Annual Report 2013/2014

An NGO perspective on Challenges to Accessing Protection in the Common European Asylum System.

A project by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, the Irish Refugee Council and the Hungarian Helsinki Committee.
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The Asylum Information Database (AIDA) is a project of the European Council on Refugees and Exiles (ECRE), in partnership with Forum Refugiés-Cosi, the Hungarian Helsinki Committee and the Irish Refugee Council.

The overall goal of the project is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level.

The project aims to do so by providing independent and up-to-date information to the media, researchers, advocates, legal practitioners and the public on asylum practices in Europe, in particular with regard to asylum procedures, reception conditions and detention. The database features analysis of the respective national asylum systems from the perspective of non-governmental organisations that assist asylum seekers and persons granted international protection, while giving a voice to those who arrive in Europe fleeing persecution, conflict and other serious human rights violations.

During the project’s first phase (September 2012 – December 2013), information on asylum procedures, reception conditions and detention was gathered in 14 Member states Austria, Belgium Bulgaria, Germany, France, Greece, Hungary, Ireland, Italy, Malta, the Netherlands, Poland, Sweden and the United Kingdom. It led to the publication of 14 country reports in July 2013, which were updated in November-December 2013; of comparative indicators for those 14 countries, as well as relevant news and advocacy resources. In addition, in September 2013, an Annual Report was issued.

During the second phase of the project (January 2014 – December 2015), the database is being extended to include two additional EU Member States (Cyprus and Croatia) as well as two non-EU neighbouring countries (Switzerland and Turkey). The existing 14 country reports as well as the comparative indicators are still regularly updated (latest update published in Spring 2014). The report on Cyprus was published in August 2014 and the report on Croatia is to be published in September 2014.

The AIDA project is funded by EPIM (the European Programme on Integration and Migration), an initiative of the Network of European Foundations and by the Adessium Foundation. Additional research for the second update of 14 national reports (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK), published in the Spring of 2014, was made possible thanks to financial support from the Fundamental Rights and Citizenship Programme of the European Union (FRAME Project).

The contents of the database are the sole responsibility of ECRE and the national experts and can in no way be taken to reflect the views of the European Commission, EPIM or Adessium Foundation.

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1. The second update of the Swedish report was not finalised at the time of writing this annual report. Therefore information with regard to Sweden is up-to-date as of February 2014. However, changes in the asylum practice in Sweden since that date were minimal.
2. The FRAME project aims to promote the principles laid down in the Charter of Fundamental Rights of the European Union amongst legal practitioners protecting the rights of vulnerable migrants. It also aims to strengthen co-operation and the exchange of information between asylum and migration lawyers and general EU law practitioners with a specific focus on litigating before the Court of Justice of the European Union (CJEU). The project is coordinated by ECRE in partnership with the Dutch Council for Refugees and the Romanian Refugee Council.
INTRODUCTION

The arrival of persons fleeing persecution, conflicts and human rights abuses at the southern shores of the European Union (EU) has dominated much of the debate in Europe on asylum in the past year. The images of the thousands of men, women and children arriving on boats in Italy, Malta and the Greek islands as well as the reports about those who died on their way to Europe have sadly become all too familiar. While the boat arrivals continue to make the headlines in the European press and the numbers of persons arriving by sea in Italy reach unprecedented levels, a true European response is lacking.

Chapter II is dedicated to an analysis of a number of important policy and legislative developments since the statistical information with regard to asylum applicants in the EU in a broader context.

Certainly, the death of over 360 migrants, asylum seekers and refugees off the coast of Lampedusa in October 2013 created a shockwave across Europe. European leaders were quick to deplore the loss of lives and made solemn pledges that all should and would be done to prevent this from happening again. Even a Task Force Mediterranean was set up, listing no less than 37 measures that could and should be implemented. However, in reality, one year later, Europe is still sitting on the fence as far as the immediate humanitarian needs at sea are concerned as it is Italy that has had to deal with the rescue and disembarkation of migrants, asylum seekers and refugees at sea on a daily basis, with only limited financial support of the EU.

The contrast with the Italian push-backs to Libya under the Gaddafi regime could not be bigger. Unfortunately, this does not mean that push-backs are history at the EU’s external borders. In the past months, non-governmental organisations (NGOs) have documented persistent and credible allegations of such practices in Bulgaria and Greece, while also in Ceuta and Melilla, migrants and asylum seekers have died trying to reach the Spanish enclaves in Morocco.

The dramatic scenes in the Mediterranean add to the long list of challenges the EU Member States are facing in building and maintaining fair and efficient asylum systems. One year ago, the Asylum Information Database (AIDA) partners published the first AIDA annual report entitled “Not There Yet”, referring to the long and difficult road ahead for the EU to establish a Common European Asylum System (CEAS) based on high standards of protection and guaranteeing similar treatment and the same outcome of asylum applications, regardless of where they are lodged in the EU. While there has been progress on a number of areas highlighted last year in some of the EU Member States covered by the database, many of the issues raised last year remain problematic in those Member States today, such as with regard to asylum seekers’ access to material reception conditions, the grounds and conditions of detention and asylum seekers’ access to quality free legal assistance during the asylum procedure.

This Annual report not only presents a number of findings from the national reports drafted in the context of the AIDA project but also reflects on a number of important developments at the EU level in the field of asylum in 2013 and the first half of 2014.

Chapter I provides an analysis of the main statistical trends on asylum in 2013 and where relevant and available the first half of 2014. This chapter discusses in particular the evolution with regard to the main countries of origin of asylum seekers arriving in the EU as well as the variations in the numbers of asylum applicants and recognition rates per Member State. It furthermore includes a brief overview of the human rights and security situation in a number of countries in the immediate neighbourhood of the European Union in order to put the statistical information with regard to asylum applicants in the EU in a broader context.

Chapter II is dedicated to an analysis of a number of important policy and legislative developments since the publication of the first AIDA Annual Report covering the period between September 2013 and July 2014. This includes in the first place an analysis of the initiatives taken at EU level in response to or in the aftermath of the abovementioned tragic events in October 2013 off the coast of Lampedusa, such as the Task Force Mediterranean and the fundamental rights safeguards in new EU legislative instruments that are relevant to arrivals of asylum seekers and migrants at sea, such as the Eurosur Regulation and the External Sea Border Surveillance Regulation. In addition the chapter provides a more detailed analysis of the evolution of the situation in Bulgaria, which experienced a major crisis of its asylum system in the past months as well as the evolution of the treatment of asylum seekers from Syria in the EU. The chapter concludes with reflection on possible legal avenues for people in need of international protection to reach the EU in a safe manner and calls for urgent action at the EU and Member State level in this area.

Chapter III presents a number of key findings and trends with regard to asylum procedures, reception conditions and detention from the research carried out in 15 EU Member States covered in the AIDA project. It is structured around seven themes: access to the territory and the procedure; the use of the safe country of origin and safe third country concepts, access to an effective remedy including access to legal assistance, material reception conditions, detention and guarantees for asylum seekers with special reception needs and in need of special procedural guarantees. The focus in this chapter is on providing the main characteristics of the existing legal frameworks as well as the challenges asylum seekers face in practice in accessing their fundamental rights. Throughout this section, both positive and negative evolutions and practice in the States concerned are highlighted as well as relevant national and European judgments.

Statistical information on the number of asylum applicants, including unaccompanied asylum-seeking children and overall recognition rates in EU Member States and Schengen Associated States as well as country fact sheets for each of the 15 EU Member States covered in this report including the most important developments since the last Annual AIDA Report and for the main issues in the national asylum context are included in Annex I and II respectively.

This report demonstrates that, while there is progress on a number of aspects, many gaps in the asylum systems of EU Member States and the functioning of the EU’s common policy on asylum remain to be addressed by the EU and its Member States before a CEAS based on high standards of protection can be achieved. The biggest gap remains between the theory of a CEAS where similar cases are treated alike and result in the same outcome as the Stockholm Programme promised and the multitude of obstacles that the CEAS poses for refugees trying to seek protection in Europe in reality. Building a CEAS based on high standards of protection is and will remain work in progress for years to come in order to close these gaps, but cannot be successful without at the same time addressing the issue of safe and legal access to EU for those fleeing conflict and persecution. The current situation in Italy reminds us every day of the urgency of such a debate at the EU level.
CHAPTER I

Main Statistical Data and Trends
This chapter will analyse the most important statistical trends in 2013 for the EU. Where the figures are available, the continuation of these trends in 2014 will also be noted. The general increase in people seeking asylum in the EU will be analysed, in particular with regard to those arriving by sea, the main countries of origin of these people, the EU countries receiving the highest proportions of asylum seekers and also the age distribution of these asylum seekers. Furthermore, the continuing diverging recognition rates across the EU will be examined including in light of the functioning of the Dublin Regulation.

1. Number of Asylum Applicants and Arrivals at Sea

In 2013, 435,385 persons sought asylum in the EU 28 and a total of 469,085 in the EU and the four Schengen associated states (Iceland, Liechtenstein, Norway and Switzerland) (hereafter referred to as EU + 4). This constitutes a 30% increase compared to 2012. In contrast to 2012, where there were a high number of repeat applicants, it is estimated that in 2013 around 90% of the total were new applicants.

The EU + 4’s contribution to receiving and hosting people seeking safety from war and persecution must be put into perspective of the global refugee population. According to UNHCR, by the end of 2013, 51.2 million people were forcibly displaced worldwide as a result of persecution, conflict, generalized violence and human rights violations, of whom 16.7 million are refugees and 1.1 million are asylum seekers. This is an increase of 5 million people in 2013 alone and is the highest on record since at least 1989 when comprehensive statistics on global forced displacement were first collected. Developing countries host 10.1 million or 85% of the world’s refugees, compared to 70% ten years ago. This is the highest value for 22 years. The Least Developed Countries provided asylum to 2.8 million refugees (24% of the global total).

Despite the 30% increase of asylum applications within the EU + 4 in 2013, with just over 1 million refugees or 6%, the EU + 4 continue to host only a fraction of the world’s refugees.

One particular and worrying trend noticed over the period was the general increase in migrants and asylum seekers trying to reach Europe by sea, thereby putting their lives at great peril in the often unsuitable and overcrowded boats in which they are forced to travel.

According to UNHCR, the number of people who arrived in Europe by crossing the Mediterranean Sea in 2013 reached over 59,600. This represents a significant increase from 2012 but is still less than in 2011, when high numbers of people took to the sea during the Arab Spring events. This trend continued into 2014 with over 106,000 people rescued at sea and disembarked in Italy alone between 1 January and 24 August 2014, according to the latest figures provided by the Italian Navy.

As described in more detail below, as more migrants take the risk of travelling by sea, the deaths on Europe’s doorstep must also be seen within the context of an increase in land border controls in Bulgaria and Greece in the Evros region, which may have forced an increasing number of asylum seekers and migrant to opt for the more dangerous sea route.

While this is dealt with more completely in the next chapter it should be noted here that the increase in arrivals by sea must also be seen within the context of an increase in land border controls in Bulgaria and Greece in the Evros region, which may have forced an increasing number of asylum seekers and migrant to opt for the more dangerous sea route.

In terms of EU funding to address arrivals at sea and operations at the EU’s southern borders of Greece and Italy, funding has been allocated to Italy, Greece and Frontex in 2013. Italy received 12 million euro in emergency allocations under the European Refugee Fund, including 10 million euro following the Lampedusa tragedy in October 2013, where over 360 migrants drowned. A further 11 million euro was provided to Italy under the External Borders Fund and the Return Fund.
In 2013, Greece received 82.7 million euro from the European Refugee Fund, the Return Fund and the External Borders Fund. In addition the European Commission allocated another 7.9 million euro to Frontex to strengthen its operations.\textsuperscript{13}

## 2. Main Receiving EU Member States

Based on the absolute numbers of asylum seekers in the 28 EU Member States in 2013, five EU Member States registered 70% of all applicants for international protection. The highest number was received in Germany (126,995 – 29%), France (66,285 – 15%), Sweden (54,365 – 12%), the United Kingdom (30,110 – 7%) and Italy (26,620 – 6%), as illustrated below.\textsuperscript{14}

### Chart 1: 70% of all applicants for international protection registered in just five EU Member States

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage of Asylum Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>29%</td>
</tr>
<tr>
<td>France</td>
<td>15%</td>
</tr>
<tr>
<td>Sweden</td>
<td>12%</td>
</tr>
<tr>
<td>UK</td>
<td>7%</td>
</tr>
<tr>
<td>Italy</td>
<td>6%</td>
</tr>
<tr>
<td>Others</td>
<td>35%</td>
</tr>
</tbody>
</table>

Source: Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded), migr_asyappct.za, extracted on 13 August 2014.

This represents a change from 2012 when Belgium ranked third with 28,285 applicants and Italy did not figure in the top 5 countries of destination in the EU. This shift can be partially explained by the important increase in arrivals by sea in Italy. The rise in applications for asylum in the EU + 4 was not the same across the board. The number of applicants rose in 18 countries, with the most significant increases in Bulgaria (+416%) and Hungary (+777%). EU Member States experiencing a significant decrease of asylum applicants in 2013 as compared to 2012 include Romania (-40%), Belgium (-25%), Cyprus (-23%) and Greece (-14%).

For Bulgaria, the rise can be partially explained by the increase of Syrian applicants but for other countries the situation is not so clear-cut. There are several assumptions that could be made and factors that could be considered, such as personal motivation, smuggling routes, policy changes and deterrence measures in different Member States. However, further in-depth qualitative analysis is necessary to fully understand why applications go up in one State but down in another.

### 3. Main Countries of Origin of Asylum Applicants in the EU

In 2013, Syria became the main country of origin of asylum seekers in the EU, with 50,470 applicants followed by Russia (41,276), Afghanistan (25,290), Serbia (22,380) and Pakistan (20,885).\textsuperscript{15}

### Syria

As the conflict in Syria continued and worsened throughout 2013, the number of Syrians seeking international protection in the EU consequently increased. With 12% of the total applicants, Syria became the first country of origin of asylum seekers in the 28 EU Member States, whereas it was the third in 2012. This trend continued in the half of 2014 with circa 6,000 applicants per month in the EU + 4.\textsuperscript{16} As in 2012, about half of the total number of asylum seekers from Syria in the EU were recorded in just two EU Member States: Germany and Sweden. However, Sweden took over from Germany as the main receiving country with a total of 16,540 Syrian asylum applicants in 2013.\textsuperscript{17} Bulgaria also recorded a substantial increase of Syrian asylum seekers, making it the third receiving Member State in the EU with a total of 4,510 applicants in 2013.\textsuperscript{18} Higher numbers than in 2012 were also recorded in other EU Member States but in much lower proportions.

### 4. Age Distribution of Asylum Applicants

Over 50% of those who applied for asylum in 2013 in the EU +4 were between 18 and 34 years as illustrated in the chart below. Children represent 27% of the total, with children younger than 14 years old amounting to 21% of the total number of applicants.

### Chart 3: Age distribution of asylum applicants in the EU in 2013

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Percentage of Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 17 years</td>
<td>27%</td>
</tr>
<tr>
<td>18 - 24 years</td>
<td>21%</td>
</tr>
<tr>
<td>25 - 34 years</td>
<td>24%</td>
</tr>
<tr>
<td>35 - 64 years</td>
<td>37%</td>
</tr>
<tr>
<td>65+</td>
<td>8%</td>
</tr>
</tbody>
</table>

Source: Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded), migr_asyappct.za, extracted on 13 August 2014.

### Russia

There was a significant rise in people from the Russian Federation seeking international protection in Europe in 2013, 71% more than in 2012. Germany and Poland were the main receiving countries, accounting for two thirds of all asylum requests from the Russian Federation. Other important countries of destination were Austria, France, Sweden and Denmark. Overall, asylum seekers from the Russian Federation accounted for 9.5% of all applicants in the EU.\textsuperscript{19} In the context of this increase, the European Asylum Support Office (EASO) ran a Practical Cooperation Workshop on the Russian Federation in 2013 to examine the reasons for such an increase and analyse the trend.\textsuperscript{20} While the participants from States in the workshop seemed to attribute the increase more to specific pull factors in EU Member States than to changes in the human rights situation in Russia or a deterioration of the situation in the Northern Caucasus, serious human rights concerns continue to exist, as demonstrated by the 22% acceptance rate of asylum applications by Russian citizens overall in 2012. The recognition rate went down to 14.5% overall in 2013. This is discussed later in the section on recognition rates.

### Afghanistan

There was a small drop of 6.5% in the number of people from Afghanistan seeking international protection in the EU in 2013 compared to 2012.\textsuperscript{21} The main countries of destination in the EU were Germany, Sweden, Austria, Hungary, and Italy who all recorded over 2,000 Afghan applicants each.

12. European Commission, ibid., p. 5.
15. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Monthly data (rounded) [migr_asyappctm], accessed on 26 August 2014.
16. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr_asyappct], extracted on 12 August 2014.
17. Ibid.
18. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr_asyappct], extracted on 13 August 2014.
19. ASO, Newsletter July/August 2013.
20. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr_asyappct], extracted 12 August 2014.
There was a slight increase in the number of unaccompanied children seeking asylum in the EU this year, however, figures have been stable over the last five years, confirming it is a long-term phenomenon. In 2013, 14,065 unaccompanied children claimed asylum in the EU (12,640 in the EU-28) in 2013. Afghanistan remains the main country of origin of unaccompanied children, amounting to 26% of the total (3,595 applicants), although this is slightly fewer than last year. Somalia constitutes the second highest country with 1,920 applicants – a figure that has doubled since 2012. Other notable countries of origin are Syria, Eritrea, Albania and Morocco, with over 500 applications for international protection from children from each country.

The main receiving countries of asylum-seeking unaccompanied children are Sweden (3,850), Germany (2,485), the United Kingdom (1,175), Norway (1,070), Austria (935) and Italy (805).

It is worth noting that in some countries, such as Italy or Spain, the majority of unaccompanied children do not seek asylum. While not all these young people require international protection, some who do, do not apply for asylum, either due to alternative options in these countries for these children, or a lack of information.21

5. Recognition Rates

Despite the EU’s long-standing efforts to harmonise the asylum policies of Member States, it is clear this is still far from being achieved. This is illustrated for instance in recognition rates among EU Member States, particularly with regard to asylum applications from the same country of origin. This also highlights, once again that the underlying principle of the Dublin Regulation, that refugees are treated alike regardless of the Member State they arrive in, is flawed.

Overall Recognition Rate for the EU

According to Eurostat data, the overall protection rate at first instance in the EU 28 was at 34%.22 For final decisions on appeal the recognition rate was 18%. The highest recognition rates for first instance decisions were in Bulgaria (87%), Malta (84%), Romania (64%), Italy (61%) and the Netherlands (61%). Belgium, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Austria, Poland and Slovenia all had an overall recognition rate that was lower than the EU average in 2013. Greece and Hungary have the lowest recognition rates with 4% and 8% respectively.23

This comparison does not allow any final conclusions to be drawn as to the decision-making practice at the first instance of EU Member States as a range of elements, such as the main countries of origin of asylum seekers, the key characteristics of the caseloads from specific countries of origin and the number of decisions taken with regard to the various nationalities, co-determine the total recognition rate. Nevertheless, the figures show that there are still huge discrepancies between Member States.

Diversities in Recognition Rates for the Same Nationalities

Syrians constituted the top nationality of asylum seekers granted protection status throughout the EU in 2013, accounting for over a quarter of all those granted a protection status.24 They were followed by citizens of Afghanistan (12%) and Somalia (7%).

Discrepancies in recognition rates for the same nationalities of asylum seekers continue to exist among EU Member States. By way of example, the maps below show recognition rates with regard to decisions taken at first instance on asylum applications lodged by Syrian, Somali and Russian nationals.

Recognition rates for Syrian asylum seekers are generally high in the EU, in line with UNHCR’s position that persons fleeing Syria require international protection.25 While a number of EU countries, including Bulgaria and Malta, granted international protection in 100% of cases concerning Syrians at first instance in 2013, the number of negative decisions is still high in Italy (51% recognition rate), Greece (60%) and Cyprus (62%).26 The recognition rates and types of protection granted to Syrian asylum seekers is further discussed in Chapter II, section 5.

21. Eurostat, Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded) [migr_asyunaa], extracted 14 August 2014. See also Annex 1 - Table 3. Applications by unaccompanied children in the EU and Schengen associated states in 2013.
22. For further details, see ECRE, Right to Justice: Quality Legal Assistance for Unaccompanied Children, Comparative Report, July 2014.
23. Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded) [migr_asydcfsta], extracted 14 August 2014.
25. Ibid.
27. Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded) [migr_asydcfsta], extracted 14 August 2014.
28. The total recognition rate at first instance and appeal for Somali nationals (OPFRA and CNDA) was 43% in 2013.
The case load from the Russian Federation provides an interesting example for analysing recognition rates in different Member States. This group is fairly homogenous, as while there have been more ethnic Russians fleeing Russia due to clampdowns on protesters and civil society groups, the majority of those seeking protection in the EU appear to be still mainly Chechens families.29 Here too, recognition rates suggest huge differences in treatment of such cases among the EU Member States.

In countries where there were over 100 asylum applications by Russian citizens, the recognition rate at first instance varies for the most part between 2% in Germany and 41% in the United Kingdom. Germany was the main country of destination for asylum seekers from Russia in 2013 with 15,475 applicants registered, making up over 37% of all applications for international protection made by Russian nationals in the EU 28 that year.30

Finally, the recognition rates with regard to Albania, Bosnia and Herzegovina (BiH), the Former Yugoslav Republic of Macedonia (FYROM), Kosovo, Montenegro and Serbia are worth mentioning here. The overall recognition rate at first instance for these countries ranged between 1% and 8% in the EU in 2013. In general, Germany had the lowest recognition rate and Italy the highest for most of the countries involved. However, Finland and the UK had relatively high recognition rates for people from Kosovo (16.7% and 19.5%), France and Switzerland had higher recognition rates for Bosnians (10.8% and 21.4%) and the UK and Belgium had higher recognition rates for people seeking protection from Albania (28% and 14.4%).

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of people seeking international protection 2013</th>
<th>Overall recognition rate EU 28 2013 at first instance</th>
<th>Lowest and highest recognition rate in EU 28 2013</th>
<th>Main countries of destination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>11,020</td>
<td>8.38</td>
<td>0.76 (EL) – 57.9 (IT)</td>
<td>BE, DE, EL, FR, SE, UK</td>
</tr>
<tr>
<td>BiH</td>
<td>7,070</td>
<td>5.6</td>
<td>0.65 (DE) – 37 (IT)</td>
<td>DE, FR, SE</td>
</tr>
<tr>
<td>FYROM</td>
<td>11,065</td>
<td>0.93</td>
<td>0.25 (DE) – 60 (IT)</td>
<td>BE, DE, FR, SE</td>
</tr>
<tr>
<td>Kosovo</td>
<td>20,220</td>
<td>3.7</td>
<td>1.2 (DE) – 54.5 (IT)</td>
<td>BE, DE, FR, HU, AT, SE, CH</td>
</tr>
<tr>
<td>Montenegro</td>
<td>945</td>
<td>3.8</td>
<td>1.8 (DE) – 33.3 (IT)</td>
<td>DE, FR, SE</td>
</tr>
<tr>
<td>Serbia</td>
<td>22,375</td>
<td>2.37</td>
<td>0.21 (DE) – 48 (IT)</td>
<td>BE, DE, FR, SE, CH</td>
</tr>
</tbody>
</table>

It is noted that EASO, in its 2013 Annual Report, has continued to group the countries of Albania, Bosnia and Herzegovina (BiH), the Former Yugoslav Republic of Macedonia (FYROM), Kosovo, Montenegro and Serbia in 2013 together under one region of the “Western Balkans” in order to analyse the flows of people seeking international protection in the EU. This approach seems questionable and potentially misleading if for no other reason than the fact that this is the only grouping of countries that is treated in this manner and it would seem to promote the discussion of “regional” trends which may ignore the specific human rights situation in the various countries belonging to such region.
In addition, there are very different numbers of asylum seekers from each country, varying from 945 applicants from Montenegro to 22,375 from Serbia. There were large numbers of asylum seekers from all countries in this grouping in Germany, France and Sweden, but these were the main countries of destination overall in the EU 28, with Belgium also another destination of note for most of the countries in the group. In addition, there was a high number of Kosovar applicants in Hungary, Austria and Switzerland and a high number of Albanians sought protection in the UK and Greece.

The case load would also seem to be different with many of those from Kosovo and Albania seeking international protection being ethnic Albanian and many from Serbia and FYROM being Roma. In addition, there were high numbers of unaccompanied children reported from Bosnia and FYROM in the fourth quarter of 2014 and there could be victims of trafficking amongst those seeking protection.

Many factors, including divergences in the assessment of the risk of persecution or serious harm upon return, the use of country of origin information, the way in which credibility of asylum seekers’ statements are assessed but also the observance and quality of procedural guarantees such as legal assistance and interpretation, influence recognition rates. EASO has stressed that differences do not necessarily mean a lack of harmonisation across EU Member States but could indicate the diversity of caseloads, saying that the extent of harmonisation can only effectively be judged by examining a sizeable sample of individual cases across Member States. Forthcoming ECRE-led research on the application of Article 7 (actors of protection) and 8 (internal protection) of the recast Qualification Directive in 11 EU Member States included the examination of a sample of individual decisions. Its preliminary findings indicate variances in the use and the relevance of both provisions in the decision-making practice of the Member States concerned. While it is acknowledged that further in-depth research on samples of individual cases is indeed much needed, it cannot be ignored that the differences in recognition rates discussed above, show that a refugee’s chances of being granted protection status in the EU continue to depend on the country where the asylum application is being examined, which is determined on the basis of the criteria laid down in the Dublin Regulation.

While comprehensive data on the application of the Dublin Regulation in 2013/2014 is not available on Eurostat at the time of writing, some general trends were highlighted in the 2013 EASO Annual Report and in an article by Eurostat dated March 2014. Available data show that the total number of outgoing requests for a Member State to ‘take charge’ or ‘take back’ asylum applicants reached on average 35,000 annually during the period 2008-2012. Yet, the actual number of persons being transferred remains much lower. EASO estimates that 25% of the outgoing requests resulted in the person being transferred to another Member State. While this represents, according to EASO, only about 3% of the total number of asylum applicants in the EU, it still results in about 8,500 persons being transferred annually. At the same time, for some EU Member States, such as France and Austria, the number of outgoing and incoming transfers evened out.

There can be many reasons for a person not being transferred, but the low percentage of transfers actually carried out indicates that the Dublin Regulation still fails to meet its objectives, whereas it continues to be unfair to the asylum seekers affected by it as a result of the continuing variances in recognition rates discussed above as well as the differences in the type of protection granted, the levels of reception conditions, procedural guarantees and detention practices of Member States as discussed elsewhere in this report.

The variation in recognition rates among Member States, together with the uneven distribution of caseloads across the EU, continues to be one of the major challenges in establishing a Common European Asylum System and illustrates once more that the premise upon which the Dublin system is built, namely that protection standards are the same in EU Member States, remains fundamentally flawed today.

32. Eurostat, Data in Focus – 03/2014, p. 17.
34. EASO, Annual Report on the Situation of Asylum in the European Union 2013, pp. 30-32
35. Eurostat, Dublin statistics on countries responsible for asylum application, data from March 2014.
CHAPTER II

Developments October 2013 – July 2014
After the adoption of the Asylum Package in June 2013, EU institutions have emphasised that the EU is in “an implementing mode” as far as asylum policy is concerned and that coherent transposition and application of what has been agreed is all that matters for the coming years. This has not prevented the EU’s common asylum policy (or the lack of it) from giving rise to, at times, heated debates in Brussels. In particular, the tragic shipwrecks off the coast of Lampedusa in October 2013 resulting in the death of hundreds of migrants and the increasing number of persons arriving in Italy by sea have raised a number of fundamental questions with regard to the impact of the EU’s border control policies on refugees’ access to the territory and to protection in the EU. Moreover, the radio-silence in the rest of Europe as regards the Italian government’s calls for more solidarity from other EU Member States in dealing with the increased sea arrivals is an indication of both the political sensitivity of the issue and the reluctance of most EU Member States to acknowledge the arrival of asylum seekers at the Southern shores of the EU as a common challenge.

In the aftermath of the tragic events in the Mediterranean in October, a ‘Task Force Mediterranean’ was set up. Concurrently the negotiations on a Commission proposal dealing with search and rescue, interception and disembarkation at the EU’s external sea borders in the context of Frontex-led operations were speeded up and successfully concluded in April 2014. In addition, the Eurosur Regulation was finally adopted and partly entered into force in December 2013.

Another important development is the final adoption in early 2014 of the Multi-annual financial framework for the period 2014-2020 and the establishment of a new Asylum, Migration and Integration Fund. This has now set the financial boundaries for the further development and implementation of the Common European Asylum System (CEAS) for the coming years. In addition, strategic guidelines in the area of freedom, security and justice were adopted in June 2014 by the European Council and are supposed to provide the EU institutions with a renewed vision and guidance in the field of asylum, migration and border controls in the post-Stockholm period.

These initiatives will be discussed in this chapter, as they are of particular relevance to the future of the EU’s common policy on asylum and the access of asylum seekers and persons in need of international protection to the EU Member States. Furthermore, the EU’s response to the asylum crisis in Bulgaria and the treatment in EU Member States of persons fleeing the conflict in Syria, including from the perspective of protection in the EU, as well as persistent allegations of push backs at entry points on the EU’s external border will also be examined.

1. Access to the Territory; EU Responses to Deaths in the Mediterranean after the Initial Shock of the Lampedusa Tragedies

The death of over 360 migrants in a shipwreck off the coast of Lampedusa on 4 October 2013 was certainly unprecedented in scale. Sadly, it was not an isolated incident and was followed by another incident on 11 October where 268 Syrians lost their lives. While no accurate figures exist, several thousands are believed to have died on route to Europe in recent years and continue to do so. This time, the political shock went far beyond Italy to reach Brussels and led both the President of the Commission, José-Manuel Barroso and Vice President of the Commission, Cecilia Malmström to visit the island of Lampedusa and to pay their respects to the migrants who died on their way to reach the EU. As much as EU leaders were keen in declaring that such tragedies were never to happen again, the tragedies of October 2013 became also the symbol of the failure of migration policies that predominantly focus on stepping up border controls, leaving migrants and refugees no other option than to undertake life-threatening journeys in order to find protection or a better future.

The challenges involved in this debate are no doubt complex and have been discussed in the context of the Task Force Mediterranean, convened immediately after the two tragedies in October. However, here again, the approach is hardly innovative. The Task Force was convened twice and identified a long list of 37 measures that could contribute to reducing the loss of lives in the Mediterranean which was then politically endorsed by the European Council in its December 2013 meeting and in the strategic guidelines, discussed further below.

37. See UNHCR, Syrian Refugees in Europe, p. 10.
In addition to the measures and activities listed by the Task Force Mediterranean, the European Parliament and the Council reached an agreement on the Regulation establishing Eurosur as well as the Regulation establishing rules on external border operations and measures for the retention of individuals. Both instruments will be briefly discussed as well in this section as they have potentially important implications on the fundamental rights protection of migrants and refugees at sea and further complement the legal framework relating to the EU’s border control management.

