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# Legal approaches to the regulation of migration processes in the European Union

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## Abstract

Using an interpretative methodology, the article examines approaches to the regulation of migration processes in the light of the increasing flow of immigrants to the European Union EU. In this context, two main directions of regulation of migration processes are considered: legal regulation and integration measures. It can be concluded that the international legal regulation of migration processes in the EU is based on adopted and ratified declarations, conventions, covenants and protocols, which form a general international legal basis for the regulation and management of migration processes at the interstate level. Accordingly, the analysis of migration legislation and state border legislation allows distinguishing three types of documents according to their content, which are related to the fight against irregular migration: a) regulatory legal acts determine the model of legal entry and stay of a migrant on the territory of the country; b) law enforcement rules establish responsibilities and regulate the application of other coercive measures in case of violation of migration rules, and; c) documents of organizational content determine the competence of the authorities involved in the process of combating illegal immigration.

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**Keywords:** migration processes; illegal migration; migration policy; migrants in Europe; immigration and integration.

## Enfoques jurídicos para la regulación de los procesos migratorios en la Unión Europea

### Resumen

Mediante una metodología interpretativa, el artículo examina los enfoques de la regulación de los procesos migratorios a la luz del creciente flujo de inmigrantes hacia la Unión Europea UE. En este contexto, se consideran dos direcciones principales de regulación de los procesos migratorios: la regulación legal y las medidas de integración. Todo permite concluir que, la regulación jurídica internacional de los procesos migratorios en la UE se basa en declaraciones, convenios, pactos y protocolos adoptados y ratificados, los cuales forman una base jurídica internacional general para la regulación y gestión de los procesos migratorios a nivel interestatal. En consecuencia, el análisis de la legislación migratoria y de la legislación en frontera estatal permite distinguir tres tipos de documentos según su contenido, que se relacionan con la lucha contra la migración irregular: a) los actos jurídicos reglamentarios, determinan el modelo de entrada y permanencia legal de un migrante el territorio del país; b) las normas de aplicación de la ley establecen responsabilidades y regulan la aplicación de otras medidas coercitivas en caso de violación de las normas migratorias, y; c) los documentos de contenido organizacional determinan la competencia de las autoridades involucradas en el proceso de lucha contra la inmigración ilegal.

**Palabras clave:** procesos migratorios; migración ilegal; política migratoria; migrantes en Europa; inmigración e integración.

### Introduction

Activation of migration processes is one of the main trends of modern world development. It is first of all due to the unevenness of the economic growth of different countries in terms of globalization, the diversity of inter-ethnic, social, international conflicts, and the peculiarities of demographic processes in the regions. Mass migration posed two problems to society: the integration of migrants into the host society and the permissible limits of its change under the influence of mass migrations.

The process of globalization, which reached large scales in the 21st century, opened up new problems for the modern world community. To date, one of the loudest challenges in Europe has become the problem of migration. Migrants seeking a better life, needing help, looking for work show interest in the economy of more developed countries. The specified migration processes endanger the state policy of the European Union, they can cause the destruction of the unity of states and national identity.

Such large-scale migration flows necessarily affect the political, economic and demographic processes in European countries by a sharp increase in the non-native population, a possible increase in rebellions and quarrels between migrants and demographic residents, a decline in the economy of states in connection with the needs of migrants, often those who have no work and rely on social benefits from the host state.

Any migration processes, in one way or another, affect the dynamics of the population in different countries and regions. Upon resettlement, migrants bring significant changes to the social life of the country. In the modern world, migration plays a major role in the political, economic and social life of a country. Thus, given the importance of this phenomenon, according to research data, the crisis began in 2013, when the migration of Syrian and Lebanese refugees began. Despite the fact that the acuteness of the crisis has been removed in recent years, the problem itself does not cease to bother the European world.

As a result of the extensive policy of the European Union, which does not take strict measures to regulate migration processes, referring to the natural human rights of movement and security, the flow of migrants in Europe, despite the crisis, continues.

The peak of the crisis was in 2015 and 2016, when more than one million people applied for asylum, and the total number of migrants was almost four million people.

The magnitude of migration flows turned migration into one of the global problems of humanity and forced the whole world to think about it as a crisis phenomenon. Migrants have a huge impact on various aspects of life in the countries they move to. Thus, for example, international migration has become an important factor in population growth and reproduction in many countries with a low birth rate.

A large influx of migrants is accompanied by many negative consequences. The flow of migrants, sometimes dominated by refugees, falls on host countries, causing dissatisfaction among the indigenous population. Besides, a number of problems arise as a result of the clash of cultures - migrants are often subjected to discrimination and mortal danger, besides, the issues of integration of international migrants into the host community are aggravated.

States have always taken measures to regulate migration policy. But in terms of the current migration crisis in European countries, new measures are needed. Recently, border control has been strengthened in many countries, barrier walls and fences are being erected, refugee camps are being destroyed, and army units are being involved, which, however, does not currently bring striking positive results. The ambiguity of the measures adopted in relation to migrants and the regulation of migration flows indicates that European countries are not ready to deal with this problem at the moment.

In view of the above, the relevance of scientific research is determined by the importance of assessing and forecasting the impact of large-scale population movements on the political and social system of the European Union, the impact on the course of modern international relations and the system of ways to overcome the phenomenon of the migration crisis in the EU.

### **1. Legal regulation of the EU migration policy: current state**

Real guarantees of the declared freedom of movement of EU citizens is the primary task of its migration policy (Zolka *et al.*, 2021). The right to work, study, and live in other countries provides significant benefits to both member countries and their citizens, ranging from ensuring greater efficiency of the labor market to expanding educational opportunities and deepening cultural exchanges.

