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# UN & CoE

January

February

16 March – European Commission against Racism and Intolerance (ECRI) adopts its General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination

March

April

11 May – Council of Europe (CoE) Secretary General's Special Representative on migration and refugees reports on the situation of refugees and migrants in Greece and the former Yugoslav Republic of Macedonia

31 May – CoE Commissioner for Human Rights releases a report on migrant integration, providing guidance to governments and parliaments on designing and implementing successful integration policies

May

17 June – Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee) launches an urgent monitoring exercise focusing on the protection of children affected by the refugee crisis

June

12 July – In a series of judgments – *A.B. and Others v. France* (No. 11593/12), *R.M. and M.M. v. France* (No. 33201/11), *A.M. and Others v. France* (No. 24587/12), *R.K. and Others v. France* (No. 68264/14) and *R.C. v. France* (No. 76491/14) – the European Court of Human Rights (ECtHR) holds that France violated the prohibition of inhumane and degrading treatment when detaining children (Article 3 of the ECHR); in *A.B. and Others* and *R.K. and Others*, the court also holds that the right to liberty and security as well as to respect for family life were violated (Articles 5 and 8 of ECHR)

July

August

19 September – Heads of state and government of UN Member States adopt a global UN strategy in New York to address the challenges resulting from large movements of refugees and migrants

29 September – CoE Ad hoc Committee for the Rights of the Child (CAHENF) initiates work to elaborate European standards on guardianship and age assessment

September

13 October – In *B.A.C. v. Greece* (No. 11981/15), the ECtHR holds that leaving an asylum-seeker under precarious conditions for some 14 years violates the competent authorities' positive obligation to provide an effective and accessible means of protecting the right to private life, also in conjunction with the right to an effective remedy (Articles 8 and 13 of the ECHR)

14 October – CoE Secretary General's Special Representative on migration and refugees expresses concern over French "Calais Jungle" refugee camp

October

3 November – CoE's anti-torture committee publishes a report on its monitoring visit to Hungary, criticising the treatment and conditions of migrants and refugees and noting that material conditions in immigration and asylum detention centres vary considerably

November

13 December – In *Paposhvili v. Belgium* (No. 41738/10), the ECtHR holds that deporting a seriously ill person to Georgia violates the prohibition of torture (expulsion) and the right to respect for family life (Articles 3 and 8 of ECHR)

15 December – In *Khlaifia and Others v. Italy* (No. 16483/12), the ECtHR concludes that the detention of certain irregular migrants in a reception centre on Lampedusa and on board of ships violated Articles 5(1), 5(2) and 5(4) of the ECHR; the ECtHR also found a violation of Article 13 taken together with Article 3 because the applicants had no opportunity to challenge the conditions in which they were held

15 December – CoE's anti-torture committee publishes two reports highlighting inadequate safeguards for foreign nationals returned by air from Italy and Spain but also noting positive observations

December

# EU

19 January – European Commission proposes database for third-country nationals' criminal records (ECRIS-TCN)

## January

15 February – In *J.N. v. Staatssecretaris van Veiligheid en Justitie* (C-601/15 PPU), the Court of Justice of the European Union (CJEU) for the first time interprets the detention provisions in the asylum acquis in light of the right to liberty and security (Article 6 of the EU Charter of Fundamental Rights) and states that limitations to Article 6 are only allowed when strictly necessary

22 February – Europol launches the new European Migrant Smuggling Centre

## February

1 March – In *Ibrahim Alo and Amira Osso* (C-443/14 and C-444/14), the CJEU rules that residence restrictions that are not applicable to other third-country nationals may be imposed on beneficiaries of subsidiary protection only if it is justified to promote their integration

17 March – In *Mirza v. Bevándorlási és Állampolgársági Hivatal* (C-695/15), the CJEU rules that Article 3(3) of Regulation (EU) No. 604/2013 must be interpreted in a way that permits a Member State that has admitted responsibility under the Dublin Regulation to send an asylum applicant to a safe third country

18 March – EU adopts the EU-Turkey statement, enabling the return to Turkey of asylum applicants who reach the Greek islands after 20 March

## March

6 April – European Commission announces the reform of the Common European Asylum System and tables a revised legislative proposal for Smart Borders, which includes the establishment of an EU Entry/Exit System

## April

4 May – European Commission tables proposals to change the Dublin and Eurodac Regulations and to create a European Union Agency for Asylum

24 May – Passenger Name Record (PNR) Directive enters into force

## May

7 June – European Commission publishes an Action Plan on the integration of third-country nationals; it provides a common policy framework and concrete supporting measures to help Member States further develop and strengthen their national integration policies for third-country nationals

7 June – European Commission revises the former Blue Card scheme and proposes a single EU-wide scheme to be used across the EU, aimed at facilitating intra-EU mobility; lowering the salary threshold to enter the scheme; creating more appropriate conditions for recent third-country national graduates and workers in areas with labour shortages; making the Blue Card available for highly skilled beneficiaries of international protection; and strengthening the rights of card holders and their family members

7 June – In *Sélina Affum v. Préfet du Pas-de-Calais, Procureur général de la cour d'appel de Douai* (C-47/15), the CJEU holds that imprisoning a third-country national whose return procedure has not yet been completed, merely on account of illegal entry across an internal border – resulting in an illegal stay – is prohibited

## June

13 July – European Commission presents the second package of proposals to reform the Common European Asylum System, including reforms to the Asylum Procedures Qualification and Reception Conditions Directives

13 July – Commission proposes a permanent EU Resettlement Framework

## July

## August

13 September – In *Alfredo Rendón Marín v. Administración del Estado* (C-165/14) and *Secretary of State for the Home Department v. CS* (C-304/14), the CJEU rules that EU law does not permit automatically refusing a residence permit to, or expelling from the territory of the EU, a non-EU national who has the sole care of a minor who is a EU citizen on the sole ground that he has a criminal record

29 September – Council Dec. (EU) 2016/175 establishes that the number of persons admitted from Turkey by a Member State (under the EU-Turkey deal) should be deducted from the number of persons to be relocated to that Member State under Council Decision (EU) 2015/1601

## September

6 October – European Border and Coast Guard Regulation enters into force, upgrading the tasks and responsibilities of Frontex

## October

16 November – European Commission proposes a regulation to establish an automated European Travel Information and Authorisation System (ETIAS) to identify any risks associated with a visa-exempt visitor travelling to the Schengen Area

## November

8 December – European Commission adopts its Fourth Recommendation on the resumption of Dublin transfers to Greece as a step towards a normal functioning of the rules of the Dublin system

9 December – Council of the EU adopts Conclusions on the integration of third-country nationals legally residing in the EU

21 December – European Commission presents modifications to improve the functionalities of the Schengen Information System, which include measures to record entry bans and return decisions, the use of facial images for biometric identification and the creation of new alerts for wanted unknown persons

## December



# 5

## Asylum, visas, migration, borders and integration



*More than 5,000 people died when crossing the sea to reach Europe in 2016, even though irregular arrivals by sea dropped by over 60 % from 2015, totalling some 350,000 in 2016. Wide-ranging changes to the European asylum system were proposed while efforts to improve the efficiency of return policies intensified. Legal avenues to reach safety in Europe remained illusory for most migrants, since new restrictions to family reunification in some EU Member States offset the small progress achieved in humanitarian admissions. Information technology systems were reinforced to better combat irregular migration and respond to threats of serious crimes. Meanwhile, integrating the significant number of people granted international protection proved challenging, including in the educational context.*

This chapter first examines displacement trends and their impact on EU asylum policies. It then analyses the EU's efforts to maximise the use of information systems for migration management and internal security purposes and its impact on fundamental rights. A separate section describes EU Member States' use of alternatives to immigration detention, as a drive to more effectively implement returns creates new risks of arbitrary deprivations of liberty. The chapter then reviews whether or not there has been any progress with respect to legal channels for reaching the EU. The final section examines migrant integration efforts, focusing on children's access to education.

### 5.1. Displacement trends trigger major changes in asylum policies

According to the UN High Commissioner for Refugees (UNHCR), over 65 million people were displaced worldwide at the end of 2015, including over 20 million as refugees. Turkey hosted the largest number of refugees in the world: 2.5 million people. Aside from Palestinians in the Middle East, more than half (54 %) of all refugees worldwide came from just three countries: Syria (4.9 million), Afghanistan (2.7 million) and Somalia (1.1 million).<sup>1</sup> The number of displaced persons continued to grow in 2016.

