



# Organisation of Asylum and Migration Policies in the EU Member States

produced by the

**European Migration Network**

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The purpose of this EMN study is to provide an overview of the organisation of asylum and migration policies in the EU Member States. This includes *inter alia* the institutional context, the Ministries involved, basic laws and regulations and other organisations dealing with immigrants. The reference period of the study was up to December 2008.

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

The EMN Synthesis Report as well as the twenty-four National Reports, upon which the synthesis is based, are available from:

<http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=114>. Several of the National Reports are also available in the Member States' national language, as well as in English. The accompanying Institutional Charts are available from: <http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=124>.

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## Disclaimer

This Study has been produced by the European Migration Network (EMN), and was completed by the European Commission and the EMN Service Provider, GHK-COWI, in co-operation with the 24 EMN National Contact Points (EMN NCPs) participating in this activity. The report does not necessarily reflect the opinions and views of the European Commission, GHK-COWI or of the EMN NCPs, nor are they bound by its conclusions.

## Explanatory Note

The Study covers the reference period up to December 2008 on the basis of the National Reports submitted by EMN NCPs in December 2008 / January 2009.

The 24 EMN NCPs who participated in this activity were from **Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden** and the **United Kingdom**. 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.

The study concerns only the organisation of asylum and migration policies related to third-country nationals from outside the EU. Policies relating to the free movement of EU nationals are not included.

## Executive Summary

The Study on *the Organisation of Asylum and Migration Policies in the EU Member States* was undertaken by 24 of the EMN National Contact Points from **Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden** and the **United Kingdom**. The purpose of the study is to provide an overview of the organisation of asylum and migration policies in the EU Member States. This includes *inter alia* the institutional context, the Ministries involved, basic laws and regulations and other organisations dealing with immigrants. The reference period of the study was up to December 2008.

As outlined in the *Overview of Political, Institutional and Legislative Framework in the EU Member* ([Section 2](#)) asylum and migration are complex issues, involving different aspects of national policies such as *inter alia* law enforcement, social and labour policies, development and international relations. Therefore, they often involve different Ministries, each of them dealing with their own area of expertise and developing their legal framework in their respective area. However, as highlighted in the *Overview of Political and Institutional Framework* ([Section 2.1](#)), in almost all Member States, there are generally three main kinds of Ministries involved in asylum and migration policy formation, namely; the *Ministry of Interior*, the *Ministry of Labour (and Social Affairs)* and the *Ministry of Foreign Affairs*. For the vast majority of Member States, the leading institution for the development of migration and asylum policies, as well as for implementation, is the *Ministry of Interior*. The *Ministries of Foreign Affairs, Labour and Social Affairs*, tend to have a more focussed role. Member States with a Federal structure have, or are more likely to have, some political, policy formulation infrastructure on a regional level also. Integration is either an integral part within the responsibility of the relevant Ministries or covered by a separate Ministry. However, in terms of implementing integration measures, this tends to be managed in a more decentralised way, remaining most of the time within the competence of local and regional authorities/institutions. In many Member States, the role of NGOs tends to be orientated around migrant needs and services to meet those needs, though a few NGOs are influential in the policy formulation process.

With regard to the *legal framework of migration and asylum issues* ([Section 2.2](#)), there are mainly two approaches, Member States either: a) adopt one or two general Acts; or b) develop a series of Acts, each of them dealing with a specific aspect of migration and asylum. All of these Acts are regularly amended, most often in order to transpose EU *acquis*. Some Member States also have references to migration or asylum in their Constitution.

The development of asylum and migration systems may be seen in light of a Member State's own social, political and economic evolution ([Section 3.1 Historical development](#)). Some Member States have been countries of immigration for over a century, whereas others, in particular some of the EU-10+2 Member States, it is a relatively recent phenomenon to which they have had to adapt very rapidly. Many of the EU-15 Member States have, over time, moved from a more law enforcement approach to a more civil approach ([Section 3.2, Development of Member States' Asylum and Migration Policies](#)), including the involvement of various institutions, International Organisations and civil society. In some of the EU-10+2 Member States, asylum and migration policy formulation and implementation is still predominantly a core Home Affairs and law enforcement matter. Conversely, some of the EU-15 Member States tend to have more non-government stakeholders involved in both policy formulation and implementation.

In general, pressure on migration systems often leads to more dynamic asylum and migration policies. Member States are constantly assessing ways to manage their migration systems in an effective and efficient (cost-effective) manner. An example of this includes introducing accelerated asylum procedures.

For some EU-10+2 Member States in particular, accession to democracy and constitutional changes impacted on their asylum and migration policies. Adoptions of EU *acquis* or National and Regional elections were also factors of influence in many Member States. Policy changes were prompted by changes in migratory flows, such as, for example, increasing numbers of asylum applicants and/or third-country nationals and sudden increasing pressure on their migration systems.

Several Member States have undergone changes in institutional setup and introduced institutions or revised the distribution of responsibilities regarding Migration, Asylum and Integration ([Section 3.3, Institutional development](#)), with some Member States in recent years establishing entirely new asylum and immigration systems. In addition to this, there have been some improvements in the protection of asylum applicants and/or refugees and in the surveillance of illegally-residing migrants.

With regard to the *Organisation of Asylum Policies* ([Section 4](#)), the level of homogeneity of Member States' policies is generally higher in asylum than in immigration due to: a) the existence of a more advanced, consistent international regime; and b) the substantial degree of harmonisation required by EU legislation in the asylum field. [Table 3](#) gives an overview of the key institutions and actors involved in the Member States. For almost all Member States, entry and registration of an asylum applicant and his/her travel route is largely attributed to a *Border Guard Agency, Aliens Police* or related Law enforcement variant which will be the first contact point upon entry of an asylum applicant ([Section 4.1, Entry, lodging and registering asylum applications](#)). Similarly, the decision on refusal and on the asylum procedure to be followed is almost always taken by another authority than the *State Border Guards* or the *Aliens Police* ([Section 4.2.1, Refusal and decision on 'types of procedures'](#)). The decision on admission to the asylum procedure and international protection status determination is most often conducted by an asylum institution under the responsibility of the *Ministry of Interior* or *Ministry of Justice*. Thus, in most Member States, the decision on admission and refugee status determination is conducted by a trained asylum officer ([Section 4.2.2, Admission to the accelerated or normal procedure](#)). Legal assistance ([Section 4.2.3, Legal assistance provided to asylum applicants](#)) and *Social support provided to asylum applicants* ([Section 4.2.4](#)) are often channelled through NGOs and International Organisations. Several Member States have special asylum and protection measures for unaccompanied minors ([Section 4.2.5, Unaccompanied minors](#)). Generally, recognised refugees are given a permanent residence or long-term residence permit which is not always the case for holders of subsidiary or other form of complimentary protection and third-country nationals ([Section 4.3, Legal residence](#)). In several Member States, if a person who has been granted international protection wishes to opt for citizenship, several prerequisites need to be fulfilled ([Section 4.4, Integration](#)). For many Member States, asylum applicants are allowed to work ([Section 4.5, Access to the labour market](#)).

The *Organisation of Migration Policies* ([Section 5](#)) first gives an overview of *Entry Procedures* ([Section 5.1](#)), where very few aspects differentiate, due to the progress made in recent years with regard to EU harmonisation in the granting of visas. This is followed by admission and legal residence procedures for third-country nationals ([Section 5.2, Admission and Legal Residence](#)), including integration measures ([Section 5.2.1, Integration measures](#))

and family reunification ([Section 5.2.2](#), *Family reunification*). Regarding the latter, for most Member States, the practice follows from the transposed Council Directive 2003/86/EC on Family Reunification. Access to labour market for third-country nationals is most often demand-driven and employer led. Several Member States have taken steps to attract highly qualified third-country nationals and also have labour market access schemes for low and medium skilled. ([Section 5.3](#), *Access to the labour market*). Following the global economic crisis, some Member States tightened the entry and permit renewal criteria and others have introduced quotas.

Return actions for asylum applicants ([Section 4.6](#), *Return*) are typically a component part of a Member States' overall migration return policy ([Section 5.4](#) *Return*) and [Table 4](#) gives an overview of the different facets of assisted return, outlining the types of incentives offered before and after return and of the management of the programmes. Regarding the operational management and the implementation of assisted return programmes, most Member States cooperate with the IOM.

At national level, the main link between migration and other policy areas ([Section 5.5](#), *Links with other policy areas*) are diverse. For some Member States, the link seems strongest to the external relations and to development aid policies, whilst in others, the inter-disciplinary links are mainly with other internal policies, such as labour migration and integration.

Some of the best practices and lessons learned, in relation to the development of asylum and migration systems, the future developments envisaged and the link between asylum and migration and other policy areas are then outlined ([Section 6](#), *Analysis of asylum and migration systems*). With regard to the development of asylum systems ([Section 6.1](#), *Best practices and lessons learned in relation to development of asylum systems*), most Member States are developing co-operation with specific stakeholders, such as experts, civil society and International Organisations in a more inclusive and comprehensive manner. Broadly, Member States are looking at ways to streamline each step of the asylum procedure from entry to integration or return, in order to close potential gaps and reduce the waiting time for decisions on asylum applicants, in an effective, efficient and safeguarded way. Some Member States envisage changes in their asylum systems and procedures to further improve their efficiency and effectiveness ([Section 6.2](#), *Future developments with regard to asylum*).

Similar to asylum, when it comes to development of migration systems ([Section 6.3](#), *Best practices and lessons learned in relation to development of migration systems*), Member States are co-operating with a broad range of stakeholders and there is a trend towards introducing “one-stop-shop” procedures with the aim to simplify and accelerate their procedures with regard to entry or renewal of residence permits for third-country nationals. Changes envisaged by the Member States ([Section 6.4](#), *Future developments with regard to migration*) to further develop their migration systems and make them more efficient and effective are also outlined. This includes, for example, a new admission policy which *inter alia* seeks to shorten the admission procedures and to merge the residence and work permit.

Finally, Member States are increasingly tending to view asylum and migration policies in a more comprehensive manner and in a “global approach context”, linking it to other policy areas, and trying to maximise the positive contribution of migrants ([Section 6.5](#), *Linking Asylum and Migration with other policy areas*).

## 1. INTRODUCTION

The [European Migration Network \(EMN\)](#)<sup>1</sup> was established through [Council Decision 2008/381/EC](#)<sup>2</sup> 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.

### 1.1. Purpose

As part of the EMN Work Programme 2008, a study on the *Organisation of Asylum and Migration Policies in the EU Member States* was undertaken, including the institutional context, basic laws and regulations, which Ministries are involved, which organisations deal with immigrants (i.e. third-country nationals). The scope of the study was limited with a descriptive focus in order to *inter alia* facilitate the integration of all the National Contact Points of the European Migration Network (EMN NCPs) and it is primarily intended for policymakers, particularly at national and European levels, as well as relevant administrative bodies in the area of asylum and immigration.

Asylum and Migration are complex issues, involving different aspects of the national policies such as *inter alia* law enforcement, social and labour policies, development and international relations. Therefore, they often involve different Ministries, each of them dealing with their area of expertise and developing their legal framework in their respective area. Thus, a general overview is useful to know how migration and asylum policies and practices are organised and which are the applicable laws in each Member State.

