since the scandals involved a significant share of Italian MPs, they led to major political transformations symbolised by the collapse of the 'First Republic' and the birth of the 'Second Republic' (Guzzini 1995). For instance, the legitimisation crisis of traditional parties, together with the electoral reform of 1993 establishing a mix of "proportional representation" and "plurality system" (Cetin 2015), paved the way for the emergence of a new political parties, such as *Forza Italia* – FI (Go Italy), and also pro-secession and increasingly hostile to migrants as the *Lega Nord* - LN (Norther League²¹⁷) which remained, at the time, largely locally-affiliated and marginal in the political competition.

Yet, in the aftermath of the 2008 financial crisis, the essentially bipolar party system started facing new political challengers. Indeed, new anti-establishment parties, such as the *Movimento Cinque Stelle* - M5S (Five Star Movement), a 'web-populist' party created by the former comedian Beppe Grillo, gradually reshaped the system into a multipolar one moving beyond the traditional left-wing and right-wing competition, also concerning migration issues (Tronconi 2016; Conti 2014).

Similarly to the overall European political trend, the political discourse in Italy has been polluted by anti-immigrant narratives, particularly during the pre-electoral periods (Kurkut et al. 2013). Under the slogan "Italian first" and the creation of the dangerous equation immigrants=criminals, echoed by mainstream media, requests of closure of borders and the progressive reduction of migrants' rights permeated the political arena. Consequently, the politicization of migration featured both the 2009 and 2014 European elections, as well as the 2008 and 2013 national elections, during which the troops of anti-immigrant parties could also rely on the far-right and Euro-sceptical party *Fratelli D'Italia* (Italian Brothers) and the already mentioned M5S. In the 2018 national elections, migration became one of the most crucial terrain for debate (Cavallaro, Diamanti, Pregliasco, 2018).

Overall, an increasingly harsh political discourse, together with the negative media representation of migration, has contributed to deteriorate the Italian attitude toward migrants (Diamanti 2016). Furthermore, scapegoating the "other" of threatening the Italian cultural identity as well as its social welfare, its security and economic stability, has found a fertile terrain in the limited sense of nationhood and belonging traditionally featuring Italian citizens (Triandafyllidou and Ambrosini 2011), and the crisis has exacerbated the competition for

²¹⁶ For a synthetic overview of the Italian normative intervention on the field see subchapter 6.5.

²¹⁷ The party renamed 'Lega' in 2017, losing the regional territorial affiliation.

resources, so the Lega Nord slogan “Italians first” has made sense for a growing number of voters in the 2018 elections (Cavallaro, Diamanti, Pregliasco, 2018).

Despite such an opposing trend to migration, the practical management of migration displays examples of openness and solidarity. Indeed, the migration crisis has shed new light on the long-standing tradition of volunteerism, fed by a curious interplay between the Catholic Church, trade unions and others secular associations of left matrix, such as the ARCI²¹⁸ (Ambrosini 2018). Indeed, Italy may count on the activism and strong response by many social groups and non-profit organizations of the third sector. From the last national census organised by ISTAT (2017a), up to 31 December 2015 the total of non-profit organisation working in Italy are 336,275, 11.6% more than 2011, concerning a total of 5,290,000 volunteers and 788,000 employees.

Amongst them, the catholic Caritas currently plays a prominent role in the assistance and reception of migrants and asylum seekers in conjunction with a number of local social cooperatives. Nonetheless, it should be mentioned that the whole issue of solidarity towards migrants is currently in the spotlight of Italian public opinion. In fact, a delicate controversy is capsizing NGOs active in migrants' assistance and rescue at sea, accused of being colluding with people smuggling operations. Although the Italian Parliament investigated these claims and has found them to be unsubstantiated (Senate 2017), right-wing newspapers and politicians have continued campaigning against Italian and foreign NGOs.

Meanwhile, despite numerous positive examples of solidarity and reception by almost the totality of NGOs, associations and cooperatives of the third sector that are running the majority of reception centres in Italy, their role has been recently overshadowed by a number of other scandals. Indeed, a system of corruption and mafia infiltration has been recently disclosed by journalistic and criminal investigations (Nadeau B.L. 2018).

On a conclusive note, this brief overview of the cultural and political background of Italy has revealed a complex picture involving intertwined systems of power, many of which directly compete with political authorities or exercise typical public sector functions due to the ineffectiveness of public administration. Currently, the migration crisis has unfolded competing interests within and outside the political competition. Moreover, the lack of cohesive policies or concrete instruments to implement them have contributed to an incoherent approach to the management of migration which has soon turned into an ‘emergency’.

²¹⁸ Associazione Ricreativa e Culturale Italiana.

7.4 The constitutional organisation of the state and constitutional principles

7.4.1 The Italian system of government and the constitutional entrenchment of asylum

The Italian Constitution establishes a typical parliamentary system of government, with the Government appointed by the President of the Republic, requiring the confidence of the Parliament (art. 94), and the President of the Republic being entrusted with the power of dissolving the Parliament (art. 88).

According to the Constitution, the legislative authority, which is concerned with the power to make legislation, is vested in the Parliament at the national level and in the Regional Councils at regional level (arts. 70 and 117); the executive authority, which is primarily concerned with the implementation of the law, is attributed to the Government, “made up of the President of the Council and the Ministers, who together form the Council of Ministers” (art. 92), and at the regional level in the Regional Executive and its President (art. 121). The judicial authority, which is concerned with granting a remedy if a rule is infringed, is conferred to the Judiciary.

Since the mid-1990s, Italy has made significant steps towards federalism, decentralizing political, fiscal and administrative powers, also by means of a major constitutional reform in 2001. Regions have exclusive legislative and administrative competences in a number of fields, some of which, as social and health care, as well as vocational training, are very relevant for Sirius research.

Until the 1970s, Italy was primarily a country of emigration. This is reflected in the Italian Constitution of 1948²¹⁹, which proclaims that “every citizen is free to leave the territory of the Republic and return to it except for obligations defined by law” (art. 16(2)) and “it recognizes the freedom to emigrate, except for legal limitations for the common good, and protects Italian labour abroad” (art. 35(4)). Only few and generic provisions, however, are devoted to the right of asylum and the legal status of foreigners.

In particular, art. 10 states that “(2) legal regulation of the status of foreigners conforms to international rules and treaties; [and] (3) foreigners who are, in their own country, denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law.”

With the Constitutional reform of 2001, asylum, the legal status of foreigner and immigration appeared among the subjects listed by art. 117, which distributes legislative powers in Italy between the State and the Regions. According to art. 117, the legislation on immigration, right of asylum and legal status of non-EU citizens, is subjected to the exclusive legislative competence of the State. Meanwhile, other policy area affecting the management of

²¹⁹ For the official English version of the Italian Constitution, see https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

migration and the legal status of foreigners, such as housing, healthcare, education, are assigned to the concurrent or exclusive regional legislative competence²²⁰.

Although the Constitution provides only few rules directly addressing asylum, migration and the legal status of foreigners, other pivotal constitutional provisions contribute enhancing the national standards of foreigners' rights. In particular, art. 117²²¹, through which the EU legislation and international treaties signed by Italy acquire "constitutional relevance"; the "personalist principle" of art. 2, according to which "the Republic recognizes and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity", and the equality clause of art. 3 that forbids unfair discrimination and entrenches substantial equality ("(1) All citizens have equal social status and are equal before the law, without regard to their sex, race, language, religion, political opinions, and personal or social conditions. (2) It is the duty of the Republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organization of the country").

In fact, international conventions and jurisprudence (especially the European Convention on Human Rights (ECHR) and the principle of non-discrimination proclaimed by art. 14 ECHR), equality and the personalist principle have been frequently invoked by the Italian Constitutional Court to secure and extend the fundamental rights of foreigners²²² (Corsi 2018 and 2014; Carrozza 2016; Biondi Dal Monte 2013; Chiaromonte 2008)

The Constitutional Court has ruled that, despite art. 3 makes reference to citizens only, when the respect of fundamental rights is at stake, the principle of equality applies also to foreigners.²²³ The Court's reasoning is more complex than a simple equalization between citizens and foreigners. It ascertained the difference between citizens and foreigners: while citizens have an "original" relation with the State, foreigners have a non-original and often temporary relation with the State. Hence, the different legal status of foreigners may justify a different legal treatment (decision No. 104/1969) with regard to security, public health, public order, international treaties and national policy on migration (decision No. 62/1994), but not with regard to the protection of inviolable rights (decision No. 249/2010), since they belong "to individuals not as members of a political community but as human beings as such" ²²⁴.

Following the same reasoning, a Constitutional Court's consolidated case-law maintained foreigners' entitlement to social rights, such as the right to health and healthcare services

²²⁰ Art. 117(3) of the Italian Constitution.

²²¹ Art. 117(1) of the Italian Constitution proclaims that "Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations".

²²² In particular, in several decisions the Constitutional Court affirmed that limiting the access to social benefits aimed to satisfy human basic needs only to foreigners with an EC residence permit for long-residents entails an "unreasonable discrimination" between Italian citizens and foreigners regularly residing in Italy. See, amongst the others, the decision of the Constitutional Court No. 187/2010, in which the Court also makes explicit reference to the decisions of the European Court of Human Rights *Gaygusuz v. Austria* 16.9.96 and *Niedzwieck v. Germania* 25.10.05.

²²³ See the following decisions of the Constitutional Court: No. 120/67; No. 104/1969; No. 46/1997.

²²⁴ Among the others see Constitutional Court, decision No. 105/2001, No. 249/2010.

(decision No. 269/2010) and to “essential social benefits”, such as invalidity benefits for mobility, blindness and deafness, regardless of the length of their residence. In particular, the Court clarified that specific social benefits that constitute “a remedy to satisfy the primary needs for the protection of the human person”, have to be considered “fundamental rights because they represent a guarantee for the person’s survival”²²⁵. The same reasoning, coupled with the anti-discrimination principle, permitted the Italian Constitutional Court to extend some guarantees and (social) rights to undocumented migrants.

The recognition of a “hard core” of fundamental and inviolable rights, regardless of citizenship and legal status, led the Constitutional Court to rule that expulsions cannot be enforced if the undocumented migrant is under an essential therapeutic treatment (decision No. 252/2001). Moreover, a similar reasoning underpins the foreigner’s rights to legal defence, even in case of undocumented foreigners.²²⁶

7.4.2 Constitutional Value of Labour

The constitutional enforcement of the *right to work* has strongly influenced labour law and its constant developments (Gaeta 2014) by providing the institutional foundations and the reference values of the Italian social market economy, where economic efficiency and social cohesion should coexist. Social rights, recognized in the Constitution alongside civil and political rights, play a fundamental role in enforcing labour related rights. Social rights are concerned with the protection against the material conditions of deprivation, which might prevent the individual from meeting his/her fundamental needs. To be fully enforced, social rights require either the provision of public services, delivered by the State or any other public authority (e.g. the right to education, art. 34 Const.), or the regulation of contractual relationships, as is the case with employment relationships (e.g. the right to a decent wage, art. 36 Const.).

The fundamental principles concerning labour laid down in the Constitution are basically to be found in the first articles of the Charter: art. 1.1 affirms that the Republic is “founded on labour”, recognizing the historical value of labour as a cornerstone of the State, together with the democratic principle (“sovereignty belongs to the people”, art. 1.2 Const). Art. 2 and 3, as mentioned, recognise and guarantees “the inviolable human rights, be it as an individual or in social groups expressing their personality” and equality in its broad meaning of formal and substantial equality. Art. 4.1, recognises the right to work to all citizens, establishing the obligation of the State to promote enforcing conditions and to pursue policies aimed at achieving full employment. The Constitution commits the State to ensure *its citizens* the right to work primarily through the promotion of full employment. Thus, with regard to the access to work, *citizens* take priority over *foreigners*. The guarantee of the foreigner’s rights, here, is

²²⁵ Constitutional Court, decision No. 187/2010. See also Constitutional Court No. 329/2011; No. 40/2013, No. 22/2015 and No. 230/2015.

²²⁶ Constitutional Court, decision No. 198/2000, where the Constitutional Court clarified that the effective exercise of the right of defence “implies that the recipient of a provision of restriction of the self-determination freedom, be enabled to understand its content and meaning”. As a consequence, “under the hypothesis of ignorance without fault of the expulsion order - in particular for non-compliance with the obligation of translation of the legal act - the deadline for proposing an appeal should not be considered” (No. 198/2000).

therefore limited by the privileged status of the citizen²²⁷. Art. 4 provides the legal basis for restrictions on the entry of foreigner workers in order to protect Italian nationals and the regular functioning of the domestic labour market. The Constitutional Court — which in fact has occasionally intervened on this topic — has supported this reasoning, assuming that it is reasonable to subordinate foreigner's access to employment to the prior recognition of the unavailability of national workforce (decision n. 144/1970 e 54/1979).

Alongside these fundamental principles, Title III of the Constitution devotes few articles to economic relations, establishing a rather conspicuous corpus of constitutional principles that labour law and labour policies have to respect and enforce. And these principles are crucial for the definition of alien workforce rights and entitlements. First of all, the citizens' priority over foreign workers to access to work (which will be discussed in detail below, § 6.2) may be at odds with the provisions of art. 35, according to which the Republic "protects labour in all its forms" without any limitation. This means that, once the foreigner is authorised to work in Italy, the protection of labour "in all its forms" — including precarious or unstable employment —, apply regardless the nationality of the workers, as the Constitutional Court as emphasised (decision n. 454/1998). Therefore, Italian and foreign workers enjoy full equality of treatment (see art. 2.3, of the Consolidated Law on immigration). The principle of equal treatment has a very wide scope, covering the internal aspects of the employment activity and relationship, as well as all the additional advantages resulting from his/her employment status. Furthermore, art. 35 states that the Republic "provides for the training and professional enhancement of workers", and "encourages international treaties and institutions aiming to assert and regulate labour rights". Moreover — as already mentioned — art.35.4 recognises the freedom to emigrate and ensures the protection of Italian workers abroad.

Art. 36 affirms the workers' right to a remuneration that must be commensurate to the quantity and quality of their work and sufficient to ensure them and their families a free and honourable existence. As further guarantee, the maximum daily working hours and rest days have to be established by law, and workers "cannot waive [the] right [to a weekly day of rest and to annual paid holidays]". Special conditions require special attention, and that is why art. 37 guarantees working women in both formal and substantial terms ("women are entitled to equal rights and, for comparable jobs, equal pay as men. Working conditions must allow women to fulfil their essential family duties and ensure an adequate protection of mothers and children") and minors, whose minimal age for paid labour shall be defined by the law; and art. 38, while guaranteeing to workers the right to social security, commit the State to provide social assistance to those unable to work and without the necessary means of subsistence, as well as education and vocational training to people with disabilities.

Finally art. 39 establishes trade union freedom and the right to collective bargaining; art. 40, ensuring the right to strike; art. 41 guarantees the freedom of private economic enterprise,

²²⁷ Here, reference is made to foreigner's access to employment in the private sector, since access to employment in the public sector is regulated by specific provisions, which however do not fall within the scope of this study.

but envisages the limit of the common good and of safety, liberty and human dignity; and art. 46, which recognises the right of workers to collaborate in the management of companies.

7.4.3 Constitutional milestones case-law

Ordinary judges and the Constitutional Court have only very occasionally intervened on the principle of equal treatment and rarely condemned discriminatory treatments against foreigners in the private sector, not because of judiciary's reluctance, but rather because few cases have reached the courts. The most common cases involving discrimination against foreigners which have been brought to the attention of the judges have not been directly concerned with working conditions, but rather with the ban on access to public services, the guarantee of the right to group identity (e.g. the right to speak one's own language) and of the neutrality of the public sphere, etc²²⁸. Moreover, most of the decisions involve disputes with the public administration, namely the so-called "institutional discriminations". This points to the difficulty in intercepting discriminations between individuals (even discriminations at work, those for which the prohibition of discrimination has traditionally arisen), where the individual's contractual freedom competes with the principle of equality.

On the contrary, with specific reference to asylum law, the Tribunals and the Supreme Courts (civil, administrative, and criminal), have been crucial in the process of aligning the asylum national legislation to the supranational and constitutional principles. A selection of the most relevant rulings illustrates how Italian courts have been and continue being very relevant actors in this field²²⁹:

- *Requirements to obtain international protection*: The Supreme Court of Cassation has repeatedly ruled that: "in terms of international protection of the foreigner, the recognition of the right to obtain political refugee status, or the most graded measure of subsidiary protection, cannot be excluded, in our system, by virtue of the reasonable possibility for the applicant to move to another area of his/her country of origin, where he/she has no reasonable grounds to fear being persecuted or does not take effective risks of suffering serious damage, because this condition, contained in Article 8 of Directive 2004/83 / EC, was not laid down in Legislative Decree 251/2007, being a power left to the Member States to include it in the act implementing the Directive"²³⁰.
- *Requirements to obtain humanitarian protection*: Based on a judgment of the Constitutional Court (decision No. 381/1999), the Court of Cassation ruled that the condition to obtain a humanitarian permit to stay is the recognition of a situation of

²²⁸ See e.g. the rulings available at the ASGI (*Associazione per gli Studi Giuridici sull'Immigrazione*) (<https://www.asgi.it/banca-dati/>) database, and Guariso (2012).

²²⁹ For an ampler lists of judgments on international protection delivered by the Italian ordinary jurisdiction see the following website: https://www.asgi.it/banca-dati/?fwf_tematica=asiloprotezione-internazionale&fwf_aree=giurisprudenza&fwf_sotto_aree=giurisprudenza-italiana&fwf_tipologia_del_documento=sentenza&fwf_sort=date_desc

²³⁰ See, among the others, Court of Cassation, decision No. 13172/2013

vulnerability, to protect on the lights of international and constitutional obligations assumed by Italy²³¹. More specifically, even beyond the constitutional and international obligations, the judiciary stressed on the particular vulnerability of the person strongly undermining his/her fundamental rights²³².

- *Definition of third safe country*: with the decision No. 4004/2016, the Council of State, the highest Italian administrative court, quashed the decision to transfer international protection applicants to Hungary, within the framework of the Dublin Regulation. This because the Court considered that it is highly likely that asylum seekers are subjected to inhuman and degrading treatments in Hungary, in contrast with humanitarian principles and with art. 4 of the Charter of fundamental rights of the EU. The same conclusion has been reached by the Council of State in a case involving the transfer to Bulgaria of an international protection applicant²³³.
- *Effective respect of the Dublin Regulation procedures*: Italian judges ruled that the participatory guarantees related to the procedures for the recognition of international protection cannot be waived and must include all the information foreseen by the EU regulation No. 604/2013. Therefore, the person applying for international protection must receive in writing and in a language understandable to him/her all the information concerning the consequences of his/her application, the criteria for determining the State responsible for the examination, the possibility of presenting information concerning family members already present, the methods of appeal and legal protection, the processing of personal data. For this reason, the simple fact that the applicant carried out an interview in which she/he had the opportunity to request information with the help of an intermediary does not comply with the information guarantees²³⁴.

7.4.4 Structure and role of the Judiciary

The Constitutional Court has represented a fundamental anchor in promoting the legal entitlements of foreigners and in preventing standards downgrading. However, besides the Court, a crucial role in shaping the national legislation on immigration and asylum and in extending foreigners' rights has also been played by ordinary judges (Cartabia 2016; Benvenuti 2014). In Italy, cases involving migrants and refugees are dealt with by the ordinary jurisdiction, and there are no special courts on migrant issues. However, recently, Law No. 46/2017 introduced specialised court sections within the ordinary jurisdiction, competent for examining specific area pertaining to asylum law and immigration law.

According to art. 101 of the Italian Constitution "judges are subject only to the law", meaning that, in principle, judges should be free of interference by any other power. Moreover, art.

²³¹ See among the others the following judgments: Court of Cassation No. 4139/2011; No. 6879/2011; No. 24544/2011.

²³² See Morandi 2008 for a punctual reference to the jurisprudence on the humanitarian permit to stay.

²³³ Council of State, decisions No. 3998/2016, No. 3999/2016, No. 5085/2017.

²³⁴ Council of State, decision No. 4199/2015.

108 states that “the provisions concerning the organisation of the Judiciary and the judges are laid out by law”. The law is the only regulating principle and limit of the Judiciary. Art. 104 of the Constitution states that the “The Judiciary is a branch that is autonomous and independent of all other powers”.

7.5 The relevant legislative and institutional framework in the fields of migration and asylum

In this section, the legislative and institutional frameworks in the fields of migration and asylum are presented, focusing specifically on the evolution of the laws, the up to date country regulations at national and subnational levels and the institutional framework including the role of stakeholders such as non-profit organisations and local authorities which deals with MRAA.

7.5.1 The national policy on immigration and asylum

The traditional separation between domestic policies and foreign ones fades when speaking of migration, given the transnationality of the concept. Indeed, when analysing the Italian policy on migration, policy measures enacted at an external level cannot be neglected (even if this report will only summarily mention this aspect). In particular, Italy signed a number of acts of international cooperation with numerous countries, such as Tunisia, Sudan and particularly Libya, which agreed to prevent migrants from reaching the Italian territory.

Art. 3 of the Italian Consolidated Law on Immigration (D. Lgs. 286/1998), that is the framework law in the field, as we will discuss in the next sections, establishes that every three years the government must release a “programmatic document” presenting the national policy on migration. This document shall identify: (a) the State’s main interventions (including social and economic measures for non-national residents); (b) the public actions for migrants’ integration; and (c) the criteria to determine the annual entry foreigners’ quota.

The most recent “programmatic document” dates back to the triennium 2004–2006, which means that in the last twelve years the government has failed to fulfil its duty (Livi Bacci 2011)²³⁵. The absence of a coherent vision and a clear policy planning, with a cascade-effect, had a number of negative impacts. The most severe consequence is that the annual measure establishing the quota of working permits (the so-called *Decreto Flussi*), coupled with the 2002 reform which reframed the system of the permit to stay for work reasons, has not been responding to any meaningful analysis of Italian needs. Thus, the *Decreto Flussi* proved to be an unrealistic, inefficient and inadequate system, as it will be discussed in the following sections (Corte dei Conti 2008; Ferraris 2009).

²³⁵ Sonia Viale, State Secretary at the Ministry of the interior for Immigration, justified the lack of the programmatic document as such: “over time the provision of Article 3 of the Consolidated Law on Immigration has lost most of its original value, due to the occurrence of new phenomena and situations. In fact, the programming of foreign workers’ flows must be modulated according to the needs of the economy and presupposes a macroeconomic stability framework, without which it is not possible to proportion the entry of workers non-EU citizens to the demand for internal work”. See http://old.asgi.it/home_asgi.php%3Fn=print&id=1655&type=news&mode=print&l=it.html 1/

Until the economic crisis, the number of migrants admitted to the Italian territory for reasons of work has progressively decreased, following a political wave of securitization and migration control. Annual entry quota were far below labour demand, especially in the industrial and agriculture sectors. Furthermore, complex procedures and delays in the examination of applications rendered the system inefficient to match labour supply and demand (Ministero Interno 2007). As a result, the *Decreto Flussi* has been used “de facto” to regularize undocumented migrants already working in Italy, having the same effect of mass regularization processes (Zanfrini 2007).

In 2011, due to the economic crisis, the government decided to radically change its approach and to limit the entry quota only to few foreigners: mainly high-qualified workers, rich entrepreneurs and “seasonal workers” in the field of agriculture and tourism. As a consequence, opportunities to regularly enter the Italian territory has been dramatically reduced.

A second severe weakness of the Italian migration policy lies in the lack of a strong governance. In Italy, the management of asylum and migration does not fall under the responsibility of a single governmental body. Rather, it is scattered among different institutional entities emanating from different tiers of government (from national to local), and it also involves the third sector. Each entity (with its own mandate and mission) is competent and responsible for single apparatus of the complex migration machine.

The necessity for some mechanisms of coordination was already detected by the Constitution itself, which stated that “State legislation shall provide for co-ordinated action between the State and the Regions” in the field of migration (art. 118(2)). However, the constitutional provision has been very partially complied with, as the sole coordination activity is provided at the local level by the “Territorial Councils of Migration” (*Consigli Territoriali per l’Immigrazione*), whose impact, nonetheless, has been very limited²³⁶.

In the field of asylum, under the EU impetus a number of relevant policy actions have been undertaken. In 2015, following the Council Decision (EU) 2015/1523 of 22 September 2015 “establishing provisional measures in the area of international protection for the benefit of Italy and Greece”, the “Italian Roadmap 2015” has been conceived.²³⁷ The Roadmap defines the measures for “improving the capacity, quality and efficiency of the Italian system in the

²³⁶ According to the Presidential Decree No. 394/99, art. 57, the Territorial Councils of Migration are competent to: a) monitor the migration phenomenon; b) analyse the needs; c) promote adequate interventions. These Councils are composed of representatives from: the Prefecture, the Region, the local municipality, migrants’ associations, employers and employee organizations. For more information see: <http://www.interno.gov.it/it/temi/immigrazione-e-asilo/politiche-migratorie/consigli-territoriali-immigrazione>. The limited impact of the “Territorial Councils of migration” is confirmed also by the “national report on Territorial Councils of migration” released in 2015 by the Department of civil liberties and migration of the Ministry of the Interior (available at <http://www.prefettura.it/FILES/AllegatiPag/1179/reportXSTAMPA.pdf>). Amongst the reasons which concurred to hamper the functioning of this body, the report mentions: a) the difficulty to identify clear and shared objectives (particularly with the local municipalities and migrants’ associations); b) the lack of recognition of its coordinating function; c) the excessive turn-over; d) the absenteeism of the appointed components. (pp. 15 – 20).

²³⁷ The Italian roadmap is a policy document approved on September 28, 2015. It is available here: http://www.immigrazione.biz/upload/Roadmap_2015.pdf. For an annotated commentary of the roadmap in English, see Maccanico Y., Statewatch Briefing, *The Italian Roadmap 2015*, <http://www.statewatch.org/news/2015/dec/no-279-Italian-Road-Map-2015.pdf>. A more detailed analysis of this policy document will be developed in the following chapters.

fields of asylum, early reception and repatriation; and ensuring the correct measures for enacting the decision” (p. 2).

Furthermore, in 2015 the Legislative Decree (hereinafter also D. Lgs.) No. 142/2015 provided a “National Coordination Board” at the Ministry of the Interior, competent to define the guidelines and the program for the improvement of the national reception system, including the distribution of migrants quotas among the Regions. To this end, every year the national Coordination Board elaborates the “National Reception Plan” to be enacted by the “Regional Coordination Boards”. Furthermore, the National Asylum Board plays an important coordination role, putting together the voices of the main associations promoting the right of asylum in Italy (reunited in the ‘National Coordination Board’).

In 2017, the National Coordination Board released the “National Plan for Integration”, as envisaged by the law²³⁸. This document dictates the guidelines to enhance the effective integration of the beneficiaries of international protection currently residing in the national territory, through a multilevel approach. In particular, the aspects addressed are: job placement, social inclusion, access to health and social assistance, housing, linguistic training and education, and the contrast to discrimination. The Plan, which is still to be implemented, stresses the importance of language learning, providing for: free compulsory language courses, vocational training and effective job placement, a special action to grant access to housing, and the encouragement of inter-religious dialogue. If duly implemented, this could be an important step forward, but no effective action has been undertaken as of July 2018.

7.5.2 The most relevant traits of legislation on immigration and asylum

The first attempt to regulate the migration phenomenon dates back to 1998, when the Legislative Decree No. 286/1998, that is the Italian “Consolidated Act of Provisions concerning immigration and the conditions of third country nationals” (the Consolidated Law on Immigration) has been issued. It provided a fundamental set of principles on foreigners’ legal status (such as the right to non-discrimination and to the recognition of fundamental rights) and a framework of regulations (such as the normative provisions concerning entry and stay) which is still binding.

However, the Consolidated Law on Immigration fails to provide a solid and thorough basis for the regulation of asylum and migration in Italy. In particular, on the one hand, with specific reference to migration, the national legislation results in multiple, fragmentary normative stratifications, with important sectors²³⁹ regulated by circulars edited by the Ministry of the Interior or other legislative acts of minor importance (Nascimbene 2004:140; Gjergji 2016b). On the other hand, the asylum field is characterised by the very same structural weaknesses. Indeed, the asylum regulation relies on a number of legislative decrees,

²³⁸ Art. 29 (3), D. Lgs. 251/2007 as amended by D. Lgs. 18/2014, art. 1 (1), the National Integration Plan is available at <http://www.interno.gov.it/sites/default/files/piano-nazionale-integrazione.pdf>

²³⁹ See, *ex multis*, the Circular No. 400 of 29.06.2004 concerning the “Authorization to foreigners, holding the receipt of the application to renew the permit to stay, to exit and re-enter the national territory”. For further details, see Bucci (2004).

transposing the EU Directives into the Italian legal system, while an organic and complete law is still lacking since 1948²⁴⁰. A number of normative provisions were approved in order to comply with the EU obligations and the construction of a “Common European Asylum System”²⁴¹, in particular, the Legislative Decrees No. 85/2003; No. 140/2005; No. 251/2007; No. 25/2008, which respectively transposed the EU Directives on “temporary protection”, “reception conditions”, “qualification”, “asylum procedures”.

Citizenship

In 1992, the Parliament approved a new citizenship law (Law No. 91/92), mainly based on the *jus sanguinis* criterion, according to which the Italian citizenship is automatically attributed only to Italian citizens’ descendants. In order to apply for citizenship, non-EU migrants shall demonstrate continuous and uninterrupted residency of ten years (reduced to five for beneficiaries of international protection), while second generations migrants had to demonstrate an uninterrupted residency from birth to the age of 18 years to apply for naturalization when turning eighteen. Finally, spouses of Italian citizens could apply for naturalization after two years of cohabitation and residency in Italy (reduced to one year in case children are born or adopted by the spouses). Remarkably, even when these requirements are fulfilled, citizenship is not automatically granted, as it lies on a discretionary decision of the Ministry of the Interior.

The Consolidated Law was characterized by a two-tracks strategy: an “integration approach” toward legally resident migrants coexisted with a tough fight against irregular immigration. In fact, on the one hand, the Consolidated Law established migrants’ rights and duties, equalizing them to Italian citizens for what it concerns civil rights and judicial protection (arts. 1 – 4). The Law also recognized foreigner children’s rights and migrant’s right to family unity (arts. 28 - 33). For the first time, even social rights (such as the right to health, education and social integration) received a coherent regulation (arts. 34 – 46). Rules on migrants’ employment and migrant workers’ rights were also provided. In particular, a new measure was introduced: a system of “sponsorship”, guaranteed by an Italian citizen or by a legally resident foreigner, which allowed migrants to enter the country ‘to search for a job’, without being previously hired (art. 23). On the other hand, the Consolidated Law provided an organic regulation of conditions of entry (through the “programmatic document” and the establishment of yearly entry quotas) and stay. The Law entrenched the principle of *non-refoulement* (art. 19), but it also provided more stringent controls at the borders (art. 9), and a broader recurs to pushback and deportation (arts. 8 – 13). Temporary detention centres were established for migrants waiting to be deported (the so called *Centri di permanenza e assistenza*) (art. 14).

²⁴⁰ To this end, amongst the main normative provisions, which have been issued to face emergency situations, see in particular the Decree 09.09.1992 after the Somali conflict, the Law No. 390/1992 after the ex-Yugoslavia crisis and the Law No. 563/1995 to face the arrivals of refugees from Albania.

²⁴¹ For further details on the Common European Asylum system see the following webpage: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en

In 2002 started the process of continuous reviewing and amending of the law. Entry quota were lowered and third nationals' regular entry and residence were strongly linked to employment, but the possibility to obtain a regular visa for work reasons was hampered; the system of sponsorship was substituted by a complicated mechanism where migrants willing to enter the country for work reasons had to demonstrate there was an employer in Italy already committed to hire them, and more restrictive provisions on expulsion and detention were introduced (Law No. 189/2002).

Laws No. 125/2008 and No. 94/2009 introduced the "aggravating circumstance of clandestinity" (under which the punishment for a crime committed by an undocumented foreigner could be increased up to one third compared with the same crime committed by an Italian citizen or a regularly resident foreigner), and the crimes of "clandestinity" itself and of refusal to comply with a removal order issued for illegal entry, together with a broad harshening of detention and expulsion measures²⁴². The paradox was that these measures were often accompanied by regularization processes (McMahon 2015:48).

Recently, the Law Decree No. 13/2017 further amended the Consolidation Law, introducing new identification procedures: undocumented foreigners intercepted within the Italian territory succoured during rescue operations in the sea are conducted to specialised structures, the so-called "hotspots", where they are fingerprinted and receive information on the international protection, the relocation and the assisted voluntary return²⁴³. The Law Decree also intervened to streamline the judicial procedure occurring in case of appeal against first rejection of asylum application. The law provided for 26 specialised court sections within the ordinary jurisdiction, competent to deal exclusively with immigration, EU citizens' freedom of movement and international protection issues (art. 8), and it removed one appeal stage from the procedure for international protection (art. 6(13)). Hence, against the first rejection of asylum application, the asylum seeker can only appeal before the Court of Cassation, which, however, cannot enquire into the essence of the case, but ensures the correct application of the law. Moreover, the appeal does not automatically suspend the effects of the decision, and a formal suspension has to be specifically required. This has raised concern about the respect of asylum applicants' legal guarantees (CSM 2017; Asgi, Magistratura democratica 2017).

Except for asylum claimants, non-EU foreigners do not have an actual right to enter the Italian State, but just a legitimate expectation against the discretionary decision of Italian authorities²⁴⁴. In order to enter Italian borders, foreigners are required to have a valid passport, a visa and adequate economic resources (allowing the stay and return to the country of origin). Furthermore, foreigners must also demonstrate not to represent a danger for public order and security, neither for Italy nor for any other Schengen State (art. 4 of the Consolidated Law on Immigration). In principle, foreigners must apply for visa at the Italian

²⁴² These provisions triggered the intervention of the Constitutional Court, which declared the aggravating circumstance of clandestinity unconstitutional (decision No. 249/2010) while dismissing the question of constitutionality of the crime of clandestinity (decision No. 250/2010).

²⁴³ Art. 10 ter of the Consolidated Law on migration, as introduced by the Law Decree. No. 13/2017, art. 17.

²⁴⁴ See among the others Corte Cass., S.U., decision No. 1417/2004.

Consulate or Embassy of their country of residence. In case the visa is refused, a motivated decision must be communicated to the foreigner who can appeal against it before the Italian courts.

Visa may be temporary, i.e. lasting up to 90 days (for visits, business and tourism), which follows the common EU Visa Code²⁴⁵, or “long-stay”. These visa, subjected to the specific national legislation, are the prerequisite to obtain a permit to stay related to the same reasons mentioned in the visa (i.e. work, study, family, religious reasons, etc.). The permit to stay, which should be asked to the Police Headquarter or the Prefecture within 8 days from the entry, grants to third-country nationals the right to stay in the Italian territory (art. 5 of the Consolidated Law on Immigration).

In case of permit to stay of minimum one year, the foreigner has to sign an “integration agreement” with the State, that commits, on the one hand, the foreigner to reach an adequate knowledge of Italian language, of Italian civic life and of the fundamental principles of the Constitution, and, on the other hand, the State to support social integration.

The permit to stay is revoked or its renewal is denied if the conditions required for its issuance do not recur anymore (art. 5 of the Consolidated Law on Immigration). The permits to stay are released for the following purposes: a) work; b) family; c) study. Beyond these, the Consolidated Law on Immigration also provides further types of permit to stay (such as the permits to stay for “elective residence”, for “justice reasons” and for “child assistance”) and also the so-called EU long-term residence permit.

7.5.2.1 Asylum Seekers

D. Lgs. No. 142/2015, enforcing the EU Directive on reception (recast) and on asylum procedures²⁴⁶, defines as international protection applicant (hereinafter also “asylum applicant or asylum seeker”) any third country national who “formally applied for international protection, pending a final decision”, or “expressed the will to apply for protection” (art. 2 (1a)).

Territorial Commissions are administrative bodies in charge to examine asylum applications and to determine the international protection status. It takes about one year from the application of international protection to the notification of the first decision, which is much longer than what established by the law and it exposes asylum seekers to frustration and further vulnerability. In July 2017, the backlog of pending international protection applications amounted at 140.000 (Anci et al. 2017:23)²⁴⁷ and the excessive length of international

²⁴⁵ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:en:PDF>

²⁴⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32013L0033> and Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0032>

²⁴⁷ The yearly report released by the SPRAR network announced the results of the first survey realised in Italy on the duration of the international protection procedure in Italy. According to the study, conducted on 5.416 asylum

protection procedure remains one of the most critical shortcomings of the national asylum system (Anci et al. 2017; Banca d'Italia 2017).

After having filled the asylum application, the asylum applicant is entitled to receive a temporary (6-months), renewable, “asylum seeker permit to stay”. This permit to stay envisages a number of rights, including the right not to be expelled until the end of the procedure of international protection²⁴⁸. Legislative Decree No. 142/2015 prohibits that asylum seekers are detained on the sole ground of the examination of their application. However, some form of detention are envisaged when the asylum applicant a) falls under the conditions of art. 1F of the Geneva Convention²⁴⁹; b) receives an expulsion order for mafia or terrorism related crimes; c) becomes a danger for public order and security; d) presents a risk of absconding (art. 6). In these cases, the asylum seeker is transferred in detention centres for repatriation (the so-called *Centri di Permanenza per il Rimpatrio* – CPR), where she/he can be detained up to 12 months.

After a preliminary phase of first aid and assistance taking place close to the disembarkation area (art. 8), D. Lgs. 142/2015 establishes that asylum seekers are channelled in the Italian system of reception, which is organized in two different tiers. Operations of identification, registration of the asylum application and assessment of the health conditions are conducted in governmental first-line reception facilities, the so-called “regional hubs”, meant to progressively substitute the already existent centres of reception (the so-called CDA and CARA) (art. 9). When these operations are concluded, asylum seekers who do not have sufficient financial resources (art. 14(3))²⁵⁰ should be transferred to second line reception centres which are managed by local municipalities within the national system of protection for refugees and asylum seekers (the so-called SPRAR network), with the financial support of the National fund for asylum (art. 14(1)).

If in both first line governmental facilities and second line SPRAR facilities there are no places available, the asylum seeker should be temporarily accommodated in Centres of extraordinary reception (CAS) activated by the Prefectures.

The system of “regional hubs”, aimed at replacing the existent centres, has not been fully implemented, yet. Consequently, asylum seekers remain for long time in first aid and reception centres (CPSA), which are not equipped to provide a long-term assistance. Otherwise, asylum seekers are currently accommodated in emergency facilities (mainly CAS or also CDA), or in large-scale buildings (CARA), where asylum applicants often suffer from critical situation, due to chronic overcrowding and low standard of services (AIDA 2018:70).

seekers, the average time from the registration of the application to the notification of the decision of the Territorial Commission amounts to about 1 year, while, in case of appeal the asylum seekers has to wait about 10 months (from the lodging of the appeal) for the final decision.

²⁴⁸ Art. 7 c. 1 D. Lgs. 25/08.

²⁴⁹ Article 1F of the Geneva Convention reads: “The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.”

²⁵⁰ Prefectures are competent to assess the insufficiency of migrants’ financial resources on the basis of the annual social allowance (€ 5.889,00).

Within the second-line SPRAR facilities, instead, asylum seekers are accommodated in small and decentralised facilities where they are entitled to receive long-term assistance and integration services. However, available places in the SPRAR network do not suffice to respond to the current presence of asylum applicants in Italy. As consequence, the main channel of reception remains the CAS facilities, which, conceived in principle as temporary measure of last resort, in December 2017 accounted for 80.9% asylum seekers accommodated (Chamber Inquiry Committee 2017:98).

7.5.2.2 Beneficiaries of International Protection

D. Lgs. 251/2007 defines the “beneficiaries of international protection” as the foreigners who obtained the status of refugee or subsidiary protection (art. 2 lett.a) bis). In the Italian asylum system, both these status are granted through the same procedure, which fall under the responsibility of the Territorial Commissions.

According to art 23 of D. Lgs. No. 251/2007, an international protection permit of five years, renewable, is granted to beneficiaries of international protection. This permit to stay entails a number of civil and social rights, which however, as we will discuss, are not always uniformly enforced.

According to the SPRAR Guidelines²⁵¹, the beneficiaries of international protection have the right to be accommodated in the national system of reception for 6 months. This period can be further prolonged for 6 months, after a case-by-case assessment.

Beneficiaries of international protections have access to professional training and to work, even public employment, at the same conditions of Italian citizens. They also are equalized to Italian citizens as regards social rights and social assistance measures. In this field, the judiciary has played a crucial role, enforcing the anti-discrimination principle against some practices of local municipalities undermining the effective enjoyment of social rights (Guariso 2017).

For refugees and subsidiary protection beneficiaries, the sole requirement to obtain the EU long-term residence permit consists in demonstrating an income equal or higher than the minimum income guaranteed by the State, while the further requirements provided by law for other third-country nationals do not have to be fulfilled. A favourable legislation also applies to family reunification rights. In fact, beneficiaries of international protection who want to apply for family reunification are not required to prove minimum income and adequate accommodation (art. 29 of the Consolidated Law).

7.5.2.3 Beneficiaries of Humanitarian Protection

Beyond international protection, the Italian normative framework foresees a further form of protection (the so-called humanitarian protection) which grants a permit of stay for humanitarian reasons with a duration ranging from 6 months to 2 years (renewable). In particular, the main reference is art. 5 of the Consolidated Law, which recognizes the right to

²⁵¹ Guidelines for the functioning of the SPRAR, approved with Ministerial Decree 10/08/2016, available at <http://www.sprar.it/wp-content/uploads/2016/11/Vademecum-Decreto-Funzionamento-Sprar-2017-01.pdf>

humanitarian protection in presence of international obligations (such as the right to non-refoulement, in the absence of the requirements to obtain the international protection), constitutional obligations (such as the right to health), or other humanitarian reasons. This requires a case-by-case assessment, which mainly relies upon the core human rights envisaged by the international conventions signed by Italy²⁵².

The humanitarian permit of stay is always released by the competent Police Headquarter, and it grants the right to work, to have access to professional trainings (art. 22(15) Consolidated Law on Immigration) and to schooling and academy (arts. 38 and 39(5)) in a condition of parity with Italian citizens. The right to health is guaranteed along with the free enrolment in the National Health Service (art. 34(1)).

Foreigners who have the permit of stay for humanitarian reasons have the right to be accommodated within the national reception system. Moreover, when the humanitarian permit of stay has a duration of at least one year, foreigners are entitled to social assistance measures. In fact, the Consolidate Law on Immigration stipulates that foreigners holding a year-long permit of stay can enjoy measures of social assistance and social benefit at the same conditions of Italian citizens (art. 41). This normative provision, which public administrations often did not comply with, has been recently reinforced by a decision of the Constitutional Court²⁵³, re-affirming that foreigners holding a humanitarian permit have the same rights of beneficiaries of subsidiary protection (art. 34 (5)), including the right to access measures of sanitary and social assistance (art. 27(1)).

The humanitarian permit of stay does not allow to obtain the so-called “EC permit for long-term residents” (art. 9(3)) of the Consolidated Law on Immigration). However, it can be converted into a permit of stay for work, unemployment, study or family reasons.

Concerning the right to family unity, according to the Consolidated Law, foreigners holding a humanitarian permit of stay are excluded from the right to family reunification. However, some jurisprudence, considering this blanket ban as discriminatory, has recognized the right to family reunification also to beneficiaries of humanitarian permit of stay²⁵⁴.

7.5.3 The sub-national legislation

According to the Consolidated Law, Regions and local municipalities are entrusted to play an essential role in the governance of migration, in close collaboration with the central government. In particular, local governments have to play a crucial role in a number of domains, such as education (art. 38) and social integration (art. 42). Local authorities, in fact, should remove any obstacles to the full recognition of foreigners’ legal entitlements provided at national level, with specific reference to housing, Italian language and social integration, guaranteeing the respect of fundamental rights.²⁵⁵

²⁵² Constitutional Court Decision No. 381/1999.

²⁵³ Constitutional Court, decision No. 95/2017

²⁵⁴ See amongst the others, Tribunale di Firenze, decision 02.07.2005.

²⁵⁵ Art. 3 (4). Other relevant normative provisions are art. 35 and 36 (with regard to health services); art. 44 (12) with regard to legal assistance; art. 45 (2) concerning the promotion of integration and equal opportunities.

The concrete enforcement of the constitutional reform of 2001, transforming Italy into a truly decentralised state, which allocated migration management to the exclusive competence of the central government, did not result in the exclusion of the regional legislations from the field of migration. Thus, Regions kept playing a decisive role in the migration governance, according to an effective ‘multilevel model’, as outlined by the Constitutional Court (Panzeri 2018)²⁵⁶. Scholars have elaborated a distinction between the “immigration politics” and “immigrants politics” (Hammar 1990; Covino 2011: 392; Benvenuti 2015:82; Caponio 2004:805). The former ones, which belong to the exclusive competence of the State, comprehends all the measures establishing the condition for the regular entry and stay of foreigners in the Italian territory, whereas the latter refer to issues such as social assistance, education, health, housing and public interventions for migrants’ integration, where Regions have a concurrent, or even exclusive, legislative competence.

To this end, the Court eloquently stated that public intervention in the migration field cannot be limited to the controls of entry and stay of foreigners, but it also involves other fields, such as public assistance, education, health care or housing, where “national and regional competences are intertwined, as established by the Constitution” (decision No. 300/2005). In other words, asylum and migration necessarily intersect both central and regional interventions, even beyond the strict distribution of powers provided by art. 117 of the Constitution. Through this reasoning, the Constitutional Court dismissed the government requests to censor some regional laws, such as the ones which extended undocumented migrants’ entitlements to health,²⁵⁷ and social services²⁵⁸ (Salazar 2010; Biondi dal Monte 2011; Corsi 2012; Gentilini 2012).

A synthetic analysis of some of the most important cases will be here provided.

- Access to healthcare: against the national Consolidated Law on Immigration which guarantee only to urgent and essential health-care services, the Apulia Regional Law No. 4/2009, for example, endows undocumented migrants with a number of medical treatments, including mental health services, pharmaceutical assistance, gynaecology, abortion, etc... (art. 10 (5)).
- Housing: the Italian Consolidated Law provides accommodation centres and access to social housing to regularly resident migrants who are temporarily unable to provide on their own for their living and subsistence needs (art. 40). However, the Region of Campania, for example, extended this right to all foreigners, regardless of their status (art. 16, Law No. 6/2010 of the Region of Campania).
- Welfare benefits: against provision of welfare benefits exclusively for long-term residents (art. 41 of the Consolidated Law on Immigration), Law No. 29/2009 of the Region of Tuscany entitled all migrants in Tuscany to enjoy the “urgent and non-delayable social welfare measures, which are necessary to ensure the

²⁵⁶ Italian Constitutional Court, decisions No. 300/2005; No. 269/2006; No. 156/2008; No. 50/2008; No. 134/2010; No. 269/2010; No. 299/2010; No. 61/2011.

²⁵⁷ Constitutional Court, decision No. 299/2010 concerning the law No. 32/2009 of the Region of Puglia

²⁵⁸ Constitutional Court, decision No. 269/2010 concerning the law No. 29/2009 of the Region of Tuscany and decision No. 61/2011 concerning the law No. 6/2010 of the Region of Campania.

respect of fundamental rights” (art. 6(35)). The Italian government claimed that these measures were all exceeding the regional legislative power and that were irrespective of the national legislation and the State exclusive competence on migration. However, the Constitutional Court, as already mentioned, ruled these regional provisions are legitimate, highlighting that migrants, irrespective of their status, are entitled to a hard-core set of inviolable and fundamental rights.

However, regions have not always demonstrated more inclusiveness than the State and the Constitutional Court also intervened to declare the illegitimacy of regional laws, which subjected migrants’ access to rights (such as housing or social security) to a prolonged residence in the region territory²⁵⁹.

In Italy, local municipalities do not hold any legislative powers, but can have important administrative and regulation-making competences. In particular in the area of asylum, immigration and legal status of foreigners, local municipalities are responsible for organizing important sectors of Services delivery²⁶⁰.

Finally, together with Regions and local municipalities, in Italy also the third sector is highly involved in the management of immigration. In particular, the third sector intervention, as acknowledged by the national as well as the regional legislation (Biondi dal Monte, Vrenna 2013), is expressly foreseen by the Consolidated Law on Immigration with reference to the intercultural education (art. 38), the foreigners’ access to housing (art. 40), education and professional trainings (art. 23), and social integration (art. 42).

7.6 The framework legislation on the integration of MRAA in the labour market

7.6.1 The essential elements of the subordinate employment conditions

No subordinate employment contract (as regulated by art. 2094 of the Civil Code) can violate the “golden rule” of the non-derogation *in pejus* of the law and of collective agreements concerning, for example: the regulation of working hours and rest days (Leg. Decree n. 66/2003); the regulation of the protection of the physical integrity and moral personality of the worker (art. 2087 of the Civil Code; Leg. Decree n. 81/2008); the *corpus* of anti-discrimination law (see below, § 6.3); the regulations that allow the worker in case of illness, accident, maternity, paternity, etc., to keep the job and receive her/his salary (art. 2110-2111 of the Civil Code; Legislative Decree n. 151/2001); the regulations restricting the employer's power to dismiss (art. 2118-2119 of the Civil Code; Law n. 604/1966; art. 18 of the Law n. 300/1970; Leg. Decree n. 23/2015).

However, since the 1990s — and particularly following the severe global recession triggered by the 2007 financial crisis — the rate of flexibility allowed in the employment of workforce

²⁵⁹ See amongst the others, the decision No. 168/2014 of the Constitutional Court, which declared the constitutional illegitimacy of art. 19 (1), lett. b), Valle d’Aosta Regional Law No. 3/2013.

²⁶⁰ Art. 118 of the Constitution and Law No. 328/2000 (Consolidated Law for the realization of an integrated system of social services and interventions).

has grown considerably (in Italy as in other continental systems). This has resulted in a (partial) liberalisation of the labour market, in the use of non-standard types of contract (such as fixed-term and temporary employment contracts) and, in the attempt to mitigate the impact of the crisis on employment, in a simultaneous weakening of the protection traditionally provided to workers. The main and most recent expressions of this trend are embodied in the so-called "Fornero reform" (Law n. 92/2012), which has — among other things — reduced the possibility for the unlawfully dismissed worker to be reintegrated back into the workplace, while extending the scope of the purely economic protection; and in the so-called Jobs Act, a composite “package” of legislative decrees adopted in 2015 (Ales 2012; Carinci 2015; Clauwaert, Schömann and Buttgen 2016) “with the purpose of simplifying, revising the regulation of employment contracts and improving the work-life balance” (Federico, Maggini, 2018:376).

With particular reference to the condition of foreign workers, we shall recall that Italian labour law is based on the principle of equal treatment between regular foreign workers (see below, § 6.2) and national workers, as well as workers of other EU Member States. The protection of work “in all its forms and practices” (art. 35 Const.) operates regardless of the nationality of the worker. According to the Consolidated Law on Immigration, the foreigner with a legal residence permit allowing her/him to work has the right to receive the very same remuneration, social security and assistance of any Italian worker. In particular, working conditions (in terms of economic and regulatory treatment) shall not be worse than those established by national collective labour agreements (art. 22, par. 3 and art. 24, par. 5 of Consolidated Law). Moreover, he/she has the right to register at the employment office (art. 22, para 9; art. 23, para. 1; art. 30, para 2; art. 18, para. 5, of the Consolidated Law). In case of repatriation, the foreigner maintains his/her social security rights, which are not subject to reciprocity agreements (see art. 22, para. 11 of the Consolidated Law). Furthermore, as any employee, the foreign worker is entitled to trade union rights and to the right to strike.

On the contrary, undocumented foreigners willing to work can only resort to the shadow economy and the black market. Unfortunately, undocumented staying inevitably leads to irregular work (Calafà 2017). However, some forms of protection exist even in the black market, especially with reference to the remuneration and the contributory role of the worker.

7.6.2 National legislation on foreigners’ access to employment

As already mentioned, the employment relationship involving a foreign worker does not have significant peculiarities. Non-discrimination with respect to other workers is particularly guaranteed (see art. 43, par. 2, letter e of the Legislative Decree N. 286/1998 and Legislative Decree 8 July 2003 n. 215), contrary to the access of foreigner workers to the national labour market, which has always been subject to specific regulations.

The system is based on the idea of planning incoming migration flows according to national labour market needs, through specific legislation (the already mentioned *Decreto fluss*), that should determine the quotas of regular entries for each year (Sciarra, Chiaromonte 2014; Chiaromonte 2016). The Consolidated Law articulates migration policy into two levels. The first level is represented by a three-year plan (art. 3, para. 1-3), which is aimed at determining the programmes and interventions regarding the migration phenomenon as a

whole, and in particular at defining the general criteria for the subsequent annual determination of the entry flows and the integration measures. This first level should be the cornerstone of Italian migration policy. The second level consists in the so-called "flows decree" (art. 3, para. 4), which should be issued each year and establish the exact yearly quotas for work purposes.

However, to date the provisions of the Consolidated Law which regulate the three-year plan have gone unheeded. Indeed, the last plan refers to the period 2004-2006, as already mentioned. In other words, the sole instrument for determining migration policy and regulating foreign workers access to the labour market has been the *Decreto flussi*, a measure conceived to operationalise a mid-term plan, not to strategically intervene on such a delicate and crucial field as migration. And indeed, it has been issued annually exclusively to allow the entry of seasonal workers, while the same frequency has not been respected for non-seasonal workers and for self-employment (Table 7.9). Moreover, rather than determining quotas for new arrivals, the Decreto flussi has become the instrument to annually "heal" the position of undocumented migrants already in Italy.

Table 7.9 Foreigners admitted in Italy for work purposes

Year	Non-seasonal work	Seasonal work	Total
2007	170,000	80,000	250,000
2008	150,000	80,000	230,000
2009	Decree not issued	80,000	80,000
2010	86,600	11,400	98,000
2011	Decree not issued	60,000	60,000
2012	17,850	35,000	52,850
2013	17,850	30,000	47,850
2014	17,850	15,000	32,850
2015	17,850	13,000	30,850
2016	17,850	13,000	30,850
2017	13,850	17,000	30,850

Source: "flow decrees" 2007-2017

Entering in Italy as foreign worker is not easy, as the process of issuing visas and residence and work permits is long and complex. The employer who intends to hire, either permanently or on a fixed-term basis, an alien worker²⁶¹ must apply²⁶² to the special office for immigration (the so-called *Sportello Unico*) at the Police Headquarters, once ensured that there are no available workers already in Italy.

The work permit should be issued in 60 days, provided that it does not exceed the annual quota. The work permit granted, the Consulate of the foreigner's residence or origin country issues an entry visa, and the worker has eight days from her/his arrival in Italy to sign the *residence agreement for work reasons* at the Police *Sportello Unico*. Only after this procedure is completed the Police Headquarters issues the residence permit for work purposes.

The duration of the "residence agreement" cannot exceed nine months for one or more seasonal jobs (for which specific rules are laid down; see art. 24 of the Consolidated Law on Immigration as amended by the Legislative Decree n. 203/2016 implementing the EU Directive n. 36/2014), one year for a fixed-term employment contract, and two years for a permanent employment contract.

In the event that the worker loses his/her job for whatever reason, he/she can register as *unemployed* to the employment centre for a period that cannot exceed the duration of the residence permit (art.22, 11 Consolidated Law). The law does not provide for the possibility of obtaining a residence permit to actively look for a job, moreover the complex and long proceedings make it very hard for both job seekers and companies to meet their needs.

In addition to the guarantees provided by international agreements and conventions (for example, the ILO Conventions n. 97/1949 and 143/1975), beneficiaries of international protection are recognised an unlimited access to the national labour market. This marks a rather substantial distinction with simple non EU workers, who are subject to the condition of long-term residence (Directive 2003/109/EC). Until 2003, this condition was only met by refugees who were granted asylum. Since 2011, the same condition applies to persons eligible for subsidiary protection.

On the contrary asylum applicants are allowed to work only since the sixtieth day from the submission of the application for international protection (if the application has not been processed yet and the delay is not due to the applicant). In any case, the residence permit thus granted cannot be converted into a residence permit for work reasons (art. 22 of the Legislative Decree n. 142/2015). Moreover, asylum applicants can work "on a voluntary basis and in activities of social utility in favour of the local communities" (art. 22 *bis*), in the framework of an existing agreement between the Prefect and the municipality. Applicants are also allowed to attend any professional training provided by the local authority.

²⁶¹ Noticeably, unless the foreign worker has a permit to stay for other reasons compatible with the transformation into a work permit, it is not possible to directly hire undocumented migrants already in Italy, so what happens for them is to set up the whole proceeding as if they were first entering the country.

²⁶² It is a nominal application, and the employers has to prove also the accommodation facilities and has to commit to pay for the worker's return ticket in his/her country of origin.

Neither European nor Italian laws envisage the possibility to work for people in reception centres or those awaiting a decision or repatriation. Moreover, no specific incentives to access the labour market for asylum seekers, international protection applicants, refugees and legal economic migrants (without a long-term residence permit) are provided. This certainly represents a particularly critical aspect, since the conditions for work placement are often disadvantageous due to language barriers, low levels of education, traumatic experiences related to separation from family and country of origin, the cultural gap and (for asylum seekers and international protection applicants) the transitional legal *status*. For beneficiaries of international protection and for asylum seekers and international protection applicants, the employment rate one year after arrival in an EU country is very low (around 8%)²⁶³. On average, for the integration into the labour market of more than half of the refugees and the individuals entitled to international protection, between five and six years are necessary. However, data for Italy (which does not monitor this phenomenon) are missing.

Furthermore, so far in Italy there has been a lack of specific investment in integration and inclusion programmes, and the relationship between the State and asylum seekers has mainly conformed to welfare assistance types of dynamics.

Finally, the problem of the recognition of professional qualifications should be noted: qualifications and training acquired in the country of origin are difficult to recognise in Italy, since long and complicated procedures are generally required. Moreover, applicants and beneficiaries of international protection often do not have certificates issued by their country of origin, which means that they cannot apply for jobs that are appropriate considering the level of education they have obtained (Favilli 2015: 726 ff.).

7.6.3 The national anti-discrimination law

In the Italian labour law there is no overarching equal treatment provision covering all aspects of employment conditions, but there are specific norms applying to peculiar aspects (Izzi 2005; Barbera 2007; Calafà, Gottardi 2009; Lassandari 2010; Bonardi 2018). Compared to equality, non-discrimination has a narrower and more focused scope, since it only prohibits differences in treatment — between workers and groups of workers — determined by grounds specifically listed by the law. Therefore, diversified treatments in the workplace become discriminatory and illegal only when they are against one of the listed grounds (Tarquini 2015). Yet, non-discrimination is strongly enforced at the European level (article 10 of the TFEU and article 21, para. 1, of the Charter of Fundamental Rights of the European Union) and the EU Court of Justice has stated that European anti-discrimination rules shall prevail over any eventual breach entrenched in domestic legislation.

Gender, political opinions and trade union activity (art. 15, Law n. 300/1970), race and ethnic origins (Legislative Decree 9 July 2003 n. 215), linguistic group and nationality (art. 2, para. 3

²⁶³ Directorate General for Internal Policy (IPOL) (2016: 22).

and art. 43, para. 2, lett. e Consolidated Law), religion²⁶⁴, personal beliefs, disability, age and sexual orientation (Legislative Decree no. 216 of 9 July 2003) are all listed grounds.

Discrimination may be direct or indirect, individual or collective (Tarquini 2015), but not every single difference in treatment constitutes a discrimination. “In compliance with the principles of proportionality and reasonableness, [...] differences in treatment based on characteristics related to race or ethnic origin do not constitute discrimination [...] if, by reason of the nature of the working activity or the context in which the latter is carried out, such characteristics constitute an essential and decisive requirement for the pursuit of that working activity” (art. 3, para. 3 of the Legislative Decree n. 215/2003). Furthermore, differences in treatment which — though indirectly discriminatory — are objectively justified by “legitimate aims pursued through appropriate and necessary means” are considered as legitimate (art. 3, para. 4 of the Legislative Decree n. 215/2003). The same applies to religion or belief, disability, age or sexual orientation (art. 3, para. 3 and 5, Legislative Decree n. 215/2003)²⁶⁵.

A special form of judicial protection is provided in legal cases entailing discrimination (art. 28, Legislative Decree n. 150/2011) : the partial reversal of the burden of proof, so that if the allegedly discriminated worker provides the Court with evidence suitable for establishing — in “precise and consistent” (for discriminations on the grounds of race or ethnic origin) or in “serious, precise and consistent” (for discrimination on the grounds of religion, personal beliefs, etc.) terms — the existence of discriminatory acts, pacts or behaviours, it is up to the defendant employer to prove that there has not be any discrimination (art. 28, para. 4, Legislative Decree n. 150/2011).

7.6.4 Contrasting undeclared work, labour exploitation and the *caporalato*²⁶⁶

7.6.4.1 Sanctions for employers who employ irregular foreign workers

Art. 22, para. 12 of the Consolidated Law on Immigration imposes criminal sanctions²⁶⁷ on the employer “who employs foreign workers without a residence permit [...], or whose permit has expired and whose renewal, has not been requested by law, or has been revoked or cancelled”.

²⁶⁴ With regard to this point, the sensitive question of whether it constitutes religious discrimination to prohibit an employee from wearing the Islamic headscarf at work, which has been negatively resolved by the EU Court of Justice, 14 March 2017, C-157/15

²⁶⁵ The parallel with discrimination on the grounds of race and ethnic origin continues with the fact that those differences in treatment that, although indirectly discriminatory, are objectively justified by “legitimate aims pursued through appropriate and necessary means” (art. 3, para. 6 of the Legislative Decree n. 216/2003) are in any case considered legitimate.

²⁶⁶ Caporalato is a form of labour exploitation through illegal intermediation and illegal recruitment practices.

²⁶⁷ From six months to three years imprisonment and a fine of 5,000 euro for each worker who is employed. In cases of particular exploitation of the worker, art. 12, para. 5 of the Consolidated Law also provides for the most serious crime of facilitation of the illegal permanence of the foreigner for the purpose of unjustified profit. The sanctions have been strengthened by the Legislative Decree n. 109/2012, which has transposed Directive 2009/52/EC. The decree provides that the above mentioned penalties are increased by one third or more when the number of employees exceeds three, when they are minors under the working age, or when they are exposed to situations of serious danger, taking into account the characteristics of the services to be provided and the working conditions (art. 22, para. 12 *bis*). Together with the conviction, the judge also applies the accessory administrative sanction, consisting of the payment of the average repatriation cost of the illegally employed foreign worker (art. 22, para. 12 *ter*).

Moreover, art. 22 of the Consolidated Law on Immigration authorises the *Sportello Unico* for immigration to refuse collaborating with any employer who in the last five years has been convicted for facilitation of illegal immigration or emigration and for crimes related to the recruitment of persons for the purpose of (the exploitation of) prostitution or of minors.

Legislative Decree. 109/2012 also provides for the extension of criminal liability to legal persons who are responsible for facilitation of illegal immigration (art. 12 of the consolidated text on immigration).

The employer has to pay the irregular foreign worker the full wages and social contributions provided for lawful employment, for a minimum period of three months unless the employer or the employee prove otherwise (art. 3 of the Legislative Decree n. 109/2012). However, due to the vicious proceedings, it is very unlikely for the worker to receive what is due before his/her removal, as the emergence of the unlawful presence of the undocumented worker entails her/his voluntary or forced removal, in accordance with the provisions of the Returns Directive (2008/115/EC). Yet, in the event of labour exploitation, charging files against the employer and collaborating with the prosecuting authority grants the undocumented worker a six-months residence permit for humanitarian reasons, renewable for one year or till completion of the criminal proceedings (art. 22 para. 12 *quater* and *quinquies*).

The provision of a residence permit for humanitarian reasons to the foreigner who is victim of labour exploitation is certainly an extremely important novelty in the Italian legal system, especially in light of her/his subsequent integration into the (regular) labour market. However, Legislative Decree n. 109/2012 has narrowed the typology of “serious labour exploitation” strongly reducing the cases only to those living in particular severe exploitation. This certainly does not correspond to the spirit of the law and the directive²⁶⁸.

With regard to the additional administrative and financial sanctions provided by Directive 2009/52/EC against employers who have employed irregular labour force²⁶⁹, no implementation measures are found in the Legislative Decree n. 109/2012. However, precisely these sanctions could potentially play a fundamental deterrent role, since the consequences for the employers would be very serious — particularly from an economic point of view. Moreover, Legislative Decree n. 109/2012 does not provide any specific measure against subcontracting, which is a very common phenomenon of exploitation of undocumented labour.

7.6.4.2 The crimes of illicit intermediation and exploitation of labour: *caporalato*

Law n. 199/2016, amending art. 603 *bis* of the Penal Code, introduced new provisions aimed at contrasting the widespread and serious phenomenon of the recruitment of illegal labour through the exploitation of the worker’s condition of need, a phenomenon which is

²⁶⁸ Between 2013 and the first half of 2014, for example, only 10 residence permits were issued.

²⁶⁹ This refers to the exclusion from entitlement to some or all public benefits and subsidies for up to five years; exclusion from participation in public procurement for up to five years; reimbursement of some or all public benefits and subsidies granted to the employer for up to 12 months before the illegal employment occurred; temporary or permanent closure of the establishments where the infringement took place, or temporary or permanent withdrawal of the operating licence of the concerned economic activity, if justified by the seriousness of the infringement.

particularly rooted in the agricultural sector and, more generally, in the agri-food production chain (Sagnet, Palmisano 2015; D'Onghia, de Martino 2018; Chiaromonte 2018).

The most relevant innovation consists in the identification (para. 1) of two distinct criminal conducts: (1) the *caporale*, who recruits workers (often, but not necessarily, undocumented migrants²⁷⁰) for third parties in conditions of exploitation, and taking advantage of their state of need (in this case the crime is that of illegal intermediation and exploitation of labour); and (2) the employer who hires or employs workers, even without the intermediation of the “corporal”, subjecting them to conditions of exploitation and taking advantage of their state of need (in this case the illegal intermediation can only potentially occur).

There are two elements that characterize the criminal conduct of both the *caporale* and the employer: on the one hand, the exploitation of labour; on the other hand, the exploitation of the state of need of the workers. What is at stake here is first of all the breach of the fundamental value of the human dignity of the worker. Unless the fact constitutes a more serious crime, e.g. slavery or human trafficking as provided by art. 600 and 601 of the Penal Code, the *caporale* or employer are punished with imprisonment from one to six years and with a fine from 500 to 1,000 euros for each employed worker. Moreover, imprisonment from five to eight years and a fine from 1,000 to 2,000 euros for each employed worker is provided when the acts are committed with violence or threat.

What is particularly important is the identification of the phenomenon of labour exploitation. Para. 2 identifies the “legal indices of exploitation” (most of which refer to the conduct of the employer only), which are grouped into four categories: remuneration, working hours, safety and hygiene at work, and the general working conditions, which means a systematic violation of the “hard core” labour law conditions.

It is also worth mentioning the additional financial provisions which were introduced by Law n. 199/2016. First of all, the new art. 603 *bis*.2 of the Penal Code extends to the crime of illicit intermediation the compulsory confiscation of what has been used to commit the crime or of the product or profit thereof. Furthermore, in order to protect the commercial value of the enterprise which has employed workers violating art. 603 *bis* of the Penal Code, and to safeguard employment, art. 3 provides that the enterprise may continue under judicial control. In this case, the judicial administrator appointed by the judge will, among other things, regularise the irregular workers, taking all the necessary measures to ensure that violations are not repeated.

