

# 1

## Asylum, immigration and integration



*The year 2012 saw progress in the negotiation of the European Union (EU) asylum instruments under review, although no new legislation was formally adopted. Solidarity among EU Member States on asylum issues remained limited, with the United States resettling more refugees from Malta than all European states together. Increased attention was devoted to statelessness, an issue that has so far remained unexplored in many EU Member States. Certain protective provisions of the Return Directive, such as the need to provide alternatives to detention or forced return monitoring, are, in practice, only slowly being implemented. As of year-end, 16 EU Member States had national-level action plans on integration, and nine of those monitored integration via the use of indicators.*

The issues covered in this chapter and the next, on borders and visa policies, are affected by proposed changes to EU funding in the area of home affairs for the years 2014 to 2020, tabled by the European Commission in 2011 and under negotiation in 2012. The proposal foresees a consolidation of currently existing funds into two major funds – the Asylum and Migration Fund and the Internal Security Fund – and an almost 40 % budget increase to €10.9 billion. The proposed Asylum and Migration Fund will be a core source of funding for many government and non-governmental organisation (NGO) projects implemented in the EU.

### 1.1. Asylum

The EU's five-year plan in the field of justice and home affairs that covers asylum, known as the Stockholm Programme, required the EU to agree on a Common European Asylum System (CEAS) by the end of 2012. A number of components are required to finalise the CEAS, including the revision of six regulations or directives, two of which were dealt with in 2011, as well as enhanced practical cooperation through the European Asylum Support Office (EASO).

#### Key developments in the area of asylum, immigration and integration

- The European Parliament and the Council of the European Union reach a compromise following intense negotiations on solutions for most of the provisions of the asylum *acquis* subject to revision, but they leave formal publication of the revised instruments to 2013.
- The European Asylum Support Office (EASO) publishes its first two country-of-origin reports describing the situation in Afghanistan and develops the first EU-wide methodology on country-of-origin information.
- The Court of Justice of the European Union (CJEU) delivers preliminary rulings on five asylum cases in 2012, bringing to 15 the total number of preliminary rulings on asylum matters to date.
- Two more EU Member States adopt national legislation in 2012 on alternatives to detention, leaving only one EU Member State with a mandatory detention policy. The use of detention for immigration-related reasons, however, remains widespread and alternatives to detention are still little used.
- Two more EU Member States introduce return monitoring systems under the Return Directive, bringing the number of countries with an effective return monitoring system to 15.
- The European Commission enhances the European Web Site on Integration, providing a virtual platform to kick-start public discussion, policy initiatives and dialogue amongst stakeholders, in both non-governmental and governmental organisations.
- The Immigrant Citizens Survey, which covered 15 cities in seven EU Member States, finds that most immigrants are interested in voting and that three out of four want to become citizens.

**Table 1.1: EU asylum-related instruments to be reviewed by the end of 2012**

| EU instrument  | Original document                    | Revision   |
|--|--------------------------------------|------------|
| Extension to refugees of the Long-Term Residents Directive | Council Directive 2003/109/EC        | 2011/51/EU |
| Qualification Directive                                    | Council Directive 2004/83/EC         | 2011/95/EU |
| Dublin II Regulation                                       | Council Regulation (EC) No. 343/2003 | pending    |
| Eurodac Regulation   | Council Regulation No. 2725/2000     | pending    |
| Reception Conditions Directive                             | Council Directive 2003/9/EC          | pending    |
| Asylum Procedures Directive                                | Council Directive 2005/85/EC         | pending    |

Source: FRA, 2013

In 2012, political agreement was reached on most of the proposed amendments for three of the remaining instruments, although the revisions were not formally completed by year-end.

Informal tripartite meetings attended by representatives of the European Parliament, the Council of the European Union and the European Commission on Eurodac started in December 2012 (see Table 1.1). Separately, a rise in asylum applications by nationals from visa-free western Balkan countries in various EU Member States persuaded the EU to work on introducing a mechanism to ► suspend visa-free travel (see [Chapter 2](#)).

As to the work still needed on the instruments to complete the CEAS, the EU completed negotiations in 2012 on the recast Reception Conditions Directive (2003/9/EC). This directive describes common standards of reception and treatment of asylum seekers. The recast contains a list of grounds for detention and regulates detention conditions. It will have revised provisions on access to the labour market and identification of persons with special needs. Detention of children seeking asylum remains possible; separated children can only be detained under exceptional circumstances.

In December 2012, an agreement was reached between the European Parliament and the Council of the European Union in the revision negotiations for the Dublin II Regulation – the EU’s legal instrument to determine which EU Member State is responsible for examining any given asylum application.

The system of responsibility established by the Dublin Convention in 1990, and which was subsequently incorporated into EU law by Regulation 343/2003 (Dublin II Regulation), has undergone several adjustments. These include introducing a range of protection-related provisions regarding the applicants under this procedure, such as the: right to information; guaranteed effective remedy and free legal assistance; a single ground for, and limited duration of detention; and enlarged reunification possibilities for unaccompanied minors and dependent persons. A mechanism for early warning preparedness and crisis

management – replacing the European Commission’s proposal for a mechanism for suspension of transfers – was introduced in the final compromise.

The European Commission published a further proposal in May 2012, which would amend the existing Eurodac Regulation ((EC) No. 2725/2000). The European Parliament and the Council are still discussing this matter. The current Eurodac Regulation allows Member States to collect and compare asylum applicants’ fingerprints, which makes the application of the Dublin II Regulation possible in practice. In December 2012, the European Parliament voted in favour of giving the police access to Eurodac for law-enforcement purposes, albeit under strict safeguards. The negotiations on detailed rules concerning access to the Eurodac database, as well as other provisions of the regulation, are still on-going.

Negotiations also advanced on the proposed changes to the Asylum Procedures Directive (2005/85/EC), although no agreement was reached by year-end on a number of substantive points, such as safeguards for traumatised persons.

### 1.1.1. EU solidarity in the field of asylum

EU funding in the field of asylum, which was under review in 2012, is supplemented by other solidarity measures. These include, among others, EASO’s work and a voluntary relocation scheme from Malta.

EASO further expanded its activities in 2012, working not only on the ground, but also on the development of early-warning tools, training materials and quality initiatives. On the operational side, EASO asylum support teams were deployed to Luxembourg in spring 2012, when the country was faced with a substantial increase in asylum applications. Asylum support teams also continued to work in Greece throughout the year.

EASO launched the development of an early warning and preparedness system on asylum, which makes it possible to gather information on asylum flows and assess the preparedness of EU Member States’ asylum

**Table 1.2: Relocation from Malta (departures), 2008–2012**

| Year                           | Departures to EU Member States and Schengen-associated countries | Departures to the US | Departures to other countries | Total number of departures |
|--------------------------------|--|----------------------|-------------------------------|----------------------------|
| 2008                           | 0  | 175                  | 0                             | 175                        |
| 2009                           | 106  | 188                  | 0                             | 294                        |
| 2010                           | 221  | 244                  | 0                             | 450                        |
| 2011                           | 164  | 176                  | 4                             | 344                        |
| 2012                           | 105  | 307                  | 8                             | 420                        |
| <b>Total (last five years)</b> | <b>596</b>   | <b>1,090</b>         | <b>12</b>                     | <b>1,698</b>               |

Source: United Nations High Commissioner for Refugees Malta, 2013

systems. It managed the European Asylum Curriculum, a core training tool primarily aimed at national asylum officers, and began supporting EU Member States to improve the quality of their asylum systems, starting with the personal eligibility interview.

Member State experiences on age assessments were collected with a view to possibly developing guidance on the matter in 2013. EASO published its first two country-of-origin reports on Afghanistan in July and December 2012,<sup>1</sup> produced the first EU-wide guidance on the methodology for such reports<sup>2</sup> and published its first annual report on the EU asylum situation.<sup>3</sup> Moreover, EASO promoted practical cooperation among EU Member States and civil society organisations, particularly in light of the increased arrivals from Afghanistan and Syria.

The EU continued to implement a voluntary intra-EU relocation scheme for beneficiaries of international protection in Malta in 2012, a pilot project established to support Malta and known as Eurema. However, as Table 1.2 shows, the number of persons relocated to EU Member States and Schengen-associated countries has consistently been smaller than those resettled from Malta to the United States (US). In 2012, in particular, almost three times as many persons left for the US as resettled in a European country.<sup>4</sup>

### 1.1.2. Case law developments

The CJEU played an increasingly important role in clarifying the meaning of unclear provisions in EU asylum law, issuing six judgments in 2012 on asylum cases referred by national courts for a preliminary

ruling.<sup>5</sup> The six 2012 decisions brought to 15 the total number of preliminary rulings the CJEU has made on asylum matters (two in 2009, four in 2010, three in 2011 and six in 2012), with an additional seven cases pending at year end. Table 1.3 provides an overview of all CJEU referrals for preliminary rulings and of the decisions taken in the field of asylum to date.

Three of the six decisions taken by the CJEU in 2012 are described in greater detail. In the joined case of *Y and Z*,<sup>6</sup> the CJEU was called upon to define which acts may constitute persecution on the ground of religion. Specifically, the Court confirmed that the definition of acts of persecution for religious reasons also covered interferences with the freedom to manifest one's faith. It further noted that an asylum seeker cannot reasonably be expected to give up religious activities that can put his or her life in danger in the country of origin.

In *CIMADE*,<sup>7</sup> the CJEU clarified how to apply the Reception Conditions Directive (2003/9/EC) in transfer requests under the Dublin II Regulation (343/2003). The CJEU held that an EU Member State seeking to transfer asylum seekers under the Dublin II Regulation is responsible, including financially, for ensuring that the asylum seekers have the full benefit of the Reception Conditions Directive until they have physically been transferred. The directive aims at ensuring the application of the articles on human dignity and the right to asylum of the Charter of Fundamental Rights of the European Union. Therefore, EU Member States must also grant minimum reception conditions to asylum seekers awaiting a Dublin II Regulation decision.

5 CJEU, Joined Cases C-71/11 and C-99/11, *Bundesrepublik Deutschland v. Y and Z*, 5 September 2012; CJEU, C-277/11, *M.M. v. Minister for Justice, Equality and Law Reform, Ireland and Attorney General*, 22 November 2012; CJEU, C-179/11, *Cimade and GISTI v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27 September 2012; CJEU, C-620/10, *Kastrati*, 3 May 2012; CJEU, C-245/11, *K v. the Bundesasylamt*, 6 November 2012.

6 CJEU, Joined Cases C-71/11 and C-99/11, *Bundesrepublik Deutschland v. Y and Z*, 5 September 2012, paras. 72 and 80.

7 CJEU, C-179/11, *Cimade and GISTI v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27 September 2012.

1 EASO (2012a); EASO (2012b).

2 EASO (2012c).

3 EASO (2012d).

4 For a more comprehensive analysis of the Eurema project, see: EASO (2012e).

Table 1.3: CJEU case law on asylum

| Year                               |         | Referring court   | Case reference  | Legal issue(s)  |
|------------------------------------|---------|---|---|---|
| Referral                           | Ruling  |   |   |   |
| Qualification Directive 2004/83/EC |         |   |   |   |
| 2007                               | 2009    | <i>Raad van State</i> – Netherlands   | Case C-465/07, <i>Elgafaji</i> , decision of 17 February 2009   | Person eligible for subsidiary protection, assessment of the risk of suffering serious harm   |
| 2008                               | 2010    | <i>Bundesverwaltungsgericht</i> – Germany   | Joined Cases from C-175 to C-179/08, <i>Abdulla</i> , decision of 2 March 2010                                | Cessation and revocation of refugee status due to change of circumstances   |
| 2009                               | 2010    | <i>Fővárosi Bíróság</i> -- Hungary  | Case C-31/09, <i>Bolbol</i> , decision of 17 June 2010  | Right of Palestinians to be recognised as refugees – meaning of receiving protection or assistance by the UN Relief and Works Agency (UNRWA)  |
| 2009                               | 2010    | <i>Bundesverwaltungsgericht</i> – Germany   | Joined Cases C-57/09 and C-101/09, <i>Bundesrepublik Deutschland v. B and D</i> , decision of 9 November 2010 | Possible exclusion from refugee status due to membership in an organisation involved in terrorist acts  |
| 2010                               | 2010    | <i>Korkein oikeus</i> – Finland   | Case C-105/10 PPU, <i>Gataev and Gataeva</i> , removal order of 3 April 2010                                  | Possibility for judicial authority to refuse to execute a European Arrest Warrant on persons who have applied for asylum in that state  |
| 2011                               | 2012    | <i>Fővárosi Bíróság</i> – Hungary   | Case C-364/11, <i>El Kott and Others</i> , decision of 19 December 2012                                       | Right of Palestinians to be recognised as refugees – meaning of when protection or assistance by UNRWA has ceased entitling a person to the benefits of the directive   |
| 2011                               | 2011    | <i>Oberverwaltungsgericht für das Land Nordrhein-Westfalen, Münster</i> – Germany | Case C-563/10, <i>Khavand</i> , removal order of 11 March 2011  | Conditions for recognition as a refugee: homosexuality as a reason for persecution  |
| 2011                               | 2012    | <i>Bundesverwaltungsgericht</i> – Germany   | Joined Cases C-71/11 and C-99/11, <i>Bundesrepublik Deutschland v. Y and Z</i> , decision of 5 September 2012 | Definition of acts of persecution on account of religion  |
| 2011                               | 2012    | High Court – Ireland  | Case C-277/11, <i>M. M.</i> , decision of 22 November 2012  | Subsequent examination for refugee status and for subsidiary protection, right of the applicant to be heard   |
| 2012                               | Pending | <i>Raad van State</i> – Netherlands   | Joined Cases C-199, 200 and 201/12, <i>X, Y, Z</i> , pending reference  | Persecution on ground of homosexuality: concept of particular social group and interpretation of the discretion requirement   |
| 2012                               | Pending | <i>Conseil d’Etat</i> – Belgium   | Case C-285/12, <i>Aboubacar Diakite</i> , pending reference   | Whether the reference to a situation of ‘internal armed conflict’ contained in the definition for persons eligible for subsidiary protection must be interpreted in accordance with international humanitarian law (Common Article 3 to the Geneva Conventions) |

