With the support of the
Erasmus+ Programme
of the European Union

Intensive Training Course
"International protection and rights of minors in the European Union"

Jean Monnet Module MARS

TRAINING MATERIALS

MARS
Migration, Asylum and Rights of Minors

Francesca Biondi Dal Monte
f.biondi@santannapisa.it

MARS website – www.mars.santannapisa.it

Summary - click on the document to see the fulltext

Section I – Legislative framework

International Law

- Convention relating to the Status of Refugees
- Convention on the Rights of the Child

European Union Law

- Charter of Fundamental Rights of the European Union
- Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
- Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast)
- Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast)
- Regulation (EU) No 604/2013 examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

Section II – European Union Acts

- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL The protection of children in migration, COM(2017) 211 final, 12.4.2017
- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on a New Pact on Migration and Asylum, COM(2020) 609 final, 23.9.2020 (and annexes)

Section III – Case Law

- ECHR, *Guide on the case-law of the European Convention on Human Rights*, 31 August 2020
- ECHR, Factsheet – Children's rights, October 2020

Section IV – ICJ Training materials (Fair Project)

- Guiding principles and definitions
- Access to fair procedures including the right to be heard and to participate in proceedings
- Access to justice in detention
- Access to justice for economic, social and cultural right
- Access to justice in the protection of their right to private and family life
- Redress through international human rights bodies and mechanisms
- Practical handbook for lawyers when representing a child

Section V – Data and reports

- FRA, *Children in migration in 2019, Annual review,* 30.3.2020
- FRA, *Integration of young refugees in the EU: good practices and challenges*, 19.11.2019
- UNHCR, UNICEF and IOM, *Refugee and Migrant Children in Europe. Overview of Trends in 2019*

Last Update: 23 November 2020

Convention relating to the Status of Refugees

Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950

Entry into force: 22 April 1954, in accordance with article 43

Preamble

The High Contracting Parties ,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows :

Chapter I

GENERAL PROVISIONS

Article 1. - Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2. - General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3. - Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4. - Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5. - Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6. - The term "in the same circumstances"

For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7. - Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to

paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8. - Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9. - Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10. - Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11. - Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

Chapter II

JURIDICAL STATUS

Article 12. - Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13. - Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14. - Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15. - Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16. - Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi .

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Chapter III

GAINFUL EMPLOYMENT

Article 17. - Wage-earning employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who

have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18. - Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19. - Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Chapter IV

WELFARE

Article 20. - Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21. - Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22. - Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23. - Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24. - Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

Chapter V

ADMINISTRATIVE MEASURES

Article 25. - Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26. - Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

Article 27. - Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28. - Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29. - Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30. - Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31. - Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32. - Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33. - Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return (" refouler ") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 34. - Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Chapter VI

EXECUTORY AND TRANSITORY PROVISIONS

Article 35. - Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

(a) The condition of refugees,

(b) The implementation of this Convention, and

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36. - Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37. - Relation to previous conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

Chapter VII

FINAL CLAUSES

Article 38. - Settlement of disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39. - Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40. - Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41. - Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42. - Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43. - Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44. - Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45. - Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46. - Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

(a) Of declarations and notifications in accordance with section B of article 1;

(b) Of signatures, ratifications and accessions in accordance with article 39;

(c) Of declarations and notifications in accordance with article 40;

(d) Of reservations and withdrawals in accordance with article 42;

(e) Of the date on which this Convention will come into force in accordance with article 43;

(f) Of denunciations and notifications in accordance with article 44;

(g) Of requests for revision in accordance with article 45.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

Done at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their

own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any

amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2012/C 326/02)

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.

2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.

2. In the fields of medicine and biology, the following must be respected in particular:

(a) the free and informed consent of the person concerned, according to the procedures laid down by law;

(b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;

(c) the prohibition on making the human body and its parts as such a source of financial gain;

(d) the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

°

° °

The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

DIRECTIVES

DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2011

on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (a) and (b) of Article 78(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) A number of substantive changes are to be made to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [3]. In the interests of clarity, that Directive should be recast.

(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.

(3) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the Status of Refugees ('the Geneva Convention'), as supplemented by the New York Protocol of 31 January 1967 ('the Protocol'), thus affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.

(4) The Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.

(5) The Tampere conclusions provide that a Common European Asylum System should include, in the short term, the approximation of rules on the recognition of refugees and the content of refugee status.

(6) The Tampere conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.

(7) The first phase in the creation of a Common European Asylum System has now been achieved. The European Council of 4 November 2004 adopted the Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, the Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the European Parliament and the Council, with a view to their adoption before the end of 2010.

(8) In the European Pact on Immigration and Asylum, adopted on 15 and 16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes and called for new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague Programme, and thus to offer a higher degree of protection.

[1] OJ C 18, 19.1.2011, p. 80.
[2] Position of the European Parliament of 27 October 2011 (not yet published in the Official Journal) and decision of the Council of 24 November 2011.
[3] OJ L 304, 30.9.2004, p. 12.

(9) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity, based on a common asylum procedure and a uniform status, in accordance with Article 78 of the Treaty on the Functioning of the European Union (TFEU), for those granted international protection, by 2012 at the latest.

(10) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying Directive 2004/83/EC as well as to seek to achieve a higher level of approximation of the rules on the recognition and content of international protection on the basis of higher standards.

(11) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressure on their asylum systems, due in particular to their geographical or demographic situation.

(12) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.

(13) The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movement of applicants for international protection between Member States, where such movement is purely caused by differences in legal frameworks.

(14) Member States should have the power to introduce or maintain more favourable provisions than the standards laid down in this Directive for third-country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person eligible for subsidiary protection.

(15) Those third-country nationals or stateless persons who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds fall outside the scope of this Directive.

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.

(17) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party, including in particular those that prohibit discrimination.

(18) The 'best interests of the child' should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.

(19) It is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to the best interests of the child.

(20) This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty on European Union (TEU) and the TFEU.

(21) The recognition of refugee status is a declaratory act.

(22) Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.

(23) Standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.

(24) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.

(25) In particular, it is necessary to introduce common concepts of protection needs arising *sur place*, sources of harm and protection, internal protection and persecution, including the reasons for persecution.

(26) Protection can be provided, where they are willing and able to offer protection, either by the State or by parties or organisations, including international organisations, meeting the conditions set out in this Directive, which control a region or a larger area within the territory of the State. Such protection should be effective and of a non-temporary nature.

(27) Internal protection against persecution or serious harm should be effectively available to the applicant in a part of the country of origin where he or she can safely and legally travel to, gain admittance to and can reasonably be expected to settle. Where the State or agents of the State are the actors of persecution or serious harm, there should be a presumption that effective protection is not available to the applicant. When the applicant is an unaccompanied minor, the availability of appropriate care and custodial arrangements, which are in the best interest of the unaccompanied minor, should form part of the assessment as to whether that protection is effectively available.

(28) It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution.

(29) One of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the reasons for persecution, namely race, religion, nationality, political opinion or membership of a particular social group, and the acts of persecution or the absence of protection against such acts.

(30) It is equally necessary to introduce a common concept of the persecution ground 'membership of a particular social group'. For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of persecution.

(31) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations resolutions relating to measures combating terrorism, which declare that 'acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations' and that 'knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations'.

(32) As referred to in Article 14, 'status' can also include refugee status.

(33) Standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention.

(34) It is necessary to introduce common criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.

(35) Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm.

(36) Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.

(37) The notion of national security and public order also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association.

(38) When deciding on entitlements to the benefits included in this Directive, Member States should take due account of the best interests of the child, as well as of the particular circumstances of the dependency on the beneficiary of international protection of close relatives who are already present in the Member State and who are not family members of that beneficiary. In exceptional circumstances, where the close relative of the beneficiary of international protection is a married minor but not accompanied by his or her spouse, the best interests of the minor may be seen to lie with his or her original family.

(39) While responding to the call of the Stockholm Programme for the establishment of a uniform status for refugees or for persons eligible for subsidiary protection, and with the exception of derogations which are necessary and objectively justified, beneficiaries of subsidiary protection status should be granted the same rights and benefits as those enjoyed by refugees under this Directive, and should be subject to the same conditions of eligibility.

(40) Within the limits set out by international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, healthcare and access to integration facilities requires the prior issue of a residence permit.

(41) In order to enhance the effective exercise of the rights and benefits laid down in this Directive by beneficiaries of international protection, it is necessary to take into account their specific needs and the particular integration challenges with which they are confronted. Such taking into account should normally not result in a more favourable treatment than that provided to their own nationals, without prejudice to the possibility for Member States to introduce or retain more favourable standards.

(42) In that context, efforts should be made in particular to address the problems which prevent beneficiaries of international protection from having effective access to employment-related educational opportunities and vocational training, inter alia, relating to financial constraints.

(43) This Directive does not apply to financial benefits from the Member States which are granted to promote education.

(44) Special measures need to be considered with a view to effectively addressing the practical difficulties encountered by beneficiaries of international protection concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualifications, in particular due to the lack of documentary evidence and their inability to meet the costs related to the recognition procedures.

(45) Especially to avoid social hardship, it is appropriate to provide beneficiaries of international protection with adequate social welfare and means of subsistence, without discrimination in the context of social assistance. With regard to social assistance, the modalities and detail of the provision of core benefits to beneficiaries of subsidiary protection status should be determined by national law. The possibility of limiting such assistance to core benefits is to be understood as covering at least minimum income support, assistance in the case of illness, or pregnancy, and parental assistance, in so far as those benefits are granted to nationals under national law.

(46) Access to healthcare, including both physical and mental healthcare, should be ensured to beneficiaries of international protection.

(47) The specific needs and particularities of the situation of beneficiaries of refugee status and of subsidiary protection status should be taken into account, as far as possible, in the integration programmes provided to them including, where appropriate, language training and the provision of information concerning individual rights and obligations relating to their protection status in the Member State concerned.

(48) The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particular the evolution of the international obligations of Member States regarding *non-refoulement*, the evolution of the labour markets in the Member States as well as the development of common basic principles for integration.

(49) Since the objectives of this Directive, namely to establish standards for the granting of international protection to third-country nationals and stateless persons by Member States, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(50) In accordance with Articles 1, 2 and Article 4a(1) of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(51) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(52) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2004/83/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(53) This Directive should be without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of Directive 2004/83/EC set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to lay down standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection-granted.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

(a) 'international protection' means refugee status and subsidiary protection status as defined in points (e) and (g);

(b) 'beneficiary of international protection' means a person who has been granted refugee status or subsidiary protection status as defined in points (e) and (g);

(c) 'Geneva Convention' means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;

(d) 'refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

(e) 'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee;

(f) 'person eligible for subsidiary protection' means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(g) 'subsidiary protection status' means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;

(h) 'application for international protection' means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;

(i) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(j) 'family members' means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:

— the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

— the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

— the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried;

(k) 'minor' means a third-country national or stateless person below the age of 18 years;

(l) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

(m) 'residence permit' means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's law, allowing a third-country national or stateless person to reside on its territory;

(n) 'country of origin' means the country or countries of nationality or, for stateless persons, of former habitual residence.

Article 3

More favourable standards

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.

CHAPTER II

ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

Article 4

Assessment of facts and circumstances

1. Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.

2. The elements referred to in paragraph 1 consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.

3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

4. The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established.

Article 5

International protection needs arising sur place

1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.

2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which the applicant has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall not normally be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin.

Article 6

Actors of persecution or serious harm

Actors of persecution or serious harm include:

(a) the State;

(b) parties or organisations controlling the State or a substantial part of the territory of the State;

(c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.

Article 7

Actors of protection

1. Protection against persecution or serious harm can only be provided by:

(a) the State; or

(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State;

provided they are willing and able to offer protection in accordance with paragraph 2.

2. Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned under points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.

3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Union acts.

Article 8

Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she:

(a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or

(b) has access to protection against persecution or serious harm as defined in Article 7;

and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.

2. In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.

CHAPTER III

QUALIFICATION FOR BEING A REFUGEE

Article 9

Acts of persecution

1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);

(f) acts of a gender-specific or child-specific nature.

3. In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.

Article 10

Reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution:

(a) the concept of race shall, in particular, include considerations of colour, descent, or membership of a particular ethnic group;

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

(c) the concept of nationality shall not be confined to citizenship or lack thereof but shall, in particular, include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(d) a group shall be considered to form a particular social group where in particular:

— members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

— that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;

(e) the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

Article 11

Cessation

1. A third-country national or a stateless person shall cease to be a refugee if he or she:

(a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or

(b) having lost his or her nationality, has voluntarily re-acquired it; or

(c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or

(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or

(f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Article 12

Exclusion

1. A third-country national or a stateless person is excluded from being a refugee if:

(a) he or she falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of this Directive;

(b) he or she is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those.

2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

3. Paragraph 2 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

CHAPTER IV

REFUGEE STATUS

Article 13

Granting of refugee status

Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.

Article 14

Revocation of, ending of or refusal to renew refugee status

1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.

2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted refugee status shall, on an individual basis, demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.

3. Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:

(a) he or she should have been or is excluded from being a refugee in accordance with Article 12;

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.

4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:

(a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;

(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.

6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State.

CHAPTER V

QUALIFICATION FOR SUBSIDIARY PROTECTION

Article 15

Serious harm

Serious harm consists of:

(a) the death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Article 16

Cessation

1. A third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.

2. In applying paragraph 1, Member States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.

3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Article 17

Exclusion

1. A third-country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious crime;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;

(d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.

2. Paragraph 1 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

3. Member States may exclude a third-country national or a stateless person from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of paragraph 1 which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.

CHAPTER VI

SUBSIDIARY PROTECTION STATUS

Article 18

Granting of subsidiary protection status

Member States shall grant subsidiary protection status to a third-country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.

Article 19

Revocation of, ending of or refusal to renew subsidiary protection status

1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.

2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).

3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person, if:

(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status.

4. Without prejudice to the duty of the third-country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted the subsidiary protection status shall, on an individual basis, demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.

CHAPTER VII

CONTENT OF INTERNATIONAL PROTECTION

Article 20

General rules

1. This Chapter shall be without prejudice to the rights laid down in the Geneva Convention.

2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.

3. When implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

4. Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.

5. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.

Article 21

Protection from refoulement

1. Member States shall respect the principle of *non-refoulement* in accordance with their international obligations.

2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may *refoule* a refugee, whether formally recognised or not, when:

(a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or

(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

Article 22

Information

Member States shall provide beneficiaries of international protection, as soon as possible after refugee status or subsidiary protection status has been granted, with access to information, in a language that they understand or are reasonably supposed to understand, on the rights and obligations relating to that status.

Article 23

Maintaining family unity

1. Member States shall ensure that family unity can be maintained.

2. Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.

3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.

4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred to therein for reasons of national security or public order.

5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.

Article 24

Residence permits

1. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least 3 years and renewable, unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3).

Without prejudice to Article 23(1), the residence permit to be issued to the family members of the beneficiaries of refugee status may be valid for less than 3 years and renewable.

2. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of subsidiary protection status and their family members a renewable residence permit which must be valid for at least 1 year and, in case of renewal, for at least 2 years, unless compelling reasons of national security or public order otherwise require.

Article 25

Travel document

1. Member States shall issue to beneficiaries of refugee status travel documents, in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.

2. Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel outside their territory, unless compelling reasons of national security or public order otherwise require.

Article 26

Access to employment

1. Member States shall authorise beneficiaries of international protection to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after protection has been granted.

2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services afforded by employment offices, are offered to beneficiaries of international protection, under equivalent conditions as nationals.

3. Member States shall endeavour to facilitate full access for beneficiaries of international protection to the activities referred to in paragraph 2.

4. The law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

Article 27

Access to education

1. Member States shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals.

2. Member States shall allow adults granted international protection access to the general education system, further training or retraining, under the same conditions as third-country nationals legally resident.

Article 28

Access to procedures for recognition of qualifications

1. Member States shall ensure equal treatment between beneficiaries of international protection and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

2. Member States shall endeavour to facilitate full access for beneficiaries of international protection who cannot provide documentary evidence of their qualifications to appropriate schemes for the assessment, validation and accreditation of their prior learning. Any such measures shall comply with Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [1].

Article 29

Social welfare

1. Member States shall ensure that beneficiaries of international protection receive, in the Member State that has granted such protection, the necessary social assistance as provided to nationals of that Member State.

2. By way of derogation from the general rule laid down in paragraph 1, Member States may limit social assistance granted to beneficiaries of subsidiary protection status to core benefits which will then be provided at the same level and under the same eligibility conditions as nationals.

Article 30

Healthcare

1. Member States shall ensure that beneficiaries of international protection have access to healthcare under the same eligibility conditions as nationals of the Member State that has granted such protection.

2. Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted protection, adequate healthcare, including treatment of mental disorders when needed, to beneficiaries of international protection who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.

[1] OJ L 255, 30.9.2005, p. 22.

Article 31

Unaccompanied minors

1. As soon as possible after the granting of international protection Member States shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order.

2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.

3. Member States shall ensure that unaccompanied minors are placed either:

(a) with adult relatives; or

(b) with a foster family; or

(c) in centres specialised in accommodation for minors; or

(d) in other accommodation suitable for minors.

In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.

4. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

5. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, Member States shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor's best interests. If the tracing has already started, Member States shall continue the tracing process where appropriate. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.

6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.

Article 32

Access to accommodation

1. Member States shall ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third-country nationals legally resident in their territories.

2. While allowing for national practice of dispersal of beneficiaries of international protection, Member States shall endeavour to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.

Article 33

Freedom of movement within the Member State

Member States shall allow freedom of movement within their territory to beneficiaries of international protection, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories.

Article 34

Access to integration facilities

In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes.

Article 35

Repatriation

Member States may provide assistance to beneficiaries of international protection who wish to be repatriated.

CHAPTER VIII

ADMINISTRATIVE COOPERATION

Article 36

Cooperation

Member States shall each appoint a national contact point and communicate its address to the Commission. The Commission shall communicate that information to the other Member States.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

Article 37

Staff

Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary training and shall be bound by the confidentiality principle, as defined in the national law, in relation to any information they obtain in the course of their work.

CHAPTER IX

FINAL PROVISIONS

Article 38

Reports

1. By 21 June 2015, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary. Those proposals for amendment shall be made by way of priority in Articles 2 and 7. Member States shall send the Commission all the information that is appropriate for drawing up that report by 21 December 2014.

2. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every 5 years.

Article 39

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 by 21 December 2013. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law covered by this Directive.

Article 40

Repeal

Directive 2004/83/EC is repealed for the Member States bound by this Directive with effect from 21 December 2013, without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directive set out in Annex I, Part B.

For the Member States bound by this Directive, references to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 41

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 shall apply from 22 December 2013.

Article 42

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 13 December 2011.

For the European Parliament	*For the Council*
The President	*The President*
J. BUZEK	M. SZPUNAR

ANNEX I

PART A

Repealed Directive

(referred to in Article 40)

Council Directive 2004/83/EC (OJ L 304, 30.9.2004, p. 12).

PART B

Time limit for transposition into national law

(referred to in Article 39)

Directive	Time limit for transposition
2004/83/EC	10 October 2006

ANNEX II

Correlation table

Directive 2004/83/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2(a)	Article 2(a)
—	Article 2(b)
Article 2(b)-(g)	Article 2(c)-(h)
—	Article 2(i)
Article 2(h)	Article 2(j) first and second indent
—	Article 2(j) third indent
—	Article 2(k)
Article 2(i)	Article 2(l)
Article 2(j)	Article 2(m)
Article 2(k)	Article 2(n)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8(1)(2)	Article 8(1)(2)
Article 8(3)	—
Article 9	Article 9
Article 10	Article 10
Article 11(1)(2)	Article 11(1)(2)
—	Article 11(3)
Article 12	Article 12
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16(1)(2)	Article 16(1)(2)
—	Article 16(3)
Article 17	Article 17
Article 18	Article 18
Article 19	Article 19
Article 20(1)-(5)	Article 20(1)-(5)
Article 20(6)(7)	—

Directive 2004/83/EC	This Directive
Article 21	Article 21
Article 22	Article 22
Article 23(1)	Article 23(1)
Article 23(2) first subparagraph	Article 23(2)
Article 23(2) second subparagraph	—
Article 23(2) third subparagraph	—
Article 23(3)-(5)	Article 23(3)-(5)
Article 24(1)	Article 24(1)
Article 24(2)	Article 24(2)
Article 25	Article 25
Article 26(1)-(3)	Article 26(1)-(3)
Article 26(4)	—
Article 26(5)	Article 26(4)
Article 27(1)(2)	Article 27(1)(2)
Article 27(3)	Article 28(1)
—	Article 28(2)
Article 28(1)	Article 29(1)
Article 28(2)	Article 29(2)
Article 29(1)	Article 30(1)
Article 29(2)	—
Article 29(3)	Article 30(2)
Article 30	Article 31
Article 31	Article 32(1)
—	Article 32(2)
Article 32	Article 33
Article 33	Article 34
Article 34	Article 35
Article 35	Article 36
Article 36	Article 37
Article 37	Article 38
Article 38	Article 39
—	Article 40
Article 39	Article 41
Article 40	Article 42
—	Annex I
—	Annex II

DIRECTIVES

DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

on common procedures for granting and withdrawing international protection (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(d) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) A number of substantive changes are to be made to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status [3]. In the interest of clarity, that Directive should be recast.

(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.

(4) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common standards for fair and efficient asylum procedures in the Member States and, in the longer term, Union rules leading to a common asylum procedure in the Union.

(5) The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments provided for in the Treaties, including Directive 2005/85/EC, which was a first measure on asylum procedures.

(6) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-10. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council. In accordance with The Hague Programme, the objective to be pursued for the creation of the Common European Asylum System is the establishment of a common asylum procedure and a uniform status valid throughout the Union.

(7) In the European Pact on Immigration and Asylum, adopted on 16 October 2008, the European Council noted that considerable disparities remained between one Member State and another concerning the grant of protection and called for new initiatives, including a proposal for establishing a single asylum procedure comprising common guarantees, to complete the establishment of a Common European Asylum System, provided for in The Hague Programme.

[1] OJ C 24, 28.1.2012, p. 79.

[2] Position of the European Parliament of 6 April 2011 (OJ C 296 E, 2.10.2012, p. 184) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).

[3] OJ L 326, 13.12.2005, p. 13.

(8) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme affirmed that people in need of international protection must be ensured access to legally safe and efficient asylum procedures. In accordance with the Stockholm Programme, individuals should be offered the same level of treatment as regards procedural arrangements and status determination, regardless of the Member State in which their application for international protection is lodged. The objective is that similar cases should be treated alike and result in the same outcome.

(9) The resources of the European Refugee Fund and of the European Asylum Support Office (EASO) should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

(10) When implementing this Directive, Member States should take into account relevant guidelines developed by EASO.

(11) In order to ensure a comprehensive and efficient assessment of the international protection needs of applicants within the meaning of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [1], the Union framework on procedures for granting and withdrawing international protection should be based on the concept of a single procedure.

(12) The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.

(13) The approximation of rules on the procedures for granting and withdrawing international protection should help to limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, and to create equivalent conditions for the application of Directive 2011/95/EU in Member States.

(14) Member States should have the power to introduce or maintain more favourable provisions for third-country nationals or stateless persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is in need of international protection within the meaning of Directive 2011/95/EU.

(15) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party.

(16) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received the necessary training in the field of international protection.

(17) In order to ensure that applications for international protection are examined and decisions thereon are taken objectively and impartially, it is necessary that professionals acting in the framework of the procedures provided for in this Directive perform their activities with due respect for the applicable deontological principles.

(18) It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.

(19) In order to shorten the overall duration of the procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications, without derogating from normally applicable procedural time limits, principles and guarantees.

(20) In well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for in this Directive.

[1] OJ L 337, 20.12.2011, p. 9.

(21) As long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not *per se* entail an automatic recourse to border or accelerated procedures.

(22) It is also in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at first instance. To that end, applicants should be provided at first instance, free of charge, with legal and procedural information, taking into account their particular circumstances. The provision of such information should, inter alia, enable the applicants to better understand the procedure, thus helping them to comply with the relevant obligations. It would be disproportionate to require Member States to provide such information only through the services of qualified lawyers. Member States should therefore have the possibility to use the most appropriate means to provide such information, such as through non-governmental organisations or professionals from government authorities or specialised services of the State.

(23) In appeals procedures, subject to certain conditions, applicants should be granted free legal assistance and representation provided by persons competent to provide them under national law. Furthermore, at all stages of the procedure, applicants should have the right to consult, at their own cost, legal advisers or counsellors admitted or permitted as such under national law.

(24) The notion of public order may, inter alia, cover a conviction for having committed a serious crime.

(25) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with: the right to stay pending a decision by the determining authority; access to the services of an interpreter for submitting his or her case if interviewed by the authorities; the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organisations providing advice or counselling to applicants for international protection; the right to appropriate notification of a decision and of the reasons for that decision in fact and in law; the opportunity to consult a legal adviser or other counsellor; the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or is reasonably supposed to understand; and, in the case of a negative decision, the right to an effective remedy before a court or a tribunal.

(26) With a view to ensuring effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection, inter alia, taking due account of relevant guidelines developed by EASO. They should be able to provide third-country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and who make an application for international protection, with relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked on land and have their applications examined in accordance with this Directive.

(27) Given that third-country nationals and stateless persons who have expressed their wish to apply for international protection are applicants for international protection, they should comply with the obligations, and benefit from the rights, under this Directive and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [1]. To that end, Member States should register the fact that those persons are applicants for international protection as soon as possible.

(28) In order to facilitate access to the examination procedure at border crossing points and in detention facilities, information should be made available on the possibility to apply for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to apply for international protection should be ensured through interpretation arrangements.

(29) Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or

[1] See page 96 of this Official Journal.

other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.

(30) Where adequate support cannot be provided to an applicant in need of special procedural guarantees in the framework of accelerated or border procedures, such an applicant should be exempted from those procedures. The need for special procedural guarantees of a nature that could prevent the application of accelerated or border procedures should also mean that the applicant is provided with additional guarantees in cases where his or her appeal does not have automatic suspensive effect, with a view to making the remedy effective in his or her particular circumstances.

(31) National measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or psychological violence, including acts of sexual violence, in procedures covered by this Directive may, inter alia, be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

(32) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution. The complexity of gender-related claims should be properly taken into account in procedures based on the concept of safe third country, the concept of safe country of origin or the notion of subsequent applications.

(33) The best interests of the child should be a primary consideration of Member States when applying this Directive, in accordance with the Charter of Fundamental Rights of the European Union (the Charter) and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interest of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background.

(34) Procedures for examining international protection needs should be such as to enable the competent authorities to conduct a rigorous examination of applications for international protection.

(35) When, in the framework of an application being processed, the applicant is searched, that search should be carried by a person of the same sex. This should be without prejudice to a search carried out, for security reasons, on the basis of national law.

(36) Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In those cases, Member States should be able to dismiss an application as inadmissible in accordance with the *res judicata* principle.

(37) With respect to the involvement of the personnel of an authority other than the determining authority in conducting timely interviews on the substance of an application, the notion of 'timely' should be assessed against the time limits provided for in Article 31.

(38) Many applications for international protection are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to provide for admissibility and/or substantive examination procedures which would make it possible for such applications to be decided upon at those locations in well-defined circumstances.

(39) In determining whether a situation of uncertainty prevails in the country of origin of an applicant, Member States should ensure that they obtain precise and up-to-date information from relevant sources such as EASO, UNHCR, the Council of Europe and other relevant international organisations. Member States should ensure that any postponement of conclusion of the procedure fully complies with their obligations under Directive 2011/95/EU and Article 41 of the Charter, without prejudice to the efficiency and fairness of the procedures under this Directive.

(40) A key consideration for the well-foundedness of an application for international protection is the safety of the applicant in his or her country of origin. Where a third country can be regarded as a safe country of origin, Member States should be able to designate it as safe and presume its safety for a particular applicant, unless he or she presents counter-indications.

(41) Given the level of harmonisation achieved on the qualification of third-country nationals and stateless persons as beneficiaries of international protection, common criteria should be established for designating third countries as safe countries of origin.

(42) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in that country. For this reason, it is important that, where an applicant shows that there are valid reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.

(43) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with Directive 2011/95/EU, except where this Directive provides otherwise, in particular where it can reasonably be assumed that another country would do the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an application for international protection where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to that country.

(44) Member States should not be obliged to assess the substance of an application for international protection where the applicant, due to a sufficient connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country, and there are grounds for considering that the applicant will be admitted or readmitted to that country. Member States should only proceed on that basis where that particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles should be established for the consideration or designation by Member States of third countries as safe.

(45) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to not carry out, or not to carry out full examination of, applications for international protection regarding applicants who enter their territory from such European third countries.

(46) Where Member States apply safe country concepts on a case-by-case basis or designate countries as safe by adopting lists to that effect, they should take into account, inter alia, the guidelines and operating manuals and the information on countries of origin and activities, including EASO Country of Origin Information report methodology, referred to in Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office [1], as well as relevant UNHCR guidelines.

(47) In order to facilitate the regular exchange of information about the national application of the concepts of safe country of origin, safe third country and European safe third country as well as a regular review by the Commission of the use of those concepts by Member States, and to prepare for a potential further harmonisation in the future, Member States should notify or periodically inform the Commission about the third countries to which the concepts are applied. The Commission should regularly inform the European Parliament on the result of its reviews.

(48) In order to ensure the correct application of the safe country concepts based on up-to-date information, Member States should conduct regular reviews of the situation in those countries based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations. When Member States become aware of a significant change in the human rights situation in a country designated by them as safe, they should ensure that a review of that situation is conducted as soon as possible and, where necessary, review the designation of that country as safe.

(49) With respect to the withdrawal of refugee or subsidiary protection status, Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a reasoned decision to withdraw their status.

(50) It reflects a basic principle of Union law that the decisions taken on an application for international protection, the decisions concerning a refusal to reopen the examination of an application after its discontinuation, and the decisions on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal.

[1] OJ L 132, 29.5.2010, p. 11.

(51) In accordance with Article 72 of the Treaty on the Functioning of the European Union (TFEU), this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

(52) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] governs the processing of personal data carried out in the Member States pursuant to this Directive.

(53) This Directive does not deal with procedures between Member States governed by Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2].

(54) This Directive should apply to applicants to whom Regulation (EU) No 604/2013 applies, in addition and without prejudice to the provisions of that Regulation.

(55) The implementation of this Directive should be evaluated at regular intervals.

(56) Since the objective of this Directive, namely to establish common procedures for granting and withdrawing international protection, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(57) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 [3], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(58) In accordance with Articles 1, 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(59) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24, and 47 of the Charter and has to be implemented accordingly.

(61) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2005/85/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(62) This Directive should be without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of Directive 2005/85/EC set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU.

Article 2

Definitions

For the purposes of this Directive:

(a) 'Geneva Convention' means the Convention of 28 July 1951 Relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967;

[1] OJ L 281, 23.11.1995, p. 31.
[2] See page 31 of this Official Journal.
[3] OJ C 369, 17.12.2011, p. 14.

(b) 'application for international protection' or 'application' means a request made by a third- country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU, that can be applied for separately;

(c) 'applicant' means a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(d) 'applicant in need of special procedural guarantees' means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Directive is limited due to individual circumstances;

(e) 'final decision' means a decision on whether the third-country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive 2011/95/EU and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;

(f) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases;

(g) 'refugee' means a third-country national or a stateless person who fulfils the requirements of Article 2(d) of Directive 2011/95/EU;

(h) 'person eligible for subsidiary protection' means a third-country national or a stateless person who fulfils the requirements of Article 2(f) of Directive 2011/95/EU;

(i) 'international protection' means refugee status and subsidiary protection status as defined in points (j) and (k);

(j) 'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee;

(k) 'subsidiary protection status' means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;

(l) 'minor' means a third-country national or a stateless person below the age of 18 years;

(m) 'unaccompanied minor' means an unaccompanied minor as defined in Article 2(l) of Directive 2011/95/EU;

(n) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;

(o) 'withdrawal of international protection' means the decision by a competent authority to revoke, end or refuse to renew the refugee or subsidiary protection status of a person in accordance with Directive 2011/95/EU;

(p) 'remain in the Member State' means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;

(q) 'subsequent application' means a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn his or her application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Article 28(1).

Article 3

Scope

1. This Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.

2. This Directive shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States.

3. Member States may decide to apply this Directive in procedures for deciding on applications for any kind of protection falling outside of the scope of Directive 2011/95/EU.

Article 4

Responsible authorities

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive. Member States shall ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive.

2. Member States may provide that an authority other than that referred to in paragraph 1 shall be responsible for the purposes of:

(a) processing cases pursuant to Regulation (EU) No 604/2013; and

(b) granting or refusing permission to enter in the framework of the procedure provided for in Article 43, subject to the conditions as set out therein and on the basis of the reasoned opinion of the determining authority.

3. Member States shall ensure that the personnel of the determining authority referred to in paragraph 1 are properly trained. To that end, Member States shall provide for relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Member States shall also take into account the relevant training established and developed by the European Asylum Support Office (EASO). Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past.

4. Where an authority is designated in accordance with paragraph 2, Member States shall ensure that the personnel of that authority have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

5. Applications for international protection made in a Member State to the authorities of another Member State carrying out border or immigration controls there shall be dealt with by the Member State in whose territory the application is made.

Article 5

More favourable provisions

Member States may introduce or retain more favourable standards on procedures for granting and withdrawing international protection, insofar as those standards are compatible with this Directive.

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

Article 6

Access to the procedure

1. When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Where the applicant does not lodge his or her application, Member States may apply Article 28 accordingly.

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4. Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.

5. Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit laid down in paragraph 1, Member States may provide for that time limit to be extended to 10 working days.

Article 7

Applications made on behalf of dependants or minors

1. Member States shall ensure that each adult with legal capacity has the right to make an application for international protection on his or her own behalf.

2. Member States may provide that an application may be made by an applicant on behalf of his or her dependants. In such cases, Member States shall ensure that dependent adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.

Consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependent adult is conducted. Before consent is requested, each dependent adult shall be informed in private of the relevant procedural consequences of the lodging of the application on his or her behalf and of his or her right to make a separate application for international protection.

3. Member States shall ensure that a minor has the right to make an application for international protection either on his or her own behalf, if he or she has the legal capacity to act in procedures according to the law of the Member State concerned, or through his or her parents or other adult family members, or an adult responsible for him or her, whether by law or by the practice of the Member State concerned, or through a representative.

4. Member States shall ensure that the appropriate bodies referred to in Article 10 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [1] have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, those bodies are of the opinion that the minor may have protection needs pursuant to Directive 2011/95/EU.

5. Member States may determine in national legislation:

(a) the cases in which a minor can make an application on his or her own behalf;

(b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 25(1)(a);

(c) the cases in which the lodging of an application for international protection is deemed to constitute also the lodging of an application for international protection for any unmarried minor.

[1] OJ L 348, 24.12.2008, p. 98.

Article 8

Information and counselling in detention facilities and at border crossing points

1. Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.

2. Member States shall ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organisations and persons in those crossing points and in particular that access is subject to an agreement with the competent authorities of the Member States. Limits on such access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the crossing points concerned, provided that access is not thereby severely restricted or rendered impossible.

Article 9

Right to remain in the Member State pending the examination of the application

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. That right to remain shall not constitute an entitlement to a residence permit.

2. Member States may make an exception only where a person makes a subsequent application referred to in Article 41 or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant [2] or otherwise, or to a third country or to international criminal courts or tribunals.

3. A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect *refoulement* in violation of the international and Union obligations of that Member State.

[2] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

Article 10

Requirements for the examination of applications

1. Member States shall ensure that applications for international protection are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

2. When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection.

3. Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:

(a) applications are examined and decisions are taken individually, objectively and impartially;

(b) precise and up-to-date information is obtained from various sources, such as EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;

(c) the personnel examining applications and taking decisions know the relevant standards applicable in the field of asylum and refugee law;

(d) the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

4. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 3(b), necessary for the fulfilment of their task.

5. Member States shall provide for rules concerning the translation of documents relevant for the examination of applications.

Article 11

Requirements for a decision by the determining authority

1. Member States shall ensure that decisions on applications for international protection are given in writing.

2. Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with such information at an earlier stage either in writing or by electronic means accessible to the applicant.

3. For the purposes of Article 7(2), and whenever the application is based on the same grounds, Member States may take a single decision, covering all dependants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender, sexual orientation, gender identity and/or age-based persecution. In such cases, a separate decision shall be issued to the person concerned.

Article 12

Guarantees for applicants

1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees:

(a) they shall be informed in a language which they understand or are reasonably supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2011/95/EU, as well as of the consequences of an explicit or implicit withdrawal of the application. That information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 13;

(b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to provide those services at least when the applicant is to be interviewed as referred to in Articles 14 to 17 and 34 and appropriate communication cannot be ensured without such services. In that case and in other cases where the competent authorities call upon the applicant, those services shall be paid for out of public funds;

(c) they shall not be denied the opportunity to communicate with UNHCR or with any other organisation providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned;

(d) they and, if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and to the information provided by the experts referred to in Article 10(3)(d), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application;

(e) they shall be given notice in reasonable time of the decision by the determining authority on their application. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him or her instead of to the applicant;

(f) they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2).

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants enjoy guarantees equivalent to the ones referred to in paragraph 1(b) to (e).

Article 13

Obligations of the applicants

1. Member States shall impose upon applicants the obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive 2011/95/EU. Member States may impose upon applicants other obligations to cooperate with the competent authorities insofar as such obligations are necessary for the processing of the application.

2. In particular, Member States may provide that:

(a) applicants are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;

(b) applicants have to hand over documents in their possession relevant to the examination of the application, such as their passports;

(c) applicants are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he or she indicated accordingly;

(d) the competent authorities may search the applicant and the items which he or she is carrying. Without prejudice to any search carried out for security reasons, a search of the applicant's person under this Directive shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity;

(e) the competent authorities may take a photograph of the applicant; and

(f) the competent authorities may record the applicant's oral statements, provided he or she has previously been informed thereof.

Article 14

Personal interview

1. Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person competent under national law to conduct such an interview. Personal interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority. This subparagraph shall be without prejudice to Article 42(2)(b).

Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible in practice for the determining authority to conduct timely interviews on the substance of each application, Member States may provide that the personnel of another authority be temporarily involved in conducting such interviews. In such cases, the personnel of that other authority shall receive in advance the relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Persons conducting personal interviews of applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect an applicant's ability to be interviewed, such as indications that the applicant may have been tortured in the past.

Where a person has lodged an application for international protection on behalf of his or her dependants, each dependent adult shall be given the opportunity of a personal interview.

Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.

2. The personal interview on the substance of the application may be omitted where:

(a) the determining authority is able to take a positive decision with regard to refugee status on the basis of evidence available; or

(b) the determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control. When in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.

Where a personal interview is not conducted pursuant to point (b) or, where applicable, with the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

3. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for international protection.

4. The absence of a personal interview pursuant to paragraph 2(b) shall not adversely affect the decision of the determining authority.

5. Irrespective of Article 28(1), Member States, when deciding on an application for international protection, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear.

Article 15

Requirements for a personal interview

1. A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.

2. A personal interview shall take place under conditions which ensure appropriate confidentiality.

3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

(a) ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;

(b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;

(c) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests, unless the determining authority has reasons to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;

(d) ensure that the person who conducts the interview on the substance of an application for international protection does not wear a military or law enforcement uniform;

(e) ensure that interviews with minors are conducted in a child-appropriate manner.

4. Member States may provide for rules concerning the presence of third parties at a personal interview.

Article 16

Content of a personal interview

When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant is given an adequate opportunity to present elements needed to substantiate the application in accordance with Article 4 of Directive 2011/95/EU as completely as possible. This shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant's statements.

Article 17

Report and recording of personal interviews

1. Member States shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview.

2. Member States may provide for audio or audiovisual recording of the personal interview. Where such a recording is made, Member States shall ensure that the recording or a transcript thereof is available in connection with the applicant's file.

3. Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarification orally and/or in writing with regard to any mistranslations or misconceptions appearing in the report or in the transcript, at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end, Member States shall ensure that the applicant is fully informed of the content of the report or of the substantive elements of the transcript, with the assistance of an interpreter if necessary. Member States shall then request the applicant to confirm that the content of the report or the transcript correctly reflects the interview.

When the personal interview is recorded in accordance with paragraph 2 and the recording is admissible as evidence in the appeals procedures referred to in Chapter V, Member States need not request the applicant to confirm that the content of the report or the transcript correctly reflects the interview. Without prejudice to Article 16, where Member States provide for both a transcript and a recording of the personal interview, Member States need not allow the applicant to make comments on and/or provide clarification of the transcript.

4. Where an applicant refuses to confirm that the content of the report or the transcript correctly reflects the personal interview, the reasons for his or her refusal shall be entered in the applicant's file.

Such refusal shall not prevent the determining authority from taking a decision on the application.

5. Applicants and their legal advisers or other counsellors, as defined in Article 23, shall have access to the report or the transcript and, where applicable, the recording, before the determining authority takes a decision.

Where Member States provide for both a transcript and a recording of the personal interview, Member States need not provide access to the recording in the procedures at first instance referred to in Chapter III. In such cases, they shall nevertheless provide access to the recording in the appeals procedures referred to in Chapter V.

Without prejudice to paragraph 3 of this Article, where the application is examined in accordance with Article 31(8), Member States may provide that access to the report or the transcript, and where applicable, the recording, is granted at the same time as the decision is made.

Article 18

Medical examination

1. Where the determining authority deems it relevant for the assessment of an application for international protection in accordance with Article 4 of Directive 2011/95/EU, Member States shall, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm. Alternatively, Member States may provide that the applicant arranges for such a medical examination.

The medical examinations referred to in the first subparagraph shall be carried out by qualified medical professionals and the result thereof shall be submitted to the determining authority as soon as possible. Member States may designate the medical professionals who may carry out such medical examinations. An applicant's refusal to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

Medical examinations carried out in accordance with this paragraph shall be paid for out of public funds.

2. When no medical examination is carried out in accordance with paragraph 1, Member States shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs that might indicate past persecution or serious harm.

3. The results of the medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with the other elements of the application.

Article 19

Provision of legal and procedural information free of charge in procedures at first instance

1. In the procedures at first instance provided for in Chapter III, Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge, including, at least, information on the procedure in the light of the applicant's particular circumstances. In the event of a negative decision on an application at first instance, Member States shall also, on request, provide applicants with information — in addition to that given in accordance with Article 11(2) and Article 12(1)(f) — in order to clarify the reasons for such decision and explain how it can be challenged.

2. The provision of legal and procedural information free of charge shall be subject to the conditions laid down in Article 21.

Article 20

Free legal assistance and representation in appeals procedures

1. Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. It shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.

2. Member States may also provide free legal assistance and/or representation in the procedures at first instance provided for in Chapter III. In such cases, Article 19 shall not apply.

3. Member States may provide that free legal assistance and representation not be granted where the applicant's appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority which is not a court or tribunal, Member States shall ensure that the applicant has the right to an effective remedy before a court or tribunal against that decision.

In the application of this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4. Free legal assistance and representation shall be subject to the conditions laid down in Article 21.

Article 21

Conditions for the provision of legal and procedural information free of charge and free legal assistance and representation

1. Member States may provide that the legal and procedural information free of charge referred to in Article 19 is provided by non-governmental organisations, or by professionals from government authorities or from specialised services of the State.

The free legal assistance and representation referred to in Article 20 shall be provided by such persons as admitted or permitted under national law.

2. Member States may provide that legal and procedural information free of charge referred to in Article 19 and free legal assistance and representation referred to in Article 20 are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that the free legal assistance and representation referred to in Article 20 is granted only for appeals procedures in accordance with Chapter V before a court or tribunal of first instance and not for any further appeals or reviews provided for under national law, including rehearings or reviews of appeals.

Member States may also provide that the free legal assistance and representation referred to in Article 20 is not granted to applicants who are no longer present on their territory in application of Article 41(2)(c).

3. Member States may lay down rules concerning the modalities for filing and processing requests for legal and procedural information free of charge under Article 19 and for free legal assistance and representation under Article 20.

4. Member States may also:

(a) impose monetary and/or time limits on the provision of legal and procedural information free of charge referred to in Article 19 and on the provision of free legal assistance and representation referred to in Article 20, provided that such limits do not arbitrarily restrict access to the provision of legal and procedural information and legal assistance and representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

5. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

Article 22

Right to legal assistance and representation at all stages of the procedure

1. Applicants shall be given the opportunity to consult, at their own cost, in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their applications for international protection, at all stages of the procedure, including following a negative decision.

2. Member States may allow non-governmental organisations to provide legal assistance and/or representation to applicants in the procedures provided for in Chapter III and Chapter V in accordance with national law.

Article 23

Scope of legal assistance and representation

1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant under the terms of national law, shall enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised. In such cases, Member States shall:

(a) make access to such information or sources available to the authorities referred to in Chapter V; and

(b) establish in national law procedures guaranteeing that the applicant's rights of defence are respected.

In respect of point (b), Member States may, in particular, grant access to such information or sources to a legal adviser or other counsellor who has undergone a security check, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant, in accordance with Article 10(4) and Article 18(2)(b) and (c) of Directive 2013/33/EU.

3. Member States shall allow an applicant to bring to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

Member States may stipulate that the legal adviser or other counsellor may only intervene at the end of the personal interview.

4. Without prejudice to this Article or to Article 25(1)(b), Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure.

Member States may require the presence of the applicant at the personal interview, even if he or she is represented under the terms of national law by a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.

Without prejudice to Article 25(1)(b), the absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting a personal interview with the applicant.

Article 24

Applicants in need of special procedural guarantees

1. Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees.

2. The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of Directive 2013/33/EU and need not take the form of an administrative procedure.

3. Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.

Where such adequate support cannot be provided within the framework of the procedures referred to in Article 31(8) and Article 43, in particular where Member States consider that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, Member States shall not apply, or shall cease to apply, Article 31(8) and Article 43. Where Member States apply Article 46(6) to applicants to whom Article 31(8) and Article 43 cannot be applied pursuant to this subparagraph, Member States shall provide at least the guarantees provided for in Article 46(7).

4. Member States shall ensure that the need for special procedural guarantees is also addressed, in accordance with this Directive, where such a need becomes apparent at a later stage of the procedure, without necessarily restarting the procedure.

Article 25

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 14 to 17, Member States shall:

(a) take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of a representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end. The person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives. The representative may also be the representative referred to in Directive 2013/33/EU;

(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself or herself for the personal interview. Member States shall ensure that a representative and/or a legal adviser or other counsellor admitted or permitted as such under national law are present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.

2. Member States may refrain from appointing a representative where the unaccompanied minor will in all likelihood reach the age of 18 before a decision at first instance is taken.

3. Member States shall ensure that:

(a) if an unaccompanied minor has a personal interview on his or her application for international protection as referred to in Articles 14 to 17 and 34, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;

(b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

4. Unaccompanied minors and their representatives shall be provided, free of charge, with legal and procedural information as referred to in Article 19 also in the procedures for the withdrawal of international protection provided for in Chapter IV.

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.

Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.

Where medical examinations are used, Member States shall ensure that:

(a) unaccompanied minors are informed prior to the examination of their application for international protection, and in a language that they understand or are reasonably supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for international protection, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;

(b) unaccompanied minors and/or their representatives consent to a medical examination being carried out to determine the age of the minors concerned; and

(c) the decision to reject an application for international protection by an unaccompanied minor who refused to undergo a medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

6. The best interests of the child shall be a primary consideration for Member States when implementing this Directive.

Where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, they may:

(a) apply or continue to apply Article 31(8) only if:

(i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive; or

(ii) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or

(iii) the applicant may for serious reasons be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law;

(b) apply or continue to apply Article 43, in accordance with Articles 8 to 11 of Directive 2013/33/EU, only if:

(i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive; or

(ii) the applicant has introduced a subsequent application; or

(iii) the applicant may for serious reasons be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law; or

(iv) there are reasonable grounds to consider that a country which is not a Member State is a safe third country for the applicant, pursuant to Article 38; or

(v) the applicant has misled the authorities by presenting false documents; or

(vi) in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality.

Member States may apply points (v) and (vi) only in individual cases where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision and provided that the applicant has been given full opportunity, taking into account the special procedural needs of unaccompanied minors, to show good cause for the actions referred to in points (v) and (vi), including by consulting with his or her representative;

(c) consider the application to be inadmissible in accordance with Article 33(2)(c) if a country which is not a Member State is considered as a safe third country for the applicant pursuant to Article 38, provided that to do so is in the minor's best interests;

(d) apply the procedure referred to in Article 20(3) where the minor's representative has legal qualifications in accordance with national law.

Without prejudice to Article 41, in applying Article 46(6) to unaccompanied minors, Member States shall provide at least the guarantees provided for in Article 46(7) in all cases.

Article 26

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive 2013/33/EU.

2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive 2013/33/EU.

Article 27

Procedure in the event of withdrawal of the application

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant explicitly withdraws his or her application for international protection, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or to reject the application.

2. Member States may also decide that the determining authority may decide to discontinue the examination without taking a decision. In that case, Member States shall ensure that the determining authority enters a notice in the applicant's file.

Article 28

Procedure in the event of implicit withdrawal or abandonment of the application

1. When there is reasonable cause to consider that an applicant has implicitly withdrawn or abandoned his or her application, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, provided that the determining authority considers the application to be unfounded on the basis of an adequate examination of its substance in line with Article 4 of Directive 2011/95/EU, to reject the application.

Member States may assume that the applicant has implicitly withdrawn or abandoned his or her application for international protection in particular when it is ascertained that:

(a) he or she has failed to respond to requests to provide information essential to his or her application in terms of Article 4 of Directive 2011/95/EU or has not appeared for a personal interview as provided for in Articles 14 to 17 of this Directive, unless the applicant demonstrates within a reasonable time that his or her failure was due to circumstances beyond his or her control;

(b) he or she has absconded or left without authorisation the place where he or she lived or was held, without contacting the competent authority within a reasonable time, or he or she has not within a reasonable time complied with reporting duties or other obligations to communicate, unless the applicant demonstrates that this was due to circumstances beyond his or her control.

For the purposes of implementing these provisions, Member States may lay down time limits or guidelines.

2. Member States shall ensure that an applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his or her case be reopened or to make a new application which shall not be subject to the procedure referred to in Articles 40 and 41.

Member States may provide for a time limit of at least nine months after which the applicant's case can no longer be reopened or the new application may be treated as a subsequent application and subject to the procedure referred to in Articles 40 and 41. Member States may provide that the applicant's case may be reopened only once.

Member States shall ensure that such a person is not removed contrary to the principle of *non-refoulement*.

Member States may allow the determining authority to resume the examination at the stage where it was discontinued.

3. This Article shall be without prejudice to Regulation (EU) No 604/2013.

Article 29

The role of UNHCR

1. Member States shall allow UNHCR:

(a) to have access to applicants, including those in detention, at the border and in the transit zones;

(b) to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, provided that the applicant agrees thereto;

(c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure.

2. Paragraph 1 shall also apply to an organisation which is working in the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.

Article 30

Collection of information on individual cases

For the purposes of examining individual cases, Member States shall not:

(a) disclose information regarding individual applications for international protection, or the fact that an application has been made, to the alleged actor(s) of persecution or serious harm;

(b) obtain any information from the alleged actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

CHAPTER III

PROCEDURES AT FIRST INSTANCE

SECTION I

Article 31

Examination procedure

1. Member States shall process applications for international protection in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

3. Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application.

Where an application is subject to the procedure laid down in Regulation (EU) No 604/2013, the time limit of six months shall start to run from the moment the Member State responsible for its examination is determined in accordance with that Regulation, the applicant is on the territory of that Member State and has been taken in charge by the competent authority.

Member States may extend the time limit of six months set out in this paragraph for a period not exceeding a further nine months, where:

(a) complex issues of fact and/or law are involved;

(b) a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit;

(c) where the delay can clearly be attributed to the failure of the applicant to comply with his or her obligations under Article 13.

By way of exception, Member States may, in duly justified circumstances, exceed the time limits laid down in this paragraph by a maximum of three months where necessary in order to ensure an adequate and complete examination of the application for international protection.

4. Without prejudice to Articles 13 and 18 of Directive 2011/95/EU, Member States may postpone concluding the examination procedure where the determining authority cannot reasonably be expected to decide within the time-limits laid down in paragraph 3 due to an uncertain situation in the country of origin which is expected to be temporary. In such a case, Member States shall:

(a) conduct reviews of the situation in that country of origin at least every six months;

(b) inform the applicants concerned within a reasonable time of the reasons for the postponement;

(c) inform the Commission within a reasonable time of the postponement of procedures for that country of origin.

5. In any event, Member States shall conclude the examination procedure within a maximum time limit of 21 months from the lodging of the application.

6. Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall:

(a) be informed of the delay; and

(b) receive, upon his or her request, information on the reasons for the delay and the time-frame within which the decision on his or her application is to be expected.

7. Member States may prioritise an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II in particular:

(a) where the application is likely to be well-founded;

(b) where the applicant is vulnerable, within the meaning of Article 22 of Directive 2013/33/EU, or is in need of special procedural guarantees, in particular unaccompanied minors.

8. Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated and/or conducted at the border or in transit zones in accordance with Article 43 if:

(a) the applicant, in submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU; or

(b) the applicant is from a safe country of origin within the meaning of this Directive; or

(c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision; or

(d) it is likely that, in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality; or

(e) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making his or her claim clearly unconvincing in relation to whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU; or

(f) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or

(g) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his or her removal; or

(h) the applicant entered the territory of the Member State unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the authorities or not made an application for international protection as soon as possible, given the circumstances of his or her entry; or

(i) the applicant refuses to comply with an obligation to have his or her fingerprints taken in accordance with Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes [1]; or

(j) the applicant may, for serious reasons, be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.

9. Member States shall lay down time limits for the adoption of a decision in the procedure at first instance pursuant to paragraph 8. Those time limits shall be reasonable.

Without prejudice to paragraphs 3 to 5, Member States may exceed those time limits where necessary in order to ensure an adequate and complete examination of the application for international protection.

Article 32

Unfounded applications

1. Without prejudice to Article 27, Member States may only consider an application to be unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive 2011/95/EU.

2. In cases of unfounded applications in which any of the circumstances listed in Article 31(8) apply, Member States may also consider an application to be manifestly unfounded, where it is defined as such in the national legislation.

SECTION II

Article 33

Inadmissible applications

1. In addition to cases in which an application is not examined in accordance with Regulation (EU) No 604/2013, Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95/EU where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for international protection as inadmissible only if:

(a) another Member State has granted international protection;

(b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35;

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38;

(d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant; or

(e) a dependant of the applicant lodges an application, after he or she has in accordance with Article 7(2) consented to have his or her case be part of an application lodged on his or her behalf, and there are no facts relating to the dependant's situation which justify a separate application.

Article 34

Special rules on an admissibility interview

1. Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 33 in their particular circumstances before the determining authority decides on the admissibility of an application for international protection. To that end, Member States shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 42 in the case of a subsequent application.

This paragraph shall be without prejudice to Article 4(2)(a) of this Directive and to Article 5 of Regulation (EU) No 604/2013.

2. Member States may provide that the personnel of authorities other than the determining authority conduct the personal interview on the admissibility of the application for international protection. In such cases, Member States shall ensure that such personnel receive in advance the necessary basic training, in particular with respect to international human rights law, the Union asylum *acquis* and interview techniques.

SECTION III

Article 35

The concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant if:

[1] See page 1 of this Official Journal.

(a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or

(b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*,

provided that he or she will be readmitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant, Member States may take into account Article 38(1). The applicant shall be allowed to challenge the application of the first country of asylum concept to his or her particular circumstances.

Article 36

The concept of safe country of origin

1. A third country designated as a safe country of origin in accordance with this Directive may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

(a) he or she has the nationality of that country; or

(b) he or she is a stateless person and was formerly habitually resident in that country,

and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with Directive 2011/95/EU.

2. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

Article 37

National designation of third countries as safe countries of origin

1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin for the purposes of examining applications for international protection.

2. Member States shall regularly review the situation in third countries designated as safe countries of origin in accordance with this Article.

3. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations.

4. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article.

Article 38

The concept of safe third country

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) there is no risk of serious harm as defined in Directive 2011/95/EU;

(c) the principle of *non-refoulement* in accordance with the Geneva Convention is respected;

(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

2. The application of the safe third country concept shall be subject to rules laid down in national law, including:

(a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;

(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a).

3. When implementing a decision solely based on this Article, Member States shall:

(a) inform the applicant accordingly; and

(b) provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

4. Where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.

Article 39

The concept of European safe third country

1. Member States may provide that no, or no full, examination of the application for international protection and of the safety of the applicant in his or her particular circumstances as described in Chapter II shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.

2. A third country can only be considered as a safe third country for the purposes of paragraph 1 where:

(a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;

(b) it has in place an asylum procedure prescribed by law; and

(c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies.

3. The applicant shall be allowed to challenge the application of the concept of European safe third country on the grounds that the third country concerned is not safe in his or her particular circumstances.

4. The Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of *non-refoulement*, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

5. When implementing a decision solely based on this Article, the Member States concerned shall:

(a) inform the applicant accordingly; and

(b) provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

6. Where the safe third country does not readmit the applicant, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

7. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with this Article.

SECTION IV

Article 40

Subsequent application

1. Where a person who has applied for international protection in a Member State makes further representations or a subsequent application in the same Member State, that Member State shall examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d), a subsequent application for international protection shall be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU.

3. If the preliminary examination referred to in paragraph 2 concludes that new elements or findings have arisen or been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of Directive 2011/95/EU, the application shall be further examined in conformity with Chapter II. Member States may also provide for other reasons for a subsequent application to be further examined.

4. Member States may provide that the application will only be further examined if the applicant concerned was, through no fault of his or her own, incapable of asserting the situations set forth in paragraphs 2 and 3 of this Article in the previous procedure, in particular by exercising his or her right to an effective remedy pursuant to Article 46.

5. When a subsequent application is not further examined pursuant to this Article, it shall be considered inadmissible, in accordance with Article 33(2)(d).

6. The procedure referred to in this Article may also be applicable in the case of:

(a) a dependant who lodges an application after he or she has, in accordance with Article 7(2), consented to have his or her case be part of an application lodged on his or her behalf; and/or

(b) an unmarried minor who lodges an application after an application has been lodged on his or her behalf pursuant to Article 7(5)(c).

In those cases, the preliminary examination referred to in paragraph 2 will consist of examining whether there are facts relating to the dependant's or the unmarried minor's situation which justify a separate application.

7. Where a person with regard to whom a transfer decision has to be enforced pursuant to Regulation (EU) No 604/2013 makes further representations or a subsequent application in the transferring Member State, those representations or subsequent applications shall be examined by the responsible Member State, as defined in that Regulation, in accordance with this Directive.

Article 41

Exceptions from the right to remain in case of subsequent applications

1. Member States may make an exception from the right to remain in the territory where a person:

(a) has lodged a first subsequent application, which is not further examined pursuant to Article 40(5), merely in order to delay or frustrate the enforcement of a decision which would result in his or her imminent removal from that Member State; or

(b) makes another subsequent application in the same Member State, following a final decision considering a first subsequent application inadmissible pursuant to Article 40(5) or after a final decision to reject that application as unfounded.

Member States may make such an exception only where the determining authority considers that a return decision will not lead to direct or indirect *refoulement* in violation of that Member State's international and Union obligations.

2. In cases referred to in paragraph 1, Member States may also:

(a) derogate from the time limits normally applicable in accelerated procedures, in accordance with national law, when the examination procedure is accelerated in accordance with Article 31(8)(g);

(b) derogate from the time limits normally applicable to admissibility procedures provided for in Articles 33 and 34, in accordance with national law; and/or

(c) derogate from Article 46(8).

Article 42

Procedural rules

1. Member States shall ensure that applicants whose application is subject to a preliminary examination pursuant to Article 40 enjoy the guarantees provided for in Article 12(1).

2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 40. Those rules may, inter alia:

(a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;

(b) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview, with the exception of the cases referred to in Article 40(6).

Those rules shall not render impossible the access of applicants to a new procedure or result in the effective annulment or severe curtailment of such access.

3. Member States shall ensure that the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, if the application is not to be further examined, of the reasons why and the possibilities for seeking an appeal or review of the decision.

SECTION V

Article 43

Border procedures

1. Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on:

(a) the admissibility of an application, pursuant to Article 33, made at such locations; and/or

(b) the substance of an application in a procedure pursuant to Article 31(8).

2. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 1 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant shall be granted entry to the territory of the Member State in order for his or her application to be processed in accordance with the other provisions of this Directive.

3. In the event of arrivals involving a large number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, which makes it impossible in practice to apply there the provisions of paragraph 1, those procedures may also be applied where and for as long as these third-country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL PROTECTION

Article 44

Withdrawal of international protection

Member States shall ensure that an examination to withdraw international protection from a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his or her international protection.

Article 45

Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing international protection from a third-country national or stateless person in accordance with Article 14 or 19 of Directive 2011/95/EU, the person concerned enjoys the following guarantees:

(a) to be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and

(b) to be given the opportunity to submit, in a personal interview in accordance with Article 12(1)(b) and Articles 14 to 17 or in a written statement, reasons as to why his or her international protection should not be withdrawn.

2. In addition, Member States shall ensure that within the framework of the procedure set out in paragraph 1:

(a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from EASO and UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and

(b) where information on an individual case is collected for the purposes of reconsidering international protection, it is not obtained from the actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

3. Member States shall ensure that the decision of the competent authority to withdraw international protection is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.

4. Once the competent authority has taken the decision to withdraw international protection, Article 20, Article 22, Article 23(1) and Article 29 are equally applicable.

5. By way of derogation from paragraphs 1 to 4 of this Article, Member States may decide that international protection shall lapse by law where the beneficiary of international protection has unequivocally renounced his or her recognition as such. A Member State may also provide that international protection shall lapse by law where the beneficiary of international protection has become a national of that Member State.

CHAPTER V

APPEALS PROCEDURES

Article 46

The right to an effective remedy

1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection, including a decision:

(i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;

(ii) considering an application to be inadmissible pursuant to Article 33(2);

(iii) taken at the border or in the transit zones of a Member State as described in Article 43(1);

(iv) not to conduct an examination pursuant to Article 39;

(b) a refusal to reopen the examination of an application after its discontinuation pursuant to Articles 27 and 28;

(c) a decision to withdraw international protection pursuant to Article 45.

2. Member States shall ensure that persons recognised by the determining authority as eligible for subsidiary protection have the right to an effective remedy pursuant to paragraph 1 against a decision considering an application unfounded in relation to refugee status.

Without prejudice to paragraph 1(c), where the subsidiary protection status granted by a Member State offers the same rights and benefits as those offered by the refugee status under Union and national law, that Member State may consider an appeal against a decision considering an application unfounded in relation to refugee status inadmissible on the grounds of insufficient interest on the part of the applicant in maintaining the proceedings.

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult.

Member States may also provide for an *ex officio* review of decisions taken pursuant to Article 43.

5. Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.

6. In the case of a decision:

(a) considering an application to be manifestly unfounded in accordance with Article 32(2) or unfounded after examination in accordance with Article 31(8), except for cases where these decisions are based on the circumstances referred to in Article 31(8)(h);

(b) considering an application to be inadmissible pursuant to Article 33(2)(a), (b) or (d);

(c) rejecting the reopening of the applicant's case after it has been discontinued according to Article 28; or

(d) not to examine or not to examine fully the application pursuant to Article 39,

a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon the applicant's request or acting *ex officio*, if such a decision results in ending the applicant's right to remain in the Member State and where in such cases the right to remain in the Member State pending the outcome of the remedy is not provided for in national law.

7. Paragraph 6 shall only apply to procedures referred to in Article 43 provided that:

(a) the applicant has the necessary interpretation, legal assistance and at least one week to prepare the request and submit to the court or tribunal the arguments in favour of granting him or her the right to remain on the territory pending the outcome of the remedy; and

(b) in the framework of the examination of the request referred to in paragraph 6, the court or tribunal examines the negative decision of the determining authority in terms of fact and law.

If the conditions referred to in points (a) and (b) are not met, paragraph 5 shall apply.

8. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7.

9. Paragraphs 5, 6 and 7 shall be without prejudice to Article 26 of Regulation (EU) No 604/2013.

10. Member States may lay down time limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

11. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his or her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 47

Challenge by public authorities

This Directive does not affect the possibility for public authorities of challenging the administrative and/or judicial decisions as provided for in national legislation.

Article 48

Confidentiality

Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work.

Article 49

Cooperation

Member States shall each appoint a national contact point and communicate its address to the Commission. The Commission shall communicate that information to the other Member States.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

When resorting to the measures referred to in Article 6(5), the second subparagraph of Article 14(1) and Article 31(3)(b), Member States shall inform the Commission as soon as the reasons for applying those exceptional measures have ceased to exist and at least on an annual basis. That information shall, where possible, include data on the percentage of the applications for which derogations were applied to the total number of applications processed during that period.

Article 50

Report

No later than 20 July 2017, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send to the Commission all the information that is appropriate for drawing up its report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

As part of the first report, the Commission shall also report, in particular, on the application of Article 17 and the various tools used in relation to the reporting of the personal interview.

Article 51

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, Articles 49 and 50 and Annex I by 20 July 2015 at the latest. They shall forthwith communicate the text of those measures to the Commission.

2. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 31(3), (4) and (5) by 20 July 2018. They shall forthwith communicate the text of those measures to the Commission.

3. When Member States adopt the provisions referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 52

Transitional provisions

Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged and to procedures for the withdrawal of international protection started after 20 July 2015 or an earlier date. Applications lodged before 20 July 2015 and procedures for the withdrawal of refugee status started before that date shall be governed by the laws, regulations and administrative provisions adopted pursuant to Directive 2005/85/EC.

Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(2) to applications for international protection lodged after 20 July 2018 or an earlier date. Applications lodged before that date shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC.

Article 53

Repeal

Directive 2005/85/EC is repealed for the Member States bound by this Directive with effect from 21 July 2015, without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directive set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 54

Entry into force and application

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 47 and 48 shall apply from 21 July 2015.

Article 55

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 26 June 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. SHATTER

ANNEX I

Designation of safe countries of origin for the purposes of Article 37(1)

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by:

(a) the relevant laws and regulations of the country and the manner in which they are applied;

(b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(c) respect for the *non-refoulement* principle in accordance with the Geneva Convention;

(d) provision for a system of effective remedies against violations of those rights and freedoms.

ANNEX II

PART A

Repealed Directive

(referred to in Article 53)

Council Directive 2005/85/EC (OJ L 326, 13.12.2005, p. 13).

PART B

Time limit for transposition into national law

(referred to in Article 51)

Directive	Time limits for transposition
2005/85/EC	First deadline: 1 December 2007 Second deadline: 1 December 2008

ANNEX III

Correlation Table

Directive 2005/85/EC	This Directive
Article 1	Article 1
Article 2(a) to (c)	Article 2(a) to (c)
—	Article 2(d)
Article 2(d) to (f)	Article 2(e) to (g)
—	Article 2(h) and (i)
Article 2(g)	Article 2(j)
—	Article 2(k) and (l)
Article 2(h) to (k)	Article 2(m) to (p)
—	Article 2(q)
Article 3(1) and (2)	Article 3(1) and (2)
Article 3(3)	—
Article 3(4)	Article 3(3)
Article 4(1), first subparagraph	Article 4(1), first subparagraph
Article 4(1), second subparagraph	—
Article 4(2)(a)	Article 4(2)(a)
Article 4(2)(b) to (d)	—
Article 4(2)(e)	Article 4(2)(b)
Article 4(2)(f)	—
—	Article 4(3)
Article 4(3)	Article 4(4)
—	Article 4(5)
Article 5	Article 5
Article 6(1)	Article 6(1)
—	Article 6(2) to (4)
Article 6(2) and (3)	Article 7(1) and (2)
—	Article 7(3)
—	Article 7(4)
Article 6(4)	Article 7(5)
Article 6(5)	—
—	Article 8
Article 7(1) and (2)	Article 9(1) and (2)

Directive 2005/85/EC	This Directive
—	Article 9(3)
Article 8(1)	Article 10(1)
—	Article 10(2)
Article 8(2)(a) to (c)	Article 10(3)(a) to (c)
—	Article 10(3)(d)
Article 8(3) and (4)	Article 10(4) and (5)
Article 9(1)	Article 11(1)
Article 9(2), first subparagraph	Article 11(2), first subparagraph
Article 9(2), second subparagraph	—
Article 9(2), third subparagraph	Article 11(2), second subparagraph
Article 9(3)	Article 11(3)
Article 10(1)(a) to (c)	Article 12(1)(a) to (c)
—	Article 12(1)(d)
Article 10(1)(d) and (e)	Article 12(1)(e) and (f)
Article 10(2)	Article 12(2)
Article 11	Article 13
Article 12(1), first subparagraph	Article 14(1), first subparagraph
Article 12(2), second subparagraph	—
—	Article 14(1), second and third subparagraph
Article 12(2), third subparagraph	Article 14(1), fourth subparagraph
Article 12(2)(a)	Article 14(2)(a)
Article 12(2)(b)	—
Article 12(2)(c)	—
Article 12(3), first subparagraph	Article 14(2)(b)
Article 12(3), second subparagraph	Article 14(2), second subparagraph
Article 12(4) to (6)	Article 14(3) to (5)
Article 13(1) and (2)	Article 15(1) and (2)
Article 13(3)(a)	Article 15(3)(a)
—	Article 15(3)(b)
Article 13(3)(b)	Article 15(3)(c)
—	Article 15(3)(d)
—	Article 15(3)(e)
Article 13(4)	Article 15(4)

Directive 2005/85/EC	This Directive
Article 13(5)	—
—	Article 16
Article 14	—
—	Article 17
—	Article 18
—	Article 19
Article 15(1)	Article 22(1)
Article 15(2)	Article 20(1)
—	Article 20(2) to (4)
—	Article 21(1)
Article 15(3)(a)	—
Article 15(3)(b) and (c)	Article 21(2)(a) and (b)
Article 15(3)(d)	—
Article 15(3), second subparagraph	—
Article 15(4) to (6)	Article 21(3) to (5)
—	Article 22(2)
Article 16(1), first subparagraph	Article 23(1), first subparagraph
Article 16(1), second subparagraph, first sentence	Article 23(1), second subparagraph, introductory words
—	Article 23(1)(a)
Article 16(1), second subparagraph, second sentence	Article 23(1)(b)
Article 16(2), first sentence	Article 23(2)
Article 16(2), second sentence	—
—	Article 23(3)
Article 16(3)	Article 23(4), first subparagraph
Article 16(4), first subparagraph	—
Article 16(4), second and third subparagraphs	Article 23(4), second and third subparagraphs
—	Article 24
Article 17(1)	Article 25(1)
Article 17(2)(a)	Article 25(2)
Article 17(2)(b) and (c)	—
Article 17(3)	—
Article 17(4)	Article 25(3)
—	Article 25(4)
Article 17(5)	Article 25(5)

Directive 2005/85/EC	This Directive
—	Article 25(6)
Article 17(6)	Article 25(7)
Article 18	Article 26
Article 19	Article 27
Article 20(1) and (2)	Article 28(1) and (2)
—	Article 28(3)
Article 21	Article 29
Article 22	Article 30
Article 23(1)	Article 31(1)
Article 23(2), first subparagraph	Article 31(2)
—	Article 31(3)
—	Article 31(4) and (5)
Article 23(2), second subparagraph	Article 31(6)
Article 23(3)	—
—	Article 31(7)
Article 23(4)(a)	Article 31(8)(a)
Article 23(4)(b)	—
Article 23(4)(c)(i)	Article 31(8)(b)
Article 23(4)(c)(ii)	—
Article 23(4)(d)	Article 31(8)(c)
Article 23(4)(e)	—
Article 23(4)(f)	Article 31(8)(d)
Article 23(4)(g)	Article 31(8)(e)
—	Article 31(8)(f)
Article 23(4)(h) and (i)	—
Article 23(4)(j)	Article 31(8)(g)
—	Article 31(8)(h) and (i)
Article 23(4)(k) and (l)	—
Article 23(4)(m)	Article 31(8)(j)
Article 23(4)(n) and (o)	—
—	Article 31(9)
Article 24	—
Article 25	Article 33
Article 25(1)	Article 33(1)

Directive 2005/85/EC	This Directive
Article 25(2)(a) to (c)	Article 33(2)(a) to (c)
Article 25(2)(d) and (e)	—
Article 25(2)(f) and (g)	Article 33(2)(d) and (e)
—	Article 34
Article 26	Article 35
Article 27(1)(a)	Article 38(1)(a)
—	Article 38(1)(b)
Article 27(1)(b) to (d)	Article 38(1)(c) to (e)
Article 27(2) to (5)	Article 38(2) to (5)
Article 28	Article 32
Article 29	—
Article 30(1)	Article 37(1)
Article 30(2) to (4)	—
—	Article 37(2)
Article 30(5) and (6)	Article 37(3) and (4)
Article 31(1)	Article 36(1)
Article 31(2)	—
Article 31(3)	Article 36(2)
Article 32(1)	Article 40(1)
Article 32(2)	—
Article 32(3)	Article 40(2)
Article 32(4)	Article 40(3), first sentence
Article 32(5)	Article 40(3), second sentence
Article 32(6)	Article 40(4)
—	Article 40(5)
Article 32(7), first subparagraph	Article 40(6)(a)
—	Article 40(6)(b)
Article 32(7), second subparagraph	Article 40(6), second subparagraph
—	Article 40(7)
—	Article 41
Article 33	—
Article 34(1) and (2)(a)	Article 42(1) and (2)(a)
Article 34(2)(b)	—
Article 34(2)(c)	Article 42(2)(b)

Directive 2005/85/EC	This Directive
Article 34(3)(a)	Article 42(3)
Article 34(3)(b)	—
Article 35(1)	Article 43(1)(a)
—	Article 43(1)(b)
Article 35(2) and (3)(a) to (f)	—
Article 35(4)	Article 43(2)
Article 35(5)	Article 43(3)
Article 36(1) to (2)(c)	Article 39(1) to (2)(c)
Article 36(2)(d)	—
Article 36(3)	—
—	Article 39(3)
Article 36(4) to (6)	Article 39(4) to (6)
—	Article 39(7)
Article 36(7)	—
Article 37	Article 44
Article 38	Article 45
—	Article 46(1)(a)(i)
Article 39(1)(a)(i) and (ii)	Article 46(1)(a)(ii) and (iii)
Article 39(1)(a)(iii)	—
Article 39(1)(b)	Article 46(1)(b)
Article 39(1)(c) and (d)	—
Article 39(1)(e)	Article 46(1)(c)
—	Article 46(2) and (3)
Article 39(2)	Article 46(4), first subparagraph
—	Article 46(4), second and third subparagraphs
Article 39(3)	—
—	Article 46(5) to (9)
Article 39(4)	Article 46(10)
Article 39(5)	—
Article 39(6)	Article 41(11)
Article 40	Article 47
Article 41	Article 48
—	Article 49
Article 42	Article 50

Directive 2005/85/EC	This Directive
Article 43, first subparagraph	Article 51(1)
—	Article 51(2)
Article 43, second and third subparagraphs	Article 51(3) and (4)
Article 44	Article 52, first subparagraph
—	Article 52, second subparagraph
—	Article 53
Article 45	Article 54
Article 46	Article 55
Annex I	—
Annex II	Annex I
Annex III	—
—	Annex II
—	Annex III

DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

laying down standards for the reception of applicants for international protection (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(f) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) A number of substantive changes are to be made to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ([4]). In the interests of clarity, that Directive should be recast.

(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

(3) At its special meeting in Tampere on 15 and 16 October 1999, the European Council agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus affirming the principle of *non-refoulement*. The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments, including Directive 2003/9/EC, provided for in the Treaties.

(4) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council.

(5) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme, which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment as regards reception conditions.

(6) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

(7) In the light of the results of the evaluations undertaken of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying Directive 2003/9/EC with a view to ensuring improved reception conditions for applicants for international protection ('applicants').

([1]) OJ C 317, 23.12.2009, p. 110 and OJ C 24, 28.1.2012, p. 80.
([2]) OJ C 79, 27.3.2010, p. 58.
([3]) Position of the European Parliament of 7 May 2009 (OJ C 212 E, 5.8.2010, p. 348) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).
([4]) OJ L 31, 6.2.2003, p. 18.

(8) In order to ensure equal treatment of applicants throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants.

(9) In applying this Directive, Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity, in accordance with the Charter of Fundamental Rights of the European Union, the 1989 United Nations Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms respectively.

(10) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party.

(11) Standards for the reception of applicants that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.

(12) The harmonisation of conditions for the reception of applicants should help to limit the secondary movements of applicants influenced by the variety of conditions for their reception.

(13) With a view to ensuring equal treatment amongst all applicants for international protection and guaranteeing consistency with current EU asylum *acquis*, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [1], it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.

(14) The reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs.

(15) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. Applicants may be detained only under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard to both to the manner and the purpose of such detention. Where an applicant is held in detention he or she should have effective access to the necessary procedural guarantees, such as judicial remedy before a national judicial authority.

(16) With regard to administrative procedures relating to the grounds for detention, the notion of 'due diligence' at least requires that Member States take concrete and meaningful steps to ensure that the time needed to verify the grounds for detention is as short as possible, and that there is a real prospect that such verification can be carried out successfully in the shortest possible time. Detention shall not exceed the time reasonably needed to complete the relevant procedures.

(17) The grounds for detention set out in this Directive are without prejudice to other grounds for detention, including detention grounds within the framework of criminal proceedings, which are applicable under national law, unrelated to the third country national's or stateless person's application for international protection.

(18) Applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation. In particular, Member States should ensure that Article 37 of the 1989 United Nations Convention on the Rights of the Child is applied.

(19) There may be cases where it is not possible in practice to immediately ensure certain reception guarantees in detention, for example due to the geographical location or the specific structure of the detention facility. However, any derogation from those guarantees should be temporary and should only be applied under the circumstances set out in this Directive. Derogations should only be applied in exceptional circumstances and should be duly justified, taking into consideration the circumstances of each case, including the level of severity of the derogation applied, its duration and its impact on the applicant concerned.

[1] OJ L 337, 20.12.2011, p. 9.

(20) In order to better ensure the physical and psychological integrity of the applicants, detention should be a measure of last resort and may only be applied after all non-custodial alternative measures to detention have been duly examined. Any alternative measure to detention must respect the fundamental human rights of applicants.

(21) In order to ensure compliance with the procedural guarantees consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.

(22) When deciding on housing arrangements, Member States should take due account of the best interests of the child, as well as of the particular circumstances of any applicant who is dependent on family members or other close relatives such as unmarried minor siblings already present in the Member State.

(23) In order to promote the self-sufficiency of applicants and to limit wide discrepancies between Member States, it is essential to provide clear rules on the applicants' access to the labour market.

(24) To ensure that the material support provided to applicants complies with the principles set out in this Directive, it is necessary that Member States determine the level of such support on the basis of relevant references. That does not mean that the amount granted should be the same as for nationals. Member States may grant less favourable treatment to applicants than to nationals as specified in this Directive.

(25) The possibility of abuse of the reception system should be restricted by specifying the circumstances in which material reception conditions for applicants may be reduced or withdrawn while at the same time ensuring a dignified standard of living for all applicants.

(26) The efficiency of national reception systems and cooperation among Member States in the field of reception of applicants should be secured.

(27) Appropriate coordination should be encouraged between the competent authorities as regards the reception of applicants, and harmonious relationships between local communities and accommodation centres should therefore be promoted.

(28) Member States should have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.

(29) In this spirit, Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than that provided for under Directive 2011/95/EU.

(30) The implementation of this Directive should be evaluated at regular intervals.

(31) Since the objective of this Directive, namely to establish standards for the reception of applicants in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at the Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(32) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 [1], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(33) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU, and to the Treaty on the Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(34) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

[1] OJ C 369, 17.12.2011, p. 14.

(35) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly.

(36) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2003/9/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(37) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of Directive 2003/9/EC set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

The purpose of this Directive is to lay down standards for the reception of applicants for international protection ('applicants') in Member States.

Article 2

Definitions

For the purposes of this Directive:

(a) 'application for international protection': means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;

(b) 'applicant': means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(c) 'family members': means, in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in the same Member State in relation to the application for international protection:

— the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals;

— the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;

— the father, mother or another adult responsible for the applicant whether by law or by the practice of the Member State concerned, when that applicant is a minor and unmarried;

(d) 'minor': means a third-country national or stateless person below the age of 18 years;

(e) 'unaccompanied minor': means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

(f) 'reception conditions': means the full set of measures that Member States grant to applicants in accordance with this Directive;

(g) 'material reception conditions': means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance;

(h) 'detention': means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

(i) 'accommodation centre': means any place used for the collective housing of applicants;

(j) 'representative': means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;

(k) 'applicant with special reception needs': means a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive.

Article 3

Scope

1. This Directive shall apply to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the border, in the territorial waters or in the transit zones of a Member State, as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to national law.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.

3. This Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [1] are applied.

4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from Directive 2011/95/EU.

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for applicants and other close relatives of the applicant who are present in the same Member State when they are dependent on him or her, or for humanitarian reasons, insofar as these provisions are compatible with this Directive.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. Member States shall inform applicants, within a reasonable time not exceeding 15 days after they have lodged their application for international protection, of at least any established benefits and of the obligations with which they must comply relating to reception conditions.

Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.

2. Member States shall ensure that the information referred to in paragraph 1 is in writing and, in a language that the applicant understands or is reasonably supposed to understand. Where appropriate, this information may also be supplied orally.

Article 6

Documentation

1. Member States shall ensure that, within three days of the lodging of an application for international protection, the applicant is provided with a document issued in his or her own name certifying his or her status as an applicant or testifying that he or she is allowed to stay on the territory of the Member State while his or her application is pending or being examined.

If the holder is not free to move within all or a part of the territory of the Member State, the document shall also certify that fact.

2. Member States may exclude application of this Article when the applicant is in detention and during the examination of an application for international protection made at the border or within the context of a procedure to decide on the right of the applicant to enter the territory of a Member State. In specific cases, during the examination of an application for international protection, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.

3. The document referred to in paragraph 1 need not certify the identity of the applicant.

4. Member States shall adopt the necessary measures to provide applicants with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain on the territory of the Member State concerned.

5. Member States may provide applicants with a travel document when serious humanitarian reasons arise that require their presence in another State.

[1] OJ L 212, 7.8.2001, p. 12.

6. Member States shall not impose unnecessary or disproportionate documentation or other administrative requirements on applicants before granting them the rights to which they are entitled under this Directive for the sole reason that they are applicants for international protection.

Article 7

Residence and freedom of movement

1. Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.

2. Member States may decide on the residence of the applicant for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection.

3. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national law.

4. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 3 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.

5. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.

Article 8

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [1].

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.

3. An applicant may be detained only:

(a) in order to determine or verify his or her identity or nationality;

(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

(d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [2], in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

(e) when protection of national security or public order so requires;

(f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [3].

The grounds for detention shall be laid down in national law.

4. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

[1] See page 60 of this Official Journal.

[2] OJ L 348, 24.12.2008, p. 98.

[3] See page 31 of this Official Journal.

Article 9

Guarantees for detained applicants

1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.

2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted *ex officio* and/or at the request of the applicant. When conducted *ex officio*, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law the period within which the judicial review *ex officio* and/or the judicial review at the request of the applicant shall be conducted.

Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, *ex officio* and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant. Free legal assistance and representation shall be provided by suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the applicant.

7. Member States may also provide that free legal assistance and representation are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

8. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

9. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

10. Procedures for access to legal assistance and representation shall be laid down in national law.

Article 10

Conditions of detention

1. Detention of applicants shall take place, as a rule, in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.

As far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged an application for international protection.

When applicants cannot be detained separately from other third-country nationals, the Member State concerned shall ensure that the detention conditions provided for in this Directive are applied.

2. Detained applicants shall have access to open-air spaces.

3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees (UNHCR) have the possibility to communicate with and visit applicants in conditions that respect privacy. That possibility shall also apply to an organisation which is working on the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.

4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible.

5. Member States shall ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed to understand. Member States may derogate from this obligation in duly justified cases and for a reasonable period which shall be as short as possible, in the event that the applicant is detained at a border post or in a transit zone. This derogation shall not apply in cases referred to in Article 43 of Directive 2013/32/EU.

Article 11

Detention of vulnerable persons and of applicants with special reception needs

1. The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities.

Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.

2. Minors shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

The minor's best interests, as prescribed in Article 23(2), shall be a primary consideration for Member States.

Where minors are detained, they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.

3. Unaccompanied minors shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible.

Unaccompanied minors shall never be detained in prison accommodation.

As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults.

4. Detained families shall be provided with separate accommodation guaranteeing adequate privacy.

5. Where female applicants are detained, Member States shall ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto.

Exceptions to the first subparagraph may also apply to the use of common spaces designed for recreational or social activities, including the provision of meals.

6. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the third subparagraph of paragraph 2, paragraph 4 and the first subparagraph of paragraph 5, when the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to in Article 43 of Directive 2013/32/EU.

Article 12

Families

Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the Member State concerned. Such measures shall be implemented with the applicant's agreement.

Article 13

Medical screening

Member States may require medical screening for applicants on public health grounds.

Article 14

Schooling and education of minors

1. Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.

The Member State concerned may stipulate that such access must be confined to the State education system.

Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

2. Access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor.

Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system as set out in paragraph 1.

3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice.

Article 15

Employment

1. Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market.

For reasons of labour market policies, Member States may give priority to Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals.

3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.

Article 16

Vocational training

Member States may allow applicants access to vocational training irrespective of whether they have access to the labour market.

Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 15.

Article 17

General rules on material reception conditions and health care

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.

2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, as well as in relation to the situation of persons who are in detention.

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.

If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when those basic needs were being covered, Member States may ask the applicant for a refund.

5. Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive.

Article 18

Modalities for material reception conditions

1. Where housing is provided in kind, it should take one or a combination of the following forms:

(a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;

(b) accommodation centres which guarantee an adequate standard of living;

(c) private houses, flats, hotels or other premises adapted for housing applicants.

2. Without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that:

(a) applicants are guaranteed protection of their family life;

(b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non-governmental organisations and bodies;

(c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.

3. Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centres referred to in paragraph 1(a) and (b).

4. Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres referred to in paragraph 1(a) and (b).

5. Member States shall ensure, as far as possible, that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the practice of the Member State concerned.

6. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers or counsellors of the transfer and of their new address.

7. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.

8. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.

9. In duly justified cases, Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

(a) an assessment of the specific needs of the applicant is required, in accordance with Article 22;

(b) housing capacities normally available are temporarily exhausted.

Such different conditions shall in any event cover basic needs.

Article 19

Health care

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders.

2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.

CHAPTER III

REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article 20

Reduction or withdrawal of material reception conditions

1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:

(a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission; or

(b) does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or

(c) has lodged a subsequent application as defined in Article 2(q) of Directive 2013/32/EU.

In relation to cases (a) and (b), when the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstallation of the grant of some or all of the material reception conditions withdrawn or reduced.

2. Member States may also reduce material reception conditions when they can establish that the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State.

3. Member States may reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.

4. Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour.

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 21, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.

6. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5.

CHAPTER IV

PROVISIONS FOR VULNERABLE PERSONS

Article 21

General principle

Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive.

Article 22

Assessment of the special reception needs of vulnerable persons

1. In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs.

That assessment shall be initiated within a reasonable period of time after an application for international protection is made and may be integrated into existing national procedures. Member States shall ensure that those special reception needs are also addressed, in accordance with the provisions of this Directive, if they become apparent at a later stage in the asylum procedure.

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. The assessment referred to in paragraph 1 need not take the form of an administrative procedure.

3. Only vulnerable persons in accordance with Article 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with this Directive.

4. The assessment provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Directive 2011/95/EU.

Article 23

Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development, taking into particular consideration the minor's background;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor in accordance with his or her age and maturity.

3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres referred to in Article 18(1)(a) and (b) and to open-air activities.

4. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

5. Member States shall ensure that minor children of applicants or applicants who are minors are lodged with their parents, their unmarried minor siblings or with the adult responsible for them whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned.

Article 24

Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of the representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2), and shall have the necessary expertise to that end. In order to ensure the minor's well-being and social development referred to in Article 23(2)(b), the person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives.

Regular assessments shall be made by the appropriate authorities, including as regards the availability of the necessary means for representing the unaccompanied minor.

2. Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:

(a) with adult relatives;

(b) with a foster family;

(c) in accommodation centres with special provisions for minors;

(d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants, if it is in their best interests, as prescribed in Article 23(2).

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

3. Member States shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.

4. Those working with unaccompanied minors shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Article 25

Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.

2. Those working with victims of torture, rape or other serious acts of violence shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

CHAPTER V

APPEALS

Article 26

Appeals

1. Member States shall ensure that decisions relating to the granting, withdrawal or reduction of benefits under this Directive or decisions taken under Article 7 which affect applicants individually may be the subject of an appeal within the procedures laid down in national law. At least in the last instance the possibility of an appeal or a review, in fact and in law, before a judicial authority shall be granted.

2. In cases of an appeal or a review before a judicial authority referred to in paragraph 1, Member States shall ensure that free legal assistance and representation is made available on request in so far as such aid is necessary to ensure effective access to justice. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by suitably qualified persons, as admitted or permitted under national law, whose interests do not conflict or could not potentially conflict with those of the applicant.

3. Member States may also provide that free legal assistance and representation are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that free legal assistance and representation not be made available if the appeal or review is considered by a competent authority to have no tangible prospect of success. In such a case, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

5. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

6. Procedures for access to legal assistance and representation shall be laid down in national law.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 27

Competent authorities

Each Member State shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Directive. Member States shall inform the Commission of any changes in the identity of such authorities.

Article 28

Guidance, monitoring and control system

1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.

2. Member States shall submit relevant information to the Commission in the form set out in Annex I, by 20 July 2016 at the latest.

Article 29

Staff and resources

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.

2. Member States shall allocate the necessary resources in connection with the national law implementing this Directive.

CHAPTER VII

FINAL PROVISIONS

Article 30

Reports

By 20 July 2017 at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall send the Commission all the information that is appropriate for drawing up the report by 20 July 2016.

After presenting the first report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

Article 31

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 12, 14 to 28 and 30 and Annex I by 20 July 2015 at the latest. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 32

Repeal

Directive 2003/9/EC is repealed for the Members States bound by this Directive with effect from 21 July 2015, without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 33

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 13 and 29 shall apply from 21 July 2015.

Article 34

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 26 June 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. SHATTER

ANNEX I

Reporting form on the information to be submitted by Member States, as required under Article 28(2)

After the date referred to in Article 28(2), the information to be submitted by Member States shall be re-submitted to the Commission when there is a substantial change in the national law or practice that supersedes the information provided.

1. On the basis of Articles 2(k) and 22, please explain the different steps for the identification of persons with special reception needs, including the moment when it is triggered and its consequences in relation to addressing such needs, in particular for unaccompanied minors, victims of torture, rape or other serious forms of psychological, physical or sexual violence and victims of human trafficking.

2. Provide full information on the type, name and format of the documents provided for in Article 6.

3. With reference to Article 15, please indicate the extent to which any particular conditions are attached to labour market access for applicants, and describe such restrictions in detail.

4. With reference to Article 2(g), please describe how material reception conditions are provided (i.e. which material reception conditions are provided in kind, in money, in vouchers or in a combination of those elements) and indicate the level of the daily expenses allowance provided to applicants.

5. Where applicable, with reference to Article 17(5), please explain the point(s) of reference applied by national law or practice with a view to determining the level of financial assistance provided to applicants. To the extent that there is less favourable treatment of applicants compared with nationals, explain the reasons for it.

ANNEX II

PART A

Repealed Directive

(referred to in Article 32)

Council Directive 2003/9/EC (OJ L 31, 6.2.2003, p. 18).

PART B

Time-limit for transposition into national law

(referred to in Article 32)

Directive	Time-limit for transposition
2003/9/EC	6 February 2005

ANNEX III

Correlation Table

Directive 2003/9/EC	This Directive
Article 1	Article 1
Article 2, introductory wording	Article 2, introductory wording
Article 2(a)	—
Article 2(b)	—
—	Article 2(a)
Article 2(c)	Article 2(b)
Article 2(d), introductory wording	Article 2(c), introductory wording
Article 2(d)(i)	Article 2(c), first indent
Article 2(d)(ii)	Article 2(c), second indent
—	Article 2(c), third indent
Article 2(e), (f) and (g)	—
—	Article 2(d)
Article 2(h)	Article 2(e)
Article 2(i)	Article 2(f)
Article 2(j)	Article 2(g)
Article 2(k)	Article 2(h)
Article 2(l)	Article 2(i)
—	Article 2(j)
—	Article 2(k)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6(1) to (5)	Article 6(1) to (5)
—	Article 6(6)
Article 7(1) and (2)	Article 7(1) and (2)
Article 7(3)	—
Article 7(4) to (6)	Article 7(3) to (5)

Directive 2003/9/EC	This Directive
—	Article 8
—	Article 9
—	Article 10
—	Article 11
Article 8	Article 12
Article 9	Article 13
Article 10(1)	Article 14(1)
Article 10(2)	Article 14(2), first subparagraph
—	Article 14(2), second subparagraph
Article 10(3)	Article 14(3)
Article 11(1)	—
—	Article 15(1)
Article 11(2)	Article 15(2)
Article 11(3)	Article 15(3)
Article 11(4)	—
Article 12	Article 16
Article 13(1) to (4)	Article 17(1) to (4)
Article 13(5)	—
—	Article 17(5)
Article 14(1)	Article 18(1)
Article 14(2), first subparagraph, introductory wording, points (a) and (b)	Article 18(2), introductory wording, points (a) and (b)
Article 14(7)	Article 18(2)(c)
—	Article 18(3)
Article 14(2), second subparagraph	Article 18(4)
Article 14(3)	—
—	Article 18(5)

Directive 2003/9/EC	This Directive
Article 14(4)	Article 18(6)
Article 14(5)	Article 18(7)
Article 14(6)	Article 18(8)
Article 14(8), first subparagraph, introductory wording, first indent	Article 18(9), first subparagraph, introductory wording, point (a)
Article 14(8), first subparagraph, second indent	—
Article 14(8), first subparagraph, third indent	Article 18(9), first subparagraph, point (b)
Article 14(8), first subparagraph, fourth indent	—
Article 14(8), second subparagraph	Article 18(9), second subparagraph
Article 15	Article 19
Article 16(1), introductory wording	Article 20(1), introductory wording
Article 16(1)(a), first subparagraph, first, second and third indents	Article 20(1), first subparagraph, points (a), (b) and (c)
Article 16(1)(a), second subparagraph	Article 20(1), second subparagraph
Article 16(1)(b)	—
Article 16(2)	—
—	Article 20(2) and (3)
Article 16(3) to (5)	Article 20(4) to (6)
Article 17(1)	Article 21
Article 17(2)	—
—	Article 22
Article 18(1)	Article 23(1)
—	Article 23(2) and (3)
Article 18(2)	Article 23(4)
—	Article 23(5)
Article 19	Article 24
Article 20	Article 25(1)
—	Article 25(2)
Article 21(1)	Article 26(1)

Directive 2003/9/EC	This Directive
—	Article 26(2) to (5)
Article 21(2)	Article 26(6)
Article 22	—
—	Article 27
Article 23	Article 28(1)
—	Article 28(2)
Article 24	Article 29
Article 25	Article 30
Article 26	Article 31
—	Article 32
Article 27	Article 33, first subparagraph
—	Article 33, second subparagraph
Article 28	Article 34
—	Annex I
—	Annex II
—	Annex III

REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(e) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the ordinary legislative procedure [3],

Whereas:

(1) A number of substantive changes are to be made to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [4]. In the interests of clarity, that Regulation should be recast.

(2) A common policy on asylum, including a Common European Asylum System (CEAS), is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing the CEAS, based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*. In this respect, and without the responsibility criteria laid down in this Regulation being affected, Member States, all respecting the principle of *non-refoulement*, are considered as safe countries for third-country nationals.

(4) The Tampere conclusions also stated that the CEAS should include, in the short-term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

(6) The first phase in the creation of a CEAS that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted international protection, has now been completed. The European Council of 4 November 2004 adopted The Hague Programme which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council with a view to their adoption before 2010.

(7) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity in accordance with Article 78 of the Treaty on the Functioning of the European Union (TFEU), for those granted

[1] OJ C 317, 23.12.2009, p. 115.
[2] OJ C 79, 27.3.2010, p. 58.
[3] Position of the European Parliament of 7 May 2009 (OJ C 212 E, 5.8.2010, p. 370) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).
[4] OJ L 50, 25.2.2003, p. 1.

international protection, by 2012 at the latest. Furthermore it emphasised that the Dublin system remains a cornerstone in building the CEAS, as it clearly allocates responsibility among Member States for the examination of applications for international protection.

(8) The resources of the European Asylum Support Office (EASO), established by Regulation (EU) No 439/2010 of the European Parliament and of the Council [1], should be available to provide adequate support to the relevant services of the Member States responsible for implementing this Regulation. In particular, EASO should provide solidarity measures, such as the Asylum Intervention Pool with asylum support teams, to assist those Member States which are faced with particular pressure and where applicants for international protection ('applicants') cannot benefit from adequate standards, in particular as regards reception and protection.

(9) In the light of the results of the evaluations undertaken of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying Regulation (EC) No 343/2003, while making the necessary improvements, in the light of experience, to the effectiveness of the Dublin system and the protection granted to applicants under that system. Given that a well-functioning Dublin system is essential for the CEAS, its principles and functioning should be reviewed as other components of the CEAS and Union solidarity tools are built up. A comprehensive 'fitness check' should be foreseen by conducting an evidence-based review covering the legal, economic and social effects of the Dublin system, including its effects on fundamental rights.

(10) In order to ensure equal treatment for all applicants and beneficiaries of international protection, and consistency with the current Union asylum *acquis*, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2], the scope of this Regulation encompasses applicants for subsidiary protection and persons eligible for subsidiary protection.

(11) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [3] should apply to the procedure for the determination of the Member State responsible as regulated under this Regulation, subject to the limitations in the application of that Directive.

(12) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [4] should apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under this Regulation, subject to the limitations in the application of that Directive.

(13) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.

(14) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for family life should be a primary consideration of Member States when applying this Regulation.

(15) The processing together of the applications for international protection of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly, the decisions taken in respect of them are consistent and the members of one family are not separated.

(16) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age, should become a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion.

[1] OJ L 132, 29.5.2010, p. 11.
[2] OJ L 337, 20.12.2011, p. 9.
[3] See page 96 of this Official Journal.
[4] See page 60 of this Official Journal.

(17) Any Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.

(18) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection. As soon as the application for international protection is lodged, the applicant should be informed of the application of this Regulation and of the possibility, during the interview, of providing information regarding the presence of family members, relatives or any other family relations in the Member States, in order to facilitate the procedure for determining the Member State responsible.

(19) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.

(20) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality. In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive 2013/33/EU also to persons detained on the basis of this Regulation.

(21) Deficiencies in, or the collapse of, asylum systems, often aggravated or contributed to by particular pressures on them, can jeopardise the smooth functioning of the system put in place under this Regulation, which could lead to a risk of a violation of the rights of applicants as set out in the Union asylum *acquis* and the Charter of Fundamental Rights of the European Union, other international human rights and refugee rights.

(22) A process for early warning, preparedness and management of asylum crises serving to prevent a deterioration in, or the collapse of, asylum systems, with EASO playing a key role using its powers under Regulation (EU) No 439/2010, should be established in order to ensure robust cooperation within the framework of this Regulation and to develop mutual trust among Member States with respect to asylum policy. Such a process should ensure that the Union is alerted as soon as possible when there is a concern that the smooth functioning of the system set up by this Regulation is being jeopardised as a result of particular pressure on, and/or deficiencies in, the asylum systems of one or more Member States. Such a process would allow the Union to promote preventive measures at an early stage and pay the appropriate political attention to such situations. Solidarity, which is a pivotal element in the CEAS, goes hand in hand with mutual trust. By enhancing such trust, the process for early warning, preparedness and management of asylum crises could improve the steering of concrete measures of genuine and practical solidarity towards Member States, in order to assist the affected Member States in general and the applicants in particular. In accordance with Article 80 TFEU, Union acts should, whenever necessary, contain appropriate measures to give effect to the principle of solidarity, and the process should be accompanied by such measures. The conclusions on a Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows, adopted by the Council on 8 March 2012, provide for a 'tool box' of existing and potential new measures, which should be taken into account in the context of a mechanism for early warning, preparedness and crisis management.

(23) Member States should collaborate with EASO in the gathering of information concerning their ability to manage particular pressure on their asylum and reception systems, in particular within the framework of the application of this Regulation. EASO should regularly report on the information gathered in accordance with Regulation (EU) No 439/2010.

(24) In accordance with Commission Regulation (EC) No 1560/2003 [1], transfers to the Member State responsible for examining an application for international protection may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers by providing adequate information to the applicant and should ensure that supervised or escorted transfers are undertaken in a humane manner, in full compliance with fundamental rights and respect for human dignity, as well as the

[1] OJ L 222, 5.9.2003, p. 3.

best interests of the child and taking utmost account of developments in the relevant case law, in particular as regards transfers on humanitarian grounds.

(25) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the TFEU and the establishment of Union policies regarding the conditions of entry and stay of third-country nationals, including common efforts towards the management of external borders, makes it necessary to strike a balance between responsibility criteria in a spirit of solidarity.

(26) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] applies to the processing of personal data by the Member States under this Regulation.

(27) The exchange of an applicant's personal data, including sensitive data on his or her health, prior to a transfer, will ensure that the competent asylum authorities are in a position to provide applicants with adequate assistance and to ensure continuity in the protection and rights afforded to them. Special provisions should be made to ensure the protection of data relating to applicants involved in that situation, in accordance with Directive 95/46/EC.

(28) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communication between competent departments, reducing time limits for procedures or simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers.

(29) Continuity between the system for determining the Member State responsible established by Regulation (EC) No 343/2003 and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparisons with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes [2].

(30) The operation of the Eurodac system, as established by Regulation (EU) No 603/2013, should facilitate the application of this Regulation.

(31) The operation of the Visa Information System, as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas [3], and in particular the implementation of Articles 21 and 22 thereof, should facilitate the application of this Regulation.

(32) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.

(33) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers [4].

(34) The examination procedure should be used for the adoption of a common leaflet on Dublin/Eurodac, as well as a specific leaflet for unaccompanied minors; of a standard form for the exchange of relevant information on unaccompanied minors; of uniform conditions for the consultation and exchange of information on minors and dependent persons; of uniform conditions on the preparation and submission of take charge and take back requests; of two lists of relevant elements of proof and circumstantial evidence, and the periodical revision thereof; of a *laissez passer*; of uniform conditions for the consultation and exchange of information regarding transfers; of a standard form for the exchange of data before a transfer; of a common health certificate; of uniform conditions and practical arrangements for the exchange of information on a person's health data before a transfer, and of secure electronic transmission channels for the transmission of requests.

[1] OJ L 281, 23.11.1995, p. 31.

[2] See page 1 of this Official Journal.

[3] OJ L 218, 13.8.2008, p. 60.

[4] OJ L 55, 28.2.2011, p. 13.

(35) In order to provide for supplementary rules, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the identification of family members, siblings or relatives of an unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State; the elements for assessing a dependency link; the criteria for assessing the capacity of a person to take care of a dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3) of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(36) In the application of this Regulation, including the preparation of delegated acts, the Commission should consult experts from, among others, all relevant national authorities.

(37) Detailed rules for the application of Regulation (EC) No 343/2003 have been laid down by Regulation (EC) No 1560/2003. Certain provisions of Regulation (EC) No 1560/2003 should be incorporated into this Regulation, either for reasons of clarity or because they can serve a general objective. In particular, it is important, both for the Member States and the applicants concerned, that there should be a general mechanism for finding a solution in cases where Member States differ over the application of a provision of this Regulation. It is therefore justified to incorporate the mechanism provided for in Regulation (EC) No 1560/2003 for the settling of disputes on the humanitarian clause into this Regulation and to extend its scope to the entirety of this Regulation.

(38) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.

(39) This Regulation respects the fundamental rights and observes the principles which are acknowledged, in particular, in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. This Regulation should therefore be applied accordingly.

(40) Since the objective of this Regulation, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(41) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Regulation.

(42) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('the Member State responsible').

Article 2

Definitions

For the purposes of this Regulation:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not national of a State which participates in this Regulation by virtue of an agreement with the European Union;

(b) 'application for international protection' means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;

(c) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(d) 'examination of an application for international protection' means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU and Directive 2011/95/EU, except for procedures for determining the Member State responsible in accordance with this Regulation;

(e) 'withdrawal of an application for international protection' means the actions by which the applicant terminates the procedures initiated by the submission of his or her application for international protection, in accordance with Directive 2013/32/EU, either explicitly or tacitly;

(f) 'beneficiary of international protection' means a third-country national or a stateless person who has been granted international protection as defined in Article 2(a) of Directive 2011/95/EU;

(g) 'family members' means, insofar as the family already existed in the country of origin, the following members of the applicant's family who are present on the territory of the Member States:

— the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

— the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

— when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

— when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present;

(h) 'relative' means the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;

(i) 'minor' means a third-country national or a stateless person below the age of 18 years;

(j) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;

(k) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out its duties in respect of the minor, in accordance with this Regulation;

(l) 'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;

(m) 'visa' means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:

— 'long-stay visa' means an authorisation or decision issued by one of the Member States in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than three months,

— 'short-stay visa' means an authorisation or decision of a Member State with a view to transit through or an intended stay on the territory of one or more or all the Member States of a duration of no more than three months in any six-month period beginning on the date of first entry on the territory of the Member States,

— 'airport transit visa' means a visa valid for transit through the international transit areas of one or more airports of the Member States;

(n) 'risk of absconding' means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer procedure may abscond.

CHAPTER II

GENERAL PRINCIPLES AND SAFEGUARDS

Article 3

Access to the procedure for examining an application for international protection

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.

3. Any Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Directive 2013/32/EU.

Article 4

Right to information

1. As soon as an application for international protection is lodged within the meaning of Article 20(2) in a Member State, its competent authorities shall inform the applicant of the application of this Regulation, and in particular of:

(a) the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of moving from one Member State to another during the phases in which the Member State responsible under this Regulation is being determined and the application for international protection is being examined;

(b) the criteria for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, including the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible under this Regulation even if such responsibility is not based on those criteria;

(c) the personal interview pursuant to Article 5 and the possibility of submitting information regarding the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information;

(d) the possibility to challenge a transfer decision and, where applicable, to apply for a suspension of the transfer;

(e) the fact that the competent authorities of Member States can exchange data on him or her for the sole purpose of implementing their obligations arising under this Regulation;

(f) the right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 35 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data.

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose.

Where necessary for the proper understanding of the applicant, the information shall also be supplied orally, for example in connection with the personal interview as referred to in Article 5.

3. The Commission shall, by means of implementing acts, draw up a common leaflet, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 of this Article. This common leaflet shall also include information regarding the application of Regulation (EU) No 603/2013 and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The common leaflet shall be established in such a manner as to enable Member States to complete it with additional Member State-specific information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2) of this Regulation.

Article 5

Personal interview

1. In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 4.

2. The personal interview may be omitted if:

(a) the applicant has absconded; or

(b) after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

3. The personal interview shall take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

4. The personal interview shall be conducted in a language that the applicant understands or is reasonably supposed to understand and in which he or she is able to communicate. Where necessary, Member States shall have recourse to an interpreter who is able to ensure appropriate communication between the applicant and the person conducting the personal interview.

5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law.

6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. This summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant and/or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

Article 6

Guarantees for minors

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

2. Member States shall ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation. The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors.

This paragraph shall be without prejudice to the relevant provisions in Article 25 of Directive 2013/32/EU.

3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor, in accordance with his or her age and maturity.

4. For the purpose of applying Article 8, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article 35 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

5. With a view to facilitating the appropriate action to identify the family members, siblings or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 4 of this Article, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

CHAPTER III

CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 7

Hierarchy of criteria

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.

2. The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State.

3. In view of the application of the criteria referred to in Articles 8, 10 and 16, Member States shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant, on condition that such evidence is produced before another Member State accepts the request to take charge or take back the person concerned, pursuant to Articles 22 and 25 respectively, and that the previous applications for international protection of the applicant have not yet been the subject of a first decision regarding the substance.

Article 8

Minors

1. Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

2. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.

3. Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

4. In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3).

6. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 9

Family members who are beneficiaries of international protection

Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 10

Family members who are applicants for international protection

If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 11

Family procedure

Where several family members and/or minor unmarried siblings submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined on the basis of the following provisions:

(a) responsibility for examining the applications for international protection of all the family members and/or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;

(b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

Article 12

Issue of residence documents or visas

1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.

2. Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas [1]. In such a case, the represented Member State shall be responsible for examining the application for international protection.

3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:

(a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;

(b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type;

(c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

4. Where the applicant is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him or her actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territories of the Member States.

Where the applicant is in possession of one or more residence documents which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him or her actually to enter the territory of a Member State and where he has not left the territories of the Member States, the Member State in which the application for international protection is lodged shall be responsible.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that a fraud was committed after the document or visa had been issued.

Article 13

Entry and/or stay

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in Regulation (EU) No 603/2013, that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place.

2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1 of this Article and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3), that the applicant — who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established — has been living for a continuous period of at least five months in a Member State before lodging the application for international protection, that Member State shall be responsible for examining the application for international protection.

If the applicant has been living for periods of time of at least five months in several Member States, the Member State where he or she has been living most recently shall be responsible for examining the application for international protection.

[1] OJ L 243, 15.9.2009, p. 1.

Article 14

Visa waived entry

1. If a third-country national or a stateless person enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection.

2. The principle set out in paragraph 1 shall not apply if the third-country national or the stateless person lodges his or her application for international protection in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In that case, that other Member State shall be responsible for examining the application for international protection.

Article 15

Application in an international transit area of an airport

Where the application for international protection is made in the international transit area of an airport of a Member State by a third-country national or a stateless person, that Member State shall be responsible for examining the application.

CHAPTER IV

DEPENDENT PERSONS AND DISCRETIONARY CLAUSES

Article 16

Dependent persons

1. Where, on account of pregnancy, a new-born child, serious illness, severe disability or old age, an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Member States, or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, sibling or parent, provided that family ties existed in the country of origin, that the child, sibling or parent or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

2. Where the child, sibling or parent referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the child, sibling or parent is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the child, sibling or parent of the applicant to its territory.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the elements to be taken into account in order to assess the dependency link, the criteria for establishing the existence of proven family links, the criteria for assessing the capacity of the person concerned to take care of the dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 17

Discretionary clauses

1. By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.

The Member State which decides to examine an application for international protection pursuant to this paragraph shall become the Member State responsible and shall assume the obligations associated with that responsibility. Where applicable, it shall inform, using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003, the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of, or to take back, the applicant.

The Member State which becomes responsible pursuant to this paragraph shall forthwith indicate it in Eurodac in accordance with Regulation (EU) No 603/2013 by adding the date when the decision to examine the application was taken.

2. The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 8 to 11 and 16. The persons concerned must express their consent in writing.

The request to take charge shall contain all the material in the possession of the requesting Member State to allow the requested Member State to assess the situation.

The requested Member State shall carry out any necessary checks to examine the humanitarian grounds cited, and shall reply to the requesting Member State within two months of receipt of the request using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. A reply refusing the request shall state the reasons on which the refusal is based.

Where the requested Member State accepts the request, responsibility for examining the application shall be transferred to it.

CHAPTER V

OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Article 18

Obligations of the Member State responsible

1. The Member State responsible under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 21, 22 and 29, of an applicant who has lodged an application in a different Member State;

(b) take back, under the conditions laid down in Articles 23, 24, 25 and 29, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;

(c) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;

(d) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person whose application has been rejected and who made an application in another Member State or who is on the territory of another Member State without a residence document.

2. In the cases falling within the scope of paragraph 1(a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection made by the applicant.

In the cases falling within the scope of paragraph 1(c), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in Directive 2013/32/EU. In such cases, Member States shall ensure that the examination of the application is completed.

In the cases falling within the scope of paragraph 1(d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had the opportunity to seek an effective remedy pursuant to Article 46 of Directive 2013/32/EU.

Article 19

Cessation of responsibilities

1. Where a Member State issues a residence document to the applicant, the obligations specified in Article 18(1) shall be transferred to that Member State.

2. The obligations specified in Article 18(1) shall cease where the Member State responsible can establish, when requested to take charge or take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

An application lodged after the period of absence referred to in the first subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

3. The obligations specified in Article 18(1)(c) and (d) shall cease where the Member State responsible can establish, when requested to take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

An application lodged after an effective removal has taken place shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

CHAPTER VI

PROCEDURES FOR TAKING CHARGE AND TAKING BACK

SECTION I

Start of the procedure

Article 20

Start of the procedure

1. The process of determining the Member State responsible shall start as soon as an application for international protection is first lodged with a Member State.

2. An application for international protection shall be deemed to have been lodged once a form submitted by the applicant or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

3. For the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and shall be a matter for the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, provided that it is in the minor's best interests. The same treatment shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for international protection is lodged with the competent authorities of a Member State by an applicant who is on the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for international protection was lodged.

The applicant shall be informed in writing of this change in the determining Member State and of the date on which it took place.

5. An applicant who is present in another Member State without a residence document or who there lodges an application for international protection after withdrawing his or her first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 23, 24, 25 and 29, by the Member State with which that application for international protection was first lodged, with a view to completing the process of determining the Member State responsible.

That obligation shall cease where the Member State requested to complete the process of determining the Member State responsible can establish that the applicant has in the meantime left the territory of the Member States for a period of at least three months or has obtained a residence document from another Member State.

An application lodged after the period of absence referred to in the second subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

SECTION II

Procedures for take charge requests

Article 21

Submitting a take charge request

1. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 14 of Regulation (EU) No 603/2013, the request shall be sent within two months of receiving that hit pursuant to Article 15(2) of that Regulation.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for international protection was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. That period shall be at least one week.

3. In the cases referred to in paragraphs 1 and 2, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 22

Replying to a take charge request

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of receipt of the request.

2. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

3. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

(a) Proof:

(i) this refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;

(ii) the Member States shall provide the Committee provided for in Article 44 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

(b) Circumstantial evidence:

(i) this refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them;

(ii) their evidentiary value, in relation to the responsibility for examining the application for international protection shall be assessed on a case-by-case basis.

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

6. Where the requesting Member State has pleaded urgency in accordance with the provisions of Article 21(2), the requested Member State shall make every effort to comply with the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give its reply after the time limit requested, but in any event within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

SECTION III

Procedures for take back requests

Article 23

Submitting a take back request when a new application has been lodged in the requesting Member State

1. Where a Member State with which a person as referred to in Article 18(1)(b), (c) or (d) has lodged a new application for international protection considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit, pursuant to Article 9(5) of Regulation (EU) No 603/2013.

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.

4. A take back request shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the statements of the person concerned, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 24

Submitting a take back request when no new application has been lodged in the requesting Member State

1. Where a Member State on whose territory a person as referred to in Article 18(1)(b), (c) or (d) is staying without a residence document and with which no new application for international protection has been lodged considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. By way of derogation from Article 6(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country

nationals ([1]), where a Member State on whose territory a person is staying without a residence document decides to search the Eurodac system in accordance with Article 17 of Regulation (EU) No 603/2013, the request to take back a person as referred to in Article 18(1)(b) or (c) of this Regulation, or a person as referred to in its Article 18(1)(d) whose application for international protection has not been rejected by a final decision, shall be made as quickly as possible and in any event within two months of receipt of the Eurodac hit, pursuant to Article 17(5) of Regulation (EU) No 603/2013.

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the requesting Member State becomes aware that another Member State may be responsible for the person concerned.

3. Where the take back request is not made within the periods laid down in paragraph 2, the Member State on whose territory the person concerned is staying without a residence document shall give that person the opportunity to lodge a new application.

4. Where a person as referred to in Article 18(1)(d) of this Regulation whose application for international protection has been rejected by a final decision in one Member State is on the territory of another Member State without a residence document, the latter Member State may either request the former Member State to take back the person concerned or carry out a return procedure in accordance with Directive 2008/115/EC.

When the latter Member State decides to request the former Member State to take back the person concerned, the rules laid down in Directive 2008/115/EC shall not apply.

5. The request for the person referred to in Article 18(1)(b), (c) or (d) to be taken back shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the person's statements, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, establish and review periodically two lists indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in Article 22(3)(a) and (b), and shall adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 25

Replying to a take back request

1. The requested Member State shall make the necessary checks and shall give a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks.