Since the 1960s, the EU has adopted a number of documents designed to promote the internal European mobility of citizens. In 2004, two regulations and nine directives on the procedure for entry and stay of citizens of EU member states were combined into one legislative act, which was supposed to simplify the use of these procedures both for individuals and for authorities. It regulates the conditions under which EU citizens and their family members can move freely and reside within the territory of member states, resettle for permanent residence, and also establishes restrictions on the exercise of this right for reasons of public health and safety (Malinovska, 2018).

To enter the territory of any EU country, an EU citizen must have only an identity document. This is enough for a short-term stay of up to three months. Family members of EU citizens who are third-country nationals enjoy the same rights as the EU citizen with whom they move around Europe.

A longer stay in another EU country is allowed if certain conditions are met. A citizen must either be economically active (employed or self-

employed), or have sufficient financial resources, health insurance, that is, prove that he or she will not become an additional burden for the host country's social protection system. The same requirement applies to students and pupils. A citizen who meets the specified conditions can move together with family members (Koppel and Parkhomchuk, 2004).

EU citizens do not need residence permits. However, member states may require them to register their stay on their territory no later than three months after moving. If their family members are citizens of third countries, they must apply for a residence permit, which is issued for a period of five years. Moreover, the death of an EU citizen, his departure to another country, dissolution of marriage or termination of partnership relations do not necessarily lead to the loss of one's right to residence by a member of one's family - a citizen of a third country. EU citizens acquire the right to permanent residence in the territory of another member state after five years of continuous residence, if the authorities of the host country have not taken a decision on their expulsion.

This right is already granted without any conditions. It is also used by family members of EU citizens who are citizens of third countries, if they have been in a family relationship with an EU citizen for at least five years. The right to permanent residence is lost only in case of absence from the territory of the respective country for two or more years (Peers, 2021).

EU citizens, if they wish, can obtain official confirmation of their permanent resident status. Their family members, if they are citizens of third countries, receive a permanent residence permit that is automatically renewed every ten years. In order to prove that the relevant persons have really lived in a particular country continuously, any suitable evidence can be provided.

Persons who have the right of residence, as well as their family members, enjoy the full range of rights. However, in the first three months, host countries are not obliged to include them in their social protection systems, unless they are officially employed. Likewise, member states are not obliged to provide education assistance (grants, loans) to immigrants from the EU until they become permanent residents.

EU citizens and their family members may be expelled from the territory of another country for security reasons. Economic reasons cannot lead to expulsion. Restrictive measures are applied only in case of a real threat to the fundamental interests of the country and exclusively on an individual basis. Before making a decision on expulsion, such circumstances as the length of residence in the country, the age of the person, the level of integration and family situation in the host country, and the presence of ties with the country of origin must be carefully considered. The expulsion decision can be appealed. A lifetime entry ban is not possible under any

circumstances. A person who has been expelled can apply for a review of the relevant decision after three years (Council of the EU, 2008).

The regulation adopted in 2011 is dedicated to clarifying and codifying the rights of workers who move within the EU and their family members. It prohibits a special procedure for the employment of citizens of other EU countries, guarantees equal access to employment, vocational training for both migrants and their children, equal working conditions and pay, access to social benefits, participation in trade unions. The only exception to the principle of equality can be access to jobs in the field of national security, if the state deems it necessary to fill them only at the expense of its own citizens. Two documents related to labor mobility were adopted in 2016.

The first concerns the European network of employment services and provides for the modernization of the electronic job portal, the activation of the exchange of relevant information between countries. The second is aimed at promoting mobility by simplifying the requirements for registration and unifying the documents required for employment.

A number of legal acts of the EU define common approaches to ensuring legal immigration and guaranteeing the rights of migrants. In particular, in 2003, a directive was adopted regarding the legal status of citizens of third countries who have continuously resided in the territory of member states for a long time (at least five years). Its effect extends to citizens of third countries who have a stable and regular source of income, health insurance, do not pose a threat to the security or public order of the country of residence.

This document provides persons who have a residence permit in one of the EU countries the right to move and reside in the territory of other EU states, guarantees basic economic and social rights on a par with citizens, namely, the right to employment and entrepreneurial activity, education and vocational training, social protection and basic benefits. In 2010, an agreement was reached that the rights provided for in this Directive also apply to beneficiaries of international protection, i.e., refugees from third countries, if they meet the basic requirements regarding the duration of residence in the EU (Buromenskyi *et al.*, 2010).

A subsequent directive granted migrants the right to family reunification and guaranteed the rights of persons arriving as members of their families (2003). According to it, citizens of third countries who legally reside in the EU can bring their minor children and spouses to the country of residence. Host countries can, at their discretion, expand this circle and allow the immigration of an unmarried partner, adult children and parents if they are dependents of the migrant. Persons arriving as family members have the right to employment and professional training on the same basis as other third-country nationals.

After five years of residence, they can obtain autonomous legal status if family ties are maintained. At the same time, the right to family reunification is not absolute and may be limited in the interests of public order and state security. A migrant who applies for permission for the arrival of his relatives must have sufficient income, housing, and health insurance to support them, he must live in the country for a certain period, the requirement for the duration of residence, however, cannot exceed two years. Penalties are also provided for concluding fictitious marriages for the purpose of obtaining an immigration permit.

