

# Reception Conditions Across the EU





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## **Abstract**

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, is based on concrete quantitative and qualitative evidence, existing available data, studies and analysis from various sources and documents from national and international institutions.

It makes a legal and policy analysis of the EU and international standards applicable to the reception of applicants for international protection, and provides a comparative overview of the implementation of the Reception Conditions and Temporary Protection Directives and of further international norms across EU Member States. Attention is also paid to how the EU supports and ensures Member States' compliance with existing rules on reception conditions.

The study concludes with policy recommendations addressed to relevant actors – including at Member State and European institutions – involved in the provision of reception conditions across the EU.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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## CONTENTS

<b>LIST OF ABBREVIATIONS</b>	<b>5</b>
<b>LIST OF COUNTRY CODES</b>	<b>7</b>
<b>LIST OF FIGURES</b>	<b>8</b>
<b>LIST OF TABLES</b>	<b>8</b>
<b>EXECUTIVE SUMMARY</b>	<b>9</b>
<b>INTRODUCTION</b>	<b>12</b>
<b>1. PART I: OVERVIEW OF LEGAL FRAMEWORK ON RECEPTION CONDITIONS</b>	<b>15</b>
1.1. Legal Framework on Reception for International Protection Applicants	15
1.1.1. Reception in the Common European Asylum System (CEAS)	15
1.1.2. Reception in International Law	15
1.1.3. From 2003 to 2023: Minimum Standards and Beyond	16
1.1.4. The 2013 recast of the RCD: Content	16
1.2. The recast RCD: The 2022 Compromise	18
<b>2. PART II: IMPLEMENTATION OF THE EUROPEAN AND INTERNATIONAL LEGAL FRAMEWORK ON RECEPTION CONDITIONS ACROSS EU EUMS</b>	<b>28</b>
2.1. Provision of Material Reception Conditions: (Preamble, Articles 1-7, 17, 18, 27-30)	28
2.1.1. Models and practices for the provision of material reception conditions	28
2.1.2. Implementation gaps and good practices	38
2.2. The Use of Detention (Articles 8-11)	50
2.2.1. Models/practice and statistics on EUMS' use of detention	50
2.2.2. Implementation gaps and good practices	58
2.3. Access to socio-economic rights: education, employment, health care (Article 14 to 19)	62
2.3.1. Models and practices of access to socio-economic rights	62
2.3.2. Findings and good practices	67
2.4. Reduction or withdrawal of reception conditions (Article 20)	72
2.4.1. Models/practices/experiences of reduction or withdrawal of reception conditions	72
2.4.2. Implementation gaps and good practices	76
2.5. Special reception needs of vulnerable applicants (Article 21-25)	78
2.5.1. Models of provision of support to vulnerable applicants	78
2.5.2. Findings and good practices	83
<b>3. PART III: EU SUPPORT AND ENFORCEMENT</b>	<b>85</b>
3.1. EU support to Member States in the implementation of the legislative framework on reception	85

3.1.1.	EU funding available to support expenditure on reception (focus on current MFF)	86
3.1.2.	Amount of EU funding for reception conditions 2021-27	88
3.1.3.	Reception in the mid-term review of the MFF 2021-27	89
3.1.4.	Budget allocations for reception conditions, AMIF & ESF+ (2021-27)	90
3.1.5.	Programming and implementing EU funds for reception in 2014-20 (AMIF & ESF)	92
3.1.6.	Effectiveness of EU funds for reception in 2014-20 (AMIF & ESF)	97
3.1.7.	Support from EU Agencies (focus on current mandates)	100
3.2.	Enforcement measures	104
3.2.1.	Case-Law on the RCD	105
3.2.2.	The European Commission role in ensuring compliance with EU rules on reception conditions	106
3.2.3.	Infringement procedures and their role in ensuring compliance with EU standards on reception conditions	115
3.2.4.	Findings on enforcement	124
<b>4.</b>	<b>PART IV: FINDINGS, IMPLEMENTATION GAPS AND GOOD PRACTICES</b>	<b>132</b>
<b>5.</b>	<b>PART V: RECOMMENDATIONS</b>	<b>136</b>
	<b>ANNEX I – RECEPTION FOR BENEFICIARIES OF TEMPORARY PROTECTION</b>	<b>142</b>
	<b>ANNEX II – CASE STUDIES</b>	<b>157</b>
	<b>ANNEX III – LIST OF INTERVIEW QUESTIONS</b>	<b>215</b>
	<b>ANNEX IV – LIST OF INTERVIEWS</b>	<b>217</b>
	<b>ANNEX V – SUMMARY OF CJEU JUDGMENTS ON THE RECEPTION CONDITIONS DIRECTIVE</b>	<b>218</b>

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## LIST OF ABBREVIATIONS

<b>AIDA</b>	Asylum Information Database
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>APD</b>	Asylum Procedures Directive
<b>APR</b>	Asylum Procedures Regulation
<b>CEAS</b>	Common European Asylum System
<b>CJEU</b>	Court of Justice of the European Union
<b>CoE</b>	Council of Europe
<b>EASO</b>	European Asylum Support Office (currently EUAA)
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECRE</b>	European Council on Refugees and Exiles
<b>EMN</b>	European Migration Network
<b>ESF</b>	European Social Fund
<b>EU</b>	European Union
<b>EUAA</b>	European Union Agency for Asylum
<b>EUMS</b>	European Union Member States
<b>FRA</b>	EU Agency for Fundamental Rights
<b>FRONTEX</b>	European Border and Coast Guard Agency
<b>ICMPD</b>	International centre for Migration Policy Development
<b>IOM</b>	International Organization for Migration
<b>MPC</b>	Migration Policy Centre
<b>MRC</b>	Material Reception Conditions

<b>MS</b>	Member State
<b>NGO</b>	Non-governmental organisation
<b>PES</b>	Public Employment Service
<b>RAMM</b>	Regulation on Asylum and Migration Management
<b>RCD</b>	Reception Conditions Directive
<b>SO</b>	Specific Objective
<b>TEU</b>	Treaty on the European Union
<b>TCN</b>	Third country national
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TO</b>	Thematic Objective
<b>TPD</b>	Temporary Protection Directive
<b>UAM</b>	Unaccompanied minors
<b>UN</b>	United Nations
<b>UNHCR</b>	Office of the United Nations High Commissioner for Refugees



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## LIST OF COUNTRY CODES<sup>1</sup>

<b>AT</b>	Austria
<b>BE</b>	Belgium
<b>BG</b>	Bulgaria
<b>CY</b>	Cyprus
<b>CZ</b>	Czechia
<b>DE</b>	Germany
<b>DK</b>	Denmark
<b>EE</b>	Estonia
<b>EL</b>	Greece
<b>ES</b>	Spain
<b>FI</b>	Finland
<b>FR</b>	France
<b>HR</b>	Croatia
<b>HU</b>	Hungary
<b>IE</b>	Ireland
<b>IT</b>	Italy
<b>LT</b>	Lithuania
<b>LU</b>	Luxemburg
<b>LV</b>	Latvia
<b>MT</b>	Malta
<b>NL</b>	Netherlands
<b>PL</b>	Poland
<b>PT</b>	Portugal
<b>RO</b>	Romania
<b>SE</b>	Sweden
<b>SI</b>	Slovenia
<b>SK</b>	Slovakia

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<sup>1</sup> The list refers to the states bound by the recast Reception Conditions Directive, plus Denmark, which is not bound by the Directive.

## LIST OF FIGURES

Figure 1:	AMIF 2021-27 available budget amount	88
Figure 2:	ESF+ 2021-27 available budget amounts	89
Figure 3:	AMIF 2021-27: proportional national budget allocations to reception intervention types/fields 001, 004, 005, cumulative	90
Figure 4:	AMIF 2014-20: Proportional national budget allocations to NO1 reception and asylum	92
Figure 5:	Proportional national budget allocations: ESF 2014-20 (TO9: promoting social inclusion, combating poverty and any discrimination) & ESF+ 2021-27 (social inclusion policy area, SOs 8-12)	95

## LIST OF TABLES

Table 1:	Types of accommodation foreseen in national reception schemes	31
Table 2:	Form of provision of housing, food and clothing	34
Table 3:	Grounds for detention in national laws	51
Table 4:	Authority issuing the detention order	55
Table 5:	Time limits to legally access the employment for asylum seekers	64
Table 6:	Labour Market test	64
Table 7:	Grounds for reduction or withdrawal of material reception conditions	73
Table 8:	Accommodation solutions in national laws	81
Table 9:	AMIF 2014-17 contribution to reception conditions	87
Table 10:	AMIF 2014-17 contribution to reception conditions	93
Table 11:	Infringement measures following failure to notify measures transposing the Reception Conditions Directive	116

## EXECUTIVE SUMMARY

### Background

According to Eurostat, in 2022 the number of first-time asylum applicants in the EU was 881,220, a 64% increase compared with the previous year.<sup>2</sup> In addition, over 4 million displaced people from Ukraine currently benefit from temporary protection in EU countries.<sup>3</sup> At the same time, during the year, a number of EU Member States (EUMS) struggled to provide reception conditions to all asylum applicants, with “reception crises” becoming a regular occurrence.<sup>4</sup>

Against this backdrop, the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, at the request of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), commissioned this study on ‘Reception Conditions across the EU’.

### The international and EU legal frameworks

All states party to the Refugee Convention are obliged to allow refugees to live full and dignified lives in the place they have sought protection.<sup>5</sup> Deriving from international law, under EU law, EUMS are bound to provide “reception conditions”, the broad term for the social and economic rights that asylum applicants are entitled to receive. Concomitantly, the term also refers to the obligations imposed on the EUMS in which an asylum application has been lodged. Reception conditions cover what are known as “material reception conditions” – housing, food, and clothing, provided in-kind or via an allowance or vouchers, and a daily expense allowance – and then rights to medical care and certain rights to education, employment and social assistance.

Reception conditions are one of the key pillars of the Common European Asylum System (CEAS), distinct from but integrally linked to the procedural obligations and rights which govern the asylum procedure and are set out in the Asylum Procedures Directive (APD), the rules on status determination to be found in the Qualification Directive (QD), and the rules on responsibility, as set out in the Dublin Regulation.

The recast Reception Conditions Directive, EU Directive number 2013/33/EU,<sup>6</sup> (the RCD) sets out the rights and requirements concerning reception conditions in the current legal framework. It seeks to ensure consistency and harmonisation across the EUMS for the provision of reception conditions. Another recast of the RCD was proposed in 2016<sup>7</sup> and the co-legislators reached a provisional agreement on the text in 2018. A trilogue agreement from December 2022 endorsed the outcome of the previous negotiations.<sup>8</sup> The new text will come into force with the other reforms of the CEAS in 2024.

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<sup>2</sup> Eurostat (2023), [Annual asylum statistics](#).

<sup>3</sup> EUAA (February 2023), [Almost 1 million asylum applications in the EU+ in 2022](#); European Council, Council of the European Union (2023), [Infographic - Refugees from Ukraine in the EU](#).

<sup>4</sup> EUAA (July 2023), [Asylum Report 2023](#), p.173.

<sup>5</sup> Articles 17 to 24.

<sup>6</sup> [Directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ 2013 L180/96.

<sup>7</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down standard for the reception of applicants for international protection (recast)*, [COM\(2016\) 465](#), 13 July 2016.

<sup>8</sup> European Parliament, Legislative Observatory - [Procedure File: 2016/0222\(COD\)](#), Reception Conditions Directive.

## Key findings

A variety of practices in the implementation of the recast RCD are observed among the EUMS, although there are also many areas where practice converges (see Chapter 2). The main implementation gaps observed through the comparative analysis of practices in the EUMS include denial of access to reception conditions (sometimes deriving from access to an asylum procedure); poor quality of material reception conditions provided; the widespread use of detention, including of accompanied children, coupled with the lack respect for certain of the procedural guarantees which should be respected when detention is applied; structural and systemic problems limiting access to education, employment and health care which disproportionately affect asylum applicants; and shortcomings in the identification of vulnerabilities and lack of adequate facilities for vulnerable applicants.

## Good practices

Nevertheless, good practices are also reported in many countries, in particular concerning access to socio-economic rights, management of reception centres that allows for early inclusion of asylum seekers in local communities, and the creation of dedicated reception facilities for various categories of vulnerable applicants.

## Case studies

Two country case studies were selected – Belgium and Italy – given the high numbers of arrivals and the need to accommodate significant fluctuations with regards to reception needs, thus requiring a well-functioning contingency planning, and in view of assessing good practices in terms of effectiveness, fundamental rights (including procedural rights), efficiency and coherence with the aims of the RCD and the CEAS as a whole (see Annex II).

A further case study explores the provision of reception conditions granted through the Temporary Protection Directive (TPD), where fewer implementation challenges were reported in most EUMS. The study finds that temporary protection beneficiaries are generally granted immediate access to rights and enjoy rights broader in scope than asylum applicants; there are shortcomings regarding access to social welfare and to the labour market (see Annex I).

## The role of the EU

The EU both supports the implementation of rules on reception conditions by the EUMS and also plays a role in monitoring and enforcing implementation (see Chapter 3). Support is provided through different funding instruments; in addition, the European Union Agency for Asylum (EUAA) is specifically mandated to improve the functioning of the CEAS through, *inter alia*, the provision of operational and technical assistance to EUMS, including for their reception systems;<sup>9</sup> it currently provides support on reception to several EUMS. According to the study's findings, certain funding instruments made a positive albeit uneven contribution to the implementation of reception conditions in the EU. However, the fact that inadequate reception capacity in EUMS pre-dates the 2015 crisis,<sup>10</sup> suggests that EU funds for reception were being used to compensate for long-term structural weaknesses and a lack of contingency planning. At the same time, responding to the 2015 crisis caused EU funds to pivot towards crisis response, at both EU and national level. An exhaustive

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<sup>9</sup> [Regulation \(EU\) 2021/2303](#) of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 467, 30 December 2021, Article 1.

<sup>10</sup> AIDA (2019), [Housing out of reach? The reception of refugees and asylum seekers in Europe](#), p.13.

assessment of the impact of EU funds on reception conditions at the national level is difficult to make, given the lack of systematic data for some funding programmes.

The European Commission monitors compliance of EUMS with the asylum *acquis* and can open infringement procedures<sup>11</sup> for countries failing to implement EU law. In this context, in January 2023, the Commission sent letters of formal notice<sup>12</sup> to four EUMS (Belgium, Greece, Spain and Portugal) for failing to properly transpose all provisions of the RCD. While finding that infringement procedures are useful, the analysis of infringement cases on the RCD reveals that the long-term impact of the Commission's actions is determined by political and practical factors, including in relation to the use of compliance mechanism(s) and overall strategies on asylum. The RCD has also been the subject of CJEU interpretation in several cases in the past decade, with detention being the most frequent subject of preliminary references (see Annex V).

## Recommendations

After collating and analysing the research findings, the study puts forward several recommendations to support better implementation of the RCD (see Chapter 5). It should be noted that many shortcomings are the result of wider dysfunctions in national asylum systems, rather than purely linked to incorrect implementation of the RCD. For example, inadequate contingency planning for the asylum system as a whole has led to insufficient reception capacity in many countries. In parallel, limiting access to the asylum procedure has as a knock-on effect the denial of access to material reception conditions for asylum seekers. As a matter of priority, the EUMS should address implementation gaps including the failure to provide one or more of the required material reception conditions; delayed access to the asylum procedure; and widespread use of detention. The EUMS could improve implementation through availing themselves of the support of the EUAA, and working with local governments, NGOs, and other providers of reception. Greater focus should be put on the needs of vulnerable applicants in order to ensure better implementation of guarantees they benefit from.

The EUMS were in general able to adapt quickly and provide reception including suitable accommodation options when the outbreak of the war in Ukraine led to activation of the TPD: despite challenges, the positive responses of states demonstrated that management of large-scale displacement is possible.<sup>13</sup> This experience should help inform improvements in planning and managing reception conditions.

The EU can provide support in this process by increasing funding for AMIF emergency fund facilities, which have proven to be an effective tool, but should also ensure that funds and other EU resources such as such training, guidance, advice and enforcement measures, are all geared towards ensuring reception capacity in the long term. EU measures should focus on structural improvements, including through the use of contingency plans, in order to avoid costlier crisis response. Given the significant evidence of infringements found, monitoring of compliance should be stepped up, as should the use of enforcement measures, including increasing the number of infringement procedures. Finally, the impact of the EU's overall policy on asylum on enforcement of the RCD (and other CEAS measures) should be taken into account, especially in view of the upcoming reform of the common asylum system.

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<sup>11</sup> European Commission, [Infringement procedure](#).

<sup>12</sup> [January Infringements package: key decisions \(europa.eu\)](#)

<sup>13</sup> For a detailed analysis, see ECRE (2023), [AIDA Temporary Protection Compilation](#).

## INTRODUCTION

### Background

The study on reception conditions across the EU was commissioned European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, at the request of the Committee on Civil Liberties, Justice and Home Affairs (LIBE). It aims at making a legal and policy analysis of the EU and international standards applicable to the reception of applicants for international protection, with a focus on the applicable rules in the RCD; analysing support on reception at EU level; analysing enforcement at EU level; evaluating the implementation of the RCD and the respect for further international norms in a selected number of EUMS; and examining reception conditions related to the TPD.

The study is divided in four parts. The first is an overview of the legal framework on reception conditions, and provides a comprehensive legal analysis of the EU's legal framework on reception and of the international standards from which it derives. It covers all elements concerning reception condition for applicants seeking international protection.

The second segment of the study is dedicated to an overview of the implementation of existing rules on reception conditions at the EUMS-level. By examining different EUMS' approaches to reception, it aims at identifying good practices, challenges, and disparities in providing adequate support to individuals in need of protection. An annex is dedicated to case studies, in which a detailed analysis of reception conditions provided to asylum applicants in Belgium and Italy is presented.

The third section focuses on available EU support provided to EUMS in implementing the legislative framework on reception condition and its effectiveness.

The final part of the study focuses on showcasing good practices, addressing challenges identified through the research, and formulating comprehensive policy recommendations directed at selected relevant stakeholder and focusing on suggesting concrete solutions to improve reception conditions for asylum seekers and beneficiaries of temporary protection throughout the EUMS.

The study also examines the reception-related aspects of the TPD, an instrument that currently provides protection to close to 4 million people who fled the war in Ukraine and are hosted in EUMS. It includes a detailed analysis of the different solutions implemented at the national level.

### Methodology

The study is based on concrete quantitative and qualitative evidence, existing available data, studies and analysis from various sources and documents from national and international institutions, and will conclude with policy recommendations addressed to the most relevant actors - including at EUMS specific level as well as at EU level.

Regarding reception for international protection applicants, it focuses on:

- Statistical information on the reception capacity of European asylum systems, and an analysis of the challenges related to access to accommodation for asylum seekers;
- An analysis of the adequacy of reception centres and other forms of accommodation and material reception conditions provided in various EUMS and assess the challenges they face in meeting the demand.
- Understanding how different EUMS address the needs of vulnerable groups within their reception systems;

- Examining the extent to which asylum seekers have access to healthcare, education, opportunities to participate in the labour market and information on their rights from NGOs and other relevant stakeholders.

Areas of examination on the implementation of the TPD include access to housing, healthcare, material support, education, and employment opportunities.

Concerning EU support to MS, it examines two main elements: on one side, EU funding available to support expenditure on reception. On the other, support provided by EU agencies, and in particular the increased operational and technical support provided by the EUAA. Finally, the section considers enforcement, looking at situations where enforcement actions were necessary, the tools used and the impact. It will include analysis of the mechanisms and efforts undertaken by the European Commission to enforce the applicable EU rules on reception conditions. This includes an examination of the Commission's monitoring processes, reporting mechanisms, and actions taken in response to non-compliance by EUMS.

On the basis of the analysis of these specific aspects, the external study provides transversal conclusions in accordance with the EU's better regulation principles.<sup>14</sup>

The study is mainly based on desk research. Sources consulted include:

- Information published by researchers, states, EU institutions and agencies, the UNHCR
- Statistics relevant to reception capacity made available by the EUAA Annual Reports on the situation of asylum in the European Union and by AIDA,<sup>15</sup>
- Qualitative information on national practice extracted from AIDA country reports, temporary protection annexes to the country reports and comparative reports, the EUAA Annual Reports on the situation of asylum in the European Union and other sources;
- Publicly available case law from the CJEU, the ECtHR and domestic courts.

In order to address information gaps, relevant national authorities, European agencies or individual experts with formal requests for information. Interviews with experts working on reception in different capacities were also carried out, both at the EU and national level, targeting experts with the following profile:

- European Commission
- Relevant EU Agencies
- International Organisations supporting projects related to reception conditions
- NGOs involved in supporting national reception systems
- National reception authorities

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<sup>14</sup> The EU better regulation principles require adherence to the following criteria to assess implementation: effectiveness, efficiency, relevance, coherence and EU added value. See toolbox n°47 of the European Commission's [Better regulation guidelines](#).

<sup>15</sup> The [Asylum Information Database](#) (AIDA) is managed by ECRE and provides a mapping of asylum procedures, reception conditions, detention and content of protection in Europe.

## Research Questions

The following research questions were used as a starting point for the realisation of the study:

- Research Question 1: What are the EU and international standards for the reception of applicants for international protection?
- Research Question 2a: What are the key elements of reception conditions for applicants for international protection in EUMS? What reception capacities do MS have, what material reception conditions are offered?
- Research Question 2b: What are the key elements of reception provided to beneficiaries of temporary protection in EUMS? What reception capacities do MS have, what material reception conditions are offered, how is housing, access to education and social service organised?
- Research Question 3a: How are EU and international standards for the reception of applicants of international protection implemented in practice and which practices are considered as "good practices"?
- Research Question 3b: How are EU and international standards for the reception of beneficiaries of temporary protection implemented in practice and which practices are considered as "good practices"?
- Research Question 4a: What funding and support by EU agencies is available for fostering EU MS' capacities to provide reception conditions according to EU and international standards for international protection applicants?
- Research Question 4b: What funding and support by EU agencies (and international organisations) is available for fostering EUMS' capacities to provide reception for beneficiaries of temporary protection?
- Research Question 5: In what circumstances did the EU start enforcement measures against MS for not adhering to EU standards on the reception of international protection applicants and what impact did these measures have on the reception standards in MS concerned?
- Research Question 6: How do selected countries implement reception standards in the practice and what contingency measures do those MS have in place to address fluctuations in arrivals of applicants for international protection?



# 1. PART I: OVERVIEW OF LEGAL FRAMEWORK ON RECEPTION CONDITIONS

Legal and policy analysis of EU and international standards on reception conditions for international protection applicants.

## 1.1. Legal Framework on Reception for International Protection Applicants

### 1.1.1. Reception in the Common European Asylum System (CEAS)

“Reception conditions” is the broad term for the social and economic rights that asylum applicants are entitled to receive under EU law, and – concomitantly – the obligations imposed on the EUMS in which an asylum application has been lodged. Reception conditions cover what are known as “material reception conditions” – housing, food, and clothing, provided in-kind or via an allowance or vouchers, and a daily expense allowance – and then rights to medical care and certain rights to education, employment and social assistance.

Reception conditions are one of the key pillars of the CEAS distinct from but integrally linked to the procedural obligations and rights which govern the asylum procedure and are set out in the APD<sup>16</sup>, the rules on status determination to be found in the QD<sup>17</sup>, and the rules on responsibility, as set out in the Dublin Regulation.<sup>18</sup>

The recast RCD (Directive 2013/33/EU)<sup>19</sup> sets out the rights and requirements on reception conditions in the current legal framework. Another recast of the RCD was proposed in 2016<sup>20</sup> and has been agreed by the co-legislators (hereafter “the recast RCD” or “the compromise”). It will come into force with the other reforms of the CEAS in 2025. Both the current RCD and the recast RCD are analysed below in order to highlight the rights and obligations that derive from each.

### 1.1.2. Reception in International Law

The CEAS seeks to ensure consistency and harmonisation across the EUMS in asylum matters, however, it also developed in order to codify in EU law the provisions of international refugee law, including the cornerstone of global protection, the Geneva Convention Relating to the Status of Refugees of 1951 and Additional Protocol of 1967 (“the Geneva Convention”). Recital 3 of the RCD refers to the CEAS as “based on the full and inclusive application” of the Refugee Convention.

The Refugee Convention stipulates the rights that should be provided to refugees, with Articles 17 to 24 covering socio-economic rights. These rights form the content of protection and go beyond

<sup>16</sup> [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 setting out common procedures for granting and withdrawing international protection (recast).

<sup>17</sup> [Directive 2011/95/EU](#) of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

<sup>18</sup> [Regulation \(EU\) No 604/2013](#) of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the EUMS by a third-country national or a stateless person (recast).

<sup>19</sup> [Directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), *OJ* 2013 L180/96.

<sup>20</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down standard for the reception of applicants for international protection (recast)*, [COM\(2016\) 465](#), 13 July 2016.

the fundamental principle of non-refoulement (Article 33) to encompass the rights that guarantee refugees full and dignified lives in the place they have sought protection. The declaratory nature of refugee status, along with pragmatic considerations related to ensuring consistency of standards across the EU, led to the provisions on reception conditions for asylum applicants, i.e. people who have applied for asylum but who have yet to be granted the status of beneficiary of international protection. All applicants are entitled to reception conditions, irrespective of whether or not they are found to be in need of international protection.

### 1.1.3. From 2003 to 2023: Minimum Standards and Beyond

Part of the first generation of CEAS instruments, the 2003 Reception Conditions Directive (Council Directive 2003/9/EC<sup>21</sup>) established minimum standards for the reception of asylum applicants. The reform process of 2010 to 2013 culminated in the 2013 version of the RCD, the current RCD, adopted on 26 June 2013 and applicable since 21 July 2015. The recast aims at providing dignified and harmonised standards of living of applicants for international protection across the EU; it sets out standards more demanding than the minimum provided for by the 2003 version. As well as the objectives of ensuring respect for international law, an explicit reference is made to limiting “secondary movement”, with Recital 12 stating:

***“The harmonisation of conditions for the reception of applicants should help limit the secondary movements of applicants influenced by the variety of conditions for their reception.”***

### 1.1.4. The 2013 recast of the RCD: Content

The section below summarises the main components of the current RCD, including the rights and obligations deriving from it. Part II will examine the implementation of each of these provisions.

**General provisions (Article 2 and Article 17): Material reception conditions should provide “an adequate standard of living”; a range of modalities permitted.**

The current RCD ensures that applicants have access to material reception conditions, which include housing, food, clothing and a daily allowance (Article 2(g)), as well as access to health care, employment and medical and psychological care. Article 17 on “general rules” for material reception conditions and health care provides more detail, specifying the standard required as “an adequate standard of living for applicants which guarantees their subsistence and protects their physical and mental health.” EUMS are allowed to limit or remove access to material reception conditions when the applicant has adequate means or resources (Article 17(4)).

Article 17(5) specifies that material reception conditions may be provided in the form of allowances or vouchers, including for accommodation. Article 18 sets out the types and rules on housing when it is provided in kind.

**Scope (Article 3 and Recital 8): the scope of the RCD extends to all people who apply for international protection in the EU.**

The RCD applies to all third-country nationals and stateless persons who apply for international protection anywhere in the EUMS, including at the border, in territorial waters or in transit zones (Article 3(1)). It applies during all stages and types of procedures concerning applications for

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<sup>21</sup> [Council Directive 2003/9/EC](#) of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ 2003 L31/18.

international protection (Recital 8), including to asylum-seekers pending transfer under the Dublin Regulation.

[More favourable provisions \(Article 4\): going beyond the standards set in the RCD is permitted.](#)

The RCD allows EUMS to introduce more favourable provisions so long as they are compatible with the Directive as a whole.

[The use of detention \(Articles 8 to 11; Recitals 15 to 20\): the use of detention is permitted but strict rules condition its use \(in line with international and EU law on the use of detention\).](#)

The RCD includes clear rules on the use of detention, including setting out the grounds for detention of applicants; requiring the application of fundamental rights in situations of detention; and setting out the conditions for the use of detention, including that it must be based on an individual assessment and is only possible if other, less coercive, alternative measures cannot be effectively applied (Article 8).

It then restricts the use of detention for vulnerable people, in particular for minors (Article 11), and includes guarantees such as access to free legal assistance and information in writing when lodging an appeal against a detention order (Article 9). It also sets out the specific conditions that must be in place in detention facilities, such as access to fresh air and communication with lawyers, NGOs and family members (Article 10).

As described below and in Annex V, a significant amount of case law concerns the use of detention and has served to circumscribe its use.

[Socio-economic rights: education and employment \(Articles 14 to 16\): a largely unfettered right to education for children is set out \(in conformity with international law on the rights of the child; the right to access the labour market is established but subject to restrictions. There is no obligation to provide access to vocational training but it is nonetheless covered by the RCD.](#)

Article 14 obliges EUMS to provide access to the education system for children “under similar conditions as their own nationals”. Access cannot be postponed for more than three months from the lodging of the application and preparatory classes “shall be provided” when necessary.

To enhance self-sufficiency and integration, applicants for international protection have a right to access the labour market, at the latest nine months after lodging their application (Article 15(1)). EUMS can, however, restrict access for reasons of labour market policy and give priority to Union citizens and EEA nationals, as well as legally resident third-country nationals (Article 15(2)). EUMS may offer access to vocational training irrespective of whether an applicant has access to the labour market.

[Reduction and withdrawal of reception conditions \(Article 20\): There is an exhaustive list of cases in which material reception conditions may be reduced or withdrawn; decisions must be individual, objective, impartial and reasoned; a “dignified standard of living” and necessary health care must still be provided.](#)

The RCD provides grounds for EUMS to reduce or, in exceptional and duly justified cases, withdraw the reception conditions it provides for (Article 20). The list is exhaustive and includes abandoning the place of residence, not complying with certain rules, making a subsequent application, not lodging an application when reasonably practicable and concealing resources.

A set of safeguards are set out at paragraph 5, including that decisions should be taken “individually, objectively and impartially”, reasons must be provided, and the decision must be based on the individual’s situation.

A minimum threshold is established even in cases of reduction and withdrawal as “a dignified standard of living” and access to healthcare should continue to be provided in line with Article 19 (at least “emergency” and “essential” care).

[Provisions for vulnerable applicants \(Articles 22 to 25\): a range of protections apply for vulnerable applicants, in line with wider legal requirements and jurisprudence on vulnerability.](#)

The Directive includes an obligation for EUMS to conduct an individual assessment to identify the special reception needs of vulnerable persons (Article 22). EUMS shall pay particular attention to unaccompanied minors (Article 24) and victims of torture (Article 25) and ensure that vulnerable asylum seekers can access psychological support. It also provides rules on the qualifications of the representatives of unaccompanied minors (Article 24).

There is also an obligation on EUMS to take appropriate measures to prevent gender-based violence when providing accommodation (Article 18(4)).

[Appeals \(Article 26\): decisions to grant, withdraw or reduce reception conditions and to restrict freedom of movement may be appealed, with free legal assistance obligatory at final instance.](#)

Chapter V of the RCD is dedicated to appeals and provides that for decisions relating to the “granting, withdrawal or reduction” of reception conditions and decisions taken under Article 7 (freedom of movement and restrictions thereof) EUMS “shall ensure” that they “may be the subject of an appeal within the procedures laid down in national law”. The language is less ambivalent on the obligation to ensure an appeal or review in the final instance, before a judicial authority and with free legal assistance and representation so far as it necessary to ensure effective access to justice.

[Implementation and monitoring mechanisms \(Article 28; Article 30\)](#)

As well as standard provisions on transposition deadlines and responsible authorities, the RCD contains light provisions on procedures for monitoring implementation. At Article 28, EUMS are obliged to “put in place relevant mechanisms to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.” Article 30 requires the Commission to report on the application of the Directive by 20 July 2017, which did not occur as by then the recast, described below, had been proposed.

The Directive does not apply to the Schengen associated states, or in Denmark. Ireland recently opted into the RCD. While still an EU MS, the UK applied the 2003 Reception Conditions Directive.

## 1.2. The recast RCD: The 2022 Compromise

The Commission proposed a recast of the RCD on 13 July 2016, as part of the second package of proposals for reform of the CEAS. Contrary to legislative changes to the EU instruments governing qualification and procedural aspects, the Qualifications Directive and the Asylum Procedures Directive,<sup>22</sup> which were to be transformed from directives into regulations,<sup>23</sup> the alignment of EUMS'

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<sup>22</sup> [Directive 2011/95/EU](#) of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ 2011 L337/9; [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60.

<sup>23</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (hereafter 'Proposal for an Asylum Procedures Regulation')*, [COM\(2016\) 467](#), 13 July 2016; *Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international*

reception standards was to remain governed by a directive. The rationale stated at the time was as follows:

***“Considering the current significant differences in Member States' social and economic conditions, it is not considered feasible or desirable to fully harmonise Member States' reception conditions.”***<sup>24</sup>

This chimed with the Commission's identification of the main challenge of the recast RCD as one of poor implementation of existing standards:

***“The persistent problems in ensuring adherence to the reception standards required for a dignified treatment of applicants in some Member States has contributed to a disproportionate burden falling on a few Member States with generally high reception standards which are then under pressure to reduce their standards. More equal reception standards set at an appropriate level across all Member States will contribute to a more dignified treatment and fairer distribution of applicants across the EU.”***<sup>25</sup>

Given that the RCD only came into force in July 2015, one year before the Commission launched the recast, the poor implementation identified is likely to have also characterised the 2003 version of the Directive, even it merely required adherence to minimum standards. It is reasonable to conclude therefore that inadequate respect for reception conditions is a longstanding challenge across the EU.

