



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 31 July 2012

13004/12

ASILE 108

COVER NOTE

from: Mr. Robert K. Visser, Executive Director of the European Asylum Support Office

date of receipt: 30 July 2012

to: Mr. Rafael Fernandez-Pita, Deputy Director General for Justice and Home affairs, General Secretariat of the Council of the European Union

Subject: 2011 Annual Report on the Situation of Asylum in the European Union and on the Activities of the European Asylum Support Office

Delegations will find in Annex the 2011 Report on the situation on asylum in the European Union and on the activities of the European Asylum Support Office.



2011 Annual Report on the Situation of Asylum in the European Union and on the Activities of the European Asylum Support Office

SUPPORT IS OUR MISSION

2011 Annual Report on the Situation of Asylum in the European Union and on the Activities of the European Asylum Support Office

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Luxembourg: Publications Office of the European Union, 2012

ISBN 978-92-95079-04-5

doi:10.2847/15683

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Printed in Belgium

PRINTED ON PROCESS CHLORINE-FREE RECYCLED PAPER (PCF)

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Preliminary remarks by the Chair of the Managing Board

The year 2011 was a critical year for the further development and enhancement of the Common European Asylum System. The establishment of EASO was a key element of this development. The Common European Asylum System cannot be achieved without support, in terms of scientific and technical assistance, and dissemination of information and expertise. EASO was created to do precisely this and it therefore constitutes an important piece of the puzzle. EASO is providing a new impetus to the Common European Asylum System.

At the first EASO Management Board meeting in November 2010, at which I was elected Chairperson, Dr Robert K. Visser was selected as Executive Director of EASO. He then took office on 1 February and EASO was officially inaugurated on 19 June 2011 in Malta. That moment underlined the commitment of key partners such as the European Commission, Member States, and other agencies working in the field, namely Frontex and the Fundamental Rights Agency, UNHCR and wider civil society to cooperate closely with EASO.

The EASO Management Board met four times in 2011. As a Chairperson of the Management Board, I am delighted and encouraged by the level of commitment and engagement of the members. Besides the unrelenting commitment of staff, the Management Board has greatly contributed to making EASO what it is today. Discussions and decisions in the Management Board have always been constructive. All Member States through their representation in the EASO Management Board fully support the set-up of EASO and actively participate in the different EASO meetings as well as contribute to the different support measures. On the one hand expectations are very high and diverse and on the other hand EASO is still in its infancy and it is fair to acknowledge that the resources and capabilities are limited, yet the results speak for themselves.

I invite you to read this annual report, which gives a comprehensive overview of the situation of asylum in the EU and outlines EASO's contribution to the implementation of the Common European Asylum System during its first year of operations.

Stéphane Fratacci
Chair EASO Management Board

Foreword by the Executive Director

Support is our mission. Since its inception, EASO has been distinguishing itself as an independent centre of expertise, support and solidarity that contributes to the development and implementation of the Common European Asylum System (CEAS). Besides the legal framework, the CEAS consists of another two important pillars: effective practical cooperation, and increased solidarity and sense of responsibility among Member States. The creation of EASO, which has been established to play a key role in supporting these two pillars, has undoubtedly been one of the key achievements in this field during 2011.

As to the creation of the CEAS, both at the legislative and practical level significant developments have taken place during 2011. One of the legal instruments comprising the EU asylum *acquis* — the qualification directive — has been adopted, and the remaining recast proposals — Dublin regulation, reception conditions directive and asylum procedures directive should be adopted by December 2012 as established, among others, in the European Pact on Immigration and Asylum (2008) and the Action Plan of the Stockholm Programme (2010).

Furthermore, case-law and jurisprudence on asylum at national and European level concerning the interpretation and implementation of relevant instruments of the EU asylum *acquis* is growing at a steady pace. Rulings from the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) related to international protection have resulted in an essential element of the implementation and interpretation of the CEAS, with many practical implications for Member States.

At the same time, events in countries neighbouring the EU together with the constantly changing political and social circumstances surrounding the EU and their influence on the migration reality in the EU has led to a growing awareness of the need for Member States to be better prepared.

Against this evolving background, both inside and outside the EU, in 2011, EASO has been very active on various fronts, in particular: on providing training and quality, Country of Origin Information (COI), setting up an Early Warning and Preparedness System, providing emergency support when needed, fulfilling measures outlined in the EU Action Plan on Unaccompanied Minors, whilst at the same time growing from one to forty staff and moving from Brussels to Malta. On 1 April 2011, two months after my appointment as Executive Director, EASO signed an Operating Plan with Greece for the deployment of asylum support teams on its territory to support them in building a modern asylum and reception system. In May, the first teams were deployed.

During 2011, EASO developed practical cooperation tools and methodologies, using also lessons learned from previous experiences and measures, as vehicles for such cooperation. Three key measures that have already been integrated and are of particular relevance to this year's Annual Report, due to their close connection with the mandate of EASO, are the European Asylum Curriculum (EAC), the Eurasil network and the COI Portal. EASO is now carrying out training sessions, organising practical cooperation workshops and administering the COI Portal.

The JHA Council of March 2012 has entrusted EASO with a number of new tasks, mainly those related to the implementation of the early warning, preparedness and crisis mechanism. In this context, EASO provides regional outlook, analysis of asylum trends and push-pull factors, as well as risk-scenarios.

EASO is also an instrument putting solidarity into practice. Solidarity is pertinent in the field of EU asylum policy and is part and parcel of the working method of EASO. This means that the success of EASO depends on the willingness of Member States both to contribute and to participate in its activities. Due to increased convergence at EU level, in particular on the

legislative level, the need for practical cooperation among Member States takes a new dimension. EASO's ongoing training of Member States asylum officials is a clear example of how asylum authorities come together and accrue common knowledge and standards. Another example is the Asylum Intervention Pool made up of Member States experts that can be deployed to support Member States facing particular pressures, as was the case with Greece and Luxembourg.

It goes without saying that EASO does not operate in a vacuum. Consequently, I would like to thank the European Commission for taking the first steps in setting up EASO and for their constant support and excellent cooperation. Similarly, I would also like to thank the European Parliament, the JHA Council, the Member States, Frontex and other EU agencies, UNHCR and civil society organisations for investing in EASO and supporting it during its first year of operations. Last but not least, I would like to express my gratitude to the Maltese Government for hosting EASO and for their availability during our settling-in phase.

The need for cooperation, enhanced responsibility and mutual trust in the field of asylum has always been the subject of much debate in the EU. EASO has been created to boost such cooperation amongst Member States and, through the different tools that it offers, fosters an atmosphere of trust and responsibility within a CEAS.

Support being its mission, EASO has taken cooperation to a new level by providing added value for the EU and its Member States and, at the same time, strengthening common values, quality and solidarity across the EU.

Robert K. Visser
Executive Director

Executive summary

This first 'Annual Report on the Situation of Asylum in the European Union and on the Activities of the European Asylum Support Office' for 2011 provides a comprehensive description of the situation of asylum in the European Union (EU) in 2011, with a focus on areas in which EASO was involved during 2011.

EASO plays a key role in the implementation of the Common European Asylum System (CEAS). It is established with the aim of enhancing practical cooperation on asylum matters and helping Member States fulfil their European and international obligations to give protection to people who need it. EASO acts as a centre of expertise on asylum. It also provides support to Member States whose asylum and reception systems are under particular pressure. In sum, EASO provides three kinds of operational support measures: permanent support, special support, and emergency support. In addition, EASO provides information and analysis support and solidarity support.

The first year of EASO's existence was an eventful one.

In 2011, Europe was the prime destination for asylum seekers among industrialised countries. The EU Member States received 85 % of all applicants for international protection in the continent with over 300 000 applications (+ 15 %). France remained the Member State receiving the largest number of applicants (56 300), followed by Germany (53 300) and Italy (34 100).

International events, in particular the so-called 'Arab Spring' and the civil war in Libya caused unexpected movements of populations on a large scale. More than 24 000 Tunisians reached the coasts of Italy in a very short time-span after the regime of President Ben Ali was toppled; the war in Libya set in motion one of the largest displacements of people since the wars in the former Yugoslavia; in Syria, tens of thousands fled their country and a few thousand of them sought protection in Europe, mainly in Germany, in the second semester.

A persistent inflow from the western Balkans countries, in particular Albania (2 800, + 55 %), albeit lesser than in previous years at EU-wide level, concentrated in Belgium and Luxembourg, putting the asylum and reception systems of both Member States under severe stress, and affected Germany and Sweden as well.

In 2011 Afghanistan was the top country of origin for asylum seekers in the European Union. The number of asylum seekers from this country reached its highest level since 2002 and the country figured in the Top 5 country of origin arrivals of 14 Member States.

Other nationalities such as Ivory Coast (+ 200 %), Nigeria (+ 20 %), Pakistan and Bangladesh also deserve a mention.

In 2011, and going into 2012, pressure remained strong on the asylum system of Greece at the same time that this system was being reconstructed. Indeed, a lot of attention was focused on Greece, especially since the ruling of the European Court of Human Rights (ECtHR) in the case of *MSS v Belgium and Greece* dated 21 January 2011 highlighted the shortcomings of the Greek asylum system and caused Member States to suspend the transfers of applicants to Greece under the 'Dublin II' regulation.

From the very start of its activities EASO's emergency support to Greece was one of the agency's main focuses. In this context, the first asylum support team was deployed by EASO to Greece as early as 24 May 2011 and many teams have been deployed since then for missions lasting from a few weeks to several months. EASO support to Greece is expected to continue at least until 2013. The combined effects of the Greek government's actions (with its legislative and administrative reform), EU emergency funding provided by the European Commission, UNHCR cooperation with the Greek authorities and EASO operations led to improvements in several areas. However, much remains to be done.

The CEAS continued its development with the adoption, in December 2011, of the first instrument of its second phase: the new Qualification Directive (Directive 2011/95/EU, of 13 December 2011). The present report comments on a number of significant rulings by the Court of Justice of the European Union, by the European Court of Human Rights and by national Courts showing the growing importance of jurisprudence in clarifying the interpretation of the EU asylum *acquis*.

In the different chapters the EASO contribution to the Common European Asylum System and its activities to enhance cooperation are described, amongst others EASO's activities on, respectively, Country of Origin Information, early warning, EASO quality activities, such as training and activities on Unaccompanied Minors.

Country of Origin Information (COI) also forms a core part of EASO's activities. This information is essential in the asylum determination process. In this field EASO gathers COI information, manages and further develops the EU's common COI portal, elaborates a common format and methodology, drafts COI reports, and organises practical cooperation workshops to share COI. The first EASO COI products will be presented in 2012.

EASO has been developing analytical tools with a view to establishing early warning with the aim of detecting situations likely to give rise to particular asylum pressures. In this context, EASO provides outlooks on asylum trends and risk scenarios and supports Member States in being fully prepared.

In 2011 EASO provided training and developed training material in support of the enhancement of quality and harmonisation in the area of asylum, ultimately contributing to the implementation of a CEAS. The cornerstone of EASO training activities is the European asylum curriculum (EAC) — which EASO took over on 1 January 2012. Already in the fourth quarter of 2011, EASO organised six training sessions. EASO training is a common vocational training system designed for asylum practitioners throughout the EU and covers core aspects of the asylum procedure in interactive modules.

In the area of unaccompanied minors, working alongside the Commission and other agencies, EASO has a key role to play in ensuring the implementation of the European Commission Action Plan on Unaccompanied Minors (2010–14). In 2011 EASO focused on collecting data, research and initiating exchange of information on unaccompanied minors with Member States and other relevant experts in the field, including UNHCR, Save the Children, Frontex and IGC. In November 2011 EASO took part in a Frontex-led multi-agency cooperation, 'Joint Operation Hammer', which focused on assisting border officials to identify potential victims of trafficking.

Moreover, EASO is engaged in cooperation with a number of institutional partners and other stakeholders: the European Commission — especially the Home Affairs DG — and other European institutions; the United Nations High Commissioner for Refugees — whose representative sits on its Management Board; Frontex and other EU agencies such as the Fundamental Rights Agency; as well as with civil society. To facilitate EASO's engagement with civil society (including NGOs, academics and the judiciary) a Consultative forum has been established. The first Consultative Forum with selected organisations from the non-governmental world and academia was held on 15 December 2011 in Valletta, Malta.

Introduction

EASO is an agency of the European Union set up by virtue of Regulation (EU) No 439/2010 of the European Parliament and of the Council. The agency plays a key role in the implementation of the Common European Asylum System (CEAS). It is established with the aim of enhancing practical cooperation on asylum matters and helping Member States fulfil their European and international obligations to give protection to people in need. EASO acts as a centre of expertise on asylum. It also provides support to Member States whose asylum and reception systems are under particular pressure. Overall, EASO provides three kinds of operational support measures: permanent support, special support, and emergency support. In addition, EASO provides information support and solidarity support.

Permanent support includes training on the asylum *acquis* and practices, cooperation on Country of Origin Information (COI), and the promotion of the best practices. Special support concerns tailor-made actions on specific issues. Emergency support relates to the coordination of actions in support of Member States subject to particular pressures on their asylum system. Information-support involves collecting, sharing and processing information and data, analysis and assessment: not only comparing and sharing of information, but also common trend analysis and common assessment. Solidarity-support involves promoting, facilitating and coordinating resettlement and relocation efforts undertaken by Member States. EASO also plays a role in the implementation of the External Dimension of the Common European Asylum System.

The Management Board of EASO, composed of representatives of the EU Member States, the European Commission and the United Nations High Commissioner for Refugees (UNHCR), held its first meeting on 25 and 26 November 2010. The member for France, Mr Stéphane Fratacci, was elected as Chairperson. Dr Robert K. Visser was proposed as EASO's first Executive Director.

Following a hearing at the European Parliament on 9 December 2010, Dr Robert K. Visser was appointed as Executive Director by the Management Board and officially took office on 1 February 2011. EASO was formally inaugurated in Valletta (Malta) on 19 June 2011 by The Hon. Lawrence Gonzi, Prime Minister of Malta, together with the EU Commissioner for Home Affairs, Ms Cecilia Malmström.

Article 12(1) of the EASO regulation (EU) states that the Support Office shall draw up an annual report on the situation of asylum in the Union, in which it shall evaluate the results of activities carried out under Regulation 439/2010 and make a comprehensive comparative analysis of such results with the aim of improving the quality, consistency and effectiveness of the CEAS⁽¹⁾.

The Report takes due account of information already available from other relevant sources so as to avoid duplication of work. The EASO Management Board decided that the first EASO Annual Report on the situation of asylum should focus on the building-up of EASO as a new EU regulatory agency, its activities under the founding regulation and their potential added value in the establishment of the CEAS. In addition, it was decided that, for 2011, the annual general report on EASO's activities provided for in point (c) of Article 29(1) of the EASO founding regulation should be merged into the present to better contextualise actions carried out by EASO during the reporting year.

Indeed, given the limited resources at EASO's disposal in its first year of operations, it would have been over ambitious to embark on an attempt to provide a comprehensive description of the situation of asylum in the EU. Therefore, this document reports only on what actually occurred in 2011 and what may be regarded as new, salient and noteworthy with regard to 2012 concerning the trends in the influx of asylum seekers and the legislative developments in the area of asylum as well as policy and jurisprudence, without any objective of comprehensiveness.

For the purpose of this report, EASO sought information and data from official Member States sources, EU institutions, international organisations and academic research with a view to avoiding duplication. Taking into account that the European Commission (the Home Affairs DG) publishes an Annual Report on Immigration and Asylum, which includes contributions from the European Migration Network (EMN) as part of its Annual Policy Report and in which several aspects of asylum legislation and policy at EU level and in the Member States are described, EASO chose not to focus on issues in which it was not actually involved in 2011. Thus, important topics such as unaccompanied asylum-seeking minors, intra-EU relocation and several facets of the external dimension of the CEAS (including resettlement) are not the subject of this year's report. The extent to which EASO will cover these aspects in subsequent reports and the complementarity with the Commission's and EMN's reporting activities, will be addressed with the relevant actors in 2012.

UNHCR, in accordance with its role under Article 35 of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees, which is reflected in the EU Treaties and the asylum *acquis* instruments, made a special contribution to this report, giving its opinion on developments in 2011.

The Annual Report was adopted by the Management Board of EASO on 18 June 2012.

International developments, effects on Member States and EASO tools and responses

Developments in the field of asylum in the EU, in particular the volume and composition of the inflow of asylum seekers, are to a large extent influenced by international events that trigger movements of individuals who have made on their own will a decision to leave their country of origin and others who have been forced to do so due to a well-founded fear of persecution or the risk of serious harm.

These events form the backdrop against which the developments, reported in the following chapters, took place.

The number of asylum applications registered in the 27 Member States of the EU reached 301 000 in 2011, including repeat applications ⁽²⁾.

New applications was 277 400, UNHCR reports, a 15 % increase compared to 2010 (240 400). The EU-27 together accounted for 85 % of all asylum claims in Europe ⁽³⁾.

Ten Member States totalled 90 % of all applications lodged in the EU: **France** remained the first receiving country (56 300), followed by **Germany** (53 300), **Italy** (34 100), **Belgium** (31 900), **Sweden** (29 700), **the United Kingdom** (26 400), **the Netherlands** (14 600), **Austria** (14 400), **Greece** (9 300) and **Poland** (6 900) ⁽⁴⁾.

One decision out of four at first instance was positive, granting either refugee status under the 1951 Geneva Convention (29 000), subsidiary protection within the meaning of the 'Qualification' Directive (21 400) or a leave to remain for humanitarian reasons under a national regime not covered by EU law (9 100) ⁽⁵⁾. However, discrepancies in recognition rates as well as in the distribution of beneficiaries among the various statuses remained significant between Member States.

Many people in need of protection enter Europe through irregular means, being either smuggled or trafficked, and often using the same means and routes as migrants moving for non-protection-related reasons.

Frontex summarises the situation as follows: 'In 2011 there were major and extensive developments in irregular-migration pressure at the external border of the EU, resulting from two simultaneous but independent hotspots of illegal border-crossings: the first was seasonally increased activity at the **Greek** land border with Turkey, where a wide variety of migrants continued to be detected at very high levels. The second, and the undeniable hotspot for illegal border-crossing into the EU in Q2 2011, was in the central Mediterranean, where vast numbers of sub-Saharan migrants landed in Italy and Malta mostly having been forcibly expelled from Libya.' ⁽⁶⁾

Regarding the third quarter of 2011, Frontex further states: 'Consistent with recent years, the majority of illegal border-crossings were limited to a small number of hotspots of irregular migration such as the eastern and central Mediterranean routes, accounting for 50 % and 33 % of the EU total, respectively. However, in Q3 2011 there was also a rise in the importance of the western Mediterranean route, now representing nearly 10 % of the EU total. At the EU level, the most commonly detected migrants were from **Afghanistan**, yet due to the recent increases in the number of migrants from Pakistan and Nigeria (by seven and ten times compared to Q3 2010, respectively) these nationalities have moved to the second and third position.' ⁽⁷⁾

As a whole, in 2011 the total number of detected irregular border crossings to the EU as reported by Frontex increased by 35.5 % (140 980 persons) compared to 2010 (104 051 persons).

UNHCR observes that: 'Border control and restrictive migration management therefore remained high on the political agenda throughout the EU. This negatively affected access to territories across the EU. There is evidence of varied practice across EU Member States in relation to access to territory for asylum seekers, and referral by border officials to national asylum authorities. In some countries there are concerns that such access and referral are frequently lacking. UNHCR noted however with appreciation that, with a few exceptions, persons arriving in mixed flows receive in most EU Member States sufficient information about the possibility to seek asylum.'

EASO and Countries of Origin Information

An important tool in the EASO toolbox is the comprehensive Country of Origin Information (COI) system, aiming at supporting Member States in the gathering and use of Country of Origin Information to achieve more objective, transparent and accurate origin information systems at national level that deliver official, rapid, reliable and up-to-date information, this being central to any assessment of whether a person should benefit from international protection.

In 2011 EASO started developing its Country of Origin Information capacity under the parameters of feasibility, effectiveness, burden sharing and harmonisation. Keeping in mind that the availability of, and the expertise on Country of Origin Information, is one of the cornerstones of decision-making and as such can enhance harmonisation, the continuous support in the field of Country of Origin Information is an important tool in developing and implementing a Common European Asylum System (CEAS).

In order to support EASO in structuring its Country of Origin Information Division a temporary Task Force was set up. A meeting of Heads of Country of Origin Information Units of the Member States took place in Malta in October 2011 and suggested to the Management Board to establish Working Parties and develop the various functions; 10 Member States were represented in this meeting of the so-called 'Task Force'. The Working Parties report to a Reference Group including all Member States, the EU Commission and external partners such as UNHCR. Additionally, EASO participated in Eurasil meetings organised by the Commission as well as meetings with UNHCR, Frontex and IGC.

The handover of the Country of Origin Information Portal by the European Commission to EASO, and its further development, has been initiated. Within the Task Force System, a Working Party entitled 'COI Portal' has been established and its first meeting took place in January 2012.

In view of the first EASO Country of Origin Information report within the Task Force System, a Working Party entitled 'Methodology' has been set up and held its first meeting in Malta in December 2011 in order to discuss a first draft of guidelines.

During May 2011 EASO screened various practical cooperation measures and best practices, including: the European Country of Origin Sponsorship (ECS), the Temporary Desk on Iraq (TDI), Eurasil and COI Portal. Furthermore, meetings were held with leaders and experts of each of these projects/networks with a view to identifying the best practices to carry over into the EASO Country of Origin Information structures. The further development of the experts' cooperation as strengthened in the framework of the ECS project will be one of the tasks of the newly established Working Party entitled 'Knowledge Management'.

One example of practical use of Country of Origin Information was the growing need for updated Country of Origin Information on Afghanistan. The ongoing armed conflict in that country and the pressure put on Afghan refugees by the Iranian government as well as the deterioration of the situation in Pakistan fuelled continuous mixed flows of migrants

and refugees into the EU. As part of the preparation process of the EASO Country of Origin Information report on Afghanistan, due to be published in mid-2012, a network of national experts was established to contribute with up-to-date and reliable information. To determine the content of the report, studies of asylum applications, first and last instance decisions and trends in the Member States have been conducted. Questionnaires have been sent to the major stakeholders. A Workshop of experts on Afghanistan organised by the European Commission was held in November 2011 in Eurasil format.

The Afghan inflow (Austria, Belgium, Germany, Netherlands, Sweden)

The map below confirms the abovementioned need for updated Country of Origin Information on Afghanistan. The influx of Afghan asylum seekers is a major part of the asylum seeker case load for a majority of Member States where it takes place in the Top 5 — and even ranks first in eight of them — which makes it the ‘No 1’ inflow at EU level.



Figure 1
Country of origin: Afghanistan – Asylum seekers in 2011.

The Afghan inflow has been consistently among the most significant since the US-led military intervention against the Taliban in October 2001. It had been decreasing sharply from 2001 to 2004, remained almost stable from 2004 to 2007 and has been on an ascending curve since then. With 26 159 new applications (+ 35 %), the level reached in 2011 is the highest since 2002 ⁽⁸⁾.

Germany was the prime destination (7 767 in 2010; + 31 %), followed by **Sweden** (4 120; + 72 %), **Austria** (3 623; + 129 %), **Belgium** (2 773; + 110 %), the Netherlands (1 885; + 38 %), **the United Kingdom** (1 525; - 17 %) and **Denmark** (903; - 38 %). It should be noted that the number of applications was also high in neighbouring countries at the southern border of the EU: Turkey 2 486; Serbia (including Kosovo) 1 757 ⁽⁹⁾. This may be correlated with the number of applications in **Italy** (880), **Hungary** (649) and **Greece** (637). It is also worth mentioning that the number of new applications increased rapidly in the second and third quarters of 2011 (+ 20 % and + 25 % respectively as compared to the previous quarter) and remained high in the fourth quarter (- 7 %), which may be an indication of a persistent high level in 2012.