In order to simplify bureaucratic procedures in the immigration process, a Directive on the introduction of a single permit for both employment and residence of citizens of third countries in the EU, as well as a common list of rights and freedoms that they can enjoy was adopted in 2011. Such a decision was aimed at improving the situation of migrants and the possibilities of their adaptation in host countries. In order to establish Europe as a world center of education and science, the EU has developed joint legislation regarding students and scientists from third countries.

In particular, in 2004, common rules were approved for the admission of foreigners to study in higher and secondary educational institutions, for paid internships, as volunteers. The conditions for accepting students are adequate knowledge of the language, availability of financial resources, medical insurance, etc. Foreigners who have come to study receive a residence permit for a period of one year, which can be extended. Under certain conditions (participation in international programs, possession of a residence permit for at least two years), students have the right to move around the territory of the EU to continue their studies (Buromenskyi *et al.*, 2010).

A special Directive of 2005 introduced a simplified procedure for the immigration of scientists at the invitation of recognized scientific institutions for a period of more than three months. A scientist who obtains the right to stay automatically acquires the right to work, that is, they do not need a separate permit for employment, as well as passing a labor market test. Scientists enjoy the same rights in terms of working conditions and social protection as local citizens, they have the right to engage in teaching activities, to move freely between the countries of the Schengen zone for a period of up to three months for the purpose of conducting scientific research.

In 2016, instead of the two Directives mentioned above, one was adopted, the category of migrants covered by the new legislation was expanded to include interns, volunteers, schoolchildren, au-pairs (young people from abroad who look after children while living in families). Opportunities for student employment have increased – 15 hours a week instead of 10. After completing studies or a contract for conducting research, graduates



of educational institutions and scientists have the right to stay in the EU for nine months in order to find a job or start their own business. Family members of scientists can join them and look for work in the host country.

Considerable attention of European legislators is devoted to the regulation of immigration of specialists. In particular, in 2009, the procedure for the admission of highly qualified migrants from third countries was approved through the introduction of “blue cards”, that is, a special type of residence permit. We are talking about people who have a higher or secondary special education and a salary that is at least one and a half times higher than the average for the EU country where they work. According to the procedure agreed at the EU level, they have free access to all member states and can move to another country after 18 months of stay, but must apply for a new “blue card” already in that country.

The signing and adoption of the European Convention on the Legal Status of Migrant Workers in 1977 became a significant event in the field of regulation of migration and its processes in Europe.

Labor migration law contains several points:

1. creation of valid conditions for approval of an invitation to work in the countries of the European Union;
2. unimpeded movement in any branches of the EU;
3. implementation of activities by migrant workers on the basis of legal norms;
4. have equal rights with the employees of the host country;
5. voluntary deportation from the territory of the EU member state after the end of the labor activity of the migrant, in accordance with the principles of the European Union (Aloyo and Cusumano, 2021).

In 2012, 3 600 “blue cards” were issued, and in 2016 - already 19 500. In 2014, a Directive on the admission of seasonal workers from third countries was approved. They must have a contract, where the working conditions are prescribed, get appropriate temporary housing. They are guaranteed the same labor and social rights as local workers, except for unemployment benefits and family allowances.

Within the permissible time of stay (from five to nine months per year), seasonal workers have the right to change employers, extend or enter into a new contract. Member countries can stimulate the circular, i.e., repeated, migration of seasonal workers by simplifying the procedures for their admission to their territory. In the same year, a Directive on intra-corporate transfers was adopted, which simplified the procedures for transferring foreign employees of multinational companies to their branches located in

the EU, which should improve opportunities for innovation and promote investment.

An important component of the regulation of immigration processes in the EU is the proper informing of migrants, which should contribute to a more organized and legal movement of people. In 2011, the EU Immigration Portal was opened, which functions in English, French, Spanish and Arabic, contains extensive information on immigration procedures of all 28 member states, contacts with national government bodies and non-governmental organizations in the field of migration. Such electronic portals are designed to provide potential migrants with up-to-date information on entry channels and operate in most member states.

At the same time, despite a significant number of common legal norms, the volume of economic immigration, as before, is regulated independently by each EU country, depending on its own needs and capabilities. Although the mechanisms of immigration are standardized, the issue of admission to the sovereign territory, as confirmed in the Treaty of Lisbon (2007), which defined the current foundations of the functioning of the EU, will continue to remain within the competence of national governments.

Along with ensuring legal immigration in the interests of progressive economic development, a significant place in the common migration policy of the EU belongs to the control of immigration processes and the fight against illegal migration. Practice has shown that it is easiest to develop standardized approaches precisely in this area, where the common interests of the member countries are most obvious. As already mentioned, the Schengen agreements, that is, the abolition of control at the internal borders of the EU and its transfer to the external border, were incorporated into EU legislation with the adoption of the Treaty of Amsterdam (1997).

Today, the zone of free movement in Europe, to which not only the member states of the European Union, but also a number of other states have joined, covers almost the entire continent. Under these conditions, the interests of internal security require EU countries to make joint efforts to protect the external border. The European Border and Coast Guard Agency (FRONTEX) was founded in 2004 with the main functions of coordination of joint actions at the external border, personnel training, risk analysis and forecasting of the migration situation, allocation of resources and assistance to member countries facing mass arrivals of illegal migrants.

In 2016, the mandate of FRONTEX was expanded. The Agency was authorized to act also outside the EU. Common rules for control at the external border are defined by the Schengen Borders Code, approved in 2006 and modernized in 2016. It provides for simplified control when crossing the external border by citizens of EU member states, as well as those foreigners who have the right to free movement (family members

of EU citizens), and, at the same time, increased control over citizens of third countries. This code is also aimed at deepening the cooperation of law enforcement structures of the member countries in the interests of common security, and defines the conditions for the temporary restoration of control at internal borders (European Parliament and the Council of the EU, 2016).

