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

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*Andreia Ghimis, Yves Pascouau and Alex Lazarowicz*

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## Highlights

The beginning of 2014 has been an intense period with numerous developments that have kept European migration and integration issues high on the political and media agenda.

In the field of **economic migration** one new instrument has been adopted: the seasonal workers directive. A small step for economic migrants, some would say, because this directive concerns a limited category of people. However, the EU is advancing in its legal migration agenda and ensures the protection of third country nationals coming to work in EU Member States as seasonal workers. In terms of **irregular migration/border management**, new rules on search and rescue operations have been agreed upon and should contribute to saving migrants' lives at sea.

There has been a change of perspective on the **EU visa policy**. With the new European Commission proposals, this policy has become a tool for growth rather than just a foreign policy instrument.

The **budget** of the future Asylum, Migration and Integration Fund (AMIF) and Internal Security Fund (ISF) has been adopted. The new budget rules aim at increasing the flexibility with which the money will be spent.

15 March 2014 marked the **unhappy anniversary of the Syrian conflict**. With over 2.5 million Syrian refugees among which less than 60,000 in EU Member States, the EU needs to do more in order to address the world's most pressing crisis. It is high time that the EU and its Member States engage into more burden sharing mechanisms and take their responsibility of human rights promoters on the international scene.

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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.

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) or [a.lazarowicz@epc.eu](mailto:a.lazarowicz@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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The European Commission evaluated the application of the [Return Directive](#) by Member States. While some improvements have been registered in a number of Member States in terms of length of detention and entry bans, there isn't a full compliance among EU Member States with this Directive's provisions and the European Court of Justice's case-law. There is a diversity of practices especially in terms of detention conditions, detention of children, criminalisation of irregular migrants, etc. Nevertheless, the Commission stresses that it will launch infringement procedures against these States.

The [free movement of persons within the EU](#) has been under attack. Furthermore, as a consequence of the Swiss referendum, the future of this fundamental freedom between the EU and Switzerland is uncertain. The political rhetoric of a wide range of political parties across Europe, in particular of far right and Eurosceptic parties, undermines a core EU fundamental freedom. Therefore, the EU must ensure that the most cherished right by the EU citizens does not become a political instrument for the EP elections campaign.

All these issues and many others are tackled in this policy update.



## General Developments

### Legal Migration

#### Seasonal Workers

After several years of sometimes tough negotiations between the European Parliament (EP) and the Council, the seasonal workers [Directive 2014/36/EU](#) was finally adopted. The Directive tackles issues such as: criteria and requirements for admission, work contracts and decent accommodation, equal treatment, work permit duration and procedures for returning applicants. After the EP's vote, Commissioner Malmström [highlighted](#) that this Directive would secure legal status for seasonal workers.

On this topic, Alex Lazarowicz (EPC) published a Policy Brief "[A success story for the EU and seasonal workers' rights without reinventing the wheel](#)". He sees the final text as a positive result on seasonal workers' rights. Equal treatment to nationals of the host Member State has been accorded in terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace. Another positive aspect is that Member States need to have evidence that a seasonal worker has adequate accommodation.

Although this is the first time a legal migration directive has dealt with admission for stays of less than 3 months, Lazarowicz considers that little harmonisation can be seen in the final text regarding the authorisations for seasonal work. Six possible visa/permit combinations have been provided for as options for authorisation to Member States. This was done in order to fall in line with the Schengen

acquis, the [Visa Code](#) and individual Member States' systems of issuing permits. Nevertheless, the European Parliament did ensure that Member States must choose one of these options, so at least there will be some consistency.

### **Intra-corporate transferees**

Inter-institutional negotiations came to an [informal conclusion](#) regarding the Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. The LIBE Committee [backed](#) this proposal on 11 March. However, there is still some uncertainty as to whether the plenary will adopt the Directive. Indeed, the EP Employment Committee rejected the compromise because of the Article 14 provisions on right to equal treatment, which do not grant equal rights to EU nationals, but to posted workers (citizens employed in one Member State and sent by employer on a temporary basis to carry out their work in another Member State). Nevertheless, there seems to be an EPP-ALDE-ECR majority on the compromise text, although the final result will depend on which MEPs will be present at the plenary session on 16 April.

The sticking point of equal treatment has resulted in the American Chamber of Commerce, together with other organisations, writing a letter to the Employment Committee, urging them to back the deal, and explaining that parity with local workers would burden employers and not benefit the employees.

On the other hand, the European Trade Union Confederation [warned](#) that the absence of full equal treatment provisions in favour of third country nationals working in an EU Member State would lead to possible exploitation and under-protection.

In an EPC Policy Brief published April 2013 "[The Intra-Corporate Transferees Directive: time to break the deadlock](#)", Alex Lazarowicz argues that the equal treatment with posted workers, as pushed for by the Council is sufficient. In the context of a transfer, it is more likely that transferees will prefer to maintain the same pension plans and health insurance in the country of origin, especially if – as is likely – they will be working on a project basis and moving from one country to another. The specialist and highly-qualified nature of transferees means that it is distinctly probable that they will have parity with national workers performing the same tasks anyway.

### **Non-EU students and researchers**

In February 2014, the European Parliament [backed](#) Cecilia Wikström's (ALDE, Sweden) [report](#) on the Commission's 2013 recast of the "Researchers Directive" which also clarifies entry and residence conditions for non-EU trainees, volunteers, school pupils and au pairs. Negotiations with the Council will start once the Member States have managed to find a common position which is not yet the case. Therefore, this dossier will be taken over and finalised by the future European Parliament elected in May 2014, which can then decide to either build upon the Wikström report or to start work from scratch.

