1 Asylum, immigration and integration

2011 witnessed concerns about certain transfers of asylum seekers under the Dublin II Regulation which were articulated before the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). Various EU Member States carried out reforms in the area of asylum procedures. While there was increased recognition at European Union (EU) level of the special situation of asylum-seeking children, evidence remains of general shortcomings in asylum procedures, including the lack of efficient remedies. In the context of return proceedings, a large number of EU Member States had not yet established efficient and independent monitoring systems by the end of 2011. Concerning legally resident migrants, a new European agenda for the integration of third-country nationals was adopted. Whereas integration is defined as a shared responsibility requiring engagement from both the receiving society and migrants, evidence from 2011 shows that shortcomings persist in various areas, including healthcare, education, employment and housing.

This chapter covers 2011 developments in EU and Member State policies and practices in the areas of asylum, immigration and integration of migrants. It should be read together with Chapter 2 on border control and visa policy.

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

- the CJEU delivers important judgments in the context of family reunification, criminal imprisonment of migrants in return proceedings, right to an effective remedy in the context of an accelerated asylum procedure and the transfers of asylum seekers under the Dublin II Regulation;
- the ECtHR Grand Chamber delivers its judgment in the case of *M.S.S. v. Belgium and Greece* on the application of the Dublin II Regulation;
- the application of the Long-Term Residents Directive is extended to refugees and beneficiaries of subsidiary protection;
- detention remains the most frequent tool used to prevent migrants from absconding, although most EU Member States have introduced alternatives to detention in their legislation;
- the rights of migrants in an irregular situation win greater visibility, for instance the International Labour Organization (ILO) adopts a convention and a recommendation on domestic workers, including those in an irregular situation;
- the European Commission presents new plans for EU funding in the area of home affairs aiming at more effective use of funds for emergencies at borders;
- the European Commission issues the European Agenda for the integration of third-country nationals contributing to the debate on how to understand and better support integration.

1.1. Asylum

In 2011, 301,000 asylum applications were lodged in 27 EU Member States. Compared with the 2010 figure, this corresponds to an increase of 42,000 applications. Eurostat estimates – on the basis of the share of repeat applicants available for 21 EU Member States – that around 90 % of these were new applicants and around 10 % were repeat applicants. The main countries of citizenship from which the applicants came were: Afghanistan (28,000 or 9 % of the total number of applicants), Russia (18,200 or 6 %), Pakistan (15,700 or 5 %), Iraq (15,200 or 5 %) and Serbia (13,900 or 5 %). The highest number of applications was lodged in France (56,300 applications), followed by Germany (53,300), Italy (34,100), Belgium (31,900), Sweden (29,700), the United Kingdom (26,400), the Netherlands (14,600), Austria (14,400), Greece (9,300) and

Poland (6,900). These 10 EU Member States accounted for more than 90 % of applicants registered in the EU 27 in 2011. When compared with the population of each Member State, the highest rates of applicants registered were recorded in Malta (4,500 applications per million inhabitants), Luxembourg (4,200), Sweden (3,200), Belgium (2,900) and Cyprus (2,200).[1]

Population movements from North Africa to Europe, particularly following the Arab spring, and the ECtHR judgment in the case of *M.S.S. v. Belgium and Greece* on Dublin II regulation transfers to Greece fueled debates on EU asylum policies in 2011. Negotiations on the EU asylum package continued. The amending of four asylum instruments, however, was still pending at the end of 2011, leaving only 12 months to reach agreement on a Common European Asylum System (CEAS) by the end-2012 deadline stipulated in The Hague and the Stockholm Programmes.

In this chapter, the FRA will provide highlights on four topics: Dublin II, or Council Regulation (EC) 343/2003; arrivals from North Africa; the asylum-package negotiations; and the fact that the European Asylum Support Office (EASO) became fully operational. This focus will be complementary to the EASO's Annual Report, which gives a detailed overview of asylum-related issues at EU level.[2]

Reflecting the importance of the ECtHR judgment in the *M.S.S.* case as well as the CJEU's ruling on Dublin II, the chapter will also examine asylum procedures and, more specifically, the right to an effective remedy against a negative asylum decision, across the EU Member States. It also touches upon controversial provisions of the recast Asylum Procedures Directive and Dublin II Regulation relating to effective remedies.[3]

1.1.1. Key developments

In January 2011, the ECtHR Grand Chamber delivered its judgment in the case of *M.S.S. v. Belgium and Greece*. The case concerned the return by **Belgium** of an Afghan asylum seeker to **Greece** in application of the Dublin II Regulation. The ECtHR found both **Belgium** and **Greece** in violation of Article 3, which prohibits degrading or inhuman treatment, and Article 13, which ensures the right to an effective remedy, of the European Convention on Human Rights (ECHR). As a result of this judgment, returns to **Greece** under the Dublin II Regulation decreased substantially in 2011.[4]

The CJEU also scrutinised Member States' responsibilities under the Dublin Regulation, ruling in December on two similar cases submitted by **Ireland** and the **United Kingdom**. The court concluded that Member States must refrain from transferring asylum seekers under the Dublin II Regulation to a country where there are substantial grounds for believing that they would face a real risk of inhuman or degrading treatment.[5] The court clarified that under EU law it was not possible to presume that a Member State observes fundamental rights. In its ruling, the court makes extensive reference to the Charter of Fundamental Rights. The Hessen Administrative Court[6] as well as the Sofia Administrative Court submitted two other cases with a broader set of questions relating to Dublin II in January and October 2011, respectively. By the end of 2011 no hearing had yet been organised on either of these two cases.

The European Commission had, in 2008, already proposed a formal mechanism for suspending Dublin transfers to Member States where asylum applications could not be properly assessed and the level of protection granted was inadequate.[7] At the end of 2011, a political agreement was reached to establish an early warning, preparedness and crisis management mechanism replacing the former emergency mechanism that would trigger a formal suspension of Dublin II transfers in case of serious deficiencies in the asylum system.

Arrivals in connection with the events and conflicts in North Africa were at the heart of public debate on asylum (for arrival figures, see Chapter 2). The United Nations High Commissioner for Refugees (UNHCR) has stressed that although many of the 60,000 arrivals from Tunisia and Libya are economic migrants, there is a sizeable group of individuals among them in need of protection.[8] The EU did not, however, characterise the North African arrivals as a 'mass influx of displaced persons from third countries', a designation that would have triggered the activation of an EU tool, the Temporary Protection Directive,[9] developed to deal with large numbers of displaced persons. Work continued in 2011 towards the creation of a CEAS. Some progress was achieved on the legislative front. First, the personal scope of the Long-term Residents Directive (2011/51/EU) was extended in May 2011[10] to beneficiaries of international protection. Second, on 13 December,

1 Eurostat (2011).
2 For more information, see: EASO, *Annual Report for 2011* (forthcoming).
3 European Commission (2011a).
4 According to the Ministry of Citizens Protection, in 2011, 55 persons were returned to Greece, mainly from Bulgaria (43), Switzerland (5) and Hungary (3).
5 Joint Cases: UK, C-411/10 and Ireland C-493/10, Court of Appeal (England and Wales) *NS v. Secretary of State for the Home Department* and Ireland *M. E. e. a. v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform,* 21 December 2011.
6 CJEU, *Kaveh Puid v. Bundesamt für Migration und Flüchtlinge,* Case C-4/11, reference for a preliminary ruling submitted on 5 January 2011.
7 European Commission (2008), Art. 31.
8 UNHCR (2011a).
9 Council Directive 2001/55/EC, OJ 2001 L212/12.
10 Directive 2011/51/EU, OJ 2011 L 132/1.

the amended Asylum Qualification Directive was published, which defines who is entitled to international protection and sets forth their rights and duties.[11] The amended Directive shows a stronger commitment to the best interests of the child and pays greater attention to gender-specific forms of persecution. It requires that gender-related aspects, including gender identity be given due consideration, when determining a person's membership in a particular social group. It thereby provides for better protection for lesbian, gay, bisexual and transgender (LGBT) persons seeking asylum in the EU, at a time when LGBT people often face stereotyping and discrimination during the asylum process, as evidenced by a study released in 2011, *Fleeing homophobia: Asylum claims related to sexual orientation and gender identity in Europe* – funded by the European Refugee Fund and the Dutch Ministry of the Interior and Kingdom Relations. The amended directive also approximates the content of rights granted to beneficiaries of subsidiary protection and refugees with regard to family unity, healthcare and employment.

The European Commission also submitted two modified proposals for the amendment of the Reception Conditions and the Asylum Procedure Directives based on feedback received during the negotiations of its recast proposals tabled in 2009.[12] Negotiations on these two instruments as well as on the recast proposals for the amendments to Dublin II and the Eurodac Regulations,[13] however, were still pending at the end of the reporting period.

The Greek government sent a letter of request for assistance to the EASO Executive Director. An agreement was reached on 1 April for the deployment of Asylum Support Teams to Greece.[14] The European Commission Communication on enhanced intra-EU solidarity in the field of asylum issued at the end of the reporting period foresees an important role for the EASO.[15] In line with its Founding Regulation EASO's role is to: facilitate and coordinate practical cooperation measures among Member States, contribute to the implementation of the Common European Asylum System, provide Emergency Support to Member States under particular pressure through, amongst other measures, coordination of Asylum Support Teams (a pool of experts, case workers and interpreters from Member States) that can be mobilised at short notice in crisis situations, facilitate resettlement, relocation and support the external dimension of asylum policies. The EASO, which became fully operational on 19 June,[16] held its first Consultative Forum with civil society organisations in December.

11 Directive 2011/95/EU, OJ 2011 L 337/9.
12 European Commission (2011a); European Commission (2011b).
13 Council of the European Union (2011).
14 Malmström, C. (2011).
15 European Commission (2011c).
16 Regulation (EU) No. 439/2010, OJ 2010 L 132, Art. 54.

1.1.2. Asylum procedures: access to an effective remedy

In 2011 in the 27 EU Member States, 237,400 first instance decisions were made on asylum applications. Three quarters of first instance decisions in 2011 (177,900) were rejections. 29,000 applicants (12 %) were granted refugee status, 21,400 (9 %) subsidiary protection and 9,100 (4 %) authorisation to stay for humanitarian reasons.[17]

Six EU Member States[18] amended their asylum procedures between November 2010 and December 2011. Five of them introduced changes to the appeals process, in some cases extending, and in other cases limiting, procedural safeguards. **Greece** reintroduced an appeals procedure and granted standing to the UN High Commissioner for Refugees to intervene in refugee and asylum seeker cases before administrative courts. **Slovenia** extended timelines for appeals. **Hungary** introduced more exceptions to the automatic protection from removal after an appeal is lodged. **Bulgaria** changed other elements of the review process. In addition, Denmark streamlined its first instance procedure with the purpose of reducing processing times without undermining the quality of decisions.

Concerning asylum and expulsion cases, the ECtHR has repeatedly stressed that in view of the irreversible damage which may result if the risk of torture or ill-treatment materialises, the effectiveness of a remedy under Article 13 requires independent and rigorous scrutiny.[19] It also requires, as the court specified, that the person concerned should in principle have access to a remedy which, while it is on-going, automatically protects them from removal.[20]

Noting the repercussions of the *M.S.S. judgment*, this subsection points to possible gaps between ECtHR requirements and EU Member State practices concerning the right to an effective remedy. It therefore reviews applicable timelines to lodge an appeal and provisions for the right to stay in the host country during the appeals process. The analysis covers regular asylum procedures, accelerated procedures as well as transfer decisions taken under the Dublin II Regulation.

17 Eurostat (2012).
18 Austria, Amending Act to the Law Relating to Aliens, 2011; Bulgaria, amendment of the Asylum and Refugees Act, 20 May 2011; Greece, Presidential Decree 114/2010 (OG A' 195/22.11.2010) , Act 3900/2010 (OG A 213/17.12.2010); Hungary, Act No. LXXX of 2007 on Asylum amended by Act No. CXXXV of 2010; Italy, Legislative Decree, 1 September 2011; Slovenia, the Act amending the International Protection Act, 23 November 2010.
19 ECtHR, *Shamayev and Others v. Georgia and Russia*, No. 36378/02, 12 April 2005; ECtHR, *Jabari v. Turkey*, No. 40035/98, 11 July 2000.
20 ECtHR, *Čonka v. Belgium*, No. 51564/99, 5 February 2002, *Gebremedhin [Gaberamadhien] v. France*, No. 25389/05, 26 April 2007; ECtHR, *M.S.S. v. Belgium and Greece*, No. 30696/09, 21 January 2011.

