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Towards a new European refugee policy that works

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Towards a New European Refugee Policy that Works

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Abstract

While Europe feels inundated by the 2015 refugee waves, the policy responses of the European Union and its member countries exhibit signs of helplessness. The Dublin system assigning responsibility to the country of first-entry has failed. Identifying true asylum seekers effectively and distributing them fairly across Europe requests loyalty to the once accepted humanitarian standards and solidarity with the principles of Europe. A turnaround of the European asylum policy is needed: Commonly organised registration, selection and distribution systems have to be followed by an early access of asylum seekers to the European labour markets.

JEL classifications: F51; F55; H75; J61; J64; J68

Keywords: Refugees, Asylees, Asylum Policy, Migration, Labour Market Access

1. Introduction

In 2015, Europe and the European Union (EU) member states (EU-28) in particular experienced an unprecedented surge of refugees, asylum seekers and other undocumented migrants. The EU-28 recorded 1,322,825 asylum applications¹ with 476,510 in Germany (36%), 177,135 in Hungary (13%), 162,450 in Sweden (12%), 88,160 in Austria (7%), and 83,540 in Italy (6%). However, unlike all public perception, the rise did not come overnight: already 2013 and 2014 brought an exceptionally large number of asylum applications (see **Figure 1**).

This historic phenomenon triggered a serious threat about the existence of the Union and its principles.² It certainly gave rise to populist, nationalist, and extreme political parties that seized the opportunity to pour fear into their populations and take undemocratic, anti-union, xenophobic, and subhuman actions. Examples are the closing of the borders against the Schengen agreements, installations of barb-wired fences, subhuman treatment of asylum seekers in detention camps, Brexit, isolationism, parochialism, active hostility and opposition among the EU-states.

While receiving masses of refugees is not a new phenomenon for countries in Europe, what made this a crisis is that the EU-28 to date has no enforcing super-national power and lacks a unified humanitarian and refugee system under which all member-states abide. Moreover, within each country, there are discrepancies in the handling of refugees and asylum seekers as well as in the proper authority in charge (national or local). With an evolving notion of the nation-state and EU's incomplete Common European Asylum System (CEAS) the result is a chaotic, divided and finger-pointing way of handling the seriousness of this humanitarian drama that is unfolding on the continent and the Mediterranean Sea with a perceived flood of refugees and thousands of deaths.

Section 2 outlines the differences between migrants, refugees and asylum seekers and their humanitarian rights. Section 3 summarises the European refugee and asylum system. Section 4 studies the labour market access regulations. Section 5 reviews the strategic European asylum policy issues.

2. Mobility, Migrants, Refugees, Asylum Seekers, and Human Rights

¹ Note that these are lodged asylum applications; the number of refugee inflow is much larger. For a deeper analysis of the asylum flow see Wech (2016).

² The situation has been debated among others by IMF (2016), EU (2016), Rinne and Zimmermann (2015) and Hinte, Rinne and Zimmermann (2015).

The word migrants denotes economic migrants who emigrate (leave) from their home country out of their free volition seeking a better life in a foreign country. The primary motive of these migrants is jobs and money. While abroad, they enjoy protection from their home government. Refugees and asylum seekers or asylees however, are forced to emigrate, often abruptly and overnight, fleeing war, persecution, or natural disasters and seek protection by another sovereign country abroad.

The difference between refugees and asylum seekers is that the former³ arrive in the host country with a pre-approved protection refugee status either from the new host country or from humanitarian organisations that also resettle them in the new host country.⁴ Asylees arrive in the new country usually as displaced people or illegal immigrants and immediately seek asylum and sanctuary by filing an application. If their application is approved by the government of the host country, asylum seekers take the status of refugees.

