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# EPC Policy Update for the European Programme for Integration and Migration<sup>1</sup>

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## Highlights

The terrorist attacks that took place in France at the beginning of this year highlight the complex interaction between liberty and security. Once again, this fragile balance is challenged by politicians taking the occasion to plead for drastic security measures. Others confuse issues and draw hazardous links between terrorism and immigration. This Policy Update's [Special Focus](#) is dedicated to the Charlie Hebdo tragedy and its possible consequences in terms of external and internal border control, cooperation with third countries and immigration in general.

Another significant issue currently at stake is linked to the worrying numbers of refugees, asylum seekers and internally displaced people highlighted in a recent [report issued by the United Nations High Commissioner for Refugees](#). With the Syrian conflict now in its fourth year, the refugee crisis in Syria and its neighbouring countries is weighing heavily in the global statistics, creating deep concerns.

Finally, the European Court of Justice (ECJ) delivered a significant number of judgments over the past two months particularly in the areas of: sexual orientation of asylum seekers, right to be heard in the context of return procedures and access to insolvency benefits for irregular migrants.

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<sup>1</sup> This document provides a focused analysis of recent EU-level policy-making, legislation and jurisprudence relevant to EPIM's three focus areas – (1) asylum seekers; (2) undocumented migrants; and (3) equality, integration and social inclusion of vulnerable migrants and covers the period from 1 November 2014 until 1 February 2015.

Should you, as representatives from EPIM's Partner Foundations or EPIM-supported organisations, have questions related to the analysis provided in this document or on EU developments in the field of migration and integration in general, you are invited to contact the authors ([a.ghimis@epc.eu](mailto:a.ghimis@epc.eu), [y.pascouau@epc.eu](mailto:y.pascouau@epc.eu)). The sole responsibility for the content lies with the author(s) and the content may not necessarily reflect the positions of EPIM, NEF or EPIM's Partner Foundations.

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## Special Focus

### What does Charlie Hebdo mean for immigration?

The terrorist assaults on the French satirical magazine, Charlie Hebdo, at the print shop and at the kosher supermarket at the beginning of 2015 have raised legitimate concerns of the French and EU population over their security. This might lead to substantial changes in terms of policies both at national and at EU level.

The need for more collaboration between the EU and its partners in the fields of counterterrorism, foreign fighters, radicalisation on the Internet has already been [highlighted at the Ministerial meeting](#) held in Paris on 11 January where several EU Interior Ministers, Commissioner Avramopoulos and US and Canadian officials have participated.

With these measures now on the table, a very important question needs to be addressed, namely the link between security and liberty. Indeed, the very difficult task of EU leaders will be to find the right balance between ensuring the safety of EU citizens without violating their or third country nationals' fundamental rights.

Alongside security issues, links with immigration and integration issues are likely to be intensively debated. Several measures can be envisaged in these fields.

Firstly, the most obvious link has been established by Interior Ministers themselves and relates to the Schengen rules. Indeed, they have planned to immediately enhance external border controls regarding EU citizens who are suspected to belong to terrorist organisations. In the medium run, controls might be reinforced for other EU citizens who are currently subject to a minimal control at EU external borders. However, the way rules and practices may change in the future remain so far unclear.

The exceptional situation deriving from Paris' massacres led some governments (for instance the Spanish one) to put forward the idea of reinstalling border controls within the EU in order to avoid terrorists circulating freely from one Member State to another. However, the EPC considers it is necessary to underline that the Schengen rules already include the possibility of temporarily installing border controls in cases of threat to public policy. As a consequence there is no need to adopt new rules in this regard.

Secondly, following this incident, the relationship with third countries might also be re-evaluated. At the Foreign Affairs Council (19 December) [several other proposals have been envisaged](#) such as strengthening the exchange of information and reinforcing cooperation not only among EU's Member States but also with countries from the Arab world, Africa and Asia. [Yves Pascouau \(EPC\) considers](#) that these terrorist attacks and the shock they have created among French and EU populations could also represent an opportunity to rethink the relationships with the neighbouring countries. In this view, [he argues](#) that instead of closing the doors to immigration, one option would be to increase mobility for the nationals of these third countries in order to send a strong signal towards the EU neighbourhood in general, and towards Muslim communities in particular.