1.1.3. Regular deadlines for appeal

Limited changes took place in 2011 as regards regular asylum procedures. Deadlines to submit an appeal continued to range from five days for applicants in detention in the **United Kingdom** to two months in **Spain**. **Greece** reintroduced an appeals procedure at the end of 2010, which stipulated that appeals must be filed within 30 days. At the end of the reporting period half of the countries listed in Figure 1.1 had appeal timelines of approximately two weeks. Seven EU Member States gave one month as the timeframe between the notification of a negative decision and the deadline by which applicants must lodge an appeal. Three countries (**Belgium**, **Italy,** and the **United Kingdom**) set shorter timelines for applicants in detention. Such short timelines can be challenging for detained applicants seeking a review of the asylum decision, as they typically face greater than average difficulties in accessing information, legal aid and language assistance. Figure 1.1 provides an overview of timelines to appeal as of 31 December 2011.

In the countries shown in Figure 1.1, with the exception of **Estonia**, **Italy**, **Slovakia** and **Spain**, an applicant rejected in the regular procedure is automatically protected from removal until the court or tribunal reviews the appeal or, if no appeal has been lodged, until the deadline for lodging one has expired.[21] In **Estonia** and **Spain** the appeal lodged against a negative decision does not suspend its execution, which must be requested separately.[22] In **Italy**, appeals submitted by *applicants apprehended when entering or staying in the territory in an irregular manner* do not prevent the enforcement of the removal order, which must be requested separately and is granted on a case-by-case basis.[23] In **Slovakia** no automatic suspension of removal is envisaged, for example, when the applicant has been convicted of a particularly serious crime or can reasonably be considered a danger to the security of the country.[24]

21 See references for national legal provisions relating to the automatic right to stay in regular asylum procedures.

22 In Estonia, the appeal lodged against a decision rejecting the asylum application does not have suspensive effect. An order to leave the territory accompanies a decision rejecting the asylum application (Act on Granting International Protection to Aliens, Art. 25 (2)). After the 17th day of issuance of the order, the authorities proceed with its execution (Obligation to Leave and Prohibition on Entry Act, Art. 8), unless the administrative court has suspended its execution (Act on Granting International Protection to Aliens, Art. 26). In Spain, Art. 29 (2) of Act 12/2009 envisages a request for suspensive effect to be lodged together with the appeal. Such request will automatically be dealt with as a request for an urgent precautionary measure (under Art. 135 of the Law on the Contentious Administrative Jurisdiction). A decision to grant suspensive effect is taken within 3 days.

23 Italy, Decreto Legislativo 28 gennaio 2008, No. 25, Art. 35 as amended by Art. 19 (4) of the Legislative Decree 1 September 2011.

24 Slovak Act on Asylum, Art. 21. See also Poland, Art. 108 and 130 (3) of the Code of Administrative Procedure.

1.1.4. Accelerated procedures

In 2011, most asylum systems in the EU continued to provide for certain applications to be processed in accelerated procedures. Such procedures are generally intended for fraudulent or manifestly unfounded applications, although they are sometimes used more broadly. Accelerated procedures are characterised by reduced safeguards, including typically shorter deadlines for appeal. At the end of the reporting period, half of the EU Member States provided for accelerated procedures with shorter deadlines for appeal (see states listed in Figure 1.2). In three of them (**Germany**, **Slovakia** and in part in the **Czech Republic**), [25] applicants did not have an automatic right to stay in the host country during the appeals procedure, which could be granted on a case-by-case basis only, usually upon application (see Figure 1.2).

In four other countries (**Estonia, Finland, France** and **Sweden**) the deadline to appeal a decision in the accelerated procedure is the same as in the regular procedure, but the right to stay in the country during the appeals process is not granted automatically, but rather on a case-by-case basis by the reviewing court or tribunal. In addition, shortly after the reporting period, the ECtHR reviewed the case of an asylum seeker from Darfur who was removed from **France** before the conclusion of the appeals process. It found a violation of Article 13 (right to an effective remedy) taken together with Article 3, which prohibits torture, inhuman and degrading treatment.[26]

In **Austria, Hungary** and the **Netherlands** all applications are first subject to a preliminary assessment procedure. Those applications which cannot be decided during this first review are channelled into an extended asylum procedure. Deadlines to submit appeals against decisions taken in the first review phase are relatively short, ranging from 3 to 14 days.[27] Only in Hungary is the right to stay automatically granted.[28] In the **Netherlands,** the individual must request a provisional measure to suspend removal. In **Austria**, the Asylum Office can withdraw the right to stay if it deems it appropriate for the case at hand; if deprived of the right to stay, the individual can ask the Asylum Court to review the withdrawal and allow him/her to stay.[29]

25 In the Czech Republic there is no automatic suspensive effect according to Art. 32 (3) (3) of the Asylum Act for safe country or origin and safe third-country decisions (but automatic suspensive effect exists in case of other manifestly unfounded cases listed in Art. 16).

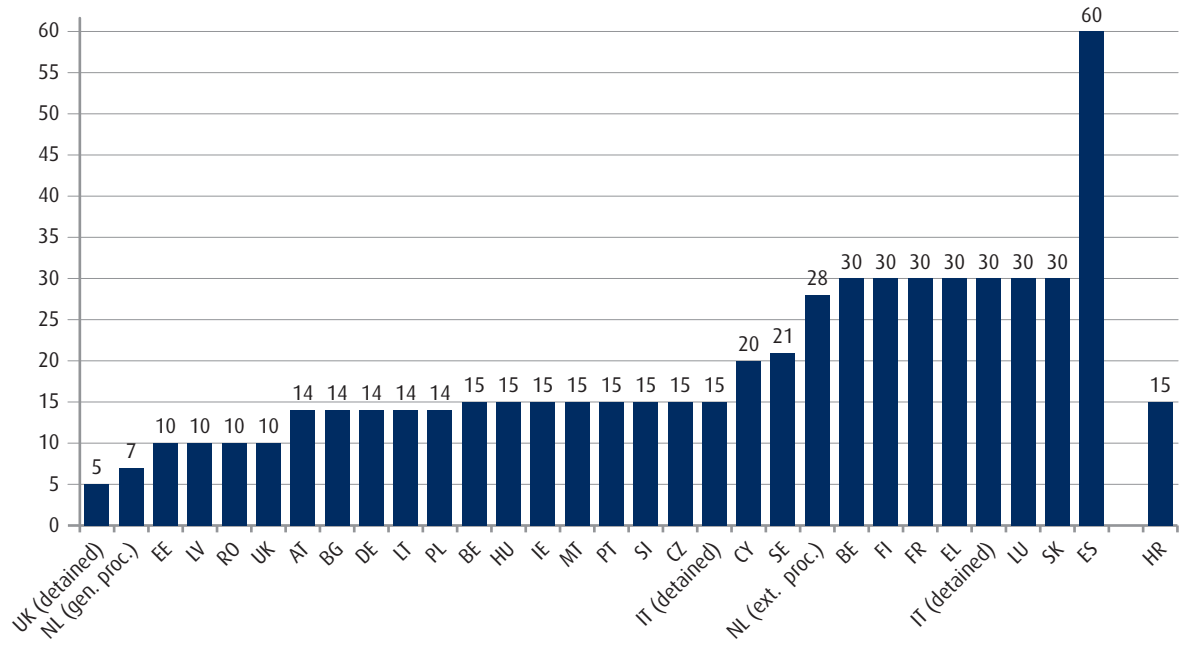
26 ECtHR, *I. M. v. France*, 2 February 2012, No. 9152/09.

27 Austria, General Administrative Law, Section 63 (5); Hungary, Act No. LXXX of 2007 on Asylum, Art. 53 (3); Netherlands, Aliens Act, Art. 69 (2).

28 Hungary, Act No. LXXX of 2007 on Asylum, Art. 53 (3).

29 Austria, Asylum Act, Section 36 (1) and 36 (2) as well as Section 38; Netherlands, Aliens Act, Art. 82 (2); Netherlands, General Administrative Act, Art. 8 (81).

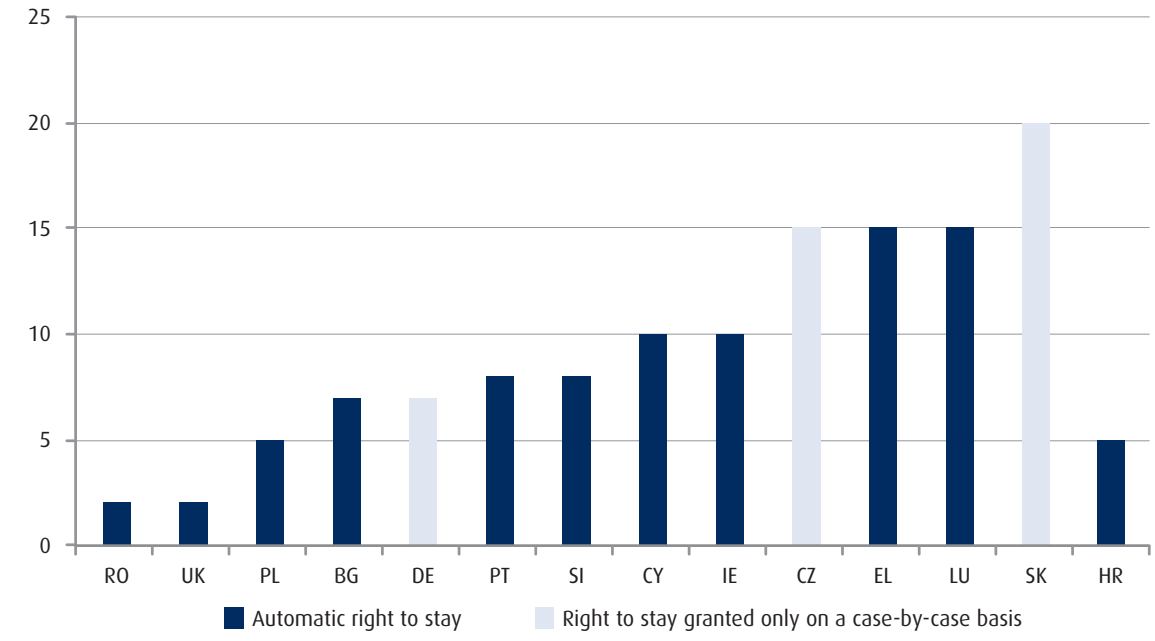
Figure 1.1: Timelines to appeal (regular asylum procedure), in days, by country



Notes: *Time limits expressed in weeks or months have been converted into days – seven and 30 days, respectively. Not all details, however, are reflected in the table, such as whether 'days' refers to working or effective days. Denmark is not included, as all negative decisions are automatically submitted for review (Aliens Act, Section 53a(1)). In Belgium, Italy and the UK there are different deadlines for detained applicants. The Netherlands also has two different time limits: one for general procedures (gen. proc.) and one for extended procedures (ext. proc.).*

Source: *National legislation as of 31 December 2011; see references for national legal provisions relating to timelines to appeal (regular asylum procedure)*

Figure 1.2: Timelines to appeal and right to stay (accelerated procedure), in days, 13 EU Member States and Croatia



Notes: *Time limits expressed in weeks or months have been converted into days – seven and 30 days, respectively. Not all details are reflected, such as whether 'days' refers to working or effective days.*

Source: *National legislation as of 31 December 2011; see references for national legal provisions relating to timelines to appeal and right to stay (accelerated procedure)*

1.1.5. Dublin II

Dublin II procedures tend to have the fewest safeguards and the shortest timelines to appeal. Five countries (**Belgium, France, Greece, Italy** and **Slovenia**) made changes to their Dublin procedures in 2011. For instance, following the *M.S.S. judgment*, **Belgium** introduced a mechanism to file a request for suspension of removal in order to deal with cases of extreme urgency.

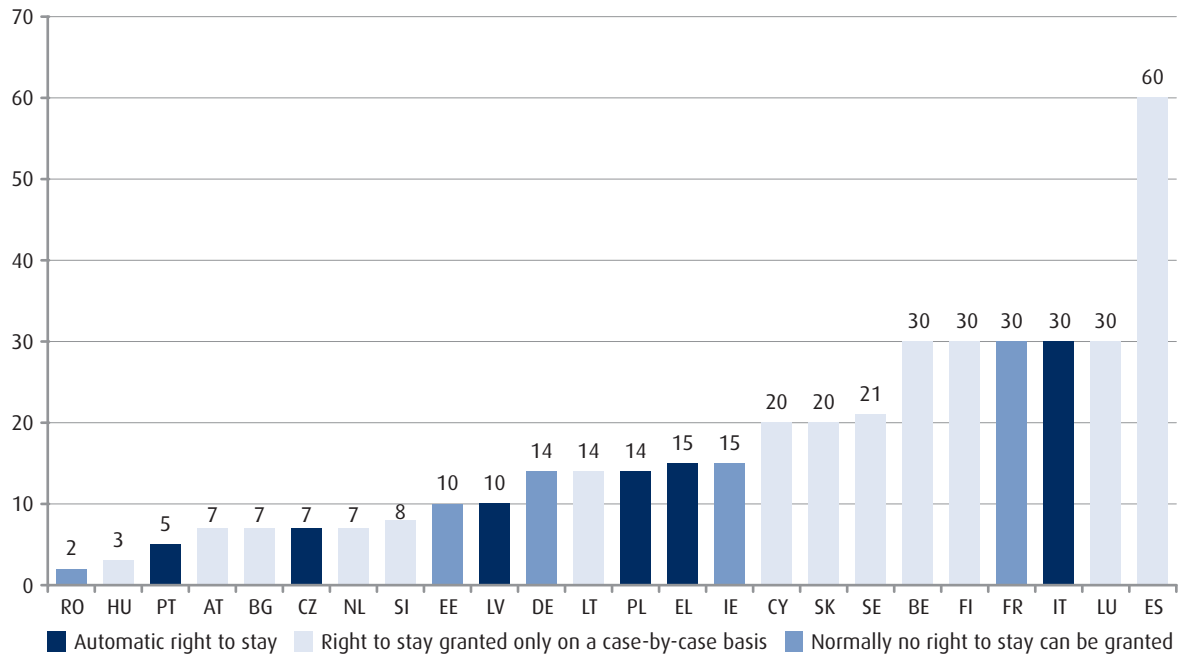
At the end of 2011, legislation in five EU Member States did not provide for the possibility for the reviewing court or tribunal to suspend the transfer (see Figure 1.3). Moreover, in **Denmark**, a Dublin II decision could not be appealed to a court; in the **United Kingdom**, an in-country appeal against Dublin II decisions was not possible.

