

Title : EUROPEAN UNION (EU) AND GERMANY MIGRATION CRISIS 2015
& BEYOND

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INTERNATIONAL MIGRATION AND REFUGEE LAW
RESEARCH REPORT

TITLE:

EUROPEAN UNION (EU) AND GERMANY MIGRATION
CRISIS 2015 & BEYOND

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A) INTRODUCTION

It's a crisis that has spread across Europe as refugees are forced to cross borders to escape the war-torn countries they've left. The majority of the refugees arrive in Europe through Greece and Italy, but there is an influx of refugees from other countries such as Syria, Somalia, and Afghanistan.

As of September 22, 2015, the European Union has conducted 1,500 rescue operations in 26 different countries. Many refugees have been abandoned by their relatives or smugglers who hoped that their family member's asylum status in Europe would protect them. Many want to relocate to Germany, France, or Britain, where the economy is stable, and the European culture is more accepting of people from other countries.

In response to the emergency situation, many different national groups have rallied behind a common cause. The European Union has been forced to use its resources and money to provide financial aid. In addition, Germany has accepted thousands of Syrian refugees since 2013, with Paris taking in about 2,300 migrants from Syria during September 2015. Then other countries have temporarily closed their borders for refugees: Hungary sealed its borders against refugees on September 15, while Poland attempted to seal its borders against thousands of refugees on September 16. What started as a crisis for one country has spread to neighbouring countries and has become a European Union refugee crisis.

European Union, as a supranational organization has its legal framework that assists the refugee's movement in the region called Dublin Regulation (1990) and European Asylum System (CEAS). The Dublin Regulation prevents asylum seekers from "asylum shopping," where they send their applications to multiple member states for better deals. Under the rule, if an asylum seeker is fingerprinted and arrives in another member state, they are responsible for their asylum application.

Nevertheless, the Dublin Regulation underwent reformation in 2013 as the regulation failed to tackle refugees' issues. Plus, in 2016, the Commission proposed reforms for the Common European Asylum System, where the system currently has weaknesses that can only be solved through a burden-sharing system.

B) LITERATURE REVIEW

This literature review examines the European Union legal framework and instrument to ensure asylum seekers are treated equally in Europe. Moreover, we overlook Germany as a case study to observe international and domestic refugee law implementation challenges. Our research findings outlined that the prominent EU refugee's legal framework is the Common European Asylum System. Five legislative instruments and one agency govern the system. We focused on one instrument, the Dublin Regulation (After the Storm: Learning from the EU Response to the Migration Crisis, Elizabeth Collett, 2018)¹. Next, Germany has their own Asylum Act and the Residence Act. These two most important immigration laws in Germany provide rules for the admission and handling of refugee claims (Library of Congress, Refugee Law, and Policy, Germany).

¹Elizabeth Collett and Camille Le Coz, 'After the Storm: Learning from the EU Response to the Migration Crisis' [2018] Brussels: Migration Policy Institute.

C) METHOD

This report will be carried out by qualitative methods such as literature research and web research to achieve a successful report on a two-book as primary references which is title "After the Storm: Learning from the EU Response to the Migration Crisis," written by Elizabeth Collet and Camile Le Coz, and "South-North Migration of EU Citizens in Time of Crisis." This report collected primary data using a web survey and in-depth library research to explore information and problems. This research method intends to identify the root problem regarding the migration crisis in European Union (EU) and how Germany response to tackle it. Besides, data and information have been collected from available secondary sources such as journal articles and books. The list of decided cases was obtained from the past events that occurred and fit the current dispute, the EU migration crisis. Once a week, we would engage in a video conference to gather, discuss, and analyze our findings cooperatively for the video call duration.

As we refer to secondary sources such as other articles and journals that we found online, we must fully utilize all sources we could use to understand this issue clearly. In this report, the key point here to analyze is the EU's migration crisis, notably caused by the poor enforcement policy. Then, to have a deep understanding, we can divide it into two parts: firstly, the formal policy refers to the EU's legal framework, and secondly, the Member States' legislation of the migration issue. Thus, in this report, we specifically chose Germany in response to the migration crisis and how EU-Germany relations manage it.