The 2016 recast proposal had a number of formal objectives:

- further harmonisation of reception conditions in the EU;
- reducing incentives and asserting greater control over secondary movements; and
- promoting integration and enhancing asylum seekers' self-sufficiency.<sup>26</sup>

Another objective of the reform, not explicitly stated in the Explanatory Memorandum, but expressed in related proposals, was strengthening the resilience and preparedness of national reception systems<sup>27</sup>, which was also a response to the apparent lack of preparedness and planning which continues to lead to crises when countries are faced with increases in arrivals.<sup>28</sup>

As a consequence of the broad range of objectives, the proposal – along with others launched in 2016 and 2020 – pulls in different directions. Some of the provisions strengthen the rights of applicants, while others undermine them. Some of the provisions may be perceived as reflecting the interests of certain EUMS, while others may align more closely with the interests of different EUMS. The amendments of the Council and the Parliament respectively have tended to render the aims of

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*protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (hereafter Proposal for a Qualification Regulation’), [COM\(2016\) 466](#), 13 July 2016.*

<sup>24</sup> European Commission, Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) (hereafter “Explanatory Memorandum”), [COM\(2016\) 465](#), 13 July 2016, p.6.

<sup>25</sup> [Explanatory Memorandum](#), p.3; Recital 5 proposal for a recast Reception Conditions Directive.

<sup>26</sup> [Explanatory Memorandum](#), pp.3-4.

<sup>27</sup> See also European Commission, *Proposal for a Regulation of the European Parliament and of the Council for a European Union Agency for Asylum*, [COM\(2016\) 271](#), 4 May 2016.

<sup>28</sup> AIDA (March 2016), [Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe](#).

the recast divergent and at times contradictory.

There are also provisions of the RCD where no amendments were proposed despite the potential for revision to support the achievement of the objectives defined, to remove ambiguities and uncertainties that were part of the drafting of the 2003 RCD (often resulting from compromises during the legislative process), or to incorporate case law.<sup>29</sup>

### **The state of play**

Following the launch of the recast, the two co-legislators, the European Parliament and the Council of the EU, analysed the legislative proposals, including the recast RCD, and sought to reach their respective negotiating mandates, including the amendments they wished to see, before entering into trilogue negotiations. Interinstitutional discussions also took place during 2016 and 2017 and culminated in an interinstitutional political agreement on some of the proposals in May 2018. The agreement included the recast RCD, with the co-legislators seemingly having agreed on the content of the recast, along with that of the Qualification Regulation, the Union Resettlement Framework, the Eurodac Regulation and the regulation transforming the EASO into the EU Asylum Agency (EUAA). The Dublin IV proposal and the APR were more controversial.

In practice, as of October 2023, only the EUAA proposal has been adopted on the basis of the 2018 agreement, and even then additional changes were made. For the RCD, the Council's decision to revisit the proposal meant a suspension of progress until December 2022. By then, the European Commission had launched new and further amended legislative proposals in the form of the New Pact on Migration and Asylum in 2020. Of the 2016 proposals, the Dublin IV proposal was withdrawn and replaced by the Regulation on Asylum and Migration Management (RAMM), the APR was further amended to include an expanded use of the border procedure, and the Commission expressed its view that the Union Resettlement Framework (URF), the Qualification Regulation (QR) and the RCD should proceed on the basis of the 2018 inter-institutional political agreement.

The Czech Presidency of the EU, in place from July to December 2022, managed to broker an agreement between the two institutions on advancing these three proposals, building on a breakthrough by the preceding French Presidency which managed to achieve agreement in the Council on certain of the files and on a solidarity mechanism. The Parliament approved its negotiating mandates on all remaining files bar the 2021 Instrumentalisation Regulation and reform of the Schengen Border Code (SBC reform) in March of 2023, while the Swedish Council Presidency which succeeded the Czech Presidency, managed to achieve Member State agreement on the RAMM and the APR.

The negotiations are complex, with the files inter-connected, and many uncertainties remain, however there is strong pressure to reach an agreement before the end of the mandates of the European Parliament and the European Commission in 2024. It is therefore likely that a number of the legislative proposals will be adopted and become part of the EU's legal framework on asylum, including the recast RCD.

### **Content of compromise: Changes compared to status quo**

The content of the recast RCD has been agreed by and between the two co-legislators, thus it can already be analysed, even though the final stages in the legislative procedure, including the formal

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<sup>29</sup> As a result of an interinstitutional agreement between the Council, European Parliament and European Commission of 2001, the provisions that remain unchanged by the Commission proposal can only be amended by co-legislators in specific circumstances. See [Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, OJ 2002 C77/1](#).

adoption of the Directive, remain to be concluded. Of particular interest are the changes brought in by the recast compared to the current RCD, as well as the interaction between the recast RCD and the other pieces of legislation which are almost certain to be adopted. The main changes in terms of the content of the directive are described below, with reference to the questions of implementation and compliance as relevant.

The text below refers to the articles as numbered in the version of the compromise available on 30 October 2023. Some of these articles are pending finalisation and it is likely that the numbers will change in the final version of the text.

### **Article 2(10) and (11); Recital 19: Definitions**

The concept of “risk of absconding” was codified in EU law by the Dublin III Regulation.<sup>30</sup> In the recast RCD the definition of “absconding” in itself is introduced into EU law for the first time in Article 2(11) of the compromise text, as follows:

***“absconding”: means the action by which an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant’s control.”***

Recital 19 explains that absconding should cover both “a deliberate action and the factual circumstances” of the applicant not being available. It should not include reasons that “are not beyond the control of the applicant”. Recital 19 also acknowledges the serious consequences of absconding or of being at risk of absconding.

The risk of absconding is not defined but the directive stipulates that it must be based on “specific reasons and circumstances in an individual case” which lead the authorities to believe that an applicant might abscond and that the reasons and circumstances must be based on “objective criteria defined by national law”. The factors that a member state “could” consider are listed in Article 19a.

The amendments to the definition of risk of absconding do not significantly change the status quo, given that there is no exhaustive list of objective criteria that EUMS may lay down in national law. Thus, it seems likely that the experience of implementation of the Dublin system will persist, in that the RCD retains the considerable discretion available to EUMS to define a risk of absconding. EUMS currently take a range of often broad approaches to finding a risk of absconding. Examples of criteria in national law currently include the existence of social ties or resources in Austria, the payment of significant amounts of money to irregularly enter the country in Germany, or the demonstration of conduct in the country or abroad that allows the authorities to believe that a person will not comply with orders in Switzerland.<sup>31</sup>

Setting the definition of absconding as any action which results in the applicant not being available, does not significantly limit the discretion of the states. The reference in Recital 19 to the requirement of a deliberate action and factual circumstances, however introduces the requirement to demonstrate the intentions of the person to be unavailable, reinforcing the requirement that the reasons must not be beyond the control of the applicant.

It should be noted that the applicant not being available is a ground for implicit withdrawal of the

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<sup>30</sup> [Regulation \(EU\) No 604/2013](#) of the European Parliament and of the Council.

<sup>31</sup> ECRE (2018), [Boundaries of Liberty: Asylum and de facto detention in Europe](#).

asylum application in the proposal for the APR.

### **Article 7; Recitals 13-18: Restrictions on freedom of movement**

While the content of Article 7 is significantly revised compared to the current RCD, the amendments proposed by the co-legislators have softened the implications of the changes compared to the proposal. The onus of the article has changed: whereas the current Article 7(1) underlines the right to freedom of movement of the applicant, the new article begins by stating that EUMS may decide that an applicant is only allowed to reside in a specific place.

Article 7(2) goes on to state that EUMS may require applicants to report to the authorities at a specific time or at reasonable intervals. In the proposal, this was an obligation, with the clause stating that EUMS "shall" require applicants to reside in a specific place in certain circumstances, which included swift processing of the application and swift processing of the Dublin procedure.

Although it is no longer an obligation, deciding on an applicant's residence "in a specific place" under Article 7(2) is liable to amount to deprivation of liberty in the light of Article 5 ECHR, if the applicant is not allowed to freely leave that designated place. In addition, as per the current RCD, the article allows the use of restrictions on freedom of movement in cases where the Dublin Regulation is applicable (to be replaced by cross-references to the RAMM), now in Article 7(1) rather than Article 7(2) as in the proposal.

### **Article 8; Recitals 18 to 26: Use of detention**

As per the current RCD – and in line with relevant jurisprudence – Article 8(1) states that an applicant cannot be detained for the sole reason that they are an applicant. It is then amended to also exclude detention solely on the basis of nationality. It further states that detention cannot be punitive. The conditions for the use of detention are maintained, again in line with case law, specifically that 1) it must be necessary, 2) an individual assessment must take place, and 3) it can only be used when other less coercive alternatives are not available.

The exhaustive list of grounds for detention at Article 8(3) retains many elements of the current law. The two differences are at (c) where ensuring compliance with a restriction in line with Article 7(1) as a ground for detention is introduced, and at (d) where the current RCD's Article 8(3)c is amended to include a reference to the APR. Detention is allowed "in order to decide, in the context of a border procedure... on the applicant's right to enter the territory."

### **Article 9: Guarantees for detained applicants**

The guarantees for detained applicants are reinforced, with the requirement added that the reasons why "less coercive alternative measures cannot be applied effectively" must be explained (Article 9(2)), and time limits added for the review of detention along with the requirement that applicants be released if time limits are not respected (Article 9(3)). In other respects, the guarantees and conditions for detention remain largely as per the current RCD.

### **Article 11: Detention of applicants with special reception needs**

The recast RCD will include a range of amendments to the section on detention of applicants with special reception needs (Article 11). First, the title of the Article has been narrowed to remove the reference to a "vulnerable person"; it now applies to "applicants with special reception needs". Second, at Article 11(1) the following phrase is added: "Where detention would put the physical and psychological health of applicants with special reception needs at serious risk, they shall not be detained.", which, in contrast, will potentially reduce the use of detention for those with special reception needs.



Third, at Article 11(2) additional protection for children has been added: “Minors shall, as a rule, not be detained.” There is a reference to the need to preserve the family unit. The article allows for detention only in exceptional circumstances, when it is a measure of last resort and no alternatives are available, and after it has been shown to be in the best interests of the child. There is a further specification that for children with family members it can only be used when the primary caregiver is detained and for unaccompanied children, when detention serves to safeguard them.

It should be noted that the recast preserves but amends Article 11(6) which allows for wider use of detention in the border context. At border posts or transit zones, EUMS may derogate from the following provisions:

- Article 11(3) first subparagraph: Where unaccompanied minors are detained, they shall be provided with accommodation in facilities adapted to the housing of unaccompanied minors. Such facilities shall be provided with personnel who are qualified to safeguard the rights of unaccompanied minors and attend to their needs
- Article 11(4): Detained families shall be provided with separate accommodation guaranteeing adequate privacy. Detained families with minors shall be accommodated in detention facilities adapted to the needs of minors.
- Article 11(5) first subparagraph: EUMS shall ensure that detained male and female applicants are accommodated separately, unless they are family members and all individuals concerned consent thereto.

The article maintains safeguards requiring the cases to be duly justified and to last only for a reasonable period of time. EUMS are supposed to have facilities in place so that the derogations only apply in “exceptional situations”. The Commission and the EUAA must be informed.

Effectively, in the border context, if duly justified, minors can be detained in unsuitable accommodation, families do not need to be detained in separate accommodation and the detention of male and female applicants in the same facilities is allowed.

However, Article 11(6) also appears to exclude the use of these derogations in the cases referred to in Article 41 of the APR, which covers the use of the asylum border procedure. The interaction with the APR will need to be examined when a final text is agreed for that instrument, however on the current reading, the derogations that remove safeguards in the border context will only apply when an applicant is not subject to either asylum or return border procedure, begging the question as to which cases will be covered.

### **Article 15: Employment**

The compromise revises the time limit for granting access to the labour market in Article 15(1). It is reduced from 9 months to 6 months, a compromise between the co-legislators as the Parliament proposed a reduction to 2 months, whereas some EUMS sought to maintain the 9-month time limit in the current RCD.

The second paragraph of the same article removes the right to employment for applicants who are subject to accelerated examination of the application. EUMS are forbidden from allowing access to the labour market or obliged to withdraw it if already granted for these applicants. The paragraph needs to be read in conjunction with the APR which lists the categories of applicants for whom the procedure is accelerated (APR Article 40(a) to (f)). The APR proposal significantly expands the categories of applicants who will be subject to an accelerated examination; the Council General Approach further expands the scope of the accelerated procedure while the Parliament seeks to

limit it. Whatever the final compromise reached, the recast RCD read in conjunction with the APR will mean a significant increase in applicants without the right to work.

The current RCD states simply that EUMS “may give priority” to nationals, EU and EEA citizens and legally resident third country nationals over applicants when it comes to labour market access (at Article 15(2) of the current RCD). The compromise includes a range of innovations. First, Article 15(3) provides that applicants who have access to the labour market shall benefit from equal treatment compared to nationals in certain respects which are listed (exhaustively) in Article 15(3), such as freedom of association and access to training. It then explains the allowable restrictions on the right to equal treatment in Article 15(3a), with paragraphs 3b and 3c including references to equal treatment and restrictions thereof for social security.

Finally, the new Article 15a obliges EUMS to ensure or facilitate (depending on the system) access to language courses, civic education courses or vocational training courses where that will support applicants to “act autonomously”, interact with the authorities or find employment.

#### **Article 16: General rules on material conditions and health care**

The article largely preserves the text of the RCD although at Article 16(2), a reference to the Charter on Fundamental Rights is added. At Article 16(5), additional protections for the applicant are added in the assessment of resources of the applicant.

#### **Article 17: modalities**

At Article 17(4a) a new reference to the need to ensure sex separation of sanitary facilities is added.

Article 17(9) maintains the possibility (in current RCD Article 18(9) which allows EUMS to derogate from the rest of the article in exceptional circumstances. It sets out the circumstances in which “different material conditions” (lower standards) may be provided, the conditions for their use, and the thresholds which must nonetheless be provided. The exceptional circumstances in which it is lawful to provide lower standards are when “housing capacities normally available are temporarily exhausted or, due to a disproportionate number of persons to be accommodated or a man-made or natural disaster, housing capacities normally available are temporarily unavailable.”

While the current RCD sets the threshold as “basic needs” which have to be covered even in exceptional circumstances, this is expanded on and the compromise states that, as well as access to health care, EUMS must ensure access to a standard of living in accordance with EU and international law when the different standards are in place.

#### **Article 17a: removal of reception conditions**

One of the most significant changes compared to the current RCD is included at the new Article 17a, which allows for the removal of reception conditions if the applicant is subject to a transfer decision under the RAMM. The Member State is obliged to withdraw the reception conditions set out in Articles 15 to 17 “from the moment” that the notification of the transfer decision has been made. The applicant is not entitled to reception conditions in any Member State other than the one where they are required to be, i.e. the country responsible under the RAMM. The transfer decision should state that reception conditions have been withdrawn, unless a separate decision is issued. The applicant should receive information on this decision and their rights and obligations.

The article also states that the withdrawal should be “without prejudice to the need to ensure a standard of living in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations,” which in practice means that minimum standards must be guaranteed. Although the language is weaker compared to the current RCD more specific

threshold of “a dignified standard of living” and access to health care. With the reference to EU law and specifically the Charter, the right to dignity is implicit.

The proposal’s provisions that allowed a restriction on the right to education for the period “pending the transfer” is not part of the compromise.

The time period during which the applicant is not entitled to reception conditions pending a transfer will depend on the final compromise between the co-legislators on the RAMM. In the European Parliament’s positions, the transferring Member State has three months to effect a transfer based on either take charge or take back procedures, extended to one year in case the person is in prison or non-compliant. In the Council’s position, the time limit is six months, extended to one year in a range of circumstances, including absconding, physical resistance, etc. Failure to complete the transfer in time means that responsibility shifts to the transferring Member State and reception conditions should be re-instated.

Points to note include the applicability of the provision to take-charge as well as take-back requests, and the extent of legal uncertainty given ongoing negotiations, including on what constitutes an “acceptance” of a transfer request (or notification) which will in turn trigger the issuing of the decision.

#### **Article 18: Health care**

Article 18 expands the right to health care compared to the current RCD. It stipulates that health care should be provided irrespective of whether the applicant is in the country where the RAMM requires them to be. It specifies that general and specialist care should be provided and lists some examples. The new paragraph Article 18(1a) requires that children receive the same type of healthcare as provided to nationals and that necessary healthcare should continue when the age of majority is reached.

#### **Article 19: Reduction or withdrawal of reception conditions**

Whereas Article 17 concerns the obligation to withdraw reception conditions when the applicant is not in the country deemed responsible according to the RAMM rules (by the country where the person is present), Article 19 sets out the circumstances under which the Member State responsible may reduce or withdraw reception conditions.

While the Commission proposal sought to limit reduction or withdrawal to the daily allowance, the compromise re-introduces the provisions of the current RCD (Article 20) which also allows for a reduction of other material reception conditions (Article 19(1)(a)). In one circumstance, it also allows for the withdrawal of reception conditions (see below). These additional reductions or withdrawal are only possible when “duly justified and proportionate”.

The reduction or withdrawal of the daily allowance and/or the reduction of other material conditions is allowed in the following exhaustive list of circumstances:

- If the applicant abandons the area or place of residence designated by the authorities or absconds (Article 19(2)(a) – an expansion of the existing provision).
- If the applicant “does not cooperate with the competent authorities” or does not comply with any of the procedural requirements set by the authorities (Article 19(2)(b)). An expansion of the current provision which allows for withdrawal when the applicant does not comply with reporting duties or does not appear for an interview is amended to become broader, allowing for withdrawal when the applicant.
- When the applicant conceals financial resources (Article 19(2)(d), when the applicant

seriously or repeatedly breaches the rules or behaves in a violent or threatening manner (Article 19(2)(e), or when the applicant fails to participate in compulsory integration measures Article 19(2)(f). (These three circumstances are new.)

The circumstance at Article 19(2)(e) (breach of rules) may also lead to withdrawal not just reduction of material conditions.

It should be noted that additional circumstances leading to reduction or withdrawal of material reception conditions which appeared in the proposal have not been agreed and will not be part of the recast RCD. In addition, a complicated partial safeguard at Article 19(1a), provides that where material reception conditions are reduced or withdrawn due to one of the circumstances listed but which no longer exists, the Member State "shall consider" whether to reinstall some or all of the conditions. If not all are reinstalled, then a decision needs to be taken and notified to the applicant.

### **Article 20: Applicants with special reception needs**

Overall, it is worth noting that the concept of vulnerability is removed from the text. The category of "vulnerable persons" is replaced throughout with references to "applicants with special reception needs", with the latter defined in Article 2(13) as "an applicant who is in need of special conditions or guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive."

The implications of the change are uncertain. The current RCD defines an applicant with special reception needs as a "vulnerable person who requires special guarantees" in order to benefit from the rights and comply with the obligations of the Directive; it then provides a long and non-exhaustive list of examples in a "General Principle" in Article 21. In the new Article 20, the list is largely preserved but these are now defined as categories of applicant "more likely to have special reception needs".

Legal questions arise, first, concerning the scope of the protections. Are there applicants who are vulnerable but who will not be classed as needing special reception conditions and who will therefore not benefit from the protections provided? Second, the application of the body of case law on vulnerability will have to be tested by the courts.

### **Article 21: Assessment of special reception needs**

The proposal reinforces the duty to assess special reception needs in Article 21(1). The Article sets a deadline of 30 days for the assessment; it then introduces detailed requirements such as the appropriate training of personnel carrying out the assessment. In the following Articles 22 to 24, the compromise sets out additional requirements and guidance on the treatment of specific groups. Despite the aforementioned questions about the potential narrowed scope of the provisions, the amendments largely mirror and seek to universalise good practice in the management of vulnerable groups, and to ensure that their special reception needs are identified and then respected.

### **Article 25: Appeals**

The article preserves the basic provisions of the current RCD which set out the right to an appeal in relation to decisions granting, reducing or withdrawing reception conditions, and the right to free legal assistance and representation.

Two changes are introduced. First, while the compromise preserves the possibility for the state to deny free legal assistance if the applicant has their own resources or when the appeal is considered to have no tangible prospect of success, it then introduces the right to an effective remedy against this decision to withhold legal assistance in Article 25(3). Second, the applicant has the right to

request free legal assistance and representation in their pursuit of this remedy. In this case, the legal assistance may be provided by legal advisors or counsellors “specifically designated by national law”. Although this category “may” include accredited NGOs, it allows states to limit provision of legal assistance to state providers and there is no reference to avoiding conflicts of interest, in contrast to the reference to legal assistance at Article 25(2).

### **Article 28: Contingency Planning**

A final novelty of the compromise, as preserved from the proposal, is the introduction of an article on contingency planning in the chapter on “Actions to improve the efficiency of the reception system”. The article obliges the EUMS to draw up a contingency plan to set out measures which would ensure they meet the obligations set out in the Directive in cases where they are confronted with “a disproportionate number of applicants for international protection, including unaccompanied minors”. The contingency plan should be prepared in consultation with other stakeholders, including civil society and international organisations, “as appropriate” and it should use a template developed by the EUAA. The plan should be prepared within 10 months of the coming into effect of the recast and be reviewed at least every three years, with the EUAA to be notified if updates are made, and the EUAA and the Commission to be informed if the plan is activated.

The provision responds to the objective of ensuring preparedness of reception systems.

## 2. Part II: Implementation of the European and international legal framework on reception conditions across EU EUMS

### 2.1. Provision of Material Reception Conditions: (Preamble, Articles 1-7, 17, 18, 27-30)

As a directive, the RCD sets out the obligations of the EUMS but allows them to decide how to meet these obligations. This means that for the provision of material reception conditions, a variety of models and practices are used. The section sets out the models used. It then examines implementation challenges and good practices.

#### 2.1.1. Models and practices for the provision of material reception conditions

**Finding 1:** The national authorities usually have overall responsibility for reception, however there are exceptions where responsibility is shared among different authorities and actors.

The RCD gives states full discretion as regards the authority in charge of reception, so long as they are provided with sufficient staffing, training and resources (Article 29 RCD). In most EU countries, the overall responsibility for the reception system lies with national authorities. There are some limited exceptions where overall responsibility for reception provision is shared.

- In AT, competence on reception is divided between the national level with the federal authorities, which are responsible for reception conditions during the admissions' phase of the procedure, and the federal states, which take over responsibility once the application has been deemed admissible.<sup>32</sup>
- In DE, the federal states (the *Länder*) are exclusively responsible for the reception of asylum seekers during the entire procedure,<sup>33</sup> making it the only country where the reception authorities are exclusively regional and not national.<sup>34</sup>
- In IT, despite the country not being a federal state, reception is shared between national and regional level.<sup>35</sup>

**Finding 2:** In most EUMS, the reception authorities work only on asylum; in a minority, the reception authorities have a broader mandate, going beyond asylum.

In a majority of states, the reception authority is either a particular unit of the determining authority (BG, HR, CY, EL, HU, PL, RO, SE, DK, FI, LT, LV, SK) or an independent government or federal agency (AT, BE, CZ, IE, LU, MT, NL). Thus, the authorities responsible for provision of material reception conditions work only on asylum.

There are a small number of cases where the reception authority has a broader mandate. For example, in FR, IT, SI, and ES the authority in charge of reception has a broader mandate covering all legally residing third country nationals. In DE, organisation varies depending on the policy of the

<sup>32</sup> AIDA (May 2023), [Country Report Austria](#), p.93.

<sup>33</sup> AIDA (April 2023), [Country Report Germany](#), p.111.

<sup>34</sup> EUAA (2022), [Overview of the organisation of reception systems in EU+ countries](#), p.2.

<sup>35</sup> EUAA (2022), [Overview of the organisation of reception systems in EU+ countries](#), p.2.

federal state in question.<sup>36</sup> In EE, reception centres are run by social services which have a broader mandate.<sup>37</sup>

- In PT, a unique situation is in place. Formal responsibility lies with the Ministries of Home Affairs and Employment, Solidarity, and Social Security, but in practice the reception system is run jointly by social security services, the immigration and border services and NGOs.<sup>38</sup>

**Finding 3:** The day-to-day management of reception facilities involves a range of actors in almost all cases.

While overall responsibility for reception is concentrated and usually lies with the national authorities, the practical, daily management of reception centres (or other housing solutions) tends to be more divided among a range of actors, both national, regional and municipal authorities, and sometimes civil society and the private sector.

- Facilities are managed on a daily basis by the state or by regional or local authorities in the following countries: BG, HR, CY, CZ, EE, EL, HU, LV, LT, NL, RO, SK, SI, SE, ES.
- Private companies and landlords play a role in the following: AT, DE, IE, IT. In IE, they manage the entirety of the accommodation programme.
- NGOs are involved in the management of reception facilities in AT, BE, DE, FI, FR, IT, LU, MT, PT, ES.
- International organisations may exceptionally be involved in accommodation by managing accommodation programmes (such as the ESTIA programme in EL until 2022).

Innovative models include the following:

- In IE,<sup>39</sup> most centres are privately owned, the remainder are State owned; nevertheless, all reception centres are operated by private external service providers who have a contract with the International Protection Accommodation Service. However, in a 2021 white paper, the Irish government indicated that it planned to replace the Direct Provision model with a non-for-profit model. The shift was still in its preparatory stage as of end 2022.
- In PT, different actors operate different reception schemes depending on the nature of the procedure.<sup>40</sup> The Institute for Social Security houses asylum applicants admitted to the regular procedure; Santa Casa da Misericórdia de Lisboa assists asylum seekers who have submitted an appeal against a Dublin decision or against a first instance decision not taken in the regular procedure; the Portuguese Refugee Council houses asylum seekers in the admissibility and accelerated procedures, and unaccompanied children in the regular procedure and appeal procedures; and, lastly, the Immigration and Borders Service (SEF) provides reception for those in border procedures.

**Finding 4:** Most EUMS change the type of accommodation provided at different stages of the procedure.

<sup>36</sup> EUAA (2022), [Overview of the organisation of reception systems in EU+ countries](#), p.3.

<sup>37</sup> [Act on Granting International Protection to Aliens](#), §32(2).

<sup>38</sup> AIDA (May 2023), [Country Report Portugal](#), p.96.

<sup>39</sup> AIDA (May 2023), [Country Report Ireland](#), p.82.

<sup>40</sup> AIDA (May 2023), [Country Report Portugal](#), p.96.

EU countries are split in terms of whether they require asylum applicants to move during the procedure. Some EUMS foresee a single location for accommodation for the entire procedure (BG, HR, EE, EL, HU, LV, SE), although there may be transfers between accommodation centres for practical or organisational reasons. Other EUMS foresee in law and/or policy multi-phase accommodation provision whereby asylum applicants are moved to different centres depending on the nature of their asylum application, the progress of the application or the time passed since the beginning of the procedure.

Some of the multi-phase processes include an arrival centre for first reception meant to be as short as possible, usually limited to a few days (e.g. in BE, CZ, DE, FI, FR, LU, LT, NL, PL, SI, SK, ES). The purpose is usually to ensure rapid access to accommodation, identification of specific needs, and direction to the most suitable type of accommodation.

Some EUMS foresee the initial reception phase lasting a few weeks in order to facilitate contact between the determining authority and the applicants (for instance CY, IE, SK).

In some cases, the applicant will be moved when they transition from the admissibility stage to the in-merits examination (e.g. AT, PT).

In some countries (BE, FR, LU, PT, SE), people awaiting a Dublin transfer are placed in specific reception centres.

- In SE, these are located closer to the airport to facilitate the execution of the transfer;<sup>41</sup>
- In FR, people awaiting an outgoing Dublin transfer can only access some reception centres (HUDA), seen as emergency solutions as opposed to the regular reception centres (CADA).<sup>42</sup>

It may also be the case that as asylum applicants advance through the various phases of the reception system, they are increasingly offered reception conditions in financial allowance rather than in kind, and are afforded more independence. For instance, they may go from collective centres to individual organised housing (BE, DE), or move out of organised housing entirely (CY,<sup>43</sup> MT,<sup>44</sup> ES).

It may be that moving from one phase to another is blocked due to issues in cooperation between different actors. That was the case in Austria where, in 2022, provinces did not take responsibility for asylum applicants upon completion of the admissibility procedure as foreseen in the agreement between the federal level and the provinces, leading to overcrowding in federal reception centres.<sup>45</sup> In Italy, the activation of so-called SAI facilities, the last phase of reception which prior to 2018 and between 2020 and 2023 was accessible to asylum seekers, is based on the willingness of local authorities to host such facilities in their territories. In practice, this has led to insufficient capacity in SAI.<sup>46</sup>

**Finding 5:** The types of accommodation provided for asylum applicants vary significantly across EUMS.

<sup>41</sup> AIDA (April 2023), [Country Report Sweden](#), p.81.

<sup>42</sup> AIDA (May 2023), [Country Report France](#), p.95.

<sup>43</sup> Support in this transition is however very limited in Cyprus. As such, many applicants are left destitute, as further explained below.

<sup>44</sup> Similarly, this transition is forced by a maximum time in collective centres, and asylum seekers are not supported in their transition to individual housing, thus many applicants find themselves in poor living conditions or destitution, as further explained below.

<sup>45</sup> AIDA (May 2023), [Country Report Austria](#), p.94.

<sup>46</sup> AIDA (May 2023), [Country Report Italy](#), pp.117-118.



While in practice states choose to use very different types of accommodation, they usually provide one or more of the following accommodation options: private accommodation of the applicant's choice; individual organised accommodation; open collective centres; and closed collective centres.

Table 1: Types of accommodation foreseen in national reception schemes

Types of accommodation foreseen in the reception scheme			
Individual accommodation		Collective centres	
Private accommodation of the choice of the asylum seeker	Individual organised accommodation	Regular	Closed centres <sup>47</sup>
HR, CY, FI, LU, MT, PL, PT, SE <sup>48</sup>	AT, BE, FR, DE, (EL), <sup>49</sup> IT, MT, PT, ES, SE	AT, BE, BG, HR, CY, CZ <sup>50</sup> , EE, FI, FR, DE, EL, HU, IT, LU, LT, LV, MT, NL, PL, PT, RO, SK <sup>51</sup> , SI, ES, SE	CY, CZ <sup>52</sup> , EL, IT, LT, MT, SK <sup>53</sup>

Source: AIDA. Information on EE, FI, LT, LV, LU provided, respectively, by: Estonian Refugee Council and Estonian Human Rights Centre; Finnish Refugee Advice Centre; Lithuanian Red Cross; Latvian Centre for Human Rights; Passerrell.

The preferences and distribution among these options varies significantly, ranging from systems offering private accommodation of the applicant's choice as the default option (SE), to systems dominated by the use of collective centres (BG, HR, CZ, EE, EL, HU, LU, LT, LV, NL, RO, SK, SI).

In some cases, if the applicant opts for private accommodation of their choice (for instance rental accommodation or staying with family members), there may be consequences. In BE, BG, CZ, FR, IE, IT, LV, LT, MT, SK, SI, ES, if asylum seekers refuse the state accommodation allocated to them in favour of accommodation of their own choice, they lose access to all material reception conditions (accommodation, food, clothing, personal expenses allowances).

Private accommodation may be a matter of choice or there may be no alternative. While in FI, PL and SE, the majority of asylum seekers voluntarily live in private accommodation of their own choosing, in CY most asylum seekers are obliged to find such accommodation, as places in reception centres after exiting the first reception centre of Pournara are extremely limited.<sup>54</sup>

Similarly, in FR, asylum seekers are allowed to seek their own accommodation whilst still benefiting from material reception conditions. However, this appears to be a consequence of the chronic lack of accommodation facilities, rather than a policy introduced to ensure increased independence of

<sup>47</sup> Only foreseen as temporary accommodation, not for the whole duration of the asylum procedure.

<sup>48</sup> Under the Tido coalition agreement of October 2022, it is planned that the possibility of individual accommodation (of the asylum seeker's choice or organised) will be abolished and that asylum seekers will be obligated to stay in transit centres for the entirety of their procedure: AIDA (April 2023), [Country Report Sweden](#), p.11.

<sup>49</sup> Ending due to the closure of the ESTIA programme: AIDA (June 2023), [Country Report Greece](#), p.147.

<sup>50</sup> §80 [Asylum Act](#).

<sup>51</sup> Section 22(2) [Asylum Act](#).

<sup>52</sup> §46 [Asylum Act](#).

<sup>53</sup> Human Rights League, [Frequently Asked Questions](#).

<sup>54</sup> AIDA (April 2023), [Country Report Cyprus](#), p.79 and 93-94.

the asylum seeker while progressing in their asylum process. That is also highlighted by the fact that, where asylum seekers choose private accommodation after being offered an accommodation place by the authorities, they are no longer entitled to material reception conditions.<sup>55</sup>

Many countries use closed reception centres for accommodation at least during the initial phases of the asylum procedure (HR, CY, CZ, EL, HU, IT, LT, MT, SK, SI, ES).