1.1 The Task Force Mediterranean: Effective EU Response or Business as Usual?

Set up as a Task Force[40] that should develop concrete answers to the challenges of the Mediterranean crossings, it soon became clear that Member States’ ambition to be able to implement and coordinate border control efforts in the area of asylum, migration and border controls and that they were much more interested in exploring ways to prevent asylum seekers, refugees and migrants from arriving in the EU rather than how to share responsibilities after their arrival in the EU. In this regard, the Commission Communication as well as the report on its implementation[41] very much reflected these Member States’ expectations already implied by the content of the Global Approach on Migration and Mobility (GAMM) as far as the external dimension is concerned or in the context of the operational activities of Frontex and EASO supporting and coordinating Member States’ activities in the field of external border control management and solidarity in the field of asylum. The Task Force placed particular emphasis on closer participation of third countries’ security-related aspects of migration and measures countering and preventing irregular migration. Libya, currently the main point of departure for most refugees, asylum seekers and migrants arriving on the EU’s southern shores, is of course strategically the most important country from the EU perspective. Notwithstanding the security and political situation and the lack of reliable interlocutors in Libya, the Communication emphasises that the ongoing EUBAM (EU Border Assistance Mission) mission[42] and the Sahara-Mediterranean project should continue to promote the development of an integrated border management system. At the same time, it stated that the EU “will continue to engage with the Libyan authorities to address practices such as indiscriminate detention of migrants” while “particular attention will be placed on the EU by the need for Libya to ensure respect of the rights of persons in need of international protection”. These appear to be rather hollow phrases in light of the lack of reliable interlocutors on the Libyan side and progress is not to be expected anytime soon.

The Communication on the Task Force Mediterranean also highlights the need for better interagency cooperation in the fight against trafficking, smuggling and organised crime as well as in the field of reinforcing border surveillance. Not only should EU cooperation be more effective, Member States should ensure that their national law and relevant national administrative bodies have access to the most up-to-date and relevant information, including personal data to Eurosur for the purpose of supporting the fight against facilitators.”[43] It also states that Eurosur (the European Border Surveillance System) should contribute to establishing a more accurate “situational picture” thanks to near-real time information exchange and close interagency cooperation at national and EU level, including with the European Maritime Affinity Group.

40. The Task Force was chaired by the Commission and consisted of representatives of the EU Member States, the European External Action Service and EU agencies including EASO, Frontex, Europol, FRA and EMISA.
42. Idem, p. 18.
43. See below, section 1.2.

Refined border surveillance activities must contribute to saving lives but at the same time must allow the EU to intensify the monitoring of transnational smuggling in the whole of the Mediterranean, including activities in ports and at coasts serving as hubs for irregular migrants.”[44] The report confirms that “the Commission’s first report on the implementation of the measures listed by the Task Force Mediterranean confirms the priority given to the activities related to cooperation with third countries in the Middle East and North Africa focusing in particular on improving asylum and border management systems as well as the implementation of RPP.”[45] It is obviously too early for a full assessment of the real impact of the short and medium term measures listed by the Task Force Mediterranean on asylum seekers’ access to protection in the EU. However, it is clear that rather than providing meaningful protection for persons fleeing persecution and war, the Task Force Mediterranean was mainly opted for the classic mix of stepping up border controls and cooperation with third countries.


This predominantly control-oriented approach is only partly compensated in the Communication on the Task Force Mediterranean by measures to develop alternative ways for refugees to reach safety and protection in the EU. While it is welcomed that the Communication states its commitment to continued development of asylum systems in the countries concerned and reinforced legal ways to access Europe, the main emphasis is on creating protection elsewhere through continuing existing Regional Protection Programmes (RPP) such as those in North Africa, the Horn of Africa and the implementation of a new Regional Development and Protection Programme for refugees in Lebanon, Jordan and Iraq. The equally much needed increase of efforts in the area of resettlement is clearly less prominent on the Task Force’s agenda as Member States are merely “encouraged” to engage more in resettlement reminding them about the financial incentives laid down in the Asylum, Migration and Integration Fund.

As regards the issue of legal channels for refugees to reach the EU - which can be a life-saving alternative to the irregular migration channels they are forced to use in the vast majority of cases - the Communication is extremely disappointing and misses the mark. There is no commitment whatsoever from the Member States to even discuss this further at the EU level while the Commission will merely “explore further possibilities for protected entry in the EU in the context of the reflection on the future priorities in the Home Affairs area after the expiry of the Stockholm Programme.”[46] Moreover, this again represents a clear joint policy stance on protection on possible processing of asylum seekers, referring back to controversial plans that had been launched in 2003 and 2005 by the then British and German Ministers of Interior. Human rights organisations had severely criticised such plans for simply shifting Member States’ protection obligations to third countries with dubious human rights records and therefore violating international refugee and human rights law. The search for such protection was in contradiction to the prejudice to the existing right of access to asylum procedures in the EU[47] is crucial in setting the parameters for such feasibility study.

There is clearly a need to clarify and define the concept of joint processing outside the EU and its true purpose in the first place as current debates continue to be blinded by the above mentioned German and UK plans. In ECGR’s view, any discussion on the possibility of joint processing outside the EU should be strictly framed as a tool to facilitate legal access to the EU for persons in need of international protection and not as a way to contain refugees in regions outside the EU or as a migration management tool. Moreover, it raises a range of serious legal and constitutional questions as to how access to key procedural guarantees and fundamental rights can effectively be ensured in such context. Recent jurisprudence of the European Court of Human Rights (ECtHR) established that the principle of non refoulement applies extraterritorial processing of asylum cases is thereby the effective protection of asylum seekers should be challenged, for example, in the context of the extra-territorial processing of asylum claims (IDR 61/2003).

Finally, the Task Force Mediterranean commands Member States’ efforts to rescue migrants in distress in the Mediterranean, such as the Italian Mare Nostrum Operation, and emphasises that these efforts must be supported including by more coordination through Frontex. Apart from underlining the need for better and more effective use of technological means for the early detection of migrants at sea, no concrete commitments are made with regard to national search and rescue activities in this regard. However, in this regard there is a clear mismatch between Commissioner Malmström and the Italian Minister of Interior, the launch of a so-called “Frontex plus operation” in the Mediterranean has been announced as recent as 27 August 2014. The operation, basically a merging of existing Frontex operations such as Mare Nostrum. However, politically an important breakthrough for the Italian Presidency, it remains uncertain when the new Frontex operation will start and importantly what the scope of the operation will be as well as the assets that will be dedicated to it.

Eventually, it is as the case with any Frontex operation, its scale will be determined by the contributions made by Member States joining the operation and allocating resources and guest officers to Frontex plus. Whether this will result in a true European response to the humanitarian crisis taking place in the Mediterranean remains to be seen, but it is in any case the most concrete step taken at the EU level so far in assisting Italy with its search and rescue operation.

Unsurprisingly, the Commission’s first report on the implementation of the measures listed by the Task Force Mediterranea confirm that the priority given to the activities related to cooperation with third countries in the Middle East and North Africa focusing in particular on improving asylum and border management systems as well as the implementation of RPP. It is obviously too early for a full assessment of the real impact of the short and medium term measures listed by the Task Force Mediterranean on asylum seekers’ access to protection in the EU. However, it is clear that rather than providing meaningful protection for persons fleeing persecution and war, the Task Force Mediterranean was mainly opted for the classic mix of stepping up border controls and cooperation with third countries.

46. See also section 4 below:
51. See on this issue also Adviescommissie voor Vreemdelingenzaken, “Advies ‘External Processing’ uitgebracht aan de Minister voor Immigratie en Asielzaken”, Advies 01/2014, 2014/01/13, Item 2, p. 15.
52. See the new model for European Seaport Security (ESSP) presented by Commissioner Home Affairs, Jean-Clauude Juncker at the Council meeting of the Home Affairs ministers, Brussels, 22 February 2014.
54. See for more information on EUBAM, see the External Action Service’s dedicated webpage.

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1.2 The External Sea Border Surveillance Regulation and the Eurosur Regulation

The adoption of the Eurosur (European Border Surveillance System) Regulation55 and the Regulation relating to Exter-
nal Sea Border Surveillance in the context of Frontex Operations56 can be seen as two sides of the same coin as far as the surveillance of European borders is concerned. While the former system was basically aimed at setting up a system that should allow Member States and Frontex to identify and detect migratory movements at sea and at an earlier stage, the recently agreed External Sea Border Surveillance Regulation lays down a number of rules regarding the treatment and the protection of fundamental rights of those detected, intercepted and rescued at sea in the framework of operations coordinated by Frontex.

The Eurosur Regulation entered into force on 2 December 2013, the fate of the External Sea Border Sur-
veillance Regulation was very uncertain. Before the tragic events off the coast of Lampedusa in October 2013, nothing seemed to indicate a quick adoption of the Commission’s proposal presented in April 2013. On the contrary, expectations were rather that it would not be possible to adopt the Regulation before the European Parliament elections in May 2014 and would have to be negotiated with the newly elected European Parliament. Moreover, a coalition of Southern Member States had made clear in a letter that it considered that the EU and Frontex had no competence in the field of search and rescue and that they opposed the Commission’s proposal for “legal and practical reasons”.57 However, after the tragic events of Lampedusa, the second phase of the process of the Regulation needed to be fast-tracked in order to negotiate on the one instrument that would address this issue and deal with the saving of lives of migrants and refugees in distress at sea. The Regulation includes provisions on search and rescue obligations of Member States as well as rules regarding the interception in the territorial waters and at the high seas, disembarkation and respect for funda-
mental rights and the principle of non refoulement.

The assessment of the Regulation from a fundamental rights perspective is mixed. On the positive side, the Regulation includes a number of provisions of fundamental rights and the principle of non refoulement. Furthermore, it establishes the requirement of an individual assessment of the personal circumstances of those intercepted or rescued at sea before disembarkation in a third country and an obligation for the participating units to address the special needs of persons in a particularly vulnerable situation. This is important as Article 4 applies to all measures taken by Member States or the Agency under the Regulation, including in case of interception at sea. The Regulation explicitly states that “the master and crew should not face criminal penalties for the sole reason of having rescued persons in distress at sea.”58 The Regulation also seeks to ensure that the masters of vessels flying their flag have the right to disembark persons in distress at sea and proceed with all possible speed to their rescue. In addition, the Regulation explicitly establishes the principle according to which the “master and crew should not face criminal penalties for the sole reason of having rescued persons in distress at sea.”58 The Regulation aims to ensure that the system that should allow Member States and Frontex to identify and detect migratory movements at sea and at an earlier stage could be seen as legitimising push-backs of migrants at sea. However, the combined reading of the Regulation’s provisions on the principle of non refoulement and disembarkation, the obligations of Member States and Frontex under the EU Charter of Fundamental Rights and the jurisprudence of the ECtHR, provides additional argumentation in favour of non refoulement while it seems to be matching the overall trend of externalizing border controls as discussed above. To a certain extent, the operational plans of Frontex operations are not publicly available before the termination of the joint operation and the modalities for the disembarkation of the persons concerned, are to be included in the operational plan that is required for each joint operation coordinated by Frontex. As the operational plans of Frontex operations are not publicly available before the termination of the joint operation without the consent of the Member States as a result of rescue or interception operations carried out on the basis of the Regulation. As a result, the operational plans of Frontex operations are not publicly available before the termination of the joint operation without the consent of the Member States as a result of rescue or interception operations carried out on the basis of the Regulation. As a result, the future impact of the Regulation on the application of the Regulation in practice in particular on compliance with fundamental rights, the impact on the operation of the Regulation in practice, whether the necessary guarantees are in place and provided for in compliance not only with the external sea border surveillance Regulation, but also the range of fundamental rights instruments Frontex must comply with in all its activities.

At the same time, the report that must be submitted by Frontex to the EU institutions on the application of the external sea border surveillance Regulation as of 18 July 2015 and as of then on an annual basis, must include detailed information on the application of the Regulation in practice in particular on compliance with fundamental rights, the impact on the operation of the Regulation in practice, whether the necessary guarantees are in place and provided for in compliance not only with the external sea border surveillance Regulation, but also the range of fundamental rights instruments Frontex must comply with in all its activities.

Prior to the External Sea Borders Surveillance Regulation, the Eurosur Regulation was adopted in October 2013. Setting up a common framework for the exchange of information and cooperation in the field of border surveillance Eurosur establishes a “system of systems”, connecting already existing tools for information gathering and exchange at the national level, enabling the EU to respond more efficiently to the picture of the external border surveillance system. Technology and databases in its efforts to counter irregular migration and enhance so-called “border security”. At the same time, upon entry into force of the Eurosur Regulation, the Commission presented it as an important tool to reduce the loss of life of migrants in the Mediterranean. However, this was not necessarily the primary objective of the Commission proposal when it was presented. It was only as a result of the negotiations with the European Parliament that “contributing to ensuring the protection and saving of lives of migrants” was explicitly added as one of the purposes of the Regulation. This is important as it partly redefines the concept and purpose of external border surveillance, which is no longer purely an instrument to prevent and combat irregular migration but also must have implications on the way border surveillance activities are planned and implemented as mentioned above. However, as the Eurosur framework is there to improve both the “situational awareness” at the external borders and the Member States’ capability to react at the external borders it does raise a number of concerns from the perspective of refugee protection and access to the territory. Coordinated and centrally managed by Frontex, Eurosur not only establishes a national and European “situational picture”, but also a so-called “common pre-frontier intelligence picture”, based on information from a variety of sources including national coordination centres and other EU agencies but also authori-


ties of third countries. As the pre-frontier area is defined as “the geographical area beyond the external borders”, the Regulation does not seem to set any limitation as to the geographical reach of the information gathering activities within the Eurosur framework. Moreover, the Eurosur Regulation allows for extensive cooperation with third parties, including international organisations, and neighbouring third countries. Although the Regulation includes a welcome prohibition on exchanging any information in the context of such cooperation with third neighbouring countries that could be used to identify asylum seekers with a pending asylum claim or persons at risk of serious human rights violations, whether and how this can be guaranteed at all times in practice is questionable. This is particularly the case as exchange of personal data with third countries, albeit limited to what is absolutely necessary for the purposes of the Regulation, is not excluded. In addition, the involvement in Eurosur of third parties and agencies outside EU that may exchange information with third countries as well, obviously increases the risk of sensitive information falling in the wrong hands.

Seen from that perspective Eurosur is somewhat of a double-edged sword. As much as the use of sophisticated technology can help to detect and identify migrants and refugees in distress at sea at an early enough stage to come to their rescue, it is as the same time a tool that allows disruption of migratory movements beyond the EU and before they reach the external border. Moreover, the increased capacity to identify the departure points of migrants, whether at sea or on land, also means an increased risk of people in need of protection being prevented from escaping persecution or human rights abuses and reaching safety.

The same applies to the External Sea Border Surveillance Regulation discussed above. While it has the merit of strengthening the legal framework within which sea border surveillance activities within the context of Frontex operations are conducted with a number of human rights safeguards, its longer term effects are less certain. It may well be that instead of investing in proper implementation of the human rights safeguards required by the Regulation and international human rights law, Member States will push for even greater investment in the prevention of Mediterranean crossings in the first place. The renewed debate on the processing of international protection needs outside the EU in the context of the Task Force Mediterranean and the strategic guidelines discussed elsewhere in this chapter is only one indication of such possible trend. In this regard, the above-mentioned “Frontex plus” operation which was announced by the Commission at the end of August 2014, if implemented, may be of particular importance in assessing the impact of the new Regulation on the fundamental rights of those rescued and their access to protection in the EU.

2. Financing the CEAS: The Price the EU is Prepared to Pay

The adoption of the Asylum, Migration and Integration Fund (AMIF) in April 2014 as part of the new Multiannual Financial Framework, marks a fundamental restructuring of the funding available at the EU level as regards the further development and implementation of common policies in these areas. The overall objective of the AMIF is to “contribute to the effective management of migration flows and to the implementation, strengthening and development of the common policy on asylum, subsidiary protection and temporary protection and the common immigration policy, while fully respecting the rights and principles enshrined in the Charter of Fundamental Rights of the EU”. Within this overall objective four key priorities have been identified:

• To strengthen and develop all aspects of the Common European Asylum System (CEAS), including its external dimension.
• To support legal migration to the Member States in line with their economic and social needs, such as labour market needs, and to promote the effective integration of third-country nationals.
• To enhance legal and effective return strategies in the Member States with an emphasis on the sustainability of return as well as effective readmission to countries of origin and transit.
• To enhance solidarity and responsibility-sharing between the Member States.

The possibility to fund activities in the field of the external dimension of the CEAS is new and illustrates once more the growing emphasis on cooperation with third countries at EU level, which is also reflected in the strategic guidelines discussed below. The possible risk of such activities contradicting or undermining activities funded by other Directives or the new Regulation has not been discussed below. The possible risk of such activities contradicting or undermining activities funded by other Directives or the new Regulation has not been discussed below.

The shift in the structure of the Home Affairs-related funds is illustrated in this table:

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<td>European Refugee Fund</td>
<td>€630 million</td>
<td>€1.5 billion</td>
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<tr>
<td>European Return Fund</td>
<td>€676 million</td>
<td>€600 million</td>
</tr>
<tr>
<td>European Integration Fund</td>
<td>€825 million</td>
<td>€1.4 billion</td>
</tr>
<tr>
<td>Asylum, Integration and Migration Fund</td>
<td>€3.137 billion</td>
<td>€3.76 billion</td>
</tr>
<tr>
<td>Internal Security Fund</td>
<td>€2.76 billion</td>
<td>€1.4 billion</td>
</tr>
<tr>
<td>Prevention of and Fight against Crime Fund</td>
<td>€600 million</td>
<td>€1.4 billion</td>
</tr>
<tr>
<td>Police cooperation, preventing and combating crime and crisis management</td>
<td>€60 million</td>
<td>€1.4 billion</td>
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<td>Common Regulatory Framework</td>
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The new structure and increased flexibility of the AMIF, accompanied by a series of technical improvements, should ensure a more simplified and effective implementation and use of the funds. An important addition is that Member States have to adopt multiannual national programmes, instead of annual national programmes, for the entire period 2014-2020. Funding priorities have been discussed by the Member States in consultation with the Commission during so-called policy dialogue organised during the second half of 2013. The multi-annual national programmes will be finally adopted as of the autumn 2014 and while the AMIF Regulation makes it mandatory for the Member States to include relevant international organisations, NGOs and social partners in that process, known as the partnership principle, this was not the case in a number of Member States at the time of writing.

As no specific criteria are defined to assess whether a Member State is facing structural deficiencies, it remains to be seen how the latter safeguard for dedicated use of AMIF money in the area of asylum can be enforced if disputed by Member States. One option would be to establish a link with the mechanism for early warning and preparedness as laid down in Article 33 of the recast Dublin Regulation and the launch of a preventive action plan or crisis management plan.

However, it is positive that despite the flexibility for Member States in setting their priorities, the AMIF Regulation requires that at least 20% of funding for national programmes must be allocated to activities relating to asylum and 20% relating to integration activities. This is an important safeguard which was not included in the Commission proposal and which may reduce the risk of national programmes predominantly financing activities relating to return and readmission to third countries. It is also an important safeguard for dedicated use of AMIF money in the area of asylum. The latter safeguard for dedicated use of AMIF money in the area of asylum can be enforced if disputed by Member States. One option would be to establish a link with the mechanism for early warning and preparedness as laid down in Article 33 of the recast Dublin Regulation and the launch of a preventive action plan or crisis management plan.

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Further, at the explicit request of the European Parliament, a set of indicators have been included in Annex IV to the AMIF Regulation in order to better measure whether the four specific objectives of the AMIF as mentioned above have been met. To this end, while the data on which the evaluation is based might be limited, but it is mostly limited to collecting the number of persons effectively affected or reached by specific measures which will not necessarily allow for a more qualitative evaluation of the activities funded by the AMIF.

The overall budget foreseen by the Commission for the activities under the AMIF was reduced during the negotiations by 20%. As a result, the total amount of the AMIF for the period 2014-2020 is 3.137 billion euro. As shown in the table below comparing the breakdown of funding in the Commission proposal with the final AMIF, budgets were mainly cut with regard to resettlement and relocation as well as specific actions such as Union actions and emergency actions and the Mid-term review, while the amounts for national programmes were not reduced. It is striking that at a time when the global need for resettlement is growing, in particular as a result of the ongoing crisis in Syria, financial incentives at EU level for such purposes were largely reduced during the negotiations. Moreover, the additional budgetary effort foreseen for the Mid-term review of the national programmes. As the new fund will now operate on the basis of multiannual programming instead of an annual revision of the programmes, this may have important consequences as the Commission may in practice not be able to make a proper assessment of whether the changes are needed as regards funding priorities in light of changes occurring on the ground.

What the Guidelines Say

The single paragraph on asylum in the strategic guidelines illustrates the lack of ambition and vision that is evident throughout the document. The full transposition and effective implementation of the CEAS is marked as the absolute priority. The document also calls for the role of EASO to be reinforced to create a level playing field where asylum seekers have “a more equal chance to be protected”.

3. Strategic guidelines in the Area of Freedom, Security and Justice:

Consolidating the CEAS for Lack of a Vision on the Way Forward?

With the Stockholm Programme coming to an end in 2014, the future of the EU’s common policy on asylum and immigration on these lines was set out by the Stockholm Programme in paragraph 5 of the strategic guidelines, any meaningful political commitment to take further steps towards addressing the EU’s critical and urgent challenges in the area of asylum and migration is lacking. Moreover, the Commission’s Strategy Paper on Asylum and Migration of 15 May 2014, which serves as a basis for the negotiations on the new Instrument, looks quite distant from the “deadlock” that exists within the EU on the issue of asylum. The strategic guidelines reflect the political position of the French Presidency and the extreme austerity measures that were in place in France at the time.

The timing for the adoption of the strategic guidelines, shortly after the European elections but before the appointment of the new Commission was not conducive to creating the conditions for an inspiring document laying out an ambitious project for the future of the EU’s common policy on asylum and immigration. The strategic guidelines as adopted by the European Council of 26 and 27 June 2014 seem to reflect the current political impasse in which the EU finds itself today. At the same time, the European Council adopted a “Strategic Agenda for the Union in times of crisis” 74 with the development of a “Union of Freedom, Security and Justice” as one of its five priorities. The language used in the strategic guidelines remains overall extremely vague and open to interpretation and at best seems to re-affirm a number of key principles that had been encoded in the Treaty of Lisbon, such as the idea of “solidarity among Member States”.

The guidelines remain overall extremely vague and open to interpretation and at best seem to re-affirm a number of key principles that had been encoded in the Treaty of Lisbon, such as the idea of “solidarity among Member States”. Nevertheless, the total amount available under the AMIF still constitutes an increase compared to the amount that was available under the European Refugee Fund, the European Integration Fund and the Return Fund combined during the period 2004-2008. The Commission proposal for Justice, Liberty and Security at EU level represented 0.77% of the EU budget with a total amount of 6.5 billion euro, while for Justice and Home Affairs Ministers and experts on the content of the guidelines.

74. This seems to be a very inaccurate and incomplete reference to the objective that was set out in the Stockholm Programme, according to which “similar cases should be treated alike and result in the same outcome”, regardless of the Member State in which the asylum application is lodged.

75. Article 80 TFEU.


71. For the period 2007 to 2013, 630 million euro was allocated to the European Refugee Fund, 825 million euro to the European Integration Fund and 676 million euro to the European Return Fund.

72. In this regard it is also striking that within that budget for 2014-2020 791 million euro is dedicated to “prevention and management of irregular migration, including criminal networks and trafficking in human beings”.

As mentioned above, by adopting the least controversial document possible, the European Council has opted for a status quo in the area of asylum and migration. One could argue that politically this was the only option at a time when UK Prime Minister David Cameron threatened the other EU Member States with a "Brexit" scenario, the European Council was still in negotiations with national authorities, and the European Parliament were on the verge of a major institutional crisis over the appointment of the new President of the European Commission and asylum and immigration debates at national level are increasingly influenced by xenophobic rhetoric was a time when the Commission was fully aware of the many problems that could arise in this field and to design migration and asylum policies that are open to creative solutions that respect Member States’ international obligations vis-à-vis refugees.

As the strategic guidelines seem to be anything but strategic, they seem to provide enormous leeway to the Commission to set the agenda in the field of asylum and migration in the next five years. Obviously, the new Commissioner dealing with asylum and migration will have to take into account the political realities in the capitals but the impotence of the European leaders to provide a vision for the EU beyond implementation of what has been adopted so far could place the Commission in the driver’s seat in the post-Stockholm era to develop the necessary responses to upcoming challenges.

Further Steps Needed to Deepen the CEAS

The reference to "future next steps" in the paragraphs on asylum in the strategic guidelines referred to above is vague enough to encompass any possible approach, including further legislative harmonisation where necessary. While after the adoption of the asylum package, its proper implementation is and should be a key priority in the coming years, without any doubt further legislative steps will be needed at the EU level to accomplish the CEAS.

Firstly, the transposition and implementation of the new standards will reveal gaps and inconsistencies and will generate new problems that will have to be tackled, as already illustrated in chapter III of this report. Also the practical cooperation between EU Member States within and outside of EASO may show the need for new legislative steps to resolve problems of harmonisation and implementation.

Secondly, the growing body of jurisprudence from the ECHR and the Court of Justice of the EU (CJEU) in the field of asylum will also force the EU legislator to intervene. In fact, the day before the adoption of the strategic guidelines, the Commission already submitted its first proposal amending one of the legal instruments of the asylum package adopted in June 2013. The proposal consisted in Article 83 of the Lisbon Regulating in relation to an unaccompanied child who lodged multiple asylum applications in more than one Member State. In essence, the Commission proposes to allocate responsibility for examining the asylum application to the Member State where the child lodged an asylum application and is currently present, subject to exceptions where this would not be in the best interest of the child. Where the unaccompanied child did not lodge an asylum application in the Member State where the child is present, the responsibility to examine the application shall be transferred to the Member State where the child lodged their most recent asylum application, except where this is not in their best interest. In view of the increasing number of preliminary references to the CJEU concerning the different EU asylum instruments, it is likely that also other provisions of the asylum acquis will have to be amended in the coming years.

Third, further legislative steps will be needed in order to complete the legal framework for the EU’s common asylum policy, in particular with regard to the “uniform status of asylum for nationals of third countries, valid throughout the Union” as referred to in article 4 of the acquis. The transfer of protection status between EU Member States is considered to be the next logical step in the completion of the legal framework of the CEAS, in particular with regard to the creation of such a uniform status. In this regard, it is striking that the final text of the guidelines does not explicitly refer to mutual recognition of asylum decisions, whereas a draft version of the guidelines did include such explicit reference.

Mutual recognition of positive asylum decisions is an issue that has been on the Commission’s radar for many years. It was raised in the Green Paper on the CEAS in 2007, was mentioned in the Stockholm Action Plan, although the principle of harmonisation was not included in the Stockholm Programme as such and was again referred to in the Commission’s communication on the future of home affairs in March 2014. If combined with a system to ensure transfer of protection status obtained in one Member State, it would further enhance the free movement of beneficiaries of international protection within the EU as well as their protection from refoulement.

Refugees and beneficiaries of subsidiary protection are now included in the scope of the long term residence directive, providing them with free movement rights within the EU after obtaining the status of long term resident within five years of residence in a Member State. However, Member States still have a possibility to include only half of the duration of their asylum procedure for the calculation of the five years of legal residence which is required to obtain long term residence status. This is a significant obstacle for irregular migrants further added to the list of obstacles and human rights violations migrants and persons in need of international protection face at the EU’s external borders.

In 2013, Bulgaria experienced a significant rise in the number of asylum applications. Whereas the country registered in 2012 a total of 1387 applicants, this number increased sharply in 2013 to a total of 7441, with the highest numbers recorded in the second half of 2013. The vast majority were refugees fleeing the conflict in Syria. The number of new arrivals dropped significantly after Bulgaria deployed over 1500 additional policemen to patrol the border as of November 2013. In December 2013, the number registered for asylum declined to 136 new arrivals registered in a single week. This number had been registered several hundred times in the past.

Another Crack in the Dublin System - The Bulgarian ‘Asylum Crisis’

In the second half of 2013 and the first half of 2014, the EU saw an asylum crisis unfolding in Bulgaria. This section discusses the measures that were taken immediately once the emergence of the situation had been recognized as a pressing issue. The question made Bulgaria the second EU Member State after Greece, with regard to which UNHCR and NGOs publicly called for a blanket suspension of transfers of asylum seekers under the Dublin Regulation. At the same time, credible allegations of push backs at the Bulgarian/Turkish borders, including of Syrian refugees, and the announcement of a forecast to stop irregular migrants further added to the list of obstacles and human rights violations migrants and persons in need of international protection face at the EU’s external borders.

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Another Crack in the Dublin System - The Bulgarian ‘Asylum Crisis’
the construction of a barbed wire fence at the border with Turkey also started. Between 1 January and 31 March 2014, 376 third country nationals were apprehended for irregular entry through the ‘green’ border as well as 63 at official border crossing points. Another 255 were reported to have crossed the border in that period by the Bulgarian Border Police. 90 The evolution of the number of asylum applicants in Bulgaria is remarkable and shows once more the impact border control measures can have on the arrivals of asylum seekers in the EU. The Bulgarian asylum system was not able to cope with the increased number of asylum applicants arriving. With reception capacity already insufficient to address the number of asylum seekers arriving in Bulgaria in 2012, the reception system further collapsed as the number of asylum seekers started to rise dramatically as of the summer of 2013. This resulted in a reception crisis. New accommodation facilities were established in September and October 2013 but the conditions in some of those centres were not meeting basic standards and were described as amounting to inhumane and degrading treatment as it included accommodation in tents and containers, without electricity and sewerage under extremely poor living and hygiene conditions. 91 In many cases, asylum seekers were forced to make use of a so-called “external address”, a fake address which was appointed to the authorities as this was required to be released, leading to cases of the fact of homelessness. As even access to food was not guaranteed in the reception centres by the end of 2013, other organisations such as UNHCR provided hot meals to asylum seekers in the reception centres.

As mentioned above, in early January, UNHCR as well as human rights organisations including ECRE and Amnesty International called for the general suspension of all transfers of asylum seekers and returns to Bulgaria because of the risk of human rights violations for asylum seekers and refugees in Bulgaria. 92 In its observations on the situation in Bul- garia, published on 2 January 2014, UNHCR came to the conclusion that asylum seekers in Bulgaria faced a real risk of inhuman or degrading treatment due to systemic deficiencies in asylum procedures and reception conditions. Referring to the jurisprudence of the Court of Justice of the EU and the ECtHR, they called for a general suspension of the application of the Dublin Regulation. 93

In practice, many Member States stopped transfers to Bulgaria, although this was not always publicly announced. As a result, Bulgaria became the second country within the EU in addition to Greece, where at least temporarily asylum seekers were no longer sent back under the Dublin Regulation to Bulgaria. 94 This is of course a very important development as it illustrated once more the weaknesses of the CEAS and certainly constituted another blow to the mantra of the Dublin Regulation being the cornerstone in building the CEAS. It also meant that Bulgaria could no longer be trusted to adhere to the rules and that the presumption of safety and compliance with the Dublin criteria was no longer valid. Bulgaria was added to the list of countries to whom Member States were not to send asylum seekers as well as refugees. 95

The calls for suspension of Dublin transfers, including from UNHCR was launched after the EASO support plan for Bulgaria had been signed in October 2013 and applied in November and December 2013. Support activities by EASO included the same focussing on protection of Malta to avoid Dublin transfers, including the asylum procedure and reception conditions. The initial support from EASO focussed in particular in mapping the flaws and weaknesses in the Bulgarian asylum system, which was necessary but obviously did not aim at or result in an immediate improvement of conditions for the refugees concerned. EASO’s stocktaking report of its support activities in Bulgaria since October 2013 was based on its assessment of the situation existing in February 2014. The report noted that the delays in registration of asylum applications had disappeared and that progress had been made to improve the asylum procedure but it still needed to be done. 96

Since the publication of the first AIDA annual report the conflict in Syria unfortunately only worsened and resulted in the number of internally displaced persons within Syria and the number of refugees outside Syria reaching unprecedented levels. As highlighted in Chapter I, the number of Syrian asylum seekers in the 28 EU Member States increased substan- tionally in 2014. In the first half of 2014 Bulgaria received more than half of all asylum applications in the EU. 97 In this context, speculation about the Bulgarian government’s intentions as to how it wants to tackle possible future flows of migrants and asylum seekers is inevitable. It follows the sad examples of the Greek government in the Evros Region and the Spanish government in Ceuta and Melilla and illustrates the one dimensional approach of European governments in Europe today. If anything, such an asylum system does not stand for the EU but rather shifting migration routes to much more dangerous routes across the Mediterranean Sea and increasing the loss of life.