## Guidelines on the application of the Directive on family reunification [Directive 2003/86/EC](#)

The European Commission issued a [Communication](#) aimed at achieving a more efficient family reunification regime in the European Union. It includes guidelines explaining how the Directive should be interpreted in order to comply with fundamental rights requirements, especially the right to respect of private and family life, the principle of non-discrimination, the rights of the child and the right to an effective remedy. These rights are enshrined in the European Convention of Human Rights and the EU Charter of Fundamental Rights.

## Post-Stockholm process – the future of Justice and Home Affairs Policies

In June 2014 the European Council will define strategic guidelines on the future of the EU Justice and Home Affairs policies. To contribute to this process, the European Commission issued two Communications (one from [DG Justice](#) and one from [DG Home](#)) on 11 March. Mobility, trust and growth are the three challenges identified by DG Justice in its Communication. To tackle them, DG Justice stresses the need to consolidate what has already been achieved, codify law and practice and complement this with new initiatives.

DG Home's Communication comes with more concrete suggestions. In terms of legal migration, it recommends an evaluation of the current legislation to identify gaps and envisage further steps for a "single area of migration". A commitment to better integration of migrants in the labour markets is also mentioned. Fewer suggestions are made in terms of irregular migration. The Commission insists on the need to give priority to voluntary return efforts. Furthermore, a strong emphasis is put on the effective transposition of the Common European Asylum System.

According to the conclusions of the two Communications, they will have to be discussed with the European Parliament and the Council and the results of this inter-institutional debate should inspire the strategic guidelines of the European Council.

These communications are based on a discussion/consultation process conducted by each DG in order to discuss with Member States, non-EU countries and civil society organisation about the future of the area of freedom, security and justice. DG Home's consultation process launched in October finished at the end of January. Despite the apparently large contribution from some governments (Belgium, Germany, Estonia, Finland, Greece, Hungary, Italy, The Netherlands), 46 NGOs, think tanks and associations, this process was [conducted](#) at a rapid pace which raised doubts about its full effectiveness.

The European Policy Centre also took part in this consultation through the publication of the discussion paper "[The future of the area of freedom, security and justice. Addressing mobility, protection and effectiveness in the long run](#)" in January 2014. This resulted from a series of workshops organised with key stakeholders at the EPC.

The discussion paper raises doubts as to the timing chosen by the European Council to adopt its strategic guidelines. Indeed, June 2014 will be a crucial political period with the election of the new European Parliament and the end of the current European Commission's mandate. The new European Parliament and European Commission will be bound by these guidelines without having properly contributed to their elaboration. In addition, the discussion paper underlines that the consultation process was run under high pressure for EU institutions and did not allow for an in-depth reflection about the future of EU policies in this key area. Therefore, it suggests postponing the adoption of these guidelines to December 2014, or even better June 2015.

It also suggests the adoption of concise, clear, forward looking guidelines in order to avoid the heavy, technocratic and complex language that is hard to understand for the "non-Brussels" community. There seems to be a large consensus on this among Member States, as illustrated by a [note](#) sent by the Greek Presidency to the Coreper.

Finally, the discussion paper addresses specific domains related to the area of freedom, security and justice, i.e. immigration and asylum, internal security, justice, external dimension and human rights. While portraying the views exchanged during EPC meetings, the discussion paper defines recommendations and proposes that the strategic guidelines should be established on three pillars: mobility, protection and effectiveness.

## Budget

Following the informal agreement reached between the Council and the European Parliament in late December 2013, the March 2014 EP Plenary session adopted the agreement on how the future Asylum, Migration and Integration Fund (AMIF) and Internal Security Fund will be spent during the period 2007-2013. Commissioner Malmström welcomed this step forward [underlining](#) that it will simplify the way EU funding is delivered.

The AMIF fund will amount to €3.1 billion. €2.7 billion of this envelope will go to national programmes and €385 million to Union actions, emergency and technical assistance and the European Migration Network. At least €480 million will be allocated to measures supporting legal migration and promoting the effective integration of migrants.

The Internal Security Fund will benefit from €2.8 billion until 2020 as follows: €1.5 billion for national programmes, €791 million for managing migration flows across the EU's external borders, €154 for the Special Transit Scheme and €264 million for Union actions and emergency and technical assistance.

This European Parliament Research Service [briefing](#) gives a good overview on the evolution of negotiations between the Council and the European Parliament. Interestingly, it notes that although the two abovementioned funds have suffered a 19% cut from the European Commission's proposal, their total has increased by 50% compared to the previous period.

The EPC welcomes in particular the increase in the lump sum awarded for a resettled refugee, (from €4.000 and €6.000 in exceptional situations to €6.000 and €10.000 for vulnerable persons) and sees this as a positive incentive emphasising the importance of increasingly involving Member States in resettlement programmes and boosting the number of resettled refugees.

### New Rule of law mechanism presented by the European Commission

In March 2014, the European Commission presented a new Rule of Law mechanism. According to the Commission, it will fill in the gap between the two instruments it already has at its disposal: infringement procedures and Article 7 TEU.

Infringement procedures are very rarely used in migration policy. In the EPC Policy Brief entitled “[Human rights violations in the field of migration: a collective responsibility](#)”, Yves Pascouau explains this with three arguments: the high sensitivity of Member States on migration issues, the internal functioning of DG Home which is not “litigation driven” and the collegiality principle at the heart of the European Commission’s decision making process which implies that the entire College needs to agree with launching the infringement procedure.

Up to date, the Article 7 TEU mechanism, often [referred](#) to as a “nuclear option” has never been used due to its high triggering threshold and political sensitivity.