In some cases, deadlines for appeal remained extremely short, such as in **Romania** (two days) or **Hungary** (three days). With the exception of six Member States, an appeal does not automatically suspend the transfer, which must be requested on a case-by-case basis.

Proposed revised EU legislation on Dublin II and Asylum Procedures, which is pending, offers an opportunity to address some of the procedural shortcomings described above. Articles 19 (2) and 20 (1) of the Dublin II Regulation provides that decisions to transfer an applicant to the responsible Member State can be subject to a review. The right to stay during appeal is not granted automatically, but courts may decide to suspend implementation on a case-by-case basis, if national legislation allows for this. In its 2009 proposal to amend the Dublin Regulation, the European Commission suggests strengthening the effectiveness of remedies against negative transfer decisions, establishing a duty by the reviewing court to decide within seven days whether the transfer should be suspended.[30]

Proposed amendments to the Asylum Procedures Directive[31] also concern the right to an effective remedy (Article 39 of the current directive). Among other things, the European Commission proposes that time limits should be "reasonable" and that they "shall not render impossible or excessively difficult the access of applicants to an effective remedy". Furthermore, the right to remain in the host country during the appeals procedure should normally be automatic. Exceptions to the automatic right to remain can be made for accelerated procedures or certain inadmissibility decisions, provided the court or tribunal has the power to grant the

Figure 1.3: Timelines to appeal and right to stay (Dublin procedure) in days, by country



Notes: *Time limits expressed in weeks or months have been converted into days – seven and 30 days, respectively. No (in-country) appeal exists for Dublin II decisions in Denmark and the United Kingdom. In Malta, all Dublin II decisions are reviewed automatically.*

Source: *National legislation; see references for national legal provisions relating to timelines to appeal and right to stay (Dublin procedure)*

30 Commission of the European Communities (2008).
31 Commission of the European Communities (2009).

right to stay on a case by case basis. No exceptions are allowed in case of border procedures. An amended proposal which was tabled by the Commission in July keeps most of these amendments, but also allows for more situations in which an application can be processed in an accelerated procedure, and thus without an automatic right to stay during the appeals process. In addition, it also permits the possibility of no automatic right to stay when a normal procedure is used, provided a ground for accelerating the procedure applies.[32]

Short appeal timelines undermine the quality of the appeals submission. They may, alternatively, make it difficult or even impossible to appeal at all. In the past, constitutional courts in **Austria** and in the **Czech Republic** have found deadlines of two and seven days too short.[33] Conversely, the CJEU found that a 15-day time limit to appeal in an accelerated procedure "does not seem, generally, to be insufficient in practical terms to prepare and bring an effective action and appears reasonable and proportionate in relation to the rights and interests involved."[34] While it is difficult to establish a minimum time frame beyond which any right to appeal would be pointless, it is questionable whether timelines of a few days only can be considered acceptable under Article 13 of the ECHR and Article 47 of the Charter of Fundamental Rights, which both grant the right to an effective remedy. This is particularly the case if gaps exist in the provision of legal and language assistance to prepare an appeal in time. A similar conclusion can be reached when it is impossible or unrealistic to obtain a right to stay until the court or tribunal has reviewed the appeal.

1.2. Immigration

In 2011, the Commission tabled three communications, including a communication about migration,[35] one on dialogue with southern Mediterranean countries concerning migration, mobility and security[36] and a third one on a global approach to migration and mobility.[37] The package proposed strengthening border controls, completion of the Common European Asylum System (CEAS), the exchange of best practices for successful integration of migrants[38] and a strategic approach to relations with third-countries on migration, including dialogues on mobility partnerships.

32 European Commission (2011a).
33 Austria, Austrian Constitutional Court (*Österreichische Verfassungsgerichtshof*), decision G31/98, G79/98, G82/98, G108/98 of 24 June 1998 abolishing a two-day deadline; Czech Republic, Czech Constitutional Court (*Ústavní soud České republiky)* decision No. 9/2010 Coll. which came into effect in January 2010, abolishing a seven-day deadline.
34 CJEU, Case C-69/10, *Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration.*
35 European Commission (2011d).
36 European Commission (2011e).
37 European Commission (2011f).
38 European Commission (2011g).

EU institutions showed growing concern relating to the demographic challenges facing the EU in the medium term and the use of legal migration to address them.[39] On 14 October, the European Parliament adopted a report on demographic change and its consequences for the future cohesion policy of the EU.[40]

Given such concerns, this section will first analyse the progress made in promoting legal migration to the Union. It will then touch upon the rights of migrants in an irregular situation, an area in which the FRA produced substantial work in 2011. Finally, it will provide an overview of the implementation of two protective provisions included in the Return Directive (2008/115/EC),[41] namely the introduction of alternatives to detention and effective forced return monitoring systems one year after the transposition period expired.

1.2.1. Legal migration

The increasing recognition that Europe's economies need migrant workers brought some developments concerning EU legislation in this field. At the end of the year, the so-called Single Permit Directive was formally adopted.[42] The directive will simplify migration procedures and ensure that workers from countries outside the EU, legally residing in a Member State, will enjoy a common set of rights on an equal footing with nationals, such as the recognition of professional qualifications and access to social security. The directive represents a small but important step towards a common European policy on economic migration. In addition, Regulation 1231/2010 was adopted, extending the scope of EU citizens' social security schemes to third-country nationals moving within the EU.[43]

Negotiations continued during the reporting period on the proposals for a Directive on Seasonal Workers and a Directive on Intra-corporate Transfers.[44] By providing for the possibility of regular low-skilled labour migration the Seasonal Workers Directive, once adopted, has the potential to reduce irregularity at work and thus, indirectly reduce the risk of fundamental rights violations. The proposal on intra-corporate transferees contains a set of clear procedural rights, as well as guarantees in terms of remuneration, working conditions and other rights aiming to protect future ICTs against unfair/low labour standards and securing their fair treatment.

39 European Commission (2011d), pp. 3 and 16.
40 European Parliament (2011a).
41 Directive 2008/115/EC of the European Parliament and of the Council, L348/98, 16 December 2008.
42 Directive 2011/98/EU of the European Parliament and of the Council, OJ 2011 L 343, 13 December 2011.
43 Regulation (EU) No. 1231/2010 of the European Parliament and of the Council, OJ 2010 L 344/1, 24 November 2010.
44 European Commission (2010).

FRA ACTIVITY

Lack of work and residence permits increases risk of exploitation

A 2011 FRA report on the situation of migrant domestic workers in 10 EU Member States shows that the absence of a work and residence permit heightens their risk of exploitation. Chilling accounts of the abuse of domestic workers' fundamental rights have surfaced. Through interviews with migrants and representatives of organisations who may come to their aid, the report explores the heightened risks of abuse and exploitation faced by these workers, overwhelmingly female, whose fears of detection and deportation hinder their ability to access rights, from healthcare to claiming unpaid wages.

For more information, see: FRA (2011d)

European Commission reports on three existing directives revealed a number of gaps, some of which relate to fundamental rights. The report on the application of Council Directive 2004/114/EC,[45] which concerns the admission of third-country nationals in order to study, pupil exchange, unremunerated training or voluntary service, pointed out the need for Member States to apply procedural guarantees and transparency principles. A second report, on the application of Council Directive 2003/109/EC on the status of third-country nationals who are long-term residents, raised concerns about the "restrictive interpretation of the scope of the directive, additional conditions for admission, such as high fees, illegal obstacles to intra-EU mobility, watering down of the right of equal treatment and protection against expulsion."[46] A report on the application of Council Directive 2005/71/EC,[47] concerning the admission of researchers, notes that a definition of "researcher" in line with the directive exists in less than half of the Member States. This is likely to have implications on a uniform implementation of the Directive, including fundamental rights relevant provisions, which have not yet been fully transposed in relation to equal treatment with nationals, intra-EU mobility, transparency of the conditions of admission as well as the duration of residence permits granted to family members.

In the *Zambrano* case, the CJEU delivered an important judgment on the right to family reunification of third-country nationals living irregularly in the EU. The case concerned the irregularly residing Colombian parents of two children who were born in Belgium, had Belgian nationality, and had never left the country. The court clarified that Article 20 of the TFEU on EU citizenship prevents a Member State from refusing residence to a third-country national who has a dependent minor child holding EU citizenship. A refusal of a residence and work permit is not allowed if it would deprive such children of the genuine enjoyment of the substance of the rights attached to EU citizenship.[48]

In two subsequent judgments (*McCarthy* and *Dereci and others*)[49] regarding spouses, adult children and other relatives, the CJEU concluded that no deprivation of such enjoyment occurs in cases where the EU national concerned can move to another EU country and reunite with his/her family there, as per Directive 2004/38/EC.

Further to the Directive on Family reunification (Directive 2003/86/EC) the European Commission, in its *Green Paper on the right to family reunification of third-country nationals living in the European Union* and published on 15 November 2011, examines the issue and asks stakeholders what steps should be taken to have more effective rules on family reunification at EU level.[50]

1.2.2. Rights of migrants in an irregular situation

A number of events in 2011 have put the rights of migrants in an irregular situation on the agenda of policy makers. While Member States can decide who can enter and stay in their territory, once a person is physically present in the country, basic human rights cannot be denied to him or her. The Fundamental Rights Conference organised by the Polish Presidency together with the FRA in November 2011 was entirely devoted to this category of persons.[51]

For the first time, the European Parliament and the Committee of the Regions drew attention to the rights of migrants in an irregular situation[52] and the ILO adopted a convention and a recommendation on domestic workers, with many provisions applying to all workers, including those in an irregular situation.[53] In addition, in July 2011 the deadline to transpose the Employers Sanctions Directive expired.[54] According to Article 6, EU Member States must make

45 European Commission (2011h).
46 European Commission (2011i), p. 4.
47 European Commission (2011j).
48 CJEU, C-34/09, *Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm)*, 8 March 2011, para. 64.
49 CJEU, C-434/09, *Shirley McCarthy v. Secretary of State for the Home Department*, 5 May 2011; CJEU, C-256/11, *Dereci and others v. Bundesministerium für Inneres*, 15 November 2011.
50 European Commission (2011k).
51 FRA (2011a).
52 European Parliament (2011b).
53 International Labour Convention (ILO) (2011).
54 Directive 2009/52/EC, OJ L168/24, 18 June 2009.

mechanisms available to ensure that migrant workers in an irregular situation may either introduce a claim against an employer for any remuneration due or may call on a competent authority of the EU Member State concerned, in order to start recovery procedures.

FRA ACTIVITY

Irregular migrants face hurdles in accessing basic rights

The FRA documented the legal and practical obstacles migrants in an irregular situation face when accessing basic rights in three reports published in 2011. Access to healthcare, for example, is limited to emergency treatment in 19 EU Member States; in 11 of these countries migrants may be billed for such services. This can prove unaffordable: giving birth in a hospital in **Sweden**, for example, can cost more than €2,500. Migrants also face hurdles in accessing the right to education. In most EU Member States, primary schools require birth certificates, identification or other papers which migrants in an irregular situation are not able to produce; as a result, schools may not admit their children. Apprehensions near schools and hospitals as well as reporting and data exchange practices between service providers and courts on the one hand, and the immigration police on the other, impact disproportionally on the migrants' ability to access basic rights. Fear of detection and deportation not only discourages migrants from accessing basic services it also keeps them from reporting cases of abuse and exploitation to the authorities.