- In CY, all asylum seekers accessed the closed Pournara centre for on average 40 to 60 days in 2022 (stretching to 5 to 6 months in 2020).<sup>56</sup>
- In CZ, the reception process starts with de facto detention in a reception centre until a medical examination has been conducted and potential quarantine or other measures have ended.<sup>57</sup>
- In EL, in Samos and Kos CCACs, all newly arrived asylum applicants are only permitted to exit the centre after 25 days, not including the quarantine period. In addition, quarantines continue to be imposed in asylum reception centres for COVID-19 prevention despite the lifting of such prevention policies for the rest of the population.<sup>58</sup>
- In HU, from 2017 to 2020, asylum seekers were required to stay in transit zones for the entire duration of their asylum procedure, with the exception of unaccompanied children below the age of 14, who were placed in a childcare facility.<sup>59</sup>
- In IT, the system foresees first aid and identification processes for people arriving via search and rescue (SAR) operations in the centres created in the principal places of disembarkation. According to national procedures, people should stay in these centres “for the shortest possible time”, but in practice they are often accommodated for days or weeks.<sup>60</sup>
- In MT, since 2019, all asylum applicants who reach the country by sea have been detained in the Ħal Far Initial Reception Centre for minimum 2 weeks upon arrival, on the basis of public health legislation.<sup>61</sup>
- In SK, asylum seekers are first accommodated in the closed reception camp of Hummené, where a medical examination and an asylum entry interview are conducted.<sup>62</sup>
- In SI, following the preliminary procedure, asylum seekers are brought to the Asylum Home or its branch Logatec. Until the lodging of their application has been completed, they are not allowed to leave the premises.<sup>63</sup>

Recently, countries increasingly shifted towards collective centres as the main form of accommodation granted to asylum seekers, as illustrated, for example, by the closure of the ESTIA

<sup>55</sup> AIDA (May 2023), [Country Report France](#), p.98 and 103.

<sup>56</sup> AIDA (April 2023), [Country Report Cyprus](#), p.93.

<sup>57</sup> §46 [Asylum Act](#); see also UNHCR (February 2021), [Information leaflet for asylum seekers in the Czech Republic](#).

<sup>58</sup> AIDA (June 2023), [Country Report Greece](#), p.208.

<sup>59</sup> AIDA (April 2021), [Country Report Hungary](#), p.70. Although this is no longer the case, reception of asylum seekers is currently almost non-existent in HU due to the near absolute impossibility to access asylum imposed by the ‘Embassy procedure’.

<sup>60</sup> AIDA (May 2023), [Country Report Italy](#), p.148.

<sup>61</sup> AIDA (April 2023), [Country Report Malta](#), p.84.

<sup>62</sup> Human Rights League, [Frequently asked questions](#).

<sup>63</sup> AIDA (May 2023), [Country Report Slovenia](#), pp.27-29.

accommodation scheme in EL<sup>64</sup> and by the SE<sup>65</sup> government's decision, announced in October 2022 and still to be implemented, to shift to a model in which all asylum seekers to reside in collective centres, while currently the majority were residing in the community. An exception to this trend was represented by IE. In 2021, the national government established in a white paper that reception of asylum seekers should become a two-phase process, with after 4 months a transition towards own-door, self-contained houses or apartments, as opposed to the current policy that relies heavily on collective centres for the entire procedure. As IE remains in a reception crisis, implementation has been delayed and the transition is still in the preparatory stages.<sup>66</sup>

Conditions in accommodation are reported as adequate in HR and to a large extent in FR, LV, LT, PT, SI, ES, and SE. In the NL and IT, conditions are considered adequate in ordinary centres and in centres within the national SAI system<sup>67</sup>, but not in emergency and temporary centres.

**Finding 6:** Some EUMS are not providing one or more of the material reception conditions required by the RCD.

In addition to housing, material reception conditions cover at a minimum food and clothing, and a daily expenses allowance. In some countries, asylum applicants are able to access these material reception conditions beyond housing without particular difficulties (AT, BG, HR, DE, HU, IE, PT, RO, SE, MT, SI). However, the following EU EUMS do not provide one or more of the required material reception conditions:

- BG: Since the end of 2015, the Bulgarian authorities have limited material reception conditions to housing, food and basic care, thus not providing the clothing or the daily expenses allowance.<sup>68</sup>
- HU: Under the current state of emergency, there is neither clothing provision nor a personal expenses allowance. It is however explicitly foreseen that material reception conditions include the costs of a public funeral for the asylum seeker.<sup>69</sup>
- LV: The financial allowance of 3 EUR per day covers food, clothing and daily expenses allowance, rather than having separate amounts for each. There is additional support for food, hygiene products and clothing through packages. but such support is external to the reception authorities and depends on foundations and voluntary contributions, so should be seen as supplementary from the allowance. In detention, food is provided by the centres directly, so detained asylum seekers do not receive the financial allowance, and thus do not receive any personal expenses allowance.<sup>70</sup>
- LT: not all asylum seekers housed in the Pabradė foreigners centre receive the financial allowance by the State, on the basis that some have not formally been admitted into the territory. This may concern asylum seekers without restrictions to their freedom of movement. In practice, by agreement with the centre management, the Lithuanian Red

<sup>64</sup> AIDA (June 2023), [Country Report Greece](#), p.147.

<sup>65</sup> AIDA (April 2023), [Country Report Sweden](#), p.11.

<sup>66</sup> AIDA (May 2023), [Country Report Ireland](#), p.82.

<sup>67</sup> See Case Study 2: Italy.

<sup>68</sup> AIDA (March 2023), [Country Report Bulgaria](#), p.70.

<sup>69</sup> AIDA (April 2023), [Country Report Hungary](#), p.75.

<sup>70</sup> Information provided by NGO Latvian Centre for Human Rights, Latvia, 25/09/2023.

Cross pays them the same amount as the asylum seekers receiving the authorities' allowance.<sup>71</sup>

States are free to provide housing, food and clothing either in kind, as a financial allowance or in vouchers, or any combination thereof (Article 2(g) RCD), so long as they together ensure an adequate standard of living for applicants (Article 17(2) RCD). In practice, EU EUMS have opted for a variety of schemes. In recent years BE<sup>72</sup> and BG<sup>73</sup> have notably increasingly shifted from provision of financial allowances to in-kind provisions.

The BE<sup>74</sup> system foresees the provision of accommodation in kind at least. If this cannot be provided due to capacity shortages, legally applicants are entitled to the same minimum standard financial aid as a Belgian national, provided by the social welfare office. In practice, this financial aid has usually not been accessible throughout the ongoing Belgium's reception crises. Where secured, this has resulted from court proceedings. In EE, applicants present in reception centres receive food, essential clothing, and other necessities such as toiletries. The services offered by the accommodation centre may be substituted by a monetary benefit.<sup>75</sup>

In FR,<sup>76</sup> asylum seekers are allowed to seek their own accommodation whilst still benefiting from (the other) material reception conditions due to the chronic lack of accommodation facilities. In practice, they are given a small additional financial allowance, in many places not adequate for securing housing and far lower than social assistance for French nationals.

Table 2: Form of provision of housing, food and clothing

Form of provision of housing, food and clothing		
All in kind	Partly in kind, partly in financial allowance	All in financial allowance including housing
AT, BE, BG, HR, CZ <sup>77</sup> , EE, DE, HU, IT, LU, LV, PL, PT, SI, ES	AT, BE, CZ <sup>78</sup> , EE, FI, FR, DE, GR, HU, IE, LU, LV, LT, MT, NL, PL, PT, RO, ES, SE	AT, BE*, CY, FI, FR*, PL, ES, SE

\* When there is a lack of reception capacity, as is currently the case.

Source: AIDA. Information on EE, FI, LT, LV, LU provided, respectively, by: Estonian Refugee Council and Estonian Human Rights Centre; Finnish Refugee Advice Centre; Lithuanian Red Cross; Latvian Centre for Human Rights; Passerell.

In some countries, problems have arisen in the payment of financial allowances:

- CY: The vast majority of asylum seekers present in the country reside in local communities rather than in the Pournara Reception Centre. Since October 2020, allowances for food, clothing, utility bills and minor expenses are provided by cheque instead of vouchers, while the rent allowance is payable directly by the authorities to the landlord. This requires asylum seekers to open a bank account but many face obstacles in that regard, including unreasonable administrative requirements (such as a clean criminal record from the country

<sup>71</sup> Information provided by Lithuanian Red Cross, 12/10/2023.

<sup>72</sup> AIDA (April 2023), [Country Report Belgium](#), p.114.

<sup>73</sup> AIDA (March 2023), [Country Report Bulgaria](#), p.72.

<sup>74</sup> AIDA (April 2023), [Country Report Belgium](#), p.117-118.

<sup>75</sup> Articles §32 and 36, [Act on Granting International Protection to Aliens](#).

<sup>76</sup> AIDA (May 2023), [Country Report France](#), p.103.

<sup>77</sup> §42 [Asylum Act](#).

<sup>78</sup> §42 [Asylum Act](#).

of origin), significant delays, and the requirement to speak Greek or English. The situation improved in 2022 through regulations and instructions provided by the central bank, but challenges remain, *inter alia* the up to 7-month processing time for requests presented to local banks.<sup>79</sup>

- FR: In 2019, the French authorities eliminated the possibility for asylum seekers to withdraw money with the payment card onto which financial allowances are paid, thus limiting asylum seekers' purchase options (markets, second hand shops, etc).<sup>80</sup>
- DE: German law provides that the personal expenses allowance should also be provided in kind as far as possible, although in practice asylum seekers receive it in cash.<sup>81</sup>
- EL: A lack of access to the cash assistance continues to be reported at the beginning of the procedure, since asylum seekers need a Greek phone number to request the assistance, and for those encamped on the Eastern Aegean Islands.<sup>82</sup>
- PT: Since 2020, the Social Security Institute, which provides reception to asylum seekers in the regular procedure, distributes reduced financial allowances because they consider that some specific allowances should not be provided at the same time, contrary to all other reception providers who distribute all the allowances combined.<sup>83</sup>

The financial allowances provided have been reported to be insufficient for ensuring a dignified standard of living and/or to adequately fulfil asylum seekers' needs in CY, CZ, FR, IE, MT, PL, PT. In many countries, allowances have not been increased in the recent years, despite higher costs of living. In PL, although allowances were raised slightly in 2022 for those living in reception centres, social assistance has remained at the same level since 2003 for those living outside centres.<sup>84</sup> In RO, to the contrary, the amounts were doubled in 2022 and are considered sufficient to ensure decent living conditions.<sup>85</sup>

Some countries (at least DE, IE, PL, PT, SE) may provide additional allowances based on other entitlements or as part of other social programmes (general social welfare for instance).

**Finding 7:** A variety of (permitted) restrictions on freedom of movement are applied across the EUMS, including dispersal systems and reporting requirements.

Although it underlines the right to freedom of movement of applicants, the current RCD also allows EUMS to apply certain restrictions on that freedom (Article 7).

Certain EUMS implement dispersal schemes, i.e. systems to distribute asylum applicants across the country in a balanced manner, according to a distribution key calculated based on various factors such as population, reception capacity, etc (AT, FR, DE and IT). In all four countries, decisions on dispersal are not (judicially) appealable, despite the impact they may have on livelihoods. Refusing to follow the dispersal scheme can lead to withdrawal of material reception conditions. Not respecting dispersal mechanisms and formal restrictions of movement can lead to fines (AT, DE) or

<sup>79</sup> AIDA (April 2023), [Country Report Cyprus](#), p.84-85.

<sup>80</sup> AIDA (May 2023), [Country Report France](#), p.99.

<sup>81</sup> AIDA (April 2023), [Country Report Germany](#), p115.

<sup>82</sup> AIDA (June 2023), [Country Report Greece](#), p.148-150.

<sup>83</sup> AIDA (May 2023), [Country Report Portugal](#), p.102.

<sup>84</sup> AIDA (May 2023), [Country Report Poland](#), p.60-61.

<sup>85</sup> AIDA (May 2023), [Country Report Romania](#), p.89.

even prison (DE, in case of repeated violations<sup>86</sup>), but also loss of material reception conditions (FR, IT, MT, PT), up to detention (BG although this has yet to be applied in practice,<sup>87</sup> GR in law and practice<sup>88</sup>). In November 2022, a legislative proposal for a distribution scheme was put forward in the NL.<sup>89</sup>

All other EU countries use the allocation of a specific location for reception, based on factors including the capacity across the reception system, the profile of the applicant, and the phase and type of procedure (for example, persons awaiting outgoing Dublin transfers are placed in specific centres in several EU countries, to facilitate their transfer (BE, FR, LU, PT, SE)).

Beyond dispersal and allocation, several EU EUMS foresee formal restrictions on the freedom of movement of asylum seekers in law and/or policy.

- In AT, BG, FR, DE, and SI, all asylum seekers cannot move freely on the territory of the Member State but are limited to a circumscribed area, usually the municipality/district/region in which they are accommodated. These restrictions apply to all asylum seekers indiscriminately.
- In CY, contrary to nationals and other legally residing TCNs, asylum seekers cannot leave the area controlled by CY authorities and cross the Green Line.<sup>90</sup>
- In EL and ES, severe restrictions to the freedom of movement apply to asylum seekers respectively in the Islands and in Ceuta, Melilla and the Canaries; in both cases, applicants have been automatically denied access to the mainland. These restrictions were declared unlawful but the ES Supreme Court in July 2020 and by regional courts across the mainland and the islands,<sup>91</sup> however implementation of the judgments remains slow, and authorisation from the authorities can still be required in practice to transfer an applicant to the mainland.<sup>92</sup> In EL, restrictions are automatically applied to people subject to the EU-Türkiye deal and the Fast-Track border procedure: their movement is restricted to the island where they have arrived, by decisions both of the Police and the Asylum Service.<sup>93</sup>
- In HR<sup>94</sup>, IT<sup>95</sup> and LT<sup>96</sup>, such restrictions on the freedom of movement are a possibility but contrary to the example above are not applied automatically and to all.

As previously mentioned, several countries also use closed reception centres for accommodation at least during the initial phases of the asylum procedure<sup>97</sup>.

<sup>86</sup> [Asylum Act](#), Section 85.

<sup>87</sup> AIDA (March 2023), [Country Report Bulgaria](#), p.74.

<sup>88</sup> AIDA (June 2023), [Country Report Greece](#), p.157.

<sup>89</sup> AIDA (May 2023), [Country Report Netherlands](#), p.103.

<sup>90</sup> AIDA (April 2023), [Country Report Cyprus](#), p.92.

<sup>91</sup> Tribunal Supremo, 29 July 2020, [STS 2497/2020](#) and [STS 2662/2020](#). For further details, see AIDA, [Country Report Spain](#), 2023, p. 104-105.

<sup>92</sup> AIDA (April 2023), [Country Report Spain](#), p. 104-105.

<sup>93</sup> AIDA (June 2023), [Country Report Greece](#), p. 153ff.

<sup>94</sup> AIDA (June 2023), [Country Report Croatia](#), p.85.

<sup>95</sup> AIDA (May 2023), [Country Report Italy](#), p.140.

<sup>96</sup> Information provided by Lithuanian Red Cross, 12/10/2023. This is excluding the quarantine policy and initial detention of maximum 48h at the border (persons may be released or transferred in less than 48h).

<sup>97</sup> See Finding 5.

Other policies, although not formal restrictions of freedom of movement, also impact the exercise of this right by asylum seekers.

- CY: asylum seekers are no longer allowed to settle in a particular area due to protests and concerns over potential 'racial alteration' of the area.<sup>98</sup>
- SE: similarly, since 2020 asylum seekers see their financial allowances withdrawn if they settle in designated "socio-economically challenged areas". However, this has yet to curb behaviours as wanted by the authorities: in 2022 6,526 asylum seekers were settled in such areas, compared to 3,067 in 2021.<sup>99</sup>
- RO: between June 2022 and February 2023, upon order of the asylum authorities, asylum seekers were subject to chain transfers every 3 to 7 days between the country's 6 reception centres to hinder contact with human smugglers. In practice, this lengthened the duration of the asylum procedure, leading to frustration for the asylum seekers, and did not prevent contact with smugglers who were well aware of the transfer scheme.<sup>100</sup>

Many other factors linked to attributes of the countries' reception systems affect asylum seekers' freedom of movement: the obligation to be present at the reception centre at night or the limited right of nightly absence from the centre; the isolation of many reception centres, with limited availability of public transportation or, where available, the financial impossibility to pay for them (a good practice in this regard is that of Zagreb, in HR, where asylum seekers may use public transportation freely);<sup>101</sup> the location of certain centres on islands, effectively limiting their area of movement significantly.

In various countries (CZ, CY, EL, IT, LT, MT, SI, SK and ES), instances of deprivation of liberty for asylum seekers that are not recognised as such by national authorities (de facto detention) have been reported at some stage of their reception processes<sup>102</sup>.

**Finding 8:** A variety of practices are used by the EUMS for ending reception after a final decision on the asylum application.

After a final negative decision, the time limit to leave the centre varies across the MS, although it is usually between 15 and 30 days. After a positive decision, the time limit to leave the asylum reception system also varies widely – anywhere from the obligation to leave the centre immediately (BG, unless they are considered vulnerable)<sup>103</sup> to 4 months to leave (AT)<sup>104</sup>, 6 months (FR)<sup>105</sup>, or 2 years (HR)<sup>106</sup>. Accommodation may be provided until housing is found (NL, IE)<sup>107</sup>.

<sup>98</sup> AIDA (April 2023), [Country Report Cyprus](#), p.92.

<sup>99</sup> AIDA (April 2023), [Country Report Sweden](#), p.77.

<sup>100</sup> AIDA (May 2023), [Country Report Romania](#), p.95-96.

<sup>101</sup> AIDA (June 2023), [Country Report Croatia](#), p.84.

<sup>102</sup> See Section 2.2 The Use of Detention.

<sup>103</sup> AIDA (March 2023), [Country Report Bulgaria](#), p.111.

<sup>104</sup> AIDA (May 2023), [Country Report Austria](#), p. 164.

<sup>105</sup> AIDA (May 2023), [Country Report France](#), p.143.

<sup>106</sup> AIDA (June 2023), [Country Report Croatia](#), p.139.

<sup>107</sup> AIDA (May 2023), [Country Report Netherlands](#), p. 148; AIDA (May 2023), [Country Report Ireland](#), p.147.

## 2.1.2. Implementation gaps and good practices

Analysis of the evidence from reception systems leads to the identification of a range of implementation gaps, which are explored below.

**Finding 9:** Lack of access to the asylum procedure hinders access to (material) reception conditions.

In some countries, access to reception is not, *per se*, the main challenge in reception provision. Rather, the major challenge is access to asylum itself and this has a knock-on effect because if an applicant cannot access the asylum procedure access to reception is hindered.<sup>108</sup> While an in-depth analysis of the phenomenon is outside of the scope of this study, in these situations the number of people accessing reception is artificially limited. Examples include:

- Pushbacks<sup>109</sup> and lack of response to distress at sea are reported in BG, CY, CZ, EE, ES, FR, EL, HR, HU, IT, LT, LV, MT, PL, RO, SI.<sup>110</sup>
- Laws have been passed formalising restrictions on access to asylum in EE, HU, LT, LV and PL.<sup>111</sup> For example, in HU, people granted the right to enter Hungary in an embassy procedure should present themselves to the border guards upon arrival, who are then to present them to the asylum authority within 24 hours and from there the application for asylum will be formally registered and the person granted reception conditions. However, this only concerns the very limited number of persons granted entry under the embassy procedure (four people in 2022).<sup>112</sup>
- In other cases, access to asylum is not impossible but may be (significantly) delayed: BE, CY, FR, EL, IT, LU, NL, ES.<sup>113</sup>

**Finding 10:** Delayed access to material reception conditions is common (i.e. material reception conditions not being available from the time of the making of the application).

<sup>108</sup> Among numerous reports, just covering 2022, see: Council of Europe (March 2023), [Anti-torture committee calls on European governments to put an end to pushbacks and prevent ill-treatment of foreign nationals at borders](#); Council of Europe (April 2022), [Pushed beyond the limits. Four areas for urgent action to end human rights violations at Europe's borders](#); 11.11.11 (March 2023), [Over 200,000 illegal pushbacks at EU's external borders in 2022](#); DRC (January 2022), [Protecting Rights at Borders: Beaten, punished and pushed back](#).

<sup>109</sup> Definition of common usage for situations of collective expulsions or removal, non-admission at the borders or no rescue at sea.

<sup>110</sup> See AIDA Country Reports (2023), [Update on the year 2022](#), for the information regarding BG, CY, ES, FR, EL, HR, HU, IT, MT, PL, RO, SI. For CZ, concerning Prague airport, see OPU (February 2023), [Input by civil society organisations to the EUAA Asylum Report 2023](#); for EE, see the significant concerns of the Estonian Refugee Council (2022), [Arvamuse andmine Riigipiiri seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus 577 SE kohta](#), of the Commissioner for Human Rights of the Council of Europe (May 2022), [Letter to Mr Jüri RATAS](#), and of UNHCR (May 2022), [UNHCR observations on the draft Amendments to the State Borders Act and Other Related Acts of the Republic of Estonia](#); For LV, LT, see among multiple sources UN Special Rapporteur on the human rights of migrants (2022), [Human rights violations at international borders: trends, prevention and accountability](#), Protecting Rights at Borders (2023), [Surprisingly surprised](#), Commissioner for Human Rights of the Council of Europe (February 2023), [Letter to Mr Māris KUČINSKIS](#).

<sup>111</sup> Amnesty International (June 2022), [Lithuania: Forced out or locked up – Refugees and migrants abused and abandoned](#); AIDA (April 2023), [Seeking Refuge in Poland](#).

<sup>112</sup> AIDA (April 2023), [Country Report Hungary](#), p.13.

<sup>113</sup> See AIDA Country Reports (2023), [Update on the year 2022](#); for LU, information was provided by Passerell, with the change in registration procedure in August 2023.



The RCD provides that reception conditions are available to all third country nationals who make an application for international protection, i.e. they are applicable at the making of the application, before registration or lodging (if they are not carried out at the same time as the making of the application). Implementation of this provision is hampered either by poor transposition or by a lack of respect for the provision in practice. Alternatively, the delay may result from the lack of access to the asylum procedure mentioned above.

This provision has not been correctly transposed in all national asylum legislation, including:

- AT: asylum seekers may access Basic care services after lodging instead of merely making an asylum claim. This distinction particularly affected asylum seekers' access to reception conditions in 2022, as the registration procedure was briefly amended due to high arrivals in the Burgenland province, and people were sent to other provinces to have their first interview by the Police.<sup>114</sup>
- BG: access is guaranteed only from the moment of the registration of TCNs as asylum seekers by the asylum authority. This is confirmed in practice whereby the registration card is a prerequisite to access the rights provided under the RCD.<sup>115</sup>
- CY: although the law foresees access to material reception conditions from the making of the application, it also requires that persons present their confirmation that an application has been made to apply for the provision of material reception conditions, confirmation which is provided three days after the lodging of the application. In practice, the issue currently presents differently, as since 2019 people wishing to apply for asylum are referring to Pournara First Reception centre for registration, lodging, and medical and vulnerability screening. Access to reception conditions after their stay in Pournara is dealt with at the end of their stay.<sup>116</sup>
- FR: Access to material reception conditions is foreseen by law after registration of the asylum claim. This is reflected in the organisation of the asylum process, as asylum seekers only meet with OFII, the reception authority, when registering their claim. However, to access registration asylum seekers must present themselves before a SPADA (Structure du Premier Accueil des Demandeurs d'Asile), who conduct a pre-registration phase and deliver the registration appointments before the Prefecture. The law foresees that this should in principle take place within 3 working days, up to 10 in some circumstances. According to the authorities, the average time was 3.7 days in 2022. Asylum seekers in the Ile de France region (Paris and its surroundings) face particular difficulties just accessing this pre-registration phase, for which they must manage to obtain an appointment over the phone, thus further delaying their access to reception conditions.<sup>117</sup>
- LT: during the first 48h maximum (persons may be released or transferred in less than 48h), all asylum seekers are held at the border, where they have accommodation and food but do not receive a financial allowance, before the administrative lodging of the application to be completed: only after this are they transferred to the foreigners centre or a refugee reception centre. People can also be released if they have a place to live and have received a decision from the Migration Directorate allowing to live a specific private accommodation. For those

<sup>114</sup> AIDA (May 2023), [Country Report Austria](#), p.116.

<sup>115</sup> AIDA (March 2023), [Country Report Bulgaria](#), p. 70.

<sup>116</sup> AIDA (April 2023), [Country Report Cyprus](#), p. 80ff.

<sup>117</sup> AIDA (May 2023), [Country Report France](#), p. 33ff and 95.

transferred to Pabradė centre, the financial allowance will only be paid at the end of the month.<sup>118</sup>

- PL: access to material reception conditions is provided only from the point of registration in the reception centre, which can only be done after the lodging of the asylum application and it will take most asylum seekers one to two days to reach the reception centre to register. This delay can be even more significant where the Border Guard are unable to register the application for asylum on the day it is made. If persons do not wish to live in the reception system, they provide the Border Guard with their address of stay when lodging their application, but the decision to grant the financial allowance is not issued immediately, and actual issuance of the allowance is also delayed after that.<sup>119</sup>

Although most national frameworks foresee access to reception conditions from the moment the application is made, in practice effective access to reception conditions does not (fully) occur at this stage in multiple countries,<sup>120</sup> namely AT, BG, CY, FR, EL, DE, IT, LU, PL, RO.

- EL: The law provides that people are entitled to material reception conditions from the time they make an asylum application. However, in practice the Ministry of Migration and Asylum does not recognise people as having expressed the will to apply for asylum and thus as asylum seekers until after their registration appointment. Moreover, access to this appointment for those seeking asylum on the mainland has been very challenging for several years, including through the new government platform deployed in 2022, which when accessed, often offers appointments in several months' time or does not have any available. Even if persons are able to secure an appointment, they do not benefit from reception conditions and risk detention.<sup>121</sup>
- DE: Although the law foresees entitlement to material reception conditions as soon as people request asylum, in practice they do not receive full benefits until they formally gain the status of an asylum seeker through the issuance of an arrival certificate at the reception centre to which they have been assigned, which in practice happens usually within a few days of reporting to the authorities. They are however accommodated and provided with food throughout the dispersal and allocation procedures,<sup>122</sup> whereby applicants are first distributed to a specific Federal State in Germany before, within that State, being allocated to a particular long-term reception centre.<sup>123</sup>
- IT: In practice for those seeking asylum on the territory, as opposed to those arriving after search and rescue operations, the asylum application can only be made at an appointment before the competent police commission (*questura*). As securing an appointment can be

<sup>118</sup> Information provided by Lithuanian Red Cross, 12/10/2023. Note that there were situations in practice where persons were detained for 72h or more, but this was assessed by the Ombudsman and recognised as a violation.

<sup>119</sup> Information provided by SIP, Poland, 12/09/2023.

<sup>120</sup> This is only covers countries where the reception system is organised as such that it is not possible, according to national policies or practices, to access full reception conditions when making the asylum application. It does not cover cases where the access is hindered in practice due to delays in access to the asylum procedure (as has been reported in BE (see AIDA (April 2023), [Country Report Belgium](#), p. 97ff), NL (see AIDA (May 2023), [Country Report Netherlands](#), p. 95ff), ES. (see AIDA (April 2023), [Country Report Spain](#), p. 98ff).

<sup>121</sup> AIDA (June 2023), [Country Report Greece](#), p.146.

<sup>122</sup> AIDA (April 2023), [Country Report Germany](#), p.112.

<sup>123</sup> For detailed information see AIDA, (April 2023), [Country Report Germany](#), pp.20-21, and 29.

highly challenging depending on the restrictions and documentary evidence demanded by the local *questura*, access to reception conditions is often delayed.<sup>124</sup>

In some cases, as mentioned in the previous section, the delay is due to obstacles to or delays in accessing the asylum procedure:

- LU: prior to August 2023, people seeking asylum in Luxembourg first presented themselves at the initial reception centre, where they were temporarily accommodated, and brought to the Ministry to make their asylum claims the following morning. However, citing capacity pressure and abuse of this possibility, since August 2023 single men must first make and lodge their application with the asylum authorities and thus receive their asylum certificate before being able to present themselves to the initial reception centre. However, the relevant office to present the asylum claim is only open on weekdays, from 8:30 to 12:30. Thus, if a person arrives outside those times, even more so on the weekend, they are unable to access asylum and thus, with the new organisation, reception for up to 3 nights.<sup>125</sup>
- ES: since 2017, there have been important delays in obtaining appointments both to express the intention to apply for asylum and then to register the asylum application on the mainland. In 2022, it was even reported that appointments were sold on the black market. In 2022, waiting time for appointments to express the intention to apply for asylum ranged from the same day or a few days in a few provinces to up to 3-6 months. Waiting time for registration following the expression of intent was on average rather to be counted in months rather than days, up to over a year in certain provinces.<sup>126</sup>

**Finding 11:** Incorrect decisions on ineligibility to access material reception conditions affect certain categories of asylum applicants.

Certain categories of asylum seekers face particular difficulties in accessing material reception conditions due to being deemed ineligible.

**Subsequent applicants** face systematic obstacles in accessing material reception conditions in the majority of EU countries, despite it only being a ground for reduction, or exceptionally and in duly justified cases, withdrawal of material reception conditions.

- Subsequent applicants are automatically denied material reception conditions in BE, BG,<sup>127</sup> CY, FR, HU, MT, NL,<sup>128</sup> RO, SI.<sup>129</sup>
- Subsequent applicants receive reduced material reception conditions in HR, SI,<sup>130</sup> and SE. In LU, although they may be granted access to the initial reception centre, most claims will be declared inadmissible extremely quickly and they will then swiftly be removed from the initial reception centre, if they had time to access it at all.<sup>131</sup>

<sup>124</sup> AIDA (May 2023), [Country Report Italy](#), p.118ff.

<sup>125</sup> Information provided by Passerell, an asylum NGO in Luxembourg, 15/09/2023.

<sup>126</sup> AIDA (April 2023), [Country Report Spain](#), p.49ff.

<sup>127</sup> However, vulnerable subsequent applicants may be granted MRC: AIDA, [Country Report Bulgaria](#), 2023, p.69.

<sup>128</sup> Until their case is deemed admissible.

<sup>129</sup> From the second subsequent application onwards: AIDA (May 2023), [Country Report Slovenia](#), p.71.

<sup>130</sup> During the first subsequent application, they are not entitled to the monthly allowance: AIDA (May 2023), [Country Report Slovenia](#), p.71.

<sup>131</sup> Information provided by Passerell, Luxembourg, 15/09/2023.

**People awaiting an outgoing Dublin transfer** face specific obstacles, linked to the nature of asylum procedure, in accessing full material reception conditions during the entirety of their procedure.<sup>132</sup>

**Dublin returnees** face challenges in accessing full material reception conditions in BE, BG, CY, FR, EL, HU, IT, MT, NL, PL, ES. However, in some of these cases, the issues are the same as those faced by all applicants for asylum (as is the case BE, CY, FR, IT, NL, ES). They may also be related to the problem of accessing the asylum procedure as a Dublin returnee, rather than specifically accessing material reception conditions (as is the case in EL, HU, IT, MT, PL). Finally, some Dublin returns will also be considered subsequent applicants, which may lead to denials of material reception conditions on that basis. The following examples illustrate these cases:

- BG: Dublin returnees who are not considered vulnerable may only access food and accommodation if there is sufficient national reception capacity and availability, otherwise they will have to secure those on their own. This was a widespread issue in 2022 due to the simultaneous increase in arrivals and reduced reception capacity, as some places were deemed unfit for living.<sup>133</sup>
- HU: Dublin returnees who had not previously applied for asylum in Hungary are prevented to do so under the current legislation foreseeing the Embassy procedure, as they are not listed under the exceptions who may apply for asylum from Hungarian territory. Persons who would be considered subsequent applicants, either because they were issued a negative decision (including in absentia) or because their application was considered withdrawn (tacitly or in writing) are in the same situation, as they would also under the current legislation be required to apply for asylum from the Hungarian embassy in Kyiv or Belgrade. Thus, Dublin returnees have no effective access to the procedure and thus to reception.<sup>134</sup>

Finally, EUMS may also deem particular categories of applicant ineligible as a matter of national law or practice:

- BE: In practice, due to the reception crisis, Fedasil automatically excludes from accommodation people recognised as beneficiaries of international protection (BIPs) in other EUMS, and, again in 2023 as official policy, all single men.<sup>135</sup>
- CY: asylum applicants channelled into the accelerated procedure lose MRC during the judicial appeal regarding their asylum claim.<sup>136</sup>
- HR: applicants detained in the reception centre are denied the financial support that is part of material reception conditions, because it is considered that by being accommodated in the reception centre for foreigners, adequate standard of living is secured.<sup>137</sup>

<sup>132</sup> See Section 2.1.1 Models and practices for the provision of material reception conditions, End of the right to reception.

<sup>133</sup> AIDA (March 2023), [Country Report Bulgaria](#), p.45-46.

<sup>134</sup> AIDA (April 2023), [Country Report Hungary](#), pp.49-50.

<sup>135</sup> AIDA (April 2023), [Country Report Belgium](#), p.110ff, 138; regarding the recently renewed official policy of denying accommodation to single men, immediately again suspended by the Council of State, see: Vluchtelingenwerk Vlaanderen (September 2023), [Organisaties naar Raad van State tegen stop asielopvang alleenstaande mannen](#) and EMN Belgium (September 2023), [The Council of State orders the suspension of the decision not to offer shelter to single male asylum seekers](#).

<sup>136</sup> AIDA (April 2023), [Country Report Cyprus](#), p.79.

<sup>137</sup> AIDA (June 2023), [Country Report Croatia](#), p.83.

**Good practice:**

A positive change is noted in ES: in 2022, the ES Reception Regulation was amended such that people who arrive from the Moroccan border and obliged to be hosted in Ceuta and Melilla's Migrant Temporary Stay Centres (CETI) are entitled to full reception conditions within CETI, as opposed to only once transferred to the Spanish peninsula, as previously foreseen by the law.<sup>138</sup>

**Finding 12: Inadequate reception capacity and poor planning has led to reception crises in at least six EUMS.**

Managing reception capacity has proven particularly challenging in many EUMS in recent years, partly due to the higher fluctuations in arrivals to Europe between 2015 and 2020/2021, when travel restrictions connected to the COVID-19 pandemic limited the number of arrivals (the EU28 saw 1,256,580 asylum applications in 2015, and the EU27 received 34% fewer applications in 2020 compared to 2019).<sup>139</sup> In turn, this had an impact on the perceived reception needs of each country.

