



European Asylum Support Office

# Annual Report on the Situation of Asylum in the European Union 2012

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# Executive Summary

The 2012 Annual Report on the Situation of Asylum in the European Union aims to provide a comprehensive overview of the requests for international protection made in the EU and how Member States dealt with them, important asylum-related developments at EU and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS).

## Applications for International Protection in the EU

There were 335 365 total applicants for international protection in the EU in 2012, an 11 % increase compared to the 303 105 in 2011. Of these, 260 575 were 'new' applicants for international protection (a 1 % increase compared to 256 945 in 2011) <sup>(1)</sup>, which means that a significant proportion of the increase was determined by an increase in subsequent applications (i.e. those made by persons already having made an application for international protection in the EU). While Afghanistan remained the number one country of origin in terms of total applications made, the most significant increase of applicants was from Syria (which was also the top country of origin when taking into account only new applicants). The overall largest number of applicants for international protection in the EU (at over 53 000) was from the six Western Balkan countries when considered together. Other increasingly significant countries of origin of applicants in the EU in 2012 were the Russian Federation, Pakistan, Somalia, Iran and Georgia.

Some 9 % more decisions in first instance were taken than in the previous year (260 425), and the overall protection rate at first instance rose to 28 % (71 700 positive decisions granting international or national protection status). The highest recognition rates were noted for citizens of Syria, Eritrea, Mali and Somalia. Approximately half of the total first instance decisions made were appealed against and, of the appeals, 19 % resulted in the granting of protection status or a review of the first instance decision. Recognition rates at both first and higher instances varied widely among Member States, however, which can be due to different practices when applying the chosen legal regime, but also to the nature of the individual applications made and the country of origin of the applicants. As for the use of different protection regimes, positive decisions made using the Geneva Convention regime rose to 14 % of the total decisions made at first instance while the subsidiary protection rate rose to 11 %; use of national Humanitarian Protection regimes decreased. Standard Deviation between Member States' use of the Subsidiary Protection regime is higher than for the use of the Geneva Convention, which may indicate that there are less divergences in the interpretation of the criteria for refugee status than in the criteria for applying subsidiary protection.

Investigation of the three largest flows of applicants for international protection to the EU show the significant differences that there can be both in the types of applications made and how they are dealt with. Afghanistan has ranked in the top 5 source countries for a number of years and Afghan citizens make applications in a large number of Member States. A specific cause of concern is the high number of unaccompanied minor applicants from Afghanistan. EASO published two COI reports and organised a multi-disciplinary conference on Afghanistan in 2012.

The Syrian caseload increased by 206 % and Syrians were the largest group of applicants applying for international protection for the first time in the EU in 2012. The most important destination countries were Germany and Sweden. Analysis shows how decision practices for Syrian applications generally followed the negatively evolving situation in Syria, with the rates in use of Geneva Convention status and Subsidiary Protection reversing after a 'freeze' period in concert with a significant increase in the acceptance rate. In 2012 and early 2013, EASO held three consecutive practical cooperation workshops on Syria.

The number of applications for international protection from Western Balkan countries significantly increased in 2012 (+50 % in comparison with 2011), reaching particularly high levels in Germany, Sweden and Luxembourg. Applications from nationals of Serbia, FYROM, Albania, Montenegro, Kosovo and Bosnia Herzegovina represented

<sup>(1)</sup> These figures do not include AT, HU, IT and PT. A new applicant is one who has never previously made an application for international protection in the country of destination.

16 % of the total applications for international protection made in the EU. This was despite a rejection rate of approximately 96 %. The vast majority of applications from citizens of these countries are considered manifestly unfounded by Member States and several Member States have included (some of) the visa-free countries of the Western Balkans on their list of safe countries of origin; however numbers continue to increase. The Member States most concerned have taken measures to shorten processing times and decrease pull factors. The issue of migration from the visa-free countries of the Western Balkans has also been addressed at EU level via the Visa Liberalisation Monitoring Mechanism. In early 2013, EASO organised a practical cooperation workshop on the Western Balkans and will author a COI comparative analysis of push and pull factors, and Member States' practices in regard to this flow.

## Major Developments in 2012

Important asylum-related developments at the EU level included legislative changes, new jurisprudence, the further development of EASO, and important projects in the framework of the European Refugee Fund (ERF).

In particular, 2012 was a defining year in the process of adopting the new 'Asylum Package', i.e., the revision of the legal instruments that comprise the EU asylum *acquis*. After the adoption of the revised Qualification Directive in 2011, political agreement was reached in 2012 on the recasts of the Dublin Regulation and the Reception Conditions Directive. Political agreement on the Asylum Procedures Directive and the EURODAC Regulation was reached in March 2013. Significant developments took place in jurisprudence at European level from the Court of Justice of the European Union and the European Court of Human Rights with regard to the interpretation and application of the existing EU asylum *acquis*. European jurisprudence also influenced the drafting of the second generation asylum package.

Practical cooperation in the field of asylum has been significantly enhanced during 2012, in particular due to the increase in operational capacity, activity and influence of EASO. Throughout the year, EASO has also worked closely with the European Commission and JHA Agencies and has continued fostering cooperation and consultation with UNHCR, members of courts and tribunals, and civil society.

In 2012, the ERF continued to be a crucial instrument for Member States to address deficiencies in their asylum systems, carry out pilot projects, share knowledge and best practices and improve the implementation of the EU asylum *acquis* in various areas.

At the national level, several Member States made major changes to their asylum systems in 2012, some of which were the result of pressures such as large numbers of applications, limited capacity to process applications, systemic deficiencies, or a combination of these and other factors. Of those Member States that experienced pressures in 2012, four formally requested EASO support (Greece, Luxembourg, Sweden and Italy), and two already received support in the course of 2012. In Greece, EASO provided support to the establishment of new administrative bodies responsible for registration of applications for international protection, status determination, reception and appeal. Support to Luxembourg consisted in training of first instance decision makers. Some Member States in 2012 supported Malta by relocating beneficiaries of international protection, either in the context of the EU pilot project on intra-EU relocation (EUREMA) or on a bilateral basis. In line with the JHA Council Conclusions of March 2012, EASO conducted a fact-finding exercise on Intra-EU Relocation as input to the evaluation of EUREMA that will be carried out by the European Commission in 2014. The exercise showed that there is room for discussing and developing the instrument of intra-EU relocation in the future.

Other national developments in 2012 included institutional changes and reshuffles in asylum administrations and some major legislative changes. Important national jurisprudence highlighted in the Report relates, *inter alia*, to minorities/particular social groups, the interpretation of Art. 15 of the Qualification Directive, the interpretation of 'family life', as well as procedural issues relating to admissibility and evidence assessment.

Policy changes in Member States were also made relating to integrity, efficiency and quality. Measures taken in 2012 to combat abuses in the asylum field and safeguard the integrity of the international protection system related to the establishment of the identity of applicants for international protection, the management of pull factors, disincentives for (unfounded) subsequent applications and the application of safe country concepts. To increase the efficiency of national asylum systems, several Member States implemented measures (new working



methods, better coordination, and additional staff) to shorten the processing time of applications and thus reduce backlogs. In several Member States the processing of (specific) caseloads was prioritised or accelerated, and some Member States relied on IT solutions to raise efficiency. A large number of Member States engaged in quality-related projects in 2012, often linked to UNHCR quality initiatives. Also EASO started its quality-related activities, with the launch of a Quality Matrix.

Finally, there were important developments relating to Third-Country Support: while traditional resettlement countries maintained their resettlement quota in 2012, several new countries also started resettlement projects or programmes. In 2012, the Joint EU resettlement programme was adopted, establishing resettlement categories and specific Union resettlement priorities. EASO organised a first Seminar on EU Resettlement Policy. A number of capacity-building activities in third countries were carried out by Member States in 2012, either in the context of Regional Protection Programmes or on a bilateral basis.

## The Functioning of the CEAS

In 2012, progress was made in regard to access to asylum procedures and information-provision to applicants, however there were also reports that potential applicants were returned to the third country they came from without *non-refoulement* guarantees, or faced challenges in having their application registered, *inter alia*, because of detention policies.

Different approaches continue to exist across the EU with regard to access to legal representation, linked to the stage of the asylum procedure, the type of procedure, or the vulnerability of the applicant. While several projects were implemented in 2012 to provide and raise the quality of legal support, the provision of free legal aid suffers from a lack of funding in several Member States. Some concerns have also been noted regarding the availability of qualified interpretation in some Member States.

In 2012, several Member States increased the use of the Dublin system, by focusing on better information-exchange. Dublin transfers to Greece continued to be suspended as a result of ECtHR and CJEU rulings, but the sovereignty clause<sup>(2)</sup> was also used in some cases for the transfer of vulnerable persons to other Member States. In 2012, issues were raised with regard to the lack of access to interim legal remedies against Dublin transfers in some Member States.

In order to shorten processing times, Member States process certain cases (mostly found to be manifestly unfounded) through accelerated procedures. An ECtHR ruling however noted that essential safeguards still need to be implemented, especially when the applicant is in detention.

In 2012, while several Member States undertook measures to increase their reception capacity and the quality of reception, problems with overcrowded and/or poor-quality reception centres, and excessive periods spent in reception centres occasionally persisted. Member States continue to have different policies when it comes to allowing applicants to access the labour market. Reception benefits in some Member States have been curtailed or changed, e.g., from cash to in-kind. A number of positive initiatives in several Member States to better accommodate the special needs of vulnerable groups deserve to be highlighted. Some Member States undertook steps to review their detention system and/or to limit the use of detention of applicants for international protection. Still, the frequent use of detention in some Member States remains a concern. Agreeing that detention of children should be considered a last resort option, some Member States abolished or plan to abolish the detention of (families with) children, or at least limit the impact of detention on children.

As for first instance decision-making, there is a clear trend to focus on shorter processing times. With regard to the personal interview, credibility assessment and decision-drafting positive new projects have been implemented and guidance has been developed. 2012 saw a boost in training programmes for asylum caseworkers, not in the least due to EASO's training-related activities. In 2012, EASO presented its Training Strategy and further

<sup>(2)</sup> According to article 3.2 of the Dublin II regulation – the so called sovereignty clause – ‘each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this 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, (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>), accessed 27 May 2013.

developed EASO Training Curriculum modules. Also at second instance measures were taken in some Member States to increase processing times and reduce backlogs. In 2012, EASO started to engage in a process of consultation with members of courts and tribunals across the EU to initiate a reflection on how EASO could support judicial and quasi-judicial decision-making bodies and their role in the implementation of the CEAS, e.g., by facilitating professional development.

In 2012, several Member States reinforced their capacity to conduct COI research or – if research experience was lacking – started to develop capacity. COI units improved their customer focus and engaged in cooperation activities. COI on medical issues has gained importance. In 2012, with the active support of Member States, EASO started to engage in EU-level COI activities, including the development of the COI portal, the publication of a methodology and COI reports, the organisation of practical cooperation workshops, and the development of a EU-level COI network approach.

The identification of vulnerability of applicants for international protection has been the focus of several projects and measures in Member States' asylum administrations. With regard to unaccompanied minor applicants, specific quality measures were taken. In 2012, EASO organised consultations on unaccompanied minors and a range of expert meetings, *inter alia*, on age assessment and family tracing. Member States also implemented a number of projects to increase awareness of gender-related issues, including training and guidelines. Despite positive evolutions, concerns remain with regard to the identification and assessment of gender-specific, gender identity and sexual orientation cases. As a result of civil society activities, several studies have been published in 2012 on this topic.

Finally, as regards return, a clear tendency can be noted towards promoting the option of voluntary return already during the asylum procedure and to focus on an integrated approach.

With the imminent promulgation of the new 'asylum package', the EU will take the next significant step towards the effective and coherent implementation of the CEAS. However, while the new legislation will address many of the uncertainties and difficulties of interpretation faced by states, it is clear that the practical implementation of the new *acquis* will be challenging and would benefit from EASO's coordination at the practical and operational level to ensure as far as possible uniformity of interpretation and harmonisation of practical implementation.

Thus EASO will continue its work in training, quality, COI and Early warning and Preparedness as well as technical and operational support in order to support as much as possible the raising and harmonising of standards in the CEAS. It is clear that practical, operational support and the continuous building up of the system from the bottom up is the only way to ensure that harmonised high-quality practices are actually implemented across the EU.

# 1. Introduction

After consultation of Member States, the Commission, UNHCR and civil society on the first Annual Report on the Situation of Asylum in the EU, EASO developed a new methodology for drafting the Annual Report, clearly separating it from the EASO Annual Activity Report, which covers the activities of the Agency. This methodology, together with a provisional table of contents, was reviewed and accepted by the EASO Management Board in February 2013.

As from 2012, the EASO annual report aims to provide a comprehensive overview of the situation of asylum in the EU, looking at flows of applicants for international protection to the EU, major changes in EU/national policy and jurisprudence (the *acquis* and their interpretation) and the practical functioning of the CEAS. The report aims to provide independent sources of information and help identify the areas where improvement is most needed (and thus where EASO and other key stakeholders should focus their efforts), in line with its declared purpose of improving the quality, consistency and effectiveness of the CEAS. The report makes no claim to be exhaustive. State-specific examples of good practices or concerns mentioned in the report only serve as illustrations of relevant aspects of the CEAS.

The Report takes due account of information already available from a wide range of sources. For the purpose of this report, EASO received information from Member States, EU institutions, civil society, international organisations and academic research. 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 (further referred to as 'UNHCR Input').

To avoid duplication with the Annual Report on Immigration and Asylum, the European Commission was regularly consulted during the drafting process of the Annual Report on the Situation of Asylum in the European Union and actively contributed to the sections that relate to its mandate. Information was also received via questionnaire responses made as part of the drafting of the European Migration Network's Annual Report (further referred to as 'EMN Questionnaire'). To complement the information obtained this way, EASO requested additional information from Member States through an Annual Report Matrix. Where needed, clarifications were sought bilaterally <sup>(3)</sup>.

Finally, civil society input received during the November 2012 Consultative Forum was used in changing the drafting methodology of the Annual Report. In February 2013, civil society organisations (CSOs), via the Consultative Forum, were also asked by EASO to provide information on any work carried out by civil society in 2012 that was of importance to the CEAS. The relevant contributions have also been incorporated in the present Report.

The EASO Annual Report covers the period from 1st January – 31st December inclusive, but also refers to major relevant developments in the year of writing.

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<sup>(3)</sup> The final version of this report has been adopted by the EASO Management Board. Information on state practices in footnotes that does not refer to a specific source (e.g., Annual Report Matrix or EMN Questionnaire) originates from internal work documents and has been cleared subsequently by the relevant Member State.



## 2. Applicants for International Protection in the EU

A large proportion of applications for international protection made in the EU in 2012 were, as in the previous year, linked to security situations in sometimes far away regions of the world. While the civil war in Syria attracted most public attention, new and on-going conflicts, from civil wars to terrorist campaigns, as well as the persecution of minorities by repressive regimes, caused a large number of people to leave their country and some of them to look for refuge in the EU. In addition, many applicants from non-conflict regions continued to arrive in the EU.

There were 335 365 total applicants for international protection in the EU in 2012, an 11 % increase compared to the 303 105 in 2011. Of these, 260 575 were 'new' applicants for international protection (compared to 256 945 in 2011 – a 1 % increase) <sup>(4)</sup>, which means that a significant proportion of the increase was determined by an increase in subsequent applications (i.e. those made by persons already having made an application for international protection in the EU). <sup>(5)</sup> Large numbers of applications were made in Germany (77 660, +46 %), France <sup>(6)</sup> (61 455, +7 %), Sweden (43 945, +48 %), Belgium (28 285, -12 %) and the United Kingdom (28 260, +7 %). Poland (10 753, +56 %) registered its highest number of applicants since EUROSTAT records began. Numbers of applications made in other States such as Malta (2 080), Luxembourg (2 055), and Cyprus (1 635) were also significant compared to their populations.

While *Afghanistan* remained the first country of origin in terms of total applicants, the significant increase of applicants from citizens of *Syria* led this country to become the largest single source of new applicants in 2012. Largely unfounded applications for international protection from citizens of several *Western Balkans* countries were however, when considered together, the largest component of the overall number of asylum requests made in the EU.

### 2.1. Overview of important countries of origin and transit

#### Afghanistan

*Afghanistan* remained the main country of origin in terms of total applicants for international protection in the EU, with 28 005 persons making or repeating an application in 2012 (almost the same as in 2011, when Afghan applicants were 28 015). The ongoing security situation there continued to affect much of the population – with regional variations – and the prospect of the forced return of Afghan refugees living in Iran and Pakistan added to pressures, constituting a push factor for some citizens of this country <sup>(7)</sup>. Nevertheless, while more than 400 000 Afghans are displaced in their own country (Internally Displaced Persons - IDP) <sup>(8)</sup>, the situation improved sufficiently in a number of areas so that UNHCR was able to assist more than 60 000 Afghan refugees to repatriate voluntarily from Pakistan <sup>(9)</sup>. The government of Pakistan extended the legal residence of registered Afghan refugees by six months expiring end of June 2013 <sup>(10)</sup>.

<sup>(4)</sup> These figures do not include AT, HU, IT and PT. A new applicant is one who has never previously made an application for international protection in the country of destination.

<sup>(5)</sup> Unless otherwise specified, statistical data are taken from Eurostat. Eurostat data are based on numbers of 'applicants'. One applicant may produce several applications however, if, for example, circumstances in their country of origin change the basis for their application. The 37 540 subsequent applications' constitute the 13 % difference between the 'total' and 'new' applicant figures (excluding Austria, Portugal and Italy that did not provide subsequent applicant data to Eurostat). The total figures give an estimation of the workload for national asylum systems, the new applicant numbers show how many persons applied for international protection in the EU.

<sup>(6)</sup> A divergence should be noted between the Eurostat data used in this report and the figures provided in the Annual Report 2012 of the French OFPRA, which registered 61 468 applications in 2012, a 7,2 % increase compared to 2011. See OFPRA, *Rapport d'Activité 2012*, April 2013, ([http://www.ofpra.gouv.fr/?dtd\\_id=10&xmld\\_id=2679](http://www.ofpra.gouv.fr/?dtd_id=10&xmld_id=2679)), accessed 27 May 2013.

<sup>(7)</sup> Frontex, *FRAN Quarterly*, Issue 2, April-June 2012., (FRAN\_Q2), ([http://www.frontex.europa.eu/assets/Publications/Risk\\_Analysis/FRAN\\_Q2\\_2012\\_.pdf](http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q2_2012_.pdf)), accessed 27 May 2013.

<sup>(8)</sup> UNHCR, *2013 country operations profile – Afghanistan*, (<http://www.unhcr.org/pages/49e486eb6.html>), accessed 25 February 2013.

<sup>(9)</sup> As of October 2012. See: UNHCR, *2013 country operations profile – Pakistan*, (<http://www.unhcr.org/pages/49e487016.html>), accessed 25 February 2013.

<sup>(10)</sup> Government of Pakistan, Press Information Department, 'Prime Minister Extends Tripartite Agreement on Repatriation of Afghan-Refugees by Six Months', Press Release Nr. 125, 12 December 2012, (<http://www.pid.gov.pk/press12-12-2012.htm>), accessed 27 March 2013.

## Syria

The civil war in *Syria* was the most important cause of forced displacement in 2012. According to UNHCR as of 15 January 2013, there were 638 286 Syrian refugees registered or awaiting registration in Lebanon, Jordan, Turkey and North Africa, a near tenfold increase compared to May 2012. However, already by May 2013, this number rocketed, with humanitarian agencies estimating that these countries were hosting over 1,5 million Syrian refugees<sup>(11)</sup>. In 2012, Syrian applicants in the EU (24 110) were a small fraction of these critical numbers, though this represented a 206 % increase in comparison to 2011 (when the total was 7 885). The applications made by Syrian nationals increased very rapidly from summer 2012 to November, when they dropped off considerably to levels seen in mid-July (approximately 2 750 per month). This was mostly due to the fact that a significant proportion of applications were from Syrians already in the EU who decided to make *sur place* applications as the situation worsened in their country and precluded their return. As this stock of persons finished making their applications for protection, the numbers of applications dropped as only Syrians who were actually travelling to the EU directly from Syria or a transit country and crossing the EU external border were left to make applications. Their numbers were diminished by the closure of embassies in Syria and much reduced opportunities. Those fleeing thus had to obtain legitimate documentation for travel to the EU<sup>(12)</sup>.

## Western Balkans

Although individually not all ranking in the Top 5 countries of origin in the EU, *Albania* and States resulting from the dissolution of the former Yugoslavia (*Bosnia Herzegovina, FYROM, Kosovo, Montenegro, Serbia*) taken together under the denomination *Western Balkans*, represent the most numerous flow of applicants for international protection in the EU, totalling more than 53 000 applicants - an increase of 50 % over 2011. The influx of applicants from the Western Balkans countries has continued to increase steadily since EUROSTAT data collection began – predating the removal of the visa obligation for the citizens of the said countries and despite a rejection rate for applications of over 95 %. The proportion of the overall total applications represented by Western Balkans citizens has represented between 10 and 20 % of the asylum workload of the European Member States in each of the past 5 years.

## Russian Federation

The *Russian Federation* remained one of the most significant sources of applicants for international protection in the EU with 24 280 applicants in 2012 but saw a 32 % increase compared to the previous year (18 330 in 2011). The situation in Chechnya and in other Republics in the Caucasus region appears to be an important cause of this influx, but this remains to be investigated fully at European level.

## Pakistan

Citizens of *Pakistan* increasingly applied for international protection in the EU in 2012 (19 695, in 2011 15 700, +25 %), which makes them the 4<sup>th</sup> most significant inflow to the EU. Political and religious disturbances, terrorist attacks and State operations to restore law and order in certain areas have created a fragile security situation, which appears to be one of the principal reasons for applications for international protection. As of October 2012 there were more than 750 000 IDPs in Pakistan<sup>(13)</sup>.

<sup>(11)</sup> On 22 May 2013, according to the UN inter-agency information sharing portal 'Syria Regional Refugee Response', there were 1 329 357 registered Syrian refugees in the region, and another 227 777 persons awaiting registration. Cf. <http://data.unhcr.org/syrianrefugees/regional.php> [accessed 2013-05-23].

<sup>(12)</sup> Based on evidence provided by Member States at the EASO Practical Cooperation meeting on Syria of March 2013.

<sup>(13)</sup> UNHCR, 2013 country operations profile – Pakistan, (<http://www.unhcr.org/pages/49e487016.html>), accessed 25 February 2013.

## Iran

The Iranian citizens who applied for international protection in the EU Member States in 2012 increased in 2012 (13 585; in 2011, 11 865, 14 % increase). An important number of applications are based on political persecution (restrictions of freedom of opinion, faith, speech and demonstration) or the situation of religious and gender minorities. Iranian applicants have been concentrated for several years in a relatively small number of Member States, most of which have significant diaspora populations.

## Iraq

While the overall security in *Iraq* improved slightly – which may account for a decrease in the number of applications from 15 170 in 2011 to 13 175 in 2012 (-13 %), there were several waves of terrorist attacks and bombings, mainly targeted at the Shi'ite community, taking place in a context of daily violence and human rights' violations. The level of violence <sup>(14)</sup> remained such in several regions that many Member States, albeit in different proportions (see 2.3), granted international protection to Iraqi citizens.

## Mali

The conquest of Northern *Mali*, from the borders of *Algeria* and *Libya* down to the Niger River in the spring of 2012 by Tuareg rebels and jihadist movements, created thousands of IDPs or refugees. As of 01 November 2012, UNHCR counted 203 843 IDPs and 208 306 refugees in neighbouring countries (*Algeria, Burkina-Faso, Mauritania, Niger*) <sup>(15)</sup>. A small proportion of this flow arrived to apply for international protection in the EU – many by crossing the Mediterranean in very unsafe conditions <sup>(16)</sup>.

## Transit

*Turkey* was one of the most important transit countries for third-country nationals seeking to enter the EU as evidenced by the high number of irregular border crossings at the Greek-Turkish border <sup>(17)</sup> and later via the Eastern Mediterranean sea route and the Western Balkans. They originate from the Middle East (*Iraq, Iran*) and from countries further afar in Asia (*Afghanistan, Pakistan, Bangladesh*) and, to a lesser extent, from North Africa (*Algeria*) and Sub-Saharan Africa (Horn of Africa, West Africa). Other countries through which significant mixed flows of third country nationals transit on their way to the EU are *Libya, Morocco* and *Tunisia* to the South and *Russia* to the East.

<sup>(14)</sup> See, for instance, Iraqi Body Count, 'Iraqi deaths from violence in 2012', First published 1 January 2013, (<http://www.iraqbodycount.org/analysis/numbers/2012/>), accessed 5 March 2013 while it read 'This page was last updated on 4 March 2013 and includes data to 30 December 2012'.

<sup>(15)</sup> UNHCR, *Mali Situation Update*, No 12, 1 November 2012, (<http://www.unhcr.org/50a35d509.html>), accessed 25 February 2013.

<sup>(16)</sup> See Frontex, *Annual Risk Analysis 2012*, ([http://frontex.europa.eu/assets/Attachment\\_Featured/Annual\\_Risk\\_Analysis\\_2012.pdf](http://frontex.europa.eu/assets/Attachment_Featured/Annual_Risk_Analysis_2012.pdf)), accessed 27 May 2013.

<sup>(17)</sup> See Frontex, *FRAN Quarterly*, Issue No 1, January-March 2012 and *FRAN Quarterly*, Issue No 2, April-June 2012, ([http://www.frontex.europa.eu/assets/Publications/Risk\\_Analysis/FRAN\\_Q1\\_2012.pdf](http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q1_2012.pdf) and [http://www.frontex.europa.eu/assets/Publications/Risk\\_Analysis/FRAN\\_Q2\\_2012\\_.pdf](http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q2_2012_.pdf)), accessed 27 May 2013.

## 2.2. Applications for international protection in the EU <sup>(18)</sup>

Total and new applicants in EU - Monthly trend, 2012

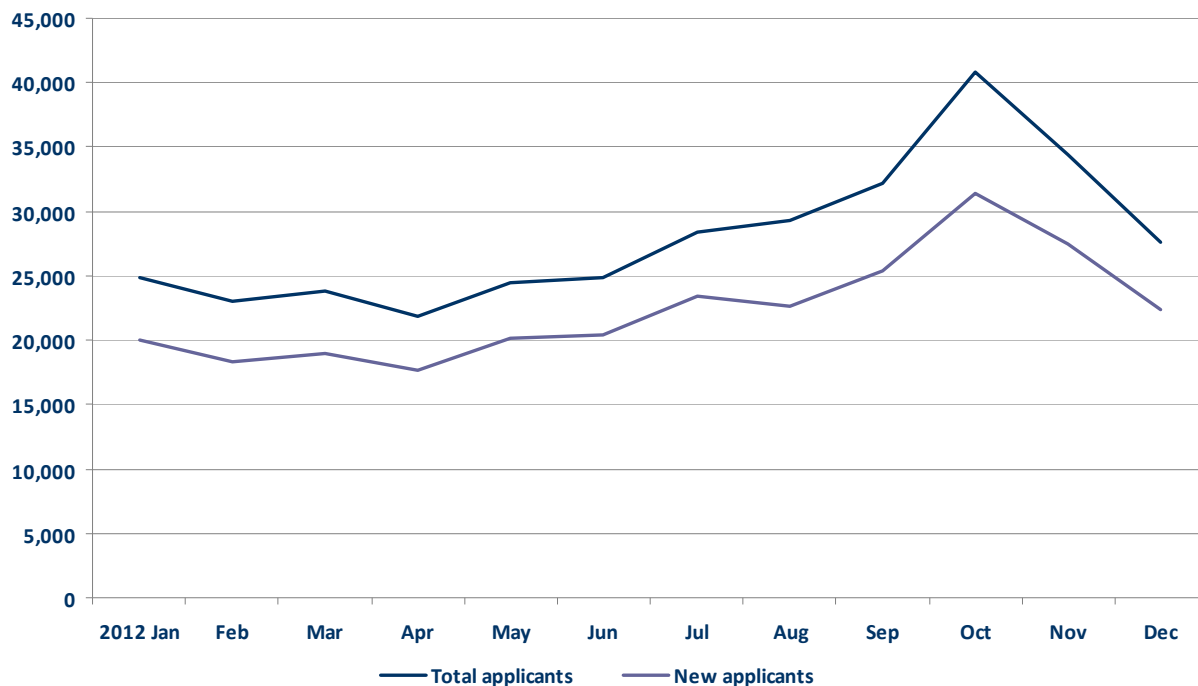


Figure 1: Monthly trend of total and new applicants for 2012; Source: Eurostat login: 13.05.2013 New applicants: no data from AT, HU; from IT from Aug; from PT from Jul <sup>(19)</sup>

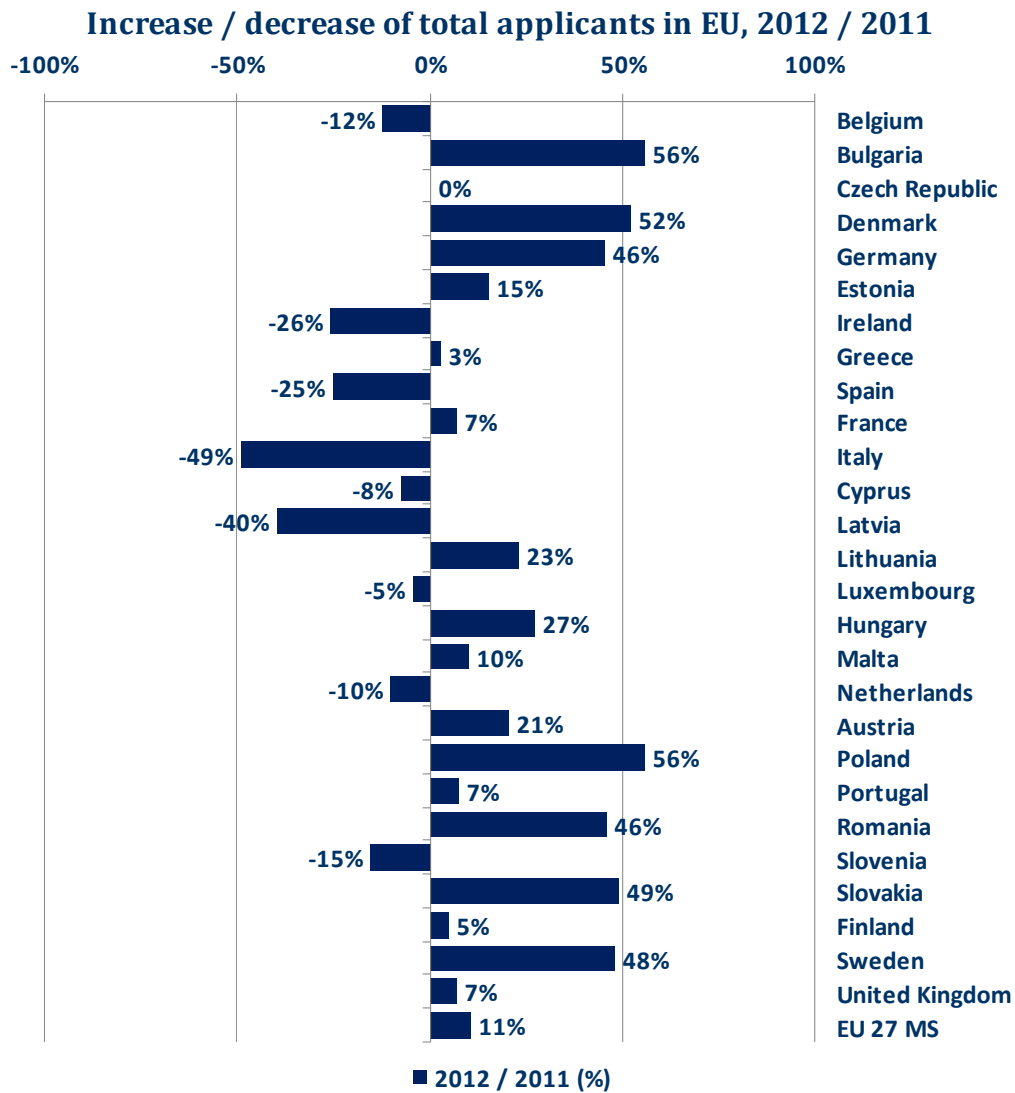
As the table above shows, the number of applications for international protection in the EU 27 Member States started ascending in April and reached a peak in October 2012, with most applications being registered in the months of September, October and November before dropping off rapidly to lower levels. The main reason for the significant rise and then drop around October was first the confluence of very large rises in applications from Syrian and Western Balkans citizens which then dropped as *sur place* applications were completed in by Syrians already in the EU and second special measures to speed application processing for Western Balkans citizens were put in place by Member States.

The overall trend seen at EU level, however, was not uniformly felt across all Member States but was the result of contrasting movements in which the numbers rose in some Member States while decreasing in others.

<sup>(18)</sup> Graphs in blue deal with **applications for international protection**. Graphs in red refer to **decisions**.

<sup>(19)</sup> Cf. Annex C1 for more details.

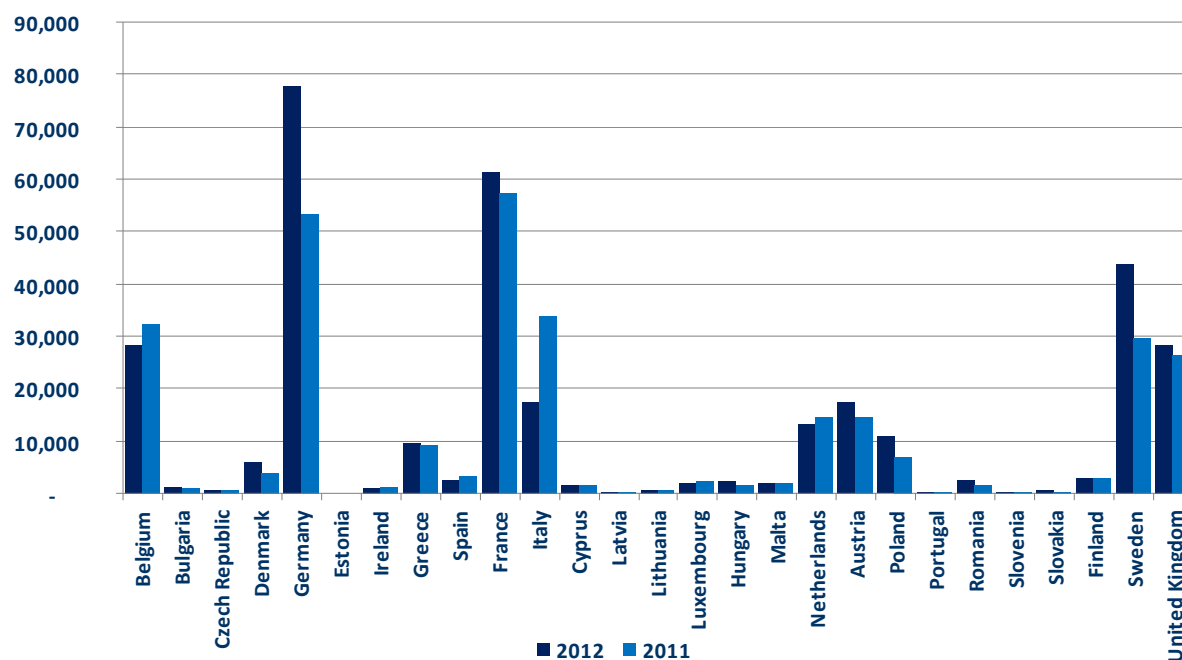




**Figure 2: Total applicants 2012/increase/decrease for each Member State; Source: Eurostat login: 21.05.2013**

In comparison with 2011, the total of applicants for international protection increased in: PL 56 %, BG 56 %, DK 52 %, SK 49 %, SE 48 %, DE 46 %, RO 46 %, HU 27 %, LT 23 %, AT 21 %, EE 15 %, MT 10 %, PT 7 %, UK 7 %, FR 7 %, FI 5 %, EL 3 %, and it dropped in: IT -49 %, LV -40 %, IE -26 %, ES -25 %, SI -15 %, BE -12 %, NL -10 %, CY -8 %, LU -5 %.

### Total applicants in EU - 2012 and 2011



**Figure 3: Comparison 2011/2012 - Total applicants for each Member State; Source: Eurostat login: 8.05.2013**

*Subsequent applications* (also ‘repeat’ or ‘follow-up applications’) lodged by a person who had already made an application(s) (represented by the difference between the dark blue and clear blue lines in Figure 1) increased by approximately 39 %, in 2012 (from 27 025 in 2011 to 37 540), growing from 9 % of the total in 2011 to 13 % in 2012 <sup>(20)</sup>. Subsequent applications are generally made by Third Country Nationals (TCN) already on the territory of the Member States for some time, while new applicants are a better (but not perfect) indicator of the extent of applications from newly arrived applicants <sup>(21)</sup>.

Out of the 77 660 applicants in Germany, 13 130, i.e. 20 %, were making a subsequent application, a 73 % increase when compared to 2011 (7 605).

Subsequent applications were also a significant phenomenon in:

- Belgium: 9 830 applicants out of 28 285 (nearly 35 % of the total, a 47 % increase over 2011 (6 690, nearly 21 %) while new applicants decreased by 28 % to 18 445 from 25 580 in 2011);
- France: 7 175, 12 % share of total (61 455); in 2011, 5 195, 9 % share of total (57 335); increase of subsequent applicants 38 %; while new applicants increased by 4 %;
- The Netherlands: 3 435 out of 13 100 (26 % of the total, a 13 % increase compared to 2011 (3 035, 21 % of the total) while new applicants decreased by 16 % to 9 665 compared to 11 565 in 2011).

A reverse trend was however clear in other Member States:

- Poland: 1 770 out of 10 755 applicants made subsequent applications which is less than in 2011 (1 920 out of 6 905) while new applicants rose by 56 % (8 985 in 2012 from 4 985 in 2011) <sup>(22)</sup>;
- United Kingdom: 850 out of 28 260, a decrease compared to 2011 (995 out of 26 450)
- Luxembourg: 55 out of 2 055, less than the previous year (235 out of 2 155)

<sup>(20)</sup> This calculation can only be an estimate given that Austria, Hungary, Portugal and Italy did not provide ‘new’ applicant data to EUROSTAT in 2012. For the purposes of the estimate, their ‘total applicant’ figures have been assumed equal to new applicant numbers in order to roughly estimate the proportion of applications which are subsequent, i.e. repeated applicants.

<sup>(21)</sup> It should be noted that the number of ‘new’ applicants is not necessarily directly proportional to numbers of persons crossing into the EU for the first time. The example of Syria shows that many applications for international protection can be ‘sur place’ – i.e. made by persons already living, visiting or studying in the EU who are prevented from returning to their country by fear of persecution. Subsequent applicants are also not necessarily all persons already in the EU. Subsequent applications may also be made by persons who have been refused international protection in previous years, but who have since returned to their country of origin (or elsewhere outside the EU) and then have returned to the EU to make another application, for example, when the situation in their country of origin has changed in the interim.

<sup>(22)</sup> According to national statistics, figures are as follows: 1 576 out of 10 753 applicants, which is less than in 2011 (1 930 out of 6 915) while new applicants rose by 56 %: 9 177 in 2012 compared to 4 985 in 2011).

In comparison with 2011, the number of subsequent applicants for international protection increased in: RO (260 %), LV (200 %), CY (80 %), DE (72 %), IE (50 %), BE (47 %), FR (+38 %), NL (+13 %); and decreased in LU (-77 %), ES (-53 %), BG (-16 %), SI (-18 %), UK(-15 %), CZ (-11 %), PL (-8 %). DE (35 %) and FR (19 %) accounted more than 54 % of subsequent applicants in EU-27. The highest number of subsequent applicants came from Western Balkans.

Considering *Total applicants* <sup>(23)</sup>, *Afghanistan* (28 005) ranks as first source country, followed by *Russia* (24 280) and *Syria* (24 110). However, as regards *New applicants* only, *Syria* was the principal country of origin (20 430), above *Afghanistan* (19 600) and *Russia* (17 405) <sup>(24)</sup>; only the addition of the 5 *Western Balkans* countries accounts for a larger influx of third-country nationals applying for international protection.

### Total Applicants in EU - Trend changes 2012/2011

2012 Total Applicants 335,365

2011 Total Applicants 303,105

Change 2012/ 2011: +11%

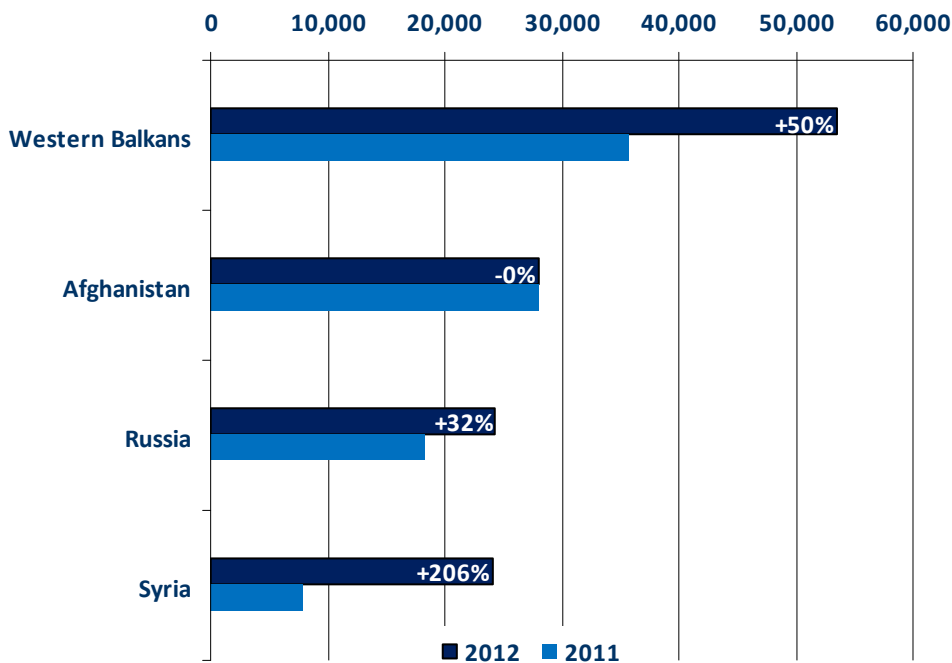


Figure 4: Comparison 2011/2012 – Nationalities/Countries of the applicants;  
Source: Eurostat Eurostat login: 8.05.2013

The table above shows the evolution of the 4 main groups of applicants for international protection at EU level from 2011 to 2012. One should also consider that *Serbia*, taken alone, ranks 5<sup>th</sup> as regards Total Applicants (19 060, +36 %) and 5<sup>th</sup> for New Applicants (16 540, +29 %).

The number of applications for international protection from source countries can be very unevenly distributed across the EU. Some flows are concentrated in very few Member States, while others can be found at lower levels in many Member States. For example, the applicants from the *Western Balkans* countries in general, and from *Serbia* in particular, tends to concentrate in a small number of Member States - Germany, Sweden and France. In Germany and France, the number of applicants from the Western Balkans increased sharply in 2012. Sweden had a +20 % increase. In Belgium it decreased in comparison to the very high levels of 2011. In Luxembourg, in comparison to 2011 only a slight decrease was noted as the number of applicants from the Western Balkan countries was still very high.

<sup>(23)</sup> For complete data, see Annexes C3 and C4.

<sup>(24)</sup> Recall that 'new' applicant data does not include that from AT, HU, PT, IT.

In contrast, *Afghanistan* was in the Top 5 of 14 Member States in 2012 and *Syria* appeared in the Top 5 in 17 Member States. While the majority of Syrian applications for international protection were lodged in Sweden and Germany, Member States situated along the migration route at the South-Eastern border also recorded significant (in national terms) inflows of Syrians (Bulgaria, 436; Greece, 275; Romania, 256). Malta embodied the central Mediterranean route with 147 applications (No. 3). *Syria* also became No. 1 in Spain (255).

The presence of a diaspora in a Member State can also influence the choice of Member States in which to lodge an application. For example, for countries situated in the *Horn of Africa*, especially *Somalia*, the applications for international protection are concentrated in a limited number of Member States, in the North of Europe (Sweden, Denmark, Finland and the Netherlands), in Central Europe (Slovakia, Hungary), and in the Mediterranean (Malta, Italy).

It should be recalled that influxes which are smaller in overall, EU-level terms (i.e. lying outside the EU Top 5) can also be significant for a number of Member States:

## Georgia

With 10 850 of total applicants (+53 %) out of which 9 715 new applicants (+61 %), *Georgia* rose from the 13<sup>th</sup> to the 9<sup>th</sup> place at EU level. Georgian applicants are spread over a large number of Member States. They rank in the Top 5 of Member States at the Eastern border of the EU (1<sup>st</sup> in Estonia, Latvia, Lithuania, 2<sup>nd</sup> in Poland, (3 235), 3<sup>rd</sup> in Slovakia (55) and Greece (895), 8<sup>th</sup> in France (2 680), 12<sup>th</sup> in Germany (1 430), 13<sup>th</sup> in Sweden (750) and are present in several other Member States.

## DR Congo

Rising to 8 285 in 2012 (+32 % from 2011), out of which 7 380 new applicants, *DR Congo* took the 1st place in France (5 645); other Member States of destination are Belgium (1 590), Germany (270) and the United Kingdom (245).

## Nigeria

In 2012 *Nigeria* dropped from the 8<sup>th</sup> to the 14<sup>th</sup> place at EU level with a total of 7 450 applicants, a 35 % decrease from 2011 (11 470). It should be noted that while the number of new applicants was nearly halved (5005 against 10 630 in 2011), subsequent applications increased by 17 % from 320 to 375. *Nigeria* is the top country of origin in Ireland (162), it was the 4th in the United Kingdom (1 455), 2nd in Italy (1 615) behind Pakistan, 2<sup>nd</sup> in Spain (205) behind Syria, and 17th in France (1 070). Nigerians also applied in Germany (965), Sweden (505), Austria (400), Greece (265), Belgium (215), the Netherlands (145), Denmark (110), Finland (100), Malta (70), Romania (35) and Portugal (30). A notable feature of the Nigerian inflow is the large proportion of female applicants, which may be related to Nigeria's position as a major country of origin for human trafficking.

## Sri Lanka

During the long armed conflict that happened there in past years, *Sri Lanka* was the source country of a significant inflow of applicants that affected a large number of Member States. It fell from the 12<sup>th</sup> to the 15<sup>th</sup> position in 2012 with 7 330 applicants (-1 %). However, it still ranks 3<sup>rd</sup> in France (3 985) and the United Kingdom (2 160).

## Bangladesh

The total number of applicants from *Bangladesh* dropped by nearly 1/3 from 8 290 in 2011 to 6 290 in 2012. While new applicants declined by 41 %, subsequent applications nearly doubled, rising from 665 to 1040. Bangladeshi applicants were concentrated in France (1 885), Greece (1 005) where they rank 2<sup>nd</sup> behind Pakistan and the United Kingdom (1 175). The addition of Bangladesh in the list of safe countries of origin in France resulted in a sharp decrease (more on Safe countries of origin in Section 3.2.5.1) Intelligence gathered by Frontex when interviewing Bangladeshi nationals apprehended while crossing the Greek-Turkish border suggest that several of them are actually coming from countries of the Arabic Peninsula after their work contract there expired <sup>(25)</sup>.

## Ivory Coast

The number of applicants from *Ivory Coast* had risen by 200 % in 2011, in connection with the unrest in the aftermath of the presidential election and the arrest of former President Laurent Gbagbo, reaching 5 365. In 2012 a reverse movement occurred, reducing the number of applicants by 51 % to 2 645. Most Ivoirians applied in France (1 030), Italy (630), Belgium (255), Greece (245) and Spain (105).

## Mali

Paradoxically, with regard to the large displacement of people caused by the conquest of Northern *Mali* by fundamentalist groups, at EU level, new applicants dropped from 3 535 to 1 540 (-56 %) – showing that only a tiny fraction of the people displaced by the war actually travelled to the EU. Traditionally, citizens of *Mali* tend to emigrate to France for employment, a small proportion of them applying for international protection, often for reasons linked to female genital mutilation (FGM) or forced marriage. A notable inflow of 1 001 Malians was detected in Italy in 2011 <sup>(26)</sup>, and 785 applied in 2012. In Spain, authorities noted a sharp increase of applications from Malians in December 2012 (+82.35 %) compared to November. France noted 965 new first applicants from Mali in 2012, with a +45 % increase in the final six months of the year. Some Malian applicants also took the long way to the south-eastern border of the EU and applied in Bulgaria <sup>(27)</sup>.

## 2.3. Asylum decisions

Two factors need to be analysed separately when considering the question of asylum decisions:

1. The type of status granted by Member States in regard to each caseload (Geneva Convention status (GC), Subsidiary Protection status (SP), which are forms of international protection regulated under EU Law, and Humanitarian Protection (HP), which is based on national law), and
2. The rate of recognition of applications ('positive decision rate').

