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Employment Challenges Affecting the Recent Influx of Refugees in the European Union

I. Introduction

The seemingly endless wars in the Middle East continue to cause travesty to its inhabitants and have struck fear and a sense of hopelessness in the lives of the men, women, and children of the respective countries, causing many to flee. The United Nations (“UN”) and major non-governmental organizations (NGO’s) have noted the frustrations in the standard of living for refugees living in refugee camps in the popular and nearby host countries of Turkey, Lebanon, and Jordan.¹

The migration of refugees to Europe has come in waves and more recently, hit with an unexpected tsunami, Europe is struggling to maintain the influx.² In addition to a financial crisis, an economic slowdown, a bailout of Member States in debt, a few hundred thousand Middle Eastern refugees certainly does not make matters easier for the European Union (EU).³ Speaking on the recent migration, a majority of reporters have noted, “[t]he E.U. has endured challenges in the past—but nothing as serious as this.”⁴

Before embarking on the discussion regarding the migration into Europe, one must distinguish between an asylum seeker, a refugee, and a migrant. The 1951 Refugee Convention defines a refugee as any person fleeing an area due to a fear of persecution based on their gender, ethnicity, religion, or particular social group or is fleeing an area of armed conflict or areas requiring international protection.⁵ A migrant is a person who emigrates from a foreign country

¹ “*When I Picture My Future, I See Nothing*” *Barriers to Education for Syrian Refugee Children in Turkey*, HUMAN RIGHTS WATCH (Nov. 8, 2015), available at <https://www.hrw.org/report/2015/11/08/when-i-picture-my-future-i-see-nothing/barriers-education-syrian-refugee-children>.

² *Europe is facing the worst refugee crisis since World War II — and there's no end in sight*, BUSINESS INSIDER (Aug. 28, 2015, 4:59 AM), <http://www.businessinsider.com/r-migrant-tragedies-on-land-and-sea-claim-hundreds-of-lives-2015-8>.

³ Ian Bremmer, *The E.U. is challenged from within*, TIME, Nov. 19, 2015, at 10.

⁴ *Id.*

⁵ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

for the purposes of improving their economic status or for reasons beyond that of seeking a safe haven.⁶ While many critical of the current migration attempt to label the persons fleeing armed conflict solely as economic migrants, it is premature and inconceivable to identify the intentions of all persons arriving into Europe without further processing.⁷ In an attempt to remain politically accurate, many have labeled the immigrants as “asylum seekers” as their refugee status is in the hands of the individual Member State, determined upon adjudication of their asylum application.⁸ This paper will examine individuals strictly fleeing an area undergoing severe turmoil and will refer to them as “refugees,” “asylum seeker,” or “third-country nationals” as defined by the Treaty on the Functioning of the European Union (TFEU).⁹

The EU has attempted to tackle the refugee situation in a lawful and orderly fashion but with no effective barriers to deter refugees from entering, hundreds of thousands of refugees have entered EU nations seeking protection.¹⁰ The current laws in place to handle asylum seekers are ineffective with respect to efficiently registering and processing asylum application and providing refugees with employment documentation.¹¹ Ivan Simonovic, the Assistant Secretary General and the head of the NY Office of the UN Higher Commission for Human Rights (“UNHCHR”) stated, “The whole legal framework [in the EU regarding refugees] has collapsed.”¹² While nations such as Germany and Sweden have opened their doors to refugees on a large scale, they are effectively challenging the authority of the Eastern European nations in their ability to administer asylum

⁶ Alan Travis, *Migrants, refugees and asylum seekers: what's the difference?*. THE GUARDIAN (Aug. 28, 2015, 11:51 AM), <http://www.theguardian.com/world/2015/aug/28/migrants-refugees-and-asylum-seekers-whats-the-difference>.

⁷ Ivan Simonovic, Remarks at Fordham International Law Weekend on “Saving Lives and Building Society: The EU’s New European Migration Agenda” (Nov. 6, 2015) (notes on file with author).

⁸ Travis, *supra* note 6.

⁹ Consolidated Version of the Treaty on the Functioning of the European Union art. [45], 2012 O.J. C 326, at [7] [hereinafter TFEU].

¹⁰ Simonovic, *supra* note 7.

¹¹ *Id.*

¹² *Id.*

applications. The majority of the refugees seek to reach the Western states in hopes of more rights, liberal laws, increased social assistance, and a faster route to legal residency.¹³

The EU has the ability and potential to use many of the refugees to their advantage as a source of young employment to fuel its economy.¹⁴ Unfortunately, the current laws and methods used to grant refugees the ability to work take months and during this lapse of time, action is not taken to facilitate the refugees' preparation for employment.¹⁵ Further, the ability to work, when granted, is limited to the Member State in which the refugee is granted employment or refugee status in, thus the free movement of persons and workers is not guaranteed throughout the EU.¹⁶ As the laws in place do not address such a large influx of refugees and their need for mobility and immediate employment, tailoring the current laws should include the ability to offer refugees immediate and unrestricted rights to employment throughout the EU Member States and assisted integration into the workforce and society.

II. Understanding the Process and the Dismantlement of the Dublin Regulation

Most refugees entering the European Union are arriving via the Mediterranean Sea from Turkey or North Africa.¹⁷ Upon their arrival to EU shores, states are expected to apply "The Dublin Regulation." The Dublin Regulation is the legal doctrine applied to newly arrived refugees and it defines the procedures under which Member States should address asylum seekers and asylum

¹³ *Germany, the EU country which takes the most asylum seekers, is straining*, THE ECONOMIST (Aug. 21, 2015), <http://www.economist.com/news/europe/21661941-wanting-burden-shared-germany-eu-country-which-takes-most-asylum-seekers-straining>.

¹⁴ Shane Ferro, *Why Refugees Are Good For Europe's Economy*, THE HUFFINGTON POST (Oct. 05, 2015, 9:47 AM), http://www.huffingtonpost.com/entry/why-refugees-are-good-for-europes-economy_560da728e4b07681270162db.

¹⁵ Alexander Coggin, *Refugees Tell Us What Their Lives Are Like After They Make It to Germany*, VICE NEWS (Nov. 01, 2015), <http://www.vice.com/read/the-nightmarish-purgatorial-lives-of-migrants-after-they-finally-get-to-germany-111>.

¹⁶ EUR. COMM'N & EUR. MIGRATION NETWORK, *Ad-Hoc Query on right of Recognised Refugees to travel in EU*, COM (2013) (Compilation produced on Jan. 14, 2014) [hereinafter *Ad-Hoc Query*].