Finally, the issue of integration has also been raised within the debates. It should be recalled that, while there certainly are some improvements to undertake in this field, this policy remains largely a national policy. Hence, the capacity of the EU to act in this domain is minimal and limited to the coordination of national policies.



## Asylum seekers

*Policy developments relevant to EPIM focus area 1*

### Global trends

In January, the United Nations High Commissioner for Refugees published the “[Mid-Year global trends](#)” for 2014 in terms of refugees, internally displaced persons and asylum seekers. The numbers (for the first half of 2014) are extremely worrying and show how difficult it is to manage the world’s current humanitarian crises:

- the largest number of new refugee arrivals during the first half of 2014 were registered in **Lebanon** (324 900), **Turkey** (250 300), **Ethiopia** (177 500), **Uganda** (130 900), **Afghanistan** (126 400), **Cameron** (111 200) and **Jordan** (85 000);
- the largest refugee source countries worldwide are: **Syria, Afghanistan, Somalia, Soudan, Democratic Republic of Congo**;
- by mid-2014, Syrians had overtaken Afghans as the largest refugee population. According to the UNHCR, two years ago, Syrians were not among the top 30 source countries of refugees. This situation has also a severe impact on the five neighbouring countries (Lebanon, Turkey, Jordan, Iraq, Egypt);
- by mid-2014, **558 600 asylum applications** were registered in **172 countries**. **Germany** received the highest number of new asylum applications (**67 400**) worldwide during the first six months of 2014;
- approximately **4.1 million people** were newly internally displaced due to war and conflict in the first half of 2014;
- **37,000 refugees** were **resettled** with UNHCR assistance from January to June 2014. This number should increase substantively in order to make a real difference.

### Syrian refugees in the world and in the EU



Amnesty International published a report, “[Left out in the cold: Syrian refugees abandoned by the international community](#)” analysing the situation in each of Syria’s neighbouring countries. The difficulties these States are facing are significant and, therefore, they have started imposing several restrictions on refugees.

**Lebanon**, the most affected State with over 1.1 million Syrian refugees, is likely to experience increased poverty. As a consequence of this situation, Lebanese authorities have started imposing restrictions such as requiring Syrians to obtain a visa before entering Lebanon. In addition, Syrian refugees living in Lebanon have very limited access to public health and educational services. Furthermore, in April 2014, a third of the Syrian refugees were unemployed, and those who were employed were paid much less than Lebanese workers on equivalent positions.

Officially, **Turkey** has an open-doors policy for Syrians. However, due to the high refugee pressure they are facing (1.6 million Syrian refugees), official border crossings are open only to refugees with passports or people with very urgent medical or humanitarian needs. The Turkish refugee camps are already operating at full capacity and the vast majority of refugees are left outside the camps.

Despite the remarkable efforts made by the **Jordanian** authorities to cope with the crisis of refugees coming from Syria, restrictions on access to territory have also been increasingly imposed in this country. Also, some cases of refoulement have been reported. The most common problems faced by refugees already staying in Jordan are: rise in housing costs, lack of adequate and low price accommodation and obtaining work permits.

The response to the Syrian refugee crisis in **Iraq** is threatened by a lack of resources. This could lead to serious consequences in terms of registration, access to education, food access, limitation in cash assistance.

**Egypt** has around 130 000 registered Syrian refugees. Many of them have tried to migrate to Europe by boat which makes them vulnerable to smugglers and to arrest and detention by Egyptian authorities.



Echoes of this situation can be noticed in the EU as well. According to the [European Asylum Support Office report](#) (second quarter 2014), the number of Syrian applicants increased by 24% compared to the first quarter of 2014. However, the number of asylum applications the EU has to deal with is significantly lower than the ones handled by Syria's neighbours. Indeed, since the beginning of the crisis [185 000 Syrians requested asylum](#) in the EU. It should thus be pointed out that the five countries mentioned above are taking the biggest share in helping Syrians in need of protection.