From a labour law perspective, a critical aspect to highlight is the absence of an automatic mechanism that obliges the company, regardless of a judicial intervention, to hire the

²⁷⁰ The “caporalato”, which “succeeds” in keeping in Italy foreign labour that would otherwise be expelled and intercepts the incoming flows attracting new labour force, mainly (but not exclusively) involves undocumented migrants, who are particularly vulnerable. Since reporting to public authorities would lead to their expulsion — except for the very few cases for which the law provides for the possibility of issuing a residence permit for humanitarian reasons already mentioned — they tend not to denounce their situation of exploitation, confirming the well-known difficulties of access to justice for foreigners (especially for undocumented) also with reference to the most serious cases of labour exploitation (the number of complaints is strongly conditioned by their undocumented status, sanctioned by criminal law, of the worker victim of serious exploitation). Therefore, they accept to work and live in situations of particular degradation, as well as precarious health conditions, often with limited access to drinking water, basic medical care and decent housing.

workers who are the object of fraudulent intermediation, interposed or exploited, with the consequent restoration of the wage and social security protection. As a consequence, the regularisation of the employment relationship and the removal of the conditions of exploitation are no longer automatic, but they are subject to the appointment, by the judge — with the order that provides for judicial control of the enterprise — of the judicial administrator.

Finally, a further critical aspect lies in the fact that there are no charges against the employer, unless it can be proved her/his for complicity in the crime.

7.7 Conclusion

The aim of this report has been to shed light on the legal and institutional framework of migration management and of the MRAA access to the labour market in Italy, with a special emphasis on the years 2014-16.

After decades of emigration, Italy became the gateway to the European Union, but also a country of destination for growing numbers of people in search for protection and for better opportunities for themselves and their families. A closer look to statistics helps demystifying common myths and traditional perceptions on immigration. Contrarily to the narrative of the “invasion”, the number of foreign resident population results in line with the European context. Furthermore, data reveal that the growing presence of foreigners is not exclusively related to current international conflicts or crisis but also to a slow process of stabilisation of the migratory phenomenon of the last two decades. The increasing number of non-EU citizens acquiring the Italian nationality, with 184,638 new citizens only in 2016, represents a clear evidence of this process. Another important data is the number of permits to stay issued for family reasons, which exceed more than a half the overall amount of permits granted for asylum and humanitarian reasons. This contributes to qualify migration in Italy as a structural phenomenon. At the same time, it shows how other important channels to obtain a permit to stay remain residual (in 2016, entry quota for non-seasonal workers was solely 3,600).

Against this backdrop, two streams of reflections inspire the concluding remarks: those concerning the legal framework of migrations, and those on the regulation of the labour markets. Both streams are, unfortunately, characterised more by barriers than by enablers.

With particular reference to the employment aspect, at the end of 2016 there were about 2.4 million foreign workers employed in Italy, with an incidence of 10.5% on the total number of employed²⁷¹. Work continues to be one of the main drivers of migration. As already pointed out, this essentially depends on two factors. The first, demographic factor is linked to the sharp decline of native young adult population in the coming decades. The second one consists in Italy's economic and social structure, characterised by well-developed labour-intensive sectors, a myriad of small businesses, a relatively low demand for medium-high professions, and a weak welfare (Strozza, De Santis, 2017:100).

²⁷¹ Centro Studi e Ricerche IDOS (2017). See also Direzione generale dell'immigrazione e delle politiche di integrazione - Ministero del lavoro e delle politiche sociali (2017).

In Italy, the labour market of foreigners has some peculiar characteristics (Reyneri, 2017:251). A first characterizing element is the complementarity with the labour market of Italians, which means that Italian workers can often afford to avoid certain occupations which traditionally are considered unattractive (the so-called *ddd – dirty, dangerous and demeaning – jobs*), and migrants undertake such unskilled jobs. Moreover, this suggests that the ideological rhetoric – dominant in the public debate on immigration – according to which migrants “steal jobs” is totally misleading (Allievi, Dalla Zuanna 2016: 12; Fondazione Leone Moressa 2017: 71)²⁷². It is no coincidence that between 2008 and 2015, the years of the economic crisis, we saw a decrease of Italians employed in the industrial and trade sectors, public administration, and education and health – with particular reference to skilled professions –, and a simultaneous increase of foreigners employed in family care services and in the hotel, catering and agricultural sectors – mainly in relation to unskilled jobs (Strozza, De Santis 2017: 106; Ambrosini 2017 b) ²⁷³. In particular, according to ISTAT labour force data for 2015, the incidence of foreigners on total employment was 74.7% in domestic services, 18.3% in hotels and catering, 16.1% in construction and 15.8% in agriculture.

As labour sociologists have repeatedly pointed out, the position of foreigners in the Italian labour market is characterised by low levels of unemployment and, at the same time, by poor quality jobs²⁷⁴. It is therefore a complementary labour market that generates occupational segregation – the so-called “ethnic specialisations” – in low-skilled jobs (which are precisely those that have been less affected by the recent negative economic cycle). This has, among other things, heavy consequences in terms of wage differences.²⁷⁵ and a slowdown in the already slow process of labour and social integration (the low level of social mobility generates, at the same time, the phenomenon of “ghettoization” of migrants (Fullin, Reyneri 2011)).

Moreover, the Italian labour market (for both nationals and foreigners) is also segmented in regular and undeclared (or non-regular) work. The vastness of the phenomenon of foreigners’ undeclared work certainly depends on a number of factors, many of which of an extra-legal nature. However, the legal framework has its own responsibilities, as already mentioned. The consolidated Law on Immigration not only fails preventing and fighting the phenomenon, but in some cases tends to favour it (Sciarra and Chiaromonte (2014: 124-127).

Italian legal framework is in line with both EU legislation and the core labour standards recognized by the eight fundamental ILO Conventions. Nevertheless, it remains disorganized and fragmented. Moreover, it is characterized by the presence of a number of actors, at different levels of government, that struggle to work coherently. The enforced new measures

²⁷² It is estimated that more than two thirds of foreigners work in unskilled professions, and only 6.7% in skilled professions. This is accompanied by the fact that they are often overeducated with respect to the working activities they carry out (37.4% foreigners are overeducated compared to 22.2% of Italians) (Centro Studi e Ricerche IDOS, cit.)

²⁷³ In this regard, Ambrosini has talked about the resilience of immigration of Italy in the face of the crisis.

²⁷⁴ See also Fullin and Reyneri (2011).

²⁷⁵ It is estimated that the remuneration of foreigners is 27.2% lower than that of Italians (see Centro Studi e Ricerche IDOS, cit.)

continue to be more dedicated to combating irregular immigration (and to the regularisation of undocumented migrants) and to guaranteeing public security, than to integration.

A national, overarching law on integration, that exists in other European countries-as in Germany, is still missing. Thus, quite often judges were obliged to take the lead in the promotion of integration, especially through the recognition and granting of social rights, sometimes even regardless of the regularity of their stay (see paragraph 4). In fact, the legal framework, in line with international standards on human rights, enforces a number of crucial rights inspired by: the personalist principle enshrined in art. 2 of the Constitution (that grants the inviolable rights to foreigners), and the equally and anti-discrimination principles proclaimed by art. 3 of the Constitution (that is recalled throughout the Consolidated law on Immigration).

The second stream focuses on migration management. The right of asylum, explicitly enshrined in art. 10 of the Constitution, still lacks of a comprehensive regulation. Meanwhile, the legal framework on migration remains fragmented and the Consolidated Law on Immigration is affected by inhomogeneous normative stratifications and lack of effective instruments of migration's planning and management. This absence of solid, structured pathways to systematically manage the migration phenomenon can be partially explained with the multiplicity of institutional actors involved in the Italian migration system. In Italy, the management of asylum and migration does not fall under the responsibility of a single governmental body. Rather, it is scattered among different institutional entities. Each entity (with its own mandate and mission) is competent and responsible for single apparatus of the complex migration machine. The compresence between the Ministry of the Interior and the Ministry of Labour, which share key aspects of the migratory policies, clearly exemplifies this.

The gap of governance at the central level has been filled from time to time by different actors, such as local municipalities (especially in the context of reception), the third sector and the judiciary. On the positive side, this has encouraged inclusive legislations at local level and the wide mobilization of civil society in support of foreigners' integration. Meanwhile, courts have often questioned regressive national legislation and the Constitutional Court has been crucial in the process of aligning the asylum national legislation to the supranational and constitutional principles.

These interventions nevertheless, the lack of coordination and monitoring at central level has led to a sheer fragmentation and uncertainty dominates the legal status of foreigners throughout the country. Fundamental social rights are not always granted at the same conditions of Italian citizens and some social welfare allowances can be obtained only through the interventions of the courts. Standards of care and assistance for asylum seekers and refugees vary a lot between the different centres of accommodation and the enjoyment of basic rights becomes "a matter of luck" (Oxfam 2017). As a result, harsh living conditions in overcrowded self-organized settlement, illegal labour and exploitation represent a frequent outcome of the absence of efficient services supporting access to housing, employment, and more broadly integration (Council of Europe, Commissioner for Human Rights 2011; UN Human Rights Council 2014).

An increasing recourse to security-oriented measures, professedly motivated by the pressure of controlling borders, seem to prevail upon any other humanitarian concern and respect of human rights obligations, deriving from both national and supranational normative

provisions²⁷⁶. And allegations of illegitimate repatriation have been recently moved against Italy²⁷⁷. Moreover, Italy is called to respond to further human rights violations against migrants, especially those violations occurring during the operations of identification in the hotspots (Oxfam 2016: 28; Amnesty International 2016: 29). Furthermore, in the absence of individual and accurate assessment, these operations of identification have been regarded as “tantamount to collective expulsion” (Guild, Costello and Moreno-Lax 2017: 47), breaching the principle on *non-refoulement*.

National and supranational Courts intervened several times to address and restrain the weaknesses of the Italian migration system and its failures to protect and promote migrants’ fundamental rights. Domestic courts (both lower courts and the Constitutional Court) have played a pivotal role to align Italian legislations and practices to the respect of human rights obligations. And also the ECHR contributed in this process.

However, this “salvific role” of the judiciary is increasingly threatened by an overall tendency to enforce migration policies by recurring to informal acts, such as communications, standard operational procedures and circulars, which are subtracted to both judicial and parliament control (Algostino 2017; Gjergji 2016a). As authors points out, the recourse to these informal acts *de facto* neutralize the judicial intervention and contributes to shape and reinforce a “special legal status” of migrants, where basic human rights and procedural guarantees are increasingly replaced by a system of contingent measures and exceptions (Ferrajoli 2010; Caputo 2007; Favilli 2017).

In particular, the numerous readmission agreements signed by Italy represent a good example of this approach (which is mirrored at the EU level by the EU-Turkey agreement). In breach of national and international standards (Favilli 2005)²⁷⁸, more than 30 agreements have been signed by Italy between 1990 and 2014 (Algostino 2017; Raffaelli 2017), with the aim of favouring repatriations and externalizing borders. These agreements jeopardize the principle of *non-refoulement* and the right not to be exposed to the real risk of “torture or to inhuman or degrading treatment or punishment” as stated by art. 3 of the European Conventions on Human rights.

To conclude, Italy has proven to be a very complex case of migration management and of foreign workers’ integration in the labour market. Both have developed in the grip of structural national limits, due to the economic and social structure of the country, but also to

²⁷⁶ Besides the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols, Italy abides a number of international treaties addressing the protection of human rights, such as the European Convention on the Legal Status of Migrant Workers (1995) and the Convention on Action against Trafficking in Human Beings (2010). Furthermore, the entire EU acquis on migration and asylum is applicable to Italy, which transposed the relevant EU Directives into national legislation. Finally, as already mentioned, human rights protection is enshrined in Italian Constitution and other relevant national legislations.

²⁷⁷ See the letter that the Special Commissioner on human rights of the Council of Europe addressed to the Italian Ministry of the Interior in 2017, available here: <https://rm.coe.int/letter-to-the-minister-of-interior-of-italy-regarding-government-s-res/168075baea>

²⁷⁸ International agreements in the immigration field raise several concerns about their constitutional legitimacy (with specific reference to arts. 80 and 87(8) of the Constitution. Whereas art. 80 is mentioned below, art. 87(8) on the Presidential Duties stipulates that the President of the Republic “accredits and receives diplomatic representatives, ratifies international treaties once they are authorized by parliament, provided parliamentary approval is necessary”. Furthermore, these international agreements also breach the art. 10(2) of the Constitution.

the political culture and the legal framework. The Italian responses to the most recent migratory crisis, characterized by an increase in the number of arrivals, especially by sea, have been based on an emergency management of the phenomenon, with regard to both the access to the territory – and to work in particular – and to the recognition and granting of humanitarian and international protection measures. But emergency measures rarely become good practices.

Work is certainly among the most effective instruments for ensuring the effective integration of foreigners into the social fabric of the host country. However, there are still many obstacles that hinder the full integration of foreigners into the Italian labour market, especially when they do not have a residence permit for work reasons but are beneficiaries of international and humanitarian protection.

Since access to work for beneficiaries of international and humanitarian protection is still very complicated, there is a strong risk that the progressive reduction in the number of permits granted for work reasons and the simultaneous increase in the number of those granted for humanitarian reasons will slow down the process of integration through work. Moreover, the fact that it is generally possible to legally enter the country for work reasons only after having already found a job and not, for example, to look for a job, makes the already difficult process of integration even more complicated. Furthermore, particularly long and complicated administrative recruitment procedures would require a comprehensive review of the legislation to become instruments of social and economic integration and not of marginalization. The newly enforced measures to fight against labour exploitation and *caporalato* could be considered a valid contribution to the enhancement of workers' rights and dignity and a truly Italian best practice. Unfortunately, the law has not found full enforcement and it does not seem that the Italian legislator is currently devoting proper attention to this original flaw in the legislation.

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- decision No. 198/2000
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- decision No. 252/2001
- decision No. 300/2005
- decision No. 269/2006
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- decision No. 156/2008
- decision No. 134/2010
- decision No. 187/2010
- decision No. 249/2010
- decision No. 269/2010
- decision No. 299/2010
- decision No. 61/2011
- decision No. 329/2011
- decision No. 40/2013
- decision No. 168/2014
- decision No. 22/2015
- decision No. 230/2015
- decision No. 95/2017
-

Court of Cassation:

- decision No. 1417/2004 (Sez. Unite)
- decision No. 4139/2011
- decision No. 6879/2011
- decision No. 24544/2011
- decision No. 13172/2013

Council of State:

- decision No. 4199/2015

- decision No. 3998/2016
- decision No. 3999/2016
- decision No. 5085/2017

European Court of Human Rights:

- *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09

EU Court of Justice:

- decision C-157/15, 14 March 2017

Glossary and List of Abbreviations

AIDA: Asylum Information Database

ANCI: National Association of local municipalities (Associazione nazionale Comuni Italiani)

ARCI: Italian cultural and recreational association (Associazione Ricreativa e Culturale Italiana)

ASGI: Association on Immigration Juridical Studies (Associazione di Studi Giuridici sull'Immigrazione)

CARA: Centre of reception for asylum seekers (Centri di Accoglienza per Richiedenti Asilo)

CAS: Emergency accommodation centre (Centri di Accoglienza Straordinaria)

CDA: Centre of reception (Centri Di Accoglienza)

CPSA: First aid and reception centre (Centri di Primo Soccorso e Accoglienza)

ECHR: European Convention on Human Rights/ European Court of Human Rights

EU: European Union

ISMU: Iniziative e Studi sulla Multietnicità (Initiatives and studies on multiethnicity)

SPRAR: National system of protection for asylum seekers and refugees (Sistema di Protezione per Richiedenti Asilo e Rifugiati)

UNHCR: United Nations High Commissioner for Refugees

Annexes

Annex I: Overview of the Legal Framework on Migration, Asylum and International Protection

Legislation title (original and English) and number	Date	Type of law	Object	Link/PDF
Law No. 47/2017 “Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati” “Provisions on protection measures for unaccompanied foreign minors”	21/04/2017	Law	Unaccompanied foreign minors	http://www.gazzettaufficiale.it/eli/id/2017/04/21/17G00062/sg
Decree Law No. 13/2017 (converted into Law, after amendments, by Law No. 46/2017) “Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale” “Urgent measures for accelerating the proceedings related to the international protection, as well as for fighting against illegal immigration”	17/02/2017	Law Decree	Measures for simplifying and speeding-up the procedure of international protection Measures for accelerating the identification and the status determination of non-EU citizens and for fighting against illegal immigration	http://www.gazzettaufficiale.it/eli/id/2017/02/17/17G00026/sg
Circolare del Ministero dell'Interno 11.10.2016 “Regole per l'avvio di un sistema di ripartizione graduale e sostenibile dei richiedenti asilo e dei rifugiati su territorio nazionale attraverso lo SPRAR”	11/10/2016	Circular of the Ministry of the Interior	Operational plan aimed at realizing a sustainable reception system equally distributed between the regions and local	http://www.immigrazione.biz/upload/circolare%20ministero_interno_11_ottobre_2016_sprar.pdf

Ministry of Interior Circular of 11.10.2016 on Rules for starting of a gradual and sustainable distribution system for asylum seekers and refugees on the national territory through the SPRAR "			municipalities, with the exemption of local municipalities already involved in the SPRAR network	
Ministry of the Interior Decree No. 10.08.2016 "Modalita' di accesso da parte degli enti locali ai finanziamenti del Fondo nazionale per le politiche ed i servizi dell'asilo per la predisposizione dei servizi di accoglienza per i richiedenti e i beneficiari di protezione internazionale e per i titolari del permesso umanitario, nonche' approvazione delle linee guida per il funzionamento dello SPRAR" "Access of municipalities to the National Fund for Asylum (FNSA) for the accommodation of asylum seekers, international and beneficiaries of humanitarian protection; guidelines for SPRAR"	10/08/2016	Ministerial Decree	Guidelines for the applications to the National Fund for the asylum policies and services Guidelines concerning the reception services provided by the SPRAR	http://www.gazzettaufficiale.it/eli/id/2016/08/27/16A06366/sg
Circolare del Servizio Centrale Sprar: Tempi di accoglienza all'interno dello SPRAR Circular of the Central Service for Sprar: time limits of accommodation in Sprar	07/07/2016	Circular of the SPRAR	Asylum seekers have the right to stay in the SPRAR accommodation until the Territorial Commission releases the decision. In case of positive decision, the refugee can prolongs the stay until 6 months. In case of negative decision, if the asylum seeker lodges an appeal, the staying is extended by the end of	https://www.asgi.it/wp-content/uploads/2016/07/Servizio-centrale-srar-accoglienza-termini-luglio-2016.pdf

			the judicial procedure.	
Circolare del Ministero dell'Interno 06.10.2015 "Decisioni del Consiglio europeo n. 1523 del 14 settembre 2015 e n. 1601 del 22 settembre 2015 per istituire misure temporanee nel settore della protezione internazionale a beneficio dell'Italia e della Grecia – Avvio della procedura di relocation Decision of the European Council No. 1523 of 14 September 2015 and Decision No. 1601 of 22 September 2015 on relocation procedure	06/10/2015	Circular of the Ministry of the Interior	Launch of the relocation procedure	https://www.asgi.it/wp-content/uploads/2015/11/2015_Minist_ero_Interno_14106_6-10_accoglienza.pdf
Decreto Legislativo n. 142/2015 "Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale." Legislative Decree 142/2015 "Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection."	18/08/2015	Legislative Decree	It is the so called "reception-decree", establishing rules, criteria and standards for the new reception system. After a first phase of first aid and assistance, reception is organised in a two-tier system, with facilities of first line reception, activated by the Ministry of the Interior, and second line reception facilities within the SPRAR network, providing for a longer-term assistance.	http://www.gazzettaufficiale.it/eli/id/2015/09/15/15G00158/sq
Decreto Legislativo n. 24/2014 "Prevenzione e repressione della tratta di esseri umani e protezione delle vittime", in attuazione alla direttiva 2011/36/UE, relativa	04/03/2014	Legislative Decree	It addresses the specific situation of vulnerable persons: minors, unaccompanied minors,	http://www.gazzettaufficiale.it/eli/id/2014/03/13/14G00035/sq

<p>alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime”</p> <p>Legislative Decree no. 24/2014 “Prevention and repression of trafficking in persons and protection of the victims”, implementing Directive 2011/36/EU”</p>			<p>people with psychic diseases, disabled, the elderly, women (particularly pregnant women), single parent with children, survivors of torture or other severe forms of violence)</p>	
<p>Decreto-Legge n. 89/2011</p> <p>"Disposizioni urgenti per il completamento dell'attuazione della direttiva 2004/38/CE sulla libera circolazione dei cittadini comunitari e per il recepimento della direttiva 2008/115/CE sul rimpatrio dei cittadini di Paesi terzi irregolari” convertito nella Legge n. 129/2011</p> <p>Decree-Law No. 89/2011 “Urgent provisions for the full application of the Directive 2004/38/EC on the free movement of EU citizens and for the transposition of the Directive 2008/115/EC on returning illegally staying third-country nationals” implemented by Law No. 129/2011</p>	23/06/2011	Decree-Law	<p>The foreign who receives an expulsion measure, can ask a term for the voluntary return.</p> <p>When the foreign has to be expelled with a forced accompaniment, s/he can ask for access to alternative measures to detention, instead to be detained in an identification and expulsion centre (CIE)</p>	http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto-legge:2011;89
<p>Law 94/2009</p> <p>Legge 15 luglio 2009, n. 94 “Disposizioni in materia di sicurezza pubblica” (Pacchetto Sicurezza)</p> <p>“Norms on public security” (Security Package)</p>	08/08/2009	Law	<p>It introduces the “aggravating circumstance of clandestinity” and the crimes of “clandestinity”</p>	http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2009-07-24&atto.codiceRedazionale=009G0096&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D94%26testo%3D%26annoProvvedimento%3D2009%26giornoProvvedimento%3D&currentPage=1

<p>Decreto Legislativo n. 25/2008 “Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato” così come modificato dal Decreto legislativo n. 159/2008 e 142/2015</p> <p>Legislative Decree no. 25/2008 “Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status” as amended by Legislative Decree No. 159/2008 and 142/2015</p>	28/01/2008	Legislative Decree	<p>It is the so-called “Procedure Decree”</p> <p>Basic principles and guarantees (access to the procedure, the examination of applications, decisions, the personal interview, composition and training of Territorial Commission, legal assistance, guarantees for unaccompanied minors)</p> <p>Procedures at first instance</p> <p>Procedures for the withdrawal of international protection</p> <p>Appeals procedures</p>	http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2008-02-16&atto.codiceRedazionale=008G0044&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D25%26testo%3D%26annoProvvedimento%3D2008%26giornoProvvedimento%3D&currentPage=1
<p>Decreto Legislativo n. 251/2007 “Attuazione della direttiva 2004/83/CE recante norme minime sull'attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta”, così come modificato dal Decreto Legislativo n. 18/2014 “Attuazione della direttiva 2011/95/UE”</p> <p>“Implementation of Directive 2004/83/EC on</p>	19/11/2007	Legislative Decree	<p>It is the so-called “Qualification Decree”</p> <p>Assessment of applications for international protection</p> <p>Refugee status</p> <p>Subsidiary protection</p> <p>Content of international</p>	http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2008-01-04&atto.codiceRedazionale=007G0259&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D251%26testo%3D%26giornoProvvedimento%3D%26annoProvvedimento%3D2007&currentPage=1

<p>minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted” as amended by Legislative Decree No. 18/2014 “Implementation of Directive 2011/95/EU”</p>			<p>protection</p> <p><u>Main amendments of the Legislative Decree No. 18/2014:</u></p> <p>Beneficiaries of subsidiary protection are equalized to refugees with reference to: family reunification, access to the public sector and housing services</p> <p>The duration of the residence permit for beneficiaries of subsidiary protection increases from three at five years.</p> <p>A national plan shall be adopted every two years to achieve the effective integration of beneficiaries of international protection</p>	
<p>Decreto del Presidente della Repubblica n. 394/1999</p> <p>"Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero", così come modificato dal Decreto del presidente della Repubblica n. 334/2004 “in materia di immigrazione”</p>	31/08/1999	Presidential Decree	<p>Measures for the Consolidated Act implementation</p> <p>General provisions Entry and stay Expulsion and detention Humanitarian provisions Labour regulation Provisions on health-</p>	<p>http://www.gazzettaufficiale.it/eli/id/1999/11/03/099G0265/sq</p>

Presidential Decree No. 394/1999 "Regulation on norms implementing the consolidated act on provisions concerning the immigration regulations and foreign national conditions norms" amended by the Presidential Decree No. 334/2004 "on immigration"			care, education and social integration	
Decreto Legislativo No. 286/1998 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero" così come modificato dalla Legge 30 luglio 2002, n. 189 "Modifica alla normativa in materia di immigrazione e di asilo" o "Legge Bossi-Fini" Legislative Decree No. 286/1998 "Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms" as amended by the Law No. 189/2002 "concerning amendments on immigration and asylum laws"	25/07/1998	Consolidated act	General principles Provisions on entry, stay and exit from Italy Labour regulation Right to family unity and children protection Provisions on health-care, education, accommodation, participation to the public life and social integration	http://www.altalex.com/documents/codici-altalex/2014/04/09/testo-unico-sull-immigrazione
Legge n. 722/1954 "Ratifica ed esecuzione della Convenzione relativa allo status dei rifugiati firmata a Ginevra il 28 luglio 1951" Law 722/1954 "ratifying and giving execution to the 1951 Geneva Convention"	24/07/1954	Law	Ratification of the Geneva Convention	

Annex II: List of institutions involved in the migration governance

Institution (English and original name)	Tier of government (national, regional, local)	Type of institution	Area of competence in the field of MRAA	Link
Ministry of the Interior – Department of Civil liberties and immigration (Ministero dell’Interno)	Central government	The department has to guarantee the civil rights’ protection, including civil rights concerning asylum and immigration, citizenship and religious confessions. The organizational chart is available here: http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/orga_nigramma.pdf	<p>It participates to identify the national policy on immigration and asylum</p> <p>It collects data on disembarked migrants (adults and unaccompanied minors) and on migrants accommodated in reception accommodations</p> <p>It manage integration projects through the European Asylum Migration and Integration Fund (AMIF)</p> <p>It is responsible for the first reception and assistance of asylum seekers</p> <p>It provides first aid when migrants disembark or are intercepted by the authorities in the national territory</p>	http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/dipartimento
Prefectures (Prefettura)	Local offices, at the provincial level, of the central government (the Ministry of the Interior)	The Prefecture has the following responsibilities: guaranteeing the administrative activity of the	<p>Identification of reception centres for asylum seekers</p> <p>It presides over the activity of</p>	http://www.interno.gov.it/it/ministero/uffici-territorio

		national peripheral offices; Providing for relevant functions in the fields of public order and security, immigration, civil protection, relationship with the local municipalities, social mediation and the system of administrative sanctions	the Territorial Commission In each Prefecture, there is an Immigration Office (Sportello Unico per l'Immigrazione), competent to release the entry clearance (nulla-osta) for family reunification, for the recruitment of foreign workers within the 'immigration quotas'. The Sportello Immigrazione is also competent to convert the residence permit for study, training or seasonal work purposes in a residence permit for work purposes. Coordination of the Territorial Council for Immigration	(each Prefecture has its own web page available here http://www.prefettura.it/portale/generale/37109.htm)
Police Headquarters (Questure)	Local offices, at the provincial level, of the central government (the Ministry of the Interior – Department of Public security)	The Questura has the responsibility to guarantee the public order and security	Identification and fingerprinting of foreign citizens Registration of the asylum application Issuance and renewal of residence permits	http://www.interno.gov.it/it/ministero/uffici-territoriali (each Police headquarter has its own web page available here http://questure.poliziadistato.it/)
Board police (polizia di frontiera)	This body is under the responsibility of the Ministry of the Interior – Department of public security	It comprehends offices at seaports, at ground border crossing and at airports.	Check of the travel documents Registration of the asylum application	https://www.poliziadistato.it/articolo/23463
Territorial Commissions (Commissioni Territoriali)	This authority is under the responsibility of the Ministry of the Interior – Department of civil	Currently, there are 20 Territorial Commission operating in Italy.	Refugee status determination (first instance)	http://www.interno.gov.it/sites/default/files/allegati/commi

	liberties and immigration	Each Territorial Commission is composed of 4 members (a representative of the Prefecture; a representative of the State Police; a representative of the local municipality; a representative of UNHCR). This authority is competent to make a decision on the asylum application at first instance.		ssioni e sezioni d creto costitutivo situazione aggiorn ata al 11_09_201 7.pdf
National Commission (Commissione Nazionale)	This authority is under the responsibility of the Ministry of the Interior – Department of civil liberties and immigration	It is composed of representatives of the Ministry of the Interior, the Ministry of Foreign Affairs, the presidency of the Council of ministers and UNHCR.	<p>Coordination and orientation of the Territorial Commissions' activity</p> <p>Training and updating of the Territorial Commissions' members</p> <p>Collection of statistics on the Territorial Commissions' activity</p> <p>Collection of data on asylum applications and decisions of the Territorial Commissions</p> <p>Refugee status withdrawal and cessation</p> <p>National focal point for the information exchange with the EU Commission and the competent authorities of other EU member states</p>	http://www.libertacivilimmigrazione.dci.interno.gov.it/it/commissione-nazionale-diritto-asilo

Dublin Unit (Unità Dublino)	This authority is under the responsibility of the Ministry of the Interior – Department of civil liberties and immigration	Since 2014 the Dublin Unit have been collaborated with EASO	<p>It is competent to determine the EU member state responsible for examining an asylum application lodged in one of the EU member states by a non-EU citizen</p> <p>It is responsible to implement the relocation Programme</p>	http://www.libertaci.viliimmigrazione.dlci.interno.gov.it/it/unita-dublino
General Directorate of Immigration and Integration Policies at the Ministry of Labour and Social Policies (Direzione Generale dell'Immigrazione presso il Ministero del Lavoro e delle Politiche sociali)	This authority is under the responsibility of the Ministry of Labour	It is composed of 3 divisions: 1) general affairs and management of the financial resources; 2) integration policies and foreign minors protection; 3) migration policies	<p>Planning, management and monitoring of migration quotas</p> <p>Coordination of the social integration policies</p> <p>Management of the financial resources for migration policies</p> <p>Coordination of the protection policies for unaccompanied foreign minors: It is responsible for the census of unaccompanied intercepted at the border or inland It is competent to promote the family tracing of unaccompanied foreign minors in the country of origin or in a third country, with the collaboration It releases an opinion about the social integration of unaccompanied foreign minors which is necessary to convert the residence permit It is competent for the assisted-return of unaccompanied foreign</p>	http://www.lavoro.gov.it/ministro-e-ministero/Il-ministero/Organizzazione/Pagine/DG-immigrazione-e-delle-politiche-di-integrazione.aspx

			minors	
Local municipalities	Local government		<p>Together with non-profit organizations, on a voluntary basis, local municipalities participate to the SPRAR network which cater for high-qualified reception services</p> <p>Local municipalities are responsible for taking unaccompanied foreign minors in charge and providing them with accommodation in a safe place</p>	<p>See ANCI (Association of Italian local municipalities) which involves around 7,300 Italian local municipalities representing about the 90% of the entire Italian population: http://www.anci.it/</p>

Annex III: Overview of the legal framework on labour and anti-discrimination law

Legislation title (original and English) and number	Date	Type of law (i.e. legislative act, regulation, etc...)	Object	Link/PDF
<p>Decreto legislativo No. 203/2016</p> <p>“Attuazione della direttiva 2014/36/UE sulle condizioni di ingresso e di soggiorno dei cittadini di Paesi terzi per motivi di impiego in qualita' di lavoratori stagionali”</p> <p>Legislative Decree No. 203/2016</p> <p>“Implementation of Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers”</p>	29/10/2016	Legislative decree	Work permit for seasonal workers	http://www.gazzettaufficiale.it/eli/id/2016/11/09/16G00217/sg
<p>Legge No. 199/2016</p> <p>“Disposizioni in materia di contrasto ai fenomeni del</p>	29/10/2016	Law	Fight against black market, workers” exploitation and fair labour condition in agriculture	http://www.gazzettaufficiale.it/eli/id/2016/11/3/16G00213/sg

<p>lavoro nero, dello sfruttamento del lavoro in agricoltura e di riallineamento retributivo nel settore agricolo”</p> <p>Law No. 199/2016</p> <p>“Law to fight against irregular employment, workers’ exploitation and fair working conditions in agriculture”</p>				
<p>Decreto legislativo No. 81/2008</p> <p>“tutela della salute e sicurezza dei luoghi di lavoro”</p> <p>Legislative Decree No. 81/2008</p> <p>“Granting workers’ health and workplaces’ safety”</p>	9/04/2008	Legislative Decree	Workers’ health and workplace safety	http://www.gazzettaufficiale.it/eli/id/2008/04/30/008G0104/sg
<p>Decreto legislativo No. 216/2003</p> <p>“Attuazione della direttiva 2000/78/CE per la parita' di trattamento in materia di occupazione e di condizioni di lavoro”</p>	9/07/2003	Legislative decree	equal treatment in employment and occupation	http://www.gazzettaufficiale.it/eli/id/2003/08/13/003G0240/sg

Legislative Decree No. 2016/2003 "Implementation of directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation"				
Decreto Legislativo No.215/2003 "Attuazione della direttiva 2000/43/CE per la parita' di trattamento tra le persone indipendentemente dalla razza e dall'origine etnica" Legislative Decree no. 215/2003 "Implementation of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin"	9/97/2003	Legislative decree	Equal treatment	http://www.gazzettaufficiale.it/eli/id/2003/08/12/003G0239/sg
Decreto Legislativo No. 66/2003 "Attuazione delle direttive 93/104/CE e 2000/34/CE concernenti taluni aspetti dell'organizzazione dell'orario di lavoro"	08/04/2003	Legislative Decree	Regulation of working hrs and rest days	http://www.gazzettaufficiale.it/eli/id/2003/04/14/003G0091/sg

Legislative Decree No. 66/2003 "Implementation of directives 93/104/EC and 2000/34/EC concerning certain aspects of the organisation of working time"				
Decreto Legislativo No. 286/1998 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero" così come modificato dalla Legge 30 luglio 2002, n. 189 "Modifica alla normativa in materia di immigrazione e di asilo" o "Legge Bossi-Fini" Legislative Decree No. 286/1998 "Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms" as amended by the Law No. 189/2002 "concerning amendments on immigration and asylum laws"	25/07/1998	Consolidated act	General principles Provisions on entry, stay and exit from Italy Labour regulation Right to family unity and children protection Provisions on health-care, education, accommodation, participation to the public life and social integration	http://www.altalex.com/documents/codici-altalex/2014/04/09/testo-unico-sull-immigrazione
Law No. 300/1970 "Statuto dei lavoratori" Law No. 300/1970 "Workers' Statute"	27/05/1970	Law	Fundamental workers' rights and working conditions	http://www.altalex.com/documents/codici-altalex/2014/10/30/statuto-dei-lavoratori

8. Switzerland

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Acknowledgements

Special thanks to Professor Stefanie Tamara Kurt (Institute of Social Work - HES-SO Wallis) for reviewing this report and for her insightful comments on the legal aspects. Thank you Dr Maria Mexi, Eva Fernandez and Professor Marco Giugni for their inputs and support.

8.1 Introduction

This report is developed in the context of the project *SIRIUS: Skills and Integration of Migrants, Refugees and Asylum Applicants in European Labour Markets*, which builds on a multi-dimensional conceptual framework. Within this framework, the host country or political-institutional, societal and individual-related conditions function either as ‘enablers’ or as ‘barriers’ to the integration of migrants, refugees and asylum seekers into the labour market.

The present report is the outcome of a study conducted in the second work package of the SIRIUS project. SIRIUS aims to contribute to revealing how, and to what extent, the legal and institutional regimes and socio-cultural environments of the countries in our research have a (beneficial or negative) impact on the effective capacity of those countries to integrate migrants, refugees and asylum seekers into the labour market. Focusing on the case of Switzerland, the aim of this report is to identify and critically analyse the socio-economic, cultural and political structure of the country, as well as to provide a more timely analysis of the institutional and constitutional framework regulating the integration of migrants, refugees and asylum-seekers into the Swiss labour market and, more broadly, society.

Part 1 of the report presents the context by providing a statistical overview of migration and asylum in Switzerland. Part 2 complements the quantitative analysis of the previous part by offering a general presentation of the socio-economic, political and cultural context of the country, shedding light on aspects pertaining to immigration and asylum. Part 3 presents information on the constitutional organization of the state while delving deeper into the constitutional principles on immigration and asylum and on labour. This analysis is followed by Part 4 that examines the relevant legislative and institutional framework in the fields of migration and asylum while, at the same time, capturing sub-national and cantonal variation. Finally, Part 5 focuses on the legislative framework regulating labour market access for migrants, refugees, and asylum-seekers in Switzerland, drawing attention to questions of *inter alia* recognition of qualifications, education and training, discrimination at work, exploitation and informal employment. The concluding part of this report summarizes the main findings of the analysis while outlining key aspects playing primarily an obstructing role

in helping migrants, refugees, and asylum-seekers gain a foothold in the Swiss labour market.

Data for this research was collected through desk research and from various sources (e.g. policy and legal documents, statistics). The findings of the present national report will be used in the development of a comparative report on the same topic and will contribute to highlighting differences and similarities across European countries in terms of legal regimes concerning migrants, refugees and asylum seekers.

8.2 Statistical Overview: Migration and Asylum in Switzerland

8.2.1 Arrivals of non-EU-28 and non-European Free Trade Association (EFTA) citizens to Switzerland (2014-2016)

In Switzerland, statistical data on immigration are available and gathered separately depending on whether the foreign citizen is under the asylum process or not. Therefore, arrivals will be first analysed without taking asylum requests into account. As EU-28 country nationals and EFTA country nationals are subject to different immigration legislation than the other countries, we will analyse here arrivals of non-EU28 and non-EFTA nationals, hereafter referred as “Third-Country citizens”.

Arrivals of non-EU-28 and non-EFTA citizens to Switzerland have slightly increased from 29,381 third-state nationals arriving in 2014, to 30,797 in 2015 and 30,885 in 2016. They represent 27% of total arrivals in 2014 and 2015, and 28% in 2016. The three principal countries of origin for the third-country arrivals between 2014 and 2016 were the USA (7,234), China (7,751) and Kosovo (6,700). USA citizens mainly arrived for family reunification reasons (53%), education and training (22%), and for gainful employment submitted to quota (21%). The main administrative reason for the arrival of citizens from China was education and training (76%), while for migrants from Kosovo it was mainly family reunification (91%).

Between 2014 and 2016, the major part of third-country nationals arrived to Switzerland for family reunification (58%) and for education and training purposes (26%), while only 7% arrived for gainful employment. This is related to the legal framework of regulating admissions into the territory for gainful employment and the legal framework for third-country citizens in general, as we will examine further in this report.

Table 8.1 Arrivals of third-state nationals (2014-2016). Does not include asylum applicants

Arrivals of third-state nationals				
Administrative motivation and authorisation	2014	2015	2016	2014-2016
Gainful employment submitted to quota	1 766	1780	1831	5 377
Gainful employment not submitted to quota	224	195	178	597
Family reunification	16927	17908	18190	53 025
Education and training	7626	8373	7990	23989
Residence permit without gainful employment	494	449	385	1 328
Other entries	2344	2092	2311	6747
Total	29 381	30797	30 885	91 063

Source: SEM, central Migration Information System (ZEMIS)

Figure 8.1 Arrivals of third-state nationals (2014-2016)

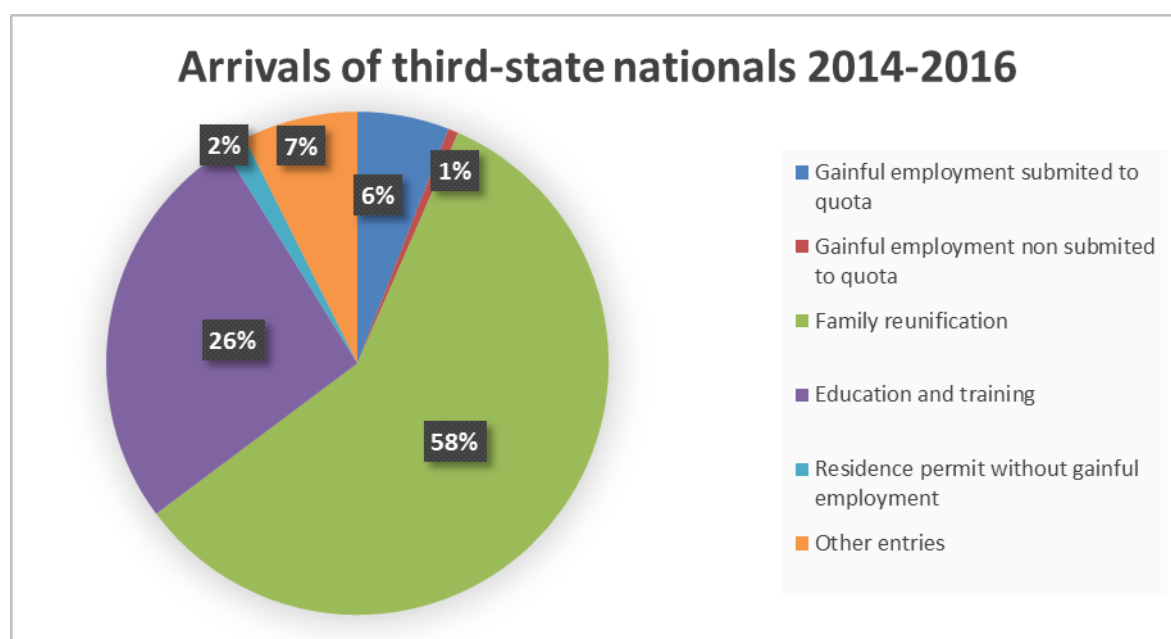


Figure 8.2. Arrivals of third-state nationals (2014-2016)

Source: SEM, central Migration Information System (ZEMIS)

The repartition between male and female during the three consecutive years remained stable, with around 58% females and 42% males arriving in the country. Looking at the administrative reason for immigration, we find that more females immigrate for family reunification (63%) and for non-gainful employment reasons (66%). However, more men

than women had been admitted into the country for gainful employment submitted to quota (67% men).

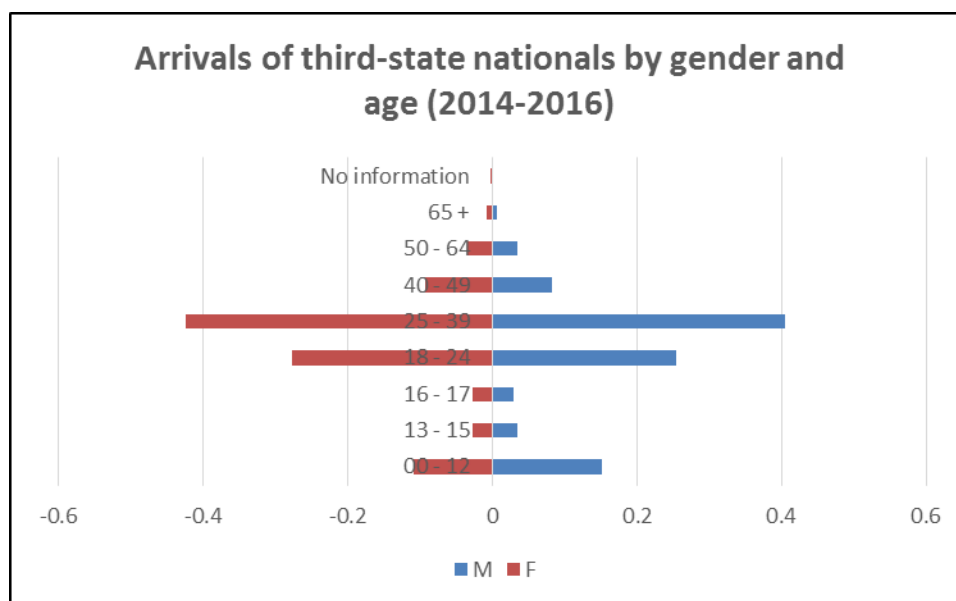


Figure 8.3 Arrivals of third-state nationals by gender and age (2014-2016). Does not include asylum applicants

Source: SEM, central Migration Information System (ZEMIS)

Most of the third-country nationals that arrived in Switzerland between 2014 and 2016 were between 18 and 39 years old (27% between 18 and 24 years old and 42% between 25 and 39 years old).

Regarding the number of persons who were refused entry at the Swiss external borders, we find that 920 persons were refused entry in 2014, 945 in 2015 and 900 in 2016, according to Eurostat.

Considering the migratory balance, we notice it has globally slightly decreased from 2014 to 2016. It declined from 78,902 in 2014 to 71,468 in 2015 and to 60,262 in 2016 (-15% compared to 2015).

8.2.2 Presence of non-EU citizens and permits

The portion of legally resident foreigners²⁷⁹ in Switzerland remained stable (around 32%) between 2014 and 2016. The numbers have, however, slightly increased: from 618,708 on 31 December 2014 to 630,180 on 31 December 2015 (+1.85%) and to 639,122 in 2016 (+1.41% compared to 2015). Fifty-one per cent of those 639,122 third-country nationals present in Switzerland at the end of the year 2016 were female.

²⁷⁹ The permanent resident population (those with more than a one-year permit) does not include asylum seekers.

The top country of origin of the third-country nationals living in Switzerland is Kosovo, regardless if we look at the presence in 2014, 2015 and 2016 (111,496). Second comes Serbia in 2014 and Turkey in 2015 and 2016; one third comes from Turkey in 2014, Serbia in 2015, and Macedonia in 2016.

From the 639,122 third-country nationals living legally in Switzerland as a permanent resident population on 31 December 2016, 4,557 (1%) were in the country with an 'L' short stay permit (less than one year valid permit); 222'840 (35%) had a 'B' residence permit (permit of one year or more but limited in time), and 411'725 (64%) had a 'C' permanent residence permit (not limited in time). When looking at the top three countries of origin of B residence permit holders, we find that Kosovo comes first, followed by Brazil and Turkey in 2014, Sri Lanka and Brazil in 2015, and Eritrea and Sri Lanka in 2016. The top country of origin of C permit holders remains Kosovo, followed by Serbia and Turkey in 2014, and Turkey and Macedonia in 2015 and 2016. In 2016, there were 47,528 granted asylum refugees in Switzerland from which 25,139 were B permit holders and 20,587 were C permit holders. The three top countries of origin of refugees present in Switzerland in the same year were Eritrea, Syria and Sri Lanka.

In 2016, 68,310 persons were in Switzerland under the asylum process. Of these, 36,877 were temporarily admitted persons, from which 11,616 persons have been in Switzerland for seven years or more.

8.2.3 Asylum figures

In 2014, Switzerland received 23,765 asylum applications. In 2015, the number of asylum applications reached 39,523, the highest level seen in Switzerland since the war in Kosovo in 1998 and 1999. In 2016, the number of applications decreased to 27,207 asylum applications.

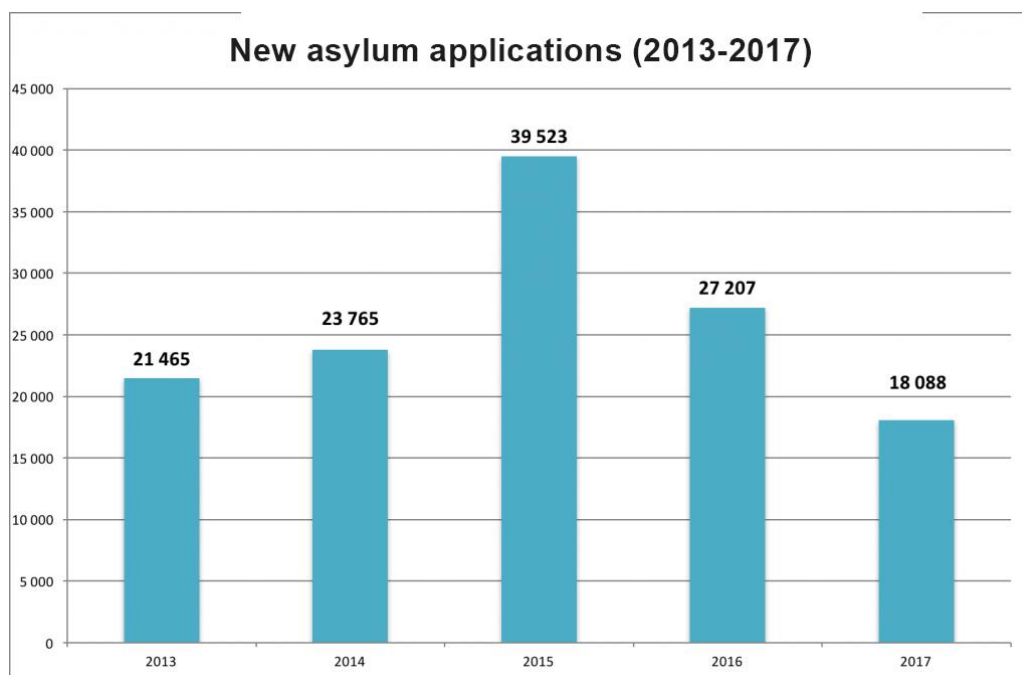


Figure 8.4 New asylum applications (2013-2017) Source: SEM and asile.ch

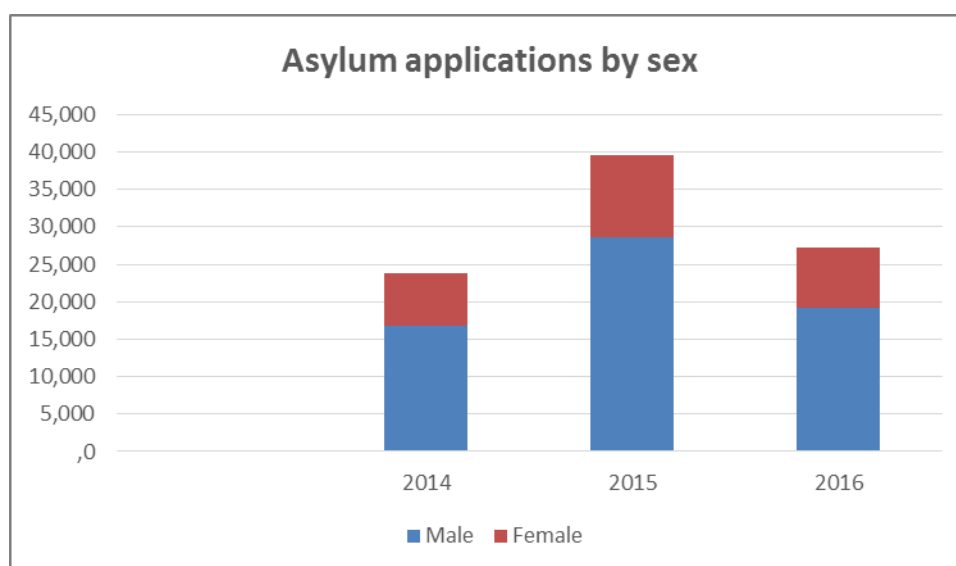


Figure 8.5 Asylum applications by sex (2014-2016)

Source: SEM

For the past three years, Switzerland received more applications from men than women. In 2014, Eritrea was the top country of origin (6,923), with around 170% more applications than 2013. The main countries following Eritrea were Syria, Sri Lanka, Nigeria and Somalia. Applications from Syrian citizens also significantly increased in 2014 (3,819 applications, representing around a 100% increase) according to the State Secretariat for Migration (SEM), since the federal authorities facilitated from autumn 2013, granting visas for Syrian citizens with relatives in Switzerland. The top five countries of origin of asylum applications submitted in Switzerland in 2015 were Eritrea, Afghanistan, Syria, Iraq and Sri Lanka. In 2016, the top five countries of origin were Eritrea, Afghanistan, Syria, Somalia and Sri Lanka.

Table 8.2. Top five countries of origin of asylum applications

Country of origin (top 5) - asylum seekers	2014		2015		2016	
No 1	Eritrea	6 923	Eritrea	9 966	Eritrea	5 178
No 2	Syria	3 819	Afghanistan	7 831	Afghanistan	3 229
No 3	Sri Lanka	1 277	Syria	4 745	Syria	2 144
No 4	Nigeria	908	Iraq	2 388	Somalia	1 581
No 5	Somalia	813	Sri Lanka	1 878	Sri Lanka	1 373

Source: SEM

In 2014, 26,715 asylum applications were handled at first instance by the SEM; 6,199 asylum seekers were granted asylum, an approval rate of 25.6%. In 2015, 28,118 cases

were handled and asylum was granted to 6,199 applicants, with an approval rate of 25.1%. In 2016, the approval rate decreased to 22.7% with 5,985 applicants granted asylum from the 31,299 cases handled by the SEM.

When examining asylum figures in Switzerland, it is important to note that the SEM can, prior to a deep examination of the motivations for requesting asylum, refuse to engage in an examination. This decision refers a particular non-consideration status, called *non entrée en matière* (NEM). A NEM can be decided when the request is considered as groundless, when the applicant has passed through a country that has signed the Dublin agreement or because he/she has lived in a third-country. The SEM counts the NEM cases based on the number of total cases handled as well as on the calculation of the protection rate, contrary to Eurostat practice. For instance, in 2014, from the 5,873 cases of particular non-consideration status (NEM), 4,844 were given this status because they were related to the Dublin framework. Hence, it can't be inferred from a NEM decision that the applicant had no reason to be granted asylum.

Other than the persons granted asylum, those who can be admitted provisionally are some rejected applicants and some NEM cases. In 2014, 7,924 applicants have been provisionally admitted (NEMs with provisional admission and rejected applicants with provisional admission). The number of provisionally admitted persons decreased to 7,109 in 2015 and was 6,580 in 2016.

Table 8.3 Cases handled at first instance by the SEM in 2016 (asylum procedure)

Cases handled at first instance in 2016								
Total cases handled	Decisions					Other handling results: radiation	Approval rate in %	Protection rate in %
	Granted asylum	Rejections with provisional admission	Rejections without provisional admission	NEM (particular non-consideration status) with provisional admission	NEM (particular non-consideration status) without provisional admission			
31,299	5,985	6,802	4,181	48	9,345	4,938	22.7%	48.7%

Source: SEM

8.2.4 Removals

In 2016, Swiss authorities ensured the removal by aeroplane of 8,781 foreign nationals (in the previous year this number was 8,608), who had no right (or no longer had the right) to remain in Switzerland. Removal figures include removals associated with the Dublin

procedure which can explain, according to SEM, the increased number in 2016 compared to 2015, despite a decrease in asylum applications.²⁸⁰

8.3 The Socio-Economic, Political and Cultural Context

Switzerland is widely recognised as a country of immigration; historically, immigration has played an important role in the Swiss economy. In 2013, one third of the people living in the country were either immigrants or had an 'immigration background' through one of their parents (FSO, 2015). Over recent decades, most immigration to Switzerland has been driven by economics. In fact, Switzerland is a country "which has successfully implemented guest worker initiatives with active economic recruitment policies alongside restrictive integration and naturalisation policies" (Klöti et al., 2007, p.622). However, such economic policies are increasingly challenged by hostile public opinion against both immigration and asylum-seekers, as suggested by the results of a number of direct democratic votes. These include the ban on new Islamic minarets accepted by 58% of Swiss citizens; the popular initiative of 2010 asking for the expulsion of foreign criminals, which was accepted by 53% of Swiss voters; and the 'initiative against mass immigration' of February 2014.

Thus, a glimpse into the economic, political and cultural context in Switzerland and its relationship to migration, as well as an overview of the country's relations with the European Union and the recent history of immigration, will help us to better understand the constitutional and legal framework of immigration, asylum as well as migrants', refugees' and asylum seekers' (MRAAs) access to labour market legislation. We will also notice that the naturalisation criteria offers us a framework for identifying who we are talking about when we refer to migrants, foreign citizens or persons with an immigration background. We will also examine the principal aspects of the geographical distribution of immigrants in Switzerland.

The Swiss economy is one of the healthiest in Europe. Switzerland was one of the most resilient European countries in the face of the 2008 crisis, thanks to its bilateral trade agreements and a "debt brake" legislation established in 2000 (Schwok, 2012, pp.79-84). The renewed growth that followed the financial crisis slowed slightly in 2011 and 2012 but recovered again in 2013 and 2014. On average, the Swiss economy grew at 1.7% from 2011 to 2014. While the country's economy grew at a slower pace in 2015, it recovered slightly in 2016, registering a moderate economic growth of 1.3%. (OFS, Comments on findings, Labour market indicators for 2016 and 2017). Between 2014 and 2017, Switzerland had an average unemployment rate of 4.8%, one of the lowest in the world; in 2016, the country's unemployment rate was the fifth lowest in the world after Iceland, Norway, Germany and the Czech Republic. (FSO, 2016). Moreover, Switzerland ranked second on the Human Development Index (HDI) in 2014 and 2015. The Human Development Index measures key dimensions of human development, including life expectancy, education and per capita income (UNDP, 2016).

²⁸⁰ SEM, Migration report 2016.

<https://www.sem.admin.ch/dam/data/sem/publiservice/berichte/migration/migrationsbericht-2016-e.pdf>

The political system in Switzerland is one of the few cultural commonalities and a key foundation of national identity in a territory where different linguistic and religious communities live together. (Kriesi, 1998). The Swiss political context has three main cornerstones: federalism, the consensual government, and direct democracy.

Switzerland is a federal state and local governments have significant powers and say over their own affairs. At the federal institution level, there are two hierarchical layers: the 26 cantons and the 2,324 municipalities. Cantons have power over a number of key areas, such as education, employment, migration, and social policy (including health, housing, and social services) (Klöti et al., 2006). For other non-specific fields, the Swiss constitution grants a presumption of competences in favour of the cantons (art. 3 and 42 Cst.).

According to Lijphart (2012), Switzerland is the most consensual democracy. The point is based on the famous Neidhart hypothesis (1970): for Neidhart, the Swiss political system tends to be a negotiating system due to its direct democratic components. Hence, politicians attempt to gain a larger consensus before proposing a law. For this reason, the Federal Council (executive power) is composed of various political parties based on proportional criteria, called *Zauberformel* (magic formula).

The direct democracy component of the Swiss political system allows citizens' initiatives requesting revisions of the Federal Constitution based on 100,000 citizens' signs gathered over an 18-month period (art. 138 and 139 Cst.) Initiatives or referenda based on 50,000 citizen signatures gathered in 100 days are required concerning federal acts and decrees and certain international treatments. After the Second World War, popular initiatives became the norm for the political left to introduce social reforms. Since 1970, conservatives have adopted similar strategies in order to restrain immigration policies (Wolf 2007). For example, the increase in the number of migrants in Switzerland has had a significant impact on public policy making and has given rise to several direct democratic votes (Sciarini, 2017).²⁸¹ According to NCCR indicators,²⁸² there is a significant restrictive effect of direct democratic instruments on migrants' rights (NCCR, 2017).

The political system of the Confederation of Switzerland is a semi-direct democracy with a two-chamber parliament. The highest legislative authority at federal level is the Swiss parliament, also known as the Federal Assembly, which is comprised of the National Council and the Council of States. Each of these chambers has the same powers and equal rights. Elected under a proportional system, the people's representatives sit in the National Council, the large chamber, whereas the representatives of the cantons sit in the Council of States,

²⁸¹ Among the direct democratic votes that we can highlight we find the 2009 popular initiative on the ban of new Islamic minarets that was accepted by 58% of the Swiss citizens, the popular initiative of 2010 asking for the expulsion of criminal foreigners, accepted by 53% of the Swiss voters and the "initiative against mass immigration" of February 2014 that we will further describe when analysing the constitutional principles on immigration.

²⁸² National Center of Competence in Research – The Migration-Mobility Nexus <https://indicators.nccr-onthemove.ch/did-federal-referendums-and-initiatives-affect-immigrants-rights/>

the small chamber, and are elected under territorially-based criteria. Importantly, the Federal Assembly elects the Federal Council (Swiss government) and the members of the Federal Supreme Court as stated in art. 168 Cst. In contrast to the Federal Council, the executive power at the cantons and communes is directly elected by people's votes. In addition, the cantonal assemblies comprise only one chamber of deputies; only 20% of the communes have parliamentary deputies; the other 80% of the communal assemblies benefit from the direct participation of all residents who are entitled to vote (Federal Chancellery Publications).

As of 2018, the Federal Council has representatives from the Liberal Party (FDP), the Swiss Social Democratic Party (SP), the Swiss People's Party (SVP), and the Swiss Christian Democratic Party (CVP). Each member of the Federal Council also heads a federal department. (admin.ch, 2018). Considerable gains made by the SVP, a right-wing conservative party, which has its roots in the farming community, have marked the country's political landscape over the last 20 years. Between 1995 and 2015, the SVP won an additional 36 parliamentary seats, while the FDP lost 12 and the CVP 10. In the same period, the number of seats held by The Greens increased from eight to 12 while the Green liberals, who had no seats in 1995 and gained seven seats by 2015, making considerable inroads into the Swiss government (admin.ch, 2018).

In this political context, migration has become a matter of heightened political dispute in Switzerland. On the one hand, populist parties pledge more restrictive policies and promote controversial initiatives such as the 2014 popular initiative against mass immigration and the 2009 referendum against the construction of minarets on mosques on Swiss territory. On the other hand, the Swiss national Government tries to foster more integration of migrants.

Regarding the Swiss cultural context, we should highlight that since the adoption of the 1848 Constitution, Switzerland's cultural identity has been forged on the principle of linguistic and religious diversity. "Switzerland came into existence as a classical Nation of Will across strong cultural differences" (Klöti et al., 2007, p.798). There is no unified culture but many cultural identities. The three most salient cultural aspects seem to be crystallized around language, religion and neutrality (Fernandez et al., 2016).

The importance of language in the cultural context is due to there being four official languages in Switzerland and three linguistic areas: French, Swiss-German and Swiss-Italian (Romansh speaking people represent 0.5% of the total population). German speakers are the most numerous (63%) followed by French speakers (23%) and then Italian speakers (8%), according to the Federal Statistical Office (2014). These linguistic areas also represent cultural traditions that impact on political behaviour (Lijphart, 2012). For example, if we consider federal votes, French-speaking areas seem more receptive to migrants and favour less restrictive immigration policies compared to German-speaking areas.

However, a closer look at the votes within the linguistic areas reveals that there are differences even within the cantons. German-speaking cities, for instance, seem to be more receptive to migrants than German-speaking rural areas. These differences can partly be explained by the fact that Swiss nationals who have come into contact with immigrants, as is often the case in cities, have become more accepting of them (Büchi, 2011). Having three different national languages also implies that language skills are also important in terms of nationals' labour market integration as, according to the Migrant Integration Policy Index

(MIPEX), even 30% of Swiss and EU citizens say that better language skills in one of the local official languages would improve their job prospects.

Traditionally, religion is also an important component of Swiss culture. Protestant religious cantons (Zurich, Glarus, Bern, Basel City, Basel-Country, Schaffhausen, Appenzell Outer Rhodes, Thurgau, Vaud, Neuchâtel) and Roman Catholic cantons (Uri, Schwyz, Nidwalden, Obwalden, Lucerne, Zug, Fribourg, Solothurn, Appenzell Inner Rhodes, St Gallen, Graubünden, Aargau, Ticino, Valais, Jura) share similar cultural and political traits, bringing their political positions closer (Lijphart, 2012). However, since 2000, the salience of this cleavage is less useful for explaining differences between cantons' policies (Hug and Trechsel, 2002).

Religion has nevertheless taken on an important role in the public debate linked to migration, as shown by the 2009 referendum against the construction of minarets on mosques on Swiss territory that was approved by 57.5% of the participating voters. However, the seeming omnipresence of Islamic values contrasts with the decreasing importance of national churches. Indeed, the percentage of persons declaring no religious affiliation has significantly increased from 1,2% in 1970 to 22% in 2014 (FSO, 2014).

The third cultural factor is neutrality. Neutrality is more than just a diplomatic stance but has taken on symbolic value. Neutrality should be seen as a state of mind, since it has played important historical roles for Swiss internal cohesion (Schwok, 2012). Neutrality enabled great stability in the nineteenth century between Roman Catholic and Protestant cantons and it was useful during the European wars to preserve the country from destruction (Schwok, 2012). Today, most of Swiss people would not abandon neutrality, even if its role is now more symbolic than ever (Sicherheit, 2012).

Another element critical to understanding Switzerland's migration policies and its legal discourse on migration and asylum is the country's relationship with the European Union (EU). While Switzerland is not a member of the EU, it is nevertheless strongly affected by European integration. In several policy domains, Switzerland has adapted unilaterally to EU rules (Linder 2011a, 2013). According to a study on the Europeanisation of Swiss legislation a third of all legislative changes introduced from 1990 to 2010 are to some extent congruent with EU rules (Jenni, 2014a, 2014b) (Sciarini, 2017).

Relations between Switzerland and the EU are governed via a bilateral system of treaties that allows the country to participate in the European internal market. Among the main agreements with regard to migration is the Agreement of Free Movement of Persons (AFMP), which confers to the EU/EFTA citizens the right to freely look for employment in Switzerland and for Swiss citizens to have the same rights in any EU country. AFMP, as with other agreements of the system, is subject to a guillotine clause: any termination of an agreement results in the cancellation of all other agreements. Evidently, while Switzerland is not a State member to the EU, the country is engaged in a close relationship with the European legal framework, which has far reaching implications for immigration and asylum, as will further be discussed in this report when analysing the legal framework on immigration.

8.3.1 History of immigration

Historically, immigration has been an important component of the Swiss economy. The economic rise of Switzerland after the Second World War has largely been possible thanks to wide scale foreign population recruitment (FCM, 2016). Today, Switzerland is widely recognised as a country of immigration. One third of the Swiss population has an immigrant background (is an immigrant or has at least one immigrant parent), while one quarter of the Swiss population was born abroad (FSO, 2015). Economic reasons are the main reasons given for immigration. Looking at the history of immigration, we can see that the country has driven active economic recruitment policies, opening doors to foreign labour forces when needed while being quite restrictive in integration and naturalization policies.

The recent history of immigration can be divided into six major phases. (Piguet 2013)

- The first phase, from 1948 to 1962, can be seen as an open period. The labour shortage faced by the country after the Second World War drives the Government to engage in labour recruitments agreements, first with Italy, then with Spain. The beginning of this “Open Door” period is also the starting point of the “Gastarbeiter” immigration regime (Piguet, 2013, p.19). Delivering seasonal and one-year renewable permits, the government sees immigration as temporary without the possibility of long-term residence and makes sure the situation remains temporary. Most immigrants during this period are Italians with half-holding seasonal permits of nine months and the other half part with one-year permits (Piguet, 2013).
- From 1963 to 1973, increasing xenophobia within the Swiss population, housing shortage and the country’s struggle to deliver public goods and services, drives the country to attempt to decrease immigration. The country implements successive measures to limit labour migration and attempt to control the risks of “foreign overpopulation” without real results (Piguet, 2001, pp.21-35). As an example of a limitation measure, with the ‘simple ceiling’ that has been introduced in 1963, permits were awarded only to workers in companies with less than 2% increase in overall employment compared to December 1962. However, foreign workers came to replace high numbers of Swiss workers that changed their job to pass from the secondary to tertiary sector in that period limiting the expected results of the simple ceiling. A new attempt was made with the introduction of the ‘double ceiling’ in 1965, asking companies to reduce of 5% the level of their foreign workforce and not to increase their total number of foreign workers. The measure had however negative effects, hindering the small enterprises development. Finally, the concept of a global ceiling, which is still in force today,²⁸³ was introduced in 1970, with the definition of new annual quotas every year on the basis of the departures.