¹⁷ *What's Behind the Surge in Refugees Crossing the Mediterranean Sea*, N.Y. TIMES, http://www.nytimes.com/interactive/2015/04/20/world/europe/surge-in-refugees-crossing-the-mediterranean-sea-maps.html?_r=0 (last updated May 21, 2015).

applications.¹⁸ The regulation was rewritten to tackle the refugee situation in 2013. The Dublin Regulation applies to third country nationals as defined by the TFEU.¹⁹ The TFEU defines a third country national as any person who is not a citizen of a Member State of the EU.²⁰ While the application process is an endeavor in of itself, the operative clause that has proved futile is the article outlining which Member State should first process an asylum application. The section states if:

[A]n applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place.²¹

The Dublin Regulation offers few exceptions to the “first country rule.” The exceptions include whether the third country national has any family in other Member States or if they have lived in several states for a continuous five months period, then they apply in the State where their family is located in or in the latter circumstance, the State they lived in most recently.²²

The most contested article of The Dublin Regulation is the understandably termed “take back” clause. The Regulation states: “[w]here a Member State with which a person...has lodged a new application for international protection considers that another Member State is responsible... it may request that other Member State to take back that person.”²³ The “take back” provision also places the burden on the transferring Member State to front all costs to transfer the third country

¹⁸ Council Regulation 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 2013 O.J. (L 180) 31, at [1].

¹⁹ *Id.* art. [13], at [1].

²⁰ TFEU art. [23], 2012 O.J. C 326.

²¹ Council Regulation 604/2013, *supra* note 18, art. [13], at [1].

²² *Id.* at ¶ 2.

²³ *Id.* at art. [23], ¶ 1.

national.²⁴ The Regulation also gives Member States the ability to adjudicate the asylum application of a third country national even though it may not be that state's responsibility to do so.²⁵

The issues that have now arisen with regard to the mass migration of refugees has rendered The Dublin Regulation largely moot and impractical. Most refugees entering the European Union are currently arriving through Greece and Italy.²⁶ Both Greece and Italy have become overwhelmed with refugees and they have no method by which to keep the refugees in the country.²⁷ With thousands arriving each day onto its shores, Greece, for example, does not have enough civil servants and an orderly system in place to even process applications and fingerprint those arriving into the country.²⁸ The "take back" provision of The Dublin Regulation is widely contested by Border States such as, Greece, Italy and Malta because they fear the stress and volume of processing such a large number of asylum seekers and providing the humanitarian support needed, would be debilitating to their country's government and economy.²⁹

The problem concerning refugees is that many do not seek to stay in their country of first arrival because the treatment and accommodations they receive are very poor or the state laws make it very difficult for a swift integration.³⁰ Some critics state that the refugees are solely economic migrants, due to their lack of interest in staying in their first safe harbor state. On the

²⁴ *Id.* at art. [30].

²⁵ *Id.* at art. [3], ¶ 2.

²⁶ See Council Regulation 604/2013, *supra* note 18.

²⁷ *Id.*

²⁸ *Greece: Chaos, Insecurity in Registration Center*, HUMAN RIGHTS WATCH (Oct. 12, 2015), <https://www.hrw.org/news/2015/10/12/greece-chaos-insecurity-registration-center>.

²⁹ *Miriam Dalli to lead negotiations in revamp of Dublin regulation*, TIMES OF MALTA.COM (Oct. 03, 2015, 2:14 PM), <http://www.timesofmalta.com/articles/view/20151003/local/miriam-dalli-to-lead-negotiations-in-revamp-of-dublin-regulation.586796>.

³⁰ Anemona Hartocollis, *Traveling in Europe's River of Migrants: Why Migrants Don't Want to Stay in Hungary*, N.Y. TIMES (Sept. 05, 2015), <http://www.nytimes.com/interactive/projects/cp/reporters-notebook/migrants/hungary-treatment-refugees>.

other hand, refugees and social workers argue that refugees arrive to Europe with expectations of improved living standards that were not available to them in their war torn nations or in the refugee camps.³¹ Syrians, for example, initially believed that the war would end quickly and many wanted to remain near to Syria. Yet, after years of an endless and worsening civil war, Syrian refugees head to Europe in search of better and safer lives, than that in Syria and the neighboring refugee camps.³² Thus, any similarities, such as large encampments as seen in Hungary and Greece, give the impressions to a refugee that there is no surmountable future in that respective country.³³ This leaves them with no other choice than to make the journey to the West.

Some refugees seek to travel to Western nations because they may have friends or family members there or have heard of “opportunities” and liberal laws that await them.³⁴ Other refugees are simply prevented from entering certain EU states, such as Slovakia, because entry is limited to Christian refugees.³⁵ Greece mandates that refugees are fingerprinted and registered, prior to leaving the country, but they do not bar them from leaving and in fact offer them with the needed route of travel to Western States.³⁶ Greece’s attempts to follow the guidelines of the Dublin Regulation are futile because “[t]he sheer amount of people arriving in Greece and traveling on to Europe has made this rule too cumbersome to enforce.”³⁷

³¹ Piotr Zalewski, *A new exodus? Europe fears more Syrians will start leaving Turkey*, ALJAZEERA AMERICA (Oct. 05, 2015 5:00 AM), <http://america.aljazeera.com/articles/2015/10/9/will-a-new-wave-of-syrians-leave-turkey.html>.

³² Simonovic, *supra* note 7.

³³ Tyler Jump, *The Most Common Questions Refugees Ask When They Arrive in Europe*, THE HUFFINGTON POST (update Nov. 03, 2015 4:59 PM), http://www.huffingtonpost.com/tyler-jump/common-questions-refugees-ask-when-arrive-europe_b_8400118.html.

³⁴ See Ferro, *supra* note 14.

³⁵ Rick Lyman, *Eastern Bloc’s Resistance to Refugees Highlights Europe’s Cultural and Political Divisions*, N.Y. TIMES (Sept. 12, 2015), http://www.nytimes.com/2015/09/13/world/europe/eastern-europe-migrant-refugee-crisis.html?_r=0.

³⁶ Jump, *supra* note 33.

³⁷ *Id.*

On October 3, 2015, *The Times of Malta* reported that the Maltese Member of the European Parliament (MEP) and member of the Migration Committee in the European Parliament, Dr. Miriam Dalli, is tasked with revamping the Dublin Regulation.³⁸ MEP Dalli will seek a permanent mechanism that addresses and counteracts the rules in place for Member States when faced with asylum seekers.³⁹ As discussed, the Dublin Regulations forces the first Member State in which the refugee enters to administer his/her asylum application. The MEP hopes to put in place a permanent mechanism that facilitates asylum applications in an emergency when a large influx of refugees enter Border States, such as Malta.⁴⁰ The permanent mechanism, if added, will be a needed addition to The Dublin Regulation as it heavily appeases Border States. The addition will also ensure that the refugees are not left in limbo waiting on the border for processing. The evident lack of preparation of the EU Member States to such a large migration is apparent now, but as this was not anticipated in years prior, the EU did not see such a mechanism as necessary. Yet with the millions of refugees living in neighboring Turkey for years, and the ever more deteriorating refugee home countries, the EU failed at addressing such a situation before it happened.

The other issue with the current Dublin Regulation is that it offers no immediate recourse for refugees to become legally employed. While the Regulation provides a framework and timeline for Member States to adjudicate applications, many refugees remain without any legal documentation for employment or the ability to contribute productively to society for months at a time.⁴¹ With the large influx of refugees and the overly busy dockets at migration offices,⁴²

³⁸ See Lyman, *supra* note 35.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Coggin, *supra* note 15.