The situation in Bulgaria undeniably improved considerably in the course of 2014 as a result of the efforts of various stakeholders, but it appears that the significant decrease of the number of arrivals mentioned was certainly a crucial factor. In this respect it seems that strengthening the asylum system in Bulgaria was also made possible by the strengthening of border controls resulting in a reduced inflow of new asylum seekers and the shifting of migration routes, including to the Central Mediterranean route through Libya.

5. The EU’s Response to the Syrian Refugee Crisis: Too Little Too Late?

ed in all reception centres. However, the EASO report found in particular the outflow of persons who received a form of protection very problematic as it resulted in overcrowding in the reception system and lack of capacity to properly receive new arrivals, while also the lack of integration programmes for those granted international protection was highlighted.

NGOs and UNHCR acknowledged in April 2014 that considerable progress had been made with regard to the reception of Syrian asylum seekers and refugees in Bulgaria. In late March 2014, the Bulgarian Helsinki Citizens’ Assembly still reported cases where registration of asylum applications was unduly delayed and repeatedly rescheduled. 98 UNHCR no longer called for a general suspension of transfers to Bulgaria because of the progress made, but called for a general suspension of transfers to Bulgaria and on proper assessment of its results. In any case, as the asylum system in Bulgaria remains fragile, resuming transfers of asylum seekers to Bulgaria risks undermining the ongoing efforts of the various actors in Bulgaria to strengthen the system for the time being. 99 In this respect, suspending Dublin transfers also constitutes an act of solidarity as it prevents additional pressure on Bulgaria’s already stretched resources and undermining ongoing support activities.

Major challenges remain to date with regard to the consistent reports and allegations of pushbacks at the border, the precarious situation of the 3.385 asylum seekers registered at “external address” 100 - the continued systematic intolerance of detention of asylum seekers at the border in a new 300 capacity detention centre, the lack of integration programmes for those granted international protection and the lack of access to quality legal assistance. Moreover, in its April 2014 report, UNHCR seriously questioned the sustainability and consolidation of the progress made in the medium and longer-term. In particular, the fact that a number of the initiatives taken to ensure support to persons with special needs, access to legal assistance as well as recreational activities for children were undertaken by Bulgarian NGOs on an ad hoc basis without sufficient capacity for the authorities to take over, was raised as a specific concern.

Finally, it should be noted that the above-mentioned dramatic decrease of new arrivals followed the posting of 1,500 additional policemen at the external land borders, while the government announced the establishment of a 170 km long fence along the Bulgarian/Turkish border. In the same context, Bulgaria has simultaneously suspended asylum applications from the region. With regard to the EU’s response to the refugee crisis, some Member States have suspensions Dublin transfers to other Member States, including Italy, Malta, Hungary, France and Germany, 101 this is further fundamentally questioning the rationale underlying the Dublin system, even though the number of Dublin cases relating to Bulgaria may not have been very high for some Member States.

In this respect it seems that strengthening the asylum system in Bulgaria was also made possible by the strengthening of border controls resulting in a reduced inflow of new asylum seekers and the shifting of migration routes, including to the Central Mediterranean route through Libya.

Overall High Recognition rates in the EU for Those Fleeing Syria in the EU...

Another trend that was confirmed in 2013 and the first half of 2014 was that overall recognition rates remained very high in EU Member States. In the first half of 2014 Bulgaria was one of these countries, where the number of asylum seekers granted the status granted to asylum applicants from Syria. In many Member States, subsidiary protection status continued to be predominantly granted to asylum applicants from Syria in 2013 while in other EU Member States a humanitarian status (other than refugee or subsidiary protection status) is still granted in most cases.

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Such an approach was maintained despite the adoption by UNHCR in October 2013 of a revised position paper on the protection needs of those fleeing the conflict in Syria, in which it characterizes the flight of civilians from Syria as a “refugee movement”. In light of the nature of the conflict and the human rights abuses in Syria, UNHCR considers that “[m]ost Syrian refugees seeking international protection are likely to require the full range of the protection requirements defined in Article 1(c) of the 1951 Convention relating to the Status of Refugees, since they will have a well-founded fear of persecution linked to one of the Convention grounds” and that the likelihood of Syrians not meeting the inclusion criteria of the 1951 Refugee Convention is “increasingly exceptional”. 103

Under the Qualification Directive, the content of refugee and subsidiary protection status is further aligned but Member States may still apply a less favourable regime to beneficiaries of subsidiary protection in particular with regard to the duration of their residence permit, which may be only valid for one year initially and renewable by another two years thereafter. Moreover, in a number of EU Member States, beneficiaries of subsidiary protection or a national humanitarian status do not enjoy the same rights to family reunification as refugees. This is for instance the case in Austria, where beneficiaries of subsidiary protection only have a right to family reunification after the first extension of their residence permit (after 1 year). 104 In Cyprus beneficiaries of subsidiary protection do not have a right to family reunification at all under the new law amending the Refugee law. 105 Also in Germany beneficiaries of subsidiary protection can only exercise the right to family reunification under strict conditions, including in terms of its income and support the family members who are usually hard to meet in practice. 106 In Hungary, exercising the right to family reunification has become increasingly difficult for both refugees and beneficiaries of subsidiary protection. This is because of the requirement that all documents submitted bear an official character and translation in English or Hungarian, which of course raises the costs considerably. Moreover, persons with subsidiary protection status do not have the right to apply for family reunification under the same rules as refugees as they for instance would need to prove sufficient income to support their family members. Other countries such as France, Poland, the United Kingdom, the Netherlands, Belgium and Sweden do not distinguish between refugees and beneficiaries as regards the right to family reunification, but also in those countries Syrians face obstacles in practice in order to be reunited with their family members. A particular situation existed until recently in Malta, where at the start of the conflict asylum seekers from Syria were granted “provisional humanitarian protection” pending a final determination of their claim, which protected them from forced removal but meant at the same time that they were still considered as asylum seekers with entitlement to the rights of the latter category. As the conflict intensified, applications were finally assessed and resulted in a subsidiary protection or refugee status for those immediately after the conflict started and in a temporary humanitarian protection status for those who applied after having been in Malta for some time if they were refused refugee status. As the temporary humanitarian protection status was not laid down in law and issued on a discretionary basis, such decisions were overturned or granted subsidiary protection status instead. Currently applicants from Syria who can prove their Syrian nationality are granted either refugee status or subsidiary protection status. 107

There was a positive evolution in some EU Member States where the proportion of refugee statuses granted to persons fleeing the conflict in Syria increased as compared to previous years. This was, for instance, the case in Austria (65.2% refugee status), France (56.8%), the United Kingdom (85%) and Poland (83%). 108 Also in Belgium the percentage of refugee statuses granted to asylum seekers from Syria increased to 51.3% in the first six months of 2014 whereas this was only 12.6% in 2013 while the percentage of subsidiary protection status increased from 79.2% to 45.4%. While being a positive evolution, NGOs in Belgium remain concerned about the fact that in a considerable number of cases where subsidiary protection status was granted, a correct reading of the abovementioned UNHCR position on international protection considerations with regard to people fleeing Syria should have resulted in the granting of refugee status.

In 2013 and the first half of 2014, there were some positive developments as well with regard to the processing of asylum applications from persons fleeing Syria. The practice of freezing asylum applications, that existed in a number of EU Member States, ceased across the EU. In Cyprus for instance, the processing of asylum applications from Syrians was resumed as of July 2013 after having been suspended for three years. 109 Where the practice of freezing the examination of asylum applications from persons fleeing the conflict in Syria seems to have stopped in 2013, other special measures have been taken in a number of EU Member States to deal with the increased number of Syrian applicants.

Since September 2013, Sweden has been granting all Syrians in need of international protection a permanent residence permit, including those granted subsidiary protection status, whereas prior to that date the latter only received a residence permit valid for three years. This followed a reassessment of the situation in Syria by the Swedish Migration Board concluding that “the present safety situation in Syria is extreme and characterised by general violence” and estimating that “the risk has, for a long time now, been so severe that the existence of a safe third country, the individuals concerned are not entitled to any residence permit on humanitarian grounds and are sent back to the safe third country. In the United Kingdom, there seems to be no consistent practice but some applications seem to be granted very quickly, although those whose asylum application has been finally refused after having exhausted all available remedies, are not granted any special form of humanitarian status either. Whereas in Bulgaria efforts were made to speed up the examination of applications of persons fleeing the Syrian conflict, the Bulgarian Helsinki Committee (BHC) had received information in October 2013, about government practice that seriously undermined the safety of Syrian asylum seekers in violation of the 1951 Refugee Convention. According to this information, the Bulgarian Ministry of Interior had submitted biometric data, including fingerprints, of asylum seekers applying in Bulgaria to the Syrian embassy in Sofia in order to verify their identity. This practice contravenes the EU Asylum Procedures Directive which explicitly prohibits Member States from disclosing any information regarding individual applications or the fact that an application has been made to the alleged actor of persecution. Whereas it is unclear whether the Ministry stopped this practice in the meantime, it illustrates the state of the Bulgarian asylum system at the time as even the most basic principles of refugee law were not respected.

No EU Member State is conducting returns to Syria at the moment, although only a few EU Member States, including Denmark and Germany have adopted formal moratoria on returns to Syria. 110 As mentioned above, while recognition rates for applicants from Syria remain very high in most EU Member States, in a number of cases applications are nevertheless rejected. Where this concerns persons whose Syrian nationality is not contested and they are not entitled to another form of humanitarian protection or a temporary residence permit, this may result in legal limbo situations as return to Syria is not possible. The lack of access to reception conditions, proper health care or housing further adds to the hardship refugees from Syria are already facing.

If They Can Get There

Despite the fact that the conflict in Syria is now entering its fourth year and despite the worsening conditions in the countries neighbouring Syria the vast majority of the persons fleeing Syria remains in the region. 111 Neighbouring countries currently are not able to deal with the refugee inflows. Nevertheless, as the conflict has been raging for more than three years, a number of people are trying to seek protection in Europe although the number of asylum seekers from Syria eventually applying for asylum in the EU remains small, in comparison to the numbers hosted in the neighbouring countries of Syria. According to UNHCR, between 2011 and May 2014 about 105,000 new asylum applications from Syrian nationals were registered in the 28 EU Member States.

103 UNHCR, International Protection Considerations with regard to People Fleeing the Syrian Arab Republic, Updated II, October 2013, par. 14-15.
104 UNHCR, International Protection Considerations with regard to People Fleeing the Syrian Arab Republic, Updated II, October 2013, par. 14-15.
105 See UNHCR, UNHCR regards the lowering of protection standards in the Republic of Cyprus, 16 April 2014.
106 See UNHCR, UNHCR, the Netherlands, Treatment of Specific Nationalities, 12 February 2014.
As the need for people to find protection and safety beyond the region is growing, the obstacles to accessing the territory are increasingly pushing Syrians, alongside other nationalities, to use dangerous routes. A particularly worrying trend is that more and more people are crossing the Mediterranean Sea departing from Libya, Turkey and Egypt. According to UNHCR statistics, 26% of all boat arrivals in Italy in 2013 were Syrians and Palestinians from Syria, whereas in the first six months of 2014 they constituted 16% of the around 60,000 persons who reached Italy by sea.121 The Mare Nostrum operation 122 has significantly reduced the number of deaths in the Central Mediterranean route but migrants and refugees, including Syrians, continue to die on their way to safety in Europe and increasingly have to resort to human smugglers and traffickers to make it to the EU’s borders.

Referring to the low level of engagement of EU Member States in the resettlement of refugees from Syria, UN High Commissioner for Refugees, António Guterres stated that “never was so little done by so many for so few.”123 It is unfortunately still an accurate description of the EU’s commitment towards those fleeing the conflict in Syria.

However, some positive developments took place with regard to the resettlement of refugees from Syria. Recently Germany, among other things, agreed to receive an additional 10,000 Syrian refugees and Austria an additional 1,000 Syrian refugees on top of earlier commitments made under the EU’s (Preliminary) Agreement with Turkey. Thus far, almost 5,500 visas have been issued under this programme and Ireland has launched an immigration-based Syrian Humanitarian Admission Programme.124 Meanwhile, the United Kingdom launched a programme to take ‘several hundred’ refugees over the next three years prioritising vulnerable persons. Nevertheless, much more can and should be done in order to alleviate the hardship of people fleeing Syria residing in countries in the region and to show solidarity with the countries hosting the vast majority of refugees.

The EU with its Member States continues to lead the international humanitarian response to the humanitarian and security crisis. According to the European Commission as of August 2014 over 2.8 billion euros has been mobilised for relief and recovery assistance to Syrians inside their country as well as to refugees and their host communities in the countries neighbouring Syria.125 While the EU’s contribution to the humanitarian relief is commendable and vital, this must be coupled with increased safe and legal access for the refugees in need of protection in Europe, including through increased resettlement and humanitarian admission programmes. It is not a question of either – or donating to the humanitarian effort and offering protection in Europe to refugees seeking it should come hand in hand in order to make a difference and alleviate the suffering of the people who had to flee the war.

6. Europe Act Now

In light of the worsening situation in Syria and the neighbouring countries, over 100 organisations from over 30 countries joined an ECRE-led campaign petitioning European leaders to act now to ensure access to protection for the men, women and children fleeing the Syrian conflict.

The campaign, which culminated in the handover of more than 20,000 signatures to a representative of EU President Herman Van Rompuy in particular on the occasion of the Rome Ministerial on Refugees and Immigration on 11 March 2014, focused on a concerted effort at the EU level to invest in legal and safe ways for people with protection needs to access the territory of a country of origin. This approach and the need for a concerted effort at the EU level to invest in legal and safe ways for refugees and others in need of international protection to reach Europe becomes more pressing as the EU sees itself confronted with the consequences of its traditional approach focusing on deterrence and tightening of its external borders. The fact that today thousands of women, men and children see no other option than to put their faith in the hands of human smugglers and undertake highly dangerous sea journeys in order to claim protection in an EU Member State is simply unacceptable as are the deaths that continue to result from these policies.

There are several ways in which safe access to protection in the EU can be facilitated ranging from adjustments to existing policies that obstruct such access to establishment of specifically designed protected entry procedures and increased use of resettlement. ECRE believes that all options should be explored and be used to ensure maximum impact.

One such option is the use of so-called protected entry procedures, referring to any arrangement allowing an individual to avoid the authorities of a potential host country outside its territory with a view to claiming international protection and being granted an entry permit in case of a positive response to that claim, be it preliminary or final. There is a lot of confusion about what this means exactly and scepticism has been raised by Member States as to their feasibility in practice, as became clear also in the context of the Task Force Mediterranean.126

In a number of Member States, protected entry procedures have been laid down in national legislation and have been used in the past but stopped for a variety of reasons, mostly relating to additional administrative burden and resources required to make such systems work in embassies. Also the complexities of coordinating between embassies registering the applications and national administrations processing the applications and deciding on cases, have often been mentioned.

However, all practical problems can be solved if there is political will and working together at the EU level may offer opportunities to more effectively address the concerns of individual Member States in terms of administrative capacity. The pooling of resources to enhance the capacities of Member States’ embassies and consular posts to process requests for visas that can be exceptional or protected entry should be encouraged. Likewise encouraging embassies or consulates of Member States may in this regard offer an effective way to overcome capacity challenges.

Furthermore, Article 25 of the EU Visa Code already provides an opportunity for Member States to issue a visa on humanitarian grounds with limited territorial validity and can be used as a means to ensure safe and legal access to the EU, in particular where persons need to leave quickly. Common EU Guidelines on this provision could further promote the use of this provision as a protection tool and encourage Member States to make use of it.

Solutions must be found to ensure the safety and security of those wanting to access protected entry procedures or obtain a humanitarian visa. This will always be a delicate issue, in particular where systems of protected entry are being applied to entries of refugees or of people who have little or no connection with the country of origin of the individual. Close cooperation with NGOs present on the ground or a system of safe houses may offer solutions in individual cases.

Visa requirements continue to be imposed on most of the countries that produce refugees and constitute an important obstacle for persons seeking protection to enter the EU in a safe and regular way. In December 2013, the EU Visa list Regulation was amended introducing a mechanisms for the temporary reintroduction of visa requirements for whose nationals are exempt from visa requirements, including where there is a significant increase in the number of asylum applications for which the recognition rate is low and where this leads to specific pressures on the Member State’s asylum system.127

Such measures create additional hurdles for asylum seekers and refugees and mainly benefit the cynical business of smugglers and human traffickers. A thorough assessment should be made of the EU’s visa policy and its impact on access to protection in the EU.

In particular, the possibility of suspending visa restrictions for a determined period of time for nationals and residents of countries experiencing a recognised significant upheaval or humanitarian crisis should be explored. Additional measures to mitigate the obstacles to access to protection created by the current EU visa policies could include the waiver of visa fees as well as the exemption from transit visa obligations for persons fleeing persecution and generalised violence.

Resettlement to the EU must be considered another important legal avenue that effectively prevents persons in need of international protection from undertaking life-threatening journeys. It is and remains one of the durable solutions to refugee situations that is underutilised by EU Member States. Six NGOs and international organisations including ECRE have launched a campaign last year calling for Europe to increase resettlement and reach the target of 20,000 places annually by 2020. Most, if not all, of the 28 Member States should get involved in resettlement in the next years in order to reach this goal, and they should increase the number of places they currently offer.

The situation at the EU’s external borders and the lack of legal avenues for refugees to enter the EU’s territory point the finger at a longstanding flaw in the EU’s common asylum policy. As the EU is increasingly investing in establishing a Common European Asylum System based on high protection standards, little is done to ensure that those who need international protection in the EU can access it safely. At the same time, the radio silence on behalf of the Member States vis-à-vis the sea arrivals in Italy and the persistent allegations of pushbacks on other entry points in the EU indicate a decreasing appetite in EU Member States to address asylum issues in common and more worryingly, a growing indifference to human rights violations. While the next chapter provides an overview not only of the improvements but also the remaining challenges that must be addressed to build a CEAS, access to the territory is vital in ensuring protection for those fleeing war, persecution and other serious human rights violations. Therefore it is crucial that the EU goes beyond its proclaimed implementation model in the field of asylum and shows the leadership and vision that will be necessary to ensure a safe haven for refugees in Europe.

121. UNHCR, ibid, p. 9, s.4.10
122. See the section on access to the territory in Chapter III.
125. See: Syria: UK helps vulnerable refugees.
126. See European Commission, Syria Crisis ECHO Factsheet, August 2014.
127. See section 1.1 of this chapter.
CHAPTER III

Procedural Safeguards, Detention and Reception Conditions in 15 EU Member States: Key Findings
This chapter highlights a number of key developments and trends with regard to selected aspects of the asylum procedure, reception conditions and detention of asylum seekers in the 15 EU Member States covered by AIDA. The main topics addressed are access to the territory and asylum procedures, safe country concepts, subsequent asylum applications, access to an effective remedy and free legal assistance, material reception conditions, detention and identification and treatment of asylum seekers with special procedural and reception needs. The sections focus on existing challenges and obstacles faced by asylum seekers in accessing their rights as well as good practice in the countries concerned. It should be noted that only the most relevant trends and developments with respect to the topics discussed in this chapter are included and must be read in line with the additional information in the relevant section of each country report on the AIDA website. The fact that a Member State is not explicitly mentioned in this chapter with respect to specific issues discussed herein does not necessarily mean that no concerns exist with respect to that Member State or that no good practice exists in that country.

Throughout the chapter, it is clear that both law and practice in the Member States vary considerably with regard to the asylum procedure, reception conditions and detention of asylum seekers. For example, of the countries applying list of safe countries of origin concept, not one country appears on all national lists. Moreover, of the 15 countries covered under AIDA, only Belgium, France, Sweden, and the Netherlands ensure access to free legal assistance to asylum seekers during the first instance of the regular asylum procedure. Asylum seekers in Austria, Cyprus, Hungary, Malta, the Netherlands and the United Kingdom are frequently detained, much to the detriment of their physical and psychological health. The chapter below explores these and many other variances and overall it can be seen that asylum seekers continue to suffer due to the many protection gaps impeding their full protection under the Common European Asylum System.

1. Access to the Territory and to the Procedure

As already raised in chapter II, access to the EU is becoming more and more challenging for persons in need of international protection, while the number of protracted refugee situations in various regions of the world increases and the human rights situation in transit countries, such as Libya, worsens. As there are hardly any legal avenues to reach Europe, refugees are increasingly forced to put their lives and the lives of their loved ones at risk in order to find safety. Tighter visa regimes, increased and more sophisticated border controls and push backs are among the obstacles that asylum seekers continue to face when trying to access the EU territory. Yet, the numbers of asylum seekers embarking on these perilous journeys does not decrease and such obstacles make attempts to reach Europe more dangerous. The ‘Migrant Files’ project, which aims to record the number of deaths of migrants and asylum seekers on their way to Europe or in detention centres, reported the death of more than 23,000 people since 2000.\footnote{129. UNHCR estimated the death toll from sinking vessels on the Mediterranean in the first 8 months of 2014 alone at almost 1,900 people, which is unacceptably high.\footnote{130. See UNHCR, High seas tragedies leave more than 300 dead on the Mediterranean in past week, 26 August 2014.}}

According to the EU Border Agency Frontex, the number of detections of irregular crossings rose from 72,437 in 2012 to 107,365 in 2013, although those numbers were still lower than the total reported during the 2011 Arab Spring.\footnote{131. When a total of 141,051 detections of irregular border crossings were reported. See Frontex, Annual Risk Analysis 2014, May 2014, p. 29-30.} Syrians attempting to cross the EU borders represented almost a quarter of the total number of detections reported by Frontex in 2013.\footnote{132. Ibid., p. 7.} Other main countries of origin of people apprehended included Eritrea and Afghanistan. Somalis also represented a significant share of the people who reached Italy and Malta by sea.

While in 2012, most irregular crossings were detected in the Eastern Mediterranean borders (Bulgaria, Greece and Cyprus), there was a clear shift in 2013 towards the Central Mediterranean. This trend continued in the first half of 2014, with the numbers of asylum seekers, refugees and migrants arriving by sea in Italy until the end of August 2014 reaching 106,000. The shift of the route taken by migrants and asylum seekers to reach Europe seems to at least partly result from the strengthening of border controls, including through the building of fences at the Greek and Bulgarian borders with Turkey. However, while Italy has become the main point of arrival, people continue to arrive by sea at the Greek islands as well.
From Mare Nostrum to Push-backs in the Aegean: The Different Faces of External Border Controls

The responses to people arriving at the EU's external borders have been very divergent depending on the point of entry. In this respect, the Mare Nostrum operation launched by the Italian authorities in October 2013 contrasts sharply with the persistent allegations of push-back tactics at the Bulgarian/Turkish land border, at Ceuta and Melilla and at the Greek islands in the second half of 2013 and the first half of 2014. Although there was initially scepticism over the real intentions of Mare Nostrum as it is a military operation, it has proven to be successful in rescuing thousands of asylum seekers and migrants at sea and disembarking them in Italy and is supported by the NGO-community. This is, of course, in sharp contrast to the push-back operation that was carried out by the Bulgarian authorities in Eastern Europe and Somalia. Shipments of asylum seekers were returned to Libya without a proper examination of their protection needs, and which was condemned by the ECtHR as a clear violation of the principle of non-refoulement in the case of Hirsi Jamaa and Others v. Italy.133

In Focus: the Mare Nostrum Operation

The Mare Nostrum operation was officially launched on 18 October 2013 by the Italian Ministry of Defence. The aim of the operation is to strengthen both surveillance in the high seas and search and rescue activities. The operation involves personnel from the Italian Navy, Army, Air Force, Custom Police, Coast Guards and other institutional bodies working in the field of the migration.134 The operation which costs over 9 million euro per month, includes a number of Navy vessels and helicopters with infrared equipment.

According to information provided by the Italian Navy, over 113,000 migrants have been rescued since the start of the operation, about 105,000 between January and 24 August 2014.135 The majority of those rescued are Syrians and Eritreans.136 The information collected through the European Border Surveillance System (Eurosur) is available to all Member States as it is to any other EU Member State, but it is not known to what extent Eurosur is being used as a tool to locate migrants in distress at sea in practice. There is also a lack of clarity with regard to the procedural steps that are being undertaken once the migrants rescued are on board the Navy ship and before disembarkation in Italy. It is unclear to what extent the identification process of those rescued takes place on board the ships and whether this includes fingerprinting.

The Italian government has repeatedly called upon the European Union to provide support for the continuation of Mare Nostrum. In July 2014, EU Commissioner for Home Affairs Cecilia Malmström stated that Frontex would not be able to fully substitute Mare Nostrum and that direct contributions from Member States would be needed to do so. However, following a meeting between Commissioner Malmström and the Italian Minister of Interior Alfano, the launch of a so-called ‘Frontex plus operation’ in the Mediterranean was announced on 27 August 2014.137 However, at the time of writing it was not clear yet when this operation would start, what its scale and scope will be and if Member States will participate in it.

Contrary to the life-saving operation of the Italian authorities, there have been several reports of push backs at other important entry points to the EU for asylum seekers, refugees and migrants in the second half of 2013 and beginning of 2014.

In a report published in November 2013, Pro Asyl accused the Greek authorities of ill-treating migrants and refugees upon arrival and separating their rights by arbitrarily detaining them on the border and refusing them asylum and summarily returning them to Turkey. Based on interviews with victims, Pro Asyl estimated that over 2,000 people had been pushed back within a year. The majority of the victims were Syrians, but the groups pushed back also included Afghans, Somalis and Eritreans.138

In January 2014, 12 refugees, including children, died off the coast of the Greek island of Farmakonisi, in which the survivors claimed to be a push back operation of the Greek coastguards. Survivors claimed that the coast guards were towing their boat at high speeds towards the Turkish coast when the vessel began to sink. They further asserted that they were beaten and prevented from boarding the coast guards' boat, which led to 12 of the passengers drowning.139

After the incident in Farmakonisi, NGOs, including ECRE and Pro Asyl as well as the EU Commissioner for Home Affairs, Cecilia Malmström, together with a number of Members of the European Parliament, urged Greece to conduct a thorough and independent investigation.140

The Commissioner of Human Rights of the Council of Europe Nils Muiznieks had also previously asked for investigations on push-backs at the Greek-Turkish border. The government later announced the launch of a judicial investigation.141 After the prosecution, the Ministry of Public Order branded the case, considering it to be manifestly ill-founded in substance with regard to several provisions of the criminal code.

This has provisionally put an end to the investigation into the responsibility of the Greek coast guards in the incident. The decision of the Public Prosecutor was met with criticism not only by the victims and the NGOs supporting their case before the Marine Court,142 but also the Commissioner for Human Rights who publicly stated that “impunity risks covering the use of tactics such as pushbacks” and that “Greek authorities have to take more resolute efforts to ensure accountability for this tragedy”.143 The organisations have already announced that they will lodge a complaint to the ECtHR.

Push-backs at the Bulgarian-Turkish border, were reported more recently by Human Rights Watch (HRW), in addition to the concerns that were already raised by the Bulgarian Helsinki Committee in December 2013.144 In a report published in April 2014, HRW argues that the sharp decrease of people crossing the border is the result of a ‘Containment Plan’ established by the Bulgarian government in November 2013 and that Bulgaria applies “a systematic and deliberate practice of preventing undocumented asylum seekers from entering Bulgaria to lodge claims for international protection”.145 HRW recorded testimonies of migrants and asylum seekers who had been apprehended either in Bulgaria or at the border and summarily returned to Turkey. People push back also mentioned having been beaten or mistreated by Bulgarian border guards.

In Ceuta and Melilla, Spanish enclaves on Moroccan territory, the Guardia Civil (Spanish police authorities) used rubber bullets and, according to the migrants concerned, tear gas to deter migrants from entering Spanish territory, leading to the death of 12 people in February 2014. Another 23 people were similarly returned to Morocco, in conditions that seem to be in violation of international human rights law, including the principle of non-refoulement. Here too, a thorough investigation was called for by NGOs as well as Commissioner Malmström but it is unclear whether concrete steps had been initiated at the time of writing.

The reported push-backs, some of which occurring in areas where Frontex-led operations are being carried out, show that protection-sensitive border controls are far from being a reality in the EU, while the perilous journeys asylum seekers and refugees and migrants continue to undertake in order to reach legal avenues to the Europe. ECRE has repeatedly called on the EU and Member States to facilitate access to protection in Europe for people fleeing war and persecution through protected entry procedures, resettlement, humanitarian visas and other means to facilitate entry to the EU in a legal and safe manner.

Delays in Registering Asylum Applications

EU law distinguishes between making an asylum application and lodging an application, the latter referring to the moment of official registration by the competent authority.146 The recall Asylum Procedures Directive requires Member States to ensure that applications are registered within three working days if the application was made to the competent authority or within five working days if made by other means. These times should be maintained for the 10 working days in case of simultaneous applications by a number of asylum seekers. The Directive also provides that applicants should have an effective opportunity to lodge their claims and therefore complete the registration process.