The 1951 Refugee Convention (RC) and the 1967 Protocol outline the rights of displaced people and the legal obligations the host countries have to protect them. The RC defines refugees as those who have a well-founded fear of persecution because of their race, religion, nationality, membership in a particular social group or political opinion, and are unable to avail themselves of the protection of that country, or to return there, for fear of persecution. A key provision of the RC is the *non-refoulement*, meaning that refugees should not be returned to a country in which they fear persecution (Article 33). Moreover, Article 14 of the Universal Declaration of Human Rights of 1948 states that everybody has the right to seek and to enjoy asylum from persecution in other countries.

However, the RC does not specify how individual countries determine if a displaced person fulfils the definition of a refugee. While the EU abides by the RC and while it perceives asylum as a fundamental right each EU-state develops its own rules and interpretation, resulting in discrepancies and gaps among countries. Typically, the burden of proof is up to the asylee, who has to prove that s(h)e left the home country and cannot return because of fear of persecution. If an asylee's application is denied, the host country must explain to the asylee the reasons for the denial. In turn,

³ Refugees can also be stateless people according to Directive 2011/95/EU (OECD, 2016a). Another category is the tolerated residents.

⁴ OECD (2016c) refers to people who have applied for asylum and have been granted some sort of protection as "humanitarian migrants"; this label includes migrants resettled through UNHCR humanitarian programs or through other private organisations (as usually occurs in Australia, Canada and the U.S.).

the asylee has the right to appeal. In almost all European countries, granting asylum is not permanent, while it varies by country from 2 to 3 years (Germany) to 5 years (the UK). Sometimes, individuals who do not qualify for asylum may qualify to stay for humanitarian reasons. This is also a temporary status.

The status that countries grant to asylees as well as restrictions about family reunification feed back on the behaviour and integration efforts by the asylees. For example, a temporary protection status and no family allowed may be received as a signal that they are not welcomed and soon will be deported. Thus, asylees will most likely not make any effort to integrate in the host country. This can further feed back negatively on the perceptions natives have about refugees and create a vicious cycle.

3. The European Refugee and Asylum System

The EU asylum legislation involves various regulations: An *asylum procedures directive* seeks to establish a fair and efficient asylum procedure. A *reception conditions directive* establishes minimum standards of living conditions for asylees and ensures that they have food, shelter, employment and healthcare. Further, a *qualification directive* sets up common grounds about granting asylum and expects rights such as residence permits, access to jobs and education, healthcare and welfare to be observed. The *Dublin Convention* of 1997 as well as its recasts (the *Dublin II Regulation*⁵ in 2003 and the *Dublin III Regulation* in 2013) determine that the EU-state responsible for accepting or rejecting asylees is the one in which the asylee was first fingerprinted. This is to prevent “asylum shopping” and to reduce the number of “orbiting asylees” from one to the other EU-state. They also allow for “readmission,” meaning that an EU-state can return an asylee back to the first EU-state of entry. The criteria used for the responsible EU-state are tied to: (i) family considerations/unity above all other, (ii) whether the applicant has a visa or residence permit in an EU-State, and (iii) whether the asylum seeker has entered the EU legally or irregularly. The EU asylum fingerprint database, *EURODAC* of 2003 aims to “prevent, detect or investigate” serious crimes and terrorism, not only related to refugees.

Since 1999, the Common European Asylum System (CEAS) and since 2008 the Policy Plan on Asylum offer three pillars underpinning the development of CEAS: (i) harmonise standards of

⁵ The exception was Denmark, which applied it in 2008.

protection by aligning asylum legislation of the EU-States; (ii) achieve effective practical cooperation; (iii) increase solidarity and responsibility-sharing among EU-States, as well as between EU and non-EU countries. As of 2011, a European Asylum Support Office (EASO) enhances cooperation among EU-states in managing asylum requests and contributes to the implementation of CEAS. The objective is on facilitating the protection of asylees, coordinating efforts among EU-states, exchanging information about countries of origin, assisting in refugee relocation, and allowing for a smooth transition of asylees among countries. The European Refugee Fund of 2000 provides financial support and resources to projects that integrate refugees as well as to the reception and return of asylees. The Asylum, Migration and Integration Fund (AMIF) for 2014-2020 with a budget of 3.137 billion Euros is set up to implement and strengthen a common approach to asylum. Since 2005, Frontex targets cooperation between national borders and is securing external borders according to EU rules.

