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The purpose of EMN Annual Policy Reports is to provide an overview into the most significant political and legislative (including EU) developments, as well as public debates, in the area of asylum and migration, with the focus on third-country nationals rather than EU nationals.

This EMN Synthesis Report summarises the main findings of National Reports produced by twenty-three of the EMN National Contact Points (EMN NCPs) from **Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden** and the **United Kingdom.**

The EMN Synthesis Report, as well as the twenty-three National Reports upon which the synthesis is based, may be downloaded from http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;?entryTitle=02. Annual Policy Report 2008 Several of the National Reports are also available in the Member States' national language, as well as in English.

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Disclaimer

This Report has been produced by the European Migration Network (EMN), and was completed by GHK-COWI and the European Commission, in co-operation with the 23 EMN National Contact Points participating in this activity. This report does not necessarily reflect the opinions and views of the European Commission, GHK-COWI or of the EMN National Contact Points, nor are they bound by its conclusions.

Explanatory Note

The 23 EMN National Contact Points who participated in this activity were from **Austria**, **Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg**, **Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden** and the **United Kingdom.**

It is important to note that the comments in this Report refer to the situation in the above-mentioned Member States and specifically the contributions from their EMN National Contact Points. More detailed information on the topics addressed here may be found in the available National Reports[1] and one is strongly recommended to consult them also.

The Member States mentioned above are given in **bold** when mentioned in the report and when reference to "Member States" is made, this is specifically for these Member States.

[1] Available from http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=125

Executive Summary

This EMN Synthesis Report provides an overall insight into the most significant political and legislative (including EU) developments, as well as public debates, in the area of migration and asylum in **Austria**, **Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg**, **Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden** and the **United Kingdom** for the period 1st January 2008 to 31st December 2008. The Synthesis Report has been produced on the basis of National Reports from each National Contact Point of the European Migration Network (EMN NCPs) in these Member States.

National elections were held in 2008 in **Austria, Belgium, Czech Republic, Italy, Lithuania, Malta, Slovenia** and **Spain,** while regional and/or municipal elections were organised in **Czech Republic, Finland** and **Germany** (Section 2.1). Some major institutional reforms (Section 2.2) occurred in **Belgium, Estonia, Finland** and **United Kingdom**, as well as several institutional changes resulting from general elections (**Austria, Greece**, **Italy, Malta, Spain**). Other organisational changes were implemented in the field of asylum (**Austria, Hungary, Netherlands**), borders (**Czech Republic, Hungary, Slovak Republic, Slovenia**), police reform (**Czech Republic, Germany, Greece, Hungary, Slovak Republic**), tackling illegal immigration (**Lithuania**), economic migration (**Austria, Belgium, Lithuania, Luxembourg**), integration (**Czech Republic, Estonia, Finland, Germany, Greece, Latvia, Luxembourg**), internal security (**Portugal**) and fight against human trafficking (**Ireland, Portugal**).

As outlined in Section 3.1, many legislative changes and new legislation adopted in the Member States during 2008 were linked to the transposition of EU Directives in the field of asylum, particularly Directive 2005/85/EC relating to minimum standards on procedures for granting and withdrawing refugee status, and Directive 2004/83/EC relating to minimum standards for the qualification and status of third-country nationals or stateless persons as refugees. Several policy and legislative debates (Section 3.2) occurred in the context of legal migration, judicial redress, naturalisation and citizenship, illegal immigration, actions against human trafficking, asylum, border control and return migration. **Slovenia** and **France** respectively held the Presidency of the Council of the EU during 2008 (Section 3.3), which inter alia adopted Directive 2008/115/EC on common standards and procedures for returning illegally-staying third-country nationals and the European Pact on Immigration and Asylum, which set the roadmap for further development of asylum and migration policy.

All Member States reported, to varying degrees, on significant developments within specific areas of asylum and migration. In the *Control and Monitoring of Immigration* (Section 4.1) the fight against fraudulent claims and/or practices was a priority for **Belgium**, **Estonia** and the **United Kingdom**. New identification documents for third-country nationals were also developed by some Member States, as were border controls and visa policies. Developments in *Refugee Protection and Asylum* (Section 4.2) included transposition of relevant EU Directives and setting up of new pilot resettlement projects. Many Member States (**Belgium, Czech Republic, Estonia, Finland, Germany, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain** and the **United Kingdom**) carried out measures targeting *unaccompanied minors* (Section 4.3), including strengthening cooperation with national police authorities, plus publication of guidelines and handbooks and development of plans and initiatives to ensure the protection of unaccompanied minors.

Economic Migration (Section 4.4) concerned legislatives changes which affected the process of entry for migrant workers, the use of migrant labour to satisfy labour demand and measures to attract highly-skilled migrant workers. *Family Reunification* (Section 4.5) primarily involved the simplification and development of conditions for family reunification in **Belgium, Greece, Hungary, Italy, Lithuania, Luxembourg, Netherlands, Portugal, Slovak Republic** and **Spain**. In *Other Legal Migration* (Section 4.6), there were amendments to national legislation regulating the stay of third-country nationals applying for the purpose of marriage in **Greece** and the **United Kingdom,** were outlined as well as the signature of agreements with third-countries favouring entry and admission of immigration from certain third-countries by **Latvia, Poland** and **Spain**. Several Member States developed their policies on language requirements for *Integration* (Section 4.7) and further promoted labour market insertion as a key factor for successful integration. A number of anti-discrimination efforts were also undertaken by **Czech Republic, Estonia, Ireland, Portugal** and **Sweden**. Legislative developments with regard to *Citizenship and Naturalisation* (Section 4.8) varied, relating to both provisions facilitating naturalisation and citizenship (**Estonia, Greece, Poland, Spain**), as well as restricting opportunities, through the imposition of additional conditions (**Germany, Luxembourg, Netherlands**). **Estonia, Poland** and the **United Kingdom** also adopted new programmes and campaigns regarding citizenship.

Developments in addressing *Illegal Immigration* (Section 4.9) mainly referred to changes in regularisation procedures in **Belgium, Luxembourg, Netherlands** and **Poland,** as well as developments in national procedures regarding the control and prevention of illegal migration in **Belgium, Czech Republic, Germany, Ireland, Italy, Latvia, Luxembourg, Netherlands, Spain** and the **United Kingdom**. *Actions against Human Trafficking* (Section 4.10) ranged from the signing of international conventions, the introduction of penalties for human traffickers, to the implementation of strategic or policy-oriented agencies and victim support measure. On *Return Migration* (Section 4.11), several Member States reported on the implementation of strategies to encourage voluntary return, including the development of reintegration measures. Bilateral readmission agreements were also concluded with specific third countries. *Other Policy areas/topics* (Section 4.12) included, among others, the effect of the economic crisis on migration policy, especially in **Austria, Czech Republic** and **Ireland**, the treatment of third-country nationals in detention in **Finland** and the representation of immigrants in media coverage and political campaigns in **Portugal**.

Finally, an overview of the *Implementation of EU Legislation* (Section 5), including the transposition of EU legislation in 2008, as well as the experiences, debates in the (non-) implementation of EU legislation, is given. An overview of the equivalent national laws (Annex) gives the status of transposition during 2008.

1. INTRODUCTION

The European Migration Network (EMN)[2] was established through Council Decision 2008/381/EC[3] and serves to provide up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU. It provides this information also to the general public.

The purpose of EMN Annual Policy Reports is to provide an overview into the most significant political and legislative (including EU) developments, as well as public debates, in the area of asylum and migration, with the focus on third-country nationals rather than EU nationals. This is the fifth in a series of such reports,[4] this time covering the period 1st January 2008 to 31st December 2008 and including contributions from 23 EMN National Contact Points (NCPs) (**Austria**, **Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg**, **Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom).** Each EMN NCP produced a National Report detailing developments in their Member State, which then forms the basis of this Synthesis Report. The aim of this Synthesis Report is to summarise and compare the findings within an EU perspective in order to provide a useful overview for policymakers in particular.

1.1 Methodology followed

Each National Report was produced following common specifications, developed by the EMN, in order to facilitate comparability between the findings from the Member States. In this respect, the same common approach was followed with regard to what was considered to be a *'significant development/debate',* namely that this was an event which had been discussed in the national parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development. Similarly, if such developments/debates then led to any proposals for amended or new legislation, this too was considered to be significant. Particular attention was also given to developments which would be of relevance to policymakers.

[2]More information on the EMN, including its outputs, is available from http://www.emn.europa.eu.
[3]Available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0381:EN:NOT.
[4]Previous versions ranging from 2004 onwards available from http://emn.sarenet.es/Downloads/prepareShowFiles.do?entryTitle=1.%20Annual%20Policy%20Reports. From 2009 onwards, the Annual Policy Report is also used in the elaboration of the Commission's Tracking Method Report on the implementation of the European Pact on Immigration and Asylum.

Various sources of information were used and analysed in order to produce a National Report, including from the applicable legislation related to asylum and migration, contributions from public administrators (legal and managerial experts), published proceedings of parliamentary debates, Ministry Press Releases, news media (including internet, official documents published in, for example, official gazettes, and case law reporting). The Annex of each National Report details more the specific methodology followed by each Member State, giving also any further refinements of the common approach outlined above.

2. POLITICAL AND INSTITUTIONAL DEVELOPMENTS

In this section, the most significant political (Section 2.1) and institutional developments (Section 2.2) that have occurred in 2008 are outlined. Consequently, not all Member States may be mentioned in each sub-section, given the purpose of highlighting only the most significant developments.

With regard to the general structure of the political system relevant for migration and asylum, all Member States outlined the principle Ministries responsible for policies in this area. Since more detailed information on the institutional contexts can be found in the EMN Study: *"*The Organisation of Asylum and Migration Policies in the EU Member States*,"* only a brief overview is given here.[5]

2.1 General political developments

This Section describes the outcomes of national and regional elections which occurred for some Member States in 2008 and which had an impact on asylum and migration policy.

General parliamentary elections were held in **Austria**, **Belgium, Italy, Lithuania, Malta, Slovenia** and **Spain**. In **Belgium, Malta, Slovenia** and **Spain**, elections led to changes in Ministerial posts. In **Belgium**, a Minister for the new Ministry of Migration and Asylum Policy was appointed, while in **Slovenia**, a new Minister was appointed for the *Ministry of Internal Affairs*. In the **Czech Republic**, elections for the national senate were also held. Regional and/or municipal elections were held in **Czech Republic, Finland** and **Germany.**

2.2 General institutional developments

This Section describes the establishment of any new Ministries, institutions, organisations, agencies or other actors dealing with migration, asylum, refugee protection or integration issues and/or changes to the mandate or structure of these bodies, which occurred in the Member States in 2008.

Some major institutional reforms occurred in **Belgium**, **Estonia**, **Finland** and **United Kingdom**, as well as several institutional changes resulting from general elections (**Austria**,

[5] Available from http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;?entryTitle=06_The ORGANISATION OF Asylum and Migration POLICIES in the EU Member States.

Greece,[6] **Italy**, **Malta, Spain**). Other organisational changes were implemented in the field of asylum (**Austria, Hungary**, **Netherlands**), borders (**Czech Republic, Hungary, Slovak Republic, Slovenia**), police reform (**Czech Republic**, **Germany**, **Greece, Hungary, Slovak Republic**), tackling illegal immigration (**Lithuania**), economic migration (**Austria**, **Belgium**, **Lithuania**, **Luxembourg**), integration (**Czech Republic**, **Estonia**, **Finland**, **Germany**, **Greece, Latvia, Luxembourg**), internal security (**Portugal**) and fight against human trafficking (**Ireland**, **Portugal**).

In **Austria**, the *Asylum Court* was established, replacing the *Independent Federal Asylum Senate* as the second-instance authority.[7] Unlike the *Independent Federal Asylum Senate*, the *Asylum Court* can be described not only as an appeal body, but also a court of last resort. As a result of the Parliamentary elections held in **Austria** in September 2008, the competencies of the former *Federal Ministry of Economics and Labour* with regard to immigration and access to labour market for third-country nationals were transferred to the new *Federal Ministry of Labour, Social Affairs and Consumer Protection.* In **Belgium**, the first *Federal Minister for Immigration and Asylum* was appointed in March 2008, after the new Government took office. Eventually, a *New Economic Service* was created, on 15th September 2008, within the *Director-General of the Immigration Department,* to facilitate the issuance of visa for business and/or employment purposes of third-country nationals.

In the **Czech Republic**, the responsibility for integration policy was shifted from the *Ministry of Labour and Social Affairs* to the *Ministry of Interior* on 31st July 2008. Furthermore, following the Czech Republic's accession to the Schengen area on 21st December 2007, the re-organisation of the former *Alien and Border Police Service* into the *Alien Police Service* took place in November 2007. From 30th March 2008, the *Alien Police Service* was made responsible for border controls only at 16 international airports operating non-Schengen flights.[8] The first stage of the reform of the Czech Police was also prepared: this included a transfer of competences for issuing all permanent residence permits and long-term residence permits for the purpose of protection from the *Aliens Police Service* to the *Ministry of Interior* as from 1st January 2009.

[6] Elections held in 2007

[7] For further information on debates concerning the establishment of the Asylum Court, please refer to Austria's Annual Policy Report 2007.

[8] The *Aliens Police Service* previously held responsibility for protection of part of the national border, known as 'green border' and operated at border crossing-points.

In **Estonia**, structural changes made to the *Citizenship and Migration Board* in 2007 were continued in 2008. Most of the departments of the *Citizenship and Migration Board* were renamed, to better illustrate their respective missions. The *Non-Estonian's Integration Foundation* was also renamed the *Integration Foundation*. A new *IT and Development Centre of the Ministry of the Interior* was established on 1st March 2008. There was also an amendment to the statutes of the *Ministry of the Interior* on 1st February 2008, setting up a new *Migration and Border Department.* The responsibilities of the *Migration and Border Department* cover the area of administration of the former *Citizenship and Migration Policy Department*, *Border Guard Police Bureau of the Internal Security Policy Department* and *External Support Bureau* of the *Administrative Department*.

In **Finland**, a structural legislative and organisational change took place on 1st January 2008, changing the overall structure of its migration institution. A new entity responsible for all migration, asylum and integration issues was formed under the *Ministry of the Interior*. This reform involved the following changes:

- The name of the *Ministry of Interior's Immigration Department*, in charge of preparing policy and legislation, was changed into *Migration Department* while the *Directorate of Immigration*, responsible for the entry, residence, removal, refugee status and citizenship of third-country nationals and working under the supervision of the *Migration Department*, was renamed *Finnish Immigration Service*.
- The *Migration Policy Team of the Policy Department* and the *Migration and Working Permit Team of the Execution Department* of the *Ministry of Labour*, the *Advisory Board of Ethnic Relations, the Office of the Ombudsman for Minorities* and the *National Discrimination Tribunal* were moved from the *Ministry of Labour* to the *Ministry of Interior*;
- Responsibility for the reception centres at national level was also transferred from the *Ministry of Labour* to the *Ministry of Interior*. A government proposal presented in 2008 suggested the further transfer of responsibilities with regard to the supervision of reception centres at municipal level, in their totality, to the *Finnish Immigration Service* by Autumn 2009;
- A new unit dedicated to the integration of third-country nationals was established within the *Migration Department of the Ministry of Interior*; and

- The renamed *Finnish Immigration Service* established its *Advisory Board* on 11 April 2008. The *Advisory Board* consists of invited members and includes immigrants' representatives along with the traditional interest groups. Its main tasks are to review the development and policies of *Finnish Immigration Service* operations, put forward relevant initiatives, and enable the Service to exploit the expertise of the *Advisory Board* members in the organisation and development of service provision.

In **France**, the *Ministry of Immigration, National Identity and Co-development* was renamed *Ministry of Immigration, National Identity and Cooperative development* in 2008.

In **Germany**, a comprehensive reorganisation of the Federal Police was carried out on 1st March 2008. The main change consisted of the replacement of the five regional Federal Police headquarters into a new centralised Federal Police headquarter in Potsdam. A *standing conference of the integration ministers and senators of the Federal States* (Länder) was established. The central objective of this body is to further improve the coordination of integration efforts between the states and the *Federal Commissioner for Integration*. It will present a report on the realisation of commitments under the national Integration Plan and define nationwide integration indicators for the evaluation of integration measures. **Germany** also set up a *coordinating body for the cooperation between security authorities and Muslim organisations,* to get an overview of all cooperation projects between security authorities and Muslim organisations, as well as an advisory '*Expert Council of German Foundations on Integration and Migration.*' The Council consists of an independent body of researchers, whose role is to provide evidence-based and practical recommendations to policymakers.

In **Greece**, following general elections held in September 2007, the *Ministry of Public Order* was merged with the *Ministry of Interior.* Furthermore, a new chief of the Hellenic Police was appointed on 3rd March 2008.

In **Hungary**, the Hungarian Border Guards were integrated into the Hungarian Police on 1st January 2008, leading to both legislative and structural changes. A new *Minister of Justice and Law Enforcement*, responsible for asylum and migration, was also appointed in February 2008. At governmental level, the *Department of Migration* of the *Ministry of Justice and Law Enforcement* was merged with the *Department of Cooperation in Justice and Home Affairs* in July 2008 and was renamed *Department of Cooperation in Justice and Home Affairs and Migration.* Additionally, changes to the institutional system were made. Following the entering

into force of the new *Asylum Act* on 1st January 2008, several organisational changes occurred, such as modifications to the operation and functions of reception centres, the accommodation of unaccompanied minors and the adaptation of the asylum and migration register.

In **Ireland**, the first head of unit of the new *Anti-Human Trafficking Unit* was appointed in 2008.[9] Two additional institutional changes were also carried out in 2008: some 90 staff members within the *Citizenship Division* of the *Irish Naturalisation and Immigration Service (INIS)* were moved from the central Dublin-based Burgh Quay office to Tipperary Town, while a full-time *Garda National Immigration Bureau (GNIB) Unit* opened at Ireland West Airport at Knock in April 2008.

In **Italy**, structural changes were implemented following the general elections held in April 2008: the M*inistry of Labour and Social Security*, *Ministry of Health* and *Ministry of Social Solidarity*, were merged into one single Ministry, the *Ministry of Labour, Health and Social Policies* (commonly referred as Ministry of Welfare), making this Ministry responsible for immigration policies in relation to access to labour market, health and social inclusion. A new *Minister of Labour, Health and Social Policies* was also appointed in 2008.

In **Latvia**, the *Secretariat of the Special Assignment Minister for Social Integration* was incorporated in the *Ministry of Children and Family Affairs* and renamed *Ministry of Children, Family and Integration Affairs.*

Several new units within different Ministries were established in **Lithuania**: an *Economic Migration Sectio*n was set up within the *Ministry of Social Protection and Labour,* to develop and implement policies relating to economic migration and social protection of third-country nationals. A *Council for Illegal Migration and Control* and *units for the prevention and control of illegal immigration* were set up within the *State Border Guard Service* under the *Ministry of Interior,* to impose a stricter operational control over illegal immigration and protect the external borders.

In **Luxembourg**, the main institutional developments in 2008 were related to the adoption of new legislation. Following the adoption of the Law of 29th August 2008 on the free movement of persons and immigration, three new advisory bodies were created to support the decision process of the Minister in charge of immigration: the *Foreigners' Advisory Commission* (whose mission is to advise the Minister on the issuing, withdrawal and renewal of residence permits),

[9] For further information on the establishment of the Anti-Trafficking Unit, please refer to Ireland's Annual Policy Report 2007

the *Advisory Commission for Employees* (whose mission is to verify whether the legal conditions for awarding a work permit to third-country nationals or authorising the renewal of such permits are met) and the *Advisory Commission for the Self-Employed* (whose opinion is required before any decision can be taken to grant or renew a residence permit for self-employed third-country nationals). Following the adoption of the Law of 16th December 2008 on the reception and integration of third-country nationals, the *Reception and Integration Agency* was established in order to further develop and implement the national integration policy. Also, the *Equality Commission*, established by Law of 28th November 2006, became fully operational in October 2008. The main mission of the *Equality Commission*, which is composed of five members, is to promote, analyse and monitor equal treatment of all persons, without discriminating them on the basis of race, ethnic origin, sex, sexual orientation, religion, beliefs, disability and/ or age. Following the adoption of Law of 13th May 2008 on the introduction of a single status for salaried workers in the private sector[10], the Chamber of Labour and the Chamber of Private Employees were merged into the Chamber of Salaried Employees while the single category of 'employees' replaced the separate statuses of 'employees' and 'manual workers'. This reform brought substantial modifications to labour law and social security structures.

In **Malta**, as a result of the general elections in March 2008, several structural changes were made: the *Organisation for the Integration and Welfare of Asylum Seekers (OIWAS)* was transferred from the *Ministry of Family and Social Solidarity* to the Mi*nistry for Justice and Home Affairs*, the *Department of Citizenship and Expatriate Affairs* was moved from the *Ministry for Justice and Home Affairs* to the *Ministry of Foreign Affairs* and the *Employment and Training Corporation* was reassigned from the *Ministry of Education and Employment* to the *Ministry for Social Policy*.

A new *State Secretary for Social Affairs and Employment* and a new *Minister for Housing, Communities and Integration* were appointed in 2008 in the **Netherlands**. In August 2008, the Cabinet submitted a Bill on visa policy, proposing to transfer the power to grant national visas from the *Ministry of Foreign Affairs* to the *Ministry of Justice*. In the field of asylum, due to the decreasing number of asylum applications since 2003, the *Foundation for Legal Aid in Asylum Cases (SRAN)* was abolished on 1st June 2008. From 1 January 2008, the *Legal Aid Council* took over the organisation and coordination of the legal aid to asylum applicants from SRAN.

[10] Published in Luxembourg Official Journal of 15th May 2008.

A new *High Commissioner for Immigration and Intercultural Dialogue* was appointed in February 2008 in **Portugal**. The *Observatory for Human Trafficking* was also created, following the National Plan against Human Trafficking on 27th November 2008. Other developments included the adoption of a new *Law for Internal Security*, which further defined the coordination and cooperation mechanisms with relevant entities in the field of national and international security and extended the membership of the *Higher Council for Internal Security*. Furthermore, *the Forum of the Ministers for the Interior of the Community of Portuguese Speaking Countries* was created in 2008. This led to the adoption of the Lisbon Declaration at its first meeting, which identified issues of migration and borders as priority areas for joint action

In the **Slovak Republic**, the structure of the *Bureau of Border and Aliens Police* of the *Ministry of Interior* was re-organised, following accession to the Schengen area and the necessity to improve the practical performance of the border police service, especially at the external border.

Following the general elections held in March 2008, a new *Ministry of Equality* was created in **Spain**. Furthermore, several changes were made to the *Ministry of Labour and Social Affairs* to reflect the importance that migration policy had acquired: while responsibilities in social matters were transferred to other ministries, this Ministry was renamed *Ministry of Labour and Immigration,* within which the competent body for managing migration remained the *State Secretariat for Immigration and Emigration*.

Within the Home Office, the **United Kingdom** *Border Agency* (UKBA) was formed in April 2008. The newly created executive agency brings together the work previously carried out by the *Border and Immigration Agency*, customs detection work at the borders carried out by *Her Majesty's Revenue and Customs* and *UK Visa Services*. It is responsible for regulating all entry and stay of non-UK citizens. There was also a change of the *Minister of State for Borders and Immigration* in October 2008.

3. POLICY AND LEGISLATIVE DEVELOPMENTS IN THE AREA OF MIGRATION AND ASYLUM

This Section describes the overall policy and legislative developments which occurred during 2008 concerning migration and asylum, in order to provide the context for the specific trends and developments in Section 4. The first Section summarises the Member States' general structure of their legal system (Section 3.1). Following on from this, Section 3.2 provides an overview of the main policy and/or legislative debates that occurred. Finally, Section 3.3 provides an overview of developments which occurred in 2008, both political and legislative, in relation to the Presidency of the European Union.

3.1 General structure of the legal system in the area of migration and asylum

Though legislative amendments did not occur in all Member States during 2008, the majority of National Reports outline the general structure of the legal systems in the area of migration and asylum. More details on the general structure of the legal system are provided in the aforementioned EMN Study: "The Organisation of Asylum and Migration Policies in EU Member States."

In 2008, many legislative changes and new legislation adopted in the Member States, as outlined below, were linked to the transposition of EU Directives, particularly Directive 2005/85/EC relating to minimum standards on procedures for granting and withdrawing refugee status and Directive 2004/83/EC relating to minimum standards for the qualification and status of third-country nationals or stateless persons as refugees. Both these Directives had significant impacts on national legislative procedures in the area of asylum. Further information on the transposition of these Directives is available in Section 5.3.1.