MS tended to reduce reception capacity in 2020 and 2021, and most experienced difficulties following the rise in applications in 2022. Although the 884,630 applications received by the EU27 in 2022 does not reach 2015 and 2016 levels, it is still a 112% increase compared to 2020.<sup>140</sup>

In AT, BE and the NL, reception places had been closed when arrivals decreased in 2020, although this was mostly due to COVID-19 travel restrictions. These systems were unprepared for the increased arrivals at the end of 2021 and throughout 2022. This demonstrates the need for stable and flexible capacity in EU reception.

Rapid opening and closing of facilities can also impact cooperation with other actors, such as in BE, where local authorities are now unwilling to accept new facilities on their territories.<sup>141</sup>

Reception capacity can also be affected by negative results of quality monitoring checks: in BG, capacity was reduced by close to 25% as 1,228 reception places were assessed as unfit for living in 2022.<sup>142</sup>

The lack of sufficient funding combined with increased costs of living also may affect reception capacity: for example, in AT, NGOs running reception centres threatened to close them, given the absence of increase in the stipend allocated to them by the Federal States to run such centres, which no longer covers their costs. An increase of 4 EUR was granted, averting an immediate crisis, but financial resources remain insufficient.<sup>143</sup>

Conversely, EUMS were in general able to adapt very quickly and find reception and particularly accommodation solutions at the outbreak of the war in Ukraine and subsequent activation of TPD: despite challenges, the positive responses of states demonstrated that management of large-scale displacement is possible.<sup>144</sup>

<sup>138</sup> AIDA (April 2023), [Country Report Spain](#), p.98.

<sup>139</sup> Eurostat, [Asylum applicants by type of applicant, citizenship, age and sex – annual aggregated data](#), as of 19 September 2023.

<sup>140</sup> Eurostat, [Asylum applicants by type of applicant, citizenship, age and sex – annual aggregated data](#), as of 19 September 2023.

<sup>141</sup> AIDA (April 2023), [Country Report Belgium](#), pp.124-125.

<sup>142</sup> AIDA (March 2023), [Country Report Bulgaria](#), p.75.

<sup>143</sup> AIDA (May 2023), [Country Report Austria](#), p. 96.

<sup>144</sup> For a detailed analysis, see ECRE (2023), [AIDA Temporary Protection Compilation](#).

While lack of reception conditions is a consequence of limited access to asylum procedures (or to territory), the causal link may be reversed, with the lack of reception places leading to a limit on the number of persons allowed to access asylum: that has been the case in BE, CY, NL.

- BE: there have been issues in making and registering asylum claims since 2018. Due to a reception crisis, the authorities limited the number of asylum applications that could be made per day, however this was ruled illegal by the Council of State. Since October 2021, with the resumption of the reception crisis, in practice, minors, families and vulnerable people are given priority and single men are not always able to register on the day: there are either given a specific date to come back within the next few days or simply refused entry. During this time, they cannot access reception as they are not yet asylum seekers according to the authorities.<sup>145</sup>
- CY: since 2019 people wishing to apply for asylum are referred to Pournara First Reception centre for the first steps of their procedure and reception. Access to reception conditions is thus directly linked to access to Pournara. However, this has been difficult since 2020. In 2022, on average 40/50 people were denied access on a daily basis and forced to return the following morning(s) until they were given access.<sup>146</sup>
- NL: since 2021, people have been forced to sleep outside the Ter Apel initial registration centre and wait to register their asylum claim, with up to 700 people sleeping around the centre on a given night. Since September 2022, another site has been opened to house people while they wait to registration, however during that period they remain unregistered asylum seekers and do not access the rest of material reception conditions.<sup>147</sup>

Even when the right to material reception conditions has been recognised, asylum applicants may face challenges in accessing accommodation. That has recently been the case in BE, CY, FR, EL, IE, IT, NL. It is particularly challenging for single men without apparent vulnerabilities, who have been systematically denied access to accommodation in BE (this was an official policy until it was struck down by courts. Since then it nevertheless remained the de facto situation at times, including in March 2022 and, as of September 2023 was again announced as official policy, once again swiftly suspended by the Council of State)<sup>148</sup> and FR.

- BE: even once they are able to access making and registration of asylum claims, many asylum seekers are informed they cannot be offered accommodation due to lack of capacity and invited to join a waiting list. This particularly affects single men but can also affect other categories of asylum seekers, including unaccompanied minors and families. Collective legal proceedings have led to sanctions towards the State but without a tangible result in terms of accessing accommodation. Once on the waiting list, people wait on average 4 months to obtain an accommodation place.<sup>149</sup>
- CY: once they have secured access to the Pournara first reception centre, asylum seekers stay on average for 40 to 60 days but are then either, in rare cases, redirected to other reception centres, or, for most of them, instructed to find accommodation in the community, as there

<sup>145</sup> AIDA (April 2023), [Country Report Belgium](#), pp.36-37.

<sup>146</sup> AIDA (April 2023), [Country Report Cyprus](#), p.30.

<sup>147</sup> AIDA (May 2023), [Country Report Netherlands](#), p.96.

<sup>148</sup> AIDA (April 2023), [Country Report Belgium](#), pp.98-107; regarding 2023 developments, see: Vluchtelingenwerk Vlaanderen (September 2023), [Organisaties naar Raad van State tegen stop asielopvang alleenstaande mannen](#), and EMN Belgium (September 2023), [The Council of State orders the suspension of the decision not to offer shelter to single male asylum seekers](#).

<sup>149</sup> AIDA (April 2023), [Country Report Belgium](#), pp.98-107.

is very little capacity in reception centres. Most asylum seekers live in the community. The Social Welfare Services only assist selected vulnerable people in finding appropriate shelter in the community. The rest must find housing solutions independently.

- FR: given the chronic lack of accommodation capacity for many years, the reception authority prioritises cases based on individual circumstances and vulnerability. At the end of 2022, only 62% of asylum seekers deemed eligible to MRC were effectively accommodated, leaving over 80,000 asylum seekers to fend for themselves when including also those considered not eligible to material reception conditions. This issue persists despite regular expansion of the reception infrastructure. Access is particularly difficult for single persons, as many centres are organised to receive families or couples. The implementation of a national reception scheme, allowing better orientation from the Paris region to accommodation in other regions, enabled the orientation of more than 36,000 migrants since 2021. However, this tool remains insufficient to cover accommodation needs.
- IE: reception capacity has been an issue since 2018. At numerous times throughout 2022, the reception authority exhausted its accommodation capacity, even when using emergency accommodation in unsuitable conditions. Persons denied State accommodation were initially not allowed to access social welfare support while homeless, however it was announced in the spring 2023 that they would be granted access.<sup>150</sup>
- IT: due to lack of capacity planning and because reception is now often foreseen in emergency rather than long term, the number of places in the Italian reception system is largely insufficient and not all are able to access, and are left instead homeless and without assistance. This is particularly the case for those seeking asylum in the territory, who have to request access through the police, since those arriving from search and rescue operations and directly channelled into hotspots.<sup>151</sup>
- NL: issues in capacity are not limited to the Ter Apel registration centres. Shortage of reception places is an issue throughout the reception system and is expected to remain a problem in 2023, as contracts with municipalities are ending and there is not always political will to renew them: at the end of 2023, the reception authority expect a shortage of 35,067 places.<sup>152</sup>

**Finding 13:** Significant numbers of applicants have been reduced to destitution in recent years in at least eight EUMS.

Asylum applicants have been forced into situations of destitution for a variety of reasons; in recent years, this has been a significant phenomenon in the following states: BE, CY, FR, EL, IE, IT, MT, NL. According to the evidence and as described case by case below, one or more of the following factors is relevant: lack of access to reception centres, insufficient accommodation capacity, withdrawal<sup>153</sup> or premature ending of reception conditions.

- BE: Applicants without access to a reception place have to sleep rough for multiple weeks, resulting in several squats in Brussels, regularly evacuated by Fedasil and the police. Medical organisations have denounced the dire medical situation for destitute asylum seekers on multiple occasions.<sup>154</sup>

<sup>150</sup> AIDA (May 2023), [Country Report Ireland](#), p. 17.

<sup>151</sup> AIDA (May 2023), [Country Report Italy](#), p. 118ff.

<sup>152</sup> AIDA (May 2023), [Country Report Netherlands](#), p. 103.

<sup>153</sup> See Section 2.4 Reduction or withdrawal of reception conditions.

<sup>154</sup> AIDA (April 2023), [Country Report Belgium](#), pp.101-102.

- CY: For most asylum seekers, when living in the community due to the absence of state provision of reception, housing continues to be a challenge, and people often find themselves in destitution, facing a risk of homelessness, poor living conditions, and exploitation by agents, landlords and others.<sup>155</sup>
- FR: Due to the lack of accommodation capacity, asylum seekers regularly end up in the streets or in informal camps, in very precarious situations, especially since such camps are regularly dismantled, including using violence, by the authorities often without an alternative being provided. In Calais for instance, despite regular dismantling makeshift camps still exist due to the lack of other options. Given the chronic lack of reception and thus inevitable existence of the camps in Calais, the Council of State in 2017 ordered the authorities to install sanitary facilities such as water points, showers and toilets. Nevertheless, the situation remains dire as of 2022. The situation was worsened in recent years by administrative orders, ultimately struck down by courts, preventing some NGOs from distributing food and water.<sup>156</sup>
- EL: concerns about destitution and homelessness were heightened by the termination of the ESTIA reception programme, partly because applicants were reluctant to be housed in isolated prison-like camps. A lack of reception capacity in island camps has led asylum seekers to live in precarious buildings such as abandoned houses.<sup>157</sup>
- MT: Following their eviction from reception centres after 6 to 12 months, some people end up sleeping in the streets outside the capital city. Informal settlements continued to crop up in 2021 and 2022, and 2022 saw a rise in the number of migrants renting substandard accommodation spaces, including stables.<sup>158</sup>

**Finding 14:** The poor quality of material reception conditions is a general problem across the EUMS.

The quality of material reception conditions, and especially accommodation, is an ongoing concern in many EUMS. Quality concerns may be exacerbated where countries have to set up emergency reception facilities, which are often not able to ensure respect for the fundamental rights of asylum seekers, including the right to human dignity. Emergency accommodation has included the use of exhibition grounds, boats, disused offices, former airports, convention centres, outdoor tents, containers, conference rooms, schools, and sports halls. Particularly poor quality conditions have been reported in emergency facilities in AT, BE, DE, IE, IT, NL, SI, ES. Quality concerns also arise in regular, established asylum reception facilities. Serious quality concerns have been reported in regular asylum reception facilities in BG, CZ, DE, IE, IT, LU,<sup>159</sup> MT, NL, PL, RO.

The following quality problems have arisen in recent years:

- Lack of access to basic utilities such as electricity, running water, showers;
- Insufficient sleeping quarters, forcing persons to sleep outside in low temperatures;

<sup>155</sup> AIDA (April 2023), [Country Report Cyprus](#), pp.93-94.

<sup>156</sup> AIDA (May 2023), [Country Report France](#), pp. 102-109.

<sup>157</sup> AIDA (June 2023), [Country Report Greece](#), pp.179-181.

<sup>158</sup> AIDA (May 2023), [Country Report Malta](#), p.88.

<sup>159</sup> According to Passerelli, (information as of September 2023), quality varies significantly from one centre to another, mainly based on date of construction. As such, conditions in some centres are very good, but conditions in other facilities are highly concerning.



- Lack of adequate heating or air conditioning;
- Food that is inadequate in terms of quality and quantity (or exceptionally not provided);
- Overcrowding and a lack of privacy;
- Poor hygiene conditions, particularly of sleeping quarters and sanitary facilities, including vermin infestations (bedbugs, lice, cockroaches, rats);
- Concerns regarding personal safety and security: conflicts with staff, residents, and assaults, including from outside the reception centre; racism by staff and communities;
- Prison-like conditions in choice of infrastructure and security;
- Isolation and remoteness of centres, which in turn affects access to services and rights (education, health, etc), coupled with a lack of transportation or when available lack of resources to use it;

Details on particular cases and links to testimony and reports is provided here:

- IE: facilities designed for short-term use are used over extended periods.<sup>160</sup>
- BG: since 2015, living conditions have been severely deteriorating, with support limited to accommodation, nutrition and rudimentary medical assistance. Living conditions are reported as very poor. There are regular issues with infrastructure of centres themselves, issues in accessing running water, hot water, and the state of repair of utilities and equipment in bathrooms, sleeping quarters and common areas remain problematic. Vermin infestations have been a consistent and ignored problem since 2013 with bedbugs, lice, cockroaches and rats; action was finally taken in 2022 to eradicate these infestations, however the state of the infrastructure prevent any significant improvements. Safety and security are a major concern due to the presence of smugglers and drug dealers who can access centres during the night with no intervention of the security staff. The poor quality of material reception conditions does not limit itself to accommodation: in 2022 there was no tender published for the supply of clothes, shoes of other basic items due to the lack of funds secured to ensure access to these basic items. In order to provide some minimal items, the asylum authority resorted to donor agreements, securing for instance food from the Food Bank, sleeping items (mattresses, blankets, etc) from UNHCR, medical supplies from the Red Cross, school items from Caritas and children's items and toys from UNICEF.<sup>161</sup>
- EL:<sup>162</sup> conditions in the Greek reception system have been criticised as inadequate for many years. Conditions in mainland camps, although overall better than those in island camps, remain entirely unsuitable, with issues of humidity, safety, lack of privacy, cleanliness, lack of access to services, isolation from society. When available, food is regularly reported as inedible, expired, and specific items such as baby milk are not provided. Infrastructures are not equipped to deal with weather conditions as there is often no heating available for winter, in addition to lack of supplies such as blankets. There are regular electricity shortages and insufficient number of sanitary facilities. Lastly, security systems in camps make for prison like conditions, especially when coupled with the isolation of such camps.

<sup>160</sup> AIDA (May 2023), [Country Report Ireland](#), p.111.

<sup>161</sup> AIDA (March 2023), [Country Report Bulgaria](#), p.76-77.

<sup>162</sup> AIDA (June 2023), [Country Report Greece](#), p.167ff.

- EL:<sup>163</sup> conditions in centres on the Eastern Aegean Islands have been widely documented as alarming. There is no heating or air conditioning, and power supplies are insufficient and unstable, as is water supply. Gender based violence is regularly reported. The comprehensive security constructions (barbed wires, camera surveillance, limited hours during which residents may exit the camp, use of fingerprint technology to access and exit the camp) make for prison like conditions and weigh heavily on asylum seekers' mental health. There are also severe issues of lack of medical staff and supplies, compensated to the best of their ability and resources by NGOs. These conditions have been widely denounced as wholly inadequate by multiple international actors, and interim measures had to be taken by the European Court of Human Rights as recently as August 2022 to safeguard the rights of persons. Despite the dire conditions, all asylum seekers can be accommodated there, and residents include many women, children and UMs. The conditions in most Greek reception camps are more concerning since the 2022 closure of the ESTIA programme, managed by UNHCR, which was highlighted as a positive accommodation experience in Greece. The people housed under ESTIA had to find accommodation for themselves or join reception camps.

NGOs and other charitable organisations, such as religious communities, may try to compensate for the poor quality of accommodation through distribution of goods and management of activities in centres and camps. In some countries, these actors are increasingly pushed out of the management and operations of reception centres as part of ongoing restrictions on their work.

- In IT, expanding the scale of accommodation has made it more difficult for NGOs to apply for and obtain contracts regarding accommodation of asylum seekers.<sup>164</sup>

#### Good practice:

Conditions are reported as positive in centres managed by NGOs or other not-profit actors (in one or all the phases of reception). It may be that more attention is dedicated to establishing links with local communities and ensuring sufficient staffing and resources, or it may reflect differences in personnel employed. Examples where not-for-profit involvement has had a positive impact include BE, IT, PT, and ES. For example, in the Refugee Reception Centre managed by the Portuguese Refugee Council, accommodation consists of shared rooms with bathrooms attached, including disability friendly rooms; a communal kitchen, giving asylum seekers control over their livelihood; a laundry service and cleaning service; a playground, a day care/kindergarten also available to local community children, and a theatre/event space that can be rented out, both thus building connection with the community; psychosocial and legal assistance, Portuguese language training, socio-cultural activities, and integrated-related support.<sup>165</sup>

#### Finding 15: Applicants awaiting a Dublin transfer are often denied reception conditions in a number of EUMS.

People awaiting a Dublin transfer face particular obstacles to accessing full material reception conditions and then maintaining access until their transfer is realised. Gaps have been noted in BE, BG, CZ, PL, RO, SE.

<sup>163</sup> AIDA (June 2023), [Country Report Greece](#), p. 174ff.

<sup>164</sup> AIDA (June 2023), [Country Report Italy](#), p.133.

<sup>165</sup> AIDA (May 2023), [Country Report Portugal](#), p.110.

- BG: the authorities distinguish between asylum seekers undergoing a Dublin procedure who have also explicitly applied for asylum in Bulgaria, who are granted full reception conditions, and those channelled into a Dublin procedure after having been found irregularly on the territory but who have not applied for asylum in Bulgaria. The latter are not granted reception conditions.<sup>166</sup>
- BE: Fedasil, the asylum reception authority, ends the right to material reception conditions for outgoing Dublin applicants on the day their deadline to leave the country expires, despite local court rulings reaffirming that reception must be provided until the transfer is actually executed. Once the deadline to depart voluntarily expires, asylum seekers are invited to join an open return centre or their rights are suspended.<sup>167</sup>
- CZ: when applicants receive a final decision on an outgoing Dublin transfer, they lose their status as asylum seekers under the Asylum Act and thus also lose all material reception conditions.<sup>168</sup>
- PL: asylum seekers awaiting an outgoing Dublin transfer are in principle only entitled to material reception conditions until the day they are supposed to leave the country.<sup>169</sup>
- SE: Under the law, people having received an expulsion decision (Swedish law explicitly foresees that a Dublin transfer decision is considered as such where applicable) are only entitled to material reception conditions until the time period for voluntary departure has expired (if provided) or until the decision becomes enforceable, i.e. when the appeal process has been concluded. In practice, people awaiting a Dublin transfer are referred to a specific departure centre close to the airport.<sup>170</sup>

**Finding 16:** In some EUMS, reception conditions are withdrawn prematurely in practice, if not in law.

Most EUMS provide, as per the RCD, for the right to reception and more specifically accommodation until a final decision has been taken in the asylum procedure, including in appeals when these include a right to remain on the territory. However, some EUMS' practices are not aligned with this provision:

- NL: when the asylum seekers in the NL are beneficiaries of international protection in another EUMS, and they have received a first instance negative decision, the reception authority often does not wait for the applicant to request a provisional measure before ending their stay at the reception centre. This practice has been challenged by the NL Council of State, reminding the authorities that such applicants have the right to reception during the period following the inadmissibility decision in which they had the opportunity to appeal.<sup>171</sup>
- MT: after the detention applied to all new arrivals since 2018 and once asylum seekers access the actual reception system, by policy – this is not foreseen in Maltese law – families and vulnerable applicants are offered accommodation for one year, and single male applicants are given a 6-month contract, which can be extended if the applicant is afterwards considered vulnerable. At the end of their contract, people are asked to leave regardless of the status of their asylum application and their potential vulnerability. This often leads to

<sup>166</sup> AIDA (March 2023), [Country Report Bulgaria](#), p.71.

<sup>167</sup> AIDA (April 2023), [Country Report Belgium](#), p.108.

<sup>168</sup> Organisation for Aid to Refugees (OPU), [Input by civil society organisations to the Asylum Report 2023](#), 2023, p.7-8.

<sup>169</sup> AIDA (May 2023), [Country Report Poland](#), p.56.

<sup>170</sup> Information provided by the Swedish Refugee Law Centre, September 2023.

<sup>171</sup> AIDA (May 2023), [Country Report Netherlands](#), p.98.

homelessness, risks of work exploitation, rising of informal settlements. Upon intervention of social workers, extensions of contracts are sometimes granted to specific asylum seekers and, upon individual NGO intervention, the reception authority regularly agrees to continue the granting of the per diem to applicants leaving the reception centres.<sup>172</sup>

**Finding 17:** Differential treatment may occur across a national territory, especially in federal states.

In the cases of AT and DE, there are uniform regulations at the Federal level, but implementation varies significantly between regions. This significantly affects the implementation of the RCD in both countries, and can lead to differences in treatment of asylum seekers purely based on the region where they benefit from reception conditions. In AT for instance, the amount of financial allowances was not increased in the province of Burgenland in 2022, contrary to the rest of the provinces; asylum seekers in Burgenland received per month 47 EUR less in food allowance, between 37 and 74 EUR less in rent allowance, and 49 EUR less for minors, than in the rest of the country.<sup>173</sup>

In LT, the situation differs based on which accommodation centre asylum seekers are assigned to. For asylum seekers accommodated in the Pabradė foreigners' centre, the financial allowance is of 15.70 EUR, on the basis that food is provided through a canteen, and clothing provided is regarded as insufficient by asylum seekers. The allowance is distributed at the end of the month. For asylum seekers hosted in Rukla and Naujininkai centres, the allowance is 94 EUR per person per month, distributed on the first day of arrival regardless of the time of the month, the food bank provides extra products every week for free, and no particular concerns are raised regarding clothing. The general rule is that vulnerable asylum seekers shall be transferred to Rukla and Naujininkai centres, however non-vulnerable asylum seekers can also be transferred there, and sometimes (always in case of detention), vulnerable asylum seekers may be assigned to Pabradė foreigners' centre.<sup>174</sup>

## 2.2. The Use of Detention (Articles 8-11)

### 2.2.1. Models/practice and statistics on EUMS' use of detention

**Finding 18:** Almost all EUMS detain asylum seekers, using a variety of the available grounds for detention.

As provided by Article 8(3) of the RCD, the grounds for detention of in the context of the asylum procedure must be laid down in national law. Several EUMS (BE, CY, CZ, EE, HU, IT, LV, LT, IT, MT, NL) foresee the possibility to apply detention to asylum seekers for all the grounds envisioned by the Directive, with only one (ES) completely excluding detention for asylum seekers.

<sup>172</sup> AIDA (May 2023), [Country Report Malta](#), pp.84, 85 and 88.

<sup>173</sup> AIDA (May 2023), [Country Report Austria](#), pp.99-100.

<sup>174</sup> Information provided by Lithuanian Red Cross, 12/10/2023.

Table 3: Grounds for detention in national laws

Grounds for detention in national laws						
	Verify identity or nationality	Determine elements on which the application is based when this would be impossible without detention, notably due to risk of absconding	Decide in the context of a procedure on the applicant's right to enter the territory	Detained under a removal procedure (Return D) & there are reasonable grounds to believe it is merely to hinder/delay enforcement	National security / public order	Dublin detention
AT					X	X
BE	X	X	X	X	X	X
BG	X	X		X	X	X
HR	X	X		X	X	X
CY	X	X	X	X	X	X
CZ <sup>175</sup>	X	X	X	X	X	X
EE	X	X	X	X	X	X
FI <sup>176</sup>	X		X	X	X	X
FR			X	X		X
DE <sup>177</sup>						X
GR	X	X	X		X	X
HU	X	X	X	X	X	X
IE	X				X	X
IT	X	X	X	X	X	X
LV <sup>178</sup>	X	X	X	X	X	X

<sup>175</sup> §46a, [Asylum Act](#).

<sup>176</sup> Information provided by Finnish Refugee Advice Centre, 25/09/23.

<sup>177</sup> While no specific grounds are set in law justifying the detention of asylum seekers, however, persons who wish to or have applied for international protection can be detained for several reasons: immigration detention after the procedure, detained as asylum seekers if presenting their application after being detained, under pre-trial detention, prison, or detention pending removal.

<sup>178</sup> Global Detention Project (May 2019), [Latvia](#).

LT <sup>179</sup>	X	X	X	X	X	X
LU	X	X		X	X	X
MT	X	X	X	X	X	X
NL	X	X	X	X	X	X
PL	X	X		X	X	X
PT			X	X	X	X
RO	X	X		X	X	X
SK <sup>180</sup>	X	X		X	X	X
SI	X	X		X	X	X
ES						
SE	X	X				X

Source: AIDA. Information on EE, FI, LU provided, respectively, by: Estonian Refugee Council and Estonian Human Rights Centre; Finnish Refugee Advice Centre; Passerell.

The accuracy of transposition of the RCD into national legislations varies across EUMS. Despite the exhaustive nature of the list provided by the RCD, some states include additional grounds for the use of detention in national legislation or expand the scope of the grounds listed in the RCD.

- IE: Despite the country's accession to the RCD in 2018, it maintained additional grounds for detention, namely: the intention to leave the State and unlawfully enter another; acting in a manner undermining the asylum system; or destroying identity or travel documents – not in conformity with the exhaustive grounds set out in Article 8(3) RCD.<sup>181</sup>
- IT: Detention can be ordered for the mere fact of the applicant being subjectable to exclusion clauses; having received an expulsion order based certain grounds; having submitted a subsequent application during the execution of a removal procedure.<sup>182</sup>
- PT: Detention can be applied for the mere fact of being subjected to a removal procedure, without having to examine whether reasonable grounds to believe it is merely to hinder or delay enforcement exist.<sup>183</sup>
- SE: An additional ground for detention is included in national law; (a) where it is probable the applicant be refused entry or expelled and there are reasons to presume the person will abscond or engage in criminal activities in Sweden, or in any other way attempt to prevent deportation.<sup>184</sup>

The concept of absconding has not been clearly defined in national laws in BG, IE, MT and PT. In some countries (AT, HR, CY, EL, HU, IT, LT, SE), it is only defined through a non-exhaustive list, leaving

<sup>179</sup> Global Detention Project (May 2019), [Lithuania](#).

<sup>180</sup> Global Detention Project (May 2019), [Slovakia](#).

<sup>181</sup> AIDA (May 2023), [Country Report Ireland](#).

<sup>182</sup> AIDA (May 2023), [Country Report Italy](#).

<sup>183</sup> AIDA (May 2023), [Country Report Portugal](#).

<sup>184</sup> AIDA (April 2023), [Country Report Sweden](#).

significant discretion to national authorities when issuing a detention order. The notion is relevant to assess the need to apply detention measures to asylum seekers under two of the grounds of detention established by the RCD. Namely, in the context of a procedure to determine elements on which the application is based, and in Dublin procedures.

Eurostat does not collect statistics on detention of asylum seekers and alternatives to detention, as they fall outside the scope of the Migration Statistics Regulation, despite the European Parliament's efforts to secure inclusion in the amended regulation in 2019.<sup>185</sup> The main consequence is a lack of homogeneity in the way MS present statistics on detention which leads to difficulties in distinguishing between numbers of detained asylum seekers and other detained third country nationals. Additionally, due to the lack of clarity as to whether measures applied by states amount to deprivation of liberty or not, statistics might misrepresent the actual number of people subjected to detention measures.<sup>186</sup>

It can be observed, even in the absence of clear statistics, that detention at the borders for people irregularly entering the country appears systematic in various states (BE, BG, CZ, EL, LV, LT, MT, PL, ES).<sup>187</sup> In these cases, different detention regimes can apply, either under the rules of the Schengen Borders Code,<sup>188</sup> the Return Directive or the RCD. Moreover, it does not appear to be applied as a measure of last resort, but instead as a structural method at the EU borders.<sup>189</sup>

Concerning asylum seekers, Article 8(3)(c) RCD allows MS to apply detention pending a decision on the applicant's right to enter the territory, which is typically transposed in national laws as a provision enabling the country to detain asylum seekers during border procedures. Apart from countries in which a border procedure is in place, however, asylum seekers arriving at the borders can be detained under other grounds set by the same article. In addition, numerous cases of *de facto* detention – the application of measures that in practice amount to deprivation of liberty, but are not qualified as such by states – have also been consistently documented in the past years.<sup>190</sup>

Various countries (AT, BE, EL, MT, PL, RO, SI, CZ, SK) frequently use detention for asylum seekers channelled in the Dublin procedure.<sup>191</sup> In AT,<sup>192</sup> arrest is almost systematic during the 72 hours

<sup>185</sup> European Parliament, 2019, [Proposal for a Regulation \[amending the Migration Statistics Regulation\]: First reading](#), T8-0359/2019, Article 1(1)(1)(a)(dg)-(dj).

<sup>186</sup> See ECRE (2018), [Boundaries of Liberty – Asylum and de facto detention in Europe](#), p.30.

<sup>187</sup> See AIDA Country Reports (2023), [Update on the year 2022](#), for the information regarding BE, BG, EL, MT, PL, ES. For CZ, see OPU (February 2023), [Input by civil society organisations to the EUAA Asylum Report 2023](#), p.11; for LV, see notably Amnesty International (2022), [Latvia: Return home or never leave the woods](#), Infomigrants (2023), [Latvian border crossing dangerous and largely unmonitored by NGOs](#); for LT, see notably, Amnesty International (2022), [Lithuania: Forced out or locked up](#); Lithuanian Red Cross (2023), [Input by civil society organisations to the Asylum Report 2023](#), p.8-9; CJEU (2022), [Case C-72/22 PPU](#).

<sup>188</sup> [Regulation 2016/399](#) of the European Parliament and of the Council of 9 March 2016 on a Union Code on the Rules Governing the Movement of Persons across Borders (Schengen Borders Code) (Codification), OJ 2016 L 77/5, 23 March 2016.

<sup>189</sup> See AIDA Country Reports (2023), [Update on the year 2022](#), for the information regarding BE, BG, EL, MT, PL, ES. For CZ, see OPU (February 2023), [Input by civil society organisations to the EUAA Asylum Report 2023](#), p.11; for LV, see notably Amnesty International (2022), [Latvia: Return home or never leave the woods](#), Infomigrants (2023), [Latvian border crossing dangerous and largely unmonitored by NGOs](#); for LT, see notably, Amnesty International (2022), [Lithuania: Forced out or locked up](#); Lithuanian Red Cross (2023), [Input by civil society organisations to the Asylum Report 2023](#), p.8-9; CJEU (2022), [Case C-72/22 PPU](#).

<sup>190</sup> See Section 2.2.2 Implementation gaps and good practices.

<sup>191</sup> For an analysis of detention in the context of the Dublin Regulation, see EPRS (February 2020), [Dublin Regulation on international protection applicants](#), pp.73-75.

<sup>192</sup> AIDA (May 2023), [Country Report Austria](#).

preceding the transfer of an asylum applicant to the responsible Member State under the Dublin Regulation.

On the contrary, various states (HR, CY, DE, FI, FR, HU, IE, LU, PT) rarely use detention under the RCD, mostly in the context of the Dublin procedure or applied to persons already detained, who were issued a deportation order before submitting their asylum application.

**Finding 19:** Most EUMS have provisions in law and policy on alternatives to detention, however their use is limited.

Article 8(4) of the RCD establishes the obligation for MS to lay down in national law rules on alternatives to detention. In a non-exhaustive list, the Directive mentions, among alternatives, “regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place”. According to a recent EMN study, most EUMS have included different alternatives to detention in their national laws on immigration and/or asylum, but they do not necessarily use all alternatives at their disposal.<sup>193</sup>

Some national legislations (BE, IT, IE, LT, SI) do not sufficiently define which alternatives can be applied in practice. In most national context, they appear to be limitedly used in practice (AT, BE, BG, CY, CZ, DE, EE, FI, FR, LU, LV, LT, SK, EL, IE, IT, MT, PL, PT, SE).<sup>194</sup> Additionally, the alternatives most frequently used appear to be those that have a deterrence component (reporting obligations, the requirement to reside at a designated place, the obligation to surrender a passport or identity document, the requirement to communicate an address, and release on bail), rather than being focused on the engagement of migrants and asylum seekers.<sup>195</sup>

**Finding 20:** Required guarantees for the use of detention are generally enshrined in law, including judicial review, legal assistance and representation, although challenges may arise in practice.

The Reception Conditions Directive establishes minimum safeguards that should be in place for asylum seekers in detention, in particular regarding provision of information, the judicial review of the detention decision, and access to legal assistance.

Article 9(4) RCD establishes the obligation on MS to inform asylum seekers in writing, in a language they understand, of the reasons for detention and procedures in national law to challenge the detention order, as well as of the possibility to request legal assistance and representation.

Article 9(3) and (5) establishes that, when detention is ordered by administrative authorities, there must be a speedy judicial review of its lawfulness – to be conducted *ex officio* and/or upon request of the asylum seeker – and that detention should be reviewed by the judicial authority at reasonable intervals of time, either *ex officio* or at the request of the asylum seeker.

In most MS, detention orders are issued by administrative authorities, while in a more limited number of countries, it is left to the competence of judicial authorities.

<sup>193</sup> EMN (May 2022), [Detention and alternatives to detention in international protection and return procedures](#), p.33.

<sup>194</sup> See AIDA Country Reports (2023), [Update on the year 2022](#), for the information regarding AT, BE, BG, CY, DE, FR, EL, IE, IT, MT, PL, PT, SE. For CZ, see OPU (February 2023), [Input by civil society organisations to the EUAA Asylum Report 2023](#), p.11; for EE, FI, LV, LT, SK, see [Global Detention Project](#), Country reports; For LU, see EMN (2020), [Detention and alternatives to detention in international protection and return procedures in Luxembourg contribution](#), p.5.