In the fall of 2015 revisions were proposed to improve the Dublin Regulations (DR) and make them more functional including (i) insert a crisis relocation mechanism clause that allows for some leeway, (ii) the responsible EU-state would not be one of first entry, (iii) take into consideration a common European list of Safe Countries of Origin and/or Transit as part of the criteria, (iv) introduce a permanent distribution key accounting for each EU-state's relative size, wealth and absorption capacity. Another reform proposal has been the "early warning, preparedness and crisis management mechanism." It entails alerting the EU immediately when the Dublin system is being endangered due to migration pressures and/or deficiencies in the asylum system(s) of one or more EU-state(s).⁶ Key aspects of the proposal were: (i) protection of applicants via compulsory personal interviews, (ii) suspend the transferring of asylees during their appeal, (iii) ensure free legal assistance upon request, (iv) guarantee the right to appeal against transfer decision, (v) have a single ground for detention and strict limitation of the detention period, (vi) have exhaustive and clearer deadlines such as the entire Dublin procedure cannot last longer than 11 months, or 9 months to take the asylee back.

To allow CEAS to work well both in times of high migration as well as in normal times the EU Commission proposed in 2016 to (July 2016 EU Commission PressRelease⁷): (i) replace the Asylum Procedures Directive with a Regulation to simplify, clarify and shorten asylum procedures;

⁶ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm

⁷ http://europa.eu/rapid/press-release_IP-16-2433_en.htm

safeguard common guarantees for asylees; guarantee stricter rules against abuse; and harmonise rules about safe countries; (ii) replace the existing Qualification Directive with a new Regulation to achieve a greater convergence of recognition rates and forms of protection; firmer rules sanctioning secondary movements; grant protection as long as it is needed; and strengthen integration incentives; (iii) reform the Reception Conditions Directive to ensure that EU-States apply the standards and indicators about reception conditions as well as constantly update contingency plans especially facing disproportionate pressure; ensure that asylees remain available and do not escape by allowing EU-States to give them residence or impose reporting obligations; reception conditions will only be provided in the EU-State responsible and clarify rules about when entitlement to material reception conditions can be scaled back and when financial allowances may be replaced with material reception conditions provided in kind; let asylees work within six months after their application at the latest, and labour market access is in full compliance with labour market standards; and have common reinforced guarantees for asylees with special needs and for unaccompanied minors.

In addition, the Commission proposed an EU Resettlement Framework along with the long-term policy on better migration management stated in the European Agenda on Migration. While the EU will act as a whole, it will be the EU-states that decide on the number of resettled people per year. Future resettlements will be implemented through annual EU resettlement plans, which set the broad geographical priorities from where the resettlement will take place, the maximum total number of persons to be resettled in the following year based on the participation and contributions made by the Member States and Associated Schengen countries in the specific annual resettlement plan. A European Border and Coast Guard Agency with a stronger role and command was proposed in December 2015 to replace Frontex.

It is clear that while these are steps in the right direction the EU lacks a common European framework, common governance and a supra-national power to impose the same rules to all its members.

In September 2015 the EU adopted the *Emergency Response Mechanism*⁸ to distribute and relocate some 160,000 of the 2015 migrants to different EU member-states using quotas based on (i) 40% of the size of the population, (ii) 40% of the GDP, (iii) 10% of the average number of past asylum

⁸ See [http://europa.eu/rapid/press-release MEMO-15-5698_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5698_en.htm)

applications, and (iv) 10% of the unemployment rate. Relocation were planned to be applicable to nationalities with an EU-wide average recognition rate of 75% or higher (such as Syria and Iraq). States receiving refugees got 6000 € per relocated person. EU-states unable to participate in the emergency relocation mechanism, were expected to contribute 0.002% of their GDP to the EU budget. However, this concept was not put largely into practice due to the resistance of member-states to cooperate.