For more information, see: The fundamental rights of migrants in an irregular situation in the European Union *(FRA, 2011b);* Migrants in an irregular situation: access to healthcare in 10 European Union Member States *(FRA, 2011c); and* Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States *(FRA, 2011d)*

The FRA research also revealed that a considerable number of migrants in return procedures cannot be removed. Removal may be suspended, postponed or not enforced for a variety of reasons, for example due to legal, humanitarian or technical obstacles. Persons in return procedures who are not removed often end up in a situation of legal limbo, with limited or no access to basic human rights. This can last for a protracted period of time. While authorities acknowledge their presence de facto or formally, persons who are not removed are usually not provided with an explicit right to stay. Given the great divergence of existing national practices concerning the rights of non-removed persons as well as the possibility to provide a residence permit if, over time, the removal cannot be enforced, the EU might play a harmonising role.

The European Commission published in February an evaluation of the readmission agreements[55] – designed to facilitate the readmission of third-country nationals to their country of origin – signed by the EU up to that point. It stressed the need to respect fundamental rights when implementing the agreements, in particular Article 18 of the Charter of Fundamental Rights regarding the right to asylum and the prohibition of refoulement.

Pre-removal detention continued to remain a controversial topic in many Member States. On several occasions, the ECtHR delivered judgment on claims of violation of Article 5 (1), the right to liberty and security of the person, of the ECHR and in particular on whether or not detention was arbitrary.[56]

In the *El Dridi* case,[57] the CJEU scrutinised the use of detention as a response to irregular immigration. The court ruled that Articles 15 and 16 of the Return Directive forbid Member States from requiring the imposition of a sentence of imprisonment on a third-country national staying irregularly on the sole ground that she or he remains on its territory contrary to a removal order. In *Achughbabian*, the CJEU clarified that the sole exceptions to this rule occur when the person concerned remains on Member State territory despite a removal order for which there is no justified ground for non-return and when the 18-month maximum period of deprivation of liberty foreseen by the Return Directive has expired, as long as the exceptions take place in full compliance with the ECHR.[58]

EU Member States continued to use immigration detention widely to facilitate removal. Deprivation of liberty also affected families with children, sometimes detained in facilities which were inadequate to cater to their needs. Enforcing a return decision poses challenges for immigration law enforcement bodies. Typically, migrants are confronted with a return decision at the end of the immigration process, when they have exhausted avenues for legal stay in the country. If the migrant perceives the immigration or asylum procedures as unfair, he or she will be less inclined to cooperate with the authorities when faced with removal at the end of the process.

55 European Commission (2011l), pp. 10-11.
56 For relevant cases, see references.
57 CJEU, C-61/11 PPU, *Hassen El Dridi, alias Karim Soufi*, 28 April 2011.
58 CJEU, C329/11, *Alexandre Achughbabian v. Préfet du Val-de-Marne*, 6 December 2011, para. 48 and 49; A similar case is still pending: CJEU, Case C-187/11, Reference for a preliminary ruling from the Tribunale di Treviso (Italy) lodged on 20 April 2011 – *Criminal proceedings against Elena Vermisheva.*

Promising practice

Increasing migrants' confidence in the system

A pilot project in Solihull, **United Kingdom,** attempted to engage migrants in immigration or asylum procedures from the beginning. The 2007–2008 pilot showed that early engagement resulted in a number of benefits, including: higher case conclusion rates in a six-month period, higher refugee status grants at first instance, fewer appeals and fewer allowed appeals.

Building on this experience, the Midlands and East Region of the United Kingdom initiated in November 2010 the early legal advice project, which aims to improve the quality of initial decisions by providing legal advice at an early stage as well as representation. The objective of the project is not only to get more cases right the first time around, but also to identify those who are in need of protection earlier, manage public funds effectively and increase confidence in the system. So far, reaction to the project has been positive overall.

For more information, see: www.ukba.homeoffice.gov.uk/aboutus/your-region/midlands-east/controlling-migration/early-legal-advice-project. For the evaluation of the Solihull Pilot, see the independent evaluator's report, available at: www.asylumaid.org.uk/data/files/publications/137/Solihull_Pilot.pdf

1.2.3. Alternatives to detention

There is growing concern about the use of immigration detention in Europe. Alternatives to detention are increasingly seen as a practical tool to reduce the need for unpopular and costly custodial measures. The International Detention Coalition published a handbook in early 2011 documenting successful programmes for the prevention of unnecessary detention.[59]

EU law allows for the detention of a person in an irregular situation in order to implement a return decision, provided certain conditions are fulfilled. According to Article 15 of the Return Directive, deprivation of liberty is only lawful when there is a risk of absconding or fear that the migrant would otherwise jeopardise his or her removal. In cases where no such risk exists, migrants should be allowed to continue to stay and live in the community, without any restrictions imposed on their freedom of movement.

Where a risk of absconding or otherwise jeopardising the removal has been found to exist, the Return Directive requires the authorities to examine whether such a risk can be effectively mitigated by resorting to non-custodial measures, before issuing a detention order.[60] Such measures are referred to as alternatives to detention. This sub-section provides an overview of the status of Member States on the introduction of alternatives to detention at the end of 2011 – one year after the expiry of the period for transposing the Return Directive.[61]

Alternatives to detention include a wide set of non-custodial measures. These may imply restrictions to fundamental rights, mostly to freedom of movement, which are less intrusive than deprivation of liberty. Typical measures include residence restrictions, the duty to report regularly to the police or release on bail.

Traditionally used in the criminal justice system, alternatives to detention have acquired increasing importance in the context of return procedures. In November 2010, only two-thirds of EU Member States provided for alternatives to detention in their national legislation.[62] Over the reporting period this proportion increased and at the end of 2011 only two countries, **Cyprus** and **Malta,** had yet to introduce such alternatives[63] (see Figure 1.4). This development can be explained in two ways – the need to transpose the Return Directive and the desire to reduce immigration detention. No alternatives are provided for in the Croatian legislation, except for Article 100 of the Aliens Act, which provides for the possibility of placing foreigners in an open facility if they cannot be detained for health or other justified needs or reasons.

The inclusion of alternatives to detention in national immigration or foreigners legislation is not itself a guarantee that alternatives are used in practice.

In many EU Member States, statistics on alternatives to detention are not systematically collected, which makes it difficult to assess the extent to which alternatives are applied. It appears, however, that in several Member States alternatives are imposed substantially less frequently than detention. In **Bulgaria,** for example, in 2011 alternative measures to detention were applied to 42 foreigners, whereas 1,057 persons were detained.[64] In **Lithuania**, during the same time span,

59 International Detention Coalition (2011); UNHCR (2011b).

60 The Return Directive stipulates in Art. 15 (1) that deprivation of liberty may be ordered "unless other sufficient but less coercive measures can be applied effectively in a specific case". Read in conjunction with Recital 16 (quoted in the above box), Art. 15 (1) establishes a duty to examine in each individual case whether alternatives to detention would suffice before resorting to deprivation of liberty.

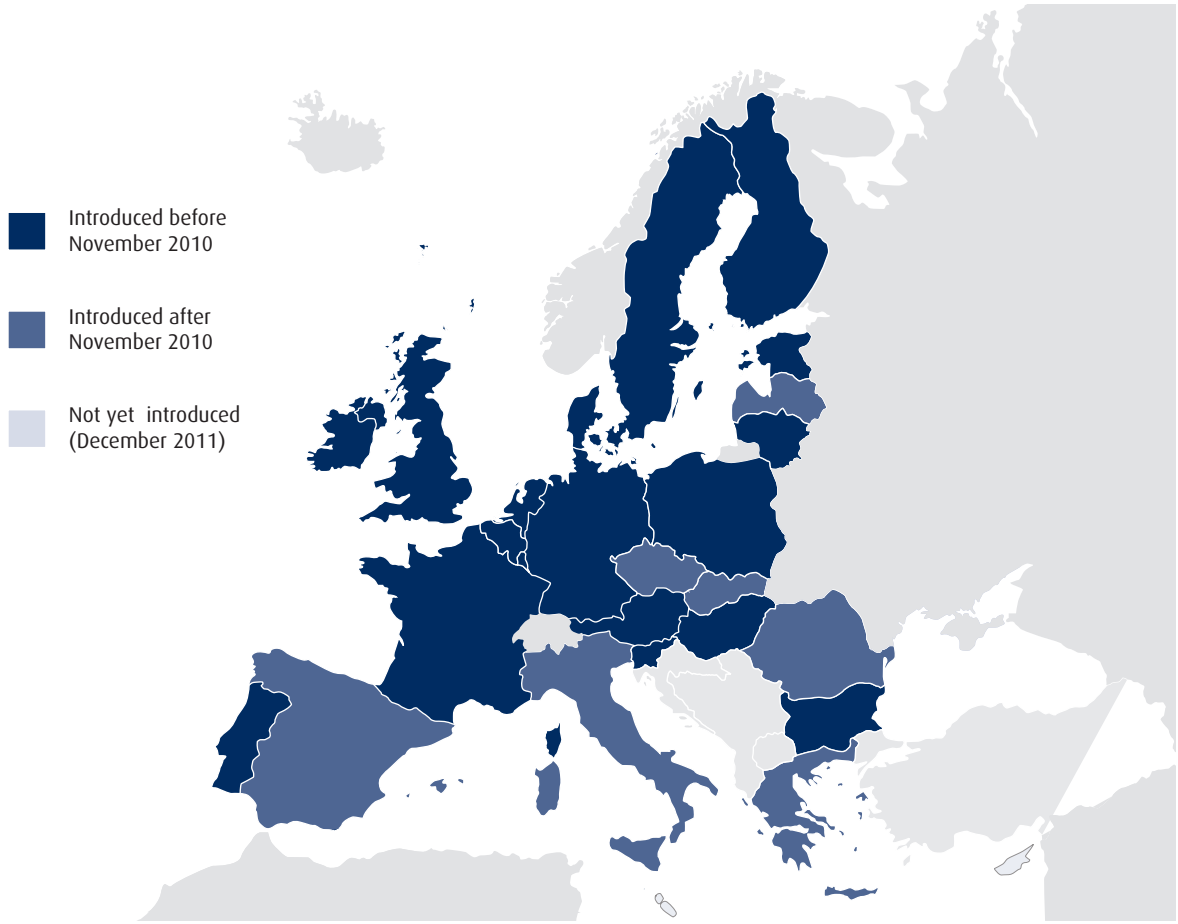
61 Art. 20 of Directive 2008/115/EC sets the transposition deadline as 24 December 2010.

62 FRA (2010), p. 50, Figure 6.

63 In Malta, Art. 25A(13) of the Immigration Act provides for the possibility to impose reporting duties, but only for individuals who have been released from detention.

64 Information provided to the FRA by the Bulgarian Ministry of Interior in February 2012.

Figure 1.4: Progress in introducing alternatives to detention in national legislation, by country



Source: FRA, 2011

alternatives to detention were applied to 11 foreigners whereas detention was applied to 473 foreigners (232 of them were detained for up to 48 hours only).[65] Amnesty International **Netherlands** (*Vreemdelingendetentie in Nederland*) stated that the Dutch government hardly uses alternatives to detention in cases pending deportation and in cases concerning highly vulnerable individuals.[66] In **Slovenia**, in the first six months of 2011, more lenient measures were ordered in only two cases, allowing unauthorised migrants' accommodation outside the Aliens Centre under Article 59 of the old Aliens Act.[67]

In a few countries alternatives are used more frequently, such as for example in **Austria**, where, during the reporting period, alternatives were applied in 1,012 cases compared to 5,152 cases of detention.[68]

Turning to the types of alternatives provided for in national law, traditional forms have a tendency to prevail. Regular reporting to the police (23 EU Member States) and residence restrictions (19 EU Member States) are the alternatives most commonly found in national legislation. Residence restrictions include the duty to stay at a particular place or the obligation to reside in a specific area of the country. Residence restrictions are often combined with other restrictions, for example, in France,[69] with the surrender of documents. Designated places can be open or semi-open facilities run by the government or NGOs, hotels or hostels as well as private quarters provided by the person concerned. The regime imposed can vary, but usually requires persons to stay at the designated location at certain times with absence only allowed if duly accounted for.

65 Information provided to the FRA by the Lithuanian State Border Guard Service in March 2012.
66 Amnesty International, Netherlands (2010). See also two court cases which concluded that alternatives to detention would have been appropriate: Netherlands, District Court The Hague (*Rechtbank's-Gravenhage*) Case No. AWB 11/523, LJN BR3477, 24 February 2011 and Case No. AWB 10/43573, LJN BP0328, 4 January 2011.
67 Information provided by the Border Police Division to the Franet focal point for Slovenia in October 2011.
68 Austria, Ministry of Interior, official monthly statistics, available at: www.bmi.gv.at/cms/BMI_Niederlassung/statistiken.
69 France, Code de l'entrée et du séjour des étrangers et du droit d'asile, Art. 552-4.