The actual registration or lodging of an application activates a number of rights for asylum seekers, as provided in the recall Reception Conditions Directive, including the issuance of a document certifying the status of asylum seeker or their right to stay on the territory, as well as access to education and to the labour market.147

Cases of people being refused entry and returned without an examination of their protection needs were also documented between EU Member States, in particular between Italy and Greece. In a report published in November 2013, Medi per Diritti (a coalition of human rights groups) gathered testimonies of migrants, mostly from Afghanistan and Syria, who declared that they were sent back to Greece upon arrival at Italy’s Adriatic ports.148

133. ECHR, Hirsi Jamaa and Others v. Italy, Application no. 27785/09, Judgment of 23 February 2012.
134. A summary of the operation in English is available here.
135. Marina Militare Italiana, information provided to ECRE on 27 August 2014.
137. The report’s conclusions from the EU since the tragedy of Lampedusa in October 2013, see Chapter I.
138. See Reuters, Italy in talks with EU to share responsibility for boat migrants, 8 July 2014.
139. After the meeting with Italian Interior Minister Alfano, Brussels, 27 August 2014.
141. See ECRE Weekly Bulletin, 12 refugees die during alleged push-back operation off Greek island, 24 January 2014.
142. European Parliament Newsroom, Debate on Syrian refugees in Bulgaria and “push backs” off the Greek coast, 5 February 2014.
144. See the response of Council of Europe Commissioner for Human Rights, Nils Muiznieks, to the letter of Mr Miltiadis VARVITSIOTIS, Minister of Shipping, Maritime Affairs and the Aegean (Greece), on the lives lost at sea during the Farmakonisi tragic incident, CommDH(2014)1, 14 February 2014.
145. Pro Asyl, ‘We were forced to leave our last land of hope’, Press release, 6 August 2014.
152. It should be noted that the suspension deadline for the recall Asylum Procedures Directive is 20 July 2015 for Articles 1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, 49 and 50 and Annex 1 whereas it is 20 July 2018 for Articles 3(1), (4) and (5) (time limit for completion of the investigation and determination of the recall). See Article 6, (14) and 15 recall Reception Conditions Directive.
153. MEDU, UN SAFE BARRIERS. Report on the readmissions to Greece from Italian ports and the violations of the basic human rights of migrants, November 2013.
The practice of granting children a few resting days prior to a screening interview had been established, the practice began... In the publication of the report.

As also illustrated in this section, State practice in this regard varies considerably across the EU. The risk of undermining the quality of the examination of international protection needs is inherent in such concepts because of the procedural examination of certain caseloads often in the context of accelerated procedures offering reduced procedural safeguards.

164. See Article 38(2)(a) recast Asylum Procedures Directive.
165. The adoption of national lists of safe countries of origin was made dependent on the adoption of the minimum common EU list of safe countries of origin that was foreseen in Article 29 of the 2005 Asylum Procedures Directive. Since this minimum common list was never adopted at the EU level, no national lists were adopted in both countries and hence the concept has not been applied in practice there. Following the judgment of the Court of Justice of the European Union (CJEU) amending Article 29(1) and (2) and Article 35(1) of the 2005 Asylum Procedures Directive, the recast Asylum Procedures Directive no longer includes the possibility of establishing a common list of safe countries of origin. Therefore, the adoption of national lists of safe countries of origin seems impossible for the time being under Bulgarian and Polish law.

The research conducted in the 15 countries covered by the Database shows that little has changed and that EU Member States have divergent opinions as to which countries should be considered as safe countries of origin for the purpose of the examination of an asylum application. This is illustrated by the following overview of the countries designated as safe countries of origin, at the time of writing, in each of the 7 Member States covered by the Asylum Information Database that apply national lists.

As in the table, two countries included in the database, Sweden and Italy, have not transposed any safe country concepts in national legislation and do not apply these concepts in practice.

In all other Member States national legislation includes provisions on either only the safe country of origin concept – France, Belgium and Ireland - or both the safe country of origin concept and the safe third country concept – Austria, Bulgaria, Cyprus, Germany, Hungary, Malta, the Netherlands and Greece. However, as the safe country of origin concept has more practical relevance than the safe third country concept, this section will mainly discuss the use of the former.

A particular situation exists in the Netherlands,166 where national legislation includes, in addition to the safe country of origin and the safe third country concept, the concept of “country of earlier residence”, which is a somewhat unclear legal concept. According to the law, this concept can be applied in case the asylum seeker will be admitted to a country of earlier residence until they have found durable protection in another safe third country. The concept differs from the concept of safe third country with regard to the criteria used to consider the country as safe. In the case of a safe third country, the Dutch legislation requires that the third country has signed the 1951 Refugee Convention, the European Convention on Human Rights (ECHR) and the UN Convention against Torture, whereas this formal requirement does not apply with regard to the concept of a “country of earlier residence”, although it is required that the applicant is protected from refoulement. An applicant can be considered to have been residing in a third country as soon as they have been staying in that country for two weeks. The recast Asylum Procedures Directive requires Member States to lay down rules in national law requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country. Whether it can be considered reasonable for applicants to go to a third country simply because they resided there for two weeks is questionable as it can certainly not be considered as “sufficient” as required in the preamble of the recast Asylum Procedures Directive.

The application of safe country of origin or safe third country concepts is often dependent on the adoption of lists designating countries as safe. In Bulgaria167 and Poland, the adoption of national lists of safe countries of origin was made dependent on the adoption of the minimum common EU list of safe countries of origin that was foreseen in Article 29 of the 2005 Asylum Procedures Directive. Since this minimum common list was never adopted at the EU level, no national lists were adopted in both countries and hence the concept has not been applied in practice there. Following the judgment of the Court of Justice of the European Union (CJEU) amending Article 29(1) and (2) and Article 35(1) of the 2005 Asylum Procedures Directive, the recast Asylum Procedures Directive no longer includes the possibility of establishing a common list of safe countries of origin. Therefore, the adoption of national lists of safe countries of origin seems impossible for the time being under Bulgarian and Polish law.

The main reason why the minimum common EU list was never adopted prior to the CJEU judgment was that Member States could not find an agreement on the countries to be included, despite the annex in the Asylum Procedures Directive determining the criteria on the basis of which a third country could be considered safe.

2. Safe Country Concepts

Safe country concepts allow States to examine certain asylum applications on the basis of general presumptions about the safety of the country of origin of the asylum seeker or of the country where they last resided or were granted some form of protection. Safe country concepts have been used by European States since the 1990s as a tool to speed up the examination of certain caseloads often in the context of accelerated procedures offering reduced procedural safeguards.

As also illustrated in this section, State practice in this regard varies considerably across the EU. The risk of undermining the quality of the examination of international protection needs is inherent in such concepts because of the procedural disadvantage and the increased burden of proof they tend to create for the applicants concerned from the start of the procedure.

The recast Asylum Procedures Directive distinguishes between the concept of first country of asylum (Article 35), safe country of origin (Article 36 and Annex I), safe third country (Article 38) and European safe third country (Article 39). Only information with regard to the concepts of safe country of origin and safe third country is included in the table below as they are the most relevant for the practice of some of the Member States covered by the Asylum Information Database. The following table provides an overview with regard to whether the safe country of origin concept and the safe third country concept is laid down in national legislation and whether they are applied in practice.

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<td>Safe Third Country in law</td>
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<td>Safe Third Country applied in practice</td>
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As reported in Frontex, Annual Risk Analysis 2014 and Asylum Information Database, Country Report Italy.
Designated Safe Countries of Origin in seven EU Member States

Austria (39 countries):
- All EU Member States, Switzerland, Liechtenstein, Norway, Iceland, Australia and Canada. In addition States with a status of accession countries to the EU are considered as safe countries of origin by governmental order: Bosnia-Herzegovina, Serbia, Montenegro, Kosovo and Albania. This list has not been changed since 2010.
- Belgium (7 countries):
  - Albania, Bosnia-Herzegovina, former Yugoslav Republic of Macedonia, Kosovo, Serbia, Montenegro and India. This list was adopted for the first time in 2012 and was last re-affirmed on 24 April 2014.
- France (17 countries):
  - Albania, Armenia, Benin, Bosnia-Herzegovina, Cape Verde, Georgia, Ghana, India, Kosovo, former Republic of Macedonia, Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia and Tanzania. This is the list as adopted in April 2014. The list was last changed in March 2014 when Ukraine was taken off the list following the recommendation of UNHCR.
- Germany (29 countries):
  - All EU Member States, Ghana and Senegal. A draft law was presented to the Parliament in May 2014 proposing to add Serbia, Bosnia-Herzegovina and Macedonia to the list of safe countries of origin.
- Ireland (2 countries):
  - Croatia and South Africa. This list was adopted in 2004 and has not been changed since.
- Malta (51 countries):
  - All EU Member States, EEA Member States (Liechtenstein, Iceland, Norway), Australia, Benin, India, Botswana, Jamaica, Brazil, Japan, Canada, Liechtenstein, Cape Verde, New Zealand, Chile, Norway, Croatia, Senegal, Costa Rica, Switzerland, Gabon, United States of America, Ghana, Uruguay. The list was last amended in 2008.
- The United Kingdom (26 countries):
  - Albania, Jamaica, Macedonia, Moldova, Bolivia, Brazil, Ecuador, South Africa, Ukraine, India, Mongolia, Bosnia-Herzegovina, Mauritius, Montenegro, Peru, Serbia, Kosovo, South Korea.
- Designated as safe for men are: Ghana, Nigeria, Gambia, Kenya, Liberia, Malawi, Mali and Sierra Leone. UK legislation also provides for the partial designation of countries as safe for a specified group of persons in that country as allowed by Article 30(3) of the 2005 Asylum Procedures Directive.

As shown in this overview, there is not a single country which appears on all the national lists. Austria, Belgium, France and the United Kingdom have five Western Balkan countries (Bosnia-Herzegovina, Albania, Montenegro, Serbia, Kosovo and Macedonia) from designated asylum countries and/or countries considered as documentary asylum countries. Asylum seekers from former Yugoslavia (excluding Kosovo), except for Austria, also consider the former Yugoslav Republic of Macedonia as a safe country of origin. Conversely, the Western Balkan countries do not appear at all on the safe country list of origin of Malta, Ireland and Germany. However, with regard to Germany it should be noted that a draft law proposing to include Serbia, Bosnia-Herzegovina and Macedonia has been presented to the German Federal Parliament by the German government. The law is likely to be adopted in 2014. Germany, as a safe country of origin by France, a decision which is currently being challenged before the French Council of State by French NGOs.170

Furthermore Malta, Germany and Austria designate all EU Member States as safe countries of origin whereas this is not the case in the other countries. Moreover, in the United Kingdom, EU Member States, except Croatia, as well as Norway, Iceland and Switzerland are listed as safe third countries but not as safe countries of origin. In Belgium, asylum applications under the Asylum Procedure Act or Accessions Treaty EU are not normally included in the list of safe countries of origin but are subject to the same admissibility procedure as applications from a safe country of origin.

Procedural Consequences of Designating a Country as a Safe Country of Origin

The consequences of designating a country as a safe country of origin differ among the seven EU Member States covered by the Asylum Information Database that apply national lists of safe countries of origin, although in all seven countries the examination of such applications can be accelerated or prioritised.

In Belgium, the safe country of origin concept was introduced in national law in 2012. Applications from these countries are dealt with in an accelerated admissibility procedure in which the Commissioner-General for Refugees and Stateless Persons, must first take a decision as to whether to take the application into consideration within 15 working days. The law establishes a very high threshold for the asylum seeker to rebut the presumption of safety as it must “appear clearly” from the asylum seeker’s declarations that they have a well-founded fear of persecution or a real risk of serious harm, which seems to shift the burden of proof entirely to the asylum seeker.171 Also in the United Kingdom, asylum applications from a designated safe country of origin are examined in an accelerated procedure. If the case is certified as clearly unfounded by the Home Office, there is no in-country appeal as the case is considered to have no merit. Although no specific time limit applies for the Home Office to take a decision, Home Office guidance states that the aim is to decide within 14 calendar days. Moreover, appeals in cases that have been certified as clearly unfounded cannot be made from within the UK but must be made within 28 calendar days of leaving the UK, which in practice is very difficult to do.172

No accelerated procedure exists technically in Austrian law, but suspendive effect may not be granted by the Federal Agency for Immigration and Asylum in cases of applications of asylum seekers coming from a safe country of origin, whereas if the Federal Administrative Court considers granting suspensive effect it must do so within seven calendar days.173

In Focus: the application of the safe country of origin concept in France

France is another example of an EU Member State where the application of the safe country of origin concept has the greatest impact. France is the only country to apply the concept. Asylum seekers from such countries are not entitled to a temporary residence permit on asylum grounds and their asylum application is processed by the OFPRA174 in an accelerated procedure. This means that these asylum seekers are excluded from the normal reception system and therefore are usually not accommodated in reception centres but have to resort to emergency accommodation.

The most important procedural consequence of examining such applications in the accelerated procedure is the lack of suspensive effect of the appeal with regard to the return decision that is issued together with the negative decision on the asylum application. In practice, a number of Prefectures systematically issue return decisions with a compulsory removal order in case of a negative decision by OFPRA in an accelerated procedure. Even if those removal orders are rarely implemented in practice, it increases the feeling of legal insecurity among asylum seekers concerned, who may self-restrict their freedom of movement and which may limit their access to assistance in preparing their appeal.

The absence of an appeal with automatic suspensive effect continued to be severely criticised by NGOs and UNHCR. In its submission to the Universal Periodic Review of France by the Human Rights Council in 2013, UNHCR severely criticised in particular this aspect of the French asylum procedure and recommended “the introduction of suspensive effect to appeals at a legislative and regulatory level, in order to make the appeals effective for accelerated procedures” and called explicitly for a more limited application of the grounds for accelerated procedures, in particular on the basis of the safe country of origin concept.175

A judgment of December 2013 of the French Conseil d’Etat has clarified the legal consequences of the forced return of asylum seekers to their country of origin pending the outcome of the appeal before the CNDA (Court Nationale du Droit d’asile – National Court of Asylum). Based on the requirement in the 1951 Refugee Convention and the EU Qualification Directive that a refugee must be outside his or her country of origin, the CNDA systematically concluded in such cases that the appeal was temporarily without purpose and therefore temporarily suspended the examination of such appeals. However, the Council of State held in December 2013 that neither the 1951 Refugee Convention nor the EU Qualification Directive require a suspensive effect for the CNDA to decide on the appeal.176 Whereas this judgment is important from a purely legal perspective as it results in a possibility for asylum seekers to continue their appeal before the CNDA from abroad and an obligation for the CNDA to decide on the appeal, its practical relevance may be limited.

This is because French law still requires the presence of the applicant at the hearing of the CNDA. Asylum seekers who were forcibly removed from the territory will experience great difficulties to come back to France and will not receive a residence permit to attend their appeal hearing at the CNDA.

Procedural consequences are less sweeping in Malta and Germany. In Malta, the applications of asylum seekers coming from a safe country of origin can be examined in the accelerated procedure which means that no appeal is technically available under the law but the recommendation of the Refugee Commissioner to consider the application as manifestly unfounded is automatically referred to the Refugee Appeals Board, which needs to examine the application within three working days. However, in practice this procedure is never applied as the Refugee Commissioner examines all applications under the normal procedure.177 In Germany, no accelerated procedure exists, but applications of asylum seekers from safe countries of origin are prioritised by the Federal Office for Migration and Refugees.

The Use of the Safe Country of Origin Concept in Practice

As regards the relevance in practice of the safe country of origin concept, the situation differs considerably between those EU Member States covered by the Asylum Information Database that apply the concept. The concept is currently widely used in particular in Belgium, France and the United Kingdom.

174. Office Français de Protection des Réfugiés et des Apatisés, the agency responsible for taking decisions on asylum applications at first instance.
175. The temporary waiting allowance (ATA) also stops as soon as the asylum seeker receives a negative decision from OFPRA. Asylum Information Database, Country Report France – The safe country concepts.
While the safe country of origin concept raises a number of fundamental questions as regards its compatibility with the key focus on individual assessment and the fact that the home country is the most appropriate source of information, there is an increasing desire to reduce the inflow of asylum seekers, than by the objectively nature of the political and social situation of any given country.

If States make use of national lists of safe countries of origin, it is of course essential that they operate an effective and transparent system that allows for the swift withdrawal of such countries from the list in case the situation in the country of origin concerned no longer allows its designation as such. Here too, law and practice differ considerably among EU Member States. Belgium and Austria list the safe countries of origin concerned as sets of countries decided by the United Nations and decisions of the OFPRA Management Board and therefore it is the specialized asylum agency in France that leads the process as opposed to the Management Board and therefore it is the specialized asylum agency in France. As a result, currently, the use of the safe country or origin concepts seems to undermine rather than contribute to the objective of convergence of decision-making within the EU as is certainly at odds with the objective of a CEAS where similar cases are treated alike and result in the same outcome regardless of the EU Member State in which the application is lodged.

The list of safe countries of origin in Belgium is adopted by the government on the proposal by the Secretary of State for Asylum and Migration and the Minister of Foreign Affairs. However, detailed advice from the Commissioner-General for Refugees and Stateless People has shown that this is crucial to ensure that the principle of non refoulement is fully complied with, including where safe country concepts are being applied. A system whereby expedited review is helpful in deciding whether the applicant has been sufficiently informed; it is confirmed for most countries in this year's Annual report. The divergences among EU Member States as regards the countries that are designated as safe countries of origin as well as the fact that the concept is not being applied in a number of other EU Member States covered by the database of the AIDA, the status of the legal concepts as regards the utility of the concept and the use of national lists in the context of the CEAS. As mentioned above, the recast Asylum Procedures Directive no longer includes a legal basis for the adoption of a common list of safe countries of origin or European safe third countries. At the same time, EU Member States are required to consider whether the countries listed should be considered as safe and use different national lists, despite the existence of criteria in the recast Asylum Procedures Directive that should be used by all EU Member States. In addition, the procedural consequences of the use of the safe country of origin concept are different in the countries applying such concepts. As a result, currently, the use of the safe country or origin concepts seems to undermine rather than contribute to the objective of convergence of decision-making within the EU as is certainly at odds with the objective of a CEAS where similar cases are treated alike and result in the same outcome regardless of the EU Member State in which the application is lodged.

3. Subsequent Asylum Applications

According to EASO, of the total number of 435,000 applicants for international protection registered in the EU in 2013, the proportion of new applicants, i.e. persons who never registered before in the asylum system of a Member State was 90%. This means that the proportion of applicants who had already applied for international protection before in the same or another EU Member State was 10%. There are various reasons why asylum seekers introduce subsequent asylum applications and the phenomenon as such may reveal a failing return policy as much as a lack of quality of the asylum procedure. In particular where asylum applications have been channelled in extremely short accelerated asylum procedures with reduced procedural guarantees, the applicants have frequently claimed that their international protection need had changed. In other cases, the situation in the country of origin may have changed after a final decision on a previous asylum application was issued or the applicant may have received new evidence indicating a well-founded fear of persecution or a real risk of being subjected to serious harm.

In recent years, the number of subsequent asylum applications has been an area of concern in a number of EU Member...
States which have adopted various measures in order to limit the possibilities for introducing such applications, which is often considered as “abuse of the system”. However, for a significant number of asylum seekers, lodging a subsequent asylum application may be the only way to avoid that they become destitute and/or have no or reduced access to reception conditions pending the assessment of the admissibility of their asylum application. Also in Bulgaria, asylum seekers with regard to subsequent asylum applications.

In the Netherlands and Belgium, important changes to the law entered into force in 2013 and 2014 that fundamentally altered the procedure for examining subsequent asylum applications. In *Belgium*, the main change is that since September 2013 the competence to decide on the admissibility of a subsequent asylum application, based on an assessment of new elements, is only possible after the Appeals Tribunal (CALL) has ruled. The Tribunal has noted that the situation has improved in the first half of 2014 in this respect as NGOs have increased their support to asylum seekers in regard to subsequent asylum applications.

Moreover, if the subsequent asylum application is examined in the context of the accelerated procedure, the appeal before the CND (National Court of Asylum) does not have suspensive effect with regard to the return decision. The applicant is also eligible for international protection (arti 33 of the Convention). 199 In *Belgium*, in order to receive legal support for the submission of the new asylum application, however, resources of NGOs to do so are limited in these countries. Also in *Sweden*, free legal assistance is not available for submitting a subsequent asylum application and depends mainly on the available resources in NGOs but if the Migration Board decided to re-examine the case based on new evidence relating to one of the international protection grounds, a lawyer can be appointed under the free legal aid scheme. In 2013, some Swedish NGOs had reduced their services for asylum seekers while others had a moratorium on accepting new cases, leaving many asylum seekers wishing to submit a subsequent asylum application without any support. In *Belgium*, the time limit for lodging a subsequent asylum application is 30 days to pay for legal assistance. However, it should be noted that the situation has improved in the first half of 2014 in this respect as NGOs have increased their support to asylum seekers in regard to subsequent asylum applications.
4. Access to an Effective Remedy and Free Legal Assistance

The right to an effective remedy must be observed rigorously in the context of asylum procedures as this is key to ensuring that no one is returned to a country in violation of the principle of non refoulement. As was already observed in the first AIDA Annual Report, examining a person’s well-founded fear of persecution or risk of serious harm is a complex and challenging task, as the outcome of the process may be literally the difference between life and death for the individuals concerned. Therefore, the rigorous scrutiny of a first instance decision by an independent appeal body is a key procedural safeguard in the context of asylum and migration procedures. This is reflected in the strengthened provision relating to the right to an effective remedy in the recast Asylum Procedures Directive which guarantees an appeal on facts and points of law with regard to all negative decisions taken in any type of asylum procedure. Article 46 of the recast Asylum Procedures Directive also requires an automatic suspensive effect of such appeals but allows for systems whereby the right to an effective remedy must be requested. The right to an effective remedy is furthermore guaranteed under Article 13 ECHR and Article 47 of the EU Charter of Fundamental Rights.

At the same time, access to quality free legal assistance has become increasingly important for asylum seekers in order to assert their rights under international human rights law and EU law whether at the appeal stage of the procedure or at the first instance. Confronted with sophisticated and complex legal procedures, effective access to quality legal assistance and representation has become almost indispensable to ensure that those who are in need of international protection are not placed in such a disadvantageous position in a procedure which is conducted in most cases in a language they do not understand, and in a legal and procedural framework with which they are not familiar.

Because of their crucial importance, the 2012/2013 AIDA Annual Report covered extensively the appeal systems as well as the possibilities and challenges for asylum seekers of accessing free legal assistance during the different stages of the asylum procedure in the EU Member States covered by the AIDA Database.

As developments in both areas have been limited since the publication of the first AIDA Annual Report, this section will recall a number of the main challenges asylum seekers continued to face in the recruiting period, adding information related to the situation in Cyprus, as it was recently added to the Database. In addition, a number of key developments in the appeals system of the EU Member States covered by AIDA as well as important recent judgments of the ECtHR will be discussed in more detail here as they are particularly relevant for the right to an effective remedy. For the purpose of this section, regular procedures are distinguished from special procedures, the latter including border, admissibility, accelerated and Dublin Procedures.

4.1 Access to Free Legal Assistance and Representation

As was already clear from the first 2012/2013 AIDA Annual Report, access to free legal assistance and representation varies considerably in practice in the 15 EU Member States covered in AIDA and the information included below is based on a general assessment of NGO experts as to whether asylum seekers have access to legal assistance in their respective countries, based on the experience of their own or other organisations in their countries.

Access to Free Legal Assistance at the First Instance of the Regular Procedure

The general assessment in Belgium, France, Sweden, and the Netherlands remains that asylum seekers have access to free legal assistance during the first instance of the regular procedure. However, even in these countries asylum seekers may in practice face problems such as in France, where the relevant appeals are begging for bail, as provided to asylum seekers applying first instance procedures are dependent on the type of reception condition they enjoy.209

In Austria, Bulgaria, Cyprus, Germany, Greece, Hungary, Italy, Ireland, Malta, and the United Kingdom, there is either no free legal assistance required under the law for asylum seekers at first instance or it is considered that asylum seekers either do not always have access to or experience difficulties in accessing free legal assistance at the first instance in practice, even where this should be available according to the law. 210 Where free legal assistance is not explicitly required under national law, the reality is that asylum seekers only have access to free legal assistance through NGOs or committed lawyers willing to take cases on a pro bono basis.

In Hungary, Poland, and Cyprus, access to free legal assistance at the first instance continues to be dependent on projects funded until recently by the national programmes of the European Refugee Fund (ERF) (now replaced by the Asylum, Migration and Integration Fund).
Whereas there are specific difficulties with the way these projects are implemented and therefore their impact on the availability in practice of legal assistance for asylum seekers, for each of these respective countries, the lack of sustainabil-
ity and the gaps in funding during periods between projects are cited as challenges in all of those countries. A similar approach and similar problems existed in Bulgaria, but a positive development is that the Law on Legal Aid was amended in mid-2013, introducing mandatory legal aid for asylum seekers, to be financed by the State budget. As a result, asylum seekers now have the right to ask for the appointment of a legal aid lawyer as of the registration of their application. However, this must only be granted if such aid is not provided by the State Agency for Refugees under an ERF program. Also in Poland, there has been discussion about introducing a legal aid system but this was postponed until mid-2015. 212

In Cyprus, the situation is even more problematic. Free legal assistance is not granted by the State during the substantial examination of asylum applications and second administrative appeals of the asylum procedure. Moreover, pro bono work by lawyers is prohibited by the Republic of Cyprus and may lead to disciplinary measures against lawyers. At these administrative stages, the only free legal assistance provided to asylum seekers is under projects funded by UNHCR and the ERF. The project funded by UNHCR is implemented by the NGO Future World Centres since 2006 but only provides for two lawyers for the total number of asylum seekers and beneficiaries of international protection, which is largely insufficient to meet the needs in practice. The projects funded under ERF have only been implemented during the first six months of 2013 and the first six months of 2014 and have also not been sufficient to cover the needs of free legal assistance for asylum seekers in Cyprus. 213

**Access to Free Legal Assistance at the Appeal Stage of the Regular Procedure**

In line with the Asylum Procedures Directive, access to free legal assistance and representation is guaranteed in the national legislation of most of the EU Member States covered in the AIDA report. However, as it was reported in the first AIDA Annual Report, in a number of countries asylum seekers face obstacles in accessing free legal assistance at the appeal stage in practice, which are often specific to the national legal framework and context. The low remuneration of lawyers under the legal aid scheme, making it less attractive for lawyers to engage in asylum and immigration cases continued to be cited as a problem in Malta, Italy, the Netherlands, Belgium, France and Sweden. Merits testing, whereby free legal assistance is made dependent on the likelihood of the appeal being successful, continues to be applied in the United Kingdom (except Scotland), where since 27 January 2014, legal aid has been abolished for civil court cases where the merits are assessed as ‘borderline’, i.e. over 50% chance of success but not more than 60%. This will affect asylum seekers’ capacity to access judicial review in particular. 214 Merits testing remains a problem in Germany, where it is foreseen in the law but hardly applied in practice in Belgium and it is not foreseen in the law in Malta and Italy. In Italy, access to free legal assistance is also subject to a merits test by the competent Bar Council, which assesses whether the grounds for lodging an appeal are “not manifestly unfounded”. In Cyprus, where state-funded free legal assistance and representation (legal aid) is only offered to asylum seekers at the judicial examination of the appeal procedure before the Supreme Court, a merits and means test applies. Whereas in the majority of cases asylum seekers are recognised not to have sufficient resources, a merits test is applied in a way which makes it close to impossible for asylum seekers to obtain legal aid for proceedings before the Supreme Court. As the Supreme Court only examines points of law, this means that asylum seekers have to argue that the appeal is likely to be successful but without the assistance of a lawyer. This is nearly impossible to do for a person without any legal background. As a result, since the 2010 amendment of the law on Legal Aid, that included the asylum procedure in its scope, only five applications for legal aid have been granted asylum-related cases. These successful applications were mostly prepared free of charge by lawyers working with NGOs. 215

**Budget Cuts in Legal Aid**

In addition to the legal obstacles undermining effective access to free legal assistance and representation, measures to reduce remuneration for lawyers working under legal aid schemes in asylum cases were implemented or discussed in the second half of 2013 and the first half of 2014 in the Netherlands and the United Kingdom. In the Netherlands, the so-called “no cure, less fee” principle was introduced with regard to free legal assistance and representation for asylum seekers with regard to subsequent asylum applications and which entered into force as of 1 January 2014. According to this principle, lawyers receive a lower compensation for their work carried out with regard to a subsequent asylum application in case the appeal has been declared inadmissible. Another measure with potentially important financial implications for lawyers providing legal aid to asylum seekers that was discussed in the Netherlands in 2013/2014 was the decision by the Secretary of State to reduce the remuneration

Access to an Effective Remedy in Special Procedures and Dublin procedures

The use of special procedures, be it accelerated, admissibility or border procedures is widespread in the EU. As these procedures are generally characterised by reduced procedural safeguards they may in practice undermine the fundamental rights of asylum seekers. National legislation usually provides for shorter time limits for applicants to lodge appeals during such procedures while also automatic suspensive effect of the appeal, a key characteristic of an effective remedy, may not be guaranteed. Also with respect to appeals in Dublin procedures, some Member States operate different procedural rules and safeguards compared to the regular procedure.

Where an appeal does not have automatic suspensive effect, but a separate appeal is needed in order to request such suspensive effect, this may undermine the effectiveness of the remedy and increases the possibility of returns carried out in violation of the principle of non-refoulement. ECRE has already expressed concern that the recast Asylum Procedures Directive allows for such a system in accelerated, admissibility and border procedures as well as the recast Dublin Regulation labelling decisions to transfer asylum seekers to other EU Member State. The problematic nature of such systems in practice is among others illustrated in Hungary, Germany and Belgium.

In Hungary a system whereby the suspensive effect of the appeal must be requested to the Court applies with regard to Dublin procedures with and regard to certain subsequent asylum applications. An appeal against the Dublin decision must be lodged within 3 days of notification of the decision to the regional court, consisting of judges who are not specialised in asylum law but rather in public administrative law and labour law. Asylum seekers have a right to request the court to refer to another court according to the EU Member State and the decision itself does not have suspensive effect either. This means that asylum seekers may be transferred to another EU Member State or Schengen Associated State before the regional court has properly assessed the appeal, including the possible risk of return. However, recently the Director General of the Office of Immigration and Nationality (OIN) has issued an internal instruction according to which, in case an applicant submits a request for suspensive effect to the Court, no transfer should be carried out until the court decides on such request. Although a positive development, this does not take the form of a guarantee in the law, as is required by the ECtHR jurisprudence.

In Germany, a similar system applies with regard to Dublin procedures since the amendment of Section 34a of the Asylum Procedures Act which entered into force on 6 September 2013. Applicants can submit an application for suspensive effect in a form referred to as “provisional form of a decision” in accordance with the Fast Track Procedure of the Federal Asylum Agency before the Supreme Court. Such an appeal must be submitted within seven calendar days and suspends the decision at least until the Court has decided on the request for suspension. Notwithstanding this guarantee in the law, it remains challenging for asylum seekers to overcome the practical difficulties of meeting the short deadline of seven calendar days for submitting an appeal.

In Cyprus, Greece, Malta and Poland, the first appeal against a negative first instance decision on the asylum application is not before a Court, but before an administrative body. In Cyprus, appeals must be lodged within 20 days before the Refugee Reviewing Authority but applicants can alternatively bypass this stage and submit an appeal directly before the Supreme Court within 75 calendar days. However, whereas the appeal before the Refugee Reviewing Authority has suspensive effect and examines both facts and points of law, the appeal before the Supreme Court has no automatic suspensive effect and only concerns points of law. Appellants or their representatives do not have access to the entire file before the Refugee Reviewing Authority but only to the refugee dossier held at the Immigration Service, which is the authority taking the first instance decision. As a result, appeals are being prepared without the asylum seeker having knowledge of the content of supporting documents, medical reports, evidence or country of origin information that was used by the Asylum Service when taking the negative decision. Moreover, if the asylum seeker changes their legal representative before the decision is issued, the newly appointed legal representative will not have access to any content of the applicant’s file.

In the Republic of Bulgaria, appeal is possible against the decision of the First Instance Court but appeal is possible against the decision of the First Instance Court but in case this is refused, the applicant may request for an extraordinary “revision”. Where the appeal would be based on the violation of a Constitutional Right, an appeal is possible against the judgment of the Federal Administrative Court before the Constitutional Court. See Asylum Information Database, Country Report Austria – Regular Procedure.