The purpose of this Synthesis Report is to provide an overview and highlight, within an EU perspective, the main findings of the National Reports produced by twenty-four of the EMN National Contact Points (EMN NCPs), namely **Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom.**

The reference period for this study is up to the end of 2008. EMN NCPs will, however, be requested to provide updates to their national situation in 2011 and thereafter on a yearly

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<sup>1</sup> More information on the EMN, including its outputs, is available from <http://emn.sarenet.es>.

<sup>2</sup> Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do>.

basis. Since there will be an update every year, it will serve as a useful reference not only for migration and asylum experts and practitioners, but also the wider public.

More detailed information can be found in each National Report, and one is strongly recommended to consult these also, in order to have a comprehensive overview of the situation in a particular Member State.<sup>3</sup>

The content of the study covers the institutional context, basic laws and regulations, the main Ministries involved and the organisations dealing with third-country nationals, asylum applicants and refugees in each Member State. The comparative tables given in this report are a first attempt at organising the different Member State profiles in a synoptic and comparable way. Other comparative tables may be developed in the future 2011 update.

This Synthesis Report is accompanied by a set of “Institutional Charts,”<sup>4</sup> presenting a schematic overview of the institutional framework of each Member State relating to migration and asylum policies. Each of them represents the main actors and their tasks. They also constitute a gateway to find more information, via the hyperlinks, on the various actors.

## 1.2. Methodology

This study addresses only the organisation of EU and Member State asylum and migration policies related to third-country nationals. Policies relating to the free movement of EU nationals are not included, as this is covered by different EU legislation. The methodology is as usually followed by the EMN, in that it does not normally engage in primary research, but rather collects, gathers and evaluates data and information which are already available.

Most of the elements needed to draft this study were publicly available. Therefore, and in accordance with this normal practice, desk analysis was undertaken, mostly based on existing information and studies, including of governmental authorities and/or agencies. Some EMN NCPs (**Finland, Greece, Slovenia**) conducted interviews with colleagues and national network partners to find out more about certain aspects, whilst others (**Austria, Belgium, Bulgaria, Czech Republic, Greece, Latvia, Netherlands, Portugal, Sweden**) relied

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<sup>3</sup> One is also recommended to consult the Annual Policy Reports 2009 available from the EMN website: <http://emn.sarenet.es/Downloads/prepareShowFiles.do;directoryID=125>.

<sup>4</sup> Available from the EMN website: <http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=124>.



primarily on studies, reports and documents from academia, research institutes, think tanks, media, parliament, political parties, NGOs and/or IGOs.

In general, the EMN NCPs did not encounter any obstacles in undertaking the study or in obtaining relevant data. Broad statistics were provided in order to indicate the size of organisations, the size and evolution of the third-country national population and of asylum applications in the Member States.

## **2. OVERVIEW OF POLITICAL, INSTITUTIONAL AND LEGISLATIVE FRAMEWORK IN THE EU MEMBER STATES**

This Section provides a general overview of how the political, institutional and legislative framework is organised, in order to provide the context in which to place the detailed descriptions in the following sections.

### **2.1 Overview of the Political and Institutional Framework**

The distinction between what constitutes the political framework and what constitutes the institutional framework may be broadly divided into, for the former, those entities or offices responsible for the formulation of policy and, for the latter, those responsible for its (operational and practical) implementation. In this Synthesis Report, 'policy' is understood as the strategic development of a course, direction or principle of governmental action in the context of asylum and migration issues. In some cases, the same entity can be responsible for both policy formulation and implementation.

#### **2.1.1 Key Ministries/Institutions**

[Table 1](#) below provides a comparative indicative overview of the key institutions in each of the EU Member States involved in migration and asylum policy formulation. In almost all Member States there are generally three main kinds of Ministries involved in asylum and migration policy formation, namely; the *Ministry of Interior*, the *Ministry of Labour (and Social Affairs)* and the *Ministry of Foreign Affairs*.<sup>5</sup> The institutional framework or policy implementation apparatus tends to be concentrated amongst the departments and other bodies within these three main policy-forming Ministries, although, with regard to asylum and migration policy development, for the vast majority of Member States the *Ministry of Interior* is usually the 'leading' institution. For example, in **Estonia**, the *Citizenship and Migration Board* is one of the main state authorities within the administrative area of its parent Ministry, the *Ministry of the Interior*, which is responsible for policy formulation.

Ministries, such as of *Foreign Affairs* or of *Labour and Social Affairs*, tend to have a more focussed designated role. There are, however, several Member States where the *Ministry of Justice* and its related variants is the principal institution with political responsibility for asylum and migration policy (**Ireland, Hungary, Malta, Netherlands, Sweden**). Another

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<sup>5</sup> The 'general' names for these Ministries are used. In reality, these names vary (e.g. reference to Home Affairs Ministry for the Ministry of Interior).

variant occurs in **Spain**, which attributes principal political responsibility to its *Ministry for Labour and Immigration*. In **France**, a single Ministry, *the Ministry of Immigration, Integration, National Identity and Co-development*, has been formed to integrate migration and asylum issues into a single Ministry, including policy formulation.

In some Member States (**Austria, Belgium,<sup>6</sup> Germany, Portugal, Sweden, United Kingdom**), the responsibility of policy formulation is assigned to the whole government as such, to the extent that the cabinet adopts draft bills or policies developed by a specific “leading” Ministry.

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<sup>6</sup> In Belgium, it falls under a combination of Federal Public Service institutions.

**Table 1: Comparative overview of the key government institutions in each EU Member State, involved in migration and asylum policy formulation<sup>7</sup>**

Institutional Entities Responsible for Policy Formulation	Austria	Belgium	Bulgaria	Czech Republic	Germany	Estonia	Greece	Spain <sup>8</sup>	Finland	France	Hungary	Ireland	Italy	Latvia	Lithuania	Malta	Netherlands	Poland	Portugal	Romania	Slovak Republic	Slovenia	Sweden	United Kingdom	Total
<b>Main Institutions:</b>																									
Ministry of Interior and related variants	X	X	X	X	X	X	X	X	X				X	X	X	X		X	X	X	X	X		X	19
Ministry of Justice and related variants				X							X	X					X						X		4
Government, Ministers, Commissioners - direct involvement	X				X														X					X	4
Ministry of Immigration, Integration, National Identity and Cooperative Development										X															1
<b>Other relevant Institutions:</b>																									
Ministry of Foreign Affairs and related variants (may include Ministry of [International] Development)					X	X		X	X		X		X		X	X	X	X	X		X				12
Ministry of Labour and related variants (may include Trade/Business/Enterprise/Industries, Social Affairs or Labour and Immigration)	X	X	X	X	X		X	X	X		X	X	X	X	X	X	X	X		X	X				18
Ministry of Social Affairs (or 'Welfare,' only)						X								X											2
Inter-agency / Inter-Ministerial body or bodies with migration and or asylum focus				1			2	1		1			1	2				1				2			
Ministry of Housing, Spatial Planning and Environment																	X								1
Local / Municipal / Provincial level involvement		X															X								4
Ministry of Education and Culture											X														1
<b>Federal States</b>	X	X			X																				3
<b>Total ministerial (not Inter-Ministerial) related entities involved</b>	3	3	3	3	4	3	2	2	3	1	4	2	3	3	3	3	4	3	3	2	2	1	1	2	

<sup>7</sup> It is important to note that this table only lists the main institutions, whilst there may be other entities which play a role in policy formation and/or implementation.

<sup>8</sup> In Spain, the main institution is the Ministry of Labour and Immigration, with the Ministry of Interior being one of the other relevant institutions involved.

Even if there is a tendency for a particular Ministry to play a major role in the definition of asylum and migration policies, there is often a concomitant need across most Member States for co-operation with other Ministries on inter-related issues. For example, in **France** the *Inter-Ministerial Committee on Immigration Control* (CICI) was created in 2005, comprising of nine Ministries,<sup>9</sup> which *inter alia* sets out government policy guidelines in areas relating to migratory flows, asylum and co-operative development and every year approves the report to Parliament on government policy on such matters. In **Spain**, the *Comisión Interministerial de Extranjería* (Inter-Ministerial Commission for Alien Affairs) is responsible for analysing, debating and reporting on any proposals from ministerial departments that may have an impact on the approach to alien affairs, immigration and asylum; and the *Consejo Superior de Política de Inmigración* (Higher Council for Immigration Policy) is responsible for co-ordinating the initiatives of the Public Bodies with competences for the integration of immigrants (the State, the Autonomous Communities and the municipalities) and also holds key policy formulating responsibility. The **Czech Republic, Greece, Italy, Latvia and Poland and Slovak Republic** also have inter-agency or inter ministerial co-ordinating bodies in the area of asylum and migration policy, primarily responsible for policy formulation and/or implementation.

Whilst the number of institutions or Ministries with policy formulating responsibility varies across Member States from around one to four, some Member States (**Austria, Estonia, Lithuania, Sweden**) have their asylum and migration policy formulation centralised at the Government level. Other Member States also have a tendency towards policy centralisation, but to a lesser degree, such as the Federal States of **Belgium and Germany**, which are decentralised at regional or state levels, plus **Portugal and United Kingdom**.

Integration is either an integral part within the responsibility of the relevant Ministries (**Austria, Bulgaria, Belgium, Germany, Italy, Finland, France, Malta, Romania, Portugal, Slovak Republic, Slovenia, Spain**) or handled by a separate Ministry (**Czech Republic, Estonia, Latvia, Netherlands, Sweden**). In terms of implementing integration measures, this tends to be managed in a more decentralised way, remaining most of the time within the competence of local and regional authorities/institutions. In this way, through actions at local community level, such authorities can more effectively deal with this aspect of asylum and migration policies. In **Belgium**, for example, integration of third-country nationals falls under the responsibility of the

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<sup>9</sup> Ministre chargé de l'immigration, le ministre de l'intérieur, le ministre chargé des affaires sociales, le ministre de la défense, le garde des sceaux, ministre de la justice, le ministre des affaires étrangères, le ministre de l'éducation nationale, le ministre chargé de l'économie et des finances et le ministre chargé de l'outre-mer.

Communities/Regions. In **Spain**, most sectoral responsibilities related to integration policy (education, active employment policies, housing, healthcare, social services) are with the Autonomous Communities and local bodies.

### **2.1.2 Federal States**

Member States with a Federal structure (**Austria, Belgium, Germany**) are more likely to have some degree of political or policy formulation infrastructure at a regional level. In **Austria**, in the field of migration, many tasks are performed by a variety of actors, on federal, provincial and municipal level. This is especially true for the field of integration, where housing, education, access to the labour market, access to health care, and participation in the social, political and cultural life of society needs to be addressed. In **Belgium**, the position of Minister for Migration and Asylum Policy was created in 2008, with responsibility for supervising the activities of the Immigration Department, Office of the Commissioner General for Refugees and Stateless Persons and the Aliens Litigation Council, as well as for economic migration in consultation with the Minister of Labour. However, as the responsibilities related to migration are spread over various actors, at national level, the Minister has no exclusive competence on all aspects of migration and asylum and has to rely on co-operation with other departments or Ministries at the regional level.

*A Standing Conference of the Federal States' Ministers and Senators of the Interior* in **Germany** regularly takes decisions on the implementation of migration policy in the Federal States (*Länder*). Notwithstanding the fact that these decisions do not yield direct legal consequences, they are binding as political recommendations and are referred to by the legislators at both Federal and state levels.