As mentioned above, Afghanistan is the most significant country of origin at EU level both in terms of applicants and in terms of EU Member States where it ranks prominently.

Comparison of trends in asylum decisions

When looking at the trends dealing with the case-load of asylum seekers across EU-27 Member States, comparison can take place either on positive or negative asylum decision rates. Positive recognition rates, at the present time, vary much from Member State to Member

State due to the imperfect state of harmonisation in the implementation of the EU asylum *acquis*. Using negative decision rates is technically easier in order to compare the difference in the case loads.

In this regard, according to Regulation 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community Statistics on migration and international protection, international protection includes four categories: refugee-status as defined in Article 2(d) of the Qualification Directive 2004/83/EC; subsidiary protection as defined in Article 2(f) of the said directive; temporary protection as defined in Article 2(a) of the Temporary Protection Directive 2001/55/EC; authorisation to stay for humanitarian reasons under national law.

Negative decision rates are therefore only used in this report for the sake of comparability of the trends.

The practice on first instance decisions varies widely across Member States.



Figure 2.
Data source: Eurostat, R.CE. 862/2007 – Art.4 (login: 20.3.2012) – Country of origin: Afghanistan – First Instance Negative Decision Rates (%) in 2011 - Total decisions in 2011: 22,900 – The relationship color-number allows the identification of 7 ranges:
1. First instance negative decision ratio from 0% to 30% (based on 60 decisions);
2. First instance negative decision ratio from 30% to 39% (based on 5,060 decisions);
3. First instance negative decision ratio from 40% to 49% (based in 4,210 decisions);
4. First instance negative decision ratio from 50% to 59% (based on 2,865 decisions);
5. First instance negative decision ratio from 60% to 69% (based on 8,205 decisions);
6. First instance negative decision ratio from 70% to 79% (based on 2,015 decisions);
7. First instance negative decision ratio from 80% to 100% (based on 475 decisions).
EU-27 MS average = 55% - Standard deviance between EU-27 MS = 28%

In the context of a Common European Asylum System, discrepancies in decision practice should be the starting point for further analysis in order to determine the reasons behind the discrepancies. In Figure 2, the example of difference is measured as standard deviation.

The eastern Mediterranean area

One of the main migration routes from Asia and Africa toward the EU goes through Turkey and eventually through the Greek–Turkish border. It had been noted in 2010 that numbers on the eastern Mediterranean route had been growing while the pressure in the western Mediterranean declined. The Fundamental Rights Agency states in its Thematic Situation Report ⁽¹¹⁾ regarding irregular migration in Greece (March 2011): ‘The strengthening of border surveillance and other measures taken by other EU southern Member States led to a significant reduction of arrivals in Italy, Malta and Spain. Migration routes to the EU changed, targeting first the sea border and then the land border between Greece and Turkey. In 2010, Greek external EU land and sea borders accounted for 90 % of all detections of irregular border crossings along all EU external land and sea borders.’ The pressure at the Greek–Turkish border continued throughout 2011 as evidenced by Frontex reports ⁽¹²⁾. Hence a growing number of people from countries whose nationals used to go the western Mediterranean route can now be found among the persons entering Greece irregularly through the Greek–Turkish border, e.g. citizens from Algeria and Morocco and still many citizens from Pakistan, Afghanistan, Georgia and the Balkans as well as citizens from sub-Saharan countries ⁽¹³⁾.

Greece

Greece had been faced for several years with intense migration pressures due to its geographical position, and the length of its land and sea borders. As these pressures intensified during 2009 and 2010, possibly as the western and central Mediterranean routes were gradually 'closed', and also taking note of the European Commission's interventions on asylum issues, Greece embarked on a series of reforms of its asylum and migration policy throughout 2010. These reforms included an overhaul of its asylum legislation as well as enhanced cooperation with Frontex, through the deployment of Joint Operation Poseidon and the RABITs at the Greek-Turkish land border.

As regards asylum, the Greek Government initiated in October 2009 a procedure of consultation within the competent state actors (e.g. Ministry of Citizen Protection, Ministry of Health, etc.) and other stakeholders (e.g. UNHCR, NGOs and the Athens Bar Association), whose aim was to report regarding the possibilities of reforming and improving the existing asylum procedure. The results of this consultation were consolidated in an 'Action Plan on Migration Management' that was developed and presented to the European Union during the summer of 2010. The Plan aimed at creating an efficient National Migration Flow Management System, including a complete recast of the asylum system as regards the asylum procedure as well as reception conditions.

Meanwhile the European Court of Human Rights (ECtHR) issued its ruling *M. S. S. v Greece and Belgium* on 21 January 2011. The Court of Justice of the European Union (CJEU) confirmed this situation in its ruling on joined cases C-411/10 *NS v Secretary of State for the Home Department* and C-493/10 *M.E. and others v Refugee Applications Commissioner Ministry for Justice, Equality and Law Reform* on 21 December 2011.

The situation on the borders, as well as the state of play on the asylum and reception capacity and conditions, had been described as alarming in several reports: insufficient administrative capacity, absence of an efficient screening system to deal with persons apprehended at the border, lack of appropriate reception facilities (in particular for vulnerable persons), deteriorating detention conditions amounting to inhuman or degrading treatment, difficult access to the asylum procedure and an inadequate support system for asylum seekers in waiting as regards housing and social care were among the shortcomings pointed out⁽¹⁴⁾.

Since 2005, the European Commission repeatedly advised Greece through letters of formal notice and reasoned opinions (which constitute the first stages of an infringement procedure) of its failure to fulfil its obligations under the Treaty as regards the transposition of the EU legislative instruments in the field of asylum and had referred it to the CJEU⁽¹⁵⁾.

On 3 November 2009, the Commission sent Greece a letter of formal notice on the issue of access to the asylum procedure, respect of fundamental rights, including the principle of non-refoulement, when conducting border controls and treatment of asylum-seeking unaccompanied minors⁽¹⁶⁾. A supplementary letter of formal notice was notified in June 2010⁽¹⁷⁾.

Describing its action plan in a nutshell, the Greek government wrote:

- 'Given that existing Greek procedures and facilities have exhausted their limits and, as a result, fall short of actual needs, the Greek Government has decided to intervene on several fronts. These initiatives, which started in October 2009 and will gradually be unrolled over a 3-year period, constitute the National Immigration Flow Management System and involve:
- creating Screening Centres and adopting a modern procedure for screening, registering and managing aliens;
- restructuring the asylum procedure and creating a new Asylum Department;
- increasing the number of centres for receiving vulnerable groups and minors;
- modernising aliens' detention centres and creating new centres and improving the return procedure.'⁽¹⁸⁾

As regards the asylum component of the Plan, the European Commission made available emergency funding under the 2010 European Refugee Fund (ERF) to the Greek authorities in addition to the amount attributed on a yearly basis. UNHCR mobilised additional resources and skills to assist Greece in improving its asylum system, including to carry out its functions foreseen in Greek legislation. For 2011, UNHCR activities included support with regard to access to the asylum procedure and registration of asylum applications, support in first instance asylum procedures through participation in interviews and advisory opinions, participation in the appeal instance of the asylum procedures, support with backlog processing of appeals, the provision of Country of Origin analysis and documentation resources, training to the staff involved in the asylum procedure, interpretation and legal aid services through partners, as well as support for reception of asylum-seeking unaccompanied minors and other asylum seekers. The ERF funding also benefited NGO actions in support of asylum seekers, particularly in Evros, and to persons enjoying international protection.

At the initiative of the European Commission, EU Member State experts missions (by **Austria, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom** as well as from Norway) took place in Greece in December 2010 and January 2011 in order to assess the situation in the field of asylum and suggest possible solutions to be implemented in the framework of action plan in the areas of the registration and screening of international protection needs, reception, backlog management, training and overall quality of the asylum procedure.

By early 2011, Greece had passed new legislation regarding asylum ⁽¹⁹⁾:

The Presidential Decree 114/2010 of 22 November 2010 provides for a transitional period, during which the responsibility for the first instance decisions on applications for international protection remains with the 14 police directorates in cooperation with the Ministry of Citizens Protection (MoCP) and it reinstates a second administrative instance with the creation of independent Appeals Committees, including Special Committees for pending appeals;

Law 3907 of 26 January 2011 establishes an Initial Reception Service, a new [civilian] Asylum Service, and an Appeals Authority and also transposes Directive 2005/85/EC; according to the Law, the said services and authority were to start their operation within one year of the entry into force of the new law ⁽²⁰⁾.

In addition to the legislative changes, the Greek government also took steps to improve the functioning of the public bodies in charge of asylum. By May 2012, with support from EASO, UNHCR and other relevant stakeholders, they had implemented:

- a registration tool which supports 56 police directorates and three departments to register in a uniform way their asylum flows from application, decision, return, etc. to improve the planning and control cycle;
- tools which assists the 10 Appeal Committees with planning; including:
- the development and implementation of an enlarged questionnaire for collecting necessary information from the applicant,
- the development and implementation of a more efficient system for invitations of active cases to Appeal Committee interviews,
- the development and implementation of a more efficient system for the interviews of the Appeal Committees.

EASO and Greece

The Management Board Meeting of 3 and 4 February 2011 — right after the appointment of the Executive Director — immediately decided that support to Greece would be the first operational priority of the Agency. Later on that month, the Greek Minister of Citizens Protection formally requested the support of EASO. In February and March 2011 the Executive Director of EASO, acting in strict coordination with the European Commission Home Affairs DG pursuant to Article 17(1) of the EASO regulation, sent a team of experts to assess the situation

and draft an Operating Plan for the deployment of asylum support teams in Greece. The Executive Director, together with representatives of the EU Commission, travelled to Greece on 24 February to install the Operating Plan Team and had talks with the Greek authorities. The team had interviews with relevant stakeholders, visits to reception centres and police directorates and discussions with Greek authorities such as police officers, members of the Appeals Committees and representatives of the Ministry of Citizens Protection (MoCP) and the Ministry of Health and Social Solidarity (MoHSS) at various levels. As a result of this assessment and building upon the findings and recommendations of the aforementioned stakeholders and the EU Member States experts in December 2010 and January 2011, the Operating Plan outlines measures designed to support the Greek authorities in implementing their action plan, thereby addressing the shortcomings and serious deficiencies including those identified in the *M.S.S.* ruling and efficiently implement the EU *acquis*. The Operating Plan identifies short-term and long-term measures through the deployment of EU experts by EASO — the so-called asylum support teams (ASTs) — in a succession of short missions spread over a duration of two years in strategically selected sectors of the main areas of the asylum system, from screening to appeals. As UNHCR was already active in a number of short-term assistance projects, it was decided that EASO would concentrate more on supporting the building of the new services and the organisation of the asylum and reception systems.

The Joint Declaration and Operating Plan were signed in Athens on 1 April 2011 by the Executive Director of EASO and the Greek Minister of Citizens Protection. The first deployments of asylum support teams (ASTs) coordinated by EASO, began on 24 May 2011. Following the experience of the first months of deployment, the Operating Plan was amended on 26 September 2011.

During 2011 good cooperation has developed between EASO and the relevant stakeholders engaged in the implementation of the action plan in Greece such as the Ministry of Citizen Protection (MoCP) and its departments, including the Appeal Committees, the Ministry of Health and Social Solidarity (MoHSS), the UNHCR, the Representation of the European Commission in Greece, the EU Task Force and Frontex.

In the last quarter of 2011, three new national services were established in accordance with Law 3907/2011: the Initial Reception Service, the Asylum Service, and the Appeals Authority. Among other actors, EASO provides support for these three services with a view to helping them become operational.

In 2011 EASO has deployed 11 ASTs in Greece including 17 experts from 11 different Member States. Some AST deployments resulted afterwards (within the framework of the Operating Plan and its amendment) in one or more follow-up actions.

In 2012, and until 1 May, EASO has deployed eight ASTs in Greece including 11 experts from eight different Member States. Several of these ASTs are expected to continue further in 2012 and until April 2013.

By an EASO ‘call for experts’, Member States are invited to designate their national experts who are part of the EASO Asylum Intervention Pool (AIP) to participate in ASTs. Member States are reimbursed for the costs of the deployment of their experts. EASO selects the experts by relevant curriculum, international experience, availability and nationality, in consultation with the Greek authorities. EASO informs the expert(s) of the AST and their Greek counterparts in advance, puts the expert in contact with the Greek counterparts, steers on concrete deliverables and monitors progress, ownership and follow-up.

The 11 ASTs in 2011 resulted — taking into account extensions and iterations — in 26 missions of experts for a total of 581 working days. The average duration of an AST mission in 2011 was 24 working days. The total cost of all deployments amounted to EUR 161 700, which means an average cost per mission of ca. EUR 8 500.

In accordance with the Operating Plan, EASO has designated a project manager who spends a significant part of his time in Greece, briefing and debriefing experts, assisting their introduction into the host services and to other stakeholders like UNHCR, supporting them

in a number of issues, helping to ensure timely, sustainable and tailor-made support and generally acting as an interface and facilitator between the experts, their Member States and the Greek administration as well as between EASO and the Greek authorities and other relevant stakeholders in Greece.

Up to May 2012, the ASTs contributed to a variety of topics. Results include:

- outline and ongoing consultations regarding best practices and international standards or vulnerable groups and age assessment of unaccompanied minors, which will be used in the daily operations of the Initial Reception Centres;
- outline and ongoing consultations regarding a management manual to be used by the manager of an initial reception centre, designed adequately to the Greek needs and context;
- one tailor-made training session with the Director of the Appeals Authority addressing management skills and management within the framework of asylum procedures;
- an instrument for the Director of the Appeals Authority which supports the monitoring and the functioning of the Appeals Authority in general and the planned new Appeals Committees to be established upon operation of the Asylum Service and Appeals Authority in particular.

The actions of the Greek government also with support of the ASTs deployed by EASO and the assistance of UNHCR produced significant results:

- the numbers of examined asylum cases (first instance) almost doubled and this shows increased administrative processing capacity;
- the examined appeal cases have increased from very low to substantial numbers;
- the backlog cases have decreased by nearly 30 % as non-active cases have been screened out and archived (NB a new legislative amendment in 2012 will allow for the further decrease of the backlog at 2nd instance (Article 18 of Law 4058/2012);
- the quality of the written decisions at second instance is, according to UNHCR, fully compliant with international and European standards;
- the provision of interpretation services is improved with the cooperation of a local NGO (partner of UNHCR); apart from the physical presence of trained interpreters the use of tele/video-conference is established at the Regional Asylum Police Services, which enhances efficiency;
- the technical specifications for the detention centres and initial reception centres have been finalised;
- standard operating procedures for reception centres, management of the centres and staffing have been drafted with the assistance of UNHCR;
- guidelines for referral of vulnerable groups, unaccompanied minors and age assessment have been drafted;
- a system for screening, identification and data analysis is being set up;
- a system of Country of Origin Information including training in Country of Origin Information is being set up, with the active support of UNHCR;
- a training plan building on the EAC has been elaborated upon by the new Services in cooperation with EASO;
- translation of six EAC training modules into Greek;
- preparation of EASO training of staff of new Services.

More specifically:

- in February 2012 the actual training of Greek staff started. Sixteen staff were trained in the EAC 'Inclusion' module. Evaluation of this training session supported the establishment of the long-term EAC training plan for Greece mentioned above;

- accordingly, several training sessions are planned by June 2012, some of them being train-the-trainer modules. One training session will be undertaken by Greek EAC certified trainers supported by EAC certified trainers from the EASO Trainers Pool;
- up to 20 Greek trainers will be trained as trainers on the Modules 'Inclusion', 'International Refugee Law and Human Rights' and 'Evidence Assessment'. This is the first step to setting up a Greek internal training system;
- further training material is being translated into Greek with the active engagement of staff of the new Services.

State of play

In May 2011, the EU Commission stated: 'Following the submission of an action plan to the European Commission in August 2010, Greece has embarked on a comprehensive overhaul of its asylum and migration system, and has received support from the Commission, the Member States, Norway, the UNHCR and other EU partners. Asylum Expert Teams coordinated by the EASO are now deployed there. Important new legislation has already been adopted by Greece in 2010, and its implementation is under way.'

At the JHA Council of 27 October 2011, the EU Commission reported on the state of play of the implementation of the Greek action plan.

As a major actor in the implementation of the asylum-related aspects of the Greek Action Plan and an international organisation with a specific mandate for the monitoring of the implementation of the 1951 Geneva Convention, UNHCR made the following general assessment at the end of 2011:

'Well into the transitional period and in the second phase of the reform, which is the implementation of the adopted legislation, Greece has already significant progress to present, despite the adverse political and economic context. With regard to the asylum procedure, this progress is noted mainly in an improved quality of the asylum decision-making process, in particular at second instance, as well as in the backlog clearance, where a first review of pending files has been completed, separating active from non-active appeal cases.

However, systemic deficiencies in the Greek administration, coupled with constraints imposed by austerity measures, render progress in implementation of the reform more challenging and significantly impact on its pace.'

For its part, the EU Commission made an evaluation mission to Greece in December 2011 and, while noting some progress in certain areas, as corroborated by UNHCR, reported a number of shortcomings.

Although important steps have been taken, such as the appointment of the Directors of the Initial Reception Service, the new Asylum Service, the Appeal Authority and the establishment of these three new services in office facilities of their own, the Greek government had to extend for another 6 months till 1 July 2012 the 'transitional period' — where the rules of Presidential Decree 114/2010 of 22 November 2010 still apply till the new services are able to take over.

Moreover, due to cross-cutting issues such as exceedingly heavy national administrative procedures and the effective freeze on recruiting in the State administration in order to meet fiscal consolidation rules, the implementation of several elements of the Action Plan remain delayed, with the most serious one relating to the staffing of the new services. Lack of competent staff means not only that their start of operations will be further delayed, but also that EU-provided assistance by means of funding and human resources, such as ASTs, cannot be absorbed as effectively as desired.

By the end of December 2011, there was still a long way to go before the situation could be regarded as corrected with regard to the EU *acquis* on asylum and to the criteria outlined in the *M. S. S.* ruling of the ECtHR.

One of the main concerns in 2012 remains the lack of Greek staff and consequently the risk of progress, in particular the transition to the new asylum procedure under the responsibility of the Asylum Service and Appeals Committee as well as for the continuity. The capacity in the asylum and reception systems of a Member State remains in the end the prime responsibility of a Member State. The support provided by EASO is and has to be in this respect temporary by nature.

Regardless the abovementioned challenges with recruitment, the three services are attracting new staff: the Asylum Service, now a director and 13 staff, plans to recruit 262 staff; the Initial Reception Service, now a director and 8 staff, plans to recruit 40 staff (+ regional staff) and start operations on 1 September 2012; and the Appeals Authority now a director and one member of staff plans to recruit 30 staff and appoint members for additional appeals committees.

Part of the support to the Greek asylum authorities comes through EU funding and by assisting the authorities in optimising the application and utilisation of funding within the Greek budget system, the effect of all support will be magnified. Ongoing Member State and EASO support has been set up.

EASO Asylum Intervention Pool for Emergency Support

According to Article 15 of the EASO regulation, EASO has established an Asylum Intervention Pool (AIP). Twenty-three Member States (including Denmark that is not bound by the EASO regulation) have nominated experts for the AIP. As of 31 December 2011, the AIP consists of around 350 experts. So far the AIP covers 13 profiles, which were agreed upon by the EASO MB in February 2011 ⁽²¹⁾.

Contact points of the Member States, UNHCR and the EU Commission have been designated for communication with EASO on all matters pertaining to ASTs. Likewise, EASO has designated the Union contact point.

On 29 July 2011 a meeting between EASO and the Member States' National Points of Contact for the AIP was held in Brussels. The intention of the meeting was to have an exchange of views on the first experience with the deployment of ASTs and the structure of the AIP. Member States stressed several important requirements for the efficient work of ASTs. It was agreed that a NCP meeting should be held at least once a year, providing useful input to the continuous update and development of AIP.

Regarding the most effective use of the AIP, EASO will develop strategies for the medium- and the long-term. The work of the ASTs should be as effective and practical as possible. Currently the experience with the deployment of the ASTs to Greece is evaluated and an annual AIP National Contact Points meeting furthermore contributes to the further development of the AIP. Some first findings include that deployment of ASTs does not only benefit the Member State concerned. The deployment of experts of different Member States also contributes in a bottom-up way to the exchange of best practices and the development of the Common European Asylum System.

The 'Arab Spring': Tunisia, Egypt, Libya, Syria, Yemen

Early in 2011, demonstrators in *Tunisia* toppled the regime of President Ben Ali who fled his country on 14 January 2011. During the power vacuum that ensued, several thousands of young Tunisians left their country in boats which landed mainly on the **Italian** island of Lampedusa ⁽²²⁾.

Starting from Benghazi, a rebellion in *Libya* soon brought the country into a civil war. Under United Nations Security Council Resolution 1973 (2011) of 17 March 2011, a no-fly zone

over Libya was instated and Member States were authorised to take all necessary measures to protect civilians under threat of attack in the country, thus preventing the regime of Colonel Muammar Gaddafi from using the best of its armament against the rebels and the civilian population in the insurgent cities. Thousands were internally displaced. Thousands of migrant workers and a difficult-to-estimate number of irregular migrants were trapped in the conflict ⁽²³⁾. Some countries managed to evacuate their citizens in an orderly fashion (e.g. **China** with the assistance of **Malta** ⁽²⁴⁾ and **Greece**) and more than 200 000 citizens from other countries received assistance from UNHCR and IOM. Some were able to return to their country of origin. It is estimated that over 1 million people fled Libya. Egypt and Tunisia kept their borders open and, in addition to their own citizens returning home, hosted the largest numbers of third-country nationals and Libyan refugees. UN agencies organised one of the largest support operations ever, providing humanitarian assistance to people in camps in Egypt and Tunisia as well as to displaced persons within Libya. IOM reports ⁽²⁵⁾ show that nearly half a million people repatriated from Libya to their country of origin as a consequence of the conflict, among them more than 160 000 *Egyptians*, 160 000 *Tunisians*, nearly 80 000 citizens of *Niger*, over 50 000 *Chadians*, etc.

By the end of November 2011, more than 217 000 persons had received transportation assistance from IOM and UNHCR. It is noteworthy that the largest contingent of assisted third-country nationals transported out of *Libya* was *Bangladeshis* (24 000). Others — among them large numbers of migrants from *Eritrea* and *Somalia*, where violation of human rights, protracted armed conflict and drought are not conducive to voluntary return — did not have this opportunity and many migrants from sub-Saharan African countries were left with little or no assistance due to the difficult conditions impeding the action of UN agencies and NGOs. Several thousands, either because it had been the initial goal of their journey where they would have arrived earlier had they not been stranded in Libya, or for fear of reprisals by the local populace who consider them as supporters or mercenaries of the former regime, seized the first opportunity to flee towards Europe. However, departures by boat from Libya dropped significantly since the rebellion seized Tripoli on 22 August 2011 ⁽²⁶⁾. It should be noted that the humanitarian evacuation implemented in cooperation by IOM and UNHCR had a significant impact on the situation: it helped decongest the borders of neighbouring countries in a speedy manner and kept protection space open and, by helping people to return safely to their home countries, it eased the potential migratory pressure towards Europe so that only a small fraction of the persons fleeing the conflict had to cross the Mediterranean Sea. At the end of 2011, although several EU Member States ⁽²⁷⁾, Norway, and, most of all, the USA, had offered places for resettlement, more than 4 000 persons of concern to UNHCR in Egypt and Tunisia were still in need of a durable solution.