Therefore, the Commission presented an additional mechanism complementary to the two existing ones. The triggering threshold for this new mechanism will be the existence of serious threats to the rule of law which are of systemic nature. The mechanism will consist of three phases: the Commission’s assessment, recommendation and follow-up and may lead to the utilisation of Article 7 TEU when Member States do not comply with the Commission’s recommendation.

Israel Butler (Open Society European Policy Institute) [believes](#) that this new mechanism does not have much added value compared to Article 7 TEU mostly because of its very high and similar triggering threshold.

### Return policy – Communication of the European Commission

The European Commission published a [Communication on EU return policy](#) highlighting some positive achievements like the overall reduction of maximum detention periods across the EU. However, the Communication acknowledges there is room for improvement in this area in terms of compliance with migrants’ fundamental rights like detention conditions and legal remedies. Steve Peers (University of Essex) [analysed](#) this Communication and regrets that it does not include a section with specific reviews of Member States’ compliance with the European Charter for Fundamental Rights when applying EU return legislation.

## Reports on migration, asylum and human rights



### Migration Policy Group and Human European Consultancy

In their report “[Discrimination in housing](#)” published on 25 February, MPG and Human European Consultancy noticed that the existing EU legislation bans discrimination in access to and supply of housing only on grounds of racial or ethnic origin ([Directive 2000/43/EC](#)) or on grounds of sex ([Directive 2004/113/EC](#)). At present, some Member States prohibit discrimination on other grounds than the ones included in EU legislation. However, there is no harmonisation in the field. Indeed, according to the findings of the report discrimination in housing exists under different guises: discrimination in housing supply, discrimination in the way housing is allocated and discrimination during the occupation of a house. Therefore, Member States must ensure that public and private actors are punished when they refuse to sell or rent houses to specific groups of people.

The EU plans to extend the protection against discrimination in housing on more grounds: religion or belief, age, disability, sexual orientation. This will happen through a proposal on a Directive on equal treatment in the access to and provision of goods and services which is in the drafting stage.

## Asylum seekers

*Policy developments relevant to EPIM focus area 1*

### Asylum statistics in the EU: European Asylum Support Office and Eurostat

EASO “[Quarterly Asylum Report](#)” for the third quarter of 2013 and asylum [trends](#) for February and January 2014.

- the number of asylum applicants rose by 14% compared to the second quarter of 2013;
- the number of Syrian applicants increased by 70% compared to the previous quarter;
- the highest first instance recognition rates were registered in Bulgaria, Malta, Romania, Italy, the Netherlands and Sweden;
- throughout the third quarter, the EU average of positive first instance decisions was 32%, equal to the annual rate for 2012;
- in February, the number of Syrian applicants increased in almost all EU countries compared to January.

Eurostat [compared](#) the number of asylum applications in EU in 2012 and 2013 and concluded that:

- there was an increase of 100 000 applications between 2012 (435 000) and 2013 (335 000), the largest group being from Syria;

- compared to their national population, in 2013, it is Sweden, Malta, Austria, Luxembourg, Hungary and Belgium that received the highest numbers of asylum applications (between 5 700 and 1 900 applications per million of inhabitants);
- Portugal, the Czech Republic, Estonia, Romania, Slovakia, Latvia and Spain receive less than 100 applications per million of inhabitants.

## Syrian asylum seekers in Europe

According to the report "[A year in review: 2013](#)" published by the United Nations Commissioner for Refugees, 6.5 million people are internally displaced within Syria. Approximately 2.5 million Syrians have [registered](#) as refugees in neighbouring countries or are awaiting registration. In December 2013, Amnesty International published a report "[An International Failure: The Syrian Refugee Crisis](#)" highlighting that five countries neighbouring Syria: Lebanon, Jordan, Turkey, Iraq and Egypt - host 97% of the refugees. UNHCR states that in Lebanon, the number is approaching 1 million (which would be the [equivalent](#) of 19 million in Germany) and it is likely to reach 1.6 million by the end of 2014. Jordan is also deploying significant efforts to ensure refugees have access to water, bread, gas and electricity. As to the situation in Europe, circa 84,000 asylum applications have been submitted since March 2011 by Syrian nationals mostly in Sweden and Denmark.

Speaking at an EPC Policy briefing at the beginning of this year, Salil Shetty, Amnesty International's Secretary General [underlined](#) that less than 1% of the Syrians who have fled the conflict came to ask for protection in EU countries. Although François Crépeau, the UN Special Rapporteur on the Human Rights of Migrants, said that Europe was perfectly capable of absorbing 250,000 Syrian refugees per year over the next five years, the EU pledged only 14,000 places.

To mark the three years that have elapsed since the beginning of the Syrian conflict, over 100 organisations from over 30 countries signed an [open letter](#) calling on European governments and European institutions to gather forces and ensure the protection of Syrians fleeing the crisis in their country. The EPC also encourages Member States to address these acute needs for protection through resettlement of refugees and insists on the need for more intra-EU solidarity and the creation of channels to grant protection outside the EU territory.



## Implementation and Interpretation of Existing Legislation

### European Court of Justice (ECJ) case law

#### *Case C-285/12, Diakité, 30 January 2014*

The Diakité [judgment](#) concerns a Guinean national who applied for international protection in Belgium. Due to his participation in demonstrations against the ruling regime he had been victim of acts of violence in his home country. As he appealed against Belgian authorities' decision to refuse to recognise him as having refugee status or to grant him subsidiary protection, the Belgian Conseil d'Etat asked a preliminary question to the ECJ related to the interpretation of the notion of "internal armed conflict".