⁴² Melissa Eddy & Katarina Johannsen, *Migrants Arriving in Germany Face a Chaotic Reception in Berlin*, N. Y. TIMES (Nov. 26, 2015), <http://www.nytimes.com/2015/11/27/world/europe/germany-berlin-migrants-refugees.html>.

refugees can remain months with absolutely no employment.⁴³ After waiting for months and surviving on public assistance, many refugees find themselves with no language abilities and no practical training to become a likely candidate for employment.⁴⁴ The prolonged search for employment and dependency on government aid also leaves many refugees with a sense of hopelessness and the intent to remain on public assistance because they do not know anything else and fear a return to hunger and severe poverty.⁴⁵ The only method by which to ensure that refugees are benefiting the European economy is to entitle them to some form of work authorization that generates tax revenue for the state, while at the same time immersing the refugees in the country's language and culture immediately upon arrival.

III. Does the Treaty on the Functioning of the European Union Apply?

The refugees, who have entered Europe, unlike the current citizens of Europe, do not have any nationalistic pride towards a specific Member State. Most refugees are in Europe because it was the closest geographical location to which they can seek safe harbor and a life style better than that of their home country. According to the TFEU, "Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia: the right to move and reside freely within the territory of the Member States."⁴⁶ The TFEU further ensures that the freedom of movement for all workers shall be secured within the European Union.⁴⁷ The freedoms enshrined include protection against discrimination based on nationality between workers of the

⁴³ Coggin, *supra* note 15.

⁴⁴ COMM. ON MIGRATION, REFUGEES AND DISPLACED PERSONS, PARLIAMENTARY ASSEMB. OF THE COUNCIL OF EUR., Doc. 13462 Report (Mar. 24, 2014), *available at* <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20569&lang=en>, at 3, ¶ 3 [hereinafter, *Council of Europe Report*].

⁴⁵ *Id.* at 11, ¶ 44.

⁴⁶ TFEU art. [20], 2012 O.J. C 326, at [2].

⁴⁷ TFEU art. [45], 2012 O.J. C 326, at [1].

Member States.⁴⁸ The abolition of discrimination includes those found in working conditions, wages, and treatment of the employee.⁴⁹

Unfortunately, the freedom of movement, concerning workers in the EU, does not apply to newly arrived refugees despite receiving asylum, full legal working rights, and residency in a Member State.⁵⁰ The TFEU states clearly that it applies to all “citizens” of the EU who by definition is, “every person holding the nationality of a Member State.”⁵¹ The TFEU does not dictate the implications and process by which to get EU citizenship but all EU nationals are eligible for EU citizenship.⁵² Receiving national status in each Member State differs, thus there are no direct or expedited methods by which refugees may get EU citizenship. Non-discrimination and protections in the work environment is given to non-EU nationals who have legal working documentation after gaining long-term residency documents.⁵³ In many Member States, they have enacted laws regarding who may employ a refugee and restricting their ability to work only after the job is offered to a national.⁵⁴ These laws place an obvious strain on the labor markets because the refugees do not have access to all types of employment. Thus, in order for the EU to reap the full economic advantages of laborers, the refugees must receive full rights to move and work freely in the entire Union as well.

⁴⁸ TFEU art. [45], 2012 O.J. C 326, at [2].

⁴⁹ *Id.*

⁵⁰ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States 2004 O.J. (L 158) ¶ 3.

⁵¹ See Council Regulation 604/2013, *supra* note 18.

⁵² See EUROPEAN COMMISSION, DIRECTORATE-GENERAL OF JUSTICE, *Freedom to Live and Move in Europe: A guide to your rights as an EU Citizen* (2010), at 4, available at http://ec.europa.eu/justice/policies/citizenship/docs/guide_free_movement_low.pdf.

⁵³ See EUROPEAN PARLIAMENT, DIRECTORATE-GENERAL FOR INTERNAL POLICIES, POLICY DEPARTMENT, ECONOMIC AND SCIENTIFIC POLICY, *Discrimination of Migrant Workers at the Workplace*, (May 2014), at 7, available at [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/518768/IPOL-EMPL_NT\(2014\)518768_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/518768/IPOL-EMPL_NT(2014)518768_EN.pdf).

⁵⁴ *Council of Europe Report*, *supra* note 44, at 3, ¶ 5.

While the protection of Art. 18 of the TFEU and more specifically Art. 45 of the TFEU applies solely to EU citizens,⁵⁵ Article 15(3) of the Charter of Fundamental Rights of the European Union entitles third country nationals who are authorized to work in the territories of an EU Member State, to equivalent working conditions to those of EU citizens.⁵⁶ Yet, laws governing working conditions and employment authorization are circumvented in national laws.⁵⁷ As stated above, current EU laws grant equal treatment to certain types of third country nationals: family members of EU citizens, long-term residents and third country nationals who derive rights from international agreements between their country of origin and the EU.⁵⁸ Some of these rights are limited to equal working conditions, for example, but do not cover equality in access to employment.⁵⁹

IV. The Court's Decision in *Antonissen* Doesn't Help

In a case involving a European citizen from Belgium who moved to the United Kingdom to seek employment, it was found that the Member State may deport an EU citizen after six months if he does not demonstrate that he is working, looking for a job, or has a chance at actually gaining employment.⁶⁰ The case was brought to the European Court of Justice (ECJ) to enforce the Appellant's rights under the Council Directive 64/221/EEC of 25 February 1964 and the TFEU, enshrining the free movement of workers in the EU.⁶¹ The Court held that:

⁵⁵ See EUROPEAN COMMISSION, DIRECTORATE-GENERAL OF JUSTICE, *supra* note 52.

⁵⁶ Charter of Fundamental Rights of the European Union art. [15], 2010 O.J. C 83/02, at [3] [hereinafter Charter of Rights].

⁵⁷ See Directive 2004/38/EC, *supra* note 50, at 26, ¶ 8.

⁵⁸ See EUROPEAN PARLIAMENT, DIRECTORATE-GENERAL FOR INTERNAL POLICIES, POLICY DEPARTMENT, ECONOMIC AND SCIENTIFIC POLICY, *supra* note 53, at 26-28.

⁵⁹ *Id.*

⁶⁰ See Case C-292/89, *The Queen v. Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen*, [1991] E.C.R. I-00745.

⁶¹ *Id.* at 5.

It is not contrary to the provisions of Community law governing the free movement of workers for the legislation of a Member State to provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged.⁶²

The decision in *Antonissen* resonates in the context of the refugees because, while many are years away from attaining citizenship in the respective Member States, the ability to travel throughout the EU to seek employment is minimized with such laws placing a time limit on their ability to do so. In many cases, a third country national will seek the ability to travel to another EU state to seek employment because a job is not afforded in the State that granted him/her asylum. Refugees have difficulty properly assimilating into current society or working when they first enter a Member State. The Court's decision is very broad because it essentially gives the Member State the liberty to interpret the meaning of "genuine chances of being engaged" very broadly in its favor.⁶³ With refugees who fled countries where no mother tongue of any of the Member States is spoken, refugees will suffer immensely in seeking employment and will be dissuaded from migrating to another Member State for fear they will be deported after not being able to attain employment.