²⁸³ "Quotas have continually been used since the 70's but the categories of foreigners subject to this quota system have change over time and the system as undergone numerous modifications" (Sandoz, 2016)

- The first oil shock marks the start of the third phase, which will finally lead to a decrease in the total foreign population within Switzerland. From 1973, tens of thousands of foreigners leave the country after losing their jobs. The precarious situation lived by the immigrants raises awareness of part of the population on the seasonal status conditions and leads the Government to include measures to facilitate foreigners' social integration in the law revision proposals such as the access to local language courses or the facilitation of the family reunification. The proposal has however been rejected by a very narrow majority (50.4%).
- From around 1985 to 1992, the fourth phase represents the second wave of large-scale immigration. With an improving economy, the workforce pushes the authorities to implement a flexible quota system, which results in the limitation measure introduced in 1970 to attempt to control immigration. Almost 50,000 new permits are issued every year between 1985 and 1995 and more than 130,000 seasonal workers enter the country during the same period (Piguet, 2013). This new wave of immigration is primarily comprised of citizens from Yugoslavia and Portugal.
- The fifth phase begins in the early 1990s. If immigration to Switzerland in the 1970s was largely characterised by workers who entered the country through the quotas system, the 1980s saw a gradual change, with immigration comprised of people who entered the country not for work, but for family reunification, education, retirement, seeking asylum,²⁸⁴ amongst other reasons. Immigrants' countries of origin diversify as well, and an increasing number of migrants come from countries other than the historically traditional sending states. In addition to the increase and diversification in countries of origin, as well as the changes in the motivations that drive people to migrate to Switzerland along the previous years, the country's fear of being isolated in the middle of Europe while the continent increasingly embraces the free movement of persons, forces Switzerland to question its migration policy in the 1990s, as shown for example by the fact that five official reports of experts have been produced by the Government on immigration topics between 1989 and 1997 (Piguet, 2013).
- In 2002 the beginning of the progressively implementation of the Agreement of Free Movement of Persons (AFMP) signed with the EU and approved by the voters in 2000 marks one of the turning points of the renewed policy. This agreement provides an almost total freedom of immigrating into Switzerland for citizens from EU and EFTA countries in order to have access to the labour market. In 2008, the implementation of The Federal Act on Foreign Nationals from 2005 completes the renewal of the policy in regards to immigrants from third countries. (Piguet, 2013). The new act limits with exceptions, the third countries immigration to the highly skilled workers using the quota system. This is in order to allow an immigration control adapted to the needs of the Swiss economy (Piguet, 2017).

²⁸⁴ According to the administrative reasons for permit requests.

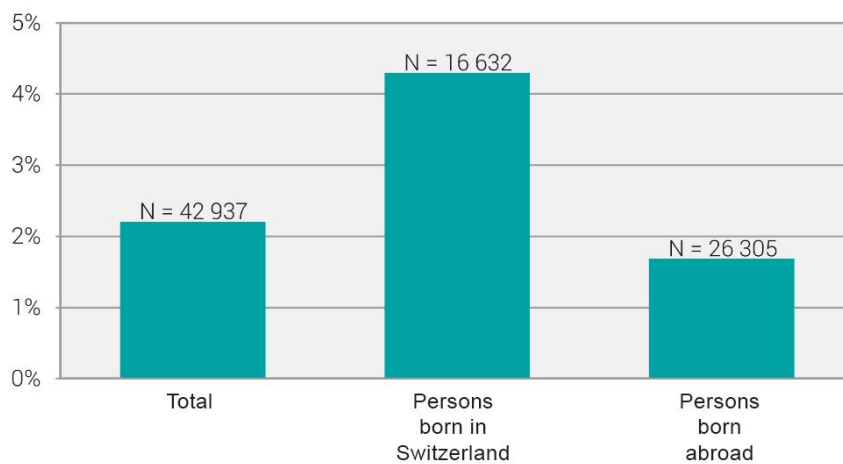
- We can see a seventh phase with the new turning point on the immigration policy that started in 2014, when the right wing ‘initiative against mass immigration’, which was supported by 50.3% of Swiss voters, requested the re-establishment of quotas for all categories of foreigners, including European citizens through the introduction of two new articles in the Constitution. This placed the government in a delicate position, as reintroducing quotas would not be compatible with the principles of the Free Movement of Persons. Because of the difficulty to make compatible the idea of reintroducing quotas with the Free Movement of Persons principles, and therefore, to avoid to be submitted to the guillotine clause (any termination of an agreement results in the cancellation of all other agreements of the package), the country found itself in a delicate position. (Sandoz, 2016). From that moment, the new constitutional provisions gave three years to the Federal Council and the Parliament to legislate and develop an immigration system compatible with the new constitutional articles. We will focus further in this report on how the new constitutional articles are implemented today.

8.3.2 Naturalization

To better understand the migration landscape in Switzerland, it is important to keep in mind its naturalization policy. Following the Federal Act on the Acquisition and Loss of Swiss Citizenship in force until 31 December 2017 and the Federal Act on Swiss Citizenship, in force since 1 January 2018, Switzerland does not grant citizenship by birth to second generation migrants (Piguet, 2017). Until 1 January 2018,²⁸⁵ living in the country for twelve years and having a good knowledge of Swiss habits and customs were among the prerequisites to obtain Swiss nationality. Yet despite this restrictive naturalization policy, the number of people granted Swiss citizenship are close to the European average (Piguet, 2017). In 2016, up to 4.4% of people who were born in Switzerland and with residence permits (B and C) acquired Swiss nationality, while 1.7% of the foreign-born population with similar permits were also granted citizenship.

²⁸⁵ Prerequisites changed with the New Nationality Act of 20 June 2014 that entered in force on 1 January 2018. Additionally, in February 2018, new amendments of the ordinance ruling the Act entered in force in order to facilitate third generation immigrants’ naturalization.

Gross rate of naturalization of “B” and “C” permit holders by place of birth, 2016



Source: OFS – Statistique de la population et des ménages (STATPOP)

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Figure 8.6 Gross rate of naturalization of “B” and “C” permit holders by place of birth, 2016

Source: OFS

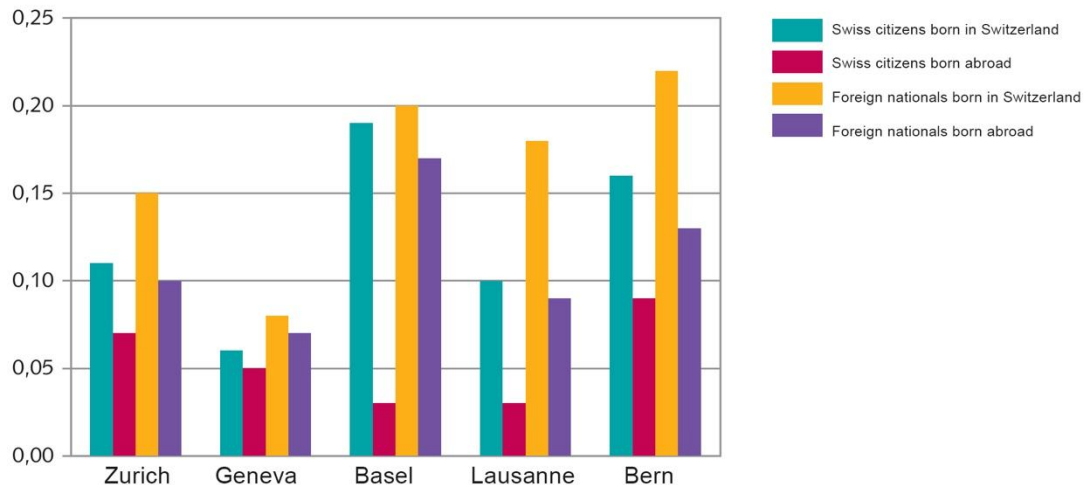
In this context, 37% (2,602,000) of the permanent residents had a migration background in 2016 and one third of these (936,000) were Swiss nationals. Four-fifths of the persons with a migration background belonged to the first generation (2,104,000). The remaining were born in Switzerland and are thus part of the second generation (498,000). These are second generation foreign nationals, Swiss-born and naturalised (OFS, 2016). These figures help us to remember that when analysing migration topics, especially those linked to integration, it is also useful to have in mind those Swiss nationals who have an immigration background and can therefore be considered as ‘immigrants’, depending on the topic analysed. On this topic, it is important to note that following the new Citizenship Act, immigrants from the third generation have access to a facilitated naturalization procedure since 15 February 2018.

The last element that we will highlight to better understand the context and its relationship with immigration legislation is the geographical distribution of immigrants in the country. One third of the permanent foreign resident population²⁸⁶ live in the French- and Italian- speaking cantons (Fribourg, Geneva, Neuchâtel, Jura, Ticino, Valais and Vaud). At first glance, the geographical distribution of the foreign population seems to be far from homogeneous, since in certain peripheral communes around big cities we find more than 50% of people with an immigrant background. But according to Piguet (2017), at the neighbourhood scale, the displacement of only one quarter of the population would be necessary to have a perfect homogeneous distribution. When looking at the spatial segregation index per nationality and place of birth, which represents the part of the group that should be displaced in order to

²⁸⁶ The permanent foreign resident population is the reference population in population statistics. It includes all foreign nationals who hold a residence permit for a minimum duration of 12 months or who have resided in Switzerland for 12 months (Permit B/C/L/F or FDFA permit - international civil servants, diplomats and members of their family). Federal Statistics Office (FSO).

have a perfectly equal distribution (FSO, 2011), we find that the five biggest cities in the country have a spatial segregation index value below 0.25, which means that less than 25% of the population should be displaced in order to have a perfect homogeneity. However, those five biggest cities do not have the same homogeneity. Geneva, for example, is the most homogeneous of them.

Spatial segregation Index in big Swiss Cities by nationality and place of birth, 2011



¹ Variation between 0 (perfect distribution) and 1 (segregative maximum distribution)

Source: STATPOP

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Figure 8.7. Spatial segregation Index in big Swiss Cities by nationality and place of birth, 2011

Source: STATPOP

8.4 The Constitutional Organization of the State and Constitutional Principles on Immigration and Asylum and Labour

To better understand the legal framework of immigration and access to the labour market of MRAs, an overview of the Swiss Federal Constitution – the fundamental law of the legal order of the state – is necessary. Since this text defines the structure and the organization of the state, some of its provisions will help us to understand how the roles and power are distributed between the federal and cantonal levels. As the Constitution also embodies the rights and guarantees of citizens, we will see some of the fundamental rights to which immigrants, asylum seekers and every person present in the Swiss territory has access. Finally, we will observe that the Swiss Constitution also gives provisions that ground the main principles on which the Swiss legislation on the immigration, asylum and labour domains is based. We will particularly analyse a newly introduced article on immigration control, along with the solutions developed for an enacting that was seen as problematic because of its incompatibility with the Swiss international policy.

The Swiss Constitution of 1999 is a socio-political agreement that frames the basic rules for the democratic building of society and peaceful coexistence between citizens and cantons. As the primary piece of legislation in the Swiss legal system, the Swiss Constitution takes

precedence over all the federal, cantonal and communal acts, ordinances and other enactments. It is based on the values of independence, justice, peace, freedom, political pluralism and cultural diversity. The Swiss Constitution is considered part of a new wave of recent Western constitutions, since it reflects changes in areas such as decentralization, deregulation, human rights and judicial review (Church, 2011).

In general terms, the text is considered as extensive (art. 197 Cst.) and not rigid; its reform does not require a special procedure (art. 193 and art. 194 Cst.). The constitution is also considered inclusive and consensual, the result of a compromise reached between political forces, cantons and citizens.

As previously mentioned, Switzerland is a federal state, whose powers are divided between the Confederation, the cantons and the communes. The Swiss Constitution outlines the main principles to be followed for the division of powers. The division of powers is allocated to the Confederation, the cantons and the communes in accordance with the principle of subsidiarity (Art. 5a Cst.), which means that powers are, as much as possible, allocated to the lowest level of government able to properly administer them. Additionally, the Confederation shall fulfil the duties that are assigned to it by the Federal Constitution (art. 42 Cst.) and the Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution (art. 3 Cst.). The Cantons decide on the duties that they must fulfil within the scope of their powers and the Confederation only undertakes tasks that the cantons are unable to perform or which require uniform regulation by the Confederation (art. 43 and art. 43a para. 1 Cst.). Thus, the federal legislative process is handled by the Confederation with the participation of the cantons (art. 45 Cst.). The federal law resulting from that process will be implemented at the federal level and the cantons shall also implement it at the cantonal level, in accordance with the Federal Constitution and the federal legislation (art. 46 Cst.). The Confederation shall however give the cantons some leeway to enforce the laws in order to allow them to take into account cantonal particularities (art. 46 para. 3 Cst.). On the other hand, cantons also have the legislative power at their level. Federal law takes precedence over any conflicting provision of the cantonal law (art. 49 Cst.).

The Constitution also provides the main rights and guarantees that shall be given to the citizens. Therefore, among the fundamental rights provided by the Constitution that we can highlight we find the right to human dignity, protection against arbitrary conduct and good faith, right to life and to personal freedom, protection of children and young people, right to assistance and care for persons in need who are unable to provide for themselves a decent standard of living (art. 12 Cst.), the right to marry and have a family, the right to basic education (art. 19 Cst.), freedom of association and the right to form and belong to professional associations (art. 23 and art. 28 Cst.), equality of treatment in judicial and administrative proceedings and guarantee of access to the courts (Art. 29 and 29a Cst.). Art. 41 Cst. also provides a list of social objectives that the Confederations and the Cantons shall endeavour to achieve. Cantons and the Confederation shall thus endeavour to ensure amongst others, that every person has access to social security, to the health care they require, that every person who is fit to work can earn their living by working under fair conditions, that any person seeking accommodation for themselves and their family can find suitable accommodation on reasonable terms, that children, young people and persons of

employable age can obtain an education and undergo basic and advanced training in accordance with their abilities. Cantons and the Confederation shall also endeavour to ensure that every person is protected against the economic consequences of old-age, invalidity illness, accident, unemployment, maternity, being orphaned, and being widowed (art. 41 para. 2 Cst.).

Principles of equality and anti-discrimination are also enshrined in the Constitution. Thus, according to art. 8 Cst. “Every person is equal before the law” and “No persons may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of physical, mental or psychological disability” (art. 8 para. 2 Cst.). It specifically prescribes equal treatment of men and women and equal pay for work of equal value (art. 8 para. 3 Cst.). We will further see that art. 8 Cst. is one of the only provisions in the Swiss legislation on discrimination on grounds of origin. Despite the fact that, as a fundamental right, the non-discrimination principle enshrined in the constitution is originally provided for the relations between every level of the government and the persons, it can also apply for relationship between particular persons according to art. 35 para. 3 Cst. as fundamental principles also apply to the whole juridical order.

Another fundamental right relevant for us to understand rights of MRAAs is the guarantee of access to a judge that was introduced in 2007 in the Constitution in the framework of the judicial reform²⁸⁷ (art. 29a Cst.). According to the article, in a legal dispute, every person has the right to have their case determined by a judicial authority. This guarantee is interesting as it also applies to immigrants giving them the constitutional right to appeal to the tribunal to make a decision in last resort when receiving a negative decision from the political authorities on an admission or a residence authorization request (Wichmann et al., 2011). Together with the inter-cantonal mobility allowed by the Federal Act on Foreign Nationals (FNA) this judiciarisation puts under pressure the sovereignty of the cantons in the area of migration law (Wichmann et al. 2011).

8.4.1 Constitutional principles on migration and asylum

The main constitutional principles on migration and asylum are those laid down in two articles under section 9 of the Swiss Constitution: ‘Residence and Permanent Settlement of Foreign Nationals’, art. 121 Cst. on legislation on foreign nationals and asylum and art. 121a Cst. on control of immigration (adopted by the popular vote on 9 February 2014). Art. 25 Cst. refers also to the migration and asylum introducing the principle of non-refoulement, adopted from the 1951 Convention Relating to the Status of Refugees, as a fundamental right.

Art. 121 Cst. sets up the Confederation as the authority in charge of legislation on entry to and exit from Switzerland, the residence and permanent settlement of foreign nationals and

²⁸⁷ Population and Cantons accepted in 2000 a reform of the judiciary. Among the new provisions, the unification of the civil and penal proceedings (art. 122 and art. 123 Cst.), the guarantee of access to a judge (art. 29a Cst.), the creation of additional judiciary instances to help ease the burden of the Federal Tribunal and the possibility for the Confederation to create new tribunals.

granting asylum. The article also details the possibility to expel from Switzerland foreign nationals if they pose a risk to the security of the country and it defines the offences for which the legal binding conviction of the foreigner may lead to the expulsion of the foreign national.

Art. 121a Cst., in force since February 2014, sets the main principles of control of immigration. This must be done autonomously by defining yearly limits and a quota of numbers of residence permits delivered to foreign nationals, including the family reunification and asylum domains, in addition to foreign nationals coming to the country for gainful employment. In defining the quotas of permits for gainful employment, Switzerland's general economic interests need to be taken into account and a priority to Swiss citizens needs to be given. This article of the Constitution will be analysed more in depth, alongside its enacting and how it is implemented.

Apart from the chapter dedicated to foreign nationals, the Swiss Constitution also refers to migration and asylum in its fundamental principles. It stresses protection against expulsion, extradition and deportation as a fundamental right. Art. 25 Cst. is a provision that 'constitutionalises' guarantees resulting from International law. Art. 25 para 2 Cst. bans the deportation or extradition of refugees to a state in which they will be persecuted. Art. 25 para 3. Cst. mentions that no person may be deported to a state in which they face the threat of torture or any other form of cruel or inhumane treatment or punishment.

8.4.2 Switzerland's general economic interests and the priority given to Swiss citizens

As explained earlier, we will now focus in depth on the new article of the Swiss Constitution on migration control that has been in force since 9 February 2014. This article was adopted by the popular vote on the so-called 'initiative against mass immigration' and contained transitional provisions that gave three years to legislators to adapt the article to the legislation. Art. 121a Cst. on the control of immigration gives Switzerland, in the first place, the autonomy to control immigration. Next, the article introduces a principle to limit the number of residence permits granted to foreign nationals through setting annual qualitative and quantitative quotas. Art. 121 a para 3 Cst. lists the criteria to be taken into account when setting the quota: quotas and a ceiling must be defined in light of Switzerland's general economic interests and they must prioritize Swiss citizens. The criteria that should be taken into account for granting residence permits are primarily the application from an employer, the ability to integrate, and the adequate, independent means of subsistence of the foreign applicant. Art. 121a para. 4 Cst. stipulates that no international agreements that breach this article may be concluded.²⁸⁸ Art. 121a para. 5 Cst. gives legislators the authority to regulate the details of the article. Additionally, a transitional provision to implement this new article has been enacted through the Art. 197 let. 11 Cst. The first paragraph requests that "international agreements that contradict art. 121a Cst. must be renegotiated and amended

²⁸⁸ Art.197 para. 2 let. 9 Cst., the transitional provision of the art. 121a Cst. stipulates that international agreements in contrast to art. 121a Cst. may be renegotiated and adapted in the 3 years following the popular acceptance of the article.

within three years of its adoption by the People and the Cantons”. The second paragraph sets a temporal goal to implement the art. 121a Cst.: “If the implementing legislation for art. 121a has not come into force within three years of its adoption by the People and the Cantons, the Federal Council shall issue temporary implementing provisions in the form of an ordinance”.

Designing the implementation of the new articles presented a number of difficulties, such as finding an implementation in concordance with the international agreements of Bilateral I with the EU. As a matter of fact, the first package of bilateral agreements between Switzerland and the EU, which was accepted in 1999 and entered into force in 2002, includes seven agreements that are mainly conventional market access agreements. The ‘guillotine clause’ ensures the adoption and upholding of each of them; this clause entails that the cancellation of one agreement implies the cancellation of the whole package. With this in mind, the initiative ‘against mass immigration’ and its new constitution articles were therefore considered as a direct threat to the bilateral agreements because their legal content is contrary to one of the seven agreements: the Free Movement of Persons (AFMP).

Straight after the vote on the initiative ‘against mass immigration’, the Federal Council²⁸⁹ had to put forward the implementation of the two constitutional articles above, as these were directly inapplicable (Boillet, 2016; Epiney, 2014). Furthermore, it was necessary to establish a law that would reflect the principles of the initiative ‘against mass migration’ – to avoid the risk of a referendum for instance – but that would, at the same time, maintain Switzerland’s close relationship with the EU (Boillet, 2016). However, this seemed rather ambitious and difficult in practice. Renegotiating the agreement on the Free Movement of Persons with the EU was out of the question.¹⁰ However, the principle of quota required by the ‘initiative’ could not be implemented either, as it would not only violate the AFMP but also the “still clause” of article 13 AFMP. This article “prohibits the Contracting Parties to adopt new restrictive measures vis-à-vis each other’s nationals” and contingents are thus excluded accordingly (Kaddous, 2013: 2; Progin-Theurerkauf, 2016).

The only exception to imposing restrictive measures is outlined in art. 14 para. 2 AFMP. It states that “in the event of serious economic or social difficulties, the Joint Committee shall meet at the request of either Contracting Party in order to examine appropriate measures to remedy the situation” (Progin-Theurerkauf, 2016). However, this safeguard clause offers only temporary measures, whereas the initiative is not time-limited. Plus, the article applies only when serious economic or social difficulties are proven; therefore, in the case of Switzerland, the application of this clause was rather unlikely (Kaddous, 2013; Progin-Theurerkauf, 2016; Boillet, 2016). In light of the above, the aim of the government and the Parliament was to implement the constitutional articles 121a Cst. and article 197 let. 11 Cst. into legislation, while conforming to the AFMP.

The content of the art. 121a Cst. is seen as contrary to the AFMP, notably because of the introduction of quotas. However, as mentioned before, this article is not directly applicable. It implies that the art. 121a Cst. does not violate the AFMP and doesn’t require the cancellation

²⁸⁹ To consult the stages of the implementation, reports and press release, see: https://www.sem.admin.ch/sem/fr/home/themen/fza_schweiz-eu-efta/umsetzung_vb_zuwanderung.html

of the agreement either (Epiney 2014). This is where the distinction between the principle and the implementation of the principle (legislation) is highly relevant: although the former is opposed to the AFMP, it doesn't mean that the latter cannot resolve this conflict. The role of the legislator was therefore crucial in this regard, and the inapplicability of the principle allowed some flexibility and legal interpretation. It is precisely during the process of implementation that a compromise was to be found between the respect of the will of the People and the Cantons who accepted this initiative and the respect of the Agreement on the Free Movement of Persons with the EU.

The legal transposition of the principle enacted in art. 121a of the Constitution involves modification in various legal texts²⁹⁰ but here we will focus only on one, namely the Federal Act on Foreign Nationals (FNA), which provisions on admission into the territory and access to the labour market will be described further. This law was modified by Parliament on 16 December 2016²⁹¹ and the art. 121a Cst. was transposed into the article 21a FNA entered in force on 1 July 2018. The legal implementation can be seen as a "light" implementation of the art. 121a Cst. as it preserves the agreement of free movement of persons (AFMP) instead of literally implementing the Constitution (Nguyen & Leyvraz, 2017, p.9). We will see more on this 'light' implementation and transposition in the Federal law when analysing the evolution between 2014 and 2018 of the legislation for EU and EFTA citizens further.

8.4.3 Constitutional principles on labour

Regarding constitutional provisions on labour, art.110 Cst. on employment gives the Confederation the power to legislate on employee protection, relations between employer and employee and the declaration of collective employment agreements to be generally applicable. The article also stands provisions on the scope of application of collective labour agreements. The confederation also has legislative powers over unemployment insurance and social security (art. 114 para.1 Cst.) as well as civil law, which includes legislation on employment contracts (art. 122 para.1 Cst.).

Regarding fundamental rights in the labour area, the Constitution sets out the free choice of occupation, free access to an economic activity (art. 27 para. 2 Cst.) and freedom of association (art. 23 and 28 Cst.) as fundamental rights. The free choice of occupation as a fundamental right (art. 27 Cst) is reserved to persons admitted without restriction in the Swiss labour market or those that are entitled to a residence permit (SCHR, 2015).The Constitution further sets out social objectives such as the objective that all persons capable of work should be able to practise an occupation under equitable conditions in order to assure their maintenance and whereby children can receive appropriate education. Those objectives bind the Swiss lawmaker but cannot be directly invoked before the courts as subjective rights (art. 41 Cst.) (2007, ILO national labour law, Swiss profile).

²⁹⁰ See the report focused on the [measures for the employment service](#); see the report on [the modifications of various other decrees](#)

²⁹¹ [FF 2016 8651](#)

8.5 The Swiss Legislative and Institutional Framework in the Fields of Migration and Asylum

Switzerland's immigration policy is embodied in the Foreign Nationals Act (FNA), approved by the Swiss electorate on 24 September 2006 and in force since 1 January 2008. However, persons who fall under the Agreement on the Free Movement of Persons (AFMP) face different legal treatment compared to third country nationals. This 'two circles' model of the Swiss foreign law distinguishes between the liberal European internal migration (first circle) and migration from outside Europe/EFTA (second circle) (Manuel du droit Suisse des migrations, 2015). The AFMP applies to citizens of EU-28/EFTA member states and their family members as well as to posted workers (regardless of their citizenship) of a legal entity based in an EU-28/EFTA member state. (SEM). Nationals from third countries (also called third state nationals) are subject to the Foreign Nationals Act (FNA).

In practical terms, regardless of nationality or the motivations that influenced their decisions to enter Switzerland, foreign nationals are subject to the ordinary regime regulated by the Foreign Nationals Act (FNA). Two special regimes complete the ordinary regime, translated by two exceptions (AFMP and Asylum regimes).

Nationals from EU/EFTA member states are subject to the Agreement on the Free Movement of Persons (AFMP), whereas persons seeking protection against persecution fall under the special asylum regime regulated by the Asylum Act, the Geneva Convention of 1951 and the Dublin regulation (Amarelle et al., 2017). In practice, the Foreign Nationals Act (FNA) is only applied where the AFMP or Asylum legislation do not contain relevant provisions that could be applied in cases where the FNA lays down more favourable provisions (Art. 2 FNA and Amarelle et al., 2017)

8.5.1 The immigration legislation for third countries citizens

The Federal Act on Foreign Nationals (FNA) regulates admission conditions, entry, residence, family reunification, integration, including criminal provisions, end of stay and the temporary admission of immigrants in the Swiss territory. The law governs, in particular, the entry and stay of non-EU/EFTA country nationals who practice or not a lucrative activity and it is only applicable for some particular asylum domains. The FNA gives more detailed provisions for foreigners staying legally and permanently in Switzerland in aspects such as employment and family reunification. It also establishes a list of principles and objectives for their integration, while strengthening coercive measures and procedures to remove and keep people away and toughening sanctions against abuses such as 'fictitious weddings' (art. 118 FNA). As part of the coordination instruments established within the FNA articles 5, 20, 98 and 124 have endorsed the Federal Council to issue enforcement ordinances which role is to specify the Act. These comprises 8-ordinance: OASA (RS 142.201) on the admission, stay and economic activity, OLCP (RS 142.203) on the progressive transition of the EU/EFTA agreements), OPEV (RS 142.204) on entry and visa procedure, OIE (RS 142.205) on foreign nationals integration, Oem-LEtr (RS 142.209), on fees linked to FNA procedures, ordonnance SYMIC (RS 142.513) on immigration data and the central information system), OERE (RS 142.281) on returns and expulsions of immigrants) and ODV (RS 143.5) on immigrant travelling documentation.

Since January 2015, the Secretariat of State for Migration (SEM) has been providing guidelines and comments on the law targeting authorities responsible for law enforcement with respect to the distribution of competences and for coordination purposes. The guidelines establish that the distribution of competences between the federal and cantonal authorities responsible of foreigners' status are governed by the FNA (art. 98-99), by the ordinance-OASA (art. 83-86) and by the ordinance of the Federal Department of Justice and Police (FDJP). Moreover, everything that relates to the granting or renewal of residence permits and not established within the ordinance or directives falls under cantonal competence (Directives LEtr 2015). SEM comments and issues directives on the distribution of competences between cantonal authorities' state that:

The SEM cannot compel the competent cantonal authority for foreigners to issue a residence permit or authorization for short-term, to renew, to extend or to grant a residence permit. Indeed, the cantons decide, according to federal law, residence and establishment of foreigners. Refusal of authorization issued by the canton is final, subject to a right of residence. As part of the exercise of its supervisory powers, the Confederation has the right, in any case, to rule ultimately on the cantonal decision to issue a residence permit or establishment (art. 99 FNA; art. 85 and 86 and the ordinances OASA and FDJP). This veto can be exercised when the foreigner has the right to an authorization.

According to the FNA and its ordinances, the competent cantonal authority should submit the grant, renewal or extension of residence permits for certain categories of foreigners for approval of the SEM (art. 99 FNA; art. 85-86 OASA and Ordinance of the FDJP). In addition, certain exceptions to the admission conditions laid down in art. 30 of the FNA are also subject to approval and listed in ordinance of the FDJP [...]. The SEM also fixed, in each case the date from which a foreigner can obtain a residence permit. (art. 34 FNA and art. 62 OASA)

In practice, since some concepts are not accurately defined in the federal law, the cantons have a degree of flexibility while applying the provisions. This is especially the case for decisions on admissions for family reunification, permit extensions and decisions involving the integration as a requirement (in decisions for granting unlimited residence permits for example). As a matter of example, we will see that one of the criteria for granting a residence permit to a spouse or child is having suitable housing. Criteria to assess if the foreign citizen has suitable housing can differ according to the cantons (e.g. number of bedrooms of having its own place). On the one hand, this flexibility allows the cantons to adapt the provisions to its situation and needs. On the other hand, those discretionary margin lead to unequal treatment of migrants according to the cantons (Wichmann et al., 2011).

8.5.2 Principles of admission

As the main legal basis on immigration legislation, the FNA rules the admission into the territory of foreign nationals, particularly art. 3 FNA. According to the provisions in the article, the interests of the Swiss economy as a whole, the chances of lasting integration into the country's employment market and in its social environment as well as the country's cultural and scientific needs shall be taken into account when deciding on the admission of gainfully employed foreign nationals. Foreign nationals shall also be admitted under international law obligations, humanitarian grounds or if the unity of the family so requires. Furthermore, Switzerland's demographic and social development are also matters that shall be taken into account during the admission determination process.

Admission requirements for foreign nationals are provided by the FNA and by the Ordinance on the admission, stay and economic activity (OASA). Requirements are explained in further details in the directives on the implementation of the Foreign Nationals Act (FNA).

The FNA distinguishes between two kinds of general types of immigrants (if we don't count those who are submitted to the Asylum legislation and those submitted to the AFMP) whose administrative reasons of entering to the country differs and to whom the admission requirements will also differ: foreign nationals who require a permit to stay with gainful employment²⁹² and those without gainful employment (such as rentiers, those entering the country for a medical treatment and those entering for education and training purposes). Stateless persons are also considered differently²⁹³ (art. 31 FNA).

8.5.3 Admission without gainful employment

According to the Federal Act on Foreign Nationals (FNA), foreign nationals without gainful employment do not require a permit if they are staying in the country for less than three months; however, if the visa indicates a shorter period of stay, then this period applies. For a longer period of stay without gainful employment, a permit is required. In this case, foreign nationals must apply for the permit at the relevant authority in their country of residence before entering Switzerland. (art. 10 para. 1 FNA). Immigrants who can enter Switzerland without gainful employment include those moving for education and training purposes, retired persons, or persons that come to Switzerland for medical treatment purposes. Each of those categories of foreigners must fulfil a range of conditions provided by Art. 27-29 of the FNA. In this respect, foreign nationals may be admitted for education purposes if there is confirmation from an educational establishment that the person is eligible for education or training, if suitable accommodation is available, if the person has the required financial means and if the foreign national fulfils the personal and educational requirements for the planned education or training course. Retired persons must have reached the minimum age set by the Federal Council, special relations to the country and have the required financial

²⁹² Gainful employment is described by Art. 11 para. 2 FNA. as any salaried or self-employed activity that is normally carried out for payment, irrespective of whether payment is made.

²⁹³ Stateless persons can have a residence permit in the canton in which they are lawfully residing (art. 31 para. 1 FNA.) If the stateless person satisfies criteria in art. 83 para. 7 FNA, the provision on temporarily admitted persons apply (Art. 31 para. 2 FNA.).

means. In case of medical treatment, persons must also have the required financial means and a guarantee of their return.

Foreign nationals who wish to work in Switzerland require a permit irrespective of the period of stay. They must apply to the competent authority at the planned place of employment for this permit. In the case of gainful employment, the application for a permit must be submitted by the employer (art. 11 FNA). Art. 20 FNA gives the power to the Federal Council to limit the number of first-time short stay and residence permits for work purposes as well as to define quotas²⁹⁴ for the Confederation and the cantons. The SEM may grant permits or increase the cantonal quotas as long as it takes into account the needs of the cantons and overall economic interest (art. 20 FNA).

For a foreign national to be granted a permit with gainful employment, a set of requirements must be fulfilled. A principle of priority (precedence), which states that employers must prove that they have not been able to recruit a suitable employee from the priority categories considered together as the 'internal workforce',²⁹⁵ must be respected (art. 21 FNA). Moreover, salary and employment conditions customary for the location, profession and sector must be satisfied (art. 22 FNA) and personal qualifications are thoroughly examined (art. 23 FNA). As a matter of fact, art. 23 FNA provides that short-term stays and residence permits for work purposes may only be granted to cadre, specialist and other qualified employees with a degree from a university or institution of higher education and several years of experience.

In addition, other criteria such as professional and social adaptability, language skills and age will be examined in order to ensure the professional and social integration of the applicant (art. 23 FNA). Furthermore, foreign nationals must also have suitable accommodation in order to be admitted (art. 24 FNA).

To sum up, foreign nationals may be admitted to work as employees if this is in the interest of the economy as a whole; if an application from an employer has been submitted; and if the requirements of art. 20 -24 FNA (limitation measures, precedence, salary and conditions, personal qualifications and accommodation) are fulfilled. Quotas, precedence principle, conditions and qualifications as requirements will be further detailed below.

Regarding the discretionary margin given by the legislation, practices among the cantons in the assessment of the criteria for admissions for gainful employment show more unity than practices in other domain such as family reunification. According to a study of the Federal

²⁹⁴ At the beginning of each year, the maximum quantity of permits to admit third-country nationals willing to work in Switzerland is published by the Swiss Government. From this quota, each Canton is allocated a certain number of permits based on its size and needs. Another quantity of permits is kept at the Federal level. This allows the federal authorities to decide to allocate additional permits to Cantons that have exhausted their quota when they consider it necessary. The number of permits allocated are divided by type of permits (short stay L permits (more than 3 months and less than 1 year) and residence B permits (of more than one year but limited in time)). As a matter of example, in 2015, 2000 L permits and 1250 B permits were allocated to the Cantons. That year, the federal authorities kept the same quantity of permits of each type as a reserve.

²⁹⁵ Priority categories were defined until end of June 2018 as persons in the Swiss labour market (Swiss citizens, foreign nationals with residence permits allowing employment) or nationals from EU/EFTA member countries. Since 1th of July 2018, implementation of art. 121a Cst. Categories have been enlarged and also include now temporarily admitted persons and refugees.

Commission on Migration, all cantons seem to attribute more importance to the criteria of professional qualifications of the foreign applicant (Wichmann et al., 2011).

A range of derogations from the admission requirements are also provided by art. 30 FNA. those, in cases where the derogation allows to regulate the employment of foreign nationals admitted under the provisions on family reunification, unless they have a right to work (art. 46 FNA); take account of serious cases of personal hardship or important public interests; regulate the period of stay of foster children; protect persons from exploitation who are particularly at risk in view of their work; regulate the period of stay of victims and witnesses of trafficking in human beings and of persons who are cooperating with the prosecution authorities as part of a witness protection programme organised by Swiss or foreign authorities or by an international criminal court; for permit periods of stay as part of relief and development projects in the interests of economic and technical cooperation; facilitate international economic, scientific and cultural exchange as well as basic and continuing professional education and training; simplify the transfer of senior management staff and essential specialists within internationally active companies; permit au-pair workers recruited through a recognised organisation, to stay in Switzerland period of stay for education and training; facilitate the re-admission of foreign nationals who held a residence or permanent residence permit; regulate the employment and the participation in employment programmes of asylum-seekers (art. 43 of the Asylum Act of 26 June 19984, AsylA), temporarily admitted persons (art. 85 FNA) and persons in need of protection (art. 75 AsylA).

Family reunification is another administrative reason to be admitted in the country. Permits for family reunification reasons are given to persons who are directly related to Swiss nationals or to immigrants with permits. Foreign spouses (in its broad sense including registered partnerships) and unmarried children under 18 who live with Swiss nationals or with a permanent residence permit holder can be granted an extended residence permit (art. 42-43 FNA). They are also allowed to work on a salaried or self-employed basis (art. 46 FNA) which means that they can apply to the cantonal authorities to receive a permit to work. For people with limited residence permits and those on short stay permits, their spouses and children can only live with them if they also have suitable housing and not depend on social assistance (art. 44-45 FNA).

Persons admitted in Switzerland for gainful employment, academic or medical treatment reasons or family reunification can receive one of the three main different types of permits provided by the FNA that differ depending on the period of validity. These include the short stay permit (one year), the residence permit (more than one year but limited to a certain number of years) and the permanent residence permit (unlimited period and newly legal criterion for Swiss citizenship). Foreign nationals can apply for a permanent residence permit if they have resided in Switzerland for a minimum of ten years in total on the basis with a short stay or residence permit, and if they have held a residence permit without interruption for the last five years and if there are no grounds for revocation in terms of art. 62 para. 1 FNA (art. 34 FNA). In case of a successful integration, a third country national may apply for a permanent residence permit after 5 years (art. 34 para. 4 FNA, with exceptions based on settlement treaties). A fourth type of permit is granted for employment in a border zone. This 'cross-border commuter permit' is granted to foreign nationals that return to their place of residence abroad at least once a week (art. 35 FNA).

8.5.4 The immigration legislation for EU-28 and EFTA citizens

While Switzerland is a member of the Council of Europe and European Free Trade Association (EFTA), it has not adhered to the EU and to the European Economic Area (EEA). Relations between Switzerland and the EU are governed via a bilateral treaty system, which allows the country to participate in the European internal market. With respect to migration, the major areas of cooperation are the mutual agreements granting free movement of persons and the association with Schengen, which entails the abolition of controls at internal borders, jurisdiction to deal with asylum requests, security at external borders of the Schengen area (SCHR 2015) as well as the Dublin Association Agreements (Dublin III in force since 1 January 2014).

The agreement package 'Bilaterals I' on the Free movement of Persons is the foundation of bilateral relations between Switzerland and the EU and is subject to a guillotine clause (any termination of an agreement results in the cancellation of all other agreements of the package).

The Agreement on the Free movement of Persons (AFMP), signed in 1999, was approved by Swiss voters in 2000 and came into effect in June 2002. It applies to citizens of EU-28/EFTA member states, their family members and to posted workers of a legal identity based in an EU28/EFTA member state, regardless of the workers' citizenship. Since 2002, the agreement has gradually introduced the free movement of economically active and inactive persons. It provides stages and transitional periods that enabled only full freedom of movement to EU-15/EFTA in 2007 and EU-8 citizens in May 2011. However, the inclusion of new EU members States needed to be accepted by the voters. The most recent additions include Bulgaria and Romania in 2009 and Croatia in 2017. Since June 2017, the Federal Council invoked the safeguard clause provided by the agreement in order to limit employment permits to Romanian and Bulgarian citizens; this is because since Switzerland fully opened up to the two countries above in 2016, a large number of citizens from Romania and Bulgaria took up jobs in professions with high unemployment rates among Swiss citizens.

The three major appendices contained in the Agreement on the Free Movement of Persons (ALCP) comprise and govern:

- Annex I: Free movement of Persons
- Annex II: the coordination of social security systems
- Annex III: mutual recognition of professional qualifications

The prohibition of discrimination on grounds of nationality is one of the main principles of the AFMP (art. 2 AFMP). The scope of application of the agreement covers the right of entry into Switzerland, the right to subsistence, the right of access to an economic activity, the right to remain on the territory of the contracting parties, coordination of social security systems and recognition of diplomas. The AFMP also foresees different types of residence permits for stays issued by the AFMP.

The right to freely choose their place of employment and residence within Switzerland conferred by the AFMP to citizens of the EU/AELE member states is conditional on possession of a valid contract by the concerned individuals (art. 6 Annex I AFMP). In cases

of self-employment or not gainfully employed individuals, this right is conditional on the possession of proofs of financial independence and full health insurance coverage (art. 12 and art. 24 Annex I AFMP)

8.5.5 Evolution of AFMP from 2014 to 2018

As a result of the popular initiative ‘against mass immigration’ as discussed previously, art. 21a FNA introduced measures concerning job seekers entered into force the 1st of July 2018. The main idea is to support the ‘native’ workforce (or domestic employees) in Switzerland and more precisely the unemployed people registered in Regional Employment Office. The Federal council established a list of professions or sectors that show an unemployment rate higher than the average at the national level²⁹⁶. From the first of July 2018 and for two years, the rate ‘higher than the average’ will be set at 8% and from 2020 it will be of 5%. Jobs and sectors with low rates of unemployment are not subject to the following process.

In practice, when an employer wants to publish a job offer, she/he has first to check if the required profile/position is included in the list. If this is the case, she/he must follow a particular procedure: the employer must announce in priority the job vacancy to the Regional Employment Office. During five working days, the employer cannot publish this job offer on other platforms. After three days, the Regional Employment Office has to communicate the relevant application files to the employer. The latter has to convene interviews or tests of professional ability with the applicants who fit the required profile. Finally, if the employer hires a candidate or, on the contrary, if not satisfied, she/he has to inform the Regional Employment Office. This measure aims at fostering the workforce available in Switzerland in areas affected by high rates of unemployment by giving priority to job seekers registered in Regional Employment Offices.

Interestingly, according to Boillet & Maiani (2016) the text of the initiative (art. 121a Cst.) was a clear and direct discrimination because it explicitly states the national preference. The transposition from the constitutional art. 121a Cst. to the art. 21a FNA transforms the direct discrimination into an indirect discrimination. In the case of nationality, a direct discrimination is to enact a different treatment between nationals and foreigners (as did art. 121a Cst.); an indirect discrimination introduces criteria seemingly neutral but from which consequences are the same as a direct discrimination. In that respect, the place of residence is considered as an indirect discrimination (Boillet and Maiani, 2016).

Therefore, legally speaking, the art. 21a FNA is not compatible with the principle of equal employment opportunity (article 7 let. a AFMP) or with the principle of equal treatment (art. 9, annex 1 AFMP) (Boillet and Maiani, 2016). In other words, the required registration to a Regional Employment Office is more easily fulfilled by Swiss nationals and it clearly disadvantages foreign nationals who are looking for a job in Switzerland (Boillet & Maiani,

²⁹⁶ The list is into force by end of 2019 and can be found here: <https://www.seco.admin.ch/seco/fr/home/Arbeit/Arbeitslosenversicherung/stellenmeldepflicht.html>. Critics have already underlined that the professions listed are not corresponding to the actual denomination and not detailed enough.

2016). Nevertheless, as art. 21a FNA has included temporarily admitted persons and refugees in the category of internal workforce (also called the ‘domestic workers’ category), the article facilitates labour market integration for those two categories of persons, provided they are registered in a Regional Employment Office.

Although the example of the art. 21a FNA – among other changes in the legislation – does not seem to resolve all conflicts with AFMP, it is indeed less extreme in comparison with art.121a Cst. Art. 21a Cst. is thus a ‘light version’ of the national preference and the economic interests at the heart of art. 121a Cst., while still being subject to accusation of discrimination based on the AFMP.

8.5.6 The asylum legislation

The Swiss Constitution provides for the right to asylum (art. 25 para. 2-3 Cst.) and sets out the provisions advocated by the EHCR (Art. 2-3 EHCR) concerning the prohibition against the refoulement of refugees and their protection against their expulsion. Like most European countries, in Switzerland asylum is granted to refugees upon request, in accordance with a criterion provided within the Asylum Act (AsylA, 26 June 1998)²⁹⁷, and it “includes the right to reside in Switzerland” (art. 2, para 2, AsylA). Persons seeking asylum can apply at the border or on the territory of Switzerland (art. 19, para. 1bis, AsylA). Moreover, some additional dispositions are stipulated if the asylum application is initiated at the airport (art. 22-23, AsylA), particularly the possibility of interrogating the asylum seeker (art. 22 AsylA) and their temporary stay for a maximum of 60 days (art. 22 AsylA). As we will see further, the AsylA is tightly linked to the FNA, which specifies the particular status of persons admitted temporarily into Switzerland²⁹⁸ (art. 80a para. 6 FNA, art. 86 para. 2 FNA, art. 88 FNA, Art. 126a FNA), the measures about the right to family reunification (art. 3 para. 2 FNA, art. 47 FNA) and the departure from the country (art. 76 FNA).

Contrary to the Member States of the European Union which are subject to European regulations concerning asylum, Switzerland’s peculiar status makes the country not subject to most European directives concerning asylum. In this regard, Switzerland is not subject to either the Directive 2013/33 ‘Procedures’, or the Directive 2011/95 ‘Qualification’. This however does not mean the country adopts a completely different legal framework. The federal legislation provides for similar provisions to those within the EU framework. In fact, the AsylA provides for procedural guarantees and the status of ‘temporary admittance’ that provides for situations which under EU law would be framed with the status of ‘subsidiary protection’.

In addition, Switzerland can take a decision of “non-consideration” (*non-entrée en matière* - NEM) with regard to a request of international protection. This decision stems from the Swiss

²⁹⁷ The legislation is implemented through several ordinances, such as the ordinance on procedure (OA 1), the ordinance concerning housing and financial issues (OA 2) and the ordinance concerning protection of personal data (OA 3).

²⁹⁸ Provisionally admitted foreigners are persons who have been ordered to return to their native countries but in whose cases the enforcement has proven inadmissible because of violation of international law, unreasonable for endangerment of the foreigner or impossible for technical reasons. They are granted 12 months that can be extended of another year. (art. 83 para. 3 and 4 AsylA).

acceptance of the Dublin Regulation (Regulation 604/2013) and it is based on art. 31a AsyIA which points out the reasons for dismissal of an application. These concern the return: 1) to a safe third country; 2) to a responsible country under an international agreement; 3) to the country of previous residence; 4) to the country from which the applicant holds a valid visa; 5) to the country in which relatives or people who have a close relationship with the applicant live; 6) to his/her native country or country of origin.

Although the NEM makes reference to a procedural decision, it also gives birth to a status which concerns “asylum applicants whose refugee status is denied when formal legal administrative requirements are incomplete” (Matthey, 2012, p.11). Persons subject to NEM must leave the country but in some cases they do not do so due to the lack of economic resources and they disappear from official records, leaving a legal vacuum (Matthey 2012: 11).

Five ordonnances rule the AsyIA: A01 in the asylum procedure (RS.142. 311), OA2 on asylum financing (RS.142. 312), OA3 on asylum seekers personnel data (RS.142. 314), CEP on asylum application and procedural centres (RS 142.311.23), OERE on asylum rules for expulsion and deportation of refused asylum seekers and NEM (RS 142.281).

Regarding the provisions for the division of powers, the AsyIA provides minor flexibility for cantonal implementation. Indeed, only seven articles rule the cantonal implementation (art. 14, 46, 48, 74, 80, 81, 82, AsyIA). Even the local asylum centres (State registration and processing centers) are directly dependent from the federal authority via the State Secretariat for Migration (SEM) (art. 26 AsyIA). The main flexibility toward cantons concerns the basic social aid which has to be delivered by the cantons (art. 80, 82, 82a AsyIA) in line with the article 12 Cst. Under certain conditions cantons can also “with consent of the SEM grant to a person for whom they are responsible in terms of this Act a residence permit”, under the “hardship-case” procedure (art. 14 para. 2 AsyIA), and they should execute deportation if their asylum application is failed (art. 46 para. 1 AsyIA).

It is important to note that in 2010 the asylum legislation started a restructuration process that is still ongoing. Since then, urgent measures entered into force on 29 September 2012. Amongst those measures are: the abolition of the possibility of submitting an asylum application abroad (art. 19 and 20 AsyIA), and the abolition of desertion or refusal to perform military service as asylum motivations (art. 3 para. 3 AsyIA). Another wave of modifications entered into force on 14 February 2014, introducing, amongst other things, that the removal of citizens from countries considered as safe is usually reasonable (art. 83 para. 5 FNA) and that persons subject to a legally binding removal decision for which a departure deadline has been fixed are excluded from receiving social assistance (art. 82 para. 1 AsyIA).

More recently, on June 5 2016, Swiss voters approved an amendment proposal as a key stage of the restructuring of the asylum system. The main objective of the amendment is to accelerate the procedures and to shorten the time-limit for appeals by gathering the key actors in the same place. Amongst the new disposals of the amendment, we find: the gathering of all the persons playing a role in the asylum process in registration and procedure centres, managed by the federal authorities, the separation between applications to be processed as accelerated procedures and extended procedures with respective time-limits for the duration of the process and the granting of free legal representation (ODAE

romand, 2017). The complete reform will enter into force by the end of 2019, but the accelerated procedure has already been tested in Zurich since 2014.

8.5.7 The asylum procedure

In practice, after the filing of the asylum application and the initial questioning, the SEM determines whether the substance of the application can be verified. In cases where it cannot be verified, the authority rejects the application by refusing it without a formal procedure or by issuing a decision of NEM (non-consideration), which dismisses the application. If Switzerland is responsible for the examination of the asylum application, the SEM engages into the asylum procedure. After completion of the procedure, the SEM determines whether the asylum seeker meets the criteria in first place for refugee status and in second place, if he or she can be granted asylum. Accordingly, the SEM can render four types of decisions in addition to the NEM decision (refugeecouncil.ch, 2018). After the complete examination procedure, the SEM can:

1. Grant asylum (decision in favour of granting asylum) (B permit)
2. Temporary admission as a refugee (decision against granting asylum although the person is recognised as refugee under international law, with suspension of the enforcement of the removal order) (F permit with refugee status)
3. Temporary admission (decision against granting asylum with suspension of the enforcement of the removal order) (F permit)
4. Rejection (decision against granting asylum with removal order) (no legal status)

According to the AsyIA, asylum may be granted to persons who are recognized as refugees under the international law if there are no exclusion motivations (art. 49 AsyIA). Those exclusion motivations are the unworthiness of the refugee status (art. 53 AsyIA) and subjective post-flight grounds (art. 54 AsyIA). Granted asylum individuals are entitled to receive a residence permit ('B' permit) delivered by the canton of residence of the individual.

In cases where asylum is denied, the SEM determines a removal order or an alternative measure that refers to articles 83 and 84 FNA. If the removal order execution is not permitted, not reasonable or not possible, the individual is then admitted temporarily. In each case, the foreigner obtains a permit F, valid for 12 months, extendable if there are no motivations that could stop the temporary admission (art. 41 para 2 FNA).

More precisely, the removal is not permitted (art. 83 para. 3 FNA) when it would be contrary to Switzerland's obligations under international law. It is not reasonable (art. 83 para. 4 FNA) when the removal would seriously endanger the foreigner's life. Finally, it is not possible (art. 83 para. 2 FNA) when technical reasons prevent the removal (no means of transportation, no travel documents issued from the native country etc.).²⁹⁹ In that sense, a temporary admission is seen as an 'alternative measure' to removal. In cases where asylum is denied under the AsyIA but there is a recognition of the refugee status under international law, the removal is postponed and the individual is provisionally admitted as a refugee and receives a

²⁹⁹ For more details see [Obstacles to Removal \(OSAR\)](#); see also Conseil fédéral (2016, pp.18-20)

permit F with the refugee mention. Most migrants provisionally admitted (90%),³⁰⁰ also called 'temporarily admitted persons', are asylum-seekers who were denied asylum³⁰¹. The rest refers to migrants who resided legally in Switzerland but whose permit hasn't been extended. The removal has been ordered, but couldn't be enforced because it was not permitted, not reasonable or not possible under art. 83 and 84 FNA. In the sections that follow, we will focus on the obstacles of a temporarily permit residence for the integration and more precisely, its implications in the labour market.

8.5.8 Hardship cases, an option for surfacing from irregular migration

As explained above, migrants from third countries face many difficulties when obtaining residence permits in Switzerland. Only managers, specialists and other qualified migrants can apply for a short stay and residence permits (as stated by the specific provision in art. 23 FNA)³⁰² as well as persons who can benefit from family reunification. However, migrants with temporary admission (permit F), irregular migrants and rejected asylum-seekers can obtain a residence permit (permit B) despite fulfilling the aforementioned criteria. Under certain conditions, they can pretend to what is called a *cas de rigueur*, translated as a 'case of serious personal hardship', through which they can obtain a residence permit.

The *cas de rigueur*, or case of serious personal hardship, is the possibility, for the Swiss authorities, to make a derogation from the admission requirement in order to grant a residence permit on the basis of humanitarian reasons.³⁰³ The basic idea is to protect a person who would face great danger returning home. This procedure is focused on individual cases (we will review the three legal ways to request a case of serious hardship in the next section). As a matter of fact, each procedure is slightly different, notably in the requirements the applicant must fulfil. However, once the procedure is under examination, there are some general criteria on which the authorities refer in order to establish whether a case of serious personal hardship is due. Those criteria can be found in the decree on admission, residence and engagement in gainful employment (OASA), which is valid for each of the three cases that we will detail later. Art. 31 para. 1 OASA therefore mentions these indicative criteria: a) the integration of the applicant; b) the applicant's compliance with the Swiss legal system; c) the family situation; d) the financial situation as well as the willingness to take part in economic life and to acquire training; e) the duration of the presence in Switzerland; f) health status; g) possibilities of reintegration in the state of origin.

These conditions are not exhaustive, and the assessment should be global rather than convincing on each condition (Fuchs and Fankhauser, 2017). These criteria are therefore to be examined for each particular case and they are subject to the authorities' interpretation.

³⁰⁰ ODAE romand (2015: p.4)

³⁰¹ Though some of them are recognised as refugees, there can be grounds for denying asylum as unworthiness of refugee status (art. 51 AsyIA) or subjective post-flight grounds (art. 54 AsyIA). Temporary admitted persons recognised as refugees have better conditions than temporary admitted persons not recognised as refugees; see Matthey (2015).

³⁰² Art. 23 FNA; Petry (2013, p.179).

³⁰³ It is important to keep in mind the 'humanitarian principle' at the core of this derogation, as we will see an interesting shift with the canton of Geneva, stressing an 'economic principle'.

The case of serious personal hardship is accessible for three 'groups': a) migrants with temporary admission (permit F), b) irregular migrants, and c) rejected asylum seeker. Each case has its own legal procedure. It is useful to shortly detail these three cases and to what legislation they refer. After five years in Switzerland, migrants with temporary admission can apply for a hardship case through art. 84 para. 5 FNA. Foreigners with temporary admission represent most of applications for hardship cases (Fuchs and Fankhauser, 2017). The second group who can apply for a case of serious personal hardship are irregular or undocumented migrants. This means that they either arrived without an entry permit or are migrants whose permit hasn't been extended and who stayed irregularly. They are usually part of the undeclared work. These people can apply for a hardship case through art. 30 para. 1 let. b FNA. Contrary to the other cases, there is no requirement concerning the duration of stay in order to apply.

Finally, the third group concerns rejected asylum-seekers without temporary admission. This means that they have been denied asylum and that no obstacle to their removal has been recognised. Although there was a decision to remove them, they stayed in Switzerland. Five years after they submitted their asylum application, they can apply for a hardship case. However, their place of stay must have been known to the authorities during the whole stay. This criterion (art. 14 para. 2 AsylA) is thought to avoid the 'disappearance' of rejected asylum-seekers and makes this procedure unattractive. Indeed, applicants passing through the FNA (either with permit F or without any authorisation) are not requested to make their place of stay known to the authorities. A difference in treatment between people passing through asylum's law (AsylA) and those who pass through the foreigner's law is also notable during the legal procedure, as we will see now.

The hardship case is a good example for a sub-national legislation comparison. Indeed, cantonal authorities have a great power of interpretation of the certain provisions of the federal law³⁰⁴. The number of applications registered largely varies between cantons. In addition, the criteria stated in art. 31 para. 1 OASA allows a certain degree of flexibility that can be influenced by political obedience. For instance, hardship cases can be seen as a way to legally integrate people who have been residing and working in Switzerland for a long time, as it can also be used in order to enact more removals³⁰⁵. Therefore, the procedure for a hardship case strongly involves cantonal authorities and also underlines a difference in treatment between AsylA and FNA applicants. Actually, a request for a hardship case has two stages: first, the request is addressed to the cantonal authority in charge of migration (stage 1). Secondly, if the request is approved, the canton forwards it to the State Secretariat for Migration (SEM) (stage 2). In the case that the SEM also approves the request, the applicant obtains a residence permit (permit B); in contrast, if the SEM rejects the request, the applicant can appeal to the federal court. The power of the cantons is made clear by the fact that the cantonal authorities are the one who permit the process to go further.

³⁰⁴ See Petry (2013: 184); Matthey (2015).

³⁰⁵ The flexibility is obviously limited by the respect of the Constitution, the law and principles as "prohibition of arbitrary, equality and proportionality". Les observatoires du droit d'asile et des étrangers (2017: p.10).

Plus, applicants who proceed through AsylA and those governed by FNA face differences of treatment during the procedure. Applicants under the asylum law have ‘party status’ according to art. 14 para. 4 AsylA only during the SEM’s consent procedure, which is the second stage, whereas other applicants already have a party status during the first stage (Fuchs and Fankhauser, 2017). As a consequence, the applicant who proceeds through the asylum law “is procedurally non-existent” because she/he can neither participate in the process nor be heard (Fuchs and Fankhauser, 2017). This is problematic because if the cantonal authorities reject the request for a hardship case (so the process stops after stage 1), the person applying through the asylum law cannot contest this decision, as she/he has no party status. Therefore, the procedure through AsylA appears more demanding (when we refer to the aforementioned criterion of making known the place of stay) and involves the applicant less, which can considerably compromise the request.

8.5.9 Cantonal interpretation: the case of ‘Operation Papyrus’ in Geneva

As has been noted, cantonal authorities enjoy great flexibility regarding the law governing hardship cases. They can submit more or fewer requests for hardship cases and interpret the related criteria more or less strictly. To explore an example of how the law can be applied by a canton, we will develop here what is called ‘Operation Papyrus’ in the canton of Geneva, which began in February 2017 and lasted for two years.

While the ‘hardship case’ procedure originally had a humanitarian objective, the aim of the Operation Papyrus is to regularise irregular foreigners living in the canton of Geneva in order to reduce undeclared work. Therefore, it exclusively concerns irregular foreigners and excludes former asylum-seekers.³⁰⁶ Applicants must fulfil various criteria: have a job, be independent financially, no debts, be in Switzerland for at least five or ten years – depending on the family situation, be successfully integrated (judged through language aptitude for instance) and absence of criminal conviction.³⁰⁷ We could call it a ‘Papyrus hardship case’, in the sense that it allows irregular migrants to get a residence permit (permit B) through specified criteria. These criteria are slightly different to the ‘normal’ hardship case, notably because there is an emphasis on the economic aspect of such a regularisation and less engagement with its humanitarian spirit (Leyvraz, 2017). Indeed, Operation Papyrus also includes a public campaign about domestic work and the launching of an online platform for domestic economy. Plus, the criteria include the duration of the stay, which is not mentioned in art. 30 para. 1 let. b FNA. More generally, the applicants have clear indications on how their case will be evaluated by the authorities, thanks to the detailed requirements. The authorities have therefore less flexibility, since they have to assess the regarding the publicly known aforementioned criteria (Della Torre, 2017).

Operation Papyrus was launched in February 2017 and lasted for two years; the mid-term evaluation shows positive results according to the canton and social partners, with the regularization of 1,093 people.³⁰⁸ Interestingly, the criteria developed for this special

³⁰⁶ The legal basis is thus Art. 30 para. 1 let. b FNA and Art. 31 OASA.

³⁰⁷ See the conditions in the document published by the République et Canton de Genève (February 2017).

³⁰⁸ Département de la sécurité et de l’économie (2017).

application of art. 30 para.1 let. b FNA can also be useful for other cases. As a matter of fact, a Brazilian national whose permit B was not extended after her divorce summoned the criteria defined in Operation Papyrus to her cause.³⁰⁹ She pled inequality of treatment, as she fulfilled all the criteria required for illegal migrants through the Operation Papyrus. The administrative court of justice ruled in her favour exemplifies how regularisation criteria might therefore apply for an extension of permit.

8.5.10 Institutional framework

The Federal Council is in charge of the regulation of the entry and exit, admission as well as residency of foreign nationals. While the cantons are in charge of enacting the executing provisions of the legislation, the Federal Council monitors its execution (art. 124 FNA). The Federal Council also has the power to set the limits of first-time short stay and residence permits for work purposes (art. 20 FNA), although it must consult the cantons and the social partners beforehand. The permits in terms art. 32-35 FNA (short stay, residence, residence, permanent residence and cross-border permits) and art. 37-39 FNA (change of the place of residence to another canton, gainful employment and employment of cross-border commuters permits/authorisations) are granted by the cantons. The Confederation remains responsible for quotas (art. 20 FNA) as well as derogations from the admission requirements (art. 30 FNA) and the approval procedure (art. 99 FNA).³¹⁰ Cantons also delegate certain administrative tasks to the communes (Koller, 2011).

Regarding the integration domain, as in the entrances and permits domains, it is the federal level which frames, together with the cantons and communities, the integration policies. Subsequently, the federal level, the cantons and the communities are responsible for all the institutional arrangements, programmes and social policies that concern an individual immigrant's integration. Cantons and communities, from their side, have the mandate to inform the immigrant population about the conditions of living and working in Switzerland and especially on their rights and duties, and to provide them with public information on policy changes. In practice, such things are taken care of by the cantonal or local integration offices.

8.5.10.1 The State Secretariat for Migration (SEM)

The State Secretariat for Migration (SEM), formerly the Federal Office for Migration, is the main institution in charge of immigration governance in Switzerland. It is attached to the Confederation and more precisely to the Federal Department of Justice and Police (FDJP). Its duty is mainly regulated by the Ordinance on the Organization of the FDJP of 1999 (Org DFJP).

In collaboration with the Federal Department of Economic Affairs, Education and Research, the SEM assesses the macro-economic interests related to the foreign national's policy. The

³⁰⁹ ATA/681/2017

³¹⁰ "The Federal Council shall determine the cases in which short stay, residence and permanent residence permits as well as cantonal preliminary labour market decisions shall be submitted to the SEM for approval. The SEM may refuse to approve or restrict the cantonal decision" (art.99 FNA).

Secretariat also carries out measures of foreign national legislation, develops border control, ensures the monitoring of the implementation of foreign nationals legislation by the cantons, treats matters of Swiss nationality, delivers decisions of asylum-granting, temporary protection and removals and ensures the coordination of asylum matters and refugees within the federal administration with the cantons and the international and national organizations amongst other duties. Furthermore, the SEM analyses, in collaboration with the Federal Department of Foreign Affairs (FDFA), the evolution of migration at national and international level and it therefore develops a basis for decision-making to support the Federal Council in the migration policy decisions. (art. 12 Org DFJP). Finally, as provided by art. 98 FNA, the SEM is responsible for all tasks that are not expressly reserved to other federal authorities or the cantonal authorities

8.5.10.2 The Federal Commission on Migration (FCM)

The FCM is a 30-member extra-parliamentary commission mandated by art. 58 FNA to address social, economic, cultural, political, demographic and legal issues that arise from the residence of foreign nationals in Switzerland. The subject areas covered range from refugee protection and economic migration to social cohesion and transnational issues. Integrated by academic and field experts in the area, the commission has an advisory role for the Federal Council and the public administration on questions of migration.

8.5.10.3 Cantonal Services of Migration

Each canton has an office that assumes the role of cantonal service of migration. In many cases it is the foreign national service of the cantonal population office or police department. The service is in charge of all matters related to the presence of foreign nationals in the Canton. In certain cantons, those offices are the main offices to resort to the permit request. In others, foreign nationals must also resort to a cantonal employment service.³¹¹

8.5.10.4 Cantonal employment services

The cantonal employment services receive permit applications from employers. These services are in charge of screening applications admissions for gainful employment and working permits. In some cantons, the cantonal service of migration takes charge of this duty. During this screening, a preliminary decision is taken.

8.5.10.5 Services in charge of integration in Cantons and Cities

Each canton has designated a service³¹² in charge of the development and implementation of the integration measures at the local level, as provided by art. 57 FNA.

³¹¹ List of cantonal authorities for the notification procedure:

https://www.sem.admin.ch/sem/fr/home/ueberuns/kontakt/kantonale_behoerden/Adressen_Meldeverfahren.html

List of cantonal authorities of migration and labour:

https://www.sem.admin.ch/sem/fr/home/ueberuns/kontakt/kantonale_behoerden/adressen_kantone_und.html

³¹² List of services in charge of integration in Cantons and Cities:

https://www.sem.admin.ch/sem/fr/home/ueberuns/kontakt/kantonale_behoerden/kantonale_ansprechstellen.html

8.6 The Framework Legislation on the Labour Market Integration of MRAs

8.6.1 Labour legal framework

Swiss labour and employment law is mainly governed by the Code of Obligations (CO), the Labour Act (LTr), and the terms agreed in the contracts of employment. Collective bargaining agreements also apply for certain industries.

The Code of Obligations, as the principal source of private labour law, regulates the relationship between the employee and their employer (art. 319- 362 CO). The CO provisions, whether they are mandatory or optional, represent the basis for the employment contracts. Nevertheless, those are not required to be in a specific form and may be established verbally or on paper (Employment and Labour Law, International Series, Siân Keall, Travers Smith LLP, 2015). However, certain provisions, such as the exclusion of compensation for overtime and notice periods which are different to statutory law, can be valid only if stated in a written form. Many of the provisions stated in the CO are not mandatory. Swiss labour law is therefore considered as a liberal law. Inalterable provisions are listed by art. 361 CO and art. 362 CO refers to provisions in the Code that cannot be altered to the detriment of the employee. Among the provisions, four weeks of paid leave per year as a minimum and five weeks for workers under 20 years old (art. 329a CO).

The Labour Act (LTr) enacts provisions of general protection of workers covering among other things: working hours and breaks; special protection for young employees, pregnant women and breastfeeding mothers; work-related injury insurance; and industrial accident prevention. The maximum working week for workers employed in industrial enterprises and white-collar workers is 45 hours. For other workers, mainly those in the construction sector and craftsmen, in commerce, sales staff in small retail undertakings, the maximum working week is 50 hours. Women may have a maternity leave of minimum 14 weeks, paid at 80%.

According to art. 28 of the Swiss Constitution, workers have the right to join or not join unions and associations in order to protect their interests. To have an idea of the impact, in 2013, the unionization rate was of 20.2 % (OFS, 2015). Employers or their associations and workers' associations may conclude collective labour agreements. Those are mainly common in the manufacturing and construction industries as well as in the public sector. Some provisions of the agreements have normative effects that bind only the parties or members of the signing associations as well. Under certain circumstances, the scope of the collective agreement may be extended to employers and workers belonging to the industry or the profession. This extension can be effected by the Federal Government or the competent cantonal authority at the request of all contracting parties. Commonly, the collective labour agreements include provisions relating to the terms of employment such as working hours, holidays and salaries and to terms for cooperation between the parties, unions and employers.