Table 1.1: Types of alternatives applied, by country

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

Notes: * *Concerns minors whose guardianship is entrusted to an agency or an individual (Article 115.2.3, Lithuanian law on legal status of aliens, Dutch Aliens Circular paragraph A6/5.3.3.3); ** In the United Kingdom, the duty to surrender documents is imposed on all individuals who do not have permission to stay. It is therefore not regarded as an alternative to detention per se.*

Source: National legislation as of 31 December 2011; see references for national legal provisions relating to types of alternatives applied

In the context of criminal law, it is not uncommon to allow for the release of a detained person against pledges of money which are forfeit should the person fail to report to the authorities. One third of the EU Member States also apply this alternative in pre-removal proceedings (see Table 1.1). Four countries have also established the use of electronic monitoring; this alternative, however, is rarely if ever applied.[70] It is costly and implies substantial restrictions on other rights, such as freedom of movement and privacy. As electronic tagging is primarily used for criminal offenders, it has associations with criminality, a further argument against its use in immigration procedures.

Half of EU Member States include as an alternative the duty to surrender documents (see Table 1.1). This measure ensures that valid identity and travel documents are not lost or destroyed during the return and removal process.

In addition to traditional forms of alternatives to detention, more innovative projects have been piloted which combine social work elements with time spent at designated residences. The open houses project for families with children in **Belgium** and the Glasgow family return project in the **United Kingdom** move beyond residence restrictions by providing migrants with information and counselling which focuses either on return

70 According to information received from the competent authorities, no cases of electronic monitoring were recorded in 2011 (until mid-October) in Denmark and Portugal. In the United Kingdom, between 1 January 2011 and 16 October 2011 electronic monitoring was imposed on 50 persons compared to the more than 50,000 residence restrictions ordered. In France electronic monitoring only concerns parents who are caring for a child. This alternative was introduced in 2011 and no figures on its application are available.

(**United Kingdom**, but also initiatives in **Germany**[71]) or on a broader range of options (**Belgium**). Results from the Belgian project have been positive: after three years in total some 250 families, including some 450 children, were accommodated in these open houses. Absconding rates remained low at 20-25 %.[72]

The alternatives to detention listed in the table are not exhaustive, as other forms can be found. In **Denmark**, for example, the authorities can opt to reduce the financial benefits of rejected asylum seekers who refuse to assist with departure arrangements.[73] In **Estonia**, the foreigner must inform the police of changes of residence and of his or her prolonged absence from the place of residence.[74] In **Spain**, the judge can impose "any other precautionary measure" that is considered appropriate and sufficient.[75]

1.2.4. Forced return monitoring

Despite efforts to increase voluntary returns, forced returns remain a reality in the EU. Figures, available for 2009 only, show the forced return of 173,370 persons in 26 EU Member States.[76]

The Return Directive obliges EU Member States to establish an effective system for the monitoring of forced returns (Article 8 (6)). Effective monitoring of forced returns benefits both the person to be removed as well as the removing agency. It reduces the risk of ill-treatment, provides feedback on the operation, increases accountability, improves public acceptance of returns, helps to de-escalate tensions, identifies and verifies possible infringements immediately and can thus reduce the need for litigation. Costs may be co-funded with the EU Returns Fund. This sub-section provides an overview of Member States introducing effective monitoring systems as per Article 8 (6) of the Return Directive.

In 2011, 2,059 persons were forcibly returned in 42 Frontex joint operations, most of which were also co-financed by Frontex, the EU agency which coordinates the operational cooperation between Member States in the field of border control.[77] According to the revised Frontex Regulation, the "Agency shall develop a Code of Conduct [... which shall] assure return in a humane manner and with full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security and the rights to the protection of personal data and non-discrimination" (Article 9 (1a)). In April, Frontex published a code of conduct, which also applies to return operations. The duty to ensure an effective return monitoring system deriving from Article 8 (6) of the Return Directive also applies to Frontex co-ordinated returns (Article 9 (1b)). In practice, however, only four states (**Austria**, **Denmark**, **Luxembourg** and the **Netherlands**) provided monitors for Frontex-coordinated return flights in 2011, three of which had already been monitoring flights in 2010. In the case of serious violations of fundamental rights, Frontex may suspend or terminate a joint operation (Article 3 (1a)).

The European Commission sponsored a study on the implementation of Article 8 (6) of the Return Directive in 2011.[78] This sub-section builds on the results of this study and reflects on the results as of 31 December. At least 13 Member States bound by the directive had not established an effective monitoring system by the end of 2011. This includes countries: with no monitoring system yet in place (**Cyprus**, **France, Italy, Malta, Poland** and **Slovenia**); where law enforcement authorities responsible for implementing the return operation carry out the monitoring (**Belgium** and **Romania**) or where it covers only specific cases (monitoring by the judiciary of certain expulsion cases in **Spain**); and where monitoring systems are not operational (**Bulgaria, Finland, Greece** and **Sweden**).

Scope of monitoring

The structure of the Common Guidelines for Joint Removal, mentioned in Article 8 (5) of the Return Directive, as well as the safeguards concerning procedures and detention pending removal in chapters three and four of the directive, clearly set out the scope of return monitoring. According to these guidelines, all phases of the removal process should be covered. This includes pre-return and pre-departure phases, in-flight procedures, transit, arrival and reception phases. Additional fundamental rights standards to be monitored relate to coercive measures. Such measures, according to the directive, should only be used as a last resort in case of resistance to removal. In this case and in accordance with fundamental rights, with respect for dignity and physical integrity (Article 8 (4)), reasonable force should not be exceeded. The implementation of returns must take into account the best interests of the child, family

71 Some German Federal States (*Länder*) installed 'return institutions' with personal support and advice in order to foster voluntary returns.
72 Jesuit Refugee Service (2011).
73 Art. 42a (11) (ii) in the Danish Aliens Act, between 1 January 2011 and 10 October 2011, the Danish Immigration Service made 276 such decisions.
74 Estonia, Obligation to Leave and Prohibition on Entry Act, Section 10.
75 Spain, Organic Law 4/2000 (as amended), Art. 61 (1).
76 Calculations by the FRA based on the figures in Matrix (2011), p. 23. No figures are available for Ireland.
77 Information provided by Frontex to the FRA on 16 January 2012.
78 Matrix Insight (2011).

life and the person's state of health while respecting the principle of non-refoulement (Article 5).

Most EU Member States concentrate on monitoring the pre-return and pre-departure phases of forced returns, although some also cover the physical removal, including accompanying flights.[79] Only a few Member States (for example, **Luxembourg** or the **Netherlands**) also include the arrival phase when monitoring forced returns.[80]

Independence

The effectiveness of monitoring cannot be ensured without the independence of the authorities which enforce return. The FRA considers that this independence is not granted in cases when the monitoring organisation belongs to or is bound to the branch of government responsible for the management of return. Based on these criteria, by the end of 2011, only 12 Member States had a system of effective return monitoring in place. This excludes systems which are not operational, pending legislative implementation (**Belgium** and **Greece**)[81] as well as those with internal control mechanisms operated by the authorities implementing return[82] or monitoring through the judiciary.[83]

Where independent monitoring mechanisms exist – which are either explicitly designated or act on the organisations' own initiative – they are carried out by three broad categories of actors:

- National preventive mechanisms under the Optional Protocol to the Convention against Torture, e.g. Ombudspersons, human rights commissions, justice chancellors. These mechanisms, in use in four countries,[84] typically have a broad remit and may face capacity problems when trying to monitor forced returns systematically.
- Other independent governmental institutions, such as commissions established specifically to monitor forced returns (Supervisory Committee on Repatriation, SCR; *Commissie Integraal Toezicht Terugkeer,* CITT in the **Netherlands**), migration oversight bodies (Portuguese High Commission for Immigration and Intercultural Dialogue) or the Prosecutor's Office (**Hungary**).
- Non-governmental organisations (NGOs), such as the Red Cross (six EU Member States).[85] While government funding may raise questions concerning the independence of NGOs, they are marked as independent in Figure 5 provided their independence is secured by law and they are not bound by orders from the ministry responsible for returns.

There are a number of further factors which determine the independence and effectiveness of monitoring mechanisms. These can relate to the frequency of observations, the monitoring organisation's capacity to determine which returns it monitors, sufficient funding as opposed to severe budgetary constraints or control and the ability of monitors to form an independent opinion.

Promising practice

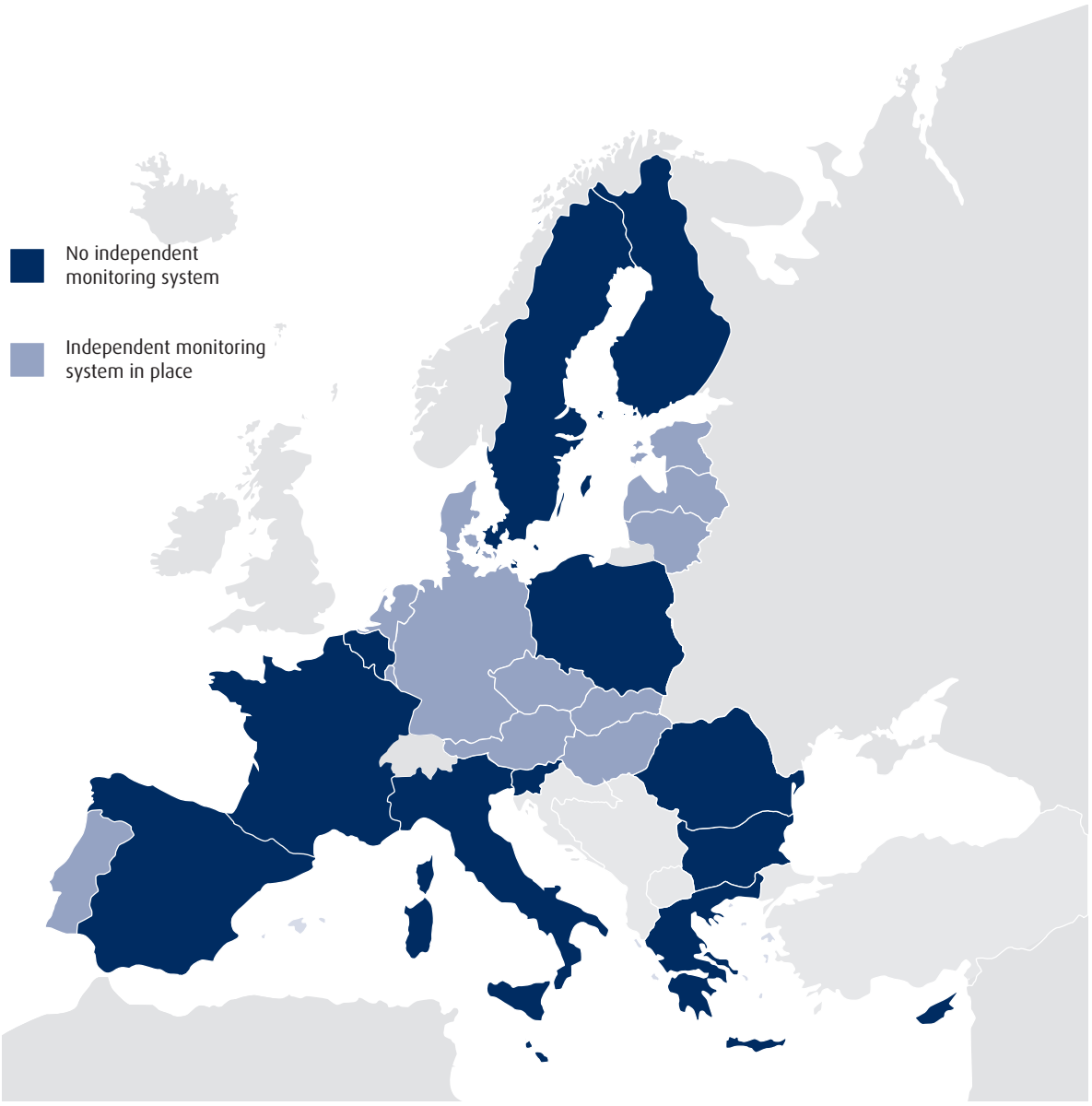
Inspecting independently

The Supervisory Committee on Repatriation (*Commissie Integraal Toezicht Terugkeer*, CITT) is an independent 'watch dog' responsible for monitoring returns in the **Netherlands**. The committee can inspect and accompany individual and collective return operations or inspect the return process as a whole, including the procedures and working methods of the Repatriation and Departure Service (*Dienst Terugkeer & Vertrek*). It also advises the government on how to improve the integrated process of return. The committee is independent in choosing when and how often forced return operations are monitored. It pays particular attention to the deportations of vulnerable groups and deportations that attract public interest, such as deportations of groups in organised charter flights. It also focuses on cases in which the necessity to apply means of coercion is foreseen, when, for example, aliens with a criminal and/or violent history are deported. A physician and a psychologist are part of the committee team. They can be deployed to survey deportations of minors or cases with medical aspects.