The Joint EU Resettlement Programme

In the course of 2011 the negotiations on the Programme were stalled due to lack of agreement between the co-legislators regarding the procedure to be used in the definition of annual EU resettlement priorities. In December 2011 the Polish Presidency of the Council agreed to take on board a compromise text that was to be further developed by the Danish Presidency in the first semester of 2012.

EASO and Resettlement

Resettlement is as one of the key measures for internal and external solidarity. Following its mandate EASO took part in the regular exchange of information, best practices and other actions on resettlement by EU Member State, UNHCR, IOM, GDISC and other relevant partners during 2011.

Demonstrations in *Egypt* led to the departure of President Hosni Mubarak from power on 11 February 2011. Like Libya, Egypt is a country where large numbers of migrants

and refugees from sub-Saharan countries have been residing, sometimes for years. The slackening of migration controls due to the unrest made it possible for a number of migrants, to resume their travel toward Europe. In addition, Egyptian citizens, notably of the Christian minority whose situation did not improve under the new political circumstances, also left the country ⁽²⁸⁾.

The *Syrian* government in its turn had to face the uprising of its people. After months of unrest and repression, the Baath regime is still in place but at the end of 2011 more than 20 000 had fled the country out of which 8 500 sought protection in refugee camps in *Turkey*, more than 6 000 were registered with UNHCR in *Lebanon* as of 6 January 2012 ⁽²⁹⁾ and almost 3 000 persons were registered with UNHCR in *Jordan*. There was an increase in asylum applications from Syrian nationals in several Member States but figures remained moderate in absolute terms, although Syria surged into the Top 5 of a few Member States. There was continuous unrest in *Yemen* throughout 2011, but despite the fact that the country hosts some 300 000 internally displaced persons (IDPs) and 220 000 Somalis who are persons of concern to UNHCR, it did not cause a significant movement of people toward Europe. Likewise, the clashes between the Shi'ite part of the population and the police/armed forces of the Sunni-held government of *Bahrain* and the repression that ensued did not cause a perceptible flow of asylum seekers toward Europe ⁽³⁰⁾.

The unrest in the abovementioned countries, in the context of the world financial crisis, severely affected their economies, especially in the sector of tourism which used to be one of the main sources of employment in *Egypt* and *Tunisia*.

EASO external dimension and third-country support

As a part of EASO's mandate, EASO supports the External Dimension of CEAS in agreement with the European Commission, e.g. by supporting countries of origin, transit and return. The overall priority-setting in EASO during 2011 gave secondary priority to the External Dimension compared to e.g. the EASO Operating Plan for Greece. This said, EASO was actively involved in meetings, seminars and conferences related to the External Dimension of CEAS.

As examples, EASO is involved in the Russia–EU Dialogue on Migration, the Eastern Partnership Panel on Migration and Asylum (the Prague Process) and the development of mobility partnership with *Tunisia* and *Morocco*.

New landings in Lampedusa, Sicily and in Malta

The 'Arab Spring', with the exception of **Italy** and **Malta**, has had a limited impact on EU Member States so far. However in 2012/13 the EU Member States may witness an increasing number of asylum seekers from that region. Indeed, due to the uprisings in the North African region in 2011 thousands of migrants and asylum seekers landed in Lampedusa (**Italy**) and **Malta**. (Arrivals by boat from African shores were also reported in **Greece**).

The total number of applications for asylum in **Malta** for 2011 amounted to 1 890, an increase of 1 221 % compared to 2010 ⁽³¹⁾. Unlike previous years, a large percentage of the irregular migrants and applicants for international protection who landed in Malta this year were established in Libya and left the country due to the conflict. The nationalities of those who arrived in 2011 were Somali (411), Eritrean (280), Nigerian (238), Ivorian (114) and Ethiopian (103). Most migrants who departed from Libya reached Malta between 28 March 2011 and 1 June 2011. The arrival of 1 535 immigrants in Malta in this short time span was considered by local authorities as a mass influx for the island.

Italy received around 28 000 persons of various nationalities from Libya alone after more than 24 000 Tunisians had reached its coasts in the first semester of 2011.

Influx of asylum seekers from the Balkans (to Belgium, Germany, Luxembourg, Sweden and other EU countries)

The areas of the western Balkans comprising Albania and the countries that were in the past part of the former Yugoslavia have been a source of migrants and asylum seekers in the EU since its dissolution in 1991 and the armed conflicts that ensued.

In 2011 new applications lodged by people originating from the western Balkans totalled 28 865: Albania 2 820 (+ 55 %), Bosnia and Herzegovina 2 275 (+ 14 %), Former Yugoslav Republic of Macedonia (FYROM) 4 700 (- 18 %), Serbia (including Kosovo [Kosovo under United Nations Security Council Resolution 1244/1999, hereinafter: Kosovo] 19 070 (- 30 %)), a decrease of 22 % compared to 2010 (36 960) though the trend presented ample variations between the different countries of origin ⁽³²⁾.

In recent years, the inflow of asylum seekers from the region was high in several EU Member States.

Citizens of Serbia (including Kosovo ⁽³³⁾) submitted 16 791 asylum claims in the EU in 2009 — thus ranking in fifth position — 4 157 more than in 2008 (12 633 claims), an increase of 33 %. Albanian applicants were 1 966 in the same year, an increase of 57 % bringing it to the 25th position ⁽³⁴⁾.

In 2010 Serbia (including Kosovo) rose to the first rank among countries of origin in the EU with 26 726 (+ 57 %). The levels were highest in **Sweden** (7 900 claims), **Germany** (6 500), **France** (5 800) and **Belgium** (3 100). In some cases, figures more than quadrupled (**Sweden**) or trebled (**Germany**). Among the main receiving countries, the proportion of people from Serbia originating from Kosovo was highest in **France** (84 %), **Austria** (66 %) and **Belgium** (48 %). It was relatively low in **Luxembourg** (13 %), **Germany** (23 %) and **Sweden** (31 %) ⁽³⁵⁾.

In addition to the influx from Serbia (including Kosovo), applications from the Former Yugoslav Republic of Macedonia increased in significant proportion from 749 in 2009 to 5 773 in 2010 (+ 671 %) — concentrating in **Germany** (2 466), **Belgium** (1 082), **Sweden** (908), **France** (590) and **the Netherlands** (389) — while applications lodged by Albanians decreased by 8 % to 1 803 ⁽³⁶⁾.

In 2011 Serbia (including Kosovo) ranked second overall behind Afghanistan with a total of 19 072 applications (a decrease of nearly 30 %). This was concentrated in a small number of Member States, **Germany** 5 974, **Belgium** 3 067, **France** 3 470, **Sweden** 3 915 and **Luxembourg** 1 097, a total of 17 523 for these five Member States together.

UNHCR notes: 'The available evidence shows that the proportion of asylum seekers from Kosovo in these countries has decreased over the past three years. In 2009, on average, 74 % of applicants from Serbia came from Kosovo. This figure dropped to 45 % in 2010 and to 41 % in 2011. Among the main receiving countries, the proportion of people from Serbia originating from Kosovo is highest in France (84 %), Austria (66 %), and Belgium (48 %). It is relatively low in Luxembourg (13 %), Germany (23 %), Sweden (31 %) and Switzerland (35 %).'

It should also be noted, although scarce data is available in this respect, that a large part of the influx from the western Balkans countries is made up of persons of Roma ethnicity who in many cases suffer in those countries from poor social and economic integration, discrimination and, in some cases, treatment amounting to persecution or representing a serious risk of harm ⁽³⁷⁾.

The increase in the number of applications in 2010 and 2011 was largely attributed to the entry into force on 19 December 2009 of the decision of 30 November 2009 granting visa-free entry to the citizens of Serbia, FYROM and Montenegro and to the decision of 8 November 2010 for Albania and Bosnia and Herzegovina that entered into force on 16 December 2010. Indeed, the visa-free circulation creates opportunities for citizens of these countries that have been severely hit by the economic crisis.

In 2011, FYROM decreased by 18 % to 4 699, Albania increased by 55 % to 2 822 and Bosnia and Herzegovina increased moderately by 14 % to 2 275. The phenomenon may be linked to the entry into force of the visa exemption for the nationals of the two latter countries from December 2010.

The EU entered into talks with the governments of the said countries and introduced a monitoring mechanism to prevent a misuse of the asylum systems of EU Member States by applicants making unfounded claims for asylum. Commissioner Cecilia Malmström pointed out that a visa-free regime 'comes with responsibilities for both the governments and the people of the countries benefiting from this freedom.' Albania and Bosnia were encouraged to intensify information campaigns for their citizens on the meaning and proper use of short-term visa-free travel.

Governments of these countries agreed to a 'roadmap' with the EU Commission; the Commission monitors progress and reports to the Council.

Steps have been taken by several countries in the region to prevent their citizens from travelling to EU Member States for other purposes than those allowed for a visit of less than 3 months: they may be asked to evidence the reason for their travel and to show that they have sufficient financial means to support themselves during their stay and for their return. Where the answers are unsatisfactory, the departure may be denied.

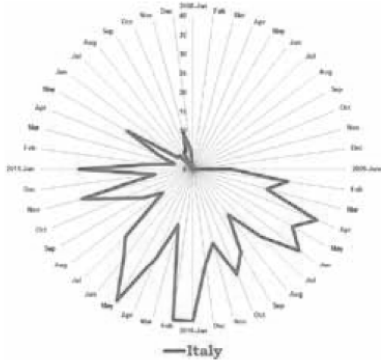
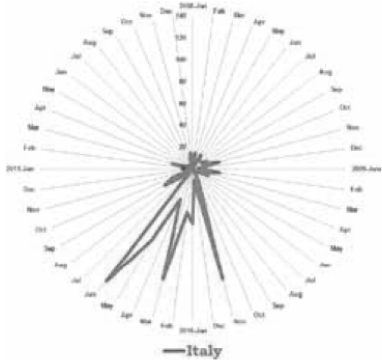
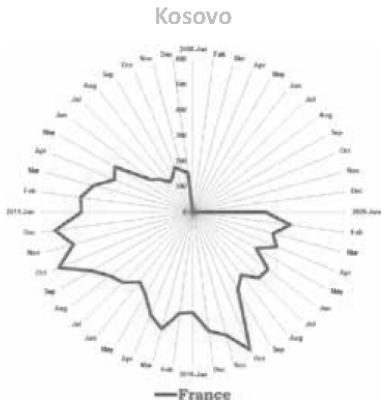
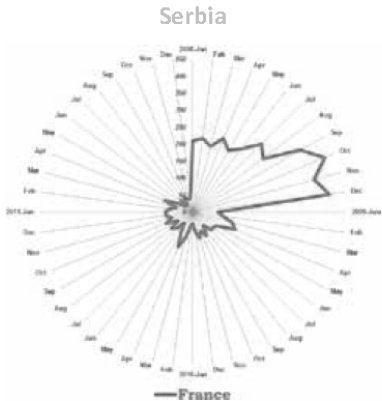
In the FYROM, the government decided that abuse of the visa-free regime may be penalised and that people who have been forcibly returned as failed asylum seekers could have their passports stamped or even temporarily confiscated.

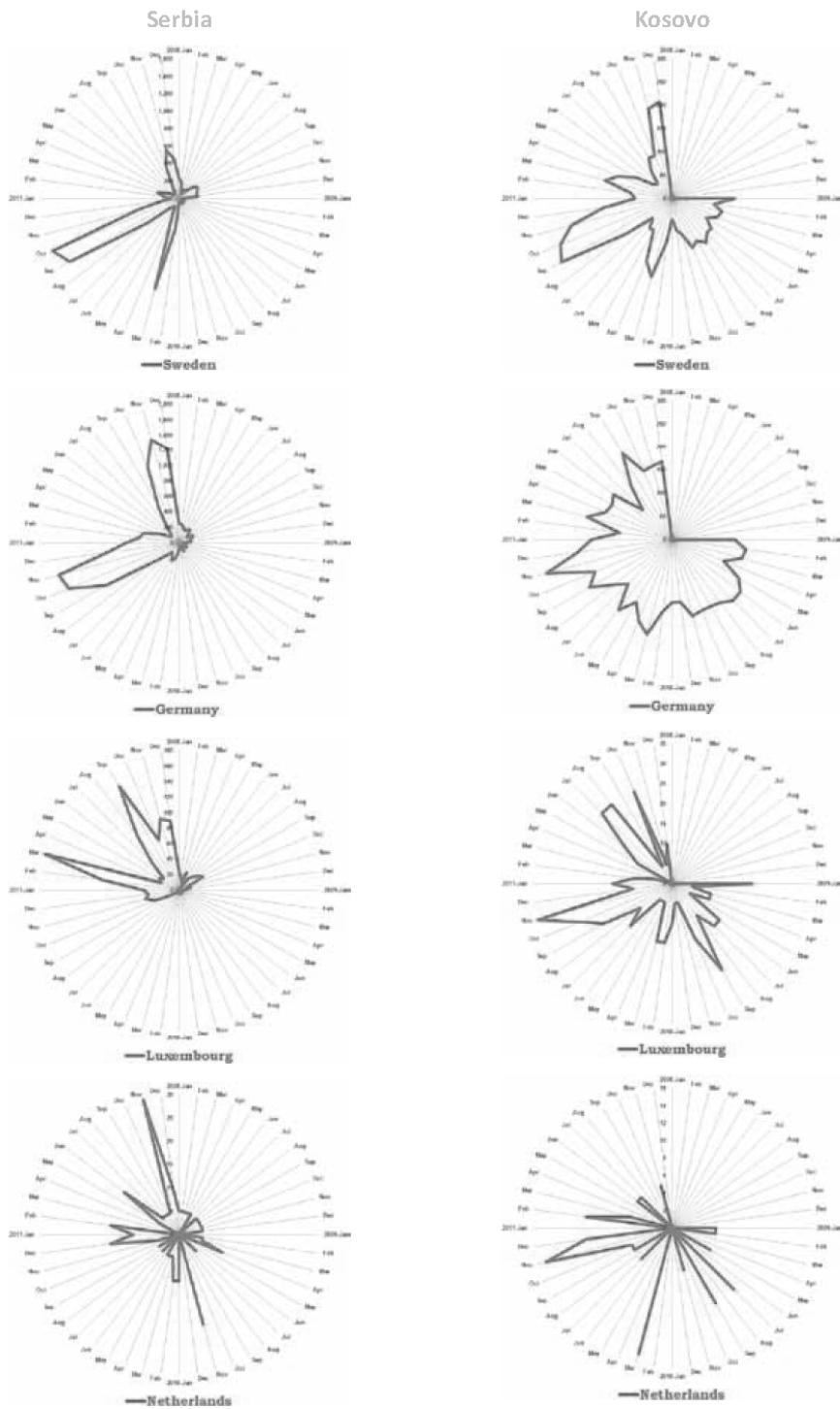
The unprecedented intake of applicants from the western Balkans region severely affected the reception and processing capacities in **Belgium** and **Luxembourg**. Their ministers in charge of migration and asylum issues addressed on 21 October 2011 a common letter to Commissioner Cecilia Malmström, drawing her attention to the already alarming level of the inflow of applicants from the western Balkans. They described the saturation effect caused by this in both the reception conditions and the asylum procedures by the high number of claims, most of them clearly unfounded, and called on the EU Commission to take all appropriate measures to remedy the situation.

Those Member States had to take exceptional measures: both recruited additional staff into their asylum systems and **Belgium** received emergency funding from the ERF.

It is noteworthy that the pace of new applications significantly increased in **Belgium** and **Luxembourg** during the second semester of 2011.

The following tables (based on Eurostat data) show the monthly evolution of the inflow of applicants from Serbia and Kosovo since 2008 and how they have been affecting Member States in a succession of peaks that conjures up the circular movement of a clock's hands.

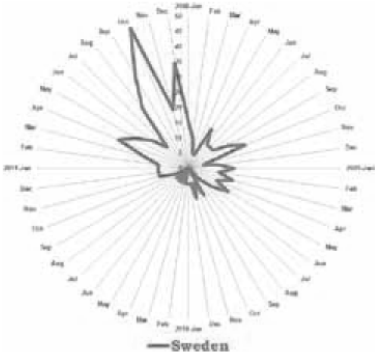
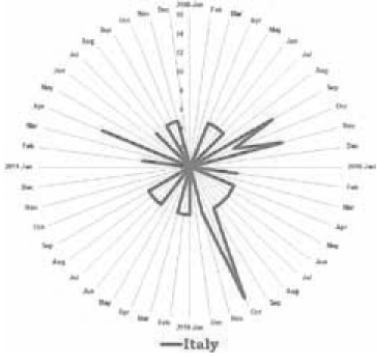
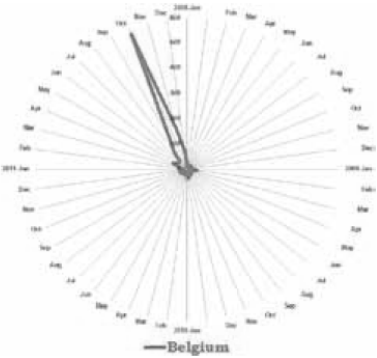
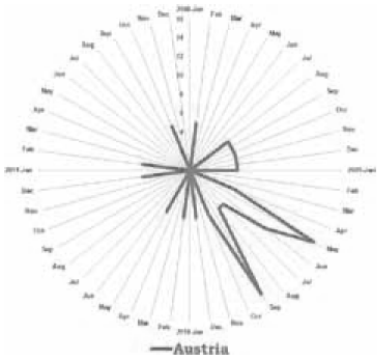
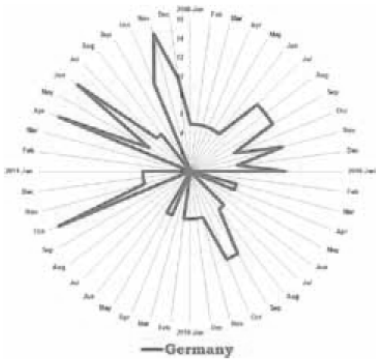
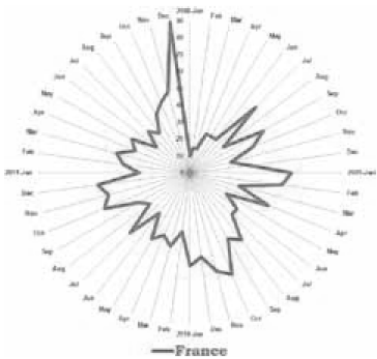




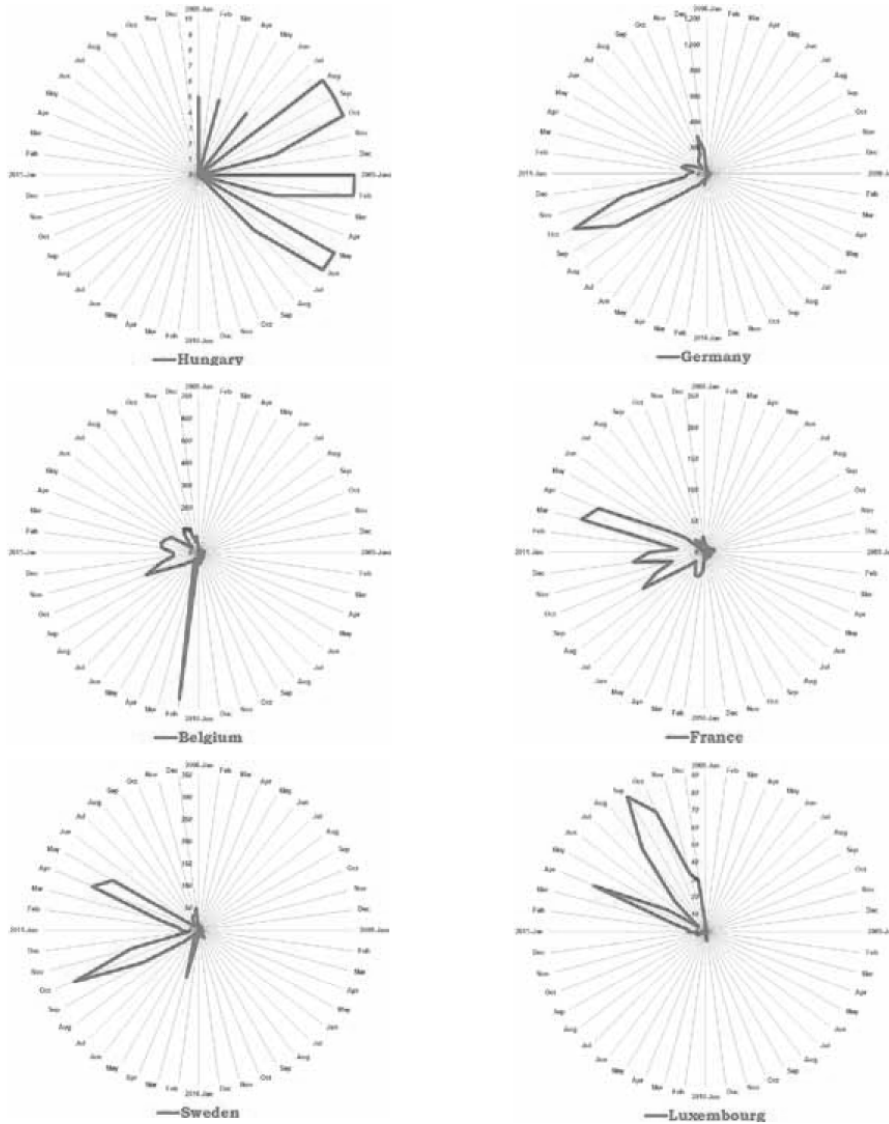
NB: Serbia (including Kosovo) are shown in parallel because Kosovo is included in the UNHCR figures provided above and because a large part of the influx of Serbian nationals as recorded before 2009 in fact came from Kosovo. For the sake of readability, scales are not uniform in the different tables; thus, a seemingly large peak in a given Member State may, in absolute terms, represent fewer applicants than a shorter one in another Member State.

Similar patterns can be observed for Albania and the Former Yugoslav Republic of Macedonia although the order of the destination Member States may vary.

Albania



FYROM



France declared Serbia a safe country of origin in December 2009. There was no immediate change of orientation of the flux towards neighbouring countries. The effect of visa liberalisation for Serbia from December 2009 was felt first in **Belgium**, then in **Sweden** and **Germany** and, more recently, in Luxembourg. Regarding Albania, for which the visa requirement was lifted in December 2010, the effect was delayed by a few months and hit Belgium and Sweden in October 2011 after a trickle of asylum seekers had reached Germany earlier in the year.

Although not a systematic seasonal pattern, quite a number of peaks occur in the fourth quarter of each year. The push and pull factors in the countries of origin and in the receiving

Member States would need a special study that would exceed the limitations of the present report. However, it may be noted that, among several factors, the duration of the procedures, the presence of an already established community from the same country of origin, access to medical care and the amounts granted for voluntary return may have an influence on the choice of a destination in the EU.

EASO and early warning

With constantly changing political circumstances surrounding the EU and their influence on the migration reality in the EU, a growing awareness of the need for tools to better prepare the Member States for this fact has been gaining support over the last years. The EASO regulation states 'The Support Office shall analyse data on any sudden arrival of large numbers of third-country nationals, which may cause particular pressure on asylum and reception systems and ensure the rapid exchange of relevant information amongst Member States and the Commission; the Support Office shall make use of existing early warning systems and mechanisms and, if necessary, set up an early warning system for its purpose'.⁽³⁸⁾

On 8 March 2012, the Council adopted its Conclusions on a Common Framework for genuine and practical solidarity towards Member States facing particular pressure on their asylum systems. In these Conclusions, the Council highlighted EASO's role as an instrument of solidarity, responsibility and trust between Member States and within the EU. Consequently, with regard to early warning, EASO was invited to develop tools for detecting situations likely to give rise to particular pressures in order to assist in the implementation of the early warning, Preparedness and Crisis Management Mechanism which is to be set up in the new Dublin regulation and to report accordingly. To this purpose, it was recalled that Member States were encouraged to provide EASO and EC with relevant data on asylum.