Although disputes must wherever possible be resolved through negotiation or mediation, the constitution provides for freedom of engaging in strikes and lockouts if they relate to employment relations and if they do not contravene any requirements to preserve peaceful employment relations or to conduct conciliation proceedings (art. 28 Cst). Strikes are,

however, not very common and individual disputes are generally settled by the labour court at the cantonal level, and collective disputes by cantonal or federal conciliation offices (Confederation website, 2018).

8.6.2 National legislation on access to the labour market

In Switzerland, labour legislation, namely the code of obligations and other specific laws regarding the labour market, do not contain specific provisions for foreign workers. According to art. 22 FNA, the salary, social security contributions and the terms of employment for foreign workers must be in accordance with the conditions customary to the region and the particular sector. However, the right to access the labour market differentiates primarily based on the nationality of a person (differentiation between EU-/EFTA nationals and third country nationals).

As stated above, citizens of EU and EFTA member states who wish to work in Switzerland may do so according to the Swiss-EU Bilateral Agreement on the Free Movement of Persons. Furthermore, citizens from countries falling within the scope of the AFMP are protected by the principle of non-discrimination enacted in art. 2 of the AFMP. Third-country nationals, by contrast, have limited access to the Swiss labour market. First, qualification criteria will be taken in consideration before granting admission into the labour market (art. 21 and art. 23 FNA). According to the precedence provision of the Federal Act on Foreign Nationals, third-country nationals may only be admitted into the Swiss labour market if no other persons belonging to the priority groups of population can be recruited for the specific position. Until 30 June, the priority groups of population included the Swiss citizens, foreign national with residence permits and EU/EFTA nationals. Since 1 July 2018, “native workforce” category has been enlarged to integrate also temporarily admitted persons, persons who have been granted temporary protection and have a permit entitling them to take-up employment (art. 21 FNA). In order to prove that no other persons belonging to this “native workforce” group could be recruited, the employer must register vacant positions with the regional employment offices and the European Employment System. If after those steps the priority potential employees have been turned down, the employer must notify the reasons for it (art. 21 FNA).

In addition, for a third national to be admitted in Switzerland with gainful employment, s/he has to be considered as a specialist, cadre or another qualified employee (with a degree from a university or institution of higher education and several years of professional experience or with special training depending on the profession or the field of specialization). The professional and social adaptability as well as the knowledge of language and age will also be taken into account. The curriculum vitae, education certificates, and references will be examined by the Swiss authorities to ensure the fulfilment of the qualifications criteria (art. 23 FNA).

Furthermore, following the economic interest principle, the Federal Council has the power to limit the number of first-time short stay and residence permits for work purposes as well as to define quotas for the Confederation and the cantons (art. 20 FNA). Concretely, in order to regulate the admission of third-country citizens, the Swiss government publishes at the beginning of each year, the maximum quantity of permits that can be allocated to that group. Different quotas are therefore allocated to each canton according to its size and needs while

another set of quota, package of permits, is kept at the federal level as a reserve, for cantons that have exhausted their quota (Sandoz 2016: 41). According to official statistics, only 4.1% of long-term immigrants in Switzerland in 2015 were subject to quotas. This corresponds to 6,140 persons (Sandoz, 2016).

Third-country nationals willing to immigrate to Switzerland for gainful employment will therefore face many obstacles before being admitted into the territory and having access to the Swiss labour market. They need to have found a job beforehand in order to receive their stay permit. Moreover, the application for the permit has to be submitted by the employer (art. 11 FNA). The last prerequisite to be fulfilled, is the certification that their salary and terms of employment are going to be in accordance with conditions customary to the region and sector (art. 22 FNA and art. 65 OASA).

Regarding access to the labour market of third country nationals staying in Switzerland without gainful employment, what criteria that needs to be fulfilled will differ according to their reason of stay (e.g. students, retired persons, persons staying for medical treatment reasons and persons staying for family reunification reasons).

The right to work of third country nationals staying in Switzerland for family reunification reasons will depend on the status of the relative who takes advantage of the family reunification. Thus, family members of Swiss nationals and permanent residence permit holders (C-permit holders) have access to gainful employment without need of authorization (art.46 FNA and art.27 OASA. The FNA does not give automatic right to work to family members of residence permit holders (B-permit holders) but given the objectives of the FNA (better integration of the foreign population), gainful employment of residence permit holders relatives is not subject to authorization. On the contrary, family members of short stay permit holders need authorization to work. The employer needs to make the correspondent request to the authorities and show that the conditions are customary for the region and sector. Professional qualifications of the applicant will also be taken into account (art. 23 FNA). Third-country nationals without gainful employment, such as retired persons and foreign nationals immigrating for medical treatment reasons, are not permitted to work or have limited access to the Swiss labour market, as it is the case for students. Thus, even though a request must be submitted to the authorities, foreign nationals from third countries officially entering into the country for education or training purpose under art. 27 FNA, are allowed to work as from six months after their arrival, during a maximum of 15 hours per week during their studies and more during the semester breaks (art. 30 para 1 let. g. FNA and art. 38 OASA). Since 2011, third country nationals who studied in Switzerland may be admitted if their work is of high academic or economic interest. They have the possibility to look for a job within six months of their graduation (art. 21 para. 3 FNA).

8.6.3 Different types of permits for third country nationals

Once arriving in Switzerland, third country nationals may be granted different types of permit.

As a reminder, foreign nationals entering the country will receive a short stay permit (up to one year) or a residence permit (more than one year but time limited). A third type of permit, the permanent residence permit, can be granted to foreign nationals after living in the country for a minimum of ten years and under certain conditions (or after five years in case

of successful integration – the so-called early grant of a permanent residence permit). Subsequently, geographical and professional mobility, allowed or not by the received permit, will have an influence on the further integration of the immigrant into the labour market.

The 'L' permit, short stay authorization (more than three months and up to one year), is one of the more restrictive permits in terms of professional or geographical mobility. As the permit is strictly linked to the specific objective of migration, a change in this objective (e.g. passing from non-gainful employment to gainful employment) will require a new permit request and the admission procedure needs to be started again. Third-country nationals with an L permit who want to move to another canton need to request a new permit to the new canton. For those with gainful employment, changing job is possible but only if they cannot pursue their work for specific reasons, and they must remain in the same industry and work in the same occupation. L permit is renewable once for one year maximum.

Third-country nationals with a 'B' permit, (residence permit of more than one year and limited in time), if they have been admitted for reasons of gainful employment, are allowed to change job without requesting a new authorization. They are also allowed to change their canton of residence if they are not unemployed. The 'B' permit, once granted, grants foreign nationals the same level of priority as nationals when accessing a vacant position (Art. 21 para. 2, let. c, FNA). For third-country nationals admitted for family reunification reasons with a 'B' permit, residence is linked to the relative already in Switzerland.

Finally, beneficiaries of 'C' permit, or permanent residence authorization, have full cantonal and professional mobility freedom and an unlimited time residence and working permit. This permit is nevertheless generally reserved for foreign nationals who have legally lived in the Swiss territory for 10 years minimum (five years in case of a successful integration), and if they are well integrated (art. 34 FNA). The 'C' permit is the new formal criterion for the Swiss Citizenship, since 1 January 2018.

8.6.4 The Asylum sector

Other than the regulation of labour market access for EU-/EFTA nationals and 'highly qualified' third country nationals, the FNA and the AsylA state provisions for persons from the domain of asylum, too. It is important to note that based on the legal status of a person who claims or claimed for asylum in Switzerland, the right to work (and consequently, access to the Swiss labour market) may be granted.

Asylum-seekers are not allowed to work during the first three months of their stay. This period can be extended if the SEM denies their application for asylum (art. 43 para. 1 AsylA). After this time period and depending on the canton, asylum-seekers may be granted a working permit only if their economic and labour market situation allows it, and if the working conditions and salary comply with local practice. In some cantons, asylum seekers can only work in certain industries, e.g. restaurants, agriculture, etc. In addition, the employer must submit a request to hire the asylum-seeker and demonstrate that the position cannot be given to a priority person in the sense of the precedence principle. Asylum-seekers can, however, participate in charitable occupational programs (art. 43 para. 4 AsylA). Until 31 December 2017, working asylum-seekers had to pay a special charge amounting to 10% of

their earned income. This regular tax has been abolished since then (Refugee Council website, 2018).

Recognized refugees as well as temporarily admitted recognized refugees (who have not been granted asylum under Swiss law) can engage in gainful employment and change job without restrictions (art. 61 AsylA) as long as the salary and conditions are customary to local practices. As a condition for them to access to the labour market, an authorization request has to be submitted by the employer to the cantonal authorities. However, this administrative request will be replaced in beginning of 2019, by a simple announcement to the authorities according to the modification of 16 December 2016 of the FNA.

Regarding temporary admitted persons, the cantons have the possibility of grant inga working permit, irrespective of the labour market and the economic situation (art. 85 para. 6 FNA). In this case, the employer must also submit a request (until the entry in force in 2019 of the FNA amendment of 16 December 2016) and comply with the usual local wage and working conditions of the industry. Working temporary admitted foreign nationals were also submitted to pay the 10% special tax on their income until 31 December 2017. In the case of dismissed asylum seekers, since they received a removal order, they are not allowed to engage in gainful employment after the expiry of their departure date (art. 43 para. 2 AsylA).

Finally, as we have seen previously, asylum-seekers or temporarily admitted foreign nationals who have resided in Switzerland for more than five years and comply with other specific conditions, can request to the cantonal authorities to be recognized as a hardship case (art. 14 AsylA and art. 31 OASA and art.84 para. 5 FNA. If the request is accepted, they will be granted a B residence permit and can request an authorization to engage in gainful employment under the same conditions as other B permit holders.

Foreign nationals administratively linked to the asylum domain must comply with different kinds of legal obstacles in order to work. For those who are legally allowed to work or who can request an authorization to do so, the realization of their right is not easy. Apart from the special tax of 10% on their income when they work (in force until the end of 2017 and now abolished), and the fact that the employer must fill in a request (to be abolished in 2019), the provisional character of the situation of foreign nationals administratively linked to asylum may demotivate the potential employers and have a dissuasive effect on them (Matthey, 2015). It is important to note that persons linked to the domain of asylum who are unable to maintain themselves on their own resources, shall receive the necessary social benefits unless third parties are required to support them. In this context, changes in the legal framework of access of those groups of immigrants to the labour market have an impact on the financial cost for the Government, as it is the case for the removal of certain barriers such as the 10% tax.

8.6.5 The temporary admission 'status'

The 'F' permit, given to temporary admitted foreign nationals recognized or not as refugees, and the precariousness of the 'status', has been at the forefront of public debate in recent

years. As a matter of fact, the F-permit raises several questions; though its name suggests that the person is staying temporarily in the country, migrants with permit 'F' usually stay many years in Switzerland.³¹³ Their status is a real obstacle to their integration, particularly to the job market.³¹⁴ Stigmatization and lack of information about this status are also significant obstacles. Moreover, permit 'F' restricts freedom of movement as the foreigner is constrained to stay in the canton where she/he was granted the temporary admission. Therefore, low mobility makes it difficult to find a job. However, the issue of job integration has been at the heart of a recent discussion on the reform of the temporary admission status.³¹⁵ Besides this debate, the implementation of the already mentioned art. 121a Cst. brought modifications that facilitate the integration of temporarily admitted persons as well as recognized refugees into the labour market. They do so by enlarging the category of 'domestic employees' to integrate these two groups of population and by abolishing the special tax and the request for a work permit.³¹⁶

In April 2017, following the recommendations from the Federal Commission on Migration (FCM), the Federal Council introduced a bill to reform the temporary admission status in order to reduce labour market integration barriers, creating for example a new status and giving more long-term protection to certain cases. The motion was defeated by the Council of States in March 2018 (motion 17.3270, parlament.ch, 2018). A motion to provide some adjustments to the temporary admission status has however been accepted by the Council of States³¹⁷ and more recently, in June 2018, by the National Council, the other organ of the assembly.³¹⁸ The text foresees the examination of the temporary admission concept and the possibility to change denomination as well as facilitate cantonal mobility (motion 18.3002, parlament.ch, 2018). Despite the expected adjustments, some issues will however persist, as persons that should receive a more long-term permit because of their situation or reason of their presence in the territory will continue to be granted temporary admissions. Plus, criteria to move from an F-permit to a B-permit are still difficult to fulfil.

8.6.6 Recognition of qualifications

According to the Migrant Integration Policy Index (MIPEX, 2015), the procedure of recognizing diplomas in Switzerland is more complex than elsewhere. Educated non-EU citizens face complicated procedures to recognize their academic and professional degrees. According to 2014 data from the FSO, around 50,000 highly skills third-country nationals were unemployed or overqualified for the job they were employed for (FSO, 2015).

³¹³ According to Matthey (2015), half of the foreigners with temporary admission stay in Switzerland more than seven years, including the stay before the grant of the permit F.

³¹⁴ ODAE romand (2015); Matthey (2015).

³¹⁵ See the report adopted by the Federal Council (14th of October 2016), the report of the federal Commission of Migration (21st of March 2017).

³¹⁶ See the statement of the Federal Council (15 November 2017).

³¹⁷ The Council of States is the organ representing the Cantons in the Swiss Parliament

³¹⁸ The National Council is the organ representing the Swiss People in the Swiss Parliament

Switzerland has a list³¹⁹ of regulated professional activities that can only be legally carried out by holders of a specific qualification (e.g. health care field). The recognition procedure will depend on whether the professional activity is regulated or unregulated. In the case of a non-regulated professional activity, there is no need to obtain recognition of the foreign qualification to legally access the Swiss labour market. However, in the case of regulated professional activities, recognition (of equivalence) is required to carry out the professional activity in question (SERI, 2018).

Therefore, recognition of upper-secondary level vocational qualifications and tertiary-level professional qualifications for EU/EFTA is regulated by the AFMP and the EFTA Convention. Foreign qualification issued by third-countries will be recognized by the State Secretariat for Education, Research and Innovation (SERI) on the basis of art. 69 ff. of the Federal Ordinance on Vocational and Professional Education and Training (VPETO) and art. 55 f. of the Ordinance relative to the Federal Act on Funding and Coordination of the High Education Sector (HedO). By virtue of this legal basis, the qualification may be recognized if certain requirements are cumulatively met (e.g. same level and duration of education and training, comparable training content, emphasis on practical training or relevant work experience) (SERI, 2018). Compensatory measures, such as aptitude test or adaptation courses, are also provided by both ordinances for cases where there are significant differences in training from one year to the next (SERI, 2018).

In order to facilitate access to non-regulated professions, the Swiss association of high education institution (Swiss universities) can issue non-legally binding recommendations of recognition for holders of foreign higher education qualifications.

8.6.7 Continuing education and training

Regarding continuing education and training, the Federal Act on continuing education and training of June 2014 (LFCo) regulates continuing education and training in Switzerland. The act implements the constitutional mandate on continuing education and training (CET), organises CET in the Swiss education area and it lays down principles governing it. With its art. 8 LFCo on the improvement of equal opportunities, the LFCo asks the Confederation and the cantons to endeavour to facilitate the integration of foreign nationals through its continuing education and training offers.

8.6.8 Integration: ‘promoting and requiring’

To better understand the legal framework for the integration into the labour market of migrants and foreign nationals linked to the asylum domain, it is important to analyse the concept of *integration* from the Swiss law point of view. The integration of the foreign population is one of the global and fundamental objectives of the FNA, and it is ruled by the specific ordinance on the integration of foreigners (OIE; RS 142 205). Principles of

³¹⁹ To see the list of regulated activities:
https://www.sbf.admin.ch/dam/sbf/en/dokumente/2016/08/reglementierte-berufe.pdf.download.pdf/Liste_regl_Berufe_D.pdf

integration are given by article 4 FNA. Chapter 8 of the FNA with art. 53- 58 FNA, gives more focused provisions on integration specifically on encouraging integration (art. 53 FNA) and the consideration of integration in the case of decisions, e.g. in the cases of admission or permit granting. (art. 54 FNA).

Art. 4 Integration FNA

1 The aim of integration is the co-existence of the Swiss and foreign resident population on the basis of the values of the Federal Constitution and mutual respect and tolerance.

2 Integration should enable foreign nationals who are lawfully resident in Switzerland for the longer term to participate in the economic, social and cultural life of the society.

3 Integration requires willingness on the part of the foreign nationals and openness on the part of the Swiss population.

4 Foreign nationals are required to familiarise themselves with the social conditions and way of life in Switzerland and in particular to learn a national language.

In 2011, the Confederation and the cantons agreed upon a common strategy for promoting the integration of the foreign population. Each Canton established its own Cantonal Integration Program (CIP) for the years 2014-2017 and now the CIP II 2018-2021 with the purpose of strengthening: social cohesion, mutual respect, tolerance, participation, and equality of opportunities for foreigners living in Switzerland. Moreover, one main aspect within the Cantonal Integration Programs is the encouragement for refugees and temporarily admitted persons into the Swiss labour market.

As we have previously seen, country nationals who are applying for a work permit or for family reunification are often required to demonstrate their ability to integrate in the future. Integration is also repeatedly cited by the FNA as a criterion to fulfil as to be granted certain permits and, therefore, access to a more stable status. Integration is therefore highly present in the FNA as a requirement. On the other hand, the promotion of integration is a topic that is often present in the formulation the FNA. Art. 53 FNA provides specifically provisions on encouraging integration.

Article 53 Encouraging integration FNA

1 In fulfilling their tasks, the Confederation, cantons and communes shall take account of integration concerns.

2 They shall create favourable regulatory conditions for equal opportunities and for the participation of the foreign population in public life.

3 They shall in particular encourage language acquisition, professional advancement, access to health care and efforts that facilitate co-existence and mutual understanding between the Swiss and the foreign population.

4 They shall take account of the special concerns related to the integration of women, children and young people.

5 In the case of integration, the authorities of the Confederation, cantons and communes, the social partners, the non-governmental organisations and the expatriate' organisations cooperate.

6 The cantonal social assistance authorities shall register recognised refugees and temporarily admitted persons who are unemployed with the public employment agencies.

Promoting and *requiring* are therefore the two keywords of the integration policy in Switzerland over recent years, stating the requirements and individual responsibilities of a foreign person with regard to integration and the promotion of equal opportunities (Kurt S. 2017). Whereas the Ordinance on admission residence and gainful employment precise in particular the requirements imposed on foreign nationals on integration matters, the Ordinance on the Integration of Foreigners (OIE) rules the promotion of integration (SEM).

Until 2018, no official definition of integration was provided by the Swiss legislation. When determining the degree of integration of foreign nationals living in Switzerland, the practice shows that cantonal authorities have taken their decisions based on the respect for legal order and the values of the Constitution, knowledge of local language and the willingness to participate in economic activities and education as well as knowledge of the 'Swiss way of life' mentioned by the Citizenship Act (Wichmann N. and al. 2011). According to Wichmann et al. (2011), cantonal interpretation and practices diverge from 'inclusive' practices that have low requirements with many exceptions to 'exclusive' practices with a high requirement and a low number of exceptions. With the amendment of 16 December 2016 that will enter into force in 2019, the legislation related to integration will be revised and the specific ordinance on the integration of foreigners (OIE; RS 142 205) will be completely amended. Among the new provisions, the specification of the integration criteria such as the levels of the language skills for each extension and permit to be granted as well as the measures to be taken for foreign nationals that do not show integration willingness (press release of the Federal Council, 1 December 2017). On the promoting side, the revision of the OIE will enshrine new provisions for financing integration measures that will encourage the development of the already existing cantonal programmes of integration. It is important to note that in the framework of the Amendment of 16 December 2016 that will enter into force in 2019, the FNA will also have a new name and will be named the new Foreign Nationals and Integration Act.

8.6.9 Anti-discrimination legal framework

According to the Swiss Centre of Expertise in Human Rights (2013), Switzerland does not have a comprehensive legislation on discrimination. Apart from the fundamental right to non-discrimination enshrined in the constitution (art. 8 Cst.) that we discussed earlier in the constitutional section, the only grounds for discrimination recognized in the criminal code are racial, ethnic, or religious belonging. In 2017, the UN Human Rights Committee expressed its concern by the absence of a complete legislation on discrimination and called for legislation offering a definition of discrimination and its motives as well as a clear prohibition. It also called for legislation providing victims with efficient civil and administrative protection (Humanrights.ch, 2017).

Article 261bis of the Criminal Code on combating racism and racial discrimination is the principal provision of the Swiss legislation on fighting discrimination related to origins. On the relations between individuals and labour, the provisions of the Swiss legislation that can be

used are very few. As the freedom of contract is one of the fundamental principles of labour legislation, the protection on discrimination when hiring is weak. Among the provisions of the Civil Law that can be used, art. 10 CO provides that a contract shall not be contrary to the public order, morals, and the rights attached to the person. It is also forbidden to take advantage of the weakest contracting parties, exploiting their distressed situation or lack of experience. Art. 28 of the Civil code against infringement is also one of the main provisions used against discrimination. According to the latter, any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement. An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law (art. 28 Civil Code) (Humanights.ch, 2018). Art. 328 of the Code of obligations also provides the obligation of the employer to protect the employee's personality rights.

According to the report of the Swiss Centre of Expertise in Human Rights (2013, pp.16-17): "Racial discrimination at work (differences in wages and working conditions), and on the labour market as well as for access to positions, is particularly significant for the concerned persons, even if the existing case law does not show this phenomenon."³²⁰ In fact, the low number of legal actions for discrimination problems is probably due to the scant knowledge of the legal instruments and the high degree of complexity of them. Bringing legal evidence of the discrimination is also required but often very difficult to produce in cases of discrimination on the labour market. Thus, only very few instances of case law can be found (SCHR, 2015).

One example of case law we can highlight is the judgement of the labour court of Lausanne of 10 October 2005, when a nursing home refused to hire a black woman because of her skin colour. In virtue of article 328 CO on the protection of the personality and article 8 Cst., the labour court qualified the nursing home's attitude as serious breach to personality and sentenced it to pay 5000 Swiss francs to the plaintiff. The labour court of Zurich also sentenced a cleaning company to pay 5000 francs to a Swiss woman with origins in Macedonia. The cleaning company stated in an email that it refused to hire persons with Balkan origins. The articles invoked by the plaintiff were art. 28 of the Civil Code against infringement and art.328 CO on the protection of the personality (SCHR, 2015).

Regarding discrimination based on sex in the labour domain, special protection is provided by the Federal Act on Equality between Women and Men of 24 March 1995 (Leg). The latter prohibits all forms of discrimination (art. 3 Leg). Discrimination is defined as any kind of behaviour based on gender that undermines the dignity of the person at her/his place of work (art. 4 Leg). Expressly excluded from these are appropriate measures aimed at promoting real equality between women and men (art. 3 para.3 Leg). Victims of discrimination within the meaning of art. 4 Leg may take recourse to the courts or an administrative authority (art. 5 Leg) (ILO national labour law profile: The Swiss Confederation, 2018).

³²⁰ Swiss Centre of Expertise in Human Rights. 'Mise en Œuvre des droits humains en Suisse. Un état des lieux dans le domaine de la migration'. 2013

Swiss legislation provides special protection against discrimination to women through the Leg and to people with disabilities through the Federal Act on equal rights for people with disabilities from 2002 (Lhand). But special protection is missing for other disadvantaged groups, such as people with foreign origins. Although Swiss private law opens certain possibilities to fight against discrimination, particularly through contracts law, a global juridical framework is still missing. Contracting parties often ignore which are their obligations and rights as well as the restrictions in force within the freedom of contract (SCHR, 2013).

8.6.10 Legal instruments to fight informal employment and workers' exploitation

The FNA includes criminal provisions and administrative penalties for cases where its legal provisions are not respected. Thus, it gives provision to fight gainful employment without authorization (art. 115 FNA), encouraging unlawful entry, exit or an unlawful period of stay (art. 116 FNA), and to combat cases of employment of foreign nationals without a permit (art. 117 FNA). Art. 120 FNA also provides penalties for further offences such as changing jobs without the required permit or changing from salaried to self-employment, moving the place of residence to another canton without the required permit.

In addition, the Federal Act on undeclared work of 2005 (LTN) and the ordinance on undeclared work (OTN) provide measures to ensure good respect of the duties on announcement and authorizations linked to work in the framework of social insurances legislation, foreign nationals legislation and taxes legislation.

Undocumented workers have, however, economic rights. Contracts concluded even orally are valid and bind the two parties. They are entitled to claim their rights to salary, customary conditions of the sector, holidays, resting time and salary in cases of medical or accident leave such as legal workers do. Thus, the fear of expulsion often prevents undocumented workers to legally claim their rights (Manuel droit Suisse des migrations, 2015).

Finally, regarding exploitation, art. 10 CO and art. 28 CC, both quoted previously when discussing anti-discrimination legal basis, can be used. Thus, according to art. 10 CO, a contract shall not be contrary to the public order, morals, and rights attached to the person. It is also forbidden to take advantage of the weakest contracting parties, exploiting its distress situation or lack of experience. According to art. 28 CC any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement. An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law (art. 28 CC).

8.7 Conclusion

Over the last 50 years, the access of foreign nationals to the Swiss territory was mainly based on economic interests. Yet, today, third country nationals migrating to the country for family reunification, education or asylum application reasons represent, altogether, an important part of the immigrating population. In this context, adapting legislation to ensure better integration into the labour market of migrants, refugees and asylum-seekers is a challenge that the Swiss authorities have mostly begun to face in the last years, particularly through the political discussions of the implementation of art. 121a Cst. Different

amendments and revisions of the foreigners and asylum legislation reflect the willingness of the authorities to foster the integration of certain groups of immigrants into the labour market. This is represented by adapting the laws and policies concerning migrants who are likely to stay and that entail a cost to society in case of unemployment. Some of those amendments have already entered into force, others will come into effect soon. Through the amendment process, certain administrative barriers and procedures that have been removed or simplified that should facilitate the integration of immigrants and foreigners under the asylum framework into the Swiss labour market. For example: the abolishment of the 10% special tax that working asylum-seekers and temporary admitted foreigners without asylum recognition were required to pay and the replacement of the employer's request by a simple announcement. Although these changes will probably contribute to tackling existing challenges, certain administrative barriers raised by the legislation remaining alongside new barriers currently being raised.

For example, third country nationals still face a range of difficulties in terms of obtaining a job and integrating into the Swiss labour market on a longer-term basis. This stands, even though they are legally entitled to engage in gainful employment independently of whether they administratively immigrated for gainful employment or not.

The unstable character of certain statuses, such as those illustrated in the most extreme form by the temporary admitted status, remains an important obstacle. On this point, it is important to note that there is no political will to change the name of the legal status of 'temporarily admitted persons'. Other statuses granting short stay permits that need to be renewed, even if more stable, can also have a dissuasive effect on potential employers. Next to that, time-limited authorizations have an impact on personal investment in a long-term professional project from the foreign national's side.

In light of the above, the Swiss legislation allows more stability to the foreign national only when he/she is granted a long-term residence permit (C permit). But, as seen previously, this is reserved to foreign nationals that have lived in the country for more than 10 years (or five years under certain conditions) and that fulfil a range of criteria, such as not being dependent on social assistance and being well integrated (art. 34 FNA).

Depending on the type of permit, geographical and professional mobility can be allowed or not. This impact on the professional integration of foreign nationals. Since permits are linked to the cantons, third-country nationals with short stay permits, willing to change their canton of residence, must request a new permit to the new canton (art. 37 FNA). This can be seen as an obstacle when looking for new work positions in other cantons. Foreign nationals who have been granted a short stay permit with gainful employment can take advantage of professional mobility only under certain conditions. In those cases, as permits are linked to employment, beneficiaries might be afraid of being dismissed.

In general terms, the fact that in many cases the employer must still submit a request to the cantonal authorities for the authorization of foreigners with certain status, and the administrative charge resulting from it, can also have a dissuasive effect for him/her. Although more and more employers are now used to submitting those requests and, even if in the cases of recognized refugees and provisionally admitted persons for which requests will be replaced by a simple announcement as of 1 January 2019, this represents another barrier to overcome.

The recognition of qualifications also continues to be an obstacle to overcome, as shown by the over-qualification rates. Skills acquired in third-countries are often considered as lower. This makes granting an equivalence diploma more difficult. Additionally, for persons under the asylum framework who had to flee their countries, it is often difficult to obtain the documents that certify their diploma or experience (Sandoz, 2016). As stated by the FCM (2016), besides the diploma and professional certificates, informal skills need also to be considered. It is, therefore, important to validate and assess practical skills to complete the current system of diploma recognition (Release FCM, 2016).

The review of the legal framework on immigration sheds light on the key role of integration, not only when discussing the potential of professional integration but also as a condition in cases of granting residence permit or extensions. This is particularly clearly shown by the 'promoting and requiring' concept of integration. Even though the integration legislation is in constant evolution, a more accurate definition of the concept and its objectives could help the actual integration of foreign third-country nationals and thereby, their integration into the labour market. The reform of the foreigners' legislation provides already more specific criteria to assess the integration required for permits to be granted. As a result, one of the main criteria to assess the integration as a requirement for being granted authorizations or extensions continues to be the knowledge of the local language and the new provisions of the FNA provide more details on the levels required. However, the fact that a foreign national does not have the minimum level of knowledge of the local language is not a sufficient argument to prove the non-integration of this person (OSAR, 2018). Indeed, when considering other factors, a person can be integrated but not have the sufficient level of local language requested.³²¹ On another note, even though the legal framework for the promotion of integration has also been developed, certain groups of population are not entitled to benefit from integration programs from their first day of presence in Switzerland as it could be the case. Art.4 para. 2 FNA, specifies that integration is aimed only at "foreign nationals who are lawful residents in Switzerland for the longer term". This provision excludes, therefore, asylum-seekers and irregular migrants. This is the case even though the stability of the protection rate shows that significant numbers of asylum seekers are likely to stay in Switzerland (Kurt, 2017). Generally, as pointed out by the Federal Commission of Migration and the civil society, integration should be considered as a "dynamic and reciprocal process that requires the involvement of the foreign population and its hosting society. Thus, the whole society should be responsible for the foreign nationals' integration and this cannot be reduced to a simple measuring instrument" (OSAR, 2018 p.4).

The four-year programme based on the principle of Swiss apprenticeship, launched in 2015 for the 2018-2021 period, is among one of the best practices that could be highlighted to enable foreign citizens linked to the asylum domain to access to the labour market. The aim of this programme is to ensure that recognized refugees and provisionally admitted persons

³²¹Organisation Suisse d'aide aux réfugiés (OSAR), prise de position sur la modification de l'ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative (nOASA) et révision totale de l'ordonnance sur l'intégration des étrangers (nOIE), 9 Mars 2018.

who are motivated and have the necessary abilities are trained to acquire language and technical knowledge at an early stage and to become familiar with the Swiss labour market through practical training. The programme also focuses on early language promotion for asylum seekers who have prospects for a sustainable stay in Switzerland. These applicants will be able to use the length of the asylum procedure to learn the local language as quickly and efficiently as possible.³²²

Finally, regarding the working conditions of migrants, refugees and asylum-seekers, the legislation provides for the same rights to foreign nationals as it does for nationals, once they are entitled to work. However, a general juridical framework to protect persons with an immigration background from discrimination is still missing. Despite the fact that Switzerland has ratified the discrimination (employment and occupation) convention, 1958 (N°111), the country does not have a general juridical guarantee to give access to the labour market, contrary to EU member states that modified their legislation in accordance with the 2000/43 directive, introducing global protection against discrimination (SCHR, 2013).³²³

Regarding other international conventions, Switzerland has not ratified to this day the conventions on working migrants 97/1949 and 143/1975. The country has neither signed nor ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) adopted by the UN General Assembly in 1990. Interestingly, not many countries of the OCDE have ratified the CMW. According to Vucetic (2007), the low level of ratification of the CMW by the OCDE countries is due to its complexity. It involves many different domains such as labour and social assistance law as well as education rights and other right demanding a high degree of coordination. Other reasons are the lack of escape clauses for the countries and the fact that some countries don't want to openly give access to certain rights to undocumented workers.

Among the conventions that Switzerland has ratified to this day, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182) and Equal Remuneration Convention, 1951 (No. 100).

³²² More information on the « pre-apprenticeship programme » in <https://www.sem.admin.ch/dam/data/sem/integration/ausschreibungen/2018-integrvorlehre/fs-invol-f.pdf>

³²³ Swiss Centre of Expertise in Human Rights (SCHR) 2013, Mise en œuvre des droits humains en Suisse : Un état des lieux dans le domaine des droits de l'homme et économie, 86.

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Glossary

AFMP	Agreement of the Free Movement of Persons
AsyIA	Asylum Act
EFTA	European Free Trade Association
EU	European Union
FCM	Federal Commission for Migration
FNA	Federal Act on Foreign Nationals
FSO	Federal Statistical Office
MRAAs	Migrants, Refugees and Asylum Applicants
NEM	Non entrée en matière
SEM	State Secretariat for Migration

Annexes

Annex I - Overview of the legal framework on migration, asylum and international protection

Legislation Title (original and English) and number	Date	Type of Law (i.e. legislative act, regulation, etc.)	Object	Link/PDF
Constitution fédérale de la Confédération suisse (Cst.)- Federal Constitution of the Swiss Confederation, RS 101	18 April 1999	Constitution	Organization of the State and its organs, fixes their skills and the ways of functioning, defines the fundamental rights of the citizens.	https://www.admin.ch/opc/en/consolidated-compilation/19995395/index.html
Loi fédérale sur les étrangers (LEtr)- Federal Act on Foreign Nationals (FNA), RS 142.20	16 December 2005	Legislative Act	<ul style="list-style-type: none"> - Entry and exit, residence and family reunification of foreign nationals in Switzerland; - The encouraging of their integration. 	https://www.admin.ch/opc/en/consolidated-compilation/20020232/index.html
Loi sur l'asile (LAsi)- Asylum Act, (AsylA) RS 142.31	26 June 1998	Legislative Act	<ul style="list-style-type: none"> - The granting of asylum and the legal status of refugees in Switzerland; - The temporary protection of persons in need of protection in Switzerland and their return. 	https://www.admin.ch/opc/en/consolidated-compilation/19995092/index.html

<p>Accord entre la Confédération suisse, d'une part, et la Communauté européenne et ses Etats membres, d'autre part, sur la libre circulation des personnes (ALCP) - Agreement between the Swiss Confederation, of the one part, and the European Community and its Member States, of the other part, on the free movement of persons (AFMP)</p> <p>RS 0.142.112.681</p>	28 June 1999	Agreement	<ul style="list-style-type: none"> - Grant a right of entry, residence, access to a salaried economic activity, establishment as an independent and the right to remain in the territory of the contracting parties; - Facilitate the provision of services in the territory of the Contracting Parties, in particular to liberalize the provision of short-term services; - Grant a right of entry and residence in the territory of the Contracting Parties to persons without economic activity in the host country; - Grant the same living, employment and working conditions as those granted to nationals. 	https://www.admin.ch/opc/fr/classified-compilation/19994648/index.html
<p>Accord entre la Confédération suisse, l'Union européenne et la Communauté européenne sur l'association de la Confédération suisse à la mise en oeuvre, à l'application et au développement de l'acquis de Schengen –Agreement between the Swiss Confederation, the European Union and the European Community on the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis.</p>	26 October 2004	International Agreement	The elimination of border controls on internal borders of Schengen states.	https://www.admin.ch/opc/fr/classified-compilation/20042363/index.html

(Schengen agreements) RS 0.362.31				
Accord entre la Confédération suisse et la Communauté européenne relatif aux critères et aux mécanismes permettant de déterminer l'Etat responsable de l'examen d'une demande d'asile introduite dans un Etat membre ou en Suisse 0.142.392.68	26 October 2004	International agreement	Dublin agreements – on responsibility of the states for the examination of an application for asylum.	https://www.admin.ch/opc/fr/classified-compilation/20042082/index.html
Ordinances ruling the Federal Act on Foreign Nationals (FNA)				
Ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative (OASA) 142.201	24 October 2007	Ordinance	Admission, residence, gainful employment of foreign nationals	https://www.admin.ch/opc/fr/classified-compilation/20070993/index.html
Ordonnance du DFJP relative aux autorisations soumises à la procédure d'approbation et aux décisions préalables dans le domaine du droit des étrangers – Ordinance o authorizations subject to the approval procedure and prior decisions	13 August 2015	Ordinance	Authorizations subject to the approval procedure and prior decisions in the field of the foreigners law	https://www.admin.ch/opc/fr/classified-compilation/20151526/index.html

in the field of the foreigners law 142.201.1				
Ordonnance sur l'introduction de la libre circulation des personnes, OLCP) 142.203	22 May 2002	Ordinance	Rules the progressive introduction of the AFMP	https://www.admin.ch/opc/fr/classified-compilation/20021010/index.html
Ordonnance sur l'entrée et l'octroi de visas (OEV) – Ordinance on the entry and visas granting 142.203	22 October 2008	Ordinance	Entry in to the territory and visas granting	https://www.admin.ch/opc/fr/classified-compilation/20081126/index.html
Ordonnance sur l'intégration des étrangers (OIE) – Ordinance on foreigners integration 142.205	24 October 2007	Ordinance	Rules the foreign citizens integration	https://www.admin.ch/opc/fr/classified-compilation/20070995/index.html
Ordonnance sur les émoluments perçus en application de la loi sur les étrangers (Tarif des émoluments LEtr, Oem-LEtr) Ordinance on the perceived fees in implementation of the foreigners Act. 142.209	24 October 2007	Ordinance	Rules the fees for administrative procedures linked to Foreigners Act.	https://www.admin.ch/opc/fr/classified-compilation/20070987/index.html

Ordonnance du 11 août 1999 sur l'exécution du renvoi et de l'expulsion d'étrangers (OERE) Ordonance on foreign citizens removals. 142.281.3	11 August 1999	Ordinance	Foreign citizens removal and expulsions	https://www.admin.ch/opc/fr/classified-compilation/19994789/index.html
Ordinances ruling the Asylum Act (AsylA)				
Ordonnance 1 sur l'asile relative à la procédure (Ordonnance 1 sur l'asile, OA 1) Ordonance 1 on the asylum procedure 142.311	11 August 1999	Ordinance	Rules the asylum procedure	https://www.admin.ch/opc/fr/classified-compilation/19994776/index.html
Ordonnance du DFJP relative à l'exploitation des logements de la Confédération dans le domaine de l'asile – Ordonance on use of housing belonging to the Confederation, on the asylum domain. 142.311.23	24 November 2007	Ordinance	Use for Asylum domain of housing belonging to the Confederation	https://www.admin.ch/opc/fr/classified-compilation/20072202/index.html

Ordonnance 2 sur l'asile relative au financement (Ordonnance 2 sur l'asile, OA 2)- Ordonance 2 on asylum related to funding 142.312	11 August 1999	Ordonance	Asylum process funding	https://www.admin.ch/opc/fr/classified-compilation/19994777/index.html
Ordonnance 3 du 11 août 1999 sur l'asile relative au traitement de données personnelles (Ordonnance 3 sur l'asile, OA 3)- Ordonance 3 on Personal Data Management 142.314	11 August 1999	Ordonance	Personal Data management in the asylum domain	https://www.admin.ch/opc/fr/classified-compilation/19994786/index.html
Ordonnance sur l'approbation des plans en matière d'asile (OAPA)- Ordonance on the approval of asylum maps- 142.316	25 October 2017	Ordonance	Rule the approval procedure of the plans of the facilities to be constructed for housing and procedures in the asylum domain	https://www.admin.ch/opc/fr/classified-compilation/20160702/index.html

<p>Ordonnance sur la réalisation de phases de test relatives aux mesures d'accélération dans le domaine de l'asile (Ordonnance sur les phases de test, OTest)-</p> <p>Ordonance on the implementation of test phases on acceleration measures</p> <p>142.318.1</p>	4 September 2013	Ordonance	Rule the implementation of phases to test the acceleration measures for the asylum procedure.	https://www.admin.ch/opc/fr/classified-compilation/20131360/index.html
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Annex II. List of institutions involved in the migration governance

Institution	Tier of government	Type of institution	Area of competence with regard to MRAAs	Link
Federal Council	Federal	Executive head of government	Regulation of entry, exit, admission, residence. Sets the quota	https://www.admin.ch/gov/en/start/federal-council.html
Parliament, Federal Assembly (Council of states and National Council)	Federal	Legislative authority	Takes decisions on laws proposals	https://www.parlament.ch/en
State Secretariat for Migration (SEM)	Federal	Implementing authority	In charge of migration governance. Ensures monitoring and implementation of legislation related to foreign nationals, delivers decisions on permit grantings, in charge of the asylum process, develops border control, contributes to the assessment of the Macroeconomic interests of the country linked to migration, develops basis for decision-making amongst other duties.	https://www.sem.admin.ch/sem/fr/home.html
Federal administrative court (FAC) TAF	Federal	Judiciary institution	Judges complaints against decisions rendered by the Swiss federal and cantonal authorities.	https://www.bvger.ch/bvger/fr/home.html
Federal Supreme Court TF	Federal	Judiciary institution	As the final arbiter on disputes, it judges complaints against lower levels decisions.	https://www.bger.ch/fr/index.htm

Federal Commission on Migration (FCM)	Federal	Extra parliamentary commission	Analyses and provides advice to the legislative power on migration related matters.	https://www.ekm.admin.ch/ekm/fr/home.html
Cantonal Services of Migration	Cantonal		In charge of all matters related to the presence of foreign nationals in the Canton and the cantonal decisions on authorisations granting. In certain cantons they also screen the application for gainful employment.	https://www.sem.admin.ch/sem/fr/home/ueberuns/kontakt/kantonale_behoerden/Adressen_Meldeverfahren.html
Cantonal Employment services	Cantonal		Receive and screen the applications for gainful employment permits and makes a preliminary decision.	https://www.sem.admin.ch/sem/fr/home/ueberuns/kontakt/kantonale_behoerden/adressen_kantone_und.html
Cantonal Services in charge of integration	Cantonal	Executive cantonal service	Develop and implement integration measures at the cantonal level.	https://www.sem.admin.ch/sem/fr/home/ueberuns/kontakt/kantonale_behoerden/kantonale_ansprechstellen.html

Annex III - Overview of the legal framework on labour and anti- discriminatory law

Legislation Title (original and English) and Number	Date	Type of law (i.e. legislative act, regulation, etc.)	Object	Link/PDF
Loi fédérale concernant des mesures en matière de lutte contre le travail au noir (LTN)- Federal Law on Measures to Combat Undeclared Work, RS 822.41	17 June 2005	Legislative Act	<ul style="list-style-type: none"> - Fight against moonlighting; - Introduce administrative simplifications as well as mechanisms of control and repression. 	https://www.admin.ch/opc/fr/classified-compilation/20020224/index.html
Loi fédérale sur l'égalité entre femmes et hommes (LEg) - Federal Act on Gender Equality, RS 151.1	24 March 1995	Legislative Act	Furthering true equality between women and men.	https://www.admin.ch/opc/en/classified-compilation/19950082/index.html
Loi fédérale sur l'élimination des inégalités frappant les personnes handicapées (LHand)- Federal Act on the Elimination of Inequalities for Persons with Disabilities, RS 151.3	13 December 2002	Legislative Act	Prevent, reduce or eliminate the inequities that affect people with disabilities.	https://www.admin.ch/opc/fr/classified-compilation/20002658/index.html
Code Civil (CC)- Swiss Civil	10 December	Collection of Laws	Determine the status of Swiss nationals, property	https://www.admin.ch/opc/en/classified-compilation/20002658/index.html

Code, RS 21	1907		and the relations between private persons.	consolidated-Compilation/19070042/index.html
Code des obligations (CO)- Federal Act on the Amendment of the Swiss Civil Code, RS 220	30 March 1911	Collection of Laws	- Regulate the obligations in Swiss private law, resulting mainly from the contract and civil liability; Company law.	https://www.admin.ch/opc/en/consolidated-Compilation/19110009/index.html
Code pénal suisse (CP)- Swiss Criminal Code, RS 311.0	21 December 1937	Collection of Laws	Determines the most serious offenses, and sets out the penalties applicable to them.	https://www.admin.ch/opc/en/consolidated-Compilation/19370083/index.html
Loi fédérale sur la formation professionnelle (LFPr)- Federal Act on Vocational and Professional Education and Training, RS 412.10	13 December 2002	Legislative Act	Ensuring an adequate number of training options within the VPET system, particularly in promising occupational and professional fields.	https://www.admin.ch/opc/en/consolidated-Compilation/20001860/index.html
Loi fédérale sur la formation continue (LFCo)- Federal Law on Continuing Education, RS 419.1	20 June 2014	Legislative Act	Strengthening lifelong learning as an integral part of lifelong learning within the Swiss training area.	https://www.admin.ch/opc/fr/classified-Compilation/20141724/index.html I
Loi fédérale sur le travail dans l'industrie, l'artisanat et le commerce (LTr)- Federal Act on Work in Industry, Handicrafts and Trade, RS 822.11	13 March 1964	Legislative Act	Protect the health of the worker from any harm attributable to the workstation.	https://www.admin.ch/opc/fr/classified-Compilation/19640049/index.html

<p>Loi fédérale sur les mesures d'accompagnement applicables aux travailleurs détachés et aux contrôles des salaires minimaux prévus par les contrats-types de travail</p> <p>(LDét)- Federal Act on Accompanying Measures for Posted Workers and Minimum Wage Controls in the Standard Work Contracts, RS 823.20</p>	8 October 1999	Legislative Act	<ul style="list-style-type: none"> - Regulates the minimum conditions of work and wages applicable to posted workers for a limited period in Switzerland by an employer domiciled or headquartered abroad; - Regulates the control of employers who employ workers in Switzerland and the penalties applicable to them in the event of non-compliance with the provisions on minimum wages provided for in the standard working contracts (CO). - Establish the joint and several liability of the contractor for the non-respect of the minimum conditions of work and wages by subcontractors. 	https://www.admin.ch/opc/fr/classified-compilation/19994599/index.html
<p>Ordonnance sur les travailleurs détachés en Suisse</p> <p>(Odét)- Ordinance on posted workers in Switzerland, RS 823.201</p>	21 May 2003	Legislative Act	Regulates working conditions of foreign workers in Switzerland	https://www.admin.ch/opc/fr/classified-compilation/20030526/index.html
<p>Ordonnance concernant des mesures en matière de lutte contre le travail au noir</p> <p>(OTN)- Ordinance on measures to fight Undeclared Casual Work, RS 822.411</p>	6 September 2006	Legislative Act	(See RS 822.41)	https://www.admin.ch/opc/fr/classified-compilation/20061830/index.html

9. United Kingdom

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– Glasgow Caledonian University

9.1 Introduction

The purpose of this report is to provide a detailed overview of the UK legal and institutional factors at the macro-level that can be regarded as decisive for explaining the effective capacity of the country to integrate migrants, refugees and asylum seekers into the labour market. By doing so, we aim to better understand the conditions within which integration policies for migrants, refugees and asylum applicants (MRAA) may take place. We begin by providing an insight into evidence concerning the migration inflows and stocks between 2014 and 2016. Next, we briefly analyse the social and cultural context of migration in the UK, firstly by looking at the history of migration and the social and political instabilities of the country. We then examine the current constitutional organisation of the British state, highlighting both the role of devolution and the importance of case law in developing MRAA integration. Furthermore, we investigate how legislation concerning migration and asylum has developed within the UK context across the decades, analyse how legislation has been translated by UK policymakers in recent years and identify the importance of the role of the third sector and local authorities in these processes. Following this, we outline key legislation concerning the integration of MRAA in European Labour markets. The report then provides a critical overview of the integration strategies (or the lack thereof) promoted at the national level, outlining the institutional challenges that affect integration. We then conclude by highlighting the possible impact that Brexit will have on an already 'hostile environment' for migration.

9.2 Statistics and data overview

In a historical period when the evidence surrounding migration has been often misused mainly for political reasons and justifying policy decisions, data on migration can provide a clear overview of the context in which legislation and policies for integration have been framed. Thus, this report begins with an overview of the numbers of migrants, refugees and asylum seekers between 2014 and 2016 in the United Kingdom. Because of the different sources of the data and the different ways by which they are collected, it is necessary to be cautious when comparing these figures and breakdowns. However, they can provide an initial overview of the migration situation in the UK in the time frame of analysis (2014-2016).

9.2.1 Arrivals of EU and NON-EU citizens: migrants flow

Long-Term International Migration (LTIM) is used to provide a broader overview of migration in the UK.³²⁴ LTIM estimates include also European Union citizens and British citizens. Data are reported by year ending³²⁵. Although, data are not reported quarterly, reporting records across the three years is helpful to provide an overview of the trends across the entire period of analysis. At the end of 2016, inflows to the UK were 589,000 people while the outflows accounted for 340,000 people. The net migration in 2016 was equivalent to a positive balance of 249,000. As shown in Figure 9.1, net migration surged from 236,000 in the year ending March 2014 to 336,000 in the year ending March 2015. After that, up to the year ending June 2016 the level of net migration remained steady with a slightly lower record in the year ending September 2015 and March 2016. However, in the second part of 2016 (from year ending July 2016 onwards), net migration decreased reaching a similar level of 2014. This coincided with the Leave campaign and the results of the Brexit referendum of the 23rd June 2016 where the British electorate voted to leave the European Union. Between 2015 and 2016 in fact, migration inflows declined by 43,000, whilst outflows increased by 40,000.

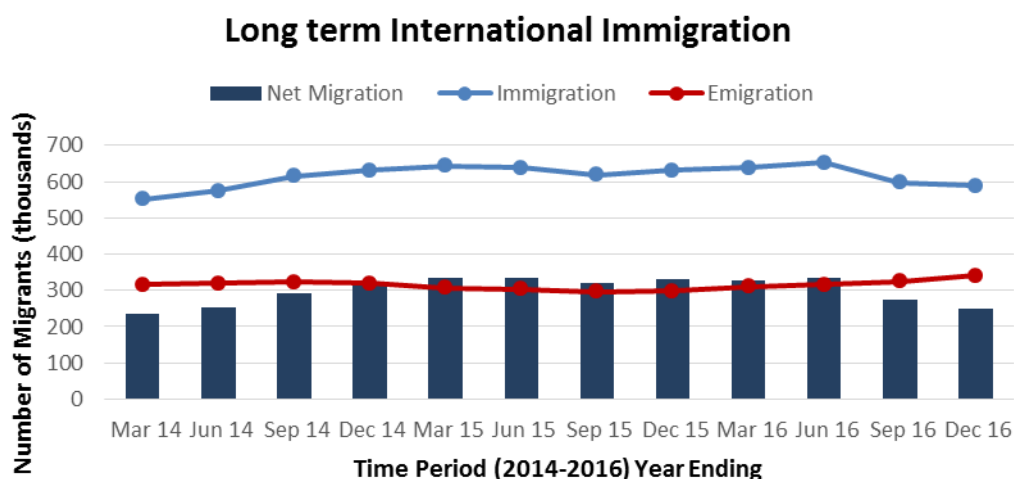


Figure 9.1 Long Term International Immigration

Source: ONS – Long-Term International Migration

Analysing the trends of net migration of EU and Non-EU citizens, up to year ending September 2016 a similar trend of inflows and outflows was recorded except for the period between September 2015 and March 2016 (Figure 9.2). In the last trimester of 2016, Non-

³²⁴ According to the ONS, “a long-term international migrant is a person who moves to another country for at least one year” (ONS, 2018, p.2). This excludes for example, tourism or short-term business-related travels and circular and seasonal migration. The primary data source for the LTIM estimates is the International Passenger Survey (IPS), which consists of face to face interviews with a sample of passengers passing through ports. LTIM estimates also include adjustments based on the Home Office data on asylum seekers, the Labour Force Survey and the Northern Ireland Statistics and Research Agency international migration estimates.

³²⁵ For example, in Figure 1, Mar-14 highlights the record of migration for the year ending March 2014 (period March 2013 to March 2014) while Jun-14 evidences migration for the year ending 2014 (June 2013 to June 2014).

EU net migration showed an increasing number of migrants in comparison with the previous trimester period, while EU net migration continued to show a decreasing rate. More research is required to understand if this evidence is consequent to the potential push factor of Brexit on European Union citizens leaving the UK. Net migration of EU citizens fell by 51,000 people between end of 2015 and end of 2016 while Non-EU citizens net migration decreased only by 14,000 people. According to Vargas-Silvas & Markaki (2017), in 2016 Non-EU citizens accounted averagely for 51% of the total Non-British inflows while in the last trimester of 2016 due to the decreasing net migration of EU Citizens, they accounted for 56% of Non-British inflows.

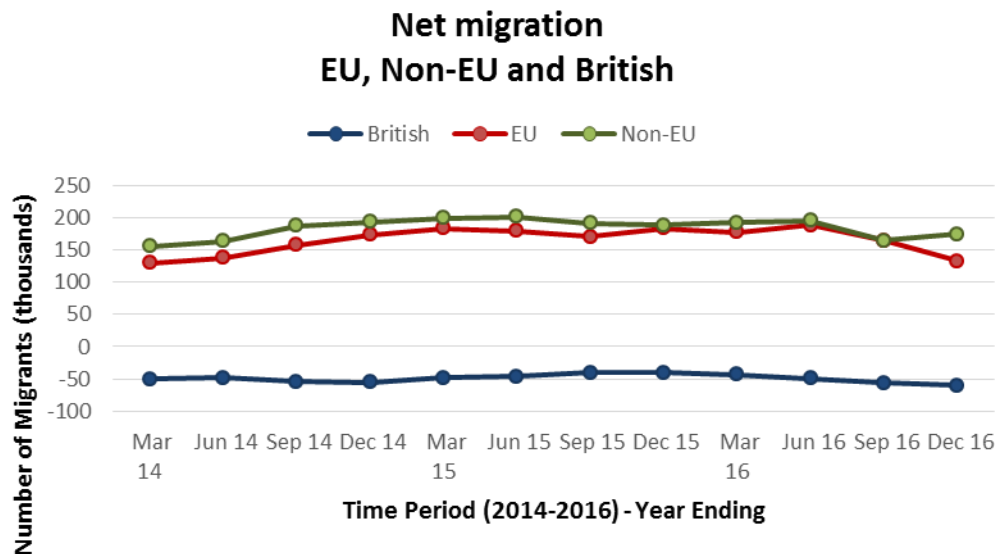


Figure 9.2 Net Migration

Source: ONS – Long-Term International Migration

As shown in Figure 9.3, East Asia and South Asia represented the main area of origin of Non-EU arrivals during the time frame analysed. In 2016, they represented respectively 22% and 23% of total Non-EU arrivals (corresponding respectively to 56,000 and 58,000 people). Across the time period, in 2015 East Asia arrivals increased and they slightly decreased during 2016. Instead South Asia arrivals decreased in 2015 and slightly increased in 2016. In 2016, compared to the arrivals of 2014, a lower number of arrivals was recorded from almost all the areas of origin, except Middle East and Central Asia.

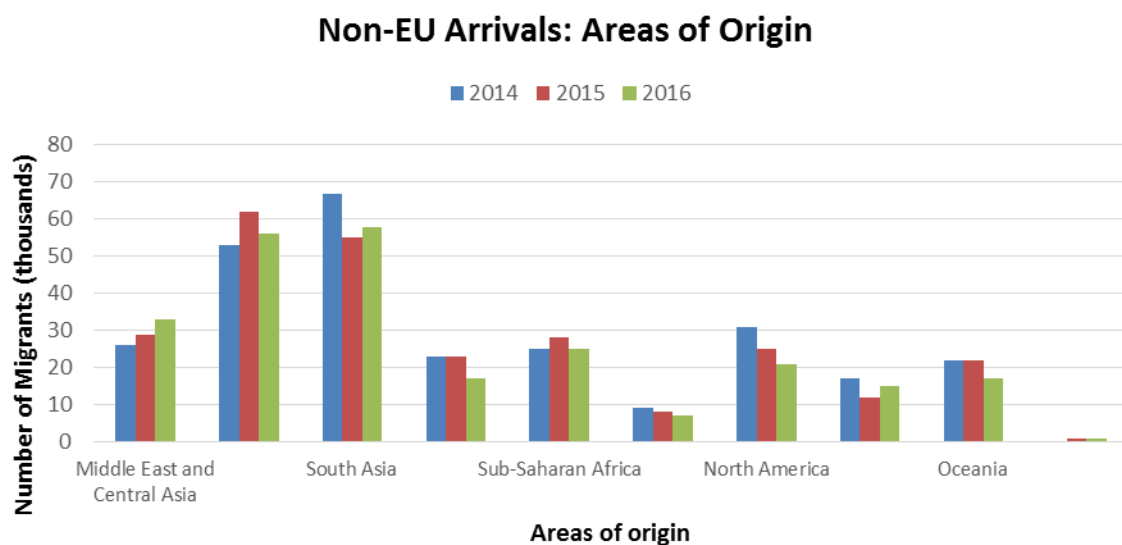


Figure 9.3 Non-EU Arrivals: Areas of Origin

Source: ONS – Long-Term International Migration

Available demographic data show that in the time frame analysed, the majority of arrivals were men, as seen in Figure 9.4. It is important to highlight that this estimate includes European Union citizens and British citizens. The differences between women and men migrants were not so remarkable in terms of percentages on total arrivals. For example, during 2016, the year with the higher difference in terms of gender balance, women represented 46% of total arrivals, while men represented 54%.

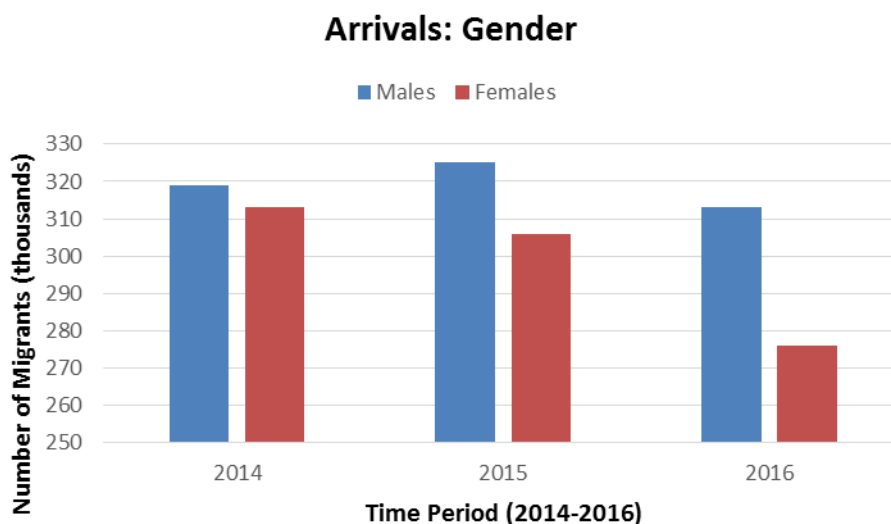


Figure 9.4 Arrivals divided by gender

Source: ONS – Long-Term International Migration

The majority of migrants arriving to the UK between 2014 and 2016 were between 25 and 44 years old, followed by people between 15 and 24 years old. In 2016, they respectively accounted for 49% (corresponding to 288,000 people) and 38% (corresponding to 221,000 people) of total arrivals. The composition in terms of age groups remained stable during the period analysed for almost all the age groups, except for migrants between 15 and 24 years old, where a decreasing trend was recorded (Figure 9.5).

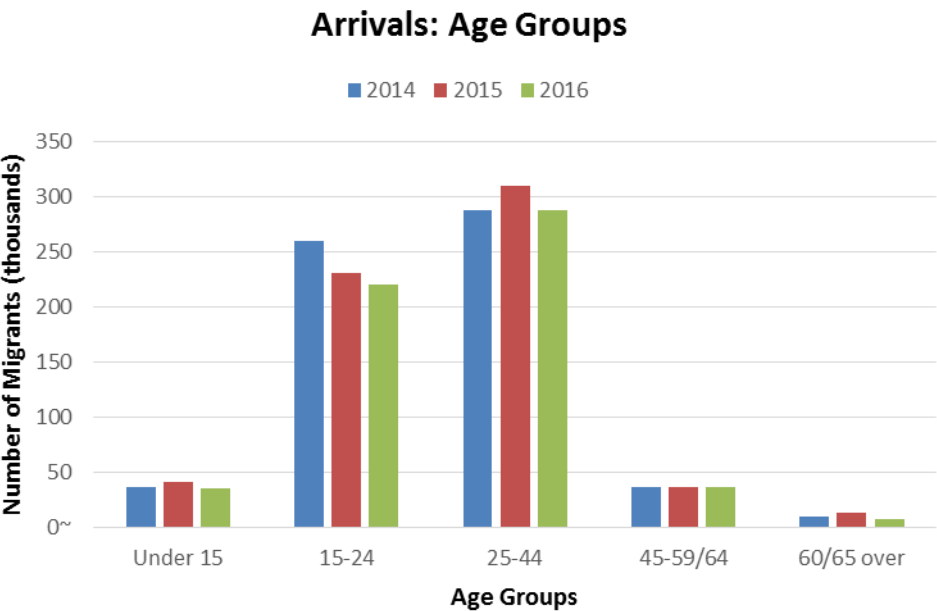


Figure 9.5 Arrivals divided by age groups

Source: ONS – Long-Term International Migration

Figure 9.6 provides an estimation of Non-EU citizens refused entry at ports deriving by Home Office records.³²⁶ Data are reported quarterly. The number of Non-EU citizens refused entry in the time period analysed varies between 6% and 7% of the total number of Non-EU arrivals. In 2016, the total number of refusals was equivalent to 17,536 cases. Analysing the trend, a surge of cases was recorded in the trimester ending in September 2014 (corresponding to 5,095 cases). An increasing number of those refused entry was also highlighted across the entire 2016, with a peak in December 2016 (4,733 cases). However, this trend did not correspond– except for the last trimester – to an increasing rate of Non-EU arrivals.

³²⁶ According to the Home Office (2018), passengers initially refused entry are calculated based upon the administrative figures emanating from the casework processes of the UK Border Force.

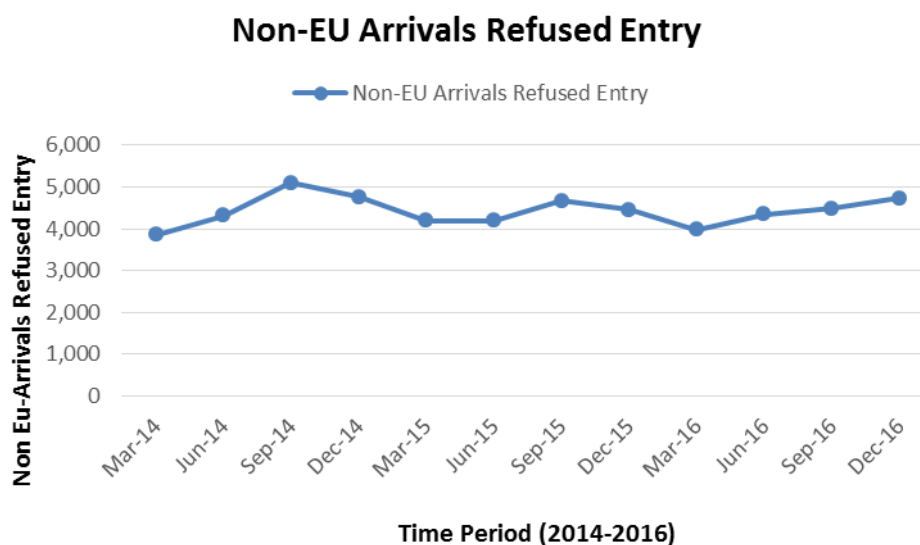


Figure 9.6 Non-EU arrivals refused entry

Source: Home Office

9.2.2 EU and Non-EU Population in the UK in 2016 (migrants stock)

According to the latest release of the Office for National Statistics³²⁷, in 2016, around 1 in 7 (14%) of the normally resident population in the UK were born abroad. As shown in Figure 9.7, in 2016, 9% of the population was born in a Non-EU country while 5% was born in EU.

UK Population: Country of birth (2016)

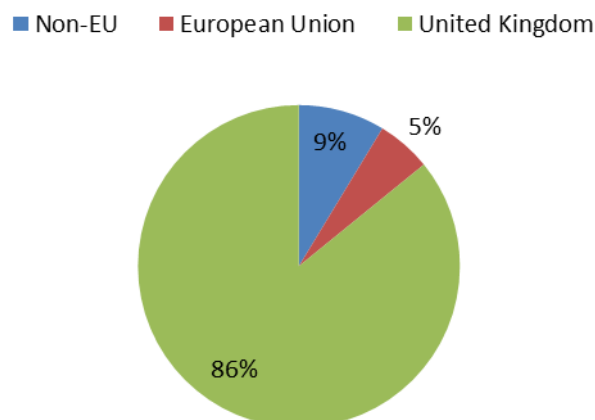


Figure 9.7 UK Population by country of birth

Source: Office for National Statistics – Annual Population Survey

³²⁷ The characteristics of the overall population of the UK are estimated by the Annual Population Survey (APS).

Available demographic data for Non-EU born people reveals that in 2016 India was the most common country of birth and nationality in the UK (Table 9.1). In 2016, the number of Indian nationals resident in the UK reached 833,000 people. Indian origin was then followed by those born in Pakistan with 534,000 residents and those whose origin was Bangladesh with 238,000 people. 52% of the Non-EU born population were women while 48% were men. While data considering the countries of birth are in line with the characteristics of Non-EU arrivals of the last three years (presented in Figure 9.3), the most recent figures on migration have recorded a higher percentage of men in comparison with the demographic characteristics of the population already resident in the UK.

Table 9.1 Country of birth UK Population

Country	Non-EU-born population by most common country of birth (thousands)
India	833
Pakistan	534
Bangladesh	238
South Africa	225
China	220

Source: Office for National Statistics – Annual Population Survey

9.2.3 Non-EU Migration: Residence permits, Asylum Applicants and Resettlement Schemes

Data are available on the typology and number of visas granted between 2014 and 2016³²⁸. Study visa represented the most common reason for Non-EU citizens migrating to the UK, followed by employment reasons. In 2016, a total of 294,397 visas related to study were granted, followed by 162,882 work visas, 38,119 family visas and 8,090 dependant visas. From 2014 to 2016, while study and family visas slightly increased, work and dependent

³²⁸ The data on those who have been refused entry at ports, have an entry clearance visa, asylum applications, asylum granted, refugees included in resettlement schemes and information on removals are based upon Home Office records. Entry clearance visa data provides an indication of the number of people who have an intention to enter the UK. They include data about the main applicants (work and study), dependants joining and the family route visa.

visas decreased respectively by 2% and 27%. Analysing the differences among quarters, as shown by Figure 9.8, study visas were, as we would expect, granted every year during the month of September (the start of the academic year). Work visa records also reveal similar patterns across the three years. A higher number of permits were usually released in the first part of the year followed by a decrease in the third and fourth quarters.