### **2.1.3 Role of NGOs and International Organisations**

In many Member States, the role of NGOs tends to be orientated around the 'direct' needs of migrants and those benefiting from international protection and the provision of services to meet those needs. A few NGOs are also influential in the policy formulation process (**Belgium, Italy, Netherlands, United Kingdom**). In the **Netherlands**, for example, the *Advisory Committee on Migration Affairs* contributes with legal advice and policy formulation and, similarly, in the **United Kingdom**, *Chatham House* and the *British Refugee Council* are contributing to asylum and migration policy formulation.

The most common types of service provision allocated to NGOs includes the running of Reception Centres and the provision of legal and social counselling services, education and/or vocational training, language and cultural orientation, job training and integration service measures. The *Red Cross* tends to be the most prevalent NGO in Member States with regard to service provision. In **Austria**, however, the running of the initial reception centres for asylum applicants is the responsibility of a private company (European Homecare), including accommodation and overall care. In **Belgium**, reception centres are managed through a combination of public bodies (FEDASIL: Federal Agency for the Reception of Asylum Seekers as coordinating body, Public Centres for Social Welfare) and NGOs (including the Red Cross) and in the **United Kingdom**, through a blend of public, private and NGO bodies.

The UNHCR and the ILO are the most prevalent International Organisations, along with the IOM, with a focus on influencing policy and service provision. In **Belgium**, the UNHCR Representative for Benelux can intervene in every phase of the asylum procedure, with advisory competences, and the *Belgian Committee for Aid to Refugees* is an operational partner of UNHCR. In **Germany**, NGOs such as the Refugee Councils are sometimes represented in so-called “Hardship Commissions,” which, in particular cases, can request the Supreme State Authority to issue a decree granting a residence permit to a third-country national who otherwise would be obliged to leave.

## 2.2 Overview of the Legal Framework in the EU Member States

### 2.2.1 Constitutional law

**Finland, France, Germany, Hungary, Italy, Slovenia** and **Spain** have references to migration or asylum in their respective Constitutions. In **Finland** and **Italy**, for example, the basic rights stipulated by their Constitutions also apply to asylum applicants, whilst in **France**, the right to asylum is reflected in the Preamble to the 1946 Constitution. In **Germany**, the right to seek asylum is enshrined in the constitutional Basic Law. Some limiting provisions were added when the respective Article was revised in 1993, but the right of asylum on grounds of the Basic Law continues to exist alongside Germany’s obligations under international law. In **Slovenia**, human rights are stated in the second chapter of the Constitution, with certain provisions also covering the legal basis of asylum and migration legislation. Article 48 of the Constitution states that foreign citizens and persons without citizenship, who are being prosecuted for advocating human

rights and fundamental freedoms, have the right, within the limits of the law, to refuge. Despite the fact that the concept of refuge is narrower than the concept of international protection, as defined in Slovenian and European legislation on asylum, it still represents the basis for further lawmaking in this field

### **2.2.2 National legislation**

Overall, there are two main different approaches with regard to the legal framework of migration and asylum issues. Member States either: a) adopt one or two general Acts (**Italy, Lithuania, Malta, Netherlands, Sweden, or Spain**); or b) develop a ‘package’ of Acts, each of them dealing with a certain aspect of migration and asylum (**Austria, Czech Republic, Estonia, Germany, Greece, Ireland, Slovak Republic, United Kingdom**). These Acts are regularly amended, also in order to transpose EU Directives. The **Czech Republic** has, for example, the *1999 Act on Residence of Aliens*, the *1999 Act on Asylum*, the *2003 Act on Temporary Protection of Aliens*, the *Act on the Police of the Czech Republic*, amended in 2008, and the *2002 Act on Protection of State Borders*.

In **France**, as far as migration is concerned, the authoritative text was, until 2008, a Decree, dated 2 November 1945, relating to conditions of entry and residence for foreign persons in France. All legislative and statutory texts have, since 2005, been classified into the *Code for Entry and Residence of Foreign Persons and the Right of Asylum (CESEDA)*, which became the authoritative text.

The *Aliens Act of 31 March 2006*, with subsequent amendments according to the EU *acquis*, in **Sweden** was considered one of the most far-reaching reforms in the migration area of modern times. The Act reflected the need for a more transparent asylum process with the notion that appeals should take place in two-party proceedings in court. Accordingly, appeals are heard by the recently established *Migration Courts*, which is meant to instil greater trust in the process and guarantee sufficient procedural safeguards for asylum applicants. Grounds for protection were also given greater prominence, making it easier to gain an overview of the reasons for which residence permits have been granted to people for protective reasons.

The **United Kingdom**, in recognition of the complexity of its body of laws and practices, is in the process of replacing all existing immigration Acts with a clear, simplified Act. New, clearer



Immigration Rules and necessary secondary legislation will also be introduced, replacing the existing legislation.<sup>10</sup>

### 2.2.3 EU legislation

In general, most Member States merely provided a list of transposition measures adopted so far without elaborating on the implementation of EU legislation. In **Germany**, for example, the *2005 Residence Act* and other acts and ordinances were amended by means of an *EU Directives Implementation Act*, transposing 11 EU directives into German law.

The Protocol on the position of the **United Kingdom** and **Ireland** annexed to the Treaty on European Union and to the Treaty establishing the European Community by the Treaty of Amsterdam, stipulates that these Member States do not participate in the adoption by the Council of proposed measures pursuant to Title IV of the EC Treaty, unless they specifically notify the Council that they do wish to take part in a certain measure. According to the Lisbon Treaty, which came into force on 1<sup>st</sup> December 2009,<sup>11</sup> **Ireland** and **United Kingdom** have the right to decide to participate or not to participate in any policies in the entire field of justice and home affairs.

In practice, once a proposal for legislation in the area is presented, **Ireland** and the **United Kingdom** have three months to decide on its adoption. The proposal could then be adopted by the other Member States without their participation. After adoption of legislation, in cases which proceed without participation of **Ireland** and/or the **United Kingdom**, either of the two Member States may then choose to participate at a later date and with the approval of the European Commission and Council. [Table 2](#) below provides an overview of the current situation. **Ireland** participates when measures do not compromise the *Common Travel Area*<sup>12</sup> with the **United Kingdom**. As a result of this agreement, the development of asylum and immigration systems in **Ireland** is considered to have been influenced more by the existence of this *Common Travel Area* than the *EU acquis*. On immigration, the main influence of European law has been in the context of illegal immigration and border control management.

Although **Ireland** is not a Schengen state, it is party to measures related to Schengen police and judicial cooperation in criminal matters. **Ireland** also participates with observer status on

<sup>10</sup> The Borders, Citizenship and Immigration Act 2009, which received Royal Assent on 21 July 2009.

<sup>11</sup> It is worth mentioning here that Denmark does not participate in Justice and Home affairs matters, but also has the right, under the new Treaty, to decide or not to take part in certain policies.

<sup>12</sup> Information available from <http://www.ukvisas.gov.uk/en/ecg/commontravelarea>.

FRONTEX. As a non-Schengen country the **United Kingdom** is also excluded from full participation in FRONTEX and the Visa Information System (VIS). It does, however, support Member States' efforts to strengthen the external borders through deploying experts and through its participation in projects such as the European Surveillance System (EUROSUR). It also completed the phased roll-out of its global visa biometric programme in December 2007, which stores all visa applicants' fingerprints and a digital photograph as part of the application process. Collected biometrics are checked against the Immigration and Asylum Fingerprint System (IAFS). The **United Kingdom** also coordinates with Schengen states on co-funded projects in countries of origin targeting illegal migration.

EU legislation has had a more significant impact on **Ireland's** asylum system, as in general they participate in a number of EU instruments related to asylum. Both **Ireland** and the **United Kingdom** are signatories to the Dublin Convention and also participate in the Dublin II Regulation and the Eurodac Regulation.

**Table 2: Overview of the EU asylum and immigration *acquis*<sup>13</sup> that Denmark, Ireland and the United Kingdom have not participated in the adoption**

EU legislation	Member States who decided not to participate in the adoption
<b>Asylum</b>	
<a href="#">Directive 2001/55/EC (Temporary Protection)</a>	Denmark, <b>Ireland, United Kingdom</b>
<a href="#">Directive 2003/9/EC (Reception Conditions)</a>	Denmark, <b>Ireland</b>
<a href="#">Directive 2004/83/EC (qualification international protection)</a>	Denmark
<a href="#">Directive 2005/85/EC (minimum standards refugee status)</a>	Denmark
<b>Immigration</b>	
<a href="#">Directive 2002/90 (unauthorised facilitation)</a>	Denmark
<a href="#">Directive 2001/40/EC (MR of exp. decisions)</a>	Denmark
<a href="#">Directive 2001/51/EC (carriers liability)</a>	Denmark, <b>Ireland</b>
<a href="#">Directive 2002/90/EC (unauthorised entry facilitation)</a>	Denmark
<a href="#">Directive 2003/86/EC (Family Reunification)</a>	Denmark, <b>Ireland, United Kingdom</b>
<a href="#">Directive 2003/110/EC (removal by air)</a>	Denmark, <b>Ireland, United Kingdom</b>
<a href="#">Directive 2003/109/EC (long-term residence)</a>	Denmark, <b>Ireland, United Kingdom</b>
<a href="#">Directive 2004/81 (victims of trafficking)</a>	Denmark, <b>Ireland, United Kingdom</b>
<a href="#">Directive 2004/114/EC (students)</a>	Denmark, <b>Ireland, United Kingdom</b>
<a href="#">Directive 2005/71/EC (researchers)</a>	Denmark, <b>United Kingdom</b>
<a href="#">Directive 2008/115/EC (Return)</a>	Denmark, <b>Ireland, United Kingdom</b>
<a href="#">Directive 2009/50/EC (Blue card)</a>	Denmark, <b>Ireland, United Kingdom</b>
<a href="#">Directive 2009/52/EC (Employer sanctions)</a>	Denmark, <b>Ireland, United Kingdom</b>
<b>External Borders</b>	
<a href="#">Directive 2004/82/EC (Passenger Data)</a>	Denmark
<a href="#">Regulation 562/2006 (Schengen Borders Code)</a>	<b>Ireland, United Kingdom</b>
<a href="#">Regulation 1931/2006 (Local border Traffic)</a>	<b>Ireland, United Kingdom</b>
<a href="#">Regulation 2007/2004/EC (Frontex)</a>	<b>Ireland, United Kingdom</b>
<a href="#">Regulation 863/2007/EC (RABITs)</a>	<b>Ireland, United Kingdom</b>
<a href="#">Regulation 444/2009/EC (Travel documents)</a>	<b>Ireland, United Kingdom</b>
<b>Visas</b>	
<a href="#">Council Decision 2004/512/EC (VIS)</a>	Denmark, <b>Ireland, United Kingdom</b>
<a href="#">Regulation 1987/2006/EC (SIS)</a>	Denmark, <b>Ireland, United Kingdom</b>
<b>EU funding</b>	
<a href="#">Council Decision 2007/435/EC</a> (European Fund for the Integration of third country nationals)	Denmark
<a href="#">Decision 573/2007/EC</a> (European Refugee Fund)	Denmark
<a href="#">Decision 574/2007/EC</a> (External Borders Fund)	Denmark, <b>Ireland, United Kingdom</b>
<a href="#">Decision 575/2007/EC</a> (European Return Fund)	<b>Ireland, United Kingdom</b>

<sup>13</sup> The consolidated *acquis* is available from [http://ec.europa.eu/home-affairs/doc\\_centre/intro/doc\\_intro\\_en.htm](http://ec.europa.eu/home-affairs/doc_centre/intro/doc_intro_en.htm).