<sup>195</sup> On the topic of engagement-based alternatives to detention see: European Alternatives to Detention Network, [Alternatives to detention](#); see [Resources](#); EPIM (July 2018), [Alternatives to detention from theory to practice](#).



Table 4: Authority issuing the detention order

Authority issuing the detention order	
Administrative authorities	Judicial authorities
AT, BE, BG, HR, CY, FR, EL, HU, IE, IT, MT, NL, PT, SI, SE, FI <sup>196</sup> , CZ <sup>197</sup> , EE (Police for the first 48h), LU, LV (6 days), LT (detention under the border procedure), SK <sup>198</sup>	DE, PL, RO, ES, EE (after 48h), LV (after 6 days), LT (regular detention grounds of RCD) <sup>199</sup>

Source: AIDA. Information on EE, LT, LV, LU provided, respectively, by: Estonian Refugee Council and Estonian Human Rights Centre; Lithuanian Red Cross; Latvian Centre for Human Rights; Passerell.

In the majority of countries (AT, BE, FR, EL, HU, IE, IT, MT, NL, PT, SE, LV, EE), the judicial review can be activated both ex officio and upon request of the applicant subjected to the detention order.

Article 9(6) RCD establishes the obligation for MS to provide access to free legal assistance and representation by suitably qualified persons to detained asylum seekers, even if it establishes a limit to access depending on the personal resources of the detained person. No significant concerns regarding access to legal assistance for asylum seekers in detention emerge in AT, FR, IE, and NL. In various countries, while detained asylum seekers have in principle access to legal assistance, some issues may be registered due to difficulties for the lawyers in visiting the centres or fixing appointments – due also to capacity constraints (CY, HU, IT, PL, PT, RO, ES) or lack of expertise or experience for the lawyers assisting the detainees (BE, MT). In a limited number of countries (BG, CY, EL), access to legal assistance appears severely hindered.

**Finding 21:** Conditions in detention appear to be respected by most EUMS, although only limited information is available.

Article 10 RCD establishes that, as a rule, asylum seekers should be detained in specialised detention facilities. Where not possible, and states are instead obliged to resort to prison accommodation, they must be kept separate from ordinary detainees. As far as possible, they should also be separated from other detained third country nationals.

In BG, HU, RO and SI, asylum seekers are in most cases separated from other third country nationals while held in detention. In GR and IT, the separation is mostly granted for asylum seekers present in hotspot facilities, while in MT, newly arrived asylum seekers are initially held in the initial reception centre. In most countries (AT, BE, BG, CY, FR, DE, EL, IE (new airport facility), IT, LU, MT, NL, PL, PT, RO, SI, ES, SE, FI,<sup>200</sup> CZ, SK), asylum seekers are detained facilities dedicated to immigration detention, where other third country nationals are also present. In EL and ES, asylum seekers can be temporarily held in police stations; in CY and EL, they can be put in the same facility as other detainees, but in separate holding cells. Both in IE and in SE, asylum seekers are generally detained in ordinary detention facilities.

<sup>196</sup> Finnish Immigration Service, [Detention](#).

<sup>197</sup> EMN Czech Republic (2021), [Detention and alternatives to detention in international protection and return procedures](#).

<sup>198</sup> §88(1) Act on the Residence of Aliens.

<sup>199</sup> Red Cross (February 2022), [Information for asylum seekers](#), p.12.

<sup>200</sup> Global Detention Project (June 2023), [Finland](#).

The RCD (article 10(2)-(5)) also sets certain standards on the living conditions of detained asylum seekers. In particular, they have to be granted: access to open air spaces; access to UNHCR; possibility to communicate and be visited by family members, legal advisers or counsellors and NGOs; systematic provision of information on rules of facility, rights and obligations in a language understood by the person. The general standard set by Article 17(2) RCD regarding the adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health also applies in the case of detained asylum seekers.

Limits to access to the detention facility may be imposed only for security, public order or administrative management reasons, and cannot in any case severely restrict or render access impossible. Similarly, a derogation to the right to access information can be justified only if implemented for a reasonable period of time and only for applicants held at border posts or in transit ones, but not in the case of the application of the border procedure under Art. 43 APD.

In several countries, issues regarding living conditions for detained asylum seekers were reported. In most cases, these regarded only some centres (AT; BE; FR; RO; SE<sup>201</sup>) or specific detention places, such as police stations or transit zones (CY; HU<sup>202</sup>). In other cases, shortcomings appeared to be widespread (CZ; EL; IT; LT;<sup>203</sup> MT; NL; PL; SI; ES). Improper use of common detention facilities for criminal and immigration detainees is reported in IRE.

Currently, living conditions appear overall adequate in HR, HU, and PT. In HR, in particular, significant improvements were registered in the past years regarding conditions in the centres; apart from the generally positive assessment of the living conditions for detained asylum seekers, a complaint mechanism was introduced.<sup>204</sup>

Access to detention facilities is not always granted. Where reported, access is most often hindered for NGOs (concerns in this respect were reported in CZ, DE, EL, HU, HR, IT, LT, MT, PL), while in a more limited number of countries (CZ, HR, MT, RO) it affects the possibility for detainees to access support from lawyers or legal counsellors. On the contrary, access is regularly granted in AT, BE, CY, FR, FI, DE, NL, PT, SI, ES, and SE.

**Finding 22:** Detention of vulnerable people is used by EUMS, including widespread detention of children when accompanied, and limited detention of unaccompanied children.

The RCD establishes additional safeguards in relation to detention, when applied to specific categories of applicants. As will be examined in detail under the section dedicated to vulnerabilities within the scope of the RCD, Article 21 refers to the notion of “vulnerable persons”, while Article 11 refers to “vulnerable applicants” and to the separate concept of “applicants with special reception needs”.<sup>205</sup> In relation to detention, the categories of applicants that should be subject of specific attention are defined by the Directive based on their health conditions, age, and gender.

Article 11(2)(3) indicates that minors may only be detained as a measure of last resort, for the shortest period possible, in suitable accommodation and with the possibility to engage in leisure activities.

<sup>201</sup> Only as connected to discipline measures, see AIDA (April 2023), [Country Report Sweden](#).

<sup>202</sup> Applied until 2020.

<sup>203</sup> It should be noted that these have been observed regarding detention under crisis rules, not for regular detention under the RCD provisions. See: Amnesty International (June 2022), [Lithuania: Pushbacks, illegal detention, deception and abuses against refugees and migrants](#).

<sup>204</sup> AIDA (June 2023), [Country Report Croatia](#).

<sup>205</sup> For a detailed analysis of the concept of vulnerability in CEAS instruments see: AIDA (August 2017), [The concept of vulnerability in European asylum procedures](#), pp.13-17.

For the specific situation of unaccompanied minors, ulterior limits to the use of detention are set, namely that detention should be applied only in exceptional circumstances, never in prison accommodation, and always separately from adults. As far as possible, accommodation in institutions with personnel and facilities should be determined taking into account the needs of persons of their age. For families, separate accommodation guaranteeing privacy should be provided (Article 11(4)), and female applicants should be accommodated separately from male applicants, unless they are family members and consent has been requested (Article 11(5)).

Most countries' legislative frameworks allow detention of minors with their families (AT, BE, HR, FI, FR, DE, EL, HU, IE, IT, NL, PL, PT, RO, SI, SE, CZ, LU, LT, LV<sup>206</sup>). In several, however, detention of this category of applicants is either rare (PT, RO, SE, LU) or limited depending on the age of the minor (AT), or on the type of procedure the applicant is subjected to (CZ, LT, NL). Only in CY detention of families with children is explicitly prohibited by national law.

In most states, while not being the norm, detention of families with children can still affect a significant number of applicants:

- CZ: Families with children are detained only in specific circumstances. Namely, when they are subjected to the Dublin procedure, or under the Foreigners Act. However, detention for applicants in a Dublin procedure is extremely common, without an actual assessment of the risk of absconding or consideration regarding the possibility to apply measures alternative to detention.<sup>207</sup>
- FR: Specific concerns emerge from the situation in Mayotte. Between 2012 and 2022, France has been condemned 9 times by the ECtHR for detaining children in situation not compatible with article 3 of the ECHR across all French territories (due to, inter alia, length of detention, detention of very young children, use of unsuitable places of detention).<sup>208</sup>
- DE: According to German law, minors must not be detained while they have the status of asylum applicants but may lose this status as a result of a Dublin procedure and so be detained for a Dublin transfer. In 2022, 2,196 children were deported to third countries or transferred to another state under the Dublin Regulation. These measures usually involve that children are taken into custody for a few hours on the day the transfer takes place. With the exception of these short-term apprehensions, detention of minors ordered by a court seems to be exceptional.<sup>209</sup>
- LT: The 'restriction to the freedom of movement' was automatically applied without individual assessment, including vulnerability. Over 1,000 children were subjected to measures that can be assimilated to detention at the beginning of 2022, including newborns from families whose freedom of movement was restricted.<sup>210</sup>
- MT: In principle, national law prohibits detention of vulnerable applicants. However, as newly arrived asylum seekers are held in the first arrival centres without the possibility to

<sup>206</sup> Although not considered as detained. Instead, as "accommodated with the detained parents".

<sup>207</sup> [Asylum Act](#).

<sup>208</sup> AIDA (May 2023), [Country Report France](#).

<sup>209</sup> AIDA (April 2023), [Country Report Germany](#), Grounds for detention.

<sup>210</sup> Lithuanian Red Cross Society (2023), [Input by civil society organisations to the Asylum Report 2023](#) and Lithuanian Red Cross (2022), [Annual Report 2022](#), p.40.

leave for around 2 weeks, vulnerable applicants – including families with children – are also de facto detained upon arrival.<sup>211</sup>

- PL: Detention for this category of applicant is allowed by the law, and has to take place in specific centres. Several international bodies expressed concerns regarding detention conditions for vulnerable groups, both as they are not adapted to the needs of children and because of their overall inadequacy.<sup>212</sup>

As previously mentioned, further guarantees are envisioned for the case of unaccompanied minors. Most countries do not allow detention for unaccompanied minors; where allowed, it is generally rarely implemented. However, some exceptions can be observed:

- BG: In practice, both asylum-seeking and other migrant unaccompanied minors continue to be detained in pre-removal detention centres. UMs arrested by the Border Police upon entry or during their attempt to exit Bulgaria irregularly are assigned to any of the adults present in the group with which the children travelled, a steady practice ongoing for last couple of years. As a consequence, they are not issued a separate detention order, but instead listed as accompanied minors in the detention order of the adult to whom they have been assigned. Unaccompanied minors detected while on the country's territory might also be "assigned" to an adult without proper collection of evidence or statements on the family links. This practice is not however applied to minors who are clearly under the age of 14.<sup>213</sup>
- FR: Detention for unaccompanied minors is prohibited, unless doubts regarding their age exist. However, minors are often maintained in waiting zones in inadequate conditions, a practice that was censored by the national Ombudsman.<sup>214</sup>
- PL: Detention of unaccompanied children is prohibited by law. In practice, however, this might happen in the cases of minors who are accompanied by unrelated adults, when doubts regarding the minor's age subsist, or if the minor is first detained for their irregular entry, and only at a later stage presents an asylum application.
- CZ: Even if outside the scope of the RCD, it can be noted that immigration detention is used as a routine tool for migration control; this entails that those – with the notable exception of Syrian nationals – who enter the country irregularly are automatically detained, including vulnerable groups such as families with children and unaccompanied minors, and a lack of proper vulnerability assessments is reported.<sup>215</sup>

## 2.2.2. Implementation gaps and good practices

**Finding 23:** Systematic detention and the use of de facto detention are widespread across the EUMS.

Recital 35 RCD establishes that the Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including Article 6 on the right to liberty and security of person. Despite this, in various national contexts

<sup>211</sup> AIDA (April 2023), [Country Report Malta](#).

<sup>212</sup> AIDA (May 2023), [Country Report Poland](#); AIDA (April 2023), [Seeking Refuge in Poland](#).

<sup>213</sup> AIDA (March 2023), [Country Report Bulgaria](#).

<sup>214</sup> AIDA (May 2023), [Country Report France](#).

<sup>215</sup> [Asylum Act](#).

asylum seekers, especially those apprehended after irregular border crossings, appear to be often detained for prolonged periods of time and are not offered significant alternatives to detention.<sup>216</sup>

Some of these practices have already been condemned as contrary to EU law. In BG, asylum seekers presenting their application while detained generally see their detention orders extended upon other grounds, such as their irregular residence. The country recently received a letter of formal notice from the EC regarding this practice.<sup>217</sup> In LT, the CJEU recently found that national practices were in violation of EU rules, referring to the seriousness of the interference in the right to liberty and thus limited the detention within the meaning of EU law to strictly necessary situations where after individual assessment a serious threat is identified. According to the Court, an irregular stay does not prove by itself a threat to society.<sup>218</sup>

Another common practice among EUMS is that of *de facto* detention. Article 2(h) RCD establishes that detention means confinement of an applicant by a MS within a particular place, where the applicant is deprived of their freedom of movement. In some cases, persons are held in closed centres, which they are not allowed exit at will unless they agree to leave the country, yet the country does not acknowledge that such practice amounts to a deprivation of liberty. These practices are particularly harmful as they do not grant applicants access to a remedy against detention.

Previous research<sup>219</sup> has shown that similar cases were reported in DE, GR, IT, AT, FR, RO. Currently, in MT, newly arrived asylum seekers are systematically detained based on an ordinance on the prevention of disease.<sup>220</sup> In CZ, all applicants are initially held in a closed centre until medical examination has been completed.<sup>221</sup> In CY, asylum seekers find themselves in a situation of *de facto* detention in the First reception centre of Pournara after the registration of their application.<sup>222</sup> In GR, asylum seekers are all subjected to a quarantine period; those arriving in Samos and Kos are all subjected to *de facto* detention on the islands.<sup>223</sup> Due, *inter alia*, to cases of *de facto* detention in the country's RICs, the EC opened an infringement procedure in January 2023.<sup>224</sup> According to civil society organisations, in IT detention in hotspots, despite being regulated by national law, still takes place in some individual cases without clear legal basis.<sup>225</sup> In LT, all asylum seekers making their applications at border – including families and unaccompanied minors - are held at border control posts or frontier stations for at most the first 48h after making the application, and are transferred to a centre only once the immigration department issues a decision on access to the procedure. During this time, asylum seekers are not allowed to leave the border control post or frontier station, but the measure is not classified as detention by national law. Moreover, those sent to the Pabradė foreigners' centre are subject to mandatory quarantine, normally for a few days, but can last up to a few weeks, during which it is not always clear what medical examinations take place in practice. No visitors are allowed access to quarantine facilities including Red Cross staff conducting monitoring

<sup>216</sup> Heinrich-Böll-Stiftung, ECRE (July 2021), [Reception, detention and restriction of movement at EU external borders](#).

<sup>217</sup> See Section on 3.2.3 Infringement procedures and their role in ensuring compliance with EU standards on reception conditions.

<sup>218</sup> CJEU, [ECLI:EU:C:2022:505](#), 30 June 2022.

<sup>219</sup> EPRS (2020), [Asylum Procedures at the Border: European Implementation Assessment](#), PE 654.201, pp.16 and 76; AIDA (2018), [Boundaries of liberty: Asylum and de facto detention in Europe](#), pp.14-15.

<sup>220</sup> AIDA (April 2023), [Country Report Malta](#).

<sup>221</sup> [Asylum Act](#).

<sup>222</sup> AIDA (April 2023), [Country Report Cyprus](#).

<sup>223</sup> AIDA (June 2023), [Country Report Greece](#).

<sup>224</sup> See Section on 3.2.3 Infringement procedures and their role in ensuring compliance with EU standards on reception conditions.

<sup>225</sup> AIDA (May 2023), [Country Report Italy](#).

activities, restoration of family links and legal assistance. Sometimes people are kept in quarantine until the day of their readmission to Latvia.<sup>226</sup> In RO, authorities do not consider persons held in transit zones as under detention.<sup>227</sup> In SI, applicants are de facto detained between the periods of registration and lodging of their applications.<sup>228</sup>

**Finding 24:** There is a lack respect for certain of the procedural guarantees related to detention in around half of EUMS.

Shortcomings were reported (in BE, BG, CY, HR, IRE, EL, HU, IT, ML, PL, RO, and ES) on provision of information on reasons for detention, appeal possibilities, and access to legal assistance, mostly connected to the limited possibilities – in law or practice – for applicants to receive information in a language they understand. In CY and MT, applicants face issues in obtaining the detention order itself. In addition, in MT, information provided by the authorities is very limited and aimed at obtaining consent for voluntary returns rather than inform applicants of their rights.

Even for applicants who are issued with a detention order, access to an effective remedy against it is not always granted.

In various countries, concerns emerge also regarding the effectiveness of the judicial review process accessible, in some cases also due to the difficulties that detained asylum seekers face in accessing support from NGOs, lawyers and legal counsellors.

- BE: The scope of judicial review of detention remains very restrictive: only the legality of the detention can be examined, not its appropriateness nor its proportionality. As such, only the accuracy of the factual motives of the detention order can be scrutinised (i.e., whether the reasons for detention are based on manifest misinterpretations or factual errors).<sup>229</sup>
- CY: The lack of automatic suspensive effect on the deportation order as well as the length of time to issue a decision reduce the effectiveness of judicial review. Furthermore, in 2020 the deadline to challenge a detention order under the Refugee Law was reduced from 75 days to 15 days, during which time legal aid must be requested and approved. This effectively limited access to an effective remedy against detention. For detainees in Police holding cells, access to courts is often hindered by the difficulties in accessing legal aid and proper information.<sup>230</sup>
- EL: Even if Greek law establishes that a judicial review should be carried out both ex officio and upon request from the applicant, asylum seekers can only challenge detention through 'objections against detention', which are only examined by the Court's President, whose decision is then non-appealable. In practice, the remedy proves ineffective, as the possibility for detained persons to challenge their detention order is severely restricted due to gaps in the provision of interpretation and legal aid, resulting in the lack of access to judicial remedies against the detention decisions.<sup>231</sup>
- HU: The Commissioner for Human Rights of the Council of Europe, UNHCR, and UNWGAD expressed concerns regarding the effectiveness of judicial review against detention orders

<sup>226</sup> Information provided by the Lithuanian Red Cross, 12/10/2023.

<sup>227</sup> Information provided by the AIDA expert for Romania, 07/10/2023.

<sup>228</sup> AIDA (May 2023), [Country Report Slovenia](#).

<sup>229</sup> AIDA (April 2023), [Country Report Belgium](#).

<sup>230</sup> AIDA (April 2023), [Country Report Cyprus](#).

<sup>231</sup> AIDA (June 2023), [Country Report Greece](#).

in the country. Hungarian courts regularly fail to realise assessments of the necessity and proportionality of detention in the individual cases, but also often do not oversee clear mistakes in the original detention decisions.<sup>232</sup>

- IT: Delays in the appointment of lawyers and timing of communication directed at appointed lawyers effectively obstacles asylum seekers' possibility to exercise their right to defence.<sup>233</sup>
- MT: Access to effective remedies to challenge detention is limited, with serious concerns over the level of independence and impartiality enjoyed by the Immigration Appeals Board (IAB), and no further appeal against the IAB's decision is possible according to national law. Lawyers report that the review that, according to national law, should be carried out two months after the first one is generally not automatically conducted and will only take place if requested by a lawyer. Additionally, no free legal aid is granted after the first review, which leads to many asylum seekers being detained without appropriate judicial oversight.<sup>234</sup>
- PT: Detention reviews (either *ex officio* or upon request) are uncommon in practice. Release usually takes place following admission to the regular procedure or at the end of the maximum detention time limit of 60 days in cases of a negative decision and appeal.<sup>235</sup>

**Finding 25:** Poor conditions are found in detention in some EUMS.

As previously mentioned, detention facilities for asylum seekers are sometimes below the standards set by the RCD for living conditions. Among the recurring concerns reported<sup>236</sup> regarding living condition for detained asylum seekers across EU countries are the following:

- Overcrowding;
- Buildings in state of disrepair;
- Lack of functioning cooling and/or heating systems;
- State of sanitary facilities, limited access, and/or insufficient number;
- Poor sanitary conditions (e.g. low level of cleanliness, presence of cockroaches);
- Nutrition: lack of tailored diets for children and pregnant women, or responding to specific religious or dietary requirements; quality and quantity of food provided;
- Health care: difficulties in accessing adequate healthcare and/or medications, lack of staff, language barriers, limited access to medical records;
- No access to open-air spaces;
- Communications: lack of access to phones and online forms of communication, limited to no contact with external actors;
- Lack of privacy;
- Poor quality of information provision;

<sup>232</sup> AIDA (April 2021), [Country Report Hungary](#).

<sup>233</sup> AIDA (May 2023), [Country Report Italy](#).

<sup>234</sup> AIDA (April 2023), [Country Report Malta](#).

<sup>235</sup> AIDA (May 2023), [Country Report Portugal](#).

<sup>236</sup> See AIDA Country Reports (2023), [Update on the year 2022](#).

- Absence of leisure activities;
- Inappropriate and racist behaviour by staff, allegations of mistreatment; lack of adequate staff training.

**Finding 26:** Vulnerability assessments are frequently not carried out prior to detention across the EUMS.

One issue frequently emerging as connected to detention of asylum seeker is that of the lack of proper mechanism to ensure the identification of vulnerabilities prior to detention. In AT, BE,<sup>237</sup> BG, CY, DE,<sup>238</sup> GR, HU, IT, ML, PL, PT, ES, SI,<sup>239</sup> CZ, FR, LU, LT, no effective vulnerability assessment results to be in place prior to detention of asylum seekers. While this applies to all vulnerabilities, a specific situation is that of unaccompanied minors. Despite additional guarantees against detention of this particular group of vulnerable applicants being in place in most national contexts, in many countries controversial practices of age assessment have emerged in the past decade.<sup>240</sup> As a consequence, many alleged minors are detained pending the appeal for their age determination process.

#### Good practices:

Although allowed by the RCD, detention of minors remains rare.

- Most countries do not allow detention for unaccompanied minor, even where it is allowed, it is rarely used in practice (four EUMS where it used more often are listed above).
- Where detention of minors with families is allowed it is used rarely or restricted.
- In Cyprus, detention of families with children is explicitly prohibited by national law.

## 2.3. Access to socio-economic rights: education, employment, health care (Article 14 to 19)

### 2.3.1. Models and practices of access to socio-economic rights

#### Education (Article 14)

According to current RCD Article 14, EUMS must grant all children access to education system under similar conditions as nationals. Preparatory classes must be provided to children when necessary. Education can be provided within accommodation centres, and cannot be postponed for more than 3 months from the lodging of the application.

**Finding 27:** All EUMS enshrine in law the right to education for asylum-seeking children and access to preparatory classes.

Assessment of the legislative frameworks reveals that all EUMS incorporate into national law the right to education for asylum-seeking children. In all cases, they also include in law the right to access

<sup>237</sup> With the exception of age assessments.

<sup>238</sup> Only some Länder have specific rules on the detention of vulnerable groups. As such, practices in this respect vary significantly depending on the different areas of the national territory.

<sup>239</sup> Information provided by PIC, Poland, 24/09/23.

<sup>240</sup> ECRE (December 2022), [Legal Note n.13: Age Assessment in Europe](#), pp.2-4; see also: AIDA (2015), [Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children](#).



preparatory classes in order to prepare children to join mainstream education when this is not immediately possible.

There are practical obstacles to the realisation of this in certain countries. These obstacles include factors deriving from the remoteness of accommodation centres; a lack of capacity to include asylum-seeking children on the part of national education institutions (in terms of lack of places or lack of skilled educators); difficulties in accessing reception conditions which has the knock-on effect of exclusion from education; and so on.<sup>241</sup> While detailed and comparative statistical analysis is not available, certain examples can be provided:

- CY: Access to education in the First Reception Centre of Pournara has been challenging when applicants' stay in the centre is extended to several months. Children entering shelters for unaccompanied minors in the middle of a school year are not placed in school, nor are children who are close in age to 18. Instead, they are referred to evening classes which include Greek, English or French language, mathematics, and computer studies at the State Institutes of Further Education.<sup>242</sup>
- DE: Access to education is challenging in initial reception centres such as arrival and AnKER centres. In many, only basic schooling is available, with no access to the regular school system for the duration of the stay in these facilities. This is partially mitigated by the fact that, for children, the maximum stay in AnKER centres is 6 months.<sup>243</sup>
- IE: Concerns regarding access to education are reported for children hosted in emergency accommodation.<sup>244</sup>

The age limit on compulsory education is a significant barrier for young people seeking asylum, including unaccompanied children. Schooling is not compulsory after the age of 15 to 16 (the academic year in which a child turns 16) in many MS, which means that asylum seekers older than the compulsory school age may not be offered the possibility to attend schools (e.g. AT, FR, DE, HU, IRE, PT).<sup>245</sup>

### Employment and vocational training (Articles 15 and 16)

Article 15 RCD establishes that access to employment should be granted to asylum seekers, maximum 9 months after lodging their application, if no first-instance decision on their case has been issued in the meantime, and the delay is not attributable to the asylum seeker. MS can decide on the conditions for granting access to labour market – priority can be given to country nationals, EU citizens/EAA, and to legally resident third country nationals –, but have to ensure effective access. Access to the labour market cannot be withdrawn during the appeal procedure – if the appeal has suspensive effect –, until a negative decision is issued.

**Finding 28:** All EUMS provide access to the labour market within the 9 month limit.

**Finding 29:** Most EUMS allow access in principle to vocational training, although it is not an obligation to do so.

<sup>241</sup> ECRE (March 2023), [Policy Note: The Right to Education for Asylum Seekers in the EU](#), see Section 2.3.2. on implementation challenges.

<sup>242</sup> AIDA (April 2023), [Country Report Cyprus](#).

<sup>243</sup> AIDA (April 2023), [Country Report Germany](#).

<sup>244</sup> AIDA (May 2023), [Country Report Ireland](#), p.82.

<sup>245</sup> FRA, [Compulsory Schooling](#).

**Finding 30:** For access to both the labour market and to vocational training, practical obstacles derive from sectoral limitations and administrative requirements across the EUMS.

In most EUMS, applicants have to wait for a period of between two and six months from lodging their application to access the labour market.

Table 5: Time limits to legally access the employment for asylum seekers

Time limits to legally access the employment for asylum seekers <sup>246</sup>						
Immediate	1 month	2 months	3 months	4 months	6 months	9 months
MT(1), PT, SE	CY(2)	IT	AT(3), BG, DE(4), RO, FI (if in possession of travel documents), LV	BE	FR, EL, ES, PL, NL, IE (in practice accepted 5m onwards), FI (if do not have a travel document), LU, CZ, <sup>247</sup> EE, LT	HR, CY(2), SI, HU, SK <sup>248</sup>

(1) Except applicants designated as coming from safe third countries under national law, who have to wait 9 months from lodging.

(2) Increased to 9 months from 1 October 2023 onwards. Prior to this moment, it used to be of 1 month.

(3) From the admission into the regular procedure, instead that from lodging of the application.

(4) However, access is not granted to applicants while they are hosted in initial reception centres, which can last for considerably longer than 3 months. Obligation to stay in centres can last for up to 18 months, or even 24 months. They are entitled to an employment permit after 9 months in IRC under certain conditions, except applicants from SCO, not even allowed to exceptionally apply.

Source: AIDA. Information on EE, FI, LT, LV, LU provided, respectively, by: Estonian Refugee Council and Estonian Human Rights Centre; Finnish Refugee Advice Centre; Lithuanian Red Cross; Latvian Centre for Human Rights; Passerell.

Some countries impose specific restrictions on access to the labour market. For example, while in some MS, access to the labour market is granted as soon as the time condition is met, in others a labour market test must be passed before access to the labour market is granted.

Table 6: Labour Market test

Labour market test	
Yes	No
AT, CY, FR (unless specific sectors), HU, LU, CZ <sup>249</sup>	BE, BG, HR, DE, FR* (in some specific sectors, listed by region), GR, ES, PL, IT, MT, PT, NL, IE, RO, SE, SI, FI, EE, LV, LT, SK <sup>250</sup>

<sup>246</sup> Providing that a first instance decision has not been taken before the end of this time limit.

<sup>247</sup> EMN (2023), [The integration of applicants for international protection in the labour market – Czech Republic](#).

<sup>248</sup> [Asylum Act](#), Section 23(6).

<sup>249</sup> EMN (2023), [The integration of applicants for international protection in the labour market – Czech Republic](#).

<sup>250</sup> Human Rights League, [Frequently asked questions](#).

Source: AIDA. Information on EE, FI, LT, LV, LU provided, respectively, by: Estonian Refugee Council and Estonian Human Rights Centre; Finnish Refugee Advice Centre; Lithuanian Red Cross; Latvian Centre for Human Rights; Passerell.

While most MS allow asylum seekers to work in all sectors, others limit participation to specific sectors. The states that tend to impose restrictions may ban asylum seekers from working as self-employed (CZ,<sup>251</sup> DE, FI, SK<sup>252</sup>). Other states limit asylum seekers to the unskilled sector (SE) or exclude them specifically from public employment (IRE).

CY limits access to specific professions in agriculture-animal husbandry-fishery-animal shelters and pet hotels, processing, waste management, trade-repairs, provision of services, food industry, restaurants, recreation centres, laundromat services and dissemination of advertising material. Austria imposed similar restrictions until 2021.<sup>253</sup>

Currently, only the NL<sup>254</sup> imposes a maximum limit for work (of 24 weeks) on asylum seekers. A case is before the Council of State following a lower court ruling that found this limit to breach RCD Article 15.<sup>255</sup>

In many countries, asylum seekers have to make a specific application in order to access the labour market (AT, BG, CY, FR, DE, HU, IE, MT, NL, PL, SI, SE, LU,<sup>256</sup> CZ<sup>257</sup>, SK<sup>258</sup>, LV,<sup>259</sup>). In most of these cases, the application has to be presented by the asylum seeker or by the employer for each new work contract or after a set period of time. This may have a negative impact on employability of asylum seekers. In other countries, asylum seekers can access the labour market without limitations after the initial period (BE, HR, IT, PT, ES, FI, EE).

RCD Article 16 establishes that countries may allow access to vocational training for asylum seekers, without this being an obligation, and irrespective of their access to the labour market. Many national legislations have decided to grant asylum seekers access to vocational training (AT, BE, BG, CY, FR, EL, IE, MT, NL, PT, RO, SI, SE, FI, LU). However, access in practice might be restricted for reasons such as challenges in registering as a job seeker, a lack of necessary documentation, or the limited duration of residence permits.<sup>260</sup>

For a number of MS, effective access is linked to administrative requirements that are imposed even after the right to access the labour market or vocational training has been established. For example:

- In CY, the national system imposes obligations on asylum applicants: once they have acquired the right to work, they must: (a) be registered as unemployed in the Register of the PES; (b) accept work in specific sectors that have been determined; (c) participate, if invited, in professional training programmes and/or educational courses, and Greek language classes; (d) accept the provision of personalised approach services by qualified employment

<sup>251</sup> EMN (2023), [The integration of applicants for international protection in the labour market – Czech Republic](#).

<sup>252</sup> Not allowed to engage in business: Human Rights League, [Frequently asked questions](#).

<sup>253</sup> EMN (June 2023), [Access to the Labour Market and Labour Market Integration of Asylum-seekers in Austria](#).

<sup>254</sup> Austria previously imposed a similar limit, before the Supreme Administrative Court decision from 2021. See: EMN (June 2023), [Access to the Labour Market and Labour Market Integration of Asylum-seekers in Austria](#).

<sup>255</sup> Court of the Hague, [ECLI:NL:RBDHA:2023:5458](#), 18 April 2023, Lower Court Decision; see also Vluchtelingenwerk (April 2023) [Asylum seekers are allowed by judges to work longer than 24 weeks a year](#).

<sup>256</sup> Information provided by Passerell, 24/09/23.

<sup>257</sup> EMN (2023), [The integration of applicants for international protection in the labour market – Czech Republic](#).

<sup>258</sup> Human Rights League, [Frequently asked questions](#): “If you want to work as an asylum seeker and you comply with the conditions set above, you will request the Legal Department of the Migration Office to issue you a certificate about your authorisation to enter the labour market”.

<sup>259</sup> Information provided by Latvian Centre for Human Rights, 04/10/2023.

<sup>260</sup> ECRE, Policy paper on Access to work for asylum seekers, unpublished.

advisers of the PES; (e) accept meetings and visits to their place of residence for on-site evaluation of their situation by the competent Social Welfare Officers regarding the planning of activities for their vocational and counselling guidance, psychosocial support and social reintegration. While vocational training is officially accessible, there are no professional training schemes available for specific labour market sectors that are accessible to asylum seekers.<sup>261</sup>

- In IT, national legislation establishes that asylum seekers are entitled to access work just based on their residency permits. However, asylum seekers face difficulties in obtaining said residence permit, due to the delay in the registration of their asylum applications or in the permit renewal.<sup>262</sup>

Many examples of good practice have also been identified which are described in the section below.

### Health care (Articles 17, 19 and 25)

RCD Article 17 provides that EUMS may condition the provision of health care on the means of the applicant. Where it is considered that the applicant has sufficient resources, MS may require them to cover entirely or to contribute to costs of healthcare.

RCD Article 19 establishes a minimum standard for what should be considered as “necessary healthcare”, which has to include emergency care and essential treatment of illnesses and serious mental health disorders, and that MS are obliged to provide necessary medical or other assistance to those with special reception needs, including appropriate mental health care.

**Finding 31:** Legal provisions enshrine provision of health care at or above the minimum standards required in all EUMS.