The question referred to the ECJ was: should this concept be interpreted according to international humanitarian law provisions ([Common Article 3 of the Geneva Conventions](#)) or should it have an independent meaning in EU law (Article 15(c) of [Directive 2004/83](#)), and if so, which criteria should be used in order to assess whether such a conflict exists in a third country?

The ECJ states that the concept of "internal armed conflict" is specific to the EU Directive, and should be interpreted autonomously. It designs a situation where "*a State's armed forces confront one or more armed groups*" or where "*two or more armed groups confront each other*". The Court also adds that there is no need to conduct an assessment of the intensity of the armed conflict, the level of organisation of the armed forces and the duration of the conflict to determine subsidiary protection needs.

Joris Larik (European Law Blog) [explains](#) that this judgment allows the protection of persons who have to flee their home countries due to indiscriminate violence but fail to receive protection because the violence they are escaping from is not considered to be "serious enough". The *Équipe droits européens et migrations* [considers](#) this judgment convincing but rather incomplete as it doesn't give orientations as to the evaluation of the level of violence in concrete situations.

#### *Case C-79/13, Saciri, 27 February 2014*

The Saciri [ruling](#) focuses on the interpretation of the [Directive 2003/9](#) on minimum standards for reception of asylum seekers in the Member States. The case is about a family of asylum seekers who lodged an application for international protection in Belgium. As there were no reception facilities available, the Saciri family could not be provided with accommodation. They then tried, unsuccessfully, to find private housing and turned to another Belgian agency for financial assistance. However, they were refused financial assistance as they were not living in a public reception facility.

The ECJ starts its ruling by reminding that according to the Directive 2003/9, Member States can opt to grant material reception conditions in kind, or in the form of financial allowances or vouchers or in a combination of these provisions. Firstly, concerning the time from which Member States are required to grant the material reception conditions, the ECJ states that these conditions have to be available for asylum seekers when they apply for asylum. Secondly, the ECJ explains that when financial assistance is granted, the amount has to ensure a dignified standard of living and it has to be sufficient to preserve family unity. Therefore, financial allowances must enable minor children of asylum seekers to be housed with their parents.

The Directive 2003/9 will be replaced by [Directive 2013/33/EU](#) in July 2015. Article 17(5) on the General rules on material reception conditions and health care of this Directive now states that the amount of financial allowances shall be determined *on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals*. However, according to the wording of the recast Directive, less favourable treatment can be applied to asylum applicants. As the *Équipe droits européens et migrations notices*, human dignity is reflected throughout the text of the new Directive, and, as a result of this judgment, it has to be ensured also in relation to accommodation.

Steve Peers (University of Essex) [highlights](#) that this ruling goes beyond the wording of the Directive 2003/9 as it is more protective of family unity than the Directive which states that family unity must be ensured “as far as possible” and only when Member States provide accommodation in kind. Marie-Laure Basilien-Gainche and Serge Slama [underline](#) that the Saciri judgment comes as a positive sign in a context in which both France and Belgium have reduced the standards of living conditions offered to asylum seekers.

## Reports regarding the implementation of EU rules in the Member States



### Detention of women asylum seekers in UK – Women for refugee women

In order to give a general picture, the report “[Detained: women asylum seekers locked up in the UK](#)” highlights that out of the 6071 women asylum seekers in the UK in 2012, 1902 were detained. Following interviews with 46 women who sought asylum in the UK and who experienced detention, the authors found that 70% of them felt uncomfortable because of the behaviour of the male guards. Three of them had been physically assaulted and one had been sexually abused. The shortest detention duration among the interviewees was three days and the longest, eleven months.

The report therefore proposes that pregnant women and women who experienced sexual aggression or other forms of violence should never be detained. In addition, it advocates for free and quality legal advice for all detainees. Access to free legal assistance and representation is also mentioned in the new Reception Conditions [Directive 2013/33/EU](#) which will be applicable in July 2015.



### The organisation of reception facilities for asylum seekers in different Member States – European Migration Network

This [report](#) is based on contributions from 24 Member States EMN National Contact Points. It underlines that despite the efforts done at EU level to ensure comparable reception conditions for asylum seekers in EU Member States (via [Directive 2003/9/EC](#) and its recast, [Directive 2013/33/EU](#)) this is very difficult to ensure in practice. For instance, when tackling the needs of vulnerable persons, vulnerability assessments differ greatly in terms of criteria, methods, timing, follow-up.



### European Council on Refugees and Exiles and Migration Policy Group

The study entitled “[Refugee Resettlement in the EU: The capacity to do it better and to do it more](#)” finds that there is a great diversity in terms of approaches towards resettlement between Member States. Denmark and Netherlands have a multi-year resettlement quota. Finland, Sweden, UK, Portugal and

Ireland have yearly quotas established years in advance. Belgium, Spain and Czech Republic decide on their quota every year. However, the study shows that new resettlement countries such as: Hungary, Spain, Belgium, Bulgaria are only able to offer limited places because of their underdeveloped capacity to grow and implement resettlement strategies. The recommendations given by the authors of the study to EU decision makers are to:

- boost European Asylum Support Office's role in ensuring the quality and quantity of resettlement programmes;
- ensure that resettlement complements existing European/national refugee protection systems and doesn't weaken them;
- create more efficient cooperation between Member States via, inter alia, transfer of knowledge;
- increase funding opportunities for NGOs and municipalities which receive resettled refugees.



### [Reception Conditions Directive \(Directive 2003/9/EC and its recast, Directive 2013/33/EU\)](#) – European Council on Refugees and Exiles

ECRE's report "[An examination of the Reception Conditions Directive and its recast in light of Article 41 and 47 of the Charter of Fundamental Rights of the European Union](#)" was published in December 2013.