According to Frontex, some 500,000 people irregularly entered EU territory in 2016, with Syrians and Afghans forming the largest shares. Most crossed the Mediterranean Sea to reach Italy (181,000 people) or crossed the land or sea borders into Greece (178,000 people).<sup>2</sup> Although individuals who reached the EU in 2016 constitute only a small portion of people displaced globally, several EU Member States faced serious difficulties in tending to their basic needs and providing adequate protection to those seeking asylum. For example, as temperatures continued to drop at the end of 2016, people were staying in unheated tents or reception facilities in Hungary (Körmend) and Greece (Samos, Lesbos).<sup>3</sup>

Arrivals to Greece dropped significantly after the EU-Turkey statement on 18 March, which reflected a deal between the EU and Turkey on how to handle migrants and refugees who cross into the EU from Turkey.<sup>4</sup> The statement facilitates the return to Turkey of persons who crossed to the Greek islands in the eastern Aegean Sea without authorisation after 20 March 2016. For every Syrian returned to Turkey, another Syrian is to be resettled from Turkey to the EU.

At the operational level, the 'hotspot' approach became a central building block of the EU's response to asylum seekers and migrants arriving in its territory by sea. The purpose of the hotspots in Greece changed with implementation of the EU-Turkey statement. According to the European Commission, as a result of the agreement,

the hotspots on the islands in Greece needed “to be adapted – with the current focus on registration and screening before swift transfer to the mainland replaced by the objective of implementing returns to Turkey”.<sup>5</sup> The Greek Parliament subsequently adopted new legislation transposing the Asylum Procedures Directive (2013/32/EU), which introduced the concepts of first country of asylum and safe third country, as well as procedures for fast-track examinations of applications for international protection at the border.<sup>6</sup>

In practical terms, this change of focus under the EU-Turkey statement initially meant transforming the hotspots into closed facilities. NGOs and UNHCR – which until then had played a central role in hotspots, particularly in providing services to new arrivals – opposed what they perceived as a move towards ‘mandatory detention’, and so terminated or significantly restricted their activities.<sup>7</sup> In practice, the focus on detention was gradually replaced by restrictions of movement to the particular island, and most humanitarian organisations reinstated their efforts. However, the Greek hotspots remain a core pillar of the implementation of the essentially return-oriented EU-Turkey statement, which clearly distinguishes them from the Italian hotspots.

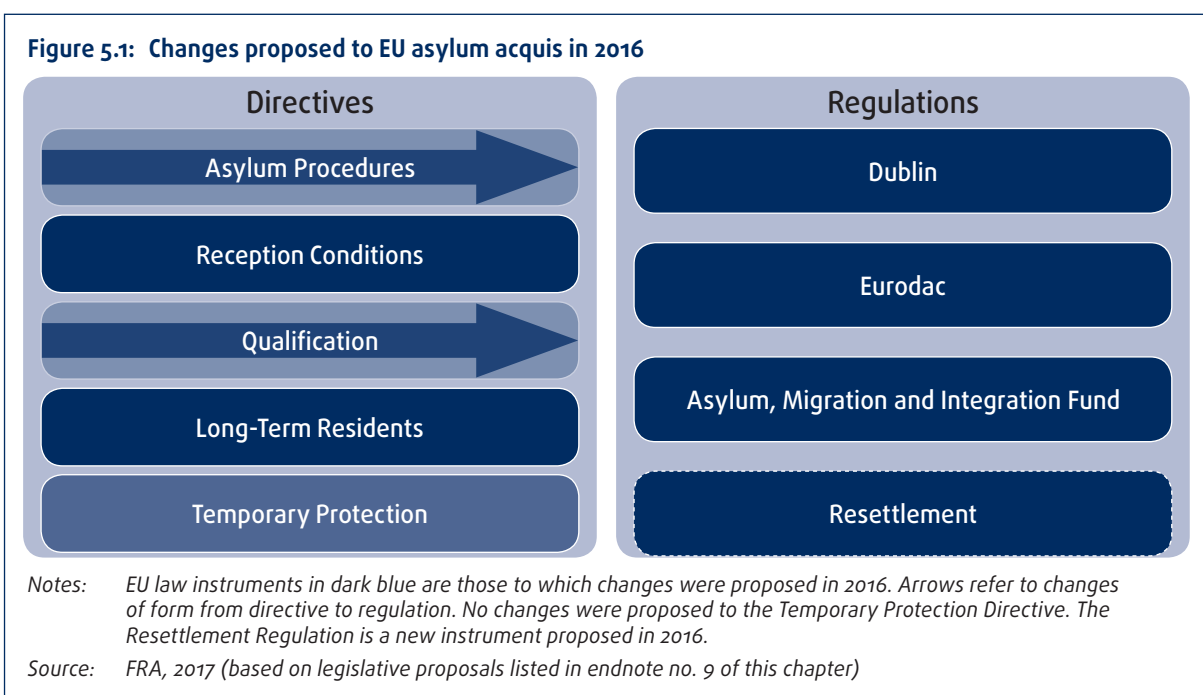
FRA presented a comprehensive overview of the fundamental rights challenges at hotspots as observed during its regular missions to Greece and Italy in its opinion submitted to the European Parliament in November 2016.<sup>8</sup> Although the hotspot approach offers new opportunities to enhance protection and identify vulnerabilities upon arrival, its practical implementation raised a number of issues under the EU

Charter of Fundamental Rights, linked to child protection or sexual and gender-based violence, for example.

One of the most significant changes affecting fundamental rights concerned the increased European involvement in national asylum procedures in Greece. The European Asylum Support Office (EASO) trained and deployed teams of experts who assisted the Greek Asylum Service with the formal registration of applications for international protection. They also carried out the personal asylum interviews and drafted recommendations for decisions to be taken by the Greek authorities. Initially limited to assessing the admissibility of Syrian applicants, this approach was subsequently extended to eligibility interviews examining the substance of asylum claims.

The European Commission proposed changes to almost all core instruments of the EU asylum *acquis* in 2016, reacting to the need to simplify and shorten the asylum procedure, to discourage unauthorised onward movements of asylum seekers to other EU Member States, and increase the integration prospects of those entitled to international protection.<sup>9</sup> Two instruments, on asylum procedures (Asylum Procedures Directive) and on the definition of who is in need of international protection and on their rights and obligations (Qualification Directive), are currently cast in the form of directives and will become regulations. The proposal for the Qualification Regulation (in Article 44) also includes an amendment to the Long-Term Residents Directive (2003/109/EC).

Figure 5.1 presents the instruments to which changes were proposed in 2016.



The European Parliament asked FRA to submit four legal opinions relating to asylum during 2016. Three concerned pending EU legislation: the proposal on safe countries of origin and the suggested amendments to the Dublin and Eurodac Regulations. FRA's opinions on Dublin and Eurodac highlighted the proposed changes' impact on children. The fourth legal opinion concerned the hotspot approach applied to new arrivals in Greece and Italy, and summarised FRA's experiences during its six-month presence on the Greek islands and its regular visits to hotspots in Italy.<sup>10</sup>

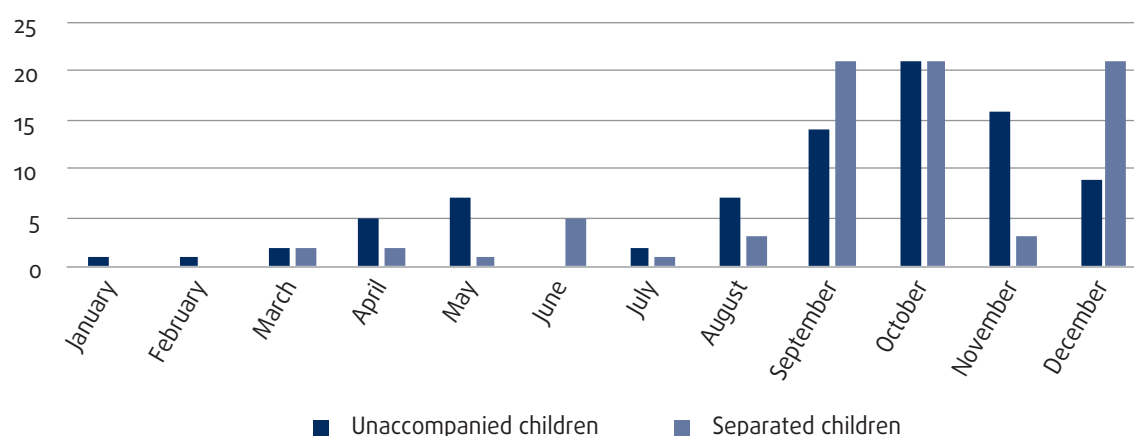
In response to the limited progress in reforming the EU asylum system, the UNHCR in December proposed a series of measures to enable Europe to better manage the emerging challenges in full respect of international law. Suggestions include better contingency planning; a common asylum registration system; and a new approach to unaccompanied children entailing early identification, appointment of a guardian and a best interests assessment.<sup>11</sup>

Meanwhile, several Member States toughened their asylum and migration legislation, leading to new fundamental rights challenges. Notably, **Hungary** allowed the police to send migrants apprehended within 8 km of the southern border with Serbia – including those who expressed their intention to apply for asylum – back to the outer side of the border fence. The region of Upper **Austria** reduced benefits for refugees to below the poverty threshold and less than the minimum benefits for Austrian nationals. **Germany** introduced cuts in social benefits where asylum seekers refuse, without good cause, to take part in integration measures assigned to them, such as attending German language classes or work opportunities. In **Sweden**, a new law introduced time-limited residence permits for refugees and persons granted subsidiary protection as long as they are not employed.<sup>12</sup>