2. Failure to act within the one month period or the two weeks period mentioned in paragraph 1 shall be tantamount to accepting the request, and shall entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.

SECTION IV

Procedural safeguards

Article 26

Notification of a transfer decision

1. Where the requested Member State accepts to take charge of or to take back an applicant or other person as referred to in Article 18(1)(c) or (d), the requesting Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection. If a legal advisor or other counsellor is representing the person concerned, Member States may choose to notify the decision to such legal advisor or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.

2. The decision referred to in paragraph 1 shall contain information on the legal remedies available, including on the right to apply for suspensive effect, where applicable, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned should appear, if that person is travelling to the Member State responsible by his or her own means.

Member States shall ensure that information on persons or entities that may provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1, when that information has not been already communicated.

3. When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.

Article 27

Remedies

1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

([1]) OJ L 348, 24.12.2008, p. 98.

3. For the purposes of appeals against, or reviews of, transfer decisions, Member States shall provide in their national law that:

(a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or

(b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or

(c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period of time, while permitting a close and rigorous scrutiny of the suspension request. A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

4. Member States may provide that the competent authorities may decide, acting *ex officio*, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.

5. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.

6. Member States shall ensure that legal assistance is granted on request free of charge where the person concerned cannot afford the costs involved. Member States may provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

Without arbitrarily restricting access to legal assistance, Member States may provide that free legal assistance and representation not be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority other than a court or tribunal, Member States shall provide the right to an effective remedy before a court or tribunal to challenge that decision.

In complying with the requirements set out in this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

Legal assistance shall include at least the preparation of the required procedural documents and representation before a court or tribunal and may be restricted to legal advisors or counsellors specifically designated by national law to provide assistance and representation.

Procedures for access to legal assistance shall be laid down in national law.

SECTION V

Detention for the purpose of transfer

Article 28

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.

2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where a person is detained pursuant to this Article, the period for submitting a take charge or take back request shall not exceed one month from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases. Such reply shall be given within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and shall entail the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within six weeks of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).

When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 21, 23, 24 and 29 shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply.

SECTION VI

Transfers

Article 29

Modalities and time limits

1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

If necessary, the applicant shall be supplied by the requesting Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

2. Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds.

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 30

Costs of transfer

1. The costs necessary to transfer an applicant or another person as referred to in Article 18(1)(c) or (d) to the Member State responsible shall be met by the transferring Member State.

2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.

3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

Article 31

Exchange of relevant information before a transfer is carried out

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 18(1)(c) or (d) shall communicate to the Member State responsible such personal data concerning the person to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, and to ensure continuity in the protection and rights afforded by this Regulation and by other relevant asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in accordance with national law have sufficient time to take the necessary measures.

2. The transferring Member State shall, in so far as such information is available to the competent authority in accordance with national law, transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

(a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;

(b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;

(c) in the case of minors, information on their education;

(d) an assessment of the age of an applicant.

3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 35 of this Regulation using the 'DubliNet' electronic communication network set-up under Article 18 of Regulation (EC) No 1560/2003. The information exchanged shall only be used for the purposes set out in paragraph 1 of this Article and shall not be further processed.

4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

5. The rules laid down in Article 34(8) to (12) shall apply to the exchange of information pursuant to this Article.

Article 32

Exchange of health data before a transfer is carried out

1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

The Commission shall, by means of implementing acts, draw up the common health certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her representative or, if the applicant is physically or legally incapable of giving his or her consent, when such transmission is necessary to protect the vital interests of the applicant or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.

3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional who is subject, under national law or rules established by national competent bodies, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.

4. The exchange of information under this Article shall only take place between the health professionals or other persons referred to in paragraph 3. The information exchanged shall only be used for the purposes set out in paragraph 1 and shall not be further processed.

5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

6. The rules laid down in Article 34(8) to (12) shall apply to the exchange of information pursuant to this Article.

Article 33

A mechanism for early warning, preparedness and crisis management

1. Where, on the basis of, in particular, the information gathered by EASO pursuant to Regulation (EU) No 439/2010, the Commission establishes that the application of this Regulation may be jeopardised due either to a substantiated risk of particular pressure being placed on a Member State's asylum system and/or to problems in the functioning of the asylum system of a Member State, it shall, in cooperation with EASO, make recommendations to that Member State, inviting it to draw up a preventive action plan.

The Member State concerned shall inform the Council and the Commission whether it intends to present a preventive action plan in order to overcome the pressure and/or problems in the functioning of its asylum system whilst ensuring the protection of the fundamental rights of applicants for international protection.

A Member State may, at its own discretion and initiative, draw up a preventive action plan and subsequent revisions thereof. When drawing up a preventive action plan, the Member State may call for the assistance of the Commission, other Member States, EASO and other relevant Union agencies.

2. Where a preventive action plan is drawn up, the Member State concerned shall submit it and shall regularly report on its implementation to the Council and to the Commission. The Commission shall subsequently inform the European Parliament of the key elements of the preventive action plan. The Commission shall submit reports on its implementation to the Council and transmit reports on its implementation to the European Parliament.

The Member State concerned shall take all appropriate measures to deal with the situation of particular pressure on its asylum system or to ensure that the deficiencies identified are addressed before the situation deteriorates. Where the preventive action plan includes measures aimed at addressing particular pressure on a Member State's asylum system which may jeopardise the application of this Regulation, the Commission shall seek the advice of EASO before reporting to the European Parliament and to the Council.

3. Where the Commission establishes, on the basis of EASO's analysis, that the implementation of the preventive action plan has not remedied the deficiencies identified or where there is a serious risk that the asylum situation in the Member State concerned develops into a crisis which is unlikely to be remedied by a preventive action plan, the Commission, in cooperation with EASO as applicable, may request the Member State concerned to draw up a crisis management action plan and, where necessary, revisions thereof. The crisis management action plan shall ensure, throughout the entire process, compliance with the asylum *acquis* of the Union, in particular with the fundamental rights of applicants for international protection.

Following the request to draw up a crisis management action plan, the Member State concerned shall, in cooperation with the Commission and EASO, do so promptly, and at the latest within three months of the request.

The Member State concerned shall submit its crisis management action plan and shall report, at least every three months, on its implementation to the Commission and other relevant stakeholders, such as EASO, as appropriate.

The Commission shall inform the European Parliament and the Council of the crisis management action plan, possible revisions and the implementation thereof. In those reports, the Member State concerned shall report on data to monitor compliance with the crisis management action plan, such as the length of the procedure, the detention conditions and the reception capacity in relation to the inflow of applicants.

4. Throughout the entire process for early warning, preparedness and crisis management established in this Article, the Council shall closely monitor the situation and may request further information and provide political guidance, in particular as regards the urgency and severity of the situation and thus the need for a Member State to draw up either a preventive action plan or, if necessary, a crisis management action plan. The European Parliament and the Council may, throughout the entire process, discuss and provide guidance on any solidarity measures as they deem appropriate.

CHAPTER VII

ADMINISTRATIVE COOPERATION

Article 34

Information sharing

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the applicant as is appropriate, relevant and non-excessive for:

(a) determining the Member State responsible;

(b) examining the application for international protection;

(c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 may only cover:

(a) personal details of the applicant, and, where appropriate, his or her family members, relatives or any other family relations (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);

(b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);

(c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EU) No 603/2013;

(d) places of residence and routes travelled;

(e) residence documents or visas issued by a Member State;

(f) the place where the application was lodged;

(g) the date on which any previous application for international protection was lodged, the date on which the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.

4. Any request for information shall only be sent in the context of an individual application for international protection. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant.

5. The requested Member State shall be obliged to reply within five weeks. Any delays in the reply shall be duly justified. Non-compliance with the five week time limit shall not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time limit withholds information which shows that it is responsible, that Member State may not invoke the expiry of the time limits provided for in Articles 21, 23 and 24 as a reason for refusing to comply with a request to take charge or take back. In that case, the time limits provided for in Articles 21, 23 and 24 for submitting a request to take charge or take back shall be extended by a period of time which shall be equivalent to the delay in the reply by the requested Member State.

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article 35(1).

7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:

(a) determining the Member State responsible;

(b) examining the application for international protection;

(c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that it has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.

9. The applicant shall have the right to be informed, on request, of any data that is processed concerning him or her.

If the applicant finds that the data have been processed in breach of this Regulation or of Directive 95/46/EC, in particular because they are incomplete or inaccurate, he or she shall be entitled to have them corrected or erased.

The authority correcting or erasing the data shall inform, as appropriate, the Member State transmitting or receiving the information.

The applicant shall have the right to bring an action or a complaint before the competent authorities or courts or tribunals of the Member State which refused the right of access to or the right of correction or erasure of data relating to him or her.

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.

11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which they are exchanged.

12. Where the data are not processed automatically or are not contained, or intended to be entered, in a file, each Member State shall take appropriate measures to ensure compliance with this Article through effective checks.

Article 35

Competent authorities and resources

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back applicants.

2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the *Official Journal of the European Union*. Where there are amendments thereto, the Commission shall publish once a year an updated consolidated list.

3. The authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.

4. The Commission shall, by means of implementing acts, establish secure electronic transmission channels between the authorities referred to in paragraph 1 for transmitting requests, replies and all written correspondence and for ensuring that senders automatically receive an electronic proof of delivery. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 36

Administrative arrangements

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:

(a) exchanges of liaison officers;

(b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back applicants.

2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate any incompatibilities observed.

3. Before concluding or amending any arrangement referred to in paragraph 1(b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation.

4. If the Commission considers the arrangements referred to in paragraph 1(b) to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable time in such a way as to eliminate any incompatibilities observed.

5. Member States shall notify the Commission of all arrangements referred to in paragraph 1, and of any denunciation thereof, or amendment thereto.

CHAPTER VIII

CONCILIATION

Article 37

Conciliation

1. Where the Member States cannot resolve a dispute on any matter related to the application of this Regulation, they may have recourse to the conciliation procedure provided for in paragraph 2.

2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article 44. By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

The Chairman of the Committee shall appoint three members of the Committee representing three Member States not connected with the matter. They shall receive the arguments of the parties either in writing or orally and, after deliberation, shall propose a solution within one month, where necessary after a vote.

The Chairman of the Committee, or his or her deputy, shall chair the discussion. He or she may put forward his or her point of view but may not vote.

Whether it is adopted or rejected by the parties, the solution proposed shall be final and irrevocable.

CHAPTER IX

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 38

Data security and data protection

Member States shall take all appropriate measures to ensure the security of transmitted personal data and in particular to avoid unlawful or unauthorised access or disclosure, alteration or loss of personal data processed.

Each Member State shall provide that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor independently, in accordance with its respective national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question.

Article 39

Confidentiality

Member States shall ensure that the authorities referred to in Article 35 are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Article 40

Penalties

Member States shall take the necessary measures to ensure that any misuse of data processed in accordance with this Regulation is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

Article 41

Transitional measures

Where an application has been lodged after the date mentioned in the second paragraph of Article 49, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date, with the exception of the events mentioned in Article 13(2).

Article 42

Calculation of time limits

Any period of time prescribed in this Regulation shall be calculated as follows:

(a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;

(b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;

(c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

Article 43

Territorial scope

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article 44

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 45

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 8(5) and 16(3) shall be conferred on the Commission for a period of 5 years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 8(5) and 16(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 8(5) and 16(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 46

Monitoring and evaluation

By 21 July 2016, the Commission shall report to the European Parliament and to the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

After having submitted that report, the Commission shall report to the European Parliament and to the Council on the application of this Regulation at the same time as it submits reports on the implementation of the Eurodac system provided for by Article 40 of Regulation (EU) No 603/2013.

Article 47

Statistics

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection ([1]), Member States shall communicate to the Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.

Article 48

Repeal

Regulation (EC) No 343/2003 is repealed.

Articles 11(1), 13, 14 and 17 of Regulation (EC) No 1560/2003 are repealed.

References to the repealed Regulation or Articles shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 49

Entry into force and applicability

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply to applications for international protection lodged as from the first day of the sixth month following its entry into force and, from that date, it will apply to any request to take charge of or take back applicants, irrespective of the date on which the application was made. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation (EC) No 343/2003.

References in this Regulation to Regulation (EU) No 603/2013, Directive 2013/32/EU and Directive 2013/33/EU shall be construed, until the dates of their application, as references to Regulation (EC) No 2725/2000 ([2]), Directive 2003/9/EC ([3]) and Directive 2005/85/EC ([4]) respectively.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 26 June 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. SHATTER

([1]) OJ L 199, 31.7.2007, p. 23.

([2]) Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000, p. 1).

([3]) Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003, p. 18).

([4]) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

ANNEX I

Repealed Regulations (referred to in Article 48)

Council Regulation (EC) No 343/2003

(OJ L 50, 25.2.2003, p. 1)

Commission Regulation (EC) No 1560/2003 only Articles 11(1), 13, 14 and 17

(OJ L 222, 5.9.2003, p. 3)

ANNEX II

Correlation table

Regulation (EC) No 343/2003	This Regulation
Article 1	Article 1
Article 2(a)	Article 2(a)
Article 2(b)	—
Article 2(c)	Article 2(b)
Article 2(d)	Article 2(c)
Article 2(e)	Article 2(d)
Article 2(f)	Article 2(e)
Article 2(g)	Article 2(f)
—	Article 2(h)
—	Article 2(i)
Article 2(h)	Article 2(j)
Article 2(i)	Article 2(g)
—	Article 2(k)
Article 2(j) and (k)	Article 2(l) and (m)
—	Article 2(n)
Article 3(1)	Article 3(1)
Article 3(2)	Article 17(1)
Article 3(3)	Article 3(3)
Article 3(4)	Article 4(1), introductory wording
—	Article 4(1)(a) to (f)
—	Article 4(2) and (3)
Article 4(1) to (5)	Article 20(1) to (5)
—	Article 20(5), third subparagraph
—	Article 5
—	Article 6
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2)
—	Article 7(3)
Article 6, first paragraph	Article 8(1)
—	Article 8(3)
Article 6, second paragraph	Article 8(4)
Article 7	Article 9

Regulation (EC) No 343/2003	This Regulation
Article 8	Article 10
Article 9	Article 12
Article 10	Article 13
Article 11	Article 14
Article 12	Article 15
—	Article 16
Article 13	Article 3(2)
Article 14	Article 11
Article 15(1)	Article 17(2), first subparagraph
Article 15(2)	Article 16(1)
Article 15(3)	Article 8(2)
Article 15(4)	Article 17(2), fourth subparagraph
Article 15(5)	Articles 8(5) and (6) and Article 16(2)
Article 16(1)(a)	Article 18(1)(a)
Article 16(1)(b)	Article 18(2)
Article 16(1)(c)	Article 18(1)(b)
Article 16(1)(d)	Article 18(1)(c)
Article 16(1)(e)	Article 18(1)(d)
Article 16(2)	Article 19(1)
Article 16(3)	Article 19(2), first subparagraph
—	Article 19(2), second subparagraph
Article 16(4)	Article 19(3)
—	Article 19(3), second subparagraph
Article 17	Article 21
Article 18	Article 22
Article 19(1)	Article 26(1)
Article 19(2)	Article 26(2) and Article 27(1)
—	Article 27(2) to (6)
Article 19(3)	Article 29(1)
Article 19(4)	Article 29(2)
—	Article 29(3)
Article 19(5)	Article 29(4)
Article 20(1), introductory wording	Article 23(1)
—	Article 23(2)
—	Article 23(3)

Regulation (EC) No 343/2003	This Regulation
—	Article 23(4)
Article 20(1)(a)	Article 23(5), first subparagraph
—	Article 24
Article 20(1)(b)	Article 25(1)
Article 20(1)(c)	Article 25(2)
Article 20(1)(d)	Article 29(1), first subparagraph
Article 20(1)(e)	Article 26(1), (2), Article 27(1), Article 29(1), second and third subparagraphs
Article 20(2)	Article 29(2)
Article 20(3)	Article 23(5), second subparagraph
Article 20(4)	Article 29(4)
—	Article 28
—	Article 30
—	Article 31
—	Article 32
—	Article 33
Article 21(1) to (9)	Article 34(1) to (9), first to third subparagraphs
—	Article 34(9), fourth subparagraph
Article 21(10) to (12)	Article 34(10) to (12)
Article 22(1)	Article 35(1)
—	Article 35(2)
—	Article 35(3)
Article 22(2)	Article 35(4)
Article 23	Article 36
—	Article 37
—	Article 40
Article 24(1)	—
Article 24(2)	Article 41
Article 24(3)	—
Article 25(1)	Article 42
Article 25(2)	—
Article 26	Article 43

Regulation (EC) No 343/2003	This Regulation
Article 27(1), (2)	Article 44(1), (2)
Article 27(3)	—
—	Article 45
Article 28	Article 46
—	Article 47
—	Article 48
Article 29	Article 49

Regulation (EC) No 1560/2003	This Regulation
Article 11(1)	—
Article 13(1)	Article 17(2), first subparagraph
Article 13(2)	Article 17(2), second subparagraph
Article 13(3)	Article 17(2), third subparagraph
Article 13(4)	Article 17(2), first subparagraph
Article 14	Article 37
Article 17(1)	Articles 9, 10, 17(2), first subparagraph
Article 17(2)	Article 34(3)

STATEMENT BY THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE COMMISSION

The Council and the European Parliament invite the Commission to consider, without prejudice to its right of initiative, a revision of Article 8(4) of the Recast of the Dublin Regulation once the Court of Justice rules on case C-648/11 MA and Others vs. Secretary of State for the Home Department and at the latest by the time limits set in Article 46 of the Dublin Regulation. The European Parliament and the Council will then both exercise their legislative competences, taking into account the best interests of the child.

The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, accepts to consider this invitation, which it understands as being limited to these specific circumstances and not creating a precedent.

EUROPEAN
COMMISSION

Brussels, 12.4.2017
COM(2017) 211 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

The protection of children in migration

{SWD(2017) 129 final}

1. INTRODUCTION

In recent years, the number of children in migration arriving in the European Union, many of whom are unaccompanied, has increased in a dramatic way. In 2015 and 2016, around thirty per cent of asylum applicants in the European Union were children[1]. There has been a six-fold increase in the total number of child asylum applicants in the last six years[2]

Behind statistics, there are individual children that live through a range of experiences linked to migration, many of them traumatic. Migrant children are in a state of particular vulnerability, because of their age, their distance from home, and often their separation from parents or carers. Thus, they require specific and appropriate protection.

Both girls and boys in migration are exposed to risks and have often suffered from extreme forms of violence, exploitation, trafficking in human beings, physical, psychological and sexual abuse and before and/or after their arrival on EU territory. They may risk being marginalised and drawn into criminal activity or radicalisation. Children may go missing or become separated from their families. Girls are particularly at risk of forced marriages as families struggle in straitened circumstances or wish to protect them from further sexual violence. Risks are exacerbated when children travel unaccompanied or are obliged to share overcrowded facilities with adults who are strangers to them.

Protecting children is first and foremost about upholding European values of respect for human rights, dignity and solidarity. It is also about enforcing European Union law and respecting the Charter of Fundamental Rights of the European Union and international human rights law on the rights of the child. This is why protecting all children in migration, regardless of status and at all stages of migration, is a priority.

The European Union, together with its Member States, has been active on this front for many years. The existing EU policies and legislation provide a solid framework for the protection of the rights of the child in migration covering all aspects including reception conditions, the treatment of their applications and integration. The **Action Plan on Unaccompanied Minors (2010-2014)**[3] has been instrumental in increasing awareness about the protection needs of unaccompanied children in migration, and in promoting protective actions[4]. The European Agenda on Migration[5] and the Communication on the state of play of its implementation[6], have most recently addressed the protection of children in migration. The Commission Recommendation "Investing in Children: Breaking the Cycle of Disadvantage" has provided guidance with a view to reducing child poverty and improving child well-being, through mainstream and targeted measures[7]. As a result, there is a wealth of knowledge and good practice in the Member States on the protection of children in migration.

---

1 The terms 'children in migration', or 'children', in this document covers all third country national children (persons below 18 years old) who are forcibly displaced or migrate to and within the EU territory, be it with their (extended) family, with a non-family member (separated children) or alone, whether or not seeking asylum. This Communication uses the definition of 'separated child' as set out in paragraph 8 of General Comment No 6 of the United Nations Committee on the rights of the child.

2 http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database.

3 COM(2010) 213 final.

4 A Staff Working Document reporting on the implementation of the Action Plan since 2012 is presented together with this Communication, SWD(2017)129.

5 COM(2015) 240 final.

6 COM(2016) 85 final.

7 Commission Recommendation 2013/112/EU, of 20.02.2013, "Investing in children: breaking the cycle of disadvantage" (OJ L 59 of 2.03.2013, p. 59).

Notwithstanding this good practice and the progress achieved in Member States, the recent surge in the number of arriving migrant children has put national systems and administrations under pressure and exposed gaps and shortcomings in the protection of all categories of children in migration. The **10th Annual Forum on the rights of the child on the protection of children in migration** organised by the Commission on 28-30 November 2016[8] and discussions at dedicated roundtable meetings with non-governmental and international organisations, as well as the "*Lost in Migration*" conference on 26-27 January 2017[9], have underlined the need for targeted actions to better protect children in migration. The Council of Europe Special Representative of the Secretary General on Migration and Refugees Report of 23 March 2017 also identified the main challenges faced by children in migration in Europe[10].

In the light of this increased number of migrant children arriving in Europe and of the growing pressure on national migration management and child protection systems, this Communication sets out a series of actions which need to be either taken or better implemented now by the European Union and its Member States also with the support of the relevant EU agencies (European Border and Coast Guard Agency; European Asylum Support Office (EASO) and the European Union Agency for Fundamental Rights (FRA)).

This Communication builds on relevant EU initiatives taken to address the migratory challenges, including the specific additional safeguards proposed in the context of the reform of EU asylum legislation[11], the Action Plan on Integration[12] and the Commission Recommendation on return[13] accompanying the renewed Action Plan on return[14]. Therefore, the aim is to provide **a series of coordinated and effective actions** to the pressing protection gaps and needs that children face once they reach Europe, ranging from their identification, reception, implementation of procedural safeguards, as well as establishment of durable solutions. There is also scope for stepping up cross-cutting actions at all migratory stages, such as using better and in a more targeted way EU financial support, improving data collection on children in migration and providing training to all those working with children in migration. These actions will be implemented in synergy with those taken by the European Union to protect children globally, including in the countries of origin and transit.

All these elements should be taken forward as part of **the EU's comprehensive approach to managing migration**, and to ensuring **effective protection of children in migration**, with a focus on strengthening cross-border cooperation[15].

The principle of **best interests of the child** must be the primary consideration in all actions or decisions concerning children.

---

8 http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456.

9 http://lostinmigration.eu/Conclusions_Lost_in_Migration_Conference.pdf.

10 https://www.coe.int/en/web/portal/-/srsg-identifies-main-challenges-for-migrant-and-refugee-children-in-europe.

11 See http://europa.eu/rapid/press-release_IP-16-1620_en.htm and http://europa.eu/rapid/press-release_IP-16-2433_en.htm.

12 COM(2016) 377 final.

13 C(2017) 1600 final.

14 COM(2017) 200 final.

15 In line with the 'ten principles for integrated child protection systems' – http://ec.europa.eu/justice/fundamental-rights/files/2015_forum_roc_background_en.pdf.

2. ADDRESSING ROOT CAUSES AND PROTECTING CHILDREN ALONG MIGRATORY ROUTES: FURTHER STEEPING UP THE EU'S EXTERNAL ACTION

The protection of children in migration starts by addressing the **root causes** which lead so many of them to embarking on perilous journeys to Europe. This means addressing the persistence of violent and often protracted conflicts, forced displacements, inequalities in living standards, limited economic opportunities and access to basic services through sustained efforts to eradicate poverty and deprivation and to develop integrated child protection systems in third countries.[16] The European Union and its Member States have stepped up their efforts to establish a comprehensive external policy framework to reinforce cooperation with partner countries in mainstreaming child protection at the global, regional and bilateral level. The European Union is fully committed to implement the 2030 Agenda for Sustainable Development, which calls for a world in which every child grows up free from violence and exploitation, has his/her rights protected and access to quality education and healthcare.

The 2015 **Valletta Summit political declaration and its Action Plan**[17]calls for the prevention of and fight against irregular migration, migrant smuggling and trafficking in human beings (with a specific focus on women and children), while at the same time calls for addressing the root causes of irregular and unsafe migration. In 2016, with the adoption of the Partnership Framework[18], migration has been more firmly embedded in EU foreign policy, to tackle its root causes and refocus the EU's aid to development.

Concrete actions to implement the above mentioned approach are currently ongoing and focusing on **supporting the development of child protection mechanisms in partner countries**, with specific focus on unaccompanied minors, in order to provide a safe environment for children along the migration route. For instance, the project 'Better Migration Management' (EUR 46 million), aims at improving migration management at regional level in the Horn of Africa providing specialised protection to unaccompanied and separated minors who have fallen prey to human trafficking and smuggling networks. In the Regional Development and Protection Programme framework, for which projects are on-going in Ethiopia (EUR 30 million), Kenya (EUR 15 million), Somalia (EUR 50 million), Sudan (EUR 15 million) and Uganda (EUR 20 million), a specific focus is put on the protection of unaccompanied minors to create evidence-based, innovative and sustainable development and protection solutions for both refugees and their host communities, including access to and provision of basic rights and services. In West Africa, support is provided to countries of origin and transit to strengthen regional cooperation on child protection supporting the West Africa Network for the protection of children on the move, providing assistance in developing common protection standards and sustainable return and reintegration mechanisms. Other specific targeted actions are currently implemented in the region, for example in Mauritania, focused on potential victims of child trafficking.

Irregular migration of unaccompanied children to the EU via unsafe routes leaves them prey to child trafficking and exploitation and places their health, if not their lives, at risk. **Awareness-raising campaigns** on the risks and dangers faced by children along the migration route have intensified.

EU funded humanitarian operations will continue to take into consideration boys' and girls' specific needs and vulnerabilities and ensure their protection while they are displaced. Where appropriate, support will be provided both in the country of origin and throughout the different

[16] See Commission Communication 'Lives in Dignity: from Aid-dependence to Self-reliance' COM(2016)234 (final)
[17] http://www.consilium.europa.eu/en/press/press-releases/2015/11/12-valletta-final-docs/.
[18] COM(2016) 385 final.

migration routes, including prevention of and response to violence (including sexual violence), case management, registration and restoration of lost civil documentation, family tracing and reunification, psycho-social support, provision of information, education and emergency shelters for unaccompanied children[19]. For example in South Sudan, the United Nations International Children's Emergency Fund (UNICEF) has carried out child protection activities focusing notably on prevention and response to separation, family tracing and reunification ; psychosocial support; mine risk education and other lifesaving prevention messaging; as well as the release and reintegration of children associated with armed forces and groups. In Iraq, Save the Children provides immediate lifesaving assistance to children and their families affected by the Mosul crisis and improve access to quality, inclusive education and child protection services for internally displaced persons and host communities girls and boys. In Afghanistan, the International Organisation for Migration provides humanitarian protection assistance for vulnerable undocumented Afghan unaccompanied minors.

In response to the Syrian crisis, and taking into account that half of those affected by the Syrian crisis in and outside of Syria are children, the Commission has been working to achieve the London conference[20] goal of **bringing all refugee children into education**. Over EUR 700 million has been allocated to providing access to education for children displaced by the Syrian crisis either through the Facility for Refugees in Turkey or through the EU Trust Fund in response to the Syrian crisis in the entire region. These efforts include through the establishment of a regional partnership on education with UNICEF, covering Lebanon, Turkey and Jordan and a cooperation with SPARK, the German Jordanian University, the British Council, the German Academic Exchange Service, Nuffic, Expertise France and the United Nations High Commissioner for Refugees (UNHCR), to help improve access to quality higher education opportunities distributing scholarships to vulnerable and internally displaced students in Syria, and to Syrian refugees. At the conference that was hosted in Brussels on the 4-5 of April on Supporting the future of Syria[21] the Commission - alongside the other Conference's participants - agreed to continue this work towards ensuring a No lost generation of children in Syria and in the region and getting all refugee children and vulnerable children in host communities into quality education with equal access for girls and boys.

The recently-revised **EU Guidelines on the Promotion and Protection of the Rights of the Child**[22] renew the EU's commitment to promote and protect the indivisibility of the rights of the child in its relations with third countries, including countries of origin or transit. They provide guidance to staff of EU institutions and Member States on how to operationalise a system-strengthening approach to ensure the protection of the rights of all children. In its conclusions adopted on 3 April 2017[23], the Council underlined that the European Union will continue to **actively engage in the processes leading to the elaboration of the Global Compact on Refugees and Global Compact on Migration,** following the adoption of the New York Declaration for Refugees and Migrants in September 2016[24]. In this context, the Council reaffirmed the need to protect all refugee and migrant children, regardless of their status, and give primary consideration at all times to the best interests of

---

19 See SWD(2016) 183 final - "Humanitarian Protection: Improving protection outcomes to reduce risks for people in humanitarian crises".

20 See conference declaration https://www.supportingsyria2016.com/news/co-hosts-declaration-of-the-supporting-syria-and-the-region-conference-london-2016/

21 See conference declaration http://www.consilium.europa.eu/en/press/press-releases/2017/04/05-syria-conference-co-chairs-declaration/

22 EU Guidelines on the Promotion and Protection of the Rights of the Child, 7 March 2017, 6846/17. https://eeas.europa.eu/headquarters/headquarters-homepage/22017/guidelines-promotion-and-protection-rights-child_en.

23 Council Conclusions on the Promotion and Protection of the Rights of the Child, 3 April 2017, 7775/17.

24 New York Declaration for Refugees and Migrants, A/71/L.1*, 13 September 2016.

the child, including unaccompanied children and those separated from their families, in full compliance with the UN Convention on the Rights of the Child and its Optional Protocols.

Key actions:

The Commission and the Member States should:

- prioritise actions aimed at strengthening child protection systems along the migratory routes, including in the context of the implementing the Valletta Summit political declaration and Action Plan and the Partnership Framework, as well as in the framework of development cooperation;
- support partner countries in developing strong national child protection systems and civil registration services as well as cross-border cooperation on child protection;
- support projects targeting the protection of unaccompanied children in third countries along migratory routes, in particular to prevent child trafficking or smuggling;
- actively implement of the EU Guidelines on the Promotion and Protection of the Rights of the Child.

3. SWIFT AND COMPREHENSIVE IDENTIFICATION AND PROTECTION

Following their arrival in the European Union, children in migration should always be **identified and registered as children**, using a uniform data set across the European Union (for example, to indicate whether a child is unaccompanied, separated or travelling with family, nationality/statelessness, age, sex, etc.). Children should be prioritised in all border-related procedures and receive adequate support from specialised staff in the process of identification and registration. They should notably apply child-friendly and gender-sensitive approaches when collecting fingerprints and biometric data. Vulnerabilities and special protection needs, including healthcare needs, should be better systematically and individually assessed**.**

Children, especially those who are unaccompanied, are ever more exposed to the risks of **exploitation and child trafficking**[25]. Children are a particularly vulnerable group targeted by traffickers, and the risk of falling prey to such practices has been exacerbated by the number of children arriving in the European Union. Specific attention should be given to responding to the needs of girls and boys who may have been victims of any forms of sexual or gender-based violence. However, the necessary referrals to national child protection systems and/or to anti-trafficking referral mechanisms are not always implemented, or not implemented promptly. Children who are stateless, due for example to birth to stateless parents or due to gender discrimination in nationality laws in their mother's country of nationality, may be difficult to identify as such, and hence delay their status determination in the European Union.

A **person responsible for child protection** should therefore be present at an early stage of the identification and registration phase. Frontline Member States should, when needed, be supported by other Member States through deployment of experts by the EU agencies. There is an urgent need to integrate child protection at the hotspots by appointing in each hotspot a child protection officer – namely, a person responsible for child protection acting as a focal point for all issues relating to children, irrespective of whether children are applicants for international protection or not.

Cross-border **family tracing and reunification** processes, including in countries of origin and transit, are often not carried out, protracted or started too late. These procedures should be smoother and faster for all children, whether applying for international protection (and thus eligible for

[25] See COM(2016) 267 final.

transfers in application of the Dublin Regulation)[26] or under the Family Reunification Directive where applicable[27]. In addition, measures should be taken to verify the family links of separated children travelling with adults, before they are referred onwards, or guardianship is entrusted to the accompanying adult.

Missing migrant children have the same right to protection as missing national children. Tackling the phenomenon of missing children requires setting up robust prevention mechanisms and responses. In terms of prevention, missing children found anywhere on the territory of the European Union must be promptly identified, registered and referred to the child protection authorities.

Protocols and procedures need to be in place **to systematically report and respond** to instances of unaccompanied children going missing[28]. Reception centre managers, in particular, as well as others involved in the care of the child, should report all cases of children going missing to the police. The missing children hotlines (116 000 number, operational in all EU Member States) and national child alert mechanisms must be used where appropriate. All cases of missing unaccompanied children should be recorded by the police, who should enter an alert on the missing child in the Schengen Information System (SIS) and liaise with the national SIRENE bureau. Member States should also request a corresponding Interpol notice on missing persons to be issued[29], involving Europol where relevant. Further efforts to raise awareness on the issue of missing children could also include information campaigns in relevant public places.

The recently proposed reform of SIS includes a proposal to add a classification to the missing child alert in the system, indicating where known the circumstances of the disappearance and the fact that the child is unaccompanied and/or a victim of trafficking[30]. Work is underway on an automated fingerprint identification system in SIS. This will allow searching SIS by fingerprints and to more reliably identify children in need of protection. Lowering the age for taking fingerprints and facial images from 14 to 6 years, as proposed in the revised Eurodac Regulation, could also facilitate the tracing of missing children[31]. Furthermore, the future Entry/Exit System[32] will also help improve the identification and detection of third country national children who go missing in Europe.

---

[26] Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection, OJ L 180, 29.6.2013, p. 31–59.

[27] Directive 2003/86/EC on the right to family reunification, OJ L 251, 3.10.2003, p. 12–18.

[28] See for instance the Swedish comprehensive approach to missing unaccompanied children (national mapping/analysis/follow-up actions). http://www.lansstyrelsen.se/Stockholm/Sv/manniska-och-samhalle/manskliga-rattigheter/ensamkommande-barn-som-forsvinner/Sidor/mapping-analysis-follow-up-on-missing-unaccompanied-minors-in-sweden.aspx.

[29] Paying due regard to safeguards to avoid exposing applicants for international protection or their families to the risk of serious harm by actors in third countries.

[30] COM(2016) 883 final.

[31] COM(2016) 272 final.

[32] COM(2016) 194 final.

Key actions:

As of 2017, with the support of the Commission and the EU agencies, the Member States are encouraged to:

- collect and exchange comparable data to facilitate the cross-border tracing of missing children and the verification of family links;
- apply child-friendly and gender-sensitive approaches when collecting fingerprints and biometric data;
- ensure that a person responsible for child protection is present at an early stage of the identification and registration phase and that child protection officers are appointed in each hotspot;
- put in place the necessary procedures and protocols to systematically report and respond to all instances of unaccompanied children going missing.

4. PROVIDING ADEQUATE RECEPTION IN THE EUROPEAN UNION

Reception conditions for children in migration include not only safe and appropriate accommodation, but also any necessary support services to secure the child's best interests and wellbeing, such as independent representation, as well as access to education, healthcare, psychosocial support, leisure and integration-related measures.

Reception facilities are not always adapted to the needs of children and staff are not always trained or qualified to work with them. Appropriate child protection and security measures are not yet in place in all reception facilities. Individual needs assessments may be inadequate or not carried out, preventing the implementation of a tailored response to meet the needs of each child. While the use of family-based care/foster care for unaccompanied children has expanded in recent years and proven successful and cost-effective, it is still under-utilised. Psychological support to traumatised children and families is needed, as well as specific services for girls and boys who may have suffered from sexual and gender-based violence, promoting access to sexual and reproductive care services. Children living in communities can face barriers accessing healthcare and education. Children are not always assured early access to education, although this is their human right according to the United Nations Convention on the Rights of the Child and fundamental for securing their future and wellbeing.

To address these challenges, the Commission will continue to prioritise safe access to formal and non-formal education, reducing the length of time children's education is disrupted[33]. Everything possible must be done to ensure the availability and accessibility of suitable and safe reception conditions. Suitable options could include, for unaccompanied children in particular, placement with adult relatives or a foster family, accommodation centres with special provision for children or other suitable accommodation, such as closely supervised open reception centres designed to ensure the protection of children, or small scale independent living arrangements for older children[34]. The United Nations Guidelines for the Alternative Care of Children constitute relevant standards.[35]

In some instances, children have been accommodated in closed facilities due to a shortage of suitable alternative reception facilities. Given the **negative impact of detention** on children, administrative

[33] In particular through the Emergency Support Instrument. http://ec.europa.eu/echo/what-we-do/humanitarian-aid/emergency-support-within-eu_en.

[34] As set out in Article 24 of Directive 2013/33/EU, laying down standards for the reception of applicants for international protection (recast) OJ L 180, 29.6.2013, p. 96–116.

[35] http://www.refworld.org/docid/4c3acd162.html.

detention should be used, in line with EU law, exclusively in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible, and never in prison accommodation.

Moreover, where there are grounds for detention, everything possible must be done to ensure that a viable range of alternatives to the administrative detention of children in migration is available and accessible,[36] including through support provided by the EU funds. The promotion of alternatives to detention will be the main topic of the 11th forum on the rights of the child (November 2017).

The establishment of **effective monitoring systems** at the national level should also contribute to the good functioning of reception centres, making sure that business interests (for centres run for profit) do not prevail over child protection. To support Member States, EASO will in 2017 develop specific guidance on operational standards and indicators on material reception conditions for unaccompanied children, in addition to the guidance on reception conditions already developed last year that apply to all asylum seekers.

Key actions:

As of 2017, with the support of the Commission and the EU agencies, the Member States are encouraged to:

- ensure that individual gender- and age-sensitive vulnerability and needs assessments of children are carried out upon arrival and taken into account in all subsequent procedures;
- ensure that all children have timely access to healthcare (including preventive care) and psychosocial support, as well as to inclusive formal education, regardless of the status of the child and/or of his/her parents;
- ensure that a range of alternative care options for unaccompanied children, including foster/family-based care are provided;
- integrate child protection policies in all reception facilities hosting children, including by appointing a person responsible for child protection;
- ensure and monitor the availability and accessibility of a viable range of alternatives to the administrative detention of children in migration;
- ensure that an appropriate and effective monitoring system is in place with regard to reception of children in migration;
- make full use of the forthcoming EASO guidance on operational standards and indicators on material reception conditions for unaccompanied children.

5. ENSURING SWIFT AND EFFECTIVE ACCESS TO STATUS DETERMINATION PROCEDURES AND IMPLEMENTATION OF PROCEDURAL SAFEGUARDS

Appropriate safeguards must be applied to all children present on the territory of the European Union, including at all stages of the asylum and return procedure. Currently, a number of key protection measures, notably as regards access to information, legal representation and guardianship, the right to be heard, the right to an effective remedy and multidisciplinary and rights-compliant age assessments, needs to be stepped up.

Guardians play a crucial role in guaranteeing access to the rights and in safeguarding the interests of all unaccompanied children, including those not applying for asylum. They can help build trust with

[36] See Article 11 of Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96–116, and background reading, UNHCR standards on detention, and Items 84-88 under "Alternatives to detention". http://ec.europa.eu/newsroom/document.cfm?doc_id=42359.

the child and ensure his or her wellbeing, including for integration, in cooperation with other actors. Guardians can also help prevent that children go missing or fall prey to trafficking. There are currently major shortcomings in the functioning of the guardianship systems in some Member States, particularly as regards the number of suitably qualified guardians available and the speed at which they are appointed. Where needed, guardianship institutions should be strengthened. Guardians need to be recruited in sufficient numbers, to be appointed faster and to be better equipped to fulfil their tasks. There is also a pressing need to develop and exchange good practices and guidance among guardians and guardianship authorities in the Member States. That is why, in 2017, a European guardianship network will be established.

The Commission's 2016 proposals to reform the **Common European Asylum System** recognise the fundamental role of guardians for unaccompanied children and seek to reinforce specific safeguards applicable to children[37]. The proposal for an Asylum Procedures Regulation[38] aims to strengthen guardianship systems in Member States, while the new Dublin Regulation[39] should secure rapid determination of the Member State responsible for the child's application for international protection.

Age assessment methods and procedures vary widely across Member States and do not always follow EASO recommendations and evolving practice. For example, unnecessary age assessments may be carried out and invasive methods are sometimes used, guardians are often appointed only after age assessment procedures have been carried out, and age disputes sometimes lead to children ending up in detention. In some cases, children are themselves expected to pay to challenge disputed age assessments. Reliable, multi-disciplinary age assessment procedures fully compliant with the legal safeguards related to age assessment provided by EU law are needed when there are doubts as to whether a person is under the age of 18. The person should be presumed to be a child and given the benefit of the doubt where results are inconclusive, in line with EU law[40]. In 2017, EASO will update its guidance on age assessment.

As mentioned above, **family tracing and family reunification/unity procedures** are often protracted or start too late. Such procedures should be carried out irrespective of the child's legal status, with the involvement of a person responsible for child protection or the child's guardian once appointed. For asylum applicants, transfers based on the family unity provisions in the Dublin Regulation are under-utilised, and sometimes take many months to be implemented. Concerted efforts should be made to speed up family reunification procedures, prioritising unaccompanied and separated children. Where children are transferred across borders within the European Union, whether pursuant to the Dublin Regulation or otherwise, close cooperation between the authorities responsible for the child's wellbeing in each Member State is essential. Member States should make full use of existing cooperation channels, for example through Central Authorities provided for in the Brussels IIa Regulation[41].

---

[37] See http://europa.eu/rapid/press-release_IP-16-1620_en.htm and http://europa.eu/rapid/press-release_IP-16-2433_en.htm.

[38] COM(2016) 467 final.

[39] COM(2016) 270 final.

[40] For migrant children applying for asylum, this is set out in Directive 2013/32/EU on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60–95. See also Article 13(2) of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ L 101, 15.4.2011, p. 1–11.

[41] Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L 338, 23.12.2003, p. 1–29.

There are sometimes long delays in **processing the asylum and other proceedings concerning children**. Children's status determination procedures should be prioritised (the 'urgency principle') in line with the Council of Europe Guidelines on child-friendly justice[42].

Relocation of asylum-seekers from Italy and Greece is designed not only to relieve pressure on these Member States but also to ensure prompt access to asylum procedures for the persons relocated. Under the **Council Decisions on relocation**[43], Member States should prioritise the relocation of vulnerable persons, including unaccompanied children and other children in particularly vulnerable situations. In December 2016, the European Council called on Member States to further intensify their efforts to accelerate relocation, in particular for unaccompanied children[44]. Despite constant encouragement from the Commission, as of 2 April 2017, only 341 unaccompanied and separated children had been relocated from Greece. In Italy, only one separated child has been relocated as the authorities have not yet developed a specific procedure for the relocation of unaccompanied children[45]. It is essential that Member States step up their pledging specifically for unaccompanied and separated children.

Key actions:

In 2017, the Commission and the EU agencies will:

- establish a European guardianship network, to develop and exchange good practices and guidance on guardianship in cooperation with the European Network of Guardianship Institutions;
- EASO will update its guidance on age assessment.

With the support of the Commission and the EU Agencies, the Member States are encouraged to:

- strengthen the guardianship authority/institution to ensure that guardians for all unaccompanied children are swiftly in place;
- implement reliable, multi-disciplinary age and non-invasive assessment procedures;
- ensure swift and effective family tracing, within or outside the EU, by making full use of existing cross-border cooperation channels;
- give priority to processing cases (e.g.: asylum applications) concerning children in line with the urgency principle;
- give priority to the relocation of unaccompanied children from Greece and Italy.

6. ENSURING DURABLE SOLUTIONS

Durable solutions are crucial to establish normality and stability for all children in the long term. The identification of durable solutions should look at all options, such as integration in a Member State, return to the country of origin, resettlement or reunification with family members in a third country. It is essential that a thorough **best interests determination** be carried out in all cases[46].

---

[42] In line with Article 31(7)b of the Asylum Procedures Directive, and the Council of Europe Guidelines on child-friendly justice:50. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000016804b2cf3.

[43] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

[44] http://www.consilium.europa.eu/en/meetings/european-council/2016/12/20161215-euco-conclusions-final_pdf/.

[45] COM(2017)212 final.

[46] See http://www.connectproject.eu/PDF/CONNECT-EU_Reference.pdf (page 59) for an overview of EU provisions on durable solutions.

Clear rules should be established on the legal status of children who are not granted asylum but who will not be returned to their country of origin[47]. Member States should establish procedures and processes to help identify durable solutions on an individual basis, and clearly set out the roles and duties of those involved in the assessment, in order to avoid that children are left for prolonged periods of time in limbo as regards their legal status. **Access to education, healthcare and psychosocial support** while awaiting the identification of a durable solution should also be ensured. Finally, Member States should seek to ensure availability of status determination procedures and resolution of residence status for children who will not be returned, in particular for those who have resided in the country for a certain period of time.

Early integration of children is crucial to support their development into adulthood. It is a social investment and essential factor contributing to societal cohesion overall in Europe. Integration of children at the earliest stage, through mainstream and targeted measures, is also important to minimise risks with regard to possible criminal activity and exposure to radicalisation[48] The Radicalisation Awareness Network looks into available practices and approaches of how to support and protect children who may have been traumatised and might be vulnerable to radicalisation[49]. It includes continuing efforts to promote a positive approach to diversity, as well as to combating racism, xenophobia and in particular hate speech against children in migration.

Given that recently arrived children may not yet have been able to acquire sufficient skills and competences to fully and actively integrate in society, in particular for transition into further study or the labour market, children in this transitional phase should be provided with guidance, support and opportunities for continuing education and training. Furthermore, as is the case for children in State care who are EU nationals, mechanisms and processes need to be in place to help prepare children in migration in State care for the transition to adulthood/leaving care.

The Commission promotes cooperation between Member States in this area, facilitating exchanges of good practices[50] and providing financial support to pilot integration projects for all migrant children, including those who are unaccompanied. The integration of unaccompanied children is a priority under the Asylum, Migration and Integration Fund (AMIF) 2014-2020. In line with the Action Plan on integration of third country nationals[51] and the December 2016 Council Conclusions[52], key steps taken so far include calls for proposals across policy areas, with integration as a main priority.

Member States' integration policies reflect their diverse social and economic backgrounds and conditions. **Early and effective access to inclusive, formal education,** including early childhood education and care, is one of the most important and powerful tools for the integration of children, fostering language skills, social cohesion and mutual understanding. Training that prepares teachers to work with children of diverse backgrounds is a key factor for integration. Attention to other dimensions of socialisation, including through leisure activities and sports, is also important.

---

47 In line with paragraph 13 of the Return Recommendation of 7 March 2017 (COM(2017) 1600 final).

48 In line with the Council Conclusions of 3 November 2016 (13611/16) and COM(2016) 379 final. See also findings of the Council of Europe's Report of 15 March 2016 on "Preventing the radicalisation of children by fighting the root causes", and the Council of Europe Parliamentary Assembly's Resolution 2103/2016.

49 See RAN Issue Paper of November 2016 on "Child returnees from conflict zones" setting out the particular challenges of working with children at risk: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf ; see also forthcoming manual on returnees responses including a dedicated chapter on children to be presented at the RAN Conference on Returnees of June 2017.

50 See European website on integration https://ec.europa.eu/migrant-integration/search?search=child+good+practices.

51 COM(2016) 377 final.

52 http://data.consilium.europa.eu/doc/document/ST-15312-2016-INIT/en/pdf.

Effective access to education, and to any measures necessary to ensure such access (e.g. language classes), must be available to all children, even if they will be returned to a third country. Due to emerging risks of segregated education for children in migration[53], access to inclusive and non-discriminatory education is the key towards children's integration in other areas of life. **Timely access to healthcare and an adequate standard of living** are key to the integration of children in the host countries. Improvement of living conditions, measures to tackle child poverty and to ensure healthcare (including mental healthcare) provision are critical[54].

Member States should also increase the use of **resettlement and other legal pathways for children**, including children in families, with a particular focus on the most vulnerable. Unaccompanied or separated children and families may be eligible for urgent resettlement through Member States' national resettlement programmes or under the ongoing European resettlement schemes established by the Conclusions on resettlement[55] of 20 July 2015 and the EU-Turkey Statement of 18 March 2016. Resettlement of unaccompanied or separated children is encouraged through financial incentives in the Union resettlement programme under the AMIF Regulation[56]. On 13 July 2016, the Commission adopted a proposal for a Regulation establishing a Union Resettlement Framework in which children and adolescents at risk are designated as vulnerable persons eligible for resettlement[57].

Where it is in their best interests, children should be **returned** to their country of origin or reunited with family members in another third country. Decisions to return children to their country of origin must respect the principles of non-refoulement and the best interests of the child, should be based on a case-by-case assessment, and following a fair and effective procedure guaranteeing their right to protection and non-discrimination. Particular priority should be attached to better cooperation with countries of origin, including by ensuring better family tracing and reintegration conditions. The Return Handbook[58] and the Commission Recommendation of 7 March 2017 on making returns more effective when implementing Directive 2008/115/EC[59] provide for specific guidelines as regards best interests of the child. It is important to ensure that children who will be returned are given prompt access to appropriate (re)integration measures, both before departure and after arrival in their country of origin or another third country.

---

53 See the Fundamental Rights Agency Report "Together in the EU – Promoting the participation of migrants and their descendants". http://fra.europa.eu/en/publication/2017/migrant-participation.

54 Migrant children are exposed to a high risk of poverty and the integrated approach promoted in the Commission's Recommendation Investing in children: breaking the cycle of disadvantage warrants renewed focus in the context of integration. OJ L 59, 2.3.2013, p. 5-16.

55 11130/15.

56 Regulation (EU) No 516/2014 establishing the Asylum, Migration and Integration Fund, OJ L 150, 20.5.2014, p. 168-194.

57 COM(2016) 468 final.

58 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf.

59 C(2017) 1600 final.

Key actions:

In 2017, the Commission will:

- promote the integration of children through available funding and exchange of good practices addressing non-discriminatory access to public services and targeted programmes.

The Member States are encouraged to:

- ensure, within a short time span after arrival, equal access to inclusive, formal education, including early childhood education and care, and develop and implement targeted programmes to support it;
- ensure timely access to healthcare as well as to other essential public services to all children;
- provide support to enable children in the transition to adulthood (or leaving care) to access necessary education and training;
- foster social inclusion in all integration-related policies, such as prioritising mixed, non-segregated housing and inclusive education;
- increase resettlement to Europe for children in need of international protection;
- ensure that appropriate family tracing and reintegration measures are put in place to meet the needs of children who will be returned to their country of origin.

7. CROSS-CUTTING ACTIONS: RESPECT AND GUARANTEES FOR THE BEST INTERESTS OF THE CHILD; MORE EFFECTIVE USE OF DATA, RESEARCH, TRAINING AND FUNDING

The **child's best interests** must be assessed and taken into account as the primary consideration **in all actions or decisions that concern him or her**[60]. However, at present, the legislation of most Member States does not set out a process for identifying and implementing this requirement, including with regard to durable solutions for unaccompanied children based on an individual and multidisciplinary assessment. Nor does national legislation always clearly specify the guardian's role in this context. It is important that the European Union provides further guidance on this topic, building upon international standards. A robust determination of the child's best interests, in the identification of the most appropriate durable solution for him or her, should entail extra procedural safeguards, given the huge impact this decision has on a child's future[61].

Targeted research can also serve a useful purpose. Horizon 2020, the EU Framework Programme for Research and Innovation, will carry out research on how to address the integration of children in migration within EU educational systems.

Children need to be informed – in a child-sensitive and age- and context- appropriate manner – on their rights, on procedures and on services available for their protection. More needs to be done to tackle gaps and to use a range of information methods to meet children's needs, and the role of cultural mediators as well as interpreters has proven to be beneficial in that respect.

---

[60] CRC General Comment No 14; http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf; procedural safeguards at Section V. UNHCR guidance on best interests: Safe and Sound, 2014: http://www.refworld.org/docid/5423da264.html; The 2012 Best Interests Determination guidelines (http://www.unhcr.org/4566b16b2.pdf) and the UNHCR/International Rescue Committee Field Handbook (http://www.refworld.org/pdfid/4e4a57d02.pdf).

[61] Article 6(1) of Dublin III Regulation, recital 35 of Eurodac Regulation, recital 33 of the recast Asylum Procedures Directive, recital 18 of the recast Qualification Directive, recital 9 and Article 23(2) of the Reception Conditions Directive.

The European Union has strengthened its **operational support** to Member States in terms of training, collection of data, funding and exchange of best practices. It will pursue this effort to support the implementation of all actions outlined in this Communication.

People working with and for children (such as border guards, reception centre workers, guardians) are not always adequately **trained in child protection** and rights of the child and in communicating with children in a gender, age- and context- appropriate manner. Allocating resources to training should be a priority. In 2017, relevant EU agencies will increase the support and volume of training on the protection of children in migration.

Data on children in migration are still very fragmented, not always disaggregated by age and sex and not always comparable, making children and their needs "invisible". Moreover, the precise numbers of (unaccompanied) children who go missing or abscond from reception and care facilities are not known[62]. Only data on the number of children who apply for asylum are collected in a coordinated manner. More detailed data on all children in migration are needed to inform policy development and better target support services and to plan for contingencies[63], in line with the New York Declaration for Refugees and Migrants of 19 September 2016[64]. To this end, the Commission's Knowledge Centre on Migration and Demography will compile a data repository on children in migration[65]. By the end of 2017, the Commission will also launch consultations on possible improvements to current EU-level data collection related to children and migration including based on the Migration Statistics Regulation[66] and the 2011 Guidelines[67][68] with a view to improving the coverage, availability and level of disaggregation of these data

EU funding contributes to the protection of children in migration and supports **integrated child protection systems.** However, the increased proportion of children in the overall migrant inflow would also require that their needs are prioritised in accordance with the scale of the phenomenon in national programmes of Member States under AMIF and the Internal Security Fund (ISF). Protection is mainstreamed across emergency interventions supported by the Emergency Support Instrument. Other EU funds should be used more to support reception, integration, education and training or access to procedural safeguards, including the European Structural and Investment Funds, such as, the European Social Fund, the European Regional Development Fund, as well as the Fund for Aid to the Most Deprived, the Employment and Social Innovation programme (EaSI) and the Rights, Equality and Citizenship Programme[69]. At the same time, it is important to ensure that the necessary EU funding includes a child protection requirement so that organisations in direct contact with

---

[62] In 2013, a Commission study on Missing children in the European Union: Mapping, data collection and statistics provided data on the numbers of missing unaccompanied children in 12 Member States. http://ec.europa.eu/justice/fundamental-rights/files/missing_children_study_2013_en.pdf.

[63] E.g. on withdrawals of international protection claims, pending cases, decisions granting or withdrawing status and Dublin transfers.

[64] https://refugeesmigrants.un.org/declaration - Section II Commitments that apply both to refugees and migrants, para 40.

[65] https://ec.europa.eu/jrc/en/migration-and-demography.

[66] http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R0223. Regulation (EC) No 223/2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities, OJ L 87, 31.3.2009, p. 164–173.

[67] Eurostat, First permits issued for other reasons by reason, length of validity and citizenship, at http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resoth.

[68] Eurostat, First permits issued for other reasons by reason, length of validity and citizenship, at http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resoth.

[69] Background document on EU funding to protect children in migration, 2016 European Forum on the rights of the child. http://ec.europa.eu/newsroom/document.cfm?doc_id=19748.

children ensure that their staff is vetted and qualified, and that reporting procedures and mechanisms and accountability measures are in place.

There is a wealth of knowledge and **good practice** in the Member States on the protection of children in migration, which needs to be shared at local and national level.

Lastly, the Commission will ensure close monitoring of the implementation of all relevant aspects of EU law, including in particular compliance with fundamental rights obligations and safeguards related to the rights of the child[70].

Key actions:

In/as of 2017, the Commission and the EU agencies will:

- provide additional training, guidance and tools on best interests of the child assessments;
- launch consultations on possible improvements to current EU-level data collection relating to children in migration including based on the Migration Statistics Regulation and the 2011 Guidelines, and the Commission's Knowledge Centre on Migration and Demography will compile a data repository on children in migration;
- require that organisations in direct contact with children have in place internal child protection policies in order to be granted EU funding;
- collect and disseminate good practices on the protection of children in migration via an online database.

The Member States are encouraged to:

- ensure that all children are provided with relevant information on their rights and on procedures, in a child-friendly and age- and context- appropriate manner;
- ensure that those working with children in migration – from arrival at EU borders to their integration or return – are appropriately trained and child protection professionals are involved where relevant;
- prioritise children in migration under AMIF and ISF national programmes; make use of any other available complementary EU funding, ensure that organisations to be funded have child protection policies in place;
- enhance collection of more disaggregated data and statistics on children in migration.

8. CONCLUSION

Progress has been made on the Action Plan on Unaccompanied Minors of 2010-2014, including as regards the legal framework for the protection of children in migration, as shown in the Staff Working Paper accompanying this Communication. There is also a wealth of knowledge and good practice in the Member States on the protection of children in migration, which should be widely shared. However, further tangible improvements to the protection of **all children in migration are needed** to adequately address the current challenges.

Therefore, a **determined, concerted and coordinated follow-up** to the key short-term actions set out in this Communication is required at the **EU and national, regional and local levels**, also in cooperation with civil society and international organisations. The swift approval by the legislators of the pending proposals for the reform of the Common European Asylum System, which contain

[70] http://ec.europa.eu/justice/fundamental-rights/files/acquis_rights_of_child.pdf.

several provisions specifically targeted to improve the protection of children and other vulnerable persons, would provide additional protection of the rights of children in migration and will need to be swiftly implemented by the Member States.

The Member States remain at the forefront in ensuring the protection of children in migration, and the Commission will support them with the actions outlined in this Communication, including by providing increased training, guidance, operational support and available funding. The cooperation among EU agencies will also be reinforced as well as cooperation with national authorities, United Nations agencies and civil society organisations active in the field. The Commission will closely monitor the follow-up of the actions set out in this Communication and will regularly report to the European Parliament and the Council.

EUROPEAN
COMMISSION

Brussels, 23.9.2020
COM(2020) 609 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

on a New Pact on Migration and Asylum

'We will take a human and humane approach. Saving lives at sea is not optional. And those countries who fulfil their legal and moral duties or are more exposed than others, must be able to rely on the solidarity of our whole European Union… Everybody has to step up here and take responsibility.'

President von der Leyen, State of the Union Address 2020

1. INTRODUCTION: A NEW PACT ON MIGRATION AND ASYLUM

Migration has been a constant feature of human history with a profound impact on European society, its economy and its culture. With a well-managed system, migration can contribute to growth, innovation and social dynamism. Key societal challenges faced by the world today – demography, climate change, security, the global race for talent, and inequality – all have an impact on migration. Policy imperatives such as free movement in the Schengen area, safeguarding fundamental rights, ensuring security, and filling skills gaps, all call for an effective migration policy. The task facing the EU and its Member States, while continuing to address urgent needs, is to build a system that manages and normalises migration for the long term and which is fully grounded in European values and international law.

The **New Pact on Migration and Asylum** offers a fresh start to address this task. The refugee crisis of 2015-2016 revealed major shortcomings, as well as the complexity of managing a situation which affects different Member States in different ways. It unearthed genuine concerns, and brought to the surface differences which need to be acknowledged and overcome. Above all, it highlighted a fundamental truth inherent in the nature of the EU: that **every action has implications for others**. While some Member States continue to face the challenge of external border management, others must cope with large-scale arrivals by land or sea, or overpopulated reception centres, and others still face high numbers of unauthorised movements of migrants. A new, durable **European framework** is needed, to manage the interdependence between Member States' policies and decisions and to offer a proper response to the opportunities and challenges in normal times, in situations of pressure and in crisis situations: one that can provide certainty, clarity and decent conditions for the men, women and children arriving in the EU, and that can also allow Europeans to trust that migration is managed in an effective and humane way, fully in line with our values.

- 20.9 million non-EU nationals were **legally resident** in EU Member States in 2019, some 4.7% of the EU total population.
- EU Member States issued around 3.0 million **first residence permits** to non-EU nationals in 2019, including around 1.8 million for a duration of at least 12 months.
- 1.82 million **illegal border crossings** were recorded at the EU external border at the peak of the refugee crisis in 2015. By 2019 this had decreased to 142 000.
- The number of **asylum applications** peaked at 1.28 million in 2015 and was 698 000 in 2019.
- On average every year around 370,000 applications for international protection are rejected but only around a third of these persons are **returned** home.
- The EU hosted some 2.6 million **refugees** at the end of 2019, equivalent to 0.6% of the EU population.

The New Pact recognises that **no Member State should shoulder a disproportionate responsibility** and that all Member States should **contribute to solidarity** on a constant basis.

It provides a comprehensive approach, bringing together policy in the areas of **migration, asylum, integration and border management**, recognising that the overall effectiveness depends on progress on all fronts. It creates faster, seamless **migration processes** and **stronger governance** of migration and borders policies, supported by modern IT systems and more effective agencies. It aims to reduce unsafe and irregular routes and promote sustainable and safe legal pathways for those in need of protection. It reflects the reality that most migrants come to the EU through legal channels, which should be better matched to EU labour market needs. And it will foster trust in EU policies by closing the existing **implementation gap.**

This common response needs to include **the EU's relationships with third countries**, as the internal and external dimensions of migration are inextricably linked: working closely with partners has a direct impact on the effectiveness of policies inside the EU. Addressing the root causes of irregular migration, combatting migrant smuggling, helping refugees residing in third countries and supporting well-managed legal migration are valuable objectives for both the EU and our partners to pursue through comprehensive, balanced and tailor-made partnerships.

In designing the New Pact, the Commission undertook dedicated high-level and technical consultations with the European Parliament, all Member States, and a wide variety of stakeholders from civil society, social partners and business. The New Pact has been shaped by the lessons of the inter-institutional debates since the Commission proposals of 2016 to reform the Common European Asylum System. It will preserve the compromises already reached on the existing proposals and add new elements to ensure the balance needed in a common framework, bringing together all aspects of asylum and migration policy. It will close gaps between the various realities faced by different Member States and promote mutual trust by delivering results through effective implementation. Common rules are essential, but they are not enough. The interdependency of Member States also makes it indispensable to ensure full, transparent and consistent implementation on the ground.

The New Pact on Migration and Asylum:

- robust and fair management of external borders, including identity, health and security checks;
- fair and efficient asylum rules, streamlining procedures on asylum and return;
- a new solidarity mechanism for situations of search and rescue, pressure and crisis;
- stronger foresight, crisis preparedness and response;
- an effective return policy and an EU-coordinated approach to returns;
- comprehensive governance at EU level for better management and implementation of asylum and migration policies;
- mutually beneficial partnerships with key third countries of origin and transit;
- developing sustainable legal pathways for those in need of protection and to attract talent to the EU; and
- supporting effective integration policies.

2. A COMMON EUROPEAN FRAMEWORK FOR MIGRATION AND ASYLUM MANAGEMENT

Since the refugee crisis of 2015-2016, the challenges have changed. Mixed flows of refugees and migrants have meant increased complexity and an intensified need for coordination and solidarity mechanisms. The EU and the Member States have significantly stepped up cooperation on migration and asylum policy. Member States' responses to the recent situation in the Moria reception centre have shown responsibility-sharing and solidarity in action. The plan of the Commission to work with national authorities on a joint pilot for a new reception centre shows how cooperation can work in the most operational of ways. To support the implementation of this joint pilot, the Commission will set up an integrated task force together with Member States and EU Agencies. However, *ad hoc* responses cannot provide a sustainable answer and major structural weaknesses remain, both in design and implementation. Inconsistencies between national asylum and return systems, as well as shortcomings in implementation, have exposed inefficiencies and raised concerns about fairness. And at the same time, the proper functioning of migration and asylum policy inside the EU also needs reinforced cooperation on migration with partners outside the EU.

A comprehensive approach is therefore needed which acknowledges collective responsibilities, addresses the most fundamental concerns expressed in the negotiations since 2016 – in particular in relation to solidarity – and tackles the implementation gap. This approach will build on progress made since 2016 but will also introduce a common European framework and better governance of migration and asylum management, as well as a new solidarity mechanism. It will also make procedures at the border more consistent and more efficient, as well as ensuring a consistent standard of reception conditions.

Building on the progress made since 2016

The Commission's previous proposals to reform the **Common European Asylum System** aimed to create a fair and swift process guaranteeing access to the asylum procedure, as well as equal treatment, clarity and legal certainty for asylum seekers, and addressing shortcomings on return. These goals remain valid and the New Pact has sought to maintain as much as possible the progress made and the compromises reached between the European Parliament and the Council.

The Commission supports the provisional political agreements already reached on the Qualification Regulation and the Reception Conditions Directive. These proposals should be agreed as soon as possible. The **Qualification Regulation** would further harmonise the criteria for granting international protection, as well as clarifying the rights and obligations of beneficiaries and setting out when protection should end, in particular if the beneficiary has become a public security threat or committed a serious crime. The recast of the **Reception Conditions Directive** would bring more harmonised rules and improved reception conditions for asylum applicants, including earlier access to the labour market and better access to education for child migrants. It would also make clear that reception conditions are only to be provided in the responsible Member State, disincentivising unauthorised movements, and rules on detention would be clarified. The regulation to set up a fully-fledged **European Union Agency for Asylum** is another essential building block in a coherent and operational system whose swift adoption would bring immediate benefits. The proposal for a **Union Resettlement and Humanitarian Admission Framework Regulation** would provide a stable EU framework for the EU contribution to global resettlement efforts. The Commission's 2018 proposal amending the **Return Directive** also remains a key priority, to close loopholes and streamline procedures so that asylum and return work as part of a single system[1].

[1] See section 2.5.

2.1 New procedures to establish status swiftly on arrival

The external border is where the EU needs to close the gaps between external border controls and asylum and return procedures. This process should be swift, with clear and fair rules for authorisation to enter and access to the appropriate procedure. The Commission is proposing to establish a seamless procedure at the border applicable to all non-EU citizens crossing without authorisation, comprising pre-entry screening, an asylum procedure and where applicable a swift return procedure – thereby integrating processes which are currently separate.

The first step should be a **pre-entry screening**[2] applicable to all third-country nationals who cross the external border without authorisation. This screening will include identification, health and security checks, fingerprinting and registration in the Eurodac database. It will act as a first step in the overall asylum and return system, increase transparency for the people concerned at an early stage and build trust in the system. It will foster closer cooperation between all relevant authorities, with support from EU Agencies. The screening will accelerate the process of determining the status of a person and what type of procedure should apply. To ensure that the same checks are conducted for all irregular arrivals before legal entry to the territory of a Member State, Member States will also need to carry out the screening if a person eludes border controls but is later identified within the territory of a Member State.

The Commission is also proposing a targeted amendment of its 2016 proposal for a new Asylum Procedures Regulation[3] to allow for more effective while flexible use of border procedures as a second stage in the process. The rules on the asylum and return **border procedures** would come together in a single legislative instrument. Border procedures allow for the fast-tracking of the treatment of an application, much like acceleration grounds such as the concepts of safe countries of origin or safe third countries. Asylum claims with low chances of being accepted should be examined rapidly without requiring legal entry to the Member State's territory. This would apply to claims presented by applicants misleading the authorities, originating from countries with low recognition rates likely not to be in need of protection, or posing a threat to national security. Whilst asylum applications made at the EU's external borders must be assessed as part of EU asylum procedures, they do not constitute an automatic right to enter the EU. The normal asylum procedure would continue to apply to other asylum claims and become more efficient, bringing clarity for those with well-founded claims. In addition, it should be possible to relocate applicants during the border procedure, allowing for procedures to be continued in another Member State.

For those whose claims have been rejected in the asylum border procedure, an EU return border procedure would apply immediately. This would eliminate the risks of unauthorised movements and send a clear signal to smugglers. It would be a particularly important tool on routes where there is a large proportion of asylum applicants from countries with a low recognition rate.

All necessary guarantees will be put in place to ensure that every person would have an individual assessment and essential guarantees remain in full, with full respect for the principle of *non-refoulement* and fundamental rights. Special attention to the needs of the most vulnerable would include a general exemption from the border procedures where the necessary guarantees cannot be secured. To guarantee effective access to asylum procedures

[2] Proposal for a Regulation introducing a screening of third country nationals at the external borders, COM(2020) 612 of 23 September 2020.

[3] Amended proposal for a Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM(2020) 611 of 23 September 2020.

and respect for fundamental rights, Member States, working closely with the Fundamental Rights Agency, will put in place an effective monitoring mechanism, already at the stage of the screening as an additional safeguard.

The new procedures will allow asylum and migration authorities to more efficiently assess well-founded claims, deliver faster decisions and thereby contribute to a better and more credible functioning of asylum and return policies. This will be of benefit both to Member States, and to the EU as a whole: the work should be supported by resources and expertise from EU agencies as well as EU funds.

The Asylum Procedures Regulation would also establish an accessible, effective and timely decision-making process, based on simpler, clearer and shorter procedures, adequate procedural safeguards for asylum seekers, and tools to prevent restrictions being circumvented. A greater degree of harmonisation of the safe country of origin and safe third country concepts through EU lists, identifying countries such as those in the Western Balkans, will be particularly important in the continued negotiations, building on earlier inter-institutional discussions.

2.2 A common framework for solidarity and responsibility sharing

Drawing on the experience of the negotiations on the 2016 proposals to reform the Common European Asylum System, it is clear that an approach that goes beyond the limitations of the current Dublin Regulation is required. Rules for determining the Member State responsible for an asylum claim should be part of a common framework, and offer smarter and more flexible tools to help Member States facing the greatest challenges. The Commission will therefore withdraw its 2016 proposal amending the Dublin Regulation to be replaced by a new, broader instrument for a common framework for asylum and migration management – **the Asylum and Migration Management Regulation**[4]. This reform is urgent and a political agreement on the core principles should be reached by the end of 2020.

This new common framework will set out the principles and structures needed for an integrated approach for migration and asylum policy, which ensures a fair sharing of responsibility and addresses effectively mixed arrivals of persons in need of international protection and those who are not. This includes a new **solidarity mechanism** to embed fairness into the EU asylum system, reflecting the different challenges created by different geographical locations, and ensuring that all contribute through solidarity so that the real needs created by the irregular arrivals of migrants and asylum seekers are not handled by individual Member States alone, but by the EU as a whole. Solidarity implies that all Member States should contribute, as clarified by the European Court of Justice[5].

The new solidarity mechanism will primarily focus on relocation or return sponsorship. Under return sponsorship, Member States would provide all necessary support to the Member State under pressure to swiftly return those who have no right to stay, with the supporting Member State taking full responsibility if return is not carried out within a set period. Member States can focus on nationalities where they see a better chance of effecting returns. While each Member State would have to contribute to relocation and/or return sponsorships and a distribution key would be applied, Member States will have the flexibility to decide whether and to what extent to share their effort between persons to be relocated and those to whom return sponsorship would apply. There would also be the possibility to contribute through other forms of solidarity such as capacity building,

[4] Proposal for a Regulation on asylum and migration management, COM(2020) 610 of 23 September 2020.

[5] Judgment in Joined Cases C-715/17, C-718/17 and C-719/17 Commission v Poland, Hungary and the Czech Republic.

operational support, technical and operational expertise, as well as support on the external aspects of migration. Whilst always leaving Member States with viable alternatives to relocation, a safety net will ensure that the pressure on a Member State is effectively alleviated by relocation or return sponsorship. The specific situation of search and rescue cases and particularly vulnerable groups should also be acknowledged, and the Commission will draw up a pool of projected solidarity measures, consisting mainly of relocations, indicated by Member States per year, based on the Commission's short-term projections for anticipated disembarkations on all routes as well as vulnerable groups projected to need relocation.

Current rules on the shift of **responsibility** for examining an application for international protection between Member States can act as an incentive for unauthorised movement, in particular when the shift of responsibility results from the behaviour of the applicant (for example, when an applicant absconds). The system therefore needs to be strengthened and loopholes closed. While the current criteria for determining responsibility will continue to apply, the rules on responsibility for examining an application for international protection should be refined to make the system more efficient, discourage abuses and prevent unauthorised movements. There should also be clear obligations for the applicant, and defined consequences if they do not comply. An additional step will be to amend the Long-term Residents Directive so that beneficiaries of international protection would have an incentive to remain in the Member State which granted international protection, with the prospect of long-term resident status after three years of legal and continuous residence in that Member State. This would also help their integration into local communities.

2.3 Mutual trust through robust governance and implementation monitoring

To be effective, border management, asylum and return policies must work well at the national level, and in the case of the integration of migrants at the local level. National policies therefore need to be coherent with the overall European approach. The new Asylum and Migration Management Regulation will seek to achieve this through closer European cooperation. It will improve planning, preparedness and monitoring at both national and EU level. A structured process would offer EU help so that Member States could assist one another in building a resilient, effective, and flexible system, with **national strategies** integrating asylum and return policies at national level. A **European strategy** would guide and support the Member States. The Commission will also prepare a report on preparedness and contingency, based on Member State reporting on an annual basis. This would bring a forward-looking perspective on addressing the risks and opportunities of migration management, to improve both the ability and the readiness to respond.

Key to trust in EU and national policies is consistency in implementation, requiring enhanced monitoring and operational support by EU Agencies. This includes more systematic Commission monitoring of both existing and new rules, including through infringement procedures.

Systems of quality control related to management of migration, such as the Schengen evaluation mechanism and the European Border and Coast Guard Agency (Frontex) vulnerability assessments, will play a key role. Another important step will be the future monitoring of the asylum systems included in the latest compromise on the proposal for a new **European Union Agency for Asylum**. The new mandate would respond to Member States' growing need for operational support and guidance on the implementation of the common rules on asylum, as well as bringing greater convergence. It would boost mutual trust through new monitoring of Member States' asylum and reception systems and through the ability for the Commission to issue recommendations with assistance measures. This legislation should be adopted still this year to allow this practical support to be quickly

available, while acknowledging that new structures such as the monitoring may need some time to be put in place.

2.4 Supporting children and the vulnerable

The EU asylum and migration management system needs to provide for the special needs of vulnerable groups, including through resettlement. This Commission has identified the needs of children as a priority, as boys and girls in migration are particularly vulnerable[6]. This will be taken fully into account in broader initiatives to promote the rights and interests of children, such as the Strategy on the Rights of the Child, in line both with international law on rights of refugees and children and with the EU Charter of Fundamental Rights[7].

The reform of EU rules on asylum and return is an opportunity to **strengthen safeguards and protection standards** under EU law for migrant children. The new rules will ensure that the best interests of the child are the primary consideration in all decisions concerning migrant children and that the right for the child to be heard is respected. Representatives for unaccompanied minors should be appointed more quickly and given sufficient resources. The European Network on Guardianship[8] should be strengthened and play a stronger role in coordination, cooperation and capacity building for guardians. Unaccompanied children and children under twelve years of age together with their families should be exempt from the border procedure unless there are security concerns. In all other relevant asylum procedures, child-specific procedural guarantees and additional support should be effectively provided. The system needs to be geared to reflect the particular needs of children at every stage, providing effective alternatives to detention, promoting swift family reunification, and ensuring that the voice of child protection authorities is heard. Children should be offered adequate accommodation and assistance, including legal assistance, throughout the status determination procedures. Finally, they should also have prompt and non-discriminatory access to education, and early access to integration services.

The risks of trafficking along migration routes are high, notably the risk for women and girls of becoming victims of trafficking for sexual exploitation or other forms of gender-based violence. Trafficking networks abuse asylum procedures, and use reception centres to identify potential victims[9]. The early identification of potential non-EU victims will be a specific theme of the Commission's forthcoming approach towards the eradication of trafficking in human beings, as set out in the recent Security Union Strategy[10].

2.5 An effective and common EU system for returns

EU migration rules can be credible only if those who do not have the right to stay in the EU are effectively returned. Currently, only about a third of people ordered to return from Member States actually leave. This erodes citizens' trust in the whole system of asylum and migration management and acts as an incentive for irregular migration. It also exposes those staying illegally to precarious conditions and exploitation by criminal networks. The effectiveness of returns today varies from Member State to Member State, depending to a

---

6 Communication on the protection of children in migration, COM(2017) 211 of 12 April 2017, recommending a comprehensive set of measures to strengthen their protection at every step of the migratory process.

7 The EU Child Guarantee will also take into account the special needs of children in migration, as well as the Action Plan on integration and inclusion (see section 8 below).

8 The Network was announced in the 2017 Communication (see footnote 6). It brings together guardianship authorities and agencies, (local) authorities and international and non-governmental organisations in order to promote good guardianship services for unaccompanied and separated children in the EU.

9 Europol 2020, European Migrant Smuggling Centre 4th Annual report – 2019.

10 EU Security Union Strategy, COM(2020) 605 of 24 July 2020.

large extent on national rules and capacities, as well as on relations with particular third countries. A **common EU system for returns** is needed which combines stronger structures inside the EU with more effective cooperation with third countries on return and readmission. It should be developed building on the recast of the Return Directive and effective operational support including through Frontex. This approach would benefit from the process proposed under the Asylum and Migration Management Regulation to identify measures if required to incentivise cooperation with third countries[11]. The common EU system for returns should integrate return sponsorship and serve to support its successful implementation.

The main building block to achieve an effective EU return system is the 2018 proposal to recast the Return Directive. This would bring key improvements in the management of return policy. It would help prevent and reduce absconding and unauthorised movements, with common criteria to assess each case and the possibility to use detention for public order and security concerns. It would boost assisted voluntary return programmes, as the most efficient and sustainable way to enhance return. It would also improve delivery, with tailor-made IT tools and a clear obligation for those in the procedure to cooperate, as well as accelerating procedures. It is important that the European Parliament and the Council find agreement on provisions on common assessment criteria and detention. The Commission is ready to work closely with the other institutions to find swift agreement on a revised Directive that brings these improvements: this also would be helped by bringing together the rules on the asylum and return border procedures in the new Asylum Procedures Regulation, closing existing loopholes and further reducing the possibilities to circumvent the asylum system.

National return efforts also need **operational support**. Work on return is often hampered by scarce financial and human resources in Member States. Embedding return in national strategies under the common framework should result in better planning, resourcing and infrastructure for return and readmission operations.

Frontex must play a leading role in the common EU system for returns, making returns work well in practice. It should be a priority for Frontex to become the operational arm of EU return policy, with the appointment of a dedicated Deputy Executive Director and integrating more return expertise into the Management Board[12]. The deployment of the new standing corps will also assist return. Frontex will also support the introduction of a return case management system at EU and national level, covering all steps of the procedure from the detection of an irregular stay to readmission and reintegration in third countries. In this way the Agency can realise its full potential to support return, linking up operational cooperation with Member States and effective readmission cooperation with third countries.

An effective system to ensure return is a common responsibility and it will need strong governance structures to ensure a more coherent and effective approach. To this end, the Commission will appoint a **Return Coordinator**, supported by a new **High Level Network for Return**. The Coordinator will provide technical support to bring together the strands of EU return policy, building on positive experiences of Member States in managing returns and facilitating a seamless and interlinked implementation of the return process. A strategic focus will be provided by an operational strategy on returns.

Return is more effective when carried out voluntarily and accompanied with strong reintegration measures. Promoting voluntary return is a key strategic objective, reflected in

[11] Return policy needs to be fully integrated with the readmission policy set out in section 6.5.

[12] The EBCG Regulation requires that one of the three deputy executive directors should be assigned a specific role and responsibilities in overseeing the Agency's tasks regarding returns.

the Commission's 2018 proposal on the Return Directive as well as in a forthcoming Strategy on voluntary return and reintegration. This strategy will set out new approaches to the design, promotion and implementation of assisted voluntary return and reintegration schemes[13], setting common objectives and promoting coherence both between EU and national initiatives and between national schemes. This work can also draw on the reinforced mandate on return of the European Border and Coast Guard.

2.6 A new common asylum and migration database

A seamless migration and asylum process needs proper management of the necessary information. For this purpose, **Eurodac** should be further developed to support the common framework[14]. The 2016 Commission proposal, on which a provisional political agreement was reached by the European Parliament and the Council, would already enlarge the scope of Eurodac. An upgraded Eurodac would help to track unauthorised movements, tackle irregular migration and improve return. The data stored would be extended to address specific needs, with the necessary safeguards: for example, the European Parliament and the Council had already agreed to extend its scope to resettled persons.

These changes should now be complemented to allow an **upgraded database** to count individual applicants (rather than applications), to help apply new provisions on shifting responsibility within the EU, to facilitate relocation, and to ensure better monitoring of returnees. The new system would help create the necessary link between asylum and return procedures and provide additional support to national authorities dealing with asylum applicants whose application has already been rejected in another Member State. It could also track support for voluntary departure and reintegration. The new Eurodac would be fully interoperable with the border management databases, as part of an all-encompassing and integrated migration and border management system.

Key actions

The Commission:

- Proposes an Asylum and Migration Management Regulation, including a new solidarity mechanism;
- Proposes new legislation to establish a screening procedure at the external border;
- Amends the proposal for a new Asylum Procedures Regulation to include a new border procedure and make asylum procedures more effective;
- Amends the Eurodac Regulation proposal to meet the data needs of the new framework for EU asylum and migration management;
- Will appoint a Return Coordinator within the Commission, supported by a new High Level Network for Returns and a new operational strategy; and
- Will set out a new Strategy on voluntary returns and reintegration.

The European Border and Coast Guard Agency (Frontex) should:

- Fully operationalise the reinforced mandate on return and provide full support to Member States at national level; and
- Appoint a Deputy Executive Director for Return,

The European Parliament and the Council should:

[13] See section 6.5.

[14] Amended proposal for a Regulation on the establishment of 'Eurodac', COM(2020) 614 of 23 September 2020.

- Adopt the Asylum and Migration Management Regulation, as well as the Screening Regulation and the revised Asylum Procedures Regulation, by June 2021;
- Give immediate priority to adoption of the Regulation on the EU Asylum Agency by the end of the year to allow effective European support on the ground;
- Ensure adoption of the revised Eurodac Regulation this year;
- Ensure quick adoption of the revised Reception Conditions Directive and the Qualification Regulation; and
- Ensure the swift conclusion of the negotiations on the revised Return Directive.

3. A ROBUST CRISIS PREPAREDNESS AND RESPONSE SYSTEM

The New Pact's goal of putting in place a comprehensive and robust migration and asylum policy is the best protection against the risk of crisis situations. The EU is already better prepared today than it was in 2015, and the common framework for asylum and migration management will already put the EU on a stronger footing, reinforcing preparedness and making solidarity a permanent feature. Yet the EU will always need to be ready for the unexpected.

The EU must be ready to address **situations of crisis and force majeure** with resilience and flexibility – in the knowledge that different types of crises require varied responses. The effectiveness of response can be improved through preparation and foresight. This needs an evidence-based approach, to increase anticipation and help to prepare EU responses to key trends[15]. A new **Migration Preparedness and Crisis Blueprint**[16] will be issued to help move from a reactive mode to one based on readiness and anticipation. It will bring together all existing crisis management tools and set out the key institutional, operational and financial measures and protocols which must be in place to ensure preparedness both at EU and national level.

The Blueprint entails continuous anticipation and monitoring of Member States' capacities, and provides a framework for building resilience and organising a coordinated response to a crisis. At the request of a Member State, operational support would be deployed, both from EU agencies and by other Member States. This would build on the hotspot approach and draw on recent experience of crisis response and civil protection. The Blueprint will be immediately effective, but will also act as important operational support to the EU's ability to respond under the future arrangements. It will set out the array of measures that can be used to address crises related to a large number of irregular arrivals. Experience, however, tells us that we also need to add a new element to the toolbox.

A new legislative instrument would provide for **temporary and extraordinary measures needed in the face of crisis**[17]. The objectives of this instrument will be twofold: firstly to provide flexibility to Member States to react to crisis and force majeure situations and grant immediate protection status in crisis situations, and secondly, to ensure that the system of solidarity established in the new Asylum and Migration Management Regulation is well adapted to a crisis characterised by a large number of irregular arrivals. The circumstances of crisis demand urgency and therefore the solidarity mechanism needs to be stronger, and

[15] This work stream will be supported through the Knowledge Centre on Migration and Demography in the Commission's Joint Research Centre.

[16] Commission Recommendation on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint), C(2020) 6469 of 23 September 2020.

[17] Proposal for a Regulation addressing situations of crisis and force majeure in the field of migration and asylum, COM(2020) 613 of 23 September 2020.

the timeframes governing that mechanism should be reduced[18]. It would also widen the scope of compulsory relocation, for example to applicants for and beneficiaries of immediate protection, and return sponsorship.

In situations of crisis that are of such a magnitude that they risk to overwhelm Member States' asylum and migration systems, the practical difficulties faced by Member States would be recognised through some limited margin to temporarily derogate from the normal procedures and timelines, while ensuring respect for fundamental rights and the principle of *non-refoulement*[19].

Protection, equivalent to subsidiary protection, could also be immediately granted to a pre-defined group of people, notably to people who face an exceptionally high risk of indiscriminate violence due to armed conflict in their country of origin. Given the development of the concepts and rules of qualification for international protection, and in view of the fact that the new legislation would lay down rules for granting immediate protection status in crisis situations, the Temporary Protection Directive would be repealed[20].

Key actions

The Commission:

- Presents a Migration Preparedness and Crisis Blueprint; and
- Proposes legislation to address situations of crisis and force majeure and repealing the Temporary Protection Directive.

The European Parliament and the Council should:

- Prioritise work on the new crisis instrument.

The Member States, the Council and the Commission should:

- Start implementation of the Migration Preparedness and Crisis Blueprint.

4. INTEGRATED BORDER MANAGEMENT

Integrated border management is an indispensable policy instrument for the EU to protect the EU external borders and safeguard the integrity and functioning of a Schengen area without internal border controls. It is also an essential component of a comprehensive migration policy: well-managed EU external borders are an essential component in working together on integrated policies on asylum and return.

4.1 Stepping up the effectiveness of EU external borders

The management of EU external borders is a shared responsibility of all Member States and Schengen Associated Countries, and of the EU and its agencies. This also means that where there are shortcomings, the impact is twofold, both an extra challenge for the Member State in question, and consequences such as unauthorised movements which affect the credibility

[18] Advancing the obligation to relocate an irregular migrant to the territory of the sponsoring Member State.

[19] Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.

[20] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States.

of the entire EU system. Effective management of EU external borders is a key element for a Schengen area without internal border controls.

European Integrated Border Management is implemented by the European Border and Coast Guard, composed of the Member States' border and coastguard authorities and Frontex. It is designed to prevent fragmentation and ensure coherence between different EU policies.

The Commission will launch the preparatory process in view of submitting the policy document for the **multiannual strategic policy and implementation cycle** in the first half of 2021. This cycle will ensure a unified framework to provide strategic guidelines to all relevant actors at the European and national level in the area of border management and return, through linked strategies: an EU technical and operational strategy set out by Frontex, and national strategies by Member States. This will allow all the relevant legal, financial and operational instruments and tools to be coherent, both within the EU and with our external partners. It will be discussed with the European Parliament and the Council.

The EU must be able to support Member States at the external border with speed, scale and flexibility. The swift and full implementation of the new **European Border and Coast Guard** Regulation is a critical step forward. It strengthens day-to-day cooperation and improves the EU's reaction capacity. Developing common capabilities and linked planning in areas like training and procurement will mean more consistency and more effectiveness. Frontex's yearly vulnerability assessments are particularly important, assessing the readiness of Member States to face threats and challenges at the external borders and recommending specific remedial action to mitigate vulnerabilities. They complement the evaluations under the Schengen evaluation mechanism, carried out jointly by the Commission and the Member States. The vulnerability assessments will also help to target the Agency's operational support to the Member States to best effect.

The new Regulation sets up a standing corps of operational staff, bringing together personnel from the Agency as well as from Member States, and exercising executive powers: a major reinforcement of the EU's ability to respond to different situations at the external borders. A **standing corps with a capacity of 10 000 staff** remains essential for the necessary capability to react quickly and sufficiently. The first deployment of the standing corps should be ready for 1 January 2021.

4.2 Reaching full interoperability of IT systems

Strong external borders also require up-to-date and **interoperable IT systems** to keep track of arrivals and asylum applicants. Once operational, different systems will form an integrated IT border management platform checking and keeping track of the right to stay of all third country nationals, whether visa-free or visa holders, arriving in a legal manner on EU territory, helping the work of identifying cases of overstaying[21].

Interoperability will connect all European systems for borders, migration, security and justice, and will ensure that all these systems 'talk' to each other, that no check gets missed because of disconnected information, and that national authorities have the complete, reliable and accurate information needed. It will bring a major boost to the fight against identity fraud. Each system will keep its established safeguards. It is essential that these new and upgraded information systems are **operational and fully interoperable by the end of**

[21] The systems participating in interoperability are: the Entry/Exit System, the European Travel Information and Authorisation System, the Visa Information System, the European Criminal Records Information System for third-country nationals, Eurodac, and the Schengen Information System.

2023, as well as the upgrade of the Schengen Information System. The Commission will also table the necessary amendments in the proposed revision of the **Eurodac** Regulation to integrate it into this approach, so that Eurodac also plays a full part in controlling irregular migration and detecting unauthorised movements within the EU. Trust in the Schengen area will be further reinforced by **making the visa procedure fully digitalised by 2025**, with a digital visa and the ability to submit visa applications online.

The tight schedule for delivering the new architecture of EU information systems requires both monitoring and support for preparations in the Member States and in the agencies. The Commission's **rapid alert process for IT systems** will enable early warning and, if needed, fast and targeted corrective action. This will inform a bi-annual **High-Level Implementation Forum** of top coordinators from Member States, the Commission and the agencies.

4.3 A common European approach to search and rescue

Since 2014, attempts to reach Europe on unseaworthy vessels have increased, with many lives lost at sea. This has prompted the EU, Member States, and private actors to significantly step up maritime search and rescue capacity in the Mediterranean. The EU joint naval operation EUNAVFOR MED Sophia and Frontex-coordinated operations – such as Themis, Poseidon and Indalo – have contributed to over 600 000 rescues since 2015.

Assisting those in distress at sea is a moral duty and an obligation under international law. While national authorities remain ultimately responsible for implementing the relevant rules under international law, search and rescue is also a key element of the European integrated border management, implemented as a shared responsibility by Frontex[22] and national authorities, making the boosting of Frontex's access to naval and aerial capacity essential.

Dangerous attempts to cross the Mediterranean continue to bring great risk and fuelling criminal networks. The disembarkation of migrants has a significant impact on asylum, migration and border management, in particular on coastal Member States. Developing a more coordinated EU approach to the evolving search and rescue practice, grounded in solidarity, is crucial. Key elements should include:

- Recognising the **specificities of search and rescue in the EU legal framework for migration and asylum**. Since January 2019, at the request of Member States, the Commission has coordinated the relocation of more than 1 800 disembarked persons following rescue operations by private vessels. While the Commission will continue to provide operational support and proactive coordination, a more predictable solidarity mechanism for disembarkation is needed. The new Asylum and Migration Management Regulation will cater for help through relocation following disembarkations after search and rescue operations. This should help to ensure the continuity of support and to avoid the need for *ad hoc* solutions.
- **Frontex should provide increased operational and technical support** within EU competence, as well as deployment of maritime assets to Member States, to improve their capabilities and thus contribute to saving lives at sea.
- **Cooperation and coordination among Member States** needs to be significantly stepped up, particularly in view of the search and rescue activities that have developed over the past years with the regular involvement of private actors. The Commission is

[22] Regulation (EU) 656/2014 sets out a specific set of rules for external sea borders surveillance in the context of the operational cooperation coordinated by Frontex, which covers search and rescue incidents arising during Frontex joint operations.

issuing a Recommendation on cooperation between Member States in the context of operations carried out by vessels owned or operated by private entities for the purpose of performing regular rescue activities, with a view to maintaining safety of navigation and ensuring effective migration management[23]. This cooperation should also be channelled through an expert group on search and rescue established by the Commission to encourage cooperation and the exchange of best practices.

- The Commission is also providing Guidance on the effective implementation of **EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence**[24], and how to prevent the criminalisation of humanitarian actors[25].
- The **EU will strengthen cooperation with countries of origin and transit** to prevent dangerous journeys and irregular crossings, including through tailor-made Counter Migrant Smuggling Partnerships with third countries[26].

4.4 A well-functioning Schengen area

The Schengen area is one of the major achievements of European integration. But it has been put under strain by difficulties in responding to changing situations at the Union's border, by gaps and loopholes, and by diverging national asylum, reception and return systems. These elements increase unauthorised movements, both of asylum seekers and of migrants who should be returned. Measures already agreed and which now need to be adopted by the European Parliament and the Council will help to bring more consistency in standards in asylum and migration systems. Further steps under the New Pact – on screening and border procedures, on reinforced external borders, on more consistent asylum and return procedures under the more integrated approach of the common framework – also add up to a major reinforcement of Schengen.

Concerns about existing shortcomings have contributed to the triggering of **temporary internal border controls**. The longer these controls continue, the more questions are raised about their temporary nature, and their proportionality. Temporary controls may only be used in exceptional circumstances to provide a response to situations seriously affecting public policy or internal security. As a last resort measure, they should last only as long as the extraordinary circumstances persist: for example, in the recent emergency circumstances of the COVID-19 pandemic, internal border control measures were introduced but most of them have now been lifted.

Building on experience from the multiple crises of the last five years, the Commission will present a **Strategy on the future of Schengen**, which will include initiatives for a stronger and more complete Schengen. This will include a fresh way forward on the Schengen Borders Code, with conclusions to be drawn on the state of play of the negotiations on the Commission's proposal of 2017. It will also cover how to improve the Schengen evaluation mechanism to become a fully effective tool for evaluating the functioning of Schengen and for ensuring that improvements are effectively implemented. An efficient **Schengen evaluation mechanism** is an essential tool for an effective Schengen area, building trust through verifying how Member States implement the Schengen rules. It is important that

[23] Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities, C(2020) 6468 of 23 September 2020.

[24] Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence, C(2020) 6470 of 23 September 2020.

[25] See section 5.

[26] See section 5.

Member States remedy deficiencies identified during the evaluations. Where Member States persistently fail to do so, or where controls at internal borders are kept in place beyond what is necessary, the Commission will more systematically consider the launching of infringement procedures.

There are also alternatives to internal border controls – for example, police checks can be highly effective, and new technology and smart use of IT interoperability can help make controls less intrusive. At the moment, readmission agreements also remain between Member States which could also be implemented more effectively.

Building on the work already in place to promote these measures[27], the Commission will put in place a **programme of support and cooperation** to help Member States to maximise the potential of these measures. The Commission will establish a dedicated **Schengen Forum,** involving the relevant national authorities such as Ministries of Interior and (border) police at national and regional level in order to stimulate more concrete cooperation and more trust. Once a year, a discussion in the Forum should be organised at political level to allow national Ministers, Members of the European Parliament and other stakeholders to bring political momentum to this process.

Key actions

The Commission:

- Adopts a Recommendation on cooperation between Member States concerning private entities' rescue activities;
- Presents guidance to Member States to make clear that rescues at sea cannot be criminalised;
- Will adopt a Strategy on the future of Schengen which reinforces the Schengen Borders Code and the Schengen evaluation mechanism;
- Will establish a Schengen Forum to foster concrete cooperation and ways to deepen Schengen through a programme of support and cooperation to help end internal border controls; and
- Will launch a new European group of experts on search and rescue.

The Commission, the Member States and Frontex should:

- Ensure the swift and full implementation of the new European Border and Coast Guard Regulation; and
- Ensure the implementation and interoperability of all large scale IT systems by 2023.

5. REINFORCING THE FIGHT AGAINST MIGRANT SMUGGLING

Smuggling involves the organised exploitation of migrants, showing scant respect for human life in the pursuit of profit. This criminal activity therefore damages both the humanitarian and the migration management objectives of the EU. The new 2021-2025 **EU Action Plan against migrant smuggling** will focus on combatting criminal networks, and in line with the EU's Security Union Strategy, it will boost cooperation and support the work of law enforcement to tackle migrant smuggling, often also linked to trafficking in human beings. The Action Plan will build on the work of Europol and its European Migrant Smuggling Centre, Frontex, Eurojust and the EU Agency for Law Enforcement Training. New measures and strengthened inter-agency cooperation will address challenges in the areas of financial

[27] C(2017) 3349 final of 12 May 2017 and C(2017) 6560 final of 27 September 2017.

investigations, asset recovery and document fraud, and new phenomena such as digital smuggling[28].

Existing rules to clamp down on migrant smuggling[29] have proven an effective legal framework to combat those who facilitate unauthorised entry, transit and residence. Reflection is ongoing on how to modernise these rules[30]. The Commission will bring clarity to the issue of criminalisation for private actors through **guidance on the implementation** of the counter-smuggling rules, and make clear that carrying out the legal obligation to rescue people in distress at sea cannot be criminalised.

Finding employment in the EU without the required legal status is one of the drivers for smuggling to the EU. The Commission will assess how to strengthen the effectiveness of the **Employers Sanctions Directive** and evaluate the need for further action. The Commission will also work with the European Labour Authority to coordinate the efforts of the national authorities and ensure the efficient implementation of the Directive, which is indispensable to deter irregular migration by ensuring effective prohibition of the employment of irregularly staying third-country nationals.

Combatting smuggling is a common challenge requiring international cooperation and coordination as well as effective border management. The July 2020 Ministerial Conference between the EU and African partners confirmed the mutual determination to address this problem[31]. The new EU Action Plan against migrant smuggling will stimulate cooperation between the EU and third countries, through targeted **counter migrant smuggling** partnerships, as part of broader partnerships with key third countries. This will include support to countries of origin and transit in capacity-building both in terms of law enforcement frameworks and operational capacity, encouraging effective action by police and judicial authorities. The EU will also improve information exchange with third countries and action on the ground, through support to common operations and joint investigative teams, as well as information campaigns on the risks of irregular migration and on legal alternatives. EU agencies should also work more intensively with partner countries. Europol will strengthen cooperation with the Western Balkans and the Commission and Europol will work towards similar agreements with Turkey and others in the neighbourhood. The Commission will also include this in its cooperation with the African Union (AU).

Common Security and Defence Policy operations and missions will continue making an important contribution, where the fight against irregular migration or migrant smuggling is part of their mandates. Complementing existing missions, such as EUCAP Sahel Niger and EUBAM Libya, Operation EUNAVFOR MED IRINI is now under way in the Central Mediterranean and helps to disrupt smuggling networks.

Immigration Liaison Officers provide a valuable connection in the fight against irregular migration and migrant smuggling. The full implementation of the Regulation on the European network of immigration liaison officers[32] will further consolidate this network and enhance the fight against smuggling.

---

[28] The use, in particular by organised criminal groups, of modern information and communication technology to facilitate migrant smuggling, including advertising, organising, collecting payments, etc.

[29] The 'Facilitators' Package' of Directive 2002/90/EC and the Accompanying Council Framework Decision on facilitation of unauthorised entry, transit and residence Directive.

[30] Directive 2002/90/EC and Council Framework Decision 2002/946/JHA.

[31] The Ministerial Conference took place on 13 July 2020 and brought together Ministers of the Interior of Algeria, Libya, Mauritania, Morocco and Tunisia with their counterparts from Italy (chair), France, Germany (participating as the Council Presidency), Malta and Spain, as well as the Commission.

[32] Regulation 2019/1240.

Key actions

The Commission will:

- Present a new EU Action Plan against Migrant Smuggling for 2021-2025;
- Assess how to strengthen the effectiveness of the Employers Sanctions Directive; and
- Build action against migrant smuggling into partnerships with third countries.

6. WORKING WITH OUR INTERNATIONAL PARTNERS

The majority of migrants undertake their journeys in a regular and safe manner, and well-managed migration, based on partnership and responsibility-sharing, can have positive impacts for countries of origin, transit and destination alike. In 2019, there were over 272 million international migrants[33], with most migration taking place between developing countries. Demographic and economic trends, political instability and conflict, as well as climate change, all suggest that migration will remain a major phenomenon and global challenge for the years to come. Migration policies that work well are in the interest of partner countries, the EU, and refugees and migrants themselves.

The prerequisite in addressing this is cooperation with our partners, first and foremost based on bilateral engagement, combined with regional and multilateral commitment. **Migration is central to the EU's overall relationships with key partner countries of origin and transit.** Both the EU and its partners have their own interests and tools to act. Comprehensive, balanced and tailor-made partnerships, can deliver mutual benefits, in the economy, sustainable development, education and skills, stability and security, and relations with diasporas. Working with partners also helps the EU to fulfil its obligations to provide protection to those in need, and to carry out its role as the world's major development donor. Under the New Pact, engagement with partner countries will be stepped up across all areas of cooperation. The Commission and the High Representative will immediately start work, together with Member States, to put this approach into practice through dialogue and cooperation with our partners.

6.1 Maximising the impact of our international partnerships

The EU needs a fresh look at its priorities, first in terms of the place of migration in its external relations and other policies, and then in terms of what this means for our overall relations with specific partners. In comprehensive partnerships, **migration should be built in as a core issue, based on an assessment of the interests of the EU and partner countries**. It is important to address the complex challenges of migration and its root causes to the benefit of the EU and its citizens, partner countries, migrants and refugees themselves. By working together, the EU and its partners can improve migration governance, deepen the common efforts to address shared challenges and benefit from opportunities.

The approach needs to deploy a wide range of policy tools, and have the flexibility to be both tailor-made and able to adjust over time. Different policies such as development cooperation, security, visa, trade, agriculture, investment and employment, energy, environment and climate change, and education, should not be dealt with in isolation. They are best handled as part of a tailor-made approach, at the core of a real **mutually beneficial partnership**. It is also important to bear in mind that migration issues such as border management or more effective implementation of return and readmission can be politically sensitive for partners. Tackling the issues we see today – the loss of life first and foremost,

[33] World Migration Report 2020, International Organisation for Migration, 2019, p.2.

but also shortcomings in migration management – means working together so that everyone assumes their responsibilities.

EU level engagement alone is not sufficient: effective coordination between **the EU level and Member States** is essential at all levels: bilateral, regional and multilateral. Consistent messaging between the EU and Member States on migration and joint outreach to partners have proven to be critical to showing the EU's common commitment. The EU should in particular draw on the experience and privileged relationships of some Member States with key partners – experience has shown that the full involvement of Member States in the EU migration partnerships, including through the pooling of funds and expertise via the various EU Trust Funds, is key to success.

The EU has credibility and strength through its role in the **international and multilateral** context, including through its active engagement in the United Nations (UN) and close cooperation with its agencies. The EU should build on the important progress made at the **regional** level, through dedicated dialogues and frameworks[34] and through partnerships with organisations such as the African Union. Further innovative partnerships could building on the positive example of the AU-EU-UN Taskforce on Libya. The specific context of the post-Cotonou framework with States in Africa, the Caribbean and the Pacific is of particular importance in framing and effectively operationalising migration cooperation.

Dialogue has deepened with a range of key partners in recent years[35]. The EU's **neighbours** are a particular priority. Economic opportunity, particularly for young people, is often the best way to reduce the pressure for irregular migration. The ongoing work to address migrant smuggling is one example of the critical importance of relations with the countries of **North Africa**. The **Western Balkans** require a tailor-made approach, both due to their geographical location and to their future as an integral part of the EU: coordination can help to ensure they are well equipped as future Member States to respond constructively to shared challenges, developing their capacities and border procedures to bring them closer to the EU given their enlargement perspective. The 2016 EU-Turkey Statement reflected a deeper engagement and dialogue with **Turkey**, including helping its efforts to host around 4 million refugees[36]. The Facility for Refugees in Turkey continues to respond to essential needs of millions of refugees, and continued and sustained EU funding in some form will be essential[37].

Migration is an integral part of the approach under the Joint Communication towards a Comprehensive **Strategy with Africa** to deepen economic and political ties in a mature and wide-ranging relationship[38] and give practical support. The reality of multiple migration routes also underlines the need to work with partner countries in **Asia**[39] and **Latin America**.

With all these partners, we need to recognise that the COVID-19 pandemic is already causing massive disruption. This must be a key part of a vision of cooperation based on

[34] Including the Valletta process between the EU and African countries. Other key regional processes include the Budapest, Prague, Rabat and Khartoum processes.

[35] Progress report on the Implementation of the European Agenda on Migration, COM(2019) 481, 16 October 2019.

[36] The Facility for Refugees in Turkey has mobilised €6 billion.

[37] For example, in July 2020 the EU agreed a €485 million extension to humanitarian support under the Facility, to allow the extension to the end of 2021 of programmes helping over 1.7 million refugees to meet their basic needs and over 600,000 children to attend school.

[38] Joint Communication "Towards a comprehensive Strategy with Africa", JOIN(2020) 4 final of 9 March 2020.

[39] Notably with the Silk Road countries: Afghanistan, Bangladesh, Iran, Iraq, and Pakistan.

mutual interests, helping to build strengthened, resilient economies delivering growth and jobs for local people and at the same time reducing the pressure for irregular migration.

EU funding for refugees and migration issues outside the EU, amounting to over €9 billion since 2015, has proven to be indispensable to the delivery of the EU's migration objectives. In July 2020 the European Council underlined that this must be developed further and in a more coordinated manner in programmes across the relevant headings of the EU budget[40]. Strategic, policy-driven programming of the EU's external funding will be essential to implement this new comprehensive approach to migration. The 10% target for migration-related actions proposed in the Neighbourhood, Development and International Cooperation Instrument recognises that resources need to match the needs of the EU's increased international engagement, as well as being sufficiently flexible to adjust to circumstances. The proposed architecture of the EU's external financial instruments also provides for additional flexibilities to respond to unforeseen circumstances or crises.

6.2 Protecting those in need and supporting host countries

The EU's work to address emergency and humanitarian needs is based on principles of humanity, impartiality, neutrality and independence. Over 70 million people, men, women and children are estimated to have been forcibly displaced worldwide, with almost 30 million refugees and asylum seekers[41]. The vast majority of these are hosted in developing countries and the EU will maintain its commitment to help.

The EU can build on a track record of cooperation with a wide range of partners in delivering this support. The humanitarian evacuation of people from Libya to Emergency Transit Mechanisms in Niger and Rwanda for onward resettlement helped the most vulnerable to escape from desperate circumstances. Assisting refugees affected by the Syrian crisis and their hosting countries will continue to be essential. Millions of refugees and their host communities in Turkey, Lebanon, Jordan or Iraq are benefitting from daily support, through dedicated instruments such as the EU's Facility for Refugees in Turkey and the EU Regional Trust Fund in Response to the Syrian crisis.

As reiterated in December 2019 at the Global Refugee Forum, the EU is determined to maintain its strong commitment to providing life-saving **support to millions of refugees and displaced people**, as well as fostering sustainable development-oriented solutions[42].

6.3 Building economic opportunity and addressing root causes of irregular migration

The **root causes** of irregular migration and forced displacement, as well as the immediate factors leading people to migrate, are complex[43].

The EU is the world's largest provider of **development assistance**. This will continue to be a key feature in EU engagement with countries, including on migration issues. Work to build stable and cohesive societies, to reduce poverty and inequality and promote human development, jobs and economic opportunity, to promote democracy, good governance,

---

[40] European Council conclusions of 21 July 2020, paragraphs 19, 103, 105, 111 and 117.

[41] The United Nations High Commissioner for Refugees reports that in 2018 almost 71 million persons were forcibly displaced persons, including almost 26 million refugees and 3.5 million asylum seekers (UNHCR Global Trends – Forced Displacement in 2018, https://www.unhcr.org/5d08d7ee7.pdf).

[42] In recent years most of the EU humanitarian budget (80% of €1.2 billion in 2018 and of €1.6 billion in 2019) went to projects helping the immediate needs of the forcibly displaced and their host communities to meet their immediate, basic needs in conflict, crisis and protracted displacement.

[43] See the work produced and supported by the Joint Research Centre Knowledge Centre on Migration and Demography on International Migration Drivers (2018) and the Atlas of Migration (2019).

peace and security, and to address the challenges of climate change can all help people feel that their future lies at home. In the Commission proposals for the next generation of external policy instruments, migration is systematically factored in as a priority in the programming. Assistance will be targeted as needed to those countries with a significant migration dimension. Flexibility has been built into the proposals for the instruments since experience of recent years has shown that the flexibility of instruments such as Trust Funds is key to rapid delivery when required, compared to funding predetermined for specific countries or programmes.

Many other policies can be harnessed to help build stability and prosperity in partner countries[44]. Conflict prevention and resolution, as well as peace, security and governance, are often the cornerstone of these efforts. Trade and investment policies already contribute to addressing root causes by creating jobs and perspectives for millions of workers and farmers worldwide. Boosting investment through vehicles such as the External Investment Plan can make a significant contribution to economic development, growth and employment. Better exploiting the potential of remittances can also help economic development. Cooperation in education, skills and research, as well as in policies such as digital, energy or transport, also helps to deepen economic development. The EU will use these policies wherever relevant in the engagement with partner countries under the New Pact.

6.4 Partnerships to strengthen migration governance and management

Supporting the EU's partners in developing effective **migration governance and management** capacity will be a key element in the mutually beneficial partnerships the EU seeks to develop. The EU can support capacity building in line with partners' needs. This will help partner countries manage irregular migration, forced displacement and combat migrant smuggling networks[45]. Tools such as strategic communication will be further deployed, providing information on legal migration opportunities and explaining the risks of irregular migration, as well as countering disinformation. In addition, depending on the contexts and situations, the EU can assist partner countries in strengthening capacities for border management, including by reinforcing their search and rescue capacities at sea or on land, through well-functioning asylum and reception systems, or by facilitating voluntary returns to third countries or the integration of migrants[46].

EU cooperation with partner countries in the area of migration governance will continue to ensure the protection of the rights of migrants and refugees, combat discrimination and labour exploitation, and ensure that their basic needs are met through the provision of key services. Support may also be targeted at maximising the positive impact of migration and reducing the negative consequences for partner countries, for example by reducing the transfer costs of remittances, reducing "brain drain", or facilitating circular migration.

Member States have a key role to play in providing such practical support, as demonstrated by the fruitful cooperation in the fight against migrant smuggling, where joint investigation teams benefit from the hands-on expertise of national administrations.

The EU should use all the tools at its disposal to bring operational support to the new partnerships, including through a much deeper involvement of **EU agencies**. Frontex's

---

[44] This broad-based approach is fully acknowledged in the EU-Africa Alliance (A new Africa–Europe Alliance for Sustainable Investment and Jobs, COM(2018) 643 of 12 September 2018).

[45] See Section 5.

[46] Including through the posting of European Migration Liaison Officers, currently stationed in 10 third countries, with another four ready to be posted as soon as the COVID-19 situation allows.

enhanced scope of action should now be used to make cooperation with partners operational. Cooperation with the Western Balkans, including through EU status agreements with the Western Balkan partners, will enable Frontex border guards to work together with national border guards on the territory of a partner country. Frontex can also now provide practical support to develop partners' border management capacity and to cooperate with partners to optimise voluntary return. The Commission will continue encouraging agreements with its neighbours[47]. As for asylum, the possibilities today to work with third countries are limited, but well-functioning migration management on key routes is essential both to protection and to asylum and return procedures. The new EU Asylum Agency would be able to work on capacity building and operational support to third countries, and support EU and Member State resettlement schemes, building on the existing cooperation with UN agencies such as the UN Refugee Agency UNHCR and the International Organisation for Migration.

6.5 Fostering cooperation on readmission and reintegration

Strands of work such as creating economic opportunity, increasing stability or tackling migrant smuggling can reduce the number of irregular arrivals to the EU and the numbers of those in the EU with no right to stay. Nevertheless, for those with no right to stay, an effective system of returns needs to be in place. Some of them may take up voluntary return options, and this should be proactively supported. Currently, one of the key gaps in European migration management is the difficulty to effectively return those who do not take up this option. Working closely with countries of origin and transit is a prerequisite for a well-functioning system of returns, readmission and reintegration.

Action taken by Member States[48] in the field of returns needs to go hand in hand with a new drive to improve cooperation on readmission with third countries, complemented by cooperation on reintegration, to ensure the sustainability of returns. This first and foremost requires the full and effective implementation of the twenty-four existing **EU agreements and arrangements** on readmission with third countries, the completion of ongoing readmission negotiations and as appropriate the launch of new negotiations, as well as practical cooperative solutions to increase the number of effective returns.

These discussions should be seen in the context of the full range of the EU's and Member States' policies, tools and instruments, which can be pulled together in a strategic way. A first step was made by introducing a link between cooperation on readmission and visa issuance in the Visa Code[49]. Based on information provided by Member States, the Commission will assess at least once a year **the level of cooperation of third countries on readmission,** and report to the Council. Any Member State can also notify the Commission if it is confronted with substantial and persistent practical problems in the cooperation with a third country on readmission, triggering an *ad hoc* assessment. Following an assessment, the Commission can propose to apply restrictive visa measures, or in case of good cooperation, propose favourable visa measures.

Visa policy can also be used to curb **unfounded asylum applications** from visa-free countries, keeping in mind that almost a quarter of asylum applications received by Member States were lodged by applicants who can enter the Schengen+ area visa-free. More cooperation and exchange of information would help to detect visa abuse. The **Visa**

[47] Status agreements were successfully negotiated with all Western Balkans countries (not including Kosovo). The status agreements with Albania, Montenegro and Serbia have already been signed and have entered into force, whereas signature of agreements with North Macedonia and Bosnia and Herzegovina is still pending.

[48] See section 2.5 above.

[49] Regulation (EC) No 810/2009 as amended.

Suspension Mechanism provides for the systematic assessment of visa-free countries against criteria including irregular migration risks and abusive asylum applications. This can ultimately result in the removal of third countries from the visa-free list.

To deliver on the goal set out by the European Council[50] to **mobilise relevant policies and tools**, joint efforts need to be taken a step further. This is why the proposed Asylum and Migration Management Regulation includes the possibility that the Commission, when reporting to the Council on the state of play of the cooperation on readmission, could identify further effective measures to incentivise and improve cooperation to facilitate return and readmission, including in other policy areas of interest to the third countries[51], while taking into account the Union's overall interests and relations with the third country. In this respect, close cooperation with the High Representative will be important. The Commission, the High Representative and the Member States should ensure that progress on readmission accompanies progress in other areas under the partnerships. This would require more coordination, and flexibility in legislative, policy and funding instruments, bringing together action at both EU and Member State level.

An important component of the future **Voluntary Return and Reintegration Strategy** will consist in setting out new approaches in third countries and include better linkages with other development initiatives and national strategies, to build third countries' capacity and ownership. The effective implementation of the Strategy will require close cooperation with Frontex under its reinforced mandate on return and as part of the common EU system for returns.

6.6 Developing legal pathways to Europe

Safe channels to offer protection to those in need remove the incentive to embark on dangerous journeys to reach Europe, as well as demonstrating solidarity with third countries hosting refugees. Legal migration can bring benefit to our society and the economy. While Member States retain the right to determine volumes of admission for people coming from third countries to seek work, the EU's common migration policy needs to reflect the integration of the EU economy and the interdependence of Member States' labour markets. This is why EU policies need to foster a level playing field between national labour markets as migration destinations. They should also help Member States use their membership of the EU as an asset in attracting talent.

Resettlement is a tried and tested way to provide protection to the most vulnerable refugees. Recent years have already seen a major increase in resettlement to the EU, and this work should be further scaled up. The Commission is recommending to formalise the *ad hoc* scheme of approximately 29 500 resettlement places already being implemented by Member States, and to cover a two-year period, 2020-2021[52] (due to the COVID-19 pandemic, it will not be possible to fulfil all resettlement pledges during 2020). To ensure a seamless continuation of EU resettlement efforts beyond 2021 and to confirm the EU's global lead on resettlement, the Commission will invite Member States to make pledges from 2022 onwards. This will be supported by the EU budget and include complementary pathways to protection, such as humanitarian admission schemes and measures such as study or work-related schemes. The EU will also support Member States wishing to establish **community**

[50] European Council conclusions of 18 October 2018.

[51] The EU's humanitarian assistance is provided in line with the principles of humanity, impartiality, neutrality, and independence.

[52] Commission Recommendation on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways, C(2020) 6467 of 23 September 2020.

or private sponsorship schemes through funding, capacity building and knowledge-sharing, in cooperation with civil society, with the aim of developing a European model of community sponsorship, which can lead to better integration outcomes in the longer term.