It concludes that the Charter is currently underutilised, although it could contribute to the improvement of fundamental rights' protection in the EU asylum legislation. For instance, Article 47 of the Charter (right to an effective remedy and to a fair trial) could improve the protection of asylum seekers who are detained under the recast Reception Conditions Directive. Furthermore, Article 41 of the Charter (right to good administration) could be of use when the procedural rules included in the abovementioned directive are not complied with by Member States. This paper is meant to assist practitioners in using the case-law of the two Courts in other areas of law in order to improve the protection of asylum seekers under this directive.

## Undocumented Migrants

*Policy developments relevant to EPIM focus area 2*

### Undocumented migrant women

On 4 February, the European Parliament voted in favour of a [Resolution on Undocumented women migrants in the European Union](#). This resolution originates in an own initiative report of the FEMM Committee, rapporteur Norica Nicolai (ALDE, Romania) denouncing the limited access to education, healthcare undocumented migrant women have and the risk of poverty and social exclusion to which they are exposed.

The Platform for Undocumented Migrants in Europe (PICUM) [recognises](#) that this resolution is an important step in ensuring the protection of this vulnerable group's rights and calls on EU institutions and Member States to take appropriate action in order to implement the wording of the resolution. However, PICUM regrets that some recommendations are not reflected in the resolution: the call for Member States to ratify the UN Convention on Migrant Workers and the need to increase legal and social assistance for undocumented women.

Human Rights Watch also [sees](#) this resolution as a positive initiative for two reasons. On the one hand, it unlinks the prosecution of violence against undocumented women from immigration control. Therefore, women can report violent acts committed against them without fearing the police will check their immigration documents. On the other hand, the resolution suggests lifting the requirement of showing immigration documents when accessing domestic violence shelters run by the state.

## External borders

### Frontex

#### Search and rescue

Following the tragic events of Lampedusa, greater urgency has resulted in the European Parliament and the Council [reaching](#) an [informal agreement](#) on the new Regulation establishing rules for the surveillance of the external sea borders in the context on joint operations coordinated by Frontex.

The LIBE committee [endorsed](#) this text on 20 February. The new Regulation contains mandatory rules on search and rescue, as well as provisions on identifying intercepted migrants, solidarity and responsibility-sharing mechanisms, interdiction of push-backs on high seas. It also establishes rules on the protection of migrants' fundamental rights and the non-refoulement principle.

A short summary of the new Regulation's most important provisions has been [drafted](#) by the European Council on Refugees and Exiles.

Steve Peers (University of Essex) analysed these provisions in his article "[New EU rules on maritime surveillance: will they stop the deaths and push-packs in the Mediterranean?](#)". The scholar noted the complex interplay between the Regulation and EU asylum law. For instance, he pointed out that according to the rules established within the Common European Asylum System, asylum applicants who lodge their application in territorial waters must be disembarked on the territory of the EU Member State concerned. However, the text of the Regulation allows these asylum seekers to be removed to third countries. Peers also highlighted the potential clash between the non-refoulement principle and the obligation to disembark asylum seekers in a Member State. Indeed, as some EU Member States have been convicted by the ECHR and the ECJ, the question that arises is: are these Member States always "safe" within the meaning of the Article 4 of the Regulation? The author also insists on the need for the

Commission to bring infringement proceedings against Member States responsible for push-backs or other ill-treatment.

### **Frontex quarterly**

In January 2014, Frontex published its [risk analysis report](#) for the period July-September 2013. The report states that Syrians were the most detected nationality in terms of irregular migration. Syrians also submitted the most numerous asylum applications and this trend is likely to continue. In Q3 2013, the number of irregular cross-border crossings was almost double the number during the same period in 2012.

## External Dimension

### Visa policy

#### **New rules on visa policy presented by the European Commission**

On 1 April the European Commission [presented two legislative proposals](#) aiming to shorten and simplify visa procedures for short stays in the EU: a recast for the Visa Code and a proposal for a regulation establishing a “touring visa”. These two proposals were accompanied by a Communication “[A smarter visa policy for economic growth](#)” explaining how the new rules would boost economic activity and job creation in the EU.

Related to the Visa Code, the Commission proposes to reduce the deadline for making a decision on visa application from 15 to 10 days and simplify the list of necessary documents. The new rules would ease repeated visits through the introduction of compulsory criteria for multiple entry visas.

Furthermore, by introducing a touring visa, the Commission aims to allow some third country nationals (artists, researchers, students) who want to circulate in the Schengen area, to do so for a period up to one year which can be extended to two years on the condition that they do not spend more than 90 days in any 180-day period in one single Member State. The new rules, also called in Brussels the Cirque du Soleil rules, still need to be approved by the Council and the European Parliament which could happen in 2015 at the earliest.

#### **Visa Exemption**

On 27 February, the European Parliament [voted](#) in favour of amending the visa free list, [Regulation 539/2001](#), in order to exempt nationals of [19 third countries from visa obligations](#): 5 Caribbean Island Nations (Dominica, Grenada, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago), 10 Pacific Island Nations (Kiribati, the Marshall Islands, Micronesia, Nauru, Palau, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu), Timor-Leste, the United Arab Emirates, Peru and Colombia. Booming tourism between the EU and the islands fuelled this process, as is the case for the UAE.

At the initiative of the European Parliament, Peru and Colombia have been added to the list. MEPs underlined that after the two trade deals concluded with the two Latin American countries in December 2012, they were ready to be included on the visa free list. However, the European Commission will have to present a positive risk assessment for these two countries before seeking the Council's negotiating mandate. The Commission estimates that the necessary procedures will be concluded in 2015 at the earliest.

