aida
Asylum Information Database

MIND THE GAP: AN NGO PERSPECTIVE ON CHALLENGES TO ACCESSING PROTECTION IN THE COMMON EUROPEAN ASYLUM SYSTEM

Annual Report 2013/2014

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 AIDA project

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).[1] 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*).[2]

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.

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.

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 /or 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.[1] 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).[2] 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.[3]

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[4] 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 6 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.[5] Developing countries host 10.1 million or 86% 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[6] (24% of the global total).[7] 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.[8] 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.[9]
As described in more detail below, as more migrants take the risk of travelling by sea, the deaths on Europe's doorstep continue to escalate. The search and rescue efforts of Italy with the Mare Nostrum operation (see Chapter III – Access to the Territory) have contributed to reducing the number of deaths at sea, even though about 1,000 deaths have already been recorded in the first half of 2014.

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 was allocated to Italy, Greece and Frontex in 2013.[10] 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

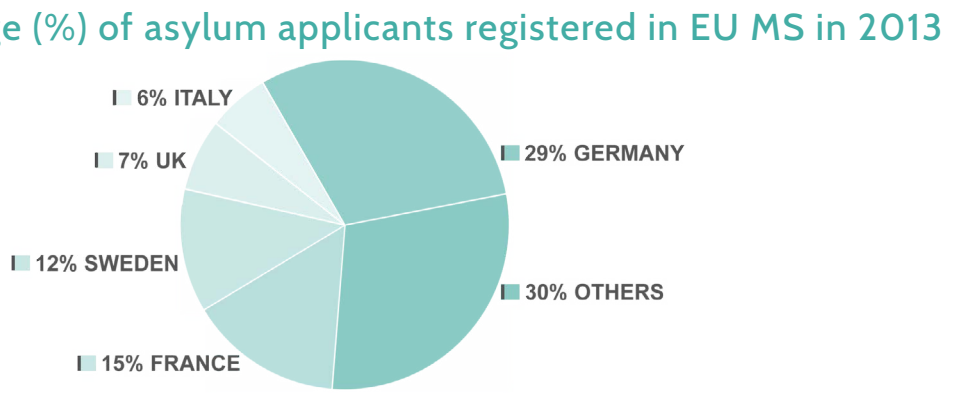
1. For the purpose of this report and for reasons of internal consistency, only statistics published by Eurostat are used, which have been either extracted from the Eurostat online database or from publications or news releases. Some figures are also taken from the EASO Annual report on the situation of asylum in the EU in 2013, but are still based on Eurostat data. However, UNHCR also publishes statistics on asylum applications and recognition rates. It is important to note that UNHCR data, especially with regard to recognition rates may, in some instances, differ from those of Eurostat because of different definitions and categories used..
2. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded), migr_asyappctza, extracted on 12 August 2014.
3. Eurostat Newsrelease, Asylum in the EU28, Large increase to almost 435 000 asylum applicants registered in the EU28 in 2013. Largest group from Syria. 46/2014 – 24 March 2014, p. 1.
4. This number includes internally displaced persons.
5. UNHCR, Global Trends 2013: War's Human Cost, June 2014, p. 2.
6. UNHCR, Global Trends 2013: War's Human Cost, June 2014, p. 17.
7. UNHCR, Global Trends 2013: War's Human Cost, June 2014, p.11.
8. UNHCR, Syrian Refugees in Europe. What Europe Can Do to Ensure Protection and Solidarity (hereafter 'Syrian Refugees in Europe'), 11 July 2014, p. 10.
9. Marina Militare Italiana, information received on 27 August 2014.
10. It should be noted also that in 2013, nine Member States, Bulgaria, Germany, France, Greece, Hungary, Italy, Malta, the Netherlands and Cyprus, received 36.34 million euro for emergency measures under the European Refugee Fund. See COM(2014) 288 final, Communication from the Commission to the European Parliament and the Council, 5th Annual Report on Immigration and Asylum (2013), Brussels, 22 May 2014, p. 6.

Fund.[11] In addition the European Commission allocated another 7.9 million euro to Frontex to strengthen its operations.[12]

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 (66,265 – 15%), Sweden (54,365 – 12%), the United Kingdom (30,110 – 7%) and Italy (26,620 – 6%), as illustrated below.[13]

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



Source: Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded), migr_asyappctza, 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 partly 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

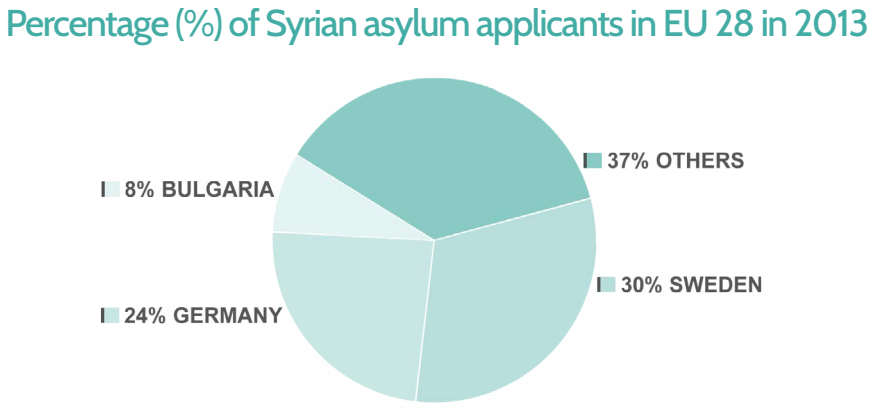
In 2013, Syria became the main country of origin of asylum seekers in the EU, with 50,470 applicants followed by Russia (41,270), Afghanistan (26,290), Serbia (22,380) and Pakistan (20,885).[14]

Syria

As the conflict in Syria continued and worsened throughout 2013, the number of Syrians seeking international protection in the EU consequentially 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.[15] 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.[16] 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.[17] Higher numbers than in 2012 were also recorded in other EU Member States but in much lower proportions.

11. European Commission, ibid., p. 6.
12. European Commission, ibid., p. 5.
13. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded), migr_asyappctza, extracted on 12 August 2014.
14. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded),migr_asyappctza, extracted on 12 August 2014.
15. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Monthly data (rounded) [migr_asyappctzm], accessed 26 August 2014.
16. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded),migr_asyappctza, extracted on 12 August 2014.
17. Ibid.

Chart 2: Distribution of Syrian asylum applicants in EU 28 in 2013



Source: Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded), migr_asyappctza, 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.[18] 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.[19] 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.

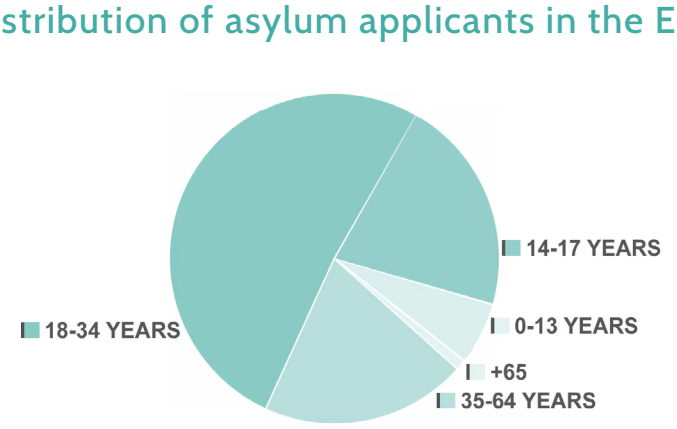
Afghanistan

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.[20] The main countries of destination in the EU were Germany, Sweden, Austria, Hungary, and Italy who all recorded over 2,000 Afghan applicants each.

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



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

18. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data *(rounded) [migr_asyappctza],* extracted on 13 August 2014.
19. EASO, Newsletter July/August 2013.
20. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data *(rounded) [migr_asyappctza],* 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 +4 (12,640 in the EU-28) in 2013.[21] 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.[22]

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 by the continuing differences 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%.[23] 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.[24]

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.

Divergences 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.[25] They were followed by citizens of Afghanistan (12%) and Somalia (7%).

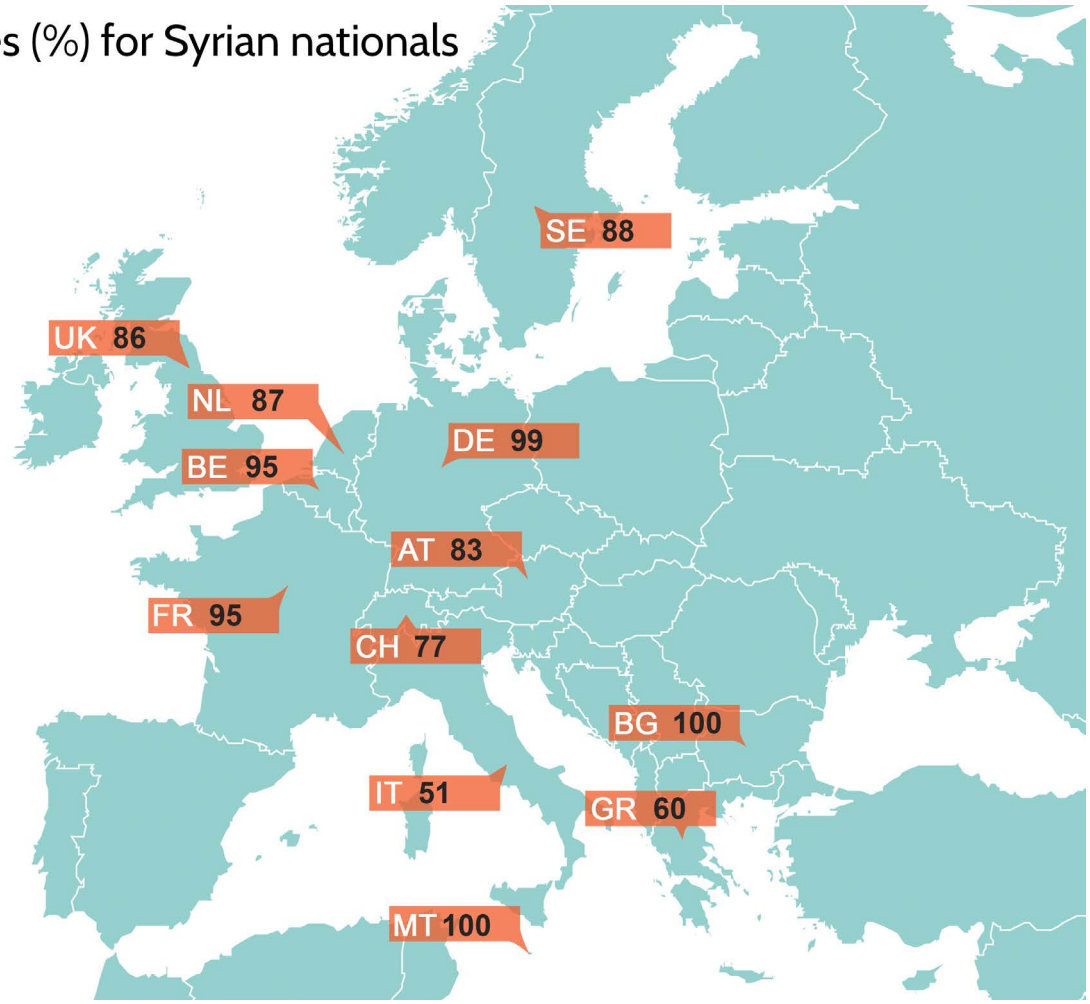
Discrepancies in recognition rates for the same nationalities of asylum seekers continue to exist among EU Member States. By way of example, the maps below show recognition rates with regard to decisions taken at first instance on asylum applications lodged by Syrian, Somali and Russian nationals.

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.[26] 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%).[27] 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 13 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.
24. Eurostat news release. Asylum decisions in the EU 28. *STAT/14/98*, 19 June 2014. See the table reproduced in Annex I.
25. Ibid.
26. UNHCR, International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update II, 2013, pp. 7-8.
27. Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data *(rounded) [migr_asydcfsta],* extracted 14 August 2014.

Recognition rates (%) for Syrian nationals

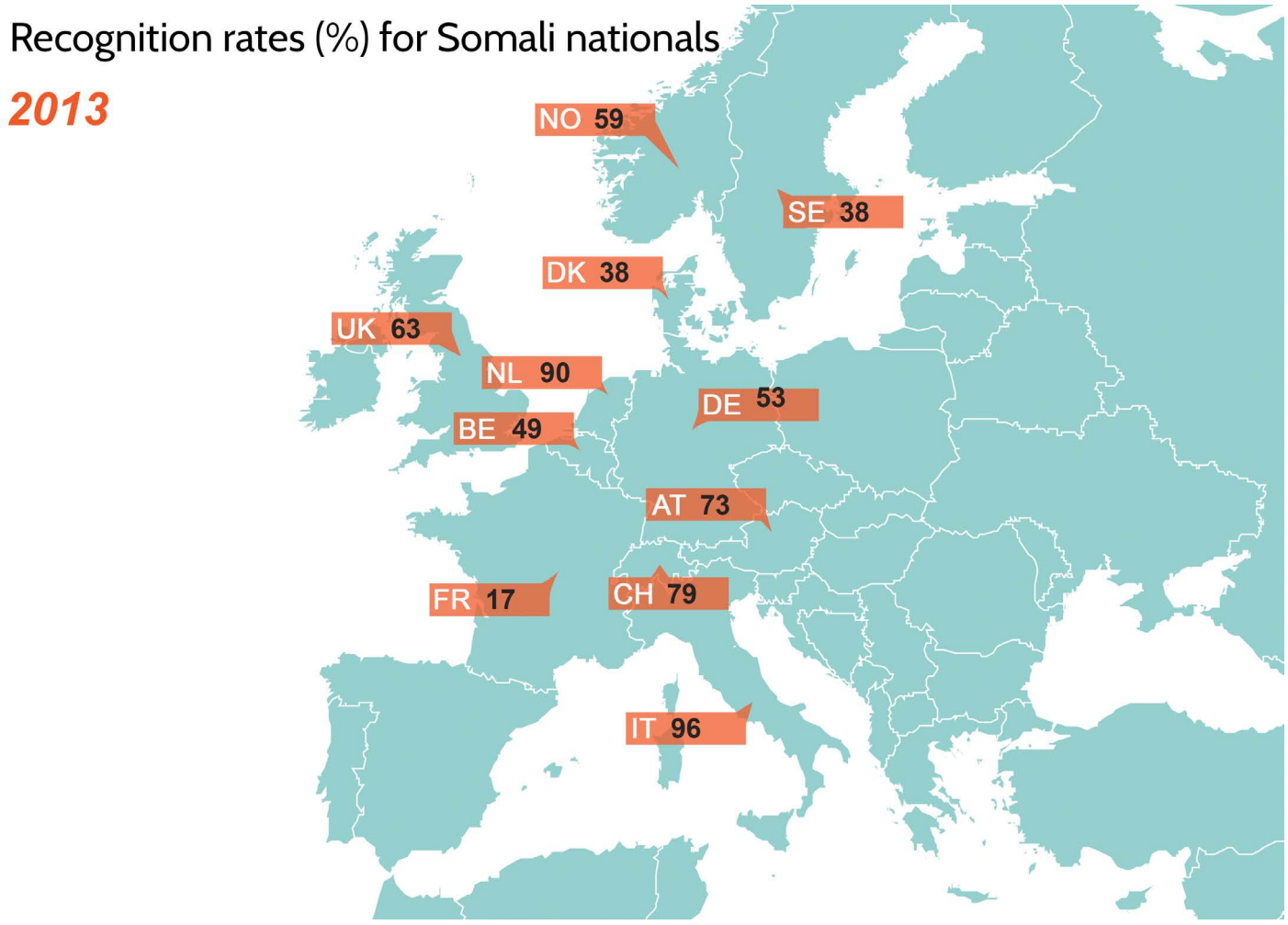
2013



All rates are for all types of protection status granted (refugee status, subsidiary protection or humanitarian protection and at first instance only. Source Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded) [migr_asydcfsta], extracted 14 August 2014.

While the recognition rates for Syrian nationals suggest a relatively homogenous approach in most EU Member States as regards their need for international protection, this is still not the case for other nationalities. Taking the example of asylum applications of Somali nationals in the EU, recognition rates at first instance in 11 European countries vary from 17% in France[28] and 38% in Sweden to 90% in the Netherlands and even 96% in Italy.

28. The total recognition rate at first instance and appeal for Somali nationals (OFPRA and CNDA) was 43% in 2013.

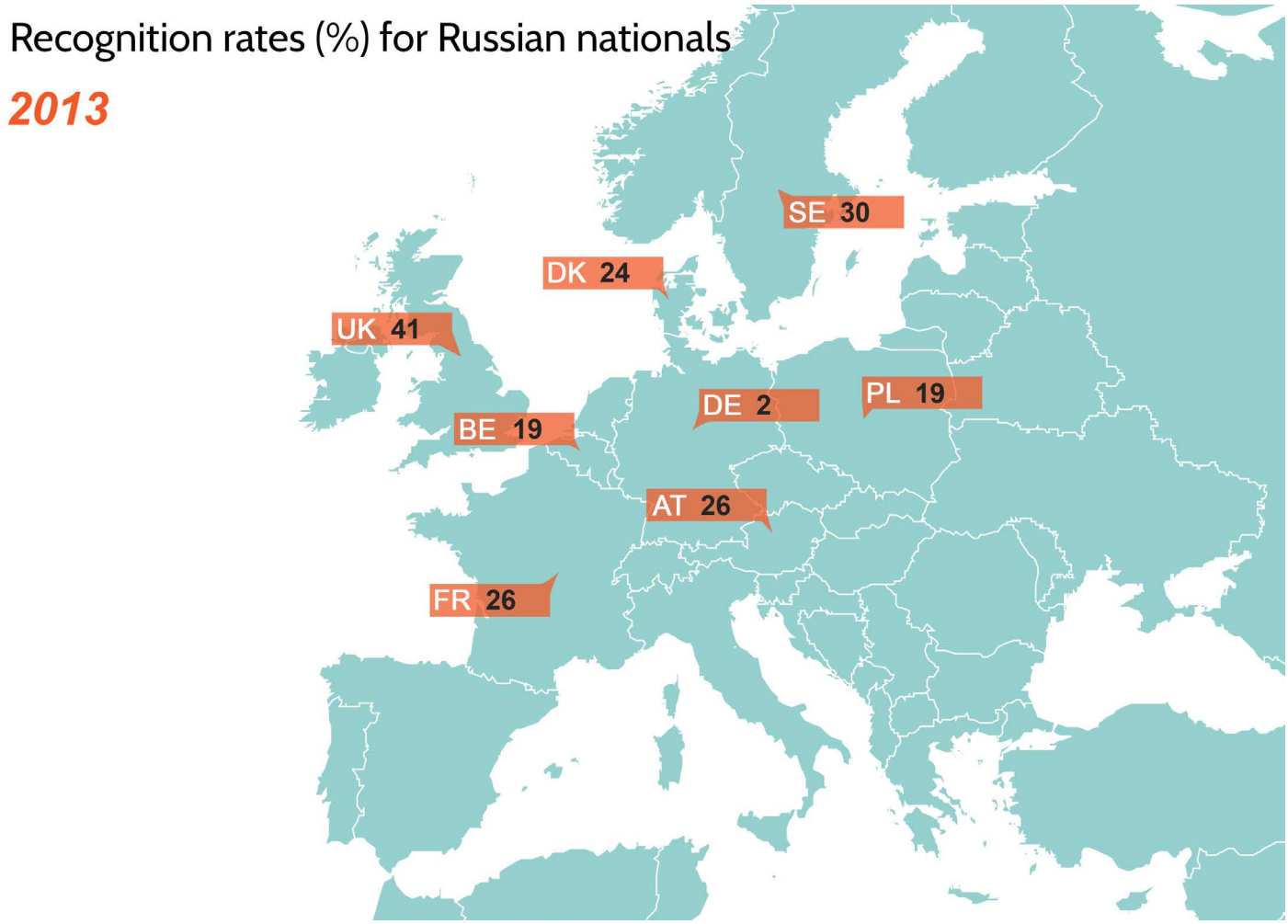


All rates are for all types of protection status granted (refugee status, subsidiary protection or humanitarian protection and at first instance only. Source Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded) [migr_asydcfsta], extracted 14 August 2014.

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 protestors 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]

29. See *EASO,* EASO Quarterly Report – Q3 2013, p. 7 and EASO, Newsletter July/August 2013.
30. Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data *(rounded) [migr_asyappctza]*, extracted 12 August 2014.



All rates are for all types of protection status granted (refugee status, subsidiary protection or humanitarian protection and at first instance only. Source Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded) [migr_asydcfsta], extracted 14 August 2014.

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%).

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

Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr_asyappctza]. Data extracted 12 August 2014; and Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded) [migr_asydcfsta], extracted 14 August 2014.

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.[31] In addition, there were high numbers of unaccompanied children reported from Bosnia and FYROM in the fourth quarter of 2014[32] 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.[33] 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[34] and in an article by Eurostat dated March 2014.[35] 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.[36]

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.

31. EASO, Annual Report on the Situation of Asylum in the European Union 2013 (hereafter 'Annual Report 2013'), p. 46.
32. Eurostat, Data in Focus – 03/2014, p. 17.
33. ECRE, Dutch Council for Refugees, Hungarian Helsinki Committee and Asylum Aid, *Actors of Protection and the Application of the Internal Protection Alternative. European Comparative Report,* forthcoming.
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.
36. See EASO, Annual Report 2013, at p. 31.

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 access to 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.[37] While no accurate figures exist, several thousands are believed to have died en 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[38] which was then politically endorsed by the European Council in its December 2013 meeting[39] and in the strategic guidelines, discussed further below.

37. See UNHCR, *Syrian Refugees in Europe*, p. 10.
38. COM(2013) 869 final, *Communication from the Commission to the European Parliament and to the Council on the work of the Task Force Mediterranean* (hereinafter 'Communication Task Force Mediterranean'), Brussels, 4 December 2013.
39. European Council, *European Council Conclusions*, 20 December 2013.

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 sea border surveillance in the context of operations coordinated by Frontex. 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 there was little appetite among Member States to go beyond existing policy frameworks and commitments 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 read as an overview of measures that the EU was already implementing as part of pre-defined policies, be it in the context 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 cooperation with 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 unstable 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 is 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 by the EU on 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 Europol strengthen its own initiatives in this field, Member States are "encouraged to systematically make available relevant information, including personal data to Europol 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 Safety Agency.