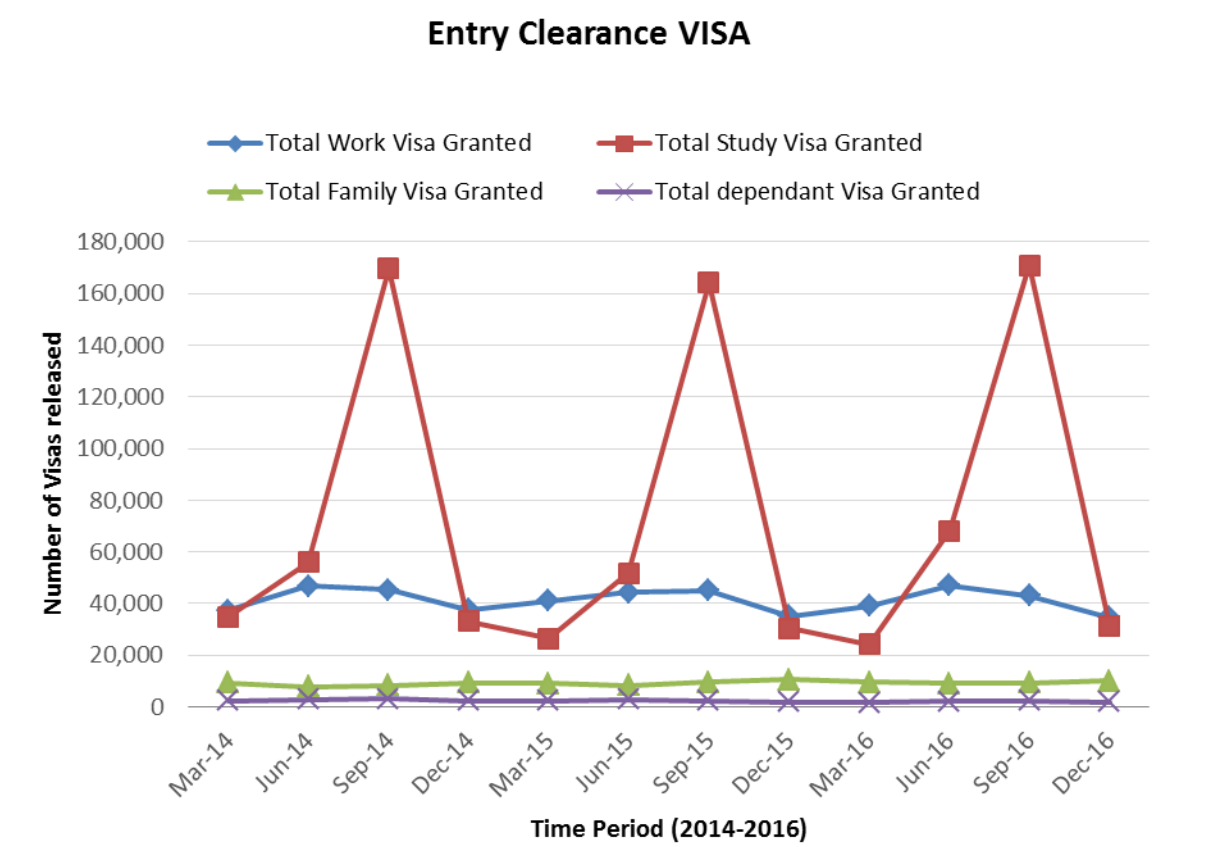


Figure 9.8 Entry Clearance Visa

Source: Home Office – Immigration Statistics

Expectedly also for data concerning residence permits, East Asia and South Asia represented the main area of migration during the time frame analysed. On average they respectively accounted across the three years for 25% and 24% of the total number of visas granted.

In the period of analysis, asylum seekers applications ranged between 10% to 15% of total net migration³²⁹. In 2016 asylum applicants were 38,517. As Figure 9.9 shows, asylum

³²⁹ Data concerning asylum applicants evidence how many individuals applied for protection as refugees at the port of entry. The Home Office counts applications, decisions (initially and on appeal), and grants of (definite) leave to remain. These include dependents that arrive with the main applicant as part of the initial application. According to (Blinder, 2017a), through this data it is possible to explore both who is going to live in the UK for a period of at least 5 years - when asylum seekers gain permission to stay as a refugee – or applicants that were

applications peaked in 2015 – and specifically in the period July-September 2015 due to the emergency of the so called Syrian refugee crisis in Europe - with a total number of 39,968 applicants. The number of applications increased by 24% between 2014 and 2015 and fell slightly (by 4%) between 2015 and 2016. Although applications increased in 2015, they remained below the levels of the early 2000s (Blinder, 2017b), a period when - as it will be fully explored – more restrictive asylum laws were promulgated.

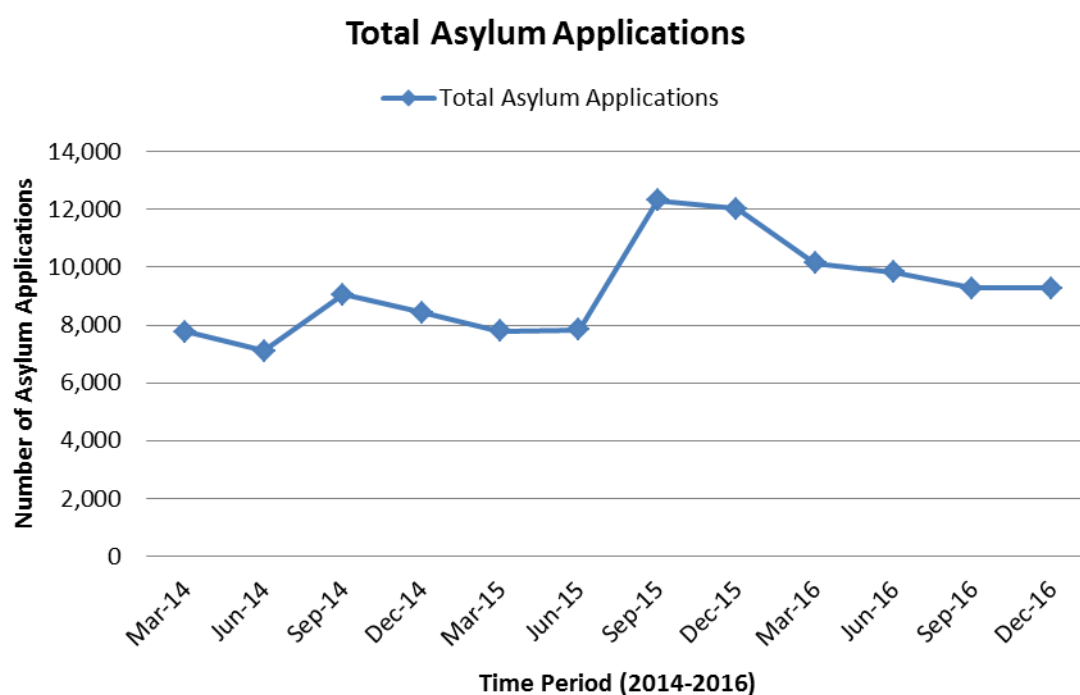


Figure 9.9 Total Asylum Application

Source: Home Office – Immigration Statistics

Available demographic data show that asylum applicants were mainly men from the Middle East, South Asia and Sub-Saharan Africa. In the time frame of analysis, they on average respectively accounted for 26%, 24% and 23% of total applications (Figure 9.10). Applications coming from the Middle East increased by 68% between 2014 and 2016, while applications from South Asia remained steady across the period and the number of applicants from Sub-Saharan Africa decreased by 21%. The nationality of asylum seekers thus varied as we would expect given the changing nature of the global political situation.

unsuccessful and have left the country. However, these data do not include irregular migrants – individuals whose application was rejected but who have not departed the country.

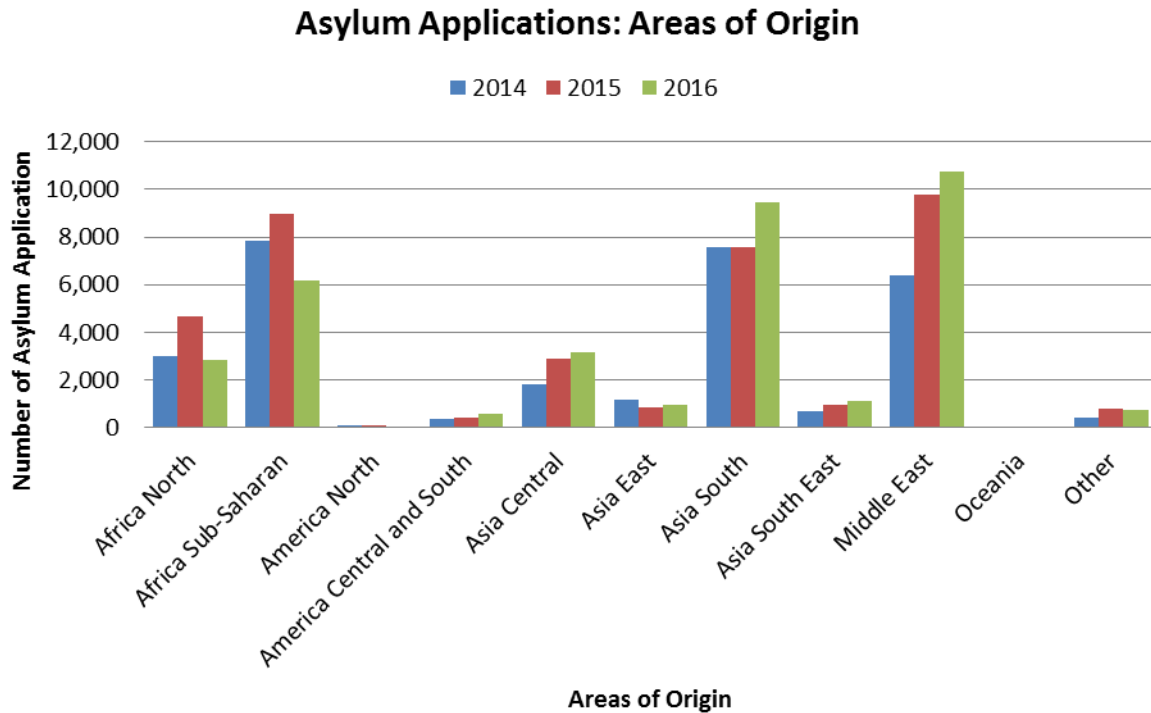


Figure 9.10 Asylum applications by areas of origin

Source: Home Office – Immigration Statistics

As we discovered earlier in Table 9.2, in 2014 and 2015 the countries with the highest proportion of asylum applicants in the UK were Pakistan and Eritrea, followed by Syria in 2014 and Iran in 2015. In contrast, applicants in 2016 came mainly from Iran, followed by Pakistan and Iraq. These figures do not, however, include Syrian people resettled through the specific resettlement schemes (Vulnerable Person Resettlement Scheme - VPRS). In terms of the demographic profile of those seeking asylum, applicants were on average 76% men and 24% women during 2014 and 2015³³⁰ and they were drawn from the younger end of the age spectrum being mainly comprised of people between 25 and 49 years old.

³³⁰ Data concerning gender and age are available only for 2014 and 2015

Table 9.2 Country of Origin of Asylum Applicants

2014		2015		2016	
Pakistan	3,976	Pakistan	3,484	Iran	4,792
Eritrea	2,902	Eritrea	2,865	Pakistan	3,717
Syria	1,911	Iran	2,717	Iraq	3,651
Iran	1,876	Afghanistan	2,508	Afghanistan	3,094

Source: Home Office – Immigration Statistics

On average, in the period of analysis, 56% of applications were refused (Figure 9.11). Across the three years, in 2016 the percentage of refusals increased going from 55% of total decisions in 2015 (corresponding to 17,201 refusals on 31,452 total applications) to almost 60% in 2016 (corresponding to 16,518 refusals on 27,870 total applications) (Figure 9.11). This was mainly due to the decreasing numbers of people granted asylum, while the number of withdrawn application remained steady across the three years. However, according to Blinder (2017b), the majority of these initial refusals were appealed. A revised share of asylum applications based on the results of the appeal showed that on the total people that applied for asylum in 2015, 48% were granted some form of protection by May 2016, while 41% had been refused protection. For 12% of people, the decision is still unknown.

Final Decisions on Applications

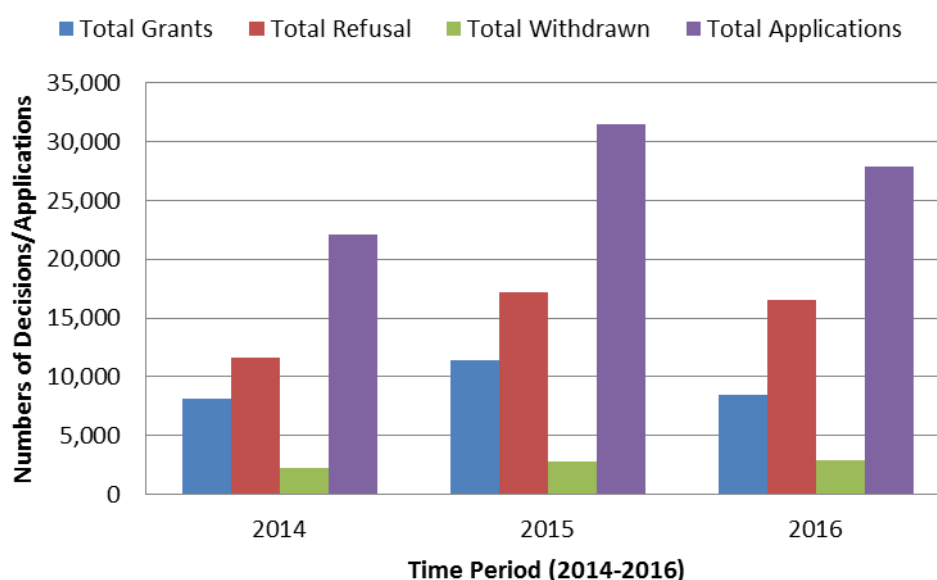


Figure 9.11 Final Decision on Applications

Source: Home Office – Immigration Statistics

Three resettlement schemes were provided by the UK government in the period of analysis: the Gateway Protection Resettlement programme, the Mandate Scheme and the Vulnerable

Persons Resettlement Scheme.³³¹ People that can apply to these schemes are identified by the United Nations and brought directly to the UK (after a process of control and evaluation that will be explored below). As shown in Figure 9.12, the Vulnerable Resettlement Scheme, that was launched in 2015, by the end of 2016, supported 5,706 Syrians. The other two schemes helped 2,086 people (Gateway Protection Programme) and 40 people (Mandate).

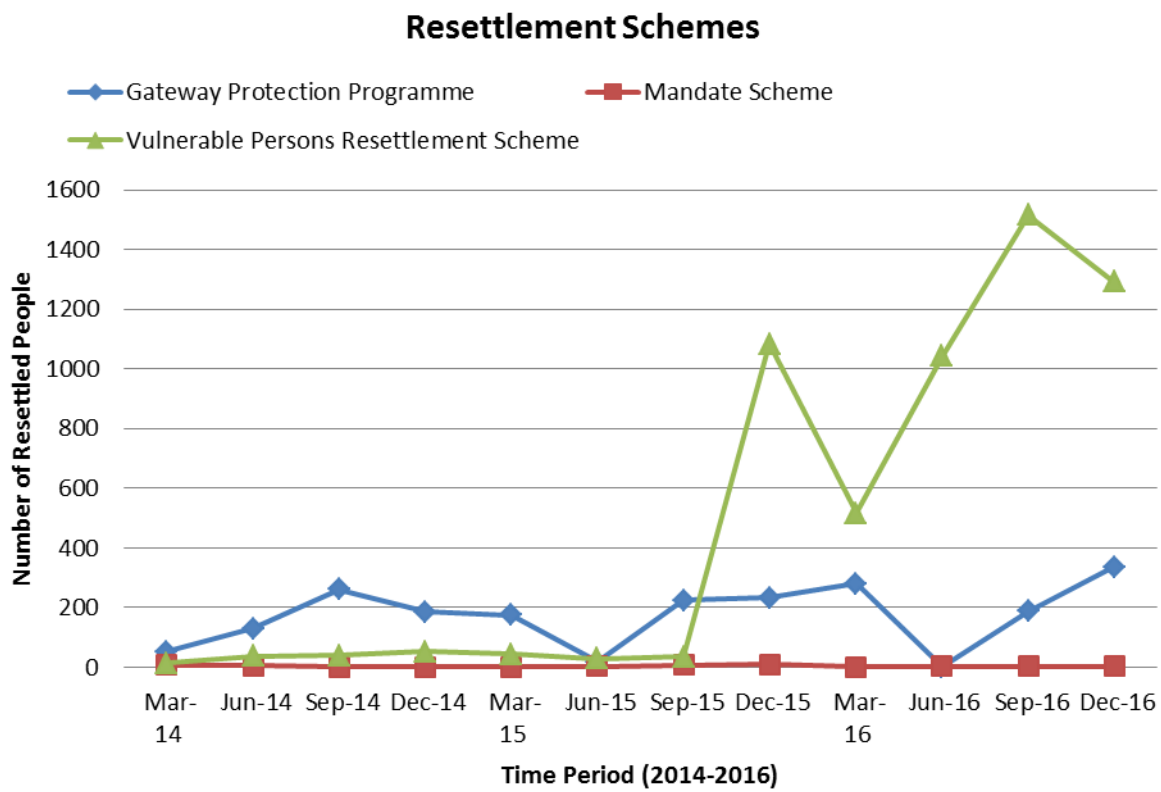


Figure 9.12 Resettlement Schemes Source: Home Office – Immigration Statistics

In contrast to the programmes designed and delivered to welcome refugees, three main programs of removals are recorded by the Home Office³³²: enforced returns, voluntary returns and total refused entry at port with subsequent departure. In 2016, a total number of 53,790 people left the UK as consequences of these three schemes. Between 2014 and 2015, the total number of returns increased by 6% while it decreased by 10% between 2015 and 2016. As shown in Figure 9.13, in 2016, 22% of people (corresponding to 12,193 people) left the country via enforced removal. Meanwhile, 45% (corresponding to 24,202

³³¹ Data about resettled refugees provide an overview of the people that have been identified outside of the country and resettled in the UK with the help of the UK government and the United Nations.
³³² Considering the data about removals according to the Home Office three main categories are reported: deportation which include people and their dependants who are considered dangerous to the public good and for this are expelled; administrative removals which include people who were irregular in the country; or voluntary departures which include people who voluntary have left the country.

people) departed voluntary and 32% (corresponding to 17,395 people) departed after being refused entry. Data shows that enforced removals declined by 15% between 2014 and 2016 and voluntary departures -after a peak in 2015 - also decreased by 6%.

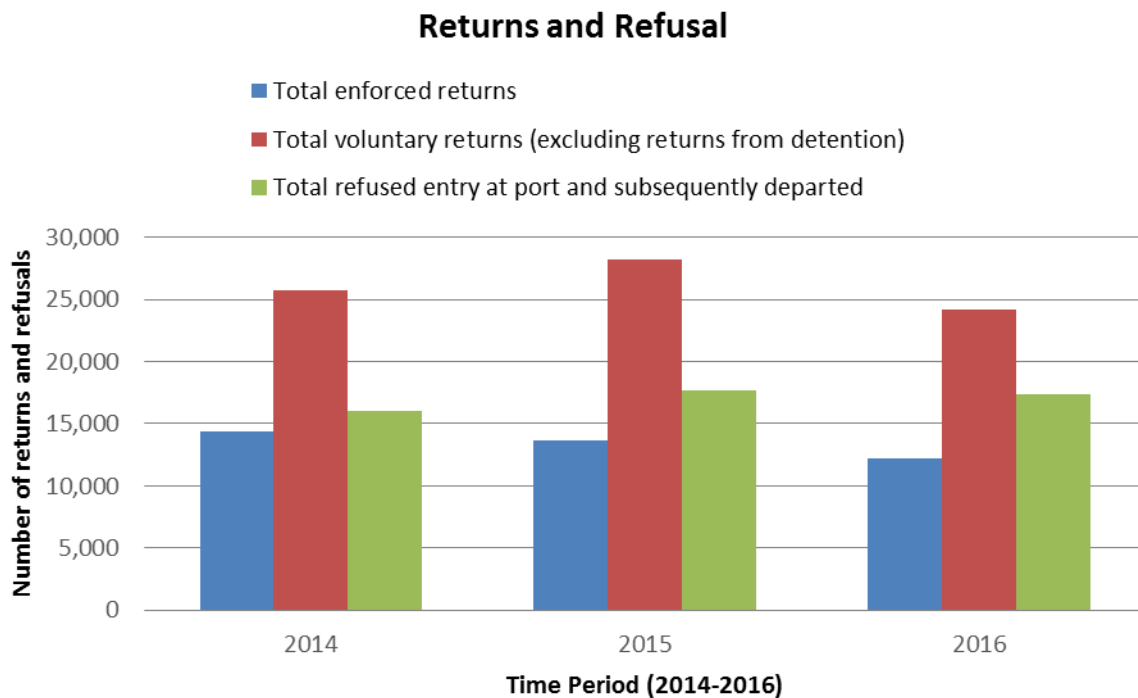


Figure 9.13 Returns and Refusals

Source: Home Office – Immigration Statistics

9.2.4 What the evidence shows

Few observations can be drawn from this brief overview of the available data. First, in the period 2014-2016, Brexit provided the context for EU migration. In 2016, a decreasing inflow and increasing outflow of EU migrants were recorded while Non-EU migration remained steady. This affected the net migration figures that decreased and returned to the levels evident in 2014.

Second, the demographic characteristics of long term migration remained similar across the three years; while the demographic characteristics of long term immigration in terms of areas of origin and age groups presented similar results to household population characteristics, new arrivals presented a higher percentage of men in comparison with the resident population; this may be related to the demographic characteristics of asylum applicants which recorded a particularly high percentage of men.

Third, the Non-EU population mainly came to the UK to spend a study period abroad, while a much lower number of people obtained work visa permits to enter the UK; although the attractiveness of the UK as a location for studying abroad is well established, questions about the accessibility of labour markets for Non-EU people can be raised.

Finally, asylum applications peaked during 2015, due to the political and global situation, namely the so called Syrian refugee crisis; however, the extremely low number of people resettled through the three UK Government schemes and the high number of refusals (in comparison with asylum applications) raises questions about the extent of the commitment of the UK Government to fully participate in efforts to welcome refugees. Although the number of enforced removals and voluntary departures declined in the period analysed, those Non-EU arrivals refused entry at port and the percentage of refusals on asylum applications registered a steady increase. This could be one of the potential consequences of policies enacted in the last few decades, culminating more recently in the creation of a hostile environment in the UK for migrants, refugees and asylum seekers as explained in the sequent section.

9.3 The socio-economic, political and cultural context

Any analysis of the legal framework concerning the integration of migrants, refugees and asylum seekers should not be isolated from the socio-economic, political and cultural context of a country. An overview of the history of migration alongside a brief analysis of where migrants are settled, and a brief outline of the UK socio-economic, political and cultural context are therefore the focus of this section of our report.

9.3.1 Brief migration history

Although there have always been episodes of immigration and emigration to Britain (see for example the Protestant diaspora in 14th and 15th centuries and the Great Migration between 1870 and 1913), three different phases that can be of interest for this report can be distinguished: the arrival of colonial migrants and their families (1948-1962), the increasing rate of EU immigration after the establishment of free movement from EU countries and the brief spike in asylum seekers (from 2000s) (Geddes & Scholten, 2016; Hansen, 2003). Most probably, today we are facing a fourth phase characterised by the outflow of EU migrants, which is taking place in the context of the decision by the UK electorate to vote to leave the European Union, and the decreasing numbers of asylum seekers (and migrants) living in the UK who are navigating a hostile environment.

In 1948, the British Government adopted legislation (in the form of the British Nationality Act 1948) that provided that every person who was a citizen of the UK and Colonies received by virtue the status of a British subject and was entitled to legal, social and political rights. Colonial migrants were used to feed the post-war boom while being employed in the growing industrial and public sectors (Geddes & Scholten, 2016; Hansen, 2003). After 15 years of colonial migration, moves towards greater restriction emerged in the political agenda as a result of an increasing tension within civil society, the rise of a more populist Conservative Party and the lack of public support for the Labour Party in opposing the introduction of more restrictive legislation. Between 1962 and 1970, citizens of Commonwealth countries that had previously been welcomed as British citizens, became subject to immigration controls and

strict regulations were applied in particular to family migration. Over time, these changes were reinforced by further legislation through the British Nationality Act 1981 that steadily reduced the rights of Commonwealth citizens³³³, thus impacting upon the everyday lives of those hitherto colonial migrants who had already settled in the UK. Over the course of the 1980s and into the early 1990s issues of immigration fell down the list of priorities for policymakers in a context where the challenges of a transforming economy took centre stage. However, from the mid-1990s onwards, the issue of immigration would return to the political spotlight.

Large scale net migration, the freedom of movement that comes with EU membership (in particular the expansion from 2004 onwards), the rise of populist and anti-immigration movements in the political arena (such as UKIP) fuelling concerns in society about immigration were some of the factors that shaped the context of migration in the UK from the mid-1990s up until the present day (Geddens & Scholten, 2016). As net migration increased EU citizens became an important part of this second wave of migrants. European migration was also accompanied by an incremental increase of non-EU net migration, although non-EU migration had always been based upon stricter and controlling policies that incentivised mainly the arrival of high skilled workers, students and people from former colonies with an ancestral link to the UK. During the 2000s, issues of asylum became a central focus of migration debates and the scale of the problem of people being forced to flee their home countries is illustrated by the fact that in 2014, there were more refugees globally than any time since the Second World War (Geddens & Scholten, 2016). Strict controls and a hostile environment (as will be fully explored later in this report) towards asylum applications were implemented by the British Government since the 2000s and asylum applications, as well as the numbers of those in the end, granted leave to remain consequently remained low in comparison with other countries such as for example Germany, Italy and France (Blinder, 2017b; Eurostat, 2018). Policies focused upon controlling borders remain in place to the present day and issues relating to migration have become a permanent fixture of contemporary political campaigns in the UK, from parliamentary elections to referenda. A fourth phase of the UK migration history can be traced from 2015 onwards. The election of a new Conservative government with a clear commitment to renegotiate the relationship between the UK and the European Union, the rise of populist political movements and the austerity measures that followed the economic crisis in 2008 have, alongside aspects of the campaign to leave the European Union, contributed to the development of a dominant narrative in UK policymaking that emphasises the securing of borders and a more restrictive disposition towards migration more generally (Montgomery et al., 2018; Wallace, 2018). Against this background, tighter restrictions in terms of the rights of Non-EU citizens have been implemented in more recent legislation such as the Immigration Acts of 2014 and 2016, encompassing stricter controls in terms of asylum applications, complemented by the opt-out

³³³ The British Nationality Act of 1981 abolished the 1948 definition of British citizenship and replaced it with three categories: British citizenship, citizenship of British dependent territories and British Overseas citizenship. Of these, only British citizenship provides the right to live in the UK. From 1981 all foreign nationals have had to apply for naturalisation to become British citizens.

from the European Union refugee relocation schemes and part of the Reception Conditions Directives which will reshape the future of migration in the UK.

9.3.2 The geography of migrants’ presence

Understanding the spatial distribution of migrants is a useful approach for identifying where legal and policy frameworks regarding the integration of migrants, refugees and asylum seekers into UK labour markets will have the strongest impact and should be the focus of efforts for implementation. To better understand this distribution, we observed data derived from the Annual Population Survey (APS) in which Non-UK born citizens (both EU and Non-EU born citizens) are considered as migrants. The data from the APS reveals that the main concentration of migrants is found in England. As Figure 9.14 reveals in greater detail, in 2016 Non-UK born population (including EU and Non-EU born citizens) represented 16% of the total resident population in England, 9% in Scotland, 8% in Northern Ireland and 6% in Wales. In 2016, 88% of the total EU born population living in the UK and 93% of total Non-EU born population living in the UK were in fact resident in England, while only 4% of the Non-EU born population were resident in Scotland, 2% in Wales and 1% in Northern Ireland.

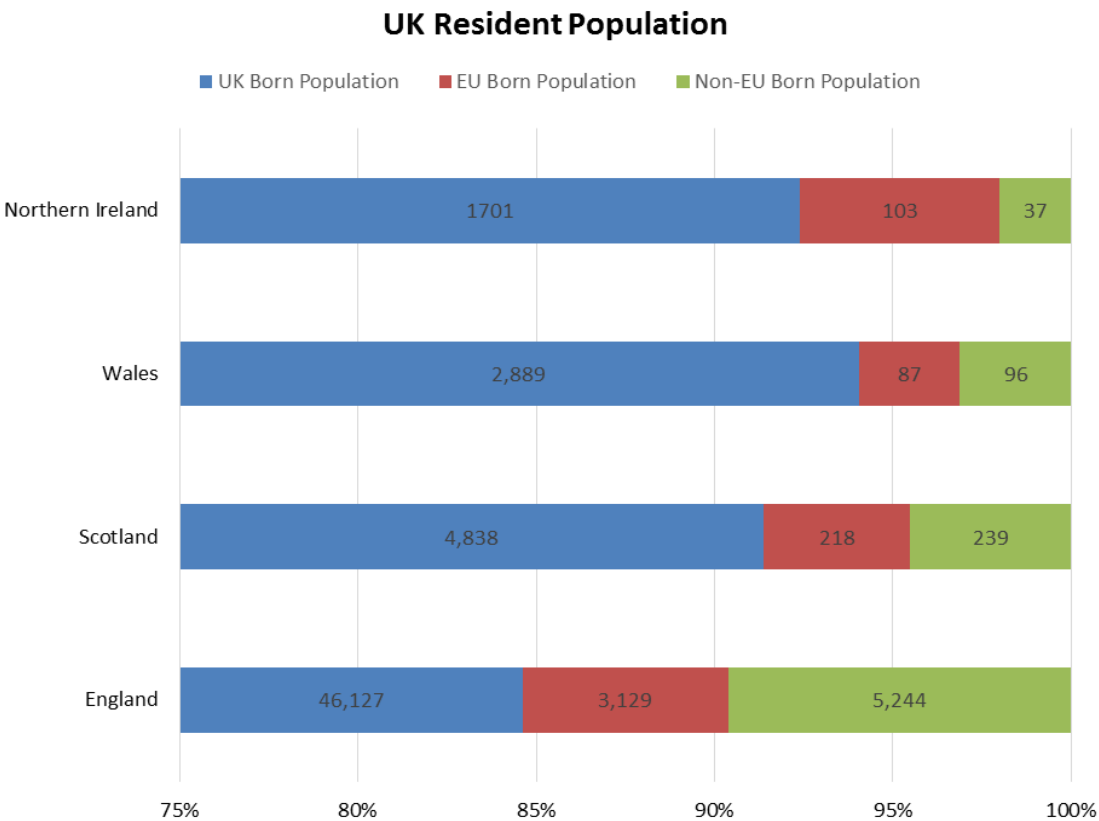


Figure 9.14 UK Resident population by country of Birth

Source: Home Office – Immigration Statistics

While the UK born population is distributed evenly across England, migrants tend to settle in specific areas. As highlighted in Table 9.3, the Non-UK born section of the population are

predominantly resident in the London area (33% of the total EU born population and 43% of the total Non-EU born population) and in South East England (15% of the EU-Born population and 13% of the Non-EU born population). The UK region with the lowest proportion of non-British nationals is North East England (2% of EU born population and 2% of Non-EU born population).

Table 9.3 UK population by country of birth and areas of residence

Areas	UK Born Population (thousands)	UK Born Population %	EU Born Population (thousands)	EU Born Population %	Non-EU Population (thousands)	Non-EU Population %	Total Population (thousands)
North East	2,450	94%	52	2%	100	4%	2,602
North West	6,426	90%	259	4%	420	6%	7,105
Yorkshire and The Humber	4,835	90%	207	4%	306	6%	5,348
East Midlands	4,109	89%	244	5%	285	6%	4,638
West Midlands	4,967	87%	257	4%	492	9%	5,716
East	5,263	87%	373	6%	412	7%	6,048
London	5,448	62%	1,042	12%	2,268	26%	8,758
South East	7,716	87%	460	5%	701	8%	8,877
South West	4,913	91%	237	4%	260	5%	5,410

Source: Office for National Statistics – Annual Population Survey

In 2016 the five local authorities with the largest proportions of non-British born residents were all in London: Kensington and Chelsea (37% non-British nationals), Brent (34%), Westminster (34%), Newham (33%) and Ealing (32%). Across London, as exhibited in Figure 9.15, there is a relation between number of Non-EU born population and the level of deprivation³³⁴. Running a simple correlation analysis, although the results are not statistically significant³³⁵, there is a relation between number of migrants and the level of poverty in the areas where they are settled, at least in London. In contrast, no relation exists between the number of UK born residents and the level of deprivation³³⁶.

³³⁴ The Index of Multiple Deprivation (IMD) is the official measure of relative deprivation for small areas (or neighbourhoods). It ranks from 1 (the most deprived area) to 32,844 (the least deprived area). Deprivation 'deciles' are used in this report, aiming to facilitate the readings of the results. Deciles are calculated by ranking the 32,844 small areas from most deprived to least deprived and dividing them into 10 equal groups. These range from the most deprived 10 per cent of small areas nationally (Index=1) to the least deprived 10 per cent of small areas nationally (Index=10)

³³⁵ Correlation=-0.41 for Non-EU born citizens and -0.39 for EU born citizens.

³³⁶ Correlation for UK born citizens = -0.009

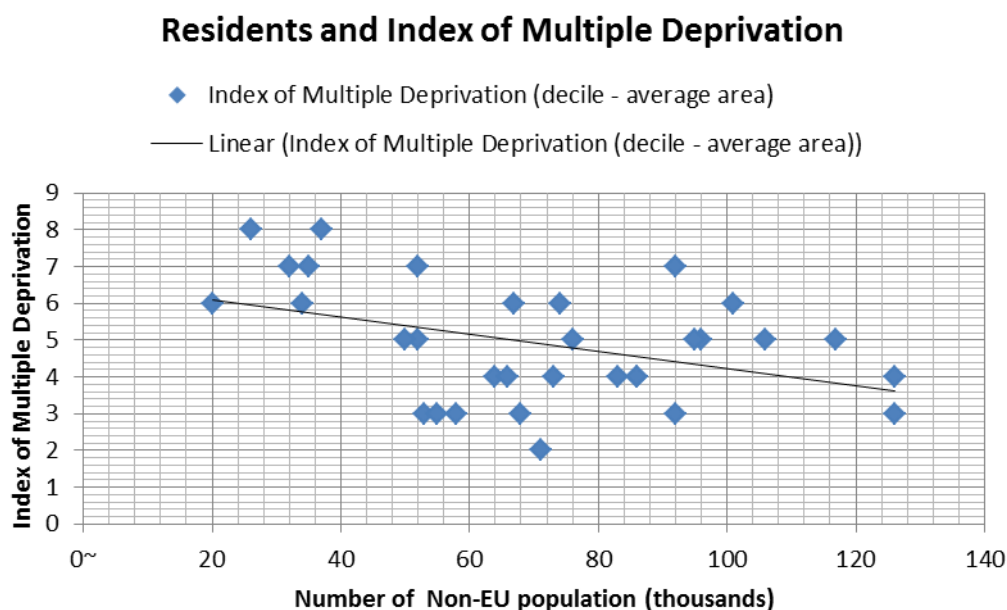


Figure 9.15 Residents and Index of Multiple Deprivation

Source: ONS- Annual Population Survey and UK Government – Index of Multiple Deprivation

These results are in line with the findings of existing studies that highlight that as a consequence of dispersal schemes, asylum seekers are often placed in the most deprived areas (Schuster & Solomos, 2004). However, according to Jivraj & Khan (2013), although they confirm that all ethnic minority groups in England are more likely to live in deprived neighbourhoods than the White British majority, they also show that the proportion living in the most deprived neighbourhoods decreased for most ethnic groups between 2001 and 2011.

9.3.3 The UK society at the time of Brexit

The UK has for some time been portrayed as a multicultural liberal society and some studies have shown that the integration of migrants in Britain compares relatively favourably with other countries across various measures of social and political integration (Koopmans, 2010; Wirght & Bloemraad, 2012). The emphasis from the mid-1960s until the beginning of the 2000s has been placed on the ‘multicultural’ society or ‘ethnic pluralism’, with different groups co-existing but retaining their independent cultural identities (although placing the blame for racial problems on the minority populations) (Ager & Strang, 2008). However, over recent years (according to some scholars from 2000 onwards – see for example Joppke (2004) and particularly in the time frame of the analysis conducted in this report, there has been a significant shift in UK public discourses regarding nationhood, prompted initially by race riots in Northern England³³⁷, by concerns over Muslim extremism fostering terrorist

³³⁷ For information and details about the race riots and the policy recommendations see Cantle Report (2001).

threats and exacerbated by the economic crisis and the rise of populist xenophobia alongside anti-migration narratives (Ager & Strang, 2008; Geddes & Scholten, 2016). From being a multicultural liberal society, which has witnessed a steady growth in immigration, the policies of the UK Government has cultivated a “hostile environment for illegal migrants” (Theresa May speech, 10th October 2013³³⁸) where nationhood and assimilation processes became central to policies and political narratives (at least at the national level).

This changing context is part of a long-term process where anti-migrant and anti-refugee discourses, legislations, and policies have dominated policymaking and the media. For example, anti-migration narratives were placed at the centre of Leave campaign in the 2016 EU referendum (Cummings, 2017) and they have also been one of the most frequent arguments used by the Conservative party in the last elections (see the Conservative Manifesto 2010 and 2015³³⁹ and the 2005 Michael Howards Campaign). Policies and legislation prioritising the control of immigration instead of integration have been favoured, espousing narratives about the negative effect of migration on public services and on the reduction of wages:

“In the last decade or so, we have seen record levels of long-term net migration in the UK, and that sheer volume has given rise to public concern about pressure on public services [...] as well as placing downward pressure on wages for people on the lowest incomes. The public must have confidence in our ability to control migration.” [Department for Exiting the European Union, 2017]

Fresh legislation such as the Immigration Act 2014 and 2016, the opt-out from the EU relocation scheme of Syrian refugees and the recent cases of the deportation of citizens who were part of the Windrush generation³⁴⁰ are some of the examples of the environment that has been promoted in the last years. The negative frame of the debates about migration has also been reflected and reinforced by the way in which the media portrays refugees and migrants. From a claims analysis undertaken by the authors of this report into the portrayal of refugees in UK newspapers³⁴¹, migrants and refugees were often dehumanized and categorised very broadly, reflecting not only a negative disposition and narrative but also a reduction of the debate to issues of border control and political management (for more information see Montgomery, Calo, & Baglioni, 2018).

³³⁸ Theresa May speech accessible at: <https://www.theguardian.com/politics/2013/oct/10/immigration-bill-theresa-may-hostile-environment>

³³⁹ Parties policy positions and party policies manifesto are available at: <https://manifesto-project.wzb.eu/>

³⁴⁰ The Windrush generation refers to immigrants who were invited to the UK between 1948 and 1971 from Caribbean countries. In 2018, these immigrants who had arrived as children on their parents' passports and they never formally became British citizens have been denied services, lost their jobs and faced deportations, raising what it has been called the Windrush generation scandal.

³⁴¹ As part of the H2020 funded European Project TransSOL (<http://transsol.eu/>), the authors conducted a political claims analysis of the Syrian Refugees crisis. Our analysis focused upon three newspapers which reflect diverse editorial perspectives and readerships, namely: The Guardian, The Telegraph and The Express. Our analysis revealed the key actors involved in constructing the political discourse in the UK, the dispositions of these actors towards refugees (i.e. positively or negatively), who the objects of these claims were, how these claims were justified and what issues form the focus of these actors claims. More information available at: <http://transsol.eu/files/2018/05/deliverable-5-1.pdf>

This hostile environment has been mirrored by political uncertainty following the results of the 2015 and the recent 2017 elections. In the most recent election of 2017, neither of the two largest parties, Labour or Conservative, gained an overall majority with the Conservative party clinging on to power despite losing some of its seats between 2015 and 2017, with the assistance of the Democratic Unionist Party.³⁴² In this landscape of political tumult and uncertainty, marked by reductions in public spending and cuts to welfare, alongside processes of labour market flexibility (through the rise of non-standard employment characterised by zero hours contracts and the rise of the gig economy), increasing levels of inequality have impacted upon the everyday lives of people in the UK, making the context for promoting and implementing integration and inclusion even more challenging.

9.4 The constitutional organisation of the state and constitutional principles

One of the defining features of the UK constitution is that it is not codified. Therefore as no single document of reference for citizens exists, the constitution must be read using various sources such as statute law, common law, conventions and works of authority (Norton, 2011). On the one hand, the uncoded nature of the constitution obviously raises issues of clarity in terms of citizens understanding their rights, but on the other hand, this has been regarded by some as an advantage, providing flexibility and enabling the constitution to move with the times. These issues are addressed by Bogdanor, Khaitan, & Vogenauer (2010) who identify two key explanations as to why the UK has no codified constitution. Unlike many of its counterparts in Europe or the USA, there has never been a constitutional moment (Bogdanor et al., 2010) when the framework used to govern a country has required clarification: even when the Parliament of the United Kingdom of Great Britain was created following the 1707 Act of Union, this remained located in London and adopted many of the characteristics of the existing English Parliament. Furthermore, Bogdanor et al. (2010) explain that aside from this historical explanation, there is also a conceptual reason, namely that the primary constitutional principle of the land has been the sovereignty of Parliament, indeed Bogdanor et al. (2010) claims that the British constitution can be summed up in eight words, “what the Queen in Parliament enacts in law” (2007: 501). This statement reminds us that the UK is a constitutional monarchy, with each piece of legislation requiring “royal assent” (in practice, however, this is a formality). Therefore the best route towards understanding the UK political context is through its institutions, at the centre of which lies the UK Parliament in Westminster.

9.4.1 The UK system of government

The UK is a constitutional monarchy (with Queen Elizabeth II as head of state) and a parliamentary democracy (with parliament as the legislative organ). The UK has experienced a shift in recent years from a much centralised system of power at Westminster to one that has witnessed political devolution to different constituent nations in Scotland, Wales and

³⁴² The Democratic Unionist Party is a unionist party in Northern Ireland.

Northern Ireland. Although the processes of devolution occurred within a very similar timeframe, the actual powers that have been devolved and reserved (that is, retained at Westminster) have differed and thus leaves the UK with an “asymmetric” form of devolution (MacKinnon, 2013). One key illustration of this has been the relatively scarce degree of devolution that has been undertaken in the largest constituent nation of the UK, England, in which the North East area via a referendum in 2004 rejected the establishment of regional assemblies. Nevertheless, England has witnessed some devolution and this is perhaps most prominently represented by the creation of a directly elected Mayor of London following a referendum brought forward by the Labour Government in 1998.

Although several areas of legislation have been devolved to Wales, Scotland and Northern Ireland,³⁴³ immigration and asylum are almost entirely reserved to the UK government. For example, even when the Scottish Government take a different approach to immigration compared to the UK government by seeking to increase the levels of immigration to Scotland and developing a ‘differentiated’ immigrant policy - as will be explored below -, decisions about the flows, the entry and the composition of migrant groups are solely managed by Westminster

While the Home Office with the advice of the Migration Advisory Committee (MAC) is responsible for securing the UK borders, controlling immigration, considering applications to enter and stay in the UK, issuing passports and visas, the Department of Communities and Cohesion (DCLG) is tasked with developing and sustaining community cohesion and integration legislation. Moreover, the Department for Work and Pension and HM Treasury have a role in legislating in the area of employment integration (labour laws) and discussing the migration flows in relation to the effect on economic growth. . A polycentric governance concerning the responsibility for migrants has thus characterised the UK central government, although the Home Office maintains a preponderant role (van Breugel & Scholten, 2017).

9.4.2 Constitutional Value of Labour

There are three main sources of UK employment law: the common law, statute and European law (in the form of both European Directives and decisions of the European Court of Justice). Since all employees in the UK work under a contract of employment with their employer, the common law (particularly the law of contract) forms the legal basis of the employer/employee relationship. A contract of employment (need not be but) is usually recorded in writing. The parties are free to stipulate which law will be the governing law of the contract. However, certain mandatory statutory employment protection rights will apply regardless of the law of the contract. In addition, the law of tort will govern matters such as an employer’s liability for the actions of its employees and liability for industrial accidents. Since the early 1970s, there has been a growth in the amount of UK employment protection legislation which has supplemented the common law framework. The main employment law statutes are: The Employment Rights Act 1996 which is the main piece of legislation

³⁴³ Examples of areas devolved: agriculture, forestry and fisheries; Education and training; Environment; Health and social services; Housing; Law and order (including the licensing of air weapons); Local Government; Sport and the arts; Tourism and economic development and many aspects of transport.

governing the employment relationship and the Equality Act 2010 which is concerned with discrimination and harassment in respect to protected characteristics.³⁴⁴ In addition, there is a substantial amount of secondary legislation in the form of regulations which contain further provisions that affect the employment relationship (e.g. Management of Health and Safety at Work Regulations 1999 No 3242 and Working Time Regulations 1998 No 1833). EC legislation has been particularly important in the areas of equal pay, discrimination and employees' rights on business transfers due to the high level of deregulation of the UK labour market. EC treaties, in particular the article 153 has in fact established the minimum requirement in terms of working conditions and information that should be provided to the employees.

9.4.3 Constitutional milestones case-law on MRAA access to labour and labour markets

Constitutional milestones in case-law on MRAA access to labour markets have been particularly significant in the field of asylum because of the differences in their right to work in comparison with refugees, migrants and citizens (Bales, 2013).

Asylum seekers – as it will be explored below - are explicitly excluded from the UK labour market until their claim has been pending for 12 months or until they have been granted refugee status. This restriction contradicts Article 15 (1) of the amended EU Reception Conditions Directive published in June 2011 in which asylum seekers can access labour markets after six months. The UK Government, in fact, decided to opt out from the EU Directive amendment. Moreover, after a 12-month period, asylum seekers are limited to applying for jobs specified under Tier 2 of the Shortage Occupation List.³⁴⁵ This decision was introduced in September 2010 following the case of *ZO (Somalia) and others: (Respondents) v Secretary of State for the Home Department (2010) UKSC 36*.³⁴⁶ The Supreme Court decided that restricting employment to refused asylum seekers, who had made further applications on their claim, was against the Reception Conditions Directive. This decision would have allowed asylum seekers access to the UK labour market after 12 months from their application or appeals. Therefore, the Coalition Government decided to impose the Tier 2 restriction Shortage Occupation List as the only employment possibilities available to asylum seekers. The list includes only very specific high skilled occupations such as for example classical ballet dancers who meet the standard required by internationally recognised United Kingdom ballet companies, physical scientists, engineers or doctors. It is thus evidently challenging for asylum seekers to access the UK labour market once the 12 month period lapses (Mayblin, 2016a).

³⁴⁴ The Equality Act 2010 sets out nine protected characteristics which are: age; disability; gender reassignment; marriage or civil partnership (in employment only); pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

³⁴⁵ Each year the UK publishes a list of shortage occupations, which employers struggle to fill. Jobs on this list do not need to be advertised before they can be offered to a non-EEA immigrant. Shortage Occupation List accessible at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-k-shortage-occupation-list>

³⁴⁶ Accessible at: <https://www.supremecourt.uk/cases/docs/uksc-2009-0151-judgment.pdf>

According to Section 95 of the Immigration and Asylum Act 1999, asylum seekers are not only excluded from the labour market, but they are also unable to access national welfare benefits. They are provided with cash/vouchers support and/or accommodation if they are considered destitute. According to Randall (2015) destitution has been defined in two different ways. Home Office under Section 95 of Immigration and Asylum Act 1999 defines destitution as lacking access to adequate accommodation or the inability to meet essential living needs (ELN). Other research instead had defined destitution as lacking shelter, food, heating, lighting, clothing and basic toiletries or having an income level so low that it is not possible to access minimum material necessities. Until *R (Refugee Action) v Secretary of State for the Home Department* [2014] EWHC 1033 the definition of essential living needs was not clear (Bales, 2015). Consequent to the decision of the Secretary of State in 2013 of freezing the income support to asylum seekers (equivalent at that time to £36.62 per week for a single person), Refugee Action – a charity organisation in England and Wales - sought judicial review of the decision. The judge responded that the rate was not enough to guarantee an adequate standard of living as stipulated by the European Reception Conditions Directive and it did not include items such as household goods, nappies and non-prescription medical goods considered to be essential (Bales, 2015). However, after reconsideration by the Secretary of State, the decision was to maintain the same cash support (the rate was increased at the beginning of 2018 from £36.95 to £37.75 according to the Asylum Support (Amendment Regulations 2018 No.30). Although the judgement of this case is limited to the confines of this decision, the restrictions on which the asylum support system is built were questioned. The lack of an adequate rate of support for essential living needs affects the integration of asylum seekers, often inducing them to live in poverty and often be involved in forced and irregular jobs.

The third case, and the most recent, dealt with what has become known as the ‘*deport first, appeal later*’ provision, an amendment to the 2002 Nationality, Immigration and Asylum Act, which came into force inside the Immigration Act 2014. The power to remove a person from the UK pending his/her deportation appeal, where such removal would not be unlawful, was thus established. The provision specifies that the grounds upon which such power may be exercised is that removing the person to the country or territory to which the Home Office proposes to remove her would not cause her to face ‘*serious irreversible harm.*’ In the case of *R (on the application of Kiarie) (Appellant) v Secretary of State for the Home Department (Respondent)* [2017] UKSC 42, the Supreme Court in March 2018 found this section unlawful. The Court’s principal concerns highlighted the barriers for deportees to secure, fund, and instruct legal representatives from abroad, the ability to obtain expert evidence where relevant, and, crucially, the ability of the individual to give effective oral evidence. Therefore the “deport first, appeal later” was considered as a breach to the procedural requirements of Article 8 of the European Convention on Human Rights, that is, the right to an appeal against a decision affecting an individual’s right to respect for their private and family life. Therefore, asylum seekers and eventually refugees and migrants who are awaiting the response of the Home Office concerning their appeals, are allowed to stay in the country whilst their appeal is being processed.

9.4.4 Structure of the Judiciary System

The institutions of the judiciary that deal with immigration cases in the UK are the Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal (for hearing and determining appeals against decisions upon receipt of immigration related applications), the Social Entitlement Chamber of the First-Tier Tribunal (for determining appeals against decisions refusing asylum support), the Court of Appeal, the UK Supreme Court and finally the Court of Justice of the European Union or the European Court of Human Rights.

We should be conscious of the fact that the divergences in the powers of the UK are also reflected in how the law is enforced. Although there are similarities between each, there are different legal systems operating in Scotland, in England and Wales and in Northern Ireland. One way of understanding this difference is by appreciating the origins of each system as Scots law is primarily based upon the principles of Roman law (which centres upon rights and obligations), whereas the law in England and Wales and in Northern Ireland is based upon common law (which centres upon the decisions of judges in different cases). Each legal system has its own system of courts, however following the Constitutional Reform Act 2005, the UK Supreme Court is the court of last resort in civil and criminal appeals for cases in Northern Ireland, England and Wales (criminal appeals in Scotland remain the remit of its own, High Court of Justiciary) and is the court which oversees issues relating to those Acts concerning devolution.

9.5 The relevant legislative and institutional framework in the fields of migration and asylum

In this section, the legislative and institutional frameworks in the fields of migration and asylum are presented, focusing specifically on the evolution of the laws, the up to date country regulations at national and subnational levels and the institutional framework including the role of stakeholders such as non-profit organisations and local authorities which deals with MRAA. But first let's turn to the main stages of evolution of the legislative framework to explore and understand the contemporary context.

9.5.1 Evolution and main stages of migration and asylum law

In post-war Britain a key piece of legislation relating to migration was developed in 1948 and it constitutes a milestone in migration law. The 1948 British Nationality Act formally gave all subjects of the Crown including British colonies the right to settle in Britain. Citizens from colonies and the Commonwealth countries were enabled to cement their status as British citizens and access the same formal legal, social and political rights as other subjects of the Crown. This relatively open migration regime lasted until 1962, when consequent to an increasing number of race riots and the rise of right-wing populism, the ruling Conservative Party introduced a new Act (*Commonwealth Immigration Act*), restricting the flow of immigration (Geddes & Scholten, 2016). The Act distinguished between citizens of the UK and its colonies and citizens of independent Commonwealth countries. The latter became subject to immigration and employment control through the establishment of work vouchers

(a sort of visas) which reduced the overall numbers of migrants. In addition, only a few of these vouchers were granted to women, setting a precedent (that is still evident today) of preventing women to enjoy the right to family reunification. In 1968 a second Commonwealth Immigration Bill was introduced, again diminishing the rights of people to enter the UK, particularly from British citizens of Indian institutions facing persecution in Kenya and Uganda. New immigration controls based upon the 'patriality' rule were then established. This restrictive legislative framework reached its peak in 1971, with the Immigration Act (1971) which distinguished between citizens of the UK and its colonies that had the right to indefinitely being settled in the UK (patrial rule) and those who instead had to apply for work permits to be granted (a definite) right to remain. More modifications regarding the categories of citizens were established in the British Nationality Act (1981). Three typologies of citizens were defined by this legislation, implying the prioritisation of the "white commonwealth": British citizens, British dependent territories citizens and British overseas citizens. New implications for the colonial citizens were then implemented, amending the status of post-colonial peoples from citizens to migrants.

As we established earlier in this report, during the course of the 1980s the issue of migration received less attention from policymakers while it returned to the spotlight from 1990s onwards. When the New Labour Government (1997-2001) came to power, a more liberal approach to labour migration was promoted (Hansen, 2003; Wright, 2017). In 2001, the High Skilled Migrant Programme (renamed the Tier 1 visa) was introduced which established the first points-based system to regulate access to the country. It allowed people entry in relation to factors such as their level of education and earnings, without imposing an upper limit to their numbers. Moreover, work permit (later renamed Tier 2 visa) regulations were loosened to be more responsive to the needs of employers. A key decision of the New Labour period was allowing uncontrolled access to Britain for citizens of the ten member states that entered the European Union in 2004. The UK was one of the three countries that decided not to impose transitional controls on migration from the new EU member states (Wright, 2017). However, in the latter period of the New Labour government, the rhetoric reflected a less open disposition towards migration and marked a return to restrictive policies and legislation. As part of this shift, a five-tier system for labour migration was imposed on Non-EU citizens: Highly skilled migrants (Tier 1), medium skilled migrants (Tier 2), Low skilled and temporary employment visa (Tier 3 – never opened), students (Tier 4) and youth mobility (Tier 5). These more restrictive policies would be continued following the election of the Conservative-led Coalition Government in 2010. Quotas on the numbers of Non-EU arrivals entering the UK (and visas granted to them) were established and a more hostile environment was promoted. The exemplification of this more "hostile environment" and legislation were the 2014 and 2016 Immigration Acts. The 2014 Act aimed at facilitating the removal of people without leave to remain, overhauling the appeals process (although following *R (on the application of Kiarie) (Appellant) v Secretary of State for the Home Department (Respondent)* [2017] UKSC 42 this part of the Act was dismissed), limiting the access to services such as the National Health System (NHS) and housing to people without the leave to remain and tightening controls on immigration status (Wallace, 2018). More restrictive changes were included in the Immigration Act 2016, in which penalties (fines and imprisonment) for employers who hire irregular migrants and landlords who rent premises to

irregular migrants were established and everyday necessities such as access to a bank account were revoked for irregular migrants.

A parallel but slightly divergent evolution in asylum law can also be distinguished. Until the 1990s the UK had no specific asylum legislation. The right to claim asylum is based upon international law and governments are obliged to provide protection to people who meet the criteria for asylum. The UK is a signatory to these international laws and has long since integrated them into UK legislation. Three pieces of international law can be used to support an asylum application in the UK: the 1951 Geneva Convention relating to the status of refugees, the 1950 European Convention on Human rights (ECHR) and the European Union Asylum Qualification Directive (2003/9/EC) which lays down minimum standards for the reception of asylum seekers. Excluding the integration of these laws, in the UK, from the 1990s onwards policies and legislation were implemented aiming at curbing the numbers of asylum seekers and at making life more difficult for those who arrived. While a more open although “managed” migration was promoted between 1997 and 2005 (as described above), measures concerning asylum were mainly aimed at reducing the number of applicants (Mayblin, 2016a). Measures pertained to three different areas: increasing the control of external borders, the reduction of welfare entitlements and denying access to labour markets and speeding up the legal process (Geddes & Scholten, 2016). The presumption that underpinned this legislation (enacted both by Labour and Conservative Governments) was that many asylum seekers were not genuine (and were instead “bogus”) and therefore they were not deserving of welfare state support or should not be allowed access to labour markets at least until they were verified as “genuine” (Geddes, 2003).

Although the Asylum and Immigration Appeals Act of 1993 integrated the United Nations Convention 1951 definition of asylum claims, it also constituted the first act that reduced the benefit entitlements of asylum applicants, introduced tighter controls on the application process and involved the detention of asylum seekers. The Asylum and Immigration Act of 1996 extended penalties associated with being an irregular migrant and removed access to welfare benefits for “in-country” applicants as opposed to applying at the port of entry and, in 1999, support for asylum seekers (£35 per week using mainly vouchers) was implemented. Moreover, a no choice dispersal system across the UK for destitute asylum applicant was enacted to lessen the burden on the London and South East regions. Through the Nationality, Immigration and Asylum Act of 2002, an entire asylum architecture was created, regulating induction, accommodation and removals. The National Asylum Support Service (NASS) (today UK Visas and Immigration – UKVI) which placed responsibility for arrivals, housing and economic support provision with central government was established (Meer, Peace, & Hill, 2018). In 2002, the right to access labour markets for asylum applicants was also removed and although new rules were enacted in 2005 and 2010 (as will be explored below), to this day it is difficult for asylum seekers to be integrated into the job market (Mayblin, 2016a). Furthermore, the indefinite leave for refugees was modified into a 5-years leave to remain status with a reassessment of the situation in the country of origin taking place at the end of this period (Bloch, 2008). After 2010, the Conservative-led Governments maintained an emphasis on restricting asylum with efforts focused on speeding up the asylum process. The focus on speeding up the asylum process and the consequent lack of appropriate time to seek and obtain legal assistance led the British High Court to find the fast track system unlawful because of an unacceptable risk of unfairness for asylum seekers who

have lived specific trauma, evidencing that the speeding up of the process results in a restriction of access. The UK Government also opted out of the EU relocation schemes of Syrian refugees to reduce the number of people that the UK would accept (Geddes & Scholten, 2016). This brief overview of the main stages of migration and asylum law reveals that UK Governments from the 1990s onwards aimed first at “managing” migration and afterwards focused upon “controlling” migration, imposing a mix of increasing border control and reducing internal rights which have contributed to the emergence of the legislative and institutional frameworks of today.

9.5.2 Immigration and asylum legislation in the UK today

The extent of the Acts of Parliament which regulate immigration and asylum is both lengthy and complex. Consolidation of the Acts of Parliament and Immigration Rules is and has long been needed in the interest of simplifying the law and making it more accessible. The now-former Home Secretary – Amber Rudd - recently announced that she has invited the Law Commission to examine Acts of Parliament and subordinate legislation concerned with immigration and asylum with a view to simplification. The tenth edition of the Immigration Law Handbook has just been published in 2018, to include the most recent legislation. Legal provisions that deal with immigration issues are composed of both primary and secondary legislation. Secondary legislation and specifically UK Statutory instruments constitute the main legal regulations of immigration. In the time frame of our analysis (2014-2016), two primary provisions were enacted (Immigration Act 2014 and 2016), while 79 orders and rules were promulgated.³⁴⁷

As we explored above the principles behind immigration and asylum law were mainly focused upon the restriction of immigration based upon the reaffirmation of British values on the one hand and on the other hand the consideration of the perceived negative effects of migration due to the difficult economic context (Wallace, 2018). The two most recent Immigration Acts were in fact justified by policymakers who based their approach on a report published by (Devlin, Bolt, Patel, Harding, & Hussain, 2014) which highlighted that in times of economic crisis, non-EU migrants displaced native workers in the UK. Similar principles were behind the opting out of the EU relocation scheme and the decision to create a Syrian vulnerable people scheme which aimed at accepting (only) 20,000 people by 2020. An increasing level of attention on the issue of national security could also be identified, specifically in the 2014 Act, which regulates removals and deportations of irregular migrants. However, the main narratives identified in the last two pieces of legislation were inherent to the difference between the “bogus” or “economic” versus “genuine” refugees and the negative effect of migration on labour markets. To understand the complex rules that regulate contemporary immigration to the UK, it is useful to provide a brief overview of the right to enter and leave to remain the country for each category of migrant (Non-EU migrants, asylum seekers and refugees that are part of relocation schemes). Each of these categories of migrant must negotiate different regulations and procedures.

³⁴⁷ These data derive by an analysis of the national archives of legislation. Accessible at: www.legislation.ac.uk

9.5.2.1 Non-EU Arrivals

Non-EU migrants have the right to enter the country (for a period longer than 6 months) if they have a valid entry clearance based upon a visa. A visa has to be released in the country of origin and this could be issued under different schemes which will be fully discussed below. The visa can eventually be renewed in the UK based upon valid documentation. After spending a specific continuous period lawfully in the country (from 5 to 10 years depending on the schemes), providing specific documentation, undertaking language and culture tests and presenting specific characteristics (such as not being an illegal entrant), Non-EU migrants can apply for the indefinite leave to remain. Afterwards, they are eligible to apply for the British citizenship.

9.5.2.2 Asylum Seekers and Refugees status

Very different regulations are applied to asylum seekers in the UK. For someone to claim asylum in the UK, they are required to present themselves to the offices of the UK Border Agency immediately upon their arrival into the country (claiming UK asylum from outside the UK is not legally possible). A person may apply for asylum in relation to the 1951 Convention through fear of persecution in their own country or may instead make a “human rights claim” under the 1950 ECHR, indeed an asylum seeker may make a human rights claim as part of a refugee claim. In terms of human rights, an asylum seeker may make a claim in accordance with Article 3 of the ECHR which protects individuals from torture, inhumane and degrading treatment or in accordance with Article 8 of the ECHR which protects the person’s right to a personal and family life. Following a pivotal court case (*Regina (Razgar) v Secretary of State for the Home Department* 2004) those seeking asylum according to their right to a personal and family life have their claims heard in relation to the “Razgar Test” which aims to balance the rights of the person seeking asylum with the right of the state to effectively control its borders. The Razgar test includes a five-stage test comprehensive of the following issues:

1. Does the [refusal] amount to an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
2. If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
3. If so, is such interference in accordance with the law?
4. If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
5. If so, is such interference proportionate to the legitimate public end sought to be achieved?

Once a person makes a claim for asylum they are required to undergo a “screening interview” which involves providing basic information including why the person is seeking asylum and their route of travel to the UK (to assess whether the persons’ claim for asylum is the responsibility of another country under the Dublin regulations³⁴⁸). At the screening interview, a triage process is implemented. According to the Asylum operating model (2013), the purpose of ‘triage’ is to identify ‘types’ of cases and assess them based on the length of time it is likely to take to decide the claim and to finally resolve the case. The triage establishes if the case can be considered an expedited case or not. Expedited cases cover detained fast-track cases and cases where a person will be sent to a European country through which they passed en route to the UK to have the case decided there (‘third country cases’). In those situations where there is a non-expedited case three characteristics will determine the type of cases: the length of time a claim is likely to need to be decided; the likelihood that the claim will be granted; and, thirdly, if refused, the speed at which removal can take place. If asylum applicants are considered destitute, they are eligible for accommodation inside the UK dispersal scheme and a payment of £37.65 per week to cover their essential living needs (ELN).

If an asylum application is accepted, there are two successful forms of asylum, one being “refugee status”, the other “humanitarian protection”, in both situations the person is awarded limited leave to remain (lasting five years), following which they can apply for indefinite leave to remain in the UK and consequently British citizenship. Once asylum seekers have gained leave to remain, they are obliged to leave their accommodation - if provided inside the dispersal scheme - within 28 days and register for administrated welfare support on the same base as British citizens. For those whose applications are refused, some applicants may have the opportunity to appeal this decision which involves taking their case through a process of tribunal and in those cases where there are challenges as to how the law has been applied, to higher courts, including the UK Supreme Court and the European Court of Human Rights.

9.5.2.3 Refugees under relocation schemes

Four resettlement schemes fully funded by the UK’s Official Development Assistance (ODA) budget were provided by the UK government in the period 2014 to 2016: the Syrian Vulnerable Persons Resettlement Scheme (VPRS), the Gateway Protection Resettlement programme, the Mandate Scheme and the Vulnerable Children Resettlement Scheme from the Middle East and North Africa (MENA). People who can apply to these schemes are identified by the United Nations and brought directly to the country (Home Office, 2017b). The VPRS is a joint scheme between the Home Office, the Department for International Development and the Ministry of Housing, Communities and Local Government aiming at relocating 20,000 exclusively Syrian persons by 2020. The UK sets the criteria and then UNCHR identifies and submits potential cases (Mulvey, 2015). The Home Office screens the

³⁴⁸ An overview of the screening interview is available in the policy guidance “Asylum Screening and routing” published by the Home Office in 2018: (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700624/screening-and-routing-v1.0ext.pdf).

potential cases and afterwards, a full medical assessment is conducted by the International Organisation of Migration (IOM). Full details of cases are sent to the local authority and after eligibility to enter the UK has been granted, visas and leave to remain for 5 years are issued under humanitarian protection (Home Office, 2017). Up to the time of writing, 10,538 people have been involved in the VPRS. A similar process has been established in the Gateway Protection Resettlement programme co-funded by the European Union, which aims at offering a legal route for up to 750 refugees to settle in the UK each year and for the Vulnerable Children Resettlement Scheme which aims at supporting vulnerable and refugee children at risk and their families. Up to February 2018, 539 people have been resettled with the MENA scheme. Finally, the Mandate Scheme is applicable to refugees that have been recognised as such by the UNHCR (from applications in their country of origin or in the country where they were recognised as refugees). Although Mandate Scheme refugees have no entitlement to asylum in the UK, the UK Border Agency accepts that in determining the asylum claim of a Mandate Scheme refugee the decision maker must give mandate status due weight and take it into account when assessing credibility and determining the risk on return.

9.5.3 The sub-national legislation

Migration policy is mainly reserved to Westminster, which governs access to the UK and the processing of visas, asylum applications and refugee status. Therefore, at a subnational level it is not possible to initiate any macro-level policy. Only in terms of integration frameworks and policies, is there evidence that some scope for variegated responses to migrants, asylum seekers and refugees exists within devolved contexts (Mulvey, 2010). Scotland, Wales and Northern Ireland could in fact establish integration frameworks which diverge, in particular in the case of Scotland, from the integration strategy (or the lack thereof) of the UK central Government (Mulvey, 2015).

9.5.3.1 Scotland

Migration is one of the policy fields where the divergence between Westminster and Holyrood (Scottish Parliament) is evident (Mulvey, 2015). Outside of the borders issues and the naturalisation process, most policies that could affect integration processes, such as health, education, some aspects of welfare and housing are devolved. Recently, a narrative of a dynamic two-way integration process and engagement was promoted in the New Scots 2014-2017 strategy and an integration infrastructure based upon this dynamic two-way process was advocated by the Scottish Government (Meer et al., 2018). In fact, the recent New Scots Refugee integration 2018-2022 strategy defined clearly the integration path detailing the responsibility both on the displaced and the settled population in different fields such as employability, welfare, housing, education, health and social connections. A specific Race Equality Framework for Scotland was also enacted in 2016 to promote race equality and tackle racism and very recently a campaign about the integration of migrants (#WeAreScotland) has been launched.

Concerning asylum applicants, the Scottish Government decided to focus on integration from the moment asylum seekers arrive in Scotland and not only when refugee status has been

granted. This means that while rights to work and to access mainstream benefits are still restricted for asylum seekers (due to the Westminster immigration rules above explored), education, healthcare, and free English courses are instead available not only to refugees but also to asylum applicants and rejected asylum seekers. However, for some services the jurisdiction remains contentious (Meer et al., 2018), for example, in the housing sector, while the Home Office is responsible for the dispersal accommodation, the standards of housing are regulated by the Scottish Government.