| Year                                     |         | Referring court   | Case reference   | Legal issue(s)  |
|--|---------|---|--|---|
| Referral                                 | Ruling  |   |  |   |
| Asylum Procedures Directive 2005/85/EC   |         |   |  |   |
| 2010                                     | 2011    | <i>Tribunal administratif</i> – Luxembourg  | Case C-69/10, <i>Samba Diouf</i> , decision of 28 July 2011  | Accelerated asylum procedure and right to an effective judicial review  |
| 2011                                     | Pending | High Court – Ireland  | Case C-175/11, <i>HID and BA</i> , pending reference   | Accelerated procedure for applicants of a particular nationality; effective remedy  |
| Reception Conditions Directive 2003/9/EC |         |   |  |   |
| 2011                                     | 2012    | <i>Conseil d'État</i> – France  | Case C-179/11, <i>Cimade</i> , decision of 27 September 2012                                       | Obligation to guarantee asylum seekers minimum reception conditions during the Dublin procedure   |
| Dublin II Regulation (EC) No. 343/2003   |         |   |  |   |
| 2008                                     | 2009    | <i>Kammarrätten i Stockholm</i> , <i>Migrationsöverdomstolen</i> – Sweden                               | Case C-19/08, <i>Petrosian</i> , decision of 29 January 2009                                       | Start of the period for implementation of transfer of the asylum seeker where an appeal has suspensive effect under national law                      |
| 2010                                     | 2011    | Court of Appeal (England & Wales) (Civil Division) – United Kingdom and High Court of Ireland – Ireland | Joined Cases C-411/10 and C-493/10, <i>N.S. and M.E. and others</i> , decision of 21 December 2011 | Obligation to transfer an asylum seeker to the Member State responsible and issue of compliance by that Member State, with fundamental rights         |
| 2010                                     | 2012    | <i>Kammarrätten i Stockholm</i> – <i>Migrationsöverdomstolen</i> – Sweden                               | Case C-620/10, <i>Kastrati</i> , decision of 3 May 2012  | Withdrawal of an application for asylum before the Member State responsible for examining that application has agreed to take charge of the applicant |
| 2011                                     | 2012    | <i>Asylgerichtshof</i> – Austria  | Case C-245/11, <i>K</i> , decision of 6 November 2012  | Interpretation of the humanitarian clause in the case where a daughter-in-law and her new-born baby are dependent on the asylum seeker                |
| 2011                                     | Pending | Court of Appeal (Civil Division) – United Kingdom   | Case C-648/11, <i>MA and Others</i> , pending reference  | Determination of the responsible Member State when the applicant is an unaccompanied minor  |
| 2011                                     | Pending | Административен съд София-град – Bulgaria   | Case C-528/11, <i>Halaf</i> , pending reference  | Use of the sovereignty clause where Member State legislation does not comply with the EU Charter's right to asylum                                    |
| 2011                                     | Pending | <i>Hessischer Verwaltungsgerichtshof</i> – Germany  | Case C-4/11, <i>Federal Republic of Germany v. Kaveh Puid</i> , pending reference                  | Obligation of Member States to take responsibility where there is a risk of violation of EU Charter rights or procedural guarantees                   |
| 2011                                     | Pending | <i>Oberverwaltungsgericht für das Land Nordrhein-Westfalen</i> – Germany                                | Case C-666/11, <i>M and Others</i> , pending reference   | Time limits to effect a transfer, meaning of 'absconding' within Dublin Regulation  |

Note: 2012 decisions in grey.

Source: CJEU database



In *K*,<sup>8</sup> the CJEU applied the humanitarian clause in Article 15 of the Dublin II Regulation. Ms K submitted an asylum request in Poland and subsequently moved to Austria, where her son was living with his family. Her daughter-in-law was dependent on Ms K's assistance, as she suffered from a serious illness, had a disability and would risk violent treatment at the hands of male members of the family, on account of cultural traditions seeking to re-establish family honour. The CJEU affirmed that where the conditions listed in Article 15 (2) are satisfied, the humanitarian clause must be interpreted as meaning that a Member State that is not responsible for examining an application for asylum pursuant to the criteria laid down in Chapter III of the Dublin Regulation becomes so responsible, even though the Member State responsible under the Dublin criteria did not make a request as required by Article 15 (1).

The European Court of Human Rights' (ECtHR) also made a number of key related rulings, including *I.M. v. France*<sup>9</sup> on accelerated asylum procedures. The case concerned a Sudanese person from Darfur who, after receiving a removal order, applied for asylum and was therefore automatically processed under an accelerated procedure without sufficient safeguards. The accelerated procedure had much narrower filing windows than the regular procedure, with the time limit for lodging the application reduced, for example, to five from 21 days. Nevertheless, despite the stricter time limit and the fact that he was in detention awaiting removal, the applicant was still expected to adhere to the requirements of the normal procedure – submitting a comprehensive application in French, with supporting documents. While the applicant could have challenged his deportation order before an administrative court, under the accelerated procedure he had only 48 hours to do so, as opposed to the ordinary procedure's two months. The ECtHR concluded that the applicant's asylum application was rejected without the domestic system, as a whole, offering him a remedy concerning his complaint under Article 3 of the European Convention on Human Rights (ECHR), which prohibits torture and inhuman or degrading treatment.

<sup>8</sup> CJEU, C-245/11, *K v. the Bundesasylamt*, 6 November 2012.

<sup>9</sup> ECtHR, *I.M. v. France*, No. 9152/09, 2 February 2012, paras. 136–160.

## FRA ACTIVITY

### Presenting EU and Council of Europe law on asylum, borders and immigration

To acquaint legal practitioners who are not specialists in asylum, borders and immigration law with the field, FRA and the ECtHR drafted a joint handbook in 2012 to provide a first point of reference on both EU and ECHR law on these subject areas. The handbook explains how EU law, the ECHR, the European Social Charter and other relevant Council of Europe instruments regulate these issues. The *Handbook on European law relating to asylum, borders and immigration* breaks down the relevant laws by topic, showing where the EU and the Council of Europe legal systems converge and where they differ. The handbook, which follows a 2011 joint publication with the ECtHR on European non-discrimination law, is expected to be released in June 2013.

For more information, see: FRA and ECtHR (2013), *Handbook on European law relating to asylum, borders and immigration*, Luxembourg, Publications Office

## 1.2. Stateless persons

The latest available Eurostat statistical data show that some 35,000 stateless persons, 200,000 persons of unknown nationality and 325,000 recognised non-citizens – primarily Russian speakers in the Baltics<sup>10</sup> – were staying in the EU in 2011.<sup>11</sup> A stateless person is a person who is not considered a national by any state under the operation of its law.<sup>12</sup>

The United Nations High Commissioner for Refugees' (UNHCR) statistics – which are based on the definitions included in the 1954 Convention relating to the Status of Stateless Persons and therefore do not report 'recognised non-citizens' separately – refer to some 450,000 stateless persons in the EU, mainly in Latvia and Estonia.<sup>13</sup> In 2011, 2,425 stateless persons and 3,095 persons with unknown citizenship applied for asylum in the EU, numbers similar to 2010.<sup>14</sup>

<sup>10</sup> In Latvia, recognised non-citizens in Latvia, who do not hold Latvian nationality, have a broad set of rights, including permanent residence status, consular protection abroad and are protected from expulsion. In Estonia, most have long-term resident status under Directive 2003/109/EC of 25 November 2003.

<sup>11</sup> Eurostat (2013a).

<sup>12</sup> UN, 1954 Convention relating to the Status of Stateless Persons, 28 September 1954, Art. 1 (1).

<sup>13</sup> UNHCR, Statistical online population database, data extracted on 22 January 2013; database available at: <http://www.unhcr.org/pages/4a013e06.html>.

<sup>14</sup> Eurostat (2013b).

The international legal regime on statelessness is composed of two core instruments, the 1954 Convention Relating to the Status of Statelessness (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention). These are integrated at the Council of Europe level by the 1997 European Convention on Nationality and by the 2006 Convention on the avoidance of statelessness in relation to State succession. In June 2012, the ECtHR ruled that it was a violation of the ECHR<sup>15</sup> to 'erase' former citizens of Yugoslavia who were still permanent residents of Slovenia but who had failed to request Slovenian citizenship within a six-month time limit.

To mark the 50<sup>th</sup> anniversary of the adoption of the 1961 Convention as well as the 60<sup>th</sup> anniversary of the 1951 UN Refugee Convention, the UNHCR organised a ministerial meeting in Geneva on 7 and 8 December 2011. In the run-up to the meeting, many states pledged to take action to reduce or prevent statelessness.<sup>16</sup>

Half of the EU's Member States – **Austria, Belgium, Bulgaria, Denmark, France, Hungary, Luxembourg, the Netherlands, Portugal, Romania, Spain, Sweden** and the **United Kingdom** – as well as **Croatia** committed themselves to taking action in the area of statelessness. Such commitments ranged from considering joining the 1961 Convention (**Belgium, Luxembourg, Portugal and Spain**) to reviewing the implementation of the 1954 Convention (for example, **Austria** and the **United Kingdom**).

**Hungary**, one of the few states with a formal operational statelessness determination procedure, agreed to share its good practices, tools and experiences with all interested states. In addition, between February and September 2012, in cooperation with UNHCR, Hungary conducted a Quality Assurance and Development Project resulting in the preparation of a handbook for eligibility officers as guidance in the statelessness determination procedure. Moreover, declarations made to Articles 23 and 24 of the 1954 Convention were lifted in July.

**Croatia** committed to facilitating access to civil registration and documentation to reduce the number of stateless persons and planned to pay particular attention to Roma in this process. The EU committed to supporting UNHCR efforts and to prevent and end statelessness in compliance with the principles of the 1961 Convention. In fulfilment of this commitment, **Bulgaria** and **Portugal** acceded to the 1954 Convention Relating to the Status of Statelessness and the 1961 Convention on the Reduction of Statelessness in March and October 2012, respectively.

<sup>15</sup> ECtHR, *Kurić and Others v. Slovenia* [GC], No. 26828/06, 26 June 2012.

<sup>16</sup> UNHCR (2012a).

In 2012, the UNHCR issued four guidelines covering the definition of stateless persons, statelessness determination procedures, the status of stateless persons at a national level and the right of every child to a nationality.<sup>17</sup> Reports mapping statelessness in the **United Kingdom** as well as in the **Netherlands** and in **Belgium** were published in late 2011–2012; revealing gaps in the identification and protection of stateless persons.<sup>18</sup> In the EU, civil society engagement in the field of statelessness also grew significantly. The European Network on Statelessness (ENS) – a coalition of NGOs and academics – was established in 2012 and by year-end had 64 members, 51 of which were from the EU.<sup>19</sup>

EU law does not regulate the acquisition of citizenship, which also includes the acquisition of EU citizenship as enshrined in Article 20 of the Treaty on the Functioning of the EU (TFEU).<sup>20</sup> Loss of citizenship, however, may trigger EU law, if this also entails loss of EU rights.<sup>21</sup> In this context, the provisions of the 1961 Convention on the withdrawal, renunciation and loss of citizenship provide important benchmarks. Half of the EU Member States are party to this convention and more have expressed their intention to ratify it. In addition, at the UN High-level Meeting on the Rule of Law held in September 2012, the EU and its Member States collectively pledged to accede to the 1954 Convention and consider accession to the 1961 Convention.<sup>22</sup>

## 1.3. Immigration and return

### 1.3.1. Legal migration

The need to facilitate legal migration and mobility in response to the ageing of the EU's population continued to guide migration policy in 2012, despite the EU economic situation. In 2012, the EU made progress on two draft directives in support of more coherent admission systems: the proposed Directive on Intra-corporate Transferees<sup>23</sup> and the Seasonal Workers Directive.<sup>24</sup>

<sup>17</sup> UNHCR (2012b); UNHCR (2012c); UNHCR (2012d); UNHCR (2012e). For more information, see also: Molnár, T. (2012).

<sup>18</sup> UNHCR (2011a); UNHCR (2011b).

<sup>19</sup> See: [www.statelessness.eu](http://www.statelessness.eu).

<sup>20</sup> Under para. 1 "Citizenship of the Union shall be additional to and not replace national citizenship"; see also: European Court of Justice (CJEU), C-369/90 [1009] I-4239, *Micheletti*, 7 July 1992; CJEU, C-192/99 [2001] ECR I-01237, *The Queen v. Secretary of State for the Home Department ex parte Kaur*, 20 February 2001.