221. Alternatively a judicial appeal can be lodged before the Supreme Court within 75 calendar days, which only deals with points of law and is not accompanied by a return order. Lodging a complaint to the Administrative Court together with a request to suspend the decision had no suspensive effect and in practice asylum seekers whose applications were rejected, were deported before the Court had decided on the request for suspension. The complaint against the decision and the return order were examined by the Court. A Dutch Court found this practice to be inconsistent with Article 47 of the EU Charter and therefore suspended the transfer of an asylum seeker back to the Netherlands. See Van der Linden and Others v. Germany. Although the Court recognized that the respondent and other people before the Court has examined their cases continued in early 2014. In response to one of such cases that was presented by the Helsinki Foundation for Human Rights, the Ministry of the Interior informed the organisation in writing that guidelines were provided for the Border Guard Commander in Chief with the instruction to suspend removals until the Court has decided on the request for suspension.

222. Suspensive effect is requested in the short regular procedure, whereas suspensive effect is automatic in case of extended regular procedure.

223. See Richtebank Haarlem, AWB 13/11314, 18 June 2013.


such an application. In practice, it may prove impossible to even make an appointment with a lawyer or legal counsellor within such a short time-frame.

In Focus: Suspensive Effect of Appeals in Belgium

In Belgium a new law of 10 April 2014, which entered into force on 1 June 2014, changed the appeal system with regard to deportations. The appeal is now an accelerated administrative procedure in which the Aliens Authority has the right to act on the grounds of pleas of suspensive effect, in origin or in case of a subsequent asylum application. The new law strengthens the safeguards regarding the suspensive effect of appeals against decisions of the Commissioner-General for Refugees and Stateless Persons (CGRS) in such cases and against the decisions of the Belgian Administrative Court. Two types of appeal are possible before the CGRS, which is the first instance. A regional administrative court competent to deal with appeals in asylum cases. Appeals against negative decisions in the regular procedure of the CGRS have always been and continue to be dealt with by the CALL under its full judicial review competence. This means that it can reassess the facts of the case and points of law and the appeal has automatic suspensive effect. Other appeals in asylum cases before the CALL are dealt with according to the annulment procedure. In this procedure, the competence of the CALL is limited to a review of the legality of the decision of the first instance authority, while the appeal does not have automatic suspensive effect. Appeals against the decisions of the Aliens Office on the application of the Dublin procedure are dealt with in the annulment procedure. Here again, the suspension appeal is not possible. The CALL is for appeals against decisions of the CGRS on subsequent asylum applications and applications from persons from a safe country of origin.

In such and other cases, where only the possibility of an annulment appeal existed, in order for the applicant to have the execution of the removal order suspended an additional petition requesting for suspension pending the examination of the case. Moreover, the time limit for lodging such an appeal must be sufficient and its suspensive effect must remain until a decision on the merits of the case. The Belgian appeal process against deportation is, according to the ECtHR, too complex and difficult to understand, even, as in this case, with the benefit of specialist legal assistance. Given this complexity, coupled with the limited application of the 'extreme urgency procedure', the ECtHR concluded that Belgium fails to comply with Article 13, which requires the right to an effective remedy to be available and accessible in practice. Moreover, the ECtHR chose to exercise the power under Article 34 of the Convention and cited Belgium in its judgment, therefore every person subject to a removal order is able to request suspension of such decision and for such request to have automatic suspensive effect, and not to be rejected on the prior lodging of another appeal on the merits of the decision. Moreover, the time limit for lodging such an appeal must be sufficient and its suspensive effect must remain until a complete and rigorous scrutiny has been conducted of the suspensive request in light of Article 3 ECHR.

Similarly, in the case of MA v. Cyprus, the ECtHR has “pointed out the risks involved in a system where stays of execution must be applied for and are granted on a case-by-case basis”.238 As neither the appeal against deportation and detention orders nor the appeal against the refusal of asylum is an appeal in which the Court has found a suspensive effect, the Court found a violation of Article 13 ECHR. The applicant lacked any effective safeguards which could have protected the applicant from wrongful deportation at the material time, despite the government’s statement that the applicant had an opportunity to request a stay of execution and submitted a request to the Ministry of Interior for a stay of execution. The Court rejected the case on the ground that the applicant had no effective remedies to challenge his removal and detention. The Court therefore held that the applicant had no effective remedy to challenge his removal and detention.

Finally, also the recent case of A.C. and Others v. Spain, the ECtHR found that the applicants did not have access to an effective remedy against their expulsion to Morocco as their request for the suspension of the expulsion order was rejected. Other requests for suspension of the removal order and appeals in such cases to be dealt with according to theCallaneous appeal procedure. As the latter had no automatic suspensive effect, only the interim measures ordered by the ECtHR under Article 39 of the rules of Procedure of the ECtHR had prevented their expulsion and therefore, Spanish legislation did not ensure the applicants’ access to an effective remedy. Similarly, where suspensive effect is granted upon request as it cannot be excluded that suspensive effect is wrongly refused.239

5. Material Reception Conditions

Well-functioning asylum systems do not only guarantee a fair and efficient asylum procedure but also ensure that asylum seekers have access to the economic and social rights they are entitled to under international human rights law and EU asylum law and that their human dignity is respected and protected as required under Article 1 of the EU Charter of Fundamental Rights. The recast Reception Conditions Directive requires Member States to ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.240 In addition, reception conditions must respect asylum seekers’ human rights such as their right to private and family life and should prevent them from being subject to inhuman and degrading treatment. In the previous AIDA Annual Report, the focus was on asylum seekers’ access to accommodation and access to the labour market. In the present report, this section looks at dispersal schemes of asylum seekers and their freedom of movement as well as reception capacity and conditions in reception facilities.

Restrictions to Free Movement of Asylum Seekers on the Territory and Dispersal Schemes

Under the recast Reception Condition Directive, Member States can restrict the freedom of movement of asylum seekers to specific areas of the territory or can assign asylum seekers to specific places of residence.241 The Directive provides that such restriction of the person’s freedom of movement shall not affect private life and allow sufficient scope for guaranteeing the freedom of movement of asylum seekers to the different Federal States in the initial reception period and then to municipalities within the States. Asylum seekers are, as a rule, not allowed to leave the municipality where they have been assigned to unless they request a permission to do so. In practice, it is often difficult for asylum seekers to obtain such permission. However, a number of Federal States have adopted more lenient rules enabling asylum seekers to move within the whole country, to neighbourhoods, or even to the neighbouring States without having to request a specific authorisation.242

In Austria and the Netherlands, asylum seekers are generally free to move within the territory except in the initial stages of the asylum procedure. In the instances, in Austria, in case of a non-compliant reception centre, asylum seekers have to stay in the initial reception centre and can be sanctioned if they do not respect this obligation.243

In most Member States, while dispersal schemes do not exist, asylum seekers can still be assigned to specific reception centres, generally based on places available. For instance, in Poland, asylum seekers are allocated to a reception centre by the Office for Foreigners based on criteria of family unity, vulnerability, continuation of medical treatment, safety or

238. ECtHR, M.A. v. Cyprus, Application no. 41872/10, Judgment of 23 July 2013, par. 137.
239. ECtHR, A.C. and Others v. Spain, Application no. 6528/11, Judgment of 22 April 2014 (French only), par.94. Moreover, the Court also held that the applicants had been residing in a legally uncertain and precarious situation on Spanish territory pending the final outcome of their appeal. The Court thus found that the applicants had been subjected to inhuman and degrading treatment to which they were not entitled under the Convention due to the absence of diligence.
240. Article 17(2) recast Reception Conditions Directive. It should be noted that the deadline for transposition of the recast Reception Conditions Directive is 20 July 2015 for Articles 1 to 12, 14 to 28 and 30 and Annex I, whereas Articles 13 (Discriminatory provision on medical screening) and 29 (Health assessment and medical screening) have to be transposed by 21 July 2016.
241. See also European Migration Network, The Organisation of Reception Facilities for Asylum Seekers in different Member States, 2014.
242. Article 17(2) recast Reception Conditions Directive.
capacity. Asylum seekers can request to be accommodated in a specific centre but the request has to be justified.260 It was noted in Italy and the United Kingdom that some asylum seekers prefer to renounce their right to accommodation or support rather than having to move to areas remote from the capital cities.261

Except in Germany and for a limited period in Austria and the Netherlands, asylum seekers retain freedom of movement within the whole State but they generally have to ask permission prior to leaving their reception centre or at least inform the management of the centre of their planned absence.

Furthermore, in most states, asylum seekers are generally not transferred from one centre to centre several times. In some countries, such as Belgium, France, Italy or Poland asylum seekers can be moved from initial or temporary/ emergency centres to centres for longer term accommodation or private accommodation. In Belgium, France and Italy this is mostly limited to one move.

However, in the Netherlands, asylum seekers can be transferred multiple times in practice. When an application is made on the territory, asylum seekers will first stay up to three days at the Central Reception Location (COL) in Ter Apel and then be transferred to a Process Reception Location (POL). If a positive decision is taken in the short procedure, or if the application is examined in the extended procedure, asylum seekers are transferred to a centre for asylum seekers (AZC). In case of a negative decision and if the asylum seeker is not entitled to other forms of reception conditions, they can then be transferred to a ‘Freedom restricted location’ (VBL) where they are not allowed to leave the municipality and ‘have to report six days out of seven to the authorities.248 The multiple transfers to different centres may have a negative impact, in particular on asylum-seeking children, as this may interfere with their education and social life.

Reception Capacity

The recast Reception Conditions Directive leaves discretion to Member States as to how material reception conditions are provided to asylum seekers and allows for the provision of such conditions through State-provided accommodation in reception centres or private houses or in the form of financial allowances or even vouchers. The table below provides an overview of the main types of accommodation used in 15 Member States covered by the database and general data on capacity.

Reception centres are the most frequently used type of accommodation across the 15 states surveyed even though accommodation in private houses or flats rented or funded by the authorities is also commonly resorted to in Austria, Belgium, Sweden and the United Kingdom.

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<tr>
<th>Type of accommodation most frequently used in a regular procedure</th>
<th>AT</th>
<th>BE</th>
<th>BG</th>
<th>CY</th>
<th>DE</th>
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<td>Type of accommodation most frequently used in an accelerated procedure</td>
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<td>RC</td>
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<td>Number of places in all the reception centres (both permanent and for first arrivals):</td>
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<td>19310</td>
<td>4150</td>
<td>70-80</td>
<td>N/A</td>
<td>23369</td>
<td>970</td>
<td>1614</td>
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<td>26663</td>
<td>Around 1200</td>
</tr>
<tr>
<td>Number of places in private accommodation:</td>
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<td>7665</td>
<td>0</td>
<td>N/A</td>
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<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>About 400</td>
<td>0</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Are there instances of asylum seekers not having access to reception accommodation because of shortage of places?

N N N Y Y Y Y Y N N Y N N N Y

RC: reception centres; PH: private housing; HO: hotel/hostel; ES: emergency shelters; N/A: not available; N/AP: not applicable


The 2012/2013 AIDA Annual Report highlighted problems of overcrowding of reception centres in countries such as Bulgaria, Hungary, Malta or Italy due to insufficient capacity of the reception system. Shortage of places in some countries also results in asylum seekers not having access to reception accommodation at all, thus having to arrange – and possibly pay for - accommodation themselves or having to sleep rough.

In Bulgaria, the lack of reception places was already problematic in 2012/2013, but the problem became even more acute with the important increase in the number of asylum seekers in the last months of 2013. The Bulgarian authorities opened four new centres between the end of September and mid-October but despite these efforts, those centres offered sub-standard living conditions and were still largely overcrowded (see below). In addition, as mentioned above in the section on access to the procedure, delays in the registration of asylum applications resulted in people detained who wished to apply for asylum in renouncing their right to material reception conditions in order to be released. Some of these asylum seekers faced homelessness or had to live in slums.250

In Italy, where arrivals of migrants and asylum seekers have significantly increased in recent months, authorities have established alternatives of accommodation in addition to the existing centres. The Ministry of Interior issued two circulars urging prefectures to find reception places and sign agreements with local entities and NGOs to manage accommodation places. In addition, the national reception system was extended, with the target of an additional 20,000 places to be provided by 2014-2016. NGOs and UNHCR urge the government to establish a more comprehensive and longer term plan to respond to current and future reception needs.251 UNHCR also reports that a number of asylum seekers did not have swift access to reception conditions. According to UNHCR, delays are the direct results of structural problems of the reception system, including lack of capacity, slow administrative procedures and delays in the registration of asylum claims.252

Some difficulties in responding to the increase of asylum seekers in 2013 were also reported in Germany. This led to overcrowding in some centres and the Federal States and municipalities had to resort more frequently to sub-contracting the accommodation of asylum seekers to private companies or welfare organisations.253

In France, problems of capacity highlighted in the previous AIDA Annual Report are still of concern. By the end of 2013, there were still 15,000 asylum seekers on a priority waiting list to obtain a place in a regular reception centre, the waiting period amounting to 12 months on average. In the meantime, asylum seekers are accommodated in emergency facilities or have to sleep on the streets.254

Shortage of places is also a long standing issue in Cyprus and Greece. In Cyprus, at the moment there is only one accommodation centre that has a capacity of about 70-80 people.255 Most asylum seekers have to find accommodation in private residence rented or owned by the asylum seeker themselves, or sleep on the streets.264

However, it should be noted that the capacity of the centre is being enlarged to a total of 400 places that will be available by September 2014. Asylum seekers have recently been receiving letters informing them to start making the necessary arrangements to move to the reception centre.

On the contrary, while Belgium had experienced a crisis in its reception system from 2009 to 2012 due to a lack of capacity, occupation rates have dropped in 2013 and 2014 and reception places have been reduced accordingly by 20% between the end of 2012 and March 2014 (from 23,988 places at the end of 2012, to 19,310 in March 2014). In the same period, the occupation rate also dropped from about 90% to 72%.256

Conditions in Reception Facilities

250. EU citizens and persons waiting for an admisibility decision (both accelerated procedures) are not entitled to any reception accommodation.
251. As of 19 March 2014.
252. As of 31 December 2013.
253. As of 19 March 2014: CPSA: 650 places, ODA/CARA: 7.866 (excluding the CARA in Cagliari, since the Ministry of Interior defined it as CPSA/CARA, therefore this is in the CPSA data. SPRAR centres provide 13.020 places. South Africa Emergency centres: At present, about 700 North Afri- can migrants are still accommodated in these centres.
254. As of 24 February 2013.
255. Places in initial accommodation centres for new claimants.
256. As of 1 March 2014.
257. All reception centres are privately run.
258. 26,878 asylum seekers are in dispersed accommodation at the end of December 2013.
259. Asylum Information Database, Country Report Bulgaria – Criteria and restrictions to access reception conditions and Types of accommodation, place.
260. One on 8 January and one on 19 March 2014.
265. There were 1255 asylum applicants in 2013 in Cyprus.
266. Asylum Information Database, Country Report Cyprus – Forms and Levels of material reception conditions.
special needs of some applicants, preventing gender-based violence and limiting the transfers of asylum seekers from centre to centre.  

Decentralised management of reception facilities at national level makes it difficult to draw a general picture of the quality of reception conditions in a number of countries covered by AIDA. For instance, in Germany, responsibility for accommodation facilities is split between federal and municipal authorities, and no common standards are in place. UNHCR’s input into EASO’s Annual Report 2013 presented a “mixed picture” for reception centres in Germany with some centres being in a bad state of repair and maintenance and several centres also being overcrowded.  

Some countries have adopted a set of standards with regard to living conditions in reception accommodation. This is, for instance, the case in Poland and Belgium. In Poland, living standards in reception centres managed by private companies are set in the contract signed between those companies and the Office for Foreigners. Such standards include the obligation to provide separate common rooms for women and men, kindergarten, space for religious practices, a recreational area, a classroom and specified numbers of refrigerators and washing machines. Similarly, in Belgium, minimum material reception rights are laid down in the Reception Act, but in a rather general way, whereas specific aspects are laid down in internal instructions of Fedasil, the federal Agency coordinating reception of asylum seekers.  

The reception conditions in Bulgaria came under the spotlight at the end of 2013 with the sharp increase of arrivals of asylum seekers. As mentioned above, in order to respond to the accommodation needs, the government rapidly opened four new reception centers in 2013. Since then, conditions in the centre of Harmanli were particularly dire. Asylum seekers were hosted in tents and containers, without electricity and sewerage in poor hygienic conditions. Since the beginning of the year, renovation works are being carried out and some improvements have been made to improve living conditions. Yet, some concerns remain with regard to the sustainability of improvements.  

Issues with regard to poor living conditions in some reception centres were also highlighted in Austria, such as in the centres in Carinthia and Burgenland. This led to the creation of a working group composed of representatives of the Federal States to define common reception standards. Some centres were also closed as a result. Living conditions in reception centres in Malta are also extremely difficult at times, with hygiene and security problems as well as overcrowding.  

In the 2012/2013 AIDA Annual Report, UNHCR’s concerns regarding the failure of Italy to monitor the quality of its reception centres were underlined. According to the EASO Annual Report 2013, a pilot monitoring scheme has been established by the Italian authorities, UNHCR, IOM, Save the Children and the Italian Red Cross, visit centres for asylum seekers on a quarterly basis. However, it should be noted that such a scheme is part of a project funded on an annual basis and which has a limited scope, as only reception centres run by the government are monitored and it is not carried out systematically. The previous AIDA report also pointed to issues related to the funding for management and maintenance of centres in Greece and the poor quality of reception centres in Ireland. No major improvement has been reported in those countries since the publication of the last report.  

In Focus: “Direct Provision” in Ireland  

The appropriateness of asylum seeker “direct provision” hostel accommodation in Ireland and length of stay in the asylum system is the subject of intense media scrutiny at present in Ireland, which has not opted in to the Reception Conditions Directive or to its recast. Highly comprehensive judicial review proceedings challenging the legal basis of the direct provision accommodation system have been heard by the High Court in April 2014, in the case of C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland (Record No. 2013/751/ JR). The challenge comprises a number of different elements including the lack of a statutory legislative basis for the system and the direct provision weekly payment of 19.10 euro. It alleges the violation of several human rights obligations including the right to family and private life, the rights of the child, the right to autonomy, freedom of movement and residence as well as the failure of the State to allow the adult subsidiary protection applicant to work and the complete exclusion of asylum seekers and subsidiary protection applicants from accessing social welfare rights in Ireland. The applicants submit that such a system violates the Irish Constitution and the European Convention on Human Rights. The case is of significant interest in Ireland and many NGOs and support groups have welcomed the opportunity for the High Court to examine the system.  

The decision of the High Court is expected shortly.  

The level and quality of material reception conditions and the lack of access to such conditions is taken into account by the ECHR in its assessment of States’ compliance with their obligations under Article 3 ECHR and is a relevant factor in the case of Cimade and GISTI, the Court held that asylum seekers are entitled to material reception conditions during Dublin procedures until the transfer of the person to the responsible Member State is actually carried out and that the financial burden of granting those conditions is assumed by the Member State requesting such transfer. In the case of Sacri, the CJEU held that where material reception conditions are provided in the form of financial allowances or vouchers, the amount of the financial aid must be sufficient to ensure a dignified standard of living, adequate for the health of applicants and capable of ensuring their subsistence. Such financial allowance must enable asylum seekers to find housing that is suitable, where necessary, to preserve the interests of persons having specific needs and to maintain the family unity of asylum seekers. Finally, the CJEU held that, whereas Member States have a certain margin of manoeuvre as regards the methods by which they provide material reception conditions, the minimum standards for reception of asylum seekers must be guaranteed under all circumstances. It also pointed out explicitly that the saturation of the reception networks cannot be a justification for any derogation from meeting those standards.

6. Detention  

Immigration detention remains an area of great concern in many regions of the world and has become a routine – rather than exceptional – response to the irregular entry or stay of asylum seekers and migrants in a number of countries, as observed by UNHCR at the launch of its global strategy to end detention in June 2014. The fact that the UN specialised organisation for refugees has launched a five year strategy to end the detention of asylum seekers and refugees is certainly a welcome initiative, but on the other hand it is also a sad confirmation that detention continues to be one of the most important human rights challenges asylum seekers and refugees face and will probably continue to face for some years to come.  

The detention of asylum seekers is practiced, albeit to varying degrees, also in the Member States covered by the Asylum Information Database. The devastating effects of detention on the physical and mental health of asylum seekers, and children in particular, are well-known. NGOs have also continued to document the negative impact of detention on the fairness of the asylum procedure for the individuals concerned in light of the obstacles it creates in accessing free legal assistance as reflected in the AIDA country reports. As part of the latest update of the AIDA country reports in spring 2014, specific attention was paid to the conditions in detention centres and measures taken, if any, to identify asylum seekers with special needs or specific vulnerabilities in detention. This section of the Annual Report highlights some of the main findings of this research in addition to a limited number of key evolutions with regard to the grounds for detention in certain EU Member States covered by the Asylum Information Database. The section concludes with an overview of these States’ practices with regard to the detention of children. Throughout the section, a number of important jurisprudential developments will be highlighted both at the level of the two European Courts and some national courts.  

By way of introduction to this section, the following table provides a snapshot of specific aspects of the legislation and practice with regard to detention of asylum seekers in the 15 EU Member States covered by AIDA.  

<table>
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<tr>
<th>AT</th>
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Are asylum seekers detained in practice during the Dublin procedure?  

The detention of asylum seekers is practiced, albeit to varying degrees, also in the Member States covered by the Asylum Information Database. The devastating effects of detention on the physical and mental health of asylum seekers, and children in particular, are well-known. NGOs have also continued to document the negative impact of detention on the fairness of the asylum procedure for the individuals concerned in light of the obstacles it creates in accessing free legal assistance as reflected in the AIDA country reports. As part of the latest update of the AIDA country reports in spring 2014, specific attention was paid to the conditions in detention centres and measures taken, if any, to identify asylum seekers with special needs or specific vulnerabilities in detention. This section of the Annual Report highlights some of the main findings of this research in addition to a limited number of key evolutions with regard to the grounds for detention in certain EU Member States covered by the Asylum Information Database. The section concludes with an overview of these States’ practices with regard to the detention of children. Throughout the section, a number of important jurisprudential developments will be highlighted both at the level of the two European Courts and some national courts.  

By way of introduction to this section, the following table provides a snapshot of specific aspects of the legislation and practice with regard to detention of asylum seekers in the 15 EU Member States covered by AIDA.
Grounds for Detention

As discussed in the first AIDA Annual Report, the recast Reception Conditions Directive includes an exhaustive list of grounds on the basis of which asylum seekers can be detained, provided such detention is necessary and proportional and no less coercive measures can be applied. ECRE and other NGOs have expressed concern over the fact that the grounds listed in the Directive are formulated in a broad way. Article 8 of the recast Reception Conditions Directive allows the detention of asylum seekers, among other grounds, in order to verify nationality or identity, for public safety and security reasons, in order to determine the elements of the asylum application in case there is a risk of absconding, and in border procedures. Moreover, Article 28 of the recast Dublin Regulation allows Member States to detain asylum seekers in order to secure a transfer to another Member State if the asylum seeker presents a significant risk of absconding. The 2012/2013 AIDA Annual Report highlighted that many of these grounds were already used in the EU Member States covered by the report. Moreover, other detention mechanisms that may not be compatible with the recast Reception Conditions Directive. The Directive has not yet been transposed or is thus not applicable in any of the States concerned, namely Austria, Belgium, Greece, and Italy, Ireland and the UK.285

In a number of countries covered by AIDA, asylum seekers arriving at the border are quasi-automatically detained and face specific problems related to the fact of being detained at the border. In Bulgaria, persons who have crossed the border irregularly and are apprehended are placed in detention centres. Among those, many claim asylum when detained, in most cases within asylum detainees. One of the reasons put forward for these so-called ‘delayed’ applications is that there is a lack of interpreters available at the borders. The current legislation does not include any specific provision on the detention of asylum seekers and in a regular procedure, asylum seekers have to be transferred to a reception centre of the State Agency for Refugees (SAR) in order to register their asylum claim. This led to an increase in the length of detention of asylum seekers in 2013 because of delays of the SAR to register asylum seekers. Since October 2013, asylum seekers who claim asylum at the border are placed in the Elhovo Detention Centre. The law stipulates that they should be transferred within 24 hours to a reception centre but because of the aforementioned delays, the average length of detention in that centre is three to six days. A draft bill to amend the Asylum Act put forward in November 2013 proposes to extend the scope of detention of asylum seekers, making detention the norm rather than an exception.286 In Belgium as well, asylum seekers arriving at the airport are by definition detained as the border procedure in Belgium is considered as a procedure relating to the access of irregular migrants to the territory. However, no necessity or proportionality test is carried out in practice by the Aliens Office, which is responsible for the initial decision on the issuance of the decision to detention. The decision to detain is not limited to the legality of the decision.287 The same situation exists in the Netherlands, where in practice asylum seekers continue to be systematically detained upon arrival at the airport in most cases for the entire procedure. However, since May 2014 this is no longer the case for families with under age children who are as a rule transferred to a reception centre on the territory before being trafficked or there is an indication that the applicants may fall under Article 1 F of the 1951 Refugee Convention (exclusion clause).

In Malta, the law does not contain specific provisions on the detention of asylum seekers. However, asylum seekers arriving irregularly by boat—which represents the majority—are all issued a return decision and removal order and placed in detention. Asylum seekers in Malta continue to be subject to detention upon arrival and in many cases for long periods of time. Two recent judgments of the ECtHR against Malta found a violation of Article 5(1) and (4) because of the length of detention. The court ordered the Maltese authorities to release the asylum seekers and the decision to detain became final in December 2013.288 In one of these cases, Sùsù Musa v. Malta, the ECtHR had made use of its powers under Article 46 ECHR to indicate to Malta the individual and or general measures necessary to put an end to the existing situation, in particular with regard to the judicial review system, the improvement of detention conditions and the limitation of detention periods. At the time of writing this report, no such measures had been taken or announced by the Maltese Government.

282. For families with children
283. Asylum seekers are generally not detained as long as their asylum application is pending (with the exception of the airport procedure). However, it is possible that asylum applications by persons who are already detained are not dealt with by the authorities and those persons may be detained for an indefinite period.
284. Information in this table with regard to the maximum duration of detention and detention during Dublin procedures refers to asylum seekers who have crossed the border (asylum seekers are otherwise not present in detention centres in France). The period of detention includes the total period of time. 285. 12 months in case of asylum seekers who are present for the first time in the country (other than at the airport), 3 months for asylum seekers who present at the airport, and 6 months for asylum seekers who are in transit and are present in the country (other than at the airport) in a detention centre (asylum seekers are otherwise not present in detention centres in France). 286. 12 months in case of asylum seekers submitting a subsequent asylum application, 6 months in case of asylum seekers submitting a first asylum application and 30 days in case of families with children (both first and subsequent asylum applications). 287. This period of detention may be renewed indefinitely if asylum seekers are detained under Article 9(8)A Refugee Act 1996. The maximum period for detention pending deportation is eight weeks. 288. Since the entry into force of the new law on Foreigners in May 2014, asylum seekers can be detained up to 6 months and migrants arriving return up to a maximum of 18 months. Failed asylum seekers who have already been detained for the purpose of return may therefore be detained beyond 24 months.

Undocumented third country nationals apprehended at the borders in Greece, are systematically detained, whether or not they apply for asylum. It is also reported that since August 2013, asylum seekers awaiting a decision are often detained for 18 months. Such practices, according to the Greek Ombudsman, deter people in need of protection from applying for asylum, undermining the entire asylum system. Another worrying development, which was strongly criticised by ECRE and other NGOs, including the Greek Council for Refugee and ECRE, is the practice of third country nationals pending return beyond the maximum time limit of 18 months laid down in the EU Return Directive.

A Ministerial Decision of 28 February 2014 allows the Greek authorities to ask persons who are already in detention on the basis of a return order to depart voluntary to the country of return, shortly before expiry of the maximum time limit of 18 months of detention. If they refuse to cooperate and present a risk of absconding a new detention order can be issued without a specified time limit. Greek NGOs collected the first individual decisions ordering unlimited detention beyond 18 months ordered under Article 28(4) of the Dublin Regulation and a joint letter from ECRE, the Greek Council for Refugee and AITIMA,292 295. Federal Government of Germany, Response to information request by the parliamentary group of “The Left” party/Die Linke, 5 March 2014, No. 18/705, pp. 17-18. It should be noted that of those 4741 persons 1370 persons had not applied for asylum in Germany.
In Focus: Detention of Asylum Seekers During Dublin Procedures in Germany

In its judgment, the German Federal High Court (Bundesgerichtshof) ruled that, under the present German law, detention for the purpose of returns is not an EU Member State in accordance with the Dublin Regulation illegal.296

This is because Germany has not yet defined in national law the objective criteria for the risk of absconding as is required in Article 28 recast Dublin Regulation. Such criteria are already defined in German law, although vaguely and broadly, for the purpose of immigration detention prior to forced return, but not for detention under the Dublin procedure, although as well as EU law, there are institutional provisions in penal and detention law. The prohibition of analogy derives from the legality principle according to which a person can only be restricted in or deprived of their right to liberty on the basis of a clearly defined provision in law. Therefore, criteria which have been defined for the purpose of immigration detention cannot be used for the purpose of detention under a Dublin procedure. Consequently, in the absence of criteria for determining a risk of absconding with respect to Dublin detention, such detention is currently illegal in Germany.