The EU also works with its partner countries on legal pathways to Europe as part of migration partnerships, opening the way for cooperation on schemes to match people, skills and labour market needs through legal migration. At the same time, developing legal pathways should contribute to the reduction of irregular migration, which often leads to undeclared work and labour exploitation in the EU. The Commission will reinforce support to Member States to scale up legal migration together with partner countries as a positive incentive and in line with the EU's skills and labour market needs, while fully respecting Member States' competencies.

The EU has a strong track record in labour mobility schemes. Legal migration pilot projects[53] have shown that by providing targeted support, the EU can help Member States implement schemes that meet the needs of employers. The EU has also opened Erasmus+ and vocational training to third country nationals and offered support grants for the mobilisation of the diaspora. However, the scope and ambition of existing schemes remains limited.

A reinforced and more comprehensive approach[54], would offer cooperation with partner countries and help boost mutually-beneficial international mobility. The Commission will therefore launch **Talent Partnerships** in the form of an enhanced commitment to support legal migration and mobility with key partners. They should be launched first in the EU's Neighbourhood, the Western Balkans, and in Africa, with a view to expanding to other regions. These will provide a comprehensive EU policy framework as well as funding support for cooperation with third countries, to better match labour and skills needs in the EU, as well as being part of the EU's toolbox for engaging partner countries strategically on migration. Strong engagement of Member States will be essential, as will involvement of the private sector and the social partners, and ownership from partner countries. The Commission will organise a high-level conference with Member States and key EU stakeholders to launch the Talent Partnerships.

The Talent Partnerships should be inclusive, building strong cooperation between concerned institutions (such as Ministries of Labour and Education, employers and social partners, education and training providers, and diaspora associations). The Commission will stimulate this cooperation through dedicated outreach and build a network of involved enterprises.

The Talent Partnerships will provide a single framework to mobilise EU and Member States' tools. EU funding streams in the area of external relations, home affairs, research, and education (Erasmus+) could all contribute. The Partnerships would combine direct support for mobility schemes for work or training with capacity building in areas such as labour market or skills intelligence, vocational education and training, integration of returning migrants, and diaspora mobilisation. Greater focus on education would help to support and reinforce investment in local skills.

As part of the comprehensive approach to migration and mobility, visa measures can act as a positive incentive in the engagement with third countries. Full implementation of the

[53] Eight Member States are currently involved in six such projects with Egypt, Morocco, Tunisia, Nigeria and Senegal. Key themes include mobility for ICT experts, opportunities for study and traineeships in Europe, and boosting the capacity of third countries to manage migration and support reintegration.

[54] This would be in line with the Global Skills Partnerships, bilateral agreements through which a country of destination gets directly involved in creating human capital among potential migrants in the country of origin prior to migration.

recently revised **Visa Code**[55] and additional efforts on visa facilitation with third countries will bring more consistency and should encourage *bona fide* short-term mobility, including student exchanges. Short-term mobility could complement other legal pathways to improve upstream cooperation with third countries (for example, in stemming irregular migratory flows).

Key actions

The Commission, where relevant in close cooperation with the High Representative and Member States, will:

- Launch work immediately to develop and deepen tailor-made comprehensive and balanced migration dialogues and partnerships with countries of origin and transit, complemented by engagement at the regional and global level;
- Scale up support to help those in need and their host communities;
- Increase support for economic opportunity and addressing the root causes of irregular migration;
- Step up the place of migration in the programming of the new instruments in the next Multiannual Financial Framework;
- Ensure full and effective implementation of existing EU readmission agreements and arrangements and examine options for new ones;
- Make use of the Visa Code to incentivise and improve cooperation to facilitate return and readmission, as well as working through the Asylum and Migration management Regulation when in place;
- Take forward the recommendation on legal pathways to protection in the EU, including resettlement; and
- Develop EU Talent Partnerships with key partner countries to facilitate legal migration and mobility.

The European Parliament and the Council should:

- Conclude swiftly negotiations on the Framework Regulation on Resettlement and Humanitarian Admission.

7. ATTRACTING SKILLS AND TALENT TO THE EU

Working with third countries on legal pathways is fully in line with the EU's interests. Europe has an ageing and shrinking population[56]. The structural pressure this is expected to create on the labour market is complemented by specific skills shortages in different localities and sectors such as health, medical care, and agriculture. The contribution of legally staying migrants to reducing skills gaps and increasing the dynamism of the EU labour market was recognised in the recently updated **Skills Agenda for Europe**[57].

Activating and upskilling the domestic workforce is necessary but not sufficient to address all existing and forecasted labour and skills shortages. This is already happening: in 2018, Member States issued over 775,000 first residence permits to third country nationals for employment purposes[58]. Workers from third countries are filling key shortages in a number

[55] Regulation (EC) No 810/2009 as amended.
[56] Report on the Impact of Demographic Change, COM(2020) 241 of 17 June 2020.
[57] European Skills Agenda for sustainable competitiveness, social fairness and resilience, COM(2020) 274 of 1 July 2020.
[58] Eurostat (online data code: migr_pop1ctz). This figure does not include UK data.

of occupations across Member States[59], including in occupations that were key to the COVID-19 response[60]. In a joint statement with the Commission, the European Social and Economic Partners have highlighted the potential of migrant workers to contribute to the green and digital transitions by providing the European labour market with the skills it needs[61]. Nevertheless, the EU is currently losing the global race for talent[62]. While Member States are responsible for deciding on the number of persons they admit for labour purposes, an improved framework at EU level would put Member States and businesses in the best possible position to attract the talents they need.

In addition to launching Talent Partnerships, it is important to complete the unfinished work of reforming the **EU Blue Card Directive,** to attract highly skilled talent[63]. The Commission acknowledges the diversity of labour market situations across Member States and their wish for flexibility through retaining national schemes tailored to specific labour market needs. At the same time, the reform must bring real EU added value in attracting skills through an effective and flexible EU-wide instrument. This requires more inclusive admission conditions, improved rights, swift and flexible procedures, improved possibilities to move and work in different Member States, and a level playing field between national and EU systems. The new EU-wide scheme should be open to recognising high-level professional skills and relevant experience. It should also be inclusive, covering categories such as highly skilled beneficiaries of international protection, to benefit from their skills and foster their integration into EU societies. The Commission calls on the European Parliament and the Council to finalise negotiations swiftly, and is ready to work towards a compromise along these lines.

The international mobility of students and researchers can increase the pool of expertise available to European universities and research institutions, boosting our efforts to manage the transition towards a green and digital economy. Full implementation of the recently revised **Directive on Students and Researchers**[64] is essential to make it easier and more attractive to come to the EU, and to promote the circulation of knowledge by moving between Member States. Talent Partnerships may also directly support schemes facilitating the mobility of students and researchers.

More could be done to increase the impact of the EU legal migration framework on Europe's demographic and migration challenges[65]. There are a number of inherent shortcomings in the EU legal migration system (such as fragmentation, limited coverage of EU rules, inconsistencies between different Directives, and complex procedures) that could be addressed through measures ranging from better enforcement to new legislation. The Commission will first ensure that the current framework is implemented fully and effectively, by intensifying cooperation and dialogue with Member States.

---

[59] OECD (2018), "The contribution of migration to the dynamics of the labour force in OECD countries: 2005-2015", OECD Social, Employment and Migration Working Papers, No. 203, OECD Publishing, Paris.

[60] For instance, non-EU immigrants represented in 2018 around 6% of health professionals in the EU, 14% of personal care workers, 10% of refuse workers, 16% of agricultural labourers (without counting in seasonal workers), 25% of cleaners and helpers and 27% of food preparation assistants.

[61] https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/legal-migration-policy/joint-statement-commission-economic-social-partners-renewal-european-partnership-integration.pdf

[62] See for example: Recruiting immigrant workers: Europe, OECD and EU (2016), OECD Publishing, Paris.

[63] COM(2016) 378 of 7 June 2016.

[64] Directive (EU) 2016/801.

[65] See Fitness check on EU legal migration legislation (SWD(2019) 1055 of 29 March 2019). On demographic issues, see also: Demographic Scenarios for the EU – Migration, Population and Education (Commission, 2019).

The Commission will also address the main shortcomings in three new sets of measures, responding to the overall objective of attracting the talent the EU needs. Admission of workers of different skills levels to the EU, and intra-EU mobility of third-country workers already in the EU, would both be facilitated.

- A revision of the **Directive on long-term residents**[66], which is currently under-used and does not provide an effective right to intra-EU mobility. The objective would be to create a true EU long-term residence status, in particular by strengthening the right of long-term residents to move and work in other Member States.
- A review of the **Single Permit Directive**[67], which has not fully achieved its objective to simplify the admission procedures for all third-country workers. This would look at ways to simplify and clarify the scope of the legislation, including admission and residence conditions for low and medium skilled workers.
- Further explore an **EU Talent Pool** for third-country skilled workers which could operate as an EU-wide platform for international recruitment, through which skilled third-country nationals could express their interest in migrating to the EU, and could be identified by EU migration authorities and employers based on their needs[68].

The Commission has also launched a **public consultation on attracting skills and talent**. This aims to identify additional areas where the EU framework could be improved, including through possible new legislation. It also invites new ideas to boost the EU's attractiveness, facilitate skills matching, and better protect labour migrants from exploitation. As part of the consultation, the Commission will pursue its dialogue with social and economic partners on all these initiatives. The results will inform the development of an EU Talent Pool and help the Commission to decide what other initiatives are needed to address the long-term challenges in this area.

Key actions

The Commission will:

- Launch a debate on the next steps on legal migration, with a public consultation; and
- Propose a Skills and Talent package including a revision of the Long-term Residents Directive and a review of the Single Permit Directive, as well as setting out the options for developing an EU Talent Pool.

The European Parliament and the Council should:

- Conclude negotiations on the EU Blue Card Directive.

8. SUPPORTING INTEGRATION FOR MORE INCLUSIVE SOCIETIES

Part of a healthy and fair system of migration management is to ensure that everyone who is legally in the EU can participate in and contribute to the well-being, prosperity and cohesion of European societies. In 2019, almost 21 million non-EU nationals were legally resident in the EU[69]. Successful integration benefits both the individuals concerned, and the local communities into which they integrate. It fosters social cohesion and economic dynamism. It

[66] Directive 2003/109/EC.
[67] Directive 2011/98/EU.
[68] See the work carried out by the OECD: Building an EU Talent Pool - A New Approach to Migration Management for Europe, 2019.
[69] Source of statistics in this paragraph: Eurostat. UK figures not included.

sets positive examples for how Europe can manage the impacts of migration and diversity by building open and resilient societies. But despite numerous success stories, too many migrants and households with migrant backgrounds still face challenges in terms of unemployment, lack of educational or training opportunities and limited social interaction. For example, in 2019, there was still a significant shortfall in the employment prospects of non-EU nationals – at around 60% of 20-64 year olds, compared to around 74% for host-country nationals. This creates concern amongst citizens on the pace and depth of integration – and a legitimate public policy reason to make this work.

The integration of migrants and their families is therefore a key part of the broader EU agenda to promote social inclusion. While integration policy is primarily a Member State responsibility, the EU has stepped up its support to Member States and other relevant stakeholders since the adoption of the 2016 Action Plan[70]. The European Integration Network works to boost cooperation and mutual learning between the national authorities responsible for integration. The EU has also strengthened cooperation with local and regional authorities and civil society and has created new partnerships with employers and social and economic partners[71]. The Commission has recently renewed the European Partnership for Integration with social and economic partners to offer opportunities for refugees to integrate into the European labour market[72]. This should lead to further dialogue and future cooperation to attract the skills our economy needs.

This work now needs to be deepened, to ensure that meaningful opportunities are provided for all to participate to our economy and society. As part of the priority on promoting our European way of life, the Commission will adopt an **Action Plan on integration and inclusion for 2021-2024.** The integration of migrants and their families will be a key aspect of this. This work will provide strategic guidance and set out concrete actions to foster inclusion of migrants and broader social cohesion, bringing together relevant stakeholders and recognising that regional and local actors have a key part to play. It will draw on all relevant policies and tools in key areas such as social inclusion, employment, education, health, equality, culture and sport, setting out how migrant integration should be part of efforts to achieve the EU's goals on each. Ensuring migrants fully benefit from the European Pillar of Social Rights will be a key objective. It will recognise that people with a migrant background (e.g. foreign born or second generation migrants) often face similar integration challenges to third-country nationals. The actions will include direct support to those active 'on the ground' and cover the full range of measures needed to accompany migrants and their families along the path to successful integration and social inclusion. The Commission is now consulting to seek the views of stakeholders, citizens and migrants on possible actions to promote the integration and social inclusion of migrants and EU citizens with a migrant background.

To ensure that migrants are actively involved in the development of EU migration policies, the Commission is creating an informal expert group on the views of migrants. One of its first tasks will be to provide input to the preparation of the Action Plan on integration and inclusion, but it will also be able to provide advice and expertise to the Commission on the design and implementation of initiatives in any area of migration and asylum.

Key actions

[70] COM(2016) 377 final of 7 June 2016.

[71] Initiatives European Partnership on Integration and Employers together for integration; support to the Committee of Regions initiative Cities and Regions for integration.

[72] https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1561

The Commission will:

- Adopt a comprehensive Action Plan on integration and inclusion for 2021-2024; and
- Implement the renewed European Partnership for Integration with social and economic partners and look into expanding the future cooperation to the area of labour migration.

9. NEXT STEPS

This New Pact on Migration and Asylum sets out the end-to-end approach needed to make migration management in Europe fair, efficient and sustainable. The EU will now have to show the will to make the New Pact a reality. This is the only way to prevent the recurrence of events such as those seen in Moria this month: by putting in place a system to match the scale of the challenge. A common European framework for migration management is the only way to have the impact required. Bringing policies together in this way is essential to provide the clarity and results needed for citizens to trust that the EU will deliver results that are both robust and humane.

Such a system can only function if it has the tools needed to deliver. This means a strong legal framework able to give the clarity and focus needed for mutual confidence, with robust and fair rules for those in need of international protection and those who do not have the right to stay. It requires migration to be at the heart of mutually beneficial partnerships with third countries to effectively improve migration management. It calls for an intelligent approach to legal migration to support the economic need for talent and the social need for integration. It also requires sufficient budget to reflect the common responsibilities and the common benefits of EU migration policies, inside and outside the EU.

Finally, it needs the engagement and commitment of all. That is why the New Pact has been built on careful consultations: with the European Parliament and the Council, the Member States, and with stakeholders. It is grounded in our values but will also provide the results needed. The Commission considers that the result is a balance of interests and needs which deserves the support of all. The Commission now calls on the European Parliament and the Council to bring a new impetus. A first step should be to reach a common understanding on the new solidarity mechanism as well as the responsibility elements in the form of the new screening and border procedure by the end of this year, followed swiftly by adopting the full package of legislation required. By working together, the EU can and must ensure that a truly common migration and asylum policy is quickly made a reality.

EUROPEAN
COMMISSION

Brussels, 23.9.2020
COM(2020) 609 final

ANNEX

ANNEXES

to the

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

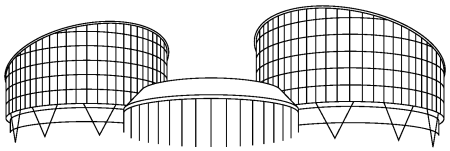
on a New Pact on Migration and Asylum

Roadmap to implement the New Pact on Migration and Asylum

Actions	Indicative Timetable
A common European framework for migration and asylum management	
The Commission:	
• Proposes an Asylum and Migration Management Regulation, including a new solidarity mechanism	Q3 2020
• Proposes new legislation to establish a screening procedure at the external border	Q3 2020
• Amends the proposal for a new Asylum Procedures Regulation to include a new border procedure and make asylum procedures more effective	Q3 2020
• Amends the Eurodac Regulation proposal to meet the data needs of the new framework	Q3 2020
• Will appoint a Return Coordinator within the Commission, supported by a new High Level Network for Returns and a new operational strategy	Q1 2021
• Will set out a new Strategy on voluntary returns and reintegration	Q1 2021
The European Border and Coast Guard Agency (Frontex) should:	
• Fully operationalise the reinforced mandate on return and provide full support to Member States at national level	Q4 2020
• Appoint a Deputy Executive Director for Return	Q2 2021
The European Parliament and the Council should:	
• Adopt the Asylum and Migration Management Regulation, as well as the Screening Regulation and the revised Asylum Procedures Regulation	Q2 2021
• Give immediate priority to adoption of the Regulation on the EU Asylum Agency	Q4 2020
• Ensure quick adoption of the revised Eurodac Regulation	Q4 2020
• Ensure quick adoption of the revised Reception Conditions Directive and the Qualification Regulation	Q2 2021
• Ensure the swift conclusion of the negotiations on the revised Return Directive	Q2 2021
A robust crisis preparedness and response system	
The Commission:	
• Presents a Migration Preparedness and Crisis Blueprint	Q3 2020
• Proposes legislation to address situations of crisis and *force majeure* and repealing the Temporary Protection Directive	Q3 2020
The European Parliament and the Council should:	
• Prioritise and conclude work on the new crisis instrument	Q2 2021
The Member States, the Council and the Commission should:	
• Start implementation of the Migration Preparedness and Crisis Blueprint	Q4 2020

Integrated border management	
The Commission:	
• Adopts a Recommendation on cooperation between Member States concerning private entities' rescue activities	Q3 2020
• Presents guidance to Member States to make clear that rescue at sea cannot be criminalised	Q3 2020
• Will adopt a Strategy on the future of Schengen	Q1 2021
• Will establish a Schengen Forum	Q4 2020
• Will launch a new European group of experts on search and rescue	Q4 2020
The Commission, the Member States and Frontex should:	
• Ensure the swift and full implementation of the new European Border and Coast Guard Regulation	Q4 2020
• Ensure the implementation and interoperability of all large scale IT systems	Q4 2023
Reinforcing the fight against migrant smuggling	
The Commission will:	
• Present a new EU Action Plan against Migrant Smuggling for 2021-2025	Q2 2021
• Start assessment how to strengthen the effectiveness of the Employers Sanctions Directive	Q4 2020
• Build action against migrant smuggling into partnerships with third countries	Q4 2020
Working with our international partners	
The Commission, in close cooperation with the High Representative and Member States, will:	
• Launch work immediately to develop and deepen tailor-made comprehensive and balanced migration dialogues and partnerships	Q4 2020
• Scale up support to help those in need and their host communities	Q4 2020
• Increase support for economic opportunity and addressing the root causes of irregular migration	Q4 2020
• Step up the place of migration in the programming of the new instruments in the next Multiannual Financial Framework	Q4 2020
• Examine options for new EU readmission agreements and arrangements	Q4 2020
• Make use of the Visa Code to incentivise and improve cooperation to facilitate return and readmission, also preparing for the new provisions of the Asylum and Migration Management Regulation	Q1 2021
• Take forward the recommendation on legal pathways to protection in the EU, including resettlement	Q4 2020
• Develop EU Talent Partnerships with key partner countries	Q4 2020
The European Parliament and the Council should:	
• Conclude swiftly negotiations on the Framework Regulation on Resettlement and Humanitarian Admission	Q4 2020

Attracting skills and talent to the EU	
The Commission will:	
• Launch a debate on the next steps on legal migration, with a public consultation	Q3 2020
• Propose a Skills and Talent package including a revision of the Long-term Residents Directive and a review of the Single Permit Directive, as well as setting out the options for developing an EU Talent Pool	Q4 2021
The European Parliament and the Council should:	
• Conclude negotiations on the EU Blue Card Directive	Q4 2020
Supporting integration for more inclusive societies	
The Commission will:	
• Adopt a comprehensive Action Plan on integration and inclusion for 2021-2024	Q4 2020
• Implement the renewed European Partnership for Integration with social and economic partners and look into expanding the future cooperation to the area of labour migration	Q1 2021



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on the case-law of the European Convention on Human Rights

Immigration

Updated on 31 August 2020

This Guide has been prepared under the authority of the Jurisconsult and does not bind the Court. It may be subject to editorial revision.

This Guide was originally drafted in English. It is updated regularly and, most recently, on 31 August 2020.

The Case-Law Guides are available for downloading at *www.echr.coe.int* (Case-law – Case-law analysis – Case-law guides). For publication updates please follow the Court's Twitter account at *https://twitter.com/ECHR_CEDH*.

Table of contents

Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on a wide range of provisions of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") relating to immigration. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI).

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the former European Commission of Human Rights (hereafter "the Commission"). Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

1. The present document is intended to serve as a reference tool to the Court's case-law in immigration related cases, covering all Convention Articles that could come into play. It is divided into six chapters, in principle corresponding to the sequence of events in chronological order. It primarily refers to, rather than reproduces or elaborates on, the Court's relevant judgments and decisions, including, wherever possible, recent judgments and decisions consolidating the relevant principles. It is thus conceived as an entry point to the Court's case-law on a given matter, not as an exhaustive overview.

2. Few provisions of the Convention and its Protocols explicitly concern "aliens" and they do not contain a right to asylum. As a general rule, States have the right, as a matter of well-established international law and subject to their treaty obligations, to control entry, residence and expulsion of non-nationals. In *Soering v. the United Kingdom* the Court ruled for the first time that the applicant's extradition could raise the responsibility of the extraditing State under Article 3 of the Convention. Since then, the Court has consistently held that the removal of an alien by a Contracting State may give rise to an issue under Articles 2 and 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. The Court also adjudicates cases concerning the compliance, of the removal of migrants from and the refusal of entry into the territory of a Contracting State, with their right to respect for their private and/or family life as guaranteed by Article 8 of the Convention.

3. Many immigration related cases before the Court begin with a request for interim measures under Rule 39 of the Rules of Court, measures most commonly consisting of requesting the respondent State to refrain from removing individuals pending the examination of their applications before the Court (see paragraph 62 below for more details).

I. Access to the territory and procedures

Article 1 of the Convention

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 4 of the Convention

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 2 of Protocol No. 4 of the Convention

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Article 4 of Protocol No. 4 of the Convention

"Collective expulsion of aliens is prohibited."

4. As mentioned above, access to the territory for non-nationals is not expressly regulated in the Convention, nor does it say who should receive a visa.

A. Application for a visa to enter a country in order to seek asylum there

5. In *M.N. and Others v. Belgium* [GC], the applicants, a Syrian couple and their two children, travelled to Lebanon where they requested the Belgian embassy to deliver short-term visas to allow them to travel to Belgium to apply for asylum given the conflict in Syria, relying on Article 3 of the Convention. Their requests were processed and refused by the Aliens Office in Belgium. Notified by the Belgian embassy of these decisions, the applicants lodged unsuccessful appeals before the Belgian courts. The Court found that the respondent State was not exercising jurisdiction extraterritorially over the applicants by processing their visa applications and that a jurisdictional link had not been created through the applicant's appeals.

B. Access for the purposes of family reunification

6. A State may, under certain circumstances, be required to allow the entry of an individual when it is a pre-condition for his or her exercise of certain Convention rights, in particular the right to respect for family life. The Court summarised the pertinent principles under Article 8 of the Convention concerning family reunification of children of foreign nationality with parents, or a parent, settled in a Contracting State in *I.A.A. and Others v. the United Kingdom* (dec.) (§§ 38-41). The criteria, including notably the best interests of the child, must be sufficiently reflected in the reasoning in the decisions of the domestic authorities (*El Ghatet v. Switzerland*).

7. There is no obligation on a State under Article 8 to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country. However, where a State decides to enact legislation conferring the right on certain categories of immigrants to be joined by their spouses, it must do so in a manner compatible with the principle of non-discrimination enshrined in Article 14. The Court found a breach of Article 14 taken in conjunction with Article 8 in *Hode and Abdi v. the United Kingdom* because one applicant, the post-flight spouse of the other applicant, a recognised refugee, was not allowed to join him in the respondent State, whereas refugees married prior to the flight and immigrants with temporary residence status could be joined by their spouses. The family reunification procedure needs to be flexible (for instance in relation to the use and admissibility of evidence for the existence of family ties), prompt and effective (*Tanda-Muzinga v. France*; *Mugenzi v. France*).

8. Another scenario concerning family reunification of refugees was examined by the Court in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*. The first applicant had obtained refugee status and indefinite leave to remain in Canada and had asked her brother, a Dutch national, to collect her five year-old daughter (the second applicant) from the country of origin, where the child was living with her grandmother, and to look after the child until she was able to join her. Upon arrival in Belgium, instead of facilitating the reunification of the two applicants, the authorities detained and subsequently deported the second applicant to the country of origin, which amounted to a breach of Article 8 (§§ 72-91).

9. As regards the refusal to grant family reunion based on ties with another country and a difference in treatment between persons born with the nationality of the respondent State and those who acquired it later in life, see *Biao v. Denmark* [GC]. In *Schembri v. Malta*, the Court found that Article 8 did not apply to a "marriage of convenience": albeit not in the context of seeking permission to enter, but rather to remain in, the respondent State (see, more generally, paragraphs 46-48 below), the Court found that the refusal to grant a family residence permit to the applicant's same-sex partner breached Article 14 taken in conjunction with Article 8 (*Taddeucci and McCall v. Italy*).

C. Granting visas and Article 4

10. In *Rantsev v. Cyprus and Russia*, the applicant's daughter, a Russian national, had died in unexplained circumstances after falling from a window of a private property in Cyprus, a few days after she had arrived on a "cabaret-artiste" visa. The Court found that Cyprus had, inter alia, failed to comply with its positive obligations under Article 4 because, despite evidence of trafficking in Cyprus and the concerns expressed in various reports that Cypriot immigration policy and legislative shortcomings were encouraging the trafficking of women to Cyprus, its regime of "artiste visas" did not afford to the applicant's daughter practical and effective protection against trafficking and exploitation (§§ 290-293). In respect of the procedural obligation to conduct an effective investigation into the issuing of visas by public officials in human trafficking cases, see *T.I. and Others v. Greece*.

D. Entry and travel bans

11. An entry ban prohibits individuals from entering a State from which they have been expelled. The ban is typically valid for a certain period of time and ensures that individuals who are considered dangerous or non-desirable are not given a visa or otherwise admitted to enter the territory. In respect of states which are part of the Schengen area, entry bans are registered into a database called the Schengen Information System (SIS). In *Dalea v. France* (dec.), the Court found that the applicant's registration on the SIS database did not breach his right to respect for his private life under Article 8 of the Convention. It considered the effects of a travel ban imposed as a result of placing an individual on an UN-administered list of terrorist suspects under Article 8 of the Convention (*Nada v. Switzerland* [GC]), as well as of a travel ban designed to prevent breaches of domestic or foreign immigration laws, under Article 2 of Protocol No. 4 to the Convention (*Stamose v. Bulgaria*).

E. Push backs at sea

12. In *Hirsi Jamaa and Others v. Italy* [GC], the Court dealt with push backs at sea. The applicants were part of a group of about 200 migrants, including asylum-seekers and others, who had been intercepted by the coastguard of the respondent State on the high seas within the search and rescue area of another Contracting Party. The applicants were summarily returned to Libya under an agreement concluded between Italy and Libya, and were given no opportunity to apply for asylum. The Court found that the applicants fell within the respondent State's jurisdiction for the purposes of Article 1 of the Convention as it exercised control over them on the high seas and considered that the Italian authorities knew, or should have known, that the applicants, when returned to Libya as irregular migrants, would be exposed to treatment in breach of the Convention, that they would not be given any kind of protection and that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin. It reaffirmed that the fact that the applicants had not asked for asylum or described the risks they faced as a result of the lack of asylum system in Libya did not exempt the respondent State from complying with its obligations under Article 3 of the Convention. It also found violations of Article 4 of Protocol No. 4 of the Convention and of Article 13 of the Convention taken in conjunction with Article 3 and Article 4 of Protocol No. 4 to the Convention.

II. Entry into the territory of the respondent State

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 2 of Protocol No. 4 of the Convention

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Article 4 of Protocol No. 4 of the Convention

"Collective expulsion of aliens is prohibited."

A. Situations at the border

13. The Court has also examined cases under Article 3 alone and in conjunction with Article 13 of the Convention in which border guards prevented persons from entering the respondent State's territory by not allowing them to disembark at a port (*Kebe and Others v. Ukraine*) or at a land border checkpoint (*M.A. and Others v. Lithuania*; *M.K. and Others v. Poland**), and either prevented the applicants from lodging an asylum application or, where they had submitted such applications, refused to accept them and to initiate asylum proceedings. Whereas the applicants in *Ilias and Ahmed v. Hungary* [GC] were able to lodge an asylum application while staying at the land border transit zone between Hungary and Serbia, the Hungarian authorities failed to discharge their procedural obligation under Article 3 when rejecting their asylum requests as inadmissible based on the presumption that Serbia was a safe third country which could examine their asylum requests on the merits (see paragraph 32 below). Where applicants can arguably claim that there is no guarantee that their asylum applications would be seriously examined by the authorities in the neighbouring third country and that their return to their country of origin could violate Article 3 of the Convention, the respondent State is obliged to allow the applicants to remain with its jurisdiction until such time that their claims had been properly reviewed by a competent domestic authority and cannot deny access to its territory to persons presenting themselves at a border checkpoint who allege that they may be subjected to ill-treatment if they remain on the territory of the neighbouring state, unless adequate measures are taken to eliminate such a risk (*M.K. and Others v. Poland**, §§ 178-179).

14. In *N.D. and N.T. v. Spain* [GC] the Court found that Article 4 of Protocol No. 4 was applicable to situations in which the conduct of persons - who cross a land border in an unauthorised manner, deliberately taking advantage of their large numbers and using force - is such as to create a clearly disruptive situation which is difficult to control and endangers public safety. It set out a two-tier test for compliance with Article 4 of Protocol No. 4 in such circumstances: whether the State provided genuine and effective access to means of legal entry, in particular border procedures, to allow all persons who face persecution to submit an application for protection, based in particular on Article 3, under conditions which ensure that the application is processed in a manner consistent with international norms including the Convention. Where the State provided such access but an applicant did not make use of it, it has to be considered whether there were cogent reasons for not doing so which were based on objective facts for which the State was responsible. The absence of such cogent reasons could lead to this being regarded as the consequence of the applicants' own conduct, justifying the lack of individual identification. On the facts of the case, the Court found that there had been no breach of Article 4 of Protocol No. 4, but underlined that this finding did not call into question the obligation and necessity for Contracting States to protect their borders in a manner which complies with Convention guarantees and, in particular, with the prohibition of *refoulement*. In *M.K. and Others v. Poland** the applicants had an arguable claim under Article 3, presented themselves at the border checkpoints and tried to enter the respondent State in a legal manner by making use of the procedure to submit an asylum application that should have been available to them under domestic law. Even though they were interviewed individually by the border guards and received individual decisions refusing them entry into Poland, the Court considered that their statements concerning their wish to apply for asylum were disregarded and that the decisions with which they were issued did not properly reflect the reasons given by the applicants to justify their fear of persecution. Moreover, the applicants were not allowed to consult lawyers and were even denied access to lawyers who were present at the border checkpoint. The Court concluded that the decisions refusing the applicants entry to Poland were not taken with proper regard to their individual situations and were part of a wider policy of refusing to receive asylum applications from persons presenting at the Polish-Belarusian border and of returning those persons to Belarus, and found a breach of Article 4 of Protocol No. 4.

15. In *Sharifi and Others v. Italy and Greece*, the applicants had entered Greece from Afghanistan and subsequently illegally boarded vessels for Italy. Upon arrival in the port of Ancona, the Italian

border police intercepted them and immediately took them back to the ships from which they had just disembarked and deported them back to Greece, without being given the possibility to apply for asylum, to contact lawyers or interpreters or providing them with any information about their rights. The Court found a violation by Italy of Article 3 with a view to their subsequent removal to Afghanistan and the risk of ill-treatment there, of Article 13 taken together with Article 3 of the Convention and of Article 4 of Protocol No. 4.

B. Confinement in transit zones and reception centres

16. In determining the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of foreigners in transit zones and reception centres for the identification and registration of migrants, the factors taken into consideration by the Court may be summarised as follows: i) the applicants' individual situation and their choices; ii) the applicable legal regime of the respective country and its purpose; iii) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events; and iv) the nature and degree of the actual restrictions imposed on or experienced by the applicants (*Z.A. and Others v. Russia* [GC], § 138; *Ilias and Ahmed v. Hungary* [GC], §§ 217-218). The Court has distinguished the lengthy confinement in airport transit zones, where it found Article 5 of the Convention to apply (see *Z.A. and Others v. Russia* [GC]), from the applicants´ stay in a land border transit zone where they awaited the outcome of their asylum claims (*Ilias and Ahmed v. Hungary* [GC], where the Court found Article 5 not to apply). In *J.R. and Others v. Greece*, the applicants, Afghan nationals, arrived on the island of Chios and were arrested and placed in the Vial "hotspot" facility (a migrant reception, identification and registration centre). After one month, that facility became semi-open and the applicants were allowed out during the day. The Court considered that the applicants had been deprived of their liberty within the meaning of Article 5 during the first month of their stay in the facility, but that they were subjected only to a restriction of movement, rather than a deprivation of liberty, once the facility had become semi-open.

C. Immigration detention under Article 5 § 1(f)

1. General principles

17. Article 5 § 1(f) of the Convention allows States to control the liberty of aliens in an immigration context in two different situations: the first limb of that provision permits the detention of an asylum-seeker or other immigrant prior to the State's grant of authorisation to enter (for the second limb, see paragraphs 54-56 below). The question as to when the first limb of Article 5 § 1(f) ceases to apply, because the individual has been granted formal authorisation to enter or stay, is largely dependent on national law (*Suso Musa v. Malta*, § 97; see also *O.M. v. Hungary*, where the detention of the asylum-seeking applicant was consequently examined under Article 5 § 1(b), since domestic law created a more favourable position than required by the Convention, with the result that the Court did not consider it necessary to address the lawfulness of the detention under Article 5 § 1(f); and *Muhammad Saqawat v. Belgium**, §§ 47 and 49, as to the impact of EU law on domestic law). Such detention must be compatible with the overall purpose and requirements of Article 5, notably its lawfulness, including the obligation to conform to the substantive and procedural rules of national law. However compliance with domestic law is not sufficient, since a deprivation of liberty may be lawful in terms of domestic law but still be arbitrary (*Saadi v. the United Kingdom* [GC], § 67). In the case of massive arrivals of asylum-seekers at State borders, subject to the prohibition of arbitrariness, the lawfulness requirement of Article 5 may be considered generally satisfied by a domestic legal regime that provides, for example, for no more than the name of the authority competent to order deprivation of liberty in a transit zone, the form of the order, its possible grounds and limits, the maximum duration of the confinement and, as required by Article 5 § 4, the

applicable avenue of judicial appeal (*Z.A. and Others v. Russia* [GC], § 162). The requirement of lawfulness was an issue, for example, where the detention was based on an administrative circular (*Amuur v. France*), where the legal basis was not accessible to the public (*Nolan and K. v. Russia, and Khlaifia and Others v. Italy* [GC]: readmission agreement) or where no maximum period of detention was laid down in legislation (*Mathloom v. Greece*). In *Nabil and Others v. Hungary*, the domestic courts had not duly assessed whether the conditions set out in domestic law for the prolongation of the detention - falling under the second limb of Article 5 § 1(f) - were met.

18. In respect of adults with no particular vulnerabilities, detention under Article 5 § 1(f) is not required to be reasonably necessary. However, it must not be arbitrary. "Freedom from arbitrariness" in the context of the first limb of Article 5 § 1(f) means that such detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country; and the length of the detention should not exceed that reasonably required for the purpose pursued (*Saadi v. the United Kingdom* [GC], § 74). If the place and conditions of detention are not appropriate, this may also breach Article 3 of the Convention (see, for example, *M.S.S. v. Belgium and Greece* [GC], §§ 205-234; *S.Z. v. Greece*, and *HA.A. v. Greece*).

2. Vulnerable individuals

19. Additional safeguards against arbitrary detention apply to children and other individuals with specific vulnerabilities, who, to be able to benefit from such protection, should have access to an assessment of their vulnerability and be informed about respective procedures (see *Thimothawes v. Belgium*, and *Abdi Mahamud v. Malta*). Lack of active steps and delays in conducting the vulnerability assessment may be a factor in raising serious doubts as to the authorities' good faith (*Abdullahi Elmi and Aweys Abubakar v. Malta*; *Abdi Mahamud v. Malta*). The detention of vulnerable individuals will not be in conformity with Article 5 § 1(f) if the aim pursued by detention can be achieved by other less coercive measures, requiring the domestic authorities to consider alternatives to detention in the light of the specific circumstances of the individual case (*Rahimi v. Greece*; *Yoh-Ekale Mwanje v. Belgium*, concerning the second limb of the provision). In addition to Article 5 § 1(f), immigration detention of children and other vulnerable individuals can raise issues under Article 3 of the Convention, with particular attention being paid to the conditions of detention, its duration, the person's particular vulnerabilities and the impact of the detention on him or her (in respect of the detention of accompanied children see *Popov v. France* concerning the second limb and the overview of the Court's case-law in *S.F. and Others v. Bulgaria*; in respect of unaccompanied children see *Abdullahi Elmi and Aweys Abubakar v. Malta*; *Rahimi v. Greece*; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, where the Court found a violation of Article 3 in respect of both the detained child and the child's mother who was in another country, and *Moustahi v. France** concerning the detention of unaccompanied minors by arbitrary association with an unrelated adult; in respect of adults with specific health needs see *Aden Ahmad v. Malta*, and *Yoh-Ekale Mwanje v. Belgium*, and a heavily pregnant woman *Mahmundi and Others v. Greece*; see also *O.M. v. Hungary*, § 53, with a view to the assessment of the vulnerability of the applicant, an LGBTI asylum-seeker, under Article 5 § 1(b)). The detention of accompanied children may also raise issues under Article 8 of the Convention in respect of both children and adults (see overview of the Court's case-law in *Bistieva and Others v. Poland*), as may the refusal to allow the reunion of a parent with his children, who were placed *de facto* in administrative detention by arbitrary association with an unrelated adult (*Moustahi v. France**).

3. Procedural safeguards

20. Under Article 5 § 2, any person who has been arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his deprivation of liberty, so as to be able to apply to a court to challenge its lawfulness in accordance with Article 5 § 4 (*Khlaifia and Others v. Italy* [GC], § 115). Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (*ibid.*; see *Čonka v. Belgium*; *Saadi v. the United Kingdom* [GC]; *Nowak v. Ukraine*; *Dbouba v. Turkey*).

21. Article 5 § 4 entitles a detained person to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (*Khlaifia and Others v. Italy* [GC], § 131; see, in particular, *A.M. v. France*, §§ 40-41, concerning the required scope of judicial review under Article 5 § 1(f)). Proceedings to challenge the lawfulness under Article 5 § 1(f) of administrative detention pending deportations do not need to have a suspensive effect on the implementation of the deportation order (*ibid.*, § 38). Where deportation is expedited in a manner preventing the detained person or his lawyer from bringing proceedings under Article 5 § 4, that provision is breached (*Čonka v. Belgium*). In cases where detainees had not been informed of the reasons for their deprivation of liberty, their right to appeal against their detention was deprived of all effective substance (*Khlaifia and Others v. Italy* [GC], § 132). The same holds true if the detained person is informed about the available remedies in a language he does not understand and is unable, in practice, to contact a lawyer (*Rahimi v. Greece*, § 120). The proceedings under Article 5 § 4 must be adversarial and ensure equality of arms between the parties (see *A. and Others v. the United Kingdom* [GC], §§ 203 et seq.; and *Al Husin v. Bosnia and Herzegovina (no. 2)* in respect of national security cases). It breaches Article 5 § 4 if the detainee is unable to obtain a substantive judicial decision on the lawfulness of the detention order, and hence his release from detention, because the appeal is deemed to have become "without object" as a new detention order has been issued in the meantime (*Muhammad Saqawat v. Belgium**), or if there is no judicial remedy available to challenge the lawfulness of the detention, even if it is brief (*Moustahi v. France**).

22. Article 5 § 4 also secures to persons arrested or detained the right to have the lawfulness of their detention decided "speedily" by a court and to have their release ordered if the detention is not lawful (*Khlaifia and Others v. Italy* [GC], § 131; in relation to case-law on the "speediness" requirement in respect of detention under Article 5 § 1(f), albeit with a view to the second limb of the provision, see also *Khudyakova v. Russia*, §§ 92-100; *Abdulkhakov v. Russia*, § 214; *M.M. v. Bulgaria*). Where the national authorities decide in exceptional circumstances to detain a child and his or her parents in the context of immigration controls, the lawfulness of such detention should be examined by the national courts with particular expedition and diligence at all levels (*G.B. and Others v. Turkey*, §§ 167 and 186). Where an automatic review is not conducted in compliance with the time-limits provided for by domestic law, but nonetheless speedily from an objective point of view, there is no breach of Article 5 § 4 (*Aboya Boa Jean v. Malta*).

D. Access to procedures and reception conditions

1. Access to the asylum procedure or other procedures to prevent removal

23. In addition to cases concerning the refusal to accept or examine asylum applications at the border (see paragraph 13 above), the Court has examined cases under Article 13 taken in conjunction with Article 3 where a person present on the territory was unable to lodge an asylum

application (*A.E.A. v. Greece*) or where such application was not seriously examined (*M.S.S. v. Belgium and Greece* [GC], §§ 265-322).

24. The Court found that there had been no violation of Article 4 of Protocol No. 4 where the applicants were afforded a genuine and effective possibility of submitting arguments against their expulsion (*Khlaifia and Others v. Italy* [GC]).

2. Reception conditions and freedom of movement

25. Article 3 cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home (*Chapman v. the United Kingdom* [GC], § 99). Nor does Article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living (*Tarakhel v. Switzerland* [GC], § 95). However, asylum-seekers are members of a particularly underprivileged and vulnerable population group in need of special protection and there exists a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the Reception Directive (*M.S.S. v. Belgium and Greece* [GC], § 251). It may thus raise an issue under Article 3 if the asylum-seekers, including persons intending to lodge an asylum application, are not provided with accommodation and thus forced to live on the streets for months, with no resources or access to sanitary facilities, without any means of providing for their essential needs, in fear of assault from third parties and of expulsion (*ibid.* [GC], §§ 235-264 and *N.H. and Others v. France**, both in respect of adults without health concerns and without children; contrast *N.T.P. and Others v. France*, where the applicants had been accommodated in a privately run shelter funded by the authorities and been given food and medical care and the children had been in school). States are obliged under Article 3 to protect and to take charge of unaccompanied children, which requires the authorities to identify them as such and to take measures to ensure their placement in adequate accommodation, even if the children do not lodge an asylum application in the respondent State, but intend to do so in another State, or to join family members there (see *Khan v. France*, concerning the situation in a makeshift camp in Calais; and *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* in respect of the situation in a makeshift camp in Idomeni; see also *M.D. v. France* regarding the reception of an asylum seeker who had identified himself as an unaccompanied minor, but in respect of whose actual age there were doubts). In *Rahimi v. Greece* (§§ 87-94), the Court also found a breach of Article 3 because the authorities did not offer the applicant, an unaccompanied child asylum-seeker, any assistance with accommodation following his release from detention.

26. In *Omwenyeke v. Germany* (dec.), the applicant asylum-seeker had temporary residence for the duration of the asylum procedure, but had lost his lawful status by violating the conditions attached to his temporary residence – the obligation to stay within the territory of a certain city. The Court found that he could thus not rely on Article 2 of Protocol No. 4.

III. Substantive and procedural aspects of cases concerning expulsion, extradition and related scenarios

Article 2 of the Convention

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 6 of the Convention

"1. In the determination of his civil rights and obligations or of any criminal charge against him, ... "

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 13 of the Convention

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 4 of Protocol No. 4 of the Convention

"Collective expulsion of aliens is prohibited."

Article 1 of Protocol No. 6 of the Convention

"The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 1 of Protocol No. 7 of the Convention

"1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

(a) to submit reasons against his expulsion,

(b) to have his case reviewed, and

(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

Article 1 of Protocol No. 13 of the Convention

"The death penalty shall be abolished. No one shall be condemned to such penalty or executed."

A. Articles 2 and 3 of the Convention

1. Scope and substantive aspects of the Court's assessment under Articles 2 and 3 in asylum-related removal cases

27. The right to political asylum is not contained in either the Convention or its Protocols and the Court does not itself examine the actual asylum application or verify how the States honour their obligations under the 1951 Geneva Convention or European Union law (*F.G. v. Sweden* [GC], § 117; *Sufi and Elmi v. the United Kingdom*, §§ 212 and 226). However, the expulsion of an alien by a Contracting State may give rise to an issue under Articles 2 and 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. In these circumstances, Articles 2 and 3 imply an obligation not to deport the person in question to that country (*F.G. v. Sweden*, §§ 110-111). Removal cases concerning Article 2 – notably in respect of the risk of the applicant being subjected to the death penalty – typically also raise issues under Article 3 (see paragraph 44 below): because the relevant principles are the same for Article 2 and Article 3 assessments in removal cases, the Court either finds the issues under both Articles indissociable and examines them together (see *F.G. v. Sweden* ([GC], § 110; *L.M. and Others v. Russia*, § 108) or deals with the Article 2 complaint in the context of the related main complaint under Article 3 (see *J.H. v. United Kingdom*, § 37).

28. The Court has adjudicated a vast number of cases in which it had to assess whether substantial grounds had been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. It consolidated, to a large extent, the relevant principles in two Grand Chamber judgments *F.G. v. Sweden* ([GC], §§ 110-127) and *J.K. and Others v. Sweden* ([GC], §§ 77-105), notably as regards the risk assessment (including as regards a general situation of violence, particular circumstances of the applicant such as membership of a targeted group and other individual risk factors - which may give raise a real risk when considered separately or when taken cumulatively -, risk of ill-treatment by private groups, the reliance on the existence of an internal flight alternative, the assessment of country of origin reports, the distribution of the burden of proof, past ill-treatment as an indication of risk, and sur place activities), the nature of the Court's inquiry and the principle of *ex nunc*

evaluation of the circumstances where the applicant has not already been deported (for scenarios in which the person has already been deported, see *X v. Switzerland*; and *A.S. v. France*).

29. As regards the procedural obligations on the part of the authorities, the Court clarified in *F.G. v. Sweden* (§ 127) that, considering the absolute nature of the rights guaranteed under Articles 2 and 3 of the Convention, and having regard to the vulnerable position that asylum-seekers often find themselves in, if a Contracting State is made aware of facts, relating to a specific individual, that could expose him to a risk of ill-treatment in breach of the said provisions upon returning to the country in question, the obligations under Articles 2 and 3 of the Convention entail that the authorities carry out an assessment of that risk of their own motion. As regards the distribution of the burden of proof, the Court clarified in *J.K. and Others v. Sweden* ([GC], §§ 91 et seq.) that it is the shared duty of an asylum-seeker and the immigration authorities to ascertain and evaluate all relevant facts in asylum proceedings. On the one hand, the burden remains on asylum-seekers as regards their own personal circumstances, although the Court recognised that it was important to take into account all of the difficulties which an asylum-seeker may encounter in collecting evidence. On the other hand, the general situation in another State, including the ability of its public authorities to provide protection, had to be established *proprio motu* by the competent domestic immigration authorities. As to the significance of established past ill-treatment contrary to Article 3 in the receiving State, the Court considered that established past ill-treatment contrary to Article 3 would provide a strong indication of a future, real risk of ill-treatment, although the Court conditioned that principle on the applicant having made a generally coherent and credible account of events that is consistent with information from reliable and objective sources about the general situation in the country at issue. In such circumstances, the burden shifted to the Government to dispel any doubts about that risk.

30. The Court has developed ample case-law in respect of all of the above-mentioned principles. By way of example, in respect of the weight attributed to country material see *Sufi and Elmi v. the United Kingdom* (§§ 230-234); in respect of the assessment of an applicant's credibility see *N. v. Finland*; *A.F. v. France*, and *M.O. v. Switzerland*; and in respect of the domestic authorities' obligation to assess the relevance, authenticity and probative value of documents put forward by an applicant – from the outset or later on – which relate to the core of their protection claims see *M.D. and M.A. v. Belgium*; *Singh and Others v. Belgium*, and *M.A. v. Switzerland*. Again by way of example, see *Sufi and Elmi v. the United Kingdom* where the Court determined the situation in the country of destination to be such that the removal would breach Article 3, having regard to the situation of general violence in Mogadishu and the lack of safe access to, and the dire conditions in, IDP camps; see *Salah Sheekh v. the Netherlands* as regards a risk assessment in respect of an applicant who belonged to a group which is systematically at risk; and with regard to various forms and scenarios of gender-related persecution, such as widespread sexual violence (*M.M.R. v. the Netherlands* (dec.)), the alleged lack of a male support network (*R.H. v. Sweden*), ill-treatment of a separated woman (*N. v. Sweden*), ill-treatment inflicted by family members in view of a relationship (*R.D. v. France*, §§ 36-45), honour killings and forced marriage (*A.A. and Others v. Sweden*), and female genital mutilation (*R.B.A.B. v. the Netherlands*; *Sow v. Belgium*). As regards forced prostitution and/or return to a human trafficking network see *L.O. v. France* (dec.). In *V.F. v. France* (dec.), the Court assessed the risk under Article 4, while leaving open the extraterritorial applicability of that Article: in this latter respect, the case of *M.O. v. Switzerland* concerned the risk of forced labour upon removal and the Article 4 complaint was inadmissible due to non-exhaustion of domestic remedies.

31. Where the risk of ill-treatment emanates from a person's sexual orientation, he or she may not be asked to conceal it in order to avoid ill-treatment, as it concerns a fundamental aspect of a person's identity (*I.K. v. Switzerland* (dec.)). Similar questions may arise in respect of a person's religious beliefs (see *A. v. Switzerland*).

2. Removal to a third country

32. While the majority of removal cases examined by the Court under Articles 2 or 3 concern removals to the country from which the applicant has fled, such cases may also arise in connection with the applicant's removal to a third country. In *Ilias and Ahmed v. Hungary* [GC] the Court observed that where a Contracting State sought to remove an asylum seeker to a third country without examining the asylum request on the merits, the State's duty not to expose the individual to a real risk of treatment contrary to Article 3 was discharged in a manner different from that in cases of return to the country of origin. In the former situation, the main issue was the adequacy of the asylum procedure in the receiving third country. While a State removing asylum seekers to a third country may legitimately chose not to deal with the merits of the asylum requests, it cannot therefore be known whether those persons risk treatment contrary to Article 3 in the country of origin or are simply economic migrants not in need of protection. It is the duty of the removing State to examine thoroughly whether or not there is a real risk of the asylum seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against *refoulement*, namely, against being removed, directly or indirectly, to his or her country of origin without a proper evaluation of the risks he or she faces from the standpoint of Article 3. If it is established that the existing guarantees in this regard are insufficient, Article 3 gives rise to a duty not to remove the asylum seekers to the third country concerned. To determine whether the removing State has fulfilled its procedural obligation to assess the asylum procedures of a receiving third State, it has to be examined whether the authorities of the removing State had taken into account the available general information about the receiving third country and its asylum system in an adequate manner and of their own initiative; and whether an applicant had been given a sufficient opportunity to demonstrate that the receiving State was not a safe third country in their particular case. In applying this test, the Court indicated that any presumption that a particular country is "safe", if it has been relied upon in decisions concerning an individual asylum seeker, must be sufficiently supported at the outset by the above analysis. Importantly, the Court specified that it is not its task to assess whether there was an arguable claim about Article 3 risks in their country of origin, this question only being relevant where the expelling State had dealt with these risks.

33. The removal of asylum seekers to a third country may furthermore be in breach of Article 3, because of inadequate reception conditions in the receiving State (*M.S.S. v. Belgium and Greece* [GC], §§ 362-368) or because they would not be guaranteed access to reception facilities adapted to their specific vulnerabilities, which may require that the removing State obtains assurances from the receiving State to that end (see *Tarakhel v. Switzerland* [GC]; *Ali and Others v. Switzerland and Italy* (dec.); *Ojei v. the Netherlands* (dec.)).

3. Procedural aspects

34. Where the individual has an "arguable complaint" that his removal would expose him to treatment contrary to Article 2 or 3 of the Convention, he must have an effective remedy, in practice as well as in law, at the domestic level in accordance with Article 13 of the Convention, which imperatively requires, inter alia, independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Articles 2 or 3 and automatic suspensive effect (*M.S.S. v. Belgium and Greece* [GC], §§ 288 and 291: for an overview of the Court's case-law as to the requirements under Article 13 taken in conjunction with Articles 2 or 3 in removal cases, see, in particular, *ibid.*, §§ 286-322; *Abdolkhani and Karimnia v. Turkey*, §§ 107-117; *Gebremedhin [Gaberamadhien] v. France*, §§ 53-67; *I.M. v. France; Chahal v. the United Kingdom* [GC], §§ 147-154; *Shamayev and Others v. Georgia and Russia*, § 460). The same principles apply when considering the question of effectiveness of remedies which have to be exhausted for the purposes of Article 35 § 1 of the Convention in asylum cases (*A.M. v. the Netherlands*, §§ 65-69; see also *M.K. and Others v. Poland*, §§ 142-148 and 212-220, in respect of an immediate removal at a border crossing point). In respect of asylum-seekers the Court has found, in particular, that

individuals need to have adequate information about the asylum procedure to be followed and their entitlements in a language they understand, and have access to a reliable communication system with the authorities: the Court also has regard to the availability of interpreters, whether the interviews are conducted by trained staff, whether asylum-seekers have access to legal aid, and requires that asylum-seekers be given the reasons for the decision (see *M.S.S. v. Belgium and Greece* [GC], §§ 300-302, 304, and 306-310; see also *Abdolkhani and Karimnia v. Turkey*; and *Hirsi Jamaa and Others v. Italy* [GC], § 204).

35. Article 6 of the Convention is not applicable *ratione materiae* to asylum, deportation and related proceedings (*Maaouia v. France* [GC], §§ 38-40; *Onyejiekwe v. Austria* (dec.), § 34; see *Panjeheighalehei v. Denmark* (dec.) concerning an action in damages by an asylum-seeker on account of the refusal to grant asylum).

36. The failure to examine an asylum application in reasonable time may breach Article 8 (see *B.A.C. v. Greece*) and the adequate nature of a remedy under Article 13 can be undermined by its excessive duration (*M.S.S. v. Belgium and Greece* [GC], § 292). On the other hand, a speedy processing of an applicant's asylum claim should not take priority over the effectiveness of the essential procedural guarantees to protect him or her against arbitrary removal. An unreasonably short time-limit to submit a claim, such as in the context of accelerated asylum procedures, and/or to appeal a subsequent removal decision can render a remedy practically ineffective, contrary to the requirements of Article 13 taken together with Article 3 of the Convention (see *I.M. v. France*, where a five-day limit for lodging an initial asylum application and a 48-hour time-limit for an appeal were found to violate these provisions; see also the overview on accelerated asylum procedures in *R.D. v. France*, §§ 55-64).

37. Where there is no "arguable complaint" that a removal would expose an individual to a real risk of treatment contrary to Articles 2 or 3 of the Convention, the remedy required by Article 13 of the Convention in conjunction with Article 8 of the Convention and/or Article 4 of Protocol No. 4 does not have to have automatic suspensive effect (*Khlaifia and Others v. Italy* [GC], §§ 276-281; *De Souza Ribeiro v. France* [GC], §§ 82-83). However, there is a breach of Article 13 taken in conjunction with Article 8 if the time between the ordering of a the removal and its implementation is so short to preclude any possibility for an action to be meaningfully brought before a court, still less for that court to properly examine the circumstances and legal arguments under the Convention (*De Souza Ribeiro v. France* [GC], §§ 86-100; *Moustahi v. France**, §§ 156-164, the latter also in conjunction with Article 4 of Protocol No. 4). In respect of the requirements under Article 13 taken in conjunction with Article 4 of Protocol No. 4, see also *Hirsi Jamaa and Others v. Italy* [GC]*; Sharifi and Others v. Italy and Greece*; and *Čonka v. Belgium*.

4. Cases relating to national security

38. The Court has often dealt with cases concerning the removal of individuals deemed to be a threat to national security (see, for example, *A.M. v. France*). It has repeatedly held that Article 3 is absolute and that it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (*Saadi v. Italy* [GC], §§ 125 and 138; *Othman (Abu Qatada) v. the United Kingdom*, §§ 183-185). The Court cannot rely on the findings of the domestic authorities if they did not have all essential information before them – for example for reasons of national security – when rendering the expulsion decisions (see *X v. Sweden*).

5. Extradition

39. Extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country (*Soering v. the United Kingdom*, §§ 88-91).

The question of whether there is a real risk of ill-treatment contrary to Article 3 in another State cannot depend on the legal basis for removal to that State, as there may be little difference between extradition and other removals in practice (*Babar Ahmad and Others v. the United Kingdom*, §§ 168 and 176; *Trabelsi v. Belgium*, § 116). For example, extradition requests may be withdrawn and the Contracting State may nonetheless decide to proceed with removal from its territory on other grounds; or a State may decide to remove someone who faces criminal proceedings (or has already been convicted) in another State in the absence of an extradition request; and there may be cases where someone has fled a State because he or she fears the implementation of a particular sentence that has already been passed upon him or her and is to be returned to that State, not under any extradition arrangement, but as a failed asylum seeker (see *Babar Ahmad and Others v. the United Kingdom*, § 168, with further references). There may also be cases where a State grants an extradition request in which the individual, who has applied for asylum, is charged with politically motivated crimes (see *Mamazhonov v. Russia*) or where extradition concerns an individual recognised as a refugee in another country (*M.G. v. Bulgaria*).

40. Articles 2 and 3 of the Convention as well as Article 1 of Protocol No. 6 or Article 1 of Protocol No. 13 (see paragraph 44 below) prohibit the extradition, deportation or other transfer of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (*Al-Saadoon and Mufdhi v. the United Kingdom*, §§ 123 and 140-143; *A.L. (X.W.) v. Russia*, §§ 63-66; *Shamayev and Others v. Georgia and Russia*, § 333). It may similarly breach Article 3 to extradite or transfer an individual to a State where he faces a whole life sentence without a de facto or de jure possibility of release (see *Babar Ahmad and Others and Others v. the United Kingdom* and *Trabelsi v. Belgium*; see also *Murray v. the Netherlands* [GC], and *Hutchinson v. the United Kingdom* [GC], in respect of whole life sentences and Article 3). Ill-treatment contrary to Article 3 in the requesting State may take various forms, including poor conditions of and ill-treatment inflicted in detention (see *Allanazarova v. Russia*) or conditions of detention that are inadequate for the specific vulnerabilities of the individual concerned (*Aswat v. the United Kingdom*, concerning the extradition of a mentally-ill individual).

41. The criteria examined by the Court in respect of diplomatic assurances are set out in *Othman (Abu Qatada) v. the United Kingdom* (§§ 186-189).

42. Article 6 of the Convention is not applicable *ratione materiae* to extradition proceedings (*Mamatkulov and Askarov v. Turkey* [GC], §§ 81-83).

6. Expulsion of seriously ill persons

43. The Court summarised and clarified the relevant principles as to when humanitarian considerations will or will not outweigh other interests when considering the expulsion of seriously ill individuals in *Paposhvili v. Belgium* [GC]. The applicant, a Georgian national, faced deportation and a ban on re-entering Belgium for 10 years on public interest grounds (criminal convictions). Whilst in prison, he was diagnosed and treated for serious illnesses (chronic lymphocytic leukaemia, hepatitis C and tuberculosis). Other than the imminent death situation in *D. v. the United Kingdom*, the later *N. v. the United Kingdom* [GC] judgment referred to “other very exceptional cases” which could give rise to an issue under Article 3 in such contexts. In *Paposhvili v. Belgium*, the Grand Chamber indicated how “other very exceptional cases” was to be understood, referring to “situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy” (*ibid.*, § 183). The Grand Chamber also clarified that that obligation to protect was to be fulfilled primarily through appropriate domestic procedures reflecting, in particular, the following elements (*ibid.*, §§ 185-193):

the applicants should adduce evidence "capable of demonstrating that there are substantial grounds for believing" that they would be exposed to a real risk of treatment contrary to Article 3, noting that a certain degree of speculation was inherent in the preventive purpose of Article 3 and that applicants were not required to provide clear proof of their claim. Where such evidence was adduced, it was for the authorities of the returning State to dispel any doubts raised by it. The impact of removal on the persons concerned was to be assessed by comparing his or her state of health prior to removal and how it would evolve after removal. In this respect, the State had to consider inter alia (a) whether the care generally available in the receiving State "is sufficient and appropriate in practice for the treatment of the applicant's illness so as to prevent him or her being exposed to treatment contrary to Article 3", the Grand Chamber specifying that the benchmark is not the level of care existing in the returning State; and (b) the extent to which the individual would actually have access to such care in the receiving State (the associated costs, the existence of a social and family network, and the distance to be travelled to access the required care, all being relevant in this respect). If "serious doubts" persisted as to the impact of removal on the person concerned, the authorities had to obtain "individual and sufficient assurances" from the receiving State, as a precondition to removal, that appropriate treatment will be available and accessible to the person concerned. The proposed deportation of a person suffering from serious illness to his country of origin in the face of doubts as to the availability of appropriate medical treatment may also breach Article 8 (*ibid.*, §§ 221-226).

B. The death penalty: Article 1 of Protocol No. 6 and Article 1 of Protocol No. 13

44. Protocols No. 6 and 13 to the Convention, which have been ratified by almost all member States of the Council of Europe, contributed to the interpretation of Article 2 of the Convention as prohibiting the death penalty in all circumstances so that there is no longer any bar to considering the death penalty – which caused not only physical pain but also intense psychological suffering as a result of the foreknowledge of death – as inhuman and degrading treatment or punishment within the meaning of Article 3 (see *Al-Saadoon and Mufdhi v. the United Kingdom*, §§ 115 et seq.). At the same time, the Court has found that Article 1 of Protocol No. 13 prohibits the extradition or deportation of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (*ibid.*, § 123). Yet, in *Al-Saadoon and Mufdhi v. the United Kingdom*, which concerned the handover by the authorities of the United Kingdom operating in Iraq of Iraqi civilians to the Iraqi criminal administration under circumstances where the civilians faced capital charges, the Court, after finding a breach of Article 3, did not consider it necessary to examine whether there had also been violations of the applicants' rights under Article 2 of the Convention and Article 1 of Protocol No. 13 (*ibid.*, §§ 144-145). In *Al Nashiri v. Poland*, which concerned the extraordinary rendition to the US naval base in Guantanamo of a suspected terrorist facing the death penalty, the Court found that at the time of the applicant's transfer from Poland there was a substantial and foreseeable risk that he could be subjected to the death penalty following his trial before a military commission, in breach of Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6 (*ibid.*, §§ 576-579).

C. Flagrant denial of justice: Articles 5 and 6

45. Where a person risks suffering a flagrant breach of Articles 5 or 6 of the Convention in the country of destination, these provisions may exceptionally constitute barriers to the person's expulsion, extradition or other form of transfer. Although the Court has not yet been required to define the term "flagrant denial of justice" more precisely, it has indicated that certain forms of unfairness could amount to such treatment (see the overview in *Harkins v. the United Kingdom* (dec.) [GC], §§ 62-65): conviction in absentia with no subsequent possibility of a fresh determination

of the merits of the charge; a trial which is summary in nature and conducted with a total disregard for the rights of the defence; detention without any access to an independent and impartial tribunal to have the legality of the detention reviewed; a deliberate and systematic refusal of access to a lawyer, especially for an individual detained in a foreign country; and the use in criminal proceedings of statements obtained as a result of torture of the accused or a third person in breach of Article 3.

D. Article 8

1. Expulsion

46. In respect of the expulsion of foreigners, who were unlawfully present in the territory of the respondent State and could thus not be considered "settled migrants", see *Butt v. Norway*. As regards the expulsion of "settled migrants", that is, persons who have already been granted formally a right of residence in a host country and where such right is subsequently withdrawn, for instance because the person concerned has been convicted of a criminal offence, the Court has set out the relevant criteria to assess compatibility with Article 8 of the Convention in *Üner v. the Netherlands* [GC] (§§ 54-60): the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the country from which he or she is to be expelled; the time elapsed since the offence was committed and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of a marriage, and other factors expressing the effectiveness of a couple's family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; whether there are children from the marriage and, if so, their age; the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled; the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination.

47. The Court has applied these criteria in numerous cases since *Üner v. the Netherlands* [GC], although the weight to be attached to each criterion will vary according to the specific circumstances of the case (*Maslov v. Austria* [GC], § 70). By way of example, it has, inter alia, found that the fact that an adult "alien" had been born and had lived all his life in the respondent State from which he was to be expelled did not bar his expulsion (*Kaya v. Germany*, § 64). However, very serious reasons are required to justify expulsion in cases concerning settled migrants, who have lawfully spent all or the major part of their childhood and youth in the host country (*Levakovic v. Denmark*, § 45). In respect of expulsions of young adults who had been convicted of criminal offences committed as a juvenile, see *Maslov v. Austria* [GC], and *A.A. v. the United Kingdom*. Where there is a significant lapse of time between the denial of the residence permit – or the final decision on the expulsion order – and the actual deportation, the developments during that period of time may be taken into account (*Ejimson v. Germany*, § 61). In *Hasanbasic v. Switzerland*, the Court dealt with a scenario where the refusal of a residence permit and the expulsion order primarily related to the economic well-being of the country, rather than the prevention of disorder and crime. In recent cases concerning expulsion of "settled migrants" and Article 8, the Court emphasised that, where the domestic courts have carefully examined the facts, applying the Convention case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities, except where there are strong reasons for doing so (*Ndidi v. the United Kingdom*, § 76; *Levakovic v. Denmark*). By contrast, where the domestic courts do not adequately motivate their decisions and examine the proportionality of the expulsion order in a superficial manner, preventing the Court from exercising its subsidiary role, an expulsion based on such decision would breach Article 8 (*I.M. v. Switzerland*). This also holds true where the domestic courts

do not take all relevant facts into consideration, such as an applicant's paternity of a child in the respondent State (*Makdoudi v. Belgium*). In respect of a revocation of a residence permit on the basis of undisclosed information and the existence of sufficient procedural guarantees in the specific context of national security, see *Gaspar v. Russia*.

2. Residence permits and possibility to regularise one's legal status

48. In addition to the scenarios concerning access to the territory for the purposes of family reunification (see paragraphs 6-9 above), the Court has examined cases under Article 8 concerning the denial of – and whether there was a positive obligation to grant – a residence permit to individuals already present in the territory of the respondent State (see *Jeunesse v. the Netherlands* [GC]; *Rodrigues da Silva and Hoogkamer v. the Netherlands*; see also *Ejimson v. Germany*, in respect of a person who had been convicted of criminal offences). The Court also examined, in connection with administrative charges to be paid as a precondition for the processing of the request for a residence permit, whether a foreigner had effective access to the administrative procedure by which he might, subject to fulfilling the conditions prescribed by domestic law, obtain a residence permit which would allow him to reside lawfully in the respondent State (*G.R. v. the Netherlands*). As regards the protection of a migrant's private-life interests in so far as they are affected by the uncertainty of his status and stay in a foreign country, see *Abuhmaid v. Ukraine* (see also *B.A.C. v. Greece* in respect of an asylum-seeker). In *Hoti v. Croatia* and in *Sudita Keita v. Hungary*, the Court found breaches of Article 8 because of the protracted difficulties for the applicants, stateless persons, to regularise their legal and residence status and the corresponding adverse effects on their private life. Determining an application for a residence permit based on an applicant's health status is discriminatory and breaches Article 14 taken in conjunction with Article 8 (*Kiyutin v. Russia*; *Novruk and Others v. Russia*, concerning the denial of residence permits because the applicants were HIV-positive).

3. Nationality

49. Article 8 does not guarantee a right to acquire a particular nationality or citizenship, but an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (*Slivenko and Others v. Latvia* (dec.) [GC], § 77; *Genovese v. Malta*, § 30). The same holds true for the revocation of citizenship already obtained, with the test requiring an assessment of whether the revocation was arbitrary and of the consequences of revocation were for the applicant (see *Ramadan v. Malta*, § 85, with regard to a person who nonetheless remained in the respondent country; and *K2 v. the United Kingdom* (dec.), who was, while abroad, deprived of citizenship and excluded from the territory of the respondent State because he was considered to be a threat to national security). The relevant principles also apply to the seizure of, and refusal to exchange, passports (*Alpeyeva and Dzhalagoniya v. Russia*, concerning the practice of invalidating passports issued to former Soviet Union Nationals).

50. The right to hold a passport and the right to nationality are not civil rights for the purposes of Article 6 of the Convention (*Sergey Smirnov v. Russia* (dec.)).

E. Article 1 of Protocol No. 7

51. In the event of expulsion, aliens lawfully resident in the territory of a State which has ratified Protocol No. 7 also benefit from the specific guarantees provided in its Article 1 (see *C.G. and Others v. Bulgaria*, § 70). The provision is applicable even if the decision ordering the applicant to leave has not been enforced to-date and requires the authorities to provide grounds for the expulsion, including in national security cases, in order for the applicant to make use of its guarantees (see *Ljatifi v. the former Yugoslav Republic of Macedonia*).

F. Article 4 of Protocol No. 4

52. Apart from push backs at sea or removals at or near borders described above (see paragraphs 12-15 above), the Court has dealt with collective expulsions of aliens who had been present in the territory of the respondent State (asylum-seekers in *Čonka v. Belgium* and *Sultani v. France*; migrants in *Georgia v. Russia (I)* [GC], § 170), irrespective of whether they were lawfully resident in the respondent State or not. In *Čonka v. Belgium* and *Georgia v. Russia (I)* [GC], in which the Court found violations of Article 4 of Protocol No. 4, the individuals targeted for expulsion in each case had the same origin (Roma families from Slovakia in the former and Georgian nationals in the latter).

IV. Prior to the removal and the removal itself

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Rule 39 of the Rules of Court

1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.

2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.

3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.

4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures.

A. Restrictions of freedom of movement and detention for purposes of removal

53. Once a foreigner has been served with a final expulsion order, his presence is no longer "lawful" and he cannot rely on the right to freedom of movement as guaranteed by Article 2 of Protocol No. 4 (*Piermont v. France*, § 44).

54. Under the second limb of Article 5 § 1(f), States are entitled to keep an individual in detention for the purpose of his deportation or extradition. To avoid being branded as arbitrary, detention under Article 5 § 1(f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (*A. and Others v. the United Kingdom* [GC], § 164). The detention does not have to be reasonably considered necessary, for example to prevent the individual from committing an offence or fleeing, but it will be justified only for as long as the deportation or extradition proceedings are in progress (*ibid.*). If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1(f) (*ibid.*). It is immaterial under Article 5 § 1(f) whether the underlying decision to expel can be justified under national or Convention law (*M and Others v. Bulgaria*, § 63). However, as asylum-seekers cannot be deported prior to a determination of their asylum application, in a number of cases the Court found there to be neither a close connection between the detention of an applicant who had lodged an asylum application which had not yet been determined and the possibility of deporting him, nor good faith on the part of the national authorities (*R.U. v. Greece*, §§ 94-95; see also *Longa Yonkeu v. Latvia*, § 143; and *Čonka v. Belgium*, § 42, for examples of bad faith). Detention for the purposes of extradition may be arbitrary from the outset due to the person's refugee status prohibiting extradition (*Eminbeyli v. Russia*, § 48; see also *Dubovik v. Ukraine*, where the applicant applied for and was granted refugee status after being placed in detention for purposes of extradition). Where an alien cannot be removed for the time being, for example because the removal would breach Article 3, a policy of keeping an individual's possible deportation "under active review" is not sufficiently certain or determinate to amount to "action being taken with a view to deportation" (*A. and Others v. the United Kingdom* [GC], §§ 166-167), including in national security cases (*ibid.*, §§ 162-190; see also *Al Husin v. Bosnia and Herzegovina (no. 2)*, where the Court found that the ground for the applicant's detention did not remain valid after it had become clear that no safe third country would admit the applicant; for a case where the Court found the detention of a migrant who was considered a security threat to have been in conformity with Article 5 § 1(f), see *K.G. v. Belgium*).

55. States must make an active effort to organise a removal and take concrete steps and provide evidence of efforts made to secure admission in order to comply with the due diligence requirement, for example where the authorities of a receiving state are particularly slow to identify their own nationals (see, for example, *Singh v. the Czech Republic*) or where there are difficulties in connection with identity papers (*M and Others v. Bulgaria*). For the detention to be compliant with the second limb of Article 5 § 1(f), there must be a realistic prospect that the deportation or extradition will be carried out; the detention cannot be said to be effected with a view to the alien's deportation if the deportation is, or becomes, unfeasible because the alien's cooperation is required and he is unwilling to provide it (see *Mikolenko v. Estonia*, in which the Court also considered that the authorities had at their disposal measures other than the applicant's protracted detention in the deportation centre in the absence of any immediate prospect of his expulsion; see also *Louled Massoud v. Malta*, §§ 48-74; *Kim v. Russia* and *Al Husin v. Bosnia and Herzegovina (no. 2)*). However, the Court found that it amounted to an abuse of the right of application where an applicant had claimed to be of another nationality and refused to cooperate in order to clarify his identity, while the authorities intending to remove him were in contact over a lengthy period with their counterparts in the alleged country of nationality, and also tried to deceive the Court as to his nationality (see *Bencheref v. Sweden* (dec.)). There may also be no realistic prospect of deportation in the light of the situation in the country of destination (*S.Z. v. Greece*, where the applicant's Syrian nationality was established when he submitted his passport and the worsening armed conflict in Syria was well-known).

56. The indication of an interim measure by the Court under Rule 39 of the Rules of Court (see paragraph 620 below) does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subject complies with Article 5 § 1 of the Convention (*Gebremedhin [Gaberamadhien] v. France*, § 74). Where the respondent States refrained from deporting applicants in compliance with the interim measure indicated by the Court, the Court was, in a number of cases, prepared to accept that deportation or extradition proceedings were temporarily suspended but nevertheless were "in progress", and that therefore no violation of Article 5 § 1(f) had occurred (see *Azimov v. Russia*, § 170). At the same time, the suspension of the domestic proceedings due to the indication of an interim measure by the Court should not result in a situation where the applicant languishes in prison for an unreasonably long period (*ibid.*, § 171). Article 5 § 1(f) does not contain maximum time-limits; the question whether the length of deportation proceedings could affect the lawfulness of detention under this provision thus depends solely on the particular circumstances of each case (*Auad v. Bulgaria*, § 128, and *J.N. v. the United Kingdom*). The Court has also held that automatic judicial review of immigration detention is not an essential requirement of Article 5 § 1 of the Convention (*J.N. v. the United Kingdom*, § 96). Where the authorities make efforts to organise removal to a third country in view of an interim measure indicated by the Court, detention may fall within the scope of Article 5 § 1(f) (*M and Others v. Bulgaria*, § 73).

57. As regards the detention of persons with specific vulnerabilities, the same considerations apply under the second limb of Article 5 § 1(f) as apply under the provision's first limb (see paragraph 19 above, and, by way of example, *Rahimi v. Greece* and *Yoh-Ekale Mwanje v. Belgium*). As regards medical treatment during a hunger strike in detention pending deportation, see *Ceesay v. Austria*.

58. As regards the procedural safeguards under Article 5 §§ 2 and 4, see paragraphs 20-22 above. There are, however, a number of cases relating specifically to the shortcomings of domestic law as regards the effectiveness of judicial review of detention pending expulsion and the requirements of Article 5 § 4 (see, for example, *S.D. v. Greece*, §§ 68-77; *Louled Massoud v. Malta*, §§ 29-47; and *A.B. and Others v. France*, §§ 126-138).

B. Assistance to be provided to persons due to be removed

59. As regards the existence and scope of a positive obligation under Article 3 to provide medical, social assistance or other forms of assistance to aliens due to be removed, see *Hunde v. the Netherlands* (dec.), and *Shioshvili and Others v. Russia* (concerning a heavily pregnant applicant and her young children, whose stay in connection with the removal was caused by the authorities).

C. The forced removal itself

60. The fact that a person whose expulsion has been ordered has threatened to commit suicide does not require the State to refrain from enforcing the envisaged measure, provided that concrete measures are taken to prevent those threats from being realised, including in respect of applicants who had a record of previous suicide attempts (see *Al-Zawatia v. Sweden* (dec.), § 57). Where there are doubts as to the alien's medical fitness to travel, the authorities have to ensure that appropriate measures are taken with regard to the alien's particular needs (*ibid.*, § 58). In *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (§§ 64-71) the Court found a breach of Article 3 in respect of the manner in which a five-year old unaccompanied child was removed to the country of origin, without having ensured that the child would be looked after there. Situations of ill-treatment by public officials during the deportation process may breach Article 3 (see *Thuo v. Cyprus*, where the Court found no violation of the substantive limb of Article 3 on account of the alleged ill-treatment, but a violation of the provision's procedural limb due to the authorities' failure to investigate effectively the applicant's complaints about his alleged ill‑treatment during the deportation process). Furthermore, breaches of confidentiality in the removal process - which in themselves may raise an issue under Article 8 - may lead to a risk of ill-treatment contrary to Article 3 upon return (see *X v. Sweden*, where the Swedish authorities informed their Moroccan counterparts that the applicant was a terrorist suspect).

D. Agreement to "assisted voluntary return" in Article 2 and 3 removal cases

61. In *N.A. v. Finland* the Court dealt with a situation where the applicant´s father had agreed to a so-called "assisted voluntary return" to the country of origin after his asylum request had been rejected. He left when the removal order was enforceable and was subsequently killed in the country of origin. The Court saw no reason to doubt that the applicant´s father would not have returned there under the scheme of "assisted voluntary return" had it not been for the enforceable removal order issued against him. Consequently, his departure had not been "voluntary" in terms of his free choice. The facts complained of were thus not incapable of engaging the respondent State's jurisdiction under Article 1 of the Convention (§§ 53-57). Moreover, the absence of a genuinely free choice rendered invalid the supposed waiver of his rights under Article 2 and 3 by the applicant´s father, and the removal thus had to be considered as a forced return engaging the responsibility of the respondent State (§§ 58-60).

E. Rule 39 / Interim measures[1]

62. When the Court receives an application, it may indicate to the respondent State under Rule 39 of the Rules of Court certain interim measures which it considers should be adopted pending the Court's examination of the case. According to its well-established case-law and practice, the Court indicates interim measures only where there is a real and imminent risk of serious and irreparable

1. *Rule 39 / Interim measures*

harm. These measures most commonly consist of requesting a State to refrain from removing individuals to countries where it is alleged that they would face death or torture or other ill-treatment, and may include requesting the respondent State to receive and examine asylum applications of persons presenting themselves at a border checkpoint (*M.K. and Others v. Poland**, § 235.). In many cases, interim measures concern asylum-seekers or persons who are to be extradited whose claims have been finally rejected and who do not have any further appeal with suspensive effect at the domestic level at their disposal to prevent their removal or extradition (see paragraph 34 above). The Court has, however, also indicated interim measures in other kinds of immigration related cases, including with regard to the detention of children. Failure by the respondent State to comply with any Rule 39 measure indicated by the Court amounts to a breach of Article 34 of the Convention (see *Mamatkulov and Askarov v. Turkey* [GC], §§ 99-129; see also *Savriddin Dzhurayev v. Russia* and *M.A. v. France*).

V. Other case scenarios

Article 4 of the Convention

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 12 of the Convention

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

Article 14 of the Convention

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Economic and social rights

63. Other than in the context of reception conditions and assistance to be provided to persons due to be removed (see paragraphs 25 and 59 above), the Court has dealt with a number of cases concerning the economic and social rights of migrants, asylum-seekers and refugees, primarily under the angle of Article 14 in view of the fact that, where a Contracting State decides to provide social benefits, it must to do so in a way that is compliant with Article 14. In this respect, the Court found that a State may have legitimate reasons for curtailing the use of resource‑hungry public services - such as welfare programmes, public benefits and health care - by short‑term and illegal immigrants, who, as a rule, do not contribute to their funding and that it may also, in certain circumstances, justifiably differentiate between different categories of aliens residing in its territory (*Ponomaryovi v. Bulgaria*, § 54).

64. Differential treatment based on the immigration status of the child of an alien, whose application for refugee status had been rejected but who had been granted indefinite leave to

remain, in respect of allocating social housing may thus be justified (*Bah v. the United Kingdom*). In *Ponomaryovi v. Bulgaria*, the Court found that a requirement to pay secondary school fees based on the immigration status and nationality of the applicants was not justified. In *Bigaeva v. Greece*, the Court found that excluding foreigners from the law profession was, in itself, not discriminatory, but that there had been a breach of the applicant's right to respect for her private life in view of the incoherent approach by the authorities, which had permitted the applicant to commence an 18-month traineeship with a view to being admitted to the bar, but upon completion refused her to sit for the bar examinations on that ground that she was a foreigner. Other cases adjudicated by the Court concerned child benefits (*Niedzwiecki v. Germany*; *Weller v. Hungary*; *Saidoun v. Greece*), unemployment benefits (*Gaygusuz v. Austria*), disability benefits (*Koua Poirrez v. France*), contribution-based benefits, including pension (*Andrejeva v. Latvia* [GC]), and admission to a contribution-based social security scheme (*Luczak v. Poland*).

65. The Court also found that the requirement for persons subject to immigration control to submit an application for a certificate of approval before being permitted to marry in the United Kingdom breached Article 12 (*O'Donoghue and Others v. the United Kingdom*).

B. Trafficking in human beings

66. A number of cases, dealt with by the Court under Article 4 in the context of trafficking in human beings, concerned foreigners, in connection with domestic servitude (*Siliadin v. France*; *C.N. and v. v. France*; *C.N. v. the United Kingdom*), sexual exploitation (*Rantsev v. Cyprus and Russia*; *L.E. v. Greece; T.I. and Others v. Greece*), and work in agriculture (*Chowdury and Others v. Greece*).

C. Obligations to prevent harm and to carry out an effective investigation in other migrant-specific situations

67. As regards the procedural obligations under Article 3 when investigating a racist assault on a migrant, see *Sakir v. Greece.*

VI. Procedural aspects of applications before the Court

Article 37 of the Convention

"1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

A. Applicants in poor mental health

68. The case of *Tehrani and Others v. Turkey* concerned, *inter alia*, the removal of the applicants, Iranian nationals and ex-members of the PMOI recognised as refugees by UNHCR. After one of the applicants had written to the Court that he wished to withdraw his application, his representative informed the Court that he wished to pursue the application and that the applicant was in poor mental health and needed treatment. The Government stated that the applicant did not suffer from a psychotic illness but that further diagnosis could not be carried out due to his lack of co-operation. The Court noted that one of the applicant's allegations concerned the possible risk of death or ill-treatment and considered that striking the case out of its list would lift the protection afforded by the Court on a subject as important as the right to life and physical well-being of an individual, that there were doubts about the applicant's mental state and discrepancies of the medical reports, and concluded that respect for human rights as defined in the Convention and the Protocols thereto required the examination of the application to continue (§§ 56-57).

B. Starting point of the six-month period in Article 2 or 3 removal cases

69. While the date of the final domestic decision providing an effective remedy is normally the starting-point for the calculation of the six-month time-limit for which Article 35 § 1 of the Convention provides, the responsibility of a sending State under Article 2 or Article 3 of the Convention is, as a rule, incurred only when steps are taken to remove the individual from its territory. The date of the State's responsibility under Article 2 or 3 corresponds to the date when that six-month time-limit starts to run for the applicant. Consequently, if a decision ordering a removal has not been enforced and the individual remains on the territory of the State wishing to remove him or her, the six-month time-limit has not yet started to run (see *M.Y.H. and Others v. Sweden*, §§ 38-41). The same would apply to removals concerning a sending State's responsibility for an alleged risk of a flagrant denial of rights under Article 5 and 6 in the receiving State (see paragraph 45 above).

C. Absence of an imminent risk of removal

70. In removal cases, in which the applicant no longer faces any risk, at the moment or for a considerable time to come, of being expelled and in which he has the opportunity to challenge any new expulsion order before the national authorities and if necessary before the Court, the Court normally finds that it is no longer justified to continue to examine the application within the meaning of Article 37 § 1(c) of the Convention and strikes it out of its list of cases, unless there are special circumstances relating to respect for human rights as defined in the Convention and the Protocols thereto requiring the continued examination of the application (see *Khan v. Germany* [GC]). After the Court has struck an application out of its list of cases, it can at any time decide to restore it to the list if it considers that the circumstances justify such a course, in accordance with Article 37 § 2 of the Convention.

D. Standing to lodge an application on behalf of the applicant

71. In *G.J. v. Spain* (dec.), the Court found that a non-governmental organisation did not have standing to lodge an application on behalf of the applicant, an asylum-seeker, after his expulsion, as it had not presented a written authority to act as his representative, contrary to the requirements of Rule 36 § 1 of the Rules of Court. The case of *N. and M. v. Russia* (dec.) concerned the alleged disappearance of the applicants, two Uzbek nationals, whose extradition had been requested by the Uzbek authorities. The Court had indicated to the respondent Government, under Rule 39 of the Rules of Court, that they should not be removed to Uzbekistan or any other country for the duration of the proceedings before the Court. The Court later found that the lawyer who lodged the application to the Court on behalf of the applicants did not have standing to do so: the lawyer had not presented a specific authority to represent the applicants; there were no exceptional circumstances that would allow the lawyer to act in the name and on behalf of the applicants. There was no risk of the applicants being deprived of effective protection of their rights since they had close family members in Uzbekistan with whom they had been in regular contact and who, in turn, had been in contact with the lawyer after the applicants' alleged abduction: it was open to the applicants' immediate family to complain to the Court on their own behalf and there was no information that they had been unable to lodge applications with the Court.

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the former European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (*http://hudoc.echr.coe.int*) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, advisory opinions and legal summaries from the Case-Law Information Note), and of the former Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the 'Language versions' tab in the *HUDOC* database, a tab which can be found after you click on the case hyperlink.

—A—

A. and Others v. the United Kingdom [GC], no. 3455/05, ECHR 2009
A. v. Switzerland, no. 60342/16, 19 December 2017
A.A. v. the United Kingdom, no. 8000/08, 20 September 2011
A.A. and Others v. Sweden, no. 14499/09, 28 June 2012
A.B. and Others v. France, no. 11593/12, 12 July 2016
A.E.A. v. Greece, no. 39034/12, 15 March 2018
A.F. v. France, no. 80086/13, 15 January 2015
A.L. (X.W.) v. Russia, no. 44095/14, 29 October 2015
A.M. v. France, no. 56324/13, 12 July 2016
A.M. v. France, no. 12148/18, 29 April 2019
A.M. v. the Netherlands, no. 29094/09, 5 July 2016
A.S. v. France, no. 46240/15, 19 April 2018
Abdi Mahamud v. Malta, no. 56796/13, 3 May 2016
Abdolkhani and Karimnia v. Turkey, no. 30471/08, 22 September 2009
Abdulkhakov v. Russia, no. 14743/11, 2 October 2012
Abdullahi Elmi and Aweys Abubakar v. Malta, nos. 25794/13 and 28151/13, 22 November 2016
Aboya Boa Jean v. Malta, no. 62676/16, 2 April 2019
Abuhmaid v. Ukraine, no. 31183/13, 12 January 2017

—B—

—C—

—D—

—E—

Eminbeyli v. Russia, no. 42443/02, 26 February 2009

—F—

F.G. v. Sweden [GC], no. 43611/11, 23 March 2016

—G—

G.B. and Others v. Turkey, no. 4633/15, 17 October 2019
G.J. v. Spain (dec.), no. 59172/12, 21 June 2016
G.R. v. the Netherlands, no. 22251/07, 10 January 2012
Gaygusuz v. Austria, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV
Gaspar v. Russia, no. 23038/15, 12 June 2018
Gebremedhin [Gaberamadhien] v. France, no. 25389/05, ECHR 2007-II
Genovese v. Malta, no. 53124/09, 11 October 2011
Georgia v. Russia (I) [GC], no. 13255/07, ECHR 2014 (extracts)

—H—

HA.A. v. Greece, no. 58387/11, 21 April 2016
Harkins v. the United Kingdom (dec.) [GC], no. 71537/14, 15 June 2017
Hasanbasic v. Switzerland, no. 52166/09, 11 June 2013
Hirsi Jamaa and Others v. Italy [GC], no. 27765/09, ECHR 2012
Hode and Abdi v. the United Kingdom, no. 22341/09, 6 November 2012
Hoti v. Croatia, no. 63311/14, 26 April 2018
Hunde v. the Netherlands (dec.), no. 17931/16, 5 July 2016
Hutchinson v. the United Kingdom [GC], no. 57592/08, 17 January 2017

—I—

I.A.A. and Others v. the United Kingdom (dec.), no. 25960/13, 8 March 2016
I.K. v. Switzerland (dec.), no. 21417/17, 19 December 2017
I.M. v. France, no. 9152/09, 2 February 2012
I.M. v. Switzerland, no. 23887/16, 9 April 2019
Ilias and Ahmed v. Hungary [GC], no. 47287/15, 21 November 2019

—J—

J.H. v. the United Kingdom, no. 48839/09, 20 December 2011
J.K. and Others v. Sweden [GC], no. 59166/12, 23 August 2016
J.N. v. the United Kingdom, no. 37289/12, 19 May 2016
J.R. and Others v. Greece, no. 22696/16, 25 January 2018
Jeunesse v. the Netherlands [GC], no. 12738/10, 3 October 2014
Levakovic v. Denmark, no. 7841/14, 23 October 2018

—K—

K2 v. the United Kingdom (dec.), no. 42387/13, 7 February 2017
K.G. v. Belgium, no. 52548/15, 6 November 2018
Khan v. France, no. 12267/16, 28 February 2019
Khan v. Germany [GC], no. 38030/12, 21 September 2016
Kaya v. Germany, no. 31753/02, 28 June 2007
Kebe and Others v. Ukraine, no. 12552/12, 12 January 2017
Khlaifia and Others v. Italy [GC], no. 16483/12, 15 December 2016
Khudyakova v. Russia, no. 13476/04, 8 January 2009
Kim v. Russia, no. 44260/13, 17 July 2014
Kiyutin v. Russia, no. 2700/10, ECHR 2011
Koua Poirrez v. France, no. 40892/98, ECHR 2003-X

—L—

L.E. v. Greece, no. 71545/12, 21 January 2016
L.M. and Others v. Russia, nos. 40081/14 and 2 others, 15 October 2015
L.O. v. France (dec.), no. 4455/14, 26 May 2015
Ljatifi v. the former Yugoslav Republic of Macedonia, no. 19017/16, 17 May 2018
Longa Yonkeu v. Latvia, no. 57229/09, 15 November 2011
Louled Massoud v. Malta, no. 24340/08, 27 July 2010
Luczak v. Poland, no. 77782/01, 27 November 2007

—M—

M and Others v. Bulgaria, no. 41416/08, 26 July 2011
M.A. v. France, no. 9373/15, 1 February 2018
M.A. v. Switzerland, no. 52589/13, 18 November 2014
M.A. and Others v. Lithuania, no. 59793/17, 11 December 2018
M.D. v. France, no. 50376/13, 10 October 2019
M.D. and M.A. v. Belgium, no. 58689/12, 19 January 2016
M.G. v. Bulgaria, no. 59297/12, 25 March 2014
*M.K. and Others v. Poland**, nos. 40503/17 and 2 others, 23 July 2020
M.M. v. Bulgaria, no. 75832/13, 8 June 2017
M.M.R. v. the Netherlands (dec.), no. 64047/10, 24 May 2016
M.N. and Others v. Belgium [GC] (dec.), no. 3599/18, 5 May 2020
M.O. v. Switzerland, no. 41282/16, 20 June 2017
M.S.S. v. Belgium and Greece [GC], no. 30696/09, ECHR 2011
M.Y.H. and Others v. Sweden, no. 50859/10, 27 June 2013
Maaouia v. France [GC], no. 39652/98, ECHR 2000-X
Mahdid and Haddar v. Austria (dec.), no. 74762/01, ECHR 2005-XIII (extracts)
Mahmundi and Others v. Greece, no. 14902/10, 31 July 2012
Makdoudi v. Belgium, no. 12848/15, 18 February 2020
Mamatkulov and Askarov v. Turkey [GC], nos. 46827/99 and 46951/99, ECHR 2005-I
Mamazhonov v. Russia, no. 17239/13, 23 October 2014
Mathloom v. Greece, no. 48883/07, 24 April 2012
Maslov v. Austria [GC], no. 1638/03, ECHR 2008
Mikolenko v. Estonia, no. 10664/05, 8 October 2009
*Moustahi v. France**, no. 9347/14, 25 June 2020

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, no. 13178/03, ECHR 2006-XI
Mugenzi v. France, no. 52701/09, 10 July 2014
*Muhammad Saqawat v. Belgium**, no. 54962/18, 30 June 2020
Murray v. the Netherlands [GC], no. 10511/10, 26 April 2016

—N—

N. and M. v. Russia (dec.), nos. 39496/14 and 39727/14, 26 April 2016
N. v. Finland, no. 38885/02, 26 July 2005
N. v. Sweden, no. 23505/09, 20 July 2010
N. v. the United Kingdom [GC], no. 26565/05, ECHR 2008
N.A. v. Finland, no. 25244/18, 14 November 2019
N.D. and N.T. v. Spain [GC], nos. 8675/15 and 8697/15, 13 February 2020
*N.H. and Others v. France**, nos. 28820/13 and 2 others, 2 July 2020
N.T.P. and Others v. France, no. 68862/13, 24 May 2018
Nada v. Switzerland [GC], no. 10593/08, ECHR 2012
Nabil and Others v. Hungary, no. 62116/12, 22 September 2015
Ndidi v. the United Kingdom, no. 41215/14, 14 September2017
Niedzwiecki v. Germany, no. 58453/00, 25 October 2005
Nolan and K. v. Russia, no. 2512/04, 12 February 2009
Novruk and Others v. Russia, nos. 31039/11 and 4 others, 15 March 2016
Nowak v. Ukraine, no. 60846/10, 31 March 2011

—O—

O.M. v. Hungary, no. 9912/15, 5 July 2016
O'Donoghue and Others v. the United Kingdom, no. 34848/07, ECHR 2010 (extracts)
Ojei v. the Netherlands (dec.), no. 64724/10, 14 March 2017
Omwenyeke v. Germany (dec.), no. 44294/04, 20 November 2007
Onyejiekwe v. Austria (dec.), no. 20203/11, 9 October 2012
Othman (Abu Qatada) v. the United Kingdom, no. 8139/09, ECHR 2012 (extracts)

—P—

Panjeheighalehei v. Denmark (dec.), no. 11230/07, 13 October 2009
Paposhvili v. Belgium [GC], no. 41738/10, 13 December 2016
Piermont v. France, 27 April 1995, Series A no. 314
Ponomaryovi v. Bulgaria, no. 5335/05, ECHR 2011
Popov v. France, nos. 39472/07 and 39474/07, 19 January 2012

—R—

R.B.A.B. v. the Netherlands, no. 7211/06, 7 June 2016
R.D. v. France, no. 34648/14, 16 June 2016
R.H. v. Sweden, no. 4601/14, 10 September 2015
R.U. v. Greece, no. 2237/08, 7 June 2011
Rahimi v. Greece, no. 8687/08, 5 April 2011
Ramadan v. Malta, no. 76136/12, 21 June 2016

Rantsev v. Cyprus and Russia, no. 25965/04, ECHR 2010 (extracts)
Riad and Idiab v. Belgium, nos. 29787/03 and 29810/03, 24 January 2008
Rodrigues da Silva and Hoogkamer v. the Netherlands, no. 50435/99, ECHR 2006-I

—S—

S.F. and Others v. Bulgaria, no. 8138/16, 7 December 2017
S.Z. v. Greece, no. 66702/13, 21 June 2018
Saadi v. Italy [GC], no. 37201/06, ECHR 2008
Saadi v. the United Kingdom [GC], no. 13229/03, ECHR 2008
Saidoun v. Greece, no. 40083/07, 28 October 2010
Sakir v. Greece, no. 48475/09, 24 March 2016
Salah Sheekh v. the Netherlands, no. 1948/04, 11 January 2007
Savriddin Dzhurayev v. Russia, no. 71386/10, ECHR 2013 (extracts)
Schembri v. Malta (dec.), no. 66297/13, 19 September 2017
Sergey Smirnov v. Russia (dec.), no. 14085/04, 6 July 2006
S.D. v. Greece, no. 53541/07, 11 June 2009
Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia, no. 14165/16, 13 June 2019
Shamayev and Others v. Georgia and Russia, no. 36378/02, ECHR 2005-III
Sharifi and Others v. Italy and Greece, no. 16643/09, 21 October 2014
Shioshvili and Others v. Russia, no. 19356/07, 20 December 2016
Siliadin v. France, no. 73316/01, ECHR 2005-VII
Singh v. the Czech Republic, no. 60538/00, 25 January 2005
Singh and Others v. Belgium, no. 33210/11, 2 October 2012
Slivenko and Others v. Latvia (dec.) [GC], no. 48321/99, ECHR 2002-II (extracts)
Soering v. the United Kingdom, 7 July 1989, Series A no. 161
Sow v. Belgium, no. 27081/13, 19 January 2016
Stamose v. Bulgaria, no. 29713/05, ECHR 2012
Sudita Keita v. Hungary, no. 42321/15, 12 May 2020
Sufi and Elmi v. the United Kingdom, nos. 8319/07 and 11449/07, 28 June 2011
Sultani v. France, no. 45223/05, ECHR 2007-IV (extracts)
Suso Musa v. Malta, no. 42337/12, 23 July 2013

—T—

T.I. and Others v. Greece, 40311/10, 18 July 2019
Taddeucci and McCall v. Italy, no. 51362/09, 30 June 2016
Tanda-Muzinga v. France, no. 2260/10, 10 July 2014
Tarakhel v. Switzerland [GC], no. 29217/12, ECHR 2014 (extracts)
Tehrani and Others v. Turkey, nos. 32940/08 and 2 others, 13 April 2010
Thimothawes v. Belgium, no. 39061/11, 4 April 2017
Thuo v. Cyprus, no. 3869/07, 4 April 2017
Trabelsi v. Belgium, no. 140/10, ECHR 2014 (extracts)

—U—

Üner v. the Netherlands [GC], no. 46410/99, ECHR 2006-XII

—V—

V.F. v. France (dec.), no. 7196/10, 29 November 2011

—W—

Weller v. Hungary, no. 44399/05, 31 March 2009

—X—

X v. Sweden, no. 36417/16, 9 January 2018
X v. Switzerland, no. 16744/14, 26 January 2017

—Y—

Yoh-Ekale Mwanje v. Belgium, no. 10486/10, 20 December 2011

—Z—

Z.A. and Others v. Russia [GC], no. 61411/15 and 3 others, 21 November 2019

October 2020
This factsheet does not bind the Court and is not exhaustive

Children's rights

See also the factsheets on "International child abductions", "Parental rights", and "Protection of minors", "Accompanied migrant children in detention" and "Unaccompanied migrant minors in detention".

Article 1 (obligation to respect human rights) of the European Convention on Human Rights ("the Convention"):

"The High Contracting Parties shall secure to ***everyone*** within their jurisdiction the rights and freedoms defined in … this Convention".

Right of access to a court (Article 6 of the Convention)

Stagno v. Belgium

7 July 2009

When their father died, the two applicants, who were minors at the time, and several other descendants were paid a sum of money by an insurance company as the beneficiaries of their father's life insurance. Their mother, being the statutory administrator of her children's property, deposited the money in savings accounts that were emptied within less than a year. On coming of age, the applicants each brought an action against their mother and against the insurance company. They later dropped the claim against their mother after entering into an agreement. Before the European Court of Human Rights the applicants complained of a violation of their right of access to a court, alleging that the Belgian courts had deprived them of any effective remedy before a court by rejecting their action as statute-barred, given that the statutory limitation period had not been suspended while they were minors even though they had been unable to bring legal proceedings during that period.

The European Court of Human Rights held that there had been a **violation of Article 6 § 1** (right to a fair trial – access to court) of the European Convention on Human Rights, noting in particular that, by holding that the limitation period also ran against minors, the Belgian courts had put the interests of the insurance companies first. However, it had been practically impossible for the applicants to defend their property rights against the company before reaching their majority, and by the time they did come of age, their claim against the company had become time-barred. The strict application of a statutory limitation period, without taking into account the particular circumstances of the case, had thus prevented the applicants from using a remedy that in principle was available to them.

Right to respect for private and family life (Article 8)

Adoption

Chbihi Loudoudi and Others v. Belgium

16 December 2014

This case concerned the procedure in Belgium for the adoption by the applicants of their

Moroccan niece, who had been entrusted to their care by "kafala"[1]. The applicants complained in particular of the Belgian authorities' refusal to recognise the kafala agreement and approve the adoption of their niece, to the detriment of the child's best interests, and of the uncertain nature of her residence status.
The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention concerning the refusal to grant the adoption, and **no violation of Article 8** (right to respect for private and family life) concerning the child's residence status. It found in particular that the refusal to grant adoption was based on a law which sought to ensure, in accordance with the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, that international adoptions took place in the best interests of the child and with respect for the child's private and family life, and that the Belgian authorities could legitimately consider that such a refusal was in the child's best interests, by ensuring the maintaining of a single parent-child relationship in both Morocco and Belgium (i.e. the legal parent-child relationship with the genetic parents). In addition, reiterating that the Convention did not guarantee a right to a particular residence status, the Court observed that the only real obstacle encountered by the girl had been her inability to take part in a school trip. That difficulty, owing to the absence of a residence permit between May 2010 and February 2011, did not suffice for Belgium to be required to grant her unlimited leave to remain in order to protect her private life.

Zaieţ v. Romania

24 March 2015

This case concerned the annulment of a woman's adoption, at the instigation of her adoptive sister, 31 years after it had been approved and 18 years after the death of their adoptive mother. The applicant alleged in particular that the annulment of her adoption had been an arbitrary and disproportionate intrusion into her family life, submitting that she had lived with her adoptive mother since the age of nine and that their relationship had been based on affection, responsibility and mutual support. She also complained that, after the annulment of her adoption, she lost title to the five hectares of forest she inherited from her adoptive mother.
This was the first occasion on which the Court had to consider the annulment of an adoption order in a context where the adoptive parent was dead and the adopted child had long reached adulthood. In the applicant's case, the Court, finding that the annulment decision was vague and lacking in justification for the taking of such a radical measure, concluded that the interference in her family life had not been supported by relevant and sufficient reasons, in **violation of Article 8** (right to respect for private and family life) of the Convention. The Court noted in particular that, in any event, the annulment of an adoption should not even be envisaged as a measure against an adopted child and underlined that in legal provisions and decisions on adoption matters, the interests of the child had to remain paramount. The Court also held that there had been a **violation of Article 1 of Protocol No. 1** (protection of property) to the Convention, on the account of the disproportionate interference with the applicant's property right over the disputed land.

Bogonosovy v. Russia

5 March 2019

This case concerned a grandfather who wanted to maintain ties with his granddaughter after her adoption by another family.
The Court found that the domestic court's failure to examine the question of the applicant's post-adoption ties with his granddaughter had led to a **breach of** his right to respect for his family life secured by **Article 8** of the Convention. It considered in

[1]. In Islamic law, adoption, which creates family bonds comparable to those created by biological filiation, is prohibited. Instead, Islamic law provides for a form of guardianship called "kafala". In Muslim States, with the exception of Turkey, Indonesia and Tunisia, kafala is defined as a voluntary undertaking to provide for a child and take care of his or her welfare and education.

particular that the domestic courts should have assessed the applicant's request to maintain a post adoption relationship with his granddaughter but had instead interpreted and applied the law in a way that had denied him such an examination. He had thus been excluded completely and automatically from his granddaughter's life.

Family reunification rights

Sen v. the Netherlands

21 December 2001

The applicants are a couple of Turkish nationals and their daughter, who had been born in Turkey in 1983 and who her mother left in her aunt's custody when she joined her husband in the Netherlands in 1986. The parents complained of an infringement of their right to respect for their family life, on account of the rejection of their application for a residence permit for their daughter, a decision which prevented her from joining them in the Netherlands. They had two other children, who were born in 1990 and 1994 respectively in the Netherlands and have always lived there with their parents.

Being required to determine whether the Dutch authorities had a positive obligation to authorise the third applicant to live with her parents in the Netherlands, having regard, among other things, to her young age when the application was made, the Court noted that she had spent her whole life in Turkey and had strong links with the linguistic and cultural environment of her country in which she still had relatives. However, there was a major obstacle to the rest of the family's return to Turkey. The first two applicants had settled as a couple in the Netherlands, where they had been legally resident for many years, and two of their three children had always lived in the Netherlands and went to school there. Concluding that the Netherlands had failed to strike a fair balance between the applicants' interest and their own interest in controlling immigration, the Court held that there had been a **violation of Article 8** (right to respect for family life) of the Convention.

See also: **Tuquabo-Tekle and Others v. the Netherlands**, judgment of 1 December 2005.

Osman v. Denmark

14 June 2011

At the age of fifteen the applicant, a Somali national who had been living with her parents and siblings in Denmark since the age of seven, was sent against her will to a refugee camp in Kenya by her father to take care of her paternal grandmother. Two years later, when still a minor, she applied to be reunited with her family in Denmark, but her application was turned down by Danish immigration on the grounds that her residence permit had lapsed as she had been absent from Denmark for more than twelve consecutive months. She was not entitled to a new residence permit as, following a change in the law that had been introduced to deter immigrant parents from sending their adolescent children to their countries of origin to receive a more traditional upbringing, only children below the age of fifteen could apply for family reunification.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding in particular that the applicant could be considered a settled migrant who had lawfully spent all or the major part of her childhood and youth in the host country so that very serious reasons would be required to justify the refusal to renew her residence permit. Although the aim pursued by the law on which that refusal was based was legitimate – discouraging immigrant parents from sending their children to their countries of origin to be "re-educated" in a manner their parents considered more consistent with their ethnic origins – the children's right to respect for private and family life could not be ignored. In the circumstances of the case, it could not be said that the applicant's interests had been sufficiently taken into account or balanced fairly against the State's interest in controlling immigration.

Berisha v. Switzerland

30 July 2013

This case concerned the Swiss authorities' refusal to grant residence permits to the applicants' three children, who were born in Kosovo and entered Switzerland illegally, and the authorities' decision to expel the children to Kosovo.

The Court held that there had been **no violation of Article 8** (right to respect of family life) of the Convention, considering in particular that the applicants were living in Switzerland because of their conscious decision to settle there rather than in Kosovo, and that their three children had not lived in Switzerland for long enough to have completely lost their ties with their country of birth, where they grew up and were educated for many years. Moreover the children still had family ties in Kosovo, the older two children, 17 and 19 years old, were of an age that they could be supported at a distance, and there was nothing to prevent the applicants traveling to, or staying with the youngest child, 10 years old, in Kosovo to safeguard her best interests as a child. Also taking into account the at times untruthful conduct of the applicants in the domestic proceedings, the Court concluded that the Swiss authorities had not overstepped their margin of appreciation under Article 8 of the Convention in refusing to grant residence permits to their children.

Mugenzi v. France, Tanda-Muzinga v. France and Senigo Longue and Others v. France

10 July 2014

These cases concerned the difficulties encountered by the applicants – who were either granted refugee status or lawfully residing in France – in obtaining visas for their children so that their families could be reunited. The applicants alleged that the refusal by the consular authorities to issue visas to their children for the purpose of family reunification had infringed their right to respect for their family life.

The Court observed in particular that the procedure for examining applications for family reunification had to contain a number of elements, having regard to the applicants' refugee status on the one hand and the best interests of the children on the other, so that their interests as guaranteed by Article 8 (right to respect for private and family life) of the Convention from the point of view of procedural requirements were safeguarded.

In all three cases, the Court held that there had been a **violation of Article 8** of the Convention. Since the national authorities had not given due consideration to the applicants' specific circumstances, it concluded that the family reunification procedure had not offered the requisite guarantees of flexibility, promptness and effectiveness to ensure compliance with their right to respect for their family life. For that reason, the French State had not struck a fair balance between the applicants' interests on the one hand, and its own interest in controlling immigration on the other.

See also, raising similar questions: **Ly v. France**, decision on the admissibility of 17 June 2014 (the Court declared the application in question inadmissible as manifestly ill-founded, considering that the decision-making process, taken as a whole, had enabled the applicant to be sufficiently involved to ensure his interests were defended).

I.A.A. and Others v. the United Kingdom (application no. 25960/13)

31 March 2016

This case concerned the complaint by five Somali nationals, the applicants, about the UK authorities' refusal to grant them entry into the United Kingdom to be reunited with their mother. The applicants' mother had joined her second husband in the UK in 2004 and the applicants were left in the care of their mother's sister in Somalia. They moved in 2006 to Ethiopia where the applicants had been living ever since.

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that, in refusing the application to join their mother, the national courts had struck a fair balance between the applicants' interest in developing a family life in the UK and the State's interest in controlling immigration. While the applicants' situation was certainly unenviable, they were no longer young children (they are currently 21, 20, 19, 14 and

13) and had grown up in the cultural and linguistic environment of their country of origin before living together as a family unit in Ethiopia for the last nine years. Indeed, they had never been to the UK and had not lived together with their mother for more than 11 years. As concerned the applicants' mother, who had apparently made a conscious decision to leave her children in Somalia in order to join her new husband in the UK, there was no evidence to suggest that there would be any insurmountable obstacles to her relocating either to Ethiopia or to Somalia.

Legal recognition for children born as a result of surrogacy treatment

Mennesson and Others v. France and Labassee v. France

26 June 2014

These cases concerned the refusal to grant legal recognition in France to parent-child relationships that had been legally established in the United States between children born as a result of surrogacy treatment and the couples who had had the treatment. The applicants complained in particular of the fact that, to the detriment of the children's best interests, they were unable to obtain recognition in France of parent-child relationships that had been legally established abroad.

In both cases the Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention concerning the applicants' right to respect for their family life. It further held in both cases that there had been a **violation of Article 8** concerning the children's right to respect for their private life. The Court observed that the French authorities, despite being aware that the children had been identified in the United States as the children of Mr and Mrs Mennesson and Mr and Mrs Labassee, had nevertheless denied them that status under French law. It considered that this contradiction undermined the children's identity within French society. The Court further noted that the case-law completely precluded the establishment of a legal relationship between children born as a result of – lawful – surrogacy treatment abroad and their biological father. This overstepped the wide margin of appreciation left to States in the sphere of decisions relating to surrogacy.

See also: **Foulon and Bouvet v. France**, judgment of 21 July 2016; **Laborie v. France**, judgment of 19 January 2017.

D. and Others v. Belgium (no. 29176/13)

8 July 2014 (decision – partly struck out of the list of cases; partly inadmissible)

This case concerned the Belgian authorities' initial refusal to authorise the arrival on its national territory of a child who had been born in Ukraine from a surrogate pregnancy, as resorted to by the applicants, two Belgian nationals. The applicants relied in particular on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the Convention.

In view of developments in the case since the application was lodged, namely the granting of a laissez-passer for the child and his arrival in Belgium, where he has since lived with the applicants, the Court considered this part of the dispute to be resolved and struck out of its list the complaint concerning the Belgian authorities' refusal to issue travel documents for the child. The Court further declared **inadmissible** the remainder of the application. While the authorities' refusal, maintained until the applicants had submitted sufficient evidence to permit confirmation of a family relationship with the child, had resulted in the child effectively being separated from the applicants, and amounted to interference in their right to respect for their family life, nonetheless, Belgium had acted within its broad discretion ("wide margin of appreciation") to decide on such matters. The Court also considered that there was no reason to conclude that the child had been subjected to treatment contrary to Article 3 of the Convention during the period of his separation from the applicants.

Paradiso and Campanelli v. Italy

24 January 2017 (Grand Chamber)

This case concerned the placement in social-service care of a nine-month-old child who had been born in Russia following a gestational surrogacy contract entered into with a Russian woman by an Italian couple (the applicants); it subsequently transpired that they had no biological relationship with the child. The applicants complained, in particular, about the child's removal from them, and about the refusal to acknowledge the parent-child relationship established abroad by registering the child's birth certificate in Italy.

The Grand Chamber found, by eleven votes to six, that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in the applicants' case. Having regard to the absence of any biological tie between the child and the applicants, the short duration of their relationship with the child and the uncertainty of the ties between them from a legal perspective, and in spite of the existence of a parental project and the quality of the emotional bonds, the Grand Chamber held that a family life did not exist between the applicants and the child. It found, however, that the contested measures fell within the scope of the applicants' private life. The Grand Chamber further considered that the contested measures had pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others. On this last point, it regarded as legitimate the Italian authorities' wish to reaffirm the State's exclusive competence to recognise a legal parent-child relationship – and this solely in the case of a biological tie or lawful adoption – with a view to protecting children. The Grand Chamber also accepted that the Italian courts, having concluded in particular that the child would not suffer grave or irreparable harm as a result of the separation, had struck a fair balance between the different interests at stake, while remaining within the room for manoeuvre ("margin of appreciation") available to them.

Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, requested by the French Court of Cassation (Request No. P16-2018-001)

10 April 2019 (Grand Chamber)

This case concerned the possibility of recognition in domestic law of a legal parent-child relationship between a child born abroad through a gestational surrogacy arrangement and the intended mother, designated in the birth certificate legally established abroad as the "legal mother", in a situation where the child was conceived using the eggs of a third-party donor and where the legal parent-child relationship with the intended father has been recognised in domestic law.

The Court found that States were not required to register the details of the birth certificate of a child born through gestational surrogacy abroad in order to establish the legal parent-child relationship with the intended mother, as adoption may also serve as a means of recognising that relationship.

It held in particular that, in a situation where a child was born abroad through a gestational surrogacy arrangement and was conceived using the gametes of the intended father and a third-party donor, and where the legal parent-child relationship with the intended father has been recognised in domestic law,

1. the child's right to respect for private life within the meaning of Article 8 of the Convention requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother, designated in the birth certificate legally established abroad as the "legal mother";

2. the child's right to respect for private life does not require such recognition to take the form of entry in the register of births, marriages and deaths of the details of the birth certificate legally established abroad; another means, such as adoption of the child by the intended mother, may be used.

C and E v. France (nos. 1462/18 and 17348/18)

19 November 2019 (Committee decision on the admissibility)

This case concerned the French authorities' refusal to enter in the French register of births, marriages and deaths the full details of the birth certificates of children born abroad through a gestational surrogacy arrangement and conceived using the gametes of the intended father and a third-party donor, in so far as the birth certificates designated the intended mother as the legal mother.

The Court declared the two applications **inadmissible** as being manifestly ill-founded. It considered in particular that the refusal of the French authorities was not disproportionate, as domestic law afforded a possibility of recognising the parent-child relationship between the applicant children and their intended mother by means of adoption of the other spouse's child. The Court also noted that the average waiting time for a decision was only 4.1 months in the case of full adoption and 4.7 months in the case of simple adoption.

D v. France (n° 11288/18)

16 juillet 2020[2]

This case concerned the refusal to record in the French register of births, marriages and deaths the details of the birth certificate of a child born abroad through a gestational surrogacy arrangement in so far as the certificate designated the intended mother, who was also the child's genetic mother, as the mother. The child, the third applicant in the case, was born in Ukraine in 2012. Her birth certificate, issued in Kyiv, named the first applicant as the mother and the second applicant as the father, without mentioning the woman who had given birth to the child. The two first applicants, husband and wife, and the child complained of a violation of the child's right to respect for her private life, and of discrimination on the grounds of "birth" in her enjoyment of that right.

The Court held that there had been **no violation of Article 8** (right to respect for family life) of the Convention, finding that, in refusing to record the details of the third applicant's Ukrainian birth certificate in the French register of births in so far as it designated the first applicant as the child's mother, France had not overstepped its margin of appreciation in the circumstances of the present case. It also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 8**, accepting that the difference in treatment of which the applicants complained with regard to the means of recognition of the legal relationship between such children and their genetic mother had an objective and reasonable justification. In its judgment, the Court noted in particular that it had previously ruled on the issue of the legal parent-child relationship between a child and its intended father where the latter was the biological father, in its judgments in *Mennesson* and *Labassee* (see above). According to its case-law, the existence of a genetic link did not mean that the child's right to respect for his or her private life required the legal relationship with the intended father to be established specifically by means of the recording of the details of the foreign birth certificate. The Court saw no reason in the circumstances of the present case to reach a different decision regarding recognition of the legal relationship with the intended mother, who was the child's genetic mother. The Court also pointed to its finding in advisory opinion no. P16-2018-001 (see above) that adoption produced similar effects to registration of the foreign birth details when it came to recognising the legal relationship between the child and the intended mother.