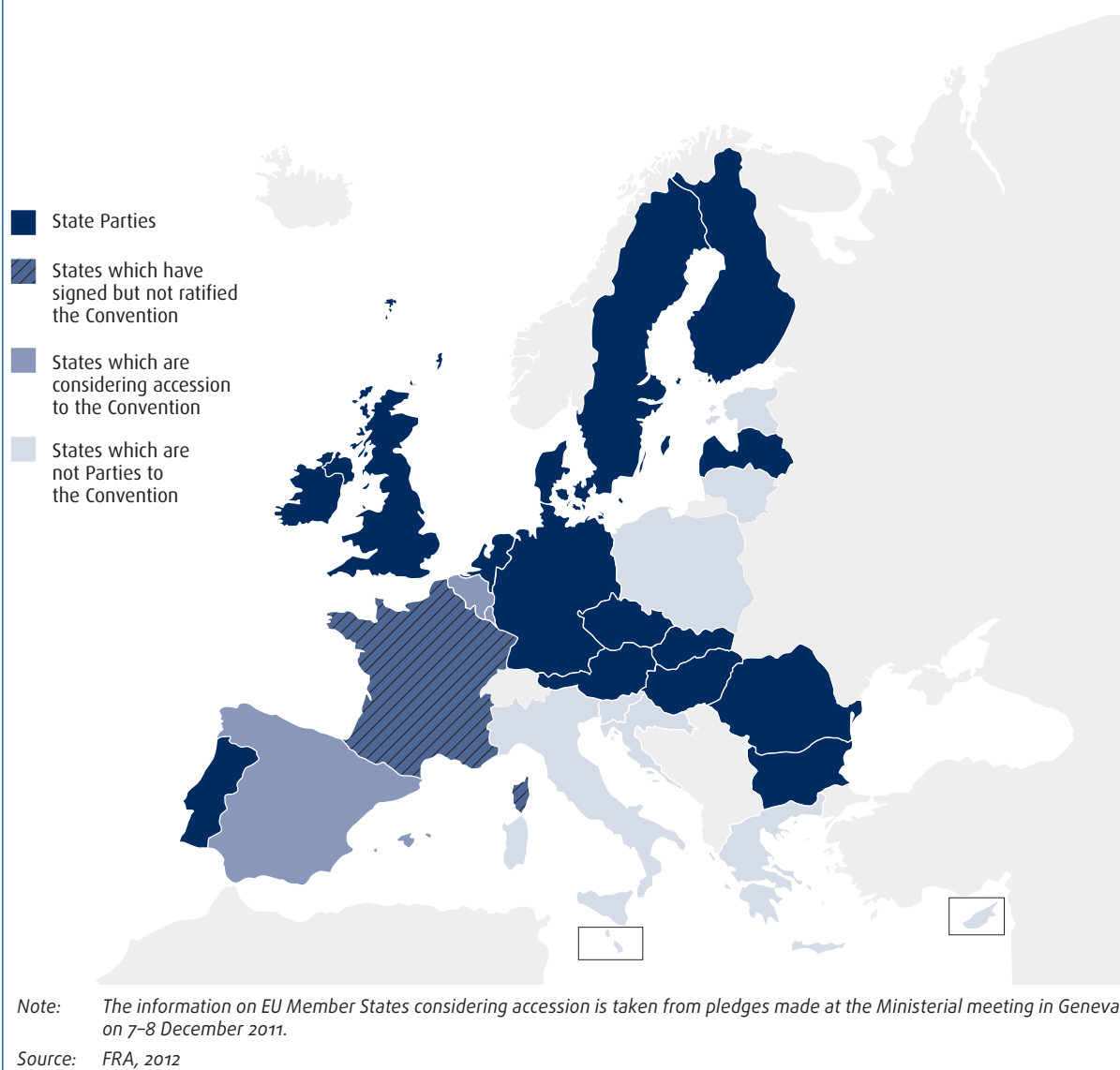
<sup>21</sup> CJEU, C-135/08 [2010] ECR II-05089, *Rottmann v. Freistaat Bayern*, 2 March 2010, paras. 41–45.

<sup>22</sup> Delegation of the European Union to the United Nations (2012).

<sup>23</sup> European Commission (2010a).

<sup>24</sup> European Commission (2010b).

**Figure 1.1: State Parties to the 1961 Convention on Reduction of Statelessness, EU-27 and Croatia, December 2012**



Once adopted, the proposed Directive on Intra-corporate Transferees will facilitate the secondment of key personnel of third-country companies to a branch of the same company in the EU. The Seasonal Workers Directive will enable seasonal workers, upon presentation of a work contract or a binding job offer, to benefit from simplified admission rules. This directive will entitle them to certain minimum standards of working and living conditions and access to a complaint mechanism if employers violate their rights.

The European Commission published a *Green Paper on the right to family reunification of third-country nationals living in the European Union* followed by public consultations on various aspects of the Family Reunification Directive (2003/86/EC).<sup>25</sup> Consultation topics included:

<sup>25</sup> European Commission (2011a).

the scope of the application of the directive; requirements for family reunification such as eligibility and integration measures; waiting periods and rules for entry and residence of family members; asylum-related questions; fraud; abuse and procedural issues.

Most EU Member States did not advocate reopening the Family Reunification Directive. Many participating international organisations, social partners and NGOs called for guidance on the implementation of the directive as well as better enforcement, including through infringement procedures.<sup>26</sup> In follow-up to the consultation, the European Commission decided to convene a group of experts to improve the implementation of the directive and related cooperation among Member States.<sup>27</sup>

<sup>26</sup> European Commission (2012).

<sup>27</sup> Council of the European Union (2012a).



The rights of family members are an important aspect of the Blue Card Directive (2009/50/EC), which regulates the entry and residence in the EU of highly qualified third-country nationals. The directive foresees conditions for family reunification and access to the labour market (Article 15) that are more favourable than those applied under the Family Reunification Directive.

At the end of 2012, family members of Blue Card holders in most EU Member States thus benefited from certain advantages over other third-country nationals in acquiring residence and work permits, such as simpler and swifter issuance procedures, exemptions from certain requirements, longer validity of permits, and immediate effect of family reunification and access to employment and more permanent residency.

Specifically, family members may join a Blue Card holder, independent of his/her prospects of obtaining permanent residence and having a minimum period of residence. They are exempt from integration requirements in advance of family reunification and may access the labour market without any time limit. Family members' residence permits, which are to be issued within six months of an application, should be valid for as long as those of the Blue Card holder.

In some Member States, there are no specific rules for family members of Blue Card holders and the same procedures apply as for other third-country nationals under the Family Reunification Directive (for example, **Italy**<sup>28</sup> or **Poland**.<sup>29</sup> In others, family members of Blue Card holders are entitled to favourable conditions as the following examples illustrate.

The Employment Act in **Bulgaria** explicitly provides that family members of Blue Card holders who usually reside in Bulgaria are equal to Bulgarian nationals in terms of labour, social security and employment rights.<sup>30</sup> In **Austria**, a 'red-white-red card plus' grants unlimited access to the labour market.<sup>31</sup> **France** provides a temporary residence permit allowing unlimited access to the labour market under the 'accompanying family' procedure.<sup>32</sup> **Germany** waives pre-entry requirements on age and proof of German language skills for spouses of Blue Card holders and also grants family members of Blue Card holders unlimited access to the labour

market.<sup>33</sup> **Latvia** simplifies the rules concerning work permits<sup>34</sup> and does not introduce any waiting period or requirements for family reunification allowing for immediate family reunification. **Croatia** harmonised its provisions of the Aliens Act on the eligibility of entry and residence of third-country citizens for the purposes of employment of highly qualified labour force with the Directive. The harmonised provisions will enter into force on the day Croatia accedes to the EU.

Another public consultation at EU level in 2012 dealt with the migration of international students and researchers. In view of a revision of the two directives on admitting third-country national students and researchers<sup>35</sup> foreseen in the 2012 Commission Work Programme, the consultation collected opinions on the future rules on the entry and residence of non-EU researchers, students, pupils, trainees and volunteers. The European Migration Network carried out a study in 2012 that analysed the immigration of international students to the EU. The study concluded that the Student Directive 2004/114/EC led to a certain approximation of national legislation on conditions for admission and stay of third-country national students. However, international students are still facing barriers during and after their studies, most prominently in freely accessing the labour market, in obtaining visa and residence permits, in accessing public healthcare and in the right to be accompanied by family members.

The CJEU considered specific provisions of the Long-term Residents Directive (2003/109/EC) in 2012. In *Kamberaj*,<sup>36</sup> the CJEU included housing benefits among the core benefits to be provided to third-country nationals by interpreting Article 11 (4) of the directive in light of Article 34 of the EU Charter on social security and social assistance. In *Commission v. the Netherlands*,<sup>37</sup> the CJEU held that the Netherlands had imposed excessive and disproportionate charges for granting residence permits to third-country nationals who are long-term residents, and to members of their families.

### 1.3.2. Rights of migrants in an irregular situation

EU Member States took further steps to implement the Employers Sanctions Directive (Directive 2009/52/EC).

28 Italy, Legislative Decree No. 108, 28 June 2012.

29 Poland, Act amending the Act on foreigners and the Act on employment promotion and labour market institutions, 27 April 2012.

30 Bulgaria, Employment Act, 1 January 2002, new Art. 74b, amendment from 15 June 2011.

31 Austria, Federal Act concerning the settlement and residence in Austria, para. 41 a; Austria, Migration platform of the federal government (2013).

32 France, Law No. 2011-672 on immigration, integration and nationality, 16 June 2011.

33 Germany, Residence Act, 8 June 2012; Germany, Federal Ministry of the Interior (2012); and Germany, Regulations on the Procedure and the Admission of Foreigners Living in Germany to Engage in Employment, para. 3 (1).

34 Latvia, Cabinet of Ministers, Regulation No. 553 on work permits for third-country nationals, 21 June 2010.

35 Council Directive 2004/114/EC, OJ 2004 L 375/12; Council Directive 2005/71/EC, OJ 2005 L 289/15.

36 CJEU, C-571/10 [2012], *Servet Kamberaj v. Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others*, 24 April 2012.

37 CJEU, C-508/10, *European Commission v. Kingdom of the Netherlands*, 26 April 2012, para. 70.

The European Commission addressed reasoned opinions to **Belgium, Cyprus, Lithuania, Luxembourg, Finland, Poland, Portugal, Slovenia** and **Sweden** in 2012 for failing to transpose the directive on time. New legislation transposing the directive entered into force in several Member States, including **Cyprus**,<sup>38</sup> **Italy**,<sup>39</sup> **Poland**,<sup>40</sup> **Portugal**<sup>41</sup> and **Slovenia**.<sup>42</sup> In contrast, **Belgium**,<sup>43</sup> **Luxembourg** and **Sweden** could not fully complete the legislative process to transpose the directive in 2012.

The Employers Sanctions Directive contains provisions aimed at protecting the rights of migrants in an irregular situation. According to Article 6, EU Member States must make mechanisms available to ensure that migrant workers in an irregular situation may either introduce a claim against an employer for any remuneration due or may call on a competent authority of the EU Member State concerned to start recovery procedures. In addition, Article 13 (4) of the directive envisages temporary residence permits to child victims, as well as to victims of particularly exploitative working conditions who cooperate with the justice system.

In practice, however, these protective provisions have not yet shown tangible results. While not all EU Member States may experience situations of particularly exploitative working conditions to the same degree, of the eight EU Member States that provided information on the number of residence permits issued to victims of particularly exploitative working conditions in 2012 (**Austria**, the **Czech Republic**, **Estonia**, **Greece**, **Hungary**, **Latvia**, **Slovenia** and **Slovakia**), only **Austria** actually issued such permits, providing them to one man and eight women. Even in this case, however, it is unclear if these cases would also have qualified for a temporary residence permit under the 2004 Trafficking Directive (2004/81/EC).

The situation appears to be similar regarding claims to recover any remuneration due to a worker, where successful court cases – such as the one submitted by a worker without a residence permit in the **Netherlands**<sup>44</sup> – remained rare.

Throughout 2012, the European Commission continued to support EU Member States in the transposition of the Return Directive (2008/115/EC), including by organising two Contact Committee meetings in March and September.

The Commission also launched an organised programme of work on the transposition of the Directive in 2012, including an in-depth analysis of national legislation and bilateral talks with Member States to discuss specific transposition-related issues. These discussions also covered those provisions in the Return Directive that provide for safeguards and rights of migrants in return procedures, such as detention orders and conditions.

The CJEU issued an additional ruling on the Return Directive in December 2012, relating to the imposition of fines as a criminal sanction for irregular stays.<sup>45</sup> This brings to four the number of cases the CJEU has already ruled on with respect to the Returns Directive, with two requests for a preliminary ruling still pending.<sup>46</sup> Table 1.4 provides an overview of these cases.

The European Committee of Social Rights (ECSR) adopted a statement of interpretation of Article 17 (2) of the European Social Charter on education for children in January 2012.<sup>47</sup> The Committee noted that access to education is crucial for every child's life and development and that the child's life would be adversely affected by the denial of access to education. It concluded that States Parties are required, under Article 17 (2) of the Charter, to ensure that children unlawfully present in their territory have effective access to education equal to that of any other child.

Access to healthcare for migrants in an irregular situation continued to be a topic of policy discussions in some EU Member States. In **Spain**, the Foreigners Act was amended in April, limiting equal access to healthcare for undocumented migrants to emergency assistance, healthcare for persons under 18 years of age and care during pregnancy, childbirth and postpartum.<sup>48</sup>

In **Sweden**, the government agreed to provide access to healthcare for migrants in an irregular situation at the same level as for asylum seekers. This covers healthcare which cannot be postponed, including maternity care.<sup>49</sup> Children will have full healthcare access. Regional governments (*landsting*) may further regulate access on a par with residents. The new rules are expected to enter into force on 1 July 2013.

38 Cyprus, Amendments to the Aliens and Immigration Law (N 100(I)/2012), 6 July 2012.

39 Italy, Legislative Decree No. 109 of 16 July 2012, entered into force 9 August 2012.

40 In Poland, the law implementing the Employers Sanction Directive entered into force on 21 July 2012.

41 Portugal, Law 29/2012, 9 August 2012.

42 Slovenia, Act amending the Prevention of undeclared work and employment act, 18 July 2012.

43 The proposal for an implementing law was approved by the Council of Ministers in May 2012 and was pending before the Federal Parliament at year-end. It was subsequently adopted on 11 February 2013 and published on 22 February 2013. See: Delafortrie, S. and Springael, C. (2012).