The Court must reexamine the circumstances under which a person cannot find employment and a Member State should bear the burden to offer all those legally able to work the ability to find a job if sought out by the employee. The ability for a worker to move freely and work freely in the EU will affect the refugees dramatically in the future but any impediments deterring them from gainfully gaining employment will cause the refugees to resort to government assistance to support themselves.

⁶² *Id.* at 22.

⁶³ *Id.* at 1.

V. The EU Definition of the Term “Worker”

The other pitfall found in current EU law is that there is no definition for the term “worker,” as it pertains to third country nationals.⁶⁴ The ECJ, also, has not clearly addressed the issue of workers’ rights concerning third country nationals.⁶⁵ As it stands, Member States should indirectly apply the laws against discrimination as applied to EU nationals to third country nationals.⁶⁶ The ECJ, in the case of *Lawrie-Blum*, defined the term worker as an individual who performs specific services, under the control of another, for the purposes of making a profit.⁶⁷ The Court also did not make a distinction between full time and part time workers as long as the “activities performed are effective and genuine.”⁶⁸

The legal criteria outlined in *Lawrie-Blum*, despite addressing the dispute of a German national, should apply to protect asylum seekers and refugees. Upon entering the labor market, refugees and migrant workers fall into similar categories of employment and the definition of “worker” should apply accordingly. The EU does not have specific directives to protect refugees in the workforce, and without such protections they will arguably succumb to discrimination, exploitation, and a lack of employment rights because their economic indigence will effectively lead them into accepting any employment for any wage they are offered.⁶⁹ With the lack of legal working documentation and an urgency to work and provide for their families, many refugees will seek employment illegally.

⁶⁴ See EUROPEAN PARLIAMENT, DIRECTORATE-GENERAL FOR INTERNAL POLICIES, POLICY DEPARTMENT, ECONOMIC AND SCIENTIFIC POLICY, *supra* note 53, at 25.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See Case 66/85, Deborah Lawrie-Blum v. Land Baden-Württemberg, [1986] E.C.R. 2121.

⁶⁸ *Id.* at 21.

⁶⁹ See EUROPEAN PARLIAMENT, DIRECTORATE-GENERAL FOR INTERNAL POLICIES, POLICY DEPARTMENT, ECONOMIC AND SCIENTIFIC POLICY, *supra* note 53, at 39.

As a catch 22, third country nationals face the dilemma and fear that if they report any issues with their employment they may be fired or face government sanctions or deportation. Thus, most refugees wait for months until they are offered some form of documentation to permit them to work.⁷⁰ For the families who arrived in Europe, it is ever more difficult and demoralizing for a father to sit at home while he receives assistance to feed his family. The refugees usually ignore the laws forbidding them to work and work illegally in order to provide for better a lifestyle.⁷¹ The EU has initiated treaties with certain third party countries with large populations in Europe and there are certain caveats under EU law in which some extremely skilled persons may be able to access the workforce.⁷² Unfortunately, the laws do not cover the current displaced persons and even if they did EU laws do not provide the refugees with the ability to freely work and move into another Member State.

VI. “Without the right to work, all other rights are meaningless.”⁷³

After applying for asylum in the designated Member State, an asylum seeker must satisfy the procedural requirements of that specific Member State.⁷⁴ While the Dublin Regulation offers guideposts for the Member States, there are no definitive and/or unifying measures among the EU states for granting refugees the right to employment.⁷⁵ Every member of the European Economic Area offers employment to an asylum seeker at some point during the

⁷⁰ Coggin, *supra* note 15.

⁷¹ Interview with Refugees, in Malmo, Sweden (notes and photos on file with author) (Oct. 06, 2015).

⁷² See EUROPEAN PARLIAMENT, DIRECTORATE-GENERAL FOR INTERNAL POLICIES, POLICY DEPARTMENT, ECONOMIC AND SCIENTIFIC POLICY, *supra* note 53, at 28.

⁷³ *Council of Europe Report*, *supra* note 44, at 5. (citing Professor Louis Henkin, US delegate at the drafting of the 1951 Convention relating to the Status of Refugees).

⁷⁴ Timothy J. Hatton, *Asylum Policy in the EU: The Case for Deeper Integration*, NORFACE MIGRATION, Feb, 2012, at 2, available at http://www.norface-migration.org/publ_uploads/NDP_16_12.pdf.

⁷⁵ Council Regulation 604/2013, *supra* note 18.

process of his or her application.⁷⁶ Because the internationally signed Refugee Convention does not mandate a right to work for asylum applicants, nations vary on their decision making process.⁷⁷

On December 2, 2013, overcome by a refugee population and an EU Border State in the Mediterranean Sea, Cyprus posed to all the Member States an urgent ad-hoc query on the right of recognized refugees to travel in the EU. One of the essential questions posed in the query was, “Would Member States allow a recognised refugee who holds a ‘temporary residence permit’ and who has in his/her possession a refugee travel document according to the Geneva Convention, to travel to their territories for the purpose of residence/employment?”⁷⁸ Seventeen of the twenty-eight Member States responded with a majority saying that a temporary residence permit would not allow free movement in the EU and the right to work for refugees is granted by means of an application process similar to other third country nationals. While most states offer a method by which it may be plausible for a refugee to reside and/or be employed, Member States are not united in their treatment of refugees. Economically prosperous states such as Austria and Denmark did not even respond and Hungary stated that they treat asylees in the same way they treat their citizens.⁷⁹

Of course, Cyprus’ question was asked on January 14, 2014, when a much smaller scale of refugees was entering Europe. “The International Organization for Migration estimates that more than 750,000 migrants were detected at the EU’s borders between January and November 2015, compared with 280,000 detections for the whole of 2014.”⁸⁰ This is almost

⁷⁶ *Asylum Seekers and the Right to Work in the European Economic Area*, MIGRATION WATCH UK (Oct. 10, 2013), <http://www.migrationwatchuk.org/briefing-paper/316> [hereinafter MIGRATION WATCH UK].

⁷⁷ *Id.*

⁷⁸ *Ad-Hoc Query*, *supra* note 16, at 1.

⁷⁹ *Id.* at 2-3.

⁸⁰ *Migration crisis: Migration to Europe explained in graphics*, BBC NEWS (Nov. 09, 2015) <http://www.bbc.com/news/world-europe-34131911>.

three times as many refugees who have entered the EU in less than a year's time as compared to 2014; so while Member States may have answered in a somewhat positive fashion in the ad-hoc query, the unprecedented numbers have forced states to reexamine their laws and bar entry to refugees all together currently.

The most efficient manner by which to integrate the recent influx of refugees is to allow them the ability to be legally employed and/or continue education immediately upon arrival and registration into the Member State of their final destination. The Member State should also provide the refugees with the ability to integrate and learn the language of the Member State. States should educate employers about the legality and benefits of hiring refugees.