### Visa liberalisation

**Moldova** – On 14 March, the Council [approved](#) the visa liberalisation agreement with Moldova.

### Impact of visa liberalisation – European Parliament Policy Department C Study

Requested by EP's LIBE Committee, this [study](#) focuses on Schengen visa liberalisation in Eastern partnership countries, Russia. It shows that visa liberalisation is a powerful tool promoting reforms in the area of freedom, security and justice. Furthermore, the report indicates that the number of visa applications lodged by nationals of these countries is higher and the refusal rate is lower than was the case for Western Balkan countries before the introduction of visa free policies. As a consequence, the author recommends reducing the burden of the visa application process.

### Interpretation of the EU visa code – European Court of Justice case-law

#### *Case C-84/12, Koushkaki, 19 December 2013*

This [case](#) is about Mr. Koushkaki, an Iranian national, whose Schengen visa application had been refused by the German embassy in Tehran. The reason invoked by the German authorities was the fact that there was significant doubt that Mr. Koushkaki would return back to his country of origin before the expiry of the visa.

The [EU visa code](#) establishes the conditions for issuing the Schengen visas. According to Article 32 2(b) of this code, a visa shall be refused if there are reasonable doubts as to the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for.

In its ruling, the ECJ states that national authorities cannot refuse to issue a Schengen visa unless one of the reasons enounced in Article 32 can be invoked. This provision aims to harmonise the grounds for refusal of a Schengen visa in order to avoid visa shopping. However, continues the Court, when analysing if one of these grounds applies to an applicant, national authorities dispose of a wide discretion. An individual assessment must be carried out taking into consideration the applicant's personal characteristics, the general situation in his origin country, etc. Furthermore, the ECJ adds that the German legislation – stating that when the conditions to issue a Schengen visa are met, the German authorities **can**, but are **not obliged** to deliver the visa – must be interpreted in conformity with EU law. Therefore a Schengen visa application can only be refused if one of the grounds laid in the EU visa code can be applied.

*Comments on this case:* [European Database of Asylum Law](#) and [EU Law analysis blog](#).

## Readmission agreements

**Turkey** – The EU and Turkey signed a [readmission agreement](#) on 16 December. In February, the European Parliament [gave](#) its consent to this agreement which, according to the rapporteur Renate Sommer (EPP, Germany), “will benefit Turkey as well as the European Union”. As mentioned in our previous [EPIM update](#), Turkish diplomats chose to link the signature of a readmission agreement to the opening of a visa-free regime for Turkish citizen talks. However, the Euro-Mediterranean Human Rights Network and Migreurop [expressed](#) concerns related to the lack of human rights safeguards. They also highlighted the big room for manoeuvre that Member States have when examining protection claims and the lack of transparency, monitoring and accountability over the implementation of the agreement.

Recent events in Turkey – revelations of high-level corruption and blocking of twitter and youtube – might have an impact on visa negotiations. However, EU officials [see](#) a freeze of these negotiations as an excessively tough sanction.

**Azerbaijan** – The EU and Azerbaijan [signed](#) a [readmission agreement](#) on 28 February.

**Belarus** – The European Commission [started](#) negotiations on visa facilitation and readmission agreements with Belarus on 30 January. Belarus is a transit country through which third country nationals access the European territory. When signing the readmission agreement with the EU, Belarus will have the responsibility to re-admit irregular migrants from the EU and therefore provide temporary camps, legal aid, travel documents etc. The EPC is concerned about the prospect of concluding such an agreement with the only European country which is not a member of the Council of Europe.

## Mobility Partnerships

**Tunisia** – The European Union and Tunisia [established](#) a mobility partnership on 3 March 2014. The EU has similar partnerships with Moldova, Cape Verde, Georgia, Armenia, Morocco and Azerbaijan. Discussions around a Mobility Partnership have begun with Jordan in December 2013. The aim of the partnerships is to ensure that the movement of people between the EU and a third country can be managed effectively.

Several organisations, including the Euro-Mediterranean Human Rights Network, International Federation for Human Rights, Migreurop, Tunisian Forum for Economic and Social Rights, signed a [joint declaration](#). In it they signal that the Tunisian (but not only) mobility partnership has a security approach aimed at preventing irregular migrants from reaching the EU and has a limited commitment to promote legal ways of accessing the European territory.

## Report on the implementation of the Global Approach to Migration and Mobility 2012-2013 – European Commission

In February 2014, the European Commission issued a [report](#) assessing the implementation of the Global Approach to Migration and Mobility for the period 2012-2013. During this period, the European

Commission supported more than 90 migration related projects in all the regions of the developing world. In spite of their capacity to strengthen relations with third countries and regions, according to the European Commission, current dialogues should become more effective, operative and balanced.

Henri Labayle (Groupe de travail – Espace Liberté, Sécurité, Justice) sees this report as a very opaque document which doesn't allow a proper evaluation of the public policy. For instance, when mentioning mobility partnerships, the European Commission only mentions the achievements with Southern Mediterranean countries, but does not say much about countries in Sub-Saharan Africa.

### EU-Africa Summit

One of the issues discussed during the EU-Africa Summit (2-3 April 2014) was irregular migration. The President of the European Council, Herman van Rompuy, underlined that migration must be managed in a way that benefits both continents. Gary Quince, EU Special Representative for the African Union, insisted on the fact that discussions should not focus on irregular migration but tackle cooperation for development in order to make sure that migration is an option and not an obligation for survival.