44 See: Netherlands, LJN: BX0143, *Sector kanton Rechtbank Zwolle*, 591648 CV 12-1394.

45 CJEU, C-430/11, *Md Sagor*, 6 December 2012.

46 CJEU, C-534/11, *Arslan*, pending; CJEU, C-297/12, *Filev and Osmani*, pending.

47 ECSR (2012).

48 Spain, Royal Decree Act 16/2012, 20 April 2012.

49 Sweden, Decision by the Swedish government, 28 June 2012.



A different discussion on healthcare – though not limited to migrants in an irregular situation – emerged in **Greece**, as it presented amendments to immigration legislation in April 2012, which would allow detention of asylum seekers and possible deportation of third-country nationals who have an infectious disease or belong to a group at high risk of infection. Such groups included sex workers, people who inject drugs, people ‘who live in conditions which do not fulfil the elementary rules of hygiene’ and people at risk ‘because of their country of origin’. There was no assessment as to whether a person posed an actual public health risk.<sup>50</sup> UNAIDS stressed the discriminatory nature of the new immigration law and called for its immediate review.<sup>51</sup>

In addition, in May 2012 the Greek Police disclosed the names and photographs of HIV-positive sex workers, some of whom were in an irregular situation, after having arrested them and subjected them to compulsory HIV testing. This raised a number of concerns about breaches of confidentiality of personal health data, imposition of criminal charges based on HIV status and discrimination. The Greek Ombudsman said that publishing the photos and personal data of the HIV positive women “not only violates rights inextricably linked to the respect of human dignity and status of the patient but is also an ineffective means of prevention and protection of public health”.<sup>52</sup> On 20 April 2012, the European Commission asked the European Centre for Disease Prevention and Control (ECDC) to carry out a risk assessment mission on the HIV situation in Greece. FRA participated as an observer.<sup>53</sup>

Some EU Member States took steps related to the detection and apprehension of migrants in an irregular situation. **France** abolished the ‘crime of solidarity’, the legal provision that sanctioned natural and legal persons who lent support to irregular migrants. The revised Article L622-4 of the Code of entry and stay of foreigners and asylum rights, as modified by Law No. 2012-1560, excludes the criminalisation of humanitarian and non-profit based acts.<sup>54</sup>

To facilitate the apprehension of migrants in an irregular situation, the **United Kingdom** Border Agency introduced a database to allow anyone who knows of a person in an irregular situation to report that person to the authorities.<sup>55</sup>

The criminalisation of migrants in an irregular situation raised concern within the Council of Europe and the UN Office of the High Commissioner for Human Rights (OHCHR).<sup>56</sup> To reduce the risk that apprehensions of migrants in an irregular situation unduly affect fundamental rights, FRA prepared guidance.

## FRA ACTIVITY

### Safeguarding fundamental rights when apprehending irregular migrants

In collaboration with EU Member States, in 2012 FRA drew up a list of dos and don’ts in 2012 to avoid disproportionate interference with a person’s human rights when detecting and apprehending migrants in an irregular situation. The operational guidance – developed together with immigration law enforcement authorities in EU Member States, relevant ministries, the European Commission and other stakeholders – follows up work on migrants in an irregular situation carried out by FRA in 2011.

Migrants in an irregular situation should not, for example, be targeted for apprehension at or near medical facilities when seeking medical assistance. Nor should such establishments be required to share migrants’ personal data with immigration law enforcement authorities for potential return purposes.

FRA presented the guidance on 26 September to the Council Working Party on Integration, Migration and Expulsion (Expulsion Formation) and on 28 September to the Contact Committee of EU Member State representatives, which the European Commission convenes to discuss issues related to the Return Directive.

*For more information, see: FRA, Apprehension of migrants in an irregular situation – fundamental rights considerations, available at: [http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf)*

## The EU’s anti-trafficking strategy

In June 2012, the European Commission adopted the *EU Strategy towards the eradication of trafficking in human beings 2012–2016*. The strategy suggests a number of measures to be implemented in five priority areas, namely (continued on p. 26):

<sup>50</sup> Greece, Law 4075/2012, Art. 59, paras. 1–2.

<sup>51</sup> UNAIDS (2012).

<sup>52</sup> Greece, Ombudsman (2012).

<sup>53</sup> ECDC (2012).

<sup>54</sup> France, Law No. 2012-1560 on detention for verification of the right to stay in France and amending the offence of aiding an illegal entry or stay, in order to exclude humanitarian and non-vested interest actions, 31 December 2012, Art. 8–12.

<sup>55</sup> The Telegraph (2012).

<sup>56</sup> Council of Europe, Commissioner for Human Rights (2012); see also expert meeting ‘Human Rights at International Borders: Exploring Gaps in Policy and Practice’ organised by the OHCHR, in cooperation with the Global Alliance Against Traffic in Women (GAATW), available at: <http://www.ohchr.org/EN/Issues/Migration/Pages/OHCHRExpertconsultationExploringGapsinPolicyandPractice.aspx>.

Table 1.4: CJEU case law on the Return Directive

| Year     |        | Referring court                            | Case reference   | Legal issue(s)  | Follow up by EU Member States  |
|----------|--------|--|--|---|--|
| Referral | Ruling |  |  |   |  |
| 2009     | 2009   | Административен съд София –зпад – Bulgaria | Case C-357/09 PPU, <i>Kadzoev</i> , decision of 30 November 2009 | Concept of ‘reasonable prospect of removal’ – Maximum duration of detention when the execution of a removal decision was suspended – Conditions for immediate release   | The 2009 Law on foreigners allows extension of detention beyond six months if the person poses a threat to national security or public order. Bulgaria prepared legislative proposals according to which national security will as such not be a ground for prolonging the period of detention.  |
| 2011     | 2011   | Corte d'appello di Trento – Italy          | Case C-61/11 PPU, <i>El Dridi</i> , decision of 28 April 2011*   | Prison sentence for illegally staying third-country nationals in the event of refusal to obey an order to leave the territory of a Member State   | A fine substituted the prison sentence: Article 14 (5-ter) (5-quater) of the Italian Immigration Law was amended by Law Decree, No. 89 of 23 June 2011, [converted into law by Law No. 129 of 2 August 2011, which entered into force on 6 August 2011].   |
| 2011     | 2011   | Cour d'appel de Paris – France             | Case C-329/11, <i>Achughbaban</i> , decision of 6 December 2011  | National legislation repressing illegal stays by criminal sanctions – Previous exhaustion of coercive measures referred to in Article 8 of the Return Directive – third-country national staying illegally in that territory with no justified ground for non-return  | The Court of Cassation, Criminal Chamber (opinion of 5 June 2012, No. 9002) and the Court of Cassation, Civil Chamber (judgments Nos. 959 and 965 of 5 July 2012) recognised that the application of custody on remand ( <i>garde à vue</i> ) for the sole reason of irregular stay was not anymore allowed.<br>Detention for verification of the right to stay in France (maximum 16 hours) was introduced by Law No. 2012-1560 on detention for verification of the right to stay in France and amending the offence of aiding an illegal entry or stay, in order to exclude humanitarian and non-vested interest actions of 31 December 2012 (Article L 611-1-1 CESEDA) |
| 2011     | 2012   | Tribunale di Rovigo – Italy                | Case C-430/2011, <i>Md Sagor</i> , decision of 6 December 2012** | National legislation repressing illegal stay by means of a fine which may be replaced by an expulsion order – Home detention order – Compatibility as long as the enforcement of that order comes to an end as soon as it is possible to physically transport the individual concerned out of that Member State | In a similar case (No. 2560/2012 filed with the registry on 17 December 2012) the Tribunal of Monza, Criminal Chamber acquitted the accused of the crime of illegal stay under Article 10bis of the Italian Immigration Law, in that such conduct was no longer to be considered a crime under the Italian legislation. The case is now pending with the Court of Cassation.   |

| Year     |         | Referring court                        | Case reference   | Legal issue(s)   | Follow up by EU Member States |
|----------|---------|--|--|--|-------------------------------|
| Referral | Ruling  |  |  |  |                               |
| 2011     | Pending | Nejvyšší správní soud – Czech Republic | Case C-534/11, <i>Arslan</i> , pending reference (hearing held on 7 November 2012)   | Detention for the purpose of removal – Grounds for detention in case the foreign national applied for international protection   | -                             |
| 2012     | Pending | Amtsgericht Laufen – Germany           | Case C-297/12, <i>Filev and Osmani</i> , preliminary reference of 3 August 2012  | National legislation providing that expulsions/deportations have unlimited effect, unless the person concerned lodges an application within a certain time limit – Criminal sanctions related to expulsion/deportation which occurred more than five years prior to re-entry | -                             |
| 2012     | 2012    | Bundesgerichtshof – Germany            | Case C-83/12 PPU, <i>Minh Khoa Vo</i> , decision of 10 April 2012 (This case, which is on the Visa Code, also relates to the Return Directive) | Notion of illegal stay within the scope of application of the Visa Code – National legislation under which assisting illegal immigration constitutes a criminal offence in cases where the persons smuggled hold visas which they obtained fraudulently                      | -                             |

Notes: 2012 decisions highlighted in grey.

\* Following this judgment, a number of pending references lodged in the course of 2011 by Italian courts to the CJEU concerning the same legal matter were withdrawn by the submitting judges and then struck off the list: Case C-113/11, *Cherni*, removal order of 26 May 2011; Case C-50/11, *Enegor*, removal order of 21 June 2011; Case C-60/11, *Mrad*, removal order of 21 June 2011; Case C-63/11, *Austine*, removal order of 21 June 2011; Case C-156/11, *Music*, removal order of 21 June 2011; Case C-140/11, *Ngagne*, removal order of 29 June 2011; Case C-43/11, *Samb*, removal order of 6 July 2011; Case C-187/11, *Vermisheva*, removal order of 6 July 2011; Case C-120/11, *Kwando*, removal order of 13 July 2011. An identical preliminary reference was declared inadmissible as the facts of the case were not sufficiently clear: Case C-364/11, *Abdallah*, inadmissibility order of 8 September 2011.

\*\* The same preliminary issues examined in the *Sagor* case were also raised in other preliminary references submitted by Italian judges to the CJEU in the course of 2012; however, they were declared inadmissible as the facts of the case were not sufficiently clear: Case C-73/12, *Ahmed Ettaghi*, inadmissibility order of 4 July 2012, Case C-74/12, *Abd Aziz Tam*, inadmissibility order of 4 July 2012 and Case C-75/12, *Majali Abdel*, inadmissibility order of 4 July 2012.

Source: CJEU database



- identifying, protecting and assisting victims of trafficking;
- stepping up the prevention of trafficking in human beings;
- working to increase prosecution of traffickers;
- enhancing coordination and cooperation among key actors and policy coherence;
- increasing knowledge of, and effective response to, emerging concerns related to all forms of trafficking in human beings.

In October, the Council of the European Union endorsed these areas, and invited EU Member States to implement these recommendations.<sup>57</sup> EU agencies mentioned in the strategy (EASO, European Police College, European Institute for Gender Equality, Europol, Eurojust, FRA and Frontex) were invited to further coordinate their work in the field of trafficking in human beings, in partnership with Member States, EU institutions and other parties. EU agencies were also invited to develop relevant best practice guides to assist Member States in tackling the problem.

## EU Action Plan on unaccompanied minors

In September 2012, the Commission adopted the mid-term report on the implementation of the Action Plan on unaccompanied minors 2010–2014. The report shows how a common EU approach has enabled more effective cross-cutting policy reflections on how to address the situation of children, regardless of their migratory status. Challenges still remain, such as the collection of comparable data to properly assess the situation, age assessment, family tracing, funding or cooperation with third countries.

### 1.3.3. Alternatives to detention

EU law allows for the detention of a migrant in an irregular situation to implement a return decision, provided certain conditions are fulfilled. While detaining irregular migrants remains a common EU practice, it is one that raises concerns among international organisations and civil society actors.<sup>58</sup>

According to Article 15 of the Return Directive, deprivation of liberty is only lawful in order to prepare a return or removal, in particular where there is a risk of absconding or fear that the migrant would otherwise jeopardise his or her removal.

In cases where no such risk exists, migrants should be allowed to continue to stay and live in the community. Where such a risk is found to exist, authorities must examine, under Article 15 (1) of the Return Directive read in conjunction with Recital 16, whether such a risk can be effectively mitigated by resorting to non-custodial measures – known as alternatives to detention – before issuing a detention order.

The UNHCR issued revised guidelines in 2012 on the detention of asylum seekers and refugees. The revised guidelines stress that asylum seekers should in principle not be detained, and outlines the exceptional circumstances under which deprivation of liberty can occur, provided certain safeguards are in place.<sup>59</sup>

Alternatives to detention, which reduce the need for custodial measures, include a wide set of measures, such as residence restrictions, the duty to report regularly to the police or release on bail. Custodial measures led to violent incidents again in 2012, resulting, for example, in the death of a Malian in **Malta** in June<sup>60</sup> and a protest in Igoumenitsa, **Greece** in October.<sup>61</sup>

Efforts to reduce child detention continued. In its 2012 report to the Government of the **Netherlands**, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended, for example, that the Dutch authorities avoid, as far as possible, detaining families with children. If, in exceptional circumstances, detention cannot be avoided, its period should not exceed the maximum duration provided by law, that is, 28 days.<sup>62</sup>

**Croatia** introduced several alternatives to detention in its national legislation in 2012, namely the duty to surrender documents, to deposit sureties, designated residence and regular reporting.<sup>63</sup>

At the end of 2011, **Cyprus** also added the possibility to apply alternatives to detention to its national law, without, however, defining any concrete alternative.<sup>64</sup> **Malta** is the only remaining EU Member State to maintain a mandatory detention policy, allowing for the application of alternatives to detention only when release is considered.

The **Netherlands** launched four small-scale pilot projects, which will be evaluated in 2013. These include, for example, imposing an obligation to report to the Aliens Police in combination with the provision of

<sup>57</sup> Council of the European Union (2012b).

<sup>58</sup> See, for example: Council of Europe, CPT (2012a); UNHCR (2012f); Human Rights Watch (2012); Pro Asyl (2012).

<sup>59</sup> UNHCR (2012f).

<sup>60</sup> Council of Europe, Parliamentary Assembly (PACE) (2012).

<sup>61</sup> Platform for International Cooperation on Undocumented Migrants (PICUM) (2012).

<sup>62</sup> Council of Europe, CPT (2012b).

<sup>63</sup> Croatia, Aliens Act, 1 January 2012, Art. 136 (3).

<sup>64</sup> Cyprus, Aliens and Migration Law, 2011, Art. 18ΠΣΤ (1).