In March 2014, also about a year prior to the recent surge, the Council of the Europe's Parliamentary Assembly published a report produced by the Committee on Migration, Refugees, and Displaced Persons.⁸¹ The Council of Europe comprises forty-seven Member States. While their decisions are non-binding, it is charged with the formation of the European Court for Human Rights whose rulings are binding on the parties involved.⁸² The report highlights the important tenants that in addition to decreasing the cost of social assistance, giving asylum seekers and refugees the access to the labor market is "important to the individual because it helps reinstate a sense of self-worth, is crucial to human dignity, facilitates recovery from trauma and encourages financial independence."⁸³

The refugees entering Europe are in a majority working age group (18-59) and their employment, with the many skills they bring, will enable them to pay taxes, buy goods, and stimulate the host countries' economy.⁸⁴ The report goes on to highlight the current

⁸¹ *Council of Europe Report*, *supra* note 44.

⁸² *Do not get confused*, COUNCIL OF EUROPE, <http://www.coe.int/en/web/about-us/do-not-get-confused>.

⁸³ *Council of Europe Report*, *supra* note 44, at 1.

⁸⁴ *Id.* at 6, ¶ 10.

Directives in place as they pertain to granting lawful employment status to asylum seekers and refugees.

In 2001, the Council of the European Union issued a directive to tackle the issue of temporary protection in the event the EU is faced with a mass influx of displaced persons.⁸⁵ Council Directive 2001/55/EC, hereinafter the “Minimum Standards Directive,” provided that Member States may give a displaced person temporary protection for a period of one year to be extended for a maximum of two-six month periods, if necessary.⁸⁶ All Member States, except Denmark, applied the Minimum Standards Directive in some form into their national laws.⁸⁷ The Directive also provided the protected individuals with the right to work, subject to certain circumstances. Employment was granted for the period in line with the temporary protection, subject to rules “applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training and practical workplace experience.”⁸⁸ The Minimum Standards Directive further highlights that protected individuals will have to yield their needs of employment to the priority of “EU citizens and citizens of States bound by the Agreement on the European Economic Area” and a legal third country national who receives unemployment benefits.⁸⁹ The Directive also advises member states to provide displaced persons with housing, basic amenities, and documentation.⁹⁰

The 2001 Directive fails to account for a mass influx of over 700,000 refugees in less than a year. The law while directing the Member States to provide displaced persons with the

⁸⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, 2001 O.J. (L 212) 12.

⁸⁶ *Id.* at art. [1], ¶ 1.

⁸⁷ *Id.* (referencing National Implementing Measures, *available* at <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32001L0055>).

⁸⁸ *Id.* at art. [12].

⁸⁹ *Id.*

⁹⁰ *Id.* at art. [13].

necessary access to housing and asylum applications fails to give a distinct period by which documentation for temporary protection must be issued. Further, when granted the temporary protection, the restrictions and hurdles in place before a refugee is even considered for employment are vast and very difficult to overcome. In many circumstances, employers will not understand the meaning behind the temporary protection and if it is only valid for a maximum of two years, they do not want to risk hiring a refugee, training them and then being confronted with the fact that he is illegal after two years. Employers also do not want to go through the process of exhausting all the prioritized classes simply to hire an individual with temporary protection who has likely, not been integrated sufficiently into society. Thus, while the Minimum Standards Directive serves a great purpose in leading displaced persons to the asylum process, Member States do not want to exceed their national laws regarding the treatment of refugees.⁹¹

In 2011, the EU Parliament and Council adopted Council Directive 2011/95/EU that would serve to unify the Member States in their determination of asylum applications and procedures; hereinafter the “Qualification for Protection Directive or QFP Directive.”⁹² It was transposed into national laws of all Member States except, Denmark, Ireland, and the United Kingdom.⁹³ The Qualification for Protection Directive directed the Member States to allow refugees the ability to be employed immediately after being granted status and to be treated the same way as a national of the State.⁹⁴ The QFP Directive also allowed for adults

⁹¹ PARLIAMENTARY ASSEMB. OF THE COUNCIL OF EUR., Working Papers, 2003 Ordinary Session (Second Part), 31 March – 4 April 2003, Vol. III (2003), at 169, ¶ 18.

⁹² Council Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 2011 O.J. (L 337) 9.

⁹³ *Id.* (referencing National Implementation Measures, *available* at <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32011L0095>).

⁹⁴ *Id.* at art. [26].

granted protection to have access to education, training or re-training, by the same conditions as other third country nationals.⁹⁵ While the QFP Directive attempted to lead the EU to a more unified system of asylum procedures, it did not give Member States a period by which application and employment rights should be granted. It also did not provide for an explanation as to what the refugees will be able to do pending adjudication of their applications.

In 2013, two years prior to the largest wave of displaced persons to hit the continent, the EU adopted two directives to address the asylum process. Council Directive 2013/32/EU, hereinafter the “Granting and Withdrawing Protection Directive or GWP Directive,” was in effect a step by step manual for Member States on how to treat refugees seeking protection, the process by which states should act in adjudicating an asylum application, and withdrawing said status from an individual.⁹⁶ The GWP Directive gives the Member States a maximum of 21 months from the date the application is filed to complete the examination process.⁹⁷

Just about half of the twenty Member States transposed it into their national laws.⁹⁸ The GWP Directive states that the treatment of the displaced person is governed by the international law the Member State is a party.⁹⁹ This of course leads to great disarray in treatment of refugees in different EU Member States. Many refugees have fled Member States because they are placed in congested housing units, are not treated with respect, and are forced to endure further dehumanization.¹⁰⁰

⁹⁵ *Id.* at art. [26], ¶ 2.

⁹⁶ Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 2013 O.J. (L 180) 60.

⁹⁷ *Id.* at ¶ 5.

⁹⁸ *Id.* (referencing National Implementation Measures, *available* at <http://eur-lex.europa.eu/legal-content/en/NIM/?uri=celex:32013L0032>).

⁹⁹ *Id.* at ¶ 15.

¹⁰⁰ Hartocollis, *supra* note 36.

Council Directive 2013/33/EU, hereinafter the “Time Frame Directive or TF Directive,” adopted on the same day as the QWP Directive, provided specific time frames for the Member States, and has been transposed in some form by all but seven Member States.¹⁰¹ Most importantly, the TF Directive states, “Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.”¹⁰² The TF Directive, while giving Member States nine months to allow for employment, restates the terms of the Minimum Standards Directive and leaves terms of the conditions of employment to the individual Member State and it preserves the priority categories in place for nationals and citizens.¹⁰³

The issue with the “nine month maximum” given for States to allow access to labor market is twofold: what will the refugees do for nine months and what does “access” entail? If the Member State provides the necessary humanitarian aid and social assistance for an extended period to refugees who have endured turmoil and endless poverty, being able to work after nine months of non-integration will be very difficult.¹⁰⁴ The accessibility provision is also very broad and in essence leaves Member States with the liberty to control where, when, and if the refugees may be able to work.¹⁰⁵ If the Member States has set national laws that prioritize citizens and nationals, then employers will also feel an obligation to deter refugees from applying for a fear they are not committing to the States’ laws. Further, the

¹⁰¹ Council Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 2013 O.J. (L 180) 96

¹⁰² *Id.* at art.[15], ¶ 1.

