


TRAINING MODULES ON CLUSTERS OF THE NEGOTIATION CHAPTERS

CLUSTER 1: THE FUNDAMENTALS

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Belgrade, Serbia



Migrations, asylum and visa policy

LEGAL MIGRATIONS EU ACQUIS

- ▶ **Directive of the Council 2003/86/EC of 22 September 2003** Regulates the right to family reunification. In this regard, „family reunification“ is defined as „the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry“.
- ▶ **Directive of the Council 2003/109/EC of 25 November 2003** Defines the status of third-country nationals who are long-term residents. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.
- ▶ **Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (Citizens' Rights Directive)** Regulates the right of citizens of the EU and their family members to move and reside freely within the EU. The Directive is based on the fact that the free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the Treaty establishing the European Community.
- ▶ **2008/381/EC: Council Decision of 14 May 2008** Establishes the European Migration Network (EMN). The EMN's objective is to meet the information needs of Community institutions and of Member States' authorities and institutions on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU in these areas.
- ▶ **Directive of the Council 2009/50/EC of 25 May 2009** Defines the conditions of entry and residence of third-country nationals in the EU for the purposes of highly qualified employment. „Highly qualified employment“ being defined as „the employment of a person who, in the Member State concerned, is protected as an employee under national employment law and/or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else, is paid, and, has the required adequate and specific competence, as proven by higher professional qualifications“. Additionally, it establishes the EU Blue Card system.

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- ▶ **Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011** Defines the single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State. Furthermore, this Directive prescribes the common set of rights for third-country workers legally residing in a Member State.
- ▶ **Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014** Sets the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. Criteria for stays not exceeding 90 days, and criteria for stays longer than 90 days are defined separately.
- ▶ **Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014** Sets the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. „Intra-corporate transfer“ is in this regard defined as „temporary secondment for occupational or training purposes of a third-country national who, at the time of application for an intra-corporate transferee permit, resides outside the territory of the Member States, from an undertaking established outside the territory of a Member State, and to which the third-country national is bound by a work contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in that Member State, and, where applicable, the mobility between host entities established in one or several second Member States“.
- ▶ **Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016** Lists the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. This Directive contributed to the Stockholm Programme's aim of approximating national legislation on the conditions for entry and residence of third-country nationals, since immigration from outside the EU is one source of highly skilled people, students and researchers are in particular increasingly sought after, and they play an important role in forming the Union's key asset, human capital, as well as in ensuring smart, sustainable and inclusive growth, and therefore contribute to the achievement of the objectives of the Europe 2020 Strategy.

ILEGAL MIGRATIONS EU ACQUIS

- ▶ **Council Directive 2001/40/EC of 28 May 2001** Treats the mutual recognition of decisions on the expulsion of third country nationals. The expulsion applies to the following cases: a) a third country national is the subject of an expulsion decision based on a serious and present threat to public order or to national security and safety; b) a third country national is the subject of an expulsion decision based on failure to comply with national rules on the entry or residence of aliens.
- ▶ **Directive of the Council 2002/90/EC of 28 November 2002** Concerns the facilitation of unauthorised entry, transit and residence and prescribes that each Member State shall adopt appropriate sanctions on: (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens; (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.
- ▶ **Framework Decision of the Council 2002/946/JHA of 28 November 2002** Deals with the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. The Framework Decision prescribes the minimum standards for sanctions, liability of legal persons, and legal jurisdiction.
- ▶ **Council Regulation (EC) No 377/2004 of 19 February 2004** Regulation on the creation of an immigration liaison officers network. In this Regulation „immigration liaison officer“ means „a representative of one of the Member States, posted abroad by the immigration service or other competent authorities in order to establish and maintain contacts with the authorities of the host country with a view to contributing to the prevention and combating of illegal immigration, the return of illegal immigrants and the management of legal migration“.
- ▶ **Directive of the Council 2004/81/EC of 29 April 2004** Defines the condition for issuing a residence permit for third-country nationals who are victims of trafficking in human beings. Additionally, it sets the conditions for issuing a residence permit to third-country nationals who have been the subject of an action to facilitate illegal immigration.

ILEGAL MIGRATIONS EU ACQUIS

- **2006/616/EC: Council Decision of 24 July 2006** By adopting this Decision, the Council concluded, on behalf of the European Community, of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of this Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community.
- **2006/617/EC: Council Decision of 24 July 2006** By adopting this Decision, the Council concluded, on behalf of the European Community, the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community.
- **Directive 2008/115/EC** of the European Parliament and of the Council of 16 December 2008 Sets the common standards and procedures in Member States for returning illegally staying third-country nationals. It establishes a horizontal set of rules, applicable to all third-country nationals who do not fulfil the conditions for entry, stay or residence in a Member State.
- **Directive 2009/52/EC** of the European Parliament and of the Council of 18 June 2009 Provides for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. Member States prohibit the employment of illegally staying third-country nationals and this Directive defines the minimum financial sanctions and other sanctioning mechanisms against employers who employed one or more third-country nationals staying illegally in the EU.
- **Communication from the Commission to the European Parliament and to the Council COM/2015/0453 of 9 September 2015** This communication presents the EU Action Plan on Return of third-country citizens illegally staying within the EU. The Action Plan is based on the European Council's earlier invitation to the Commission "to set up a dedicated European Return Programme".
- **Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016** Establishes a European travel document for the return of illegally staying third-country nationals. It specifies the document's format, security features and technical specifications, but not the rules for issuing the document.