To respond to this situation, the EU has recently announced two measures aiming to improve the situation of refugees inside Syria and in the neighbouring countries. Firstly, the High Representative Federica Mogherini and Commissioner Christos Stylianides [decided to allocate additional €10 million in humanitarian funding](#) both inside Turkey and inside Syria. Secondly, the European Commission and Italy [agreed on the first ever EU Regional Trust Fund](#) in response to the Syrian crisis. The fund amounts to €20 million from EU funding and €3 million from Italy. More sources are foreseen for 2015. The Fund is designed to be flexible and respond to the changing needs of this regional crisis. It must be noted that the total EU support since the Syrian crisis started reaches [€3.1 billion](#).

While the EU is providing extremely important help to these countries, more should be done in terms of financial support but also in terms of receiving refugees and creating legal ways to access the EU.

### [Recast Asylum Procedures Directive – ECRE information note](#)

The European Council for Refugees and Exiles (ECRE) published an [Information Note](#) with recommendations on how to transpose the [EU Recast Asylum Procedures Directive](#) which will become applicable on the 21 July 2015. Some of the positive elements of this new Directive that ECRE emphasises are: personalized interviews with asylum seekers will become a rule with very limited exceptions, properly trained staff to deal with asylum demands, the strengthening of the right to challenge negative decisions etc.

However, ECRE expresses concerns related to some of the Directive's provisions. For instance, as the articles related to the protection of unaccompanied children are very complex, ECRE recommends that Member States

prioritise the examination of their asylum claims but not use accelerated or border procedures which could lead to a violation of the children's fundamental rights.

## Proposal to amend Dublin III – European Economic and Social Committee opinion

As mentioned in our [September 2014 EPIM Update](#), the European Commission put forward a [proposal](#) to amend the [Dublin III Regulation](#) in relation to the situation of the unaccompanied children. In January 2015, the European Economic and Social Committee (EESC) published an [opinion](#) on this proposal. The EESC supports the proposal but highlights a few elements that could be improved. One of the most important aspects emphasized is that, at no phase of the procedure, should a minor be kept in detention.

## Study for the EP's LIBE Committee – access to asylum procedures



The report entitled "[New approaches, alternative venues and means of access to asylum procedures for persons seeking international protection](#)" evaluates the relevance and utility of joint processing and distribution of asylum applicants. Several policy recommendations are put forward, among which:

- "Dublin without coercion" which would require Member States to keep or bring families together and take into consideration special links asylum seekers have with specific countries.
- In case joint processing schemes are introduced, they should be introduced progressively and generalised only once they have proven their efficacy. The Commission, the European Asylum Support Office and other actors should be involved and support the process.
- In order to engage the asylum seekers' confidence, the study recommends a reduction of the number of coercive institutions (police, criminal justice institutions) in asylum procedures.
- Making sure that the new Asylum, Migration and Integration Fund (AMIF) is effectively spent on first-line reception capacities.

## ECJ Case law

### *A, B, C v Staatssecretaris van Veiligheid en Justitie, C-148/13 to C-150/13, 2 December 2014*

These three joint cases are about three third country nationals claiming refugee status in the Netherlands relying on fear of persecution in their country of origin on account of their homosexuality. The applications have been rejected because the sexual orientation had not been proven. The applicants brought an appeal against that decision.

The Court (ECJ) states that the simple declaration given by applicants as to their sexual orientation may require confirmation. However, the methods used by the authorities to verify the statements made by the applicants must be consistent with EU law. The ECJ underlines that the assessment must be done on an individual basis. However, the EU judges consider that asking questions regarding the applicant's sexual practices is contrary to the EU Charter for fundamental rights. Moreover, the acceptance by national authorities of evidence such as the performance by the applicants of homosexual acts, or the production of films of these acts, with the purpose of demonstrating their homosexuality, is a violation of the right to human dignity. According to the Court, these acts or materials do not have probative value.