Reinforced border surveillance activities must contribute to saving lives but at the same time must allow the EU to intensify the monitoring of "known departure points for irregular migration in the whole of the Mediterranean, including activities in ports and at coasts serving as hubs for irregular migrants".[44]

This further illustrates the ambiguity of the Union's strategy on migration and border management. On the one hand, the explicit reference to saving lives as a key objective of border surveillance in the Commission Communication as well as in the recently adopted legal instruments related to rescue at sea,[45] reaffirms that border surveillance has a wider purpose than the mere protection of external borders and the prevention of irregular entry. On the other hand, the emphasis on the need to increase intelligence gathering about departure points, the ongoing efforts of EU agencies such as Frontex to engage in risk analysis as regards migratory flows, and the use of sophisticated technology to detect irregular migrants reaffirms the intention of increasingly moving the border further south and east.

Seen from this perspective, the Task Force Mediterranean and the list of measures it identified simply confirms the externalisation of border controls and migration management that has been going on for a number of years already. The EU and the Member States have built a panoply of measures that serve a strategy of disrupting as early as possible migratory movements and stop irregular migration to the EU at an early stage. These measures range from restrictive visa requirements, sanctions on carriers responsible for irregular entry of third country nationals and readmission agreements to "softer" instruments such as the posting of immigration liaison officers in main countries of origin and transit or the launch of information campaigns in third countries aiming at deterring potential migrants. All such measures may obviously interfere with the right to seek and enjoy asylum from persecution as guaranteed in Article 14 (1) of the UN Universal Declaration of Human Rights and may prevent refugees from effectively exercising their right to asylum as guaranteed under Article 18 of the Charter of Fundamental Rights of the European Union.

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 EMSA.
41. SWD(2014) 173 final, *Commission Staff Working Document. Implementation of the Communication on the work of the Task Force Mediterranean*, Brussels, 22 May 2014.
42. For more information on EUBAM, see the External Action Service's dedicated *webpage*.
43. European Commission, *Communication Task Force Mediterranean*, p. 15.
44. Idem, p. 18.
45. See below, section 1.2.

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 a specific strand of action is dedicated to regional protection programmes, resettlement 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.[46]

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 a missed opportunity. 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".[47] Moreover, this is again linked to a feasibility study on possible joint processing of protection claims outside of the European Union, 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.[48] In this regard, the explicit reference to such possible joint processing being "without prejudice to the existing right of access to asylum procedures in the EU" 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 blurred by the above mentioned German and UK plans. In ECRE'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.[49] Moreover, it raises a range of complex legal and practical questions as to how access to key procedural guarantees and fundamental rights can effectively be ensured in such context.[50] Recent jurisprudence of the European Court of Human Rights (ECtHR) established that the principle of *non refoulement* applies extraterritorially as soon as States have effective control over individuals and that this implies the observance of procedural safeguards such as access to legal assistance, interpretation and information and access to an effective remedy.[51]

Finally, the Task Force Mediterranean commends 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.[52] 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 operations such as Mare Nostrum. However, in this regard it should be noted that 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 has been announced as recent as 27 August 2014.[53] The operation, basically a merging of existing Frontex operations Hermes and Aneas, aims to complement the efforts of Italy through its Mare Nostrum operation. While politically an important breakthrough for the Italian Presidency, it remains uncertain when the new Frontex operation will start and more importantly what the scope of the operation will be as well as the assets that will be dedicated to it.

Eventually, as it is 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 Mediterranean confirms the priority given to the activities related to cooperation with third countries in the Middle East and North Africa focussing in particular on improving asylum and border management systems as well as the implementation of RPP.[54] 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 a real boost to new approaches regarding access to protection for persons fleeing persecution and war, the Task Force Mediterranean mainly opted for the classic mix of stepping up border controls and cooperation with third countries.

46. See also section 4 below.
47. European Commission, *Communication Task Force Mediterranean*, p. 13.
48. See for instance Amnesty International, UK/EU/UNHCR, *Unlawful and Unworkable – Amnesty International's views on proposals for extra-territorial processing of asylum claims*, IOR 61/004/2003.
49. See ECRE, *ECRE Submission to the European Commission Consultation on the Future of Home Affairs Policies. An Open and Safe Europe – What Next?* (hereafter 'Submission to the European Commission Consultation on the Future of Home Affairs Policies'), January 2014.
50. See on this issue also Adviescommissie voor Vreemdelingenzaken, "Advies 'External Processing' uitgebracht aan de Minister voor Immigratie en Asiel (Opinion 'External Processing' to the Minister of Immigration and Asylum)", Den Haag, December 2010.
51. See ECtHR, *Hirsi Jammaa and Others v.Italy*, Application No. 27765/09, Judgment of 23 February 2012.
52. On the Mare Nostrum Operation see chapter III, section 1.
53. See European Commission, *Statement by Commissioner Malmström after the meeting with Italian Interior Minister Alfano, Brussels*, 27 August 2014.
54. See SWD(2014) 173, *Commission Staff Working Document. Implementation of the Communication on the Work of the Task Force Mediterranean*, Brussels, 22 May 2014 and SWD(2014) 173 final, Part 2/2.

1.2 The External Sea Border Surveillance Regulation and Eurosur Regulation

The adoption of the Eurosur (European Border Surveillance System) Regulation[55] and the Regulation relating to External Sea Border Surveillance in the context of Frontex Operations[56] can be seen as two sides of the same coin as far as the surveillance of the external sea borders are concerned. While the Eurosur Regulation basically aims at setting up a system that should allow Member States and Frontex to identify and detect migratory movements at sea faster 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.

At the time the Eurosur Regulation entered into force on 2 December 2013, the fate of the External Sea Border Surveillance 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 further 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 second shipwreck on 11 October off the coast of Lampedusa those States changed their position and were willing to negotiate on the one EU 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 fundamental 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 an extensive provision on the protection of fundamental rights and the principle of *non refoulement* which 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 the high seas which means that EU law now explicitly endorses the extraterritorial applicability of the principle of *non refoulement*. Furthermore, a set of detailed criteria need to be taken into account to assess whether a vessel or the persons on board must be considered to be in a phase of uncertainty, alert or distress. The Regulation also reiterates the obligation of States under international maritime law to require the masters of vessels flying their flag to render assistance without delay to any person in danger at sea and proceed with all possible speed to their rescue. In addition, the Regulation explicitly establishes the principle according to which the "shipmaster and crew should not face criminal penalties for the sole reason of having rescued persons in distress at sea and brought them to a place of safety".[58] The latter is an important safeguard to ensure that private shipmasters and owners effectively honour their duty to rescue those in distress at sea and do not have to fear charges under criminal law for facilitating irregular entry into the territory of the State of disembarkation.[59]

However, at the same time, the Regulation allows for redirecting the course of vessels outside of the territorial waters of Member States or conducting the vessels or persons on board to a third country or handing them over to the authorities of a third country in case of confirmed suspicion that the vessel is engaged in smuggling of migrants by sea. Moreover, Article 10 (1)(b) of the Regulation establishes a preference of disembarkation in the "third country from which the vessel is assumed to have departed" in the case of interception at the high seas before disembarkation in the host Member State. This provides States participating in the sea operation with considerable flexibility as to the third state of disembarkation while it seems to be matching the overall trend of externalizing border controls as discussed above. To a certain extent, it 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 systematically processing international protection needs on the territory of an EU Member State in case of interception or rescue at sea in the context of Frontex-led operations. This is because the procedural safeguards that as a minimum need to be met in order to ensure full respect of the principle of *non refoulement* cannot be ensured in practice aboard ships while the Regulation requires an individual assessment of the risk of *refoulement* before disembarking, forcing to enter, conducting to or otherwise handing over those intercepted or handed over to the authorities of a third country.

An important limitation is that the Regulation only establishes rules under EU law with regard to the surveillance of the external sea borders in the context of Frontex-led operations. Therefore, unilateral operations carried out by one Member State or joint operations carried out by two or more Member States fall outside the scope of this Regulation.

55. Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur), OJ 2013 L 295/11.
56. Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereafter 'External Sea Border Surveillance Regulation'), OJ 2014 L 189/93.
57. Council of the European Union, *Note from the Greek, Spanish, French, Italian, Cyprus and Maltese delegations*, Doc. No. 14612/13, Brussels 10 October 2013.
58. See Recital 14 of the External Sea Border Surveillance Regulation.
59. The risk of criminal charges as well as the financial costs due to delays caused by rendering assistance to migrants in distress at sea was, for instance, referred to by Maltese fisherman as particular concerns in the 2013 FRA study on the respect of fundamental rights at sea borders. See Fundamental Rights Agency, *Fundamental Rights at Europe's Southern Sea Borders*, 2013, pp. 34-35.

This not only risks creating double standards with regard to the fundamental rights protection of migrants and refugees at sea. It also remains to be seen what impact the Regulation will have on Member States' level of participation in joint operations or their willingness to host joint operations coordinated by Frontex.

The Regulation, at the request of the European Parliament, includes a provision on solidarity mechanisms as a way to mitigate the lack of any binding arrangements on the physical distribution of those disembarked in an EU coastal State. However, this does not go beyond repeating the possibilities for states facing "urgent and exceptional pressure at its external border" or "subject to strong migratory pressure which places urgent demands on its reception facilities and asylum systems" to request the assistance of Frontex or EASO in accordance with the existing respective founding regulations of both agencies and emergency funding under the Asylum, Migration and Integration Fund.[60] No specific link is even made to the additional tasks and capacity requirements resulting from the obligations imposed on the host and participating Member States as a result of rescue or interception operations carried out on the basis of the Regulation. As a result, the provision seems to have a rather symbolic value and does not provide any additional incentives for Member States to engage in search and rescue operations which could have increased the overall search and rescue capacity at the EU level. Another area of concern is the lack of transparency with regard to the application in practice of the external sea border Regulation. As this only applies in the context of Frontex-led operations, the details relating to key procedural safeguards such as access to legal assistance and interpretation, the general assessment of the situation in possible third countries of disembarkation prior to the launch 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 host Member State, this will make scrutiny of whether the necessary safeguards are in place to ensure full respect of the principle of *non refoulement* prior to or during the sea operation almost impossible.

Here the Consultative Forum can play a role as it has a mandate, together with the Fundamental Rights Officer, to advise Frontex in the further development of its fundamental rights strategy. In that capacity, the Frontex founding Regulation explicitly states that "[T]he Fundamental Rights Officer and the Consultative Forum shall have access to all information concerning respect for fundamental rights, in relation to all the activities of the Agency".[61] In order to do so effectively, this requires that the members of the Consultative Forum are provided full access to the operational plan in order to verify 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.[62]

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 those rights and any incidents which may have taken place. Details on cases of disembarkation in third countries and how procedural guarantees laid down in the operational plan to ensure compliance with the principle of *non refoulement* were applied by the participating units, must be included in the report as well. While this only allows for monitoring after the operation was carried out, it nevertheless is an important tool for the EU institutions to scrutinize Frontex' activities in this regard and, where necessary, to hold Frontex and Member States concerned accountable for human rights violations that may have occurred during such operations at sea.

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. Controversial from the start, the Eurosur adds to the picture of the increasing reliance of the EU on sophisticated 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.[63] 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 limited to detecting, preventing and combating irregular migration and cross-border crime and therefore 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 authorities of third countries.

60. See Article 12 External Sea Border Surveillance Regulation.
61. See Article 26(a)(4) of the Frontex Regulation as inserted by Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ 2011 L 304/1.
62. It should be noted that the 2014 work programme of the Consultative Forum explicitly includes work on the surveillance of the external sea borders Regulation. See Frontex Consultative Forum on Fundamental Rights, *Work Programme 2014*.
63. See European Commission, *Eurosur kicks off: new tools to save migrant's lives and prevent crime at EU borders*, Press release, 29 November 2013.

As the pre-frontier area is defined as "the geographical area beyond the external borders",[64] 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 the 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

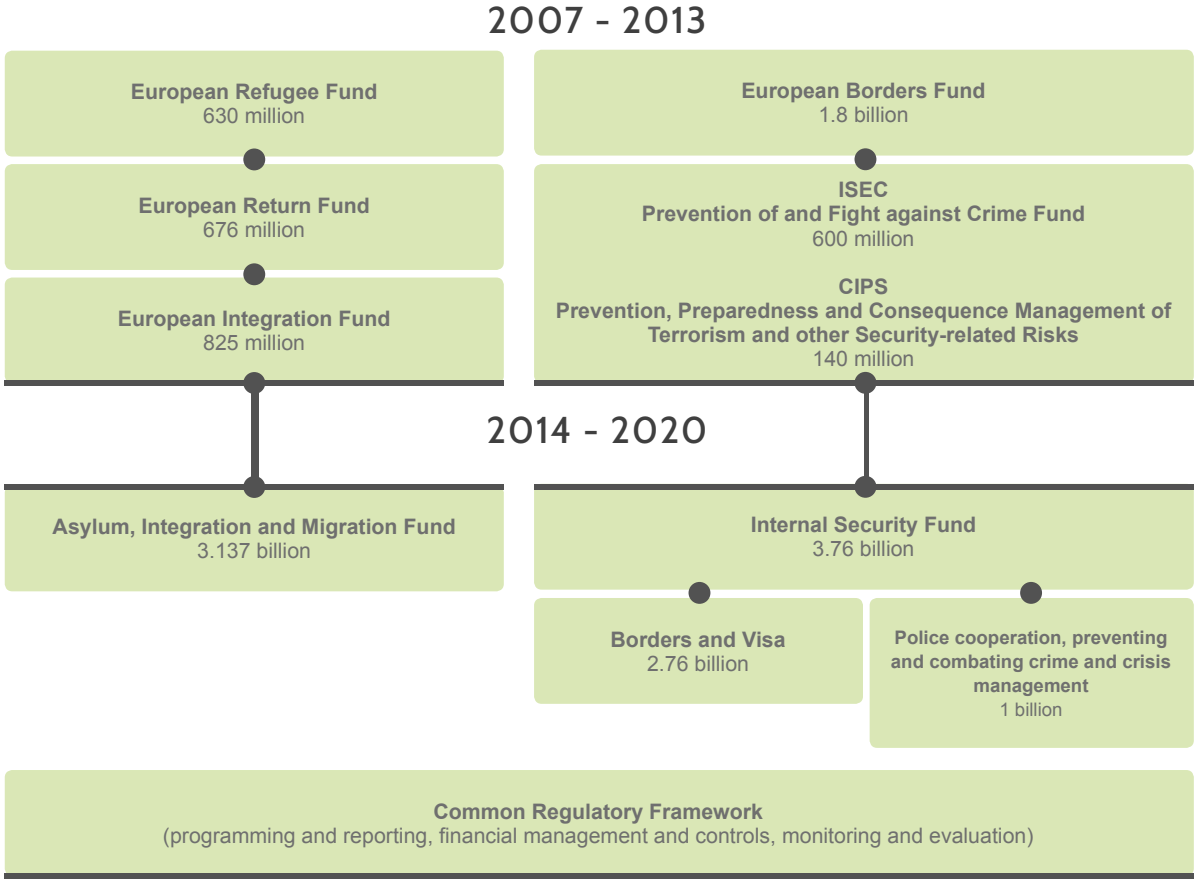
The adoption of the Asylum, Migration and Integration Fund (AMIF) in April 2014 as part of the new Multiannual Financial Framework, marks a fundamental restructuring of the funding available at the EU level as regards the further development and implementation of common policies in these areas. The overall 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".[65] 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 fair 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 Directorates-General dealing with development cooperation and humanitarian assistance is addressed by the inclusion of a principle of policy coherence, which includes that measures financed under the AMIF on the external dimension should focus on non-development measures and that they must serve the interests of the EU's internal policies.[66]

64. See Article 3(g) Eurosur Regulation.
65. See Article 3(1) of Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (hereinafter 'AMIF Regulation'), OJ L 150/168. Although adopted in April 2014, the AMIF retroactively entered into force on 1 January 2014.
66. See also Article 24 AMIF Regulation requiring the Commission, the Member States and, where appropriate, the External Action Service to coordinate their actions in and in relation to third countries.

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



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 dialogues 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,[67] this was still not the case in a number of Member States at the time of writing.[68] In view of the key role that many NGOs and international organisations such as UNHCR play in asylum and migration policies today and the privileged position they have in identifying the real needs for additional funding in these areas, not involving them in this process deprives national authorities and the Commission of the input of important actors in the field. This would not only ignore the key role they play, it may also mean that eventually AMIF money is not used to address the real challenges at the national level or is used predominantly to serve a government's political agenda.

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.[69] This is an important safeguard which was not included in the Commission proposal and which may reduce the risk of national programmes predominantly financing actions relating to return and readmission to the detriment of improving the quality and capacity of asylum systems. Member States may derogate from these minimum percentages but only where a detailed explanation is provided as to how this will not jeopardise the achievement of the respective objectives laid down in Article 3(2) of the AMIF Regulation. At the same time, EU Member States facing structural difficulties in the area of accommodation, infrastructure and services are not allowed to go below the 20% minimum percentage. This is currently understood to mainly refer to Greece, but could of course also include other countries in the future.

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 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, so far Article 33 has not been applied, even in the case of Bulgaria, where UNHCR considered that the situation amounted to systemic deficiencies in the asylum procedure and reception conditions.[70]

67. "For the purposes of the Fund, the partnership referred to in Article 12 of Regulation (EU) No 514/2014 shall include relevant international organisations, non-governmental organisations and social partners", see Article 4 AMIF Regulation.
68. See ECRE, UNHCR and 7 other organisations, *The AMIF Partnership Principle Recommendations on Implementation, Brussels*, 25 July 2014.
69. See Article 15(1)(a) AMIF Regulation.
70. See below, section 4.

Furthermore, 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 effectively met. However, while being a clear improvement to the Commission proposal, the indicators remain 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 where 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 activities were reduced during the negotiations. Moreover, a budget is no longer 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.

	COM Proposal	AMIF	% Difference
National Programmes	2.37bn	2.39bn	0%
Resettlement/Specific Actions	700m	360m	-49%
Mid-term review	160m	0	-100%
Union Actions, Emergency, TA	637m	385m	-40%
Total	**bn 3.89**	**bn 3.13**	**-20%**

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 previous budget cycle (2007-2013) which was 2.2 billion euro.[71] Whereas under the previous budget cycle the budget for Justice, Liberty and Security at EU level represented 0.77% of the EU budget with a total amount of 6.5 billion euro, the total budget for Home Affairs covering the period 2014-2020 is 9.2 billion euro, representing now 1.2 % of the overall Union budget. The increase certainly reflects the political importance of policies related to home affairs. However, the allocation of financial resources within the home affairs area at the same time reflects the ongoing emphasis on the EU's security agenda within this area of policy making. The internal security fund, which covers activities relating to visa and external borders on the one hand, policing on the other hand, represents a total budget of 3,764,23 million euro for the period 2014-2020. In this regard it is also striking that within that budget for 2014-2020 791 million euro is dedicated already to the "smart border package" a set of Commission proposals aiming at establishing large scale IT systems to facilitate the daily management of external border controls including the creation of an entry-exit system. The proposals are contested both from a data-protection perspective, while their financial and technical feasibility is still very uncertain.[72] Allocating considerable resources in the budget to the development of systems for which it is unclear whether or not they will be supported by a majority in the European Parliament raises fundamental questions as to how policies are being shaped and pushed through. A similar approach was followed with regard to Eurosur, which was also already tested and being developed within Frontex long before the Eurosur Regulation was finally adopted.

It should be noted that a series of other EU funds, managed by other Directorates General of the European Commission, also finance activities related to migration and asylum, such as the Instrument for Development Cooperation and the European Social Fund. However, this is outside the scope of this AIDA Annual Report.

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 and the priorities in this area for the coming years was high on the agenda in 2013 and the first half of 2014. The framework of the debate was set by the new Article 68 of the Treaty on the Functioning of the European Union (TFEU) which requires the European Council to "define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice". As strategic guidelines were to be adopted for the first time in this field, the process was for a long time characterised by a lack of clarity as to the scope and format of the guidelines. However, EU institutions agreed early on that the short and concise Tampere Conclusions rather than the detailed Hague or Stockholm Programmes should be the point of reference. Moreover, as the discussions progressed, it became clear that the office of the President of the European Council would take the lead in the drafting process, reducing considerably the influence of Justice and Home Affairs Ministers and experts on the content of the guidelines.

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. See for instance, European Data Protection Supervisor, Press Release, *Smart borders: key proposal is costly, unproven and intrusive*, Brussels, 19 July 2013.

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 change" 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 have been endorsed by Justice and Home Affairs Ministers or the European Council in other policy documents over the past 15 years. From this perspective there is little that distinguishes the strategic guidelines from other European Council conclusions. The title is also misleading as if they could technically be described as guidelines, they can hardly be qualified as strategic and provide little added value. At the same time, the lack of concrete guidance may create an opportunity for the Commission in particular to take the lead in taking the debate on the future of the CEAS forward through innovative ideas and solutions.

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 are given the same procedural safeguards and protection throughout the Union.[73] Finally it is stated that converging practices will enhance mutual trust and allow to move to "future next steps". Rather than providing direction to the EU institutions and Member States for the future, this cannot be described otherwise than endorsing the status quo, despite the flaws of the current legal and policy framework that continue to exist.

Solidarity and responsibility-sharing in the field of asylum and migration is another area where the strategic guidelines failed to provide any direction. While the incoming Italian Presidency has made the debate on further steps towards concrete solidarity one its key priorities for the second half of 2014, the strategic guidelines remain almost silent on one of the biggest challenges for the EU's common policy on asylum in the coming years. Apart from a rather formal reference to Article 80 TFEU[74] in paragraph 5 of the strategic guidelines, any meaningful political commitment to take further steps to enhance solidarity among Member States in upholding the institution of asylum in the EU as well as in other regions in the world, is lacking. Ironically, whereas Frontex is explicitly referred to as an "instrument of European solidarity in the area of border management", no such reference is made with regard to EASO as the EU's specialised agency in the field of asylum. After the adoption of the Commission's communication on intra-EU solidarity and the Council conclusions on a framework for genuine solidarity, this is where the strategic guidelines were expected to provide further guidance and political impetus. However, the strategic guidelines do not provide any political direction with regard to current debates and ongoing initiatives on possible ways to process asylum applications in the EU jointly or conferring decision-making powers in individual cases to EU bodies, alternatives to the current Dublin system of allocating responsibility for examining asylum applications and other solidarity tools such as the relocation of beneficiaries of international protection or asylum seekers within the EU.

Unsurprisingly, the emphasis in the strategic guidelines is rather on intensifying the cooperation with third countries in the area of irregular migration and border controls and tackling the root causes of irregular migration flows. In this respect there is nothing new as the principles underlying the Global Approach to Migration (GAMM), the EU's policy framework for cooperation with third countries in the area of migration and asylum are simply reaffirmed. Furthermore, the guidelines call for the full implementation of the list of actions identified by the Task Force Mediterranean, an effective common return policy and enforcing readmission obligations, while full support is expressed for the smart border management of the external borders and the possibility of a European system of border guards as part of the long-term development of Frontex "should be studied".