Pending applications

Schlittner-Hay v. Poland (nos. 56846/15 and 56849/15)

Application communicated to the Polish Government on 26 February 2019

This case concerns the refusal to grant Polish nationality to children of a same-sex couple born through surrogacy in the United States of America.

[2]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

The Court gave notice of the applications to the Polish Government and put questions to the parties under Article 8 (right to respect for private and family life) alone and in conjunction with Article 14 (prohibition of discrimination) of the Convention.

Parental authority, child custody and access rights

N.Ts.v. Georgia (no. 71776/12)

2 February 2016

This case concerned proceedings for the return of three young boys – who had been living with their maternal family since their mother's death – to their father. The first applicant maintained in particular that the national authorities had failed to thoroughly assess the best interests of her nephews and that the proceedings had been procedurally flawed.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the boys had not been adequately represented before the domestic courts, in particular as the functions and powers of the domestic authority designated to represent them had not been clearly defined and the courts had not considered hearing the oldest of the boys in person. Moreover, the courts had made an inadequate assessment of the boys' best interests, which did not take their emotional state of mind into consideration.

V.D. and Others v. Russia (no. 72931/10)

9 April 2019

This case concerned a child, who was cared for by a foster mother, the first applicant in the case, for nine years and was then returned to his biological parents. The foster mother and her remaining children complained about the Russian courts' decisions to return the child to his parents, to terminate the first applicant's guardianship rights and to deny them all access to the child.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention owing to the order by the domestic courts to remove the child from his foster mother and return him to his biological parents and a **violation of Article 8** of the Convention because of the decision to deny the foster family any subsequent contact with the child. It found in particular that the domestic courts had weighed up all the necessary factors when deciding to return the child to his parents, such as whether the measure had been in his best interests. However, the courts had denied the foster family any subsequent contact with the child, who had formed close ties with the first applicant and her remaining children. In this regard, the Court noted that the courts' decision had been based solely on an application of Russia's legislation on contact rights, which was inflexible and did not take account of varying family situations. The domestic courts had therefore not carried out the required assessment of the individual circumstances of the case.

Right to know one's origins

Mikulić v. Croatia

7 February 2002

This case concerned a child born out of wedlock who, together with her mother, filed a paternity suit. The applicant complained that Croatian law did not oblige men against whom paternity suits were brought to comply with court orders to undergo DNA tests, and that the failure of the domestic courts to decide her paternity claim had left her uncertain as to her personal identity. She also complained about the length of the proceedings and the lack of an effective remedy to speed the process up.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It observed in particular that, in determining an application to have paternity established, the courts were required to have regard to the basic principle of the child's interests. In the present case, it found that the procedure

available did not strike a fair balance between the right of the applicant to have her uncertainty as to her personal identity eliminated without unnecessary delay and that of her supposed father not to undergo DNA tests. Accordingly, the inefficiency of the courts had left the applicant in a state of prolonged uncertainty as to her personal identity. The Court further held that there had been a **violation of Articles 6 § 1** (right to a fair hearing within a reasonable time) and a **violation of Article 13** (right to an effective remedy) of the Convention.

See also, among others: **Gaskin v. the United Kingdom**, judgment of 7 July 1989; **Ebru and Tayfun Engin Çolak v. Turkey**, judgment of 30 May 2006; **Phinikaridou v. Cyprus**, judgment of 20 December 2007; **Kalacheva v. Russia**, judgment of 7 May 2009; **Grönmark v. Finland** and **Backlund v. Finland**, judgments of 6 July 2010; **Pascaud v. France**, judgment of 16 June 2011; **Laakso v. Finland**, judgment of 15 January 2013; and **Röman v. Finland**, judgment of 29 January 2013; **Konstantinidis v. Greece**, judgment of 3 April 2014; **Călin and Others v. Romania**, judgment of 19 July 2016.

Odièvre v. France

13 February 2003 (Grand Chamber)

The applicant was abandoned by her natural mother at birth and left with the Health and Social Security Department. Her mother requested that her identity be kept secret from the applicant, who was placed in State care and later adopted under a full adoption order. The applicant subsequently tried to find out the identity of her natural parents and brothers. Her request was rejected because she had been born under a special procedure which allowed mothers to remain anonymous. The applicant complained that she had been unable to obtain details identifying her natural family and said that her inability to do so was highly damaging to her as it deprived her of the chance of reconstituting her life history. She further submitted that the French rules on confidentiality governing birth amounted to discrimination on the ground of birth.

In its Grand Chamber judgment, the Court noted that birth, and in particular the circumstances in which a child was born, formed part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention. In the instant case, it held that there had been **no violation of Article 8** (right to respect for private life), observing in particular that the applicant had been given access to non-identifying information about her mother and natural family that enabled her to trace some of her roots, while ensuring the protection of third-party interests. In addition, recent legislation enacted in 2002 enabled confidentiality to be waived and set up a special body to facilitate searches for information about biological origins. The applicant could now use that legislation to request disclosure of her mother's identity, subject to the latter's consent being obtained to ensure that the mother's need for protection and the applicant's legitimate request were fairly reconciled. The French legislation thus sought to strike a balance and to ensure sufficient proportion between the competing interests. The Court further held that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** of the Convention, finding that the applicant had suffered no discrimination with regard to her filiation, as she had parental ties with her adoptive parents and a prospective interest in their property and estate and, furthermore, could not claim that her situation with regard to her natural mother was comparable to that of children who enjoyed established parental ties with their natural mother.

Jäggi v. Switzerland

13 July 2006

The applicant was not allowed to have DNA tests performed on the body of a deceased man whom he believed to be his biological father. He was therefore unable to establish paternity.

The Court held that there had been a **violation Article 8** (right to respect for private life) of the Convention, on account of the fact that it had been impossible for the

applicant to obtain a DNA analysis of the mortal remains of his putative biological father. It observed in particular that the DNA test was not particularly intrusive, the family had cited no philosophical or religious objections and, if the applicant had not renewed the lease on the deceased man's tomb, his body would already have been exhumed.

A. M. M. v. Romania (no. 2151/10)

14 February 2012

This case concerned proceedings to establish paternity of a minor who was born in 2001 outside marriage and who has a number of disabilities. He had been registered in his birth certificate as having a father of unknown identity. Before the European Court, the applicant was first represented by his mother and subsequently, since his mother suffered from a serious disability, by his maternal grandmother.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the domestic courts did not strike a fair balance between the child's right to have his interests safeguarded in the proceedings and the right of his putative father not to undergo a paternity test or take part in the proceedings.

Godelli v. Italy

25 September 2012

This case concerned the confidentiality of information concerning a child's birth and the inability of a person abandoned by her mother to find out about her origins. The applicant maintained that she had suffered severe damage as a result of not knowing her personal history, having been unable to trace any of her roots while ensuring the protection of third-party interests.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, considering in particular that a fair balance had not been struck between the interests at stake since the Italian legislation, in cases where the mother had opted not to disclose her identity, did not allow a child who had not been formally recognised at birth and was subsequently adopted to request either non-identifying information about his or her origins or the disclosure of the birth mother's identity with the latter's consent.

Canonne v. France

2 June 2015 (decision on the admissibility)

In this case, the applicant complained about the fact that the domestic courts had inferred his paternity of a young woman from his refusal to submit to the genetic tests ordered by them. He emphasised in particular that under French law individuals who were the respondents in paternity actions were obliged to submit to a DNA test in order to establish that they were not the fathers. He alleged a breach of the principle of the inviolability of the human body which, in his view, prohibited any enforcement of genetic tests in civil cases.

The Court declared **inadmissible** as manifestly ill-founded the applicant's complaints under Article 8 (right to respect for private and family life) of the Convention. It found that the domestic courts had not exceeded the room for manoeuvre ("wide margin of appreciation") available to them when they took into account the applicant's refusal to submit to court-ordered genetic testing and declared him the father of the young woman, and in giving priority to the latter's right to respect for private life over that of the applicant.

Mandet v. France

14 January 2016

This case concerned the quashing of the formal recognition of paternity made by the mother's husband at the request of the child's biological father. The applicants – the mother, her husband and the child – complained about the quashing of the recognition of paternity and about the annulation of the child's legitimation. In particular, they considered these measures to be disproportionate, having regard to the best interests of

the child which, they submitted, required that the legal parent-child relationship, established for several years, be maintained, and that his emotional stability be preserved.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It noted in particular that the reasoning in the French courts' decisions showed that the child's best interests had been duly placed at the heart of their considerations. In taking this approach, they had found that, although the child considered that his mother's husband was his father, his interests lay primarily in knowing the truth about his origins. These decisions did not amount to unduly favouring the biological father's interests over those of the child, but in holding that the interests of the child and of the biological father partly overlapped. It was also to be noted that, having conferred parental responsibility to the mother, the French courts' decisions had not prevented the child from continuing to live as part of the Mandet family, in accordance with his wishes.

Pending applications

Gauvin-Fournis v. France (no. 21424/16)

Application communicated to the French Government on 5 June 2018

Silliau v. France (no. 45728/17)

Application communicated to the French Government on 5 June 2018

Sex education in State schools

A.R. and L.R. v. Switzerland (no. 22338/15)

19 December 2017 (decision on the admissibility)

This case concerned the refusal by a Basle primary school to grant the first applicant's request that her daughter (the second applicant), then aged seven and about to move up to the second year of primary school, be exempted from sex education lessons. Both applicants, who stated that they were not against sex education as such in State schools but were merely calling into question its usefulness at the kindergarten and early primary school stages, alleged that there had been a violation of the first applicant's right to respect for her private and family life. They also argued that the second applicant had been subjected to an unjustified interference with the exercise of her right to respect for her private life.

As regards the applicants' victim status, the Court began by finding that, under Article 34 (right of individual application) of the Convention, the application was manifestly ill-founded in respect of the second applicant, who had never actually attended sex education classes before the end of her second year at primary school. The Court also declared **inadmissible**, as being manifestly ill-founded, the first applicant's complaints under Article 8 (right to respect for private and family life) of the Convention, finding that the Swiss authorities had not overstepped the room for manoeuvre ("margin of appreciation") accorded to them by the Convention. The Court noted in particular that one of the aims of sex education was the prevention of sexual violence and exploitation, which posed a real threat to the physical and mental health of children and against which they had to be protected at all ages. It also stressed that one of the objectives of State education was to prepare children for social realities, and this tended to justify the sexual education of very young children attending kindergarten or primary school. The Court thus found that school sex education, as practised in the canton of Basel-Urban, pursued legitimate aims. As to the proportionality of the refusal to grant exemption from such classes, the Court observed in particular that the national authorities had recognised the paramount importance of the parents' right to provide for the sexual education of their children. Moreover, sex education at a kindergarten and in the first years of primary school was complementary in nature and not systematic; the teachers merely had to "react to the children's questions and actions".

Freedom of thought, conscience and religion (Article 9)

Dogru v. France and Kervanci v. France

4 December 2008

The applicants, both Muslims, were enrolled in the first year of a state secondary school in 1998-1999. On numerous occasions they attended physical education classes wearing their headscarves and refused to take them off, despite repeated requests to do so by their teacher. The school's discipline committee decided to expel them from school for breaching the duty of assiduity by failing to participate actively in those classes, a decision that was upheld by the courts.

The Court held that there had been **no violation of Article 9** (freedom of religion) of the Convention in both cases, finding in particular that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety was not unreasonable. It accepted that the penalty imposed was the consequence of the applicants' refusal to comply with the rules applicable on the school premises – of which they had been properly informed – and not of their religious convictions, as they alleged.

Aktas v. France, Bayrak v. France, Gamaleddyn v. France, Ghazal v. France, J. Singh v. France and R. Singh v. France

30 June 2009 (decisions on the admissibility)

These applications concerned the expulsion of six pupils from school for wearing conspicuous symbols of religious affiliation. They were enrolled in various state schools for the year 2004-2005. On the first day of school, the girls, who are Muslims, arrived wearing a headscarf or kerchief. The boys were wearing a "keski", an under-turban worn by Sikhs. As they refused to remove the offending headwear, they were denied access to the classroom and, after a period of dialogue with the families, expelled from school for failure to comply with the Education Code. Before the Court, they complained of the ban on headwear imposed by their schools, relying in particular on Article 9 of the Convention.

The Court declared the applications **inadmissible** (manifestly ill-founded), holding in particular that the interference with the pupils' freedom to manifest their religion was prescribed by law and pursued the legitimate aim of protecting the rights and freedoms of others and of public order. It further underlined the State's role as a neutral organiser of the exercise of various religions, faiths and beliefs. As to the punishment of definitive expulsion, it was not disproportionate to the aims pursued as the pupils still had the possibility of continuing their schooling by correspondence courses.

Grzelak v. Poland

15 June 2010

The first two applicants, who are declared agnostics, are parents of the third applicant. In conformity with the wishes of his parents, the latter did not attend religious instruction during his schooling. His parents systematically requested the school authorities to organise a class in ethics for him. However, no such class was provided throughout his entire schooling at primary and secondary level because there were not enough pupils interested. His school reports and certificates contained a straight line instead of a mark for "religion/ethics".

The Court declared the application **inadmissible** (incompatible *ratione personae*) with respect to the parents and held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 9** (freedom of religion) of the Convention with respect to their child, finding in particular that the absence of a mark for "religion/ethics" on his school certificates throughout the entire period of his schooling had amounted to his unwarranted stigmatisation, in breach of his right not to manifest his religion or convictions.

Freedom of expression (Article 10)

Cyprus v. Turkey

10 May 2001 (Grand Chamber)

In this case, which related to the situation that has existed in northern Cyprus since the conduct of military operations there by Turkey in July and August 1974 and the continuing division of the territory of Cyprus, Cyprus alleged, among other things, a violation of Article 10 (freedom of expression) of the Convention, as regards the Karpas Greek Cypriots, because of the excessive censorship of school-books.

The Court held that there had been a violation of A**rticle 10** (freedom of expression) of the Convention in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school had been subject to excessive measures of censorship.

Prohibition of discrimination (Article 14)

Affiliation- and inheritance-related rights

Marckx v. Belgium

13 June 1979

An unmarried Belgian mother complained that she and her daughter were denied rights accorded to married mothers and their children: among other things, she had to recognise her child (or bring legal proceedings) to establish affiliation (married mothers could rely on the birth certificate); recognition restricted her ability to bequeath property to her child and did not create a legal bond between the child and mother's family, her grandmother and aunt. Only by marrying and then adopting her own daughter (or going through a legitimation process) would she have ensured that she had the same rights as a legitimate child.

The Court held in particular that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention taken alone, and a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 8**, regarding both applicants, concerning the establishment of the second applicant's maternal affiliation, the lack of a legal bond with her mother's family and her inheritance rights and her mother's freedom to choose how to dispose of her property. A bill to erase differences in treatment between children of married and unmarried parents was going through the Belgian Parliament at the time of the judgment.

Inze v. Austria

28 October 1987

The applicant was not legally entitled to inherit his mother's farm when she died intestate because he was born out of wedlock. Although he had worked on the farm until he was 23, his younger half-brother inherited the entire farm. By a subsequent judicial settlement, the applicant ultimately obtained a piece of land which had been promised to him by his mother during her lifetime.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 1 of Protocol No. 1** (right to the peaceful enjoyment of one's possessions) to the Convention. Having recalled that the Convention is a living instrument, to be interpreted in the light of present-day conditions, and that the question of equality between children born in and children born out of wedlock as regards their civil rights is today given importance in the member States of the Council of Europe, it found in particular that very weighty reasons would accordingly have to be advanced before a difference of treatment on the ground of birth out of wedlock could be regarded as compatible with the Convention.

Mazurek v. France

1 February 2000

The applicant, born of an adulterous relationship, had his entitlement to inherit reduced by half because a legitimated child also had a claim to their mother's estate, according to the law in force at that time (1990). He complained in particular of an infringement of his right to the peaceful enjoyment of his possessions.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 1 of Protocol No. 1** (right to the peaceful enjoyment of one's possessions) to the Convention. With regard to the situation in the other member States of the Council of Europe, it noted in particular, contrary to the French Government's assertions, a clear trend towards the abolition of discrimination in relation to adulterine children. The Court could not disregard such developments in its interpretation – which was necessarily evolutive – of the relevant provisions of the Convention. The Court further found in the present case that there was no good reason for discrimination based on adulterine birth. In any event, the adulterine child could not be reproached with events which were not his fault. Yet because the applicant was the child of an adulterous union he had been penalised as regards the division of the estate. The Court therefore concluded that there had been no reasonable relationship of proportionality between the means employed and the aim pursued.

See also: **Merger and Cros v. France**, judgment of 22 December 2004.

Camp and Bourimi v. the Netherlands

3 October 2000

The first applicant and her baby son (the second applicant) had to move out of their family home after the first applicant's partner died intestate, before marrying her and recognising the child (as had been his stated intention). Under Dutch law at the time the deceased's parents and siblings inherited his estate. They then moved into his house. The child was later declared legitimate, but as the decision was not retroactive, he was not made his father's heir.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for family life) of the Convention with respect to the second applicant. It observed that the child, who had not obtained legally-recognised family ties with his father until he had been declared legitimate two years after his birth, had been unable to inherit from his father unlike children who did have such ties either because they were born in wedlock or had been recognised by their father. This had undoubtedly constituted a difference in treatment between persons in similar situations, based on birth. According to the Court's case-law, very weighty reasons need to be put forward before a difference in treatment on the ground of birth out of wedlock can be regarded as compatible with the Convention. The Court observed in this respect that there had been no conscious decision on the part of the deceased not to recognise the child the first applicant was carrying. On the contrary, he had intended to marry her and the child had been declared legitimate precisely because his untimely death had precluded that marriage. The Court could therefore not accept the Dutch Government's arguments as to how the deceased might have prevented his son's present predicament and considered the child's exclusion from his father's inheritance disproportionate.

Pla and Puncernau v. Andorra

13 July 2004

The first applicant, an adopted child, was disinherited and his mother, the second applicant, consequently lost her right to the life tenancy of the family estate after the Andorran courts interpreted a clause in a will – stipulating that the heir must be born of a "legitimate and canonical marriage" – as referring only to biological children.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It noted that the first applicant's parents had a "legitimate and

canonical marriage" and there was nothing in the will in question to suggest that adopted children were excluded. The domestic courts' decision had amounted to "judicial deprivation of an adopted child's inheritance rights" which was "blatantly inconsistent with the prohibition of discrimination" (paragraph 59 of the judgment).

Brauer v. Germany

28 May 2009

The applicant was unable to inherit from her father who had recognised her under a law affecting children born outside marriage before 1 July 1949. The equal inheritance rights available under the law of the former German Democratic Republic (where she had lived for much of her life) did not apply because her father had lived in the Federal Republic of Germany when Germany was unified. The applicant complained that, following her father's death, her exclusion from any entitlement to his estate had amounted to discriminatory treatment and had been wholly disproportionate.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It could not find any ground on which such discrimination based on birth outside marriage could be justified today, particularly as the applicant's exclusion from any statutory entitlement to inherit penalised her to an even greater extent than the applicants in other similar cases brought before it.

Fabris v. France

7 February 2013 (Grand Chamber)

The applicant was born in 1943 of a liaison between his father and a married woman who was already the mother of two children born of her marriage. At the age of 40, he was judicially declared the latter's "illegitimate" child. Following his mother's death in 1994, he sought an abatement of the *inter vivos* division, claiming a reserved portion of the estate equal to that of the donees, namely, his mother's legitimate children. In a judgment of September 2004, the *tribunal de grande instance* declared the action brought by the applicant admissible and upheld his claim on the merits. Following an appeal by the legitimate children, the court of appeal set aside the lower court's judgment. The applicant unsuccessfully appealed on points of law. Before the Court, the applicant complained that he had been unable to benefit from a law introduced in 2001 granting children "born of adultery" identical inheritance rights to those of legitimate children, passed following delivery of the Court's judgment in *Mazurek v. France* of 1 February 2000 (see above).

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 1** (protection of property) **of Protocol No. 1** to the Convention. It found in particular that the legitimate aim of protecting the inheritance rights of the applicant's half-brother and half-sister did not outweigh the applicant's claim to a share of his mother's estate and that the difference of treatment in his regard was discriminatory, as it had no objective and reasonable justification[3].

See also: **Quilichini v. France**, judgment of 14 March 2019.

Mitzinger v. Germany

9 February 2017

The applicant in this case complained that she could not assert her inheritance rights after her father's death in 2009, as she had been born out of wedlock and before a cut-off point provided for by legislation in force at the time. Notably, children born outside marriage before 1 July 1949 were excluded from any statutory entitlement to inherit and from the right to financial compensation.

[3]. See also, with regard to the same case, the Grand Chamber judgment of 28 June 2013 on the question of just satisfaction. In this judgment, the Court took formal note of the friendly settlement reached between the French Government and the applicant and decided to strike the remainder of the case out of its list of cases, pursuant to Article 39 of the Convention.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It found that the aims pursued by the applicant's difference in treatment, namely the preservation of legal certainty and the protection of the deceased and his family, had been legitimate. However, the Court was not satisfied that excluding children born out of wedlock before a certain cut-off point provided for by legislation had been a proportionate means to achieving the aims sought to be achieved. Decisive for that conclusion was the fact that the applicant's father had recognised her. Furthermore, she had regularly visited him and his wife. The latter's awareness of the applicant's existence, as well as of the fact that the legislation allowed children born inside marriage and outside marriage after the cut-off date to inherit, had therefore to have had a bearing on her expectations to her husband's estate. In any case, the Court noted, European case-law and national legislative reforms had shown a clear tendency towards eliminating all discrimination regarding the inheritance rights of children born outside marriage.

Citizenship

Genovese v. Malta

11 October 2011

The applicant was born out of wedlock of a British mother and a Maltese father. After the latter's paternity had been established judicially, the applicant's mother filed a request for her son to be granted Maltese citizenship. Her application was rejected on the basis that Maltese citizenship could not be granted to an illegitimate child whose mother was not Maltese.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private life) of the Convention. It noted in particular that the 1975 European Convention on the Legal Status of Children Born out of Wedlock was in force in more than 20 European countries and reiterated that very weighty reasons would have had to be advanced to justify an arbitrary difference in treatment on the ground of birth. The applicant was in an analogous situation to other children with a father of Maltese nationality and a mother of foreign nationality. The only distinguishing factor, which had rendered him ineligible to acquire citizenship, was the fact that he had been born out of wedlock. The Court was not convinced by the Maltese Government's argument that children born in wedlock had a link with their parents resulting from their parents' marriage, which did not exist in cases of children born out of wedlock. It was precisely a distinction in treatment based on such a link which Article 14 of the Convention prohibited, unless it was otherwise objectively justified. Furthermore, the Court could not accept the argument that, while the mother was always certain, a father was not. In the applicant's case, his father was known and was registered in his birth certificate, yet the distinction arising from the Citizenship Act had persisted. Accordingly, no reasonable or objective grounds had been given to justify that difference in treatment.

Education

Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (Belgian Linguistic Case)

23 July 1968

The applicants, parents of more than 800 Francophone children, living in certain (mostly Dutch-speaking) parts of Belgium, complained that their children were denied access to an education in French.

The Court found that, denying certain children access to the French-language schools with a special status in the six communes on the outskirts of Brussels because their parents lived outside those communes was in **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to

education) of Protocol No. 1 to the Convention. However, the Court also held that the Convention did not guarantee a child the right to state or state-subsidised education in the language of her/his parents.

D.H. and Others v. the Czech Republic

13 November 2007 (Grand Chamber)

This case concerned 18 Roma children, all Czech nationals, who were placed in schools for children with special needs, including those with a mental or social handicap, from 1996 to 1999. The applicants claimed that a two-tier educational system was in place in which the segregation of Roma children into such schools – which followed a simplified curriculum – was quasi-automatic.

The Court noted that, at the relevant time, the majority of children in special schools in the Czech Republic were of Roma origin. Roma children of average/above average intellect were often placed in those schools on the basis of psychological tests which were not adapted to people of their ethnic origin. The Court concluded that the law at that time had a disproportionately prejudicial effect on Roma children, in **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to education) **of Protocol No. 1** to the Convention.

Oršuš and Others v. Croatia

16 March 2010 (Grand Chamber)

This case concerned fifteen Croatians national of Roma origin who complained that they had been victims of racial discrimination during their school years in that they had been segregated into Roma-only classes and consequently suffered educational, psychological and emotional damage.

Even though the present case differed from *D.H. and Others v. the Czech Republic* (see above) in that it had not been a general policy in both schools to automatically place Roma pupils in separate classes, it was common ground that a number of European States encountered serious difficulties in providing adequate schooling for Roma children. In the instant case, the Court observed that only Roma children had been placed in the special classes in the schools concerned. The Croatian Government attributed the separation to the pupils' lack of proficiency in Croatian; however, the tests determining their placement in such classes did not focus specifically on language skills, the educational programme subsequently followed did not target language problems and the children's progress was not clearly monitored. The placement of the applicants in Roma-only classes had therefore been unjustified, in **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to education) **of Protocol No. 1** to the Convention.

See also: **Sampanis and Others v. Greece**, judgment of 5 June 2008; **Horvàth and Vadàzi v. Hungary**, decision on the admissibility of 9 November 2010; **Sampani and Others v. Greece**, judgment of 11 December 2012; **Horváth et Kiss c. Hongrie**, judgment of 29 January 2013; **Lavida and Others v. Greece**, judgment of 28 May 2013; and the factsheet on **"Roma and Travellers"**.

Ádám and Others v. Romania

13 October 2020[4]

The applicants, ethnic Hungarians, undertook their education in their mother tongue. In order to receive their baccalaureate (school-leaving) qualification they had to sit exams to test their Romanian and their Hungarian, having to take two more exams than ethnic Romanians. They complained about discrimination against them as members of the Hungarian minority in the taking of final school exams — they had to take more exams than ethnic Romanians (two Hungarian tests) over the same number of days, and the Romanian exams had been difficult for them as non-native speakers.

The Court held that there had been **no violation of Article 1** (general prohibition on discrimination) of **Protocol No. 12** to the Convention, finding that neither the content of

[4]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

the curriculum nor the scheduling of the exams had caused a violation of the applicants' rights. It noted in particular that the importance for members of a national minority to study the official language of the State and the corresponding need to assess their command of it in the baccalaureate was not called into question in the case. Nor was it its role to decide on what subjects should be tested or in what order, which came within States' discretion ("margin of appreciation"). Furthermore, the extra tests the applicants had had to take had been a result of their own choice to study in their mother tongue.

Protection of property (Article 1 of Protocol No. 1 to the Convention)

S.L. and J.L. v. Croatia (no. 13712/11)

7 May 2015

This case concerned a deal to swap a seaside villa for a less valuable flat. The Social Welfare Centre had to give its consent to the deal as the owners of the villa – the two applicants – were minors. The Social Welfare Centre agreed to the proposed swap without rigorously examining the particular circumstances of the case or the family. The lawyer acting on behalf of the children's parents also happened to be the son-in-law of the original owner of the flat. Before the Court, the applicants complained that the Croatian State, through the Social Welfare Centre, had failed to properly protect their interests as the owners of a villa which was of significantly greater value than the flat they had been given in exchange.

The central question in this case was whether the State took the best interests of the children into account in accepting the property swap. As minors their interests were supposed to be safeguarded by the State, in particular through the Social Welfare Centre and it was incumbent on the civil courts to examine the allegations concerning the swap agreement which raised the issue of compliance with the constitutional obligation of the State to protect children. The Court held that in the applicants' case there had been a **violation of Article 1** (protection of property) **of Protocol 1** to the Convention, finding that the domestic authorities had failed to take the necessary measures to safeguard the proprietary interests of the children in the real estate swap agreement or to give them a reasonable opportunity to effectively challenge the agreement.

Right to education (Article 2 of Protocol No. 1 to the Convention)

Timishev v. Russia

13 December 2005

The applicant's children, aged seven and nine, were excluded from a school they had attended for two years because their father, a Chechen, was not registered as a resident of the city (Nalchik, in the Kabardino-Balkaria Republic of Russia) where they lived and no longer had a migrant's card, which he had been obliged to surrender in exchange for compensation for property he had lost in Chechnya.

The Court observed that the applicant's children had been refused admission to the school which they had attended for the previous two years. The Russian Government had not contested the submission that the true reason for the refusal had been that the applicant had surrendered his migrant's card and had thereby forfeited his registration as a resident in the town of Nalchik. The Government had confirmed however that Russian law did not allow children's right to education to be made conditional on the registration of their parents' residence. The applicant's children were therefore denied the right to education provided for by domestic law. As Russian law did not allow children's access to education to be made conditional on the registration of their parent's place of residence, the Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention.

Folgerø and Others v. Norway

29 June 2007 (Grand Chamber)

In 1997 the Norwegian primary school curriculum was changed, with two separate subjects – Christianity and philosophy of life – being replaced by a single subject covering Christianity, religion and philosophy, known as KRL. Members of the Norwegian Humanist Association, the applicants attempted unsuccessfully to have their children entirely exempted from attending KRL. Before the Court, they complained in particular that the authorities' refusal to grant them full exemption prevented them from ensuring that their children received an education in conformity with their religious and philosophical convictions.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention. It found in particular that the curriculum of KRL gave preponderant weight to Christianity by stating that the object of primary and lower secondary education was to give pupils a Christian and moral upbringing. The option of having children exempted from certain parts of the curriculum was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life, and the potential for conflict was likely to deter them from making such requests. At the same time, the Court pointed out that the intention behind the introduction of the new subject that by teaching Christianity, other religions and philosophies together, it would be possible to ensure an open and inclusive school environment, was in principle consistent with the principles of pluralism and objectivity embodied in Article 2 of Protocol No. 1.

Hasan and Eylem Zengin v. Turkey

9 October 2007

Pointing out that his family followed the Alevist branch of Islam (an unorthodox minority branch of Islam), the applicant in 2001 requested for his daughter to be exempted from attending classes in religious culture and ethics at the State school in Istanbul where she was a pupil. His requests were dismissed, lastly on appeal before the Supreme Administrative Court. The applicants complained, in particular, of the way in which religious culture and ethics were taught at the State school, namely from a perspective which praised the Sunni interpretation of the Islamic faith and tradition and without providing detailed information about other religions.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention. Having examined the Turkish Ministry of Education's guidelines for lessons in religious culture and ethics and school textbooks, it found in particular that the syllabus gave greater priority to knowledge of Islam than to that of other religions and philosophies and provided specific instruction in the major principles of the Muslim faith, including its cultural rites. While it was possible for Christian or Jewish children to be exempted from religious culture and ethics lessons, the lessons were compulsory for Muslim children, including those following the Alevist branch.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further concluded that the violation found originated in a problem related to implementation of the syllabus for religious instruction in Turkey and the absence of appropriate methods for ensuring respect for parents' convictions. In consequence, it considered that bringing the Turkish educational system and domestic legislation into conformity with Article 2 of Protocol No. 1 to the Convention would represent an appropriate form of compensation.

Ali v. the United Kingdom

11 January 2011

The applicant was excluded from school during a police investigation into a fire at his school, because he had been in the vicinity at the relevant time. He was offered alternative schooling and, after the criminal proceedings against him were discontinued, his parents were invited to a meeting with the school to discuss his reintegration. They

failed to attend and also delayed deciding on whether they wanted him to return to the school. His place was given to another child.

The Court noted that the right to education under the Convention comprised access to an educational institution as well as the right to obtain, in conformity with the rules in each State, official recognition of the studies completed. Any restriction imposed on it had to be foreseeable for those concerned and pursue a legitimate aim. At the same time, the right to education did not necessarily entail the right of access to a particular educational institution and it did not in principle exclude disciplinary measures such as suspension or expulsion in order to comply with internal rules. In the instant case, the Court found that the exclusion of the applicant had not amounted to a denial of the right to education. In particular, it had been the result of an ongoing criminal investigation and as such had pursued a legitimate aim. It had also been done in accordance with the 1998 Act and had thus been foreseeable. In addition, the applicant had only been excluded temporarily, until the termination of the criminal investigation into the fire. His parents had been invited to a meeting with a view to facilitating his reintegration, yet they had not attended. Had they done so, their son's reintegration would have been likely. Further, the applicant had been offered alternative education during the exclusion period, but did not take up the offer. Accordingly, the Court was satisfied that his exclusion had been proportionate to the legitimate aim pursued and had not interfered with his right to education. There had, therefore, been **no violation of Article 2** (right to education) **of Protocol No. 1** to the Convention.

Catan and Others v. the Republic of Moldova and Russia

19 October 2012 (Grand Chamber)

This case concerned the complaint by children and parents from the Moldovan community in Transdniestria about the effects of a language policy adopted in 1992 and 1994 by the separatist regime forbidding the use of the Latin alphabet in schools and the subsequent measures taken to enforce the policy. Those measures included the forcible eviction of pupils and teachers from Moldovan/Romanian-language schools as well as forcing the schools to close down and reopen in different premises.

The Court held that there had been **no violation of Article 2** (right to education) of **Protocol No. 1** to the Convention in respect of ***the Republic of Moldova*** and a **violation of Article 2 of Protocol No. 1** in respect of the ***Russian Federation***. It found in particular that the separatist regime could not survive without Russia's continued military, economic and political support and that the closure of the schools therefore fell within Russia's jurisdiction under the Convention. The Republic of Moldova, on the other hand, had not only refrained from supporting the regime but had made considerable efforts to support the applicants themselves by paying for the rent and refurbishment of the new school premises as well as for all equipment, teachers' salaries and transport costs.

Mansur Yalçın and Others v. Turkey

16 September 2014

In this case, the applicants, who are adherents of the Alevi faith, an unorthodox minority branch of Islam, complained that the content of the compulsory classes in religion and ethics in schools was based on the Sunni understanding of Islam.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention with respect to three of the applicants, whose children were at secondary school at the relevant time. It observed in particular that in the field of religious instruction, the Turkish education system was still inadequately equipped to ensure respect for parents' convictions.

Under **Article 46** (binding force and execution of judgments) of the Convention, observing that the violation of Article 2 of Protocol No. 1 found had arisen out of a structural problem already identified in the case of *Hasan and Eylem Zengin* (see above), the Court held that Turkey was to implement appropriate measures to remedy the situation without delay, in particular by introducing a system whereby pupils could be

exempted from religion and ethics classes without their parents having to disclose their own religious or philosophical convictions.

Memlika v. Greece

6 October 2015

This case concerned the exclusion of children aged 7 and 11 from school after they were wrongly diagnosed with leprosy. The applicants – the two children in question and their parents – alleged in particular that the exclusion of the children from school had infringed their right to education.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention. It accepted that the children's exclusion from school had pursued the legitimate aim of preventing any risk of contamination. Nevertheless, it considered that the delay in setting up the panel responsible for deciding on the children's return to school had not been proportionate to the legitimate aim pursued. As the children had been prevented from attending classes for over three months, the Court therefore found that their exclusion had breached their right to education.

C.P. v. the United Kingdom (no. 300/11)

6 September 2016 (decision on the admissibility)

The applicant, a minor, complained that his temporary exclusion from school from 7 February 2007 to 20 April 2007 had breached his right to education.

The Court declared the application **inadmissible** pursuant to Article 35 (admissibility criteria) of the Convention, finding that, in the circumstances of the case, the applicant could not be said to have suffered a significant disadvantage in the sense of important adverse consequences.

Dupin v. France

18 December 2018 (decision on the admissibility)

The applicant, the mother of an autistic child, complained in particular that the domestic authorities had refused to allow her child to attend a mainstream school. She also argued that the State had failed to fulfil its positive obligation to take the necessary measures for disabled children, and that the lack of education in itself constituted discrimination. Lastly, she complained that the specific resources earmarked by the State for autistic children were insufficient.

The Court held that the complaint that there had been a violation of the right to education of the applicant's child was **inadmissible** as manifestly ill-founded, finding that the refusal to admit the child to a mainstream school did not constitute a failure by the State to fulfil its obligations under Article 2 (right to education) of Protocol No. 1 or a systematic negation of his right to education on account of his disability. It observed in particular that the national authorities had regarded the child's condition as an obstacle to his education in a mainstream setting. After weighing in the balance the level of his disability and the benefit he could derive from access to inclusive education, they had opted for an education that was tailored to his needs, in a specialised setting. The Court also noted that this strategy had been satisfactory for the child's father, who had custody of the child. Moreover, since 2013, the child had received effective educational support within an institution for special health and educational needs, and this form of schooling was conducive to his personal development. The Court further considered that the complaint that the French authorities had failed to take the necessary measures to cater for disabled children was also manifestly ill-founded, for lack of evidence. The Court lastly observed that the complaint about the alleged insufficiency of the specific resources earmarked by the State for autistic children was inadmissible for non-exhaustion of domestic remedies.

Iovcev and Others v. the Republic of Moldova and Russia

17 September 2019 (Committee judgment)

This case concerned complaints about pressure that had been brought to bear in 2013-14 by the authorities of the self-proclaimed "Moldavian Republic of Transdniestria" (the

"MRT"), on four Romanian/Moldovan-speaking schools in that Region which used the Latin alphabet. Among the applicants, five pupils and three parents of pupils complained in particular that measures had been taken to harass and intimidate them because of their choice to pursue their or their children's education at the schools concerned.
The Court held that **Russia** had **breached** a number of Convention rights including, in respect of the five pupils and three parents of pupils, the right to education protected by **Article 2 of Protocol No. 1** to the Convention. In particular it found that Russia had exercised effective control over the "MRT" during the period in question and that, in view of its continuing military, economic and political support for the "MRT", without which the latter could not have survived, the responsibility of Russia was engaged under the Convention on account of the interference with the applicants' rights. The Court found, by contrast, that the Republic of Moldova had not failed, in respect of the complaints raised by the applicants, to fulfil its positive obligations.

Papageorgiou and Others v. Greece

31 October 2019
This case concerned compulsory religious education in Greek schools. The applicant parents complained that if they had wanted to have their daughters exempted from religious education, they would have had to declare that they were not Orthodox Christians. Furthermore, they complained that the school principal would have had to verify whether their declarations were true and that such declarations were then kept in the school archives.
The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** (right to education) to the Convention, **interpreted in the light of Article 9** (freedom of thought, conscience, and religion) of the Convention. It stressed in particular that the authorities did not have the right to oblige individuals to reveal their beliefs. However, the system in Greece for exempting children from religious education classes required parents to submit a solemn declaration saying that their children were not Orthodox Christians. That requirement placed an undue burden on parents to disclose information from which it could be inferred that they and their children held, or did not hold, a specific religious belief. Moreover, such a system could even deter parents from making an exemption request, especially in a case such as that of the applicants, who lived on small islands where the great majority of the population owed allegiance to a particular religion and the risk of stigmatisation was much higher.

Texts and documents

See, in particular:

- **Handbook on European law relating to the rights of the child**, European Union Agency for Fundamental Rights and Council of Europe, June 2015
- Internet site of the Council of Europe programme for the promotion of Children's Rights and the protection of Children from violence: **"Building a Europe for and with Children"**

Media Contact:
Tel.: +33 (0)3 90 21 42 08

Section IV – ICJ Training materials (Fair Project)

The ICJ (International Commission of Jurists) has published a set of training materials on access to justice for migrant children that were developed as part of the FAIR (Fostering Access to Immigrant children's Rights) project.

These training modules should help lawyers when representing migrant children to increase their knowledge of the rights of the migrant children, to increase their understanding of the use of international redress mechanisms for violations of human rights of migrant children and give some advice on how to effectively communicate with child clients.

For more information see ICJ website:
https://www.icj.org/training-materials-on-access-to-justice-for-migrant-children/

The materials include the following training modules (click on the title to open the full text):

0. Guiding principles and definitions,

I. Access to fair procedures including the right to be heard and to participate in proceedings,

II. Access to justice in detention,

III. Access to justice for economic, social and cultural rights,

IV. Access to justice in the protection of their right to private and family life,

V. Redress through international human rights bodies and mechanisms,

VI. Practical handbook for lawyers when representing a child.

The modules are available in English, Spanish, Greek, Bulgarian, German and Italian.

FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

CHILDREN IN MIGRATION IN 2019

1.1.2019 → 31.12.2019

ANNUAL REVIEW

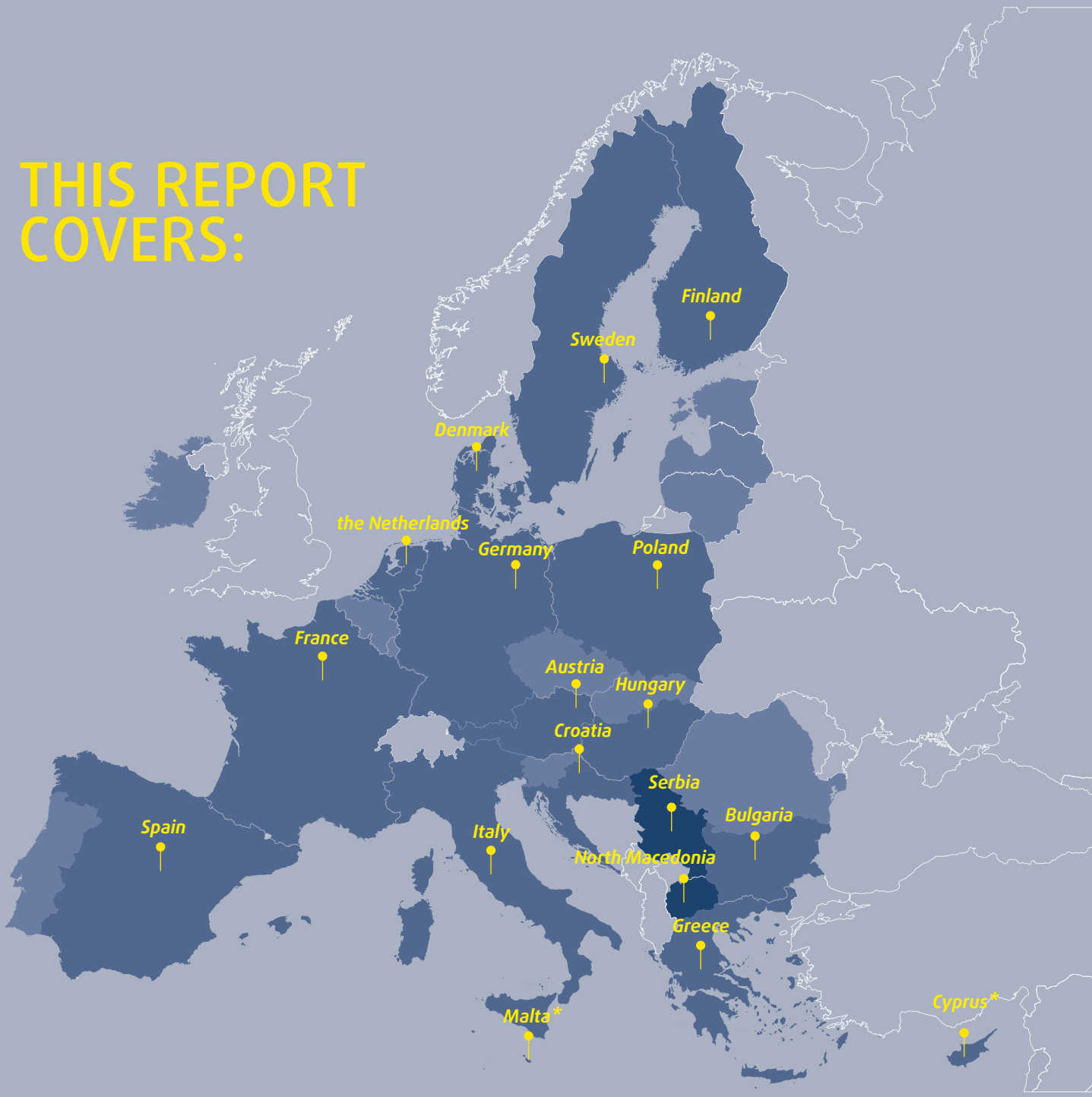
Contents

Migration | Children | Hate crime | EU Charter of Fundamental Rights

DISCLAIMER: This publication is based on quarterly reports that the European Union Agency for Fundamental Rights (FRA) commissioned under a contract with its research network, FRANET. Throughout 2019, FRANET provided FRA with descriptive up-to-date data on migration-related fundamental rights concerns on a quarterly basis. The data are based on interviews and desk research, and do not include analyses or conclusions.

EU Member States' legal and practical approaches and responses to migrants and refugees implicate several of their fundamental rights, as enshrined in the EU Charter of Fundamental Rights. The EU Agency for Fundamental Rights (FRA) has regularly collected data on these issues since September 2015.

THIS REPORT COVERS:



*covered since October 2019

Introduction

Children in migration are more vulnerable than adults, particularly when they are unaccompanied. Their vulnerability makes them more exposed to violence, exploitation and trafficking in human beings, as well as physical, psychological and sexual abuse.

The UN Convention on the Rights of the Child (CRC) obliges states to protect children from violence, exploitation and abuse. All EU Member States have ratified the convention, and the EU is guided by the principles and rights set out therein.[1] Nevertheless, many of the children coming to the EU to seek international protection, alone or with their families, are not sufficiently protected.

This report looks into challenges to the fundamental rights of children in migration throughout 2019. It pulls together the main issues identified in FRA's Quarterly Bulletins on migration in selected EU Member States. The report does not touch upon all areas relevant to migrant children's fundamental rights. For example, issues related to mental health and access to education were also of concern, but other recent FRA reports have extensively covered these.[2]

Fundamental rights of migrant children in 2019: key findings

In 2019, the main challenges concerning the fundamental rights of children in migration were:

1. Reaching and entering the EU

- Children risk death or injury when they try to enter the EU to seek international protection or a better life. The International Organization for Migration estimates that, in 2019, some 80 children died or went missing while crossing the sea to Europe. Moreover, since 2015, at least 34 children are known to have died while trying to cross land borders after their arrival in Europe.
- In 2019, over 780 children were stranded on board of rescue vessels – often for more than a week in bad weather and under poor health conditions. At least 28 rescue vessels were not allowed to dock immediately – more than double the number in 2018.
- Pushbacks, as well as the use of violence against migrants, including children, persisted or even increased during the past year. According to the international NGO 'Save the Children', at least 1,230 children were pushed back on the Western Balkan route.

2. Arrival and stay in the EU

- Reception capacity for all asylum applicants, particularly for unaccompanied children who have special protection needs, was insufficient in Cyprus, France, Greece, Italy, Malta and Spain.

Note on sources

The evidence presented in this report is based on interviews with representatives of public institutions, non-governmental organisations, Ombudspersons and international organisations, as well as on desk research. In addition, where sources of information are available in the public domain, hyperlinks can be found in the footnotes throughout the text.

1 United Nations (UN), **Convention on the Rights of the Child (CRC)**, 22 November 1989.

2 FRA (2019), ***Integration of young refugees in the EU: good practices and challenges***, Publications Office of the EU.

– Hygiene and sanitation conditions for children were deplorable in the hotspots operated in Greece. Poor reception standards for children were also reported in Croatia, Cyprus, France, Hungary, Italy, Malta and Spain.
– Facilities are often not age appropriate. Migrant children were not effectively protected from sexual and labour exploitation.
– Children sometimes face long asylum procedures. This can either be due to lengthy age-assessment procedures or because it takes a long time to appoint the legal guardian who submits the application on behalf of the child. Despite significant progress in reforming national guardianship systems in recent years, in practice, gaps remained.

3. Detention and return

– Since 2015, more migrant children have been detained, mainly to ensure their return. Detention conditions remained poor or even deteriorated in 2019.
– Croatia, Finland, the Netherlands and Sweden allow and carry out forced returns of unaccompanied children. However, most returns of unaccompanied children are voluntary.

In 2019, over 140,000 migrants were apprehended after crossing the EU's external land or sea borders in an unauthorised manner. Among them, about 33,000 claimed to be children, including over 5,000 who were unaccompanied.[3] Compared to 2018, the number dropped from some 150,000 detected migrants, one in five of whom claimed to be under 18.[4] Some countries, like **Greece**, received significantly more children than other countries, underscoring the urgent need for realistic burden sharing and solidarity among EU Member States.

Legal corner

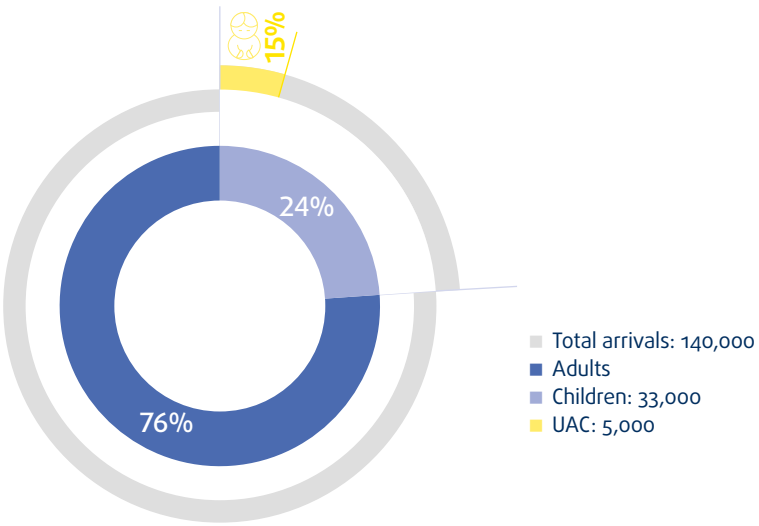
The year 2019 marks the 30th anniversary of the UN Convention on the Rights of the Child (CRC). All EU Member States are bound by the convention, which sets out the civil, political, economic, social, health and cultural rights of children. The convention defines a child as any human being under the age of eighteen.

Article 3 of the Convention on the Rights of the Child – as well as Article 24 of the EU Charter of Fundamental Rights – require authorities to take due account of the best interests of the child, which must be a primary consideration in their actions.

The Committee on the Rights of the Child monitors the implementation of the CRC to ensure that every child has the right to be free from discrimination, violence and neglect; to be treated with dignity and respect; to be cared for, develop and be part of their communities; and to participate in decisions that concern them.

3 Information provided by Frontex to FRA in March 2020.
4 Frontex (2019), **Risk Analysis for 2019**, February 2019.

Figure 1: Arrivals in Europe by land and sea, total, children and unaccompanied children, EU-27 plus UK*



Note: The figure covers the United Kingdom because the country was still an EU Member State in 2019. UAC = unaccompanied children.

Source: Frontex, March 2020

This is the fourth year FRA is publishing an overview of the key fundamental rights challenges for migrants in the previous year.[5] Many issues FRA flagged a year ago remain valid. Migrants' rights at borders are not always respected and incidents of violence and hate speech against migrants persist. Improvements were observed in several of the EU Member States where new arrivals continued to decline. Detected unauthorised arrivals at land and sea borders declined in all countries, except for Croatia, Cyprus, Greece, Hungary, Malta, and Romania, where more unauthorised border crossings were detected in 2019 than in 2018.[6]

FRA activity

Eye on migration: quarterly bulletins on migration

FRA has been collecting data on migration in selected EU Member States since September 2015. As of 2020, the reports focus on 16 EU Member States and North Macedonia and Serbia. For the first time, coverage now includes Cyprus and Malta (replacing Finland).

The 'Quarterly Bulletin' reports provide overviews on key emerging and persisting fundamental rights concerns, the situation at the border, asylum procedures, reception, child protection, immigration detention, return, legal and policy responses, responses by civil society, local and political actors, as well as hate speech and violent crime.

All reports can be found on ***FRA's website.***

5 FRA (2019), ***Beyond the peak: challenges remain, but migration numbers drop***, Publications Office of the EU.

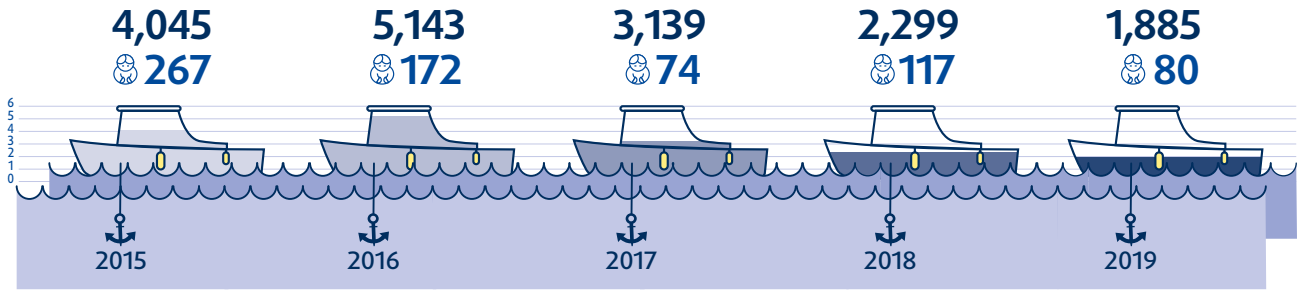
6 Information provided by Frontex to FRA in March 2020.

1. Reaching and entering the EU

Fatalities at sea and land borders

According to IOM, some 1,885 people are estimated to have died or gone missing in 2019 while crossing the sea to reach Europe. Of these, around 80 were children. Children face particular risks when they attempt to cross borders irregularly.[7]

Figure 2: Estimated deaths at sea 2015-2019: total number of persons/children



Source: **International Organization for Migration**, *2019*

In Libya, the humanitarian situation continued to deteriorate last year. Around 3,300 migrants, including children, were arbitrarily detained in severely overcrowded centres, where they faced torture, ill-treatment, forced labour, rape and malnutrition.[8] An airstrike on one of the centres near Tripoli killed more than 50 people, including six children, and left over 130 people injured. Many migrants, including children, were rescued at sea by the Libyan coastguards while fleeing to Europe, and brought back to Libya.[9]

IOM reported that, out of 9,225 people rescued or intercepted at sea and returned to Libya in 2019, 400 were children – 296 of them boys and 104 girls. In 2018, out of 15,428 people intercepted, 939 children were rescued and returned to Libya (696 boys and 243 girls).[10]

Legal corner

Providing assistance to people in distress at sea is a duty of all states and shipmasters under international law. Core provisions on search and rescue at sea are set out in the 1974 International Convention for the Safety of Life at Sea and the 1979 International Convention on Maritime Search and Rescue.

7 International Organization for Migration (IOM), **Missing migrants projects**. The dataset is regularly updated. Data extracted on 3 March 2020.

8 UNHCR (2019), **UNHCR, IOM condemn attack on Tajoura, call for an immediate investigation of those responsible**, Joint UNHCR/IOM Press Release, 3 July 2019.

9 UN News (2019), **Six children among 53 confirmed fatalities after Libya detention centre airstrikes: Security Council condemns attack**, 5 July 2019.

10 IOM, **Libya update 16-31 December 2019**. Data extracted 3 March 2020. For 2018: UNHCR, UNICEF and IOM, **Refugee and Migrant Children in Europe, Overview of Trends, January - December 2018**.

The stricter border controls introduced by many Member States also increased risks at land borders. As of September 2019, at least 34 children who had arrived in the EU since 2015 are known to have died when attempting to move onward to other EU Member States.[11] Some children have drowned attempting to cross rivers or died while trying to hide in trucks, cars or trains to cross borders undetected.[12]

Search-and-rescue operations

Tough search-and-rescue policies have continued to undermine civil society rescue efforts to save lives and bring to safety migrants in distress. The few remaining rescue boats deployed by civil society organisations faced serious difficulties when trying to dock, delaying the disembarkation of migrants and putting at risk their safety and physical integrity.

According to information available to FRA, in at least 28 cases in 2019, rescue vessels were not allowed to dock immediately – more than double the number of 2018 (Table 1). Consequently, over 780 children were stranded on board – often for more than a week in bad weather, under poor health conditions, and running out of drinking water and food before being allowed to disembark.

Legal corner

The UN Human Rights Committee published General Comment No. 36 on Article 6 of the ICCPR (right to life), which includes guidance on rescue at sea and the prohibition of *refoulement*.

Council decision (CFSP) 2019/1595 extends to 31 March 2020 the mandate of the European Union Naval Force Mediterranean Operation SOPHIA. Between its establishment in 2015 and July 2018, Operation SOPHIA's assets were involved in rescuing 45,000 people. However, ship patrols were ended in April 2019, with the focus shifting to the use of planes.

11 UNHCR (2019), **Desperate Journeys - Refugee and Migrant Children arriving in Europe and how to Strengthen their Protection – January to September 2019,** October 2019.

12 *Ibid.*

Table 1: Vessels that had to stay at sea for more than one day in 2019

Ship	Number of migrants		Days spent at sea***	Date and place of disembarkation	EU MS that pledged to relocate some passengers
	Total*	Children**			
'Sea Watch 3' (NGO vessel, Germany)	47	15	11	31 January Catania (Italy)	France, Portugal, Germany, Malta, Luxembourg, Romania, Lithuania, Bulgaria
'Mare Jonio' (NGO vessel, Italy)	49+1 evacuated	15	2	19 March Lampedusa (Italy)	No relocation requested
'Alan Kurdi' (NGO vessel, Germany)	64	12	10	13 April Malta	France, Portugal, Germany, Luxembourg
'Sea Watch 3' (NGO vessel, Germany)	47+20 evacuated	14	4	19 May Lampedusa (Italy)	No relocation requested
'Sea Watch 3' (NGO vessel, Germany)	53	4	16	29 June Lampedusa (Italy)	Finland, France, Portugal, Germany, Luxembourg
'Alex-Mediterranea' (NGO vessel, Italy)	41+13 evacuated	12	3	7 July Lampedusa (Italy)	No relocation requested
'Alan Kurdi' (NGO vessel, Germany)	65	36	2	7 July Malta	Finland, France, Germany, Portugal, Ireland, Luxembourg, Lithuania
'Gregoretti' (state vessel, Italy)	116 +19 evacuated	29	5	31 July Augusta (Italy)	France, Germany, Portugal, Luxembourg, Ireland
'Alan Kurdi' (NGO vessel, Germany)	40	13	4	4 August Malta	France, Portugal, Germany, Luxembourg, Ireland
'Open Arms' (NGO vessel, Spain)	163 (some of them evacuated)	23	21	21 August Lampedusa (Italy)	France, Portugal, Germany, Luxembourg, Spain
'Ocean Viking' (SOS Mediterranee and MSF)	356	103	14	23 August Malta	France , Portugal, Germany, Ireland Luxembourg, Romania
'Eleonore' (NGO Mission Lifeline, Germany)	104	30	8	2 September Pozzallo (Italy)	France, Portugal, Germany, Ireland, Luxembourg
'Mare Jonio' (Mediterranea Saving Humans, Italy)	35+63 evacuated	36	5	2 September Lampedusa (Italy)	No relocation requested
'Alan Kurdi' (NGO vessel, Germany)	5 + 8 evacuated	8	10	10 September Malta	France, Germany, Portugal
'Ocean Viking' (SOS Mediterranee and MSF)	85	20	6	14 September Lampedusa (Italy)	France, Portugal, Germany, Luxembourg
'Ocean Viking' (SOS Mediterranee and MSF)	182	45	8	24 September Messina (Italy)	France, Germany, Portugal, Ireland, Luxembourg
'Ocean Viking' (SOS Mediterranee and MSF)	176	39	4	16 October Taranto (Italy)	France, Germany, Portugal, Ireland, Luxembourg
'Asso 29/Diciotti' (commercial vessel and state vessel, Italy)	67	24	2	22 October Pozzallo (Italy)	No relocation requested

Ship	Number of migrants		Days spent at sea***	Date and place of disembarkation	EU MS that pledged to relocate some passengers
	Total*	Children**			
'Ocean Viking' (SOS Mediterranee and MSF)	104	38	12	30 October Pozzallo (Italy)	France, Germany, Portugal, Ireland
'Alan Kurdi' (NGO vessel, Germany)	89+3 evacuated	14	8	3 November Taranto (Italy)	France, Germany, Portugal, Ireland
'Asso Trenta' (state vessel, Italy)	151+4 evacuated	46	2	3 November Pozzallo (Italy)	No relocation requested
'Ocean Viking' (SOS Mediterranee and MSF)	213+2 evacuated	57	5	24 November Messina (Italy)	France, Germany, Malta, Ireland, Spain, Portugal
'Open Arms' (NGO vessel, Spain)	62+11 evacuated	29	5	26 November Taranto (Italy)	France, Germany, Malta, Ireland, Spain, Portugal
'Aita Mari' (NGO vessel, Spain)	79	21	5	26 November Pozzallo (Italy)	France, Germany, Malta, Ireland, Spain, Portugal
'Ocean Viking' (SOS Mediterranee and MSF)	60	24	6	4 December Pozzallo (Italy)	France, Germany, Portugal, Ireland
'Alan Kurdi' (NGO vessel, Germany)	61+23 evacuated	22	6	4 December Messina (Italy)	France, Germany
'Ocean Viking' (SOS Mediterranee and MSF)	159+3 evacuated	42	3	23 December Taranto (Italy)	France, Germany, Portugal, Ireland
'Alan Kurdi' (NGO vessel, Germany)	32	12	3	29 December Pozzallo (Italy)	France, Germany, Ireland

Notes:

** Medically evacuated persons listed separately; location of evacuation may differ from port of disembarkation.*

*** Includes unaccompanied children as well as children accompanied by their parents. The numbers are based on declarations upon disembarkation and may later have been adjusted.*

**** In case of multiple rescue operations, this corresponds to the number of days spent at sea by those who were at sea the longest.*

Source: FRA, 2020 [based on various sources, including NGO and media reports and interviews]

FRA activity

In June 2019, FRA published an update on *'Fundamental rights considerations: NGO ships involved in search and rescue in the Mediterranean and criminal investigations'*. The note draws attention to the criminalisation of search-and-rescue operations carried out by NGOs in the Mediterranean.

The note is available on ***FRA's website***.

In May 2020, FRA will publish a study on different relocation schemes of unaccompanied children that have been put in place since 2015. The study explores challenges and good practices in ten EU Member States. It aims to help national authorities relocate unaccompanied children in a fundamental rights-compliant and feasible manner.

Legal corner

The principle of *non-refoulement* is the core element of refugee protection and is enshrined in international and EU law. Article 33 (1) of the 1951 Refugee Convention, the interpretation of Article 3 of the European Convention on Human Rights (ECHR) and Article 19 (2) of the EU Charter of Fundamental Rights prohibit returning an individual to a risk of persecution, torture, inhuman or other degrading treatment or punishment.

According to media reports, in September 2019, **Germany**, **France**, **Italy** and **Malta** reached a temporary agreement for the disembarkation and relocation of migrants who are rescued in the central Mediterranean.[13] In this context, 22 unaccompanied children were relocated in 2019 from **Malta** to **Finland**, **Ireland**, **Germany** and **Slovenia**.[14]

Risk of *refoulement* and border violence

The number of children apprehended and returned back to a neighbouring country without granting those seeking international protection access to the territory and to fair and efficient asylum procedures (pushbacks),[15] as well as the use of violence against children, continued or increased over the past year.[16]

Save the Children reported that, between January and September 2019, 1,230 children were pushed back on the Western Balkan route. Most children were pushed back at the **Croatian** border (321), followed by **North Macedonia** (212), **Bulgaria** (158) and **Hungary** (176). Pushbacks were also reported in **Serbia** (47 between January and July) and **Greece** (41 between January and July). Children are most likely to perceive pushbacks as violent – even if no actual physical violence has been used. Most incidents of violence during pushbacks were explicitly reported to Save the Children at Bulgarian borders, with 73 % of pushbacks being violent in the first half of 2019; followed by 51 % at Greek and Serbian borders; and 45 % in the case of North Macedonia.

13 Joint declaration of intent on a controlled emergency procedure – voluntary commitments by member states for a predictable temporary solidarity mechanism ('**Malta Declaration**'), 23 September 2019.

14 Data provided by IOM Malta in February 2020.

15 As regards the obligations under Article 33 of the 1951 Convention Relating to the Status of Refugees, see UNHCR (2007), **Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol***, Geneva, 26 January 2007, para. 8.

16 Save the Children (2019), **Reports about Push Backs and Violence against Children on the Move at the Western Balkans Borders. January–June 2019**, 14 August 2019; Save the Children (2019), **Reports about Push Backs and Violence against Children on the Move at the Western Balkans Borders. July–September 2019**, 11 December 2019.

According to the NGO 'Border Violence Monitoring Network', the use of gun violence – including firing warning shots and voicing threats while holding guns – was systemic and increased in the Western Balkan region. This was particularly the case in Croatia, including against children.[17] In 2019, 63 cases involving gun violence were reported in different countries, among them 54 in Croatia. Almost 20 % of all recorded pushback cases from Croatia involved gun use, affecting 1,279 people.[18]

Some 770 people in transit were threatened with guns when they were pushed back in 2019, according to the Border Violence Monitoring Network. In several instances, the officers allegedly took or burnt the migrants' shoes, bags, phones and clothes.[19] In at least one case, families – including their small children – had to take off their clothes and nappies in the forest at night.[20]

NGOs reported that children were also pushed back in **France**, **Poland** and **Spain**.[21]

Legal corner

In D.D. v. Spain, the UN Committee on the Rights of the Child establishes that the return of an unaccompanied child from Spain to Morocco, without assessing the best interests of the child, violated Articles 3, 20 and 37 of the Convention on the Rights of the Child.

See UN Committee on the Rights of the Child (CRC), ***Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 4/2016****, 15 May 2019.*

17 Border Violence Monitoring Network (2019), **Illegal Push-backs and Border Violence Reports – Balkan Region – November 2019**, November 2019. On pushbacks from Croatia, see also: Amnesty International (2019), **Pushed To The Edge: Violence And Abuse Against Refugees And Migrants Along Balkan Route**, March 2019; Amnesty International (2019), **Croatia: EU complicit in violence and abuse by police against refugees and migrants**, 13 March 2019; Meltingpot Europa (2019), **Stories of ordinary violence from the border between Bosnia and Croatia**, 19 February 2019; United Nations Children's Fund (UNICEF) (2019), **Refugee and Migrant Response in Europe Situation Report 32. April–June 2019**, June 2019; Centre for Peace Studies, **5th Report on Pushbacks and Violence from the Republic of Croatia: Illegal Practices and Systemic Human Rights Violations at EU Borders**, April 2019; Schweitzer Rundfunk, ***Kroatische Polizei bei illegaler Abschiebung gefilmt***, May 2019.

18 Border Violence Monitoring Network (2019), Press release, **Croatian police shoot person in transit**, November 2019.

19 Border Violence Monitoring Network (2019), **Illegal Push-backs and Border Violence Reports – Balkan Region – November 2019**, November 2019.

20 Border Violence Monitoring Network (2019), **The Babies' Diapers had to be taken off to Search the Babies. They were Naked in the Forest in the Middle of the Night**, 16 October 2019.

21 Médecins Sans Frontières (2019), **Unaccompanied minors: symbols of a policy of mistreatment**, 10 September 2019; Amnesty International (2019), ***Der Schicksalszug in Richtung Polen****, 26 March 2019;* European Council on Refugees and Exiles (ECRE) (2019), **Spain: Rights of Asylum Seekers Deteriorating at Border with Morocco**, 4 October 2019.

REPORTED INCIDENTS OF UNLAWFUL REFUSAL OF ENTRY OF CHILDREN AT BORDERS

Note: Unlawful refusals of entry at airports are not included.
Source: FRA, 2020

2. Arrival and stay in the EU

Reception

In 2019, due to the drop in arrivals, several EU Member States improved their reception capacity and living conditions in accommodation for migrants, including children. In a few Member States, however, the reception capacity and conditions severely worsened, particularly at the EU's external borders.

Insufficient reception capacity

Reception capacities were insufficient to cover all asylum applicants, including children, in **Cyprus**, **France**, **Greece**, **Italy**, **Malta** and **Spain**. Insufficient capacity led to challenges in all these countries. However, the camps on the Greek islands in the Eastern Aegean were unprecedentedly overcrowded and conditions incomparably poor. The combination of reception gaps on the ground, the inefficient use of EU funds,[22] and the interpretation of the EU-Turkey statement, allowing only for readmission to Turkey of those staying on the islands, all undermined dignified reception standards in the Eastern Aegean islands.

In **Cyprus**, where some 13,200 people applied for asylum in 2019, the number of applicants has almost doubled every year for the past four years. Reception capacity also remained largely insufficient in **France**.[23] In **Greece**, at the end of 2019, the five hotspots hosted over 38,000 people, which is more than six times their capacity.[24] Over 5,300 unaccompanied children were estimated to be in the country at the end of the year, including 486 separated children.[25] In comparison, by the end of 2019, only some 7,000 unaccompanied children had arrived in six EU Member States combined (**Belgium**, **Germany**, **Italy**, **the Netherlands**, **Poland** and **Sweden**).[26] This discrepancy in numbers underscores the urgent need for realistic burden sharing and solidarity among EU Member States to overcome the fundamental rights challenges in Greece.

In November 2019, the Greek authorities announced a scheme ("No child alone") aiming to distribute unaccompanied children in various accommodation facilities on the mainland.[27] This, however, has not yet materialised.

In **Italy**, UNICEF reported that following the closure of reception centres, the number of unaccompanied children in informal settlements and squats increased in Rome and other urban areas.[28]

22 FRA (2019), **Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy**, March 2019, p. 7.

23 France, Fédération des acteurs de la solidarité, ***Manifeste national des associations et des collectifs citoyens*** *«En finir avec les situations inhumaines d'errance et de campements en France»*, 27 June 2019. For data about the number of accommodation places in France, see Office Français de l'Immigration et de l'Intégration, ***Rapport d'activité 2018***, 10 July 2019, p. 15.

24 Greece, Ministry of Citizen Protection, National Coordination Center for Border Control, Immigration and Asylum, **National Situational Picture Regarding the Islands at Eastern Aegean Sea**, 31 December 2019.

25 Greece, National Center for Social Solidarity (EKKA) (2019), **Situation Update: Unaccompanied Children (UAC) in Greece**, 31 December 2019.

26 Eurostat, **webpage on asylum applicants considered to be unaccompanied minors**, extracted 17 March 2020.

27 Greece, Keep Talking Greece, **No Child alone: PM Mitsotakis to start new program for unaccompanied minors**, 24 November 2019.

28 UNICEF (2019), **Refugee and Migrant Response in Europe Humanitarian Situation Report # 32**, April-June 2019.

Legal corner

Article 1 of the EU Charter of Fundamental Rights provides: "Human dignity is inviolable. It must be respected and protected." Housing serves to uphold the right to human dignity guaranteed in Article 1. It is a key dimension of integration and a precondition for the enjoyment of other rights.

Under Article 34 of the Charter, the Union recognises and respects the right to social and housing assistance, in accordance with national laws. The Reception Conditions Directive obliges Member States to ensure adequate living conditions for vulnerable persons, such as children.

In numbers

At the end of 2019, there were 5,301 unaccompanied children in Greece. Of these, only 1,286 were in appropriate and long-term accommodation (shelters and semi-independent living apartments); 748 were in temporary accommodation ('safe zones' and emergency hotels); 1,809 stayed in Reception and Identification Centres; 195 in 'protective custody', mainly at police stations; 77 at emergency accommodation facilitates; and 141 in open temporary accommodation facilities. 1,045 have been reported as living in informal or insecure housing conditions, including being homeless.

See National Center for Social Solidarity (EKKA) (2019), ***Situation Update: Unaccompanied Children (UAC) in Greece,*** *31 December 2019.*

Legal corner

In ***European Committee on Social Rights, International Commission of jurists and European Council for Refugees and Exiles v. Greece***, No. 173/2018 (23 May 2019), the European Committee on Social Rights ordered immediate measures to protect migrant children's rights in Greece.

Sh.D. and others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia, No. 14165/16 (13 June 2019), concerned living conditions of five unaccompanied migrant children in Greece. The European Court of Human Rights found that conditions in the Idomeni camp were not suitable for children, and that the protective custody of three applicants in police stations amounted to a deprivation of liberty in facilities not designed for unaccompanied children.

During times of increased arrivals, the hotspot in Lampedusa was overcrowded.[29] In **Malta**, where no new reception facilities have opened in the past years, increased arrivals led to overcrowding, riots and arbitrary detention.[30] This constitutes a serious risk to the life, health and psychological wellbeing of children.[31]

In **Spain**, every month some 10,000 people applied for asylum in 2019.[32] Official data on reception capacity are not available, but the Chair of Refugees and Forced Migrants estimates that the 9,100 places in first reception, where applicants stay for up to six months, were largely insufficient.[33] Due to the increasing number of arrivals in the Canary Islands, according to media reports, the reception system on the islands was overwhelmed and pregnant women and children stayed in hotel rooms.[34]

Poor reception conditions

Hygiene and sanitation conditions remain unacceptable in the hotspots situated in **Greece**, where many families and children stay for prolonged periods of time, with few support measures available for vulnerable people, in particular unaccompanied children.[35] A baby died from dehydration in Moria, illustrating the seriousness of the situation.[36]

Children also faced difficulties as a result of reception conditions in **Cyprus**, **Croatia**, **France**, **Hungary**, **Italy**, **Malta**, and **Spain**. Age appropriate facilities are rare.

In **Cyprus**, poor reception conditions made it impossible to ensure a dignified standard of living, exposing children to particular hardships.[37] **Croatia** continued to place unaccompanied children in centres for children with behavioural problems. These are not well equipped and lack resources (experience, interpreters) to provide appropriate support and services to unaccompanied children during the asylum procedure.[38]

29 UNHCR (2019), **UNHCR Italy Factsheet, October 2019**, 31 October 2019; ***UNHCR Italy Factsheet, November 2019***, 30 November 2019; Italy, Melting Pot Europa, ***Esigiamo una degna accoglienza per chi sopravvive ai frequenti naufragi!***, *2 December 2019.*

30 Times of Malta, **Police raid open centre, arrest ringleaders, after Ħal Far riot**, 21 October 2019; Times of Malta, **No food for three days for Ħal Far migrants**, 24 October 2019. Times of Malta, **Rats and cramped conditions: life inside the Ħal Far open centre**, 28 October 2019.

31 Malta Today, **University academics call for appropriate conditions for child asylum seekers**, October 2019.

32 Eurostat, **migr_asyappctzm**, data extracted on 22 January 2020.

33 Spain, information provided by Chair of Refugees and Forced Migrants, December 2019.

34 El Pais, ***La llegada de migrantes colapsa los centros canarios de acogida***, 6 December 2019.

35 European Committee on Social Rights, International Commission of Jurists and European Council for Refugees and Exiles v. Greece, **No. 173/2018**, 21 December 2018; Greek Council for Refugees (2019), **Limits of Indignation: the EU-Turkey Statement and its implementation in the Samos 'hotspot'**, 9 May 2019; Council of Europe, Parliamentary Assembly (PACE) (2019), **Resolution 2280 (2019) on the situation of migrants and refugees on the Greek islands: more needs to be done**, 11 April 2019.

36 Greece, euronews, **Baby dies in Moria migrant camp, MSF reveals**, 17 November 2019.

37 Cyprus, **Asylum Service**, asylum applications 2015–2018. The statistics for 2019 have not yet been published, but the Asylum Service reported to FRA that it received 13,200 asylum applications, the highest number ever recorded; Commissioner for Children's Rights, Report from the Commissioner on material conditions granted to asylum seekers not hosted in the reception centres and the treatment of vulnerable persons, **Έκθεση Επιτρόπου, αναφορικά με τις υλικές συνθήκες υποδοχής που παραχωρούνται στους Αιτήτες Ασύλου που δεν υπαρχει δυνατότητα φιλοξενίας σε κέντρα υποδοχής και της μεταχείρισης ευάλωτων προσώπων.**

38 Croatia, interview with Rehabilitation Centre for Stress and Trauma, March 2019.

The European Court of Human Rights found that **France** violated Article 3 of the European Convention on Human Rights (prohibiting torture, and inhuman or degrading treatment or punishment) by not offering alternative accommodation to a 15-year-old unaccompanied child from Afghanistan evicted near Calais.[39]

In **Italy**, UNICEF reported that most children are still hosted in first-level reception centres or in centres managed directly by municipalities, with inadequate standards.[40]

In **Malta**, authorities placed many new arrivals, including unaccompanied children, in the Safi barracks, the country's main immigration detention facility. The facility was soon overcrowded and facing serious hygienic issues.[41] In October, there was a riot in the largest open reception centre in Hal Far, hosting 1,200 people. It led to the temporary suspension of food distribution and the arrest of 107 people, including unaccompanied children.[42] In **Hungary**, almost half of those kept in the transit zones along the Hungarian-Serbian border were children.[43] In the transit zones, armed security guards escort asylum applicants, including children, at all times; freedom of movement is severely restricted; and adequate medical care, in particular for women and children, is not available.[44] In Melilla, **Spain**, unaccompanied children at the centre "La Purísima" reported a lack of beds, food scarcity, cold-water showers and physical mistreatment by at least one centre employee.[45]

Children often lacked child appropriate facilities and adequate facilities for play and leisure in some reception facilities in **Germany**,[46] **Hungary**,[47] **Malta**,[48] **the Netherlands**,[49] **North Macedonia**,[50] **Spain** [51] and **Sweden**.[52]

In **Cyprus** and **Greece**, newly arrived asylum applicants have to stay for weeks and months (or even years in the case of Greece) in camps originally intended only for short-term stays. On the Greek islands, FRA staff observed children sleeping in tents, halls or taking turns sleeping and in some cases staying together with adults not related to them. In Cyprus, adults share common areas with children unrelated to them.[53]

39 ECtHR, ***Kahn v. France***, No. 12267/16, 28 February 2019. See also UN Special Rapporteur on the right to adequate housing, **End of Mission Statement**, April 2019, presenting her preliminary findings after her visit to the Republic of France, conducted on 2–11 April 2019

40 UNICEF (2019), ***Refugee and Migrant Response in Europe Humanitarian Situation Report # 32***, April-June 2019.

41 Malta, interview with Office of the Commissioner for Child, December 2019.

42 Times of Malta, **Police raid open centre, arrest ringleaders, after Ħal Far riot**, 21 October 2019; Times of Malta, **No food for three days for Ħal Far migrants**, 24 October 2019; Times of Malta, **Rats and cramped conditions: life inside the Ħal Far open centre**, 28 October 2019.

43 Hungary, 444.hu (2019), ***A tranzitzónában őrzött menedékkérők nagyobbik része gyerek***, 11 April 2019.

44 United Nations High Commissioner for Human Rights (OHCHR) (2019), **End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales**, 17 July 2019.

45 Spain, Harraga Association (2019), ***La Purísima: la pesadilla de ser menor y extranjero en Melilla***, 6 May 2019.

46 Germany, interview with Caritas Association, September 2019.

47 OHCHR (2019), **End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales**, 17 July 2019.

48 Malta, interview with Office of the Commissioner for Child, December 2019.

49 The Netherlands, **Study on the living conditions of children in reception centres and 'family locations'**, May 2018.

50 North Macedonia, interview with Ombudsperson, September 2019.

51 Spain, Harraga Association (2019), ***La Purísima: la pesadilla de ser menor y extranjero en Melilla***, 6 May 2019.

52 Sweden, Interview with Save the Children, June 2019.

53 Cyprus, interview with Refugee Council and Commissioner for Children's Rights, December 2019; Report from the Commissioner on material conditions granted to asylum seekers not hosted in the reception centres and the treatment of vulnerable persons, ***Έκθεση Επιτρόπου, αναφορικά με τις υλικές συνθήκες υποδοχής που παραχωρούνται στους Αιτήτες Ασύλου που δεν υπαρχει δυνατότητα φιλοξενίας σε κέντρα υποδοχής και της μεταχείρισης ευάλωτων προσώπων.***

FRA activity

Integrating young people

FRA published a report on the challenges of young people aged between 16 and 24 who fled armed conflict or persecution and arrived in the EU in 2015 and 2016. The report identifies two critical moments that require more attention: the transition from asylum applicant to a person granted international protection, and the transition from childhood to adulthood upon turning 18. During such transitions, people experience gaps in rights and services, which risk undermining their pathway to social inclusion.

See FRA (2019), ***Integration of young refugees in the EU: good practices and challenges.***

Bright spots

In **Sweden**, municipalities receive financial support for accommodating unaccompanied asylum-seeking children who turn 18 during their asylum procedure to allow them to remain in the same accommodation until their asylum procedure is finalised.

In Spain, the Office of Asylum and Refuge stopped appointments to register applications for over a month. In Madrid, this led to people sleeping on the streets, including pregnant women and children, as they cannot access the reception system before their asylum claims are registered.[54]

Challenges when turning 18

Upon turning 18, unaccompanied asylum-seeking children face particular challenges, as they often have to leave their child-specific accommodation and experience a significant reduction in social support.[55] Guardianship ceases and young people may have to share rooms with other adults of different ages. Housing experts in **Greece**, **Italy** and **Sweden** noted that some young asylum applicants refuse to move to adult reception facilities, worried that they will not offer sufficient protection and assistance. Turning 18 can thus even result in homelessness.[56]

Sexual and labour exploitation

In 2019, the NGO Rosa Luxemburg Stiftung issued a report on **Greece**, **Italy** and **Spain** showing that shortcomings in their national child-protection systems led to the social exclusion, as well as to sexual and labour exploitation, of children.[57] ECPAT, a worldwide network of organisations working to end the sexual exploitation of children, reported that unaccompanied children in Greece, especially boys, offer sex services to obtain food, shelter or money to continue their journey.[58] According to the Committee to the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee), in **Hungary**, due to the exclusion of children between 14-18 years of age from the child protection system, migrant children, in particular girls, are not adequately protected from sexual harassment and exploitation.[59]

Age assessment

Age assessments not only prolong the procedure in some cases, but the manner in which they are conducted continued to raise fundamental rights concerns in several countries, including **France**, **Germany**, **Malta** and **Spain**.[60]

In **France**, age-assessment methods predominantly rely on bone testing and physical examination.[61] In **Germany**, untrained police officers increasingly performed age assessments.[62]

54 Spain, Interview with the Reception Solidarity Network, Parish Church of San Carlos Borromeo and Coordinadora de Barrios, June 2019.

55 FRA (2019), ***Integration of young refugees in the EU: good practices and challenges***.

56 *Ibid, p. 59.*

57 Rosa Luxemburg Stiftung (2019), **Children Cast Adrift – The exclusion and exploitation of unaccompanied minors (UAMs) in Greece, Spain and Italy – Comparative report**, November 2019.

58 Greece, ECPAT, Country Overview Greece, **A report on the scale, scope and context of the sexual exploitation of children**, p. 2, December 2019.

59 Committee to the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee), **Assessment by the Lanzarote Committee of the follow-up given by the Hungarian authorities to the recommendations addressed to them further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017)**, 6 June 2019.

60 FRA (2019), ***Integration of young refugees in the EU: good practices and challenges,*** p. 32.

61 France, **National Consultative Commission on Human Rights and Public Defender of Rights.**

62 Germany, interview with Federal Association for Unaccompanied Minors, June 2019.

In **Malta**, age assessment is not multidisciplinary; is conducted on every child (as opposed to when a child's age is in doubt); and there is currently a large backlog.[63]

In **Spain**, age assessment procedures were automatically applied to every child, even when a child had documentation. Some of the medical age-assessment procedures are invasive, not carried out by a medical expert, and applied without the child's consent.[64]

Guardianship systems for unaccompanied children

An effective guardianship system for unaccompanied children is a necessary pre-condition to ensure the child's best interests, as required by the UN Convention on the Rights of the Child and by Article 24 of the EU Charter for Fundamental Rights. Further details are elaborated in the Council of Europe's Guidelines on Guardianship.[65] Despite significant progress in recent years in reforming national guardianship systems,[66] gaps remained in practice.

In **Croatia**, local social-welfare centres or people who arrived with a child exercise the role of guardians, without being systematically trained.[67] **Greece** adopted a new guardianship law, but to date, implementation has not started.[68] A civil society guardianship project created to fill the gap offered some 43 guardians by the end of 2019, while there were 5,300 unaccompanied children in the country.[69] Under **Hungarian** law, only children under 14 receive a fully-fledged child guardian *(gyermekvédelmi gyám)*. Children aged between 14 and 18 are considered to have full legal capacity and are assigned only temporary "*ad hoc* guardians" *(eseti gyám)* to represent them in the asylum procedures.[70] In **Malta**, where reform of the guardianship system is pending,[71] the relocation of unaccompanied children was on hold until the Minister for Family and Children's Rights produced interim care orders for them. These assigned temporary guardianship to the Director of the Agency for the Welfare of Asylum Seekers (AWAS) for 21 days.

Legal corner

In ***A.L. v. Spain*** (No. 16/2017) and ***J.A.B. v. Spain*** (No. 22/2017), the UN Committee on the Rights of the Child found that Spain's age-assessment procedure for unaccompanied children violates the UN Convention on the Rights of the Child.

63 Committee on the Rights of the Child, **Concluding observations on the combined third to sixth periodic reports of Malta**, June 2019; Asylum Information Database, **Country Report Malta**, January 2019; interviews with IOM and the Office of the Commissioner for Children, December 2019.

64 UNICEF (2019), ***Niños y niñas migrantes no acompañados***, February 2019.

65 Council of Europe (2019), **Guidelines on Guardianship**, December 2019.

66 See, for example, Italy, Law No. 47, 7 April 2017 (***legge Zampa***).

67 Croatia, Ombudsperson for Children, Ombudsperson's work report for 2018 ***[Izvješće o radu pravobraniteljice za djecu za 2018. Godinu]***, p. 132.

68 Greece, **Law No. 4554 of 18 July 2018**, published in Government Gazette No. 130/A/18-7-2018 on the regulatory framework for the guardianship of unaccompanied minors (*"Επιτροπεία ασυνόδευτων ανηλίκων και άλλες διατάξεις"*); Ministerial Decision **No. Δ11/οικ.26945/1074** published in Government Gazette 399/B/19-06-2019 on the registry of accommodation facilities for unaccompanied children; Joint Ministerial Decision No. Δ11/οικ.28304/1153/21.6.2019 published in the Government Gazette 2725/B/2-7-2019 on the registry of professional guardians; Joint Ministerial Decision **No. Δ11/οικ.26943/1073** published in the Government Gazette 2474/B/24-06-2019 on the registry of unaccompanied children; Joint Ministerial Decision _No Δ11/οικ.28303/1153 published in the Government Gazette 2558/B/ 27-06-2019 on the determination of the formal and substantive qualifications for the selection of a professional guardian, obstacles, number of unaccompanied minors per guardian, details on their training, continuing education as well as regular evaluation, content, type and conditions of their contract, their remuneration and any necessary detail; Ministerial Decision No. Δ11/28925/1169 published in the Government Gazette 2890/B/5-7-2019 on adoption of the rules of procedure of the Supervisory Board for Guardianship of Unaccompanied Minors as per Article 19 of L.4554/2018 (130/τ.Α).

69 See Metadrasis, **Guardianship Network for unaccompanied minors** and National Centre for Social Solidarity, **Situation update on Unaccompanied Children in Greece**, 31 December 2019.

70 Hungary, Act No. 31 of 1997 on Child Protection and Guardianship Administration (***1997. évi XXXI. törvény a gyermekek védelméről és a gyámügyi igazgatásról***).

71 Malta, **Child Protection (Alternative Care) Act**, published for public consultation on 14 June 2018.

Legal corner

Detention is the most severe limitation on the right to liberty set out in Article 6 of the Charter and Article 5 of the European Convention on Human Rights (ECHR). Any deprivation of liberty must respect the strict safeguards established to prevent unlawful and arbitrary detention.

The Reception Conditions Directive (2013/33/EU) and the Return Directive (2008/115/EC) both emphasise that children are to be detained only as a last resort and only if less coercive measures cannot be applied effectively. Such detention must be for the shortest period of time possible and, in the asylum context, all efforts must be made to release those detained and to place them in suitable accommodation. The best interests of the child must be the primary consideration, in accordance with the Convention on the Rights of the Child.

3. Detention and return

Detention of children

Under EU asylum law, migrants can be detained for immigration-related reasons, either as asylum applicants,[72] to ensure transfer under the Dublin Regulation procedure[73] or to facilitate their return.[74] A child can be deprived of liberty only in exceptional cases, as the detention of children – even if only for a short time - negatively affects their physical and psychological well-being.[75] Nevertheless, a UN Global Study on Children Deprived of Liberty found that immigration detention of children in Europe is extensively used, although no reliable statistics exist.[76]

Detention of children on the rise

Since 2015, the detention of children in migration, in particular to facilitate their return, has been on the rise. According to available data, in 2015-2016, detention of unaccompanied children pending return was allowed in 19 EU Member States.[77] In 2019, in some EU Member States, including **France**, **Greece** and **Malta**, the use and length of child detention was increasing.

In **France**, some 1,430 children were detained in 2018, usually for between 1–13 days before their return or transfer.[78] The French oversea territory of Mayotte in the Indian Ocean, to which the EU Return Directive applies, detained the most children in the EU: 2,000 children.[79] In **Greece**, since August 2019, on average around 200 children have been held in 'protective custody', often in police cells, as a protective measure pending their transfer to a specialised accommodation facility. The number almost doubled compared to the same period in 2018, when fewer than 100 children were being held per month.[80] Immigration detention is on the rise in **Malta** since the country effectively returned to systematically detaining all who arrive by sea, including children.[81] In 2019, this concerned some 885, mostly unaccompanied, children. Around 80 of them were girls.[82]

72 Directive 2013/33/EU laying down standards for the reception of applicants for international protection, Art. 8.

73 Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), No 604/2013. Art. 28(2) provides that 'When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively. Member States shall not hold a person in detention for the sole reason that he or she is subject to the Dublin procedure, and Member States shall ensure that the detention is as short as possible.

74 Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, Art. 15.

75 Red Cross, EU Office, **Reducing the use of immigration detention in the EU**, 2020.

76 See in this regard also Manfred Nowak, **United Nations Global Study on Children Deprived of Liberty**, November 2019, p. 460.

77 This list only includes the 16 EU Member States covered by FRA's Quarterly Bulletins on migration and only those for which data were available. For a complete list of all EU Member States, see FRA (2017), ***European legal and policy framework on the immigration detention of children***, p. 74.

78 France, various authors, ***Rapport 2018*** *sur les centres et locaux de rétention administrative*, June 2019.

79 Manfred Nowak, **United Nations Global Study on Children Deprived of Liberty**, November 2019, p. 460.

80 Greece, National Center for Social Solidarity, **Situation Update on Unaccompanied Children in Greece, 31.12.2018** and **Situation Update on Unaccompanied Children in Greece, 31.12.2019.**

81 Times Malta, **1,400 migrants detained 'illegally' at Marsa and Safi – UNHCR**, 4 January 2020.

82 Data provided by UNHCR. The number of children refer to the declared age.

Most of them were detained for at least one week, but some for months, often together with unrelated adults.[83]

Even in **Italy**, where the law does not allow the detention of children, media and NGOs continued to report about cases of unaccompanied children in detention in Trapani.[84] In **the Netherlands**, unaccompanied children are detained for an average of 21 days, exceeding the maximum allowed period by seven days.[85] The District Court of The Hague found that the relevant national legislation violates the rights of the child, as it does not contain sufficient guarantees regarding the detention of unaccompanied children under immigration law.[86]

In **North Macedonia**, detention of unaccompanied children is on the rise.[87] Children were held for 1-2 days in detention to ensure their presence as witnesses in criminal procedures against smugglers.[88] In **Poland**, in 2019, some 156 children were detained (132 accompanied and 24 unaccompanied). This is one third fewer than in 2018, when 229 children were deprived of their liberty (210 accompanied and 19 unaccompanied).[89] In most cases, the district courts in Poland did not examine the best interests of the child when deciding on the detention of children.[90] At the same time, the number of alternatives to detention applied to children increased from 605 in 2018 to 830 in 2019.[91]

Detention conditions

While numbers of children in detention and the length of their detention were on the rise in 2019, reports about deplorable detention conditions continued to emerge, particularly in **Greece**, **France** and **North Macedonia**, as the following examples illustrate.

The ECtHR found that detention conditions for unaccompanied children under "protective custody" in police stations in **Greece** represented degrading treatment in violation of Article 3 of the ECHR.[92] In December 2019, three unaccompanied children attempted suicide in protest against their long detention under 'protective custody' in Greece.[93] In **France**, conditions at Mesnil-Amelot, the largest pre-removal detention centre in the country were reported as poor.[94]

83 Malta, Interview with Office of the Commissioner for Children, IOM Malta and several NGOs in December 2019; Times Malta, **1,400 migrants detained 'illegally' at Marsa and Safi – UNHCR**, 4 January 2020.

84 Italy, Melting Pot (2019), ***Un minore trattenuto al CPR di Trapani. La denuncia della campagna LasciaCIEntrare***, 11 February 2019; TrapaniSi (2019), ***Giunti al porto di Trapani 14 migranti tunisini, ci sono anche minorenni***, 5 January 2020.

85 The Netherlands, **Letter from the State Secretary for Justice and Security** (*Kinderen ivreemdelingendetentie/ alternatieve toezichtmaatregelen),* 22 February 2019.

86 The Netherlands, Court of The Hague (Rechtbank Den Haag), **NL19.18769 and NL19.18836**, 23 August 2019.

87 North Macedonia, Macedonian Young Lawyers Association (2019), US AID, **Gender Aspects of Migration**, 2020.

88 U.S. Department of State (2019), **2018 Country Reports on Human Rights Practices: North Macedonia**, 13 March 2019.

89 Poland, Border Guard Headquarters, Foreigners Department, data provided to FRA in January 2020.

90 Poland, Secretariat of the Committee of Ministers of the Council of Europe (2019), Communication from a NGO (Helsinki Foundation for Human Rights) (21/08/2019) in the case of *Bistieva and Others v. Poland* (Application No. 75157/14) and reply from the authorities (06/09/2019), 10 September 2019; Interview with the NGO Helsinki Foundation for Human Rights, December 2019. In July 2018, the ECtHR in Bistieva and Others v. Poland already stressed that Polish authorities failed to properly assess children's best interests before deciding on placing them in immigration detention.

91 Poland, Border Guard Headquarters, Foreigners Department, data provided to FRA in January 2020.

92 ECtHR, ***H.A. and Others v. Greece***, No. 19951/16, 29 February 2019.

93 Greece, NGO ARSIS (2019), **SOS for 61 unaccompanied minors in "protective" custody**, 11 December 2019.

94 France, *La Cimade* (2019), ***Face à une situation intenable au CRA du Mesnil-Amelot, la Cimade se retire pour trois jours***, 11 July 2019.

Legal corner

Individuals without permission to stay in an EU Member State can be returned to their home country following the procedures laid down in the Return Directive (Directive 2008/115/EC).*

The directive also applies to children, including those who are unaccompanied. Article 3 of the Convention on the Rights of the Child, Article 24 of the EU Charter of Fundamental Rights and the Return Directive require Member States' authorities to take due account of the best interests of the child, which must be a primary consideration in their actions.

See Return Directive, Art. 5 (a) and Art. 10 (1), read together with recital (22). The CJEU has also cited these provisions: see CJEU, C-249/13, Khaled Boudjlida v. Préfet des Pyrénées-Atlantiques, 11 December 2014, para. 48.

* The Return Directive was proposed to be recast in September 2018. For a fundamental rights-centered analysis of the recast proposal, see FRA (2019), **The recast Return Directive and its fundamental rights implications**, 10 January 2019.

At the border to **Italy** between Menton and Briançon, vulnerable people, including unaccompanied children, were detained under inadequate conditions before being sent back to Italy.[95] In **North Macedonia**, the Reception Centre for Foreigners Gazi Baba did not meet international standards and did not have appropriate conditions for accommodating children. Children did not have access to fresh air and were not given the opportunity to make phone calls. The police did not inform them of the reasons for their detention.[96]

Greece, **Malta**[97] and **North Macedonia**[98] detained unaccompanied children together with unrelated adults. Concerning Greece, the ECtHR, applying Rule 39 of the Rules of the Court, indicated interim measures in the case of two unaccompanied girls seeking international protection, and ordered the Greek authorities to transfer them immediately from the pre-removal detention centre for adults to an accommodation facility dedicated to unaccompanied children.[99] The Greek authorities complied with the interim measure. In **France**, a 10-year-old Cuban girl was held with her parents and 65 other people in the waiting area of Roissy Charles de Gaulle Airport for 16 days. As a result, she reportedly stopped talking and suffered from insomnia.[100]

Return of unaccompanied children

Returns of unaccompanied children are largely voluntary, as most Member States do not (by law or in practice) return unaccompanied children forcibly, including, for example, **Austria**, **Belgium**, **Cyprus**, **Greece**, **Hungary**, **Italy** and **Malta**.[101]

At least **Croatia**, **Finland**, **the Netherlands** and **Sweden** allowed and carried out forced returns of unaccompanied children.[102] **Germany** also started returning unaccompanied children to their parents or youth welfare facilities in the Balkan region.[103] **France** introduced a new law making it possible to return unaccompanied children without waiting for a court decision placing them under care.[104]

FRA activity

Returning unaccompanied children: fundamental rights considerations

In September 2019, FRA published guidance on how to ensure fundamental rights compliance when returning unaccompanied children. The focus paper aims to help national authorities involved in return-related tasks to ensure full rights compliance.

The guidance is available on ***FRA's website.***

95 France, Interview with the Public Defender of Rights, April 2019.

96 North Macedonia, Ombudsman, Annual Report 2018–Republic of North Macedonia 2018 (*ГОДИШЕН ИЗВЕШТАЈ ЗА СТЕПЕНОТ НА ОБЕЗБЕДУВАЊЕТО ПОЧИТУВАЊЕ, УНАПРЕДУВАЊЕ И ЗАШТИТА НА ЧОВЕКОВИТЕ СЛОБОДИ И ПРАВА* 2018), March 2019; Macedonian Young Lawyers Association (MYLA), "Immigration detention in North Macedonia through numbers, January - September 2019", *Имиграциски притвор во Северна Македонија низ бројки. јануари-септември 2019 година*, December 2019.

97 Malta, interview with the Office of the Commissioner for Children and IOM Malta, December 2019.

98 North Macedonia, Macedonian Young Lawyers Association (2019), US AID, **Gender Aspects of Migration**, 2020.

99 Greece, Greek Council of Refugees (2019), **The European Court of Human Rights grants interim measures in favour of two detained unaccompanied girls**, 28 March 2019.

100 France, NGO '**ANAFÉ**' on Twitter, January 2019.

101 See for data in 2016, FRA (2019), ***Returning unaccompanied children: fundamental rights considerations***, p.5, 2019. This information was confirmed to FRA in various interviews for 2019.

102 *Ibid.*

103 Germany, interview with Federal Association for Unaccompanied Minors, December 2018.

104 France, ***Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie***, Art. 18.

FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU

Looking ahead

After four years of regular migration updates, FRA will continue to issue 'Quarterly Bulletins' on key migration-related fundamental rights concerns in 2020. These bulletins cover the following countries: Austria, Belgium, Cyprus, Bulgaria, Croatia, Denmark, France, North Macedonia, Germany, Greece, Hungary, Italy, Malta, the Netherlands, Poland, Serbia, Spain and Sweden.

For the February 2020 Quarterly Bulletin, see: **https://fra.europa.eu/en/publication/2020/migration-key-fundamental-rights-concerns-quarterly-bulletin-1-2020**

All previous monthly and weekly reports also remain available on **FRA's website.**

FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS
fra.europa.eu
facebook.com/fundamentalrights
twitter.com/EURightsAgency
linkedin.com/company/eu-fundamental-rights-agency

ISBN 978-92-9474-840-9
DOI:10.2811/71324
TK-01-20-047-EN-N

Publications Office of the European Union

Integration of young refugees in the EU: good practices and challenges

FRA
EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS

Europe Direct is a service to help you find answers to your questions about the European Union

Freephone number (*):
00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

Photos (cover & inside, from left to right): ©Shutterstock.com-MikeDotta; Stock.adobe.com-Nadezhda; Shutterstock.com-Jazzmany.

More information on the European Union is available on the internet (http://europa.eu).

Luxembourg: Publications Office of the European Union, 2019

Print	ISBN 978-92-9474-736-5	doi:10.2811/014056	TK-04-19-548-EN-C
PDF	ISBN 978-92-9474-735-8	doi:10.2811/31568	TK-04-19-548-EN-N

FRA
EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS

Integration of young refugees in the EU: good practices and challenges

Foreword

Imagine you were forced from your home in the most harrowing of circumstances; endured hostility and peril during your flight; lost loved ones; and finally arrived in an unfamiliar place, surrounded by people who survived similar hardships. How would it feel to realise that another hugely challenging journey was about to begin?

This is the reality many of the over 2.5 million people who applied for international protection in the European Union in 2015 and 2016 face. Uprooted and often traumatised, they are confronted with one difficult transition after another while striving to build a new life.

FRA's report, which focuses on children and young people between the ages of 16 and 24, shows that two transitions loom particularly large: the transition from being an asylum applicant to a person who has been granted international protection, and the transition from childhood to adulthood upon turning 18. Changes that should in many ways be joyful instead often crack open protection gaps that can undermine even the most sincere efforts to integrate.

Successful integration involves multiple factors, all strongly interconnected. Extended legal uncertainty, being separated from family members, unstable housing conditions, language difficulties, interrupted social support, mental health issues, limited educational and training opportunities, and the threat of criminality – these all in and of themselves present hurdles to inclusion, and can also exacerbate each other.

FRA's look at developments in six EU Member States that have hosted a significant number of arrivals underscores that these challenges are real. But they are not insurmountable. Diverse examples highlight that smart and thoughtful policy decisions can go a long way towards overcoming obstacles. We hope this report encourages policymakers at both national and EU levels to embrace such decisions.

Michael O'Flaherty
Director

Country codes

Country code	Country
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czechia
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SK	Slovakia
SI	Slovenia
UK	United Kingdom

Glossary

Asylum applicant	A third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken *Asylum Procedures Directive, 2013/32/EU, Article 2 (c)*
Humanitarian protection	Authorisation to stay for humanitarian reasons under national law. […] It includes persons who are not eligible for international protection but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments. Examples of such categories include persons who are not removable on ill health grounds and unaccompanied children *Eurostat, Glossary, Asylum decision*
International protection beneficiary	A person who has been granted refugee status or subsidiary protection status *Qualification Directive, 2011/95/EU, Article 2 (b)*
Land/Länder	German state(s) or Austrian province(s)
Refugee	A third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply *Qualification Directive, 2011/95/EU, Article 2* (d)
Status holder	Synonym for international protection beneficiary
Subsidiary protection beneficiary	A third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country *Qualification Directive, 2011/95/EU, Article 2 (f)*
Family Reunification Directive	Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, p. 12–18
Long-Term Residents Directive	Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, p. 44–53
Qualification Directive	Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted
Reception Conditions Directive	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection
TFEU	Treaty on the Functioning of the European Union
Victims' Rights Directive	Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, p. 57–73

Acronyms list

AIDA	Asylum Information Database
AMKA	Social security number (Αριθμός Μητρώου Κοινωνικής Ασφάλισης)
ASE	Child welfare services (*aide sociale à l'enfance*)
CADA	Reception centre for asylum seekers
CAF	Family Allowance Service (*Caisse d'Allocations Familiales*)
CAS	Centres for asylum applicants (*Centri di Accoglienza Straordinaria*)
CJEU	Court of Justice of the European Union
CPH	*Centre provisoire d'hébergement*
CPIAs	*Centri provinciali per l'istruzione degli adulti*
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ESC	European Social Charter
ESTIA	Emergency Support to Integration and Accommodation
FRA	EU Agency for Fundamental Rights
NGO	Non-governmental organisation
UNHCR	United Nations High Commissioner for Refugees

Contents

Figures and tables

Key findings and FRA opinions

This report is about the integration of young third-country nationals who arrived in the EU in 2015 and 2016 as asylum applicants.

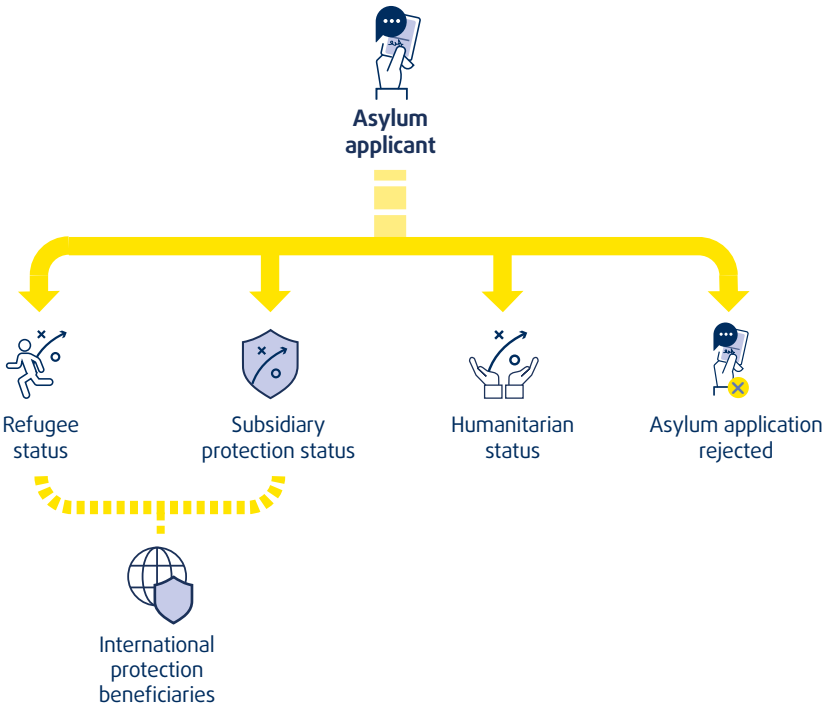
Over 2.5 million people applied for international protection in 2015 and 2016 in the 28 EU Member States, according to Eurostat. Most reached Germany, Sweden, France and Austria. Many remained in Italy and Greece, their first countries of arrival. EU Member States' asylum, reception, social welfare and educational systems were not adequately prepared to receive them. This led to hardships, such as people sleeping rough and children being unable to attend school.

From 2015 to 2018, according to Eurostat, 1.9 million people received international protection in the EU, either as refugees or as beneficiaries of subsidiary protection, or received a humanitarian residence permit. More than 80 % were below the age of 34, including nearly 540,000 girls and young women.[1] Figure 1 shows the types of protection a person claiming asylum may obtain.

Many of those granted asylum are young people. They are likely to stay and settle in the EU. The EU Agency for Fundamental Rights (FRA) interviewed some of them, as well as professionals working with them in 15 locations across six EU Member States: Austria, France, Germany, Greece, Italy and Sweden. This report presents the result of FRA's fieldwork research. It examines if and how EU Member States respected their rights, as set out in EU asylum law. It describes how and to what extent Member States are facilitating their inclusion into European societies.

In its 2016 Action Plan on the integration of third-country nationals, the European Commission pointed out that failure to integrate the newly arrived people can result in "a massive waste of resources, both for the individuals concerned themselves and more generally for our economy and society". The legal, economic and social inclusion of recently arrived refugees in the host society depends on how the different rights they are entitled to under EU and national law can be realised in practice.

Figure 1: Possible outcomes of an asylum application



Source: FRA, 2019

1 Eurostat, migr_asydcfsta and migr_asydcfina, extracted on 16 September 2019.

The report paints a multifaceted picture with many good initiatives and promising practices. It also shows major gaps and challenges, many of which remain unaddressed. It reveals that measures taken in one policy field often affect the degree to which individuals are able to enjoy their rights in other fields. This points to the need for better coordination both between ministries and between levels of governance (national, regional and local). Gaps in one area have an impact on other areas. As Figure 2 shows, successful integration hinges upon several interconnected factors. In most cases, these factors represent different rights that EU law guarantees.

This report, which focuses on young people between 16 and 24 years of age, also reveals two critical moments, which require much more attention:

- the transition from asylum applicant to a person granted international protection
- the transition from childhood to adulthood upon turning 18 years of age.

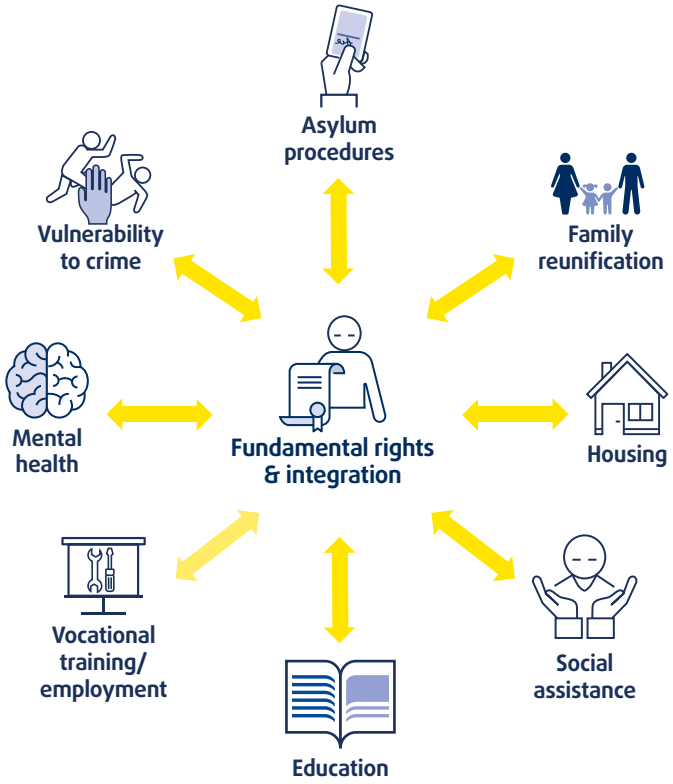
During such transitions, people experience gaps in rights and services, which risk undermining their pathway to social inclusion. FRA's research documented challenges relating to such transitions across the eight different but interconnected policy areas this report covers.

Sufficient, consistent and systematic support from lawyers, social workers and guardians emerges from the research as a key factor for successful integration. It not only promotes the best interests of the child but also helps children and young adults with the multiple challenges they face, in particular during transition to adulthood or when receiving decisions on their legal status.

Length of asylum procedures

Because of the large number of asylum applications in 2015 and 2016, asylum procedures sometimes lasted for years. Lengthy asylum procedures have various impacts on applicants' daily lives. Their legal status grants them limited rights and access to services compared with status holders. These limitations, coupled with uncertainty about the outcome of proceedings, the fear of return and the absence of family and friends, can affect integration prospects and mental health, and make some vulnerable to becoming victims or perpetrators of crime. The longer a person does not have full access to rights and benefits, in particular those linked to vocational training and employment, the harder it is to catch up with the integration process once a status is granted. At the same time, it is crucial

Figure 2: Interconnectedness of different factors for successful refugee integration



Source: *FRA, 2019*

that the asylum procedure allows sufficient time for the applicant to prepare for the interview, seek legal, medical and psychological assistance, and collect evidence to substantiate a claim.

In the six EU Member States reviewed, asylum procedures lasted longer than the time limits set out by EU law. Numerous factors contribute to the delays in processing asylum applications. Some are within the remit of the authorities, such as insufficient human and financial resources to deal with a high number of applications, delays in appointing a guardian or inadequate information for asylum applicants. Other factors are linked to the person in search of international protection.

The negative consequences of lengthy asylum procedures can be minimised when at least those applicants with good prospects of acquiring a protection status can already start their integration process during the asylum procedure, to make the transition from applicant to status holder as easy as possible.

FRA opinion 1

EU Member States should examine asylum claims within a reasonable time period, allowing sufficient time to prepare a case and to seek legal and other assistance, including in times of large numbers of arrivals. To do so, they should ensure that sufficient financial and human resources, using qualified professionals, can be made available at short notice so as not to exceed the time limits set out in EU law.

Factors contributing to lengthy proceedings should be minimised, in particular if the factor lies within the remit of the authority and if the applicant is a child. Appropriate resources to quickly appoint competent guardians should be ensured. The guardianship system should be an integral part of the national child protection system, and must operate within the national legal child protection framework. EU Member States should ensure that applicants with good prospects of receiving protection can already start their integration process during the asylum procedure to make the transition from being an applicant to being a status holder as easy as possible. This should include participation in language classes and effective access to education, healthcare, vocational training and the labour market as early as possible.

Family reunification

EU law entitles refugees to bring their family members who are still abroad, but does not expressly regulate family reunification rights for subsidiary protection beneficiaries. Since 2015, legal and practical barriers have made family reunification increasingly difficult. In some cases, there are tight deadlines for refugees to benefit from simplified reunification procedures under EU law. In other cases, national laws introduced waiting periods of up to three years before beneficiaries of subsidiary protection are eligible to apply for reunification.

The long duration and complexity of family reunification procedures, accessing diplomatic missions in non-EU countries, difficulties in producing the documents required and high costs are some of the practical obstacles people face when they want to bring their families.

Family reunification is recognised as one of the key mechanisms for better integration of migrants and refugees. The absence of family members and worries about their well-being hinder effective participation in language courses, school and training and from finding a job. Evidence shows that the absence of their families makes people more vulnerable to mental health issues and criminality. Allowing swift, efficient and affordable family reunification is not only beneficial for the people concerned, but also a worthwhile investment for the host society in the medium and long runs. Equal treatment of refugees and beneficiaries of subsidiary protection would be similarly beneficial. Among others, swift reunification also prevents the use of smugglers and secondary movement.

FRA opinion 2

EU Member States should implement family reunifications in a swift and affordable manner, limiting bureaucracy to a minimum. They should promote equal treatment of beneficiaries of subsidiary protection and refugees.

EU Member States should implement the Court of Justice of the EU's judgment in A and S v. Staatssecretaris van Veiligheid en Justitie*, C-550/16, 12 April 2018, and ensure eligibility for family reunification of third-country nationals who are below the age of 18 at the time of the asylum application but who, in the course of the asylum procedure, attain the age of majority.*

Housing

EU Member States had difficulty providing housing to the 1.5 million asylum applicants who arrived in 2015-2016. This resulted in significant challenges, including homelessness. Many, including families, had to sleep in tents, shipping containers, camps, sports facilities and hotels. Often quality standards were far below those that the Reception Conditions Directive requires. Applicants experienced overcrowding, lack of privacy, risks of sexual and gender-based violence, lack of attention to vulnerabilities, poor hygiene conditions and

isolation. In practice, many challenges were overcome through large-scale civil society engagement.

The research findings show that there are three critical stages concerning housing. First, upon arrival, many asylum applicants experienced substandard reception conditions, exposing them to protection risks, including violence, which can have long-lasting consequences. Frequent transfers between different reception facilities, which many asylum applicants experienced, often have a negative impact on their future integration. Each relocation requires the individual to repeat administrative tasks, get used to the new environment and start re-establishing relationships.

Second, as soon as applicants receive international protection, they have, in most cases, a deadline to leave the reception facility where they are staying but are not offered another place to go, except for those in Sweden. When applicants receive an international protection status, EU law obliges Member States to provide access to accommodation under the same conditions as other legally resident third country-nationals and the same level of public housing support available to nationals. In practice, often this means very little. In spite of many good initiatives, public support to find adequate housing appeared insufficient. International protection beneficiaries face many practical obstacles to finding an affordable flat. Some of them are general, such as availability and affordability of housing. Others are specific to them, such as prejudices against refugees and difficulties in providing supporting documents. Targeted housing schemes, temporary solutions when status holders have to leave the reception facility and support mechanisms for finding affordable housing would ensure a smoother transition once international protection is granted.

Third, as soon as unaccompanied children turn 18 years of age, they lose their entitlements to special protection and often find themselves facing the same challenges as adults, or more. From one day to another, children are expected to confront many difficulties with very little support. Only in exceptional cases do those who turn 18 continue to receive social support services for a transitional period. This may have a very negative impact on their lives in many respects, including school attendance and performance, mental health and vulnerability to crime.

Multiple factors linked to housing facilitate social inclusion and integration, the research finds. Contact with locals, short distances to services, such as schools, and availability of employment are some of them. In many cases, initiatives by civil society and volunteers help establish links with the local communities and avoid segregation.

FRA opinion 3

EU Member States should develop adequate contingency plans to be prepared for future situations of large-scale arrivals. Such plans should also consider the use of multipurpose facilities, which can be flexibly adapted to the needs. Contingency plans should form part of long-term strategic planning of migration governance at all levels, including the central, regional and municipal levels.

The availability of adequate facilities near the border should be an integral component of national strategies for integrated border management, which Member States are obliged to draw up under the European Border and Coast Guard Regulation.

EU Member States should design their refugee housing policies taking into account how housing may affect education, employment and other aspects of life. They should actively support reception and housing practices that promote social inclusion, avoid segregation, and reduce transfers from one facility to another to a minimum. They should encourage and financially support public administrations, including municipalities, as well as civil society initiatives and housing providers, including through the effective use of European Union funds.