This ruling is an important step towards the protection of asylum seekers' fundamental rights.



## Undocumented Migrants

*Policy developments relevant to EPIM focus area 2*

### Visa policy

#### Georgia

Increasing the mobility of people is one of the objectives of EU's Eastern Partnership. Therefore, the EU is carrying out tailor made visa liberalisation dialogues with its partner countries. In this context, the European Commission adopted its [second progress report](#) on the implementation by Georgia of the Visa Liberalisation Action Plan. According to the report, Georgia meets the first-phase requirements of the visa dialogue and the second phase can therefore be launched. Efforts have been made in the areas of: document security, asylum, anti-corruption and anti-money laundering.

#### Colombia and Peru

The Commission adopted two reports concluding that [Colombia](#) and [Peru](#) fulfil the relevant criteria necessary in order to start the negotiations for visa waiver agreements between these two countries and the EU. These reports will be discussed in the appropriate European Parliament Committees and in the Council. Subsequently, negotiations should start in the first semester of 2015. Once the agreements enter into force the visa free regime for short stays will be in place. At earliest, this could happen in the second semester of 2015.

#### Cape Verde

The agreement between the EU and Cape Verde facilitating the issue of short-stay visas entered into force the 1<sup>st</sup> of December. On the same day, a readmission agreement between the two partners entered into force. The two agreements have been negotiated in parallel and aim to strengthen cooperation between the EU and Cape Verde and increase the mobility of their citizens.

### Smuggling of migrants

The European Commission published a factsheet on "[Smuggling of Migrants in Europe and the EU response](#)". In 2014, more than 276 000 migrants entered the EU irregularly. This represents an increase of 155% compared to 2013. The main routes used by smugglers are: the Central Mediterranean Route (to Southern Italy) and the Eastern Mediterranean Route (to Greece, Cyprus and Italy).

The factsheet gives an overview of the EU's response to the ever changing modus operandi of smugglers. This consists of several actions: reinforcement of Europol's team dedicated to intelligence sharing, launch of an EASO pilot project on information gathering, expanding debriefing mechanisms, etc.

Another element of the EU's response to this phenomenon is the launch of the Triton operation, coordinated by Frontex. The main goal of this operation is to assist the Italian authorities in gathering information on smugglers' networks and to provide assistance to people in distress at sea. Since the launch of the joint

operation (1 November 2014), 130 incidents have been dealt with of which 109 were search and rescue cases. [According to Frontex, 11 400 migrants have been rescued.](#)

## Schengen Area

### Schengen Borders Code – Codification Proposal

The European Commission put forward a [proposal to codify the Schengen Borders Code \(SBC\)](#). The SBC has been amended several times. In order to ensure clarity and transparency and to make it more accessible to citizens, the European Commission decided to merge all the documents into one legal instrument. This codification does not change the substance of the documents it codifies. The unofficial consolidated version of the SBC can be consulted on the [EuropeanMigrationLaw](#) website.

### Border control activities – FRA study



The Fundamental Rights Agency (FRA) published a report entitled: [“Fundamental rights at airports: border checks at five international airports in the European Union”](#). The study was conducted in five of the EU’s biggest airports: Roissy-Charles de Gaulle (Paris), Fiumicino (Rome), Frankfurt Airport, Manchester Airport and Schiphol (Amsterdam). More than 100 million third country nationals arrive annually at these five airports. FRA put forward a number of recommendations:

- border management authorities should ensure that adequate office spaces, waiting rooms and special rooms for non-admitted passengers exist: separate rooms for men and women, suitable children friendly areas, beds and showers, etc.;
- training courses for border management authorities should also focus on effective de-escalation (conflict resolution);
- food, water and hygiene items should be provided to persons who remain in transit zones longer;
- gate checks should include asylum and children specialists;
- special protection needs should be evaluated pro-actively;
- the exclusive use of professionally certified interpreters should be promoted;
- passengers must be informed that their data is collected, the purpose and the use of this action, and they need to be able to correct wrong information.