While the RCD establishes the minimum standards of health care to which asylum applicants are entitled, many EUMS impose higher standards than those required. This is established in national law in the following cases BG, FR, DE, EL, IT, NL, PL, PT, ES, CZ, LU where emergency care is generally provided to asylum seekers under the same conditions as for nationals of the country. In AT, BE, SK,<sup>263</sup> more limited coverage is established in law, but can be extended by national authorities. Some countries provide the same level of coverage as nationals to children but not to adult asylum seekers (FI<sup>264</sup>, SI, SE) while others provide equal access after a certain time period (18 months in DE, 3 months in LU). The remaining countries provide the minimum emergency care as set out in the RCD (CY, HR, HU, IE, MT, RO, EE, LV<sup>265</sup>, LT<sup>266</sup>).

Previous studies have shown how inequalities in accessing national healthcare system can be observed when comparing nationals and third country nationals, including asylum seekers and refugees.<sup>267</sup> In some cases, limited access is a direct consequence of the difficulties in accessing

<sup>261</sup> AIDA (April 2023), [Country Report Cyprus](#).

<sup>262</sup> AIDA (May 2023), [Country Report Italy](#).

<sup>263</sup> European Commission, EMN (2020), [AD HOC QUERY ON 2020.18 Health care provisions for asylum seekers Requested by EMN NCP Netherlands on 13 March 2020](#); Human Rights League, [Frequently asked questions](#).

<sup>264</sup> Finnish Institute for Health and Welfare, [Asylum seekers' health and services](#).

<sup>265</sup> European Commission, EMN (2020), [AD HOC QUERY ON 2020.18 Health care provisions for asylum seekers Requested by EMN NCP Netherlands on 13 March 2020](#).

<sup>266</sup> Ibid.

<sup>267</sup> See, *inter alia*, Lezano, A., Hamed, S., Bradby, H. *et al.* (2020) [Migrants' and refugees' health status and healthcare in Europe: a scoping literature review](#). *BMC Public Health* 20, 1039; Nowak AC, Namer Y, Hornberg C., [Health Care for Refugees in Europe: A Scoping Review](#). *Int J Environ Res Public Health*. 2022 Jan 24;19(3):1278. PMID: 35162300; PMCID:

material reception conditions<sup>268</sup> or of the loss of material reception conditions,<sup>269</sup> while in others it is connected to administrative delays, shortcomings or to structural issues of national healthcare systems.

For applicants with special reception needs, medical and related assistance for is only provided with significant restrictions in some MS,<sup>270</sup> while limitations have been reported in most others,<sup>271</sup> for reasons including a lack of dedicated resources, overburdened national services or on limited access to material reception conditions for asylum seekers present in the country.

Victims of torture and violence are entitled to access to appropriate medical and psychological treatment or care under the RCD (Article 25). However, only in a few cases (IE<sup>272</sup>, SI<sup>273</sup>, HU<sup>274</sup>, NL<sup>275</sup>) is this right granted. In most national contexts,<sup>276</sup> access to these specialised services appears difficult, either due to the lack or limited number of dedicated facilities, or to the lack of allocated resources. In other cases, victims of violence do not obtain access to specialised care due to the issues in accessing national reception systems and to the difficulties in identifying these forms of vulnerability.<sup>277</sup> A positive example is that of PT,<sup>278</sup> where a protocol was established with the Psychiatric Hospital Centre of Lisbon that allowed easier and faster access to services, medication and specialised care for unaccompanied minors.

### 2.3.2. Findings and good practices

Shortcomings regarding access to socio-economic rights for asylum seekers are not easily attributable to individual factors, are often complex and may derive from more general weaknesses in the system, such as a lack of resources or a lack of skilled staff, which also affect nationals. In some cases, the difficulties experienced are related to the individuals but follow from language and cultural barriers. Certain common implementation gaps may nonetheless be identified.

**Finding 32:** Structural and systemic problems limiting access to education, employment and health care disproportionately affect asylum applicants compared to the general population in certain EUMS.

PMC8834962.; C. Di Maio, [Refugees' access to health services in the EU framework: what role for primary healthcare?](#); Diritti Comparati; Roos., M. (2023), [Different Systems, Similar Responses: Policy Reforms on Asylum-Seekers' and Refugees' Access to Healthcare in Germany and Sweden in the Wake of the 2015–17 'Migration Crisis'](#). In: Jakobson, ML., King, R., Moroşanu, L., Vetik, R. (eds), [Anxieties of Migration and Integration in Turbulent Times](#), IMISCOE Research Series. Springer, Cham.

<sup>268</sup> See Section 2.1.1 Models and practices for the provision of material reception conditions.

<sup>269</sup> See Section 2.4 Reduction and withdrawal of reception conditions.

<sup>270</sup> NL, SI, LU, LV, HU.

<sup>271</sup> AT, BE, CY, FR, DE, PL, CZ, FI, GR, SE, IRE, MT, BG, NL.

<sup>272</sup> Treatment is available through Spirasi, the National Centre for Survivors of Torture. Includes medical, psychological, and psychosocial support, however, there is a waiting list for psychological/medical service. Information provided by the Irish Refugee Council, 23/09/23.

<sup>273</sup> As a result of the work of NGOs and psychologists in the reception centre. Information provided by PIC, 21/09/23.

<sup>274</sup> Provided by NGOs, see: AIDA (April 2021), [Country Report Hungary](#).

<sup>275</sup> Only provided in regular facilities, not in emergency accommodation.

<sup>276</sup> AT, BE, CY, FR, DE, GR, PL, PT, ES, FI, CZ, LU, LV, SE, IT.

<sup>277</sup> See Sections 2.1.1 Models and practices for the provision of material reception conditions and 2.5 Special reception needs of vulnerable applicants.

<sup>278</sup> AIDA (May 2023), [Country Report Portugal](#).

Many of the issues undermining asylum seekers' access to education, work and health care are derived from structural issues within national systems, such as inadequate resources, a lack of trained staff or bureaucratic inefficiencies. In many cases, they also affect nationals, but in it appears that asylum applicants are disproportionately affected.

### Right to education

In the education sector, asylum-seeking children experience challenges in accessing education due to, inter alia:

- Schools' lack of capacity in absorbing new arrivals (BE, HR, CY, EE, FR<sup>279</sup>, DE, HU, IT, PL);
- Regular compulsory transfers between reception places, especially in multi-step accommodation processes (BE, EL);
- Unpreparedness of school personnel to work with migrant children (HR, DE, ES);

Additional concerns arise regarding students with special needs. Again, such problems are often systemic, however there may be a disproportionate impact on asylum-seeking children. A related challenge is the lack of efficient mechanisms to detect vulnerabilities which may reduce the rate of detection of special needs.<sup>280</sup>

### Right to work

Despite being legally allowed to work, practical challenges for asylum seekers exist due to structural barriers that obstruct access to services and resources. Some of these challenges are general (lack of available training places) but likely to disproportionately affect asylum applicants, whereas other are specific (such as language barriers and limited provision of language courses or obstacles in qualification recognition, remote location of reception centres). Among those identified are the following:

General:

- Lack of resources (AT)
- High national unemployment rate (BG, EL, PL, SE)
- Lack of supplementary assistance such as childcare - disproportionately affecting women (CY, EL)

Specific:

- Delays in accessing the asylum procedure (and, consequently, no availability of residence cards (BE, ES, IT)
- Lack of transportation to work places / isolation of accommodation places: (CY, EL, IT, PL, FI)
- Lack of appropriate information provisions re. respect of terms/conditions of employment, labour rights, complain mechanisms (CY, PT)

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<sup>279</sup> Limited resources for specialised language training or initiation classes, all the more so in rural areas, even though dispersal mechanism of accommodation may be encouraging more AS in such areas.

<sup>280</sup> See Section 2.5 Special reception needs of vulnerable applicants.

## Right to health

Asylum seekers face difficulties in accessing general health care which may be caused by shortcomings of the national health system that affect them and country nationals alike, as is the case in BE or EL. In other cases, challenges are a consequence of their status as asylum seekers, for example as connected to the limited scope of healthcare which they can legally access (CY, FR, FI, HU).

Some people experience issues in accessing healthcare that derive from challenges in accessing the asylum procedure (LT, PL) or in accessing material reception conditions because health services are primarily provided in reception centres (AT, SK). In other cases, procedures for obtaining reimbursement may be highly complex (BE, LU). Finally, the distance of reception centres from health care structures (PL, CZ) or difficulties in accessing services from emergency reception places (NL) may also negatively affect access to medical including psychological care.

Access to specialised healthcare is challenge often due to a lack of capacity in specialised institutions or on the part of providers (AT, BE, BG, HR, CY, FR, DE, HU, PL, PT, CZ, LU, FI, IE). Where certain specialised care is solely provided by NGOs, capacity and over-stretch is a particular challenge (AT, HR, CY, IE, RO). Other challenges found include the distance between reception centres and appropriate treatment places (DE, CZ, IE), lack of funding (HR<sup>281</sup>, DE<sup>282</sup>, HU, LU), lack of awareness of specific necessities of asylum seekers (for example, victims of torture) of personnel in reception facilities and hospitals (FI, IT, SE). In PL,<sup>283</sup> civil society organisations reported denial of access to the more costly treatments.

One of the major issues effectively hindering access to health care for asylum seekers appears to be language constraints (CY, FR, EL, HU, IT, MT, PL, PT, CZ), and the lack of interpreters or cultural mediators in hospitals.

**Finding 33:** The complexity of administrative procedures is a major obstacle to accessing rights to education, work and health in many EUMS.

Complex administrative procedures can also affect access to rights.

## Right to education

Among vulnerable groups, some concerns emerge regarding unaccompanied minors, mostly derived from lengthy age assessment procedures (HR, ES) or delays in the appointment of a guardian (MT).

## Right to work

Among the most commonly reported administrative constraints in accessing work are:

- Lack of recognition of foreign qualifications or difficulties in providing evidence of qualifications (BE, EL, PL, PT, SI, ES);
- Issues in accessing driver's licenses (CY, IE);

<sup>281</sup> Most of healthcare services are provided by NGOs Since May 2023, MdM had to suspend activities due to lack of funding. See AIDA (June 2023), [Country Report Croatia](#).

<sup>282</sup> Depends on donations or other funds since therapies are often not covered by the health and social authorities for asylum seekers.

<sup>283</sup> AIDA (May 2023), [Country Report Poland](#).

- Difficulties opening bank accounts: (CY, EL, IE, SI, LT);
- Issues obtaining insurance numbers (EL, PT);
- Difficulties in obtaining residence permits (IT);
- Lengthy employment procedures (FR, NL).

Additional obstacles specifically hamper access to vocational training:

- Short length of residence permit (DE)
- Time limitation to obtain the work permit (FR, FI)
- Difficulties in providing necessary documentation (EL, BG, PT)
- Difficulties access the work permit needed to access vocational training (FR, DE)
- Cost of vocational training / lack of financial aid (NL, PT)

### Right to health

The lack of necessary health insurance documents very often impedes access to health care (AT, DE). In CY, EL, and IE, while similar complaints were often reported in the past, the situation appears to have recently improved.

**Finding 34:** Racial and religious prejudice may be a factor in limiting access to socio-economic rights in some EUMS.

In some countries, there are reports of significant resistance from local communities to inclusion efforts (HR, HU, PL), which may be manifested in xenophobia. This in turns causes distrust and fear in asylum seekers and a tendency to self-exclude. Episodes of racism towards asylum seekers are widespread in EUMS,<sup>284</sup> with some cases also reported within national healthcare systems (e.g. CY, CZ, ES).

Regarding access to work, asylum seekers are also often faced with reticence from employers, for a number of factors, which are often connected to the provisional and precarious residence status and complex administrative situation (BE, EL, IE, IT, MT, NL), but which may also relate to prejudice.

### Good practices:

#### Right to education:

A set of good practices on access to education across MS can be highlighted:

- BG: In 2022, the asylum authority organised the daily commute to and from schools, and provided support to ensure access to preparatory classes.<sup>285</sup>
- EL: In 2020 and 2021, a record low school attendance rate was registered among asylum seeking children, with only 15% of children enrolled in the mainland able to attend school. Between 2021 and 2022 however, significant efforts were made to improve the situation, in particular by focusing on ensuring transport to and from schools, adequate staffing and a specific focus on the inclusiveness of education. However, some obstacles remain, such as the possible reduction of material reception conditions and administrative sanctions

<sup>284</sup> Council of Europe, [European Commission against Racism and Intolerance](#) (ECRI).

<sup>285</sup> AIDA (March 2023), [Country Report Bulgaria](#).



for the adults in case of non-compliance with mandatory schooling of children, on account of a potential “unwillingness to be included in the education system”.<sup>286</sup>

- LT: Compared to the second half of 2021, access to education for asylum seeking children improved significantly in 2022. At the beginning of the year, school-aged children living in all centres had the opportunity to attend classes (part of them in the centre area).<sup>287</sup>
- PL: In 2022, in all the reception centres - with the exception of Biała Podlaska -, access to kindergarten was ensured for a minimum of 5 times a week for 5 hours a day.<sup>288</sup>
- PT: On average, enrolment in school for asylum seeking children is ensured within two weeks from the registration of their application.<sup>289</sup>
- SI: All asylum-seeking children accommodated in the Asylum Home enrol into elementary school within around one week’s time from arrival. Most attend the elementary school of Livada, where three hours of Slovene and literacy classes are held every day, followed by regular classes. When children return from school, they can attend the language and literacy classes in the Asylum Home with an NGO. Additionally, an elementary school is available for adults, where students are placed in a suitable class, based on initial testing of their knowledge level. They can then complete two regular school years per year.<sup>290</sup>

### Right to work:

Many countries implemented good practices to improve access to work for asylum seekers:

- In some countries, asylum seekers can access the labour market throughout the duration of their residency permit (BE, HR, IT, PT, ES, FI, EE).
- BE: Asylum seekers with access to the labour market can register as jobseekers, which allows them to be entitled to a free assistance programme and vocational training.<sup>291</sup>
- PT: Asylum seekers are entitled to benefit from support measures and programmes in the area of employment and vocational training under specific conditions. Once admitted to the regular procedure, they can register as ‘job applicants’ and can access vocational training and language courses.<sup>292</sup> Local NGOs developed their own initiatives to support asylum seekers in the job search.
- RO: Asylum seekers can benefit from measures promoting employment, as well as protection within the unemployment insurance system, under the same conditions as Romanian citizens.<sup>293</sup>
- ES: In March 2020, a ministerial instruction requested Autonomous Communities (in charge of the protection and guardianship of unaccompanied minors) to provide work permits to minors aged between 16 and 18. The measure aims at improving the situation

<sup>286</sup> AIDA (June 2023), [Country Report Greece](#).

<sup>287</sup> Lithuanian Red Cross (2022), [Annual Report 2022](#) (in Lithuanian), p.30.

<sup>288</sup> AIDA (May 2023), [Country Report Poland](#).

<sup>289</sup> AIDA (May 2023), [Country Report Portugal](#).

<sup>290</sup> AIDA (May 2023), [Country Report Slovenia](#).

<sup>291</sup> AIDA (April 2023), [Country Report Belgium](#).

<sup>292</sup> AIDA (May 2023), [Country Report Portugal](#).

<sup>293</sup> AIDA (May 2023), [Country Report Romania](#).

of unaccompanied migrant children and at assuring them the access to the labour market at the same conditions as Spanish nationals.<sup>294</sup>

- SE: Should an asylum seeker obtain a job offer at another place in the country, they can move there and get nominal support towards living costs. Those who obtain jobs are able to improve their economic situation and possibly to switch their status as asylum seeker to becoming a "labour market migrant".<sup>295</sup>
- AT: sectoral restrictions on the right to work were lifted in 2021 when the Supreme Administrative Court ruled against the measure.<sup>296</sup>

### Health care

- Several EUMS' national laws provide for a wider definition of minimum emergency care as compared to the minimum standard set by the Directive, which is generally provided to asylum seekers at the same conditions as for nationals of the country (BG, FR, DE, EL, IT, NL, PL, PT, ES, CZ, LU).
- In PT,<sup>297</sup> a protocol was established with the Psychiatric Hospital Centre of Lisbon that allowed easier and faster access to services, medication and specialised care for unaccompanied minors.

## 2.4. Reduction or withdrawal of reception conditions (Article 20)

### 2.4.1. Models/practices/experiences of reduction or withdrawal of reception conditions

Article 20 RCD limits the reasons for which MS may reduce or withdraw material reception conditions for asylum applicants.

<sup>294</sup> AIDA (April 2023), [Country Report Spain](#).

<sup>295</sup> AIDA (April 2023), [Country Report Sweden](#).

<sup>296</sup> EMN (June 2023), [Access to the Labour Market and Labour Market Integration of Asylum-seekers in Austria](#).

<sup>297</sup> AIDA (May 2023), [Country Report Portugal](#).

Table 7: Grounds for reduction or withdrawal of material reception conditions under the RCD

<b>Grounds for reduction or withdrawal of material reception conditions under the RCD</b>	
<b>Ground</b>	<b>Sanction</b>
Abandon place of residence determined by the authorities without informing or where required permission	Reduction or (exceptionally) withdrawal
Non-compliance with reporting duties, request to provide info or appear for personal interviews in asylum procedure	Reduction or (exceptionally) withdrawal
Lodged a subsequent application	Reduction or (exceptionally) withdrawal
Applicant did not lodge application as soon as reasonably practical after arrival in MS	Reduction
Sufficient financial resources to have adequate standard of living	Termination or no corresponding of material reception conditions
Concealed financial resource and thus unduly benefited from MRC	Reduction or withdrawal
Serious breaches of rules of accommodation centres	All possible sanctions* * The CJEU established the sanction cannot be withdrawal, even if temporary <sup>298</sup>
Seriously violent behaviour	All possible sanctions* * The CJEU established the sanction cannot be withdrawal, even if temporary <sup>299</sup>

The decision on reduction or withdrawal must be individual, objective, impartial and justified, based on the particular situation of the person concerned, especially when vulnerable, taking into account the principle of proportionality.

<sup>298</sup> The CJEU establishes that, where house rules are breached or where violent behaviour occurs, the corresponding sanction cannot be the withdrawal of material reception conditions relating to housing, food or clothing, even if it is temporary. MS should ensure such a standard of living continuously and without interruption. They should grant access to MRC in an organised manner and under their responsibility, including when they call upon the private sector to fulfil that obligation. It is therefore not sufficient for them to provide a list of private homeless centres which could be contacted by the applicant, as Fedasil did in the present case. See ECRE (November 2019), [CJEU: Withdrawal of Material Reception Conditions not a Lawful Sanction for Violation of House Rules](#).

<sup>299</sup> ECRE, *ibid.*

**Finding 35:** A significant number of EUMS are going beyond what is allowed by the RCD in their legal provisions and/or practice on reduction and withdrawal of reception conditions.

The majority of MS introduced most of the grounds for reduction or withdrawal listed by the Directive in national legislations.<sup>300</sup> Most remaining countries introduced at least two to four of these grounds. The only exceptions being FI, that envisions the possibility to reduce material reception conditions only for those not participating in work and study activities in centre (not applied in practice),<sup>301</sup> and LV, that did not transpose the provision in national law.<sup>302</sup>

There are some discrepancies between the requirements under the Directive and its transposition in national laws. In several instances, MS (AT, CY, FR, EL, IE, PL, SE, SK) introduced additional grounds for reduction and withdrawal. Among the most notable are:

- CY:<sup>303</sup> Eligibility to material reception conditions ends if the person is detained; if they refuse a visit by social welfare services to their place of living; refuse to provide information on issues that would affect decisions on reception conditions; when they refuse a job offer twice to reasons not considered objectively acceptable or justified.
- FR:<sup>304</sup> Additional grounds for reduction or withdrawal are having presented several asylum applications under different identities and misleading info about family situation. It can also be noted that in 2018, France had introduced an automatic and immediate withdrawal of material reception conditions instead of temporary withdrawal, for persons deemed to have abandoned their reception place or to have not responded to information requests/not fulfilled their obligations towards the asylum authorities, but these provisions were invalidated by the Council of State<sup>305</sup> on the basis EU law requires individual assessment so cannot reduce or withdraw automatically.
- EL:<sup>306</sup> Material reception conditions can be reduced if minor children (whether applicants themselves or children of applicants) do not comply with the obligation to enrol and attend school. A new regulation covering the newly established CCAC on the islands was issued in 2021, establishing the possibility to terminate accommodation and withdraw material reception conditions if applicants are unjustifiably not identified during the regular census-verification of the resident population for two consecutive times.
- IE:<sup>307</sup> Transposes the ground on “non-compliance with reporting duties, request to provide info or appear for personal interviews in asylum procedure” as non-compliance with some aspect of the asylum procedure. This ground results vague as it refers to “an obligation under an enactment relating to the application” rather than any specific aspect of the IPA. Abstractly, it could mean that a failure to comply with any aspect of the application process – no matter how insignificant – could be a ground for reducing or withdrawing reception conditions, so long as the applicant has failed to provide a “reasonable excuse”.

<sup>300</sup> AT, BE, CY, FR, EL, HU, IRE, IT, LT, LU, NL, PT, RO, SI.

<sup>301</sup> Information provided by Finnish Refugee Advice Centre, 25/09/23.

<sup>302</sup> Information provided by Latvian Centre for Human Rights, 21/09/23.

<sup>303</sup> AIDA (April 2023), [Country Report Cyprus](#).

<sup>304</sup> AIDA (May 2023), [Country Report France](#).

<sup>305</sup> Belgian Council of State, Decision 428530.

<sup>306</sup> AIDA (June 2023), [Country Report Greece](#).

<sup>307</sup> AIDA (May 2023), [Country Report Ireland](#).

Despite the CJEU judgement<sup>308</sup> establishing that the most severe sanction against serious breaches of accommodation rules and violent behaviour cannot entail the withdrawal - even if temporary – of material reception conditions relating their most basic needs (housing, food or clothing), this remains the case in the legislation of several MS: AT, BE, HR, CY, FR, EL, IE, LT, LU, PL, RO, ES.

Regarding the requirement set by the Directive on the obligation for the MS to ensure and dignified standard of living, only few MS (BG, CY, EL, HU, IE, LU) include a mention to guarantees for dignified living conditions in their national legislations, and even fewer carry out an assessment in practice (BG, IE, LU).

*Rights of asylum seekers subject to reduction or withdrawal of reception conditions*

### Access to healthcare

Under the RCD, access to healthcare must always be granted, and MS shall ensure a dignified standard of living for all applicants.<sup>309</sup> While the national frameworks in all MS ensure access to emergency and essential healthcare to applicants who have been subject to reduction or withdrawal of material reception conditions, in some countries<sup>310</sup> it is challenging.

### Right to an effective remedy

In accordance with Article 26 RCD, the right to appeal against the decision to reduce or withdraw material reception conditions must be granted; at least in the last instance, the appeal or review must be before a judicial authority. MS must ensure that, where necessary, applicants have access to free legal assistance and representation for the appeal before the judicial authority, even if this requirement can be subject to a means and merits tests).<sup>311</sup>

As a rule, all MS ensure this right in law and its accessibility in practice, with some limited exceptions:

- BG:<sup>312</sup> Asylum seekers face difficulties proving before Court when they have been informed about the accommodation refusal (since notification is oral and not written), which may result in the cessation of the court proceedings.
- CY:<sup>313</sup> There is no possibility to challenge a decision to terminate material reception conditions where the applicant has been found to be 'wilfully unemployed'. On average, these applicants have then to wait between two and six months to be able to newly apply for material reception conditions.
- MT: Asylum seekers may appeal these decisions before the Immigration Appeals Board, in accordance with the Receptions Regulations and the Immigration Act.<sup>314</sup> However, this

<sup>308</sup> ECRE (November 2019), CJEU: [Withdrawal of Material Reception Conditions not a Lawful Sanction for Violation of House Rules](#); ECRE/ELENA (August 2023), [CJEU: Applicants for international protection cannot be sanctioned with the withdrawal of material reception conditions if this deprives them of their most basic needs](#).

<sup>309</sup> Article 20(5).

<sup>310</sup> BG, LT, see, EL – concerns are reported in particular for applicants that must undergo specific health examination such as x-rays, blood tests, etc.; this is not the case for children, that have unhindered access to healthcare in all cases, see: information provided by GCR, 23/09/23.

<sup>311</sup> Article 26(2)(3) RCD.

<sup>312</sup> Information provided by the Bulgarian Helsinki Committee, 23/09/23.

<sup>313</sup> AIDA (April 2023), [Country Report Cyprus](#).

<sup>314</sup> Regulation 16(1) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta, taken in conjunction with Article 25A(7) of the Immigration Act, Chapter 217 of the Laws of Malta.

remedy is inaccessible in practice due to the lack of information and the stringent deadlines to file the appeal (3 days). This was highlighted by the ECtHR several cases against Malta.<sup>315</sup>

- SI:<sup>316</sup> While national law does not ensure access to free legal assistance and representation in law, this is provided in practice by the NGO PIC.

In the NL, where the asylum seeker must be granted the right to be heard before the measure is adopted.<sup>317</sup> Similarly, in FR, for refusal, reduction and temporary and permanent withdrawal, the applicant has to be notified and given the opportunity to provide written observations within 15 days.<sup>318</sup>

#### *Reinstatement of the grant of some or all material reception conditions*

In the first two grounds for reduction or withdrawal of material reception conditions listed by the Directive,<sup>319</sup> where the applicant is traced or voluntarily reports to national authorities, the latter can adopt a motivated decision to grant them the possibility to be newly granted access – or full access – to material reception conditions. While generally granted in law, the possibility to enjoy this right is not fully granted in various national contexts.<sup>320</sup>

### 2.4.2. Implementation gaps and good practices

**Finding 36:** Unlawful reduction or withdrawal of reception conditions and lack of individualised assessment appear to be commonplace across the EUMS.

Despite legal provisions on safeguards and the limits imposed to MS concerning decisions to reduce or withdraw reception conditions, in certain countries these grounds appear to have been unduly expanded. Examples include the use of a stringent interpretation of the ground relative to the violation of house rules,<sup>321</sup> or systematic application of certain grounds<sup>322</sup> without individual assessment<sup>323</sup> or without evaluation of proportionality.<sup>324</sup>

- BE:<sup>325</sup> During the reception crisis in November 2022, the national reception authority Fedasil issued a new instruction concerning the forced and voluntary withdrawal of reception conditions for working applicants, ordering compulsory withdrawal of reception conditions

<sup>315</sup> ECtHR, *Louled Massoud v. Malta*, Application No 24340/08, [Judgment of 27 July 2010](#); *Aden Ahmed v. Malta*, Application No 55352/12, [Judgment of 23 July 2013](#); *Suso Musa v. Malta*, Application No 42337/12, [Judgment of 23 July 2013](#).

<sup>316</sup> Information provided by PIC, 24/09/23.

<sup>317</sup> AIDA (May 2023), [Country Report Netherlands](#).

<sup>318</sup> AIDA (May 2023), [Country Report France](#).

<sup>319</sup> Article 20(1)(a)(b): Having abandoned their place of residence without providing information or non-compliance with reporting duties, request to provide info or appear for personal interviews in the asylum procedure.

<sup>320</sup> See Section 2.4.2 Implementation gaps and good practices.

<sup>321</sup> As was the case in IT, see AIDA (May 2023), [Country Report Italy](#).

<sup>322</sup> In practice subsequent applicant ground is systematically applied by some prefectures, especially in major cities (Lyon, Marseille, Paris), only a select few may potentially access after demonstrating particular vulnerability and specific needs re accommodation.

<sup>323</sup> EL: Cash benefits. Residency is the pre-condition to receive since July 2021, no more cash assistance to those not accommodated in reception system, at the time amounted to a withdrawal of MRC to 25,000 AS without any individual or reasoned assessment. Came at detriment of integration, many forced to abandon a place of residence of their own choice and to abandon their communities and friends, in order to return to camps, where they would have to be in isolation from society. See AIDA (June 2023), [Country Report Greece](#).

<sup>324</sup> For e.g., in CY, where vulnerable asylum seekers might also be subject to reduction or withdrawal. See AIDA (April 2023), [Country Report Cyprus](#).

<sup>325</sup> AIDA (April 2023), [Country Report Belgium](#).

for applicants having a stable work contract (of minimum 6 months) providing an income higher than the minimal living wage; this led to around 350 asylum seekers receiving such a decision. In recent judgements, national labour courts have annulled these decisions, as the applicant did not meet the required minimum income, or because the principle of proportionality was violated.

- BG:<sup>326</sup> Withdrawal is admissible under the law in cases of disappearance of the asylum when the procedure is discontinued. The SAR applies this ground of withdrawal in practice to persons returned under the Dublin Regulation. In their majority, they are refused accommodation in the reception centres. It should be noted, however, that this approach is usually not applied to families with children, unaccompanied children and other vulnerable applicants, who are provided shelter and food.

Accessing material reception conditions when they have been reinstated following an appeal – as allowed by the RCD – is challenging in some MS, either due to destitution in which asylum seekers might be living as a consequence of the measure (AT) or due to a lack of reception places (BE). In others, there are difficulties in appealing the decision to withdraw (CY, EL, MT).

**Finding 37:** the consequences of reduction and withdrawal are severe in many cases, leading to suffering for applicants and social tension.

Reduction or withdrawal of reception conditions can severely impact the livelihoods of asylum seekers. Despite this, sufficiency and adequacy of resources to ensure a dignified standard of living, are not always taken into account during individualised assessments as required by the RCD and the CJEU,<sup>327</sup> which leads many asylum seekers subjected to these measures being left in conditions of destitution (FR).

In some countries this is partially connected to the ongoing housing crisis on the private housing market (BE), or to the unwillingness of house owners to rent an apartment to asylum seekers (MT) which makes it almost impossible for those excluded from material reception conditions to find an accommodation.

#### Good practices:

- Almost all MS ensure the right to an effective remedy in law and its accessibility in practice (exceptions are discussed above).
- DE: reduction of reception conditions lasts for a maximum of 6 months and is then reviewed, and only extended if the ground is still applicable. Even before the end of the 6-month time limit, benefits have to be restored to the standard level if the legal prerequisites for the reduction cease to apply. In practice, the reduction of benefits rarely applies to asylum seekers while their asylum procedure is ongoing, but it may affect former asylum seekers whose application has been rejected as ‘manifestly unfounded’ or ‘inadmissible’ (Dublin, protection in another EU country).<sup>328</sup>

In some countries, measures are taken to avoid destitution, such as setting indicators to measure basic needs or giving the asylum seeker the possibility to be heard before the decision is adopted:

<sup>326</sup> AIDA (March 2023), [Country Report Bulgaria](#).

<sup>327</sup> Article 20(5) RCD; CJEU (8 August 2022), [Case C-422/21](#).

<sup>328</sup> AIDA (April 2023), [Country Report Germany](#).

- BG:<sup>329</sup> Destitution is defined based on the monetary indicator of the national poverty threshold.
- The law defines as “basic needs” sufficient food, clothing and housing provided according to the national socio-economic development. While not legally obliged to assess the risk of destitution, the national reception authority (SAR) takes it into account in the majority of cases.
- ES:<sup>330</sup> Asylum seekers are rarely expelled from reception facilities, unless they accumulate several breaches to the rules of conduct of the centres. In this case, the management authority will start a procedure which foresees the hearing of the subject, who can make allegations or give explanations within a 15-day period, after which a decision is taken.

## 2.5. Special reception needs of vulnerable applicants (Article 21-25)

### 2.5.1. Models of provision of support to vulnerable applicants

According to the interpretation given by the ECtHR, all applicants for international protection can be considered as inherently vulnerable,<sup>331</sup> given their disadvantaged legal position compared to other groups or nationals;<sup>332</sup> the Court itself however acknowledged that certain specific groups – such as children<sup>333</sup> or persons with diverse SOGIESC (sexual orientation, gender identity, gender expression and sex characteristics)<sup>334</sup> – have specific vulnerabilities that have to be addressed. EU law adopts a concept of vulnerability based on the idea that certain asylum seekers are more vulnerable than others due to their individual characteristics or circumstances, and therefore require special attention, both in terms of procedural safeguards that concerning their special reception needs.

The Reception Conditions Directive qualifies the special needs related to vulnerability as a “primary concern for national authorities”.<sup>335</sup> Accordingly, Articles 21 to 25 of the Directive are dedicated to defining the guarantees for applicants with special needs that must be granted in the reception context.

Article 21 creates a non-exhaustive list of vulnerable persons which includes: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation. As previously mentioned,<sup>336</sup> the Directive’s text introduces the definition of applicants with “special reception

<sup>329</sup> AIDA (March 2023), [Country Report Bulgaria](#).

<sup>330</sup> AIDA (April 2023), [Country Report Spain](#).

<sup>331</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, [Judgment of 21 January 2011](#), para 263. The Court reiterated its position on the inherent vulnerability of asylum seekers in several stances, See for example: ECtHR, *Tarakhel v. Switzerland* [GC], Application No 29217/12, [Judgment of 4 November 2014](#), para 9; *A.S. v. Switzerland*, Application No 39350/13, [Judgment of 30 June 2015](#), para 29.

<sup>332</sup> C. Costello and E. Hancox (2016), [The Recast Asylum Procedures Directive 2013/32/EU: Caught between the Stereotypes of the Abusive Asylum-Seeker and the Vulnerable Refugee](#), in V Chetail, P de Bruycker and F Maiani (eds), *Reforming the Common European Asylum System. The New European Refugee Law*, pp.442-443.

<sup>333</sup> ECtHR, *Tarakhel v. Switzerland*, para 99.