In 2012, the number of first instance decisions issued by EU-27 reached 260 425, which is 10 % more than the annual total in 2011 (around 238 000). The highest number of decisions was recorded in: FR (59 830) and DE (58 765); then SE (31 570), BE (24 640), UK (21 890), AT (15 905) and IT (13 650).

<sup>(25)</sup> Frontex, *FRAN Quarterly*, Issue No 2, April-June 2012, p. 22, ([http://www.frontex.europa.eu/assets/Publications/Risk\\_Analysis/FRAN\\_Q2\\_2012\\_.pdf](http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q2_2012_.pdf)), accessed 27 May 2013.

<sup>(26)</sup> UNHCR, *2011 Asylum Levels and Trends in Industrialized Countries, Statistical Overview of Asylum Applications Lodged in Europe and Selected non-European Countries*, 27 March 2012, (<http://www.unhcr.org/4e9beaa19.pdf>), accessed 27 May 2013.

<sup>(27)</sup> Bulgaria noted a new tendency relating to the profiles of applicants for international protection. Many applicants are now coming from Algeria, Mali and Morocco seeking international protection in Bulgaria. (Annual Report Matrix)

## First instance - Total decisions and positive decision rates in EU, 2012

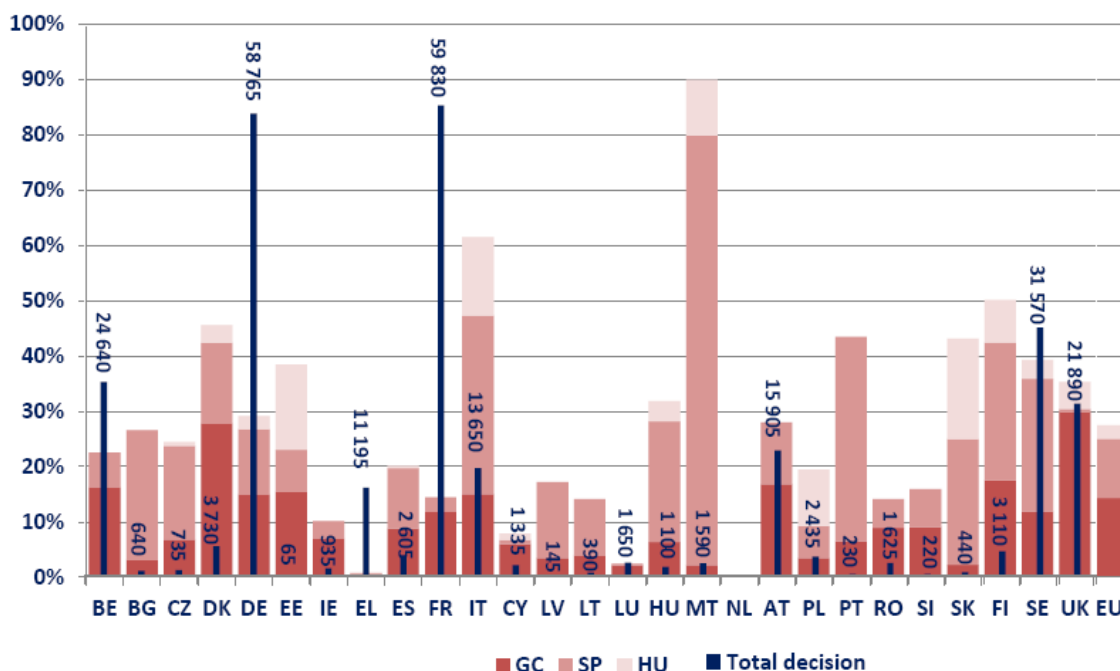


Figure 5: Total decision in 2012 and positive decision rate; Source: Eurostat login: 8.05.2013. No data from NL due to transition to a new information system

GC – Geneva Convention;  
 SP – Subsidiary protection;  
 HU – Humanitarian <sup>(28)</sup>

The graph above indicates in sum the numbers of decisions issued by Member States, the recognition rate and the type of protection afforded.

The extent of recognition of the applications made varies by Member State and by country of origin: this can be due to a difference in practice when assessing the applications or in the policies of Member States, but is also a consequence of the nature of the individual applications made. Even if Member States were to have exactly the same practices in regard to the same flow, the recognition rate would still be different if the type of application made by citizens of the same source country varies, as each application is to be assessed on an individual basis. The clearest example of a case in which this might be so is, when citizens of different ethnicity or religion from the same source country apply for international protection in different Member States. For example, as will be shown in more detail below, one Member State may receive a large number of applications from Afghans of a minority facing persecution (or from a region of Afghanistan recognised as unsafe) while another may receive almost all its applications from the majority ethnicity coming from a relatively safe area of the country.

With this in mind, the Positive Decision Rates table above gives some indication of a) the lack of correlation between recognition rates and absolute numbers of applications (total applicants) and b) may aid in indicating potential problems in dealing with certain flows.

For instance, by far the highest positive decision rate afforded by an EU Member States for 2012 was by Malta (90 %,) which was overwhelmingly faced with applications for international protection from citizens of Somalia, Eritrea and Syria , who were forced to flee their countries of origin due to a well-founded fear of persecution or other serious human rights violations. Though absolute numbers of decisions (1 590) remained small by European standards, they were very significant for Malta, given its small population. The recognition rate for Germany (29 %), for example, was about ‘average’ for the EU-27 Member States (28 %), but a very large proportion of the influxes it dealt with were of very different characteristics: i.e. Syria and Western Balkans countries (particularly Serbia). This underlines that recognition rates should be summed over *dissimilar* flows only with extreme caution.

<sup>(28)</sup> In case of Estonia the humanitarian data concerns family members in asylum procedure only.

Different influxes can have very different characteristics. The recognition rate of applications from Syrians in 2012 was over 95 %, however that for applications from nationals of Western Balkans countries was approximately 5 % (i.e. 95 % negative). In the former case, rates were very high for the obvious reason that the emergency situation in Syria was interpreted by Member States as requiring that protection be granted to Syrian citizens in almost all cases (though using different legal instruments). In the latter case, the Member States affected by the influx from the Western Balkans generally did not accord protection, judging that these applications were overwhelmingly unfounded. Adding the two recognition rates together would give a figure of approximately 50 % recognition, which hides the quite different characteristics of the two flows.

Very low recognition rates *may* be an indication of problems with the application of the EU asylum acquis, but this cannot be assumed. A thorough knowledge of the caseload in Member States where such a situation exists — even down to examination of individual cases — would be necessary to arrive at this conclusion with certainty. In Luxembourg, for instance, the very low recognition rate has to be seen in the context of the very high influx of applicants from the Western Balkan countries, which constituted the large majority of applications for international protection. Almost all of these applications are considered manifestly unfounded.

The approaches used and challenges faced by Member States in applying the acquis when dealing with very different influxes are detailed in the second part of the report.

### **2.3.1. Use of protection regimes**

When granting protection, the determining authority in Member States chooses the protection regime on the basis of an individual examination of the application, the situation in the applicant's country of origin and the specific profile of the applicant.

It is instructive to look at general figures: in EU-27 Member States, positive Geneva Convention (GC) and Subsidiary Protection (SP) decision rates increased in 2012: positive decisions made using the GC regime rose to 14 % (12 % in 2011) of the total decisions made at first instance while the SP rate rose to 11 % (from 8 % in 2011); use of national Humanitarian Protection (HP) regimes decreased: use of HP dropped by half: the overall rate was 2 % (down from 4 % in 2011).

	2012		2011		2012/2011 Decisions
	Decisions	Rate (%)	Decisions	Rate (%)	
Geneva Convention Status <i>standard deviation</i>	37 335	14% 7%	29 035	12% 7%	29%
Subsidiary Protection <i>standard deviation</i>	27 960	11% 16%	19 975	8% 13%	40%
Temporary Protection	-	-	-	-	
Humanitarian Protection <i>standard deviation</i>	6 415	2% 6%	10 550	4% 5%	-39%
Total Positive Decisions	71 700	28%	59 560	25%	20%
Rejected Decision <i>standard deviation</i>	188 715	72% 19%	178 420	75% 16%	6%
Total Decisions	260 425		237 980		9%

Table 1: First instance decision overview in EU 2011-2012; Source: Eurostat login 14.05.2013

The figures for the standard deviation between Member States in the use of GC and SP would seem to indicate that the variation in use of the regimes between Member States is much less for GC than for SP. This may indicate that there are fewer divergences in the interpretation of the criteria for refugee status than in those for applying subsidiary protection. This analysis is born out somewhat when looking at the Top 10 countries of origin for which Member States use each type of regime.

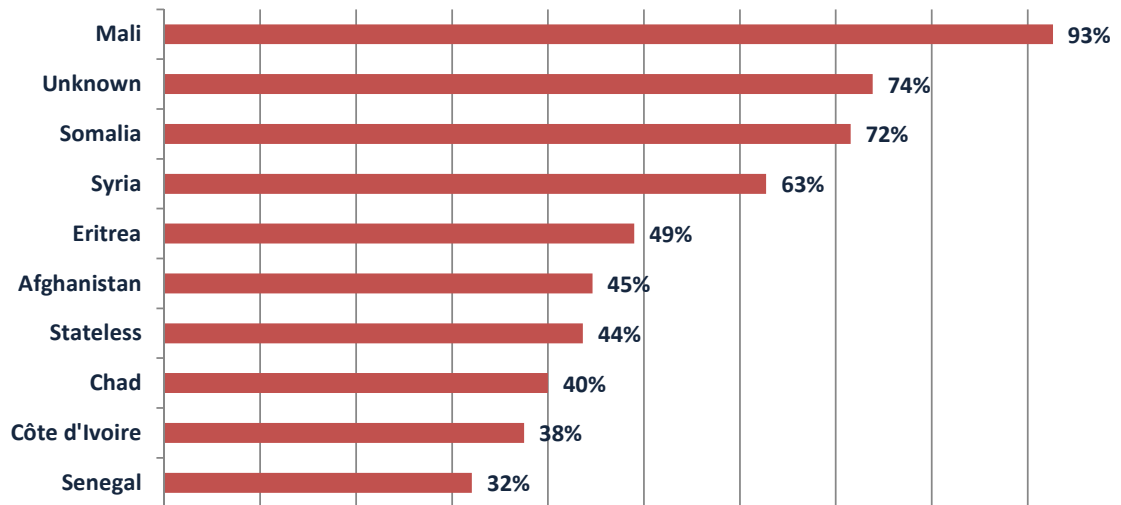
Geneva Convention / Positive Decisions (%) in EU-27, 2012  
Top 10 Countries of origin (with > 100 positive decisions )



Figure 6: Total Geneva Convention / Positive Decisions ( % ) in EU-27, 2012-Top 10 Countries of origin (with > 100 positive decisions); Source: Eurostat login: 14.05.2013



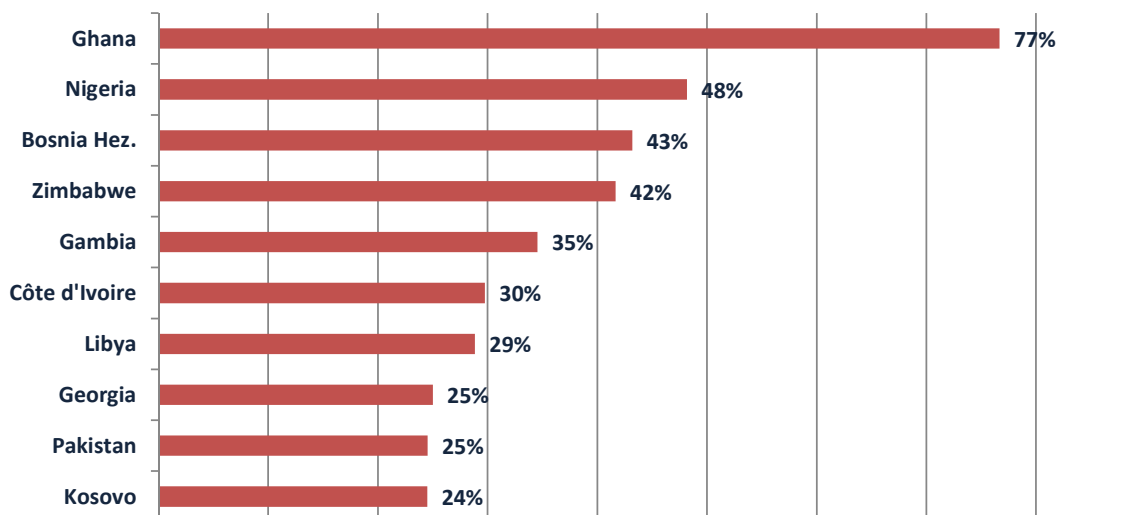
**Subsidiary Protection/ Positive Decisions (%) in EU-27, 2012  
Top 10 Countries of origin (with > 100 positive decisions)**



**Figure 7: Total Subsidiary Protection/ Positive Decisions (%) in EU-27, 2012-Top 10 Countries of origin (with > 100 positive decisions; Source: Eurostat login: 14.05.2013)**

The bar charts above illustrate how the Geneva Convention is used by EU Member States mostly in 'classic' situations of individual persecution by a strong regime while Subsidiary Protection is used most in situations of uncertainty or generalised violence. The criteria determining the use of humanitarian protection (and also the heterogeneity of national HP regimes) does not allow even tentative conclusions without further detailed analysis, also considering the different existing approaches in reporting humanitarian decisions to Eurostat due to the fact that in some Member States those decisions are taken outside the framework of the Asylum Procedure.

**Humanitarian Status/ Positive Decisions (%) in EU-27, 2012  
Top 10 Countries of origin (with > 100 positive decisions)**



**Figure 8: Total Humanitarian Status/ Positive Decisions (%) in EU-27, 2012-Top 10 Countries of origin (with > 100 positive decisions; Source: Eurostat login: 14.05.2013)**

### 2.3.2. Recognition rates

The overall recognition rate (including GC, SP, HU decisions) at first instance of some form of protection status in the EU rose to 28 % *at first instance* in 2012 from 25 % in 2011 but this apparently similar figure hides a wide range of divergent practices in regard to a diverse influx. A glance at the recognition rates afforded to the Top 10 influxes (in terms of absolute numbers) to the EU in 2012 shows this clearly.

Recognition rate in EU-27 Top 10 Countries of origin

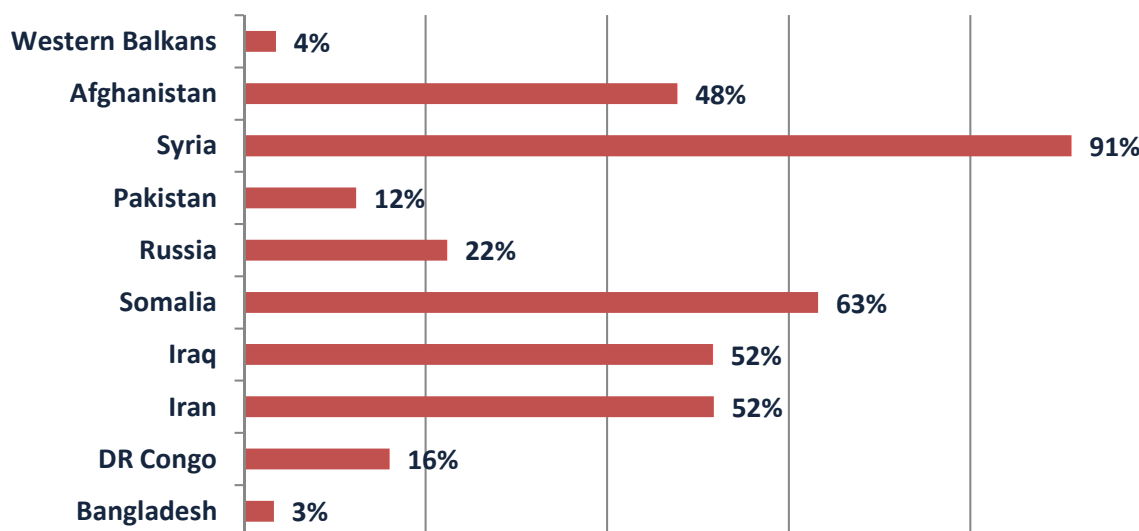


Figure 9: Total Recognition rate in EU-27 Top 10 Countries of origin; Source: Eurostat login: 14.05.2013

Not considering absolute numbers, the highest recognition rates afforded by EU Member States were for the following countries of origin:

Recognition rate in EU -27, 2012  
Top 10 Countries of origin  
(countries of origin with a total of decision >100)

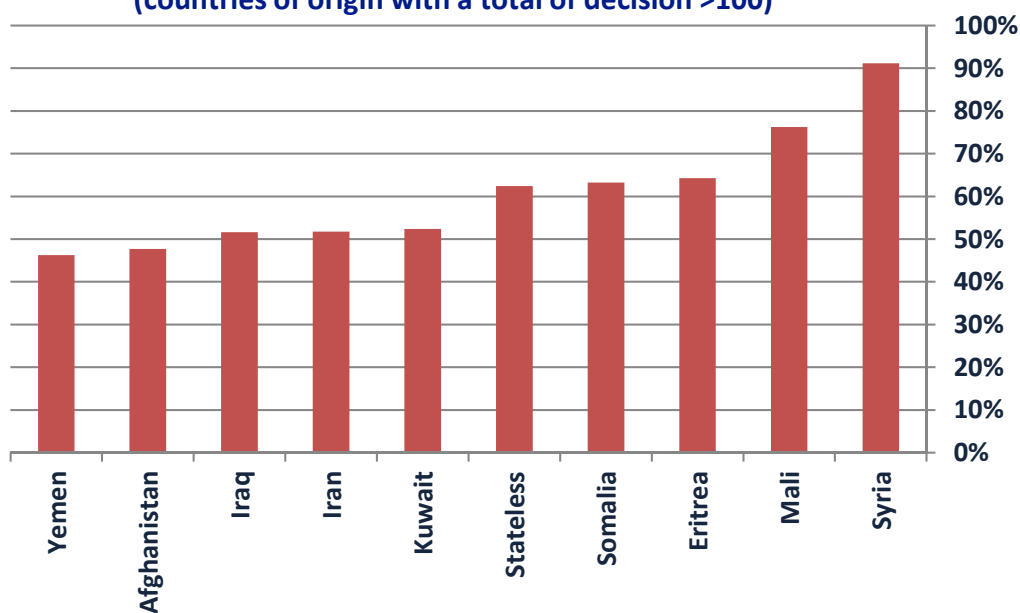
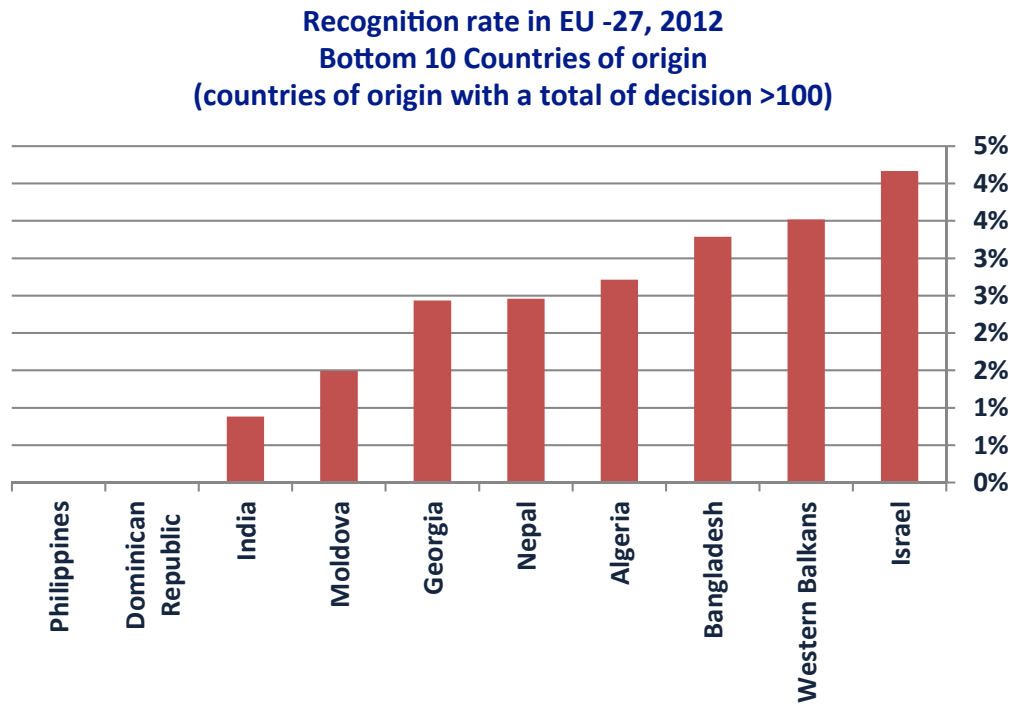


Figure 10: Total Recognition rate in EU -27, 2012-Top 10 Countries of origin (countries of origin with a total of decision >100); Source: Eurostat login: 14.05.2013

In contrast, the lowest recognition rates were for:



**Figure 11: Recognition rate in EU -27, 2012-Bottom 10 Countries of origin (countries of origin with a total of decision >100); Source: Eurostat login: 14.05.2013**

Another relationship remains to be analysed: that between recognition rate and the type of status granted. Again, no simple conclusions can be drawn. To take the example of Malta again (see Total Positive Decisions table beginning section 2.3), almost 100 % of the positive protection decisions made were under the Subsidiary Protection regime. In the case of the United Kingdom, (which had 35 % overall recognition rate, but dealing with very different flows), by contrast, nearly 100 % of the positive protection decisions were under the Geneva Convention regime.

### 2.3.3. Second and higher instance decisions

Finally, we must consider second or higher instance decisions, i.e. appeals against first instance decisions <sup>(29)</sup>. The only data available for such decisions is gathered under the EUROSTAT 'Final decisions' indicator <sup>(30)</sup>. In 2012, the total number of final decisions rose to 130 725, +2 % compared to 2011 (128 010). If we compare the number to the number of decisions made in 2012, that is to say just over 260 000, then approximately 50 % of all first instance decisions were appealed against <sup>(31)</sup>. Of these appeals 24 995, or 19 %, resulted in some kind of protection being granted or a review of the first instance decision being ordered. As with first instance decisions, there are marked differences between Member States - with some higher instances upholding over 50 % of appeals against first instance decisions and others dismissing nearly all.

Full data on final instance decisions in 2011 and 2012 can be found in Annexes C.8 and C.9.

<sup>(29)</sup> These are not necessarily only against negative decisions. There may be cases where applicants appeal against receiving a positive 'lower' status than that of refugee as per the Geneva Convention.

<sup>(30)</sup> Final decision definition according to Eurostat guidelines art 4: decision taken by administrative or judicial bodies in appeal or in review and which are no longer subject to remedy. The true 'final instance' may be, according to the national legislation and administrative procedures, a decision of the highest national court. However, it is not intended that asylum statistics should cover rare or exceptional cases determined by the highest courts. Thus, the statistics related to the final decisions should refer to what is effectively a final decision in the vast majority of all cases: i.e. that all normal routes of appeal have been exhausted.

<sup>(31)</sup> Such analysis can only be made with a number of provisos - principally that it is unlikely that a major proportion of the number of final decisions reached in 2012 refer to first instance applications also made in 2012. However, given that the number of appeals in 2011 was 128,000, i.e. 98,5 % of the 2012 total, we may assume that our calculation is not too far out (assuming that the vast majority of appeals are decided within 2 years).

### Final recognition rates - Selected Countries of origin, EU - 2012

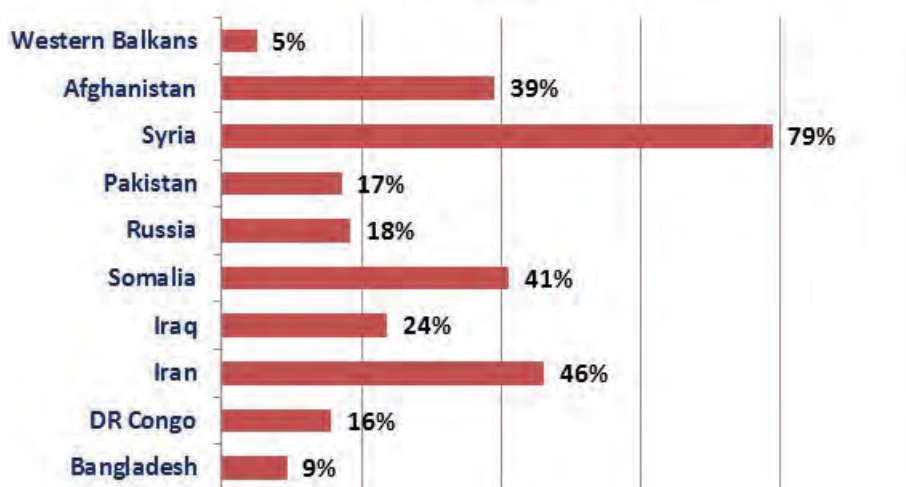


Figure 12: Final recognition rates – Selected Countries of origin, EU – 2012; Source: Eurostat login: 17.05.2013

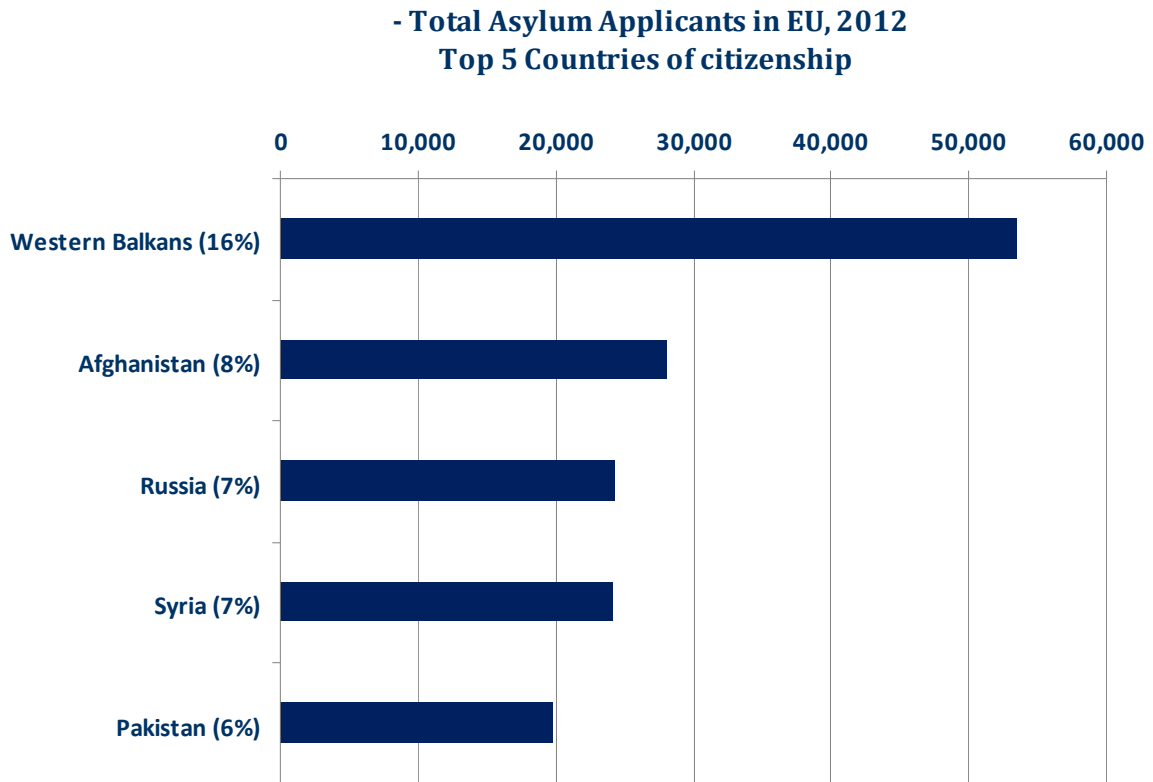
Moreover, there were significant differences in the propensity of second instance bodies in different Member States when dealing with applications from citizens of different countries of origin as shown in table below.

Final positive decision rates in EU-27 MS, 2012 - Selected countries of origin															
	Syria	Eritrea	Iran	Mali	Somalia	Afghanistan	Sri Lanka	Iraq	Nigeria	Russia	WB	Pakistan	DR Congo	Bangladesh	
EU 27 MS	79%	52%	46%	43%	41%	39%	33%	24%	20%	18%	5%	17%	16%	9%	
Belgium		0%	0%	0%	6%	0%	0%	2%	0%	2%	1%	0%	1%	0%	
Bulgaria	100%		100%					100%							
Czech Republ	50%							0%	0%	0%	0%	0%	0%		
Denmark	49%	100%	52%		0%	22%	0%	9%	0%	20%	0%	0%	0%	0%	
Germany	89%	71%	59%	0%	75%	54%	38%	18%	12%	17%	1%	24%	26%	4%	
Estonia															
Ireland	0%		0%		33%	0%		0%	0%	100%	0%	0%	13%	0%	
Greece	29%		62%		0%	41%	0%	59%	13%	0%	20%	2%	100%	6%	
Spain															
France	90%	53%	44%	43%	63%	64%	25%	37%	11%	32%	17%	7%	14%	10%	
Italy		100%		69%	100%	100%	0%		66%		33%	59%		50%	
Cyprus	0%		6%	0%		0%	0%	17%	0%	0%	0%	0%	0%	0%	
Latvia			100%							0%			0%		
Lithuania						0%			0%						
Luxembourg											1%				
Hungary	67%		25%		0%	47%	0%	50%	0%		29%	0%	0%	0%	
Malta		25%		0%	33%			0%	4%			0%		0%	
Netherlands															
Austria	77%	100%	65%	0%	41%	45%	0%	9%	4%	19%	3%	1%	100%	6%	
Poland			0%			0%			0%	10%		0%			
Portugal									0%				0%		
Romania	68%	100%	43%		40%	24%	0%	45%	0%		0%	0%	100%	0%	
Slovenia						0%			0%		0%				
Slovakia			0%			25%					0%				
Finland	100%		88%		89%	93%	100%	88%	100%	62%			100%		
Sweden	80%	35%	28%	0%	17%	17%	0%	23%	6%	13%	5%	15%	29%	8%	
United Kingd	78%	62%	48%	0%	73%	50%	51%	51%	35%	57%	61%	26%	65%	12%	

Table 2: Final positive decision rates in EU 27 MS, 2012 – Selected Countries of origin; Source: Eurostat login: 17.05.2013

## 2.4. Member States' responses to specific flows

A detailed comparative analysis of regimes used and recognition rates for similar flows (where this can be established) is not possible in a general report; for this reason in what follows we will attempt to underline the points made above by focusing on three important but very different influxes: Afghanistan, Syria and Western Balkans. The Western Balkans, Afghani and Syrian influxes were the top 3 (total applicants) in the EU in 2012 <sup>(32)</sup>.



**Figure 13: Top-5 of Countries of Origin of Applicants for international protection, in 2012; Source: Eurostat login: 8.05.2013**

### 2.4.1. Afghanistan

*Afghanistan* is the first (single) country of origin at EU level as regards total applicants. As covered in the previous edition of this Report (*EASO Annual Report 2011*) it has ranked in the Top 5 source countries for applicants for international protection in the EU for a number of years and affects a large number of Member States. The difficulties in assessing applications due to the volatile security situation have continued to be a cause for concern for asylum authorities in Member States in 2012.

<sup>(32)</sup> The term 'Western Balkans' covers applications from citizens of Albania, Serbia, FYROM, Kosovo, Montenegro and Bosnia and Herzegovina.

*Afghanistan* was the subject of the first Country of Origin Information (COI) report drafted by EASO in accordance with Article b) of its founding Regulation (Regulation (EU) N° 439/2010 of the European Parliament and the Council of 19 May 2010 establishing a European Asylum Support Office – hereinafter: EASO Regulation). The first Report ‘*COI Report Afghanistan: Taliban Strategies — Recruitment*’ was published 10 July 2012; a second report ‘*COI Report Afghanistan: Insurgent strategies — Intimidation and targeted violence against Afghans*’ was finalised in November 2012 and published in December 2012. Both are intended to support case workers in their assessment of cases relating to the issues addressed in the said reports by providing them with comprehensive and reliable information gathered, verified and analysed in accordance with strict methodological rules (see ‘*EASO COI Report Methodology*’ published in July 2012).

EASO organised in Malta on 8-9 November 2012 an International ‘Conference on Afghanistan – Country of Origin Information and beyond’ where case workers and COI researchers from Member States asylum authorities, refugee law judges, representatives of international organisations (UN, UNHCR, IOM) and non-governmental organisations as well as academics exchanged points of view and learned from each other.

While providing quality COI information, the Reports and the Conference also aimed to have a harmonising effect that should help reduce the divergences in positive/negative decision rates across Member States regarding the Afghan caseload that had been pointed out in *EASO Annual Report 2011*.

In addition to the issues dealt with in the two EASO reports, Member States mentioned persecution on religious grounds (religious minorities, conversion) and gender-related applications (forced marriages, ‘honour’ crimes) as part of the reasons why Afghans fled (or are unable or unwilling to return to) their country.

Several Member States stressed their concern with the high number of Unaccompanied Minors (UAM) in the Afghan inflow (e. g. there were 1 081 Afghan UAM applicants in Austria, i. e. 66 % of all UAMs dealt with in that country; in Sweden Afghan UAMs were 1 940 (54 % of all UAMs) and were 438 in Belgium (43 % of all UAM in that country).

An additional feature of the Afghan caseload is the increasing percentage of subsequent applications. With 2010 applicants making a subsequent application in 2012 against 1 325 in 2011, the number of subsequent applicants has increased by 52 % whilst new applicants were 11 % less than in 2011. This phenomenon is an indication that significant proportion of Afghans who had not been found eligible for international protection in previous years has not left the territories of the Member States.

## 2.4.2. Syria

The number of applicants for international protection from *Syria* underwent massive growth in 2012: +206 %. With 24 110 applicants, it rose to 3<sup>rd</sup> place, behind the Afghan and Russian caseload, from 11<sup>th</sup> in 2011. However, as regards new applicants (20 430), which better reflects the actuality of recent applications in the EU, it ranks first. The comparatively low component of subsequent applications (2 230) is often a characteristic feature of a recent demand for protection<sup>(33)</sup>.

The pace at which, due to the expanding civil war, the inflow of Syrian applicants was growing was a cause of concern for the EU and, in particular, in the Member States most affected by this flow - Germany and Sweden. It was also an issue for Member States at the South-Eastern external borders that are geographically closer to Syria and are already the main entry gate to the EU for other flows. At the end of 2012, however, the Syrian demand for protection in the EU dropped off significantly to the levels of mid-July, even as it rose exponentially in the region. As explained above, it was revealed that this sudden rise and drop off for applications made in the EU was likely mainly due to the large proportion of *sur place* applications being made as the crisis worsened<sup>(34)</sup>, combined with the tightening of border controls at the Greek-Turkish land border.

<sup>(33)</sup> There is currently no dedicated data collection on the issue of subsequent applications at the EU level, the numbers are therefore derived by subtracting ‘new applicants’ from the ‘total applicants’ collected in the EUROSTAT database. However it has to be noted that applicants repeating their application more than once in the same year might be counted twice in this statistical collection. EASO, in the context of its activities in the field of Early Warning will start a dedicated data collection on the issue of subsequent applications.

<sup>(34)</sup> Based on information provided by Member States at the EASO Practical Cooperation meeting on Syria in March 2013.

### Total Syrian Asylum Applicants in EU by MS, 2011-2012

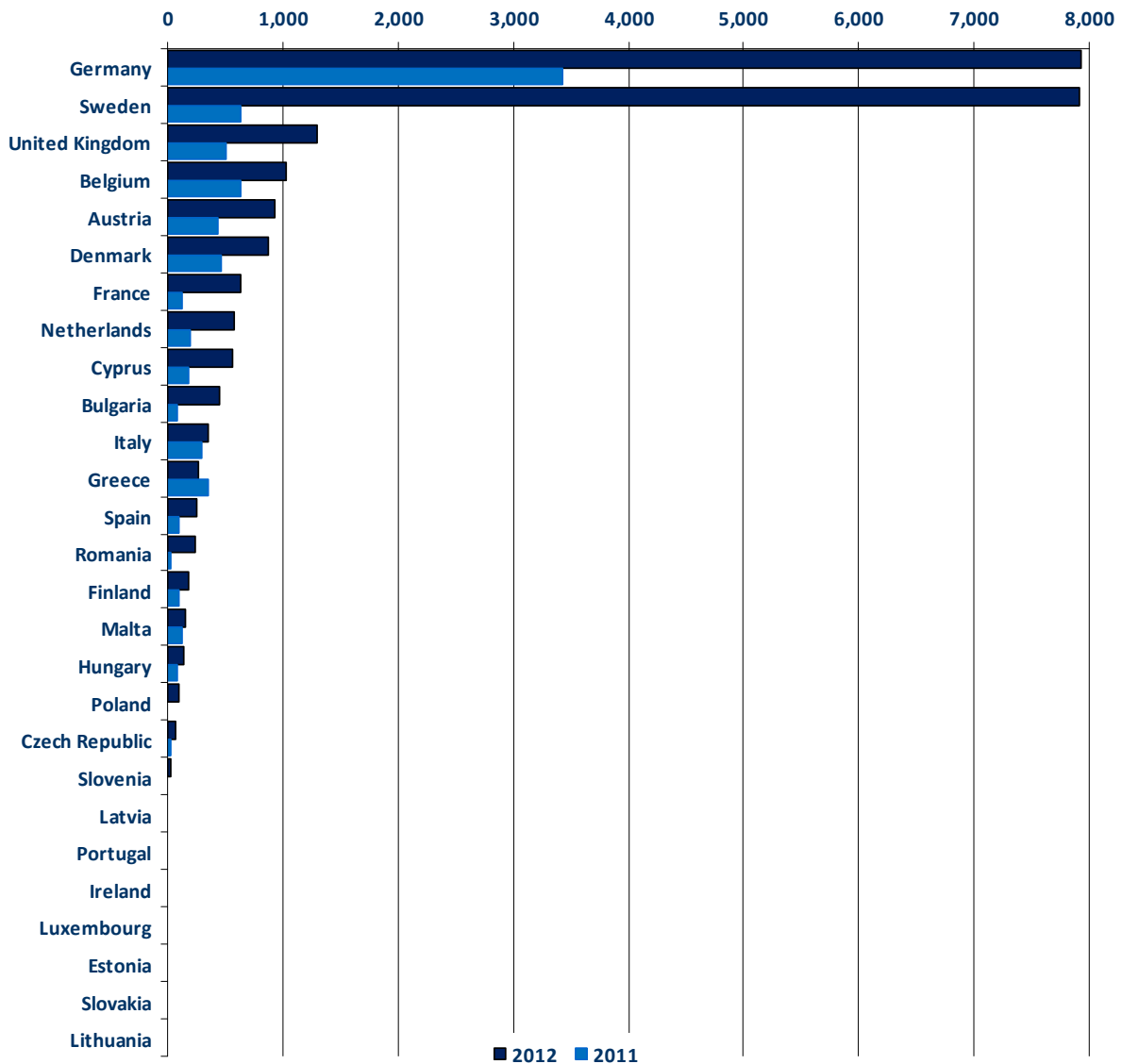


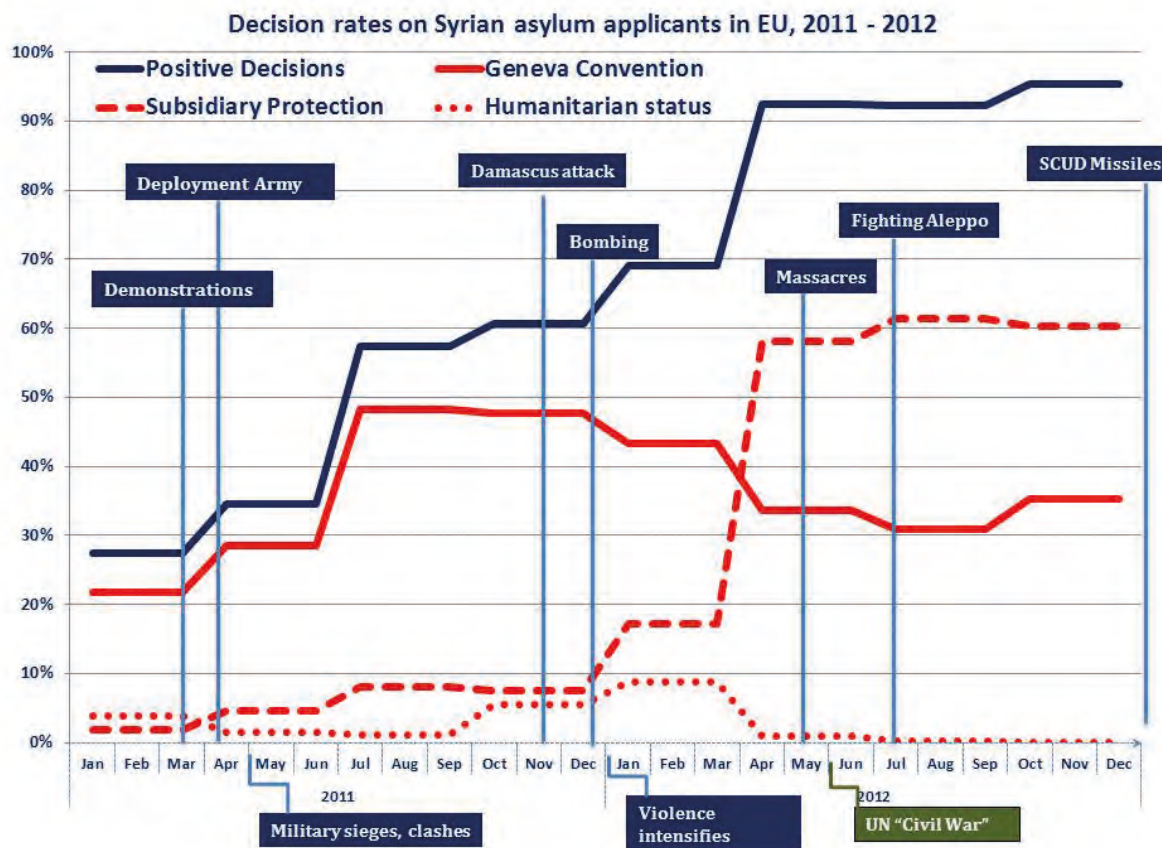
Figure 14: Syrians applicants in EU Member States; Source: Eurostat login: 8.05.2013

Unlike Afghans, many Syrian applicants enter the EU as families. This results in a large proportion of accompanied minors <sup>(35)</sup>, a more balanced distribution between the sexes and, should the inflow continue at the same rate, a more challenging situation to provide appropriate reception conditions in accordance with the provisions of Council Directive 2003/9/EC laying down minimum standards for the reception of asylum applicants <sup>(36)</sup> (hereinafter: reception conditions Directive) because national reception systems often are better suited to singles than to families. Member States such as Cyprus expressed concerns in this respect (See 3.2.1.5).

Member States reacted in three phases to the increasing inflow of Syrian applicants, and the said phases were closely connected, albeit with some delay, with the evolution of the situation in the country:

<sup>(35)</sup> This may account for the discrepancy between the figures published by UNHCR in 'Level and Trends in Industrialised countries, 2012' and the figures used in the present Report.

<sup>(36)</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>), accessed 27 May 2013.



**Figure 15: Decision rates on Syrian applicants for international protection in EU 2011-2012; Source: Eurostat login: 14.05.2013. No data from NL due to transition to a new information system**

The graph above shows:

- A first reaction (January to November 2011), while the uprising was still in the form of peaceful mass demonstrations and applicants had stories of being individually targeted by security forces, was an increasing amount of decisions granting refugee status under the 1951 Geneva Convention relating to the status of refugees;
- A second step (July 2011 – March 2012), in connection with a more and more volatile and uncertain situation was to ‘freeze’ processing of the applications until the situation became clearer. During this ‘freeze’ period several Member States only processed manifestly well-founded applications, which may partly account for the high percentage of GC refugee status grants;
- Thirdly (from April 2012), as the situation evolved into a civil war, many applicants were recognised on the basis of the ongoing military/insurgent operations in line with Article 15 of the Qualification Directive, although Member States continued granting Geneva Convention status to the applicants who qualified for it.

The total of decisions issued by Member States has a direct impact on the stock of Syrian cases still pending at end of each month. After the bombings in Damascus in December 2011, the stock decreased; after the massacres in May 2012, the stock increased. The number of pending cases at the end of November 2012 was 60 % more than the total of pending cases at the end of May 2012. The increase in pending cases is clearly affected by measures applied by many Member States in the asylum procedure, i.e. the temporary freeze of case-processing.

While the EU level graphs presented above give an idea of how the CEAS as a whole dealt with the Syrian influx, they hide divergences between Member States. Many Member States ‘froze’ the applications for a time or proved more inclined to granting subsidiary protection. Sweden and Germany granted mainly subsidiary protection pursuant to Article 15 b) rather than c) of the Qualification Directive. It was also noticed that a large proportion of Syrian applicants in Germany are of Kurdish ethnicity, which may be linked to the pre-existing diaspora in that Member State<sup>(37)</sup>.

<sup>(37)</sup> Frontex, *FRAN Quarterly*, Issue No 2, April-June 2012, p.40, ([http://www.frontex.europa.eu/assets/Publications/Risk\\_Analysis/FRAN\\_Q2\\_2012\\_.pdf](http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q2_2012_.pdf)), accessed 27 May 2013.



Other Member States tried to provide alternative solutions so that Syrian nationals could legally prolong their stay without having to go through the asylum procedure. For instance, in the United Kingdom, where *Syria* was the 4<sup>th</sup> highest source country, a limited opportunity for Syrians lawfully present was introduced which allows them greater flexibility to extend their stay (e.g., as a student) or swap immigration route (e.g., visitor to student).

As an explanation for the concentration of Syrian applicants in a few Member States, both diverging national decision-making policies and the presence of an established Syrian community may have played a role. In order to improve harmonisation of approaches, guidance for Member States facing such situations is often helpful <sup>(38)</sup>. UNHCR updated its position paper on *Syria* in December 2012 <sup>(39)</sup>.

Starting in August 2012, the European Commission has gathered a network comprising relevant EU agencies and stakeholders (SY NET) in order to better monitor the developments taking place on the ground as well as the situation at the border and in the asylum systems across Europe. The network successfully helped EU Institutions to ensure that swift action could be taken in case of need and resulted, among others, in a practical cooperation workshop organised by EASO in August 2012.

Furthermore, following a request from the Justice and Home Affairs (JHA) Council <sup>(40)</sup>, the Commission is developing a Regional Protection Programme (RPP) in the countries neighbouring Syria (in particular Lebanon, Jordan and Iraq) aimed at long-term capacity building in the area of international protection. The RPP can include for example, as one of its elements, the provision of assistance to register applications and thus enable protection for the persons fleeing the Syrian conflict. It can also support local authorities by providing the necessary equipment and supplies, as well as, wherever necessary, by providing training and familiarising non-governmental organisations, officials, and other stakeholders with the basic principles of international protection <sup>(41)</sup>.

EASO supported the European Commission and Member States in dealing with their Syrian caseload by providing up-to-date statistics and organising experts' meetings on 28-29 June 2012 and 18-19 March 2013 in Malta and 24 August 2012 in Brussels where representatives of Member States' asylum authorities had an opportunity to listen to experts' presentations, exchange information and update each other of their current policies and practices as well as of their contingency planning.

### 2.4.3. Western Balkans

The inflow of applicants for international protection from the Western Balkans region has been a cause of concern to Member States for many years, and especially since the obligation of holding a visa to enter the EU Member States that are bound by the Visa Regulation <sup>(42)</sup> was lifted in December 2009 for *Serbia*, *FYROM* and *Montenegro* and December 2010 for *Albania* and *Bosnia Herzegovina*. The proportion of the total influx represented by applicants from these countries has variously represented between 10 and 21 % of the EU total over the past 5 years.

The total numbers of applicants significantly increased (+49 %) in 2012 (Figure 16), reaching very high levels in some Member States like Germany, Sweden and Luxembourg.

Noting that most applications for international protection by Western Balkan citizens enjoying visa-free travel are 'manifestly unfounded', France, Germany, Belgium, Luxembourg, the Netherlands and Sweden, sent a joint letter to the European Commission prior to the JHA Council meeting of 25 October 2012 seeking to make further steps with the introduction of a safeguard clause that would allow for the temporary reintroduction of a visa requirement for nationals of the Balkan countries, Serbia and FYROM, who are normally allowed to travel within the EU without a visa <sup>(43)</sup>. While visa liberalisation has made travel to the EU easier for citizens of Western Balkans

<sup>(38)</sup> These were among the findings of the EASO Practical Cooperation meeting on Syria of 18-19 March 2013.

<sup>(39)</sup> UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update I*, December 2012, (<http://www.unhcr.org/refworld/country,,,COUNTRYPOS,SYR,,50d457b12,0.html>), accessed 11 April 2013.

<sup>(40)</sup> Council of the European Union, *Press Release*, 3195th Council meeting, Justice and Home Affairs, 15389/12, 25-26 October 2012, ([http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/133241.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/133241.pdf)), accessed 27 May 2013.