ASYLUM ACQUIS

- **Council Regulation (EC) No 343/2003 of 18 February 2003** Establishes the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. This Regulation is no longer in force: Repealed by Regulation (EU) No 604/2013 of the European Parliament and of the Council.
- **Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010** Establishes the European Asylum Support Office – EASO. The EASO's objectives are strengthening cooperation between Member States in the area of asylum, improving the implementation of CEAS, and providing support to Member States under migratory pressure.
- **Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 (Qualification Directive)** Concerns the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, the uniform status for refugees or for persons eligible for subsidiary protection, and the content of the protection granted. The Qualification Directive finalized the first stage of creating the Common European Asylum System – CEAS.
- **Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013** Brought the Decision on the establishment of 'Eurodac' (European Dactyloscopy) for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013. Furthermore, it defines the way of regulating requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes.

ASYLUM ACQUIS

- **Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013** Establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. Defines in detail access to the procedure for examining an application for international protection, the asylum seekers' right to information, guidelines for conducting personal interviews, guarantees for minors, as well as exact criteria for determining the Member State responsible.
- **Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 (Asylum Procedure Directive – APD)** Prescribes common procedures for granting and withdrawing international protection. The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the EU.
- **Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013** Lays down standards for the reception of applicants for international protection. It aims at prescribing standards for the reception of applicants that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States.

LEGAL BACKGROUND AND LATEST DEVELOPMENTS

- The Dublin Regulation is a European Union law that determines which EU Member State is responsible for the examination of an application for asylum, submitted by persons seeking international protection under the Geneva Convention and the EU Qualification Directive, within the European Union. It is the cornerstone of the **Dublin System**, which consists of the Dublin Regulation and the Eurodac Regulation, which establishes a Europe-wide fingerprinting database for unauthorised entrants to the EU. The Dublin Regulation aims to "determine rapidly the Member State responsible [for an asylum claim]" and provides for the transfer of an asylum seeker to that Member State.
- The new EU Pact on Migration and Asylum, which revises the Dublin System, was presented to the public on 23 September 2020. The new Pact is going to enable Member States to choose whether they are going to accommodate migrants or take responsibility over the return of asylum seekers whose requests have been denied. For the accommodation of asylum seekers, states are going to receive 10,000 EUR per adult from the EU budget and no country is going to be obliged to offer shelter to anyone. In case a Member State finds itself under "migratory pressure" and believes that it cannot take care of the migrants, then it can request the EC to activate the "obligatory solidarity mechanism", when all Member States would be asked to contribute, based on their economic power and population size, choosing one of the following options: receive asylum seekers, sponsor the return of migrants that don't have the right to stay, or assist in constructing reception centres. Despite initial expectations that the Pact would be formalized until the end of 2020, the Pact's elements are still a topic of discussion within EU institutions and among individual Member States.

LEGAL BACKGROUND AND LATEST DEVELOPMENTS

- Criticism on the new Pact on Migration and Asylum could be heard from multiple EU Member States. On 25 November 2020, a joint statement by the authorities of Spain, Italy, Greece, and Malta on the new Pact on Migration and Asylum was published, seeking a more proactive approach of the Member States as regards resolving the problems caused by the migrant crisis and demanding from the EU institutions a fairer distribution of duties among Member States. On 18 December 2020, a Joint Statement on the New Pact on Migration and Asylum by the Visegrád Group countries, Slovenia, and Estonia was published. The representatives of these six countries agreed on the necessity for a better definition of the criteria related to the number of migrants that each Member State needs to receive and a better determination of the procedure for the return of migrants.
- On 29 January 2021, the EU published a report of migratory flows in 2020, where it is stated that last year the EU had a decrease of 33% in the total numbers of asylum requests received in comparison with 2019 data, as well as the lowest number of illegal crossings of the state border since 2014. On the other hand, Frontex data states that the number of illegal crossings on the territory of Spain's Canary Islands has increased almost sevenfold in 2020, when compared with 2019. Thus, on 6 November 2020, the European Commissioner for Home Affairs held meetings with Spanish authorities on the topic of migration management, where it was emphasized that there is a risk of a serious crisis at "Europe's deadliest migration route".



BIGGEST ISSUES FOR MIGRATIONS AND ASYLUM

- Informatic system
- Reception capacities.
- Plans in case of the large influx
- International cooperation.