<sup>334</sup> ECtHR, *O.M. v. Hungary*, Application No 9912/15, [Judgment of 5 July 2016](#), para 5.

<sup>335</sup> Paragraph 14 Preamble RCD.

<sup>336</sup> See Section 2.2.1 Models/practice and statistics on EUMS’ use of detention.



needs”.<sup>337</sup> According to Article 22(3), only “only vulnerable persons in accordance with Article 21 may be considered to have special reception needs”.

As indicated by the EUAA in its guidance on Reception Conditions,<sup>338</sup> indicators and special needs should be recorded and communicated to relevant authorities as soon as possible after they are detected, but their identification can be realised at any step of the provision of reception.

**Finding 38:** Vulnerability assessments appear often to be inadequate for the EUMS for which information is available.

According to the Directive,<sup>339</sup> the assessment of the special reception needs shall be initiated “within a reasonable period of time after an application for international protection”. EASO (currently EUAA) developed a specific tool to support national authorities in the early identification of vulnerabilities,<sup>340</sup> and supports vulnerability assessments in countries of operations.<sup>341</sup> Different time periods are applied for the vulnerability assessment.

Several national legislations foresee that said assessment should be realised prior to the applicant’s arrival in long term accommodation. In practice, vulnerabilities are often detected at a later stage.

- BE:<sup>342</sup> A legal mechanism is put in place to assess specific needs of vulnerable persons once they are allocated to a reception facility. Within 30 calendar days after having been assigned a reception place, the individual situation of the asylum seeker should be examined to determine if the accommodation is adapted to their personal needs. Particular attention has to be paid to signs of vulnerability that are not immediately detectable, which could lead to a transfer to a more suitable accommodation facility.
- In some MS there is no time limit for the assessment: AT, HU, IT, PT, RO, SI, ES.

In a number of countries, the vulnerability assessment does not appear to be properly implemented in practice (BE, BG, HR; CY, FR, DE,<sup>343</sup> EL, IE, MT, NL, PL, SE, FI, CZ, LU<sup>344</sup>, LT<sup>345</sup>, LV<sup>346</sup>). Often, a limited assessment is carried out which only identifies the most serious, visible vulnerabilities, with those that are harder to detect (such as being a victim of violence or of torture) observed at a later stage in the reception.

<sup>337</sup> Article 22 RCD.

<sup>338</sup> EUAA (September 2023), [Guidance on reception conditions: operational standards and indicators](#), p.39.

<sup>339</sup> Article 22(1) RCD.

<sup>340</sup> EASO, [Tool for Identification of Persons with Special Needs](#) (IPSN).

<sup>341</sup> See Section on assistance from the EUAA; AIDA (September 2017), [The concept of vulnerability in European asylum procedures](#), pp.29-34.

<sup>342</sup> AIDA (April 2023), [Country Report Belgium](#).

<sup>343</sup> The [Asylum Act](#) does not foresee a systematic assessment procedure for vulnerable persons. A systematic screening for vulnerabilities is only in place in three Federal States. Practices differ between Federal States and also municipalities, as not all Federal States have laws or protection concepts in place that apply to all accommodation centres for asylum seekers.

<sup>344</sup> A first screening is carried out at the time of application, but since the conditions might change over time, the identification and facilitation of special needs shall be made throughout the asylum procedure, identification is often carried out with support from civil society actors such as the Red Cross and Caritas. See: Commission consultative des Droits de l’Homme du Grand-Duché de Luxembourg (November 2018), [Rapport sur les conditions d’accueil des demandeurs et bénéficiaires de protection internationale au Luxembourg](#).

<sup>345</sup> Information provided by the Lithuanian Red Cross, 12/10/2023. Vulnerability assessment procedures are in place, however, procedures in different centres are different and limited to the people living in the centres, totally excluding those living on their own; even in the centres where procedures are in place, there are instances when vulnerable people are not identified as such and thus do not benefit from respective safeguards.

<sup>346</sup> Information provided by the Latvian Centre for Human Rights, 11/09/2023.

**Finding 39:** All EUMS provide separate accommodation for families with children, mainly in separate areas of general facilities and in some cases in separate facilities.

Among the categories of vulnerable applicants listed in RCD Article 20 are minors and parents with minor children. Various MS provide for special reception places dedicated to families with children.

Most states provide separate areas within common facilities to host them: AT, BE, BG, HR, CY, FR, DE, IE, IT, MT, PL, PT, RO, SI, ES, FI, CZ, LV, LT<sup>347</sup>, NL<sup>348</sup>, LU, SE.

Some countries have established dedicated facilities for families with children: BE, FR, IE, IT, PT, SK.

A particular challenge has emerged concerning the accommodation of men with their families.

- CY:<sup>349</sup> Families can be accommodated in the Safe Zone, however in most cases they will be accommodated in the main section of the Pournara Reception Centre, as men, including fathers with children are not allowed to stay in the Safe Zone and the families choose not to be separated.
- IT: The Reception Decree, ensure the protection of family unity consisting of spouses and first-degree relatives: cannot separate children from parents who live in the same wing of the facility. In practice, however, fathers are often separated from rest of family in different wing or centre.<sup>350</sup>
- ES:<sup>351</sup> Men and women are often hosted in separate parts of the reception centres. As a result, families are separated, and children stay with only one of their parents.

**Finding 40:** EUMS use a range of accommodation options for unaccompanied children. Some EUMS provide suitable reception for unaccompanied children; in other EUMS, unaccompanied children are housed in unsuitable facilities.

Article 24 RCD establishes obligations on MS regarding the reception of unaccompanied children, including the obligation to appoint a representative who will assist the child in accessing the rights stemming from the Directive.

MS have made significant advances in the appointment and training of representatives, especially as this area has been subject to a certain amount of scrutiny. In some countries the guardianship system appears to meet needs (BG, IE, NL, SI, SE, LV). In other cases, challenges have been identified including:

- A lack of expertise of the representatives (AT, HR, DE, FI, EL, PL, RO),
- A shortage of guardians, which results in excessive responsibilities for those available (BE, DE, EL, HU, PL, RO)
- Delays in the appointment of representatives (MT, LU).<sup>352</sup>

<sup>347</sup> Lithuanian Ombudsman, [Report on Ensuring Human Rights and Freedoms of Foreign Nationals in Medininkai Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior of the Republic Of Lithuania](#), pp.11-12.

<sup>348</sup> Information provided by the Dutch Refugee Council, 20/09/2023.

<sup>349</sup> AIDA (April 2023), [Country Report Cyprus](#).

<sup>350</sup> AIDA (May 2023), [Country Report Italy](#).

<sup>351</sup> AIDA (April 2023), [Country Report Spain](#).

<sup>352</sup> Information provided by Passerell, Luxembourg, 15/09/2023.

The Directive also lists<sup>353</sup> four different accommodation solutions considered suitable for unaccompanied children: (a) adult relatives; (b) foster families; (c) accommodation centres with special provisions for minors; and (d) other accommodation suitable for minors. It also allows EUMS to place unaccompanied minors aged 16 to 18 in accommodation centres for adult applicants, but only if it is in their best interests.

National laws generally provide that several of the options can be used:

Table 8: Accommodation solutions in national laws

Accommodation solutions in national laws	
Individual accommodation	CY (16+), EL, FI
Foster families	AT, BG, HR, CY, FR, DE, IT, NL, PL, LU <sup>354</sup> , LV <sup>355</sup>
Centres specific to asylum-seeking unaccompanied minors	AT, BE, DE, IT, MT, NL, PT, SI
Centres for unaccompanied minors	AT, BG, HR, CY, FR, DE, EL, HU, <sup>356</sup> IE, PL, RO, ES, SE, FI, LU <sup>357</sup> , LV <sup>358</sup>
Separate wing in regular asylum facilities	AT, BE, BG, CY, IT, MT, SI, LT
Together with adult asylum seekers for minors over 16	HR, MT, NL, PT, RO, LU <sup>359</sup>

Source: AIDA. Information on EE, FI, LT, LV, LU provided, respectively, by: Estonian Refugee Council and Estonian Human Rights Centre; Finnish Refugee Advice Centre; Lithuanian Red Cross; Latvian Centre for Human Rights; Passerell.

A specific problem emerges as connected to age assessment procedures, that present various shortcomings in various national contexts, and can as such condition the possibility for unaccompanied minors to see their special reception needs addressed.<sup>360</sup>

**Finding 41:** Most EUMS provide specialised reception facilities for single women.

Most countries either dispose of separate facilities only dedicated to reception of single women or establish separate areas in common reception facilities (AT<sup>361</sup>, BG<sup>362</sup>, BE, CY<sup>363</sup>, HR, FR, DE, IE, IT, LU,

<sup>353</sup> Article 24(2) RCD.

<sup>354</sup> Not used in practice. Information by Passerell, 25/09/23.

<sup>355</sup> Section 9(6) [Asylum Act](#).

<sup>356</sup> Although it should be noted that The Children's Home's closure was announced in 2016 and a deadline to shut the Home down has been proclaimed several times, the Home remains open at the time of writing.

<sup>357</sup> Article 21(1) Reception Law.

<sup>358</sup> Section 9(6) [Asylum Act](#).

<sup>359</sup> Article 21(2) Reception Law.

<sup>360</sup> See Section 2.2.1 Models/practice and statistics on EUMS' use of detention; ECRE (December 2022), [Legal Note n.13: Age Assessment in Europe](#).

<sup>361</sup> In Federal initial centres.

<sup>362</sup> Information provided by the Bulgarian Helsinki Committee, 22/09/2023.

<sup>363</sup> In Kofinou, and in the safe zone of the Pournara centre.

MT, PL, PT, ES, LT<sup>364</sup>, NL<sup>365</sup>, LU, LV, SE). However, this does not completely exclude that, generally for issues related to capacity (AT) or nature (NL, in emergency reception places) of the centres, women are in practice accommodated in the same spaces as men.

**Finding 42:** Some EUMS provide specialised reception for vulnerable applicants other than families with children, unaccompanied children and single women, including, variously, victims of torture and violence, LGBT applicants, and people with disabilities.

Not all MS envision, in laws or practice, that additional accommodation arrangements should address the needs of other vulnerable categories of applicants. Nevertheless, several relevant examples exist in national practices.

### Reception of victims of torture and violence

Regarding victims of violence and torture, the Directive explicitly mentions their right to receive the necessary treatment for the damage caused by such acts, in particular through access to appropriate medical and psychological treatment or care, as well as the obligation for MS to provide training for staff on this specific topic.<sup>366</sup>

As no specific obligation is foreseen in terms of creation of dedicated reception places, the needs of this category of vulnerable applicants are in general addressed by MS from the perspective of access to specialised healthcare.<sup>367</sup> There are however examples of countries in which additional steps are taken to ensure that their needs in terms of reception are addressed, such as the creation of centres dedicated victims of trafficking (e.g. BE, ES, IT)<sup>368</sup>, or accommodation in separate rooms is granted to applicants who have suffered from trauma (e.g. HR).

### Reception for LGBT+ applicants

Despite the risks of discrimination and mistreatment LGBT applicants might encounter in common reception centres,<sup>369</sup> most countries do not foresee specific reception places for this category of applicants. Exceptions to this rule are AT, BE,<sup>370</sup> DE, IT,<sup>371</sup> and SI. In the NL, the national reception authority (COA) do not provide separate centres for centres for women, LGBT persons or other categories, although there have been calls for their creation from civil society. According to a study,<sup>372</sup> the COA has recently developed a policy to increase the quality of life for LGBT persons hosted in its centres, by providing specialised training of officials and ensuring officials grant special attention to this vulnerable group.

<sup>364</sup> Lithuanian Ombudsman (July 2022), [Report on Ensuring Human Rights and Freedoms of Foreign Nationals in Medininkai Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior of the Republic Of Lithuania](#), pp.11-12.

<sup>365</sup> Information provided by the Dutch Refugee Council, 20/09/2023.

<sup>366</sup> Article 25 RCD.

<sup>367</sup> See Section 2.3.1 Models and practices.

<sup>368</sup> It should be noted that these are in some cases not only dedicated to asylum seekers and are generally not under the direct management of national reception authorities.

<sup>369</sup> Ranibow Welcome! project, [The Reception of LGBTIQ+ Refugees In Europe](#), p.64.

<sup>370</sup> One centre was opened in 2022.

<sup>371</sup> Some reception places managed by NGOs within the national SAI network are dedicated to LGBTIQ+ applicants.

<sup>372</sup> Regioplan (October 2021), [LHBTI's, bekeerlingen en religieverlaters in de asielopvang](#).

## People with disabilities and special medical needs

Various countries (AT, BE, FR, HR, DE, IT, NL, PL, SE, LU, IE, LV, LT, PT) have, within their reception networks, dedicated facilities for applicants with disabilities and special medical needs, or offer specific support to persons with these characteristics.

- AT:<sup>373</sup> At the federal level, some places in facilities of the state or run by NGOs are reserved for traumatised or ill asylum seekers. In recent years, number of places for asylum seekers with disabilities or other special needs of care increased. There is one special care centres for people in need of special medical care at the federal level, with quality medical care for patients in need of both regular or special care.

In some cases, however, said structures lack the necessary capacity to address the needs of all applicants with disabilities or other medical needs (e.g. AT, BE, IE, IT), or are not evenly distributed on the national territory (e.g. AT, DE), thus creating situations of discrimination based on the province or state in which applicants are hosted. In other countries no dedicated facilities or reception places are available for these applicants (BG, CZ, HU, LT, LV, MT, SI).

### 2.5.2. Findings and good practices

**Finding 43:** Identification of vulnerabilities is often too late in many EUMS.

To ensure special reception needs are addressed, a proper assessment of vulnerabilities should be conducted early on in the asylum procedure. In some cases, early identification appears not to be happening for reasons that include a lack of training and experience of staff in charge of the assessment and language barriers.

In many cases, the evidence suggests that either too little time is dedicated to vulnerability assessments at the time of registration, meaning that only visible vulnerabilities are identified (e.g. very young age, sex/gender, physical disabilities) or assessment of vulnerabilities is not undertaken systematically. Examples include: BE, BG, DE, EL, HU,<sup>374</sup> IE, IT, MT, NL.

- DE:<sup>375</sup> The national Asylum Act does not foresee a systematic assessment procedure for vulnerable persons. A systematic screening for vulnerabilities is only in place in three Federal States. Practices differ between Federal States and municipalities, as not all Federal States have laws or protection concepts in place that apply to all accommodation centres for asylum seekers.

**Finding 44:** There is a lack of adequate facilities and poor living conditions for vulnerable applicants in many EUMS.

A major issue affecting national systems is the lack of dedicated facilities – or lack of capacity within existing facilities – for the reception of vulnerable applicants, regardless of the type of vulnerability. This increases risks connected to privacy and safety for vulnerable asylum seekers. It is particularly

<sup>373</sup> AIDA (May 2023), [Country Report Austria](#).

<sup>374</sup> Until 21 May 2020, in the transit zone regime even obvious and visible vulnerabilities, such as pregnancy, old age, being an unaccompanied minor or disability were absolutely disregarded and only in exceptional cases were the applicants transferred to reception centres from the confinement and dire conditions the transit zones entailed. See AIDA (April 2021), [Country Report Hungary](#).

<sup>375</sup> AIDA (April 2023), [Country Report Germany](#).

clear in cases where there are no separate spaces for single men and women<sup>376</sup> or for adults and unaccompanied minors within reception centres.

A related challenge is the inadequacy of living conditions for vulnerable applicants in certain countries. That is especially the case for families with minor children (CY, FR, EL, IE, IT, MT, SI, ES, CZ) and unaccompanied children (AT, ES, HR, FR, EL, HU, IT, NL).

For unaccompanied children, reports suggest countries provide facilities that are not suitable, such as dormitories, hotels, "safe zones", emergency reception centres and closed centres. Alternatively, children may be hosted in centres without education support or specialised services (AT, BG, HR, FR). Another worrying practice is accommodation of unaccompanied children with adults, even when they are under 16 years of age (AT<sup>377</sup>, BG, CY, IT, SI, LU<sup>378</sup>). Dangerous situations may develop<sup>379</sup> and risks for the children involve harassment and sexual abuse.<sup>380</sup>

### Good practices:

Encouraging initiatives can also be highlighted, including:

- Dedicated reception places available for underage pregnant girls or young girls with children in BE,<sup>381</sup>
- Programmes for independent living for unaccompanied minors over the age of 16 in CY.<sup>382</sup>

<sup>376</sup> For example, in SE there were reports of women sharing sanitary facilities with older men being victims of sexual harassment or sexual violence. See GREVIO (April 2021), [Second General Report on GREVIO's activities](#).

<sup>377</sup> According to the NGO Asylkoordination Österreich (information provided on 20/09/2023), there have been cases of unaccompanied minors hosted in reception facilities together with adults at the Federal level.

<sup>378</sup> This became a particular concern in 2023, due to the significant increase in the number of unaccompanied minors in the country. As a consequence, children as young 8 or 9 are accommodated in the same centres as adults. Information provided by Passerell, 15/09/23.

<sup>379</sup> Such as the case of "safe zones" for unaccompanied minors in Bulgaria and Cyprus. BG: Opened in 2019/2020, they are located in the reception-and-registration centre. Children were provided round-the-clock care and support tailored to their specific and individual needs. Total capacity 288, insufficient. Increased arrivals, children are accommodated in mixed dormitories without proper care, safety and security measures. Unaccompanied minors in the main centre are accommodated in mixed dormitories and in many cases in rooms with unrelated adults. children often complain to be deprived of sleep due to noise, gambling or alcohol consumption during the night by the adults accommodated in their rooms, or by being forced to run errands for them such as shopping, laundering or cleaning.

<sup>380</sup> See AIDA (April 2023), [Country Report Cyprus](#); AIDA (April 2023), [Country Report Spain](#).

<sup>381</sup> AIDA (April 2023), [Country Report Belgium](#).

<sup>382</sup> AIDA (April 2023), [Country Report Cyprus](#).

### 3. Part III: EU Support and Enforcement

#### 3.1. EU support to Member States in the implementation of the legislative framework on reception

##### Key findings

- **Finding 45: EU funds have supported implementation of the RCD, however there is potential for funds to improve the current state of only partial implementation.**

The AMIF 2014-20 made a positive but uneven contribution to the implementation of reception conditions in the EU, with AMIF measures often prioritising basic reception over other aspects. The ESF's contribution is less certain, although it is clear that asylum seekers were included in ESF measures on employment and training in some instances. EU funds are in some instances supporting reception conditions that do not meet legal obligations. Of particular concern is 'reception' accommodation provided in lower standard temporary and/or detention facilities that do not meet the standards specified in the recast Directive, and the prolonged use of lower standard emergency accommodation within mainstream reception systems.

- **Finding 46: AMIF EMAS has proved to be a multifunctional and flexible tool.**

The function of AMIF EMAS varied depending on the specific national contexts in which it was implemented, where it: supported crisis responses that the state could not (Bulgaria, Greece, Italy and others); demonstrated solidarity through cost reimbursements (Germany, Sweden); enabled piloting of new national approaches for reception conditions (Italy). In contrast to the funding distribution and programme amendment modalities for AMIF national programmes, EMAS provided a route for the Commission to disburse funds directly and more quickly to individual EUMS, according to prevailing needs. The Commission's management role usefully enabled the implementation of EMAS reception measures in collaboration with non-state actors (mainly international organisations), in contexts where state capacities could not fully manage the emergency response. Although the EMAS grant-making process is highly un-transparent, the Commission's management role also enabled an open route to accessing EU funds, via which EUMS could signal a potential need for EMAS support without the need for formal programme amendments or budgetary adjustments. Finally, during 2014-17 EMAS was an effective vehicle for securing large budgetary increases for reception conditions from within the Union budget in response to emergency needs.

- **Finding 47: There is a lack of transparency on the implementation of EU funds for reception.**

No systematic data on the contribution of ESF 2014-20 measures to implementing reception conditions is available, although it is clear that ESF funding did contribute to this area. For AMIF EMAS, a lack of publicly available information on grants, actions implemented and impact/results, at both EU and national level, mean the instrument remains highly un-transparent.

- **Finding 48: Inadequate investment in reception capacity creates a need for support from EU funds.**

Inadequate reception capacity in EUMS pre-dates the 2015 crisis,<sup>383</sup> suggesting EU funds for reception were in many instances addressing long-term structural problems rather than emergencies. Additionally, in some EUMS significant AMIF EMAS resources were used to

<sup>383</sup> AIDA (2019), [Housing out of reach? The reception of refugees and asylum seekers in Europe](#), p.13.

create/strengthen reception infrastructure and coordination where these elements were lacking.<sup>384</sup>

- **Finding 49: EU funds support crisis response rather than structural improvement.**

Responding to the 2015 crisis caused EU funds to pivot away from long-term structural improvement and convergence of standards and toward crisis response, at both EU and national level. AMIF EMAS was central to supporting responses to the crisis, but there is little evidence that EMAS prompted or was accompanied by measures for longer term reception improvement or resilience.

- **Finding 50: There were Insufficient initial budget allocations in the last MFF.**

Allocation of AMIF and ESF shared management funds to EUMS for 2014-20 did not sufficiently capture changing national needs in relation to migration (including reception conditions) during the implementation period. Substantial budget increases for AMIF EMAS during 2014-20 demonstrate the extent to which initial budget allocations were insufficient to meet reception needs from 2015.

### 3.1.1. EU funding available to support expenditure on reception (focus on current MFF)

This section includes the following points:

- The relevant sections of the legal framework (with reference to reception in financial instruments).
- The amount of EU funding available for reception conditions and the types of activities supported.
- The implications of the current revision of the MFF to increase funding for reception.
- The amounts of funding allocated and spent per Member State and per activity in previous MFFs.
- A comparison of amounts of funding allocated between previous and current MFF.
- Modalities of funding provision and main benefiting authorities and actors.
- Tools for monitoring the use of funding at national and EU levels.
- As assessment of the effectiveness of funding (summary of results from reports, evaluations and research where available).

## Reception in the financial instruments

### Asylum, Migration and Integration Fund (AMIF) 2021-27

The bulk of AMIF support for reception conditions is found in the Fund's first specific objective (SO1) set out in the Regulation establishing the instrument 'strengthening and developing all aspects of the Common European Asylum System'. In SO2 'promoting and contributing to the effective integration and social inclusion of third-country nationals', measures supported by the Fund can be implemented in reception contexts, and asylum seekers should participate 'where appropriate'.<sup>385</sup>

<sup>384</sup> European Commission (2018), *Interim Evaluation of the Asylum, Migration And Integration Fund: Final Report*, pp.419, 451, 509 (hereafter '[AMIF Interim Evaluation Report](#)').

<sup>385</sup> More horizontal reception conditions measures, such as staff training and strengthening child safeguarding and guardianship systems, are supported under the Fund's general policy objective, alongside best interest of the child



Table 9: AMIF 2014-17 contribution to reception conditions

Specific Objective	Type of activity supported (reception conditions)
SO1: Asylum	<ul style="list-style-type: none"> <li>• Material aid.</li> <li>• Identifying applicants with special procedural/reception needs,</li> <li>• Specialised psychosocial and rehabilitation services.</li> <li>• Establishing/improving small-scale reception accommodation.</li> <li>• Developing protection systems for children in migration.</li> <li>• Effective alternatives to detention, particularly for unaccompanied minors/families.</li> </ul>
SO2: Integration	<ul style="list-style-type: none"> <li>• Assessment and recognition of skills and qualifications acquired in a third country.</li> <li>• Tailored support for third-country nationals (education, language and training).</li> <li>• Adapted education, healthcare and psycho-social support services.</li> <li>• Measures to promote equality of access to services and non-discrimination.</li> </ul>

Source: Annex III (2-3), AMIF 2021-27 Regulation.

Support for reception conditions is the central rationale of AMIF Emergency Assistance (EMAS), included in the Fund's Thematic Facility. Mobilised in three specific scenarios of mass migratory influx, EMAS aims to alleviate pressure on national reception and asylum systems.<sup>386</sup>

More horizontal reception conditions measures, such as staff training and strengthening child safeguarding and guardianship systems, are supported under the Fund's general policy objective, alongside best interest of the child assessments.<sup>387</sup>

### European Social Fund Plus (ESF+) 2021-27

The ESF+ does not directly reference reception, although it does introduce a specific objective (SO) dedicated to 'promoting socio-economic integration of third-country nationals, including migrants' (SO9).<sup>388</sup> Asylum seekers are not legally excluded from any element of ESF+ support,<sup>389</sup> and reception conditions can be supported under the Fund's remaining 12 SOs in five areas<sup>390</sup>:

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assessments. Annex III(1), [Regulation \(EU\) 2021/1147](#) establishing the Asylum, Migration and Integration Fund, adopted on 7 July 2021 (hereafter 'AMIF 2021-27 Regulation').

<sup>386</sup> Art.31(1), [AMIF 2021-27 Regulation](#).

<sup>387</sup> Annex III(1), [AMIF 2021-27 Regulation](#).

<sup>388</sup> Art.41(i) [Regulation \(EU\) 2021/1057](#) establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013, adopted on 24 June 2021 (hereafter 'ESF+ Regulation').

<sup>389</sup> Art.2(2), [ESF+ Regulation](#). Past EC guidance has recommended asylum seekers are included as ESF beneficiaries solely in relation to labour market participation, vocational training and children's education (see for example European Commission (2016) [Support to asylum seekers under the ESF and FEAD](#)).

<sup>390</sup> Art.4(1), [ESF+ Regulation](#).

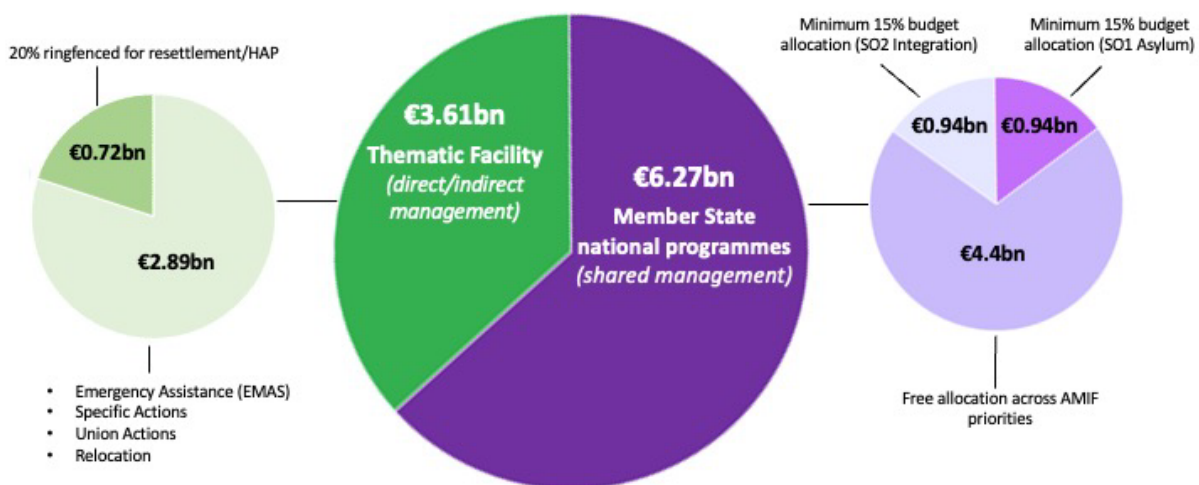
- Labour market integration, including vocational training (SOs 1-7).
- Children's education, including childhood education and care (SO 6).
- Access to health and social care services (SO 11).
- Socioeconomic integration of TCNs, migrants, and marginalised communities (SOs 8-10, 12).
- Material assistance (SO 13).

### 3.1.2. Amount of EU funding for reception conditions 2021-27

While the AMIF and ESF+ do not ring-fence specific resources for reception conditions, it is possible to identify wider categories with ring-fenced amounts from which reception measures might be supported (alongside other measures).

#### AMIF 2021-27

Figure 1: AMIF 2021-27 available budget amount



Source: Art.10, Art.16(2) and Art.11, AMIF 2021-27 Regulation.

EUMS must programme 15% of national programme resources to SO1 and SO2<sup>391</sup>, respectively, although there is no corresponding minimum spend requirement.<sup>392</sup> The AMIF uses a higher co-financing rate<sup>393</sup> to incentivise specific programme actions under SO1, including those targeting vulnerable persons with special reception/procedural needs.<sup>394</sup> Emergency Assistance (EMAS) is included in the AMIF Thematic Facility, alongside Union and Specific Actions and resettlement. The 2021-22 Thematic Facility Work Programme earmarks a minimum of €60m for EMAS, although no similarly ring-fenced allocation is made for 2022-25.<sup>395</sup>

<sup>391</sup> Art.16(2), [AMIF 2021-27 Regulation](#).

<sup>392</sup> Rubio, E. (2022) [Jacques Delors Institute Policy Brief: What the EU budget can and cannot do in response to the war in Ukraine](#), p.8.

<sup>393</sup> 90%, against a standard co-financing rate of 75%.

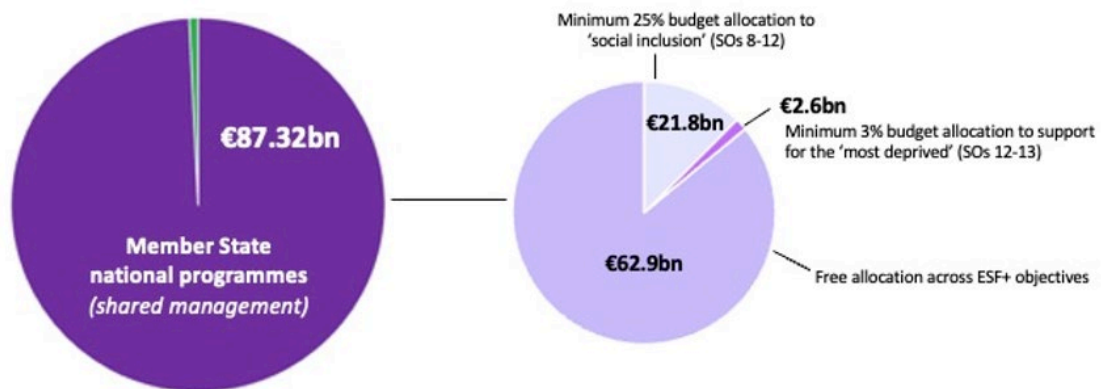
<sup>394</sup> Annex IV, [AMIF 21-27 Regulation](#).

<sup>395</sup> European Commission Implementing Decisions on the financing of components of the Thematic Facility under the Asylum, Migration and Integration Fund and adoption of the Work Programme: for 2021 and 2022 ([C\(2021\) 8458](#)).

Some Thematic Facility resources programmed for 2021-22 were reallocated to EMAS and disbursed to five EUMS.<sup>396</sup> This reduction in Thematic Facility funds led to the cancellation of planned Union Action calls, effectively removing (at least temporarily) the only direct route to accessing AMIF funds for many CSOs.<sup>397</sup>

## ESF+ 2021-27

Figure 2: ESF+ 2021-27 available budget amounts



Source: Article 7, ESF+ Regulation.

EUMS are required to programme a minimum 25% of ESF+ national resources to measures contributing to the 'social inclusion policy area' programmed under SOs 8-12,<sup>398</sup> and 3% to assistance to the 'most deprived' under SOs 12 and 13.<sup>399</sup> ESF+ does not require budget allocations specifically to reception conditions at the programming stage.

### 3.1.3. Reception in the mid-term review of the MFF 2021-27

A targeted revision of the MFF 2021-27 launched in June 2023 calls on EUMS to contribute an additional €65.8bn to an adjusted EU budget for 2021-27. An additional €2bn is proposed for MFF budget Heading 4 'Migration and Border Management', a 10% increase under this heading for 2021-27.<sup>400</sup>

The review identifies a need for additional financial support to respond to migratory pressure and implement the New Pact on Migration and Asylum, identifying the screening and border procedure, reception capacity, relocation and returns as priorities for funding.<sup>401</sup> Although the review notes

[November 2021](#)); for 2023, 2024 and 2025 ([C\(2022\) 8340, November 2022](#)) (hereafter AMIF Thematic Facility Work Programme 2021-22/2022-25).

<sup>396</sup> Poland, Hungary, Slovakia, Czechia and Romania. ECRE (2022), [Displacement from Ukraine: the EU's financial response \(Policy Note\)](#), p.3.

<sup>397</sup> Four AMIF Union Action calls planned for early 2022 were cancelled (inclusion at regional and local level, access to healthcare, digital skills, and community sponsorship). ECRE *ibid.*, pp.7-8.

<sup>398</sup> Art.7(4), [ESF+ Regulation](#).

<sup>399</sup> Art.7(5), [ESF+ Regulation](#).

<sup>400</sup> ECRE & PICUM (2023) [Revision of the Multiannual Financial Framework: Key Recommendations on Migration and Asylum](#), p.5.

<sup>401</sup> European Commission (20 June 2023), [Communication on the Mid-term revision of the Multiannual Financial Framework 2021-2027 \(COM\(2023\) 336\)](#), p.3.

critical pressure on Member State reception and integration capacities as a key challenge for the EU budget, it states that funding for these 'emergencies' is being provided via AMIF and Cohesion Funds.