Changes to legislation occurred in the **Czech Republic, Estonia, Greece, Hungary, Ireland, Latvia, Netherlands, Poland Portugal, Slovak Republic, Spain, Sweden** and **United Kingdom** which affected migration and asylum policy. These changes included both amendments to previously existing legislation, as well as the adoption of new legislation. In the **Czech Republic**, for example, the amendment to the *Alien and Asylum Acts* included the imposition of stricter conditions for spouses of third-country nationals to obtain permanent residency, as well as a new examination system for third-country nationals for the compulsory testing of their knowledge of the Czech language. Furthermore, with regard to economic

migration, an amendment to the *Employment Act* and *Alien Act* was passed, which introduced the Green Card Scheme, facilitating the procedures of employment for migrants. In **Greece**, in the area of asylum, the *Presidential Decree 90/2008,* adopted in July 2008, introduced the term "refugee" into legislation and set out the procedure for handling asylum applications and granting refugee status. In **Hungary**, the new *Act on Asylum* of 2007 and its *Implementing Decree* entered into force on 1st January 2008. This replaced the previous *Act on Asylum* of 1997 and set out basic principles and the most important guidelines to be followed in the area of asylum in accordance with EU directives, following accession to the EU. In **Portugal**, the new *Asylum Law* was adopted, which established further conditions and procedures for granting asylum. In **Spain**, legislation governing the 'Plan for Voluntary Return' was approved through *Royal Decree-Law 4/2008* on the cumulative contributory unemployment benefits paid in advance to non-EU third-country national workers, who voluntarily return to their country of origin. These measures aimed to make advance payments of unemployment benefits to third-country national workers, depending on their contributions, who decide to voluntarily return to their country of origin.[11] **Sweden** adopted new regulations concerning labour immigration, in order to make the process for such immigration more efficient and flexible and to make it easier to recruit workers from third countries.

New legislation was proposed in **Ireland, Italy, Poland, Spain** and **United Kingdom** in 2008. In **Ireland**, the *Immigration, Residence and Protection Bill 2008* was proposed, constituting a single piece of legislation for the management of both immigration and protection issues. The Bill includes the first statutory basis for the issuing and revoking of visa applications, as well as a reformed system for a single application procedure for both asylum and subsidiary protection claims. In **Spain**, a draft *Bill,* replacing the existing *Immigration Law,* was prepared along with a *Draft Bill* for a new *Law on Asylum*. The main reasons for proposing this reform were to adapt the rights of third-country nationals to recent jurisprudence of the Spanish Constitutional Court,[12] as well as to carry out the full and proper incorporation into domestic legislation of EU Directives since the last reform in 2003. In addition, the aim of the *Draft Law on Asylum and Subsidiary protection* was to transpose into national legislation each of the EU's legislative changes since the Treaty of Amsterdam. In

[11] In view of the economic situation in **Spain**, the Spanish government offered these workers the opportunity to return to their countries of origin and made resources available for their laboural and professional integration or personal development. Given the urgency of the situation and of the response to the measures adopted, these measures were approved by *Royal Decree-Law.*

[12] Concerning the rights of assembly, association, trade unions and strikes which were not extended to third-country nationals staying illegally in **Spain** in the previous *Law on Immigration.*

the **United Kingdom**, the government was in the process of replacing all Immigration Acts with one simplified Act. Furthermore, the *Borders, Citizenship and Immigration Bill* was proposed, with key changes to routes to citizenship, and the partial draft *Immigration and Citizenship Bill* published for pre-legislative scrutiny, setting out proposals to replace all extant Immigration Acts with a single, simplified and consolidated Act.

3.2 General overview of main policy and/or legislative debates

Policy and legislative debates in the area of migration and asylum occurred in **Austria, Belgium, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Spain, Sweden** and the **United Kingdom** in 2008, the main debates being on the following topics: Legal Migration (Section 3.2.1), Judicial Redress (Section 3.2.2), Naturalisation and Citizenship (Section 3.2.3), Illegal Immigration (Section 3.2.4), Asylum (Section 3.2.5), Border Control (Section 3.2.6) and Return Migration (Section 3.2.7). Debates were held at both parliamentary level, as well as amongst the media, civil society and non-governmental organisations that played a key role in discussing the issues at national level in the area of migration and asylum.

3.2.1 Legal Migration

The debates focused both on the residence of third-country nationals, as well as on economic migration.

In the **Czech Republic, Ireland** and **Spain**, the introduction of new legislation in 2008 was followed by extensive debates. In **Ireland**, the *Immigration, Residence and Protection Bill* was debated and commented by various actors, including the UNHCR, the *Irish Refugee Council* and the *Irish Human Rights Commission*. Furthermore, the treatment of separated children attracted criticism from several organisations. In **Spain**, the content of the draft law on immigration was greatly debated, as stakeholders were concerned about the possible introduction of restrictive measures towards migrants, including restrictions to family reunification of parents under 65 years.[13] In the **Czech Republic**, following the entry into force of the *Alien and Asylum Acts*, heated debate and criticism from non-governmental

[13] The draft bill furthermore had a great impact on public opinion, in comparison to the new *Law on Asylum* due to Spain having a large and growing number of economic migrants, while not receiving a high number of asylum applications.

organisations and media ensued, due to the imposition of tougher and restrictive conditions for spouses of third-country nationals to receive permanent residence. Furthermore, media and stakeholder debate focused on police intervention and control measures in Vietnamese market halls. Additionally, the new system introducing requirements related to the knowledge of the Czech language received attention from social workers, teachers and professionals working with third-country nationals. Further information on legal migration is available in Section 4.6 below.

In **Italy**, in reaction to legislative proposals in the area of security[14], several NGOs, labour organisations, associations and churches argued for the need to also strengthen integration efforts to better balance immigration policies. In **Ireland,** the issue of wearing the hijab in a classroom context received much attention and public debate. A joint statement in September 2008, issued by the *Minister for Education* and the *Minister for Integration*, clarified that the Government would not issue a Directive to schools on the wearing of a hijab within a classroom context, but rather would continue to allow schools to decide their own uniform rules. For further information on integration, see Section 4.7 below.

In **Sweden**, there was an ongoing discussion on whether it was reasonable that third-country nationals, under certain circumstances, had to leave the country to apply for a residence permit for their child, when they or their partner had had a child and the other parent was residing in Sweden. Following a debate, the *Swedish Network of Asylum and Refugee Support Groups* welcomed the Governments initiative of revising the regulation on third-country nationals having to leave the country while applying for a resident permit.

Economic and labour migration gave rise to debates in **Austria**, **Czech Republic**, **Estonia**, **Finland, Lithuania** and the **Netherlands**. In **Austria**, the request for skilled migrants expressed by the Austrian Economic Chamber and the Federation of the Austrian Industries was debated in the media. In the **Czech Republic**, media debate began in connection to the introduction of the Green Card, as well as the financial crisis, which impacted on migrants as many lost their jobs. In **Estonia**, debates on making the labour market more flexible were linked to the amendments of the *Alien Act,* which aimed to simplify the procedures related to the employment of third-country nationals by making recruitment more flexible and by decreasing the administrative burden on companies hiring employees. In **Finland**, the promotion of work-related immigration was a main topic of debate due to measures prepared

[14] These legislative proposals are commonly referred to as the 'Security Package'. For more information, please refer to the EMN Synthesis Annual Policy Report 2007.

by the *Ministry of Labour*, to promote labour migration, including the simplification of the permit system for labour immigration. Amendments to regulations concerning work permits for third-country nationals in **Latvia** caused parliamentary debate concerning the issue of introducing guest workers from third countries, rather than trying to attract the diaspora of Latvians living abroad.[15] In **Lithuania**, organisations representing employer's interests heavily criticised some provisions in the *Law of the Legal Status of Aliens*, limiting the possibility for third-country nationals who came to work in Lithuania (especially highly qualified workers) to bring family members.[16] In the **Netherlands**, a Cabinet proposal was submitted by the *State Secretary for Justice* entitled the 'Blueprint for Modern Migration Policy,'[17] describing a new admission policy, in order to admit migrants who were needed quickly and effectively. This was debated in the House of Representatives several times.

For further information on economic migration, see Section 4.4 below.

3.2.2 Judicial Redress

In **Sweden**, there was an ongoing debate in 2008 on whether the new order of appeal in migration cases to the *Migration Court* and the *Migration Court of Appeal*, rather than to the *Aliens Appeal Board*, led to a stricter interpretation of the law. A commission of inquiry was appointed following this debate in order to evaluate the new order of appeal and ensure protection to third-country national migrants when arriving in the Member State.

3.2.3 Naturalisation and Citizenship

Citizenship was a matter of debate in **Estonia**, **Italy**, **Lithuania** and **Luxembourg**. In **Estonia**, an amendment to the *Citizenship Act* aimed at granting citizenship to all children born in the Member State whose parents are living permanently in the Member State, was heavily debated in both the political and media spheres, with the proposal eventually being rejected. In **Italy**, several draft bills related to naturalisation and citizenship were under discussion at the Parliament. In **Lithuania**, the issue of dual citizenship was discussed at length, due to the preparation of a new law on citizenship which aimed to set provisions in the

[15] The lowering of the state fee for the examination of the documents necessary to request a work permit for the employment of a third country national were also debated though it was considered that this measure was needed to improve the competitiveness and simplify the flow of labour

[16] According to defined legal regulation, family members can join a foreign national working in Lithuania after two years.

[17] http://english.justitie.nl/currenttopics/pressreleases/archives-2008/dutch-cabinet-endorses-new-admission-policy.aspx

Constitution limiting cases of dual citizenship. In **Luxembourg**, access to naturalisation and citizenship were discussed extensively during the months prior to the elaboration of the new Law on Nationality from 23rd October 2008. Debates around the necessary conditions for acquiring the Luxembourgish nationality, closely tied to questions of national identity and political participation, took place both within the political sphere and civil society.

3.2.4 Illegal Immigration

Measures to tackle illegal immigration were matters of debate in **Greece, Spain** and the **United Kingdom**. Parliamentary debate in **Greece** focused on the political aspects of illegal immigration and highlighted a need for a more stringent immigration policy and border control.[18] In **Spain**, measures to tackle illegal immigration, including the return of immigrants to their countries of origin, and cooperation with third countries in controlling the southern border of the EU (Sub-Saharan Africa) were topics of debate. In the **United Kingdom**, the issuance of compulsory identity cards to third-country nationals to help combat illegal work and reduce illegal immigration were subject to parliamentary debate.

Concerning regularisation, in **Belgium**, due to the Circular letter clarifying the criteria for applying individual regularisations, insecurity rose amongst illegally-staying third-country nationals and civil society organisations resulting in hunger strikes, occupations of churches and empty buildings and even suicide threats. Actions undertaken by Member States regarding illegal immigration are presented in Section 4.9 below.

3.2.5 Actions against human trafficking

In **Austria**, the first report on human trafficking, which was presented under the auspices of the *Ministry of European and International Affairs*, was debated. Further information on Member States' policies concerning actions against human trafficking are presented in Section 4.10 below.

3.2.6 Asylum

National debates also related to the growing number of asylum applicants from a particular third country (**Finland**, **Netherlands**), the accommodation of asylum applicants (**Austria**, **Finland**, **Ireland**), the detention of asylum applicants (**Ireland**), the potential suspension of

[18] These debates echoed political discussions in society and the media.

Dublin transfers to certain EU Member States (**Germany**), the provision of legal aid to asylum applicants (**Austria**, **Slovak Republic**), the acceleration of the asylum procedure (**Netherlands**), the appeal procedure (**Ireland**), the status and return of rejected asylum seekers (**United Kingdom)**, as well as the criteria for granting residence permit on the basis of humanitarian reasons (**Austria**).

In 2008, the number of asylum applicants coming from Somalia to **Finland** and from China to the **Netherlands** increased significantly. These sudden influxes of asylum applicants from particular third-countries raised debates in the media, in relation to their accommodation and potential abuse of the respective national asylum system. With regard to national debates related to the accommodation of asylum applicants, the governor of Carinthia in **Austria** confirmed that asylum applicants, who were suspected of violence, had been moved to a special accommodation centre in the Austrian Alps. Both Amnesty International and UNHCR considered this measure as a move towards the criminalisation of asylum applicants.

In **Ireland**, the *Irish Refugee Council* and several NGOs expressed serious concerns about the growing number of homeless asylum seekers, who had been barred from Direct Provision Accommodation, while suffering from mental health issues. Calls to improve the entitlements for asylum seekers in relation to the weekly living allowance were also made. On the detention of asylum applicants, the *Department of Justice, Equality and Law Reform* announced that a new prison complex in Dublin would also be used for the detention of certain asylum applicants, as well as the occasional detention of failed asylum applicants pending removal. This decision was criticised in a joint statement issued by the *Irish Refugee Council* and the *Irish Penal Reform Trust*. Significant debates were also held in relation to the *Refugee Appeals Tribunal.* Costs related to asylum application appeals were discussed, as well as the accusations that one Tribunal member was biased, having a particularly high rate of refusals. The Irish Refugee Council called for the resignation of the Chair of the *Refugee Appeals Tribunal*, with the opposition Labour Party stating that activities had raised concerns on the public confidence in the system of administrative tribunals. The on-going refusal of the Tribunal to publish all its decisions and information regarding allocation of cases to individual Members was also criticised.

In relation to the provision of legal aid to asylum applicants, the *Federal Ministry of Interior* in **Austria** announced its decision to discontinue the financing of legal advice centres for asylum seekers. Following this decision, Amnesty International and the UNHCR expressed criticism, recalling the Ministry's obligations to provide legal advice to asylum applicants. In

the **Slovak Republic**, several media provided information about the responsibility of the Legal Aid Centres to provide free legal assistance.

In relation to the Dublin transfers, a national debate occurred in **Germany** regarding whether asylum applicants should be transferred to **Greece** or not, within the framework of the Dublin Regulation. Following examinations of certain cases, the *Federal Office for Migration and Refugees* decided that there was no reason to completely suspend transfers to Greece on the basis of the Dublin procedure.

In the **Netherlands**, the Cabinet's proposals to accelerate and improve the asylum procedure were heavily criticised by legal aid organisations, including the *Dutch Association of Asylum Lawyers*, the *Dutch Council for Refugees* and *Amnesty International*.

The status and return of rejected asylum seekers was a matter of debate in the **United Kingdom**, particularly concerning the status of nationals of Zimbabwe, whose applications had been rejected but who were unable to return to their country of origin due to the volatile situation. Debate also centred on the removal of rejected Sudanese asylum seekers. Civil society furthermore played a role in this debate with a 'Free UK Zimbabweans from Limbo' rally organised by the charity 'London citizens.'

Elsewhere, a national debate was held in **Austria** about the criteria for granting residence permit for humanitarian reasons. The media focused on the case of a teenager from Kosovo who came to Austria in the late 1990s, together with her family, as an asylum applicant. After several years of residence in Austria, her asylum application was rejected and several years after, a decision to remove her parents was made. The teenager went into hiding and continues to reside in Austria. This case led to a request from the Constitutional Court to specify the criteria for humanitarian stay in the existing Austrian law.

3.2.7 Border Control

Schengen accession was a matter of debate in both the **Czech Republic** and **Lithuania**. In the **Czech Republic**, the introduction of the new Schengen rules led to a debate on the abolition of border checks and on the changes linked to the new Schengen visas. In **Lithuania**, Schengen accession, which entailed changes in visa conditions for neighbouring countries,

such as Belarus and Russia, caused dissatisfaction amongst Lithuanian companies especially in the field of tourism and healthcare.[19]

3.2.8 Return Migration

The issue of forced return migration stimulated public debate in **Ireland, Luxembourg** and **United Kingdom**. In **Ireland**, this came about after a Deportation Order was issued to a Nigerian citizen and her daughters, who, if returned could be subjected to forced genital mutilation. The case was referred to the *European Court of Human Rights* and Deportation Orders were postponed. In **Luxembourg**, NGOs criticised the forced return of rejected asylum applicants or illegally-staying third-country nationals, especially where this concerned the return of families and children or well integrated persons. This led to publicity on the issue in Parliament and the press which denounced the lack of legislation regarding the modalities and execution of the expulsion decisions before the adoption of the *Immigration Law* on 29th August 2008. In the **United Kingdom**, the publication of an audit report on race relations across the immigration detention estate was the focus of some debate.

3.3 Presidency of the European Union

France and **Slovenia** outlined actions undertaken or planned under the Presidency of the Union.

Slovenia held the Presidency of the European Union from 1st January to 30th June 2008 and reached a number of agreements in the areas of legal and illegal immigration, asylum, external borders and return. In the context of legal migration, **Slovenia** also prepared a compromise proposal for the Directive on conditions of entry and residence of highly-skilled workers.[20] With regard to return, one of the major achievements of the Slovenian Presidency was the adoption of Directive 2008/115/EC on common standards and procedures for returning illegally staying third-country nationals, otherwise known as the "Return Directive." Concerning External Borders, **Slovenia** succeeded in reaching an agreement on a timetable of Schengen accession for Romania and Bulgaria, as well as beginning a dialogue on visa liberalisation with all countries of the Western Balkans. For the Visa Information System

[19] Belarus responded to this by increasing fees on visas for neighbouring citizens of Schengen Member States.
[20] Leading to Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:en:PDF

(VIS), a conference was organised on the theme of administering external borders which discussed the proposal for the VIS as well as the assessment of FRONTEX.

Under the Presidency of **France**, the European Council adopted the *European Pact on Immigration and Asylum*[21] in October 2008. This was considered to be a great success for the French Presidency, providing a new roadmap for the further development of asylum and migration policy in accordance with the following five commitments:

- Legal immigration will be organised by taking into account the priorities, needs and reception capacities determined by each Member State, and encouraging integration;
- Combating illegal immigration will be carried out in particular through the repatriation of illegally resident foreign persons to their country of origin or a country of transit;
- More effective border controls;
- Construction of a Europe of asylum;
- A comprehensive partnership with countries of origin and transit to promote synergy between migration and development will be formed.

Following the adoption of the *Pact*, the French Presidency worked on translating it into concrete actions. These actions influenced a number of different policies in the area of asylum, migration and integration. For legal migration, a political agreement was reached on the Directive on conditions of entry and residence of highly-skilled workers. On illegal immigration, the Council's position on a proposal for a Directive on sanctions against illegal employers was adopted in December 2008. This led to the formal adoption of Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, otherwise known as the "Employers' Sanctions Directive."

With regard to integration, a *Ministerial Declaration* in November 2008 placed emphasis on the promotion of European values, the balance between rights and duties in integration programmes, integration through employment, and the integration of women. The European Parliament, during the French Presidency, also reached an agreement in the context of external border control on the modification of common consular instructions, and therefore made decisive steps towards the deployment of the Visa Information System (VIS). **France**

[21] European Pact on Migration and Asylum, available at http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf

also reported that the Presidency had, in cooperation with the European Commission, implemented instruments for the Global Approach to Migration, particularly mobility partnerships with Cape Verde and Moldova.

4. SPECIFIC DEVELOPMENTS IN ASYLUM AND MIGRATION

This Section gives an informative overview of Member States' policies in the area of migration and asylum in 2008. Each sub-section summarises the policies exercised under the following headings: Control and Monitoring of Immigration (Section 4.1), Refugee Protection and Asylum (Section 4.2), Unaccompanied Minors (and other vulnerable groups) (Section 4.3), Economic Migration (Section 4.4), Family Reunification (Section 4.5), Other legal migration (Section 4.6), Integration (Section 4.7), Citizenship and Naturalisation (Section 4.8), Illegal Immigration (Section 4.9), Actions against human trafficking (Section 4.10), Return Migration (Section 4.11), and Other policy areas/topics (Section 4.12).

4.1 Control and Monitoring of Immigration

This Section provides an overview of the specific national developments in relation to control and monitoring of immigration. It first reviews Member States' developments with regard to the fight against fraudulent claims and practices, the development of electronic monitoring systems and identity documents, followed by an analysis of developments related to Schengen accession, border control, cross-border cooperation, cooperation with third countries and visa policy.

4.1.1 Fight against fraudulent claims and/or practices

Belgium, Estonia, Germany and the **United Kingdom** introduced measures to improve the identification of fraudulent claims,[22] by, for example, further developing their DNA testing capacity, introducing sanctions and setting up language analysis tests.

Belgium increased the number of diplomatic posts that could perform DNA tests, in order to prove alleged family relationships. With regard to sponsored-type of migration (i.e. student migration, short-stay visa and family reunification), they also started developing a database encompassing all migrant sponsors who signed a letter of consent, which would have liability for a dependant third-country national, in order to combat fraudulent practices and to facilitate the reimbursement of public expenditures incurred in relation to these third-country nationals. Eventually, in October 2008, an inter-departmental working group within the *Belgian Federal*

[22] Fraudulent claims refer here to situations where third-country nationals and/or asylum applicants deliberately attempts to deceive the asylum and/or immigration authorities.

Ministry for Public Service and Justice produced a detailed scenario for the fight against marriages of convenience.

In **Estonia**, a common identification procedure was introduced by the *Citizenship and Migration Board* in the beginning of 2008, which included improved storage of data on third-country nationals, to improve the quality of identification and facilitate the prevention of identity thefts and double-identity. Amendments were also made to the *Estonian Penal Code*, extending the capacity to start criminal proceedings of the *Board of Border Guard* to crimes linked to the falsification of documents.

In **Germany**, the Act Supplementing the right to challenge paternity entered into force on 1st June 2008, involving amendments to the *German Civil Code* and *Residence Act*. This new Act supplements the provisions set out in the German Civil Code, by granting authorities the right to challenge paternity. This Act concerns cases where a German national or a third-country national, with a secure residence title, claims paternity for a child, in order to protect the mother from being expelled. In **Slovenia**, a new Penal Code was adopted, defining sanctions against migrant smuggling, providing counterfeit documents or transport, or other forms of organisation of illegal migration.

The **United Kingdom** launched a language-analysis pilot project, to detect fraudulent asylum applications, by analysing whether applicants really came from the claimed country of nationality. They introduced *Local Immigration Teams*, which consist of employees of the *UK Border Agency*, to act as an Agency contact point within the local community for newly-arrived third-country nationals, employers and local agencies. Among others, the objectives of the Local Immigration Teams are to improve direct contact with newcomers, to gather and manage intelligence and to deploy this effectively in order to combat criminal activity and support local businesses that want to legally employ migrant workers. The teams also assist in the detection of immigration offenders and in addressing community concerns on migration, to help the *UK Border Agency* and other agencies to manage irregular immigration threats and prevents fraudulent access to benefits.

4.1.2 Electronic monitoring systems and related fees

Ireland, Latvia, Finland and **Luxembourg** took measures with regard to the fees charged to third-country nationals for receiving permits and with regard to the processing of permits. In **Ireland**, fees for registration at the *Garda National Immigration Bureau (GNIB)* were

increased in August 2008, from €100 to €150. This measure concerns all migrants from outside the EEA, as they are required to register with the GNIB. The *Immigrant Council of Ireland* issued criticism on this particular measure, noting that work permit holders (particularly those with families and international students) would be greatly affected by this increase in fees. In **Latvia**, new regulations regarding State fees for the examination of documents necessary for application for visa, residence permit or long-term resident status came into force in April 2008. The regulations set the rates charged for examination of documents, how these fees should be paid and who is exempt from paying a fee.

In **Finland**, the current Register of Aliens is to be replaced with a new electronic case management system that will be officially launched in 2009. In **Luxembourg**, the *Law on the Free Movement of Persons and Immigration* of 29th August 2008 introduced a dual system of admission for third-country nationals. According to this Law, a third-country national must apply for an authorisation to stay before entering the national territory (subject to some additional requirements, such as a medical check and/or evidence of adequate accommodation), in order to be granted a residence permit. They also started the development of a new computer system to implement this new Law and better monitor immigration flows.

4.1.3 Identity documents and screening

Some Member States developed new identification documents (**Belgium, Estonia, United Kingdom**). In October 2008, and following a pilot phase, the electronic identity card for third-country nationals was introduced in all municipalities in **Belgium**. In **Estonia**, amendments were made to the *Identity Document Act*, which foresees the regulation of digital identity documents, in addition to "physical" documents. Since January 2008, the *Dutch Immigration and Naturalisation Service* has been issuing identity documents to former asylum applicants, who are lawfully resident, but who do not have valid passports.[23] In November 2008, the **United Kingdom** *Border Agency* started issuing compulsory identity cards to foreign nationals, who were granted an extension of their stay as a student or as spouse, civil partner or unmarried same-sex partner of a permanent resident, or as dependants of applicants in these two categories. The aim of the card is to combat illegal work and to reduce illegal immigration to the United Kingdom. The card helps employers, public agencies and educational establishments understand the migrants' entitlements.

[23] Please refer to the Annual Policy Report 2007 for more information on this matter.

