

Background Information for the LIBE Delegation on Migration and Asylum in Italy - April 2017

Justice, Freedom and Security

Directorate General for Internal Policies of the Union

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PE 583.136- March 2017

DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT FOR CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

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IN-DEPTH ANALYSIS

Abstract

Upon request by the LIBE Committee, this paper provides some information on the current situation of asylum and migration in Italy, focusing in particular on the “hotspots” and on the asylum procedures. The paper describes the applicable legislative framework, as recently amended, as well as its practical application.

ABOUT THE PUBLICATION

This research paper was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs and was commissioned, overseen and published by the Policy Department for Citizen's Rights and Constitutional Affairs.

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LINGUISTIC VERSIONS

Original: EN

Manuscript completed in March 2017
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1. INTRODUCTION

Migratory flows to Italy have long been high, with significant numbers of migrants and asylum seekers reaching its shores through the so-called "central Mediterranean route". According to Frontex [data](#), in 2016 181.126 persons arrived to Italy through this route, more than in 2015 (153.946) and 2014 (170.760). The top three nationalities in 2016 were Nigerians (over 37.000), Eritreans (over 20.000) and Guineans (over 13.000). As regards unaccompanied minors, national authorities report 25.846 unaccompanied children arriving to Italy by sea in 2016; the number more than doubled in comparison to 2015 (12.360 UAMs).¹

The journey, bringing migrants and asylum seekers from North African (currently, especially [Libyan](#)) shores to Italian ones, is particularly dangerous, as it often involves the use of old, unseaworthy fishing boats, or even small rubber dinghies, which are overloaded and thus prone to capsizing. Search and Rescue (SAR) operations are very often necessary to avoid loss of lives: according to the Italian coastguard, 1.424 SAR activities took place in 2016.² Yet, according to IOM data, the Central Mediterranean route remains [deadlier than ever](#): in 2016, [4.579](#) persons died while attempting to cross the sea through this route, and in the first weeks of 2017, already [481](#) deaths were recorded (data until 12 March 2017).³

Italy is, together with Greece, one of the countries directly affected by the Council decisions on relocation (Council Decisions [2015/1523](#) and [2015/1601](#) of September 2015); in this context, the hotspots approach has been implemented on the ground. Until [December 2016](#), the number of persons relocated from Italy was of 2.451 adults and 203 children; by 28 February 2017, a total of 3.936 persons had been relocated, while 8.804 places have been pledged, in total, by other Member States out of the 34.953 pledges foreseen by the Council decision.⁴

¹ See Ministero dell'Interno, at <http://www.interno.gov.it/it/notizie/25846-i-minori-stranieri-non-accompagnati-giunti-italia-mare-nel-2016>.

² See Italian Coastguard, [Search and Rescue \(S.A.R.\) activity in the central Mediterranean Sea](#) from January 1st to December 31st, 2016.

³ IOM, [Missing migrants project](#).

⁴ See the 2 March 2017 [tenth Commission report](#) on relocation and resettlement.

2. THE LEGAL FRAMEWORK

2.1. Search and rescue

Under international law, a shipmaster is obliged to provide assistance to anyone in distress at sea.⁵ This obligation is enshrined, for instance, in the 1982 United Nations Convention on the Law of the Sea ([UNCLOS](#)), to which all EU Member States and the EU itself are [parties](#); Italy ratified the convention in 1995. According to its Article 98(1), every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers, to render assistance to any person found at sea in danger of being lost, and to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance. Moreover, in accordance with its Article 98(2), every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea. Italy is also a State party of the amended 1974 International Convention for the Safety of Life at Sea ([SOLAS](#)), which it [ratified](#) in 1980; the Convention also obliges the master of a ship "in a position to provide assistance" and "on receiving information from any source that persons are in distress at sea....to proceed with all speed to their assistance".

In order to ensure that their SAR obligations are met in practice, coastal Governments are required to set up Rescue Coordination Centres to coordinate SAR activities taking place in their SAR areas, in accordance with both the 1974 SOLAS Convention and the 1979 International Convention on Maritime Search and Rescue (SAR Convention), which Italy ratified in [1989](#). Article 3 of Presidential Decree [662/1994](#) established the Italian Maritime Rescue Coordination Center (MRCC) at the *Comando generale del Corpo delle capitanerie di porto* (the Coast Guard Headquarters).

2.2. The hotspots

The [European Agenda on Migration](#), adopted in May 2015, first announced that the Commission would set up a new 'Hotspot' approach, "where the European Asylum Support Office, Frontex and Europol will work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants." The 25-26 June [European Council](#) endorsed the idea of the "hotspots", as a way to determine "those who need international protection and those who do not"; at the same meeting, it further endorsed the idea of a relocation scheme to alleviate the migratory pressure on frontline Member States.

EU legislation does not deal in detail with the "hotspots". The general concept was first clarified in an ["explanatory note"](#) sent by Commissioner Avramopoulos to Justice and Home Affairs Ministers on 15 July 2015, then further restated in an [annex](#) to the 23 September 2015 Commission Communication on managing the refugee crisis. Subsequently, a definition of a 'hotspot area' has been included in the EU Border and Coast Guard Regulation ([2016/1624](#)), in Article 2(10).⁶ The Regulation also clarifies that the "hotspot approach" is triggered by a request by a Member State facing disproportionate migratory challenges at particular hotspot areas of its external borders; the request is subsequently assessed and can lead to the deployment of a 'migration management support team' composed of experts deployed from Member States by Frontex and EASO, and experts from Frontex, Europol or other relevant Union agencies. The [proposal](#) for a new EASO

⁵ For an overview of the legal principles and established practices in relation to SAR, see International Maritime Organisation, International Chamber of Shipping and UNHCR, "[Rescue at Sea](#)" guide.

⁶ 'Hotspot area' means an area in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders.

Regulation would also include in the latter reference to the hotspots and to the role of the future asylum agency within them.

National legislation also does not regulate the hotspots in detail. Currently, there exist specific "[standard operating procedures](#)" (SOPs), drafted by the Ministry for Home Affairs, which clarify the applicable procedures in the hotspots; however, the SOPs do not have a clear basis in the law. Numerous institutional actors (including the former Minister for Home Affairs and two parliamentary Committees) have stressed the need for a specific legal basis for the hotspots;⁷ such a basis seems to be essential, in particular, since the SOPs envisage that migrants cannot leave the hotspot until after having been fingerprinted (p. 8). Article 13 of the Italian [Constitution](#) provides that restrictions of personal liberty may only be applied by reasoned order of the judiciary, in such cases and manner as provided by law; only in exceptional circumstances, under conditions of necessity and urgency defined by the law, provisional measures may be taken by the police, but they must be referred to the judiciary within 48 hours for validation (within the subsequent 48 hours). The importance of a legal basis has also been stressed by the December 2016 judgment of the Grand Chamber of the ECtHR in the [Khlaifia](#) case: according to the Strasbourg Court, retention of migrants in first reception centres (such as Lampedusa) violates Art. 5 ECHR, and is to be considered arbitrary due to the lack of a legal basis.⁸ The issue seems to have been only partly clarified by the recent inclusion of a short mention of the hotspots (as "*punti di crisi*") in [law decree 13/2017](#) (Art. 17).⁹ The decree, which was adopted by the Government on 17 February 2017 and needs to be converted into law by Parliament within 60 days from publication (in accordance with Art. 77 of the Constitution), is the first national piece of legislation to refer to the hotspots. While the new decree does not include specific provisions as regards the rules applicable in the hotspots, and in particular whether migrants might be retained there against their will, it does provide for a legal basis for detention of migrants who refuse fingerprinting: a repeated refusal to be fingerprinted is to be considered as a sign of a risk of absconding, allowing for detention - not in the hotspots, but in the pre-return centres, in accordance with the procedures applicable there (including the need for a detention order validated by a justice of the peace). Thus, the problem of the legal basis upon which retention in the hotspots can take place, as well as of its duration and modalities, remains open.¹⁰

The [standard operating procedures](#) clarify the steps that must be taken from the moment when migrants are disembarked on Italian soil until the moment when they exit the hotspot. In particular, these steps include:

- Search and rescue and disembarkation operations;
- Initial medical screening (on board of the ship that rescued the migrants, or upon disembarkation): to identify persons who require specific medical care or are already obviously vulnerable, as well as contagious diseases;
- Arrival in the hotspots: migrants undergo a security check and receive information sheets on the national laws on migration and asylum and on how to seek asylum;

⁷ See e.g. the Reports adopted by the Parliamentary Inquiry Committee on the System for the reception, identification and return of migrants ([Inquiry Committee Report](#) and [Hotspot inquiry report](#)) and by the [Senate extraordinary committee](#) on human rights; the report of the National [Ombudsman](#) for the rights of persons deprived of their liberty; the hearings at the Inquiry Committee of the former [Chief of Police](#) and of the former [Minister for Home Affairs](#); and the Report of the fact-finding mission to Italy by the CoE's [Special Representative on migration and refugees](#).

⁸ The issue of a possible violation of Art. 5 ECHR due to the lack of a legal basis for *de facto* detention in the hotspots has also been raised by the CoE's [Special Representative on migration and refugees](#).

⁹ According to the recent [Opinion](#) of the Council for the Judiciary (CSM), the new provision of Art. 17 is not sufficiently precise to satisfy the requirements of Art. 5, ECHR as regards retention in the hotspots. The recently adopted joint position of [ASGI and Magistratura Democratica](#) reached a similar conclusion.