Preventing and tackling irregular migration is the key concept as "the answer to many of the challenges in the area of freedom, security and justice lies in relations with third countries." Such an approach is said to help avoid the loss of lives of migrants undertaking hazardous journeys, without even hinting at the absence of any alternatives for persons fleeing conflict and war to reach the EU in a safe and legal manner. The absence of any reference to the ongoing debate on legal channels for persons in need of protection to reach the EU is extremely disappointing, particularly in light of the ongoing tragedies in the Mediterranean. The same applies to the absence of any reference to the need for a collective effort at EU level to support life-saving operations at sea, such as the Mare Nostrum operation that is carried out and financed by Italy so far. The sad reality is that Commissioner Malmström's initial call for "a Frontex search and rescue operation that would cover the Mediterranean from Cyprus to Spain"[75] was never picked up by the Member States.

73. 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.
74. According to which policies in the area of asylum, immigration and border controls and their implementation "shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States".
75. See European Commission, *Commissioner Malmström's intervention on Lampedusa during the Home Affairs Council Press Conference*, Memo, Luxembourg, 8 October 2013.

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 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.[76] However, at the same time, the opportunity was missed to provide the political leadership that is exactly required in this field and to design migration and asylum polices 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 paragraph 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 ECtHR 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.[77] The proposal concerns the clarification of Article 8(4) of the recast Dublin Regulation on applications by unaccompanied children with no family, siblings or relatives on EU territory. The proposal stems from the judgment of the CJEU in the case of *MA and Others v. Secretary of State for the Home Department* concerning the interpretation of the corresponding provision in the 2003 Dublin Regulation in relation to an unaccompanied child who lodged multiple asylum applications in more than one Member State.[78] 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 a new asylum application in the Member State where they are present, responsibility should lie with the Member State where the child lodged their most recent asylum application, except where this is not in their best interest. However, 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 required by Article 78 TFEU. Mutual recognition of positive asylum decisions and the transfer of protection statuses 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 refer explicitly to mutual recognition of positive asylum decisions, whereas a draft version of the guidelines did include such explicit reference.[79]

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 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.[80] If combined with a system to ensure transfer of protection status obtained in one Member State to another 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 residence after five years

76. See AIDA, *Annual Report 2012/2013. Not there yet: An NGO Perspective on Challenges to a Fair and Effective Common European Asylum System*, at pp. 23-24.
77. See COM(2014)382 final, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State, Brussels, 26 June 2014.
78. CJEU, Case C-648/11, *MA and Others v. Secretary of State for the Home Department*, Judgment of 6 June 2013.
79. See Council of the European Union, European Council (26 and 27 June 2014) – Draft Conclusions, Doc. 8284/14 LIMITE CO EUR PREP 12, Brussels, 16 June 2014.
80. COM(2014) 154 final, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An open and secure Europe: making it happen*, Brussels, 11 March 2014.

of residence in a Member State.[81] 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 and hence the right to take up residence in another EU Member State. This can delay their access to free movement rights as compared to other third country nationals and is another obstacle to their successful integration into society.

A uniform status valid throughout the Union also requires that the protection status obtained in one EU Member State is automatically transferred to another EU Member State in case a beneficiary of international protection takes up residence in that other Member State. This is explicitly excluded from the scope of the long term residence directive and is not covered elsewhere in the EU asylum *acquis*. Although there are some guarantees against *refoulement* in the long term residence directive in case a person's protection status ceases or is withdrawn in the Member State that granted the status, there are exceptions. Moreover, the long term residence Directive only applies once a person has obtained long term residence status, which is only possible after a period of at least five years. It does not cover the situation of a refugee who makes use of the right to travel within the EU for a period of no longer than three months. Within that period, EU law does not provide sufficient guarantees against violations of the principle of *non refoulement*.

This was illustrated in the case of *M.G. v. Bulgaria* of March 2014 before the ECtHR.[82] This case concerns a Chechen man with refugee status in Germany and Poland who was apprehended at the Bulgarian/Romanian border following an extradition request from the Russian authorities. The Bulgarian authorities wanted to pursue extradition and argued that M.G. had not been recognised in Bulgaria as a refugee and that they were therefore not bound by the decisions of Poland and Germany. The ECtHR held that his extradition would have amounted to a violation of Article 3 ECHR. It should be noted that the Court explicitly referred to the absence of mutual recognition of asylum decisions in the EU legal framework and that the applicant had obtained refugee status in two EU Member States, which was an important element in the assessment of the existence of a real risk of ill-treatment upon return to Russia.

Both the mutual recognition of positive asylum decisions and the transfer of protection statuses between EU Member States have been called for, in addition to the Commission, by NGOs, UNHCR and academic networks in their submissions to the Commission Consultation as a key aspect of a truly harmonised asylum policy.[83] Yet it appeared that, as it was the case at the time of the adoption of the Stockholm Programme, there was not sufficient political support to include this as a long term goal for the EU in the further development of the common asylum policy. The classical North-South divide within the EU in matters related to asylum and immigration seems to be mainly responsible for this omission. Northern Member States, already receiving the vast majority of asylum applications in the EU, remain skeptical of any initiative that may result in further secondary movements towards their territories once protection status has been granted in one of the Southern EU Member States. As beneficiaries of international protection may indeed find better integration opportunities in certain EU Member States, it is not excluded that mutual recognition and a workable and accessible system of transfer of protection statuses may encourage onward movement. However, as free movement rights are not unconditional and require the individuals concerned to dispose of sufficient resources, such effect may initially be limited. At the same time, freedom of movement of beneficiaries of international protection within the EU also constitutes a form of solidarity with those EU Member States located at the external borders and that are responsible for the first reception of those arriving by land or sea in the EU.[84] In this regard, the lack of explicit reference to mutual recognition in the strategic guidelines may also be seen as an indication of the lack of political will among Member States to act on the basis of a truly European policy in this area.

4. 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 situation in Bulgaria more in detail as it ultimately once again puts the functioning of the Dublin system into question and 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 fence 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.

In 2013, Bulgaria experienced a significant rise in the number of asylum applications. Whereas the country registered in 2012 a total of 1387 applicants,[85] this number increased sharply in 2013 to a total of 7144,[86] with the highest numbers recorded in the second half of 2013.[87] 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.

81. Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, OJ 2011 L 132/1.
82. ECtHR, *M.G. c. Bulgarie*, Application no. 59297/12, Judgment of 25 March 2014 (French only).
83. See ECRE, *Submission to the European Commission Consultation on the Future of Home Affairs Policies*, January 2014.
84. See also COM(2011) 835 final, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU Solidarity in the field of asylum. An EU agenda for better responsibility-sharing and more mutual trust*, Brussels, 2 December 2011.
85. Asylum Information Database, *Country report Bulgaria - Statistics*, November 2013.
86. Asylum Information Database, *Country report Bulgaria - Statistics*, April 2014.
87. UNHCR, *Bulgaria as a Country of Asylum. UNHCR Observations on the Current Situation of Asylum in Bulgaria (*hereafter 'Bulgaria as a Country of Asylum'), April 2014, p. 5

In December 2013 only 138 new arrivals were registered at the border whereas several hundred a week had been registered from August to November 2013. This downward trend continued in the first half of 2014. In the same period, the construction of a barbed wire fence at the border with Turkey also started.[88] Between 1 January and 31 March 2014, 376 third country nationals were apprehended for irregular entry through the 'green' border as well as 86 at official border crossings at the Bulgarian-Turkish Border. A total of 255 were reported to have applied for international protection in this period by the Bulgarian Border Police.[89] 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 inhuman and degrading treatment as it included accommodation in tents and containers, without electricity and sewerage under extremely poor living and hygiene conditions.[90] In addition, asylum seekers were referred to detention centres for their accommodation. As they could be released if they renounced their right to accommodation and financial and material assistance, many did so. In many cases, asylum seekers were forced to make use of a so-called "external address", a fake address which was submitted to the authorities as this was required to be released, leading to cases of *de facto* 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.[91] In its observations on the situation in Bulgaria, 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.[92]

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 as a matter of general policy in many EU Member States. This is of course a very important development as it illustrated once more some of 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 EU asylum law cannot apply with regard to Bulgaria. Added to the individual cases in which national courts continue to suspend Dublin transfers to other Member States, including Italy, Malta, Hungary, France and Germany,[93] 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.

However, although most Member States at least initially did not transfer asylum seekers to Bulgaria after UNHCR's call, this did not necessarily mean that those Member States immediately assumed responsibility for examining asylum applications in such cases. Some Member States postponed taking a decision to assume responsibility, rather than immediately entering into the substantive examination of the asylum claim, thereby unnecessarily further prolonging the Dublin carroussel for the asylum seekers involved.[94]

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 deployment of joint asylum support teams focussing in particular on the delays in the registration of asylum applications, 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 that more needed to be done.[95] In particular, the length of the asylum process remained problematic in particular for applicants other than Syrians as well as the length of the Dublin interviews. On the other hand, the EASO report concluded that considerable progress had been made as regards reception conditions with reception facilities being in a "reasonable state" and one hot meal per day being provid-

88. The construction of the fence was completed in July 2014. See Reuters, *Bulgaria's fence to stop migrants on Turkey border nears completion*, 17 July 2014
89. Asylum Information Database, *Country report Bulgaria - Registration of the asylum application*.
90. Asylum Information Database, *Country Report Bulgaria - Reception Conditions – Types of Accommodation*, November 2013.
91. ECRE, *ECRE joins UNHCR's call for the suspension of Dublin transfers to Bulgaria*, 8 January 2014.
92. UNHCR, *Bulgaria as a Country of Asylum*, 2 January 2014.
93. See for instance Belgium, where the Administrative Court has suspended transfers to France and Germany in case of risk for interrupting indispensable medical care and annulled decisions to transfer asylum seekers to Malta, Hungary and Italy. In the case of Malta, the Court considers that asylum seekers risk inhuman and degrading treatment because of Malta's non-compliance with the EU asylum acquis. See Asylum Information Database, *Country Report Belgium – Dublin*. Also French courts have suspended Dublin transfers to Hungary, while German courts have issued interim measures with regard to Dublin transfers to Italy, Hungary and Malta. See Asylum Information Database, *Country Report France – Dublin* and *Country Report Germany – Dublin*.
94. As was the case in Belgium for instance. See Asylum Information Database, *Country Report Belgium – Dublin*.
95. See EASO, *EASO Operating Plan to Bulgaria. Stock taking report on the asylum situation in Bulgaria*, p. 5-8.

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 conditions in the reception centres, access to health care and the registration of asylum applications, although the Bulgarian Helsinki Committee still reported cases where registration of asylum applications was unduly delayed and repeatedly rescheduled.[96] UNHCR no longer called for a general suspension of transfers to Bulgaria because of the progress made but it still found serious gaps in the asylum system and recommended, among others, that further efforts be undertaken with regard to the early identification and continuous assessment of specific needs of asylum seekers.[97]

However, NGOs including ECRE reaffirmed their call for a general suspension of transfers of asylum applicants to Bulgaria at least until the foreseen termination of the EASO Operating Plan for Bulgaria in September 2014 and upon 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.[98] In this respect, suspension of 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 concerns 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 addresses"[99], the continued systematic initial 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 and on an ad hoc basis without sufficient capacity for the authorities to take over, was raised as a specific concern.[100]

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 a section of the Bulgarian/Turkish border. Although the latter was only completed in July 2014, it leaves no speculation about the Bulgarian government's intentions as to how it wants to tackle possible future flows of migrants and asylum seekers. 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 approach has proven not to stop migrants from trying to enter the European Union 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?

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 substantially in 2013 and the first half of 2014 but compared to the numbers of refugees hosted today in the countries neighbouring Syria, it remains remarkably low. Notwithstanding the increased number of persons from Syria applying for asylum in the EU, access to the territory remains problematic due to the absence of safe and legal channels to reach safety in the EU. At the political level, the uneven distribution of asylum applicants from Syria between EU Member States as well as the varying responses from Member States to the continued calls from UNHCR and NGOs to resettle significant numbers of refugees from the region have fed into the debate on solidarity both within and outside the EU.

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 with protection rates between 90 and 100 percent, while differences remained with regard to 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

96. Asylum Information Database, *Country Report Bulgaria – Overview of the main changes since the previous report update*.
97. Such as with regard to access to integration for beneficiaries of international protection, access to education for children, access to legal aid etc. See UNHCR, *Bulgaria as a country of Asylum*, April 2014.
98. See ECRE, *ECRE reaffirms its call for the suspension of transfers of asylum seekers to Bulgaria under the recast Dublin Regulation*, Brussels, 7 April 2014.
99. Situation on 31 March 2014. See Asylum Information Database, *Country Report Bulgaria – Overview of the main changes since the previous report update*.
100. UNHCR, *Bulgaria as a country of Asylum*, April 2014, p. 16.

(other than refugee or subsidiary protection status) is still granted in most cases.[101]

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 Syrians seeking international protection are likely to fulfil the requirements of the refugee definition contained in Article 1A(2) 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".[102]

Under the recast 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).[103] In **Cyprus** beneficiaries of subsidiary protection do not have a right to family reunification at all under the new law amending the Refugee law.[104] Also in **Germany** beneficiaries of subsidiary protection can only exercise the right to family reunification under strict conditions, including in terms of financial resources and sufficient living space to support the family members in Germany, which are usually hard to meet in practice.[105] 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 stamp of the authorities, proving their authenticity and translation in English or Hungarian, which of course raises the costs considerably.[106] 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 who applied 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 by the Refugee Appeals Board which granted such persons subsidiary protection instead. Currently all 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 statuses granted decreased 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.

101. See for instance ELENA/ECRE, *Information Note on Syrian Asylum Seekers and Refugees in Europe*, November 2013, pp. 21-23.
102. UNHCR, *International Protection Considerations with regard to People fleeing the Syrian Arab Republic, Update II*, October 2013, par. 14-15.
103. Asylum Information Database, *Country Report Austria – Treatment of Specific Nationalities*.
104. See UNHCR, *UNHCR regrets the lowering of protection standards in the Republic of Cyprus*, 16 April 2014.
105. Asylum Information Database, *Country Report Germany – Treatment of Specific Nationalities*, accessed July 2014.
106. Asylum Information Database, *Country Report Hungary – Treatment of Specific Nationalities*.
107. Asylum Information Database, *Country Report Malta – Treatment of Specific Nationalities*.
108. Percentages are taken from the statistics in the respective country reports on the Asylum Information Database and refer to the total percentage for first instance decisions and at appeal except for France, where it only refers to the positive decisions for applicants from Syria at the first instance.
109. See UNHCR, Syrian Refugees in Europe, 11 July 2014, p. 16.

Since September 2013, **Sweden** has been granting all Syrians in need of international protection a permanent residence permit,[110] 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 conflict will continue for a long time. The granting of permanent residence permits enhances legal certainty for Syrian refugees and is an important aspect for their integration into Swedish society and rebuilding their lives. Whereas it is often considered as a pull factor by other Member States, it is certainly not the sole explanation of the high numbers of applicants from Syria that Sweden is receiving. For instance, in Germany, most applicants from Syria are granted subsidiary protection and therefore a temporary residence permit. Nevertheless, as mentioned above, Germany continued to receive the second largest number of asylum applicants from Syria in the EU.

Germany continued the prioritisation of the examination of asylum applications from Syria and managed to further reduce the average processing time of such applications from 7.1 months in the first half of 2013 to 4.6 months by the end of the year, [111] whereas the average processing time for other nationalities was 12.4 months according to the German government.[112] This did not result in a decrease of the overall recognition rate which remained at 95%.

A similar approach is adopted in **the Netherlands** where applications from persons fleeing the conflict in Syria are dealt with in the short regular procedure and in most cases the persons concerned are granted a residence permit after 4 days. However, in case their asylum application is finally rejected, for instance on the basis of 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.[113] 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.[114] Such 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.[115] 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.[116] 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.[117] Neighbouring countries currently host close to 3 million Syrian refugees.[118] Nevertheless, as the statistics discussed above show, an increasing 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.[119]

110. With the exception of Dublin cases.
111. Asylum Information Database, *Country Report Germany – Treatment of specific nationalities*.
112. Asylum Information Database, *Country Report Germany – Treatment of specific nationalities*, first update 30 December 2013.
113. Also the asylum applications of applicants from Eritrea are now being prioritised in the short regular procedure by way of a pilot project. See Asylum Information Database, *Country Report The Netherlands – Treatment of specific nationalities*.
114. See Bulgarian Helsinki Committee, Open Letter on the establishment of closed centres for refugees at the border and the taking of and verifi cation of fingerprints and biometric data, Press Release, 28 October 2013.
115. See Article 30 of the recast Asylum Procedures Directive and Article 22 of the 2005 Asylum Procedures Directive.
116. ECRE/ELENA, *Information Note on Syrian Asylum Seekers and Refugees in Europe*, November 2013, p. 44.
117. UNHCR, *Syrian Refugees in Europe*, 11 July 2014, p. 3.
118. As of 31 August 2014, UNHCR registered 2,965,312 Syrian refugees in the region (Jordan, Lebanon, Turkey, Egypt, Iraq and North Africa). See UNHCR *Syria Regional Refugee Response Inter-agency Information Sharing Portal* for updated information.
119. UNHCR, *Syrian Refugees in Europe*, 11 July 2014, p.10.

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 fleeing Syria, along with other nationalities, arrive in the EU by 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.[120] The Mare Nostrum operation[121] 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".[122] 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 pledged to receive an additional 10,000 Syrian refugees and Austria an additional 1,000 Syrian refugees on top of earlier commitments through their respective Humanitarian Admission Programmes. Moreover, **Germany** again issued over 5,500 visas through its individual sponsorship programme and **Ireland** launched an immigration-based Syrian Humanitarian Admission Programme.[123] Meanwhile, the United Kingdom launched a programme to take 'several hundred' refugees over the next three years prioritising vulnerable persons.[124] 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 increasing 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 hand-over of more than 20,000 signatures to a representative of EU President Herman Van Rompuy in June 2014, focussed in particular on the obstacles refugees from Syria as well as from other countries face in accessing protection in the EU and the fact that refugees have little or no legal means of accessing protection in Europe. Acquiring visas to travel to Europe is virtually impossible due to difficulties in obtaining documents while people with protection needs have few possibilities to apply for protection or humanitarian visas in European embassies in the region. Moreover, the ongoing deterrents at the EU borders such as push-back operations and the lack of protection-sensitive border controls further undermine access to protection and prevent individuals from exercising the right to asylum as guaranteed under the EU Charter of Fundamental Rights.

As the security situation in a number of regions neighbouring or close to Europe worsens and an increasing number of conflicts generates an increasing number of people on the move and in need of international protection, more efforts are needed from the EU to do its share. 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 focussing 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 unscrupulous human traffickers and 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

120. UNHCR, Ibid., pp. 9-10.
121. See the section on access to the territory in Chapter III.
122. A. Guterres, *Europe must give Syrian refugees a home*, The Guardian, 22 July 2014.
123. See European Resettlement Network, Newsletter – Issue 5, p. 2.
124. See *Syria: UK helps vulnerable refugees*.
125. See European Commission, *Syria Crisis ECHO Factsheet*, August 2014.

to approach 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 humanitarian visa and/or protected entry should be encouraged. Local Schengen cooperation between 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 through embassies or consulates in 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 fleeing persecution 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 countries 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 asylumsystem.[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 conflict 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 underutilized 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 long standing 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 self-proclaimed implementation mode in the field of asylum and shows the leadership and vision that will be necessary to ensure a safe haven for refugees in Europe.

126. See section 1.1 of this chapter.
127. Regulation (EU) No 1289/2013 of the European Parliament and of the Council of 11 December 2013 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ 2013 L 347/74.

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.[128] 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.[129]

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.[130] Syrians attempting to cross the EU borders represented almost a quarter of the total number of detections reported by Frontex in 2013.[131] 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.

128. The Migrant Files is a project launched in August 2013 by a group of journalists. By collecting data from a wide range of sources the project aims to compile a comprehensive and reliable dataset.
129. See UNHCR, High seas tragedies leave more than 300 dead on the Mediterranean in past week, 26 August 2014.
130. When a total of 141,051 detections of irregular border crossings were reported. See Frontex, Annual Risk Analysis 2014, May 2014, p. 29-30.
131. Ibid., p. 7.

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 approach of the Mare Nostrum operation launched by the Italian authorities in October 2013 contrasts sharply with the persistent allegations of push-backs practices 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 Italy in 2009, whereby a number of Eritreans and Somalis fleeing Libya 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*.[132]

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 migration.[133] 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 106,000 between January and 24 August 2014.[134] The majority of those rescued are Syrians and Eritreans.[135] The information collected through the European Border Surveillance System (Eurosur) is available to the Italian authorities 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 EU to provide support for the continuation of Mare Nostrum.[136] 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.[137] 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.[138] However, at the time of writing it was not clear yet when this operation would start, what its scale and scope will be and which Member States will participate in the operation.

Contrary to the life-saving approach 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 apprehension and violating their rights by arbitrarily detaining them, not giving them the opportunity to apply for 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.[139]

In January 2014, 12 refugees, including children, died off the coast of the **Greek** island of Farmakonisi, in what 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 speed 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.[140]

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 andindependentinvestigation.[141]

132. ECtHR, Hirsi Jamaa and Others v. Italy, Application no. 27765/09, Judgment of 23 February 2012.
133. A summary of the operation in English is available here.
134. Marina Militare Italiana, information provided to ECRE on 27 August 2014.
135. UNHCR, Statement Council of Europe Parliamentary Assembly Resolution 2000 (2014) and Recommendation 2047 (2014) on "The large-scale arrival of mixed migratory flows on Italian shores", 8 July 2014.
136. On the financial support that Italy receives from the EU since the tragedy of Lampedusa in October 2013, see Chapter I.
137. See Reuters, Italy in talks with EU to share responsibility for boat migrants, 8 July 2014.
138. See European Commission, Statement by Commissioner Malmström after the meeting with Italian Interior Minister Alfano, Brussels, 27 August 2014.
139. Pro Asyl, Pushed Back: Systematic human rights violations against refugees in the Aegean Sea and at the Greek-Turkish land border, November 2013.
140. See ECRE Weekly Bulletin, 12 refugees die during alleged push-back operation off Greek island, 24 January 2014.
141. European Parliament Newsroom, Debate on Syrian refugees in Bulgaria and "push backs" off the Greek coast, 5 February 2014.