Following this summit, a declaration on Migration and Mobility has been signed. The Action Plan presented in this declaration for 2014-2017 has a strong focus on fighting irregular migration and strengthening boarder management. Despite the limited commitments in terms of legal migration and strengthening international protection, this declaration confirms once again EU's security-driven approach to migration policy. Migreurop regrets this document's emphasis on the externalisation of border management, the reinforcement of surveillance systems like Frontex and Eurosur. Migreurop is also dissatisfied with the intention of using development aid in order to ensure that migrant populations do not leave their origin country.

### Relevant reports



#### The implementation of the return Directive 2008/115/EC in Italy, Cyprus and Spain – Borderline Europe

In December 2013, Borderline Europe published a report focusing on the repatriation of third country nationals found in an irregular situation in Italy, Cyprus or Spain. In Cyprus there is no difference between administrative detention waiting for deportation and ordinary jails. Furthermore, in Italy, a disproportionate relationship has been noticed between the costs of migrant detention policies and their actual effectiveness. Migrants detained in Spain have no space for recreational activities with the exception of the TV room. All in all, the report shows that as long as it suggests administrative detention as a legitimate tool of EU migration management, the wording of the Directive does not fulfil its objective, namely: *an **effective** removal and repatriation policy, based on common standards, for persons to be returned in a **humane manner** and with full respect for their **fundamental rights** and **dignity**.*



Marie Garcia, from Groupe de travail – Espace de Liberté, Sécurité, Justice [commented](#) on this report highlighting that migrants have very limited possibilities to challenge the decision to place them in detention centres or the decision to extend the detention duration as well as the inhumane conditions irregular migrants have to bear in detention centres.



### [Criminalisation of irregular migrants – Fundamental Rights Agency](#)

FRA published a report studying the “[Criminalisation of migrants in an irregular situation and of persons engaging with them](#)”. It shows that almost all EU Member States punish irregular stay and/or entry with imprisonment. The report also states that irregular migrants very rarely report crimes (committed against them or not) to the police as they fear being detected and returned. FRA suggests a reinforcement of access to justice for irregular migrants and a need to ensure that Member States do not punish persons facilitating irregular entry of migrants for humanitarian purposes.



### [Human Rights Watch](#)

The report “[Abused and expelled: Ill treatment of Sub-Saharan African Migrants in Morocco](#)” draws attention to the harsh living conditions of Sub-Saharan Migrants in Morocco who lack basic necessities and are often and deprived of their goods by police forces.



### [Smart Borders Package](#)

At the beginning of 2013, the European Commission proposed a 'smart border package' consisting of:

- a Registered Traveller Programme (RTP) to allow certain groups of frequent travellers from third countries to enter the EU using simplified border checks.
- an Entry/Exit System (EES) to record the time and place of entry and exit of third country nationals travelling to the EU.

The EP Policy Department C [issued](#) a study, “[The Commission’s legislative proposals on smart borders: their feasibility and costs](#)”, evaluating the feasibility and costs of the Commission’s legislative proposals on Smart Borders. This report showed that a new feasibility study would be needed as the one done by the Commission was not relevant anymore (see previous [EPIM update](#)).

The study will be [carried](#) out between March and September 2014. Following the Commission’s recommendations, a dialogue on this topic will be established between the Council’s Working Party on Frontiers and the European Parliament in order to define the details of a pilot project aiming to test the technical solutions agreed upon for RTP and EES. This pilot project will be carried out in 2015.

## Equality, Integration and Social Inclusion of Vulnerable Migrants

*Policy developments relevant to EPIM focus area 3*

### Eurostat migrant integration statistics

These [statistics](#) dated February 2014 contain data on migrant integration terms of employment, health, education, social inclusion and active citizenship. The set of indicators used are the ones agreed on in the [Zaragoza declaration](#) and further developed in the 2011 study “[Indicators of immigrant integration - a pilot study](#)”, but also some new indicators developed in the 2013 report “[Using EU indicators of immigrant integration](#)”. The article shows that, in 2011, the unemployment rate among migrants in EU-27 (16%) was higher than that of the total population (9%). Another relevant finding is that between 2009 and 2011, 15% of the total EU population was at risk of poverty whereas the percentage of foreign born nationals in this situation was 24%.

### Immigrants and EU citizenship

The issue of EU citizenship for third country nationals has been greatly debated at the beginning of this year when the Maltese system – allowing third country nationals who invested \$1.57 million in the country to apply for Maltese citizenship, thus European citizenship, without any prior residence requirement – was brought to light. In this context it was highlighted that Austria and Cyprus have similar approaches, offering a national passport in exchange for investments. Highly criticised by the [European Parliament](#) and the [European Commission](#), the Maltese system has been changed by the national authorities and now requires an effective residence status of one year before opening the possibility for third country nationals to acquire Maltese citizenship.

On the same topic, the European Economic and Social Committee issued an [own-initiative opinion](#) pleading for a more inclusive citizenship open to immigrants in the EU. In this vein, the EESC proposes for Treaty reform which ensures that immigrants who are long term residents in a Member State can become EU citizens.

### Studies on integration

The research papers drafted in the context of the [KING](#) (Knowledge for Integration Governance) project will soon be available on the Internet. Co-funded by the European Commission and run by the ISMU (Istituto e Studi della Multiethnicità) Foundation the objective of this project is the elaboration of a report on the state of play of migrant integration in Europe through an interdisciplinary approach. It also aims to provide decision- and policy-makers with evidence-based recommendations on the design of migrant integration-related policies.

## Free movement of EU citizens

On 1 January 2014, labour market restrictions were lifted for Romanian and Bulgarian citizens in nine remaining EU Member States: Austria, Belgium, France, Germany, Luxembourg, Malta, The Netherlands, Spain and the United Kingdom. The European Commission [welcomed](#) this underlining that facilitating free movement can play a substantial role in tackling the current unemployment crisis the EU is going through.