With regard to the screening of migrants, the *Act on Residence of Aliens* was amended in the **Czech Republic**, in order to exempt third-country nationals from submitting an abstract from the Registry of Criminal Records when applying for a visa of more than 90 days, long-term residence or permanent residence permit. Verification of third-country status is now ensured through the cooperation of the Police and the *Ministry of the Interior*. In **Latvia**, a regulation was adopted in May 2008, to define procedures for examining information from applicants to ensure that they did not represent a threat to national security or public order and safety.

4.1.4 Accession to the Schengen area

Several EU-10 Member States reported on their first year as member of the Schengen area (**Czech Republic**, **Estonia, Hungary, Latvia, Lithuania, Slovak Republic, Slovenia** and **Poland**). The **Czech Republic** approved its National *Schengen Action Plan* in November 2008, while continuing the work to introduce the Schengen Information System 2nd Generation (SIS II). Furthermore, the *Czech Analytic Centre for Border Protection and Migration* published a report evaluating its security situation after its accession to the Schengen Area. **Hungary** amended its long-term visa and residence permits system. **Latvia** and **Lithuania** respectively adopted amendments to their Immigration Law, to fully comply with the requirements of the Schengen acquis. For the **Slovak Republic**, pressure at the Slovak-Ukrainian state border decreased by about 25%. In the **Slovak Republic** and **Slovenia**, preparations for the launching of the second-generation SIS (SIS II) were carried out in 2008. In **Poland**, there was a significant decrease in border traffic at the borders with Belarus, Russia and Ukraine, due to the additional requirements introduced for obtaining visas and problems with the handling of the visa applications in the diplomatic posts.

4.1.5 Border controls

Estonia, **Finland**, **Netherlands, Slovak Republic, Spain, Sweden** and the **United Kingdom** developed and implemented measures in relation to border controls. In **Estonia**, mobile border control units were introduced, to prevent illegal immigration and cross-border crimes. In **Finland**, a government proposal was adopted to reorganise the competences related to border checks, in order to strengthen border control and prevent illegal migration and human trafficking. The Finnish "*Safety first – Internal Security Programme 2008-2012"* was also presented in May 2008. This programme has two main objectives, namely the detection of illegal immigration, customs crime and other border crime at the Schengen border (involving

the allocation of more staff and the development of monitoring systems and techniques at the border) and the strengthening of monitoring of immigrants and crime prevention in the country and at the inner border of the Schengen area.

In the **Netherlands**, the Cabinet presented its second progress report on the implementation of the measures contained in the *Border Controls Action Plan* in November 2008. Most of the proposed measures have meanwhile been implemented. Outstanding measures include, for example, connecting information systems and receiving crew and passenger lists prior to arrival at airports. Cooperation with the Royal Constabulary, the Seaport Police, and Customs has also been enhanced, by means of the Integrated Border Management. The **Slovak Republic** actively cooperated with other Member States in FRONTEX operations and detached and trained 15 border police officers for the Rapid Border Intervention Teams (RABIT).[24] Efforts were also made in **Spain** to improve border control: the necessary technology to monitor border posts was incorporated and the number of police officers at the border was increased. **Sweden** continued to carry out border control operations in accordance with the Schengen agreement. The **United Kingdom** began the trial phase of the e-border programme, which will be fully implemented by 2014. The e-border programme aims to capture information on all persons who travel to or from the United Kingdom, to make it easier for those who are travelling and trading legitimately and maintain tight control on the United Kingdom borders.

4.1.6 Changes to border guard structure and/or responsibilities

In **Latvia**, amendments to the *Border Guard Law* came into force in April 2008, entrusting the *State Border Guard* with the supervision over the implementation of the regulation concerning boats in inland waters and at waters with border-crossing points. Other amendments were made to the Border Guard Law in December 2008, defining the rights of border guards to place a person in temporary detention. In **Poland**, 'Assumptions for the long-term conception of the functioning of the Border Guard (2009-2015)' were prepared in 2008, which anticipated that the *Polish Border Guard* would evolve into a modern border-immigration service with new responsibilities.

[24] Regulation (EC) No 863/2007 of the European Parliament and the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and Amending Council Regulation (EC) No 2007/2004 as regard that mechanism and regulating the tasks and power of guest officers, See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0030:0039:EN:PDF

4.1.7 Cross-border cooperation

In April 2008, two bilateral cross-border cooperation agreements were signed between **Greece** and **Bulgaria**: the first agreement established a joint contact information centre, while the second agreement set up joint border control operations. In 2007, **Austria**, **Belgium, France, Germany, Luxembourg, the Netherlands** and **Spain** signed the Prüm Treaty, in order to step up cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration. The Treaty entered into force in the **Netherlands** in May 2008. However, in the meantime, this Treaty has been partially replaced by Council Decision 2008/615/JHA of 23 June 2008[25] on the stepping up of cross-border cooperation. In 2008, **Lithuania** held intensive technical consultations with Belarus and Russia, on the conclusion of agreements on local traffic across the borders. In May 2008, the **Slovak Republic** signed a treaty on local border traffic with Ukraine. In **Poland**, amendments were made to the *Act on Foreigners* and concerned local border traffic relating to citizens of non-EU countries who wish to enter without a visa. Following the Agreement for Trans-border Co-operation regarding Police and Customs Matters, signed between **Portugal** and **Spain, Portugal** approved the regulation regarding the organisation and functioning of the Centres for Police and Customs Co-operation in these two countries. In July 2008, a joint statement regarding the Common Travel Area between **Ireland** and the **United Kingdom** was issued by the *Minister for Justice, Equality and Law Reform* and the *UK Home Secretary*. The latter mentioned that challenges related to border management would be tackled via "state of the art" border technology (particularly electronic border management), as well as the continued exchange of intelligence.

4.1.8 Other cooperation agreements

Member States have also developed agreements, and other forms of bilateral and multilateral cooperation, with third countries of origin and of transit in order to strengthen the external border and to combat illegal migration. Some focused exclusively on border control and illegal immigration (**Italy, Netherlands, Spain, Poland**) while in others, these aspects were embedded in wider cooperation agreements (**France**).

In 2008, **France** concluded and/or ratified bilateral concerted management agreements on migration flows and co-operative development with nine countries (i.e. Benin, Burkina Faso,

[25] Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:210:0012:0072:EN:PDF

Cameroon, Cape Verde, Congo, Gabon, Mauritius, Senegal and Tunisia). In 2008, **Italy** reached an agreement with Libya, related to the surveillance of the maritime border near the Strait of Sicily. The **Netherlands** set up the *Swift Action Teams Pilot Project* in Nigeria to prevent potential victims of human trafficking and/or human smuggling and other persons who do not have the appropriate documents or any documents to travel from Nigeria to the Netherlands. **Spain** strengthened operational cooperation with third countries. **Poland** signed an agreement with the Cabinet of Ministers of Ukraine on local border traffic rules in March 2008, as well as a Protocol on changes to this agreement in December 2008.

4.1.9 Visa

A large increase in visa applications occurred in the **Czech Republic** in 2008, displaying the weaknesses of embassies dealing with these applications in terms of the visa system's capacity limits. This led to the introduction of new rules, to make this procedure more efficient. The Member State also decided to postpone the introduction of machine-readable travel documents containing biometric data, from 1st May 2008 to 1st April 2009. To deal more effectively with visa applications and prevent fraud, **France** continued the installation of fingerprint-recording equipment, as part of the VISABIO programme covering 104 of the French consulates authorised to deliver visa, to be put in place by 31st December 2008. In **Estonia**, amendments were made to the *Aliens Act,* allowing the taking of fingerprints from third-country nationals applying for a visa and/or applying for a stay extension. The Member State also concluded visa representation agreements with seven other EU Member States (**Finland, Germany, Hungary**, **Latvia, the Netherlands, Slovenia, Spain**) where they had no representation. These other Member States now represent Estonia in 52 countries for the issuance of visas. From April 2008, **Estonia** issues visa on behalf of **Finland** in Minsk (Belarus) and Pskov (Russia). In April 2008, the agreement between **Lithuania** and **Hungary,** on the mutual representation in the processing of visas and collecting biometric data in diplomatic and consular representations, entered into force, while a similar agreement between **Latvia** and **Hungary** came into force in March 2008. In **Latvia**, amendments to the Visa Regulation came into force in August 2008, clarifying the border crossing points of Latvia where visas are issued by the *State Border Guard*. In **Poland**, the amendments to the *Act on Foreigners* and some other Acts was adopted in October 2008 and entailed changes concerning entry, uniform and national visas and their annulment under the regulations in force in the countries of the Schengen zone. In 2008, **Portugal** adopted an agreement with

Algeria, concerning the suppression of visas for holders of diplomatic, special and service passports.

In 2008, **Portugal** and **Slovenia** carried out the implementation of an experimental system of biometric visas, which would be fully interoperable with the VIS system. The **United Kingdom** carried out a *Visa Waiver Test* in all non-EU countries, in order to assess the level of risk these countries posed, in terms of illegal immigration, crime and security and to decide whether they should be included or excluded from the visa register. In June 2008, the government also put forward proposals for a reform of the visa system for short-term visitors. This involved the creation of a distinct and clear category for business and special visitors, the creation of a new sponsored family visitor category with licensed sponsors vouching for their family visits and new proposals for tourist visas. In January 2008, the **United Kingdom** government announced the global roll-out of fingerprint checks on visa applicants, which meant that third-country nationals applying for a visa from 133 countries have their fingerprints checked against a national database.

4.2 Refugee Protection and Asylum

This Section outlines Member States' national legislative developments in the area of international protection in 2008. It also includes information on developments in relation to resettlement, particular pressures and other relevant information on international protection.

4.2.1 Legislative and/or policy developments

Austria, Belgium, Czech Republic, Estonia, Finland, Germany, Hungary, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and United Kingdom experienced international protection-related legislative and/or policy developments in 2008.

Belgium, **Czech Republic**, **Estonia**, **Hungary**, **Italy**, **Latvia**, **Malta**, **Netherlands, Poland**, **Portugal, Slovakia, Slovenia** and **Spain** adopted new legislation related to international protection and/or introduced amendments to their national international-protection related Acts. As indicated in Section 3.1, these changes were mainly linked to the transposition of EU Directives, particularly Directive 2005/85/EC relating to minimum standards on procedures

for granting and withdrawing refugee status[26] and Directive 2004/83/EC relating to minimum standards for the qualification and status of third-country nationals or stateless persons as refugees.[27]

Austria, Belgium and **Germany** introduced institutional changes related to the organisation of their asylum policies. In **Austria**, and as outlined previously in Section 2.2, the *Asylum Court* was established, replacing the *Independent Federal Asylum Senate*. In **Belgium**, priority was given in 2008 to the reorganisation of the asylum agencies, namely the *Office of the Commissioner General for Refugees and Stateless Persons (CGRS)* and the *Aliens Litigation Council*, which were made responsible for the new asylum procedure following its entry into force in June 2007. In addition, following the governmental agreement in March 2008, the *Office of the Commissioner General for Refugees and Stateless Persons (CGRS)* was intended to establish the criteria and conditions for granting the status of "stateless person." In **Germany**, following the amendment of the *Ordinance on determining asylum competences*, the responsibility for the Dublin Procedure was partially shifted from the *Federal Office for Migration and Refugees* to the *border authorities.* The *Federal Police* now has the principle responsibility for border procedures under the Dublin Procedure, unless it transfers responsibility to the *Federal Office for Migration and Refugees*. **Belgium** and **Netherlands** indicated their intention to have a faster and improved asylum procedure. In the **Netherlands**, the Cabinet's proposal for the revision of the asylum procedure was based on three main elements which would significantly improve the asylum procedure: the introduction of a period of preparation for at least six days prior to the submission of the asylum application, the extension of the first part of the asylum procedure from 48 processing hours to eight working days and the acceleration of the second part of the asylum procedure. In addition to the above, the Cabinet also announced measures to reduce the number of follow-up procedures and proposed to create scope for the Court to take all relevant circumstances and amendments to legislation into consideration at appeal stage. Furthermore, the **Netherlands** proposed to allow the *Immigration and Naturalisation Service* the opportunity to take into account facts and circumstances that were not known until after making a decision and to possibly withdraw or change a decision on that basis at appeal stage.[28]

[26] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF
[27] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML
[28] In addition, with respect to a subsequent application, it was proposed that there would be no period of rest and preparation, neither would an initial interview be conducted.

Finland and **Germany** introduced changes in relation to the country of origin information and other asylum-related guidelines. In **Finland**, first decisions were made in 2008 by the *Finnish Supreme Administrative Court* to return refugees to Afghanistan following the declaration by the Country Information Unit of the *Finnish Immigration Service* that the safety situation in Afghanistan was no longer considered as grounds for granting international protection or an obstacle for removal. In **Germany**, in January 2008, the *Ansbach Administrative Court* decided that the *Federal Office for Migration and Refugees* could continue to restrict public access to certain Guidelines on countries of origin and other guidelines used in the asylum procedure.[29]

Finland published new "Asylum Guidelines" in November 2008. The purpose of these new Guidelines was threefold: (1) to support the processing of applications of persons in need of international protection without delay; (2) to guarantee uniformity both in the application of the law and procedures; and (3) to ensure legal protection in the asylum process.

Sweden and **Portugal** adopted new legislation regulating health and medical care for asylum applicants. In **Sweden**, the new law formalised prior agreements between the central government and the *Swedish Association of Local Authorities and Regions* though did not change the extent of health and medical care provided. In **Portugal**, the new Ordinance in September 2008 established the terms and guarantees of access for asylum applicants, persons seeking subsidiary protection and their family members to the *National Health Service*. The scope of the previous Ordinance was expanded, establishing the specific modalities of medical assistance and medication to be provided in the different phases of the asylum procedure.

In **Austria, Germany** and **Malta**, national developments occurred in relation to protection statuses granted on humanitarian grounds. In **Austria**, the *Constitutional Court* requested the *Federal Ministry of the Interior* in June 2008 to specify the criteria for humanitarian stay both in the *Settlement and Residence Law* and the *Asylum Law*. In order to comply with Article 8 of the European Convention on Human Rights, it was decided that provisions would be introduced for rejected asylum applicants to be granted the right to stay on humanitarian grounds in certain circumstances. In **Germany**, the *Immigration Act* was amended, abolishing the time limits for *Hardships Commissions* which deal with cases of third-country nationals at state level, who are to leave the Federal States but whose removal is prevented on urgent humanitarian or personal grounds. The Regulation related to these *Hardships Commissions,*

[29] This decision did however result in some public accessibility to certain parts of these guidelines.

which entered into force in January 2005, was initially conceived as a "sunset clause" to become invalid on 31 December 2009. In **Malta**, an administrative procedure was established at the end of 2008 to examine special and extraordinary cases where applicants are found not to be eligible for recognition as beneficiaries of international protection, but who are nonetheless considered to be in need of protection on the basis of humanitarian reasons and can be granted *temporary humanitarian protection*.

With regard to other international protection-related policy and/or legislative developments, the **Netherlands** implemented two main changes in the policy related to family members of third-country nationals who have been denied on the basis of Article 1(f) of the Geneva Convention. [30] The *Cabinet* decided that the contra-indication of posing a threat to public order would no longer be enforced against these family members if they stayed in the **Netherlands** without interruption for at least ten years, counted from the date of the initial asylum application. Furthermore, the regulation included provisions outlining that the contra-indication of public order would no longer be enforced if the family ties with the third-country national against whom Article 1(f) was enforced had been broken. In June 2008, **Portugal** adopted a new model of travel document for refugees who reside there. In the **Slovak Republic**, several judgments were issued by the *Supreme Court* in 2008 in relation to the asylum procedure. These judgments related to the definition of "refugee sur place" and the application of this definition in a particular case, the assessment of the credibility of asylum applicants' statements by the administrative body and the assessment of conditions concerning the appointment of a guardian for an asylum applicant.

In **Slovenia**, an agreement on cooperation between the *Regional Office of the High Commissioner of the United Nations for Refugees for Central Europe*, the *Ministry of Internal Affairs of the Republic of Slovenia* and the *Police* was signed in October 2008, which guaranteed the access of applicants for international protection to the territory of Slovenia and the exercising of their rights to international protection.

[30] Article 1(f) of the Geneva Convention stipulates the following: "*The provisions of this Convention shall not apply to any person which respect to whom there are serious reasons for considering that:*

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

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

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

In October 2008, the **United Kingdom** introduced the *Refugee Integration and Employment Service*. Beneficiaries of refugee or humanitarian protection aged over 18 years of age are eligible for support from the service.

4.2.2 Resettlement

Three Member States announced their intention to engage into pilot resettlement projects (**Belgium**, **Czech Republic, Germany**) and/or set up national resettlement programmes (**Czech Republic**). Following the call of the Council of the European Union dated from 27 November 2008[31] to resettle 10 000 Iraqis refugees who fled from Jordan and Syria, **Belgium** and **Germany** agreed to participate in a pilot resettlement project. On 5 December 2008, the Federal Minister of the Interior and the Länder ministers and senators of the Interior in **Germany** decided to admit about 2 500 Iraqi refugees from Jordan and Syria. In addition, on 27 June 2008, the **Czech Republic** adopted a *Government Resolution on the Concept and Policy of the National Resettlement Programme*, which defined annual quotas of resettled refugees and included a draft pilot resettlement programme for Burmese refugees from Malaysia, implemented in October 2008. **Ireland** and the **Netherlands** pursued their national resettlement policy. **Ireland** continued to participate in the *Resettlement Programme for Vulnerable Refugees* in cooperation with the UNHCR, receiving 101 resettled refugees in 2008. In the **Netherlands**, on 1st January 2008, the Cabinet announced its intention to receive on average 500 refugees to be resettled per year between 2008 and 2011, with a maximum of 2 000 refugees to be resettled for the entire period. The Cabinet also proposed limiting the right to invite family members to be resettled within the quota at a later stage, only to those family members that were known to the Dutch authorities at the moment of the selection.

4.2.3 Particular pressures

Malta reported that its asylum system was under particular pressure in 2008, stating that 98% of the migrants arriving on its shores submitted an asylum application. Within the context of the *European Pact of Immigration and Asylum*, they stressed the need to further develop intra-EU relocation of beneficiaries of international protection, with a view to relieve Member States facing specific and disproportionate asylum pressures, as a result of their demographic or geographical circumstances. At the end of 2008, **France** communicated its intention to the

[31] Council of the European Union, Press Release, 2908th meeting of the Council, Justice and Home Affairs, Brussels, 27 and 28 November 2008

Maltese authorities to relocate 80 beneficiaries of international protection from Malta. Earlier that year, as part of an ongoing resettlement programme concluded between **Malta** and the United States, 175 beneficiaries of international protection were resettled to the United States, with the assistance of the *International Organisation for Migration (IOM)* and the *United National High Commissioner for Refugees (UNHCR)*.

In **France**, the number of asylum applications increased by 19. 9% in 2008 and those received by the French Overseas Territories and Departments more than doubled. **Belgium** and the **Netherlands** faced particular pressure on their reception systems. In **Belgium**, the Federal reception centres reached complete saturation in September 2008. In November 2008, emergency measures were taken to make more beds available for newly arrived asylum-applicants, optimising spaces in existing reception centres and opening emergency shelters. In the **Netherlands**, following a sudden increase in the number of asylum applications from China, due to rumours suggesting that there would be a succession to the royal throne to be followed by an amnesty for all illegally-staying third-country nationals, the *Central Agency for the Reception of Asylum Seekers* set up additional emergency reception facilities. Conversely, in the **Slovak Republic**, the *Migration Office of the Ministry of Interior* decided to close one of its accommodation centres for asylum seekers in December 2008, given the decreasing number of applications for international protection in 2008.

The implementation of the new *Act of Asylum* in **Hungary** led to some problems in the handling of asylum applications, with asylum applicants demonstrating against the delays and high level of uncertainty. This was caused by the fact that officers involved in the asylum procedure were not sufficiently aware of and/or trained on the changes to the asylum legislation.

4.2.4 Other developments in relation to international protection

On other international protection related matters, the *Office of the Commissioner General for Refugee and Stateless persons* in **Belgium** set up a special procedure in April 2008 to guarantee full protection to girls and women, who were exposed to a risk of genital mutilation or who underwent genital mutilation and suffered from trauma. The procedure includes the close monitoring of the presence of an element of risk of genital mutilation, the provision of warnings to parents of minor girls that genital mutilation amounts to a criminal offence under Belgian law and a specific follow-up when refugee status is granted on the ground of fear for genital mutilation.

In the **Czech Republic,** as part of the framework for humanitarian evacuation of persons in need of medical treatment, the Government provided CZK 5 million (approx. €202 000) in 2008 to evacuate and treat 13 patients, mainly children, from Afghanistan.

In **Finland**, the *Refugee Advice Centre* and the *Finnish Immigration Service* participated in a project that aimed to develop a common asylum interview. This is the first time that an element of the asylum procedure is jointly developed by state officials and an NGO. As a result of this project, recommendations for the development of an asylum interview were established.

The **Netherlands** defined several specific groups under the concept of "risk groups" to qualify more easily as a refugee in the meaning of the Refugee Convention (i.e. ethnic and religious minorities from Afghanistan, the ethnic minority group Reer Hamar in Somalia and homosexuals from Afghanistan and Iraq). Some specific groups were also defined as falling under the concept of vulnerable minority groups, qualifying more easily for a subsidiary protection status (ethnic and religious minorities and single women from Afghanistan, Tutsi from the Democratic Republic of Congo; Christians, Palestinians, Yezidis, and Mandeans from Iraq, the ethnic minority group Reer Hamar from Somalia and the non-Arab population groups from Sudan, Darfur Region). In 2008, the concept of categorical protection was applied by the Dutch Cabinet to the following groups: non-Arab population groups from Sudan, Darfur Region, Somalia with the exception of the regions of Puntland, Somaliland, Sool and Sanaag, Ivory Coast and persons originating from Central and South of Iraq. Conversely, the categorical protection policy ceased to apply to the Tutsi ethnic group from the Democratic Republic of Congo in September 2008. Eventually, the Dutch Cabinet issued a decision and departure moratoria in 2008 for asylum applicants from Guinea.[32]

In the **Slovak Republic**, the *Migration Office of the Ministry of Interior* opened a new admission centre at the Bratislava airport in February 2008. Several projects related to the monitoring and support of asylum applicants' access to the asylum procedure, the evaluation of the quality of decisions issued by the Slovak Republic and the evaluation of the inclusion of asylum applicants and beneficiaries of international protection were also implemented.

[32] More information on the concepts of risk groups, vulnerable minority groups, categorical protection and decision and departure moratoria as applied in the Netherlands can be found in the EMN Synthesis Study related to The different national practices concerning granting of non-EU harmonised protection statuses, available at: http://emn.sarenet.es/Downloads/prepareShowFiles.do?entryTitle=04_The%20different%20national%20practices%20concerning%20granting%20of%20NON-EU%20HARMONISED%20PROTECTION%20STATUSES

4.3 Unaccompanied Minors and other vulnerable groups

This Section provides an overview of developments in Member States in 2008 concerning both unaccompanied minors (Section 4.3.1) and vulnerable groups (Section 4.3.2). Almost all Member States undertook actions relating to unaccompanied minors and other vulnerable persons.

4.3.1 Unaccompanied Minors

This Section provides an account of actions occurring in the Member States regarding unaccompanied minors in 2008. More detailed information on Member States' policies in this area can be found in the EMN Synthesis Report "Reception, Return and Integration Policies for, and numbers of, Unaccompanied Minors."[33]

Belgium, Czech Republic, Estonia, Finland, Germany, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain and the **United Kingdom** experienced policy and/or legislative developments in relation to unaccompanied minors.

The **Czech Republic, Estonia** and **Ireland** developed cooperation with national police authorities, to ensure the protection of unaccompanied minors. The *Inter-ministerial Methodology (Guidelines/Information Brochure) on Child Trafficking* was developed in the **Czech Republic** by several Ministries and relevant institutions, in order to provide the police with information and guidance on the identification and treatment of minors. In **Estonia**, the police completed an Action Plan, on the basis of which systematic specialisation to issues related to children would start taking place among police investigators. In **Ireland**, negotiations on a joint protocol on missing children between the police and Health Service Executive continued during 2008.