Table 1.5: Types of alternatives applied by EU Member States, EU-25 and Croatia

| Country | Duty to surrender documents | Bail/sureties | Regular reporting | Designated residence | Designated residence & counselling | Electronic monitoring |
|---------|-----------------------------|---------------|-------------------|----------------------|------------------------------------|-----------------------|
| AT      |                             | x             | x                 | x                    |                                    |                       |
| BE      |                             |               |                   |                      | x                                  |                       |
| BG      |                             |               | x                 |                      |                                    |                       |
| CZ      |                             | x             | x                 |                      |                                    |                       |
| DK      | x                           | x             | x                 | x                    |                                    | x                     |
| DE      | x                           |               | x                 | x                    | x                                  |                       |
| EE      | x                           |               | x                 | x                    |                                    |                       |
| EL      | x                           | x             | x                 | x                    |                                    |                       |
| ES      | x                           |               | x                 | x                    |                                    |                       |
| FI      | x                           | x             | x                 |                      |                                    |                       |
| FR      | x                           |               | x                 | x                    |                                    | x                     |
| HU      | x                           |               | x                 | x                    |                                    |                       |
| IE      | x                           |               | x                 | x                    |                                    |                       |
| IT      | x                           |               | x                 | x                    |                                    |                       |
| LV      | x                           |               | x                 |                      |                                    |                       |
| LT      |                             | x*            | x                 | x                    |                                    |                       |
| LU      |                             |               | x                 | x                    |                                    |                       |
| NL      | x                           | x*            | x                 | x                    |                                    |                       |
| PL      |                             |               | x                 | x                    |                                    |                       |
| PT      |                             |               | x                 | x                    |                                    | x                     |
| RO      |                             |               | x                 | x                    |                                    |                       |
| SE      | x                           |               | x                 | x                    |                                    |                       |
| SI      | x                           | x             | x                 | x                    |                                    |                       |
| SK      |                             | <b>x</b>      | <b>x</b>          | <b>x</b>             |                                    |                       |
| UK      | x**                         | x             | x                 |                      | x                                  | x                     |
| HR      | <b>x</b>                    | <b>x</b>      | <b>x</b>          | <b>x</b>             |                                    |                       |

Notes: **Bold/blue** indicates changes that occurred in 2012. Cyprus and Malta not included: Cyprus does not name any alternatives in its law and in Malta, alternatives operate only when release is considered.

\* Concerns minors whose guardianship is entrusted to an agency or an individual (Article 115.2.3, Lithuanian law on legal status of aliens, Dutch Aliens Circular para. A6/5.3.3.3).

\*\* In the United Kingdom, the duty to surrender documents is imposed on all individuals who do not have permission to stay and is therefore not an alternative to detention per se.

Sources: Austria, Alien Police Act 2005, Section 77 (3) (release on bail introduced on 1 July 2011); Belgium, Aliens Act, Art. 74 (5)–74 (8); Bulgaria, Law on Foreigners, Art. 44 (5); Croatia, Aliens Act, Art. 136/3; Czech Republic, FORA, Art. 123; Denmark, Danish Aliens Act, Art. 34 (1) (i) (ii) (iii) and (iv) as well as Art. 34 (2)–(5), and Art. 34a (1); Estonia, Obligation to Leave and Prohibition on Entry Act, Section 10; Finland, Finnish Aliens Act 301/2004, Art. 118, 119 and 120; CESEDA, Art. L 552-4, L 552-4.1 (electronic monitoring introduced in 2011 for persons caring for a child) and L 552-5; Germany, Residence Act (AufenthG) at Sections 50 (5) and 61; Greece, Law 3907/2011, Art. 30 (1) in conjunction with Art. 22 (3); Hungary, Admission and Right of Residence of Third-Country Nationals Act II, Sections 62 and following; Ireland, Immigration Act 2004, Section 14 (1), and Immigration Act 2003, Section 5 (4); Italy, Law Decree No. 89 of 23 June 2011 (Official Gazette No. 129 of 23 June 2011), Art. 3 (1) (d) (2); Latvia, Immigration Law, Section 51 (3); Lithuania, Law of the Legal Status of Aliens Act, Section 115.2; Luxembourg, Loi du 1<sup>er</sup> juillet 2011 modifiant la loi du 29 août 2008 sur la libre circulation des personnes, amendements to Art. 120 and 125; Netherlands, Aliens Act, Art. 52 (1), 54 and 56–58 as well as Aliens Circular, para. A6/1.1 and para. A6/5.3.3.3; Poland, Act on Aliens, Art. 90.1 (3); Portugal, Law 23/2007 of 4 of July, Art. 142 (1); Romanian, Aliens Act, Art. 102–104 (applicable to tolerated persons); Slovakia, Act No. 404/2011 of 21 October 2011 on residence of foreigners (in force since 1 January 2012); Slovenia, 2011 Aliens Act, Art. 73, 76 and 81 (2); Spain, Act 4/2000, Art. 61; Sweden, Aliens Act, 2005:716, Chapter 10, Sections 6 and 8; United Kingdom, Immigration Act 1971, Schedule 2, paras. 4, 21, 22 and 29–34 and for electronic monitoring see Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, s. 36

assistance by the Repatriation and Departure Service to aliens obliged to return who are staying with reliable private individuals or organisations. Another pilot consists in the payment of a deposit by or on behalf of

aliens obliged to leave the country, which is refundable upon verification that the alien has left EU territory.<sup>65</sup>

<sup>65</sup> Netherlands, Parliament, Second Chamber (2011). See also: Netherlands, National Ombudsman (2012); and Netherlands, Government (2012).

**Slovakia's** new Law on Residence of Foreigners came into force in January 2012, introducing two alternative measures to detention with designated residence and the possibility of financial sureties.<sup>66</sup>

Table 1.5 provides an overview of the types of alternatives provided for in national law, although some countries also use other additional alternatives.<sup>67</sup>

The inclusion of alternatives to detention in national legislation is not itself a guarantee that alternatives are used in practice. Several EU Member States do not yet collect statistics on alternatives to detention, which makes it difficult to assess the extent to which they are actually used. In other Member States, 2012 statistics were not available at the time this report went to print.

Table 1.6 provides a comparison between persons subjected to detention and those subjected to alternatives to detention in the eight EU Member States for which this information could in part be collected, as well as in **Croatia**. In all these countries, detention is more common than the use of alternatives. While some EU Member States (for example **Austria**, the **Czech Republic** or **Romania**) make regular use of alternatives, this does not appear to be the case in others.

### 1.3.4. Forced return monitoring

Third-country nationals who do not fulfil the conditions for entering or staying in the EU receive a return decision, which the authorities may enforce if it is not complied with voluntarily. Frontex-coordinated operations alone returned 2,110 persons in 2012, roughly the same as in 2011 when 2,059 persons were returned.

The Return Directive requires EU Member States to establish an effective return monitoring system. Fundamental rights concerns during forced returns may relate, for example, to the treatment of returnees by the authorities enforcing return, returnees' access to information, legal remedy and communication, holding conditions and safeguards for vulnerable persons.

Effective monitoring benefits both the person to be removed as well as the removing agency.<sup>68</sup> It reduces the risk of ill-treatment by law enforcement authorities during the return process, provides feedback on the operation, increases accountability, helps to de-escalate tensions, identifies and verifies possible infringements immediately and can thus reduce the need for litigation and improve public acceptance of returns.

For the first time, the Committee for the Prevention of Torture (CPT) examined the treatment of foreign nationals during a removal operation by air. A CPT delegation monitored a charter flight between London

**Table 1.6: Number of detained migrants and of persons to whom alternatives to detention were imposed in 2012, eight EU Member States and Croatia**

| Country   | Persons in detention | Persons to whom alternatives were applied | Period covered | Number includes asylum seekers | Number includes detention in transit zones |
|-----------|----------------------|---|----------------|--------------------------------|--|
| <b>AT</b> | 4,561                | 924                                       | 2012           | Yes                            | No   |
| <b>BG</b> | 685                  | 15  | Jan-June       | Yes                            | No*  |
| <b>CZ</b> | 152                  | 59  | Jan-June       | No                             | Yes  |
| <b>LT</b> | 234                  | 1   | Jan-June       | No                             | No   |
| <b>LV</b> | 207                  | 34  | 2012           | No                             | No   |
| <b>RO</b> | 668                  | 206                                       | 2012           | No                             | No   |
| <b>SI</b> | 359                  | 21  | 2012           | No                             | No   |
| <b>SK</b> | 72                   | 1   | Jan-June       | No                             | No   |
| <b>HR</b> | 784                  | 6   | 2012           | No**                           | No   |

Notes: \* Indicates that figures on detention do not include asylumseekers but figures on alternatives may.

\*\* Indicates that the total number of detained persons includes asylum seekers, but the number of persons to whom alternatives to detention were imposed excludes asylum seekers.

Source: National statistics, 2013

<sup>66</sup> Slovakia, Law No. 404/2011 on Residence of Foreigners that alters and amends certain laws, 21 October 2011.

<sup>67</sup> FRA (2012), pp. 50–51.

<sup>68</sup> *Ibid.*, p. 51 and following.

and Colombo, Sri Lanka, in the context of an ad hoc visit to the **United Kingdom** from 22 to 24 October.<sup>69</sup>

## Establishment of effective monitoring systems in 2012

Systems of forced return monitoring can be effective and operational if they cover all activities undertaken in respect of removal, from pre-departure to arrival and reception in the destination country, and if they are carried out on an on-going basis by an organisation which is independent of the authorities enforcing return.<sup>70</sup>

In late 2011 and 2012, two EU Member States, **Belgium** and **Cyprus**, introduced an independent monitoring system by law.<sup>71</sup> **Belgium** designated the General Police Inspection service, albeit without structural funding, whereas **Cyprus** named no specific entity, instead appointing the Ombudsman for this function who demanded that additional staff be appointed to her Office as a prerequisite.

**Portugal** designated the Aliens Service (*Serviço de Estrangeiros e Fronteiras*) as the authority responsible for return monitoring.<sup>72</sup> The Aliens Service cannot, however, be considered independent, as it is the same agency implementing returns.

**Romania** consolidated the monitoring system in 2012 following amendments to the Aliens Act adopted in the second half of 2011. In **Poland**, the Helsinki Foundation for Human Rights was invited to accompany a return flight in a pilot project supported by an EU fund which supports Member States in improving return management, the Return Fund. In **Estonia**, following an agreement with the Red Cross made in 2011, return monitoring became operational. In August 2012, the return monitor at Düsseldorf airport in **Germany** and the Serbian National Preventive Mechanism cooperated in monitoring all phases of a return flight from Germany to Belgrade, except for the flight itself, according to information from the *Diakonie Rheinland-Westfalen-Lippe e.V.*

As illustrated in Figure 1.2, at the end of 2012, legislation or cooperation agreements between the authorities and the monitoring body in 15 Member States, including the **United Kingdom** which is not bound by the Return Directive, provide for independent return monitoring. These either provide a legal basis for monitoring returns in general or designate a specific institution for this function. EU Member States where monitoring is designated to an agency belonging to the branch of government

responsible for the return (**Portugal**,<sup>73</sup> **Sweden**<sup>74</sup> and Member States where monitoring is carried out on an ad hoc or informal basis (such as pilot projects in **Finland**<sup>75</sup> and **Poland**<sup>76</sup>)) have not been included among these 15 EU Member States.

In **Slovakia**, independent monitoring by NGOs is possible by law,<sup>77</sup> although no mechanism is in place and independent monitoring has not yet been performed systematically in practice.<sup>78</sup>

Six EU Member States – **Bulgaria**, **France**, **Greece**, **Italy**, **Slovenia** and **Spain** – have no effective monitoring system and **Ireland** is not bound by the Return Directive. Although National Human Rights Institutions (NHRIs) may monitor the pre-departure phase in detention centres where persons pending return are held, as, for example, in **Belgium**, **Bulgaria** and **Portugal**, they generally do not act as forced return monitoring bodies.

**Bulgaria** proposed that national and international NGOs and the Ombudsman regulate the mandatory monitoring of removals, but these amendments to the Aliens Act were still pending at the end of 2012.

Despite a legal provision for external monitoring of removals introduced in **Greece** in 2011, it has not yet issued the joint ministerial decision needed to establish the monitoring system by the Ombudsman and NGOs.<sup>79</sup> In the context of supervision of the execution of the judgment *M.S.S. v. Belgium and Greece* by the Council of Europe Committee of Ministers, the Greek authorities were invited to update the Committee on the implementation of the procedure of forced returns in light of the ECHR requirements.<sup>80</sup>

In **Spain**, the setting up of an independent monitoring system is not mentioned in the Aliens Act. The Ombudsman in its capacity as the National Preventive Mechanism (NPM) monitored for the first time the

73 *Ibid.*

74 Sweden, Aliens Act 2005:716, 29 September 2005.

75 In Finland, the law only provides for monitoring the legality of forced returns by the Parliamentary Ombudsman, the Chancellor of Justice and the Ombudsman for Minorities. There is also an ad hoc monitoring system, based on an oral agreement between the Municipal Police of Helsinki and the District Court of Helsinki. A person working at the District Court has on some occasions accompanied actual removals by aircraft.

76 Information provided by the Helsinki Foundation for Human Rights, November 2012.

77 Slovakia, Law No. 404/2011 on Residence of Foreigners that alters and amends certain laws, 21 October 2011, Section 84 (8).

78 Statement by the Human Rights League, 10 September 2012.

79 Greece, Law 3907/2011, 26 January 2001, Art. 23 (6).

80 Decision adopted at the 1144<sup>th</sup> Human Rights meeting, 4–6 June 2012; see also Council of Europe, Committee of Ministers (2012).