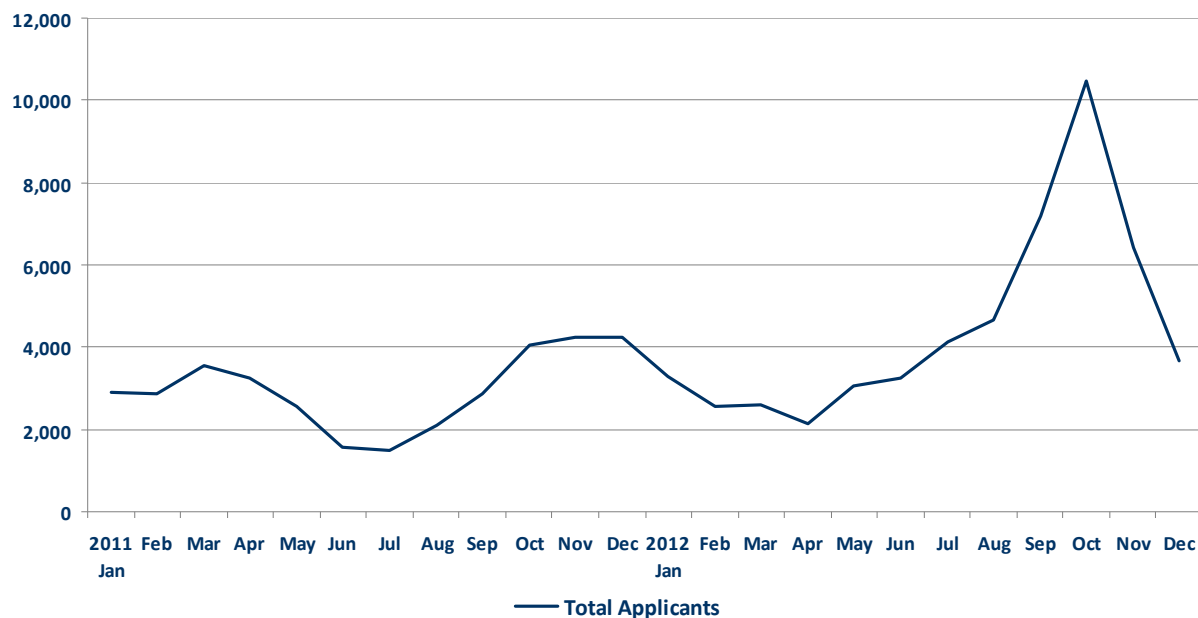
<sup>(41)</sup> Cf. European Commission, *4th Annual Report on Immigration and Asylum* (2012).

<sup>(42)</sup> Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R0539:EN:NOT>), accessed 27 May 2013.

<sup>(43)</sup> The main reason behind this proposal lied in the fact that the proposing Member States had been faced with a considerable migration inflow of international

countries, the trend of increasing numbers began before liberalisation and there is some evidence that this factor is not the only one determining the decision to travel and the choice of destination. Some Member States did not detect an increased inflow of applicants (e.g., Italy), or even experienced a decrease of applications since visa liberalisation (Austria, Hungary). The United Kingdom, which still has a visa requirement in place (since it is not part of Schengen) noted a rise in applications for international protection after increased enforcement activity in regard to illegal immigration <sup>(44)</sup>.

### WB total applicants in EU - Monthly trend, 2011 - 2012



**Figure 16: WB total applicants - Monthly trend, 2011 – 2012; Source: Eurostat login: 14.05.2013**

The *EASO Annual Report 2011* already noted a seasonal pattern in the influx (usually peaking in October of each year) and that some pull-factors may have a decisive influence on the choice of Member State of destination by the applicants <sup>(45)</sup>.

A study published 1<sup>st</sup> January 2013 by an independent think-tank <sup>(46)</sup> also identified pull-factors as being important in determining the flow and opined that the length of the asylum procedure – with its connected duration of benefits that applicants for international protection are entitled to while their application is processed – is the main factor of attraction. According to this study, Member States with shorter procedures were less affected and those that managed to sufficiently speed up the examination of applications so that the benefit of social and/or financial support was shortened to a minimum or even made unavailable saw the inflow decrease.

The Constitutional Court of Germany decided on 18 July 2012 that the provisions governing basic cash benefits according to the Asylum Seekers Benefits Act are incompatible with the fundamental right to a minimum existence. Therefore the in-cash benefits provided to applicants while their case is pending have been subsequently considerably increased. In the period that followed it was noticeable that the seasonal increase of applications started earlier in the year and was more substantial compared to the years before.

protection seekers from the Western Balkan States, putting strain on the competent administrative and judicial services in the EU. Such a clause would enable the reintroduction of visas in case of a force majeure situation.

<sup>(44)</sup> The United Kingdom has not experienced any significant increases in applications for international protection from the Western Balkans region with the exception of Albania, for which the UK is one of the preferred European asylum destinations despite a visa regime still being in place. Asylum intake to the UK from Albania has risen sharply in 2012 compared to 2011. Cf. UK Government, Home Office, *Immigration Statistics, October to December 2012*, (<https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2012>), accessed 27 May 2013.

<sup>(45)</sup> As the graph shows, this seasonal pattern was much sharpened in 2012 compared to 2011 and, despite the very sharp drop off at the end of 2012, continued at “normal” seasonal levels in early 2013.

<sup>(46)</sup> European Stability Initiative (ESI), ‘Saving visa-free travel - Visa, asylum and the EU roadmap policy’, 1 January 2013, ([http://www.esiweb.org/index.php?lang=en&id=156&document\\_ID=132](http://www.esiweb.org/index.php?lang=en&id=156&document_ID=132)), accessed 27 May 2013.

EASO organised a Practical Cooperation meeting in March 2013 on the Western Balkans caseload and Member State policies and practices in relation to it. The question of particularly cash benefits on offer to those with a pending application was confirmed as a major pull factor however a more complicated picture emerged in regard to the nature of the flows, which are highly specific and heterogeneous. The workshop also showed that a comprehensive set of measures, including i.a. shorter processing times, public information campaigns, return operations and reduction of benefits, proved crucial in order to successfully cope with the asylum flows from the Western Balkans.

EASO will draft a detailed COI comparative analysis of this flow and Member States' attempts to deal with it in 2013.

The German authorities took practical administrative steps to mitigate the effects: Applications from *Serbia* and *FYROM* or rather the *Western Balkans* countries were given number-one priority and treated in a prioritised procedure <sup>(47)</sup>.

In France, *Albania* and *Kosovo* that had been listed as safe countries of origin since 18 March 2011, were removed from the list by a decision of the *Conseil d'Etat* dated 26 March 2012. This may have led the inflow to swell as early as May. The sum of Total applicants of *Western Balkans* countries amounted to 9 170, including quite significant increases: *Albania* +445 %; *Bosnia Herzegovina* +400 %; *Montenegro* +162 %; *Serbia* +20 %; *Kosovo* +118 %. Like other, but not all, Member States, France noted that a majority of applicants from those countries belonged to the Roma community.

Sweden was the third most affected Member State with nearly 7 400 New applicants (+20 %).

Even though the number of applications for international protection slightly decreased in Luxembourg, the number was still very high; 1 643 out of a total of 2 056 applications were lodged by persons originating from the Western Balkan countries, with Serbian nationals on top, followed by Albanian and Montenegrin nationals.

Upon request of the European Commission, FRONTEX has also established a monitoring mechanism aimed at assessing on a weekly basis the developments in terms of applications for international protection in the European Union. This mechanism was part of a wider effort of the European Commission to conduct high-level dialogues with countries of the Western Balkans in order to take appropriate measures to reduce the impact of visa liberalisation in terms of unfounded applications for international protection in the European Union. In this context countries of the Western Balkans have been regularly reporting on the activities undertaken and on their impact. The pivotal meeting in this regard was organised in Tirana at the Ministerial Level on the 5-6 of November 2012.

The European Commission and Member States also sought to address the issue of migration from the *Western Balkans* at its source, either through information campaigns in the countries of origin (Belgium <sup>(48)</sup>) or by means of development projects aimed at improving the living conditions of the most migration-prone communities (Luxembourg <sup>(49)</sup>). The latter project focuses on access to decent housing, income-generating activities in the areas of traditional economic sectors, fighting high levels of school dropouts, improving access and quality of care, and community development.

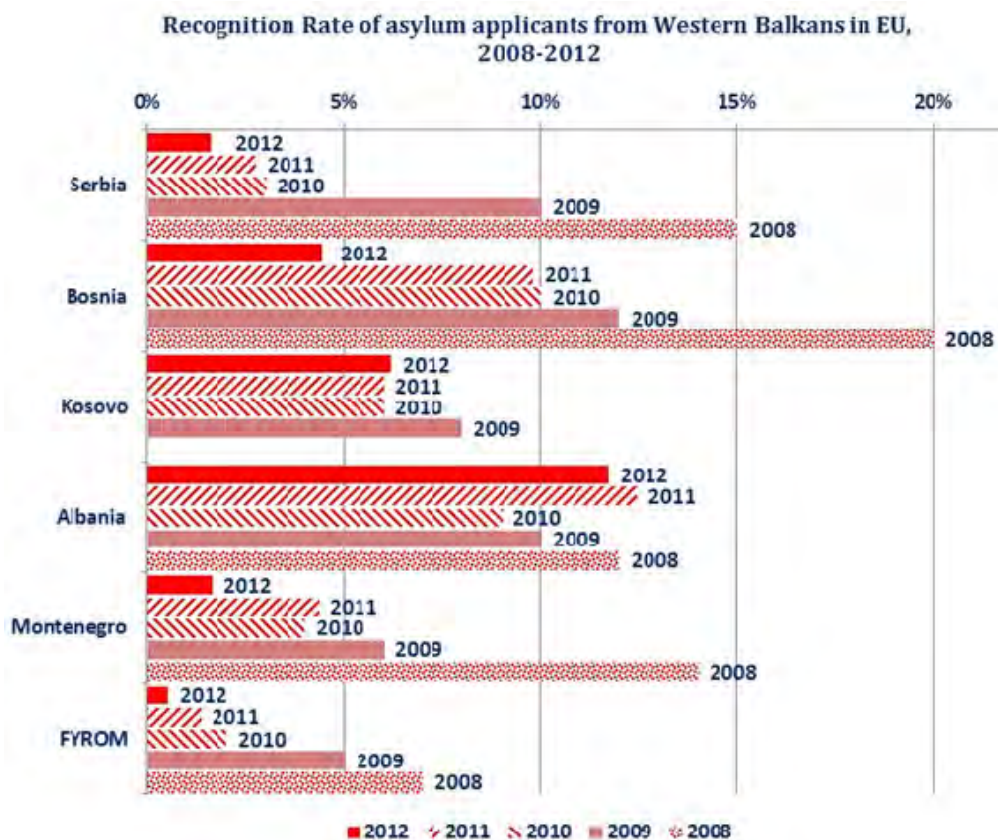
In spite of their differences, Member States share a similar assessment of the situation in the *Western Balkans* countries, with a negative decision rate of close to 96 % (see Figure 17). There seems to be a consensus that, while discrimination and social exclusion may well be a cause of severe hardships, seldom do they amount to persecution or severe harm within the meaning of the relevant provisions of the Qualification Directive. UNHCR

<sup>(47)</sup> Staff from other sections of the Federal Office for Migration and Refugees (BAMF) (officers for legal proceedings, officers for integration matters) were seconded for working on applications from Serbia and FYROM so that from mid October 2012 to mid December 2012 top priority was given to these applications. (EMN Questionnaire)

<sup>(48)</sup> Several dissuasion and prevention campaigns to different Balkan countries were undertaken and the return policy reinforced. Applicants originating from Balkan countries are not given incentive bonuses, only the return ticket is paid for. In November and December 2011, the Immigration Office organised together with Fedasil weekly bus transfers to the concerning Balkan countries, a service continuing in 2012.

<sup>(49)</sup> Luxembourg's development cooperation in the Balkans (Serbia, Montenegro and Kosovo) began in 1999, when Luxembourg participated in the overall effort by the international community to favor stability and development in the Balkan region. The Government's policy at the time focused on facilitating the voluntary return and socio-economic reintegration of international protection seekers in their country of origin. With the recent upsurge of international protection seekers from southern Serbia (Vranje and Bujanovac), the Government initiated a development programme in late 2011, aiming to improve the living conditions in the region and thereby to contain the massive influx of international protection seekers from this region. The project focuses on access to decent housing, income-generating activities in the areas of traditional economic sectors, fighting high levels of school dropouts, improving access and quality of care, and community development.

prepares guidance about cumulative measures, which may amount to persecution<sup>(50)</sup>. It should be noted that the recognition rate for Albania is significantly higher than the recognition rate for the other Western Balkan countries.



**Figure 17: Recognition Rate of applicants for international protection from Western Balkans in EU, 2008-2012; Source: Eurostat login: 8.05.2013. No data for 2012 from NL due to transition to a new information system**

The analysis of the 3 caseloads provided above highlights the very different characteristics that influxes of applicants for international protection may have. In cases of emergency situations due to civil war or other major conflict, recognition rates are usually very high, as the need for protection is obvious for genuine applicants for international protection – difficulties remain however over the choice of legal regime to be used over time as the situation evolves.

Other flows may to a large extent be composed of persons who have very little reason for claiming persecution as understood in the EU legislation covering international and other protection. The difficulty for Member States here is to deal as quickly as possible with manifestly unfounded applications and returns while maintaining procedural safeguards and ensuring an individual assessment of applications. A number of Member States also make strenuous efforts to help source countries reduce push factors that may lead to unfounded applications.

Finally, and more normally, other usually longer term situations in source countries in a state of ‘stable instability’ may cause significant difficulty to the EU Member States in providing protection to those who effectively need it, while removing those who do not, in the context of changing situations in the country of origin in both geographical and temporal terms. This is the case of Afghanistan, Somalia and other countries where the difficulty of knowing what is occurring in the region of origin of the applicant and when makes providing appropriate protection, or not providing it, extremely challenging. When dealing with such flows, the provision and use of high-quality, timely Country of Origin Information (COI) is essential to enable caseworkers to make quality decisions.

<sup>(50)</sup> UNHCR input.

In February 2013, the EASO Management Board approved a proposal for EASO to adopt a Network Approach in regard to EU-level COI. The approach links different COI-related EASO activities into one coherent structure and makes use of the available resources in the most effective way. <sup>(51)</sup>

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<sup>(51)</sup> For more details, see EASO Annual Activity Report 2012.



## 3. Major developments in 2012

### 3.1. Important developments at EU level in the field of asylum

#### 3.1.1. Legislative: completion of CEAS

2012 has been a defining year in the process to adopt the new EU Asylum Package. Under the Danish and the Cypriot presidencies important steps forward have been undertaken by the Co-Legislators in order to agree on the different instruments. In particular, after the adoption of the revised Qualification Directive<sup>(52)</sup> in 2011, political agreement was reached in 2012 on the recasts of the Dublin Regulation<sup>(53)</sup> and the Reception Conditions Directive. On the former, the main changes are linked to the provision of effective remedy (guaranteed right of appeal against transfer decision and related suspensive effect, free legal assistance), introduction of a single ground and a maximum period for detention, enhancing the right to maintain family unity, in particular for minors and dependent persons, introducing the right to information and the personal interview, as well as the setup of a mechanism for early warning, preparedness and crisis management. Regarding the Reception Condition Directive important further guarantees have been introduced in the field of detention, with detailed rules an exhaustive list of restrictive grounds for such detention, and strict requirements on detention conditions. Access to employment of further facilitated and more rules are established concerning the protection of persons with special needs

While still a work in progress in 2012, also on the other two pieces of legislation forming the legal basis of the CEAS – namely the Asylum Procedure Directive and the EURODAC regulation – political agreement has been reached in March 2013.

The new Asylum Procedure Directive<sup>(54)</sup> will significantly clarify procedural standards at EU level. It will notably provide for an asylum procedure based on ‘frontloading’ (more assistance for applicants for international protection at the beginning of the procedure for better and faster decisions); exhaustive and objective grounds for accelerated and border procedures; guarantees for persons with special procedural needs including unaccompanied minors; rules on appeals designed to withstand challenge before European courts; and stricter rules to combat abusive repetitive applications. The revised EURODAC Regulation<sup>(55)</sup> improves the regular functioning of EURODAC with new time limits for fingerprint data to be transmitted. A new scope has been added to allow for law enforcement access under strictly controlled circumstances. Certain additional safeguards were added during the course of negotiations, including an additional requirement to undertake a comparison of fingerprints against the Visa Information System (where permitted) prior to making a EURODAC check.

Once formal adoption of the legal instruments is completed, a new phase will start for the CEAS. In this new context, Member States and the European Commission with the support of EASO will have to ensure that a coherent implementation of the package takes place across the EU, and that this is matched with a credible monitoring of the legal instruments including through the use of the new opportunities offered by Article 33 of the revised Dublin Regulation, which provides for the establishment of an Early warning and Preparedness Mechanism at the EU level managed by the European Commission.

EASO will continue playing a crucial role in this process, as effective practical cooperation is essential if the EU wishes to fully implement the requirements of the Common European Asylum System. EASO will act as a provider of information and an indispensable tool of monitoring to prevent crises, as well as an instrument to coordinate

<sup>(52)</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, (recast), (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>), accessed 27 May 2013.

<sup>(53)</sup> Recast Directive 2003/9/EC. Council of the European Union, Reception conditions for asylum seekers: Better and more harmonised living standards and more effective rules for fighting abuse, 14556/12, 25 October 2012, ([http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/133193.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/133193.pdf)), accessed 27 May 2013.

<sup>(54)</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status., p. 13, (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>), accessed 27 May 2013. EP legislative observatory, inter-institutional reference COD(2009)0165.

<sup>(55)</sup> Council Regulation (EC) No 2725/2000. OJ L316, 15.12.2000, p.1. EP legislative observatory link. EP legislative observatory, inter-institutional reference COD(2008)0242. The next EURODAC Annual Report will be published in the latter half of 2013.

and implement practical cooperation activities that will foster solidarity across the European Union as also expressed in the European Commission Communication on Intra-EU Solidarity<sup>(56)</sup>.

### 3.1.2. Jurisprudence

Significant developments took place in 2012 concerning case-law at European level with regard to the interpretation and application of the legal instruments of the CEAS and other related instruments.

Over the past years, rulings from the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) relating to international protection have developed a case-law corpus, resulting in an essential element of the application and interpretation of the CEAS.

On one hand, the ECtHR has judged, in the last decades, a notable number of cases related to asylum, the principle of *non-refoulement* and detention conditions. The ECtHR has based its judgements on its competence to ensure the observance of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), *inter alia*, prohibition of inhuman or degrading treatment (Article 3), prohibition of collective expulsions (Article 4 of Protocol 4), right to liberty and security (Article 5), right to respect of family and private life (Article 8), and right to effective remedy (Article 13).

On the other hand, the CJEU's role in interpreting EU law to make sure it is applied in the same way in all EU countries is of growing importance in the field of asylum. In this regard, the CJEU plays an essential role in this field by ensuring the consistent and harmonised application of the asylum *acquis* in all EU countries (preliminary rulings), as well as in the context of proceedings for failure by Member States to fulfil an obligation laid down in EU law (infringement procedures) or even regarding cases where the legality of a piece of EU legislation is reviewed (actions for annulment). In addition, the CJEU has to ensure the application of the Charter of Fundamental Rights of the EU, which establishes the right to asylum (Article 18) and foresees the prohibition of torture and inhuman or degrading treatment or punishment (Article 4), the protection in the event of removal, expulsion or extradition (Article 19) or the right to an effective remedy and to a fair trial (Article 47). In this context the respect for the Charter could eventually be analysed by the CJEU with regard to asylum issues.

Lastly, Article 6 (3) of the Treaty of the European Union (TEU) foresees that 'Fundamental rights, as guaranteed by the ECHR 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, the ECHR is considered by the CJEU as a Treaty of special significance.

In order to avoid a long enumeration of cases, most of the relevant judgments by the CJEU and the ECtHR in 2012 with regard to asylum, international protection and non-refoulement have been distributed across the relevant sections of the Report in accordance with the issue they deal with. Those that do not fit in the structure are commented on here below:

<sup>(56)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum - An EU agenda for better responsibility-sharing and more mutual trust, COM(2011)835 final, 2 December 2011, (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0835:FIN:EN:PDF>), accessed 27 May 2013.



**Qualification:** Exclusion clause of Article 1D GC (Palestinians under the assistance of UNRWA)

In the reference for a preliminary ruling *C-364/11 El Kott and others v Bevándorlási és Állampolgársági Hivatal (Hungary)* <sup>(57)</sup>, the CJEU ruled on the interpretation of the exclusion clause based on the existing protection by UNRWA when such protection has ceased (Article 12 (1) (a) of the Qualification Directive). In particular, the referring court asked whether, in cases where it is established that the protection has ceased, the applicant should always be granted refugee status or would be entitled simply to a review of his or her application on the same basis as other applicants for international protection. The main proceedings related to the application for international protection presented by several Palestinian nationals, which were forced to leave the area of operations of UNRWA and requested to be granted refugee status *ipso facto* by the Hungarian authorities. The CJEU observed that cessation of protection by UNRWA includes the situation in which a person who, after actually availing himself such protection or assistance, ceases to receive it for a reason beyond his control and independent to his volition. The authorities should assess whether that person's personal safety was at serious risk and it was impossible for UNRWA to guarantee that his living conditions at the area would be commensurate with the mission entrusted to UNRWA. If so determined, the person is entitled to be recognised *ipso facto* as a refugee within the meaning of Article 2 (c) of the Qualification Directive (and not subsidiary protection) and in light of Article 1D of the Geneva Convention. The CJEU further noted that the words *ipso facto* do not lead to discrimination with other applicants for international protection, given that the applicants receiving assistance from UNRWA are in a different situation.

**Family reunification:** non-discrimination, post-flight marriage

As regards the ECtHR, it should be noted that it has no direct jurisdiction to judge the individual decisions of Member States to recognise or not international protection. Nonetheless, within its remit, it examined one case in 2012 related to discrimination of certain refugees and family union which may be relevant in this field. Case *Hode and Abdi v the United Kingdom* (No 22341/09) <sup>(58)</sup> concerned the refusal to authorise the family reunion of a Somali refugee, based on the fact that the marriage had only taken place after he left Somalia. The ECtHR found that the difference in treatment between the applicants and other categories of immigrants had not been objectively and reasonably justified, considering that it placed post-flight spouses of refugees in a particularly disadvantageous position compared to spouses of refugees who married before the flight. Moreover, this decision was in breach of the prohibition of discrimination in conjunction with the right to respect for private and family life. It is worth noting that the immigration rules of the United Kingdom in this respect were amended in 2011 to permit refugees to be joined by post-flight spouses also during their initial period of leave to remain.

**Detention:** on the power to keep individuals in custody of international criminal tribunals having their seat within the territory of one Member State, even after an asylum application was presented in that Member State

The ECtHR ruled for the first time in *Djokaba Lambi Longa v the Netherlands* (No 33917/12) <sup>(59)</sup> on the power to keep individuals in custody of international criminal tribunals having their seat within the territory of one Member State, even after an asylum application was presented in that Member State. It was concluded that, although Mr. Djokaba Lambi Longa was held in custody by the International Criminal Court on the soil of the Netherlands in order to give evidence as a witness, the Netherlands had no jurisdiction to review the lawfulness of his detention at the premises of the International Criminal Court (thus pursuing article 1 ECtHR), even if the Netherlands had decided to examine his asylum request.

<sup>(57)</sup> Judgment of the Court (Grand Chamber) of 19 December 2012. Full text of the judgment available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0364:EN:HTML>.

<sup>(58)</sup> Judgment of the Court of 6 November 2012. Full text of the judgment available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114244>.

<sup>(59)</sup> Decision of the Court of 9 October 2012 declaring the application inadmissible. Full text of the judgment available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114056>.

### 3.1.3. Practical Cooperation: Building up the European Asylum Support Office

The important role laid down for EASO in the implementation of the CEAS was highlighted in the Communication from the Commission on enhanced intra-EU solidarity in the field of asylum: ‘The support office will ensure that practical cooperation can become a major supporting pillar to the asylum system of the Union’, as ‘initial experience of the CEAS has shown that practical action is a necessary complement to legislation to create confidence that all Member States perform the same tasks in a similar way with similar outcomes’<sup>(60)</sup>. In 2012, while still in the start-up phase and with limited resources available, EASO was entrusted with important additional tasks, such as the elaboration of an Early warning and Preparedness System (EPS)<sup>(61)</sup> that will feed into the Dublin III Article 33 Early Warning, Preparedness and Crisis Management mechanism.

As outlined in the Annual Activity Report 2012<sup>(62)</sup>, both the organisation (in terms of staff) and the scope of operations increased significantly.

Important milestones in the development of the EASO included the official move to the new EASO premises in Valletta Grand Harbour on 3 September 2012 and EASO’s financial independence from the European Commission on 20 September 2012. Also in 2012, a number of pre-existing asylum-related measures were transferred to EASO, such as the COI Common Portal, the European Asylum Curriculum, and the EURASIL Network.

Even with the limited staff and resources available in 2012, EASO managed to become a catalyst of practical cooperation in the field of international protection. In addition to the development of strategies and methodologies, operational activities in 2012 included, *inter alia*, the organisation of meetings and workshops on asylum policy and COI, the publication of COI reports, training, quality-related activities (incl. on unaccompanied minors), data analysis, operational support to countries under particular pressure, and some first steps with regard to intra-EU relocation, resettlement and external dimension of the CEAS. Throughout this Annual Report, in the relevant thematic sections, references are made to concrete EASO activities undertaken in 2012. More details can also be found in EASO’s Annual Activity Report 2012.

Whereas EASO has so far mainly focused on practical cooperation activities between Member States’ first instance asylum administration, in strong coordination with the European Commission and with the regular participation of UNHCR and other EU agencies, activities have also started involving members of courts and tribunals specialised in asylum. Representatives of civil society have been invited to a multi-disciplinary conference on Afghanistan and some activities relating to unaccompanied minors. Input from civil society into EASO’s work is obtained from organisations that are members of the EASO Consultative Forum.

<sup>(60)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum - An EU agenda for better responsibility-sharing and more mutual trust, COM(2011)835 final, 2 December 2011, (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0835:FIN:EN:PDF>), accessed 27 May 2013.

<sup>(61)</sup> Cf. Justice and Home Affairs (JHA) Council Conclusions of 8 March 2012.

<sup>(62)</sup> Whereas the 2011 Annual Report on the Situation of Asylum in the EU also incorporated a full overview of EASO operations, its management, as well as budgetary information, it was decided to publish a separate EASO Annual Activity Report in 2012 and following year. This document can be found downloaded from the EASO website.

## Consultative Forum 2012

The EASO Consultative Forum was set up soon after the establishment of EASO. The forum constitutes a process 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. 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 at the national as well as at the EU level, and have been instrumental in supporting the fairness and accuracy of asylum procedures, partially by bringing certain cases to the European Court of Justice and 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. These organisations can be relevant to the different aspects of the work of EASO. The aim of consultation is to ensure that interested parties are given the opportunity to be heard and to contribute to EASO's work.

During 2012, EASO continued strengthening its relationship with civil society and the Consultative Forum membership base grew to 55 organisations. Throughout the year, EASO consulted registered civil society organisations on various areas of its work: Annual Work Programme, Annual Report 2011, Training, Quality, Age Assessment, Early warning and Preparedness System (EPS), resettlement and COI. EASO also invited civil society organisations to participate in the Afghanistan Conference in November, which was open to Member States, members of courts and tribunals, academics and NGOs. The turnout was encouraging and the outcome demonstrated that when different actors come together to discuss specific topics, the result is more comprehensive.

In cooperation with the Advisory Group, EASO elaborated an Operational Plan for the Consultative Forum. The Operational plan provides the general parameters for consultation that will be applied in a systematic manner, a framework for consultation that is coherent albeit flexible enough to allow for specific ad hoc consultation needs that might be necessary from time to time. Following adoption by the Executive Director, the Management Board endorsed it in September 2012. EASO also nominated the Consultative Forum Contact Point, as a single point of contact with civil society, ensuring smoother and more effective communication between the various civil society actors and the different units within EASO.

EASO organised the second plenary meeting on 26 November 2012. Although EASO consults various organisations throughout the year, the plenary meeting has become a major event in the EASO calendar of activities attracting around 75 participants most of whom NGOs working in the field of asylum.

At the November meeting, besides the Consultative Forum Operational Plan, participants had the opportunity to discuss key EASO products and services during breakout sessions, such as the EASO Annual Report, EASO Annual Work Programme 2014, EASO Training, Quality and Unaccompanied minors, and the EASO Early warning and Preparedness System. EASO also presented a draft calendar of consultation activities during 2013 <sup>(63)</sup>.

### 3.1.4. The European Refugee Fund

The European Refugee Fund has since its creation been a crucial instrument for Member States to address deficiencies in their asylum systems, carry out pilot projects and experimentations, share knowledge and best practices through bi- and multilateral projects and improve the implementation of the European asylum *acquis* in various areas.

*EASO Annual Report 2011* devoted several pages to the projects implemented by Member States under Community Actions and under their national programmes <sup>(64)</sup>.

<sup>(63)</sup> A special mention should be made of the report 'Enhancing Intra-EU Solidarity Tools to Improve Quality and Fundamental Rights Protection in the Common European Asylum System' (January 2013), in which the European Council on Refugees and Exiles (ECRE) shares its views on a wide range of topics, including EASO activities, Early Warning Mechanism, and Solidarity (be it financial, sharing of expertise, or in the form of intra-EU relocation). Cf. <http://www.ecre.org/component/content/article/56-ecre-actions/315-enhancing-intra-eu-solidarity-tools.html>, accessed 17 April 2013.

<sup>(64)</sup> See EASO Annual Report 2011, pp. 49 and ff.

The national ERF projects reported by Member States for 2012 are so numerous and so diverse that describing them, even by broad categories, would largely exceed the limitations of the present report.

Inasmuch as a few trends may be identified, Member States seem to have concentrated their efforts on reception conditions – especially for vulnerable persons – including medical and psychological care; legal assistance and counselling; training; resettlement and intra-EU relocation; integration of beneficiaries of international protection; COI; and administrative reform with a view to better efficiency. Many projects are implemented by or through non-governmental organisations whose contribution to the implementation of the CEAS should be highlighted <sup>(65)</sup>.

The EU Commission regularly reports on the use of the money allocated through this important instrument of European financial solidarity <sup>(66)</sup>.

In the present report a variety of concrete examples of ERF projects are mentioned in the thematic Sections they relate to.

Year 2013 is the ERF's last year. Starting in 2014 (until 2020) the new Asylum and Migration Fund (AMF) will focus on people flows and the integrated management of migration. It will support actions addressing all aspects of migration, including asylum, legal migration, integration and the return of irregularly staying non-EU nationals. The AMF aims at ensuring a more coherent system to channel EU funding and increase the possibility of strategic planning, while reducing the administrative burden on Member States. In 2012 the negotiations on the AMF were ongoing <sup>(67)</sup>.

## 3.2. Important developments at the national level

### 3.2.1. Pressures on National Asylum Systems

Several Member States made major changes to their asylum systems in 2012, some of which were the result of pressures on the national asylum systems, due to large numbers of applications, limited capacity to process applications, systemic deficiencies, or a combination of different factors. Of those Member States that have experienced pressures in 2012, four Member States formally requested the assistance of EASO in providing operational support to their asylum systems.

#### 3.2.1.1. Greece

Greece has been facing great pressure at its external borders for several years <sup>(68)</sup>, while the country's infrastructure was insufficient with respect to the management of the disproportionately large mixed flows, which include persons potentially in need of international protection.

In line with the National Action Plan on Asylum and Migration Management agreed between the Greek authorities and the European Commission in 2010, and after the enactment of the law 3907/2011 'Establishment of Asylum Service and First Reception Service, the transposition of the 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals', Greece proceeded with the setting up and staffing of the new Asylum Service that is expected to be operational in June 2013, the new Appeals Authority and the new First Reception Service. These bodies are civilian structures, under the authority of the Ministry of Public Order and Citizen Protection, staffed with trained professionals and charged with the reception and screening of applicants for international protection and the examination of their applications.

<sup>(65)</sup> Examples of projects co-financed under the ERF are available under [http://ec.europa.eu/dgs/home-affairs/financing/fundings/example-of-projects/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/financing/fundings/example-of-projects/index_en.htm), accessed 27 May 2013.

<sup>(66)</sup> For more information, see [http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/refugee-fund/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/refugee-fund/index_en.htm), accessed 27 May 2013.

<sup>(67)</sup> [http://ec.europa.eu/dgs/home-affairs/financing/fundings/funding-home-affairs-beyond-2013/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/financing/fundings/funding-home-affairs-beyond-2013/index_en.htm), accessed 27 May 2013.

<sup>(68)</sup> See EASO Annual Report 2011, p. 17 and ff.

### EASO Support to Greece

In 2012, EASO supported the implementation of the National Action Plan on Asylum and Migration by helping Greece with the establishment of the new Asylum Service, the new First Reception Service, the new Appeals Authority, reception in general and reduction of the backlog via the deployment of experts from the different EU member states via the so-called Asylum Support Teams (AST) and the involvement of EASO's own expert staff. <sup>(69)</sup>

The basis for these deployments of asylum experts is the EASO Operating Plan for Greece, which was signed on 1 April 2011 and has a duration of two years.

In addition, EASO and UNHCR signed a grant agreement (22 November 2012) on a project for 5 months on operational support in strengthening the administrative appeals instance of the asylum-procedure in Greece, including the clearance of the backlog of appeals.

In the allocation of European funds to Member States on the basis of the provisional budget of the four Funds of the General Program 'Solidarity and Management of Migration Flows' for 2012, Greece received 3 601 857 euros from the ERF. The national action plan under the ERF has been implementing various programs regarding the improvement of infrastructure and asylum system supporting institutions <sup>(70)</sup>.

### 3.2.1.2. Luxembourg

To deal with the increasing demands of applications for international protection caused by the inflow of applicants from the *Western Balkans*, Luxembourg recruited additional staff to process applications in late 2011 and 2012. In order to train these personnel in asylum matters, the Minister for of Labour, Employment and Immigration asked EASO to provide support. An operating plan was signed on the margins of the JHA Council meeting of 26 January 2012 by Minister Nicolas Schmit and Dr Robert K. Visser, Executive Director of EASO.

### EASO Support to Luxembourg

The support of EASO aimed to train the newly hired staff in 'Interviewing Techniques' and 'Decision Making'. Luxembourg has committed itself to the EASO training programme with own EAC trainers for the future in line with EASO and EU policy. By the end of 2012, Luxembourg had 7 trainers in 4 different modules in its refugee unit.

### 3.2.1.3. Sweden

The inflow of applicants for international protection in Sweden in 2012 exceeded the previous estimations due to the large inflow of *Syrian* applicants, an unexpectedly high inflow from the *Western Balkans* (see 2.4.2, 2.4.3) and the persistent influx from other countries of origin such as *Somalia*, *Afghanistan* and *Eritrea*. This put stress

<sup>(69)</sup> For more details, see EASO Annual Activity Report 2012.

<sup>(70)</sup> In particular, the actions funded two related programmes:

A) Improving the conditions and infrastructure reception and asylum procedures.

Specific Actions:

A.1. Increase capacity and upgrade hosting services for asylum seekers  
 A.3. Services for providing legal support and assistance to asylum seekers and people who enjoy international protection  
 A.4. Social care, health services, psychological support and related consulting services with emphasis on vulnerable cases of the target group  
 A.5. Provide information to local communities, including increasing awareness and positive influence on public opinion as well as specific training of the staff of local authorities and organisations which will come in contact with the target group in the process of reception.  
 A.7. Interpreting / Translation Services to the relevant asylum authorities

B) Integration of persons of the target group whose stay in Greece has a permanent and steady nature.

Specific Actions:

B.1. Counselling and assistance in areas such as housing, basic means of living, integration into the labour market and assistance provided to medical, psychological and social level  
 B.2. Activities that help the target group to adjust to Greek society at social and cultural level  
 B.3. Activities focusing on education, vocational training, Greek language courses and skills acquisition. (EMN Questionnaire)

on the national asylum systems and in the areas of reception and accommodation, as well as in the examination of applications.

The Swedish authorities responded with administrative improvements and the recruitment of additional staff <sup>(71)</sup>. The Swedish Migration Board (SMB) established an Operational Division focusing on the coordination of the various Divisions within the SMB, in order to gain flexibility, and better respond to the high number of migrants.

### EASO Support to Sweden

At the end of 2012 Sweden requested Special Support from the European Asylum Support Office, more specifically in the form of training for the Swedish Migration Board on International Refugee Law and Human Rights, as well as the training on Inclusion, which was held in February 2013. Support was agreed upon involving bringing forward the relevant scheduled training as required by Swedish Migration Board staff. <sup>(72)</sup>

#### 3.2.1.4. Italy

Italy's present asylum and reception system faces major challenges. Externally, there were some cases of lower courts in other Member States questioning the conditions in the Italian reception system and, as a consequence, whether Dublin transfers should take place. Internally, the Italian Authorities have been assessing the situation and discussing the need for enhancing and reinforcing parts of the asylum and reception system. Although significant improvements have been made in recent years and are still being made, Italy encounters difficulties in guaranteeing a homogenous level of services foreseen by the national legislation when large numbers of arrivals take place. There is a need for a higher number of specialised personnel on country of origin information (COI) and analytical capacity, an improvement in the reception system and for support to the appeals instance.

### EASO Support to Italy

On 7 December 2012 Italy requested EASO for Special Support to improve and enhance the Italian Asylum and Reception System. The Executive Director of EASO decided on 13 December 2012 to render technical and operational support to Italy via a joint expertise of EASO and Member States, in the framework of a Special Support Plan due to be signed in 2013.

#### 3.2.1.5. Malta/ Intra-EU Relocation

The Maltese Office of the Refugee Commissioner received a total of 2 114 applications for international protection in 2012, such that 2012 ranks the second highest year since 2001 in the number of irregular arrivals on the island and the number of applications for international protection received by the Office of the Refugee Commissioner. 86.3 % of applications received by the Office of the Refugee Commissioner in 2012, as in previous years, were lodged by third country nationals (TCNs) who entered Malta irregularly by sea. <sup>(73)</sup>

In view of the significant pressures facing Malta, and following an inter-Ministerial pledging conference organised by the European Commission in May 2011, relocation of protected persons from Malta to other Member States took place during 2012, as indicated in the table below. Relocation activities were organised either as part of the EU pilot project on Intra-EU relocation (EUREMA), or through bilateral projects.

<sup>(71)</sup> Besides the recruitment of additional staff, measures at the Swedish Migration Board include a more flexible working week, with working shifts also covering the weekend and the revision and improvement of legal positions and administrative guidelines vis-à-vis the situation in countries of origin by the legal department and the Division for Asylum Examination within the Board.

<sup>(72)</sup> Cf. EASO Annual Activity Report 2012.

<sup>(73)</sup> Annual Report Matrix.

Member State/Schengen Associated State	Number of relocation places pledged (2011-2012)	Number of beneficiaries relocated (as at 23 January 2013) <sup>(74)</sup>	Bilateral/EU funded project
Germany	150	153 <sup>(75)</sup>	Bilateral
Poland	50	6 <sup>(76)</sup>	EU-funded Project
Spain	25		Bilateral
The Netherlands	20	20 <sup>(77)</sup>	Bilateral
Denmark	10	10 <sup>(78)</sup>	Bilateral
Romania	10		EU-funded project
Slovakia	10		EU-funded project
Hungary	5		EU-funded project
Ireland	10	20 <sup>(79)</sup>	Bilateral
Lithuania	6	4 <sup>(80)</sup>	EU-funded project
Portugal	6	4 <sup>(81)</sup>	EU-funded project
Bulgaria	4		EU-funded project
<b>Total</b>	<b>306</b>	<b>217</b>	

**Table 3: Intra-EU relocation from Malta by EU Member States: number of pledges in 2011-2012 and actual relocations by January 2013**

### Report on Intra-EU Relocation Measures

In a fact-finding report on Intra-EU Relocation Measures published in July 2012 <sup>(82)</sup>, EASO analysed Member States' views about the use of relocation, as well as motivations for participation or non-participation. The report showed that there is room for discussing and developing the instrument of intra-EU relocation in the future, as part of a range of intra-EU solidarity measures. The Commission created the scope for Union co-financing of such activities in the Asylum and Migration Fund proposal, which will facilitate action by Member States willing to engage in voluntary projects, with the EASO taking a coordinating role as established in its founding Regulation <sup>(83)</sup>.

#### 3.2.1.6. Others/Contingency planning

Having regard to the increasing inflow of applicants for international protection at EU or at national level, Member States sought to anticipate and take measures in order to be able to face a possible additional inflow in the best conditions.

Cyprus <sup>(84)</sup> wrote to EU authorities that it would request EU support in case of a mass influx; Poland <sup>(85)</sup> recruited additional staff for the asylum procedure and conducted studies on its ability to mobilise resources were it to

<sup>(74)</sup> As at 23 January 2013.

<sup>(75)</sup> Germany has relocated a total of 153 beneficiaries of international protection from Malta on a bilateral basis. On 29 November 2011, 147 beneficiaries departed and on the 13 February 2012 another 6 persons departed to Germany, bringing the total to 153.

<sup>(76)</sup> 5 left on 17 January 2013. 1 left on 23 January 2013.

<sup>(77)</sup> 20 left for the Netherlands on 6 June 2012.

<sup>(78)</sup> 1 beneficiary left Malta for Denmark on 26 March 2012; a further 7 beneficiaries left for Denmark on 17 October 2012; and 2 left on 11 December 2012.

<sup>(79)</sup> 10 beneficiaries left Malta for Ireland on 13 December 2011. In 2012 Ireland pledged to relocate a further 10 beneficiaries from Malta. These 10 beneficiaries left Malta on 6 November 2012.

<sup>(80)</sup> 4 left on 12 December 2012.

<sup>(81)</sup> 4 left for Portugal on 18 December 2012. The other 2 asked for the possibility to delay their relocation in view of personal matters. Portugal accepted but asked for them to be relocated in January or February of 2013.

<sup>(82)</sup> Cf. EASO fact finding report on intra-EU relocation activities from Malta, July 2012, (<http://easo.europa.eu/wp-content/uploads/EUREMA-fact-finding-report-EASO1.pdf>), accessed 27 May 2013.

<sup>(83)</sup> For more details, see EASO Annual Activity Report 2012.

<sup>(84)</sup> With regards to pressures on the asylum system, the Ministry of Interior addressed a written request to EASO and the European Commission for providing support in case of mass influx of applicants for international protection from Syria. The request focuses on relocation. In the meantime, a national action plan is being developed in order to address the situation in case of a mass influx, but this can only cover a very limited number of applicants. (EMN Questionnaire)

<sup>(85)</sup> Taking into account that the number of applicants for international protection in Poland in 2012 was high (10 753 applicants), an analysis of an internal availability of additional human resources was conducted. The Department for the RSD Procedure was strengthened by engaging more employees in the RSD examination, including in conducting of an asylum interviews. Also in 2012, the Ministry of Interior carried out preparatory works for the development of an action

react to a sudden inflow. Latvia also developed contingency planning <sup>(86)</sup>. Sweden established a Migration intelligence unit at the Swedish Migration Board (SMB), the purpose of which is to coordinate and ensure high quality of the SMB's systematic intelligence work. In order to achieve this, relevant changes will be analysed in time, and communicated through, for example, forecasts.

### 3.2.2. Institutional changes

In 2012 several Member States introduced or implemented institutional changes.

#### Centralisation

In Austria, a new act was passed by Parliament, which foresees in the establishment of one central authority exclusively dealing with asylum and alien police matters by 2014, called the Federal Office of Immigration and Asylum Matters <sup>(87)</sup>. Also the second instance will be reformed as of 2014, with the asylum court being merged into a Federal Administrative Court (*Bundesverwaltungsgericht*). In Belgium, one State Secretary became responsible for all aspects of the migration and asylum policy, including also reception, voluntary and forced return, which were previously under the mandate of two different ministries <sup>(88)</sup>. Bulgaria concentrated the litigation of appeals in asylum in one specialised jurisdiction based in Sofia <sup>(89)</sup>.

#### Division

In Denmark, the Danish Immigration Service (DIS) was split into two separate entities at the end of 2011, the competence for asylum now comes under the umbrella of the Ministry of Justice <sup>(90)</sup>. Likewise, in the United Kingdom, some competencies of the United Kingdom Border Agency (UKBA) were transferred to a newly created body; asylum remained within the remit of the UKBA <sup>(91)</sup>.

#### Change of Ministry/administrative status

While the above-mentioned division of the DIS in Denmark also entailed a change of Ministry as regards asylum, there were similar changes in other Member States:

In Malta, the Prime Minister assumed the role of the outgoing Minister for Home Affairs <sup>(92)</sup>, including migration and asylum. In the Netherlands, the Dutch Immigration and Naturalisation Service – as well as of other services involved in migration and asylum – returned to the Ministry of Security and Justice, like under previous

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concept in the light of mass inflow of foreigners into the territory of the Republic of Poland. An important element of the concept was the Diagnosis of the system of reaction to the mass inflow of foreigners – an attempt at an analysis of the risk of mass inflow of foreigners to Poland and study of available resources, including procedural, human, technical and financial. (EMN Questionnaire)

<sup>(86)</sup> On 4 July 2012, the Cabinet of Ministers adopted order No. 312 'On Plan of Measures for Coordinated Action of Institutions in Relation to the Possible Arrival of Asylum Seekers from Crisis-Affected Countries to Latvia', stipulating the actions of involved institutions in the case of mass arrival of applicants for international protection. (EMN Questionnaire)

<sup>(87)</sup> On 5th July 2012 the Austrian parliament enacted the Foreigners' Authorities Restructuring Act ('FARA', Federal Law Gazette of 16 August 2012, No. I 2012/97).

<sup>(88)</sup> End of December 2011 the new Belgian government was sworn in and Ms Maggie De Block was appointed as State Secretary for Asylum and Migration. To allow for the development of a more comprehensive policy on asylum competences, reception and return, the government decided to concentrate all aspects of migration and asylum policy in one cabinet. (Annual Report Matrix)

<sup>(89)</sup> Annual Report Matrix.

<sup>(90)</sup> As of 3 October 2011, the Ministry of Refugee, Immigration and Integration Affairs is closed. The ministry's responsibilities have been transferred to other ministries. Asylum, humanitarian residence, family reunification, residence for EU citizens, Danish citizenship and short-term visas are now the responsibilities of the Ministry of Justice. Cf. [http://www.nyidanmark.dk/en-us/News/News/danish\\_immigration\\_service/2011/Oktober/inm-is-closed.htm](http://www.nyidanmark.dk/en-us/News/News/danish_immigration_service/2011/Oktober/inm-is-closed.htm), accessed 11 April 2013.

<sup>(91)</sup> In March 2012, the UK Border Agency split its functions in two and created a separate Border Force. Border Force is a law enforcement command within the Home Office and is led by Director General, Sir Charles Montgomery. Border Force works to secure the UK border and protect the UK from terrorism, crime, revenue fraud and immigration abuse, whilst supporting economic growth by facilitating legitimate trade and travel. The UK Border Agency is responsible for immigration, asylum and visas. (Annual Report Matrix) It should be noted that on 1 April 2013 the Home Secretary announced the UKBA would be split up and its functions would no longer exist as part of an Agency, but would come back under the main Home Office structure.

<sup>(92)</sup> Pursuant to the Cabinet reshuffle of January 2012, the Ministry for Justice and Home Affairs was re-designated as the Ministry for Home and Parliamentary Affairs. Following the resignation of the Minister for Home and Parliamentary Affairs in May 2012 the Ministry was re-designated as the Ministry for Home Affairs, which fell under the direct responsibility of the Prime Minister. (Annual Report Matrix)



governments<sup>(93)</sup>. In Slovakia, the administrative body dealing with asylum became a Directorate in the Ministry of Interior<sup>(94)</sup>.

### Reorganisation

In Slovenia, migration and asylum-related competences underwent a far-reaching reshuffle<sup>(95)</sup>. Less visible internal administrative restructuring within the bodies in charge of asylum occurred in Germany<sup>(96)</sup>, Finland<sup>(97)</sup>, France<sup>(98)</sup>.

### 3.2.3. Important national jurisprudence

While the rulings of the CJEU and of the ECtHR have an immediate and EU-wide influence on both administrative practice at first instance and the judgements of national courts, it is a remarkable trend that some national courts expressly refer to landmark decisions of the higher Courts of other Member States.

Thus, on the issue of *religious minorities/particular social groups* – in that case, sexual orientation – the Supreme Administrative Court of Finland<sup>(99)</sup> expressly referred to a ruling issued by the Supreme Court of the United Kingdom in the case *HJ (Iran)*, whose basic principle that an individual should not be obliged to hide personal characteristics that are essential to them, such as religious beliefs or sexual orientation/gender identity, is identical to the principles of the Judgement of 5 September 2012 of the Court of Justice of the European Union (C-71/11 and C-99/11) (see above 3.1.2.). A similar decision was issued regarding religious minorities in Afghanistan<sup>(100)</sup>.