Limited progress occurred on the initial target of relocating 160,000 asylum seekers from Greece and Italy, set in 2015.<sup>13</sup> It was reduced to a minimum of 106,000 people following adoption of the EU-Turkey statement. (Member States have been given the option of resettling the remaining 54,000 directly from Turkey).<sup>14</sup> By 8 December 2016, a total of 8,162 asylum applicants had been relocated (6,212 from Greece and 1,950 from Italy), the majority of them Syrians. This was some 12 % of the minimum target to be met by September 2017. Three Member States – Austria (benefiting from a temporary suspension),<sup>15</sup> Hungary and Poland – have not accepted anyone.<sup>16</sup> Hungary's and Slovakia's requests to the Court of Justice of the European Union (CJEU) to annul the relocation scheme remained pending.<sup>17</sup> The example of Hungary illustrates the opposition in some EU Member States to compulsory relocation. Hungary held a referendum on 2 October asking the population the following question: "Do you want the European Union to order the mandatory settlement of non-Hungarian citizens in Hungary without the approval of the National Assembly?"<sup>18</sup> Although the referendum result turned out to be invalid because of low voter turnout, anti-refugee propaganda and xenophobic attitudes in Hungary continued to raise fundamental rights concerns. For more information, see [Chapter 3](#).

Relocating unaccompanied and separated children remained a significant challenge. By the end of 2016, only one separated child was relocated from Italy, and 164 children (85 unaccompanied and 79 separated) were relocated from Greece; see [Figure 5.2](#). Italy is hosting a significant number of Eritreans who could benefit from relocation. Practical obstacles that remained unaddressed at year's end relate to delays in appointing a guardian (a precondition to ensure that relocation is in the child's best interests) and the determination of the child's best interests. Regarding Greece, Member States' alleged difficulties with relocating married minors, with or without children of their own, as a specific category

**Figure 5.2: Unaccompanied and separated children relocated from Italy and Greece in 2016**



Source: European Commission, personal communication, 2017

of separated children are hampering the process. In addition, many unaccompanied children in Greece are nationals of countries not eligible for relocation.

Finally, towards the end of 2016, calls re-emerged for international protection applications to be assessed outside the EU. Germany's Federal Minister of the Interior proposed that asylum seekers and migrants rescued at sea be disembarked in North African countries. Their asylum applications would be examined in facilities supported by the EU and run in collaboration with the host country and the UNHCR.<sup>19</sup> No further details were made available on how such an approach could be made compatible with the EU Charter of Fundamental Rights and the European Convention on Human Rights (ECHR).

## 5.2. Information systems bring new risks and opportunities

The significant number of people who crossed the EU's external border and moved onwards without authorisation, together with threats to internal security, prompted Member States to reintroduce internal border controls within the Schengen area. At the end of 2015, border controls within the Schengen area were in place at some sections of the borders of four EU Member States (**Austria, France, Germany and Sweden**) and **Norway**. None of them lifted internal controls in 2016. In January 2016, **Denmark** also temporarily reintroduced border controls.<sup>20</sup> Such controls adversely affect one of the main freedoms within the EU: the right of citizens to move freely within the common area.

At the same time, the absence of internal border controls makes it difficult for Member State law-enforcement authorities to obtain necessary information on who is entering and leaving their territories. As the European Commission points out, data on persons entering or leaving the Schengen area are fragmented in different national or European information systems. National border guards and police authorities operate in a complex landscape of differently governed information systems, creating significant practical difficulties.<sup>21</sup>

### 5.2.1. Improving existing EU information systems

EU institutions and Member States made significant efforts to make EU information systems more robust throughout the year. As shown in [Table 5.1](#), the European Commission presented seven legislative proposals to change existing systems or create new ones. Most changes concern the processing of data on third-country nationals.

The EU has so far set up three large-scale information technology (IT) systems with very different purposes,

containing personal data on individuals along with data on objects, in particular the second-generation Schengen Information System (SIS II). These IT systems are:

- Eurodac, to help determine the Member State responsible for examining an application for international protection;<sup>22</sup>
- the Visa Information System (VIS),<sup>23</sup> to manage visa applications; and
- SIS II, which contains alerts on wanted persons and objects (e.g. missing persons, persons subject to an entry ban, or stolen cars or documents).<sup>24</sup>

The personal data of around 40 million individuals are stored in one or more of these three large-scale IT systems, for one reason or another. The majority involve third-country nationals, as the largest amount of personal data is stored in VIS and Eurodac.

The European Commission presented proposals to expand Eurodac and SIS II in 2016. In addition, three more databases are planned: the European Criminal Records Information System for third-country nationals (ECRIS-TCN), the Entry/Exit System (EES), and the European Travel Information and Authorisation System (ETIAS). ECRIS-TCN will be an EU-wide database of criminal records of third-country nationals. The EES will record border crossings by third-country nationals who are entitled to visit the Schengen area.<sup>25</sup> ETIAS will gather data on visa-exempt third-country nationals before they arrive at the border, to determine whether or not the person may enter the EU.

A few trends can be seen. Data on all third-country nationals coming to the EU for short stays will be included in the new systems. Currently, the only personal data stored in EU databases are those of asylum and visa applicants, of persons apprehended when crossing the border in an irregular manner, and of people banned from entry.

As shown in [Table 5.1](#), old and new EU systems will increasingly rely on biometric data to identify persons with a certain degree of certainty. In some systems, fingerprints are complemented by an additional biometric identifier, namely the facial image. The age at which biometrics can be taken is dropping, as scientific research indicates that high-quality fingerprints can be collected from children aged six.<sup>26</sup> Linked to this, the proposed SIS II reform suggests adding an alert for children at risk of abduction, and to better categorise types of missing persons, which could enhance the tracing of missing children.<sup>27</sup>

The information systems serve different purposes. Most, however, include the objectives of enforcing immigration law and preventing, detecting and investigating serious





**Table 5.1: Legislative changes relating to EU information systems proposed in 2016**

System	Data stored	New?	Biometrics?	Persons	Source
<b>ECRIS-TCN</b>	Criminal records of third-country nationals	✓	Fingerprints	TCN	COM(2016) 7 final, 19 January 2016
<b>EES</b>	Entry and exit data and refusal of entry data of TCNs crossing the external borders	✓	Fingerprints (4 fingers), facial image	TCN	COM(2016) 194 final, 6 April 2016
<b>Eurodac</b>	Extending scope of Eurodac to cater to wider migration management purposes with more data stored on individuals	–	Fingerprints (10 fingers), facial image	TCN	COM(2016)272 final, 4 May 2016
<b>ETIAS</b>	Advance travel information and authorisation system for visa-free TCNs	✓	No	TCN	COM(2016) 731 final, 16 November 2016
<b>SIS II (return)</b>	Storing personal data, including confirmation of departure, of persons against whom a return decision has been issued	–	Fingerprints	TCN	COM(2016) 881 final, 21 December 2016
<b>SIS II (border checks)</b>	Improving SIS II for visa, border management and immigration law enforcement purposes, storing searchable biometrics and entry bans in SIS II	–	Fingerprints (10 fingers), palm prints, facial image	TCN	COM(2016) 882 final, 21 December 2016
<b>SIS II (police and judicial cooperation)</b>	Improving SIS II for judicial and police cooperation purposes, including storing searchable biometrics in SIS II	–	Fingerprints (10 fingers), palm prints, facial image, DNA profile	TCN, EU citizens	COM(2016) 883 final, 21 December 2016

Note: TCN = third-country national.

Source: FRA, 2017 (based on proposed legislation)

criminal offences. This leads to longer data retention periods. For example, the first proposal for an entry/exit system, published in 2013,<sup>28</sup> envisaged a retention period of 181 days; the revised proposal, issued in 2016, extended this to five years.<sup>29</sup>

FRA has been looking into the fundamental rights implications of using biometric data in information systems in the areas of borders, visa and asylum since 2014.<sup>30</sup> The risks and benefits to fundamental rights are not fully known. As a starting point, data protection safeguards need to be observed, such as the principles of purpose limitation and data minimisation. Lawful access to, and use of, the data stored in the systems need to be ensured. Biometrics are sensitive personal data that call for special protection. Biometric identifiers are thought to establish a person's identity reliably. Therefore, safeguards to ensure quality become important.

Fundamental rights risks intrinsically linked to the processing of biometric identifiers include the use of coercive measures when collecting the identifiers. They also include risks to the safety of vulnerable persons, such as persons in need of international protection or victims or witnesses of crime, if personal data of such persons are shared with third countries or third parties – for example, if people are fleeing state

persecution. Third-country nationals are also likely to face more obstacles (language barriers, the need to start a procedure from a third country, etc.) if they wish to have incorrect data corrected or deleted.