The publication of guidelines and handbooks was considered to be an important development in **Austria**, **Czech Republic**, **Ireland** and the **United Kingdom**. The IOM Vienna in **Austria** prepared a handbook on unaccompanied minors, which presented best-practice models, as well as the exchange of information and assistance and protection. Following a visit to **Ireland**, the Council of Europe's Report by the Commission for Human Rights was published

[33] For more information on unaccompanied minors, see EMN Synthesis Report on 'Policies on Reception, Return and Integration Arrangements for, and numbers of, Unaccompanied Minors – an EU Comparative Study', published on 6th May 2010, available at http://emn.sarenet.es/Downloads/prepareShowFiles.do;?entryTitle=03

which criticised the level of State care provided to third-country national children who were in danger of being trafficked for exploitation due to a low level of State care. A report was published by the **United Kingdom**'s *Border and Immigration Agency* on "*Improving the care of unaccompanied asylum-seeking children in the United Kingdom*."[34] This report outlined a number of key reforms, which included putting in place better procedures for age assessments, in order to ensure children and adults were not accommodated together, better procedures for identifying and supporting unaccompanied asylum-seeking minors who are victims of human trafficking, as well as resolving the immigration status of unaccompanied minors more quickly.

Finland, Malta and the **Slovak Republic** also adopted and developed plans and initiatives aimed at improving the protection of unaccompanied minors. In **Finland**, the *Revised Plan of Action against Trafficking in Human Beings*, published in September 2008, included a chapter dedicated to unaccompanied minors, with the plan indicating that the greatest risks and needs for special services involved cases where criminals attempted to regain their hold on the victimised child.[35]

In **Malta**, additional procedural safeguards entitled "*Procedural Standards in examining applications for refugee status regulations"* were introduced, which concerned the responsibilities of appointed legal representatives for the protection of unaccompanied minors.[36] In the **Slovak Republic**, the *"Summary Report on the state of fulfilment of the tasks resulting from the migration policy concept"* outlined that improvement in conditions for social guardianship of unaccompanied minors had been made.

Legislative developments in **Estonia, Greece, Luxembourg, Malta, Poland, Portugal, Slovenia** and the **United Kingdom** also had a positive effect on the protection of unaccompanied minors. **Luxembourg, Malta, Poland** and **Slovenia** extended the granting of protection statuses to unaccompanied minors through their legislative reforms. In **Malta**, the 2008 amendments to the *Refugee Act* replaced the old humanitarian protection status with subsidiary protection status. An administrative procedure was also introduced allowing unaccompanied minors who did not qualify for refugee status or subsidiary protection, as

[34] United Kingdom Border Agency (UKBA) (2008h). Better outcomes: the way forward. Improving the care of unaccompanied asylum-seeking children.

[35] Furthermore in **Finland**, in April 2008, the management group of the migration issues within the *Ministry of the Interior* made a decision that in Dublin cases unaccompanied minors will not be returned to Greece.

[36] These standards stipulated that within thirty days of the issue of a care order, an appointed representative should ensure that the unaccompanied minor is given the opportunity to be informed about the possible consequences of the personal interview and where appropriate how to prepare themselves for this interview. Article 12 of the previous Refugee Act also stipulated that minors should be assisted by a care order.

defined in the Directive, to be granted "temporary humanitarian status" in view of their vulnerability.[37] In **Poland** the *Act on the amendments to the Act on granting protection to foreigners within the territory of the Republic of Poland* entered into force in 2008, amending the regulations on unaccompanied minors applying for refugee status. The amended regulations changed the procedures concerning unaccompanied minors, particularly the methods for interviewing minors. Furthermore, the new provisions obliged the court to only place an unaccompanied minor in a care and educational facility.[38] This was an improvement from prior regulations which stipulated that an unaccompanied minor who was 13 years of age or older could be placed in a refugee centre for third-country nationals applying for refugee status. The *International Protection Act* in **Slovenia**, which entered into force in 2008 and replaced the *Asylum Act,* extended both the Reception and Qualifications Directives' definition of a "family member" of an applicant for asylum in order to include the parents of an unaccompanied minor.

In order to ensure the protection of minors, **Greece**, **Hungary**, **Ireland, Latvia, Netherlands** and **Spain** (further) developed their reception capacity for unaccompanied minors. In **Greece** and **Hungary,** specially created accommodation facilities for unaccompanied minors were established with, for the former, a state reception centre for unaccompanied minors built on the Lesvos Island of Agiasso. This followed a letter from the Greek Ombudsman, who recommended that minors, who form a significant part of migrants illegally-entering the Member State, should be sent to special reception centres.

Ireland, Netherlands and **Spain** introduced or proposed particular initiatives and policies for the improved reception of unaccompanied minors. In **Ireland,** a draft operational policy for separated children seeking asylum was presented by the *Health Service Executive*. These specifications, which were an initiative in association with the *Department of Justice, Equality and Law Reform*, sought to standardise procedures for the referral, reception and care of unaccompanied minors. In the **Netherlands,** a pilot project regarding protected reception facilities for unaccompanied children, who had been a victim or who ran the risk of becoming a victim of human trafficking, was launched in January 2008. This followed on

[37] In **Malta**, unaccompanied minors are granted temporary humanitarian protection status even if the merits of the case are not considered such as to render the applicant eligible for refugee status or subsidiary protection. The previous Refugee Act already defined humanitarian protection as 'a special leave to remain in Malta until the person concerned can return safely to his/her country of origin or otherwise resettle safely in a third country'. Under this Refugee Act, minors who did not qualify for refugee or subsidiary protection were usually granted humanitarian protection.

[38] These new amendments subsequently made the treatment of unaccompanied minors similar to the treatment of unaccompanied minors having Polish citizenship.

from the introduction of protected reception facilities in 2007, in order to prevent unaccompanied minors between the age of 13 and 18 years from disappearing and possibly being exploited. In **Spain**, a number of initiatives were introduced in 2008 to improve the care provided to unaccompanied minors. These initiatives included the provision of extra support to minors at risk by the Spanish *International Cooperation Agency for Development*, which is responsible for the development of specific prevention strategies and professional training in third countries and also cooperates with those autonomous communities which receive the greatest number of minors, such as the Government of the Canary Islands.

Concerning the equal treatment of unaccompanied minors**, Belgium** and **Italy** developed specific policies. In **Belgium**, since 1st January 2008, some categories of unaccompanied minors, e.g. those who have attended school for at least three consecutive months, were granted access to the national health insurance system. In **Italy**, equal treatment of unaccompanied minors was also discussed. The *Central Organism for the Protection of Minors Travelling alone* was created within the *Department of Civil Liberties and Immigration*, in order to ensure the rights of minors. This followed from a Directive, signed in April 2008, addressing the presence of the estimated half a million migrant minors, and provided that minors, whether Italian or of third-country origin, were to be treated equally and that the issuance of a residence permit to such individuals was possible from the age of 14 years.

Estonia set up a nationwide children's helpline in 2008, which officially started working on 1st January 2009, to also offer direct and accessible assistance to unaccompanied minors.

Belgium, Czech Republic, Estonia, Finland, France, Germany, Ireland, **Italy** and **Slovak Republic** provided data on the number of unaccompanied minors on their territory in 2008. This data is a "snapshot" of the situation in these Member States. Most of these Member States collected data with regard to the number of unaccompanied minors who applied for international protection. **Belgium**, **Finland, France** and **Germany** noted an increase in the number of unaccompanied minor asylum applicants, ranging from 98 (**Ireland**) to 706 (**Finland**), a significant rise from 165 in 2007 of almost 700%.[39]

[39] Due to the high increase in the number of asylum applicant minors arriving in Finland in 2008, this resulted in a shortage of available reception places. Furthermore the increase resulted in a lack of trained representatives appointed to each unaccompanied minor. Several civil society organisations expressed their concern over issues such as the reception, placement and legal protection of underage asylum applicants. Topics which made the headlines chiefly included the rise in asylum applicant minors, age determination, interview activities and reception.

Belgium, Finland, France and **Germany** also provided information on the most common countries of origin of unaccompanied minors. In **Belgium**, five nationalities (Afghanistan, Guinea, Democratic Republic of Congo, Iraq and Russia) made up approximately 47% of the asylum applications in 2008. **Finland** registered Somalia, Iraq and Afghanistan as the most predominant countries of origin for unaccompanied minors arriving on their territory, while in **France** 67% of unaccompanied minors came from Africa.

In both **Belgium** and **Finland**, the unaccompanied minor asylum applicants were predominantly male, with approximately 70% of those claiming asylum being male in Belgium.

Concerning the overall number of unaccompanied minors in the Member States, 2 214 unaccompanied minors arrived in **Italy** in emergency landings cases during 2008, with overall a total of almost 8 000 unaccompanied minors. In the **Czech Republic**, the number of unaccompanied minors being detected was diminishing. Furthermore, the composition of unaccompanied minors placed in specialised facilities changed during 2008. The number of minor asylum seekers and refugees diminished, while the number of other categories of minors increased, such as children who had been living with their parents in the Czech Republic but had been diagnosed with serious behavioural disorders or children whose parents had been detained. In **Germany**, the collection of data concerning unaccompanied minors was improved in order to better inform national authorities of the presence of migrant minors. The *Federal Office for Migration and Refugees* made some changes to the collection of statistics on unaccompanied minor asylum applicants by making data available on the number of unaccompanied minors who applied for asylum.

4.3.2 Other Vulnerable Groups

Belgium, Czech Republic, Greece, Poland, Portugal, Slovenia and the **United Kingdom** experienced policy and/or legislative developments in relation to other vulnerable groups in 2008.

New legislation in **Portugal, Slovenia** and the **United Kingdom** enhanced the protection of vulnerable groups. In **Portugal**, the new *Asylum Law* in 2008 consolidated the concepts and legal regimes applicable to particularly vulnerable individuals. The *International Protection Act* in **Slovenia** enabled positive discrimination of vulnerable groups of applicants, in relation to material acceptance conditions, healthcare and psychological counselling. In addition to the

protection of unaccompanied minors in the **United Kingdom**, a *Code of Practice for Keeping Children Safe from Harm*[40] was published in December 2008 which ensured the protection of all minors included migrant minors, on its territory.

Belgium and **Greece** developed policies and measures with regard to migrant families in 2008. In **Belgium**, the *Minister of Migration and Asylum* declared that illegally-staying families with children would not be sent to administrative detention centres from October 2008 onwards. Furthermore, a Pilot Project, inspired by similar projects in **Sweden** and Australia and involving the coaching of illegally-staying families with children, began in the same period. The project provided families awaiting removal with a 'return coach', who assists the families in understanding their current situation and the reasons why they should cooperate with authorities in relation to their return. Concerning data on vulnerable groups, in **Belgium** in 2008**,** 137 families with children were detained in closed centres in 2008, with 270 detained children. In **Greece**, following complaints from the Ombudsman, as well as from certain trade unions, concerning the exclusion of mothers of third-country origin, who have children with disabilities, from the social programme '*Harmonisation of Family and Professional Life,*' the *Ministry of Labour* amended the *Ministerial Decision* in 2008 in order to allow all working mothers, irrespective of their country of origin, to participate in the programme.

In **Poland**, regulations on procedures concerning the granting of refugee status to third-country nationals were supplemented with a definition of a group of third-country nationals requiring "special treatment," having been subjected to violence or disabled. Psychological or medical examination was used to confirm that the third-country national had been subjected to violence or was disabled and subsequently in need of "special treatment."

Though no developments occurred in **Spain** concerning vulnerable groups, the situation of women as victims of gender violence became an increasing concern, with the incidence rate higher among migrant women.

[40] United Kingdom Border Agency (UKBA) (2008i). *UK Border Agency Code of Practice for keeping children safe from harm,* http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/closedconsultations/keepingchildrensafe/codeofpracticechildren?view=Binary

4.4 Economic Migration

This Section outlines changes to Member States' procedures and policies regulating economic migration. The year 2008 was marked by the first, significant signs of the economic crisis, following a period of relative economic prosperity, but the economic downturn did not (yet) lead to policy changes. As such, most of the changes and developments which occurred in 2008 and which are described in this Section are generally favourable to the entry of economic migrants.

The section is divided into various subsections which address different aspects of economic migration in the Member States. Section 4.4.1 provides a general overview of legislative changes introduced in relation to economic migration, Section 4.4.2 focuses on legislative changes introduced specifically in relation to work permits, and Section 4.4.3 outlines those which relate particularly to using migration to meet labour demands. The following subsections then focus on changes affecting highly-skilled (Section 4.4.4) and low-skilled workers, as well as other types of workers (Section 4.4.5). Finally, Section 4.4.6 describes changes as a result of the economic crisis. This Section is complemented by the EMN Study on Satisfying Labour Demand through Migration[41] and Conditions of entry and residence of Third Country Highly-Skilled Workers in the EU.[42]

4.4.1 Legislative changes to the regulation of economic migration

The following Section outlines legislative changes which affected the processes of entry for migrant workers. Institutional changes to the system of regulating economic migration are outlined previously in Section 2.3, and debates concerning legislative changes are given in Section 3.2.3. In total, ten Member States (**Estonia, Germany, Greece, Latvia, Luxembourg, Portugal, Slovak Republic, Spain, Sweden, United Kingdom**) introduced new legislation to regulate aspects of economic migration, and two (**Belgium, Hungary**) modified existing legislation. In addition, in **Austria**, the new government planned the introduction of legislative changes in the field of highly qualified migrants.

[41] Available on the EMN Website, from http://emn.sarenet.es/Downloads/prepareShowFiles.do;?entryTitle=01_Satisfying%20LABOUR%20DEMAND%20through%20migration.

[42] Available on the EMN Website, from http://emn.sarenet.es/Downloads/prepareShowFiles.do;?entryTitle=08_Conditions of entry and residence of Third Country HIGHLY-SKILLED WORKERS in the EU.

The Bundestag of **Germany** passed the *Labour Migration Control Act,* which simplified a number of immigration regulations pertaining, in particular, to the entry of highly-qualified workers (see also Section 4.4.4); in **Luxembourg**, the *Immigration Law* (29th August 2008) outlined the conditions to be met in order for a third-country migrant to work; and *Act No. 5/2005* of the **Slovak Republic** amended the *Act on Employment Services* and introduced changes in relation to the duration of the work permits and their complementarity with residence permits and employment conditions.

In **Sweden** and **Estonia**, new pieces of legislation were passed, whose aim was to make the process of labour immigration more efficient and flexible. In **Estonia**, the draft *Employment Contract Act* was approved on 13th June 2008, and passed by the Riigikoguon on 17th December 2008 - entering into force on 1st July 2009. The act was passed after a political debate on the improvement of flexibility of the national labour market (see also Section 3.2.3). Amendments were also made to the *Aliens Act*, which entered into force on 14th May and 14th June 2008. The amendments shortened and harmonized the time-limits for processing the residence permits' applications, increased the immigration quota and established new salary criteria for third-country nationals working in Estonia for a short or long-term period. In **Sweden**, new legislation came into force on 15th December 2008, changing the system by which labour shortages were identified and the conditions under which vacancies can be offered to third-country national migrants. Under the old system, only national authorities were responsible for the identification of shortages, whilst under the new system, this was left to the employers who, after seeking appropriate employees within the European Union, could decide whether there was a need to seek employees from third countries, and were then responsible for obtaining work and residence permits for these third-country national employees.

In **Greece**, a number of Ministerial Decisions were passed to facilitate the continued entry of third-country national workers into specific occupations (such as the sports, hospitality, construction industries). In **Latvia**, two Regulations[43] came into force (July 2008), which reduced the state fee for the examination of documents in relation to requests for work permits from 35 *lats* per month to 35 *lats* per year. In **Spain**, the *Royal Decree (34/2008)* was passed (January 2008) to facilitate the process of recognition for third-country national workers with professional qualifications.

[43] Through *Regulation No.403 "Amendments to the regulations of the Cabinet of Ministers"* of January 20, 2004 and *Regulation No.44 "On Work Permits for Foreign Nationals."*

In **Portugal**, *Cabinet Resolution 28/2008* was passed, which approved the setting of fixed quotas for the annual inflow of workers. In **Italy**, this is done annually under *Flow Decrees*. Employers' applications for third-country national work permits submitted in excess in 2007, were assessed as part of the 2008 quota. In **Austria**, quotas were also fixed for the inflow of economic migrants (see Section 4.3).

In **Belgium** and **Hungary**, amendments were made to existing pieces of legislation, in order to change rules in relation to work permits. For the former, the *Royal Decree of 23 April 2008*, modifying article 2.14 of the *Royal Decree of 09 June 1999*, retracted the condition which required third-country national migrants working for a foreign company to have first worked for the company in another EU Member State for 6 months before entering Belgium. Furthermore, as **Belgium** had not transposed Directive 2003/109/EC in time, provisional measures were put in place[44] to regulate access to the labour market for third-country nationals who were granted long-term-resident status in another EU country.[45] In **Hungary**, the *Ministerial Decree 8/1999* was amended in January 2008. The amendments increased the validity period of an individual work permit from one year to a maximum of two years. The main reason for the changes was to make the rules more flexible and to reduce the administrative burden of employers.

The **United Kingdom** launched a new immigration system, the *Points-Based System*, in February 2008 to control migration more effectively. The Points-Based System consists of five *Tiers* covering highly skilled migrants (Tier 1), skilled workers with a job offer (Tier 2), low skilled workers (Tier 3), students (Tier 4) and Youth Mobility and temporary workers (Tier 5). Colleges, employers and others who benefit from migration must be licensed to sponsor skilled or temporary migrants coming from outside the European Economic Area.

4.4.2 Work permits

The **Czech Republic**, **Ireland** and **Slovenia** introduced favourable measures in relation to the issuance and/or revocation of work permits. The **Czech Republic** introduced, for legally-staying third-country nationals who lost their jobs for reasons specified by law, a protective period of 60 days so that they could find a new job, before the permit was revoked. This

[44] At their arrival, third country nationals with long-term resident status can be employed in the so-called 'bottleneck occupations' (i.e. occupations which are not generally filled by the domestic workforce), with a work permit B. After one year in employment, they are entitled to a residence permit on the basis of salaried employment and can be employed in any type of occupation.

measure only applied to third-country nationals who had worked for at least one year, or lived in the country for at least three years. In **Ireland**, the *Department of Enterprise, Trade and Employment* published a policy regarding a decision to look 'more favourably' on applications made by third-country nationals who were current employment permit holders and who had been made redundant within the previous three months. In addition, the *Department of Enterprise, Trade and Employment* also agreed to change published regulations, allowing work permit holders to change employer, within certain limitations. In **Slovenia,** amendments to the *Alien Act* were adopted, stipulating that an application for the issuance of a residence permit for reasons of employment or work, may also be lodged by a third-country national's employer with the competent diplomatic or consular representative office abroad. An employer may also lodge an application with the competent official body in Slovenia. In **Portugal**, a set of ordinances were approved, relating to a uniform model for residence permit and to the approval of models of documents presented in the *Foreigners' Law*.

4.4.3 Use of migrant labour to satisfy labour demand

Most Member States (**Austria, Belgium**, **Czech Republic**, **Estonia, Finland, France, Germany**, **Greece, Hungary, Latvia, Lithuania**, **Netherlands, Poland**, **Sweden**, **United Kingdom**) took measures to address the demand for labour also through immigration.

Some Member States made changes to the mechanisms by which they identified labour shortages and the extent to which these were made available to third-country migrant workers. For example, in **Greece,** following a Parliamentary debate on the absorption capacity of Greek society and issues surrounding the matching of supply and demand for labour, parliamentarians concluded that better knowledge of the labour market needs and immigration figures were required. The Ministry of Interior, Finance, Foreign Affairs, Labour and Agriculture also enacted a Ministerial Decision to improve mechanisms for monitoring the demand for labour and migrant workers. *Ministerial Decision 12311/08* amends Art. 14 of *Law 3386/05* on the number and qualifications of new immigrants. In the **United Kingdom,** a new system of assigning visas entitled the *Points Based System*, was introduced. As part of this system, a *shortage occupation list* was introduced, compiled by the *Migration Advisory Committee*, for Tier 2 migrants (skilled workers with a job offer) to ensure migrant workers were only employed to specifically fill gaps in the domestic labour market which could not be filled by domestic or EEA labour force. **Lithuania** and **France** introduced mechanisms for

identifying those labour shortages which could be filled by migrant workers, through the drawing-up of a list of occupations with significant shares of unfilled jobs. In **Poland**, actions to attract migrant workers were particularly aimed at workers from countries bordering in the East, and into particular sectors such as construction, agriculture and the service industry.

In other Member States, initiatives to encourage the entry of migrant workers included, in **Belgium**, the creation of the Economic Migration Service in November 2008, to facilitate the procedure of employing and integrating economic migrants. In **Germany** and the **Czech Republic**, specific programmes were set up to attract migrant workers. **Germany** established the *Programme on the Contribution of Labour Migration to Safeguard the Stock of Skilled Professionals* and the **Czech Republic** extended its Programme *Selection of Qualified Workers* for a further five years. By the end of 2008, there were 1 281 participants in the Czech Republic scheme. Both of these programmes are aimed specifically at attracting highly-skilled workers. The **Czech Republic** also introduced the Green Card Scheme which combines the work permit and the residence permit into one single permit received through one single and faster application procedure. The setting up of the Green Card Scheme aimed at answering the needs of the employer for a more flexible system to match economic migrants with available jobs that cannot be filled by Czech or other EU citizens. According to the Green Card Scheme, a green card can be issued for all vacancies classified as 'available for Green Card' in the vacancies' database run by the Labour Offices. Access to the Green Card is limited to the nationals of third-countries listed in the Ministerial Regulation[46] and may be issued to three categories of workers, namely workers with a university degree or key personnel, workers with jobs requiring at least vocational training and other workers.

In the **Netherlands**, proposals for amendments to the immigration system were made to facilitate the entry of migrant workers into the labour market. The Cabinet proposal *Blueprint for Modern Migration Policy* was submitted by the *State Secretary for Justice*. The Blueprint outlines a new policy aimed at rendering admission procedures for immigrants quicker and more efficient. Two acts facilitating the entry of highly-skilled workers were introduced as part of preparatory measures for the implementation of the *Blueprint*, which was expected to be phased in throughout 2011 (see also Section 3.2.1).

In **Latvia**, no specific policy changes were made; however, the *Information Report on Economic Migration in the Baltic States* recommended the simplification of administrative

[46] In 2008, 12 source countries were listed in the Ministerial Regulation.

procedures for the entry and stay of third-country migrants, in order to align procedures with those of other Baltic States.

4.4.4 Highly-skilled workers

Austria, Czech Republic, France, Germany, Greece, Lithuania, Luxembourg, Netherlands, Spain and the **United Kingdom** took measures to attract highly-skilled migrant workers. A number of them simplified the entry conditions: **Austria** increased its permit quota for highly-skilled migrant workers, whilst **Germany, Greece, Lithuania** and **Luxembourg** facilitated the conditions of entry (e.g. by simplifying or fast-tracking the processing of their applications) and **France** and the **United Kingdom** introduced specific types of permits. In addition, the **Czech Republic, Germany** and the **Netherlands** introduced programmes or schemes to specifically attract highly-skilled migrant workers. For **Germany** and the **United Kingdom**, the changes formed part of much wider amendments to immigration procedures.

The quota for highly-skilled workers, their partners and dependent children in **Austria** was fixed at 2 700 in 2008. This was almost double the number agreed in 2007. Furthermore, the request of the Austrian Federation of Industries and Economic Chamber for a more flexible immigration system for highly skilled and skilled migrants was included into the government programme under the headline 'Red-White-Red Card'. This model was planned to be organised as a points-based system and to complement the current immigration legislation.

Luxembourg made amendments to its immigration legislation, in view of the Directive 2009/50/EC[47] and in order to facilitate the entry of highly-skilled workers. In **France**, a new system of residence permits was introduced, which included a new "skills and talents" permit for foreign nationals who are able to significantly and sustainably contribute to the development of its economy, as well as that of their country of origin. Under this permit, non-nationals may reside for 3 years and may extend or renew the permit beyond three years, in order to pursue employment in line with their career plan. The purpose of the permit is comparable to that of the EU's *Blue Card*.[48]

[48] The EU's *Blue Card* was introduced under COUNCIL DIRECTIVE 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:en:PDF

In February 2008, the **United Kingdom** introduced a Points-Based System of entry for third-country nationals, formed of five Tiers. This system assigns points to applicants, on the basis of skills (e.g. language skills), qualifications, and ability to support themselves. Tier one is specifically for highly-skilled workers, such as entrepreneurs or scientists. Both **Austria** and the **Netherlands** started preparations in 2008 to introduce similar systems. The **Netherland**'s *Modern Migration Policy*, for example, is to be based on the **United Kingdom**'s tier system, whilst the approach of **Austria** will be based on a system from Canada.