Unsurprisingly, the *HJ* decision set a precedent whose reasoning was expanded by British courts to other situations in other countries of origin, for instance the visible absence of political enthusiasm in favour of the government in Zimbabwe<sup>(101)</sup>.

Similar principles guided the Council of State in the Netherlands, with an additional reference to the *Sufi and Elmi v UK* decision of the ECtHR<sup>(102)</sup>, on the issue of ‘westernisation’ of Somali applicants who have resided for a long time in European countries. The Dutch government had to change its policy in this regard<sup>(103)</sup>.

<sup>(93)</sup> Migration policy Department, including agencies INS, COA (reception) and DT&V (return) have been moved from the Ministry of the interior and Kingdom relations to Ministry of Security and Justice. (Annual Report Matrix)

<sup>(94)</sup> On 31 December 2012, the Migration Office was on the basis of a ministerial decision turned from an independent budgetary organisation to one of the offices of the Ministry of Interior with direct subordination to the State Secretary of the Ministry of Interior and within the same budget for the whole ministry.

<sup>(95)</sup> The Migration and Integration Directorate was merged with internal administrative affairs into the Internal Administrative Affairs, Migration and Naturalisation Directorate. Within the new Internal Administrative Affairs, Migration and Naturalisation Directorate, a Migration Office has been established and within this office three divisions have been created, which are also involved into international protection issues, namely the Migration Policy and Legislation Division, the Status Affairs Division and the Accommodation, Care and Integration Division. The new Status Affairs Division was established for decision making in all matters in the field of migration, including in international protection procedures, the Accommodation, Care and Integration Division for reception and integration issues and the Migration Policy and Legislation Division for policy and legislation making in the field of migration, including international protection. (Annual Report Matrix)

<sup>(96)</sup> Some institutional changes have been implemented since 1st October regarding IT units, some divisions have changed parts of responsibilities and instead of Division 500 ‘Operative Controlling’, a new unit called ‘Developing and Optimising Asylum Procedures’ has started.

<sup>(97)</sup> The Asylum Unit of the Finnish Immigration Service (FIS) formed new teams for separate processes; e.g., a section for cessation and cancellation of the refugee statuses, a new Passport team, the Resettlement Section, and one common secretarial team for all asylum sections in Helsinki. The asylum process for unaccompanied minors was divided over all of the sections in the Asylum Unit. Previously it was handled in the Helsinki 2 section, which now only focuses on resettlement issues. (Annual Report Matrix)

<sup>(98)</sup> In March 2012, OFPRA reorganised the distribution of countries of origin in its different geographical divisions so as to better share the burden of the total caseload (OFPRA has four geographical divisions consisting of Asia, Europe, Africa and America/Maghreb).

<sup>(99)</sup> The Supreme Administrative Court gave a precedent on the issue of belonging to a particular social group, namely on sexual orientation. In its decision the Court referred to the *HJ (Iran) and HT (Cameroon) v. Secretary of State of the Home Department* (2010 UKC 31, UK Supreme Court, 7 July 2010). (Annual Report Matrix)

<sup>(100)</sup> In 2012 the Supreme Administrative Court stated that applicants from Afghanistan that are perceived to have contravened Sharia law (for example Christians, or converts to Christianity) are not able to resort to the protection of the authorities in case of facing persecution or being subjected to serious harm practiced by private persons. It should not be required that a person hides his/her religious conviction. Based on this decision applicants that are Christians or credibly converted to Christianity are granted international protection. (Annual Report Matrix)

<sup>(101)</sup> In the case of *RT (Zimbabwe)* the Supreme Court has held that the *HJ (Iran)* principle - that an applicant for international protection should not be required to conceal the protected characteristic of sexual orientation simply to avoid persecution - be extended to applicants who applies for international protection on the basis of a fear of persecution on the grounds of lack of political belief, regardless of how important their lack of belief is to them. Cf. <http://www.bailii.org/uk/cases/UKSC/2012/38.html>, accessed 27 May 2013.

<sup>(102)</sup> See *EASO Annual Report 2011*, p. 47.

<sup>(103)</sup> On 31 July 2012, the Dutch Council of State decided that the judgment of the European Court for Human Rights in the case of the *UK vs. Sufi and Elmi* had not been implemented completely in the Dutch policy regarding Somalia, because the element of ‘westernisation’ was not specifically taken into account. To implement the decision of the Dutch Council of State, the Dutch policy has been changed. The third country nationals in the case *Sufi and Elmi* had stayed in the UK for respectively 8 and 23 years (*Sufi* was under-age when arriving in the UK). In the Netherlands the decision on whether or not an applicant for international protection from Somalia is ‘westernised’ (concerning features that cannot be hidden) is currently considered when taking the decision on the application.

The interpretation of *Article 15 QD*, in particular its point c) regarding indiscriminate violence in a context of armed conflict and the analysis of specific situations in which it is or not applicable in light of the *Elgafaji* ruling of the CJEU, gave rise to several decisions of national courts. A decision of the Helsinki Administrative Court in Finland regarding the criteria for admission to the benefit of subsidiary protection under the said provisions<sup>(104)</sup>; decisions of the Upper Tribunal in the United Kingdom regarding its application to the situation of different countries of origin (Afghanistan, Iraq)<sup>(105)</sup>; and a decision of the Federal Administrative Court of Germany regarding the conditions of applicability of the ‘internal flight alternative’ in the context of an armed conflict affecting parts of the country of origin<sup>(106)</sup>.

The Supreme Administrative Court (SAC) of Poland in its decision of 8 August 2012, File No 1550/11 referred to the case *Berrehab v. the Netherlands*, 21 June 1988, § 21, the case *Keegan v. Ireland*, 26 May 1994, § 44-45 and *Haas v. Netherland*, 13 January 2004, § 43 on the interpretation of ‘family life’. The SAC of Poland stated that family life covers close personal ties, regular contacts and a certain degree of intimacy (ECHR judgment of 21 June 1988 on the *Berrehab v. the Netherlands*, § 21). Other indications beside the joint household, may exceptionally demonstrate a sufficient and stable bond which meets the level of a de facto family tie. The assessment should focus on the nature of the relationship, including the mutual interest, affection and dependence (ECHR judgment of 26 May 1994 on the *Keegan v. Ireland*, § 44-45)<sup>(107)</sup>.

Again regarding *particular social groups*, the *Conseil d’Etat* in France on 21 December 2012 delivered a decision on female genital mutilation (FGM) and *Mali* that overturned the established jurisprudence of the National Court of Asylum and practice of OFPRA that consisted in granting subsidiary protection to the girls at risk and to their parents as well for the purpose of family unity. The *Conseil d’Etat* decided that non-excised women are regarded as a particular social group in *Mali* and, hence, do qualify for refugee status<sup>(108)</sup>.

However, since the most important issues regarding the interpretation of the provisions of the EU Asylum Directives and Regulations may be addressed by way of a preliminary ruling of the CJEU, salient national jurisprudence deal with the interpretation of national law.

## Constitutional Law

On the direct applicability of the provision of the Constitution regarding asylum in Italy, the High Court of Cassation ruled that the right to asylum enshrined in the Constitution is fully implemented through the existing institutions of refugee status, subsidiary protection and humanitarian leave to remain, leaving no scope for directly invoking the Constitution<sup>(109)</sup>.

<sup>(104)</sup> Before, the choice between subsidiary protection and humanitarian protection has been based on the level of armed conflict in the area concerned. Due to recent decisions of the Helsinki Administrative Court the Finnish Immigration Service will assess more thoroughly the personal circumstances of the applicants coming from those areas in the light of Article 15 (c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards. (Annual Report Matrix)

<sup>(105)</sup> On 18 May 2012 the Upper Tribunal handed down its determination in AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163(IAC) in which it found that the level of indiscriminate violence in Afghanistan taken as a whole is not at such a high level as to mean that there is a general risk within the meaning of Article 15(c) of the Qualification Directive. The Upper Tribunal similarly handed down a determination on 13 November 2012 in the case of HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409(IAC) which found that there was no general Article 15(c) in Iraq. (Annual Report Matrix)

<sup>(106)</sup> Federal Administrative Court order of 14 November 2012 - 10 B 22.12: In the case of armed conflict which does not involve the entire country, the risk assessment required by Section 60 (7) second sentence of the Residence Act is to be based on the actual destination of the foreigner upon his or her return. If the foreigner cannot return to his or her home region of the country of origin due to the threat of danger there, he or she may be sent to another part of the country of origin only under the conditions given in Article 8 of Council Directive 2004/83/EC (Asylum Qualifications Directive) (the applicant can reasonably be expected to stay in the part of the country where there is no real risk of suffering serious harm). (Annual Report Matrix)

<sup>(107)</sup> The ECHR highlighted that the natural bond between parent and child is so important that even if family life understood as the creation of the family community living together for various reasons is broken or completed, it is inadvisable to further eliminate any possibility to maintain contact between them. Sporadic contact with the child does not prove, however, the existence of family life between it and the parent (see e.g., *Haas v. the Netherlands*, judgment of 13 January 2004, § 43). The SAC of Poland in its decision underlined that the particular situation of the party relating from long-term imprisonment is not conducive to the support of family ties – particularly of the bond between the party – as a parent and their minor, because the frequent contact between them is severely limited, their mutual residence is not possible. The assessment of the existence and quality of family life of the imprisoned person should concentrate on other aspects, such as mentioned above: *mutual interest, affection and dependence* and should include circumstances existing before the imprisonment indicating the existence of an actual family life.

<sup>(108)</sup> The *Conseil d’Etat* stated on 21 December 2012 that ‘in a society where FGM are so commonly accepted that they may be regarded as a social norm, non-mutilated girls and teenagers do form a social group’. Where the girls have been born in France, however, the parents who refrained from having the girls mutilated are not a social group because this practice is punished under national criminal law. In another case, the Council of State judged that having one’s child victim of FGM against one’s will is not an ‘inhuman or degrading treatment’ inflicted on the parents. (Annual Report Matrix). More about the issue of FGM and international protection in: UNHCR, *Too much pain: Female genital mutilation and asylum in the European Union – A statistical study*, February 2013, (<http://www.unhcr.org/refworld/pdfid/512c72ec2.pdf>), accessed 11 April 2013 and European Institute for Gender Equality (EIGE), *Female genital mutilation in the European Union and Croatia*, 2013, (<http://www.eige.europa.eu/sites/default/files/EIGE-Report-FGM-in-the-EU-and-Croatia.pdf>), accessed 11 April 2013.

<sup>(109)</sup> High Court of Cassation judgement No.10686 of 26/6/2012.

## Procedural Law

The Supreme Administrative Court of the Czech Republic decided that there is no obligation to examine admissibility to subsidiary protection where the application has already been refused as inadmissible for asylum <sup>(110)</sup>.

The Supreme Administrative Court (SAC) of Poland reiterated that the refugee status determination initiated upon a subsequent application in its scope can refer only to those protection relevant facts that happened after the examination of the initial application <sup>(111)</sup>. In another judgment, the SAC of Poland stated that the authority cannot limit itself to finding that the applicant did not provide new facts relevant from the point of view of international protection, but is also obliged to establish that the situation in the country of origin has not changed prior to the issuance of the decision on discontinuation of the proceedings that were based on the finding that the new application is identical to the previous one. Therefore, the request for protection in light of change of the situation in the country of origin should be assessed within the framework of a new asylum procedure and not by changing the previous negative decision by reopening the procedure <sup>(112)</sup>.

The Federal Administrative Court of Germany judged that a review of whether a beneficiary of international protection is still entitled to protection is not invalid solely because the decision was issued past the deadline <sup>(113)</sup>.

In Greece, the Council of State ruled on the respective obligations of the applicant and the deciding authority and the status of the opinion of the Advisory Committee <sup>(114)</sup>.

The National Court of Asylum in France decided on 21 February 2012 that, although it is competent for examining the substance of the case, it may send an application back to OFPRA for a decision on the merits when, for formal reasons that have been found to be illegal, the applicant was denied a substantive examination of his/her situation at first instance <sup>(115)</sup>. This decision sets the principles after a long series of litigation regarding cases that had been rejected without interview by OFPRA as ‘manifestly unfounded’ on the sole ground that, by making his/her fingerprints illegible, the applicant had failed to cooperate in establishing his/her identity and nationality.

The abovementioned Italian High Court of Cassation ruled about the consequence of the non-transposition of certain provisions of EU asylum Directives in national law <sup>(116)</sup> (in that case Article 8 QD on ‘internal flight alternative’) and on the scope of the obligation to inform the applicant in a language s/he understands <sup>(117)</sup>.

The Migration Court of Appeal of Sweden ruled on the practical consequence for the Swedish Migration Board of the existence of a medical certificate indicating that the applicant was subjected to torture <sup>(118)</sup>.

The Supreme Administrative Court of Poland determined that all submitted foreign language documents require the party to indicate in the application the occurrence of those facts and circumstances which the submitted document has to prove <sup>(119)</sup>.

<sup>(110)</sup> The issue of inadmissible application for asylum was solved by the Supreme Administrative Court in 2012 by decision of special (expanded) senate. According to the Supreme Administrative court decision there is not an obligation under the national, international or European law to examine whether an applicant qualifies for subsidiary protection in case of inadmissible application for asylum. (Annual Report Matrix)

<sup>(111)</sup> Events that have occurred in the past and have already been taken into account by the Head of the Office for Foreigners in his final decision are considered as *res judicata*. A subsequent application based solely on the same grounds as the initial application (without any new facts) is thus to be considered as inadmissible. Judgment of 9 May 2012, File OSK 1356/11.

<sup>(112)</sup> Supreme Administrative Court of Poland judgment of 20 December 2012, File 2507/11.

<sup>(113)</sup> Federal Administrative Court, judgment of 5 June 2012 - 10 C 4.11: Revocation does not violate the law because the Federal Office did not meet the deadline given in Section 73 (2a) and (7) of the Asylum Procedure Act; the review obligation consists exclusively in the public interest.

<sup>(114)</sup> One of the noteworthy decisions issued by the Council of State in 2012 concerns the cancellation of the ministerial decision that rejected the asylum request of an applicant who claimed fear of persecution because he deserted from the armed forces on grounds of conscience. Quoting – as a means of interpretation of the refugee definition - the relevant article of the Qualification Directive, the Council of State decided that the Minister should have taken into consideration the opinion of the Advisory Committee that assessed that the asylum applicant is a refugee (decision No. 2450/2012 of the Council of State).

<sup>(115)</sup> Although the National Court of Asylum is competent to make a new examination of the substance of the case, it goes differently when the applicant was denied a substantive examination of his/her case, which is an essential guarantee in asylum procedures. In such a case, the Court may nullify OFPRA's decision and send the case back to it for a substantive examination. (Annual Report Matrix)

<sup>(116)</sup> The High Court of Cassation through judgement no. 2294/12 determined the necessity to grant international protection even if the applicant might find protection in another safe area of his/her country of origin, since the European directive which provided for such a possibility (art. 8 no. 2004/83/EC) was not incorporated into Italian Leg. Decree No. 251/2007.

<sup>(117)</sup> Through the same judgement, the High Court made it clear that the obligation to translate the measure taken by the administration into a foreign language understood by the concerned Third Country national relates only to expulsion measures, that is those relating to entry and stay on the national territory.

<sup>(118)</sup> Case No. UM 4609-10: The Swedish Migration Court of Appeal has clarified that subsequent medical examination of torture should be undertaken, if there is a medical certificate available indicating that the applicant has been subjected to torture, even if the applicant's asylum application contains facts with low credibility. The Swedish Migration Board conducts medical examination of torture if there are indications that the applicant has been subjected to torture.

<sup>(119)</sup> Supreme Administrative Court (SAC) of Poland judgment of 09 May 2012, File 1462/11. The SAC underlined that translation of a document the content of which is not relevant to the case would be aimless - particularly in relation to voluminous documents, or documents with specialised terminology, will create unnecessary costs and will lead to excessive prolongation of the proceedings. The crucial role of procedural steps undertaken prior to the examination of the

## Material Law

The German Federal Administrative Court issued a decision relating to the risks to be considered when deciding on cessation/revocation of international protection <sup>(120)</sup>.

The Greek Council of State found that an *exclusion* clause is still applicable in spite of the applicant having served his/her sentence <sup>(121)</sup>. The issue of *proportionality* was also raised.

On *sexual orientation*, the Italian High Court of Cassation found that an applicant is eligible to international protection if homosexuality is punishable by imprisonment in his/her country of origin <sup>(122)</sup>.

### 3.2.4. Major legislative changes in Member States

Several Member States have introduced or have planned new legislation or amendments to existing laws <sup>(123)</sup>. New legislation of a general nature directly or indirectly regarding asylum is often intended to transpose or complete the transposition of the EU asylum acquis. More specific legal provisions are adopted to adapt the asylum system to new realities or correct loopholes that can be abused.

Of a general nature and not connected to the transposition of EU legal instruments were the changes to the Presidential Decree currently regulating the transitional asylum procedure in Greece <sup>(124)</sup>, and a new legal act in Poland regarding several areas of the asylum system <sup>(125)</sup>. An amendment to the International Protection Act in Slovenia whose specific provisions are mentioned in other Sections as appropriate also abolished the possibility to apply for international protection at Slovene embassies.

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contents of a document was emphasised. It includes a preliminary analysis of the suitability of the evidence leading to determination whether the object of evidence is relevant to the case, and may contribute to the clarification, especially if the fact is not supported by other evidence. *All foreign-language documents submitted require the party to indicate in the application the occurrence of those facts and circumstances the submitted document has to prove.* There are no obstacles for the authority to make the preliminary assessment of suitability of a foreign language document on the basis of the document's content summary prepared by the party submitting the evidence, in the context of the evidence thesis presented, or to commit the party to indicate the excerpt or excerpts in the document proving thesis evidence.

<sup>(120)</sup> Federal Administrative Court, judgment of 1 March 2012 - 10 C 11.11: If refugee status is revoked, the assessment of the likelihood of persecution is to be based on the standard of significant probability of persecution.

<sup>(121)</sup> In decision No. 1661/2012 of the Council of State, concerning the implementation of the exclusion clause for a non-political crime committed outside the country of asylum, the Council of State decided that the fact that the applicant served the sentence imposed on him by the criminal Court is not crucial. The offence committed by the applicant (attempted murder of the Indian Ambassador in Romania), is not 'political', 'complex' or 'related' crime, even though it was committed on the basis of the political beliefs or principles of the perpetrator or for the realisation of such aspirations. An interesting minority opinion is expressed in this decision as three of the judges stated that the Minister did not take into consideration (principle of proportionality) the fact that the asylum applicant served the sentence imposed on him by the criminal court. Furthermore, noting that the Minister granted the asylum applicant the right to stay in Greece for humanitarian reasons, the Council of State mentioned the decisions issued by the Court of the European Union on the cases C-57/09, C-101/09 and by the ECHR on the cases *Chahal versus UK*, *Ahmed versus Austria* and *Saadi versus Italy*. (Annual Report Matrix)

<sup>(122)</sup> Through judgement No. 15981/12 the High Court established that an homosexual national can be regarded as persecuted in his/her country in case homosexuality is punishable by imprisonment, according to his/her national legal system. (EMN Questionnaire)

<sup>(123)</sup> In order to avoid a long and fastidious list, only legislation of a general nature is mentioned here. New legal provisions regarding specific issues that are examined separately in the course of the present report are mentioned in the respective sections/sub-sections. For the sake of consistency and in order to avoid repetition from one year to another, only legislation that has been enacted or that entered into force in 2012 is mentioned; legislation in preparatory phase and Bills being debated in national Parliaments are not.

<sup>(124)</sup> Presidential Decree 114 of 2010, the main legislative act regulating the asylum procedure during the transitional period (procedure carried out by the responsible Police Authorities) was amended during 2012 as follows:

(<sup>e</sup>) Article 13 'Detention': An additional reason for allowing the detention of previously arrested illegal immigrants was introduced. Furthermore, a possibility for prolonging the detention of already detained illegal immigrants in cases of obvious abuse of the asylum procedure before returning to the country of origin was introduced.

(<sup>b</sup>) Article 14 'Explicit – Implicit withdrawal': A provision was added in order to facilitate the identification of the active and inactive cases of pending appeals.

(<sup>c</sup>) Article 26 'Appeal Committees': An amendment regarding the status of the Chairs of the Committees was introduced, in order to deal with the lack of availability of civil servants to cover the needs. (EMN Questionnaire)

<sup>(125)</sup> A new legal act introducing amendments to the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland was signed on 28 August 2011 and come into force on 1 January 2012. A new act amends the Act of 13 June 2003 as regards the following issues: Relocation and resettlement; Detention of applicants for international protection; Decisions on transfer and discontinuation of the procedure on the basis of the Dublin Regulation; Obligation to report to the reception center after lodging an application; Grounds for discontinuation of the asylum procedure; Social assistance for the applicants. (Annual Report Matrix)

### 3.2.5. Key policy changes, relating to integrity, efficiency and quality

#### 3.2.5.1. Integrity

The following measures have been taken in 2012 to combat abuses in the asylum field and safeguard the integrity of the international protection system:

##### Establishing the identity of applicants for international protection

Establishing the identity of an applicant for asylum — both as an individual and as a national of a certain country (or a person having his/her habitual residence in the said country in case of a stateless person) — is a necessary step for the determination of international protection needs. Additionally, it is a tool to combat fraud and other misuses of the asylum system.

Several Member States mentioned the usefulness of a database of *identity and other documents* used to identify a person (e.g., birth certificates) established and maintained by the Netherlands – Documents Information System Civil Status (DISCS).

*Language analysis* is a method used to determine an applicant's origin or place of socialisation, that has been used for years by some Member States, especially Germany, the Netherlands, Finland, Sweden, Ireland and Luxembourg<sup>(126)</sup>. Slovakia mentioned that it used this method for the first time in 2012<sup>(127)</sup>, while the United Kingdom resumed using it at the end of 2011 after an interruption<sup>(128)</sup>.

Taking the *fingerprints* of all applicants for international protection is an obligation under the Eurodac Regulation<sup>(129)</sup>. Member States have been faced with applicants who altered, damaged or erased their fingerprints in order to avoid detection. The use of new machines allowing for a deep scan of underlying skin layers can prevent abuses linked to the phenomenon of unreadable fingerprints and have been used in Sweden.

Eurodac however cannot detect all cases of *multiple applications* and abuse of the asylum system. Bi-lateral cooperation can help in detecting other cases. The United Kingdom cooperated with Belgium<sup>(130)</sup> and Ireland<sup>(131)</sup> to identify applicants who had resided in Great Britain before applying for asylum in one of the other Member States.

As an additional measure to the detection of multiple applications through Eurodac, Sweden started to systematically check the fingerprints of applicants for international protection against the data contained in the European Visa Information System (VIS), enabling Sweden to improve its Visa handling system and establish the responsibility of other Member States under the provisions of the Dublin II Regulation.<sup>(132)</sup>

<sup>(126)</sup> Luxembourg uses language analysis since 2007. In order to determine the country of origin of international protection seekers without identity documents through the means of linguistic tests, Luxembourg cooperates closely with the German BAMF. (EMN Questionnaire)

<sup>(127)</sup> In 2012, the Slovak Republic had the opportunity to test the use of language analysis. The first five ones were made under the GDISC project in collaboration with Malta. The project was completed on 30 June 2012. (EMN Questionnaire)

<sup>(128)</sup> Language Analysis testing was re-launched in the UK at the end of 2011, with testing levels increasing during 2012. During this time the use of Language Analysis Testing was closely monitored, resulting in sufficient evidence for those claiming to be of Palestinian national origin, of Kuwaiti national origin and Syrian nationality to allow for an Equality Act exemption for targeted testing, which came into force in February 2013. (EMN Questionnaire)

<sup>(129)</sup> 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, (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2725:EN:HTML>), accessed 27 May 2013.

<sup>(130)</sup> As it became clear that a significant number of applicants from Bangladesh and Nepal in Belgium had stayed in the UK prior to their asylum application in Belgium, the Belgian Office of the Commissioner General for Refugees and Stateless Persons and the UKBA agreed to systematically verify fingerprints of applicants from these countries. Since this cooperation is in place, the number of applicants from these countries in Belgium dropped considerably.

<sup>(131)</sup> The Irish Naturalisation and Immigration Service is progressing a data sharing exercise with the UK Border Agency in respect of failed applicants for international protection whose cases are currently being considered by INIS for Leave to Remain and/or Subsidiary Protection. This involves the referral by INIS of applicants' fingerprints to the UKBA for checks against UK immigration records. The purpose of the exchange is to establish if the persons concerned have a UK immigration history which may assist INIS in processing cases to a final decision and facilitating removals where appropriate. In 2012 cross-referencing of fingerprints from 1,750 failed applicants with UK immigration records also took place during the year, with 'almost 30 %' matched and a very significant proportion showing a different identity in UK records. (EMN Questionnaire)

<sup>(132)</sup> In February 2012, Sweden started making automatic fingerprint researches for applicants for international protection in the Visa Information System (VIS). Between February 1 2012 until February 14 2013, this resulted in more than 1400 hits. As a result of this, little less than 1000 take charge requests according to the Dublin Regulation have been sent to other Member States. Most of these cases would not have been detected otherwise. (Annual Report Matrix)

In order to prevent frauds linked to identity, the United Kingdom started issuing *biometric documents* to applicants and beneficiaries of international protection <sup>(133)</sup>.

### Removing pull-factors

The duration of procedures has been identified as one of the main pull-factors for certain applicants whose motivations are linked solely to the availability of social benefits during asylum procedures. How Member States have endeavoured to speed up their system is described in other parts of the present report (see *inter alia* 2.4.3, 3.2.5.2).

Member States have identified other areas of their system that can be abused or exploited and have tried and remedy the loopholes in their legislation.

Benefits granted in the framework of voluntary/assisted return schemes are one of the said pull-factors. The Netherlands found that its system might be misused by certain categories and has strengthened the conditions for obtaining such benefits <sup>(134)</sup>. As reported above (see *inter alia* 2.4.3, 3.2.5.2), Belgium and Luxembourg too addressed the issue of the pull-effect of their voluntary return incentives. France took a similar decision in December <sup>(135)</sup>.

### Subsequent applications

As mentioned above (see 2.2), subsequent applications can have a significant bearing on national asylum systems. Additionally, the abuse of other procedures aiming at obtaining a legal residence for other reasons (e.g., on medical grounds) that can be used in parallel or after the completion of the asylum procedure may have adverse consequences on the integrity and credibility of the asylum system when used as delaying tactics.

The Belgian government submitted in October 2012 a new Bill that, when passed, will modify the management of subsequent applications for international protection <sup>(136)</sup>.

In France, 86 % of all subsequent applications are channelled into the 'priority' procedure <sup>(137)</sup> in which OFPRA is making a decision within two weeks (96 hours when the applicant is in detention).

The United Kingdom adopted administrative measures to speed up the examination of subsequent applications, especially since a High Court decision had censured the delay during which such applicants were left without social support <sup>(138)</sup>.

<sup>(133)</sup> The UK Border Agency rolled out Biometric Residence Permits to Asylum in February 2012 so that all applicants granted leave to remain in the UK for more than six months now receive a Biometric Residence Permit as evidence of their right to be in the UK. Successful applicants given permission to stay in the UK for more than six months are required to register their fingerprints and digital facial image. (EMN Questionnaire)

<sup>(134)</sup> In 2012 the inflow of some nationalities showed that there might be a misuse of the Dutch return regulations by making asylum requests in the Netherlands. As a result the Dutch government took the following measures: (Alleged) applicants for international protection originating from Georgia have been excluded from the financial contribution under the REAN (Return and Emigration of Aliens from the Netherlands) programme; (alleged) applicants originating from the Russian Federation and claimed by another country under the Dublin Convention have been excluded from the financial contribution under REAN, the Return and Reintegration Regulation (HRT) and the in kind reintegration assistance under the Subsidy Framework on Voluntary and Sustainable Return; other (alleged) applicants originating from the Russian Federation are still eligible for the aforementioned return regulations. Despite of the exclusion from the Dutch return regulations, (alleged) nationals originating from Georgia and the Russian Federation are still eligible for AVR (Assisted Voluntary Return) projects financed by European funding (e.g., European Return Fund). (EMN Questionnaire)

<sup>(135)</sup> Executive Decision of 16 January 2013, published in the *Journal Officiel de la République Française* on 19 January 2013.

<sup>(136)</sup> The competence to assess new facts and circumstances presented by the asylum applicant during a subsequent application will shift from the Immigration Department to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS). There will be a clearer description of the concept of 'new element'. This should allow an accelerated treatment for many unfounded subsequent applications. Subsequent applications make up around 30 % of all applications for international protection in 2012. (EMN Questionnaire)

<sup>(137)</sup> EMN Questionnaire.

<sup>(138)</sup> On the 10th July 2012 the High Court handed down its determination in *Haile and Kanyemba*. The case was brought by two failed applicants who had lodged further submissions and applied for section 4 support. The application was made on the basis that they could not be reasonably expected to leave the United Kingdom until the submissions were answered and needed accommodation in the meantime. The challenge was mainly directed at the UK practice of trying to formally respond to the further submissions before dealing with the support application with the aim that if the submissions are rejected the support application will fail. Immediate steps were taken to remove the part of the casework instruction referred to in the court order. This was replaced by provisions that require the case owner to identify vulnerable cases (e.g., street homeless cases and where there are children) and process them within 2 working days. The new instruction also made clear that the support application should not be delayed because of administrative problems in dealing with the further submissions and generally should take no longer than 5 days to process in non-vulnerable cases. (EMN Questionnaire)

## Safe country concepts (Asylum Procedures Directive: Articles 26, 27, 29<sup>(139)</sup>-31)

Many Member States apply one or more safe country concepts as foreseen in the Asylum Procedures Directive (first country of asylum, safe third country or safe country of origin) to increase the speed of their asylum procedures to speed up the examination of a case by either (a) channelling the application into an accelerated procedure or (b) by declining to make a decision on the merits of the application *vis-à-vis* the country of origin.

Several Member States<sup>(140)</sup> maintain a national list of safe countries. The most notable changes in 2012 were as follows:

Belgium established a list of seven safe countries of origin: *Albania, Bosnia-Herzegovina, Montenegro, FYROM, Kosovo, Serbia and India*<sup>(141)</sup>. In addition, the government decided to introduce the notion of first country of asylum into national legislation<sup>(142)</sup>.

The list of safe countries of origin underwent several changes in France. *Albania* and *Kosovo* were removed from the list in March following a Court decision<sup>(143)</sup> and the Management Board of OFPRA removed *Mali* from the list in December<sup>(144)</sup>. As of 31 December 2012, the list comprised of 17 countries<sup>(145)</sup>.

## Other integrity-related measures

Among others, family reunification may in some cases be used to introduce persons who do not actually belong to the family of the beneficiary. Belgium<sup>(146)</sup> and the Netherlands<sup>(147)</sup> took steps to reduce the possibility of misusing the system. The rules applying to family reunification were modified in the United Kingdom, including for beneficiaries of international protection<sup>(148)</sup>.

<sup>(139)</sup> Please note that Art 29 paragraphs 1 and 2 have been declared void by the CJEU in its judgment of 6 May 2008 in case C-133/06 European Parliament v Council of the European Union.

<sup>(140)</sup> Austria, Belgium, Czech Republic, Denmark, France, Germany, Ireland, Luxembourg, Malta, Slovakia, United Kingdom.

<sup>(141)</sup> The Belgian Parliament approved mid-November 2011 the concept of 'safe countries of origin'. On 11 May 2012, the government decided to put the following countries on this list: Albania, Bosnia-Herzegovina, Montenegro, FYROM, Kosovo, Serbia and India. The list was established based on advice by the Office of the Commissioner General for Refugees and Stateless Persons (CGRS). This list came into force after the publication of the Royal Decree on 1 June 2012. The list should be revised at least once a year, and has already been revised for the first time in December 2012. The asylum procedure for applicants from these countries was shortened: the CGRS has to take a decision within 15 working days and the burden of proof is higher. The appeal possibilities are limited to an annulment procedure, which has no automatic suspensive effect. (EMN Questionnaire)

<sup>(142)</sup> The introduction of the concept 'first country of asylum' as described in the Asylum Procedures Directive will be introduced in the Belgian Aliens Act. This should allow rejecting an asylum application based on the assumption that the asylum applicant already enjoys sufficient protection or refugee status in another country. In accordance with article 25 of the Asylum Procedures Directive (2005/85/EU) it will also be possible to consider an asylum application inadmissible if the applicant has refugee status in another EU country. (EMN Questionnaire)

<sup>(143)</sup> A decision from the *Conseil d'Etat* (the highest French administrative jurisdiction) dated 26 Mars 2012 removed Albania and Kosovo from the list of safe countries of origin, taking account, *inter alia*, of the persistence of 'blood feuds'.

<sup>(144)</sup> The OFPRA Management Board removed Mali from the list of safe countries of origin by a decision dated 21.12.2012. (EMN Questionnaire)

<sup>(145)</sup> Armenia, Bangladesh, Benin, Bosnia Herzegovina, Cape Verde, Croatia, Ghana, India, FYROM, Mauritius, Moldavia, Mongolia, Montenegro, Senegal, Serbia, Tanzania, Ukraine. (EMN Questionnaire)

<sup>(146)</sup> A new law on family reunification entered into force on 22 September 2011. New, more severe criteria were introduced, although most of the criteria (income and housing requirements) do not apply to recognised refugees, on the condition that the family bounds already existed before arrival in Belgium and that the application was lodged within one year after the granting of the refugee status. Cf. EMN Focussed Study 2012, Misuse of the Right to Family Reunification: marriages of convenience and false declarations of parenthood, National Contribution from Belgium.

<sup>(147)</sup> In 2009, the Netherlands intensified the examination in the context of family reunification of the relationship between a third country national that enjoys (inter)national protection and another third country national, after having experienced a high level of fraud especially with Somali children – falsely claiming to be foster children and asking to be reunited with a stated foster parent in the Netherlands. Therefore, the Immigration and Naturalisation Service started to ask questions on the family relationship and other identifying questions during the procedure on the application of a visa for family reunification. Declarations about daily life of the applicant were compared to declarations of family members and of the third country national that already enjoyed protection. In case of comparable declarations, a DNA test followed. Fraudulent cases were rejected. After complaints from NGOs that applications of genuine biological children were rejected, the Dutch Minister for Immigration, Integration and Asylum changed the methodology. The procedure will now be limited to a DNA test only in cases when two parents and their minor biological children wish to be reunited as a family. In cases with complex family ties, still both a DNA test and an identifying interview take place. In addition, more information about the procedure is provided to third country nationals that wish to reunite with family members in the Netherlands.

<sup>(148)</sup> On 9 July 2012, new Immigration Rules for non-EEA nationals applying to enter or remain in the UK on the family migration route came into effect. [...] Special arrangements reflecting international obligations allow refugees and those granted humanitarian protection in the UK to be joined by existing members of their nuclear family. These are contained in Part 11 of the Immigration Rules (paragraphs 352A-352F1) and are unaffected by the new financial requirement or other changes set out in the Statement of Intent. Those who enter the UK under these provisions will continue to be granted settlement in line with the refugee or person granted humanitarian protection. The new Immigration Rules provide that: like those with indefinite leave to remain, those with limited leave in the UK as a refugee or person with humanitarian protection who wish to sponsor a post-flight partner and dependent child/children will continue to do so on an equivalent basis to a settled person. This means that they will be subject to the new family Immigration Rules, including the income threshold and the five year probationary period (after which they can apply for indefinite leave to remain provided their sponsor is settled in the UK). Refugees and persons with humanitarian protection will continue to be able, in exceptional circumstances, to sponsor a child relative, e.g., the child of a dead or displaced brother or sister, and without having to meet the income threshold. The UK has not opted-in to the Directive on Family Reunification and is not therefore bound by it. (EMN Questionnaire)

The United Kingdom also adopted a new policy regarding the residence of individuals who, while excluded from the benefit of international protection, cannot be deported to their country of origin due to the risk of being subjected there to treatments prohibited by Article 3 ECHR <sup>(149)</sup>.

A Bill passed in December 2011 in Belgium to ‘filter’ applications for residence on medical grounds produced its effects in 2012 <sup>(150)</sup>.

### 3.2.5.2. Efficiency

#### Streamlined, Accelerated and Prioritised Procedures

Lengthy procedures have long been a point of concern, and some Member States are still struggling to keep processing time reasonable <sup>(151)</sup>.

Several Member States implemented new or follow up measures to improve efficiency, shorten the processing time of applications and thus reduce backlogs.

New working methods were used, e.g., the so-called ‘lean’ method in Sweden <sup>(152)</sup>, Finland <sup>(153)</sup> and Denmark <sup>(154)</sup>. Special units and monitoring systems have been established in Austria and Belgium and chain management initiatives have been undertaken in Belgium <sup>(155)</sup> and Finland <sup>(156)</sup> for a better coordination between services. Finally, additional resources and staffing were obtained in Member States experiencing significant influxes, such as Belgium, France, Luxembourg <sup>(157)</sup> and Sweden <sup>(158)</sup>.

Other measures are specifically targeted at certain categories:

- Prioritisation or acceleration of ‘manifestly unfounded’ applications (i.a., in France <sup>(159)</sup>, Denmark <sup>(160)</sup>, Finland <sup>(161)</sup>, Germany <sup>(162)</sup>, Sweden <sup>(163)</sup>);
- Simplified procedure for ‘manifestly founded’ cases (Denmark);

<sup>(149)</sup> With effect from 2 September 2011, all cases excluded from the protection of the Refugee Convention by Article 1F but who cannot be removed due to Article 3 of the ECHR will be subject to a new, tighter, Restricted Leave policy. Such cases should usually only be granted Restricted Leave for a maximum of six months at a time, with some conditions. Such cases will remain under close review by UKBA and will be removed at the earliest opportunity. These reviews will be conducted at six monthly intervals as a minimum, before expiry of the Restricted Leave. Inter-governmental Consultations on Migration, Asylum and Refugees (IGC), *Asylum Procedures: Report on Policies and Practices in IGC Participating States 2012*, December 2012 (also called ‘Blue Book 2012’), p. 439. Cf. <http://www.igc-publications.ch>.

<sup>(150)</sup> On 1 December 2011, the Federal Parliament adopted a bill to amend the legal procedures for regularisation on medical grounds (Art. 9ter, Aliens Law). The most significant amendment is the introduction of a so called ‘filter’ to exclude ‘manifestly unfounded’ regularisation applications. Cf. <http://www.dekamer.be/FLWB/pdf/53/1824/53K1824008.pdf>, accessed 12 April 2013.

<sup>(151)</sup> Besides general problems this issue might also be linked to Courts only acting as Courts of Cassation or of Member States not having established a single procedure for the determination of applications for international protection. (UNHCR input)

<sup>(152)</sup> The Swedish interpretation of lean production is process-oriented and focused on the learning aspect. The asylum applicant is placed at the centre of a client-based approach consisting of four main elements: Process efficiency, Performance Management, Organisation and Skills, and Mindsets and Behaviours. After a successful pilot project called ‘Shorter Wait’, the findings are now being implemented throughout the Swedish Migration Board. For more information, see IGC, *Blue Book 2012*, p.397.

<sup>(153)</sup> In 2012, the Finnish Immigration Service launched a Lean project to speed up the asylum procedure. As a result, asylum application queues and waiting times have been cut down, and the quality of the work has improved. For more details, see: The Finnish Immigration Service (MIGRI), ‘Cutting down asylum application queues with lean philosophy’, Press Release, 14 March 2013, ([http://www.migri.fi/for\\_the\\_media/releases/press\\_releases/press\\_releases/1/0/cutting\\_down\\_asylum\\_application\\_queues\\_with\\_lean\\_philosophy](http://www.migri.fi/for_the_media/releases/press_releases/press_releases/1/0/cutting_down_asylum_application_queues_with_lean_philosophy)), accessed 12 April 2013.

<sup>(154)</sup> In Denmark, the Lean principle has been incorporated into the so-called ‘Handheld Procedure’, in which the applicant is led from one step of the procedure to the next, without waiting periods between steps. For more details, see IGC, *Blue Book 2012*, p133 and 139.

<sup>(155)</sup> The ‘Enhancement Project Asylum Procedure’ project analysed the efficiency of each authority involved in the asylum process (Immigration Department, CGRS, Council for Aliens Law Litigation), as well the various possibilities to improve the efficiency within the chain processes. It also focused on a uniform, integrated reporting on the performances of and within the asylum chain. The objective was to identify opportunities to further reduce the processing times of applications for international protection while maintaining a high quality standard. (EMN Questionnaire)

<sup>(156)</sup> A permanent cooperation structure will be established to accelerate cooperation between the Finnish Immigration Service, the Police and the Border Guard, aimed at speeding up the processing of applications for international protection and intensifying the prevention of illegal migration, trafficking in human beings and evasion of entry provisions. IGC, *Blue Book 2012*, p. 155.

<sup>(157)</sup> Reinforcement of human resources for asylum services has increased the efficiency of the decision-making process. Besides, the efficiency and quality of the decision-making process was continually improved, i.e. through the establishment of a COI unit. As a result the backlog has been significantly reduced. (EMN Questionnaire)

<sup>(158)</sup> See 3.2.1.4.

<sup>(159)</sup> One application out of 3 was channelled into the priority procedure in 2012. It applies mostly to Armenians, Bangladeshis, Sudanese, nationals of FYROM and Comorians. (EMN Questionnaire)

<sup>(160)</sup> IGC, *Blue Book 2012*, p.133.

<sup>(161)</sup> Ibid, p.160.

<sup>(162)</sup> Ibid, p.215.

<sup>(163)</sup> Ibid, p.390.



or at certain nationalities (e.g., Austria <sup>(164)</sup>, Germany <sup>(165)</sup>, Luxembourg <sup>(166)</sup>); or both (Italy <sup>(167)</sup>).

Some concerns have been expressed with regard to the consequences of prioritisation. While prioritisation may be a solution to cope with the increased influx of a specific type of caseload, the downside is that other caseloads – potentially with more urgent protection needs – are being deprioritised, leading to an increased length of procedure <sup>(168)</sup>.

In 2010, the Netherlands has started frontloading all procedural activities into an 8-day procedure, preceded by a rest and preparation period of minimum 6 days. First evaluations are positive, as timeframes are generally kept, applicants for international protection are better informed and medical screening allows for a better identification of special needs. However, some aspects also give rise to concerns. <sup>(169)</sup>

### Technology/IT

New technological tools/IT systems were implemented in order to simplify the workflow, alleviate the workload of certain services, better monitor performance or more efficiently identify certain categories of cases.

New control and case management systems were implemented in Finland <sup>(170)</sup>, Germany <sup>(171)</sup> and in Ireland <sup>(172)</sup>.

The Electronic Documents Management system launched in France in 2010 reached full capacity in 2012: all new applications, supporting evidences, interviews, decisions etc. are now available in digital format.

As mentioned above, Sweden started exploiting data of the European VIS for asylum (Dublin) purposes.

### 3.2.5.3. Quality

In parallel to or as a consequence of the successful UNHCR Quality initiative (ASQAEM and FDQ projects – the latter having completed in 2011 <sup>(173)</sup>) a number of Member States have established more or less sophisticated quality assurance systems or launched pilot projects in this regard.

Notable developments occurred in Belgium where the Belgian Asylum Authorities announced in late 2012 the intention to develop a systematic quality control mechanism, <sup>(174)</sup> in Bulgaria with the establishment of a ded-

<sup>(164)</sup> With regard to certain countries of origin the Asylum Office has introduced a fast track procedure which enables the case manager to decide on the merits of a case within 10 days of receiving an asylum application. In a fast track procedure the asylum applicant enjoys the same procedural rights as in a 'regular' procedure. In particular, each case is heard and decided upon individually. In 2012 some 2,300 applications for international protection have been heard and decided upon in a fast track procedure. (EMN Questionnaire)

<sup>(165)</sup> Faced with an increasing inflow of applicants from the Western Balkans region, **Germany**, as mentioned above (see 2.4.3) took administrative measures aimed at providing a swift response.

<sup>(166)</sup> Since September 2011, all applications for international protection from persons originating from the Western Balkan Countries (Kosovo excluded) are analysed in an accelerated procedure.

<sup>(167)</sup> According to legal provisions (art. 12, paragraph 2), the applicant's hearing can be omitted if written documents are sufficient to grant refugee status. Furthermore, a prior examination is provided for if the applicant belongs to vulnerable categories, in conformity with Leg. Decree no. 140/2005, or if he/she is hosted in reception centres. Owing to the emergency in north-African countries in 2011/2012 and the situation in Mali in 2012, priority is given to the examination of applications made by people coming from such areas. (EMN Questionnaire)

<sup>(168)</sup> UNHCR has observed this in some EU-MS (UNHCR input).

<sup>(169)</sup> Since the introduction of the General Asylum Procedure, which is also known as the '8-day procedure' in July 2010, UNHCR has noted a number of positive features. This procedure, which includes a six-day 'Rest and Preparation' period for the asylum applicant to recuperate and prepare his or her application, will be evaluated by the Dutch authorities from July 2013. 61 % of the new applications for international protection are processed under the 8-day procedure. If this is not possible, applicants are channelled into the extended procedure. In the prolonged procedure a decision will normally be taken in six months. Some aspects of the 8-day procedure are deemed problematic by UNHCR, such as the lack of criteria for determining if an application can be processing in the general (8-day) or extended procedure, the accuracy of the decision due to the rapidity of the procedure, the quality of the medical advice, the fact that there is only a marginal review by the immigration judge, and the fact that statements made after the initial decision are sometimes not taken into account. (UNHCR input)

<sup>(170)</sup> UMA is the new electronic case-management system for all immigration processes, including asylum. The cross-administrative UMA system handles affairs pertaining to applications for citizenship, residence permits and asylum, as well as affairs pertaining to removal and interim measures. For more details, see IGC, *Blue Book 2012*, p. 168.

<sup>(171)</sup> A further increase in application numbers was the reason for the introduction of the new control system OrAs. The system enables: a) to distribute work evenly across branch offices, b) to strengthen the individual responsibility of the branch offices and c) a better differentiation of the evaluation of job performance.

<sup>(172)</sup> AISIP is a new Information Technology system, which was introduced in INIS and associated agencies in the asylum/immigration process on 24 October 2011. The AISIP system replaces or integrates with 20 existing systems for Immigration, Citizenship and Asylum. It also provides a central location for the management of Person Data, and a single view of client interactions with INIS. It represents a significant step forward in relation to the co-ordinated management of applications and applicants within the Irish Naturalisation and Immigration Service (INIS).

<sup>(173)</sup> See *EASO Annual report 2011*, p. 54

<sup>(174)</sup> The Belgian CGRS announced in late 2012 that it would develop systematic quality control mechanisms and has expressed its intent to consult with UNHCR

icated Directorate and the adoption of new Internal Rules in the State Agency for Refugees <sup>(175)</sup>, and in Poland with new quality analysis tools and a quality audit agreement with UNHCR <sup>(176)</sup>. In Hungary, an internal quality assurance team has been set up within the Office of the Immigration and Nationality (OIN) and a revised Manual for decision makers and auditors elaborated jointly by the OIN and UNHCR has been put in use <sup>(177)</sup>.

Regarding projects implemented with a view to enhance quality or prepare for the establishment of a permanent mechanism, Estonia <sup>(178)</sup> carried out a ERF co-financed project involving the Estonian Police and Border Guard with support from IOM. The competent authority of Ireland (ORAC) continued in 2012 its quality initiative cooperation with UNHCR that had started in 2011 <sup>(179)</sup>, and also in Austria UNHCR conducted a successful quality assurance project in cooperation with the Federal Asylum Agency <sup>(180)</sup>. Slovenia continued to implement the recommendations of the ASQAEM project <sup>(181)</sup>. Latvia announced and Lithuania <sup>(182)</sup> launched a new quality assurance project that also involves UNHCR. In cooperation with the United Kingdom and UNHCR Bulgaria, Hungary, Poland, Romania and Slovakia engaged in a project concerning quality in connection with vulnerable applicants for international protection <sup>(183)</sup>.

In Sweden a new quality assurance project, called ‘The Learning Organisation’ was launched in 2012 - benefiting from ERF co-financing - which is aimed at developing tool and methods to continuously assess and improve legal quality and support the Migration Board’s employees to implement a uniform asylum procedure <sup>(184)</sup>.

Following a comparative study of quality assurance schemes in other Member States, France (OFPRA) installed internal working parties with a view to prepare the possible installation of a permanent mechanism <sup>(185)</sup>.