4. Asylees' and Refugees' Right to Work

There is wide variation among EU-states about allowing asylees to work while their application is pending.⁹ Some countries impose a time-limit, others add labour market restrictions and institutional limitations. In most countries, asylees are not allowed to be self-employed. If asylees are granted asylum they become refugees and are allowed to work immediately under the 1951 RC. However, it often takes several months to a year from the moment a person arrives and claims asylum until an application can be lodged. Some countries allow some work access also during this period.

Figure 2 provides a classification and overview about the situation in the EU-28 for asylees. An immediate admission to the labour market is provided by Latvia and Sweden, while Portugal imposes a waiting period of 1 month; Greece, Austria and Germany (with some qualifications) impose 3 months. Lithuania and Ireland do not allow for work during the asylum application period. All other countries have 6, 9 or 12 months waiting periods.

On top there may be numerous other restrictions to take up work, which vary substantially across countries.¹⁰ For instance, in the UK the job needs to be on the *Shortage Occupation List*, and apply to jobs only with a minimum of 30 hours/week workload that pay an occupation-specific minimum salary. Asylees in Sweden have to provide identity, need a working permit and are not allowed to work in sectors and jobs that require skills certification. In 2015, Sweden launched new initiatives such as fast-tracking in order to integrate skilled refugees into shortage occupations (OECD, 2016b). In Cyprus, asylees can only work in low skilled jobs (fishing, waste management industries, etc.). In Austria, employment is limited to seasonal work in tourism, agriculture or forestry.

⁹ See <https://www.migrationwatchuk.org/briefing-paper/316>

¹⁰ See <https://www.migrationwatchuk.org/briefing-paper/316>. The following are illustrative examples.

In Germany, the adoption of a new law in October 2015 imposed new restrictions on the previously newly introduced 3-month waiting-period. Asylum seekers from safe countries of origin are completely excluded from access to work. All others who stay at the initial reception centres have also no access to the labour market until they have reached the maximum period of 6 months of allowed stay, and they have to leave. If they manage to leave earlier for legal or practical reasons (e.g. because of overcrowding), they may have access to work if (i) their waiting period since the asylum application was filed is longer than 3 months and (ii) they receive an employment permit by the labour office. The employment permit requires a concrete job offer by a company in case the permit is granted and a detailed job description. The job centre pursues a *priority review*, to see if there is another job-seeker who is a better match for the job such as a German citizen or a foreigner with a residence permit. They also carry out *reviews of labour conditions* to examine whether labour rights and wages are according to standards.

Spatial dispersal is important for labour market integration. Typically, the early asylum procedure focuses on a strict geographic allocation of refugees with local residence obligations. Mobility within the host country or even across EU-states is initially ruled out. This is naturally a potential problem for taking up work and has been identified as a cause for long-term labour market integration failures.¹¹ Hence, countries like Germany and Austria began to allow asylees to follow the geographical location of the acquired jobs.

Further, the importance of mapping skills with labour market needs has been recognised. For instance, through *early intervention* Germany is mapping the skills of asylum seekers with the labour market at a very early stage. Case workers assess the asylees' competencies at reception facilities, through a "work package" and the federal employment office develops individual employment strategies to match asylees' skills with local labour market needs. A similar scheme is just recently used in Finland, where interviews occur at reception camps, but matching skills are considered only after geographic settlement is chosen (OECD, 2016b).

5. A Strategic European Asylum Policy

The world will continue to generate conflict and asylum seekers and Europe needs to be prepared to take its fair share based on the Geneva 1951 Refugee Convention and balanced across the member-

¹¹ See Hatton (2013) and Zimmermann (2016) for intensive discussions and reviews of this point.

states. Surviving after they have reached the soil of an EU-state, all refugees and asylum seekers have also economic motives. They want to live well together with their families. It is in the best interest of migrants and the host countries that refugees move as soon as possible and politically acceptable to the geographic location where they can best provide for their living through work and education. Those not recognised as refugees need to be re-located to their country of origin as fast as possible.