In 2008, a decision was made to create a Visa Information System (VIS), which enables member countries to promptly exchange information regarding Schengen visas. It gradually accumulates data on applications and issuance of Schengen visas in various regions of the world. The main purpose of VIS is to check the visa history of third-country nationals, as well as control whether the visa is being used by the person to whom it was issued (Yakubovsky, 2015).

The strengthening of control at the external border of the EU was accompanied by measures to simplify the procedures for its crossing for law-abiding travelers. This is convincingly demonstrated by initiatives to introduce a “smart border”. The corresponding package was prepared by the European Commission in 2016, according to which an automatic entry/exit control system (Entry/Exit System, EES) was introduced, which records all entries/exits of citizens of third countries at the external border of the EU.

The main legislative acts of the EU directly aimed at combating illegal migration are several Directives. In particular, the sanctions imposed on carriers transporting foreigners to the EU without proper documents have been harmonized. Before taking a citizen of a third country on board, they are obliged to check that he has the necessary documents for entry into the EU. If the border guards do not allow such a citizen into the EU territory, the carrier must transport him at his own expense to the country from which he or she arrived.

Transportation of illegal migrants threatens the company with sanctions of up to 5 thousand euros for each person. The following EU Directive obliged air carriers to transfer information about passengers to the control authorities of the destination country even before arrival at a point in the territory of the European Union. Violation of this requirement may result in financial sanctions up to confiscation of the vehicle or suspension or loss of the license to transport (Buromenskyi *et al.*, 2010).

To combat illegal migration, the European Union developed a legislative framework consisting of four main documents:

1. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (Council of the EU, 2002);

2. Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (Council of the EU, 2002);
3. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (European Parliament and the Council of the EU, 2008);
4. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (European Parliament and the Council of the EU, 2009).

Council Directive 2002/90/EC of 28 November 2002 and Council framework Decision of 28 November 2002 are interdependent and complementary to each other, as they are the basis of the legislation under which, by the end of 2004, all EU countries were obliged to adjust their criminal codes and other laws regulating intrastate relations, with the help of sanctions for criminal actions and aiding illegal migration.

On the basis of the documents listed above, it can be said that illegal migration is perceived by the European Union through the prism of measures addressed to employers who provide work to undeclared foreigners, as well as through the analysis of possible ways and means of an effective policy for the deportation of migrants.

An important role in the regulation of migration processes is played by the International Organization for Migration - IOM (1951), whose task was to organize the movement of migrants. Today, its powers include:

- 1) recruitment of migrants;
- 2) preparation for the migration process;
- 3) promotion of language training;
- 4) implementation of information activities for visiting foreigners;
- 5) passing a medical examination;
- 6) location of migrants;
- 7) conducting and organizing various events to promote reception and integration;
- 8) provision of consultations on migration issues.

To regulate migration flows, the European Union uses two directions: regulatory and legal regulation and integration measures (Kuryliuk *et al.*, 2021).

Regulatory and legal regulation affects the size and number of the flow of migrants, in such a measure, national states and European institutions are the subjects, and migration flows and the results of migration are the objects. Integration acts as a forced measure for radical change and integration of foreigners into the national society of the host party.

Universal international principles and norms are:

- 1) freedom of movement and the right to freely choose a place of residence;
- 2) prohibition of deportation;
- 3) prevention of discrimination;
- 4) maintenance of family reunification programs;
- 5) the right to protection by judicial authorities.

In April 2012, the European Council approved the Strategy of the EU's response to migration pressure, which defines a number of strategic priorities for the EU's activities in this area. Among them: strengthening of cooperation with countries of origin and transit regarding migration management; improvement of external border management; prevention of illegal migration across the Turkish-Greek border; prevention of abuse of legal migration channels; ensuring compliance with the right to freedom of movement while preventing its abuse by citizens of third countries; improvement of the system of regulation of migratory movements, including the return of migrants to their homeland.

As part of the implementation of the first priority, i.e., cooperation with third countries, it was planned to improve their own capacity to regulate mixed migration flows (that is, those that consist partly of refugees and partly of economic migrants). For this purpose, it was envisaged to arm the countries of first asylum with the necessary means to provide protection to refugees in accordance with international standards, thus preventing further movements of refugees; ensure the implementation and continuation of readmission agreements; deepen partnership in the field of mobility with third countries; to develop a dialogue with the countries of the Eastern Partnership in the context of challenges caused by migration flows from the Southern Mediterranean moving through the Western Balkans.

Improving the management of external borders involved the further development of political and legislative tools for border control, including ensuring the functioning of the surveillance system and exchange of information on border risks (European Border Surveillance System, EUROSUR), the preparation of proposals for the entry and exit registration system, the use of prejudicial information about international passengers to identify ways of illegal entry into the EU.

In order to prevent abuses of the right to free movement, including the right of migrants to family reunification, joint investigations, collection and analysis of information on detentions in connection with the presentation of false documents at the borders, exchange of information between the authorities of member states are used. The general goal of the Strategy is to strengthen the coordination of the efforts of member countries, in particular, the full implementation of directives on sanctions against employers and the return of illegal migrants, including further support for voluntary return, providing the necessary statistical and scientific support for the policy of combating illegal migration, studying and disseminating advanced experience (Chacon Hernandez, 2021).