¹⁰ See national Ombudsman for the rights of persons deprived of their liberty, [Relazione al Parlamento](#) 2017, at 105-106; CSM [Opinion](#), at 13.

- Pre-identification: with photo and identity bracelets (with an identification number), followed by the filling up of an information sheet (so-called *foglio notizie*). The SOPs state clearly that pre-identification, including as regards nationality, does not imply the definition of the legal status of the persons, as they may file an asylum application even at a later stage;
- International organisations (UNHCR and IOM) provide third-country nationals with information on the laws applicable to them;
- Identification, fingerprinting of migrants who are at least 14 years of age, followed by checks of the data in the existing databases;
- Reception: accommodation within the hotspot and medical examination;
- In-depth information on the procedures for relocation and to apply for asylum is provided by EASO, international organisations, and national authorities;
- Frontex debriefing.

The practicalities of how these different steps actually take place will be examined below.

2.3. The initial identification procedure: fingerprinting and pre-identification

The hotspots are meant as a place where incoming migrants are identified, registered and fingerprinted, to then be channelled into the appropriate procedures depending on their needs. Identification and fingerprinting - to be carried out in accordance with the Eurodac Regulation ([603/2013](#), currently under [recast](#)) - have long been an issue in Italy. Indeed, in December 2015 the European Commission [launched](#) infringement proceedings against Italy for failure to implement the Eurodac Regulation. At about the same time, the Commission¹¹ called on the Italian authorities to accelerate further efforts, also at legislative level, “in order to provide a more solid legal framework to perform hotspot activities and in particular to allow the use of force for fingerprinting and to include provisions on longer term retention for those migrants that resist fingerprinting” so as to quickly achieve “the target of a 100% fingerprinting rate.” The infringement proceedings were however [closed](#) one year after their opening, given the “significant improvements in the fingerprinting activities” in 2016.

National legislation provides for an obligation to fingerprint foreigners who cannot be identified,¹² but it does not envisage the possibility of forced fingerprinting. Such a possibility is provided in the [Standard Operating Procedures](#), as a measure of last resort; however, the SOPs do not have legislative rank.¹³ It is widely acknowledged that the use of force to impose fingerprinting would require a clearer legal basis, as it might be considered as a restriction upon personal liberty, to which Article 13 of the Constitution applies;¹⁴ however, some recall a 1962 [judgment](#) of the Constitutional Court, which seems to imply that a legal basis is not an absolute requirement, at least when the use of force is minimal. The current situation of legal uncertainty has sometimes led to application problems on the ground;¹⁵ currently, however, the fingerprinting rate in Italy is reported to have increased and is now between 80 and 95%.¹⁶

¹¹ See the 15 December 2015 Commission Communication [Progress Report on the Implementation of the hotspots in Italy](#) COM(2015) 679.

¹² *Testo Unico Immigrazione* (Immigration Law, legislative decree 286/1998), Art. 6(4), according to which foreigners whose identity is uncertain are fingerprinted; the same obligation is now also enshrined in Article 10-ter of the Immigration Law, as amended by Law Decree 13/2017.

¹³ In case of a refusal to be fingerprinted, national authorities should begin an information process, with the participation of cultural mediators, to persuade the person to be fingerprinted - and, “where necessary, the use of force proportionate to overcoming objection, with full respect for the physical integrity and dignity of the person, is appropriate.” A *Circolare* by the Ministry of Home Affairs dated 25 September 2014 is mentioned as authorising the use of force for fingerprinting ([SOPs](#), p. 15).

¹⁴ E.g. [Senate report](#), p. 22; [Inquiry Committee Report](#), p. 39-40; for a deeper analysis, see [ASGI](#).

¹⁵ Firstly, since the Constitutional Court judgment 30/1962 is rather old, even those referring to it agree that a clearer legal basis for the use of force is still needed ([hearing](#) of prefect Pinto, Inquiry Committee, October 2015). Moreover, several Police [Trade Unions](#) have complained about this situation, since the use of force - not being

2.4. Relocation

Italy is, together with Greece, one of the countries benefitting from relocation procedures, in accordance with Council Decisions [2015/1601](#) of 22 September 2015 and [2015/1523](#) of 14 September 2015. As clarified in the [tenth Commission report](#), although there has been a progressive increase in the pace of relocations - as of 28 February, 13.546 persons had been relocated: 9.610 from Greece and 3.936 from Italy¹⁷ - this represents less than 14% of the legal obligation so far allocated by the Council.

According to the Council Decisions, persons eligible for relocation include applicants who lodged an application for international protection in Italy or in Greece and for whom those States would have been responsible pursuant to the Dublin Regulation; moreover, eligible applicants must belong to a nationality for which the average recognition rate, according to the latest available quarterly average Eurostat data, is 75 % or higher. According to the ninth Commission Report on relocation and resettlement, currently the nationalities eligible for relocation are Burundi, Eritrea, Maldives, Oman, Qatar, Syria and Yemen.¹⁸

As regards the relocation procedure, it requires a high level of cooperation between the national authorities of the Member States affected. Member States are requested to indicate, at least every 3 months, the number of applicants who can be relocated swiftly to their territory. Based on this information, Italy and Greece, with the assistance of EASO and of Member States' liaison officers, identify the individual applicants who could be relocated and submit all relevant information to the contact points. According to common Article 5 of the two Relocation Decisions, the relocation procedure shall be completed as swiftly as possible - normally, within 2 months from the moment when the Member State of relocation gives its availability, which can be extended for a maximum of another 6 weeks. Where relocation is not completed within these time limits, Italy and Greece remain responsible for examining the application for international protection, unless they can agree with the Member State of relocation to a reasonable extension of the time limit.¹⁹

Both Council Decisions included, in their Article 8, a provision for the adoption of a Roadmap, on the part of Italy and Greece, including adequate measures in the area of asylum, first reception and return, and to ensure appropriate implementation of the Decisions. The Italian [Roadmap](#) describes the main elements of the relocation procedures, by identifying possible hotspots and regional hubs, where applicants for international protection would be brought upon exit from the hotspot. According to a subsequent [Circular](#) of the Ministry for Home Affairs,²⁰ persons eligible for relocation are to be transferred from the hotspots into dedicated regional hubs, where they should remain until the end of the relocation procedure (which, as seen above, cannot last longer than 3 and a half months). According to the [EASO Operating Plan to Italy](#), there are currently four regional hubs in Italy: Villa Sikania (Agrigento); Mineo (Catania); Bari and Crotona. Moreover, Castelnuovo di Porto (a former CARA, now first reception centre) is reported to have been frequently

allowed by law - might be deemed criminal and lead to the involved policeman being convicted of a violent crime. The FRA also recalled the need to provide for the use of force for fingerprinting by law, not mere internal instructions: see [Fundamental rights implications](#) of the obligation to provide fingerprints for Eurodac, May 2015. The usefulness of fingerprints obtained by force has also been questioned by the Chief of the *Polizia Scientifica* (forensic police), during a [hearing](#) at the Inquiry Committee, as they would tend to be of insufficient quality.

¹⁶ See [The implementation of the hotspots in Italy and Greece](#), p. 23; [Senate report](#), p. 29; [Report of the fact-finding mission to Italy](#) of the CoE's Special Representative on migration and refugees.

¹⁷ According to [national data](#) of the Ministry for Home Affairs, by 20 March 2017, 4.438 persons had been relocated from Italy.

¹⁸ See the Ninth report, [COM\(2017\) 74](#), at p. 2 (footnote 5). The Report also stresses that, while some nationalities are no longer eligible for relocation (such as for instance Iraq), this does not affect persons already identified and pre-registered.

¹⁹ Much has already been written on the relocation decisions - the summary in the text only concerns a few issues that are of particular relevance for the delegation to Italy. A more in-depth analysis can be found in E. Guild, C. Costello, V. Moreno-Lax, [Study](#) on the implementation of the Council Decisions (European Parliament, 2017).

²⁰ [Circolare](#) Ministero dell'Interno n. 14106, 6 October 2015.

used to host persons eligible for relocation, given its position of proximity to Rome and its international airport.²¹

2.5. Reception of applicants for international protection

The law governing reception conditions and asylum procedures has recently been modified. The new legislative decree [142/2015](#), which was adopted to implement Directives [2013/33/EU](#) and [2013/32/EU](#) (the reception conditions and asylum procedures directives, both currently under recast²²), sets up a reception system which is divided into two stages. The **first stage of reception** (Article 9 of the Legislative Decree) takes place in Governmental centres, which may be managed by local authorities or by public or private entities, in accordance with public procurement laws. During their stay in such centres, asylum seekers are identified (in case they have not yet been), their application for international protection is registered, and its examination begins; moreover, their health conditions are examined, in particular with a view to assess whether they are vulnerable persons. The old reception centres for asylum seekers (CARA) have all been automatically converted into first reception centres.

Once all these steps have taken place, the applicant may be moved to the **second-stage reception centres**, the so-called SPRAR (*Sistema di protezione per richiedenti asilo e rifugiati*, Article 14): however, applicants are only moved if they file a specific request to this aim, if they do not have sufficient means of subsistence, and depending on the availability of a place in the SPRAR system; priority is given to applicants with special reception needs (Art. 9.5).²³ The decision whether to move an applicant from the first to the second stage of the reception system is taken by the prefect (local representative of the Government). The SPRAR system was set up, and is still regulated, by law [39/1990](#); municipalities can apply for funds in order to set up reception and assistance projects, which are financed for the most part by the State. Thus, the setting up of a SPRAR service depends on the willingness of a municipality to participate in the system, preparing a project according to given guidelines. The most recent guidelines as to the services that each SPRAR project must offer have been published in August 2016 (by [Decree](#) of the Minister for Home Affairs) and include cultural and linguistic mediation, accommodation, access to local services, language education and access to schools for minors, professional training, legal advice, healthcare, as well as assistance in accessing the job market, housing and social integration.