While most quality assurance programmes mainly focus on the asylum interview and the asylum decision, the United Kingdom intends to expand its quality audit mechanism under the ‘Next Generation Quality Framework’ to be ‘end to end’ for the asylum process <sup>(186)</sup>.

and the Belgian Refugee Council in the context of this project. Moreover, Belgium actively participated in UNHCR’s CREDO (Improved credibility assessment in EU asylum procedures) project. (UNHCR input)

<sup>(175)</sup> With the new Internal Rules of Procedure (July 2012) Bulgaria has a new administrative structure for increasing the quality of the asylum procedure: the directorate ‘Procedure Quality, Temporary Protection and Responsibility for Examining the Applications’. (Annual Report Matrix)

<sup>(176)</sup> The mechanism of quality assurance and quality analysis and control of decisions, developed in 2009, was updated in 2012 with the implementation of order no. 27 of the General Director of the Office for Foreigners of 23 February 2012. The analysis of the quality of proceedings in each calendar month covers 5 administrative decisions issued in the proceedings, 5 interviews of applicants in the proceedings, and 5 sets of files of completed proceedings selected at random. The analysis of the quality of decisions, interviews and files is done based on contents of the decision, by filling out a form. Based on the data contained in the forms, monthly reports with recommendations are drafted, discussed and disseminated. In addition, in 2012 a cooperation agreement between the Head of the Office for Foreigners and the UNHCR Regional Representative for Central Europe regarding the implementation of quality audit of refugee status determination proceedings conducted by the Head of the Office for Foreigners was signed. (Annual Report Matrix)

<sup>(177)</sup> UNHCR, *Hungary as a Country of Asylum, Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, p.10, (<http://www.ref-world.org/cgi-bin/texis/vtx/rwmain?docid=4f9167db2>), accessed 27 May 2013.

<sup>(178)</sup> In 2012 the Police and Border Guard Board carried out the Quality development project VaKa IV co-financed by the ERF. The aim of the project was to develop a well-functioning, fast and high-quality asylum procedure and improve the reception conditions for applicants for international protection. A two-day conference on asylum procedure was carried out and a handbook on the asylum procedure was developed for the officers of the border guard department (of Police and Border Guard Board). (EMN Questionnaire)

<sup>(179)</sup> ORAC has worked closely with the UNHCR on a range of matters including quality assurance, the provision of training, and other issues in relation to its current statutory framework. UNHCR began a quality initiative with ORAC in 2011 which continued throughout 2012. The initiative includes the examinations of a selection of decisions, personal interaction with staff at all levels and the provision of feedback in the context of training and other support initiatives. The work being undertaken draws on best practice developed by UNHCR through activities implemented in other EU Member States and internationally. (Annual Report Matrix)

<sup>(180)</sup> UNHCR input.

<sup>(181)</sup> UNHCR input.

<sup>(182)</sup> In August 2012, the new asylum quality assurance project was launched together with UNHCR, called ‘Improving the Quality of Decisions in Lithuania’. The objective of the project is to assess and assist the decision-making process, the quality of decisions on international protection by the Migration Department of the Ministry of Internal Affairs (MD) and to promote the introduction of a sustainable asylum quality mechanism in Lithuania in first instance. The project will cover both accelerated and normal procedures and will focus on the applicability of relevant provisions in Lithuanian Aliens’ Law, interviews, the assessment of facts, the legal argumentation, the use of evidence, including country of origin information, and the internal and external credibility assessment. The project will also address other factors that may influence the quality of decisions, such as legal representation, interpretation and adequate training and quality control. Quality assessment tools and recommendations for asylum quality mechanism in Lithuania will be developed during the project. Cf. <http://www.migracija.lt/index.php?709979387>, accessed 27 May 2013.

<sup>(183)</sup> UNHCR, *Response to Vulnerability in Asylum (RVA) project*, see <http://www.unhcr-centraleurope.org/en/what-we-do/caring-for-vulnerable-groups/response-to-vulnerability-in-asylum.html>, accessed 27 May 2013.

<sup>(184)</sup> Annual Report Matrix.

<sup>(185)</sup> Following a comparative study in other Member States, 5 working parties have been launched in 2012: Quality in 1. Documentation; 2. Interview; 3. Examination of the case; 4. Decision drafting; 5. Organisation. Effective tools including evaluation grids and methodology documents are to be the outcome. They might be systematised and used permanently.

<sup>(186)</sup> As part of an ‘Asylum Improvement Project’, and as a follow-on to work undertaken with UNHCR under the auspices of the Quality Integration (QI) project, over the course of 2012 UKBA began development of its ‘Next Generation Quality Framework’ (‘NextGen’). Under the new Framework, the focus of quality auditing of asylum decision making is shifting to look at the organisation as a whole and not just the individual quality performance. As such, the Agency has introduced process evaluation for each stage of the end to end process that will be audited i.e. not receiving the file, not having up to date computer (CID) records from previous team, etc. Development of the framework continued throughout 2012 with stakeholder (including UNHCR) input. Internal piloting of the tools began at the end of the year and the whole framework is to be rolled-out formally in April 2013, the start of the new financial year. (UNHCR input)

## EASO Quality Matrix

As part of EASO's permanent support, EASO launched the Quality Matrix in 2012. This matrix intends to cover comprehensively all areas of the CEAS over a two-year period. The exercise will result in a database of good practices, quality mechanisms and tools and quality projects and initiatives. The Matrix will also enable EASO to identify Member States' support needs. The first operational phase of the Quality Matrix has commenced in January 2013. It aims at covering a core topic in the asylum procedure, the topic of Personal Interview <sup>(187)</sup>.

At the Consultative Forum in November 2012, input from civil society was received on EASO's quality activities. It was recommended to develop standards and indicators on quality assessment and to share good practices. More active engagement by civil society in particular areas, such as age assessment (unaccompanied minors) was discussed as was the question of how external information from civil society could be integrated and practically used by Member States.

## 3.2.6. Third-Country Support

### 3.2.6.1. Resettlement

While a number of Member States have a long-standing tradition of resettlement (e.g., Sweden, Finland, Netherlands, United Kingdom, Ireland, Denmark), several Member States passed in recent years legislation providing a legal basis for resettlement programmes and/or procedures for the adoption of resettlement quotas, either through a decision of the executive or through a vote in Parliament.

In 2012, the Joint EU resettlement programme <sup>(188)</sup> was adopted, establishing the resettlement categories/priorities (including emergency resettlement) and the specific Union resettlement priorities. Lump sums of 4 000 €, 5 000 € and 6 000 € will apply as from pledging for 2013 Action Plans under ERF III.

Resettlement Departures to EU Member States assisted by UNHCR 2008-2012					
	2008	2009	2010	2011	2012
Countries with regular resettlement programmes					
Czech Rep.	23	17	48		25
Denmark	403	488	386	606	324
Finland	675	710	543	573	763
France	276	179	217	42	84
Germany		2064	457	22	323
Hungary					1
Ireland	101	192	20	35	39
Netherlands	580	347	430	479	262
Portugal	5	26	24	28	21
Romania			38		
Spain	8				80
Sweden	1596	1880	1789	1896	1483
United Kingdom	697	969	695	424	989

<sup>(187)</sup> For more details, see EASO Annual Activity Report.

<sup>(188)</sup> Cf. Communication from the Commission to the European Parliament and the Council on the Establishment of a Joint EU Resettlement Programme (COM2009/447 final) and the ensuing amendments to the ERF Council Decision (COM2009/0456 final - COD 2009/0127).

Resettlement Departures to EU Member States assisted by UNHCR 2008-2012					
	2008	2009	2010	2011	2012
Countries with special resettlement programmes/ad-hoc resettlement intake					
Belgium	6	54	2	19	
Greece	2				
Italy	30	191	58		9
Luxembourg		28			
Total	4402	7145	4707	4124	4403

**Table 4: Resettlement Departures to EU Member States assisted by UNHCR 2008-2012; Source: UNHCR**

As Table 4 outlines, 4 403 departures of resettled refugees to EU Member States took place in 2012. While most resettlement departures took place in the framework of regular resettlement programmes, Italy engaged in minor ad hoc resettlement projects. In addition to the 84 arrivals of resettled refugees in 2012, France concluded its programme for religious minorities from Iraq<sup>(189)</sup>. In 2012, Slovakia acted as a transit country for 234 refugees (including 8 births in Slovakia) whose final destination for resettlement was elsewhere<sup>(190)</sup>. 174 refugees were evacuated to the Romanian Emergency Transit Centre (ETC) in Timisoara<sup>(191)</sup>. Hungary started with its first resettlement operation and received its first resettled refugee in 2012.

Resettlement Departures to EU Member States assisted by UNHCR by Region of Asylum, 2012						
EU Resettlement Country	Region of Asylum					Total
	Africa	Asia and Pacific	Europe	MENA	The Americas	
Czech Rep.		25				25
Denmark	40	233	9	41	1	324
Hungary			1			1
Finland	263	402	14	84		763
France	35	17	11	20	1	84
Germany		10	112	201		323
Ireland	26		8	5		39
Italy				9		9
Netherlands	34	132	11	75	10	262
Portugal	-	1	1	19		21
Spain	-			80		80
Sweden	299	707	16	351	110	1483
United Kingdom	644	149	3	193		989
Total	1341	1676	186	1078	122	4403

**Table 5: Resettlement Departures to EU Member States assisted by UNHCR by Region of Asylum; Source: UNHCR**

While the resettlement programmes implemented by Member States obviously rest on a set of common principles, their policy as regards the countries that first asylum refugees are selected from and, hence, the nationalities of the beneficiaries, differ in some respects. This is often linked with foreign policy concerns, established communities of third-country nationals, traditional ties with certain third countries or a shared language.

<sup>(189)</sup> The special programme for religious minorities of Iraq involved the resettlement of 1200 persons over a period of 5 years.

<sup>(190)</sup> On the basis of the Agreement between the Slovak Government, UNHCR and IOM, Slovakia has received for the period of six months in its asylum facility 368 refugees and persons of concern including 167 children (since the beginning of the project in 2009) before their transfer to the final country of destination. The project of Emergency transit centre or Transit Facilities for Resettlement is a project *sui generis*, applied with EU only in Slovakia and Romania. (Annual Report Matrix)

<sup>(191)</sup> Since its establishment in 2008, the Emergency Transit Centre Timisoara received 1 171 refugees, out of which 1 067 already left for resettlement country. 16 babies were born and two refugees passed away. In 2012, a total number of 174 refugees were evacuated to the ETC. Most of them were of Iraqi origin (89). The others were from Eritrea (62), Ethiopia (16) and Somalia (7).

Several Member States concurred in resettling refugees from countries affected by the conflicts that unfolded in Northern Africa (*Libya*) and in the Middle East (*Iraq, Syria*). Belgium, Spain, Germany, Sweden resettled persons in need of internal protection hosted in *Tunisia* since the civil war in *Libya*, and refugees residing in *Jordan, Syria, Turkey* <sup>(192)</sup>. Table 5 gives an indication which other regions Member States resettle from.

EU Member States resettlement quota 2012 and 2013		
Member State (pro year)	2012 total quota	2013 total quota
Belgium	-	100
Czech Republic	40	40 (tbc)
Denmark (multi-year programme 2012-2013)	500	500
Finland	750	750
France	100	100
Germany	300	300
Hungary	10	10
Ireland	-	80
The Netherlands (multi-year programme 2011-2014)	500	500
Portugal	30	30
Romania	0	40
Spain	-	30
Sweden	1900	1900
United Kingdom	750	750
TOTAL	4580	4580

**Table 6: EU Member States resettlement quota 2012 and 2013; Source: UNHCR <sup>(193)</sup>**

Table 6 shows that Member States with regular resettlement quota plan to allocate similar quotas for resettlement in the upcoming year. While Finland <sup>(194)</sup>, Sweden <sup>(195)</sup>, the United Kingdom <sup>(196)</sup> have yearly quotas, the Netherlands <sup>(197)</sup> and Denmark <sup>(198)</sup> built in flexibility by applying multi-year quotas. Members States whose resettlement programmes are more recent, such as Belgium <sup>(199)</sup>, Czech Republic, France <sup>(200)</sup>, Germany <sup>(201)</sup>, Hungary <sup>(202)</sup>, Portugal and Romania, also allocated resettlement quotas for 2013. In addition, Spain adopted a

<sup>(192)</sup> In 2011, Belgium re-settled 25 Eritrean and Congolese nationals who fled the Libyan conflict. Germany admitted 300 persons under the resettlement programme in 2012. 105 were Iraqi nationals coming from Turkey, and 205 came from Tunisia (nationals from Sudan, Eritrea, Ethiopia, Congo, Nigeria, Pakistan and Somalia). Spain organised a selection mission to the Shousha camp (Tunis) in June 2012, as part of the implementation of the National Programme for Resettlement. As a result of that programme, 80 refugees from the Libyan conflict were resettled in Spain.

<sup>(193)</sup> Reference period January to December, except for the United Kingdom April to end March.

<sup>(194)</sup> The quota refugee policy will be continued at the current level, i.e. 750 persons.(EMN Questionnaire)

<sup>(195)</sup> Sweden's resettlement programme is set per calendar year. A large part of the annual quota is allocated to dossier cases, including a large emergency sub-quota. All cases selected for resettlement have protection needs and are to be submitted by the UNHCR. The total allocation for 2012 is 1 900 (Source: Swedish Migration Board) via (EMN Questionnaire).

<sup>(196)</sup> The UK resettlement programmes are aimed at relieving the burden of refugees in protracted situations where resettlement is the only viable solution. In the last programme year ending 31 March 2012, UK achieved its quota of 750 for the first time. The UK does not support resettlement of refugees in emergency situations – its policy is to provide help and advice in alleviating the situation in situ.

<sup>(197)</sup> Just like in the preceding years, the Netherlands observed a quota in 2012 of an average of 500 invited refugees a year. For the next policy period of 2012-2015, this means that the Netherlands will be able to relocate a total of 2,000 refugees. Out of this number, approximately 400 persons will be selected by means of resettlement missions and approximately 100 individual refugees will be relocated on the basis of proposals from the UNHCR.

<sup>(198)</sup> Denmark has resettled refugees since 1978. Since 1989, the quota has been set at 500 placements per year. As a general rule, the quota still remains at 500 placements per year, but as of 1 July 2005, the arrangement changed. The framework is now a three year flexible quota on 1500 persons. The categories for quota placements are: 1) refugees originating from selected countries, 2) refugees critically ill and in need of immediate treatment and 3) country of residence (urgent cases). Every year the Minister of Justice makes the decision, based on the recommendation of the Danish Immigration Service, on how the placements are divided among the three categories.

<sup>(199)</sup> On 25 May 2012, the Belgian State Secretary for Asylum and Migration Policy announced that Belgium will in 2013 participate in the European Resettlement Scheme and pledges for the first time to resettle 100 persons. This more structural commitment by the Belgian government comes after two successful *ad hoc* projects in the previous years.

<sup>(200)</sup> It should be noted that France counts the quota by number of 'cases' as opposed to number of 'individuals'.

<sup>(201)</sup> Germany's resettlement programme is initially scheduled to run for three years: Until 2014, 300 especially vulnerable refugees will be permanently admitted to Germany each year. For 2013, 200 refugees from Syria and 100 Iraqi refugees from Turkey are to be admitted.

<sup>(202)</sup> For the calendar year of 2012, Hungary made a pledge of resettling a maximum of ten persons belonging to the category of persons from a country or region designated for the implementation of Regional Protection Programme. The first resettlement programme was implemented in 2012, the implementation is currently ongoing. Within the framework of the programme one Iranian refugee was resettled from Ukraine on 29 November 2012. (EMN Questionnaire)

national resettlement programme with a quota of 30<sup>(203)</sup> and Bulgaria took the decision in June 2012 to participate in the joint European Resettlement Programme<sup>(204)</sup>.

Due to the increasingly difficult security situation, on 31 August 2012, UNHCR made an appeal for the resettlement of 500 particularly vulnerable persons from Syria<sup>(205)</sup>.

Refugees from a wider range of refugee hosting countries and nationalities are also selected by Member States in accordance with their annual allocation programmes. Belgium plans to focus on the resettlement of DR Congolese and Burundian refugees from the Great Lakes region of Africa. In 2013, Finland will receive refugees in Southern Africa, urban refugees of mixed nationalities in Egypt and Afghan refugees in Iran; Iraqi, Iranian, Afghan and Somali refugees in Turkey, and refugees on an emergency dossier basis<sup>(206)</sup>. Portugal selects mostly from African countries<sup>(207)</sup>. Sweden resettles refugees from several African first asylum countries, from Latin America, and Iran (Afghans)<sup>(208)</sup>. Denmark reserved approximately 400 places for Bhutanese refugees in Nepal (Bhutanese), Burmese refugees in Malaysia, Colombians in Ecuador, 30 places for persons with special need for medical treatment and 75 places for urgent cases. Also Sweden, Finland, the Netherlands and Ireland provide for emergency resettlement of refugees from around the world (including for medical reasons) on a dossier basis, which is a critical life-saving component of the resettlement programme.

The importance of the ERF financial support in several Member States' resettlement programs was highlighted by Germany<sup>(209)</sup> and Ireland<sup>(210)</sup>. The ERF pledging exercise for resettlement showed that more Member States are engaging in resettlement activities. For the year 2012, 10 Member States had pledged for 3 083 persons to be resettled, under a funding of 12 300 000 €. In May 2012, there was a pledging round for 2013 under the ERF. In total, Member States pledged 3 962 places.

In the field of resettlement, UNHCR plays a vital role, and civil society is often actively involved. Also municipalities can be engaged in the resettlement processes<sup>(211)</sup>.

It should be noted that the unexpected increase of new applicants in a number of Member States is making the reception of resettled refugees more challenging due to a shortage of housing capacity. France<sup>(212)</sup> and Sweden<sup>(213)</sup> raised this issue.

<sup>(203)</sup> On 28 December 2012, a new Resettlement National Programme was adopted by the Spanish Government, in accordance with the First Additional Provision of the Spanish Asylum Law. As part of the programme, Spain has pledged to resettle up to 30 beneficiaries of international protection. The profile of the refugees is yet to be defined, on the basis of the priorities set by the European Resettlement Programme. (Annual Report Matrix)

<sup>(204)</sup> The Government of the Republic of Bulgaria adopted a decision to participate in the joint European resettlement program on June 13, 2012 and for this purpose, an inter-departmental expert group prepared a pilot resettlement programme. The Pilot Resettlement Programme is to start in 2014.

<sup>(205)</sup> European Resettlement Network: Newsletter 1 October 2012, p.2.

<sup>(206)</sup> The 2012 refugee quota have been allocated as follows: Afghan refugees in Iran (200 persons); Myanmar refugees in Thailand and so-called urban refugees (a maximum of 30 persons) in Thailand (altogether 150 persons); Congolese refugees in Rwanda (150 persons); Iraqi, Iranian, Afghan and Somali refugees in Turkey (altogether 150 persons); Emergencies (100 persons) (EMN Questionnaire)

<sup>(207)</sup> Within the scope of the annual resettlement plan, Portugal hosted 30 refugees who were under the mandate of the UNHCR, in Tunisia, Egypt, Kenya, Turkey, Morocco, Senegal, Ethiopia and Thailand. Resettled 30 Third-country nationals: Democratic Republic of Congo, Burundi, Somalia, Sudan, Ethiopia, Liberia, Iran, Eritrea, Afghanistan, Guinea Conakry. (EMN Questionnaire)

<sup>(208)</sup> 2012 resettlement quota have been allocated as follows: Kenya (Somali refugees): 350; Sudan (Eritrean and Ethiopian): 150; Djibouti (mixed nationalities): 100; Tunisia (mixed nationalities):200; Iran (Afghan): 400; Ecuador/Costa Rica (Colombian): 130; Pool (mixed nationalities): 220; Emergency (mixed nationalities): 350; total:1900. Source: Swedish Migration Board (EMN Questionnaire)

<sup>(209)</sup> Resettlement project under the national Refugee Fund 2013. The Project covered the organisation of the resettlement process beginning with the interview missions, cultural orientation programs, medical checks, travel arrangements via charter flight to Germany, accommodation in the reception centre for 14 days including a five-day language and orientation course.

<sup>(210)</sup> St. Catherine's Community Services are funded by the European Refugee Fund (ERF) to continue the support for the resettlement of 13 Rohingya families (from Burma) into their new life in Carlow. The aim of this project is that the target group will be able to support themselves and access mainstream services by the end of the project. A wide range of actions are delivered under the programme including a drop-in service, supporting adults to develop independent living skills, facilitation of men's and women's groups and youth supports. A critical element of the project is St. Catherine's work at an inter-agency level to co-ordinate supports and to develop a mainstreaming strategy that will address identified gaps in services by the end of the project.

<sup>(211)</sup> In the **Czech Republic** a successful multi-stakeholder meeting took place with the participation of the Ministry of Interior, UNHCR, municipalities' representatives, NGOs as well as foreign experts. Cf. <http://www.resettlement.eu/news/national-resettlement-stakeholder-meeting-czech-republic>. Similar events were held in Belgium, Bulgaria, Italy, Portugal, Germany and Spain under the auspices of the 'Linking-In EU Resettlement' project, which was jointly implemented by UNHCR, IOM and ICMC. More broadly, this project also launched the European Resettlement Network, which is an inclusive network that supports the development of resettlement in Europe by connecting a variety of actors involved in refugee resettlement. Cf. <http://www.resettlement.eu/>.

<sup>(212)</sup> Out of 134 person selected in 2011 for resettlement in 2012 only 54 could be relocated to France due to the lack of reception capacity (80 remain to be transferred) but specific tools have been developed so that would-be-resettled persons from previous years could actually arrive, which resulted in 90 arrivals in 2012 against 55 in 2011.

<sup>(213)</sup> A general increase in the number of applicants for international protection is challenging the reception system. It is becoming increasingly difficult to find residence in a municipality for persons granted residence permit/resettlement. This in turn impacts on processing times; it delays resettled refugees' departures to Sweden. (Annual Report Matrix)

## EASO and Resettlement

EASO organised the first Seminar on EU Resettlement Policy on 22-23 October 2012. The meeting focused on the national resettlement schemes state of play, on EU funding available for resettlement and on solidarity support seen from the social society perspective. EASO will support emergency resettlement and convene a coordination meeting with EU Member States and UNHCR in early autumn each year, in order to identify the resettlement needs in Europe and support the Member States to make annual commitments and provide for complementarity of the intakes, in light of the available EU funding in the field. <sup>(214)</sup>

### 3.2.6.2. Capacity-building in Third Countries

Several Member States are carrying out capacity-building activities in third countries, either in the neighbourhood of the EU or in other regions of the world.

Regarding the close neighbourhood of the EU, a number of Member States referred to the Prague process (e.g., Czech Republic <sup>(215)</sup>, Poland <sup>(216)</sup>, United Kingdom <sup>(217)</sup>, Sweden <sup>(218)</sup>) or to bilateral cooperation (Hungary with Serbia <sup>(219)</sup>, Poland with Ukraine <sup>(220)</sup>, United Kingdom with Turkey <sup>(221)</sup>, Sweden (in cooperation with Poland) with Armenia <sup>(222)</sup>).

<sup>(214)</sup> For more details, see EASO Annual Activity Report 2012.

<sup>(215)</sup> The **Czech Republic** is actively involved in activities of the Prague process particularly in its capacity of the leading state of the Process as well as the leading country of one of the pilot projects on circular migration implemented under an EC-targeted initiative on the implementation of the Action Plan of the Process. The results of the pilot project will contribute to discussion with other platforms such as the Panel on Asylum and Migration of Eastern Partnership and Migration Dialogue between EU and Russia. (EMN Questionnaire)

<sup>(216)</sup> The Office for Foreigners participates in the Prague Process project Quality and Training in the Asylum Process, under which EASO Training Curriculum trainers from Germany and Sweden conducted e-learning and face-to-face training sessions in Russian on the module Inclusion. The training session in Warsaw was attended by employees of migration offices from Moldova, Belarus, Armenia, Georgia and Kyrgyzstan. Poland will host a study visit for the partner from Ukraine in the framework of the Prague Process Targeted Initiative. Two Polish (Inclusion module) trainers will conduct a face-to-face training session for the representative from Ukraine. Moreover, a representative of the Office for Foreigners participated in an expert meeting in the framework of the Eastern Partnership (Panel on Migration and Asylum): Country of Origin Information (COI) in the Context of Refugee Status Determination Process. (Annual Report Matrix, EMN Questionnaire)

<sup>(217)</sup> In the framework of the Prague Process Targeted Initiative, the UK has agreed to host a study visit for the partner country (Georgia) in the UK to give them an overview of the asylum processes, training and quality and to assist with practical demonstration of the EASO Training Curriculum platform. (EMN Questionnaire)

<sup>(218)</sup> **Sweden** and **Germany**, in close cooperation with EASO and UNCHR, actively develop the EAC (European Asylum Curriculum) tool with its partners in the Eastern neighborhood, mainly the Eastern Partnership countries. As part of implementing the action plan of the Prague Process, which is the main Eastern migration dialogue of the EU, the pilot project aims at educating case workers and decision makers in one module of the EAC, *Inclusion* (EMN Questionnaire). The Swedish Migration Board is also acting as a general support function for the Eastern Partnership in Migration and Asylum during 2012, intended to support the Commission and the participating countries concerning the planning and carrying out of panel meetings and expert meetings.

<sup>(219)</sup> An Action Plan was adopted between **Hungary** and **Serbia** in order to implement joint operations, law-enforcement training, legislative alignment, develop migration and asylum capacities and establish a Common Contact Point. (EMN Questionnaire)

<sup>(220)</sup> In 2012 the Office for Foreigners participated in the implementation of a project strengthening Ukraine's reception capacity in respect to persons applying for international protection (co-financed from the funds of the Ministry of Foreign Affairs). One of components of the project was the Polish asylum system. Within the framework of the project, 12 representatives of the Ukrainian Migration Service participated in a study visit to Poland. One of them participating in November 2012 in a two-week traineeship in the Department for Refugee Procedures of the Office for Foreigners, two in the Department for Social Assistance, and three representatives of Ukrainian NGOs participated in a two-week training hosted by a Polish NGO.

<sup>(221)</sup> Continued support to Turkey in managing mixed migration flows through the provision of an Assisted Voluntary Return (AVR) programme. The International Organization for Migration (IOM) Turkey is the designated project delivery partner. Irregular migrants in removal centres are able to nominate themselves to voluntarily return to their own country. The AVR scheme allows for a dignified return home and the delivery partner arranges for a ticket, travel documentation and support through the departure process. The AVR scheme provides an alternative route for the Turkish authorities to resolve cases and relieves pressure on their removals centre estate. Using the FCO Returns and Reintegration Fund (RRF) the British Embassy in Ankara have sponsored 3 seminars bringing academics, NGOs and Ministry of the Interior officials from the Bureau for Migration and Asylum together to draft and discuss a new asylum law for Turkey. Also using RRF, officials from the Bureau went to the UK Home Office to meet and learn from British officials engaged in the drafting of secondary immigration legislation, rules, processes and dissemination of migration information to the public. (EMN Questionnaire)

<sup>(222)</sup> Together with **Poland**, **Sweden** is administrating a Twinning project to support the Armenian State Migration service in order to strengthen migration management in Armenia. The project aims at bringing Armenia closer to EU legislation and best practices in migration and asylum management (EMN Questionnaire).

For other regions of the world, Member States mentioned their support to EU Regional Protection Programmes (Netherlands <sup>(223)</sup>, United Kingdom <sup>(224)</sup>) or national projects in Africa and Asia Minor (Belgium <sup>(225)</sup>, Denmark <sup>(226)</sup>, United Kingdom <sup>(227)</sup>).

## EASO and External Dimension

In 2012, EASO participated in the mission to Jordan organised by the Commission as part of the EU-Jordan Dialogue on Migration, Mobility and Security, and declared its intentions for cooperation under the framework of EU-Tunisia and EU-Morocco Mobility Partnerships <sup>(228)</sup>. EASO also participated in meetings of the Budapest process: one meeting was focused on the South East Europe and EASO contributed significantly to the development of asylum aspects of the drafting process of the Silk Routes Regions Declaration. On a pilot basis, EASO is also cooperating in the context of the Prague Process Pilot Project: 'Quality and training in the asylum processes' which is implemented within the framework of the Prague Process Targeted Initiative.

<sup>(223)</sup> The **Netherlands** is making an effort to enhance the protection of refugees in the regions of origin. The Netherlands is supporting large projects that contribute to capacity building in favour of the refugees in those countries. During the Justice and Home Affairs Council (JHA Council) meeting, the Netherlands advocated an early implementation of the Regional Protection Programmes in connection with the Syrian refugee problem. (EMN Questionnaire)

<sup>(224)</sup> The **United Kingdom** supports EU plans for Regional Protection Programmes to address the outflow of refugees from Syria.

<sup>(225)</sup> In 2010 the Belgian asylum authority (CGRS) and its Burundese counterpart (ONPRA) have signed a cooperation agreement. Experts of the CGRS will provide their expertise to ONPRA, the newly established asylum authority. By using different modules of the European Asylum Curriculum (EAC) theoretical and practical knowledge is transferred. The project has been prolonged until the end of 2012 and further modules on e.g., Exclusion, Evidence Assessment and COI have been introduced. The project has been positively welcomed by both sides.

<sup>(226)</sup> The Regions of Origin Initiative is managed and implemented by the Ministry of Foreign Affairs and includes cooperation on aspects of the programme pertaining to Danish refugee and asylum policies. At the moment, the Regions of Origin Initiative supports activities in twelve countries: Kenya, Afghanistan, Somalia, Ethiopia, and South Sudan – which are all priority programme countries for Danish bilateral assistance – as well as Iraq, Jordan, Syria, Côte d'Ivoire, Liberia, Yemen and Guinea. It is expected that by 2012, more than DKK 2 billion (€ 270 million) will have been committed to the Regions of Origin Initiative.

<sup>(227)</sup> The Department for International Development (DFID) funding UNHCR in Kenya with approximately £9 million in 2012. They engage and support the Kenyan authorities, including the Department of Refugee Affairs within the Ministry of Immigration, on refugee protection and assistance activities. (EMN Questionnaire)

<sup>(228)</sup> Cf. EASO Annual Activity Report 2012.



## 4. The Functioning of the CEAS

### 4.1. Access to the asylum procedure

In the most literal sense, access to a national asylum procedure presupposes access to the territory, but it relates also to the possibility to register an application, as well as the availability of information explaining the asylum procedure and the rights and obligations of applicants for international protection.

Although ideas are regularly being raised about offering some form of protected entry <sup>(229)</sup>, *access to the territory* is still a precondition for access to Member States' national asylum systems <sup>(230)</sup>. In the recent past, serious concerns have been raised in regards the access for applicants for international protection to Europe, as measures directed against irregular migration also affect these persons as part of mixed migration flows. Also in 2012, some reports were made of applicants for international protection being returned to the third country they came from, based on safe third country concepts without *non-refoulement* guarantees <sup>(231)</sup>.

The former practice of push-backs at sea was condemned by, in February 2012 by the ECHR in its judgment in the case *Hirsi Jamaa and Others v. Italy* <sup>(232)</sup>.

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<sup>(229)</sup> None of the EU Member States currently allow for applicants for international protection to make applications in diplomatic representations outside of their territories. In 2012, the Italian Council for Refugees (CIR) published the report 'Exploring Avenues for Protected Entry in Europe'. The report examines complementary forms of access to asylum in Europe from abroad and is based on the experience collected from various European countries, as well as interviews with stakeholders at national and EU level. The report was drawn up in the framework of the project 'E.T. Entering the Territory: exploring new forms of access to asylum procedures', co-financed by the European Commission under the European Refugee Fund – Community Actions 2009.

<sup>(230)</sup> In the course of 2012, **Slovenia** abolished the possibility of submitting an asylum application in diplomatic representations in third countries (Annual Report Matrix). In **Spain**, this option was abolished when the 12/2009 Asylum Law came into force. IGC, *Blue Book 2012*, p.336. The **Netherlands** still provide diplomatic asylum by law, but only in very exceptional cases (as laid out in *Staatscourant*, TBV 2003/33 C5/25 (TK) (12 January 2003, 19,637, nr. 719).

<sup>(231)</sup> UNHCR observed in one MS that persons of concern to UNHCR, including unaccompanied children, were denied access to the asylum procedures, despite presenting themselves to the police declaring their irregular entry and their wish to apply for international protection. They remained in the exclusive control of the police for a number of hours, before they were compelled to return to the third country from where they were consecutively expelled: in another MS, UNHCR was made aware of a few persons of concern forcibly returned within 48 hours after their arrival in breach of the right to apply for protection. In another Member State UNHCR received information that persons attempting to apply for international protection at crossing points were rejected admission on the basis of the border guard's application of Russia as a safe third country. (UNHCR input)

<sup>(232)</sup> Cf. 3.2.1.6.

In *Hirsi Jamaa and others v Italy* (No 27765/09) <sup>(233)</sup>, the ECtHR ruled on the return of Somalian and Eritrean nationals to Libya who were intercepted 35 miles south of Lampedusa within the maritime search and rescue area under the responsibility of Malta. The Somalian and Eritrean nationals were transferred to Italian military vessels and handed over to the Libyan authorities on the basis of bilateral agreements. The ECtHR ruled for the first time on the extraterritorial jurisdiction involving the removal of third country nationals. The ECtHR concluded that, whenever a State exercises outside its territory authority over an individual, the concerned State is under the obligation to secure the rights recognised to that individual. In this case, Italy had conducted the rescue operation on the high seas on board ships of the Italian armed forces, the crew of which consisted of Italian military personnel, being the applicants under exclusive *de iure* and *de facto* control of the Italian authorities. The ECtHR concluded that the applicants had been subject to risk of degrading or inhuman treatment both in Libya and their countries of origin. On one hand, having regard to the situation in Libya at the material time (i.e. inhuman detention conditions of irregular migrants, risk of returning to their countries of origin at any time or precarious living conditions and exposure to racist acts) observed that the prohibition of inhuman or degrading treatment had been violated. On the other hand, the ECtHR concluded that when transferring applicants to Libya, the Italian authorities had known or should have known that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin, since Libya was not party to the Geneva Convention. The situation in Somalia was of widespread insecurity, whereas the in Eritrea individuals were likely to be tortured and detained in inhuman conditions only on the basis of having left the country irregularly. It is worth underlining that the ECtHR stated that the fact that the applicants had not applied for international protection did not exempt Italy from its responsibility, since the '*non-refoulement*' principle arose also from the Charter of Fundamental Rights of the European Union. Additionally, the ECtHR considered that the facts amounted to a collective expulsion, since the transfer to Libya had been executed without any individual examination or identification procedure. Finally, the ECtHR stressed that the right to an effective remedy had not been respected, due to the fact that they were not informed on where they were being returned to Libya and to the fact that, in practice, the remedy did not have a suspensive effect as required for cases in which the *non-refoulement* principle was to be applied.

A specific issue of concern is the situation in the Spanish enclaves Ceuta and Melilla, where applicants for international protection in particular are faced with long delays in the processing of their asylum requests and the UN Special Rapporteur on Human Rights reports a different approach to asylum than in the Spanish mainland <sup>(234)</sup>.

*Border crossing* points play a crucial role when it comes to access to national asylum systems. In Spain, the Spanish Office for Asylum and Refugees organised training sessions on access to the asylum procedure for the competent authorities in border areas and immigrants detention centres during 2012 <sup>(235)</sup>. In Poland, active monitoring takes place in border crossing points to ensure access to protection <sup>(236)</sup>. In Latvia, a border monitoring agreement between the Latvian State Border Guard, UNHCR and the Latvian Centre for Human Rights as partner, aimed at improving border guards' understanding of the need to identify protection needs of persons arriving irregularly and ensuring their reception and speedy referral to the asylum procedure <sup>(237)</sup>. A similar project is carried out in Lithuania <sup>(238)</sup>.

*Detention policies* may also complicate the access to the asylum procedure <sup>(239)</sup>.

<sup>(233)</sup> Judgment of the Court of 23 February 2012. Full text of the judgment available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231>.

<sup>(234)</sup> Cf. Office of the High Commissioner for Human Rights, 'Spain must make a priority the fight against racism, now more than ever – UN expert', 28 January 2013, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12954&LangID=E>, accessed 12 April 2013. The specificities of both Spanish enclaves stem from the fact that the provisions of the Schengen Regulation do not affect the special rules applying to these cities, as foreseen in the Schengen Border Code. This said, the same time processing rules as the rest of the country apply for applications for international protection in Ceuta and Melilla, with the particularity of high inflows of applications in these two cities.

<sup>(235)</sup> Annual Report Matrix.

<sup>(236)</sup> In **Poland** inspections of border crossing points are carried out by UNHCR as well as NGOs under the Agreement on cooperation and coordination between UNHCR and Border Guards, signed on the 21st of October 2009 with regard to access to the asylum procedure for persons in need of international protection. Border Guards conduct also activities aimed at facilitating the access of foreigners placed in detention centres to representatives of non-governmental organisations. UNHCR in cooperation with NGOs organises regular monitoring of detention centres. Border Guards distribute leaflets with contact details informing about non-governmental organisations providing aid to applicants for international protection.

<sup>(237)</sup> UNHCR input.

<sup>(238)</sup> UNHCR input.

<sup>(239)</sup> E.g., in **Bulgaria**, after making an asylum application, proceedings before the State Agency for Refugees only starts after the registration *in personae* of the applicant, which is rendered difficult as long as the person is in a closed centre. Cf. Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2012 (Annual Report)*, ([http://ec.europa.eu/ews/en/resources/detail.cfm?ID\\_ITEMS=33936](http://ec.europa.eu/ews/en/resources/detail.cfm?ID_ITEMS=33936)), accessed 12 April 2013.

Greece continued facing challenges when it came to the actual *registration of applications* <sup>(240)</sup>. The new Greek Asylum Service, however, is committed to ensuring unhindered access to the asylum procedure. <sup>(241)</sup> In Italy, IT tools have been developed to facilitate the registration of applications <sup>(242)</sup>.

With regard to *information-provision*, many Member States have stepped up their efforts to ensure that applicants are better informed about the asylum procedures. Leaflets, booklets, a welcoming guide and audiovisual tools were developed for this purpose <sup>(243)</sup>. Specific information was developed for unaccompanied minors <sup>(244)</sup> and on gender <sup>(245)</sup>, sexual orientation and gender identity <sup>(246)</sup> issues.

## 4.2. Access to legal representation and provision of interpretation

Legal counselling and representation of applicants help support a fair asylum procedure and safeguard applicants' rights.

In most Member States, applicants for international protection are entitled to some form of free legal assistance and representation. Whereas a limited number of Member States provide free legal representation to all applicants in all stages of the asylum procedure <sup>(247)</sup>, most Member States limit this support to the appeal stage <sup>(248)</sup>, or allow representation during both asylum interview and appeal only to unaccompanied minors and/or applicants whose application is processed under an accelerated procedure <sup>(249)</sup>.

<sup>(240)</sup> Throughout 2012, UNHCR observed continued difficulties of access to the asylum-procedure in Petrou Ralli. During the extended transitional period, the first instance asylum procedure continues to suffer from understaffing, resulting in extremely limited access to the asylum-procedure in Athens and some other locations. New applications for international protection (of persons who are not in detention) are in practice registered according to the current capacity of the competent police authorities to carry out interviews, and not in relation to the actual numbers of persons seeking asylum and attempting to register their asylum-applications. UNHCR, 'Dozens queue every week in Athens to apply for asylum', 23 March 2012, (<http://www.unhcr.org/4f6c8b6a6.html>), accessed 12 April 2013.

<sup>(241)</sup> The Greek Asylum Service will begin its operations with 5 functional Regional Asylum Offices (in Athens, in Thessaloniki, in Rhodes, and two in the region of the Greek-Turkish border). The Asylum Service is in the process of recruiting 50 members of staff to carry out the actual registration of applicants for international protection. The Appeals Authority will begin its operations with 19 three-member, independent, second instance Committees.

<sup>(242)</sup> The operating platform Vestanet enables to produce an electronic version of the application for international protection ('C3 on line'), which, through the said platform, is made available for the determining authorities (Territorial Commissions for the recognition of the international protection). The management of the appointments for the interview of applicants is also done by means of the same IT procedure. (Annual Report Matrix)

<sup>(243)</sup> **Cyprus** prepared a new updated Information Leaflet/Booklet to be made available to applicants for international protection upon application at District Immigration Offices, Police Stations, Detention, points of entry etc. In **Estonia**, a 'Welcome Guide for Asylum Seekers and Refugees' was published in three languages, in the framework of the CAP-CO project (led by IOM in co-operation with Police and Border Guard Board, Ministry of Interior and Ministry of Social Affairs). The **Greek** Asylum Service is planning to print 70,000 copies and disseminate a leaflet, written in English and in the languages of the main national/ethnic groups of applicants, in Greece, which will contain basic information on asylum procedures. The Asylum Service is also planning to establish a free phone line with recorded information in the same languages. In **Malta**, information is delivered through different means, including verbally with the help of interpreters, through an audio-visual presentation and a booklet – both available in eleven different languages. After the provision of such information, the potential applicants for international protection are asked whether they need any clarifications and are then assisted by an interpreter to fill in a registration form. In the **United Kingdom**, the UK Border Agency revised the information leaflet given to applicants when they apply for international protection. It informs the applicant what to expect of the asylum process, their rights and responsibilities, as well as sign-posting vulnerable applicants to support organisations. Audio-visual tools (films) are being used to explain the different steps of the procedure in, *inter alia*, **Belgium** (cf. [http://www.cgvs.be/en/news/lancement\\_du\\_dvd\\_l\\_asile\\_en\\_belgique.jsp](http://www.cgvs.be/en/news/lancement_du_dvd_l_asile_en_belgique.jsp), accessed 27 May 2013), **Denmark** (cf. [https://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/application\\_for\\_asylum/asylum\\_information\\_film/asylum-info-film.htm](https://www.nyidanmark.dk/en-us/coming_to_dk/asylum/application_for_asylum/asylum_information_film/asylum-info-film.htm), accessed 27 May 2013) and **Sweden** (cf. [http://www.migrationsverket.se/info/5383\\_en.html](http://www.migrationsverket.se/info/5383_en.html), accessed 27 May 2013).

<sup>(244)</sup> In the context of a quality assurance project (co-funded by the ERF and the **Austrian** MOI), which was implemented by UNHCR in cooperation with the Federal Asylum Agency, a brochure with information about the asylum procedure in Austria specifically for separated children was developed. (UNHCR input)

<sup>(245)</sup> In **Belgium**, a brochure 'Women, girls and asylum in Belgium' was developed as part as an ERF project. This brochure does not only contain information about the asylum procedure itself, but it also treats other more specific themes such as health, the issue of equality between men and women, violence within the family, the issue of female genital mutilation and human trafficking. In order to reach out to as many female applicants for international protection as possible, the brochure was translated in nine languages.

<sup>(246)</sup> The **Swedish** Migration Board has on its website a special information portal for lesbian, gay, bisexual, transsexual and queer persons. Cf. [http://www.migrationsverket.se/info/5737\\_en.html](http://www.migrationsverket.se/info/5737_en.html), accessed 27 May 2013.

<sup>(247)</sup> In **Belgium**, applicants for international protection are entitled to free legal assistance and representation at each stage of the asylum procedure. If an asylum applicant cannot afford legal assistance, the state may provide this free of charge through the legal aid office. Belgium has an extended system of pro bono legal counselling/representation: e.g., for appeal procedures and for administrative procedures. As it was established that this is a costly system to maintain, a political discussion on the functioning of this system arose during 2012. However, no concrete measures have been proposed yet. (Annual Report Matrix). In **Bulgaria** amendments to the 'Law for the Legal Aid', which contain a new provision for legal aid free of charge to applicants for international protection, were adopted in March 2013 (Annual Report Matrix).

<sup>(248)</sup> In the course of 2012, the **Polish** Ministry of Interior has undertaken actions aimed at providing free legal counselling and representation for applicants for international protection at the level of the appeal to the Refugee Board. Up until now applicants for international protection appealing against the decision of the Head of the Office for Foreigners to the Refugee Board are granted free legal assistance provided by non-governmental organisations, which are enrolled in number of projects on free legal aid financed by the European Refugee Fund (Annual Report Matrix). In **Greece**, the Appeal Authority plans to provide limited legal aid to applicants in the second instance (Annual Report Matrix). **Slovenia** officially abolished state-provided free legal assistance at the first instance, but continues to provide legal aid in the context of an ERF-funded programme. (Annual Report Matrix)

<sup>(249)</sup> In the **United Kingdom**, Legal Aid, Sentencing and Punishment of Offenders Act received Royal Assent on 1 May 2012. This legislation lays out the new provisions for legal aid in civil and criminal cases, including immigration and asylum. The Act will come into effect on 1 April 2013. In general, applicants for international protection will continue to receive legal aid for the following: Representation at any asylum appeal in a non-detained process and during an interview where they lack capacity within the meaning of section 2 of the Mental Capacity Act 2005; Representation during an asylum interview, any asylum appeals and for bail hearings when detained under the Detained Fast Track process; Legal representation at their asylum interview and any appeals where the applicant is a minor. (Annual Report Matrix)

In 2012, several Member States have implemented projects related to the provision and quality of legal support – often involving NGOs – in the framework of the European Refugee Fund <sup>(250)</sup>. In several Member States, however, the provision of free legal aid suffers, *inter alia*, from a lack of funding <sup>(251)</sup>.

Poor-quality interpretation can have a direct impact on the outcome of proceedings. UNHCR, for example, urges Member States to not only invest in quality initiatives involving caseworkers, but also to focus on the quality of interpreters, and to refrain to the extent possible from using non-qualified persons with only limited experience as interpreters <sup>(252)</sup>. Belgium worked on a procedural framework for interpretation services, by developing and publishing deontological guidelines for translators and interpreters <sup>(253)</sup>.

As the availability of interpreters can be problematic, especially for smaller Member States and for languages that are not commonly used, the GDISC Interpreters' Pool project allowed Member States with limited interpretation capacity to request the assistance of 'donor' countries, thus increasing the number of languages available to them during the asylum interviews. This project ended in June 2012 <sup>(254)</sup>.

In several Member States interpretation services have been outsourced to external service-providers, for which calls for tender need to be launched. These tender procedures can be used as an opportunity to raise the quality of the requested services <sup>(255)</sup>.

Finally, an increasing number of Member States relies on videoconferencing to ensure interpretation during asylum interviews <sup>(256)</sup>.

### 4.3. Dublin procedure

In 2012, several Member States increased the use of the Dublin Regulation process by better investigating visa and residence histories <sup>(257)</sup>.

<sup>(250)</sup> In **Bulgaria**, the State Agency for Refugees provides legal aid free of charge as part of an ERF project. Also co-financed by the ERF was the elaboration of a handbook on refugee law for court-appointed attorneys registered with the National Bureau for Legal Aid who represent rejected applicants. (Annual Report Matrix). Also **Latvia** has implemented ERF projects on legal counselling (Annual Report Matrix). In **Estonia**, the Estonian Ministry of the Interior granted financial support to a project proposal by the Estonian Centre for Human Rights on the provision of free legal aid to applicants for international protection. The project proposal was supported by UNHCR and has led to improved access to legal assistance. (UNHCR input). In **Slovakia**, the project AZYL.SK IV, financed by ERF, provides applicants for international protection with legal assistance through NGOs located in the region of central and eastern Slovakia, with emphasis on vulnerable groups, including unaccompanied asylum minors. (Annual Report Matrix). In **Poland**, the Helsinki Foundation for Human Rights (HFHR) provided regular free legal aid and integration assistance to refugees and applicants for international protection in the Foundation headquarters and in detention centres during on-site visits in the framework of the 'Lawyers for Refugees V' project. Cf. <http://programy.hfhr.pl/uchodzcy/en/pro/prawnicy-na-rzecz-uchodzcow-v/>, accessed 9 April 2013.

<sup>(251)</sup> UNHCR offices reported different levels of concerns with regard to the provision of free legal aid in the first or second legal instance in several MS (UNHCR input)

<sup>(252)</sup> See for example UN High Commissioner for Refugees, *Self-Study Module 3: Interpreting in a Refugee Context*, 1 January 2009, (<http://www.refworld.org/docid/49b6314d2.html>), accessed 12 April 2013.

<sup>(253)</sup> In **Belgium**, deontological guidelines for translators/interpreters were developed and published. They describe the duties and rights of translators and interpreters and give practical information on conduct during the interview. Cf. IGC, *Blue Book 2012*, p.67.

<sup>(254)</sup> In the case of **Malta**, the interpreters' pool project has been expanded to include a pilot project on actually sending interpreters from the United Kingdom to Malta when there is a need for interpreters for a short period to provide practical assistance on the spot. The Office of the Refugee Commissioner managed to bring over to Malta six interpreters in different languages. (Annual Report Matrix)

<sup>(255)</sup> In **Greece**, interpretation services for the interviews will be outsourced. The call for tender will be published at the beginning of 2013. During the transitional period interpretation services are provided either by persons that cooperate with the responsible police authorities or by interpreters of the NGO METACTION. (Annual Report Matrix) In 2012, **Spain** improved the quality of the interpretation service through the introduction of higher standards in the public tender for the provision of interpretation services. As a result, higher qualification and training standards for interpreters have been set and a more accessible service is now available with interpretation through videoconference. The new service also provides for a more accessible service for disabled people making available language sign interpretation. In **Ireland**, procedures in place with the interpretation and translation service providers were kept under review during the year 2012. A new interpretation service provider was appointed towards the end of 2012 as a result of a tendering process led by the Irish Naturalisation and Immigration Service. In **Italy**, the National Asylum Commission launched a new call for tender for the provision of the interpretation service in mid 2012. The contracting Company provides experienced interpreters specialised in rare languages and dialects, able to assist the Territorial Commissions during the interview of the applicants for international protection. (Annual Report Matrix)

<sup>(256)</sup> The use of videoconferencing was mentioned, *inter alia*, by **Bulgaria** and **Spain**.