In accordance with the 2017 Commission Communication on the protection of children in migration, EU Member States should support unaccompanied children in their transition to adulthood, including when leaving care. Support measures could entail preparatory measures to support the child's autonomy, through encouraging independent living and managing the demanding paperwork. If a transfer to an adult facility is required, authorities should consider delaying the transfer until completion of the education cycle, and ensure there is an assigned social worker who continues to support the young person during the transition period.

The EU should ensure that the integration of unaccompanied children remains a priority in the new Asylum and Migration Fund.

Social welfare for international protection beneficiaries

In its Action Plan on the integration of third-country nationals, the European Commission highlights the necessity for Member States to implement national economic and social policies that cover the immediate needs of migrants and refugees and contribute to their integration. The action plan recognises that ensuring sufficient social and economic assistance will be a challenge for Member States, but notes also that with the right conditions it is an opportunity for swift and successful integration.[2] This research shows

2 European Commission (2016b), p. 3.

that sufficient social assistance is what allows young international protection beneficiaries to learn the local language and to pursue education.

When individuals cannot support themselves, social assistance ensures a decent existence for those persons who lack sufficient resources, as required by Article 34 of the Charter. Under EU law, refugees have the same rights to social welfare as nationals, but allows Member States to pay only core benefits to beneficiaries of subsidiary protection. Austria is the only EU Member State out of the six reviewed that differentiates between the two. The type and level of benefits differ significantly from one EU Member State to another and, in some cases, even between component parts of a Member State.

Although Member States must grant core benefits to all international protection beneficiaries, in practice, lack of information – sometimes also among professionals – complex procedures and formal requirements may exclude young international protection beneficiaries from social welfare benefits. Moving from the support system established for asylum applicants to the national welfare system may create gaps or delays, leaving status holders without resources at a crucial time for their integration. Moreover, benefits may be reduced or cut if the person does not comply with integration requirements, including language tests.

Support mechanisms for accessing social assistance, in particular when one becomes an adult or a status holder, the reduction of bureaucratic hurdles, and flexible and fair application of conditions to access social assistance would enhance integration prospects.

FRA opinion 4

EU Member States should ensure that refugees receive all social welfare benefits they are entitled to under EU law. They should consider providing the same entitlements to subsidiary protection status holders in need of support.

EU Member States should remove practical obstacles that impede access to social welfare benefits – for example, by providing information in clear, accessible and non-bureaucratic language and offering language support, where needed.

When EU Member States require international protection beneficiaries to comply with integration measures to receive social assistance, any such requirement must be non-discriminatory and thus comparable to those established for national recipients of social assistance. Any reduction of benefits for non-compliance with integration requirements should be implemented in a flexible manner, taking into account the individual circumstances of persons who have fled armed conflict or persecution. Reduction of benefits should not result in precarious living conditions for beneficiaries.

Mental health problems

Exposure to stressful situations before, during and after the flight puts people in need of international protection at a particular risk of developing mental health problems. They might, for instance, experience disrupted sleeping patterns, anxiety and other signs of post-traumatic stress.

EU asylum law grants access to healthcare, including mental health care, to asylum applicants as well as international protection beneficiaries. In practice, however, officials often fail to identify signs of mental health problems soon enough to refer them to adequate care at an early stage. When mental health problem are not swiftly addressed, they can develop further and negatively affect integration. Early investment in the identification and care of mental health problems is thus beneficial not only for the person concerned but also for the host society.

A lack of social integration, particularly social isolation and unemployment, is linked with higher prevalence of mental health problems in refugees and migrants. Across all policy fields, interviewees in all locations spontaneously referred to negative effects of lengthy asylum procedures, poor living conditions and frequent transfers, loss of child-specific support for 18-year-olds, family separation and other factors that affected their physical and mental health conditions.

Early and clear information for applicants and status holders about where and how they can seek support, as well as enough mental health workers who are trained to work specifically with migrants and refugees, can help to address the factors leading to mental health problems.

FRA opinion 5

In line with the social determinants of health approach, the conditions in which people grow up, work and live strongly contribute to their individual health status. When developing their policies to address mental health issues for asylum applicants and status holders, EU Member States should acknowledge that mental health problems also result or are magnified by gaps relating to the provision of different services, such as education, housing and income, which are necessary for successful integration.

EU Member States should ensure swift and efficient identification, referral and treatment of mental health problems. They should have mechanisms to ensure that the results of the needs assessment under Article 22 of the Reception Conditions Directive are followed up and support continued once protection status is granted. They should apply the EASO Guidance on reception conditions of 2016: operational standards and indicators.

EU Member States should provide early and clear information to applicants and status holders about where and how they can seek help for their mental health problems in a language they can understand.

EU Member States should ensure that all those working with asylum applicants and status holders, such as police officers, immigration officials or guardians and social workers, are appropriately trained to detect signs of potential mental health problems and refer them to medical authorities.

EU Member States should strengthen national and local capacity to respond to mental health needs and ensure that mental health workers are trained to work specifically with migrants and refugees. They should provide interpretation services free of charge, including by exploring options for video interpretation. The quality of healthcare services provided to migrants should be closely monitored.

Education for children

Under EU law, children who seek asylum or have obtained international protection have the same access to education under the same conditions as nationals, or similar conditions. Whereas access to compulsory schooling is generally guaranteed, FRA's findings show that, because of practical barriers, access to post-compulsory education might be only on paper, especially for students who arrived after compulsory school age. In some EU Member States, asylum-seeking children initially attend classes in reception facilities, which isolates them and might increase stigmatisation.

Article 14 (2) of Directive 2013/33/EU requires that asylum-seeking children entering an EU Member State be included in education within three months. However, multiple transfers of accommodation, time lag in finding a school place and other administrative barriers mean that it sometimes took one year or more for children of compulsory school age to be enrolled in school, FRA's research shows. Some EU Member States have successful measures to help integrate newly arrived students into education, such as early individual assessment of knowledge and skills and preparatory classes. In practice, EU Member States face a number of common challenges in integrating a large number of young people into the education system, such as lack of school places and teachers, especially language teachers, FRA's research shows.

It would make life easier for children and school administrators if new arrivals were integrated into the mainstream education system early, measures helping them return to school were boosted, and the education system were better prepared for future similar situations.

FRA opinion 6

In accordance with Article 14 (2) of Directive 2013/33/EU, Member States must ensure that children entering a Member State are included in (compulsory) education within three months.

To improve effective enrolment of persons in need of international protection into education, EU Member States should increase their efforts to facilitate access to post-compulsory education, notably secondary education.

EU Member States should try to integrate children in mainstream education systems as early as possible. They should consider strengthening measures to facilitate the integration of newly arrived students into national school settings, such as through early individual assessment of knowledge and skills and preparatory classes. Schooling in reception centres should be only a temporary emergency measure.

EU Member States should enhance support to mainstream schools hosting refugee children, with additional resources and training for teachers, especially in areas where the arrival of refugees is a new phenomenon or where there is a high concentration of refugees.

EU Member States should establish contingency plans for the quick integration of refugee children into schools in order to be able to quickly and adequately respond to future arrivals of asylum-seeking children.

EU Member States should increase efforts to address school disruption of children in need of international protection turning 18. To this end, for children who are close to completing their studies when they turn 18, transfer to adult facilities could be postponed until completion of their education cycle. They should receive support for their transition to adulthood, including sufficient income to avoid having to drop out of school to work.

Adult education and vocational training

As part of their duty under the Qualification Directive (2011/95/EU) to facilitate the integration of international protection beneficiaries into society, Member States should also provide language training. Four of the six EU Member States reviewed have introduced mandatory integration programmes for people granted asylum, which also include language acquisition. In recent years, Austria and Germany have also extended language programmes to asylum applicants with good prospects of acquiring a protection status. An early start to language acquisition facilitates inclusion in society.

Providing persons in need of international protection with access to the labour market, including vocational training, prevents their skills from becoming obsolete. Furthermore, vocational training can help in validating previously acquired skills. This helps them to achieve economic self-reliance, thus promoting integration and helping to fill the shortage of skilled workers in the EU. Four out of the six EU Member States either do not allow asylum applicants to access vocational training or restrict such access. For many of those who do have access, either as applicants or as status holders, practical obstacles, such as lack of information and financial resources, make such access illusory in practice.

Although many newly arrived international protection beneficiaries would like to enrol in higher education, in practice the pressure to earn money and become economically self-reliant makes this difficult.

FRA opinion 7

As FRA pointed out in 2015 regarding migrants more generally, to improve their participation in the labour market and their overall social integration, EU Member States should provide general and specific job-related language courses free of charge also to asylum applicants. If limitations are implemented, these should only concern those applicants who are very unlikely to stay.

EU Member States should consider granting asylum applicants access to vocational training as early as possible. Access restrictions, if implemented, should only concern those applicants who are very unlikely to stay.

EU Member States should take steps to help asylum applicants and status holders overcome practical obstacles to accessing vocational training. This would mean providing effective counselling, offering opportunities to validate prior skills and creating other incentives that promote broad use of vocational training. In this regard, EU Member States should make full use of EU funds.

In line with Article 28 (2) of the Qualification Directive, which requires Member States to facilitate the appropriate assessment, validation and accreditation of the prior learning of beneficiaries of international protection who cannot provide documentary evidence of their qualifications, EU Member States should increase efforts to improve the efficiency of their procedures to recognise previous educational attainment, including in the absence of documentary evidence. Such procedures should be simple and free of charge.

In order to facilitate access to higher education institutions, EU Member States should consider boosting measures to facilitate linguistic and financial support.

Vulnerability to crime

Involvement in crime, as either a victim or a perpetrator, is based on a complex combination of interconnected, often highly individual, factors. This underlines the need to avoid drawing generalised conclusions about factors that may affect the involvement of asylum applicants and international protection beneficiaries in crime. Furthermore, whereas the public and policy discussions largely focus on the risk of this group's involvement in crime as perpetrators, the findings of this research indicate the need to pay at least equal attention to the risk of their victimisation.

Factors that foster successful and rapid integration also play a considerable role in preventing crime. Insecure or unsafe housing, lack of access to employment and education, and the absence of family members may, together with individual factors, such as those related to age, mental health or gender, make young people more prone to becoming victims of violence, labour exploitation, theft, fraud or hate crime. Women and girls in particular may be affected by sexual and gender-based violence, although boys and young men can also become victims. Not all asylum applicants and international protection beneficiaries feel that the police treat them fairly. Underreporting appears to be widespread, especially for those types of crime that particularly affect women.

The factors that expose new arrivals to victimisation, together with the protracted uncertainty of the outcome of the proceedings, contribute to an overall sense of precariousness and a lack of prospects. This hampers effective integration and makes persons more likely to become dependent on informal networks, sometimes of a criminal nature. They may enter a cycle of exploitation and crime, blurring the line between victimisation and becoming a perpetrator. Concerning radicalisation, EU Member States take very seriously the risk of new arrivals being approached by extremist and radicalised networks, and instances of radicalisation are rare, according to FRA's research. Moreover, some experts conclude that people who have experienced extremism in conflict zones may be particularly resilient to radical ideologies.

Proactive policies can help address these risk factors at an early stage by making people's legal status and social condition less precarious, by providing them from the outset with access to core services, safe housing, employment, education opportunities and support from relevant professionals.

FRA opinion 8

EU Member States should ensure that support of relevant professionals, including social workers, guardians and youth welfare authorities, but also teachers and staff of reception facilities, is available to young asylum applicants and beneficiaries of international protection. Such support may play a key role in addressing risk factors that make them vulnerable to crime.

To give effect to their rights under Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, EU Member States should take effective measures to facilitate reporting of crime by asylum applicants and international protection beneficiaries who have been victims of crime. Such measures should address the specific obstacles that may discourage these persons from reporting crimes committed against them.

EU Member States should raise awareness among police forces of the standards applicable to police stops and the damaging effect of discriminatory profiling practices on community relations and trust in law enforcement.

Introduction

Whom and what does the report cover?

This report explores the challenges of young people between the ages of 16 and 24 years who fled armed conflict or persecution and arrived in the European Union (EU) in 2015 and 2016. Although many of the challenges they face are common to asylum seekers and refugees of all ages, the report focuses in particular on the experiences of children and young people. Over 50 % of asylum applicants in 2015–16 were between 18 and 34 years of age and an additional 9 % were between 14 and 17 years old (see Figure 3). Taking these two groups together, about four in five are male and one in five female.

The report covers people with different legal statuses, including asylum applicants (meaning persons who requested international protection in an EU Member State and are awaiting a decision) and persons who have been granted international protection or an authorisation to stay for humanitarian reasons. Persons granted international protection include:

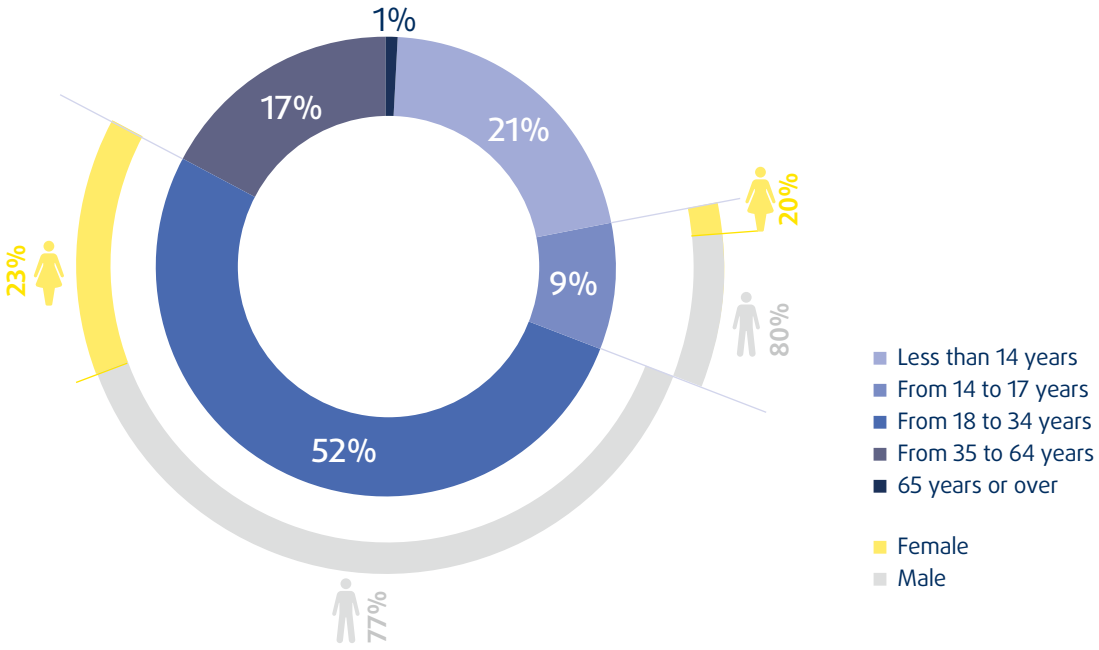
- refugees, who are persons fleeing individualised persecution;
- subsidiary protection status holders, who have fled armed conflict or other serious harm.

On FRA's research approach

The report uses a qualitative case study approach. It is based on semi-structured interviews conducted with experts as well as people in need of international protection, in 15 locations spread among six EU Member States. The purpose of the case studies is not empirical generalisation in the statistical sense but to provide a description and in-depth understanding of a complex social issue, distilling drivers of and obstacles to the integration of young refugees. The use of multiple sources of evidence, i.e. interviews and focus groups with experts as well as international protection holders, guarantees the internal validity of the research findings.

The research covered the five EU Member States with the highest numbers of arrivals, calculated on the basis of asylum application statistics: Austria, France, Germany, Italy and Sweden. The report does not cover Hungary, as most asylum applicants only passed through it. In addition, the report covers Greece, given the particular challenges it faces as a first EU Member State of arrival. Figure 4 shows the top 10 EU Member States by total number of asylum applications in 2015 and 2016.

Figure 3: Asylum applications in 2015 and 2016, age and gender breakdown, 28 EU Member States



Source: Eurostat, *Asylum and first time asylum applicants by citizenship, age and sex annual aggregated data extracted on 24 June 2019*

Thematically, the report covers eight policy fields: length of asylum procedures; family reunification; housing; social welfare; mental health; education for children; adult education and vocational training; and vulnerability to crime. It describes experiences during the transition from studying to work but does not analyse access to work; that is because extensive literature already shows that accelerating labour market access, particularly for asylum applicants likely to get international protection, has helped speed up their integration. The report assesses in detail specific integration measures related to employment and vocational training.[3]

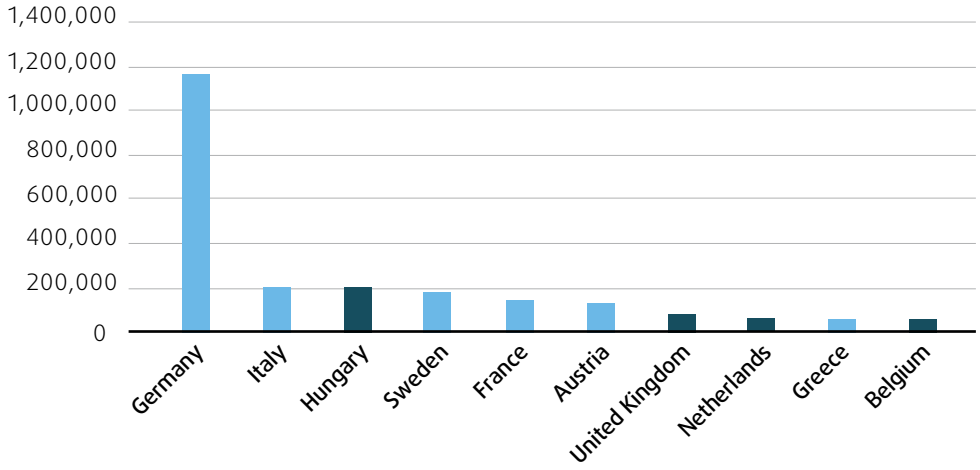
Why this report?

Hundreds of thousands of young people arrived in the EU in 2015–16. EU Member States were not prepared to receive them and provide them with the necessary assistance. The reality on the ground, with thousands of people staying in overcrowded centres and makeshift camps, required action.

The policies and measures adopted at national or EU level to respond to the situation in 2015–16 affected and continue to affect the lives and well-being of many asylum applicants, international protection beneficiaries and more generally third-country nationals across the EU. Their number is significant. From 2015 to 2018, over 1.9 million people received international protection in the 28 EU Member States. This includes over 1 million refugees and some 600,000 subsidiary protection status holders. The rest received humanitarian protection.[4] However, little is known about the actual impact of these policy measures. The objective of this report is to use the outcomes of the fieldwork research to explore the actual experiences of the beneficiaries of these policies, especially children and young adults.

EU law defines in detail the rights and obligations of asylum applicants and international protection beneficiaries, whereas beneficiaries of humanitarian protection are generally covered by national law. If these rights are not respected, protected and fulfilled, people will face problems in successfully integrating in EU societies once they are allowed to stay and settle. Identifying challenges and gaps, but also opportunities and promising practices, provides the evidence that is necessary for the EU and its Member States to adjust their policies and actions. The young age of many newly arrived persons and their backgrounds of conflict and persecution require smart investments for successful integration. This report aims to contribute to reflection on how to achieve this, thus making sure that a whole generation will not be lost.

Figure 4: Asylum applications in 2015 and 2016, top 10 EU Member States



Note: *The report covers the EU Member States in light blue.*

Source: *Eurostat, Asylum and first time asylum applicants by citizenship, age and sex annual aggregated data, extracted on 24 June 2019*

3 See, for example, Organisation for Economic Co-operation and Development (OECD) and United Nations High Commissioner for Refugees (UNHCR) (2018); OECD (2019a); NIEM (2019); European Foundation for the Improvement of Living and Working Conditions (Eurofound) (2019); European Spatial Planning Observation Network (ESPON) (2019); Berlin-Institut (2019).

4 Eurostat, migr_asydcfsta and migr_asydcfina, data extracted on 26 June 2019.

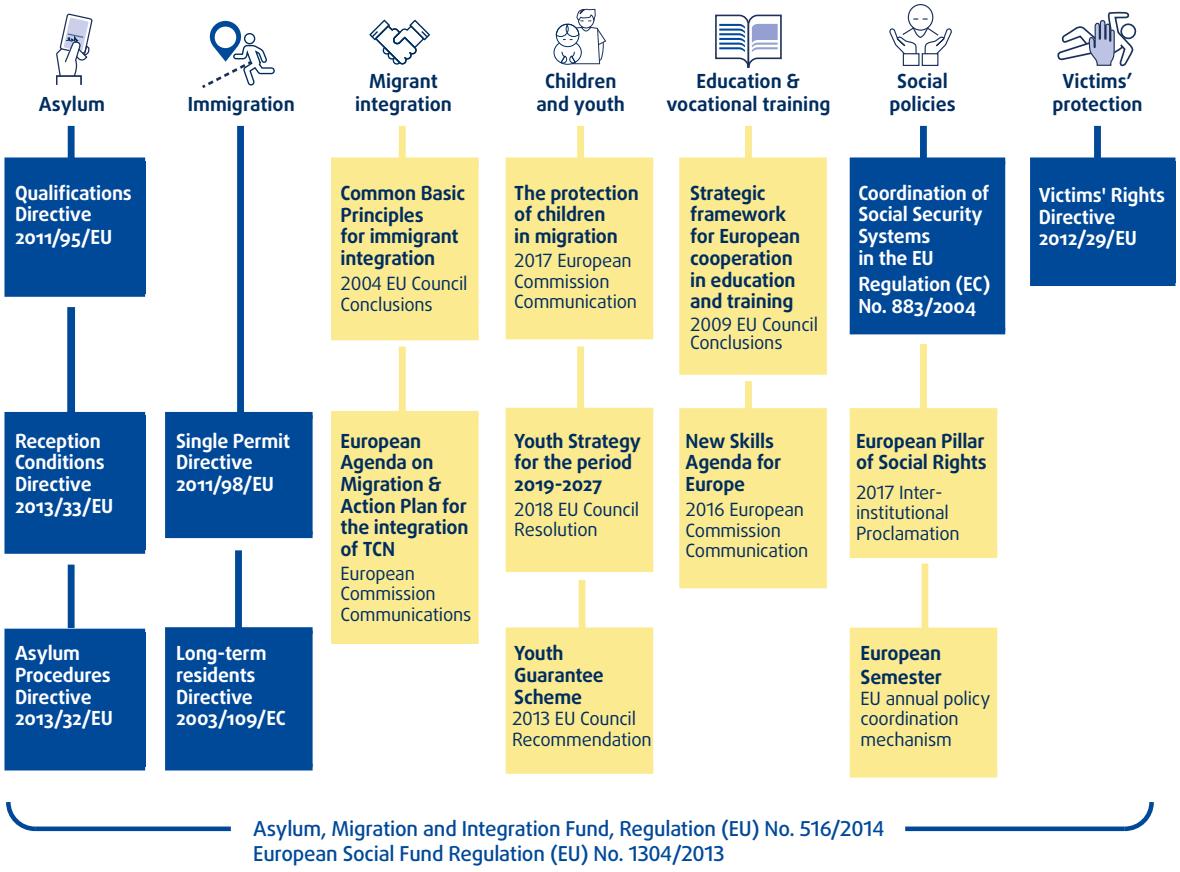
EU legal and policy framework

The treatment of young people who arrived in the EU in 2015–16 fleeing armed conflicts and persecution, and the action to promote their successful integration touch upon several EU policy fields, as illustrated in Figure 5.

The Union and its Member States share jurisdiction over asylum and immigration. EU primary law provides for a common European asylum system in compliance with the 1951 Geneva Refugee Convention and its Protocol.[5] It also provides for a common immigration policy, which should ensure fair treatment of third-country nationals residing legally in EU Member States.[6] Figure 5 lists the secondary EU asylum and immigration law instruments that are most relevant to this report.

Social policy falls primarily within the powers of Member States. Shared jurisdiction in this field applies only to certain aspects defined in the Treaty on the Functioning of the EU (TFEU), for example in the area of employment.[7] In areas of significant importance for this report, such as social protection and combating social exclusion, the EU's role is mainly to provide support and to complement the action of Member States. The European Semester economic policy coordination mechanism, which also addresses social policy issues, including issues

Figure 5: Relevant EU legal and policy framework



Note: *Instruments on dark blue backgrounds are legally binding.*

Source: *FRA, 2019*

5 Treaty on the Functioning of the European Union (TFEU), OJ C 326, p. 47–390, Art. 78.

6 *Ibid.*, Art. 79.

7 *Ibid.*, Art. 4 and Art. 153.

relevant to migrant inclusion,[8] and the European Pillar of Social Rights,[9] a legally non-binding list of rights and principles, are two important tools of the EU for this. Country-specific recommendations, which are the main outputs of the European Semester process, often include references to migrant integration, such as access to the labour market, the risk of poverty or social exclusion. In its 2016 European Semester assessment report, the European Commission underlined:[10] "economic and social policies will also need to cater for the recent inflow of migrants and refugees, in particular to provide for their immediate needs and integration in the labour market".

The EU exercises powers to support, coordinate and supplement the actions of Member States in other relevant policy fields too, namely education, vocational training and youth.[11] In these policy areas, EU documents are typically non-binding, as Figure 5 shows. They are, however, very relevant. For example, one of the goals of the EU's youth strategy, focusing on inclusive societies, highlights that "[n]ew migratory phenomena brought several social and inclusion challenges" and that, therefore, "it is crucial to work towards the fulfilment of the rights of all young people in Europe, including the most marginalised and excluded".[12] The European Commission highlights the importance of supporting the integration of young migrants and refugees.[13] The new skills agenda for Europe underlines the need to make better use of third-country nationals' skills, in a context of an ageing and shrinking EU workforce.[14]

The Qualification Directive and other EU law instruments regulate the rights of international protection beneficiaries. Under Article 79 (4) of the TFEU, migrant integration more generally falls primarily within the jurisdiction of Member States. The EU may, however, provide incentives and support for the action of EU Member States.

EU common basic principles for integration

A milestone in EU policy was the adoption of the 'Common basic principles for immigrant integration policy' in 2004, which were reaffirmed in 2014. They establish a common policy framework to assist Member States with their integration policies and to help EU institutions to develop further EU-level instruments related to integration.

The document makes it clear that integration policies may target diverse audiences, including international protection beneficiaries. It states that failure to develop and implement a successful integration policy "can undermine the respect of human rights and European's commitment to fulfilling its international obligations to refugees and others in need of international protection".

The common principles point out the importance of providing access to public and private goods and services on a basis equal to national citizens and in a non-discriminatory way, and highlight the critical nature of education and the significance of having a basic knowledge of the host society's language, history and institutions. They define employment as a key part of the integration process.

Source: EU Common Basic Principles for Immigrant Integration Policy, Council of the European Union, Justice and Home Affairs Council, Brussels, 19 November 2004

The European Commission set out a European Agenda for the integration of third-country nationals in 2011,[15] and an action plan in 2016. The 2016 action plan invites EU Member States to take care of the needs and the integration of recently arrived migrants and refugees from non-Member States.[16] In 2016 the European Commission underlined that: "Newly-arrived refugees in particular face specific problems, such as vulnerability resulting from traumas suffered, lack of documentation including as regards qualifications, inactivity prior to and during asylum procedure, but also cultural and language barriers and risks of stigmatisation in education and on the labour and the housing market, which are not limited to refugees alone."[17]

The action plan contains a long list of actions, including, for example, tailored education support for refugee children; removal of obstacles to ensure effective access to vocational training and to the labour market for refugees and for asylum applicants with good prospects of acquiring a protection status; promotion of the use of EU funds for reception, education, housing, health and social infrastructures for third-country nationals, including those who are newly arrived; and

8 See the European Commission's webpage on the 2019 European Semester: Country Specific Recommendations, for example Austria, France, Germany, Greece, Italy and Sweden.
9 See the European Commission's webpage on the European Pillar of Social Rights.
10 European Commission (2017a).
11 TFEU, OJ C 326, p. 47–390, Art. 6, Art. 165 and Art. 166.
12 Council of the European Union (2018).
13 European Commission (2018a).
14 European Commission (2016a).
15 European Commission (2011).
16 European Commission (2016b).
17 *Ibid.*, p. 4.

the creation of networks of health experts, particularly on mental health. To implement such actions, Member States may tap into EU funds. The integration of third-country nationals is one of the objectives of the Asylum, Migration and Integration Fund, which has a total amount of € 765 million earmarked by Member States for integration projects for 2014–2020.[18] The Commission has proposed that for 2021–2027 the future Asylum and Migration Fund should focus on early integration measures, while structural funds and Erasmus+ will focus on long-term integration.[19] Other EU funds, particularly the European Social Fund, can also be used to support integration efforts.[20]

When EU institutions are designing and applying policies, and when Member States act within the scope of EU law, they are bound to respect and apply the EU Charter of Fundamental Rights (Article 51 of the Charter). The provisions of the Charter reflect the founding values of the EU, as laid down in EU treaties. The Charter rights most relevant to this report are:

- human dignity (Article 1)
- right to liberty and security (Article 6)
- respect for private and family life (Article 7)
- right to education (Article 14)
- right to asylum (Article 18)
- protection in the event of removal, expulsion or extradition (Article 19)
- non-discrimination (Article 21)
- rights of the child (Article 24)
- integration of persons with disabilities (Article 26)
- family and professional life (Article 33)
- social security and social assistance (Article 34)
- health care (Article 35)
- freedom of movement and of residence (Article 45).

Pursuant to Article 52 (3) of the Charter, whenever the rights contained therein correspond to rights guaranteed by the European Convention on Human Rights (ECHR), their meaning and scope must be the same as those laid down in the ECHR.

The rights enshrined in the EU Charter reflect those in several other international human rights and refugee law instruments. Therefore, even when Member States act on matters that are outside the scope of EU law, they have to comply with international law obligations applicable to them. At the beginning of each chapter, this report lists the most relevant human rights and refugee law provisions applicable to the specific policy field.

Evidence base: who was interviewed?

In cooperation with its research network, Franet, FRA consulted 426 experts working with young refugees as well as 163 young asylum applicants and status holders in 15 geographical locations (see Figure 6). These locations are in six Member States: Austria, France, Germany, Greece, Italy and Sweden. Within each Member State, the research covered two or three regions or cities, depending on the size of the country. The selected locations include bigger cities and smaller towns or villages in economically richer and poorer areas of the Member State. The selection also took into account regional policy differences. All fieldwork was carried out between October 2017 and June 2018. Experts and young people who arrived in 2015–16 were asked to report about their experiences and to reflect on the impact of policy changes up to the date of the interview. Desk research covering legislative and policy changes at international, EU and national levels extended until July 2019. More information on the methodology can be found in the Annex (available on FRA's website).

FRA collected experts' experience through:

- 190 face-to-face interviews at local and national levels
- 29 local and seven national focus groups, involving 236 experts.

As shown in Table 1, experts included professionals working with the asylum and immigration authorities and with local authorities for housing, education, child protection and social welfare, guardians, teachers, employment agents, law enforcement experts, lawyers, members of focal points for integration, and representatives of non-governmental organisations (NGOs) and international organisations.

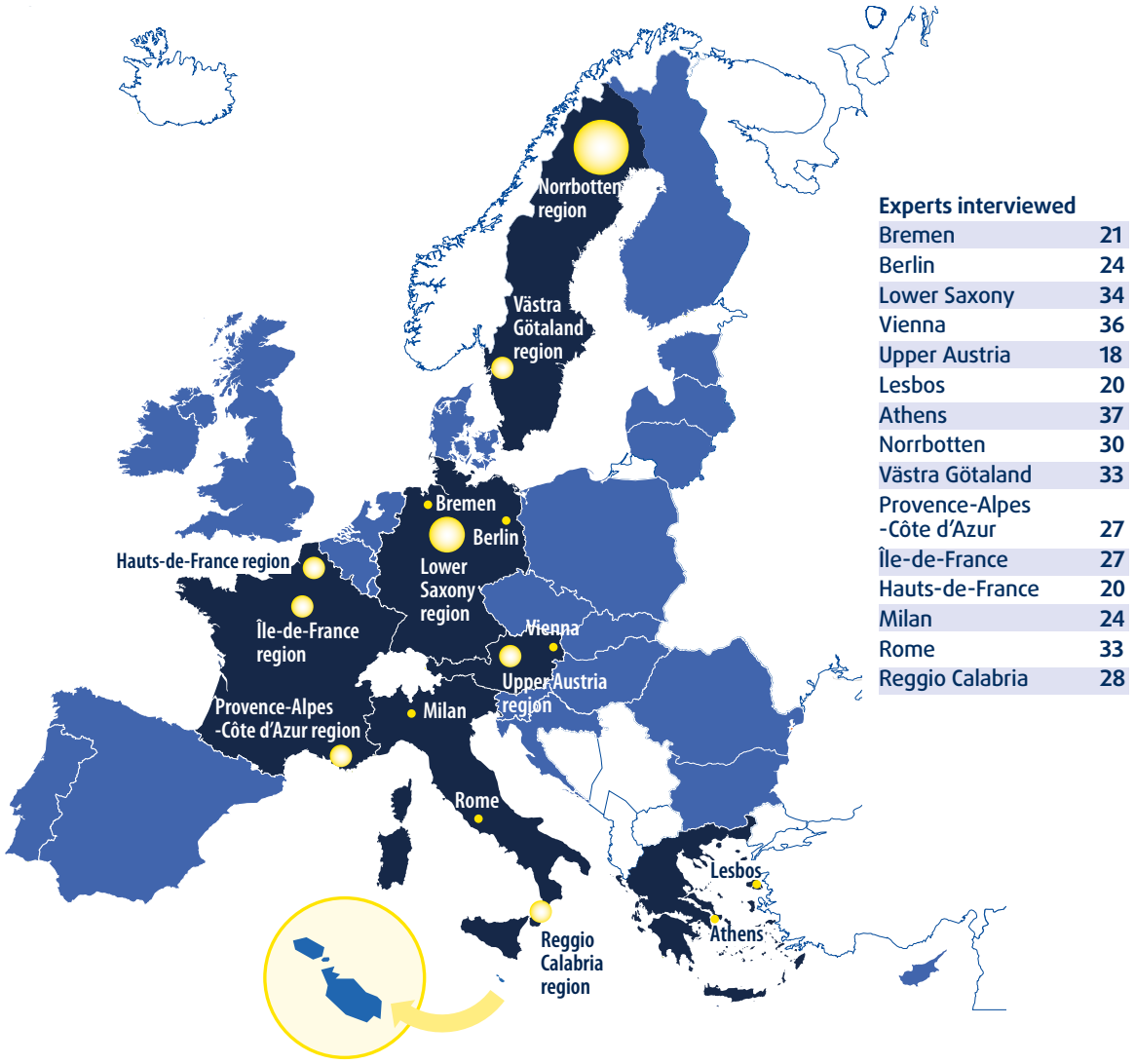
Experts were asked about their experience with beneficiaries of international protection and asylum applicants likely to stay in the EU for the long term. They were asked to focus on people who are 16 to 24

18 Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, OJ L 150, 20.5.2014, pp. 168–194.

19 European Commission (2018b), Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund, COM/2018/471 final, Strasbourg, 12 June 2018.

20 Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006; see recitals 4 and 16, Art. 2 (3) and Annex I (1).

Figure 6: Number of local-level expert interviews



Experts interviewed	
Bremen	21
Berlin	24
Lower Saxony	34
Vienna	36
Upper Austria	18
Lesbos	20
Athens	37
Norrbotten	30
Västra Götaland	33
Provence-Alpes -Côte d'Azur	27
Île-de-France	27
Hauts-de-France	20
Milan	24
Rome	33
Reggio Calabria	28

Note: *The numbers of experts include those interviewed individually and those participating in focus groups. Additional experts were interviewed at national level.*

Source: *FRA, 2019*

years old. Experts were asked to reflect on the impact of policies covering their areas of expertise. This made it possible to compare and consolidate the findings from different professional angles and to assess the links between policy areas. Although the majority of interviews took place at local level, approximately 40 experts shared national-level experiences; they were mainly from authorities responsible for asylum, immigration law enforcement and justice, as well as some NGOs.

Focus groups complemented the individual interviews, allowing a more in-depth and multidisciplinary discussion of recurrent issues. In all six EU Member States, following an initial national focus group covering all thematic areas, local focus groups covered housing and education. In five Member States, the local focus groups also covered vulnerability to crime. The other focus group themes reflected issues that were of particular relevance in the specific location. Table 2 provides an overview of the 29 focus group discussions.

FRA also interviewed 163 young asylum applicants and beneficiaries of international protection on questions corresponding to those asked to experts. Most of them had arrived in 2015–16.[21]

They included refugees, subsidiary protection status holders, humanitarian protection status holders and applicants for international protection. The only exceptions are unaccompanied children in France who

21 Of the 163 interviewed, 156 arrived in 2015 or 2016, four in the second half of 2014 and three in 2017.

Table 1: Experts' professional profiles (including focus groups), by EU Member State

Category	AT	DE	EL	FR	IT	SE	Total
Asylum and/or immigration authorities	2	0	10	2	8	3	25
Local housing authorities	6	7	4	3	3	8	31
Local education authorities	2	4	0	3	6	3	18
Local child protection authorities	0	5	1	3	3	4	16
Local social welfare authorities (in some cases also responsible for children and youth)	2	1	1	2	2	6	14
Housing professionals, e.g. managers of housing facilities							
Guardians	4	6	3	2	4	2	21
Education professionals, e.g. teachers	4	11	4	8	7	10	44
Employment agents	2	3	1	3	3	2	14
Law enforcement experts	7	7	11	7	5	6	43
Lawyers	6	3	5	9	6	2	31
Focal points for integration	2	1	2	1	1	6	13
NGOs and international organisations (including professionals counselling on legal, housing, education and employment issues, e.g. social workers assigned to a housing facility or school)	14	27	20	27	38	13	139
Total	55	81	64	75	86	65	**426**

Note: *Some experts had more than one profile. In the table they are listed according to their main profile.*

Source: *FRA, 2019*

Table 2: Topics of local focus-group discussions at the 15 locations

Topic	Locations
Education	Vienna (Austria); Berlin and Lower Saxony (Germany); Provence-Alpes-Côte d'Azur and Hauts-de-France (France); Milan and Reggio Calabria (Italy); Norrbotten and Västra Götaland (Sweden); Athens and Lesbos (Greece)
Housing	Upper Austria (Austria); Berlin and Bremen (Germany); Provence-Alpes-Côte d'Azur, Hauts-de-France and Île-de-France (France); Reggio Calabria and Rome (Italy); Norrbotten (Sweden); Lesbos (Greece)
Vulnerability to crime	Vienna (Austria); Lower Saxony (Germany); Milan (Italy); Västra Götaland (Sweden); Athens (Greece)
Social assistance	Upper Austria (Austria)
Asylum procedures	Rome (Italy)
Access to employment	Bremen (Germany)

Source: *FRA, 2019*

were covered by the law on child welfare and did not apply for asylum, as they are not required to hold a residence permit until they reach 18 years of age. The criteria used to identify the sample were legal status, age, gender, country of origin and location. Among children, quotas were established for unaccompanied as well as unaccompanied children. The project focused on persons who are likely to stay long-term. In relation to asylum applicants, the research included individuals from nationalities who are most likely to be granted international protection. Therefore, every effort was made to select asylum applicants from countries of origin that, in the EU Member State concerned as well as at EU level, had a recognition rate[22] of at least 51 % in 2015 or 2016. In a few cases, asylum applicants from other countries were included to explore specific risks that emerged during the fieldwork, for example Nigerian women in Italy. Interviews with experts as well as with people in need of international protection were based on a semi-structured topic guide available in the Annex (available on FRA's website).

22 The (asylum) recognition rate is the share of positive decisions in the total number of asylum decisions for each stage of the asylum procedure (i.e. first instance and final on appeal).

Table 3: Residence status of people in need of international protection interviewed

Member State	Asylum applicant	Beneficiary of international protection			Other*	Total
		Refugee	Subsidiary protection	Humanitarian status		
Austria	7	6	7	0	0	20
France	5	14	6	0	7	32
Germany	3	15	9	3	0	30
Greece	10	10	0	0	0	20
Italy	7	9	11	9	0	36
Sweden	7	8	10	0	0	25
Total	39	62	43	12	7	163

Note: ** The category 'Other' refers to interviewees who arrived in France as unaccompanied children. Unaccompanied children are covered by the law on child welfare and are not required to hold a residence permit.*

Source: *FRA, 2019*

Of the interviewees, 72 % (117) had received an international protection status at the time of the interview in 2018; 59 % (96) had arrived as children in 2015–16, most of them unaccompanied. Interviews were evenly distributed among locations.

The majority of the interviewees (93 %) were aged between 16 and 24 years at the time of the interviews, which made it possible to focus on the transitions from childhood to adulthood and from education to vocational training and work. The interview process included protective measures for interviewed children, including a possible follow-up in case of psychological strain after the interview. The research did not look at migrants in an irregular situation.

Of the 163 asylum applicants and beneficiaries of international protection interviewed, 65 % (106) were male and 35 % (57) were female. The sample included persons from 23 countries, with Syria (26 %, 43), Afghanistan (25 %, 35), Eritrea (7 %, 11) Somalia (6 %, 10) and Iran (5 %, 8) as top countries of origin. Table 4 shows the main countries of origin of people interviewed in the six EU Member States covered.

The main challenges during the research related to difficulties in identifying persons who had arrived in France and Italy and applied for asylum as children, as they were given residence permits as children; difficulties in identifying persons who had arrived as children at all in Greece; the need to interrupt or abort interviews with refugees because of psychological strain and past traumatic experiences; and difficulties for interviewees to address questions relating to vulnerability to crime. The Austrian and German authorities in charge of asylum did not agree to be interviewed.

Table 4: Main countries of origin of people in need of international protection interviewed, in order of predominance, by EU Member State (N = 163)

Member State	Main countries of origin
Austria	Afghanistan (25 %), Syria (25 %), Somalia/Iran (20 %)
France	Afghanistan (25 %), Syria (25 %), Nigeria/Sudan (9 %)
Germany	Syria (50 %), Afghanistan (23%), Eritrea (13 %)
Greece	Syria (35 %), Afghanistan (25 %), Iran (15 %)
Italy	Gambian (17 %), Nigerian (14 %), Guinea/Ivory Coast/Mali (14 %)
Sweden	Afghanistan (36 %), Syria (32 %), Eritrea (16 %)

Source: *FRA, 2019*

1 Length of asylum procedures

EU Charter of Fundamental Rights, Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union.

Time plays a key role in asylum proceedings. Fundamental rights can be at risk when procedures are either too short or too long. Excessively speedy decisions might not leave sufficient time for preparation and to seek legal assistance. They thus undermine one's right of access to asylum, reflected in Articles 18 and 19 of the EU Charter of Fundamental Rights and, in appeal proceedings, the right to an effective remedy, enshrined in Article 47 of the Charter.

Lengthy proceedings that leave an asylum applicant in a state of insecurity and legal limbo can compromise the right to good administration, which is a general principle of EU law binding upon EU Member States.[23] In addition, practical obstacles may negatively affect the effective enjoyment of a wide range of rights that are important for successful integration, as shown in Chapters 2–8. As an illustration, some employers in different Member States noted that they avoid hiring asylum applicants because of complicated procedures or doubts about their right to work or simply because they may not be available if their application for asylum is rejected. Lengthy procedures often affect the mental health of the individual. The longer asylum applicants have limited rights and access to services, the harder it becomes for them to integrate once they have received international protection.

This chapter analyses the reality of delays in the six EU Member States surveyed. Section 1.1 assesses to what extent procedures were longer than legally required. Section 1.2 analyses different factors influencing the length of procedures. Some 225 experts, including lawyers, professionals working with child welfare authorities and immigration authorities, members of focal points for integration, representatives of NGOs and guardians, were asked more specific questions regarding the right to stay. This includes the participants in a local focus group in Rome that discussed the impact of asylum procedures. Experts in other professional categories were consulted depending on their experience. The experiences of asylum applicants and beneficiaries of international protection concerning the impact of lengthy asylum procedures are reflected primarily in the subsequent chapters.

EU asylum law

The Asylum Procedures Directive (Directive 2013/32/EU)[24] sets clear timelines for the asylum procedure. For the regular procedure, when a person "makes an application", Article 6 (1) sets a time limit for "registering" such an application of three to six days, or in case of large numbers of arrivals 10 working days (Article 6 (5)). Article 31 (3) obliges EU Member States to "ensure that the examination procedure is concluded

23 See Court of Justice of the European Union (CJEU), C604/12, *H. N.*, 8 May 2014, para. 49; Joined cases C141/12 and C372/12, *YS and Others*, 17 July 2014, para. 68; C166/13, *Mukarubega*, 5 November 2014, paras. 43-45.

24 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, p. 60–95.

within six months of the lodging of the application" or within up to 21 months in certain specific situations (Article 31 (5)). Under certain conditions, Article 31 (8) of the directive allows EU Member States to accelerate procedures and/or conduct these at the border or in transit zones, provided such procedures respect basic procedural standards and guarantees.

The directive uses the following terminology:

- "making" an application, which is the oral or written expression of the intention to seek asylum before a public authority;[25]
- "registering" an application, which means the recording of a person's wish to apply for protection, which in some Member States may include a pre-registration;[26]
- "lodging" an application, which is the act of formalising the application for international protection with the determining authority.[27]

Whereas some EU Member States understand all three concepts as one procedural step of the asylum procedure, others envisage two or three distinct steps. In practical terms, the entire asylum procedure, depending on the Member State concerned, can have up to eight administrative steps from the moment an individual "makes" an application to the moment an individual receives a residence permit. Figure 7 illustrates these steps.

1.1. Extent of lengthy procedures

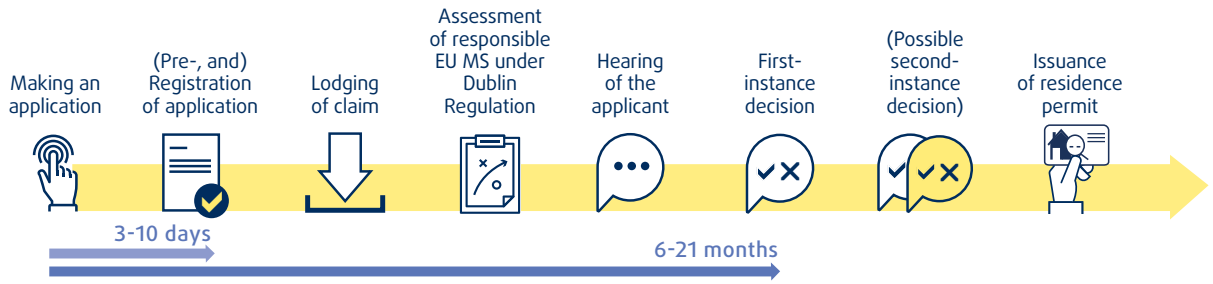
Applicants who arrived in 2015 and 2016 brought up issues about excessively fast procedures occasionally during the research.[28] However, disproportionately long asylum procedures are a key concern affecting their integration prospects. The manager of a reception centre in France illustrated this as follows:

"It is a system that is extremely perverse: meaning that people are asked to integrate, but they are not given the opportunity to do so. [...] There is the phase where everything is blocked, when they have requested asylum, as if it was an illness, and the phase after, when anything is possible. But you have got too far behind. When you have waited two years and done nothing during these two years, you have not given the person the ability to do something." (Reception centre manager, France)

Delays occurred mainly at four different steps: registration and lodging of the asylum claim; the first instance decision; appeals; and issuance of residence permits.

The example of a humanitarian protection status holder from West Africa is illustrative. He could apply for asylum only three months after his arrival in Italy, when he was transferred from Sicily to Milan. He then waited one month for a temporary residence permit as asylum applicant, an additional 19 months to be summoned before the Territorial Commission for the hearing and two months to have the asylum decision. Afterwards, he waited for two months to obtain his official residence permit as protection status holder. In total, he waited more than two years to conclude the asylum procedure and receive a residence permit.

Figure 7: Steps of the asylum procedure and timespans required by EU law



Source: FRA, 2019

25 EASO (2016a), p. 4.
26 *Ibid.*
27 *Ibid.*; Glossary on European Migration Network website.
28 For guidance on international standards and good practices relating to accelerated procedures, see UNHCR (2018a).

1.1.1. Registration of asylum claims

Even before and during the large-scale arrivals in 2015–16, EU Member States took measures intended to avoid delays in the registration of asylum claims. France, Germany, Greece and Italy introduced pre-registration systems. In Austria, since July 2015, police stations have registered asylum applications (before that, this occurred exclusively in the two initial reception centres).[29] In Sweden, there is no pre-registration procedure.[30]

In 2015 and 2016, in five of the six EU Member States surveyed (all but Sweden), the time between the moment when an asylum applicant first expresses their wish to apply for asylum (making a claim) and the registration of that wish took much longer than the time limit of three to 10 days set out in EU law. Only in Sweden were there no significant delays at the registration stage.

In Austria the registration of the asylum claim at the police was relatively swift, but then there were delays of several months to get an appointment for a first interview with the asylum authority to collect all registration-related data, noted the Asylum Information Database (AIDA), a database managed by the European Council on Refugees and Exiles (ECRE).[31] In France, one needs an appointment with the reception service for asylum applicants (*Plateforme d'Accueil des Demandeurs d'Asile* – PADA) before one can make an appointment at the registration office, called GUDA (*Guichet Unique de Demande d'Asile*), at the prefecture. In 2016, the average delay for an appointment at the GUDA exceeded one month in Paris,[32] although the law sets a limit of three days (10 days in cases of high demand).[33] In Italy, the formal lodging of the application (*verbalizzazione*) uses form C3 (*Modello C3*). The time between when the police registered the intention to apply for asylum and when the asylum application was lodged (*verbalizzazione*) took two months in Milan and Rome.[34] In Germany, in 2015, asylum applicants were usually registered immediately after entering the first reception facility.[35] In Greece, in July 2016, the Asylum Service, assisted by the United Nations High Commissioner for Refugees (UNHCR) and the European Asylum Support Office (EASO), conducted a pre-registration exercise for potential asylum applicants living on the mainland.[36] The authorities estimated the period between such pre-registration and full registration as several months.[37] Applicants who were not pre-registered had to schedule an appointment for registration through Skype, which created further challenges.[38] Experts whom FRA interviewed confirmed the existence of delays in registering asylum applications, and noted the negative impact on people affected. A young Syrian who had arrived as a child in Germany commented:

"This is not an experience, it is suffering […] a struggle because you need to wait between 30 and 40 days to register, they give you a number and this number needs to be shown on the screen. The screen works every day from 8.00 until 18.00. I remained 35 days like this […] waiting for the number to show up." (Refugee from Syria, male, Germany)

Delays in registration entail a delay in issuing asylum applicant cards too, which are often a precondition to access rights in practice, as subsequent chapters will show. After the formal registration of the applications, asylum applicants receive papers entitling them to stay in the Member State.[39] For example, the French prefectures issue a receipt (*récépissé*) and the Italian authorities issue a temporary residence permit (*cedolino*), both of which are valid for six months and renewable. The format and validity of such documents differ between Member States. Austria and Sweden issue plastic cards, whereas the other four EU Member States use paper documents.[40] The format affects how much people trust in the document, particularly in the private sector, such as landlords or employers, as emerged from France and Italy.

1.1.2. First instance procedure

During 2015–16, in practice, in all six EU Member States surveyed, reaching a first instance decision on asylum took between six months and two years. For example, in Austria, the average duration of first instance proceedings was 3.3 months in December 2014, rising to 5.3 months in September 2015[41] and to 9.1 months throughout 2016.[42] In Germany, the average length of asylum procedures in the selected locations was between one and two years in 2015 and 2016 according to most of the NGOs, lawyers and guardians

29 Austria, Asylum Law (*AsylG*), Section 17 (1).
30 AIDA (2018a), p. 19.
31 AIDA (2016), p. 3.
32 AIDA (2017a), p. 24.
33 France, *Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA), 22 February 2005, Art. L741-1.
34 AIDA (2017b), p. 24.
35 Germany, Federal Government (2015a), p. 2-3.
36 Greece, Asylum Service (2016). For a discussion, see ECRE and AIRE Centre (2016), p. 14.
37 Greece, Asylum Service (n.d.); Asylum Service Director's Decision No. 8097/2016, *Official Gazette* 1542/B-31-5-2016, recital 7.
38 Greek Ombudsman (2017), p. 32.
39 Austria, Asylum Law (*Asylgesetz*), Section 50; France, CESEDA, 22 February 2005, Art. L 741-2; Germany, Asylum Act (*AsylG*), *Federal Law Gazette I*, 2 September 2008, p. 1798, Section 63; Greece, Law 4375/2016, Art. 41 (1) (d); Italy, Legislative Decree No. 142/2015, Art. 4; Sweden, Swedish Migration Agency webpage at Private individuals/ Protection and asylum in Sweden/While you are waiting for a decision/LMA card.
40 See ECRE (2018).
41 Austria, Parliament (2015), p. 2.
42 Austria, Parliament (2017).

interviewed; around one third of the 14 experts who comment on this point stress that the duration varies greatly between individuals. In Greece, the average time from lodging the application until the issuing of the first instance decision amounted to around six months in 2017.[43] In Sweden, at the end of 2016, the average processing time for an asylum case was 328 days from application to the first decision, and it increased considerably in the following years.[44]

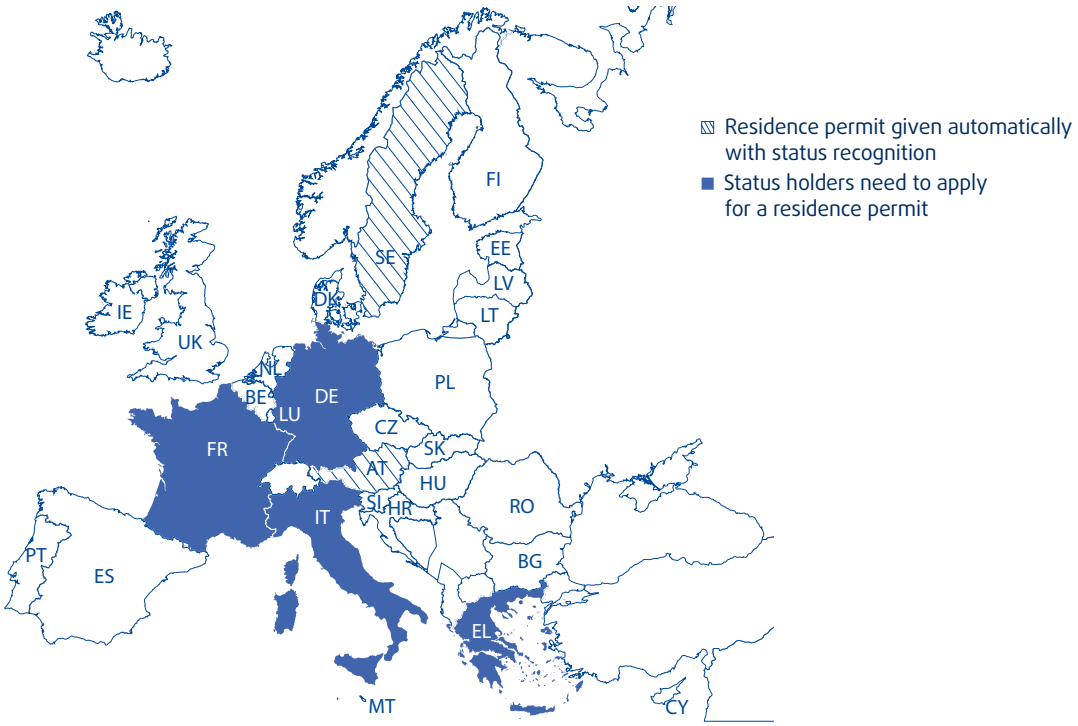
1.1.3. Second instance decisions

Waiting times significantly increase when applicants appeal against the administration's decision to refuse them asylum or grant them only subsidiary protection. Although FRA did not collect data on the length of appeal procedures, it can take several months and sometimes years, existing literature and replies by lawyers and other professionals indicate. For example, in the experience of a lawyer interviewed in Austria, the entire asylum procedure takes between one to three years or more, including all instances. Another Austrian lawyer said at the time of the interview, in early 2018, that some of his clients who arrived in 2015 had only had their asylum interview by then. In France, the average time for the asylum court (*Cour nationale du droit d'asile*) to take a decision increased to 6.5 months in 2018 compared with 5 months and 6 days in 2017, according to AIDA.[45] The average duration of appeal procedures in Germany increased significantly because of the increase in the number of appeals filed in 2016 and 2017: in 2018, the average processing period for appeals was 12.5 months, compared with 7.8 months in 2017.[46] In Italy, the average duration of the procedure for appeals examined after 2017 was 4.8 months in Milan and 6.6 months in Rome, according to AIDA.[47] At the migration court in Gothenburg, Sweden, the waiting time for a second asylum decision amounted to approximately 18 to 22 months.[48]

1.1.4. Issuance of residence permits

Article 24 of the Qualification Directive stipulates that, as soon as possible after refugee or subsidiary protection status has been granted, Member States should provide beneficiaries of international protection with residence permits. Whereas in Austria and Sweden such permits are automatically granted together with

Figure 8: Overview of EU Member States that provide residence permits automatically with status recognition



Source: FRA, 2019

43 AIDA (2018b), p. 37.
44 Sweden, Swedish Migration Agency (*Migrationsverket*) (2016), *Avgjorda asylärenden 2016; Avgjorda asylärenden 2017*; *Avgjorda asylärenden 2018*.
45 AIDA (2019).
46 Germany, Federal Government (2019a), p. 48; (2018), p. 42.
47 AIDA (2019).
48 Sweden, Gothenburg Migration Court, Approximate processing time.

the protection status, in France, Germany, Greece and Italy, once granted international protection, the persons concerned also need to obtain a residence permit to enjoy some of their rights (Figure 8). This can cause further delays, for example up to six months in Greece.[49]

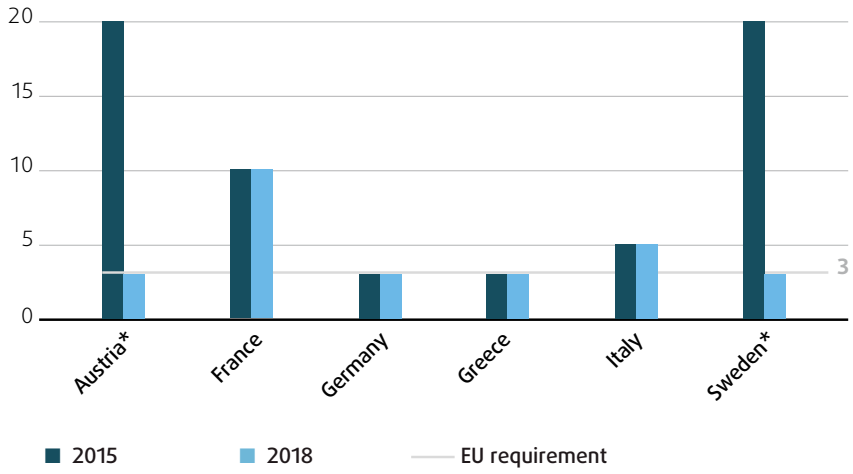
Under Article 24 of the Qualification Directive, residence permits must be valid for no less than three years for refugees and at least for one year for beneficiaries of subsidiary protection. Before the large number of arrivals in 2015, many Member States went beyond the requirements of the Qualification Directive. Since then, however, Austria and Sweden have changed their laws to meet only the minimum requirements of EU law. Figures 9 and 10 provide an overview of how the lengths of residence permits changed from 2015 to 2018.

The average length of the procedure to grant the residence permit varied greatly across all EU Member States, in 2015, ranging from two weeks to six months.[50]

The time when a person receives their residence permit, as well as the length of the residence permit and thus the prospect of how long one is allowed to stay, can have various effects on integration. Recital 40 of the Qualification Directive allows EU Member States, within the limits set out by international obligations, to make access to employment, social welfare, healthcare and access to integration facilities dependent on the prior issue of a residence permit. The Commission's proposal for a Qualification Regulation introduced that recital into the proposed Article 22 (3).[51]

The legal status of a person thus affects their right to work and to access education, training and social benefits, which can, consequently, affect their mental health. Precarious legal status has a particularly strong effect on integration during the transition from childhood to adulthood, which is when the support of competent professionals, such as social workers, guardians or lawyers, is most needed. Certain rights, in particular free movement within the EU, materialise only later, if and when international protection beneficiaries receive long-term residence permits. Under Article 4 of the Long-Term Residents Directive (2003/109/EC), EU Member States must grant long-term resident status to third-country nationals who have resided legally and continuously within their territory for five years immediately prior to the submission of the relevant application, provided they fulfil a number of other conditions.[52] For international protection beneficiaries, the calculation of the five years must take into account at least half of the period between the lodging of the

Figure 9: Length of residence permits for refugees, 2015 and 2018, six EU Member States

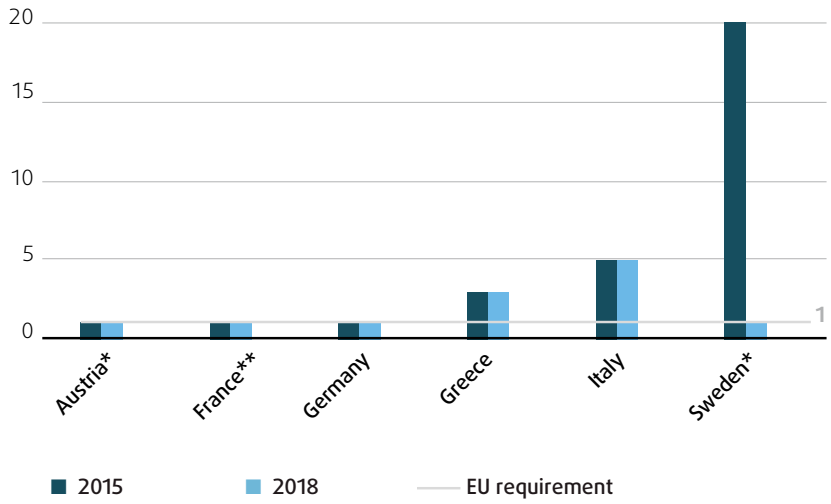


Notes: *Permanent residence permits are shown as 20 years.*
** Residence permits are granted automatically upon status determination.*

Source: *FRA, 2019*

49 AIDA (2018b), p. 168.
50 European Commission (2019a), p. 184.
51 European Commission, Proposal for a Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM/2016/0467 final, Brussels, 13 July 2016.
52 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, p. 44–53 (Long-Term Residents Directive).

Figure 10: Length of residence permits for beneficiaries of subsidiary protection, 2015 and 2018, six EU Member States



Notes: *20 years = permanent.*
** Residence permits are granted automatically upon status determination.*
*** Since 1 March 2019, subsidiary protection status holders are granted a four-year residence permit renewable for 10 years.*

Source: *FRA, 2019*

asylum application and the granting of protection, or the full period if the asylum procedure exceeded 18 months.[53] This is the case in Greece[54] and Austria.[55] In Germany, the whole duration of the asylum procedure is included within the five-year period.[56] In Italy,[57] France[58] and Sweden[59] the five-year period is calculated from the moment the asylum applicant submits the application for international protection.

1.2. Factors affecting the length of asylum procedures

Numerous factors contributed to the delays in processing asylum applications. The aims of this section are to shed light on the different reasons why asylum procedures ended up being excessively long and to analyse how best to address them.

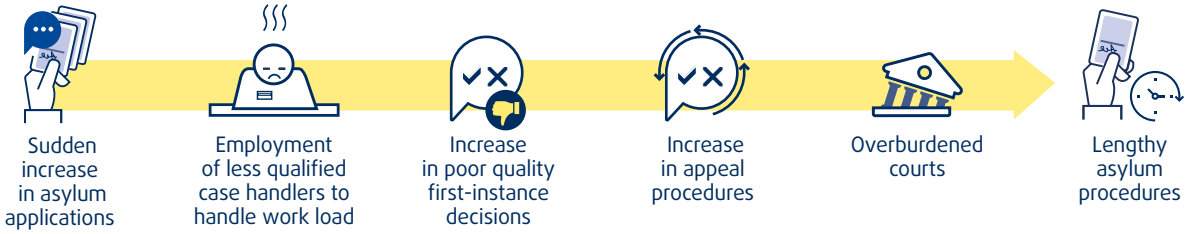
1.2.1. High number of applications paired with lack of capacity to process claims

The main reason for delays was insufficient human and financial resources to process the sudden increase in applications in 2015, at both first and second instances, as all interviewed stakeholders stated. Interviewed experts highlighted five specific issues (see Figure 11).

- There was a sudden increase in asylum applications.
- The high number of asylum applications led in Austria, Germany and Sweden to the asylum authority of first instance and the administrative courts using less-qualified personnel. For example, following the privatisation of the Federal Post Office in 2014, the Austrian Federal Office for Immigration and Asylum had hired several former postal workers as asylum case handlers although they did not have any experience in processing asylum claims.[60] Before working as case handlers they had to train for four months.[61]
- Overburdened and underqualified case handlers led to an increased number of poor-quality first instance asylum decisions.

53 Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, OJ L 132, p. 1–4.
54 Greece, Law No. 4251/2014, Immigration and Social Integration Code and other provisions, Government Gazette 80/A/01.04.2014, Art. 89, para. 2.
55 Austria, Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*), BGBl. I Nr. 100/2005, Art. 45 (12).
56 Germany, Residence Act (*Aufenthaltsgesetz*), BGBl. I S. 162, 25 February 2008, Art. 26 (3) (1).
57 Italy, Consolidated Immigration Act (*Testo unico sull'immigrazione*), (28 July 1998) Art. 9 (5*bis*).
58 France, CESEDA, 22 February 2005, Art. L122-3 and Art. R. 314-1-1.(1), and Decree No. 2016-1456, 28 October 2016, modifications to Art. R. 314-1-1.
59 Sweden, *Utlänningslag* (2005:716), 29 September 2005, Chapter 5a, Section 1.
60 *Der Standard* (2014).
61 Austria, Parliament (2019), p. 8.

Figure 11: Factors leading to lengthy asylum procedures in 2015/2016



Source: FRA, 2019

- Poor-quality first instance decisions and a high number of negative decisions led to a higher number of appeals.
- High numbers of appeals shifted the bottleneck from the asylum authorities to the courts. For example, an asylum lawyer in Germany stressed that all chambers of the local administrative court had all of a sudden to deal with asylum-related matters, but many of the judges did not have the necessary experience to deal with asylum cases. Limited capacities of the courts as well as organisational shortcomings, such as the lack of available interpreters for certain – previously less demanded – languages, have likewise increased waiting times.

1.2.2. Insufficient information

Insufficient information, including the lack of child-friendly material, about the different steps of the asylum procedures, together with the lack of interpreters, emerged as an important cause of delays. This was especially the case in France. About one third (four out of 14) of the asylum applicants interviewed in the three locations in France reported delays caused by the agents of the prefecture providing them with incorrect or too little information. For example, a Syrian refugee who had arrived as an accompanied child had to return to the prefecture in Marseilles seven times, because at each appointment she was told there were additional documents to provide.

"Every time, if we wanted to do the residence permit, it goes on for a long time because they ask for a lot of paperwork and there is always something still missing. In fact, I was, I do not know, I was a little shocked because they do not ask you for everything at the same time, every time you have to go, and they ask you for something else." (Refugee from Syria, female, France)

Although stakeholders in other EU Member States also indicated the lack of information as a general problem in the asylum procedure, they did not specifically identify this as a cause for delays. They noted some promising practices.

Promising practice

Informing applicants on a mobile app

The app is an information portal run by people who have fled to **Germany**. It is financed by the government and private companies. The app provides replies to questions about life in Germany by means of short videos and articles, on the topics of asylum, housing, health, employment, vocational training, childcare or university studies, among others. A search engine assists with finding services and offers in the immediate surroundings. The app is available in seven languages.

For more information, see Handbook Germany, 'Germany from A to Z'.

The applicant's educational and professional background can affect the length of the asylum procedure. The ability to understand the procedure, to know which documents to provide and to present one's case eloquently and convincingly can speed the procedure up. For example, an asylum lawyer in Germany reported cases of journalists who received positive decisions on their asylum applications only two weeks after their hearing.

1.2.3. Physical accessibility

Asylum applicants in France, Greece and Italy experienced delays in their asylum procedures because of difficulties in physically accessing the relevant authorities.

In France, local and national authorities and civil society representatives highlighted the problem of long queues of people waiting to submit their claim, including people sleeping in front of the association responsible for pre-reception (PADA). Local and national authorities as well as NGOs and lawyers in France noted that waiting time varies significantly depending on the prefecture and the number of appointments available. A Somali asylum applicant in Paris explains that he had to queue for several days to pre-register:

"It was really very very difficult. So, everyone … in fact people were fighting for a place. So, for example, when there are 200 people, they only take 40 [a day], 20-odd or 40-odd. So you had to be in the first 40 or the first 20. You had to come […] four days or six days before the day of the appointment." (Asylum applicant from Somalia, male, France)

Applicants in Italy reported that they had to wait for two days before being given access to the police headquarters to lodge the asylum application by completing form C3. The police allowed only a limited number of applications each day. An NGO professional described this critical situation:

"There is another problem that concerns the police headquarters […] an extremely serious barrier […] an applicant might have to wait months before being able to be among the 20 people allowed in to fill in the form [C3]." (NGO legal assistant, Italy)

1.2.4. Asylum policies or practices

Some EU Member States implement prioritisation policies based on the country of origin. These may help avoid delays, provided that sufficient resources remain available to process non-priorities applications. For example, Greece introduced a fast-track policy for Syrians in 2014.[62] In Germany, as of autumn 2014, asylum applications submitted by persons from Syria, Iraq and Eritrea were processed using an expedited procedure, based on a written questionnaire rather than a fully fledged individual interview.[63] Several NGOs in Germany pointed out that applicants either from so-called safe countries of origin or from countries with high protection rates receive the decisions on their asylum applications faster than those whose applications are perceived to be more complex to examine, such as applicants from Afghanistan and Sudan. In Sweden, an asylum authority expert noted:

"There are cases that are more complicated and require more investigation and then there are some cases that are easier. What I note is that there are major differences between different nationalities. This is first and foremost what the statistics show. Asylum applicants who come from countries where there usually are no needs for protection often have a relatively quick process. […] And the process is also relatively short for groups who in most cases are granted protection. Syrians for example also have a shorter process than Afghans or Somalis, so there are probably significant differences between different nationalities." (Asylum authority expert, national level, Sweden)

Policies on how to interpret the Qualification Directive also affect the overall length of procedures. According to an evaluation of the recast Qualification Directive, national authorities in Austria and in Greece indicated a tendency in 2015 to grant refugee status rather than subsidiary protection to Syrians. For example, in 2015, among Syrians who received international protection in Austria, 96 % were granted refugee status and 4 % were granted subsidiary protection.[64] This trend continued in the following years.[65] According to the evaluation, this was related to Austria's long-standing experience with the Geneva Convention but also motivated by the wish to reduce the number of appeals (refugee statuses are not appealed, as opposed to subsidiary protection), which shortened the length of procedures significantly.[66]

1.2.5. Type, existence and quality of evidence to substantiate claims

The quality, type and amount of evidence asylum applicants can provide to substantiate their asylum claims can differ for a variety of reasons. The complexity of the claim, the quality of the documentary evidence produced or the changing situation in the country of origin can affect the time needed to process a claim. For example, several asylum applicants in Germany and Italy spoke about challenges linked to the documents required to substantiate an asylum application and their inability to provide what the authorities requested. Several refugees in Germany had lost their documents on their journeys, and in Italy an asylum applicant reported that he was asked to provide documents to prove the situation in his country of origin but he did not have them.

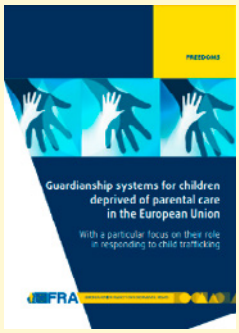
1.2.6. Applications by unaccompanied children

The age of an applicant can be important for the duration of the procedure. For example, in Italy, unaccompanied children's applications are processed as a priority, in line with the best interests of the child. In Austria, Germany and Sweden their processing time can be longer than for adults. This can be either because it takes a long time to appoint a legal guardian, who submits the application on behalf of the child, or because of lengthy age assessment procedures.[67]

62 AIDA (2015), p. 73.
63 Germany, Asylum Act (*AsylG*), *Federal Law Gazette* I, p. 1798, 2 September 2008, Section 24 (1) sentence 2. See also Germany, Federal Government (2016), which concerns applicants who arrived in Germany before 1 January 2016 and submitted their applications before 17 March 2016.
64 European Commission (2019a), p. 330.
65 In 2016, for applicants originating from Syria, Austria granted in second instance decisions, 15,528 refugee status and 585 subsidiary protection, Austria, Federal Ministry of the Interior (2016), p. 37; in 2017, 11,827 were refugee status and 1,194 subsidiary protection, Austria, Federal Ministry of the Interior (2017), p. 35; in 2018, 4.951 were refugee status and 414 subsidiary protection; Austria, Federal Ministry of the Interior (2018), p. 33.
66 European Commission (2019a), p. 330.
67 For recommendations and good practices about asylum procedures for unaccompanied children, see UNHCR (2017a).

FRA ACTIVITY

Strengthening guardianship systems



FRA and the European Commission have published a handbook to strengthen national guardianship systems for unaccompanied children. The handbook provides guidance and recommendations to EU Member States, setting forth the core principles, design and management of guardianship systems. It is available in all EU languages.

See FRA (2015), Guardianship for children deprived of parental care in the EU – with a particular focus on their role in responding to child trafficking, Publications Office, Luxembourg.

The guardian's qualifications, personal commitment and workload and the number of children they are supporting may affect the quality of the support the guardian can provide and thus also the duration of asylum procedures. Qualified case workers who are specifically trained to interview children may increase the likelihood that a child will be recognised as a refugee. The provision of age-sensitive information and prompt referral to appropriate services also increase the protection of children within the asylum process.

Guardians, NGOs and local authorities interviewed in different locations in Germany mentioned the improvements to the Asylum Act in October 2015 whereby children above the age of 16 too must be represented by a guardian.[68] They note that, although in principle a positive step, it is not always accompanied by sufficient resources to make enough guardians available, leading to further delays. Age assessments may take months in some cases, according to an Austrian guardian.

Promising practice

Speeding up procedures for unaccompanied children in Milan

The police headquarters of Milan, **Italy**, dedicates one day a week to asylum claims lodged by children. All different administrative steps, which adults have to do separately, can be done in one day, including photo identification, database verification to avoid duplication of the request, and filling in form C3. This preferential treatment is also applied to renewing a residence permit.

Source: Local child protection authority, Milan

68 Germany, Asylum Act (*AsylG*), *Federal Law Gazette* I, p. 1798, 2 September 2008, Section 12.

Conclusions and FRA opinions

Lengthy asylum procedures have various impacts on applicants' daily lives. Their legal status grants them limited rights and access to services compared with status holders. These limitations, coupled with uncertainty about the outcome of proceedings, the fear of return and the absence of family and friends, can affect integration prospects and mental health, and make some vulnerable to becoming victims or perpetrators of crime. The longer a person does not have full access to rights and benefits, in particular those linked to vocational training and employment, the harder it is to catch up with the integration process once a status is granted. At the same time, it is crucial that the asylum procedure allow sufficient time for the applicant to prepare for the interview, seek legal, medical and psychological assistance, and collect evidence to substantiate a claim.

In the six EU Member States reviewed, asylum procedures lasted longer than the time limits set out by EU law. Numerous factors contribute to the delays in processing asylum applications. Some are within the remit of the authorities, such as insufficient human and financial resources to deal with a high number of applications, delays in appointing a guardian or inadequate information for asylum applicants. Other factors are linked to the person in search of international protection.

FRA opinion 1

EU Member States should examine asylum claims within a reasonable time period, allowing sufficient time to prepare a case and to seek legal and other assistance, including in times of large numbers of arrivals. To do so, they should ensure that sufficient financial and human resources, using qualified professionals, can be made available at short notice so as not to exceed the time limits set out in EU law.

Factors contributing to lengthy proceedings should be minimised, in particular if the factor lies within the remit of the authority and if the applicant is a child. Appropriate resources to quickly appoint competent guardians should be ensured. The guardianship system should be an integral part of the national child protection system, and must operate within the national legal child protection framework. EU Member States should ensure that applicants with good prospects of receiving protection can already start their integration process during the asylum procedure to make the transition from being an applicant to being a status holder as easy as possible. This should include participation in language classes and effective access to education, healthcare, vocational training and the labour market as early as possible.

2 Family reunification

EU Charter of Fundamental Rights, Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

The family is the natural and fundamental unit of human society. Being together with family members helps to bring stability and security in life, facilitating integration.[69] Nevertheless, many EU Member States have introduced and implemented increasingly restrictive family reunification laws and policies, amid concerns that generous family reunification rules may serve as a pull factor for migrants. At the same time, family reunification remains one of the primary grounds for admission into the EU, amounting to some 26 % of all first residence permits issued in the 28 EU Member States to third-country nationals in 2017.[70] Family reunification constitutes a safe and legal way to enter the EU as a third-country national, avoiding deadly routes and exploitative smuggling networks.

Status holders responding to the research in all six EU Member States stressed that not being able to reunite with their families had a negative impact on them. It affected their ability to engage in education and employment. It impaired their physical and emotional health. A refugee in Greece describes how family reunification will influence his integration:

"I will be psychologically calm, I will have no anxiety that my parents are in Syria and something can happen to them, because the situation over there and around them is very difficult [...] There is a slight chance that I will be able to integrate." (Refugee from Syria, male, Greece)

This chapter illustrates the legal and practical challenges that young international protection beneficiaries wishing to reunify with their family members face in the six EU Member States surveyed. The data are based on interviews with professionals as well as refugees and asylum applicants in the six Member States, complemented with desk research. FRA consulted 225 experts on family reunification procedures, including lawyers, officials of child welfare, asylum and immigration authorities, members of focal points for integration, representatives of NGOs and guardians. Out of the 117 interviewed beneficiaries of international protection, 20 had experiences relating to family reunification. However, interviewers had to abort several interviews because the interviewees were unable to speak about the topic.

Human rights law

All persons, including asylum applicants and international protection beneficiaries, have a right to respect for family life. This right is set out in several human rights instruments, as shown in Table 5. Although not expressly covered in the 1951 Refugee Convention, family unity and the protection of the refugee's family feature prominently in the final act of the diplomatic conference that adopted the Convention.[71] For international protection beneficiaries, reuniting with their family members in the country of origin where they would face persecution or the risks attached to armed conflicts is not an option. Therefore, realising the right to respect for family life normally means that

69 UNHCR (2017b).
70 Eurostat, migr_resfirst, data extracted on 11 October 2019.
71 United Nations General Assembly, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, Recommendation B.

Table 5: Right to family life in international law, selected instruments

Instrument	Main provisions	Applicability
Universal Declaration of Human Rights, Article 16 (3)	"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."	Refugees and asylum applicants
International Covenant on Civil and Political Rights, Article 23 (1)	"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."	Refugees and asylum applicants
International Covenant on Economic, Social and Cultural Rights, Article 10 (1)	"The widest possible protection and assistance should be accorded to the family."	Refugees and asylum applicants
ECHR, Article 8	"1. Everyone has the right to respect for his or her private and family life, home and communications."	Refugees and asylum applicants
Convention on the Rights of the Child, Article 8	"1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."	Refugees and asylum applicants
Convention on the Rights of the Child, Article 10	"1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family."	Refugees and asylum applicants

Note: *Under 'applicability', 'refugee' is used in a broad sense, also including subsidiary protection status holders.*

Source: *FRA, 2019*

countries of asylum should facilitate the entry of family members to join international protection beneficiaries.[72]

EU law

The Charter protects family life and family unity as a fundamental right in Articles 7, 9 and 33.

Secondary EU law provides further specifics on the right. The Family Reunification Directive (2003/86/EC) lays down the right for third-country nationals legally residing in an EU Member State (sponsors) to be joined by their family members staying outside the EU. The directive also applies to refugees. It does not apply to asylum applicants or to subsidiary protection beneficiaries.

In the light of refugees' special circumstances, the directive sets forth more favourable conditions for refugees' family reunification than are available to other third-country nationals.[73]

The Qualification Directive regulates the situation of family members who are already in the EU.[74] According to its Article 23 (2), family members of beneficiaries of international protection who do not individually qualify for protection are entitled to almost the same benefits as the status holder. The only difference between the entitlements of refugees and of their family members concerns the length of their residence permit: according to Article 24 (1), the residence permit to be issued to the family members of the beneficiaries of refugee status may be valid for less than three years and renewable.

There is no right to family reunification in the EU before the protection status is determined. During the asylum application procedure, the Dublin Regulation serves as a basis for family reunification of family members already in the EU but living separated in different Member States.[75] Family reunification under the Dublin Regulation is outside the scope of this study.

72 In this context see also UNHCR Executive Committee (1979, 1981, 1998, 1999).

73 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, p. 12–18 (Family Reunification Directive), Art. 3 (2) and recital 8.

74 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, p. 9–26 (Qualification Directive), Art. 23 (1); see also Family Reunification Directive, recital 2.

75 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, p. 31–59 (Dublin Regulation); recitals 15 and 16 and Art. 8 apply to children.

Figure 12: EU law sources regulating family unity and family reunification

Source: FRA, 2019

Figure 12 illustrates how secondary EU law provides further specifies on the right to family reunification.

2.1. Legal obstacles

The implementation of the EU legal framework regarding family reunification varies between the six EU Member States surveyed. Since 2015, Austria, Germany and Sweden have introduced legal changes restricting the possibilities of family reunification for beneficiaries of international protection.

2.1.1. Personal scope

Article 4 of the Family Reunification Directive obliges EU Member States to authorise the entry and residence of the sponsor's spouse and the minor children of the sponsor and of their spouse. The directive gives EU Member States the discretion to also allow family reunification to first-degree relatives in the direct ascending line of the sponsor or spouse, where they are dependent on the sponsor and/or spouse and do not enjoy proper family support in the country of origin; and the adult unmarried children of the sponsor or his or her spouse. Implementation in the six surveyed EU Member States varies, as Table 6 illustrates.

During the interviews, several respondents, especially in Austria and France, noted that the family members they wished to reunify with did not qualify as family members according to EU or national laws. Several interviewees wished they could bring their parents and siblings. However, as Table 6 demonstrates, once a person is over 18 years old, their parents are, in four out of six EU Member States, not eligible. That young adults are separated from their parents deeply affects them. For example, a 19-year-old Eritrean, who cannot bring his parents or siblings, says that having his family near matters the most for his well-being:

Table 6: Personal scope of family reunification rules

Member State	Spouse	Unmarried long-term/ registered partner	Minor unmarried child	Dependent unmarried adult child	Parents of minor child	Parents of adult (if dependent)	Sibling of minor
EU law "shall" or "may" provision	shall	may	shall	may	shall	may	may
Austria	✓	✓*	✓		✓		
France	✓	✓	✓		✓		✓**
Germany	✓	✓	✓		✓		
Greece	✓	✓	✓	✓	✓	✓	
Italy	✓	✓	✓	✓	✓	✓	
Sweden	✓	✓	✓		✓		

Notes: *Member States may allow, at their discretion, the reunification of other family members, for example to avoid hardship. For instance, in Germany, the Residence Act (AufenthG), Section 36 (2), applies to reunification rules for adult children and parents of adults.*

** Family reunification is possible for registered partners as well as spouses. However, family reunification for unmarried long-term partners is possible only for Austrians or EEA and Swiss citizens.*

*** Since 2019.*

Sources: *Austria, Federal law on settlement and residence (Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich (Niederlassungs- und Aufenthaltsgesetz) StF: BGBl. I Nr. 100/2005, and Federal law on granting asylum (Bundesgesetz über die Gewährung von Asyl – Asylgesetz 2005 – AsylG 2005), BGBl. I Nr. 100/2005 as amended by BGBl. I Nr. 56/2018; France, Code for entry and residence of foreigners in France and the right of asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile – CESEDA), 22 February 2005, Articles L 752-1, L 812-5, R 752-1 to R 752-3 and R 812-4; Germany, Residence Act (AufenthG), Sections 27, 29, 30, 32, 36; Greece, Presidential Decree 131/2006 as amended by Presidential Decrees 167/2008 and 113/2013, Articles 4 (1) and 13, and maintained in force by Article 139 of Law 4251/2014 and Presidential Decree 141/2013, Article 2 and Article 23, as amended by Law 4375/2016 (Ελλάδα, Προεδρικό Διάταγμα 131/2006, όπως τροποποιήθηκε με τα Προεδρικά Διατάγματα 167/2008 και 113/2013 και διατηρήθηκε σε ισχύ με το άρθρο 139 του Νόμου 4251/2014, Άρθρα 4 παρ.1 και 13, καθώς επίσης και Προεδρικό Διάταγμα 141/2013, όπως τροποποιήθηκε με το Νόμο 4375/2016, Άρθρα 2 και 23); Italy, Legislative Decree (decreto legislativo) No. 286/1998, Articles 29 and 29a and (for unmarried partners) Law No. 76 of 20 May 2016 (Legge 20 maggio 2016, n. 76), as clarified by the Ministry of the Interior in its circular letter of 5 August 2015; Sweden, Act temporarily restricting the possibility of obtaining residence permits in Sweden (Lag [2016:752] om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige), 20 July 2016*

"Family, always. No matter if you have found a job, if you're well settled in France, if you have friends and all that …" (Refugee from Eritrea, male, France)

Many of the interviewed status holders expressed that their transition to adulthood had seriously detrimental effects, as they were no longer able to apply for family reunification with their parents. In 2018, the Court of Justice of the European Union (CJEU) ruled that a third-country national "who is below the age of 18 at the time of his or her entry into the territory of a Member State and of the introduction of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is, thereafter, granted refugee status must be regarded as a 'minor' in the family reunification procedure".[76] This clarification came during the fieldwork research. In Germany, some international protection beneficiaries reported new hopes of reuniting with their family, whereas others, in Austria, Germany and Sweden, continued to believe they had no possibility of reuniting because of their age. A young Syrian beneficiary of subsidiary protection in Germany recalls that his parents:

"went to Lebanon from Syria. It [the journey] was a torture for them […]. They finally reached the embassy but turned back to Syria with big disappointment because the child is 18 years old now. […] [Travelling] to Turkey was extremely dangerous […] they travelled while Idlib was under intensive bombing, they stayed 11 days there [at the border, not being able to enter Turkey]. I suffered a lot during those 10 days. They tried to cross borders but they could not until we paid smugglers […] to transfer the family from Idlib to Turkey, two months ago […] the costs were high but more importantly the journey was not safe […]" (Subsidiary protection status holder from Syria, male, Germany)

At the beginning of 2019, a German court ruled that the CEU's judgment had to be respected in Germany too,[77] opposing the German government's position. In

76 CJEU, C-550/16, *A and S v. Staatssecretaris van Veiligheid en Justitie*, 12 April 2018, para. 64.

77 Germany, Administrative Court (*Verwaltungsgericht*) Berlin, judgment of 1 February 2019, 15 K 936.17 V, *Asylmagazin* 4/2019, p. 119.

January 2019, the government announced that it was reassessing its practice of considering children who turned 18 after applying for asylum to be no longer eligible for family reunification, in view of the CJEU's judgment.[78] However, this practice had not changed by July 2019, according to Pro Asyl.[79]

2.1.2. Restrictions for refugees

Under the Family Reunification Directive, unlike other third-country nationals, refugees are exempt from providing evidence of their accommodation, sickness insurance and resources when applying for family reunification during the first three months after receiving refugee status.[80] Member States may extend these favourable conditions beyond three months. Italy and France have done so.[81] In these two EU Member States, third-country nationals with refugee status are entitled to family reunification without specific requirements, such as minimum income or adequate housing.

Austria,[82] Germany,[83] Greece[84] and Sweden[85] apply the three-month time limit. Refugees who apply for family reunification after three months from the day they were granted refugee status no longer have access to the more favourable conditions. After this deadline, family reunification is possible only under the standard provisions applicable to all third-country nationals. These standard provisions include housing and maintenance requirements. These pose a major obstacle. In Austria, where the application must be submitted personally or in writing at the embassy, the three-month deadline is often nearly impossible to meet:

"What obviously has changed – that was [the 2016 amendment] – that you can only submit the application within three months after recognition of asylum [...]. Obviously that does have an impact, because people have an immense amount of stress." (Lawyer, Austria)

Similarly, a legal adviser in Sweden said:

"I can say that the new maintenance requirement that was added with [the introduction of] the temporary law has made investigations on family reunification more complicated. I know that case workers to whom I have talked spend a lot of time looking at evidence on whether persons have sufficient funds, if their incomes are enough to cover the maintenance requirement and so on. So the investigations have probably become more complicated and more difficult in this way." (NGO legal adviser, national level, Sweden)

2.1.3. Restrictions for beneficiaries of subsidiary protection

Legal restrictions on family reunification primarily affected beneficiaries of subsidiary protection, as the Family Reunification Directive does not explicitly apply to them. In its reports on the implementation of the directive, the European Commission stressed that it should not be interpreted as obliging Member States to deny beneficiaries of temporary or subsidiary protection the right to family reunification.[86] Many Member States do also apply the directive to beneficiaries of subsidiary protection,[87] but several of them with restrictions. Out of the six EU Member States surveyed, this is the case in Austria, Germany and Sweden, as Figure 13 shows.

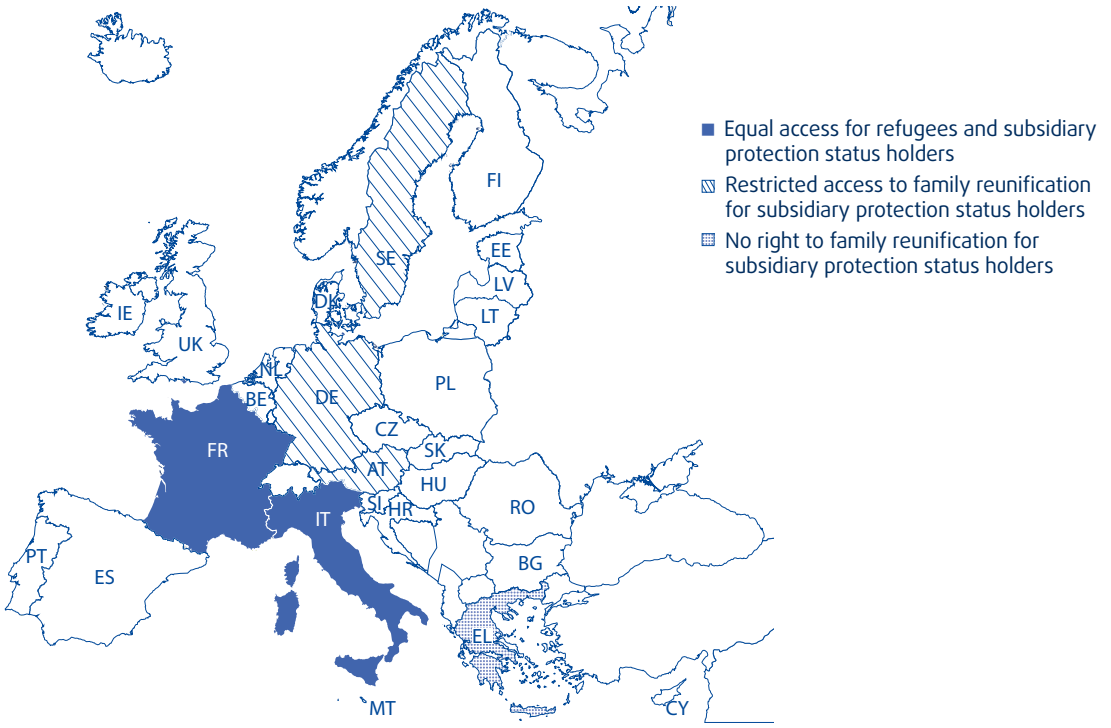
France and Italy apply the same rules on family reunification to both refugees and subsidiary protection status holders.[88]

In Greece, only recognised refugees have the right to apply for reunification with non-EU family members.[89]

Germany and Sweden suspended family reunification for beneficiaries of subsidiary protection and Austria introduced a waiting time for them. In Germany, family reunification for beneficiaries of subsidiary protection was not possible between March 2016 and July 2018.[90] Since August 2018, every month a maximum of 1,000 visas can be issued for family members of sponsors who

78 Germany, Federal Government (2019b), p. 21.
79 Pro Asyl (2019).
80 Family Reunification Directive, Art. 12.
81 France, *Loi no. 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile*, Arts. L. 411-2 to L. 411-4 and the first paragraph of Art. L. 411-7; Italy, Legislative Decree No. 286/1998, Art. 29.
82 Austria, Law changing the Asylum Law (*Bundesgesetz, mit dem das Asylgesetz 2005, das Fremdenpolizeigesetz 2005 und das BFA-Verfahrensgesetz geändert werden*), BGBl. I 24/2016, Arts. 35 and 60.
83 Germany, Residence Act (*Aufenthaltsgesetz*), BGBl. I S. 162, 25 February 2008, Section 29 (2) No. 1, *Official Gazette*, p. 1147.
84 Greece, Presidential Decree 131/2006 (as amended by Presidential Decree 167/2008), Art. 14 (1) and (3).
85 Sweden, Act on temporary restrictions of the possibility to obtain a residence permits in Sweden (*Lag [2016:752] om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*), 20 July 2016.
86 European Commission (2014, 2019b).
87 European Commission (2008); EMN (2017), p. 6.
88 France, *Loi no. 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile*, Arts. L. 411-2 to L. 411-4 and the first paragraph of Art. L. 411-7; Italy, Legislative Decree No. 286/1998, Art. 29.
89 Greece, Presidential Decree No. 167/2008 amended by Presidential Decree No. 113/2013.
90 Germany, Law introducing accelerated asylum procedures (*Gesetz zur Einführung beschleunigter Asylverfahren*), 11 March 2016, Art. 2 (4), amending the Residence Act, Section 104(13), 3 February 2016.

Figure 13: Family reunification for subsidiary protection status holders, six EU Member States



Source: FRA, 2019

have subsidiary protection status.[91] Several experts, such as a social worker, a lawyer and a teacher, noted that in individual cases the ban on family reunification in place at the time of the research triggered instability, aggression, drinking problems and difficulties in forming stable relationships. It may also have an effect on motivation to invest in one's living situation in Germany. One respondent stresses:

"They [young people] have no motivation any more […] in the beginning, the young people were so motivated. They wanted to attend three courses a day. Learn German as fast as possible […] if you have waited for too long, for two years, and you are still not sure if you will see your family again, when you will see them again, what motivates you to learn the language? For whom? For your social worker? No." (NGO integration manager and lawyer, Germany)

In 2016, Sweden adopted temporary measures for three years, limiting, in principle, family reunification for beneficiaries of subsidiary protection.[92] The Migration Court of Appeal in Sweden ruled in November 2018 that the denial of family reunification rights to a child benefiting from subsidiary protection was not, in this specific case, a proportionate restriction on the right to family life under Article 8 ECHR and was, in the circumstances of that case, contrary to the best interests of the child.[93]

In Austria, subsidiary protection status holders have to wait for three years after receiving their decision before they are eligible to apply for reunification.[94] The sponsor must then prove that they can provide their family members with accommodation, sickness insurance and financial means. This suspension has had particularly negative impacts for the 16- to 17-year-olds, as it deprived them of the possibility of applying for family reunification.

2.2. Practical challenges

In 2017, the European Migration Network identified a number of practical obstacles to accessing family reunification.[95] Many of these continue to exist, it

91 Germany, Act on the revision of family reunification with subsidiary protection status holders (*Gesetz zur Neuregelung des Familiennachzugs zu subsidiär Schutzberechtigten*) of 12 July 2018, *Federal Law Gazette* I, p. 1147, amending among others the Residence Act and inserting Section 36a (family reunification with subsidiary protection status holders).

92 Sweden, Act temporarily restricting the possibility to obtain residence permits in Sweden (*Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*), 20 July 2016.

93 Sweden, Migration Court of Appeal, Case MIG 2018:20, November 2018.

94 Austria, Law changing the Asylum Law (*Bundesgesetz, mit dem das Asylgesetz 2005, das Fremdenpolizeigesetz 2005 und das BFA-Verfahrensgesetz geändert werden*), BGBl. I 24/2016.

95 EMN (2017).

emerged from FRA's research. The main practical challenge is the complexity of family reunification procedures, about which status holders have not enough information. Other obstacles include difficulties in accessing embassies, difficulties in producing documents requested, costs and the length of procedures.

2.2.1. Complex procedures and insufficient information

Some international protection beneficiaries mention that the procedure for family reunification is so complex and the chances of success so low that it has not been worth trying to reunite with their family. In all EU Member States, interviewees across the board note that potential sponsors have not received enough information on how to proceed. The lack of information on the procedures emerged especially in Austria, France, Greece, Italy and Sweden. For example, in Italy a respondent who came to Italy as a child expressed a complete lack of awareness about the functioning of the procedure:

"I never asked for information about the procedure, I wouldn't know where to go, where to ask." (Subsidiary protection status holder from Somalia, male, Italy)

2.2.2. Difficulties in accessing embassies

Another major challenge is accessing embassies and the high cost of doing so, as experts as well as international protection beneficiaries noted in all the six EU Member States. A particular challenge emerged from Austria, where it is the family member in the non-EU country who has to initiate the family reunification procedure in the embassy.[96] To benefit from the simplified family reunification procedure, this has to be done within three months from the recognition of refugee status in Austria. This may be a challenge, particularly if the diplomatic representation is in another country. Experts experienced in family reunification, as well as refugees, in France, Germany, Greece, Italy and Sweden had examples of similar difficulties in accessing embassies in non-EU countries. As an illustration, a refugee interviewed in Italy noted that Italy has no embassy in Somalia, her country of origin; the closest Italian embassies are in Kenya and Ethiopia. The journey to Kenya or to Ethiopia is very expensive. In Germany, civil society representatives listed problems when people have to leave a conflict zone or if they have to travel to a neighbouring country, as in the case of Afghanistan, to access a German diplomatic mission. A social worker in France shared the same concern:

"[F]or example, for seven months the embassy in Kabul has been closed." (Social worker, national level, France)

2.2.3. Lack of required documents

In all six EU Member States reviewed, international protection beneficiaries face major practical challenges in producing the necessary documents. The following examples illustrate various obstacles that may emerge. A child in Sweden applied for family reunification. After authorities interviewed him in Sweden and his parents in Iran, authorities denied his application for family reunification because his family did not have any passports. In Austria, lawyers explain that documents have often been destroyed or lost in the course of the flight or in war. The consequence is that families have incomplete evidence to prove their family relationships.

The experiences of many interviewees demonstrate the difficulty of obtaining evidence that the Member States consider valid. A French lawyer noted that the National Asylum Court views with suspicion the documents issued by many non-EU countries, considering that they are fake. An Austrian lawyer corroborates this:

"The number of times you email and talk on the phone with various embassies […], those are such stressful procedures, everything is always questioned, every document that someone submits is doubted, […] that's an extremely straining procedure." (Lawyer, Austria)

Corruption in non-EU countries may also be an obstacle to refugees initiating the procedure. A Somali refugee interviewed in Italy reported that one reason why she has not applied for family reunification for her mother and son yet is that corruption problems in Kenya prevent her from obtaining the necessary documents to apply. According to her, Kenyan soldiers regulate access to the Italian embassy and ask for money in exchange.

2.2.4. High costs

The financial implications of a family reunification application and the costs of supporting the family on their way to Europe or in transit countries were frequently named as a major obstacle experienced during the reunification procedure, for example in Germany. Financial aspects include fees, costs of translating documents required for an application, bribes to ensure a timely appointment at an embassy in transit countries and travelling costs.

2.2.5. Length of procedures

Besides the complexity, the length of family reunification procedures was considered cumbersome and frustrating, as the following examples illustrate. Several experts and international protection beneficiaries in Germany

96 Austria, Asylum Law (*Asylgesetz*), Section 35.

note that waiting times to get an appointment are an issue. A lawyer in Germany described it as follows:

"I feel like I can watch them becoming old and grey and skinny. […] And we know of […] clients who went back [to Syria] because they said: 'I can no longer bear the separation.'" (Lawyer, Germany)

At the time of the interviews, the very limited number of families whose admission the authorities in Greece had approved had not received entry visas yet.[97] In August 2018, a joint ministerial decision introduced new ways to prove the family relationship, such as additional interviews or DNA tests.[98] As an illustration of the practical difficulties, in Sweden, a young woman with subsidiary protection status from Syria said that it was a lot of back and forth before family reunification could happen. Her family had first been on their way to the Swedish embassy in Ankara in Turkey for their interview, while the interviewee was trying to get their appointment rebooked to the Swedish consulate in Istanbul. When she had managed this, she received a phone call from the Swedish embassy saying that the interview had been moved and was to take place in Sudan. Her family, who had travelled with a smuggler to get across the Turkish border, were not able to get their money back. Nevertheless, they had to go back to Syria, and later went to Sudan for their interview.

Conclusions and FRA opinions

Family reunification is recognised as one of the key mechanisms for better integration of migrants and refugees. The absence of family members and worries about their well-being hinder effective participation to language courses, school and training and from finding a job. Evidence shows that the absence of their families makes people more vulnerable to mental health issues and criminality. Allowing swift, efficient and affordable family reunification is not only beneficial for the people concerned, but also a worthwhile investment for the host society in the medium and long runs. It also prevents the use of smugglers and secondary movement.

FRA opinion 2

EU Member States should implement family reunifications in a swift and affordable manner, limiting bureaucracy to a minimum. They should promote equal treatment of beneficiaries of subsidiary protection and refugees.

EU Member States should implement the Court of Justice of the EU's judgment in A and S v. Staatssecretaris van Veiligheid en Justitie*, C-550/16, 12 April 2018, and ensure eligibility for family reunification of third-country nationals who are below the age of 18 at the time of the asylum application but who, in the course of the asylum procedure, attain the age of majority.*

97 Greek Council for Refugees (2018).

98 Greece, Joint Ministerial Decision No. 47094/2018 on specification of required documentation and procedure for the allowance of a long-stay national visa (D-visa) to third-country nationals or stateless persons in the context of family reunification for refugees (Καθορισμός απαιτούμενων δικαιολογητικών και διαδικασία για τη χορήγηση εθνικής θεώρησης εισόδου μακράς διάρκειας (VISA-τύπου D) σε πολίτες τρίτων χωρών ή ανιθαγενών στο πλαίσιο οικογενειακής επανένωσής τους με πρόσφυγες), *Government Gazette* B 3678/28-08-2018.

3 Housing

EU Charter of Fundamental Rights, Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Housing serves to uphold the right to human dignity guaranteed in Article 1 of the Charter. It is a key dimension of integration and a precondition for the enjoyment of other rights. Location, conditions and size of housing as well as frequent transfers affect the possibilities of attending and performing well at school, accessing employment and gaining social welfare support. Experts and refugees alike considered individual housing, as opposed to shared accommodation, an important step towards integration and self-sufficiency. They also noted that having appropriate housing arrangements during the asylum procedure affects future integration prospects after a person receives an international protection status.

This chapter describes the experiences of finding housing that people had after arriving in Europe as part of the large-scale arrivals in 2015 and 2016. It looks at the impact that housing policies had on integration and fundamental rights. It covers asylum applicants as well as status holders. The chapter is based primarily on interviews with a total of 216 professionals with expertise in housing issues, who were interviewed either individually or as part of focus groups, including employees of local housing authorities, members of integration focal points, guardians, officials from child protection authorities and representatives of NGOs. Other professionals were consulted depending on their experience. Ten local focus groups on housing took place in Norrbotten, Linz, Lesbos, Berlin, Bremen, Lille, Paris, Marseilles, Rome and Reggio Calabria. Interviews with experts are compared with the experiences of all the asylum applicants and international protection beneficiaries interviewed.

International human rights law

The right to adequate housing is a component of the right to an adequate standard of living, a human right that many international instruments reflect (see Chapter 4, Table 8). In addition, international refugee law and the European Social Charter (ESC) have specific provisions on housing, which are binding on the six EU Member States, with some exceptions; see Table 7.[99]

EU asylum law

Except for unaccompanied children who have a right to accommodation,[100] entitlements differ significantly. EU law grants asylum applicants a right to receive accommodation but does not do so for status holders. The Reception Conditions Directive establishes minimum standards for the material reception conditions of asylum applicants. Under Article 17 of the directive, material reception conditions must provide an adequate standard of living, which guarantees applicants' subsistence and protects their physical and mental health. Article 18 of the directive lists different housing options, sets out guarantees for vulnerable applicants and requires measures to prevent sexual and gender-based violence. Persons working in reception facilities must receive adequate training. The Qualification Directive regulates access to housing for refugees and subsidiary protection status holders in Article 29 on social welfare (which includes housing

99 Germany has not ratified the revised ESC, and Austria has made the reservation that it does not consider itself bound by Art. 31 of the revised ESC.

100 Qualification Directive, Art. 31.

Table 7: Right to housing in international law, selected instruments

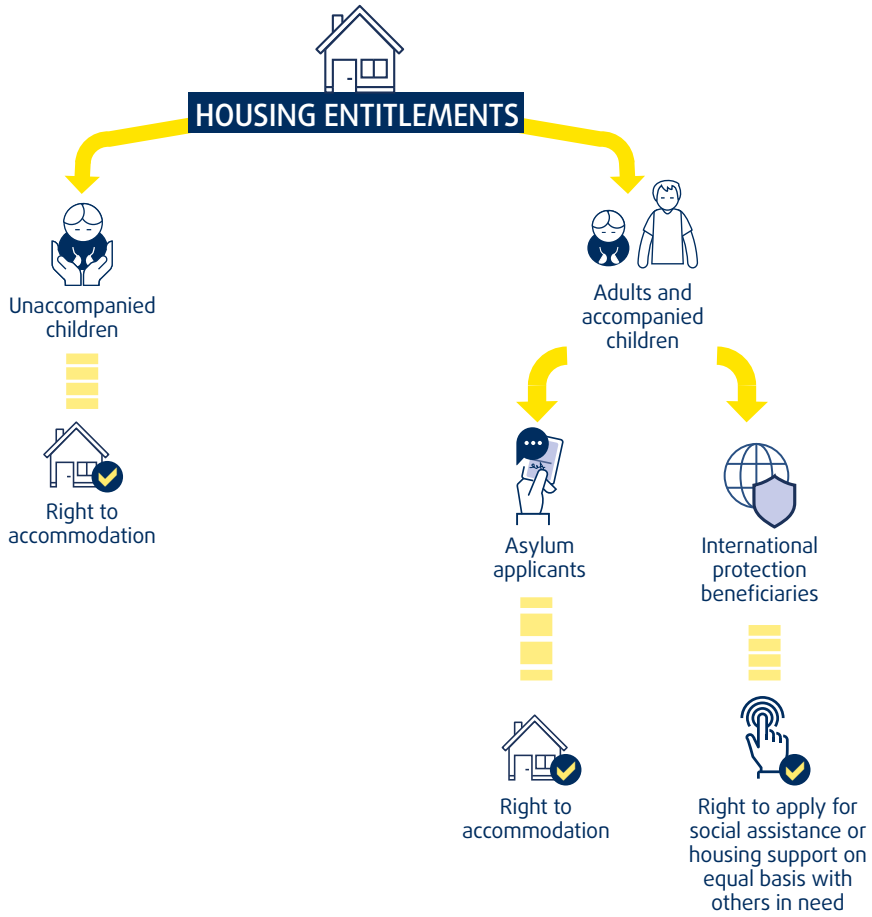
Instrument	Main provisions	Applicability
Geneva Convention, Article 13	"The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property."	Refugees
Geneva Convention, Article 21	"As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."	Refugees
Revised ESC, Article 31	The right to housing "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: "1 to promote access to housing of an adequate standard; "2 to prevent and reduce homelessness with a view to its gradual elimination; "3 to make the price of housing accessible to those without adequate resources."	Refugees and asylum applicants*

Notes: *For an overview on the right to an adequate standard of living, see Table 8. Under 'applicability', the term 'refugee' is used in a broad sense, also including subsidiary protection status holders.*

** In principle, the revised ESC applies only to nationals of the Parties to the Charter lawfully resident or working regularly within the territory of the Party concerned. The European Committee on Social Rights clarified in Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, paragraphs 113–118 and 144, that Contracting States must provide emergency shelter to all foreign nationals without exception, regardless of their residence status, to preserve their human dignity. See also, more generally, European Committee of Social Rights, Statement of interpretation on the rights of refugees under the European Social Charter, 5 October 2015.*

Source: *FRA, 2019*

Figure 14: Right to housing for asylum applicants and status holders under EU law



Source: *FRA, 2019*

benefits) and in Article 32 on accommodation. As Figure 14 illustrates, beneficiaries of international protection have only the same entitlement to apply for housing support as other persons in need. Therefore, once a person receives international protection, they may lose their right to be sheltered by the state.

3.1. Accommodation for asylum applicants

Upon arrival, asylum applicants are typically housed in reception facilities run or funded by the public administration. Their quality, size and location significantly affect applicants' access to other rights.

3.1.1. Housing policies

Policies to house asylum applicants differ between the six EU Member States. Some operate initial reception facilities for new arrivals. Some Member States distribute applicants across the country through a quota system. Some restrict the right to liberty guaranteed in Article 6 of the Charter, limiting applicants' freedom of movement to the area in which they are hosted. Most applicants stay in reception facilities, many of which were overcrowded in 2015–16. Private accommodation is rare, although many agree that it can assist integration.

First-line reception facilities

At Greek and Italian landing sites, which apply the hotspots approach, and in Austria and Germany, new arrivals are registered in first-line reception facilities. In Austria, there are two initial reception facilities, in Traiskirchen and in Thalham, in addition to the facility at the Vienna airport.[101] In Germany, adults and accompanied children are obliged upon arrival to stay at the nearest reception centre; from there they are allocated to a federal state and, more specifically, to a municipality (generally within six weeks) based on a quota system that is readjusted every year.[102] In Greece and Italy, in 2018, there were in total nine hotspot centres for arrivals by sea: four in Italy and five in Greece. From these hotspots, once registered, many asylum applicants are transferred to other parts of the country. However, in Greece, only some categories of applicants move onwards after registration; those who could be returned to Turkey under the March 2016 EU-Turkey statement remain in the hotspots for the whole asylum procedure. In north-eastern Greece, a facility in Fylakio registers new arrivals who enter Greece by crossing the land border with Turkey.

There is no clear distinction between first- and second-line reception facilities in France and Sweden. In France, the Office on Immigration and Integration manages the national reception scheme.[103] As a rule, asylum applicants are accommodated in reception centres for asylum seekers (*Centre d'accueil pour demandeurs d'asile,* CADAs), but these are not sufficient.[104] Different emergency accommodation, such as the *hébergement d'urgence pour demandeurs d'asile* or the new facilities created since 2015 during the evacuations of the Calais and Paris camps, complements the CADAs.[105] These have mainly been hotels or transit accommodation facilities. In Sweden, asylum applicants are housed in facilities run or contracted by the Swedish Migration Agency – either an accommodation centre or a temporary facility intended for short-term use upon arrival – or may arrange their accommodation privately.

Support by social workers is often essential for accessing various rights in practice. It varies depending on the facility and the organisation managing the facility. Emergency accommodation and facilities created in the context of the 2015 arrivals often offered only limited social support. Examples of the issues raised during interviews include insufficient social workers in a number of centres for asylum applicants (*Centri di Accoglienza Straordinaria* – CAS) in Italy and insufficiently qualified support staff in Swedish rural areas. In France, significant differences between CADAs and other facilities emerged, as a director coordinating different housing centres for a social housing agency noted:

"A CADA is more ideal and moreover it shows in the results. People who are supported in a CADA have a level of access to protection that is much better than those who are not supported or supervised, and who do not have, how would you say it, all the advantages that those who are in a CADA can have, it goes without saying." (Local housing authority expert, France)

Private housing

Private housing furthers social inclusion. However, accommodating asylum applicants in private housing appears to be the exception rather than the rule, although in principle it is possible in all six EU Member States covered (except for the initial six weeks in Germany). Among the 15 locations where the research took place, large proportions of asylum applicants have stayed in private accommodation only in Vienna and Västra

101 See the Ministry of the Interior's webpage for more details on Austria's basic care arrangements for asylum applicants.
102 Germany, Asylum Act (*AsylG*), *Federal Law Gazette* I, p. 1798, 2 September 2008, Arts. 45 and 53 (1). This distribution does not apply to applicants who come from a so-called safe country of origin.
103 France, CESEDA, Art. L.744-2.
104 France (2017).
105 France, *Code de l'action sociale et des familles* (CASF), Art. L.345-2-2; France, Île-de-France Prefect (*Préfet de la region Ile-de-France*), Lodging and support of the migrants in Paris and in Ile de France: Vade mecum of the managers of centres (*Hebergement at accompagnement des migrants à Paris et en Ile-de-France: Vade-mecum des gestionnaires de centres*), 21 September 2016.

Götaland, where 70 % and nearly 50 % of asylum applicants respectively stayed in privately arranged accommodation in 2017.[106]

Promising practice

Individual housing upon admission to the asylum procedure in Vienna

In Vienna, **Austria**, the city government explicitly promotes and financially supports individual housing for asylum applicants staying in the reception system of the *Land*. It is considered the best housing arrangement to foster integration and does not require alternatives to be found when international protection is granted. In addition, public costs for individual housing are lower than for organised facilities. Some 70 % of asylum applicants in Vienna live in individual housing. Asylum applicants transferred to basic care in Vienna are required to go to a central service point and there they get the information on individual housing.

Sources: Experts from organisation providing basic care in Vienna (Fonds Soziales Wien), webpage on basic care

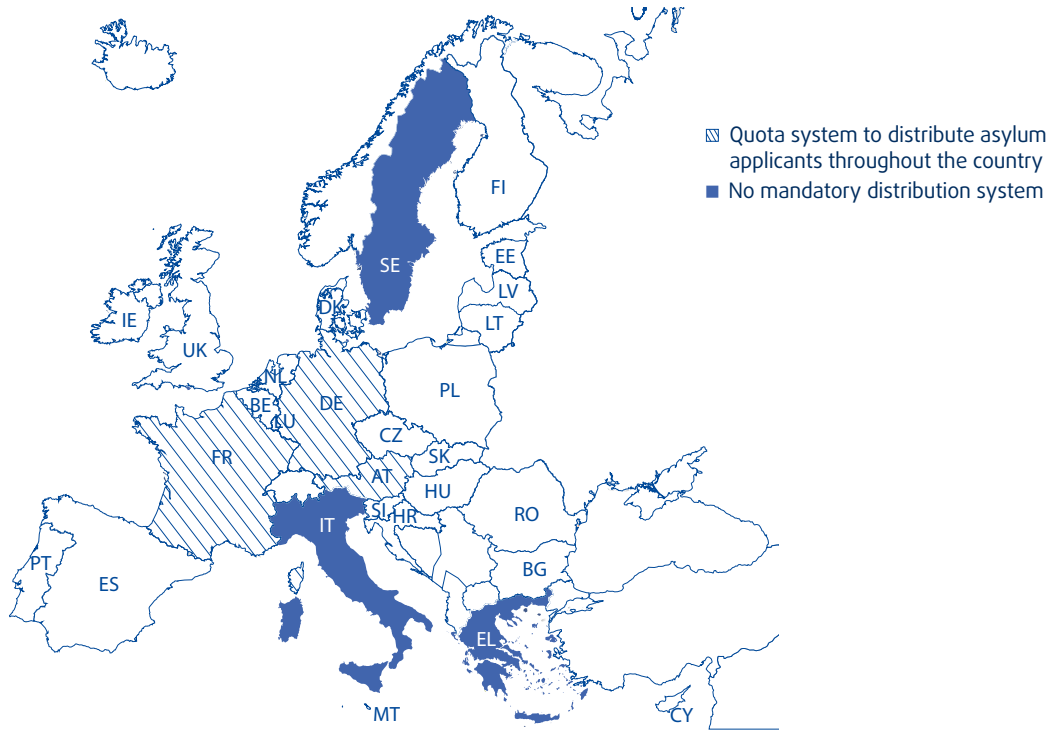
Geographical distribution of asylum applicants

As Figure 15 shows, three out of the six EU Member States studied, namely Austria, France and Germany, implement a quota system (in France as of 2020), whereby asylum applicants are assigned a place to stay in a particular geographical area based on a predefined distribution key.[107] In Greece, Italy and Sweden, asylum applicants are either hosted in the place where they apply for asylum or allocated a reception place elsewhere in the country, if places are available. Special rules may apply to unaccompanied children.