Therefore, the international legal regulation of migration processes at the large-scale level is based on declarations, adopted and ratified conventions, pacts and protocols, which form the general international legal framework for the regulation and management of migration processes at the interstate level. The main decisions are developed by the United Nations, followed by its specialized organizations: the International Labor Organization, UNESCO and specialized bodies - the Economic and Social Council of the United Nations, the Office of the United Nations High Commissioner for Refugees, the International Organization for migration.

To date, the European Union, being a special form of the commonwealth of different states, has developed its own system for the regulatory and legal regulation of migration flows, which is supported by various international documents, regulatory and legal acts of institutions and organizations, founding treaties, acts that apply directly to the participating countries and do not require the actual implementation of obligations at the international level, which passes into national legislation.

To resist and prevent illegal migration, the system of normative legal acts provides quite large aspects that reflect migration problems in general. But at the same time, there is no single strategy for conducting migration policy in the EU countries, as each country follows its own course, not striving for cooperation with EU member states.

## **2. Evolution of means of combating illegal migration to Europe**

The migration situation in the countries of the European Union has become a test of strength for the main political forces in Europe. Debates in every EU country often come down to the question: whether to support migration - the wave of refugees from the countries of the Middle East and Africa - or to oppose it.

As the first countries that refugees cross on their way to Europe, Italy and Greece have faced an unprecedented influx of migrants. However, some EU partners, mainly Visegrad Group member states (Poland, the Czech Republic, Slovakia and Hungary) are in no hurry to share the burden of responsibility with their neighbors and open their doors to refugees. Even Germany was forced to reconsider its approach under the pressure of public opinion in its own country. It should be noted right away that the EU and its institutions are a complex bureaucratic mechanism. Decisions, one way or another related to migration, are made at the level of the entire EU, which means that they are subject to implementation in all its member states, as well as at the local level of states.

When it comes to the migration crisis in Europe, public opinion most often has in mind not migrants in general, but refugees as a separate category of migrants. It is very important not to confuse concepts and distinguish a migrant (motives for resettlement, which may be different, including purely economic ones) from a refugee or an applicant for his status. Article 1 of the UN Convention on the Status of Refugees (adopted on July 28, 1951) provides grounds for granting refugee status in the event of “fear of being persecuted on the grounds of race, religion, nationality, membership of a particular social group or political opinion”.

The Convention also states that a refugee is outside the country of his nationality and is unable to enjoy the protection of that country or is unwilling to enjoy such protection because of such fears; or, having no definite nationality and being outside the country of his former residence as a result of such events, is unable or unwilling to return to it because of such apprehensions.

The main political decisions in the field of migration adopted in the EU in recent years are primarily aimed at refugees as a separate category of migrants.

The largest number of applicants for refugee status still come to the EU from Syria, Afghanistan, Iraq and East African countries. 53% of migrants from those countries are men. Germany remains the country that receives the most applications for refugee status (60% of all applications in the 28 EU countries go to Germany) (Malinovska, 2018).

Bringing refugee flows under control is not an easy task. Although the increase in the flow of refugees during hostilities is a logical and expected phenomenon, it is the instability in the countries of origin of the refugees that has triggered the increase in their flow, or it can be fully predicted. The EU was not ready to accept such a large number of people at the same time, despite the fact that the scale could be even larger: after all, a huge number of refugees were accepted by Turkey (2.9 million according to UNHCR data as of 2018-2019) and other countries in region, taking the brunt of it.



The Dublin Convention of 1990 stipulates that asylum must be requested in the country on the territory of the EU that the potential refugee crosses first. The document turned out to be unsustainable already in the first months of the new migration crisis. Refugees entered the EU, entering mainly through Greece, Italy and Hungary. These countries were not able in a short time not only to carry out all the necessary procedures for consideration of requests, but also simply to register all those who settle. Thus, in practice, due to the lack of human resources, a large number of people crossed these countries in an uncontrolled manner, heading to Central Europe.

Identification, document verification, overnight accommodation and provision of food and clothing became the first priority. Conducting interviews, checking all the circumstances of the case of potential refugees has also become a challenge for some countries. Standard procedures for consideration of this request for refugee status could take several months or even years in some countries. Now, in some cases, accelerated processes take from several weeks to several days, depending on the country. This certainly requires additional funding. The migration agencies of the EU countries are mobilized: for example, at some point the migration service of Sweden switched to a 24-hour mode of operation.

The next problem faced by EU countries was how to deal with those whose requests for refugee status were rejected for objective reasons. Expulsion of illegal migrants costs the budget of the EU countries a lot of money, as deportation procedures are usually not carried out in one day, but require planning. This is complicated by the fact that remission agreements have not been signed with all countries of origin of illegal migrants, which means that the deportation process in such cases becomes extremely difficult.

One of the constant difficulties that have become a European reality today is the process of integration of refugees: initially providing housing and funds to pay for small daily expenses, and then state support for measures for their future independent life in the EU without state subsidies. The latter is particularly difficult, because sometimes refugees do not even speak English, let alone the language of their new country of residence, and do not have professional skills (Ispas, 2021).

The main principles of the European migration policy are outlined in the European Agenda on Migration, a comprehensive document that came out in 2015. However, the EU migration policy needs to be revised. This is noted by both the expert community and the politicians themselves.