### **3. DEVELOPMENT OF ASYLUM AND MIGRATION SYSTEMS**

This section includes a brief comparative overview of the developments of asylum and migration systems and policies in the Member States, according to their own relevant social, political and economic evolutions.<sup>14</sup>

#### **3.1. Historical development**

Broadly three types of Member States can be identified. Firstly, several Member States (typically EU-15) have longstanding traditions with immigration, including the arrival of people seeking asylum. A second group of Member States, principally EU-10+2, have had to adapt to increased levels of immigration in particular after accession to the EU. A third and last group concerns Member States which have witnessed a transformation from being mainly an emigration country to becoming an immigration country, with immigration steadily increasing from 2002.

##### ***3.1.1 Member States with long immigration traditions***

Member States, such as **Austria**, **France**, **Germany** and the **United Kingdom**, have been countries of immigration for over a century. **Austria** was a country of origin, transit and destination for many migrants, especially since the Cold War era, due to its geographic location. It also has a long history of economic migration, starting with the guest worker programmes with Turkey and Former Yugoslavia, which brought family reunification as well. As a country of refuge, **Austria** has a long history with major flows of refugees from **Hungary**, Former Czechoslovakia, **Poland**, Former Yugoslavia, Russia and Afghanistan. In the beginning of 2008, 1.42 million inhabitants had a migration background, representing 17.3% of the total population. Among these, 854 752 did not possess Austrian citizenship, bringing the share of foreign nationals (EU and non-EU nationals) of the total population to 10.3%. Moreover, **Austria** is one of the EU countries with the highest immigration rates in proportion to its population size.

**France**, from 1850 and for over a century, has experienced high levels of immigration. From 1945 onwards, two consecutive periods can be highlighted. The first was the “Trente Glorieuses” (Glorious Thirty) (1945-1974). Priority was given to reconstruction of the country

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<sup>14</sup> See also the "Overview of Immigration History and Development" Section of the National Reports for the EMN study on "Impact of Immigration on Europe's Societies," available from <http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=16>.

and the years of strong growth, which resulted in a significant need for workers. As the “*classes creuses*” (age groups depleted by low birth rate) of the French population could not meet this need, migrants from the Maghreb (Morocco, Algeria and Tunisia), from the Iberian Peninsula and, to a lesser extent, from Sub-Saharan Africa and Turkey were welcomed. Immigration was, therefore, primarily of an economic character. The second period was from 1974, the year which, in principle, saw the cessation of economic migration, and new challenges appeared. From the time the oil crisis occurred in that year, the international economic environment changed. Against this background, in 1974, **France** ceased to rely on foreign labour and began to change its immigration policy. Since then, the accent has been placed on controlling migratory in-flows (“*migration choisie*”) and on the integration of non-nationals into society.

**Germany** also has a long history of immigration. Between 1945 and 1949, nearly 8 million German refugees and persons displaced by the World War II went to the western occupied zones, while approximately 3.6 million went to Soviet-occupied East Germany. The founding of the Federal Republic of **Germany** in 1949 led to mass migration from East to West Germany. Until the Berlin Wall was erected in 1961 approximately 3.5 million people had crossed the intra-German border to remain permanently in the Federal Republic of **Germany**. Following an economic boom, migrant workers were recruited between 1955 and 1973 through recruitment agreements between **Germany** and **Italy** (1955), **Spain** and **Greece** (1960), Turkey (1961), Morocco (1963), **Portugal** (1964), Tunisia (1965) and Yugoslavia (1968). In 1960, 1.3% of the workforce consisted of non-nationals. This percentage had risen to 11.9% by 1973. Until the beginning of the 1980s, asylum played a quantitatively smaller role and consisted primarily of refugees from the former Eastern Bloc countries. From the mid-1980s onwards, asylum became a major migration category in **Germany**.

Following labour shortages in the **United Kingdom** after the World War II, there was large-scale immigration from its Commonwealth countries between the late 1940s and early 1960s. During the 1970s and 1980s, rules on family settlement became tighter. By the mid-1980s the first visa controls had been imposed on Commonwealth citizens and in 1987 the first carrier sanctions were introduced. Until the recent global economic crisis, recent years had seen a general upturn in demand for labour. In 1997, 43 700 work-permit holders were issued, and by 2007 this figure had risen to 86 300.

### *3.1.2 Member States which joined the EU in 2004 and 2007 (EU-10+2)*

In several of the EU-10+2 Member States, immigration is a relatively recent phenomenon to which they have had to adapt very rapidly. Examples include the opening of the borders at the end of the communist era and/or the formal accession to the EU, triggering the expansion of immigration for most of them. **Estonia** and **Latvia** still have challenges deriving from internal migration in the former USSR. During approximately 50 years (between 1945-1988) about 500 000 migrants settled in **Estonia** from the former regions of the Soviet Union, making up ca 35% of the total population of **Estonia** by 1989. In the **Czech Republic** and **Slovak Republic**, migration has undergone dramatic changes in the last two decades. Until 1989, the former Czechoslovakia had only limited experience with immigration. After the end of communist era, state policies dealing with asylum and migration were substantially modified and a more open approach towards migration was adopted. The number of non-nationals living in the **Czech Republic** has been increasing continuously, as well as in the **Slovak Republic**. In January 1993, when the **Czech Republic** was founded, there were around 50 000 non-nationals, increasing in 2008 to 400 000.

At the beginning of the 1990s in **Hungary**, among other migrant and refugee flows, the armed conflicts in Yugoslavia led to a substantial inflow of displaced persons seeking international protection. The government made a political decision to admit these asylum applicants on humanitarian grounds. Most of them were granted temporary protection. This new wave of immigrants made it clear that **Hungary's** situation had changed and that new challenges, relating to the higher in-flows of migrants and the need to further adapt to international law, had to be addressed.

### *3.1.3 Member States which traditionally were emigration countries*

**Ireland, Italy, Greece, Malta** and **Spain** do not have a long history of immigration. **Ireland**, for example, following a long history of emigration, witnessed a dramatic reversal of the situation in the mid-1990s, when its economy was booming. From around 1996 onward, immigration accelerated significantly, with the numbers of new asylum applications and of non-EU/EEA immigrants peaking in 2002. After 2004, new highs were reached in overall immigration, driven mainly by nationals from EU-8 Member States, particularly **Poland** and **Lithuania** following enlargement, which counted for more than 40% of the immigration flow between 2005 – 2007. In 2007 – 2008 immigration was still significant but reduced, largely due to decreased immigration from EU-10 Member States nationals.

Similarly, **Italy** has also experienced a transformation from being a traditional emigration country in the first half of the 20<sup>th</sup> century, to becoming country of immigration. This started to be visible in the mid-1970s and continued throughout the 1980s (and in 1986 the first Immigration Law was adopted). The number of immigrants (both EU citizens and third-country nationals) reached half a million in 1987. Ten years later, the number was more than one million (including EU citizens from EU-10 Member States). In the subsequent years, the number of immigrants steadily increased from 1.5 million (2002) to around 4 million (2008).

For most of the 20<sup>th</sup> century, **Greece** had traditionally also been an emigration country. This situation has now changed, with the Member State hosting more than one million third-country nationals, accounting for nearly 10% of its resident population.

**Malta**'s history in the area of migration is characterised by particularly large emigration flows between the mid 1950s and the 1980s, mainly to Australia, the United States, Canada and the **United Kingdom** and, on the other hand, immigration from Yugoslavia, Iraq and Albania in the early 1990s. The year 2000 marked an important milestone for asylum, as a legal instrument on asylum was introduced for the first time. A marked change also occurred in 2002, as migrants from Africa started entering illegally in large numbers. During 2001, for example, less than 100 migrants entered the island illegally by boat. In 2002, this figure had increased to 1 686 and to 2 636 in 2008. **Malta** decriminalised illegal entry in December 2002, although migrants who enter illegally are still subject to administrative detention.

From the 1990s onwards **Spain** also moved from being a country of emigration to a country of immigration. This was *inter alia* due to the Member State's strong economic development and increased domestic labour demand.

### 3.2 Development of Member States' Asylum and Migration Policies

This section presents the main factors of development of Member States' Asylum and Migration Policies. These can be summarised as follows: a) A more inclusive approach to policy making; b) Changes in migration flows and particular pressures; c) Dynamic legislative area; d) The *EU acquis* and e) Domestic policy shifts/reforms.

### 3.2.1 A more inclusive approach to policymaking

Overall, EU-15 Member States tend to have more actors involved in both policy formulation and implementation, although the degree of inter-ministerial cooperation may be relatively low. Over time, they have moved away from a ‘law enforcement’ focus in the 1980s and 1990s, towards a more ‘inclusive’ and civil approach, involving various institutions, International Organisations and civil society. The general approach in EU-10+2 Member States is for asylum and migration policy formulation and implementation to be predominantly a ‘core’ Home Affairs / Interior and law enforcement matter, primarily implemented by police and / or border guard authorities.

### 3.2.2 Changes in migration flows and particular pressures

The dynamic developments of asylum and migration policies are often a result of pressure on the Member States’ migration systems. Policies are often introduced as a way to manage migration in a more effective and efficient (cost-effective) manner. This has *inter alia* been the case with regard to the introduction of carrier liability and accelerated asylum procedures for manifestly unfounded applications.

In general, immigration and asylum flows have increased over time, with the flow of asylum applications more variable. **Ireland** has observed a tenfold increase in asylum applications during the period 1996-2002 with 11 600 applications in 2002. Since the peak in 2002, however, the number of asylum applicants has been declining and, since 2005, the number is relatively stable at approximately 4 000 - 5 000 per year. As a result, immigration and asylum systems were burdened in particular up to 2002 and necessary structures for processing asylum applications had to be rapidly put in place. The approach was to focus on addressing the asylum situation first and even now, most immigration related provisions remain on an administrative, rather than a legislative basis. Draft legislation has been produced, designed to remedy this situation.<sup>15</sup>

**Austria, Belgium, Germany, Greece, Italy, Malta, Netherlands, Slovenia, Sweden** and the **United Kingdom** also experienced significant increases in asylum and immigration flows and in particular in the 1980s and 1990s. What is considered significant in one Member State may, however, be different from what is regarded as significant in another Member State. In **Germany**, for example, in 1985, the number of asylum applicants increased dramatically and continued to increase from 1988 (103 000 applications) onward. The peak for asylum applications (approximately 438 000) occurred in 1992. Since 1998, the number of first-time

<sup>15</sup> Cf. The *Immigration, Residence and Protection Bill* of 2008.



asylum applicants has been less than 100 000 per year. For some years now, asylum applicants are no longer significant in quantitative terms, reaching, in 2007, the lowest number (19 164) since 1983. Since then, however, the number of first-time applications shows an upward trend again, with more than 22 000 in 2008 and almost 28 000 in 2009. **Sweden** also had sharp increases in asylum applications in the 1980s and early 1990s, as well as more recently. In 2007, 36 207 people sought asylum in Sweden of which about half of the applicants were from Iraq.

Those Member States with the highest pressure of asylum applicants and immigrants tend to be **France, Germany, Greece, Italy, Malta** and the **United Kingdom**. Of these Member States, **Greece, Italy** and **Malta** continued to witness significant increases in immigrants arriving illegally, often by sea. **Austria, Slovenia** and **Slovak Republic**, as well as **Sweden**, experienced periodic increases of migration flow, in particular in the framework of family reunification with migrants from the former Republic of Yugoslavia.