In **Germany**, the *Action Programme on the Contribution of Labour Migration to Safeguard the Stock of Skilled Professionals* was initiated on 16th July 2008, with the aim to facilitate the entry of highly-qualified third-country nationals. The programme implements three changes which are expected to have a notable impact on highly-qualified workers and entrepreneurs. Firstly, it lowered the minimum annual salary required for a highly-qualified worker ('specialist') in order to obtain a work permit from €86 400 to €64 800. Secondly, the minimum investment necessary for entrepreneurs, to start up their business, was reduced from €500 000 to €250 000. Thirdly, amendments to the *Ordinance on the Access of Foreign University Graduates* granted free access to the labour market to third-country migrants who have studied in Germany.

In addition to the changes described above, a number of Member States reviewed the potential role of highly-skilled third-country nationals in meeting labour shortages and in contributing to national economic development. **Hungary** put forward a proposal on the entry of highly-skilled workers to the Parliamentary Committee of EU Affairs but no policy decisions were finalised. In **Ireland**, the government announced that it was still considering whether to formally opt-in into the EU *Blue Card* Directive (see footnote 48 below). Of consideration regarding the initiative was the preservation of the Common Travel Area with the **United Kingdom** who had also not opted-in to the Directive. In reaction, the *Immigrant Council of Ireland* argued that if Ireland was to decide not to opt-in into the EU *Blue Card* Directive, this could put Ireland at a competitive disadvantage when trying to attract highly-skilled workers. In **Latvia**, although the migration of highly-skilled workers was viewed positively, no specific policy changes were made to reflect this.

4.4.5 Low-skilled and other categories of workers

While the majority of legislative or policy changes concerned the entry of highly-skilled third-country nationals, some changes also affected other types of third-country nationals. In particular in **Greece**, a number of Decisions focus on low-skilled workers.

The systems of entry for third-country migrant workers in the **Czech Republic** (the Green card system, developed in 2008 for entry into force in January 2009) and the **United Kingdom** (Points-Based System, introduced February 2008) both include categories for low-skilled third-country nationals. In the **Czech Republic**, this is covered by the category "other worker" of the Green Card Scheme which comprises third-country nationals without university or vocational qualifications. In the **United Kingdom**, however, the category of "low-skilled workers, filling specific temporary labour shortages," was temporarily suspended, in light of the high availability of low-skilled labour from within the European Economic Area. Similarly, in **Germany**, low-skilled seasonal workers were only granted work permits for up to a maximum of six months. In **Malta,** the majority of third-country nationals who were granted work permits were low-skilled, with many being employed by the construction sector.

Greece passed *Ministerial Decision 6997/146*, which established that immigration of low-skilled third-country nationals for employment, in farming, light industry and construction, would continue to play an important role in meeting the demand for labour. *Law 3731/2008* of 2008, which provided for an easier renewal of residence permits for workers in hotels and restaurants, was also passed.

4.4.6 Effects of the economic crisis

In spite of the onset of economic decline in the middle of 2008, there was not any immediate significant impact on their policy towards economic migrants. **Austria** and **Ireland** extended their transition regulations on the employment of nationals from EU-2 Member States (Bulgaria, Romania), for the former to 2011.

4.5 Family Reunification

This Section describes policies and actions undertaken in 2008 by **Austria, Belgium, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Portugal, Slovak Republic, Spain,** and **Sweden** regarding family reunification.

4.5.1 Simplification and development of conditions for family reunification

Conditions for family reunification were developed, and in some instances simplified in **Belgium, Greece, Hungary, Italy, Lithuania, Luxembourg, Netherlands, Portugal, Slovak Republic** and **Spain**.

Greece, Hungary, **Lithuania, Netherlands** and **Portugal** simplified rules for certain categories of third-country nationals requesting family reunification. In **Greece**, the *presidential decree of 2008* supplemented the provisions in national legislation for family reunification, by allowing a refugee to apply for reunification with their adult unmarried children, parents and partner. Changes to the legal framework concerning family reunification took place in several steps in **Hungary** between 2007 and 2008, with, in 2008, the new *Act on Asylum* entering into force, regulating the status of family members of refugees and of beneficiaries of subsidiary protection. In order to ensure family unity, the Act stipulated that family members of a refugee or beneficiary of subsidiary protection were also being recognised as a refugee or beneficiary of subsidiary protection. In **Lithuania**, a draft project of amendment to Article 43 of the *Law on the Legal Status of Aliens* was submitted to the Parliament, which suggested simplifying requirements applicable to third-country nationals holding residence and working permits and wanting to bring family members to join them. The proposed draft defined categories of third-country nationals who could enjoy a more favourable regime for family reunification, giving priority to highly-qualified professionals. In the **Netherlands**, third-country nationals wishing to stay for more than three months require a provisional residence permit. In 2008, the *State Secretary for Justice* announced a change in this policy, exempting some categories of third-country nationals from the obligation to hold a provisional residence permit, including family members of previously admitted asylum applicants. The new *Asylum Law* in **Portugal** created a new legal framework for family reunification, further extending the scope of family reunion from the *Foreigners' Law 2007,* which had already expanded the applicable scope of beneficiaries of family

reunification to de facto partners, as well as unmarried adult dependent children studying in an educational institution.

Belgium, **Italy**, **Luxembourg, Slovak Republic** and **Spain** developed conditions for third-country nationals to benefit from family reunification. In **Belgium**, it was proposed to impose additional conditions upon family members of third-country nationals for the purpose of family reunification; these related to the proof of regular and sufficient income, as well as proof of integration into Belgian society.[49] In 2008, **Italy** introduced *Legislative Decree no. 160,* which included income requirements for family reunification, stating that, for each family member, one must have an available income equal to the annual amount provided by annual social assistance, plus half the amount for each additional family member.[50] In **Luxembourg**, the *Immigration Law* of 29th August 2008 stipulated conditions for family reunification in general, as well as specific conditions for unaccompanied minors. This law was in addition to the new *Law on Free Movement of Persons and Immigration* of 29th August 2008, transposing Council Directive 2003/86/EC[51] into national law. In the **Slovak Republic**, legislative amendments provided that, though asylum applicants and third-country nationals who were granted refugee status or subsidiary protection were entitled to family reunification, other third-country nationals are not legally entitled to be granted permanent or temporary residence permits for the purpose of family reunification, even after meeting all of the legal requirements.[52] In **Spain**, the draft *Law on Immigration* announced the establishment of restrictions to family reunification of parents aged less than 65 years.

Though no legislative changes relating to family reunification took place in **Estonia**, the new draft *Aliens Act* foresaw a number of future changes to family reunification provisions, which would include the clarification of the specific basis for refusal to grant residence permits for the purposes of family reunification.

[49] Furthermore, in **Belgium**, the *Governmental Agreement* of 2008 developed a number of policies in the area of legal migration, including the introduction of sponsoring for family reunification. In February 2008, the Constitutional Court in **Belgium**, issued a negative ruling on the *Law* regarding the entry, stay, establishment and removal of third-country nationals. A number of legal provisions were suspended concerning the family reunification with children of polygamous marriages and the family reunification of parents of an unaccompanied minor who have been granted refugee status in accordance with the Geneva Convention.

[50] The decree also restricted the right to family reunification which can be requested by legal age spouses who are not legally separated and for minors who are not married.

[51] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF

[52] In the majority of cases in the **Slovak Republic**, the exercise of family reunification depends on the fulfilment of other conditions such as proving accommodation and financial coverage of the stay in the Member State.

Concerning the extension of a residence permit for family reunification, the **Netherlands** provided that the application to extend a residence permit for extended family reunification, including family formation, would only be refused if the third-country national or the person with whom this individual stayed, partly or entirely relied on public funds.[53]

With regard to the imposition of DNA tests, the **Netherlands** abolished the fee payable by family members of holders of an asylum residence permit who had already travelled to the Netherlands for undergoing DNA testing. With regard to the introduction of requirements in relation to financial support, the Government in **Sweden** appointed, in February 2008, a Commission of inquiry with the task of exploring whether financial support could be introduced as a condition for family member immigration. This report, which proposed the introduction of a financial support requirement, sparked public debate and was criticised for breaching the rights of children.[54]

4.5.2 Data and Trends concerning family reunification

Austria, Belgium, Estonia, Finland, France, Germany, Hungary, Ireland, Lithuania and the **Netherlands** provided information with regard to data and trends related to family reunification. In many instances, this related to the number of visas issued to third-country nationals for the purposes of family reunification.

Belgium, **Finland**, **Hungary, Ireland** and **Lithuania** recorded an increase in the number of visas and/or residence permits issued for the purposes of family reunification. In **Austria**, the quotas for family reunification with third-country national sponsors, set out in the *Residence and Settlement Law* was kept at a low level, i.e. 4 755, which led to a "backlog" of applications in the countries of origin. In **Belgium,** an increase was recorded from 9 468 (2004) to 13 916 (2008).[55] As a consequence of the high rate of unaccompanied minors seeking asylum in **Finland**, the rate of family reunification applications also increased, with 7 424 applications for family reunification in 2008. In **Hungary**, the number of requests for family reunification related to asylum and, owing to new legislation extending the scope of the right to family reunification, increased, with the number of positive decisions also increasing. **Ireland** received a total of 408 applications for family reunification from

[53] Prior to this amendment, the third-country national and/or the person with whom they were staying had to prove that they had sufficient means of existence through the submission of proof of income.

[54] The Report stated that the Inquiry proposed the introduction of a financial support requirement under which the sponsor i.e. the person already in **Sweden** would have to have a sufficient income to support themselves and have suitable accommodation at their disposal for themselves and the family member.

[55] The number of D visas issued for family reunification represents 52% of the total of visa D in 2008.

recognised refugee status holders, representing an increase of 9.4% with respect to 2007 figures. In **Lithuania**, there was an increase from 3 784 (2007) to 4 304 (2008) in the number of people to whom temporary residence permits were issued on the grounds of family reunification.

Estonia and **Germany** recorded a decrease in the numbers of persons granted family reunification. In **Estonia**, there was a decrease in residence permits from 1 572 (2007) to 1380 (2008).[56] **Germany** saw a decline in 2008, with the annual number of visas granted on grounds of family reunification decreasing from more than 85 000 (2002) to 30 766 (2008).[57]

In **France**, numbers remained stable from 17 618 (2007) to 17 809 (2008). In the **Netherlands**, 26 900 of the 49 300 applications for residence permits in 2008 concerned family reunification.

Some Member states provided further information on the most prominent countries of origin of third-country nationals using family reunification. In **Belgium**, nationals of Morocco (17%) and Turkey (7%) were the main beneficiaries of family reunification in 2008. The five main countries of origin in **Finland** for family reunification in decreasing order of numbers were Russia, Somalia, India, Iraq and Turkey.

4.6 Other legal migration

This Section describes the political and legislative changes made in 2008 to address other types of legal migration. The first section (4.6.1) describes changes made in relation to entry and stay of students and voluntary workers; Section 4.6.2 looks at changes to regulations for third-country nationals entering the country as researchers; and Section 4.6.3 focuses on other changes to legislation with regard to legal migration.

4.6.1 Changes in legislation in relation to students and voluntary workers

A number of Member States introduced political and legislative measures to either encourage foreign students to study in their universities, or to encourage students already present to remain and find employment. These appear to be mainly related to the transposition of

[56] Family migration continued however to be the biggest type of migration in Estonia in 2008.

[57] **Germany** also recorded a 5% decrease in family migration. The reason for such a decline in Germany was due to EU enlargement with nationals who formerly required a visa now benefitting from the freedom of movement as EU citizens. In addition, the significant decrease was that foreign nationals of spouses living in Germany were obliged to prove their basic knowledge of German before entering Germany in order to obtain a residence permit.

Directive 2004/114/EC[58] which aimed to facilitate admission and entry procedures for students, school pupils, unremunerated trainees and volunteers from third countries.

In **Estonia**, the newly drafted *Aliens Act* (which entered into force in 2010), stipulated the right of third-country national students to obtain residence permits for voluntary service within the framework of a cooperation programme or cooperation project of a youth organisation acknowledged by the *Ministry of Education and Research*. Similarly, in **Latvia**, the *Foreign Commission of the Saeima* made recommendations on amendments to the *Immigration Law*, to simplify the procedures by which foreign students apply for residence permits. **Malta** adopted the *Legal Notice 29 of January 2008*, allowing the *Department for Citizenship and Expatriate Affairs* to issue residence permits to third country nationals who are higher education courses. **Portugal** introduced *Ordinance No. 208/2008* of 27th February, which also defines the terms for granting residence visas for the purposes of study, student exchanges, professional internships or volunteers. In **Belgium**, the government started to modify the *Alien Act*, in order to transpose Directive 2004/114/EC, and a specific working party was set up for this purpose. Similarly, **Estonia** drafted amendments to its *Aliens Act* in light of the Directive, but specified that the amendments would not transpose some of the optional articles, such as Article 11(a) of the Directive on minimum and maximum age and Article 11(d) on basic knowledge regarding the language, history and political and public structures. **Poland** also made progress towards the transposition of the Directive by developing an *Action Plan* on how to implement the Directive's provisions. The *Action Plan* outlined several steps to introduce student visas for foreign students and special residence documents.

The **Czech Republic, Finland** and **Sweden** implemented changes to facilitate access to the labour market of foreign students who had completed their studies in the Member State. As part of broader amendments to immigration policy, the **Czech Republic** removed the obligation for foreign students to first obtain a work permit before accessing employment (while studying or after graduating from a Czech university). In **Finland**, measures were also taken to improve foreign students' entry into the national labour market

Finland also digitalised its methods of processing applications from third-country national students. This significantly sped up the application process and encouraged an increasing

[58] Directive 2004/114/EC relating to the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary services. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:EN:PDF

number of students to apply. Similarly, the number of foreign students studying in **France** continued to increase in 2008, partly due to the methods used to promote French universities abroad. Two organisations – EduFrance and CampusFrance – have more than 100 offices in 75 countries to promote French higher education and offer advice and information.

In addition to these changes, **Austria** reduced its university fees for third-country students by 50% to €363 per semester. Therefore, it was expected that the inflow of students from third countries would increase. In **France,** third-country students have the possibility to obtain a grant to study from the French government. In 2008, 18 398 foreign students received such a grant. In a similar vein, in **Greece,** the Ombudsman has recommended that scholarships be provided to foreign students. In **Finland**, education for foreign students (as for national students) is free.

By contrast, **Belgium** and **Ireland** made moves to introduce stricter conditions on the residence and employment of foreign students. **Belgium**, in order to reduce the amount of forged visas entering the system, announced that it would increase the number of civil servants issuing student visas at diplomatic offices (specifically in Kinshasa and Casablanca). Currently only one civil servant per year is given this task. In **Ireland**, conditions obliging non-EEA students to register with the *Garda National Immigration Bureau (GNIB)* when taking up paid employment were proposed. The proposed new system would result in a *de facto* requirement for non-EEA national students to work for only one employer at a time. In **Finland**, there was some debate about whether the measures to facilitate the residence of foreign students could be open to abuse. In the **Netherlands,** a procedural change, effective from 1st August 2008, provided that foreign students no longer need to submit their application to study through the ministerial institutions, but rather through the intermediary of the educational institution.

4.6.2 Changes in legislation in relation to researchers

The **Czech Republic, Italy, Luxembourg, Malta, Slovak Republic** and **Sweden** adopted legislation transposing the provisions outlined in Directive 2005/71/EC[59] on admission of third-country nationals for the purpose of research (Researchers Directive). **Germany** had implemented the Directive on 27th September 2007, with the *Act on the Implementation of*

[59] Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0015:0022:EN:PDF

Residence and Asylum Directives of the EU into national law. In the beginning of 2008, already more than 100 research organisations had applied for hosting agreements. However, by the end of 2008, only 101 third country researchers held a residence permit in **Germany**, which constituted a much lower figure than had been envisaged at the time of implementation of the Act. In addition, **France** introduced a new residence permit for researchers. In **Estonia** and **Lithuania**, researchers were given special rights to have their families live with them during their period of research in the Member State (see also section 4.5 for more details).

4.6.3 Other types of legal migration

Greece and the **United Kingdom** amended their legislation regulating the stay of third-country nationals applying for entry for the purpose of marriage. The **United Kingdom** began implementing safeguards to protect individuals against forced marriage. These included raising the minimum age of application from 18 to 21 years, asking foreign spouses to enter into an agreement to learn English before they entered and introducing the power to revoke leave to remain where there is evidence that the marriage route has been abused. In **Greece,** Article 45.1 of *Law 3731,* introduced in 2008, provides that third-country nationals whose spouses (also foreign nationals) are returned, or living abroad, shall be entitled to obtain an autonomous residence permit, lasting one year, in cases where either: a) a divorce or annulment of marriage has been issued; or b) if there were particularly difficult circumstances, e.g. if a family member was victim of interfamily violence during the marriage.

Latvia, Poland and **Spain** signed agreements with third countries favouring entry and admission of immigrants from certain third countries. **Latvia** signed a Memorandum of Understanding with the USA, regarding the United States *Visa Waiver Programme and Related Enhanced Security Measures*. **Latvia** also signed an agreement with the Government of New Zealand establishing a "Working Holiday Scheme," which would simplify procedures for young people coming to the Member State for a limited amount of time. In **Spain**, a Cooperation Agreement with the Cluster of Fishing Companies in Third Countries (CPPT) for the training and vocational integration of seagoing workers from abroad was signed with Peru, Ecuador and Senegal. By contrast, the **Slovak Republic** terminated a previously established agreement with the Ukraine on mutual employment of each country's citizens. In February 2008, **Poland** extended the period by which third-country nationals were able to

work without a permit from three months to six months for citizens of Ukraine, Belarus and Russia.

4.6.4 Statistical data on legal migration

In total, nine Member States provided quantitative data on aspects of legal migration.

The **Czech Republic**, **Ireland** and **Spain** provided general data on the stock of registered third country nationals. For the **Czech Republic**, there was a stock of 438 301 non-nationals registered, including EU and EEA citizens, of which 30.1 % (131 965 persons) were nationals of Ukraine. The second and third largest groups of third-country nationals were from Vietnam (60 258 persons) and Russia (27 176 persons). Nationals of Vietnam were also the quickest growing group in 2008 with the stock of migrants from this country increasing by +18.3 % on 2007 figures. The stock of nationals of Ukraine increased by +4.3 % and Russia by +16.6 %. In **Ireland**, non-EU and non-EEA citizens who wish to stay for more than three months must register for a certificate of registration with the *Garda National Immigration Bureau (GNIB)*; in 2008 around 164 344 Certificates of Registration (referring to new registrations and renewals) were issued. In **Spain**, the number of third-country nationals with a valid residence permit reached 2 679 270 in December 2008: 36% were permanent residents while 33% were granted a work and residence permit, 19% a temporary residence permit[60] and 13% were family members of EU nationals.

France, Finland, Hungary, **Netherlands, Poland** and the **Slovak Republic** provided data on the number and nationality of registered third country students in 2008. In **France**, around 164 700 third-country nationals were registered in 2008. North African and Sub-Saharan African countries represented almost half (46.6%) of this figure, although the stock of students from these countries has decreased in the last two years. Students from Asia and Oceania accounted for 15% of third-country national students (an increase of +3.8% from the previous year); students from the Americas represented 7.6% of students; and those from the Near and Middle East accounted for 5.6%. **Finland** received 4 832 applications of student residence permits; with non-EEA students mostly from Russia (902 persons), China (690 persons), Nigeria (338 persons), Nepal (246 persons) and USA (221 persons). In **Hungary**, the number of third-country national students participating in higher education was 15 459, from which 6 955 students were third-country nationals. The **Netherlands** provided data on

[60]Temporary residence permits include residence permits granted for non-lucrative reasons, family reunification and exceptional circumstances.

the number of provisional residence applications, and the proportion of which was for students with 8 300 out of 49 300 applications for residence in 2008 granted to students. In **Poland** for the academic year 2008/2009, 60% of students in higher education institutions were non-nationals. For example, a total of 4 874 non-nationals were studying in medical university departments in November 2008. Of these, 867 were students from the USA, 532 were from Taiwan and 371 were from Canada. In the **Slovak Republic**, 267 third-country nationals held a temporary residence permit for the purpose of study in 2008. With regard to other categories of third-country nationals granted a residence permit for other forms of legal migration, 116 third-country nationals were granted a permit for the purpose of sports activities, 10 for the purpose of research activities, 92 for special activities under international treaty, one for the purpose of artistic activities, 24 for lecturing activities and 14 for study internship.

4.7 Integration

This Section summarises the actions undertaken concerning integration in **Austria**, **Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden** and the **United Kingdom** in 2008, divided into the following points: Legislative and Institutional Developments (Section 4.7.1), Member State programmes and strategies (Section 4.7.2), Language requirements for integration (Section 4.7.3), Migrant integration in national labour markets (Section 4.7.4), and equal treatment for the purpose of integration (Section 4.7.5).

4.7.1 Legislative and Institutional Developments

Institutional developments with respect to integration took place in **Czech Republic** and **Finland**. In the **Czech Republic**, the responsibility for the coordinating the implementation of the *Strategy for Integration of Foreign Nationals on the territory of the Czech Republic* was transferred, in 2008, from the *Ministry of Labour and Social Affairs* to the *Ministry of the Interior,* in order to consolidate integration and immigration policies into a single institution. This shift was accompanied by the introduction of a number of new objectives into the integration agenda, including an increase in the general awareness of all stakeholders involved in the process of integration, namely relevant ministries, NGOs and academics, as

well as the establishment of integration centres and the promotion of direct cooperation between the *Ministry of Interior* and the municipalities. In **Finland**, the Organisational Reform implemented in 2008 resulted in a new unit for the integration of third-country nationals within the *Migration Department of the Ministry of the Interior,* in order to promote a coordinated approach and shared responsibility in integration issues. To implement the reform, cooperation between different Ministries was emphasised, such as with the *Ministry of Employment* to promote labour-based immigration.

Legislative developments were introduced in **Finland, France, Greece, Hungary, Luxembourg** and the **Netherlands**. In **Greece,** a draft law, including provisions for the integration of second generation migrants, was proposed. In **Hungary**, the new *Act on Asylum* introduced changes concerning the reception of asylum applicants, including the provision of a pre-integration centre to help individuals to start a new life, with free Hungarian language training courses, a language exam, translation support, living costs subsidies and several types of housing subsidies.

Decrees were passed in both **Belgium** and **Slovenia** concerning the social inclusion of third-country national migrants. In **Belgium**, the Walloon government passed two decrees concerning social cohesion plans in cities and municipalities. These plans are part of a wider regional policy, aimed at supporting municipalities seeking to promote social cohesion. A *Decree on the Integration of Aliens* was prepared in **Slovenia**, which sets out methods and conditions for the inclusion of third-country nationals who have a residence permit, in its cultural, economic and social life.

In **Latvia** and **Portugal,** regulations establishing specific rules for the public funding of actions that are eligible within the scope of the European Integration Fund came into force. In **Spain**, the scope of financing allocated to the integration of third-country nationals was considerably increased, with the allocation by the government of €200 million for the reception and integration of migrants as part of the *Support Fund for the Admission and Integration of Immigrants*, aiming to reinforce their education by autonomous communities and municipalities. Fifty-five percent of this sum was allocated to reception and integration, with the rest to educational assistance. The main axes of this fund were reception, education, employment, housing, social services, health, infancy and youth.

With regard to fines for the failure to participate in integration programmes, **Belgium** and **Netherlands** amended their policy. In **Belgium**, the Flemish government decided that

administrative fines would replace penal sanctions imposed on third-country nationals who were obliged to take part in the integration programme and who did not fulfil their duty. In the **Netherlands**, municipalities are now permitted to impose a maximum fine of €500 if the third-country national fails to participate in the integration programme within the stipulated maximum period of four weeks.

4.7.2 Member State programmes and strategies

Austria, Czech Republic, Estonia, Germany, Ireland, Luxembourg, Portugal, Sweden and the **United Kingdom** developed national integration programmes and strategies in 2008. In **Austria**, the *Ministry of the Interior* presented an Integration Strategy, proposing measures in respective areas following suggestions by national experts. In the **Czech Republic**, due to the problems arising from dismissals during the financial crisis, the *Ministry of the Interior* initiated and funded the 'Emergent integration projects' in a selection of municipalities, in order to involve regional and local authorities in the implementation of migrant integration policy. The *Estonian Integration Plan 2008-2013* was approved in April 2008 in **Estonia**, with the plan serving as a basis for the national integration policy. The plan, consisting of over 200 activities, places more emphasis on the specific needs of various target groups when planning interventions and defines the role of local municipalities in the integration process. In **Germany**, a revised version of the *Concept for a national integration course* was published, following the review of the previous Integration Course ordinance. This reworked version included possibilities of repeating the course and the standardised test. In **Ireland**, a *Statement on Integration and Diversity Management* entitled 'Migration Nation' was launched by the *Minister for Integration*, which set out the future direction of national integration policy and included the following four key principles: (1) a partnership approach; (2) a mainstream approach to service delivery; (3) a strong link between integration policy and wider state social inclusion measures; and (4) a commitment to effective local delivery mechanisms. In **Luxembourg**, the law of 16th December 2008 on reception and integration of foreigners foresaw the adoption of a *multi-annual National Action Plan on Integration and fight against discrimination*. In **Portugal**, a *National Action Plan for Inclusion 2008-2010* was launched, as well as the *Action Implementation Report of the Plan to Integrate Immigrants 2008,* reviewing progress made. In **Sweden**, the Government presented a cohesive S*trategy for integration* covering the period 2008-2010. The strategy, entitled "*Empowerment against exclusion – the government's strategy for integration*" focuses primarily on how to

stimulate both demand and supply in the labour market, excellence and equivalence in schools and better conditions for entrepreneurs. A government report was published in the **United Kingdom** by the *Department for Communities and Local government* entitled "*Managing the Impacts of migration: a cross government approach*".[61] This report was in response to the recommendations of the *Commission on Integration and Cohesion*, who had emphasised the importance of locally tailored responses to both migrant and host community needs.