A systematic collecting of data is crucial for the function of the Early Warning and Preparedness System (EWPS). Eurostat data-sources⁽³⁹⁾ represent the most important improvement in the harmonisation of migration, asylum and international protection data collected in Europe and form an integral part of the input to EWPS. Nevertheless, the frequency or lack of further details (such as the region of residence or motivations for negative decisions) can affect the EWPS efficiency and timeliness. For this reason, rescheduling data collection is sometimes required within the framework of EASO activities.

In this light the Member States in the EASO Management Board have decided to continuously deliver to EASO early, non-validated data, which then has been used to provide up-to-date trends analysis. These different trends have already led to numerous and detailed discussions both at a policy level and a practical level among the Member States. The system as developed now consists of different elements: **early warning (EW)** provides timely data and quality information for all Member States in order to help them to identify potential conditions of particular pressures — **early preparedness** for them to be able reduce their risk and prepare for effective responses. This integrated platform of both elements is the foundation of EWPS.

Early warning consists of: **early alert** monitoring and trend analysis, to provide Member States, the EU Commission, EASO and other stakeholders with timely information on the dynamics of migration routes and asylum influx. In the future the ambition of EASO is to complement this with early warning to start providing an estimation of potential risk faced by Member States in their asylum systems' ability to withstand pressure.

Early Preparedness consists of: **early prevention (EP)** forecast future scenarios; adopting a regional approach, which combines countries of origin, transit and destination. It allows Member States at an early stage to see their national situation in 'bigger picture' and to plan for preventing gaps in their national asylum procedures. Early preparedness is the response to emerging pressure; starting the implementation of appropriate actions — taking into account national infrastructures, administrative organisation and local logistic contexts — short-term results into a long-term efficacy.

As an example of two typical particular pressure situations:

Increasing asylum seekers' influx — external factors (sudden-onset), i.e. political-economic crisis in countries of origin and/or migration-policy changes in receiving countries;

Increasing pending cases — internal factors (slow-onset) producing a cumulative change that can be slow in its early phase; neglected creeping changes in backlog over time may become urgent crises, which are more costly to deal with. Typically, a sudden-onset will be detected by EW and a slow-onset captured by EP.

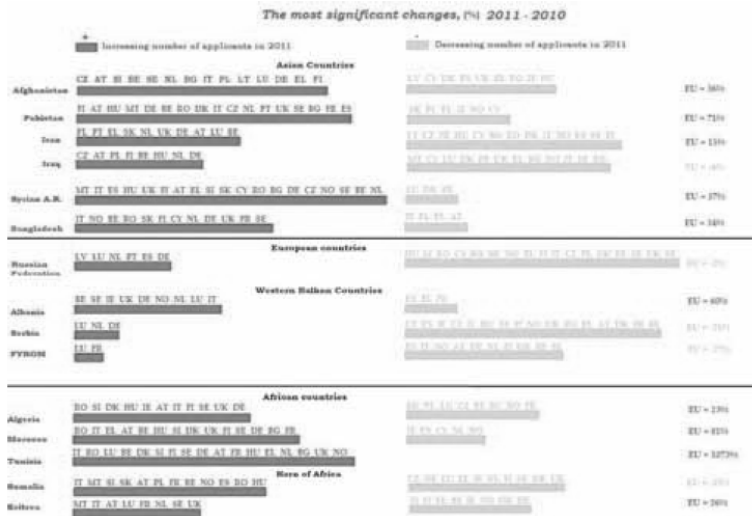
EASO's approach to statistics

Comprehensive statistical data regarding asylum in the EU are collected and disseminated by Eurostat and by UNHCR.

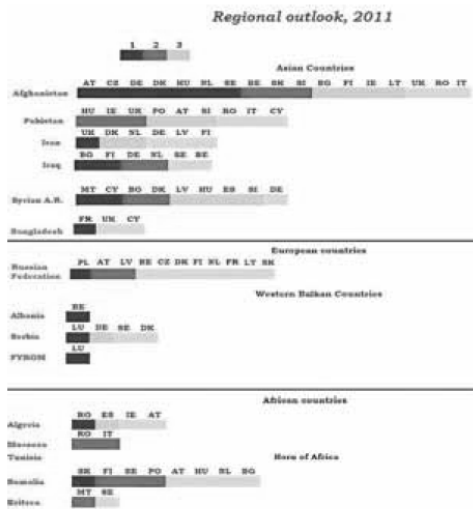
It is a clear policy from the EASO side not to duplicate their work. Using the data provided by both entities, data from Frontex and data provided voluntarily on an ad hoc basis by Member States, EASO endeavours to provide other types of statistical analysis and representations that may be used, on the one hand, for the purposes of the Early Warning and Preparedness system described earlier and, on the other hand, as tools for policymakers at EU and national levels.

The 'clock analysis' used in the previous section to illustrate the variations of the inflows from the western Balkans countries in a sequential and comparative way is but one of the tools EASO puts at the disposal of the EU and its Member States. Other analytical tools are available to provide other insight and enhance the understanding of asylum phenomena in the EU.

Analysis of the inflow of a selection of significant countries of origin/trends



Regional outlook



The first horizontal table above illustrates some of the most significant changes observed in 2011 as regards a selection of inflows of asylum seekers by nationality and Member States of destination. In the 'plus' (red — left) and 'minus' (yellow — right) columns, countries are mentioned in decreasing order of the magnitude of the recorded variation; the variation referred to is proportional to the situation in 2010: a stronger variation in percentage does not necessarily mean a larger number of applicants in absolute value.

The second horizontal table shows in which Member States and at which level the selected nationalities rank in the Top 5 of countries of origin.

As mentioned already, the influx from *Afghanistan* was a major concern for a number of Member States. However, while it increased in a majority of Member States, including Member States where there were only few Afghan applicants in years past (e.g. **Italy**, **Slovenia**), the influx decreased in other Member States, including states that used to be traditional destinations for Afghans (**United Kingdom**).

Regarding other *Asian countries*, *Pakistan and Bangladesh* may be considered jointly: they are both countries affected by floods (the July 2010 floods in Pakistan were exceptionally severe), have an economy that is very dependent on the exportation of textile goods (Pakistan ranking as the world's first and Bangladesh as third) and is vulnerable to international economic cycles and have a tradition of supplying manpower in other Asian countries (Malaysia, Arabic Peninsula and other countries of the Middle East) where demand for foreign labour may have been affected by the world economic and financial crisis. While Pakistanis have been distributed across a large number of Member States, Bangladeshis historically tended to concentrate mainly in **Cyprus**, **France** (where the inflow had been steadily increasing over the past years) and the **United Kingdom**. That their number significantly increased in **Italy** in 2011 is a new phenomenon that should be closely monitored in 2012.

The sudden increase in *Syrian* applicants is quite obviously linked to the civil strife that has been lasting for more than one year (and was regarded as 'indiscriminate violence' within the meaning of Article 15(c) of the 'qualification' directive in some Member States). The strongest increase in percentage was in **Malta**, but in absolute value, the most considerable increase took place in **Germany** where the level was already higher in 2010 than in any other Member State. This emerging trend might be nurtured by the continuation of the violence and the large number of Syrian refugees in neighbouring countries such as Lebanon and Turkey.

As regards *European countries* of origin, the movements from the *western Balkans* and their imbalanced distribution across Member States have been commented on previously. It should be pointed out that the inflow into **France**, where *Russia*, and *Armenia* are ranked as No 1 and 2 respectively (followed by *Bangladesh*, *DR Congo* and *Sri Lanka*) is completely different from that of any other Member State.

From *Africa*, the considerable increase in applications from Maghreb countries is obviously linked to the aforementioned 'Arab Spring'. The very significant inflow of *Tunisians* concentrated in **Italy** in a brief period of time in the second quarter. However, it is noteworthy that migrants from *Tunisia*, *Algeria* and *Morocco* found new routes of entry into the EU: in **Romania** applications from countries of the Maghreb increased sharply, applicants entering the country from *Serbia*; the three nationalities also increased in **Bulgaria**, **Hungary**, **Slovenia**, and **Austria**. It may be an effect of secondary movements that they also increased in Member States lying farther north such as **Germany**, **the United Kingdom** and **Sweden**.

Applicants from *Somalia* were less but they spread to Member States where there had hardly ever been any like **Slovakia**, **Portugal** and **Estonia**. *Eritrean* applicants increased significantly by more than 25 %. The numbers received by **Malta** and **Italy** is consistent with previously existing migration routes transiting through *Libya*. Unlike nationals from other sub-Saharan countries, who chose to return home when leaving war-torn *Libya*, many Somalis and Eritreans, where violation of human rights, protracted armed conflict and drought are not conducive to voluntary return, escaped from *Libya* to seek protection elsewhere.

Not reflected in the above table but worth mentioning are the increasing inflows of applicants from *Nigeria* (20 % at EU level, significant increase in **Italy**), *Ivory Coast* (200 % at EU level, mainly in **France**, but also in **Spain**) and *Guinea* (17 % at EU level, mainly in **Belgium**, **France**).

There was a significant change in the origin of asylum seekers in **Estonia** where, unlike previous years, citizens of several African countries applied (*DR Congo*, *Cameroon*, *Libya*, *Somalia*).

In contrast with the situation in **Belgium**, **Luxembourg** and other Member States, **Hungary** experienced a significant decrease in applications from nationals of *Serbia* and *Kosovo*.

The number of asylum seekers increased significantly in **Latvia** during 2011 and the largest group of claimants came from *Georgia*. Georgians were ranking at No 1 in **Lithuania** too and No 2 in **Poland** and **Greece** at a significant volume above 1 100 in both Member States.

In **Spain**, the year 2011 ended with an important increase in the number of applications for international protection compared to the figures of the previous year. In 2010 there were 2 744 asylum applicants registered in Spain while in 2011 there were over 3 420 asylum applicants registered that represent a rise of 25 % in relation to last year's figures. A detailed analysis of these figures shows that the number of applications for international protection lodged by *Ivory Coast* citizens had increased significantly in 2011 (550 applications in comparison with the 120 applications registered in 2010), representing the first country of citizenship of asylum applicants, followed by the *Cubans*, *Nigerians* and *Guineans*.

The Common European Asylum System

The Common European Asylum System (CEAS)

Asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection. Asylum is a fundamental right; granting it is an international obligation, first recognised in the Geneva Convention relating to the Status of Refugees (1951).

In the EU, where there are no internal borders and countries share the same fundamental values, there is a need to work together to find common solutions that guarantee high standards of protection for refugees. Procedures must at the same time be fair and effective throughout the EU and not open to abuse. With this in mind, the EU has committed to establishing a Common European Asylum System.

CEAS is based on three main pillars:

- development of a legal framework, aiming at harmonising Member States' asylum legislation,
- effective practical cooperation, coordinated and promoted by EASO,
- increased solidarity and sense of responsibility among Member States and between the EU and non-EU countries.

EASO plays a prominent role in the second and third pillar: EASO coordinates and promotes practical cooperation and EASO is an instrument of solidarity, responsibility and trust.

The EU asylum *acquis* and its implementation: new qualification directive and developments in national legislation and case-law

Significant developments took place in 2011 concerning the development and implementation of the EU asylum *acquis* and thus the relevant legal instruments of the CEAS.

In December 2011, the first legal instrument of the second phase of CEAS, the new qualification directive, was adopted, with the objective of reinforcing standards for the identification of people in need of international protection in the EU either as refugees or as beneficiaries of subsidiary protection.

The remaining recast proposals of the second phase of CEAS concerning the Dublin regulation, reception conditions directive and asylum procedures directive are still under negotiation, aiming at their adoption by December 2012.

Furthermore, national legislation was passed during 2011 in several Member States, in particular related to international protection procedures.

Case-law on asylum at national and European levels deserved special attention. Jurisprudence at national and European levels concerning the interpretation and implementation of relevant instruments of the *acquis* is growing at a steady pace, since the first phase of CEAS was completed.

With regard to case-law at European level, rulings from the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) related to international protection have developed a jurisprudence *corpus*, resulting in an essential element of the implementation and interpretation of the CEAS.

On one hand, the ECtHR has judged, in the last decades, a large number of cases related to asylum and the principle of *non-refoulement*, on the basis of its competence to ensure the observance of, among others, Article 3 (prohibition of inhuman or degrading treatment), Article 4 of Protocol 4 (prohibition of collective expulsions), Article 8 (right for respect of family and private life) and Article 13 (right to an effective remedy).

On the other hand, the CJEU's role in interpreting EU law by ensuring its application in the same way in all EU countries (preliminary rulings), as well as its role within proceedings for failure by Member States to fulfil an obligation laid down in EU law (infringement procedures) has been reinforced after the entry into force of the Treaty of Lisbon. In this regard, the interpretation and application of EU legal instruments on asylum falls under the full jurisdiction of the CJEU.

In addition, the CJEU has to ensure the application of the Charter of Fundamental Rights of the EU. Article 18 of the Charter establishes that the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Moreover, application of Article 4 (prohibition of torture and inhuman or degrading treatment or punishment), Article 19 (protection in the event of removal, expulsion or extradition) and Article 47 (right to an effective remedy and to a fair trial) could eventually be analysed by CJEU with regard to asylum issues.

Lastly, Article 6(3) TEU foresees that 'Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law'. In this sense, although the negotiations on the Agreement on the EU's Accession to the ECHR have not yet concluded, the ECHR is considered by the CJEU to be a Treaty of special significance.

In this context, 2011 witnessed important changes regarding the instruments concerning the Dublin system, reception conditions, qualification and international protection procedures.

The Dublin system

The Dublin system is concerned with determining which Member State is responsible for the examination of an application for asylum. It also establishes the procedures to be applied by Member States to request another Member State to acknowledge its responsibility and 'take charge' of (or 'take back', according to the situation) an applicant.

The aim of the system is to guarantee effective access to procedure to all asylum seekers, avoiding cases of asylum seekers 'in orbit' (where no Member State admits responsibility for the examination of the case) and to prevent abuse of asylum procedures ('asylum-shopping' in the form of multiple applications).

The Dublin system is mainly composed of the so-called 'Dublin II' regulation (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national⁽⁴⁰⁾) and the 'Eurodac' system (Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention⁽⁴¹⁾) as well as the two implementing regulations laying down detailed rules for their application (Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing

the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention). With regard to the implementation of the Dublin system, landmark cases were judged both in the ECtHR and the CJEU in 2011.

As mentioned before, on 21 January 2011, the ECtHR ruled in case *M.S.S.*, which dealt with a complaint of an Afghan national who applied for asylum in Belgium, after having entered the EU through Greece. The Belgian authorities transferred the applicant to Greece in accordance with the Dublin regulation.

The ECtHR concluded that the applicant had been subject to inhuman or degrading treatment due to the detention conditions in the facility next to Athens airport, in particular, the lack of information concerning the reasons for detention, the overcrowded rooms and insufficient beds for every detainee, the deficient access to water and food, the limited access to the toilets and the impossibility to undertake physical activity in open air. Moreover, the ECtHR observed that the living conditions as an asylum applicant were against the ECHR. The applicant was not informed of his rights as an asylum seeker, he spent months living in a state of extreme poverty, he was unable to cater for his basic needs, while fearing being attacked and robbed. Moreover, there was no likelihood of his situation improving.

The ECtHR noted that this situation could have been alleviated if the asylum procedure had been effective and efficient. However, shortcomings in the Greek asylum system, especially as regards the procedure, the effective remedy and the reception conditions, were systematic and structural. Insufficient information about the procedures to be followed, the lack of a reliable system of communication between authorities and asylum seekers, the lack of training of the staff responsible for conducting interviews with them, a shortage of interpreters and a lack of legal aid effectively depriving asylum-seekers of legal counsel were underlined by the ECtHR. The ECtHR took into consideration the observations by the intervening organisations stating that forced returns of asylum seekers by Greece to high-risk countries were a common practice. Furthermore, there were less than 1 000 places in reception centres to accommodate tens of thousands of asylum seekers.

Concerning an effective remedy, the theoretical possibility of judicial review was uncertain in practice, due to the fact that he would not be informed of the final outcome of his application, the fact that he was not given information on access to organisations offering legal advice and the fact that there was a shortage of lawyers in the Greek system.

The ECtHR held that Belgium had infringed Article 3 of the ECHR. First, by exposing the applicant to the risks arising from the deficiencies in the asylum procedure in Greece, since the Belgian authorities knew or ought to have known that he had no guarantee that his asylum application would be seriously examined by the Greek authorities; second, by knowingly exposing him to conditions of detention and living conditions that amounted to degrading treatment. Moreover, no effective remedy was granted by Belgium in order to challenge the transfer decision under the 'extremely urgent procedure', which did not closely scrutinise the substance of the complaint.

The CJEU also decided on a landmark case on 21 December 2011. CJEU ruled in joined cases C-411/10 *N.S. v Secretary of State for the Home Department (United Kingdom)* and C-493/10 *M.E. and Others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform (Ireland)*. The NS and ME cases concerned preliminary rulings in which the CJEU was asked whether, in the light of the overloading of the Greek asylum system and its effects on the treatment of asylum seekers and on the examination of their claims, the authorities of a Member State which should transfer the applicants to Greece under the Dublin regulation should first check whether that state actually observes fundamental rights. It was also asked whether, if that State does not observe fundamental rights, those authorities are bound to assume responsibility for examining the application themselves.

The Court stated that the slightest infringement of the norms governing the right to asylum cannot be sufficient to prevent the transfer of an asylum seeker to the Member State primarily responsible. However, the Court held that EU law precludes a conclusive presumption that the Member State indicated by the regulation as responsible observes the fundamental rights of the EU. In this context, the CJEU reflected that Greece was facing a disproportionate burden compared to other Member States that led to the inability of the Greek authorities to cope with the situation in practice.

The CJEU mentioned the ECtHR's *M.S.S.* ruling. It concluded that Member States, including the national courts, may not transfer an asylum seeker to the Member State indicated as responsible when systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in such country amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union. The Member State which should transfer the applicant to the Member State responsible under the regulation and which finds it is impossible to do so, must examine the other criteria set out in the regulation, in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application. In that regard, it must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, it must itself examine the application.

The consequences of the aforementioned judgments were the most obvious and significant event affecting the effectiveness of the 'Dublin system' in 2011. Following the *M.S.S.* case, all Member States suspended transfers of third-country nationals to Greece and examined the applications themselves, unless another Member State could be identified as responsible under one of the criteria of the regulation. Several Member States had already done so before January 2011 based on national decisions or reports. Many of them decided to apply the 'sovereignty clause' (Article 3(2) of the Dublin II regulation). The suspension of transfers to Greece was officially or tacitly prolonged by all Member States for the duration of 2012 or till the shortcomings identified by the ECtHR in the Greek system have been fully remedied.

The *M.S.S.* and *NS and ME* judgments show that a smooth implementation of the Dublin system is very much dependent on a level implementation of the EU asylum standards across Member States that fully complies with international human rights standards and refugee law standards. One of the main aims of the practical support extended to Member States by EASO is to achieve the level playing field of the CEAS by providing tools for a uniform quality in the implementation of the EU asylum legislation. In addition, EASO provides a training module on Dublin in the framework of the EAC.

Following the reasoning of ECtHR and CJEU, Member States, at administrative and judicial level, have begun to assess the adequacy of the asylum systems, including reception conditions, potential transferees will be confronted with in the Member State responsible. Several Member States reported court rulings in which the judges took into account one or more of the characteristics of the asylum system of another Member State before allowing or refusing the transfer of an asylum seeker to the Member State responsible. Special attention was given to whether reception conditions were up to the standards of EU legislation. Other courts referred cases for preliminary rulings to CJEU in order to clarify other similar issues (42).

The secondary movements of persons who have been granted protection in another Member State represent a noticeable epiphenomenon to the Dublin system: most Member States do not consider that the provisions of the regulation are applicable to them and, even if they accepted taking the persons back under the ordinary readmission procedures, this may enter into conflict with the national law of the Member State where a second application has been lodged, obliging them to examine the application anew, irrespective of the status granted in the first Member State.

Another phenomenon which characterized the functioning of the Dublin system during 2011 was the growing number of applicants for asylum who manipulated their fingerprints in order to avoid or prevent detection of a previous application or irregular entry through the external border by the Eurodac system. This issue was reported by some Member States mainly in connection with Somali and Eritrean citizens. A growing number of Member States is concerned about this sensitive issue that needs to be addressed.

Finally, UNHCR also noted with concern that ⁽⁴³⁾: 'the inclusive provisions of the Dublin II regulation notably Articles 3(2), 6, and 15 are rarely applied by most states. There seem to be very limited efforts, if any, to take initiatives to assess whether the state may accept the moral responsibility under these Dublin II regulation provisions. Furthermore, it is not clear whether states are undertaking relevant inquiries or research that might lead to greater application of the criteria which require the claims of family members to be dealt with by the same responsible state.'

Temporary protection

Temporary protection is defined in Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof ⁽⁴⁴⁾. Temporary protection is an exceptional measure to provide immediate and provisional protection to displaced persons from non-EU countries who are unable to return to their country of origin. It applies in particular when there is a risk that the standard asylum system is struggling to cope with demand stemming from a mass influx that risks having a negative impact on the processing of claims. The directive defines the decision-making procedure needed to trigger, extend or end temporary protection. Solidarity and a balance of efforts between EU Member States in receiving displaced persons are promoted through a structured mechanism. This allows for transfers of beneficiaries between EU states, based on a voluntary offer from a state and on the consent of the transferee. The most affected Member States would be able to rely on EASO emergency support in case of mass influx.

In view of the influx of immigrants from Libya during the civil war, the Government of **Malta** requested the triggering of the temporary protection directive. The conditions foreseen in the directive were not met, thus the Commission did not propose using this mechanism.

Reception conditions

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers ⁽⁴⁵⁾ aims at ensuring appropriate and comparable reception conditions throughout the Union. This ensures the protection of their fundamental rights and discourages applicants from moving to the more generous EU states. It specifies that applicants must be informed of their rights and the benefits they may claim, as well as the obligations with which they must comply. It outlines what should be provided upon arrival — such as accommodation, food, clothing and pocket money. It also addresses issues like freedom of movement (as a rule, EU states must allow applicants freedom of movement within their territory), family unity, access under certain conditions to the labour market and to vocational training, provision of medical and psychological care and the right of access to the education system for children. Special rules apply to persons with special needs (minors, disabled people, the elderly and victims of torture).

Several Member States took measures to increase the capacity of their reception system, especially those that were particularly affected by the inflow of applicants from the western Balkans.

Others modified their legislation in order to adapt to new circumstances, e.g. to regulate access to the labour market, to facilitate the circulation of asylum seekers within the national territory for taking up employment, or to curtail the reception services to applicants who are citizens of another Member State.

A request for a preliminary ruling was lodged at the CJEU on 18 April 2011 to clarify whether the provisions of the 'reception conditions' directive apply to asylum seekers whose case is pending under the Dublin II regulation ⁽⁴⁶⁾.

Furthermore, as mentioned before, *M.S.S.* and *N.S.-M.E.* cases have underlined the need to assess the reception conditions in the responsible Member State prior to transfer the asylum applicant. Therefore, full application of the reception conditions directive and full compliance with the reception conditions' standards as interpreted by the courts are crucial elements for the development of CEAS and thus for the effective implementation of the Dublin system.