Freedom of movement

According to Article 7 of the Reception Conditions Directive, applicants may move freely within the territory of the host Member State but not within the EU. However, Member States may limit the freedom of movement to an assigned area. The assigned area must not affect the unalienable sphere of private life

Figure 15: Geographical distribution of asylum applicants, six EU Member States



Source: *FRA, 2019*

106 Austria, interview with Fonds Soziales Wien (organisation providing basic care in Vienna); Sweden, Swedish Migration Agency (*Migrationsverket*) official website, see 'Overview and statistics from previous years' (*Översikter och statistik från tidigare år*).

107 Austria, Basic Welfare Support Agreement (*Grundversorgungsvereinbarung*), BGBl. I No. 80/2004, Arts. 3 and 4; Germany, Asylum Act (*AsylG*), *Federal Law Gazette* I, p. 1798, 2 September 2008, Art. 45; France, CESEDA, 22 February 2005, Art. L744-2, and Law no. 2018-778 for controlled immigration, effective asylum and successful integration (Loi n° 2018-778 *pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie*), 11 September 2018.

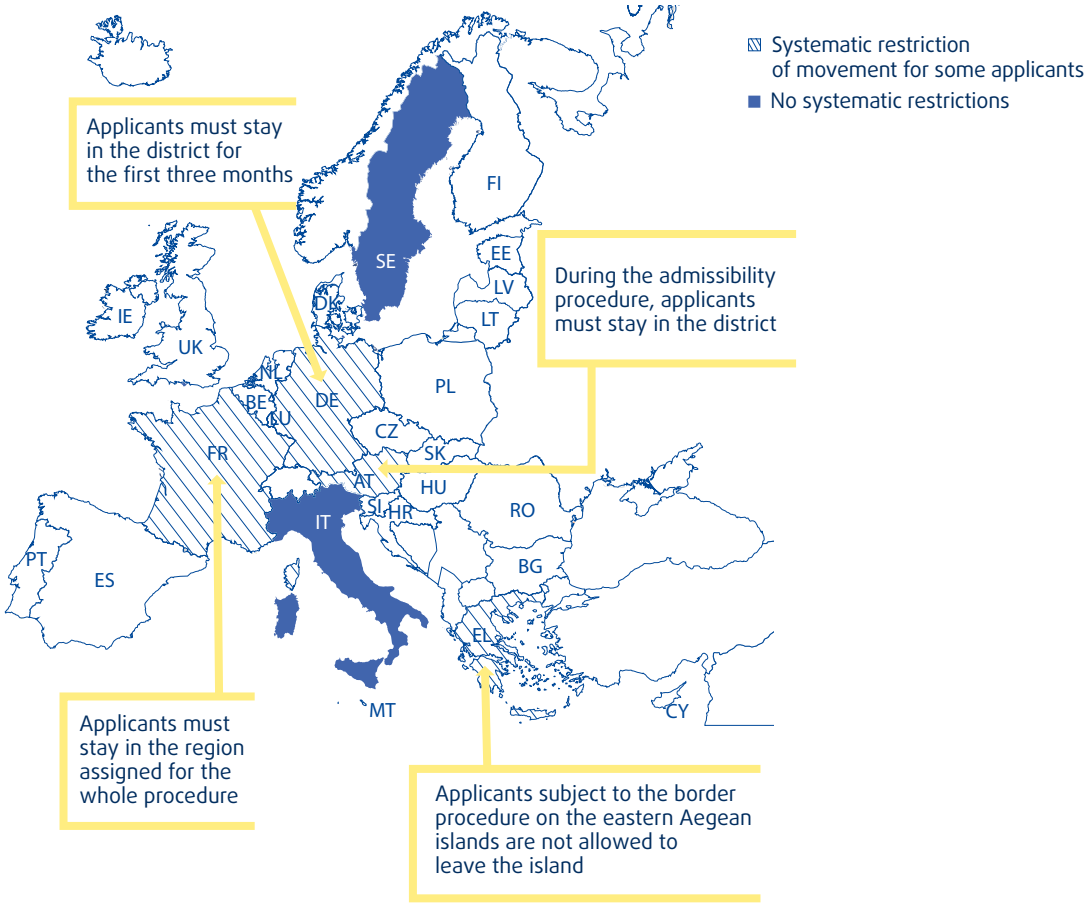
and must allow sufficient scope to guarantee access to all benefits. As Figure 16 shows, four out of the six EU Member States restrict or will restrict the freedom of movement of asylum applicants, at least during the initial period upon arrival. In Austria, France, Germany and the Greek islands in the eastern Aegean, asylum applicants can move only within a relatively limited geographical area, namely the district or island.[108] Restrictions of movement can last for considerable periods of time, particularly for applicants on the Greek islands who are subject to border procedures. In France, once the geographical distribution system is in place in 2020, asylum applicants will have to request authorisation to leave the region they are assigned to. The longer an asylum applicant waits for their decision, the more severe the consequences of such restrictions can be.

Limited reception capacity and its effects

During the large-scale arrivals in 2015–16, reception systems had insufficient capacity to accommodate all asylum applicants. In France, Greece and Italy, shortages already existed before then.[109] Many people, including families, had to sleep in tents at peak times of arrival and some were homeless. Temporary arrangements used or set up at short notice, such as container villages, camps, warehouses, former military structures, sports facilities and hotels, often compromised quality. In addition to homelessness, discussed in Section 3.1.3, this led to several fundamental rights challenges. Figure 17 illustrates the most frequently reported problems.

In all six EU Member States, experts and refugees reported overcrowding. For example, 10–12 persons, including children, shared a room in Austria or Germany. Particularly persons with mental health problems

Figure 16: Policies restricting applicants' freedom of movement, six EU Member States



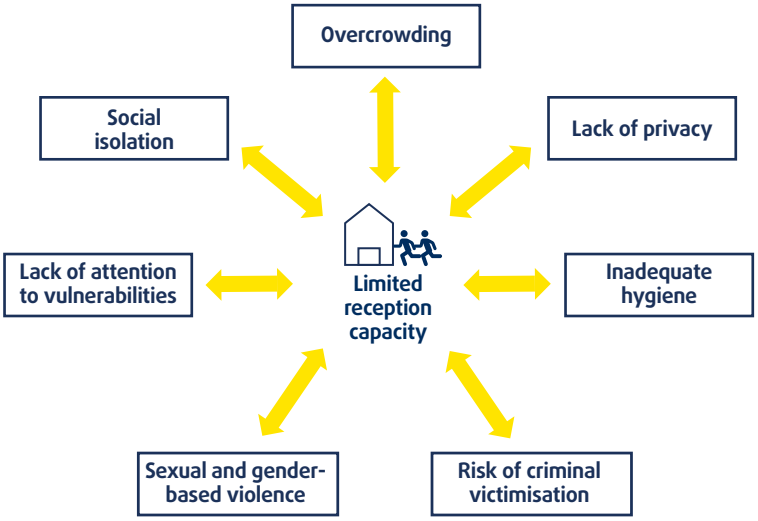
Note: *In addition, restrictions may be imposed in other situations based on the individual circumstances of the case.*

Source: *FRA, 2019*

108 Austria, Asylum Law, Section 12 (2); France, CESEDA, Article L744-2; Germany, Asylum Act, Sections 56, 58 and 59a; Greece, Decision 8269/2018 (OG B 1366/20.04.2018) and Decision 18984/2018 (OG B 4427/05.10.2018).

109 See also ECRE (2019).

Figure 17: Fundamental rights challenges deriving from limited reception capacity



Source: FRA, 2019

found it difficult to live in crowded facilities, as experts in Sweden highlighted.

High noise level, makeshift separation of 'rooms' by thin, poorly sound-proofed wooden or plastic partitions, neighbours' interference in personal matters and lack of opportunity to cook are examples of issues raised during interviews.

Lack of hygiene in reception facilities was an issue in all the researched locations in 2015–16. Half of the asylum applicants and beneficiaries of international protection interviewed in Germany and one third of those interviewed in Austria raised it. Unhygienic conditions in reception facilities in various Member States led to the spread of dermatological diseases and sanitary problems, such as bed bugs and scabies. Inadequate hygiene is associated with sharing sanitary and cooking facilities and, in Greece, the lack of hot water or, in France, lack of water altogether in some makeshift camps in Paris and Calais, hosting persons in need of international protection among other dwellers. At some facilities, 400 to 500 persons had to share a toilet, whereas some preliminary facilities in France and Greece lacked any functioning toilets. Before the closure of the camp of Hellinikon in June 2017:

"The situation in Hellinikon, that was a big issue, with thousands of people living there without tents or toilets (there were five toilets for 2,000 people). I believe there was no planning at all for handling so many people. As a result, these people were crammed into camps where conditions were appalling." (Social worker, Greece)

In spite of clear rules in Article 18 (4) of the Reception Conditions Directive to prevent assault and gender-based violence, interviewees in Austria and Germany noted that in some facilities rooms and bathrooms could not be locked, or that bedrooms with big windows lacked curtains. For example, a Syrian refugee who stayed in a temporary refugee shelter in Germany noted that facility personnel frequently entered his room without notice. An unaccompanied girl from Somalia, subsequently granted subsidiary protection status in Austria, reports having to sleep outside alone in the initial reception centre:

"When I arrived in Traiskirchen, I think also 200 others came. Back then I only spoke my mother tongue and didn't understand German or English. There were only a few Somali translators there. And in the first night, they took all the children and women, quickly and suddenly all the women were gone and I was alone with the men. That night there were only men, and all the women were gone, and I didn't have anyone who helped me speak in Somali. I didn't find anyone and I couldn't ask what was going on. Maybe they said my last name but I didn't hear it and then I slept outside. And then I found a man who spoke Somali and English and then he went to the office with me and said: 'it's a girl and she is 14 years old and she doesn't have space.'" (Subsidiary protection status holder from Somalia, female, Austria)

An informant from a local housing authority in Rome considered that women are more at risk of human trafficking at large-scale reception facilities, where they can be spotted and recruited by criminal organisations, whereas small reception centres offer suitable support and opportunities to be integrated into the local community.

Identification of vulnerable applicants at first reception was challenging. For example, emergency facilities in Italy (CAS) and in France (called '115 facilities', which is the emergency phone number for people who are homeless) lacked sufficient staff qualified to identify and assist persons with vulnerabilities. On

the Greek hotspot islands, lack of social and medical staff delayed vulnerability assessments. In Sweden, lesbian, gay, bisexual, trans and intersex (LGBTI) asylum applicants have felt unsafe when they were placed together with men from a country where LGBTI persons are not respected. Although Member States have to consider gender and age-specific concerns,[110] local authorities and NGO workers in Paris and Marseilles said that this has disadvantaged young men, who are generally considered less vulnerable and thus excluded from placement in special or any accommodation arrangements.

Experts and asylum applicants in Greece and Sweden mentioned the isolated location of facilities as a negative factor. Many facilities in Greece are located in the outermost regions and lack sufficient access to public transport, for example to go and see a doctor. In Norrbotten, because of the specific geographic location, many persons who arrived in 2015 stayed in accommodation centres far away from the main cities of the region, which isolated them from healthcare centres, social services, the migration agency and the police.

EU Member States set up emergency arrangements as temporary solutions. Nevertheless, many persons interviewed, including unaccompanied children, stayed beyond the period initially envisaged. For example, in Bouches-du-Rhône (Provence-Alpes-Côte d'Azur) and Île-de-France in France, some stayed in temporary facilities for years after their arrival. Although throughout Europe decreasing arrivals helped to resolve bottlenecks in capacity, in 2018, reception conditions in many facilities in France, Greece and Italy continued to be below the standards prescribed by the Reception Conditions Directive.[111]

3.1.2. Impact of frequent transfers

According to Article 18 (6) of the Reception Conditions Directive, Member States must ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States must enable applicants to inform their legal advisers or counsellors of the transfer and of their new address.

Transfers between reception facilities have taken place frequently. Asylum applicants and international protection beneficiaries interviewed had to change place on average four times in the six EU Member States since 2016. Although they are not a representative sample, asylum applicants interviewed for this research said they had stayed on average in seven different places in Italy and in two different facilities in Sweden during their first year after arrival. In France, interviewees staying in hotels moved five or six times per year; interviewees staying with volunteer families (as either asylum applicants or protection status holders) stayed with an average of 10 different families within a year.

Transfers commonly take place when:

- an applicant moves from a first-line to a second-line reception facility;
- reception facilities are closed as a result of decreasing arrivals;
- vulnerabilities are identified, requiring a transfer to a specialised facility;
- an unaccompanied child turning 18 moves to an adult facility;
- an unaccompanied child obtains protection status and the youth welfare authority decides to move them;
- required by individual reasons – these can be related to protection (e.g. to reunite a family) or a consequence of expulsion from a facility (e.g. in cases of aggressive behaviour).

The effects of transfer depend on the reason of the transfer and the conditions at the destination facility. Many asylum applicants interviewed in different locations in Austria, France and Italy did not understand or were not informed of the reasons for the transfer. In various locations in Germany, they described how transfers resulted in interrupting language classes or school.

Unaccompanied children have generally been transferred more frequently than adults. This negatively affects the child's capacity to start a new life. The reasons for their frequent transfers are manifold: decreasing arrival numbers, according to housing experts in Vienna (Austria) and Norrbotten (Sweden); the need to move children from institutions to supervised flats or host families in Bremen, Berlin, Lower Saxony (Germany) and Västra Götaland (Sweden). Some of the unaccompanied children in the area of Norrbotten have had to move three or four times as accommodation facilities closed down.

"They place these people in smaller villages and earn money from housing them for a shorter period. And then they close down the accommodation centre and the Migration Agency decides to move them far away from there. In the worst case, a person can be taken out of school in the middle of the semester […]. This way of handling these young persons in this country is unprecedented in modern times." (Teacher, Sweden)

110 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (Reception Conditions Directive), OJ L 180, p. 96–116, Art. 18 (3).

111 FRA (2018a), p. 10; (2018b), p. 10.

Interviewees in the Greek and Italian locations generally considered the transfers from hotspots and first-line reception facilities a positive change, although the conditions did not always improve. As an illustration, children interviewed at two locations in Italy positively assessed their transfer to SPRAR (Protection System for Refugees and Asylum Seekers) reception facilities, where they started attending schools, language proficiency courses and leisure activities, allowing them to finally settle and get in contact with their Italian peers.[112]

3.1.3. Homelessness

Homelessness exposes people to risks, which may be long-lasting. Experts reported cases of homeless asylum applicants in 2015–16 in all six EU Member States, but particularly in the French, German and Greek locations researched. In Italy too, homelessness has been widespread.[113]

In France and Greece, reception capacity continued to be insufficient during the fieldwork research in 2018. Despite the overall increase of reception capacity to almost 100,000 places by the end of 2019,[114] experts in Paris considered that only 60 % of all asylum applicants have accommodation.[115] According to the manager of an NGO accommodation centre, on 1 January 2018 in the Provence-Alpes-Côte d'Azur region 5,800 asylum applicants were waiting for a place in a reception centre for asylum applicants (CADA). Of them, 4,300 had no accommodation; the rest were in hotels or other arrangements. A representative of a local authority illustrated the challenge as follows:

"You have a housing stock that cannot absorb all the flows, with the migration pressure that we have seen. And today we can have situations of people who unfortunately have not been accommodated at all throughout the procedure." (Local housing authority expert, France)

Most asylum applicants interviewed in France confirmed that they had been homeless. Of the 13 asylum applicants interviewed, 10 managed to find accommodation thanks to the support of social workers after spending up to a year on the streets. Overnight shelters for homeless people do not help close the gap, particularly for single young men, who are generally presumed not to be vulnerable and are therefore excluded from priority access. As an illustration, after having spent more than three weeks sleeping in the street in front of the reception service for asylum applicants (PADA), an applicant tried to call 115 (the emergency number for homelessness) for a place in a shelter for homeless people, without success:

"On 28 September 2016, I went to the prefecture, I gave my fingerprints, I was given an asylum seeker's certificate, and during all that time I continued to live on the streets, because there was no accommodation […]. I also called 115 but they told me that: 'No, we do not take lone boys, we take families, pregnant women, women with children; so if you're alone, there really is no place for you.' So I had no choice, I continued to sleep outdoors, in the underground, here and there. And it was in 2017, in August, that I had this place in the CADA here." (Refugee from Democratic Republic of the Congo, male, France)

In all three regions of France and in Greece, homelessness has also affected unaccompanied children, owing to lack of spaces in the child and youth welfare system. According to an expert from the child protection authority in France, only half of the people undergoing age assessment in 2017 were sheltered during the procedure. In Greece, in April 2019, there were 3,817 unaccompanied and separated children in the country, of whom 1,065 were reported as living in informal housing conditions, such as living temporarily in flats with others, living in squats, being homeless and moving frequently between different types of accommodation.[116] A specific situation emerged from Sweden, where young adults were afraid of moving to adult reception facilities upon turning 18:

"I have contact with a boy on Facebook who has had his age re-registered. There was no possibility for the social services to offer him anything here, so he had to be moved to the asylum accommodation centre. He didn't want to because he expressed a fear, like other boys, of winding up with adult men, whom they don't know. […] They're afraid of being molested – really, this is what they say. They don't say it outright, but they say that they are afraid to sleep because someone might do something bad to them, and they don't have a door to close behind them. So, this boy […] calls himself homeless, but he does have the possibility of living at the Migration Agency's […] centre." (NGO child expert, Sweden)

3.2. International protection beneficiaries

The Qualification Directive regulates access to housing for refugees and subsidiary protection status holders in Article 29 on social welfare (which includes housing benefits) and in Article 32 on accommodation. Under Article 29, Member States must guarantee international protection beneficiaries the same level of social welfare benefits available to nationals, whereas under the

112 The SPRAR system has been renamed SIPROIMI (System of protection for those with international protection status and unaccompanied foreign minors). In this report, FRA uses SPRAR, which was the official name during the time of the research.

113 See, for example, AIDA (2018c); Medici Senza Frontiere (2018).

114 France, Ministry of the Interior (2019).

115 See also AIDA (2019).

116 Greece, National Centre for Social Solidarity (2019).

housing provision in Article 32 the obligation is to provide access to accommodation under the same conditions as other legally residing third-country nationals. The line between the two provisions depends on the meaning of social welfare and may be difficult to draw. With regard to other pieces of EU law, in *Kamberaj*, the CJEU opted for an extensive interpretation of social assistance encompassing all assistance schemes established by public authorities at national, regional or local level for individuals who do not have resources sufficient to meet their own basic needs and those of their families.[117] This would suggest that many public housing support measures for nationals, such as municipal housing schemes, should fall under Article 29.

In practical terms, however, the effect of this distinction are limited. The meaning of Article 32 of the Qualification Directive must be analysed in the light of EU law provisions concerning other categories of third-country nationals who are in a comparable situation. These are the Long-term Residents Directive and, for those with short-term residence, the Single Permit Directive (2011/98/EU).[118] In general terms, both of these instruments entitle third-country nationals to equal treatment with nationals.[119]

In principle, housing benefits apply equally to refugees and subsidiary protection status holders. Article 32 of the Qualification Directive does not distinguish between the two categories. Article 29 (2) allows Member States to reduce social assistance for subsidiary protection status holders to core benefits. When interpreting the Long-Term Residents Directive, referring to Article 34 of the Charter, the CJEU concluded that housing benefits constitute core benefits insofar as they ensure a decent existence for all those who lack sufficient resources.[120] This applies by analogy to Article 29 (2) of the Qualification Directive. This means that housing benefits also need to be provided to subsidiary protection status holders, if they are in need.

The need to leave the housing provided to applicants, combined with the absence or limitation of housing programmes for international protection beneficiaries, has in practice led to homelessness. This issue emerged from all six EU Member States. Depending on the EU Member State, experts blamed homelessness on the lack of temporary solutions or limited information about different housing options, but also on insufficient social support, language problems, people leaving reception facilities by their own choice because of poor conditions, and losing employment and, thus, income, resulting in evictions. In many cases, homelessness is not visible: international protection beneficiaries stay with family or friends. The friends or relatives often already have no sufficient space for themselves, which leads to overcrowded and precarious living conditions.

3.2.1. Housing policies

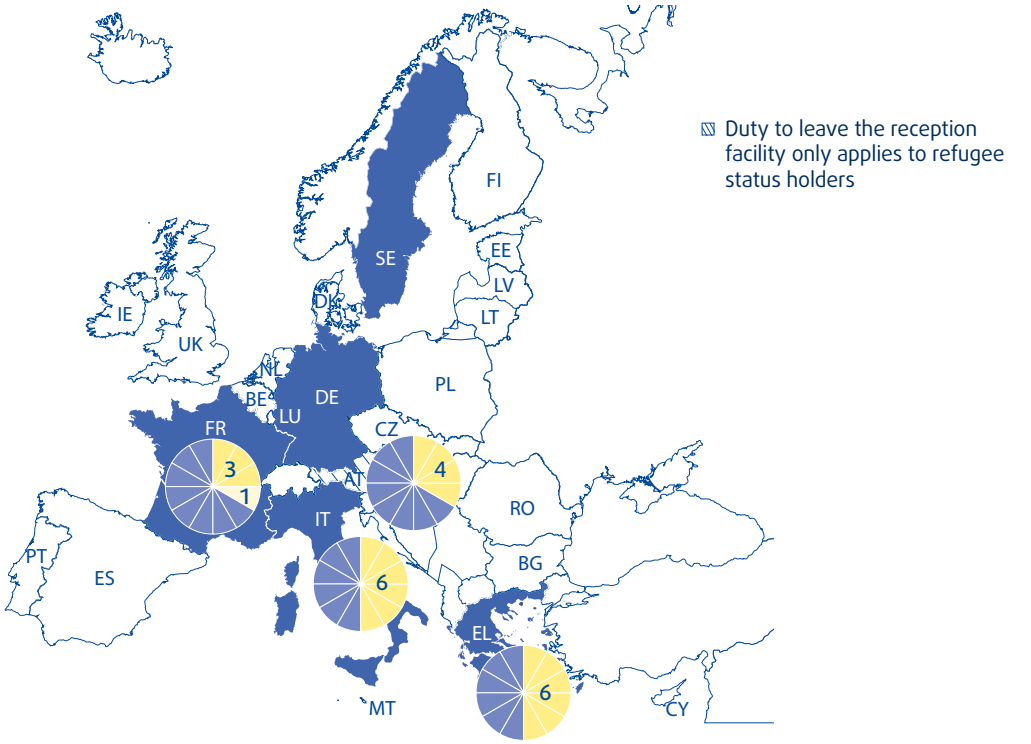
Housing policies in the six EU Member States differ significantly. In all except Sweden, most beneficiaries of international protection have in principle to arrange their own housing, possibly with housing benefit (see Chapter 4) or by applying for municipal housing.

Moving out from facilities for asylum applicants

The transition from asylum applicant to beneficiary of international protection usually entails a change of housing. As Figure 18 illustrates, four of the six EU Member States have set a time limit after receipt of international protection by which people must leave the reception facility where they were staying as applicants. In Sweden, once given status, beneficiaries of international protection must move to the municipality to which they are assigned, where they receive housing for at least two years.[121] Germany allows people to stay in the accommodation for asylum applicants until they are able to find suitable housing, and so does Austria for subsidiary protection status holders. In Greece, beneficiaries of international protection can stay for up to six months (and longer for certain categories of vulnerable people) in the reception facilities funded by the EU through the UNHCR-administered Emergency Support to Integration and Accommodation (ESTIA) programme.[122] The ESTIA programme was designed to cover the reception needs of asylum applicants. In practice, however, persons granted international protection could stay for long periods until March 2019, when those who received status before 31 July 2017 were the first to leave the flats.[123]

117 See CJEU, C571/10, *Kamberaj*, 24 April 2012, para. 91, on Art. 11 (4) of the Long-Term Residents Directive; and also CJEU, C-333/13, *Dano*, 11 November 2014, para. 63, on the meaning of social assistance under Art. 24 (2) of Directive 2004/38/EC (Free Movement Directive).
118 Directive 2011/98/EU of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, p. 1–9.
119 *Ibid*., Art. 12 (1); Long-Term Residents Directive, Art. 11 (1).
120 CJEU, C571/10, *Kamberaj*, 24 April 2012, para. 92.
121 Sweden, Act on reception of certain newly arrived immigrants for settlement (*Lag (2016:38) om mottagande av visa nyanlända invandrare för bosättning*), 4 February 2016, Section 7.
122 Greece, Ministerial Decision No. 6382/2019, Art. 9.
123 Greece, Ministry of Migration Policy (2019a).

Figure 18: Timeframe within which asylum applicants must leave the reception facility after receiving status (months), six EU Member States



Notes: *In France, a one-month extension is possible. In Germany, there is no duty to leave the facility, and in Sweden there is a duty but no time limit. In Austria, refugees have to leave the reception facility whereas subsidiary protection status holders can stay. Extensions of stay are possible as exceptions in individual cases in all Member States.*

Sources: *Austria, Basic Care Act, Art. 2 (1) (6); France, Family and Social Action Code (CASF), Art. R.348-3; Greece, Ministerial Decision No. 6382/19, Art. 6 (1); Italy, Decree by the Minister for the Interior, 10 August 2016, Official Gazette, No. 200, 27 August 2016, Art. 35*

Specific housing schemes for international protection beneficiaries

Sweden and, to some degree, France have national housing schemes, which target refugees. Sweden allocates international protection beneficiaries to municipalities across the country. Article 32 (2) of the Qualification Directive allows national practices for dispersing beneficiaries of international protection, provided they are implemented in a non-discriminatory manner. The Swedish municipality to which the person is assigned must arrange housing for them.[124] The accommodation provided is based on a social contract. The social services are the main tenant and sublet the flats to the protection status holders. If the subtenants manage the flats well, they will eventually become the main tenants. However, as there are insufficient flats available, families and unaccompanied children are prioritised and single adult refugees have to wait in the reception facility or stay in temporary facilities. The law does not specify the type of accommodation or how long it must be provided. Therefore, the stability and quality of housing vary depending on the municipality. This arrangement was intended to offer permanent accommodation to newly arrived persons, if possible.[125] However, the Administrative Court of Appeal in Stockholm ruled that a municipality's decision to terminate the beneficiaries' housing after two years was not against the law.[126] Now municipalities arrange housing for beneficiaries of international protection for different durations. For example, Gothenburg provides housing for four years, Malmö for a maximum of four years, Uppsala for the duration of the introduction period or for the duration of a temporary residence permit, and Nacka for two years.[127] Asylum applicants

124 Sweden, *Lag (2016:38) om mottagande av visa nyanlända invandrare för bosättning*, 4 February 2016.

125 Sweden, Ministry of Employment (*Arbetsmarknadsdepartementet*), *Ett gemensamt ansvar för mottagande av nyanlända*, Government proposal 2015/16:5, 26 November 2015; Sweden, Swedish Association of Local Authorities and Regions (*Sveriges kommuner och landsting*), official website, 'Questions and answers regarding settlement for newly arrived' (*Frågor och svar om boende för nyanlända*).

126 Sweden, Administrative Court of Appeal in Stockholm, including the Migration Court of Appeal, Case 4155-18, 26 March 2018.

127 See the pages on refugees' housing on the websites of the Gothenburg, Malmö, Uppsala and Nacka local authorities.

who stayed in privately arranged accommodation during their procedure are not assigned to a municipality and therefore do not receive housing assistance after being granted international protection. These consequences may not have been clear to asylum applicants who chose to arrange their own accommodation.

Promising practice

Assigning a proportion of vacant flats to refugees in Luleå

The municipal housing company Lulebo has aimed to make 25 % of all vacant flats available for international protection beneficiaries who are assigned to Luleå (**Sweden**) as their "municipality for introduction". First families and then unaccompanied young people have priority. Single adult men will first go to temporary accommodation.

Source: Housing experts, Norrbotten region, Sweden

In France, specific refugee housing schemes exist but their capacity has been limited compared with the needs. Persons granted international protection may benefit from accommodation in temporary accommodation centres (*centres provisoires d'hébergement* – CPHs), according to the Code of Social Action and Families. These centres are specifically dedicated to vulnerable beneficiaries of international protection. They provide accommodation as well as language, social, professional and legal support for integration. However, places are very limited. For example, in 2018, there were only 50 CPH places in Nord (Hauts-de-France), 105 in Bouches-du-Rhône (Provence-Alpes-Côte d'Azur) and 777 in Île-de-France, according to interviews with local housing authorities in the regions. An interministerial strategy for the integration of refugees proposes measures to improve refugees' access to housing, to be implemented between 2018 and 2021. It includes, for example, the creation of 3,000 CPH places in 2018 and 2000 in 2019 as well as measures on language acquisition, education and employment.[128] By the end of 2019, some 8,710 places were planned to be available for refugee housing.[129]

In Greece, under a programme launched in June 2019, 5,000 recently recognised international protection beneficiaries will be entitled to a rental subsidy for six months and other integration support measures.[130] The authorities have also been examining additional measures to support protection status holders as part of the national strategic plan for integration, adopted in July 2019.[131]

In Italy, the SIPROIMI network, which replaced the SPRAR system in 2018, accommodates beneficiaries of international protection and unaccompanied children for six months after recognition, which can be extended in individual cases.[132] However, after that, the refugees or subsidiary protection status holders have to find their own housing.

Austria and Germany do not have specific refugee housing schemes, although programmes may exist at a regional level. For example, in Berlin a programme called *Wohnungen für Geflüchtete* (housing for refugees)[133] reserves housing for refugees each year. Since 2011, 275 flats (125 one-room flats and 150 flats with several rooms) have been allocated to status holders.[134] Historically, the first two large internationally funded refugee housing schemes were in Austria and Germany.

Looking at the past: housing schemes for Second World War refugees in Austria

In Austria, after the Second World War, the international community granted loans for up to 50 years to municipalities and housing cooperatives to cofinance the construction of homes for refugees. The housing project financed homes for some 5,400 households. Refugees living there paid rent. Part of the rent was used to pay back the loans and part was deposited in a special fund for assistance to refugees. When a flat became vacant, the authorities assigned it to a new refugee family. Two organisations implemented the project, the Internationale Aufbauhilfe and the Evangelische Verein für Innere Mission. They also managed the loan repayments until 1971, when the newly created Austrian United Nations Refugee Fund took this over. On 21 July 1991, it was replaced by the Fund for the Integration of Refugees, which used part of the income from the housing project for refugee integration activities. The project came to an end in the early 2000s when all loans were paid back. All rights in the housing moved to the municipality or the housing cooperative.

Source: FRA, 2019 [based on various sources, including Yvonne von Stedingk (1970), Die Organisation des Flüchtlingswesens in Österreich seit dem Zweiten Weltkrieg, Abhandlungen zu Flüchtlingsfragen, vol. VI, Braumüller Verlag, Vienna]

128 France (2018).
129 France, Ministry of the Interior (2019).
130 Greece, Ministry of Migration Policy (2019a).
131 Greece, Ministry of Migration Policy (2019b).
132 Italy, Decree by the Minister for the Interior of 10 August 2016, *Official Gazette* No. 200, 27 August 2016, Art. 35 (2).
133 See the official webpage of the *Land* Berlin.
134 Germany, Berlin Senate for Integration (2011).

Access to housing schemes for country nationals

The two most common forms of housing assistance for nationals are housing allowances, which enable the person to pay the rent (these are analysed in Chapter 4 on social assistance), and social or subsidised housing schemes, often managed at municipal level. In principle, international protection beneficiaries are not prohibited from applying for social or subsidised housing available to nationals.[135] In practice, however, it is hardly accessible to international protection beneficiaries, at least to those who have arrived recently, because of unavailability or strict requirements.

As social housing supply has increasingly fallen behind demand across Europe, in France, Greece and Italy the general lack of social housing has in practice precluded this option for recently arrived international protection beneficiaries.[136] For example, in Greece, social housing schemes of municipalities such as Athens are very limited in size and other municipalities may not have any scheme in place. In France, the social workers in the national reception facilities assist residents to request social housing as well as emergency shelter and entry to temporary accommodation centres.[137] The deadline of a few months for asylum applicants to leave the reception facility is, however, an unrealistic timeframe to find something, in the experience of housing experts in Lille, Marseilles and Paris. For example, a young man from the Democratic Republic of the Congo had applied for social housing when he obtained refugee status. Five months later he had not received an offer while having one month left before having to leave the facility where he was staying:

"I already applied for social housing, but there they told me that it takes a long time to get something, and I also made requests for a young worker's home, but up to now I have had no response." (Refugee from Democratic Republic of the Congo, male, France)

In other instances, beneficiaries of international protection are not able to meet the requirements. For example, access to subsidised housing in Upper Austria requires five years of prior residence in Austria, including 54 months' income from employment or social insurance benefit based on employment, five years of having been registered in the municipality and German language level A2.[138] Although the city of Vienna has a large public housing sector, the eligibility criteria are equally high[139] and difficult for refugees to meet in practice, according to the municipal integration focal point.

Support measures

Of 124 protection status holders interviewed, 36 indicated that the authorities, organisations and volunteers had helped them find housing when they were granted international protection, which they considered useful overall. Furthermore, 11 interviewees had benefited from the help of friends and other personal connections. Authorities, NGOs and volunteers provide counselling, act as or arrange intermediaries with the landlords, and make housing financially more accessible, for example by negotiating lower prices with landlords.

Particularly in Austria and Germany, many examples of support and counselling by NGOs and volunteers, as well as other private persons such as friends or acquaintances, emerged from the research. For example, Caritas Upper Austria provides support and counselling service for status holders.[140] Networks of volunteers support asylum applicants in finding individual housing. They help find private flats, working together with at least one professional social worker, who coordinates the efforts. In the three geographical locations researched in Germany, support and assistance primarily entail the provision of information, help in communicating with authorities and help with applications to housing companies.

NGOs, volunteers and in some cases also the municipalities act as intermediaries between members of the target group and landlords,[141] as the following examples illustrate. In Upper Austria and Vienna, they

135 See, for example, Upper Austria, Housing Subsidy Act (*Wohnbauförderungsgesetz*), LGBl. Nr. 6/1993, Sections 2 (13) and 6 (9)-(13); Vienna, Viennese Housing Subsidy Law (*Wiener Wohnbauförderungs- und Wohnhaussanierungsgesetz*), LGBl. Nr. 18/1989, Section 11; France, Construction and Housing Code (*Code de la Construction et de l'habitation*), 28 May 2019, Title IV, Art. R.441-1; Order of 1 February 2013 fixing the list of residence permits provided for in 1 ° of Article R. 441-1 of the Construction and Housing Code, 1 February 2013, Art. 2 (8); Germany, Housing Subsidy Law (*Wohnraumförderungsgesetz*), 13 September 2001, BGBl. I S. 2376, Section 1; Berlin, Housing Law Berlin (*Wohnraumgesetz Berlin*), 1 July 2011, Section 2; Lower Saxony, Housing Subsidy Law (*Wohnraumfördergesetz*), 29 October 2009, Sections 2, 6 and 8; Bremen, Housing Subsidy Directive (*Richtlinien zur Mietwohnraumförderung*), 18 June 2008, Section 5; Italy, Constitutional Court (*Corte Costituzionale*), 20 July 2018, ruling No. 166, which declared unconstitutional the 10- or five-year residence requirements for accessing social housing in Law Decree 112/2008, Art. 11 (13).

136 See, for Italy, Colombo, F. (2019).

137 France, CASF, Art. R.348-3.

138 Austria, Upper Austria, Housing Subsidy Act (*Wohnbauförderungsgesetz*), LGBl. Nr. 6/1993, Art. 6 (9) and (111).

139 Austria, Viennese Housing Subsidy Law (*Wiener Wohnbauförderungs- und Wohnhaussanierungsgesetz, WWFSG 1989*), LGBl. Nr. 18/1989, Art. 11.

140 See also Caritas Upper Austria website.

141 See also Erasmus et al. (2018).

provide guarantees to landlords and/or refugees. In Berlin, Marseilles and Vienna, they act as temporary intermediary tenants. In France, Germany and Italy, interviewees mentioned examples of facilitating contact and communication. Particularly positive outcomes emerged from Lower Saxony and Berlin (Germany), where volunteers and NGOs may act as intermediaries, bringing together interested renters and landlords, and providing landlords with certainty that there is someone who understands the German lease contract. In Austria, the Vienna city government checks flat size and rental contracts to protect asylum applicants from rental fraud. In Italy, a public official noted that the municipal SPRAR system in Rome provided new protection status holders with mediation services, which include negotiation and communication with landlords to help obtain a regular rental contract.

Support measures have also aimed to make housing financially more attainable for protection status holders in other ways. An example is collaboration with landlords and households willing to rent out their property at a reduced price. Such initiatives emerged from various locations in Austria, France and Italy. In Italy, the reception centres sometimes give a financial contribution towards refugees' housing costs. In Upper Austria, NGOs have cooperated with benevolent property owners, who agree to rent out their property to members of the target group for reduced prices. Upper Austrian NGOs and municipalities also provide deposit funds. Individuals can get interest-free credit to pay the deposit for the flat, and pay it back in small instalments over one to two years.[142] In Vienna, Upper Austria, Île-de-France and Hauts-de-France, local people acting as 'buddies' have taken people into their private flats as roommates. The research identified several initiatives that interviewees considered promising practices.

Promising practice

Supporting access to the housing market

Subletting by NGOs

NGOs in Marseille, **France**, implement a 'sliding lease' system. The NGO rents accommodation, which it sublets to a beneficiary. After subletting the accommodation, the NGO also provides overall social and administrative support (e.g. daily budget management, management of administrative procedures). When the beneficiary is sufficiently independent, the NGO 'slides the lease' over, and the beneficiary then becomes the tenant.

Source: Évaluation logement initiative altérité webpage

Hosting refugees at home

An initiative by Caritas **Italy** allows interested persons to host an international protection beneficiary at home. The host offers accommodation and food and accompanies the person in their integration efforts. International protection beneficiaries stay with families for six to nine months. Some 1,000 persons have benefited from this project.

Source: Caritas Italiana webpage

Cooperating with housing agencies

In Upper **Austria**, the housing agency Vöckla-Ager works together with NGOs that provide social support and counselling for migrants and refugees, to link them with landlords. The rental contract is concluded directly between the landlord and the tenant. The tenant benefits because the housing agency helps to find affordable housing and checks the landlord, which protects the tenant from rental fraud. Benefits for landlords are fourfold: assurance that the tenant is backed by an organisation; legal counselling on rental law; no need to search for a tenant; and availability of the housing agency in case of any problem. This service is provided for free, as the housing agency is a subsidised programme.

Source: Vöckla-Ager webpage

Establishing a contact point for future tenants and landlords

The programme *Mehr Wohnungen für Flüchtlinge in Bremen,* **Germany** ("more flats for refugees in Bremen"), an initiative by a non-profit organisation, brings landlords together with asylum applicants and status holders interested in renting housing. It offers advice to both parties and an opportunity for interested landlords to register flats, houses, student rooms in shared flats or individual rooms in a host family for rent. It is funded by Bremen Senate for Social Affairs, Youth, Women, Integration and Sports.

Source: Bremen webpage

Bringing together tenants and landlords

Boplats is a housing agency wholly owned by the City of Gothenburg, **Sweden**. It lists both publicly and privately owned housing available in the region. The agency provides customer service and organises fairs and seminars to help bring tenants and landlords together. However, the waiting time for a flat is on average eight to 10 years.

Source: Boplats website

142 See also *Volkshilfe*'s webpage on the funds.

3.2.2. Factors assisting social inclusion through housing

Multiple factors linked to the location and type of housing can facilitate social inclusion and integration, research finds. Examples are contact with locals and short distances to services.[143] Status holders emphasised that the geographical location and the type of housing are determining factors, which either enable or prevent isolation and segregation. Many status holders in all EU Member States shared the view that schools and sports activities, as well as music classes, parks, cafes and open events and activities, were crucial for their integration. Interviewed international protection beneficiaries expressed the opinion that these infrastructures and initiatives were important for their integration if they had access to them, or that they saw the lack of them as a reason for their isolation.

Daily contact with locals

Many agree that, for integration to take place, too many beneficiaries of international protection should not live in a single area by themselves. In Italy, this understanding defined the development of the SPRAR system.

Promising practice

Decentralising the provision of accommodation in small facilities in Italy

Following pilot projects by the Ministry of the Interior, the Italian Association of Municipalities and UNHCR, Law No. 189/2002 created a decentralised accommodation system for asylum applicants and international protection beneficiaries. It was referred to as the SPRAR system. Interested municipalities could request funding to open facilities, which would offer not only accommodation and food, but various other forms of support. Municipalities often cooperated with civil society organisations. SPRAR facilities were usually on a small scale and distributed over the territory, to avoid marginalisation. In December 2018, the system was renamed SIPROIMI and exclusively reserved for international protection beneficiaries and unaccompanied children, relegating asylum applicants to reception centres.

Source: SPRAR and SIPROIMI webpage

Housing experts from Vienna and an integration expert from Upper Austria maintain that the best housing solutions are those that allow residents to make regular and normal contact with locals every day. Authorities in Sweden have implemented promising practices guided by this idea. In Norrbotten, a municipally owned housing company has long been trying to distribute newly arrived persons within the municipality. This practice has led to this municipality not having clearly segregated areas as other municipalities in Sweden do. Local public authorities in Lower Saxony, Germany, have also adopted measures to avoid segregation, including the creation of integration management divisions within municipal administrations.

These examples demonstrate the importance of creating bonds between beneficiaries of international protection and other persons, such as volunteers, caregivers, mentors or guardians. Through these bonds, status holders become more familiar with the local language and meet more local people, thus enhancing their integration.

Promising practice

Promoting exchange and dialogue in Berlin

'Berlin creates new neighbourhoods' (*Berlin entwickelt neue Nachbarschaften* – BENN) is an integration management programme at 20 locations in Berlin with relatively large refugee accommodation facilities. The regional administration of Berlin has set it up in close cooperation with the respective district administrations. The project runs between 2017 and 2021 and is financed by federal, regional and communal funds within the framework of the investment pact *Soziale Integration im Quartier* and the urban development programme *Soziale Stadt*. The project aims at community building by promoting exchange and dialogue between long-established and new residents; it fosters active citizenship, empowers new residents to realise their ideas on shaping the neighbourhood and connects individual volunteers with associations, institutions and public authorities. A local BENN team organises participation processes and supports community services' work.

Source: Berlin, Senate Department for Urban Development and Housing webpage on BENN

Geographical location

Some experiences support the idea that housing in small villages and rural areas, rather than big cities, promotes integration. Experts and status holders alike thought that human contact might be easier to establish in rural communities. In the local focus group in Upper Austria, participants compared experiences in facilities for unaccompanied children in rural and urban areas with regard to integration. They concluded that small towns provide the best combination of urban infrastructure on the one hand and rural advantages,

143 See, for example, Whelan, M. and Pittini, A. (2018).

such as personal networks, more affordable housing and job vacancies, on the other. A Swedish expert noted that in one location in Norrbotten, thanks to the arrival of new people, a school that had been on the verge of closing down could remain open. Another example comes from the same region:

"You have these fantastic examples that are really touching, take this small village around here. They lacked a permanent dentist at the public dental care for many years. Now they have a Syrian dentist who lives in [town]. Isn't it beautiful?" (Local housing authority expert, Sweden)

Similar positive experiences were reported from the province of Reggio Calabria, where some local mayors rented flats at a reduced price to protection status holders willing to live in small towns and villages. This practice allows the beneficiaries of international protection to keep these localities alive.

"I met this guy who was a pharmacist in Pakistan and who was helped by being included in this context, helping the town's pharmacist, because he was like a local institution and he was 80 years old, so he could ensure continuity to this activity." (Lawyer, Italy)

However, housing away from cities, which often host events and activities that promote social interactions, causes isolation, according to other experts from all EU Member States apart from Austria, so housing in cities is preferable to housing in remote areas or small towns. Housing experts in different locations in Germany and Greece noted that having to move to rural and/or segregated areas may seriously hinder access to classes or work. This has severe consequences that lead to further social isolation. A refugee living in collective accommodation in an isolated location in Greece explains:

"You can see yourselves the situation here, how it is. It is better that I don't stay here, I want to leave … there is no school, I cannot work either, it is far from everything. We just eat, drink and sleep." (Refugee from Syria, male, Greece)

Type of housing

Living with nationals of the host state facilitates integration, experiences from Austria, France, Germany and Sweden indicate. Some protection status holders in various locations in Germany, Greece and Sweden found that accommodation in collective housing with each other impeded their social integration.

Shared flats with locals facilitate integration most, notes an NGO housing expert in Austria. Living in host families had a positive impact on language acquisition and facilitated contact with locals and their culture, international protection beneficiaries from France report. Several housing and child welfare experts from Germany recommend that unaccompanied children be accommodated with a foster or host family.

"And I simply believe that the opportunities are best in a foster family. It constitutes an […] intimate setting, personal involvement, personal attachment, personal assumption of responsibility for the individual, and where people take care of everyday problems, challenges, all the paperwork, and simply where someone is around day and night." (Guardian, Germany)

In Sweden, expert opinions at both locations also echoed this view. According to a lawyer, a social worker and a guardian, foster homes are the best type of accommodation for unaccompanied children, as long as these homes function well, thanks to the support they may offer the individual child and the increased opportunity for the child to integrate into the local society.

3.2.3. Practical challenges in finding adequate housing

Persons granted international protection face many different challenges in finding or keeping a flat, FRA's research shows. Of the 124 beneficiaries of international protection interviewed in the six Member States in 2018, fewer than half (55 persons) were living in individual housing, including those staying with families or friends.

Everyone faces challenges in finding a flat to rent, such as costs and availability of housing. These also affect beneficiaries of international protection. Finding housing that is affordable, considering the deposits, start-up costs, real estate agents' fees and possibly temporarily paying double rent when moving, emerged as the most common challenge according to housing experts. Limited language skills are another obstacle. In addition, finding individual housing requires time and may conflict with other priorities, such as language acquisition, education or employment.

Promising practice

Applying the Youth Guarantee to young refugees

The Youth Guarantee (*garantie jeunes*) is a nationwide scheme for 16- to 25-year-old people living in precarious conditions in **France**. The youth employment agencies (*missions locales*) run it. Recipients may benefit for a maximum of one year from:

- a supplement of € 480 per month;
- training on various topics, as needed, enabling them to handle issues related to administration, health, transport, culture, etc. independently, and supporting their educational or professional integration.

Youth employment agencies may offer specific support measures for beneficiaries of international protection, depending on the location; for example, language training is offered in Paris. The supplement facilitates access to housing, and, therefore, provides some stability. However, young beneficiaries of international protection had limited access to the guarantee, interviewed experts found.

Sources: Ministry of Employment webpage and Mission Locale Rennes webpage

Offering language classes and counselling

The municipality of Athens launched a pilot programme for refugee integration named Curing the Limbo, co-funded by the EU. It covers refugees who have been granted asylum in **Greece** since 2015 and speak Greek, English, Arabic, Farsi or French. The target group is offered language classes and training on computer skills and audio-visual arts, and takes part in one-to-one career counselling, including on how to find and rent affordable homes.

Source: City of Athens, Curing the Limbo webpage

However, alongside such general challenges, persons granted international protection also face obstacles connected to their status. In addition to difficulties in obtaining social welfare described in Chapter 4, the following specific obstacles emerged from the research:

- **Prejudice against refugees** on the part of landlords and neighbours: Experts mentioned this as an obstacle particularly in Austria, Germany and Italy.

A: "I've been looking for a house on my own for a year and I still haven't found anything, I'm still looking."
Q: "Why haven't you found one?"
A: "I think it's because I don't have a long-term contract, so maybe ..."
Q: "Only that?"
A: "Let's say it's also because I'm a bit coloured."
Q: "Tell me, when you look for a house, what are landlords' reactions?"
A: "Landlords, when you call them, they say somebody's already taken the house, they ask you where you're from, what job you do and then when you tell them you're African they say 'ah, somebody's already taken the house, I'm sorry'... Even where I am now we don't have a regular house rental agreement." (Refugee from The Gambia, male, Italy)

- **Lack of work contract:** In all six Member States, experts mentioned examples of housing agencies and landlords being reluctant to rent to social welfare recipients. In Sweden, private landlords usually require an employment contract. A protection status holder in Milan (Italy) indicates that many beneficiaries of international protection become homeless if they cannot afford to pay rent. However, finding a job before getting a place to stay is also difficult. The possibility of registering at an address for administrative purposes only, without living there, is a helpful way out, as experts in Austria and Sweden noted.
- **Lack of residence papers:** In France, difficulties also related to the long waiting period pending the issuance of a residence permit. During this time, status holders receive a receipt. However, landlords often do not recognise such receipts. The lack of long-term residence status (together with discrimination) also emerged as an obstacle to renting flats in Milan.
- **Language barriers:** The social services in Sweden have many refugee clients who are homeless, as private landlords are usually reluctant to let to persons who do not speak Swedish. Without support from social workers, refugees will not have the necessary information and language skills to find housing.
- **Lack of information on housing options:** Information should be provided early on, according to experts in different locations in France and Sweden, so that once persons gain international protection they are able to take the necessary steps.

3.3. Unaccompanied children turning 18

For unaccompanied children, whether they are still seeking asylum or have been granted international protection, their transition to adulthood is the main challenge, as housing experts in all six EU Member States stressed. Upon turning 18, they generally change their housing arrangements and often also their location. They also experience a significant reduction in social support.

EASO's *Guidance on reception conditions for unaccompanied children* indicates that unaccompanied children who have reached the age of majority should be allowed to stay in the same place or area, if possible. If they transfer to an adult reception facility, this should be carefully organised, with the involvement of the unaccompanied child.[144]

The six Member States researched allow, in principle, youth welfare support to continue beyond 18 years of age in certain circumstances.[145] In practice, only a few examples emerged – from France, Germany and Italy, in exceptional cases when young adults can stay in a SPRAR facility for six months (and sometimes longer) after reaching 18 years of age.[146] In France, the Young Adult Contract (*Contrat Jeune Majeur*) is an arrangement for material, educational and psychological support to adults up to 21 years of age facing difficulties.[147] Under it the duration of child welfare support can be extended once the child reaches majority. However, whereas in Paris concluding such contracts is quite common, housing experts and two individually interviewed lawyers noted that obtaining such contracts in the Bouches-du-Rhône (Provence-Alpes-Côte d'Azur) and Nord (Hauts-de-France) regions has been increasingly difficult.

When they turn 18, asylum applicants are generally transferred to adult reception facilities. These are typically much bigger than child facilities and entail a drop in reception conditions and support services. Young persons may have to share rooms with several other adults of different ages, as the head of a facility for unaccompanied children in Austria noted. Housing experts in both geographical locations in Sweden considered the adult asylum facilities unsuitable to accommodate young persons.

Housing experts in Greece, Italy and Sweden noted that some young asylum applicants refuse to move to the adult reception facility assigned to them, expecting that reception arrangements for adults will not offer them sufficient protection and assistance. Thus, in some cases, turning 18 resulted in homelessness. In Sweden, housing, law enforcement and NGO experts have seen an increase in homelessness and unstable living conditions among young asylum applicants:

"Well, [Gothenburg] received more asylum applicants. They lived here and then they were thrown out of Gothenburg and were placed at different adult asylum accommodation centres all over the region. However, they return to Gothenburg and hang out, because this is the place where they lived. They have their friends there. They have their social context, but they have no accommodation. So they live with friends, or they even live outdoors, or they hang out in Nordstan [a big shopping mall in the city of Gothenburg]." (Law enforcement expert, Sweden)

The research documented several initiatives to make the transition easier. Organisations running child facilities in Austria and Italy have tried to ensure transfers to facilities nearby that are run by the same organisation. This allows social workers to follow up and to accommodate young adults together, avoiding a sudden and drastic change in roommates' ages. In Greece, the NGO Iliaktida runs a facility on Lesbos island for boys turning 18. The NGO Arsis operates social flats in Thessaloniki and Volos for young male asylum applicants from 18 to 25 years old, who were previously under the care of other organisations; Arsis provides them with opportunities for further education, vocational training and other social participation.[148] In Germany, accommodation in shared flats and buddy or sponsorship programmes may enable a smoother transition from the youth welfare system to the adult support system.

Promising practice

Sponsoring young adults in Bremen (Germany)

The initiative *SchlüsselBund* (key chain) connects housing sponsors with young adult asylum applicants and refugees. Interested residents with a spare room or flat offer housing and guidance to a young migrant. The aim is to support the young adult on their way to independent living. The sponsorship programme is funded by youth welfare authorities.* The youth welfare authority and the implementing organisation remain points of contact for the duration of the sponsorship. Participants may benefit from advisory services and seminars that deal with legal questions and practical challenges. The sponsor and the young adult receive financial support from the authorities.

For more information, see the SchlüsselBund website.

** Germany, Social Code Book VIII, 26 June 1990, Sections 41 and 34.*

144 EASO (2018), p. 29.
145 See EMN (2018), p. 28.
146 Italy, Decree by the Minister for the Interior of 10 August 2016, *Official Gazette* No. 200, 27 August 2016, Art. 35 (2).
147 France, CASF, Arts. L.112-3, L.221-1 and L.222-5.
148 See the Arsis webpage.

In the French regions Bouches-du-Rhône (Provence-Alpes-Côte d'Azur) and Nord (Hauts-de-France), experts found that increasing numbers of young people turning 18 are homeless as a result of the scarcity of Young Adult Contracts and their lack of financial resources. Child welfare services have therefore pointed unaccompanied children towards short vocational training courses so that they can support themselves when they turn 18, according to an expert in Marseilles. Local schools in Lille have also noticed pupils becoming homeless at the age of 18.

"Young people who have been supported, who have gone to school and reached the age of 18, and who overnight are no longer supported by the ASE [aide sociale à l'enfance, child welfare services], and find themselves in the street. But they are still in school. So that poses a problem obviously to everyone: to them, of course; and to the institutions that support them, because they have homeless pupils." (Local education authority expert, France)

The situation is even more challenging for international protection beneficiaries. On turning 18, they generally have to arrange housing solutions by themselves, like any other adult refugees. Youth welfare and social services in Germany may finance housing agents to support young persons who are about to leave the youth welfare system. In Sweden, social services facilitate housing arrangements.

Promising practice

Helping in arranging housing in Norrbotten

In the region Norrbotten in **Sweden**, when children with protection status turn 18, social workers move them to flats that they can sublet from social services. The subletting through social services is a guarantee for landlords. Case officers from the municipality regularly visit and support these young persons. After one year, the person usually has the lease transferred to them. Before they turn 18, children and social workers have a talk about the practical implications of reaching adulthood in Sweden, for example in relation to the use of alcohol, drugs and tobacco, as well as individual responsibility to manage their education and continue their activities in sports associations or other physical activities. If the unaccompanied child is assessed as needing extra help during the transition, social services appoint a contact person, to whom the child can turn to for social support.

Source: Local focus group on housing, Norrbotten, Sweden

Conclusions and FRA opinions

EU Member States had difficulty providing housing to the 1.5 million asylum applicants who arrived in 2015. This resulted in significant difficulties, including homelessness. In practice, many challenges were overcome through large-scale civil society engagement.

The research findings show that there are three critical stages concerning housing. First, upon arrival, many asylum applicants experienced substandard reception conditions, exposing them to protection risks, including violence, which can have long-lasting consequences. Frequent transfers between different reception facilities, which many asylum applicants experienced, often have a negative impact on their future integration. Each relocation requires the individual to repeat administrative tasks, get used to the new environment and start re-establishing relationships. Second, as soon as applicants receive international protection, they have, in most cases, a deadline to leave the reception facility where they are staying but are not offered another place to go, except for those in Sweden. In spite of many good initiatives, public support to find adequate housing appeared insufficient. International protection beneficiaries face many practical obstacles to finding an affordable flat. Some of them are general, such as availability and affordability of housing. Others are specific to them, such as prejudices against refugees and difficulties in providing supporting documents. Third, as soon as unaccompanied children turn 18 years of age, they lose their entitlements to special protection and often find themselves facing the same challenges as adults, or more. From one day to another, children are expected to confront many difficulties with very little support, and this may have a very negative impact on their lives.

Multiple factors linked to housing facilitate social inclusion and integration, the research finds. Contact with locals, short distances to services, such as schools, and availability of employment are some of them. In many cases, initiatives by civil society and volunteers help establish links with the local communities and avoid segregation.

FRA opinion 3

EU Member States should develop adequate contingency plans to be prepared for future situations of large-scale arrivals. Such plans should also consider the use of multipurpose facilities, which can be flexibly adapted to the needs. Contingency plans should form part of long-term strategic planning of migration governance at all levels, including the central, regional and municipal levels.

The availability of adequate facilities near the border should be an integral component of national strategies for integrated border management, which Member States are obliged to draw up under the European Border and Coast Guard Regulation.

EU Member States should design their refugee housing policies taking into account how housing may affect education, employment and other aspects of life. They should actively support reception and housing practices that promote social inclusion, avoid segregation, and reduce transfers from one facility to another to a minimum. They should encourage and financially support public administrations, including municipalities, as well as civil society initiatives and housing providers, including through the effective use of European Union funds.

In accordance with the 2017 Commission Communication on the protection of children in migration, EU Member States should support unaccompanied children in their transition to adulthood, including when leaving care. Support measures could entail preparatory measures to support the child's autonomy, through encouraging independent living and managing the demanding paperwork. If a transfer to an adult facility is required, authorities should consider delaying the transfer until completion of the education cycle, and ensure there is an assigned social worker who continues to support the young person during the transition period.

The EU should ensure that the integration of unaccompanied children remains a priority in the new Asylum and Migration Fund.

4 Social welfare for status holders

EU Charter of Fundamental Rights, Article 34

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

People who have been uprooted may need public support to cover their daily necessities of life, such as clothing and food. This includes young people until they finish their education and start a professional life to sustain themselves in the new society in which they live.

The issue of social assistance to refugees (and immigrants more generally) has been high on the political agenda in some Member States, as migrants and refugees are perceived as a heavy burden on public funds. As an illustration, Austria introduced a new federal law on social welfare in June 2019, reducing social assistance particularly for families with several children, for persons with little knowledge of German and for subsidiary protection status holders.[149]

Research suggests that, although providing social assistance to asylum applicants and refugees increases costs for Member States, the overall fiscal outcome is less certain. Additional short-term costs are rather moderate, whereas in the medium term the fiscal impact tends to be low. In the long term, migrants may even result in social as well as economic gains and can help strengthen fiscal sustainability, provided they are well integrated.[150] New migrants can offset the EU's demographic decline, fill vacancies in various sectors of the economy, contribute to entrepreneurship and even increase growth in gross domestic product.[151]

The experiences of interviewees demonstrate that social assistance is crucial for young international protection beneficiaries. In many cases, sufficient social assistance is what allowed refugees to learn the local language and to pursue vocational or tertiary education. Several interviewees who have received sufficient social assistance, especially those in Germany and Sweden, reported that they have managed to complete secondary school, work as apprentices and interns, and learn the local language. Many experts – all in France – considered supporting housing, employment and vocational training to be a way of reducing the need for social assistance in the medium term.

This chapter focuses on beneficiaries of international protection. It analyses social welfare benefits financed through public funds, as opposed to benefits financed on the basis of workers' and/or employers' contributions. It is based on interviews with 121 experts, including local social services in each of the geographical locations, as well as a local focus group discussion on social assistance in Upper Austria, where international protection beneficiaries had been receiving only core benefits since July 2016. The chapter also draws on replies to relevant questions by 164 asylum seekers and protection status holders in the six Member States.

149 Austria, Social Assistance Basic Law (*Sozialhilfe-Grundsatzgesetz*), BGBl. Nr. 41/2019, June 2019.

150 European Commission (2016c); Kancs, D. and Lecca, P. (2017); OECD (2013, 2014); King, R. and Lulle, A. (2016).

151 European Parliamentary Research Service (2015).

Human rights law

International human rights law requires that everyone, including asylum applicants, should enjoy an adequate standard of living. International refugee law accords to refugees lawfully staying in the territory of the signatory states the same treatment as nationals with respect to public relief and assistance. Thus, international law provides for greater protection of refugees than asylum applicants, a distinction that EU law also reflects. Table 8 provides an overview of the main international law provisions. These instruments

Table 8: Right to an adequate standard of living in international law, selected instruments

Instrument	Main provisions	Applicability
Geneva Convention, Article 23	"The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."	Refugees
Universal Declaration of Human Rights, Article 25	"(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."	Refugees and asylum applicants
International Covenant on Economic, Social and Cultural Rights, Article 11 (1)	"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."	Refugees and asylum applicants
(Revised) ESC, Article 13 (1)	"With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake: "1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition."	Refugees and asylum applicants*
(Revised) ESC, Article 16	"Article 16 – The right of the family to social, legal and economic protection "With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means."	Refugees and asylum applicants*
Convention on the Rights of the Child, Article 27	"1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development." "3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."	Refugees and asylum applicants
International Convention on the Rights of Persons with Disabilities, Article 28	"States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability."	Refugees and asylum applicants

Notes: *Under 'applicability', the term 'refugee' is used in a broad sense, also including subsidiary protection status holders.*

** In principle the revised ESC applies only to nationals of the Parties to the Charter lawfully resident or working regularly within the territory of the Party concerned. The European Committee on Social Rights clarified in Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, paragraphs 66–76, that provisions of the European Social Charter also apply to asylum applicants and refugees when excluding them from this protection would have seriously detrimental consequences for their fundamental rights; emergency social assistance should be provided under the said provision to all foreign nationals without exception.*

Source: *FRA, 2019*

are applicable to the six EU Member States reviewed, with some exceptions.[152]

EU law

EU asylum law regulates social assistance differently for asylum applicants and status holders. Article 17 of the Reception Conditions Directive provides for an adequate standard of living guaranteeing the subsistence of asylum applicants, and Article 18 (9) contains the right to have basic needs covered in material reception conditions.

For international protection beneficiaries, the right to social assistance benefits paid through public funds is set out in Article 29 of the Qualification Directive. This provision implements Article 23 of the 1951 Convention Relating to the Status of Refugees. The rights may differ depending on the status of the person:

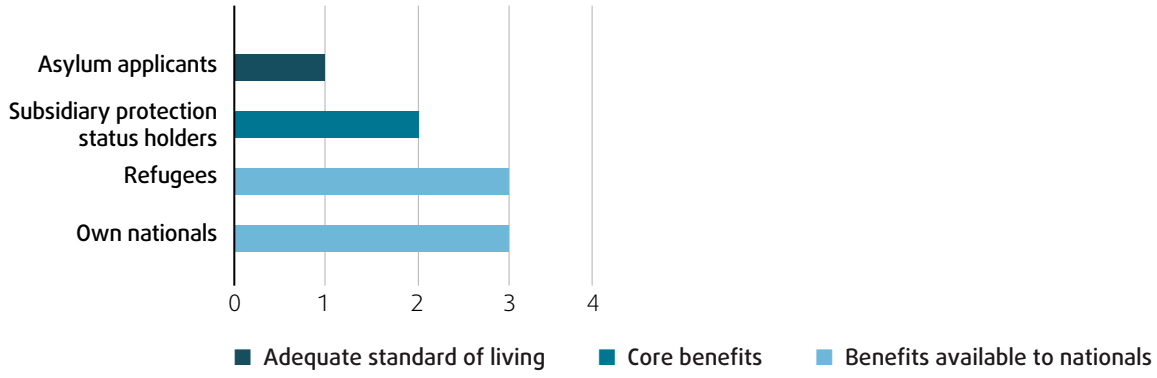
- Article 29 (1) of the Qualification Directive entitles refugees to the same social assistance as nationals.
- Article 29 (2) of the Qualification Directive introduces a possible restriction to core benefits for subsidiary protection status holders; however, the CJEU clarified that housing benefits constitute core benefits insofar as they ensure a decent existence for all those who lack sufficient resources.[153]

As Figure 19 illustrates, under EU law the level of social assistance thus increases depending on the legal status of the person: asylum applicant – subsidiary protection status holder – refugee.

Regulation (EC) No. 883/2004/EC[154] (as amended) protects people's social security rights when they move within the EU. It covers several social security areas, such as sickness, maternity and paternity benefits, old age pensions, pre-retirement and invalidity pensions, unemployment and family benefits.

This chapter does not analyse benefits financed on the basis of workers' and/or employers' contributions. These follow different rules, even when they are topped up by public funds. Under Article 24 of the 1951 Refugee Convention, state parties must grant such benefits to refugees lawfully staying, under the same conditions as nationals. Article 27 (4) of the Qualification Directive refers to the rules established in national law of the Member States. For asylum applicants, no specific EU law provision regulates the granting of benefits. Proposed revisions to the Reception Conditions Directive would introduce equal treatment with nationals concerning

Figure 19: Minimum level of social welfare benefits as required by EU law



Note: *In EU Member States with limited social welfare benefits for nationals, benefits for asylum applicants may in practice be higher.*

Source: *FRA, 2019*

152 Austria has expressed a reservation to Art. 23 of the Geneva Convention, stating that "public relief and assistance" "shall be interpreted solely in the sense of allocations from public welfare funds" (Declarations and Reservations to the Convention - Austria). The Austrian Constitutional Court (*Verfassungsgerichtshof*) confirmed that, in line with Art. 23 of the Geneva Convention, refugees are to be treated like nationals as regards social welfare benefits; see decision G 136/2017, 7 March 2018, at 114. Germany is not party to the revised ESC. For the list of States Parties to UN instruments, see the interactive dashboard on the website of the Office of the High Commissioner for Human Rights.

153 CJEU, C571/10, *Kamberaj*, 24 April 2012, para. 92.

154 Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, p. 1–123.

working conditions and branches of social security covered by Regulation (EC) No. 883/2004.[155]

4.1. Entitlements

Social welfare benefits paid to persons granted international protection depend on the welfare systems in place for nationals. These differ significantly from one EU Member States to another and, in some cases, even within Member States, as is the case in Austria. There, *Länder*'s laws regulate the conditions and levels of social welfare benefits. These vary between *Länder*. In June 2019, Austria adopted a new federal law that establishes a general framework for social benefits at national level. The social welfare laws of the *Länder* will continue to define the details. These will need to be aligned to the new federal law.[156]

In all of the six EU Member States covered, persons granted international protection receive social benefits from the same source as nationals.

The transition from asylum applicant to status holder creates a gap, as described in Chapter 3. As soon as international protection is granted, status holders are expected to leave the reception facility in which they were hosted while their asylum applications were under examination. A local authority representative responsible for the social support and integration of migrants and refugees in Athens explained well the loss of benefits upon getting refugee status:

"And here's the irrational thing: once you are legally recognised as having all rights, in practice you lose all your rights. [...] Immediately upon recognition as refugees, they lose every right they had before and they enter into a 'grey area', where there are huge problems." (Local social welfare authority expert, Greece)

Moving from the support system established for asylum applicants to the national welfare system takes time. Delays may create a gap, when newly recognised international protection beneficiaries find themselves without resources at a crucial moment on their path towards integration.

The transition to adulthood brings not only a change in housing arrangements and a loss of support from social workers, guardians and other child protection services but also a loss of financial benefits. Upon turning 18 years of age, the support that children receive suddenly drops. Usually, the support provided to adults is significantly less than the assistance that unaccompanied children receive, particularly in terms of services. For example, in Sweden, an asylum applicant reported being shocked when finding out how low his allowance would be after turning 18 years compared with the benefits he received as a child:

"When I was under the age of 18, I had more opportunities, I mean it wasn't an issue. They usually took care of everything. But when I turned 18, it was a lot harder. You just received money for food, nothing else. There were more problems, and I didn't get any information about how to apply for financial permits or anything else. When you're under 18 years you have the chance to... besides food, you can buy clothes and some other stuff. But when you turn 18, it's a lot harder, it's just food. If you don't have a residence permit, you can't even work, so it's just money for food. This money you get for food, it's just money for surviving." (Asylum applicant from Afghanistan, male, Sweden)

In Milan (Italy), a subsidiary protection status holder from Somalia recalled that, as an unaccompanied child, he used to receive a public transport pass, a mobile phone, clothes and food as well as € 8 per week as pocket money. When moving to an adult SPRAR facility, he was expecting to receive € 1.50 per day and nothing else.

4.1.1. Types of benefits

The six EU Member States have many different types of social welfare benefits for nationals in need. International protection beneficiaries are, in principle, entitled to apply for them, although there are some limitations. FRA reviewed three broad categories of benefits:

- income support benefits for persons who do not have a regular income, including specific schemes to cover housing expenses;
- child and family support benefits;
- disability benefits.

The fieldwork research did not cover retirement and sickness benefits. Healthcare findings are limited to mental health issues, discussed in Chapter 5.

Income support

In France, Greece and Italy, state-funded income support has essentially not been available to young refugees even if they were eligible. This is in stark contrast to Sweden and Germany, where it plays an important role in enabling them to start a new life. In Austria, income support depends on the status and the region.

155 Proposal for a Directive of the European Parliament and the Council laying down standards for the reception of applicants for international protection (recast), COM/2016/0465 final, Brussels, 13 July 2016, Art. 15 (3) (a) and (e). For a list of the branches of social security covered, see Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, p. 1–123, Art. 3.

156 Austria, Social Assistance Basic Law (*Sozialhilfe-Grundsatzgesetz*), BGBl. Nr. 41/2019, June 2019.

In Sweden, all protection status holders must participate in an introduction programme organised by the Public Employment Service (*Arbetsförmedlingen*).[157] The Public Employment Service assesses their experiences and abilities and, based on those, develops a plan together with each person. The plan includes activities and courses to enable the person to find employment in the local labour market. The Swedish Social Insurance Agency (*Försäkringskassan*) provides introduction benefits.[158] Social welfare benefits available to Swedish nationals (e.g. to cover housing expenses) may top up the introduction benefits.

Figure 20 illustrates the diversity of the main social welfare benefits to support income that are available in the six EU Member States reviewed.[159] In two of the six EU Member States reviewed, namely France and Italy, income support benefits are not accessible to young international protection beneficiaries due to general unavailability for anyone in need. In Greece, none of the refugees interviewed was aware of any other benefits apart from the monthly cash assistance (€ 90 for single adults) from UNHCR. As of 1 February 2017, they have been eligible to apply for social solidarity income.[160]

In France, young beneficiaries of international protection are virtually deprived of social benefits, since the main income support allowance – the active solidarity income (*revenu de solidarité active* – RSA) – applies only to persons above 25 years of age.[161] An Afghan refugee aged 24 noted:

"People who are over 25 years old, they have the RSA and they ask for housing immediately. And for me there is no RSA, so it's very, very difficult." (Refugee from Afghanistan, male, France)

The lack of social benefits for refugees younger than 25 has been a major barrier to integration, according to NGOs and a national authority. In the absence of social benefits, young refugees in France depend on work or paid training to access housing. This compromises education. Experts in Lille and Marseilles referred to students leaving school or university upon obtaining international protection, as they needed financial resources to find a place to stay. Being stuck in low-paid temporary jobs may also affect persons' morale, according to an education expert in Lille.

In Italy, the citizenship income introduced in 2019 is contingent upon EU long-term residence status and 10 years of residence in Italy. These conditions exclude newly arrived beneficiaries of international protection.[162] Some interviewees, however, commented positively about additional allowances provided at SPRAR centres in consideration of their personal circumstances. For example, a Gambian humanitarian protection status holder who arrived to Italy as a child said:

"Each month they [the reception centre's staff] pay me € 240, I buy food, anything I want to buy I buy with that money […] We have to buy ourselves [cleaning products], you cook with that money, you buy things, soap, every month." (Humanitarian protection status holder from The Gambia, male, Italy)

Family and child support

Another important form of social welfare is benefits to support families and children. Whereas some of them are employment-related and covered by employers' and/or workers' contributions (such as child allowances included in salaries), others are paid from public funds. In practice, the two may be interconnected.

As Figure 21 illustrates, of the six EU Member States reviewed, Austria, France, Germany, Italy and Sweden provide child and family allowances that, in principle, families granted international protection who have little or no income can receive.[163] In Greece, many protection status holders cannot obtain the single child allowance as a result of its residency requirement. Greece grants the allowance to persons – including recognised refugees and beneficiaries of subsidiary protection – who have been residing legally and permanently in

157 Sweden, Public Employment Service (*Arbetsförmedlingen*) webpage, 'For you participating in the introduction programme' (*För dig i etableringsprogrammet*).

158 Sweden, Swedish Social Insurance Agency (*Försäkringskassan*) webpage, 'If you participate in the introduction programme at the Public Employment Service' (*Om du deltar i etableringsprogrammet hos Arbetsförmedlingen*).

159 See Austria, Vienna Needs-Based Minimum Benefit Act (*Wiener Mindestsicherungsgesetz* – WMG), LGBl. Nr. 38/2010, and Upper Austrian Needs-based Minimum Benefit Act (*Oö. Mindestsicherungsgesetz* - Oö. BMSG), LGBl. Nr. 74/2011; France, Construction and Housing Code (*Code de la construction et de l'habitation)* and Social Action and Family Code (*Code de l'action sociale et des familles)*; Germany, Social Code Book II (SGB, BGBl. I S. 2954); Greece, Law 4389/2016 'Πληροφορίες για το ΚΕΑ'; Italy, Decree Law 4/2019 as amended by Law No. 26 of 28 March 2019; Sweden, Social Services Act(*Socialtjänstlag* 2001:453) and Social Insurance Code (*Socialförsäkringsbalk* 2010:110).

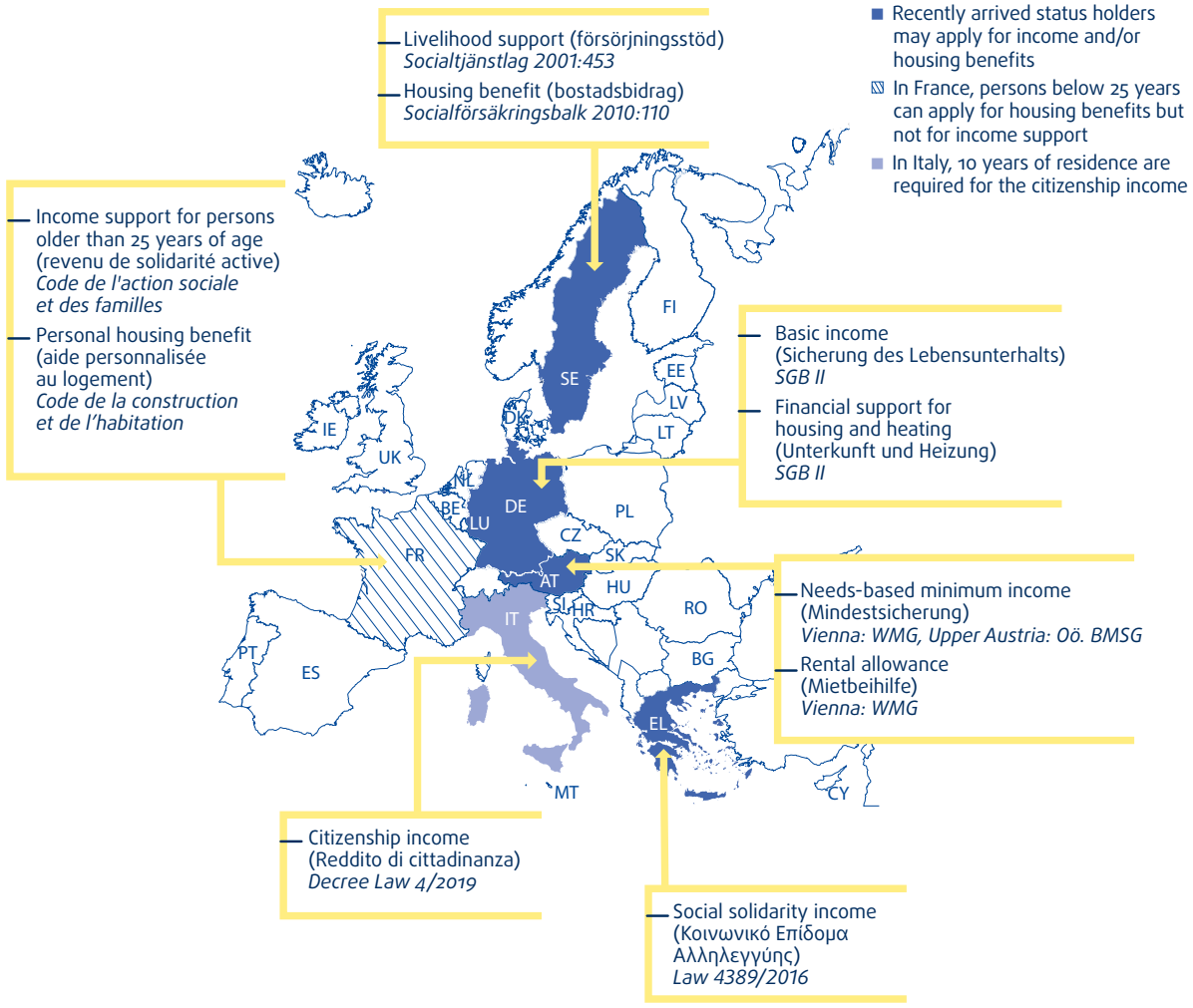
160 Greece, Law L 4389/2016, Article 235.

161 France, CASF, Arts. L. 262-2, L. 349-1 and L. 349-2.

162 Italy, Law Decree No. 4/2019 as amended by Law No. 26 of 28 March 2019, consolidated version, Art. 2(1)(a) (1) and (2).

163 See Austria, Family Law Compensation Act - *Familienlastenausgleichsgesetz* (FLAG, BGBl. Nr. 376/1967 idF BGBl. I Nr. 40/2017) and Childcare Allowance Benefits Act - *Kinderbetreuungsgeldgesetz* (KBGG, BGBl. I Nr. 103/2001 idF BGBl. I Nr. 53/2016); France, CASF and Social Action and Family Code - *Code de la sécurité sociale* (CSS); Germany, Income Tax Act - *Einkommensteuergesetz* (EStG), BGBl. I S. 3366, 3862,Federal Law on family allowances - *Bundeskindergeldgesetz* (BKGG), BGBl. I p. 1250, 1378 and Parental Allowances and Parental Leave Act - *Bundeselterngeld- und Elternzeitgesetz* (BEEG), BGBl. I S.33; Italy, Decree Law No. 251 of 19 November 2007, Art. 27, and circular letters 9, 39 and 93 referred to in subsequent footnotes; Sweden, Social Insurance Code - *Socialförsäkringsbalk* 2010:110 (SFS).

Figure 20: Social welfare benefits for basic income and housing, six EU Member States



Source: *FRA, 2019*

Greece for the last five years.[164] Austria distinguishes between refugees and subsidiary protection status holders (see Section 4.1.2).

In Italy, the social assistance systems provide various benefits paid from public funds. However, cumbersome procedures limit the number of status holders who are able to benefit in practice (see Section 4.2). Benefits include the allowances for families with more than three children (*assegni per il nucleo familiari numeroso*),[165] maternity allowances for unemployed mothers (*assegno di maternità*),[166] the baby bonus (*assegno di natalità*, also referred to as *bonus bebè*) for up to three years from the birth or adoption of a child[167] and an allowance for all expectant mothers (*premio alla nascita* or *bonus mamma domani*).[168] Following clarifications by the national social security body, these allowances

164 Greece, Law No. 4512/2018, Art. 214 (11). According to Joint Ministerial Decision No. Αριθμ. Γ.Π.οικ. Δ22/11/2705/58/2018, the submission of income tax returns is used to prove the five-year residence.

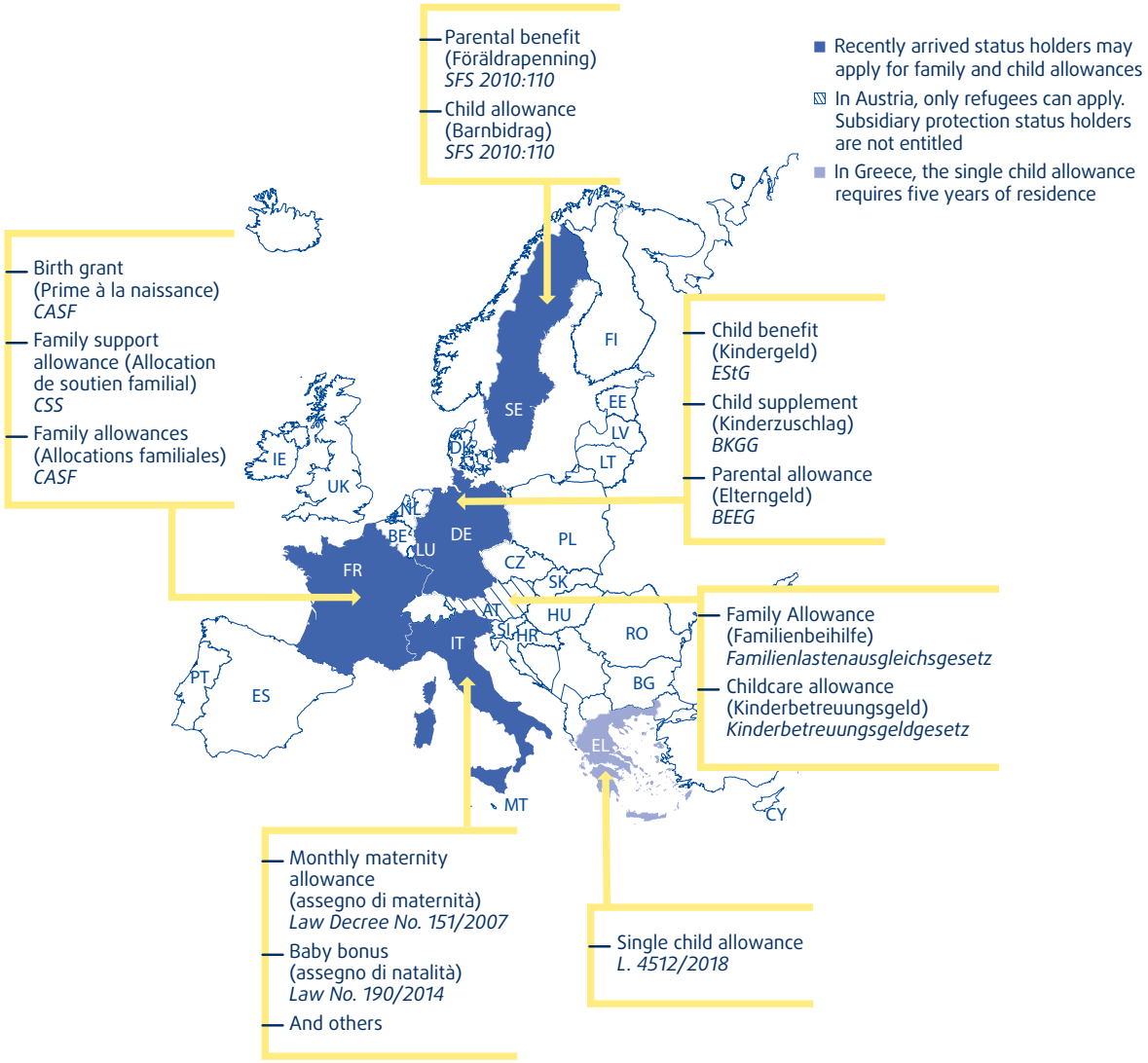
165 Under Italy, INPS, circular letter No. 9 of 22 January 2010, beneficiaries of international protection are entitled to family allowances as established by Art. 65 of Law No. 448 of 23 December 1998 (as amended and integrated).

166 See Italy, Law Decree No. 151 of 26 March 2001, Art. 74. International protection beneficiaries are entitled to this benefit according to Art. 27 of Decree Law No. 251 of 19 November 2007 (incorporating Directive 2004/83/EC into national law).

167 Under Italy, INPS, circular letter No. 93 of 8 May 2015, beneficiaries of international protection are entitled to the baby bonus as established by Art. 1 (125) of Law No. 190 of 23 December 2014 and subsequently extended (see, for 2019, Law Decree No. 119/2018, Art. 23-*quater*).

168 Under Italy, INPS, circular letter No. 39 of 27 February 2017, beneficiaries of international protection are entitled to the allowance for expectant mothers established by Art. 1 (353) of Law No. 232/2016 of 11 December 2016.

Figure 21: Family and children allowances, six EU Member States



Source: FRA, 2019

are accessible to international protection beneficiaries under the same conditions as nationals.[169]

Apart from child and social welfare allowances, several young refugees in France and Sweden reported receiving scholarships or grants from a school or university. In France, all students interviewed were informed of this possibility by teachers. Similar opportunities may be available in the other four Member States.

Disability support

All of the six reviewed EU Member States have social assistance schemes for persons with disabilities. The approach, however, varies between them. Some income support schemes are based on contributions, and thus available only to those who have worked and paid contributions in the past.

In addition to income support, EU Member States have different kinds of benefits, depending on the type of disability and several other factors. Benefits may include, for example, adaptations to make housing more accessible, benefits for transportation or vehicles, personal assistance and devices. The type and amount of benefit may vary depending on the region the person lives in.[170]

In principle, international protection beneficiaries can receive non-contribution-based disability allowances,

169 For an overview of non-EU nationals' entitlements to social assistance, see Guariso, A. (2018).

170 See, for further information, the reports compiled by the Academic Network of European Disability Experts and listed on its webpage, Art. 28 of the UN Convention on the Rights of Persons with Disabilities, 23 January 2017.

as the following examples illustrate. In Austria, persons with disabilities, including international protection beneficiaries, may be entitled to a care allowance (*Pflegegeld*).[171] France provides an allowance to disabled adults (*allocation aux adultes handicapés*) who do not qualify for the invalidity pension; it is available to persons who live in France permanently and have a residence permit.[172] In Germany, persons with disabilities receive rehabilitation and participation support, possibly in the form of a personal budget that can be granted instead of in-kind support;[173] however, this specific option has rarely been used in practice because potential recipients do not know about it.[174] They can also receive retirement benefits if they are unable to work, which are generally offset against social benefits. These retirement benefits, however, generally require at least five years of contributions prior to the reduction in working capacity.[175] In Greece, uninsured persons, including international protection beneficiaries, may have access to welfare disability benefits for specific disabilities. The amount of the benefit varies depending on the person's type and degree of disability.[176] In Italy, the contribution-based pensions are complemented by publicly funded schemes for persons with disabilities who have not worked in the past, for example the inability allowance (*pensione di inabilità*)[177] or the compensation for care (*indennità di accompagnamento agli invalidi civili totalmente inabili*).[178] The Constitutional Court clarified that these schemes also apply to third-country nationals who holding at least a one- year residence permit.[179] Sweden has in place a system which that entitles persons with disabilities who resideing in Sweden (hence including status holders) to an "additional cost allowance" (*merkostnadsersättning*) for expenses related to their disability which that are not covered by the income support scheme;[180] children with disabilities receive in additionally a child carer's allowance (*omvårdnadsbidrag*).[181]

However, even if international protection beneficiaries are in principle eligible for disability benefits available to nationals, complicated procedures for applying and other practical difficulties may make their right elusive in practice. An NGO worker in Italy provided an extreme example, referring to a hospitalised child who could not obtain a disability allowance, as it was not possible to obtain a residence permit without an address:

"The child who had lost a leg was a minor. As long as he was in hospital there was no way for him to get a residence permit […]. The hospital could not give him a declaration of hospitality […] and to this day he still doesn't have a disability allowance, and without that you can't get a prosthesis other than by paying for it […]. From a legal point of view there was no way out." (NGO legal assistant, Italy)

4.1.2. Level of benefits

In general, most experts interviewed assessed the level of social assistance as low; it excluded any expenses beyond basic subsistence. As an illustration, in Germany, although the amount of benefits was generally assessed as sufficient to cover basic costs, one in three refugees pointed out that they could not cover personal expenses such as clothing, a phone, university books, dental braces or language tutoring. Most interviewees in Sweden considered state benefits insufficient, particularly when extra costs arise, for example travel costs and fees for a passport:

"For example, I had to go to Stockholm twice by myself and apply for a Syrian passport, and I got it, but I had to pay like SEK 5,000 (€ 487) for it. So that felt really unnecessary, and I didn't get any extra financial support to cover the costs. And yes, it has been many things like that, the driving licence… If I hadn't worked during 2017, I wouldn't have managed all that." (Subsidiary protection status holder from Syria, male, Sweden)

Under Article 23 of the 1951 Refugee Convention and Article 29 of the Qualification Directive, Member States must grant the same social assistance benefits to refugees as are granted to nationals, regardless of the type of residence permit they hold. Article 29 (2) of the Qualification Directive allows Member States to derogate from the equal treatment provision only insofar as benefits for subsidiary protection status holders may be reduced to "core benefits". Among the six Member States reviewed, only Austria distinguishes between the two categories. The 2019 social assistance

171 Austria, *Bundespflegegeldgesetz* (BPGG), BGBl. Nr. 110/1993, which, under Art. 3a, also applies to international protection status holders.
172 *Code de la sécurité sociale*, Arts. L821-1 to L821-8, R821-1 to R821-9, and D821-1 to D821-11.
173 Germany, Social Code Book IX (*Sozialgesestzbuch IX*), 19 June 2001, BGBl. I S. 1046, Art. 29, and Social Code Book XII (*Sozialgesestzbuch XII*), 27 December 2003, BGBl. I S. 3022, Art. 57.
174 Germany, Deutsches Institut für Menschenrechte (2019); Germany, Prognos AG (2013).
175 Germany, Social Code Book VI (*Sozialgesetzbuch VI*), 18 December 1989, BGBl. I S. 2261, 1990 I S. 1337, Arts. 43 and 50.
176 Greece, Presidential Decree 141/2013 on the transposition into the Greek legislation of Directive 2011/95/EU, Art. 30; Law 4520/2018, Art. 4; Law 4540/2018, Arts. 17 and 20; Ministerial Decision Δ12α/Γ.Π.οικ.68856/2202 ΦΕΚ Β 5855 2018, Art. 4; Circular 09-4785 of 25 January 2019 of ΟΠΕΚΑ. See also UNHCR Help webpage, 'Access to welfare'.
177 See Italy, Law No. 118 of 30 March 1971, Art. 12 for all persons in need who fulfil the requirements for a 'social pension'.
178 See Italy, Law No. 18 of 11 February 1980, Art. 1.
179 Italy, Constitutional Court, Decision No. 40 of 11 March 2013.
180 Sweden, *Socialförsäkringsbalk* (2010:110), 4 March 2010, Section D, Chapter 50.
181 Sweden, Regulation on additional cost reimbursement and care allowance (*Förordning (2018:1614) om merkostnadsersättning och omvårdnadsbidrag*), 2018.

framework law reduces assistance for subsidiary protection status holders to basic care level.[182]

Until the Viennese law is adapted to the July 2019 framework law, refugees and subsidiary protection status holders in Vienna remain entitled to income support benefits under the same conditions as Austrian nationals.[183] Upper Austria's legislation grants reduced benefits to holders of time-limited residence permits under Section 3 (4) of the Austrian Asylum Act. This includes subsidiary protection status holders as well as refugees who applied for asylum after 14 November 2015 during their first three years of residence.[184] The CJEU has declared that such reduction of income support benefits for refugees is incompatible with EU law: "the level of social security benefits paid to refugees by the Member State which granted that status, whether temporary or permanent, must be the same as that offered to nationals of that Member State." [185]

Austrian courts have since then overturned decisions by the administration in Upper Austria granting reduced benefits to refugees.[186] It continues, however, to give reduced benefits to holders of subsidiary protection status.

Austria also differentiates between refugees and subsidiary protection status holders for family and childcare allowances. Whereas refugees are treated in the same manner as nationals, subsidiary protection status holders are entitled to family allowance only if they are employed or self-employed and do not receive any basic care (*Grundversorgung*) services.[187] Childcare allowance (*Kinderbetreuungsgeld*)[188] depends on family allowance, meaning that if persons are not entitled to family allowances they also do not receive childcare benefits. Free public transport for school children (*Schülerfreifahrt*) is limited to those who are entitled to family allowance.[189] As finding employment and affording housing without basic care are difficult, subsidiary protection status holders often do not qualify for these allowances. If they are working, subsidiary protection status holders risk losing their jobs when their temporary residence permit expires. According to social welfare experts participating in the focus group in Upper Austria, employers threaten to terminate work contracts, or actually do terminate them, if the renewal procedure takes too long. The loss of the job entails also the loss of family and childcare allowances. To cope with living costs, subsidiary protection status holders with children sometimes end up taking out loans with interest rates reaching 50 %, according to social welfare experts participating in the local focus group in Upper Austria.

Under the 2019 framework law, international protection beneficiaries, as like other third-country nationals, are entitled to only 65 % of the needs-based minimum benefits until they have attended a two-day values and orientation course (*Werte und Orientierungskurs*), signed an integration declaration and passed a B1 integration test, as per Section 16a of the Austrian Integration Law,[190] and have an official certificate showing that they know at least German at B1 level or English at C1 level.[191] This restriction applies to refugees as well as subsidiary protection status holders. As there is no entitlement to official German language classes during the asylum procedure, it is likely that a considerable number of international protection beneficiaries will receive reduced social benefits for several months after recognition. In addition, some protection status holders may not reach the necessary level of language knowledge at all, owing to learning difficulties resulting from past trauma, for example. In practice, this means that, even in the best-case scenario, a one-person household would receive significantly less than the poverty risk threshold, which corresponds to € 1,238 per month.[192]

182 Austria, Social assistance framework law (*Sozialhilfe-Grundsatzgesetz*), BGBl. Nr. 41/2019, June 2019, Art. 4.

183 Austria, Vienna Needs-Based Minimum Benefit Act (*Gesetz zur Bedarfsorientierten Mindestsicherung in Wien (Wiener Mindestsicherungsgesetz – WMG)*), LGBl. Nr. 38/2010, last amendment LGBl. Nr. 29/2013, Art. 5.

184 Austria, Upper Austrian Needs-Based Minimum Benefit Act (*Landesgesetz, mit dem das Gesetz über die bedarfsorientierte Mindestsicherung in Oberösterreich (Oö. Mindestsicherungsgesetz – Oö. BMSG) erlassen wird*), LGBl. Nr. 74/2011, last amendment LGBl. Nr. 55/2018, Art. 4 (3).

185 CJEU, C-713/17, *Ayubi v. Bezirkshaumptmannschaft Linz-Land*, 21 November 2018.

186 See, for example, Upper Austrian Regional Administrative Court (*Landesverwaltungsgericht Oberösterreich*), LVwG-350363/21/KLi, 3 December 2018; LVwG-350602/3/BZ and LVwG-350551/3/Py/KaL of 4 December 2018; LVwG-350553/3/GS and LVwG-350539/6/GS of 11 December 2018; LVwG-350565/3/Bm/AK, LVwG-350548/3/Bm/AK and LVwG-350362/4/Bm/AK of 13 December 2018; LVwG-350515/4/Bm of 13 February 2019; and LVwG-350636/2/Bm/AK of 14 February 2019.

187 Austria, Family Compensation Act (*Bundesgesetz vom betreffend den Familienlastenausgleich durch Beihilfen (Familienlastenausgleichsgesetz)* 1967), 24 October 1967, BGBl. I Nr. 376/1967, last amendment Nr. 40/2017, Art. 3.

188 Austria, Child Care Allowance Act (*Kinderbetreuungsgeldgesetz, KBGG*), BGBl. I Nr. 103/2001, last amendment BGBl. I Nr. 53/2016.

189 Austria, Austrian Act for Family Benefits (*Familienlastenausgleichsgesetz*), BGBl. Nr. 376/1967, Sections Ia and Ib.

190 Austria, Integration Law (*Integrationsgesetz* – IntG), BGBl. I Nr. 68/2017.

191 Austria, Basic Social Care Act, Social Care Statistics Act and updated Integration Act (*Sozialhilfe-Grundsatzgesetz und Sozialhilfe-Statistikgesetz sowie Änderung des Integrationsgesetzes-IntG*), BGBl. Nr. 41/2019, June 2019, Section 5 (6) and (7).

192 See Austria, official webpage of the Government, 18 June 2019; Statistik Austria, EU-SILC 2018, data compiled on 25 April 2019, as illustrated on the webpage of Die Armutskonferenz.

In Upper Austria, the Needs-Based Minimum Benefits Act sets a cap of € 1,500 per month per household, regardless of the number of family members living in the household.[193] Although the cap applies to everybody, it affects refugee and migrant families disproportionally, as they tend to live in larger households. As a result, the larger the household, the less money is available for each child. The Austrian Constitutional Court annulled a similar provision adopted in Lower Austria, considering that an overall cap on benefits prevents an individualised needs assessment.[194] The 2019 framework law may achieve the same result through a different approach. The law reduces social assistance allowances for families with more children, adopting a regressive approach: 25 % of the allowance for the first child, 15 % for the second child and 5 % for any further child.[195]

4.1.3. Conditions for accessing benefits

The conditions for requesting social welfare benefits in the EU Member States covered are in principle the same for everyone, including for beneficiaries of subsidiary protection.[196] However, even if conditions do not differ formally, in practice refugee and subsidiary protection status holders often face higher practical obstacles to accessing benefits than nationals. Section 4.2 provides examples.

In certain circumstances, different treatment of subsidiary protection status holders from refugees or nationals is lawful according to the CJEU. When reviewing residence restrictions that Germany imposed on beneficiaries of subsidiary protection who were receiving social welfare benefits, the CJEU accepted that restrictions imposed with the objective of facilitating the integration of third-country nationals may be in line with EU law. The CJEU noted that the German restrictions seek to prevent third-country nationals in receipt of welfare benefits from concentrating in certain areas and the emergence of social tension that would have negative consequences for their integration. Furthermore, the residence restrictions are intended to link third-country nationals who are in particular need of integration to a specific place of residence so that they can make use of the integration facilities available there.[197] The Integration Act of July 2016 amended the Residence Act to introduce residence restrictions for protection status holders for three years.[198] This means that, if subsidiary protection status holders move, at their own initiative, to a different *Land* from the one they had been allocated to, no social benefits are provided. Such cases emerged from the research. A civil society representative mentioned the example of a couple from Afghanistan who went into debt after the wife moved to the *Land* where her husband was living, unaware that she would not be granted any benefits there.

Another differentiation between international protection beneficiaries (persons granted refugee as well as subsidiary protection) and nationals is the reduction of benefits if the beneficiary does not comply with obligations concerning integration. In three of the EU Member States studied, income support benefits play an important role for status holders, and all three have a mechanism to reduce or cut social security benefits for non-compliance with integration obligations. In Austria, as described in Section 4.1.2, status holders receive the full benefits only once they meet the integration requirements.

In Germany, under certain conditions, persons can be obliged to participate in integration courses.[199] Such an obligation can arise for a variety of reasons, including insufficient ability to communicate in German, if other indicators point to the need for additional assistance to integrate or if the person receives specific forms of social benefits.[200] Where participation is obligatory, non-attendance can lead to cuts to the financial support.[201]

In Sweden, the Public Employment Service (*Arbetsförmedlingen*) provides each status holder with an individual plan.[202] It includes activities and courses that are meant to enable the person to find employment in the local labour market. It includes Swedish for immigrants (*Svenska för invandrare*), validation of previous degrees, other courses or work placements, and civic information (*samhällsinformation*). Protection status holders must follow this plan to receive the introduction benefits administered by the Social Insurance Agency (*Försäkringskassan*).[203]

193 Austria, Upper Austrian minimum benefits law (*Oberösterreichisches Mindestsicherungsgesetz*), 2019, Section 13a.
194 Austria, Constitutional Court (*Verfassungsgerichtshof*), G136/2017, 2018.
195 Austria, Social Assistance Framework Law (*Sozialhilfe-Grundsatzgesetz*), BGBl. Nr. 41/2019, Art. 5 (2).
196 See also CJEU, Joined cases C-443/14 and C-444/14, *Alo and Osso*, 1 March 2016, para. 50.
197 *Ibid.*, paras. 58 and 64.
198 See Germany, Residence Act (*AufenthG*), 30 July 2004, Section 12a.
199 Germany, Residence Act (*AufenthG*), 30 July 2004, Section 44a.
200 *Ibid.*
201 Germany, Social Code Book (SGB) II, 24 December 2003, BGBl. I S. 2954, Section 31 (1) sentence 1 no. 1; Section 31a.
202 Sweden, Public Employment Service (*Arbetsförmedlingen*) webpage, see 'For you participating in the introduction programme' (*För dig i etableringsprogrammet*).
203 Sweden, Social Services Act (*Socialtjänstlag* (2001:453)), 7 June 2001; Swedish Social Insurance Agency (*Försäkringskassan*) webpage 'If you participate in the introduction programme at the Public Employment Service' (*Om du deltar i etableringsprogrammet hos Arbetsf*örmedlingen).

Whether cuts in benefits are lawful or not depends on whether or not they are comparable to the requirements imposed on nationals. Recipients of social assistance are usually required to show that they are making efforts to reintegrate into the labour market, for example by applying for a job or undergoing requalification courses. Similar requirements imposed on international protection beneficiaries could therefore be envisaged. They must, however, also be reasonable, taking into consideration that people who have fled armed conflicts and persecution may not be capable of fulfilling the required conditions.

4.2. Practical obstacles

In all six EU Member States, experts referred to the complexity of the application process and low level of awareness among status holders and service providers as key obstacles to accessing social welfare benefits. Other recurrent barriers are difficulties in providing the required documents and limited language skills.

4.2.1. Information and communication

To apply for social welfare benefits, individuals must be aware of the procedure and formalities to follow. However, Figure 22 shows only slightly more than half of the beneficiaries of international protection interviewed in the six Member States indicating that they had received any information on social benefits.

Several local social welfare authorities and NGOs reported information gaps. NGO representatives in various locations in Germany said the lack of knowledge and limited access to information were particularly significant during the transitions from asylum applicant to status holder, and from child to adult. Both transitions require complex administrative procedures. Non-compliance with deadlines, often resulting from a lack of information, may be another reason for the loss of social assistance entitlements:

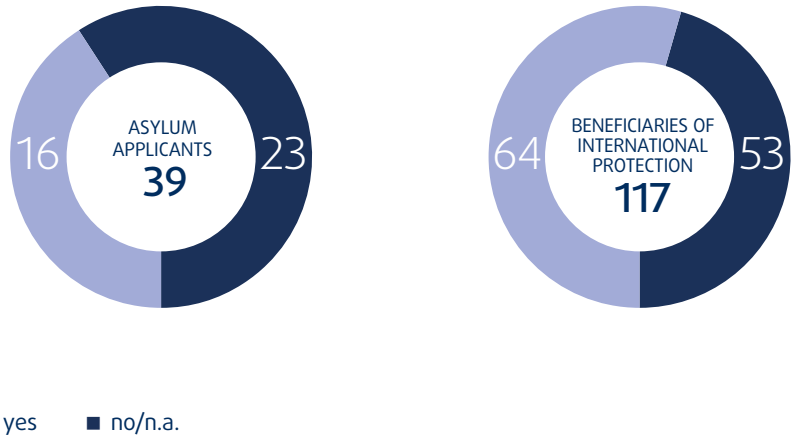
"There are individual cases when, for example, [...] they just haven't re-registered [at their new address] yet. And then the Job Centre quickly suspends the benefits [...] or they have forgotten to submit the follow-up form for the further approval because the letter has not arrived. Then it could be that someone is destitute [...]" (Local social welfare authority, Germany)

Several accompanied children interviewed in Germany found information on social benefits only through local volunteers, word of mouth from other residents at the accommodation facility or an Arab community association assisting them to file applications and translate letters. A girl who arrived at the age of 17 explains her struggle:

"particularly because of the language, sometimes we receive letters from the Job Centre saying that we need to compile this application [...] or a paper is missing [...] I don't know what papers and I need to ask a person who has experience or went through the same experience in order to tell me what to do [...]" (Subsidiary protection status holder from the Middle East, female, Germany)

The situation in Italy matches the experiences the German interviewees reported. Local social protection professionals from Milan highlight that not only are

Figure 22: Proportions of asylum applicants and beneficiaries of international protection who received information about social benefits



Note: *Responses to the question 'Did anybody inform you about the benefits/financial support you are entitled to claim (for example, unemployment benefits, housing related benefits, child/family benefits)? Who informed you?'*

Source: *FRA, 2019*

protection status holders themselves unaware of their rights to social assistance but so are professionals, volunteers and authorities, who ought to be in a position to share this crucial information. The Ministry of the Interior has developed an information document, to be shared with the prefectures, explaining the social benefits that refugees and asylum applicants are entitled to in 2019.[204]

Social work experts in Sweden (Västra Götaland) considered that children residing with their families in large asylum accommodation centres are particularly at risk of getting insufficient social assistance. Social services shall support a child only if they are notified of the situation.[205] Refugee families are generally not aware of this possibility, and Migration Agency staff may not know the situation of all children living in large centres.

Promising practice

Providing information on social assistance at municipal level

The municipality of Vänersborg (Västra Götaland, **Sweden**) has set up a refugee reception unit where refugees assigned to or choosing to live in the municipality are informed of various benefits they can apply for. The unit has drop-in hours twice a week. The Migration Agency refers people to the unit once they are granted international protection. They are assigned a contact person for advice and support (*råd- och stödkontakt*), who maintains contact during the two-year introduction programme at the Public Employment Services (*Arbetsförmedlingen*). The contact person is a social worker, who also administers the protection status holders' income support, if needed. The contact person provides support in practical matters, for example enrolling in a Swedish language class, registering children at school, getting a bank account and a bank card or finding suitable furniture, or simply showing the person around town.

Source: Vänersborg webpage

4.2.2. Supporting documents

To request income support benefits, applicants must typically submit a set of documents. The documents requested are often difficult to produce, FRA's research showed. Practical obstacles emerged especially from France, Greece and Italy. They concern proof of residence, obtaining civil status documents, tax registration or social security numbers and opening a bank account, as the following examples illustrate.

In France, experts from national and local authorities and NGOs referred to a gap regarding family allowances and housing benefits arising when residence permit receipts (*récépissés*) expire. The prefecture issues these receipts when refugees apply for a residence permit. They are valid for six months. It frequently takes longer than six months for a residence permit to be issued. If the receipt expires and is not extended before then, the Family Allowance Service (*Caisse d'Allocations Familiales* – CAF) suspends payments.[206] According to an expert responsible for housing in Marseilles (Provence-Alpes-Côte d'Azur), one in three refugees housed by the organisation stopped receiving benefits for three months on average, in most cases because the receipt had expired. The lack of civil status documents proving the family relationship has also been an obstacle to claiming family and child allowances, affecting children in families in particular, as the following example from another French region illustrates.

"What is sometimes an obstacle is when children have no identity documents. We have a case now, so pending the provision of civil status documents by Office Français de Protection des Réfugiés et Apatrides(OFPRA), the CAF necessarily requires the birth certificate for the child, and that's what drags on, so, while waiting, access to family allowances cannot be opened up." (Social worker, France)

This is part of a broader issue. Employers often do not recognise even these temporary receipts:

"It means nothing to the company. It means nothing, because the residence permit is much more reassuring. Companies are used to seeing them. Whereas they are not at all familiar with receipts. The fact that there are these renewals to be done every three months or six months, it depends, it's not at all something that encourages the company to hire." (Employment agency expert, France)

In Greece, applying for the solidarity solidarity allowance requires a tax registration number, a social security number (*Αριθμός Μητρώου Κοινωνικής Ασφάλισης* – AMKA) and a tax declaration for the previous year. Obtaining a social security number has been difficult, as experts reported. Staff responsible for it at the Citizens' Service Centre in several municipalities refused to provide numbers although all requirements were met, sometimes asking for additional documents, such as a VAT registration number or a certificate from a future employer.[207] Furthermore, banks have refused to open accounts for refugees, which they need to receive the solidarity assistance; the banks argue that they would not understand the terms of the contract

204 Italy, Ministry of the Interior, 2019.
205 Sweden, Social Services Act (*Socialtjänstlag* (2001:453)), 7 June 2001, Chapter 14, Section 1.
206 France, *CASF*, Art. L.512-2.
207 Greek Council for Refugees, webpage.

because of language difficulties. This prevents refugees from accessing the benefit in practice.

Promising practice

Guidance facilitating issuance of social security numbers in Greece

Persons in need of international protection have difficulty obtaining social security numbers (AMKAs), the Greek Ombudsman found. In response, the Ministry of Migration Policy and the Ministry of Labour and Social Solidarity issued a circular in February 2018 clarifying a number of things, which improved access to health benefits and services:

- The residence permit for international protection and the asylum application card comply with the requirements for the type of documents needed to issue an AMKA to foreign nationals.
- There is no need for an employment relationship or the provision of services or work, or affiliation to a social security body or health institution.
- It is not mandatory for unaccompanied children to indicate the AMKA of a representative or guardian.

This circular was complemented by a new one issued in June 2019, which was, however, revoked in July 2019. Following the revocation and in the absence of new guidance, the first circular is not implemented, even though it is in force.

Sources: Greece, Circular 31547/9662/13.2.2018 on the issuance of AMKA to beneficiaries and applicants of international protection; Greek Ombudsman (2018); Circular 80320/28107/1857/20.6.2019; Revocation announcement Φ.80320/οικ.31355/Δ18.2084

In Italy, many public services require an alphanumeric social security code, but this is not issued automatically with the temporary residence permit. Because of such practical difficulties, social services try to register refugees as people with disabilities so they can obtain some kind of financial support, a psychologist in Milan reported.

4.2.3. Language and psychological barriers

In all six Member States, experts referred to language barriers complicating access to social welfare procedures. These includes the lack of language skills in general, but also the administrative language used in forms, official webpages and decisions. An Italian NGO worker noted the insufficiency of cultural mediators and interpreters in public services.

Promising practice

Adapting the language to the target group in Sweden

In Västra Götaland, the region's public housing agency (*Boplats*) has started to provide information in Arabic, Somali and other common languages since the arrivals of 2015. The social services have revised their written and spoken language to make it more accessible and less bureaucratic. They use a programme called *Klarspråk* (plain language) to adjust the texts used to explain decisions. These changes have improved the clients' ability to understand the grounds on which they have been granted or denied social support such as income support.

Sources: Social welfare authority expert, Västra Götaland, and Boplats website

Specific difficulties may arise for accompanied children. Youth welfare offices in Germany pointed to the challenge of parents fearing to approach the youth welfare offices, as part of a fear of approaching authorities in general. As a result, accompanied children may go short of support, as they depend on their parents applying for benefits. Finally, for traumatised persons, going to the competent authority, introducing themselves and expressing themselves often constitutes a barrier in itself, a member of an NGO providing specialised support to traumatised persons in Austria recalled.

Conclusions and FRA opinions

In its Action Plan on the integration of third-country nationals, the European Commission highlights the necessity for Member States to implement national economic and social policies that cover the immediate needs of migrants and refugees and contribute to their integration. The action plan recognises that ensuring sufficient social and economic assistance will be a challenge for Member States, but notes also that with the right conditions it is an opportunity for swift and successful integration.[208] This research shows that sufficient social assistance is what allows young international protection beneficiaries to learn the local language and to pursue education.

When individuals cannot support themselves, social assistance ensures a decent existence for those persons who lack sufficient resources, as required by Article 34 of the Charter. Under EU law, Member States must grant core benefits to all international protection beneficiaries, regardless of whether they have been granted refugee

208 European Commission (2016b), p. 3.

or subsidiary protection status. In practice, lack of information – sometimes also among professionals – complex procedures and formal requirements may exclude young international protection beneficiaries from social welfare benefits. Benefits may be reduced or cut if the person does not comply with integration requirements, including language tests.

FRA opinion 4

EU Member States should ensure that refugees receive all social welfare benefits they are entitled to under EU law. They should consider providing the same entitlements to subsidiary protection status holders in need of support.

EU Member States should remove practical obstacles that impede access to social welfare benefits – for example, by providing information in clear, accessible and non-bureaucratic language and offering language support, where needed.

When EU Member States require international protection beneficiaries to comply with integration measures to receive social assistance, any such requirement must be non-discriminatory and thus comparable to those established for national recipients of social assistance. Any reduction of benefits for non-compliance with integration requirements should be implemented in a flexible manner, taking into account the individual circumstances of persons who have fled armed conflict or persecution. Reduction of benefits should not result in precarious living conditions for beneficiaries.

5 Mental health

EU Charter of Fundamental Rights, Article 35

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

According to the World Health Organization, mental health problems, such as anxiety, post-traumatic stress and depression, are higher among refugee populations than the general population.[209] This increased vulnerability is linked to experiences before, during and after flight. Applicants' mental health problems are in many cases not swiftly and efficiently identified. Mental health problems worsen over time if they are not adequately addressed and care is not provided. Literature suggests that a lack of social integration, and specifically unemployment, causes a high prevalence of mental problems among long-term refugees.[210]

Although this research did not explicitly ask questions on mental health, several respondents in all six EU Member States spontaneously raised issues relating to mental health and access to healthcare, in particular for asylum applicants. Social workers, other experts, asylum applicants and international protection beneficiaries in all locations mentioned that lengthy procedures, impossible or delayed family reunification and poor reception conditions have a significant negative impact on the applicants' health, resulting in, for example, disrupted sleeping patters, anxiety and deteriorating psychological problems.

209 WHO Regional Office for Europe (2018), p .5.
210 Bogic, M. *et al.* (2015).

This chapter illustrates the risk factors which emerged from the research and describes access to mental health care in law and practice. It does not explore health in general. Some 34 experts working in the fields of education, employment, housing, and social and child welfare, as well as lawyers and NGOs, raised mental health problems, as did a significant number of asylum applicants and status holders.

Human rights law

International law requires that refugees enjoy the same treatment with respect to public relief and assistance as is accorded to nationals of the host country. Everyone, including asylum applicants, has the right to a standard of living adequate for health and well-being, including food, clothing, housing, medical care and necessary social services. Table 9 provides an overview of the main international law provisions. These instruments apply to the six EU Member States, with some exceptions.[211]

211 For the list of States Parties to UN instruments, see the interactive dashboard on the website of the Office of the High Commissioner for Human Rights. Germany has not ratified the revised ESC. Austria has expressed a reservation to Art. 23 of the Geneva Convention, stating that 'public relief and assistance' "shall be interpreted solely in the sense of allocations from public welfare funds". The Austrian Constitutional Court (*Verfassungsgerichtshof*) confirmed that, in line with Art. 23 of the Geneva Convention, refugees are to be treated like nationals as regards social welfare benefits; see decision G 136/2017, 7 March 2018, at 114.

Table 9: International law instruments on the right to health

Instrument	Main provisions	Applicability
Geneva Convention, Article 23	"The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."	Refugees
Universal Declaration of Human Rights, Article 25 (1)	"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."	Refugees and asylum applicants
CRPD, Article 4 (1)	"1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability."	Refugees and asylum applicants
International Covenant on Economic, Social and Cultural Rights, Article 12 (1)	"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."	Refugees and asylum applicants
(Revised) ESC, Article 11	"With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia: "1. to remove as far as possible the causes of ill-health; "2. [...] "3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents."	Refugees and asylum applicants*
(Revised) ESC, Article 13 (1)	"With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake: "1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition."	Refugees and asylum applicants*
Convention on the Rights of the Child, Article 24 (1)	"States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."	Refugees and asylum applicants

Notes: *Under 'applicability', the term 'refugee' is used in a broad sense, also including subsidiary protection status holders.*

** In principle the revised ESC applies only to nationals of the Parties to the Charter lawfully resident or working regularly within the territory of the Party concerned. The European Committee on Social Rights clarified in Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, paragraphs 66–76, that provisions of the European Social Charter apply also to asylum applicants and refugees when excluding them from this protection would have seriously detrimental consequences for their fundamental rights; emergency social assistance should be provided under the said provision to all foreign nationals without exception. Recently, in International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, the Committee indicated to the Greek government that under ESC obligations the government was to adopt immediate measures "to ensure access to health care and medical assistance, in particular by ensuring the presence of an adequate number of medical professionals to meet the needs of the [unaccompanied and accompanied asylum-seeking and refugee] children".*

Source: *FRA, 2019*

EU law

The EU asylum *acquis* grants access to mental health care, as part of more general provisions of access to healthcare, to asylum applicants as well as status holders. EU law grants access to "necessary health care" to asylum applicants and to "adequate health care" to refugees and subsidiary protection beneficiaries.[212] This suggests that some differentiations may be allowed. At the same time, for asylum applicants, a number of provisions limit Member States' discretion.