The **Slovak Republic** intensively worked on the preparation of and consultations on the first draft *National Concept for the integration of third-country nationals*. This activity was undertaken in cooperation with representatives of state administration, non-governmental organisations, migrants' associations and academic circles. To support the preparation of this National Concept for the integration of third-country nationals, the Migration and Integration Department of the *Ministry of Labour, Social Affairs and Family* established five different working groups, dealing with legislation issues and residence, employment and access to the labour market, healthcare and social security, education and housing.

In **Germany**, the third Integration Summit took place in November 2008. This yearly Summit, held for the first time in 2006, was established in order to find a common basis for the various integration initiatives of the Federal Government, the Länder, the local authorities and civil society. In March 2008, the third plenary meeting of the *German Islam Conference* was held in Berlin. The aim of the Islam Conference is to improve the religious and social integration of the Muslim population in Germany. The 2008 Conference, among other aspects, discussed and agreed that integration required Muslims to learn German and respect the German legal system. It further agreed to include religious education for Muslims in the state school curriculum.

In **Ireland**, research was commissioned by the *Immigration Council of Ireland* entitled "*Getting on: from migration to integration – Chinese, Indian, Lithuanian and Nigerian Migrants' experiences in Ireland*" in order to provide a comparative analysis of experiences which could inform future policy decisions.

[61] Department for Communities and Local Government (DCLG) (2008). *Managing the Impacts of Migration: A Cross-Government Approach.*

4.7.3 Language Requirements for Integration

The **Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Luxembourg, Netherlands, Malta** and **Sweden** developed their policies on language requirements for integration. In the **Czech Republic**, an inter-ministerial working group was set up to deal with the issue of language examination of third-country nationals applying for a residence permit.[62] This group produced a document, entitled "*System of tuition and examinations for foreigners as one of the conditions for granting permanent residence permit,*" which was passed by the government in May 2008. An information campaign was furthermore launched to inform third-country nationals about the new obligations and system of exams. In **Estonia**, the government approved a national curriculum for pre-school childcare institutions, which foresaw Estonian language activities for children from the age of four years whose mother tongue was not Estonian. The *Integration Plan*, adopted in 2008, included free Estonian language courses for applicants of citizenship and the continuation of free Constitution and Citizenship Act courses. This plan provided that free classes would be provided for 1 500 people annually, with new schools and kindergartens involved in the language immersion programme. In **France**, procedures for assessment and training in the French language and values, for obtaining a visa to join family and French spouses were being introduced gradually in countries of residence, following the introduction of new legislation. With regard to integration courses, **Germany** experienced an increase in the number of participants in integration courses from 114 000 in 2007 to 121 000 in 2008, with 66.7% of participants being female. In **Ireland**, the issue of language immersion classes, where newcomer students were provided with intensive language tuition before being placed in a mainstream class, sparked controversy. To improve the provision of new places for migrant children, non-denominational schools were established.[63] Furthermore, the multi-denominational group *Educate Together* opened 12 new primary schools. In **Luxembourg**, the *Law on reception and integration of foreigners* of 16th December 2008 was the third element of a wider integration policy reform. As part of this law, the government is required to organise language and civic instruction courses, as well as measures for social and economic integration. In **Malta**, the COPE project commenced in June 2008, which ensured that potential beneficiaries of international protection started acquiring the language skills

[62] This followed from the amendment of the *Act on the Residence of Aliens* from 2007 which introduced new requirements for third-country nationals applying for permanent residence. From 1st January 2009, third-country nationals have to prove their knowledge of the Czech language in order to obtain a permanent residence permit. In connection with this new requirement, a new system of language examinations has been established to enable third-country nationals to certify their knowledge of the Czech language.

[63] Non-denominational schools are those which are not led by a particular religion.

necessary to integrate into society at the earliest possible stage. This training continued in open accommodation centres, where it has been primarily provided by voluntary organisations.

In the **Netherlands**, an amended *Civic Integration Act* entered into force in 2008. This allowed municipalities to offer civic integration facilities, including language courses, to all third-country nationals who are obliged to participate in civic integration.[64] It was estimated that more than 30 000 civic integration facilities were offered in 2008 though the target period of 2007-2011 aimed at offering 47 000 integration facilities per year. In **Sweden**, the government presented plans to introduce a pilot project with a special bonus system for newly arrived migrants who met the target for Swedish language acquisition within a stipulated time. The objective of the bonus system is to strengthen the incentives for learning the language.

4.7.4 Migrant Integration in national labour markets

The promotion of labour market insertion was considered to be important in many Member States (**Estonia, Greece**, **Italy, Malta**, **Portugal, Spain**) for the integration of immigrants. **Estonia**'s *Integration Plan* provided for multicultural training and labour force exchange programmes for the public sector and schools, as well as joint activity projects for adults. In **Greece**, initiatives aimed to protect and ensure the social acceptance of migrants, by providing employment opportunities and access to the labour market. In **Italy**, the *National Council for Economy and Labour* presented the fifth Report on the 'Indicators of the Integration of Immigrants in Italy' which highlighted that social integration conditions were more effective in regional contexts where economic development and labour shortages were higher. **Malta** sought to encourage and facilitate access to employment by open centre residents. **Portugal** approved the regulation setting up the programme for the *Professional Integration of Immigrant Doctors*, which had as an objective the integration of 150 migrant doctors into the National Health Service.[65] Different partners were involved in this programme, including the *Ministry of Health* as well as the *Jesuit Refugee Service*. In **Spain**, local authorities and NGOs were provided subsidies in order to organise programmes which encourage the social and labour integration of immigrants, asylum seekers, stateless persons

[64] The civic integration facility prepares the third-country national who is obliged to follow the civic integration programme for the civic integration exam and the State examination in Dutch as a second language and includes at least following a civic integration course and taking the relevant examination free of charge.

[65] A regulation for the process of registering foreign diplomas was also approved in 2008 which was considered to be a key measure in streamlining access to work and to the recognition of qualifications

and those received under the temporary protection scheme and other subsidiary protection arrangements.

4.7.5 Equal Treatment for the purpose of integration

A number of anti-discrimination efforts were undertaken in the **Czech Republic, Estonia, Ireland, Portugal** and **Sweden**. In **Estonia**, the *Equal Treatment Act* was passed by the Parliament which transposed into Estonian legislation Council Directive 2000/43/EC (implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) and Council Directive 2000/78/EC (establishing a general framework for equal treatment in employment and occupation). In **Ireland**, two research studies highlighting subjective discrimination levels felt by migrants were published. One of the key findings of these publications was that migrants fare less well than nationals in the labour market, facing higher risks of unemployment and experiencing discrimination in access to employment. In **Sweden**, the new A*nti-discrimination Bill* was passed on 5th June 2008, merging the existing acts against discrimination into a single piece of legislation.

Greece, Hungary and **Poland** put in place policies and/or legislation to enable migrants to have better access to public and social services for integration. In **Greece**, in February 2008, the Ombudsman issued a recommendation to the *Minister of Education* to grant national scholarships to migrant children. In **Hungary**, an amendment to the 2001 *Government Decree* on state subsidies for housing was adopted in 2008, providing preferential credits and allowances for buying a house for young persons and the 'supported people.' The amendment increased the scope of this decree to refugees and beneficiaries of subsidiary protection. In **Poland**, since May 2008, individuals with subsidiary protection status were entitled to use the *Individual Integration Programme,* within which an individual and their family are granted aid in the form of financial benefits for living and for covering costs related to the studying of the Polish language, paying health insurance and specialised counselling.

4.8 Citizenship and Naturalisation

The developments in 2008 concerning citizenship and naturalisation policies are outlined in this Section. These include legislative and institutional amendments made by Member States (Section 4.8.1), as well as programmes and strategies (Section 4.8.2) relevant to citizenship

and naturalisation. This Section also outlines data and trends (Section 4.8.3) in Member States regarding citizenship and naturalisation.

4.8.1 Legislative and Institutional developments

In **Estonia, Germany, Greece, Latvia, Luxembourg, Netherlands, Poland** and **Spain**, legislation was adopted with regard to citizenship and naturalisation. These legislative developments varied, relating to both provisions facilitating naturalisation and citizenship (**Estonia, Greece, Poland, Spain**), as well as restricting opportunities, through the imposition of additional conditions (**Germany**, **Luxembourg, Netherlands**).

Naturalisation was facilitated in **Greece** by an amendment of the *Hellenic Citizenship Code 2004*, introduced under *Law 3731/2008,* which included provisions to facilitate the procedure for naturalisation of third-country nationals of Greek descent and the granting of further benefits to their family members. In **Poland**, a resolution introducing an *Act on Polish Citizenship* was adopted, which set forth general rules and conditions for obtaining, revoking and confirmation of granting or revoking of Polish citizenship. This new act was based on the *European Convention on Citizenship*, particularly the provision expressing every person's right to citizenship. It furthermore introduced the restoration of Polish citizenship, to accommodate the wish of many former Polish citizens who lost citizenship for political reasons.[66] In **Spain**, in late 2008, the *Law 52/2007 of 26th December 2007,* known as the *Historic Remembrance Law*,[67] came into force which recognised the plight of those who were persecuted or suffered violence during the Spanish civil war. This Law contained important provisions on nationality and established the possibility of choosing to acquire Spanish nationality for people whose parents were of Spanish origin and to the grandchildren of those who lost or had to renounce their Spanish nationality as a result of exile.

Luxembourg outlined the minimum time period in which an individual was expected to reside in a Member State in the *Law of 23 October 2008,* by stipulating that a naturalisation candidate must have resided for at least seven years, which must be consecutive and immediately precede the application and show proof of sufficient integration, such as language competences and participation in citizenship courses. The **Netherlands** adopted a

[66] In the 1950 and 1960's, a number of Polish citizens were deprived from their citizenship for political reasons if they 'infringed the obligation of loyalty to the People's Republic of Poland' or if their attitude was considered 'detrimental to the vital interests of the People's Republic of Poland'.

[67] Law to recognise, extend rights and establish measures in favor of those who suffered persecution or violence during the Civil War and the Dictatorship.

Bill, which provided that applicants for Dutch citizenship had to make a declaration of commitment as part of the naturalisation ceremony.

Amendments to the citizenship and naturalisation tests were made in both **Estonia** and **Germany**. In **Estonia**, the free preparatory courses for taking the exam outlined in the *Constitution and Citizenship Act* were implemented. Furthermore, *Regulation No. 143* was passed, which renewed the examination procedure for applicants for citizenship on the *Constitution and Citizenship Act*. This act provided for new exam models, which would be more practical and related to the implementation and application of the Constitution in daily life, as well as familiarity with the meaning and principles of law. **Germany** introduced a nationwide naturalisation test in July 2008, the passing of which was a prerequisite for obtaining citizenship. This test includes questions on the legal and social way of living, with applicants being required to answer 17 of 33 multiple choice questions correctly within one hour to pass the test.

Regarding the payment of fees for applying for national citizenship, amendments were made in both **Ireland** and **Latvia**. In **Ireland**, costs for adult applicants rose from €630 to €950. In **Latvia**, *Regulations on the State Fee for Examination of the Application for Naturalisation* came into force on 6th December 2008.

In **Belgium**, **Czech Republic**, **Finland, Lithuania, Netherlands** and **Italy,** legislative amendments or proposals were in the process of being negotiated. In the *Governmental Agreement 2008* in **Belgium**, the government expressed its intention to modify the *Code of Belgian Nationality,* in order to make it more "neutral" in terms of migration, by limiting the acquisition of nationality to those registered in the 'Population Register of the Foreigners' Register'. This meant, for example, that third-country national children of adult age, living in another country but of Belgian parents, would no longer be entitled to acquire Belgian nationality. In **Finland**, a reform of the *Nationality Act* was initiated in October 2008, which aimed to increase social cohesion and integration of third-country nationals permanently residing, by enabling the acquisition of Finnish citizenship in a flexible manner. In **Lithuania**, discussions in 2008 centred on the issue of dual citizenship. A draft law amending the *Law on Citizenship* was submitted to the Parliament in April 2008 and adopted by the Parliament in July 2008. In the **Netherlands**, a Bill was submitted which aimed to limit multiple nationalities.

Germany introduced rules with regard to repealing citizenship. The amendment on the *Citizenship Law*, which was adopted on 13th November 2008, enabled authorities to repeal a decision to grant citizenship if this was acquired on the basis of fraudulent evidence.

Concerning institutional developments in 2008, the constitutional and operational rules of the *Ministry of Justice and Law Enforcement* were modified in **Hungary** with tasks related to citizenship applications, previously undertaken by the *State Secretary for Public Law* transferred to the *State Secretary for European Union Law*.

4.8.2 Campaigns and Programmes developing naturalisation and citizenship policies

Estonia, Poland and the **United Kingdom** adopted new programmes and campaigns regarding citizenship. In **Estonia**, the *Office of the Minister of Population and Ethnic Affairs* organised an Information Campaign entitled "'Different people. One nation" in order to emphasise the need for new citizens. A Green Paper on the "Path to Citizenship" was published in the **United Kingdom**, which outlined the following three routes: (1) The "work route" for highly skilled and skilled workers; (2) the "family route" for those joining existing permanent residents or British citizens; and (3) the "protection route" for those granted refugee status or humanitarian protection. Under this new scheme, all migrants, apart from the protection route migrants, need to pass through three key stages (temporary residence, 'probationary citizenship' and British citizenship/permanent residence) to demonstrate their continued commitment to the United Kingdom and to support their integration. In **Poland**, the "Card of the Pole" entered into force in March 2008, which provided a number of rights to third-country nationals, including receiving a long-term residence visa, free of charge, as well as carrying out economic activities on the same conditions as nationals.[68]

4.8.3 Cases of naturalisation and citizenship in 2008

Austria, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Malta, Netherlands, Poland and the **Slovak Republic** provided data on the number of individuals applying for naturalisation and/or citizenship.

[68] It must be noted that only citizens from the fifteen countries of the former Soviet Union can apply for the Card though this does not apply to Polish nationals living in other countries of the world. Being granted the Card of Poles does not mean that one is automatically granted Polish citizenship or a permit to settle on the territory of Poland.

Concerning the granting of citizenship in 2008, this ranged from 594 (**Malta**) to 108 131 (**France**).[69] With regard to citizenship applications, 4 986 third-country nationals applied for citizenship in **Finland** in 2008, while 9 633 third-country nationals applied for citizenship in **Hungary**.[70]

Austria, Germany, Ireland, Malta and **Netherlands** provided data on naturalisations. In **Austria**, the rate of naturalisation declined in 2008 from 5.9% of the foreign population in 2003 to 1.2% percent in 2008. In **Germany**, 94 470 third-country nationals were naturalised in 2008, representing a decline of 16.4% from 2007 (113 030). In **Ireland**, 3 117 naturalisation certificates were granted in 2008, while in **Malta**, 50 third-country nationals were naturalised. In the **Netherlands**, 24 467 applications were made, with 23 406 applications granted.

The **Czech Republic**, **Estonia, Finland**, **France, Poland and Slovak Republic** provided information on the most prominent countries of origin. In the **Czech Republic** and **Slovak Republic**, the most frequent nationalities granted citizenship were those from Ukraine. The main countries of origin in **Estonia** were Russia, Ukraine, Belarus and Moldova. In **Finland**, the five main countries of origin of third-country nationals applying for Finnish citizenship were Morocco, Algeria, Tunisia, Turkey and Russia. In **France**, the third-country nationals becoming French citizens were mainly from Morocco, Algeria, Tunisia, Turkey and Russia, while in **Poland**, they were from Ukraine, Belarus and Russia. A *Register on Nationality Decisions* was also introduced by the *Federal Administrative Office* at the end of 2008 in **Germany**.

4.9 Illegal Immigration

This Section describes the developments in Member States with regard to illegal immigration. The first Section provides an overview of trends and data concerning illegal immigration in Member States in 2008 (Section 4.9.1). Regularisation procedures are furthermore examined (Section 4.9.2), as well as control and prevention measures in Member States (Section 4.9.3). This Section finally examines procedures put in place in Member States concerning the removal of illegally-staying third-country nationals (Section 4.9.4).

[69] This only concerns Member States for which data on granting citizenship was received, namely Czech Republic, Estonia, France, Malta and Poland.
[70] Finland and Hungary were the only two Member States providing data on citizenship applications.

4.9.1 Data and Trends on Illegal immigration

Estonia, France, Greece, Ireland, Malta, **Netherlands** and **Slovak Republic** provided data on the number of cases of illegal immigration in their Member State in 2008. The figures of those entering the Member State illegally ranged from 40 (**Estonia**) to 146 337 (**Greece**). In **Estonia,** as well as cases of illegal immigration, there were 30 cases of falsified documents and 301 cases of violations of the visa regime.[71] Furthermore, in **Greece**, it was estimated that the total number of persons entering the territory illegally was approximately 300 000, with a total of 44 610 persons having passed from Turkey into Greece through land (14 461) and sea (30 149) borders. In **Ireland**, 5 394 persons were refused "leave to land" at Irish ports.[72]

In the **Netherlands**, in a report published in 2008,[73] it was concluded that in the period between 1st April 2005 and 1st April 2006, between more than 74 000 and nearly 184 000 persons resided illegally in the Netherlands, though it was estimated that this number had probably decreased due to EU enlargement. In the **Slovak Republic**, the number of cases of illegal migration considerably decreased in 2008, with 2 355 cases of illegal migration reported, of which 1 034 were cases of illegal border crossing and 1 321 were cases of illegal residence, compared to 6 761 and 7 620 cases of illegal migration in 2007 and 2006.

France, Greece and **Slovak Republic** also provided information on the most prominent countries of origin. Concerning the countries of origin of illegal immigration, in terms of pressure exerted on borders in **France**, flows from China, Brazil, the Maghreb, the Middle East and the Indian Subcontinent feature prominently. In terms of illegal residence, the most prominent nationals were from Afghanistan (5 731), Iraq (1 969), Morocco (1 542), Eritrea (1 479) and Vietnam (754).[74] In **Greece**, the main countries of origin were Albania, Afghanistan, Iraq, Somalia and Pakistan. In the **Slovak Republic**, third-country nationals crossing the national borders illegally mainly originated from Moldova, Georgia, Pakistan, Russia and Afghanistan.

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[71] The violation of the visa regime is an increase of 10.7% from 2007. Most of the persons violating the regime were citizens of Russia (247) and citizens of the Ukraine (27). An average exceeded stay in the country was 11 days.

[72] This number refers to those refused overall leave to land in the State upon presentation at an Irish port or airport or held in an Irish prison until a return flight could be arranged, and those classified as leave to land for administrative purposes and admitted entry to the State for the purpose of submitting an application for asylum.

[73] Dutch Research Documentation Centre (Ministry of Justice) (2008), "*Unlawful Residence in the Netherlands: A review of literature*".

[74] In **France** in 2008, there was also an increase in placements in the waiting zone from 15 827 to 16 645.

Concerning the trends in illegal immigration, following Schengen accession, the **Czech Republic** experienced a shift from illicit activities connected to the facilitation of illegal border crossing towards the facilitation of illegal stay, such as scam marriages. Furthermore, **Malta** experienced a 63% increase in the number of persons reaching its shores illegally. This could, in part, be explained by the bilateral readmission agreements concluded between **Spain** and the West African States, combined with the FRONTEX joint operations in the Western Mediterranean, which led to a shift in illegal immigration from those routes to the Central Mediterranean, which had no such readmission agreements in place.

4.9.2 Regularisation procedures

Belgium, Luxembourg, Netherlands and **Poland** provided information regarding changes to their regularisation procedures in 2008.

Belgium and **Luxembourg** made changes to their case-by-case regularisation. In **Belgium**, the *Minister of Migration and Asylum* was provided with discretionary powers in matters of regularisation, with third-country nationals regularised on the grounds of a lengthy asylum procedure, on medical grounds or on other humanitarian grounds. Regularisation was, however, subject to an ongoing debate, as, despite the government's announcement that criteria for exceptional regularisation on humanitarian or other economic ground would be further clarified, no political agreement was reached. This led to many organisations supporting illegally-staying migrants complaining about the legal insecurity that resulted from the lack of a proper framework. Regularisation on a case-by-case basis was also possible in **Luxembourg**, relating to humanitarian reasons or the family situation of a person. Furthermore, new legislation provided the possibility to grant a residence permit for exceptional reasons to persons illegally staying in the territory, when fulfilling certain conditions.

In **Poland**, the 2007 amendment of the *Act on Foreigners*, which entered into force in 2008, provided a number of conditions for the regularisation of third-country nationals, with the amendment allowing third-country nationals residing illegally to apply for a one year residence permit.

Belgium provided figures on the number of illegally-staying third-country nationals who were regularised. Almost 20 000 regularisation claims were made in 2008, with 22 500

decisions taken.[75] In **Poland**, 2 029 third-country nationals applied for a residence permit for a fixed period within the framework of the regularisation procedure.

In the **Netherlands,** following two decisions of the Administrative Jurisdiction Division in December 2008, it became possible to appeal against a decision not to legalise an applicant under the so-called 'Pardon Scheme' that entered into force in 2007.[76] Following this decision, 1 500 objections have been lodged against the written confirmation that the appeal scheme would not be applied to a particular case.

4.9.3 Control and prevention of Illegal Immigration

Belgium, Czech Republic, Germany, Ireland, Italy, Latvia, Luxembourg, Netherlands, Spain and the **United Kingdom** outlined developments in their national procedures regarding the control and prevention of illegal immigration in 2008.

Belgium, Czech Republic, Luxembourg and the **United Kingdom** undertook preventive actions to stop the growth of illegal immigration. In **Belgium**, preventive actions were launched to stop illegal immigration fluxes from specific third countries, with a budget of €100 000 dedicated to prevention projects and information campaigns in Senegal, Cameroon and India. In the **Czech Republic**, measures aimed at fighting illegal immigration were defined in the *Action Plan on the Fight against illegal migration*, which included the *Updated Schedule for the fulfilling of the Plan on the Fight against Illegal Migration*. During 2007 and 2008, a system was set up to ensure more effective coordination between the different Ministries involved and the Police. Furthermore, suggestions from 146 third-country nationals who could provide possible information on illegal immigration due to their personal experiences in this phenomenon were received.[77]

Luxembourg and the **United Kingdom** introduced penalties to prevent illegal immigration. In **Luxembourg**, the new *Law on Immigration 2008* contained measures to prevent

[75] The higher number of decisions is due to this figure including regularisation claims introduced in 2008 or before 2008.

[76] Under the Pardon Scheme adopted on 15th June 2007, former and current asylum applicants who had submitted an application prior to the implementation of the current Aliens Act (dated from 1st April 2001) and who did not have yet lawful residence could obtain a residence permit under specific conditions. Before decisions of the Administrative Jurisdiction Division in December 2008, the Scheme did not provide for objection or appeal procedures against the refusal of these permits as the residence permit in the context of the Pardon Scheme could not be applied for but only granted as a matter of fact. For more information about the Pardon Scheme, please refer to the Dutch Annual Policy Report 2007.

[77] Third-country nationals who cooperated with the relevant authorities within this scheme were provided with counselling regarding the possibilities of their legal stay in the **Czech Republic** or voluntary return.

immigration fraud and to fight against illegal immigration. The law foresaw penalties for the facilitation of illegal entry, transit or stay of third-country nationals. The law also foresaw fines against transport companies, employers of illegally-staying migrants and persons falsifying documents, including the possibility to withdraw residence permits. In the **United Kingdom**, the *UK Border Agency* introduced a civil penalty system for employers found to be employing someone who does not have permission to be there or to undertake the work in question.