### ***3.2.3 Dynamic areas of policy***

Asylum and (im)migration are particularly dynamic areas of policy, due to various factors, reflecting the dynamic nature of asylum and migration itself. There have also been dynamic legislative and practice changes following, for example, increased labour needs.<sup>16</sup> In the **Czech Republic** and **Lithuania**, for example, there has been a steady growth of migrants – for the former primarily for labour purposes and for the latter for family reunification. **Bulgaria** has also had to implement changes to its legislative system, as the Member State is evolving from being mainly a transit country in the past, to now becoming a country of destination for immigrants.

### ***3.2.4 The EU acquis***

Naturally, EU policies and *acquis* have influenced the development of Member States' immigration and asylum policies, with the prospect of EU and Schengen membership in many cases leading to significant changes to national asylum and migration policies (**Austria, Bulgaria, Greece, Hungary, Romania, Slovenia, Spain**).

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<sup>16</sup> For further information one is recommended to consult the EMN Study 2010 on “Addressing labour shortages in the EU Member States through migration”, which will be available from the EMN website: <http://emn.sarenet.es>.

### 3.2.5 Domestic policy shifts/reforms

In several of the EU-10+2 Member States (**Hungary, Poland, Romania, Slovak Republic**), constitutional changes and/or reforms, from Communist ruling to EU accession, have had the most significant influence on asylum and migration policy.

In **Belgium, Portugal** and **Spain**, policy shifts occurred following both national and regional elections, leading either to more restrictive or liberal policies in the field. In **Belgium**, for example, this was the case in 1989 when a *Royal Commissioner for Immigrants' Policy* was appointed for the first time, following a large electoral gain for the far right and pressure from society, e.g. increases in racial violence, also contributed to changes in this policy area.

In **France**, the financial crisis following the oil crisis in 1974 led to changes to their immigration policy. A general ban on new admissions for working purposes was enacted, which is still in force.

## 3.3. Institutional Development

Changes to the institutional setup, to ensure better management and implementation of migration and asylum policies, occurred in several Member States. Amongst others, the following key factors are identified: a) A higher focus on improving the asylum and migration system with institutional reforms; and b) A higher focus on integration.

### 3.3.1 Improving asylum and migration system / institutional reforms

In recent years, the introduction of new institutions with responsibility for migration and/or asylum can be found in several Member States (**Bulgaria, Estonia, Finland, Hungary, Ireland, Latvia, Malta, Poland**). **Malta**, for example, established the *Office of the Refugee Commissioner* in 2001, which has taken over the responsibility for refugee status determination from the UNHCR. In **Ireland**, the focus was initially on setting up structures for the processing of asylum applications, leading to the establishment of the *Office of the Refugee Applications Commissioner and the Refuge Appeals Tribunal*. In 2002, **Italy** simplified its procedures by creating a new 'Protection System' for the reception of asylum applicants and refugees and Territorial Commissions for the recognition of the refugee status. In **Portugal**, the *Portuguese Refugee Council* was created. **Austria, Finland, Poland** and **Sweden** made changes to their

appeal systems, like, for example, **Austria**, when in 2008 the *Asylum Court* replaced the *Independent Federal Asylum Senate* and became a court of last resort, with the legal remedy to the *Administrative Court* abolished.

In **Belgium**, the Federal government set up a Federal agency for the reception of asylum applicants in 2001 and in **Romania**, a new organisation responsible for immigration has been created. In **Spain** a new *Ministry of Labour and Immigration* was set up during the first mandate of the Zapatero government which started in 2004.

In order to support policymaking on migration in **Germany**, the *Federal Office for Migration and Refugees* – a Federal Office conducting all asylum-related proceedings – operates as a centre of excellence for migration, integration and asylum. Since 2005, it was assigned a number of additional duties, including the implementation of integration courses, the overall promotion of integration and providing migration-specific consultation and migration research. With regard to illegal migration, a *Joint Analysis and Strategy Centre for Illegal Migration* has become fully operational.

In **Greece**, an independent *Asylum Service* within the *Ministry of Citizen Protection* is currently being set up with the aim to ensure the full implementation of the *European Charter of Human Rights* and the *1951 Geneva Convention*. **Greece** also established the *Inter-ministerial Committee on Monitoring of Migration Policy* and a *Consultancy Committee on Migration*.

There have been other institutional changes to ensure the stricter surveillance of illegal immigration, including the introduction of closed detention centres, introduced in **Bulgaria** in 2006, and improved organisation of border control in, for example, the **Czech Republic**.

In 2008, the **United Kingdom** asylum and immigration system was reformed and a new *UK Border Agency* was set up with the objectives of strengthening the national borders and building an immigration system that is fair, effective, transparent and trusted. This also led to a strengthened focus on accelerated asylum procedures, facilitating labour immigration and building a migration and asylum system which aims to be more effective, transparent and trusted.

In **Finland**, a partial legislative and organisational reform has fundamentally changed the structures of its asylum and migration system. The *Directorate of Immigration*, an independent agency under the *Ministry of Interior*, became the *Finnish Immigration Service* in January 2008.

In **France**, a major overhaul of the institutional governance of migration was implemented between 2005 and 2007 with the creation of the *National Agency for the reception of Foreign Nationals and Migration (ANAEM)* and of the *Inter-ministerial Committee on Immigration Control (CICI)* first; and in a second stage with the creation of a separate *Ministry of Immigration, Integration, National Identity and Cooperative Development (MIINDS)*.

In **Ireland**, after years of focus on asylum, the priority began to shift in 2004 - 2005 towards immigration, visas and citizenship. In March 2005, the *Irish Naturalisation and Immigration Service (INIS)* was established to provide a “one-stop-shop” for immigration, asylum, visas and citizenship services. **Lithuania** has established a *Commission for Economic Migration Affairs* to promote *inter alia* return migration and labour migration.

### 3.3.2 Higher focus on Integration<sup>17</sup>

**Belgium** created a *Commission for Intercultural Dialogue* in 2004 and the Flanders region established its first Minister for Integration in the same year. This was, to a large extent, due to racial tensions in society. In **Germany**, since 2005 the *Commissioner for Integration* has been given increased authority, with the incumbent assigned as a Minister of State within the Federal Chancellery and thus having direct access to the Cabinet. **Finland** has created a special *Department for Integration* in 2008. In **Malta**, the *Organisation for the Welfare and Integration of Asylum Applicants (OIWAS)* was created in 2007, and in **Slovak Republic** the *Ministry of Labour* has created a *Department of Migration and Integration of Foreigners* in 2007. Regarding the latter, many responsibilities still rest with the *Ministry of Interior*. In **Spain**, the promotion of an integration strategy for immigrants has been one of the main lines of action of the Government, through the development of a Strategic Plan for Citizenship and Integration 2007-2010 (Plan Estratégico de Ciudadanía e Integración), which acts as a co-operation framework for joint action by all actors responsible for integration policies aimed at the immigrant population, including both public bodies and civil society. In **Sweden**, the responsibility for integration issues was transferred to a new agency, the *Integration Board*. This was, however, dissolved in 2007 and some of its tasks were returned to the *Migration Board* and to the *County Administrative Boards*.

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<sup>17</sup> With the exception of integration measures as a prerequisite to admission/residence/citizenship integration were not *per se* part of the study and the specifications. Hence, only some Member States have addressed integration measures in their National Reports.

## **4. ORGANISATION OF ASYLUM POLICY**

In procedural terms, and as illustrated in [Table 3](#) below, the level of homogeneity of Member States' policies is generally higher in the asylum field than in the immigration field. This is essentially due to: a) the existence of a more advanced, consistent international regime; and b) the substantial degree of harmonisation required by EU legislation in the asylum field.

### **4.1 Entry, lodging and registering asylum applications**

In most Member States, entry and registration of an asylum applicant and his/her travel route is attributed to a *Border Guard Agency*, *Aliens Police* or related Law enforcement variant which will be the first contact point upon entry of an asylum applicant. In most cases, the *Border Guards* will register the claim of the asylum applicant, his/her identity and travel route. From this point onwards, the asylum applicant will normally be referred to the Admission procedure and for determination of the refugee claim under either an accelerated or normal procedure.

### **4.2 Admission Conditions**

#### ***4.2.1 Refusal and decision on 'types of procedures'***

In all Member States, except from **Estonia** and **Greece**, the decision on refusal and on the asylum procedure to be followed is taken by an authority other than the State Border Guards or the Aliens Police. In **Estonia**, the *State Border Guards* are authorised to reject an asylum application at the point of entry, if there is 'clear basis' for refusal. If not, the application is forwarded to *Citizenship and Migration Board* for an eligibility assessment. In **Greece**, the *Aliens Police Services* are authorised to decide on whether an accelerated procedure or the normal procedure is to be applied.

In **Germany**, entry can only be refused when there are sufficient grounds, such as, for example, when the foreigner enters from a 'safe third country'. In this case, Border Agencies may turn away the foreigner at the border or return him/her after illegal entry.

#### ***4.2.2 Admission to the accelerated or normal procedure***

In almost all Member States, the decision on admission to the asylum procedure and international protection status determination is conducted by an asylum institution under the responsibility of the *Ministry of Interior* or *Ministry of Justice*. Thus, in most Member States, the decision on admission and refugee status determination is conducted by a trained asylum officer. Only a few Member States involve NGOs, International Organisations (such as UNHCR) or independent judicial bodies during the first instance of the asylum adjudication. [Table 3](#) below gives an overview of the institutions and actors involved.

**Table 3: Comparative overview of the key institutions and actors in each EU Member State involved in the Asylum Procedure**

Institutions and Actors	Austria	Belgium	Bulgaria	Czech Republic	Germany	Estonia	Greece	Spain	Finland	France	Hungary	Ireland	Italy	Latvia	Lithuania	Malta	Netherlands	Poland	Portugal	Romania	Slovak Republic	Slovenia	Sweden	United Kingdom	Total	
<b>a) Entry Procedure (information on arrival, lodging and registering the asylum claim)</b>																										
Border Agency and Law Enforcement institution	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X		
Immigration Service/Asylum Institutions	X	X		X	X							X									X		X			
Involvement of NGO/International Organisation <sup>18</sup>	X																									
<b>b) Admission Procedure (decision on applicable procedure and refugee status determination (1st instance))</b>																										
Border Agency and Law Enforcement institution <sup>19</sup>						X	X																	X		
Immigration Service/Asylum Institution			X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Federal Asylum Office (Asylum Institution)	X	X			X																					
Involvement of NGO/International Organisation		X			X								X								X					
Involvement of Magistrates, Courts or judicial bodies		X																				X				
<b>c) Appeals Procedure (2<sup>nd</sup> and 3<sup>rd</sup> instance)</b>																										
Ministry (purely administrative discretion)				X			X					X				X										
Quasi-judicial body <sup>20</sup>		X	X			X			X	X						X	X	X		X				X		
Involvement of Magistrates, Courts or judicial bodies	X	X		X	X	X		X		X			X	X	X		X	X	X		X	X	X	X		
Involvement of NGOs/International Organisations		X											X								X					

<sup>18</sup> This refers to direct and formal involvement in the asylum procedure.

<sup>19</sup> Authorised institution to decide on Refusal to Admission Procedure and/or Authorised to decide on the applicable procedure (i.e. to refer an applicant to either the normal procedure or the manifestly unfounded/accelerated procedure).