For more information, see: www.commissieterugkeer.nl

79 Matrix Insight (2011), p. 26.
80 Matrix Insight (2011), p. 45.
81 In Belgium, police currently carry out monitoring, pending the implementation of a legislative proposal that Parliament passed on 21 November 2011 to have an independent instance appointed (Art. 22, §3 proposal 1825/008). In Greece, the mechanism was set up by law 3907/2011. The joint Ministerial Decision necessary for implementing the law which also regulates the structure and operation of the monitoring system had not been issued by the end of 2011. Ministerial Decision 801/2011 (OG B 3027 2011) provided for the preparations for opening the relevant service.
82 In Romania, the Office for Immigration monitors returns. Similarly, in Belgium until the adoption of the abovementioned legislative proposal, the police monitor returns.
83 In France and Spain, the only monitoring available is general judicial control over action by law enforcement authorities.
84 Austria (Commissions of the Human Rights Advisory Board); the Czech Republic (Ombudsman); Denmark (Ombudsman) and Latvia (Ombudsman). In Finland, the task is assigned to the Ombudsman and the Chancellor of Justice, who in practice does not have the capacity to monitor forced returns.
85 Austria (NGO *Verein Menschenrechte Österreich*); Estonia (Red Cross); Germany (different NGOs in at least three airports); Lithuania (Red Cross). In addition, NGOs can be involved in monitoring in Slovakia.

Figure 1.5: Independent forced return monitoring systems, by country



Note: *The map illustrates the independence of monitoring bodies from the authorities managing return. Other possible deficiencies such as limitations in the scope or capacity of monitors are not considered. At the end of 2011, Belgium and Greece were in the process of introducing monitoring mechanisms. In Germany, return monitoring mechanisms exist at some airports but not nationwide. Ireland and the United Kingdom are not included as they are not bound by the Return Directive.*

Source: *FRA, 2011; based on Matrix/ICMPD and information collected from Franet*

Reporting

Reporting on findings is key to an effective monitoring system as it ensures the accountability of government agencies and the credibility of the monitoring organisation. Only eight of the 12 Member States (**Austria**, the **Czech Republic**, **Denmark**, **Germany**, **Latvia**, **Lithuania**, the **Netherlands and Slovakia**) with operating and independent monitoring organisations publish the findings of the monitoring missions at least in part. While some Member States publish the reports in full, the majority produce case specific reports and analyses for internal use only, while publishing summaries, statistics or the resulting recommendations to authorities.

In **Austria**, the Human Rights Advisory Board publishes annual reports including recommendations to the Federal Ministry of the Interior, but does not report on each monitored return.[86] In its Annual Report 2010, for example, it said that fundamental rights issues should be kept in mind at all stages of forced returns. In **Lithuania**, after

86 Austria, Human Rights Advisory Board (*Menschenrechtsbeirat*) (2010), p. 20.

each monitored return, observers submit a short report, describing and assessing the entire return process and making recommendations to improve the procedure of return and expulsion. These documents are submitted to their project coordinator at the Red Cross and are not published, although the recommendations are presented to state officials and representatives of NGOs at a conference.

1.3. Integration

This section deals with the integration of migrants, including legally resident third-country nationals as well as their children. The European Council's Common Basic Principles for Immigration Integration Policy in the EU from November 2004[87] say that "integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of the Member States". Whereas these common principles refer to various migrant groups residing in the EU, EU communications and directives focus particularly on legally resident third-country nationals.

In 2011, the European Commission issued the *European Agenda for the Integration of Third-Country Nationals*.[88] Integration is understood as a long-term, multidimensional process, requiring engagement by the receiving society in accommodating the migrants, respecting their rights and cultures and informing them about their obligations. At the same time, migrants need to show a willingness to integrate and respect the rules and values of the society in which they live. This communication highlights European integration challenges and provides recommendations and suggests areas for action.

The integration of third-country nationals should be based on strong guaranties for fundamental rights and equal treatment, building on the mutual respect of different cultures and traditions. Under EU law, the set of rights granted to a person depends on his or her status. On one end of the spectrum, migrants in an irregular situation are afforded only minimal rights, while, on the other end, asylum seekers are addressed through targeted legislation (e.g. the Reception Conditions Directive). Third-country long-term residents are given rights which are commensurate with those of EU nationals. Other categories of persons fall in between these extremes: students, researchers, persons joining their family members, highly qualified migrant workers, refugees and subsidiary protection status holders all have specific rights attached to their status. The more likely or desirable it is that one category or another stays long-term in the country, the broader the set of rights that group enjoys. Such fragmentation of rights does not, however, take into account the fact that individuals often move between categories. Asylum-seekers may become long-term residents. Persons who are not removed may obtain temporary residence permits and, with time, also become part of the resident population. Experiences of detention or deprivation lived through in the first months and years in the host country may create considerable psychological obstacles for successful integration later. The *European Agenda for the Integration of Third-Country Nationals* does not address the issue that the reception experiences of migrants arriving in an irregular manner may undermine their ability to integrate at a later stage when they have legal resident status.

As reported by the FRA in its 2010 Annual Report – in a number of EU Member States migrants must satisfy pre-entry requirements to be granted a residence permit, requirements which are seen as necessary pre-requisites for integration. Such pre-arrival measures are also addressed in the *Green Paper on the right to family reunification*, which asks how such measures serve the purpose of integration, how they can be assessed in practice and which ones are most effective. Some Member States require family members to pass a test – on language or knowledge of the host culture, say – as a condition of admission to the territory. To facilitate integration and better prepare new migrants, a more promising practice would be to provide pre-arrival information about life in the new country of residence within the EU.

As stated in the *European Agenda*, integration is achieved through the active participation of migrants in the receiving societies. In a pilot study published in June 2011 by Eurostat,[89] the data required to calculate indicators of immigrant integration have been presented in four policy areas proposed to measure and monitor results of integration policies: employment; education; social inclusion; and active citizenship. Figures for different immigrant groups are provided, broken down by country of birth as well as country of citizenship including long-term third-country residents as well as third-country nationals who have acquired citizenship. Those policy areas can be viewed in parallel with the *EU Framework for National Roma Integration Strategies*[90] to improve the situation of Roma in Member States with regard to education, employment, housing, healthcare and essential services. The statistical information draws less from issues such as political, social and cultural participation. A closer look at those areas reveals clear differences in access and participation rates between different migrant groups and the majority population but also promising practices of integration.

87 Council of the European Union (2004), p. 19.
88 European Commission (2011g), reference or comment on the resulting JHA Council conclusions of December 2011 could also be made.
89 Eurostat (2011).
90 European Commission (2011m).

FRA ACTIVITY

Respect for and protection of persons belonging to minorities

In September 2011, the FRA published a report on *Respect for and protection of persons belonging to minorities*. This report examines what the Treaty of Lisbon means for the protection of minorities, and policies the EU has recently adopted in this field. It provides evidence of persisting discrimination found in many areas of life, including employment, housing, healthcare and education.

1.3.1. Health

Legislative and policy developments in healthcare affecting migrants

Several legal provisions exist which guarantee equality of treatment between EU citizens and third-country nationals who are long-term residents[91] and those who benefit from international protection[92] in a wide range of economic and social matters, including healthcare. In addition, Article 30 of the Qualifications Directive[93] guarantees access to healthcare to refugees and to those who benefit from subsidiary protection under the same conditions as Member State nationals. With the publication of the recast, a previously existing limitation for persons granted subsidiary protection was removed.

However, some EU Member States instituted measures that could potentially raise economic barriers, thereby limiting migrants' access to healthcare. Rules introduced in June 2011 in **Denmark**, for instance, require that patients with more than seven years of residence cover the costs of any language interpretation they need when seeking medical assistance. In contrast, those who have resided there for less than seven years continue to enjoy this service free of charge.[94]

Some EU Member States also implemented changes that have increased the cost of health insurance for third-country nationals. This was the case in the **Czech Republic**, where legislative changes led to a doubling of the level of insurance coverage for third-country nationals who apply for residence permits valid beyond 90 days. Since January 2011, they have been required to subscribe to insurance policies that cover costs of up to €60,000, whereas the previous threshold was €30,000.[95]

Some EU Member States have adopted national integration strategies for migrant populations that include a healthcare component. This includes **Cyprus**, which adopted its first action plan for the integration of immigrants who reside there legally.[96] In the area of health, the action plan aims to provide easier access to information and health treatment and to improve the way health service providers handle immigrants. All legal immigrants are covered by healthcare insurance.

Although healthcare is free of charge in **Cyprus** for asylum seekers whose salaries fall below a certain threshold, the European Commission against Racism and Intolerance (ECRI) reports[97] that the standard policy appears to be to refuse this benefit to those who are entitled to it. Governmental and non-governmental organisations, ECRI adds, express concerns that refugees are consistently refused special treatment abroad when the medical treatment or procedure required cannot be provided in Cyprus, although they are entitled to free healthcare on the same footing as Cypriots and other EU nationals.

Similarly to the Cypriotic action plan, the **Czech** Government adopted its *Foreigners Integration Concept*, which required the ministers of health and of the interior to submit a proposal for improving the healthcare situation of foreigners by the end of 2011.

Another example is that of **Austria**, whose national action plan on integration includes specific recommendations relating to healthcare. This plan, which is coordinated by the Ministry of the Interior (*Bundesministerium für Inneres*), includes raising awareness among disadvantaged groups of persons with a migration background and facilitating the use of preventive healthcare by these groups. As part of improving access to healthcare, medical staff will be encouraged to diversify their language skills and efforts will be made to increase the number of medical staff with a migration background.[98]

In March, the Ministry of Labour, Social Affairs and Family (*Ministerstvo práce, sociálnych vecí a rodiny Slovenskej republiky*) of the **Slovak Republic** amended the concept for the integration of foreigners (*Koncepcia integrácie cudzincov v. Slovenskej republike*) that was

91 Council Directive 2003/109/EC, OJ 2004 L 16, p. 44.
92 Directive 2011/51/EU, OJ 2011 L 132, p. 1.
93 Directive 2011/95/EU, OJ 2011 L 337, p. 9.
94 Denmark, Administrative order No. 446 of 12 May 2011.
95 Czech Republic, *Zákon o pobytucizinců* (Residence Act), No. 326/1999, January 1, 2000, last modified by law 427/2010, 1 January 2011.
96 Cyprus, *Σχέδιο Δράσης για την Ένταξη των μεταναστών που διαμένουν νόμιμα στη Κύπρο* 2010–2012.
97 ECRI (2011a).
98 Austria, BMI (2011), pp. 29-32.

adopted in May 2009.[99] This policy relates to the integration of third-country nationals residing legally in Slovakia. The policy introduces a number of measures that could lead to better health outcomes for third-country nationals, mainly through facilitating their independent access to the healthcare system.

Promising practice

Capturing migrant status in health databases

In 2011, the **Slovakian** Ministry of Health (*Ministrstvo za zdravje*) produced a draft proposal for a Healthcare Databases Act (*Predlog Zakona o zbirkah podatkov v. zdravstvu*). This bill defines the rights, obligations and duties of healthcare providers and other operators in processing personal data and managing databases in the field of healthcare. It stipulates that several databases include data disaggregated by migrant status, including the chronic diseases registry; the preventive healthcare of children and youth registry; the preventive healthcare of adults registry; the reproductive healthcare registry; the database on treatment in hospitals and other stationary facilities; and the database on the health of the economically active population, work-related injuries and occupational disease and eligible sickness absence of employees.

Two main trends can be identified among the few Member States where data on health inequalities between the majority population and migrant communities were published in 2011: migrant communities make less use of preventive healthcare services (**Austria,**[100] **Denmark**[101] and **Germany**[102]) and have poorer health outcomes (**Denmark**[103] and the **Netherlands**[104]) compared to members of the majority population.

Refugees, as well as asylum seekers, are especially at risk of poor health and mental health problems. According to the Equality and Human Rights Commission (EHRC) in the **United Kingdom**, refugees and asylum seekers have particular health concerns due to the impact of relocation and possible past experiences of trauma.[105]

1.3.2. Education

In its report on **Malta**, CERD expressed concerns about difficulties faced by immigrant women, in particular refugees and asylum seekers, in effectively accessing education.[106]

Residence requirements can also act as barriers preventing migrants and third-country nationals from having equal access to pre-school education and educational grants. For instance, in the **Czech Republic**, municipalities often require that applicants who wish to register their children for pre-school education must be permanent residents in that municipality. The Public Defender of Rights (*Veřejný ochránce práv*) considered this practice to be discriminatory and found the requirement to be contrary to the national School Act (*školský zákon*).[107] It also issued a recommendation to guarantee the right of everyone to equal treatment in access to pre-school education.[108]

Access to pre-school education and to educational grants and scholarships for third-country nationals and EU citizens in some municipalities in **Italy** are hindered by restrictive residence requirements imposed by local authorities. For some municipalities a residence permit and registration in the municipal registry of residents is required. In other municipalities a minimum number of years of residence is also required before social services can be accessed (up to 15 years in some regions), which has acted as a barrier even for long-term stay migrants. In its 2011 annual report, the National Office Against Racial Discrimination (*Ufficio Nazionale Antidiscriminazioni Razziali*, UNAR) referred to administrative acts aimed at limiting access to pre-primary education or education grants or scholarships as institutional discrimination.[109] Similar restrictive criteria have been adopted by some municipalities in Italy for long–term migrants wishing to access public housing and rental subsidies (for more information, see the upcoming section on Housing).