However, reception systems in the Member States are sometimes regarded as insufficient or inadequate. UNHCR notes that: 'many [asylum seekers] may not have received adequate reception conditions.' UNHCR observed that, in several Member States: 'asylum seekers were homeless or forced to live in overcrowded or substandard living accommodation. As a consequence some individuals were exposed to heightened risks, in particular concerning health, becoming victims of crime and sexual violence, etc.'

While the directive provides that persons with special needs are entitled to specific treatment, UNHCR notes that such treatment is not always provided because, due to: 'the lack, or poor implementation of a mechanism to identify asylum seekers with special needs, [the latter] may not be identified or receive sufficient care. There is an observed lack of specialists available for assistance to traumatised asylum seekers, persons with disabilities, with mental health or psychological problems. The rights and needs of children, in particular unaccompanied/separated children are not always respected and met; best interest is not always treated as a primary consideration.'

Qualification

As stated before, the first element of the second phase of CEAS was adopted in December 2011. The qualification directive (Directive 2011/95/EU of 13 December 2011 ⁽⁴⁷⁾), repealing and replacing Directive 2004/83/EC except for Denmark, Ireland and the United Kingdom, clarifies several legal concepts used to define the grounds for protection, thereby ensuring coherence with the case-law of the CJEU and the ECtHR. The text also ensures a higher minimum level of benefits and rights for both categories of beneficiaries of international protection throughout the EU. Although differences continue to exist between the two categories, the recast directive approximates to a large extent the benefits and rights of refugees and of beneficiaries of subsidiary protection, offering, in some fields, higher protection standards. The new rules also strengthen the rights of beneficiaries of international protection by taking into account the specific integration challenges they face.

The main new elements of the amended qualification directive include:

- clarification of the legal concepts of 'actors of protection', 'internal protection' and 'membership of a particular social group', in particular as regards the gender-related aspects of persecution, which enable Member States to identify more quickly the persons in need of protection, to make more robust decisions at first instance and to prevent abuse of the asylum system.
- an enlarged family definition which, in the future, will cover not only the spouse or unmarried partner as well as unmarried minor children, but also any other adult legally responsible for an unmarried minor who is a beneficiary of international protection.
- approximation of the rights of refugees and beneficiaries of subsidiary protection with regard to family unity, access to employment and health care while allowing Member States to continue differentiation between these two protection statuses as regarding the duration of residence permits and access to social welfare and integration facilities. The rights of beneficiaries of subsidiary protection are nevertheless enhanced with respect to the validity of residence permits: whereas the first permit granted following the recognition can have a validity limited to one year, if the protection needs are still there, the residence permit for subsidiary protection should be renewed for a duration of at least

two years. The rules for refugees remain unchanged, i.e. their residence permit must be valid for at least three years and must be renewable.

- better access to employment-related education opportunities and vocational training as well as to procedures for recognition of professional qualifications.
- improved conditions for access to accommodation and integration facilities.
- extension of the list of vulnerable persons with special needs to other categories such as victims of trafficking and persons with mental disorders.

UNHCR expressed its appreciation and noted that, 'with adoption in late 2011 of the EU qualification directive, significant improvements have been made to the entitlements of subsidiary protection beneficiaries, including people fleeing serious human rights violations or indiscriminate violence. These include improvements in relation to access to health care, work and integration facilities, although UNHCR advocates for the approximation of all rights.'

Although Directive 2011/95 was adopted in December 2011, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ⁽⁴⁸⁾ remains in force till the period of time granted to Member States to transpose the new provisions into domestic legislation, i.e. 21 December 2013, has elapsed.

Within the framework of EAC, EASO maintains a training module on the application of the criteria for granting international protection. The so-called 'Inclusion' module is widely regarded as one of the most important for the training of case workers and is implemented in several Member States.

No Member State reported legislative changes regarding the transposition of the directive in national law in 2011.

It was reported that one Member State recognised that under certain circumstances (e.g. after a stay of 10 years) 'westernised' girls and their families may not be required to return to Afghanistan. Although they will not be recognised as refugees or persons eligible for subsidiary protection, they will be granted a residence permit on national humanitarian grounds.

Regarding case-law, CJEU was asked to interpret the concept of particular social group in connection with a group based on a common characteristic of sexual orientation (Article 10(1)(d) of Directive 2004/83) in Case C-563/10 *Kashayar Khavand v Bundesrepublik Deutschland*. In particular, CJEU was asked in this reference for a preliminary ruling as to whether protection could be denied to a homosexual person from Iran on the basis that no persecution would be feared if the person behaved discreetly and did not show publicly his sexual orientation ('discretion requirement'). Furthermore, the referring court raised the question of whether prohibitions for the protection of public order and morals were relevant when interpreting and applying Article 10(1)(d).

The referring German court withdrew the reference for a preliminary ruling, while a CJEU decision was pending, after the applicant was granted asylum. There were also several significant court decisions regarding the implementation of Article 15(c) of the qualification directive regarding the risk of serious harm due to indiscriminate violence caused by an armed conflict.

Regarding the situation in Somalia, a tribunal in one Member State found that there remains a real risk of Article 15(c) harm for the majority of those returning to Mogadishu after a significant period of time abroad, a general Article 3 ECHR risk for those returned to Al-Shabaab-controlled areas without recent experience of living in Somalia and a general Article 3 ECHR risk in southern and central Somalia in respect of the exceptional humanitarian situation due to the current famine. The tribunal regarded the transitional government and African Union Mission in Somalia (Amisom) as powerful actors and found that there has been a durable change with regard to Article 3 ECHR in Mogadishu. It considered that certain categories of persons, such as middle/professional classes, would be able to return there without being subject to a breach of the aforementioned Article 15(c).

Courts in one Member State have reportedly been applying the reasoning of the CJEU in its preliminary ruling of 17 February 2009 (Case No C-465/07, *El Gafaji* ⁽⁴⁹⁾) to the situation prevailing in Syria, qualifying the action of the authorities against protesters as indiscriminate violence within the meaning of Article 15(c) of Directive 2004/83/EC, thus granting the applicants the subsidiary protection that had been denied at first instance regarding their repeat application.

Following a decision of its Supreme Administrative Court in December 2010, another Member State began to grant subsidiary protection to Iraqi applicants originating from certain areas of Iraq, including Baghdad.

However, divergences between Member States regarding the interpretation of Article 15(c) have been evidenced by the UNHCR study ‘Safe at last?’ published in July 2011 on law and practice in selected EU Member States with respect to asylum seekers fleeing indiscriminate violence ⁽⁵⁰⁾. ‘While noting its limited scope, the research seems to indicate that, among other things, approaches to the application of Article 15(c) of the qualification directive (QD) are significantly divergent between Member States and in many cases, so strict and narrow as to deny protection under Article 15(c) QD to persons facing risks which the drafters of the QD intended to cover. It is particular noteworthy that states seem to have failed to grant refugee status under the 1951 Refugee Convention in cases of people fleeing indiscriminate violence who in UNHCR’s view would be entitled to it. It was also found that the relationship between Article 15(c) QD and Art 3 ECHR appears not entirely clear in all states. Approaches to assessing the level of violence required to trigger application of the provision vary widely. The study indicates further that often the notion of “real risk” in Article 15(c) QD is interpreted in a way that imposes too heavy a burden on applicants to show individual risks, as opposed to those risks affecting a group.’

The Federal Administrative Court (BVerwG) of **Germany** issued its judgments ⁽⁵¹⁾ on three individual cases in respect of which it had requested preliminary rulings of the CJEU on the interpretation of provisions of the directive regarding ‘cessation’ of and ‘exclusion’ from the benefit of refugee status ⁽⁵²⁾.

Regarding cessation based on changed circumstances in the country of origin (Article 1 of Directive 2004/83/EC), the decision of the BVerwG confirmed the existing practice of the Federal Office for Migration and Refugees (BAMF) that refugee status ceases when the circumstances in connection with which the refugee has been recognised as a refugee have ceased to exist. However, in addition to the cessation of the danger of persecution on which the recognition of refugee status was based, a revocation of refugee status presupposes as well that the individual concerned also has no well-founded fear of persecution because of other circumstances.

Most interestingly, while upholding the decision of the BAMF in a case of exclusion, the Federal Administrative Court, in its judgment BVerwG 10 C 2.10 of 31 March 2011, ruled, for the first time, that constitutional asylum cannot be granted in cases where European law stipulates that refugee status must be denied. Although constitutional asylum is not part of Community law, the BVerwG reasoned that it is identical to refugee status in both content and purpose. The BVerwG concluded that granting asylum status to an individual excluded from refugee status would undermine European law. Thus came to an end a German exception.

In the other exclusion case, the BVerwG explicitly stated that mere membership of a movement that may be qualified as terrorist does not automatically entail exclusion from the benefit of international protection: the personal behaviour and responsibility of the applicant have to be assessed (administrative courts in other Member States issued similar rulings ⁽⁵³⁾).

Still regarding exclusion, the highest administrative court in one of the Member States judged that the exclusion under Article 12(2)(b) of the qualification directive may cease to be applicable once the applicant has served his/her sentence for a non-political crime, provided he/she does not represent a danger for the host country ⁽⁵⁴⁾.

As shown by the various court rulings above, the actual implementation of the directive raises many issues of interpretation both at first and second instance. UNHCR notes: ‘the EU

qualification directive has not yet achieved its objective of ensuring that EU Member States apply common criteria for the identification of persons in need of international protection.’ Indeed, UNHCR points out ‘an overly restrictive interpretation of the refugee definition in a number of states, including when it comes to victims of trafficking, Internal Flight Alternative (IFA) and membership of a particular social group, excluding from its scope certain persons in need of refugee protection. While some countries instead granted other forms of protection, in several states these persons of concern received no protection at all.’

UNHCR further notes that, despite the rights attached to their status, integration of refugees or persons benefiting from subsidiary forms of protection faces significant obstacles: ‘Even in the EU, where laws support integration and grant rights in accordance with the 1951 Convention, integration continues to be a challenge in many EU Member States, for instance in relation to availability of relevant information, attainment of self-sufficiency, social and cultural integration, family reunification, secure legal status and protection against racism, xenophobia and social exclusion. Labour market discrimination is one important factor for this.’

Procedures

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status⁽⁵⁵⁾ establishes a minimum level framework throughout the EU by introducing guarantees for a fair and efficient procedure. It provides important basic safeguards for asylum applicants such as the right to receive appropriate information about the procedure, legal assistance, interview and the right to appeal a negative decision. The said guarantees apply for ‘normal’ asylum applications. However, EU states may make provisions for special procedures, for example at a border, that derogate from these principles and guarantees. Moreover, under specific conditions, EU states may declare an application to be inadmissible and not examine its substance, especially when another EU state is competent, or another EU state has already granted the applicant refugee status. EASO offers training using the European Asylum Curriculum training module **Asylum Procedures Directive** and several of the training modules maintained by EASO within the framework of EAC refer to provisions of the said directive.

During 2011, several Member States amended their legislation on procedures in different ways. In fact, the most significant legislative developments at national level during 2011 concerned asylum procedures⁽⁵⁶⁾.

Following a ruling by the Constitutional Court, **Austria** passed new legal provisions that clarified the interpretation of the Asylum Act regarding which administrative authority at what stage of the asylum procedure is competent for the provision of legal counsellors. In this regard, UNHCR points out that: ‘The extent to which asylum seekers have access to legal advice and counselling appears to be not sufficient in a significant number of states. In most EU Member States, legal advice for asylum seekers is not provided free of charge in the administrative procedure and pro bono quality legal aid capacities are not sufficient. The situation seems to be better at the appeals or review instance, where the majority of states offer access to free legal aid without applying a merits test.’

There were several changes in **Belgian** asylum legislation. A bill passed on 29 December 2010 that entered into force on 10 January 2011 contains modified time limits for appeals, more restrictive rules regarding free legal aid and fines for manifestly unfounded appeals. Amendments to the Asylum Act adopted by Parliament on 24 November 2011 introduced the concept of ‘safe country of origin’ into national law in accordance with Articles 30 and 31 of Council Directive 2005/85/EC. At a more practical level, the Belgian Commissioner General for Refugees and Stateless persons adopted codes of conduct for eligibility officers and for interpreters and translators.

In **France** too, Act No 2011-672 of 16 June 2011, whose main purpose was the transposition of the abovementioned ‘return’ directive, introduced amendments to several provisions governing asylum, regarding inter alia: legal aid for appeals in subsequent applications and other procedural aspects regarding the National Court of Asylum — including the possibility

of holding hearings by means of videoconferencing⁽⁵⁷⁾, cases to be channelled into the accelerated procedure; and ‘waiting zones’ at the border.

A by-law of 29 August 2011⁽⁵⁸⁾ completes the transposition of Article 10(1) of the ‘procedures’ directive by introducing several provisions regarding the information given to the applicants in a language which they may reasonably be supposed to understand, at the border, at the Préfectures upon lodging their application, as well as in detention centres. Since October 2011, the ‘Guide of the Applicant for Asylum’ is available in 23 languages⁽⁵⁹⁾.

The Management Board of the French Office for the Protection of Refugees and Stateless persons (OFPRA) — which is the competent authority in this respect — has modified twice the national list of ‘safe countries of origin’: on 18 March 2011 Albania and Kosovo were added to the list⁽⁶⁰⁾; Armenia, Bangladesh, Moldova, Montenegro were added on 6 December 2011⁽⁶¹⁾. As of 31 December 2011, the national list of safe countries of origin comprised 20 countries⁽⁶²⁾⁽⁶³⁾. Applications for international protection lodged by nationals of safe countries of origin may be channelled into the accelerated procedure.

Taking into account the provisions of Article 10(1)(d) of Directive 2005/85/EC, the Conseil d’Etat ruled that a duration exceeding two years for the examination of an application for asylum cannot be deemed reasonable, so that the judge may demand from OFPRA that a decision be made within a certain time under penalty of a daily fine⁽⁶⁴⁾.

It is worth noting, in this connection, that excessive duration of procedure was observed by UNHCR in several Member States: ‘Backlogs of applications and length of procedures remained one of the most significant challenges in many countries in 2011. While in most states UNHCR observed that asylum seekers were interviewed within a period of 2 months after the claim was lodged, in some states applicants had to wait more than 4 to 5 months and sometimes between 6 and 12 months before the first interview.’

UNHCR further states: ‘While it is positive to note that asylum seekers have in general access to an in-depth personal interview in EU Member States, UNHCR has observed in a few states that many asylum seekers have only a preliminary or pre-screening interview, significantly limiting their ability to present the cases in detail. The practice of not granting a full interview was also observed in the appeal instance of some countries, limiting the effectiveness of the review of the claim in the 2nd Instance significantly, where that instance is required to make findings of fact. In many cases relevant elements of the asylum claims are only examined during the 2nd instance procedure, which bears the risk of prolonging the overall asylum decision-making process.’

Amendments to the **Hungarian** Asylum Act and Decree that entered into force on 24 December 2010, 1 April 2011, and 1 and 2 May 2011 introduced the concepts of ‘manifestly unfounded application’ and ‘safe third-country’. The right to remain in the territory is not granted any more for repeat applications. Appeals may be adjudicated in four county-level courts in addition to the Metropolitan Court in order to alleviate the workload of the latter.

In a move similar to that of France in 2009, **Luxembourg** added the Republic of Serbia to its national list of safe countries of origin. While transposing the ‘return’ directive (2008/115/EC), the Grand Duchy modified provisions of its Asylum Act regarding the link between negative decisions on applications for asylum and decisions on return, the ways of appeal and the applicable time-limits.

The new legislation in **Slovenia** introduced free legal aid at first instance, reduced the number of exceptions to the rule of mandatory hearing of the applicant as well as the scope of the accelerated procedure and provided for an extended deadline for bringing an action against decisions issued in the accelerated procedure from 3 to 8 days.

For the purpose of improving the implementation of the law in the area of international protection and the efficient implementation of new statutory matters, eight implementing and administrative Acts were adopted and published in the *Official Gazette of the Republic of Slovenia* in 2011.

Although there was no legislative change in **Spain**, the Spanish Asylum Office (OAR) has been focused on the correct implementation of the Asylum Act passed in October 2009 and making the appropriate changes to adapt itself and the asylum procedure to the new rules laid down in the aforementioned Act.

Regarding the interaction between EU legislation and national law, an issue emerged in the courts of the **Czech Republic** as to whether or not there is an obligation under Czech law to examine whether a person qualifies for subsidiary protection even though the application for international protection was rejected as inadmissible. This is a pending issue which will have to be solved by the Supreme Administrative Court after contradictory decisions have been issued.

Concerning case-law, the CJEU ruled on 28 July 2011 on case C-69/10 *Samba Diouf v Ministre du Travail, de l'Emploi et de l'Immigration (Luxembourg)*. The reference for a preliminary ruling concerned the right to an effective remedy (Article 39 of the asylum procedures directive) in accelerated procedures.

The CJEU observed that the decisions against which an applicant for asylum must have a remedy under Article 39 of Directive 2005/85 are those which entail rejection of the application for asylum for substantive reasons or for formal or procedural reasons, which preclude any decision on the substance. Hence, decisions that are preparatory to the decision on the substance or decisions pertaining to the organisation of the procedure are not covered by that provision. Widening the scope would be against the need for expediency of procedures relating to applications for asylum. However, the CJEU concluded that it should be possible to challenge the reasons underlying the decision to follow such a procedure within the framework of the action that may be brought against the final decision closing the procedure.

Moreover, on 7 April, in case C-431/10 *European Commission v Ireland*, CJEU declared that **Ireland** had failed to fulfil its obligation to transpose fully the provisions of the asylum procedures directive and to communicate the content of the national provisions to the European Commission within the prescribed period. The deadline for the transposition of the asylum procedures directive was 1 December 2007. The European Commission argued in this infringement procedure that **Ireland** still needed inter alia to implement requirements concerning the conduct of personal interviews, some guarantees for unaccompanied minors, the obligation to inform asylum applicants of delays in completing the procedure, and procedures for dealing with subsequent applications. In February 2011, the Minister for Justice and Law Reform made two sets of regulations to give further effect in Irish law to the directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. The regulations are the European Communities (Asylum Procedures) Regulations 2011 and the Refugee Act 1996 (Asylum Procedures) Regulations 2011.

Not directly related to asylum: detention and return

Relevant case-law developments took place in the ECtHR and the CJEU during 2011 with regard to detention and return. Some of the rulings do not strictly affect asylum applicants nor are they directly related to the implementation of the Dublin system or the reception conditions directive. However, these rulings are relevant to the asylum situation in the EU as they interpret and infer the rules that could be potentially applied to cases concerning rejected asylum applications. In that sense they are relevant background information for the purposes of the present report.

As regards detention, in case *Efremidze v Greece (No 33225/08)*, the ECtHR considered that detention conditions during 3 months on Themi border police premises violated the prohibition of inhuman or degrading treatment, due to the lack of possibilities to undertake physical activity in the open air and the inadequate food quality. Furthermore, the 3 months detention exceeded the legal period and was beyond a reasonable period to fulfil its objective to return the applicant. Moreover, the procedural safeguards relating to the expulsion of immigrants had not been granted, as long as the jurisdictional control was not sufficiently effective and the duration of the procedure was excessive.

Furthermore, case *Lokpo and Touré v Hungary* (No 10816/10) dealt with a complaint by two Ivorian nationals, regarding the unlawfulness of their detention during a 5-month period pending an asylum decision. The ECtHR concluded that there had been a violation of the right to liberty and security, due to the fact that the deprivation of liberty was prolonged unlawfully. The continued detention was due to the authority's non-action, the latter failing to initiate their release even when the asylum applications were in the in-merit examination phase. Furthermore, this non-action was not susceptible to a remedy.

Case *Longa Yonkeu v Latvia* (No 57229/09) concerned a Cameroonian national who was returned to Cameroon after two unsuccessful asylum applications. The applicant complained that his detention in Latvia in a closed facility, between December 2008 and January 2010, violated his right to liberty and security, due to the long detention period and the lack of sufficient safeguards against arbitrariness. The ECtHR found that there had been a violation of the said right, but just in certain periods of his detention. During these specific periods no national legal basis supported the said detention after a final decision on the asylum application had been taken. Furthermore, the ECtHR observed that before 14 July 2009, when new legal provisions came into force, the applicable law for detention with a view to return did not meet ECHR standards, as it was vague, it did not foresee clear specific procedures for failed asylum seekers, its applicability could not be anticipated and it led to administrative arbitrariness.

On 20 December, the ECtHR decided on case *Yoh-Ekale Mwanje v Belgium* (No 10486/10), regarding an HIV-positive Cameroonian national who was detained for almost 4 months in the '127 bis' closed transit centre with a view to her return to Cameroon. ECtHR found that the detention conditions were against the provisions of the ECHR, due to the fact that the authorities did not act with the required diligence to have her illness carefully treated while she was in detention. Furthermore, the right to an effective remedy was not granted, in order to challenge the medical report in which the decision was founded and which did not analyse carefully the individual health situation of the applicant. Finally, the detention measure itself was considered by ECtHR as not proportionate to the pursued aim, the court stating that she could have received better treatment against HIV if she had not been detained. ECtHR also considered that her identity and fixed address were known, she had attended every appointment set by the authorities and presented the requested documents. Therefore, a less burdensome measure could have been adopted by Belgium.

The CJEU also judged two relevant cases on detention, namely, cases C-61/11 *Hassen El Dridi, alias Soufi Karim* and C-329/11 *Achugbabian v Préfet du Val-de-Marne (France)*. In these cases, CJEU was asked about the application of Directive 2008/115/CE on common standards and procedures in Member States for returning illegally staying third-country nationals.

The CJEU observed that the directive does not preclude penal sanctions being imposed, following national rules and in compliance with fundamental rights, on third-country nationals to whom the return procedure established by that directive has been applied and who are illegally staying in the territory of a Member State without there being any justified ground for non-return. Nor does the directive preclude a placing in detention in order to determine whether or not a third-country national's stay is lawful. However, the CJEU stated that the national authorities are required to act with diligence and to take a position as soon as possible. Once the illegality of the stay has been established, those authorities must, in principle, adopt a return decision.

The CJEU concluded that, what EU law precludes is national legislation permitting the imprisonment of an illegally staying third-country national who has not been subject to the coercive measures provided for in the directive and has not, in the event of his having been placed in detention with a view to application of the removal procedure, reached the expiry of the maximum duration of that detention.

The CJEU understood that in a situation where such measures have not led to the expected result being attained, namely, the removal of the third-country national against whom they were issued, Member States do not remain free to adopt measures, including criminal

law measures, aimed *inter alia* at dissuading those nationals from remaining illegally on those States' territory. CJEU concluded that such a custodial sentence risked jeopardising the attainment of the objective intended by the directive, namely, the establishment of an effective policy of removal and repatriation of illegally staying third-country nationals in a manner in keeping with fundamental rights.

In light of the ruling in *El Dridi*, references for 11 similar preliminary rulings⁽⁶⁵⁾ to the CJEU were withdrawn by the referring Italian courts as identical rulings would have applied to those cases.

Besides the rulings concerning detention, it could be observed that there was an increase in the practice of detention within the Dublin system for the purpose of transfers to the Member State responsible. UNHCR points out that: 'In the context of the implementation of transfers under the Dublin II regulation, an increasing number of states resort to detention.'

According to UNHCR, detention is in general becoming widespread in an increasing number of Member States, including the detention of children, and there are reports regarding unduly harsh treatment of applicants in detention.