However, political tension on this topic escalated in some Member States, especially the UK. In order to stop the so-called benefits tourism, the UK government proposed to change the definition of “worker” to describe citizens from other Member States who have earned £150/week for at least three months. Only then, will EU citizens be able to access child benefits, child tax credit, job-seekers' allowance and housing benefits. Alongside these concrete measures, mainstream parties in other countries like [France](#) and [Germany](#) moved towards adopting negative discourses on free movement.

In a [Commentary](#) published in January 2014, the European Policy Centre warned about the negative consequences of this anti-free movement rhetoric. The EPC denounces the allegations portraying EU mobile citizens as benefits' scroungers and regrets the confusion created in terms of terminology between third country national migrants and EU citizens who move within the EU. Behind these seemingly simple words lie legal concepts to which different rights are attached. Therefore, intentionally blurring the lines between the two concepts may lead to a situation where a demand to decrease the rights from which EU citizens benefit may – even though wrongly - seem legitimate. However, the renegotiation of free movement provisions is inconceivable given the strong attachment of the majority of [Member States](#), the [European Parliament](#) and [citizens](#) to them. Moreover, the EPC warned that these attacks against a core European fundamental freedom could start a negative spill over effect putting in danger the entire European integration project.

In order to combat the social benefits tourism myth, DG Justice commissioned a report consisting of an [“Evaluation of the impact of free movement of EU citizens at local level”](#). The study is based on six case studies in European cities which count a significant number of mobile EU citizens: Barcelona, Dublin, Hamburg, Lille, Prague, and Turin. It shows that despite the overall positive attitude towards mobility in these cities, mobile EU citizens' access to the labour market, housing and children education is not always as easy as for the native population. Nevertheless, according to the findings of this report, mobile EU citizens contribute to the host economy by filling the gaps in the labour market and by contributing to the development of core sectors of the local economy.

Aiming to promote the free movement of workers, the European Commission published a proposal for a [Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers](#). While MEP Edit Bauer (EPP, Slovakia) has seen her draft report on this proposal and the mandate for negotiations with the Council [adopted](#) in EMPL Committee in November, the Parliament [gave](#) its consent to this proposal on 12 March. This new Directive is meant to give full

effect to the application of Article 45 TFEU and [Regulation 492/2011/EU](#). The EPC welcomes the vote of the European Parliament and agrees that this is a step forward towards a more homogenous application of the free movement of workers EU legislations among Member States.



## Special Focus

### The Swiss referendum and its consequences

On 9 February, the Swiss population said a shy “yes” with 50.3% of votes in favour of the initiative launched by the right wing Swiss Peoples’ Party aiming to impose quotas on immigration. The result of the referendum threatens, among other [EU and International Law provisions](#), the [Free Movement of persons agreement](#) between the EU and Switzerland. With 80,000 EU citizens arriving every year, EU and EFTA citizens represent around 66% of the foreign population in Switzerland. 450,000 Swiss citizens have [exercised](#) their right to leave and work in the EU.

As Diego Acosta Arcarazo (Bureau of European Policy Advisors) [highlights](#), it is now up to Switzerland to find a solution. The Swiss authorities started a “tour des capitales” in order to take the pulse of EU partners and discuss potential solutions. They have at their disposal three years to implement the results of the referendum. In this context, they aim to publish an implementation plan by the end of June. However, the first consequences of the vote are already visible. Swiss authorities declared they have to reflect in order to see if they can extend free movement provisions to Croatians (planned for 1 July). On its side, the EU stopped the cross border energy talks and [Horizon 2020](#) (EU framework programme for research and innovation) negotiations.

In an article for the Heinrich Böll Foundation, Alex Lazarowicz (European Policy Centre) welcomed the initial reaction of the European Commission, which stressed its openness to discussions with the Swiss partners while making it clear that there is very limited room for manoeuvre in discussions and that renegotiating the freedom of movement is not on the table. Indeed, Lazarowicz [emphasises](#), this firm position sends a strong signal not only in the context of EU-Swiss relations, but also within the EU, where free movement has also been under attack. In times of rising nationalistic movements the cornerstone of the European integration project has to be protected at all costs.

## EU Calendar

*Upcoming events*



### Council

According to the [indicative calendar](#) of meetings, published on 2 December 2013, the JHA Council will meet on **5 and 6 June**.



### European Parliament

Next LIBE committee meeting will take place on **10 April 2014**.

Next EP Plenary will take place between **14 and 17 April 2014**.

European Parliament elections will be held between **22 and 25 May 2014**.



### Other Events

*EU Fundamental Rights Agency* is organising:

**10-11 April 2014:** 7<sup>th</sup> Fundamental rights [platform meeting](#) in Vienna.

*Academy of European Law (ERA)* is organising:

**28-29 April 2014:** [Seminar](#): “Applying the Reformed Dublin Regulation”, in Trier.

*European Policy Centre* is organising (TBC):

**13 May 2014:** Conference: “Preparing the European Council Strategic Guidelines in the field of Justice and Home Affairs?” in Brussels.

*Academy of European Law (ERA)*, in association with *EPC* and *European Migration Law* ([www.europeanmigrationlaw.eu](http://www.europeanmigrationlaw.eu)) are organising:

**19-20 May 2014:** Annual [Conference](#) on EU Migration Law 2014 with focus on the [Long term residence directive](#), in Trier.

*Eurocities* is organising:

**18 June 2014:** [Conference](#) “ImpleMentoring, City-to-City Support for Integration”, in Brussels.