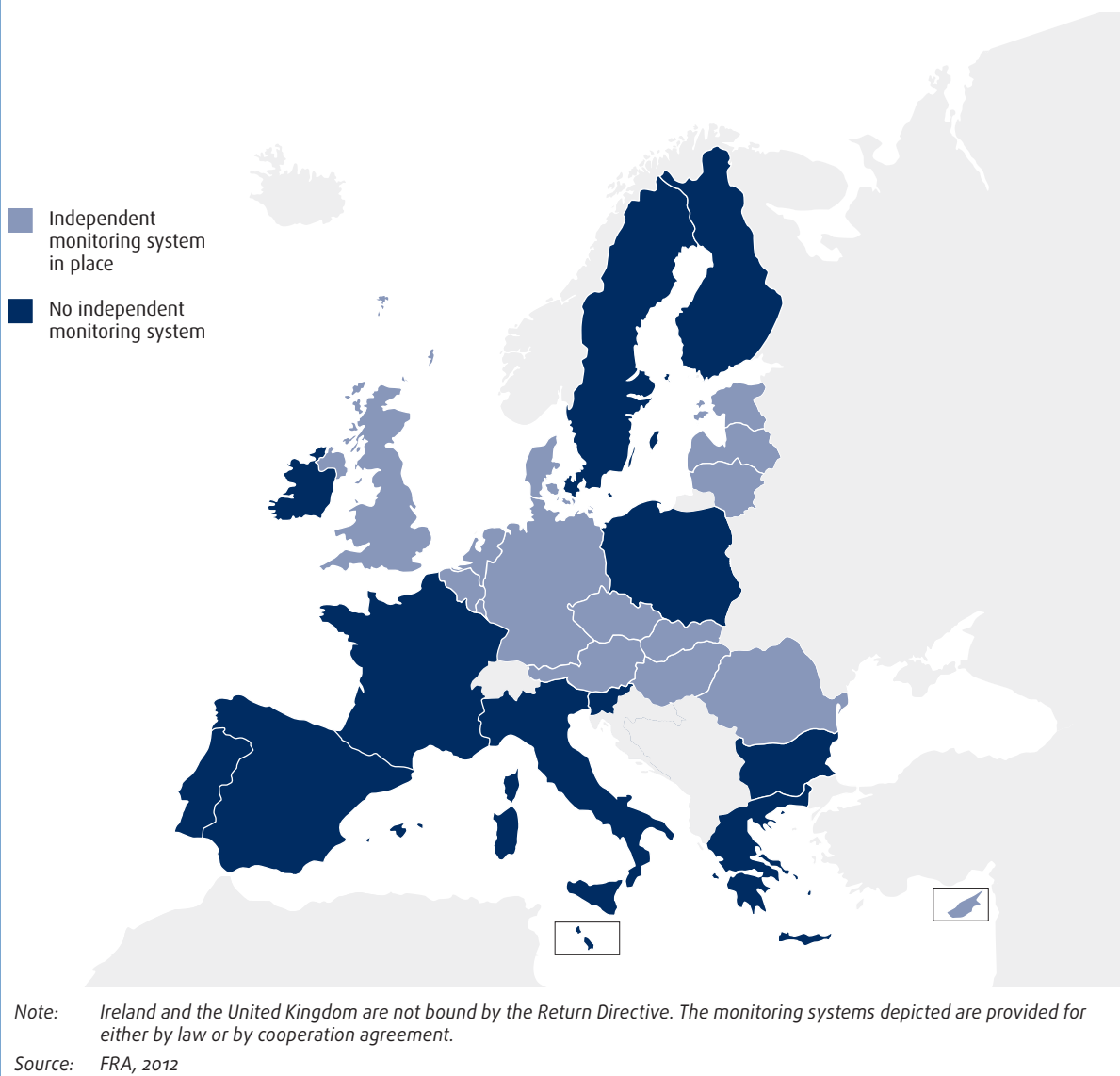
69 Council of Europe, CPT (2012c).

70 See: FRA (2012), p. 51 and following.

71 Belgium, Royal decree of 19 June 2012 on forced return, 19 June 2012; Cyprus, Aliens and Immigration Law, 2011, Art. 180F–8ΠΘ.

72 Portugal, Law 29/2012, 9 August 2012.

**Figure 1.2: Independent forced return monitoring systems, EU-27**



embarkation of two Frontex-coordinated return flights in 2012, organised by **Spain** and the **Netherlands**.<sup>81</sup>

Not all EU Member States that participate in Frontex-coordinated return operations have, according to FRA's assessment, an effective system for return monitoring (**Finland, Italy, Spain** and **Sweden**). In 2012, three of these Member States organised 14 of a total 38 joint return operations (**Italy, Spain** and **Sweden**).

Monitoring systems are operational to different degrees. In a minority of EU Member States, the monitors accompany the actual return flight. Of the 15 Member States where FRA considers that effective monitoring systems are in place, only seven (**Austria, Belgium, Czech Republic, Denmark, Estonia, Luxembourg** and

the **United Kingdom**) monitored a return flight in 2012, while monitoring in the other Member States remained limited to the pre-departure process. In **Lithuania**, the Red Cross plans to join a return flight in 2013.<sup>82</sup> Member States with monitors who are not independent from the authority implementing the removal (**Portugal** and **Sweden**) also carry out in-flight monitoring.

The European Return Fund provides funding for monitoring forced returns. Seven Member States made use of this option in 2012: among these in two Member States (**Sweden** and **Slovakia**), authorities enforcing the return carry out the monitoring; in three others (**Lithuania, Latvia** and **Romania**), the Fund fully or significantly finances the monitoring projects which in practice remained limited to pre-return procedures.

<sup>81</sup> Spain, Ombudsman (2012).

<sup>82</sup> Lithuania, Lithuanian Red Cross Society (2012).



## Promising practice

### Providing independent return monitoring

Even those EU Member States not subject to the Return Directive and thus not required to establish an effective return monitoring system recognise the benefits of such monitoring. In the **United Kingdom**, Her Majesty's Inspectorate of Prisons (HMIP), for example, monitors forced return operations on a regular basis. In 2011 and 2012, this included four monitoring missions where full-time independent HMIP monitors accompanied returnees from immigration removal centres to the point of disembarkation in the destination country, conducting inspections in line with prescribed guidelines, called *Expectations*. HMIP also reviews records of previous flights and other documentation relevant to the particular flight in order to identify and suggest improvements.

Removals were generally well managed and most detainees treated respectfully, according to the findings, which are always published. Issues raised included a lack of interpretation, unnecessary use of force, the lack of specific training on the use of force in the confined space of an aircraft, some use of offensive and racist language by escort staff and aggressive behaviour by home country officials on arrival at destinations.\*

In addition, Independent Monitoring Boards (IMBs) are involved in return monitoring in an effort to ensure proper standards of care and decency. IMBs comprise members of the general public appointed by the Secretary of State to carry out independent monitoring work a few days per month on a voluntary basis. The volunteers have unrestricted access to detention facilities and can talk in private to any detainee they wish to.

The IMB regularly publishes reports on issues of concern. IMBs traditionally focus on conditions in immigration removal centres and some short-term holding facilities at airports and, for some years, have monitored removals up to boarding at the point of departure from the United Kingdom. From 2010, in response to an invitation from the Home Secretary to monitor enforced removals by charter flights, the volunteers accompanied detainees on six return flights to various destinations as part of a feasibility study, which is expected to become a routine part of their monitoring activities in the near future.

For more information, see: [www.justice.gov.uk/about/hmi-prisons/inspection-and-appraisal-criteria](http://www.justice.gov.uk/about/hmi-prisons/inspection-and-appraisal-criteria) and [www.justice.gov.uk/about/hmi-prisons](http://www.justice.gov.uk/about/hmi-prisons) and [www.justice.gov.uk/about/imb](http://www.justice.gov.uk/about/imb)

\*Information provided by the HMIP in January 2013 as well as HMIP, Detainees under escort: Inspection of escort and removals to Afghanistan, 25-26 June 2012

While the proposed regulation establishing the Asylum and Migration Fund as of 2014 does not explicitly mention return monitoring, building such capacities might be eligible for community funding if understood to support the setting up of "systems ensuring smooth return procedures".<sup>83</sup>

### Reporting

Reporting monitoring results ensures the accountability of government agencies and the credibility of the monitoring organisation. Four of the seven EU Member States where independent monitoring organisations were fully operational in 2012 publish the findings of the monitoring missions, at least in part (the **Czech Republic**, **Germany**, the **Netherlands** and the **United Kingdom**). In other Member States, the findings are shared internally with the institutions involved in the return.

Reporting takes place on a regular, usually annual, basis. The publicly available reports describe the actors involved in the return, the return procedures and any shortcomings observed during the return process. Such reports raise recurrent problem areas, including, for example:

- the lack of means necessary to reach the final destination in the return country;
- food and water pending return; the repetition of procedures delaying return;
- avoidable last-minute cancellations; the deportation of sick and suicidal persons;
- the separation of families; lack of time allowed for packing by the authorities;
- the detention of returnees together with criminal offenders; purposefully not informing the person of the imminent return, for example to avoid complicating the return;
- language difficulties;
- children who are overburdened emotionally and must translate for their parents in a way that is not age appropriate;
- elderly persons who are often destitute or sick leaving behind their families;

<sup>83</sup> European Commission (2001), Art. 11.

- returns to crisis countries; return of unaccompanied children to other Member States where they may be considered adults; and
- the return of Roma who fear discrimination in the destination country.

### Promising practice

#### Reporting on monitoring results

The Forum for Monitoring Forced Returns at the Airport in Frankfurt (*Forum Abschiebungsbeobachtung am Flughafen Frankfurt am Main*, FAFF) meets quarterly, bringing together authorities, UNHCR and civil society initiatives. The Forum reports annually on the number of returns, reasons for aborting returns and the behaviour of police during the enforcement. The report describes general problem areas, which are illustrated by individual cases and includes accounts of the responses provided by the monitors and the institutions responsible for a specific return.

Source: FAFF Annual Reports, available at: <http://diakonie-hessen-nassau.de/arbeitsfelder/migration-flucht-und-interkulturelle-arbeit/abschiebungsbeobachtung.html>

### Standards used

The EU does not yet have detailed binding standards to use for monitoring return processes. Such common standards among observers, as well as joint training of operational and monitoring teams would help ensure the responsibility of the actors involved in the return, including police, immigration, escorts and authorities in stop-over and destination countries.<sup>84</sup> At present, observers rely on experience, paying attention to the procedure, facilities and the treatment of the returnee in line with human dignity.

A number of EU Member States have developed specific guidelines and checklists, some of which are in the public domain (**Austria**, **Germany**, the **Netherlands**,<sup>85</sup> and the **United Kingdom**).<sup>86</sup>

Several Member States refer to legal and policy documents, among them the Council Decision on Organisation of Joint Flights for Removals (2004/573/CE), International Air Transport Association (IATA)

Guidelines for the Removal of Inadmissible Passengers,<sup>87</sup> the Council of Europe Twenty Guidelines on Forced Return,<sup>88</sup> the CPT standards on the deportation of foreign nationals by air,<sup>89</sup> the study on Best Practice in Return Management by the International Organization for Migration (IOM),<sup>90</sup> the Frontex Best Practices for the Removal of Illegally Present Third-country Nationals<sup>91</sup> and the Frontex Code of Conduct.<sup>92</sup>

In the context of returning trafficked persons, the basic principles of return prepared by the OSCE/ODIHR in 2012 may contain guidance to consider when monitoring returns of third-country nationals in general, especially in the field of post-return monitoring, including by the authorities in the country of origin.<sup>93</sup>

## 1.4. Integration of migrants

### 1.4.1. Key developments

In line with the Europe 2020 strategy for inclusive growth to improve opportunities in employment, education and social inclusion for all people residing in the EU,<sup>94</sup> the European Commission launched several initiatives to address issues of migrant integration and support monitoring and actions at EU and national level.

In 2012, the European Web Site on Integration was thus revamped.<sup>95</sup> This site offers a virtual platform to kick-start public discussion, policy initiatives and dialogue amongst stakeholders, both in non-governmental and governmental organisations. The website has a collection of examples of good integration practices from EU Member States and an online library of key legislation, policy papers and conference reports.<sup>96</sup>

The Immigrant Citizens Survey, co-funded by the European Commission, explored experiences across the EU of integration policies by first-generation migrants who have resided in an EU Member State for more than one year, in the fields of employment, languages, political and civic participation, family reunification, long-term residence, citizenship and the link between participation and positive settlement outcomes. The survey, published in 2012 by the King Baudouin

<sup>84</sup> Council of Europe, European NPM Project (2012).

<sup>85</sup> See, for example, inspection form of the Dutch Supervisory Commission on Repatriation, available at: [www.commissieterugkeer.nl/publicatie/toezichtkader](http://www.commissieterugkeer.nl/publicatie/toezichtkader).

<sup>86</sup> For more information, see: 'Expectations: inspection criteria' for police custody, prisons, immigration detention, children and young people, Military Corrective Training Centre and court custody, available at: [www.justice.gov.uk/about/hmi-prisons/inspection-and-appraisal-criteria](http://www.justice.gov.uk/about/hmi-prisons/inspection-and-appraisal-criteria).

<sup>87</sup> IATA, Control Authorities Working Group (2002).

<sup>88</sup> Council of Europe, Committee of Ministers (2005).

<sup>89</sup> Council of Europe, CPT (2003).

<sup>90</sup> IOM (2005).

<sup>91</sup> Frontex (2009).

<sup>92</sup> Frontex (2011).

<sup>93</sup> OSCE/ODIHR (2012).

<sup>94</sup> Europe 2020, Youth on the Move, available at: [http://ec.europa.eu/youthonthemove/index\\_en.htm](http://ec.europa.eu/youthonthemove/index_en.htm).

<sup>95</sup> Launched in 2009, see: [http://europa.eu/rapid/press-release\\_IP-09-593\\_en.htm](http://europa.eu/rapid/press-release_IP-09-593_en.htm).

<sup>96</sup> See the European Web Site on Integration, available at: [http://ec.europa.eu/ewsi/en/Integration\\_in\\_other\\_policy\\_areas.cfm](http://ec.europa.eu/ewsi/en/Integration_in_other_policy_areas.cfm).

Foundation and the Migration Policy Group,<sup>97</sup> covered 15 cities in seven EU Member States (**Belgium, France, Germany, Hungary, Italy, Portugal and Spain**), and 7,473 immigrants born outside the EU participated.

The data showed that for most of the immigrants surveyed, job security remains the major issue and that 25–33 % of immigrants feel overqualified for their jobs. Yet “participating in the labour market is one of the best and most concrete ways to integrate in society”, according to the European Agenda for the Integration of Third-Country Nationals.<sup>98</sup>

The Immigrant Citizens Survey further highlights that immigrants generally tend to speak more languages than the average person in their new country, which demonstrates the potential contributions of migrants to a diverse and inclusive EU. They also highly value the language courses offered in several Member States as part of national action plans on migrant integration (see Table 1.7. for more information on such plans).

The Immigrant Citizens Survey shows that in the area of political and civic participation, most immigrants are interested in voting, particularly at a local level, and that three out of four participants want to become citizens of the country in which they reside. Nonetheless, immigrants’ broader participation in civic life varies depending on the city and participation in an immigrant NGO depends heavily on the local and national context.