Whenever the capacity of the ordinary system is exhausted, legislative decree 142/2015 also allows for the setting up of **extraordinary reception centres** (so called CAS, or *centri di accoglienza straordinaria*) (Art. 11). The prefect may decide to place some asylum seekers in temporary reception structures, after consulting with the Civil Liberties Department of the Ministry for Home Affairs and assessing the health condition of the applicant. Such temporary structures are identified by the prefect after consultation with the municipality where they are located; applicants should remain there for the shortest possible time, and they are to be brought to the closest Police Office to be identified and have their application for international protection registered. Currently, according to Ministry of Home Affairs data,²⁴ around 80% of all asylum seekers are accommodated in these exceptional, temporary structures (more details below).

²¹ ECRE et al., [The implementation of the hotspots in Italy and Greece](#), December 2016.

²² Commission proposals [COM\(2016\)0465](#) and [COM\(2016\)0467](#).

²³ Under Article 17, legislative decree [142/2015](#), applicants with special protection needs (sometimes referred to as vulnerable persons) include in particular children, unaccompanied children, disabled persons, the elderly, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses or mental disorders, persons who have been ascertained to have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence or violence related to their sexual orientation or gender identity, and victims of genital mutilation.

²⁴ Ministero dell'Interno, Dipartimento Libertà Civili e Immigrazione, [Cruscotto statistico febbraio 2017](#).

In recent years, the Italian Ministry for Home Affairs has attempted to reach agreements with the **Regions and municipalities** in order to ensure a better distribution of migrants across the national territory, so as to avoid concentrating the reception centres in the Regions closer to the borders. Already in July [2014](#), a distribution plan was agreed within the “*Conferenza Unificata Stato-Regioni ed Enti Locali*” (the body within which State, Regions and local authorities meet and find agreements); moreover, according to Art. 16 of the 2015 legislative decree, a national reception plan is adopted yearly by the “*Tavolo di coordinamento nazionale*” (national coordination forum).²⁵ As emerges from the [2016 reception plan](#) and as confirmed by the Minister for Home Affairs during a [hearing](#) at the parliamentary Inquiry Committee in February 2017, the idea behind this planning is to approach immigration influxes in a more structured manner, abandoning the “emergency” approach which was typical of the past and ensuring a better distribution of asylum seekers across the national territory, reducing the need for big reception centres accommodating thousands of persons. While progress has been made towards this objective,²⁶ this is a long-term process, requiring time. In December 2016, a new agreement has been concluded between the Minister for Home Affairs and the Association of Italian Municipalities ([ANCI](#)); accordingly, the general rule should be to accommodate around 2.5 migrants per 1000 inhabitants, with some corrective mechanisms. Moreover, and confirming a [policy](#) that had already been initiated by the Ministry for Home Affairs since October 2016, municipalities that participate in the SPRAR system will not be asked to accommodate additional numbers of asylum seekers (through the identification of CAS centres there), and will be partly exempted from the current freeze on hiring new staff that applies to all local entities.

2.6. Asylum procedures - most recent changes

Asylum procedures are regulated mainly by legislative decree [25/2008](#), as amended; recently, changes have been introduced by law decree 13/2017. Applications for asylum are filed with the police and are then examined and decided by one among 20 **territorial commissions**, which may be supplemented, in case of exceptionally high arrivals, by an additional 30 sub-sections. Members of the territorial commissions are appointed by the Minister for Home Affairs; each commission is composed of an officer of the prefecture, a police officer, a representative of a local authority, and a UNHCR representative. The **national commission** for the right to asylum is competent to take decisions to withdraw international protection, as well as to coordinate the work of the territorial commissions, train their members, and gather country of origin information.²⁷

Once the application for asylum has been filed, the applicant is allowed to remain in Italy until the territorial commission takes a decision. Normally, the procedure involves a personal interview with the applicant, which is conducted by an individual member of the commission; the interview is not necessary whenever the commission believes that it has sufficient evidence and information to grant the person asylum or subsidiary protection. The recent law decree 13/2017 has introduced the rule that the interview is to be video-recorded. The applicant may be accompanied by a lawyer, but at this stage, s/he receives no legal aid and must cover the expenses for himself. Territorial commissions must give priority, in the examination of the applications, to those filed by vulnerable persons or

²⁵ This body is to be composed of representatives of the Ministry for Home Affairs, for Integration, and for Employment and Social Policies, as well as of representatives of the regions and local authorities; in adopting the plan, it additionally involves a representative of the Ministry for Equal Opportunities, of UNHCR, of the national commission for the right to asylum, and possibly others. The decision on the criteria to be followed in the distribution of asylum seekers across the national territory is to be taken jointly with the “*Conferenza Unificata*”.

²⁶ See the [2016 reception plan](#), page 13.

²⁷ Members of the national commission are appointed by the Prime Minister, upon a joint proposal by the Ministers for Home Affairs and for Foreign Affairs; its president is a prefect and its other members include high-level administrative and diplomatic personnel. For the composition, see its [website](#).

persons detained in a pre-return detention centre,²⁸ and to those that are manifestly well-founded. At the end of the procedure, the person may be granted refugee status, subsidiary protection, or national humanitarian protection; in the latter case, the commission sends the documents to the head of the police, who is competent to issue the relevant permit.

If the person concerned wishes to **challenge a negative decision** (including one granting him subsidiary protection instead of asylum), s/he must file the challenge in front of the ordinary tribunals; the recent law decree [13/2017](#) has created 14 specialised sections which are competent, i.a., for such matters. The challenge normally has automatic suspensive effect. As regards the procedure, the recent law decree 13/2017 has amended it so that it is normally not necessary for the judge to hear the applicant in person - such a hearing will only take place if the judge still considers it necessary after having seen the video-recording of the interview carried out by a member of the territorial commission. According to the recent [Opinion](#) of the Council for the Judiciary (CSM),²⁹ the lack of a provision granting the applicant the right to appear in front of the judge could lead to a violation of constitutional principles, in particular the principles of adversarial proceedings and *audi et alteram partem* (*contraddittorio*), as well as of Art. 6, ECHR.³⁰ Until January 2017, the decision taken by the court of first instance could be **appealed**; however, the recent law decree [13/2017](#) eliminates this possibility. Thus, the only possibility to challenge the first instance decision is to do so in front of the Court of Cassation, which only deals with mistakes of law, not with facts. The [CSM](#) has criticized this change, since, in national procedural law, the right to appeal is normally granted even for disputes that are much less relevant than the ones concerning asylum. Concerns have also been raised that the Court of Cassation will be faced with the same problems that currently affect the Courts of Appeal and which the reform aims to solve, with a high risk of backlogs forming at the highest national Court.

An alternative avenue for persons seeking asylum to obtain international protection in Italy has been created through the issuance of **humanitarian visas** having limited territorial validity, in application of Art. 25 of the Visa Code. A Memorandum of Understanding was signed, in December 2015, by the Ministry for Foreign Affairs, the Ministry for Home Affairs, and several Christian communities active in Italy (Chiese Evangeliche in Italia, Tavola Valdese, Comunità Sant'Egidio), and was followed in January 2017 by another [MoU](#) signed between the same Ministries, the Conferenza Episcopale Italiana and Comunità Sant'Egidio. Under these Memoranda, which provide for the issuance of 1.500 humanitarian visas, almost [700 persons](#) have already been brought to safety to Italy; the project is completely self-funded by the Churches and communities involved.³¹

2.7. Unaccompanied children and victims of trafficking

Specific provisions exist as regards unaccompanied minors. Firstly, under the Italian Immigration Law ([Art. 19](#)), the general rule is that minors may not be expelled, unless they are to follow an expelled parent or foster parent, or for reasons of public order and national security - therefore, unaccompanied children are protected from expulsion and entitled to a residence permit "*per minore età*". According to Article 19 of legislative decree [142/2015](#), unaccompanied minors are to be initially accommodated into special, separate accommodation centres, set up by the Government, where they should stay no longer than

²⁸ For more information, see below, in 2.7.

²⁹ Council for the Judiciary (*Consiglio Superiore della Magistratura*), [Opinion](#) issued upon request of the Minister for Justice, 15 March 2017.

³⁰ The change has also been criticized by the [President](#) of the Court of Cassation, as well as by the Association for Juridical Studies on Immigration (ASGI) and by Magistratura Democratica (an association of judges), who argue that it reduces the applicant's fair trial guarantees. The [ASGI-MD](#) paper argues that this change violates the guarantees foreseen in Art. 46 of the Asylum Procedures Directive (2013/32/UE).

³¹ Also see the 2017 [Report](#) of the National Ombudsman for the rights of persons deprived of their liberty, p. 96.

60 days; subsequently, they are to be granted access to the SPRAR system, regardless of whether they have applied for asylum or not. However, whenever accommodation in these structures is not possible, reception must be ensured by the public authorities in the municipality where the children are. Additionally, a change to the law adopted in 2016 allows for accommodation of children aged 14 or older in special temporary structures, to be identified by prefects, whenever the numbers of unaccompanied children arriving are particularly high.³² On 29 March 2017, Parliament approved a new law on unaccompanied minors. The law will, i.a., reduce the length of stay in first reception centres, set down a clear age assessment procedure, improve the rules on guardianship³³ and facilitate reception in foster families, and improve access to healthcare and schooling.