¹⁰³ *Id.* at art [15], ¶ 2.

¹⁰⁴ *Council of Europe Report, supra* note 44, at 11.

¹⁰⁵ *See* Council Directive 2013/33/, *supra* note 101, at art. [15], ¶ 2.

numbers of refugees who have entered the EU have drastically changed from 2013.¹⁰⁶ Many States are overwhelmed with their caseloads and nine months may be too little a time to adjudicate applications. On the other hand leaving hundreds of thousands of people with no means of employment or way to contribute to society will cripple the social welfare system and exhaust the humanitarian measures in place.

VII. The Right to Employment – Member State Specific

It is very rare that a country offers a refugee the right to employment, immediately upon their filing of an application.¹⁰⁷ The only exceptions to this rule are Austria, Greece, Malta, and Sweden.¹⁰⁸ Austria, Greece, and Malta all have specific requirements and provisions dictating who specifically may in fact be employed and it is narrowed down to those with particular skills or labor markets that may not be filled by current legal residents or nationals.¹⁰⁹ Sweden offers unrestricted working rights¹¹⁰ but it is most common among EU states to allow asylum seekers to work after twelve months from the date they register and lodge their applications.¹¹¹ “In France, Germany, Hungary and Latvia an asylum seeker can work after twelve months however they are subject to a resident labour market test to ensure that the position could not be filled by a member of the domestic labour force.”¹¹²

The lack of uniformity among the Member States regarding the ability to work, receive asylum status, and ample benefits have caused many refugees to “asylum shop.”¹¹³ Granting,

¹⁰⁶ See BBC NEWS, *supra* note 80.

¹⁰⁷ MIGRATION WATCH UK, *supra* note 76.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*, but see discussion *infra* Part IX pp. 25-26 regarding the Swedish asylum process and its acceptance of refugees.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *EU Commission Wants to End “Asylum Shopping,”* DEUTSCHE WELLE (Jun. 07, 2007), <http://www.dw.com/en/eu-commission-wants-to-end-asylum-shopping/a-2579627>.

the ability to work while an asylum application is pending is not granting a refugee permanent status in any way. In effect, it will only serve as a temporary recourse to ensure that refugees have a source of income while they await the adjudication of their applications. Arguably, the ability to work legally benefits both the worker and the Member State, decreases the amount of financial assistance needed for refugees to survive, and it offers employers the incentive to hire eager employees at minimum wages who will generate productivity and taxes for the nation.¹¹⁴ The ability to work also immerses the refugees into society and does not ostracize them from the ability to learn the language and culture of the Member State.¹¹⁵

Mike Kaye, an advocacy manager for an organization dealing with asylum seekers called “Still Here Still Human,” states “reducing the length of time asylum seekers have to wait to legally work from 12 months to six would be ‘sensible, economically efficient and compassionate,’ and would help more people integrate into society.”¹¹⁶ The article highlights how German business people have hailed the incoming influx of refugees and have called for their employment.¹¹⁷ Without the ability to work and integrate into society the asylum seekers, remain stigmatized, even beyond the grant of full refugee status. Member States have not taken the time to inform their respective business industries that there are no additional hassles placed on hiring a refugee.¹¹⁸

In the United States, for example, asylum seekers are able to apply for work authorization 150 days after an application is filed with the Department of Homeland Security, a decision

¹¹⁴ *Council of Europe Report*, *supra* note 44, at 6, ¶ 10.

¹¹⁵ *Id.* at 10, ¶ 37.

¹¹⁶ Adam Forrest, *Refugees will have the right to work - why not employ them?*, THE GUARDIAN (Sept. 11, 2015, 6:00 AM), <http://www.theguardian.com/sustainable-business/2015/sep/11/business-refugee-crisis-employment-work-asylum-seekers>.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

has not been made on the application, and the applicant has caused no delays.¹¹⁹ Work authorization in turn, enables a refugee to get a Social Security Card and a driver's license in many US States.¹²⁰ His/her work documentation enables the asylee or asylum seeker to work across the country without any employment restrictions, such as being barred by priority classes of US Citizens and Legal Permanent Residents.¹²¹

VIII. Repercussions on Employers

As in many of the developed nations, the EU has instituted directives to prohibit and curb employers from hiring third country nationals without legal documentation for employment. A 2009 Directive of the EU Parliament and Council offered “minimum standards” for which Member States should apply against employers who employ undocumented third country nationals, hereinafter “Employers Sanctions Directive or EC Directive”¹²² The EC Directive reiterates a previous point that emphasizes that third country nationals with no rights for employment are not entitled to free movement in the EU.¹²³ An overwhelming majority of the Member States have transposed the EC Directive into national laws.¹²⁴ The EC Directive states that employees must present documentation proving that they are legal residents of the Member State, which in turn must be provided to the relevant authorities by the employer.¹²⁵

¹¹⁹ DEP'T OF JUSTICE, EXEC. OFF. FOR IMMIGR. REVIEW & U.S. DEP'T OF HOMELAND SECURITY, U.S. CITIZENSHIP & IMMIGR. SERVICES, *The 180- Day Asylum EAD Clock Notice*, http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum_Clock_Joint_Notice_Revised_Adj_Code_Chart_01-30-15.pdf (Jan. 30, 2015).

¹²⁰ DEP'T OF JUSTICE, OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES, *“Refugees and Asylees Have the Right to Work,”* http://www.justice.gov/sites/default/files/crt/legacy/2011/05/20/Refugee_Asylee_Flyer_English.pdf (May 20, 2011).

¹²¹ *Id.*

¹²² Council 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, 2009 O.J. (L 168) 24 [hereinafter “Employers Sanctions Directive” or “EC Directive”].

¹²³ *Id.* at ¶ 5.

¹²⁴ *Id.* (referencing National Implementation Measures, *available* at <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0052>).

¹²⁵ *Id.* at art. [4], ¶ 1.

Any employer found in violations of the EC Directive will face financial sanctions that will increase depending on how many “illegal third country nationals” are employed and the government may impose on the employer costs for deporting the employee back to his home nation.¹²⁶

In an effort to defend the rights of third country nationals, the Employers Sanctions Directive gives the employee the opportunity to seek remuneration and all benefits the employer would have paid had the employee were legally allowed to be employed.¹²⁷ The employee may also seek this payment despite freely leaving or being deported to his home country.¹²⁸ The EC Directive further threatens employers with criminal penalties if found to be a repeat offender of the law or inflicting admonished working conditions.¹²⁹ The Member States, by means of inspections to work place environments, must enforce the law.¹³⁰

The EC Directive while seeking to benefit the rights of the worker, are in fact contradictory to the current dilemma facing the EU. The EC Directive offers no incentive or direction for employers to hire refugees or asylum seekers with proper documentation. Further, with overarching fears of hiring third country nationals, employers fear that anyone they hire is undocumented because they cannot personally identify the validity of their documents.¹³¹ Additionally, refugees have no option but to offer their skills on the black market, for low wages and in some cases outside of the refugee’s potential skill set.¹³²

¹²⁶ *Id.* at art. [5], ¶ 1.