VISA POLICY ACQUIS

- **Council Regulation (EC) No 1683/95 od 29 May 1995** Lays down a uniform format for visas. Visas issued by Member States in line with this Regulation are issued in a uniform format – sticker with machine-readable data.
- **Council Regulation No 539/2001 of 15 March 2001** Listed the third countries whose nationals had to be in possession of visas when crossing the external borders and those whose nationals were exempt from that requirement. This Regulation is no longer in force: repealed by the Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018.
- **Council Regulation (EC) No 1030/2002 of 13 June 2001** Lays down a uniform format for residence permits for third-country nationals. The residence permit is produced either as a sticker or as a stand-alone document, and it is based on the specifications set out in the International Civil Aviation Organization (ICAO) documents on machine-readable visas or on machine-readable travel documents (cards).
- **Decision of the Council 2004/512/EC of 8 June 2004** Establishes the Visa Information System – VIS. The VIS enables competent national authorities to access and update visa-related data and gain digital insight into this data.

VISA POLICY ACQUIS

- **Council Regulation (EC) No 2252/2004 of 13 December 2004** Sets the standards for security features and biometrics in passports and travel documents. The harmonisation of security features and the integration of biometric identifiers is an important step towards the use of new elements in the perspective of future developments at European level, which render the travel document more secure and establish a more reliable link between the holder and the passport / travel document as an important contribution to ensuring that it is protected against fraudulent use.
- **Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009** Establishes the Community Code on Visas, i.e. the EU Visa Code. Sets the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period.
- **Regulation (EU) 2017/1954 of the European Parliament and of the Council of 25 October 2017** Amends the Council Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals. The previous uniform format for residence permits, which had been used for 20 years, was considered to be compromised in view of serious incidents of counterfeiting and fraud, thus, a new common design for residence permits for third-country nationals was established, with more modern security features in order to render such permits more secure and to prevent forgery.
- **Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018** Prescribes the currently valid list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. Repeals the Council Regulation No 539/2001 of 15 March 2001.

COMPARATIVE EXPERIENCES IN HARMONISATION WITH WHITE SCHENGEN

- ▶ **Croatia** had fully aligned its visa system with the EU visa system by 1 April 2013, three months ahead of its formal EU accession date (i.e. 1 July 2013). On that date, Croatia abolished visa-free entry to, among others, citizens of Russia, Ukraine, and Turkey – countries from which Croatia was receiving large numbers of tourists.
- ▶ The visa system of the **Republic of Serbia** is not fully aligned with the EU list of third countries whose nationals are visa exempt or visa required. In 2019, Serbia further aligned with the EU positive list by granting visa free access to holders of ordinary passports from Georgia, St. Kitts and Nevis and the Republic of Palau. However, Serbia moved further away from alignment with the EU negative list by granting visa free access to holders of ordinary passports from Armenia in October 2019. Previously, in October 2018, the Serbian media published a statement from unofficial diplomatic sources that the European Union did indeed directly affect the Serbian Government's decision to reintroduce visas for Iranian citizens by threatening Belgrade that not carrying that decision out would result in the removal of Serbia from the "White Schengen" list. The EC 2020 Serbia Report stresses that "Serbia needs to refrain from further diverging from the EU common visa policy and take concrete steps to ensure full alignment with the EU visa policy, in particular with regard to the main countries of origin of irregular migration to the EU."
- ▶ **Albania's** visa policy is also not yet fully aligned with the EU visa policy, as Albania has visa-free arrangements with Kazakhstan, Kuwait, and Turkey, which are not on the EU's visa-free list. Furthermore, between April and October each year, Albania lifts its visa requirement for nationals of Bahrain, Belarus, Oman, Qatar, Russia, Saudi Arabia and Thailand, which is not in line with the EU acquis. Additionally, in December 2019, it also decided to exempt Chinese nationals from visa requirements, which is why, among other things, the EC 2020 Albania Report states that: "The country needs to ensure full alignment with EU visa policy."
- ▶ The European Commission's third Report under the Visa Suspension Mechanism of July 2020 concluded that **Montenegro continues to meet the visa liberalisation benchmarks**. However, in order to ensure a well-managed migration system and security environment, **Montenegro will need to ensure full alignment with the EU visa policy**, a recommendation that is being repeated in EC's Montenegro Reports year after year.

COMPARATIVE EXPERIENCES IN HARMONISATION WITH WHITE SCHENGEN

- ▶ The visa regime of **North Macedonia** is largely aligned with that of the EU. The Commission's third Report under the Visa Suspension Mechanism of July 2020 concluded that North Macedonia continues to meet the visa liberalisation benchmarks. The visa policy needs to be further aligned for a number of countries currently on the EU "white list", whose nationals are still required to have a visa to enter North Macedonia. As noted in the EC 2020 North Macedonia Report: "The visa-free travel regime with the EU continued to work smoothly."
- ▶ Legislation of **Bosnia and Herzegovina** on visa is broadly aligned with the EU acquis, however, the country still maintains visa-free regimes with Azerbaijan, Bahrain, Kuwait, Oman, Qatar, Turkey, Russia and China. Bosnia and Herzegovina implements a 'zero' visa-issuing policy on the state border. As stated in the EC 2020 Bosnia and Herzegovina Report: "In order to ensure a well-managed migration and security environment, the country needs to fully align with the EU visa policy."



THANK YOU FOR YOUR ATTENTION

QUESTIONS?

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