Age assessment procedures are not yet clearly set out by law, although the new law on unaccompanied minors, which Parliament just approved and which should soon be published and enter into force, will solve this issue. According to the hotspots SOPs, in case of doubts as to the age of a person, a holistic approach should be adopted, limiting medical examinations as a last resort; moreover, if doubts remain, the person should be treated as a child. A similar provision is also included in Art. 19 of legislative decree [25/2008](#), which deals with the procedures to apply for asylum. A recent Decree of the Prime Minister (D.P.C.M. [234/2016](#)), which supplements the law implementing Directive 2011/36/UE, has clarified the age assessment procedures applicable to unaccompanied children who are trafficking victims; the Decree recalls the importance of the assessment of the best interests of the child, and provides for a progressive approach, with medical examination being used as a last resort, only upon judicial authorisation, and with an indication of the margin of error. The national Ombudsman for the rights of persons deprived of their liberty,³⁴ several international organisations and civil society groups recently [called](#) for an extension by analogy of the decree to all unaccompanied children whose age is in doubt, regardless of whether they are trafficking victims. As mentioned above, the new law on UAMs sets out a clear age assessment procedure applicable to all unaccompanied children - their age will be ascertained following a step-by-step approach, with medical examination used only as a last resort, upon a decision to be taken by the prosecutor at the Tribunal for minors; the medical report must clearly indicate the margin of error.³⁵

As regards **trafficking victims**, those who are identified as such are entitled to obtain a special social protection residence permit (Art. [18](#), Immigration Law), which is issued specifically to trafficked persons so as to protect them from the influence of their traffickers, accommodating them in special shelters (in theory, regardless of whether they accept to act as witnesses against their traffickers). According to the latest [report](#) adopted by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), by the end of August 2016, a total of 494 Article 18 permits had been issued, 139 of which to Nigerian women. In addition, trafficking victims may also apply for asylum. In February 2016, the first [Action plan against trafficking](#) and exploitation was adopted.

2.8. Return procedures

In accordance with the principles of the Return Directive ([2008/115/EC](#)), adult third-country nationals who have no right to remain on the national territory under any ground are to be returned to their countries of origin or transit, or to other third countries accepting them. The applicable return procedures are set out in the Italian [Immigration](#)

³² The change was criticised by [ASGI](#), according to which accommodation in temporary structures is not in the best interests of the child, as required under the UN Convention on the Rights of the Child.

³³ In particular, by setting up registries listing the persons who are willing to act as voluntary guardians for unaccompanied children; such persons must have been selected and trained by the regional or national Ombudsperson for children. The [text](#) of the law (with the latest amendments introduced by the Senate) is available on the website of the Chamber. By the time of writing, the law had not yet been published.

³⁴ See the March 2017 [Report](#), p. 89.

³⁵ See [Article 5](#) of the new law, as approved by Parliament. The law will enter into force after publication.

[Law](#); the law is rather complex and has been amended numerous times to comply with EU law and the case-law of the CJEU. The most relevant return procedures are the following. Firstly, in accordance with Art. 10, the border police must refuse entry to persons who arrive at the border without having the requirements to be admitted into Italy; orders refusing entry (*ordine di respingimento*) are also adopted by the local head of the police (*questore*) as regards persons who entered the national territory avoiding border checks, but who were apprehended soon thereafter, or who could not be refused entry due to the need to give them humanitarian assistance. Alternatively, a return order (*ordine di espulsione*) may be issued by the prefect as regards persons who could not be refused entry, or whose visa or residence permit has expired or was not requested (Art. 13, para. 2). The order is forcibly executed in a series of circumstances (e.g. risk of absconding), after validation by a justice of the peace; otherwise, the third country national can apply to the prefect to be granted a period for voluntary departure. Whenever the return order cannot be forcibly executed in practice, the *questore* should order pre-return detention (in a CIE, Centre for Identification and Expulsion - renamed CPR, “*Centro di permanenza per i rimpatri*” since the entry into force of law decree 13/2017); detention must be confirmed by a justice of the peace within 4 days. Pre-return detention should last no longer than 90 days. If detention is not possible (for instance, due to a lack of capacity in the CPRs), the *questore* orders the person to leave the national territory within seven days (Art. 14, para. 5 *bis*) - this seemingly residual option is actually widely used in practice. Several other forms of expulsion exist (in particular, in connection with criminal investigations or convictions or with reasons of national security).

As regards existing readmission agreements and other international cooperation instruments aimed at facilitating returns, according to the governmental [portal on integration](#), treaties were concluded in the 90s with Slovenia, FYROM, Latvia, Romania, Lithuania, Croatia, Austria, Albania, Tunisia, Bulgaria, Hungary, Estonia, France, the Slovak Republic, and in the early 2000s with Switzerland, Greece, Spain, Sri Lanka, Malta, Cyprus, Moldavia, the Serb and Montenegro Republic, the Philippines, and Algeria. According to the [Senate report](#), in recent years readmission agreements have also been formally concluded with Egypt (2007), Tunisia (2011), Nigeria and Morocco. The texts of several of these agreements, as well as of a few others (in particular, with Bosnia Herzegovina, Peru, the Russian Federation and Kosovo), are available from the website of the ministry for Foreign Affairs.³⁶ In addition, in August 2016 a police cooperation agreement in the area of returns was concluded between the Heads of the Italian and of the Sudanese Police.³⁷ According to the [Senate report](#) (p. 14), the Public Security Department of the Ministry for Home Affairs also launched forms of operational cooperation with the competent authorities of the [Gambia](#), Ivory Coast, [Ghana](#), [Senegal](#), Bangladesh and Pakistan. Police cooperation agreements are also reported to have been concluded with [Niger](#) and [Egypt](#).³⁸ More recently, an agreement concerning cooperation in the fight against irregular immigration, smuggling and border security has been concluded with the Prime Minister of Libya.³⁹ The agreement, which according to the [press](#) has been provisionally suspended by the Court of Appeals in Tripoli (Libya) in March 2017.

³⁶ The text of the treaties is available from the website of the Ministry for Foreign Affairs, using “riammissione” as a keyword: http://ittra.esteri.it/Ricerca_Documenti/wfrmRicerca_Documenti.aspx.

³⁷ As widely reported in the [Senate report](#), p. 27-28, and in the news: see e.g. [Avvenire](#); [ASGI](#).

³⁸ Information taken from the website of the Italian police. Also see the agreements cited in the EMN Italy [study](#), Practical responses to irregular migration: the Italian case, 2012.

³⁹ The text of the agreement is available [online](#) and can be downloaded from the website of the Ministry for Foreign Affairs.

3. ENFORCEMENT AND PRACTICAL ASPECTS

3.1. Search and rescue activities

Deadly incidents along the Central Mediterranean route are a frequent, tragic occurrence. An episode which gained much attention in the media, prompting political reactions, was the 3 October 2013 shipwreck off the coast of Lampedusa (Sicily), which cost the lives of over 350 people. Soon afterwards, the EU set up the so-called "[Task Force Mediterranean](#)", while Italy launched its search and rescue mission called "[Mare Nostrum](#)". The mission operated from 18 October 2013 to 31 October 2014 (when it was replaced by the EU operation Triton) and served to save 156.362 persons and arrest 366 suspect smugglers.⁴⁰

Currently, several actors patrol the Central Mediterranean route, ensuring prompt search and rescue when needed as well as safety and security of transports. The Italian Navy patrols the Mediterranean with its "[Mare Sicuro](#)" Operation; Frontex Joint Operation [Triton](#) supports Italy in ensuring border controls and meeting its search and rescue obligations; EUNAVFOR Med - [Operation Sophia](#) aims to disrupt the business model of smugglers networks in the Central Mediterranean and is also frequently involved in SAR; and the Italian Coast Guard carries out its patrolling and search and rescue duties as well as contributing to the coordination of SAR activities by other actors through the Italian Maritime Rescue Coordination Center. Civil society also reacted to the loss of lives at sea, deploying private boats to carry out search and rescue operations.⁴¹ According to the [Italian coastguard](#), in 2016 1.424 SAR activities took place with the coordination of the MRCC, saving the lives of 178.415 persons: 36.084 persons were rescued by the Italian Navy, 35.875 by the coastguard, 22.885 by EUNAVFOR Med, 13.616 by Frontex non-Italian vessels, 46.796 by NGO ships, 13.888 by merchant ships, 1.696 by the financial police, and 7.404 by foreign military vessels.

Migrants rescued at sea are subsequently transferred to a safe port, in accordance with the instructions of the MRCC, and disembarked there.⁴² An important coordination role, in addition to that of the MRCC, is played by the International Coordination Centre, set up in Pratica di Mare (near Rome), at one of the headquarters of the Italian financial police (*Guardia di Finanza*). The ICC was set up in 2011, in particular, to organise and manage joint operations promoted by Frontex in the waters around Italy.⁴³

3.2. Disembarkation and identification: the hotspots

In 2015, the majority of disembarkation operations (around 70% of the total) took place in a Sicilian harbour: 15% took place in Augusta, followed by Lampedusa (14.2%) and, after Reggio Calabria (at 11.4%), by Pozzallo (11.3%); Palermo, Catania, Messina and Trapani made for between 5 and 7% each.⁴⁴ Data for 2016 confirms this trend.⁴⁵ Most disembarkations do not take place in a hotspot: indeed, in 2016, out of a total of around 180.000 migrants who arrived to Italy irregularly by sea, less than one third (52.337) disembarked in one of the four existing hotspots (Lampedusa, Pozzallo, Trapani and Taranto).⁴⁶ Migrants who arrive in an ordinary harbour might have to be brought from there to the nearest hotspot; however, the Standard Operating Procedures are also applied

⁴⁰ Italian Navy, [Riepilogo attività Operazione Mare Nostrum](#), p. 2.