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.[142] The government later announced the launch of a judicial investigation.[143] After a preliminary investigation, the Public Prosecutor of the Marine Court shelved 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,[144] but also the Commissioner for Human Rights who publicly stated that "impunity risks covering these serious human rights violations" and that "Greek authorities have to take more resolute efforts to ensure accountability for this tragedy".[145] 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 the AIDA national country report in December 2013.[146] 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".[147] HRW collected testimonies of migrants and asylum seekers who had been apprehended either in Bulgaria or at the border and summarily returned to Turkey. People push backed 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 summarily 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.[148]

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, refugees and migrants continue to undertake in order to reach the EU are a direct consequence of the lack of 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.[149]

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.[150] The recast Asylum Procedures Directive requires Member States to ensure applications are registered within three working days if the application was made to the competent authority or within six working days if it was made to other authorities. These time limits can be extended to 10 working days in case of simultaneous applications by a large 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.[151]

The actual registration or lodging of an application activates a number of rights for asylum seekers, as provided in the recast 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.[152]

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, Medici per I Diritti Umani (Doctors for Human Rights) collected testimonies of persons, mostly from Afghanistan and Syria, who declared they were sent back to Greece upon arrival at Italy's Adriatic ports.[153]

142. Commissioner of Human Rights of the Council of Europe, Press Release: Greece must end collective expulsions, 14 January 2014.
143. See the response of Council of Europe Commissioner for Human Rights, Nils Muižnieks, 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)6, 14 February 2014.
144. Pro Asyl, Wie der Tod von Elf Bootsflüchtlingen vertuscht wird, Press release, 6 August 2014.
145. See Ekathimerini, Human rights watchdog criticizes decision to file Farmakonisi case, 1 August 2014.
146. See Asylum Information Database, Country Report Bulgaria – Registration of the Asylum Application.
147. Human Rights Watch, "Containment Plan" Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants, April 2014.
148. See Accem, CEAR and ECRE, Death and Summary Returns at Europe's Doorstep: European Commission Must Investigate Border Practices in Ceuta and Melilla, Press release, 14 February 2014.
149. ECRE, Deaths at sea off the Italian coast: ECRE calls for safe channels for refugees to reach Europe, 3 October 2013; ECRE, EU Leaders Should Stop Shedding Crocodile Tears and Focus on Measures that Save Lives and Provide Access to Protection for Refugees, 20 December 2013; see also ECRE, Submission to the European Commission Consultation on the Future of Home Affairs Policies, January 2014.
150. Article 6 recast Asylum Procedures Directive.
151. It should be noted that the transposition deadline for the recast Asylum Procedures Directive Is 20 July 2015 for Articles 1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, Articles 49 and 50 and Annex 1 whereas it is 20 July 2018 for Articles 31(3), (4) and (5) (time limit for con cluding an examination procedure at first instance (6 – 21 months))
152. See Article 6, 14(2) and 15 recast Reception Conditions Directive.
153. MEDU, UNSAFE HARBOURS. Report on the readmissions to Greece from Italian ports and the violations of the migrants' basic human rights, November 2013.

According to the report, unaccompanied children were among those pushed back. Such practices at the Adriatic ports were also denounced by the Italian Refugee Council (CIR) services that are operational at the borders.[154]

The 2012/2013 AIDA Annual Report highlighted issues with delays of the registration of asylum claims in **Bulgaria, Italy**, the **UK** and **France**,[155] Except from Bulgaria, no significant improvements have been reported in those countries since the publication of the report.

In the **UK**, applications made in the territory have to be registered at a Screening Unit near London, on appointment only. Substantial delays in securing an appointment for a screening interview are still reported. In addition, while a good practice of granting children a few resting days prior to a screening interview had been established, the practice began to be distorted leading to delays of up to 30 days until screening takes place.[156]

Important concerns about the registration of asylum claims were highlighted in **Bulgaria** in the last months of 2013 when high numbers of arrivals were recorded. Asylum applications in Bulgaria have to be lodged, in person at the State Agency for Refugees and this already created long delays in the registration process when the number of asylum seekers was much smaller. In 2013, 4,520 people asked for asylum at the Border Police and a further 7,886 claimed asylum in detention. Yet, by the end of 2013, only 7,144 asylum applications were registered by the State Agency for Refugees (SAR).

People claiming asylum from detention have to be released before being able to register their claim and to speed up their release, asylum seekers started to waive their right to accommodation and social assistance and to declare a so-called 'external address' (a false domicile). Such waivers were accepted by the SAR even though the law only provides for this possibility after the asylum procedure has officially started and therefore only after a claim has been registered. Those asylum seekers are precluded from asking for assistance from SAR at a later stage in the procedure. By April 2014, the majority of asylum seekers had been officially registered.[157]

Italy currently records the highest number of arrivals by sea but a number of asylum seekers landing in Italy try to continue their journey further north, and therefore do not apply for asylum while in Italy. In 2013, more than 9,000 Syrians were reported arriving irregularly to **Italy** and **Malta**[158] but only 695 Syrians applied for asylum in Italy.[159] Some Syrians, but also Somalis and Eritreans, refuse to be fingerprinted by the Italian authorities, probably to avoid being later subjected to a Dublin procedure,[160] and quickly disappear from short term reception centres (CARAs) after arrival.[161]

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 II), 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.

154. CIR, Access to protection: a human right – Accesso alla protezione: un diritto umano, EPIM, 11 October 2013, pp. 32-35.
155. In France, asylum seekers continue to face delays in having their asylum application registered linked to difficulties in obtaining a postal address or the sometimes long waiting periods for an appointment with certain Préfectures.
156. Asylum Information Database, Country Report UK – Registration of the Asylum Application,
157. Asylum Information Database, Country Report Bulgaria – Registration of the Asylum Application,
158. Ibid., p.34.
159. See Asylum Information Database, Country Report Italy – Statistics and UNHCR, Asylum Trends 2013.
160. Hundreds of persons, mostly Eritreans protested against fingerprinting in Lampedusa in July 2013. Reasons given for not wanting to be fingerprinted in Italy were that the country is too poor, does not guarantee asylum seekers' rights and is not able to welcome refugees properly. See La Repubblica, Lampedusa, vincono gli eritrei, No alle impronte digitali (Lampedusa, Eritreans win. No to fingerprinting), 21 July 2013.
161. Reported in Frontex, Annual Risk Analysis 2014 and Asylum Information Database, Country Report Italy.

	AT	BE	BG	CY	DE	FR	GR	HU	IE	IT	MT	NL	PL	SE	UK
Safe Country of Origin in law	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	Y
Safe Country of Origin applied in practice	Y	Y	N	N	Y	Y	N	Y	Y	N	Y	N	N	N	Y
Safe Third Country in law	Y	N	Y	Y	Y	N	Y	Y	Y	N	Y	Y	N	N	Y
Safe Third Country applied in practice	Y	N	N	N	Y	N	N	Y	Y	N	N	N	N	N	Y

Y: Yes – N: No

As shown 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**,[162] 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.[163] 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.[164]

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 **Bulgaria**[165] and **Poland**,[166] 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.[167] Following the judgment of the Court of Justice of the European Union (CJEU) annulling Article 29(1) and (2) and Article 36(3) 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.[168] 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.

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.

162. Asylum Information Database, Country Report The Netherlands – The Safe Country Concepts,
163. See Article 38(2)(a) recast Asylum Procedures Directive.
164. See recital 44.
165. Asylum Information Database, Country Report Bulgaria – The Safe Country Concepts.
166. Asylum Information Database, Country Report Poland – The Safe Country Concepts.
167. In Bulgaria national legislation links the adoption of a national list of safe third countries also to the adoption of a common minimum list of safe countries of origin, which means that so far no national lists of safe third countries has been adopted.
168. CJEU, Case C-133/06, European Parliament and Commission v. the Council, Judgment of 6 May 2008.

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) in common. These Member States, 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 of origin lists 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. Georgia is only considered as a safe country of origin by **France**, a decision which is currently being challenged before the French Council of State by French NGOs.[169]

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 from nationals of other EU Member States or Accession States to the EU are not formally 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.[170] 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

169. As further discussed below.
170. Asylum Information Database, Country Report Belgium – The safe country concepts.

within the UK but must be made within 28 calendar days of leaving the UK, which in practice is very difficult to do.[171]

No accelerated procedure exists technically in **Austrian** law, but suspensive 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.[172]

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 important negative consequences for the asylum seekers concerned. Asylum seekers from such countries are not entitled to a temporary residence permit on asylum grounds and their asylum application is processed by the OFPRA[173] 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.[174]

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 risk of being arrested and returned for the persons 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 French Aliens Law requires the applicant to be present on the territory of France during the appeal procedure.[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**.

171. Asylum Information Database, Country Report United Kingdom – The safe country concepts.
172. Asylum Information Database, Country Report Austria – The safe country concepts.
173. Office Français de Protection des Réfugiés et Apatrides, the agency responsible for taking decisions on asylum applications at first instance.
174. 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.
175. Submission of the High Commissioner of the United Nations for Refugees, based on the summary provided by the High Commissioner for Human Rights, Universal periodic review, France report, July 2012, point 3.1.
176. See Judgment of the Council of State, n° 357351, 6 December 2013. See for more information also Asylum Information Database, Country Report France – Accelerated Procedures.
177. Asylum Information Database, Country Report Malta – Accelerated Procedures.

While the safe country of origin concept raises a number of fundamental questions as regards its compatibility with the key focus of human rights and refugee law on the individual assessment of each case and the personal circumstances of the applicant, it seems to be primarily used as a tool to deter asylum seekers from those countries from applying in the EU Member States concerned. This was also one of the conclusions of an information report of two French Senators in November 2012 with regard to the practice in France, which explicitly stated that "the inclusion of a country on the list of safe countries of origin is rather motivated by the desire to reduce the influx of asylum seekers, than by the objectively safe nature of the political and social situation of any given country".[178]

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. In the **United Kingdom**, **Belgium** and **Austria**, for instance, the designation of countries as safe countries of origin is done by the government, while in France this is a responsibility of the first instance asylum authority.

In the **United Kingdom** this is a competence of the Secretary of State for the Home Office who may make such an order where they are satisfied that "there is in general in that State or part no serious risk of persecution of persons entitled to reside" there, and that removal "will not in general contravene" the ECHR, while having regard to information from any appropriate source, including other Member States and international organisations. However, designation as a safe country of origin is not reviewed routinely and there is no automatic review in response to changes in country decisions. It is possible for NGOs to make representations in judicial reviews, to be joined as parties or to initiate the challenge with regard to a specific safe country of origin if they are able to establish standing as required by public law, meaning that they have sufficient interest in the outcome of a case. However, a worrying development is that current government proposals on judicial review seek to dissuade such interventions by introducing a presumption that interveners pay their own costs and costs of other parties caused by their intervention.[179] Also challenges by judicial review to safe country of origin decisions are difficult to establish on a case-by-case basis, although some have been successful in the past, such as with regard to Gambia and Jamaica.[180]

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 Persons as regards the situation in the countries concerned is required before the list is adopted, adjusted or confirmed.[181]
Also in **Austria**, the list of safe countries of origin is adopted by the government after an assessment of human rights standards by the Ministry of Interior based on country of origin information provided by the Federal Agency for Immigration and Asylum.[182]

In **France**, the list of safe countries of origin has been adopted and reviewed since its introduction in 2005 by the OFPRA Management Board and therefore it is the specialized asylum agency in France that leads the process as opposed to the situation in the United Kingdom, Belgium and Austria, where the government has the final say. However, the designation as safe countries of origin is not entirely transparent as the sources used by the OFPRA to establish the national lists are internal and are not shared. In the past, the national list of safe countries of origin has been amended following challenges of the inclusion of certain countries by national NGOs before the Council of State. The latter annulled the inclusion of Albania and Niger on the list of safe countries of origin in February 2008, of Armenia, Madagascar, Turkey and Mali (for women only) in July 2010, of Albania and Kosovo in March 2012 and Bangladesh in March 2013. At the same time, Georgia (November 2009); Mali (men and women - December 2012), Croatia (June 2013) and Ukraine (March 2014) were withdrawn from the list by the Management Board of OFPRA not in response to a specific Court challenge but because of specific evolutions or calls from UNHCR. This was the case with Ukraine, which was withdrawn on 26 March 2014 from the safe list of countries of origin shortly after UNHCR called on States to remove the country from their national lists of safe countries of origin. This was explicitly welcomed by French NGOs as a necessary step in light of the current situation in Ukraine.[183]

However, at the same time, the OFPRA Management Board decided on 16 December 2013 yet again to add Albania, Georgia and Kosovo to the list of safe countries of origin. This was joined by an instruction to the prefectures to no longer deliver temporary residence permits to asylum seekers originating from these countries who lodged their application after 29 December 2013 or those who made their asylum application before that date but did not receive a temporary residence permit yet. Forum réfugiés-Cosi, as well as other French NGOs have challenged the decision to include the three countries concerned again in the list of safe countries of origin. [184] According to the NGOs challenging the decision of OFPRA, problems continue to exist in Albania and Kosovo with regard to the vendetta and the impunity of its perpetrators. At the same time, the situation in Georgia remains insecure in particular in separatist regions Abkhazia and South-Ossetia and human rights violations continue to be reported by international human rights organisations, including Human Rights Watch.[185]

178. See Sénat, Information Report n° 130 prepared by MM. Jean-Yves Leconte and Christophe-André Frassa, 14 November 2012.
179. See Asylum Information Database, Country Report The United Kingdom – The safe country concepts.
180. The Court of Appeal in 2013 found Jamaica unsafe for specific groups but this is being appealed to the Supreme Court. See R (on the application of JB (Jamaica) v SSHD [2013] EWCA Civ 666.
181. Asylum Information Database, Country Report Belgium – The safe country concepts.
182. Asylum Information Database, Country Report Austria – The safe country concepts.
183. Asylum Information Database, Country Report France – The safe country concepts.
184. See Forum réfugiés-Cosi, Press release, Pays d'origine sûrs: Forum Réfugiés-Cosi va contester devant le Conseil d'Etat l'ajout sur la liste de l'Albanie, de la Géorgie et du Kosovo (Safe countries of origin: Forum Réfugiés-Cosi will challenge before the Council of State the addition to the list of Albania, Georgia and Kosovo), 5 February 2014.
185. See Forum réfugiés-Cosi, Press Release, Liste des pays d'origine sûrs: un outil inadapté (List of safe countries or origin: a maladjusted tool), 30 December 2013.

No Place for National Lists of Safe Countries in a Common Policy on Asylum?

The recast Asylum Procedures Directive has further improved the procedural safeguards where safe country concepts are applied by Member States, which may to a certain extent help to address the disadvantaged position of the asylum seeker in the procedure when such concepts are applied. The respective provisions now explicitly require that asylum seekers have a possibility to challenge the presumption of safety with respect to their country of origin, or the third country they stayed in before arriving in the EU Member State examining their asylum application and the right to an effective remedy must be guaranteed.

Also as regards the sources that need to be taken into account when assessing whether a country can be considered as safe and the need for a regular review of national lists, the recast Asylum Procedures Directive includes slight improvements. The preamble now explicitly stresses the need to ensure the correct application of the safe country concepts based on up-to-date information and the need for Member States to conduct regular reviews of the situation in those countries based on a range of sources of information, including from UNHCR and relevant international organisations. Moreover, whereas the Directive does not establish a clear standard with regard to the procedure to be followed in case of a change in the situation in countries considered as safe, it does require Member States to ensure a review of the situation in a country designated by them as safe "as soon as possible" when they become aware of a "significant change in the human rights situation in such a country".[186]

However, as regards the suspensive effect of the appeal, the core aspect of an effective remedy, the recast Asylum Procedures Directive allows for a system whereby suspensive effect is not automatic, but must be requested by the applicant and decided upon separately by the Court or Tribunal. According to the recast Asylum Procedures Directive, the latter system can be applied in all circumstances where the Directive allows for the application of one of the four safe country concepts.[187]

As further discussed below, in ECRE's view, in order to be effective, a remedy must have automatic suspensive effect as 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 suspensive effect of the appeal must be requested by the applicant obviously increases the risk that for practical reasons this may not happen because the applicant has not been sufficiently informed about this requirement, or where the applicant did not have timely access to legal assistance.[188] The latter was already identified as one of the major gaps in the systems of many of the asylum systems in the countries covered by AIDA in last year's annual report, and which unfortunately is confirmed for most countries in this year's Annual report.[189]

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 practice in a number of other EU Member States covered by the database raises a number of fundamental questions 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 have different views as to which countries 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%.[190] 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 individuals concerned may be convinced that their international protection needs have not been fully examined. 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.

186. See recital 46 and 48 recast Asylum Procedures Directive.
187. See Article 46 (6) (a), (b) and (d) recast Asylum Procedures Directive.
188. On the recent developments with regard to this issue in the jurisprudence of the ECtHR, see section 4.4 below.
189. See AIDA, Annual Report 2012/2013, at p. 63-70 and below, section 4.1.
190. EASO, Annual Report Situation on Asylum in the European Union 2013, p. 13.

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 is often the only way to avoid that they become destitute and have to reside for years on the territory without a residence permit because they cannot be removed are in practice, for instance because of the situation in the country of origin or because their country of origin refuses to issue the necessary documents to return.[191]

In all EU Member States covered by the Asylum Information Database, subsequent asylum applications are subjected to an examination of their admissibility which is centred around the question of whether the applicant has submitted new elements regarding their case as compared to the previous asylum procedure. Although the concept of new elements is key in the examination of subsequent asylum applications, in most countries the lack of clear definition of what constitutes a new element is problematic. This is for instance the case in **Hungary** where the law does not provide much guidance as to what constitutes new elements, except that the Refugee Authority must assess whether the applicant submitted any new facts or circumstances making them eligible for refugee or subsidiary protection status.[192] A similarly vague definition exists in **Bulgaria**, while in **Austria**, no definition is provided in the law, but guidance as to what constitutes a new element is primarily provided through the jurisprudence of the Austrian Administrative Court. The legislation and or administrative guidance in other EU Member States is more prescriptive and requires not only that new elements are submitted that could not have been provided before but also that such new elements make it (significantly) more likely that the person will be granted international protection. This is the case, for instance, in **Ireland, Germany** and **Belgium**. In the **United Kingdom**,[193] a slightly different test is laid down in the law as the immigration rules provide that where an asylum seeker makes further representations that are sufficiently different from previous submissions in that the content has not previously been considered, and which, taken together with previously submitted material create a "realistic prospect of success", these submissions can be treated as a fresh claim. However, NGOs and lawyers consider the threshold to be passed for submissions to be treated as fresh claims to be very high and that in the majority of cases it is necessary to proceed to judicial review in order for the claim to be treated as a fresh claim. Moreover, in the experience of legal practitioners, clearly new circumstances have been rejected as not new, and new evidence which supports the asylum seeker's credibility has been disregarded, often by reasserting the earlier, adverse findings, without reference to the strength, cogency or objectivity of either the old or new evidence.

Personal Interviews

It is good practice to conduct a personal interview in order to assess whether the elements submitted by the applicants can be considered as new and increase the likelihood of the applicant being granted international protection. In particular as it will not always be possible for the applicant wishing to submit a subsequent asylum application to produce written evidence of the existence of such new elements and where the new elements are required to increase the likelihood of the applicant meeting the eligibility criteria, a personal interview is often the only way to substantively assess the new elements submitted.

Such an interview is organised in practice in **Austria, Belgium, Bulgaria, the Netherlands** and **Hungary.** No interview on the admissibility of the subsequent asylum application is organised in **Cyprus, Greece, Ireland, the United Kingdom, France**[194] and **Italy**[195] while it is rare in **Sweden** and **Poland**. In **Germany**, whether an interview is organised relating to the admissibility of the subsequent application is entirely at the discretion of the Federal Office for Migration and Refugees. Similarly, in **Malta**, an interview is possible at the discretion of the Refugee Commissioner in some cases.

Obstacles to Lodging a Subsequent Asylum Application

In a number of the countries covered by the Asylum Information Database, asylum seekers wishing to submit a subsequent application face a number of specific obstacles to do so effectively. This is in many countries related to the fact that asylum seekers are not entitled to free legal assistance for the purpose of introducing a subsequent asylum application and/or have no or reduced access to reception conditions pending the assessment of the admissibility of their asylum application. Also the absence of an appeal with automatic suspensive effect risks undermining asylum seekers' access to an effective remedy in such cases.

In **France**, asylum seekers making a subsequent asylum application are not entitled to accommodation in reception centres[196]. As a result, they are forced to live in extremely precarious conditions which undermine the preparation of a subsequent asylum application and have no longer access to specialised NGOs active in reception centres or in orientation platforms, which means that asylum seekers have to rely on volunteers working for charities with respect to lodging their subsequent asylum application.[197]

191. On the practice of detention of unreturnable migrants in selected EU Member States, see Detention Action, Flemish Refugee Action, France Terre d'Asile, Menedék, Point of No Return. The Futile detention of unreturnable migrants, January 2014.
192. Asylum Information Database, Country Report Hungary – Subsequent applications.
193. Asylum Information Database, Country Report The United Kingdom – Subsequent applications.
194. OFPRA decides on the admissibility of the subsequent application on the basis of the evidence provided without organising an interview but in case it considers the application as admissible, the asylum seeker is invited for an interview.
195. No interview is organised by the Territorial Commission as part of its preliminary assessment of the new elements submitted.
196. But they are eligible to the temporary allowance (for the first subsequent application).
197. Asylum Information Database, Country Report France – Subsequent applications.

Moreover, if the subsequent application is examined in the context of the accelerated procedure, the appeal before the CNDA (National Court of Asylum) does not have suspensive effect with regard to the return decision. The applicant is also not entitled to legal aid for lodging such an appeal at the CNDA, when the applicant has had an oral hearing with the OFPRA (First Instance Asylum Authority) during the previous asylum procedure as well as with the CNDA and received legal assistance from a lawyer under the legal aid system at that time. Not having access to quality free legal assistance during the appeal procedure may, of course, further jeopardise the effectiveness of the appeal given the complexity and the level of technicality of such procedure.