The ECtHR judged relevant cases concerning return decisions throughout 2011. Case *Sufi and Elmi v United Kingdom* (Nos 8319/07 and 11449/07) was considered a lead case and thus established the principles to be applied to all similar pending cases concerning applications from Somali persons (up to 214 similar cases involving decisions by the United Kingdom to return applicants to Mogadishu were pending by the time of the ruling). The ECtHR judged whether there would be a violation of the prohibition of inhuman or degrading treatment if the applicants were sent back to Mogadishu, taking into consideration their convictions for a number of serious criminal offences. The ECtHR concluded on 28 June 2011 that the prohibition of torture and of inhuman or degrading treatment or punishment is absolute, irrespective of the victims' conduct. Hence, the applicants' undesirable or dangerous behaviour could not be taken into account. The ECtHR observed that the situation in Mogadishu, as assessed by the United Kingdom Immigration and Asylum Tribunal itself and as described in reliable COI reports, including Human Rights Watch reports, posed a real risk of inhuman or degrading treatment in Mogadishu. As regards internal relocation, the ECtHR established that a returnee with no recent experience of living in Somalia would be at real risk of ill-treatment if he was required to travel through or to live in an area controlled by Al-Shabaab. Furthermore, if a returnee had no family connections, or could not travel safely to an area where he had such connections, he would most probably have to find shelter in an Internally Displaced Persons (IDP) or refugee camp. The situation in those camps amounted to inhuman or degrading treatment.

Following this judgment, one government indicated that rejected Somali asylum seekers can return to South and Central Somalia, but only under very strict conditions: presence of close family who are able to give effective protection, recent experience of living and/or being able to live according to Al-Shabaab rules.

Several judgments were made by the ECtHR on cases concerning returns to Afghanistan. Both in cases *Husseini v Sweden* (No 10611/09) and *J.H. v United Kingdom* (No 48839/09), ECtHR observed no violation of the prohibition of inhuman or degrading treatment in case of return to Afghanistan, following COI reports and information provided, among other, by UNHCR.

The ECtHR also decided on case *Samina v Sweden* (No 55463/09). A Pakistani national, whose asylum application was denied, alleged that she would face a risk of being arrested, tortured and executed on charges of blasphemy, either by the authorities or religious fundamentalists due to her activities for a Christian organisation. She also maintained that she would not be able to afford treatment upon her return to Pakistan for her poor mental health. The ECtHR ruled that there would be no violation of Article 3 ECHR if the person was returned to Pakistan. The ECtHR backed its decision on the COI reports provided, *inter alia*, by the US Department of State and the Human Rights Commission of Pakistan, including information, among other, on freedom of religion and mental health assistance.

On 31 May 2011, the ECtHR judged case *E.G. v United Kingdom* (No 41178/08), concerning a Sri Lankan whose application, which was based on his involvement with the Liberation Tigers of Tamil Eelam and past arrest by the Sri Lankan army, had been refused. The ECtHR ruled that no risk of ill-treatment or inhuman or degrading treatment was to be faced by the applicant in the event of returning him to Sri Lanka, especially to Colombo. The ECtHR arrived at this conclusion on the basis of the present reliable COI information in Sri Lanka, made available by relevant sources, such as UNHCR. The decision was also supported by consideration of his personal circumstances, such as having been released from jail by Sri Lankan authorities and having been able to travel and leave the country through normal channels, revealing that they did not have a continuing strong level of interest in him.

In 2011, the ECtHR consolidated its jurisprudence on the criteria for examining return cases in connection with the right to respect for private and family life. Following this jurisprudence, the return decision has to be adopted in accordance with the law, pursue a legitimate aim (e.g. prevention of disorder or crime), be proportionate and necessary in a democratic society.

In case *Abou Amer v Romania* (No 14521/03), the applicant, of Palestinian origin, who had been granted asylum in 1998, was taken into custody pending expulsion on the ground that he was a danger to national security. The applicant was married in Romania and had a daughter. Declared an 'undesirable person', a removal order was issued together with a 10-year ban from re-entering Romania. The ECtHR considered that the decision had forced the applicants to leave Romania, in order to keep their nuclear family together, leaving their family behind. The ECtHR decided that the right to respect for private and family life and home had been violated as the interference with such right was not fully justified on grounds of national security. Also with regard to the consideration of 'national security' as a ground for expulsion, the ECtHR concluded in case *Baltaji v Bulgaria* (No 12919/04), that the right to respect for private and family life had been violated by deciding the return without sufficient factual basis.

On 20 September 2011, the ECtHR judged case *A.A. v United Kingdom* (No 8000/08), regarding a Nigerian national who had been convicted of rape, at the age of 15. Since his release on license, he had completed his studies and commenced employment in the United Kingdom. The ECtHR concluded that, although deportation pursued a legitimate aim (namely, 'prevention of disorder or crime') and was adopted in accordance with the law, deportation was disproportionate to the said legitimate aim and that there was an interference with his right to respect for private and family life. Such a judgment was made after considering the following factors: the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the United Kingdom (more than 6 years); the time which had elapsed since the offence was committed (5 years); the applicant's conduct during that period; and the solidity of social, cultural and family ties with the host country and the absence of the latter with the country of destination.

On the other hand, in Case *A.H. Khan v United Kingdom* (No 6222/10), the ECtHR concluded that there had been no violation of the applicant's rights, especially his right to respect for private and family life, as the return was in accordance with the law and pursued a legitimate aim. The case involved a Pakistani national who was returned to his country of origin due to a long offending history, including offences of violence and repeated robbery. This was necessary in a democratic society, as the applicant had regular contact with Pakistan and did not have close ties with his children and their mothers, who remained in the United Kingdom and decided not to return with the applicant to Pakistan.

As regards legislation in Member States, Lithuania reported that Amendments to the Law on the Legal Status of Aliens adopted by the Parliament on 8 December 2011 (entered into force 01/02/2012) has transposed the 'return' directive (2008/115/EC). It modified provisions of the law regarding the terms of obligation for illegally staying foreigners to leave the territory of Lithuania, as well as the length and conditions of detention. The priority is given to the voluntary return of migrants to the country of origin; it is also foreseen that foreigners are expelled only in case they have not left after being issued with an order to voluntary leave the territory or in case their stay is a threat to national security or public order. International and non-governmental organisations are allowed to monitor the expulsion of foreigners.

Other instruments related to asylum

In 2011, developments also took place concerning legislation, which affected asylum seekers and/or beneficiaries of international protection.

In this regard, 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 was adopted. The directive entitles refugees and beneficiaries of subsidiary protection to acquire long-term resident status on a similar basis to other third-country nationals after a period of 5 years' legal residence in the EU.

Moreover, several Member States made amendments to legislation, in order to introduce new provisions regarding the residence permits of beneficiaries of international protection in order to take due account of the provisions of Council Regulation (EC) No 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals.

European Refugee Fund

Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC⁽⁶⁶⁾ sets the rules governing the allocation of financial resources to Member States in order to support and encourage efforts made by the Member States in the areas of reception, asylum procedures, integration of applicants and beneficiaries of international protection, capacity building and resettlement as well as relocation. The ERF also provides for a reserve that can be used in case of emergencies such as the triggering of the 'temporary protection' or imbalances caused by a massive influx of third-country nationals who may be in need of international protection in a Member State, placing exceptionally heavy and urgent demands on the reception facilities, asylum system or infrastructure.

A limited part of the available funds is reserved for transnational projects with a distinctive EU added value. A number of the tasks attributed to EASO coincide with existing transnational projects that were financed by the ERF.

The Communication on intra-EU solidarity

Solidarity has been a central tenet in the field of EU asylum policy for over a decade, since the very beginning of the Union's common asylum policy, and it is now enshrined in Article 80 of the Treaty on the Functioning of the European Union. The need to translate solidarity into concrete measures flows from practical realities since Member States' asylum systems are also interdependent: an overburdened or malfunctioning system in one Member State has a clear impact on all the others.

It is thus the Union's responsibility to assist these Member States and to uphold the Union's common values and fundamental rights. Member States, in turn, must ensure that their asylum systems meet the standards set by international and European law, notably the Charter of Fundamental Rights of the EU, the 1951 Geneva Refugee Convention, and the European Convention on Human Rights.

The Stockholm Programme, the roadmap for EU action in the justice, freedom and security field, also calls for the Union to strengthen solidarity on asylum. In particular, it calls for solidarity between Member States as they collectively shoulder the responsibility of setting up a humane and efficient system to manage asylum flows.

Building on this background the European Commission adopted on 2 December 2011 a Communication on 'Enhanced intra-EU solidarity in the field of asylum'. The European Commission proposes to improve asylum systems through the interaction of EU legislation, an enhanced practical cooperation and a better use of EU funding mechanisms.

This will notably be achieved by realising the full potential of practical cooperation and technical assistance, in particular by building upon what has been already undertaken in recent years and bringing it one step forward through the action of EASO.

ERF Community actions and EASO

A number of important projects that are of particular relevance for this year's Annual Report by reason of their close connection to EASO's mandate are described below. Indeed, several of them have been duly assessed by EASO either to be taken over as is the case for the European Asylum Curriculum (EAC), whose operation will be described in another section — or as a source of inspiration. The ERF had also been the source of financing for the preparation work and establishment of the Common European Portal on Country of Origin Information (often referred to as COI Portal or Common Portal) which is now incorporated into EASO. In addition, a large number of other projects were carried out by Member States, international organisations and non-governmental organisations with ERF co-financing but they are not mentioned in the selection below. A list of projects having received grants in previous years can be consulted on the Home Affairs DG website⁽⁶⁷⁾.

ERF: relocation

After an initial bilateral project in which France relocated 92 beneficiaries of international protection from Malta in 2009, a pilot project was set up for the intra-EU relocation of beneficiaries of international protection from Malta (Eurema). In its first phase, a total of 227 beneficiaries were relocated under the project, which amounted to approximately 14 % of the 1 600 persons who constituted the target population. The implementation of the pilot project commenced in January 2010 and was concluded in September 2011.

In view of the influx of immigrants who had left Libya during 2011 and the difficulties faced by Malta it was decided, on a proposal by Commissioner Malmström, to extend the pilot project for the relocation of beneficiaries of international protection in **Malta** due to the disproportionate burden being borne by the said Member State⁽⁶⁸⁾. Member States and Associated States pledged approximately 360 places for the relocation of beneficiaries of international protection from Malta (some of which will be provided on a bilateral basis and others as part of the extension of the pilot project for the intra-EU relocation of beneficiaries of international protection from Malta (Eurema), co-funded under the European Refugee Fund Community Actions). The commitments were made at a special pledging conference convened on 12 April 2011 by Home Affairs Commissioner Cecilia Malmström as part of the intra-EU migrants' resettlement pilot project⁽⁶⁹⁾.

EASO and relocation

As part of its mandate, in 2011, EASO has also promoted the exchange of information and other activities related to relocation within the Union. Lessons learned from the EU pilot project with Malta will be part of a future evaluation process in supporting the practical cooperation measures for the relocation of beneficiaries of international protection within the European Union. EASO is a partner in the JHA Council-mandated evaluation of the intra-EU relocation pilot project with Malta (Eurema), which will deliver its results in summer 2012.

ERF other relevant projects with an impact on EASO

Inter-state cooperation:

Malta and Italy, together with IOM and UNHCR, concluded in June 2011 an 18-month project 'Mare Nostrum — Common Approach to develop the asylum facilities in Italy and in Malta' focusing on information to applicants and health services.

Among the projects of particular interest to EASO, the following deserve a special mention:

Arising from an idea discussed in 2006 during a GDISC conference in Nuremberg, the **'European Country of Origin Sponsorship'** project, or ECS, was launched in 2007, by several European states and funded by the European Refugee Fund (ERF). The idea was to introduce an information and cooperation network that would allow all European states to benefit from Country of Origin Information (COI) according to the principle 'one for all'.

More specifically, two European states, the so-called 'sponsor countries', benefiting from a particular knowledge on a certain country of origin, would share their expertise by providing specific Country of Origin Information and by jointly answering other European countries' requests for factual Country of Origin Information. While being given an opportunity to further specialise on a country of origin, the participating states could in turn rely on their counterparts for expertise related to countries of origin for which they only had general knowledge. European states which did not participate in the project as sponsor countries could also benefit from this information network.

From 2007 until 2011, 13 European states took over the 'sponsorship' of 16 countries of origin, engaging in various Country of Origin Information activities, including providing responses to information requests, organising Eurasil Country of Origin workshops and Fact Finding Missions (FFMs) and sharing specific country information through the German database MILO.

The ECS also organised three conferences gathering Country of Origin Information researchers, Country of Origin Information Units managers, ECS country of origin experts as well as invited speakers, to discuss the development of the network and best practices.

In addition to promoting an open and transparent exchange of Country of Origin Information and contributing, likewise, to burden sharing amongst Member States, the ECS aimed at harmonising Country of Origin Information approaches and increasing the range and quality of country of origin knowledge. To help reach this goal, the ECS used the 'EU Common guidelines for processing Country of Origin Information' as a basis instrument for its work and drafted new common guidelines specifically designed to assist Member States which conduct FFMs.

The ECS encountered some challenges along the way, amongst which a limited use of the system by European states and difficulties in jointly researching Country of Origin Information and fine-tuning research methodologies. However, ECS was innovative in many ways. Firstly, it contributed to moving Country of Origin Information cooperation a step further by allowing this cooperation to be channelled through a more formal framework. In addition, it proved to be a useful tool for the mutualisation and the dissemination of country of origin expertise. Finally, ECS provided country of origin experts, working in different Country of Origin Information environments in Europe, with a unique opportunity to exchange, to jointly collect, assess and present Country of Origin Information, and ultimately to engage in common practices.

The ECS project formally ended in December 2011. Taking into consideration lessons learned from the ECS project and other specialised networks, the EASO is currently devising a new Country of Origin Information network concept with the support of Working Parties composed of Member State experts, the European Commission and EASO.

The 'Temporary Desk on Iraq' (TDI) project that had been initiated in the framework of the GSISC came to an end in 2011. The TDI had been established in May 2009 against the backdrop of significant population displacement of Iraqis within Iraq and the region, and significant asylum applications from Iraqis to Europe as well as the Conclusions of the JHA Council of 27–28 November 2008 setting as an objective to resettle in the Member States 10 000 refugees from Iraq. Twenty-two States participated in this 24-month project. While the TDI intended to be an example of practical cooperation on a specific case-load, it also identified tools for practical cooperation on data, asylum, resettlement, return, multi-disciplinary analysis and early warning. The tools developed by TDI proved to be generic in nature and could be successfully applied to other case-loads (Afghanistan, Russian

Federation, Somalia). Upon completion of the project, parts of its archives as well as its legacy regarding methodology were handed over to EASO.

Implemented by non-state actors:

Not only inter-state cooperations benefit from ERF co-financing; a number of transnational projects led by international organisations and non-governmental organisations (NGO) received EU subsidies too. The annual work programmes as well as a regularly updated list of projects having received grants from the EU Commission under the 'Community actions' provisions of the ERF decision can be found on the website of the Home Affairs DG ⁽⁷⁰⁾.

The publication in May 2011 of the final report of the '**Transnational Dublin project: Transnational advisory and assistance network for asylum seekers under a Dublin process**' ⁽⁷¹⁾ on which 13 organisations from 11 Member States and Switzerland worked together since 2009 may be mentioned as an example of such NGO projects amongst many others. The information leaflets and the follow-up and assistance system put in place for the asylum seekers transferred from a Member State to the Member State responsible for their case are evidence of what contribution civil society might bring to improve the fairness of the Dublin procedure.

ERF annual programmes:

Within their **ERF national annual programme**, Member States select projects to be carried out by state administration, local government bodies or NGOs. In line with the Commission's decision establishing the priorities of the ERF ⁽⁷⁴⁾, Member States prioritised in their national programmes and implemented a wide variety of projects. Among these were socioeconomic support to asylum seekers, care of vulnerable persons and integration of beneficiaries of international protection (**Austria, Belgium, Czech Republic, Germany, Estonia, Ireland, Latvia, Portugal, Sweden**). In addition, they included projects aiming at improving the quality of the asylum procedure through training, the implementation of quality assurance schemes and Country of Origin Information (**Austria, Germany, Estonia, Luxembourg**) including (joint) fact-finding missions to countries of origin (**Poland** to Armenia and Nigeria; **France** to Sri Lanka; **Belgium and France** to Guinea (Conakry) together with Switzerland).

Belgium is a special case with regard to the implementation of the ERF since, in addition to the projects carried out under its national programme, Belgium received EU funding under the ERF Emergency Measures. In 2011 Belgium initially received EUR 3 million. With these funds Belgium was able to, on the one hand, recruit extra personnel for the asylum instances (Immigration Department, Office of the Commissioner General for Refugees and Stateless Persons, Council for Aliens Law Litigation) and on the other hand provide for the creation of extra places in reception facilities. At the end of 2011 the European Commission provided an additional EUR 1.75 million under the ERF Emergency Measures. This extra funding was again used to reinforce the asylum and reception capacities. In terms of priorities under the national programme, support to vulnerable groups, mainly unaccompanied minor asylum seekers and women at risk, as well as housing support for recognised refugees are emphasised.

Most projects in the national programme of **France** fall under Priority One and aim at improving reception and support for asylum seekers as well as the integration of beneficiaries of international protection through access to housing and employment.

Projects implemented in **Hungary** aimed at increasing the efficiency of Dublin transfers and developing the Country of Origin Information services.

The national programme in **Ireland** includes orientation, advocacy, promoting inter-cultural awareness, integration and anti-racism amongst schools and service providers.

In **Italy**, taking into consideration the state of pressure in the national territory, due to the unprecedented inflow of third-country nationals which had been occurring since February 2011 and the related emergencies, it was deemed important to concentrate the 2011 ERF resources

into the effective and concrete strengthening of reception, support and integration measures directly intended for applicants/holders of international protection. Furthermore, particular attention was devoted to the promotion of professional integration for holders of international protection. Furthermore, between August and November 2011, additional resources were approved for the activation of emergency measures in Italy, to an amount of EUR 14.52 million. The measures implemented came in support to the Territorial Commissions (competent for refugee status determination as well as eligibility to subsidiary protection and national humanitarian status) including translation and interpretation, the reception centres for asylum seekers and the government services involved in the response to the emergency situation.

In **Lithuania**, in the course of implementation of activities provided for in the framework of the project, the information system was launched allowing for the connection to the European Union common portal on information on the countries of origin (website: <http://www.coi.migracija.lt/>). In addition, the Resolution of the Government of the Republic of Lithuania 'On Asylum Seekers from Malta' was adopted on 14 September 2011. According to the resolution Lithuania takes part in the abovementioned pilot project for Intra-EU Relocation from Malta — Eurema II and has the intention to take up to six asylum seekers from Malta.

Malta chose to implement only Priority One of the Strategic Guidelines under the Annual Programme for 2011, i.e. actions related to reception conditions and asylum procedures and actions related to integration.

In **Romania**, no project activity has been undertaken under the ERF national annual programme for 2011. According to the annual programme in question the expected time for starting the projects was November 2011 and the end date for this is 30 June 2013. No call for proposals was made during 2011. Nevertheless, in 2011, projects have been implemented under previous ERF national annual programmes (2009 and 2010), mostly by NGOs, providing for legal counselling and assistance for the asylum seekers, Country of Origin Information management enhancing, strengthened capacity for the relevant authorities to manage asylum issues and specialised assistance for the asylum seekers (currently under implementation).

In the same period, the Romanian Immigration Office, acting as an executing body, started a project aiming at the development of unitary and efficient asylum procedures, through training sessions concerning access to the asylum procedure, assessment of the existing internal procedures and quality mechanisms and exploring further developments and also by facilitating dialogue of the decision actors. Moreover, projects seeking to create/improve existing facilities for the asylum seekers are under implementation, including the newest accommodation and procedures centre opened in October 2011 and located in Giurgiu, near the southern border with Bulgaria.

Within the **Slovak** national programme, the Project called 'Supporting activities of the Migration Office, Ministry of Interior, connected to providing humanitarian transfer of refugees and persons under international protection, in the Slovak Republic' was implemented in 2011.

In cooperation with UNHCR and IOM, it aims to support resettlement of refugees to a number of countries in and beyond the EU, by providing them with accommodation, meals and support for a temporary period, as well as a venue for the final stages of resettlement processing where needed, in the Emergency Transit Centre in the Slovak Republic. Till December 2011, Palestinians from the Iraqi Al-Waleed camp, a group of Afghan women and children and Somali refugees from Eritrea spent 6 months in the centre before being transferred to the final destination.

The national programme in **Slovenia** includes Slovene language courses for asylum applicants and persons with international protection, works with vulnerable groups (especially children), translation, free legal aid and informing in asylum procedures.

Similarly, **Spain** devoted the major part of its projects to integration, followed by reception and social support.

Sweden used ERF funding for a large-scale multi-annual project that began in 2009 and concluded in 2011: project 'Shorter Wait' resulted in reducing the waiting time in the asylum process (which was halved from 6 to 3 months) and providing greater legal security to the applicants. This project was complemented by a similar project 'Shorter wait — Return; Implementation' that aims at dealing with the consequences of the aforementioned project by providing the individuals whose applications have been refused with relevant and reliable information in order to help them consider the option of voluntary return. The positive results of Swedish projects have attracted the attention of several other asylum authorities in Europe who then organised study visits to the Migration Board.

The United Kingdom put emphasis on Priority Three through the United Kingdom Border Agency (UKBA)'s **Gateway Resettlement Programme** and several related internal and external projects regarding pre- and post-arrival support for resettled refugees.

It is a recurrent feature in many national programmes that ERF funding is being used to enhance practical cooperation between Member States at bi- or multilateral level in a number of areas for which EASO is now competent such as training and Country of Origin Information, through study visits and other forms of information- and experience-sharing meetings (**Estonia, Lithuania, Latvia, Poland**), implementation of EAC modules (**France**), preparation for the connection of the national Country of Origin Information database to the Common Portal (**France**).

Another recurrent feature is the use of ERF funding in projects aiming to prepare, implement and enhance the relocation/resettlement policy (**France, Hungary, Portugal, United Kingdom**).

EASO and quality activities

Quality activities support provided by EASO will be an important tool for gaining a common level of quality in asylum procedures in the EU. These quality activities will thus add to the implementation of the CEAS.

'Further Developing Asylum Quality in the EU' (FDQ), an important project led by UNHCR in which 12 Member States participated, came to an end in 2011, holding its Final Conference in September in Brussels. The EASO Executive Director was invited to make a presentation at the closing Conference of the Further Developing Asylum Quality in the EU.

This FDQ project — which can highly inspire the future work of EASO in the field of quality has examined and developed in 2010–11 quality assurance mechanisms in the asylum procedures of selected Member States: Bulgaria, Cyprus, Greece, Hungary, Italy, Poland, Portugal, Romania and Slovakia. It has involved the assistance of the asylum authorities of Austria, Germany and the United Kingdom who have provided good practice advice. UNHCR played a prominent role in those projects, as it did earlier with other quality initiatives projects. A variety of tools, techniques and methodologies have been developed and applied to examine, assess and develop a quality assurance system in national asylum procedures.

The objective has been to improve the quality of asylum procedures by building the capacity of the asylum authorities responsible for examining and taking decisions on asylum applications at first and second instance, and to ensure the effective and sustainable functioning of national quality assurance mechanisms. In this way, those projects have supported, through practical cooperation, the building of effective and sustainable internal review mechanisms that will regularly and objectively maintain good quality standards in EU Members States' asylum systems.

Two reference documents on Quality Process in the Asylum area were released in this context; The Summary report of the FDQ and the Manual on 'Building In Quality' in Asylum Systems.

Following the experience of the Member States and the UNHCR in these projects it is timely for EASO as from 2012 to carry out a broad assessment and evaluation of the experiences

and lessons learned from the quality systems and projects that have been established or conducted since 2004. EASO will then identify key areas where quality challenges and needs remain, which could be addressed through practical cooperation and/or other forms of EASO support and EAS will explore potential areas of interest for further projects on quality in asylum decision-making.