In **Austria,** the Compulsory Schooling Act (*Schulpflichtgesetz*)[110] introduced in 2011 provides that education is compulsory for children who reside permanently in Austria, but it does not provide compulsory schooling for children with temporary residence status.

The initial findings of the Trajectories and Origins (TeO) Survey on Population Diversity in France, which sampled 21,000 persons in metropolitan **France** between September 2008 and February 2009, were published at

99 Slovakia, Ministry of Labour, Social Affairs and Family (2011).
100 Austria, Statistics Austria (2011), p. 66.
101 Kjøller M. *et al.* (2007).
102 Germany, Federal Office for Migration and Refugees (BAMF) (2011).
103 Kjøller M. *et al.* (2007).
104 Can, M. (2011).
105 United Kingdom, Equality and Human Rights Commission (EHRC) (2010).
106 UN, Committee on the Elimination of Racial Discrimination (CERD) (2011), p. 4.
107 Czech Republic, Law on Pre-School, Basic, Secondary, Tertiary, Professional and Other Education (School Act), Nr. 561/2004, 1 January 2005, last modified by law Nr. 73/2011, 25 March 2011.
108 Czech Republic, *Veřejný ochránce práv* (2010).
109 Italy, National Office Against Racial Discrimination (UNAR) (2011).
110 Austria, Compulsory Schooling Act 2011 (*Bundesgesetz über die Schulpflicht*) BGBl. 76/1985, last modified by BGBl. I 113/2006.

the end of 2010.[111] The respondents were immigrants, descendants of immigrants and people from the majority population. The aim of the survey was to examine access to resources by immigrants and their children who were born in France. The survey:

- shows that, concerning education, significantly smaller proportions of persons with an immigrant background access higher education compared to the mainstream population. While 53 % of the mainstream population access higher education, only 25 % of descendants of immigrants from Turkey do, compared to 41 % of descendants of Algerian origin, 43 % of Portuguese origin and 44 % of sub-Saharan African origin. These "differences stem from differences in the tracks followed in secondary school, which in turn partly reflect differences in social origin between sub-groups."[112]

- results also show that differences in career tracks between the majority population and minority populations may be due to discriminatory treatment in educational advisory services. On average, 14 % of descendants of immigrants reported "having been less well treated" when offered advice on which educational path to follow, which is about three times as much as the rate for the general population. This is particularly marked among descendants of immigrants from Sahelian Africa (24 %), Morocco and Tunisia (23 %), Turkey (22 %), Algeria (20 %) and west and central Africa (20 %). The main motives given as a possible reason for this unfavourable treatment are 'origin' and 'skin colour'.[113]

- findings suggest that de facto segregation in education may be the result of residential segregation and avoidance strategies by parents. "Avoidance strategies are most common in mainstream population families," with 30 % of children in this group attending schools outside of their catchment area. Descendants with an immigrant background, in contrast, are less likely to avoid schools in their catchment area: 16 % of respondents with a Turkish background, 18 % of those with a Sahelian African background, 20 % of those with a west and central African background and 21 % of those with an Algerian background attend schools outside of their catchment area.

- also shows in its initial findings that children with a minority background are more likely to "go to schools with high proportions of immigrant children (51 % on average compared to 17 % for the mainstream population)."[114] This may stem from residential segregation, which makes it less likely for children with an immigrant background to attend schools attended by those from the majority population.

Evidence of segregation leading to avoidance strategies is confirmed by research conducted in eight Member States (**France, Germany, Hungary**, **Italy**, **Netherlands**, **Poland, Portugal** and the **United Kingdom**[115]). In its 2011 publication *Intolerance, Prejudice and Discrimination: a European Report*, the Friedrich Ebert Foundation (*Friedrich Ebert Stiftung*) analysed "survey data collected in telephone interviews of a representative sample of 1,000 persons aged 16 and above per country in autumn 2008 in the scope of the Group-based Enmity in Europe study," conducted by the University of Bielefeld.[116] The analysis of the survey results shows that "41 % of all European respondents agree 'somewhat or strongly' that they would not send their child to a school where a majority of the pupils are immigrants. In the Netherlands, Germany and Great Britain more than half of respondents share this opinion; in France, Poland and Italy the figure is about one third. In Portugal the figure is one in four."[117]

1.3.3. Employment

Migrants and the labour market

Evidence shows that a number of migrant groups often find themselves in less favourable positions on the labour market in EU Member States than members of the majority population. This can manifest itself in lower rates of employment, in over-qualification for the work carried out, or in over- and under-representation of migrants and ethnic minorities in economic sectors compared to the majority population.[118]

Data published by the Observatory of Inequalities (*Observatoire des inégalités*) in December 2010 suggest that people with a migration background have a different profile on the labour market in **France** than the majority population.[119] The data, concerning the year 2007, show that while the occupation of 23 % of native French people was in the category of 'labourers' (*ouvriers*), this was much higher for other groups: Algerians (43 %), Moroccans (52 %), Tunisians (49 %), Turkish nationals (66 %) and other African nationals (35 %).

111 Brinbaum, Y. *et al.* (2010), p. 50.
112 *Ibid.*, p. 49.
113 *Ibid.*, pp. 45-51.
114 *Ibid.*, p. 51.
115 The survey was conducted in England, Wales and Scotland but not in Northern Ireland.
116 Zick, A. *et al.* (2011), p. 18.
117 *Ibid.*
118 European Centre for the Development of Vocational Training (Cedefop) (2011).
119 Observatory of inequalities (*Observatoire des inégalités*) (2010).

Larger proportions of members of migrant groups and ethnic minorities are unemployed compared to the majority white population in the **United Kingdom.**[120] In the last quarter of 2010, the overall unemployment rate in Great Britain was 4.9 %, with that of the white population at 4.5 %. The average unemployment rate for minority ethnic groups was 8.5 %. Within that group, the population with the highest rates of unemployment were those of a mixed ethnic background (12.8 %), followed by the 'Black or Black British' population (11.5 %). The "Asian or British Asian" population fared relatively better, with an unemployment rate of 6.8 %.

FRA ACTIVITY

Migrants, minorities and employment

In July 2011, the FRA published a 2003–2008 update on the exclusion and discrimination of migrants, minorities and their employment in the 27 EU Member States. The report provides a comparative overview and analysis of data and information documenting discrimination in the workplace and labour markets across the EU. It highlights persistent patterns of inequality between the situation of foreigners, immigrants and minority groups in the labour market and that of the overall majority populations.

The most recent data available from **Austria** show that, in 2008, 15 % of second generation migrants (and 29 % of first generation migrants) were over-qualified for the work they carried out, compared to 10 % for persons without a migration background.[121] Data from 2010 show that the trade or manufacturing sectors employed the largest proportions of people in Austria and people with a migration background tended to work more in these sectors than those without a migration background.[122]

Data released by the Federal Service Employment, Labour and Social Dialogue in **Belgium** (*Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg*) show that the employment rate of native Belgians was 63.2 % in 2009.[123] For migrants from within the EU, the rate was 52.2 % compared to 47.1 % for migrants from outside the EU. Similar differences can be observed in unemployment rates, with that of native Belgians at 6.6 %, compared to 16.2 % for migrants from within the EU and 21.9 % for migrants from outside the EU.

Statistics from the trade union for commercial and clerical employees (*Handels- og Kontorfunktionærernes Forbund,* HK) show that the unemployment rate in 2010 for people with a migration background in **Denmark** was 9.2 %, compared to 4.1 % among ethnic Danes.[124] Furthermore, the latest available national statistical data show that while the employment rate of persons of Danish origin was 74.1 % in 2010 the rate for descendants of migrants was 58 %. Within that group, the employment rate of descendants from Western countries was 66.7 %, compared to 56 % for descendants from non-Western countries.[125] 'Western countries' were defined to include the Nordic countries, EU countries, Andorra, Liechtenstein, Monaco, San Marino, Switzerland, Vatican City, Canada, the United States, Australia and New Zealand. Non-Western countries include all others.[126]

The occupational attainment of people with a migration background in **Germany** remains behind that of native Germans. The latest available data, covering the year 2009, show that, at 13 %, the unemployment rate for persons with a migration background was higher than the 6.5 % rate for persons without a migration background.[127] The proportion of manual workers among persons with a migration background was also much higher than that for those without a migration background: 40.8 % compared to 23.1 %.

The unemployment rate among persons with a non-Western migration background in the **Netherlands** in 2010 was 12.6 %, compared to 4.5 % among persons with no migration background.[128] The net labour participation rate among persons with a non-Western migration background was 52.8 % compared to 69.4 % among persons with no migratory background. For the purposes of this research "people with a non-western foreign background comprise people from Turkey or countries in Africa, Latin America and Asia, with the exception of Former Dutch East Indies/Indonesia and Japan. The first generation consists of men and women born outside the Netherlands. The second generation are men and women born in the Netherlands of whom at least one parent was born abroad."[129]

> *"Asylum seekers, migrant workers, non-white and Muslim Cypriots continue to face widespread discrimination in employment [in Cyprus] often attributed to a deep-rooted attitude of protectionism."*
>
> *ECRI (2011a), p. 22*

120 United Kingdom, Office for National Statistics (2011).
121 Austria, Statistics Austria (2011), p. 57.
122 Austria, Statistics Austria (2011).
123 Belgium, Federal Public Service Employment, Labour and Social Dialogue (2011).
124 Denmark, Trade union for commercial and clerical employees (2011).
125 Denmark, Statistics Denmark (2011a).
126 Denmark, Statistics Denmark (2011b).
127 Germany, Federal Office for Migration and Refugees (2011).
128 Netherlands, Statistics Netherlands (2011a).
129 Netherlands, Statistics Netherlands (2011b).

Removing barriers

While the statistical data and cases presented above suggest that barriers to the labour market persist for migrants in the EU, some EU Member States adopted policy and legislation that removed such barriers. In the long run, this removal could lead to the more successful integration into the labour market of first- and second-generation migrants from within and outside the EU.

Legislation on the employment of non-nationals in **Austria** (*Ausländerbeschäftigungsgesetz*) was amended in April 2011, removing a provision requiring employers to prioritise non-national workers for dismissal when making staff cuts.[130] In **Germany**, legislation adopted in July 2011 now makes it easier for professional qualifications gained abroad to be recognised by introducing a single procedure.[131]

1.3.4. Housing

The **Bulgarian** Refugee Council (*Българският съвет за бежанци и мигранти*) in its 2008–2010 report on the integration of refugees reported that they still face obstacles and difficulties in accessing municipal and private housing. These obstacles result from eligibility requirements, such as registration in a municipality; a length of residence requirement set by the municipalities themselves; and discriminatory attitudes and reluctance among property owners to let to non-nationals with refugee or humanitarian status.[132]

The President of the Veneto region in **Italy** proposed a bill – yet to be adopted – requiring that migrants should have resided in the region for 15 years before they can access local social services, including access to public housing and rental subsidies.[133] If they are to be registered in the municipal registry of residents (*iscrizione anagrafica*), migrants are required to meet 'specific housing standards' not asked of Italian citizens. One requirement is certification from a municipality or local health unit that the accommodation is of a minimum area of habitable space relative to the number of residents. As social services are usually granted on the basis of this registration, third-country nationals who are not able to comply with these standards could be excluded from access to social housing and rent subsidies. The National Office Against Racial Discrimination (*Ufficio Nazionale Antidiscriminazioni Razziali*, UNAR) issued an opinion stating that requiring Italian citizenship or many years of residence for access to public services consists of discrimination on the ground of the status of citizenship.[134] In April 2011 the European Commission began infringement proceedings against Italy with regard to laws in the Friuli Venezia Giulia region that make access to public housing dependent on the number of years of residence or which in other ways give preferential treatment to Italian citizens compared to third-country nationals who are long-term residents under Directive 2003/109/EC.[135]

In its 2011 report on **Spain**, ECRI noted that "the new Law on the Rights of Freedom of Foreigners and their social integration has opened a possibility for discriminatory restrictions by guaranteeing the right to housing aid on equal terms with Spanish nationals only to 'long-term' foreign residents and leaving decisions in other cases to the discretion of the autonomous communities with responsibility in this area."[136]

Non-EU nationals can also be excluded from non-profit housing schemes. The Housing Act adopted in 2003 in **Slovenia**, for instance, stipulates that only Slovenian and EU citizens with permanent resident status have the right to apply for non-profit rental housing, rental subsidies and housing loans, upon fulfilment of the principle of reciprocity, that is, if Slovenian nationals have access to similar schemes in other EU Member States.[137]

The aforementioned Trajectories and Origins Survey on Population Diversity in **France** provides an analysis of inequalities in access to housing.[138] The initial findings of the survey show that "immigrants and their children are less frequently homeowners and more frequently occupy social housing than the mainstream population. This is particularly the case for people originating from North and sub-Saharan Africa and Turkey. One-fifth of the respondents from Algeria and sub-Saharan Africa report that they have been discriminated against, regarding access to housing. The feeling of segregation is strongest among social housing tenants, particularly immigrants and *départements d'outre-mer* (DOM) native French."[139] Drawing on the findings of the survey, the National Institute for Demographic Studies (*Institut national d'études démographiques*, INED) published a report on the residential segregation of immigrants in France in April 2011.[140] This report shows that 42 % of population groups from North Africa, sub-Saharan Africa and Turkey live in the 10 % of neighbourhoods

130 Austria, Parliament (2011).
131 Germany, Federal Ministry of Education and Research (2011a); Germany, Federal Ministry of Education and Research (2011b).
132 Bulgaria, Bulgarian Council of Refugees (2009).
133 Italy, Veneto Regional Council (2011).
134 Italy, UNAR (2010).
135 Italy, Infringement procedure No. 2009/2011 on Wrong application of Directive 2003/109 by the commune of Verona and by the region of Friuli-Venezia-Giulia.
136 Council of Europe, ECRI (2011b), p. 7.
137 Slovenia, the Housing Act, 19 June 2003.
138 Pan KéShon, J.-L. and Robello, S. (2010).
139 *Ibid.*, p. 93.
140 Pan KéShon, J.-L. and Robello, S. (2011).

with the highest unemployment rates, as compared to 10 % of the majority population living in the same neighbourhoods.