In the **United Kingdom**, bureaucratic requirements to make the submission in person at specified regional offices[198] complicate the lodging of a subsequent asylum application considerably. For instance, there are recorded attempts of up to 200 calls from legal representatives to make an appointment at the Liverpool office of the Home Office, the designated office for further representations in cases where the original claim was made before March 2007. Furthermore, once they have an appointment to deliver the further submission in person, lack of means to travel to the designated reporting centre may further complicate such delivery in practice for the applicants. This is considered to be relatively unproblematic for those who are required to lodge the submissions where they regularly report as the Home Office will pay travel expenses to report where the distance is over three miles. However, the Home Office will not pay travel expenses for those who are required to attend more distant regional offices, or to travel to Liverpool. Moreover, although destitute applicants should be eligible for no-choice accommodation and a form of non-cash support as soon as they have alerted the Home Office to the existence of further submissions, in practice it can be extremely difficult to access such support while waiting for an appointment or for a decision on whether those further submissions constitute a fresh claim. As a result, persons with further submissions may be left destitute. Finally, the preparation of further submissions is funded under a limited form of legal aid (Legal Help) which puts further pressure on lawyers to maintain quality work. The refusal to treat submissions as a fresh claim can only be challenged by judicial review and requires the permission of the tribunal. The assessment of legal practitioners is that in practice, the shortage of publicly funded legal advice and the limitations of judicial review means that poorly based refusals may go unchallenged and that asylum seekers instead resort to making another set of further submissions.[199]

Also in **Bulgaria**, asylum seekers have no right to accommodation when they make a subsequent asylum application and they face the additional problem that registration of such an application can be delayed for months by the State Agency for Refugees (SAR). Legal aid to appeal a negative decision on a subsequent asylum application can be requested but is in practice rarely granted by the Court.[200] In **Cyprus** asylum seekers making a subsequent asylum application are not entitled to reception conditions as they are not considered as asylum seekers under the law until the competent authority takes a positive decision on the admissibility of the subsequent asylum application. Moreover, no State-provided free legal assistance is available to challenge a negative decision on the subsequent asylum application, leaving the limited possibilities of free legal assistance provided for under the European Refugee Fund or UNHCR as the only option. Also in **Ireland**, persons submitting a subsequent asylum application are not considered as asylum seekers and therefore are not entitled to accommodation and financial support until the application is accepted.[201]

Free legal assistance is not available either for asylum seekers for the purpose of making a subsequent asylum application in **Malta** and **Greece**. The only realistic alternative for asylum seekers in such a situation is to approach NGOs in order to receive legal support for the submission of their 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 legal support in practice, unless they had the resources 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 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[202], based on an assessment of whether new elements exist which increase the chances of the applicant being recognised as in need of international protection lies with the Commissioner-General for Refugees and Stateless Persons (CGRS), the specialised and independent asylum authority at the first instance in Belgium. Prior to that date, decisions on the admissibility of subsequent asylum applications were the responsibility of the Aliens Office, an administration receiving instructions from the State Secretary of Asylum and Migration. Moreover, since the new law entered into force on 1 June 2014, an appeal on the merits of the subsequent asylum application is possible before the Council of Aliens Litigation (CALL), whereas before only an annulment appeal was possible without automatic suspensive effect. Such an appeal must be lodged within 15 calendar days in the case of a first subsequent application, 10 days in case the person is detained or 5 calendar days in case of an appeal against a second (or third,..) subsequent asylum application.

198. Although the response to further submissions in the context of a fresh claim is decided without an interview.
199. Asylum Information Database, Country Report the United Kingdom – Subsequent applications.
200. Asylum Information Database, Country Report Bulgaria – Subsequent applications.
201. Asylum Information Database, Country Report Cyprus – Subsequent applications.
202. Technically this is a decision whether or not to take into consideration the subsequent asylum application according to the Belgian Aliens Law. See Asylum Information Database, Country Report Belgium – Subsequent applications.

In Focus: A New Procedure for Subsequent Asylum Applications in The Netherlands

In **The Netherlands**, as of 1 January 2014, subsequent asylum applications are dealt in a new procedure, called the 'one-day review'. This procedure is initiated by the asylum seeker filling out a form and when the Immigration and Naturalisation Service (IND) has confirmed that the application is complete, the asylum seeker receives an invitation to submit an asylum application at an IND application centre. The IND aims to deal with the application within two weeks of the reception of the form, although this is not guaranteed. At the appointed day and time, the asylum seeker must register with their luggage at the appointed IND application centre. The identity of the asylum seeker is checked, following which, the asylum application is signed and a hearing takes place with an IND employee and an interpreter, in which only the existence of new facts or circumstances justifying a subsequent asylum application is addressed.

A decision is taken on the same day as the hearing. The IND can decide either to 1) grant refugee or subsidiary protection status; 2) reject the application or 3) decide that further research is needed.

In case the application is rejected, the asylum seeker receives a report of the hearing and the intended decision considering the rejection on the same day as the hearing (day 1). On the next day (day 2), the asylum seeker discusses the report of the hearing and the intended decision, while the lawyer will draft an opinion on the intended decision and will also submit further information. On the third day the asylum seeker will receive an answer from the IND whether the application is rejected, approved or requires further research. When the asylum seeker receives a decision that their subsequent asylum application will be rejected, the asylum seeker can be expelled.

In case the IND decides that further research is needed, the asylum application is examined in the short or extended asylum procedure according to the general rules of the Dutch asylum procedure. During the short or extended asylum procedure, the asylum seeker enjoys the right to shelter until the IND has made a judgment on the application. When the application is granted, the asylum seeker will retain the right to shelter until there is housing available.

The main issue in assessing the subsequent application is whether the asylum seeker has submitted new facts or circumstances (*nova*) in relation to their previous asylum application and if so, whether these *nova* are relevant. The nova criterion is interpreted strictly.[203] An appeal can be lodged against a negative decision on the subsequent asylum application to the regional court. However, lodging an appeal is not sufficient for the asylum seeker to get lawful residence in the Netherlands, which means they can be expelled during their appeal. To prevent this, the asylum seeker has to request for a provisional measure from the regional court. After the decision of the regional court, the asylum seeker can lodge an appeal with the Council of State.

When the negative decision is final the asylum seeker cannot lawfully stay in the country and can be expelled immediately. This means that the asylum seeker is not entitled to a period of four weeks to return on their own accord and that no accommodation is offered to the asylum seeker.

Due to recent financial cutbacks the principle of 'no cure, less fee' is applied with regard to legal assistance in the case of subsequent asylum applications. This implies that lawyers will receive lower remuneration fees in case of a negative decision of the regional court or the Council of State.

All EU Member States covered by the Asylum Information Database are confronted with subsequent asylum applications albeit to various degrees, while there are also variances with regard to the nationalities lodging subsequent asylum applications. EU Member States covered in the Asylum Information Database registering relatively high numbers of subsequent asylum applications in 2013 included **Germany**[204] (17,443 subsequent asylum applications with the top five nationalities being Serbia, Macedonia, Kosovo, Syria and the Russian Federation); **France**[205] (5,790 subsequent asylum applications with the top five nationalities being Bangladesh, Sri Lanka, Russia, Kosovo and Armenia) and **Belgium**[206] (5,647 subsequent asylum applications with top five nationalities being Russia, Afghanistan, Iraq, Guinea and Kosovo).[207]

As these examples illustrate, the main nationalities lodging subsequent asylum applications in those EU Member States present a mix of countries for which recognition rates are high on average across the EU or facing high levels of violence and human rights abuses, including Syria, Afghanistan and Iraq and nationalities that are considered in some EU Member States as safe countries of origin. Although no final conclusions can be drawn from these examples, the fact that in some countries significant numbers of Syrians, Afghans or Iraqis have to introduce a subsequent asylum application is important and may point to problems in the functioning of the asylum procedure. However, further research is necessary to better understand the reasons why their first asylum application was rejected as this may include lack of credibility with regard to the nationality of the applicants concerned or technical reasons. Whatever the reason may be, it is clear that, in light of the situation in those countries, rules relating to subsequent asylum applications will have to be applied with sufficient flexibility and caution in order to ensure effective access to protection for those persons.

203. For further information see Asylum Information Database, Country Report The Netherlands – Subsequent applications.
204. Asylum Information Database, Country Report Germany – Statistics.
205. Asylum Information Database, Country Report France – Statistics.
206. Asylum Information Database, Country Report Belgium – Statistics.
207. No statistics on the number of subsequent asylum applications submitted in 2013 were available for the other EU Member States covered by the Asylum Information Database.

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 remain on the territory pending the appeal 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 also recognised as such. This is because, by definition, asylum seekers find themselves in a disadvantaged 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 reporting 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 with respect to Article 13 ECHR 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.[208]

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 modalities and degree of legal assistance that is provided to asylum seekers during first instance procedures are dependent in practice on the type of reception condition theyenjoy.[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).

208. Issues related to legal assistance and representation and access to an effective remedy in the context of subsequent asylum applications are dealt with in the previous section.
209. In general, asylum seekers accommodated in a reception centre for asylum seekers (CADA) have better access to legal assistance than those not residing in reception centres, as the latter depend on legal assistance provided through the orientation platforms. For further information see Asylum Information Database, Country Report France – Regular Procedure.
210. For further details on the specific challenges in the countries that are not further discussed in this section, see the respective country pages on the Asylum Information Database website.

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 sustainability and the gaps in funding during periods in 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 asylum application. However, this must only be granted if such aid is not provided by the State Agency for Refugees under an ERF programme.[211] 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 at the first and second administrative instances of the asylum procedure. Moreover, pro bono work by lawyers is prohibited by the Advocates Law 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 Worlds Centre 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 all 15 EU Member States covered by the AIDA. 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 also problematic in **Germany**, while it is foreseen in the law but hardly applied in practice in **Belgium** and it is not foreseen in the law in **Malta** and **Austria**. 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 asylum application 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 must raise legal/procedural points 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 within its scope, only five applications for legal aid have been granted in 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 for lawyers where the appeal is dealt with by the Court without a hearing. This was based on the assumption that such

211. Asylum Information Database, Country Report Bulgaria – Regular Procedure.
212. Asylum information Database, Country Report Poland – Regular Procedure.
213. Asylum Information Database, Country Report Cyprus – Regular Procedure.
214. Asylum Information Database, Country Report The United Kingdom – Regular Procedure.
215. Asylum Information Database, Country Report Cyprus – Regular Procedure.

cases are very easy or an indication of the fact that there is no need for a procedure at all. This was criticised by asylum lawyers arguing that such reasoning may be valid for other areas of law but is not applicable to asylum cases because of their very nature. In the Netherlands, 95% of asylum cases in an onward appeal are dealt with without a hearing while in other areas of law, this percentage is on average 15%, so it would have impacted legal aid in asylum cases considerably more than other areas. Eventually, the Secretary of State withdrew this measure in February 2014 after lawyers had severely objected to this.[216]

In **the United Kingdom** following the abolition of legal aid in most immigration cases in April 2013 there have been further cuts in legal aid affecting asylum seekers such as the reduction of rates paid for Upper Tribunal work as of December 2013, the abovementioned abolition of legal aid for civil court cases where the merits are assessed as 'borderline' and the removal of legal aid for applications to apply for judicial review. In addition to the closure of immigration and asylum law firms and departments, these developments have resulted in a shortage of good quality publicly funded advice and representation for asylum seekers while the continued reduction in public funding also threatens more reductions in the voluntary sector.

In **Ireland**, the Legal Aid Board, an independent statutory body funded by the State has limited resources to bring judicial review proceedings themselves and therefore it has been crucial for applicants to have access to private practitioners who are willing to take cases without charging them significant fees from the start.[217] There is anecdotal evidence that the climate of austerity has made it more risky for private solicitors to bring cases for applicants for low costs where they think there is merit in the case and apply for legal costs in case the High Court action for judicial review is successful.

A positive development was noted in **France**, where a decree of 20 June 2013 doubled the unit value under the legal aid scheme for appeals lodged to the National Court of Asylum (CNDA), in an effort to address the fact that the low remuneration for asylum cases under the legal aid scheme is not encouraging lawyers to take up cases. However, it should be noted that many stakeholders in France still consider the compensation for lawyers in appeal cases insufficient, in particular as these fees are not sufficiently high to cover interpretation during the preparation of the case. Therefore, the problem remains that some lawyers refuse to work under the legal aid scheme and as a result lawyers assisting asylum seekers at the appeal stage are often appointed by the CNDA. In many cases these lawyers are informed of the name of their client only late in the process (about three weeks before the date of the hearing) and often do not even meet their clients before the hearing as they are often based in Paris.

Under EU asylum law, States only have an obligation to ensure access to free legal assistance and representation at the appeal stage, while at the first instance asylum seekers must have access to legal and procedural information, a concept which is not very clearly defined in the recast Asylum Procedures Directive. In ECRE's view, access to quality free legal assistance and representation is essential for asylum procedures to achieve their objective: identifying those who are in need of international protection using a process that is efficient but fair and takes into account special needs and vulnerabilities where necessary. It is also essential that such legal assistance is provided as early as possible in the procedure as this is an important tool to build asylum seekers' trust in the system and ensure that they are well informed and prepared for the various procedural steps that are awaiting them. Quality legal assistance also contributes to the frontloading of asylum procedures, the policy of investing sufficient resources in the first stage of the asylum procedure so as to increase the chance that first instance decisions are correct.

However, the trend in a number of the EU Member States covered in the Asylum Information Database seems to go in the opposite direction. States and EU institutions should take the necessary steps to stop this trend and remove disincentives for lawyers to engage in asylum and migration cases.

4.2 Right to an Effective Remedy

As mentioned above, the right to an effective remedy is a crucial part of any asylum procedure and is enshrined in EU law. The way the appeal system is organised in practice determines to a great extent the effectiveness of the remedy in asylum cases. In this section, a number of important developments in the appeal system in the EU Member States covered by AIDA since September 2013 are highlighted.

Access to an effective remedy during the regular procedure

The table below provides a general overview of three key characteristics of the first appeal against a negative first instance decision of an asylum application that is at the applicant's disposal during **the regular procedure** in relation to the 15 countries covered by AIDA. While the characteristics of a further appeal before a Higher Court is an important aspect in the jurisprudence of the ECtHR and the Court of Justice of the EU (CJEU) to assess the effectiveness of the remedy in light of a State's administrative and judicial system as a whole,[218] the main focus of this section is on the first appeal as this is the most relevant level in asylum cases.

216. Asylum Information Database, Country Report The Netherlands – Regular Procedure.
217. Asylum Information Database, Country Report Ireland – Regular Procedure.
218. See for instance CJEU, Case C-175/11, H.I.D., B.A. v Refugee Applications Commissioner, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Ireland, Attorney General, Judgment of 31 January 2013, par. 102.

First appeal in the regular asylum procedure

	Judicial or administrative appeal	Time limit for lodging appeal	Suspensive effect
AT	J	2 weeks [220]	Y [223]
BE	J	30 calendar days	Y
BG	J	14 days	Y
DE	J	14 calendar days	Y
CY	A [219]	20 days	Y
FR	J	1 month	Y
GR	A	30 calendar days	Y
HU	J	8 days	Y
IE	J	10 or 15 working days	Y
IT	J	30 calendar days [221]	YW [224]
MT	A	2 weeks	Y
NL	J	1 week in short regular procedure [222]	Y [225]
PL	A	14 calendar days	Y
SE	J	3 weeks	Y [226]
UK	J	10 working days	Y

Note: A: Administrative - J: Judicial –Y: Yes - N: No – YW: Yes with exceptions

Whether the **time limits** within which asylum seekers and their lawyers or legal advisors have to lodge an appeal against a negative first instance decision in the respective EU Member States is sufficient, depends very much on the availability and quality of legal assistance discussed above. This table should therefore also be read together with the observations made in the previous subsection.

An important development in **France** is the adoption of a new decree on the procedure before the National Court of Asylum (CNDA) on 16 August 2013. This decree established a time limit of two months to lodge an appeal against a first instance decision of the OFPRA (the first instance determining authority) in the regular procedure for asylum applications lodged in French overseas departments, whereas this is one month for applications made on mainland France. Moreover, the decree also introduced a new rule according to which information relating to the appeal can only be added to the file for the CNDA up until five days before the date set for the hearing of the appeal, whereas previously this was possible up until three days before the date of the hearing. Another decree of 12 June 2013 makes the use of videoconferencing for CNDA hearings possible. Asylum seekers are informed of this by registered mail and can refuse the use of videoconferencing in their case within 15 days. However, asylum seekers in French overseas departments do not have the possibility to refuse the use of videoconferencing.

A positive development in **Austria** is that, as of 1 January 2014, the time period to lodge an appeal against a negative decision of the Federal Office for Immigration and Asylum (BFA)[227] before the Federal Administrative Court (BVwG) in a regular procedure is now four weeks for the legal representative of unaccompanied asylum seeking children, whereas it is two weeks in all other cases. This results from the entry into force of a new law reorganising a number of administrative procedures. As of 1 January 2014, a further appeal can be lodged against the judgment of the Federal Administrative Court before the Administrative High Court (VwGH). Such an appeal must be allowed by the Federal Administrative Court, but in case this is refused, the applicant may request for an extraordinary "revision".[228]

In **Poland**, under the new law on Foreigners which entered into force on 1 May 2014 asylum procedures and return procedures have now been separated. This means that a negative decision on granting protection is no longer accompanied by a return order. The return procedure is launched after a final negative decision on the asylum application is issued by the Refugee Board. There is also an important amendment with regard to the suspensive effect of the complaints lodged to the Administrative Court in Warsaw in return procedures. If the complaint to the Court is accompanied by a

219. 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 suspensive. A separate application can be lodged before the Supreme Court to request suspensive effect pending the appeal.
220. 4 weeks in case of an appeal against a decision concerning an unaccompanied asylum seeking child.
221. 15 calendar days (in detention centre or reception centre (CARA).
222. 4 weeks in extended regular procedure.
223. Except where the FAA does not allow the appeal to have suspensive effect, such as when the application is considered to be without substance.
224. Suspensive effect must be requested in case the asylum application was made after notification of an expulsion order, in case of a manifestly unfounded application; where the applicant is accommodated in a CIE or CARA after being apprehended while trying to avoid border controls or where the applicant left the CARA without justification.
225. Suspensive effect must be requested in the short regular procedure, whereas suspensive effect is automatic in case of extended regular procedure.
226. Not in manifestly unfounded cases.
227. Suspensive effect must be requested in short regular procedure, whereas automatic suspensive effect in case of extended regular procedure.
228. 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.

request to suspend the return decision, the execution of this decision is withheld until the Court decides on this request. This is a major change, since with regard to the asylum cases which started before 1 May 2014, a negative asylum decision was 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 deportedbefore the request and the complaint against a negative decision on the asylum application 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 threatening the principle of *non refoulement*,[229] and therefore suspended the transfer of an asylum seeker back to Poland under the Dublin Regulation. However, despite the new law being already adopted, the practice of expelling 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 issued for the Border Guard Commander in Chief with the instruction to suspend removals until the Court has decided on the request for suspension.[230]

In **Cyprus, Greece, Malta** and **Poland**, the first appeal against a negative first instance decision on the asylum application is not before a Court or Tribunal, 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[231] and only concerns points of law. Applicants or their representatives do not have access to the entire file before the Refugee Reviewing Authority but only to the recommendation on the decision and, as of June 2014, the interview transcript at the Asylum 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.

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, inadmissibility and border procedures as well as the recast Dublin Regulation with regard to appeals lodged against decisions to transfer asylum seekers to another EU Member State.[232] 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 and with regard to certain subsequent asylum applications.[233] 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 suspend the transfer to another EU Member State pending the appeal, but according to the law, such a request in 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 *refoulement*. 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 until the court decides on such request.[234] 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 to the Administrative Court pending the examination of their appeal of the transfer decision to another Member State. Such an appeal must be submitted within seven calendar days and suspends the transfer decision at least until the Court has decided on the request for suspension. Notwithstanding this guarantee in the law, it remains challenging for

229. See Rechtbank Haarlem, AWB 13/11314, 18 June 2013.
230. See Asylum Information Database, Country Report Poland – Regular Procedure.
231. Suspension can be requested in a separate application before the Supreme Court. See below.
232. See AIDA, Annual report 2012/2013, pp. 40-41.
233. Since January 2014 only in case a subsequent asylum application was submitted after implicit or explicit discontinuation of the previous procedure and is found inadmissible or manifestly unfounded, suspensive effect of the appeal must be requested and is not an automatic consequence of lodging the appeal.
234. Asylum Information Database, Country Report Hungary – Dublin.

asylum seekers to overcome the practical difficulties of meeting the short deadline of seven calendar days for submitting 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 asylum applications rejected in an accelerated procedure on the basis that the applicant is from a safe country of 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 removal orders. Two types of appeal are possible before the Council of Aliens Law Litigation (CALL), the 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 Regulation are dealt with in the annulment procedure. This was also the case until 1 June 2014 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 appeal had to be submitted either by way of a 'normal suspension request' or by way of a request for suspension on the basis of extreme urgency in case the applicant is detained or removal is otherwise considered to be imminent.

In a judgment of 16 January 2014, the Belgian Constitutional Court quashed the provisions in the Aliens Act providing only for an annulment procedure against decisions of the CGRS not to take into consideration applications from asylum seekers coming from a safe country of origin as it held that it did not meet the requirements of an effective remedy.[235] Partly in response to this judgment of the Constitutional Court, the law of 10 April 2014 provides for specific time-limits for lodging appeals in cases concerning subsequent asylum applications and asylum applications from safe countries of origin and for appeals in such cases to be dealt with according to the 'full judicial review' procedure before the CALL. This means that the CALL can not only annul or confirm the decision of the CGRS but also review the application on its merits, declare it admissible and grant refugee or subsidiary protection status. This appeal has automatic suspensive effect, except with regard to subsequent asylum applications, as of the second subsequent asylum application under certain conditions.

In addition, the law now stipulates explicitly that a request for suspension of removal orders in extreme urgency automatically suspends the execution of the removal order until the CALL has taken a decision on the need to grant suspensive effect. Moreover, the CALL is now required to conduct a rigorous examination of all evidence submitted, in particular evidence pointing to reasons to believe that removal risks violating human rights that are non derogable according to Article 15 ECHR.

Recent jurisprudence of the ECtHR with respect to Belgium, Cyprus and Spain has further casted doubt as to the compatibility of a system whereby suspensive effect must be requested with Article 13 ECHR. In the case of *S.J v. Belgium*, the ECtHR once more questioned the system whereby suspensive effect must be requested separately by the applicant to the CALL in extreme urgency in certain cases.[236] In this case, concerning the proposed return of a mother with HIV and her three children to Nigeria, the Court ruled that the family did not have an effective opportunity to challenge their removal. The Court concludes that Belgian law fails to enable people to appeal against their deportation with automatic suspensive effect, which would allow a judicial authority to submit the merits of the appeal to a thorough and rigorous review prior to removal. Under Belgian law an 'annulment appeal' against an expulsion order has no suspensive effect, nor does an ordinary 'suspension appeal'. Only an appeal for suspension under the 'extreme urgency procedure' has automatic suspensive effect. Such an appeal can only be issued where expulsion is imminent and where the applicant is in detention, according to the jurisprudence of the Belgian Appeal Court. Moreover, the 'extreme urgency procedure' cannot be launched without having submitted an ordinary suspension appeal first.