<sup>20</sup> A quasi-judicial body is an individual or organization which has powers in a specific area resembling those of a court of law or judge and able to remedy a situation or impose legal penalties on a person or organization. It could *inter alia* be a Refugee Appeals Board comprising of a Judge and representatives from different institutions.

### 4.2.3 Legal assistance provided to asylum applicants

In some Member States, free legal assistance, paid for by the Member State, is provided to asylum applicants, either during the asylum application process (e.g. the interview) or when their case is rejected in first instance. Such legal assistance is mainly channelled through NGOs or International Organisations, such as the UNHCR. In **Austria**, for example, legal advisors are assigned by the *Ministry of the Interior*, to assist asylum applicants during the admission procedure, leading up to the asylum procedure. Legal assistance is, in the actual asylum procedure, provided by NGOs, such as the *Counselling Centre for Migrants*, *Caritas*, *Diakonie Flüchtlingsdienst*, *Austrian Red Cross*, *Volkshilfe Austria*. The *Network Asylum Advocate*, co-financed by UNHCR, provides qualified legal representation.

In **Spain**, the asylum applicants are granted the right to legal counselling, which is provided free of charge by the administrative authority if the applicant does not have sufficient financial resources. In **Sweden**, all asylum applicants are entitled to legal assistance by an appointed attorney, who is paid for by the Migration Board. There are two exceptions: when the application is obviously unfunded, or if the application for asylum is clearly expected to be approved in the first instance.

In the **United Kingdom**, funding for legal assistance is available both in relation to an initial application (i.e. for asylum) and for any subsequent appeal of a negative decision by the *UK Border Agency*. Funding in relation to an initial application is contingent on the client passing a means test and also the case having sufficient benefit to the client to warrant funding.<sup>21</sup> Funding can be granted for an appeal where the client not only passes the means test, but also where the provider of legal assistance assesses that the client's appeal has a moderate or better chance of success (above 50%). Funding can also be granted where the merits are believed to be unclear or borderline (50:50) but the case concerns the life, liberty or physical safety of the client or his or her family, or the case raises significant issues of human rights; or the case has a significant wider public interest.<sup>22</sup>

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<sup>21</sup> Legal advice is provided by organisations that are accredited under the Immigration and Asylum Accreditation Scheme (IAAS), and that have a contractual relationship with the UK's Legal Services Commission (LSC). The decision about whether or not a case merits funding is made by a representative of the respective organisation.

<sup>22</sup> Negative decisions based on merits can be appealed to the LSC, which will refer the matter to an Independent Funding Assessor. Negative decisions based on means are final.



#### ***4.2.4 Social support provided to asylum applicants***

Social support offered to asylum applicants is, in most Member States, provided through Reception Centres, which are mostly run by NGOs. In addition to housing, Member States also provide state allowances to asylum applicants in terms of pocket-money, access to healthcare and schooling for children during the admission phase. In **Greece**, the *Ministry of Health* is in charge of the reception and accommodation of needy asylum applicants at specially designed Hospitality Centres. Asylum applicants who do not have a proper place of residence or the necessary financial means to cover residence expenses can stay at such centres. In **Spain**, the Ministry of Labour and Immigration is responsible for the reception centres (*CAR - Centros de Acogida a Refugiados*). These public centres offer accommodation, board and psycho-social support to applicants who do not have sufficient economic resources and whose asylum application has been accepted for processing. In **Sweden**, the Migration Board is responsible for running the reception centres, whereas in **Germany**, the establishment of reception centres and the accommodation of asylum applicants are the responsibilities of each Federal State.

#### ***4.2.5 Unaccompanied minors***<sup>23</sup>

In **Austria**, the legal advisors and the ‘Youth Welfare Authority (Provincial)’ legally represent unaccompanied minors during the asylum processing. **Belgium** also has special measures and a guardianship system. In **Poland**, unaccompanied or separated minors are referred to a temporary shelter as per recommendations by the UNHCR, UNICEF and the International Committee of the Red Cross (ICRC). Similarly, **Finland** has established special centres for accommodating unaccompanied minors during the Admission procedure. In the **Netherlands**, special attention is given to unaccompanied minors through NIDOS and plans are underway for faster asylum procedures.<sup>24</sup> In the **United Kingdom**, applications from unaccompanied minors are dealt with by case workers at the *UK Border Agency* who have received special training with regard to child protection. Furthermore, interviews are conducted in the presence of a responsible adult accompanying the child.

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<sup>23</sup>For further details and a complete overview on the Member States special policies with regard to unaccompanied minors, please refer to the EMN Study on "*Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors – an EU comparative study*" available at the EMN website: <http://emn.sarenet.es/Downloads/prepareShowFiles.do; directoryID=115>.

<sup>24</sup> This information was not in the **Netherlands** National Report but has been added given its relevance.

### 4.3 Legal Residence

In general, and according to the provisions in the Dublin II Regulation,<sup>25</sup> asylum applicants can stay ‘temporarily’ and ‘lawfully’ in Member States whilst their application is being processed. In general, recognised refugees are given a permanent or long-term residence permit, whereas applicants who are granted ‘subsidiary’ or other forms of complementary protection status are granted a temporary legal residence status, which varies from Member State to Member State.

In **Austria**, for example, citizenship can be obtained for refugees after 6 years of settlement whereas for the majority of other third-country nationals it is 10 years. In **Spain**, refugees are granted a residence permit for a duration of 5 years, after which it is possible to apply for citizenship. In the **United Kingdom**, holders of international protection are given a residence permit, which remains valid for five years and entitles them to the same rights as permanent residents. After five years, they may apply for a renewal of their permit or for permanent residence.

### 4.4 Integration<sup>26</sup>

In several Member States (**Austria, Czech Republic, Germany, Estonia, Finland, Greece, Latvia, Lithuania, Slovakia, Spain**), if a person who has been granted international protection wishes to opt for citizenship, several prerequisites need to be fulfilled. In general this includes proof of sufficient language competencies and basic knowledge of the democratic system and the history of the Member State (and perhaps the Federal region, as is the case for **Austria**, or the basic principles of the Constitution, as required by **Lithuania**). In **Germany**, recognised refugees (like any other third-country national living lawfully on a permanent basis) are entitled to a comprehensive integration course.

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<sup>25</sup> Council Regulation 343/2003/EC of 18 February 2003 (Dublin II Regulation), which entered into force on 2 September 2003. The Regulation is binding upon all Member States, except Denmark.

<sup>26</sup> Please refer also to Section 2.1.1 above.

#### 4.5 Access to the Labour Market

The EU *acquis*<sup>27</sup> requires Member States to provide asylum applicants with access to the labour market if a first decision on their status is still outstanding after a maximum of 12 months.

Whilst the right to access the labour market for asylum applicants in **Malta** and **Portugal** are unconditional, in many other Member States (**Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Netherlands, Poland, Romania, Slovakia, Spain, Sweden, United Kingdom**) certain conditions exist and appear to mainly relate to:

- a) Temporal criteria, i.e. those used by Member States giving access to the labour market after a certain time, if the asylum procedure is still open;<sup>28</sup>
- b) Labour market criteria, for example, the requirement that an asylum applicant undergoes a ‘labour market test’ proving that the job on offer cannot be filled by preferential applicants such as a national, EU citizen, legal immigrant worker or recognised refugee.

In **Belgium, Lithuania and Ireland**, asylum applicants are not allowed to work (neither paid work, nor self-employed work, nor voluntary work). However, in **Belgium** they may engage in maintenance and cleaning work at reception centres for which they can receive a small remuneration, although, preparatory work on new legislation is under way to provide asylum applicants with access to the labour market under the condition that they have awaited a decision on their claim for more than six months. The asylum procedure in **Lithuania** usually takes three months (in exceptional cases six months) and persons granted international protection then have the right to work.

<sup>27</sup> Cf. Council Directive 2003/9/EC of January 2003, laying down minimum standards for the reception of asylum applicants.

<sup>28</sup> Cf. Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, OJ L 326, 13 December 2005.

## 4.6 Return<sup>29</sup>

This Section should be read in conjunction with [Section 5.4](#) (elaborating the return dimension of migration policy) and [Table 5](#) in that Section, as it includes information on the return of all categories of third-country nationals, including refused asylum applicants and/or beneficiaries who no longer benefit from international protection.

With regard to refused asylum applicants the main issue is whether, and to which extent, these are subject to specific rules and procedures on return, or if they are treated like other categories of migrants who are not, or no longer, entitled to stay in the country. In general terms, the vast majority of Member States submit refused asylum applicants to their “general” return regime (including special regimes by category, like for the return of unaccompanied minors, be they illegally resident or refused asylum applicants).

Even though the return of refused asylum applicants is in most cases submitted to these general rules, the tendency is for refused asylum applicants to be treated in a *de facto* ‘milder’ way when options to return/tolerate/regularise are considered. There are several examples, also in recent years, of “humanitarian” and “complementary” regularisation schemes targeting only (or preferentially) refused asylum applicants having spent at least a certain number of years in the country. In **Belgium**, for example, in 1999, a one-off regularisation campaign benefited more than 50 000 third-country nationals, who were illegally residing. Next to this one-off regularisation, its *Aliens Act* sets out a procedure for granting a residence permit to persons who, due to “exceptional circumstances,” cannot return to their country of origin. In 2008 more than 8 000 third-country nationals fell under this provision. In the **Netherlands** a scheme has been realised for asylum applicants who have exhausted all legal remedies and who applied for asylum under what was still the old *Aliens Act* (the *Aliens Act* from before 1 April 2001). This so-called Settlement of the legacy of the “old” *Aliens Act* scheme ultimately came into effect on 15 June 2007. On 28 January 2008, the Dutch Immigration and Naturalisation Service made an offer to approximately 25 000 persons in this situation, to which around 21 000 responded positively.

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<sup>29</sup> For further details and a complete overview on the Member States return policies, please refer to the EMN Study on “Return Migration” and on “Programmes and strategies in Member States fostering assisted voluntary return and reintegration in third countries” available at the EMN website: <http://emn.sarenet.es>.

## **5. ORGANISATION OF MIGRATION POLICY**

### **5.1 Entry Procedures**

EU harmonisation for the granting of visas (i.e. implementing the Schengen *acquis*) are, as a means to be admitted to most Member States, an area in which most progress has been made in recent years. This is particularly evident with regard to Schengen visas, but the trend concerns national visas (above 3 months of validity) as well. Recently, Member States (especially EU 10+2 Member States with Eastern external borders), which still had significant specificities in their visa policies and procedures prior to accession (e.g. a widespread possibility enshrined in national legislations to grant visas at the border), had to adapt to the EU-Schengen *acquis*, as a binding requirement for accession. The first phases of the entry procedures of the Member States, which adhere to the Schengen *acquis*, therefore show little differences.

### **5.2 Admission and Legal Residence**

In most Member States, third-country-nationals who hold a requisite visa can apply for a short-term residence permit. In **Austria**, certain permits are subject to quota restrictions of approximately 8 000 permits per year.

Generally speaking, third-country nationals applying for a residence permit, such as highly-, medium-, and low skilled workers, seasonal workers, self-employed, au pairs, students and researchers may be granted a ‘temporary’ and short-term residence permit. In many Member States, decisions are taken by an *Immigration and Naturalisation Service* or related variant under the *Ministry of Interior* or *Ministry of Justice*. In **Germany**, for example, the *Municipal Foreigners’ Offices*, which are under the auspices of the *Federal States’ Authorities*, are responsible for these tasks.