The number of people who acquired citizenship in an EU Member State rose 4 % to 810,000 in 2010 from 2009, the first time that this number exceeded 800,000, according to the 2012 Eurostat report *Population and social condition*.<sup>99</sup>

**France, Spain** and the **United Kingdom** awarded the lion’s share, together granting 57 % of all new EU citizenships. By including **Germany and Italy**, which award the next largest numbers of new citizenships, these five EU Member States account for about 78 % of the EU total. The overall EU increase was due to a rise of 55 % to 44,000 new citizenships that Spain awarded in 2010 over 2009.<sup>100</sup>

Youth remains one of the priorities of integration policies. Although discrimination is prohibited by law in EU Member States, national and international reports show that young people with a migrant background and other socially excluded young people experience discrimination on a regular basis in most EU Member States.<sup>101</sup>

The European Commission highlighted that migrant youth should be a priority within the domains of education and employment, since they are vulnerable and more exposed to discrimination.<sup>102</sup> Social inclusion of young people with emphasis on those with a migrant background is also a central feature of the November 2012 conclusions on the participation and social inclusion of young people of the Council of the European Union and of the Representatives of the Governments of the Member States.<sup>103</sup>

Because integration primarily takes place at the local level, it is important to involve a variety of stakeholders, such as NGOs, trade unions and other actors to support service delivery and facilitate integration in day-to-day life.

An expert conference on the integration of immigrants, held by the **Cyprus** Presidency in November 2012, focused on the role of local and regional authorities in shaping and implementing national integration policies. By the end of 2012, however, only six EU Member States (**Denmark, Estonia, Finland, Italy, the Netherlands and Sweden**) had ratified the Council of Europe’s Convention on the Participation of Foreigners in Public Life at Local Level.<sup>104</sup>

The *Good Ideas from Successful Cities: Municipal Leadership in Immigrant Integration*<sup>105</sup> report shares good practices from cities in eight EU Member States (**Austria, France, Germany, Ireland, the Netherlands, Portugal, Spain** and the **United Kingdom**) on topics including city charters, programmes of inclusion, participation and belonging, as well as welcoming communities. A tendency to cut costs and reduce social benefits for third-country nationals is observed at the national level. In some cases courts were asked to intervene. As an illustration, the Federal Constitutional Court in **Germany** issued two rulings concerning social inclusion issues. On 10 July 2012, the court declared unconstitutional the exclusion of foreign citizens with a humanitarian residence status from federal parental benefits for child-raising and care.<sup>106</sup> A few days later, the same court also ruled the Asylum Seekers Benefit Act unconstitutional, because it did not comply with the constitutional right to a minimum standard of living.<sup>107</sup> Under that act, asylum seekers and tolerated persons received an allowance 40 % below the standard rate. This last judgment is particularly relevant not only because it clearly affirms that all persons residing in

<sup>102</sup> European Commission (2011c).

<sup>103</sup> Council of the European Union (2012c).

<sup>104</sup> Council of Europe, Convention on the Participation of Foreigners in Public Life at Local Level, CETS No. 144, 1992.

<sup>105</sup> Maytree Foundation and Cities of Migration (2012).

<sup>106</sup> Germany, Federal Constitutional Court, Karlsruhe/1 BvL 2/10, 10 July 2012.

<sup>107</sup> Germany, Federal Constitutional Court, Karlsruhe/1 BvL 10/10, BvL 2/11, 18 July 2012.

<sup>97</sup> King Baudouin Foundation and Migration Policy Group (2012).

<sup>98</sup> European Commission (2011b).

<sup>99</sup> Eurostat (2012).

<sup>100</sup> *Ibid.*, pp. 1 and 2.

<sup>101</sup> European Commission and Cypriot EU Presidency (2012).

**Germany** have a right to a dignified minimum existence, but because it argues that migration-policy considerations may not be used to undermine human dignity. The court said: "Migration-policy considerations of keeping benefits paid to asylum seekers low to avoid incentives for migration [...] may generally not justify any reduction of benefits below the physical and socio-cultural existential minimum."<sup>108</sup>

#### 1.4.2. National action plans on integration

The European Integration Forum, a platform that involves stakeholders at all levels to discuss integration issues, stressed that one of the policies favouring integration is the adoption of "clear policy documents, e.g. clear national action plans on integration".<sup>109</sup> Action plans on a national level identify responsible authorities and hence should increase accountability, easing the monitoring phase.

Table 1.7 provides an overview of the 16 EU Member States that have adopted and are implementing one or more action plans. The absence of a national action plan may indicate that migrant integration is not on the political agenda due to the low number of migrants living in any given Member State, as may be the case in **Hungary** and **Lithuania** where, according to Eurostat, foreigners represent, respectively, only 0.1 %, and 1.2 % of the population.<sup>110</sup>

Other Member States may have adopted strategies or policy documents that, while addressing integration, fall short of being national action plans (for example **France**,<sup>111</sup> **Poland**<sup>112</sup> or the **United Kingdom**<sup>113</sup>). At year-end **Greece** had not yet adopted its plan.<sup>114</sup>

Most EU Member States adopted their action plans between 2006 and 2010, although the **Czech Republic** and **Estonia** published their first plans in 2000. By and large, the plans cover a period up to 2014, with the exception of the **Bulgarian** and **Estonian** plans, which run to 2020.

With regard to target groups, the action plans listed in Table 1.7 take two different approaches. Some Member states (**Austria, Estonia, Finland, Germany, Ireland, Latvia, Luxembourg, Portugal** and **Spain**) aim to be all-encompassing, including nationals and non-nationals, as well as first- and second-generation migrants. Other Member States concentrate specifically on third-country nationals (**Cyprus, Czech Republic, Netherlands** and **Romania**) or on very specific groups, such as refugees in **Bulgaria**.<sup>115</sup> **Austria** and **Germany** specifically emphasised migrant women in their 2012 policies.<sup>116</sup>

Some action plans target a thematic area of integration, such as employment or education. The **Slovak** action plans, for example, concern migration policies in the field of employment.<sup>117</sup> Action plans might also cover a number of thematic areas, such as those in **Austria**,<sup>118</sup> **Cyprus**,<sup>119</sup> **Germany**,<sup>120</sup> **Latvia**<sup>121</sup> and **Spain**.<sup>122</sup>

Apart from programmes on pre-school and primary school education, existing action plans rarely address the second generation of migrants, that is the immediate descendants of migrants. This gap is particularly significant since, in absolute terms, a substantial part of the EU population is composed of second-generation migrants, with some six million persons aged 25–54 born in the EU with one parent born abroad, and with more than four million with both parents born abroad.<sup>123</sup> To illustrate this, the rate of early school-leavers among persons with a foreign background is more than four percentage points higher than for those with native-born parents, a 2011 Eurostat study revealed.<sup>124</sup>

The European Council's Common Basic Principles for Immigration Integration Policy in the EU from November 2004 refers to integration as "a dynamic two-way process of mutual accommodation by all immigrants and residents of the Member States".<sup>125</sup> Therefore, programmes should not only address migrants themselves but also the wider community, enhancing interactions and intercultural contacts between the majority population and migrant groups.

<sup>108</sup> *Ibid.*, available at: [www.escri-net.org/node/364979](http://www.escri-net.org/node/364979).

<sup>109</sup> European Integration Forum (2010).

<sup>110</sup> Eurostat (2011a).

<sup>111</sup> France, Ministry of Interior (2012), pp. 111–119.

<sup>112</sup> In Poland, on 31 July 2012, the government accepted the document called: 'The Polish migration policy: current state of play and further actions'.

<sup>113</sup> United Kingdom, Department for Communities and Local Government (2012).

<sup>114</sup> The drafting of the National Strategy for Third-Country Nationals' Integration 2012–2015 by the Ministry of Interior is still on-going. From early 2012 to April 2012, the Ministry of Interior (General Secretariat for Population & Social Cohesion) held a public consultation on the draft with different stakeholders, including civil society.

<sup>115</sup> Bulgaria, State Agency for Refugees (2011).

<sup>116</sup> Austria, Federal Ministry for the Interior (2012), p. 29 and following; Germany, Federal Ministry of Interior (2011).

<sup>117</sup> Slovakia, Ministry of Labour, Social Affairs and Family of the Slovak Republic (2012).

<sup>118</sup> Austria, Federal Ministry for the Interior (2012).

<sup>119</sup> Cyprus, Ministry of Interior, Special Experts Committee on Integration (2010).

<sup>120</sup> Germany, Federal Office for Migration and Refugees (2011), pp. 19, 28 and 30.

<sup>121</sup> Latvia, Ministry of Education and Science (2012).

<sup>122</sup> Spain, Ministry of Employment and Immigration (2011).

<sup>123</sup> Eurostat (2011a).

<sup>124</sup> *Ibid.*, p. 125.

<sup>125</sup> Council of the European Union (2004), p. 19.

A number of Member States (**Austria**, the **Czech Republic**, **Estonia**, **Finland**, **Germany**, **Ireland**, **Latvia**, **Luxembourg**, **Portugal**, **Romania**, **Spain** and **Sweden**) thus include programmes with majority involvement in their action plans or policy papers. Such involvement may encompass activities including: increasing awareness for diversity, initiating intercultural contacts, addressing attitudes among the wider public or providing intercultural training and awareness-raising in the public administration, relevant institutions and support services.

The absence of a plan does not necessarily mean that the countries in question have not implemented any programme aiming at migrant integration. In September 2012, **Croatia**, for example, adopted a Croatian language curricula for asylum seekers, refugees and persons under subsidiary protection who are older than 15.<sup>126</sup> The curriculum aims at providing the migrants with sufficient language competence to enable them to enrol in secondary schools and adult education programmes. The learning programme is expected to last from six to nine months, and will also include Croatian culture and history. In **Greece** initiatives have been taken by municipalities and civil society actors.

In spite of its small number of migrants, **Lithuania** enacted measures to promote communication with the host society, funded by the European Fund for the Integration of Third-country Nationals (EIF) and the European Refuge Fund (ERF).<sup>127</sup> **SOS Malta** in partnership with the Maltese Public Broadcasting Services and the Institute of Maltese Journalists developed Media InterAct Project, a 12-month project aimed at presenting the diversity and integration of migrants in the Maltese media.<sup>128</sup>

## Promising practice

### Launching recognition of qualifications procedures before arrival

A German Federal Law on the Recognition of Foreign Qualifications (*Berufsqualifikationsfeststellungsgesetz*)<sup>129</sup> came into force on 1 April 2012. This law makes it possible for third-country nationals, including potential labour migrants, to seek recognition of their qualifications before arriving in **Germany**.

The main feature of this new provision is the possibility of claiming a qualification assessment within a specific time frame, generally three months. If formal recognition is denied, the provision makes it possible to obtain instead a positive written assessment of skills and qualifications. It also allows non-formal qualifications, such as work experience, to count towards requirements if the formal foreign qualification does not satisfy the authorities.

For more information, see: Internationale Handelskammer (IHK) – Foreign Skills Approval (FOSA), available at: [www.ihk-fosa.de](http://www.ihk-fosa.de)

## 1.4.3. Monitoring integration

Indicators have increasingly become part of international and national policy making, including the assessment of migrant integration. In March 2011, following the Zaragoza Declaration adopted by the EU JHA Council in April 2010,<sup>130</sup> Eurostat published a pilot study<sup>131</sup> examining the availability and quality of data from agreed harmonised sources to calculate migrant integration indicators in the four areas identified by the Zaragoza Declaration: employment, education, social inclusion and active citizenship.

Table 1.8 lists what are known as the Zaragoza indicators, which are designed to monitor policy outcomes rather than processes towards those outcomes (such as action plans).<sup>132</sup> In line with what was stated in the Council Conclusions of 3–4 June 2010 and the European Agenda for the Integration of Third-Country Nationals (COM(2011) 455 final), in 2012 the European Commission launched a pilot project to further explore the development of European indicators for monitoring the results of integration policies. The project, carried out by the consortium of the European Services Network (ESN) and

<sup>126</sup> Croatia, Decision on the Curricula of Croatian language for asylum seekers, asylees and persons under subsidiary protection who are older than 15 to be able access the secondary educational system and the system of education of adults, 5 September 2012.

<sup>127</sup> The list of the projects financed by the EIF is available at: <http://esf.socmin.lt>.

<sup>128</sup> See also: <http://sosmalta.org/mediainteract>.

<sup>129</sup> Germany, Federal Law on the Recognition of Foreign Qualifications, 6 December 2011.

<sup>130</sup> Council of the European Union, European Ministerial Conference on Integration (2010).

<sup>131</sup> Eurostat (2011b).

<sup>132</sup> See also: FRA (2011).



Table 1.7: National-level action plans on integration, 16 EU Member States

|           | Year of the first edition | Responsible ministry   | Target group   | Focus area(s)  | Are some actions also targeting the majority population? |
|-----------|---------------------------|--|--|--|--|
| <b>AT</b> | 2010                      | Ministry of Interior, and State Secretariat for integration  | EU nationals and third-country nationals                                   | Education, recognition of foreign qualification, children, women in the labour market  | yes  |
| <b>BG</b> | 2008                      | Ministry of Labour and Social Policy   | Third-country nationals (focus on refugees)                                | Language courses, professional training and orientation  | no   |
| <b>CY</b> | 2010                      | Ministry of Interior   | Third-country nationals  | Information, employment, housing, education, health, culture, civic participation  | no   |
| <b>CZ</b> | 2000                      | Ministry of Interior   | Third-country nationals  | Language, employment, orientation in society, relations between immigrants and majority society, migrants' awareness of rights and duties with adaptation-integration courses, language courses, pre-departure information packs | yes  |
| <b>DE</b> | n.a                       | Federal Ministry of Interior   | EU nationals and third-country nationals                                   | Education, professional training, healthcare, language courses, social inclusion   | yes  |
| <b>EE</b> | 2000                      | Ministry of Culture  | EU nationals and third-country nationals                                   | Educational and cultural integration, social and economic integration and legal and political integration  | yes  |
| <b>ES</b> | 2007                      | Ministry of Employment and Social Security and Secretary General of Immigration and Emigration, General Director of Migrations | EU nationals and third-country nationals                                   | Employment, education, healthcare, social integration, housing, children and youth   | yes  |
| <b>FI</b> | n.a                       | Ministry of Employment and the Economy   | EU nationals and third-country nationals (focus on newly arrived migrants) | Training and support, employment/labour market   | yes  |
| <b>IE</b> | 2008                      | Office for the Promotion of Migration Integration, Department of Justice and Equality  | EU nationals and third-country nationals                                   | Language courses, education, professional training   | yes  |

|           | Year of the first edition | Responsible ministry   | Target group   | Focus area(s)   | Are some actions also targeting the majority population? |
|-----------|---------------------------|--|--|---|--|
| <b>LU</b> | 2006                      | Ministry for Family and Integration, and Luxembourg Reception and Integration Agency | EU nationals and third-country nationals                         | Employment, language courses, education, social inclusion                                 | yes  |
| <b>LV</b> | 2007                      | Ministry of Culture  | EU nationals and third-country nationals, including non-citizens | Education, cultural, social and economic integration, and legal and political integration | yes  |
| <b>NL</b> | n.a.                      | Minister of Social Affairs and Labour  | Third-country nationals  | Integration agreement   | no   |
| <b>PT</b> | 2007                      | High Commission for Immigration and Intercultural Dialogues                          | EU nationals and third-country nationals                         | Language courses, employment, professional training, housing                              | yes  |
| <b>RO</b> | n.a.                      | Ministry of Administration and Interior  | Third-country nationals  | Education, language courses   | yes  |
| <b>SE</b> | 2008/2010                 | Ministry of Employment   | Third-country nationals with focus on newly arrived migrants     | Anti-discrimination, language courses, housing, entrepreneurs, diversity; employment      | yes  |
| <b>SK</b> | n.a.                      | Ministry of Interior, Ministry of Labour, Social Affairs and Family                  | Foreign workers  | Employment  | no   |

Note: n.a. = not available.