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 to make recommendations under Article 46 ECHR to urge Belgium to amend its domestic law in order to ensure that every person subjected 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 conditional on the prior lodging of another appeal on the merits of the case. Moreover, the time limit for lodging such an appeal must be sufficient and its suspensive effect must remain until a

235. See Constitutional Court, Judgment N° 1/2014 of 16 January 2014.
236. ECtHR, S.J. v. Belgium, Application no. 70055/10, Judgment of 27 February 2014 (French only). Other cases in which a violation of Article 13 ECHR was found with respect to the appeal system in Belgium include M.S.S. v. Belgium and Greece, Application no. 30696/09 , Judgment of 21 January 2011 and Yoh-Ekale Mwanje v. Belgium, Application no. 10486/10, Judgment of 20 December 2011 (French only) and Singh and Others v. Belgium, Application no. 33210/11, Judgment of 2 October 2012 (French only).

complete and rigorous scrutiny has been conducted of the suspension 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".[237] As neither the appeal against deportation and detention orders nor the application for a provisional order in the context of the proceedings before the Cypriot Supreme Court have automatic 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 a provisional order was suspensive in practice. However, the ECtHR reiterated that "the requirements of Article 13, and of the other provisions of the Convention, take the form of a guarantee and not of a mere statement of intent or a practical arrangement. This is one of the consequences of the rule of law, one of the fundamental principles of a democratic society, which is inherent in all the Articles of the Convention".

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 by the Spanish Administrative Court before it had examined the substance of their appeal in the administrative 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 provide for an effective remedy. Here again, the Court warned the risks involved in a system whereby suspensive effect is granted upon request as it cannot be excluded that suspensive effect is wrongly refused.[238]

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.[239] 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.[240]

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 access to all benefits under the Directive and that transfers of applicants from one housing facility to another should take place only when necessary.[242]

Out of the 15 States covered by the Asylum Information Database, only **Austria**, **Germany**, **Hungary** and the **United Kingdom**, have a formal country-wide dispersal scheme in place for the accommodation of asylum seekers. In **Germany**, asylum seekers are also subject to a 'residence obligation' under the law, which means that their residence permits are limited to a specific town or district where they are assigned to. The general dispersal scheme allocates 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 State, to neighbouring municipalities, or even to the neighbouring State without having to request a specific authorisation.[243]

In **Austria** and the **Netherlands**, asylum seekers are generally free to move within the territory except in the initial stages of the asylum procedure. For instance, in **Austria**, in the admissibility procedure, asylum seekers have to stay in the initial reception centre and can be sanctioned if they do not respect this obligation.[244]

In most Member States, while dispersal schemes do not exist, asylum seekers can still be assigned to specific reception

237. ECtHR, M.A. v. Cyprus, Application no. 41872/10, Judgment of 23 July 2013, par. 137.
238. 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 as the applicants had been residing in a legally uncertain and precarious situation on Spanish territory pending the final outcome of their appeal before the national jurisdiction and the ECtHR had imposed an interim measure, the national court should issue its final decision on the substance with due diligence.
239. 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 (Discretionary provision on medical screening) and 29 (obligatory provision on staff and resources) shall apply from 21 July 2015 (see Article 33 recast Reception Conditions Directive).
240. See also European Migration Network, The Organisation of Reception Facilities for Asylum Seekers in different Member States, 2014.
241. Article 7 recast Reception Conditions Directive.
242. Article 18(6) recast Reception Conditions Directive.
243. Asylum Information Database, Country Report Germany – Freedom of movement.
244. Asylum Information Database, Country Report Austria – Freedom of movement.

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 capacity. Asylum seekers can request to be accommodated in a specific centre but the request has to be justified.[245] 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.[246]

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.[247] 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**.

245. Asylum Information Database, Country Report Poland – Freedom of movement.
246. Asylum Information Database, Country Report Italy – Freedom of movement and Country Report United Kingdom – Criteria and restrictions to access reception conditions,
247. Asylum Information Database, Country Report the Netherlands – Freedom of movement.

	Type of accommodation most frequently used in a regular procedure	Type of accommodation most frequently used in an accelerated procedure	Number of places in all the reception centres (both permanent and for first arrivals):	Number of places in private accommodation:	Are there instances of asylum seekers not having access to reception accommodation because of shortage of places?
AT	RC, PH	RC	12780	7000	N
BE	RC, PH	RC, other [249]	19310 [250]	7695 [255]	N
BG	RC	RC	4150	0	Y
CY	PH	PH	70-80	N/A	Y
DE	RC	RC	N/A	N/A	Y
FR	RC	ES, HO	23369 [251]	N/A	Y
GR	HO	HO	970	N/A	Y
HU	RC	N/A	1614	N/A	N
IE	RC	RC	5522	N/AP [256]	N
IT	RC	N/A	22236 [252]	N/A	Y
MT	Other	Other	N/A	About 400	N
NL	RC	RC	N/A	0	N
PL	RC	RC	2420	N/AP	N
SE	RC [248]	RC	26663 [253]	14818	N
UK	RC, PH	RC, PH	Around 1200 [254]	N/A [257]	Y

RC: reception centres; PH: private housing; HO: hotel/hostel; ES: emergency shelters; N/A: not available; N/AP: not applicable; Y: Yes; N: NO

248. In Sweden the term reception centre refers also to accommodation provided in individual flats rented by the authorities, which is the most used form of accommodation.
249. EU citizens and persons waiting for an admissibility decision (both accelerated procedures) are not entitled to any reception accommodation.
250. As of 1 March 2014.
251. As of 31 December 2013.
252. As of 19 March 2014: CPSA: 650 places, CDA/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. North Africa Emergency centres: At present, about 700 North African migrants are still accommodated in these centres.
253. As of February 2013.
254. Places in initial accommodation centres for new claimants.
255. As of 1 March 2014.
256. All reception centres are privately run.
257. 20,687 asylum seekers are in dispersed accommodation at the end of December 2013.

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.[258]

In **Italy**, where arrivals of migrants and asylum seekers have significantly increased in recent months, authorities have established alternatives types of accommodation in addition to the existing centres. The Ministry of Interior issued two circulars[259] urging prefectures to find reception places and sign agreements with local entities and NGOs to manage new accommodation places. In addition, the national reception system was extended, with the target of an additional 20,000 places for the period 2014-2016. NGOs and UNHCR have called on the government to establish a more comprehensive and longer term plan to respond to current and future reception needs.[260] 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.[261]

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.[262]

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.[263]

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.[264] Most asylum seekers have to find accommodation in private apartments on their own. They are granted a rent allowance but the amount is insufficient to cover actual costs.[265] 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%.[266]

Conditions in Reception Facilities

The recast Reception Conditions Directive provides that accommodation centres should guarantee asylum seekers an adequate standard of living. The Directive also provides some guarantees with regard to the protection of family life,special needs of some applicants, preventing gender-based violence and limiting the transfers of asylum seekers from centre tocentre.[267]

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 of asylum seekers lies with federal states or municipalities 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.[268]

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

258. Asylum Information Database, Country Report Bulgaria – Criteria and restriction to access reception conditions and Types of accommodation.
259. One on 8 January and one on 19 March 2014.
260. Asylum Information Database, Country Report Italy –Types of accommodation.
261. EASO, *Annual Report 2013*, footnote 288, p 85.
262. Asylum Information Database, Country Report Germany –Conditions in reception facilities.
263. Asylum Information Database, Country Report France –Types of accommodation.
264. There were 1255 asylum applicants in 2013 in Cyprus.
265. Asylum Information Database, Country Report Cyprus – Forms and Levels of material reception conditions.
266. Asylum Information Database, Country Report Belgium –Types of accommodation.
267. Article 18 of the recast Reception Conditions Directive.
268. EASO, *Annual Report 2013*, p. 85.

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.[269] 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.[270]

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 facilities. However, since their opening, living conditions in three of these centres were below standards. 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 efforts have been made to improve living conditions. Yet, some concerns remain with regard to the sustainability of the improvements.[271]

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.[272] Living conditions in reception centres in **Malta** are also extremely difficult at times, with hygiene and security problems as well as overcrowding.[273]

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 Ministry of Interior whereby local Commissions, composed of local prefectures, police, UNHCR, IOM, Save the Children and the Italian Red Cross, visit centres for asylum seekers on a quarterly basis.[274] 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 allowance 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.[275] 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.[276] 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 ECtHR in its assessment of States' compliance with their obligations under Article 3 ECHR and is a relevant factor in Dublin procedures.[277] Furthermore, the CJEU has held that material reception conditions must be granted to asylum seekers as soon as the asylum seeker applies for asylum. 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.[278] In the case of *Saciri,* 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,

269. Asylum Information Database, Country Report Poland –Conditions in reception facilities.
270. Asylum Information Database, Country Report Belgium –Conditions in reception facilities.
271. Asylum Information Database, Country Report Bulgaria –Types of accommodation and Conditions in reception facilities.
272. Asylum Information Database, Country Report Austria – Conditions in reception facilities.
273. Asylum Information Database, Country Report Malta – Conditions in reception facilities.
274. EASO Annual Report, p. 86.
275. For further information see Human Rights in Ireland blog articles by Dr Liam Thornton, Direct Provision System challenged before the Irish High Court: Day 1; Direct Provision System challenged before the Irish High Court: Day 2; Direct Provision System challenged before the Irish High Court: Days 3- 11.
276. The Journal, High Court case could be a 'step towards ending Direct Provision system', 22 October 2013, NASC, NASC welcomes new High Court challenge to Direct Provision, 30 April 2014.
277. See ECtHR, M.S.S. v. Belgium and Greece, Application no. 30696/09, Judgment of 21 January 2011.
278. CJEU, Case C-179/11, Cimade, GISTI v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration, Judgment of 27 September 2012.

whereas Member States have a certain margin of manoeuvre as regards the methods by which they provide material reception condition, 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 meetingthosestandards.[279]

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.[280] 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 probably will 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.

	Maximum duration of detention in law	Are asylum seekers detained in practice during the Dublin procedure?
AT	10 m	F
BE	5 m	R
BG	18 m/3 m [281]	R
CY	18 m	F
DE	18 m [282]	R
FR	45 days [283]	F (prior to the transfer to the responsible State)
GR	18 m	N
HU	12m/6 m/30 days [284]	F
IE	21 days renewable [285]	R
IT	18 m	N
MT	12 m	F
NL	18 m	F
PL	6m/18m [286]	R
SE	12m	R
UK	No max. period	F

F: Frequently; R: Rarely; N: Never

279. CJEU, Case C-79/13, Federaal agentschap voor de opvang van asielzoekers v. Selver Saciri and Others, Judgment of 27 February 2014, par. 50.
280. UNHCR, Beyond Detention. A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014-2019, 2014.
281. For families with children.
282. 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 kept in detention.
283. Information in this table with regard to the maximum duration of detention and detention during Dublin procedures refers to asylum seekers who lodged an asylum application while being in a detention centre (asylum seekers are otherwise not present in detention centres in France).
284. 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.
285. This period of detention may be renewed indefinitely if where asylum seekers are detained under Article 9(8)A Refugee Act 1996. The maximum period for detention pending deportation is eight weeks.
286. 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 awaiting return up to a maximum of 18 months. Failed asylum seekers who are subsequently detained for the purpose of return may therefore be detained up to 24 months.

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 AIDA, while in a number of Member States other detention grounds exist 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**.[287]

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 that have crossed the border irregularly and are apprehended are placed in detention centres. Among those, many claim asylum when detained, in most cases because they were not able to claim asylum earlier. 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 applications. 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 centres 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 Law put forward in November 2013 proposes to extend the scope of detention of asylum seekers, making detention the norm rather than an exception.[288] 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 to detain asylum seekers and irregular migrants, while the judicial review of the decision to detain is mostly limited to the legality of the decision.[289] 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 unless there is a suspicion of human trafficking 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 subjected 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 of the applicants concerned and the insufficient system for challenging the lawfulness of their detention and became final in December 2013.[290] In one of these cases, *Suso 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.

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 a number of NGOs, including the Greek Council for Refugees, AITIMA and ECRE, concerns the policy of detaining 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 as of April 2014. In response to a joint letter of ECRE, the Greek Council for Refugee and AITIMA,[291] raising the incompatibility of such practice with the EU Return Directive, Commissioner Malmström indicated that the Commission was further examining the situation. Meanwhile, the Decision was ruled unlawful in May 2014 by the Athens Administrative Court[292] but has so far not been withdrawn.

287. Ireland and the UK have opted out of the recast reception Conditions Directive.
288. Asylum Information Database National Country report Bulgaria – General and Grounds for detention.
289. Asylum Information Database, National Country Report Belgium – Grounds for detention.
290. ECtHR, Aden Ahmed v. Malta, Application no. 55352/12, Judgment of 23 July 2013 and Suso Musa v. Malta, Application no. 42337/12, Judgment of 23 July 2013.
291. See ECRE, Greek Refugee Council, Aitima, Letter to Commissioner Malmström, Athens/Brussels, 6 May 2014.
292. Asylum Information Database National Country report Bulgaria –Grounds for detention.

The Refugee Law in **Cyprus** allows the detention of asylum seekers on two grounds: 1) to establish their identity or nationality if they have destroyed or falsified their documents and do not reveal their real identity or 2) to examine new elements in the application after their asylum claim was finally rejected and a deportation order was issued. However, detention is also allowed under the Aliens and Immigration Law if asylum seekers are declared "prohibited migrants", meaning that they are detained for the purpose of deportation, although the deportation order is suspended until a decision has been taken on the asylum application. In practice the detention provisions of the Refugee Law are never used and therefore asylum seekers are detained as prohibited migrants. Decisions to detain are not based on an assessment of the asylum seeker's individual circumstances or the risk of absconding and decisions to release asylum seekers during the procedure, which are rare, are not based on formal criteria and are left to the discretion of the authorities. Although the Aliens and Immigration Law refers to alternatives to detention, these are not listed in the law, although a proposed amendment to the Refugee Law does include such a list.

In **Austria, Cyprus, Hungary, Malta, the Netherlands** and **the United Kingdom** it is reported that asylum seekers are frequently detained in the context of Dublin procedures. At the same time, the requirement of the existence of a significant risk of absconding in Article 28 recast Dublin Regulation as a condition for detention to secure transfers under the Dublin Regulation triggered legislative and jurisprudential developments in some Member States, while in other Member States covered by the Asylum Information Database, no specific changes were reported.

In **the Netherlands**, the entry into force of the recast Dublin Regulation on 1 January 2014 led to the adoption of new legislation relevant for the assessment of the risk of absconding, which is required under Article 28 of the recast Dublin Regulation. The Aliens Decree now requires that there is an indication that the Dublin Regulation applies and that there is a significant risk of absconding in order for the detention of an asylum seeker for the purpose of the Dublin procedure to be lawful. According to the Parliamentary preparatory notes, a significant risk of absconding exists when at least two of three 'severe grounds' are applicable in the individual case. These grounds include 1) the asylum seeker has entered the territory irregularly and unlawfully absconded from the supervision of the Dutch authorities; 2) the person has not complied with an earlier decision to leave the territory; 3) the asylum seeker did not cooperate in determining their identity and nationality; disposed of their documents, used forged documentation or 'made it clear' that they will not cooperate with regard to their transfer to another Member State. In case one of those grounds applies, there is no need for the Immigration and Naturalisation Service (IND) to state further reasons for the detention for the purpose of the Dublin procedure.

In **Austria** asylum seekers are frequently detained in the context of the Dublin procedure and people are almost systematically detained during the 24 hours preceding their transfer to the Member State responsible for examining their claim. In some cases, detention under a Dublin procedure has been reported to last as long as six months. The Aliens Police Law does not explicitly refer to a risk of absconding in order to detain an asylum seeker and therefore does not define it explicitly, but the reference to the asylum seeker having left the initial reception centre without a valid reason may be seen as absconding. In any case, the Administrative High Court has issued several judgments that include relevant guidance for the Federal Agency for Immigration and Asylum (BFA) and the Federal Administrative Court with regard to the risk of absconding. In these judgments, criteria such as irregular entry, non- compliance with a return decision, having dependent children in Austria have been considered relevant to determine whether there is a risk of absconding. Moreover, asylum seekers are in practice also detained at an early stage of the procedure on the basis that they were in several other States applying the Dublin Regulation or in light of their travel route to Austria.

In **Germany**, where detention of asylum seekers only takes place in exceptional cases in 'normal' procedures, it was frequently used in the context of Dublin procedures in 2013.[293] According to the German Federal Government, in 2013, a total of 4,741 persons were transferred to another EU Member State or Schengen Associated State in the context of a Dublin procedure.[294] Although the number of asylum seekers detained in the context of Dublin procedures is not available, in practice a Dublin transfer is usually preceded by detention as asylum seekers are kept in police custody. However, this is usually for a very short period of time and in most cases applicants are kept in police custody and transferred to the responsible State on the same day of their arrest.

In Focus: Detention of Asylum Seekers During Dublin Procedures in Germany

In a recent judgment, The **German** Federal High Court (Bundesgerichtshof) ruled that, under the present German laws, detention for the purpose of return to another EU Member State in accordance with the Dublin Regulation isillegal.[295]

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. Yet, the German constitution, as well as EU law, prohibits analogies 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.

293. Asylum Information Database, *National Country Report Germany – Grounds for detention*.
294. 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.
295. See Bundesgerichtshof, Beschluss vom 26 Juni 2014, V ZB 31/14.

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.[296] 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 light of Article 28 of the recast Dublin Regulation.[297] In **Belgium**, the Aliens 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 so far.[298]

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 **Cyprus** detention in such cases is mainly relevant with regard to those transferred back from other EU Member States. In **Malta**, asylum seekers who left the country in an irregular 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 remanded in custody at Corradino 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 for a number of years. Moreover, in such cases, where asylum seekers have left Malta without 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 asylum 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.[299]

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 Dublin Unit under the Dublin Regulation, but by the Civil Registry and Migration Department, which is in charge of administrative detention, 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.[300]

Hungary is one of the few countries that has already transposed the detention grounds in the EU recast Reception Conditions Directive by a law that entered into force on 1 July 2013. The law established a distinction between immigration detention and asylum detention.

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 experience of the Hungarian Helsinki Committee (HHC) so far, the assessment of whether a person will "depart for 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.[301]

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 on the ground that asylum seekers channelled through this procedure 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.[302]

296. Asylum Information Database, *Country Report Ireland – Grounds for detention*.
297. Asylum Information Database, Country Report France – Grounds for detention.
298. Asylum Information Database, Country Report Belgium – Grounds for detention.
299. Asylum Information Database, Country Report Malta – Dublin.
300. Asylum Information Database, Country Report Cyprus – Grounds for Detention.
301. Asylum Information Database, Country Report Hungary – Grounds or Detention.
302. United Kingdom High Court (England and Wales), Detention Action v Secretary of State for the Home Department, [2014] EWHC 2245 (Admin), 9 July 2014. See also ELENA Weekly Legal Update of 11 July 2014.

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, jurisprudence 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 must be provided with separate accommodation whereas female applicants must be accommodated separately from male applicants.[303] In recent years, the ECtHR has found that detention conditions amounted to inhuman or degrading treatment and therefore violated Article 3 ECHR with respect to detention centres in - among other countries - **Greece**,[304] **Malta**,[305] and **Belgium**.[306] 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 detention 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 appalling in both countries, caused among others by 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, Nyirbator and Békéscsaba. During a visit of the asylum detention facilities in Nyirbator 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 with the detainees during the HHC's visit and mainly performed 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 a range of different medical problems and the language barrier which may prevent an accurate diagnosis.[307]

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 of the recommendations of the General Controller in 2014 was for the centres to set up agreements with hospitals in order to ensure access to mental health care and that psychiatrists should be present in the centres on a regular basis.[308]

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.[309] 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

303. See Article 10 recast Reception Conditions Directive.
304. See, for instance, ECtHR, F.H. v. Greece, Application no. 78456/11, Judgment of 31 July 2014 (French only) and ECtHR, B.M. v. Greece, Application no. 53608/11, Judgment of 19 December 2013 (French only).
305. ECtHR, Aden Ahmed v Malta, Application no. 55352/12, Judgment of 23 July 2013.
306. See, for instance, ECtHR, Kanagaratnam and others v Belgium, Application no. 15297/09, Judgment of 13 March 2012.
307. Asylum Information Database, Country Report Hungary – Detention Conditions.
308. Asylum Information Database, Country Report France – Detention Conditions.
309. Asylum Information Database, Country Report Cyprus – Detention Conditions.

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.[310]

Although the conditions vary considerably in the five Centres for Identification and Expulsion (CIE) that are currently operational in **Italy**,[311] 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.[312] In January 2014, the NGO Medici per I diritti umani (MEDU) concluded that the conditions in the CIE 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 CIE describe the type of services that must be provided in the CIEs, including access to health care, detainees in the CIE often face severe obstacles in accessing effectively health care. These include the lack of basic 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 prisons, in practice most detainees experience these centres as prisons. Serious shortcomings in medical provision has been reported in the past 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".[313] 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.[314]

In **Germany**, detention facilities are run by the Federal States but in some of the States private companies take over some of the tasks in the centres. 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 system.[315]

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 release them as soon as possible.[316] As regards the detention of children for the purpose of their 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.[317] The table below provides an overview of the practice of detention of children, both unaccompanied and within families.

310. Asylum Information Database, Country Report Austria – Detention Conditions.
311. Currently 7 detention facilities in Italy have been temporarily closed because of management-related problems as well as damages that were caused during protests by the detainees. Asylum seekers are very rarely detained but according to statistics relating to 2013, 150 asylum seekers were detained in that year (whereas 120 asylum seekers were detained in 2012). See Asylum Information Database, Country Report Italy - Detention of Asylum Seekers – General.
312. Whereas before the amount varied depending on the centre (e.g. € 72 in the CIE of Modena and € 26 in the CIE of Lamezie Terme).
313. HM Inspector of Prisons, Report on an unannounced inspection of Harmondsworth Immigration Removal Centre, 5-16 August 2013.
314. Asylum Information Database, Country Report the United Kingdom – Detention Conditions.
315. Asylum Information Database, Country Report Germany – Detention Conditions.
316. Article 11 recast Reception Conditions Directive.
317. 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 measures against them or their parents is not actually enforced. Access to education may be postponed for not more than 3 months after the asylum application was lodged.

	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	R	N	R
If frequently or rarely, are they only detained in border/transit zones?	N	Y	N	N	N	Y	Y	-	-	N	N	Y	N	N	N
Are asylum seeking children in families detained in practice?	R	N	F	N	R [320]	R	F	N	N	N	F	R	F	R	N

F: Frequently; R: Rarely; N Never; Y: Yes; N: No

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, albeit only as a measure of last resort and in case alternatives to detention are not effective. If adopted, this 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.[320]

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 a last resort in practice, whereas in the **Netherlands**,[321] 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 under age children are no longer detained upon arrival at the airport 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**,[322] a case of children wrongfully 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 recognised 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.

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 country of origin proving their age, but this had been disregarded by the police.[323] Instances of applicants detained as adults but who were later found to be children were also reported in **Hungary** and the **United Kingdom**.