In other Member States, it remains unclear how the authorities will interpret the notion of significant risk of absconding as there is no publicly available guidance. This is the case in Ireland, for instance, where it is only referred to in an information leaflet issued by the Office of the Refugee Applications Commissioner (ORAC) to applicants regarding the Dublin Regulation in a very general way.297 Also in France, where asylum seekers can be placed in administrative detention with a view to enforcing their transfer under the Dublin Regulation once the transfer decision was notified, but there is no guidance as to the meaning of the risk of absconding in line of Article 28 of the recast Dublin Regulation.298

In Belgium, the Alien Office assumes a risk of absconding whenever an asylum seeker has moved on from another EU Member State where they applied for asylum first and which seems to indicate an intention to detain all asylum seekers awaiting a Dublin transfer. However, it is reported that asylum seekers are rarely detained for the purpose of the Dublin procedure in practice.299

Whereas in the countries mentioned above, detention in the context of Dublin procedures is used in order to secure their transfer to another Member State or Schengen Associated State responsible for examining the asylum application, in Malta and Hungary, it is mainly used in a clearly relevant with regard to those transferred back from other EU Member States. In Malta, asylum seekers who left the country in illegal manner may face criminal charges, upon return, under the Immigration Act. Upon return, the person may be arrested and brought before the Court of Magistrates to face charges. Pending the case, the asylum seekers concerned would be kept in custody at the Correctional Facility for the entire duration of the criminal proceedings, which generally last for about one to two months. If found guilty, the Court may sentence the asylum seeker to either a fine of around 12,000 euro or a maximum imprisonment term of two years or impose both penalties. In practice, some individuals have been sentenced to imprisonment which was subsequently suspended. Moreover, in such cases, the possibility of being granted a stay of procedure is subject to the permission of the Immigration Authorities, their asylum applications are considered by the Refugee Commissioner as implicitly withdrawn. Upon return they may ask for a re-opening of their claim, which will be considered as a subsequent application. The time taken by the Refugee Commissioner to decide whether they will be readmitted to the asylum procedure is entirely discretionary and can take, at times, several months. During this time, the persons concerned may be removed to their country of origin and a number of persons in this situation have been waiting for months in detention for the decision of the Refugee Commissioner on whether or not they will be readmitted to the asylum procedure.300

In Cyprus, the majority of asylum seekers transferred back from another State, are placed in detention except women with children. However, their detention is not ordered by the Asylum Service in the University of the Dublin Regulation, but by the Director General, which is in charge of the Home Affairs, irregular migrants and return. In practice, there is no individual assessment of whether those returned under a Dublin procedure present a risk of absconding by this Department and therefore detention is considered lawful in such cases, even if no final decision on the asylum application has been taken before the applicants had left Cyprus. In case a final decision had been taken on their individual asylum application before their departure, the persons concerned are detained for the purpose of removal upon their return in Cyprus.301

The concept of risk of absconding is in practice the most commonly used grounds to detain asylum seekers, sometimes in combination with the ground relating to establishing the identity or nationality of the applicant. The risk of absconding is defined in a very broad way in Hungarian legislation and refers among others to the situation where, based on the statements of the applicant, it is probable that they will “depart for an unknown destination”. As a result there is a presumption that the person will frustrate the course of the asylum procedure, including any Dublin procedure. In the example given by HHJ Huscott, the “Committee of Ministers have defined an unknown destination” is sometimes very arbitrary. One example is a case, where an applicant, asked about his country of destination, responded that he wanted to come to the EU. The fact that the applicant did not explicitly mention Hungary, was considered sufficient to conclude that it was “probable that the person will depart for an unknown destination” and order his detention. In practice, detention orders lack any assessment of the individual’s circumstances and the necessity and proportionality of detention.302

Finally an important development took place in the United Kingdom, where the so-called ‘detained fast-track’ procedure, which allows for the detention of asylum seekers on the ground that their application can be decided quickly, was subject to severe criticism from the judiciary. In a landmark judgment of 9 July 2014, the High Court ruled that the procedure was unlawful under the EU asylum procedure which are not promptly provided with legal assistance and therefore are not given sufficient time to prepare for their asylum interview. According to the judge, this leads to an “unacceptably high risk of unfairness”. The Court also found that the system does not allow for effective identification of victims of trafficking, torture survivors or other vulnerable people.

Detention Conditions

Where EU Member States consider it necessary to detain asylum seekers, conditions in detention facilities must meet standards set in international human rights law, jusprudence and EU asylum legislation. The recast Reception Conditions Directive requires that when asylum seekers are detained, it must be carried out, as a rule, in specialised detention facilities and that asylum seekers are separated from other third country nationals, as far as possible. Asylum seekers must have access to open air-spaces and family members and UNHCR and NGOs must have a possibility to communicate with and visit detained asylum seekers in conditions that respect privacy. Furthermore detained families may be provided with separate accommodation whereas female applicants must be accommodated separately from male applicants. The conditions must amount to inhumane or degrading treatment and therefore violated Article 3 ECHR with respect to detention centres in - among other countries - Greece, Malta, and Belgium.303 At the same time, under Article 1 of the EU Charter of Fundamental rights, Member States have a duty to protect and respect human dignity. Whereas deprivation as such has a proven negative impact on the mental and physical health of detainees, degrading conditions have a profound effect on a person’s dignity as well.

In Malta and Greece, there was no significant progress reported with regard to detention conditions, which generally remain poor. I.e. asylum seekers are subject to overcrowding during prolonged periods of detention, as already highlighted in the first AIDA Annual Report. Since 1 July 2013, asylum seekers in Hungary are detained under a specific legal regime of asylum detention which is currently organised in three centres: Debrecen, Nyírbátor and Békéscsaba. During a visit of the asylum detention facilities in Nyírbátor and Békéscsaba the Hungarian Helsinki Committee found a lack of language skills among the majority of social workers in the asylum detention facilities problematic. As they hardly speak any foreign language they did not engage in establishing a relationship with the Hungarian authorities. Also they could not engage in any administrative tasks. Also the fact that there are no psychologists working in the centres is a concern. Access to health care is limited to basic medical care and asylum seekers have complained about the lack of access to specialist medical care, the fact that the same medication is often provided for different medical problems and the language barrier which may prevent an accurate diagnosis.

In France, persons held in detention centres experience practical problems in accessing healthcare and in general there is little attention paid to psychological or psychiatric problems of the individuals concerned. This has been noted as a particular weakness of the detention centres in France by the General Controller of Places of Freedom Deprivation (Contrôleur général des lieux de privation de liberté), the authority responsible for monitoring and controlling all places where persons are deprived of their freedom. Dozens of suicide attempts are reported each year in the detention centres and one inquirer in 2015 in the General Controller of Places of Freedom Deprivation (Contrôleur général des lieux de privation de liberté) has written a civil complaint in order to ensure access to mental health care and that psychiatrists should be present in the centres on a regular basis.304

Asylum seekers in Cyprus are mostly detained in Menogia, which is a centre that opened in 2013 to detain irregular migrants. Material conditions in the centre are generally considered appropriate and there have been no reports of overcrowding since it opened but detainees may face obstacles in accessing health care or communicating with lawyers.
outside the centre due to bureaucratic requirements. There are also complaints about rude behaviour of the guards, who are police officers often lacking training and who tend to perceive the detainees as criminal offenders. Asylum seekers may also be detained temporarily in police stations across the island until being transferred to Menogia. Conditions in holding cells in the police stations vary considerably but are reported in some stations to be far worse as compared to the situation in Menogia with regard to hygiene, access to open air, internet and reading materials etc. The time asylum seekers spend in holding cells in police stations can range between a couple of days to three - four months.

In a number of countries covered in AIDA, the management of detention centres is outsourced to private companies, which raises a number of concerns from a human rights perspective as regards the observance of standards in practice in such centres.

In Austria, a new detention centre was opened in Vordernberg in January 2014 with a capacity of 200 places, adding to the existing 500 places available in the three existing detention centres in Vienna and Salzburg. In that centre, detainees are not obliged to stay in their cell during the day. Unlike the other centres, the new centre in Vordernberg is run by G4S, a private security company. The outsourcing of the management of a detention centre has raised concerns in Austria as regards to the way in which human rights standards will be upheld in practice in the new centre. The Minister of Interior has emphasised in Parliament the fact that G4S will simply assist the authorities and that final responsibility remains with the public security authorities.

Although the conditions vary considerably in the five Centres for Identification and Expulsion (CIE) that are currently operational in Italy, they are generally considered to be very poor and have worsened recently. This is linked to the fact that the management of the CIEs is assigned to private companies (cooperatives) through public procurement contracts and to the fact that the public spending review carried out under the Monti government set the maximum daily expenditure for all centres at 30 euro per person, which resulted in a reduction in staff. In January 2014, the NGO Medic' i diritti umani (MEDU) concluded that the conditions in the CIF of Trapani Milo were appalling as the basic services and necessities were not provided at the time of their visit. Although the agreements signed between the Prefectures in Italy and the companies running the CIF concr. the type of services that must be provided in the CIEs, including access to health care, detainees in the CIF often face severe obstacles in accessing effectively health care. These include the lack of medical medicines on the premises of the CIEs, the lack of access of local public health units to the CIEs and the poorly structured services for psychological support.

In the United Kingdom, asylum seekers are normally detained in immigration removal centres and the purpose built detention centres are run by private security companies. While some efforts are made by contractors to distinguish from those in previous practice, most detention experiences are not pleasant. Medical practitioners in the largest immigration removal centre (Harmondsworth) in 2011, while the Prison Inspector reported in August 2013 major concern with “an inadequate focus on the needs of the most vulnerable detainees, including elderly and sick men, those at risk of self-harm through food-refusal, and other people whose physical or mental health conditions made them potentially unfit for detention”. However, some centres have better health resources such as in Morton Hall. In 2013, it was also revealed that there had been sexual abuse of women detainees in Yarls Wood and although those responsible were dismissed, the Prison Inspector found that women’s histories of victimisation were insufficiently recognised by the authorities and that more women staff were needed.

In Germany, detention facilities are run by the Federal States but some of the States private companies take over some of the responsibility for running detention facilities. This is, for instance, the case in one facility in the State of Brandenburg, where the National Agency for the Prevention of Torture raised a concern about the fact that almost all the staff are employees of a private security company who did not receive any training as regards working in a penitentiary setting.

Detention of Children

The immigration detention of children in EU Member States is now regulated by the EU asylum acquis and the EU Return Directive. The recast Reception Conditions Directive only allows the detention of asylum seeking children as a measure of last resort, where no alternatives to detention can be applied effectively and for the shortest period of time. Moreover, unaccompanied asylum seeking children can only be detained in exceptional circumstances while all efforts must be made to remove the children as soon as possible. With regards to the detention of children for the purpose of removal, Article 17 of the Return Directive allows detention only as a measure of last resort and for the shortest appropriate period of time. Additionally, under both legal regimes, children in detention must have the possibility to engage in leisure activities and access to education. 311

The table below provides an overview of the practice of detention of children, both unaccompanied and with families.

| Country | AT | BE | BG | CY | DE | FR | GR | HU | IE | IT | MT | NL | PL | SE | UK |
|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| Are unaccompanied asylum seeking children detained in practice? | R | R | F | R | R | R | 319 | F | N | N | N | F | R | N | R |
| Are unaccompanied asylum seeking children detained in practice? | R | R | F | R | R | R | 319 | F | N | N | N | F | R | N | R |
| If frequently or rarely, are they only detained in border transit zones? | No | Yes | No | No | Yes | No | Yes | - | No | No | Yes | No | No | No | No |
| Are asylum seeking children in families detained in practice? | R | N | F | N | R | 320 | R | F | N | N | F | R | F | R | N |

The detention of children in the 15 EU Member States covered by AIDA remains an area of great concern, even if in practice children are not or rarely detained in the majority of the countries covered by AIDA. In addition, practices and safeguards continue to vary widely both with regard to the grounds and to the conditions of detention. Both positive and negative developments have been noted with regard to the detention of unaccompanied asylum-seeking children and children in families. This section looks in particular at detention conditions, access to education during detention and age assessment.

Only Belgium, Bulgaria, Hungary, Italy have legal provisions in place prohibiting detention of asylum seeking unaccompanied children. Despite such prohibition in the law, unaccompanied asylum seeking and migrant children continue to be detained in Bulgaria. The draft proposal of the new Law on Asylum (LAR) now provides for the detention of unaccompanied asylum-seeking children in closed centres, although only in the case of refusal of a last resort decision. If the last resort decision is not effective, it would undermine basic legal standards for child protection under Article 10(3) of the Bulgarian Child Protection Act.

In France, where persons can only be placed in administrative detention for the purpose of removal, unaccompanied children are not detained as they are not subject to a return procedure.

In Austria, Cyprus, Greece, the Netherlands, Sweden, United Kingdom, detention of unaccompanied asylum seeking children is not prohibited as such in the law but allowed only in exceptional circumstances and/or alternatives to detention must be applied whenever possible. However, as highlighted in the previous AIDA Annual Report, unaccompanied children are detained in practice in Greece. In Cyprus, unaccompanied children are sometimes detained without any procedures in place to assess whether detention is necessary, whereas in the Netherlands, Amnesty International criticized the Dutch government for detaining persons belonging to vulnerable categories, including children. However, as mentioned above, a positive development in the Netherlands is that since May 2014 families with younger age children are no longer detained upon arrival except in case of human trafficking or in case Article 1 F of the 1951 Refugee Convention (exclusion clause) might apply.

It is crucial that age assessments are conducted with particular care. Where there is doubt about the person’s age, the benefit of the doubt should always be applied. However, practice in some of the countries covered in AIDA shows that in a number of countries, age disputed young people are still detained.

In Italy 323 a case of children wrongly assessed as adults and held in detention was reported in 2013. Three Bangladeshi children, in March 2013, were transferred from the reception centre for unaccompanied children to a detention centre following a second age assessment. The three boys were, then, subjected to a third medical evaluation, which confirmed their minority. Nevertheless, the guardianship judge still declared them as adults, therefore revoking their guardianship. Finally, thanks to the intervention of some NGOs, an appeal against the decision of the guardianship judge as well as against the order of detention was filed and they were subsequently released from detention.

318. According to Article 17 EU Directive, this must be guaranteed “depending on the length of their stay”, whereas under the EU recast Reception Conditions Directive, the right to access to education for detained children derives from Article 14 of the Directive, which is applicable to detention. Article 14 requires Member States in principle to grant access to education under similar conditions as nationals for so long as an expulsion measure is being taken. Asylum seekers are very rarely detained but are occasionally placed in detention facilities relating to 2013. 150 asylum seekers were actually detained in that year (whereas 120 asylum seekers were detained in 2012). See Asylum Information Database, Country Report Italy – Detention Conditions.
319. Whereas before the amount varied depending on the centre (e.g. € 72 in the CIE of Modena and € 26 in the CIE in Lamezì Terme).
In Greece, during missions by Doctors without Borders (MSF) to detention centres in 2013/2014, more than 100 young people who were most probably children but had been wrongly registered as adults were identified. Several had documentation from their home country proving their age, but this had been disregarded by the police.326 Instances of applicants detained as adults but who were later found to be children were also reported in Hungary and the United Kingdom.327

Practices vary also with regard to the use of detention pending age assessment. As highlighted in the 2012/2013 AIDA Annual Report, unaccompanied children are still being detained pending the results of an age assessment in Belgium and Malta.

Detention conditions for children vary widely across the different States, with special detention facilities existing only in Austria.328 In most cases, children are accommodated separately from adults, whereas in Cyprus, Greece, and Malta they are reportedly being accommodated together with unrelated adults. In Malta, unaccompanied children awaiting their assessment may be detained for up to three months with unrelated adults before being released to be accommodated in small open centres. NGOs report cases of harassment.326 In Greece, Amnesty International reported that children have been forced to stay together with adults in substANDARD conditions. In Germany, the law states that children shall only be detained under the conditions established in Article 17 of the Recuperative 17. In light of this, courts (including the Federal Supreme Court) have repeatedly declared detention of children in Germany unlawful. In any case, detention of children is less and less applied in practice in recent years.

In the countries where children are detained, access to education during the period of detention is almost always problematic and often not guaranteed in practice. Access to education is guaranteed by law only in Belgium, Germany, and Cyprus, whereas in Ireland and the United Kingdom, detention of children is regarded as a last resort instead of a first response, including by the use of alternatives to detention that respect the fundamental rights of asylum seekers where necessary.

7. Asylum Seekers in Need of Special Procedural Guarantees and with Special Reception Needs

Asylum seekers find themselves by definition in a vulnerable position as they were forced to leave their country of origin, including friends and relatives and have to adapt to a new environment while their asylum application is being processed in language and procedure with which they are not familiar. The ability of certain individuals to comply with their obligations and address the challenges inherent in the procedure and in reception facilities is further impaired due to particular personal circumstances such as a previous traumatic experience or the trauma of their route to Europe. The lack of family networks in the country of destination country. Under EU law, such vulnerable groups include, but are not limited to, unaccompanied children, disabled people, elderly, or persons suffering from serious illnesses, pregnant women, single parents with children, persons suffering from mental health problems, victims of human trafficking and victims of torture, physical or sexual violence. The EU acquis now explicitly acknowledged that these applicants may be in need of special procedural and reception needs, and that their timely identification is of paramount importance to ensure that they are provided with adequate support “in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.”

In this section, the ways in which the EU Member States covered by AIDA identify the special reception needs and applicants in need of special procedural guarantees are discussed. The changes that accompanied asylum-seeking children are facing within the asylum procedure and in the reception system in those EU Member States are then analysed more in detail.

7.1 Mechanisms to Identify Persons in Need of Special Procedural Guarantees and Special Reception Needs

Whereas EU asylum law does not explicitly require EU Member States to establish specific administrative procedures to identify children or persons with specific reception or procedural needs, the recast Reception Conditions Directive and the recast Procedural Guarantees Directive have introduced a new obligation to assess whether an applicant has special needs and whether the applicant is in need of special procedural guarantees respectively.333 The information on practice collected through AIDA, shows that in general the identification of special needs of asylum seekers remains in most cases a matter decided on an ad hoc administrative arrangement or through the assessment by others such as the judge under Article 5 ECHR.334 In the case of Housein v Greece concerning an unaccompanied child from Afghanistan who was arrested and detained in a detention centre for adults, the ECHR ruled that Greece violated Article 5 ECHR because of his automatic detention for nearly two months without any legal reasons. This judgment is also of interest in the case of an unaccompanied child.335 Even in the absence of specific medical reports on the individual situation of the applicant, the ECHR has attached great importance to the fact that detention in and of itself has a negative impact on the health of children and on the role of parents vis-a-vis their children in case of detention of families.

While still allowing for detention of children, the recast Receptions Conditions Directive clearly establishes that children can only be detained as a measure of last resort and after having been procedures that are not only less coercive alternative measures cannot be applied effectively and for the shortest period of time, while unaccompanied children can be detained only in exceptional circumstances while all efforts must be made to release the detained unaccompanied child as soon as possible. As they are particularly vulnerable because of their age, Member States must take the necessary measures to ensure that the immigration detention of children can never be said to be in their best interest and provide for accommodation that is suitable to their needs and respects their fundamental rights.

7.2 Detection of Vulnerable Asylum Seekers

Detention has particularly grave consequences for adult asylum seekers also and inevitably renders access to fundamental rights including access to legal assistance and an effective remedy more difficult. In this regard, it is important to recall that, in the jurisprudence of the ECtHR, asylum seekers are considered as a particularly vulnerable group of migrants because of the hardship many of them had to suffer throughout their journey to Europe.334 As detention adds to their vulnerability all mandatory measures must be taken to ensure that detention is only used in exceptional circumstances and that the need for detention is of last resort instead of a first response, including by the use of alternatives to detention that respect the fundamental rights of asylum seekers where necessary.

Asylum seekers who find themselves defined as vulnerable or particularly vulnerable by the examining authorities are firstly referred to a medical assessors or persons suffering from serious illnesses, pregnant women, single parents with children, persons suffering from mental health problems, victims of human trafficking or victims of torture, physical or sexual violence.

An identification and referral system is also envisaged in Greece where, according to the law, referrals are done by the Asylum Service to NGOs working in the field or in the few reception centres. According to the law, those who have been subjected to torture, rape or other serious acts of violence shall be referred by the examining authorities to a specialised

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328. It should be noted that in 2013 3,138 persons, among which 1,119 asylum seekers, were placed in migration detention in Poland. At the end of January 2014, 349 persons were held in one of the 12 detention centres, among which 84 children were included, almost one fourth of all detainees. See Press fact sheet Poland.
333. See Article 22(1) of the recast Reception Conditions Directive and Article 24(1) of the recast Procedural Guarantees Directive.
335. ECtHR, Housein v. Greece, Application no. 71825/11, Judgment of 24 October 2013 (French only), par. 76.
336. See for instance, ECtHR, Kanagaratnam and others v. Belgium, cited above.
unit, namely, the NGO Metرادasi for identification and are not subjected to accelerated procedures. However, due to the lack of funding, Metرادasi was unable to document torture victims and therefore the Asylum Service has stopped refer-
als to this NGO until further notice.

In Malta, the vulnerability of asylum seekers is assessed with a view to their release from detention, following referral to the Agency for the Welfare of Asylum-seekers (AWAS), which administers the Vulnerable Adults Assessment Procedure (VAAP). Referrals can be made by all actors coming in contact with asylum seekers, and are usually accompanied by medical certificates or other supporting documents. The VAAP is not regulated by clear, publicly available rules. Where a referral is made, it is always informed that the decision on the case is not yet taken at the discretion of the Minister for Home Affairs, and that when such requests have been made they are usually respected. In these cases, a trained caseworker is assigned to conduct the interview. Nonetheless, the procedure is geared towards taking into account the specific procedural needs of vulnerable applicants, who are furthermore not excluded from accelerated procedures.

In Hungary, although the Asylum Act provides a definition of ‘persons with special needs’ and Government Decree 301/2007 provides that asylum seekers’ special needs should be addressed, there is no further detailed guidance available in the law and no practical identification mechanism in place to adequately identify such persons. In other EU Member States covered by AIDA, no specific identification mechanism is established in the law, but some arrangement has been established as a matter of practice.

The ‘vulnerability unit’ was established at the Alzene Office to screen all applicants for potential vulnerabilities upon registration of their asylum application. However, its impact is not yet felt by the level of the Commissioner-General for Refugees and Stateless Persons (GCRS) two units have been established to support protection officers in dealing with cases of vulnerable asylum seekers. The ‘gender’ unit provides support with regard to all gender-related asylum applications, including LGBTI-related claims, whereas the ‘Psy’ unit specifically assists protection officers in cases where trauma or other psychological problems may have an impact on the procedure or be relevant for the assessment of the asylum application. Specific safeguards are foreseen in gender-related claims and for unaccompanied children, who are also excluded from accelerated border procedures due to the prohibition of child detention. However, all other vulnerable applicants are processed in a discretionary manner, and no systematic screening of vulnerabilities seems to be in place in border procedures, except for unaccompanied children.

In the Netherlands, every asylum seeker is medically examined by an independent agency (Medifirst) with the purpose of providing the examining authorities with indications on how to conduct the asylum interview. The scope is the examination is not of assessing vulnerabilities as such and address the procedural and reception needs of the applicant. All applicants are examined under the so-called short asylum procedure, and only in case the need for further investigation, e.g. a medical examination is needed, they are referred to the extended asylum procedure.

In Germany, some Federal states have introduced pilot schemes for the identification of vulnerable groups, but no com-

u外表 recognition procedure exists.

Italy does not have a legislative framework for the identification of vulnerable asylum seekers. Nevertheless, despite the lack of specific provisions and of a comprehensive national system, several initiatives have been taken, in particular with regard to recognition and referral procedure to ensure that torture survivors receive prompt specialised medical and psychological care.” A Network for Asylum Seekers who Survived Torture (NIRAST) was created in 2007. The Network has worked to improve standards for identification (especially through training of relevant authorities) and assist-
ance of victims of torture. In addition, it produced a questionnaire specifically designed to assist in identifying survivors of torture, who may be referred to specialised services. Applications by applicants believed to be vulnerable by police authorities or identified as such through medico-legal reports from specialised NGOs, reception centres and hospitals are prioritised, although identification of vulnerable asylum seekers is not mainstreamed in the training of police authorities, caseworkers or interpreters.

Austria, Cyprus, Sweden, France and the United Kingdom are reported not to provide any specific vulnerability as-

essment, although in Sweden the issue of special needs of vulnerable asylum seeker is mainstreamed in the training of caseworkers and all applicants are offered a medical examination. In France, where there is currently no identifica-
tion system, the action plan - adopted on 22 May 2013 - for the reform of the Office for the Protection of Refugees and Stateless people (OFPRA) includes the consideration of a specific treatment for vulnerable groups of asylum seekers. Five thematic groups (torture, trafficking in human beings, unaccompanied minors, sexual orientation and gender-based violence) have been created to work on awareness raising, training and to design specific support tools to examine these claims. As noted in the national report, the practical impact of these measures remains to be seen.

Also as regards the identification and assessment of special reception needs, great differences exist in terms of statutory

340. See on this issue also CIR, Maieutics Handbook. Elaborating a common interdisciplinary working methodology (legal-psychological) to guar-

antee the recognition of the proper international protection status to victims of torture and violence, December 2012.

provisions and standards, practices, assessment methods, criteria, and timing in the countries covered by AIDA. Howev-

er, in most of the States covered by AIDA, it is reported that an assessment of special reception needs is being conducted at an earlier or later stage in practice.

In Belgium, Bulgaria, Cyprus, Germany, Greece, Hungary, Italy, Malta, and Poland, national law lays down an obligation for the Agency for the Protection of Asylum-seekers (APAS), which administers the Vulnerable Adults Assess-

ment Procedure (VAAP). Referrals can be made by all actors coming in contact with asylum seekers, and are usually accompanied by medical certificates or other supporting documents. The VAAP is not regulated by clear, publicly available rules. Where a referral is made, it is always informed that the decision on the case is not yet taken at the discretion of the Minister for Home Affairs, and that when such requests have been made they are usually respected. In these cases, a trained caseworker is assigned to conduct the interview. Nonetheless, the procedure is geared towards taking into account the specific procedural needs of vulnerable applicants, who are furthermore not excluded from accelerated procedures.

In Belgium, Bulgaria, Cyprus, Germany, Greece, Hungary, Sweden, and the United Kingdom, the 2007 and 2010, No 133/2007 on the protection of the victim. In Ireland, Italy and Poland do not have specific legislation providing for a vulnerability assessment to be conducted and/ or do not have standard practices in place.

Regardless of whether it is provided for in national legislation in a number of countries covered in AIDA, it is reported that an assessment of a person’s vulnerability is carried out systematically within the reception system as a standard practice. This is the case in Belgium, Bulgaria, France, Malta, Netherlands, Sweden and the United Kingdom.

Nevertheless, the stage at which the assessment of the special reception needs of vulnerable persons is conducted and the extent to which the needs identified are addressed and taken into consideration in practice when allocating asylum seekers to accommodation facilities vary greatly. This is largely dependent on the availability of resources and the aim of the assessment itself. In Malta, for example, the process is intended to assess the nature of the special needs, rather than to identify vulnerable individuals. In addition, it is reported that due to resource and infrastructural limitations, some vulnerable individuals are either never identified or, once identified, unable to access the support and care they require. In Belgium, the law requires that vulnerability is taken into account when deciding on accommodation, due to restricted reception capacity and poor material reception conditions, this is only exceptionally applied, if at all. Being identified as one of the gaps of the Bulgarian asylum system in late 2013, UNHCR mobilised emergency resources for the identification of special needs. As a result, the identification of special needs is now carried out by the Bulgarian Helsinki Committee and the Red Cross, in coordination with UNHCR. These organisations also provide and monitor direct assistance and services in reception centres across the country.

In Greece, despite the provision of an identification and referral system in law, referrals are made ad hoc by NGOs and reception centres’ staff and the Asylum Service, although for the time being the Asylum Service stopped referring alleged torture victims to the NGO Metرادasi for their identification because of the lack of funding available to this NGO to per-

form any evaluation. However, asylum officers have the duty to ascertain whether rules applying to vulnerable asylum seekers apply to an individual case, there is however no protocol to identify these vulnerable asylum seekers. Therefore, it depends on the actual asylum officer whether special needs are identified or not. In Italy there are no legal provisions on how, when and by whom the assessment of special reception needs should be carried out. In practice, it is not sys-


tematical or uniform practice to refer all cases of vulnerable asylum seekers to social workers or psychologists. In other words, vulnerable asylum seekers do not inform authorities that they were victims of violence or are disabled are referred to a medical practitioner for examination; no other early identification mechanisms which requires proof of a clear need for special reception needs is foreseen. Nevertheless, according to the Office for Foreigners, staff of the reception centres monitors the asylum seekers’ needs, so as to react timely if special reception needs appear at a later stage.

In the United Kingdom, although there is no mechanism laid down in law to identify vulnerable persons, there is a pol-

icy that instructs caseworkers to assess whether asylum seekers have special medical needs that may affect dispersal. Whether the identified needs are addressed in fact is variable according to local practice. This is due also to the fact that the level of needs considered is taken into care by a local authority, most often together with children under 16 hosted in foster families, whereas no specific measure is provided to address the reception needs of other vulnerable groups.

States differ also as how to the assessment is conducted. For example, Ireland assesses special needs during when conducting medical screening and applicants are asked about their health on their initial attendance at ORAC (the first instance decision making body) when they apply for asylum and in the asylum questionnaire, whereas the Netherlands assesses special needs during interviews. Since February 2013, the latter practice is adopted also in France at the Paris initial orientation platform for isolated adults, where psychologists conduct interviews aiming at identifying whether a person is a victim of trafficking.

Finally, only Belgium is reported to conduct regular vulnerability assessments after an initial assessment has been made. A legal mechanism is in place to regularly monitor changes in the applicant’s situation that might lead to the need of a more adequate accommodation. The vulnerability assessment is required to take place within thirty days following the decision on the request for an asylum period of stay and at least four times a year. Moreover, the frequency of psychological examinations on the suitability of the reception facility is taken within six months. As the asylum procedure rarely exceeds six months, in practice reception conditions are almost never adapted to the vulnerable person’s special needs. Moreover, with the exception of some measures, the density for special reception arrangements exceeds availability, and in practice not all vulnerable asylum seekers can be accommodated in facilities suitable for their needs. On the other hand in the United Kingdom, unless vulnerability is identified at one of the Initial Accommodation centres by a health-care provider, it is unlikely to be identified until the asylum seeker discloses a problem to a voluntary worker or community advice organisation.

7.2 Unaccompanied Children

The particular vulnerability of unaccompanied asylum-seeking children requires special attention within the asylum procedure and the reception system. As the detention of asylum-seeking children is discussed in section 4.6 of this report, this section will not go into detail about the protection of the fundamental rights of unaccompanied children in the asylum procedure: age assessment and the role of guardians and legal representatives.

Age Assessment

The outcome of an age assessment has far-reaching implications for the individual, their entitlements and the enjoyment of certain rights and specific safeguards. Article 25(5) recast Asylum Procedures Directive allows Member States to use medical examinations as a method to determine the age of unaccompanied children but requires States to assume that the applicant is a child in case doubts remain after such examination.

In all the EU Member States covered by AIDA, an age assessment procedure is conducted only where it is not clear whether the individual is under 18 or not. In most countries, except Sweden, the United Kingdom and Ireland, procedures for age assessments are laid down in law. In Sweden, age assessment is part of the practice directions of the Migration Board which are based on guidelines from the National Social Welfare Board (Socialstyrelsen) on the use and interpretation of results of age assessments.342 In the United Kingdom, age assessment is regulated by guidelines and case law.343 In general, the examination of the asylum procedure is suspended until the disputed date of the applicant is assessed.

Assessing the age of unaccompanied children remains a complex and controversial issue as there is no existing method that can provide accurate results for all and all methods are subject to a margin of error.344 Austria, Belgium, Bulgaria, Hungary, Italy, the Netherlands, Poland and Sweden use a variety of different medical examinations, while Ireland and the United Kingdom apply non-medical assessment methods and in some countries, such as Greece or Malta a combination of medical and non-medical methods can be used. In Germany and France, different medical and non-medical methods are used, either independently or combined, in the various Federal States and départements respectively.

Medical age assessment methods include X-ray of the collarbone, the clavicle, the wrist or the hand, Magnetic Resonance Tomography (MRT) of the bones, dental examination, physical development assessment by a paediatrician or sexual maturity examination, including observation of the genitals. Non-medical methods include interviews, consideration of documentary evidence and social evaluation (which includes questions about family, education, the journey to Europe, etc.), birth certificates, identification and identification documents.345 Where medical examinations are used, they are often criticised for being too intrusive and also for being unreliable as is the case, for instance, in Austria, France, and Germany. In Italy, it is explicitly provided in law that medical examinations must be non-invasive.