¹²⁷ ANP, EU Monitor, Explanatory Memorandum to COM(2014)286 - Application of Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals (May 22, 2014), http://www.eumonitor.eu/9353000/1/j4nvhdjdk3hydzq_j9vvik7m1c3gyxp/vjjztdvrbiw2.

¹²⁸ *Id.* at Part 4.

¹²⁹ *Id.* at Part 3.

¹³⁰ *Id.* at Part 6.

¹³¹ Interview with Refugees, in Malmo, Sweden (notes and photos on file with author) (Oct. 06, 2015) [hereinafter Sweden Interview].

¹³² *Id.*

IX. Sweden – A Case Study

In early October 2015, I conducted a limited case study to determine how the asylum system in Sweden is actually being implemented on the ground. Initial conversations took place with a social worker who processed stipends for asylum seekers and refugees in Southern Sweden. The social worker suggested that giving monetary handouts without spending restrictions to all refugees is making the refugees dependent on social assistance and giving them no impetus to work.¹³³ I then traveled to Malmo, a city in the south of Sweden that is overwhelmed with migrants seeking asylum. Upon nearing the Migration Office in Malmo, I was surprised to find a few hundred persons sleeping in tents outside of the Migration Office. The refugees sleeping in the frigid cold weather were Palestinian refugees who fled Iraq or Gaza, all of whom have been denied asylum. I visited the tents of both groups of refugees and spoke to several male and female refugees staying there. All the Palestinian refugees located in the tents were denied asylum because Iraq and Palestine are considered “safe countries” by Swedish standards.¹³⁴ After the denial, the refugees are then denied any social assistance and more importantly are not given any rights to employment, and are issued deportation orders.¹³⁵ Oddly enough, any attempts to deport the refugees have failed because Sweden is unable to get them to their unstable home countries.¹³⁶ Speaking to a Palestinian refugee from Iraq, he stated that it was always his intention to arrive to Sweden and continue his job and education as an electrical engineer.¹³⁷ He was never given the ability

¹³³ *Id.*

¹³⁴ Adriano Merola Marotta, *Why does Sweden want to expel Gaza refugees?*, THE ELECTRONIC INTIFADA (Oct. 15, 2015), <https://electronicintifada.net/content/why-does-sweden-want-expel-gaza-refugees/14916>.

¹³⁵ *Id.*

¹³⁶ Sweden Interview, *supra* note 131.

¹³⁷ *Id.* referencing discussion with middle-aged Palestinian Refugee from Iraq.

to work legally in the country and like the other refugees in the tents; all have resorted to illegal labor.

Two elder women were also among the refugees I met who deplored the Swedish government for its lack of action in giving stateless and un-deportable persons asylum status.¹³⁸ The women described how they have spent years with no status or work documentation for themselves or their kids.¹³⁹ The encampment was set up in an effort to protest the actions of the Swedish government and force them to issue those few hundred families asylum status. Their efforts were fruitful as some families were granted asylum but days after my interview, reports indicated that the Swedish police destroyed the encampment and removed the refugees from the area.¹⁴⁰

As the Migration Office was overwhelmed with refugees and exhausted civil servants, I interacted at a rest stop with a group of Syrian refugees on a government chartered bus ride to northern Sweden. Syrians are granted immediate asylum status upon proof of identity, unlike Palestinians and those from other countries. Yet despite the reports that refugees receive immediate rights to employment, the group of Syrians on the bus did not get that message.¹⁴¹ They were in fact being sent to shelters in rural northern Swedish towns, unknown to them, where they must stay until they are issued the documentation that will enable them to work freely.¹⁴² I spoke to four Syrian refugees, all approximately 19-23 years of age, who were excited to come to Sweden because of their ability to sustain better and

¹³⁸ *Id.*

¹³⁹ *Id.* referencing discussion with elder women Palestinian Refugees from Iraq.

¹⁴⁰ Marotta, *supra* note 138.

¹⁴¹ Tom Sullivan, *Syrian refugees can take a fast track to new life in Sweden – one made it to Spotify*, BUSINESS INSIDER (Jun. 14, 2015, 2:21 PM), <http://www.businessinsider.com/afp-syrian-refugees-take-fast-track-to-new-life-in-sweden-2015-6>.

¹⁴² Sweden Interview, *supra* note 131.

safer lives and provide for their families.¹⁴³ One refugee informed me that he was promised working documents in about three months.¹⁴⁴ There is no way for me to verify this information or inquire on whether he received the documents.

As was expected, on November 19, 2015, the Swedish Migration Agency announced that they would not be able to offer housing accommodations to asylum seekers because there are not enough shelters.¹⁴⁵ The Agency has been registering more people than it even has housing accommodations for and now Sweden is overwhelmed.¹⁴⁶ The Swedish people are largely in favor of offering humanitarian care but with high income and payroll taxes, they are not encouraged to hire refugees who are not familiar with the language or cultural, thus many refugees in Sweden are surviving on social assistance.¹⁴⁷

X. The Economic Advantages of Accommodating Refugees

The EU is currently split on whether the refugees are in fact a needed economic boost or an ever more unneeded economic burden.¹⁴⁸ Experts on the issue have discussed that the Eastern EU states are struck with a high unemployment rate and a very poor economy and their countries cannot sustain the refugee situation.¹⁴⁹ On the other hand, nations like Germany, who has taken a large majority of the refugees, are benefiting economically and looks to benefit from the refugees.¹⁵⁰ Swiss bank Credit Suisse said that over the next five years “net immigration will boost

¹⁴³ *Id.*

¹⁴⁴ *Id.* referencing discussion with Syrian Refugee #1 on bus.

¹⁴⁵ MIGRATIONSVERKET, *The Swedish Migration Agency is no longer able to offer accommodation to all asylum seekers*, (Nov. 26, 2015), <http://www.migrationsverket.se/English/About-the-Migration-Agency/News-archive/News-archive-2015/2015-11-26-The-Swedish-Migration-Agency-is-no-longer-able-to-offer-accommodation-to-all-asylum-seekers.html>.

¹⁴⁶ *Id.*

¹⁴⁷ Sweden Interview, *supra* note 135.

¹⁴⁸ Henry Ridgwell, *Migrant Influx Cost Europe, But Economy Could Benefit*, VOICE OF AMERICA (Oct. 02, 2015, 10:17 AM), <http://www.voanews.com/content/migrant-influx-costs-europe-but-economy-could-benefit-long-term/2988634.html>.