318. Information in this table with regard to France refers to asylum seekers who lodged an asylum application while being in a detention centre (asylum seekers are otherwise not present in detention centres in France).
319. There is no confirmation that the few families with children who have been placed in detention centres have applied for asylum from the detention centres.
320. Asylum Information Database, Country Report France – Grounds for Detention.
321. Asylum Information Database, Country Report the Netherlands – Detention Conditions.
322. Asylum Information Database, Country Report Italy – Grounds for Detention.
323. Asylum Information Database, Country Report Greece – Detention Conditions.

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.**[324] In most cases, children are accommodated separately from adults, whereas in **Cyprus**, **Greece**, and **Malta** they are reported to be placed in a number of cases 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.[325] In **Greece**, Amnesty International reported that children have been found to be held 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 Return Directive.[326] 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 always problematic and often not guaranteed in practice. Access to education is guaranteed by law only in **Belgium, Germany** and **Cyprus**, whereas in **Poland** this is only derived from a general obligation in the Constitution. In **Austria**, **Bulgaria**, **Sweden** and the **United Kingdom**, there are no provisions foreseeing education for detained unaccompanied children**.** In **Sweden** and the **United Kingdom**, it is reported that often no educational activities are carried out, while in **Cyprus** the provision in the law foreseeing education for children in detention is never applied in practice. It should be noted that unaccompanied children in **Sweden** are generally not detained and if it happens they are only detained for very short periods of time with a maximum of six days so in practice the need for such activities rarely arises.

In **Poland**, where families with children can be detained, access to education,[327] which is mandatory under the Constitution until 18, is very problematic for children detained in the guarded centres, i.e. detention centres. Children are not physically attending school in any of the centres, but rather schools located near the centres in Ketrzyn and Biala Podlaska, where children at school age are placed with their families, send teachers to the guarded centres, on the basis of special agreements. This is problematic as it is only provided during a couple of hours a week and for all children placed in the centre, regardless of their age and level of education.[328] In **France**, access to education is not foreseen in detention centres (CRA) even though detention of families with children remains possible (although it is exceptional since July 2012) up to 45 days.[329]

The negative impact of detention on a child's psycho-social and physical stability, especially where children are unaccompanied has been widely documented and is also increasingly acknowledged in the jurisprudence of the ECtHR as an important factor in the assessment of the lawfulness of detention of children in asylum and immigration cases under Article 5 ECHR.[330] 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 ECtHR ruled that Greece violated Article 5§1 ECHR because of his automatic detention for nearly two months without taking into account his particular circumstances as an unaccompanied child.[331] Even in the absence of specific medical reports on the individual situation of the applicant, the ECtHR 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-à-vis their children in case of detention of families.[332]

While still allowing for the detention of children, the recast Reception Conditions Directive clearly establishes that children can only be detained as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively and be 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 end the immigration detention of children as detention 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.
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.[333] As detention adds to their vulnerability, all measures must be taken to ensure that detention of asylum seekers becomes in practice a measure 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.

324. Asylum Information Database, Country Report Austria – Grounds for Detention.
325. Asylum Information Database, Country Report Malta – Detention Conditions.
326. Asylum Information Database, Country Report Germany, Detention Conditions.
327. It should be noted that in 2013 1,738 persons, among which 1119 asylum seekers, were placed in migration detention in Poland. At the end of January 2014, 347 persons were detained in all detention centres, among which 84 children, almost one fourth of all detainees. See Press fact sheet Poland.
328. Asylum Information Database, National Country Report Poland – Detention Conditions.
329. Asylum Information Database, National Country Report France – Detention Conditions.
330. See for instance, ECtHR, Kanagaratnam and others v. Belgium, Application no. 15297/09, Judgment of 13 March 2012, Popov v. France, Application no. 39472/07 and 39474/07, Judgment of 19 January 2012. See also International Detention Coalition, Captured Childhood, Introducing a new model to ensure the rights and liberty of refugee, asylum seeker and irregular migrant children affected by immigration detention, Melbourne, 2012, pp. 46-55.
331. ECtHR, Housein v. Greece, Application no. 71825/11, Judgment of 24 October 2013 (French only), par. 76.
332. See for instance, ECtHR, Kanagaratnam and others v. Belgium, cited above.
333. ECtHR, M.S.S. v. Belgium and Greece, Application no. 30696/09, Judgment of 21 January 2011, par. 251.

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 characteristics or traumatic experiences either in the country of origin or *en route* to the 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, rape or any other form of psychological, physical or sexual violence. The EU asylum *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."[334]

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 challenges that unaccompanied 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 and assess persons with special reception or procedural needs, the recast Reception Conditions and recast Asylum Procedures Directive have introduced a new obligation to assess whether an applicant has special reception needs and whether the applicant is in need of special procedural guarantees respectively.[335] The information on law and practice collected through AIDA, shows that in general the identification of special needs of asylum seekers remains in most countries a matter of ad hoc administrative arrangements rather than systems with sound legal guarantees laid down in law, with varying degrees of accuracy. Also the practice with regard to the processing of asylum seekers with such special needs in accelerated and border procedure, which are often ill-suited for such cases because of the speed with which they are conducted, varies greatly in the EU Member States covered in AIDA.

Only **Greece,**[336] **Malta**[337] and **Poland**[338] have introduced in their national legislation provisions putting in place a specific system in the asylum procedure for the identification and referral of asylum seekers with special needs.

In **Poland**, the law provides for a specific mechanism to identify defined groups of asylum seekers, i.e. victims of violence, disabled persons, and unaccompanied children, in need of specific procedural guarantees due to their vulnerability. Such a mechanism allows for the identification of vulnerabilities at the beginning or during the asylum procedure.

Asylum seekers, who inform the authorities of being a victim of violence, who are disabled or whose psycho-physical status leads to the belief that they have been a victim of violence, undergo a medical or psychological examination. Still according to the law, if their vulnerability is confirmed, procedures shall be adapted to asylum seekers' specific necessities and be gender-sensitive. The time limits for submitting evidence and gathering evidence are not extended, but the interview should be conducted by specifically trained staff in the presence of a psychologist. According to the Office for Foreigners in 2014 no unaccompanied child or victim of torture, rape or other serious forms of psychological, physical or sexual violence was subjected to an accelerated procedure. However, NGOs and UNHCR consider the identification methods and the procedural guarantees for vulnerable asylum seekers to be insufficient.

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 unit, namely, the NGO Metradasi for identification and are not subjected to accelerated procedures. However, due to the lack of funding, Metradasi was unable to document torture victims and therefore the Asylum Service has stopped referrals 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 rejected the individual concerned is not always informed of the decision; where the decision is communicated it

334. Recital 29 of the recast Asylum Procedures Directive.
335. See Article 22(1) of the recast Reception Conditions Directive and Article 24(1) recast Asylum Procedures Directive.
336. Asylum Information Database, Country report Greece – Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture): Special Procedural Guarantees.
337. Asylum Information Database, Country report Malta – Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture): Special Procedural Guarantees.
338. Asylum Information Database, Country report Poland – Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture): Special Procedural Guarantees.

is rarely communicated in writing and no reasons are ever given. The decision can be reviewed upon presentation of new evidence. As a rule, the vulnerability assessment is carried out only for reception purposes. As a consequence, it does not have a bearing on the asylum procedure, unless an *ad hoc* request is made to the Refugee Commissioner. However, as these safeguards are not set out in the law, approval or otherwise is entirely discretionary, although practice shows 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 not 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.

This is the case, for instance in **Belgium**, where no formal identification and referral system exists. However, in Belgium a 'Vulnerability unit' was established at the Aliens Office to screen all applicants for potential vulnerabilities upon registration of their asylum application. However, its impact is not yet clear. At the level of the Commissioner-General for Refugees and Stateless Persons (CGRS) 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 can be subjected to prioritised and accelerated procedures, while the national report notes that 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. Therefore, the scope of the examination is not that 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 common identification 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, good practices have been developed, in particular with regard to identification and referral procedure to ensure that torture survivors receive prompt specialised medical and psychological care.[339] 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 assistance 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 in general 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 assessment, 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 identification 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 provisions and standards, practices, assessment methods, criteria, and timing in the countries covered by AIDA. However, 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,**[340] **Bulgaria, Cyprus, Germany, Greece, Hungary, Italy, Malta,** and **Poland**, national law lays down an obligation to address the reception needs of vulnerable persons. On the contrary, **Austria, Germany, Greece, Hungary, 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.

339. See on this issue also CIR, Maieutics Handbook. Elaborating a common interdisciplinary working methodology (legal-psychological) to guarantee the recognition of the proper international protection status to victims of torture and violence, December 2012.
340. Asylum Information Database, Country report Belgium – Addressing special reception needs of vulnerable persons.

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 available 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 **Bulgaria**, where 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 remainder of 2013 and 2014. As a result, the identification of individuals with vulnerabilities and 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 done *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 Metradasi for their identification because of the lack of funding available to this NGO to perform this role. In **Hungary**, where 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, this is not systematically conducted, and in any case only upon placement of asylum seekers in a reception centre and depending on available resources. In **Poland**, only asylum seekers who inform the 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 proactive screening of 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 policy 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 law foresees special arrangements only for unaccompanied children, who are taken into care by a local authority, with most 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 to how the assessment is conducted. For example, **Ireland** assesses special needs 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 aimed 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 placement in a reception centre and should be repeated at several intervals until a final decision and recommendations 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 unaccompanied children, the demand 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 healthcare 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 focusses on two specific aspects that are crucial in 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 assessment 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.[341] In the **United Kingdom,** age assessment is regulated by guidelines and case law.[342] In general, the examination of the asylum procedure is suspended until the disputed age 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 accurately determine a person's age and all methods currently applied are subject to a margin of error.[343] **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., and assesses the young person's age based on how articulate they are, and on their emotional, cognitive and physical development).[344] 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.

Also the extent to which States rely on the result of the medical examinations varies greatly. For example, in **Bulgaria** and **Malta**, the results of the examination 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 first instance decision-making body). Worryingly, in case the applicant does not consent to the age assessment procedure, in some countries, such as **Hungary** and **Poland** the individual is automatically considered an adult, and therefore procedural guarantees for children do not apply.

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 new documentation, with the consequence that the person might be considered alternatively as an adult or a child by different institutions. The prefecture, 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.[345]

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 under 18 may have their age disputed later by the Home Office and be subjected to an age assessment. According to a protocol 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.[346]

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

341. Asylum Information Database, Country report Sweden - Age assessment and legal representation of unaccompanied children.
342. Asylum Information Database, Country report United Kingdom - Age assessment and legal representation of unaccompanied children.
343. EASO, EASO Age assessment practice in Europe, December 2013, p. 24.
344. See EASO, EASO Age assessment practice in Europe, December 2013 for a more detailed overview of the various methods used across Europe.
345. Asylum Information Database, National Country Report France – Age assessment and legal representation of unaccompanied children.
346. Asylum Information Database, Country report United Kingdom - Age assessment and legal representation of unaccompanied children.

and assist the child in the asylum procedure.[347] In practice at national level, such a role may be assumed by different persons or organisations, which creates confusion in definitions used and at time on the role of the different actors. 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 EU 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.[348]

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,[349] 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,**[350] 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 be appointed a legal advisor (solicitor). However, if the social worker 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 legal advisor will also provide 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.[351]

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 the child's welfare. In other cases, on the contrary, guardians assume full parental responsibility for the children. 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 accommodation, and that they receive the 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.
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 **Poland**[352] 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.[353]

347. 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 in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive."
348. See ECRE, Right to Justice. Comparative report, and Fundamental Rights Agency, Guardianship for children deprived of parental care. A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, June 2014.
349. The UK and Ireland opted out all recast Directives but the initial Reception Condition Directive still applies to the UK.
350. Asylum Information Database, Country report Ireland - Age assessment and legal representation of unaccompanied children.
351. See ECRE, Right to Justice. Comparative report.
352. Asylum Information Database, Country report Poland - Age assessment and legal representation of unaccompanied children.
353. Asylum Information Database, Country report Greece - Age assessment and legal representation of unaccompanied children.

Further to the above-mentioned delays, in some cases, such as in **Bulgaria**[354] and **France,**[355] 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.[356]

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 (OFPRA).

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.[357] 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.[358]

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**.[359] 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,[360] 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.[361] 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**,[362] 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.

354. Asylum Information Database, Country report Bulgaria - Age assessment and legal representation of unaccompanied children.
355. Asylum Information Database, Country report France - Age assessment and legal representation of unaccompanied children.
356. Asylum Information Database, Country report Bulgaria – Age assessment and legal representation of unaccompanied children.
357. Asylum Information Database, Country report Italy - Age assessment and legal representation of unaccompanied children.
358. Asylum Information Database, Country report Germany - Age assessment and legal representation of unaccompanied children.
359. Asylum Information Database, Country report Malta - Age assessment and legal representation of unaccompanied children.
360. Asylum Information Database, Country report France - Age assessment and legal representation of unaccompanied children.
361. Asylum Information Database, Country report Sweden - Age assessment and legal representation of unaccompanied children.
362. Asylum Information Database, Country report United Kingdom - Age assessment and legal representation of unaccompanied children.

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 Mediterranean, remains centred on investing 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 push backs 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 free 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.

- EU Member States must consolidate in national legislation the general presumption that exists in international human rights law against the detention of asylum seekers. As a general rule, **asylum seekers should not be detained**, except in the most exceptional cases and only as a measure of last resort where alternatives to detention cannot be applied effectively. Where asylum seekers are detained, they must be issued with a decision stating the reasons of their detention and have effective access to the full range of procedural safeguards laid down in EU and international law to protect them against arbitrary detention, including automatic judicial review and free legal assistance. Persons in detention must be informed about the possibility to apply for international protection and if they express the wish to do so, must be given the necessary assistance to make an application. Where detention is used, Member States have a duty to ensure that detention conditions are such that an asylum seeker's right to human dignity under Article 1 of the EU Charter of Fundamental Rights is respected and protected in practice and if not to release those persons from detention. Access to health care must be ensured at all times. As they are particularly vulnerable, the detention of asylum-seeking children, whether unaccompanied or with families, should be prohibited by law.

- In line with their obligations under EU law and the jurisprudence of the ECtHR and the CJEU, Member States must ensure access to **material reception conditions that ensure an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.** Sufficient capacity must be created in EU Member States' reception systems allowing swift responses to evolutions in the number of asylum seekers, while taking into account their special reception needs. EU Member States must refrain from imposing any restrictions on the freedom of movement of asylum seekers within their territory or establishing administrative or bureaucratic requirements on asylum seekers making such free movement impossible in practice. Multiple transfers of asylum seekers between various reception centres within a State must be avoided as much as possible, in particular where they interfere with education of children and their integration with local communities, except where this is in the best interest of the individuals or families concerned.

ANNEX I

STATISTICAL TABLES

Table 1: Asylum applications in the EU and Schengen associated states in 2013 (top 5 countries of origin)

Country of Destination/ Country of Origin	Total	Syria	Russia	Afghanistan	Serbia	Pakistan
Total	469,085	53,210	42,290	27,820	22,755	21,160
EU (28 countries)	435,385	50,435	41,485	26,200	22,375	20,815
EU (27 countries)	434,305	50,240	41,475	26,015	22,375	20,765
Austria	17,520	2,005	2,850	2,590	210	1,035
Belgium	21,215	1,135	2,150	1,675	685	400
Bulgaria	7,145	4,510	0	310	0	25
Croatia	1,080	195	15	185	0	50
Cyprus	1,255	570	5	5	0	55
Czech Republic	710	70	50	10	10	5
Denmark	7,230	1,685	965	410	465	70
Estonia	95	15	15	0	0	10
Finland	3,220	150	245	200	50	35
France	66,265	1,315	5,145	590	700	1,790
Germany	126,995	12,855	15,475	8,240	18,000	4,245
Greece	8,225	485	15	1,225	5	1,360
Hungary	18,900	975	10	2,330	90	3,080
Iceland	170	5	10	5	0	0
Ireland	920	40	5	35	0	95
Italy	26,620	635	40	2,055	115	3,230
Latvia	195	15	5	5	0	0
Liechtenstein	95	0	10	0	0	0
Lithuania	400	10	75	85	0	0
Luxembourg	1,070	25	10	15	60	0
Malta	2,245	250	0	0	0	0
Netherlands	17,160	2,705	330	1,380	280	175
Norway	11,980	865	375	725	80	150
Poland	15,245	255	12,845	50	0	35
Portugal	505	145	5	0	0	25
Romania	1,495	1,010	5	40	5	40
Slovenia	270	60	15	20	5	20
Slovakia	440	10	15	110	0	20
Spain	4,495	725	55	65	5	100
Sweden	54,365	16,540	1,035	3,025	1,670	270
Switzerland	21,460	1,900	410	895	305	195
United Kingdom	30,110	2,040	105	1,550	5	4,645

Source: Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded), migr_asyappctza, extracted 12th August 2013.

Table 2: Evolution of asylum applications in the EU and Schengen associated states in 2012 and 2013

Country of Destination	2012	2013	Change
Total	374,630	469,085	+25%
European Union (28 countries)	336,015	435,385	+30%
European Union (27 countries)	336,015	434,305	+29%
Belgium	28,285	21,215	-25%
Bulgaria	1,385	7,145	+416%
Czech Republic	755	710	-6%
Denmark	6,075	7,230	+19%
Germany	77,650	126,995	+64%
Estonia	75	95	+27%
Ireland	955	920	-4%
Greece	9,575	8,225	-14%
Spain	2,565	4,495	+75%
France	61,455	66,265	+8%
Croatia	:	1,080	-
Italy	17,350	26,620	+53%
Cyprus	1,635	1,255	-23%
Latvia	205	195	-5%
Lithuania	645	400	-38%
Luxembourg	2,055	1,070	-48%
Hungary	2,155	18,900	+777%
Malta	2,080	2,245	+8%
Netherlands	13,100	17,160	+31%
Austria	17,450	17,520	-
Poland	10,755	15,245	+42%
Portugal	295	505	+71%
Romania	2,510	1,495	-40%
Slovenia	305	270	-11%
Slovakia	730	440	-40%
Finland	3,115	3,220	+3%
Sweden	43,945	54,365	+24%
United Kingdom	28,895	30,110	+4%
Iceland	120	170	+42%
Liechtenstein	75	95	+27%
Norway	9,785	11,980	+22%
Switzerland	28,640	21,460	-25%

Source: Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded), migr_asyappctza, extracted on 12th August 2013.

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

Country of Destination/ origin	Total	Afghanistan	Somalia	Syria	Eritrea	Albania	Morocco
Total	14,065	3,595	1,920	1,080	985	540	580
EU (28 countries)	12,640	3,300	1,575	1,025	715	535	525
EU (27 countries)	12,585	3,270	1,570	1,025	710	535	525
Austria	935	405	20	65	5	5	35
Belgium	420	110	10	15	0	15	5
Bulgaria	185	35	5	60	0	0	5
Croatia	55	30	10	5	0	0	0
Cyprus	55	0	25	15	0	0	0
Czech Republic	0	0	0	0	0	0	0
Denmark	350	60	50	45	10	0	65
Estonia	5	0	0	0	0	0	0
Finland	160	20	35	0	0	0	25
France	365	25	5	5	0	15	0
Germany	2,485	690	355	285	140	10	35
Greece	325	175	5	15	0	0	0
Hungary	380	210	0	15	0	0	5
Ireland	20	0	0	0	0	0	0
Iceland	0	0	0	0	0	0	0
Italy	805	70	160	10	45	5	0
Liechtenstein	0	0	0	0	0	0	0
Lithuania	0	0	0	0	0	0	0
Luxembourg	45	0	0	0	0	5	10
Latvia	5	0	0	5	0	0	0
Malta	335	0	280	5	15	0	0
Netherlands	310	60	10	25	35	0	5
Norway	1,070	250	315	20	215	5	35
Poland	255	0	0	15	0	0	0
Portugal	55	0	0	0	0	0	0
Romania	15	0	0	5	0	0	0
Slovenia	30	5	0	5	0	0	5
Slovakia	5	5	0	0	0	0	0
Spain	10	0	0	0	0	0	0
Sweden	3,850	1,245	575	365	345	25	315
Switzerland	355	45	25	35	60	0	15
United Kingdom	1,175	140	35	60	115	445	15

Source: Eurostat, Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded), migr_asyunaa, extracted on 12th August 2014.

Table 4: Recognition rates in the EU in 2013

	First instance decisions				Final decisions on appeal			
	Total number	Positive	Rate of recognition (%)*		Total number	Positive	Rate of recognition (%)*	
			Total	*Refugee & subsidiary protection status*			Total	*Refugee & subsidiary protection status*
EU28	**326,575**	**111,115**	**34**	***29***	**134,965**	**24,615**	**18**	***15***
BE	21,390	6,280	29	*29*	11,485	430	4	*4*
BG	2,810	2,460	87	*87*	40	40	93	*93*
CZ	900	345	38	*36*	415	20	5	*4*
DK	6,965	2,810	40	*39*	1,660	550	33	*33*
DE	76,165	20 125	26	*24*	36,660	5,955	16	*11*
EE	55	10	17	*13*	0	0	0	*0*
IE	840	150	18	*18*	580	55	9	*9*
EL	13,080	500	4	*3*	3,900	910	23	*14*
ES	2,365	535	23	*22*	1,110	20	2	*2*
FR	61,715	10,705	17	*17*	37,550	5,450	15	*15*
HR	185	25	12	*12*	95	0	0	*0*
IT	23,565	14,390	61	*37*	95	75	78	*71*
CY	800	165	21	*20*	960	90	9	*7*
LV	95	25	29	*29*	55	10	15	*15*
LT	175	55	31	*31*	35	5	19	*19*
LU	1,245	130	11	*11*	670	10	1	*1*
HU	4,540	360	8	*8*	685	60	9	*9*
MT	1,905	1,605	84	*78*	140	0	1	*1*
NL	15,590	9,545	61	*30*	1,895	1,075	57	*47*
AT	16,610	4,920	30	*30*	6,860	1,425	21	*21*
PL	2,895	685	24	*11*	1,050	50	5	*3*
PT	305	135	44	*44*	100	0	0	*0*
RO	1,435	915	64	*64*	1,550	925	60	*60*
SI	195	35	19	*19*	60	0	3	*3*
SK	190	70	35	*17*	115	5	4	*4*
FI	3,185	1,620	51	*42*	230	180	77	*55*
SE	45,005	24,015	53	*51*	12,955	2,380	18	*13*
UK	22,355	8,505	38	*34*	14,010	4,895	35	*27*
IS	130	10	8	*7*	70	5	9	*7*
NO	11,785	5,770	49	*47*	10,430	1,005	10	*5*
CH	16,595	6,390	38	*24*	3,400	215	6	*2*
LI	45	5	16	*16*	35	0	0	*0*

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[1]

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.