With regard to tackling illegal immigration, **Italy, Latvia**, **Netherlands** and **Spain** further developed their policies in this regard. In **Italy**, the *Decree on Urgent Measures Concerning Public Safety* was followed by an order of the Prime Minister to strengthen the system of identification and removal of third-country nationals staying illegally. In **Latvia**, the *Regulations of Maintenance and Utilisation of the Illegal Immigration Register* entered into force, which defined the procedure of access, usage and the type of information included in the *Illegal Immigration Register*.[78] This resulted from the need of the *State Border Guard* to have more detailed and specialised control of immigration, following Schengen accession, in order to perform more effective identification and removal of third-country nationals. In the **Netherlands**, as a follow up to the aforementioned report on illegal immigration, the *State Secretary for Justice* announced new measures to control the phenomenon.[79] This outlined the role of the police in contributing to public order and safety in Dutch society, by combating illegality and included the tracing of illegally-staying third-country nationals with the purposes of removing them, as well as focusing on migration-related crimes, such as human trafficking, human smuggling and identity fraud. In **Spain**, prior to the elections, the governing party announced an amendment to the existing maximum period of 40 days for the detainment of illegally-staying immigrants to 60 days, with the measure expected to come into effect in the future reform of the *Law on Immigration.* In addition, during 2008, the French EU Presidency initiated a European search for criminals on the railway network. Seventeen Member States participated in this initiative.

[78] The register is the state information system where data on detained and removed third-country nationals is included in the procedure prescribed in the Immigration Law in order to secure effective identification of persons and to prevent illegal immigration.

[79] Dutch Research Documentation Centre (Ministry of Justice) (2008), "*Unlawful Residence in the Netherlands: A review of literature*".

4.9.4 Removal of illegally staying third-country nationals

France, Greece, Ireland, Italy, Malta reported on actions undertaken in 2008 regarding the removal of illegally-staying third country nationals. In **Ireland**, the *Immigration Residence and Protection Bill* 2008 contained an amendment to previous legislation concerning the detention and removal of third-country nationals, by allowing for 'summary removal' of an individual without notice and due process.[80] This draft legislation also allowed third-country nationals to be detained pending removal and that those under 18 years could be detained if they did not comply with certain conditions imposed by an immigration officer or member of the police force. In **Italy**, a decree was issued by the *President of the Republic* regarding 'urgent measures concerning public safety.' This decree contained new rules for the removal of convicted immigrants, thus introducing provisions related to the aggravating circumstance of having committed a crime, while illegally-staying on the territory. This decree was later followed by an order of the Prime Minister to strengthen the system of identification and removal of illegally-staying migrants.

Concerning accommodation for illegally-staying migrants awaiting removal, a protocol agreement was signed in **Portugal** between the *Aliens and Borders Service* and Hospitaller Order of St. John of God, to create suitable accommodation for illegally-staying third-country nationals, whilst they were in the process of being removed.[81]

France, Greece, Ireland and **Malta** provided figures on the number of forced removals in 2008. This ranged from 20 555 (**Greece**) to 260 (**Malta**). In **Ireland**, 952 persons were removed during 2008, representing an increase of +23%.[82]

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[80] The *Immigration Residence and Protection Bill 2008* proposed changes to the suspensive effects of judicial reviews. Under the existing regime, an applicant for judicial review of a deportation order may secure an injunction which suspends their removal while proceedings are underway. An injunction is granted as a means of maintaining the status quo in order to safeguard against returning a person to a potentially dangerous situation. The Immigration, Residence and Protection Bill 2008 proposed that this suspensive effect would be removed in the future.

[81] This agreement sought to provide continuity to the project that began with the Santo Antonio Residential Unit in Porto which implemented an innovative concept, based on police, human and social components, respecting the third-country citizens in questions

[82] This increase represents return migration overall which includes deportations, transfers and voluntary repatriations. For more information, see National Reports on "EU Programmes and Strategies fostering Assisted Return to and Reintegration in third countries", available at http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=A946CE55E3F1A9AE5E34A07519C24D8A?entryTitle=01

4.10 Actions against human trafficking

This Section describes the actions undertaken by the Member States in 2008 to prevent human trafficking and to assist victims, as well as data available on the phenomenon. Almost all Member States reported action in this area, ranging from the signing of international conventions and the introduction of penalties for human traffickers, to the implementation of strategic or policy-oriented agencies and victim support measure.

4.10.1 Legislative and other developments

Estonia, Latvia, Luxembourg, Portugal, Slovak Republic, Slovenia, Spain and the **United Kingdom**) made progress with regard to the Council of Europe's Convention on Action Against Trafficking in Human Beings.[83] **Latvia**, **Luxembourg**, **Portugal** and **United Kingdom** ratified the Convention in 2008. **Luxembourg** introduced two bills to implement the Convention at the same time as the UN's protocol on trafficking,[84] the *Framework Decision of the Council of the European Union*[85] and Directive 2004/81/EC.[86] In **Estonia** and **Spain**, proposals to ratify the Convention were sent to the respective Parliaments for approval. By contrast, **Slovenia**'s *Ministry of Justice* decided not to ratify the Convention, concluding that its provisions were not compatible with its legislative framework.

Austria, Estonia, Finland, Hungary, Ireland, Slovak Republic, Spain and **Sweden** introduced or continued action plans or strategies on human trafficking. **Austria** decided upon a *National Action Plan against Human Trafficking*, which specified broad inter-ministerial cooperation, prevention, assistance to the victims, prosecution of smugglers and international cooperation. In **Finland**, the *Revised National Plan of Action against Trafficking in Human Beings* was adopted in June 2008. The plan takes a human-rights-based and victim-oriented perspective, emphasising the importance of cooperation and taking into consideration the fact that most victims of trafficking are women and children. In **Spain**, the Minister of Equality's *Comprehensive Plan against Trafficking of Human Beings for the Purposes of Sexual*

[83] Available at: http://conventions.coe.int/treaty/en/treaties/html/197.htm

[84] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.* Available at: http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

[85] 2002/629/JHA: Council Framework Decision of 19 July 2002 on combating trafficking in human beings. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0629:EN:HTML

[86] Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML

Exploitation (2009-2012) contained over seventy measures, aimed at raising societal awareness to promote 'zero tolerance' of criminal acts related with trafficking, at combating root causes, and at ensuring that victims receive adequate care and protection. **Sweden**'s *Action Plan* also outlined measures to increase support and protection for victims, to raise awareness and to improve the quality and efficiency of the judiciary system in dealing with cases of trafficking.

In **France, Ireland, Italy** and the **Netherlands**, governmental bodies or agencies were set up to specifically deal with human trafficking related crimes. In **France**, a *National Delegation* was set up under the authority of the Prime Minister and the Minister for the Budget, through the *Decree of 18 April 2008*. The delegation focuses on trafficking for the purpose of labour exploitation, rather than specifically on sexual exploitation or child trafficking. It is responsible for administering *Act n° 2005-882 of 2 August 2005* of the *National Commission to Combat Illegal Employment* and aims to prevent the smuggling of workers. In **Italy**, the *Prime Minister's Council and the Department for Equal Opportunities* established the *Inter-ministerial Commission on support for victims of trafficking*. In the **Netherlands**, the *Ministry of Justice* established a *National Task Force Human Trafficking,* with the aim to identify obstacles which prevent authorities in the Member State from combating human trafficking quickly and at the right level. The Task Force comprises the *National Rapporteur on Human Trafficking*, representatives from different Ministries, the police, local administration, and the judiciary, and is chaired by the *Public Prosecution Service*. In **Ireland,** an action group was specifically set up to implement recent recommendations to reduce the risk of child trafficking.

Ireland and **Slovenia** introduced legislation to deal with the perpetrators of human trafficking. **Ireland** enacted the *Criminal Law (Human Trafficking) Act* in June 2008, which established separate offences for the trafficking of children, as distinct from the trafficking of adults. **Slovenia** made changes to the *Penal Code* in relation to the penalties for human trafficking, increasing the duration of prison sentences when the victim is a minor. The **Netherlands** also announced an increase of the maximum sentences for human trafficking. In the **United Kingdom**, Section 31 of the *UK Borders Act of 2007* (amending the Asylum and Immigration Act 2004, and the Sexual Offences Act 2003) was brought into effect. This provision sets additional criteria by which an act can be considered human trafficking. The **Czech Republic, Greece** and **Ireland** introduced measures to directly support victims of human trafficking. The **Czech Republic**'s *Programme for the Support and Protection of*

Victims of Human Trafficking, which has functioned since 2003, was replaced by an inter-ministerial coordination group. **Greece** and **Ireland** both made amendments to existing laws in order to enhance the protection of victims of human trafficking.

Poland, Portugal and **Slovenia** implemented information campaigns, to raise awareness of the threat of human trafficking. In **Portugal** the campaign, "You are not for sale"[87] which had begun in 2007, was extended to Cape Verde, Guinea-Bissau and São Tomé and Príncipe. The campaign is aimed at school pupils and at people working in sectors, such as social care, who may come across victims of trafficking. In **Poland**, target groups of campaigns were, on the one hand, third-country nationals immigrating to Poland for work, and on the other Polish emigrants. The project *Combating human trafficking in the context of strengthening the Moldovan migration management system and international cooperation* was also created and aimed at encouraging Polish-Moldovan exchange of experience and good practice. In **Slovenia,** the *Government Media Office* financed and coordinated a conference for professionals working in public services entitled "You, too, could be a victim." The *Ministry of Internal Affairs* financed the printing of a leaflet, aimed at victims of human trafficking.

4.10.2 Data on the extent of human trafficking in Member States

The **Czech Republic, Estonia, Greece, Ireland** and the **United Kingdom** provided data on the number of cases, and in some instances, also the type of human trafficking in their Member State in 2008.

Estonia gave data from a national helpline which offers advice and counselling to victims of human trafficking: it dealt with 416 persons reporting incidences of trafficking in 2008, which represented an increase from 166 persons in 2007. The **Czech Republic** also observed that the number of identified trafficking victims had increased from previous years; although the figure was still small, at 16. By comparison, **Greece** noted that, during 2008, the Hellenic Police had come across forty cases of human trafficking (37 sexual abuses, two labour abuses, and one smuggling of human organs), and had also dismantled fourteen criminal networks of traffickers, arrested 2 211 perpetrators and accused 162 offenders (both nationals and foreigners). It had also put 78 victims under protection. Similarly, the **United Kingdom** outlined the results of *Pentameter 2* which consisted of targeted operations carried out by national police during six months. Some 822 premises were visited, 528 criminals arrested,

[87] http://www.nao-estas-a-venda.sef.pt/#1

and 167 victims identified. In addition, more than £500 000 (approx. €590 000) was recovered from arrested criminals. In **Ireland**, no official statistics on trafficking were provided; although the results of a research project on trafficking for forced labour was published by the Irish School of Ecumenics in 2008.[88] The project bases its findings on case files held by support groups, such as the *Migrants Rights Centre Ireland (MRCI)*, trade unions and other bodies. According to this research project's findings, around 50 non- nationals were found to have been trafficked into Ireland as forced labourers since 2002, mainly from Bangladesh, Egypt, Pakistan and the Philippines. Most were involved in the catering, manufacturing and domestic work sectors.

The **Slovak Republic** provided data on smuggling, 1 008 foreigners smuggled in 2008; of which 388 were detained. A further 142 persons were suspected of smuggling, and of these 75 were nationals of Slovak Republic and 13 were nationals of Ukraine.

4.11 Return Migration

This Section outlines the actions implemented in the Member States to assist the return of migrants to their countries of origin. Section 4.11.1 describes actions implemented to enforce return decisions; and Section 4.11.2 details the type of assisted voluntary return measures put in place to support return and reintegration. Finally, Section 4.11.3 discusses bilateral agreements concluded between Member States and third countries with regard to return.

4.11.1 Forced Return

In **Belgium**, the government pledged to continue implementing return through collaboration with Fedasil, the police and the municipal authorities, on the one hand, and through efficient cooperation with competent administrations, such as the *Federal Public Service for Justice* and the *Federal Public Service for Foreign Affairs*, on the other. **Italy** introduced new legislation to enforce the removal of third-country migrants who had committed crimes. It introduced *Law no. 125/08* following *Decree no. 92/2008* on *Urgent Measures Concerning Public Safety*. The Law contains new rules for the removal of convicted immigrants.

Estonia, Ireland and the **Slovak Republic** provided statistics on the number of removals. In **Estonia**, 107 persons were removed; of these 4 were citizens of the EU and 10 were stateless

[88] Wylie and Coghlan (2008) Irish School of Ecumenics, Trinity College Dublin. Reports forthcoming

persons. This represented a decrease from 2007 (159). A further 44 persons were placed in detention centres, and there were also 18 removals carried out by the *Border Guard*; the majority of removals were to Azerbaijan, Ukraine and Byelorussia. In **Ireland**, there were 162 removals to third countries. In the **Slovak Republic,** according to the *Annual Report of the Bureau of Border and Alien Police of the Ministry of Interior*, 576 persons were placed into police detention facilities and 266 persons were removed.

4.11.2 Assisted Voluntary Return

Malta, Spain and **Luxembourg** implemented strategies to encourage voluntary return. Some of these made a distinction between assistance to rejected asylum applicants and (other) legal migrants who no longer have leave to stay, whereas other apply to all types of third-country nationals. **Malta** set up the project RESTART, which aims to assist the voluntary return of all migrants who no longer meet the conditions of stay.[89] The project also supports their reintegration in the country of return. The **Czech Republic, France, Ireland, Poland** and **Portugal** reported similar schemes which had been introduced in previous years, but which continued into 2008. **Spain** approved the *Plan for Voluntary Return*, which targets third-country migrants residing legally, who have become unemployed. The Plan encourages the unemployed workers to return to their country of origin, by entitling them to claim the total contributory unemployment benefits in two lump sums they would otherwise be able to claim monthly, as long as they return to the country of origin within 30 calendar days and do not return within three years. This opportunity is limited to nationals from third countries which have signed bilateral agreements on social security (currently 20 countries).[90] In **Luxembourg**, the government mandated the *International Organisation for Migration (IOM)* to assist rejected asylum seekers coming from Kosovo in their return and reintegration.

In terms of reintegration measures, **Sweden** increased its reintegration allowance by 50%. The allowance is available for rejected asylum seekers who opt for voluntary return and who are returning to countries with limited economic opportunities, such as Iraq, Somalia and Afghanistan. The **Czech Republic** and **France** also supports migrants who have been refused

[89] Individuals who may apply for the AVRR may include those who have not yet received a final negative decision in relation to their request for asylum, those enjoying a form of international protection, and those who no longer fulfil the conditions for entry-or stay in Malta. See http://irrico.belgium.iom.int/iom-offices/iom-malta.html for further details.

[90] The countries with which Spain has signed bilateral agreements on social security are: Andorra, Argentina, Australia, Brazil, Canada, Chile, Colombia, the Dominican Republic, Ecuador, the United States of America, the Philippines, Morocco, Mexico, Paraguay, Peru, Russia, Tunisia, Ukraine, Uruguay and Venezuela.

entry. In **France,** the *National Agency for the Reception of Foreign Persons and Migration* (ANAEM) funds assisted voluntary return of persons who have been refused residence and assisted humanitarian returns of third-country nationals who are destitute, or in extreme difficulties. In 2008, there were 2 206 assisted voluntary repatriations, and 10 212 assisted humanitarian returns. Beneficiaries of voluntary returns were mainly nationals from China, Algeria and Serbia; beneficiaries of assisted humanitarian returns were mainly from Romania and Bulgaria. In **Estonia,** the *Migration Foundation* provides financial support for the return of third-country migrants who have lived permanently in the Member State for at least 10 years. The *Ministry of the Interior* approved the *Migration Foundation's* application for funding from the *European Refugee Fund*, to set up a support system for voluntary return for asylum seekers and refugees.

4.11.3 Readmission agreements with third-countries

Germany, Latvia, Poland, Slovak Republic, Slovenia, Spain and **Sweden** signed agreements with one or more third countries, to facilitate the readmission of removed migrants. Some of these focused on third countries on the European continent. For example, **Latvia** adopted an agreement with the government of Georgia; **Slovenia** strengthened an agreement with Montenegro by introducing a protocol for implementation; and the **Slovak Republic** signed agreements with seven third-countries, all neighbouring the Member State and primarily comprising countries of the former Yugoslavia.

Germany signed a readmission agreement with Syria in July 2008, which added to the thirty or so readmission agreements already existing with various countries, most of them in Eastern and South-Eastern Europe; **Sweden** signed agreements with Iraq, Vietnam and Armenia; **Poland**, which has a number of readmission agreements in place, signed no new ones in 2008; however, the implementation of the agreement on readmission with Vietnam was not functioning satisfactorily; and **Spain** signed agreements with Cape Verde, Mali and Niger. These agreements formed part of its efforts to sign a series of bilateral agreements on immigration with sub-Saharan African countries. **Malta** signed no readmission agreements, but expressed a need for them in order to combat difficulties with the return of migrants.

4.12 Other Policy areas/topics

Austria, Czech Republic, Finland, Hungary, Ireland, Italy, Luxembourg, Portugal, Spain and the **United Kingdom** provided information on other policy areas and topics which were deemed to be relevant to migration and asylum policy. This included information related to the effect of the economic crisis on migration policy (**Austria**, **Czech Republic**, **Ireland**), the treatment of third-country nationals placed in detention (**Finland**), statelessness (**Hungary**), improvements to administrative procedures for the renewal of residence permits (**Italy**), the global approach to migration (**Luxembourg**), representation of immigrants in media coverage and political campaigns (**Portugal**), rights of immigrants to participate in local elections (**Spain**) and national policy regarding criminal third-country nationals (**United Kingdom**).

Austria and the **Czech Republic** adopted particular measures following the economic crisis with **Austria** requesting the prolongation of the transitional measures applied to the EU-8[91] until 2011. The **Czech Republic**, considering the massive dismissals of third-country nationals who had previously been granted a work permit, started an analysis of the situation and the preparation of a State-funded project on Voluntary Return, to be implemented from 2009. Additionally, in **Ireland**, a survey related to '*Population and Labour Force Projections 2011-2041,*[92] was published by the *Central Statistics Office* in April 2008. The survey established that, in the light of the Irish economy decelerating rapidly, there could, at least in the short term, be net emigration.

In March 2008, **Finland**'s *Ministry of Interior* commissioned a project for the examination of the treatment of third-country nationals placed in detention, the functioning of the detention units and the requirements and procedures relating to detention.

Following accession by **Hungary** to the 2006 Council of Europe Convention on the avoidance of Statelessness, the Convention was promulgated and became binding in national legislation in 2008.

In **Italy**, in February 2008, a new procedure for the renewal of residence permits was implemented as a test in 223 municipalities, in order to reduce the average time for processing such administrative decisions. Under this new procedure, municipalities replaced the

[91] EU-10 minus Cyprus and Malta. For details on transitional measures, see European Commission DG Employment, Social Affairs and Equal Opportunities Website at http://ec.europa.eu/social/main.jsp?catId=466&langId=en.

[92] Central Statistics Office (April 2008) *Population and Labour Force Projections 2011-2041,* available at: www.cso.ie.

functions of the Italian Post, alongside the Police headquarters, for the renewal of residence permits for third-country nationals.

In the framework of the Global Approach to Migration adopted by the European Council in 2005,[93] **Luxembourg**, together with other participating Member States (**France, Portugal and Spain**), the European Commission, the Presidency of the Council and the Government of Cape Verde signed a Joint Declaration to establish the Mobility Partnership between the European Union and Cape Verde on 5 June 2008.[94] Similar agreement was signed on the same date between the European Union and the Government of Moldova[95], involving 15 participating Member States (**Bulgaria, Cyprus, the Czech Republic, France, Germany, Greece, Hungary, Italy, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden**).

In **Portugal**, following protests from citizens regarding comic scenes on television associating negative characteristics with citizens of certain foreign nationalities, religion or ethnic minorities, the *Commission for Equality and against Racial Discrimination (CICDR)* requested comedians and persons responsible for the programming to avoid using such negative associations. A letter was also sent to mass media requesting that special attention be paid while preparing journalistic reports, to avoid portraying individuals belonging to other nationalities and ethnic minorities as persons particularly prone to committing violent criminal acts. Along the same lines, and following the publication of a poster from the *National Renewal Party*, which sought to associate immigration with social problems, the CICDR formally condemned the content of the said poster, stressing the risks of disinformation that could unfairly create prejudice against the immigrant community in Portugal.

A special ambassador appointed by the Government of **Spain** undertook the negotiation of international treaties with immigrants' principal countries of origin, to enable immigrants to participate in local elections. Agreements with 15 countries were signed stipulating that their

[93] Council of the European Union, Brussels, 13 December 2005, Global Approach to Migration: priority actions focusing on Africa and the Mediterranean. Available at: http://register.consilium.eu.int/pdf/en/05/st15/st15744.en05.pdf.

[94] The European Union and Cape Verde enter in a Mobility Partnership. European Commission Press Release. IP/08/894 of 5th June 2008. Available at http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/894&guiLanguage=en.

[95] The European Union and the Republic of Moldova enter in a Mobility Partnership, European Commission Press Release, IP/08/893 of 5th June 2008, Available at: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/893&format=HTML&aged=0&language=EN&guiLanguage=en

nationals, who had legally lived in Spain for at least 5 years, would be able to vote in the 2011 municipal elections.

The **United Kingdom** *Border Agency* continued to work with the Prison Service to remove migrants who had committed crimes. According to the *Criminal Justice and Immigration Act*, which came into force in July 2008, the *Secretary of State* has the competency to categorise third-country nationals who had committed crimes as ”foreign criminals.” This meant that these third-country nationals received a special status under immigration law and could be required to comply with additional conditions on their residence, employment, and compulsory reporting to the Police. Furthermore, in October 2008, the *United Kingdom's Home Secretary* announced revised measures to remove individuals who encouraged violence or hatred in support of their ideology. Decisions on excluding non-British nationals are made by the *Home Secretary* personally.

5. IMPLEMENTATION OF EU LEGISLATION

This chapter outlines the developments that have taken place in Member States regarding the transposition of EU legislation in 2008. Adopted EU legislation in 2008 is initially outlined (Section 5.1), as well as proposed EU legislation (Section 5.2). Details of Member States' transposition is furthermore examined (Section 5.3) with experiences and debates which have arisen in some Member States finally outlined (Section 5.4).

5.1 Adopted EU Legislation 2008

In terms of EU asylum and immigration legislation adopted in 2008, these were:

5.1.1 Asylum

- Commission Decision 2008/22/EC[96] of 19 December 2007 laying down rules for the implementation of Decision No. 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund

5.1.2 External Borders

- Council Decision 2008/147/EC[97] of 28 January 2008 on the conclusion on behalf of the European Community of the Agreement between the European Community and the Swiss Confederation, concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland

- Commission Decision 2008/456/EC[98] of 5 March 2008 laying down the rules for the implementation of Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund.