Article 17 (2) and (3) of the Reception Conditions Directive obliges Member States to grant applicants the right to material reception conditions that guarantee their subsistence and protect their physical and mental health. Article 19 stipulates that Member States must provide necessary healthcare. This includes, at least, emergency care and essential treatment of illnesses and of serious mental problems. Under Article 19, applicants who have special reception needs have a right to "appropriate mental health care", where needed. Concerning children, Article 23 (4) requires that Member States ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

Under Article 30 of the Qualification Directive, beneficiaries of international protection have access

212 Reception Conditions Directive, Art. 19; Qualification Directive, Art. 30 (2).

to adequate healthcare under the same conditions as nationals of the Member State that has granted such protection. This includes mental health care.

5.1. Vulnerability to mental health problems: risk factors

Factors making applicants and international protection beneficiaries more vulnerable to developing mental health problems can be identified before, during and after their flight. Figure 23 illustrates the risk factors that emerged from the fieldwork research.[213]

People in search of international protection have often been exposed to stressful events such as wars, persecution, violence or other forms of hardship in their countries of origin. During their often long and complicated journey, many experience exploitation, discrimination, separation from their families and threats to health, well-being or life.

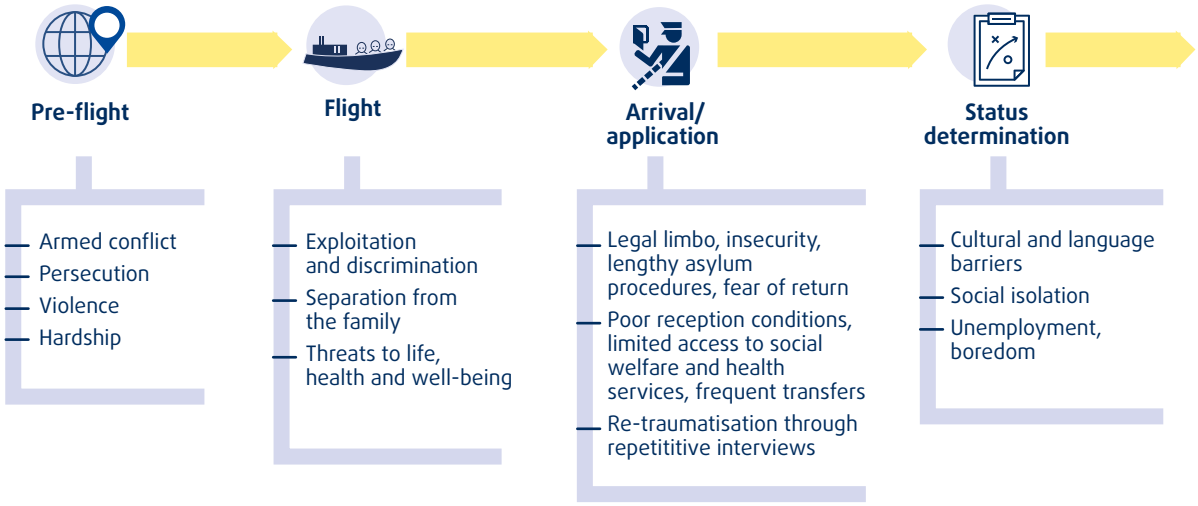
After they have arrived in their destination country, the situation of legal limbo, poor reception conditions, detention, rejection of the asylum claim, fear of return, the absence of the family, isolation and lack of integration may also affect applicants' mental health. If they have pre-existing mental health problems, it may lead to re-traumatisation. Interviewees highlighted in particular the following post-arrival risk factors for asylum applicants or status holders.

5.1.1. Protracted insecurity of stay

Social workers in different locations in Italy, Greece and Sweden, said that delays in procedures cause psychological distress and tension, in particular if they mean that applicants have to stay confined in one place. Such distress may also result in physical problems, such as disrupted sleeping patterns, loss of appetite, muscle pain and digestive impairments, as well as anxiety and depression. This distress in turn also affects other rights, as the following examples illustrate. Delays discourage applicants from investing in their education, training and learning Italian because they are not sure if they are going to remain in Italy, reported a social worker in Calabria. Education professionals in both Swedish locations also noted difficulties in learning or even attending school. The long waiting time and related uncertainty affect the life of asylum applicants like torture, said a teacher in Västra Götaland. A guardian in northern Sweden stated:

"Every boy I know has trouble sleeping. Many of them have been to the healthcare centre and have been prescribed sleeping pills. Many of the boys have visited the social counsellors at school for support. Several of them have been referred to the Red Cross, which has been able to provide psychological assistance. Then we have a handful of children who have been admitted to the children's psychiatry ward or the adult psychiatry wards repeatedly, because of various suicide attempts." (NGO child expert and guardian, Sweden)

Figure 23: Risk factors for mental health problems



Note: *The figure illustrates the risk factors as interviewees identified them. Some risk factors, such as family separation or exploitation, may emerge at different times.*

Source: *FRA, 2019*

213 See also WHO Regional Office for Europe (2018), p. 4.

A Sudanese asylum applicant who had to wait for seven months between pre-registering his application in November 2016 and receiving the first asylum decision from the authorities noted:

"The hardest thing was waiting. For sure, the waiting was very difficult, if I speak for myself personally, it threw me into a whirlwind where I could neither eat nor drink, I was just waiting." (Asylum applicant from Sudan, male, France)

5.1.2. Poor reception conditions

The poor housing situation of asylum applicants emerged as a risk factor in all locations. Experts referred to overcrowding, poor hygienic conditions, isolated location, frequent changes of locations and confinement.

"Sleep disorders – the main topic here – nightmares, screaming at night. Everything is simply too tightly packed, there are simply too many people in one room, where others have nightmares at night too, and for people with sleep disorders it's a huge problem to be in bunk beds and other people who live so close." (NGO psychologist, Austria)

Asylum applicants in different locations in France, Germany and Greece reported feeling uncomfortable and in some cases lonely and isolated. An unaccompanied child in Paris illustrates this:

"I'm alone there. There is nobody. There is just me." (Unaccompanied child, male, France)

Having to live in camps in Greece under poor conditions, sometimes for up to two years, had psychological effects that hinder integration, according to all asylum applicants interviewed on the Greek islands.

"My life is hell. I feel that I am in a prison, and I don't know when they will let me go. My family left, I'm left alone. Since my family left, when I communicate with them I get very sad and feel alone. Loneliness. At night I can't sleep, I can't fall asleep. There are doctors and I go to them for insomnia, lack of appetite. They give me pills for all that, so that I can sleep and get my appetite back." (Asylum applicant from Afghanistan, male, Greece)

5.1.3. Frequent transfers

Frequent transfers from one accommodation to another have also affected mental health, particularly for children. Transfers impede settling down. Young persons may perceive relocation as a punishment or rejection, affecting their ability to form new relationships, leading in some cases to aggression and vandalism. Children must constantly have a reference person, such as a guardian or social worker, particularly if they are already traumatised, NGOs and a police officer in Austria emphasised. When unaccompanied children turned 18, they moved to adult facilities and the loss of child-specific support worsened their mental health problems, anxiety and insecurities, according to experts in Calabria, Italy, and Norrbotten, Sweden. All previous support given to the unaccompanied child goes to waste when they are transferred upon turning 18, an Italian guardian believes. A social worker from Norrbotten reported problems children face when they turn 18 and no longer have the support of guardians or foster home parents to take their mental health medicine. One of the NGO representatives described the impact of changes when children become 18-year-olds as follows:

"It's rather obvious that people who are children one day and treated like adults the next day will not feel OK. The regulations are rigidly defined, so all changes enter into force from one day to the other. The persons have first been [staying] in a supported independent living accommodation and then they're just supposed to stay in the Migration Agency's accommodation centres for asylum applicants, where there is no support from adults whatsoever. [...] The staff that is there is to a great extent guards from Securitas, who are there to maintain order. That's not optimal at all. And because of this, we get a lot of signals from [...] the sports associations, who work at the asylum accommodation centres. They say that the group of young men and boys, mainly from Afghanistan, suffer from severe mental health problems. They come from this safe environment and are thrown into a highly insecure environment." (NGO integration expert, Sweden)

5.1.4. Having to recount one's story repeatedly

Several interviewees pointed to the negative consequences of having to recount one's story of persecution and flight over and over again. Particularly in the French locations, five out of 23 interviewed applicants and international protection beneficiaries mentioned that one of the main difficulties was having to tell their story repeatedly to different people at different stages: the reception service for asylum applicants (PADA) for the pre-registration, the accommodation facility to prepare the OFPRA interview, OFPRA for the interview, their host family, etc.

"What was a little difficult is that you have to start all over again. They ask you in several different places about your situation, your real problem. [...] and then that gets to you. It gets to you very badly. Because everything you've experienced and all the stuff that... the misery you've had or... there are things you do not want to talk about, and they'll ask you all that again." (Refugee from Guinea who arrived as an unaccompanied child, male, France)

FRA ACTIVITY

Child-friendly justice – checklist for professionals

Based on research with children and professionals, FRA developed a checklist of measures that are needed to make proceedings child-friendly. Although it refers to judicial proceedings, many measures apply equally to asylum procedures, including, for example, possible actions to prevent repetitive hearings.

For more information, see FRA (2017a).

5.1.5. Separation from the family

A number of interviewees in different locations pointed to the heavy emotional burden of fearing for the families back in the country of origin. For example, an NGO representative in Västra Götaland, Sweden, guardians, lawyers and social workers across different regions in Germany, and some asylum applicants and status holders interviewed in France underlined the negative effects of unsuccessful or delayed family reunification. As long as people are worrying about the fate of their families, integration is difficult. People have problems focusing on their education and language acquisition and, in some cases, it affects their ability to work.

"Their families are either in refugee camps or in conflict areas. They [the families] turn to the person that's sitting here in safety: 'You're having it all, and we're under all this suffering.' […] It's breaking these people down, psychologically breaking them down. They can't cope. I think I could say that 90 % of those persons I've met in this situation have said: 'I can't focus. I can't learn the language. I can't go to school. I attend school just to get the introduction benefit, but I don't understand what the teacher is saying.' When we send them for work practice, they say that they can't focus there. Employment works better, because they think that a job might be a way for them to bring their families here. […] Even socially, when we try to invite them to participate in cultural or social activities, to integrate in society, they say: 'My family is in that situation and you want me to come to a cultural event?'" (NGO integration expert, Sweden)

5.1.6. Cultural and language barriers, social isolation, unemployment and boredom

Finally, even when protection status is granted, beneficiaries of international protection may still experience several risk factors that negatively affect their mental health. In addition to family separation, described in the previous paragraphs, such factors include cultural and language barriers, social isolation, unemployment and, simply, boredom.

"The observation that we make is that, from the point of view of the people concerned, it's a little discouraging […] to have overcome so many obstacles, to obtain refugee status and finally find themselves without prospects. There have been problems […] because people imagined that with the status finally they had the holy grail and they were going to have a normal life, and in fact it is only the beginning of a new nightmare." (Local housing authority expert, France)

Promising practice

Counselling and information provided to young refugees in Bremen

The 'advice café' (*Beratungscafé*) for young refugees in Bremen, **Germany**, offers young persons support and advice concerning day-to-day matters. This may include help in doing homework, applying for a job, housing or social benefits, or reading or writing official correspondence, e.g. invoices for electricity or mobile phones. For legal matters, young refugees are referred to other services. The café is integrated into a more general set of offers to young persons with and without a refugee background, including for example the Youth Meet-up (*Jugendtreff*). The project specifically supports young persons phasing out – or never having benefited from – youth welfare support, independently of their status as asylum applicant or beneficiary of international protection. The project has relied on volunteers' activity and secured institutional funding from the City of Bremen since 2018.

Source: Fluchtraum Bremen webpage

5.2. Access to mental health care by law and in practice

The extent to which asylum applicants and international protection beneficiaries have access to mental health care by law in the six EU Member States varies, as does the actual support offered in practice.

In the six EU Member States reviewed, international protection beneficiaries are entitled to the same healthcare services as nationals. In four of them, this is also the case for asylum applicants, at least once

their application for asylum is formally registered.[214] Germany and Sweden provide asylum applicants with fewer healthcare entitlements than status holders. In Germany, for the first 18 months of their stay, applicants have access to only "necessary treatment". This includes instances "of acute diseases or pain", in which "necessary medical or dental treatment has to be provided including medication, bandages and other benefits necessary for convalescence, recovery or alleviation of disease, or necessary services addressing consequences of illnesses."[215] In Sweden, adult applicants are entitled to emergency healthcare and dental care. Third-country nationals under the age of 18 are entitled to healthcare to the same extent as Swedish residents.[216] In Germany, mental health treatment be covered can under exceptional circumstances, but only if essential to safeguard health,[217] whereas Sweden provides mental health care to a certain degree.[218]

Where entitlements are the same as those that the national healthcare systems offer to anyone else, the question is which services the national system covers in the field of mental health, beyond psychiatric treatment in hospitals. If psychological therapies are covered, a shortage of professionals specialised in trauma and traumatic stress may limit support services in practice. So does the lack of interpreters, without whom sessions with psychologists or other therapists are not possible. Regardless of the legally guaranteed level of healthcare, in all the six EU Member States reviewed, the real issue for applicants was accessing mental health care in practice.

5.2.1. Identification of persons in need of support

One of the first challenges is the identification of asylum applicants and status holders who have experienced trauma or otherwise are in need of mental health services. When applicants are traumatised by the reasons for or the experiences during their flight, it is often worsened by the fact that the reception system does not take mental health problems into account sufficiently. In 2016, FRA noted the absence of formal legal or policy frameworks or specific procedures for the identification of victims of torture in Austria, Germany, Greece, Italy and Sweden.[219] Germany introduced 'Minimum standards for the protection of refugees and migrants in refugee accommodation centres' in 2017, including standards for the protection and support of persons requiring particular protection.[220] In 2016, Greece introduced a state procedure for identification of vulnerable persons and drew up specific guidance for vulnerability assessment in the Greek hotspots.[221] Lack of doctors and psychologists makes it difficult, however, to identify less visible vulnerabilities, including those linked to mental health.

FRA ACTIVITY

Update of 2016 Opinion on fundamental rights in Greek and Italian 'hotspots'

©FRA

In March 2019, FRA published an update of its 2016 opinion to address the fundamental rights shortcomings identified in the implementation of the 'hotspot' approach in Greece and Italy. Despite genuine efforts to improve the situation, many of the suggestions contained in the 21 opinions FRA had formulated in 2016 remain valid. The main persisting challenges in the hotspots are related to international protection, child protection, identification of vulnerable people, security, return and readmissions.

For more information, see FRA (2019a).

214 Austria, Federal law regulating the basic care of asylum seekers in the admission procedure and certain other foeriginers (*Bundesgesetz, mit dem die Grundversorgung von Asylwerbern im Zulassungsverfahren und bestimmten anderen Fremden geregelt wird*) (GVG-B), BGBl. Nr. 405/1991, Art. 2 (4); France, Social Security Code (Code de la sécurité sociale), Art. L.380-1 ; Greece, Law No. 4368/2016, Art. 33; Italy, Legislative Decree No. 142 (Reception Decree), 18 August 2015, Art. 21; Presidential Decree No. 21/2015, Art. 16.

215 Germany, Asylum Applicants' Benefits Act (AsylbLG), 30 June 1993, Section 4. In May 2019, the Law on improved enforcement of the duty to leave the country (Geordnete-Rückkehr-Gesetz) extended the time during which asylum seekers have only limited access to healthcare from 15 to 18 months upon registration; persons for whose asylum procedure another Member State is responsible are not eligible for any health benefits, unless they can prove a hardship case.

216 Sweden, Health and Medical Care for Asylum Seekers and Others Act (*Lag om hälso- och sjukvård åt asylsökande m.fl.* (SFS 2008:344)), 22 May 2008, Sections 5 and 6.

217 Germany, *AsylbLG*, 30 June 1993, Section 6 (1).

218 Sweden, Swedish Migration Agency webpage, Private individuals / Protection and asylum in Sweden / While you are waiting for a decision / Health care.

219 See FRA (2016), webpage 'Thematic focus: Migrants with disabilities'. The publication covers all Member States analysed in this report, except France.

220 Germany (2017).

221 Greece, Law 4375/2016, Art. 14.

In the three locations in France, all teachers and local authorities in charge of education noted the lack of a system for identifying and/or supporting specific psychological needs for the target group at schools. Many applicants have the impression that no one believes in the persecution until it is formally recognised.

"I think that OFPRA's decision, in terms of recognition of refugee status or at least subsidiary protection, has the value of a legal decision, a ruling, a form of recognition." (Guardian, France)

At the same time, promising practices have emerged. Examples are in the box below.

Promising practice

Facilitating referral to specialised services in Milan and Rome

The Milan Vulnerabilities Network (*Rete Milanese Vulnerabili*) facilitates referral to specialised medical services, based on a local protocol. The network has strengthened cooperation among healthcare and social professionals in identifying and treating vulnerable and complex cases among asylum applicants and protection status holders. The network is composed of municipal authorities, NGOs providing housing and psychological support, psychiatric rehabilitation centres, forensic medicine centres, and ethno-psychiatric and neuropsychiatric services. It has been extending its membership to include the regional health service and the different hospitals and public healthcare companies active in the city of Milan.*

In Rome, the Local Healthcare Department – Rome 1 (*Azienda Sanitaria Locale Roma 1*) runs a project called FARI 2. It enhances detection and referral, including by training professionals operating in local healthcare and social services. Each beneficiary of the project will have an individual tailored recovery project, which includes the necessary health and psychological assistance as well as activities to foster inclusion in the labour market.**

*Sources: * Rete Milanese Vulnerabili (2017). **Azienda Sanitaria Locale Roma 1 webpage and Ministry of Interior (2019).*

5.2.2. Language barriers limiting access to treatment

Sessions with psychologists or other mental health specialists are possible only if effective communication can be guaranteed. If applicants and protection status holders do not speak the professionals' language, they need interpreters. Given the delicate topic, interpreters should be professionals who can guarantee the necessary communication standards and confidentiality requirements.

In Austria, applicants and status holders, including unaccompanied children, have waited up to a year for treatment. Experts in Upper Austria noted that, since the health insurer does not reimburse interpretation costs, applications for mental care are often refused with the argument that therapy is not feasible. This is different in Germany, where interpretation for healthcare, including mental health care, is covered if required for treatment.[222] Nevertheless, there too, language barriers combined with limited availability of interpreters emerged as an issue. Healthcare staff and patients in Austria have generally considered new methods useful, such as video interpretation, and more widespread use could be explored.[223]

5.2.3. Distance

Geographical distances between healthcare service providers and reception facilities, combined with poor public transport, can cause a challenge for applicants. Particularly in Norrbotten, long distances were considered to complicate access to healthcare centres and hospitals, as asylum accommodation centres were located far away from the main cities. Consequently, the longer the asylum procedure lasts, the longer applicants face limitations on accessing healthcare, which can have severe effects on their health. On some Greek islands the hotspots are far away from the healthcare services. At the time of the research, UNHCR provided buses to the city centre and to the hospital. Since then, UNHCR has handed over the provision of transport services to the relevant authorities and transport services have deteriorated.

5.2.4. Insufficient information

Another obstacle to accessing mental health support is that social workers and applicants lack information about entitlements and services. Interviewees in Italy and Sweden mentioned this in particular.

A local social work expert in Västra Götaland, Sweden, mentioned that asylum applicants lack information on what kind of healthcare they are entitled to. Many persons did not know where and when to phone to make a doctor's appointment. Several experts in Västra Götaland stated that they have had difficulties in understanding the frequent changes in legislation. All six asylum applicants interviewed in Norrbotten and Västra Götaland confirmed that they had not received information about state benefits or that this information

222 Germany, Asylum Applicants Benefits Act (*AsylbLG*), 30 June 1993, Section 6.
223 Ketečka-Pulker, M. and Parrag, S. (2015).

had been insufficient or provided late. This concerned, for example, the possibility of applying for additional support for more expensive but necessary purchases.

In Italy, applicants are in theory entitled to access healthcare on the same grounds as Italian nationals. In practice, however, some healthcare providers think that the temporary residence permit that asylum applicants hold is not sufficient to access all services, as it does not have a social security number:

"There is a lack of willingness when it comes to training workers operating in the field, which means that often basic rights are not guaranteed, starting with the general practitioners who refuse to write prescriptions for patients because they don't have a fiscal code." (Social worker, Italy)

NGO experts in the three German locations said the introduction of the electronic health card for asylum applicants was a positive development. Previously, asylum applicants had to apply to the local health department for a health certificate before getting treatment, which had caused delays or prevented persons from seeing a doctor.

In France, health workers lacked training and awareness, as a psychiatrist pointed out:

"There is a real lack of awareness on the part of social health workers and this should be tackled. It would be fundamental to have policies of this kind, because this is the real starting point [...] another crucial aspect is that of providing sufficiently specialised training allowing professionals to recognise early risk signals for mental health problems." (Psychiatrist, France)

Conclusions and FRA opinions

Exposure to stressful situations before, during and after the flight puts people at a particular risk of developing mental health problems. This constitutes a significant obstacle for their integration. Early investment in the identification and care of mental health problems is thus beneficial not only for the person concerned but also for the host society.

A lack of social integration, particularly social isolation and unemployment, is linked with higher prevalence of mental health problems in refugees and migrants. Across all policy fields, interviewees in all locations spontaneously referred to negative effects of lengthy asylum procedures, poor living conditions and frequent transfers, loss of child-specific support for 18-year-olds, family separation and other factors that affected their physical and mental health conditions.

FRA opinion 5

In line with the social determinants of health approach, the conditions in which people grow up, work and live strongly contribute to their individual health status. When developing their policies to address mental health issues for asylum applicants and status holders, EU Member States should acknowledge that mental health problems also result or are magnified by gaps relating to the provision of different services, such as education, housing and income, which are necessary for successful integration.

EU Member States should ensure swift and efficient identification, referral and treatment of mental health problems. They should have mechanisms to ensure that the results of the needs assessment under Article 22 of the Reception Conditions Directive are followed up and support continued once protection status is granted. They should apply the EASO Guidance on reception conditions of 2016: operational standards and indicators.

EU Member States should provide early and clear information to applicants and status holders about where and how they can seek help for their mental health problems in a language they can understand.

EU Member States should ensure that all those working with asylum applicants and status holders, such as police officers, immigration officials or guardians and social workers, are appropriately trained to detect signs of potential mental health problems and refer them to medical authorities.

EU Member States should strengthen national and local capacity to respond to mental health needs and ensure that mental health workers are trained to work specifically with migrants and refugees. They should provide interpretation services free of charge, including by exploring options for video interpretation. The quality of healthcare services provided to migrants should be closely monitored.

6 Education for children

EU Charter of Fundamental Rights, Article 14

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.

Early and effective access to inclusive, formal education is one of the most important and powerful tools for integration, as the European Commission states in its 2017 Communication on the protection of children in migration.[224] However, persons in need of international protection face a number of barriers that may prevent their successful integration into education. These include the need to learn the language, gaps in prior education, differences from the educational system of the country of origin, disruption of family networks, precarious housing and mental health issues. Addressing such barriers is crucial not only to fulfil the right to education, but also to enhance refugees' future performance in the labour market, their well-being and their inclusion in society.[225]

This chapter looks at access to education and language learning for child asylum applicants and beneficiaries of international protection. The first part of the chapter focuses on access to compulsory and upper secondary education for children, the second part on measures that facilitate integration and the third part on challenges that remain to be addressed. It sometimes touches upon vocational education, but apprenticeships, on-the-job training and other forms of vocational training are covered in Chapter 7, on adult education. This chapter draws on the experiences of 227 experts, including interviews with teachers, local education and child protection authorities, guardians and NGO social workers as well as 11 focus group discussions on the topic of education in Vienna, Berlin, Lower Saxony, Marseilles, Lille, Milan, Reggio Calabria, Norrbotten, Västra Götaland, Athens and Lesbos. All interviewed asylum applicants and beneficiaries of international protection were asked about their opportunities to access and pursue education.

Human rights and refugee law

As Table 10 shows, international human rights law applicable to the six EU Member States (with some exceptions[226]) sets forth the right to education for everyone. The right covers elementary education and secondary education as well as the right to access vocational and tertiary education.

The different wording used in most instruments allows a distinction between primary, secondary and tertiary (higher) education. States Parties must afford free primary education to everyone equally, regardless of status. For secondary education, states have some limited margin of appreciation. The European Court of Human Rights acknowledged that secondary education "plays an ever-increasing role in successful personal development and in the social and professional integration of the individuals concerned." Therefore, it found that the requirement for two pupils to pay fees for their secondary education on account of their nationality and immigration status constituted

224 European Commission (2017b).
225 OECD (2019b).

226 Austria has made a reservation to the Geneva Convention that "the provisions of article 22, paragraph 1, shall not be applicable to the establishment and maintenance of private elementary schools". Germany is not party to the revised ESC. For the list of States Parties to UN instruments, see the interactive dashboard on the website of the Office of the High Commissioner for Human Rights.

Table 10: Right to education in international law, selected instruments

Instrument	Main provisions	Applicability
Geneva Convention, Article 22	"1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. "2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships."	Refugees and asylum applicants
ECHR, Protocol No. 1, Article 2	"No person shall be denied the right to education."	Refugees and asylum applicants
Universal Declaration of Human Rights, Article 26	"(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."	Refugees and asylum applicants
International Covenant on Economic, Social and Cultural Rights, Article 13	"1. The States Parties to the present Covenant recognize the right of everyone to education. [...] "2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: "(a) Primary education shall be compulsory and available free to all; "(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; "(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; "(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; "(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved."	Refugees and asylum applicants
Convention on the Rights of the Child, Article 28	"1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: "(a) Make primary education compulsory and available free to all; "(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; "(c) Make higher education accessible to all on the basis of capacity by every appropriate means; "(d) Make educational and vocational information and guidance available and accessible to all children; "(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates."	Refugees and asylum applicants
(Revised) ESC, Article 17 (2)	"[...] to provide to children and young persons a free primary and secondary education as well as encourage regular attendance at school"	Refugees and asylum applicants*

Notes: *Under 'applicability', the term 'refugee' is used in a broad sense, also including subsidiary protection status holders.*

** In principle, the revised ESC applies only to nationals of the Parties to the Charter lawfully resident or working regularly within the territory of the Party concerned. However, in International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, the Committee decided that, to avoid irreparable injury to the integrity of migrant minors, it was the government's duty under the ESC to immediately adopt measures to ensure the access of children in need of international protection to education.*

Source: *FRA, 2019*

a violation of the ECHR.[227] Finally, for university studies, states have a large margin of discretion and may, for example, require student fees. Chapter 7 examines tertiary education.

EU law

The European asylum *acquis* distinguishes between education for children and education for adults, as Figure 24 shows.

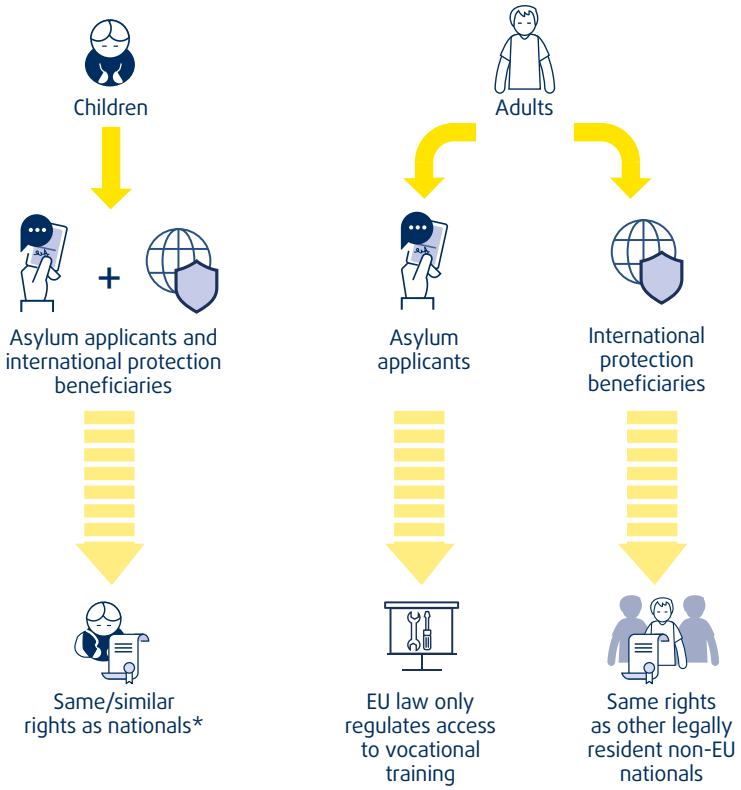
Article 14 of the Reception Conditions Directive stipulates that asylum-seeking children have the right to access the education system under similar conditions to those of nationals within three months of lodging their application for asylum.[228] States are not allowed to withdraw secondary education for the sole reason that an applicant has reached the age of majority. Although Article 14 refers to "similar conditions", for primary education, and not "the same conditions", any difference from the treatment accorded to nationals would need to meet the equal treatment clause in Article 22 (1) of the 1951 Refugee Convention, which also applies to asylum applicants, as it does not require lawful presence or stay. Pursuant to Article 27 of the Qualification Directive, children who received international protection have the same access to education under the same conditions as nationals. The 2017 Commission Communication on the protection of children in migration highlights the importance of providing access to education without delay and regardless of status.[229]

6.1. Access to compulsory and post-compulsory education

6.1.1. Compulsory education

Compulsory schooling refers to a period of educational attendance required of all students. This period is regulated by the law. The duration of compulsory

Figure 24: Right to access education under EU asylum law



Note: * *For asylum seekers, access to education shall be provided within three months from the date on which children or their parents have lodged their asylum claim.*

Source: *FRA, 2019*

227 European Court of Human Rights, *Ponomaryovi v. Bulgaria*, No. 5335/05, 21 June 2011, paras. 56, 57 and 63.
228 Reception Conditions Directive, Art. 14 (1) (2).
229 European Commission (2017b).

schooling varies depending on the Member State. In France, Greece and Italy the end of compulsory schooling is determined by the student's age; school is compulsory until 16 years of age in France,[230] Greece,[231] and Italy.[232] In France, beginning in 2020, training will be compulsory from age 16 to 18. In Austria[233] and Sweden,[234] the law defines it as the number of years students must attend school. It is nine years in Austria (until 15 years of age) and 10 in Sweden (usually until 16 years of age but, if a student has not passed the highest grade when the compulsory schooling would otherwise have ceased, the compulsory schooling shall cease at the latest when the student reaches the age of 18).[235] In Germany it is regulated at *Land* level.[236] Full-time compulsory education lasts nine or 10 years (depending on the federal state). For those who do not attend full-time general or vocational education in upper secondary education, part-time compulsory education is usually 12 years.[237]

School-age asylum-seeking children and children who have received international protection are in principle entitled to access mainstream compulsory education in all six EU Member States regardless of their residence status.[238] In Greece, at the time of the research in 2018, children hosted in the Moria camp on Lesbos did not have access to public schools. Subsequently, the policy changed.[239] In practice, however, children hosted in Moria do not attend school yet. In Germany, additional requirements are needed to go to public schools. There, education is governed by *Länder*'s school laws.[240] Asylum applicants, including children, stay in federal first reception facilities (*Aufnahmeeinrichtungen*) for, in principle, up to six weeks (which can be extended for up to six months).[241] It depends on the *Land* whether compulsory schooling starts in the first reception facility or later, and whether 'compulsory schooling' is understood as access to mainstream compulsory education or individual schooling in the facility.[242] The three regions surveyed in Germany have different approaches to compulsory schooling. Berlin does not require additional administrative steps,[243] which means that children attend mainstream schools already while staying at the first reception facility (subject to availability of teachers and classrooms). In Bremen, the applicant's main residence must be registered there.[244] For children still staying in the first reception facility in Bremen, the ministry sends home-schooling teachers.[245] In Lower Saxony, the child must be assigned to a municipality or district first, which means no access to public schools as long as the child is staying in a first reception facility.[246] The educational authority plans to address this through guidelines on home schooling or cooperation with the local schools in the reception centres.[247]

In other Member States, although this is not established by law, students might attend school in accommodation centres. In Italy, for example, a health professional working in the reception system reported that, in the province of Reggio Calabria, unaccompanied children often attend school classes in the reception centres in which they are hosted. Although this gives them access to the language certificate and to the final exam organised in public schools to obtain official

230 France, Law 2019-791 of 26 July 2019 (Loi n° 2019-791 du 26 juillet 2019 pour une école de la confiance (1)), Art. 15(1) amending Code of education (*Code de l'éducation*), Art. L131-1.
231 Greece, Law 4521/2018, Art. 33.
232 Italy, Ministry of Education, Circular letter No. 101 of 30 December 2010, at point 4.
233 Austria, Education Act (*Schulpflichtgesetz 1985*), Sections 2 and 3.
234 Sweden, Education Act (*Skollag* 2010:800), Chapter 7, Sections 10 and 12.
235 Sweden, information provided by national authorities on 2 September 2019.
236 For the three German *Länder* covered by this study, see Education Act for the *Land* Berlin (*Schulgesetz für das Land Berlin*), Sections 41-43; Education Act Bremen (*Bremisches Schulgesetz*), Sections 53 and 54; Education Act of Lower Saxony (*Niedersächsisches Schulgesetz*), Sections 64 and 65.
237 Germany, information provided by the Federal Government on 21 August 2019.
238 Austria, *Schulpflichtgesetz* (SchPflG), BGBl. Nr. 76/1985, Section 17; France, Code of education (*Code de l'éducation*), Arts. L. 111-1, L. 321-4 and L. 332-4; Greece, Law No. 4540/2018, *Government Gazette* 91/A/22-5-2018, Art. 13; Italy, Legislative Decree No. 286/1998, Art. 38, and Legislative Decree No. 142/2015; Sweden, Education Act (Skollag 2010:800), Chapter 7. In Germany, access to education is regulated at *Land* level. See, for Bremen, Education Act Bremen (*Bremisches Schulgesetz*), Section 52; for Berlin, Education Act for the *Land* Berlin (*Schulgesetz für das Land Berlin*), as last for Lower Saxony, Education Act of Lower Saxony (*Niedersächsisches Schulgesetz*),Section 63 (domicile, habitual residence or educational institution or employment).
239 Greece, Lesvos Education Sector Working Group (2019); Greece, Ministry of Education, Research and Religious Affairs (2019).
240 Germany, Weiser, B. (2016), p. 10.
241 Germany, Asylum Act (*AsylG*), Section 47. Individuals coming from 'safe countries of origin' are obliged to reside in a reception facility until a decision on their asylum application is made.
242 For an overview of all *Länder*, please refer to the Institut der deutschen Wirtschaft webpage 'Vom Recht auf (Schul-) Bildung', 15 June 2016.
243 UNICEF (2017), p. 39; Germany, Education Act for the *Land* Berlin (*Schulgesetz für das Land Berlin*), Section 41(2).
244 Germany, Bremen, *Bremisches Schulgesetz*, Section 52; in conjunction with *Meldegesetz Bremen,* Section 15 S.1.
245 Germany, Deutsches Institut für Menschenrechte, Monitoring- Stelle UN-Kinderrechtskonvention (2017).
246 Germany, Education Act of Lower Saxony (*Niedersächsisches Schulgesetz*), Section 63 (domicile, habitual residence or educational institution or employment); compulsory schooling is applicable from the moment the obligation to reside in a first reception centre in accordance with the Asylum Act (*AsylG*), Section 44 (1), or Residence Act (*AufenthG*), 30 July 2004, Section 15a (4), ceases. Germany, Ministry of Education of Lower Saxony (2016).
247 Germany, information provided by the Federal Government on 21 August 2019.

school certificates, he described it as very detrimental to their integration prospects.

"What we can observe is that these guys very often attend school classes in the reception centres rather than in ordinary public schools and this is an approach that they do not deal with very well, because it is not a school, it is the reception centre they live in 24 hours per day, this is not school, the school is something else and they cannot have access to it." (Health professional, Italy)

For unaccompanied children, the impossibility of attending public schools might result from residence restrictions on leaving first reception facilities, imposed to prevent absconding. A young Ethiopian refugee who arrived in Italy when he was 13 mentioned this in an interview. He reported that, in the shelter where he lived, only those beyond 15 years of age were allowed to attend public schools. The boy could finally enrol in school once he was transferred to Rome, four or five months after his arrival. In France, in a few exceptional cases, regular schools have been set up in accommodation centres. A school in Ivry (Île-de-France) is the only school in an emergency accommodation centre in France. It has pupils from 6 to 18 years, in age-based groups. The school is officially part of the national education system. Such temporary solutions are a good way to reduce waiting times and complement efforts to integrate refugee children into mainstream schooling as soon as possible.

6.1.2. Education beyond compulsory school age

Under EU law, asylum seekers and beneficiaries of international protection have full access to the education system under the same conditions as nationals (for protection status holders) or similar conditions (for asylum seekers), regardless of their status.[248] However, what that access entails after compulsory schooling depends on the Member State. In the six EU Member States, asylum-seeking children as well as protection status holders have the right to enrol in upper secondary school, provided they have completed compulsory education.[249] However, in practice, children in need of international protection experience a number of barriers when accessing secondary education, especially if they arrive beyond compulsory school age (see Section 6.3).

248 Qualification Directive, Art. 27 (1); Reception Conditions Directive, Art. 14.

249 This derives from specific legislation, for example in Sweden, or from a combination of legal provisions concerning education and anti-discrimination.

6.2. Measures that facilitate integration into school

6.2.1. Preparatory classes

Upon arrival, children need support to facilitate their enrolment, attendance and participation in school. Acknowledging this, Article 14 (2) of the Reception Conditions Directive sets forth Member States' obligation to provide asylum-seeking children with preparatory classes to facilitate their access to and participation in the education system. As an illustration of this duty, EASO's Guidance on reception conditions for unaccompanied children provides that, in the light of the right of all children to access education, "All unaccompanied children should have access to internal or external preparatory classes, including language classes, when necessary, in order to facilitate their access to and participation in the education system."[250]

In addition to informal schooling in reception facilities, all six EU Member States offer preparatory classes and/or language courses in regular school settings. However, only five of them (Austria, France, Germany, Greece and Sweden) provide structured and formal preparatory classes to newly arrived students with a lower level or no skills at all in the language of instruction. In Italy, language classes are offered but in less formalised ways and through ad hoc solutions.

Whereas in general children of compulsory school age learn the language while integrated into regular classes, most EU Member States offer separate preparatory classes to older children, FRA's findings show. These classes aim to integrate the child in the regular school setting gradually within a certain amount of time. Classes usually last between six months and two years, depending on the EU Member State. They focus on language acquisition but also include the teaching of core subjects, until the newly arrived student reaches sufficient language proficiency to follow regular classes. There are different types of preparatory classes, including within the same EU Member State. In some cases, newly arrived children are placed in regular classes with all other students but have a certain number of separate language classes. In other cases, students spend most of the time in separate classes, where they learn not only the language of instruction but also the core curriculum subjects. The following list provides an overview.

- In Austria, at the time of the research, asylum applicants and beneficiaries of international protection of compulsory school age were enrolled in regular school classes. In the beginning, they mainly had

250 EASO (2018), p. 44.

German language lessons and they were not graded for other subjects until they had sufficient language skills. In 2015 the city of Vienna set up 'preparatory classes' and Upper Austria set up 'bridge classes'. There are two kind of bridge classes in Upper Austria: one aims to prepare students to attend regular classes in secondary schools and the other prepares young people for compulsory schooling that is suitable for adults too or for entry into working life. They are separate classes located in public schools. They last one year. However, the findings indicate that these classes are not sufficient in Vienna and hardly available in some rural area in Upper Austria. In 2018, Austria introduced a new model of language promotion. Pupils with no or little German language knowledge are separated from their schoolmates during most subjects and taught German. When they pass a test certifying sufficient language skills, they are integrated fully into the normal class.[251] Schools must create such separate language classes if they have at least eight pupils who need them. Otherwise, the pre-existing system continues to be followed.

Promising practice

Using the European Social Fund for targeted education services in Vienna

The "Start Wien – the Youth College" programme, which is co-funded by the European Social Fund, offers tailored language courses and courses in basic education or literacy to 1,000 refugees and subsidiary protection status holders between 15 and 21 years of age. The programme helps them obtain school-leaving certificates and access secondary schools, vocational training or a job. Basic education and language training are also available to those who have completed compulsory schooling in their home country. The programme also allows persons beyond compulsory school age to get a certificate of school completion. It also provides an assessment of abilities.

Sources: Education authority expert, Vienna, and the city of Vienna's webpage on the programme

- France stands out in taking into account the previous level of schooling of newly arrived foreign children for allocating them to preparatory classes. Different types of preparatory classes are offered to non-French-speaking children who arrive after compulsory school age, depending on whether they have attended school before or not, with the aim of integrating them into upper secondary school. French educational experts mentioned the inclusive and immersive nature of these units as a success factor.

"The UPE2A (Unité pédagogique pour élèves allophones arrivant) is different from what existed before, which were the 'reception classes', closed classes with a cocoon effect, but also a ghetto effect, where the pupils stayed among themselves and did not have contact with native French speakers. Since 2012, it has really been inclusive schooling. Pupils receive about 12 hours of French, but they are included – whatever their level of French – in mathematics – so what the circular says is: mathematics and a foreign language – so in general English." (Teacher, France)

Promising practice

Providing differentiated 'preparatory classes' to older children

In **France**, UPE2A classes are offered to pupils who have previously been enrolled in school but do not speak French.* Their purpose is language acquisition. Students who have not been enrolled in school before follow UPE2A-NSA (*Unité Pédagogique pour Élèves Allophones Arrivants*) and MLDS (*Mission de Lutte contre le décrochage Scolaire*) classes. Some schools offer MoDAc (*Module d'Accueil et d'Accompagnement*) classes.** The objective of these classes is the acquisition of the French language as well as the basics of reading, writing and arithmetic, to allow students to join an ordinary class thereafter. These separate classes are integrated into French state schools.

*Sources: * France, Ministry of National Education, Circular 12/141 (Circulaire No. 2013–141), 2 October 2012, and Circular No. 2012-143 (Circulaire No. 2012-143), 2 October 2012*

*** France, focus groups and individual interviews with educational experts.*

- In Germany, beginning in 2015, as a result of the large number of arrivals, separate preparatory classes (named differently depending on the location, e.g. *Willkommensklass, Vorkurs, Sprachlernklasse*) have been offered to all new children in primary, secondary and vocational schools. These classes vary in modality and duration. In some regions, students attend preparatory classes for one to two years before being transferred to regular classes. Older students (typically, in year 9 or 10) may also attend courses that combine language acquisition with professional training, such as a vocational qualification course (*berufsqualifizierender Lehrgang*) or integrated vocational preparatory course (*integrierte Berufsausbildungsvorbereitung*) in Berlin;[252] language acquisition and professional orientation

251 Austria, Bundesministerium Wissenschaft, Bildung und Forschung (2018).

252 See website of Berlin Senate Administration for Education, Youth and Family.

(*Sprachförderungsklasse plus Berufsorientierung* and *Berufsorientierungsklasse mit Sprachförderung*) in Bremen;[253] and SPRINT classes (*Sprache und Integration*) for language and integration in Lower Saxony.[254] FRA interviews confirmed the availability of preparatory classes in practice; 25 out of 30 interviewees had attended such courses.

- Greece offers separate afternoon reception classes (*Δομές Υποδοχής και Εκπαίδευσης Προσφύγων*) to facilitate access to public education for school-age children residing in camps.[255] The classes are usually available in neighbouring public schools. However, compared with the mainland, the implementation of this programme on the eastern Aegean islands has been slow. On most islands, these classes started only in 2018 (e.g. on Lesbos) or at the beginning of 2019.[256] Children residing in urban accommodation, on the mainland as well as the islands, can attend regular school classes, including some supported by morning reception classes designed to facilitate the integration of students with little or no knowledge of Greek (reception classes in Zone of Educational Priority schools). Reception classes are available in primary and lower secondary education schools (i.e. compulsory school) but to a very limited extent in upper secondary schools (lyceum, 15–18), according to the experts interviewed. Many language acquisition programmes are organised by NGOs.
- In Sweden, asylum-seeking and protection status holder children between 16 and 18 years old are usually enrolled in separate language introduction programmes (*Språkintroduktion*) in upper secondary schools. The aim is to prepare the students for the regular upper secondary-level programmes or other education pathways. Within these programmes, schools must also offer additional school subjects that a pupil may need in order to be able to access regular study programmes at upper secondary level.[257] However, the number of subjects taught to the children enrolled in the introduction programmes varies very much between schools, the professionals working in the education field maintained.

In Italy, no formal preparatory programme to facilitate enrolment in public school was mentioned. In practice, school-age children (i.e. up to 16) generally attend school in the morning and language classes in the afternoon, either at school – if the schools provide this opportunity – or in reception centres/local associations. Those who arrive after compulsory school age and manage to access education are usually enrolled in adult education centres (*centri provinciali per l'istruzione degli adulti* – CPIAs; see Section 6.3.7), which offer language tuition. However, the lack of preparatory classes for newly arrived foreign children and the lack of specific integration projects addressed to students with a migrant background emerged as an issue from the fieldwork. Children often start school without an adequate level of Italian language knowledge, compromising their ability to understand what the teachers say.

The main issues mentioned in relation to preparatory and language classes are their limited duration and the insufficient number of preparatory classes available. For example, in Germany, a social and youth welfare expert in Bremen commented that the duration of preparatory classes is not enough to acquire a B1 level of language knowledge, while several experts highlighted that students generally need more time and support to learn German. Similarly, in Austria, experts highlight that the main challenge is that only half of the students attending such classes reach the level of German required to go to regular school. Likewise, in Marseilles (France), four out of six education experts suggested that increasing the time spent in preparatory classes would improve language acquisition and students' performance in ordinary classes afterwards.

Another challenge emerges from German and Swedish locations. It concerns the delicate transition from preparatory classes to regular classes, for example because of insufficient language skills and lack of knowledge in some subjects. Individual tuition, i.e. one-to-one classes designed to meet the specific needs of a student, could compensate for this, as a guardian, an NGO representative and several students interviewed in different German locations suggested. In Germany, social and pedagogical support at school, student buddies, existent social workers and mentors at the youth welfare institutions, as well as voluntary mentors and guardians have facilitated the integration process, in the eyes of numerous NGO, guardianship, education and employment experts from all three regions covered. Similarly, an education authority expert in Norrbotten stated that research has shown that study counsellors facilitate language acquisition and ease the transition to further education. However, experts said that counsellors are too few, even though they are provided for by law.

Education professionals France, Germany and Sweden mentioned living with host families and

253 For an overview of the courses offered during school year 2017/2018 please refer to Germany, Bremische Bürgerschaft (2017).
254 See *Niedersächsische Landesschulbehörde* webpage.
255 Greece, Joint Ministerial Decision No. 180647/ΓΔ4/2016, *Government Gazette* 3502/2016/B/31.10.2016.
256 Greece, Lesvos Education Sector Working Group (2019); Greece, Ministry of Education, Research and Religious Affairs (2019).
257 Sweden, Ministry of Education and Research (*Utbildningsdepartementet*), Upper Secondary School Ordinance (*Gymnasieförordningen 2010:2039),* 20 July 2018, Chapter 6, Section 7.

being involved in leisure/sport activities with local children as factors enabling language acquisition and, more generally, integration.

6.2.2. Assessment and allocation to different classes

Existing literature highlights the importance of running individual early assessments of students with a migrant background before allocating them to classes, including preparatory classes.[258] These assessments can contribute to decisions on how to place students in schools and/or to provide learning support to meet their needs.[259] Acknowledging that international protection beneficiaries may face difficulties in providing documentary evidence from their country of origin, Article 28 of the Qualification Directive encourages Member States to facilitate assessment and validation of prior learning.

Professionals working on education mentioned the existence of procedures to evaluate newly arrived children's abilities in different locations in France, Germany and Sweden, and, to a lesser extent, Austria. As an illustration, according to educational experts taking part in a focus group in Marseilles (France), newly arrived foreign children over 16 years old are first tested in an information and orientation centre (*centre d'information et d'orientation*) of the Education Ministry to determine in which type of school (general or vocational) and at what level they should be placed. They are tested on their level of French, writing and comprehension in their native language, and mathematics in their native language. Certificates of previous academic results are not required. In Germany, some federal states have procedures to assess prior education. In Sweden, within two months of starting school, all new arrivals are assessed on their academic knowledge. The assessments are offered in the native language of the migrant.[260] In Austria, only ad hoc initiatives emerged, for example by Start Wien – the Youth College.[261] Authorities and education professionals in Greece and Italy mentioned the lack of such assessments as a major shortcoming.

Education experts in different EU Member States highlighted delays, unsystematic assessments and issues with how the assessment is made or how its results are used to place students in classes. For example, in Germany, according to the experts interviewed, as a result of the large number of new arrivals, in Berlin and in Lower Saxony, a "resource check" of qualifications prior to school allocation was not always possible or sufficient. Consequently, new arrivals could not receive schooling in accordance with their level of education and instead were placed where spots were available. This situation has led to frustration, as some students felt bored, while others were overwhelmed. This also emerged from Italy, which does not have formal assessments.

"I know a lot of people here who did the same thing as me, who returned to a class two or three years lower, who were forced to redo all the years of high school. They were forced to do the year of MoDAc [i.e. preparatory classes in Marseilles] and I have a friend who was in 'Terminale' [final year] [in the country of origin], [...] and [in France] he had to redo, from second [year]." (Refugee accompanied child from Syria, male, France)

In Sweden, according to the experts interviewed, the assessment does not take place in all schools, and preparatory classes are often not adapted to the individual pupil's knowledge level and background. However, several of the children interviewed reported that the schools did make an individual assessment of the student's prior knowledge and skills and that they ended up in the right class for their level.

6.3. Practical challenges

This section describes the main challenges in access to education according to professionals and students interviewed.

6.3.1. Delays in school enrolment

According to EU law, child asylum applicants should have access to compulsory school within three months of their arrival.[262] However, the waiting times to access formal schooling are often much longer, FRA's findings show.

Children were asked to estimate when they had started to attend school. In Austria, children interviewed who arrived during compulsory school age accessed school between three weeks and four months after their arrival. In Germany, where not all children could remember when they started school, the delays were longer: at best some children accessed compulsory school in three months and at worst in one year. Of those interviewed in France, only three out of 11 who arrived during compulsory school age were enrolled within the three-month timeline. The other eight waited between six and 12 months. In Italy, six children in compulsory school age had access to secondary school and vocational training within the mandatory three months, one waited eight months, another 18 months and two more had not attended school at all. In Sweden, compulsory school-age children accessed the language

258 EACEA (2019).
259 *Ibid.*, p. 17.
260 Sweden, information provided by national authorities, 2 September 2019.
261 See also the city of Vienna's webpage on the initiative.
262 Reception Conditions Directive, Art. 14 (1) and (2).

introduction courses within one to five months. In Greece, neither of the two children who arrived during compulsory school age had attended school.

A number of different reasons behind delays in school enrolment emerged from FRA's research, as the following examples illustrate. In France, the delays in Marseille and Île-de-France were mainly related to the bottlenecks in the initial assessment (see Section 6.2.2), as highlighted by education experts. In Marseille, experts reported delays in getting the test results for certain native languages, for lack of education professionals who speak the required language. Interviews with young people seem to confirm that speaking French favours faster enrolment in school and that delays especially affect pupils with little or no previous schooling, as there are only a few specific schemes for them. In Germany, experts stressed that waiting periods to allocate the newly arrived pupils to a preparatory class could reach up to a year. This is mainly due to administrative bureaucracy, for example the residence registration document (*Einwohnermeldung*) in Bremen or the lack of coordination between schools, education authorities and other actors in Berlin and Lower Saxony. One interviewee describes how the local administration of Bremen has developed a system to reduce administrative documentation to the bare minimum and offers multilingual counselling to reduce enrolment waiting times. In Lesbos (Greece), delays were due to the lack of sufficient vaccines for all of the children, as vaccination is a precondition for enrolment in school. Specific reasons for delays affecting unaccompanied children emerged from different locations in most EU Member States, including lengthy age assessment procedures and delays in appointing guardians. In Italy, unaccompanied children are usually enrolled in school in their final destination location, that is, several months after their arrival.

Delays in school enrolment increase drop-out rates and distress. In Greece, education experts in Lesbos consider that even a short delay of a week might be a problem because children get used to spending their day doing other things (e.g. playing football) and then it is difficult for them to integrate into education. In Germany, the six interviewees who reported waiting over a year to attend school describe the waiting time as "difficult", a "struggle" and a "jail" that amplified the psychological distress and feelings of loneliness. A 20-year-old Syrian woman narrates how hard it was for her to spend her initial 13 months in Germany without attending school:

"I knew no one, I had no German friends nor Syrians, […] so I wasn't feeling well psychologically […] I felt lonely […] yes, I was going to the library and getting Arabic books […] Sometimes, I stopped eating for days, I just had no appetite. I was doing groceries, cleaning the house, going out […] despite all of this, I was feeling lonely, I don't know, I felt it was really difficult. […] I came here; I went out from a jail to another jail. I was expecting that I would start school quickly, get friends, and be smiling. This all turned out the opposite, I had no friends, I had no school, and I was always home […]. All things accumulated and pressured me, it was really difficult, I attempted suicide […]". (Subsidiary protection status holder from Syria, female, Germany)

6.3.2. Limited capacity of schools and lack of teachers

Education and child welfare professionals in different French, German, Greek and Swedish locations observed problems with capacity and lack of places in schools for asylum-seeking and protection status holder children. Insufficient places in preparatory classes were mentioned in Austria and France. For example, in France, with the exception of Paris, the lack of places in the adapted units within state schools resulted in some children aged 16–18 years not receiving schooling.

Moreover, educational professionals in Germany, Italy and Sweden also expressed concern about the lack of teachers. As an illustration, in Sweden, experts in Västra Götaland point to a shortage of teachers qualified to teach Swedish as a second language, and a shortage of study counsellors able to provide advice in the mother tongues of the new pupils, something they are entitled to. To deal with the high number of new arrivals in Germany and the increase in demand for language courses, classes were not always directly offered at regular schools, experts in Berlin and Bremen mention; instead external educational associations were commissioned with this task. Moreover, lateral entrants, for example individuals with a degree but with no specific qualification or experience in the education system, were quickly hired to meet the demand. Although some consider that the employment of these professionals provided the flexibility needed to quickly integrate new students into education, other respondents criticise the lack of adequate teaching experience and qualifications.

In some locations in France, delays in school enrolment for unaccompanied children led to ad hoc solutions, including unofficial schools set up by NGOs. These have their limits and an impact on the continuity of schooling and integration.

Promising practice

Addressing lack of places in school through NGO support

In **France**, experts described an ad hoc solution adopted to deal with lack of places for newly arrived students in regular French schools: schooling through NGO support. For example, in Marseille, the local education authority in cooperation with two NGOs, called Pep13 and *Centre d'Innovation pour l'Emploi et le Reclassement Social* (Innovation Centre for Employment and Social Rehabilitation), runs two non-governmental schools that can enrol newly arrived foreign children who arrive during the school year. In Lille, the NGO Centre de la Réconciliation has been operating a 'solidarity school' (école solidaire) since September 2017 with 20 volunteer teachers. Not only did experts assess that the quality of education is the same as in state schools, but they highlighted that such schools have the flexibility to adapt to the needs of pupils, which especially benefits students with limited or no previous schooling.

Although these schools are a good way to enable the schooling of more children than the existing capacity of state schools allows, they have fewer training opportunities than state schools.

Source: Education experts, Marseille

6.3.3. Issues with housing affecting education

Housing arrangements frequently influence access to education. Education professionals as well as children especially noted the negative impact of bad accommodation conditions, transfers between different housing arrangements, the long distances from housing to schools, and homelessness. Noise levels, sharing housing with non-students, commuting difficulties and crowded conditions create practical obstacles to learning. These factors delay young refugees' language acquisition and complicate their integration into educational pathways, because students are unable to concentrate on their schoolwork. In France, educational experts and unaccompanied children referred to a lack of educational activities and support from child welfare services while children were living in hotels during their age assessment.

Each relocation between reception facilities requires children to settle in again socially and at school and, if they are unaccompanied, to get used to new social workers. In Sweden, multiple education experts from Västra Götaland and Norrbotten expressed concern about frequent transfers.

"We've seen this very clearly. The pupils who stay in the first accommodation centres [for unaccompanied children] with the same experienced staff, they entered the education system in the right way. They were really taken care of in a completely different way. The rest, those who arrived later, were left to themselves and this was extremely clearly reflected in their school results and attendance [...] One of the most important success factors to counteract school drop-outs that we have found is ensuring that the transfers are monitored, and pupils followed up when they have been moved. It's always a sensitive phase. And we can see that the municipalities appear to have forgotten to look after the pupils' transfers, have forgotten how important it is to do follow-ups on asylum-seeking pupils in upper secondary schools." (Education authority expert, Sweden)

Transfers particularly affect unaccompanied children turning 18. Upon turning 18, they generally lose child protection support and have to leave child-specific facilities. This often results in more difficult housing conditions; change of school or even interruption of schooling; sudden loss of support from social workers, guardians and psychologists; loss of friends; and interruption of language courses and leisure activities.

In all six EU Member States, examples of long commuting times from the place of accommodation to school emerged an obstacle to accessing education. For example, a young man from Syria living in Greece, who was enrolled in high school, does not plan to continue because the school is too far away from the camp. A typical challenge mentioned by different experts in German and Greek locations is that schools near accommodation facilities often do not have room for more children, so children have to take buses to reach other schools. In Greece, experts mentioned that, when children need a bus to go to school and parents do not have a free ticket, they may not allow the children, particularly girls, to go alone. In France, although interviewees did not generally identify the place of accommodation as a major problem for access to schooling, an official from a local authority in charge of schooling in Nord (Hauts-de-France region) mentioned a problem of coordination with the child welfare services resulting in unaccompanied children being placed where there is no nearby school suited to their situation. Swedish experts said that the ongoing downsizing of the Migration Agency's accommodation facilities results in the asylum accommodation centres being increasingly far away from the centres of the municipalities, making it difficult to get to school.

Some accommodation had a positive impact on education and study, according to the people in need of international protection interviewed. For example, asylum applicants in Italy positively assessed their transfer to family shelters and SPRAR reception facilities for children, where they started attending schools, language courses and other leisure activities, allowing them to finally settle and get in contact with

their Italian peers. Many of the young people in Sweden were also pleased with their accommodation in a family, and two of them explicitly mentioned the positive effect it had on their studies, as expressed by a young man from Afghanistan:

"Right now, I am living in a foster home with a Swedish family. I like it very much […] And this family I live with, I enjoy living there. They help me with my studies and things like that. (Asylum applicant from Afghanistan, male, Sweden)

6.3.4. Racism, xenophobia and discrimination

Negative attitudes of parents, students and teachers towards foreigners in general and refugees more specifically were mentioned in Germany and Greece. As an illustration, actions perceived as racism appeared in seven accounts, primarily by young women in Germany. They describe incidents of receiving unpleasant and insulting remarks, being physically attacked in the school, being called names such as "the foreigner", and being screamed at by teachers. Interviewees felt "degraded". A 17-year-old Syrian woman recounts her experiences and the teacher's action:

"At [the secondary school], the students did not treat us with respect, not all of them, I can't generalise, there is good and bad […] you can say they tend to be racist towards us; as an example, once we were playing basket-ball, then a female German student attacked us and said 'go and play in your home country' […] even the teacher did not react, just distanced [the girl] away from us, even teachers are kind of [racist]." (Subsidiary protection status holder from Syria, female, Germany)

In Greece, the educational experts reported some isolated cases of parents complaining about the existence of reception classes, which in some extreme cases resulted in parents occupying schools to express their disagreement. In September 2018, in Chios, approximately 1,000 parents sent a letter of protest to school principals and local authorities, stating their opposition to the operation of reception classes inside the island's school units. They suggested as an alternative the operation of such classes within the hotspot.[263] In Lesbos, experts taking part in a focus group on education agreed that people from African countries experienced racism at school more than those of Middle Eastern descent or from any other country.

6.3.5. Directing students into vocational tracks

Students in need of international protection are likely to be pointed towards vocational education rather than other types of schools, FRA finds. This can already happen at an early stage. For example, in Austria, where students are split quite early, when they are 10 years old, into secondary academic schools and more practical/vocational schools (*Neue Mittelschule*), all the children interviewed arriving within mandatory school age (up to 15) were enrolled in *Neue Mittelschule*. Past publications have emphasised that students from lower socio-economic backgrounds are overrepresented in *Neue Mittelschule*.[264]

In Italy, once they have obtained school-leaving certificates, young people in need of international protection are often encouraged to enrol in vocational schools to increase the possibility of their finding a job quickly. Among the 11 who arrived as children and completed compulsory education in Italy, all those who continued their studies at upper secondary level were enrolled in vocational schools. Similarly, in France, nine out of 13 interviewees who arrived as children were enrolled in vocational high school, against only four in general high school. Children with little or no previous schooling especially are enrolled in vocational high school.

In Germany, two participants in the focus group on education held in Berlin stressed that, while German students have the opportunity to reflect on the education pathway they want to follow in accordance with their interests and capacities, people in need of international protection are directed towards vocational education and vocational professions. A 19-year-old Syrian boy in Bremen who arrived in Germany as a child expressed his frustration at not being able to continue his studies further:

"they [the school] were trying to direct us towards one direction, vocational training. I did not like this because they trapped us in specific fields in vocational training, in handicrafts, blacksmith, carpenter, painter […] I was doing my high school in Syria, I wanted to continue university and now I downgraded to vocational training and said 'let's do salesman', and they [the school] wanted me to do carpenter and blacksmith." (Refugee from Syria, male, Germany)

Interestingly, experts raised the opposite concern in Sweden. Several of the interviewees agreed that there is a misconception that general upper secondary school (preparing students for tertiary education) is the only possible way forward. They noted that students who will not be able to meet the eligibility criteria of general

263 Greece, Observatory of the Refugee and Migration Crisis in the Aegean, webpage 'Observatory News Bulletin: Parents' protest in Chios against the Reception Facilities for Refugee Education (RFRE) in the island's schools (updated 8 November 2018)'.

264 European Commission (2019c).

upper secondary school could be better informed and pointed towards other possibilities, for example a vocational programme in upper secondary school.

6.3.6. Specific practical barriers to access to compulsory school

Even if school-age children are entitled to attend public schools, practical or logistical barriers may result in their not attending public schools. According to an education professional, in Milan (Italy) public schools often refuse to enrol school-age children in need of international protection who do not speak Italian. As a result, children wait until they are 16 and are then placed in 'adult schools' (CPIAs, see Section 6.3.7), for which the minimum age is 16:

"[I]f you arrive aged 16 and you don't speak Italian, you can't access public state schools [...] you have to have some requisites [...] I would venture to say that even in those years of mandatory education it's like this. We have asylum seekers and protection holders who are at the age of mandatory education who have not managed to access state schools because these have a tendency to refuse access." (Language teacher, Italy)

This is confirmed by the interviews: in Italy, among the 10 unaccompanied children who arrived within compulsory school age, two aged 15 never attended public school. Both had to wait to turn 16 to be enrolled in 'adult schools', as such schools accept children aged 16 or older.

6.3.7. Specific practical barriers to access to post-compulsory school

The right to access upper secondary school is a reality in some of the countries reviewed, FRA's findings show. As an illustration, in France, out of the 13 interviewees who arrived in the country as children, all went to upper secondary school, including those who arrived after compulsory school age: two thirds in vocational high school and one third in general high school. Similarly, in Germany and in Sweden, among the students who had finished preparatory classes, all had continued to study at upper secondary school, either general or vocational.

Specific challenges exist in accessing upper secondary school, FRA finds, especially for young people arriving beyond compulsory school age (15–17 years old), because it is difficult to attain the grades needed to enrol, because they are placed in schools to obtain compulsory leaving certificates, because they are not informed of the possibility of attending secondary school or because of a lack of places in preparatory classes.

Difficulty in complying with age requirements in Sweden

In Sweden, compulsory school is defined as the number of years students must attend school, but most typically complete them when they are 16. Those who are between 16 and 18 years old when they arrive are usually enrolled in language introduction programmes and, if they get the required grades, they can enrol in upper secondary-level programmes. The law establishes that asylum applicants must begin their study programmes at upper secondary level before they turn 18, and protection status holders before they turn 20. This creates a particular challenge for asylum applicants arriving in Sweden aged 16 and 17 because it takes at least two years to learn the language and get the grades needed to access secondary school, according to education experts FRA interviewed. This is especially challenging for those with little or no previous schooling.

Placement in classes to obtain compulsory school certificates in Austria and Italy

In Austria and Italy, it is common for children arriving after compulsory school age (15 and 16 respectively) to be encouraged to enrol in school to get school-leaving certificates. In Austria, children who arrive aged 15 are encouraged to obtain school-leaving certificates from adult education facilities after they complete preparatory classes. In Vienna, as well as preparatory classes, NGOs provide language tuition and facilitate access to education and vocational training, FRA's findings show.

Similarly, among the 18 interviewees who arrived as children in Italy, the majority had been enrolled in school to obtain school-leaving certificates (*terza media*, usually obtained at 14 years of age). According to the experts interviewed in Italy, public secondary schools often refuse to enrol children who are over 15, and therefore not subject to compulsory schooling, if they do not speak Italian. As a result, these children become the responsibility of the adult education system – CPIAs. The CPIAs were set up in 2015 in each Italian province and are accessible to Italian as well as foreign students from the age of 16 years who want to gain school-leaving certificates. CPIAs have proven to play a crucial role in offering a range of training and education opportunities, including language acquisition, at the same time as offering refugees the possibility of being included in an ordinary class setting with Italian students. In addition, according to most of the experts, the CPIAs have contributed to overcoming the previous practice of integrating asylum applicants and international protection beneficiaries aged 16 or over in classes with 11- to 14-year-old children, which made them feel very uncomfortable. However, the possibility

of enrolling in the CPIAs depends very much on the housing facility where the child is living. Children living in SPRAR reception centres are often supported by the centre's management to enrol in these institutions. Those living in CAS often do not receive this kind of support and are more likely to end up attending other free courses offered by NGOs and volunteers. Another challenge is the lack of awareness among, and coordination between, public stakeholders operating in the education field, who often do not consider CPIAs proper schools, although they have the same value as ordinary high schools.

As an Italian language teacher mentioned:

"[I]f you arrive aged 16 and you don't speak Italian, you can't access public state schools; it's sometimes also hard to access a CPIA. […] Access to upper secondary schools I think is really rare, if you arrive in Italy at the age of 16 and you are an asylum seeker, […] if you arrive at 16 it's already a bit too late, it's late because two years to learn the language, obtain the terza media diploma, go to upper school, […] it's practically impossible." (Language teacher, Italy)

Pressure to work

In some countries, for example Italy, the need to work in order to earn money and the impossibility of reconciling work and study are often mentioned as deterrent factors, discouraging the children interviewed from trying to attain upper secondary and higher levels of education. For example, a 19-year-old refugee from Guinea who had arrived in Italy as an unaccompanied child in 2016, interviewed in Rome, had obtained the compulsory school certificate in Rome. He was informed of the possibility of continuing studying in ordinary high school but he declined because he needed to start working promptly to be able to pay rent.

Unaccompanied children turning 18

Article 14 of the Reception Conditions Directive prohibits Member States from withdrawing secondary education for the sole reason that an applicant has reached the age of majority. Although none of the six EU Member States reviewed have enacted rules that formally remove access to education for child applicants who become 18 years of age, unaccompanied children turning 18 face two main obstacles, FRA's research findings show: the loss of welfare support and transfers to adult accommodation. This often results in school drop-out.

In France, although in certain cases support may be extended (see Chapter 3), the end of ASE support at 18 years of age means that accommodation is not provided and canteen and transport subsidies are stopped, as participants in the focus group in Marseilles and several interviewees in the other two regions discussed. This results in students not attending school any more.

"We see it every year. And we have kids who, when they are approaching 17 years and 8 months or 9 months, they are freaked out. They are less and less … because they are thinking about: 'Right, I will find myself on the streets'." (Teacher, France)

The negative effect of loss of welfare support on schooling for unaccompanied children turning 18 was also reported in Greece and Sweden.

In Sweden it is up to the municipalities if they choose to let unaccompanied children stay after turning 18. Luleå (Norrbotten) has decided to let them stay,[265] Gothenburg (Västra Götaland) not. When transferred to adult facilities, students are entitled to continue their education at a school in their new location.[266] However, the education experts interviewed consider that the greater distances to the adult accommodation centres, the more chaotic living conditions in these centres and the mental effects of forced transfers all contribute to students dropping out of school.

"When pupils who attend upper secondary school have been assessed to be 18 years old by the Swedish Migration Agency and they, as I have understood, are moved to an asylum accommodation centre for adults often in a different municipality at very short notice […] they are, of course, entitled to continue their education in the new municipality, but for them to take this initiative and participate has been very difficult. And they've also lost so much of their safety nets – sometimes their entire social milieu. The result is that some of them have chosen to remain in their municipalities even when they are left without accommodation." (Education authority expert, Sweden)

In Greece, transfers of housing during childhood or when children turn 18 can result in school disruption. According to the experts interviewed, this is especially the case in bigger cities such as Athens, and less so in smaller places where the different professionals in touch with the children are more likely to communicate with each other for the benefit of the child, e.g. in Mytilene (Lesvos).

Conclusions and FRA opinions

Under EU law, children who seek asylum or have obtained international protection have the same access to education under the same conditions as nationals, or similar conditions. Whereas access to compulsory schooling is generally guaranteed, FRA's findings show that, because of practical barriers, access to post-compulsory education might be only on paper, especially for students who arrived after compulsory

265 Sweden, Swedish Television (*Sveriges Television*), webpage 'Young unaccompanied persons may remain in Luleå' (*Unga ensamkommande får stanna i Luleå*), 14 August 2017.
266 Sweden, Education Act (*Skollagen, 2010:800*), 1 July 2011.

school age. In some EU Member States, asylum-seeking children initially attend classes in reception facilities, which isolates them and might increase stigmatisation.

Article 14 (2) of Directive 2013/33/EU requires that asylum-seeking children entering an EU Member State be included in education within three months. However, multiple transfers of accommodation, time lag in finding a school place and other administrative barriers mean that it has sometimes taken one year or more for children of compulsory school age to be enrolled in school, FRA's research shows. Some EU Member States have successful measures to help integrate newly arrived students into education, such as early individual assessment of knowledge and skills and preparatory classes. In practice, EU Member States face a number of common challenges in integrating a large number of young people into the education system, such as lack of school places and teachers, especially language teachers, FRA's research shows.

FRA opinion 6

In accordance with Article 14 (2) of Directive 2013/33/EU, Member States must ensure that children entering a Member State are included in (compulsory) education within three months.

To improve effective enrolment of persons in need of international protection into education, EU Member States should increase their efforts to facilitate access to post-compulsory education, notably secondary education.

EU Member States should try to integrate children in mainstream education systems as early as possible. They should consider strengthening measures to facilitate the integration of newly arrived students into national school settings, such as through early individual assessment of knowledge and skills and preparatory classes. Schooling in reception centres should be only a temporary emergency measure.

EU Member States should enhance support to mainstream schools hosting refugee children, with additional resources and training for teachers, especially in areas where the arrival of refugees is a new phenomenon or where there is a high concentration of refugees.

EU Member States should establish contingency plans for the quick integration of refugee children into schools in order to be able to quickly and adequately respond to future arrivals of asylum-seeking children.

EU Member States should increase efforts to address school disruption of children in need of international protection turning 18. To this end, for children who are close to completing their studies when they turn 18, transfer to adult facilities could be postponed until completion of their education cycle. They should receive support for their transition to adulthood, including sufficient income to avoid having to drop out of school to work.

7 Adult education and vocational training

EU Charter of Fundamental Rights, Article 14

1. Everyone has the right to education and to have access to vocational and continuing training.

Adult education refers to a range of formal and informal learning activities, both general and vocational, undertaken by adults after leaving initial education and training.[267] Vocational training includes knowledge and skills required in particular occupations or, more broadly, the labour market. Although older children can also benefit from vocational training, research findings concern primarily vocational training for young adults. This report, therefore, covers it together with adult education.

This chapter examines language opportunities for adults in need of international protection, and their access to vocational training and tertiary education. It recounts the experiences of vocational training and adult education that professionals as well as asylum applicants and status holders shared with FRA. Some 208 professionals, including teachers, school directors, local education authorities, employment agencies and NGO experts, were consulted on this topic. Their responses are complemented by those from asylum applicants and international protection beneficiaries.

International law

Chapter 6 outlined the human rights law framework on the right to education for children as well as adults. Vocational training is part of the right to education analysed in Chapter 6 (see Table 6.1). In addition, some international instruments also have specific provisions on vocational training, as summarised in Table 11.

EU law

Under EU asylum law, education entitlements for adults differ between asylum applicants and status holders, with the exception of adults still in secondary education. For applicants, Article 16 of the Reception Conditions Directive states only that Member States may allow them access to vocational training. In simple terms, Member States may restrict access to certain forms of vocational training to only those asylum applicants who are entitled to work. Under Article 27 of the Qualification Directive, international protection beneficiaries have access to education, training and retraining for adults under the same conditions as legally resident third-country nationals.

267 Council Resolution on a renewed European agenda for adult learning, 2011/C 372/01.

Table 11: Right to vocational training in international law, selected instruments

Instrument	Main provisions	Applicability
Geneva Convention, Article 24	"1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals with respect of the following matters: "(a) in so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: [...] apprenticeship and training"	Refugees
(Revised) ESC, Article 10	"With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake: "1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, [...]; "2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments"	Refugees
Human Resources Development Convention, Articles 1 and 3	"Article 1 "1. Each Member shall adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services. "[...] "5. The policies and programmes shall encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society." "Article 3 "1. Each Member shall gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to all children, young persons and adults, including appropriate programmes for all handicapped and disabled persons. "2. Such information and guidance shall cover the choice of an occupation, vocational training and related educational opportunities, the employment situation and employment prospects, promotion prospects, conditions of work, safety and hygiene at work, and other aspects of working life in the various sectors of economic, social and cultural activity and at all levels of responsibility."	All workers

Notes: *For the (revised) ESC, see European Committee of Social Rights, Statement of interpretation on the rights of refugees under the European Social Charter, 5 October 2015.*

Source: *FRA, 2019*

7.1. 'Integration programmes' and language acquisition

Article 34 of the Qualification Directive lays down that, "In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes." In the light of recital 47 of the directive, language training is included in these integration programmes. Member States should, therefore, provide language training to beneficiaries of international protection, regardless of their age.

7.1.1. Asylum applicants

Integration measures normally start once a person is granted asylum. For this reason, the Reception Conditions Directive does not cover integration classes and has no specific provision on language courses. Nevertheless, as knowing the host country's language is also important for applicants' everyday life, most EU Member States do offer some language classes. Typically, these are unofficial classes organised in the reception facility or accommodation centre with the help of civil society and volunteers or directly offered by reception facility staff. Although they are an important first step to learn the language, interviews with asylum applicants show that unofficial language classes are often not considered of significant value because the teaching is of poor quality and it is impossible to separate people with different levels of language knowledge. Hence, the longer the asylum procedures last, the later persons granted asylum enrol in official language classes. For example, a teacher and an NGO representative in France said that waiting for the decision acts as a barrier to the acquisition of the language and thus delays integration.

7.1.2. Beneficiaries of international protection

Integration efforts and funding have been stepped up in a number of EU Member States. Austria, France,

Germany and Sweden[268] have introduced mandatory integration programmes for protection status holders such as the 'work integration year' in Austria, the 'integration contract' in France, 'integration courses' in Germany and the 'introduction programme for newly arrived adults' in Sweden. These programmes include a number of measures, such as validation of skills, language acquisition programmes, support for the recognition of qualifications, civic courses, educational measures and familiarisation with the labour market.

Protection status holders are obliged to participate in the integration years. In Germany, Austria, and Sweden, refusal to participate can be punished with benefit cuts (see Section 4.1.3). In recent years, Austria and Germany have extended language programmes that initially targeted protection status holders to asylum applicants with good prospects of acquiring a protection status.[269] In Germany, this means applicants from countries of origins with recognition rates exceeding 50 %.[270] Similarly, Sweden introduced several measures in 2017 for the early integration of asylum applicants, including increased provision of language classes.[271]

Promising practice

Providing integration support to enter the labour market

In **Sweden**, in 2015, the government initiated an integration programme called "fast tracks" (*Snabbspåret*)* to support newly arrived protection status holders who have professional skills and education needed on the Swedish labour market.** The "fast tracks" include language training, early assessment of each person's skills and education, faster validation of non-Swedish education and degrees, special language training focused on the professional language of different professions, trainee jobs in combination with language training, job matching and supplementary education if needed.* There are fast tracks for many professions, for example teachers, doctors, nurses, and electrical and mechanical engineers.

*Sources: *Sweden, Ministry of Employment, webpage 'Fast track – a quicker introduction of newly arrived immigrants'; and **Labour-INT, webpage 'From arrival to work – fast tracks – a quicker introduction of newly arrived refugees and migrant'*

Germany and Sweden offer special language training focused on the technical language of different professions. In Germany, following the completion of integration courses, the Federal Office for Migration and Refugees offers job-related language training to people with a migrant background who have reached German level B1.[272] The measure extends to asylum applicants with good prospects of acquiring a protection status.[273] That said, experience shows that the process for accessing German language and integration courses becomes much faster and more efficient once a protection status is granted, an education expert in Bremen pointed out. The "fast tracks" programme in Sweden offers special language training focused on the professional language of different professions.

In Greece, a first pilot programme on language learning for asylum applicants and beneficiaries of international protection was launched in 2018 and is yet to be implemented.[274] No formal programmes for language acquisition are offered to protection status holders, according to education experts in Lesbos. In Italy, reception facility managers of SPRARs are under

268 Austria, Labour market integration law (*Arbeitsmarktintegrationsgesetz*), 2017, Art. 1, para. 5; France, Law No. 2016-274 of 7 March 2016 relating to the law for foreigners in France (*Loi n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France*); Germany, Residence Act (*Aufenthaltsgesetz – AufenthG*), 30 July 2004, Sections 43-45; Integration Course Ordinance (*Integrationskursverordnung*) of 13 December 2004 (*Federal Law Gazette* I, p. 3370), as last amended by Art. 1 of the Ordinance of 21 June 2017 (*Federal Law Gazette* I, p. 1875); Sweden, Act on the responsibility for introduction activities (*Arbetsförmedlingen har ansvar för att nyanlända invandrare erbjuds insatser som syftar till att underlätta och påskynda deras etablering i arbets- och samhällslivet (etableringsinsatser) – Lag [2017:584] om ansvar för etableringsinsatser*), Section 4, 1 January 2018.

269 Austria, Federal Ministry for Europe, Integration and Foreign Affairs (2016), p. 48; Germany, Residence Act (*AufenthG*), 30 July 2004, Section 44 (4) 1.

270 Germany, Federal Government (2015b), p. 31; see the website of the Federal Office for Migration and Refugees, under FAQ 'Was heißt "gute Bleibeperspektive"?'

271 Sweden, Government Offices of Sweden, webpage 'Early measures for asylum seekers' (*Tidiga insatser för asylsökande*), 23 November 2017.

272 Germany, Ordinance on job-related language training (*DeuFöV*), 4 May 2016.

273 Germany, Residence Act (*AufenthG*), 30 July 2004, Section 45a (2), sent. 3.

274 Greece, Greek Government, webpage '"Language and culture for refugees and immigrants 15+" programme' (*Πρόγραμμα «Μαθήματα Γλώσσας και Πολιτισμού για Πρόσφυγες και Μετανάστες 15+»*), 23 January 2018.

an obligation to offer language classes.[275] Following legal changes in December 2018, only beneficiaries of international protection can be hosted in these centres and therefore access these classes.[276]

Recent research from the Council of Europe shows that many European states offer language courses to migrants. However, in most cases, migrants only receive up to 250 hours of language instruction free of change.[277]

FRA ACTIVITY

Together in the EU

FRA's report *Together in the EU: promoting the participation of migrants and their descendants* provides more information on language learning and integration tests used in EU Member States. It examines national integration policies and measures, also including education and participation, integration action plans, labour market participation, and democratic and political participation.

See FRA (2017b).

7.2. Vocational training

Article 166 of the Treaty on the Functioning of the European Union (TFEU) recognises that EU Member States are responsible for the content and organisation of national vocational training. This explains the significant differences between Member States concerning the types of vocational training. The EU complements Member States' actions through a vocational training policy. EU law uses a broad definition of vocational training:

"Any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary training and skills for such a profession, trade or employment is vocational training, whatever the age and the level of training of the pupils or students, and even if the training programme includes an element of general education." (CJEU, Case 293/83, *Françoise Gravier v. City of Liège*, 13 February 1985, paragraph 30)

Vocational training opportunities are closely linked to access to the labour market. Providing persons in need of international protection with access to education, including vocational training and higher education, promotes their self-reliance and integration. It prevents previously acquired skills from becoming obsolete and may help validate their qualifications.

A forthcoming report[278] highlights that validation should be combined with a comprehensive set of integrated services aiming for better social and professional integration and access to the labour market, including vocational orientation and accompanying measures.

The scope of vocational training varies depending on the educational system of the Member State. It generally includes learning systems that provide knowledge and skills required in particular occupations or, more broadly, the labour market. The United Nations Educational, Scientific and Cultural Organization (Unesco) uses the term 'technical and vocational education and training'. It clarifies that vocational training can take place at secondary, post-secondary or tertiary education level. Vocational training can take place either in a school-based environment or in a work-based setting (most typically apprenticeship schemes). It includes a wide range of skill development opportunities.[279] This section covers school-based as well as work-based vocational training. It analyses access to vocational training for asylum applicants and then for international protection status holders, and lists practical obstacles to accessing it that emerged from the research.

7.2.1. Asylum applicants

Under Article 16 of the Reception Conditions Directive, Member States enjoy discretion whether to allow asylum applicants to access vocational training or not. The second part of this provision, however, limits access to certain forms of vocational training – namely those "relating to an employment contract" – only to those asylum applicants who have been granted access to the labour market. Thus, under Article 16 (2) of the Reception Conditions Directive, Member States are not allowed to give access to certain forms of vocational training to those applicants who are not entitled to work. The review of the Reception Conditions Directive plans to remove this restriction.[280]

275 Italy, Decree of the Ministry of the Interior of 10 August 2016, on the requirements to have access to the national funds destined to the reception of asylum seekers, international protection status holders and humanitarian protection status holders as well as guidelines ruling the functioning of the SPRAR system (Decreto *del Ministero dell'Interno 10 agosto 2016)*, Art. 30.
276 Italy, Legislative decree 113/2018, Art. 12.
277 Council of Europe (2019).
278 Cedefop European Community of Learning Providers – report forthcoming (2020).
279 Unesco (2016), paras. 2 and 30.
280 European Commission, Proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), COM/2016/0465 final, Brussels, 13 July 2016, deleted Art. 16.

Table 12: Asylum applicants' earliest access to the labour market

EU Member State	Waiting time (months)	Start of calculation	Source
Austria	3	Admission to regular procedure	Aliens Employment Act (*AuslBG*) Article 4 (1)
France	6	Lodging of application	Ceseda, Article L. 744-11
Germany	3	Start of lawful stay in Germany	Asylum Law, Article 61
Greece	0	Lodging of application	Law 4375/2016, Article 71
Italy	2	Lodging of application	Reception Decree No. 142/2015, Article 22 (1)
Sweden	0	Admission to regular procedure	Act on reception of asylum seekers and others (*Lag [1994:137] om mottagande av asylsökande m.fl.*), 30 March 1994

Note: *Additional conditions may need to be fulfilled under national law. See also Eurofound (2019), p. 11.*
Source: *FRA, 2019*

Pursuant to Article 15 of the Reception Conditions Directive, Member States must ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged. For reasons of labour market policies, Member States may give priority to EU citizens and to legally resident third-country nationals. The Commission's proposal to review the Reception Conditions Directive suggests lowering this restriction to six months.[281] Table 12 illustrates Member States' policies.

Flowing from the limited access to the labour market, four out of the six EU Member States reviewed, namely Austria, France, Germany and Sweden, impose limitations on vocational training for asylum applicants.

In Austria, since September 2018, applicants are in principle no longer allowed to enter apprenticeships.[282] Before that date, they could access vocational training until the age of 25 in specific, often understaffed, occupations – for example in fields such as technology, gastronomy, or industrial production.[283] France does not grant adult asylum applicants a right to access vocational training, but child asylum applicants over 16 years old may apply for a work permit if they have an apprenticeship contract.[284] Thus, in France, leaving childhood at 18 years of age deprives asylum applicants of their rights to continue an apprenticeship. In Germany, asylum applicants may start vocational training three months after the submission of their asylum application if they are not required to reside in a reception facility.[285] Germany does not allow asylum seekers from 'safe countries of origin' to follow vocational training (or to take up employment) for the duration of the asylum procedure, if they applied for asylum after 31 August 2015.[286] In Sweden, the only adult asylum applicants who are entitled to access some kind of vocational training programme are unaccompanied asylum seekers between the ages of 18 and 20. Other asylum applicants are, in principle, not entitled to attend vocational training organised by the Public Employment Service in the context of adult education.[287] However, adult asylum seekers with the necessary knowledge of Swedish are in principle entitled to attend higher vocational education (*yrkeshögskolan*), a post-secondary form of vocational education that is offered in in-demand fields, and does not include having a resident permit among its requirements.[288]

In Greece and Italy, asylum applicants and protection status holders are entitled to enrol and participate in any vocational training programme. However, practical obstacles make it difficult for some applicants to exercise their right to vocational training. In Greece, for example, no asylum applicants on Lesbos were in vocational training, education professionals there pointed out. The legal limbo caused by long delays in Italian asylum procedures often discourages asylum applicants from investing in their own education and training, since they are not sure if they are going to stay in Italy, Italian education, NGO and child welfare experts stressed. Moreover, there are discrepancies between

281 *Ibid.*, Art. 15.
282 Austria, Foreigners Employment Act (*Ausländerbeschäftigungsgesetz*), 20 March 1975, Section 4 (1), first sentence.
283 Austria, Asylkoordination, website: Access to the labour market.
284 France, Labour Code, Art. L 5221-5, provides that "A work permit is however rightfully granted to a foreigner who is authorised to remain in France for the conclusion of a fixed-term professional or apprenticeship contract." Foreign minors present in France are authorised to remain in France, because of their age. They can request work permits.
285 Germany, Asylum Act (*AsylG*), *Federal Law Gazette* I, p. 1798, 2 September 2008, Section 61; Section 32 Abs. 2 Nr. 2 i. V. m. Abs. 4 BeschV.
286 *Ibid.*, Section 61 (2), sent. 4.
287 Sweden, *Lag (2017:584) om ansvar för etableringsinsatser för vissa nyanlända invandrare*, 22 June 2017.
288 See Yrkeshogskolan webpage 'What are the entry requirements?'

the population living in SPRAR reception centres and those hosted in other types of Italian reception facilities. Persons living in SPRAR centres are generally better informed about vocational training opportunities and are provided with specific orientation and support. Those living in CAS have limited access to the information and thus to training or labour opportunities.

In practice, asylum applicants benefited from vocational training more frequently in France and Italy than in other EU Member States, interviews with them show. This, however, mainly concerns applicants hosted in reception facilities that offer more services, including counselling, such as CADAs in France and SPRAR facilities in Italy.

7.2.2. Beneficiaries of international protection

Under Article 26 of the Qualification Directive, Member States must allow beneficiaries of international protection to access vocational training under conditions equivalent to those of nationals. All six EU Member States have implemented this provision, allowing protection status holders access to vocational training on an equal basis with citizens of the Member State.[289] A number of initiatives promote early integration into the labour market.

Promising practice

Offering professional training contracts in France

The *Hébergement, Orientation, Parcours vers l'emploi des réfugiés* (HOPE) programme was set up in 2017 as a pilot programme for 200 beneficiaries, by the National Agency for Adult Vocational Training (*Agence nationale pour la formation professionnelle des adultes* – AFPA), the state and approved operators (*opérateurs de compétence*). It provides international protection beneficiaries and asylum applicants with (work-related) language training and professional training through a work-study scheme (professional training contract). The programme provides accommodation and food throughout the course as well as administrative, social, professional, medical and other support. In 2018, 1,500 trainees followed the programme and almost all had signed a professional training contract.

Sources: AFPA webpages 'L'insertion professionnelle au coeur de l'intégration des réfugiés: le livre blanc' and 'Hope: l'essentiel en chiffres'

Accompanying young adults in Austria

JUST Integration, a foundation set up by Austrian Economic Chambers (*Wirtschaftskammer Österreich* – WKO) and the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund* – ÖGB), supports and advises young adult beneficiaries of international protection. Advisors map the young adults' previous knowledge and interests, develop an education programme for them and support their integration into internships.

Source: JUST Integration webpage

Offering entry qualification measure in Germany

The entry qualification measure (*Einstiegsqualifizierung)**, enables individuals who are no longer subject to general compulsory schooling to pursue a 6- to 12-month internship with an employer with the purpose of transferring into vocational training at the end of the programme. The measure is open to adolescents and young adults more generally; individuals with a protection status have unrestricted access; asylum applicants can participate after three months of stay and if approval is granted by the immigration authority. Participants receive a small remuneration, for which employers can be (partially) refunded by the employment agency or job centre responsible. The programme encourages the participants' attendance at vocational school. Participants may also be granted vocational training support (*Ausbildungsbegleitende Hilfen),*** such as tutoring in German or other subjects.

Source: Bundesagentur für Arbeit (2017)

** Germany, Sozialgesetzbuch III, Section 54a.*

*** Ibid., Section 75.*

Many beneficiaries of international protection interviewed in France, Germany, Italy and, to a lesser extent, Sweden benefited from vocational training, which took place either in a school-based environment or in a work-based setting. In Sweden, 21 out of 25 interviewees had arrived as children and were therefore generally integrated into compulsory or upper secondary school, including in vocational programmes at upper secondary school.

Fewer interviewees benefited from vocational training in Austria and Greece. In Austria, many were completing the 'bridge classes' (i.e. preparatory classes) or had prioritised working over training to secure their financial situation. In Greece, only one was able to pursue vocational training offered by an international organisation.

Several interviewees enjoyed their training and/or believed it would be useful for them. Others were

289 Austria, *Ausländerbeschäftigungsgesetz*, Section 1 (2) (a); France, CESEDA, 22 February 2005, Art. L744-11; Germany, Residence Act (*AufenthG*), 30 July 2004, Section 25 (1), sent. 4; Greece, Law 4375/2016, Art. 70; Italy, Legislative Decree No. 142, 18 August 2015, Art. 22; Sweden, see the Government report Implementation of the modernised Qualification Directive (*Genomförande av det omarbetade skyddsgrunddirektivet*, Ds 2013:72).

sceptical that it would help them in the job market. Some find that there is a lack of jobs in the field they desire to work in, which reduces their motivation, some did not perceive the type of vocational training they received as useful, and others were directed into training that they did not like in the first place. For example, a man from Mali who arrived as a child in Italy said:

"[When I registered with the school they] gave me this appointment, and I told the school director straight away that I didn't like this course, that I didn't want to become a bricklayer, then I came here and I spoke with Martina [the reception facility coordinator] and she explained to me that even if I did this course I wasn't obliged to pursue it as a career and become a bricklayer. And so I went and I also did the construction course … I did the courses at the Umanitaria and […] at the Muraria school… Unfortunately, […] I did these courses but in the end nothing, [opportunities for] working as a baker were blocked, as a pizza maker blocked, construction wasn't my choice, so I didn't even try." (Humanitarian protection status holder from Mali, male, Italy)

The majority of interviewees who were in favour of vocational training emphasised its role as a facilitator for obtaining a job. For example, a refugee from The Gambia interviewed in Milan reported that he was offered the opportunity to attend an information technology course at the end of 2016. His Italian teacher told him about this course. Thanks to the acquired skills, in 2017 he started a paid internship as a fibre optic technician. He was very satisfied with his job and considered it closely connected to the training he had undertaken.

7.2.3. Practical challenges

Even if people are legally entitled to it, multiple practical obstacles limit the potential for integration and self-reliance that vocational training offers. The most frequently mentioned obstacles include issues related to residence permits, financial barriers, limited information, the lack of choice and the physical distance to training facilities.

Lack of awareness among employers

Education, employment and legal professionals in Italy and Sweden identified temporary residence permits[290] as a disincentive. In Italy, they said that employers may not know whether or not the holder of a temporary residence permit is allowed to work and may prefer not to hire them or give them a vocational training opportunity.

"[Residence permits for asylum seekers or protection holders] exist, it's true, but it's not the majority, so sometimes it happens that you come across them for the first time, and you have to be able to recognise them; sometimes they [employers] ask you: 'Is this OK to work? It's not written here! It doesn't say residence permit for work reasons, he can't work!' We can't assume that everyone is aware of the rights connected to the different types of residence permits. Because actually everybody knows that there are some residence permits which don't allow you to work and hence they are reluctant to employ these people." (Employment service expert, Milan)

Lack of or limited financial support during vocational training

Financial difficulties emerged in different contexts. For example, in France, limited finances constitute a serious barrier to access vocational training for asylum applicants under the age of 25. The number of paid vocational training positions is very limited. As Chapter 4 describes, the active solidarity income benefit (RSA) is subject to a minimum age of 25 years,[291] which prevents younger adults from staying in education.

Although housing experts in the Lille focus group considered paid training a possible springboard to get housing, they considered it only a short-term solution and usually insufficient to cover rent and living expenses, as the average monthly remuneration for vocational training in the region amounts to € 399. Employment is thus often preferred to training.

Another illustration comes from Germany, where at the time of the research asylum applicants were in certain circumstances excluded from social assistance if they followed vocational training. Individuals whose asylum application is still pending receive benefits in accordance with the Asylum Seekers Benefits Act for the first 15 months of residence in Germany.[292] After that they receive subsistence benefits under the Social Code Book (SGB) XII,[293] which are normally not paid to those who are in principle eligible for training assistance (under the *Bundesausbildungsförderungsgesetz* – BAföG) or the vocational training grant (*Berufsausbildungsbeihilfe* – BAB).[294] However, until recently, the BAföG was not

290 Italy, Legislative Decree No. 251, 19 November 2007, Art. 23; Sweden, Act on temporary restrictions of the possibility to be granted residence permits in Sweden (*Lag [2016:752] om tillfällig begränsning av möjlighet till uppehållstillstånd*), 22 June 2016.

291 France, CASF, Art. L. 262-4.

292 Germany, Asylum Seekers Benefits Act (*AsylbLG*), 30 June 1993, Section 1 (beneficiaries).

293 Germany, *AsylbLG*, Section 2 (1); for Social Code Book (SGB) XII, see Social Code Book XII – Social welfare support (*Sozialgesetzbuch Zwölftes Buch – Sozialhilfe*), Art. 1 of the Law of 27 December 2003, *Federal Law Gazette* I, p. 3022, as last amended by Art. 2 of the Law of 17 August 2017, *Federal Law Gazette* I, p. 3214.

294 Germany, SGB XII, Section 22 (1), sent. 1; for BAB see Social Code Book III – Employment Support (*Sozialgesetzbuch Drittes Buch – Arbeitsförderung*), Art. 1 of the Law of 24 March 1997, *Federal Law Gazette* I, p. 594, as last amended by Art. 2 of the Law of 17 July 2017, *Federal Law Gazette* I, p. 2581 (SGB III), Sections 56.

accessible to asylum applicants.[295] The BAB could be granted to them only if a long-term legal stay was to be expected, they had been legally residing in Germany for at least 15 months, and had sufficient knowledge of the German language to provide a successful transition into vocational training.[296] Two recently introduced pieces of legislation addressed this gap.[297]

Lack of information on vocational training opportunities

According to recent evidence,[298] a consistent challenge for provision of vocational training opportunities at upper secondary level across OECD countries is to ensure easy access to comprehensive information, enabling informed choices. This is an even bigger challenge for asylum seekers and international protection status holders, who are often unfamiliar with the host country education systems.

Whether or not interviewees had information about their options for vocational training varies between Member States. Asylum applicants and status holders lack sufficient information about vocational training options, especially in the geographical locations researched in France, Germany, Greece and Italy, according to interviews with professionals and persons in need of international protection. In Germany, this lack of knowledge is linked to insufficient counselling, say education, employment and guardianship professionals in Lower Saxony, Berlin and Bremen. Several interviewees in Greece expressed a wish to follow a vocational training programme but had not received sufficient information about it. In Italy, persons living in SPRAR centres were generally more informed about vocational training opportunities those hosted in other types of reception facilities.

Lack of choice

In France, Germany and Italy, although many interviewees were able to access vocational training, few felt they were able to follow a training course that they wanted. They said that the lack of available places in vocational training programmes, lack of choice and lack of information about training options constituted major challenges.

In Austria, although young people were able to express their preferences, many could not access their preferred education or vocational training. Unaccompanied children in France receive little choice in vocational orientation, according to education professionals from Marseilles and Paris: the ASE encourages prioritising short vocational courses such as the CAP (*Certificat d'aptitude professionnelle* – certificate of professional aptitude).

"Which means that there are a lot of kids who have very good levels of schooling, high school, [...] who could go on to further studies, they will rather direct them at the request of social services towards a vocational qualification like the CAP, BEP [Brevet d'études professionnel – vocational studies certificate]." (School coordinator, France)

In Lesbos, Greece, according to the educational experts interviewed, vocational training is not in practice an option for adults. In Lesbos, asylum applicants and protection status holders mainly attend two schools, the vocational senior high or secondary school and the evening secondary school. However, owing to space and capacity constraints, education experts in Lesbos contend that the latter is probably the only option for those who are over 18 years old and wish to continue their studies, unless an organisation targets this group with educational programmes.

7.3. Tertiary education

7.3.1. Access to tertiary education

The Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights set forth the obligation of States to make higher education equally accessible to all, on the basis of capacity. According to EU law, beneficiaries of international protection are entitled to equal treatment with nationals in the recognition of foreign diplomas, certificates and other evidence of formal qualifications.[299] This right not only helps beneficiaries of international protection to access the labour market, but may also enable them to access higher vocational or university education.

The six EU Member States in this study grant asylum applicants and beneficiaries of international protection different rights to access tertiary education.[300] Universities in all six countries request university entrance qualifications and proof of relevant language skills. In Germany,[301] asylum applicants as well as beneficiaries of international protection are in principle entitled to access tertiary education. In 2015, a change in legislation removed the possibility for the German

295 See BAföG webpage '*BAföG auch ohne deutschen Pass*'.
296 Germany, SGB III, Section 39a and 52.
297 Germany, Asylum Applicants Support Law (*AsylbLG*), entered into force on 1 September 2019; Germany, Foreigners Employment Support Law (*Ausländerbeschäftigungsförderungsgesetz*), entered into force on 1 August 2019.
298 OECD (forthcoming).
299 Qualification Directive, Art. 28.
300 See European Commission *et al.* (2019).
301 Germany, Asylum Act (*AsylG*), Section 55 (*Aufenthaltsgestattung*).

Länder to limit access to tertiary education for asylum applicants.[302] In Italy, access seems to be limited to beneficiaries of international protection or those who have resided at least one year in Italy and have obtained secondary school diplomas in Italy.[303] In France, Greece and Sweden, only those holding a residence permit are entitled to access tertiary education. In practice, this limits asylum applicants' right to access tertiary education in these countries.

Among the countries in this study, Germany stands out as having the most comprehensive policy[304] to integrate asylum applicants and beneficiaries of international protection into the higher education system.[305]

7.3.2. Practical challenges

Some practical barriers also emerged in the six EU Member States. The most common barriers to accessing tertiary education are the difficulty in having previous education recognised, which was mentioned in all six EU Member States, the lack of financial resources and the language barrier, often related to the difficulty of meeting high language entry requirements. Moreover, as Section 6.3.7 reports, people in need of international protection face obstacles in terms of obtaining the upper secondary education necessary for accessing tertiary education, both in the countries of origin and upon arrival in the Member State.

Recognition of qualifications

When it comes to having previous education recognised, experts in different Austrian and German locations related that the process is slow, expensive and complicated. Experts from both France and Germany highlighted that the lack of physical copies of diplomas is an issue in determining whether or not a person meets the qualifications for entrance to higher education. German experts note that higher education institutions decide upon recognition of qualifications, and for particular courses of study the discretionary power of these institutions may constitute an additional burden for refugee students who wish to enrol. According to experts interviewed in Italy and Sweden, for students who had already started higher education abroad, it is easier to start again from the beginning than to continue based on qualifications obtained in the country of origin.

Lastly, as experience in Germany demonstrates, geographical and residence restrictions constitute a barrier to tertiary education. Pursuant to Section 56 of the Asylum Act (*AsylG*), individuals are required to remain within the district of the assigned reception centre pending the asylum decision.[306] As of July 2017, federal states have been able to oblige individuals to remain resident within the reception centre responsible for them for up to 24 months.[307] After that, asylum applicants who are no longer required to live in a reception centre and whose subsistence is not secured must take up residence at the place referred to in the allocation decision.[308] To access subsidies, residence restrictions apply to protection status holders for three years.[309] Accordingly, individuals are obliged to take up habitual residence in the federal state to which they have been allocated for the purposes of their asylum procedure or in the context of their admission process, unless the individual or a family member has sufficient income. This hampers their access to education. Beneficiaries of international protection are to be exempted from residence restrictions if they or their spouse, recognised partner or children have taken up a study or vocational training programme.[310] The provision has, however, been applied disparately by local authorities and federal states.[311]

Lack of financial resources and social assistance

International protection beneficiaries often feel pressured to work instead of continuing their education. This pressure arises from two distinct sets of circumstances. First, limited financial resources coupled with lack or insufficiency of social assistance compel them to get a job to maintain themselves. Second, residence requirements may include provisions on employment.

Limited financial resources featured strongly in discussions in Italy, where the young people interviewed often mentioned the necessity to start working in order to earn money and the impossibility of reconciling work and study as a deterrent factor, discouraging them from trying to attain higher levels of education. Lack of social assistance plays a crucial role in this case. An additional economic burden is the fact that when unaccompanied children reach the age of 18 years they have to leave care facilities. Similarly, in Austria, adult protection

302 Germany, Asylum Procedures Act (*Asylverfahrensgesetz*) - old version, of 16 June 1982 (*Federal Law Gazette* I, p. 946), Section 60 (1).
303 See Ministry of the Interior webpage on foreigners in education.
304 Germany, Standing Conference of the Ministers of Education and Cultural Affairs (2015).
305 European Commission (2019c), p. 13.
306 Germany, Asylum Act (*AsylG*), *Federal Law Gazette* I, p. 1798, 2 September 2008, Section 56.
307 *Ibid.*, Section 47 (1b).
308 *Ibid.*, Section 60.
309 Germany, Residence Act (*AufenthG*), 30 July 2004, Section 12a (1).
310 Germany, Integration Act (*Integrationsgesetz*), 31 July 2016, Section 5 (3).
311 Germany, information provided by the Federal Government on 21 August 2019.

status holders report that they would have preferred to study, but could not afford it. The experts interviewed confirm that this is a widespread problem, because access to social assistance is related to availability for the labour market.[312] An education professional notes that students, therefore, prioritise work over education.

"The university offers very nice things, like integration programmes, sample courses, and so on. Only our [asylum holders with secondary school qualification] can't make use of any of that, because the job centre says: 'you need to be available for the labour market and you only get primary care if you are available for the job market.' That's why you can't be students, because as soon as you are students, you are not available for the labour market any more. And my evaluation is … that they are employed far beneath their actual qualifications, because they don't get the chance – or only to a very limited extent – to find work in an area in which they are trained." (School director, Austria)

In France, the limited access to social benefits for persons under 25 years of age causes a tendency for young adults to seek employment rather than higher education, according to experts (see also Chapter 4).

"I wanted to continue studying, but now I cannot. Because for a start, if I study, who will feed me?" (Refugee from Mali, female, France)

Conclusions and FRA opinions

As part of their duty under the Qualification Directive to facilitate the integration of international protection beneficiaries into society, Member States should also provide language training. Four of the six EU Member States reviewed have introduced mandatory integration programmes for people granted asylum, which also include language acquisition. In recent years, Austria and Germany have also extended language programmes to asylum applicants with good prospects of acquiring a protection status. An early start to language acquisition facilitates inclusion in society.

Providing persons in need of international protection with access to the labour market, including vocational training, prevents their skills from becoming obsolete. Furthermore, vocational training can help in validating previously acquired skills. This helps them to achieve economic self-reliance, thus promoting integration and helping to fill the shortage of skilled workers in the EU. Four out of the six EU Member States either do not allow asylum applicants to access vocational training or restrict such access. For many of those who do have access, either as applicants or as status holders, practical obstacles, such as lack of information and financial resources, make such access illusory in practice.

Although many newly arrived international protection beneficiaries would like to enrol in higher education, in practice the pressure to earn money and become economically self-reliant makes this difficult.

FRA opinion 7

As FRA pointed out in 2015 regarding migrants more generally, to improve their participation in the labour market and their overall social integration, EU Member States should provide general and specific job-related language courses free of charge also to asylum applicants. If limitations are implemented, these should only concern those applicants who are very unlikely to stay.

EU Member States should consider granting asylum applicants access to vocational training as early as possible. Access restrictions, if implemented, should only concern those applicants who are very unlikely to stay.

EU Member States should take steps to help asylum applicants and status holders overcome practical obstacles to accessing vocational training. This would mean providing effective counselling, offering opportunities to validate prior skills and creating other incentives that promote broad use of vocational training. In this regard, EU Member States should make full use of EU funds.

In line with Article 28 (2) of the Qualification Directive, which requires Member States to facilitate the appropriate assessment, validation and accreditation of the prior learning of beneficiaries of international protection who cannot provide documentary evidence of their qualifications, EU Member States should increase efforts to improve the efficiency of their procedures to recognise previous educational attainment, including in the absence of documentary evidence. Such procedures should be simple and free of charge.

In order to facilitate access to higher education institutions, EU Member States should consider boosting measures to facilitate linguistic and financial support.

312 Austria, Social Assistance Basic Law (*Sozialhilfe-Grundsatzgesetz*), Section 3 (4).

8 Vulnerability to crime

Victims' Rights Directive, Article 18, Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying.

The vulnerability of migrants and refugees to becoming victims of crime is receiving increased attention at the EU and global levels. International political commitments incorporate measures to combat crimes including racism, xenophobia and related forms of intolerance into crime prevention strategies.[313] The United Nations General Assembly strongly condemned the continuing incidence of criminal acts against migrants, migrant workers and their families in all regions of the world, including criminal acts of violence motivated by racism, racial discrimination, xenophobia and related intolerance.[314] At the same time, a dominant discourse in the EU has been to characterise migrants and refugees as potential criminals, which has included linking them with the threat of terrorism.

EU law obliges Member States to take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment in reception centres for asylum applicants.[315] More generally, the Victims' Rights Directive establishes minimum standards on the rights of, support for and protection of all victims of crimes irrespective of their residence status, i.e. including asylum applicants and international protection beneficiaries.

This chapter looks at factors that may play a role in whether or not young asylum applicants or beneficiaries of international protection become involved in crime, either as victims or as perpetrators. It builds on the findings of previous chapters. It is based on interviews with some 114 professionals, law enforcement experts (representing law enforcement authorities at the national, regional or local level) and other professionals, such as social workers, teachers or guardians, who had experience of the issue. In addition, five focus group discussions in Vienna, Lower Saxony, Milan, Västra Götaland and Athens also discussed this topic. Some of the professionals interviewed considered themselves insufficiently familiar with issues related to vulnerability to crime, so their views are not included. Where this chapter refers to a specific proportion of experts who, for example, expressed their view on the role of a certain type of crime or a certain risk factor, it means the proportion of those who had knowledge of the specific question. The experiences of asylum applicants and international protection beneficiaries complement what experts said.

A number of professionals interviewed, including law enforcement experts, highlight the risk of drawing generalised conclusions about asylum applicants' and refugees' involvement in crime, either as victims or as perpetrators. They emphasise that both victimisation and becoming a perpetrator are based on a combination of general factors and the individual situation of the person. A law enforcement expert in France described well the need for caution in drawing conclusions:

313 See UN Economic and Social Council (2012), para. 20.
314 United Nations General Assembly (2013).
315 Reception Conditions Directive, Art. 18.

"One should not make not make hasty conclusions. […] It's not because one is poor that one will commit a crime … A lot of people find themselves in precarious situations, with no access to housing, etc., and will not commit crime. But the contrary also exists, with no jobs and no access to housing, one can speculate that such a person will more easily steal than someone that has a job and a place to live. It seems to be coherent, logic. But nothing is a given, one should not make any type of determinism that this would push you into committing infractions." (Law enforcement expert, France)

8.1. Vulnerability to victimisation

This first section deals with crimes committed against asylum applicants and international protection beneficiaries. It describes the phenomenon of underreporting victimisation, lists the most typical crimes this group experience and analyses risk factors. It also flags the perception of discriminatory police stops.

8.1.1. Underreporting

FRA's research in the area of criminal victimisation shows a significant level of underreporting to the police. This holds for victims of violence including, for example, hate crime, as illustrated by the Agency's research on violence against women[316] or antisemitism.[317] The Second European Union Minorities and Discrimination Survey (EU-MIDIS II), which collected the experiences of 25,515 immigrants in all EU Member States, showed that 90 % of victims had not reported to the police or other competent bodies their experience of harassment motivated by hatred, and 72 % of victims had not reported violence motivated by hatred. The most common reason given for not reporting was the conviction that nothing would happen or change if they did report it.[318]

Experts in different fields interviewed in all six EU Member States confirmed that asylum applicants and international protection beneficiaries seldom report crime. The interviewees pointed to specific issues that in their view affect the willingness of victims to report crime. These include lacking information about the criminal justice system (e.g. what actually constitutes a crime under the national legal system and where to report it) and language barriers, but also insecurity regarding their own residence status and lack of trust in the police. Even if they are staying in the territory legally, many may believe that reporting to the authorities could have a negative impact on them. According to some experts, unwillingness to report may be linked to past negative experience with the police in other countries:

"Actually, it is always the same, foreigners basically have, no matter where they are from, always bad experiences with the police. […] Foreigner themselves coming to us […] is very rare." (Law enforcement expert, Germany)

Reporting to the authorities may be particularly difficult for some groups of victims, such as women and girls who are victims of domestic violence. In such cases, the combination of uncertainty about future legal stay and dependence on the perpetrator may discourage reporting altogether, and lead to further victimisation.

Underreporting affects the reliability of statistics on the actual scope of victimisation:

"it's hard to have someone coming to one of our teams to publicly report a crime, whether it's theft or violence; I don't have enough facts and statistics to answer [because] there is a lack of trust from these people towards the institution." (Law enforcement expert, Italy)

As a result of underreporting of victimisation, asylum applicants and international protection beneficiaries may be more frequently represented in the statistics as perpetrators than as victims, giving a distorted picture of their involvement in crime, as a law enforcement expert in France indicated:

"We are more able to speak about this group when it is an offender than when it is victim." (Law enforcement expert, France)

8.1.2. Victims: most common crimes

The experts interviewed were asked to comment on the degrees to which asylum applicants and international protection beneficiaries were, to their knowledge, affected by different types of crime: theft, fraud (particularly fraudulent renting of accommodation), labour exploitation, gang violence, trafficking in human beings, violent crime, sexual and gender-based violence, domestic violence and hate crime. They also had the opportunity to identify other types of crime that they considered particularly relevant. Furthermore, they were asked to indicate which types of crime they believe specifically affect women, if any. In general, experts' responses show that all types of crime are relevant, although gang violence emerges less frequently. Asylum applicants and international protection beneficiaries (except children) were also

316 FRA (2014).
317 FRA (2018c).
318 FRA (2017c), pp. 66-67. Respondents who did not report the most recent incident of hate-motivated violence encountered in the five years before the survey most often indicated that they were not convinced that anything would happen or change if they reported it (41 %). Other common reasons for not reporting included dealing with the problem oneself or with the help of family and friends (21 %) and the perception that the incident was minor and therefore not worth reporting (16 %). Furthermore, 11 % mentioned not trusting the police or being afraid of the police.

asked to comment on their experiences of victimisation, either directly or indirectly (such as having witnessed or heard about such cases), after they arrived in the EU.

The views of experts and the experiences shared by asylum applicants and international protection beneficiaries converge in some aspects. They both agree that theft and hate crime are common. On other crimes, their views differ. Applicants and status holders more frequently referred to incidents of racism and hate crime, of varying severity. Experts more frequently mentioned the risk of exploitation at work and, particularly for women and girls, becoming a victim of sexual and gender-based violence, including domestic violence, and trafficking in human beings. This divergence can stem from a number of factors. Experts may focus on what they consider to be the most serious forms of crime, whereas asylum applicants and international protection beneficiaries may highlight the more common experiences that have an impact on their daily lives. There may also be a certain degree of unwillingness among asylum applicants and international protection beneficiaries to disclose their most sensitive or traumatic experiences. In addition, for example, some women who are victims of domestic violence might not in fact consider it a crime and, therefore, not report it, some law enforcement experts note.

The following types of crime are listed according to how often experts interviewed consider that they affect asylum applicants and/or international protection beneficiaries.

Labour exploitation

Two thirds of experts interviewed identified labour exploitation as one of the main types of crime against asylum applicants and international protection beneficiaries. In Austria, Greece and Italy, they mentioned it more often than any other type of crime (equal with violence, in Austria). They typically referred to exploitation in the construction, agriculture and hospitality sectors.

Violent crime

Six out of 10 experts mentioned violent crime, such as assault, as relevant, making it the most frequently mentioned type of crime in Austria (together with labour exploitation) and Sweden. Although they usually referred to men as the typical victims, in Germany and Italy experts consider this risk to be more or less equally high for men and women. Some law enforcement experts in Austria, Germany and Sweden highlight that these crimes are mostly perpetrated by other migrants or refugees, possibly from a different background (see also Section 8.2), sometimes fuelled by differences in ethnicity or religion.

Sexual and gender-based violence, including domestic violence

The large majority of experts (and all those who responded to this question in France, Germany and Greece) noted that sexual and gender-based violence (including sexual abuse and rape) is the most common crime that disproportionately affects women. Most law enforcement experts interviewed in all Member States confirmed this. In France, some experts specifically highlighted that this type of crime affects not only women but also men and unaccompanied children, because of the precarious situation in which some of them find themselves. Nearly all experts interviewed in Austria, Germany and Greece consider domestic violence specifically to be a type of crime affecting female asylum applicants as well as international protection beneficiaries, although it is rarely reported.

Trafficking in human beings

About a third of the experts interviewed considered trafficking in human beings, primarily in connection with sexual exploitation and forced prostitution, a particular risk. When asked to identify types of crime affecting women specifically, the majority of the experts across professional groups, particularly in Austria, France and Greece, raised it. In Italy, it is the single most frequently mentioned type of crime affecting women as victims. Professionals in France and Italy made special reference to trafficking networks exploiting women from sub-Saharan Africa who have been recruited either already in the country of origin or upon arrival, for example in first reception centres.

Theft of property

Overall, half of the experts – and the majority of expert respondents in France, Germany, Greece and Sweden – listed theft of personal effects. Together with cash, they referred most often to the theft of mobile phones. In France, theft is the single most frequent type of crime that experts mentioned, some of them stating that it especially affects people living on the street and in squats. It is also the most commonly reported crime that asylum applicants and international protection beneficiaries interviewed in France and Greece mentioned. As an illustration, an Iranian man said his phone had been stolen five times since his arrival in Greece.

Fraud

Almost half of the interviewed experts referred to the risk of becoming a victim of fraud, particularly of fraudulent renting of housing. This may include eliciting money under a false promise of providing accommodation, as well as a range of other practices

such as exploitative rental agreements and breaches of rental law. An expert working with unaccompanied children in a large city in Austria noted:

"Finding an apartment in the city without an employment contract is almost impossible. And then it often ends in a way that they are somehow illegally – without a rental contract – in rooms where they pay several hundred euros for a mattress in a mouldy room, where they share a room with other refugees, which is obviously not legal – but there is quite a black market in the area of housing." (NGO expert, Austria)

Hate crime

Almost half of the experts interviewed also considered hate crime a particular risk. This included the majority of experts in Austria, Germany and Greece. Asylum applicants and international protection beneficiaries interviewed in Austria, Germany and Italy report hate crime as the most common experience of victimisation. They mostly refer to verbal attacks and insults on the street, although a law enforcement expert in Germany also mentions comments made on social networks, some of which have been prosecuted.[319] Law enforcement experts in Greece and Sweden emphasise that extreme right-wing groups are implicated in hate crime attacks against migrants, including attacks on accommodation centres or right-wing demonstrations, some of them leading to prosecution for incitement to racial hatred.[320] FRA's regular reporting on the migration situation also describes the involvement of right-wing groups in attacks on migrants in Austria and Germany.[321] Attacks often focus on persons with obvious signs of religious affiliation. For example, all four interviewees who identified themselves as Muslims in Austria reported that they or members of their families have been insulted by members of the local community. Exposure to hate crime may be higher for Muslim women who wear a headscarf, some law enforcement experts in Austria and education and NGO experts in Germany note.