It is necessary to move from reactive measures in response to the crisis in the form of a large flow of illegal migrants and refugees to anticipatory measures, which will represent a coordinated coherent mechanism that works in all EU countries. Analyzing the main decisions and discussions in



official Brussels, as well as the roadmap on migration (Roadmap to deal by June 2018 on the Comprehensive Migration Package), the following can be noted:

1. The reform of the Common European Asylum System (CEAS) is currently blocked in the European Council. The cornerstone was the issue of mandatory redistribution of refugees from countries where there are too many of them to countries where there are fewer of them. This would allow responsibility to be shared between all EU countries. Separate quotas were calculated for each country taking into account its size, population, and other factors. However, no agreement was reached on this issue.

In order to somehow get out of this impasse, it is proposed to abandon the mandatory resettlement of refugees from one country to another and rely on the good will of the EU member states in this matter. Mandatory resettlement will be provided by law only in crisis situations.

2. Frontex, the European Union's external border control agency, was transformed into the European Border and Coast Guard Agency in 2016. Measures related to building the capacity of the transformed agency should improve the management and control of the EU's external borders. Among other things, the agency received an additional 1.5 thousand reserve employees and the opportunity to purchase the latest equipment for border management, available for mobilization in a crisis situation. However, EU countries should be ready to increase the agency's funding, if necessary, as well as provide additional human resources.
3. Cooperation with third countries or countries of origin of migrants is an important task. For example, the EU finances large-scale projects with Turkey, which has become a place of accommodation for a huge number of refugees. However, spot financing is not enough.

Thus, the EU needs to develop legal migration schemes with the main countries of origin of migrants, including primarily African and Middle Eastern countries. Pilot schemes on legal economic migration were proposed by third countries in May 2018. Cooperation with third countries, project financing and the development of schemes on legal migration will contribute to reducing the level of migration flows only if the leaders of third countries are ready to cooperate. A good example of this is Turkey, which is not itself the country of origin of a large number of refugees in the EU, but which is crossed by refugees on their way to the EU.

According to the agreement between Turkey and the EU, refugees entering Greece from Turkey can be turned back and Turkey will be obliged to accept them. The EU allocated additional funding for refugee settlements in Turkey. If Turkey completely closes its borders to refugees, they will still reach the EU borders one way or another.

4. The development of mechanisms for the return of illegal migrants must continue. This consists not only in signing remission agreements and protocols of their interaction with third countries, as well as in the actual expulsion of illegal migrants, but also in providing financing and support for reintegration measures for those who return to their countries of origin.

Therefore, the consolidated approach of the EU is based on the development of compromise solutions on those issues where there is no unity among the EU member states; on the reform of its internal institutions; on increasing cooperation with countries of origin of migrants (for example, by concluding remission agreements and legal migration schemes, as well as by financing projects to support governments and the population in these countries).

### **3. Prospects for improving the EU's migration policy**

The migration crisis in Europe in 2015 became one of the key events in the modern history of the development of European integration. Despite the fact that the member states of the European Union have faced migration from other regions before, this crisis was particularly acute not only in view of the scale of migration flows, but also in view of the changes in the nature of migration and the increase in the number of so-called asylum applicants. As a result, the traditional European system of measures in the field of migration turned out to be ineffective for regulating migration processes taking place on the territory of the EU.

Before the beginning of the mass influx of refugees in 2014-2015, the role of the main regulator of EU migration policy was performed by the Dublin system, in accordance to which refugees were distributed according to the principle of "country of first entry". Thanks to this rule, it was possible to prevent a situation in which a refugee can submit an application to several EU countries at once and receive asylum in the most suitable country.

The Dublin Agreement clearly defined the country responsible for processing asylum applications. This system showed its unsustainability after the beginning of the 2015 crisis, when the main burden of migration fell on the border countries of the EU, primarily on Greece, Italy and Hungary. Moreover, as a result of the mass influx of migrants, the Schengen zone was under attack, given the danger of free, uncontrolled movement of unregistered migrants within the EU.

The inability of the Dublin system to offer a fairer criterion for the distribution of migrants within the EU, as well as the threat to the existence of the Schengen Agreement, have led to aggravation of disagreements

between member states on this issue. As a result, there are serious contradictions within the European Union on the issue of the effective distribution of immigrants between member countries. While the leader of European integration, Germany, advocates the initiative of the EU member states, the countries of Central and Eastern Europe take a mostly skeptical position in this regard and are not ready to take responsibility for the placement of refugees on their territory.

As a result, the European Union faces not only and not so much a migration crisis, but a crisis of European integration, which is most threatened by the growth of far-right attitudes among the population. The general growth of the terrorist threat, expressed in repeated attacks by people from non-European countries, further contributes to the growth of populist sentiments in Europe.

The ineffectiveness of the Dublin system, disagreements between member states on the issue of the distribution of migrants, public dissatisfaction with the actions of the authorities and, as a result, the growing popularity of far-right attitudes in Europe became the main reasons that led to the need to change the EU's approach to refugee policy and reform the entire system of migration legislation. In the period from 2015 to 2021, attempts of the member states of the European Union to develop a joint plan of action to overcome the negative consequences of the migration crisis are being observed.

If we analyze the course of events, we can distinguish two stages in the process of reforming the EU migration policy. As the first stage, the period from April to October 2015 can be singled out, when the term "crisis" was first used in relation to the situation with refugees and the necessary measures were taken to overcome the negative consequences of mass migration and prevent the possibility of an escalation of the crisis.

It was in April 2015 that a series of maritime disasters occurred in the Mediterranean Sea, as a result of which ships carrying several thousand migrants from North Africa sank. These events became the first impetus for the use of measures to respond to migration problems. The key phenomenon of this period is the approval of the "10 points" program based on the results of the meeting of the ministers of foreign affairs of the EU countries in Luxembourg on April 20, 2015.

