

Assessing EU Regulation on migration

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Central dilemma

- MS and EU have good reasons for making common migration rules (*level playing field, avoid secondary migration, support integration and economy, share tasks*), ⇔ MS do not want to give up room for national migration policies due to political sensitivity of field (*'sovereignty', 'public order'*)

Two sets of EU rules on migration

- **Rules on free movement of EU nationals** (since **1961**); re-codified in 2004; only minor changes (posted-workers; improve enforcement).
Central dilemma visible: 1968-1992 and Brexit
- **Rules on entry, residence and rights of Third Country Nationals (TCN)** from outside EU (since **2000**): legal migration, asylum, visa, borders and expulsion; in NL > 80% IND decisions covered by EU law (except: employment, regularisations)

Migration and Asylum instruments

- Since 2001 more than 60 binding instruments adopted: 10 legal migration, 7 on asylum.

Three types:

- Common (minimum) rules for issue of national permits (family, study, asylum, employment)
- Create separate EU residence permit next to national residence permit (LTR and Blue Card)
- Funds, databases, agencies and relocation

Parallel national status I: Blue Card Directive 2009

Permits for highly qualified TCN workers in 2017

	EU Blue Card	National status
Germany	20,500	< 50
Other EU-25	3,800	25,000
(Netherlands	20	8,000)

Parallel national status II: Long-term-resident TCN (2003)

in 2017	national LTR	EU-LTR	%EU
Germany	2,323,000	11,000	< 1
Belgium	194,000	1,000	< 1
France	2,024,000	58,000	3
Spain	1,236,000	78,000	6
Czech Republic	99,000	92,000	49
Slovenia	5,500	47,000	90
Austria	19,000	272,000	94
Italy	83,000	2,209,000	96
Estonia	1,500	162,000	99

Legal Migration and Asylum rules

- Little enforcement by Commission: since 2006 one infringement judgment of Court of Justice and 10 formal notice of non-compliance
- Important role for national courts en CJEU: 33 references on legal migration directives and 82 on asylum instruments
- Relatively few serious evaluations of effects and effectiveness of rules by Commission

Legal Migration ↔ Asylum

- Repeated revisions of asylum instruments: packages of proposals in 2002, 2010 and 2016
↔ only one legal migration directive revised
- More pressure from MS to revise asylum rules
- NL only MS campaigning for revision of Family Reunification Directive (2003) in 2010 in vain
- Repeated revisions EU asylum rules hinder knowledge and acceptance at national level

Legislative response to central dilemma and lack of consensus

(1) **Detailed, complex rules** many 'may' clauses and exceptions due to incompatible desires of MS

(2) Instead of common rules more competences **EU Agencies**: FRONTEX => Border Guard, EASO

(3) Reliance on **soft law**:

- More and lengthy preambles in Directive/Reg.
- Recommendations and Guidelines
- Non-binding Partnership agreements with states outside EU
- EU-Turkey Statement

Response to central dilemma and lack of consensus II

(4) **Flight ahead:** more binding rules (↔ soft law)

- Binding rules on relocation of asylum seekers from Greece and Italy (2015)
- EC proposal to replace *Asylum Directives* by *Regulations* (2016)
- EC proposal: *no* more parallel national status to Blue Card (2016)
- Suggestion long-term aim: uniform EU refugee status granted by EU agency (2018)