To obtain a visa, special conditions and requirements apply and vary greatly for the different categories of third-country nationals. For students of higher education in **Belgium**, for example, students are required to have a valid admission or enrolment certificate for a full-time course of study or an enrolment certificate concerning examinations for entering the university, and a pledge of financial status. For applicants for lower education in **Belgium**, the

applicant should have strong family ties with a legal resident and the applicant must not pursue the same type of education in their country of origin or in a neighbouring country.

### **5.2.1 Integration measures**

In addition to conditions and requirements for residence permits, integration measures are sometimes pre-requisite conditions to obtain or renew a residence permit in some Member States (**Austria, Germany, Netherlands**). In **Austria** all migrants who wish to obtain a long-term residence permit have to sign an *Integration Agreement* and learn basic German (minimal reading and writing skills). Minors, elderly persons (depending on age or state of health) are exempted from signing an *Integration Agreement*. Furthermore, **Italy** is currently in the process of drafting regulations to formally introducing an *Integration Agreement* as a new instrument.

### **5.2.2 Family reunification**

For most Member States, the practice follows from the transposed Council Directive on family reunification.<sup>30</sup> In order to better account for a families' capacity to integrate when considering applications for family reunification, several Member States stipulate that sponsors are required to have a stable and regular income to support the family member(s) (**Austria, Belgium, Bulgaria, Estonia Finland, Italy, Lithuania, Netherlands, Poland, Portugal, United Kingdom**), suitable accommodation (**Austria, Estonia, Belgium, Bulgaria, Italy, Lithuania, Spain, United Kingdom**) and/or a previous period of residence (**Lithuania, Spain**). Some Member States (**France, Germany, Netherlands, Portugal**) demand that spouses or family members attain a specific level of language proficiency, including some after issuance of a residence title (**Austria**), and/or sign an integration contract or agreement (**Austria, France**). **Austria** sets, in certain cases, quotas regarding family reunification with the aim of respecting its national reception capacities.

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<sup>30</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. For further details on family reunification one is encouraged to consult the EMN Study on "*Family Reunification*" available on the EMN website: [http://emn.sarenet.es/Downloads/prepareShowFiles.do;\\_directoryID=105](http://emn.sarenet.es/Downloads/prepareShowFiles.do;_directoryID=105). Denmark, **Ireland** and **United Kingdom** have not participated in the adoption of the Directive.

### 5.3 Access to the Labour Market

In general, access to the labour market for third-country nationals in Member States is often demand-driven and employer led. Several Member States have taken steps to transpose Council Directive 2009/50/EC.<sup>31</sup> Member States best practice and lessons learned with regard to attracting “highly skilled migrants,” are outlined in Section [6.3.2](#).

Member States also have demand driven labour access schemes for “low” and “medium” skilled and for “seasonal” workers and some Member States facilitate access to the labour market for third-country nationals on the basis of bilateral agreements e.g. for contract or seasonal workers (**Germany, Spain**), or for third country nationals who have special links to the Member State (**France, Italy**), or graduated from education establishments in the Member State (**Austria, Czech Republic, Ireland, Italy, Latvia**). The **Slovak Republic** plans to do so in the near future.

Following the global economic crisis, the labour demands may be different today and some Member States have tightened entry or permit renewal criteria (**Czech Republic, Ireland**), introduced quotas (**Italy, Portugal**) or reduced professions eligible for work permits (**Ireland, Lithuania**).

### 5.4 Return<sup>32</sup>

[Table 4](#) below gives an overview of the different facets of return, outlining the various categories of migrants including refused asylum applicants, classified on the basis of relevant variables, such as type of incentive and management of the assisted return programme. Many Member States outsource the management of Assisted Voluntary Return to the IOM. However, in some Member States (**Austria, Belgium, Germany, Netherlands, Portugal, Slovak Republic United Kingdom**), there is a strong co-operation between the Ministries and Government Institutions and the IOM. In **Sweden**, the *Migration Board* has the full responsibility for Voluntary Return, while for Forced Return this is carried out in co-operation

<sup>31</sup> 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. Denmark, **Ireland** and **United Kingdom** have not participated in the adoption of the Directive.

<sup>32</sup> For specific information on the overall EU acquis and Directive 2008/115/EC of 16 December 2008, please refer to Section 4.6 above. For further details on return, re-integration and the variety in the types of incentives (money, loans, machines etc.) offered by Member States, one is strongly recommended to consult the EMN Study on ‘Programmes and Strategies in the EU Member States fostering assisted return to and re-integration in third countries, available at: <http://emn.sarenet.es/Downloads/prepareShowFiles.do;directoryID=123>.

with the Police.

Assisted return policies seem to be more developed in EU-15 Member States owing to many years of experience in dealing with return. In **Austria**,<sup>33</sup> **Portugal** and **Spain**, a one-off incentive is provided before the return, whilst, in the **United Kingdom**, there is economic support for up to three months for temporary housing.

**Table 4: Type of Return Incentives and Management of Return**

Type of Incentive				Management	
Monetary	in kind (e.g. support services to start a business in the home country)	one off	In several tranches/ before and after return	Administrative management (e.g. by Ministries or other institutional actors)	Operational management (implemented by NGOs or International Organisations)
<b>Austria</b> <b>Belgium</b> <b>Finland</b> <b>Germany</b> <b>Italy</b> <b>Lithuania</b> <b>Netherlands</b> <b>Portugal</b> <b>Romania</b> <b>Sweden</b> <b>Spain</b> <b>United Kingdom</b> <b>Estonia</b>	<b>Austria</b> <b>Belgium</b> <b>Germany</b> <b>Italy</b> <b>Lithuania</b> <b>(from 2010)</b> <b>Netherlands</b> <b>Spain</b> <b>Slovak Republic</b> <b>United Kingdom</b>	<b>Austria</b> <b>Portugal</b> <b>Spain</b> <b>Slovak Republic</b>	<b>Italy</b> <b>United Kingdom</b>	<b>Austria</b> <b>Belgium</b> <b>Germany</b> <b>Netherlands</b> <b>Portugal</b> <b>Spain</b> <sup>34</sup> <b>Sweden</b> <b>United Kingdom</b>	<b>Austria (mostly IOM)</b> <b>Belgium (IOM)</b> <b>Bulgaria</b> <b>Finland (IOM)</b> <b>Germany (IOM)</b> <b>Hungary</b> <b>Ireland (IOM)</b> <b>Italy (IOM)</b> <b>Lithuania (IOM)</b> <b>Netherlands (IOM)</b> <b>Poland</b> <b>Portugal (IOM)</b> <b>Romania</b> <b>Estonia</b> <b>Slovak Republic (IOM)</b> <b>Spain (IOM, other NGOs)</b> <b>Sweden (mostly IOM)</b> <b>United Kingdom (IOM)</b>

<sup>33</sup> In Austrian incentives in kind can be provided to selected target groups in the framework of specific projects..

<sup>34</sup> In Spain, the “Voluntary Return Plan” provides one-off monetary support; whilst the programme established by the Royal Decree-Law 4/2008, provides part of the support granted before and the remainder after return.



## 5.5 Links with other Policy Areas

Since the *Tampere Conclusions of October 1999*, the EU has striven towards developing a “comprehensive” common migration policy. This emphasis is *inter alia* more recently reflected in the [European Pact on Immigration and Asylum](#)<sup>35</sup> and in the [Stockholm Programme](#),<sup>36</sup> which highlights the importance of policy coherence, and in the case of migration policy. This includes a ‘Global Approach to Migration’ with links to development policy, trade, employment, health, and education.

At national level, the state of interconnection of migration policies is diverse. To illustrate the variants, a distinction may be made between:

- a) Member States where the main axis of interdisciplinary connection is between migration and external policy fields, primarily development cooperation. This is particularly relevant in **Czech Republic, France, Italy, Netherlands and Spain**.
- b) Member States where the main axis of interconnection is between (im)migration and internal policies. This is, for example, the case in the **United Kingdom** where under the “Points-Based System” higher education institutions act as sponsors for migrants, or in **France**, with the critical connection existing between integration policy and urban policy (with the strengthening of social cohesion in the suburbs (banlieues) as a national priority). The *Suburbs Plan* of 2008 introduced a new policy in favour of the suburbs which aimed at placing in synergy the National Education system, durable development, the Policy and interior security. This Plan follows the Plan ‘*Suburban Hope – A French dynamic*’ of January 2008.<sup>37</sup>

<sup>35</sup> Cf. [http://ec.europa.eu/justice\\_home/news/intro/doc/doc\\_13440\\_08\\_en.pdf](http://ec.europa.eu/justice_home/news/intro/doc/doc_13440_08_en.pdf).

<sup>36</sup> Adopted version available from the website of the Swedish Presidency of the EU at [http://www.se2009.eu/en/the\\_presidency/about\\_the\\_eu/justice\\_and\\_home\\_affairs/1.1965](http://www.se2009.eu/en/the_presidency/about_the_eu/justice_and_home_affairs/1.1965).

<sup>37</sup> The *Equality Law* of 32st March 2006 influenced this Plan which aimed at favouring the employment of urban youth as well as combating discrimination. This followed from the ‘suburbs crisis’ in 2005.

## **6. ANALYSIS OF ASYLUM AND MIGRATION SYSTEMS**

This section presents some of the best practices and lessons learned, in relation to the development of Asylum and Migration systems, future developments envisaged and the link between asylum and migration and other policy areas, as identified in the National Reports. With regard to best practices and lessons learned, two main categories have been identified, namely: a) Involvement of specific stakeholders; and b) Streamlining/Specific procedures and practices developed.

### **6.1 Best Practices and Lessons Learned in relation to development of asylum systems**

#### ***6.1.1 Involvement of specific stakeholders***

In general, most Member States are developing co-operation with specific stakeholders, such as experts, civil society and International Organisations in a more inclusive and comprehensive manner.

The *Citizen and Migration Board* in **Estonia** is involved in a wide range of tasks allowing for a comprehensive implementation of policies, whilst its integration plan 2008-2013 built on lessons learned from the 2000 - 2007 plans. **Germany** has established specialised advisory bodies, which may include NGOs, created to deal with complicated individual cases, in which the forceful termination of residence according to the law would pose an unbearable hardship.

In **Malta**, a specialised pool of private lawyers has been created to provide free legal aid. Since asylum applicants started to come to **Poland** only in the 1990s, it had to develop an asylum and reception system essentially from scratch. Many problems were encountered due to an overall lack of financial resources, expertise, adequate infrastructure, especially within a context of substantial wider State reforms. From 1990 – 1996, the development of legislation and the management of asylum and migration was initially shaped under the influence of external partners (including some of the EU-15 Member States) or from International Organisations, such as IOM, UNHCR and the Council of Europe.

#### ***6.1.2 Streamlining asylum procedures and practices developed***

Broadly, Member States are looking at ways to streamline each step of the asylum procedure from entry to integration or return, in order to close potential gaps and reduce the waiting time

for decisions on asylum applicants, in an effective, efficient and safeguarded way.

**Austria** has decided that humanitarian considerations should be taken into account, complementing asylum cases. In **Germany**, consecutive granting of exceptional leave to remain on the territory (referred to as “chain toleration”), was reduced by issuing residence permits for well integrated individuals with a long record of residence.