In **Germany**, the survey carried out by the Friedrich Ebert Foundation, mentioned earlier, shows that 50 % of German respondents would prefer not to "move to an area where many immigrants live" and "find such residential areas problematic."[141]

The Federal Integration Commissioner (*Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration*) in **Germany** remarks that migrants are often victims of discrimination in the residential market.[142] It called upon real estate agents and associations to develop new ways of preventing this discrimination, by raising awareness and training their employees. The Institute of Ethnic Studies at the **Lithuanian** Social Research Centre conducted a public opinion survey in 2010 on social distance between various social groups and attitudes towards immigration. In total, 1,008 respondents aged 15 to 74 were interviewed. The results of the survey, which were made available in December 2010, show that 63.8 % of respondents would not support the allocation of social housing to immigrants.[143]

The results of a survey published in December 2010 in **Spain** by the Basque Immigration Observatory (*Ikuspegi*) among 1,200 individuals with a migration background and native Spaniards show that 56.2 % of migrant respondents reported having particular difficulties in renting a flat.[144] Another attitude survey conducted by the **Catalan** government on the basis of 1,600 face-to-face interviews with native Spaniards reveals that only 48.5 % of the respondents would rent a flat to a migrant family.[145]

Homelessness

In September 2011, the European Parliament adopted a *Resolution on an EU Homelessness* Strategy. The resolution calls for the development of an ambitious, integrated EU strategy, underpinned by national and regional strategies with the long-term aim of ending homelessness within the broader framework of social inclusion.[146] The significance of this resolution rests partly on the fact that migrants, whether third-country nationals or EU citizens, form a significant and increasing proportion of clients using services for homeless people in some EU Member States.[147]

A study published in late 2010 mapping the situation of non-national homeless people in Copenhagen, **Denmark**, shows that these people stem from three main groups: central and eastern European EU citizens; ethnic groups from African countries; citizens of Scandinavian countries.[148] The first two groups have grown in number over the past year. One of the most visible subgroups consists of Romanian citizens of Roma origin, who often find themselves in situations of extreme poverty.

The Housing Finance and Development Centre (*Asumisen rahoittamis- ja kehittämiskeskus,* ARA*/finansierings- och utvecklingscentralen för boendet*) in **Finland** reveals that homelessness among immigrants has increased even though the total number of homeless people in the country fell significantly in the period 2000–2010. In 2010, about 9 % of single homeless persons were immigrants, while over 40 % of all homeless families were migrants.[149] The Social Report series published annually by the National Board of Health and Welfare (*Socialstyrelsen*) in **Sweden** also indicate that homelessness among migrants is increasing. It also highlights the vulnerability of migrant groups and the prevalence of ethnic segregation in housing.[150]

In November 2010, the Polish Institute of Public Affairs published a report from a pilot study on homelessness among refugees in **Poland**. The study was conducted on behalf of UNHCR in 2010 and is based on in-depth interviews with refugees from Chechnya. The main factors behind homelessness were shown to be the lack of communal and social housing, the poor economic situation of refugees and the reluctance of landlords to rent to non-nationals, particularly single mothers and families with many children, and the fact that some landlords demand higher fees from refugees than from Poles.[151]

Hungary provides an example of some of the relevant legislative developments at the national level. Amended legislation, which came into force in December 2011, makes it possible for a fine of approximately €500 (HUF 150,000) or 60 days of imprisonment to be imposed on individuals "habitually residing in public places."[152] According to the analyses of several international and national civil society actors, this could have a severe impact in future on ethnic minorities and refugees.[153]

141 Zick, A. *et al.* (2011).
142 Germany, Migazin (2011).
143 Lithuania, Žibas Karolis (2010) p. 7.
144 Ikuspegi (2010).
145 Generalitat de Catalunya, Centre d'Estudis d'Opinió (2010).
146 European Parliament (2011c).
147 European Federation of National Organisations working with the Homeless (FEANTSA) (2011a).
148 Denmark, Københavns Kommune (2010).
149 Finland, Housing Finance and Development Centre (2010).
150 Sweden, National Board of Health and Welfare (*Socialstyrelsen*) (2010).
151 Wysieńska, K. and Ryabińska, N. (2010).
152 Hungary, Act CLIII/2011 on the amendment of the Act on Offenses (LXIX/1999).
153 FEANTSA (2011b); Győri, P. and Vecsei, M. (2011); A Város Mindenkié (2011); UNHCR (2010).

Political participation

Political participation of third-country nationals remained an important topic for discussion in some EU Member States. In its 2011 Communication on integration, mentioned earlier, the European Commission stressed the importance of migrants' participation in the democratic process and suggested that obstacles to migrants' political participation should be removed. Similarly, at the Council of Europe level, the Congress of Local and Regional authorities asked the Committee of Ministers to invite Member States "to ensure that all forms of democratic participation at local level are open to all people, regardless of citizenship or nationality".[154] In its 2010 Annual Report, the FRA reported that the majority of EU Member States grant, under certain conditions, the right to vote in municipal or local elections to resident third-country nationals. No other country extended the right to vote to non-EU nationals in 2011. In **Cyprus** on 13 October, the House of Representatives rejected two bills regarding the extension of the right to vote in municipal and community elections to long-term immigrants who are non EU-citizens. In Berlin, a symbolic election was organised for non-EU foreigners in parallel to the Berlin election in order to highlight the number of Berliners who are paying taxes but are excluded from elections in **Germany**.[155] In **Belgium**, a proposal to abolish the right to vote for non-EU nationals was introduced in the House of Representatives in 2010 and in the Senate in 2011 by parliamentarians from a minority member party of the opposition.[156]

Promising practice

Engaging migrants in political participation

The Finnish Immigrant Parliament, a project funded by the Ministry of the Interior, is designed to influence public opinion on relevant issues and give a voice to immigrants in the Finnish immigration debate. It will not have official status. The first Immigrant Parliament elections will be held in 2012 in tandem with municipal elections. Altogether 50 parliamentary representatives will be voted in. Foreign-born Finnish citizens, foreigners with at least a year of residence in Finland and the children of immigrants are eligible to vote.

For more information, see: www.ipf.fi

154 Council of Europe, Congress of Local and Regional Authorities (2011).
155 Citizens of Europe, *Jede Stimme* (2011).
156 Belgium, Proposition to abolish the municipal right to vote for non-EU nationals (2010).

Outlook

The EU will need to have established a Common European Asylum System by the end of 2012. The European Asylum Support Office will play an increasingly important role at the practical level, supporting national asylum systems with information and tools.

The finalisation of the recast asylum package will remain a challenge, given the persistent diversity of views among the European Commission, the Council of the European Union and the European Parliament.

A mechanism will be required to assess whether the fundamental rights of asylum seekers who are transferred to another EU Member State in accordance with the Dublin II Regulation are at risk.

The exposure of migrants in an irregular situation to exploitation and abuse will remain a cause for concern and policy makers, including at EU level, are likely to pay particular attention to the situation of those who are not removed for legal, humanitarian or practical reasons.

With respect to the rights of migrants in an irregular situation, experience gained from the implementation of the Employers Sanctions Directive will show whether existing mechanisms are effective, at least as regards the right to claim withheld wages.

The adoption of the Seasonal Workers Directive would facilitate non-skilled labour migration into the EU. This instrument could reduce the demand for the labour force of persons staying illegally on the territory of EU Member States who typically are at risk of being exploited.

With regard to the integration of migrants in the societies of EU Member States, a future challenge will be to ensure that integration continues to be seen as a two-way process, combating discrimination while also recognising the benefits of diversity for the receiving society.

Continuous monitoring, based on agreed indicators of integration, including in the areas of political, cultural and social participation, is required to promote further the integration of legally-resident third-country nationals.

The modernisation of the Professional Qualifications Directive announced in a European Commission green paper could allow for greater mobility of certain third-country nationals who obtained their qualifications within the EU: family members of EU citizens, long-term residents, refugees and blue card holders.

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Greece, Article 25 par. 2 PD 114/2010.

Hungary, 2007 Act on Asylum, Article 68.

Ireland, 1996 Refugee Act, Section 9 (2) (c).

Latvia, 2009 Asylum Act Section 30 (1).

Lithuania, Law on the Legal Status of Aliens, Article 139.

Luxembourg, Loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, Article 19 (3).

Malta, Procedural Standards in Examining Applications for Refugee Status Regulations, Article 12 (1).

Netherlands, Aliens Act, Articles 8 (h) and 82 (1) 82 (2) and General Administrative Act, Article 8 (81).

Poland, Code of the Administrative Proceedings, Article 129 (2).

Portugal, Law 27/2008, Article 30 (1), 30 June.

Romania, Law on Aliens, Article 55 (2).

Slovenia, Protection Act, Article 74 (4).

Sweden, Aliens Act, Chapter 12, Section 8a.

United Kingdom, Nationality Immigration and Asylum Act 2002 (c.41), Sections 92 and 94, 7 November 2002.

UN & CoE

21 January – European Court of Human Rights Grand Chamber delivers its judgment on transfers to Greece under the Dublin II Regulation in the *M.S.S. v. Belgium and Greece* case

January

February

March

April

May

June

16 July – International Labour Organization adopts a convention and a recommendation on domestic workers

July

August

September

October

November

December

EU

January

23 February – European Commission presents an evaluation of existing and pending EU readmission agreements

February

8 March – Court of Justice of the European Union finds in the *Zambrano* case that Article 20 of the Treaty on the Functioning of the European Union (TFEU) implies a right to stay for irregular migrant parents of a child who holds EU citizenship

March

28 April – Court of Justice of the European Union finds in the *El Dridi* judgment that persons in return procedures may not be subject to criminal imprisonment for their unlawful stay

April

4 May – European Commission adopts a Communication on migration

5 May – Court of Justice of the European Union, building on the *Zambrano* judgment, finds in the *McCarthy* case that an EU citizen is not deprived of her rights by the refusal of a residency permit to her third-country national spouse

11 May – Long Term Residents Directive is revised and its application extended to beneficiaries of international protection

May

1 June – European Commission presents amended proposals for the revision of the Reception Conditions and Asylum Procedures Directives

19 June – European Asylum Support Office (EASO) becomes operational

20 June – European Commission and Eurostat publish the Zaragoza pilot study on indicators of immigrant integration

June

20 July – European Commission presents the European Agenda for the Integration of Third-Country Nationals

28 July – Court of Justice of the European Union delivers a judgment in the *Samba Diouf* case on the absence of a remedy in the context of an accelerated asylum procedure

July

August / September / October

15 November – Court of Justice of the European Union clarifies *Zambrano* in *Dereci*, introducing a strict test for family reunification under Article 20 of the TFEU

15 November – European Commission publishes Green Paper on the right to family reunification of third-country nationals living in the European Union

November

2 December – European Commission publishes a Communication on enhanced intra-EU solidarity in the field of asylum

7 December – Court of Justice of the European Union clarifies in the *Achughbabian* case when criminal imprisonment for persons in return procedures is exceptionally allowed

13 December – The European Parliament and the Council of the European Union adopt a directive on a single work and residence permit and common rights for third-country workers

13 December – The European Parliament and the Council of the European Union adopt a revised Qualification Directive

21 December – Court of Justice of the European Union clarifies in *N.S. and others* the need to respect fundamental rights in the context of Dublin II transfers

December