Multi-agency networks that include several different stakeholders have been established in Scotland and in particular in Glasgow to promote services aimed at integrating MRAA (Meer et al., 2018). For example, the Holistic Integration Service has been provided at regional level through a partnership of non-profit organisations and educational organisations and is aimed at supporting people that have recently been granted the refugee status, facilitating finding accommodation, applying for welfare benefits and accessing the labour market (see Strang, Baillot, & Mignard, 2018 for more information). Two specific programmes were also promoted at a regional level to support integration into employment: the Refugees into Teaching in Scotland³⁴⁹ programme implemented between 2004 and 2011 and the New Refugee Doctors Project³⁵⁰ from 2016, subsequent to the UK wide Refugee Doctors scheme. Another initiative, the Bridges programme was also established from 2002 aiming to connect employers and migrants, refugees and asylum seekers, to introduce people to the labour market. These are just some of the examples of the programmes sustained in Scotland which are useful to highlight the different approach that has been endorsed. However, a fragmented approach with diverse initiatives and projects promoted by different organisations has been also identified as a barrier to long-term integration, with the risk of simply moving people from one project to another without a long-term outcome (Meer et al., 2018).

9.5.3.2 Wales

Tensions between the levels of governance involved in migration policy can be evidenced also in the Welsh case. Although the Welsh government is not responsible for UK migration policies, as in the case of Scotland it is responsible for several devolved competencies such as housing, social services, education and healthcare. Contrary to Scotland, Wales has not yet developed an integration strategy, but it has published a specific approach towards migrants, refugees and asylum seekers in several pieces of legislation, such as the Well-Being of Future Generations (Wales) Act 2015, the Social Services and Well-Being (Wales) Act 2014, or in policies plans such as the Community Cohesion and Refugee and Asylum

³⁴⁹ RITeS (Refugees into Teaching) aimed at enabling professionals who were teachers in their country of origin and arrived in the UK seeking asylum to maintain their professional identity and revitalise their professional skills in a new education system, leading to employment opportunities through identification as teachers rather than refugees. More information about the programme available at:

<https://impact.ref.ac.uk/CaseStudies/CaseStudy.aspx?Id=42375>

³⁵⁰ The NHS Education for Scotland (NES) Refugees Doctors Programme is designed to assist asylum seeking and refugee doctors living in Scotland to achieve registration with the General Medical Council via the PLAB examinations in order to be in a position to compete for posts in the NHS in the UK. More information about the programme available at: <http://www.scotlanddeanery.nhs.scot/trainee-information/careers/refugee-doctors-programme/>

seeker Delivery plan (Spencer & Sanders, 2016). The Social Services and Well-Being (Wales) Act established that people who do not have leave to remain in the UK are not excluded from the provisions of services. In the Community Cohesion Delivery Plan 2016-2017, a specific outcome on raising awareness on migration has been promoted, while key actions to increase the availability of information for migrants and the communities where they live have been undertaken. The specific plan concerning refugees and asylum seekers details collaborative actions in sectors such as housing, social care, education and employment. Concerning employment, programmes aiming at increasing the skills and opportunities for MRAs have been promoted in collaboration with non-profit organisations and educational institutions.

9.5.3.3 Northern Ireland

A similar tension can be detected between the constitutional and security issues that are under the control of the Northern Ireland Office, which is directly answerable to the Home Office and responsible for devolved matters such as housing, health, education and employment. The integration needs of migrants, asylum seekers and refugees are currently addressed through the Racial Equality Strategy (2015-2025) and Section 75 of the Northern Ireland Act (1998). Although several proposals concerning an integration strategy have been promoted in particular by the Northern Ireland Strategic Partnership, up until now there has been a lack of a specific and determined strategy at the sub-national level. It is up to the local council, such as for example Belfast City Council to organise and fund services aimed at including and integrating migrants, refugees and asylum seekers. For example, information has been made available to enable people arriving to Belfast from other countries to understand how to access services such as education, health, and advice on employment.

9.5.4 The institutional framework and the role of local authorities and third sector organisations

The brief overview thus far of the policies enacted at sub-national level provides important information about the institutional framework that manages the fields of migration and asylum seekers, evidencing the important role that local authorities and third sector organisations have in producing a framework of inclusion and integration.

In the 2010 UK General Election, dominated by the debate over how to address the financial crisis, one central plank of the Conservative Party manifesto was that of the “Big Society”. The key values underpinning the type of community solidarity pursued by the Big Society were claimed by the Prime Minister to be liberalism, responsibility and community empowerment. These values were to be manifested through a greater level of voluntarism, including paving the way for charities, private enterprises and social enterprises to be much more involved in the running of public services, all of which were to be encouraged by the Coalition Government. The UK Government has in fact always consistently relied upon the role of community and third sector organisations to provide support when policy provisions are limited, and this was taken to a new level, at least rhetorically, with the Big Society programme (Montgomery and Baglioni, 2018).

The important role of local councils and third sector organisations can also be identified in migration policies and specifically in the activities dealing with asylum seekers and refugees inclusion and integration. For example, in 2012 the Government launched the “Creating the conditions for the integration” framework (only related to England) with an emphasis on individual agency and community responsibility alongside a limited role of the central government in dealing with integration issues. Responsibility for community cohesion fell upon the Department for Communities and Local Government (DCLG) (now Department of Housing, Communities and Local Government DHCLG) and civil society and local authorities were mobilised to address issues such as integration and inclusion.

The important role of local councils and third sector organisations can be also identified in the way accommodation for asylum is managed and in the creation of strategic partnerships across the country. Though the National Asylum Support Service was administrated by the UK Government, accommodation provisions had been outsourced – at least up to recently - to a combination of local authorities, private landlords and housing associations (Meer et al., 2018).

Twelve local authority-led Strategic Migration Partnerships were created in the UK with the aim of bringing together different partners (public, private and third sector) to promote more effective policies at the local level. It is at the discretion of the local authority to apply to be a dispersal area where asylum seekers can be accommodated, or alternatively, third sector organisations can apply for example to the Community Sponsorship Programme. The Community Sponsorship programme towards refugees has been promoted by the Home Office since 2016. The plan aims at enabling community groups to support the resettlement of refugees which are part of the VPRS scheme. Communities in the form of charitable organisations or social enterprises can apply to the local authority (first) and Home Office (second) to take the lead in resettling refugee families, after exhibiting a minimum amount of its own funding (9,000 pounds), housing opportunities and a plan for resettlement. The Home Office is then responsible for funding the living expenses and the housing of refugees according to the Immigration Acts while the community (e.g. a third sector organisation) takes the lead in supporting the integration process (Home Office, Department for Communities and Local Government, & Department for International Development, 2017). However, at this point in time, very few families (around 25) have been resettled through this scheme in England. These are only some of the examples of the activities devolved at a local level.

Although a higher degree of responsibility has been devolved to communities, the austerity measures promoted by Westminster and the reduction of budgets at the local level raises questions regarding how local authorities and third sector organisations can really continue to offer services. Even though in 2016 the Controlling Migration Fund has been developed by the DHCLG, aiming to support local areas facing pressures linked to recent immigration (and to improve direct enforcement action again on irregular migrants), funding opportunities for non-profit organisations and local authorities dealing with asylum and refugees have been reduced (Mayblin & James, 2018). For example, accommodation contracts previously awarded to local authorities and third sector organisations were transferred to private security companies (COMPASS) and only one organisation (Migrant Help) has been contracted by the central government to support asylum seekers. On the other hand, the

number of third sector organisations which deal with asylum seekers and refugees is growing, most probably trying to fill a gap left by the withdrawal of central and local government resources (Mayblin & James, 2018). Non-profit organisations dealing with migration issues not only offer services such as training for employment and support to resolve health and housing issues, but they also have an important role in sponsoring campaigns to address issues of solidarity, provide legal services and promote voluntary work (Sales, 2002). Examples of these variegated roles third sector organisations undertake are initiatives such as the “City of Sanctuary” project which originated in Sheffield, with aims to build a grassroots network of support for those seeking asylum or the support services promoted by the Refugee Councils at delivery, policy and lobby levels (e.g. research). Two campaigns have been promoted addressing issues of inclusion and integration. The first (“The Let Them Work” campaign) promoted between 2008 and 2010 by the Refugee Council in collaboration with the Trades Union Congress aimed at granting the right to work to asylum seekers while they were awaiting a decision on their claim (Mayblin, 2016b). Although the campaign was unsuccessful, it was transformed into the “Still Human Still Here” movement which aims to end the destitution of refused asylum seekers and continues today to fight for the rights of migrants. The “Welcome Refugee” is another recent campaign promoted by Amnesty International with the goal of raising awareness and attention towards migration. Alongside these solidarity actions, networks of voluntary sector organisations provide free legal advice to vulnerable groups and grassroots organisations, often led by migrants, offering an important space where people can meet, exchange experiences and create connections.

What is clear then is that while Westminster in the last decades have mainly focused on how to reduce the pressure of migration, increasing barriers at entry and enacting an increasingly hostile legislative environment, the role of third sector organisations alongside local authorities and sub-national governments (e.g. Scotland) have been identifying spaces of integration and inclusion for all categories of migrants, fulfilling the lack of an integration infrastructure at national level.

9.6 The framework legislation on the integration of MRAA in the labour market

Integration is a very debated concept both in academia and at the policy level. Integration has been defined to be a linear, two-way or multidimensional process involving migrants and host societies and has also been conceptualised as a continuously negotiated process between context and cultures, past and present, origin and destination countries (see Bakker, Cheung, & Phillimore, 2016 for a review of the different conceptualisations of integration). The process of integration has also been studied in terms of functional dimensions such as policy areas where it can be enabled and individual structural issues that can be explored both in terms of process and outcomes. In this report, we conceptualise integration as a two-way path which consists of dynamic and multidimensional processes which are complex and fluctuating (Court, 2017). Processes of integration happen in a variety of functional dimensions such as employment, housing, health, education (Ager & Strang, 2008). Employment and inclusion in the labour market are considered one of the key factors of successful integration because they enable economic independence that has an

impact on well-being, mental health and connectedness (Bloch, 2000). This part of the report will provide an overview of the legislation and particularly policy programmes on the integration of MRAA in the labour market, starting from the national labour standards and principles of labour law in the UK.

9.6.1 The national labour standards/fundamental principles of labour law

In UK law, the Employment Rights Act 1996 distinguishes between employees, workers and the self-employed. Individuals are employees if the employer has control over their work, there is a mutuality of obligation and there is nothing inconsistent with an employment relationship. Individuals are workers if they are obliged to perform services personally and do not carry the work as part of their own limited company in an arrangement where the employer is actually a customer or client. Finally, self-employed people usually run their own business and take responsibility for it.

The duty of mutual trust and confidence is at the base of an employment contract. Employees are under an implied obligation to exercise reasonable skills and to obey reasonable instructions. Employers have a duty to pay wages and to provide a safe environment. A national minimum wage of £7.83 per hour and a maximum average working week of 48 hours (although workers can opt out from this) apply to most workers. Employees are entitled to a minimum daily and weekly rest periods and up to 5.6 weeks' holiday. Maternity leave is divided into ordinary maternity leave (26 weeks period) and additional maternity leave (an additional 26 weeks).. Usual terms and conditions of employment continue through ordinary and additional maternity leave except remuneration that is paid at a rate of 90% for the first six weeks, followed by a flat rate of £145.18 a week (or 90% of normal weekly pay if lower) for a further 33 weeks. Eligible fathers are entitled to choose one or two weeks' paternity leave, which is paid at a rate of £145.18 per week.

According to government statistics, in 2016 around 26.3% of the total UK workforce were covered by collective agreements. Trade unions can gain recognition through agreement with an employer or under the statutory recognition process. They have the possibility to disclose information for collective bargaining, collective redundancies, transfers, pension matters, as well as health and safety issues. Employment tribunals have jurisdiction to hear most employment-related complaints and employees must refer disputes to ACAS for pre-claim conciliation first. Employment tribunal decisions can be appealed on a point of law to the Employment Appeals Tribunal.

Workers are entitled to certain employment rights such as the national minimum wage, the statutory minimum level of paid holiday and rest breaks, the maximum amount of hours on average per week and protection for whistleblowing. They may also be entitled to maternity or paternity leave pay where necessary. They are usually not protected against unfair dismissal and are not entitled to receive redundancy payments except if the duration of the contract is has been more than two years.

Self-employed people have relatively few protections. You are entitled to a safe and healthy working environment on your client's premises and you might be entitled to maternity allowance. In addition, recently self-employed workers got trade union representation inside the Community trade union.

Both employees and the self-employed are protected against discrimination because of age, disability, gender reassignment, pregnancy, race, religion or belief, sex, sexual orientation or marriage or civil partnership status under the Equality Act 2010. Discrimination is prohibited at every stage of the employment relationship including recruitment and after termination. Employees can bring discrimination claims before the Employment Tribunal and compensation is the main remedy in discrimination claims.

9.6.2 The national legislation on access to the labour market for migrants, asylum seekers and refugees

The right to work is a restricted privilege to which migrants are granted unequal access in relation to citizens and in relation to each other. Some migrants are able to obtain visas to work in the UK relatively easily, while for others working is prohibited (Mayblin, 2016a). The next section will evidence what are the different legal status and the right to work in the UK depending on the legal status of migration.

9.6.2.1 Non-EU Arrivals

The Non-EU migrants (excepted asylum seekers and refugees) can apply to various visas to access the labour market in the UK. Three different visa tiers have been established and are currently operating: Tier 1, Tier 2 and Tier 4. Non-EU migrants can apply before arriving to the UK to Tier 1 visas if they are willing to open a business activity in the UK (with investment of at least £50,000), they represent an exceptional talent or promise in the field of science, humanities, engineering, medicine, digital technology or the arts (endorsement has to be granted by the Home Office), they aim to invest at least £2 million in the UK or if they are graduate entrepreneurs with an endorsed idea from the Department of International Trade or from a UK Higher Education institution. Until 2015, high skilled migrants achieving a high score in the points-based system³⁵¹ were also entitled to apply to Tier 1. However, the programme has been closed and only extensions are considered. A Tier 2 visa can be requested if a non-EU migrant has received a skilled job offer by one of the recognised and licenced sponsors. Sponsors must offer a salary higher than £30,000 or a job that is included in the shortage occupation list (Shortage Occupation Lists examples available at footnote 8). The Tier 2 visa also includes migrants who are involved in intra-company mobility, are ministers of religion or are an elite sportsperson. Non-EU migrants can apply for the Tier 5 visa if they are willing to volunteer in a charity, they have been sponsored to work as a sportsperson or creative worker, they are aiming to participate in a work exchange programme for a short time, they are employed under international law (e.g. working for a foreign government) or they are working for a religious order. The Tier 5 visa also offers the possibility for young people between 18 and 30 years old from specific countries³⁵² to spend a period up to two years in the UK (Youth Mobility Scheme).

³⁵¹ In order to be eligible for a visa in any of the five tiers the applicant must pass a points-based assessment. In work visa applications, points are generally awarded according to the applicant's ability, experience and age.

³⁵² Australia, Canada, Japan, Monaco, New Zealand, Hong Kong, Republic of Korea, Taiwan.

Although eligibility rules are very different across the different schemes, all non-EU migrant must have a valid clearance for entry under these routes. The majority of the visas request a specific endorsement from a public sector organisation (e.g. the Home Office) or a sponsorship from a list of licensed companies. When an endorsement or the sponsorship is not requested, a high level of skills are necessary, an amount of investment is requested (such as for Tier 1) or there are restrictions concerning the eligible countries (such as for the Youth Mobility Scheme). These regulations clearly increase the barriers to access the UK labour market for non-EU migrants. Most non-EU migrants who are subject to immigration control are also unable to access "public funds" (such as jobseekers' allowance or tax credits), although they can use public services like the NHS and education. Finally, through the Immigration Act 2014 and 2016, an NHS surcharge (Immigration Health Surcharge) to cover the entire period of the visa has been introduced in the immigration application for all non-EU migrants.

9.6.2.2 Asylum seekers

A completely different system and right to work has been established concerning asylum seekers. Asylum policy has been identified as institutionally exclusionist, given that the restriction of rights demarcates asylum seekers as "other" and undeserving (Bakker et al., 2016). According to the Immigration Act of 1999, asylum seekers are explicitly excluded from the labour market. Up until 2002, asylum seekers could request permission to work after 5 months of awaiting their application, but in 2002 this period was extended to 12 months. Moreover, the pending period should not depend on the asylum seeker mistakes in the application ("fault of the claimant") (Home Office, 2017a). This is in contradiction with the Reception Conditions Directive (COM[2011] 320 final) published in 2011 which only allows a labour market restriction for 6 months (Bales, 2013). However, the UK government, as explored in the case law section, rejected the 2011 Reception Conditions Directive. After the 12-month period lapses, asylum seekers can only apply for jobs specified under Tier 2 of the Shortage Occupation list. The Tier 2 restriction was justified by the Government due to the legislation on labour market access to Non-EU migrants (explored above). It is therefore very difficult for asylum applicants to³⁵³ comply with the Tier 2 shortage occupation lists and this clearly affects their possibilities for integration, and consequently has an impact on their health and connectedness (particularly of women) (Mayblin, 2016a; Mulvey, 2015). In addition, asylum seekers are also precluded from self-employment and starting a business according to Immigration Rules part 11B (Reception Conditions for Non-EU Asylum Applicants).

Exclusion from employment makes the asylum seekers fully dependent on the State for the means of their existence (Bales, 2013). In addition, they are also immediately excluded from the provision of mainstream benefits (such as for example Child Benefit, Disability Living Allowance). Only in those cases where the asylum applicant is considered as destitute or is

³⁵³ Accessible at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-k-shortage-occupation-list>

likely to become destitute with the next 14 days (section 95 of Asylum Act 1999), he/she receives support from the Home Office. Payments to meet essential living needs (equivalent to £37.75 per week) and/or accommodation on a no-choice basis are provided. There is a somewhat different situation for refused asylum seekers. They are generally not entitled to any help, and their accommodation and public welfare support is removed. However, if they demonstrate that they are taking action to leave the country or they can demonstrate that they cannot return to their home due to the situation in the country of origin they could receive basic shelter and a lower level of support.

9.6.2.3 Refugees

Migrants granted refugee or humanitarian protection statuses (including refugees who are resettled as part of the VPRS) are entitled to work without any restrictions (both as an employee or self-employed) and thus have the same right to work as British citizens. However, the definite leave to remain for five years has been identified as a barrier to labour-market access due to the uncertainty surrounding the long-term presence of a refugee in employment (Bloch, 2008; Stewart & Mulvey, 2014). Refugees are eligible for mainstream benefits such as the most recent Universal Credit reform.³⁵⁴ However, new refugees could face a period without any income due to the specific timeframe of the welfare benefit and the gap with the transition period of 28 days (APPG, 2017). Newly recognised refugees are able to apply for an interest-free integration loan to negotiate this period where there is a risk of destitution. The Home Office is responsible for accepting the request while the Department for Work and Pensions is responsible for the payment and the recovery. Different experiences in terms of welfare entitlement are faced by refugees that are part of the Vulnerable Persons Resettlement Scheme. They, in fact, receive a pre-departure cultural orientation and they are immediately provided with accommodation, a welcome pack, an allowance and support for health and education services.

Table 9.4 summarises the rights to residence, work and welfare access that the different migrants are entitled to.

³⁵⁴ Universal credit is a social security benefit introduced in 2013 to replace six different benefits and tax credits.

Table 9.4 Adapted by Dwyer, Hodkinson, Lewis, & Waite, 2016)– Rights entitlement for Migrants

Definition/Status	Right to Residence	Right to Work	Welfare Rights
Asylum seeker: a person who has applied for asylum and whose application has not yet been decided	Yes, whilst their application is considered	No (curtailed since 2002). Can apply for permission to work after 1 year if the delay of initial claim is not their fault – only Tier 2 shortage list	Basic accommodation and public welfare support. Must be destitute and willing to accept no-choice dispersal policy
Humanitarian protection: a person whose case does not fit the refugee criteria but who is given permission to enter or remain in the UK because they need protection from harm by others	Yes Granted for 5 years in first instance	Yes	Access to welfare rights on the same base of UK citizens. They need to wait 3 years to access financial support for universities.
Refugee: a person who has received a positive decision on their asylum claim	Yes Granted 5 years temporary leave to remain (since 2005)	Yes	Access to welfare rights on the same base of UK citizens.
Refused asylum seeker: a person whose asylum claim has been refused	No Expected to return to their grant of origin	No	Not generally entitled to support. Accommodation and Public Welfare support removed. Basic shelter and support may be available for some hard cases
Non-EU migrant: a person whose came to the UK for work and study under a visa programme	Yes. Granted for the time of the Visa	Depending on the Visa (Tier for work)	Education and NHS (NHS Surcharge)

9.6.3 Vocational and Education training

The UK Government identifies language learning and education as key facilitators of the integration of MRAA (Meer et al., 2018). Acquisition of language has been identified as central to get employment, increase social connectedness and reach positive health and well-being (Bakker et al., 2016). However, despite the focus of the UK Government on English-language abilities in its policies, funds to provide courses have been reduced. Asylum seekers were excluded from free access to English courses in England (Mulvey, 2015) and restrictions on provision of courses for refugees were also established. According to Court (2017), between 2008 and 2015, there was a 50% funding reduction of English as a Second or Other Language (ESOL) classes. Increasing waiting lists and lack of provision in the local community were among some of the effects of this funding reduction. Although a £10 million funding scheme has been announced in 2016 for providing free English classes, these courses are only accessible to Syrian refugees who arrived through the VPR Scheme (MacIver, 2016). For the other refugees there are no specific funding streams except the ones that are dedicated to any other individuals that meet the eligibility criteria. As described above education is one of the areas devolved to subnational constituent nations of the UK. Thus, the level of access to education is different in the different nations. In Scotland, for example, education policies have worked alongside Scottish integration approaches to provide access to both refugees and asylum seekers to education (Meer et al., 2018). All children and young people from different backgrounds including asylum seekers and refugees have universal access to compulsory education in Scotland. For all the people over the age of 16, fees for attending college and studying full or part-time course are waived. In addition, ESOL classes are offered to all migrants independently from their legal status and programmes to integrate local communities and migrants through English language courses have been provided.

Concerning education, the UK exercised its right under Protocol 21 not to opt-in to the Qualification Directive (Directive 2011/95/EU). Thus, the UK does not apply the Directives with respect to procedures for the recognition of qualifications, in particular, the equal treatment between refugees and nationals and access to schemes for the assessment and validation of prior learning. The UK has a National Recognition Information Centre (NARIC) who is responsible to provide information and advice on the skills and qualifications of all migrants and it provides international qualifications conversion. Support for university access is fragmented and dependent upon the legal status of the migrant. For example, refugees have the same access to University as British students (with the same fees as home students) and scholarships alongside loans are often offered. Migrants that arrive with the aim to study in the UK have to pay a higher level of fees than home students and do not have access to the same financial support (APPG, 2017).

Some vocational programmes of work placement and job intermediation have been promoted at a local level. Examples of this are the *Phoenix Mentoring Project* or the *Bridges Programmes* which arrange short-term placement and mentoring activities. The Phoenix Mentoring project in Newcastle aims at supporting asylum seekers and refugees young people between 16 and 25 years old in a process of learning and development based upon a one-to-one mentor support. The Bridges Programmes based in Scotland aims at providing employability support to migrants, refugees and asylum seekers, investing in further

education, short work placement programs (not paid placement) and vocational training. However, the risk of losing Job Seekers Allowance during the work placement programmes has been identified as a disincentive to be part the Bridges scheme (MacIver, 2016). Sector-specific vocational training has also been provided to refugees such as *Refugees into Teaching*, *Refugee Doctors*, *Refugee Health Professionals-Building Bridges*. However, the entry criteria ascribed by the professional standards required in the UK, the difficult process of re-qualifications and exam passing have been identified as barriers to access the labour market in these sectors (Piętka-Nykaza, 2015). Some training schemes have been developed to incentivise refugees to be self-employed and run their own business. The *Refugees into business scheme*, for example, supported applicants in all the steps to set up a small enterprise. However, the lack of a national strategy and policies in terms of educational access and training - as will be fully explored in the next section – multiplies the risk of creating a fragmented and project-based response to integration issues, a response that risks not being sufficient to address the complex and multifaceted path of inclusion.

9.6.4 Institutional challenges

The lack of a national strategy for the integration of migrants, refugees and asylum seekers is one of the main institutional challenges that can be identified in the UK context (MacIver, 2016). Integration has, in fact, remained notably absent from policy, at least since 2010 (Meer et al., 2018). Refugees are the only category for which the UK Government has introduced an integration strategy in 2000 (*Equal Citizens*) that aimed at supporting refugee access to jobs, benefits, accommodation, health, education and language classes (Mulvey, 2015). In addition, initial policies were aiming at supporting third sector organisations involvement to provide services (Cheung & Phillimore, 2017). A second refugee integration strategy was developed in 2005, introducing the Strategic Upgrade of National Refugee Integration Service (SUNRISE) first and the Refugee Integration and Employment Service (RIES) second. The two programmes aimed at enabling integration through the signposting to mainstream services across key social policy areas. Both programmes were operated by the Refugee councils and local authorities and they helped to assist refugees to recognise their own skills and experience, improving their ability to access employment services (Bloch, 2008). However, after the election of 2010 and due to austerity measures the integration programmes were closed, placing the responsibility of integration fully in the hands of local government and communities (Bales, 2013). While a range of government departments have been under pressure to reduce their budgets, migrants, refugees and particularly asylum seekers were targeted as a relatively easy area for austerity measures. Asylum seekers are unable to vote, unable to work and are often portrayed negatively in the media (Darling, 2016; Sales, 2002). Thus, instead of focusing on integration policies, the major focus of the UK Government has been on increasing barriers at entry, investing in removals and creating an unfriendly and difficult environment for all migrants. In recent years the policy emphasis shifted from separate and specific immigrant integration policies to the broader social inclusion and mobilities priorities (van Breugel & Scholten, 2017). The UK Government sought to include and integrate certain migrants by making them less different, transforming a multicultural approach to a more assimilation based process, centred upon the concept of Britishness and common citizenship. This was particularly evident in the 2012 “Creating the conditions for integration” framework with an emphasis on individual agency

and responsibility and a limited role of the central government. The absence of a national integration policy is to be contrasted with the devolved nations such as Scotland and Wales that tried to fill this gap in those areas where they have legislative competence. This increases a governmental complexity around the issues of migration, developing an institutional challenge and tension between the two levels of government. In addition, this affects the development of very different narratives across the four nations of the UK in terms of migration but also a very different environment for migrants to live in England and in Northern Ireland in comparison with those living in Scotland and Wales.

9.6.5 Anti-discriminatory legislation

The lack of national integration has impacted upon the UK race relations model that has historically been influenced by managing diversity through racial equality, non-discrimination acts and limiting numbers (Scholten, Collett, & Petrovic, 2017). The first attempts to deal with the potential for racial conflict and to tackle racial discriminations can be traced back to the 1960s and 1970s. Three Race Relations Acts (1965, 1968, 1976) were promoted, aiming at banning discrimination on the basis of race, colour or ethnic origin through legal sanctions. Regulatory agencies were also established to promote greater equality of opportunity and access to employment, education and public facilities. However, according to several studies, the goals remained unfilled (Schuster and Solomos, 2004).

Only after the election of the Labour government in 1997, were race relations modified, promoting the 2000 Race relations (Amendment Act) which enforced on public authorities a new duty to promote racial equality. However, officials from the Home Office that make decisions on immigration cases were excluded. The persistent underemployment of minority ethnic groups resulted in the formation of the Ethnic Minority Employment Task Force in 2003. In 2007 the Equality and Human Rights Commission (EHRC) had taken on the responsibilities of the Commission for Racial Equality and the 2010 Equality Act superseded the four Race Relations Acts, combining everything into a broader framework (Geddes & Scholten, 2016). The Equality Act 2010 sets out nine protected characteristics which are: age; disability; gender reassignment; marriage or civil partnership (in employment only); pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The 2010 Act encompasses the protections previously provided by legislation including the Equal Pay Act 1970, the Race Relations Act 1976 and the Disability Discrimination Act 1995. Finally, included in the 2010 Act was a “public sector equality duty” which harmonised some of the existing duties not to discriminate based upon race, disability and gender in public sector organisation.

9.6.6 Legal Instruments to fight informal employment, workers' exploitation and *caporalato*

Irregular migrants and asylum seekers that face a limited access to benefits and a restriction to the rights to work are often involved in irregular and informal sectors of employment (Dwyer et al., 2016). However, also refugees and regular migrants could engage in severe exploitative labour because of the high barriers they face in finding employment (Dwyer et al., 2016). Since 1996, it has been possible to prosecute UK employers for hiring irregular immigrants. Sanctions were strengthened in 2004 and 2008, up to arriving at the Immigration

Act of 2016 which again increased penalties. Today, an illegal working criminal offence can be convicted with a maximum penalty of 51-weeks prison sentence and an unlimited fine. Immigration officials have been allowed to seize property and earnings, to enter and search properties and to close down businesses. The legislation does not apply to activities that are undertaken by small businesses. Although some of the measures are directed at employers, they are likely to affect workers who may become more exploited through employers seeking to manage risks by lowering wages and/or increasing working hours (Dwyer et al., 2016). Unauthorised workers themselves, who became criminalised for the new offence of “illegal working” would also face deportation without appeal if they did not have the right to remain in the UK. The UK, then, is characterised by a strong state intervention to maintain formal labour markets. This legislation, more than tackling informal employment, seems to increase the barriers to access labour markets and indirectly affect the conditions of employment. This also confirms that a major focus, in fact, has been placed on border enforcement and the reduction of irregular migrants instead of improving working conditions. Trade unions and community organisations have thus asserted some role in campaigning and promoting better working conditions for migrants and ethnic minorities. For example, the Living Wage campaign in London is a key case example of unions and community organisations working together to improve working conditions for a mainly migrant group of workers, confirming once again the role of community organisations in supporting integration and inclusion.

9.7 Conclusion

Our analysis of the UK context presents a very challenging environment for the integration of migrants, refugees and asylum seekers. The policies of the last decades have been mainly based on increasing borders control and decreasing entitlements to migrants, asylum seekers and refugees. Scarce attention has been placed upon strategies of integration and inclusion, based upon the idea (dismissed by several studies) that employment will constitute a pull factor in terms of migration and that the presence of migrants, in a period of economic crisis, affect the displacement of national workers. The main policies and legislations have emphasised control of borders and have systematised a hostile environment towards migrations, involving employers, landlords, banks, universities and even the NHS in controlling the presence of irregular migrants. This hostile environment has seen its peak in spring 2018, in which the former Home Secretary has been forced to resign after the scandal of Windrush generation deportation and admitting to there being targets for the removal of irregular migrants.

This lack of integration policies has been highly criticised by the UNHCR. Diversity has been mainly managed through racial equality and non-discrimination acts. But this does not seem enough to stimulate a process of integration and inclusion, which has been defined as a complex multidimensional path that affects different policies area. The cross-cutting policies nature of integration has also generated tensions between the national and subnational level. Scotland and Wales, in fact, have promoted a different narrative and they have promoted integration strategies (Scotland) or specific delivery plan (Wales) in their devolved responsibilities which not only includes migrants and refugees but also asylum seekers and failed asylum applicants.

Local authorities and third sector organisations have a fundamental role in trying to address issues of integration. They provide services and schemes, promote international campaigns and fulfil a gap left by the government and could therefore represent a starting point to understand what has worked and what has not. The results and analysis of their programme could then inform the development of a national framework and strategy. Unfortunately, local government and third sector organisations have been affected by the austerity measures and their funds have been depleted in recent years. This alongside a lack of coordination strategy has generated a fragmented approach that risks undermining the aim of facilitating long-term inclusion.

Migrants, refugees and particularly asylum seekers represent a relatively easy target for austerity measures due to the increasingly negative narrative promoted by policy-makers and the UK media. Asylum seekers are the main targets of such policies. The prohibition of working, the lack of access to mainstream benefits and the freezing of support promoted in the last twenty years of legislation have deeply affected the lives of people that are waiting for their asylum claim to be processed. Increasing poverty and health inequalities among migrants with different legal status and between citizens and migrants have been increasing. Some of the rhetoric distinguishing between those who are deserving and undeserving in terms of welfare appears to lead us to question if there is a tangible dividing line between the valorisation of high skilled immigrants which invest or work in shortage occupation jobs compared to those with low skills or those who seek asylum. This division most probably will not improve with the results of the Brexit. The risk of opting out from the European directives that have invested in promoting an adequate standard of living and the fair reception of migrants and refugees and in improving workers rights will certainly have an impact on migrants in the UK.

However, rather than conclude that as a consequence of social, cultural and institutional change, the only future is a hostile environment for migrants, asylum seekers and refugees alongside a lack of integration, our hypothesis is that there is space to promote positive processes of integration. Through understanding the barriers and enablers that could facilitate or hinder inclusion into labour markets, it would hopefully be possible to counteract the hostile environment of today. However, the only way to test our hypothesis thoroughly is to undertake a more in-depth analysis into what constrains or hinders integration processes into employment at macro (policies), meso (civil society and social partners) and micro (individuals) levels. This is our intention in the future stages of our research.

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Case Lists

1. ZO (Somalia) and others: (Respondents) v Secretary of State for the Home Department (2010) UKSC 36
2. R (Refugee Action) v Secretary of State for the Home Department [2014] EWHC 1033
3. R (on the application of Kiarie) (Appellant) v Secretary of State for the Home Department (Respondent) [2017] UKSC 42
4. Regina (Razgar) v Secretary of State for the Home Department 2004

Annexes

Annex I: Overview of the Legal Framework on Migration, Asylum and International Protection

Legislation title	Date	Type of law	Object	Link/PDF
British Nationality Act	1948	Legislative Act	Citizens of Crown Rights	http://www.legislation.gov.uk/ukpga/Geo6/11-12/56/enacted
Commonwealth Immigrants Act	1962	Legislative Act	Citizens of Commowealth	https://api.parliament.uk/historic-hansard/acts/commonwealth-immigrants-act-1962
Commonwealth Immigrants Bill	1968	Legislative Act	Indian citizens	http://www.legislation.gov.uk/ukpga/1968/9/contents/enacted
Immigration Act	1971	Legislative Act	British Citizens and Migrants	https://www.legislation.gov.uk/ukpga/1971/77/contents
British Nationality Act	1981	Legislative Act	British Citizens and Migrants	https://www.legislation.gov.uk/ukpga/1981/61
Asylum and Integration Appeals Act	1993	Legislative Act	Asylum seekers	http://www.legislation.gov.uk/ukpga/1993/23/contents
Asylum and Immigration Act	1996	Legislative Act	Asylum seekers	https://www.legislation.gov.uk/ukpga/1996/49/contents
Human Rights Act	1998	Legislative Act	Asylum seekers	https://www.legislation.gov.uk/ukpga/1998/42/contents

Asylum and Immigration Act	1999	Legislative Act	Asylum seekers	https://www.legislation.gov.uk/ukpga/1999/33/contents
Nationality, Immigration and Asylum Act	2002	Legislative Act	Asylum seekers and migrants	https://www.legislation.gov.uk/ukpga/2002/41/contents
Asylum and Immigration Act	2004	Legislative Act	Asylum Seekers and refugees	https://www.legislation.gov.uk/ukpga/2004/19/contents
Immigration, Asylum and Nationality Act	2006	Legislative Act	Asylum seekers and migrants	https://www.legislation.gov.uk/ukpga/2006/13/contents
UK Borders Act	2007	Legislative Act	Migrants	https://www.legislation.gov.uk/ukpga/2007/30/contents
Borders, Citizenship and Immigration Act	2009	Legislative Act	Migrants	https://www.legislation.gov.uk/ukpga/2009/11/contents
Immigration Act	2014	Legislative Act	Asylum seekers and migrants	https://www.legislation.gov.uk/ukpga/2014/22/contents
Immigration Act	2016	Legislative Act	Asylum seekers and migrants	https://www.legislation.gov.uk/ukpga/2016/19/contents

Annex II: List of institutions involved in the migration governance

Institution	Tier of Government	Type of Institution	Area of Competence in the Field	Link
Home Office	First	Ministerial Department	Securing the UK border and controlling immigration; Considering applications to enter and stay in the UK; Issuing passports and visas	https://www.gov.uk/government/organisations/home-office/about
Department for Communities and Local Government (DCLG)/ Department of Housing, Communities and Local Government DHCLG)	First	Ministerial Department	Support communities and cohesion	https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government/about
Department of Work and Pension	First	Ministerial Department	Mainstream benefits for refugees and Integration Loan	https://www.gov.uk/government/organisations/department-for-work-pensions
Local authority-led Strategic Migration Partnerships	Second	Local Authority Partnership	Support to implement strategies for integrating migrants, refugees and asylum seekers	Partnership they have their own website. COSLA (Scottish partnership website) is: http://www.migrationscotland.org.uk/our-priorities/national-outcomes

Scotland, Wales and Northern Ireland	Second	Devolved nations	Housing, social services, Education and healthcare	http://www.gov.scot/Home ; https://gov.wales/?lang=en ; https://www.northernireland.gov.uk/
Local Councils	Third	Local Government	Integration strategies and programmes; voluntary dispersal schemes	City councils of the UK websites

Annex III: Overview of the legal framework on labour and anti-discrimination law

Legislation title	Date	Type of law	Object	Link/PDF
Race Relations Act	1965	Legislative Act	Discrimination	http://www.legislation.gov.uk/ukpga/1965/73/contents/enacted
Race Relations Act	1968	Legislative Act	Discrimination	http://www.legislation.gov.uk/ukpga/1968/71/contents/enacted
Equal Pay Act	1970	Legislative Act	Discrimination	http://www.legislation.gov.uk/ukpga/1970/41/contents/enacted
Race Relations Act	1976	Legislative Act	Discrimination	http://www.legislation.gov.uk/ukpga/1976/74/enacted

Asylum and Immigration Act	1996	Legislative Act	Irregular Work	https://www.legislation.gov.uk/ukpga/1996/49/contents
Asylum and Immigration Act	1999	Legislative Act	Rights to work asylum seekers	https://www.legislation.gov.uk/ukpga/1999/33/contents
The Employment Rights	1996	Legislative Act	Employment Rights	https://www.legislation.gov.uk/ukpga/1996/18/contents
Race Relations Amendment Act	2000	Legislative Act	Discrimination	http://www.legislation.gov.uk/ukpga/2000/34/contents
Nationality, Immigration and Asylum Act	2002	Legislative Act	Rights to work asylum seekers	https://www.legislation.gov.uk/ukpga/2002/41/contents
Asylum and Immigration Act	2004	Legislative Act	Irregular Work	https://www.legislation.gov.uk/ukpga/2004/19/contents
Equality Act	2010	Legislative Act	Discrimination	http://www.legislation.gov.uk/ukpga/2010/15/contents
Immigration Act	2016	Legislative Act	Irregular Work	https://www.legislation.gov.uk/ukpga/2016/19/contents

Immigration Rules	Updated to 2018	Rules	Right to Work	https://www.gov.uk/guidance/immigration-rules
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Glossary and List of Abbreviations

APS - Annual Population Survey

DCLG - Department for Communities and Local Government

DHCLG - Department of Housing, Communities and Local Government

ELN – Essential Living Needs

IMD - Index of Multiple Deprivation

IOM – International Organisation of Migration

IPS - International Passenger Survey

LTIM - Long-Term International Migration

MENA - Vulnerable Children Resettlement Scheme from the Middle East and North Africa

MRAA - Migrants, refugees and asylum applicants

NHS - National Health Service

ONS - Office for National Statistics

UKSC - UK Supreme Court

VPRS - Vulnerable Person Resettlement Scheme

Part III – Migrants, Refugees and Asylum Applicants Rights and Benefits Framework

10. Czech Republic

	Asylum Applicants ³⁵⁵	Refugees ³⁵⁶	Subsidiary protection ³⁵⁷	National forms of temporary protection ³⁵⁸	Economic migrants Short term (in the Czech republic Temporary Residence) ³⁵⁹	Economic migrants Long term (in Czech Republic Permanent Residence) ³⁶⁰	Undocumented migrants
FUNDAMENTAL FREEDOMS							
Permit to stay	Conditions of stay are defined in Act 325/1999 Coll. on Asylum Protection. Applicants have right to stay in the Czech Republic until the final decision about the application	yes- holders of asylum status are in the same legal position as holders of Permanent Residency	Yes (for limited period of time- most frequently one or two years) after this period holders of subsidiary protection have to apply for prolongation at Ministry of Interior-for prolongation they have to prove that	yes- until the decision about the temporary protection, through its duration and until the final decision about possible prolongation (this legal instrument is not used so there are no data about standard length of	Status and duties of various groups of migrants are defined in the Act 326/1999 Coll. on the Residence of Foreign Nationals). Temporary Residence and long term visa are most often issued for period of one year. For prolongation applicants	Foreigners can apply for Permanent Residence after five years of stay in the Czech Republic and Permanent Residence is issued for period of ten years.	No- undocumented migrants are facing threat of expulsion and searches of Foreign Police are common in workplaces.

³⁵⁵ Act 325/1999 Coll. on Asylum Protection

³⁵⁶ Act 325/1999 Coll. on Asylum Protection (Refugees with asylum status are in the same legal position as permanent residents)

³⁵⁷ Act 325/1999 Coll. on Asylum Protection

³⁵⁸ Act 221/2003 Coll. on Temporary Protection of Aliens

³⁵⁹ Act 326/1999 Coll. on the Residence of Foreign Nationals

³⁶⁰ Act 326/1999 Coll. on the Residence of Foreign Nationals

			reasons for the subsidiary protection are still valid.	temporary protection)	have to prove that they have sufficient finance to cover their living, health insurance, housing and they have to prove purpose of their stay (birth or marriage certificate in case of family reunification, acceptance of school in case of study or working permit). Procedure of the prolongation is difficult and time consuming.		
Freedom of movement	Yes, but the applicant who don't prove his/her identity sufficiently can be detained in the Reception Center up to 120 days	yes	yes	yes- after initial interviews in the humanitarian centres (§ 32)	yes-	yes	Not applicable
Family reunification	not applicable- only in case of successful asylum application, asylum holder can apply for family reunification	according to §13 Act 325/1999 Coll. family reunification is one of the valid purposes for granting asylum status	according to §13 Act 325/1999 Coll. family reunification is one of the valid purposes for granting asylum status	yes (§ 51)	yes- family reunification is one of the recognised purposes for long term visa or Temporary Residence application (Act 326/1999 Coll.)	Yes- family reunification is one of the recognised purposes for the Permanent Residence application (Act 326/1999 Coll.)	not applicable

Right to legal defense	Yes- asylum applicants have right to contact NGOs offering legal services and they get their list at the Reception Centres), however there is no specific official policies to provide legal advice for foreigners	yes- legal advice can be provided by NGOs or at State Integration Centres however there are no specific policies	yes	yes	yes- legal advice can be provided by NGOs or at State Integration Centres however there are no specific services for foreigners defined in the legal system.	yes- legal advice can be provided by NGOs or at State Integration Centres however there are no specific services for foreigners defined in the legal system.	yes
SOCIO-ECONOMIC BENEFITS							
Health	granted on the scale of public health insurance as defined by Act 48/1997 Coll. on Public Health Insurance, health care is provided either in the refugee facilities or by public providers-	Participate in the public health care system (Act 48/1997 Coll. on Public Health Insurance)however there were cases documented where hospital refuse health care to asylum seekers and refugees	Participate in the public health care system (Act 48/1997 Coll. on Public Health Insurance)	Participate in the public health care system (Act 48/1997 Coll. on Public Health Insurance)	Don't participate in public health care scheme. Applicants for long term visa or Temporary Residence have to prove that they have commercial health insurance. This insurance is provided by several private insurance companies, its price can be high and each provider covers different services (often insufficient especially in the case of pregnancy). The exceptions are	Participate in the public health care system as defined by Act 48/1997 Coll. on Public Health Insurance	Health care professionals are obliged (by §150 Act 40/2009 Penal Code and § 2 Ethical Codex of Czech Medical Chamber) to offer necessary health care to everyone- undocumented migrants who are not insured have to pay for these services. In praxis undocumented migrants are using services of health

					migrants working for Czech companies who participate in the public health care system. In 2017 Constitutional Court declared that this praxis is not discriminating and that Human Rights Charter is not violated (Pl. ÚS 2/15). Constitutional Court was dealing with two cases of women of Ukrainian nationality who were charged by public hospitals after giving birth.		care facilities and individual professionals who are informally known to offer health care for cash.
Social care	Social workers are available at Residential Centres	Right to the same care as citizens (Act 108/ 2006 Coll. Social Services Act) see below. Refugees can participate voluntarily in the State Integration Programme. For one year refugees cooperate closely with social worker in the region	Right to the same care as citizens (Act 108/ 2006 Coll. Social Services Act) Refugees can participate voluntarily in the State Integration Programme. For one year refugees cooperate closely with social worker in the region	social workers available at Humanitarian Centres	Social rights of temporary residents are limited (by Act 326/1999 Coll. on the Residence of Foreign Nationals- they are not entitled to all allowances (see below) however State Integration Centres provide social and legal counselling and courses of social and cultural skills.	Right to the same care as citizens (Act 108/ 2006 Coll. Social Services Act). State Integration Centres provide social and legal counselling and courses of social and cultural skills.	there are no specific policies targeting undocumented migrants, social care provided only by NGOs´.

Education	Based on § 33. of Constitutional Act (Act 2/1993 Coll) and Act on Education (Act 561/ 2004 Coll.) attending primary school (9 years, up to 15 years of age) and the last year of pre-school is compulsory. Ministry of Education is also providing special funding for schools which are attended by children with foreign background (to cover material costs, personal costs and extracurricular activities.	Based on § 33. of Constitutional Act (Act 2/1993 Coll) and Act on Education (Act 561/ 2004 Coll.) attending primary school (9 years, up to 15 years of age) and the last year of pre-school is compulsory. Ministry of Education is also providing special funding for schools which are attended by children with foreign background (to cover material costs, personal costs and extracurricular activities	Based on § 33. of Constitutional Act (Act 2/1993 Coll) and Act on Education (Act 561/ 2004 Coll.) attending primary school (9 years, up to 15 years of age) and the last year of pre-school is compulsory. Ministry of Education is also providing special funding for schools which are attended by children with foreign background (to cover material costs, personal costs and extracurricular activities	Based on § 33. of Constitutional Act (Act 2/1993 Coll) and Act on Education (Act 561/ 2004 Coll.) attending primary school (9 years, up to 15 years of age) and the last year of pre-school is compulsory. Ministry of Education is also providing special funding for schools which are attended by children with foreign background (to cover material costs, personal costs and extracurricular activities	Based on § 33. of Constitutional Act (Act 2/1993 Coll) and Act on Education (Act 561/ 2004 Coll.) attending primary school (9 years, up to 15 years of age) and the last year of pre-school is compulsory. Ministry of Education is also providing special funding for schools which are attended by children with foreign background (to cover material costs, personal costs and extracurricular activities	Based on § 33. of Constitutional Act (Act 2/1993 Coll) and Act on Education (Act 561/ 2004 Coll.) attending primary school (9 years, up to 15 years of age) and the last year of pre-school is compulsory. Ministry of Education is also providing special funding for schools which are attended by children with foreign background (to cover material costs, personal costs and extracurricular activities.	Based on § 33. of Constitutional Act (Act 2/1993 Coll) and Act on Education (Act 561/ 2004 Coll.) attending primary school (9 years, up to 15 years of age) and the last year of pre-school is compulsory. Ministry of Education is also providing special funding for schools which are attended by children with foreign background (to cover material costs, personal costs and extracurricular activities. Schools shouldn't check legal status of children or their parents.
Training	Same rights as citizens (Act 561/ 2004 Coll.) - for secondary schools	Same rights as citizens (defined by Act on Education	Same rights as citizens- for secondary schools	Same rights as citizens- for secondary schools	education is one of official reasons for obtaining long-term	Same rights as citizens-Act 177/ 2009 Coll.) for	Secondary schools and universities have right to check

	<p>and universities applicant has to prove finished previous education and pass the entrance exam. Asylum applicants and refugees can ask for recognition of education in case of missing documents. Act on Education (Act 561/ 2004 Coll.) has also several inclusive measures. The entrance exam for foreigners to secondary school shouldn't include Czech language but the applicant has to prove basic understanding (§ 60) and they have longer time for final exam in Czech language (§ 5). Programmes in Czech language at public universities are tuition free, necessary condition for acceptance is finished secondary education (Act 111/1998 Coll. on Higher Education)</p>	<p>Act 561/ 2004 Coll) - for secondary schools and universities applicants has to prove finished previous education and pass the entrance exam. Asylum applicants and refugees can ask for recognition of education in case of missing documents. Act on Education (Act 561/ 2004 Coll.) has also several inclusive measures. The entrance exam for foreigners to secondary school shouldn't include Czech language and but the applicant has to prove basic understanding (§ 60) and they have longer time for final exam in Czech language (§ 5 Act 177/ 2009 Coll.)</p>	<p>and universities applicants has to prove finished previous education and pass the entrance exam. Asylum applicants and refugees can ask for recognition of education in case of missing documents. Act on Education (Act 561/ 2004 Coll.) has also several inclusive measures. The entrance exam for foreigners to secondary school shouldn't include Czech language and but the applicant has to prove basic understanding (§ 60) and they have longer time for final exam in Czech language (§ 5 Act 177/ 2009 Coll.). Programmes in Czech language at public universities are tuition free, necessary condition for acceptance is finished secondary</p>	<p>and universities applicants has to prove finished previous education and pass the entrance exam. Asylum applicants and refugees can ask for recognition of education in case of missing documents. Act on Education (Act 561/ 2004 Coll.) has also several inclusive measures. The entrance exam for foreigners to secondary school shouldn't include Czech language and but the applicant has to prove basic understanding (§ 60) and they have longer time for final exam in Czech language (§ 5 Act 177/ 2009 Coll.). Programmes in Czech language at public universities are tuition free, necessary condition for acceptance is finished secondary</p>	<p>visa or Temporary Residence. Acceptance letter from the school is needed to apply for this type of residence. Secondary schools and programmes in Czech language at public universities are tuition free.</p>	<p>secondary schools and universities applicants has to prove finished previous education and pass the entrance exam. Recognition of diplomas and certificates is needed. Act on Education (Act 561/ 2004 Coll.) has also several inclusive measures. The entrance exam for foreigners to secondary school shouldn't include Czech language but the applicant has to prove basic understanding (§ 60) and they have longer time for final exam in Czech language (§ 5). Programmes in Czech language at public universities are tuition free, necessary condition for acceptance is finished secondary education (Act 111/1998 Coll. on</p>	<p>the legality of stay of students</p>
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		Programmes in Czech language at public universities are tuition free, necessary condition for acceptance is finished secondary education (Act 111/1998 Coll. on Higher Education)	education (Act 111/1998 Coll. on Higher Education)	education (Act 111/1998 Coll. on Higher Education)		Higher Education).	
Housing	According to Act 325/1999 Coll. on Asylum Protection applicants have right to choose either to live in <i>Residential Centers</i> or stay in private (then they have to have the acceptance of the owner of the property and have to be registered at the local Foreign Police office). If they have own savings they have to pay for the housing provided at Residential Centers otherwise accommodation is free.	There are no special housing policies for migrants and no social housing overall but refugees have right to both universal benefits that cover housing - <i>Supplement for Housing</i> -for families and individuals whose income is lower than living wage (Act 111/2006 Coll. on Assistance in Material Need) and <i>Housing allowance</i> - for families and individuals whose income doesn't	There are no special housing policies for migrants and no social housing overall but refugees have right to both universal benefits that cover housing <i>Supplement for Housing</i> -for families and individuals whose income is lower than living wage (Act 111/2006 Coll. on Assistance in Material Need) and <i>Housing allowance</i> - for families and individuals whose income doesn't cover housing sufficiently (Act 108/ 2006 Coll.	refugees under temporary protection can reside either in the Humanitarian Centres (currently none in the Czech republic) or can stay in private but have to be registered at the local Foreign Police	No policies- to obtain temporary residence applicants have to prove that they have secured accommodation (Act 326/1999 Coll. on the Residence of Foreign Nationals)	There are no special housing policies for migrants and no social housing overall but refugees have right to both universal benefits that cover housing <i>Supplement for Housing</i> -for families and individuals whose income is lower than living wage (Act 111/2006 Coll. on Assistance in Material Need) and <i>Housing allowance</i> - for families and individuals whose income doesn't cover housing sufficiently (Act 108/ 2006 Coll.	No policies

		cover housing sufficiently (Act 108/2006 Coll. Social Services Act). Housing is also one of the main issues in the State Integration Programme- social workers assist refugees with finding, moving in and furnishing the flat.	Social Services Act). Housing is also one of the main issues in the State Integration Programme- social workers assist refugees with finding, moving in and furnishing the flat.			Social Services Act).	
Language courses	offered at facilities run by Refugee Facilities Administration	one year language course organised by Ministry of Education (finished with a certificate) is part of voluntary State Integration Programme. Language courses are also offered in the State Integration Centres- however, there is no duty to take part in the language education	one year language course organised by Ministry of Education (finished with a certificate) is part of State Integration Programme. Language courses are also offered in the State Integration Centres, however, there is no duty to take part in the language education	no policies defined by law (temporary protection is not used so there is no praxis)	several types of language courses are offered by State Integration Centres .There is no duty to take part in the language education	several types of language courses are offered by State Integration Centres. Language exam is necessary for obtaining Permanent Residency and later citizenship. Scope is defined by Ministry of Education. Exams can be passed at certified language schools and first attempt is paid by Ministry of Interior.	Provided only by NGOs

Cash benefit/allowances	<p>during they stay in the Residential Centers applicants have right to <i>subsistence allowance</i> (cash benefit without income or other type of benefit). If applicant has own funds exceeding the subsistence allowance the right for this benefit expires and he/she has to pay for accommodation and boarding (Reception Centers) or accommodation (Residential Centers)</p> <p>Applicants living outside the Residential Centers has right to <i>pocket money</i> (coca 1 Euro per day) and for a term of maximum three months for allowance up to 1.6 of <i>subsistence allowance</i> (special application is processed by Ministry of Interior).</p>	<p>refugees participate fully in the universal social security system- they have rights for <i>Assistance in material need benefits</i> (defined by Act 111/2006 Coll. Act on Assistance in Material Need) which are- <i>Supplement for Housing</i> (see above), <i>Subsistence Allowance</i> (for low income individuals and families- regular) and <i>Extraordinary Immediate Assistance</i> (for individuals and families in difficult situations- simple)</p>	<p>refugees participate fully in the social security system- they have rights for <i>Assistance in material need benefits</i> defined by Act 111/2006 Coll. Act on Assistance in Material Need) <i>Supplement for Housing</i> (see above), <i>Subsistence Allowance</i> (for low income individuals and families- regular) and <i>Extraordinary Immediate Assistance</i> (for individuals and families in difficult situations- simple)</p>	<p>in case of limited finance right to <i>subsistence allowance</i> (the total amount depends on number of family members). §31</p>	<p>temporary residents have right only to <i>Extraordinary Immediate Assistance</i> allowance for people in unexpected situation (nature catastrophes, victims of criminal activity etc). On the other hand applicants for temporary residence have to prove that they have sufficient financial resources. If the holder of the blue card applies for one of the benefits the regional Labour Office has to inform the Ministry of Interior which assess the eligibility and consequences and can in certain cases cancel validity of the blue card</p>	<p>residents participate fully in the social security system they have rights for <i>Assistance in material need benefits</i> defined by Act 111/2006 Coll. Act on Assistance in Material Need) <i>Supplement for Housing</i> (see above), <i>Subsistence Allowance</i> (for low income individuals and families- regular)) and <i>Extraordinary Immediate Assistance</i> (for individuals and families in difficult situations- simple)</p>	<p>In exceptional cases right to <i>Extraordinary Immediate Assistance</i> - simple cash benefit for individuals in specific situations defined by § 2 of Act 111/2006 Coll. Act on Assistance in Material Need)- it is paid by regional Labour Offices to people suffering from natural disaster or individual problem (such as theft of personal documents) or who don't have sufficient finance.</p>
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Child care benefits	none	same rights as citizens defined by Act 108/ 2006 Coll. Social Services Act) - right to maternity (28 week), paternity (one week) and parental (two/three/four year scheme) leaves. However if the parent didn't participate in the public social insurance one year prior to birth she/he has right only to minimum allowance	same rights as citizens defined by Act 108/ 2006 Coll. Social Services Act) - right to maternity (28 week), paternity (one week) and parental (two/three/four year scheme) leaves. However if parent didn't participate in the public social insurance one year prior to maternal leaves she/he has right only to minimum allowance	none	right for maternity and parental leave if the mother was insured in public social security at least for 270 days prior to the start of maternity leave. This applies to women that were working for Czech companies. Private insurance (see above) often doesn't cover child care.	same rights as citizens defined by Act 108/ 2006 Coll. Social Services Act) - right to maternity (28 week), paternity (one week) and parental (two/three/four year scheme) leaves. However if parent didn't participate in the public social insurance one year prior to maternal leaves she/he has right only to minimum allowance	none
POLITICAL RIGHTS/RIGHTS OF THE PUBLIC SPHERE							
Right to vote in local elections	no	yes (according to § 4 Act 491/2001 Coll on Elections to Municipal Councils)	yes (according to § 4 Act 491/2001 Coll on Elections to Municipal Councils)	yes (according to § 4 Act 491/2001 Coll on Elections to Municipal Councils)	no	yes (according to § 4 Act 491/2001 Coll on Elections to Municipal Councils)	no

Right to vote for consultative entities - not applicable							
Right to join/create a cso	no	yes (Act 82/2012 Coll. Civil Code)	yes (Act 82/2012 Coll. Civil Code)	yes (yes (Act 82/2012 Coll. Civil Code))	no- according to Act 82/2012 Coll. Civil Code social security number is needed for application to create cso and therefore it is not sure if temporary residents would be able to create cso (however there was no legal case so far)	yes (Act 82/2012 Coll. Civil Code)	No
WORK RELATED RIGHTS/BENEFITS							
Right to work	After one year of stay in the Czech Republic applicant has right to enter labour market and use services of Labour Office	free access to the labour market and services of Labour Office (counselling, training)	free access to the labour market and services of Labour Office (counselling, training)	free access to the labour market and services of Labour Office (counselling, training)	Secured workplace is a condition for obtaining of temporary residence (in case of work as a purpose of the application) - applicant can choose from positions listed in database run by Ministry of Interior.	Free access to the labour market and services of Labour Office (counselling, training)	no

					These are vacancies that couldn't be filled within the national labour market. Based on preliminary work contract applicant is issued <i>employee's card</i> which work as a work and residence permit.		
Recognition of competences/degree	<p>Conditions defined by Act 18/2004 Coll. on the recognition of professional qualifications and other competences. Recognition of primary and secondary education is conducted by regional and municipal administration and tertiary education by universities with similar programmes. For specific occupation further recognition by respective institutions (chambers, ministries, unions) is needed.</p> <p>Asylum seekers and refugees can also ask for recognition in case</p>	<p>Conditions defined by Act 18/2004 Coll. on the recognition of professional qualifications and other competences. Recognition of primary and secondary education is conducted by regional and municipal administration and tertiary education by universities with similar programmes. For specific occupation further recognition by respective institutions (chambers, ministries, unions)</p>	<p>Conditions defined by Act 18/2004 Coll. on the recognition of professional qualifications and other competences. Recognition of primary and secondary education is conducted by regional and municipal administration and tertiary education by universities with similar programmes. For specific occupation further recognition by respective institutions (chambers, ministries, unions) is needed.</p> <p>Asylum seekers and</p>	<p>Conditions defined by Act 18/2004 Coll. on the recognition of professional qualifications and other competences. Recognition of primary and secondary education is conducted by regional and municipal administration and tertiary education by universities with similar programmes. For specific occupation further recognition by respective institutions (chambers, ministries, unions) is needed.</p> <p>Asylum seekers and</p>	<p>Conditions defined by Act 18/2004 Coll. on the recognition of professional qualifications and other competences. Recognition of primary and secondary education is conducted by regional and municipal administration and tertiary education by universities with similar programmes. For specific occupation further recognition by respective institutions (chambers, ministries, unions) is needed.</p> <p>Organisations and media have called attention to praxis of</p>	<p>Conditions defined by Act 18/2004 Coll. on the recognition of professional qualifications and other competences. Recognition of primary and secondary education is conducted by regional and municipal administration and tertiary education by universities with similar programmes. For specific occupation further recognition by respective institutions (chambers, ministries, unions) is needed.</p> <p>Organisations and</p>	no

	of missing documents.	is needed. Asylum seekers and refugees can also ask for recognition in case of missing documents.	refugees can ask for recognition also in case of missing documents.	refugees can ask for recognition also in case of missing documents.	professional exams organised by Czech Medical Chamber and the fact that it might be more complicated for foreigners to pass the exam.	media have called attention to praxis of professional exams organised by Czech Medical Chamber and the fact that it might be more complicated for foreigners to pass the exam.	
Vocational training	applicant can apply to vocational schools	can apply to vocational school or in case of unemployment can participate in the retraining schemes organised by Labour Offices and available for citizens	can apply to vocational school or in case of unemployment can participate in the retraining schemes organised by Labour Offices and available for citizens	can apply to vocational school or in case of unemployment can participate in the retraining schemes organised by Labour Offices and available for citizens	vocational training can be one of the recognised reasons for application for temporary residence but in that case the possibility to work at the same time legally would be limited	can apply to vocational school or in case of unemployment can participate in the retraining schemes organised by Labour Offices and available for citizens	no
Anti-discrimination measures	Anti-discrimination law (Act 198/2004)	Anti-discrimination law (Act 198/2004)	Anti-discrimination law (Act 198/2004)	Anti-discrimination law (Act 198/2004)	Anti-discrimination law (Act 198/2004)	Anti-discrimination law (Act 198/2004)	Anti-discrimination law (Act 198/2004)
Right to work in public sector	yes, with exceptions (armed services and positions in the state service defined by Act 234/2014 Coll.)	yes, with exceptions (, armed services and positions in the state service defined by Act 234/2014)	yes, with exceptions (armed services and positions in the state service defined by Act 234/2014)	yes, with exceptions , armed services and positions in the state service defined by Act 234/2014)-	yes, with exceptions , armed services and positions in the state service defined by Act 234/2014)-	yes, with exceptions , armed services and positions in the state service defined by Act 234/2014)-	not applicable

Right to self-employment	no	yes- one has to fulfil conditions defined by Act 455/1991 Coll. Trade Act) that are the same for foreigners and citizens	yes- one has to fulfil conditions defined by Act 455/1991 Coll. Trade Act) that are the same for foreigners and citizens	yes- yes- one has to fulfil conditions defined by Act 455/1991 Coll. Trade Act) that are the same for foreigners and citizens	yes- individual business activity is one of the purposes for issuing temporary residence. Applicant has to be registered in Business Register. For business activity in certain areas one has to also have recognised qualification (see above). Only after that one can apply for temporary residence- still this procedure is often easier than applying for regular job and individuals often choose to apply for business visa but intend to work as regular employees.	yes- one has to fulfil conditions defined by Act 455/1991 Coll. Trade Act) that are the same for foreigners and citizens	no
Unemployment benefits	no	yes- under same conditions as citizens (Act 435/2004 Coll. on Employment)- one has to work for certain time to be entitled for unemployment benefits	yes- under same conditions as citizens (Act 435/2004 Coll. on Employment- one has to work for certain time to be entitled for unemployment benefits	yes- under same conditions as citizens (Act 435/2004 Coll. on Employment- one has to work for certain time to be entitled for unemployment benefits	no- in the case of unemployment holders of employee's card have 60 days to find new position otherwise their residency expires	yes- under same conditions as citizens- (Act 435/2004 Coll. on Employment one has to work for certain time to be entitled for unemployment benefits	no

Membership in Unions	yes (Act 262/2006 Coll. Labour Act)	yes (Act 262/2006 Coll. Labour Act)	yes (Act 262/2006 Coll. Labour Act)	yes (Act 262/2006 Coll. Labour Act)	yes (Act 262/2006 Coll. Labour Act)	yes (Act 262/2006 Coll. Labour Act)	no
Retirement benefits	no	Yes-under same conditions as citizens (Act 155/1995 Coll. on Pension Insurance) however many refugees won't reach 35 years in public insurance system and therefore they are not entitled for retirement benefits	Yes- under same conditions as citizens (Act 155/1995 Coll. on Pension Insurance) - however many refugees won't reach enough years in public insurance system and therefore they are not entitled for retirement benefits	Yes-under same conditions as citizens (Act 155/1995 Coll. on Pension Insurance) however many refugees won't reach 35 years in public insurance system and therefore they are not entitled for retirement benefits	yes- under same conditions as citizens (Act 155/1995 Coll. on Pension Insurance). In case of short term labour migration to Czech Republic part of retirement benefits can be also claimed from other country.	under same conditions as citizens (Act 155/1995 Coll. on Pension Insurance)	no
DUTIES							
Attending civic integration programs- not applicable							
Attending language courses	no	no	no	no	No	No- but exam in Czech language is necessary for obtaining of Permanent Residency	no

Doing volunteering activities for local communities- not applicable							
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11. Denmark

	Asylum Applicants	Refugees (Convention Status) ³⁶¹	Subsidiary protection	National forms of temporary protection	Economic migrants Short term	Economic migrants Long term	Undocumented migrants
FUNDAMENTAL FREEDOMS							
Permit to stay	Asylum applicants are not automatically granted a permit to stay. They are however allowed to remain in Denmark while their application is being processed.	Those who are granted Art. 7(1) convention status will be granted a residence permit that can be extended two years at a time	A humanitarian permit is valid for 1-2 years at a time. The applicant is required to provide documentation of the diagnosis and treatment of their illness	Those granted Art. 7(2) protection status will receive a residence permit valid up to a year. After a year the permit can be extended for up to two years at a time.	A permit to stay normally accompanies a short-term work visa. (Aliens (consolidation) act no. 984 of 2 October 2012)	A permit to stay normally accompanies a long-term work visa. (Aliens (consolidation) act no. 984 of 2 October 2012)	Undocumented migrants are not eligible for permits to stay. Individuals found to be working illegally risk being fined, imprisoned and expelled from Denmark. If expelled, the individual cannot enter Denmark or any other EU and Schengen countries for at

³⁶¹ As of 2015 asylum seekers can be granted three different asylum statuses: 1) Art. 7(1) of the Aliens Act or convention status refers to UN Refugee Convention. 2) Art. 7(2) of the Aliens Act or Art. 7(2) protection status, draws on human rights conventions and the ban against torture and can be acquired if returning to the home country would mean facing capital punishment, torture or inhumane or degrading treatment or punishment. 3) Art. 7(3) of the Aliens Act or Art. 7(3) temporary protection status can be granted if an asylum seeker risks facing capital punishment, torture or inhumane or degrading treatment or punishment if they return to your home country, and if this risk stems from severe instability and indiscriminate violence against civilians in their home country. In the column titled 'Refugees' we will be referring to Art. 7(1) convention status. Protection Status 7(2) and Temporary Protection Status 7(3) will be discussed under the column 'national forms of temporary protection'. Under the column 'Subsidiary Protection' we will refer to the 'humanitarian residence permit' that is granted in accordance with section 9b of the Aliens Act. Access to this permit is extremely limited and is granted to only those whose asylum request has been rejected but cannot be deported because they have a life-threatening illness and cannot receive the necessary treatment in their home country. It can also be granted to a family with children where the parents (due to illness) have limited sources to care for their children