The extent to which States rely on the result of the medical examinations varies greatly. For example, in Bulgaria and Malta, the result of such examinations are not binding, although in the latter practice suggests that, in most cases, the result determines the outcome of the assessment. In most of the countries covered by AIDA, the benefit of the doubt is generally applied, even though it is quite rare in practice in France. In Ireland, there is no publicly available formal procedure for age determination and therefore it is difficult to determine if the benefit of the doubt is frequently applied by ORAC (the final authority in the asylum procedure) and social workers (social workers have legal responsibilities for the personal and physical development).346 Where medical examinations are used, they are often criticised for being too intrusive and also for being unreliable as is the case, for instance, in Austria, France, and Germany. In Italy, it is explicitly provided in law that medical examinations must be non-invasive.

In France, if a person is determined to be above 18 as a result of an age assessment procedure, this impacts significantly on the young asylum seeker’s ability to benefit from their fundamental rights. The age assessment procedure does not entail the granting of a new documentation, with the consequence that the person might be considered alternately as an adult or a child by different institutions. The procedure, which refers to the declaration of minority of the person in the asylum procedure, may for instance refuse to grant a residence permit with a view to lodging the asylum application, arguing that the young asylum seeker needs to have a legal representative. However, such legal representative will most likely not be appointed, as the prosecutor, which is the authority responsible for issuing the order to place the child under the responsibility of a legal representative, relies on the result of the age assessment procedure. In an important ruling of March 2014 regarding the inadmissibility of the appeal of an unaccompanied child before the Administrative Court to obtain access to his right to reception conditions, because the child was not represented by a legal representative, the Council of State cancelled this decision and recognized the right of a child to engage directly in a procedure when their "fundamental freedoms are at stake."347

In the United Kingdom, where a person appears to be under 18 to an immigration officer or the Home Office caseworker, policy guidance is that they are to be treated as a child. In case of doubt, the person should be treated as if they are under 18 until there is sufficient evidence to the contrary. Where their appearance strongly suggests to the officer that they are significantly over 18, a second opinion must be sought from a senior officer. If they agree that the person is over 18, the asylum seeker is treated as an adult. In this case, an age assessment can be triggered by the young person or any third party referring to the local authority for an age assessment. However, the result of immediate treatment as an adult while this process is ongoing means that people who are in fact under 18 may be detained. The Home Office may request an age assessment from the local authority. This may entail that some applicants who are initially accepted as unaccompanied children are later rejected as adults.348 A legal representation protocol has been developed by local authorities and endorsed by the courts, the assessment can only be conducted by two appropriately qualified social workers. In practice, NGOs report that the quality of assessments can be poor, partially due to lack of training of social workers. In addition, there is no specific legislation or guidance on age assessment and individual agencies must keep up to date with the many judgments made by courts and amend their policies accordingly.349

Guardianship and Legal Representation of Unaccompanied Children

EU asylum law foresees the appointment of a legal 'representative' to unaccompanied children whose role is to represent and assist the child in the asylum procedure.350 In practice at national level, such a role may be assumed by different persons in different countries, which creates confusion about the definitions used across the EU.351 In particular, some countries refer to lawyers assisting the child in the asylum procedure as 'legal representative'. In most countries, the role of the representative as defined in asylum law is undertaken by a guardian. To distinguish between the role of a lawyer and that of a guardian, who should safeguard the child’s best interests and general well-being, and to this effect complements the limited legal capacity of the child, the term ‘guardian’ will be preferred in this section.352 While the appointment of a legal guardian is foreseen in the national legislation of all the EU Member States covered by the Asylum Information Database that are bound by the recast Asylum Procedures Directive and Reception Conditions Directive,353 this may happen in different ways and to different extents in the various Member States, and does not mean that in practice the right to guardianship and legal representation is guaranteed.

In Ireland,354 the law provides for the appointment of a guardian, but the sections of the Child Care Act that would need to be invoked, are not in practice. Instead, unaccompanied children are taken into care under other provisions of the Child Care Act, which do not foresee the appointment of a legal guardian. At the same time, there are no provisions stating that a child must apply in order to benefit from the legal representation. However, if the court determines that the child should submit a claim for asylum, which is the duty of the social worker in accordance with the Refugee Act, the young person would then be referred to the Refugee Legal Service and receive legal assistance in the same way an adult applicant would. The law provides legal representation. If the child is in care, it is the social worker who provides for the immediate and ongoing needs and welfare of the child through appropriate placement and links with health, psychological, social and educational services.

Similarly, in the United Kingdom a guardianship system for unaccompanied children in asylum procedures is not in place, but legal advisors are tasked with providing legal representation. The child is represented in the asylum procedure by a lawyer, referred to as 'legal representative'. Yet, the functions of a guardian are mostly performed by a social worker appointed by the local authority, who is responsible for promoting and safeguarding the child’s welfare and interests.355

In many cases, such as in France, Hungary, Austria or Poland, the guardian or legal representative is appointed only to represent the child in administrative and judicial procedures related to the asylum claim. Thus, they are not tasked to ensure that other rights are protected, on the contrary, they are not responsible for the child’s social and educational needs. Therefore, not only do they complement the children’s limited legal capacity in all acts affecting them, but they also have the responsibility to ensure that all necessary steps for the well-being of the child are taken, including taking care of the child’s educational needs and all other necessary care, attend school, etc. This is the case in Belgium and the Netherlands. In the latter, children are heard on the appointment of the guardian and have to give their consent.

Major obstacles to effective guardianship appear to be the frequent delays in the appointment of a guardian in many of the States examined, the lack of qualifications requested, complemented by the absence of adequate training in all of the countries examined. Such obstacles may negatively impact the outcome of the asylum procedure and impair children’s right to special procedural and reception safeguards.

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345. See EASO, EASO Age assessment practice in Europe, December 2013 for a more detailed overview of the various methods used across Europe.


349. "A legal representative is defined in the recast Asylum Procedures Directive (Article 2(n)) and Reception Conditions Directive (Article 2(j)) as ‘a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for by the present Directive, and to protect the best interests of the child and express the child’s views, and who is designated by the child or an organisation as a representative, shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor in accordance with this Directive.’”


351. The UK and Ireland opted out all recast Directives but the initial Reception Condition Directive still applies to the UK.


353. See ECRE, Right to Justice: Comparative report.
As in most States no specific time-limit for the appointment of a guardian is foreseen in law, the periods for appointing a guardian vary greatly across the States examined. In some countries the appointment is swift, as is the case for example in Belgium and the Netherlands, where the appointment of a guardian is streamlined through a specialised service at the Ministry of Justice in the former case or a specific institution in the latter. In Austria, a ‘legal representative’ (a legal advisor from a contracted NGO) is appointed as soon as an unaccompanied asylum-seeking child applies for asylum, while in Hungary the appointment is reported to take place within one week. In other cases, instead, the appointment of a representative may take up to several months. In France, for example, a legal representative could be appointed up to three months after the asylum application has been made, while in Poland358 cases were reported, whereby it took three or even five months for the court to issue a decision appointing a legal representative. In Italy, the law prescribes that the Judge for Guardianship has to appoint a legal guardian within 48 hours following the communication by the Police Immigration Office that an unaccompanied child has been detected. In practice, however, guardians are often appointed several weeks after the submission of the asylum request, and tend to meet the children only during the formal registration of the asylum application and at the hearing before the determining authority, as it is strictly required by law.

Delays in the appointment of a guardian appear to be a major concern also in Greece, where the competent Prosecutor is designated as temporary legal guardian, and should then propose a permanent guardian to be appointed by the Court. In practice, as prosecutors and Courts do not have the resources to handle the number of cases referred to them, the system is highly inefficient. In addition, the procedures followed in order to ensure the representation and protection of unaccompanied children seem to depend on the discretion of the prosecutor and on the supporting services that the prosecutor may have at their disposal, such as NGOs, directors of reception centres, or social services.359

Further to the above-mentioned delays, in some cases, such as in Bulgaria355 and France,362 unaccompanied children may sometimes go through the whole procedure without the assistance of a guardian.

In Bulgaria, by law, unaccompanied children may not be appointed a guardian during the entire asylum procedure, with the law allowing for the appointment of a social worker instead. In practice, despite the availability of guardians, this opportunity is applied extensively by the asylum administration and in all cases status determination is carried out with the sole assistance of a social worker. However, the law does not provide for any training of social workers, who therefore lack basic skills and knowledge in relation to the needs of unaccompanied children and asylum procedures, which proves particularly problematic when legal aid is not available, as is almost always the case. Recent jurisprudence of the national court ruled that status determinations, in absence of an appointed guardian are unlawful, but this has no yet had an impact on the practice.363

The lack of a guardian throughout the entire asylum procedure is reported also in France in the context of border procedures. Where an asylum application is made at the border, the law provides that an ad hoc administrator should be appointed “without delay” for any child held in a transit zone. In practice, when large numbers of children arrive, or when children arrive on weekends or holidays, there can be delays, to the extent that unaccompanied children may never meet with such a person and end up going through the procedure without an ad hoc administrator. In the regular procedure, it may happen that in some jurisdictions, due to the absence of ad hoc administrators or to their insufficient number, the Prosecutor may not appoint any, with the consequence that these children are forced to wait until they turn 18 to be able to lodge their asylum application at the Office for the Protection of Refugees and Stateless Persons (OPFRA).

In Italy, where delays in appointing guardians are significant, it happens in practice that guardians are not appointed when a child is 17, with the consequence that, as children do not have legal capacity, they cannot act by themselves in the asylum procedure and will have to wait until they turn 18 for the procedure to be reactivated.355 In Germany, where children over 16 have by law the capacity to perform procedural acts on their own behalf, they are treated as adults and therefore a guardian is not appointed.356

In most of the countries included in the Asylum Information Database, such as Poland, Germany, Greece, Italy, Malta and Sweden there are no specific qualifications, e.g. specific education or specialised knowledge, or requirements to act as a guardian. A notable exception is the Netherlands, where guardians are professionals who are part of an independent national guardianship institution (NIDOS). In Poland, the situation is worsened by the fact that due to the insufficient number of potentially trained guardians, in practice, NGO staff and students of legal clinics at universities are appointed as guardians. Resource constraints are highlighted also in Malta.360 In addition, in Malta, legal guardians are generally social workers contracted by the Agency for the Welfare of Asylum-seekers (AWAS), who are, therefore, not independent from public authorities and in most cases responsible for a large number of children.

In France, ad hoc administrators must meet a list of criteria to be nominated, including demonstrating an interest in youth related issues and relevant skills,361 whereas Sweden requires only good moral standing and specific training was until recently only sometimes provided, although it should be noted that training is more frequently provided recently and that standardised information packages have been drafted by the Migration Board and some NGOs.362 In Hungary, the law foresees that the guardian should be a lawyer, if possible. Nevertheless, those lawyers are usually not trained in refugee law and have no knowledge of foreign languages, which makes quality of representation in the asylum procedure for unaccompanied children not effective. In the United Kingdom,363 specialist training by the Immigration Law Practitioners Association (ILPA) is available to legal representatives (lawyers) but attending this is not a requirement to advise asylum-seeking children, and ‘lack of adequate advice, advocacy and legal representation’ are identified as critical obstacles to children realising their rights.

As unaccompanied children are among the most vulnerable asylum seekers, Member States must take the necessary measures to ensure that their best interest is always a primary consideration throughout the asylum procedure and beyond. In order to do so, access to qualified guardians and legal representation as soon as possible is key to ensuring that they can benefit from the safeguards laid down in the EU asylum acquis. Given their particular vulnerability, Member States should not examine asylum applications of unaccompanied children in accelerated or border procedures as such procedures are ill-suited to accommodate their special needs. Age assessment should only be carried out at last resort, when the age cannot be determined through other ways, such as by documentary evidence, and only if serious doubts persist. Where age assessment is carried out through medical examinations, Member States should always use the least invasive methods. In light of the serious consequences of an unaccompanied child being wrongfully assessed as an adult, the benefit of the doubt should always be applied and if doubts remain Member States should consider that the applicant is a child.

CONCLUSION
This second AIDA Annual report reflects on a number of key EU developments in the field of asylum in the past year and presents an overview of key protection gaps, positive developments and challenges identified by NGO experts in 15 EU Member States.

Despite two phases of legislative harmonisation within almost 15 years, the establishment of an EU agency on asylum and increasing practical cooperation at EU level, significant divergences continue to exist among EU Member States with regard to recognition rates, reception conditions and procedural safeguards. The challenges ahead for the EU and its Member States in creating a level playing field in the area of asylum remain huge while the rise of extreme right political parties in a number of EU Member States during the last European elections further complicates the debate.

In this regard, it is essential for the debate on asylum in the EU today to put the increase in the number of asylum applicants arriving in the EU today into perspective. As the statistical analysis of the key trends in 2013 in the EU and some of the neighbouring regions has shown, the EU continues to host only a fraction of the world’s refugees. In this regard, the 30% increase in the number of asylum seekers arriving is more than manageable for a Union of 28 EU Member States. However, the vast majority of asylum applications continue to be lodged in only a few Member States of the European Union. This implies that many asylum seekers do not make their asylum application in the first country of entry into the EU but travel on to another EU Member State. The reasons for this phenomenon are manifold, including migration routes, the presence of family members or diaspora in another EU Member State, language, integration prospects, living conditions and the likelihood of being granted international protection. However, it shows how refugee movements are difficult to steer, even in the EU where the Dublin system is supposed to allocate responsibility for examining an asylum application among others on the basis of the country of first entry into the EU. Whereas the concentration of asylum application in just a few countries seems to illustrate the failure of the Dublin system, the fact remains that it continues to cause hardship for many asylum seekers and results in breaches of their fundamental rights in the EU today.

As discussed in this report, the situation at the EU’s external borders and in particular the increasing number of asylum seekers, refugees and migrants arriving by sea in Italy raises a number of fundamental questions with regard to the EU’s common policy on asylum.

Firstly, gaining safe access to the territory remains a major challenge for those fleeing persecution and conflict and trying to find protection in the EU. It is absurd that refugees are forced to pay thousands of euros to unscrupulous smugglers and human traffickers in order to make the trip to Europe in often unseaworthy vessels because visa restrictions, carrier sanctions and border controls prevent them travelling legally, while recognition rates for many of them, such as Syrians and Eritreans, are very high. Yet the main focus of many of the recent initiatives taken at EU level, including the Task Force for the Mediterranean, remains centred on increasing in more sophisticated border surveillance, including through Frontex, and externalisation of border controls through border management cooperation with the main countries of transit for asylum seekers and migrants. Creating even more obstacles to reach the EU territory only seems to benefit the cynical business of human smuggling and trafficking and forces those in need of international protection and other migrants to take ever greater risks to reach the EU. While the Mare Nostrum operation is to be praised for the saving of thousands of lives in the past months in the Mediterranean it is not a long term solution to a problem that is likely to become even more pressing in the future in light of the growing list of conflicts in the world.

Secondly, instances of refoulement and pushbacks at the EU’s external borders continue to be documented by NGOs, such as at the Greek-Turkish borders, the Bulgarian-Turkish borders and the Spanish enclaves Ceuta and Melilla. A CEAS based on high standards of protection serves no purpose if those arriving at the EU’s doorstep are simply turned away without a proper examination of their protection needs. The denial of access to the territory at the EU’s external borders is simply unacceptable and undermines the credibility of the CEAS as a whole. While it is true that final responsibility for border controls and entry to the territory, including compliance with fundamental rights, lies with the Member States, EU institutions and agencies cannot turn a blind eye to such serious accusations. This is particularly the case where such reports relate to areas where Frontex or other EU agencies are operational. The adoption of a fundamental rights strategy, including the appointment of a Fundamental Rights Officer and establishment of a Consultative Forum are steps in the right direction but more needs to be done to establish proper human rights monitoring at the main entry points of the EU.

Thirdly, the increased arrival of asylum seekers, refugees and migrants in Italy puts the meaning and role of solidarity in EU asylum policy again high on the EU’s agenda. The pressure on Italy’s asylum system is mounting and it remains to be seen how long Italy’s reception system will be able to cope with the increased numbers. At the same time, other EU Member States argue that they are receiving even higher numbers either in absolute or relative terms and that Italy should step up its own capacity to deal with the situation. Reference is made to existing tools such as EASO and the financial and technical EU support Italy is receiving in order to block any serious debate at EU level on the need for additional solidarity measures. This situation illustrates once more the delicate nature of the solidarity discussion in the field of asylum. On the one hand, each individual Member State has a responsibility to keep its house in order and take the necessary measures to make its asylum system as robust as possible. On the other hand, as the CEAS further develops, a common policy on asylum requires a shared vision on how situations such as the one in Italy today can be addressed together as it has ramifications for other EU Member States as well.
Beyond the situation at the EU’s borders, this overview of practice in the EU Member States in chapter III of this report further confirms that the establishment of a Common European Asylum System based on high protection standards where asylum seekers’ fundamental rights are respected regardless of where they apply in the EU has only just started. Many of the observations made and concerns raised in the first AIDA annual report remain valid in particular with regard to asylum seekers’ access to material reception conditions, the grounds and conditions of detention and asylum seekers’ access to quality legal assistance during the asylum procedure. In addition, many EU Member States covered in the Asylum Information Database lack functioning mechanisms to effectively and promptly identify asylum seekers in need of special procedural guarantees or who have special reception needs and address those needs. Furthermore, national lists of safe countries of origin in the EU Member States covered in the Asylum Information Database continue to diverge and show that there is no common understanding of which countries can be considered safe. Moreover, the use of the safe country of origin concept has very different procedural consequences in the different EU Member States.

The adoption of strategic guidelines for the operational and legislative planning within the area of freedom, security and justice by the European Council in June 2014 was the opportunity to establish a shared vision on the next steps needed to further develop the EU’s common policy on asylum and make the CEAS based on high standards of protection a reality. The opportunity was sadly missed, the main message of the guidelines being that all that matters is transposition and implementation of the EU asylum legislation and the consolidation of the CEAS. The lack of ambition in the field of asylum is not only disappointing, it also leaves many of the key questions about the functioning of the CEAS unanswered. Nevertheless, these will have to be addressed sooner or later if the CEAS is ever to materialise. The lack of direction given by the European Council has now de facto placed an important responsibility on the new European Commission to provide further guidance and prepare further steps in the completion and deepening of the EU’s common policy on asylum.

By way of conclusion, a number of key recommendations are reiterated here that relate to the recent developments at the EU level and some of the key findings of this second AIDA Annual Report and that need to be addressed by the EU institutions and the EU Member States in the coming years.

The use of legal avenues to access protection in the EU, including protected entry procedures and the use of humanitarian visas must be further supported and promoted as a way to reduce the need for those in search of international protection to resort to unsafe and irregular ways to access the EU, which often expose asylum seekers, refugees and migrants to additional human rights abuses. Such legal avenues should never be designed as a substitute for the processing of asylum applications lodged on the territory of EU Member States but as a complementary tool in the protection regime.

Measures must be taken to end push-backs at the EU’s external borders and ensure access to the territory and to the asylum procedure. Protection-sensitive border control management and effective monitoring of border control operations both at the national level and in the context of Frontex operations must be implemented to ensure that the principle of non-refoulement and the right to asylum enshrined in the EU Charter of Fundamental Rights is fully respected and guaranteed at the EU’s external borders.

Access to quality free legal assistance must be guaranteed at all stages of the asylum procedure as an essential safeguard to ensure that asylum seekers can assert their rights under the EU asylum acquis in practice. The necessary resources must be made available to ensure sufficient capacity with NGOs and legal aid providers to advise and represent asylum seekers, and efforts should be made to properly address disincentives for legal aid providers to engage in asylum cases, including low financial remuneration compared to other areas of law.

EU Member States must ensure access to an effective remedy with automatic suspensive effect which guarantees a full and ex nunc examination of both facts and points of law and provides for reasonable time limits for lodging an appeal enabling asylum seekers to exercise the remedy effectively. This is best guaranteed by ensuring that appeals against negative first instance decisions are automatically suspensive with regard to any removal decision that may accompany such decision, without the need for asylum seekers to lodge a separate request for such suspension. While shorter time limits for lodging appeals may be acceptable in certain cases, they should never be so short as to render the effective exercise of the remedy extremely difficult or practically impossible.

National asylum systems must be designed to ensure the timely and early identification of asylum seekers in need of special procedural guarantees as well as the special reception needs of vulnerable asylum seekers in all reception structures. National mechanisms for the assessment of a person’s special needs within the asylum procedure or reception structures must be implemented while respecting the individual’s right under general principles of EU law to be heard with regard to any individual measure that may adversely affect them and to receive a reasoned decision.
ANNEX I
STATISTICAL TABLES
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<thead>
<tr>
<th>Country of Destination/ Country of Origin</th>
<th>Total</th>
<th>Syria</th>
<th>Russia</th>
<th>Afghanistan</th>
<th>Serbia</th>
<th>Pakistan</th>
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Source: Eurostat, Asylum and new asylum applicants by citizenship, age and sex. Annual aggregated data (rounded), migr_asyap_pctza, extracted 12th August 2013.
### Table 2: Evolution of asylum applications in the EU and Schengen associated states in 2012 and 2013

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<td>+27%</td>
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Source: Eurostat; Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded); migr_asyap-pctza, extracted on 12th August 2013.

### Table 3: Applications by unaccompanied children in the EU and Schengen associated states in 2013

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Source: Eurostat; Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded); migr_asyunaa, extracted on 12th August 2014.
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Data are rounded to the nearest five. 0 means less than 3.

* Rate of recognition is the share of positive decisions (first instance or final on appeal) in the total number of decisions at the given stage. In this calculation, the exact number of decisions has been used instead of the rounded numbers presented in this table. Rates of recognition for humanitarian status are not shown in this table, but are part of the total recognition rate.

Source: Table initially published in Eurostat, Asylum decisions in the EU28: EU Member States granted protection to 135 700 asylum seekers in 2013, Syrians main beneficiaries, STAT/14/98 19/06/2014.
ANNEX II
Overview of Main National Developments
Austria

The restructuring of the administrative procedures brought several legal changes as of 1st January 2014: The Federal Asylum Agency (Bundesasylamt) became the Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl - BFA), which is now also in charge of return orders and detention in the context of immigration laws.

The Asylum Court (Asylgerichtshof) became the Federal Administrative Court (Bundesverwaltungsgericht – BVwG). It is responsible for decisions on granting international protection as well as return decisions and measures like detention. While the appeal in the regular procedure has to be submitted within 2 weeks, the legal representative of an unaccompanied asylum seeking child has 4 weeks to appeal the negative decision of the BFA.

Final decisions by the Administrative Courts can be examined by the Federal Administrative High Court (Verwaltungsgerichtshof – VwGH). The Administrative Court decides whether appeals are allowed. If the Federal Administrative Court does not allow such appeal, asylum seekers can ask for an onward appeal at the Federal Administrative High Court in exceptional cases.

Right of residence for humanitarian reasons is examined by the federal office for immigration and asylum. In case the residence permit of persons with subsidiary protection status is prolonged after one year, it is extended for another two years.

Persons with subsidiary protection status receive a foreigners’ passport if they cannot obtain travel documents from the authorities of their country of origin.

In accordance with Article 2(j) recast Qualification Directive, the father, mother or other adult responsible for an unmarried child who has refugee or subsidiary protection status, is now considered as a family member and derives from that status a right to family reunification.

Free legal advice is not granted in case alternatives to detention are applied.

Asylum seekers/foreigners cannot benefit anymore from free legal representation in measures and procedures regulated by immigration laws such as detention. Nevertheless, NGOs may visit detained asylum seekers and represent them in procedures.

A new detention centre in Styria/Vordernberg for up to 220 persons opened in January 2014 and most of the detention centres are used for an apprehension up to 48 hours only (Bludenz, Innsbruck, Eisenstadt, Villach, Klagenfurt, Graz, Leoben, Wels, Linz, Wiener Neustadt St.Pölten). By the end of February 2014 when the centre opened 10 persons were there.

The number of detainees decreased significantly, from 150-200 persons to 50 persons detained in February 2014. The decrease has to be seen in light of the new competence of the BFA and IT problems.

Belgium

During 2013 and the beginning of 2014 there has been a serious drop in the number of asylum applicants, as compared to 2012. While in 2012 21,463 asylum applications were introduced, in 2013 only 15,840: a decrease of 28% - while the percentage of subsequent applications has risen from 29% to 35%, amounting to more than one every three applications.

At the same time, the protection rate has risen (from 22% to 27%), as well as the absolute number of positive decisions (4,932 in 2013 compared to 4,419 in 2012).

The reception accommodation capacity has been substantially reduced by around 20% (from 23,988 places at the end of 2012 to 19,310 in March 2014). In the same period also the occupation rate has dropped from about 90% to 72%.

An important change of law has taken place, amending certain provisions on appeal possibilities in certain cases, following Constitutional Court and ECtHR judgments in which different aspects of the asylum appeal system were determined to be insufficient to guarantee an effective remedy (and/or were quashed by the Constitutional Court). The Law of 10 April 2014 containing ‘Several Provisions concerning the Procedures before the CALL and the Council of State’, that entered into force on 1 June 2014, introduced the following changes:

- Full judicial review appeals, with automatically suspensive effect, against inadmissibility decisions on subsequent applications and applications by persons from safe countries of origin can be introduced at the Council for Alien Law Litigation (CALL) – replacing the non-suspensive annulment appeals (i.e. with no full judicial review of the merits) that were provided before. These appeals have to be introduced within a shorter time period of fifteen days (instead of the general thirty days period). In case the applicant is detained such appeal against the inadmissibility decision on a subsequent application has to be introduced within ten days, reduced to only five days for inadmissibility decisions from the second application on.
- A request to suspend in extreme urgency any removal decision can be introduced within ten days when the removal is imminent, which the law now explicitly stipulates to be the case when the applicant is detained, or five days against a second and subsequent removal decision. This appeal period and the appeal itself have a suspensive effect, in order to avoid refoulement. A specifically swift processing by the CALL is provided for in such cases.
- In case of an inadmissibility decision on a first subsequent application, the CGRS has to pronounce itself explicitly about the risk of direct or indirect refoulement (the latter in case the Aliens Office would to return a person to a place the CGRS considers not to be or is not believed to be the person’s country of origin. In this case also the CGRS shall conduct an in-mem of the risks connected to the return to such a place).

This is the so-called non-refoulement clause.

In the light of the recent ECtHR judgment in the S.J. v. Belgium case, it remains unlikely that these changes will suffice to satisfactorily comply with the Court’s judgment, which found that exactly the complexity of the appeal system as a whole is a violation of the right to an effective remedy.

Bulgaria

Asylum Procedure

In November 2013, 1,500 police were deployed to reinforce controls along the Bulgarian-Turkish border in the Elhovo region, causing a drastic decrease of new arrivals which thus raised concerns and allegations on push-backs policy and practices.

The practice of criminal convictions for irregular entry in violation of Article 33 of the 1951 Convention was reverted; during the period January-February 2014, only 27 individuals were convicted of using false documents (crime which is not de-penalized), while none was convicted on accounts of irregular entry.

Registration and documentation (provision of registration cards) of asylum seekers who arrived in large numbers in autumn of 2013 have been streamlined to a great extent; however there are still cases where the registration of asylum seekers – those who live in urban areas outside reception centers- is unduly delayed and repeatedly re-scheduled.

The law was changed to distribute the competence for handling court appeals on first instance decisions in the regular procedure from the Administrative court of Sofia to all regional administrative courts, designated as per the residence of the asylum seeker who submits the appeal.

Reception Conditions

Seeking for a release from detention, where they had been referred to by the Border Police, many asylum seekers submitted formal waivers from their right to accommodation in reception centers and from the related social assistance, declaring false domiciles (so called “external addresses”), which were largely accepted by the State Agency for Refugees (SAR) in violation of the law. As of 31 March 2014, according to the official statistics, 3,358 asylum seekers reside at external addresses at their own expenses.

As of 27 March 2014, the capacity of the seven SAR centres (reception and registration centres – Banya, Ovcha Kupel and Harmanit, Transit centre Pastrogror, reception shelters of Voenna Rampa, Vrazhdebna and Kovchavtsi) reached 4,150 spaces with an 82% occupancy rate. SAR expects to reach a capacity of 6,000 places by the end of April 2014.

Conditions observed in the centres have improved considerably in comparison with the situation observed in December 2013, particularly in the facility of Harmanit which currently accommodates more than 1,000 people. Harmanit no longer operates under a closed regime. Since 2 February 2014, in all reception facilities food is provided by the government (two hot meals per day).

Asylum seekers have access to primary medical care services, interpretation services for the registration of the asylum claim and the asylum process, heating, separate facilities for single men and women and a monthly assistance of 65 BGN (33 euros). However, delays occur in cash payments, due mainly to the fact that the amount of money required was not secured in the national budget and has to be allocated on an ad hoc basis each month.

Banya RRC has been designated as a centre for unaccompanied children, who nevertheless still lack effective guardianship or representation. However, the draft law amendments currently discussed provide for institutional arrangements that could finally and effectively solve this long standing protection problem, if adopted.

Since the previous National Programme for Integration of Refugees (NPIR) ended in December 2013, there is currently no integration programme in place. Therefore, newly recognised refugees or subsidiary protection holders (humanitarian status) do not receive any initial integration support. The government announced to be working towards the establishment of a new integration programme involving local municipalities. However, no progress has so far been made in this respect.

Detention of Asylum Seekers

Asylum seekers who applied at the border have by law to be transferred within 24 hours from the Border Police to SAR reception facilities. In practice, since October 2013 asylum seekers are transferred to the newly established Elhovo Detention Centre, a triage centre, where they spend between three to seven days on average before being transferred to any of the SAR reception facilities.

Average detention duration for those who applied from pre-removal detention centers increased to 45 days approximately in 2013; in Lubimets detention center almost 50 asylum seekers from the Maghreb region of Africa have been waiting for their release and registration for more than 6 months.

Transposition of the EU asylum acquis

Draft amendments introduced by the Parliament in October 2013 were largely advertised to be transposing the recast Qualification Directive and Reception Conditions Directive. However, neither of them is being fully transposed, in particular the Reception Conditions Directive which is reflected in the draft only with regard to Articles 8 -11 relating the detention of asylum seekers.

During the draft amendments briefing before the Parliamentarian Human Rights Commission the government announced that immediately after the adoption of the current draft law it will establish a working group to prepare the transposition of the recast Asylum Procedure Directive and the remaining provision of recast Qualification and Reception Conditions Directives.
The global recognition rate for 2013 stands at 24.5% (12.8% of the OFPRA decisions and 14% of the CNDA decisions have been revised or overturned). It has remained stable compared to 2012 (24.2%).15 The drop observed in 2012 is due to a greater number of appeals filed (from 11,514 in 2012 to 12,884 in 2013). – Increase in comparison to the 2012 rates (global recognition rate of 21.7% in 2012; global recognition rate for unaccompanied minors at 38.4%).

Information on waiting periods for the registration of the claim: An official report from the General controller16 has described in September 2013 that asylum seeking families in Paris can only hope to lodge their asylum claim after a waiting period of 7 months and a half. In 2013, it was taking 4 months to get an appointment to obtain a ‘domiciliation’ address; an additional month to get the residence permit at the prefecture to request the temporary residence permit (therefore largely exceeding the prescribed time limit of 15 days) and another 3 weeks to receive the decision and to eventually be handed over an application form. Similarly, the two members of Parliament in charge of the report on the reform of the asylum procedure have highlighted that in 2013, the waiting period to obtain an appointment at the prefecture of Essonne was 2 days, while it was 16 days in Moselle, 20 days in Seine-Saint-Denis and 99 days in Lille.