### Border control activities – Mos Maiorum Operation

In the [previous EPC EPIM Update](#), we mentioned the joint police operation “Mos Maiorum” implemented under the Italian Presidency of the Council (13-26 October 2014). The aim of the operation was to apprehend irregular migrants; identify, prosecute and disrupt organised crime groups; carry out controls along the most frequently used irregular migration routes and gather information related to secondary movements.



The [final report](#) of the operation was leaked by the NGO StateWatch. According to this report:

- approximately 19 000 irregular migrants were apprehended (9 890 intercepted at external borders and 9 344 at internal borders) as well as approximately 257 facilitators;

- the most frequent nationalities of the intercepted irregular migrants are: Syrians, Afghans, Kosovars, Eritreans, Somalis and Albanians. Taking into consideration their countries of origin, these irregular migrants are likely to be refugees. This explains also the fact that approximately 11 000 of the intercepted migrants applied for asylum during or after their interception.

## ECJ case-law

### *Makarubega, C-166/13, 5 November 2014*

Ms. Makurabega, of Rwandan nationality, entered legally in France in 2009. Subsequently, she introduced an asylum demand which was rejected. Ms. Makurabega brought an action against that decision and during this procedure she was heard with the help of an interpreter. The Court dismissed that action and adopted a decision obliging her to leave the French territory. However, the applicant continued to stay in France illegally and was caught trying to travel to Canada with a false passport. Another return decision was adopted for her and this time no voluntary departure time was given because of the risk of absconding. The applicant brought an action against the two return decisions claiming that her right to be heard had been violated.

The Court (ECJ) reminds that according to its settled case-law, the right of defence is a fundamental principle of EU law. Furthermore, it states that the right to be heard is now protected by Articles 47 (right to an effective remedy and to a fair trial), 48 (presumption of innocence and right of defence) and 41 (right to good administration) of the European Charter for Fundamental Rights. However, the ECJ finds that Ms. Makurabega's right to be heard was respected during the procedure related to her residence application and that the return decisions are simple consequences of the decisions determining that her stay was illegal. Furthermore, they had been taken soon after the applicant had been heard on the illegality of her stay. As a consequence, the ECJ concludes that there has been no violation of Ms. Makurabega's fundamental right.

Some academics such as Lennart van Laake (University of Leiden) nevertheless highlight that, when third country nationals do not qualify as refugees, they still benefit from the right to be protected against torture and inhuman or degrading treatment. Therefore, if the return decision is taken automatically without hearing the person, there is a risk of treating the examination of a risk of inhuman treatment with less attention than necessary.

### *Boudjlida, C-249/13, 11 December 2014*

Mr. Boudjlida is an Algerian national who entered France in 2007 in order to pursue higher education. He had a student residence permit which was renewed annually. The last renewal ended in October 2012 and he did not apply for a renewal or a new residence permit since. While staying in France irregularly, he tried to register himself as a self-employed businessman. While waiting for an appointment to register as self-employed, Mr. Boudjlida was interviewed by the police in relation to his application to register as self-employed, his arrival in France, his family situation, etc. Following this interview a return decision was adopted against him. The applicant contested that decision claiming that his right to be heard and individual situation (degree of integration, family ties) had not been taken into consideration.

According to the Court, the right to be heard (as included in the Return Directive 2008/115/EC) includes the right of third country nationals to express their point of view on the legality of their stay before a return decision is adopted against them. However, the ECJ considers that the national authority is not obliged to warn the third country nationals that it is planning to adopt a return decision or the justification of that decision as long as the concerned individuals have the opportunity to express their point of view effectively.



*Mohamed M'Bodj, C-542/13, 18 December 2014*

Mr. M'Bodj from Mauritania arrived in Belgium in 2006. He was granted an indefinite right to remain in Belgium due to his medical condition as his removal to his home country would have subjected him to a real risk of inhuman or degrading treatment due to the lack of adequate medical treatment. However, his application for income support was rejected because he had not been granted refugee status nor subsidiary protection (Qualification [Directive 2004/83/EC](#)). The applicant brought an appeal against this decision.