The proper use of biometric data can prevent mistakes in establishing a person's identity and can reduce the risk of people being wrongfully apprehended or arrested. Biometrics could also potentially be used to optimise the tracking of people who are reported missing, including missing children. In addition, introducing a degree of automation in border control may reduce the risk of discriminatory ethnic profiling at borders.

From a fundamental rights point of view, improving EU-level information systems brings new opportunities but also challenges, as noted in this chapter's [FRA opinions](#).

## 5.2.2. Interoperability

If the various proposals relating to IT-systems are accepted, technical aspects of the systems will be better aligned with each other, making it easier to consult them simultaneously. National authorities believe that this could improve efficiency and security. They note that, to facilitate border management and satisfy security needs, existing information systems

should not work in silos; they should “speak” to each other, making it easy to share information between them. As a result, significant efforts were made in 2016 to identify ways to improve the interoperability between existing and future information systems.

There are different ways to make information systems interoperable. For example, a single-search interface can query several information systems at the same time, then display combined results on a screen. This single-search interface can be queried with alphanumeric or biometrical data. Information systems could also be technically interconnected so that new information stored in one system would automatically be accessed by the other system. This option is envisaged by the proposed Entry-Exit System, through which the biometrics of visa holders would simultaneously be consulted in VIS.<sup>31</sup> Finally, basic personal data needed to identify a person – and not just biometric data – could be stored in a common repository. This solution represents a more future-oriented model.<sup>32</sup> To increase the reliability of the identification of a person across many IT-systems, a “shared biometric matching service” could be set up, using fingerprints and/or facial images.

Interoperability involves both risks as well as benefits to fundamental rights. It ensures that more data are more easily accessed. This may affect the right to asylum, to respect for privacy and family life, the rights of the child, and the right to liberty and security of the person. Decisions taken based on false matches can have negative consequences for individuals, underlining that quality standards are very important when searching and matching alphanumeric or biometric data – be it through a single-search interface, a shared biometric matching aid or a common repository of data. The increased accessibility of data, possibly including through mobile devices, may also heighten the risk of data being unlawfully processed and shared, including with third parties or third countries, exposing people to risks. Where non-EU databases are included among the interoperable IT-systems, there is also a risk that data may have been intentionally stored in information systems to harm an individual; that is, oppressive regimes may deliberately include political dissidents in the Interpol Database on Stolen and Lost Travel Documents to limit their ability to travel. Users of the information systems must remain vigilant and evaluate matches on a case-by-case basis.

Interoperability also brings benefits. For example, the status of persons who need protection may become immediately visible to users, thus avoiding uninformed decisions that put at risk applicants for international protection, missing children, or victims or witnesses of crime. To minimise negative fundamental rights consequences and promote benefits, interoperability should be based on ‘privacy by design’ solutions.

### 5.3. Alternatives to detention remain underutilised

A drive to increase the effectiveness of returns followed the EU Action Plan on Return of September 2015<sup>33</sup> and continued in 2016, with efforts focusing on making better use of asylum-related tools for return purposes. This is illustrated by the proposed changes to Eurodac, which is being redesigned to facilitate and accelerate the identification and documentation of migrants in an irregular situation. FRA has consistently pointed out that the effective return of migrants who are in an irregular situation and for whom there are no legal bars to removal is essential to uphold the credibility of the asylum system.<sup>34</sup> However, the current emphasis on implementing returns increases the risk of arbitrary detention, as alternatives to detention remain underutilised in this context. As noted in the discussion ▶ on migration in this report’s [Focus Section](#), using alternatives to detention is particularly important to avoid detaining children.

In 2016, some Member States announced that they were increasing the use of immigration detention. For example, at the end of the year, **Italy** announced the creation of an immigration detention facility in each of its 20 regions.

Under EU law, Member States may resort to detention to prevent migrants from absconding or otherwise interfering with the return process. However, to comply with the right to liberty and security protected by Article 6 of the EU Charter of Fundamental Rights, deprivation of liberty must be used only as a last resort and migrants must be kept in facilities that respect standards of human dignity. Moreover, before authorities resort to deprivation of liberty, EU law requires them to examine in each individual case whether or not the purpose can also be achieved by applying more lenient measures, so-called alternatives to detention. The Return Directive (2008/115/EC) stipulates in Article 15 (1) that deprivation of liberty may be ordered “unless other sufficient but less coercive measures can be applied effectively in a specific case”. Similar provisions can be found in Recital 20 and Article 8 (2) of the recast Reception Conditions Directive (2013/33/EU). Article 8 (4) of the Reception Conditions Directive obliges Member States to lay down alternatives to detention in national law.

Alternatives to detention include a wide set of non-custodial measures. Typical measures consist of residence restrictions, the duty to report regularly to the police, and release on bail (see also Article 7 (3) of the Return Directive). The use of alternatives to detention is especially desirable for vulnerable categories of foreigners, such as children. Pursuant to Articles 16



and 17 of the Return Directive and Article 11 (2) of the Reception Conditions Directive, particular attention must be paid to children and other vulnerable people. Detaining children has a severe impact on their physical and mental health. Research indicates that even short periods of detention negatively affect children's cognitive and emotional development and can cause lifelong trauma and developmental challenges.<sup>35</sup>

FRA last reviewed the use of alternatives to detention in 2012.<sup>36</sup> Increasing efforts to enforce returns of migrants in an irregular situation and to speed up asylum procedures have created an environment in which Member States resort to restrictive measures,

including deprivation of liberty. It is against this background that FRA decided to review how the situation has evolved over the past five years.

Overall, there has been progress in law, but alternatives remain little used in practice. All EU Member States have provisions on alternatives to detention in their national laws. The two Member States that did not have such provisions in 2012 – **Cyprus** and **Malta** – have meanwhile enacted legislation, although specific types of alternatives are listed only for asylum seekers and not for migrants in an irregular situation, which affects their actual use for this second category of persons.<sup>37</sup>

Table 5.2 provides an overview of the state of play at

**Table 5.2: Types of alternatives to detention envisaged in national legislation, EU-28, by country, at end of 2016**

Member State	Duty to surrender documents	Bail/sureties	Regular reporting	Designated residence	Designated residence and counselling	Electronic monitoring
AT		X	X	X		
BE	X	X	X	X	X	
BG			X			
CY		X	X	X		
CZ		X	X	X		
DE			X	X	X	
DK	X	X	X	X		
EE	X		X	X		
EL	X	X	X	X		
ES	X		X	X		
FI	X	X	X	X		
FR	X		X	X		
HR	X	X	X	X		
HU	X	X	X	X		
IE	X		X	X		
IT	X		X	X		
LT		X	X	X		
LU	X	X	X	X		X
LV	X		X			
MT	X	X	X	X		
NL	X	X <sup>a</sup>	X	X		
PL	X	X	X	X		
PT			X	X		X
RO			X	X		
SE	X		X	X		
SI	X	X <sup>b</sup>	X	X <sup>b</sup>		
SK		X	X			
UK	X	X	X	X	X	X

Notes: Entries in red denote changes in legislation since 2012.

The duty to surrender documents in the United Kingdom (imposed on all individuals who do not have permission to stay) is per se not categorised as alternatives.

<sup>a</sup> Concerns children whose guardianship is entrusted to an agency or an individual (Dutch Aliens Circular para. A6/5.3.3.3.).

<sup>b</sup> Bail is not formally considered an alternative to detention, but is allowed under "permission to stay" decisions under a separate administrative procedure under Art. 73 (6) of the Slovenian Aliens Act. Designated residence is optional under Article 81 (3) of this act.

Source: FRA, 2017 (based on national legislation listed in endnote no. 38 of this chapter)

the end of 2016.<sup>38</sup> It illustrates the types of alternatives to immigration detention envisaged under national law for asylum seekers or persons in return procedures.

In the past four years, alongside **Cyprus** and **Malta**, five Member States stipulated new forms of alternatives to detention in their legal systems: **Belgium, Finland, Hungary, Luxembourg** and **Poland**. Electronic tagging is no longer used in **Denmark**, with legislative changes to remove it from the law underway at the end of the year. In **France**, Article L 552-4-1 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA) – which provided for electronic tagging – was removed.<sup>39</sup> **Lithuania** repealed one alternative to detention: entrusting an unaccompanied child to the care of a social institution.<sup>40</sup> In **Belgium**, since 2014, in addition to hosting foreigners in dedicated return houses, families with children may be given the option to remain in their own home while their return is being planned.<sup>41</sup>

Most Member States do not collect regular statistics on the use of alternatives, making it difficult to determine how frequently they are applied. FRA asked Member States to report how many persons were in immigration detention and how many were subject to an alternative to detention on a specific day of the year: 1 September 2016. Thirteen Member States provided both figures, although some did not specify whether the persons under a restrictive measure (detention or alternative) included only persons in return procedures or also asylum seekers. The data provided have been compiled by counting the individual files.