			It is important to note the humanitarian residence permit is rarely granted and in 2016 only 5 out of 20,000 asylum seekers were given this permit.	Those granted Art. 7(3) temporary protection status will receive a residence permit valid for up to year. After three years the permit can be extended for up to two years at a time.			least two years.
Freedom of movement	<p>Asylum seekers must remain in Denmark while their application is being processed.</p> <p>During their first 6 months in Denmark asylum seekers are required to first reside at the Sandholm Reception center before being relocated to a residence camp. After 6 months an asylum seeker can apply to the Danish Immigration Service for permission to live either in a self-financed private residence, in the</p>	<p>According to sections 7 and 8 of the Aliens Act (no. 984 of 2 October 2012), refugees granted residency in Denmark cannot travel to the country (or countries) where they risk persecution.</p> <p>After receiving a Danish residence permit a refugee with convention status is subject to the regulations in Part 3 of the Consolidation of the Act on Integration of Aliens in Denmark (Act No. 1035 of 21 November 2003) that relate to the housing placement of refugees. In</p>	<p>The Aliens Act does not specify any limitations on travelling outside the country for recipients of Humanitarian Residence Permits.</p> <p>After receiving a Danish humanitarian residence permit an individual is also subject to the regulations in Part 3 of the Consolidation of the Act on Integration of Aliens in Denmark (Act No. 1035 of 21 November 2003) that relate to the</p>	<p>According to sections 7 and 8 of the Aliens Act (no. 984 of 2 October 2012), refugees granted residency in Denmark cannot travel to the country (or countries) where they risk persecution.</p> <p>After receiving a Danish residence permit a refugee with (temporary) protection status subject to the regulations in Part 3 of the Consolidation of the Act on Integration of Aliens in Denmark (Act No. 1035 of 21</p>	<p>Danish work permits allow for visa-free travel in the Schengen zone and no limitations apply on international travel.</p> <p>Short-term economic migrants can choose their place of residence.</p>	<p>Danish work permits allow for visa-free travel in the Schengen zone and no limitations apply on international travel.</p> <p>Long-term economic migrants can choose their place of residence.</p>	<p>Since undocumented migrants don't have a legal basis for being in Denmark they, in principle, don't have freedom of movement.</p>

	<p>private residence of their spouse or with family/friends. According to the of the Consolidation of the Act on Integration of Aliens in Denmark (Act No. 1035 of 21 November 2003) self-financed private residence and the residence of friends/family cannot be located in municipalities that are not receiving refugees. As of 1 January 2018, these municipalities are: Brøndby, Albertslund, Høje-Taastrup, Ishøj, Nyborg, Langeland, Billund, Sønderborg, Tønder, Fanø, Vejle, Aabenraa, Struer, Syddjurs, Odder, Samsø and Læsø.</p>	<p>accordance with these regulations the Immigration Service decides where in Denmark a refugee will live. This decision is made on the basis of the number of refugees each municipality must accept (its quota). Additionally, if an individual has a job offer, familial ties or has resided in a particular municipality before, the Immigration Service can decide to house a refugee in the same municipality.</p>	<p>housing placement of refugees. In accordance with these regulations the Immigration Service decides where in Denmark a refugee will live. This decision is made on the basis of the number of refugees each municipality must accept (its quota). Additionally, if an individual has a job offer, familial ties or has resided in a particular municipality before, the Immigration Service can decide to house a refugee in the same municipality.</p>	<p>November 2003) that relate to the housing placement of refugees. In accordance with these regulations the Immigration Service decides where in Denmark a refugee will live. This decision is made on the basis of the number of refugees each municipality must accept (its quota). Additionally, if an individual has a job offer, familial ties or has resided in a particular municipality before, the Immigration Service can decide to house a refugee in the same municipality.</p>			
Family reunification	Asylum seekers cannot apply for	Individuals granted convention status have the right to	Under this scheme an individual has access to family	Art. 7(2) Protection status grants access to family	Short-term migrant workers can apply for	Long-term migrant workers can apply for	Undocumented migrants cannot apply for family

	family reunification.	family reunification in accordance with the UN Refugee Convention (See Section B on 'Principle of unity of the family')	reunification.	reunification. Art. 7(3) Temporary Protection Status does not grant access to family reunification until three years of residency. However, unaccompanied minors who receive this status can apply for family reunification immediately after receiving a residence permit.	family reunification.	family reunification.	reunification.
Right to legal defense	The Danish state provides asylum seekers with a lawyer for free only after the immigration authorities have rejected an asylum application after which the case is automatically sent to the Refugee Appeals Board for an assessment of the immigration authority's decision	Refugees granted convention status in Denmark have a right to legal defense and if one cannot afford a lawyer, a public defender will be appointed by the court. The fees of the public defender are normally covered by the state in criminal proceedings. However, if convicted, one is required to	Individuals who are granted a humanitarian residence permit will have received a lawyer for free in relation to their hearing with the Refugee Appeals Board. In general one has a right to legal defense in Denmark. In the	Refugees granted (temporary) protection status have a right to legal defense and if one cannot afford a lawyer, a public defender will be appointed by the court. The fees of the public defender are normally covered by the state in criminal proceedings.	Short-term migrant workers have a right to legal defense. In the case of criminal proceedings, a public defender is appointed by the court if one cannot afford a lawyer. The fees of the public defender are normally covered by the state in criminal proceedings. However, if convicted, one is required to	Long-term migrant workers have a right to legal defense. In the case of criminal proceedings, a public defender is appointed by the court if one cannot afford a lawyer. The fees of the public defender are normally covered by the state in criminal proceedings. However, if convicted, one is required to reimburse the state for	There is no reference to undocumented migrants in the Justice Act cited below so one can assume that they too have a right to legal defense. Additionally, if one cannot afford a lawyer, a public defender will be appointed by the court. The fees of the public defender are normally covered by the state in criminal proceedings. However, if convicted, one is required to reimburse the

	<p>to reject.</p> <p>In general organizations like the Red Cross and the Danish Refugee Council offer free legal advice to all asylum seekers in Denmark.</p>	<p>reimburse the state for these expenses (The Danish administration of Justice Act – Consolidation Act no. 1069 of November 2008).</p> <p>Additionally, organizations like the Red Cross and the Danish Refugee Council offer free legal advice to refugees in Denmark.</p>	<p>case of criminal proceedings, a public defender is appointed by the court if one cannot afford a lawyer. The fees of the public defender are normally covered by the state in criminal proceedings. However, if convicted, one is required to reimburse the state for these expenses (The Danish administration of Justice Act – Consolidation Act no. 1069 of November 2008).</p> <p>Additionally, organizations like the Red Cross and the Danish Refugee Council offer free legal advice to asylum seekers in Denmark</p>	<p>However, if convicted, one is required to reimburse the state for these expenses (The Danish administration of Justice Act – Consolidation Act no. 1069 of November 2008).</p> <p>Additionally, organizations like the Red Cross and the Danish Refugee Council offer free legal advice to refugees in Denmark.</p>	<p>reimburse the state for these expenses (The Danish administration of Justice Act – Consolidation Act no. 1069 of November 2008).</p>	<p>these expenses (The Danish administration of Justice Act – Consolidation Act no. 1069 of November 2008).</p>	<p>state for these expenses (The Danish administration of Justice Act – Consolidation Act no. 1069 of November 2008).</p> <p>Undocumented migrants can approach organizations like the Red Cross and the Danish Refugee Council that offer free legal advice.</p>
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SOCIO-ECONOMIC BENEFITS							
Health	<p>Asylum seekers are not covered by the national health insurance system. Instead, according to section 42a of the Aliens Act (no. 984 of 2 October 2012), asylum seekers' healthcare expenses are paid for by the Danish Immigration Service. The immigration Service pays the healthcare expenses only when a medical treatment is urgent (meaning, delaying would result in in death or severe degeneration of condition) and when treatment is for pain-relief.</p>	<p>Individuals under this scheme receive a CPR number (civil registration number). Subsequently, in accordance with The Health Act (no. 546 of 2005), they are covered by the national health insurance system.</p>	<p>Individuals under this scheme receive a CPR number (civil registration number). Subsequently, in accordance with The Health Act (no. 546 of 2005), they are covered by the national health insurance system.</p>	<p>Individuals under this scheme receive a CPR number (civil registration number). Subsequently, in accordance with The Health Act (no. 546 of 2005), they are covered by the national health insurance system.</p>	<p>Individuals under this scheme receive a CPR number (civil registration number). Subsequently, in accordance with The Health Act (no. 546 of 2005), they are covered by the national health insurance system.</p>	<p>Individuals under this scheme receive a CPR number (civil registration number). Subsequently, in accordance with The Health Act (no. 546 of 2005), they are covered by the national health insurance system.</p>	<p>In principle, access to healthcare in Denmark is on the basis of legal residency. However, relevant for undocumented migrants, access to emergency care is available to every person present in Denmark (irrespective of the legality of their residency) in accordance with section 80 of the Health Act.</p> <p>Also, to the benefit of undocumented migrants, the National Board of Health stipulates that doctors have the duty to treat patients who have provided false identifications, except in cases of elective treatment.</p> <p>The Danish Law on Hospital Services (Law No. 687 of 16 August 1995) does not specify how an individual shall identify themselves while paying for hospital services. In principle this</p>

							<p>means that undocumented migrants can pay for health services at Danish hospitals.</p> <p>Finally, irrespective of the legality of their residency in Denmark, children have the right to healthcare, including vaccinations, preventive examinations, school health services and municipal dental care (Health Act – Law No. 546 of 2005)</p>
Social care	Asylum seekers do not receive any form of social security.	Once an individual receives a CPR number and is assigned to a municipality, s/he is able access all social care services provided by the municipality to its residents.	Once an individual receives a CPR number and is assigned to a municipality, s/he is able access all social care services provided by the municipality to its residents.	Once an individual receives a CPR number and is assigned to a municipality, s/he is able access all social care services provided by the municipality to its residents.	Individuals granted a short-term work permit are not allowed to access any social benefits disbursed under the Active Social Policy Act (Law No. 946 of 2009)	Individuals granted a long-term permit are not allowed to access any social benefits disbursed under the Active Social Policy Act (Law No. 946 of 2009).However, if an individual is granted permanent residency they are covered by the Active Social Policy Act.	Undocumented migrants are not entitled to any forms of social security.
Education	Asylum seekers who are of school age will be offered schooling at or in affiliation with	Refugees under this scheme are exempted from paying for tuition fees for their higher education in	Like refugees, humanitarian residence permit holders are exempted from paying for tuition	Those granted Art. 7(2) Protection status are exempted from	Those who have been granted a short-term work permit do not have access to	Those who have been granted a long-term work permit do not have access to tuition	Undocumented migrants do not have access to tuition-free higher education.

	the asylum center. Asylum seekers over the age of 18 who have not received a final refusal of their application are required to attend courses that are designed to maintain and increase general and professional skills at or in affiliation with the asylum center.	Denmark. They can also apply for public support to cover living costs during the period of study in accordance with Article 2(2) and 2(3) of the Consolidation of the Act on Integration of Aliens in Denmark (No. 1035 of 21 November 2003)	fees for their higher education in Denmark. They can also apply for public support to cover living costs during the period of study in accordance with Article 2(2) and 2(3) of the Consolidation of the Act on Integration of Aliens in Denmark (No. 1035 of 21 November 2003)	paying tuition fees for their higher education in Denmark. They can also apply for public support to cover living costs during the period of study. (Article 2(2) and 2(3) of the Consolidation of the Act of Integration of Aliens in Denmark - Act No. 1035 of 21 November 2003). Those granted Art. 7(3) Protection status do not have access to tuition-free higher education.	tuition free education. However, they are eligible to receive public support to cover living costs during the period of study if they have worked in Denmark for 24 consecutive months or lived in Denmark for 5 years (having arrived in the country to work). Children of Non-EU/EEA parents holding a residence permit based on employment are entitled to visa-free higher education in accordance with Sections 9a and 9b of Aliens Act (no. 984 of 2 October 2012)	free education, unless they receive permanent residency. They are however eligible to receive public support to cover living costs during the period of study if they have worked in Denmark for 24 consecutive months or lived in Denmark for 5 years (having arrived in the country to work).	
Training	Along with the above-described 'education' benefits, newly arrived asylum seekers are required to take an introductory course	Training for refugees is covered by the IGU program. The Law on Integration Education (Law No. 623 of 8	Officially, the IGU program is accessible only to refugees and reunited family members of refugees. While the	Training for individuals with (temporary) protection status is covered by the IGU program.	While (short- and long-term) economic migrants are not eligible to receive any social benefits and training programs like the IGU, they are able	While (short- and long-term) economic migrants are not eligible to receive any social benefits and training programs like the IGU, they are able	Undocumented migrants do not have access to any training programs

	<p>at the reception center that introduces them to the Danish language, culture and society as well as the Danish labor market, education system and housing patterns. Once immigration Service decides that an asylum seeker's application will be processed in Denmark, the applicant will be required to take courses in Danish, English or his/her native language that help build skills for integration into Danish society and/or in preparation for life in the home country.</p> <p>After 5 months in the asylum system, asylum seekers will be shown two films produced by the Danish Red Cross that provides</p>	<p>June 2016) established the Basic Integration Education (IGU) meant to facilitate the integration of refugees and reunited family members of refugees into the Danish labor market.</p> <p>IGU is a two-year program. It includes a job at a Danish company (32-37 hours a week including educational training) that is meant to give a refugee work experience and an insight into the Danish workplace. During this period participants will also participate in a 20-week educational program. The content and schedule of this program will be decided on by the participant together with the employer. The educational program can include both Danish lessons</p>	<p>law does not specifically disqualify individuals with Humanitarian Residence Permits, in effect this means that individuals under this category cannot participate in the IGU program. However, if individuals under this category of residency enter into an integration agreement with immigration authorities they will be expected to participate in the IGU program.</p>	<p>The Law on Integration Education (Law No. 623 of 8 June 2016) established the Basic Integration Education (IGU) meant to facilitate the integration of refugees and reunited family members of refugees into the Danish labor market.</p> <p>IGU is a two-year program. It includes a job at a Danish company (32-37 hours a week including educational training) that is meant to give a refugee work experience and an insight into the Danish workplace. During this period participants will also participate in a 20-week educational program. The content and schedule of this</p>	<p>to become members of professional unions. Members can participate in mentorship programs, career counselling and vocational training courses organized by unions.</p>	<p>to become members of professional unions. Members can participate in mentorship programs, career counselling and vocational training courses organized by unions.</p>	
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	<p>information on employment opportunities, possibilities for pursuing an education and opportunities for attending training and internship programs.</p> <p>Additionally, asylum seekers are allowed to participate in 'out of house' activities that include unpaid job-training programs at a company not affiliated with the asylum center.</p>	<p>and professional/vocational courses.</p> <p>Participants in the IGU program receive a wage from the employer. The wage depends on the industry in which the participant is employed. The average pay is approximately 11-12,000 Danish Krone (DKK) (before tax). During the educational program participants receive an educational assistance instead of wages from the employer. As of 2018, single participants without children receive 6,253 DKK (before tax), married participants with children receive 8,751 DKK (before tax) and single participants with children receive 12,504 DKK (before tax).</p>		<p>program will be decided on by the participant together with the employer. The educational program can include both Danish lessons and professional/vocational courses.</p> <p>Participants in the IGU program receive a wage from the employer. The wage depends on the industry in which the participant is employed. The average pay is approximately 11-12,000 Danish Krone (DKK) (before tax). During the educational program participants receive an educational assistance instead of wages from the employer. As of 2018, single participants without children receive</p>			
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				6,253 DKK (before tax), married participants with children receive 8,751 DKK (before tax) and single participants with children receive 12,504 DKK (before tax).			
Housing	During their first 6 months in Denmark asylum seekers are required to first reside at the Sandholm Reception center before being relocated to a residence camp. After 6 months an asylum seeker can apply to the Danish Immigration Service for permission to live either in a self-financed private residence, in the private residence of their spouse or with family/friends. According to the of the Consolidation of the Act on	After receiving a Danish residence permit a refugee with convention status is subject to the regulations in Part 3 of the Consolidation of the Act on Integration of Aliens in Denmark (Act No. 1035 of 21 November 2003) that relate to the housing placement of refugees. In accordance with these regulations the Immigration Service decides where in Denmark a refugee will live. This decision is made on the basis of the number of	After receiving a Danish humanitarian residence permit an individual is also subject to the regulations in Part 3 of the Consolidation of the Act on Integration of Aliens in Denmark (Act No. 1035 of 21 November 2003) that relate to the housing placement of refugees. In accordance with these regulations the Immigration Service decides where in Denmark a refugee will live. This decision is	After receiving a Danish residence permit a refugee with (temporary) protection status subject to the regulations in Part 3 of the Consolidation of the Act on Integration of Aliens in Denmark (Act No. 1035 of 21 November 2003) that relate to the housing placement of refugees. In accordance with these regulations the Immigration Service decides where in Denmark a refugee will live. This decision is	Recipients of short-term work permits are not allowed to access any social benefits disbursed under the Active Social Policy Act (Law No. 946 of 2009). This includes housing benefits.	Long-term economic migrants are not allowed to access any social benefits disbursed under the Active Social Policy Act unless they have permanent residency (Law No. 946 of 2009). This includes housing benefits.	Undocumented migrants are not entitled to housing benefits.

	Integration of Aliens in Denmark (Act No. 1035 of 21 November 2003) self-financed private residence and the residence of friends/family cannot be located in municipalities that are not receiving refugees. As of 1 January 2018, these municipalities are: Brøndby, Albertslund, Høje-Taastrup, Ishøj, Nyborg, Langeland, Billund, Sønderborg, Tønder, Fanø, Vejle, Aabenraa, Struer, Syddjurs, Odder, Samsø and Læsø.	refugees each municipality must accept (its quota). Additionally, if an individual has a job offer, familial ties or has resided in a particular municipality before, the Immigration Service can decide to house a refugee in the same municipality.	made on the basis of the number of refugees each municipality must accept (its quota). Additionally, if an individual has a job offer, familial ties or has resided in a particular municipality before, the Immigration Service can decide to house a refugee in the same municipality.	made on the basis of the number of refugees each municipality must accept (its quota). Additionally, if an individual has a job offer, familial ties or has resided in a particular municipality before, the Immigration Service can decide to house a refugee in the same municipality.			
Language courses	While language training is not a requirement, asylum seekers are introduced to the Danish language during the course of the above-mentioned 'education' and	Section 8 of the Aliens (consolidation) act no. 984 of 2 October 2012) stipulates that refugees shall receive free Danish education as part of their integration into	The Aliens Act does not specify whether the recipient of a humanitarian residence permit is eligible for free language classes. However, if an individual enters	Section 8 of the Aliens (consolidation) act no. 984 of 2 October 2012) stipulates that refugees shall receive free Danish education as part of	Until recently all individuals with a residence permit (for work or education) were entitled to a language education for free. However, a new tax law (Aftale om lavere skat på	Until recently all individuals with a residence permit (for work or education) were entitled to a language education for free. However, a new tax law (Aftale om lavere skat på	Undocumented migrants are not entitled to free or subsidized language education.

	'training' curriculum.	Danish society. There are three parallel language education tracks that correspond to the individual's prior educational level. Danish Education 1 (DU1) is offered to those without any significant educational background or have a limited learning ability because of past trauma. Danish Education 2 (DU2) is offered to students who have attended school for 8-10 years. Danish Education 3 (DU3) is offered to students with a higher education.	into an integration agreement with immigration authorities they are entitled to free courses.	their integration into Danish society. There are three parallel language education tracks that correspond to the individual's prior educational level. Danish Education 1 (DU1) is offered to those without any significant educational background or have a limited learning ability because of past trauma. Danish Education 2 (DU2) is offered to students who have attended school for 8-10 years. Danish Education 3 (DU3) is offered to students with a higher education.	arbejdsindkomst og større fradrag for pensionsindbetalinger 2018) has been agreed upon on February 6 th , 2018 that will require students to put up a co-pay (approx. 2000 DKK) and deposit (1250 DKK) which would be returned after the successful completion of their language education. Since these courses are still heavily subsidized and the fee students will be required to pay is termed as a 'co-pay', this new tax agreement still fulfills the requirement (as stipulated by the Consolidation of the Act on Integration of Aliens in Denmark (Act No. 1035 of 21 November 2003)) that municipalities must <i>support</i> immigrants' language education.	arbejdsindkomst og større fradrag for pensionsindbetalinger 2018) has been agreed upon on February 6 th , 2018 that will require students to put up a co-pay (approx. 2000 DKK) and deposit (1250 DKK) which would be returned after the successful completion of their language education. Since these courses are still heavily subsidized and the fee students will be required to pay is termed as a 'co-pay', this new tax agreement still fulfills the requirement (as stipulated by the Consolidation of the Act on Integration of Aliens in Denmark (Act No. 1035 of 21 November 2003)) that municipalities must <i>support</i> immigrants' language education.	
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Cash benefit/allowances	Asylum seekers receive cash allowances for clothes, personal hygiene items and food (unless the asylum center offers free meals). The immigration service also covers transportation costs to and from meetings with public officials and health providers. (Executive Order Establishing Basic-Term Benefit Packages for Asylum Seekers – BEK nr 1358 af 15/12/2005)	Refugees are entitled to cash allowances but since 1 September 2015 they have been cut by 45%. Amendments to the Act on Active Social Policy was passed as a means of encouraging refugees to be active in the Danish labor market (Law No. 1000 of 30 August 2015). For example, in 2015 the new lowered allowance, called 'integration allowance', was 5,945 DKK per month before tax for single adults with no children compared to the 10,849 DKK before the amendment was passed.	The Alien Act does not stipulate whether recipients of humanitarian residence permits can receive cash allowances. However, if an individual enters into an integration agreement with immigration authorities they are entitled to the integration allowance.	Refugees are entitled to cash allowances but since 1 September 2015 they have been cut by 45%. Amendments to the Act on Active Social Policy was passed as a means of encouraging refugees to be active in the Danish labor market (Law No. 1000 of 30 August 2015). For example, in 2015 the new lowered allowance, now called 'integration allowance', was 5,945 DKK per month before tax for single adults with no children compared to the 10,849 DKK before the amendment was passed.	Individuals with work permits are not entitled to cash allowances because they are not allowed to receive any benefits disbursed under the Active Social Policy Act (Law No. 946 of 2009)	Individuals with work permits are not entitled to cash allowances because they are not allowed to receive any benefits disbursed under the Active Social Policy Act (Law No. 946 of 2009)	Undocumented migrants are not entitled to cash benefits/allowances.
Child care benefits	As part of their allowance, asylum seekers with children	In accordance with the Consolidation Act on Child and Youth	In accordance with the Consolidation Act on Child and	In accordance with the Consolidation Act on Child and	In accordance with the Consolidation Act on Child and Youth	In accordance with the Consolidation Act on Child and Youth Benefit	Undocumented migrants do not have access to publicly funded childcare benefits

	<p>receive infant clothing packages, children's clothing, children's clothing packages and a caregiver (cash) allowance for each dependent minor child. The full caregiver allowance is paid for a maximum of two children and a reduced allowance is given for two additional children. One cannot receive more than four allowances. (Executive Order Establishing Basic-Term Benefit Packages for Asylum Seekers – BEK No. 1358 of 15/12/2005). Unaccompanied minor asylum seekers have the following special rights: 1) The Immigration Service, in consultation with the Danish Red Cross will appoint a personal</p>	<p>Benefit (Law No. 339 of 15 April 2011) refugees are entitled to childcare benefits that include subsidized place at a public or approved privately run daycare, family allowance and child and youth benefit allowance.</p>	<p>Youth Benefit (Law No. 339 of 15 April 2011) individuals with Humanitarian Residence Permits are entitled to childcare benefits that include subsidized place at a public or approved privately run daycare, family allowance and child and youth benefit allowance.</p>	<p>Youth Benefit (Law No. 339 of 15 April 2011) refugees with (temporary) protected status are entitled to childcare benefits that include subsidized place at a public or approved privately run daycare, family allowance and child and youth benefit allowance.</p>	<p>Benefit (Law No. 339 of 15 April 2011) short-term economic migrants are entitled to childcare benefits that include subsidized place at a public or approved privately run daycare, family allowance and child and youth benefit allowance.</p>	<p>(Law No. 339 of 15 April 2011) long-term economic migrants are entitled to childcare benefits that include subsidized place at a public or approved privately run daycare, family allowance and child and youth benefit allowance.</p>	<p>and facilities.</p>
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	<p>representative who will work in the interest of the minor, assist in the application procedures and accompany applicants during the application process. 2) The immigration service will appoint a lawyer who will represent the applicant during the applicant process. 3) In some cases the Immigration service will assist with finding the minor asylum seeker's relatives.</p>						
POLITICAL RIGHTS/RIGHTS OF THE PUBLIC SPHERE							
Right to vote in local elections	Asylum seekers are not allowed to vote in local elections. Only Danish citizens, citizens of EU members states, Iceland and Norway	All individuals who have resided in Denmark for at least three years are eligible to vote in municipal elections. (Section 29 [voting	All individuals who have resided in Denmark for at least three years are eligible to vote in municipal elections. (Section 29 [voting	All individuals who have resided in Denmark for at least three years are eligible to vote in municipal elections. (Section 29 [voting	A short term economic migrant's right to vote in municipal elections depends on the length of their stay in Denmark. If they have	All individuals who have resided in Denmark for at least three years are eligible to vote in municipal elections. (Section 29 [voting rights] and	Undocumented migrants cannot vote in municipal elections.

	as well as citizens of non-EU countries who have resided in Denmark for at least three years are allowed to vote.	rights] and Section 30 [eligibility] of the Constitutional act of the Kingdom of Denmark)	rights] and Section 30 [eligibility] of the Constitutional act of the Kingdom of Denmark)	rights] and Section 30 [eligibility] of the Constitutional act of the Kingdom of Denmark)	resided in Denmark for at least three years, they have the right to vote in municipal elections Section 29 [voting rights] and Section 30 [eligibility] of the Constitutional act of the Kingdom of Denmark)	Section 30 [eligibility] of the Constitutional act of the Kingdom of Denmark)	
Right to vote for consultative entities	Only Danish citizens can vote in consultative elections	Only Danish citizens can vote in consultative elections	Only Danish citizens can vote in consultative elections	Only Danish citizens can vote in consultative elections	Only Danish citizens can vote in consultative elections	Only Danish citizens can vote in consultative elections	Only Danish citizens can vote in consultative elections
Right to join/create a cso	All residents in Denmark can join a CSO. Their right to do so is protected by sections 77 (freedom of expression), 78 (freedom of association) and 79 (freedom of assembly) of the Constitutional act of the Kingdom of Denmark. Specifically, asylum	All residents in Denmark can join a CSO. Their right to do so is protected by sections 77 (freedom of expression), 78 (freedom of association) and 79 (freedom of assembly) of the Constitutional act of the Kingdom of Denmark.	All residents in Denmark can join a CSO. Their right to do so is protected by sections 77 (freedom of expression), 78 (freedom of association) and 79 (freedom of assembly) of the Constitutional act of the Kingdom of	All residents in Denmark can join a CSO. Their right to do so is protected by sections 77 (freedom of expression), 78 (freedom of association) and 79 (freedom of assembly) of the Constitutional act of the Kingdom of	All residents in Denmark can join a CSO. Their right to do so is protected by sections 77 (freedom of expression), 78 (freedom of association) and 79 (freedom of assembly) of the Constitutional act of the Kingdom of Denmark.	All residents in Denmark can join a CSO. Their right to do so is protected by sections 77 (freedom of expression), 78 (freedom of association) and 79 (freedom of assembly) of the Constitutional act of the Kingdom of Denmark.	All residents in Denmark can join a CSO. Their right to do so is protected by sections 77 (freedom of expression), 78 (freedom of association) and 79 (freedom of assembly) of the Constitutional act of the Kingdom of Denmark.

	seekers are allowed participate in voluntary and humanitarian work without require prior approval from the immigration authorities. Setting up a CSO is difficult for an asylum seeker because this requires a Danish bank account. A prerequisite for having a Danish bank account is a CPR number (civil registration number) that asylum seekers do not receive.		Denmark.	Denmark.			
WORK RELATED RIGHTS/BENEFITS							
Right to work	Asylum seekers above the age of 18 can request the Immigration Service to approve an offer of employment until a decision is made on their application. The position can be	Refugees with convention status have the right to work in Denmark. In accordance with section 14 of the Aliens (consolidation) act no. 984 of 2 October 2012	Humanitarian residence permit holders have the right to work in Denmark. In accordance with section 14 of the Aliens (consolidation) act	Refugees with (temporary) protection status have the right to work in Denmark. In accordance with section 14 of the Aliens (consolidation) act	According to section 13 of the Aliens (consolidation) act no. 984 of 2 October 2012 a person has the right to work only if they have been granted a work	According to section 13 of the Aliens (consolidation) act no. 984 of 2 October 2012 a person has the right to work only if they have been granted a work permit.	Undocumented migrants do not have the right to work in Denmark.

	full-time/part-time/paid/unpaid, and the employer cannot receive any public funding in connection to the employment. Asylum seekers will be required to pay taxes and labor market contributions (Danish Withholding Tax Act (Kildeskatteloven) section 48B). The Immigration Service will reduce the cash allowance on a 'krone-for-krone' basis for any income (after tax and labor contributions) from the employment. The asylum seeker, if earning a wage, can also be asked to support their spouse and minor children as well as pay for rent.	refugees do not need to apply for a work permit.	no. 984 of 2 October 2012 they do not need to apply for a work permit.	no. 984 of 2 October 2012 refugees do not need to apply for a work permit.	permit.		
Recognition of competences/degrees	The Assessment of Foreign Qualifications (Consolidation) Act	The Assessment of Foreign Qualifications (Consolidation) Act no. 371 of 13 April	The Assessment of Foreign Qualifications (Consolidation) Act	The Assessment of Foreign Qualifications (Consolidation) Act	The Assessment of Foreign Qualifications (Consolidation) Act no. 371 of 13 April	The Assessment of Foreign Qualifications (Consolidation) Act no. 371 of 13 April 2007	The Assessment of Foreign Qualifications (Consolidation) Act no. 371 of 13 April 2007 allows

	no. 371 of 13 April 2007 allows access to assessment of foreign qualifications to state agencies for administrative procedures, employers, educational institutions and the unemployment insurance fund.	2007 allows access to assessment of foreign qualifications to state agencies for administrative procedures, employers, educational institutions and the unemployment insurance fund.	no. 371 of 13 April 2007 allows access to assessment of foreign qualifications to state agencies for administrative procedures, employers, educational institutions and the unemployment insurance fund.	no. 371 of 13 April 2007 allows access to assessment of foreign qualifications to state agencies for administrative procedures, employers, educational institutions and the unemployment insurance fund.	2007 allows access to assessment of foreign qualifications to state agencies for administrative procedures, employers, educational institutions and the unemployment insurance fund.	allows access to assessment of foreign qualifications to state agencies for administrative procedures, employers, educational institutions and the unemployment insurance fund.	access to assessment of foreign qualifications to state agencies for administrative procedures, employers, educational institutions and the unemployment insurance fund.
Vocational training	Vocational training is part of the courses and training (see 'education' and 'training' above) provided by the asylum center.	Vocational training is included in the IGU program (see 'training' above)	Vocational training is included in the IGU program if the individual enters into an integration agreement (see 'training' above)	Vocational training is included in the IGU program (see 'training' above)	Vocational training can be accessed through union membership (see 'training' above)	Vocational training can be accessed through union membership (see 'training' above)	Undocumented migrants do not have access to vocational training.
Anti-discrimination measures	The Executive Order for the Prohibition of Discrimination in the labor market (Executive Order No. 1349) covers all employees in the Danish labor market. It prohibits direct discrimination, for instance, on the	The Executive Order for the Prohibition of Discrimination in the labor market (Executive Order No. 1349) covers all employees in the Danish labor market. It prohibits direct	The Executive Order for the Prohibition of Discrimination in the labor market (Executive Order No. 1349) covers all employees in the Danish labor	The Executive Order for the Prohibition of Discrimination in the labor market (Executive Order No. 1349) covers all employees in the Danish labor	The Executive Order for the Prohibition of Discrimination in the labor market (Executive Order No. 1349) covers all employees in the Danish labor market. It prohibits direct	The Executive Order for the Prohibition of Discrimination in the labor market (Executive Order No. 1349) covers all employees in the Danish labor market. It prohibits direct discrimination, for	In principle, undocumented migrants are covered by The Executive Order for the Prohibition of Discrimination because it doesn't specify residency status/nationality. However, considering the fact that they do not have the proper authorization to

	grounds, for example, of their ethnicity, race, religion or disability. It also prohibits indirect discrimination. For example, if an employer stipulates a language requirement that negative affects non-ethnic Danes it must assessed if this requirement is reasonable in relation to the work tasks or if it is a discriminatory practice.	discrimination, for instance, on the grounds, for example, of their ethnicity, race, religion or disability. It also prohibits indirect discrimination. For example, if an employer stipulates a language requirement that negative affects non-ethnic Danes it must assessed if this requirement is reasonable in relation to the work tasks or if it is a discriminatory practice.	market. It prohibits direct discrimination, for instance, on the grounds, for example, of their ethnicity, race, religion or disability. It also prohibits indirect discrimination. For example, if an employer stipulates a language requirement that negative affects non-ethnic Danes it must assessed if this requirement is reasonable in relation to the work tasks or if it is a discriminatory practice.	market. It prohibits direct discrimination, for instance, on the grounds, for example, of their ethnicity, race, religion or disability. It also prohibits indirect discrimination. For example, if an employer stipulates a language requirement that negative affects non-ethnic Danes it must assessed if this requirement is reasonable in relation to the work tasks or if it is a discriminatory practice.	discrimination, for instance, on the grounds, for example, of their ethnicity, race, religion or disability. It also prohibits indirect discrimination. For example, if an employer stipulates a language requirement that negative affects non-ethnic Danes it must assessed if this requirement is reasonable in relation to the work tasks or if it is a discriminatory practice.	instance, on the grounds, for example, of their ethnicity, race, religion or disability. It also prohibits indirect discrimination. For example, if an employer stipulates a language requirement that negative affects non-ethnic Danes it must assessed if this requirement is reasonable in relation to the work tasks or if it is a discriminatory practice.	work in Denmark they are very likely to be subjected to discriminatory and predatory practices.
Right to work in public sector	There is no law that prevents foreign nationals from working in the public sector. However, section 27 of the Constitutional Act of the Kingdom of Denmark stipulates	There is no law that prevents foreign nationals from working in the public sector. However, section 27 of the Constitutional Act of the Kingdom of Denmark stipulates	There is no law that prevents foreign nationals from working in the public sector. However, section 27 of the Constitutional Act of the Kingdom of	There is no law that prevents foreign nationals from working in the public sector. However, section 27 of the Constitutional Act of the Kingdom of	There is no law that prevents foreign nationals from working in the public sector. However, section 27 of the Constitutional Act of the Kingdom of Denmark stipulates	There is no law that prevents foreign nationals from working in the public sector. However, section 27 of the Constitutional Act of the Kingdom of Denmark stipulates that only those with Danish	Undocumented migrants are not allowed work in the public sector because this requires legal residency in Denmark.

	that only those with Danish nationality can be appointed as civil servants. Foreign nationals can however be employed on terms corresponding to those of civil servants (Section 58C of the Civil Servants Act). Additionally, foreign nationals cannot be appointed in the Ministry of Defense or as judges and police officers.	that only those with Danish nationality can be appointed as civil servants. Foreign nationals can however be employed on terms corresponding to those of civil servants (Section 58C of the Civil Servants Act). Additionally, foreign nationals cannot be appointed in the Ministry of Defense or as judges and police officers.	Denmark stipulates that only those with Danish nationality can be appointed as civil servants. Foreign nationals can however be employed on terms corresponding to those of civil servants (Section 58C of the Civil Servants Act). Additionally, foreign nationals cannot be appointed in the Ministry of Defense or as judges and police officers.	Denmark stipulates that only those with Danish nationality can be appointed as civil servants. Foreign nationals can however be employed on terms corresponding to those of civil servants (Section 58C of the Civil Servants Act). Additionally, foreign nationals cannot be appointed in the Ministry of Defense or as judges and police officers.	that only those with Danish nationality can be appointed as civil servants. Foreign nationals can however be employed on terms corresponding to those of civil servants (Section 58C of the Civil Servants Act). Additionally, foreign nationals cannot be appointed in the Ministry of Defense or as judges and police officers.	nationality can be appointed as civil servants. Foreign nationals can however be employed on terms corresponding to those of civil servants (Section 58C of the Civil Servants Act). Additionally, foreign nationals cannot be appointed in the Ministry of Defense or as judges and police officers.	
Right to self-employment	Asylum seekers are not allowed to be self-employed.	Refugees have the right to be self-employed and, In accordance with section 14 of the Aliens (consolidation) act no. 984 of 2 October 2012, they do not have to apply for a visa to do so.	Humanitarian Residence Permit recipients have the right to be self-employed and, In accordance with section 14 of the Aliens (consolidation) act no. 984 of 2 October 2012, they do not have to apply for a visa to do so.	Refugees have the right to be self-employed and, In accordance with section 14 of the Aliens (consolidation) act no. 984 of 2 October 2012, they do not have to apply for a visa to do so.	Right to self-employment is only accessible to who have been granted a visa specifically for starting a business in Denmark.	Right to self-employment is only accessible to individuals with permanent residency and those who have been granted a visa specifically for starting a business in Denmark.	Undocumented migrants do not have the right to self-employment.

Unemployment benefits	Asylum seekers are not entitled to unemployment benefits	By participating in the IGU program individual earn the right to unemployment benefits immediately after the completion of the program.	By participating in the IGU program individual earn the right to unemployment benefits immediately after the completion of the program.	By participating in the IGU program individual earn the right to unemployment benefits immediately after the completion of the program.	<p>Migrant workers (short-term and long-term) can earn unemployment benefits by being member of and by making monthly contributions to an unemployment insurance fund (A-Kasse) for a period of one year. Foreign nationals must also have the right to live and work in Denmark and have earned 228,348 DKK (total) in the preceding 3 years to be completely insured.</p> <p>In general it makes sense to be a member of A-Kasse only if one's residency exceeds their employment. Otherwise, foreign nationals will have to leave the country immediately after becoming</p>	<p>Migrant workers (short-term and long-term) can earn unemployment benefits by being member of and by making monthly contributions to an unemployment insurance fund (A-Kasse) for a period of one year. Foreign nationals must also have the right to live and work in Denmark and have earned 228,348 DKK (total) in the preceding 3 years to be completely insured.</p> <p>In general it makes sense to be a member of A-Kasse only if one's residency exceeds their employment. Otherwise, foreign nationals will have to leave the country immediately after becoming unemployed and will not be able to access the</p>	Undocumented migrants do not have the right to self-employment.
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					unemployed and will not be able to access the unemployment insurance they have been contributing to.	unemployment insurance they have been contributing to.	
Membership in Unions	The Act on Freedom of Association in the Danish Labor Market gives all workers the right to form and join associations and participate in assemblies (Act no. 248 of 8 May 2002). In principle, anyone with a Danish CPR number (civil registration number) is allowed to join a union. But since asylum seekers do not receive a CPR number they are, in effect, prevented from becoming members in unions.	The Act on Freedom of Association in the Danish Labor Market gives all workers the right to form and join associations and participate in assemblies (Act no. 248 of 8 May 2002).	The Act on Freedom of Association in the Danish Labor Market gives all workers the right to form and join associations and participate in assemblies (Act no. 248 of 8 May 2002).	The Act on Freedom of Association in the Danish Labor Market gives all workers the right to form and join associations and participate in assemblies (Act no. 248 of 8 May 2002).	The Act on Freedom of Association in the Danish Labor Market gives all workers the right to form and join associations and participate in assemblies (Act no. 248 of 8 May 2002).	The Act on Freedom of Association in the Danish Labor Market gives all workers the right to form and join associations and participate in assemblies (Act no. 248 of 8 May 2002).	Since undocumented migrants don't have a CPR number they are unable to join unions.
Retirement benefits	Asylum seekers are not entitled to retirement benefits	By participating in the IGU program individual earn the right to retirement	By participating in the IGU program individual earn the right to retirement	By participating in the IGU program individual earn the right to retirement	In accordance with the Law on Labor Market Supplementary Pension (no. 942 of 2	In accordance with the Law on Labor Market Supplementary Pension (no. 942 of 2 October 2009) a	Undocumented migrants do not have the right to retirement benefits.

		benefits	benefits	benefits	October 2009) a contribution to the Labor Market Supplementary Pension fund (ATP) is automatically deducted from the monthly salary. Individuals become eligible to receive ATP at the age of 65.	contribution to the Labor Market Supplementary Pension fund (ATP) is automatically deducted from the monthly salary. Individuals become eligible to receive ATP at the age of 65.	
DUTIES							
Attending civic integration programs	As described under 'education' and 'training' asylum seekers are required to attend several courses that are said to facilitate their integration into Danish society	Civic integration is part of the IGU and language integration program (See 'training' and 'language courses')	Civic integration is part of the IGU and language integration program (See 'training' and 'language courses')	Civic integration is part of the IGU and language integration program (See 'training' and 'language courses')	Not compulsory	Not compulsory	Not compulsory
Attending language courses	As mentioned earlier, the required integration programming includes a basic	Refugees are required to attend language courses as part of their integration agreement	If an individual with a humanitarian residence permit enters into an integration	Refugees are required to attend language courses as part of their integration	Not compulsory	Attending language courses is not a requirement unless an individual is applying for permanent	Not compulsory

	introduction to Danish language (see 'language'). Only those who have been granted a residence permit are required to attend intensive language courses.	with immigration authorities. (See 'training' and 'language courses')	agreement with the integration authorities, they are required to attend language courses.	agreement with immigration authorities. (See 'training' and 'language courses')		residency (Immigration Act, cf. Act No. 412 of 9 May 2016)	
Doing volunteering activities for local communities	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Volunteering is not compulsory unless applying for permanent residency. Active participation for at least 1 year in nonprofit organizations, school or volunteer work helping children and young people is one of four supplementary requirements for being granted permanent residency. Active participation in this form can be substitute by a written active citizen exam held twice a year (Immigration Act, cf. Act No. 412 of 9 May 2016)	Not compulsory

12. Finland

	Asylum Applicants	Refugees	Subsidiary protection	National forms of temporary protection	Economic migrants Short term	Economic migrants Long term	Undocumented migrants
FUNDAMENTAL FREEDOMS							
Permit to stay	Asylum applicants can stay in Finland during the application process without a residence permit. After the application process, they can stay if they are granted asylum or a residence permit on some other grounds such as e.g. work.	The residence permit of refugees, based on international protection, is granted for four years. After this time the individual must apply for an extended residence permit. (FINLEX 2004/301)	The residence permit based on subsidiary protection is granted for four years. After this the individual must apply for an extended residence permit. (FINLEX 2004/301)	There are no national forms of temporary protection (other than asylum and subsidiary protection) recognized by law in Finland. The separate right to stay in Finland on basis of humanitarian protection was abolished in 2016.	Short term migrants can apply for a fixed-term residence permit. Fixed-term residence permits are either granted as temporary or as continuous. (FINLEX 2004/301 33 §)	Long term migrants must apply for either a fixed-term residence permit or a permanent residence permit (FINLEX 2004/301 33 §). A permanent residence permit is valid until further notice. It can be applied for once the migrant has lived in Finland for four years with a continuous residence permit.	Undocumented migrants live in Finland without legal residence permits. They can apply for a residence permit based on the same general rules as other foreigners. In general, the residence permit must be applied for in the country where the foreigner resides lawfully before entering Finland This however is not imperative. (FINLEX 2004/301 60 §.)
Freedom of movement	Asylum applicants are assigned to a certain Asylum center within Finland, but they can also choose to live privately with e.g. friends. They are free to move within the country unless placed in a	Once asylum is granted individuals receive the status of a refugee and they are assigned to a certain municipality. However, since people in Finland	Once subsidiary protection is granted individuals receive the status of a refugee and they are assigned to a certain municipality. However, since	-	All people in Finland, including foreign citizens with valid residence permits, are free to choose where they reside within the country (FINLEX	All people in Finland, including foreign citizens with valid residence permits, are free to choose where they reside within the country (FINLEX 731/1999 9	Since undocumented migrants stay in Finland without the legal right to do so, they do not legally have the freedom to movement.

	detention center. Asylum seekers cannot leave the country.	have the right to freely choose where they live (FINLEX 731/1999 9 §) refugees can move to another place if they want to.	people in Finland have the right to freely choose where they live (FINLEX 731/1999 9 §) refugees can move to another place if they want to		731/1999 9 §)	§)	
Family reunification	Asylum seekers are not entitled to family reunification arrangements	Once refugees have a residence permit, their family members can apply for family reunification. The refugee cannot apply for family reunification on behalf of the family members. The premise for family reunification is that the refugee must have secure means of support to cover each family member's living expenses. Within the first three months after being granted refugee status, family reunification can be applied for without income demands. (FINLEX	Once a person is granted subsidiary protection, their family members can apply for family reunification. The individual granted protection cannot apply for family reunification on behalf of the family members. The premise for family reunification is that the family gatherer must have secure means of support to cover each family member's living expenses. Within the first three months after being granted protection, family reunification can be applied for	-	The family members (defined as nuclear family) of a person who resides in Finland by the virtue of a residence permit may be issued a residence permit based on family ties. In this case the family must have secure means of support to cover each family member's living expenses. EU citizens do not need a residence permit in Finland	The family members (defined as nuclear family) of a person who reside in Finland by the virtue of a residence permit may be issued a residence permit based on family ties. In this case the family must have secure means of support to cover each family member's living expenses. EU citizens do not need a residence permit in Finland	Since undocumented migrants do not have a residence permit to stay in Finland they cannot apply for family reunification.

		HE 43/2016)	without income demands. (FINLEX HE 43/2016)				
Right to legal defense	<p>Asylum seekers have the right to personal legal advice and counselling. If the asylum seeker or his/her partner has no funds the advice is free of charge. Otherwise the asylum seeker may need to pay for the legal advice.</p> <p>Refugees, asylum seekers and other foreigners can find help and guidance in legal questions at the Refugee Advice Centre, which is an NGO.</p>	Those individuals who have a place of residence in Finland, ergo refugees, have a right to legal defense (FINLEX 2004/972 2 §).	Those individuals who have a municipality of residence in Finland, ergo those granted subsidiary protection, have a right to legal defense (FINLEX 2004/972 2 §).	-	<p>Those individuals who have a municipality of residence* in Finland, or who have a place of residence in another EU or EEA country have a right to legal defence. In addition, those individuals that are involved in legal cases that are handled in Finnish courts have the right to legal defence. Legal defence is also provided in some cases that do not meet the above-mentioned criteria if there is a special need for it.</p> <p>(FINLEX 2004/972 2 §)</p>	<p>Those individuals who have a municipality* of residence in Finland, or who have a place of residence in another EU or EEA country have a right to legal defence. In addition, those individuals that are involved in legal cases that are handled in Finnish courts have the right to legal defence. Legal defence is also provided in some cases that do not meet the above-mentioned criteria if there is a special need for it.</p> <p>(FINLEX 2004/972 2 §)</p>	<p>Since undocumented migrants do not have a legal residence in Finland, which generally means that they do also not come from EU or EEA countries, they do not automatically have the right the legal defense. If they are involved in cases that are tried in Finnish courts, they are however entitled to legal defense (FINLEX 2004/972 2 §). Refugees, asylum seekers and other foreigners can find help and guidance in legal questions at the Refugee Advice Centre, which is an NGO.</p>

SOCIO-ECONOMIC BENEFITS**=							
Health	Asylum seekers cannot normally use public health services, such as health centers, directly. Instead, the reception center arranges health services for them. Adult asylum seekers are entitled to urgent healthcare services. Minor asylum seekers are entitled to the same healthcare services as local citizens. In practice, healthcare services are purchased from municipalities and private enterprises.	Once granted a residence permit and placed in a municipality, refugees are entitled to the same public health services of their municipality, as all citizens of their municipality.	Once granted a residence permit and placed in a municipality, individuals granted subsidiary protection are entitled to the same public health services of their municipality, as all citizens of their municipality.	-	Once granted a residence permit and once they have a municipality of residence* they are entitled to the same public health services of their municipality, as all citizens of their municipality. Short-term migrants that do not have a municipality of residence are not entitled to the public health care services.	Once granted a residence permit and once they have a municipality of residence* they are entitled to the same public health services of their municipality, as all citizens of their municipality.	Undocumented migrants cannot use public health care services. They can receive health care free of charge from the Global Clinic, also in non-urgent medical cases. According to the Health Care Act (FINLEX, 2010/1326 50§) public healthcare must be provided in urgent cases to all who need it. Patients who have no residence permit in Finland must pay themselves the costs of urgent care in full.
Social care	Asylum seekers are not entitled to social security in Finland. The reception center arranges social care.	Once granted a residence permit and placed in a municipality, refugees are entitled to the same social care services of their	Once granted a residence permit and placed in a municipality, individuals granted subsidiary protection are	-	Once granted a residence permit and once they have a municipality of residence* they are entitled to the same public social care	Once granted a residence permit and once they have a municipality of residence* they are entitled to the same public social care	Since undocumented migrants do not have a residence permit to stay in Finland or a municipality of residence* they are not entitled to social care.

		municipality, as all citizens of their municipality.	entitled to the same social care services of their municipality, as all citizens of their municipality.		services of their municipality, as all citizens of their municipality.	services of their municipality, as all citizens of their municipality.	However, Finnish legislation obligates municipalities to organize undocumented migrants at least urgent social and health care services.
Education	Legislation does not prohibit migrants from attending education. Asylum seekers may take part in comprehensive education in schools and after this they may apply and accept a study place if they meet the general selection criteria. A study place does not affect the decision on granting asylum for international protection.	Once granted a residence permit and placed in a municipality refugees are entitled to the same education services of their municipality, as all citizens of their municipality. They may apply for and accept a study place. Before attending education in Finland, migrants may receive preparatory training for education organized by municipalities.	Once granted a residence permit and placed in a municipality those receiving subsidiary protection are entitled to the same education services of their municipality, as all citizens of their municipality. They may apply for and accept a study place. Before attending education in Finland, migrants may receive preparatory training for education organized by municipalities.	-	Migrants have a right to attend education in Finland. If a migrant studies in Finland for longer than 3 months, he/she need a residence permit. Individuals from EU, Iceland or Switzerland do not need a residence permit to study in Finland. All children living in Finland permanently have the liability to participate in compulsory education (FINLEX 1998/628).	Migrants have a right to attend education in Finland. If a migrant studies in Finland for longer than 3 months, he/she need a residence permit. Individuals from EU, Iceland or Switzerland do not need a residence permit to study in Finland. All children living in Finland permanently have the liability to participate in compulsory education (FINLEX 1998/628).	All children living in Finland have the right to attend public free of charge school, independent of their parents' legal status. The right to attend school is independent of children having a municipality of residence* or residence permit. The possibility of adults undocumented migrants to apply and accept a study place is hindered by them not having a social security number.

Training	Asylum seekers can take part in various trainings voluntarily. A range of vocational courses as well as language courses are offered to migrants by municipalities, learning institutes, secondary schools, NGOs, the employment office and enterprises. There are no compulsory trainings for asylum seekers.	Once the residence permit is granted an initial mapping of the migrant's integration needs is made. During this time, if found necessary, an individual integration plan is made which can include e.g. various forms of trainings organized by municipalities, employment offices and learning institutions. To receive unemployment benefits migrants must participate in integration training.	Once the residence permit is granted an initial mapping of the migrant's integration needs is made. During this time, if found necessary, an individual integration plan is made which can include e.g. various forms of trainings organized by municipalities, employment offices and learning institutions. To receive unemployment benefits migrants must participate in integration training	-	Once the residence permit is granted an initial mapping of the migrant's integration needs is made. During this time, if found necessary, an individual integration plan is made which can include e.g. various forms of trainings organized by municipalities, employment offices and learning institutions. To receive unemployment benefits migrants must participate in integration training	Once the residence permit is granted an initial mapping of the migrant's integration needs is made. During this time, if found necessary, an individual integration plan is made which can include e.g. various forms of trainings organized by municipalities, employment offices and learning institutions. To receive unemployment benefits migrants must participate in integration training	There are no trainings offered to undocumented migrants.
Housing	Refugee centers take care of asylum seekers needed subsistence for living and offer accommodation. Asylum seekers can also choose to live privately with e.g. friends or rent an apartment with their own money. In this case, they	Once granted a residence permit and placed in a municipality refugees are entitled to the same housing services of their municipality, as all citizens of their	Once granted a residence permit and placed in a municipality those granted subsidiary protection are entitled to the same housing services of their municipality,	-	Once granted a residence permit and once they have a permanent municipality of residence* they are entitled to the same public housing services of their	Once granted a residence permit and once they have a permanent municipality of residence* they are entitled to the same public housing services of their	Finnish legislation (FINLEX 1999/731 19 §) obligates municipalities to help undocumented migrants find accommodation. In practice, the accommodation

	still need to be registered at a refugee center, which takes care of their reception services, such as health care services and reception allowance.	municipality.	as all citizens of their municipality.		municipality, as all citizens of their municipality.	municipality, as all citizens of their municipality.	situation varies between municipalities.
Language courses	Asylum seekers can voluntarily participate in language courses offered e.g. by learning institutes, NGO's and schools. In some municipalities, language courses especially for asylum seekers are organized.	Refugees can voluntarily participate in language courses offered e.g. by learning institutes, NGO's and schools. Language courses are often also as a part of the integration training offered to migrants (see section "Training").	Those granted subsidiary protection can voluntarily participate in language courses offered e.g. by learning institutes, NGO's and schools. Language courses are often also as a part of the integration training offered to migrants (see section "Training").	-	Migrants can voluntarily participate in language courses offered e.g. by learning institutes, NGO's and schools. Language courses are often also as a part of the integration training offered to migrants (see section "Training").	Migrants can voluntarily participate in language courses offered e.g. by learning institutes, NGO's and schools. Language courses are often also as a part of the integration training offered to migrants (see section "Training").	There are no official language courses especially for undocumented migrants. They can however participate in language courses offered e.g. by NGOs that do not require a social security number when enrolling.
Cash benefit/allowances	The reception center pays asylum seekers a reception allowance once their application is being processed. The amount varies on whether the asylum center offers meals or not. For example, a single parent living alone in an asylum center that	Once granted a residence permit and placed in a municipality refugees are entitled to the same allowances as other citizens in the municipality.	Once granted a residence permit and placed in a municipality those granted subsidiary protection are entitled to the same allowances as other citizens in the	-	Once granted a residence permit and once they have a permanent municipality of residence* they are entitled to the same public allowances as all citizens of	Once granted a residence permit and once they have a permanent municipality of residence* they are entitled to the same public allowances as all citizens of their	In some cases, undocumented migrants can receive some cash benefits in the form of a small subsistence for living. The law states that everyone who does not have the means for a life worthy of a human

	does not offer meals receives 312, 23 e a month in 2018.		municipality.		their municipality.	municipality.	being has the right to indispensable income and care. (FINLEX 1999/731 19 §)
Child care benefits	Asylum seekers are not entitled to social security, including childcare benefits. The refugee center takes care of the children's subsistence for living and accommodation during the application process.	Once granted a residence permit and placed in a municipality refugees are entitled to the same child care benefits as other citizens in the municipality.	Once granted a residence permit and placed in a municipality they are entitled to the same child care benefits as other citizens in the municipality.	-	Once granted a residence permit and once they have a permanent municipality of residence* they are entitled to the same public child care benefits, as all citizens of their municipality.	Once granted a residence permit and once they have a permanent municipality of residence* they are entitled to the same public child care benefits, as all citizens of their municipality.	There are no childcare benefits for undocumented migrants. Undocumented migrant children have the right to participate in Finnish basic education (see section "Education").
POLITICAL RIGHTS/RIGHTS OF THE PUBLIC SPHERE							
Right to vote in local elections	No, before having a municipality of residence* asylum seekers are not allowed to vote in local (=municipal) elections.	Yes, in local (=municipal) elections, citizens of other countries who have had a municipality of residence* in Finland for at least	Yes, in local (=municipal) elections, citizens of other countries who have had a municipality of residence* in Finland for at least	-	No, in local (=municipal) elections, only those citizens of other countries who have had a municipality of residence* in	Yes. In a local (=municipal) elections, citizens of other countries who have had a municipality of residence* in Finland for at least two years	No

		two years have the right to vote.	two years have the right to vote.		Finland for at least two years have the right to vote.	have the right to vote.	
Right to vote for consultative entities	No, only Finnish citizens can vote in consultative elections.	No, only Finnish citizens can vote in consultative elections.	No, only Finnish citizens can vote in consultative elections.	-	No, only Finnish citizens can vote in consultative elections.	No, only Finnish citizens can vote in consultative elections.	No, only Finnish citizens can vote in consultative elections.
Right to join/create a cso	<p>Individuals in Finland have the right to freely set up and join Civil Society Organizations (FINLEX 1989/503). Three individuals that are over 15-years old are needed to set up a cso/NGO. Only the chair and the vice-chairperson need to be min. 18-years old and have their residency in Finland.</p> <p>If the purpose of the organization is to influence state matters, only those individuals who residence in Finland can be part of the organization (FINLEX 1989/503 10 §).</p>	<p>Individuals in Finland have the right to freely set up and join Civil Society Organizations (FINLEX 1989/503). Three individuals that are over 15-years old are needed to set up a cso. Only the chair and the vice-chairperson need to be min. 18-years old and have their residency in Finland.</p> <p>If the purpose of the organization is to influence state matters, only those individuals who residence in Finland can be part of the</p>	<p>Individuals in Finland have the right to freely set up and join Civil Society Organizations (FINLEX 1989/503). Three individuals that are over 15-years old are needed to set up a cso. Only the chair and the vice-chairperson need to be min. 18-years old and have their residency in Finland.</p> <p>If the purpose of the organization is to influence state matters, only those individuals who</p>	-	<p>Individuals in Finland have the right to freely set up and join Civil Society Organizations (FINLEX 1989/503). Three individuals that are over 15-years old are needed to set up a cso. Only the chair and the vice-chairperson need to be min. 18-years old and have their residency in Finland.</p> <p>If the purpose of the organization is to influence state matters, only those individuals who</p>	<p>Individuals in Finland have the right to freely set up and join Civil Society Organizations (FINLEX 1989/503). Three individuals that are over 15-years old are needed to set up a cso. Only the chair and the vice-chairperson need to be min. 18-years old and have their residency in Finland.</p> <p>If the purpose of the organization is to influence state matters, only those individuals who residence in Finland can be part of the organization (FINLEX</p>	<p>Individuals in Finland have the right to freely set up and join Civil Society Organizations (FINLEX 1989/503). Three individuals that are over 15-years old are needed to set up a cso. Only the chair and the vice-chairperson need to be min. 18-years old and have their residency in Finland.</p> <p>If the purpose of the organization is to influence state matters, only those individuals who residence in Finland can be part of the organization (FINLEX 1989/503 10</p>

		organization (FINLEX 1989/503 10 §).	residence in Finland can be part of the organization (FINLEX 1989/503 10 §).		residence in Finland can be part of the organization (FINLEX 1989/503 10 §).	1989/503 10 §).	§).
WORK RELATED RIGHTS/BENEFITS							
Right to work	An asylum seeker can work in Finland three months after arrival if her/his travel documents are in order (a valid and authenticated passport or other travel document). Those asylum seekers that do not have the needed travel documents can start working after five months has passed in Finland. There is no need to apply for the right separately.	Yes, individuals who have been granted a residence permit on the basis of international protection (and who thus have the refugee status) are allowed to work in Finland. (FINLEX § 2018/121 78)	Yes, individuals who have been granted a residence permit on the basis of subsidiary protection (and who thus have the refugee status) are allowed to work in Finland (FINLEX § 2018/121 78)	-	The right to work is depends on how long the individual intents to stay, what kind of work he/she is coming to perform and what country citizenship he/she has. Nordic citizens, EU-citizens and individuals from Liechtenstein or Switzerland do not need to apply for a special permission to work in Finland. Third Country Nationals in general, need a residence permit, which allows work.	The right to work is depended on how long the individual intents to stay, what kind of work he/she is coming to perform and what country citizenship he/she has. Nordic citizens, EU-citizens and individuals from Liechtenstein or Switzerland do not need to apply for a special permission to work in Finland. Third Country Nationals in general, need a residence permit, which allows work.	No

Recognition of competences/degrees***	Asylum seekers can apply for the recognition of competence/degrees during their application process. One of the requirements for the application is proof of citizenship. There is no need to present a residence permits.	Refugees can apply for the recognition of competence/degrees. See *** description of process. One of the requirements for the application is proof of citizenship. There is no need to present a residence permits.	Those granted subsidiary protection can apply for the recognition of competence/degrees. See *** description of process. One of the requirements for the application is proof of citizenship. There is no need to present a residence permits.	-	Migrants can apply for the recognition of competence/degrees. (See *** for description of process). One of the requirements for the application is proof of citizenship. There is no need to present a residence permits.	Migrants can apply for the recognition of competence/degrees. (See *** for description of process.) One of the requirements for the application is proof of citizenship. There is no need to present a residence permits.	Non-documented migrants can apply for recognition of competence since there is no need to present a residence permit. One of the requirements for the application is however proof of citizenship.
Vocational training	Legislation does not prohibit migrants from attending vocational training. Asylum seekers may take part in vocation training in schools and after this they may apply and accept a study place if they meet the general selection criteria. A study place does not affect the decision on granting asylum for international protection.	Refugees can attend vocational training in an equivalent manner as all other citizens of her/his municipality. Generally vocational schools need to be applied for and refugees can do so, and they can accept a study place if they meet the general selection criteria.	Those granted subsidiary protection can attend vocational training in an equivalent manner as all other citizens of her/his municipality. Generally vocational schools need to be applied for and refugees can do so, and they can accept a study place if they meet the general	-	Migrants can attend vocational training in an equivalent manner as all other citizens of her/his municipality. Generally vocational schools need to be applied for and migrants can do so, and they can accept a study place if they meet the general selection criteria. Third country national who study	Migrants can attend vocational training in an equivalent manner as all other citizens of her/his municipality. Generally vocational schools need to be applied for and migrants can do so, and they can accept a study place if they meet the general selection criteria. Third country national who study in vocational training for more than three	The possibility of undocumented migrants to attend vocational training is hindered by them not having a social security number.

			selection criteria.		in vocational training for more than three months need a residence permit, which can be granted based on studying for a profession.	moths need a residence permit, which can be granted based on studying for a profession.	
Anti-discrimination measures	The Non-Discrimination Act (FINLEX 1325/2014) prohibits discrimination based on age, ethnic or national origin, nationality, language, religion, conviction, opinions, health, disability, sexual orientation or any other personal quality.	The Non-Discrimination Act (FINLEX 1325/2014) prohibits discrimination based on age, ethnic or national origin, nationality, language, religion, conviction, opinions, health, disability, sexual orientation or any other personal quality.	The Non-Discrimination Act (FINLEX 1325/2014) prohibits discrimination based on age, ethnic or national origin, nationality, language, religion, conviction, opinions, health, disability, sexual orientation or any other personal quality.	-	The Non-Discrimination Act (FINLEX 1325/2014) prohibits discrimination based on age, ethnic or national origin, nationality, language, religion, conviction, opinions, health, disability, sexual orientation or any other personal quality.	The Non-Discrimination Act (FINLEX 1325/2014) prohibits discrimination based on age, ethnic or national origin, nationality, language, religion, conviction, opinions, health, disability, sexual orientation or any other personal quality.	Basic rights set in the constitution belong to all individuals in Finland not just citizens. In addition, international conventions secure the right of undocumented migrants.
Right to work in public sector	There are no legal prohibitions for asylum seeker to work in the public sector during their asylum application period. There are however a few official positions that only Finnish citizens can	In general, those granted residence permit have the right to work in the public sector. There are however a few official positions that only Finnish citizens	In general, those granted residence permit have the right to work in the public sector. There are however a few official positions that only Finnish citizens	-	In general migrants have the right to work in the public sector. There are however a few official positions that only Finnish citizens can occupy. Such	In general migrants have the right to work in the public sector. There are however a few official positions that only Finnish citizens can occupy. Such are e.g. the	No

	occupy. Such are e.g. the highest government positions as well as the judges and the police.	can occupy. Such are e.g. the highest government positions as well as the judges and the police.	can occupy. Such are e.g. the highest government positions as well as the judges and the police.		are e.g. the highest government positions as well as the judges and the police.	highest government positions as well as the judges and the police.	
Right to self-employment	Yes, an asylum seeker has the right to self-employment in Finland three months after arrival if her/his travel documents are in order (a valid and authenticated passport or other travel document). Those asylum seekers that do not have the needed travel documents can employ themselves after five months has passed in Finland. There is no need to apply for the right separately.	Yes, a refugee has the same right as any other citizen in Finland to self-employment	Yes, those granted subsidiary protection have the same right as any other citizen in Finland to self-employment	-	Yes, migrants have the same right as any other citizen in Finland to self-employment. Migrants who come to Finland to set up an enterprise need to apply for the residence permit for self-employed persons (FINLEX 2004/301 11 §). To get a residence permit for an employed person you must register your business with the Trade Register and you must have secure means of support yourself in Finland. Moreover, you must actually work in the business enterprise	Yes, migrants have the same right as any other citizen in Finland to self-employment. Migrants who come to Finland to set up an enterprise need to apply for the residence permit for self-employed persons (FINLEX 2004/301 11 §). To get a residence permit for an employed person you must register your business with the Trade Register and you must have secure means of support yourself in Finland. Moreover, you must actually work in the business enterprise and the work must be	No, undocumented migrants do not have the legal right to work in Finland, which also includes self-employment.

					and the work must be done in Finland.	done in Finland.	
Unemployment benefits	No, refugee centers take care of asylum seekers needed subsistence for living.	To receive unemployment benefits, one must live permanently in Finland (= have a municipality of residence*) and register with the TE Office as an unemployed jobseeker. Unemployed jobseekers who have received a residence permit will be paid unemployment benefits in the form of integration assistance for a period of at most three years.	To receive unemployment benefits, one must live permanently in Finland (=municipality of residence*) and register with the TE Office as an unemployed jobseeker. Unemployed jobseekers who have received a residence permit will be paid unemployment benefits in the form of integration assistance for a period of at most three years.	-	To receive unemployment benefits, one must live permanently in Finland (= have a municipality of residence*) and register with the TE Office as an unemployed jobseeker. Unemployed jobseekers who have received a residence permit will be paid unemployment benefits in the form of integration assistance for a period of at most three years.	To receive unemployment benefits, one must live permanently in Finland (= have a municipality of residence*) and register with the TE Office as an unemployed jobseeker. Unemployed jobseekers who have received a residence permit will be paid unemployment benefits in the form of integration assistance for a period of at most three years.	No
Membership in Unions	The possibility of asylum seekers to join a union is limited by the fact that they do not have a social security number. The social security number is	Refugees have the right to join a union in an equivalent manner as all individuals working in Finland. They may	Those granted subsidiary protection in Finland have the right to join a union and they may not be	-	Individuals working in Finland have the right to join a union and they may not be discriminated based on this	Individuals working in Finland have the right to join a union and they may not be discriminated based on this (FINLEX	The possibility of undocumented workers to join a union is limited by the fact that they do not have a social security number. The

	needed when filling the application for membership.	not be discriminated based on this (FINLEX 2001/55, Chapter 13 1 §) Whether unions choose to represent migrants varies between unions.	discriminated based on this (FINLEX 2001/55, Chapter 13 1 §) Whether unions choose to represent migrants varies between unions.		(FINLEX 2001/55, Chapter 13 1 §) Whether unions choose to represent migrants varies between unions.	2001/55, Chapter 13 1 §) Whether unions choose to represent migrants varies between unions.	social security number is needed when filling the application for membership.
Retirement benefits	No, refugee centers take care of asylum seekers needed subsistence for living.	A refugee has the right to receive a pension based on her accumulated working time. As part of the Finnish social security system* she/he has the right to receive a national pension if he/she has lived in Finland for at least three years and if her/his work-based pension income does otherwise not surpass the income threshold. A migrant who does not have the right to receive any other sort of pension has the right to guarantee pension.	Those granted secondary protection have the right to receive a work pension based on their accumulated working time. As part of the Finnish social security system* they also have the right to receive a national pension if he/she has lived in Finland for at least three years and if her/his work-based pension income does otherwise not surpass the income threshold. A migrant who does not have the right to receive any other sort of	-	A migrant has the right to receive a pension based on her accumulated working time. If a migrant is part of the Finnish social security system* she/he has the right to receive a national pension if he/she has lived in Finland for at least three years and if her/his work-based pension income does otherwise not surpass the income threshold. A migrant who does not have the right to receive any other sort of pension has the right to guarantee	A migrant has the right to receive a pension based on her accumulated working time. If a migrant is part of the Finnish social security system* she/he has the right to receive a national pension if he/she has lived in Finland for at least three years and if her/his work-based pension income does otherwise not surpass the income threshold. A migrant who does not have the right to receive any other sort of pension has the right to guarantee pension.	No

			pension has the right to guarantee pension.		pension.		
DUTIES							
Attending civic integration programs	No	Some welfare benefits, such as unemployment benefits, are made conditional on participation in the integration programme defined in the individual integration plan.	Some welfare benefits, such as unemployment benefits, are made conditional on participation in the integration programme defined in the individual integration plan.	-	Some welfare benefits, such as unemployment benefits, are made conditional on participation in the integration programme defined in the individual integration plan.	Some welfare benefits, such as unemployment benefits, are made conditional on participation in the integration programme defined in the individual integration plan.	No
Attending language courses	No	Some welfare benefits, such as unemployment benefits, are made conditional on participation in the integration programme defined in the individual integration plan, which often includes e.g. language courses.	Some welfare benefits, such as unemployment benefits, are made conditional on participation in the integration programme defined in the individual integration plan, which often includes e.g. language courses.	-	Some welfare benefits, such as unemployment benefits, are made conditional on participation in the integration programme defined in the individual integration plan, which often includes e.g. language courses.	Some welfare benefits, such as unemployment benefits, are made conditional on participation in the integration programme defined in the individual integration plan, which often includes e.g. language courses.	No

Doing volunteering activities for local communities	No	No	No	-	No	No	No
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*A home municipality can be assigned if (FINLEX 1994/201 4§):

- you are a Finnish citizen
- you are a citizen of a Nordic country
- you are a resident of an EU country, Switzerland or Lichtenstein and have registered your right of residence in Finland
- you have a valid permanent or continuous residence permit
- you are a family member of a person who has a municipality of residence in Finland
- If you have a valid temporary residence permit, you may have a Finnish municipality of residence, but only if you can demonstrate that you intend to live in Finland permanently.