Next, to clear the hurdles in the form of misunderstandings we've encountered while conducting our report, we consulted our lecturer, Sir Syafiq. Any queries regarding the report and its content were immediately asked our lecturer via WhatsApp and email. This allowed us to overcome any confusion and difficulties during the research and preparation of this report.

D) RESULTS

When analyzing the EU's policy measures of the migration crisis, we could see that it still shows a weak side to provide a unitary approach. This is not the first time that the EU faced some issues affecting Europe. The incapacity of the EU in offering the world the image of united Europe can be proved from the 2005 Constitutional Crisis, the 2010 Financial Crisis, and the Greek Debt Crisis up until Brexit and the Schengen Crisis (2015-2016)². Based on our understanding, we believed that this is caused by a series of complex factors: the poor results of the European Project, the deepening divisions among the Member States, and the division of standard solutions to issues that threaten the stability of the EU³. To discuss further the policy, we have to look at the legal framework on the legislation in the EU that legally applied to particular matters, and in this case, any legislation related to asylum or migration crisis. There are two main instruments of the legal framework that can be assessed thoroughly: the Dublin Regulation and the Common European Asylum System.

The Dublin Regulation replaces the Dublin Convention's intergovernmental treaty created in the 1990s and regulates the asylum law on asylum process application within the EU. Generally, the purpose of this regulation is to identify which country is responsible for giving asylum applications⁴. In this case, the responsibility rests with the country where the asylum seeker enters the EU region for the first time and ensures the application is fairly reviewed in a Member State. Besides, it is speculated that the nature of the system's operation is that the asylum laws and practices of EU countries are based on common standards. The Common standard is a concept that enables asylum seekers to enjoy a fair treatment of

² Simone Bertoli and Herbert Brucker, 'The European Crisis and Migration to Germany: Expectations and Diversion of Migration Flows'.

³ *ibid.*

⁴ Rebecka Ingimarsdottir, 'The European Union's Response to the Migration Crisis' [2016] Department of Political Science, University of Umea.

protection in all EU Member States⁵. However, it is not that way because each State in the EU has different asylum legislation depending on their domestic law, resulting in different treatment of asylum seekers throughout Europe⁶.

In addition, looking at how Germany managing asylum seekers issues, Germany's asylum policy is based on its Basic Law and international regulations (1951 Refugee Convention). From January to December 2015, almost a million asylum seekers arrived in Germany⁷. The country has been the most sought-after destination for asylum seekers in the European Union because of its socioeconomic stability and pro-refugees' policy. Germany demonstrates an explicit intention and commitment to foster support for refugees⁸.

However, in 2016 the German government revealed that it lost track of about 13 percent of the people it registered as asylum seekers in 2015 because the asylum can enter Germany with the minimal requirement. Many of them went to other European countries while the others were able to stay in Germany illegally. At the end of 2013, 7.6 million non-citizens lived in Germany⁹. This shows some loopholes in the European Union refugee framework, and Germany keeps over-burdened with unequal refugee distribution.

⁵ *ibid.*

⁶ *ibid.*

⁷ Global Migration Data Analysis Centre Data Briefing Series, Issue No. 1, January 2016

⁸ Simin Fadaee, *The Long 2015 in Germany: Activists' Pro-Refugee Frames and Media Counter Frames*, [March 13, 2020]

⁹ Jean-Michel Lafleur, *South-North Migration of EU Citizens in the Time of Crisis* (Mikolaj Stanek ed, Springer Open 2016).