As **Table 5.3** shows, the number of persons subject to an alternative to detention was higher than 10 % of those detained in only six Member States: **Croatia, Greece, Latvia, Lithuania, Luxembourg** and **Malta**. Alternatives to detention in **Greece** essentially consist of geographical restrictions of movement systematically imposed on certain categories of asylum seekers in the Eastern Aegean islands.<sup>42</sup> **France** provided figures on detention and alternatives for the first 11 months of 2016, noting that, as of 30 November 2016, a total of 21,037 people had been placed in administrative detention as part of a removal measure (obligation to leave France, expulsion on grounds of public order, judicial exclusion order, decision to return pursuant to the Dublin III regulation, etc.) and 3,636 foreigners had been placed under house arrest. In three Member States – the **Czech Republic, Estonia** and **Slovakia** – nobody was subject to an alternative to detention on that day. Aside from **Greece**, in the other 12 Member States that reported back, on 1 September 2016, the number of persons subject to an alternative to detention corresponded to some 7 % of those under a detention regime.

**Table 5.3: Persons in immigration detention or subject to an alternative to detention on 1 September 2016, in 13 EU Member States**

Member State	Detention	Alternative to detention
AT	185	6
BE	535	22
CZ	107	0
EE	24	0
EL	2,958	4,169
HR	32	12
LT	31	16
LU	31	5
LV	49	34
MT	9	2
SE	290	2
SK	95	0
SL	16	1

*Notes:* Statistics provided by national authorities for the total number of persons detained pending removal and persons against whom alternatives to detention were executed on 1 September 2016. Statistics for Lithuania cover a different date: 31 December 2016. For Greece, the figure on alternatives to detention includes territorial restrictions on the Eastern Aegean islands imposed systematically on asylum applicants who could be returned to Turkey.

*Source:* FRA, 2016 (based on information provided by national authorities)

Alternatives are not applied systematically. In 2016, FRA identified several obstacles to their application; the following examples illustrate some of these. In **Bulgaria**, alternatives are not applicable to the majority of new arrivals because they cannot meet the mandatory requirement of having a place of residence in the country.<sup>43</sup> In **Hungary**, the authorities assess the applicability of only asylum bail: if its conditions are not met, the two other measures (designated place of residence and regular reporting obligation) are not assessed and the authority orders detention. The UNHCR also noted that the authority generally sets the amount of asylum bail at a very high level, and that no transparent guidance has been adopted on the factors to be taken into account in setting its amount. Few applicants have the requisite financial resources.<sup>44</sup> The lack of financial means was also reported as a problem in **Latvia**.<sup>45</sup> Similarly, in **Lithuania**, the possibility of using alternatives essentially depends on income and accommodation. Given that third-country nationals whose return or removal is being considered usually have no funds for subsistence and no residence in Lithuania, applying alternatives to them becomes difficult.<sup>46</sup>

## Promising practice

**Providing community-based support to ex-offenders awaiting deportation**

In the **United Kingdom**, alternatives to detention include community-based support. If people are to be deported after they committed a criminal offence, one-to-one, person-centred support can help them to stabilise their lives in the community, avoiding reoffending or absconding while their cases are resolved. Such alternatives to detention can assist them to understand and participate better in immigration procedures, enabling their cases to be resolved in a fair, timely and humane manner in the community, with the minimum use of enforcement. This shift in approach, from enforcement to involvement, can build greater fairness, accountability and trust into the system and produce better outcomes for individuals, communities and the government.

*Sources: United Kingdom, Shaw, S. (2016), Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office by Stephen Shaw; for information on Detention Action's Community Support Project, see Detention Action (2016), Without Detention: Opportunities for Alternatives, London, Detention Action, September 2016*

## 5.4. Legal avenues to safety in the EU remain illusory

Many people in need of international protection continue to risk their lives and safety to reach the EU. Besides the dangerous sea crossing, many are also exposed to exploitation and violent crimes by criminal networks. Vulnerable migrants and refugees are particularly at risk. In 2015, FRA highlighted – in its focus paper on *Legal entry channels to the EU for persons in need of international protection: A toolbox* – that strengthening legal channels for refugees to reach protection and safety would not only reduce the number of migrants' lives lost at sea and the abuses perpetrated by smuggling networks, but would also enhance security, promote integration, fill skills gaps and reduce the need for psychosocial care due to traumatic experiences.<sup>47</sup> It suggested a combination of refugee-related schemes, such as resettlement and humanitarian admissions, and regular mobility schemes that are more refugee-friendly – for example, family reunification. FRA noted that private sponsorship can help tap additional resources that would otherwise not be available to support legal entry programmes.

Resettlement policy did make progress in 2016. However, this was offset by significant restrictions in national family reunification laws.

### 5.4.1. Resettlement and humanitarian admissions

One of the legal and safe options for people in need of international protection to enter the EU is resettlement. Resettlement involves the selection of refugees upon a referral by the UNHCR based on established criteria related to specific needs and vulnerabilities<sup>48</sup> and their subsequent transfer from a state in which they have sought protection (for example, in a refugee camp) to a third state that has agreed to admit them as refugees with permanent residence status.

In July 2015, EU Member States, as well as Iceland, Liechtenstein, Norway and Switzerland, agreed to resettle 22,504 people by 2017.<sup>49</sup> Despite a slow start, by 6 February 2017, the number of resettled persons was almost 14,000.<sup>50</sup> Part of this number comes from the resettlement mechanism under the EU-Turkey statement. Some 3,100 persons were resettled from Turkey between April 2016 and February 2017.<sup>51</sup> Compared with the number of refugees resettled worldwide, however, EU efforts remain limited, which could partly be explained by the significant number of asylum applicants reaching the EU spontaneously. From January to 30 September 2016, the largest proportion of refugees was resettled to the United States (58,037), followed by Canada (17,785).<sup>52</sup> During the same period, 8,547 persons were resettled to all EU Member States combined.<sup>53</sup> The UNHCR estimates that in 2017 it will submit to states some 170,000 refugees for resettlement, out of nearly 1.2 million people in need of resettlement.<sup>54</sup>

As a result of EU-level initiatives, more EU Member States were engaged in resettlement than in previous years – 17 accepted resettled refugees in 2016.<sup>55</sup> To align resettlement policies in Member States, on 13 July 2016, the Commission proposed a permanent EU Resettlement Framework. It plans to establish common procedures for the selection of resettlement candidates and a common protection status for persons resettled to the EU.<sup>56</sup> The proposed regulation envisages an annual EU resettlement plan that establishes priorities regarding from which broad geographical regions resettlement should take place. The plan will contain the maximum number of persons to be resettled in the following year.<sup>57</sup> At the same time, the proposed regulation blurs the distinction between resettlement and family reunification. Individuals who may already be entitled to join their family members on the basis of Directive 2003/86/EC could be included by Member States in their resettlement quota.<sup>58</sup> This would allow Member States to use resettlement for individuals who already have a legal avenue to reach the EU. The UNHCR has pointed out that resettlement should not be used for persons who have a legal right to join their families in resettlement states in a timely manner pursuant to national or regional legislation.<sup>59</sup>

Meanwhile, other humanitarian admission programmes – such as humanitarian corridors to Italy initiated for vulnerable migrants by the country’s Federation of Protestant Churches – continued to be implemented alongside EU and national resettlement schemes.

### Promising practice

#### Humanitarian corridors to Italy established for vulnerable migrants

The Federation of Protestant Churches in Italy (FCEI) – a member of the Churches’ Commission for Migrants in Europe (CCME) – in partnership with the Sant’Egidio Community and the Waldensian and Methodist churches, launched a Humanitarian Corridors Programme at the beginning of 2016. The initiative is largely funded by the Waldensian Church. The organisations signed a memorandum of understanding with the Italian interior and foreign affairs ministries, allowing them to issue 1,000 humanitarian visas to vulnerable persons in Lebanon, Morocco and Ethiopia during 2016 and 2017. In January 2017, the Italian government and the Italian Catholic Bishops’ Conference signed another protocol, providing for a further 500 visas.

By the end of January 2017, 600 asylum seekers had arrived in Italy through these corridors. They are accommodated in facilities funded and managed by the different ecumenical organisations.

*For more information, see [Mediterranean Hope, ‘Corridoi umanitari’](#)*



*Refugees welcomed at Rome’s Fiumicino airport – safe travel made possible by Italian churches’ project for humanitarian corridors. Photo: © Federation of Protestant Churches in Italy*

## 5.4.2. Family reunification

EU law regulates family reunification for refugees – but not for beneficiaries of subsidiary protection – in the Family Reunification Directive (2003/86/EC).<sup>60</sup> Family ties constitute one of the major factors determining the choice of destination country for asylum seekers.<sup>61</sup> The desire to live with one’s own family is a strong drive for migration. Family reunification is also an important factor facilitating integration.