EASO and unaccompanied minors

The Action Plan on Unaccompanied Minors (2010–14), which was presented by the European Commission in May 2010, provides a common approach to tackling the challenges relating to the arrival in the EU of unaccompanied minors from third-countries. The action plan is based on the principle of the best interests of the child and sets out three main strands for action: prevention, protection and durable solutions.

EASO maintained constant contact with the European Commission in Brussels to discuss priorities and key objectives within the action plan and the role EASO could play in implementing various actions. EASO also held talks with Frontex and the FRA.

The EASO 2012 Work Programme confirmed its thematic focus on age assessment of unaccompanied minors for 2012, with a view to developing information sharing, hosting a working group on age assessment for Member States and eventually producing technical documentation and guidelines on age assessment.

Work has already begun on delivering technical documentation and developing training materials, with EASO participation in the updating of the EAC module on interviewing children, which began in October 2011.

It is recognised that age assessment is an area of growing concern and importance for Member States, the Commission and NGOs alike. The need for a coherent approach across the EU Member States, which tackles the issues raised by age assessment, whilst maintaining the best interests of the child is clear.

Following the conclusion of the working group a report will be made on the outcome to the EASO Management Board. Further to this, it is anticipated that EASO will produce best practice guidance relating to age assessment.

EASO and anti-trafficking

On 18 October 2011 EASO participated at the '5th EU Anti-Trafficking Day — *Together Against Trafficking in Human Beings*'. EASO together with the Heads of the EU Justice and Home Affairs agencies issued a joint statement of the agencies strengthening the partnership with the EU Member States, EU institutions and other partners for a coordinated, coherent and comprehensive approach to the fight against trafficking in human beings and the protection of its victims — the statement being in line with the provisions of the Lisbon Treaty and Stockholm Programme and the EU external security strategy. EASO is taking part in the joint efforts with the other agencies on prevention, cooperation with non-EU countries and coordination of more effective protection of victims. A contact point has been nominated for each agency, including EASO, who will be the contact point responsible for improving the communication between EASO and the EU institutions — including the EU Anti-Trafficking Coordinator.

EASO and training

Pursuant to Article 6 of Regulation (EU) No 439/2010, EASO, as soon as it was established, examined the ways and means to develop training tools to be made available to all Member States, including the European Asylum Curriculum (EAC) taking into account existing cooperation in that field. To that end, it was decided to transfer the EAC Project to EASO from 1 January 2012 ⁽⁷³⁾.

EASO offers two types of knowledge and skills training measures: learning material and training for national trainers. The training activities organised by EASO will be of high quality and identify key principles and best practices with a view to greater convergence of administrative methods and decisions and legal practice (EASO regulation, Article 6(5)). EASO training will serve as a common training base for asylum and migration services across the European Union and will practically support the implementation of CEAS.

The European Asylum Curriculum (EAC) that was initially established within the framework of GDISC, with the Swedish Migration Board as coordinating and managing body — is a system of common vocational training for asylum officers throughout the European Union based on commonly developed learning material. Since the beginning of the project in 2005, thirteen (13) interactive modules covering all stages of the asylum procedure were developed and over 2 100 officers from different Member States were trained.

The modules developed by the European Asylum Curriculum project form a core activity of EASO's training portfolio. The EAC training concept and learning material was taken over by EASO from 1 January 2012 with the full support and cooperation of the Swedish Migration Board.

An EASO Trainers Pool has been established during autumn 2011 and now counts over 170 experts from 18 Member States, the EU Commission and UNHCR. Experts from the EASO Trainers Pool have been active already during the first half of 2012 for planned training sessions and module updates. In addition, from January 2012, strengthened cooperation (increased communication, feedbacking, regular reviews) between EASO and the EAC Reference Group (the EU Commission, UNHCR, ECRE, IARLJ, etc.) during updates and module developments will help to deliver even more precise and quality content to EASO learning materials.

During the fourth quarter of 2011, EASO organised six training sessions in Malta regarding the modules: Evidence Assessment, Interviewing Vulnerable persons, Inclusion, Dublin regulation, Country of Origin Information, Drafting and Decision-Making. Over 60 national trainers were trained.

A Didactic Seminar took place in Malta in December 2011 with the aim to strengthen and extend the didactic skills of national trainers and didactic experts gathered through the EASO Trainers Pool. Over 35 national trainers from EU Member States attended this seminar.

One EAC National Contact Points Meeting was also organised by EASO in Malta in December 2011 in order to present new developments in transferring the EAC project activities under EASO and to inform about planned EAC activities in 2012 managed already by EASO. Several workshops were organised during this meeting with 35 participants.

EASO also prepared for its first training sessions on the EAC 'Inclusion' module to take place in Greece during February and March 2012. To that end, six EAC modules have already been specially translated by EASO and are being implemented online. The six translated modules are: **Interview Techniques, Drafting and Decision-Making, Evidence Assessment, Country of Origin Information, Inclusion, Dublin Regulation.**

EASO is committed to providing all Member States with training sessions in all EAC modules during 2012. In line with the EASO 2012 Work Plan, 13 to 14 training sessions in all training modules will take place in parallel with updates of all the modules. In this respect EASO has also introduced an 'Annual Updating Scheme' which means that, based on proper evaluation and quality review, all modules will be updated annually, if necessary. This should also allow EASO to plan all updates in advance and in a regular manner, ultimately reaching a higher level of coherence and quality within EASO training.

EASO's network of institutional partners and other stakeholders



EASO and the European Commission

The European Commission has been responsible for the establishment and initial operation of EASO since the European Parliament and the Council decided to set up the agency. In this respect, the Directorate-General (DG) of Home Affairs within the European Commission is the parent directorate-general of EASO. This directorate-general is also the parent of other agencies, including Frontex and Europol. Aside from administrative and financial dependency on the Home Affairs DG until it becomes financially independent in September 2012, EASO enjoys an excellent working relationship with the Home Affairs DG on various content- and policy-related matters covered by the EASO regulation. EASO also works closely with the Budget DG, the Human Resources DG, the Informatics DG, the Office for Infrastructure and Logistics in Brussels (OIB), and Eurostat. The European Commission has two seats on the EASO Management Board. Key documents of EASO, including its annual work programme, must receive the opinion of the Commission before being adopted by the Management Board. Without being exhaustive, some of the main areas of cooperation are:

THE activities of EASO as an actor in the implementation of the Action Plan on Migration and Asylum in Greece. EASO is taking part to coordination efforts managed by the Home Affairs DG, and acts in coordination on the ground with the European Commission Task Force.

The cooperation in the handover of practical cooperation measures previously managed by the European Commission (Eurasil and the COI Portal). The transfer of the two measures is to be completed by the first half of 2012.

The participation of the European Commission to the Reference Group of EAC where it acts as a key actor in the process of module update and creation.

The presence of the European Commission to all Working Parties which are defining the future of EASO activities on Country of Origin Information.

EASO efforts in the framework of the implementation of the Action Plan on Unaccompanied Minors.

EASO participation in the meetings of the European Migration Network with the goal to closely coordinate the information produced both in EASO and EMN.

The key role played by EASO in the European Commission-led evaluation of the intra-EU relocation pilot project with Malta (Eurema).

The presence of EASO in some of the activities organised by the Home Affairs DG in the field of External Dimension.

EASO and the UNHCR

The EASO founding regulation provides for a specific role given to **UNHCR** within the work of EASO. UNHCR has been represented as a non-voting member of the Management Board, since the first EASO Management Board meeting in 2010. As well, UNHCR participates in Working Parties. Directly from the start UNHCR and EASO developed a strong practical cooperation. Different fields of cooperation are:

EASO Management Board: UNHCR is represented on the Management Board as a non-voting member.

EASO Consultative Forum: UNHCR was involved in the preparation of the first Consultative Forum meeting on 15 December 2011 and participated in the ad hoc advisory group.

Operational Support: Within the implementation of the Operating Plan for Greece there is a strong coordination and cooperation between UNHCR and EASO on the different activities mentioned in the Operating Plan: asylum service, reception service and backlog management.

European Asylum Curriculum: Through the reference group of the EAC, UNHCR together with important other stakeholders in the asylum field (like ECRE, IRLIA, Odysseus Network, EU Commission) is closely associated with the content development of new EAC modules and to the yearly update of existing ones.

Country of Origin Information: UNHCR is currently participating in the Country of Origin Information Reference Group to support EASO in the implementation of its various Country of Origin Information functions such as the building up of EASO's Practical Cooperation (former Eurasil). Moreover, EASO and UNHCR are currently in talks on the possible linking of UNHCR's database **Refworld** with the Country of Origin Information Portal of EASO.

Unaccompanied Minors: EASO has met with UNHCR representatives involved in unaccompanied minor (UM) policy to discuss activities relating to the EC Action Plan on Unaccompanied Minors. To date discussions have focused on Age Assessment, Family Tracing and Best Interest considerations in actions relating to children.

Other areas to develop more close links and cooperation: Early Warning and Preparedness System, Resettlement, Relocation, External Dimension, Regional Protection Programmes and capacity building.

EASO and cooperation with partners and stakeholders

The Council authorised the European Commission to open negotiations for the conclusion of arrangements between the European Union, *Iceland, Norway, Switzerland and Liechtenstein* on the modalities of the participation by those states in EASO on 27 January 2012. The EU Commission has invited the associated countries to open formal negotiations. EASO participates in these negotiations as an observer. A practical way of cooperation between EASO and associated countries has already begun, such as the input of Norway and Switzerland in the work on Country of Origin Information and training activities.

Frontex and EASO are two agencies comparable to each other. Whereas Frontex deals with migration flows at the border, EASO deals with asylum cooperation within and between the Member States. Contacts between EASO and Frontex exist at all levels. Since early 2011 the Executive Directors have had regular contacts on mutual cooperation in the different fields; Frontex shared its expertise in setting up a new agency and gave its support to the recruitment panels. In 2011 Frontex and EASO established many links between the different centres within the different fields of cooperation. Different fields of cooperation are: Operational Support and setting up a pool of experts, data-sharing for an Early Warning and Preparedness System, training, best practices for unaccompanied minors, trafficking and smuggling of human beings, Country of Origin Information, interpreters' list and the Consultative Forum.

Fundamental Rights Agency (FRA) operates in the field of human rights and links directly with the work of EASO in the asylum field. On different levels, contacts with FRA exist, from the level of the Executive Directors to cooperation between the different centres. In 2011 FRA and EASO established links in at least the following fields of cooperation: Operating Plan for Greece, training, best practices for unaccompanied minors, training, trafficking and smuggling of human beings and Consultative Forum.

Apart from UNHCR being a natural partner with its mandate on asylum and refugees, **the International Organisation for Migration** has a central role in many of EASO's areas of activities; the sharing of data on migration flows, cooperation in emergency and resettlement are among many. From the highest level down, cooperation already takes place.

EASO attends the meetings organised by the General Directors of Immigration Services Conference (**GDISC**) and is connected to every activity GDISC organises. GDISC will continue its activities as a platform for pilot projects on a voluntary basis, which can be of influence and support for future EASO activities. In 2011, EASO participated in the Steering Group, the Annual Conference and the workshop on early warning.

The Executive Director of EASO met the Director of the International Centre for Migration Policy Development (**ICMPD**) on 31 March 2011. Both ICMPD and EASO are interested to find mutual cooperation and fields of interest for exchange of information.

EASO and civil society

Civil society operating in the field of asylum is characterised by a considerable number of active and diverse organisations at local, regional, national, European and international level. These organisations, in their various forms and functions, play a key role in the debate on and implementation of asylum policy and practices, and have been instrumental in supporting the fairness and accuracy of asylum procedures, partially by bringing certain cases to the Court of Justice of the EU and the European Court of Human Rights.

Many organisations working in the field of asylum have specific experience and expertise that is not readily available to national administrations and other institutions. In many EU Member States, for instance, NGOs run reception centres for asylum seekers and are indispensable to ensure sufficient reception capacity at the national level. NGOs also provide legal assistance and representation to asylum seekers and are often the only accessible sources of information for asylum seekers who are newly arriving in a Member State. Also in crisis situations, such as the one experienced recently in Lampedusa following the increase of arrivals of migrants and refugees, NGOs play an essential role together with the governmental actors to ensure that basic needs of those arriving are being met through humanitarian assistance. NGOs play an invaluable role in the integration of those granted protection or resettled in our societies through an active involvement of integration programmes but also through the relentless efforts of their volunteers assisting with their integration. All of these organisations can be relevant to the different aspects of the work of EASO. EASO will tap into this form of valuable expertise by consulting civil society using a wide array of methodologies and tools.

In line with the EASO regulation, EASO has set up a **Consultative Forum** in 2011 — the first year of EASO operations. This bears witness to the fact that EASO is willing to engage in consultation with civil society because it believes in the added value and cross-fertilisation of ideas that such an exchange could yield. The Consultative Forum constitutes a mechanism for the exchange of information and pooling of knowledge between EASO and civil society organisations and relevant bodies operating in the field of asylum policy.

The Forum is open to relevant competent bodies in accordance with the EASO regulation. EASO addresses the members of the Consultative Forum in accordance with specific needs related to areas identified as a priority for EASO's work, as outlined in its annual work programme. In particular, EASO calls upon the Consultative Forum to make suggestions on the annual work programme, to provide feedback and suggest measures as follow-up to the annual report, and to communicate conclusions and recommendations of conferences, seminars and meetings relevant to the work of EASO.

In the process of setting up the Consultative Forum, EASO sought the support of an informal advisory group composed of senior officials from the European Commission, UNHCR, ECRE, IARLI and the Odysseus network. A meeting of this group was held on 26 October 2011.

For EASO, the Consultative Forum is not just an annual meeting, but rather a continuous two-way dialogue. Expert meetings, workshops, seminars and specific consultations using IT tools are used. These methodologies will become the ordinary way of consultation. In 2012, EASO will explore the possibility of using an e-platform for online consultation, ensuring the broadest possible reach and no additional expenses for participating organisations.

During the fourth quarter of 2011, EASO established the EASO Consultative Forum Register (ECFR). Registration is open to all interested organisations and bodies. EASO will select participants for its various consultative activities using the EASO Consultative Forum Register (ECFR). Registration forms are available online at: http://ec.europa.eu/home-affairs/policies/asylum/asylum_easo_en.htm

Given the very large number of relevant organisations and their diverse nature, and in order to ensure an efficient and effective approach, EASO has established a number of selection criteria, which will be subject to revision during 2012 and 2013. A flexible composition, adapted according to the topics being discussed, will be adopted for the different EASO Consultative Forum activities. Selection is based on the following criteria:

- Relevance — of the organisation's participation vis-à-vis the theme(s) discussed by the Consultative Forum.
- Knowledge and Expertise — degree of knowledge and expertise in the area(s) being dealt with by the Consultative Forum.
- Availability — of the organisation to get involved in the work of the Consultative Forum.
- Involvement at national and EU level — degree of involvement of the organisation in the relevant area(s) at national and EU level (European orientation).
- Affiliation — of the organisation in relevant networks/groups.
- Relationship — of the organisation with EASO and/or involvement in EU practical cooperation measures/training/academic activities in the field of asylum.

The first inaugural plenary of the EASO Consultative Forum took place on 15 December, in Valletta, Malta. Seventy-five participants from 45 different European organisations took part in this meeting. The meeting consisted of a number of addresses, two plenary sessions and two rounds of workshops each focusing on a specific subject-matter identified as a key area of work for EASO:

Participants highlighted the importance of focusing both on thematic and cross-cutting issues in the draft **work programme** (such as reception; detention; gender issues). It was also suggested that the outline of the draft work programme is shared with civil society

in due time so that more concrete comments can be made. Furthermore, participants called for a report on how recommendations made by civil society have been taken into account by EASO. There was also a proposal to invite a representative of civil society to the EASO Management Board meetings at least once a year. On the 2012 work programme, participants suggested that EASO should facilitate resettlement activities and help Member States to be more proactive. A link on the EASO website to NGOs, who are present on the spot and ready to help, could also be created. Other suggestions included: to broaden the EAC training groups to judges, lawyers, NGOs and interpreters; to provide information on Dublin, detention and reception and to compile best practices on unaccompanied minors. As the activities in the Work Programme on Unaccompanied Minors were considered to be very ambitious, consultation with other actors was considered as crucial.

There was a general interest in the nature of the Early Warning System referred to in the EASO 2012 Work Programme. EASO's role should be to facilitate the exchange of good practices. EASO could to this end use the common tools developed within the framework of the quality projects on best practices by Member States.

In general, participants emphasised the need for high quality Country of Origin Information reports. The aim is to draft analytical EASO **Country of Origin Information** reports that are an independent source of information. To this end, participants suggested the following methodological criteria: 'up-to-dateness' (periodic review); feasibility; usefulness; added value; impartiality; objectivity; accessibility; and transparency, both with regard to the national expert chosen to write the report as well as the sources and methodological framework. Further suggestions made include: external quality assurance (peer-review by academic and NGO experts), necessity to indicate that the content is not binding on the decision-makers, and a mechanism by which Member States can translate EASO Country of Origin Information reports.

Participants shared the understanding that the **EASO Annual Report (AR)** should be based both on 'the best facts' and evidence. The AR should provide a balanced descriptive assessment of the EU Member States' challenges in the implementation of the CEAS. Ideally, the EASO activity report and the EASO annual report on the situation of asylum in the EU are kept separate. A question was raised as regards 'what is evidence' or 'information'. It was suggested that in order to prevent the AR being potentially considered as judgemental or subjective in nature, civil society organisations, international organisations and independent academics and experts should be given the opportunity to provide input on practical obstacles and dilemmas experienced on the ground.

This should be the case not only as regards the 'legal check' of national transposition of relevant EU asylum law instruments by Member States, but also on their actual practical application at local and regional levels. To that end, it was suggested that EASO could open up a process of consultation for contributions by civil society and international organisations both before and after the publication of the AR and made publicly available. Should an important point be raised or highlighted in the AR, the subsequent issue of the report should also follow up on the evolution and developments regarding that same issue. EASO could allocate specific sections in the AR to a selection of contributions received by civil society and international organisations and acknowledge the actors that contribute to it. Participants postulated that EASO could strategically develop the AR as a tool for improving the quality and implementation of the CEAS.

Participants stressed that there is a strong link between **training and quality**. It was noted that the success of EAC training in national asylum offices depends very much on commitment from the top. Sometimes this commitment is lacking. NGOs consider EAC as a best practice example of cooperation between national administrations and NGOs. Some suggested that training should not only be for administrations but also for lawyers, interpreters and the judiciary. However, there were different views as to whether the same training curriculum should be used for the different audiences. Some participants wondered whether EASO would be in a position to cater for such demand. Access to EAC training for NGOs was also raised. Participants advocated the close involvement of civil society in updating and development of EAC modules, a process that already takes place through the

reference group. Finally there was a call for synergies in training offered by EASO, Frontex and FRA. It was finally noted that the EASO training strategy should go beyond EAC. General suggestions made during the first plenary discussion on the role of the Consultative Forum:

- To involve the judiciary in EASO training activities and development of judicial guidelines stipulating how to assess the quality of Country of Origin Information reports,
- To present a programme of Consultation activities in advance, thus giving interested organisations sufficient time for preparation,
- To encourage wider participation and look into the possibility of reimbursing travel expenses,
- To have more transparent procedures related to the Consultative Forum,
- To conduct regional consultation activities,
- To involve refugee communities in the dialogue between civil society and EASO thus having a more open and transparent exchange of ideas,
- To be more transparent on the work of EASO,
- To be clear about access to EASO documents, the Country of Origin Information Portal and the EASO Country of Origin Information reports, and make these as accessible as possible.

The stage has been set for a continuing process of interaction with civil society, bringing the human dimension to the forefront of EASO in its mission towards a CEAS.

EASO is in the process of drafting an Operational Plan for the Consultative Forum, in line with the EASO regulation. This plan will include rules on the frequency and nature of consultation and other organisational mechanisms for the administration of the Consultative Forum. During 2012, EASO will consult civil society on a variety of topics and will involve organisations in its work.

Appendix

Access to documents

Article 17(1) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May regarding public access to European Parliament, Council and Commission documents foresees that each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents.

According to Article 42 of the EASO regulation, the aforementioned regulation applies to EASO. Furthermore, EASO's Management Board Decision No 6 of 20 September 2011 has laid down practical arrangements on public access to EASO documents, stating that EASO shall annex the report on access to documents to its Annual Report.

During 2011, EASO received one request to access documents held by it. Access was granted by EASO.

Financial report

Financial Resources

Expenditure	2011					
	Commitment appropriations			Payment appropriations		
	Budget	Executed budget 2011	% Execution level	Budget	Executed budget 2011	% Execution level
Title 1 Staff expenditure	3 540 000	1 713 365	48.40 %	3 540 000	952 905	26.92 %
Title 2 Infrastructure and operating expenditure	2 025 000	2 323 934	114.76 %	1 012 500	686 627	67.82 %
Title 3 Operational expenditure	2 435 000	2 010 717	82.58 %	1 217 500	263 699	21.66 %
Total expenditure	8 000 000	6 048 016	75.60 %	5 770 000	1 903 203	33.08 %

At the end of the financial year, the European Commission amended the budget by reducing the payment appropriations by EUR 3 million.

2011	Budgeted	Consumed
Commitment appropriations	8 000 000	6 048 016
Payment appropriations	2 765 000	1 903 230

The year 2011 was the first year of EASO operations. The Executive Director took up duty on 1 February and the agency was inaugurated on 19 June 2011.

The appropriations put under title 1 covered the cost for the staff recruited and in position during 2011. This covered not only salaries but also missions and training for the newly recruited staff. Taking into account that the basic regulation entered into force in mid-2010, EASO was still in its start-up phase during 2011.

Title 2 covered the fixed costs and routine running administrative expenditure such as building rent, information technology equipment and other associated costs for EASO.

Title 3 covered the operational costs of EASO. In 2011, EASO's priorities were still being defined but various high priority activities were undertaken. These include training, the establishment of the Asylum Intervention Pool, support to Greece and practical cooperation measures. Various actions in all the three aspects of the mandate of the EASO — practical cooperation amongst Member States, supporting Member States under particular pressure and contributing to the implementation of the Common European asylum — have been carried out/started in 2011, albeit not exhaustively.

Human Resources

Human Resources	2011	
	Authorised under the EU budget	Actually filled as of 31.12.2011
Establishment posts: AD	25	5
Establishment posts: AST	13	0
Total Establishment Plan posts	38	5
Contract agents	11	2
Seconded national experts	12	9
Total staff	61	16

The total number of authorised staff under the EU budget for 2011 was 61. The staff structure was as follows:

25 administrators: including heads of unit for operational and administrative units, accountant, finance officers, HR manager, auditor, IT/web master and specialist experts in asylum practical cooperation;
 13 administrative assistants;
 12 seconded national experts;
 11 contract agents for operational and administrative tasks in the following categories: three contract agents (IV), five contract agents (III), and three contract agents (I).

All 12 SNE posts were published and nine were filled in 2011. Twenty-seven statutory staff posts were published on 18 April 2011. Around 2 600 applications were received by the deadline — 18 May 2011. Around 200 candidates have been interviewed for the 27 positions during 2011.

However, the recruitment process suffered from delays due to the limited number of EASO staff members who were eligible to sit on selection panels. This meant that staff from the European Commission and other agencies had to sit on selection panels. Furthermore, availability of candidates to attend interviews in Brussels/Malta was not always optimal, long waiting lists for the mandatory medical exam, drop outs after selection and long notice periods led to delays both in the recruitment process and also in the take up of duty after appointment. Out of the 27 posts published in 2011, 21 were completed as of 1 May 2012, one was cancelled, three are still ongoing and for two, no successful candidates had been found and the vacancies were therefore republished.