Asylees and refugees are temporary migrants by definition. A substantial part of those migrate on when the situation in their country of origin has improved or a different long-term perspective in another country comes up. However, they should have the possibility from the beginning to transfer to a regular labour migration or permanent immigration scheme if they qualify. This would require a transparent immigration system leading to a short or long-term work permit or even citizenship. Point systems relying on categories like job offers, education, language proficiency, labour market experiences, qualifications, and social engagement have been shown to be effective to guide mobility and decisions.

The Dublin system has exacerbated imbalances among EU-states and placed enormous burdens on the southern-European gateway countries (Greece, Italy, Malta, and Spain). Eventually, it has turned EU-states against each other such as is the case of Germany versus Hungary and Austria. It undermined solidarity and harmony across the EU-states. It failed because even at times of small numbers there was neither the needed effective first registration and initial decision about the asylum request nor the willingness of the other European countries to receive a fair share.

However, there is a case for an effective European asylum policy. In a common market and open society, there are so many spill-overs of costs across EU-members that make cost-minimising strategies by coordination beneficial. Besides, Hatton (2015) argues that granting asylum to displaced people is similar to locally produced public goods. Countries providing asylum based on humanitarian principles as well as on their legal obligations as signatories of the Geneva Convention. Knowing that refugees are protected from persecution in one country makes people in another country feel better, since they do not have to host any refugees. But if there is no cooperation between countries, this public good is underprovided.

If refugees are mainly a "burden", then a quota system seems appropriate following criteria like population size, GDP, unemployment and existing diaspora (Rinne and Zimmermann, 2015). If

countries take more than their fair share they should be compensated for their extra costs from the EU budget. As Fernández-Huertas Moraga and Rapoport (2015) suggest, this can be optimised using a system of Tradable Refugee-Admission Quotas supplemented by a matching scheme that takes into account the preferences of both refugees and host countries. Some countries are willing to pay others in order to receive fewer refugees, and some countries are willing to receive compensation for having more refugees. Therefore, a good policy that mitigates the inefficiencies inherent in free-riding, is to apportion refugee quotas to countries and let them trade freely.

However, refugees are not just a burden, as people are concerned about their fate, volunteer to help and donate money. Refugees can and are willing to re-finance their costs through work, and they may be useful in the economies of the host countries; making this transparent may reduce public tensions about refugees substantially. Education and the provision of work experiences might turn out as effective long-term development policies and foster trade. Refugees can also be a mobility reserve to better allocate labour within and between member-states; migrants are perceived to be more mobile than natives, following labour market needs. This requires opening up the labour market as early as possible marking a substantial regime switch in the European refugee policy which traditionally did not allow asylees to work.

Europe should adopt a proactive strategy. Therefore, education and training such as language and other civic courses should be offered as soon as people are recorded in reception centres. In addition, adult education should be provided to those low-skilled who are ready and willing to work. Particular attention should be paid to the most vulnerable group, the unaccompanied children migrants.¹² Besides physical health checks, countries should provide mental health check-ups starting at the reception camps. Displaced people not only flee traumatic conditions, violence and abuse, but they also go through a painful and agonising journey until they arrive in a safe host country. They often suffer from family separation, uncertainty about the success of their application, and inactivity and jobless limbo in the camps. Countries should simplify and expedite the labour market entry of asylees while they are still in reception camps. An early profiling about labour market characteristics is imperative as the ability to move with jobs to other geographic areas in the host countries. Refugees should be freely mobile across Europe after granted that status. This would have a lasting effect on social integration and labour market success. Further, host countries