In **Ireland**, the problem with regard to excessive asylum processing time appears to have been largely resolved through prioritisation directives and designation of safe countries of origin. In the **United Kingdom**, the “One Case Owner” practice following an asylum applicant from “start-to-finish” is identified as a best practice to ensure timely follow-up. Furthermore, a ‘fast-tracking’ system targeting early exclusion of false applicants and the integration of those in need of protection, as well as the asylum appeals process, are considered to be particularly effective.

Since 2000, **Lithuania** uses the single asylum procedure. Asylum applicants need to submit only one application and competent authorities decide on the kind of protection which can be granted (refugee status or subsidiary protection).

**Malta** based its initiatives on learning processes, such as the restructuring of the *Refugee Appeals Board*, the *Immigration Appeals Board* for residents in detention centres, and a *Visitors Board* to monitor the conditions of the detention centres and address the residents’ complaints. From 2002 onwards, **Malta** faced huge learning and adaptability challenges due to a change in responsibility for asylum from the UNHCR to the Maltese authorities.

In the **Netherlands**, special attention is given to unaccompanied minors through *NIDOS* and plans are underway for faster asylum procedures. **Sweden** also places more focus on accelerated procedures and reducing waiting times for asylum applicants.

With regard to refused asylum applicants, several Member States are promoting Assisted Return (**Austria, Czech Republic, Estonia, Germany and Netherlands**). In **Ireland**, during the year 2000, 370 additional staff were allocated by the *Department of Justice, Equality and Law Reform to the asylum and immigration area* and the expenditures increased by almost 30 million Euros between 2001 – 2004. In the **United Kingdom**, failure to remove migrant prisoners created a crisis of public confidence which may have affected the public view of legitimate migrants and asylum applicants.

## 6.2 Future developments with regard to asylum

This section introduces some changes envisaged by Member States to further develop their asylum systems and improve its efficiency and effectiveness. Note in particular that this Section, as for the rest of the report, refers to the situation up to the end of 2008.

In **Austria**, it is foreseen that the establishment of an *Asylum Court* will accelerate procedures and reduce a backlog of cases. In **Ireland**, many changes are underway, in particular a new *Immigration, Residence and Protection Bill of 2008* is moving through the legislative procedure. One change introduced under this legislation will be a single protection determination procedure, meaning that all protection claims, including claims for both asylum and subsidiary protection, would be examined under a single procedure. **Latvia** is to introduce a new *Asylum Bill*, which will be fully compliant with international and EU standards. In **Greece**, to improve the initial screening for asylum applicants, several stakeholders recommended that specialised NGOs and International Organisations be included in the initial screening process as a way to make use of available specialised resources and, at the same time, ensure the fair treatment of asylum applicants.

The **Netherlands** is envisaging to have a faster and improved asylum procedure with an introduction of a period of rest and preparation of at least six days prior to submitting 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.

## 6.3 Best practices and Lessons Learned in relation to development of migration systems

### 6.3.1 Involvement of specific stakeholders

As illustrated in particular under [Sections 2](#) and [4](#), legal and illegal migration management involves a variety of stakeholders and institutions in all Member States from Consular representations abroad; to a variety of Ministries, such as the *Ministry of Labour and Trade* to Employers; to involvement of NGOs and International Organisations, such as UNHCR (for asylum), IOM (for assisted voluntary return) and ILO (for labour migration).

In **Malta**, negotiations, through international organisations and bilateral cooperation, have

helped facilitate return when the migrant is reluctant to do so and EU actions are regarded as important especially concerning re-admission agreements, as well as dialogue with Civil Society.

In **Italy**, Territorial Councils for Immigration were implemented by the *Territorial Offices of Government* (“*Prefettura*”) in order to analyse the needs and to promote actions at local level, with the involvement of competent administrations from the State, the local level and associations involved in assistance activities for migrants.

In **Spain**, the Tripartite Labour Commission (*Comisión Laboral Tripartita*) is a consultative body, acting as a conduit for permanent dialogue between the general State administration, trade unions and the largest national employers’ associations, on matters related to the management of migration flows. The Forum for the Social Integration of Immigrants (*Foro para la Integración Social de los Inmigrantes*) is a consultative, information and advisory body on matters related to the integration of immigrants, which serves as a channel for participation and dialogue on solutions required by the immigrant population. Its composition is tripartite and balanced, with representation from public bodies, migrant and refugee associations and social support organisations, including the largest trade union and employers’ associations. It is mandatory to consult this consultative body when drafting legislation and / or when formulating any policies for the integration of immigrants.

### ***6.3.2 Specific immigration procedures and practices developed***

Trends with regard to Member States attempts towards making immigration more effective and efficient, *inter alia* by introducing “one-stop-shop” procedures are highlighted here, including examples of Member States practices to attract talent to meet national labour demands.

Similar to its asylum procedures, Member States are aiming to simplify and accelerate their procedures with regard to entry or renewal of residence permits for third-country nationals (**Austria, Germany, Greece, Ireland, Italy, Lithuania**). In **Germany**, a “one-stop-shop system” for residence and employment permits has been established, as well as more exchange of information on ‘security-relevant’ countries of origin and changes to visa policy for security reasons. In **Greece**, a pilot programme of “one-stop-shop” facilities for migrants to interface with all the different Ministries of the government is deemed to be successful and the intention is to for this to be developed further.

Following access to Schengen, the residence visa in **Hungary** was abolished and a residence permit was introduced. In **Poland**, another important aspect, related to accession, is the transformation of methods and style of work of the Polish offices and officers to accommodate EU standards. This process is also related to the need of securing interoperability and effective cooperation in solving migration problems for the whole community.

In line with the overall objective of Council Directive 2009/50/EC<sup>38</sup> to improve the EU's ability to attract highly qualified workers from third countries, several Member States, such as the **Czech Republic** and **Germany**, as well as **Ireland** and the **United Kingdom** who did not participate in the adoption of this Directive, are either implementing or envisage implementing special procedures and/or “Points-Based Systems” to meet labour demands. In the **Czech Republic**, for example, a *Green Card Scheme* and *Selection of Qualified Foreign Workers Scheme* aims to strengthen the competition for qualified labour. In **Germany**, as previous procedures for attracting highly qualified foreigners and successful entrepreneurs fell short of expectations, the criteria have been changed, namely by lowering the minimum investment requirements and the required minimum salary for highly qualified workers. Although, as mentioned above, **Ireland** and the **United Kingdom** decided not to ‘opt into’ this directive, they have nevertheless implemented their own highly skilled worker schemes. Green cards were introduced in **Ireland** in 2007 in order to attract highly earning workers and those in occupations experiencing skills shortages. In the **United Kingdom**, a new ‘Points-Based 5 tier System’ has been established which intends to simplify procedures and attract talent.

In **France**, cited best practice is the ‘Urban Hope Plan’, launched after the 2005 riots in the suburbs of Paris, making the suburbs priority areas with enhanced focus on integration measures. Another example is the “Talents des cités” prize launched in 2002 rewarding successful business creation in disadvantaged suburbs.

**Portugal** has introduced programmes to recognise immigrants’ higher education and qualifications, such as for doctors. It was also cited as an example of good practices in terms of the integration of immigrants, in the Migrant Integration Policy Index<sup>39</sup>. A *National Action*

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<sup>38</sup> 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.

<sup>39</sup> The Migrant Integration Policy Index (MIPEX) measures policies to integrate migrants in 25 EU Member States and three non-EU countries (Norway, Switzerland and Canada). It uses over 140 policy indicators to

*Plan for Integrating Immigrants (2005-2010)* aimed at promoting the integration of immigrants' communities, was adopted, along with the *National Action Plan for Inclusion*.

#### 6.4 Future developments with regard to migration

This section introduces some changes envisaged by Member States to further develop their migration system and improve its efficiency and effectiveness. Again note that this Section, as for the rest of the report, refers to the situation up to the end of 2008.

**Austria** envisages the development of a *National Action Plan for Integration*, which aims to develop nationwide measures and optimise the related integration indicators in the fields of language skills and education, employment, rule of law and values, health and social affairs, intercultural dialogue and sports and recreation. Furthermore, two major amendments to the asylum and immigration legislation are planned in 2009, tackling a wide range of issues, such as humanitarian residence, subsequent asylum applications and detention pending removal.

In the **Czech Republic**, the *State Aliens Police* will undergo substantial organisational changes within the next few years, in order to ensure that the administrative part handling third-country national cases is separated from the law enforcement part. From 1 January 2009, issuance of permanent residence permits and long-term residence permits has, therefore, been shifted from the *State Aliens Police* to the *Ministry of Interior*.

In **Estonia**, the new *Employment Contract Act*, which entered into force in July 2009 and is expected to be implemented in July 2010, aims to improve the legal clarity in the Alien's Law. It is expected that the *Police Board*, the *Board of Border Guard* and the *Citizenship and Migration Board* will merge into a single and more effective institution.

In **France**, a new agency will be established as a successor to ANAEM: the *French Office for Immigration and Integration*. It will be responsible for the reception of all newly arrived immigrants and for their enrolment in an integration course during their first five years. The new Office will also have a language training function. The OFII (*French Office for Immigration and Integration*) was created in April 2009, as a successor to ANAEM.

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create a rich, multi-dimensional picture of migrants' opportunities to participate in society. Led by the British Council and Migration Policy Group (MPG), co-funded by the European Commission, it is the largest study of its kind ever conducted. It covers six policy areas which shape migrants' journeys to full citizenship: the ability to work, to reunite with family members, to reside long-term, to vote, to acquire nationality and to be protected from discrimination. <http://www.integrationindex.eu>.

**Latvia** envisages creating a ‘one-step’ agency for handling work and residence permits to become competitive in attracting migrant workers.

Between 2008 - 2012, the Government programme in **Lithuania** will regulate clearer foreign policy procedures, strive to retain national competence in regulation of economic migration and simplify conditions for arrival of foreign nationals, highly qualified professionals and their family members etc.

**Malta** is expected to increasingly focus on tackling illegal immigration, seeking to promote burden sharing amongst the EU Member States and stronger ties to third countries of transit. It is envisaged that priority will focus on infrastructure work, upgrading structures for reception, joint actions at the border, resettlement and return possibilities.

In the **Netherlands**, a new admission policy is expected to be implemented on a phased basis in 2011, focusing on a provisional residence permit and a residence permit to be integrated; shortened admission procedures; and the merging of the application for residence and work permit.

## **6.5 Linking Asylum and Migration with other policy areas**

Member States increasingly view asylum and migration policies in a more comprehensive manner and in a “global approach context,” linking it to other policy areas, and trying to maximise the positive contribution of migrants.

In **Belgium**, the policy documents of the *Minister of Migration and Asylum Policy* mentioned in 2008 that a system of economic migration should be set up in the short term. **France** and **Germany** have undertaken initiatives on “circular migration,” combining international development, security, asylum and migration policy. Similarly, in **Sweden**, new legislation on labour immigration is being considered in light of positive effects of “circular migration,” aimed at meeting the Member State’s need for labour while contributing to positive development effects in countries of origin, as well as benefiting the migrants themselves.

In **Finland**, the organisation of asylum and migration had become more centralised with more responsibility directed to the *Ministry of Interior*. For the first time, a *Minister for Immigration Affairs* was appointed.



**Spain** has developed an integral approach to asylum and migration policies which are strictly interlinked, being in favour of multilateral channels and an active participation in international forums, such as the *Global Forum on Migration and Development* (GFMD).

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