The Court states that a third country national does not qualify for the status of subsidiary protection unless they are intentionally deprived of health care in their home country. Although Member States are entitled to have more favorable conditions than the ones enshrined in the Directive, this is not the case of the Belgian legislation. In this case, the ECJ acknowledges that the leave to reside has been offered according to the national legislation and the fact that the application for income support was rejected is not contrary to EU law.

*Abdida, C-562/13, 18 December 2014*

This case is about a Nigerian national who applied for leave to reside on medical grounds in Belgium because he was suffering from a particularly serious illness. The application was accepted as admissible and Mr. Abdida received social assistance. A couple of years later, his application was rejected on the ground that his country of origin had adequate medical infrastructure for his medical condition. Mr. Abdida was asked to leave Belgium. Subsequently, Mr. Abdida introduced an appeal against this decision. Meanwhile, the Belgian authorities decided to withdraw social assistance from him and refused to grant him emergency medical assistance. A few days later, this decision was revised and Mr. Abdida was granted emergency medical assistance. Mr. Abdida nevertheless lodged an appeal against the decision withdrawing social assistance. The Belgian Labour Court of Nivelles ordered the Belgian social authorities (CPAS) to pay Mr. Abdida social assistance. The CPAS introduced an appeal against this decision.

The ECJ states that the [Directive 2005/85/EC](#) (asylum procedures) does not apply in this situation as the applicant did not apply for international protection. According to the Court, the [Directive 2003/9/EC](#) (reception conditions for asylum seekers) is not applicable either as it concerns asylum applications. However, the decision to remove Mr. Abdida from the Belgian territory triggers the application of the EU Return [Directive 2008/115/EC](#). The ECJ stated that according to this Directive, Member States are obliged to make provision, in so far as possible, for the basic needs of a third country national suffering from serious illness when he lacks means to make such provision for himself.



## Equality, Integration and Social Inclusion of Vulnerable Migrants

*Policy developments relevant to EPIM focus area 3*

### Eurostat statistics on acquisition of EU citizenship

Eurostat published some EU citizenship acquisition statistics for the year 2012. They are interesting to look at in order to understand the major EU and national trends in this area. The following elements are worth mentioning. In 2012:

- 818 100 people obtained citizenship of an EU-28 Member State;
- most new citizenships were granted by: the United Kingdom (193 900 or 24%), Germany (114 600 or 14%), France (96 100 or 12%), Spain (94 100 or 12%) and Italy (65 400 or 8.0%);

- out of those acquiring EU citizenship, 87% had previously been citizens of non-EU countries;
- citizens of Morocco, Turkey, India, Ecuador and Iraq were the most numerous to receive EU citizenship;
- in relation to the population, the highest number of citizenships were granted by **Luxembourg** (8.7 per thousand persons) followed by **Ireland** (5.5), **Sweden** (5.3), **Belgium** (3.5) and **United Kingdom** (3).



## EU Calendar

*Upcoming events*



### Council

The Justice and Home Affairs Council will meet on **12 and 13 March** in Brussels.



### European Parliament

Next LIBE committee meetings will take place on **5, 23 and 24 February 2015**.

Next EP Plenaries will take place between **9-12 February** and between **9-12 March 2015**.



### Other Events

#### 3 February

[Launch](#) of Civil Society Europe – the European coordination of civil society organisations, in Brussels.

#### 5 February 2015

Institute for European Studies – Saint Louis University Brussels is organising [Midi de l'Europe](#), L'arrêt Dano de la Cour de Justice ou les limites de la solidarité européenne, in Brussels.

#### 5 March 2015

##### Committee of the Regions is organising:

[Conference](#): A territorial perspective on growth, jobs and investment in Europe. Regions, cities, the mid-term review of the Europe 2020 strategy and the European Semester, in Brussels.

#### 12-14 April 2015

European Policy Centre's FutureLab Europe Programme is organising a Spring Conference on the European Integration Fund, in Brussels.