<sup>(257)</sup> In 2012, the **Irish** ORAC continued to maximise use of the Dublin II Regulation determining the Contracting State responsible for processing an asylum application. There were 144 determinations made by ORAC under the Dublin II process and 70 applicants were transferred to other Member States. Where possible, as part of the Dublin Regulation process, ORAC continued to take into account visa or other residence histories as provided for in EU law. As a result of making full use of the Dublin Regulation process, the detection of applicants, who have obtained a visa or residence permission for another Contracting State to the Regulation and entered Ireland to make an asylum application while claiming to have no identity or travel documents, has increased. (Annual Report Matrix). In February 2012, **Sweden** started making automatic fingerprint researches for applicants for international protection in the Visa Information System (VIS), which resulted in a considerable increase of take charge requests according to the Dublin Regulation sent to other Member States. Most of these cases would not have been detected otherwise. (Annual Report Matrix)

Both Poland and Spain reported important increases in the number of requests received compared to the year 2011, respectively + 35 % and +65 % <sup>(258)</sup>.

The cooperation and information-exchange between Member States on issues related to the Dublin system was boosted by regular bilateral meetings and administrative agreements <sup>(259)</sup>, as well as the establishment of dedicated IT systems <sup>(260)</sup>.

Poland made important amendments to the provisions on the implementation of the Dublin system, aiming at expanding the scope of assistance provided to applicants. The new provisions now grant financial support to enable applicants to travel to the Member States responsible for examining the application.

The CJEU delivered its judgment in three cases in 2012 regarding the application of the Dublin system:

The case *C-179/11 CIMADE and GISTI v Ministre de l'Interieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration (France)* is analysed more thoroughly in another section (see 4.5), since it concerns the application of the Reception Conditions Directive in cases of requests for transfer under the Dublin Regulation.

In case *C-245/11 K v Bundesasylamt (Austria)* <sup>(261)</sup>, the CJEU dealt with a reference for a preliminary ruling regarding the application of the humanitarian clause under Article 15 of the Dublin Regulation. The main proceedings related to the application for international protection lodged in Austria, following a prior application in Poland, by a person whose daughter-in-law suffered from a serious illness and disability was dependent on the applicant's assistance and was at risk of facing violent treatment from other male family members in order to re-establish 'family honour'. The CJEU considered that a Member State not responsible *prima facie* to examine an application for international protection according to the criteria of the Dublin Regulation shall 'normally' become responsible in circumstances as the ones referred to in Article 15 (2). 'Normally' should be interpreted in the sense that, if a member State wishes to derogate from that obligation to keep the persons concerned, it shall justify why an exceptional situation has arisen. In these cases, the humanitarian clause should be applied even if the *prima facie* responsible Member State does not request it as required by Article 15 (1). The CJEU observed that, even when the daughters-in-law do not strictly fall within the definition of family members (Article 6-8 of the Dublin Regulation), the humanitarian clause should be applicable beyond that definition on the basis of the dependence criterion and the purpose of maintaining the family ties. Finally, the referring court raised also the question on the interpretation of other provisions which could be affected if the humanitarian clause was to be applied automatically, in particular, the provisions of the ECHR (Articles 3 and 8) and the Charter of Fundamental Rights of the European Union (Articles 4 and 7) on prohibition of inhuman or degrading treatment and respect for private and family life. In this regard, the referring court asked whether the notions of ill-treatment or family life could be interpreted more extensively and at variance with the interpretation developed by the ECtHR. The CJEU did not deem necessary to reply to this question of the referring court, taking into consideration ruling on the main question.

With regard to case *C-620/10 Kastrati v Migrationsverket (Swedish Migration Board)* <sup>(262)</sup> the CJEU examined the application of the Dublin Regulation when the application is withdrawn before the Member State responsible agrees to take charge of the applicant. In this regard, the CJEU held that the Dublin Regulation is no longer applicable in such cases. The Member State in the territory of which the application was lodged should take the required decisions as a result of the withdrawal and, in particular, discontinue the examination of the application, recording the information relating to it in the applicant's file.

<sup>(258)</sup> Cf. Annual Report Matrix. The total number of requests for taking back and taking charge in 2012 amounted to 4 730 in Poland. 1 250 persons were transferred to Poland in 2012, 120 persons were transferred to other Member States. The procedure IN constituted over 95 % of all Dublin cases in Poland (Annual Report Matrix).

<sup>(259)</sup> Throughout 2012, **Italy** held meetings with the Helvetic Confederation in order to share good practices related to the implementation of EC Regulation no. 343/2003 – Dublin. Furthermore, meetings with **France** were started with a view to draft an administrative agreement related to the same Dublin regulation. In October 2012 the Italian Dublin Unit started closer relationships with **Sweden** in order to reduce by default cases and better handle transfers from Sweden. (Annual Report Matrix)

<sup>(260)</sup> In 2012, the **Italian** Department for civil liberties and immigration put in place software to the benefit of the Dublin Unit aimed at streamlining and speeding up Dublinet – allowing all Dublin Units in EC Countries to talk to each other – also in order to facilitate the contacts with the Department for Public Security both on the central and local levels. (Annual Report Matrix)

<sup>(261)</sup> Judgment of the Court of 6 November 2012. Full text of the judgment available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0245:EN:HTML>.

<sup>(262)</sup> Judgment of the Court of 3 May 2012. Full text of the judgment available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0364:EN:HTML>.

As regards the ECtHR, case *Buishvili v the Czech Republic (No 30241/11)* <sup>(263)</sup> referred indirectly to the Dublin system. The case dealt with a Georgian national who, transferred from the Netherlands to the Czech Republic following the provisions of the Dublin Regulation, was refused entry and remained in the reception centre at the airport of Prague, after applying for international protection. Based on the absence of access to judicial proceedings in which his release could have been ordered, the ECtHR considered that his right to have the lawfulness of his detention decided by a court had been violated.

Member States continued to suspend Dublin transfers to Greece in line with ECtHR and CJEU rulings <sup>(264)</sup>. In March 2012, Germany, France, the United Kingdom, Austria, the Netherlands, Belgium and Sweden presented a non-paper to the Justice and Home Affairs Council. In this non-paper, the seven countries called on Greece to improve border controls using available EU funds. With regard to the Greek situation, a new ruling by the ECtHR confirmed some of the findings that informed the landmark *M.S.S.* ruling commented in *EASO Annual Report 2011*:

Case *Ahmade v Greece (No 50520/09)* <sup>(265)</sup> referred to the conditions of detention of an Afghan asylum applicant in Athens, as well as to the Greek asylum procedure. The ECtHR deemed that the conditions of detention (i.e. overcrowding, poor ventilation, no possibility of exercise in a courtyard, lack of accessibility to showers or toilets without authorisation) amounted to degrading treatment. The ECtHR also established that no effective remedy was available regarding the living conditions in detention centres for irregular migrants. Finally, the ECtHR stressed that the detention only aiming at guaranteeing his removal was not lawful since, under Greek law, this deprivation of liberty is only justified if the removal can actually be executed. Since the applicant was an asylum applicant, he was entitled to remain in the country and the removal could not be executed.

In May 2012, European Council on Refugees and Exiles (ECRE) and the International Commission of Jurists presented a joint submission to the Committee of Ministers of the Council of Europe under Rule 9.2 of the Rules of Procedure of the Committee of Ministers, under its supervisory role in the execution of judgments of the European Court of Human Rights, in which some concerns are raised with regard to Greece's respect to the obligations arising from the *M.S.S. v Belgium & Greece* case <sup>(266)</sup>.

Suspension of transfers did not only occur *vis-à-vis* Greece. Some Member States also applied the sovereignty clause by not transferring persons belonging to vulnerable groups to other Member States <sup>(267)</sup>.

With regard to the Dublin procedure, UNHCR voiced its concern about the lack of access to interim legal remedies against Dublin transfers in some Member States <sup>(268)</sup>.

In 2012, UNHCR published two position papers regarding the situation in Hungary, in which it urged countries to refrain from returning applicants for international protection to Hungary under the Dublin II Regulation, where they had transited through Serbia prior to their arrival in Hungary. In these papers UNHCR voiced its concerns

<sup>(263)</sup> Judgment of the Court of 25 October 2012. Full text of the judgment available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114051>

<sup>(264)</sup> A very limited number of Dublin transfers from a small number of Member States to Greece did take place in 2012, but preliminary information received by EASO shows that this concerns persons who were in possession of a valid residence permit in Greece or who explicitly and repeatedly expressed the wish to be transferred to Greece.

<sup>(265)</sup> Judgment of the Court of 25 September 2012. Full text of the judgment available (in French) at: <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-113330>

<sup>(266)</sup> Cf. Joint Submission of the International Commission of Jurists (ICJ) and of the European Council on Refugees and Exiles to the Committee of Ministers of the Council of Europe in the case of *M.S.S. v. Belgium and Greece* (Application no. 30696/09), May 2012, (<http://www.ecre.org/component/content/article/64-elena-publications/280-joint-submission-of-the-international-commission-of-jurists-and-of-the-european-council-on-refugees-and-refugees-and-exiles-to-the-committee-of-ministers-of-the-council-of-europe-in-the-case-of-mss-v-belgium-a-greece-application-no-3069609.html>), accessed 17 April 2013. Another submission followed in February 2013.

<sup>(267)</sup> **Finland** has not returned persons belonging to vulnerable groups (unaccompanied minors, single parents, victims of trafficking) to **Malta** or **Italy**. Unfounded applications filed by applicants from the Balkan area have been handled in Finland according to the Art. 3.2. of the Dublin II Regulation, instead of returning the applicants to another country. (Annual Report Matrix). In **Germany**, administrative courts are increasingly rejecting transfers to **Italy** by way of interim legal protection. (Annual Report Matrix)

<sup>(268)</sup> E.g., interim legal remedies against Dublin transfers are generally excluded by **German** national law. Even following a number of landmark decisions regarding access to effective legal remedies by the ECtHR and the CJEU in 2011, interim legal remedies against Dublin transfers are thus only sporadically granted by German administrative courts in exceptional cases and the respective case law remains inconsistent and unpredictable. The restrictive court practice holds in the majority of the 16 German individual states and is sometimes combined with the practice of notifying adult applicants for international protection of the Dublin decision only on the day of the transfer, which prevents many applicants from effectively appealing against the return decision. It is expected that the required legislative amendments will be revised in the course of the transposition of the forthcoming Dublin recast. [http://www.unhcr.de/fileadmin/user\\_upload/dokumente/07\\_presse/60\\_Jahre\\_GFK\\_-\\_Herausforderungen\\_fuer\\_die\\_deutsche\\_Fluechtlingspolitik.pdf](http://www.unhcr.de/fileadmin/user_upload/dokumente/07_presse/60_Jahre_GFK_-_Herausforderungen_fuer_die_deutsche_Fluechtlingspolitik.pdf), accessed 12 April 2013 ; UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Germany*, October 2012, (<http://www.refworld.org/docid/507284242.html>), accessed 12 April 2013.

regarding Hungary's policy to treat the applications of Dublin transferees as subsequent applications and to consider Serbia as a safe third country and returning applicants to that country without an in-merit examination of their applications <sup>(269)</sup>. In December 2012, UNHCR amended its position, after the Hungarian Parliament adopted a comprehensive package of legal amendments, aimed at further strengthening guarantees and procedures to ensure that applicants for international protection who transited through Serbia or the Ukraine have access to a full in-merit procedure <sup>(270)</sup>.

Finally, some actions have been undertaken by civil society to map Member State Dublin practices and improve the support given to persons placed under the Dublin procedure <sup>(271)</sup>.

## 4.4. Accelerated Procedures

Accelerated procedures have already been dealt with under heading 3.2.5.1 (Integrity) and 3.2.5.2 (Efficiency).

While accelerated procedures are an efficient tool to deal with a number of situations (see 2.4.3. Western Balkans), essential safeguards should nevertheless be implemented, especially when the applicant is in detention. In this respect, the ECtHR delivered the following judgment regarding accelerated procedure in detention in France:

Case *I.M. v France* (No 9152/09) <sup>(272)</sup> concerned the application for international protection of a Sudanese national from Darfur lodged after being detained for illegally entering or staying in France and for forgery and use of forged documents. While in detention, I.M. applied to the administrative court challenging the order for his removal. This application was rejected on the grounds that no conclusive evidence had been provided to substantiate his claim that he faced a risk of ill-treatment in Sudan. When subsequently placed in administrative detention with a view to his deportation, I.M. lodged an application for international protection, which was processed under an accelerated procedure. After refusal of the application by OFPRA, he appealed to the National Asylum Court. As this appeal was non-suspensive, I.M. applied to the ECtHR seeking to have the order for his deportation suspended. The request was granted and after I.M. obtained additional evidence to support his asylum application, the National Asylum Court granted I.M. refugee status.

The ECtHR established that the automatic registration of an application under the accelerated procedure in cases of first-time applications for international protection while being held in a specialised detention facility imposed certain constraints (e.g., reduction of time-limits to lodge the application and provide supporting documents from 21 to 5 days, and inadequate legal and linguistic guidance). Moreover, while the remedies to challenge the decision ordering removal had been available in theory, their accessibility in practice had been limited by the short deadlines imposed (48 hours) and the practical and procedural difficulties in producing evidence. The ECtHR also noted that the appeal to the National Asylum Court did not have suspensive effect when the fast-track procedure was applied. In this context, the ECtHR emphasised that without its intervention, the applicant would have been deported to Sudan without his claims having been subjected to the closest possible scrutiny and effective remedy in practice. Hence, the ECtHR concluded that his right to an effective remedy, taken together with the prohibition of inhuman or degrading treatment was violated.

<sup>(269)</sup> UNHCR, *Hungary as a Country of Asylum, Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4f9167db2>, accessed 25 March 2013; UNHCR, *Note on Dublin transfers to Hungary of people who have transited through Serbia*, October 2012, (<http://www.unhcr.org/refworld/docid/507298a22.html>), accessed 25 March 2013.

<sup>(270)</sup> UNHCR, *Note on Dublin transfers to Hungary of people who have transited through Serbia*, October 2012, (<http://www.unhcr.org/refworld/docid/507298a22.html>), accessed 25 March 2013.

<sup>(271)</sup> Dublin Transnational Project (Part 2): European Network for Technical Cooperation on the Application of the Dublin II Regulation is an 18 months project (1.07.2011 – 1.01.2013) with as principal goal to improve the support given to persons placed under the Dublin procedure. The projects particularly focuses on Bulgaria and Slovakia for their location as external borders of the EU, to Greece as a country with particular difficulties with regard to the execution of transfers and living conditions, and finally Germany, for its high number of incoming and outgoing requests (<http://www.dublin-project.eu/dublin>). Forum Réfugiés-Cosi, ECRE and the Hungarian Helsinki Committee conducted comparative research into Dublin-related practices with respect to fundamental rights in 11 states (Austria, Bulgaria, France, Germany, Greece, Hungary, Italy, Slovakia, Spain, Switzerland and the Netherlands), called 'The Dublin II Regulation: Lives on Hold'.

<sup>(272)</sup> Judgment of the Court of 2 February 2012. Full text of the judgment available (in French) at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108934>.

## 4.5. Reception of applicants for international protection and vulnerable groups, including detention policy

In 2012, several Member States undertook measures to maintain or increase their reception capacity<sup>(273)</sup>. In Belgium, the reception crisis, which started in May 2008 due to a high influx of applicants for international protection, and led to situations whereby applicants were accommodated in hotels or had limited or inadequate accommodation, came to an end in 2012, due to the introduction of a comprehensive set of measures<sup>(274)</sup>. During 2012, limited reception capacity and overcrowded reception centres remained an important issue in a number of Member States<sup>(275)</sup>, as well as excessive periods of time some applicants for international protection spend in reception centres<sup>(276)</sup>.

Despite positive developments, UNHCR still reported challenges with regard to the quality of reception facilities or services in several Member States<sup>(277)</sup>.

<sup>(273)</sup> E.g., in **Austria**, due to an overall increase in applications for international protection in 2012 and particularly of separated asylum-seeking children capacities for the reception of applicants for international protection admitted to the regular procedure were a concern. However, after a so-called 'Asylum Summit' between the Federal Government and the Provincial Governors end of October 2012, the lack of reception capacity could be addressed through providing additional facilities (cf. <http://www.unhcr.at/presse/pressemitteilungen/artikel/d7467a5048172ef41765600b7d7b289f/unhcr-zu-asylquartieren-nach-quoten-nun-auf-qualitaet-schauen.html> (30 November 2012)). **Italy** increased its capacity with 702 places in December 2012, in compliance with the Order of the President of the Council of Ministers (OPCM) no 3965 of 21 September 2011 containing 'Urgent measures aimed at tackling the state of humanitarian emergency on the national territory with regard to the unprecedented inflow of nationals belonging to North African countries'. On 31 December 2012, the state of emergency for North Africa ended and a new transition phase into ordinary management was established in the Centres through the Order of the President of the Council of Ministers dated 28 December 2012. (Annual Report Matrix). **Bulgaria** opened a transit centre in 2012, with a capacity of 300 additional places for the accommodation of applicants for international protection and invested in the renovation of infrastructure and improvement of services (Annual Report Matrix). **Cyprus** developed and improved services through an ERF co-funded project by providing accommodation and social support to applicants for international protection residing in hotels used as reception centres. (EMN Questionnaire). In **Poland**, tenders for three new asylum centres were opened in 2012 to cope with the high numbers of applicants in asylum centres.

<sup>(274)</sup> Measures included: the introduction of a list of safe countries of origin, the limitation of the right to reception for subsequent applicants, creation of extra reception places (from 16 061 places at the end of 2008 to 23 989 places at the end of 2012), increased attention to return policy, prevention campaigns, more efficient and faster asylum procedure, intensified cooperation between the asylum and reception agencies under the responsibility of one State Secretary. Since mid-January 2012 a reception place could be assigned to all new applicants and the capacity of emergency reception places could be downsized. (Annual Report Matrix)

<sup>(275)</sup> E.g., a recent report of the Ombudsman in **Cyprus** identified a number of flaws in the provision of material reception conditions and access to social welfare including unjustified interruptions and unfavourable treatment. The CRC Committee urged the Cypriot authorities to provide persons seeking international protection with the same level of health care as nationals including adequate medical care to persons with special needs (Cf. [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_CYP\\_CO\\_3-4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_CYP_CO_3-4.pdf), accessed 27 May 2013) In **France**, for instance, the national accommodation scheme for applicants for international protection (*Dispositif national d'accueil*) could only accommodate about one third of all applicants in France, mostly families and vulnerable people, who are considered a priority. While the number of slots in CADA increased from 4,500 in 2002 to 21,410 places (spread over 270 centres) in 2012, they remained insufficient due to the high increase in the number of applications for international protection and the longer duration of stay. To face this high increase, a system of emergency accommodation was considerably developed, and has reached up to 20 000 beds in 2012, in order to shelter all applicants in need. Regardless of the nature of their accommodation, applicants for international protection receive a financial allowance. The creation of additional 4 000 slots scheduled for 2013 and 2014 also constitutes a significant increase. Cf. Rapport de la Fédération française pour le Droit d'Asile, *Droit d'asile en France : Conditions d'accueil – Etat des lieux 2012*, [http://cfda.rezo.net/Accueil/EDL%202013/EDL\\_CFDArapportwebversionfinale.pdf](http://cfda.rezo.net/Accueil/EDL%202013/EDL_CFDArapportwebversionfinale.pdf), accessed 27 May 2013 Croix Rouge française (French Red Cross), *Bilan d'activité – Mineurs isolés étrangers*, Janvier 2013, [http://infomie.net/IMG/pdf/Bilan\\_d\\_activite\\_MIE\\_CRF.pdf](http://infomie.net/IMG/pdf/Bilan_d_activite_MIE_CRF.pdf), accessed 27 May 2013). Apart from the situation in the mainland, concerns have been raised about the situation in the overseas departments, especially in Mayotte: Cf. Rapport d'information fait au nom de la commission des lois constitutionnelles, de législation, du suffrage universel, du Règlement et d'administration générale (1) à la suite d'une mission effectuée à Mayotte du 11 au 15 mars 2012, par MM. Jean-Pierre SUEUR, Christian COINTAT et Félix DESPLAN, Sénat, n° 675, 18 juillet 2012. As a further example, in **Germany**, several reception facilities were reported to be overcrowded (partly due to new arrivals from the Western Balkans) and in need of repair and maintenance: <http://www.zeit.de/gesellschaft/zeitgeschehen/2012-06/fluechtlinge-sammellager> (accessed 12 April 2013), <http://www.stern.de/politik/deutschland/asylbewerberzahl-enorm-gestiegen-auch-niedersachsens-innenminister-fuer-aenderung-des-asylverfahrens-1909351.html>, accessed 12 April 2013. Reception conditions for applicants for international protection and unaccompanied or separated children (UASC) in Greece remained problematic, both in terms of capacity and in terms of quality of services. In 2012, the country's deepening economic recession further negatively impacted the State's ability to respond to actual needs and provide for the reception of applicants for international protection according to the standards provided for, inter alia, in the EC Reception Conditions Directive. The reception capacity for applicants for international protection and UASC covered some 1,000 persons, while a total of 9,577 new applications for international protection were registered only in 2012. Reception structures, all of which are run by NGOs, faced operational problems as their funding depended exclusively on the European Refugee Fund (ERF) which is administered, with delays. UNHCR-Office in Greece, *Contribution to the dialogue on migration and asylum*, May 2012, [http://www.unhcr.gr/fileadmin/Greece/News/2012/positions/2012\\_Migration\\_Asylum\\_EN.pdf](http://www.unhcr.gr/fileadmin/Greece/News/2012/positions/2012_Migration_Asylum_EN.pdf), accessed 15 April 2013. E.g., in **Italy**, UNHCR called on the Italian Government to ensure an adequate reception capacity for applicants for international protection throughout the country, including when significant numbers of arrivals take place, so that all applicants lacking the means to provide for themselves are able to access adequate reception facilities, in line with provisions of the EU Directive on Reception Conditions. Existing reception facilities differed in quality and in a number of instances, reception measures were not available to applicants for international protection. Cf. UNHCR, *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy*, July 2012, (<http://www.refworld.org/docid/5003da882.html>), accessed 15 April 2013. Nonetheless, given the unprecedented flow of migrants from North Africa, Italy has been implementing extraordinary reception measures since 2011 through a reception system spread over the national territory, resulting from the cooperation of territorial and local bodies and coordinated by the Department for Civil Protection until 31 December 2012. Concerns were also reported with regard to the reception conditions in the **Spanish enclaves** of Ceuta and Melilla, where centres are overcrowded. See, i.a., Office of the High Commissioner for Human Rights, *Spain must make a priority the fight against racism, now more than ever – UN expert*, 28 January 2013, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12954&LangID=E>, accessed 27 May 2013; Spanish Commission for Aid to Refugees or CEAR, <http://www.pear.es/files/up2012/Resumen%20Ejecutivo.pdf>, accessed 27 May 2013.

<sup>(276)</sup> This is for instance the case in **Ireland**, where answers to a parliamentary question in April 2012 revealed that, of the 5,215 persons overall residing in RIA accommodation at that given time, there were 539 persons residing in the direct provision system who made their applications for international protection less than one year ago; 630 between one and two years; 770 between two and three years; 945 between three and four years; 812 between four and five years; 670 between five and six years; 397 between six and seven years; and 272 more than seven years ago. Cf. <http://debates.oireachtas.ie/dail/2012/04/18/00658.asp>, accessed 10 April 2013.

<sup>(277)</sup> As an example, in **Hungary**, UNHCR raised several concerns with regard to reception conditions in Hungary cf. UNHCR, *Hungary as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, (<http://www.unhcr.org/refworld/docid/4f9167db2.html>), accessed 25 March 2013. Different levels of concern have been registered by UNHCR also in other EU MS. (UNHCR input)



Some Member States reported contracts with new service-providers for the management of reception centres in 2012 <sup>(278)</sup>.

Member States still have different policies when it comes to allowing applicants for international protection to access the labour market. In Denmark, a political agreement was reached in September 2012, allowing applicants for international protection who are cooperative to work and be accommodated outside the asylum centre system after six months <sup>(279)</sup>. Also in Poland, applicants have access to the labour market six months after the application for international protection is lodged and no decision is issued <sup>(280)</sup>. Some Member States only issue work permits for those professions and fields experiencing a shortage of qualified workers <sup>(281)</sup>. In Ireland, applicants for international protection are not entitled to access the labour market at any stage <sup>(282)</sup>.

In several Member States, financial reception benefits have been curtailed or changed, e.g., from cash to in-kind, either to limit pull factors or because of austerity measures due to the economic crisis <sup>(283)</sup>. In Germany, however, cash allowances have been increased as a result of a ruling of the Federal Constitutional Court <sup>(284)</sup>.

In an attempt to deter the increasing number of unfounded subsequent applications for international protection, Belgium may now exclude subsequent applicants from reception and material aid <sup>(285)</sup>. The opposite development took place in Poland, which extended the level of assistance to include foreigners submitting subsequent applications as of January 2012 <sup>(286)</sup>.

With regard to the reception of unaccompanied minors, services in some Member States were improved and/or extra reception places were created <sup>(287)</sup>.

A number of initiatives were taken in several Member States in 2012 to better accommodate the special needs of vulnerable groups within the reception system, such as single parents, traumatised persons, persons with

<sup>(278)</sup> In **Austria**, a new operator became responsible for the basic care in the federal reception centres. (Annual Report Matrix). Also in **Estonia**, it was decided that a new service-provider would manage the Reception Centre. In **Poland**, the contract period for companies running asylum centres for applicants for international protection was extended from one year to four. (Annual Report Matrix)

<sup>(279)</sup> This policy change after the October 2011 elections was based on the findings of a working group, published in a report in June 2012.

<sup>(280)</sup> The applicant is entitled to take employment without any work permit and is entitled to register in the labour office provided he or she possess a document issued by Head of the Office for Foreigners stating that the above situation is due to the factors that do not hinge upon an applicant (EMN Questionnaire)

<sup>(281)</sup> This is, *inter alia*, the case in **Austria**, where applicants for international protection are granted access to the labour market three months after the admission of the application. The work permit is only issued for those sectors with a significant lack of available workers. This is the case if not enough Nationals, EU or other legally resident third country nationals are available. (Annual Report Matrix). **Denmark** uses a 'Positive List' of professions and fields experiencing a shortage of qualified workers. Persons who have been offered a job in one of these professions or fields will see their application for a work permit processed according to faster and simplified procedures. IGC, *Blue Book 2012*, p. 142. Also in **Germany**, a labour market test applies. Applicants for international protection will be considered for a position only if there are no competing German or EU citizens qualified for the job. IGC, *Blue Book 2012*, p. 225.

<sup>(282)</sup> The prohibition on access to work is included in the Refugee Act, 1996. See among others recently The Irish Times, 'Ireland out of step with Europe in treatment of asylum seekers – Nasc', 2 April 2013, (<http://www.irishtimes.com/news/social-affairs/ireland-out-of-step-with-europe-in-treatment-of-asylum-seekers-nasc-1.1345740>), accessed 27 May 2013.

<sup>(283)</sup> In **Luxembourg**, the Grand-Ducal Regulation of the 8th of June 2012, establishing the conditions and methods for granting social aid to applicants for international protection foresees an important cut regarding the monthly pocket money granted to applicants. (Annual Report Matrix). In **Slovenia**, due to the changes of the implementing act governing the rights of applicants for international protection, financial assistance for applicants for international protection living on private addresses decreased by 50 %. (Annual Report Matrix).

<sup>(284)</sup> In its judgment of 18 July 2012, the Federal Constitutional Court determined that the cash benefits pursuant to the Act on Benefits for Asylum Seekers (AsylbLG) are insufficient. Until this judgment is enacted in law, under a transitional rule determined by the Court those affected are receiving cash benefits in line with benefits paid to others in need of assistance. (Annual Report Matrix). Cf. <http://www.bundesverfassungsgericht.de/en/press/bvg12-056en.html>, accessed 27 May 2013.

<sup>(285)</sup> This is not the case if the application is deemed admissible by the Immigration Department. (Annual Report Matrix)

<sup>(286)</sup> From January 2012 foreigners submitting subsequent applications are granted the same level of social and medical assistance as the rest of applicants. This essential change in the principles on granting social assistance to applicants is aiming at providing the adequate standard of living for all applicants for international protection. The practice had shown that very often foreigners who were lodging subsequent applications were not able to afford the costs of life in Poland.

<sup>(287)</sup> In **Belgium** the capacity for the reception of unaccompanied minors increased by 194 places in 2012. (Annual Report Matrix). The **Czech Republic** adopted in 2012 a new Concept of protection and care for unaccompanied minors, including applicants for international protection, setting new rules for dealing with minor aliens who arrive in the Czech Republic without their legal guardians as well as the system of care and integration of this group in the CR. (EMN Questionnaire). In **Poland** an amendment to the Act of 9 June 2011 on family support and foster care system entered into force on 1 January 2012. Unaccompanied minors applying for refugee status are placed in intervention educational and care facilities and subsequently should be moved to socialisation educational and care facilities. (EMN Questionnaire) Please see also the comprehensive study: Right to asylum for unaccompanied minors in the European Union: Comparative study in the 27 EU countries <http://www.france-terre-asile.org/images/stories/mineurs-isoles-etrangers/final-report-mie-en-2012.pdf> (accessed 12 April 2013).

psychological problems, etc. <sup>(288)</sup>. UNCHR still reported some challenges in some Member States with regard to reception conditions for vulnerable persons <sup>(289)</sup>.

Within the reception field, several Member States highlighted a good cooperation with civil society <sup>(290)</sup>. Also highlighted are activities of the European Network of Reception Organisations (ENARO) <sup>(291)</sup>.

The CJEU issued a ruling regarding the applicability of the Reception Conditions Directive in the framework of a 'Dublin' procedure:

As mentioned in a previous section, the preliminary ruling *C-179/11 CIMADE and GISTI v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration (France)* <sup>(292)</sup> concerned the scope of the Reception Conditions Directive in cases where a Member State decides to refer an application of asylum to another Member State in application of the Dublin Regulation. In particular, the referring court requested clarification whether the obligation to provide adequate reception conditions ceased at the moment of acceptance decision by the second Member State, at the moment of actual taking charge or taking back the applicant or at any other stage. Moreover, the court raised the question on which Member State should bear the costs of providing the reception conditions during that period. The CJEU confirmed that the Reception Conditions Directive applied in cases of Dublin transfers. It found that the Member State requesting to transfer the applicant for international protection is responsible, including its financial implications, to guarantee adequate reception conditions until the applicant is actually and effectively transferred to another Member State.

Some Member States undertook steps in 2012 to review their detention system and/or to limit the use of detention of applicants for international protection <sup>(293)</sup>. Measures were also taken to improve living conditions in places of detention <sup>(294)</sup>. Still, the frequent use of detention remains a concern in a number of Member States, as well as overcrowded detention centres and the detention of children, women or other vulnerable persons <sup>(295)</sup>.

<sup>(288)</sup> In **Bulgaria**, a program has been developed with ERF funding for social and psychological support with the purpose of identifying and meeting the specific needs of vulnerable applicants for international protection and refugees. (Annual Report Matrix). In **Finland**, the authorities have agreed to implement a number of recommendations made by the women who had participated in the 2011 Dialogue, through a joint project with UNHCR that will seek to integrate Age Gender and Diversity considerations and participatory approaches into existing projects for applicants in the reception centers and refugees in the municipalities. (UNHCR input). In **Ireland**, an ERF project operated by the Dublin Rape Crisis Centre (DRCC) sought to enhance the capacity of a wide range of service providers to provide services in an effective and sensitive manner to applicants for international protection and refugees and their children, especially those who have experienced rape and sexual violence and other trauma. The project was structured around a series of training programmes designed and delivered by DRCC. In **Slovenia**, as a result of amendments to the International Protection Act, vulnerable applicants are entitled to additional health services, including psychotherapeutic help. (Annual Report Matrix). In **Slovakia**, unaccompanied minors are provided psychological and educational aid (Slovak language courses) directly in the foster home for unaccompanied minors in Horné Orechové in the context of the project BAKHITA. (Annual Report Matrix)

<sup>(289)</sup> UNHCR observed concerns with regard to systematic identification of applicants with specific needs, such as unaccompanied asylum seeking minors, survivors of torture and sexual violence and traumatised persons in some MS. (UNHCR input)

<sup>(290)</sup> In **Italy**, the Department for Civil Liberties and Immigration of the Ministry of Interior concludes conventions and/or protocols with international and national organisations dealing with reception. Among them, cooperation with UNHCR, OIM, Save the Children and the Italian Red Cross through the Praesidium Programme, renewed in 2012 for the seventh year were particularly useful. Within this scheme, each organisation gives its contribution, according to its responsibilities and objectives, to the legal guidance as well as to the monitoring of the migrants' living conditions and health within the government Centres. Another protocol regarding the control of tuberculosis in the Identification and Expulsion Centres located in Milan, Rome, Trapani and Caltanissetta was signed between the Directorate Central for Immigration and Asylum Civil Services of the abovementioned Department and Médecins sans Frontières (MSF). (Annual Report Matrix)

<sup>(291)</sup> ENARO is an inter-institutional linkage between 17 European organisations set up to arrange the reception of applicants for international protection. Its aim is to exchange knowledge and experience between staff of the member states of this European network. For more information, see <http://www.enaro.eu>.

<sup>(292)</sup> Judgment of the Court of 27 September 2012. Full text of the judgment available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0179:en:HTML>

<sup>(293)</sup> In **Belgium**, so-called 'open return places' have been established in September 2012 for some categories of rejected applicants for international protection, as an alternative to detention centres. The opening in April 2012 of the Caricole closed transit centre for aliens near the airport meant that aliens refused entry to the territory were held in considerably improved conditions than in the previous 'Transit 127' centre near the runway at the airport. (UNHCR input). As an example, in the **Czech Republic**, as of 1 January 2011, two forms of alternatives to administrative detention according to the Aliens Act were introduced - paying bail and reporting to the police station on a regular basis. In 2011, there were 58 cases when reporting was applied instead of detention. In 2012, the number of alternatives to detention doubled and assessment of alternatives to detention became an integral part of the decision on detention in each individual case. (UNHCR input). A reporting obligation and financial bail are also possible in **Slovakia** since January 2012, although only very rarely used so far. (UNHCR input) In **Finland**, a project called '*Ulkomaalaisten säilöönottoa koskevien säännösten tarkistaminen*' [Reviewing the provisions regarding the detention of aliens] is being implemented. In the first stage, the intention recorded in the Government Programme with regard to the prohibition of detention of unaccompanied minor applicants for international protection would be realised and a related government bill would be submitted to the parliament in the 2012 autumn session. In the second stage of the project, the aim was to determine any other needs to amend legislation, such as the development of alternatives to detention and the development of court proceedings related to detention (use of video links). A Government proposal will be submitted to parliament in the 2014 spring session. (EMN Questionnaire).

<sup>(294)</sup> In **Poland**, Border Guards carry out projects aimed at improving of living conditions in guarded centers and arrests for the purpose of expulsion. The projects are focused on modernisation of existing facilities, sport facilities, recreational facilities, improvement of living conditions and conditions in the field of education. With the use of EU funds, new sport and educational equipment is gradually being purchased. (Annual Report Matrix)

<sup>(295)</sup> E.g. in **Greece**, the UN Working Group on Arbitrary Detention under the Office of the Commissioner for Human Rights stated at the end of an 11-day visit to Greece in January 2013: '*In most detention facilities visited by the Working Group, the conditions fall far below international human rights standards, including in terms of severe overcrowding.*' The Working Group also found pre-trial and convicted detainees together in the same cell, as well as administrative detainees, including irregular migrants and applicants for international protection, mixed in with criminal detainees, in violation of national and international standards. See UN News Service, 'Greece must improve detention conditions for migrants - UN experts', 31 January 2013, (<http://www.unhcr.org/refworld/docid/510fb77f.html>), accessed 2 April 2013. UNHCR has raised on several occasions in the past and 2012 legal concerns with regard to the **Maltese** practice of detaining all

There is a general agreement that detention of children should be considered a last resort option. Some Member States have abolished or plan to abolish the possibility of detaining children or families with children. <sup>(296)</sup> Others try to limit the impact of detention on the children by improving the living conditions <sup>(297)</sup>.

With the following decisions, the ECtHR reminded Member States of the importance of decent detention conditions and of legal remedies to verify the legality of the privation of liberty and of the obligation to grant special consideration to the needs of children:

The ECtHR also ruled on case *Mahmundi and others v Greece* (No 14902/10) <sup>(298)</sup> which concerned the deprivation of liberty of an Afghan family, including a woman who was eight months pregnant and four minors, in the Pagani detention centre on the island of Lesbos. The ECtHR, referring to the information on the conditions of detention in that centre (i.e. number of detainees was four times greater than its capacity, the centre consisting of storage containers unsuitable for detention of humans, the floor was partially flooded by overflowing toilets, and overall filth), considered that the applicants were subject to inhuman and degrading treatment. Special attention deserved the conditions of the woman who, in her late stages of pregnancy, was not under medical supervision nor informed on where to give birth. Two of the minors were separated from their parents, had not received special attention and could only rarely exercise outdoors. The ECtHR reiterated that no effective remedy against the conditions and the lawfulness of detention was provided for in the Greek law in breach of the right to liberty.

In *Popov v France* (Nos 39472/07 and 39474/07) <sup>(299)</sup>, the ECtHR examined the rights to liberty and security and to respect for private and family life in connection with the detention of minors. The case concerned the administrative detention of two Kazakhstani nationals, accompanied by their two children of five months and three years, whose application for international protection was rejected. The ECtHR stated that the children were obliged to live with their parents in a situation of particular vulnerability and under conditions of detention (e.g., only iron-frame beds, no play areas or activities for children, dangerous automatic doors, stress, insecurity and hostile atmosphere) which were likely to cause distress and have serious psychological repercussions. Moreover, the ECtHR concluded that, having regard to the right to respect for private and family life, the child best interests in the context of detention called not only for families to be kept together but also for alternatives for detention. Detention of families with young children should be limited. Finally, the ECtHR found that the children were placed in a legal void, since they were unable to avail themselves of a remedy to challenge the lawfulness of their detention.

Finally, civil society continued to campaign in 2012 against child detention <sup>(300)</sup>.

applicants for international protection who arrive on the territory in an irregular manner. Procedures for release from detention based on vulnerability are regulated by policy and practice rather than by law and are implemented by the immigration authorities. Release is not automatic, and vulnerable persons are still, in practice, detained upon arrival. See for example Human Rights Watch, *Malta: Migrant Detention Violates Rights*, 18 July 2012, (<http://www.hrw.org/news/2012/07/18/malta-migrant-detention-violates-rights>), accessed 12 April 2013; International Commission of Jurists (ICJ), *Not Here to Stay, Report of the International Commission of Jurists on its Visit to Malta on 26-30 September 2011*, May 2012, (<http://www.unhcr.org/refworld/docid/4fe4096a2.html>), accessed 12 April 2013. Further concerns have been observed in other MS and include, *inter alia*, the systematic detention of applicants for international protection at the border and in Dublin cases; detention of applicants without a legal basis; lack of automatic and/or effective review of the proportionality and necessity of the detention; no effective mechanism to provide genuine alternatives to detention following an individual assessment of each case; lack of identification of vulnerabilities in detention; lack of the application of the Reception Conditions Directive in detention; applicants being detained in police jails and border guard detention facilities due to overcrowded existing facilities (UNHCR input).

<sup>(296)</sup> In **Belgium**, the detention of children is forbidden. As an alternative, special 'housing units' have been established, the number of which was increased in 2012. In **Finland**, the introduction of the previously planned ban on the detention of unaccompanied minors has been postponed and is expected to be considered in 2014. (UNHCR input)

<sup>(297)</sup> In **Poland**, for instance, minors staying in 'guarded centers' can participate in educational activities carried out by qualified specialist teachers from local schools. Minors also have opportunities to participate in physical education and sport classes delivered by specially-trained officers and employees of Border Guard. Specialised guarded centres for minors were established to guarantee that minors will stay only in those centres that are able to ensure compulsory education and adequate living conditions for this group. Currently minors are placed only in specially designated centers located in Kętrzyn and Biała Podlaska. Several rule changes were passed aimed at improving the living conditions. (Annual Report Matrix)

<sup>(298)</sup> Judgment of the Court of 31 July 2012. Full text of the judgment (in French) available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112526>

<sup>(299)</sup> Judgment of the Court of 19 January 2012. Full text of the judgment available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108710>.

<sup>(300)</sup> In March 2012, the International Detention Coalition presented a report 'Captured Childhood' at the Human Rights Council in Geneva, in which it presents a new child-sensitive community assessment and placement model. Cf. International Detention Coalition, *Capture childhood – Introducing a new model to ensure the rights and liberty of refugee, asylum seeker and irregular migrant children affected by immigration detention*, 2012, (<http://idcoalition.org/wp-content/uploads/2012/03/Captured-Childhood-FINAL-June-2012.pdf>), accessed 12 April 2013.

## 4.6. First instance decisions

As mentioned earlier (Cf. Efficiency), many Member States are trying to shorten processing times, manage backlogs, cut costs and remove pull factors in the reception system but also because of protection considerations. In the Netherlands, however, limiting processing times in the first instance is not just a matter of enhancing efficiency. Since 1 October 2012, an administrative law (*Wet Dwangsom*) rules that the Immigration and Naturalisation Service has to pay a fine to the applicant if a decision has not been taken within the legal timeframes of the Dutch Aliens Law <sup>(301)</sup>.

The personal interview plays a key role in first-instance refugee status determination. In 2012, several Member States have adopted measures to guarantee and improve the quality of the asylum interview <sup>(302)</sup>. This said, some concerns remain, e.g., with regard to the lack of interviewing methodology or a lack of in-depth interviews by specialised asylum caseworkers <sup>(303)</sup>.

In addition, regarding the obligations to hear an applicant arising from the Qualification Directive in Member States where the eligibility to refugee status and to subsidiary protection is examined in two separate procedures, the CJEU delivered the following ruling:

In the case *M.M. v Minister for Justice, Equality and Law Reform (Ireland)* <sup>(304)</sup> the CJEU delivered an interpretation of the scope of the duty to cooperate with the applicant in the assessment of the relevant elements of the application (Article 4(1) of the Qualification Directive). The duty to cooperate was assessed in the light of the fundamental principles of the right to defence and the right to be heard, as well as the principle of good administration. The question at hand arose in the context of a national legal framework which envisages separate procedures to examine an application for refugee status and the application for subsidiary protection. The procedure for subsidiary protection may be triggered within a certain time limit with a respective application from an applicant who has been refused refugee status in an earlier procedure.

The CJEU established that the duty to cooperate cannot be interpreted as meaning that the national authority who intends to reject the application for subsidiary protection from an applicant, whose application for refugee status has been refused, is obliged to inform the applicant that it proposes to reject his application, so that to enable the applicant to make known his views in that regard. Neither is the authority obliged to notify to the same purpose the applicant of the arguments on which it intends to base its rejection. The CJEU also established that where, like in the case of Ireland, the national legislation establishes two separate procedures, one after the other, for examining refugee status and subsidiary protection respectively, the right to be heard (whereby the applicant is able to make known his view before the adoption of any decision that does not grant the protection requested) needs be ensured in each of those procedures. Where an applicant has been duly heard when his application for refugee status was examined, it does not mean that this procedural requirement can be dispensed with when the application for subsidiary protection is being examined.

Credibility assessment is at the core of international protection eligibility procedures. Some concerns are still being raised regarding, e.g., the use of contradictions or inconsistencies or the lack of a systematic methodology for assessing evidence in particular Member States <sup>(305)</sup>. Careful attention is also to be granted to supporting evidence, as a judgement of the ECtHR pointed out:

<sup>(301)</sup> The 'wet dwangsom' was already in effect three years earlier for all Dutch administrative bodies, except the IND, which was granted three years extra to prepare. (Annual Report Matrix)

<sup>(302)</sup> In order to ensure a better quality of the interviews, the Belgian CGRS has adopted a Charter for Asylum Interviews, which contains best practices and a manual for conducting interviews. A copy of this Charter is available to the asylum applicant in every interview room at the CGRS. IGC, *Blue Book*, p.67. In Finland, The Asylum Unit started a project relating to the improvement of the quality of the asylum interviews in 2012. The results and recommendations of the project will be finished later in 2013. (Annual Report Matrix). In Malta, Interviews continued to be audio-recorded and a transcript of each interview is drawn up. (Annual Report Matrix).

<sup>(303)</sup> Such observations were made in several MS and included the lack of an in-depth interview by a specialised asylum officer and an over emphasis on initial questioning rather than an assessment of the interview. This especially affected vulnerable persons. (UNHCR input).

<sup>(304)</sup> Judgment of the Court of 22 November 2012. Full text of the judgment available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0277:EN:HTML>.

<sup>(305)</sup> Such observations, made in several MS, included interviewing bodies not addressing contradictions and/or; assessing applications without the necessary objective evidence (UNHCR input); in Ireland, for example, the Irish Refugee Council published a report in which it voiced concerns regarding credibility assessments in both first and second instance. Cf. Irish Refugee Council, *Difficult to Believe: The Assessment of Asylum Claims in Ireland, 2012*, (<http://www.irishrefugee-council.ie/wp-content/uploads/2011/08/Difficult-to-Believe-The-assessment-of-asylum-claims-in-Ireland.pdf>), accessed 11 April 2013.

The ECtHR ruled on case *Singh and others v Belgium* (No 33210/11) <sup>(306)</sup>, which referred to the refusal of protection to an Afghan family on the basis of lack of credibility, concluding that the applicants had been unable to prove their Afghan nationality or the veracity of the protection granted to them by the UNHCR. The ECtHR, however, observed that the supporting documents (i.e. identity documents, copies of pages of two Afghan passports and copies of UNHCR attestations), which had only been submitted for the first time before the Asylum judge, were dismissed – despite their relevance to the request for international protection – without verifying their authenticity which could have been easily done by contacting UNHCR. In addition, it was concluded that the decision had been taken without having sought to ascertain, even incidentally, whether the applicants faced risks of ill-treatment in Afghanistan. Consequently, the right to an effective remedy had been infringed.

Credibility is also the key focus of the CREDO project, initiated by the Hungarian Helsinki Committee, the overall goal of which is to contribute to better structured, objective, high-quality and protection-oriented credibility assessment practices in asylum procedures conducted by EU Member States <sup>(307)</sup>.

To help Member States with the assessment of applications for international protections, UNHCR continued to provide guidance in the form of country-specific eligibility guidelines <sup>(308)</sup>.

When it comes to the formal decision-making process, it is worth mentioning that in Spain, UNHCR can issue a report on each application and participates in the Inter-ministerial Committee responsible to take the final decision in an advisor capacity. <sup>(309)</sup>In Italy, UNHCR continued its participation in the asylum-procedure in the 19 Territorial Commissions, including those created in view of the significant increase in applications for international protection in 2011 <sup>(310)</sup>.

In Finland, the Asylum Unit of FIS developed a new model for writing asylum decisions in order to ensure their quality <sup>(311)</sup>.

2012 saw a boost in training programmes for asylum caseworkers, not in the least due to EASO's training-related activities. National training programmes often adapted existing modules, making them more specific to the national context. Some Member States organised very specific training, e.g., relating to document verification <sup>(312)</sup> or to sexual orientation and gender identity <sup>(313)</sup>.

<sup>(306)</sup> Judgment of the Court of 2 October 2012. Full text of the judgment available at: <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-113660>.

<sup>(307)</sup> CREDO, a joint project between the Hungarian-Helsinki Committee (HHC), UNHCR, the International Association of Refugee Law Judges (IARLJ) and UK Asylum Aid with support from the European Refugee Fund started end-2011 to contribute to quality credibility assessments and promote more harmonised approaches, reflecting the relevant provisions in EU law and international standards. As part of the CREDO project, UNHCR carried out research into the practice of three EU Member States in 2012 and gathered jurisprudence from EU courts and beyond to provide a better understanding of state practices, standards and the issues at stake in this complex area of asylum law. The findings of the UNHCR report (to be published in May 2013) are also informed by a multi-disciplinary approach drawing on the developments in psychology, neuro-biology and the workings of the human memory, gender, anthropology and sociology. See Hungarian Helsinki Committee, *CREDO – Improving Credibility Assessment in EU Asylum Procedures*, 1 June 2012, (<http://helsinki.hu/en/credo—improving-credibility-assessment-in-eu-asylum-procedures>), accessed 12 April 2013.

<http://helsinki.hu/en/credo—improving-credibility-assessment-in-eu-asylum-procedures> [accessed 12 April 2013].