¹⁴⁹ *Id.*

¹⁵⁰ Reuters, *Refugee Could Give Europe's Economy New Lease of Life*, NEWSWEEK (Oct. 14, 2015, 7:44 AM), <http://europe.newsweek.com/refugee-could-give-europes-economy-new-lease-life-334759>.

the euro area's population by about 5 million, equivalent to 1.5 percent of the current 340 million.”¹⁵¹ Additionally the “euro ‘potential output’ growth will be lifted by 0.2 points above official assumptions to 1.3 percent on average over the eight years through 2023, the Credit Suisse report added, with growth this year alone exceeding European Commission forecasts by up to half a percentage point.”¹⁵² While the report does state that housing needs and financial assistance will be provided in advance to refugees, the coming years should project economic growth as the refugees are integrated into the labor market.¹⁵³

Germany’s low birth rate and aging population can benefit immensely from the refugees who make up a young demographic.¹⁵⁴ If properly integrated and assimilated into society, “young refugees could be a resource to overcome a dire demographic threat to Europe. More than one-fifth of Europeans will be 65 or older by 2025, according to the European Commission, and Europe will face a severe problem funding retirement benefits.”¹⁵⁵ Critics of the refugees deplore the Member States’ overwhelming expenditures dedicated to housing and providing financial assistance for the refugees.¹⁵⁶ However, a study conducted by the Center for European Economic Research found just last year the:

The 6.6 million residents with foreign citizenship who lived Germany in 2012 will pay EUR 147.9 billion more taxes and social insurance contributions than they receive as social transfers over the remaining life cycle.¹⁵⁷ The surplus arises despite their still substantially weaker labour market and income position compared to German nationals.¹⁵⁸

¹⁵¹ Mark Misercola, *Can Migrants Boost European Growth, Ease Labor Constraints?*, CREDIT SUISSE (Oct. 16, 2015), <https://www.credit-suisse.com/us/en/news-and-expertise/economy/articles/news-and-expertise/2015/10/en/can-migrant-boost-european-growth.html>.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Reuters, *supra* note 150.

¹⁵⁵ Jamie Dettmer, *Refugees May Hold Potential to Boost European Economies*, VOICE OF AMERICA (Oct. 16, 2015 7:33 AM), <http://www.voanews.com/content/refugees-could-boost-european-economies/3010008.html>.

¹⁵⁶ *Id.*

¹⁵⁷ ZENTRUM FÜR EUROPÄISCHE WIRTSCHAFTSFORSCHUNG, CENTRE FOR EUROPEAN ECONOMIC RESEARCH, *The Fiscal Effects of Foreigners and Immigration in Germany*, available at <http://www.zew.de/en/news/2817/the-fiscal-effects-of-foreigners-and-immigration-in-germany> (Nov. 27, 2014).

¹⁵⁸ *Id.*

In Sweden, the unrestricted spending tied to the monetary assistance, deposited on a debit card and given to refugees, enables them to stimulate local businesses through purchases.¹⁵⁹

The head of the International Monetary Fund, Christine Lagarde, highlighted the economic benefits of the influx refugees.¹⁶⁰ She stated, “I don’t want to prejudge because they have not done the analytical work, but I would bet that if the influx is well-managed, yes, it is bound to be a positive in a society which is aging and which has the fiscal space to accommodate it.”¹⁶¹ Thus while the refugees are overwhelming the German civil servants in attempting to process and accommodate the refugees, the country is need of the young workers to fill an aging gap in its society.¹⁶²

Whether Germany’s actions in suspending the Dublin Regulation is due to its need to boost its economy and working class or out humanitarian concerns has not been publicly disclosed at the moment. Yet, economic analysts all perceive that Germany’s stance to accommodate an incredible amount of refugees is to boost its own economy with eager workers who will be trained and assimilated into society.¹⁶³ Unfortunately, Germany is not offering many of these refugees much hope because the country is overwhelmed by the mass influx.¹⁶⁴ Government officials are not able to register all the refugees efficiently and individuals have been waiting for over three months with no indication as to when they will receive legal work authorization. Upon granting working

¹⁵⁹ Sweden Interview, *supra* note 131.

¹⁶⁰ Shane Ferro, *Why Refugees Are Good For Europe’s Economy*, THE HUFFINGTON POST (Oct. 05, 2015, 9:47 AM), http://www.huffingtonpost.com/entry/why-refugees-are-good-for-europes-economy_560da728e4b07681270162db.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Elizabeth Matsangou, *Refugees are an economic benefit, not burden, to Europe*, WORLD FINANCE (Nov. 02, 2015), <http://www.worldfinance.com/infrastructure-investment/government-policy/refugees-are-an-economic-benefit-not-burden-to-europe>.

¹⁶⁴ Coggin, *supra* note 15.

documentation the labor market must be easily accessible by the refugees without having to worry about a priority worker that may take his/her place or an uninformed employer.¹⁶⁵

XI. Conclusion

On September 22, 2015, the EU Member States agreed in a Council Decision on a quota that may ease the migration burden on Italy and Greece and instead relocate 120,000 refugees across the EU with a rationalized quota for each state.¹⁶⁶ The European Council met on October 12, 2015, to discuss and adopt a conclusion regarding the migration issue.¹⁶⁷ Unfortunately, the Council did not formulate any concrete decisions or attempts to tackle the problems regarding the refugees who have entered the EU and are still entering.¹⁶⁸ The conclusions provided for a comprehensive support system to assist the conflict-inflicted regions and to provide people in war torn regions and refugee camps with humanitarian aid.¹⁶⁹

After the attacks in Paris on November 13, 2015, States such as Poland have now refused to accept their quota and other States such as Sweden have reversed their open door policy noting that the country is in need of “respite.”¹⁷⁰ The United Nations Higher Commission on Refugees has also urged States not to scapegoat the refugees because they too are fleeing from “extremism and terrorism” and it will only contribute to xenophobia and fear amongst Europeans.¹⁷¹

¹⁶⁵ Matsangou, *supra* note 163.

¹⁶⁶ Council Decision No. 2015/1601, 2015 O.J. L 248/80.

¹⁶⁷ Council Conclusion of 12 October 2015, 2015 (OR. en.) 12880/15.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 4.

¹⁷⁰ Natalie Ilesley, *After Welcoming Refugees Europe is Saying No More*, NEWSWEEK (Nov. 25, 2015, 12:26 PM), <http://www.newsweek.com/after-welcoming-refugees-europe-saying-no-more-398261>.

¹⁷¹ UN HIGH COMM’N FOR REFUGEES, *After Paris attacks, refugees should not be turned into scapegoats*, <http://www.unhcr.org/564b1f786.html> (Nov. 17, 2015).

The only way for the EU to address the largest influx of refugees facing the EU since World War II, is by integrating the refugees into the work force as quickly as possible with no barriers to employment. While the EU trumps the US in their ability to provide social assistance to refugees, the employment restrictions and the delays caused in processing the masses of refugees, is not assisting the EU economy. With efficient integration into the workforce, the Member States can insure that the refugees generate tax revenue for the country and if their asylum applications are not granted the refugees would have provided the country with a surplus of some sort during the period in which his asylum application was being adjudicated.

When asked about the need for refugees to receive immediate working documents, Assistant Secretary General, Ivan Simonovic responded that getting working documents is something we “should strategically pursue, there is no doubt about that.”¹⁷² While the benefits of the refugees to the European economy are only to be seen farther along the horizon, the only way to determine their benefit is by allowing refugees the ability to prosper and succeed in the European Union.

¹⁷² Simonovic, *supra* note 7.