Many beneficiaries of international protection who reached the EU as part of the 2015 migration flows have family members abroad. Bringing them to the EU lawfully is becoming increasingly difficult.

In 2016, at least seven Member States restricted their family reunification legislation, with the effect of reducing or delaying family reunification possibilities, particularly for beneficiaries of subsidiary protection. Four of these were among the five countries with the highest arrivals of Syrians in 2015 as well as 2016, according to Eurostat: Germany (158,655 in 2015 and 266,250 in 2016), Hungary (64,080 in 2015 and 4,875 in 2016), Sweden (50,890 in 2015 and 4,710 in 2016) and Austria (24,720 in 2015 and 8,730 in 2016).<sup>62</sup>

For an overview of these changes, see [Table 5.4](#).<sup>63</sup> Changes introduced at national level include new or shorter timeframes to apply for family reunification to benefit from more favourable conditions (**Austria, Finland, Hungary, Ireland, Sweden**); increased material requirements – for example, proving sufficient income, adequate accommodation or health insurance – in case of non-compliance with the new timeframe (**Austria, Finland, Hungary, Sweden**); restricting the notion of family member (no family reunification for children above 18 in **Austria** and limiting family reunification to core family members in **Ireland**); excluding beneficiaries of subsidiary protection from applying for family reunification for a certain time period after being granted protection (**Austria, Denmark, Germany, Sweden**); and abolishing the possibility of reimbursing the costs of certain family members travelling from their country of origin (**Denmark**).

When assessing interference with the right to respect for private and family life enshrined in Article 8 of the ECHR, the European Court of Human Rights takes into account whether or not there are insurmountable obstacles to the family living in the country of origin or in another state.<sup>64</sup> This would, for example, be the case for people in need of international protection who fear serious harm if they were to live with their families in their home country.<sup>65</sup> In this context, it seems difficult to justify Member States treating refugees (fleeing persecution) differently from persons granted subsidiary protection (typically fleeing armed conflict). In *Alo and Osso*, the CJEU stated that different treatment of refugees and beneficiaries of subsidiary protection status concerning residence requirements is not justified, if their situations are objectively comparable.<sup>66</sup> The CJEU pointed out that beneficiaries of subsidiary protection cannot, in principle, be subject to more restrictive rules, as regards the choice of their place of residence, than those applicable to refugees or non-EU citizens legally resident in the Member State concerned. According to

**Table 5.4: Legislative changes to family reunification legislation in 2016, seven EU Member States**

Member State	Shorter deadlines to apply under more favourable rules	Additional conditions in case of elapsed deadline	Restricting notion of family member	Waiting period for beneficiaries of subsidiary protection
AT	X	X	X	X
DE				X
DK				X
FI	X	X		
HU	X	X		
IE	X		X	
SE	X	X		X

Note: In Denmark, the exclusion of subsidiary protection beneficiaries from family reunification is subject to exceptions, where Denmark's international obligations so require.

the European Council on Refugees and Exiles (ECRE),<sup>67</sup> the logic applied by the CJEU to residence restrictions would also apply to family reunification.

FRA reports every month on the fundamental rights situation in the Member States most affected by the arrivals of refugees and migrants. FRA's September 2016 report includes a thematic focus on family tracing and family reunification. It highlights, among other things, restrictive legislative changes at national level and lists practical obstacles faced by people who wish to bring their family members to the EU through legal family reunification procedures. The focus report covers Austria, Bulgaria, Germany, Greece, Hungary, Italy and Sweden. Subsequent monthly reports also refer to legislative changes concerning family reunification in 14 Member States.<sup>68</sup>

Practical obstacles to family reunification also created additional hardships. The jump in the number of applications for family reunification created significant delays. For example, at **German** consulates in Jordan, Lebanon and Turkey, the waiting times for an appointment to file an application ranged from several months up to a year.<sup>69</sup> To benefit from fewer admission requirements, **Finland** asked applicants to visit a Finnish embassy or consulate to prove their identity within three months from the decision granting asylum to the sponsor; however, obtaining the necessary travel documents to reach the embassy – for example, for Syrians to go to Turkey – is often not possible within this timeframe.<sup>70</sup> Other practical obstacles include complicated procedures to determine family links (**Greece**), provision of limited information on the possibility of and procedure for family reunification, and limited access to legal assistance (**Germany**).<sup>71</sup>

## 5.5. Integration measures for recently arrived refugees and migrants in education

### 5.5.1. Ensuring access to education for refugee and migrant children

Article 14 of the EU Charter of Fundamental Rights and Article 28 of the UN Convention on the Rights of the Child assert the right of every child to education. EU Member States have an important responsibility to uphold this right for recently arrived refugee and migrant children. Most Member States and their societies significantly stepped up their efforts to provide access to education to such children in 2016, acknowledging the challenge as an opportunity and investment. However, not all Member States provided systematic support.

Protecting and fulfilling children's rights, especially the right to education, produces win-win outcomes that benefit both rights holders and the general population. The future positive contribution of migrants and refugees partly depends on timely measures to respect and promote their fundamental rights. Member State efforts to produce policies that meet the immediate needs of these children as early as possible will lay the foundations for their long-term integration into society and the labour market. The European Commission's 2016 Action Plan for the integration of third-country nationals<sup>72</sup> stresses that education is a key policy priority to achieve successful integration and unlock children's full potential, to the benefit of all. As it stated during the action plan's launch, "[e]nsuring that third-country nationals can contribute

economically and socially to their host communities is key to the future well-being, prosperity and cohesion of European societies.”<sup>73</sup>

The Commission’s action plan provides a common policy framework and supporting measures that should help Member States further develop and strengthen their national integration policies for third-country nationals. In particular, it clearly lays down the concrete policy, operational and financial support to be delivered at EU level.

On 9 December 2016, the Justice and Home Affairs Council conclusions<sup>74</sup> endorsed the action plan, prioritising a focus on education and promoting access to mainstream education systems. The Council noted that promoting integration, although a competence of Member States under EU law, is not an individual and independent effort: “the effective integration of third-country nationals legally residing [in the EU] contributes to the building of inclusive, cohesive and prosperous societies, which is of a common interest to all Member States.”

Attending school again is an important starting point for children fleeing war, whose schooling has often been interrupted for a long time. Restoring their right to education in a new cultural, social and schooling environment requires special measures and targeted support.

Providing access to education for refugee and migrant children requires considerable efforts from Member States, and decisions as to how to approach the issue entail risks and challenges that affect the longer-term integration of such children in school systems and host societies more broadly. In some countries, such as Greece, there are still refugee and migrant children aged between 6 and 15 who do not yet attend school, and children above 15 who are not in education or training, as relevant structures to implement the government’s plans have yet to be set up.<sup>75</sup> The International Organization for Migration contributes by providing transport to school for such children; according to its press release, 1,200 children already attended school in autumn 2016 and more are expected to start school in 2017. Meanwhile, negative – and in some cases even violent – reactions by locals and parents of native children in Italy and Greece have cast a shadow on the effort to send migrant and refugee children to school like all other children.

Separate schooling reflects but can also lead to or reinforce divisions in society, as the agency’s research from 2015 and 2016 underscores. Introductory courses and support are necessary to bridge the gap with the rest of the pupils, especially to learn the national language. However, attending school separately from the rest of the children for long periods, in terms of

both location and type of schooling, inevitably delays their school integration. Depending on the settings and modalities of such courses, it may also limit their interactions and socialisation, compromising the chances for mutual understanding and integration.

This reality affecting newcomers also echoes and feeds into a long-standing problem of *de facto* segregation and separate schooling of children from migrant families. This often happens despite Member States’ efforts to avoid it – a side effect of their residential concentration in distinct urban neighbourhoods and of their reduced contacts and interaction with the general population. As FRA’s report *Together in the EU: Promoting the Participation of Migrants and Their Descendants* – published in March 2017 – demonstrated, this is clearly a concern for half of the Member States, particularly the traditional immigration countries. Relevant data are needed for the rest of the EU countries.<sup>76</sup>

On the other hand, integration in normal classes without or before any preparatory period may lead to marginalisation in the classroom or to poorer-quality education being offered to some or even all pupils. It therefore requires considerable educational and learning support efforts in parallel.

Developing responses to these challenges is not easy. Member States need to share solutions and promising practices, as the Commission’s action plan stresses. This can ideally be done in the context of the European Integration Network of the national contact points on integration of third-country nationals – a network of high-ranking public servants from Member State governments responsible for integration policies. Created by the European Commission in 2002, the action plan upgraded it to a European Integration Network, with a stronger coordination role and mutual learning mandate.

The comparative overview that follows examines Member States’ diverse approaches to addressing the educational needs of newly arrived refugee and migrant children and to upholding their fundamental right to education in the context of their integration into, and contribution to, the host society.

For more information on intolerance and xenophobic incidents, see [Chapter 3](#). More information about challenges relating to the rights of children can be found in [Chapter 7](#).