<sup>(308)</sup> UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 21 December 2012, HCR/EG/LKA/12/04, (<http://www.unhcr.org/refworld/docid/50d1a08e2.html>), accessed 3 April 2013; UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, (<http://www.unhcr.org/refworld/docid/4fc77d522.html>), accessed 3 April 2013; UNHCR, *Addendum to 2010 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia, relating specifically to the city of Galkacyo*, 16 March 2012, (<http://www.unhcr.org/refworld/docid/4f675c5e2.html>), accessed 3 April 2013; UNHCR, *Interim Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Côte d'Ivoire*, 15 June 2012, HCR/EG/CIV/12/01, (<http://www.unhcr.org/refworld/docid/4fa7c1c92.html>), accessed 3 April 2013; UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*, 14 May 2012, HCR/EG/PAK/12/02, (<http://www.unhcr.org/refworld/docid/4fb0ec662.html>), accessed 3 April 2013.

<sup>(309)</sup> Annual Report Matrix.

<sup>(310)</sup> UNHCR, *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy*, July 2012, (<http://www.unhcr.org/refworld/docid/5003da882.html>), accessed 10 April 2013.

<sup>(311)</sup> This model is based on the EASO Training Curriculum Module 'Drafting and Decision Making', with some national modifications. (Annual Report Matrix)

<sup>(312)</sup> In **Malta**, the asylum determination officers received training on document analysis and on profiling organised by the Office of the Refugee Commissioner through a European Refugee Fund (ERF) co-funded project. The entire team of asylum determination officers attended a five-day training course on document analysis, which aimed at developing the level of expertise on the subject and at improving the asylum determination process. The adjudicating officers were provided with a personal document analysis kit, which enables them to perform preliminary analysis of documents presented by applicants. Six asylum determination officers proceeded to a ten-day training course in document analysis at an advanced level. These were trained to use the forensic equipment now available at the office of the Refugee Commissioner. In April 2012, two of these six asylum determination officers travelled to the Netherlands to observe work practices at the Immigration and Naturalisation Service – Documents Unit and also to receive further education and guidance on the analysis of breeder documents by the Dutch experts. (Annual Report Matrix)

<sup>(313)</sup> In **Ireland**, Belongto (an Irish NGO working with LGBT applicants for international protection) provided training on Lesbian, Gay, Bisexual and Transgender (LGBT) issues. UNHCR also provided a training module to ORAC staff on Refugee Claims Relating to Sexual Orientation and Gender Identity. The training was delivered by an expert from UNHCR, who has particular expertise in this area and has delivered similar training seminars to adjudicators in other European countries. (Annual Report Matrix)

## EASO and Training

EASO presented its Training Strategy <sup>(314)</sup> to the Management Board in July 2012, thus increasing awareness and transparency of its training processes. EASO also developed a system of data collection and analysis, the EASO Training Cockpit, to assist Member States in setting up and monitoring national training targets. The adoption of the EASO training recommendations will assist Member States in developing their training plans and promote a better understanding of EASO's offer under the EASO Training Curriculum.

EASO's core training tool is the EASO Training Curriculum, a common vocational training system consisting of 13 interactive modules <sup>(315)</sup>. In 2012 EASO updated the following nine EASO Training Curriculum modules:

- Drafting and Decision Making
- Dublin Regulation
- Inclusion
- Exclusion
- End of Protection
- COI
- Evidence Assessment
- Interviewing Children
- International Refugee Law and Human Rights (to be finalised in 2013)

In 2012, EASO also launched the development of two new modules – one on Interview Techniques and another module on the CEAS. <sup>(316)</sup>

By means of its train-the-trainer approach, EASO provided in 2012, 14 train-the-trainer sessions in all but one EASO Training Curriculum modules. Over 100 national training sessions concerning more than 1 100 asylum officers in 12 EU Member States <sup>(317)</sup> and Switzerland in various modules were further organised throughout the EU in 2012 with the support of EASO.

At the EASO **Consultative Forum** in November 2012, participants representing civil society made a number of suggestions concerning EASO's training activities:

First, civil society could, to greater extent, contribute on ad-hoc basis by supporting EASO in developing specific or specialised training materials, where particular expertise is needed (gender, unaccompanied minors, etc.).

Second, within the new EASO initiative to develop a professional curriculum for members of courts and tribunals in the area of asylum, to respect the independence of the judiciary and, to the extent possible, create synergies with other, already existing, developments and projects in this field.

Third, the development of the CEAS module initiated in November 2012 by EASO is of a crucial importance - as is the development of a module for managers, which will be launched in 2013. The idea of developing a module on resettlement was strongly supported. Suggestions for other modules included Interpreting or Reception Conditions. It was also agreed that the issues of gender, minors, sexual orientation and gender identity, being of a cross-cutting nature, should be covered throughout the different modules of the entire curriculum.

Fourth, timely exchange of information and other resources could support EASO in developing or updating their training materials and setting up training plans.

## 4.7. Second instance decisions

In 2012, some Member States reorganised the second instance. Noteworthy is the Danish Refugees Appeal Board, which has been expanded from three to five members, appointed by the Ministry of Foreign Affairs and

<sup>(314)</sup> EASO, EASO training strategy, <http://easo.europa.eu/wp-content/uploads/EASO-Training-strategy.pdf>.

<sup>(315)</sup> The 13 modules are: 1. International Refugee Law & Human Rights, 2. Common European Asylum System, 2.1 Dublin Regulation, 3. Inclusion, 3.1. Exclusion, 3.2. End of Protection, 4. Asylum Procedure Directive, 5. Country of Origin Information, 6. Interview Techniques, 6.1. Interviewing Children, 6.2. Interviewing Vulnerable Persons, 7. Evidence Assessment, 8. Drafting and Decision Making.

<sup>(316)</sup> For more details, including numbers of training sessions and beneficiaries, see EASO Annual Activity Report 2012.

<sup>(317)</sup> Sweden, Romania, Slovakia, Germany, Netherlands, Luxembourg, Ireland, Greece, France, Finland, Czech Republic and Belgium.

the Danish Refugee Council (NGO) <sup>(318)</sup>. In the Czech Republic, as a result of amendments to the Asylum Act, the Supreme administrative court gained importance as its rulings are now directly binding for the Ministry <sup>(319)</sup>.

As in the first instance, processing times and backlog management are key notions in the second instance. In Belgium, the Council for Aliens Law Litigation (responsible for appeals on asylum and migration issues) dedicated its attention primarily to the handling of appeals of asylum cases in order to keep the timeframes within reasonable limits and limit the backlog <sup>(320)</sup>. In Greece, a number of Appeal Committees are dedicated to clear the backlog of asylum appeals <sup>(321)</sup>. In Finland, the Helsinki Administrative Court was able to cut down the case handling time <sup>(322)</sup>. In France, the government allocated additional funds to both OFPRA and the CNDA (appeal court) in order to reinforce their instruction capacities and reduce the total average length of application processing. Streamlining measures in the first instance were, however, not always mirrored by similar measures in the second instance, resulting in a shift rather than a reduction in backlogs <sup>(323)</sup>.

In Hungary, projects have been set up to improve the quality of judicial decision-making in the field of asylum procedures <sup>(324)</sup>.

Some concerns were raised in 2012 relating to the restricted access of applicants for international protection dealt with under an accelerated procedure to the appeal procedure, as well as the legal status of rejected applicants at judicial review level <sup>(325)</sup>.

### EASO's cooperation with Member States' Courts and Tribunals

In 2012, EASO sought the support of the International Association of Refugee Law Judges (IARLJ) and engaged in a process of consultation with members of courts and tribunals across the EU, the IARLJ and the Association of European Administrative Judges. The specific aim of these consultations was to initiate a reflection on how EASO could support judicial and quasi-judicial decision-making bodies and their role in the implementation of the CEAS. During a plenary meeting in December 2012, EASO, members of judges' associations and UNHCR discussed plans for the coming year with the purpose of finding synergies and coordinating activities, reflected on the principle of judicial independence and issues related to judicial training. <sup>(326)</sup>

## 4.8. The availability and use of COI

Availability and an appropriate use of country of origin information (COI) are crucial for well-informed, fair and well-reasoned asylum decisions.

<sup>(318)</sup> This amendment came into force on 1 January 2013. IGC, *Blue Book 2012*, p.129.

<sup>(319)</sup> The Supreme administrative court now has the possibility to directly cancel decisions of the Ministry (not only decisions of the Regional courts). The law opinion of the Supreme administrative court thus became directly binding for the Ministry. That consequently reinforced the role of the Court and the influence of its law opinion. (Annual Report Matrix)

<sup>(320)</sup> Annual Report Matrix.

<sup>(321)</sup> Ten (old) Appeal Committees are currently examining the appeals submitted (second instance). Of these committees, six examine the so-called backlog active cases and four the appeals submitted in the framework of Presidential Decree 114 of 2010. All appeals have suspensive effect. An administrative procedure took place in the last quarter of 2012 with the aim of identifying the actual number of active pending appeals, which will be forwarded to the (new) Appeal Committees. As a result, and by 22 January 2013, 25 576 applicants were identified as holders of a valid 'pink card' (the provisional identity card provided to applicants for international protection while their case is pending). (Annual Report Matrix)

<sup>(322)</sup> The case handling time is now six months maximum, due to extra allocations to the Court.

<sup>(323)</sup> E.g., in **Luxembourg**, in order to cope with the increasing influx, the Immigration Department hired new staff. However, there was no corresponding increase in staff in the Administrative Tribunal and Court to respond to the increased workload: UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Luxembourg*, July 2012, (<http://www.refworld.org/docid/4ffd36262.html>), accessed 12 April 2013.

<sup>(324)</sup> Under the 2012 national allocation of the European Refugee Fund the project entitled 'Improving of the quality of judicial decision making in the field of refugee procedures' is being implemented by the National Judicial Office, the main objective of which is to collect relevant ECJ and ECtHR judgments and on the basis of which conduct a comparative analysis and to disseminate a curriculum among the judges, secretaries of courts who are involved in the review of refugee determination decisions. (EMN Questionnaire)

<sup>(325)</sup> E.g., in **Ireland**, some applicants for refugee status have access to an appeal on the papers rather than an oral hearing – even though such applicants would have received a full interview in ORAC at first instance – solely on the basis that they come from a designated 'safe' country of origin. Where adverse credibility findings have been made against such applicants, their ability to contest those findings by way of a non-oral appeal is limited. The Irish High Court in a decision of 30 March 2012 determined that an applicant should not be denied an oral appeal under accelerated procedures against a negative decision which is based exclusively or predominantly upon lack of personal credibility, cf. <http://www.unhcr.org/refworld/docid/514353342.html>. This decision is under appeal to the Supreme Court.

<sup>(326)</sup> Cf. EASO Annual Activity Report 2012.

In 2012, several Member States reinforced their capacity to conduct COI research, by developing new research methodologies <sup>(327)</sup>, upgrading dedicated IT systems <sup>(328)</sup>, training staff, improving the access to information <sup>(329)</sup> and/or raising quality standards <sup>(330)</sup>. Also some Member States that had limited or no COI research expertise are now starting to develop capacity <sup>(331)</sup>.

COI units improved their customer focus by providing training to their users and adapting COI products to user needs <sup>(332)</sup>. A Belgian multi-annual project aims at analysing modalities regarding the external publication of COI <sup>(333)</sup>.

COI research is traditionally a field in which Member States actively cooperate. As an example, the German-speaking cooperation (D-A-CH) <sup>(334)</sup> provided factsheets to Greece, Slovakia benefitted from Finnish COI expertise <sup>(335)</sup>, and Poland organised study visits for COI experts from Switzerland, France, Ukraine and Greece <sup>(336)</sup>.

As national COI units increasingly need to undertake research on medical COI to determine whether the medical situation of an asylum applicant is of relevance when deciding upon the protection status or the possibility to return a rejected asylum applicant, an important EU-wide COI project needs to be highlighted. The MedCOI 2 project, co-funded by the ERF community actions, provides information not only on the availability of medical treatment and medications in specific countries of origin but also on individual accessibility <sup>(337)</sup>.

Another Community Action project related to COI resulted in a Comparative Study on Country of Origin Information in Central-Eastern European Countries <sup>(338)</sup>.

<sup>(327)</sup> Austria renewed its COI methodology based on an external evaluation conducted by ICMPD with the support of external experts. The goal was to set up a methodology for high quality COI products optimised for the use of the different customers within the asylum procedure. (Annual Report Matrix)

<sup>(328)</sup> As part of an ERF co-funded project, the Finnish COI database Tellus was to be connected to the EU's Common COI Portal. In addition, a minor part of the project's funding was aimed at developing new functions such as a latest news section into the Tellus database, which allows the Finnish COI service to efficiently distribute information on acute asylum situations such as rapidly changing security situations in countries of origin to case workers and stake holders outside of the Immigration Service, such as administrative courts that handle asylum appeals in Finland. (Annual Report Matrix). In Bulgaria, the functionalities of the COI Resource Centre were expanded as new software was developed and implemented for the information system (RTSSP – Phase 2). (Annual Report Matrix). Poland modernised and further developed its COI database Światowid. (Annual Report Matrix)

<sup>(329)</sup> In Lithuania, the project 'Enhancement of the Capacity to Gather, Evaluate and Disseminate Information on the Countries of Origin' of the Migration Department under the Ministry of Interior, was implemented by 30 June 2012. The aim of this project was to ensure the gathering and evaluation of relevant and comprehensive COI as well as its dissemination. As part of the project, information publications as well as services of data agency FACTIVA and the services of the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) were ordered. The online Information Centre of the Asylum Affairs Division of the Migration Department under the Ministry of the Interior (<http://www.coi.migracija.lt>) was provided up-to-date, accurate, objective and reliable COI, as well as relevant statistics and case law. The reports are stored in an electronic database which is accessible not only to asylum decision makers but to other staff of the Migration Department responsible for taking decisions on the legal status of foreigners, to courts, lawyers and NGO's.

<sup>(330)</sup> Germany further developed its internal quality control system and drafted a quality criteria handbook (Annual Report Matrix). Hungary implemented a project entitled 'Country of origin information comparative seminar and study', aiming at quality development of the asylum procedure in countries involved in the project (Central European EU Member States and Serbia, Croatia) by studying the use of COI in the asylum procedure, as well as sharing best practices and drawing up recommendations. Within the framework of the project the unit responsible within the OIN for providing COI (Documentation Centre) prepared and compiled a comparative report on the activities, institutional and legal background of COI Units as well as the interfaces of COI and the asylum procedure in the countries involved. The study was disseminated among the COI and refugee status determination (RSD) officers of the participating countries.

<sup>(331)</sup> Luxembourg is in the process of establishing a COI unit. (Annual Report Matrix). In Latvia, two COI experts have been employed and ACCORD was contracted for the provision of COI (Annual Report Matrix).

<sup>(332)</sup> In Germany, due to the increased influx and the prioritisation of case-processing, the COI unit was under pressure to deliver demand-oriented COI products within a limited timeframe. (Annual Report Matrix). In France, training was provided to caseworkers to learn how to use the new French COI database Flora, which is connected to the COI Common Portal. In Spain, efforts have been made to improve the use of country of origin information in the decision making process. As part of these, training for caseworkers has been organised during the year, including a training session, organised by UNHCR, focused on a more efficient use of the country of origin information and the main tools available. (Annual Report Matrix)

<sup>(333)</sup> The Belgian COI Department (Cedoca) initiated the ERF-sponsored project (2012-2014) 'Research and analysis of the modalities regarding the external publication of country of origin information (COI)'. The first phase involves i.a. the harmonisation of the different COI products, and the development of guidelines on peer review and editing. In a second phase it is envisaged to make this harmonised COI available on a website and the Common COI Portal. (Annual Report Matrix)

<sup>(334)</sup> The D-A-CH cooperation consists of Germany, Austria, Switzerland and Luxembourg (since 2011).

<sup>(335)</sup> In April 2012, a Finnish COI expert on Somalia (top country of origin for Slovakia) visited the Slovakian Migration Office to share his knowledge on Somali applicants. (Annual Report Matrix).

<sup>(336)</sup> Cf. Annual Report Matrix.

<sup>(337)</sup> The overall objective of the project 'Sharing of Medical Country of Origin Information, Further Cooperation in Collecting New MedCOI, Extra Training of National Authorities' Officials Aimed at the Collection and Usage of MedCOI in Individual Cases, Development of a Structural Quality System Surrounding MedCOI and Creation of Uniformed MedCOI Guidelines/National Standards (MedCOI2)' is to increase cooperation and harmonisation among European asylum services on the research and usage of medical country of origin information. The implementing agency is the Dutch Immigration and Naturalisation Service – Bureau for Medical Advice. Cf. <http://www.icmpd.org/Ongoing-Projects.1638.0.html>, accessed 27 May 2013.

<sup>(338)</sup> Cf. <http://www.icmpd.org/Research.1556.0.html>, accessed 27 May 2013.



## EASO's COI Activities

For the establishment of EASO's COI function, EASO set up different consultative structures in which national COI units and the European Commission were represented. With the help of the Working Party on Methodology, EASO developed a methodology for drafting analytical EASO COI reports. <sup>(339)</sup> Based on this methodology, EASO drafted two COI reports on Afghanistan <sup>(340)</sup>.

EASO, supported by the Working Party on the Common COI Portal, further developed the European Common COI Portal, which was transferred from the Commission to EASO at the end of 2012. The Portal is a restricted access website that allows connection of all the official COI databases owned by Member States and Associated Countries, to a single web application, while enabling Member States which do not have web service databases to upload and share COI documents into a dedicated area called the 'Upload Area'. In 2012, the French and Norwegian databases joined MLo (Germany) on the Portal, while other national databases are expected to be linked in the course of 2013 (Sweden, Finland).

In 2012, a Working Party on Practical Cooperation provided EASO with recommendations on how best to organise expert workshops, taking into account the activities, methodologies and tools of the EURASIL Network, which was transferred to EASO in March 2012. In response to the emerging situation in Syria and its effects on EU Member States, EASO organised a workshop on Syria on 28 and 29 June in Malta, which brought together COI specialists and policy practitioners on Syria. In August 2012, upon request of the European Commission in the context of the SY NET <sup>(341)</sup> a follow-up workshop on Syria focused on scenario-based policy issues. Finally, in November 2012, EASO organised a conference on Afghanistan: Country of Origin Information and Beyond.

The last COI Working Party was set up in July 2012 with the goal to link the different activities of EASO in the field of COI in a coherent and consistent system. Based on positive experiences of previous regional and EU-wide COI networks the Working Party elaborated a new structure for cooperation between EASO and Member States based on the COI network approach. In the context of EASO's operational support to Greece, the Working Party on Knowledge Management assisted EASO by developing COI factsheets on top countries of origin. <sup>(342)</sup>

The two following judgements of the ECtHR highlight the importance European judges attach to information based decisions:

The case *A.L. v Austria* (No 282328/03) <sup>(343)</sup> dealt with the removal of a Togolese national alleging membership of the opposition party Union des Forces de Changement (UFC), whose application for international protection had been rejected. The ECtHR considered that the prohibition of degrading or inhuman treatment would not be violated if he was returned to Togo, taking into account his personal circumstances and the COI documents available at the time of taking its decision, including information on the participation of UFC in the Government or information provided by Austria, UNHCR, Amnesty International, the US Department of State and the Swiss Refugee Council.

In *S.F. and others v Sweden* (No 52077/10) <sup>(344)</sup>, the ECtHR judged the case of an Iranian family who complained that there would be a risk of torture or inhuman or degrading treatment if deported to Iran. The ECtHR found that the reports on the situation of human rights indicated that the Iranian authorities monitored activities critical to Iran, even outside its territory. The activities of the applicants in Sweden, which included the reporting on violations of human rights in their country of origin intensified the risk of ill-treatment would they be deported to Iran. Thus, the prohibition of inhuman or degrading treatment would be violated if they were return to their country of origin.

<sup>(339)</sup> The COI Report Methodology can be downloaded from the EASO website: <http://easo.europa.eu/news/easo-publication>.

<sup>(340)</sup> Cf. 2.4.1.

<sup>(341)</sup> Cf. 2.4.2.

<sup>(342)</sup> For more information on EASO COI activities in 2012, cf. EASO Annual Activity Report 2012.

<sup>(343)</sup> Judgment of the Court of 10 May 2012. Full text of the judgment available at: <http://www.refworld.org/docid/4facd3653c2.html>.

<sup>(344)</sup> Judgment of the Court of 15 May 2012. Full text of the judgment available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110921>.

The case *D.N.W. v Sweden* (No 29946/10) <sup>(345)</sup> referred to an Ethiopian national whose application for international protection was rejected. The ECtHR established that, according to his personal circumstances and the COI reports, there was no risk of ill-treatment if he was deported to Ethiopia.

## 4.9. Vulnerable groups

A number of different groups of applicants for international protection are deemed to have specific needs due to their vulnerability. This includes unaccompanied minors and persons with gender, sexual orientation or gender identity-related applications. Asylum administrations need to pay specific attention to these groups, so as to assure their access to protection and guarantee their fundamental rights.

In November 2012, UNHCR started up a regional project on ‘Ensuring Effective Responses to Vulnerability of Asylum Seekers – Promotion of Adequate Standards for Identification and Claim Determination for People with Special Needs’, involving Hungary, Bulgaria, Poland, Romania, Slovakia and the United Kingdom <sup>(346)</sup>.

As mentioned under section 4.1, several Member States have improved their information-provision to vulnerable applicants. Issues related to reception and/or detention of vulnerable applicants have been dealt with in section 4.5.

In addition, in 2012, a number of measures and policy changes were taken that relate specifically to *unaccompanied minor applicants* <sup>(347)</sup>.

To improve the involvement and commitment of voluntary legal guardians of unaccompanied minors, Germany set up an exchange-base (Do it!). <sup>(348)</sup> Some other Member States, however, were lacking guardianship services for unaccompanied minors or have experienced problems in providing adequate reception conditions to unaccompanied minors i.a., due to high inflows <sup>(349)</sup>.

Several Member States organised training for caseworkers on interview methods and decision-making for unaccompanied minor applicants for international protection <sup>(350)</sup>. Specific quality assurance projects were set up or continued <sup>(351)</sup>. In Spain, minor applicants are granted a second interview in all cases. On a practical level, study visits allow for an exchange of national experiences regarding asylum procedures and reception for unaccompanied minors <sup>(352)</sup>.

In order to increase the evidence base for clinical age assessment, the German project ‘*Alterseinschätzung mind-erjähriger Flüchtlinge*’ is expected to develop and validate clinical diagnostics that are permissible, reliable and

<sup>(345)</sup> Judgment of the Court of 6 December 2012. Full text of the judgment available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114966>.

<sup>(346)</sup> The project aims at addressing the specific needs of vulnerable groups via comprehensive analysis and monitoring of national legal frameworks and practice, targeted capacity building, exchanges on good practices on national and cross-national level and networking with civil society. The major result of the project will be the elaboration of a national standard operating procedure on the identification of vulnerability which would contribute to strengthening the quality of the refugee status determination procedure. Cf. <http://www.unhcr-centraleurope.org/en/what-we-do/caring-for-vulnerable-groups/response-to-vulnerability-in-asylum.html>, accessed 12 April 2013.

<sup>(347)</sup> The situation of unaccompanied children continue to be of concern in France (see i.a. a report of the French Red Cross published in January 2013: *Bilan d'activité – Mineurs isolés étrangers*, [http://infomie.net/IMG/pdf/Bilan\\_d\\_activite\\_MIE\\_CRF.pdf](http://infomie.net/IMG/pdf/Bilan_d_activite_MIE_CRF.pdf), accessed 12 April 2013). However, a new regulation from the Ministry of Justice is to be published soon and it is expected that it will be a positive contribution to some of the needed improvements. Specifically, an agreement is struck between the government and the local administration with a view to dispatching minors over the whole territory. Besides, it is envisaged that minors will be taken in charge by the State throughout the first five days (the period during which the age evaluation will be made).

<sup>(348)</sup> The project aims at acquiring and qualifying volunteers for the position of a legal guardian. The fact that a legal guardian appears for a minor shows a deeper support and engagement of the minors' interests. By doing so, the clarification of immigration issues will be promoted. (Annual Report Matrix)

<sup>(349)</sup> This was e.g. the case in **Belgium**, see European Committee of Social Rights, Complaint No. 69/2011, decision on the merits of 23 October 2012; according to UNHCR's observations the situation has improved recently; for a comprehensive study on various aspects of the situation of unaccompanied minors see a study coordinated by France Terre d'Asile, *Right to asylum for unaccompanied minors in the European Union: Comparative study in the 27 EU countries*, November 2012, (<http://www.france-terre-asile.org/images/stories/mineurs-isoles-etrangeurs/final-report-mie-en-2012.pdf>), accessed 12 April 2013.

<sup>(350)</sup> In 2012 the personal training programme of the **Austrian** Federal Asylum Office focused on unaccompanied minor asylum applicant and included trainings on interview methods as well as exercises on decision making. (Annual Report Matrix). In **Belgium**, an extra 29 caseworkers received training on unaccompanied minors, which makes a total of 80 protection officers who can handle cases of unaccompanied minors. (Annual Report Matrix)

<sup>(351)</sup> In 2012 the FMI and the European Refugee Fund continued their support to a quality assurance project aiming at assisting authorities in processing asylum procedures of unaccompanied minors (UBAUM II). The project was implemented by UNHCR in cooperation with the Federal Asylum Office. (EMN Questionnaire)

<sup>(352)</sup> **Estonia** made a study visit to Norway on 5-6 November 2012 to learn about the procedures and reception system of UAMs. The study visit was part of the IOM project CAP-CO (Capacity Building of Stakeholders in Asylum Process) and included officers from the Citizenship and Migration Department of Police and Border Guard Board. Information and expertise gathered in Norway will be used for improving the Estonian system for UAM applicants. (EMN Questionnaire)

practicable when assessing the age of minor applicants without proper documents <sup>(353)</sup>. Malta has introduced a number of standard operating procedures that relate to age assessment <sup>(354)</sup> and also Slovenia introduced age assessment into national legislation <sup>(355)</sup>.

Some Member States are exploring possibilities of family tracing <sup>(356)</sup> and opportunities to return unaccompanied minors to adequate reception facilities in their country of origin <sup>(357)</sup>.

During the Danish Presidency of the Council a conference on unaccompanied minors arriving in Europe took place in Copenhagen, Denmark, on 18-19 June 2012. The conference focused on finding durable solutions for unaccompanied minors arriving in Europe with respect to the best interest of the child, in line with the EU Action Plan and relevant EU legislation.

### EASO Quality Activities on Unaccompanied Minors

EASO activities on unaccompanied minors are being carried out within the framework of EASO's Annual Work Programme and the European Commission Action Plan on Unaccompanied Minors (2010-2014) <sup>(358)</sup>, and apply to all unaccompanied minors regardless of their status. Between February and April 2012 EASO commissioned a Questionnaire to Member States on current policy and practice relating to age assessment and unaccompanied minors, followed with wider consultation with relevant experts from civil society, members of Courts and Tribunals, the Commission and other EU Agencies for their views on the issue. Between May and November 2012, EASO organised a range of expert meetings on unaccompanied minors, with a specific focus on age assessment. These meetings resulted in a comprehensive overview of current practice in Member States and a better understanding of key issues and challenges faced. As a follow-up, EASO is drafting a Handbook on Age Assessment, to be published in 2013. EASO will also organise an annual conference on activities relating to Unaccompanied Minors <sup>(359)</sup>.

Also *gender, sexual orientation and gender identity* have become increasingly prominent topics on Member States' agendas.

A number of projects have been implemented to increase awareness of gender-related issues among caseworkers, interpreters and staff in reception centres <sup>(360)</sup>. In order to improve the quality of the asylum interview, spe-

<sup>(353)</sup> The project 'Alterseinschätzung minderjähriger Flüchtlinge' (Age assessment of minor refugees) is conducted by the Westfälischen Wilhelms University Münster. With a duration of 24 months the project runs from 01.04.2013 – 31.03.2015. The project aims at the development and validation of clinical diagnostics that is permissible, reliable and practicable when assessing the age of minor refugees without proper documents. In the course of the project it is planned to conduct a benchmark study with 25 male and 25 female German test persons of each birth cohort between the ages of 12 and 24 and with a validation group of 50 refugees with proven and undisputed age in the same age segment. The results will be presented via an expert meeting, professional journals and public media. (Annual Report Matrix).

<sup>(354)</sup> In 2012 the Agency for the Welfare of Asylum Seekers launched a number of standard operating procedures in its Manual of Procedures that particularly relate to: Procedures for the Age Assessment Team (AAT – closed centres); Procedures for Vulnerable Adults Assessment (VAAT – closed centres); Procedures for Unaccompanied Minor Asylum Seekers (UMAS being accommodated at open centres); and Dealing with UMAs Positive/ Challenging Behaviour. (Annual Report Matrix)

<sup>(355)</sup> Amendments to the International Protection Act were adopted on 25.10.2012, which introduce age assessment in case of unaccompanied minors into national legislation. The provision is fully in line with Directive 2005/85/EC and anticipates that when in doubt an assessment in order to determine applicant's age can be done by a medical expert. An applicant and his/her guardian must give a consent to the procedure and must be informed prior that of the possibility to the procedure of age determination. The law will enter into force on 21 November 2012.

<sup>(356)</sup> In **Malta** a new initiative has been the piloting of 15 cases of family tracing through the collaboration with IOM on the Sparklet Project under the European Refugee Fund, 2008-2011. This project allows the Agency for the Welfare of Asylum Seekers to explore how this mechanism can be sustained in normal business operations. (EMN Questionnaire)

<sup>(357)</sup> In 2011, the **Netherlands** started its review of its specific policy on unaccompanied minors. In 2012, this review was translated into concrete details. The new policy on unaccompanied minors will be implemented in 2013. The purpose of the review is to provide an unaccompanied minor clarity about his or her prospects sooner. The special residence permit for unaccompanied minors will be abolished as a result of the policy change. Another aim is to pay more attention to the return of more unaccompanied minors who do not require protection in the Netherlands, and to realise these returns faster, provided that adequate reception facilities have been arranged in the country of origin or in the country of permanent residence. If it is established that it is not possible for the unaccompanied minor to return to adequate reception facilities, through no fault of the unaccompanied minor, and the unaccompanied minor was at the time of his or her initial application younger than 15 years of age, the unaccompanied minor may be entitled to a residence permit pursuant to the so-called 'no-fault policy' for unaccompanied minors. This permit will be granted for a period of five years.

<sup>(358)</sup> Communication from the Commission to the European Parliament and the Council - Action Plan on Unaccompanied Minors (2010 – 2014) SEC(2010)534 / COM/2010/0213 final, (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:HTML>), accessed 27 May 2013.

<sup>(359)</sup> Additional information on EASO's and other actors' activities relating to the Action Plan on Unaccompanied minors can be found in the report from the Commission to the Council and the European Parliament Mid-term report on the implementation of the Action Plan on Unaccompanied Minors and the Commission Staff working document. Cf. [http://europa.eu/rapid/press-release\\_IP-12-1033\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-1033_en.htm?locale=en). See also EASO Annual Activity Report 2012.

<sup>(360)</sup> As part of the ERF co-funded project 'Vulnerable Groups', the **Belgian** CGRS increased its capacity to deal with the treatment the asylum cases of refugees who invoked gender issues (FGM, forced marriages, honour killings, gender identity) under the supervision of the CGRS gender coordinator. Fedasil (Reception Agency) provided for a better identification, medical screening and increase reception capacity for these cases. Another ERF co-financed project involved the training for interpreters regarding gender-sensitive issues. As mentioned previously, the **Irish** NGO Belongto provided training on LGBT issues to ORAC staff (cf. 4.6.). In **Slovenia**, training on sexual and gender based violence for social workers and persons responsible for initial interviews were conducted by UNHCR. (Annual Report Matrix)

cific training modules and guidelines were developed <sup>(361)</sup>. Despite some positive evolutions, concerns remain with regard to the identification and assessment of gender specific, gender identity and sexual orientation cases, in the context of the ‘social group’ in Art 1 A (2) of the 1951 Refugee Convention and the EU Qualification Directive. To address some of these concerns, in October 2012, UNHCR published new guidelines on applications based on sexual orientation and/or gender identity <sup>(362)</sup>.

Civil society activities in the field of gender have resulted in a number of studies in 2012. In March, the European Institute for Gender Equality published the ‘Study to map the current situation and trends of female genital mutilation’, which aims to support policy makers and all relevant institutions by providing them with reliable and comparable data for evidence-based actions and policy improvement in the area of FGM <sup>(363)</sup>. In May 2012, as an outcome of the ERF-co-funded GENSEN project, the report ‘Gender-related Asylum Claims in Europe: Comparative Analysis of Law, Policies and Practice Focusing on Women in Nine EU Member States’ was published <sup>(364)</sup>.

The following ruling of the CJEU actually refers to religious freedom, it is also relevant as regards ‘particular social group’ issues such as sexual orientation:

In the joined cases *C-71/11 and C-99/11 Germany v Z. and Y.* <sup>(365)</sup> the referring court asked the CJEU to interpret the provisions related to acts of persecution on grounds of religion (Articles 9 and 10 of the Qualification Directive). In particular, the referred the question whether any interference with the right to religious freedom that infringes the Charter of Fundamental Rights of the European Union may constitute an act of persecution and whether distinctions should be made between the core areas of freedom of religion and its external manifestation. The main proceeding concerned the rejection of the applications for international protection of Pakistani nationals, members of the Muslim Ahmadiyya community. The appeal courts annulled the decision considering that, if the applicants were returned to Pakistan, they could not continue to practice their religion in public without being exposed to a risk of persecution. The CJEU held that not every interference with the right to freedom of religion recognised in the Charter is capable of constituting an act of persecution within the meaning of the Qualification Directive. Nevertheless, there may be an act of persecution as a result of interference with the external manifestation of that freedom. In order to determine if such an infringement of the freedom of religion amounts to an act of persecution, the competent authorities should examine whether, as a result of exercising publicly that freedom in his or her country of origin, the applicant would be subject to a risk of being prosecuted or subject to inhuman or degrading treatment or punishment. Therefore, the applicant’s fear of being persecuted is well founded if, in view of the applicant’s personal circumstances, the authorities consider that it may be reasonably be thought that the applicant will engage in religious practices when returning to his or her country of origin. Finally, the CJEU stressed that the national authorities cannot reasonably expect the applicant to abstain from those religious practices and the external manifestation of faith.

Indeed, as mentioned above (see 3.2.3.), the underlying principle that a person should not be required to hide characteristics that are essential to him/her, has been expanded to cases where the issue at stake was sexual orientation/gender identity (e.g., Germany <sup>(366)</sup>, Finland <sup>(367)</sup>).

<sup>(361)</sup> In France, a specific working group on LGBTI issues was created with a view to drafting guidelines and an interview grid. (Annual Report Matrix). In the United Kingdom, the UKBA developed in 2012 specific training on gender issues in the asylum application for all UKBA case owners. Cf. <http://www.migrantsrights.org.uk/migration-pulse/2012/gender-asylum-and-message-ukba-s-new-chief-executive>, accessed 12 April 2013.

<sup>(362)</sup> UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, (<http://www.unhcr.org/refworld/docid/50348afc2.html>), accessed 27 May 2013.

<sup>(363)</sup> European Institute for Gender Equality (EIGE), *Study to map the current situation and trends of female genital mutilation*, March 2012, (<http://eige.europa.eu/content/document/female-genital-mutilation-in-the-european-union-and-croatia-report>), accessed 9 April 2013.

<sup>(364)</sup> The Gensen project was set up to enhance gender equality in the European asylum process. Funded by the European Refugee Fund (ERF) it aims to help harmonise the implementation of the main European asylum legal instruments to ensure gender sensitivity. Over the course of twenty months (October 2010 to May 2012) the Gensen project undertook comparative research, national workshops, regional training and an experts meeting. The results of all these initiatives were used to identify key recommendations set out in this report. The report consists of a comparative analysis of law, policies and practice relating to gender issues across nine EU Member States (Belgium, France, Hungary, Italy, Malta, Romania, Spain, Sweden, and the United Kingdom) and recommendations towards integrating a gender perspective in European asylum systems. Cf. *Gender-related asylum claims in Europe – A comparative analysis of law policies and practice focusing on women in nine EU Member States*, May 2012, (<http://helsinki.hu/wp-content/uploads/GENSEN-Report-FINAL.pdf>), accessed 27 May 2013.

<sup>(365)</sup> Judgment of the Court of 5 September 2012. Full text of the judgment available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0071:EN:HTML>.

<sup>(366)</sup> Annual Report Matrix.

<sup>(367)</sup> The Finnish Supreme Administrative Court adopted a precedent-setting judgment in a case involving an Iranian homosexual man, in which the Court recognised that the man should not be required to be discreet with his sexual orientation in order to avoid persecution and that he feared persecution for reasons of his membership of a particular social group. UNHCR’s guidelines on Sexual Orientation and Gender Identity and Membership in a Particular Social Group were extensively referred to in the judgment. Cf. [http://yle.fi/uutiset/kho\\_keskeytti\\_homomiehen\\_karkotuksen/3379061](http://yle.fi/uutiset/kho_keskeytti_homomiehen_karkotuksen/3379061).

It should also be mentioned that, following this judgement, the government of the Netherlands immediately changed its policy with regards to religious minorities in Iran <sup>(368)</sup>. Also Denmark changed its practice in cases concerning conversion from one religion to another <sup>(369)</sup>.

The United Kingdom introduced new measures regarding applicants with *healthcare needs*, including heavily pregnant applicants <sup>(370)</sup>.

Finally, while concerns continue to be raised regarding insufficient systems of identification and support for *victims of torture and trafficking* in particular Member States <sup>(371)</sup>, some positive developments have been noted recently in Member States to facilitate this work <sup>(372)</sup>.

### EASO Activities relating to Trafficking of Human Beings (THB)

Since 2012, EASO has actively been participating in the coordination meetings between the seven JHA agencies and the EU Anti-Trafficking Coordinator. EASO began to focus on streamlining its processes and products to ensure that counter trafficking elements are an integral part of Asylum and Reception systems, e.g., by incorporating tools and information on THB in training modules and manuals.

## 4.10. Return

Return policies are not covered by the asylum *acquis*, as rejected applicants for international protection fall under the provisions of aliens law rather than asylum law. Most return measures are not specifically targeting applicants for international protection. With this said, a clear tendency can be noted towards promoting the option of voluntary return already during the asylum procedure and to focus on an integrated approach.

<sup>(368)</sup> On the 2nd of November 2012 the Minister of Immigration informed the Dutch Parliament that he will amend his asylum policy towards Iranian applicants for international protection who belong to a religious minority according to the Judgement of 5 September 2012 of the Court of Justice of the European Union (C-71/11 and C-99/11). This adjustment in policy applies to applicants who belong to a religious minority in Iran and to Muslim applicants who have converted to Christianity after they departed from Iran. The Court of Justice has ruled that certain forms of serious interference with the public manifestation of religion may constitute to persecution. With reference to the Report of the Minister of Foreign Affairs of The Netherlands of 2012 on the situation in Iran, the persecution of religious minorities is sufficiently serious. This means that if an asylum applicant from Iran belongs to a religious minority and he or she has made it plausible that he/she will engage in a religious practice which will expose him/her to a real risk of persecution, he or she should be granted a refugee status. There will be no longer expected that he or she will abstain from the manifestation or practice of certain religious acts. See also the issue of 'westernised' Somalis (3.2.3.).

<sup>(369)</sup> Following the CJEU decision of 5 September 2012 (Germany v Z. and Y.), Denmark has changed its practice in cases concerning conversion from one religion to another. Earlier much attention was focused on whether the conversion was known in the country of origin. If not it was assumed that Christian converts could live discreetly with their new belief and that the protection of religious beliefs warranted by the Geneva Convention only included the so-called '*forum internum*'. Since the ECJ decision Denmark consider that also the so-called '*forum externum*' is protected. Consequently, the focus is now on whether the conversion can be considered to be genuine or to be fabricated in order to obtain protection.

<sup>(370)</sup> The UK Border Agency introduced new guidance for Healthcare needs and pregnancy Dispersal Guidance, a copy of which can be found at the following link: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/>

The new policy provides far greater detail on the process for dispersing applicants with healthcare needs, including specific actions to be taken to help ensure continuation of care in the event continuity of care assistance is required. A major change is the introduction of the 'protected period' for heavily pregnant women. The 'protected period' runs from 4 weeks before the Estimated Date of Delivery until 4 weeks after the birth for heavily pregnant applicants for support. During this period, dispersal should be deferred. This is a significant shift away from the previous policy 'to encourage a woman even in the late stages of pregnancy to leave the Emergency Accommodation and establish herself in her new home before the birth of the baby'. (Annual Report Matrix)

<sup>(371)</sup> Such observations, as made in several MS, included the lack of timely and appropriate victim identification, and lack of psychological assessment and support (UNHCR input)

<sup>(372)</sup> In 2011, Germany started a 12 month IOM/UNHCR/BAMF Project, called 'Identification and protection of victims of trafficking in the asylum procedure', the main objectives of which were: Systematic assessment of the link between the asylum application procedure and the protection of human trafficking victims; Sensitising a minimum of 22 asylum decision makers of the Federal Office to the topic of human trafficking and in doing so, support them in their role as multipliers for the remaining decision makers in the 22 branch offices; Create local networks between the asylum decision makers and relevant local specialised counselling centres for trafficked persons as well as contact persons from relevant police departments. In **Bulgaria**, a questionnaire for the identification of people seeking protection with a traumatic experience was used by the authority responsible for accommodating applicants for international protection and by NGOs. (Annual Report Matrix). In **Sweden**, steps were taken to improve the determination of applications for international protection from victims of torture, through seminars for Swedish Migration Board eligibility officers on the topic, jointly facilitated by the SMB, UNHCR, the Swedish Red Cross and Amnesty, and through the SMB's adoption of a Legal Position on its responsibility for obtaining medical certificates in cases where the applicant invokes past experiences of torture. These measures have been taken in response to, *inter alia*, recommendations by UNHCR in its report from the Quality Initiative in 2010-2011, and the ECtHR judgment in the case *RC vs. Sweden* (41827/07, 9 March 2010). (UNHCR input). For women who may be victim of trafficking, a special protocol for the identification in the framework of the asylum procedure is in place in **Spain**. (Annual Report Matrix) In **Slovenia**, training related to the identification of victims of trafficking in human beings was conducted in 2012 (Annual Report Matrix). **Denmark** considers human trafficking as a high priority area. A third national action plan for combating human trafficking was launched in June 2011 (2011-2014). The action plan ensures that victim identification is further developed, especially within the group of foreign women in prostitution. As a part of the outreach work, meeting points with health clinics have been set up in three different parts of Denmark. Here, foreign women in prostitution can receive different kind of support from doctors, nurses and social workers and have information about the offers given to victims of human trafficking. Further, in March 2012 the maximum sentence for trafficking was raised from 8 to 10 years imprisonment, see section 262a in the Danish Criminal Code. Another step taken is the guidelines to the prosecution launched in June 2012. According to the guidelines charges can be withdrawn for victims of trafficking for violations that have to do with the persons in question being victims of trafficking, e.g., forgery of documents in connection with entry papers.

Voluntary repatriation is in general the preferred alternative to enforced return and many Member States further developed their Assisted Voluntary Return (AVR) programmes in 2012 <sup>(373)</sup>. A note-worthy project co-funded under the Community Actions 2012 is the ‘Voluntary Return European Network’ (VREN), a two-year project whose aim is to set up a European network for voluntary return including the 27 Member States, Norway, Switzerland, as well as major countries of transit and origin <sup>(374)</sup>.

In Belgium, several initiatives were developed to better organise the return of failed applicants for international protection and irregular migrants, thereby offering an individualised ‘return path’ whereby voluntary return is the preferred option. Rejected applicants for international protection will first be transferred to a so-called ‘return place’ in a designated open reception centre in order to facilitate the return. The Immigration Department and the Reception agency work closely together and return coaches provide the necessary information.

In Luxembourg, efforts undertaken to promote voluntary return to the Western Balkan Countries (except Kosovo) were positively evaluated. During all stages of the asylum procedure, the applicants are informed about the possibility to opt for voluntary return. An information flyer is already handed out when the application for international protection is lodged. Once a week, an information desk provides the applicants - whether still in the procedure or rejected – with information on voluntary return options to the Western Balkan countries (except Kosovo).

In Greece the numbers of both voluntary and forced returns increased in 2012, partly as a consequence of a vigorous return programme operated by IOM and the Greek government <sup>(375)</sup>.

<sup>(373)</sup> In 2012, AVR programmes have been expanded in **Austria** and the Austrian Ministry of Interior Affairs implemented a number of projects to promote assisted voluntary return to specific countries of origin through IOM, co-funded by the European Return Fund. (Annual Report Matrix). In **Finland** the project ‘Developing Assisted Voluntary Return in Finland (DAVRiF)’ was launched on 1 January 2010 as a cooperation project between the office of the International Organization for Migration (IOM) in Helsinki and the Finnish Immigration Service. The overall goal of the project is to establish a permanent framework for Assisted Voluntary Return in Finland that will continue to provide migrants in Finland with voluntary return assistance also after the end of the project. The project ends on 31 December 2012, but a follow-up project (‘Voluntary Return and Return Assistance from Finland’) will start on 1 January 2013 with the aim of institutionalising the practices developed during DAVRiF and preventing the interruption on voluntary return activities. Both projects are funded by the Return Fund. In **Malta**, the Ministry responsible for Home Affairs, in collaboration with the International Organisation for Migration (IOM), supports an Assisted Voluntary Return (AVR) and Re-integration Project for third country nationals in Malta, co-financed by the European Return Fund. The project, Restart III, is a continuation of previous AVR projects also co-funded under the European Return Fund. (Annual Report Matrix)

<sup>(374)</sup> Cf. <http://www.vren-community.org>, accessed 27 May 2013.

<sup>(375)</sup> Annual Report Matrix. The **United Kingdom** supports Greece by financing an upstream capability project. The project is implemented by the IOM and delivers an AVR programme for irregular migrants in Greece who wish to return to their own country. In October 2012 a further project was agreed with IOM. This project will provide for the return of 145 irregular migrants by AVR, and the provision of an IOM resource at the Greece Turkey land border to gather intelligence and provide assistance to Greece in screening potential applicants for international protection and to identify victims of trafficking.

## 5. Conclusion

From the statistical section of the report it is clear that, for similar flows, significant differences can remain between Member States in: the legal regimes applied to deal with similar flows (Geneva, Subsidiary and Humanitarian); when the application of these regimes undergoes changes (i.e. what is considered as a trigger for policy adjustment); and the rate of recognition afforded to similar flows across Member States. Such general conclusions should be carefully qualified, however, as the difficulty in establishing whether flows are effectively ‘similar’ are notable <sup>(376)</sup>.

National and European legal decisions, changes in Member States’ organisation and policy, the actions of the European Commission as well as advice and recommendations of UNHCR have also shown that there continue to be challenges at national and EU level in many key aspects of the asylum process. Effectively establishing identity of applicants, removing pull factors for unfounded applications, developing and applying safe country concepts, assessing how to classify and deal with subsequent applications and family reunification are all essential to ensuring the integrity and quality of the asylum system. Some, but not all, states have introduced quality check processes to ensure the quality of certain parts of their asylum systems.

At the same time, the question of improving the speed of the process while ensuring quality continues to be a key challenge. Member States are experimenting with streamlined, accelerated and prioritised procedures, new, ‘lean’ working methods to keep processing times down and use of improved technology in this regard. The European Commission and Member States have also continued to promote resettlement through new tools and increase numbers of refugees resettled, as well as supported capacity building as part of third country cooperation. Some progress has been made on relocation. Many opportunities exist for investigating best practices in several Member States and sharing beneficial experiences across the EU and there is considerable scope for increasing practical solidarity between Member States on asylum-related matters.

The key challenges in regard to the smooth functioning of the CEAS include among others: access to territory (legal challenges to ‘push backs’ and *refoulement* were upheld at the highest judicial levels); access to procedure at the external border; prompt registration of applications and detention policy; provision of interpretation and legal assistance; the ability to make Dublin transfers while respecting Fundamental Rights; the use of accelerated procedures and access to appeal; reception and detention conditions; protection of UAM and vulnerable groups; developing effective first instance quality control systems; making proper credibility assessments; improving second instance processing times and backlog management; ensuring availability and use of COI and return policy and practice.

With the imminent promulgation of the new ‘asylum package’, the EU will take the next significant step towards the effective and coherent implementation of the CEAS. However, while the new legislation will address many of the uncertainties and difficulties of interpretation faced by states, it is clear that the practical implementation of the new *acquis* will be challenging and would benefit from EASO’s coordination at the practical and operational level to ensure as far as possible uniformity of interpretation and harmonisation of practical implementation.

Thus EASO will continue its work in training, quality, COI and Early warning and Preparedness as well as technical and operational support in order to support as much as possible the raising and harmonising of standards in the CEAS. It is clear that practical, operational support and the continuous building up of the system from the bottom up is the only way to ensure that harmonised high-quality practices are actually implemented across the EU.

The introduction of the Asylum and Migration Fund for the years 2014-2020 and the requirement for Member States to develop 7-year strategic plans for development of their asylum systems will also have a major effect. Member States should be encouraged to propose investments and initiatives at national and European level that favour the effective and harmonised implementation of the CEAS.

