



# EU migration law an advanced introduction

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## Outline

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- 📖 The workings of EU law: brief intro
- 📖 A multi-level legal environment
- 📖 EU migration policy: analysis and discussion
- 📖 Right to family reunification and access to the labour market: overview and discussion
- 📖 Researching EU migration law: tools and resources



## The workings of EU law brief intro

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- ☐☐ Conferral
  - ☐☐ Creation of an AFSJ as a shared competence
  - ☐☐ A Common European Asylum System, Common Immigration Policy and the fight against irregular migration
  - ☐☐ Directives as instruments of EU law
- level of discretion
  - more favourable standards



## A multilevel legal environment

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### A. International level

- 1951 Refugee Convention

International human rights protection regime (ICCPR, ICESCR, CRC, CAT)

### B. Council of Europe level

- European human rights protection regime (ECHR, European Social Charter)

### C. EU level

- EU level fundamental rights protection regime (EUCFR)



## A multi-level legal environment

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- Art. 78 TFEU: asylum policy must be in accordance with the 1951 Refugee Convention *and other relevant treaties*
- Art. 79 TFEU: immigration policy aims at ensuring fair treatment of third-country nationals
- Art. 6 § 1 TEU: EUCFR shall have the same value as the treaties



## A multi-level legal environment

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- Art. 6 § 3 TEU: Fundamental rights as guaranteed by the ECHR and as they result from the constitutional traditions common to the MS: general principles of Union's law
  
- Art. 52 § 3 EUCFR: ECHR as the 'threshold'
  
- Art. 53 EUCFR: Charter provisions should not be interpreted as restricting or adversely affecting human rights



## EU's ambition in AFSJ policies

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- ✧✧ From freedom of movement in the internal market for EU citizens to the abolition of internal borders in the AFSJ for TCNs
- ✧✧ Europeanisation of decision-making process (QMV & co-decision) from 1986 with Single Act to Lisbon in 2009
- ✧✧ Competences of EU since 1999 (Amsterdam)
- ✧✧ “Common policy” as objective for visas <3months, external borders, immigration >3 months (States' favor) & asylum (protection as a right)



## A. EU's immigration policy







## EU immigration policy an overview

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- Art. 79 § 1 TFEU: “common immigration policy”; “efficient management of migration flows” and “fair treatment of third-country nationals residing legally in Member States”
- As well as “the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings”
- 79 § 3 TFEU: external dimension (readmission agreements)



## EU immigration policy an overview

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- 79 § 4 TFEU: promotion of integration measures, however, excluding legal harmonisation in this area
- 79 § 5 TFEU: MS retain right to: “determine volumes of admission of third-country nationals [...] in order to seek work, whether employed or self-employed”
- but family reunification a right !



## EU immigration policy an overview

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- ✧✧ Legal migration following motive of admission:
  - ✧✧ Family reunification
  - ✧✧ Blue card (highly skilled)
  - ✧✧ Students and researchers
  - ✧✧ ICTs
  - ✧✧ Seasonal workers
- ✧✧ Long term residence directive (from temporary to permanent migration)
- ✧✧ Fight against illegal migration: return directive; employers sanctions directive



## EU immigration policy critical remarks

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- Prospects for a common policy on admission of third-country nationals for employment?
  - Difficulties in reaching consensus among MS with different policies regarding regulation of their labour markets
  - To date, limited EU-wide consultation with third countries on access to employment in EU MS, although introduction of mobility partnerships is changing this



## EU immigration policy critical remarks

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- But if no common policy, following undesirable consequences can be identified:
  - Different / complex admission policies fuel irregular migration, and unregulated “secondary movements” between MS
  - No uniform protection of rights at EU level
  - Highly skilled migrants choose other countries over EU



## Voice your opinion!

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- Do you think EU's legal migration system is adequately developed?
  - Should the EU focus on attracting specific types of legal migrants (i.e. students, highly-skilled migrants, low-skilled migrants) and if so, which?
  - Are you in favour or against national-level schemes of regularisation for irregular migrants?
  - Do you think that private individuals who hire irregular migrants should be sanctioned?
  - What is your opinion about seasonal work?
  - At national level, do you think Italy needs to admit more or less legal migrants?
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## B. Focus on family reunification and access to the labour market





# Asylum seekers

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<b>Right to family reunification</b>	<b>Access to the labour market</b>
No; only right to family unity with family members in same MS or through Dublin	Yes but highly conditioned





# Recognised beneficiaries

Category	Access to the labour market	Right to family reunification
<b>Refugees</b>	Yes; immediate after granting of status	Yes and with favourable conditions compared to other TCNs
<b>Subsidiary protection beneficiaries</b>	Yes; immediate after granting of status	Not under EU law



# Irregular migrants

Category	Access to the labour market	Right to family reunification
<b>Undetected or with return order</b>	No and even employers sanctions	No
<b>With postponement of removal</b>	Perhaps, if foreseen by national law	No, but right to family unity



# Legal migrants

Category	Access to the labour market	Right to family reunification
<b>General application</b>	Yes, but possibility for MS to impose labour market tests and quotas	Yes if conditions are fulfilled (residence, resources and possibly integration)
<b>Long-term residents</b>	Yes, same as nationals with very exceptional restrictions	Yes and intra-EU mobility (family unity)



# Legal migrants

Category	Access to the labour market	Right to family reunification
<b>Highly-skilled</b>	Yes but particular conditions on who is "highly-skilled"; quotas possible; preference rule possible + certain sectors might be excluded "brain-drain provision"	Yes and favourable conditions
<b>Intra-corporate transferees</b>	Mobility for specific personnel profiles or traineeship on basis of employment in third country; quotas possible preference rule possible (no other labour market test)	Yes and favourable conditions



# Legal migrants

Category	Access to the labour market	Right to family reunification
<b>Students</b>	Yes but with restrictions (e.g. max. cap of weekly hours); access might be postponed for 12 months	Under general conditions but often not fulfilled (more favourable national standards)
<b>Researchers</b>	Yes but very specific sectors (research project in host institution). However, if checks fulfilled "researchers <i>shall</i> be admitted"	Yes and exemption from residence requirement



# Legal migrants

Category	Access to the labour market	Right to family reunification
<b>Seasonal workers</b>	Yes but particular sectors and limit of time per year	No (in the sense that they will not manage to fulfill the criteria of the Family Reunification Directive)
<b>Posted workers</b>	Yes in view of their employment contract in another MS or third country; in the latter case conditions might apply	No (in the sense that they will not manage to fulfill the criteria of the Family Reunification Directive)



## Access to the labour market critical remarks

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- Most categories of TCNs lawfully resident in EU MS have some access to the labour market under EU law
- However, access is qualified in most cases
- This overall position is a reflection of compromises reached between those MS preferring a more restrictive approach concerning a right to work for third-country nationals and MS adopting a more progressive position



## Family reunification critical remarks

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- Favourable conditions for the highly-skilled; impossible for those with precarious statuses; extremely difficult for students and non-highly skilled (brain-waste?)
- Undermining integration and leading to precarisation in host society?





## Voice your opinion!

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- Are you in favour or against the imposition of integration conditions for migrants and their family members? (for example language or civic education courses)
- Should integration conditions be imposed before or after the family members have been admitted to the EU territory?
- What do you think about the access of asylum seekers to the national labour market (i.e. should national rules encourage it or frame it restrictively?)
- Should irregular migrants whose return is postponed be given access to the labour market or not?
- Do you think MS should be more or less protective of their national labour markets?



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Thank you for your attention!

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