For 2012, EASO has the same level of authorised staff as in 2011, i.e. 61 posts. Based on analysis of staff needs with the Heads of Centres, a new set of vacancies has been launched and recruitment is progressing at a high speed, meeting the established targets. By 1 May 2012, 40 staff (65.57 %) have been selected and appointed. Fourteen positions (22.95 %) were in the recruitment process and only seven positions (11.48 %) are still to be published.

List of abbreviations and acronyms

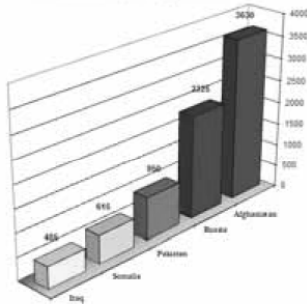
AIP	Asylum Intervention Pool
Amisom	African Union Mission in Somalia
AST	Asylum support team
BAMF	Bundesamt für Migration und Flüchtlinge (Germany)
BVerwG	Bundesverwaltungsgericht (Germany)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
CNDA	Cour Nationale du Droit d'Asile (France)
COI	Country of Origin Information
EAC	European Asylum Curriculum
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRE	European Conference on Refugees and Exiles
ED EASO	Executive Director of EASO
ECS	European COI Sponsorship
EMN	European Migration Network
ERF	European Refugee Fund
EU	European Union
Eurasil	EU Network of Asylum Practitioners
Eurema	Intra-EU Relocation of Refugees from Malta
FDQ	Further Developing Asylum Quality in the EU
FFM	Fact-Finding Mission
FRA	Fundamental Rights Agency
Frontex	EU External Borders Agency
FYROM	Former Yugoslav Republic of Macedonia
GDISC	General Directors of Immigration Services Conference
IARLJ	International Association of Refugee Law Judges
ICMPD	International Centre for Migration Policy Development
IDP	Internally Displaced Person
IFA	Internal Flight Alternative
IGC	Intergovernmental Consultations
IOM	International Organisation of Migrations
JHA	Justice and Home Affairs
NATO	North Atlantic Treaty Organisation
NCP	National Contact Point
NGO	Non-Governmental Organisation
MB	Management Board
MS	Member State
OFPRA	Office Français de Protection des Réfugiés et Apatrides
RABIT	Rapid Border Intervention Teams (Frontex)
TDI	Temporary Desk on Iraq
UKBA	United Kingdom Borders Agency
UMA	Unaccompanied Minor Asylum seeker
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
USA	United States of America
WB	Western Balkans

Annexes

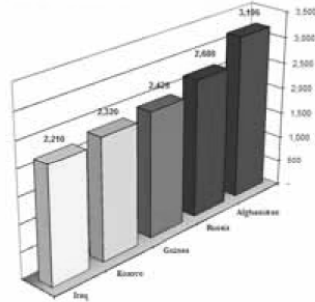
Statistical Tables

Top five nationalities of applicants in the Member States

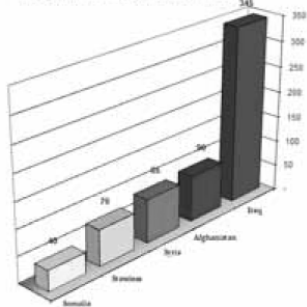
Austria, 2011 - Asylum Applicants



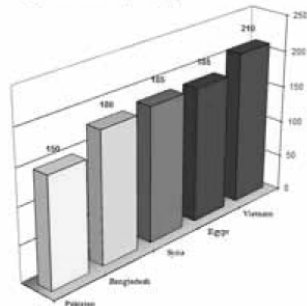
Belgium, 2011 - Asylum Applicants



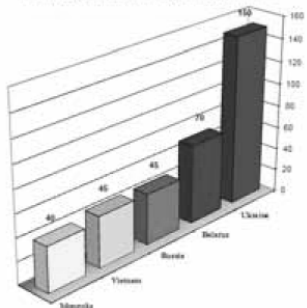
Bulgaria, 2011 - Asylum Applicants



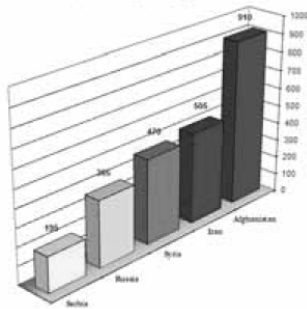
Cyprus, 2011 - Asylum Applicants

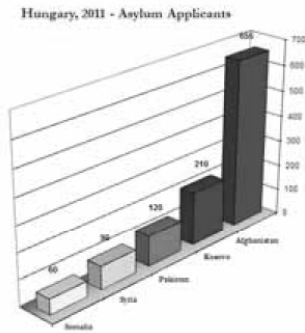
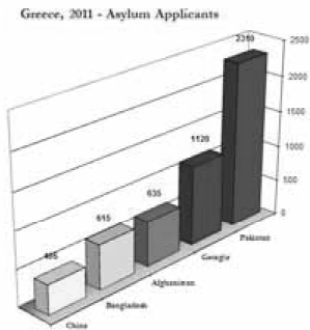
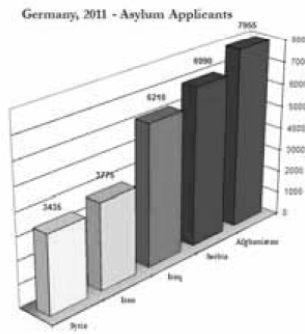
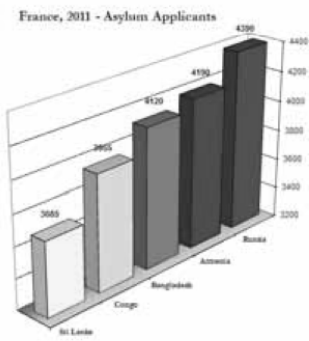
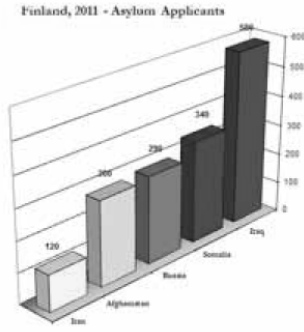
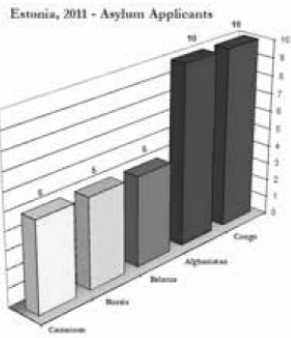


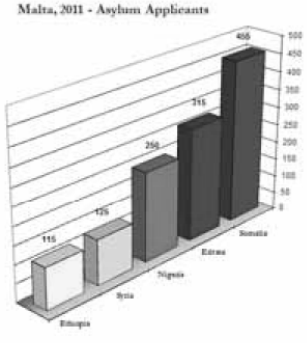
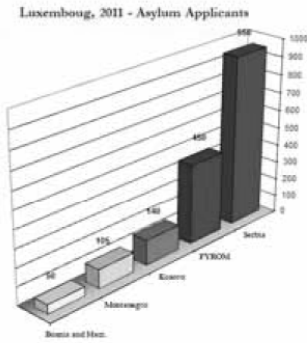
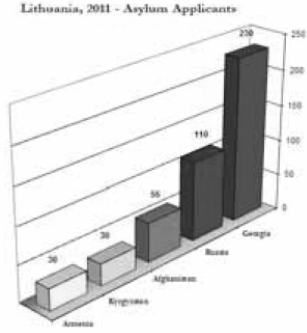
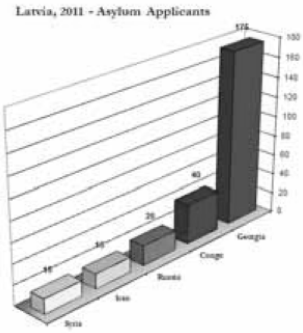
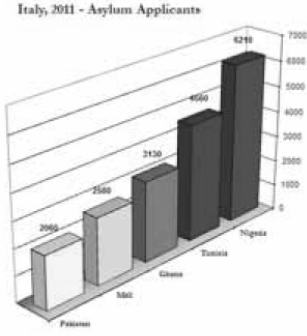
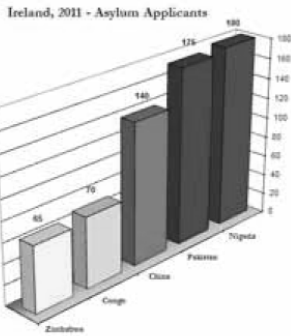
Czech Republic, 2011 - Asylum Applicants



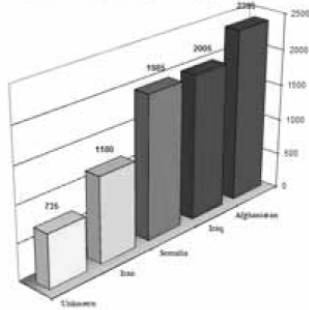
Denmark, 2011 - Asylum Applicants



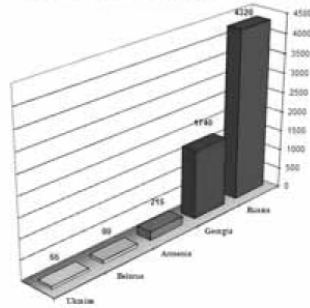




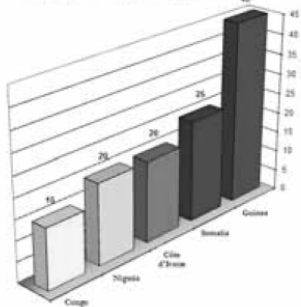
Netherlands, 2011 - Asylum Applicants



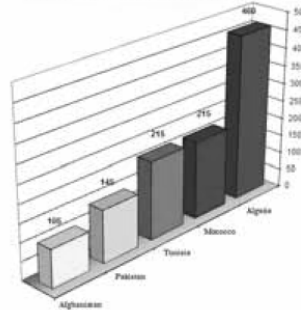
Poland, 2011 - Asylum Applicants



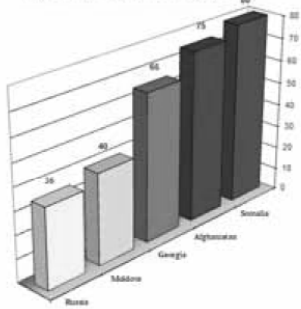
Portugal, 2011 - Asylum Applicants



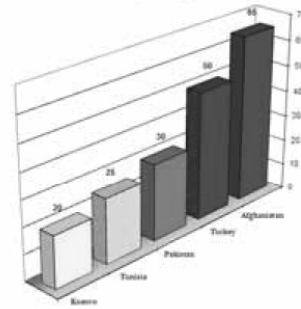
Romania, 2011 - Asylum Applicants



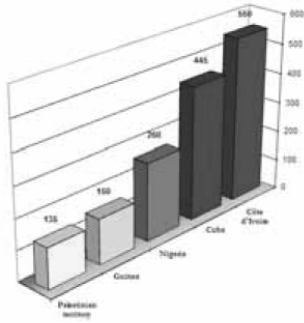
Slovakia, 2011 - Asylum Applicants



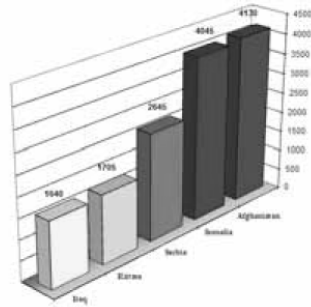
Slovenia, 2011 - Asylum Applicants



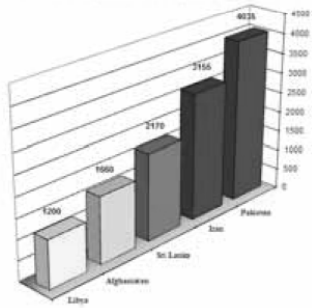
Spain, 2011 - Asylum Applicants



Sweden, 2011 - Asylum Applicants



United Kingdom, 2011 - Asylum Applicants



Endnotes

- (¹) Article 12, Reports and other Support Office documents: '1. The Support Office shall draw up an annual report on the situation of asylum in the Union, taking due account of information already available from other relevant sources. As part of that report, the Support Office shall evaluate the results of activities carried out under this regulation and make a comprehensive comparative analysis of them with the aim of improving the quality, consistency and effectiveness of the CEAS.'
- (²) Source: Eurostat, News release 'Asylum in the EU-27', 23.3.2012.
- (³) Source: UNHCR, 'Asylum levels and trends in industrialised countries', 27.3.2012.
- (⁴) Source: Eurostat, News release 'Asylum in the EU-27', 23.3.2012.
- (⁵) Id.
- (⁶) Frontex, FRAN Quarterly, Issue 2, April–June 2011, September 2011, p. 5.
- (⁷) Frontex, FRAN Quarterly, Issue 3, July–September 2011, January 2012, p. 5.
- (⁸) Source: UNHCR, 'Asylum levels and Trends in Industrialised Countries', March 2012.
- (⁹) Ibid.
- (¹⁰) Standard deviation is a statistical concept that measures divergence in a given sample. The higher the figure, the larger is the divergence.
- (¹¹) Fundamental Rights Agency, 'Coping with a fundamental rights emergency: The situation of persons crossing the Greek land border in an irregular manner', Thematic situation report, March 2011, p. 4. http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011_EN.pdf
- (¹²) Frontex, FRAN Quarterly, op. cit.
- (¹³) Id.
- (¹⁴) UNHCR, November 2007, <http://www.unhcr.org/47302b6c2.html>
 UNHCR, April 2008, <http://www.unhcr.org/refworld/pdfid/4805bde42.pdf>
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 See also op. cit. Fundamental Rights Agency, 'Coping with a fundamental rights emergency: The situation of persons crossing the Greek land border in an irregular manner', Thematic situation report, March 2011.
- (¹⁵) http://ec.europa.eu/home-affairs/news/infringements/infringements_by_policy_asylum_en.htm
- (¹⁶) <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2009-5426&language=EN>
- (¹⁷) Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report — Universal Periodic Review: Greece, p. 2 <http://www.unhcr.org/refworld/pdfid/4cd8f2ec2.pdf>
- (¹⁸) Greek Action Plan on Migration Management, Executive Summary.
- (¹⁹) Communication from the Commission to the European Parliament and the Council: Annual report on immigration and asylum 2010, COM(2011) 291 final, 24.5.2011, p. 6. Cf. http://ec.europa.eu/commission_2010-2014/malmstrom/archive/1_EN_ACT_part1_v8.pdf
- (²⁰) However, due to various difficulties, an extension of the transitional period, i.e. till July 2012, had to be proposed.

- (²¹) The system of the EASO list of interpreters was discussed at the 5th MB meeting on 25 November 2011. The EASO ED presented his proposals for the system of the EASO list of interpreters to be approved by the Management Board in 2012.
- (²²) Ibid.
- (²³) Estimations vary but, according to Frontex, 'are consistently in the millions'. The Border Post, Frontex Monthly Newsletter, October 2011 issue, p. 1.
- (²⁴) Malta played a central role in the context of the evacuation of foreigners from Libya, as well as the provision of humanitarian assistance to the Libyan people. Malta effectively acted as the hub for the provision of support to the Libyan people by the international community.
- (²⁵) IOM, Daily Statistical Report, 27.11.2011, http://www.migration-crisis.com/libya/page_sitreps/extsitreps/111128_hq_mena_data.pdf
- (²⁶) 'Since the National Transitional Council successfully gained control of Libya, this flow stopped abruptly in August. However, in Q3 2011 there were 12 673 detections of illegal border-crossing on this route, where Tunisian and sub-Saharan migrants, particularly Nigerians, are still arriving in significant numbers.' Frontex, FRAN Quarterly, Issue 3, July–September 2011, January 2012, p. 5.
- (²⁷) SE, NL, BE, PT, UK, IR, DK, FI.
- (²⁸) Frontex, FRAN Quarterly, Issue 2, April–June 2011, September 2011, p. 9.
- (²⁹) UNHCR, Lebanon Update, 6.1.2012, <http://www.unhcr.org/4f070b9f9.html>
- (³⁰) For a more detailed overview, the first Chapters of Amnesty International's report 'Year of rebellion' contain an easy-to-read summary of the main events of the Arab Spring. See: Amnesty International, 'Year of rebellion: The state of human rights in the Middle East and North Africa', 9 January 2012. <http://www.amnesty.org/en/library/asset/MDE01/001/2012/en/e2985922-558f-486d-8e68-ef54a7d25222/mde010012012en.pdf>
- (³¹) UNHCR, 'Asylum Levels and Trends in Industrialised Countries', March 2012, p. 20, <http://www.unhcr.org/4e9beaa19.html>
- (³²) Source: UNHCR, 'Asylum levels and trends in industrialised countries', 27.3.2012.
- (³³) Kosovo (UN Resolution S/RES/1244 (1999)) is included in Serbia in UNHCR. Unless indicated otherwise, UNHCR data have been used in the following paragraphs in order to facilitate comparison from year to year. UNHCR data have been preferred to Eurostat data because, by [in most cases] not including repeat applications (applications for a new examination of their case lodged by rejected applicants who have not left the country after the previous negative decision(s)), they tend to provide a more accurate picture of the actual inflow of recently arriving persons who apply for asylum the first time in a given MS.
- (³⁴) Source: UNHCR, 'Asylum Levels and Trends in Industrialised Countries', March 2010.
- (³⁵) Source: UNHCR, 'Asylum Levels and Trends in Industrialised Countries', March 2011.
- (³⁶) Ibid.
- (³⁷) See, for instance: Irish High Court case *D (a minor) v Refugee Appeals Tribunal & Anor*, IEHC 431. 10 November 2011.
- (³⁸) Ref. Art.9.3 EU N 439/2010 — 19 May 2010.
- (³⁹) R.EC n. 862/2007 provision.
- (⁴⁰) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>
- (⁴¹) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:316:0001:0010:EN:PDF>
- (⁴²) Reference for a preliminary ruling from the Administrative Sad Sofia (Bulgaria) lodged on 18 October 2011, Case C-528/11.
- (⁴³) While recognising the good efforts made in many Member States, the UNHCR comments in this Chapter have been selected to highlight the asylum practices that deserve further attention.
- (⁴⁴) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>
- (⁴⁵) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>
- (⁴⁶) C-179/11, Reference for a preliminary ruling from the Conseil d'État (France) lodged on 18 April 2011 — *CIMADE, GISTI v Ministre de l'Intérieur, de l'Outre-Mer, des Collectivités territoriales et de l'Immigration* [OJ C 186/13, 25.6.2011, at: <http://eur-lex.europa.eu/LexUriServ.do?uri=OJ:C:2011:186:0013:0014:EN:PDF> UNHCR submitted a statement to the Court on that case on 1.8.2011
- (⁴⁷) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>
- (⁴⁸) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF>

- (⁴⁹) <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-465/07>
- (⁵⁰) UNHCR Research Project 'Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum seekers Fleeing Indiscriminate Violence'. (Belgium, France, Germany, the Netherlands, Sweden and the UK), July 2011, <http://www.unhcr.org/refworld/docid/4e2ee0022.html> or <http://www.unhcr.org/4e2d7f029.html>
- (⁵¹) For English full text versions of the Court decisions (BVerwG 10 C 3.10, 24.2.2011; BVerwG 10 C 2.10, 31.3.2011; BVerwG 10 C 26.10, 7.7.2011) cf. the website of the Federal Administrative Court (Bundesverwaltungsgericht): <http://www.bverwag.de> and click 'Information and Decisions (EN)'.
- (⁵²) Cf. ECJ, 23.2010, C – 175/08; ECJ, 9.11.2009, C – 57/09 and C – 101/09
- (⁵³) France: CE, 17 January 2011, 316678, M. A., CE, 21 October 2011, 336576, M. S. and CE, 26 January 2011, 312833, M. H. Belgium: one decision of the Aliens' Law Litigation Council mentioned by the Belgian authorities, no reference provided.
- (⁵⁴) CE, 4.5.2011, 320 910, M. H
- (⁵⁵) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>
- (⁵⁶) Summary descriptions of the asylum procedures in the Member States can be found on the website of the Fundamental Rights Agency: http://fra.europa.eu/fraWebsite/research/background_cr/cr_country_factsheets_en.htm
- (⁵⁷) In this respect, UNHCR notes: 'More and more states refer in such situation to the video technique to interview asylum seekers, which creates several concerns, in particular with regard to vulnerable asylum seekers.'
- (⁵⁸) Décret n° 2011-1031 du 29 août 2011 relatif aux conditions d'exercice du droit d'asile, *Journal Officiel de la République Française*, 31.08.2011.
- (⁵⁹) In its contribution to EASO, UNHCR notes with satisfaction that: 'the provision of individual documentation to asylum seekers is well established across EU MSs.'
- (⁶⁰) Ministère de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration, Décision du 18 mars 2011 révisant la liste des pays d'origine sûrs, *Journal Officiel de la République Française*, 26.03.2011.
- (⁶¹) Ministère de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration, Décision du 6 décembre 2011 révisant la liste des pays d'origine sûrs, *Journal Officiel de la République Française*, 09.12.2011.
- (⁶²) Albania, Armenia, Bangladesh, Benin, Bosnia-Herzegovina, Cabo-Verde, Croatia, Ghana, India, Kosovo, Mali (for male applicants only), FYROM, Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia, Tanzania, Ukraine.
- (⁶³) By a ruling of the Conseil d'Etat dated 26.3.2012 Albania and Kosovo were removed from the list of safe countries of origin.
- (⁶⁴) CE, 18 juillet 2011, 343901, F. M.
- (⁶⁵) CJEU. Cases C-43/11 *Samb*, C-50/11 *Emegor*, C-60/11 *Mrad*, C-63/11 *Austine*, C-94/11 *Godwin*, C-113/11 *Cherni*, C-120/11 *Kwadwo*, C-140/11 *Ngagne*, C-156/11 *Music*, C-169/11 *Conteh*, C-187/11 *Vermisheva*.
- (⁶⁶) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:144:0001:0021:EN:PDF>
- (⁶⁷) http://ec.europa.eu/home-affairs/funding/refugee/funding_refugee_en.htm
- (⁶⁸) The Conclusions of the Justice and Home Affairs Council of 11–12 April 2011 state: '3. The Council reaffirms the need for genuine and concrete solidarity towards Member States most directly concerned by migratory movements and calls on the EU and its Member States to continue providing the necessary support as the situation evolves, such as by assisting the local authorities of the most affected Member States in addressing the immediate repercussions of migratory flows on the local economy and infrastructure. The Council welcomes the Commission's intention to extend, with the support of the current and incoming Presidencies of the Council, the existing pilot project, on a voluntary basis, for persons who are beneficiaries of international protection in Malta.'
- (⁶⁹) http://ec.europa.eu/malta/news/over_300_refugees_resettled_en.htm
- (⁷⁰) http://ec.europa.eu/home-affairs/funding/refugee/funding_refugee_en.htm
- (⁷¹) <http://www.dublin-project.eu>
- (⁷²) http://ec.europa.eu/home-affairs/funding/refugee/work_programme_2011_en.pdf
- (⁷³) Indeed, Article 8(2)(c) of the Procedures Directive (Council Directive 2005/85/EC of 1 December 2005) provides that (c) MS shall ensure that: 'the personnel examining

applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.' UNHCR mentioned to EASO: 'UNHCR has concerns with regard to the selection and qualification of first instance asylum decision-makers in some countries, which neither require minimum qualifications nor offer systematic training. With a few exceptions, the selection and qualification of appeals or second instance asylum adjudicators appears stronger. The extent to which status determination decisions are well reasoned with adequate reference to COI, facts of the case and legal analysis appears to be inadequate in several states.'

European Asylum Support Office

Annual Report 2011

Luxembourg: Publications Office of the European Union

2012 — 75 pp. — 21 X 29.7 cm

ISBN 978-92-95079-04-5

doi:10.2847/15683



Publications Office



doi:10.2847/15683