⁴¹ Such operations include the Malta-based [MOAS](#); [MSF](#) ships; and others.

⁴² On search and rescue operations, and their evolution in the Mediterranean Sea, also see the Policy Department Background Briefing for the LIBE Mission to Italy, 17-18 September 2015, and the [Mission report](#) of the LIBE Delegation on search and rescue to Lampedusa, Italy, on 17-18 September 2015.

⁴³ See the [hearing](#) of the Commander of the *Guardia di Finanza*, Saverio Capolupo, at the parliamentary Committee on the implementation of the Schengen agreement, 20 May 2015.

⁴⁴ See ANCI, Caritas, Cittitalia, Migrantes, SPRAR, UNHCR, [Rapporto protezione internazionale 2016](#), at 85.

⁴⁵ Ministry for Home Affairs, Civil Liberties and Immigration Department, [Cruscotto statistico](#) 31 December 2016.

⁴⁶ Also see European Commission, [Ninth report](#) on relocation and resettlement, February 2017, at p. 9.

in some of the harbours which are not officially considered as hotspots, and the Commission⁴⁷ recently reported that the Ministry of Home Affairs decided, last December, to designate 15 ports of disembarkation as ports applying the SOPs.

3.2.1. Reception in the hotspots - possible future hotspots

According to recent [Commission data](#), the total reception capacity of the Italian hotspots is of around 1.600 persons.⁴⁸ Currently, 86 Frontex experts have been deployed there (little over 20 per hotspot, with the exception of Taranto where 14 Frontex officers are present), in addition to 18 EASO experts (including Member State experts and cultural mediators).

The practical implementation of the hotspot approach has given rise to several issues. Firstly, the centres that have been identified as hotspots are, for the most part, not equipped for prolonged stays. Yet, it is widely reported that migrants are often accommodated there for weeks at a time; such periods tend to be longer for unaccompanied children, due to the insufficient reception capacity of dedicated centres elsewhere.⁴⁹ Lampedusa and Pozzallo, both originally first reception centres, were conceived as places of transit, to be used to accommodate new arrivals for a couple of days at most; thus, their structure is not designed for longer stays. Reports of official visits to both hotspots describe similar issues, such as the frequent lack of running water, lack of space, and other practical problems that are aggravated by their frequent overcrowding.⁵⁰ Problems also affect the other two hotspots, in particular the Taranto one, which has been set up in an area where there were no reception centres: migrants - including unaccompanied children and vulnerable persons - are therefore accommodated in tents, with limited access to services. Moreover, the environmental conditions surrounding the hotspot also led to safety concerns and protests on the part of police trade [unions](#). The hotspot in Trapani was previously a pre-return detention centre - the building is therefore more adequate, although several structural problems are still reported.⁵¹

Other areas have also been suggested as possible hotspots. In particular, the Augusta harbour was [initially](#) identified as a hotspot area, but the conversion into a hotspot proved impossible given the opposition of the port authority.⁵² However, it is reported that "mobile hotspots" have been set up in Augusta, to allow for the swift identification of arriving migrants, who are provisionally accommodated in tents within the port.⁵³ At some point, the press also reported that the CARA of Mineo would become a hotspot, and the issue was discussed in a [hearing](#) at the Chamber in July 2016; currently, Mineo is used as a [regional](#)

⁴⁷ [Ninth report on relocation and resettlement](#), p. 9-10.

⁴⁸ European Commission, [Hotspot state of play](#), March 2017. However, in March 2017 the National Ombudsman for the rights of persons deprived of their liberty [reported](#) that the actual reception capacity is often lower, due to maintenance and rebuilding works in the hotspots.

⁴⁹ See the letter of the Mayor of Lampedusa to the Minister for Home Affairs, January 2016, cited in the [Senate report](#); [Hotspot inquiry report](#), at 19, 25, 29; as regards UAMs, Dutch Refugee Council, Greek Refugee Council, CIR, ECRE, Proasyl, [The implementation of the hotspots in Italy and Greece](#), at 27; [Hotspot inquiry report](#), at 25 and 29; National [Ombudsman](#) for the rights of detained persons. The CoE's [Special Representative on migration and refugees](#) specifically reports that UAMs tend to stay in the Lampedusa hotspot even longer (up to months).

⁵⁰ See e.g. [Hotspot inquiry report](#), reporting visits by the Parliamentary Inquiry Committee in July 2016; the [two minority](#) reports describe similar issues. For Pozzallo, also see the report of the LIBE-BUDG [mission](#) to Sicily, July 2015; for Lampedusa, the report of the LIBE Committee [mission](#) to Lampedusa, November 2011. Conditions in Pozzallo were criticized, in 2015, by [Doctors without borders](#), which subsequently withdrew from the centre. Following a new public procurement procedure, the management of Pozzallo subsequently changed - the Società Cooperativa [Domus Caritatis](#) is currently in charge of the hotspot. In March 2017, the Italian Head of the Police, Franco Gabrielli, [reported](#) in a hearing at the Inquiry Committee that Pozzallo has been identified as a "best practice" by the EU Fundamental Rights Agency.

⁵¹ See Dutch Refugee Council, Greek Refugee Council, CIR, ECRE, Proasyl, [The implementation of the hotspots in Italy and Greece](#), at 26 ff.; Senate Report, at 24-25; [Hotspot inquiry report](#), at 18-24.

⁵² See the [minutes](#) of the 3 December 2015 hearing of the former Head of the Department for Civil Liberties and Immigration, prefect Morcone, at the Inquiry Committee.

⁵³ On mobile hotspots, see on [Eunews](#), October 2016. The new Head of the Department for Civil Liberties and Immigration, prefect Pantalone, was heard by the Inquiry Committee in March 2017 and [reported](#) that consideration is being given to setting up mobile hotspots in Sardinia too. For the tents in Augusta, see e.g. the recent [video](#) aired by the TV channel La7 (February 2017).

[hub](#) and is reported as both a (future) hotspot and a regional hub in the December 2016 [EASO Operating Plan to Italy](#). According to the EASO Plan, several hotspots are in preparation in Italy, including in Messina (where a public procurement procedure for the setting up of accommodation facilities has already been [launched](#) and [awarded](#)); Crotone and Reggio Calabria (which were expected to be operational by end 2016); and Cagliari. Plans for the setting up of additional hotspots in Messina and Palermo in Sicily, in the province of Cosenza (Corigliano Calabro), Crotone and Reggio Calabria in Calabria, and in Sardinia, have been confirmed by the new Head of the Department of Civil Liberties and Immigration, prefect Gerarda Pantalone, during a [hearing](#) at the Chamber Inquiry Committee in March 2017.

An additional issue, which has been reported in particular as regards the Taranto hotspot, is the presence of migrants who have been brought there, not upon disembarkation (as a first step of a structured procedure to identify them), but after having been found elsewhere in Italy. The [Senate Committee for human rights](#) reports that thousands of persons (the majority of those who passed through the hotspot) were brought to Taranto to be identified after having been found elsewhere in Italy. Most of them were reportedly identified close to the Northern borders of Italy (particularly in Ventimiglia, Como and [Milan](#)); according to the [Senate report](#), some cases involved migrants who had already applied for international protection or had another type of residence permit, as well as some form of accommodation in the Northern city where they were found. According to the Senate report, such a practice is difficult to explain, since identity checks can be carried out in any police station across the Italian territory.

3.2.2. Procedure in the hotspot

After disembarkation, persons are subjected to a medical pre-screening; some NGOs and IGOs may be present in the harbour to offer help and to facilitate the identification of vulnerabilities - for instance, UNHCR and IOM are to be present, in accordance with the [SOPs](#), and Save the Children is also often [present](#). Subsequently, migrants receive information about the national laws concerning asylum; according to the SOPs, such information is given, in writing, by IGOs present in the hotspot, right before the migrants are pre-identified. ECRE [reports](#) that information is usually provided by UNHCR, IOM, or using EASO leaflets (including the [leaflet on relocation](#)), but also that, in some hotspots, international organisations do not have access to migrants until after their pre-identification.