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<sup>(376)</sup> How similar the applications made by individual applicants who share a certain citizenship actually are is always difficult to establish. In principle, a case-level analysis would need to be made to establish the level of similarity of applications dealt with in different Member States precisely. However, analysis of some flows, such as the Syrian one, show that choices made by Member States vary considerably for flows of persons who could be treated in the same way.

EASO stands ready, together with the Member States, the European Commission and key partners and stakeholders, to support initiatives in this direction however its ability to effectively support in all of the many areas identified above is limited given current staff and budget levels. Nevertheless, good progress has already been made and the foundations have been laid on which all key stakeholders can build the future implementation of the new asylum *acquis* over the coming years in order to ensure the raising and harmonising of standards and the practical establishment of the CEAS.



# Annexes

## A. List of Abbreviations

AAT	Age Assessment Teams (Malta)
ACCORD	Austrian Centre for Country of Origin and Asylum Research and Documentation
AISIP	Asylum and Immigration Strategic Integration Programme (Ireland)
AMF	Asylum and Migration Fund
APD	Asylum Procedures Directive
ASQAEM	Asylum Systems Quality Assurance and Evaluation Mechanism Project in the Central and Eastern Europe sub-region (UNHCR)
AST	Asylum Support Teams
AsylbLG	Act on Benefits for Asylum Seekers (Germany)
AVR	Assisted Voluntary Return
BAMF	Federal Office for Migration and Refugees (Germany)
CADA	Centre d'Accueil de Demandeurs d'Asile (France)
CAP-CO	Capacity Building of Stakeholders in Asylum Process: from Procedures to Cultural Orientation (Project) (Estonia)
CEAS	Common European Asylum System
Cedoca	Centre for Documentation and Research (Belgian COI unit)
CGRA	Office of the Commissioner General for Refugees and Stateless Persons (Belgium)
CIR	Council for Refugees (Italy)
CJEU	Court of Justice of the European Union
CNDA	Court Nationale du Droit d'Asile / National Asylum Appeal Court (France)
COA	Central Agency for the Reception of Asylum Seekers (Netherlands)
COI	Country of Origin Information
CRC	Committee of the Red Cross
CREDO	Improved credibility assessment in EU asylum procedures project (UNHCR)
CSOs	Civil Society Organisations
D-A-CH	Cooperation network between Germany-Austria-Switzerland (and Luxembourg)
DAVRiF	Developing Assisted Voluntary Return in Finland (Project)
DFID	Department for International Development (United Kingdom)
DIS	Danish Immigration Service
DISCS	Documents Information System Civil Status (Netherlands)
DRCC	Dublin Rape Crisis Centre (Ireland)
DT&V	Repatriation and Departure Service (Netherlands)
EAC	European Asylum Curriculum
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EEA	European Economic Area
EIGE	European Institute for Gender Equality
EMN	European Migration Network
ENARO	European Network of Reception Organisations
EP	European Parliament

EPS	Early warning and Preparedness System
ERF	European Refugee Fund
ESI	European Stability Initiative
ET	Entering the Territory Project
ETC	Emergency Transit Centre
EU	European Union
EURASIL	European Network of Asylum Practitioners
EUREMA	EU Pilot Project for the relocation of beneficiaries of international protection from Malta
FARA	Foreigners' Authorities Restructuring Act 2012 (Austria)
FDQ	Further Developing Quality Project (UNHCR)
Fedasil	Federal Agency for the Reception of Asylum Seekers (Belgium)
FFM	Fact Finding Mission
FIS	Finnish Immigration Service
FGM	Female Genital Mutilation
Flora	French COI database
FMI	Federal Ministry of the Interior (Austria)
FRONTEX	EU Agency for the Management of Operational Cooperation at the External Borders
FYROM	Former Yugoslav Republic of Macedonia
GC	Geneva Convention relating to the Status of Refugees of 28 July 1951
GDISC	General Directors' of Immigration Services Conference
HFHR	Helsinki Foundation for Human Rights (Poland)
HHC	Hungarian-Helsinki Committee
HU	Humanitarian Protection
IARLJ	International Association of Refugee Law Judges
ICJ	International Commission of Jurists
ICMC	International Catholic Migration Commission
IDP	Internally Displaced Person
IGC	Intergovernmental Consultations on Migration, Asylum and Refugees
IND	Immigration and Naturalisation Service (Netherlands)
INIS	Irish Naturalisation and Immigration Service
JHA	Justice and Home Affairs Council
IOM	International Organisation for Migration
LGBT	Lesbian, Gay, Bisexual, Transgender
MD	Migration Department (Lithuania)
MedCOI (II)	Project on the availability and accessibility of medical COI
MENA	Middle East and North Africa
MILo	German COI database
MOI	Ministry of the Interior (Austria)
MS	Member State(s)
MSF	Médecins sans Frontières
NextGen	Next Generation Quality Framework (UKBA)
NGO	Non-governmental Organisation
OFPRA	Office français de Protection des Réfugiés et Apatrides
OIN	Office of Immigration and Nationality (Hungary)
ONPRA	Office National pour la Protection des Réfugiés et des Apatrides (Burundi)
OPCM	Order of the President of the Council of Ministers (Italy)
OrAs	IT control system at the BAMF (Germany)
ORAC	Office of the Refugee Applications Commissioner (Ireland)

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QD	Qualification Directive
QI	Quality Integration (UKBA)
REAN	Return and Emigration of Aliens from the Netherlands Programme
RPP	Regional Protection Programme
RRF	Returns and Reintegration Fund of the Foreign and Commonwealth Office (UK)
RSD	Refugee Status Determination
SAC	Supreme Administrative Court (Poland)
SMB	Swedish Migration Board
SP	Subsidiary Protection
Światowid	Polish COI database
TEU	Treaty of the European Union
TCN	Third Country National
Tellus	Finnish COI database
THB	Trafficking of Human Beings
UAM	Unaccompanied Minor
UASC	Unaccompanied Asylum Seeking Children
UBAUM II	Assisting Authorities in Asylum Procedures of Unaccompanied Minors (Project) (Austria)
UKBA	UK Border Agency
UMA	Case Management System for Immigration Services (Finland)
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency
VestNet	Operating platform for applications for international protection (Italy)
VIS	Visa Information System
VREN	Voluntary Return European Network

## B. List of figures, tables and sources

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- Figure 3:** Comparison 2011/2012 - Total applicants for each Member State; Source: Eurostat login: 8.05.2013.
- Figure 4:** Comparison 2011/2012 – Nationalities/Countries of the applicants; Source: Eurostat login: 8.05.2013.
- Figure 5:** First Instance - Total decision in 2012 and positive decision rate; Source: Eurostat login: 8.05.2013. No data from NL due to transition to a new information system.
- Table 1:** First instance decision overview in EU 2011-2012; Source: Eurostat login 14.05.2013.
- Figure 6:** Total Geneva Convention / Positive Decisions ( %) in EU-27, 2012-Top 10 Countries of origin (with > 100 positive decisions); Source: Eurostat login: 14.05.2013.
- Figure 7:** Total Subsidiary Protection/ Positive Decisions ( %) in EU-27, 2012-Top 10 Countries of origin (with > 100 positive decisions; Source: Eurostat login: 14.05.2013.
- Figure 8:** Total Humanitarian Status/ Positive Decisions ( %) in EU-27, 2012-Top 10 Countries of origin (with > 100 positive decisions; Source: Eurostat login: 14.05.2013.
- Figure 9:** Total Recognition rate in EU-27 Top 10 Countries of origin; Source: Eurostat login: 14.05.2013.
- Figure 10:** Total Recognition rate in EU -27, 2012-Top 10 Countries of origin (countries of origin with a total of decision >100); Source: Eurostat login: 14.05.2013.
- Figure 11:** Recognition rate in EU -27, 2012-Bottom 10 Countries of origin (countries of origin with a total of decision >100); Source: Eurostat login: 14.05.2013.
- Figure 12:** Final recognition rates – Selected Countries of origin, EU – 2012; Source: Eurostat login: 14.05.2013.
- Table 2:** Final positive decision rates in EU 27 MS, 2012 – Selected Countries of origin; Source: Eurostat login: 17.05.2013.
- Figure 13:** Top-5 of Countries of Origin of Applicants for international protection, in 2012; Source: Eurostat login: 8.05.2013.
- Figure 14:** Syrians applicants in EU Member States; Source: Eurostat login: 8.05.2013.
- Figure 15:** Decision rates on Syrian applicants for international protection in EU 2011-2012; Source: Eurostat login: 14.05.2013 No data from NL due to transition to a new information system.
- Figure 16:** WB total applicants - Monthly trend, 2011 – 2012; Source: Eurostat login: 14.05.2013.
- Figure 17:** Recognition Rate of applicants for international protection from Western Balkans in EU, 2008-2012; Source: Eurostat login: 8.05.2013. No data for 2012 from NL due to transition to a new information system.
- Table 3:** Intra-EU relocation from Malta by EU Member States: number of pledges in 2011-2012 and actual relocations by January 2013; Source: European Commission.
- Table 4:** Resettlement departures to EU Member States assisted by UNHCR 2008-2012; Source: UNHCR.
- Table 5:** Resettlement Departures to EU Member States assisted by UNHCR 2012 by Region of Asylum (persons); Source: UNHCR.
- Table 6:** EU Member States resettlement quota 2012 and 2013; Source: UNHCR.

## C. Statistics

**Annex C.1:** Applicants for international protection in EU-27 by Member State and % share in EU-27 in 2011-2012; sorted in decreasing order of the number of total applicants in 2012

	Total asylum applicants				New asylum applicants				Repeated Asylum applicants			
	2012	2011	% in EU 2012	% in EU 2011	2012	2011	% in EU 2012	% in EU 2011	2012	2011	% in EU 2012	% in EU 2011
1 Germany	77,650	53,345	23%	18%	64,540	45,740	25%	18%	13,110	7,605	35%	28%
2 France	61,455	57,335	18%	19%	54,280	52,140	21%	20%	7,175	5,195	19%	19%
3 Sweden	43,945	29,710	13%	10%	43,930	29,690	17%	12%	15	20	0%	0%
4 Belgium	28,285	32,270	8%	11%	18,450	25,585	7%	10%	9,835	6,685	26%	25%
5 United Kingdom	28,260	26,450	8%	9%	27,410	25,455	11%	10%	850	995	2%	4%
6 Austria	17,450	14,455	5%	5%								
7 Italy	17,350	34,115	5%	11%		34,115		13%		0		0%
8 Netherlands	13,100	14,600	4%	5%	9,665	11,565	4%	5%	3,435	3,035	9%	11%
9 Poland	10,755	6,905	3%	2%	8,985	4,985	3%	2%	1,770	1,920	5%	7%
10 Greece	9,575	9,310	3%	3%	9,575	9,310	4%	4%	0	0	0%	0%
11 Denmark	6,075	3,985	2%	1%	6,075	3,985	2%	2%	0	0	0%	0%
12 Finland	3,115	2,975	1%	1%	2,920		1%		195		1%	
13 Spain	2,565	3,420	1%	1%	2,355	2,975	1%	1%	210	445	1%	2%
14 Romania	2,510	1,720	1%	1%	2,420	1,695	1%	1%	90	25	0%	0%
15 Hungary	2,155	1,695	1%	1%								
16 Malta	2,080	1,890	1%	1%	2,060	1,865	1%	1%	20	25	0%	0%
17 Luxembourg	2,055	2,155	1%	1%	2,000	1,920	1%	1%	55	235	0%	1%
18 Cyprus	1,635	1,770	0%	1%	1,590	1,745	1%	1%	45	25	0%	0%
19 Bulgaria	1,385	890	0%	0%	1,230	705	0%	0%	155	185	0%	1%
20 Ireland	955	1,290	0%	0%	940	1,280	0%	0%	15	10	0%	0%
21 Czech Republic	755	755	0%	0%	515	485	0%	0%	240	270	1%	1%
22 Slovakia	730	490	0%	0%	550	320	0%	0%	180	170	0%	1%
23 Lithuania	645	525	0%	0%	560	405	0%	0%	85	120	0%	0%
24 Slovenia	305	360	0%	0%	260	305	0%	0%	45	55	0%	0%
25 Portugal	295	275	0%	0%		275		0%		0		0%
26 Latvia	205	340	0%	0%	190	335	0%	0%	15	5	0%	0%
27 Estonia	75	65	0%	0%	75	65	0%	0%	0	0	0%	0%
<b>EU 27 MS</b>	<b>335,365</b>	<b>303,105</b>	<b>100%</b>	<b>100%</b>	<b>260,575</b>	<b>256,945</b>	<b>100%</b>	<b>100%</b>	<b>37,540</b>	<b>27,025</b>	<b>100%</b>	<b>100%</b>
Switzerland	28,640	23,880			25,965	19,445			2,675	4,435		
Norway	9,785	9,055										
<b>EU+</b>	<b>373,790</b>	<b>336,040</b>			<b>286,540</b>	<b>276,390</b>			<b>40,215</b>	<b>31,460</b>		

*Data Source:*

- Eurostat (ER 862/2007), data extracted on 08.05.2013. Data from the Netherland not yet available at Eurostat database, provided separately to EASO.

*Notes:*

- According to Eurostat Guidelines Art.4 ER 862/2007, the difference between the total of applicants and the number of new applicants should be considered an estimation of the number of subsequent applicants.
- New + subsequent applicants EU-27 do not sum up to EU-27 totals, because for some states no breakdown available.
- Numbers or rounded to closest 0 or 5
- Data are provisional

**Annex C.2:** Applicants for international protection in EU-27 by Member State and changes in 2011-2012; sorted in decreasing order of the change in the number of total applicants 2012/2011

	Total asylum applicants				New asylum applicants				Repeated Asylum applicants			
	2012/2011	2012	2011		2012/2011	2012	2011		2012/2011	2012	2011	
Germany	24,305	46%	77,650	53,345	18,800	41%	64,540	45,740	5,505	72%	13,110	7,605
Sweden	14,235	48%	43,945	29,710	14,240	48%	43,930	29,690	-5	-25%	15	20
France	4,120	7%	61,455	57,335	2,140	4%	54,280	52,140	1,980	38%	7,175	5,195
Poland	3,850	56%	10,755	6,905	4,000	80%	8,985	4,985	-150	-8%	1,770	1,920
Austria	2,995	21%	17,450	14,455								
Denmark	2,090	52%	6,075	3,985	2,090	52%	6,075	3,985	0		0	0
United Kingdom	1,810	7%	28,260	26,450	1,955	8%	27,410	25,455	-145	-15%	850	995
Romania	790	46%	2,510	1,720	725	43%	2,420	1,695	65	260%	90	25
Bulgaria	495	56%	1,385	890	525	74%	1,230	705	-30	-16%	155	185
Hungary	460	27%	2,155	1,695								
Greece	265	3%	9,575	9,310	265	3%	9,575	9,310	0		0	0
Slovakia	240	49%	730	490	230	72%	550	320	10	6%	180	170
Malta	190	10%	2,080	1,890	195	10%	2,060	1,865	-5	-20%	20	25
Finland	140	5%	3,115	2,975			2,920		195		195	
Lithuania	120	23%	645	525	155	38%	560	405	-35	-29%	85	120
Portugal	20	7%	295	275				275				0
Estonia	10	15%	75	65	10	15%	75	65	0		0	0
Czech Republic	0	0%	755	755	30	6%	515	485	-30	-11%	240	270
Slovenia	-55	-15%	305	360	-45	-15%	260	305	-10	-18%	45	55
Luxembourg	-100	-5%	2,055	2,155	80	4%	2,000	1,920	-180	-77%	55	235
Cyprus	-135	-8%	1,635	1,770	-155	-9%	1,590	1,745	20	80%	45	25
Latvia	-135	-40%	205	340	-145	-43%	190	335	10	200%	15	5
Ireland	-335	-26%	955	1,290	-340	-27%	940	1,280	5	50%	15	10
Spain	-855	-25%	2,565	3,420	-620	-21%	2,355	2,975	-235	-53%	210	445
Netherlands	-1,500	-10%	13,100	14,600	-1,900	-16%	9,665	11,565	400	13%	3,435	3,035
Belgium	-3,985	-12%	28,285	32,270	-7,135	-28%	18,450	25,585	3,150	47%	9,835	6,685
Italy	-16,765	-49%	17,350	34,115				34,115				0
<b>EU 27 MS</b>	<b>32,260</b>	<b>11%</b>	<b>335,365</b>	<b>303,105</b>	<b>3,630</b>	<b>1%</b>	<b>260,575</b>	<b>256,945</b>	<b>10,515</b>	<b>39%</b>	<b>37,540</b>	<b>27,025</b>
Switzerland	4,760	20%	28,640	23,880	6,520	34%	25,965	19,445	-1,760	-40%	2,675	4,435
Norway	730	8%	9,785	9,055								
<b>EU+</b>	<b>37,750</b>	<b>11%</b>	<b>373,790</b>	<b>336,040</b>	<b>10,150</b>	<b>4%</b>	<b>286,540</b>	<b>276,390</b>	<b>8,755</b>	<b>28%</b>	<b>40,215</b>	<b>31,460</b>

*Data Source:*

- Eurostat (ER 862/2007), data extracted on 08.05.2013. Data from the Netherlands not yet available at Eurostat database, provided separately to EASO.

*Notes:*

- According to Eurostat Guidelines Art.4 ER 862/2007, the difference between the total of applicants for international protection and the number of new applicants should be considered an estimation of the number of subsequent applicants.
- New + subsequent applicants EU-27 do not sum up to EU-27 totals, because for some states no breakdown available.
- Numbers are rounded to closest 0 or 5
- Data are provisional

**Annex C.3:** Top 30 Countries of citizenship of total applicants for international protection in EU-27 in 2012, numbers and % share in EU-27 2011-2012; sorted in decreasing order of the number of total applicants in 2012

	Total asylum applicants				New asylum applicants				Repeated asylum applicants			
	2012	2011	% in EU 2012	% in EU 2011	2012	2011	% in EU 2012	% in EU 2011	2012	2011	% in EU 2012	% in EU 2011
1 Afghanistan	28,005	28,015	8%	9%	19,600	22,130	8%	9%	2,010	1,325	5%	5%
2 Russia	24,280	18,330	7%	6%	17,405	12,650	7%	5%	3,730	3,055	10%	11%
3 Syria	24,110	7,885	7%	3%	20,430	6,195	8%	2%	2,230	1,070	6%	4%
4 Pakistan	19,695	15,700	6%	5%	14,435	14,245	6%	6%	505	360	1%	1%
5 Serbia	19,060	13,980	6%	5%	13,540	10,515	5%	4%	5,105	3,165	14%	12%
6 Somalia	14,265	12,195	4%	4%	12,010	10,430	5%	4%	885	750	2%	3%
7 Iran	13,585	11,865	4%	4%	11,560	10,270	4%	4%	1,040	975	3%	4%
8 Iraq	13,175	15,170	4%	5%	10,920	12,730	4%	5%	1,325	1,320	4%	5%
9 Georgia	10,832	7,060	3%	2%	9,715	6,035	4%	2%	735	675	2%	2%
10 Kosovo	10,210	9,870	3%	3%	7,065	7,535	3%	3%	2,510	1,710	7%	6%
11 FYROM	9,625	5,545	3%	2%	6,690	4,520	3%	2%	2,795	920	7%	3%
12 DR Congo	8,285	6,285	2%	2%	7,380	5,760	3%	2%	790	425	2%	2%
13 Albania	7,465	3,060	2%	1%	6,780	2,840	3%	1%	575	190	2%	1%
14 Nigeria	7,450	11,470	2%	4%	5,005	10,630	2%	4%	375	320	1%	1%
15 Sri Lanka	7,330	7,375	2%	2%	5,945	6,460	2%	3%	1,260	875	3%	3%
16 Eritrea	6,395	5,695	2%	2%	5,495	5,550	2%	2%	145	110	0%	0%
17 Bangladesh	6,290	8,290	2%	3%	4,460	7,515	2%	3%	1,040	665	3%	2%
18 Turkey	6,210	6,455	2%	2%	4,540	5,010	2%	2%	885	935	2%	3%
19 Bosnia and Herz.	5,835	2,595	2%	1%	4,965	2,335	2%	1%	470	180	1%	1%
20 Guinea	5,635	6,245	2%	2%	4,235	5,465	2%	2%	1,110	720	3%	3%
21 Armenia	5,520	7,105	2%	2%	4,040	5,645	2%	2%	1,065	1,225	3%	5%
22 China	5,045	5,540	2%	2%	4,284	4,840	2%	2%	490	450	1%	2%
23 Algeria	4,805	4,385	1%	1%	3,740	3,525	1%	1%	340	300	1%	1%
24 Stateless	3,510	2,425	1%	1%	3,165	2,105	1%	1%	185	100	0%	0%
25 Unknown	3,315	3,095	1%	1%	2,140	2,475	1%	1%	815	515	2%	2%
26 India	3,220	2,785	1%	1%	2,575	2,115	1%	1%	175	185	0%	1%
27 Egypt	2,650	2,100	1%	1%	1,980	1,860	1%	1%	95	85	0%	0%
28 Côte d'Ivoire	2,645	5,365	1%	2%	1,785	4,935	1%	2%	200	385	1%	1%
29 Morocco	2,625	1,965	1%	1%	1,835	1,535	1%	1%	110	70	0%	0%
30 Sudan	2,605	3,130	1%	1%	2,265	2,895	1%	1%	220	145	1%	1%
<b>Western Balkans</b>	<b>53,455</b>	<b>35,680</b>	<b>16%</b>	<b>12%</b>	<b>40,110</b>	<b>28,270</b>	<b>15%</b>	<b>11%</b>	<b>11,590</b>	<b>6,255</b>	<b>31%</b>	<b>23%</b>

*Data Source:*

- Eurostat (ER 862/2007), data extracted on 08.05.2013. Data from the Netherlands not yet available at Eurostat database, provided separately to EASO.

*Notes:*

- According to Eurostat Guidelines Art.4 ER 862/2007, the difference between the total of applicants for international protection and the number of new applicants should be considered an estimation of the number of subsequent applicants.
- New + subsequent applicants EU-27 do not sum up to EU-27 totals, because for some states no breakdown available.
- New + subsequent applicant data exclude Austria, Italy, Hungary and Portugal for 2012 and Austria, Finland and Hungary for 2011
- Western Balkans: aggregation of the numbers for six countries: Albania, Bosnia and Herzegovina, Kosovo, the Former Yugoslav Republic of Macedonia (FYROM), Montenegro, Serbia
- Numbers are rounded to closest 0 or 5
- Data are provisional

**Annex C.4:** Top 30 Countries of citizenship of total applicants for international protection in EU-27 in 2012, numbers and changes 2011-2012; sorted in decreasing order of the number of total applicants in 2012

	Total asylum applicants				New asylum applicants				Repeated asylum applicants			
	2012	2011	2012/2011	%	2012	2011	2012/2011	%	2012	2011	2012/2011	%
1 Afghanistan	28,005	28,015	-10	0%	19,600	22,130	-2,530	-11%	2,010	1,325	685	52%
2 Russia	24,280	18,330	5,950	32%	17,405	12,650	4,755	38%	3,730	3,055	675	22%
3 Syria	24,110	7,885	16,225	206%	20,430	6,195	14,235	230%	2,230	1,070	1,160	108%
4 Pakistan	19,695	15,700	3,995	25%	14,435	14,245	190	1%	505	360	145	40%
5 Serbia	19,060	13,980	5,080	36%	13,540	10,515	3,025	29%	5,105	3,165	1,940	61%
6 Somalia	14,265	12,195	2,070	17%	12,010	10,430	1,580	15%	885	750	135	18%
7 Iran	13,585	11,865	1,720	14%	11,560	10,270	1,290	13%	1,040	975	65	7%
8 Iraq	13,175	15,170	-1,995	-13%	10,920	12,730	-1,810	-14%	1,325	1,320	5	0%
9 Georgia	10,830	7,060	3,770	53%	9,715	6,035	3,680	61%	735	675	60	9%
10 Kosovo	10,210	9,870	340	3%	7,065	7,535	-470	-6%	2,510	1,710	800	47%
11 FYROM	9,625	5,545	4,080	74%	6,690	4,520	2,170	48%	2,795	920	1,875	204%
12 DR Congo	8,285	6,285	2,000	32%	7,380	5,760	1,620	28%	790	425	365	86%
13 Albania	7,465	3,060	4,405	144%	6,780	2,840	3,940	139%	575	190	385	203%
14 Nigeria	7,450	11,470	-4,020	-35%	5,005	10,630	-5,625	-53%	375	320	55	17%
15 Sri Lanka	7,330	7,375	-45	-1%	5,945	6,460	-515	-8%	1,260	875	385	44%
16 Eritrea	6,395	5,695	700	12%	5,495	5,550	-55	-1%	145	110	35	32%
17 Bangladesh	6,290	8,290	-2,000	-24%	4,460	7,515	-3,055	-41%	1,040	665	375	56%
18 Turkey	6,210	6,455	-245	-4%	4,540	5,010	-470	-9%	885	935	-50	-5%
19 Bosnia and Herz.	5,835	2,595	3,240	125%	4,965	2,335	2,630	113%	470	180	290	161%
20 Guinea	5,635	6,245	-610	-10%	4,235	5,465	-1,230	-23%	1,110	720	390	54%
21 Armenia	5,520	7,105	-1,585	-22%	4,040	5,645	-1,605	-28%	1,065	1,225	-160	-13%
22 China	5,045	5,540	-495	-9%	4,284	4,840	-556	-11%	490	450	40	9%
23 Algeria	4,805	4,385	420	10%	3,740	3,525	215	6%	340	300	40	13%
24 Stateless	3,510	2,425	1,085	45%	3,165	2,105	1,060	50%	185	100	85	85%
25 Unknown	3,315	3,095	220	7%	2,140	2,475	-335	-14%	815	515	300	58%
26 India	3,220	2,785	435	16%	2,575	2,115	460	22%	175	185	-10	-5%
27 Egypt	2,650	2,100	550	26%	1,980	1,860	120	6%	95	85	10	12%
28 Côte d'Ivoire	2,645	5,365	-2,720	-51%	1,785	4,935	-3,150	-64%	200	385	-185	-48%
29 Morocco	2,625	1,965	660	34%	1,835	1,535	300	20%	110	70	40	57%
30 Sudan	2,605	3,130	-525	-17%	2,265	2,895	-630	-22%	220	145	75	52%
<b>Western Balkans</b>	<b>53,455</b>	<b>35,680</b>	<b>17,775</b>	<b>50%</b>	<b>40,110</b>	<b>28,270</b>	<b>11,840</b>	<b>42%</b>	<b>11,590</b>	<b>6,255</b>	<b>5,335</b>	<b>85%</b>

*Data Source:*

- Eurostat (ER 862/2007), data extracted on 08.05.2013. Data from the Netherlands not yet available at Eurostat database, provided separately to EASO.

*Notes:*

- According to Eurostat Guidelines Art.4 ER 862/2007, the difference between the total of applicants for international protection and the number of new applicants should be considered an estimation of the number of subsequent applicants.
- New + subsequent applicants EU-27 do not sum up to EU-27 totals, because for some states no breakdown are available.
- New + subsequent applicant data exclude Austria, Italy, Hungary and Portugal for 2012 and Austria, Finland and Hungary for 2011
- Western Balkans: aggregation of the numbers for six countries: Albania, Bosnia and Herzegovina, Kosovo, the Former Yugoslav Republic of Macedonia (FYROM), Montenegro, Serbia
- Numbers are rounded to closest 0 or 5
- Data are provisional



**Annex C.5: Top 15 Countries of citizenship in terms of highest increases and decrease in total applicants for international protection in EU-27 2012; sorted in decreasing order of the number of highest changes**

Highest increases in total applicants for international protection 2012/2011

	Total asylum applicants			New asylum applicants			Repeated asylum applicants					
	2012/2011	2012	2011	2012/2011	2012	2011	2012/2011	2012	2011			
1 Syria	16,225	206%	24,110	7,885	14,235	230%	20,430	6,195	1,160	108%	2,230	1,070
2 Russia	5,950	32%	24,280	18,330	4,755	38%	17,405	12,650	675	22%	3,730	3,055
3 Serbia	5,080	36%	19,060	13,980	3,025	29%	13,540	10,515	1,940	61%	5,105	3,165
4 Albania	4,405	144%	7,465	3,060	3,940	139%	6,780	2,840	385	203%	575	190
5 FYROM	4,080	74%	9,625	5,545	2,170	48%	6,690	4,520	1,875	204%	2,795	920
6 Pakistan	3,995	25%	19,695	15,700	190	1%	14,435	14,245	145	40%	505	360
7 Georgia	3,770	53%	10,830	7,060	3,680	61%	9,715	6,035	60	9%	735	675
8 Bosnia and Herz.	3,240	125%	5,835	2,595	2,630	113%	4,965	2,335	290	161%	470	180
9 Somalia	2,070	17%	14,265	12,195	1,580	15%	12,010	10,430	135	18%	885	750
10 DR Congo	2,000	32%	8,285	6,285	1,620	28%	7,380	5,760	365	86%	790	425
11 Iran	1,720	14%	13,585	11,865	1,290	13%	11,560	10,270	65	7%	1,040	975
12 Stateless	1,085	45%	3,510	2,425	1,060	50%	3,165	2,105	85	85%	185	100
13 Eritrea	700	12%	6,395	5,695	-55	-1%	5,495	5,550	35	32%	145	110
14 Morocco	660	34%	2,625	1,965	300	20%	1,835	1,535	40	57%	110	70
15 Montenegro	630	100%	1,260	630	545	104%	1,070	525	45	50%	135	90
<b>Western Balkans</b>	<b>17,775</b>	<b>50%</b>	<b>53,455</b>	<b>35,680</b>	<b>11,840</b>	<b>42%</b>	<b>40,110</b>	<b>28,270</b>	<b>5,335</b>	<b>85%</b>	<b>11,590</b>	<b>6,255</b>

Highest decreases in total applicants for international protection 2012/2011

	Total asylum applicants			New asylum applicants			Repeated asylum applicants					
	2012/2011	2012	2011	2012/2011	2012	2011	2012/2011	2012	2011			
1 Tunisia	-4,095	-65%	2,240	6,335	-4,980	-82%	1,065	6,045	5	8%	65	60
2 Nigeria	-4,020	-35%	7,450	11,470	-5,625	-53%	5,005	10,630	55	17%	375	320
3 Côte d'Ivoire	-2,720	-51%	2,645	5,365	-3,150	-64%	1,785	4,935	-185	-48%	200	385
4 Ghana	-2,255	-52%	2,050	4,305	-3,030	-73%	1,145	4,175	-25	-42%	35	60
5 Bangladesh	-2,000	-24%	6,290	8,290	-3,055	-41%	4,460	7,515	375	56%	1,040	665
6 Iraq	-1,995	-13%	13,175	15,170	-1,810	-14%	10,920	12,730	5	0%	1,325	1,320
7 Armenia	-1,585	-22%	5,520	7,105	-1,605	-28%	4,040	5,645	-160	-13%	1,065	1,225
8 Libya	-1,445	-50%	1,445	2,890	-1,400	-52%	1,300	2,700	-45	-56%	35	80
9 Mali	-1,210	-33%	2,415	3,625	-1,995	-56%	1,540	3,535	0	0%	70	70
10 Comoros	-710	-50%	705	1,415	-715	-52%	670	1,385	10	40%	35	25
11 Guinea	-610	-10%	5,635	6,245	-1,230	-23%	4,235	5,465	390	54%	1,110	720
12 Sudan	-610	-10%	5,635	6,245	-1,230	-23%	4,235	5,465	390	54%	1,110	720
13 China	-495	-9%	5,045	5,540	-556	-11%	4,284	4,840	40	9%	490	450
14 Burkina Faso	-495	-50%	500	995	-620	-65%	335	955	10	25%	50	40
15 Niger	-480	-58%	345	825	-545	-70%	235	780	10	29%	45	35

**Data Source:**

- Eurostat (ER 862/2007), data extracted on 08.05.2013. Data from the Netherlands not yet available at Eurostat database, provided separately to EASO.

**Notes:**

According to Eurostat Guidelines Art.4 ER 862/2007, the difference between the total of applicants for international protection and the number of new applicants should be considered an estimation of the number of subsequent applicants.

New + subsequent applicants EU-27 do not sum up to EU-27 totals, because for some states no breakdown available.

New + subsequent applicant data exclude Austria, Italy, Hungary and Portugal for 2012 and Austria, Finland and Hungary for 2011

Western Balkans: aggregation of the numbers for six countries: Albania, Bosnia and Herzegovina, Kosovo, the Former Yugoslav Republic of Macedonia (FYROM), Montenegro, Serbia

Numbers are rounded to closest 0 or 5

Data are provisional

**Annex C.6:** First Instance Decisions on Application for international protection by Member States in 2012; sorted in decreasing order of the number of total number of decisions in 2012

Country	Number						Rates					
	Gen.	Sub.	Hum.	Pos (+)	Neg (-)	TOTAL	Gen.	Sub.	Hum.	Pos (+)	Neg (-)	TOTAL
France	7,070	1,575		8,645	51,185	59,830	12%	3%	0%	14%	86%	100%
Germany	8,765	6,975	1,400	17,140	41,625	58,765	15%	12%	2%	29%	71%	100%
Sweden	3,745	7,595	1,060	12,400	19,170	31,570	12%	24%	3%	39%	61%	100%
Belgium	3,990	1,565		5,555	19,085	24,640	16%	6%		23%	77%	100%
United Kingdom	6,535	130	1,070	7,735	14,155	21,890	30%	1%	5%	35%	65%	100%
Austria	2,680	1,775		4,460	11,445	15,905	17%	11%		28%	72%	100%
Italy	2,050	4,410	1,935	8,390	5,260	13,650	15%	32%	14%	61%	39%	100%
Greece	30	45	20	95	11,095	11,195	0%	0%	0%	1%	99%	100%
Denmark	1,035	545	120	1,700	2,030	3,730	28%	15%	3%	46%	54%	100%
Finland	545	775	240	1,555	1,555	3,110	18%	25%	8%	50%	50%	100%
Spain	230	285	10	525	2,075	2,605	9%	11%	0%	20%	80%	100%
Poland	85	140	250	475	1,960	2,435	3%	6%	10%	20%	80%	100%
Luxembourg	35	5		40	1,610	1,650	2%	0%		2%	98%	100%
Romania	145	85	0	230	1,395	1,625	9%	5%	0%	14%	86%	100%
Malta	35	1,235	160	1,435	155	1,590	2%	78%	10%	90%	10%	100%
Cyprus	80	10	15	105	1,230	1,335	6%	1%	1%	8%	92%	100%
Hungary	70	240	40	350	750	1,100	6%	22%	4%	32%	68%	100%
Ireland	65	30		95	840	935	7%	3%		10%	90%	100%
Czech Republic	50	125	5	175	560	735	7%	17%	1%	24%	76%	100%
Bulgaria	20	150		170	470	640	3%	23%		27%	73%	100%
Slovakia	10	100	80	190	250	440	2%	23%	18%	43%	57%	100%
Lithuania	15	40		55	335	390	4%	10%		14%	86%	100%
Portugal	15	85		100	130	230	7%	37%		43%	57%	100%
Slovenia	20	15		35	185	220	9%	7%		16%	84%	100%
Latvia	5	20		25	120	145	3%	14%		17%	83%	100%
Estonia	10	5	10	20	45	65	15%	8%	15%	31%	69%	100%
Netherlands												
<b>EU 27</b>	<b>37,335</b>	<b>27,960</b>	<b>6,415</b>	<b>71,700</b>	<b>188,715</b>	<b>260,425</b>	<b>14%</b>	<b>11%</b>	<b>2%</b>	<b>28%</b>	<b>72%</b>	<b>100%</b>
Switzerland	2,455	505	1,320	4,280	12,500	16,780	15%	3%	8%	26%	74%	100%
Norway	3,675	1,185	325	5,180	5,515	10,695	34%	11%	3%	48%	52%	100%
<b>EU+</b>	<b>43,465</b>	<b>29,650</b>	<b>8,060</b>	<b>81,160</b>	<b>206,730</b>	<b>287,900</b>	<b>15%</b>	<b>10%</b>	<b>3%</b>	<b>28%</b>	<b>72%</b>	<b>100%</b>

*Abbreviations:*

- Gen. Geneva Convention Status  
 Sub. Subsidiary Protection Status  
 Hum. Humanitarian Status  
 Pos (+) Number of Positive Decisions (Gen. + Sub. + Hum.)  
 Neg (-) Rejected  
 TOTAL Total number of decisions (Gen. + Sub. + Hum. + Neg (-))

*Data Source:*

- Eurostat (ER 862/2007), data extracted on 08.05.2013.

*Notes:*

- Humanitarian Status assessment is not part of the asylum procedure in several states, but a separate procedure. These states do not report data on humanitarian status granted.
- Numbers are rounded to closest 0 or 5
- Data are provisional
- Data exclude the Netherlands due to transition to a new information system
- In case of Estonia the humanitarian data concerns family members in asylum procedure only

**Annex C.7:** First Instance Decisions on Applications for international protection by Member States in 2011; sorted in decreasing order of the number of total number of decisions in 2011

Country	Number						Rates					
	Gen.	Sub.	Hum.	Pos (+)	Neg (-)	TOTAL	Gen.	Sub.	Hum.	Pos (+)	Neg (-)	TOTAL
France	3,340	1,275		4,615	37,600	42,220	8%	3%	0%	11%	89%	100%
Germany	7,100	665	1,910	9,675	30,690	40,365	18%	2%	5%	24%	76%	100%
Sweden	2,335	5,390	1,075	8,805	17,960	26,760	9%	20%	4%	33%	67%	100%
Italy	1,805	2,265	3,085	7,155	17,010	24,165	7%	9%	13%	30%	70%	100%
United Kingdom	5,515	125	1,600	7,240	15,735	22,970	24%	1%	7%	32%	69%	100%
Belgium	3,810	1,265		5,075	14,950	20,025	19%	6%		25%	75%	100%
Netherlands	710	4,065	2,050	6,830	8,965	15,790	4%	26%	13%	43%	57%	100%
Austria	2,480	1,605		4,085	9,185	13,270	19%	12%		31%	69%	100%
Greece	45	85	45	180	8,490	8,670	1%	1%	1%	2%	98%	100%
Denmark	735	385	190	1,315	2,280	3,595	20%	11%	5%	37%	63%	100%
Spain	335	630	20	990	2,410	3,400	10%	19%	1%	29%	71%	100%
Poland	155	155	170	475	2,740	3,215	5%	5%	5%	15%	85%	100%
Finland	160	715	190	1,065	1,580	2,645	6%	27%	7%	40%	60%	100%
Cyprus	55	0	15	70	2,560	2,630	2%	0%	1%	3%	97%	100%
Malta	70	690	125	885	720	1,605	4%	43%	8%	55%	45%	100%
Ireland	60	15		75	1,295	1,365	4%	1%		5%	95%	100%
Romania	70	10	0	75	1,000	1,080	6%	1%	0%	7%	93%	100%
Luxembourg	30	5		35	985	1,020	3%	0%		3%	97%	100%
Hungary	45	100	10	155	740	895	5%	11%	1%	17%	83%	100%
Czech Republic	105	200	10	320	365	685	15%	29%	1%	47%	53%	100%
Bulgaria	10	180		190	410	605	2%	30%		31%	68%	100%
Lithuania	5	15		25	285	305	2%	5%		8%	93%	100%
Slovenia	15	5		20	190	215	7%	2%		9%	88%	100%
Slovakia	5	80	35	115	100	215	2%	37%	16%	53%	47%	100%
Portugal	25	40		65	50	115	22%	35%		57%	43%	100%
Latvia	5	15		20	70	90	6%	17%		22%	78%	100%
Estonia	10	5	5	15	50	65	15%	8%	8%	23%	77%	100%
<b>EU 27</b>	<b>29,035</b>	<b>19,975</b>	<b>10,550</b>	<b>59,560</b>	<b>178,420</b>	<b>237,980</b>	<b>12%</b>	<b>8%</b>	<b>4%</b>	<b>25%</b>	<b>75%</b>	<b>100%</b>
Switzerland	3,675	975	1,790	6,445	7,850	14,295	26%	7%	13%	45%	55%	100%
Norway	2,810	765	440	4,015	5,575	9,590	29%	8%	5%	42%	58%	100%
<b>EU+</b>	<b>35,520</b>	<b>21,715</b>	<b>12,780</b>	<b>70,020</b>	<b>191,845</b>	<b>261,865</b>	<b>14%</b>	<b>8%</b>	<b>5%</b>	<b>27%</b>	<b>73%</b>	<b>100%</b>

*Abbreviations:*

- Gen. Geneva Convention Status
- Sub. Subsidiary Protection Status
- Hum. Humanitarian Status
- Pos (+) Number of Positive Decisions (Gen. + Sub. + Hum.)
- Neg (-) Rejected
- TOTAL Total number of decisions (Gen. + Sub. + Hum. + Neg (-))

*Data Source:*

- Eurostat (ER 862/2007), data extracted on 08.05.2013.

*Notes:*

- Humanitarian Status assessment is not part of the asylum procedure in several states, but a separate procedure. These states do not report data on humanitarian status granted.
- Numbers are rounded to closest 0 or 5
- Data are provisional

**Annex C.8:** Final Instance Decisions on Applications for international protection by Member States in 2012; sorted in decreasing order of the number of total number of decisions in 2012

Country	Number						Rates					
	Gen.	Sub.	Hum.	Pos (+)	Neg (-)	TOTAL	Gen.	Sub.	Hum.	Pos (+)	Neg (-)	TOTAL
France	4,290	1,390		5,680	30,575	36,255	12%	4%		16%	84%	100%
Germany	2,110	1,135	1,775	5,025	24,520	29,545	7%	4%	6%	17%	83%	100%
Sweden	725	1,450	715	2,895	13,085	15,975	5%	9%	4%	18%	82%	100%
United Kingdom	3,850	140	2,855	6,845	8,825	15,670	25%	1%	18%	44%	56%	100%
Belgium	295	30		325	12,195	12,520	2%	0%	0%	3%	97%	100%
Austria	1,240	300		1,540	6,415	7,955	16%	4%		19%	81%	100%
Romania	160	115	0	275	1,950	2,225	7%	5%	0%	12%	88%	100%
Greece	185	90	255	530	1,115	1,650	11%	5%	15%	32%	68%	100%
Cyprus	5	15	25	45	1,500	1,550	0%	1%	2%	3%	97%	100%
Denmark	230	180	0	410	1,085	1,495	15%	12%	0%	27%	73%	100%
Italy	45	270	470	790	445	1,235	4%	22%	38%	64%	36%	100%
Poland	20	25	25	70	900	970	2%	3%	3%	7%	93%	100%
Luxembourg	5	0		5	905	910	1%	0%		1%	99%	100%
Ireland	45			45	645	690	7%			7%	93%	100%
Czech Republic	0	25	0	25	415	440	0%	6%	0%	6%	94%	100%
Malta	10	5	5	20	415	435	2%	1%	1%	5%	95%	100%
Hungary	20	90	5	110	290	405	5%	22%	1%	27%	72%	100%
Finland	90	145	45	280	50	335	27%	43%	13%	84%	15%	100%
Lithuania	0	0		0	215	215	0%	0%		0%	100%	100%
Slovakia	5	5	0	10	65	70	7%	7%	0%	14%	93%	100%
Portugal	0	0		0	65	65	0%	0%		0%	100%	100%
Latvia	5	0		5	40	50	10%	0%		10%	80%	100%
Slovenia	0	0		0	35	35	0%	0%		0%	100%	100%
Bulgaria	0	20		25	0	25	0%	80%	0%	100%	0%	100%
Estonia	0	0	0	0	5	5	0%	0%	0%	0%	100%	100%
Spain	10	5	30	40								
Netherlands												
<b>EU 27</b>	<b>13,345</b>	<b>5,435</b>	<b>6,205</b>	<b>24,995</b>	<b>105,755</b>	<b>130,725</b>	<b>10%</b>	<b>4%</b>	<b>5%</b>	<b>19%</b>	<b>81%</b>	<b>100%</b>
Norway	285	290	365	945	7,225	8,170	3%	4%	4%	12%	88%	100%
Switzerland	50	30	220	300	3,605	3,905	1%	1%	6%	8%	92%	100%
<b>EU+</b>	<b>13,680</b>	<b>5,755</b>	<b>6,790</b>	<b>26,240</b>	<b>116,585</b>	<b>142,800</b>	<b>10%</b>	<b>4%</b>	<b>5%</b>	<b>18%</b>	<b>82%</b>	<b>100%</b>

**Abbreviations:**

- Gen. Geneva Convention Status  
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 Hum. Humanitarian Status  
 Pos (+) Number of Positive Decisions (Gen. + Sub. + Hum.)  
 Neg (-) Rejected  
 TOTAL Total number of decisions (Gen. + Sub. + Hum. + Neg (-))

**Data Source:**

- Eurostat (ER 862/2007), data extracted on 08.05.2013.

**Notes:**

- Humanitarian Status assessment is not part of the asylum procedure in several states, but a separate procedure. These states do not report data on humanitarian status granted.
- Numbers are rounded to closest 0 or 5
- Data are provisional
- Data exclude the Netherlands due to transition to a new information system

**Annex C.9:** Final Instance Decisions on Applications for international protection by Member States in 2011; sorted in decreasing order of the number of total number of decisions in 2011

Country	Number						Rates					
	Gen.	Sub.	Hum.	Pos (+)	Neg (-)	TOTAL	Gen.	Sub.	Hum.	Pos (+)	Neg (-)	TOTAL
France	4,930	1,195		6,125	28,470	34,595	14%	3%		18%	82%	100%
Germany	1,680	350	1,340	3,370	21,265	24,630	7%	1%	5%	14%	86%	100%
United Kingdom	4,015	175	3,065	7,255	10,435	17,690	23%	1%	17%	41%	59%	100%
Sweden	455	725	645	1,825	11,400	13,225	3%	5%	5%	14%	86%	100%
Belgium	425	50		475	10,365	10,845	4%	0%		4%	96%	100%
Austria	1,325	460		1,785	7,565	9,350	14%	5%		19%	81%	100%
Cyprus	20	5	45	65	3,110	3,175	1%	0%	1%	2%	98%	100%
Netherlands	120	1,140	290	1,555	1,205	2,760	4%	41%	11%	56%	44%	100%
Poland	5	55	40	100	2,175	2,270	0%	2%	2%	4%	96%	100%
Denmark	220	200	0	420	1,815	2,240	10%	9%	0%	19%	81%	100%
Italy	65	0	260	325	1,175	1,505	4%	0%	17%	22%	78%	100%
Ireland	75			75	1,250	1,325	6%	0%		6%	94%	100%
Romania	75	35	0	110	1,185	1,290	6%	3%	0%	9%	92%	100%
Czech Republic	115	260	10	385	365	755	15%	34%	1%	51%	48%	100%
Greece	195	80	135	410	215	625	31%	13%	22%	66%	34%	100%
Malta	0	0	0	0	505	505	0%	0%	0%	0%	100%	100%
Luxembourg	40	10		50	330	380	11%	3%		13%	87%	100%
Finland	20	215	40	275	65	340	6%	63%	12%	81%	19%	100%
Hungary	5	40	5	50	275	325	2%	12%	2%	15%	85%	100%
Slovenia	0	0		0	70	75	0%	0%		0%	93%	100%
Lithuania	0	0		0	30	30	0%	0%		0%	100%	100%
Bulgaria	0	15		15	5	20	0%	75%		75%	25%	100%
Latvia	5	5		10	10	20	25%	25%		50%	50%	100%
Portugal	0	0		0	20	20	0%	0%		0%	100%	100%
Estonia	0	0	0	0	10	10	0%	0%	0%	0%	100%	100%
Slovakia	0	5	0	5	0	5	0%	100%	0%	100%	0%	100%
Spain	0	20		20								
<b>EU 27</b>	<b>13,790</b>	<b>5,040</b>	<b>5,875</b>	<b>24,705</b>	<b>103,315</b>	<b>128,010</b>	<b>11%</b>	<b>4%</b>	<b>5%</b>	<b>19%</b>	<b>81%</b>	<b>100%</b>
Norway	290	85	335	710	7,965	8,675	3%	1%	4%	8%	92%	100%
Switzerland	35	30	290	355	3,270	3,625	1%	1%	8%	10%	90%	100%
<b>EU+</b>	<b>14,115</b>	<b>5,155</b>	<b>6,500</b>	<b>25,770</b>	<b>114,550</b>	<b>140,310</b>	<b>10%</b>	<b>4%</b>	<b>5%</b>	<b>18%</b>	<b>82%</b>	<b>100%</b>

*Abbreviations:*

- Gen. Geneva Convention Status  
 Sub. Subsidiary Protection Status  
 Hum. Humanitarian Status  
 Pos (+) Number of Positive Decisions (Gen. + Sub. + Hum.)  
 Neg (-) Rejected  
 TOTAL Total number of decisions (Gen. + Sub. + Hum. + Neg (-))

*Data Source:*

- Eurostat (ER 862/2007), data extracted on 08.05.2013.

*Notes:*

- Humanitarian Status assessment is not part of the asylum procedure in several states, but a separate procedure. These states do not report data on humanitarian status granted.
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