### 5.5.2. Member States offer introductory courses and language support to refugee and migrant children

Almost all Member States adopted special measures providing language support and/or introductory courses





in 2016. Some already do so in the refugee reception centres. Others prioritise immediately integrating children into the mainstream schooling system, alongside regular classes that provide parallel educational support.

Introductory classes, mainly offering language support to pupils from refugee and migrant families before they join standard classes, are provided by all EU Member States.

**Austria**,<sup>77</sup> **Denmark**,<sup>78</sup> **Greece**,<sup>79</sup> **France**,<sup>80</sup> **Ireland**,<sup>81</sup> **Lithuania**,<sup>82</sup> **Luxembourg**,<sup>83</sup> **Malta**<sup>84</sup> and the **Netherlands**<sup>85</sup> are among the Member States that already provide educational support, mainly language and basic introductory support, at reception and in the reception centres.

Outside the reception centres and in countries that do not have any, the maximum duration of this introductory period before the children join normal classes in area schools ranges from 12 to 36 months. In **Austria**,<sup>86</sup> **Denmark**,<sup>87</sup> **Poland**,<sup>88</sup> **Slovenia**<sup>89</sup> and **Sweden**,<sup>90</sup> the maximum period is 24 months. In **Belgium**,<sup>91</sup> it is 12 months but can be extended to 18 months, or to 36 months for the Flemish community. In **Croatia**,<sup>92</sup> **Finland**,<sup>93</sup> **France**,<sup>94</sup> **Luxembourg**,<sup>95</sup> **Malta**<sup>96</sup> and **Romania**<sup>97</sup> the maximum duration of introductory classes is 12 months. In the **Netherlands**<sup>98</sup> it can range from 12 to 24 months on a case-by-case basis. In **Greece**<sup>99</sup> it can be as long as 36 months – three full years outside of the mainstream school system. Authorities in Greece have chosen to provide introductory courses either inside the reception centres and hotspots or as afternoon classes in the schools, after the regular classes have ended and pupils have left. In **Estonia**, the maximum period is 10 months. In **Latvia** and **Lithuania**, linguistic support while attending regular classes lasts for 120 and 240 hours, respectively. In other Member States, either no specific maximum duration is nationally determined or there is a case-by-case assessment of the migrant and refugee children's individual progress in linguistic capacity before they join regular classes – as in **Germany**<sup>100</sup> or the **United Kingdom**,<sup>101</sup> where such policies are decentralised and determined at local level.

The introductory courses for newcomer children in many cases provide more than language support. In **Belgium**,<sup>102</sup> **Bulgaria**<sup>103</sup> and **Cyprus**,<sup>104</sup> they also get psychological support and counselling for post-traumatic stress. In **Austria**<sup>105</sup> and the **Czech Republic**,<sup>106</sup> introductory support includes courses on values, social competence and legal principles. In **Greece**,<sup>107</sup> alongside language support, pupils take courses in mathematics, computer skills and English and also engage in athletic and artistic activities.

Such courses, both in reception centres and in introductory school classes, are implemented by governments in cooperation with civil society or by local authorities. In others, non-governmental organisations assigned by authorities undertake this task, often within EU-funded projects, or voluntarily provide support to migrant and refugee children.

However, a significant number of EU Member States have opted to integrate third-country national pupils directly in normal mainstream classes, regardless of whether they offer a first phase of introductory support. **Bulgaria**,<sup>108</sup> **Croatia**,<sup>109</sup> **Cyprus**,<sup>110</sup> **Estonia**,<sup>111</sup> **Finland**,<sup>112</sup> **Latvia**,<sup>113</sup> **Italy**,<sup>114</sup> **Poland**,<sup>115</sup> **Portugal**,<sup>116</sup> **Romania**,<sup>117</sup> **Slovenia**,<sup>118</sup> **Sweden**<sup>119</sup> and the **United Kingdom**<sup>120</sup> provide mainly language support to newcomer pupils who are already in mainstream education and standard classes. **Lithuania**<sup>121</sup> and **Malta**<sup>122</sup> also do so, in addition to the educational support provided as early as in the reception centres. In most cases, introduction and language support in normal classes is part of national education policies. However, in a number of Member States, this is an optional initiative to be decided by schools, as in **Finland**,<sup>123</sup> or at regional level, as in **Romania**.<sup>124</sup>

In **Hungary**, the government has confirmed that children have access to kindergarten and school education under the same conditions as Hungarian children.<sup>125</sup> At the age of 6, children are enrolled in local schools in the towns in which the reception centres are located, which host a special preparatory language learning class for children to later join regular classes. However, the Hungarian authorities were not in the position to provide any further information about the implementation of such measures, such as the duration of the learning support classes, the numbers of children covered, and whether schools are enrolling them and hosting such classes. In addition, there are civil society initiatives in the country – such as the 'Inclusive kindergartens and schools' by Menedék, the Hungarian Association for Migrants, supported by the Asylum, Migration and Integration Fund (AMIF).<sup>126</sup>

**Slovakia**'s Ministry of Education confirmed that no special integration measures were in place for primary and secondary education.<sup>127</sup> It is the only Member State that has not adopted, and is not implementing, any introductory support measures at national level to facilitate the integration of third-country national pupils in education. Member States could follow the best practices and approaches of other Member States that are dealing with this critical challenge.

Table 5.5 summarises the range of different approaches to providing introductory and language support to children of refugee and migrant families.

**Table 5.5: Initiatives to secure access to education for refugee and newcomer pupils in EU Member States in 2016**

Member State	Educational support in reception centres	Introductory classes before joining regular classes	Language support in regular classes	Maximum duration of introductory and language support (months)
AT	✓	✓	✓	24
BE	–	✓	✓	French community: 12–18 Flemish community: 12–36
BG	–	–	✓	N/A
CY	–	–	✓	N/A
CZ	–	–	✓	6
DE	–	✓	✓	N/A; individual assessment
DK	✓	✓	✓	24
EE	–	–	✓	10
EL	✓	✓	✓	36
ES	✓	–	–	N/A
FI	–	✓	✓ <sup>a</sup>	12
FR	✓	✓	✓	12
HR	–	✓	✓	12
HU	–	–	✓	N/A
IE	✓	✓ <sup>b</sup>	✓	N/A
IT	–	–	✓	N/A
LT	✓	–	✓	240 hours
LU	✓	✓	–	6–12
LV	✓	–	✓	120 hours
MT	✓	✓	✓	12
NL	✓	✓	–	12–24
PL	–	✓ <sup>e</sup>	✓	N/A
PT	–	✓	✓	10
RO	–	✓ <sup>c</sup>	✓	12
SE	–	✓	✓	24
SI	–	✓	✓	24
SK	–	–	✓	N/A
UK	–	✓ <sup>d</sup>	✓	N/A

Notes: N/A= not applicable

<sup>a</sup> Introducing language support is optional for schools.

<sup>b</sup> This is the case for some schools only.

<sup>c</sup> Depends on region – ad hoc programmes.

<sup>d</sup> Depending on individual assessment by schools that are independent or under local authority control.

<sup>e</sup> Introducing introductory classes and language support are optional for schools.

Source: FRA, 2016



### 5.5.3. Schooling of refugee children triggers tensions

Schooling of children of refugees and migrants has not been introduced without tensions, and triggered occasionally harsh and negative reactions among segments of society in some Member States.

In 2016, there were violent reactions to the schooling of refugee and migrant children at least in **Italy** and **Greece**, as FRA reported in its monthly overviews.<sup>128</sup> In Sicily, **Italy**, refugee children were attacked by locals and needed to be hospitalised.<sup>129</sup>

In **Greece**, refugee children's first days of joining schools' preparatory and introductory classes were marked by negative reactions from local parents, including attempts to obstruct and prevent the children's access to schoolrooms. According to the Greek government, negative reactions in the country were considered isolated incidents that took place in approximately 25 % of the schools, while, in many cases, migrant, refugee and asylum-seeking children were well received, with welcoming activities organised.

Some parents sent letters and gained media attention for refusing to accept migrant and refugee children or to enrol their own children in the same schools. In a couple of cases, they went so far as to padlock school entrances to prevent the children from accessing the schools, discouraging migrant and refugee families from bringing their children to school. This often occurred even though the children were not yet admitted to normal classes and in many cases were to follow different timetables that would not permit them to have contact with the rest of the children. In one case, the police had to escort refugee children as they entered the school premises.<sup>130</sup> This prompted the competent authorities in the country to conduct informational meetings with local community stakeholders to raise awareness among local communities and facilitate and encourage the schooling of migrant and refugee children.

### 5.5.4. Involving parents in school life and training teachers

As the European Commission's action plan stresses, "education plays a strong role in the socialisation of children and can foster social cohesion and mutual understanding between third country nationals and the receiving societies."<sup>131</sup> Involving children, parents and the families of newcomers in school life may prove the key to promoting participation in shared spaces on the basis of common values and to strengthening relations with local communities in everyday life.