The main purpose of this program was the adoption of emergency measures to rescue migrants in the Mediterranean Sea and the allocation of additional funds for rescue operations, as well as the coordination of increased measures in the field of security, which included the mandatory fingerprinting of all migrants who arrived on the territory of the EU. In addition, already in April, at an extraordinary meeting of the European Council, the possibility of starting negotiations with third countries for

a joint solution to the migration problem, in particular, with Turkey and African states, was discussed for the first time.

A joint action plan with third countries was agreed in November of the same year at the Valletta Migration Summit, where EU and African leaders signed an agreement on joint action in the field of migration, as well as within the framework of the EU-Turkey Action Plan aimed at suspending migration flow to Europe and the fight against illegal migration. In general, EU measures within this period can be characterized as a response to current problems and a search for possible ways and strategies to solve the migration crisis (Casagran, 2021).

The period from the end of 2015 to the end of 2017 can be marked as the second stage of migration policy reform, when decisions were made for the long term, not so much for the purpose of solving current tasks, but for the purpose of creating a more effective system of migration legislation at the pan-European level as a whole. During this period, not only was the final agreement concluded between the EU and Turkey on the issue of measures against illegal migrants (March 18, 2016), but also the provisions on the reform of the Common European Asylum System were approved, which, among other things, included the transformation of the Dublin system.

As a result, official frameworks were established for cooperation with third countries, primarily with Turkey, through which the main migration route to Europe passes, as well as proposed reforms, which include an accelerated procedure for considering applicants' applications, fixing migrants in one country and prevention of attempts to move them within the EU, as well as basic measures to integrate refugees, including into the labor market. In addition, the European Commission adopted the so-called list of "safe countries" in order to limit migration from those regions where hostilities are not taking place directly and there is no real threat to life.

In practice, this means that asylum applications from countries such as Albania, Macedonia, Montenegro, Serbia, Turkey, Bosnia and Herzegovina and Kosovo began to be considered under an accelerated procedure. Finally, on February 3, 2017, the "Malta Declaration" on migration was adopted, the main provisions of which touched on external issues, such as the fight against the illegal importation of migrants and human trafficking, the provision of assistance during the period of return of migrants to their homeland, as well as cooperation with Libya in the field of control along migration routes and support for Libyan Coast Guard employees (European Council, 2017). The main focus of this document is on the Central-Mediterranean route, along which more than 180,000 migrants arrived in the EU in 2016 alone (Malinovska, 2018).

Evaluating the results of the second stage, it can be concluded that after 2015, the EU seeks to develop a certain long-term action strategy that would

be able not only to overcome the crisis, but also to create a more effective legal framework for regulating migration processes on the territory of the EU and in the future.

It is obvious that the current process of migration to Europe had a serious impact not only on the internal development of the EU member states, but also on the political capacity of the European Union as a supranational body and, therefore, required fundamental changes to the existing legislation. The future viability of the European Union as an integration group depends on how effectively the EU can deal with the current crisis.

In 2017, the migration policy of the EU strengthened. At the summit held in Brussels on October 19, 2017, it was determined that the approach of EU member states and institutions to ensuring full border control should be consolidated. At the same time, the Conclusions of the European Union indicate that it is ready to react and stop any attempts to illegally cross the borders of EU member states (European Council, 2017).

However, the settlement of the issue has by no means become clearer, because in the European Union there is a problem of a “closed circle”, which consists, on the one hand, in opposing immigrant flows, and on the other hand in observing the principles of protecting the rights of migrants, fighting poverty, etc. (Zastavna, 2021).

As for the actual results of the EU migration policy reform, the following results can be highlighted at this point. First, it was possible to strengthen control over the external borders and significantly reduce the number of illegal migrants arriving in the EU. In addition, due to the introduction of the list of “safe countries”, it was possible to limit the opportunities for obtaining asylum for citizens from relatively safe regions, which helped to focus the main efforts of the EU on providing assistance to refugees from Syria, Iraq, Afghanistan and other countries where the internal political situation poses a real threat to life.

Agreements with third countries, primarily with Turkey and Libya, which assumed part of the responsibility for providing assistance to refugees, helped to significantly reduce the flow of migrants heading to Europe. Despite the contradictions that took place during the negotiations with Turkey on the issue of migration, positive changes could be observed already a month after the conclusion of the 2016 EU-Turkey agreement. According to data from the European Commission, if more than 56,000 asylum seekers arrived in the EU in February 2016, then during the next 30 days after the conclusion of the agreement, their number already amounted to 7,800 immigrants (Raczyński, 2015).

Thus, we can talk about the positive impact of reforms in the field of migration policy carried out by the European Union in recent years. In addition to limiting migration flows and reducing the number of illegal

migrants, other results were also achieved, in particular, an accelerated and optimized procedure for considering asylum applications, which helped to process a large number of applications in a relatively short period of time and, in case of refusal, to ensure the rapid deportation of immigrants to their homeland.

In addition, funds were allocated for the implementation of integration programs for refugees in order to ensure their integration not only into society, but also into the labor market. Positive developments are also observed in this area: in Germany, for example, between 2013 and 2020, the share of employees without German citizenship increased by 75% to more than four million (Bathke, 2021).

However, the European Union's response to the 2015 migration crisis also has weaknesses. Statistics show an increase in crime among refugees in the EU. According to *Der Spiegel*, the share of refugees among rape suspects in 2016 was the highest among other social groups and amounted to 33%. In addition, the number of terrorist acts and other serious crimes committed by immigrants in various European cities has been increasing in recent years (Bondarchuk, 2016).