8.1.3. Risk factors

Experts interviewed were asked to identify the main factors that, in their view, make asylum applicants and international protection beneficiaries more vulnerable to becoming victims of crime. They were offered the following list of factors and asked if they agreed that they were relevant: uncertainty about the length of stay; insecure/unsafe housing conditions; inability to attend school or get a job; absence or presence of family members; lack of contact with and integration in everyday life of the host society; and interacting with groups of offenders/potential offenders. In addition, they were asked to identify any other factors that they considered particularly relevant.

Experts noted a combination of external factors as well as factors related to the person, such as age, gender or the individual's mental health state. They emphasised certain gender-specific issues.

319 See for example Germany, District Court Passau (*Amtsgericht Passau*), Decision No. 4 Ds 32 Js 12766/14 of 28 July 2015.

320 See also Swedish Television (*Sveriges Television*) webpage, '17 persons accused of incitement of racial hatred at Nazi demonstration' (*17 personer misstänks för hets mot folkgrupp efter nazistdemonstration*), 2 March 2018.

321 FRA's regular overviews of migration-related fundamental rights concerns are available online. A thematic issue dedicated to hate crime was issued in November 2016.

Role of gender in victimisation

Experts across all EU Member States indicated that vulnerability to certain crimes differs, to some extent, for women and men. Several important issues seem to emerge in this regard:

- *In criminal statistics, women generally appear as victims less frequently than men do, but this is not necessarily because they are less vulnerable, particularly for certain crimes such as domestic violence and sexual assault. Rather, it is due to a high level of underreporting.*

Women feature less frequently in criminal statistics than men, particularly as perpetrators but also as victims. This is a general trend that also relates to nationals. For example, according to official statistics in Germany covering the whole population, women represented 40 % of victims and 25 % of perpetrators in 2018.[322] Among asylum applicants and international protection beneficiaries, this difference is amplified by the fact that fewer of them are women than men. According to law enforcement experts interviewed in Italy, women represented about one quarter of the asylum applicants and refugees who were victims of crimes reported to the police in 2017. Women frequently arrive with other family members, which reduces their vulnerability to stranger-based crimes, law enforcement experts in most EU Member States explained. However, some crimes that typically affect women and girls, such as domestic violence, are more likely to take place in private and hence are more difficult for authorities to detect.

- *Additional factors may exacerbate women's and girls' vulnerability to victimisation.*

Three specific challenges emerged. First, conditions in reception facilities may make women and girls more vulnerable to victimisation (see Section 3.1). In Greece, for example, experts refer to the high risk of sexual and gender-based violence, including domestic violence, in the hotspots, particularly for those not hosted in safe areas of the camp. Second, dependence on a husband and limited knowledge of the language of the host country may be factors for women from certain countries. Third, previous victimisation is an important vulnerability factor. Women who had been victims of trafficking in human beings are burdened by the traumatic experience but also by a heavy debt that financed their journey to Europe, experts in Italy highlighted. As a result, they might be reluctant or unable to actively seek a way out of their situation, partly for fear of retaliation. Some 90 % out of 300 female asylum applicants who were offered the opportunity refused to be included in anti-trafficking programmes, according to one interviewee.

- *Individual risk factors play an important role in vulnerability to victimisation.*

Although women may be considered more vulnerable to certain types of crime, personal circumstances and factors besides gender affect vulnerability. Experts in France and Greece, for example, refer to the risk of sexual violence and sexual exploitation also affecting boys and young men. Factors such as the person's material situation, level of education, language skills or mental health problems can make a specific individual vulnerable to victimisation regardless of their gender.

Figure 25 illustrates the risk factors for becoming a victim of crime that emerged from the research. These include individual factors as well as external factors, which this report describes in more detail.

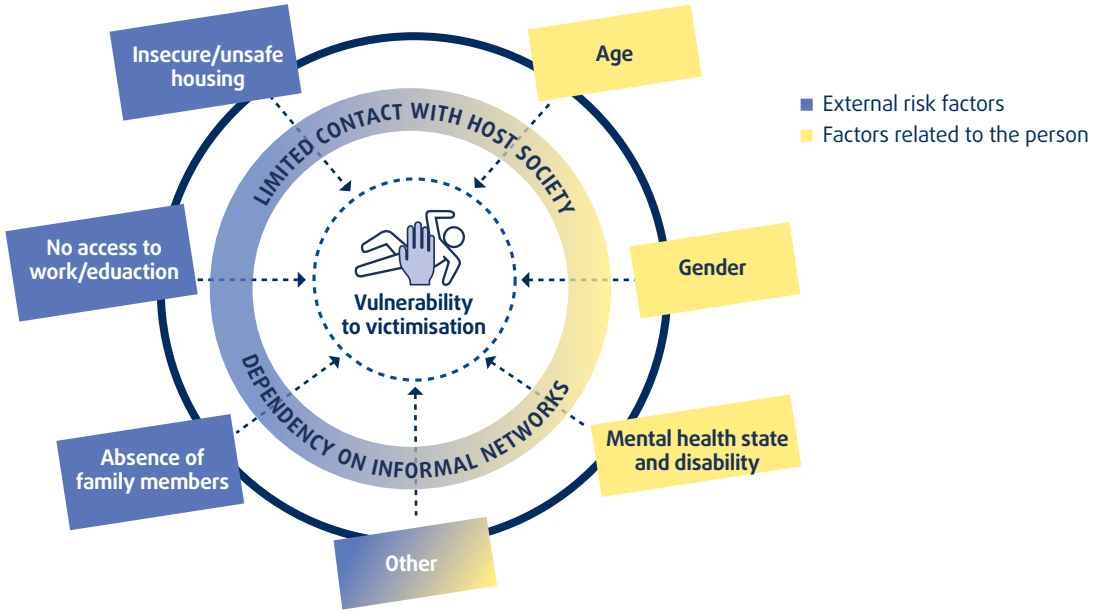
As regards external factors, the majority of interviewed experts identified three key risk factors increasing vulnerability to criminal victimisation:

- unsafe housing
- absence of family members
- lack of access to employment and education.

Experts see the interaction with groups of potential offenders and the lack of contact with the host society as a consequence of these three main factors. Uncertainty about the length of stay and the overall precariousness of the situation emerge as more relevant to the risk of becoming a perpetrator than the risk of becoming a victim.

322 Germany, Ministry of the Interior (2019), pp. 33 and 34.

Figure 25: Factors increasing the risk of becoming a victim of crime



Source: *FRA, 2019*

Unsafe housing

Insecure or unsafe housing emerges as a major risk factor for becoming a victim of crime. Nearly all experts, across professional backgrounds, consider it to contribute to the risk of victimisation. A large number of asylum applicants interviewed in the six EU Member States, including the majority of those interviewed in Germany, Greece and Sweden, felt unsafe at first reception.

"They are packed in together with all kinds of cultures and they have very limited space to themselves. From what I can tell, this is a major reason for them becoming victims of crime sooner or later. You become an easy prey, especially when you are as young as 16. This is an important reason for moving them to foster families or move them away from the large asylum accommodation centres. The younger you are and the longer you stay, the greater the risk is of becoming both [a perpetrator and] a victim of crime." (Law enforcement expert, Sweden)

The list of factors that emerged from the research illustrates the diversity of challenges and the complexity of the issue.[323]

- **Homelessness, overcrowding, limited space and lack of privacy** have been reported by asylum applicants in all six EU Member States as reasons for not feeling safe, particularly in large-scale facilities. They frequently mentioned sharing large rooms with no means of escape in the event of a conflict, and not being able to lock the rooms and bathrooms. Lack of lighting in camps and reception facilities can increase the risk of exposure to violence.
- **Lack of separation of men, women and children** exposes already vulnerable individuals to significant risks, even if it occurs only as a temporary measure. Lack of safety in the hotspots in Greece,[324] accommodation of children together with adults in hotels during the age assessment procedure in France, and initial placement of children in adult or gender-mixed facilities in Germany are some examples.
- **Exposure to criminal activities in the facilities** has been reported by experts with various professional backgrounds as well as asylum applicants. These activities include violence, sexual abuse, distribution and consumption of drugs, as well as frequent thefts. Some experts in Sweden refer to criminal gangs trying to recruit unaccompanied children while they reside in the accommodation centres that the municipalities provide.
- **Insufficient attention to security issues** affects the actual degree of security in facilities but also undermines the subjective feeling of safety. This may include lack of security staff at night or not intervening in incidents. Gaps in preventative programmes could lead to recruitment directly in reception facilities, experts on trafficking in human beings in Italy noted.
- **Isolated locations of the facilities** may also negatively affect safety at the facility, preventing the police or social services from intervening in a timely

323 See also EASO (2016b).

324 FRA (2019a), pp. 50–54. FRA publishes regular overviews of migration-related fundamental rights concerns.

manner, if needed. A law enforcement expert in Norrbotten, Sweden, described having had to drive 200–300 kilometres to an asylum accommodation centre at a remote location in response to a conflict.

- **Transfer to adult facilities upon reaching adulthood** may expose former unaccompanied children to new risks to their safety and security (see Section 3.3). As an illustration, in Sweden, experts reported that criminal groups consider them easy targets to recruit and exploit.
- **Resorting to private housing**, for example upon being granted protection status, may also lead to new vulnerability risks. Experts highlight in particular the risk of falling prey to exploitative rental agreements.
- **Living on the streets** entails a particularly high risk of victimisation. In a large city in Greece, a young woman from the Democratic Republic of the Congo reported a sexually motivated assault when she was sleeping rough in a park:

"In the meantime one night, because I was sleeping in the park, I was attacked and they wanted to rape me. The very next morning I went to the psychologist who had told me to go to her if anything happens to me. She told me that we will find a place and that I should not go back to the park." (Refugee from Democratic Republic of the Congo, female, Greece)

Promising practice

Establishing refugee contact officers in Austria and Sweden

In Upper Austria, the police initiated the Competence and Situation Centre Migration (*Kompetenz- und Lagezentrum Migration*) in cooperation with NGOs that operated reception centres, and trained 180 police officers to be 'refugee contact officers'. They regularly visit reception centres, educate the staff on safety awareness and provide asylum seekers with information about the criminal justice system and criminal law and victim protection.* Similar initiatives have been implemented in Viennaand in Västra Götaland in Sweden.

Sources: Interviews with law enforcement experts in Austria and Sweden

Absence of family members

Absence of family members appears to be among the main factors exposing young asylum applicants and international protection beneficiaries to criminal victimisation. A large majority of the professionals interviewed in all six Member States shared this view. In France, lawyers, education experts and law enforcement experts mentioned the combination of isolation from relatives, young age and psychological vulnerability, particularly when not compensated for by adequate social and educational support. The strongest resilience factor for young persons is strong family bonds, a law enforcement expert in Lower Saxony, Germany, notes.

With respect to asylum applicants arriving as unaccompanied children, professionals in different countries described quite different situations. Experts in France, Greece and Sweden consider their situation particularly precarious. A lawyer working with migrants arriving at the hotspots in Greece highlights the degree of traumatisation and special vulnerability of children who had lost their relatives during the journey to Europe, often at sea. A government representative from a large city in mainland Greece underlines the lack of experience due to age, and the resulting vulnerability to victimisation:

"Children who become adults and grow up alone and have no experience of the world are very susceptible to becoming victims of sexual exploitation, of violence, of fraud, etc. […] Such incidents have been recorded, described […] Yes, [the main risk factor] is inexperience and lack of knowledge of the world." (Government representative working in the integration field, Greece)

At the same time, some Member States offer more support to unaccompanied children than to families, leading some experts to the opinion that the absence of a family could paradoxically protect them from victimisation. For example, in Germany, whereas unaccompanied children will be housed in supervised living facilities and be in close contact with youth welfare authorities, accompanied children will be housed with their parents, who might not receive the support they need in caring for their children. Therefore, several experts emphasise the need to ensure that sufficient support is available to children regardless of whether they are accompanied or not.

"A 15-year-old, if he was lucky, he was unaccompanied. He was accommodated in a nice single bedroom […] There are six full-time staff positions for 10 children […] a reference person and cooked food. However, if he was unlucky, he arrived together with his dad and maybe ended up in a shared housing facility. […] A very different key applies there: in some cases we had only two full-time social workers for 600 residents in one shared facility." (Government representative working in the integration field, Germany)

Finally, in individual cases, the presence of a family can cause rather than prevent victimisation, some experts note, such as in cases of domestic violence or trafficking in human beings when the perpetrator is a member of the family. Apart from these exceptional cases, the presence of a family remains an important factor in reducing the risk of victimisation.

No employment or education

Lack of access to employment and education opportunities also emerged as a significant factor increasing the risk of becoming a victim of crime. Such lack of opportunities may result from various factors, such as restrictions on accessing the labour market based on the person's legal status, discriminatory employers, insufficient qualifications and more general lack of education and vocational training opportunities (see Chapters 6 and 7). The need of financial resources can be an important factor increasing exposure to exploitation.

Illegal work might be attractive to asylum applicants or persons who have not yet been able to lodge an asylum application, if they are unable to work legally and uncertain about the duration and outcome of the asylum procedure. Experts across different professional categories shared this view, including law enforcement, legal, NGO, housing, education and local government experts, in selected geographical locations researched in Austria, France and Italy. Testimonies of the persons concerned indicate that in such cases, labour exploitation is a common experience:

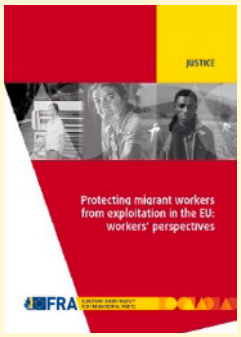
"[W]hen you work illegally, well, they take advantage [of you]. Sometimes you are not paid, sometimes you are poorly paid, sometimes you are ill-treated ..." (Refugee from Syria, female, France)

Some asylum applicants may feel particularly compelled to find a source of income quickly. A local government expert in Upper Austria refers to the pressure to earn money for the family or to pay smugglers, which leads even those who would have the opportunity to enrol in schools or vocational training to pursue illegal employment or other means of earning money instead. Experts in Italy note the incompatibility between the long waiting time to have an asylum application assessed or a residence permit issued and the obligation to financially support the family in the country of origin. At the same time, some employers are aware of the uncertain administrative status of asylum applicants who might eventually be removed from the territory, and may try to take advantage of it:

"They have been victims of workplace harassment – this is a very common thing because there is a very strong perception among employers that these people [asylum applicants] have a vulnerable legal status and are therefore more susceptible to blackmail." (NGO legal assistant, Italy)

FRA ACTIVITY

Highlighting severe exploitation and abuse of workers



A 2019 FRA report recounts the experiences of workers severely exploited by their employers. Victims interviewed explained how they ended up in exploitative working conditions and the types of exploitation they were subjected to, and illustrated the strategies employers use to keep them. Among the 162 victims, there were 13 asylum applicants and three international protection beneficiaries.

See FRA (2019), Protecting migrant workers from exploitation in the EU: workers' perspectives, Publications Office, Luxembourg.

8.1.4. Police stops perceived as discriminatory

Persons with immigrant backgrounds encounter discrimination in daily life situations or perceive police stops to be discriminatory, as FRA's research shows.[325] Perhaps unsurprisingly, law enforcement experts interviewed generally do not consider discrimination during stops to be a common issue. A law enforcement expert in Île-de-France referred to "increased vigilance towards groups of young people". Another in Austria emphasised that such complaints generally come from persons mostly legitimately suspected of drug dealing, and not from asylum applicants and international protection beneficiaries from countries such as Syria or Afghanistan.

In all six EU Member States, at least some of the experts interviewed, typically lawyers, guardians or NGO staff working directly with the target group, have recorded cases in which asylum applicants and international protection beneficiaries experienced what they perceived as unfair treatment by the police or, in Sweden, by private security staff (e.g. in shopping malls).

As an illustration, a lawyer in northern Italy reported that over the previous 12 months he had received almost daily reports about unfair police treatment of asylum applicants and international protection beneficiaries. A lawyer in a large city in Germany estimated that, during the last 12 months, about half of the people whose cases she had been working on had reported that they felt unfairly targeted by the police. In the view of these experts, such cases are mostly not related to the legal

325 FRA (2017c). See also FRA (2018d).

status of the persons, but result from a general approach to stop-and-search operations based on racial profiling. A guardian working with unaccompanied children in Austria described police behaviour as follows:

"[Police] constantly let them be stopped, searched, […] empty backpacks, in the wallet – 'you have a [customer] card in your wallet, that can't be your wallet, it's stolen' – and then they always get fines for something, and the fines are coincidentally exactly as high as the amount of money they happen to be carrying with them. That's actually the most common thing I hear about [with regard to victimisation]." (NGO child expert, Austria)

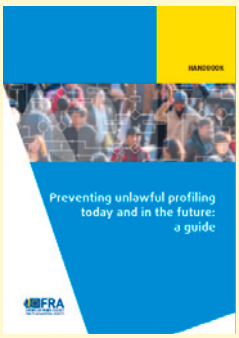
As a coping strategy, an expert working for an NGO in Germany in the field of non-discrimination advises his clients to avoid certain areas and behaviour to avoid excessive stops by the police:

"That's difficult because which other persons would I tell: 'Don't go to the city centre, don't drink, and make sure you stay somewhere where you cannot be screened in public'?" (NGO anti-discrimination expert, Germany)

Although some experts working with asylum applicants and international protection beneficiaries in Austria and Germany recognise that the approach of the police has improved in recent years, e.g. in terms of training and enhanced cooperation with stakeholders, the issue remains a common concern.[326]

FRA ACTIVITY

Preventing unlawful profiling



Experience of police stops perceived as discriminatory correlates with persons with immigrant backgrounds having a lower level of trust in public authorities, including the police, and a lower sense of belonging to the country of residence, FRA's research shows. Discriminatory ethnic profiling, when a police stop is based solely or mainly on an individual's personal characteristics rather than their behaviour, is unlawful. In 2018, FRA issued the second edition of its guide on preventing unlawful profiling, aimed at assisting law enforcement and border management professionals to conduct their activities in line with the law, without undermining trust in the authorities and stigmatising communities.

For more information, see FRA (2018), Preventing unlawful profiling today and in the future: a guide, Publications Office, Luxembourg.

326 See also FRA (2018e).

8.2. Risk of becoming a perpetrator of crime

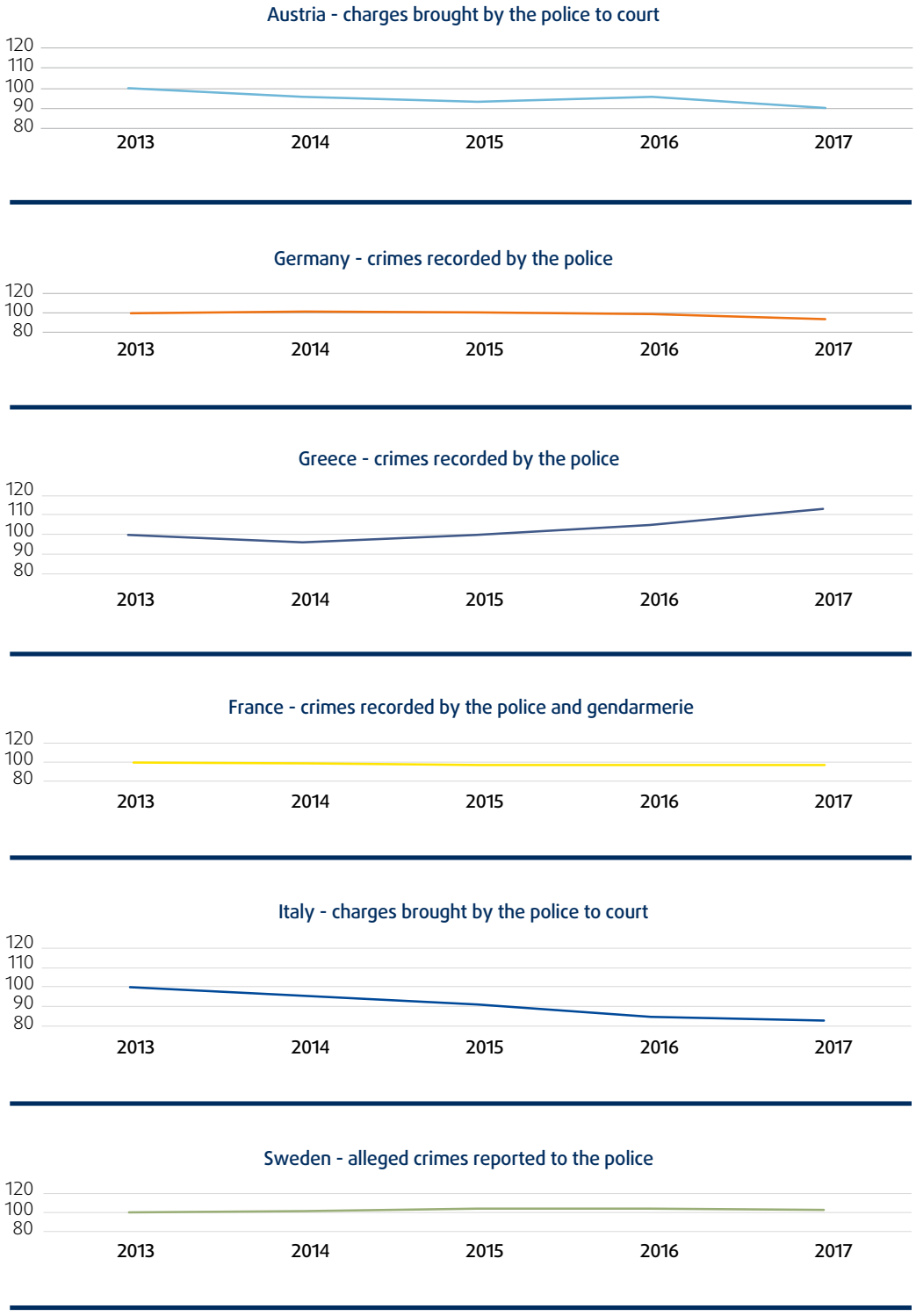
The number of people who arrived in Europe in 2015 and 2016 has led to discussions of the impact on crime, with refugees and other migrants not only as potential victims but also as perpetrators. Among the general population in October 2017, 55 % of the respondents across EU Member States agreed with a statement that immigrants worsen crime problems in the respondent's country, according to Special Eurobarometer 469. Some 70 % of respondents in Austria, 39 % in France, 64 % in Germany, 70 % in Greece, 75 % in Italy and 61 % in Sweden shared this view.[327]

At the same time, official statistics do not show a correlation between the increased arrivals in 2015–16 and the overall rate of crime. Figure 26 shows the relative development in the number of criminal offences and the overall size of the population in each Member State. In none of the six EU Member States do available crime statistics indicate a major departure from long-term trends as a result of the 2015–16 arrivals. In Austria, an increase in 2016 was followed by a decrease in the overall rate of crime in 2017, reaching the lowest level in 10 years.[328] Similarly, in Germany, the number of offences reported in 2017 was the lowest in 25 years.[329] In Sweden, there was a continuous rise in reported crime between 2013 and 2017, similar to the trend from the previous period. The rate of reported crime did not increase after 2015, as it was largely offset by the increase in the country's population.[330] In Italy, the gradual decline in the number of criminal offences during this period was also a continuation of a longer-term trend.[331] In Greece, police statistics show an increase in minor offences (misdemeanours) while the rate of major offences (felonies) remained relatively stable.[332] In France, the number of offences covered by the annual statistics fell in 2015, and despite the subsequent increase in some categories of crime it remained below the 2014 level in 2016–17.[333]

It is very difficult to assess the actual proportions of asylum applicants and beneficiaries of international protection who are suspects in or perpetrators of criminal offences, based on available data. Officially reported crime statistics have to be interpreted with caution, given that significant numbers of crimes, such as sexual assault and domestic violence, are not reported.

327 European Commission (2018c), Question A9.7.
328 Austria, Federal Criminal Office (2018), p. 8.
329 Germany, Ministry of the Interior (2018a,b).
330 Sweden, Swedish National Council for Crime Prevention (n.d.).
331 Italy, Italian National Institute of Statistics (n.d.).
332 Greece, Hellenic Statistical Authority (n.d.).
333 France, Ministry of the Interior (2018), p. 10; (2017), p. 7.

Figure 26: Indexed trends in overall rate of criminal offences, six EU Member States, 2013–2017



Note: *The trends have been calculated using available national statistics for 2013–2017 and comparing these with the overall population. The year 2013 corresponds to the value of 100 and subsequent years show the relative change of the rate compared with 2013. The methodology for criminal statistics differs among Member States. In Austria and Italy, only crimes that resulted in a charge being brought to court are included. In Germany, all crimes recorded by the police are included, except specific offences such as those against immigration legislation, traffic offences or specific constitutional offences. In France, the statistics are based on an aggregate of the main categories of crime recorded by the police and the gendarmerie. In Greece, felonies and misdemeanours recorded by the police are included, but not minor offences. In Sweden, all events reported to the police as crimes are included, whether or not they were subsequently established as constituting criminal offences. Therefore, the table allows comparison in one Member State over time but not between individual Member States.*

Source: *For population, Eurostat, demo_pjan, data extracted on 27 June 2019. For national criminal statistics, see footnotes 328 to 333.*

None of the six Member States has publicly available criminal statistics specifically on asylum applicants and international protection beneficiaries. In Austria and Germany, some data referring specifically to asylum applicants and/or international protection beneficiaries are presented in situational reports on crime, but not systematically. In Germany, a broader category of 'immigrants' (*Zuwanderer*) is captured by the annual reports of the Federal Criminal Office. This category covers applicants for international protection, resettled refugees, irregular migrants and persons with a tolerated (temporarily non-removable) status. This means that persons who have never applied for international protection, or whose asylum claim has been rejected, are also included. International protection beneficiaries have been covered by these statistics only since 2017.[334] In Austria, situational reports of the Federal Criminal Office look specifically at applicants for international protection but not at international protection beneficiaries. The least information is available in Sweden, where neither the legal status nor the nationality of suspects is recorded.[335]

Some EU Member States publish data distinguishing between suspected offenders who are foreigners and their own nationals. These statistics show an increase in the proportion of foreign suspects between 2014 and 2017. For example, in Germany the broader category of 'immigrants' among criminal suspects in the field of general crime (i.e. not including organised and politically motivated crime) is reported to have increased from 3.0 % in 2014 to 8.5 % in 2017. At the same time, the overall proportion of all non-German suspects (including also, for example, citizens of other EU Member States, tourists and legal workers from non-Member States) stood significantly higher at 30.4 %.[336] Some law enforcement experts in Italy referred to internal police statistics showing that the number of crimes in which the suspect was an asylum applicant or beneficiary of international protection increased between 2015 and 2017; at the same time, they represent only a small proportion of all crimes committed by non-Italian nationals.

Experiences shared by experts interviewed in individual EU Member States, including those representing national law enforcement authorities, illustrate the complexity of the situation and the difficulty of clearly attributing the developments in crime rates between 2015 and 2017 to the increased presence of asylum applicants or international protection beneficiaries. For example, some law enforcement experts in Austria explicitly say that some asylum applicants and international protection beneficiaries are more ready to resolve conflicts by violent means than the general population, so they are more involved in crime as both perpetrators and victims. Law enforcement experts in Greece note that some asylum applicants and status holders in the hotspots fight among themselves but are not involved in serious crimes:

"There are some criminal behaviours related … physical integrity (fighting with each other) or attacks on one's honour and reputation (insulting each other) or other offences such as … someone who wants to leave and uses a fake document in order to leave" (Law enforcement expert, Greece)

Law enforcement experts interviewed in Germany have varied experiences. A law enforcement expert from a city in Lower Saxony in Germany notes that, while the 40,000 persons who have arrived since 2015 form 20 % of the city's population, the increase in the crime rate has been marginal. A law enforcement expert working with children in conflict with the law in another city in northern Germany states that the rising number of asylum applicants in the city since 2014 also meant that the police had to start paying increased attention to this group, for example by setting up a special investigation team dealing with unaccompanied children. However, the great majority of unaccompanied children who have arrived in the city are well integrated, this expert notes. At the same time, it has to be acknowledged that, if there were a significant number of young adolescent males in the general population, concentrated in certain areas and with few prospects, the overall crime rate would increase, as established criminology research indicates.[337]

Some experts specifically highlight positive experiences. A director of a facility hosting young Germans as well as unaccompanied children pointed out that, compared with their German peers living in the same facilities, they are "well adjusted, ambitious and goal-oriented". In France, a guardian specified that, of the young people he has supported since 2015, not one has committed even a minor crime:

"frankly they impress me. I have had about, since 2015, we will say about 300 files. They set me the challenge: nothing, zero." (Guardian, France)

A number of experts interviewed, with varying professional backgrounds, therefore specifically emphasise the risk of drawing conclusions based on the available statistics and the risk of stigmatising the overwhelming majority of asylum applicants and beneficiaries of international protection, who fully

334 Germany, Federal Criminal Office (2018), p. 3.
335 Between October 2015 and February 2016 only, the police used a special code for reporting cases involving, in any manner, persons seeking international protection, to assist the authorities in planning the deployment of human resources.
336 Germany, Federal Criminal Office (2018), p. 9.
337 Maguire, M. (1997); UNODC (2019).

respect the legal system of the host countries and do not in any manner become involved in crime.

Finally, various experts in different EU Member States and with diverse professional backgrounds emphasise that, in their experience, it might be difficult to distinguish between victims and perpetrators, and that victimisation may lead to becoming a perpetrator. For example, criminal networks dealing with drugs may approach asylum applicants and international protection beneficiaries because they are vulnerable to exploitation, first supplying them with drugs and subsequently using them as dealers.

"I think this victim-perpetrator thing is lost. I think that a child that gets involved in this [drug dealing] is both victim and perpetrator. When someone, because of the conditions they live in, is dependent on other people, who put pressure on them or blackmail them." (Guardian, Greece)

8.2.1. Perpetrators: Most common crimes

When asked about their experience of the most common types of crime that asylum applicants and international protection beneficiaries become involved in as perpetrators, law enforcement experts and other professionals most often refer to drug-related offences, theft and violence, mostly within migrant or refugee communities. Involvement in organised crime and gangs is mentioned less frequently, mostly in relation to drug-related offences. This broadly corresponds to criminal statistics regarding types of crime involving non-nationals, where these are available. In Austria, the representation of foreign nationals (without differentiating their nationality or legal status) in 2017 was highest in areas of property crime, violent crime and drug-related crime.[338] In Germany in 2017, more than three quarters of offences in which the suspect was an 'immigrant' concerned theft, fraud and other property crime, or violent crime, and the most significant increase over the period of 2014–17 concerned drug-related crimes.[339]

In comparison, law enforcement experts mention sexual violence less frequently. For example, sexual violence committed by asylum applicants and international protection beneficiaries does not play as much a role as the media attributes to it, according to law enforcement experts in Austria, and its occurrence has not increased significantly since 2015. The data published by the Austrian Federal Criminal Office show that the increase in the number of offences against sexual integrity in 2016 occurred primarily in the field of harassment, which was newly defined in the Criminal Code with effect from that year. The number of sexual offences involving physical force, on the other hand, "remained constant and did not indicate a specific offender profile" during 2013–2017.[340] Similarly, in Germany, the reclassification of sexual harassment as a sexual offence ("offence against sexual self-determination") accounted for most of the increase in the rate of involvement of suspects from the 'immigrant' category in this area of crime, according to the German Federal Criminal Office.[341] A high level of gender-based violence is committed by men in the general population against women in the general population, FRA's survey on violence against women shows.[342]

As regards gender, experts interviewed generally speak about men when discussing the risk of becoming a perpetrator. They have limited experience of female perpetrators of crime. According to law enforcement experts in Italy, internal police statistics indicate that women represented only about 6 % of perpetrators with an asylum-seeking or international protection background in 2017.

Drug-related offences

Experts in all EU Member States, except France, mentioned that drug-related offences were one of the most common types of crime in their experience. Depending on the national criminal law provisions, this may entail not only distribution but also possession or use. In Germany, for example, more than half of the drug-related offences with suspects from the 'immigrant' category in 2017 related to consumption, mostly of cannabis.[343] Drug-related crime was also noted in Italy, as one of the areas of crime in which the involvement of migrants increased most significantly between 2015 and 2017, according to internal police statistics. Minor drug dealing is often done on behalf of the suppliers, who use asylum applicants and international protection beneficiaries as dealers to reach other members of the migrant community, a law enforcement expert in Milan states. Experts in the two locations in Sweden consider that using and dealing drugs are the most common type of crime by asylum applicants, especially those who have been waiting for their asylum decision for a long time. An NGO expert in Västra Götaland states that this is commonly known to be a problem, and that unaccompanied boys and young men are the main groups at risk of becoming perpetrators.

Drug-related offences are also the only area in which experts from different fields indicate possible

338 Austria, Federal Criminal Office (2018), p. 21.
339 Germany, Federal Criminal Office (2018), p. 18.
340 Austria, Federal Criminal Office (2018), p. 16.
341 Germany, Federal Criminal Office (2018), pp. 24 and 59.
342 The survey shows that some 31 % of women have experienced one or more acts of physical violence, and 11 % some form of sexual violence, since the age of 15. See FRA (2014).
343 Germany, Federal Criminal Office (2018), p. 44.

involvement of criminal networks actively approaching asylum applicants and international protection beneficiaries, attempting to recruit them for criminal activities. Some asylum applicants and international protection beneficiaries interviewed confirm that such networks promise young people fast money if they deal drugs, for instance in Austria or Sweden:

"Here [in the city], there are many youths [...] who sell drugs. I cannot imagine that they create the drugs themselves. They are simply exploited." (Subsidiary protection status holder from Syria, male, Austria)

Asylum applicants and international protection beneficiaries in Greece are more hesitant to discuss these issues, but some also confirm that there are groups actively trying to recruit people whom they consider vulnerable. For example, a respondent from Syria said that she heard about criminal networks that approach refugees in the centre of Athens, especially concerning drugs, and that she avoids visiting this part of the city.

Promising practice

Supporting refugees and migrants with addictions

The Therapy Center for Dependent Individuals (KETHEA) in Athens, **Greece**, runs a programme aimed specifically at providing information, counselling, psychological support and relapse prevention services to immigrants and refugees with addictions. This can also have a crime prevention effect. The KETHEA Mosaic programme also provides psychological support and other preventative activities for children, to reduce the factors that lead to addiction and impede social integration. Experts also train professionals working with migrants. In cooperation with the International Organization for Migration, the programme runs intervention and prevention programmes in reception facilities.

Source: Kethea website

Theft

Experts in several EU Member States mentioned that, in their experience, theft is a relevant type of crime that may involve asylum applicants and international protection beneficiaries. In France, experts mentioned it as the most common crime. There, guardians and lawyers often referred to "survival theft" in response to the precarious living conditions, in particular the lack of accommodation and basic financial resources. A lawyer in Lille even referred to unaccompanied children without accommodation who commit small offences on purpose, such as breaking a window of a car in front of a police patrol, so that they will be referred to child protection authorities. A law enforcement expert in the same city referred to persons who intend to move further to the United Kingdom and do not have money to pay to smugglers, or simply lack the resources to survive in the city:

"At some point necessity knows no law, so they will steal a mobile phone, a wallet, break into a car but they know it's illegal." (Law enforcement expert, France)

In Sweden, several professionals participating in a local focus group in Västra Götaland referred to thefts being largely a temporary phenomenon in late 2015/early 2016, when many migrants who had arrived in Sweden did not have money to afford clothes.

Violent crime

Incidents of violence, although experts in most EU Member States mention them, are mostly limited to resolving conflicts between different national groups. Different professionals participating in a local focus group in Västra Götaland, Sweden, maintain that such incidents seldom affect the local population or other unrelated migrants. This is also the case in Austria, where law enforcement experts in Vienna and Upper Austria refer to a higher readiness of some groups of asylum applicants and international protection beneficiaries to resolve conflicts between themselves by violent means. Intra-family violence may play an important role too, FRA's data on violence against women among the general population would suggest.[344]

In Italy, a law enforcement expert in Milan mentions conflicts between different groups in reception facilities as well as – less frequently – clashes among street vendors over control of the market (of various goods/items, including souvenirs and counterfeit goods) in different parts of the city. Fights among groups of migrants over control of territory also emerged in Île-de-France. In Greece, law enforcement experts at the national level likewise describe clashes between different nationality groups as the most common form of violent crime.[345]

8.2.2. Risk factors

Similarly to victimisation, experts interviewed were asked to identify the main factors that, in their view, can make asylum applicants and international

344 Since the age of 15, one woman in five (22 %) who is or has been involved in a relationship with a partner has experienced physical and/or sexual intimate partner violence. Equally, one in five women (22 %) has experienced this type of violence from somebody other than an intimate partner, for example a stranger, acquaintance, relative, boss or colleague. In 30 % of the cases, this person was a relative or a family member other than a partner. See FRA (2014).

345 See also FRA (2016), pp. 40-45; FRA (2019a), pp. 50-54.

protection beneficiaries more vulnerable to becoming perpetrators of crime. They were offered the same list of factors as those relating to victimisation (see Section 8.1.3).

Experts stressed the risk of drawing generalised conclusions. They emphasised that becoming a perpetrator is based on a combination of general factors and the individual situation of the person, such as age or gender. Mental health issues or a trauma can manifest itself in numerous ways, including through violent behaviour, as some housing experts mentioned. It can also make a person more susceptible to resorting to drugs and becoming potentially vulnerable to being recruited for drug dealing.

Many experts highlight the strong interconnectedness and the cumulative effect of different factors. For example, experts working on housing issues and with unaccompanied children in Lower Saxony, Germany, refer to a chain of factors that may gradually reduce the person's integration prospects. A lack of access to education or private housing, an insecure or overcrowded housing situation, lengthy asylum procedures or uncertainty regarding the residence status can result in frustration and a perceived lack of prospects, which could eventually lead some individuals to become involved in crime. Any factor that makes life uncertain increases the risk of becoming a perpetrator of crime, says a law enforcement expert in Västra Götaland, Sweden.

Therefore, the risk factors analysed in this section may favour a possible involvement in crime but there is no causal link. The actual risk will depend on the individual in question and cannot be generalised, as a law enforcement expert in Germany illustrates well:

"This is why we always need to consider the individual case. It is never possible to generalise, or to say, 'if it is like this in one case, then it is the same in another case'. Everybody is very different, so it is really difficult to tell. […] Moreover, as concerns the pedagogical measures, they have to be adapted to the individual case every single time. And for this reason it is very difficult to say, 'if it wasn't for this, then it is always like this'. You cannot tell." (Law enforcement expert, Germany)

This section describes the external factors in more detail. Experts interviewed confirmed that the three main factors that make people vulnerable to victimisation are also relevant to the risk of becoming a perpetrator, and they add a fourth one:

- the lack of access to employment and education
- unsafe housing
- the absence of family members
- the overall precariousness and uncertainty about the prospect and length of stay.

Limited contact with the host society and contact with potential offenders also emerge as important factors but, as with the risk of victimisation, the interviewees see them rather as the logical consequence of other factors.

Unemployment or precarious employment and difficulties in integrating into the education system

All the experts interviewed in Austria and Italy, with different backgrounds, and a large majority in Germany, Greece and Sweden, consider unemployment or precarious employment an important risk factor. All experts in Sweden and the majority in all the other EU Member States say the same of education. Lack of access to employment or education may have a particular impact if it occurs in combination with other destabilising factors, such as poor or uncertain prospects of further stay, which may contribute to the feeling of insecurity. By providing contact with the local population, employment and schooling also serve as a natural integration driver. Law enforcement experts in Greece highlight the role of education in this regard, which also helps people from different cultures understand the norms of the host society. Law enforcement experts in Italy emphasise the same role for employment:

"[The] best way […] of integration is with employment; but they do not always find it [employment], it is not possible […] Who has a job is better integrated." (Law enforcement expert, Italy)

Access to employment plays a role in the sometimes precarious economic situation of asylum applicants and international protection beneficiaries. Social welfare professionals in Vienna highlighted that asylum applicants and international protection beneficiaries are at greater risk of poverty, arguing that this may be a central factor for crime. Pressure to send money to relatives in the country of origin, to pay money owed to smugglers or to be able to pay official fees may also put a severe economic as well as psychological strain on young people. The long waiting time contrasts with their expectation of sending money back home, according to a healthcare professional working with young people in northern Italy. In some cases, a perceived lack of self-sufficiency might lead young people to resort to other means of meeting their financial expectations.

Promising practice

Organising cross-departmental case conferences

Law enforcement experts in Bremen, **Germany** highlighted the practice of organising cross-departmental meetings on cases of children in conflict with the law, to consider at an early stage whether or not to provide tailored support measures. Such measures are usually pedagogical, but may also, depending on the case, involve change of accommodation or drug rehabilitation. The conferences bring together the case manager, youth welfare authority, police and, where appropriate, teachers or migration authorities.

Source: Law enforcement authority, Bremen, Germany

Such pressure can make young people more vulnerable if approached by criminal networks with promises of easy money, a scenario that a variety of experts in Greece mentioned. In Austria, a local government expert working with asylum applicants confirmed this, as did several asylum applicants and international protection beneficiaries interviewed. For example:

"That's a discrepancy, because in support we say 'first he should take up vocational training or education and learn German', but there he doesn't earn money. Now he has pressure from the family and there are cases of those who feel obliged to get into drug trafficking so that they can fulfil their responsibilities to the family. Those are cases that we have again and again. Often there are also cases where the traffickers come and say 'all right, [you still owe me] a few thousand dollars', and then even more pressure is exercised." (Government representative working in the integration field, Austria)

Vulnerability increases significantly if a person has no access to employment on reaching the age of 18 and leaving the child protection system. Education and social work experts working with unaccompanied children in Lower Saxony confirm that this is a critical period. Lacking language skills or adequate prior education can make it very difficult for some young people to find vocational training or employment and support themselves. This can entail significant frustration, which can also culminate in outbursts of violence and other criminal behaviour. The loss of a support structure may also make it difficult to disentangle oneself from a criminal environment. A Somali beneficiary of international protection who arrived in Italy as an unaccompanied child reports the experience of a friend who was recruited to deal drugs during this period:

"I have this friend. We used to live together in [a reception centre for unaccompanied children in Milan]. He turned 18 and he didn't have anything. He wanted to eat, he wasn't working... If somebody says to you, 'I'll give you money, come here and do this', it's easy, and it's what you need. He worked with them and then the police stopped him and now he's in prison for drug dealing. My teacher told me to be careful with these people and I didn't know this before, I didn't know there were these people who give you money, you deal drugs and then it's impossible to leave that [world]." (Subsidiary protection status holder from Somalia, male, Italy)

The role of employment and schooling extends beyond a source of income and economic perspective. Experts also emphasise their importance in providing a daily structure and a meaningful activity, which they see as being of particular importance at a young age, and as a source of self-esteem and sense of belonging. In Austria, respondents with different areas of expertise from both Vienna and Upper Austria stress that an unstructured life makes young people more likely to come into contact with persons who put them at risk. Joining gangs may be a way of compensating for lacking self-esteem, as an NGO expert in the field of integration in Upper Austria describes. In France, law enforcement experts in Lille and Île-de-France also mention prolonged periods of inactivity as a risk factor, adding that they can also lead to consuming alcohol and drugs, and developing criminal behaviour that asylum applicants and international protection beneficiaries would not develop if they had jobs. A guardianship expert in Sweden considers education the most important factor preventing young people from becoming involved in criminal behaviour:

"The most relevant factor that put the target group at risk of becoming involved in crime is if you for different reasons don't get them to attend school. If you don't get them to attend and they continue to be absent and meet others who don't go to school, they will soon be up to something. I have had a couple of boys who have been stealing and doing drugs and so on, and one is now drifting somewhere in the south of Sweden. So, if you can't catch them from the start and get them into the school system, there is a really great risk that they will get into strange activities." (Guardian, Sweden)

Insecure or unsafe housing

All the experts interviewed in France, a large majority of professionals across different fields of expertise (including law enforcement experts) interviewed in Greece and Sweden, and several experts in other EU Member States consider insecure or unsafe housing an important risk factor. Staying in large or geographically isolated reception facilities may lead to marginalisation, preventing people from integrating into the host society or learning the local language, said law enforcement experts at the national level in Italy and in Norrbotten in Sweden. Avoiding concentrating asylum applicants in

large reception facilities, and instead ensuring that they are dispersed in smaller accommodation facilities that are not isolated from the local society, is an important crime prevention mechanism, some law enforcement experts in Greece and Italy argued.

Lack of personal space and forced cohabitation of people with different cultures increase the likelihood of conflicts, including violent conflicts, between residents. Any form of shared accommodation generally increases the risk of access to drugs, as law enforcement and housing experts in different cities in Germany suggest. Lack of personal space in any type of housing (including private accommodation) may contribute to the exposure to a criminal environment, adds an expert on housing issues in Sweden:

"In this neighbourhood there are big families and they have too small flats, so the youths don't get peace and quiet to study because they have many younger siblings. They cannot be at home – it's too crowded – so they hang around the street corners and in the stairwells. Then they form gangs and it's easy for criminals to recruit them."
(Housing authority expert, Sweden)

Living on the streets heightens the risk. A law enforcement expert in Milan, Italy, cites examples of children who were apprehended by the police in the streets for petty theft or drug dealing and referred to social services for placement in child facilities, but who were soon afterwards found on the streets again, presumably because no place was available for them. This exposes children who are already vulnerable to a higher risk of becoming victims or perpetrators. Housing, education and guardianship experts in Germany working with unaccompanied children highlighted the negative experiences of penalising children by expelling or transferring them from housing facilities as soon as they become involved in problem activities, such as drug consumption or crime. This may lead to a spiral of loss of prospects, more criminal behaviour and homelessness. Instead, in these experts' view, the system should ensure that those who are at risk receive more attention.

Overcrowded first reception facilities or camps, where basic needs are not catered for, may expose a young person to contact with potential offenders and lead to their adopting errant behaviour, as national law enforcement experts in Greece noted. A lawyer in one of the Greek hotspots mentioned examples of children whose personality and behaviour changed to adapt to the environment, and who eventually became involved in criminal activities, such as drug dealing. The high risk of criminal victimisation of young people staying in the hotspots goes hand in hand with the risk of their becoming perpetrators themselves, a guardianship expert stressed. The conditions in such facilities can also be a major factor in a decision to abscond, leading subsequently to homelessness and potentially driving the person into criminal behaviour.

A law enforcement expert in Lille (Hauts-de-France) recounted a positive experience that may illustrate the positive impact of improved housing conditions. When migrants from dismantled camps were placed in basic hotel accommodation, police patrols were deployed to deal with possible incidents. However, no cases of violence, vandalism or other criminal activities occurred.

Transition from the reception system to individual housing may be a period of heightened risk. An NGO expert in Italy reported that not every person is able to find housing once granted protection, which leads to a growing phenomenon of refugees living in informal settlements, where the exposure to the risk of joining criminal gangs is higher.

"For a period of time asylum applicants are somehow protected, because they've got a place to stay [in the reception system], but then this ends and that's where the big problem lies. They are accorded a form of protection, and then they have to leave these centres. They can't find a job, because for various reasons [it's not easy], so they can't rent a small apartment or something [...]. Then they end up in abandoned areas, in which there are ethnic-based groups, but also groups ... I wouldn't know whether to call them criminal, or tending to criminal activities, they dominate the situation and they start imposing rules."
(NGO child expert and psychologist, Italy)

Specifically in relation to unaccompanied children, transition to adulthood is critical. Transfers of persons who turn 18 (or whose age is re-registered as 18) to large asylum accommodation centres for adults are among the most important factors increasing the risk of becoming a perpetrator of crime, second only to not being granted asylum, according to a law enforcement expert in Västra Götaland.

Absence of family members

The presence of family members is an important factor providing stability and protection, particularly for young people. The majority of experts in all EU Member States, including nearly all of the interviewed experts from different backgrounds in Austria, France and Greece, believe that the absence of family members increases the risk of becoming a perpetrator of crime.

Law enforcement experts in France and Germany referred to the importance of a family as a strong resilience factor that protects and helps steer a young person. A social welfare authority expert in Vienna expressed the same view. For example, a law enforcement expert in Germany noted:

"The presence of family members plays a big role for this group, but mostly the family is absent. Those who come with family are always less of a problem than those without family." (Law enforcement expert, Germany)

The situation of those who arrived as unaccompanied children is specific. On the one hand, experts refer to their special vulnerability. The precarious situation of a young, unaccompanied person makes it natural to seek a group, even if it is a criminal one, a law enforcement expert in France argues.

"Someone who is necessarily marginalised will latch on to a specific group to belong to, so either an ethnic group or a criminal group … ultimately they try any means to latch on to a group." (Law enforcement expert, France)

Age is seen an important factor in this context. The younger an unaccompanied person is, the higher the vulnerability, according to law enforcement experts in France. Law enforcement and education experts in Bremen and Lower Saxony added other risk factors, such as the inability to speak the language and lack of knowledge of the law.

In France, a 2016 decree on the reception and conditions of assessment of the situation of children temporarily or permanently deprived of the protection of their family covers all children regardless of their nationality. It requires the competent authorities to pay particular attention to the risk of the influence of criminal networks on the young person assessed.[346] According to some guardianship experts, this specific provision has raised the awareness of social workers of this risk, and such situations can be identified more systematically.

On the other hand, the benefits of comprehensive services and strong protective frameworks for unaccompanied children, including social workers and youth welfare authorities, emerged from Austria, Germany and Italy. An NGO representative working with unaccompanied children in Upper Austria, for example, stated that the involvement of these authorities can help avoid some of the risks common among teenagers living with their families, such as falling into a debt spiral due to trying to purchase expensive status symbols, and prevent them from getting involved in criminal activities.

Uncertainty about the prospect of stay

Uncertainty about the prospect of stay increases the risk of becoming a perpetrator of crime, the majority of experts in all EU Member States agree. Law enforcement experts in France, for example, conclude that the sooner a person is aware of their legal situation the better. Experts working with unaccompanied children in Upper Austria noted the negative impact of the asylum procedure being lengthy. Law enforcement experts in Greece referred to the risks of prolonged stay in camps and on the islands, which in their experience leads to psychological problems and may build up aggression.

"The waiting time in the hotspots creates tension, in general. When they are not sure, when there is no precise information about when they will leave, or sometimes in order to cause their removal from the area, they manifest intense, violent behaviour mainly directed towards the place itself, namely by destroying the infrastructure of the hotspots and camps; this frustration is also directed towards different nationalities or towards any different group in the area." (Law enforcement expert, Greece)

Various types of decisions may have an impact if people perceive them as negatively affecting their prospect of stay, even if they do not mean the final rejection of the asylum claim. Uncertain legal status and length of stay may make unaccompanied children particularly vulnerable. An NGO expert in Sweden speaks of criminal gangs specifically targeting young asylum applicants as well as those who have had their asylum claim rejected or are undocumented:

"These gangs are recruiting these guys because they [the gangs] know that, if you are an asylum applicant or if you are undocumented, then it's like you have zero rights. You are invisible, so they can use you to whatever they want. So, you have to [do] the dirty work, as they say, and risk getting into real trouble." (NGO housing and child expert, Sweden)

The moment of transition to adulthood may be particularly critical if it changes the person's legal situation significantly. Reaching the age of 18 may be among factors that motivate unaccompanied children to abscond, to avoid the risk of having their asylum application rejected and being deported, according to various experts in different locations in Italy. For those who have relatives in other EU Member States, this might act as a trigger to decide to continue their journey. If they abscond, they can no longer access social support, which might make them more prone to try to obtain financial resources by crime, as well as exposing them to criminal victimisation. A legal expert in Sweden mentioned how a negative result of the age assessment procedure can trigger a chain reaction:

346 France, Decree No. 2016-840 on the reception and conditions of assessment of the situation of minors temporarily or permanently deprived of the protection of their family (*Décret n° 2016-840 pris en application de l'article L. 221-2-2 du code de l'action sociale et des familles et relatif à l'accueil et aux conditions d'évaluation de la situation des mineurs privés temporairement ou définitivement de la protection de leur famille*), 24 June 2016.

"I also note that many who receive negative decisions on their age assessments [i.e. are re-registered as adults] noticeably often get negative decisions in their asylum cases. It's not unusual that they disappear. It's not unusual that they wind up in criminality, either as victims or that they actually commit crimes of different kinds, primarily acts of violence. It's mainly this part of the target group, the ones who've got a feeling that 'this is really about to go to rack and ruin. I will probably not be allowed to stay'. It's my experience, given the clients that I've had, that many are at risk in this way." (Legal expert, Sweden)

8.2.3. Violent extremism

Besides involvement in crime more broadly, one of the specific issues debated in the media and at a policy and political level relates to the alleged vulnerability of some asylum applicants and international protection beneficiaries to becoming radicalised and recruited to violence. For example, the European Commission's High Level Expert Group on Radicalisation stated that among "individuals migrating to the EU territory" some may be "particularly vulnerable to radicalisation and be possible targets of recruitment".[347] According to a survey conducted in 10 European countries in spring 2018 (including all EU Member States covered by this research with the exception of Austria), 57 % of respondents believe that immigrants increase the risk of terrorism, while 38 % disagree.[348]

In this context, interviewees were asked about their experience of extremist networks approaching members of the target population to recruit and/or radicalise them. The scope of this research and the professional background of the respondents do not allow an exhaustive assessment of this issue, but the responses offer a picture based on the experience of professionals in diverse fields who work closely with asylum applicants and international protection beneficiaries.

The issue of radicalisation and violent extremism is considered a priority and closely monitored, law enforcement experts in all six Member States confirmed. Despite this attention, cases of asylum applicants and international protection beneficiaries being approached by extremist networks or becoming radicalised are relatively rarely encountered in practice. In one German city, attempts by members of extremist networks to access refugee facilities have been detected in the past, in rare cases. In another city in Germany, a law enforcement expert noted that they deployed a specialised officer but have not detected any such cases so far. A law enforcement expert in a third German city mentions that all the cases so far referred by the unit to the responsible office as suspicious turned out to be simply "stupid jokes" and no individuals in question could be classified as even starting to show symptoms of radicalisation. A law enforcement expert in Austria indicated that known recruitment efforts are centred around certain places of worship, rather than accommodation facilities.

An expert working specifically in the field of prevention of radicalisation in Germany referred to cases of extremists particularly trying to target people whose actual integration prospects do not match their expectations and who perceive that they lack long-term prospects. Such groups then offer an alternative perspective and community to integrate into. This underlines the need for the state to support integration proactively:

"Well, to put it simply, one can say that, wherever the state pulls back from particular fields of competence, [religious extremists] enter and take over these tasks." (Law enforcement expert, Germany)

In Greece, the situation in the hotspots is monitored particularly closely, in collaboration with Frontex and Europol, law enforcement experts stated. According to them, no link between terrorism and migration has been detected so far, such as cases of migrants being recruited in a hotspot to join an extremist network.

"We haven't seen at the moment any particular link [between extremism and migration] … It is still being examined if there is such a trend but there is no evidence or statistical data supporting this." (Law enforcement expert, Greece)

In Sweden, although extremist networks in the region have aimed some recruitment efforts at asylum applicants and international protection beneficiaries, radicalisation is rather considered to affect persons who have lived in Sweden for a long time or who were born and raised in the country, a law enforcement expert states. A recent study confirms this.[349] A law enforcement expert in Italy also emphasises that, although radicalisation certainly is an important issue, it is not specifically linked to asylum applicants and beneficiaries of international protection:

"the fact of being an asylum applicant isn't in any way related to a phenomenon of extremism or radicalisation; these two elements aren't linked in any way whatsoever." (Law enforcement expert, Italy)

Experts from different professional backgrounds in several EU Member States who are familiar with the issue actually presume that asylum applicants and international protection beneficiaries would often be particularly resistant to recruitment by such networks, given that many of them left their countries of origin in order to flee from these networks.

347 European Commission, High-Level Commission Expert Group on Radicalisation (2018), p. 10. For an overview of EU activities aiming specifically to address radicalisation of children and young people, see FRA (2018f), pp. 186–188.

348 Pew Research Center (2019).

349 Gustafsson, L. and Ranstorp, M. (2017).

For example, a guardian interviewed in Austria is aware of several cases in which such networks tried to recruit child asylum applicants at the facilities, but the children immediately informed the staff, who then reported the incidents to the relevant authorities. The guardian emphasises that the presence of social workers is clearly beneficial for unaccompanied children in this regard, but adds that young people's resistance may be adversely influenced by negative experiences on the labour market, lack of participation in education or unstable family situations. A guardian in Greece refers to the case of a child who escaped recruitment in Syria and was then again approached by an extremist group in one of the camps on the Greek islands. After sharing this information with the guardian, the child was moved out of the camp to the mainland within two hours. In Germany, a law enforcement expert explains that, since many Syrians fled from the Islamic State, it would be "absurd" if they were willing to be recruited by the same organisation in Germany.

Conclusions and FRA opinions

Involvement in crime, as either a victim or a perpetrator, is based on a complex combination of interconnected, often highly individual, factors. This underlines the need to avoid drawing generalised conclusions about factors that may affect the involvement of asylum applicants and international protection beneficiaries in crime. Furthermore, whereas the public and policy discussions largely focus on the risk of this group's involvement in crime as perpetrators, the findings of this research indicate the need to pay at least equal attention to the risk of their victimisation.

Factors fostering successful and rapid integration also play a considerable role in preventing crime. Insecure or unsafe housing, lacking access to employment and education, and the absence of family members may, together with individual factors, such as those related to age, mental health or gender, make young people more prone to becoming victims of violence, labour exploitation, theft, fraud or hate crime. Women and girls in particular may be affected by sexual and gender-based violence. Not all asylum applicants and international protection beneficiaries feel that the police treat them fairly. Underreporting appears to be widespread, especially for those types of crime that particularly affect women.

The factors that expose new arrivals to victimisation, together with the protracted uncertainty of the outcome of the proceedings, contribute to an overall sense of precariousness and a lack of prospects. This hampers effective integration and makes persons more likely to become dependent on informal networks, sometimes of a criminal nature. They may enter a cycle of exploitation and crime, blurring the line between victim and perpetrator. EU Member States take very seriously the risk of new arrivals being approached by extremist and radicalised networks, but instances are rather rare. Moreover, some experts conclude that people who have experienced extremism in conflict zones, may be particularly resilient to radical ideologies.

Proactive policies can help address these risk factors at an early stage by making people's legal status and social condition less precarious, by providing them from the outset with access to core services, safe housing, employment, education opportunities and support from relevant professionals.

FRA opinion 8

EU Member States should ensure that support of relevant professionals, including social workers, guardians and youth welfare authorities, but also teachers and staff of reception facilities, is available to young asylum applicants and beneficiaries of international protection. Such support may play a key role in addressing risk factors that make them vulnerable to crime.

To give effect to their rights under Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, EU Member States should take effective measures to facilitate reporting of crime by asylum applicants and international protection beneficiaries who have been victims of crime. Such measures should address the specific obstacles that may discourage these persons from reporting crimes committed against them.

EU Member States should raise awareness among police forces of the standards applicable to police stops and the damaging effect of discriminatory profiling practices on community relations and trust in law enforcement.

References

Asylum Information Database (AIDA) (2015), *Country report: Greece*, November.

AIDA (2016), *The length of asylum procedures in Europe*, October.

AIDA (2017a), *Country report: France – 2016 update*.

AIDA (2017b), *Country report: Italy – 2016 update*.

AIDA (2018a), *Country report: Sweden – 2018 update*.

AIDA (2018b), *Country report: Greece – 2017 update*.

AIDA (2018c), *Country report: Italy – 2018 update*.

AIDA (2019), *Country report: France – 2018 update*.

Austria, Bundesministerium Wissenschaft, Bildung und Forschung (2018), *Deutschförderklassen und Deutschförderkurse, Leitfaden für Schulleiterinnen und Schulleiter*, Vienna, June.

Austria, Federal Criminal Office (2018), *Lagebericht Polizeiliche Kriminalstatistik 2017* [*Situational report, police criminal statistics 2017*].

Austria, Federal Ministry for Europe, Integration and Foreign Affairs (2016), *Integration report 2016*, Vienna, Federal Ministry for Europe, Integration and Foreign Affairs.

Austria, Federal Ministry of the Interior (2016), Asylum statistics 2016.

Austria, Federal Ministry of the Interior (2017), Asylum statistics 2017.

Austria, Federal Ministry of the Interior (2018), Asylum statistics 2018.

Austria, Parliament (2015), Answer to parliamentary question BMI-LR2220/1080-III/5/2015, 1 December.

Austria, Parliament (2017), Answer to parliamentary question BMI-LR2220/0062-III/5/2017, 20 March.

Austria, Parliament (2019), Answer to parliamentary question No. 3621/J, 23 July.

Berlin-Institut (2019), *Von individuellen und institutionellen Hürden* [*About individual and institutional obstacles – The long way to labour market integration of refugees*].

Bogic, M., Njoku, A. and Priebe, S. (2015), 'Long-term mental health of war-refugees: A systematic literature review', *BMC International Health and Human Rights*, Vol. 15, Article 29.

Bundesagentur für Arbeit (2017), *Brücke in die Berufsausbildung*, Nuremberg, Bundesagentur für Arbeit.

Colombo, F. (2019), '*L'autonomia abitativa di richiedenti asilo e titolari di protezione internazionale in Italia*'.

Council of Europe (2019), *The 2018 Council of Europe and ALTE survey on language and knowledge of society policies for migrants*.

Council of the European Union (2018), Resolution of the Council of the European Union and the Representatives of the Governments of the Member States meeting within the Council on a framework for European cooperation in the youth field: The European Union Youth Strategy 2019-2027, OJ C 456, p. 1–22.

Education, Audiovisual and Culture Executive Agency (EACEA) (2019), *Integrating students from migrant backgrounds into schools in Europe: National policies and measures*, Eurydice report, Luxembourg, Publications Office of the European Union (Publications Office), 17 January.

Erasmus, KU Leuven, Research Group Urbanism and Architecture and Housing Europe (2018), *Designing inclusion*, Sheffield, University of Sheffield, School of Architecture.

European Asylum Support Office (EASO) (2016a), *Practical guide: Access to the asylum procedure*, Luxembourg, Publications Office.

EASO (2016b), *EASO guidance on reception conditions: Operational standards and indicators*, September.

EASO (2018), *EASO Guidance on reception conditions for unaccompanied children: Operational standards and indicators*, Luxembourg, Publications Office, December.

European Council on Refugees and Exiles (ECRE) (2018), *Access to protection in Europe: The registration of asylum applications*, October.

ECRE (2019), *Housing out of reach? The reception of refugees and asylum seekers in Europe*, May.

ECRE and Advice on Individual Rights in Europe (AIRE) Centre (2016), *With Greece: Recommendations for refugee protection*, July.

European Foundation for the Improvement of Living and Working Conditions (Eurofound) (2019), *Role of public services in integrating refugees and asylum seekers*, Publications Office, Luxembourg.

European Spatial Planning Observation Network (ESPON) (2019), *Impact of refugee flows to territorial development in Europe*.

European Commission (2008), Report from the Commission the European Parliament and the

Council on the application of Directive 2003/86/EC on the Right to Family Reunification, COM(2008)610, Brussels, 8 October.

European Commission (2011), European Agenda for the Integration of Third-Country Nationals, Brussels, 20 July 2011, COM/2011/0455 final.

European Commission (2014), Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014) 210 final, Brussels, 3 April.

European Commission (2016a), A new Skills Agenda for Europe: Working together to strengthen human capital, employability and competitiveness, COM (2016) 381 final, Brussels, 10 June.

European Commission (2016b), Action Plan on the integration of third country nationals, COM(2016) 377 final, Strasbourg, 7 June.

European Commission (2016c), An economic take on the refugee crisis: A macroeconomic assessment for the EU, Institutional Paper 033, July.

European Commission (2017a), 2016 European Semester: Communication on country reports, Brussels, 7 April 2016, COM(2016) 95 final/2.

European Commission (2017b), Communication from the Commission to the European Parliament and the Council: The protection of children in migration, COM(2017) 211 final, Brussels, 12 April.

European Commission (2018a), Engaging, connecting and empowering young people: A new EU youth strategy, COM/2018/269 final, Brussels, 22 May.

European Commission (2018b), Proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund, COM/2018/471 final, Strasbourg, 12 June.

European Commission (2018c), *Special Eurobarometer 469: Integration of immigrants in the European Union*, Report, April.

European Commission (2019a), Evaluation of the application of the recast Qualification Directive (2011/95/EU), Final report, 22 January.

European Commission (2019b), Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification, COM(2019) 162 final, Brussels, 29 March.

European Commission (2019c), *Integrating asylum seekers and refugees into higher education in Europe: National policies and measures*, Eurydice report, Brussels.

European Commission, EACEA and Eurydice (2019), *Integrating asylum seekers and refugees into higher education in Europe: National policies and measures*, Eurydice report, Luxembourg, Publications Office.

European Commission, High-Level Commission Expert Group on Radicalisation (2018), Final report, 18 May.

European Migration Network (EMN) (2017), Family reunification of third-country nationals in the EU plus Norway: National practices, EMN Synthesis Report for the EMN Focussed Study 2016, April.

EMN (2018), Approaches to unaccompanied minors following status determination in the EU plus Norway – Synthesis report, Brussels, July.

European Parliamentary Research Service (2015), 'Economic challenges and prospects of the refugee influx', Briefing, December.

European Union Agency for Fundamental Rights (FRA) (2014), *Violence against women: An EU-wide survey. Main results report*, Luxembourg, Publications Office, March.

FRA (2016), *'Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the "hotspots" set up in Greece and Italy'*, FRA Opinion 5/2016 (Hotspots), Vienna, 29 November.

FRA (2017a), *Child-friendly justice – Checklist for professionals*, Luxembourg, Publications Office.

FRA (2017b), *Together in the EU – Promoting the participation of migrants and their descendants*, Luxembourg, Publications Office.

FRA (2017c), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, December.

FRA (2018a), *Periodic data collection on the migration situation in the EU – November 2018 highlights*, November.

FRA (2018b), *Periodic data collection on the migration situation in the EU – September 2018 highlights*, September.

FRA (2018c), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, December.

FRA (2018d), *Preventing unlawful profiling today and in the future: A guide*, Luxembourg, Publications Office.

FRA (2018e), *Being black in the EU*, Luxembourg, Publications Office, November.

FRA (2018f), *Fundamental rights report 2018*, Luxembourg, Publications Office.

FRA (2019a), '*Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the "hotspots" set up in Greece and Italy*', FRA Opinion 3/2019 (Hotspots Update), Vienna, 4 March.

FRA (2019b), *Protecting migrant workers from exploitation in the EU: Workers' perspectives*.

France (2017), *Circulaire relative à l'évolution du parc d'hébergement des demandeurs d'asile et des réfugiés* [Circular relating to the development of the housing stock for applicants for asylum and refugees], 4 December.

France (2018), *Stratégie nationale pour l'accueil et l'intégration des personnes réfugiées* [National strategy for the reception and integration of refugees], 5 June.

France, Ministry of the Interior (2017), *Insécurité et délinquance en 2016: premier bilan statistique* [Insecurity and delinquency in 2016: First statistical review].

France, Ministry of the Interior (2018), *Insécurité et délinquance en 2017: premier bilan statistique* [Insecurity and delinquency in 2017: First statistical review].

France, Ministry of the Interior (2019).

Germany (2017), Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Minimum Standards for the Protection of Refugees and Migrants in Refugee Accommodation Centres, Berlin, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, June.

Germany, Berlin Senate for Integration (2011), Press release, Wohnungen für Flüchtlinge – Senatorin Bluhm und städtische, 28 July.

Germany, Bremische Bürgerschaft (2017), '*Antwort des Senats auf die Große Anfrage der Fraktion DIE LINKE: Vorkurse im Schuljahr 2017/2018 an den Schulen im Land Bremen*', Drucksache 19/1227, 12 September.

Germany, Deutsches Institut für Menschenrechte (2019), *Wer Inklusion will, sucht Wege*, Berlin, Deutsches Institut für Menschenrechte.

Germany, Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Kinderrechtskonvention (2017), *Welchen Zugang haben geflüchtete Kinder zu Schulen? Ergebnisse einer Befragung der Bundesländer, Antworten 2017*, Berlin, Deutsches Institut für Menschenrechte.

Germany, Federal Criminal Office (2018), *Kriminalität im Kontext von Zuwanderung, Bundeslagebild 2017* [*Crime in the context of immigration, federal situational picture 2017*].

Germany, Federal Government (2015a), 'Response to parliamentary question of Die Linke', Drucksache 18/4581, 10 April.

Germany, Federal Government (2015b), 'Answer to the written inquiry of the Member of the Bundestag Brigitte Pothmer', Drucksache 18/6403, 12 October.

Germany, Federal Government (2016), 'Response to parliamentary question of Ulla Jelpke et al.', Drucksache 18/9992, 17 October.

Germany, Federal Government (2018), 'Response to parliamentary question of Die Linke', Drucksache 19/1371, 22 March.

Germany, Federal Government (2019a), 'Response to parliamentary question of Die Linke', Drucksache 19/8701, 25 March.

Germany, Federal Government (2019b), 'Response to parliamentary question of Die Linke', Drucksache 19/7267, 21 January.

Germany, Ministry of Education of Lower Saxony (2016), '*Leitfaden Schulpflicht für begleitete und unbegleitete Kinder und Jugendliche aus dem Ausland*', May.

Germany, Ministry of the Interior (2018a), *Bericht zur Polizeilichen Kriminalstatistik 2017* [Report on police crime statistics 2017].

Germany, Ministry of the Interior (2018b), 'Lowest number of criminal offences since 1992', press release, 8 May.

Germany, Ministry of the Interior (2019), *Polizeiliche Kriminalstatistik 2018, Ausgewählte Zahlen in Überblick* [*Police criminal statistics 2018, overview of selected figures*].

Germany, Prognos AG (2013), *Umsetzung und Akzeptanz des Persönlichen Budgets: Endbericht im Auftrag des Bundesministeriums für Arbeit und Soziales*, Forschungsbericht 433.

Germany, Standing Conference of the Ministers of Education and Cultural Affairs (2015), *Hochschulzugang und Hochschulzulassung für Studienbewerberinnen bzw. Studienbewerber, die fluchtbedingt den Nachweis der im Heimatland erworbenen Hochschulzugangsberechtigung nicht erbringen können (Beschluss der Kultusministerkonferenz vom 03.12.2015)* [*Access and admission to institutions of higher education for applicants who are unable to provide evidence of a higher education entrance qualification obtained in their home country on account of their flight (resolution of the Standing Conference of the Ministers of Education and Cultural Affairs)*].

Germany, Weiser, B. (2016), *Recht auf Bildung für Flüchtlinge*, Berlin, Informationsverband Asyl & Migration.

Greece, Asylum Service (2016), 'Joint press release: The pre-registration of asylum seekers in the Greek mainland is starting today', 9 June.

Greece, Asylum Service (n.d.), What's next: After pre-registration.

Greece, Greek Ombudsman (2018), 'Announcement on Circular 31547/9662/13.2.2018'.

Greece, Hellenic Statistical Authority (n.d.), 'Criminal offences committed and offenders by sex, citizenship and age classes (2000–2017)'.

Greece, Lesvos Education Sector Working Group (2019), 'Meeting minutes', 9 January.

Greece, Ministry of Education, Research and Religious Affairs (2019), 'Refugee children from the RICs of Samos and Kos go to school', 7 February.

Greece, Ministry of Migration Policy (2019a), *Announcement: Το ΥΜΕΠΟ στοχεύει στην χειραφέτηση και αυτονόμηση των αναγνωρισμένων προσφύγων*, 13 March.

Greece, Ministry of Migration Policy (2019b), National strategy for integration, July.

Greece, National Centre for Social Solidarity (2019), Situation update: Unaccompanied children (UAC) in Greece 30 April 2019.

Greek Council for Refugees (2018), 'Πρώτη απόφαση διοικητικών δικαστηρίων για οικογενειακή επανένωση πρόσφυγα', Press release, 6 February.

Greek Ombudsman (2017), Special report: Migration flows and refugee protection, April, Athens, Greek Ombudsman.

Guariso, A. (2018), *Stranieri e accesso alle prestazioni sociali: Normativa nazionale ed Europea schede pratiche*, January.

Gustafsson, L. and Ranstorp, M. (2017), *Swedish foreign fighters in Syria and Iraq: An analysis of open-source intelligence and statistical data*, Försvarshögskolan, June.

Italy, Italian National Institute of Statistics (n.d.), Crimes reported by the police forces to the judicial authority, 2013–2017.

Italy, Ministry of Interior (2019), *Fondo asilo migrazione e integrazione (FAMI) 2014-2020. Elenco dei progetti finanziati al 15 Marzo 2019*, March.

Kancs, D. and Lecca, P. (2017), Long-term social, economic and fiscal effects of immigration into the EU: The role of the integration policy, JRC Working Papers in Economics and Finance, 2017/4.

Ketečka-Pulker, M. and Parrag, S. (2015), Pilotprojekt: "*Qualitätssicherung in der Versorgung nicht-deutschsprachiger PatientInnen: Videodolmetschen im Gesundheitswesen*", March.

King, R. and Lulle, A. (2016), Research on migration: Facing realities and maximising opportunities, European Commission Policy Review, Luxembourg, Publications Office.

Lehrian, M. and Mantel, J. (2016), 'Neuerungen durch das Integrationsgesetz' ['Amendments by the Integration Act'], *Asylmagazin*, No. 9, pp. 290–294.

Maguire, M. (1997), 'Crime statistics, patterns and trends: Changing perceptions and their implications', in *Oxford Handbook of Criminology*, 2nd edition, pp. 135-188.

Medici Senza Frontiere (2018), Fuori campo.

National Integration Evaluation Mechanism (NIEM) (2019), *The European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*.

Organisation for Economic Co-operation and Development (OECD) (2013), 'The fiscal impact of immigration in OECD countries', in *International Migration Outlook 2013*, 13 June.

OECD (2014), Is migration good for the economy?, Migration Policy Debates, May.

OECD (2019a), Ready to help? Improving resilience of integration systems for refugees and other vulnerable migrants, Paris, OECD Publishing.

OECD (2019b), Refugee education: Integration models and practices in OECD countries, OECD Education Working Papers No. 203.

OECD (forthcoming), *Unlocking the potential of migrants through vocational education and training*.

OECD and United Nations High Commissioner for Refugees (UNHCR) (2018), Engaging with employers in the hiring of refugees: A 10-point multi-stakeholder action plan for employers, refugees, governments and civil society.

Pew Research Center (2019), 'Europeans credit EU with promoting peace and prosperity, but say Brussels is out of touch with its citizens', 19 March.

Pro Asyl (2019), 'Die Hürden beim Familiennachzug', 9 July.

Rete Milanese Vulnerabili (2017), 'Rete Milanese Vulnerabili per Richiedenti e Titolari Protezione Internazionale'.

Der Standard (2014), 'Postler und Asyl: SPÖ-Justizsprecher stellt sich auf Landaus Seite', 4 January.

Sweden, Swedish Migration Agency (*Migrationsverket*) (2016), Avgjorda asylärenden 2016.

Sweden, Swedish Migration Agency (*Migrationsverket*) (2017), Avgjorda asylärenden 2017.

Sweden, Swedish Migration Agency (*Migrationsverket*) (2018), Avgjorda asylärenden 2018.

Sweden, Swedish National Council for Crime Prevention (n.d.), 'Reported offences 1950–2015'.

United Nations Children's Fund (Unicef) (2017), Kindheit im Wartezustand: Studie zur Situation von Kindern und Jugendlichen in Flüchtlingsunterkünften in Deutschland.

UN Economic and Social Council (2012), Twenty-first Session of the Commission on Crime Prevention and Criminal Justice, Discussion guide for the thematic discussion on violence against migrants, migrant workers and their families, E/CN.15/2012/5, Vienna, 3 February.

United Nations Educational, Scientific and Cultural Organization (Unesco) (2016), Recommendation concerning technical and vocational education and training (TVET), ED.2016/WS/11, Paris, Unesco.

United Nations General Assembly (2013), Promoting efforts to eliminate violence against migrants, migrant workers and their families, A/RES/67/185, 12 March.

UN High Commissioner for Refugees (UNHCR) (2017a), The way forward to strengthened policies and practices for unaccompanied and separated children in Europe, July.

UNHCR (2017b), Summary conclusions on the right to family life and family unity in the context of family reunification of refugees and other persons in need of international protection, Expert roundtable, 4 December.

UNHCR (2018a), Fair and fast: UNHCR discussion paper on accelerated and simplified procedures in the European Union, 25 July.

UNHCR (2018b), Greece: Cash assistance, 6 June.

UNHCR Executive Committee (1979), Conclusions No. 15 (XXX).

UNHCR Executive Committee (1981), Conclusions No. 24 (XXXII).

UNHCR Executive Committee (1998), Conclusions No. 85 (XLIX).

UNHCR Executive Committee (1999), Conclusions No. 88 (L).

United Nations Office on Drugs and Crime (UNODC) (2019), Understanding homicide: Typologies, demographic factors, mechanisms and contributors, Global Study on Homicide, Booklet 3, Vienna, UNODC.

Whelan, M. and Pittini, A. (eds.) (2018), Housing & migration, Brussels, Housing Europe.

World Health Organization (WHO) Regional Office for Europe (2018), Mental health promotion and mental health care in refugees and migrants: Technical guidance, Copenhagen, WHO Regional Office for Europe.

Getting in touch with the EU

In person

All over the European Union, there are hundreds of Europe Direct information centres.
You can find the address of the centre nearest you at: http://europa.eu/contact

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service:
– by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls),
– at the following standard number: +32 22999696 or
– by email via: http://europa.eu/contact

Finding information about the EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: http://europa.eu

EU publications

You can download or order free and priced EU publications from EU Bookshop at: http://publications.europa.eu/eubookshop. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see http://europa.eu/contact).

EU law and related documents

For access to legal information from the EU, including all EU law since 1951 in all the official language versions, go to EUR-Lex at: http://eur-lex.europa.eu

Open data from the EU

The EU Open Data Portal (http://data.europa.eu/euodp) provides access to datasets from the EU.
Data can be downloaded and reused for free, both for commercial and non-commercial purposes.

FRA
EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS

HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Over 2.5 million people applied for international protection in the 28 EU Member States in 2015 and 2016. Many of those who were granted some form of protection are young people, who are likely to stay and settle in the EU. The EU Agency for Fundamental Rights interviewed some of them, as well as professionals working with them in 15 locations across six EU Member States: Austria, France, Germany, Greece, Italy and Sweden. This report presents the result of FRA's fieldwork research, focusing on young people between the ages of 16 and 24.

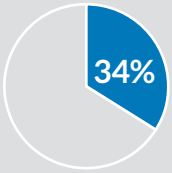
FRA - EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS
Schwarzenbergplatz 11 – 1040 Vienna – Austria
Tel. +43 1580 30-0 – Fax +43 1580 30-699
fra.europa.eu
facebook.com/fundamentalrights
linkedin.com/company/eu-fundamental-rights-agency
twitter.com/EURightsAgency

Publications Office
of the European Union

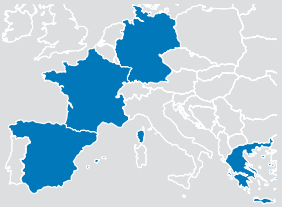
Refugee and Migrant Children in Europe

Overview of Trends in 2019

Some **8,200** children arrived in Greece, Italy, Bulgaria and Spain between January and June 2019 **(35% girls and 65% boys)**. This is 21% less compared to the first half of 2018 (10,400).



Some **2,800** children who arrived in Europe between January and June 2019 were unaccompanied and separated.



Out of the total number of children who sought international protection in Europe between January and June 2019, over **70%** were registered in just four countries: **Germany (39%), France (12%), Spain (11%) and Greece (10%)**.

Over **10,400** children **(24% boys and 27% girls)** were being considered for resettlement in Europe.

Arrivals to Europe between January and June 2019[1]

Between January and June 2019, **8,236** children arrived in Greece, Spain, Italy and Bulgaria, of whom **2,794** (34%) were unaccompanied or separated children (UASC)[2]. Overall, arrivals of children in the first half of 2019 decreased by 21% compared to the same period in 2018.

Greece

Between January and June 2019, **5,905**[3] children arrived in Greece by land and sea, including **994** (17%) UASC[4]. This is an 18% increase compared to children arriving in the same period in 2018 (5,001). The number of children arriving unaccompanied or separated was also 57% higher than in the first six months of 2018 (636). The majority of children, including UASC, were from Afghanistan, the Syrian Arab Republic, Iraq and the Democratic Republic of Congo.

Spain

Between January and June 2019, some **1,750** children arrived by land and sea. This is a 20% decrease compared to the first half of 2018, when a total of 2,179 children arrived. Nevertheless, the proportion of children arriving unaccompanied or separated has increased slightly from 65% in January-June 2018 to 69% in 2019. Most children came from Morocco, the Syrian Arab Republic, Mali and Guinea. Most of them arrived by sea and rarely applied for asylum.

Italy

Between January and June 2019, **486** children arrived in Italy . This is an six-fold decrease in comparison to the same period of 2018 (3,096) – in line with the sharp decrease in total sea crossings since July 2017. The proportion of children arriving unaccompanied or separated has also decreased from 84% in January-June 2018 to 75% in 2019.

Most children originated from Tunisia, Pakistan, Bangladesh and Iraq.[5]

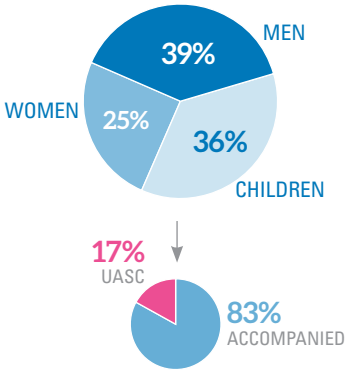
Bulgaria

Between January and June 2019, **95** children were intercepted at border crossing points and within the territory of the country. While this represents an overall decrease of 26% compared to the first half of 2018 (128), the number of UASC (62) nearly doubled compared to the same period in 2018 (35). This meant the proportion of UASC arriving in Bulgaria increased from 27% in the first half of 2018 to 65% in 2019. Most children were from Afghanistan, Iraq and the Syrian Arab Republic.[6]

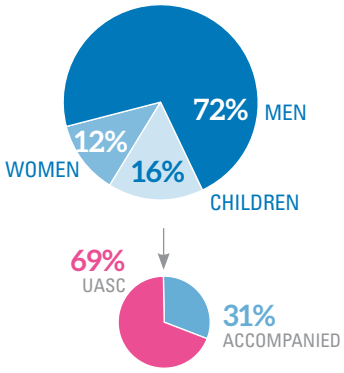
UNHCR The UN Refugee Agency unicef IOM UN MIGRATION

Demographic of Arrivals, Including Accompanied, Unaccompanied and Separated Children

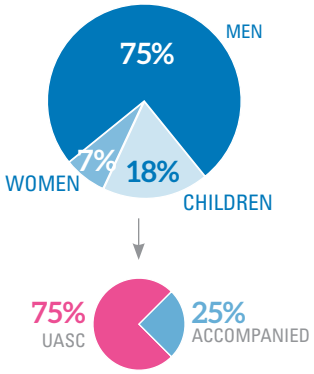
Greece



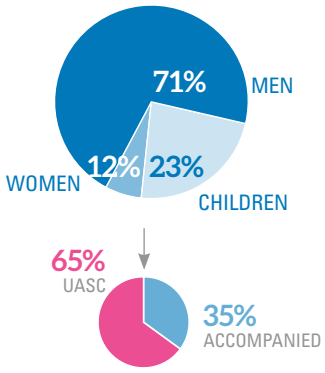
Spain



Italy

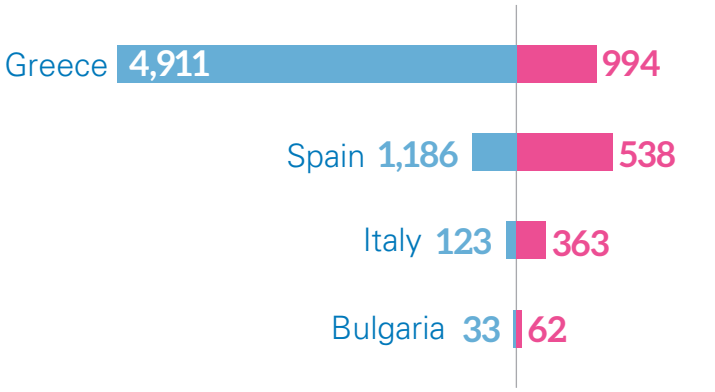


Bulgaria



Accompanied, Unaccompanied and Separated Children by Country of Arrival

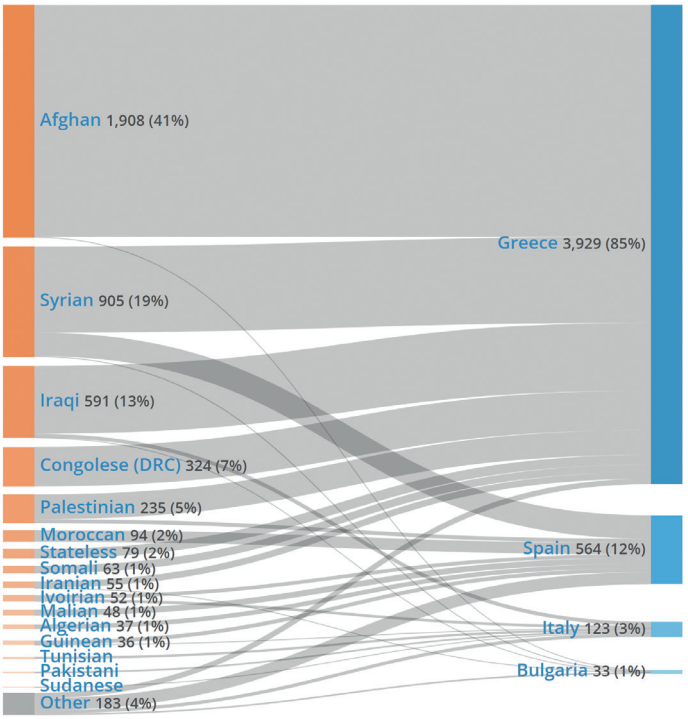
Source: Hellenic Police, EKKA, Italian Ministry of Interior, Bulgaria State Agency for Refugees, Bulgarian Helsinki Committee, Spanish Ministry of Interior.



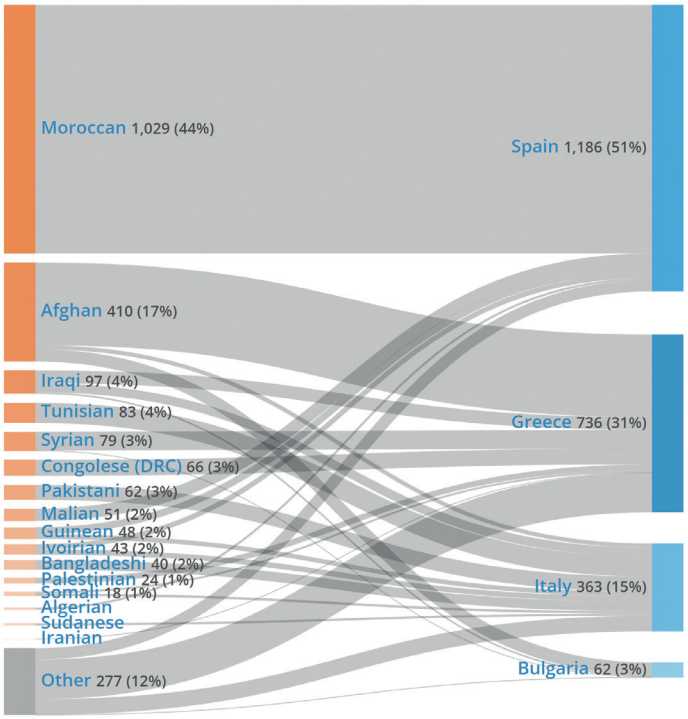
© UNICEF/UN026246/GILBERTSON VII PHOTO

Nationality of Accompanied and Unaccompanied and Separated Children by Country of Arrival

Accompanied Children by Country/Area of Origin and Arrival



UASC by Country/Area of Origin and Arrival

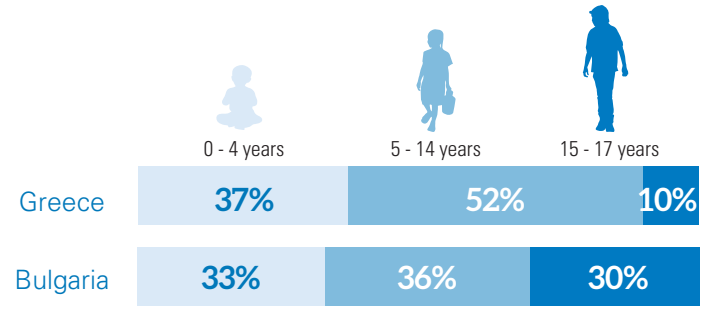


* Data for Greece only reflects sea arrivals as information on nationalities of children arriving by land arrivals is not available.

Age Breakdown of Accompanied and Unaccompanied Children by Country of Arrival

Among the 6,000 accompanied children who arrived in Greece and Bulgaria, 37% were 0 to 4 years old, 52% were 5 to 14 years old and 11% were 15 to 17 years old. An age breakdown for accompanied children in Italy and Spain is not available.

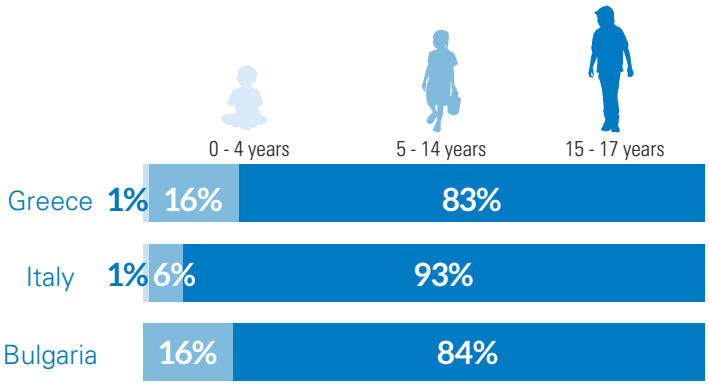
Age Breakdown of Accompanied Children by Country of Arrival



Source: Hellenic Police, EKKA, Bulgarian State Agency for Refugees

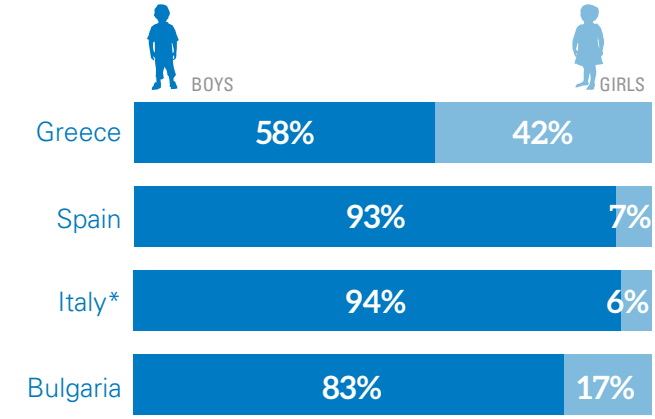
The majority of UASC who arrived in Italy, Greece and Bulgaria between January and June 2019 were between 15 and 17 years old (86% overall). Age disaggregated data on children arriving to Spain is not available.

Unaccompanied and Separated Children – Age breakdown



Sex Breakdown of Children by Country of Arrival

Overall, the proportion of boys among arrivals remains high - nearly two-thirds of children who arrived through various Mediterranean routes in the first half of 2019 were boys. Yet, the proportion of girls arriving to Greece in the same period was significant - 42% of all child arrivals. This is due to the fact that children arriving to Greece are primarily accompanied, and the proportion of girls among accompanied children is overall much higher as compared to children who travel alone.



Source: Hellenic Police, EKKA, Italian Ministry of Interior and Ministry of Labour and Social Policy, Bulgarian State Agency for Refugees, Bulgarian Helsinki Committee, Spanish Ministry of Interior

Analysis of available data in Greece, Italy, Serbia and Bulgaria suggests a lack of systematic data collection disaggregated by age and sex, and limited information regarding unaccompanied girls in particular. While it is largely believed that most unaccompanied children arriving in Europe are boys, unaccompanied girls may inadvertently be overlooked due to challenges in identification and registration as such, for example because they are traveling with their husbands, children, or extended or unrelated families.

Children in Reception as of June 2019

Greece

- An estimated **32,000** children were present in Greece as of June 2019, up from 27,000 in December 2018. Of them, 60% live in urban areas (apartments, hotels, shelters for UASC, self-settled, etc.); 26% live in accommodation sites and 1% live in safe zones for UASC[7]. A further 13% are in Reception and Identification Centres, which is a situation comparable to December 2018.
- A total of **682** unaccompanied children remained in Reception and Identification Centres[8] and **139** were in protective custody/detention (up from 86 in December 2018).
- Out of the total 3,868 UASC present in Greece, **1,862** were placed in dedicated accommodation for UASC (1,010 in long-term accommodation and another 852 in temporary accommodation, such as safe zones and hotel facilities) - a slight increase of 6% compared to December 2018. Despite the progress in creating additional accommodation, however, the increased caseload of UASC in Greece meant that as of June 2019 more than half of all UASC present in Greece (**2,006**) remained outside appropriate accommodation, including 1,060 UASC living in informal/insecure housing conditions.

Italy

- A total of **7,272** unaccompanied children (93% boys and 7% girls) were present and registered in different types of accommodation at the end June 2019. This is a 45% decrease compared to June 2018 – mainly due to a sharp decrease in sea arrivals, as well as adolescents reaching adulthood.
- Most of all registered UASC at the end of June 2019 were in shelters run by state authorities and non-profit entities (79% of the total in second-level reception centres and 5% in first-level reception centres), while 6% were in private accommodation (family care arrangements).
- Additionally, the Italian Government has reported **4,736** registered unaccompanied children to be out of the reception system at the end of June 2019 (in December 2018, this number stood at 5,230).
- There is no information available on accommodation for children with their families in reception facilities.

* For Italy, the calculation is based on the estimated 7,272 UASC registered in reception according to the Ministry of Labour and Social Policies.

Spain

- As of September, **13,400** unaccompanied and separated refugee and migrant children were accommodated in specialized government-run reception centres across the 17 autonomous communities and the two autonomous cities of Ceuta and Melilla. Regions hosting the vast majority of UASC include Andalusia, Melilla, Catalonia, the Basque Country and Madrid, yet no data is available on their number, age and gender.

Bulgaria

- As of June 2019, a total of **156** children (85% boys and 15% girls), including **54** UASC, were accommodated in reception facilities in Sofia and southern Bulgaria. This represents a 27% decrease in the number of children compared to December 2018, mainly due to continued onward movements.
- In mid-June 2019, a safe zone for unaccompanied asylum-seeking children opened in the reception centre of Voenna Rampa in Sofia. This is the first of its kind in the country, and currently 39 unaccompanied children (mainly from Afghanistan, Islamic Republic of Iran and Pakistan) benefit from its services.

Serbia

- A total of **825** children (18% girls and 82% boys) were present in the country as of June 2019 - a 28% decrease compared to December 2018, but slightly more compared to the caseload in June 2018.
- With **463** UASC present in June 2019, the proportion of UASC among all refugee and migrant children in Serbia increased to **59%**, up from 42% in December 2018 (484). While the reception system for UASC continues to improve, there are an estimated 100 UASC still out of appropriate long-term or temporary care.
- In June 2019, children made up **26%** of the total refugee and migrant population accommodated in state reception and accommodation centres, down from 46% in December 2018.

Bosnia and Herzegovina

- As of June 2019, **843** children (26% girls and 74% boys), were present in different accommodation centres in Bosnia and Herzegovina (state-run facilities, IOM-managed reception centres, shelters managed by NGOs) or awaiting the registration of their asylum claim in registered private accommodation - a 43% increase compared to December 2018. Of them, **267** (32%) were UASC, all of whom were boys. No data is available on the number of children among the estimated 3,300 people privately accommodated or squatting in other areas of the country.
- Just over 80 children applied for asylum in the country (43% girls and 57% boys) between January and June 2019.
- 90% of all refugees and migrants continue to be located in Una Sana canton, where restrictions on freedom of movement persist, while access to services and rights remains limited, especially for those residing outside of formal reception centres or NGO shelters.
- Between January and June 2019, of the 11,041 refugees and migrants identified by the Ministry of Security of Bosnia and Herzegovina, **227** were UASC.

Montenegro

- Since the beginning of 2019, there has been a steady increase in refugees and migrants transiting through and staying in Montenegro. As of June 2019, **23** accompanied children and **5** unaccompanied children (4% of the total number of refugees and migrants) were present in reception facilities in the country.
- While the caseload appears to be manageable, there is a lack of appropriate accommodation and limited access to basic services for children and families.

Croatia

- As of June 2019, **74** children, predominantly boys (54%) including a small number of UASC, were present in Croatia. In the first six months of 2019, 108 UASC were identified by the Croatian border police, similar to 2018 when 106 UASC were identified.
- Accompanied children were accommodated in two reception centres for asylum seekers, while the child protection authorities mostly accommodate UASCs in juvenile facilities around the country. The children, irrespective of their legal status, are largely entitled to the same protection and care as Croatian children.

Hungary

- As of June 2019, nine unaccompanied children below the age of 14 were accommodated in a designated children's centre, while and a total of 32 young adults in aftercare lived in this facility and in two other children's centres.
- In February 2019, the Hungarian Government announced that the designated child centre (which is part of a bigger child care institution) would be relocated to another city later this year. However, no further details have been available so far which puts the already understaffed and underfunded centre and the children accommodated there in limbo.
- As of June 2019, a total of 146 children were held in the Roszke and Tompa transit zones (85 boys and 61 girls), which was 55% of the total number of the then-asylum-seeker population. Access to services from the transit zones including education, psychosocial and legal support is limited.

Romania

- Families with children, who do not have sufficient resources for private accommodation, are hosted in reception facilities managed by the national asylum authority. During the first half of 2019, 760 asylum-seekers, including **87** children and **60** UASC had benefitted from accommodation in such facilities. Yet, as of the end of June, around 330 asylum-seekers and refugees, including around 44 children and 16 UASC, were present in reception managed by national asylum authorities.
- Those under the age of 16 are usually referred to national child protection services, while older adolescents typically remain in government-run reception facilities for asylum seekers and refugees of all ages.

Reception systems still vary greatly in quality across and within countries, and when inadequate, can pose protection risks. The large number of children who are not in shelters have either moved onwards or found themselves destitute on the streets or in informal accommodation.

Source: EKKA- Greece, Ministry of Social Affairs- Italy, Bulgaria State Agency for Refugees, UNHCR, UNICEF and IOM

Access to Education for Refugee and Migrant Children in Europe

- Although all children have a fundamental right to basic education, in practice the type, quality and duration of schooling offered to asylum-seeking, refugee and migrant children depends more on where they are in the migrant/asylum process than on their educational needs.
- All European States that were affected by the 2015–2016 refugee and migrant crisis have made an effort to ensure children can go to school. In Bulgaria, Greece and Serbia, for example, **between 50% and 62%** of all school-age refugee and migrant children were **integrated into the formal education system** as of December 2018.
- **Children of pre-primary and upper secondary ages** (3-5 years and 15+ years) are typically beyond the scope of national legislation on compulsory education and are consequently often excluded from school integration programmes.
- **Insufficient school capacity** both in terms of resources and staff trained to work with refugee and migrant children, **language barriers, psychosocial issues, as well as limited catchup classes** are among the most common challenges faced by refugee and migrant children in need of education. **Lack of information** on enrolment procedures and transportation to/from remote asylum facilities can also present a barrier.
- Students with a migrant/refugee background, especially new arrivals, **may initially underperform** academically, especially when they do not receive the required additional support. Yet, **their education performance improves significantly over time** when provided with adequate support, as many show determination to improve their prospects in life.

For more information see full Briefing paper.

Asylum Applications and Decisions

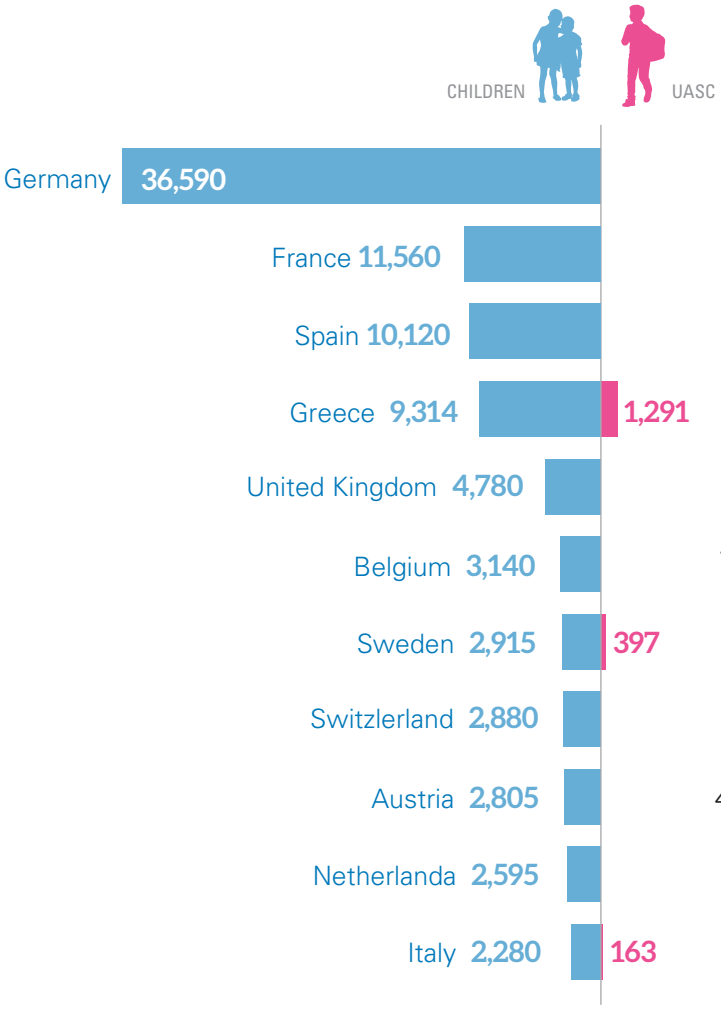
During the first half of 2019, European countries[10] recorded some 297,560 new asylum seekers. Nearly a third of them (**94,040**) were children. This represents a slight increase of **21%** compared to the same period in 2018.

In 2019, the largest proportion of child asylum seekers are from the **Syrian Arab Republic** representing 21% of all child asylum seekers (compared to 28% in all of 2018). Other notable countries of origin among child asylum seekers include **Afghanistan** (9%), **Iraq** (8%), **Venezuela** (5%), **Eritrea***(4%), **Nigeria** (4%), **Turkey** (3%), **Georgia** (3%), the **Islamic Republic of Iran** (3%) and **the Russian Federation** (3% each).

In general, **45%** of all child asylum seekers in the first half of 2019 were female, and originated from **Nigeria** (51%), **Venezuela** (49%), **Turkey** (48%), the **Russian Federation** (48%), **Syrian Arab Republic** (47%) and **Georgia** (47%).

Similar to previous years, **Germany** remained the top destination for refugee and migrant children, registering 39% of all child asylum applications between January and June 2019 (36,590 children). Other countries that recorded large numbers of child asylum seekers include **France** (11,560 children, 12%), **Spain** (10,120 children, 11%), **Greece** (9,314 children, 10%), and the **United Kingdom** (4,780 children, 5%). Greece remains the country with the highest number of first-time applicants relative to its population, while Spain has marked the sharpest increase in child asylum claims over the first six months of 2019 (double compared to the same period in 2018).

Asylum Applications Lodged by Children, including Unaccompanied and Separated Children between January and June 2019 - by Country of Asylum**



Between January and June 2019, a total of **72,420** decisions were issued by national authorities on child asylum claims across Europe. Yet, due to accumulated backlogs in national asylum systems, over 168,320 asylum applications by children were still registered as pending at the end of June 2019.

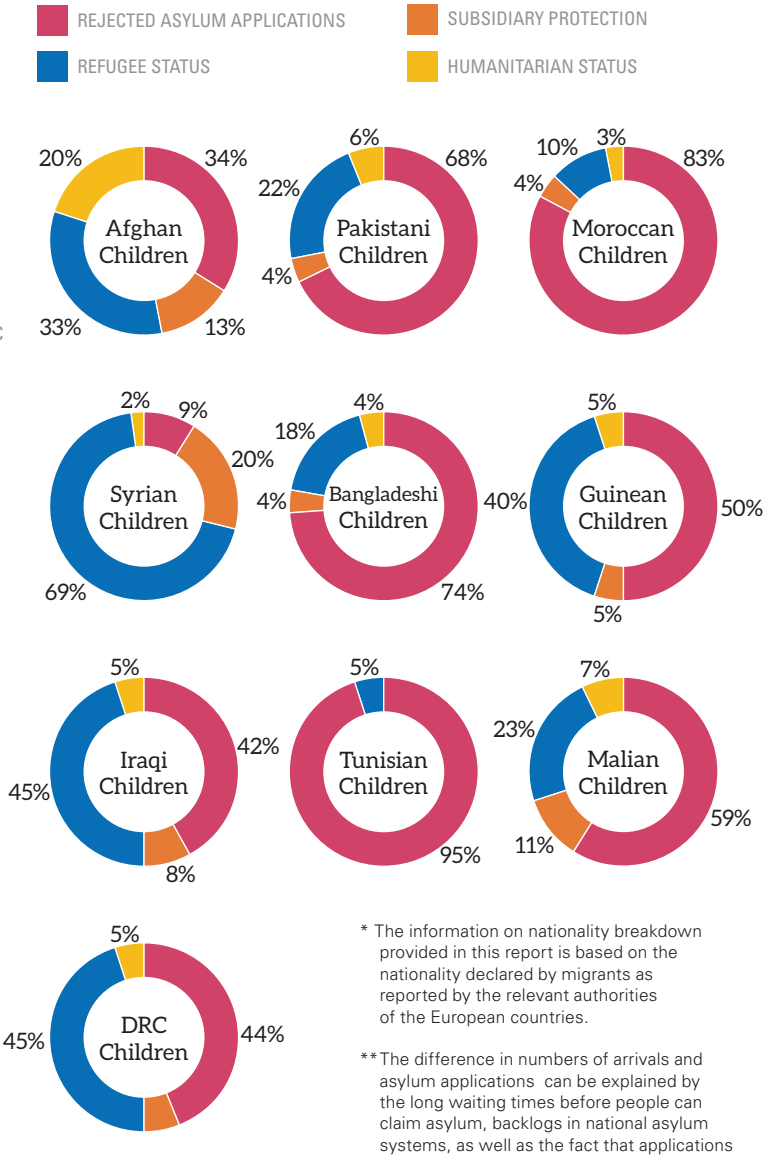
Of all decisions issued in the first half of 2019, **59%** were positive, which is a slight increase compared to 2018 (56%), but significantly lower than in 2017 and 2016, when respectively 63% and 67% of children received positive asylum decisions.

72% of all children who received positive decisions, were granted **refugee status**, while the remaining were provided subsidiary protection. This represents a positive trend over the past years - compared to 63% in 2018, 50% in 2017 and 53% in 2016.

This is particularly visible among Syrian children, for whom refugee status decisions increased from 62% in 2018 to 69% in 2019 , while subsidiary protection decisions dropped from 27% to 20%.

Many child asylum seekers received negative decisions, notably among those coming from North African countries (90% on average), as well as children from Bangladesh (74%), Pakistan (68%) and Mali (59%).

Decisions on Child Asylum Applications between January and June 2019



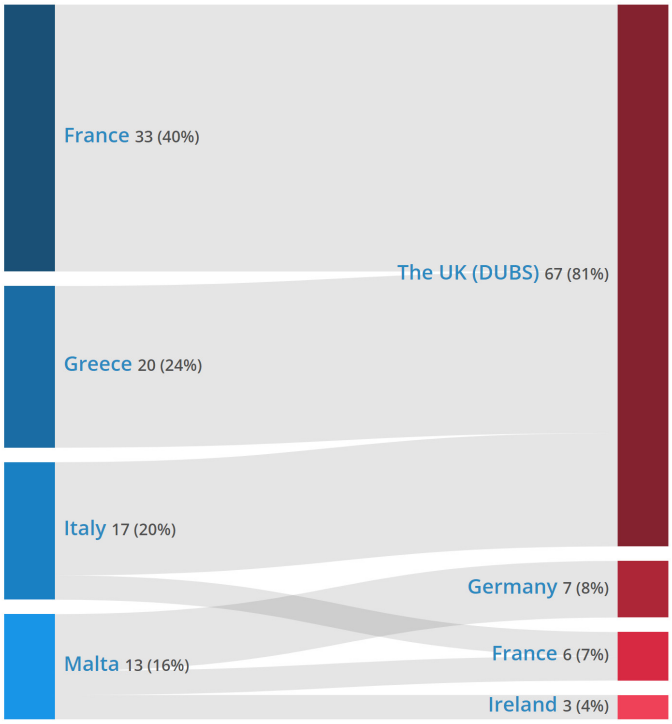
Source: Eurostat, Date: 13 September, 2018

* The information on nationality breakdown provided in this report is based on the nationality declared by migrants as reported by the relevant authorities of the European countries.

** The difference in numbers of arrivals and asylum applications can be explained by the long waiting times before people can claim asylum, backlogs in national asylum systems, as well as the fact that applications can be submitted by persons who have arrived previously or did not necessarily come through the Mediterranean Routes.

Relocation

Despite the official closure of the EU emergency relocation scheme, IOM has continued to support national authorities to relocate migrants and refugees arriving by sea to EU Member States through bilateral agreements between countries involved. Between January and June 2019, a total of 16 unaccompanied children were relocated to Germany (7), France (6), and Ireland (3), primarily from Italy and Malta. Additionally, 67 unaccompanied children were transferred to the United Kingdom within the framework of the DUBS project, mainly from France (33), Greece (20) and Italy (14).



Returns from Greece to Turkey

Of all returnees (1,885) from Greece to Turkey under the EU-Turkey Statement between 2016 and June 2019, only 5% (93) were children. All of whom were returned with their families.

Source: Returns from Greece to Turkey

Assisted with Voluntary Return and Reintegration (AVRR) to Children and UASC

Between January and June 2019, IOM provided AVRR support to 28,502 migrants globally (5% more than the same period in 2018). In general, 13% of them were children, including 549 UASC. Overall, 14,881 AVRR beneficiaries were assisted to return from the European Economic Area and Switzerland, with 45% (6,715) assisted to return from Germany. 19% (2,701) of AVRR beneficiaries from the European Economic Area and Switzerland were children, including 62 unaccompanied and separated. Over half of the beneficiaries assisted to return from the European Economic Area and Switzerland (7,705) returned to South-eastern and Eastern Europe. Another 19% (2,877) returned to the Middle East and Northern Africa and 17% (2,595) went back to Asia and Pacific region.

Children Resettled to Europe

Of the total 20,200 people being considered for resettlement in Europe as of June 2019, 51% were children (24% boys and 27% girls). Children's resettlement cases in Europe were most commonly considered by Germany, Sweden, Norway, France and the United Kingdom. The most common countries of origin of children being considered for resettlement included the Syrian Arab Republic, Somalia, Sudan and the Democratic Republic of Congo.

Source: Europe Resettlement 2016, UNHCR

Sources: Hellenic Police, Greek National Centre for Social Solidarity (EKKA), Italian Ministry of Interior, Bulgarian State Agency for Refugees, Spanish Ministry of Interior, Eurostat, BAMF-Germany, IOM, UNHCR and UNICEF

Definitions:

A **"separated child"** is a child separated from both parents or from his/her previous legal or customary primary care-giver, but not necessarily from other relatives. This may, therefore, mean that the child is accompanied by other adult family members.

An **"unaccompanied child"** is a child separated from both parents and other relatives and are not being cared for by any other adult who, by law or custom, is responsible for doing so. UNHCR

A **"refugee"** is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country (Article 1 A 1951 Refugee Convention).

An **"asylum seeker"** is a person who is someone who has applied for asylum and is **waiting for a decision** as to whether or not they are a refugee.

Determination of refugee status can only be of a declaratory nature. Indeed, any person is a refugee within the framework of a given instrument if he meets the criteria of the refugee definition in that instrument, whether he is formally recognized as a refugee or not (UNHCR Note on Determination of Refugee Status under International Instruments UNHCR

A **"migrant"** refers to any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. IOM

Limitations

There is no comprehensive data on arrivals (both adults and children) in Europe, especially by land and air, as such movements are largely irregular and involve smuggling networks, which are difficult to track. Where collected, data is rarely disaggregated by nationalities, risk category, gender or age.

Reliable data on the number of UASC either arriving to, or currently residing in, different European countries is often unavailable. The number of asylum applications filed by UASC is used to provide an indication of trends but does not necessarily provide an accurate picture of the caseload due to backlogs in national asylum systems, onward irregular movements or not applying for asylum at all. In addition, due to different definitions and national procedures and practices, collecting accurate data on separated children specifically is very challenging (e.g. separated children being registered as either accompanied or unaccompanied).

In 2018, UNICEF, UNHCR, IOM, Eurostat and OECD issued a Call to Action: Protecting children on the move starts with better data, which reiterates the fact that to ensure the protection of children affected by migration, data on children should be disaggregated by standard age categories, from early childhood to adolescence; by other demographic and socio-economic characteristics like disability, education level and whether they live with their parents; and by legal status.

These messages were further reiterated and contextualized in UNHCR and UNICEF's suggestions for Strengthening Current Data on Refugee and Migrant Children in the EU.

About the factsheet

This factsheet is jointly produced by UNHCR, UNICEF and IOM with the aim to support evidence-based decision-making and advocacy on issues related to refugee and migrant children.

The document provides an overview of the situation in Europe with regards to refugee and migrant children (accompanied and UASC). It compiles key child-related data based on available official sources: arrival, asylum applications, asylum decisions, profiling of arrivals, relocation from Greece and Italy under the EU relocation scheme, as well as returns from Greece to Turkey under the EU-Turkey Statement.

The present factsheet covers the period from January to June 2019 and is produced every six months to provide up-to-date information on refugee and migrant children, including unaccompanied and separated children.

© UNICEF/UN027745/HAVIV VII PHOTO

Endnotes

1 Data on arrivals is partial due to the large scale of irregular movements and reflects only sea arrivals for Greece and Italy. It does not reflect the recent sharp increase of land arrivals in Greece. Data for Spain includes both sea and land arrivals and is based on UNHCR estimates, pending provision of final figures by the Spanish Ministry of Interior. Figures for UASC are only available for arrivals by sea (not for Ceuta or Melilla).

2 Separated children are children separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. Unaccompanied children are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. (Inter-Agency Standing Committee)

3 Arrival figures for Greece are collected in the framework of UNHCR border activities and are provided by Hellenic Police.

4 During the same period of time, a total of 3,404 referrals were made to the Greek National Centre for Social Solidarity (EKKA) based on children identified on islands and mainland Greece, including near the land border with Turkey in January–June 2018.

5 Data on arrivals and demographics of refugees and migrants registered in Italy is based on information received from the Italian Ministry of Interior.

6 Statistics for Bulgaria are collected by the State Agency for Refugees. Observations on data and trends that are not typically compiled by government institutions are collected by the Bulgarian Helsinki Committee.

7 Safe Zones are designated supervised spaces within accommodation sites which provide UAC with 24/7 emergency protection and care. They should be used as short term (maximum 3 months) measures to care for UAC in light of the insufficient number of available shelter places. Safe Zone priority is given to UAC in detention as well as other vulnerable children, in line with their best interests.

8 Also referred to as 'hotspots'.

9 Under emergency regulations adopted by the Hungarian government in 2017, unaccompanied and separated asylum-seeking children of and above the age of 14 are confined to the transit zones for the duration of the asylum procedure.

10 European Union Member States + Iceland, Liechtenstein, Norway and Switzerland

For further information or any questions concerning this factsheet please contact:

UNHCR:
Edgar Scrase
scrase@unhcr.org

UNICEF:
Tsvetomira Bidart
tbidart@unicef.org

IOM:
Ivona Zakoska Todorovska
izakoska@iom.int