More than one third (10) of the Member States provided assistance measures to help parents and

families of migrant refugee children integrate into school life in 2016. Some Member States set a clear path of support for migrant and refugee families to join school life and strengthen their role in the education of their children. Member States such as **Austria**,<sup>132</sup> **Luxembourg**,<sup>133</sup> **Malta**,<sup>134</sup> the **Netherlands**<sup>135</sup> and **Portugal**<sup>136</sup> provide translated education material, extra language and multi-level support to parents of third-country national school children. They integrate such modules in the general induction and introductory courses and support programmes for newly arrived children of asylum seekers, refugees and other third-country nationals. **Belgium**<sup>137</sup> provides mediation and general introductory services to parents, although not at school level. In **Poland**<sup>138</sup> and in the **Czech Republic**,<sup>139</sup> support is available in the form of bilingual teacher assistants for foreign national pupils, and not specifically for third-country nationals. **Estonia**<sup>140</sup> provides counselling to schools and staff to make sure they can provide advice to immigrant parents in supporting their children's learning. Similarly, general information material is provided to parents of third-country national children in **France**.<sup>141</sup>

Education and support for and training of teachers are important and areas on which Member States need to focus their efforts, as the Justice and Home Affairs Council stressed in its conclusions of 9 December 2016.<sup>142</sup> Member State investments in integrating migrant and refugee children in education can bear fruit if teachers are equipped with the skills and tools necessary to support such children in learning the national language and catching up with the rest of the classroom. They also need to be adequately trained and prepared to create and support cohesive and inclusive school communities that build on diversity as an advantage for reaching both curricular and extracurricular objectives of the personal and collective development and growth of all pupils and students.

By the end of 2016, half of the EU Member States did provide some kind of training to teachers who deal with migrant and refugee children who are learning the national language as a second language, FRA's data collection shows. In some Member States, such as **Austria**,<sup>143</sup> **Denmark**,<sup>144</sup> **Finland**<sup>145</sup> and **Ireland**,<sup>146</sup> the teacher-training curriculum includes teaching children who are learning the national language as a second language. In others, such as in **Slovakia** – where the Centre for Continuing Education at Comenius University in Bratislava offers systematic training for teachers in the programme 'Slovak as a Foreign Language'<sup>147</sup> – the influx of migrants and refugees has encouraged the production and provision to teachers of ad hoc training courses, information portals and material about improving their skills in dealing with a diverse classroom and teaching children of migrants and refugees.

**Table 5.6: Initiatives for involving parents, and training support for teachers, in EU Member States in 2016**

Member State	Involving parents in school life	Training support for teachers
AT	✓	✓
BE		-
BG	-	-
CY	-	-
CZ	✓	✓
DE	-	-
DK	✓	✓
EE	✓	✓
EL	-	-
ES	-	✓
FI	✓	✓
FR	✓	-
HR	-	✓
HU	-	-
IE	✓	✓
IT	-	-
LT	-	-
LU	✓	✓
LV	-	✓
MT	✓	✓
NL	-	-
PL	-	-
PT	✓	✓
RO	-	-
SE	-	✓
SI	-	✓
SK	-	✓
UK	-	-

Source: FRA, 2016



## FRA opinions

In 2016, EU institutions and Member States made significant efforts to further develop information systems for migration management and internal security purposes. Existing systems were modified and new systems were proposed. For the future, the plan is to make such systems 'interoperable', allowing the competent authorities to access multiple systems simultaneously. A forthcoming FRA publication on interoperability will address the related fundamental rights concerns. In many cases, the fundamental rights impact of information systems is not immediately visible. The consequences of storing incorrect personal data may affect an individual only years later – for example, when applying for a visa or a residence permit. Article 8 (protection of personal data) of the EU Charter of Fundamental Rights and in particular its principle of purpose limitation (i.e. that data are only used for the purpose for which they were collected) is a central standard when developing technical solutions to improve interoperability between information systems. Therefore, all steps to enhance existing information systems and create new ones should be subject to a comprehensive fundamental rights impact assessment.

### FRA opinion 5.1

*The EU and its Member States should ensure that information systems for migration management are designed so that officers who handle the data contained therein can only access data in accordance with their work profiles. Officers should only have access to data relevant for the specific tasks they are carrying out at a given moment in time, and be fully aware of which databases they are consulting. Since interoperability means that more data – including biometric data – are more easily accessible, Member States should develop quality standards and administrative procedures to secure the accuracy of the data and limit the risks of unauthorised sharing of data with third parties or countries. Moreover, they should introduce specific safeguards to guarantee that interoperability does not lead to adverse effects on the rights of vulnerable persons, such as applicants for international protection or children, or to discriminatory profiling.*

Article 6 of the EU Charter of Fundamental Rights, as well as secondary EU law in the field of asylum and return, requires Member States to examine in each individual case the viability of more lenient measures before resorting to deprivation of liberty. By the end of 2016, all EU Member States provided for alternatives to detention in their national laws, albeit in some cases

for certain categories only. However, the inclusion of alternatives to detention into national legislation is in itself not a guarantee that these are applied. In practice, alternatives remain little used.

### FRA opinion 5.2

*EU Member States should require the responsible authorities to examine in each individual case whether a legitimate objective can be achieved through less coercive measures before issuing a detention order. If this is not the case, the authorities should provide reasons in fact and in law.*

Legal avenues to reach safety continued to be illusory for most refugees. There was some progress on resettlement in 2016, but this was offset by a step backwards concerning family reunification, with several EU Member States introducing restrictions in their national laws. Any action undertaken by a Member State, when acting within the scope of EU law, must respect the rights and principles of the EU Charter of Fundamental Rights, which enshrines in Article 7 the right to respect for private and family life. In the case of refugees and persons granted subsidiary protection, it can generally be assumed that insurmountable obstacles prevent their families from living in their home country and that establishing family life in a transit country is usually not an option.

### FRA opinion 5.3

*EU Member States should consider using a combination of refugee-related schemes and more refugee-friendly, regular mobility schemes to promote legal pathways to the EU. In this context, they should refrain from adopting legislation that would result in hindering, preventing or significantly delaying family reunification of persons granted international protection.*

*The EU could consider regulating family reunification of subsidiary protection status holders to address the different approaches taken by Member States.*

Upholding every child's right to education in the continuing movement of migrant and refugee families in the EU is a major responsibility for the EU Member States. Article 14 of the EU Charter of Fundamental Rights and Article 28 of the United Nations Convention on the Rights of the Child guarantee the right to education to every child, including migrant and refugee children. Making sure that all children enjoy their right to education will benefit not only them, but also the societies they will live in.

This underlines that it is important and beneficial for both the economy and society at large to invest in human rights. 2016 shows that most Member States provided language support and aim to integrate refugee and migrant children in regular classes, allowing for their socialisation with other children and investing in long-term and sustainable social cohesion. However, the level of separated and segregated schooling remains too high.

FRA opinion 5.4

*EU Member States should ensure that migrant and refugee children are effectively supported through linguistic, social and psychological support based on individual assessments of their needs. This would prepare them to attend school and integrate successfully in education and local communities. Policies and measures should be in place to avoid separated schooling and segregation and to promote access of migrant and refugee children to regular classes and the mainstream education system.*

FRA evidence shows that in 2016 most EU Member States stepped up their efforts to introduce migrant and refugee children in education and support their integration. However, in very few cases, there are still migrant and refugee children who do not attend school, and some local communities and parents of native children react negatively to or even with violence against their schooling together with other children. Expressions of intolerance and hatred towards migrant and refugee children and their families that lead to the deprivation of the children's right to education violate EU and national legislation against discrimination and hatred. Addressing parents' concerns can support integration and promote the participation of migrants and refugees in local communities.

FRA opinion 5.5

*EU Member States should address adequately discriminatory or violent reactions against the schooling of migrant and refugee children, both through law enforcement and by promoting mutual understanding and social cohesion. They should apply positive measures for fighting prejudices and help eradicate unfounded concerns. Furthermore, the Member States' authorities should enforce laws and rules against discrimination and hate-motivated crimes on any ground – including ethnic origin, race and religion – that are in force in all EU Member States.*

Involving children's parents and families in school life and supporting their efforts to get involved is a crucial part of the education and integration process. A third of the EU Member States do provide measures to support and encourage parents and families of migrant and refugee children by involving them in the education process through information, mediation and language support. Such measures may improve the children's school performance, their and their families' integration in education and in local communities, and foster better community relations. The European Integration Network, whose status was upgraded through the European Commission Action Plan on Integration launched in June 2016, is an adequate framework and space for sharing best practices and solutions that can help Member States to both fulfil their human rights obligations and invest successfully in more cohesive and inclusive societies.

FRA opinion 5.6

*EU Member States should share good practices and experiences in integration through education, promoting the participation of children's parents and families in school life, and making the right to education a reality for all children.*



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