Modification of the list of safe countries of origin: The Management Board of OFPRA has decided on 28 March 2014 to remove Ukraine from the list of safe countries of origin. On 5 March 2014, UNHCR had called states to remove Ukraine (instead of 3 days until now); a summon for a hearing has to be communicated to the applicant at least 30 days before the appeal stage: A new decree on the procedure related to the CNDA of 16 August 201311 has modified some of the procedural steps pertaining to the appeal stage: a longer period for asylum applications lodged in French overseas departments to be granted to these asylum seekers who have a total of 2 months to appeal the OFPRA decision; the deadline for appeal hearings explaining that it will avoid costly transfers, sometimes conducted in conditions which do not respect the dignity of the persons concerned. The Council of Europe Commission for Human Rights, Nils Mužnik has sent a letter to the Justice Minister on 17 December 2013 on the OFPRA’s appeal decisions entailing holding hearings in the immediate proximity of a place of deprivation of liberty, in which the applicants are being held or detained. This situation, combined with the fact that this place is under the authority of the Ministry of the Interior, which is also a party to the proceedings, could undermine the independence and impartiality of the court concerned, at least in the eyes of the applicants17. On 15 October 2013, the Justice Minister has responded to these concerns by setting-up an enquiry mission in charge of determining if the off-site hearing room located at Roissy airport is complying with European and national obligations. The two rapporteurs have handed over their conclusions to the Justice Minister on 17 December 2013 who has immediately announced the freezing of the opening of the site in the waiting area of Paris-Charles de Gaulle airport. The report does not challenge the necessity to have the judges come to the airport but stresses that several changes have to be made to respect the migrants’ rights.

Reception

Lack of housing solutions: According to the Ministry of Interior, only 32% of the asylum seekers entitled to an accommodation in a regular reception centre had been able to access such a centre on 30 June 2013 (19 008 asylum seekers housed under OUAC and 6 464 asylum seekers entitled to the reception scheme). The number of reception centres is therefore clearly not sufficient for the French scheme to provide access to housing to all the asylum seekers who should benefit from it in accordance with the Reception Conditions Directive. On 31 December 2013, there were 1 108 reception centres.18

Increase of the AIA allowance: Decree n° 27 December 2013 has set the daily amount of the temporary waiting allowance at 11.35 euros from 1st January 2014

Temporary allowance for Dubliners: Asylum seekers who fall under the Dublin procedure in France can get access to the temporary allowance until another effective transfer to another Member State, since an Instruction of the Ministry of Interior published on 23 March 2013. This instruction was confirmed by a Council of State decision of 30 December 2013 which states in paragraph 13 that by excluding from the granting of the minimal reception conditions the asylum seekers who had not complied with the obligation to move to the Member State found to be responsible under the Dublin regulation of 7 June 200119, the Ministry of Interior has failed to comply with European and national obligations.15 The Council of State reiter-ated that the reception conditions (i.e. temporary allowance) have to be granted until the effective transfer to another Member State. Besides, a Council of State decision of 12 February 201420 has recalled that, short of the transposition of article 16 of the Reception Conditions Directive, the withdrawal of reception conditions in case of flight of the asylum seeker into French law, the instruction to Prefects of 23 December 2013 to transmit to Pole emploi (French employment agency) the list of asylum seekers considered to be absconding “does not have the aim and cannot have the effect of resulting in the suspension of the granting of the temporary waiting allowance”.

Detention

Dozens of police attacks are reported each year in administrative detention centres. Noting the weakness of the information available on the proportion of psychiatric cases in the French administrative detention centres, the ‘General controller of places of freedom deprivation has recommended in 2014 that these centres and the relevant hospitals set up agreements by which mental health care would be accessible. He added that the regular presence of psychiatrists (be they independent or from hospitals) within the detention centres should be systematic.”

Data on the judicial review of the administrative detention: An NGO report demonstrates that 5,935 persons in detention centres have been expelled during the first 5 days (62 % of the 9,636 removals carried out in 2012), which means in practice that they have not been able to see the JLD judge and therefore did not benefit from any judicial review. This figure is even more impressive in French overseas departments where 96% of the removals are carried out during these first 5 days.

Proposal of off-site appeal hearings for detention and border procedures: A hearing room had opened in September in the administrative detention centre of Le Mesnil-Arnel (near Paris) and another one was planned to be used in the waiting area of Charles de Gaulle airport in January 2014. The authorities had justified the relocation of these appeal hearings explaining that it will avoid costly transfers, sometimes conducted in conditions which do not respect the dignity of the persons concerned. The Council of Europe Commissioner for Human Rights, Nils Mužnik has sent a letter to the Justice Minister on 17 December 2013 on the OFPRA’s appeal decisions entailing holding hearings in the immediate proximity of a place of deprivation of liberty, in which the applicants are being held or detained. This situation, combined with the fact that this place is under the authority of the Ministry of the Interior, which is also a party to the proceedings, could undermine the independence and impartiality of the court concerned, at least in the eyes of the applicants17. On 15 October 2013, the Justice Minister has responded to these concerns by setting-up an enquiry mission in charge of determining if the off-site hearing room located at Roissy airport is complying with European and national obligations. The two rapporteurs have handed over their conclusions to the Justice Minister on 17 December 2013 who has immediately announced the freezing of the opening of the site in the waiting area of Paris-Charles de Gaulle airport. The report does not challenge the necessity to have the judges come to the airport but stresses that several changes have to be made to respect the migrants’ rights.

1. Letter from Nils Mužnik to Ms Christiane Taubira, 2 October 2013.
2. Council of State decision n° 368741, 12 February 2014.
Germany

As of 1 December 2013, the concept of international protection has been introduced into German law, in implementation of the recast Qualification Directive (Directive 2011/95/EU). Accordingly, an asylum application is now defined as an application both for “asylum” -as defined in the German constitution- and for international protection (refugee and subsidiary protection) -as defined in the Qualification Directive. Furthermore, both the refugee definition and the definition of subsidiary protection have been transposed almost verbatim (instead of general references) into the Asylum Procedures Act.

People with subsidiary protection status are now legally entitled to a residence permit (replacing a discretionary provision, according to which they “should” be granted a residence permit). Before, people were entitled to a residence permit “as a rule”, so it could be denied under certain circumstances. People would then be left with a “tolerated” stay (Duldung).

Family members of people with subsidiary protection status have the same right to protection status (“family asylum”) as family members of refugees. Parents and siblings of minors with refugee status or subsidiary protection are now included in the definition of family members within the meaning of the “family asylum” provision.

In February 2014, the Federal Ministry of the Interior prepared a draft bill adding Serbia, Bosnia and Herzegovina and Macedonia to the list of safe countries of origin.

At the same time, the draft aims to give asylum seekers better access to the labour market: if the bill will be passed, they will be allowed to take up employment after three months in Germany (at the moment they are not allowed to work for the first nine months). The draft bill has been introduced to both chambers of parliament at the end of May 2014.

According to statistics published in January 2014, the number of positive decisions on subsequent asylum applications decreased by 15% in 2013, including with regard to subsequent asylum applications from Syria, which registered a 20% decrease.

Greece

The Directors of First Reception Centres (FRC-Screening Centres) can decide on the retention of the aliens staying at the FRC. A Regulation on the Appeals Authority under the Asylum Service was in force till January 2014.

The validity of ID cards for asylum seekers is four months, except for those coming from Albania, Bangladesh, Egypt, Georgia and Pakistan. The validity of their ID cards is 45 days.

According to a Decision of the Minister of Public Order and the Protection of Citizen which endorsed Legal Opinion no. 2014/14 of the Legal Council of the State, after the 18-month maximum detention period under EU law, a new detention order can be issued without time limit if the alien does not cooperate with the authorities to get repatriated. The Greek Council for Refugees lodged the first appeal against the “endless detention duration”. The Athens Administrative Court of First Instance ruled on 23 May 2014 (Decision 2255/23.5.2014) that indefinite detention (in the form of compulsory stay in a detention centre as defined by the State Legal Council Opinion 44/2014) is unlawful. As a consequence, an Afghan Refugee that had already been in detention for 18 months was released.

Some decisions at second instance have stopped returns from Greece to Bulgaria under the Dublin Regulation. Nevertheless, there are decisions which ordered Victims of Torture to return to Bulgaria.

Hungary

777% increase of asylum applications compared to 2012.

Subsequent applications have suspensive effect except if the subsequent application submitted after discontinuation (tacit or explicit) is found inadmissible or manifestly unfounded.

Applicants need to request for suspensive effect when appealing against the Dublin decision. Such a request does not have a suspensive effect. However, the Director General of the Office of Immigration and Nationality (OIN) issued an internal instruction that if a person requests for suspensive effect, the transfer should not be carried out until the court decides on the request for suspensive effect.

The OIN no longer requests a new age assessment, but regards the result of the age assessment ordered by the police at an initial stage of immigration procedure (the main method employed is the mere observation of the physical appearance) as a fact that should not be checked again.

For the purpose of family reunification the OIN now requests that all the documents bare an official stamp from the authorities of the country that issued them, proving that they are originals, as well as an official stamp from the Hungarian consulate. All documents have to be translated into English or Hungarian.

Subsequent asylum applicants are no longer detained in immigration detention (except those whose subsequent applications for asylum were rejected by the OIN as manifestly unfounded or inadmissible). They are now detained in asylum detention facilities if the grounds for detention exist.

In practice, asylum detention is not an exceptional measure: in the beginning of April 2014, over 40% of adult male first-time asylum seekers were detained.29

Despite recent improvements in the law, Dublin returnees whose asylum applications had been rejected at the first instance in Hungary are still not afforded an opportunity to seek effective remedies once they are returned to Hungary.25

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26. The changes which came into effect as of 1 December 2013 were not included in the previous report update.
30. Ibid.
Ireland

The recognition rate at first instance in Ireland rose again in 2013 and is currently around 15%-18% depending on calculation methods. From November 2013 subsidiary protection applications have been decided by the Office of the Refugee Applications Commissioner (ORAC) (they were previously decided by the Department of Justice). As part of ORAC’s investigation of the subsidiary protection application a person has an oral interview which they previously did not have. In addition a person receiving a negative decision on a subsidiary application has the right of appeal to the Refugee Appeals Tribunal (RAT). These changes are considered a response to the requirements suggested in the ruling of the Court of Justice of the EU in M. M. v. Minister for Justice.

ORAC will work through a backlog of outstanding subsidiary protection applications which numbers around 3000-3500 persons. In March 2014 ORAC announced a prioritisation process. Cases will be dealt with in two streams that will be considered simultaneously: Stream one will include applications processed on the basis of oldest applications first. Stream two will process the following cases first: age of applicants (unaccompanied children in the care of the Health Services Executive (HSE); aged out unaccompanied children; applicants over 70 years of age, who are not part of a family group); the likelihood applications are well-founded (including whether a Medico Legal Report indicates well-foundedness); the likelihood applications are well-founded due to the country of origin or habitual residence (Afghanistan, Chad, Eritrea, Iraq, Mali, Somalia, South Sudan, Sudan, Syria).

New asylum applicants in Ireland will continue to have their claim for refugee status decided before their subsidiary protection application. A person cannot apply for subsidiary protection unless they have been first refused refugee status. In 2012 the Irish Supreme Court made a reference to the Court of Justice of the European Union asking whether this requirement satisfies the requirements of Directive 2004/83/EC and, in particular, the principle of good administration to the identification of the appellant is removed). The Court of Justice stated in May 2014 that a person applying for international protection must be able to submit an application for refugee status and subsidiary protection at the same time and that there should be no unreasonable delay in processing a subsidiary protection application. The Irish Refugee Council, responding to the CJEU decision, stated that it provides a clear mandate for reform of the existing procedure in Ireland.

The RAT published a strategy statement in early 2014 which listed five high level goals for 2014-2017. These included deciding appeals to the highest professional standards; achieving and maintaining quality standards by the training and development of RAT Members; efficiently and effectively managing cases in the Superior Courts to which the RAT is a party; ensuring the good administration of the RAT to the highest professional standards.

In a significant change in previous practice, decisions of the RAT are now publicly available (information that may lead to the identification of the appellant is removed). A major criticism of the RAT in the past has been that decisions were not publicly available.

How the Dublin III Regulation will be interpreted by the Irish authorities is so far unclear, possibly considering the short time that it has been in effect for. An information note given to all asylum applicants about the Regulation seems to suggest that persons subject to the Regulation may have to request that an appeal is suspensive of transfer rather than the appeal automatically suspending transfer.

In April 2014 a legal challenge against Direct Provision was brought in the High Court. The applicants challenged the system of direct provision on a number of grounds, including the lack of statutory basis for direct provision and the nature of direct provision; however, that the system of direct provision is a violation of rights under the Irish Constitution, the European Convention on Human Rights and the European Charter of Fundamental Rights. The applicant is also challenging the refusal to consider the applicant’s right to work and the exclusion of asylum seekers and persons seeking subsidiary protection from accessing social welfare.

Italy

Italian legislation concerning asylum has been amended through the Legislative Decree n. 18/2014 “Implementation of Directive 2011/95/EU 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)”. This led to the adoption of some relevant changes. Firstly, more protective provisions for unaccompanied children have been adopted. Moreover, the residence permits issued to both refugees and beneficiaries of subsidiary protection have now the same duration, enabling an extension of the duration of the residence permit for subsidiary protection from 3 up to 5 years. In addition, beneficiaries of subsidiary protection benefit of the same rights recognised to refugees with regard, in particular, to family reunification.

“Mare Nostrum” was launched by Italian authorities as a “military and humanitarian” operation in the Channel of Sicily immediately after the tragic shipwreck which occurred on 3 October 2013 near the coast of Lampedusa, in order to reduce the number of deaths of migrants at sea. This operation, initiated officially on 18 October 2013, aims to strengthen surveillance and patrols on the high seas as well as to increase search and rescue activities. It provides for the deployment of personnel and equipment of the Italian Navy, Army, Air Force, Customs Police, Coast Guard and other institutional bodies operating in the field of mixed migration flows. According to the Italian Navy as of 24 August 2014 around 113,000 migrants have been rescued since the operation Mare Nostrum started (106,000 between 1 January and 24 August) in the area of the Mediterranean covered by this operation, with around 74% of the rescued migrants on the other hand were rescued by the Coast Guard, the Guardia di Finanza and commercial vessels. The vast majority of those rescued are likely to be in need of international protection. As of 20 July 2014, among the 85,000 persons that had arrived by sea to Italy, 22,000 were from Eritrea and 15,000 from Syria, while 25,000 asylum applications were submitted.

In response to the extraordinary arrivals of mixed flows registered this year in Italy, on 10 July 2014 the Italian Government has reached an agreement with the Regions and the local Authorities. The agreement is based on the principle of joint responsible collaboration among all the Institutional actors involved, and it aims at building a system for the reception as well as for the integration of asylum seekers and beneficiaries of international protection. The newly adopted reception system is divided into three phases: the first phase foresees the presence of rescue centers near the areas concerned with sea arrivals, a second phase is established for the reception and identification to be carried out in Regional hubs, and the third phase consists in secondary reception in decentralized structures within the National Protection System for Asylum seekers and Refugees (SPRAR).

The new approach consists in establishing a governance system including also reception mechanisms for unaccompanied minors, who will be hosted in specialized and SPRAR centers.

The national reception system (SPRAR) has been enlarged in order to respond to the increased flows of migrants arrived on national territory. The Ministry of Interior, through its decrees of July and September 2013, has foreseen an increase of the accommodation capacity of the SPRAR system to up to 16,000 places for the three-year period 2014-2016.

As a result of these decrees, the Ministry of Interior announced that the capacity of the SPRAR System will be enhanced to up to 20,000 places during the next three years (2014-2016) Ministry of Interior Decrease n. 9/2013 of the 30 July 2013, and Decreve of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration). At present, the number of reception places financed amounts to 13,020 within the SPRAR system; while an additional 6.490 places will be made available during this three-year period.
In December of 2013, the European Court of Human Rights (ECtHR) judgments Suso Musa v. Malta48 and Aden Ahmed v. Malta47 became final. The two judgments assessed Malta’s detention policy in terms of Article 5, whilst Aden Ahmed also delved into living conditions compatibility with Article 3. In both cases the Court found Malta to be in breach of the Convention, and in Suso it indicated general measures Malta is required to take in order to prevent other similar violations in the future.

In 2013, the Office of the Refugee Commissioner shifted the level of protection granted to Syrian asylum seekers, mainly by eliminating the distinction made earlier between Syrians reaching Malta after the start of the conflict and those who had been living in Malta prior to the start of the hostilities.

In a number of cases in 2013 the Refugee Appeals Board disagreed with the assessment that the harm feared by Syrian asylum seekers rendered them eligible only for Temporary Humanitarian Protection. First-instance decisions were therefore overturned and the asylum seekers concerned granted subsidiary protection. At around the same time, all Syrian applicants who had been granted THP had their protection changed to subsidiary protection. Currently, all Syrian applicants who prove their Syrian nationality are granted, as a minimum, subsidiary protection. A number of persons have also been recognised as refugees.

There are currently 2 immigration detention facilities in use, 1 in Safi Barracks – B Block – and 1 in Lyster Barracks – Hermes Block. The facilities known as the Warehouses in Safi Barracks were closed for refurbishment at the beginning of 2014 and have not been used since. All the facilities are used to detain both asylum seekers and immigrants awaiting removal. At the end of 2013, there were around 500 detainees, with more than 1,900 individuals passing through detention throughout the year.50

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The significant influx also resulted in various logistic problems, especially regarding Eritrean interpreters and immigration officers. At the moment, due to the above-mentioned problems, in most cases Eritrean nationals are referred to the extended procedure. The IND indicates that the procedure for most Eritreans will start again in October 2014. Total amount of applications: 17,190 in 2013 of which 2,790 were subsequent applications.

Two main grounds on which an asylum permit can be granted are abolished. This concerns the categorical protection ground (Article 29 paragraph 1 under D) and the trauma policy ground (Article 29 paragraph 1 under C). A new system for the examination of subsequent Applications introducing a one-day-review – test is introduced. In one day there will be examined whether there are new facts or circumstances since the last procedure. If so, a permit can be granted or more investigation has to be done and the asylum seeker is directed the general procedure.

Practice shows that the one-day-review is not done in one day. The review takes up to three days. On the first day, an extensive interview takes place followed by a written intention to reject (or to grant) asylum. On the second day, the lawyer submits their opinion in writing with regards to the written intention (in case of rejection). On day three, the IND decides either to grant or refuse asylum and hands out the formal decision. When the IND cannot assess the asylum claim within those three days, it has to refer case to the short asylum procedure or even to the extended regular procedure. Practice shows that this frequently happens.

Introduction of no cure, less fee. Lawyers will receive a lower compensation for work relating to subsequent asylum applications if the appeal has been declared inadmissible (instead of four “points” they will receive two “points”).

When there is a significant risk of absconding, asylum seekers subject to a transfer under the Dublin Regulation can be detained. According to the notes of the Parliament relating to the amendments to the Alien Act a ‘significant risk’ is demonstrated when at least two ‘severe’ grounds are applicable. These severe grounds are the following:

- the asylum seeker has entered the Netherlands irregularly and unlawfully absconded the supervision of the Dutch authorities;
- in an earlier stage the person has received some kind of a decision which entitled an obligation to leave the Netherlands but which was not obeyed;
- the person did not cooperate with the determination of their identity and nationality; threw away their identification papers; used forged identification papers or the asylum seeker made very clear they will not cooperate with the transfer to another member state.

As of May 2014, families with under age children who are applying for asylum at the border are, as a rule, no longer detained at the airport but referred to a reception centre on the territory, except when there is a suspicion of human trafficking or in case Article 1F of the 1951 Geneva Refugee Convention (exclusion clause) might apply.

The Qualification Directive has been implemented in national law but this did not result in major changes. The Asylum Procedure Directive and the Reception Directive have not been transposed yet nor has any draft law been presented so far.

47. See Asylum Information Database, Country Report Malta – Overview of the main changes since the previous report update, accessed July 2014.
48. ECtHR, Case of Suso Musa v. Malta, Application no. 42337/12, Judgment of 23 July 2013.
49. ECtHR, Case of Aden Ahmed v. Malta, Application no. 55352/12, Judgment of 23 July 2013.
50. UNHCR Malta, Malta and Asylum: Data at a glance.
51. See Asylum Information Database, Country Report the Netherlands – Overview of the main changes since the previous report update, accessed July 2014.
The largest number of asylum seekers per year in the history of Poland (around 15,000) and the largest number of Dublin "take charge" requests directed to Poland (around 10,000) were recorded in 2013.

In the new Law on Foreigners, which entered into force on 1 May 2014, asylum proceedings and return proceedings are separated. This means that a negative decision on granting protection is no longer accompanied by a return order.

There were concerns in 2013 about the practical application of the Dublin II Regulation, which resulted in the separation of asylum-seeking families. Such practice was most commonly used in cases of foreign citizens who lodged an asylum application to the Head of the Office for Foreigners in Poland and after that travelled on to Germany. Subsequently their procedure in Poland was discontinued. German authorities transferred only some family members to Poland. The most significant issue was that the separated asylum seekers were vulnerable and dependent on their family members.

The new Law on Foreigners increased the maximum detention time limits. In asylum proceedings it is 6 months and in return proceedings – 18 months. It also introduced alternatives to detention in both asylum and return proceedings (reporting obligation, deposit, staying in assigned place).

New monitoring of the detention centres conducted in January-February 2014 showed that the detention conditions for asylum seekers and returnees were improved in comparison to 2012. However, some major problems still persist. There is no system of identification of vulnerable detainees, access to psychological and legal assistance in detention is problematic. Also, there were even more children detained in Poland in 2013.

In the end of 2013 two NGOs held a monitoring of the border crossing checkpoint in Terespol (at the border with Belarus), which is the main entry point in Poland for asylum seekers. In 2012 and 2013, cases were reported where persons were denied access to the territory at this checkpoint. From 1 January 2013 to 17 September 2013 there were 4078 applications (not applicants) for asylum submitted in Terespol and 13348 decisions on refusal of entry issued. According to the Migration Board, the reason for this refusal was the fact that there are only 235 places available in the detention centres of the Swedish Migration Board, it is obvious that a relatively small number considering that more than 54,000 asylum seekers came to Sweden in the same year. Given the fact that there are only 235 places available in the detention centres of the Swedish Migration Board, it is obvious that the most individuals were detained for relatively short periods of time. Even though the use of supervision as an alternative to detention is always considered as a first resort, only 405 decisions on supervision were issued during 2013.

In 2013, approximately 2,900 persons were detained (mostly rejected asylum seekers) in Sweden, which is a comparatively small number considering that more than 54,000 asylum seekers came to Sweden in the same year. The Migration Board subsequently concludes agreements with the municipalities that the reception of unaccompanied children seeking asylum, which means among other things that the municipalities must ensure their accommodation and care. The country administrative boards are responsible for negotiation agreements with the municipalities on the reception of such children. The Swedish Migration Board in 2014 has received 6,500 unaccompanied children and young people applied for asylum and from January to August 2014 more than 4.121 unaccompanied children have arrived in Sweden. According to the Migration Board prognosis more than 6,500 unaccompanied children are expected to seek asylum in Sweden during 2014.

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The High Court held that the decision not to review the rate of asylum support paid to destitute asylum seekers was unlawful (R (on the application of Refugee Action) v SSHD [2014] EWHC 1033 (Admin)).

Followings the abolition of legal aid for human rights claims on April 1st 2013, there have been further cuts in legal aid affecting asylum seekers:

- Reducing the rate paid for representation of immigration and asylum Upper Tribunal cases;56
- Removing legal aid for borderline cases in the courts;57
- Removing legal aid for applications for permission to apply for judicial review.58

52. See Asylum Information Database, Country Report Poland – Overview of the main changes since the previous report update, accessed July 2014.
54. Migration Board, for more information see here.
55. See Asylum Information Database, Country Report the United Kingdom – Overview of the main changes since the previous report update, accessed July 2014.
56. The Civil Legal Aid (Remuneration) (Amendment) Regulations 2013 No. 2877.
57. The Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2014 No. 131.
58. The Civil Legal Aid (Remuneration) (Amendment) (No. 3) Regulations 2014 No. 607.
ANNEX III
Selected Asylum-Related Case-law of the ECtHR and the CJEU
The summaries (in English) and full texts of the judgments (in English or French) listed in this Annex are available on the website of the European Database of Asylum Law, www.asylumlawdatabase.eu

Court of Justice of the European Union

A) Asylum Procedures
Case C-604/12, H. N. v Minister for Justice, Equality and Law Reform and Others, Judgment of 8 May 2014.

B) Dublin
Articles 3(1) and 3(2) of Council Regulation (EC) No 343/2003 of 18 February 2003; Articles 1, 4, 18 and 47 of the Charter; Protocol (No 30) on the application of the Charter to Poland and to the United Kingdom (OJ 2010 C 83, p. 313; ‘Protocol (No 30)’).
Articles 3(2) and 15 of Council Regulation (EC) No 343/2003 of 18 February 2003.
Case C-648/11, MA, BT, DA v Secretary of State for the Home Department, Judgment of 6 June 2013.
Case C-4/11, Kaveh Puid v Bundesrepublik Deutschland, Judgment of 4 November 2013.
Case C-394/12, Shamso Abdullahi v Bundesassyaltam, Judgment of 12 December 2013
Articles 10(1) and 19(2) of Council Regulation (EC) No 343/2003 of 18 February 2003; Article 4 of the Charter.

C) Reception Conditions
Case C-79/13, Selver Saciri and Others v Federaal agentschap voor de opvang van asielzoekers, Judgment of 27 February 2012.
D) Return and Detention
Case C-534/11, Mehmet Arslan v Policie ČR, Krajské ředitelství políce Ústeckého kraje, odbor cizincův police – Czech Republic, Judgment of 30 May 2013.


E) Qualification Directive
Joined Cases C-199/12, C-200/12 and C-201/12, X, Y and Z v. Minister voor Immigratie en Asiel, Judgment of 7 November 2013.


F) Pending references


European Court of Human Rights

A) Access to the territory
Hirsi Jamac and Others v. Italy, Application no. 27765/08, Judgment of 23 February 2012.

Violation of Article 3 ECHR, Article 4 of Protocol No. 4 and Article 13 taken together with Article 3 ECHR and of Article 13 taken together with Article 4 of Protocol No. 4.

B) Dublin

Greece: Two violations of Article 3 ECHR (detention and living conditions); Violation of Article 13 taken in conjunction with Article 3 ECHR.

Belgium: Two Violations of Article 3 ECHR; Violation of Article 13 ECHR taken in conjunction with Article 3 ECHR;

Sharifi v. Austria, Application no. 60104/08, Judgment of 5 December 2013.

No Violation of Article 3 ECHR (Dublin transfer to Greece).

Safai v. Austria, Application no. 44689/09, Judgment of 7 May 2014.

No Violation of Article 3 ECHR (Dublin transfer to Greece).

Mohammed v. Austria, Application no 2283/12, Judgment of 6 June 2013.

No violation of Article 3 ECHR; Violation of Article 13 ECHR in conjunction with Article 3 ECHR (Dublin transfer to Hungary).

Mohammadi v. Austria, Application no. 71932/12, Judgment of 3 July 2014.

No violation of Article 3 ECHR (Dublin transfer to Hungary).

C) Access to an effective remedy

Violation of Article 13 ECHR taken in conjunction with Article 3 ECHR (asylum application submitted at the border); no violation of Article 5 (1) (f) ECHR.

Abdolkhani and Karimnia v Turkey, Application no. 30471/08, Judgment of 22 September 2009.

Violation of Article 13 ECHR in relation to the applicant’s complaint under Article 3 ECHR; Violations of Articles 5 (1), (2) and (4) and Article 3 ECHR.

I.M. v France, Application no. 9152/09, Judgment of 2 February 2012.

Violation of Article 13 ECHR taken in conjunction with Article 3 ECHR (accelerated asylum procedure).

Singh and Others v Belgium, Application no. 33210/11, Judgment of 2 October 2012.

Violation of Article 13 ECHR taken in conjunction with Article 3 ECHR.


Violation of Article 13 ECHR taken in conjunction with Article 2 and 3 ECHR; Violations of Articles 5 (1) and 4 ECHR; No violations of Articles 5 (2) and Article 4 of Protocol No. 4 ECHR.


No violation of Article 13 ECHR (Accelerated asylum procedure); violation of Article 3 ECHR.


Violation of Article 13 ECHR taken in conjunction with Article 3 ECHR; No violation of Articles 3 and 8 ECHR.


Violation of Article 13 ECHR taken in conjunction with Articles 2 and 3 ECHR.

D) Detention

Violation of Article 3 ECHR (detention conditions); Violation of Article 5 (1) and (4) ECHR.

Muskhadzhiyeva and Others v Belgium, Application no. 41442/07, Judgment of 19 January 2010

Violation of Articles 3 and 5(1) ECHR with respect to children; No violation of Articles 3 and 5(1) ECHR with respect to their mother; No violation of Article 5 (4) with respect to all applicants.

Rahimi v. Greece, Application no. 8687/08, Judgment of 5 April 2011.

Violation of Articles 3, 13, 5 (1)(f ) and 5(4) ECHR (detention of an unaccompanied child).

Confirmed in Housein v. Greece, Application no. 71825/11, Judgment of 24 October 2013

Violation of Article 5(1) and Article 5(4) ECHR.


Violations of Article 5(1) and (4), Article 8, and Article ECHR.


Violation of Article 5(1) ECHR.


Violation of Articles 3, 5 (1) and (4) ECHR with regard to detention of children; Violation of Article 8 ECHR in respect of the administrative detention of the whole family.


Violation of Article 3 ECHR concerning the detention of the children; No violation of Article 3 ECHR concerning the mother; Violation of Article 5(1) ECHR concerning the detention of the mother and her three children.


Violation of Article 3 ECHR, Article 5 (4) and 13 ECHR concerning the detention of a family with children, including a pregnant woman; No Violation of Article 5(1) ECHR.

Amie and Others v. Bulgaria, Application no. 58149/08, Judgment of 12 February 2013

Violation of Articles 5 (1) and 5(4) of the ECHR.
Firoz Muneer v Belgium, Application no. 56005/10, Judgment of 11 April 2013.
Violation of Article 5(4) ECHR; No violation of Article 5(1) ECHR.

Aden Ahmed v Malta, Application no. 55352/12, Judgment of 23 July 2013.
Violation of Articles 3 (detention conditions) and 5(1) and 5(4) ECHR.

Suso Musa v Malta, Application no. 42337/12, Judgment of 23 July 2013.
Violation of Articles 5(1) and 5(4) ECHR.

Horshill v Greece, Application no. 70427/11, Judgment of 1 August 2013.
Violation of Article 3 ECHR.

M.D. v. Belgium, Application no. 56028/10, Judgment of 14 November 2013
Violation of Article 5(4) ECHR concerning the applicant’s detention pending a Dublin transfer to Greece.

Violation of Article 3 ECHR (detention conditions) and violation of Article 5(4) ECHR; No violation of Article 5(1) ECHR.

Violation of Article 3 ECHR (detention conditions) and Article 13 ECHR taken together with Article 3 ECHR concerning the detention of an asylum seeker.

Violation of Article 5(4) ECHR.

Violation of Article 3 ECHR (detention conditions) and of Article 5(4) ECHR; Violation of Article 5(1) ECHR with regard to the first applicant; No violation of Article 5(1) ECHR with regard to the second applicant.