The [SOPs](#) provide that **pre-identification** is to take place immediately after this initial information is received, as soon as the migrants enter the hotspot; the procedure includes the taking of a photo and a short interview, during which the persons are asked about their nationality and the reasons for being in Italy. The interviews are conducted by police officers, possibly with the support of Frontex officers, and the information thus collected is to be written down in the so-called "*foglio notizie*." Civil society and the competent parliamentary committees have been critical of how pre-identification is conducted, both in terms of timing and in terms of consequences. The pre-identification interview takes place only a few hours after the migrants have disembarked, while they might still be very confused after the lengthy and dangerous journey they went through. Many argue that the information the migrants receive before the interview is insufficient to allow them to fully understand the importance of this step and of indicating, already at this stage, whether they intend to claim asylum; furthermore, given the fatigue and shock they are in when they receive such information, they might in any case not be able to properly understand or retain it.⁵⁴ As stressed in the recent Report of the [CoE's Special Representative](#), although an asylum application may be lodged even at a later stage, negative consequences ensue if

⁵⁴ As stressed by the CoE's [Special Representative on migration and refugees](#), as well as in the [Inquiry Committee Report](#) and in the [Senate report](#).

a person is not immediately flagged up as an asylum seeker, as they will be issued with an order to leave and will not be provided with accommodation until they manage to lodge the application. Moreover, if in the meanwhile they are detained in a pre-return centre, their detention can be extended to up to 12 months if the application for asylum is lodged from there and if it is deemed to have been filed merely in order to delay expulsion (D. Lgs. [142/2015](#), Art. 6). The use of the “*foglio-notizie*” has also been criticised for being too short and superficial: the officer who fills it in is not required to summarise the reasons that each migrant gives for coming to Italy, but merely to check the box that applies to them.⁵⁵

An additional issue which was often reported in the past was that, in numerous cases, migrants’ protection needs were screened only superficially, if at all, when they declared to be of a nationality which is considered as mostly made of “economic migrants” ([FRA Opinion 5/16](#)⁵⁶). The [SOPs](#) stress very clearly that the pre-identification stage (including nationality assignment) is not the appropriate moment to assign a final legal status to the person and does not preclude the possibility of exercising the right to seek international protection at a later stage (p. 7). Yet, in the past, allegations were often made of “nationality-based discrimination”, with some migrants automatically considered as returnable merely on the basis of their nationality; in some cases, they were issued with an order to leave (or an order refusing entry - *ordine di respingimento*) without having previously received any information about the possibility to claim asylum.⁵⁷ In 2015, however, the [Court of Cassation](#) has ruled that an order refusing entry or a return order issued without the person having been informed of the possibility of applying for asylum is illegitimate and therefore void (Cass. Sez. Civ. VI, 5926/2015). Practical improvements have been recorded since the Ministry for Home Affairs issued a [circular](#), in January 2016, stressing the need to provide every migrant with adequate information on the right to asylum, underlining that migrants may apply for asylum at any moment and that the territorial commissions have an exclusive competence to determine the person’s legal status, and recalling that Italy has not adopted any list of “safe countries”.⁵⁸

The **fingerprinting** procedure has also given rise to concerns. As mentioned above, the law does not provide for the use of force to fingerprint migrants; yet, the [Standard Operating Procedures](#) allow a proportionate use of force, if necessary. [Amnesty International](#) recently reported cases of excessive use of force to fingerprint migrants who resisted the process; the Ministry for Home Affairs has however strongly [denied](#) this claim. Another issue regarding fingerprinting is the length of retention in the hotspots. The [SOPs](#) (p. 8) provide that migrants should leave the hotspots only after having been fingerprinted. The Senate Committee for human rights [reports](#) that migrants who refuse to be fingerprinted are held in the hotspots for longer than 48 hours, without being brought in front of a judge, in breach of Art. 13 of the Constitution. On the other hand, some official visit reports imply that the hotspots - or some of them - are not “closed” centres, and that migrants held there are free to go out (either officially, or as a tolerated practice), and may therefore not be considered as being held in detention.⁵⁹ From a practical perspective, since

⁵⁵ See the [Senate report](#), p. 18-19; [Inquiry Committee Report](#), p. 35-36; [ECRE report](#), p. 21-22; [Oxfam](#), p. 25 ff. [ARCI](#) has uploaded the template of a *foglio notizie* online.

⁵⁶ FRA Opinion 5/16, 29 November 2016, published following the request of the European Parliament of 22 September 2016, at page 20.

⁵⁷ See the [Senate report](#), p. 19; [Inquiry Committee Report](#), p. 35; [ECRE report](#), p. 21-22; [Oxfam](#), p. 25 ff.

⁵⁸ See e.g. CoE’s Special Representative on migration and refugees, [Report of the fact-finding mission to Italy](#), at footnote 18.

⁵⁹ According to the January 2016 [Inquiry Committee Report](#), the Lampedusa hotspot is an open centre; according to the [Senate report](#) (November 2016 visit), the Taranto centre is open during the day for adults who want to go out; according to the CoE’s [Special Representative on migration and refugees](#) (October 2016 visit), the prefect and head of the police in Pozzallo have taken a decision to allow fingerprinted migrants to go out of the hotspot during the day, while in Lampedusa exits are tolerated in practice; however [ECRE](#) (visits in May 2016) reports that the hotspots are closed centres.

the inception of the hotspot approach, identification and fingerprinting rates have been increasing in Italy: different sources report rates of between 80 and 95%, or even higher.⁶⁰

Finally, as regards the **exit from hotspots**, the [SOPs](#) provide for several alternatives. In particular, persons who have indicated their willingness to apply for international protection or for relocation should be transferred to reception centres or, if eligible for relocation, to the regional hubs. On the other hand, adults who have not expressed the intention to claim asylum and have no right to stay should be issued with an order refusing entry (*respingimento*) or a return order, and might be transferred to a pre-return detention centre. In such cases, the SOPs stress the need to ascertain that the person has understood the meaning and consequences of the return order, as well as to inform them of the possibility of participating into an assisted return programme.

3.3. Relocation

Relocation numbers from Italy are particularly low: as stressed by the Commission in its [tenth report on relocation and resettlement](#), only eight countries are fully engaged in relocations from Italy, while nine still have to carry out their first relocation from there. Issues have arisen in the past as regards security interviews, which were sometimes not allowed to take place - currently, however, the Commission reports that arrangements with Europol and the Italian authorities have been made to facilitate exceptional additional security checks, including security interviews. The tenth Commission report also includes recommendations both for other Member States (who should not resort to cherry picking, arbitrarily deciding whether to accept a relocation request on grounds other than those specified in the Decisions⁶¹) and for Italy. In particular, according to the Commission, Italy should show more flexibility in allowing additional Europol security interviews; it should identify and register for relocation all those eligible as soon as possible, i.a. by increasing the number of staff processing applications in the Dublin Unit, if needed with EASO's support; and it should centralise applicants in a few relocation sites, at least for the last stages of the procedure. Moreover, with regard to unaccompanied minors, Italy should clarify the procedures to enable their relocation (including by facilitating the appointment of guardians), make use of EASO's guidance and support, and create dedicated relocation hubs for unaccompanied minors.

According to the Report of the CoE's [Special Representative on migration and refugees](#), access to relocation has become increasingly slower, with eligible persons sometimes having to wait up to 2 months simply in order to begin the process; moreover, although EASO provides training to the Italian police in Rome, police staff across the country is not always aware of the possibility of relocation, and therefore does not mention it to eligible asylum seekers. Furthermore, a recent [study](#) has pointed to the existence of additional challenges as regards relocations from Italy, including widespread unpreparedness and lack of coordination between all national agencies involved in relocation, often leading to confusion, duplication of controls and lengthy delays.⁶² The study also found that persons eligible for relocation often lack information about this process; moreover, procedures on the ground were found to be excessively cumbersome, with multiple stages taking place in different places, requiring multiple transfers of eligible asylum seekers which sometimes lead to additional administrative obstacles for them. According to the study, the reception of asylum seekers (which, as explained below, is to be spread across the national territory)

⁶⁰ See ECRE et al., [The implementation of the hotspots in Italy and Greece](#), p. 23; [Senate report](#), p. 29; [Report of the fact-finding mission to Italy](#) of the CoE's Special Representative on migration and refugees.

⁶¹ According to the report by the CoE's [Special Representative on migration and refugees](#), Italian authorities view the personal interviews with applicants which some Member States insist on carrying out before accepting them as an attempt to "cherry pick" the asylum seekers who are more likely to be easily integrated.

⁶² Guild, Costello, Moreno-Lax, [Implementation of the 2015 Council Decisions](#) establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (Policy Department C, 2017).

can hamper quick relocations, as asylum seekers who are eligible for relocation are not gathered together in one centre or regional hub, but may be reallocated into any Region.

Additional problems affect the relocation of unaccompanied children. Indeed, as stressed by [vice prefect Caprara](#), children cannot be moved within or outside the national territory unless the competent judge has given an authorization - however, this procedure is very long, and tends to exceed the length of the relocation procedure (which, as mentioned above, should not last more than 3 months and a half). According to the CoE's [Special Representative](#), this has sometimes led to children claiming to be adults in order to be able to access relocation. The [Commission](#) recently stressed the need to further develop the procedure for the relocation of unaccompanied minors travelling on their own, pointing to the fact that only one separated child was relocated from Italy in November 2016.⁶³

3.4. Reception of applicants for international protection

Notwithstanding recent legislative changes, and efforts to implement them in practice, the reception system still presents numerous problems. The reception capacity of existing "ordinary" structures (first reception centres and SPRAR) is still absolutely insufficient to accommodate all persons seeking international protection in Italy: different data sources all report that, by the end of 2015, around 80% of all applicants for international protection were accommodated in exceptional, temporary structures (CAS), while the ordinary system could only host little more than 20% of the total. Thus, the reality on the ground points to the exception being the norm, with around 19.715 persons accommodated in the SPRAR and around 80.000 in CAS - data varies depending on the source.⁶⁴ [Official data](#) for the end of January 2017 confirms similar trends, with 136.729 asylum seekers hosted in CAS, 711 in hotspots, 14.026 in first reception centres, and 23.107 in the SPRAR. Moreover, the distinction between first and second reception stages is still far from fully achieved - indeed, due to the lack of places in SPRAR projects, many asylum seekers spend months or even years in first reception structures, or in the CAS, where reception conditions are often insufficiently developed and services lacking.⁶⁵

Efforts are underway to increase the **capacity of the SPRAR** system, which by November 2016 was of 26.012 persons, including 2.039 unaccompanied minors.⁶⁶ This total number speaks of an impressive effort, if compared to previous years: in 2013, the SPRAR could host 9.400 persons, which more than doubled to 19.600 in 2014. Yet, much remains to be done. In 2016, prefects still had to resort to the creation of extraordinary centres, or CAS, quite often, using, for instance, hostels, hotels, or unused public buildings (such as old [military barracks](#)). The process of identifying such places and transferring migrants there has sometimes given rise to tensions with mayors, as well as between migrants and citizens, with episodes of citizens [barricading](#) against arrivals of refugees. This problem is meant to be addressed by the new [agreement](#) between the Ministry of Home Affairs and the Association of Municipalities, by which local entities that participate in the SPRAR programme will not be assigned to host asylum seekers as an emergency measure (by identifying a CAS there) and will be exempted from the freeze on hiring new staff which currently applies to all local entities; the agreement should also help distribute SPRAR places more evenly across Italian Regions (currently, Sicily and Lazio offer around 4.000

⁶³ European Commission, [Ninth report](#) on relocation and resettlement, p. 5.