A key problem in solving the European migration crisis is the inability to effectively allocate migrant quotas among member states. As a mechanism for the distribution of quotas for migrants, a possible proposed system of trading quotas for refugees is presented, in the framework of which a market mechanism is used for the distribution of migrants by country.

Such a mechanism allows each country to choose the most suitable option for itself: either to accommodate refugees on its territory, providing them with the necessary assistance, or, in case of a lack of resources for their proper accommodation, to provide financial support to those countries that accept refugees instead. It follows that, if the state is not ready to take direct responsibility for the accommodation of migrants, it is obliged to provide material and financial assistance to other countries, which will allow to achieve justice in the distribution of the migration burden between countries.

Each EU member state also has the right to combine both options - for example, to place fewer refugees in its country than it should according to the quota, but to allocate additional funds for other countries that have redistributed part of the migrants to themselves. In addition, the amount of financial assistance may vary depending on the level of economic development and the average income per capita of a country. According to this principle, the financial aid allocated by, for example, Finland will be much higher than the aid from Estonia or Bulgaria. When distributing migrants, it is also important to take into account the needs of each individual country: for example, to send labor migrants to those countries where there is a shortage of labor (Masoumi, 2022).

Thus, the European Union's policy response to the 2015 refugee crisis has both advantages and disadvantages. Among the latter is the inability to resolve differences between EU member states on the issue of migrant distribution, as some countries continue to take a hard line on refugees and are not ready to make concessions, as, for example, in the case of the Hungarian government. This factor, as well as internal problems arising in connection with mass migration (such as the increase in crime and the problem of integration), contribute to the strengthening of public distrust in relation to EU institutions and stimulate the growth of right-wing populist sentiments, thus undermining the foundations of the European Union functioning.

The proposed system has a number of advantages, as it allows countries to independently decide how to contribute to solving the migration crisis and for which categories of refugees to open borders. A flexible mechanism will not only help to achieve a certain consensus on the issue of the distribution of migrants between member countries, but will also contribute to a more effective integration of migrants into the host society, as the system will take into account the needs of a given society and country in certain categories of migrants.

### **Conclusions**

The specificity of modern political processes is largely determined by migration flows from zones of armed conflicts and countries with an unfavorable political and socio-economic situation to more prosperous countries and regions. Migration, which has acquired a massive multi-million character in recent years, is one of the most significant phenomena of modern political reality. This is evident in the development of the European migration crisis.

Initially focused on providing assistance to migrants and refugees, the European Community faced a whole set of problems of a social, economic and humanitarian nature, among which particular significance is found, such as the migrants' ignoring and devaluation of European values, imposing their own way of life on Europeans, gradual Islamization, finding radical forms, as well as the direct escalation of tension and conflict. All these factors determine the crisis in the development of the situation in European countries, undermine their social, humanitarian, economic and political foundations.

Taking into account the fact that the situation in countries with military conflicts still has an extremely acute nature of armed conflict and the escalation of the terrorist threat, there is every reason to believe that the migration crisis will continue to develop in the near future.



The migration crisis revealed a number of internal problems of a political, institutional and social nature in the European Union, which must be solved both in the short and long term.

Germany, France and Great Britain occupy the leading positions among Western European countries in terms of the number of immigrants. In this regard, they face a number of problems, mainly related to the economic support of immigrants arriving in the country, integration into the native society of the host country and ensuring national security.

After the exacerbation of the migration crisis in 2014-2016, its decline began. The intensity of the influx of migrants and refugees in 2017-2019 significantly decreased, which gave Europe a noticeable relief. However, the year 2020 brought some aggravation of the migration crisis of the new era.

The main factors that provoked this aggravation and increased the flow of migrants in 2020 include: political, economic, national and legal instability in Africa and the Middle East; armed conflicts in Syria, Yemen, Afghanistan, Iraq, which were involved in the fight against ISIS; an increase in the number of the population in the named countries due to an uncontrolled demographic situation; large-scale unemployment; rapid growth of poverty; deterioration of the situation in the refugee camps created on the territory of Turkey and Lebanon. There was no social protection, no work, and funding was constantly being cut. That is why Syrians began to run to the countries of the Eurozone.

The analysis of the migration legislation and the legislation on the state border makes it possible to distinguish three types of documents according to their content, which relate to the fight against illegal migration: regulatory legal acts determine the model of a migrant's legal entry and stay on the territory of the country; law enforcement regulations establish responsibility and regulate the application of other coercive measures in case of violation of migration regulations; documents of organizational content determine the competence of authorities involved in the process of countering illegal migration.

In order to improve the migration policy, the structures of the European Union propose to strengthen the legislation for arriving immigrants, for persons who have committed crimes and offenses on the territory of the EU, as well as for illegal migrants. An important element of the new migration policy should be integration, but in a more intensive form: a clear concept should be formed that ensures the preservation of harmonious relations between the local population of EU member states and migrants. The process of integration can be facilitated by the availability of education, medical services, and jobs for a wider circle of refugees and immigrants. Expanding the principles of solidarity and fair responsibility among EU member states will facilitate the solution to the migration crisis.



Also, building a new dialogue between the EU states and third countries, based on compromises and equality of the parties, should be an essential step for the settlement of the political situation. This can be facilitated by the renewal of both the national and the elites of the European Union. The future of this political body depends on whether the European Union will be able to develop a new migration policy and cope with the challenges.

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