Table 1. The distribution of asylum seekers in the EU

	Number of first time asylum applicants in EU member states			Share in EU total (%)	Number of applicants per million inhabitants*
	Q4 2014	Q1 2015	Evolution (in %) Q1 2015 / Q4 2014	Q1 2015	Q1 2015
EU	184,200	184,815	0%	100%	365
Belgium	4,090	3,440	-16%	1.9%	307
Bulgaria	4,235	3,190	-25%	1.7%	440
Czech Republic	280	355	27%	0.2%	34
Denmark	3,700	1,505	-59%	0.8%	267
Germany	55,310	73,120	32%	39.6%	905
Estonia	40	50	25%	0.0%	38
Ireland	435	625	37%	0.3%	136
Greece	2,115	2,610	23%	1.4%	239
Spain	1,950	2,035	4%	1.1%	44
France	15,515	14,770	-5%	8.0%	224
Croatia	80	40	-50%	0.0%	9
Italy	21,285	15,245	-28%	8.2%	251
Cyprus	445	430	-3%	0.2%	501
Latvia	75	45	-40%	0.0%	23
Lithuania	160	45	-72%	0.0%	15
Luxembourg	320	265	-17%	0.1%	482
Hungary	27,925	32,810	17%	17.8%	3,322
Malta	315	345	10%	0.2%	811
Netherlands	4,375	2,425	-45%	1.3%	144
Austria	10,565	9,705	-8%	5.3%	1,141
Poland	1,655	1,440	-13%	0.8%	38
Portugal	140	180	29%	0.1%	17
Romania	360	335	-7%	0.2%	17
Slovenia	90	45	-50%	0.0%	22
Slovakia	90	50	-44%	0.0%	9
Finland	1,100	960	-13%	0.5%	176
Sweden	19,370	11,415	-41%	6.2%	1,184
United Kingdom	8,155	7,335	-10%	4.0%	114
Norway	2,565	1,520	-41%	-	298
Switzerland	5,135	4,125	-20%	-	507

Source: Eurostat, News release 18 June 2015.

To counter this migration movement threat, the German federal office for migration has reformed the Orderly Return Law, which was adopted in 2019. This law allows the authorities to detain an asylum seeker if they fail to cooperate with the deportation process. It also allows the authorities to deport an individual without a judicial order.

E) DISCUSSION

In dealing with such a large-scale crisis, the EU is evident that no country can bear the burdening impact alone, and the Member needs to cooperate and find a unified way to deal with the crisis. Discussing the deficiencies of the EU, it is clear that the current policy needs to be revised thoroughly and adopting a new measure together with all Member States so that they have a unitary approach which also increases the integration between them. In this case, instead of closing borders and imposing national quotas, the EU needs a common asylum policy with transparent legislation¹⁰. In 2016, for instance, efforts were made to negotiate new asylum systems and new rule whereby, in line with the approach set out in the European Agenda for Migration, the EU Commission suggested a review of current asylum policy to manage migration flows better and providing adequate protection to those in need¹¹. Lastly, in our opinion, we do agree that it is a positive step to reform the Dublin Regulation to facilitate the migration crisis efficiently across Europe. The latest development was on last year in 2020, where the EU Commission proposed a New Pact on Migration and Asylum, setting out a comprehensive and fairer policy that ensures all Member States responsible for managing asylum and migration crisis.

Besides, on a state level, Germany faced the most numbers of refugees compared to the other Member States because of its welcoming policies and stable economy. The reformation of the Ordered Return Act has modified the criteria for detention pending deportation and add additional rules. For example, a limited three-year residence permit and a new concept called "cooperative liability" are proposed. If the foreigner does not comply with specific directives,

¹⁰ Collett and Le Coz (n 1).

¹¹ *ibid.*

it is designed to allow the authority to detain the refugees but still provided fundamental human rights by the government.

Furthermore, in our opinion, Germany's step to strengthen its legal instrument to tackling this unequal refugee distribution is a wise step. Without specific directives and additional requirements, many refugees will come over to Germany freely as usual, which Germany cannot take anymore. Moreover, Germany politician has to struggle about several years in facing a rise of the far-right movement in the country (anti-refugee's policy). The refugee has seen as a threat to their culture and employment opportunities to local people.

F) CONCLUSION

To conclude, the evolution of EU migration law has become a good reference for other countries outside of the EU. This is because the effectiveness of the EU in tackling the migration crisis was reflected in their constant efforts to revised their legal framework from time to time to fit with contemporary demands in Europe as a whole. Besides, on a state level, as we studied Germany's response to this crisis, they faced the most numbers of refugees compared to the other Member States because of its welcoming policies and stable economy. Lastly, in our opinion, Germany's step to strengthen its legal instrument to tackle this unequal refugee distribution is a wise step.

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