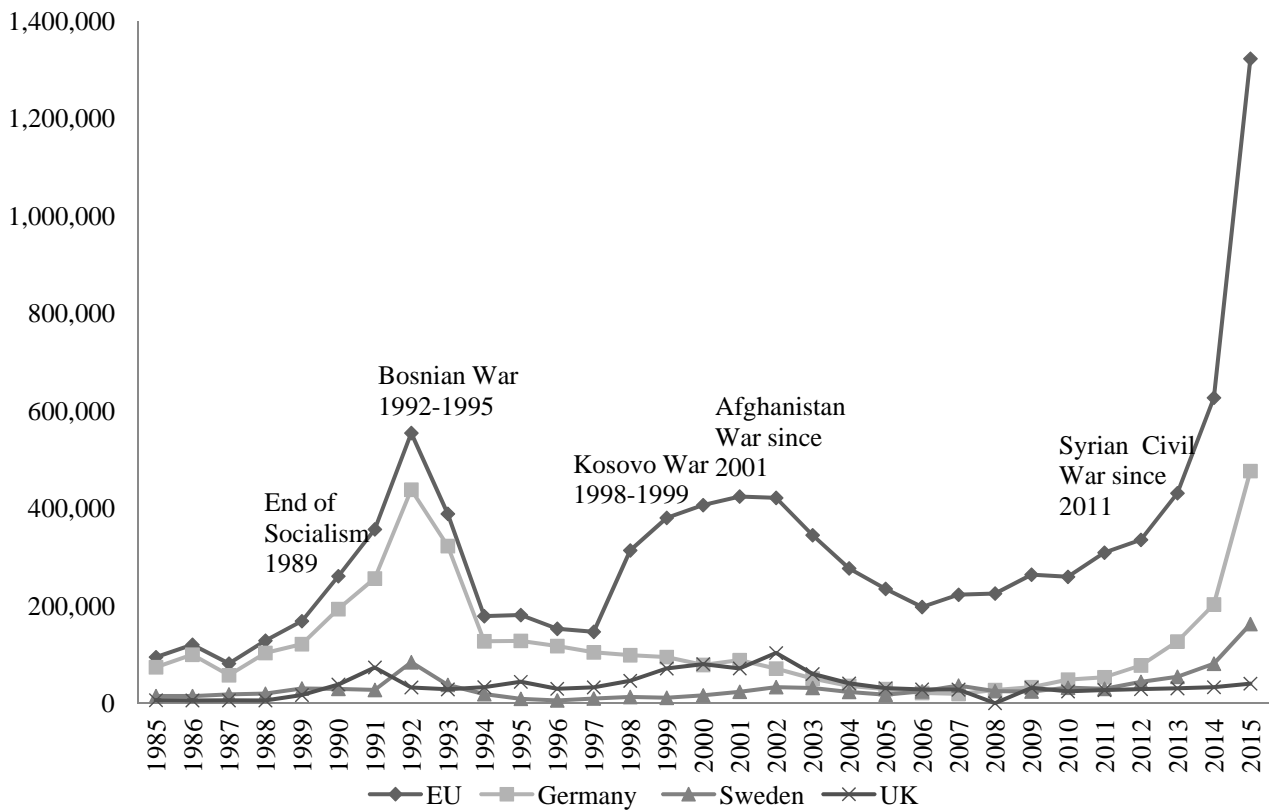
¹² The number of unaccompanied children migrants seeking asylum in Europe reached 96,000 in 2015 (<http://ec.europa.eu/eurostat/web/main/home>).

should mobilise the diaspora¹³ from the refugees' origins and involve them in the integration, acculturation and adjustment of refugees.

¹³ For an introduction into diaspora economics and its potential see Constant and Zimmermann (2016).