1. See Asylum Information Database, *Country Report Austria – Overview of the main changes since the previous report update*.

Belgium[2]

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 26% – 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 Aliens 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-merit assessment 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[3]

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.

2. See Asylum Information Database, *Country Report Belgium – Overview of the main changes since the previous report update*.
3. See Asylum Information Database, *Country Report Bulgaria – Overview of the main changes since the previous report update*.

As of 27 March 2014, the capacity of the seven SAR centres (reception and registration centres – Banya, Ovcha Kupel and Harmanli, Transit centre Pastrogor, reception shelters of Voenna Rampa, Vrazhdebna and Kovachevtsi) 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 Harmanli which currently accommodates more than 1,000 people. Harmanli 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 subsidary 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.

France[4]

Procedure

The global recognition rate for 2013 stands at 24.5% (12.8% of the OFPRA decisions and 14% of the CNDA decisions have resulted in the granting of a protection). The global protection rate for unaccompanied minors stands at 56.7% for 2013.[5] – 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 Controllers[6] 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 3 months to get an appointment 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 asylum 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 Essone was 2 days, while it was 16 days in Moselle, 20 days in Seine-Saint-Denis and 99 days in Lille[7].

Modification to the list of safe countries of origin: the Management Board of OFPRA has decided on 26 March 2014 to remove Ukraine from the list of safe countries of origin. On 5 March 2014, UNHCR had called states to remove Ukraine from their safe countries of origin (SCO) list. Shortly after and prior to the official withdrawal of Ukraine from the French SCO list, the French Ministry of Interior had asked prefects to treat Ukrainian asylum applications through the regular procedure, and no longer through the accelerated one. The same management board had decided on 16 December 2013 to modify again the list of safe countries of origin and added Albania, Georgia and Kosovo to the list.[8] The Ministry of Interior sent an instruction to the Prefects on 2 January 2014 calling them not to deliver temporary residence permit to nationals of the latter countries whose request for a residence permit to lodge an asylum claim had been made after 29 December 2013[9] and to those whose request for a residence permit had been made before but has not yet been decided on.[10]

Appeal stage: A new decree on the procedure related to the CNDA of 16 August 2013[11] has modified some of the procedural steps pertaining to the appeal stage: a longer period for asylum applications lodged in French overseas departments is granted to these asylum seekers who have a total of 2 months to appeal the OFPRA decision; the deadline for closing the inquiry into the appeal has been brought forward to a minimum of 5 days before the date set for the hearing (instead of 3 days until now); a summon for a hearing has to be communicated to the applicant at least 30 days before the hearing day; the CNDA has the obligation to inform the applicant about their rights to access their file in cases where the Court plans to reject the appeal by order (ordonnance) due to the absence of serious elements capable of contesting the negative OFPRA decision; and if the CNDA fails to provide an interpreter in the language indicated by the applicant, the Court has to inform the latter that they will be heard in another language one can reasonably think they understand.

Border procedure: In 2014, the Controller General of places of freedom deprivation has recommended that the notification of the "clear day" period, during which no return can be carried out, should be recorded in a distinct official report (proces verbal), countersigned by the third-country national. Alternatively, the "clear day" could be implemented automatically (unless the third country national expressly wants to be returned).[12]

Vulnerable asylum seekers: A specific treatment for vulnerable groups of asylum seekers is gradually been considered by OFPRA. The action plan for the reform of OFPRA (adopted on 22 May 2013) had set the path for the creation of five thematic groups in order to reinforce the OFPRA's ability to deal with protection needs related to torture, trafficking in human beings, unaccompanied children, sexual orientation and gender-based violence. These groups have been tasked to work on awareness raising, training and designing specific support tools to examine these claims (in particular during the interviews).[13] The practical impact of these measures remains to be seen. In addition, OFPRA staff is being trained on issues related to dealing with testimonies recounting painful events during the interview process. Starting in October 2013, Forum réfugiés-Cosi and the Belgium NGO Ulysse have conducted several 2-days trainings for OFPRA case workers with two main objectives: taking into account the difficulties asylum seekers may face when they have to share their story after traumatic events and providing case officers with tools to help them in these situations. OFPRA has announced its goal to train all 170 case workers by the end of 2015.[14] – This is a direct consequence of the anticipated impact of the transposition of the procedures directive.

4. See Asylum Information Database, *Country Report France – Overview of the main changes since the previous report update*.
5. OFPRA, *2013 Activity report*, 28 April 2014.
6. *Report* from the General controllers of social matters, the General controller of finance and the General controller of the administration, "Housing and the financial assistance to asylum seekers", Published on 12 September 2013.
7. *Report* on the reform of the asylum procedure, Valérie Létard and Jean-Louis Touraine, 28 November 2013.
8. *Décision du 16 décembre 2013 modifiant la liste des pays d'origine sûrs* (Decision of 16 December 2013 modifying the list of safe countries of origin), JORF n°0301 of 28 December 2013 (page 21652).
9. One day after the publication in the Official journal.
10. Information note of 2 January 2014 from the Ministry of Interior (INTV1332162N).
11. Decree n°2013-751 of 16 August 2013 on the procedure related to the CNDA, official journal n°0191 – A useful explanatory *note* has been published on the CNDA website in September 2013.
12. General controller of places of freedom deprivation, Activity Report 2013, 11 March 2014.
13. See information on the action plan for the reform of OFPRA on pages 54-59 of OFPRA, *OFPRA, 2013 Activity report*, 28 April 2014.
14. See page 35 of OFPRA, *OFPRA, 2013 Activity report*, 28 April 2014.

Proposition 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-Amelot (near Paris) and another one was planned to be used in the waiting area of Paris-Charles de Gaulle airport as of 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 Muižnieks has sent a letter to the Justice Minister, Ms Christiane Taubira, on 2 October 2013, in which he mentioned that "these off-site" proceedings entail 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 applicants"[15]. 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.[16] 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[17].

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 in a CADA centre out of 59 327 asylum seekers entitled to the reception scheme).[18] 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 15,000 asylum seekers on a priority waiting list to obtain a place in a CADA reception centre, amounting to an average waiting period of 12 months.[19]

Increase of the ATA allowance: A Decree on 27 December 2013 has set the daily amount of the temporary waiting allowance at 11.35 euros from 1st January 2014[20]

Temporary allowance for Dublinees: Asylum seekers who fall under the Dublin procedure in France can get access to the temporary waiting allowance until the effective transfer to another Member State, since an instruction from the Ministry of Interior published on 23 April 2013. This instruction was confirmed by a Council of State decision of 30 December 2013[21] 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, the circular of 1 April 2011 contradicts the 2003 Reception Conditions Directive. The Council of State reiterated 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 2014[22] has recalled that, short of the transposition of article 16 of the Reception Conditions Directive (allowing the withdrawal of reception conditions in case of flight of the asylum seeker) into French law, the instruction to Prefects of 23 April 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 suicide attempts are reported each year in administrative detention centres. Noting the weakness and the variations in the availability of psychiatric care 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.[23]

Data on the judicial review of the administrative detention: An NGO report[24] 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.

15. *Letter* from Nils Muižnieks to Ms Christiane Taubira, 2 October 2013.
16. See the *Press release* from the Ministry announcing the enquiry mission.
17. *Rapport* on the off-site hearing room located in theat Roissy airport, Bernard Bacou and Jacqueline de Guillenchmidt, 17 December 2013
18. Quoted in National Assembly, *Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile* (Information report on the evaluation of the reception conditions offered to asylum seekers), Jeanine Dubié and Arnaud Richard, 10 April 2014.
19. National Assembly, *Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile (Information report on the evaluation of the reception conditions offered to asylum seekers)*, Jeanine Dubié and Arnaud Richard, 10 April 2014.
20. Décret n° 2013-1274 du 27 décembre 2013 revalorisant l'allocation temporaire d'attente, l'allocation de solidarité spécifique, l'allocation équivalent retraite et l'allocation transitoire de solidarité
21. Council of State *decision n°350193*, 30 December 2013.
22. Council of State *decision n° 368741*, 12 February 2014.
23. General controller of places of freedom deprivation, *Activity Report 2013*, 11 March 2014.
24. Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte , Centres et locaux de rétention administrative, Rapport 2012 (Administrative detention centres and facilities, Report 2012), 4 December 2013.

Germany[25]

As of 1 December 2013,[26] 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[27]

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 cars is 45 days.

According to a Decision of the Minister of Public Order and the Protection of Citizen which endorsed Legal Opinion no. 44/2014 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.

25. See Asylum Information Database, *Country Report Germany – Overview of the main changes since the previous report update*.
26. The changes which came into effect as of 1 December 2013 were not included in the previous report update.
27. See Asylum Information Database, *Country Report Greece – Overview of the main changes since the previous report update*.

Hungary[28]

- 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 orignials, 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 asylumseekers 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.[30]

28. See Asylum Information Database, *Country Report Hungary – Overview of the main changes since the previous report update*.
29. Hungarian Helsinki Committee, Information note on asylum-seekers in detention and in Dublin procedures in Hungary, May 2014 available at http://helsinki.hu/wp-content/uploads/HHC-Hungary-info-update-May-2014.pdf.
30. Ibid.

Ireland[31]

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.[32]

ORAC will work through a back log 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 without having 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 laid down in Article 41 of the Charter of Fundamental Rights of the European Union. The Court of Justice stated in May 2014[33] 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.[34]

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 actively 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).[35] 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, partly 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.[36] 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 allowance; 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.[37]

31. See Asylum Information Database, *Country Report Ireland – Overview of the main changes since the previous report update*, accessed July 2014.
32. CJEU, Case C-277/11, *M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, Judgment of 22 November 2012.
33. CJEU, Case C604/12, *H. N. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, Judgment of 8 may 2014.
34. Irish Refugee Council, *European Court judgment shows need for urgent legislative reform*, 12th May 2014.
35. For more information see *here*.
36. C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland.
37. Liam Thornton, '*Direct Provision System Challenged Before the Irish High Court: Day 1*', Human Rights in Ireland.

Italy[38]

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, entailing 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, Custom Police, Coast Guards and other institutional bodies operating in the field of mixed migration flows.[39] 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 74,000 rescued by military ships, while the other persons were rescued by the Coast Guard, the Guardia di Finanza and commercial vessels.[40] The vast majority of those rescued are likely to be in need of international protection.[41] 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.[42]

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.[43]

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.[44] Following the mentioned decrees of July and September 2013, 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 Decree n. 9/2013 of the 30 July 2013, and Decree 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;[45] while an additional 6.490 places will be made available during this three-year period.[46]

38. See Asylum Information Database, *Country Report Italy – Overview of the main changes since the previous report update*.
39. Summary of the operation on the Navy website available *here*.
40. Source, Marina Militare Italiana, information received on 27 August 2014.
41. CIR, *'Mare Nostrum', Pinotti: about 2/3 of migrants have the requirements to claim asylum*, 8 May 2014; see also *here*.
42. CIR, *Sbarchi: arrivate 85mila persone. finora 25mila domande d'asilo*, 27 July 2014.
43. Ministry of Interior, *Varato il Piano Nazionale per fronteggiare il flusso straordinario di migranti*, 24 July 2014.
44. Ministry of Interior Decree n. 9/2013 of the 30 July 2013, and Decree of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration).
45. See: Ministry of Interior, *Classification of the SPRAR places*, 29 January 2014, and ANCI, *SPRAR: the new triennium 2014-2016*.
46. Asilo in Europa, *Lo SPRAR al centro*. Intervista a Daniela Di Capua, direttrice del Servizio Centrale dello SPRAR, 4 March 2014 (The SPRAR in focus. Interview with Daniela Di Capua, Director of the Central Service of the SPRAR).

Malta[47]

In December of 2013, the European Court of Human Rights (ECtHR) judgments Suso Musa v. Malta[48] and Aden Ahmed v. Malta[49] 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 this 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]

47. See Asylum Information Database, *Country Report Malta – Overview of the main changes since the previous report update*.
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*.

Netherlands[51]

A significant influx of Eritreans was registered in the spring of 2014. In April, 1,080 asylum requests were submitted, while 1,860 were submitted in May. The month of June saw a return to normality, with 203 requests. This influx was (and somehow still is) remarkable and subject to debate in the Netherlands, as the causes are unclear. Most likely, they are victims of well-organized human traffickers and travel agents. In addition, the relatively favourable asylum policy for Eritrean nationals (under which everybody from Eritrea who illegally fled the country is granted asylum) might be the reason for which the Netherlands was chosen by the traffickers and travel agents. The IND therefore is very vigilant if alleged Eritreans are actually of Eritrean nationality. This led to a very intense checking of the origin of asylum seekers during asylum interviews.

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 Aliens 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 entailed an obligation to leave the Netherlands but which was not obeyed to;
- 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.

51. See Asylum Information Database, *Country Report the Netherlands – Overview of the main changes since the previous report update*.

Poland[52]

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 foreigners 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 Border Guard, the reasons given by foreigners for entry is mostly work reasons or visiting family members, and not fear for their life or health. Some NGOs still receive calls from asylum seekers in Belarus who claim they want to apply for asylum, but are refused entry.

52. See Asylum Information Database, *Country Report Poland – Overview of the main changes since the previous report update*.

Sweden

During the last eight months of 2014 nearly 50,175 persons sought asylum in Sweden, almost 70 per cent more than the corresponding period in 2013. Subsequently the Swedish Migration Board raised its prognosis from 70,000 to 80,000[53] asylum seekers this year. The number of asylum seekers has increased week by week and over 2000 applicants are arriving every week. Most refugees come from Syria and at the same time there has been a significant increase form Eritrea, which is the main reason for the prognosis now being raised.

In order to manage the increase, the Migration Board is recruiting more personnel and the staff is working in shifts in order to examine the applications. At the end of the year the Migration Board estimates that the number of ongoing asylum cases will have grown from the current 30,700 to about 42,000.[54] The Migration Board is also trying to arrange more housing allocations for the applicants during the waiting time.

The number of unaccompanied children has continued to increase in Sweden. In 2013, 3,852 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.

The municipalities are responsible for 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 subsequently concludes agreements with the municipalities.

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. Given the fact that there are only 235 places available in the detention centres of the Swedish Migration Board, it is obvious that 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.

United Kingdom[55]

The sections of the Home Office which deal with asylum applicants are undergoing an ongoing organisational change. This has not to date resulted in major changes in law or the structure of the asylum process affecting applicants, though some changes in administrative practice have been observed and are noted in this report.

On 19th February 2014 the Supreme Court held in EM (Eritrea) [2014] UKSC 12 that where an asylum applicant claimed that it would breach their rights under Article 3 ECHR for them to be removed to another EU country pursuant to the Dublin regulation, it was not necessary for them to prove that there was a systemic deficiency in the asylum system in the destination country in order to establish a real risk of a breach of Article 3.

From 1st April 2014 initial advice on the asylum process is provided through one organisation operating in the initial accommodation centres and through an online and telephone service. Asylum support applications (s.95) are also now made through this system.

From 1st April 2014 applications for support for refused asylum seekers (s.4) must be made through the online and telephone service, except for vulnerable applicants who can have a face to face appointment at the initial accommodation centres.

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).

Following 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 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]

53. Migration Board, *Operations and cost prognosis*, 24 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*.
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-69/10, Brahim Samba Diouf v Ministre du Travail, de l'Emploi et de l'Immigration,Judgment of 28 July 2011.
Article 39 of Council Directive 2005/85/EC of 1 December 2005.

■ Case C-277/11, MM v Minister for Justice, Equality and Law Reform, Ireland, Attorney General, , judgment of 22 November 2012.
Article 4(1) of Council Directive 2004/83/EC of 29 April 2004.

■ Case C-175/11, HID, BA v Refugee Applications Commissioner, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Ireland, Judgment of 31 January 2013.
Articles 23(3), (4) and 39 of Council Directive 2005/85/EC of 1 December 2005; Article 47 of the Charter of Fundamental Rights of the European Union (the Charter).

■ Case C-604/12, H. N. v Minister for Justice, Equality and Law Reform and Others, Judgment of 8 May 2014.
Council Directive 2004/83/EC of 29 April 2004; Article 41 of the Charter.

B) Dublin

■ Joined Cases C-411/10 and C-493/10, N.S. v. Secretary of State for the Home Department and M.E. and Others v. Refugee Applications Commissioner & Minister for Justice, Equality and Law Reform, Judgment of 21 December 2011.
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)').

■ Case C-245/11, K v. Bundesasylamt, Judgment of 6 November 2012.
Articles 15(1) and 15 (2) of Council Regulation (EC) No 343/2003 of 18 February 2003.

■ Case C-528/11, Zuheyr Frayeh Halaf v. Darzhavna agentsia za bezhantsite pri Ministerskia savet, Judgment of 30 May 2013.
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.
Article 6 of Council Regulation (EC) No 343/2003 of 18 February 2003; Article 24(2) of the Charter.

■ Case C-4/11, Kaveh Puid v Bundesrepublik Deutschland, Judgment of 4 November 2013.
Article 3(2), Chapter III of Council Regulation (EC) No 343/2003 of 18 February 2003; Article 4 of the Charter.

■ Case C-394/12, Shamso Abdullahi v Bundesasylamt, 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-179/11, CIMADE, Groupe d'information et de soutien des immigrés (GISTI) v Ministre de l'Intérieur, de l'Outre-Mer, des Collectivités Territoriales et de l'Immigration, Judgment of 27 September 2012.
Council Directive 2003/9/EC of 27 January 2003; Council Regulation (EC) No 343/2003 of 18 February 2003.

■ Case C-79/13, Selver Saciri and Others v Federaal agentschap voor de opvang van asielzoekers, Judgment of 27 February 2012.
Articles 13(5), 14(1), (3), (5) and (8) of Council Directive 2003/9/EC of 27 January 2003; Article 1 of the Charter.

D) Return and Detention

■ Case C-534/11, Mehmet Arslan v Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie– Czech Republic, Judgment of 30 May 2013.
Articles 2(1) and 15 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008; Council Directive 2005/85/EC of 1 December 2005; Council Directive 2003/9/EC of 27 January 2003.

E) Qualification Directive

■ Joined Cases C-199/12, C-200/12 and C-201/12, X, Y and Z v. Minister voor Immgratie en Asiel, Judgment of 7 November 2013.
Articles 2(c), 9(1), 9(2)(c), 10(1)(d) of Council Directive 2004/83/EC of 29 April 2004;

■ Case C-285/12, Aboubacar Diakite v. Commissaire général aux réfugiés et aux apatrides, Judgment of 3 January 2014.
Article 15(c) of Council Directive 2004/83/EC of 29 April 2004.

F) Pending references

■ Cases C-148, C-149 and C-150/13, A, B and C v. Staatssecretaris van Veiligheid an
d Justitie (Article 4 of Council Directive 2004/83/EC and Articles 3 and 7 of the Charter).

■ Case C-373/13, H.T. v. Land Baden-Württemberg (Articles 21 and 24 of Council Directive 2004/83/EC; Article 33(2) of the Geneva Convention relating to the Status of Refugees).

■ Case C-542/13, Mohamed M'Bodj v. Conseil des ministres (Articles 2(e) and (f), 15, 18, 20, 28 and 29 of Council Directive 2004/83/EC).

■ Case C-562/13, Abida v. Centre public d'action sociale d'Ottignies-Louvain-La-Neuve (Article 15(b) of Council Directive 2004/83/EC; Articles 4, 19(2), 20, 21 and Article 47 of the Charter).

■ Case C-472/13, Andre Lawrence Shepherd v Federal Republic of Germany (Articles 9(2)(e) and Article 12(2)of Council Directive 2004/83/EC).

■ Case C-249/13, Khaled Boudjlida v Préfet des Pyrénées-Atlantiques (Article 41 of the Charter; Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008).

European Court of Human Rights

A) Access to the territory

■ Hirsi Jamaa and Others v Italy, Application no. 27765/09, 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

■ M.S.S. v Belgium and Greece, Application no. 30696/09, Judgment of 21 January 2011.
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).

■ Safaii 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

■ Gebremedhin [Gaberamadhien] v France, Application no. 25389/05, Judgment of 26 April 2007.
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, Jugdment 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.

■ M.A. v Cyprus, Application no. 41872/10, Judgment of 23 July 2013.
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 Article 5 (2) and Article 4 of Protocol No. 4 ECHR.

■ K.K. v. France, Application, no. 18913/11, Judgment of 10 October 2013.
No violation of Article 13 ECHR (Accelerated asylum procedure); violation of Article 3 ECHR.

■ S.J. v. Belgium, Application no. 70055/10, Judgment of 27 February 2014.
Violation of Article 13 ECHR taken in conjunction with Article 3 ECHR; No violation of Articles 3 and 8 ECHR.

■ A.C. and Others v. Spain, Application no. 6528/11, Judgment of 22 April 2014.
Violation of Article 13 ECHR taken in conjunction with Articles 2 and 3 ECHR.

D) Detention

■ S.D. v Greece, Application no. 53541/07, Judgment of 11 June 2009.
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) EHCR 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) EHCR (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.

■ M. and others v. Bulgaria, Application no. 41416/08, Judgment of 26 July 2011.
Violations of Article 5(1) and (4), Article 8, and Article EHCR.

■ Lokpo and Touré v Hungary, Application no. 10816/10, Judgment of 20 September 2011.
Violation of Article 5(1) ECHR.
Confirmed in Al-Tayyar Abdelhakim v Hungary, Application no. 13058/11, Judgment of 23 January 2013; Hendrin Ali Said and Aras Ali Said v Hungary, Application no. 13457/11, 23 January 2013.

■ Popov v France, Application no. 39472/07 and 39474/07, Judgment of 19 January 2012.
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.

■ Kanagaratnam and others v Belgium, Application no. 15297/09, Judgment of 13 March 2012.
Violation of Article 3 EHCR 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.

■ Mahmundi and Others v Greece, Application no. 14902/10, Judgment of 24 October 2012.
Violation of Article 3 ECHR, Article 5 (4) and 13 EHCR concerning the detention of a family with children, including a pregnant woman; No Violation of Article 5(1) EHCR.

■ 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.

- C.D. and Others v. Greece, Applications nos. 33441/10, 33468/10 and 33476/10, Judgment of 19 December 2013.
Violation of Article 3 ECHR (detention conditions) and violation of Article 5(4) ECHR; No violation of Article 5(1) ECHR.

- B.M. v. Greece, Application no. 53608/11, Judgment of 19 December 2013.
Violation of Article 3 ECHR (detention conditions) and Article 13 ECHR taken together with Article 3 ECHR concerning the detention of an asylum seeker.

- Akhadov v. Slovakia, Application no. 43009/10, Judgment of 28 January 2014.
Violation of Article 5(4) ECHR.

- Herman and Serazadishvili v. Greece, Applications nos. 26418/11 and 45884/11, Judgment of 24 April 2014.
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.

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