Source: FRA, 2012; based on the national action plans on integration listed at the end of this chapter

**Table 1.8: Zaragoza indicators**

| Policy area               | Indicators   |
|---------------------------|--|
| <b>Employment</b>         | <ul style="list-style-type: none"> <li>• employment rate</li> <li>• unemployment rate</li> <li>• activity rate</li> </ul>  |
| <b>Education</b>          | <ul style="list-style-type: none"> <li>• highest educational attainment (share of population with tertiary, secondary and primary or less than primary education)</li> <li>• share of low-achieving 15-year-olds in reading, mathematics and science</li> <li>• share of 30-to-34-year-olds with tertiary educational attainment</li> <li>• share of early leavers from education and training</li> </ul>  |
| <b>Social inclusion</b>   | <ul style="list-style-type: none"> <li>• median net income – the median net income of the immigrant population as a proportion of the median net income of the total population</li> <li>• at risk of poverty rate – share of population with net disposable income of less than 60 % of the national median</li> <li>• the share of population perceiving their health status as good or poor</li> <li>• ratio of property owners to non-property owners among immigrants and the total population</li> </ul> |
| <b>Active citizenship</b> | <ul style="list-style-type: none"> <li>• the share of immigrants that have acquired citizenship</li> <li>• the share of immigrants holding permanent or long-term residence permits</li> <li>• the share of immigrants among elected representatives</li> </ul>  |

Source: *European Ministerial Conference on Integration, Zaragoza, 15 and 16 April 2010*

Migration Policy Group (MPG), based its work on a pilot study, presented by Eurostat in 2011,<sup>133</sup> and reporting on the availability and quality of the data necessary.

These proposed common indicators of migrant integration can be drawn from data currently available from the EU Labour Force Survey (EU-LFS), the EU Statistics on Income and Living Conditions (EU-SILC) and Eurostat's migration statistics. In consideration of the UN OHCHR framework on Human Rights Indicators,<sup>134</sup> the Zaragoza indicators refer to actual results on the ground – the extent to which rights holders perceive that they are able to enjoy their rights.

Table 1.9 provides an overview of policy areas for which the 16 Member States that have adopted action plans have developed indicators. As most indicator systems have only recently been developed, data collection to populate these indicators is not yet systematic. In future, FRA intends to review information and data collected in the various areas for which Member States have drawn up indicators.

Eight EU Member States (**Austria**,<sup>135</sup> the **Czech Republic**,<sup>136</sup> **Estonia**,<sup>137</sup> **Germany**,<sup>138</sup> **Ireland**,<sup>139</sup> the

**Netherlands**,<sup>140</sup> **Romania**<sup>141</sup> and **Sweden**<sup>142</sup> have developed indicators to monitor integration and **Finland**<sup>143</sup> is introducing them. A variety of data sources such as national statistics, registry and micro-census data, as well as surveys including different migrant groups (EU nationals, non-EU nationals, first- and second-generation migrants), which provide data by country of citizenship and country of birth are used to populate these indicators. However, the availability and quality of data varies depending on the Member States and the area covered. Some EU Member States that do not have any public monitoring are debating the use of indicators (**Latvia** and **Portugal**).<sup>144</sup>

**Spain** has not introduced formal indicators, but uses annual reports published by an independent research institute, the Centre for Sociological Research annually.<sup>145</sup> The development of indicators is also discussed in Member States which do not (yet) have an action plan, as is the case for example in **France** and **Greece**.<sup>146</sup>

<sup>133</sup> Eurostat (2011a).

<sup>134</sup> UN, OHCHR (2012).

<sup>135</sup> Austria, Federal Ministry for the Interior (2012).

<sup>136</sup> Czech Republic, Research Institute for Labour and Social Affairs (2011).

<sup>137</sup> Estonia, Ministry of Culture, Praxis Centre for Policy Studies (2012).

<sup>138</sup> Germany, Federal Commissioner for Migration, Refugees and Integration (2011), p. 198 and following.

<sup>139</sup> Ireland, Office of the Minister of Integration (2008).

<sup>140</sup> Bijl, R. and Verweij, A. (eds.) (2012).

<sup>141</sup> Romania, Ministry of Internal Affairs (2011); Romania, Government Decision No. 498/2011 to approve the National Strategy on Immigration for 2011–2014.

<sup>142</sup> Sweden, Ministry of Integration and Gender Equality (2009).

<sup>143</sup> In Finland, the indicators have not yet been formally accepted. Information provided to Franet by the Ministry of Employment and the Economy on 16 August 2012.

<sup>144</sup> For Latvia, see: Latvia, Cabinet of Ministers (2011); for Portugal, see: Portugal, High Commission for Immigration and Intercultural Dialogue (2010).

<sup>145</sup> Cea D'Ancona, M.A., Valles Martínez, M.S. (2011).

<sup>146</sup> France, Ministry of Interior, General Secretariat of Immigration and Integration (2010).

**Table 1.9: Indicators used for integration monitoring in EU Member States with migrant integration action plans, 16 EU Member States**

| EU Member State | Indicators       | Education | Employment | Social inclusion | Citizenship | Political participation | Civic/social participation | Subjective indicators | Security | Programmes |
|-----------------|------------------|-----------|------------|------------------|-------------|-------------------------|----------------------------|-----------------------|----------|------------|
| AT              | Yes              | x         | x          | x                |             |                         | x                          | x                     | x        |            |
| BG              | No               |           |            |                  |             |                         |                            |                       |          |            |
| CY              | No               |           |            |                  |             |                         |                            |                       |          |            |
| CZ              | Yes              | x         | x          | x                | x           |                         |                            |                       |          |            |
| DE              | Yes              | x         | x          | x                |             | x                       | x                          |                       | x        |            |
| EE              | Yes              | x         | x          | x                |             | x                       | x                          |                       |          |            |
| ES*             | No               |           | x          |                  |             |                         |                            |                       |          | x          |
| FI              | being introduced | x         | x          | x                | x           |                         |                            | x                     |          |            |
| IE              | Yes              | x         | x          | x                | x           | x                       | x                          |                       |          |            |
| LU              | No               |           |            |                  |             |                         |                            |                       |          |            |
| LV*             | No               | x         | x          |                  | x           | x                       |                            |                       |          |            |
| NL              | Yes              | x         | x          | x                |             |                         |                            |                       | x        |            |
| PT              | No               |           |            |                  |             |                         |                            |                       |          |            |
| RO              | Yes              | x         | x          | x                |             |                         |                            |                       |          | x          |
| SE              | Yes              | x         | x          |                  |             |                         |                            |                       |          | x          |
| SK              | No               |           |            |                  |             |                         |                            |                       |          |            |

Note: \* Spain and Latvia have not yet implemented indicators but have already started to monitor integration in the identified areas.

Source: FRA, 2012, based on data sources including national statistics registry and micro-census data

Some of the national indicators go much further than the Zaragoza indicators. The German indicators,<sup>147</sup> for example, include the intercultural openness of public institutions, memberships to clubs and associations, social transfers, public health or the dynamics of bi-national marriages. **Austria, Germany** and the **Netherlands** collect data on safety-related issues such as crime rates, also in relation to racism.

Table 1.9 shows that education, employment and social inclusion are covered the most whereas active citizenship, political as well as civic/social participation or subjective indicators on perceptions and attitudes, e.g. on perceived discrimination, are much less covered.

The focus of the monitoring systems lies in measuring results indicators to give evidence of people's actual experiences. Process indicators, in contrast, are used to a lesser extent to monitor the successful implementation of integration programmes such as participation rates

and the evaluation of, for example, language courses in **Sweden**<sup>148</sup> or cultural orientation courses in **Romania**.<sup>149</sup>

In general terms, most data available on employment and education identifies barriers that continue to exist but also some positive developments. The second **German** report on integration indicators, for example, showed that young persons with a migrant background obtain university graduation certificates more often than earlier migrant generations.<sup>150</sup> In **Austria**,<sup>151</sup> twice as many migrant students with highly educated mothers go to disadvantaged schools than non-migrant students, with the emphasis on German language identified as the main barrier.

More data should become available within the next years as monitoring systems are put in place and the reporting periods for the implementation of the action plans come to an end in several EU Member States.

<sup>148</sup> Sweden, Ministry of Employment (2012).

<sup>149</sup> Romania, Ministry of Internal Affairs (2011).

<sup>150</sup> Germany, Federal Commissioner for Migration, Refugees and Integration (2011), pp. 198 and following.

<sup>151</sup> Organisation for Economic Co-operation and Development (2012), p. 92; Austria, Statistik Austria (2012), p. 10.

<sup>147</sup> Germany, Federal Commissioner for Migration, Refugees and Integration (2011).

## Outlook

In the area of asylum in 2013, the EU will continue its efforts to complete the revision process of the Dublin and the Eurodac regulations, as well as of the Reception Conditions and the Asylum Procedures Directives.

The many unclear provisions in the existing asylum *acquis* are likely to lead to further referrals to the CJEU for preliminary rulings.

EASO activities will expand further, providing an impulse towards an increased quality of asylum systems in the EU. EASO is also likely to release its first guidance on a specific topic – age assessment.

In spite of the increased attention to the situation and the rights of migrants in an irregular situation, tangible changes are likely to be limited in 2013. Provisions on access to justice in the Employers Sanctions Directive, including cases of particularly exploitive working conditions, have not yet brought about real change for those concerned.

However, depending on its final wording, the Seasonal Workers Directive could help reduce the reliance on undeclared work in sectors such as agriculture and tourism, and thus indirectly reduce the risk of exploitation, given that migrants in an irregular situation run a higher risk of exploitation than regular workers.

In the field of return and removals, the review of the implementation of the Return Directive provides an opportunity to draw attention to the slow implementation by Member States of some of its protective provisions, such as, Article 8 (6) on return monitoring and Articles 16 and 17 on conditions of detention.

Attention is likely to remain focused on the monitoring of migrant integration. In 2013 a pilot study carried out by the Migration Policy Group (MPG) for the European Commission will be completed and further reflection will be devoted, in cooperation with Member States, to the development of EU migrant indicators to support integration monitoring. This could go hand-in-hand with evaluating the implementation of national action plans to identify good practices to support. Focus on political, social and civic participation is likely to increase. The discourse on migrant integration is also focusing on the links between growth and mobility and how migrants can contribute to a more diverse, vibrant, energetic and inclusive society.





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## UN & CoE

### January

23 February – European Court of Human Rights (ECtHR) rules in *Hirsi Jamaa and Others* that Italy violated the rights of migrants by intercepting them and sending them back to Libya

### February

29 March – UN General Assembly adopts resolution on the protection of migrants, A/RES/66/172

### March

24 April – Council of Europe Parliamentary Assembly adopts Resolution 1872 *Lives lost in the Mediterranean Sea: Who is responsible?*

### April

### May

### June

### July

### August

### September

8 October – UN Special Rapporteur on the human rights of migrants concludes his country visit to Italy for his regional study on the human rights of migrants at the borders of the European Union

### October

27 November – ECtHR concludes in *Stamose v. Bulgaria* that a two-year travel ban and seizure of passport for violating US immigration laws had violated the right to leave one's country

### November

3 December – UN Special Rapporteur on the human rights of migrants concludes his country visit to Greece for a regional study on the human rights of migrants at the borders of the European Union

### December

## EU

### January

15 February – European Parliament and the Council of the European Union adopt Regulation No. 154/2012 amending the provisions on airport transit visas in the Visa Code

### February

23 March – New EU agency for managing large-scale EU information systems is inaugurated

### March

### April

10 May – Visa Information System (VIS) is launched in the second region of deployment, the Near East (Israel, Jordan, Lebanon and Syria)

### May

### June

### July

28 August – European Commission issues a third report on Post-Visa Liberalisation Monitoring for the western Balkan Countries

### August

5 September – Court of Justice of the European Union annuls Council Decision 2010/252/EU, which provided fundamental rights guidance for Frontex operations at sea

20 September – European Commission launches proposals allowing for an increase in the Union co-financing rate under the Solidarity Funds – COM(2012) 526 final and COM(2012) 527 final

### September

2 October – VIS starts operations in the Persian Gulf region (Afghanistan, Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen)

16 October – Frontex Consultative Forum holds its inaugural meeting

### October

7 November – European Commission issues a report on the functioning of Local Schengen Cooperation during the first two years of implementation of the Visa Code, COM(2012) 648 final

7 November – European Commission issues a Communication on the implementation and development of the common visa policy to spur growth in the EU, COM(2012) 649

### November

15 December – Frontex Fundamental Rights Officer starts her work

### December