Figure 1

Asylum Applications in the EU and Selected EU-States: 1985-2015

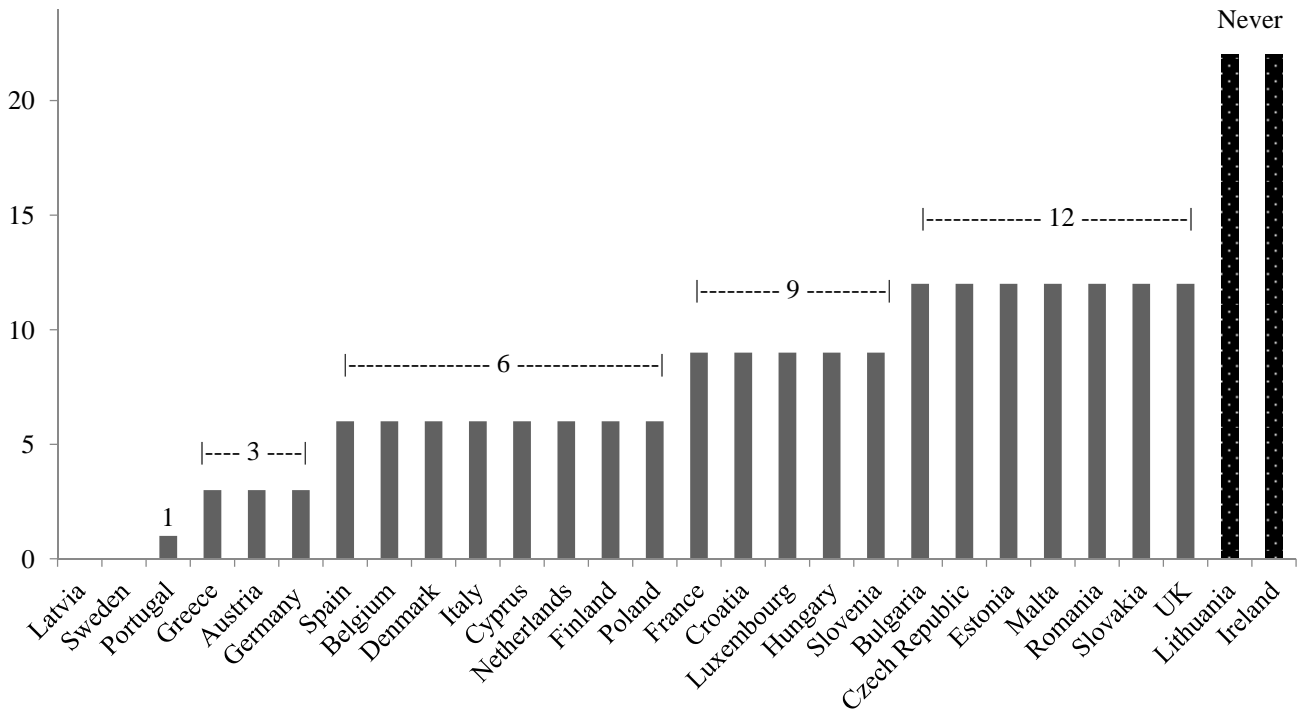


Note: (a) In 2015 the EU recorded 1,322,825 applications with 476,510 in Germany (36%), 177,135 in Hungary (13%), 162,450 in Sweden (12%), 88,160 in Austria (7%), 83,540 in Italy (6%), and 40,160 in the UK (3%). (b) From January to September 2016 the EU recorded 927,100 applications with 612,415 in Germany (66%), 26,875 in Hungary (3%), 19,860 in Sweden (2%), 31,935 in Austria (3%), 72,545 in Italy (8%), and 22,970 in the UK (2%).

Source: Eurostat (http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics), own calculations

Figure 2

Waiting Period After the Asylum Application is Lodged Until Allowed to Work, in Months



Note: When an application is lodged and while it is under consideration a person is called an asylee. If asylees are granted asylum they become refugees and are allowed to work immediately under the 1951 Refugee Convention. However, it often takes several months to a year from the moment a person arrives and claims asylum until he can lodge an application.

Source: AIDA - Asylum Information Database (<http://www.asylumineurope.org/>), own calculations

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