These factors are defined as demonstrating permanent residence:

- you have a job in Finland and your employment contract is valid for at least two years
- you are studying in Finland and your studies will take at least two years
- you are of Finnish origin
- you have previously had a municipality of residence in Finland
- you have continuously resided in Finland for at least one year
(translation of law by Infopankki.fi)

Asylum seekers who are granted refugee status, as well as those granted subsidiary protection, are assigned to a municipality and they thus have a “home municipality” and they are entitled to the social security system. This means that they also receive a social security number.

** In general, social security in Finland is based on living in Finland permanently and having a “home municipality”/ municipality of residence. If a person comes from a European Union or a European Economic Area member state the EU directive on social security coordination (EY N:o 883/2004) is used in determining the right to social security. If a person does not come from an EU or EEA state, and is instead a third country national, the Finnish national legislation is used in determining the right to social security. Some countries, such as the Nordic countries, Canada, Chile, Australia, India, Israel and the US have signed bilateral social security agreements with Finland.

*** Responsibility for recognition of qualifications rests with the Finnish National Agency for Education EDUFI, a field-specific authority, an employer, a higher education institution or some other educational institution, depending on the purpose for which recognition is applied. Generally, recognition has to be applied for individually and it there are application fees. A decision on recognition of a higher education qualification does not transform the foreign qualification into a Finnish one.

13. Greece

	Asylum Applicants	Refugees	Subsidiary protection	National forms of temporary protection	Economic migrants, Short term	Economic migrants, Long term	Undocumented migrants
FUNDAMENTAL FREEDOMS							
Permit to stay	An International Protection Applicant Card is granted to Asylum Applicants. It represents a temporary title which does not constitute an entitlement to have a residence permit issued. A residence permit on humanitarian grounds can be granted to applicants for international protection whose application had been lodged up to five years prior and its examination is pending in the second	Residence permit for three years, which is renewable at the request of the person concerned. The person can apply for a long-term residency permit after completing 5 years of legal and permanent stay.	Residence permit for three years, which is renewable at the request of the person concerned. The person can apply for a long-term residency permit after completing 5 years of legal and permanent stay.	Third-country nationals who have been characterised as victims of trafficking in human beings or have engaged in actions to facilitate illegal immigration are granted a reflection period of three months. After the expiry of the reflection period a twelve-month residence permit can be Issued.	For seasonal workers, a visa is granted that remains valid for a period equal to the duration of employment and which may not exceed six months in total within a twelve-month period.	The long-term residence permit and the ten-year residence permit are the forms of long-term residence. The long-term residence permit is valid for five years and can be renewed each time for a period of five years.	The legal framework gives the opportunity to legally settle migrants on the grounds of exceptional or humanitarian reasons by providing a two-year residence permit. In addition, irregular immigrants whose order to leave the country was postponed for humanitarian reasons are granted a special certificate to remain in the country for six months, renewable for a further six months (status of “para-legality”).

	instance.						
Freedom of movement	<p>Geographical restrictions for Asylum Seekers within the island where their application has been lodged.</p> <p>Applicants for international protection (settled either in the islands or in the mainland) cannot travel outside Greece.</p>	<p>Can move freely and settle anywhere in the country.</p> <p>Upon request, travel documents are provided to travel abroad. People with refugee status cannot travel to their country of origin without the risk of losing their refugee status</p>	<p>Can move freely and settle anywhere in the country.</p> <p>They may apply to be given travel documents, if they are unable to obtain a national passport. They can travel to their country of origin.</p>	Can move freely and settle anywhere in the country. They cannot leave the country.	Can move freely in the country.	Can move freely and settle anywhere in the country and can travel within the EU.	Undocumented migrants are detained in police stations and in special holding facilities for up to 18 months for the purpose of their deportation, return or readmission.
Family reunification	Applicants for international protection cannot transfer their family from their country of origin to Greece.	Refugees have the right to apply for family reunification with family members in their country of origin or in a third country.	Beneficiaries of subsidiary protection do not have this right.	Third-country nationals within a reflection period do not have this right.	Seasonal workers do not have this right.	A third-country national who has resided lawfully in Greece for two years is entitled to apply for his/her family members to enter into and reside in the country.	Undocumented migrants do not have this right.
Right to legal defence	Applicants are provided with free legal assistance at the second but not at	Free legal assistance is provided by civil society organisations.	Free legal assistance is provided by civil society organizations.	Free legal assistance is provided by civil society		Free legal assistance is provided by civil society	Free legal assistance is provided by civil society organisations.

	first instance. The UNHCR plays a significant role in the provision of free legal assistance. Free legal assistance is also provided by civil society organisations.			organisations.		organisations.	
SOCIO-ECONOMIC BENEFITS							
Health	Equal rights with nationals (a Social Security Number is a prerequisite).	Equal rights with nationals (a Social Security Number is a prerequisite)	Equal rights with nationals (a Social Security Number is a prerequisite).	Equal rights with nationals (a Social Security Number is a prerequisite).	Equal rights with nationals (a Social Security Number is a prerequisite).	Equal rights with nationals (a Social Security Number is a prerequisite).	Equal rights with nationals only for those that are members of undocumented vulnerable groups (minors, pregnant women, drug addicts, homeless people).
Social care	No	As regards access to social care refugees have equal rights. Moreover they are eligible for the Social Solidarity Income (KEA) benefit (a Tax Registration and a Social Security Number are prerequisites).	As regards access to social care refugees have equal rights. Moreover they are eligible for the Social Solidarity Income (KEA) benefit (a Tax Registration and a Social Security Number are prerequisites).	NO	NO	As regards access to social care refugees have equal rights. Moreover they are eligible for the Social Solidarity Income (KEA) benefit (a Tax Registration and a Social Security Number are	No

						prerequisites).	
Education	Yes, the same as nationals (declaration of address and possession of a vaccination card are prerequisites).	Yes, the same as the nationals (declaration of address and possession of a vaccination card are prerequisites).	Yes, the same as the nationals (declaration of address and possession of a vaccination card are prerequisites).			Yes, the same as nationals (declaration of address and possession of a vaccination card are prerequisites).	No, undocumented migrants do not have this benefit.
Training							
Housing	Yes, housing programmes provided by NGOs and municipalities. However, reception, hotels and hostels and emergency shelters are the most frequently used forms of accommodation.	Yes, housing programmes provided by NGOs and municipalities.	Yes, housing programmes provided by NGOs and municipalities.	Yes, the same as nationals.	Very often, this is provided by their employer.	Yes, the same as nationals.	No, undocumented migrants do not have this benefit.
Language courses	Yes, the majority of language courses are provided by NGOs.	Yes, the majority of language courses are provided by NGOs.	Yes, the majority of language courses are provided by NGOs.	Yes, the majority of language courses are provided by NGOs.	Yes, the majority of language courses are provided by NGOs.	Yes, the majority of language courses are provided by NGOs.	

Cash benefit/allowances	Not from government funds. However, since 2017 a cash allowance has been provided by the NGO Greece Cash Alliance (GCA), under the guidance of the UNHCR with funds from the European Commission and with the cooperation of the Ministry of Migration Policy.	Not from government funds. However, since 2017 a cash allowance has been provided by the NGO Greece Cash Alliance (GCA), under the guidance of the UNHCR with funds from the European Commission and with the cooperation of the Ministry of Migration Policy.	Not from government funds. However, since 2017 a cash allowance has been provided by the NGO Greece Cash Alliance (GCA), under the guidance of the UNHCR with funds from the European Commission and with the cooperation of the Ministry of Migration Policy.	NO	NO	Yes, equal to nationals.	NO
Child care benefits	No	Yes, but very often based on permanent and uninterrupted stay in the country.	Yes, but very often based on permanent and uninterrupted stay in the country.	No	No	Yes, the same as nationals	No
POLITICAL RIGHTS/CIVIC RIGHTS							
Right to vote in local elections	No	No	No	No	No	No	No
Right to vote for consultative entities	No	They may vote in elections for their representatives on the	They may vote in elections for their representatives on the Migrant Integration	No	No	They may vote in elections for their representatives	No

		Migrant Integration Councils. These are advisory bodies to the municipalities and promote the integration of immigrants in the local community.	Councils. These are advisory bodies to the municipalities and promote the integration of immigrants in the local community.			on the Migrant Integration Councils. These are advisory bodies to the municipalities and promote the integration of immigrants in the local community.	
Right to join/create a CSO	They can join and create communities or associations.	They can join and create communities or associations.	They can join and create communities or associations.	They can join and create communities or associations.	They can join and create communities or associations.	They can join and create communities or associations.	For representation of the association, it is not necessary for the members to legally reside in Greece, but this may be necessary when representing the association before the public authorities.
WORK RELATED RIGHTS/BENEFITS							
Right to work	Applies only to fully-registered asylum applicants. Right to work under equivalent conditions as nationals from the moment of lodging	Right to work under equivalent conditions as nationals.	Right to work under equivalent conditions as nationals.		Right to work on condition that an invitation has first been made by the employer.	Right to work under equivalent conditions as nationals.	The status of “para-legality” offers limited access to the labour market in specific sectors (such as agriculture, animal husbandry and domestic work) and geographical locations

	the application.						(mainly rural). Right to work under equivalent conditions as nationals for those with a residence permit on humanitarian or exceptional grounds.
Recognition of competences/degrees	Equal treatment with nationals regarding the recognition of foreign diplomas, certificates and other evidence of formal qualifications.	Equal treatment with nationals regarding the recognition of foreign diplomas, certificates and other evidence of formal qualifications.	Equal treatment with nationals regarding the recognition of foreign diplomas, certificates and other evidence of formal qualifications.		Equal treatment with nationals regarding the recognition of foreign diplomas, certificates and other evidence of formal qualifications.	Equal treatment with nationals regarding the recognition of foreign diplomas, certificates and other evidence of formal qualifications.	
Vocational training	Access to adult education and training programmes under equivalent conditions as nationals.	Access to adult education and training programmes under equivalent conditions as nationals.	Access to adult education and training programmes under equivalent conditions as nationals.			Access to adult education and training programmes under equivalent conditions as nationals.	
Anti-discrimination measures	Equal treatment for access to employment, access to all types of vocational guidance and training, working conditions,	Equal treatment for access to employment, access to all types of vocational guidance and training, working conditions, participation	Equal treatment for access to employment, access to all types of vocational guidance and training, working conditions, participation in a trade		Equal treatment for access to employment, access to all types of vocational guidance and training, working	Equal treatment for access to employment, access to all types of vocational guidance and	

	participation in a trade union.	in a trade union.	union.		conditions, participation in a trade union.	training, working conditions, participation in a trade union.	
Right to work in the public sector	No	No	No	No	No	No	No
Right to self-employment	No	Right to independent economic activity.	Right to independent economic activity.			Right to independent economic activity.	
Unemployment benefits	Applies only to fully-registered asylum applicants. Access to the Unemployment Register and all relevant benefits and services under equivalent conditions as nationals.	Access to the Unemployment Register and all relevant benefits and services under equivalent conditions as nationals.	Access to the Unemployment Register and all relevant benefits and services under equivalent conditions as nationals.			Access to the Unemployment Register and all relevant benefits and services under equivalent conditions as nationals.	
Membership of Trade Unions	Under equivalent conditions as nationals.	Under equivalent conditions as nationals.	Under the equivalent conditions as nationals		Under equivalent conditions as nationals.	Under equivalent conditions as nationals.	
Retirement benefits	Applies only to fully-registered asylum applicants. Under equivalent conditions	Under equivalent conditions as nationals.	Under equivalent conditions as nationals.		Under equivalent conditions as nationals.	Under equivalent conditions as nationals.	

	as nationals.						
DUTIES							
Attending civic integration programmes	No	No	No	No	No	No	No
Attending language courses	No	No	No	No	No	No	No
Performing volunteer activities for local communities	No	No	No	No	No	No	No

14. Italy

	Asylum Applicants	Refugees	Subsidiary protection ³⁶²	National forms of temporary protection ³⁶³	Economic migrants Short term	Economic migrants Long term	Undocumented migrants
FUNDAMENTAL FREEDOMS							
Permit to stay	The asylum applicant is entitled to receive a temporary (6-months), renewable, “asylum seeker permit to stay”.	According to art 23 of D. Lgs. No. 251/2007, an international protection permit of five years, renewable, is granted to beneficiaries of international protection.		A permit of stay for humanitarian reasons has a duration of 2 years (renewable) (art. 14(4) Presidential Decree No. 21/2015).	The same system of entry quota foreseen for long-term economic migrants also applies to seasonal workers (art. 24 of the Consolidated Law on Immigration), who are granted permits between 20 days and 9 months and will get priority in case of re-entering in Italy.	To obtain a visa for work reasons, the foreigner must receive an offer of employment before entering the national borders. More precisely, according to the quota established by law (through the so-called Decreto Flussi ex art.	-----

³⁶² In Italy, beneficiaries of subsidiary protection are granted the same legal status of refugees

³⁶³ The humanitarian protection is a residual form of protection, which can be obtained in a number of different situations. For the purpose of this table, by humanitarian protection is intended the national form of protection envisaged by art. 5 of the Consolidated Law on Immigration and art. 32(3) of D. Lgs. 25/2008. This latter provision states that, having ascertained the absence of grounds for the recognition of international protection, the Territorial Commission can determine the presence of “humanitarian grounds” and transmit the documents to the competent Police Headquarter (art. 32(3)).

						<p>3(4) of the Consolidated Law on Immigration), the employer, after having verified that no employee already residing in Italy is available, submits the request together with the documents proving the employees' accommodation and the commitment to pay the foreigner's travel costs to return to his/her country of origin (art. 22 Consolidated Law on Immigration).</p> <p>The length of the work permit depends on the typology of contract: two years for permanent employment, one year for temporary employment.</p>	
Freedom of movement	According to art. 5(4) of D. Lgs. 142/2015, the prefecture may	The Italian legislation does not foresee a limitation to refugees'	The Italian legislation does not foresee a limitation to	The Italian legislation does not foresee a limitation to beneficiaries of	The Italian legislation does not foresee a limitation to the freedom of movement of migrants holding a	The Italian legislation does not foresee a limitation to the freedom of movement	Undocumented foreigners who have been intercepted in Italy or have been

	<p>limit the freedom of movement of asylum seekers to a specific geographical area. This provision has never been applied. However, applicants' freedom of movement is normatively restricted in first line facilities. Art. 10(2) of D. Lgs. 142/2015 allow applicants to leave the facility only during the day, while a specific permission should be asked if the asylum seekers wants to leave the center for some days. Specific hours of entry to and exit from the center are also imposed by the internal regulations of CAS and SPRAR.</p>	<p>freedom of movement. Under art. 24 of the D. Lgs. 251/2007, a 5-years "travel document" is issued to refugees.</p>	<p>beneficiaries of subsidiary protection's freedom of movement. Under art. 24 of the D. Lgs. 251/2007, beneficiaries of subsidiary protection who have no representative authority of their country in Italy may ask the Questura to release a "travel permit".</p>	<p>humanitarian protection's freedom of movement. Under art. 24 of the D. Lgs. 251/2007, beneficiaries of humanitarian protection who have no representative authority of their country in Italy may ask the Questura to release a "travel permit".</p>	<p>permit to stay for work reasons.</p>	<p>of migrants holding a permit to stay for work reasons.</p>	<p>succoured during rescue operations in the sea are conducted to the "hotspots" where procedures of identification occur. Pending the identification, the asylum seeker is impeded to leave the centre. This limitation of the liberty, in the lack of a law regulating it, raises severe problems of constitutional legitimacy, under art. 13 of the Constitution.</p> <p>In case the undocumented migrant does not intend to apply for asylum, s/he receives an order refusing entry.</p> <p>Beyond these cases, migrants who are intercepted in the country without documents may be reached by an expulsion order. In this case, they are escorted to the border by the police. When this</p>
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							<p>provision cannot apply, the foreigner is detained in the closest centre for repatriation (CPR, the formerly CIE - centre for identification and expulsion -). The detention in CPR centres cannot last more than 90 days.</p> <p>Immigrants who received an expulsion order are barred from re-enter Italy for a period between three and five years, depending on the specific circumstances</p>
Family reunification	-----	Beneficiaries of international protection have the right to apply for family reunification. Contrary to what applies to other third-country nationals, beneficiaries of international protection are not required to prove minimum income		Beneficiaries of humanitarian protection do not have the right to apply for family reunification.	Short term economic migrants do not have the right to apply for family reunification.	The foreigner applying for family reunification must demonstrate to have a regular permit to stay of at least one year; sufficient financial resources (also incomes of other cohabitants family members is taken into account) and a suitable accommodation	-----

		and adequate accommodation (art. 29 bis and 29 of the Consolidated Law on Immigration).				(proven through the so-called <i>certificato di idoneità alloggiativa</i>). When all requirements are fulfilled, a declaration of “no impediment” is transmitted to the diplomatic representation of the family member’s country of origin. Once obtained the family visa, the family member can enter the Italian borders and apply for a permit to stay for family reasons within 8 days.	
Right to legal defense	Concerning the review of decisions issued by the Court in asylum procedures, art. 16(2) Legislative Decree No. 25/2008 provides free legal aid (the so called <i>patrocinio a spese dello Stato</i>), to asylum seekers who have	Presidential Decree No. 115/2002 regulating the access to free legal aid (the so called <i>patrocinio a spese dello Stato</i>) recognizes the right to free legal aid to both citizens and regular foreigners residing	=	=	=	=	Based on the fundamental principle of effective judicial protection, in the decision No. 164/2018, the Court of Cassation stated that also undocumented migrants have the right to access free legal aid (the so called <i>patrocinio a spese dello Stato</i>) in procedures concerning

	an annual income below €11,369.24 and whose case is not deemed manifestly unfounded.	in the Italian territory (art. 119).					their right to a permit to stay. Moreover, in previous decisions, the Constitutional Court maintained that the right to legal defence is a fundamental right, to be recognized to every human being, regardless of the regularity of their status (e.g. decision No. 198/2000 and ordinance No. 144/2004).
SOCIO-ECONOMIC BENEFITS							
Health	Right to healthcare and free and compulsory enrolment in the National Health Service (Art. 34 Consolidated Law on immigration, art. 21 D. Lgs. 142/2015)	Beneficiaries of international protection are equalized to Italian citizens with respect to health-care (art. 27 D. Lgs. 251/2007).	Concerning socio-economic benefits, in Italy, beneficiaries of subsidiary protection are granted the same legal status of refugees.	Beneficiaries of humanitarian protection have the right to health and the free enrolment in the National Health Service (art. 34(1) of the Consolidated Law on Immigration).	Foreign seasonal workers have the right to health and the free enrolment in the National Health Service (art. 34(1) of the Consolidated Law on Immigration).	Foreign workers have the right to health and the free enrolment in the National Health Service (art. 34(1) of the Consolidated Law on Immigration).	According to art. 6 of the Italian Consolidated Law on Immigration, the residence permit is a necessary requirement to benefit of public services, with the sole exception of the compulsory education for children and some urgent and essential health-care services. However, some Regional laws provide

							an ampler range of social rights to undocumented migrants.
Social care	Concerning social benefits, D. Lgs. 142/2015 only refers to beneficiaries of international protection	Beneficiaries of international protection are equalized to Italian citizens as regards social assistance measures (art. 27 D. Lgs. 251/2007).	Concerning socio-economic benefits, in Italy, beneficiaries of subsidiary protection are granted the same legal status of refugees.	Beneficiaries of humanitarian protection are entitled to social assistance measures at the same conditions as Italian citizens (art. 41 of the Consolidated Law on Immigration and art. 27(1) and 34(5) of D. Lgs. 251/2007). Recently the Constitutional Court recalled this provision (decision No. 97/2017).	Full rights to social care and social benefits are not recognized to foreign seasonal workers. However, according to art. 25 (1) of the Consolidated Law on Immigration the following measures of compulsory social welfare have to be granted to foreign seasonal workers: “a) insurance for invalidity, old-age and survivors; b) insurance against work injuries and occupational ill-health c) insurance against injuries; d) maternity insurance”.	According to art. 41 of the Consolidated Law on Immigration, only long-term residents and migrants holding a 1-year long permit to stay are entitled to welfare benefits. However, Law No. 388/2000 (Framework Law for the Implementation of the Integrated System of Interventions and Social Services) reserved the access to social welfare allowances to EU long-term residence permit holders. The Constitutional Court has several times declared that the limitation is unreasonable. However, the Court only declared the constitutional illegitimacy with	According to art. 41 of the Consolidated Law on Immigration, only long-term residents and migrants holding a 1-year long permit to stay are entitled to welfare benefits. However, as already mentioned in the section above, some regional laws recognized urgent and non-delayable social welfare measures to all migrants, regardless of their status (i.e. Law No. 29/2009 of the Region of Tuscany).

						respect to specific provisions, not of the entire law, so that, in terms of certain rights, the Italian legislation still maintains a distinction between long-term residents (with EU long-term residence permit) and migrants who have a permit of one or two years.	
Education	The right to education is granted on the same basis as Italian children, irrespective of their status. In particular, foreign children have access to primary education, which is compulsory and free (Italian Constitution, art. 34; Legislative Decree No. 286/1998, art. 38; Legislative Decree No. 251/2007, art.	Beneficiaries of international protection have the same access to schooling and university education as Italian citizens (Legislative Decree No. 251/2007, art. 26 and arts. 38 (5) and 39(5) of the Consolidated Law on Immigration).	Concerning socio-economic benefits, in Italy, beneficiaries of subsidiary protection are granted the same legal status of refugees.	Foreign adults have access to schooling and the same access to academy as Italian citizens (arts. 38 (5) and 39(5) of the Consolidated Law on Immigration). They are also entitled to all measures that support the right to study, including scholarship, student loans and housing (art. 39)	Foreign workers have access to schooling (art. 38(5) of the Consolidated Law on Immigration). However, they cannot have access to academy, unless they have regularly resided in Italy since 1 year and have a high school diploma obtained in Italy.	Foreign workers have access to schooling and the same access to academy as Italian citizens (arts. 38 (5) and 39(5) of the Consolidated Law on Immigration). They are also entitled to all measures that support the right to study, including scholarship, student loans and housing (art. 39)	No access to schooling and academy is granted to undocumented migrants (except for children – see section on childcare).

	26 and Legislative Decree No. 142/2015, art. 21, para. 2)						
Training	In SPRAR reception centre asylum seekers may attend professional trainings, while this is highly limited in the other type of reception centres, and particularly in CAS, due to their structural weaknesses. The 2017 National Plan for Integration stated that CAS have to provide the same services offered in SPRAR. However, the harmonization of services is far from being implemented in practice.	Beneficiaries of international protection are entitled to the same treatment as Italian citizens	Concerning socio-economic benefits, in Italy, beneficiaries of subsidiary protection are granted the same legal status of refugees.	Beneficiaries of humanitarian protection who work have the same right to access professional trainings as Italian citizens (art. 22(15) of the Consolidated Law of Immigration).	Foreign seasonal workers have the same right to access professional trainings as Italian citizens (art. 22(15) of the Consolidated Law of Immigration).	Foreign workers have the same right to access professional trainings as Italian citizens (art. 22(15) of the Consolidated Law of Immigration).	-----
Housing	D. Lgs. 142/2015 establishes that asylum seekers	According to SPRAR Guidelines,	Concerning socio-economic benefits, in Italy,	According to SPRAR Guidelines, asylum applicants	No access to public housing and housing measures is granted to	Foreigners who are not able to provide to their housing and	The Italian Consolidated Law on Immigration provides

	<p>are channelled in the Italian system of reception, which is organized in two different tiers: a) governmental first line reception facilities for operations of identification and assessment of health conditions; b) when asylum applicants do not have sufficient financial resources, they are transferred to second line reception centres, which are managed by local municipalities within the national system of protection for refugees and asylum seekers (the so-called SPRAR network). If in SPRAR there are no places available, asylum seekers are accommodated in</p>	<p>beneficiaries of international protection have the right to be accommodated in the national system of reception for 6 months (plus further 6 months, after a case-by-case assessment). No normative provision regulates how long refugees can be accommodated in CAS.</p> <p>Art. 40(6) of the Consolidation Law and art. 29 of D. Lgs. No. 251/2007 guarantees refugees the right to access public housing.</p> <p>However, in practice, a widespread recourse to informal settlements has been reported</p>	<p>beneficiaries of subsidiary protection are granted the same legal status of refugees.</p>	<p>who obtained the humanitarian protection have the right to be accommodated in the national system of reception for 6 months (plus further 6 months, after a case-by-case assessment). Beneficiaries of humanitarian protection who are not able to provide to their housing and subsistence needs, have the right to be accommodated within the national reception system at the same conditions as Italians which experience the same situation. Beyond the accommodation in reception centres, which is a temporary solution, beneficiaries of humanitarian protection who regularly work have also the same</p>	<p>seasonal workers.</p>	<p>subsistence needs, have the right to be accommodated within the national reception system at the same conditions as Italians which experience the same situation. However, in the long term, the access to housing is subjected to limitations. In fact, the Consolidated Law on Immigration stipulates that only foreigners holding a EU long-term residence permit or foreigner workers with a permit to stay of no less than two years can have access to public housing accommodations and to housing support measures (art. 40 of the Consolidated Law on Immigration).</p>	<p>accommodation centres and access to social housing only to regularly resident migrants (art. 40). However, the 2010 Region of Campania, for example, extended this right to all foreigners, regardless of their status.</p>
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	<p>Centres of extraordinary reception (CAS) activated by the Prefectures.</p> <p>In practice, the great majority of asylum seekers are accommodated in CAS, featured with uneven standard of services. In general, due to the shortage of places, asylum applicants may remain for long time in first line reception centres, which are not meant to provide long-term assistance.</p>	amongst refugees.		access to public housing and housing support measures as Italians (art. 40 of the Consolidated law on Immigration).			
Language courses	SPRAR reception centres provide language courses, while this is highly limited in the other type of reception centres, and particularly in CAS, due to their	See the right to education, which also entails language and literacy courses.	Concerning socio-economic benefits, in Italy, beneficiaries of subsidiary protection are granted the same legal status of	See the right to education, which also entails language and literacy courses.	See the right to education, which also entails language and literacy courses.	See the right to education, which also entails language and literacy courses.	See the right to education, which also entails language and literacy courses.

	structural weaknesses. The 2017 National Plan for Integration stated that CAS have to provide the same services offered in SPRAR. However, the harmonization of services is far from being implemented in practice.		refugees.				
Cash benefit/allowances	LD 142/2015 does not provide any financial allowance to asylum seekers. The only cash benefit provided is the so-called “pocket money”, issued for personal needs. It amounts to 2,50 € per day per person in CAS (Circular of the Ministry of the Interior, 20.03.2014), whereas in SPRAR centres it may range from 1,50 to 3,00 € per person	No cash benefits provided	Concerning socio-economic benefits, in Italy, beneficiaries of subsidiary protection are granted the same legal status of refugees.	No cash benefits provided	No cash benefits provided	No cash benefits provided	No cash benefits provided

	per day (SPRAR, Manuale unico per la rendicontazione Sprar, March 2017)						
Child care benefits	<p>Foreign children have access to primary education and to all educational services free of charge (Italian Constitution, art. 34; Legislative Decree No. 286/1998, art. 38; Legislative Decree No. 142/2015, art. 21, para. 2).</p> <p>Instead, child care benefits are not granted to asylum applicants.</p>	The same regulation of the right to social allowances also apply to child-care benefits which are granted to beneficiaries of international protection as the same conditions as Italian citizens.	=	<p>Law No. 388/2000 (Framework Law for the Implementation of the Integrated System of Interventions and Social Services) reserves the access to social welfare allowances to EU long-term residence permit holders. However, with reference to child care benefits, a consistent jurisprudence has maintained that the same rights should be recognized also to all migrants holding a permit allowing to work (permit to stay for work reasons, for humanitarian reasons, for family reasons, for</p>	No child care benefits are granted to foreign seasonal workers	<p>Law No. 388/2000 (Framework Law for the Implementation of the Integrated System of Interventions and Social Services) reserves the access to social welfare allowances to EU long-term residence permit holders. However, with reference to child care benefits, a consistent jurisprudence has maintained that the same rights should be recognized also to all migrants holding a permit allowing to work (permit to stay for work reasons, for humanitarian reasons, for family reasons, for pending employment). Under art. 12, Directive</p>	Based on art. 38 Cost., a consistent jurisprudence has maintained that the right to education (and to all educational services) is granted to foreign children, irrespective of their status, on the same basis as Italians. Instead, no child-care benefit is granted to undocumented migrants.

				pending employment). Under art. 12, Directive 2011/98/UE, the denial of this right entails a discrimination.		2011/98/UE, the denial of this right entails a discrimination.	
POLITICAL RIGHTS/RIGHTS OF THE PUBLIC SPHERE							
Right to vote in local elections	<p>According to art. 48 of the Constitution, only Italian citizens have the right to vote. Hence, no political rights are granted to non-EU foreigners residing in Italy.</p> <p>Law No. 203/1994, which ratifies and implement the 1992 Convention of Strasburg on the participation of foreigners to public life at local level, excluded chapter</p>	=	=	=	=	=	=

	<p>C on the recognition of the right to vote and to be elected in local elections.</p> <p>However, several Regional Laws have approved the establishment of consultative entities aimed at encouraging the representation of foreigners to the local public life.</p> <p>However, these experiences are often reported to be merely symbolic.</p>						
Right to vote for consultative entities	<p>Under Law No. 203/1994, which ratifies and implement the 1992 Convention of Strasburg on the participation of foreigners to public life at local level, Italy undertakes to encourage and facilitate the establishment of</p>	=	=	=	=	=	<p>Law No. 203/1994 , which ratifies and implement the 1992 Convention of Strasburg on the participation of foreigners to public life at local level, only refers to foreigners legally residing in the Italian territory</p>

	consultative bodies and “ensure that representatives of consultative bodies [...] may be elected by the foreign resident” (art. 5 (1 and 2)).						
Right to join/create a cso	Although art. 18 of the Italian Constitution, proclaiming freedom of association, only refers to citizens, other normative provisions explicitly recognize the right to create/join an association to foreigners legally residing in the Italian territory. Overall, art. 2 of the Consolidated Law on Immigration recognizes to foreigners full civil rights (art. 2(2)). More specifically, Law No. 203/1994, which ratifies and	=	=	=	=	=	Not recognized

	implement the 1992 Convention of Strasbourg on the participation of foreigners to public life at local level, recognizes to foreigners full right of association (art. 5).						
WORK RELATED RIGHTS/BENEFITS							
Right to work	Asylum seekers have the right to work after 60 days from the registration of their asylum application (Art. 22(1) D. Lgs. 142/2015)	Beneficiaries of international protections have the right to work at the same conditions of Italian citizens (art. 25 D. Lgs. 251/2007). With an amendment introduced to the budget law in December 2017, tax incentives are provided for social cooperatives which will recruit beneficiaries of international		Beneficiaries of humanitarian protection have the right to work at the same conditions of Italian citizens as long as all requirements established by law are fulfilled (art. 14 (1)c of the Italian Consolidated law on Immigration)	Foreigners have no unlimited access to seasonal work. The employer who intends to establish a subordinate relationship with a foreigner residing abroad must apply to the <i>Police Headquarter</i> after verification at the competent employment centre of the unavailability of a worker already residing in Italy (art. 22 Consolidated Law on Immigration). The residence permit is issued within the limit of the quota (if any) established every	Foreigners have no unlimited access to work. The employer who intends to establish a subordinate relationship with a foreigner residing abroad must apply to the <i>Police Headquarter</i> after verification at the competent employment centre of the unavailability of a worker already residing in Italy (at. 22 Consolidated law on	Undocumented migrants have only access to shadow economy. However, in the event of labour exploitation, an irregular foreign worker who has reported the employer that employs illegal labour — and who cooperates in the criminal proceedings instituted against the employer — is granted a residence permit for humanitarian reasons (art. 22 para. 12 <i>quater</i> and <i>quinquies</i> of the Consolidated law on

		protection with a permanent contract in 2018.			year by the “Decreto Fussi” (art. 3, para. 4 Consolidated Law on Immigration)	Immigration). The residence permit is issued within the limit of the quota (if any) established every year by the “Decreto Fussi” (art. 3, para. 4 Consolidated Law on Immigration)	Immigration). However, the redefinition of the matter of serious labour exploitation by Legislative Decree n. 109/2012 has led to a considerable reduction in the number of cases in which illegal foreign workers may obtain temporary residence permits: workers who are irregularly present on the territory cannot benefit from it, but only those who live in a condition of particular exploitation can.
Recognition of competences/degrees	The general rule provided for foreign workers applies. However, applicants often do not have certificates issued by their country of origin, which means that they cannot apply for jobs that are appropriate considering the level of their level	Beneficiaries of international protection can require the recognition of the equivalence of degrees and qualifications, even in the absence of due certifications, when there is no possibility to obtain them (art. 3 and 3 bis D. Lgs. 251/2007).	=	The general rule provided for foreign workers applies.	Foreign seasonal workers can require the recognition of the equivalence of professional qualifications obtained abroad (art. 22(15) Consolidated law on Immigration)	Foreign workers can require the recognition of the equivalence of professional qualifications obtained abroad (art. 22(15) Consolidated law on Immigration). qualifications and training acquired in the country of origin are difficult to recognise in Italy, since long and	No recognition is provided

	of education.	However, beneficiaries of international protection often do not have certificates issued by their country of origin, which means that they cannot apply for jobs that are appropriate considering the level of education they have obtained.				complicated procedures are generally required.	
Vocational training	In SPRAR facilities, asylum seekers may attend vocational training when envisaged in programmes eventually adopted by the public local entities (art. 22(3) D. Lgs. 142/2015).	See training above	See training above	See training above	See training above	See training above	See training above
Anti-discrimination measures	Foreigners are entitled to obtain legal protection against	Foreigners are entitled to obtain legal protection against	=	Foreigners are entitled to obtain legal protection against	Foreigners are entitled to obtain legal protection against discriminatory practices (art. 43 (2 c) and	Foreigners are entitled to obtain legal protection against discriminatory	No protection against discrimination is provided

	discriminatory practices (art. 43 (2 c) and d)).	discriminatory practices (art. 43 (2 c) and d)).		discriminatory practices (art. 43 (2 c) and d)).	d)).	practices (art. 43 (2 c) and d)). Moreover, non-discrimination with respect to other workers is particularly guaranteed (art. 43, par. 2, letter e of the Legislative Decree N. 286/1998 and to and Legislative Decree 8 July 2003 n. 215). More specifically, prohibitions of discriminations based on race and ethnic origin are provided in implementation of EU directives (Legislative Decree 9 July 2003 n. 215; art. 2, para. 3 and art. 43, para. 2, lett. e of the Consolidated Law on Immigration, which considers the belonging to a certain linguistic group and the citizenship or nationality as being discrimination factors); as well as discrimination on the grounds of religion, personal beliefs,	
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						disability, age and sexual orientation (Legislative Decree no. 216 of 9 July 2003).	
Right to work in public sector	No right to work in public sector	Beneficiaries of international protection have the right to access public employment, except for the positions involving the exercise of public authority or responsibility for safeguarding the general interests of the State (art. 25 D. Lgs. 251/2007)	=	No right to work in public sector	No right to work in public sector	Only holders of a long term EU residence permit have the right to access the public sector, except for the positions involving the exercise of public authority or responsibility for safeguarding the general interest of the State (Art. 38 D. Lgs. 165/2001 (General rules on the regulation of work in public sector), as amended by Law No. 97/2013). However, often, public administrations fail to comply with this normative provision.	No right to work in public sector
Right to self-employment	According to art. 22(1) of the D. Lgs. 142/2015, asylum seekers are	Beneficiaries of international protection are entitled to the	=	Beneficiaries of humanitarian protection have the right to self-	Foreign seasonal workers are not allowed to self-employment	Foreign workers have the right to self-employment at the same conditions of	Undocumented migrants are not allowed to self-

	entitled to access employment. The law makes a generic reference to the right to access to employment without indicating any limitations. Hence, it can be argued that asylum seekers are also entitled to self-employment.	same treatment as Italian citizens		employment at the same conditions of Italian citizens as long as all requirements established by law are fulfilled (art. 14 (1)c of the Italian Consolidated law on Immigration)		Italian citizens as long as all requirements established by law are fulfilled (art. 14 (1) a) and b) of the Italian Consolidated law on Immigration)	employment
Unemployment benefits	Asylum applicants are entitled to unemployment benefits. However, the requirement of 2 years of contributions <i>de facto</i> reduces the opportunities to effectively enjoy this right.	Beneficiaries are entitled to the same treatment as Italian citizens	=	Beneficiaries of humanitarian protection are entitled to receive unemployment benefits	Under art. 25(2) of the Consolidated Law on Immigration no insurance against involuntary unemployment is provided in favor of foreign seasonal workers.	Foreign workers are entitled to receive unemployment benefits	No unemployment benefits are recognized to the undocumented migrant
Membership in Unions	See right to join/create a cso	See right to join/create a cso	=	See right to join/create a cso	See right to join/create a cso	See right to join/create a cso	See right to join/create a cso
Retirement benefits	No specific rule regulates the right	Beneficiaries of international	=	The general rule provided for foreign	The normative provision which secure social	Foreign workers are entitled to the same	No retirement benefits are recognized to

	to retirement benefits of asylum seekers. The general rule provided for foreign workers also applies to asylum seekers. However, in case of asylum seekers, the requirements established by law are hardly met.	protection are entitled to the same treatment as Italian citizens		workers also applies to beneficiaries of humanitarian protection, as long as all requirements are fulfilled.	security benefits accumulated by foreign workers do not apply to foreign seasonal workers (art. 25(5) of the Consolidated Law on Immigration).	rights of social welfare and the same wage as Italian workers (art. 37(4) of the Consolidated Law on Immigration). In case of return, foreign workers have the right to the social security benefits accumulated (art. 22 (15) Consolidated Law on Immigration). In some cases, the right to retirement benefits of foreign workers is regulated by specific bilateral agreement.	undocumented migrants
DUTIES							
Attending civic integration programs	Some reception centers foresees civic integration programs for asylum seekers	In case of permit to stay of minimum one year, the foreigner has to sign an "integration agreement" with the State, that commits, on the one hand, the foreigner to reach	=	=	No civic integration program provided	The conclusion of the integration program is a condition sine qua non for the renewal of the permit to stay. The integration program is based on a system of credits. If the foreigner loses all the credits, his/her	No civic integration programs provided

		an adequate knowledge of Italian language, of Italian civic life and of the fundamental principles of the Constitution, and, on the other hand, the State to support social integration (art. 4 bis Consolidatd Law on Immigration). The integration program is based on a system of credits. If the beneficiary of international protection loses all the credits, the sanction of the expulsion does not apply in this case.				permit to stay is revoked and an order of expulsion is issued against him/her.	
Attending language courses	Under the regulations of some reception center, the reception measures can be withdrawn if the applicant repeatedly fail to	See above	See above	See above	See above	See above	No language courses provided

	attend the language course (AIDA, 2018: 77)						
Doing volunteering activities for local communities	D. Lgs. 142/2015, as recently amended by L. 46/2017, promoted the asylum seekers' voluntary involvement in activities of social value for the local community, (art. 22 bis).	No prohibition to do volunteering activities is established by law	=	=	=	=	Undocumented workers can have access only to informal volunteering activities

15. Switzerland

	Asylum Applicants	Refugees	Subsidiary protection ³⁶⁴	National forms of temporary protection	Economic migrants Short term ³⁶⁵	Economic migrants Long term ³⁶⁶	Undocumented migrants
FUNDAMENTAL FREEDOMS							
Permit to stay	Yes, until the conclusion of the procedure (Art. 42 LAsi)	Yes, as long as there is no revocation or expiry reason (Art.63 and 64 LAsi).	Yes, as long as their permit is renewed and there is no revocation reason.	Not a real permit to stay but deportation is not possible. They are allowed to stay as long as it is the case. (Always a one year permit that can be	Yes, for the duration of their permit	Yes	Not allowed to stay

³⁶⁴ According to the [Swiss Refugee Council](#) "The status of subsidiary protection does not exist in Switzerland as the Qualification Directive is not applicable. Regarding the application of Article 9 of the Dublin III Regulation, the term "international protection" includes the temporary admission status in cases in which the status is granted on the ground that the removal is either contrary to international law or not reasonable because of a situation of war or generalised violence (but not a temporary admission based on medical grounds)."

³⁶⁵ Residence permit according to Art. 33 LEtr. Short stay permit in Switzerland is for less than one year (Art.32 LEtr) and has not been included in this table. Migrant with residence permit (time limited permit of more than 1 year, renewable)

³⁶⁶ As defined by Art.34 LEtr, can be granted to foreign nationals living in the country from 10 years or 5 years. In both cases, under specific conditions. Permanent residence permit. (C-Permit)

				renewed).			
Freedom of movement	After a stay at a reception and processing center during the first days of the procedure, they have freedom of movement within the country but must live in the canton they have been assigned. No travel abroad is allowed, but in exceptional cases, they can apply for permission to do it.	Yes and they have the right to change the canton unless they rely on social assistance (Art.62 LEtr)	Freedom of movement and choice of a place to live within the allocated canton. They have the right to change the canton only if they do not rely on social assistance (Art.62 LEtr).	Freedom of movement within the canton and can apply for residence in another canton. They have a right to choose their place to live within the allocated canton, unless they depend on social assistance. In this case, the canton can determine a place of residence or accommodation. They are only allowed to travel outside Switzerland in exceptional cases, under restrictive and limited circumstances.	Yes, if the foreign national is not unemployed.	Yes	Depending on the nationality and the need for visa, they might have problems to return to Switzerland in case they travel abroad.
Family reunification	No rights of family reunification during the procedure but if the dependents and the asylum seekers arrived	Spouses or registered partners of refugees and their minor children are entitled to family reunification and will be recognized as refugees and	Can be requested 3 years after the granting of the temporary status and under the condition that the person is financially independent and has	Can be requested 3 years after the granting of the temporary status and under the condition that the person is financially independent and has	Yes, if the spouses and/or children live with the permit holder, if suitable housing is available and if they do not depend on social assistance (Art. 44	Yes, if they live with the permit holder (Art.43 LEtr).	No

	together, they can apply together for asylum.	granted asylum If one of those persons is still abroad unless the marriage does not exist at the time of application. (Art.51 LAsi).	a large enough apartment (Art.85 para 7 LEtr).	a large enough apartment (Art.85 para 7 LEtr).	LEtr).		
Right to legal defense	Right to free legal protection from 1 March 2019. Before that date, they have to hire private lawyers or ask support from specialized associations	Yes, but not for free	Yes, but not for free	Yes, but not for free	Yes, but not for free	Yes, but not for free	Yes, but not for free.
SOCIO-ECONOMIC BENEFITS							
Health ³⁶⁷	They must be insured against	They must be insured against	They must be insured against illness but if	They must be insured against illness but, if	They must be insured against	They must be insured against illness but if	Have to subscribe to a private insurance and

³⁶⁷ Switzerland does not have free healthcare. Subscription to a private basic health insurance is mandatory. Persons that are not able to pay by themselves will receive support from the government to have access to a basic health insurance. Art 3. LAMal provides the obligation to ensure all the persons domiciled in Switzerland.

	illness but if the subscription is paid by the cantons, the cantons may limit the choice of insurers, physicians and hospitals (Art. 82a para. 2 to 5 LAsi).	illness but if they are not able to pay by themselves, they will receive support from the government. In cases where they rely on social assistance, the latter will provide them access to basic health insurance.	they are not able to pay by themselves, they will receive support from the government. In cases where they rely on social assistance, the latter will provide them access to basic health insurance.	the subscription is paid by the cantons, the cantons may limit the choice of insurers, physicians and hospitals (Art. 82a para. 2 to 5 LAsi).	illness but if they are not able to pay by themselves, they will receive support from the government. In cases where they rely on social assistance, the latter will provide them access to basic health insurance.	they are not able to pay by themselves, they will receive support from the government. In cases where they rely on social assistance, the latter will provide them access to basic health insurance.	have the possibility to do it, even if they don't have a residence permit. When they do not have insurance, they have the right to basic medical assistance. Insurers and health providers may not report any personal data of undocumented persons to a third party.
Social care	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Education	Children have the right to free basic education (until the age of 16 in CH). They might not be able to have access to proper education if they are in the federal reception centers. Legally allowed to enter further education programmes	Right to free basic education (until the age of 16 in CH). Also access to secondary school and upper education levels.	Right to free basic education (until the age of 16 in CH). For upper education levels, it depends on the cantons.	Right to free basic education (until the age of 16 in CH). Also access to secondary school and upper education levels.	Yes	Yes	Children have the right to free basic education (until the age of 16 in CH). They also have access to secondary school.

	and apprenticeships, but there are practical and administrative impediments.						
Training	Yes, in cases where trainings are short. For long term training that finish after the asylum decision, there must be a probability of a long term stay. The cantonal authorities can reach out to the SEM in case of doubt. Directives LEtr 4.8.5.5.7	Yes, but administrative obstacles such as the presentation of their original diploma.	Yes, but administrative obstacles such the presentation of their original diploma.	Yes if they will probably stay in Switzerland for a long period that will allow them to finish the training. (That their condition of temporary admitted person will not change before the end). Directives LEtr 4.8.5.3.3.	Yes	Yes	If they have attended compulsory schooling in Switzerland during at least five consecutive years, if they are integrated (local language and respect the law), the employer fills the request and if conditions and salary are customary, young undocumented immigrants can request a residence permit for education and training purpose. They have to do the request maximum 12 months after the end of their 5 years schooling (Art. 30a OASA).
Housing	If they depend on social assistance, housing is provided by the	Yes	Yes	Yes	Yes	Yes	No access to housing

	canton. This can be in a collective center or in a specific allocated housing.						
Language courses	Not by law, but certain cantons provide it, as well as certain associations.	They have the right to access language courses in the framework of the integration measures provided to them (Art.82 para. 5 LAsi)	They have the right to access language courses in the framework of the integration measures provided to them (Art.82 para. 5 LAsi)	They have the right to access language courses in the framework of the integration measures provided to them (Art.82 para. 5 LAsi)	Yes, but not necessarily for free	Yes, but not necessarily for free	Not access by law, but they have the possibility through associative programs.
Cash benefit/allowances	If they are unable to maintain themselves on their own resources, they shall receive the necessary social benefits unless third parties are required to support them (Art. 81 LAsi). The social benefits should be rendered in kind if possible	If they are unable to maintain themselves on their own resources, they can have access to the same social benefits as local recipients of social assistance.	If they are unable to maintain themselves on their own resources, they can have access to the same social benefits as local recipients of social assistance (Art.86 LEtr).	If they are unable to maintain themselves on their own resources, they shall receive the necessary social benefits unless third parties are required to support them. The social benefits should be rendered in kind, and less than the social benefits given to the local population.	Have access but the competent authority may revoke the permit, "if the foreign national or a person they must care for is dependent on social assistance" (Art. 62, letter e and 63, paragraph 1 letter c, LEtr)	Access to the same aid and allowance than Swiss citizens in case of need.	Have the right, under request to the canton, to the emergency assistance (most of the time in-kind support) that covers basic housing, food, hygiene, clothing and medical care (Art.12 Cst). But requesting the assistance might lead to the expulsion of the undocumented migrant. This assistance is most of the time provided to NEM coming from asylum procedure or to dismissed asylum

	and should be less than the amount of social benefits given to the local population (Art.81 and 82 para. 3 LAsi).						applicants until their departure.
Child care benefits	Yes in cases where both parents work or attend specific trainings.	Yes in cases where both parents work or attend specific trainings.	Yes in cases where both parents work or attend specific trainings.	Yes in cases where both parents work or attend specific trainings.	Yes in cases where both parents work or attend specific trainings.	Yes in cases where both parents work or attend specific trainings.	Not by law.
POLITICAL RIGHTS/RIGHTS OF THE PUBLIC SPHERE							
Right to vote in local elections	No	Only certain cantons allow foreign citizens to vote in local elections (Geneva, Neuchâtel, Jura, Vaud and Fribourg. 3 other cantons allow their communes to give the right to vote, but it is not mandatory).	Only certain cantons allow foreign citizens to vote in local elections (Geneva, Neuchâtel, Jura, Vaud and Fribourg. 3 other cantons allow their communes to give the right to vote, but it is not mandatory). Amongst the conditions:	Only certain cantons allow foreign citizens to vote in local elections (Geneva, Neuchâtel, Jura, Vaud and Fribourg. 3 other cantons allow their communes to give the right to vote, but it is not mandatory). Amongst the conditions:	Only certain cantons allow foreign citizens to vote in local elections (Geneva, Neuchâtel, Jura, Vaud and Fribourg. 3 other cantons allow their communes to give the right to vote, but it is not mandatory).	Only certain cantons allow foreign citizens to vote in local elections (Geneva, Neuchâtel, Jura, Vaud and Fribourg. 3 other cantons allow their communes to give the right to vote, but it is not mandatory). Amongst the conditions:	No

		Amongst the conditions: leaving in the country for at least 5 to 10 years according to the canton.	leaving in the country for at least 5 to 10 years according to the canton.	leaving in the country for at least 5 to 10 years according to the canton.	Amongst the conditions: leaving in the country for at least 5 to 10 years according to the canton.	leaving in the country for at least 5 to 10 years according to the canton.	
Right to vote for consultative entities							
Right to join/create a cso	Yes	Yes	Yes	Yes	Yes	Yes	Yes
WORK RELATED RIGHTS/BENEFITS							
Right to work	Yes, after three months and if: the general situation in the economy and on the labor market allows; If an employer asks to hire the asylum seeker and complies with the usual local wage and working conditions of the	Have the right to work and change employment (Art.61 LAsi)	Have the right to work and change employment (Art.61 LAsi and Art. 65 OASA). The employer must submit a corresponding request and comply with the usual local wage and working conditions for the given industry (Art. 65	Can apply for a working permit but the employer must submit a corresponding request and comply with the usual local wage and working conditions for the given industry (Art. 18 LEtr and Art. 53 OASA). They had to deduce the 10% special tax from their salary until	Depending on the administrative reason of the admission. Not allowed if the reason is medical treatment, retirement. Partially allowed if education and training, allowed if gainful employment, refugee, family reunification.	Yes	No right to work but they have labor rights to protect them in case they do. They are also supposed to pay tax and social security if they work.

	<p>given industry; and</p> <p>If it is determined that no one else from the local and priority labor market with the requested qualifications profile can be hired for the position. (Art.52 OASA)</p> <p>They had to deduce the 10% special tax from their salary until 31.12.2017.</p>		OASA)	31.12.2017.			
Recognition of competences/degrees	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Vocational training	Yes, in cases where trainings are short. For long term training that finishes after the asylum decision,	Yes	Yes	Yes if they will probably stay in Switzerland for a long period that will allow them to finish the training. (That their condition of	Yes	Yes	If they have attended compulsory schooling in Switzerland during at least five consecutive years, if they are integrated (local language and respect the

	there must be a probability of a long term stay. The cantonal authorities can reach out to the SEM in case of doubt. Directives LEtr 4.8.5.5.7			temporary admitted person will not change before the end). Directives LEtr 4.8.5.3.3			law), the employer fills the request and if conditions and salary are customary, young undocumented immigrants can request a residence permit for education and training purpose. They have to do the request maximum 12 months after the end of their 5 years schooling (Art. 30a OASA).
Anti-discrimination measures	No	No	No	No	No	No	No
Right to work in public sector	Not forbidden by law but as their access to work is submitted to the principle of priority, other persons in the Swiss labor market must be hired first.	Yes, in principle. But certain professions in the public sector are reserved to nationals, C and in certain cases to B permits such as police forces or customs for example. This also varies according to the cantons.	Yes, in principle. But certain professions in the public sector are reserved to nationals, C and in certain cases to B permits such as police forces or customs for example. This also varies according to the cantons.	Yes, in principle. But certain professions in the public sector are reserved to nationals, C and in certain cases to B permits such as police forces or customs for example. This also varies according to the cantons.	Yes, in principle. But certain professions in the public sector are reserved to nationals, C and in certain cases to B permits such as police forces or customs for example. This also varies according to the cantons.	Yes.	No

Right to self-employment	No	Yes, under specific conditions.(art. 31, para. 4, OASA and Art. 19 let. b, LEtr),	Yes, under specific conditions.(art. 31, para. 4, OASA and Art. 19 let. b, LEtr),	Under certain conditions (Art.19 LEtr and Art.53 para 3 OASA)	Yes, if the administrative reason for the admission was for gainful self-employment, refugee, and family reunification. In this case, the necessary financial and operational requirements must be fulfilled (Art. 19 let.b, LEtr)	Yes	No
Unemployment benefits	Yes, entitled as Swiss citizens once they are allowed to work. Right to trainings and courses since the beginning of the subscription, right to allowances after contributing to the fund during 1,5 years. In practice, the right to certain types of training varies according	Yes, entitled as Swiss citizens.	Yes, entitled as Swiss citizens.	Yes, entitled as Swiss citizens.	Yes, entitled as Swiss citizens if they are allowed to work.	Yes	No benefits, but as it is compulsory for all employees in Switzerland to pay into an unemployment fund, undocumented immigrants are therefore required to do it. In this case, they won't receive the benefits or can receive them once they have legal residence.

	to the canton or the councilor in charge of the person.						
Membership in Unions	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Retirement benefits	They have right to receive the part of their contribution if they had contributed to the fund. As contribution is mandatory, the canton provides the minimum contribution if the persons are unable to maintain themselves.	They have right to receive the part of their contribution if they had contributed to the fund. As contribution is mandatory, the canton provides the minimum contribution if the persons are unable to maintain themselves.	They have right to receive the part of their contribution if they had contributed to the fund. As contribution is mandatory, the canton provides the minimum contribution if the persons are unable to maintain themselves.	They have right to receive the part of their contribution if they had contributed to the fund. As contribution is mandatory, the canton provides the minimum contribution if the persons are unable to maintain themselves.	They have right to receive the part of their contribution if they had contributed to the fund. As contribution is mandatory, the canton provides the minimum contribution if the persons are unable to maintain themselves.	They have right to receive the part of their contribution if they had contributed to the fund. As contribution is mandatory, the canton provides the minimum contribution if the persons are unable to maintain themselves.	As it is compulsory for all employees in Switzerland to pay into a retirement fund, undocumented immigrants doing so, will be able to receive the benefits from their contribution only once they have legal residence.
DUTIES							
Attending civic integration programs	Not mandatory	Not mandatory	Not mandatory	Not mandatory	In cases of integration convention (canton),	Not mandatory	No

					authorities, in certain cantons, can request the foreign citizens to attend language courses. Non-respect of this condition can lead to a refusal of the permit or access to social assistance. (Art.54 para 1 LEtr).		
Attending language courses	Not mandatory	Not mandatory	Not mandatory	Not mandatory	In cases of integration convention (canton), authorities, in certain cantons, can request the foreign citizens to attend language courses. Non- respect of this condition can lead to a refusal of the permit or access to social assistance. (Art.54 para 1 LEtr).	Not mandatory	No
Doing volunteering activities for local communities	Not mandatory	Not mandatory	Not mandatory	Not mandatory	Not mandatory	Not mandatory	Not mandatory

16. United Kingdom

	Asylum Applicants	Refugees	Subsidiary protection	National forms of temporary protection	Economic migrants Short term	Economic migrants Long term	Undocumented migrants
FUNDAMENTAL FREEDOMS							
Permit to stay	If they claim their asylum immediately upon their arrival in the country, they have the permit to stay until their application (and eventually appeal) is processed.	Awarded limited leave to remain (lasting five years), following which they can apply for indefinite leave to remain with no requirement to demonstrate knowledge of language and life in the UK.	Awarded limited leave to remain (lasting five years), following which they can apply for indefinite leave to remain with no requirement to demonstrate knowledge of language and life in the UK.	Visas and leave to remain for 5 years are issued under humanitarian protection. Afterwards they can apply for indefinite leave to remain with no requirement to demonstrate knowledge of language and life in the UK.	Non-EU migrants have the right to visit the UK (for less than 6 months) if they have a Standard Visitor Visa. However, with this visa you cannot do paid or unpaid work.	Non-EU migrants have the right to enter the country (for a period longer than 6 months) if they have a valid entry clearance based upon a visa. After spending a specific continuous period lawfully in the country (from 5 to 10 years depending on the schemes), can apply for the indefinite leave to remain.	Irregular Migrants are expected to return to the country of origin. Refused asylum seekers are expected to return to their country of origin. There are some exceptions if they can demonstrate that they cannot return to their home. However, there are some situations in which an irregular migrant may have the right to apply to different routes for regularization (in particular in case of children or adults that have lived in the UK for a continuous period of more than 20 years).
Freedom of	Asylum claims will automatically be	Refugees and those granted	Refugees and those granted	Refugees and those granted	If they return within the period of their visa, they	If they return within the period of their visa, they	Problem with readmission to

movement	deemed to have been withdrawn when the claimant's passport is sent back to them, at the claimant's request, for travel outside the CTA (Common Travel Area: UK, Ireland, Channel Islands and the Isle of Man).	humanitarian protection or discretionary leave, who return within the period of their previous leave, will normally be re-admitted to the United Kingdom provided they can satisfy the immigration officer about their status.	humanitarian protection or discretionary leave, who return within the period of their previous leave, will normally be re-admitted to the United Kingdom provided they can satisfy the immigration officer about their status.	humanitarian protection or discretionary leave, who return within the period of their previous leave, will normally be re-admitted to the United Kingdom provided they can satisfy the immigration officer about their status.	will normally be readmitted to the United Kingdom. Their freedom of movement depends on the bilateral agreement between their country of origin and the country of visit.	will normally be readmitted to the United Kingdom. Their freedom of movement depends on the bilateral agreement with their country of origin and the country of visit.	the United Kingdom.
Family reunification	Dependents will normally be identified at the screening stage of the initial claim, or on occasion, at the substantive asylum interview. Spouses, civil partners, unmarried or same-sex partners and minor children may be included as dependant on the principal applicants asylum claim before an initial decision. There may be instances where an individual returns to	Family members who have been accepted as dependents on the asylum claim will normally be granted leave and refugee status in line with the main claimant Those who are granted refugee status are also able to sponsor their partner and children under the age of 18 to join them in the UK under the family	Family members who have been accepted as dependents on the asylum claim will normally be granted leave and refugee status in line with the main claimant. Those who are granted refugee status are also able to sponsor their partner and children under the age of 18 to join them in the UK under the family	Family members who have been accepted as dependents on the asylum claim will normally be granted leave and refugee status in line with the main claimant Those who are granted refugee status are also able to sponsor their partner and children under the age of 18 to join them in the UK under the family	Family members can apply for a family visa to join the spouse, partner, child or parent living in the UK.	Partners will be granted leave in line with the expiry date of the PBS migrant's (or main applicant's) leave, except where the PBS migrant has been granted indefinite leave to remain. In these cases, a period of three years leave will be granted. An application for further leave may then be made if required to take the person up to the applicable qualifying period for indefinite	If the minor child of a migrant family is a British citizen or has been granted indefinite leave to remain and is, therefore, settled a parent with irregular migration status may be entitled to leave to remain here if he or she has sole responsibility for that child. Some exceptions applied.

	the UK, following previous removal action or voluntary departure, with dependants who were not included in the original asylum claim. In these cases, providing they meet the requirements in Paragraph 349 they should be accepted as dependants on any subsequent further submissions claim.	reunion. This would normally be through an application for entry clearance but family members can also apply in country.	reunion. This would normally be through an application for entry clearance but family members can also apply in country.	reunion. This would normally be through an application for entry clearance but family members can also apply in country.		leave to remain. Children: They will be granted leave in line with: (i) a period which expires on the same day as the leave granted to the parent whose leave expires first, or (ii) Where both parents have, or are at the same time being granted, indefinite leave to remain, or have since become British citizens, leave to remain will be granted to the applicant for a period of 3 years.	
Right to legal defense	Yes (Legal aid)	Yes	Yes	Yes	Yes	Yes	Yes (on private basis – no free legal aid)
SOCIO-ECONOMIC BENEFITS							
Health	Yes – Exempt to pay	Yes – Exempt to pay	Yes – Exempt to pay	Yes – Exempt to pay	Yes- You need to pay for any NHS care	Yes- You need to pay the healthcare surcharge for the time	Access to emergency health care and some level of primary and secondary care.

					unless it's a free service	of the visa	However full cost of some or all care is required.
Social care	No access	Yes- entitled as British citizens	Yes- entitled as British citizens	Yes- entitled as British citizens	No access (only when indefinite leave to remain is granted)	No access (only when indefinite leave to remain is granted)	No access (except for children)
Education	Yes (with low financial barriers in Scotland), Yes for children (with high financial barrier in the rest of UK)	Yes entitled as British Students	Yes entitled as British Students	Yes entitled as British Students	No	Yes (with a specific visa) or dependents as overseas students	Children (5-16) with irregular status are entitled to attend school (Financial barriers)
Training	Not based on a legal framework	Not based on a legal framework	Not based on a legal framework	Not based on a legal framework	Yes – but only in specific cases	Yes – but with a specific visa	Not based on a legal framework
Housing	No – Only eligible for no choice dispersal scheme	Yes – entitled as British citizen	Yes – entitled as British citizen	Yes – entitled as British citizen	Access only if and when they will have indefinite leave to remain	Access only when and if they have indefinite leave to remain	Not eligible for housing Landlord request to check migration status. Barrier to housing.
Language courses	In England excluded from free access/ In Scotland they are included	Yes but competing with other individuals for free access	Yes but competing with other individuals for free access	Yes	Yes (not free access)	Yes (not free access)	Not based on a legal framework
Cash	No – eligible only for asylum seekers cash	Yes- entitled as	Yes- entitled as	Yes- entitled as	No access (only if and when indefinite leave to	No access (only if and when indefinite leave to	No except in specific cases when refused asylum

benefit/allowances	benefits	British citizens	British citizens	British citizens	remain is granted)	remain is granted)	seekers are destitute and cannot return to their country
Child care benefits	No	Yes- entitled as British citizens	Yes- entitled as British citizens	Yes- entitled as British citizens	No access (only when and if indefinite leave to remain is granted)	No access (only if and when indefinite leave to remain is granted)	No access
POLITICAL RIGHTS/RIGHTS OF THE PUBLIC SPHERE							
Right to vote in local elections	No (except if you are from qualifying Commonwealth country)	No (except if you are from qualifying Commonwealth country)	No (except if you are from qualifying Commonwealth country)	No (except if you are from qualifying Commonwealth country)	No (except if you are from qualifying Commonwealth country)	No (except if you are from qualifying Commonwealth country)	No
Right to vote for consultative entities	Yes (unless it is related to something bound by its own legislation)	Yes (unless it is related to something bound by its own legislation)	Yes (unless it is related to something bound by its own legislation)	Yes (unless it is related to something bound by its own legislation)	Yes (unless it is related to something bound by its own legislation)	Yes (unless it is related to something bound by its own legislation)	No
Right to join/create a cso	Yes	Yes	Yes	Yes	Yes	Yes	Yes
WORK RELATED							

RIGHTS/BENEFITS							
Right to work	No (only after 12 months in Tier 2 Short List)	Yes- entitled as British citizens	Yes- entitled as British citizens	Yes- entitled as British citizens	No	Yes (with specific visa)	No
Recognition of competences/degrees	It depends from the countries – table of conversion	It depends from the countries – table of conversion	It depends from the countries – table of conversion	It depends from the countries – table of conversion	It depends from the countries – table of conversion	It depends from the countries – table of conversion	No
Vocational training	Not based on legal framework (In Scotland yes, in England it is more difficult to be included)	Yes - Not based on legal framework	Yes - Not based on legal framework	Yes - Not based on legal framework	Yes but it should not be your main reason of visit	Yes but with a specific visa	No
Anti-discrimination measures	No because they don't have the right to work	Yes	Yes	Yes	Yes	Yes	No because they don't have the right to work
Right to work in public sector	No (only after 12 months in Tier 2 Short List)	Yes	Yes	Yes	No – they don't have the right to work with the visa	Yes but with a work visa	No
Right to self-employment	No	Yes	Yes	Yes	Yes but with specific limit	Yes but with a specific visa	No

Unemployment benefits	No	Yes – entitled as British citizens	Yes – entitled as British citizens	Yes – entitled as British citizens	No Access (only if and when indefinite leave to remain is granted)	No Access (only if and when indefinite leave to remain is granted)	No
Membership in Unions	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Retirement benefits	No	Yes – entitled as British citizens	Yes – entitled as British citizens	Yes – entitled as British citizens	No	Yes – entitled as British citizens if contributions have been paid to UK National Insurance Contributions	No
DUTIES							
Attending civic integration programs	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Not compulsory
Attending language courses	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Not compulsory
Doing volunteering activities for local communities	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Not compulsory	Yes if you are a refused asylum seeker that cannot return but receive expense cover