⁶⁴ Indeed, the collection of data as regards the numbers of persons hosted in reception centres is not centralised - the Chamber's Inquiry Committee is currently trying to collect such data and store them in a centralised database. According to data taken from the [2016 reception plan](#), by the end of 2015, the SPRAR system accommodated 19.715 persons, and the CAS 76.683. The [Inquiry Committee Report](#) however has different data, and refers to 82.010 persons living in the CAS, out of a total of 111.689 applicants in the Italian reception system.

⁶⁵ CoE's Special Representative on migration and refugees, [Report of the fact-finding mission to Italy](#); also see the [Inquiry Committee Report](#).

⁶⁶ Data taken from the [SPRAR](#) website.

SPRAR places each). Previous attempts to increase the participation rate of municipalities into the SPRAR system have however not given the expected results.⁶⁷

Reception conditions in the CAS are particularly problematic. Indeed, as noted in the [Inquiry Committee Report](#), these extraordinary structures are meant to offer temporary accommodation, residually, to a small number of persons staying for a short period of time; instead, they host tens of thousands of persons, often in suburban or rural and isolated areas, providing them with few if any services.⁶⁸ This is also due to public procurement and management problems of these centres, which are often procured out by direct award or in a situation of monopoly; additionally, as the services are requested for a limited period of time (given the - by law - temporary nature of the CAS), public contracts often expire after a few months, which makes good management almost impossible. The Inquiry Committee concluded that the CAS offer services of lower quality than the SPRAR structures, while involving a comparable public expenditure for their management, giving rise to issues of unequal treatment between persons holding the same status (as applicants for international protection) as well as of inefficient financial administration. Similar conclusions were also drawn by the Report of the [CoE's Special Representative](#). Currently, [new rules are being drafted](#) as regards the way to procure out the services offered within all the reception centres, with a view to improve them.⁶⁹

3.5. Asylum procedures

The first stage of the asylum procedure is the examination of the application for international protection by an administrative body, the territorial commission. According to [prefect Trovato](#), the president of the national commission on the right to asylum, 123.600 applications for asylum have been filed in 2016 – a 47% increase from the previous year. Over 105.000 applicants were men, while only 18.594 were women, mostly Nigerians; 11.656 were minors. As regards nationalities, most applicants (over 27.000) are Nigerian, followed by Pakistani,⁷⁰ Gambians, and nationals of Senegal and the Ivory Coast. The average time to examine and decide an application for international protection is now of around 257 days for the period between 2014 and 2016; this delay has been decreasing steadily, and data for 2016 points to an average time of 163 days to take a decision on an application. Moreover, the training of members of the territorial commissions has improved, and EASO training modules are also used to provide such training.⁷¹ On the other hand, as underlined by [prefect Trovato](#), members of the commissions who have other tasks to deal with (such as members from the police) often find it difficult to participate in the work of the commissions. The [UNHCR](#) had in the past suggested the need to appoint specialised members whose exclusive task should be to work for the commissions.

Another issue is that of the outcomes of the asylum applications. [Data for 2016](#) shows that 5% of all applicants obtained refugee status, 14% obtained subsidiary protection, and 21% humanitarian protection. Adding a 4% of cases of applicants who go missing while the procedure is ongoing, the average refusal rate is 56%. [Data for 2015](#) shows that the rates

⁶⁷ See the hearing of prefect Mario Morcone, former Head of the Department for Civil Liberties, cited in the [Inquiry Committee Report](#), p. 54.

⁶⁸ [Civil society groups](#) have also criticized the lack of transparency as regards the CAS system - some prefect offices publish lists of the places identified as CAS on their websites, while others refuse to grant access to such information in order to preserve the security and privacy of the persons living there.

⁶⁹ Also see the March 2017 [hearing](#) at the Inquiry Committee of the new Head of the Department for Civil Liberties and Immigration, who explained that the new public procurement procedures will be divided into 4 different lots, with a view to facilitate competition, ensure enhanced transparency in reporting, and improve controls.

⁷⁰ According to the CoE's [Special Representative on migration and refugees](#), the high numbers of Pakistani citizens found in first reception structures appear to be in Italy following a Dublin transfer of a refusal to grant them international protection in another EU country.

⁷¹ Also see the December 2016 [EASO Operating Plan to Italy](#), p. 13.

vary widely between different territorial commissions, with some issuing as many as 75 or 80% positive decisions (granting some form of protection), and others as few as 15%.⁷²

Data on the number of asylum decisions that are challenged and brought to judicial review is not easily available. The national commission for the right to asylum has only incomplete data - accordingly, since 2014, over 53.000 decisions have been subjected to judicial review. Only 18% of them have been decided (81% are still pending); in most of the decided cases (around 70%), the judge has considered the challenge as well-founded and granted some form of international protection to the applicant.⁷³

3.6. Unaccompanied children and victims of trafficking

3.6.1. Unaccompanied children

The reception of unaccompanied minors has been, in recent years, particularly difficult. Indeed, the number of unaccompanied children who arrive to Italy by sea has been on the increase: according to [national data](#), in 2016, it rose to 25.846 - more than double than in 2015 (12.360). In addition, the number of unaccompanied children arriving by land is also deemed to be on the increase.⁷⁴

One of the biggest problems in this regard is the number of unaccompanied children who leave the reception centres: Ministry for Employment [data](#) for December 2016 show that 6.561 such children left the Italian reception system and went missing. According to an ANCI report,⁷⁵ children tend to leave immediately, in the first week following their arrival; the report concludes that a more structured and appropriate reception in the first reception centres for children could be essential to improve the situation.

Another relevant problem is the insufficient **reception capacity** of the dedicated system for UAMs. Indeed, data for June 2016 points to the availability of 13 specialised first reception centres (with a reception capacity of 641 children), while the SPRAR system can accommodate up to 2.039 UAMs.⁷⁶ While the reception system for unaccompanied children has considerably improved in the last few years, with dedicated funding - since 2008 - going directly from the State to municipalities that take charge of such children, the system is still terribly inadequate to the number of minors who arrive to Italy alone. Many reports underline that unaccompanied minors paradoxically tend to remain in the hotspots longer than adults, precisely due to the unavailability of reception places in dedicated centres; their stay in the hotspot can go up to months, in some cases.⁷⁷ The ANCI study on the reception system for unaccompanied minors reports their presence not only in hotspots but even in exceptional reception centres for adults (CAS).⁷⁸ According to a Terre des Hommes [report](#), long stays in the hotspots, or other types of non-specialised first reception centres, increase stress levels for children, and might expose them to higher risks of violence and abuse, especially when the structure is often overcrowded and children are accommodated together with adults. Practical issues, such as the absence of a telephone to contact the family members who remained home, can increase the detrimental effect of this prolonged

⁷² Data for 2016 are taken from the 31 January 2017 [hearing](#) of prefect Angelo Trovato, president of the national commission on the right to asylum, at the Inquiry Committee; data for 2015 are taken from the 2016 [Rapporto sulla protezione internazionale in Italia](#).

⁷³ See the minutes of the 31 January 2017 [hearing](#) of prefect Angelo Trovato at the Inquiry Committee.

⁷⁴ [Hearing](#) of vice-prefect Caprara at the Chamber, January 2017. According to [data](#) of the Ministry for Employment and Social Affairs, of the unaccompanied children residing in the Italian reception system by December 2016, 6.7% were girls; 82.6% were aged between 16 and 17, almost 10% were 15 years old, while 7.4% (1.280 children) were aged between 7 and 14 and 0.3% (46 children) were aged 6 or younger.

⁷⁵ See ANCI, [I comuni e le politiche di accoglienza dei minori stranieri non accompagnati](#), 2016.

⁷⁶ Data taken from ANCI et al., [Rapporto sulla protezione internazionale in Italia 2016](#), and from the SPRAR [website](#).

⁷⁷ See the [Hotspot inquiry report](#) of the Inquiry Committee; [Relazione al Parlamento 2017](#) of the national Ombudsman for the rights of persons deprived of their liberty, p. 87-88; Report of the CoE's [Special Representative on migration and refugees](#).