[96] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:069:0016:0017:EN:PDF
[97] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:096:0015:0028:EN:PDF
[98] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:167:0001:0068:EN:PDF

5.1.3 Visas

- Council Regulation (EC) No 856/2008[99] of 24 July 2008 amending Regulation (EC No 1683/95 of 29 May 1995 laying down a uniform format for visas and Council Decision 2008/910/EC of 27 November 2008 amending Parts 1 and 2 of the Schengen consultation network (technical specifications)
- Council Decision 2008/374/EC[100] of 29 April 2008 amending Annex 3, Part I, to the Common Consular Instructions on third-country nationals subject to airport visa requirements
- Council Decision 2008/859/EC[101] of 4 November 2008 amending Annex 3, Part I, of the Common Consular Instructions on third country nationals subject to airport visa requirements
- Council Decision 2008/905/EC[102] of 27 November 2008 amending Annex 13 to the Common Consular Instructions on filling in visa stickers
- Council Decision 2008/972/EC[103] of 18 December 2008 amending Annex 13 to the Common Consular Instructions on filling in visa stickers
- Council Regulation (EC) No 380/2008[104] of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals
- Commission Decision 2008/602/EC[105] of 17 June 2008 laying down the physical architecture and requirements of the national interfaces and of the communication infrastructure between the central VIS and the national interfaces for the development phase
- Regulation (EC) No 767/2008[106] of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)

[99] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008R0856:EN:HTML
[100] Seehttp://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:129:0046:0047:EN:PDF
[101] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:303:0011:0012:EN:PDF
[102] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:327:0019:0020:EN:PDF
[103] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:345:0088:0089:EN:PDF
[104] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:115:0001:01:EN:HTML
[105] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:194:0003:0008:EN:PDF
[106] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0060:0081:EN:PDF

- Council Decision 2008/633/JHA[107] of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences

5.1.4 Immigration

- Council Decision 2008/381/EC[108] of 14 May 2008 establishing a European Migration Network
- Commission Decision 2008/457/EC[109] of 5 March 2008 laying down the rules for the implementation of Council Decision 2007/435/EC establishing the European Fund for the integration of third-country nationals the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund
- Commission Decision 2008/458/EC[110] of 5 March 2008 laying down the rules for the implementation of Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund

5.1.5 Control of illegal immigration and return

- Directive 2008/115//EC[111] of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member-States for returning illegally staying third-country nationals

[107] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0129:01:EN:HTML
[108] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:131:0007:0012:EN:PDF
[109] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:179:0064:0065:EN:PDF
[110] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:167:0135:0200:EN:PDF
[111] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF

5.2 Proposed EU Legislation 2008

Legislation proposed in 2008 was:

- COM (2008) 891 final[112] Proposal for a Council Regulation (EC) No …/... of […] laying down a uniform format for visas (codified version)
- COM (2008) 825 final[113] Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No […/…] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person]
- COM (2008) 820 final[114] Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person
- COM (2008) 815 final[115] Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers
- COM (2008) 761 final[116] Proposal for a Council Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement
- COM (2008) 730 final[117] Commission Opinion on the request from the United Kingdom to accept Regulation (EC) no 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations (ROME I)

[112] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0891:FIN:EN:PDF
[113] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0825:FIN:EN:PDF
[114] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0820:FIN:EN:PDF
[115] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0815:FIN:EN:PDF
[116] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0761:FIN:EN:PDF
[117] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0730:FIN:EN:PDF

- COM (2008) 332 final[118] Proposal for a Council Decision on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2008/XX/JHA
- COM (2008) 246 final[119] Proposal for a Council Regulation amending Annexes A and B to Regulation (EC) No 1346/2000 on insolvency proceedings
- COM (2008) 197 final[120] Proposal for a Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)
- COM (2008) 196 final[121] Proposal for a Council Decision on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

5.3 Member States' Transposition of EU Immigration and Asylum Acquis

This Section outlines developments in the transposition of EU acquis. Section 5.3.1 describes Member States' actions to transpose EU legislation relating to Asylum; Section 5.3.2 relates to Member States' transposition of EU legislation relating to external borders; Section 5.3.3 outlines the transposition of EU legislation relating to visas; Section 5.3.4 relates to admission regulations; and Section 5.3.5 outlines the transposition of EU legislation in relation to return policy. A full overview of all transposition activities in 2008 is provided in Annex.

5.3.1 The transposition of EU legislation relating to Asylum

In 2008, Member States transposed, or prepared to transpose, four EU Directives relating to Asylum. The two Directives which were most commonly debated or transposed were Directive 2005/85/EC[122] relating to minimum standards on procedures for granting and withdrawing refugee status and Directive 2004/83/EC[123] relating to minimum standards for the qualification and status of third country nationals or stateless persons as refugees.

[118] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0332:FIN:EN:PDF
[119] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0246:FIN:EN:PDF
[120] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0197:FIN:EN:PDF
[121] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0196:FIN:EN:PDF
[122] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF
[123] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML

Greece, Italy, Lithuania, Malta, Portugal, Slovenia transposed Directive 2005/85/EC[124] in 2008, while **Finland** and **Ireland** made steps towards its transposition. In **Finland**, proposals to transpose the Directive (*Government Proposal (86/2008)*) were presented to Parliament and in **Ireland** it was aimed to transpose the Directive through the adoption of the *Immigration, Residence and Protection Bill*. The **Slovak Republic** transposed the Directive into national law in 2007, but its provisions only became effective in 2008.

Greece, Malta, Netherlands, Portugal and **Slovenia** transposed Directive 2004/83/EC,[125] otherwise known as the "Qualification Directive." In **Finland** and **Ireland** preparations were made for the future transposition of the Directive. In **Germany**, some aspects of the Qualification Directive, which had been transposed into national law in 2007, were brought into question in 2008 regarding the revocation of refugee status, reasons for exclusion from refugee status and subsidiary protection. In February 2008, **Germany** asked the *European Court of Justice* whether recognition as a refugee can be revoked under the *Qualification Directive* if the circumstances which triggered the recognition have ceased to exist and if the refugee need not fear persecution for other reasons in case of return to the country of origin, or whether additional conditions must be met. In October 2008, the *Federal Administrative Court* asked whether a plaintiff was to be excluded from being recognised as a refugee on the grounds of terrorist activities ahead of his/her entry into the Federal Territory. Furthermore, a decision of the *Federal Administrative Court* of June 2008 resulted in changes in the decision practice on subsidiary protection and more concrete guidelines for the application of Art. 15(c) of the *Qualification Directive*. The Court decided that differentiation should be made between protection on the basis of European law and on the basis of national law: where European law governs protection of refugees against torture, death penalty and dangers in the framework of armed conflict, national law provides protection against removal and protection against risks for the individual, such as deteriorating health due to lack of medical facilities in their country of origin.

Greece, Portugal and **Slovenia** transposed Directive 2003/9/EC[126] on minimum standards for the reception of Asylum seekers, and **Ireland** prepared to transpose Directive 2001/55/EC[127] on minimum standards for giving temporary protection in the event of mass flux of displaced

[124] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF
[125] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML
[126] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF
[127] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF

persons. In **Slovenia,** Regulation 343/2003[128] establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application was implemented.

In addition, **Hungary** and **Lithuania** transposed and implemented Decision No 573/2007/EC[129] establishing the European Refugee Fund. **Spain** also made preparations towards the implementation of this Decision. Eventually, most of the Member States undertook action to transpose Council Regulation EC No.862/2007[130] on Community statistics on migration and international protection, 2008 being the first reference year for the collection and compilation of Community Statistics in this area.

5.3.2 The transposition of EU legislation relating to External Borders

No Directives were adopted in relation to external borders. However, **Spain** carried out preparations to transpose Council Directive 2004/82/EC[131] on the obligation of carriers to communicate passenger data, once the proposed *Preface of the Draft Reform Bill* would be passed.

Hungary made the necessary arrangements to implement Regulation (EC) No 1931/2006[132] which lays down rules on local border traffic at external land borders of the Member States. **Latvia**, the **Netherlands** and **Poland** ensured the implementation of Regulation (EC) No 562/2006[133] relating to movement across borders under Schengen. The **Czech Republic** and **Lithuania** entered into force Decision No 574/2007/EC[134] establishing the External Borders Fund.

5.3.3 The transposition of EU legislation relating to Visas

Few EU legislation relating to visas were implemented by the Member States in 2008. **Latvia** arranged for the implementation of Council Regulation (EC) no 415/2003[135] relating to the issue of visas at the border, including the issuing of visas to seamen in transit into its

[128] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF
[129] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:144:0001:0021:EN:PDF
[130] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0023:0029:EN:PDF
[131] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0024:0027:EN:PDF
[132] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:029:0003:0009:EN:PDF
[133] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF
[134] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:144:0022:0044:EN:PDF
[135] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:064:0001:0008:EN:PDF

Immigration Law. In the **Czech Republic,** Council Regulation (EC) No 380/2008[136] amending Regulation (EC) No.1030/2002 entered into force; the Regulation set a uniform format of residence permits throughout all Member States. In addition, **Hungary** implemented Council Decisions[137] concerning the conclusion of agreements with eight countries (Albania, Bosnia-Herzegovina, Republic of Macedonia, Moldova, Montenegro, Russia and Ukraine) on the facilitation of the issuance of visas. The Council Decision on the visa agreement with Moldova was also implemented in **Sweden**. The **Czech Republic** and **Lithuania** transposed provisions of the Schengen acquis in the area of migration.

5.3.4 The transposition of EU legislation relating to Immigration Admission

Five EU Directives relating to the admission of third-country nationals were transposed by some Member States. These were:

- Council Directive 2005/71/EC[138] on procedures for admitting third-country nationals for the purposes of scientific research, transposed by the **Czech Republic, Finland**, **Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Spain, Sweden;**
- Council Directive 2004/114/EC[139] on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary, transposed by **Latvia, Luxembourg, Malta;**
- Directive 2004/38/EC[140] on the freedom of movement of EU nationals and their family members, transposed by **Belgium, Ireland, Italy, Latvia, Luxembourg, United Kingdom[141];**
- Directive 2003/109/EC[142] on the status of Long Term Residents, transposed by **Belgium**, **Luxembourg, Spain**;
- Council Directive 2003/86/EC[143] on the right to family reunification, transposed **Italy Luxembourg** and **Slovenia.**

[136] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:115:0001:01:EN:HTML
[137] Available at: http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2007:334:SOM:EN:HTML
[138] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0015:0022:EN:PDF
[139] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:EN:PDF
[140] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF
[141] Full transposition now includes Gibraltar.
[142] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:EN:PDF
[143] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF

Moreover, **Estonia** made preparations to transpose Council Directives 2003/86/EC and 2004/114/EC, although their entry into force was not foreseen until 2010. **Hungary** and **Lithuania** drafted their national programmes under the European Fund for the Integration of Third-Country Nationals. The fund was established under Decision 2007/435/EC[144] and Commission Decision 2007/599.[145] Eventually, following the entry into force of Council Decision of 14 May 2008 establishing the European Migration Network (Council Decision 2008/381/EC), most of the Member States established for the first time or confirmed different institutions as National Contact Points for the EMN (EMN NCPs).

5.3.5 The transposition of EU legislation relating to Illegal Immigration and Return

Member States transposed, or began to transpose, a variety of EU Directives relating to illegal immigration and return. These are:

- Directive 2008/115/EC[146] on common standards and procedures for returning illegally staying third-country nationals otherwise known as the Return Directive, partially transposed by **Luxembourg**;
- Commission Decision 2007/837/EC[147] implementing Decision No 575/2007/EC on the adoption of strategic guidelines for 2008 to 2013 transposed by **Hungary;**
- Council Directive 2004/81/EC[148] on the residence permit issued to third-country nationals who are victims of trafficking or who have been the subject of an action to facilitate illegal immigration, transposed by **Luxembourg;**
- Council Directive 2001/51/EC[149] which supplements the provisions of Article 26 of the Convention implementing the Schengen Agreement, on the maximum fine limit for offences linked to illegal entry or illegal cross border trafficking, transposed by **Estonia;**
- Council Directive 2001/40/EC[150] on the mutual recognition of decisions on the expulsion of third country nationals, transposed by **Poland** and **Latvia;**

[144] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:168:0018:0036:EN:PDF
[145] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:233:0003:0006:EN:PDF
[146] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF
[147] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:330:0048:0050:EN:PDF
[148] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML
[149] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:187:0045:0045:EN:PDF
[150] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0040:EN:HTML

- Council Decisions concluding readmission agreements with the former Yugoslav Republic of Macedonia (Decision 2007/817/EC[151]); with the Republic of Montenegro (Decision 2007/819/EC[152]); with the Republic of Serbia (Decision 2007/819/EC[153]); with Bosnia and Herzegovina (Decision 2007/820/EC[154]) and Ukraine (Decision 2007/839/EC[155]) transposed by **Sweden.**

The **Czech Republic, Hungary** and **Lithuania** transposed Decision No 575/2007/EC[156] establishing the European Return Fund.

5.4 Experiences, debates in the (non-) implementation of EU acquis

Debates occurred in 2008 concerning both the implementation of different EU legislation (Section 5.4.1), as well as the effects of case law on both EU and national legislation (Section 5.4.2).

5.4.1 Debates related to EU legislation

Belgium, Czech Republic, **Finland, Germany, Hungary, Ireland, Luxembourg, Portugal** and **Spain** outlined debates regarding the implementation of EU legislation. Both **Finland** and **Germany** experienced difficulties with the transposition of the Qualification Directive.[157] This Directive was also heavily criticised in **Ireland**. **Belgium** experienced similar difficulties with EU legislation regarding family reunification. In the **Czech Republic,** its entry into the Schengen area was discussed, including the benefits, challenges, impacts and consequences of this. The issues drawing most media attention were the impact on criminal activities and decrease of security, and traffic density at border crossing points. **Hungary** participated in the expert meetings concerning the implementation of Directive 2004/38/EC[158] relating to the free movement of EU citizens.

Italy, Luxembourg and **Spain** debated the Return Directive.[159] In **Italy**, a heated public debate followed the adoption of the Return Directive. In **Luxembourg,** proposals to approve

[151] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0001:0002:EN:PDF
[152] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0025:0025:EN:PDF
[153] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0045:0045:EN:PDF
[154] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0065:0065:EN:PDF
[155] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:332:0046:0047:EN:PDF
[156] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:144:0045:0065:EN:PDF
[157] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML
[158] See http://eur-lex.europa.eu/pri/en/oj/dat/2004/l_229/l_22920040629en00350048.pdf
[159] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF

the Directive were challenged by NGOs dealing with migrant and asylum-seeker rights. Similarly, in **Spain,** it was considered that the Directive could threaten fundamental rights. More specifically, the provisions allowing a maximum detention time of 18 months were widely criticised, as was the length of time the removed individual is prohibited from returning to the European Union. In **Portugal**, there was controversy following its decision to delay transposition of Directive 2006/100/EC[160] guaranteeing the recognition of professional qualifications of citizens of Bulgaria and Romania. The debate arose following a complaint filed against Portugal by the European Commission for the non-transposition of the Directive, leading to mass media coverage. They finally decided to table proposals to transpose the Directive for public discussion between November and December 2008. In **Ireland,** public debate arose over the transposition of a number of EU Directives. Most of the debate was led by the *Immigrant Council of Ireland*, but also involved other migrant interest groups. For example, a number of organisations, including the *Immigrant Council of Ireland* and the *United Nations High Commission for Human Rights* (UNHCR) were highly critical of the provisions contained in certain Directives which were to be transposed into national law, particularly the Qualification Directive and the Asylum Procedures Directive.[161] The *Immigrant Council of Ireland* also criticised the implementation of Council Framework Decision 2002/629/JHA[162] on *Combating Trafficking in Human Beings*, due to the Government not including protection measures in the *Criminal Law (Human Trafficking) Act*, but instead proposing to include them in the *Immigration, Residence and Protection Bill*. Finally, speaking at a Joint Committee on European Scrutiny hearing at the Parliament in March 2008, the *Immigrant Council of Ireland* argued that Ireland's "cherry-picking" of EU Directives on immigration put the country at a disadvantage, when trying to attract and retain highly-skilled migrants. They noted that **Ireland** had opted into some Directives, such as Directive 2005/71/EC (Researchers), but not others, such as Directive 2003/86/EC on the Right to Family Reunification.

5.4.2 Debates related to EU Case Law

There were very few debates relating to case law. Only **Hungary** and **Ireland** reported on debates relating to EU Case Law, both in relation to Directive 2004/38/EC and the opinion of

[160] See http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_363/l_36320061220en01410237.pdf
[161] The transposed Directives were the Council Directive 2005/85 EC ("The Procedures Directive"), Council Directive 2001/5//EC, and the Qualification Directive.
[162] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF

the *Metock* judgment[163] of 2008. The European Court of Justice's judgment in the *Metock* case, which arose in **Ireland,** concerned the rights of third-country national spouses of Union citizens moving between Member States of the EU. In relation to this case, the *European Court of Justice* applied Directive 2004/38/EC[164] on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and held that restricting the third-country national spouse from moving to another Member State of the EU would hinder the EU citizen's right to free movement. Following the judgment, **Hungary** expressed its preference to find solutions which would not require an amendment to Directive 2004/38/EC. In **Ireland,** the *Metock* case stimulated major debate, since the Member State had originally maintained a requirement that a non-EU family member had to have been lawfully resident in another EU Member State prior to applying for a residence permit. However, consequent to the *Metock* Case, this requirement was questioned. The *Department of Justice, Equality and Law Reform* thus issued a press release[165] on the judgment stating that the Minister had consequently decided to revoke the requirement, and invited applicants who had been refused for failure to have prior legal residence, to have their applications for residence cards reviewed under the Directive.

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[163] Case C-127/08 Blaise Behetan Metock and Others v Minister for Justice, Equality and Law Reform

[164] See http://eur-lex.europa.eu/pri/en/oj/dat/2004/l_229/l_22920040629en00350048.pdf

[165] Department of Justice, Equality and Law Reform (31 July 2008) 'Press Release on Metock and Others v the Minister for Justice, Equality and Law Reform'.

ANNEX:

Overview of equivalent national laws which have been (in force), or steps taken in order to begin to be (not yet passed), implemented during 2008 only in order to transpose EU legislation[166]

EU Legislation	Equivalent National Law (*status*)
Council Decision No. 573/2007/EC (establishing the European Refugee Fund)	**Hungary:** Law not specified (*in force*) **Lithuania:** Decree of the Minister of social security and labour no. A1-235 (July 9, 2008) for the 2008 annual programme of the European refugee fund (State Gazette, 2008, no. 79-3125).
Directive 2005/85/EC (minimum standards for granting and withdrawing the refugee status)	**Czech Republic:** Act No. 379/2007 Coll.42 amending the Act on Asylum (*in force*). **Finland:** Government Proposal (86/2008) for implementation of the Council Directive 2005/85/EC (*not yet passed*) **Greece:** Presidential Decree 90/2008, published in the Official Gazette no. 138/A/11.7.2008. **Ireland:** Immigration, Residence and Protection Bill 2008 (*not yet passed*). **Italy:** Legislative Decree no. 159 (October 3, 2008); and Legislative Decree no. 25 (January 28, 2008). **Malta:** Act VII of 2008 amending the Refugees Act; and Legal Notice 243 of 2008 entitling Procedural standards in examining applications for refugee status. **Poland:** Act amending the Act on granting protection to the foreigners within the territory of the Republic of Poland. **Portugal:** Law No. 27/2008 (30 June) establishing the conditions and procedures for granting asylum or subsidiary protection and the statutes of those seeking asylum, refugee status and subsidiary protection (*in force*). **Slovak Republic:** Act No.480/2002 Coll. on Asylum and on amending and supplementing certain acts as amended. **Slovenia:** International Protection Act (*in force*).
Directive 2004/83/EC (minimum standards for the qualification as refugee)	**Greece:** Presidential Decree 96/200824 on the harmonisation of the Greek legislation to the provisions of the Council Directive 2004/83/EC. **Ireland:** Immigration, Residence and Protection Bill 2008 (*not yet passed*). **Malta:** Act VII of 2008 amending the Refugees Act; and Legal Notice 243 of 2008 entitling Procedural standards in examining applications for refugee status. **Netherlands:** Amendments to the Aliens Act 2000146, the Aliens Decree 2000, the Youth Care Act (Implementation) Decree (Uitvoeringsbesluit Wet op de jeugdzorg), the Regulations on Aliens 2000148 and the Aliens Act Implementation Guidelines 2000 (*in force*). **Poland:** Act amending the Act on granting protection to the foreigners within the territory of the Republic of Poland. **Portugal:** Law No. 27/2008 (30 June) establishing the conditions and procedures for granting asylum or subsidiary protection and the statutes of those seeking asylum, refugee status and subsidiary protection (*in force*). **Slovak Republic:** Act No.480/2002 Coll. on Asylum and on amending and supplementing certain acts as amended. **Slovenia:** International Protection Act (*in force*).

[166] Note that this summarises the changes or developments which occurred in 2008 only.

EU Legislation	Equivalent National Law (*status*)
Directive 2003/9/EC[167]	**Portugal:** Law No. 27/2008 (30 June) establishing the conditions and procedures for granting asylum or subsidiary protection and the statutes of those seeking asylum, refugee status and subsidiary protection (*in force*). **Slovenia:** International Protection Act (*in force*)
Regulation EC No.862/2007[168]	**Belgium** (*entry into force*)
Regulation 343/2003[169] (criteria and mechanisms for determining Member State responsible in asylum applications)	**Slovenia:** International Protection Act (*in force*)
Decision No 573/2007/EC	**Hungary** (*implemented*) **Lithuania** (*implemented*)
Commission Decision 2007/599/EC (implementing decision No 573/2007/EC (adoption of the strategic guidelines)	**Hungary:** No Law Specified
Directive 2001/55/EC[170] (minimum standards for giving temporary protection in the event of a mass influx of displaced persons)	**Ireland:** Immigration, Residence and Protection Bill 2008 (*not yet passed*).
Regulation (EC) No 1931/2006 (rules on local border traffic at the external land borders)	**Czech Republic:** Law not specified (*in force*). **Poland:** Act on the amendments to the Act on foreigners (*in force*)
Regulation (EC) No 562/2006 (Schengen Borders Code)	**Netherlands:** Amendments to the Aliens Act 2000 (*in force*).
Council Regulation (EC) No 380/2008 (uniform format for residence permits for third-country nationals)	**Czech Republic:** Law not specified (*in force*)
Schengen Acquis	**Czech Republic:** Law not specified (*in force*)
Council Regulation (EC) no 415/2003 (visas to seamen in transit)	**Latvia:** Amendments to Immigration Law (*in force*)
Council Directive 2005/71/EC (procedure for admitting third-country nationals for the purposes of scientific research)	**Finland:** Aliens Act the 8th of August 2008 in accordance with the Government Proposal (167/2007) (*in force*). **Italy:** Legislative Decree no. 17 (January 9, 2008), G.U. no. 31 (February 6, 2008) **Lithuania:** Amendments to the Law on the Legal Status of Aliens of the Republic of Lithuania. **Luxembourg:** Law of 29 August 2008 on free movement of persons and immigration implements. **Netherlands:** Amendments to Aliens Act Implementation Guidelines

[167] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF
[168] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0023:0029:EN:PDF
[169] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF
[170] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF

EU Legislation	Equivalent National Law (*status*)
	2000. **Slovak Republic:** Act No. 233/2008 Coll. of 22 May 2008 on amending and supplementing Act No.172/2005 Coll. on the Organisation of State Support for Research and Development and on amending and supplementing Act No.575/2001 Coll. on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration as amended (Amendments also made to Act No.48/2002 Coll. on Stay of Aliens – Article 22, paragraph 2 of the Act. **Sweden:** No Law Specified (*in force*).
Council Directive 2003/109/EC (status of third country nationals who are long-term residents of another Member State of the European Union)	**Belgium:** Royal Decrees of 07.05.2008 and two Royal Decrees of 22.07.2008. **Spain:** Instruction DGI/SGRJ/04/2008 on the direct application of Council Directive 2003/109/EC (*not yet passed*)
Directive 2003/86/EC (right to the reuniting of families)	**Luxembourg:** Law of 29 August 2008 on free movement of persons and immigration implements. **Slovenia:** International Protection Act (*in force*)
Directive 2004/114 (conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary services)	**Luxembourg:** Law of 29 August 2008 on free movement of persons and immigration implements**.** **Malta:** Legal Notice No. 29 of 2008 - the Conditions of Admission of Third country Nationals for the purposes of Studies Regulations, 2008 (*in force*). **Spain**: Draft Reform Bill (*not yet passed*).
Directive 2004/38/EC (right of citizens of the Union and their family members to move and reside freely within the territory of the Member States)	**Belgium:** The law of 25.04.2007 (*in force*) **Ireland:** Amendments to Regulations 2008 (S.I. No. 310 of 2008) amending the European Communities (Free Movement of Persons) **Italy:** Legislative Decree no. 32 (February 28, 2008), G.U. no. 52 (March 1, 2008) on « Changes and Additions to Legislative Decree no. 30 (February 6, 2007) (*in force*). **Luxembourg:** Law of 29 August 2008 on free movement of persons and immigration implements**.**
Directive 2003/109/EC (status of third country nationals who are long-term residents)	**Luxembourg:** Law of 29 August 2008 on free movement of persons and immigration implements**.** **Spain**: Draft Reform Bill (*to be passed*).
Council Regulation (EC) No. 862/2007 (Community statistics on migration and international protection)	**Lithuania:** Government Resolution of 14 October 2008
Directive 2003/86/EC (Right to Family Reunification)	**Italy:** Legislative Decree 160, (October 3, 2008), G.U. no. 247 (October 21, 2008) entitled « Changes and Additions to Legislative Decree no. 5, (January 8, 2007) (*in force)*
Recommendation of the Commission 2008/355/EC (the text of Article 20 TEC in passports)	**Lithuania:** Amendments to the law defining the form of passports in the Republic of Lithuania.
Council Framework Decision 2002/629/JHA (Combating Trafficking in Human Beings)	**Ireland:** Criminal Law (Human Trafficking) Act (June 2008).

EU Legislation	Equivalent National Law (*status*)
Council Directive 2000/43/EC (principle of equal treatment between persons irrespective of racial or ethnic origin)	**Estonia:** The Estonian Equal treatment Act (11.12.2008) (*in force*).
Council Directive 2000/78/EC (general framework for equal treatment in employment and occupation)	**Estonia:** The Estonian Equal treatment Act (11.12.2008) (*in force*).