⁷⁸ ANCI, [I comuni e le politiche di accoglienza dei minori stranieri non accompagnati](#), 2016, p. 18.

stay in a state of uncertainty ([Oxfam](#) report). Efforts have been made to improve the situation for children at ports of disembarkation and in transit areas - for instance, [Save the Children](#) has set up "child-friendly" spaces in some of these areas, while in Pozzallo, a new facility for unaccompanied minors has been planned.⁷⁹

Efforts to increase the reception capacity of the SPRAR system as regards unaccompanied children are being undertaken - however, as for adults, this requires the active cooperation of the municipalities. According to the most recent data, the latest call for proposals launched in 2016 was met with limited enthusiasm, and it is expected that it will lead to an increase of around 800 places instead of the planned 2.000.⁸⁰ Another option to accommodate unaccompanied children - especially as an alternative to the [second stage](#) of reception - is that of finding a foster family to take care of them (*affido familiare*); however, this practice is not yet common, and rules and practical conditions vary from a municipality to another.⁸¹

The **role of municipalities** in offering adequate reception to unaccompanied children remains essential. A practical problem that has arisen in this regard is the availability of sufficient funds, in particular for small municipalities that are affected by high numbers of arrivals (see [Inquiry Committee report](#), at 127). Currently, municipalities receive 45€ per day per child; however, the ANCI report⁸² stresses that this sum is largely insufficient to cover all expenses, especially when it comes to children younger than 14. Another practical issue is that of **guardianship**. The ANCI study stresses that, by law, as soon as a child is found whose parents cannot take care of him/her, a guardian should be appointed by the competent judge⁸³ - yet, in the past, this did not always happen. Since 2014, the number of unaccompanied children who are immediately reported to the competent judge rose to over 80%; the judge usually appoints a temporary guardian. However, due to a shortage of qualified guardians, the appointed guardian is often an institutional entity, such as the director of the reception centre, or the mayor of the city where the child is accommodated. As stressed by the FRA,⁸⁴ institutional actors have to take care of their duty as guardians in addition to their everyday functions, often without having received any specific training. Moreover, they may sometimes be appointed as guardians for a very high number of children: for instance, in its Opinion 5/16 the [FRA](#) reports that the mayor of Pozzallo (a municipality of around 19.500 inhabitants) was in charge of 193 children in August 2016, while according to the [CoE's Special Representative](#), in the summer of 2016 the Mayor of Palermo was the formal guardian of 1.200 children. The Special Representative also reports lengthy delays in the appointment of a guardian, which lead to children being without a legal representative for months, and thus unable to apply for asylum or for relocation or family reunification elsewhere in Europe. Additionally, whenever the child's guardian is also the person responsible for the reception centre where he/she is accommodated, there may be a risk of conflicts of interests arising - therefore, the joint Commission/FRA [Handbook](#) on guardianship recommends avoiding such situations. According to the national [ombudsperson for children](#), the law on guardianship is obsolete, fragmented, and applied in an incoherent manner. The new law on UAMs, which Parliament approved on 29 March 2017, provides for the setting up of registries of persons willing to act as voluntary guardians, who must be selected and trained by the local or national ombudsperson for children.⁸⁵

⁷⁹ See the CoE Special Representative's [Report](#) - the visit in Pozzallo took place in October 2016, so it is possible that the facility might already be operational by now.

⁸⁰ As reported by Vice Prefect Caprara during a [hearing](#) at the Inquiry committee, 12 January 2017.

⁸¹ Save the Children, [7 cose da sapere sull'affido familiare dei minori migranti soli non accompagnati](#).

⁸² ANCI, [I comuni e le politiche di accoglienza dei minori stranieri non accompagnati](#), 2016.

⁸³ In accordance with articles 343 ff. of the [Civil Code](#).

⁸⁴ FRA [Opinion 5/16](#), 29 November 2016.

⁸⁵ See Article 11 of the [law](#) - the text is available on the website of the Chamber. By the time of writing, the law had not yet been published and therefore not entered into force.

3.6.2. Victims of trafficking

As regards trafficking victims, [IOM](#) and [Save the children](#) are particularly active in Italy on this subject. According to IOM,⁸⁶ experiences of trafficking are widespread among migrants arriving to Italy through the central Mediterranean route, with 74% of them having experienced at least one indicator of trafficking, and 54% two; among the categories at highest risk of trafficking are Nigerian women and girls, who are often forced into prostitution.⁸⁷ According to [Save the children](#), the number of women and girls, including young girls, trafficked to Italy to be forced into prostitution remains very high; often, their sexual exploitation begins already while they are en route, and continues once in Italy. Moreover, the NGO also reports high numbers of Egyptian, Albanian, Bengali and other children, mostly boys, who are trafficked and subjected to labour exploitation.

The situation of trafficking victims in Italy recently led the Council of Europe's Group of Experts on Action against Trafficking in Human Beings ([GRETA](#)) to make, for the first time, an urgent request for information, to carry out a visit in Italy and to then adopt, in January 2017, a [Report](#) on the situation in Italy. One of the issues that have been identified as particularly problematic is the initial identification of trafficking victims, especially if they arrive by boat. While IOM is present at all Italian hotspots with staff specifically trained on the identification of indicators of trafficking, GRETA urged the Italian authorities to set up clear, binding procedures and provide systematic training and operational indicators of trafficking to immigration police officers and staff working in centres for migrants (including hotspots, reception centres, and pre-return centres). GRETA additionally reported a lack of accommodation capacity in specialised shelters, as well as an episode of removal of suspect trafficking victims by forced return flights. Moreover, GRETA called for measures to mainstream prevention of trafficking of unaccompanied and separated children, including by training all staff working with them, to prevent their disappearance.

As mentioned above, in Italy there exists a special residence permit which can be issued to trafficked persons in order to allow them to obtain protection; yet, many trafficked persons are also found to have applied for asylum. Research points to the existence of numerous interlinks between asylum procedures and trafficking victims;⁸⁸ identification of trafficking victims who apply for asylum poses particular challenges, as they may have been instructed by their traffickers to deny it, even when there are clear indicators of trafficking. The national commission for the right to asylum has recently adopted guidelines for the territorial commissions on how to deal with asylum seekers who could be victims of trafficking, while [GRETA](#) reports that many territorial commissions cooperate with IOM and ask its staff to interview suspect trafficked applicants to help in determining whether they might be entitled to an Art. 18 residence permit for trafficking victims. Yet, as the requirements of Article 18 are quite strict (the person's safety must be at risk due to their attempts to escape from the hands of the criminal network of traffickers), many trafficking victims who are identified as such are found not to be entitled to this permit, and are therefore left with the asylum procedure as their only avenue to obtain protection.

⁸⁶ IOM, [Flow Monitoring Surveys](#), May - August 2016.

⁸⁷ IOM, [Rapporto](#) sulle vittime di tratta nell'ambito dei flussi migratori misti in arrivo via mare, April 2014 - October 2015.

⁸⁸ No tratta, [Report](#): Vittime di tratta e richiedenti / titolari protezione internazionale, 30 June 2014.

MAIN SOURCES OF INFORMATION

Website of [DG Home](#) on the European Agenda on Migration - European Commission.

Eurostat - Statistics Illustrated - [Asylum and Managed Migration](#).

Website of The Council of Europe's [Special Representative of the Secretary General on Migration and Refugees](#).

Website of the [Dipartimento Libertà Civili](#) - Ministry for Home Affairs. Data on arrivals and asylum requests is available there, on a daily and monthly basis.

Website of the Italian [police](#).

Website of the [Ministry for Employment and Social Policies](#) (responsible to gather data on unaccompanied children).

[Chamber Inquiry Committee](#): *Commissione parlamentare di inchiesta sul sistema di accoglienza, di identificazione ed espulsione, nonché sulle condizioni di trattenimento dei migranti e sulle risorse pubbliche impegnate*. It was set up in November [2014](#).

- [Full minutes of all the hearings](#) that have taken place at the Inquiry Committee
- [Report of activities until January 2016](#) (Inquiry Committee Report, rapporteur Mr F. Gelli, approved on [3 May 2016](#))
- [Report on the "hotspot" system](#) (Hotspot inquiry report, rapporteur Mr P. Beni, approved on [26 October 2016](#))
- Minority reports on the "hotspot" system ([Palazzotto](#) report; [Fontana-Ravetto](#) report)

[Senate Committee for human rights](#): *Commissione straordinaria per la tutela e la promozione dei diritti umani*. The Committee was first set up in 2001.

- [Report on the pre-return centres in Italy](#) (January 2017 update) (Senate Report, Chair Sen. L. Manconi)
- [First report](#) on pre-return centres (September 2014)

[Garante nazionale dei diritti delle persone detenute o private della libertà personale](#) - Mr Mauro Palma. It is part of the national preventive mechanism under the Optional Protocol to the UN Convention against Torture; it started its works at the beginning of 2016.

- [2017 Report](#) (Relazione al Parlamento), pages 86-123.

Website of the [SPRAR system](#).

Website of the [ANCI](#) - National Association of Italian Municipalities.

Upon request by the LIBE Committee, this paper provides some information on the current situation of migration in Italy, focusing in particular on the “hotspots” and on the asylum procedures. The paper describes the applicable legislative framework, as recently amended, as well as its practical application.

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Print ISBN 978-92-846-1086-0 | doi:10.2861/87475 | QA-02-17-589-EN-C
PDF ISBN 978-92-846-1085-3 | doi:10.2861/806859 | QA-02-17-589-EN-N