The strong implication is that the proposed additional €2bn will support implementation of the Pact outside of general reception conditions, with support for reception capacity and infrastructure solely in the context of the screening and border procedure and relocation. This is reinforced by the review's reference to the General Approach agreed by the Council on 8 June 2023,<sup>402</sup> which prioritises implementation of both these elements.<sup>403</sup>

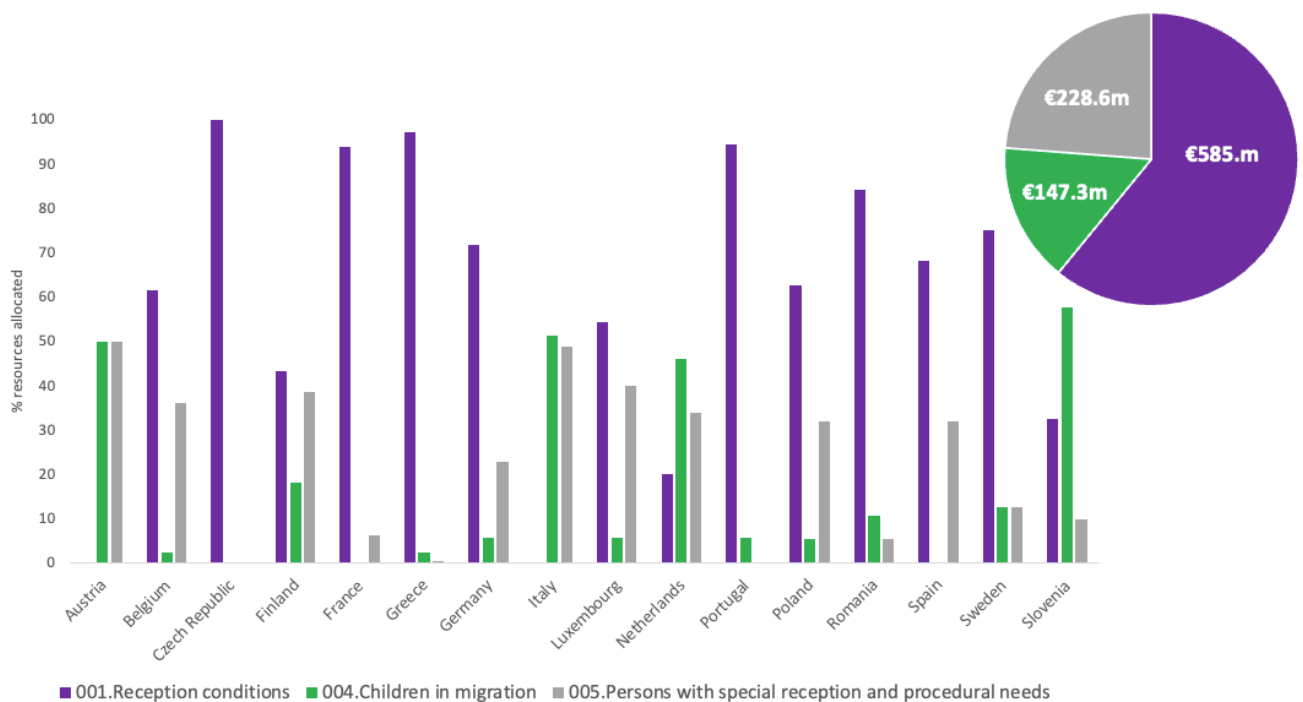
### 3.1.4. Budget allocations for reception conditions, AMIF & ESF+ (2021-27)

#### AMIF 2021-27

The 2021-27 AMIF amended the financial planning aspect of **national programmes** to introduce a requirement for EUMS to programme specific budget amounts to broad areas of action within each of the Fund's four objectives, known as 'intervention types/fields'.<sup>404</sup>

Within SO1 (asylum), those relevant to reception conditions are *001 Reception conditions*, *004 Children in migration* and *005 Persons with special reception and procedural needs*.

Figure 3: AMIF 2021-27: *proportional national budget allocations to reception intervention types/fields 001, 004, 005, cumulative*



Source: Selected AMIF national programmes for 2021-27.

<sup>402</sup> European Commission (20 June 2023), *Communication on the Mid-term revision of the Multiannual Financial Framework 2021-2027* (COM(2023) 336, p.2).

<sup>403</sup> See European Council of the European Union, *Main results: Justice and Home Affairs Council, 8-9 June 2023*, (last accessed 14 September 2023).

<sup>404</sup> The introduction of 'intervention types/fields' in the 2021-27 AMIF prevents any useful comparison with national allocations for reception conditions for the 2014-20 budgetary period.

A selection of 16 EUMS for which information is available<sup>405</sup> programmed an average of 44.67% of SO1 resources and 19.5% of all national programme resources to 001, 004 and 005.

The majority of these resources (61%) are programmed for reception conditions (001). Just under 24% of resources are programmed for measures targeting vulnerable applicants (005, related to both reception conditions and asylum procedures). Far lower allocations (15%) are programmed for measures relating to children in migration, despite the Commission highlighting actions in this area as a priority for national programmes going forward in the 2017 AMIF 2014-10 mid-term review.<sup>406</sup>

AMIF EMAS resources are included in global grant amounts detailed in multiannual Thematic Facility Work Programmes: €331m for 2021-22 (€60m earmarked for EMAS) and €341m for 2023-25.<sup>407</sup> The allocation for all Thematic Facility grants is substantially less than the €2.4bn solely for EMAS during 2014-20, risking a new 'initial miscalculation'<sup>408</sup> of EMAS budgets should further emergencies occur. EMAS grants are not entirely reception-related, but aim to alleviate pressure on the 'reception, asylum and return'<sup>409</sup> systems of affected EUMS. A new EMAS grant stream supporting EUMS 'exposed to migratory pressure...due to their geographical position' is introduced, from 2023-25 open to international organisations and CSOs only.<sup>410</sup> EUMS can include Specific Actions supporting 'reception, asylum and return systems under pressure' in national programmes from 2023-25, embedding crisis response into mainstream national programming.

### ESF+ 2021-27

As in Figure 5, in contrast to the ESF 2014-20 (see below), 2021-27 ESF+ operational programmes in selected 19 EUMS satisfy the new minimum 25% allocation requirement for the 'social inclusion policy area'<sup>411</sup> (SOs 8-12), implying this measure has had its intended impact. That 11 EUMS programmed 30-40% (and Ireland 50.5%) suggests increased budgetary attention to social inclusion may also be needs driven.

Also in Figure 5, 15 EUMS increased the proportion of national programme resources allocations to the broad social inclusion policy area from the 2014-20 (see below) to 2021-27 budgetary periods, seven by 10% or more. Those increasing allocations most sharply were in general smaller EUMS such as Lithuania, Cyprus, Ireland and Slovenia. Additionally, all 22 EUMS for which information is available

<sup>405</sup> Selected AMIF national programmes represent over 93% of total AMIF contributions programmed under shared management for the period 2021 - 2027. Data is based on European Commission Cohesion Open Data Platform at [cohesiondata.ec.europa.eu](https://cohesiondata.ec.europa.eu), last accessed 7.11.23.

<sup>406</sup> [AMIF Interim Evaluation Report](#), p.52.

<sup>407</sup> European Commission Implementing Decisions on the financing of components of the Thematic Facility under the Asylum, Migration and Integration Fund and adoption of the Work Programme: for 2021 and 2022 ([C\(2021\) 8458, November 2021](#)); for 2023, 2024 and 2025 ([C\(2022\) 8340, November 2022](#)).

<sup>408</sup> Rubio, E., *ibid.*, p.7

<sup>409</sup> Here, EMAS 2021-27 Work Programmes amend the use of EMAS to include 'return operations' (rather than 'measures necessary for the preparation of return operations' as in 2014-20 EMAS), potentially indicating increased costs for eligible return measures that would reduce available budgets for reception conditions. AMIF Thematic Facility Work Programmes for [2021-22](#) and [2023-25](#).

<sup>410</sup> Although IO/CSO EMAS beneficiaries under this grant stream must 'coordinate' with national authorities, EMAS is here incorporating 2016 legislative changes enabling direct financial assistance to these actors without formal national authority involvement. IOs/CSOs will therefore lead implementation of EMAS resources programmed for action in an as yet undefined group of border EUMS in which migratory pressure is deemed to be caused by their 'geographical position'. See AIDA (2017), [Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe](#), p.27, referring to [Council Regulation \(EU\) 2016/369](#) of 15 March 2016 on the provision of emergency support within the Union.

<sup>411</sup> Art.7(4), [ESF+ Regulation](#).

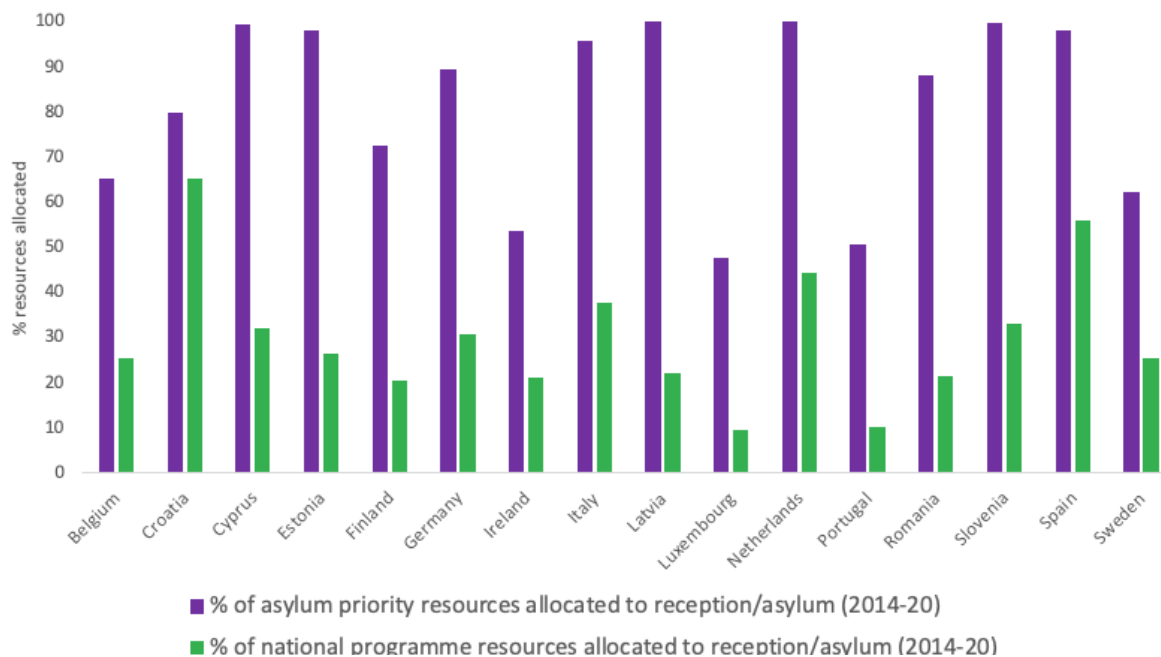
met the 3% minimum allocation requirement for ESF+ SO13 'material assistance to the most deprived', with seven programming more than 5%.

### 3.1.5. Programming and implementing EU funds for reception in 2014-20 (AMIF & ESF)

#### Asylum, Migration and Integration Fund (AMIF) 2014-20

Budgets and programming

Figure 4: AMIF 2014-20: Proportional national budget allocations to NO1 reception and asylum



Source: Selected AMIF national programmes for 2014-20.

For the 2014-20 budgetary period, 12% (€0.38 billion) of all AMIF funds was directly managed by the European Commission to support Union Actions, EMAS and technical assistance.<sup>412</sup>

AMIF EMAS budget amounts were programmed via Annual Work Programmes published during 2015-20. The 'migration crisis' of 2015 saw an initial €95m set aside for EMAS during 2014-17 scaled up to €929m. A substantial amount of these new funds were redeployed from other budgetary headings,<sup>413</sup> and the extensive use of EMAS reduced AMIF resources for Union actions.<sup>414</sup> EMAS Work Programmes for 2018-20 allocated an additional €1.48bn in budgetary resources,<sup>415</sup> bringing the global EMAS programmed amount for 2014-20 to €2.41bn.

<sup>412</sup> Westerby, ECRE/UNHCR (2018), *Follow the Money: Assessing the use of EU Asylum, Migration and Integration Fund (AMIF) funding at the national level*, p.14.

<sup>413</sup> Rubio, E., *ibid.*, p.7.

<sup>414</sup> [AMIF Interim Evaluation Report](#), p.26.

<sup>415</sup> €126.6m in 2018, €616.9m in 2019, €740m in 2020. Annexes to *Commission Implementing Decisions on the adoption of the work programme and the financing for emergency assistance within the framework of the Asylum, Migration and Integration Fund*, for 2018 ([C\(2018\) 8902](#)), 2019 (not provided) and 2020 ([C\(2020\) 8958](#)).

Approximately 88% (€2.75 billion) of all AMIF funds were allocated to EUMS implementing AMIF national programmes.<sup>416</sup> **Selected** 16 EUMS for which information is available programmed an average of 81.3% of SO1 (asylum) resources, and 30% of all AMIF national programme resources to the 'reception/asylum' sub-objective<sup>417</sup>.

### Activities funded<sup>418</sup>

Table 10: AMIF 2014-17 contribution to reception conditions

AMIF instrument	Main contributions to reception conditions (2014-17)
<b>National programmes</b>	<ul style="list-style-type: none"> <li>• New reception centres.</li> <li>• Improvement/renovation of existing reception accommodation.</li> <li>• Support services (e.g. language assistance).</li> <li>• Provision of food and medical care to asylum seekers.</li> </ul>
<b>EMAS</b>	<ul style="list-style-type: none"> <li>• Material aid (including assistance at the border).</li> <li>• Renovating existing accommodation for reception use.</li> <li>• Renting/purchasing temporary accommodation (incl. tents and containers).</li> <li>• Temporary staff deployment (doctors, social workers, psychologists/therapists)</li> <li>• First assistance and legal advice.</li> <li>• Identifying Victims of Trafficking at landing points.</li> </ul>

Source: AMIF Interim Evaluation Report, pp.51 & 92.

### Main beneficiaries

Information on the type of beneficiaries implementing AMIF national funds is not available for reception conditions. At programme objective level in 2014-17, 61% of SO1 (asylum) funds were implemented by national authorities and 30% by CSOs.<sup>419</sup> In EUMS allocating a majority of resources to CSOs, these actors operate large parts of national asylum reception systems.<sup>420</sup> During 2017-20, national authorities and international organisations were the main EMAS beneficiaries. IOM and UNHCR implemented large-scale EMAS actions supporting reception conditions in Bulgaria and Greece, in the latter alongside the European Asylum Support Office.<sup>421</sup>

<sup>416</sup> Westerby, ECRE/UNCHR, *ibid.* p14.

<sup>417</sup> It is not possible to further determine what proportion of funds under this sub-objective were programmed to support reception conditions.

<sup>418</sup> The mid-term evaluation of the AMIF provides detailed implementation information for 2014-17. Corresponding information for 2018 on is unavailable until the ex-post evaluation due to be published by the Commission in mid-2025, and transparency is further limited for this period by a lack of public access to EMAS project grant information.

<sup>419</sup> Other beneficiaries included local authorities, international organisations and 'private/public law companies' (the latter solely in Germany), Westerby, ECRE/UNHCR (2019), *Follow the Money II: Assessing the use of EU Asylum, Migration and Integration Fund (AMIF) funding at the national level, 2014-2018*, pp.20-21.

<sup>420</sup> For example, Spain (91%) and France (84%). See Westerby, ECRE/UNHCR, *ibid.*, p.21, and AIDA (2018), *Country Report: France*, p.80, and AIDA (2018), *Country Report: Spain*, p.55.

<sup>421</sup> EASO, since 19 January 2022, the European Union Agency for Asylum (EUAA).

## Results

In 2014-17, AMIF national programmes increased annual new reception places (from 1,109 new places in 2013 to 7,000 in 2017), mainly in three EUMS.<sup>422</sup> While arrivals of unaccompanied minors (UAMs) increased significantly in many EUMS during 2015-16, during 2014-17 the AMIF made a limited contribution to the considerable increase in reception places reported as adapted for UAMs<sup>423</sup> (from 21 EU places in 2014 to 15,630 by 2017<sup>424</sup>). The extent of its contribution also varied widely across EUMS: from 100% of adapted places in Bulgaria and Slovenia, to 13% in Italy (which reported 13,194 adapted places, the vast majority of places created in 2014-17) and 1% in Belgium.<sup>425</sup>

In the same period, a majority of EMAS actions (26 of 44) focused on reception conditions.<sup>426</sup> Support in Germany and Sweden (short-term housing), France (short-term housing and basic needs), and in Austria, Bulgaria and Italy on expanding reception capacities, including actions for unaccompanied minors in Italy<sup>427</sup>. Extensive support in Greece addressed humanitarian/reception assistance, temporary accommodation, and access to services.<sup>428</sup> In Germany and Sweden, EMAS was provided to national authorities as a reimbursement of prior accommodation costs, covering small proportions of the total costs borne by national budgets.<sup>429</sup>

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<sup>422</sup> France (6,000 places in 2014-17), Bulgaria (4,200 places in 2016) and Spain (4,934 places in 2017).

<sup>423</sup> [AMIF Interim Evaluation Report](#), p.52.

<sup>424</sup> *ibid.*, p.51.

<sup>425</sup> [AMIF Interim Evaluation Report](#), p.51.

<sup>426</sup> *Ibid.*, pp.35, 92.

<sup>427</sup> *Ibid.*, p.35.

<sup>428</sup> *Ibid.*, p.52.

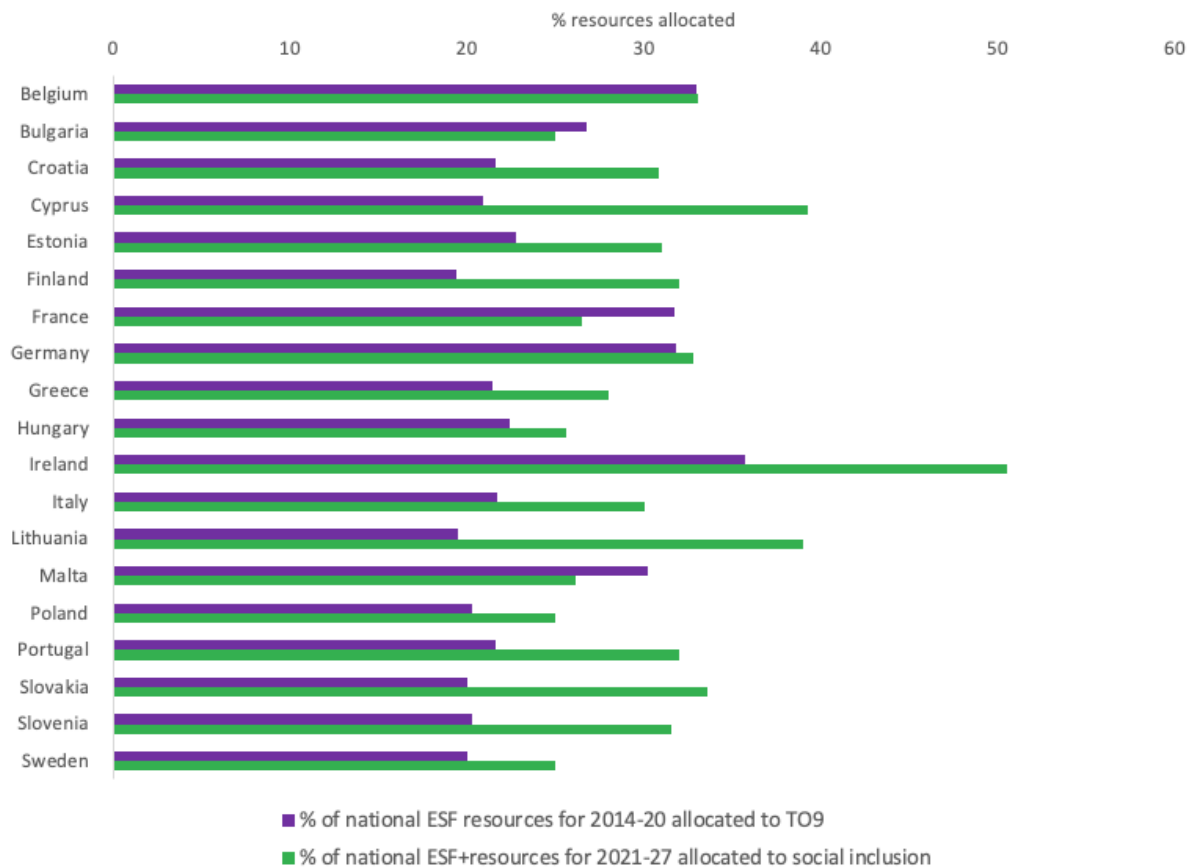
<sup>429</sup> *Ibid.*, pp.441-442, 538.



## European Social Fund (ESF) 2014-20

### Budgets and programming

Figure 5: Proportional national budget allocations: ESF 2014-20 (TO9: promoting social inclusion, combating poverty and any discrimination) & ESF+ 2021-27 (social inclusion policy area, SOs 8-12)



Source: European Commission Cohesion Open Data Platform at [cohesiondata.ec.europa.eu](https://cohesiondata.ec.europa.eu), last accessed 20.9.23.

17 of the selected 19 EUMS<sup>430</sup> programmed more than 20% of ESF national resources to TO9 'promoting social inclusion, combating poverty and any discrimination'<sup>431</sup> (although just six programmed 25% or more). In 2014-18, actions targeting those with a migrant/foreign background varied significantly between EU15 (40%) and EU13 (4%) EUMS.<sup>432</sup> Approximately 65% of EUMS targeted ESF measures at asylum seekers and refugees, with others focusing more on minorities such as Roma.<sup>433</sup>

<sup>430</sup> Selected programmes represent around 80% of total ESF+ contributions programmed under shared management for the period 2021 - 2027. Data is based on European Commission Cohesion Open Data Platform available at [cohesiondata.ec.europa.eu](https://cohesiondata.ec.europa.eu), last accessed 7.11.23.

<sup>431</sup> Art.9(9), [Regulation \(EU\) 2021/1060](#) laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, adopted on 24 June 2021 (hereafter 'Common Provisions Regulation 2021-27').

<sup>432</sup> European Commission (March 2019), [Thematic note on the European Social Fund and Youth Employment Initiative support to migrants](#), p.485.

<sup>433</sup> European Commission *ibid.*, p.2.

## Activities funded and results

As asylum seekers are included in the ESF broad target group of those with a migrant/foreign background, there is no systematic fund or programme level data on ESF support for reception conditions in 2014-20.

In 2014-18, 12% (23) of ESF operational programmes (implemented in 12 EUMS) explicitly targeted migrants, people with a foreign background and minorities, although these groups were included in broader 'disadvantaged' target beneficiaries by two thirds of EUMS. Just eight EUMS set programme-specific targets related to migrants, less than the number formally targeting migrants in programme objectives, leading to a 'lack of traceability of the achievements of operations...which poses problems for the evaluation'.<sup>434</sup>

EUMS took different approaches to the inclusion of asylum seekers in ESF programmes and measures<sup>435</sup>, and while it is clear that ESF resources were mobilised in response to the 2015 European migration crisis<sup>436</sup>, how far they supported reception conditions is largely unspecified beyond individual programme/project examples. The exception is Germany, which added a national programme-specific indicator relating to asylum seekers.<sup>437</sup>

## Main beneficiaries

97,285 ESF projects were implemented by social partners or CSOs in 2014-21, concentrated in a few EUMS (almost half in Italy).<sup>438</sup> No systematic information on the role of different beneficiaries in implementing the Fund's priorities and objectives is available until the Fund's ex-post evaluation due end 2025.<sup>439</sup> Although larger refugee-assisting NGOs are noted as beneficiaries of ESF funding at project level,<sup>440</sup> there is some evidence of low awareness of the ESF amongst potential beneficiaries assisting newly arrived immigrants and less integrated groups.<sup>441</sup>

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<sup>434</sup> European Commission (2019), [Thematic note on the European Social Fund and Youth Employment Initiative support to migrants](#), pp.22-23.

<sup>435</sup> For example, Spain's Social Inclusion and Social Economy Operational Programme for 2014-2020 included asylum seekers amongst its target beneficiaries, whereas Romania determined both asylum seekers and refugees to be eligible for only for measures under the AMIF. European Commission (October 2020), [Study supporting the evaluation of promoting social inclusion, combating poverty and any discrimination by the European Social Fund \(Thematic Objective 09\)](#), p.587, and European Commission (March 2019), [Thematic note on the European Social Fund and Youth Employment Initiative support to migrants](#), p.41.

<sup>436</sup> During implementation, thirteen EUMS reported a notable shift in target groups mainly as a result of the 2015 European migration crisis. European Commission (October 2020), [Study supporting the evaluation of promoting social inclusion, combating poverty and any discrimination by the European Social Fund \(Thematic Objective 09\)](#), pp.108-9.

<sup>437</sup> European Commission (March 2019), [Thematic note on the European Social Fund and Youth Employment Initiative support to migrants](#), pp.3-5.

<sup>438</sup> European Commission (May 2023), [ESF Synthesis Report of 2021 AIRs](#), p.15.

<sup>439</sup> Art.57(4), [Regulation \(EU\) 1303/2013](#) laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, adopted on 17 December 2013.

<sup>440</sup> European Commission (October 2020), [Study supporting the evaluation of promoting social inclusion, combating poverty and any discrimination by the European Social Fund \(Thematic Objective 09\)](#), p.138.

<sup>441</sup> European Commission *ibid.*, (October 2020) p.540.

## Monitoring and evaluation (AMIF and ESF 2014-20)

AMIF and ESF national monitoring committees<sup>442</sup> are tasked with 2014-20 programme monitoring and evaluation. In practice, the degree to which EUMS engage the required partnership and carry out these functions varies widely.<sup>443</sup> No similar national oversight mechanism exists for EMAS actions implemented in EUMS, by either states or international organisations/EU agencies.

### 3.1.6. Effectiveness of EU funds for reception in 2014-20 (AMIF & ESF)

Analysis of the distribution and available evaluations demonstrates that the Funds were partially effective in ensuring implementation of reception conditions in 2014-20.

#### Areas where EU funds had a positive impact on reception conditions

##### Ensuring basic reception during the crisis of 2015/2016

AMIF EMAS made a significant contribution to ensuring basic reception and assistance in EUMS most affected by the 2015 crisis, although a lack of publicly available information on EMAS grants, actions implemented and their impact/results mean the instrument remains highly un-transparent. For 2016-18 it is unclear what proportion of reception places supported by the AMIF were directed solely toward relocation,<sup>444</sup> a potentially limiting factor for the Fund's effectiveness in securing reception conditions for wider asylum-seeking populations.

##### Useful support from the ESF (but with limited measurement of results)

The ESF was able to provide support to asylum seekers which is allowed by the instrument. It is clear that asylum seekers were included in ESF target groups in some EUMS prior to the 2015 crisis, and that several others pivoted resources to include measures for newly arriving migrants from 2015 on (including aspects of reception conditions, and despite the ESF having no formal emergency response function). Despite evidence of good practice, there is however no systematic measurement of the ESF's effectiveness in ensuring reception conditions.<sup>445</sup>

The ESF's monitoring framework emphasises 'hard' outcomes as key measures of success, when soft outcomes might often provide a more useful framework to judge the Fund's impact for more vulnerable and 'hard-to-reach' groups. This incentivises 'creaming' (the practice of targeting funding at groups for which hard outcomes are easier to achieve), and disincentivises the Fund's inclusion of reception conditions (particularly where asylum seekers cannot legally access the labour market).<sup>446</sup>

<sup>442</sup> The Partnership Principle requires AMIF and ESF monitoring committees to include relevant public authorities (national, regional and local level), CSOs and social partners, with economic partners (ESF only) and international organisations (AMIF only).

<sup>443</sup> For the ESF see Weber, T and Pavlovaite, (February 2018), [EU Social Partners' Project on "The European Social Fund: Supporting Social Dialogue at National, Regional and Local Levels" Final report](#), pp.8-12; for the AMIF see Westerby, ECRE/UHCR (2018), [Follow the Money: Assessing the use of EU Asylum, Migration and Integration Fund \(AMIF\) funding at the national level](#), p.39, and Westerby, ECRE/UNHCR (2019), [Follow the Money II: Assessing the use of EU Asylum, Migration and Integration Fund \(AMIF\) funding at the national level, 2014-2018](#), pp.46-56.

<sup>444</sup> AIDA, *ibid.*, p.23.

<sup>445</sup> In Germany, the only Member State to measure ESF programme level results for asylum seekers, outcomes were 'significantly more successful than expected'. European Commission (2019) [Thematic note on the European Social Fund and Youth Employment Initiative support to migrants](#), pp.8-9.

<sup>446</sup> European Commission (2020), [Study supporting the evaluation of promoting social inclusion, combating poverty and any discrimination by the European Social Fund \(Thematic Objective 09\)](#), p.540.

## Support for vulnerable applicants (to some extent)

Both AMIF national programmes and EMAS effectively contributed to a range of measures to support vulnerable applicants. In existing reception accommodation, EMAS contributed to increased staffing to extend healthcare, psychosocial and trauma care services. EMAS also contributed new reception accommodation, enabling national programmes to support other extended services and support measures for vulnerable groups beyond accommodation provision.<sup>447</sup>

Initial programming of funds in national programmes were not always sufficient to meet the reception needs of increased numbers of vulnerable applicants. As part of the 2018 AMIF mid-term review, 15 EUMS proposed increasing budgets under SO1 Asylum to support reception conditions. Of these, six cited an increased need for resources to improved reception conditions for vulnerable applicants.<sup>448</sup>

Although arrivals of UAMs increased significantly from 2015, the AMIF made a limited contribution to the overall increase in reception places adapted for UAMs. The extent to which the Fund contributed in this area also varied widely across EUMS: in some it supported 100% of all reported adapted places, providing crucial support for reception conditions, while in others it played a complementary role alongside significant contributions from other funding sources (presumably national budgets). For the latter, the AMIF could potentially play a bigger role as a solidarity tool supporting reception places adapted/created for UAMs, even where national budgets and capacities can absorb these costs.

### AMIF EMAS as a solidarity tool

EMAS was an effective tool for solidarity with EUMS affected by migratory pressure, supporting both national crisis responses and reimbursements of reception costs.

## Areas in which the impact of EU funds was more limited

### Quality of reception

Concerns persist as to the quality of reception conditions supported by the AMIF during 2014-20.

The hotspots were consistently affected by severe overcrowding, unsanitary facilities, poor maintenance, insufficient food, and a lack of interpreters and psychologists required to meet basic reception needs.<sup>449</sup> Overcrowding also affected conditions in reception facilities outside of hotspots, and in some instances the quality of basic reception conditions provided to applicants deteriorated through the funding period.<sup>450</sup>

Several EUMS (those under severe migratory pressure and those not) failed to make adequate reception accommodation provisions for vulnerable applicants during 2014-17, particularly affecting families and UAMs.<sup>451</sup> Restrictions on the movements of applicants created detention conditions within hotspots and in border/transit areas,<sup>452</sup> and in several EUMS de facto detention was in place

<sup>447</sup> [AMIF Interim Evaluation Report](#), p.50.

<sup>448</sup> *ibid.*, pp.386-392.

<sup>449</sup> See European Union Agency for Fundamental Rights (March 2019), [Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy](#) and AIDA (2017), [Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe](#), pp.30-31.

<sup>450</sup> AIDA, *ibid.*, p.31.

<sup>451</sup> AIDA. *Ibid.*, pp.35-38.

<sup>452</sup> ECRE (2018), [Boundaries of liberty: Asylum and de facto detention in Europe](#), pp.20-21.

for applicants in reception facilities who could not exercise their theoretical right to leave due to geographical location, extensive reporting requirements and/or limited financial resources.<sup>453</sup>

The AMIF undoubtedly resourced essential reception measures taken in response to the crisis, and in several EUMS provided crucial support without which implementation would not have taken place.<sup>454</sup> However, concerns also persist as to how far EU funds for reception supported implementation of reception conditions obligations as set out in the recast Directive.

The Commission and some EUMS designated emergency (and sometimes detention) facilities affording minimal conditions as available 'reception capacity', despite their not meeting standards set out in the recast Directive.<sup>455</sup> In several EUMS, emergency accommodation facilities devised as temporary solutions to cover housing shortages remained in use several years later, as default accommodation options within national reception systems.<sup>456</sup> By supporting the use of lower standard emergency accommodation outside of the 'exceptional' circumstances and 'as short as possible' time periods specified in the recast Directive,<sup>457</sup> the AMIF contributed to an institutionalisation of the use of lower standard emergency accommodation within mainstream national reception systems.<sup>458</sup>

### **Emergency shelter versus other reception conditions**

The 2015 crisis caused many EUMS to pivot AMIF national resources toward reception, and within spending on reception conditions to prioritise first assistance, emergency accommodation and basic needs. This focus on emergency and basic reception needs meant the AMIF was less successful in ensuring the reception conditions obligations that cover access to the labour market, training and education.

### **Sustainable improvement of national reception capacities**

The AMIF had limited effectiveness in ensuring long-term structural improvements for reception. For 2020, EASO (now EUAA) noted how 'the overall quality of material reception conditions remained insufficient in many Member States', pointing to acute shortages in accommodation and a failure to ensure reception conditions<sup>459</sup> (including in EUMS previously in receipt of EMAS).

In some EUMS, a chronic lack of investment in reception capacity has resulted in permanent gaps in reception capacity regardless of arrivals.<sup>460</sup> While some EUMS (notably Italy<sup>461</sup>) mainstreamed EMAS actions for reception into national programmes, there is little evidence that EMAS prompted/was accompanied by measures for longer term improvement or resilience in other contexts.

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<sup>453</sup> ECRE *ibid.*, p.28.

<sup>454</sup> [AMIF Interim Evaluation Report](#), pp.404-541.

<sup>455</sup> See AIDA (2017), [Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe](#), pp.12-13, 21-22, and Mouzourakis, M. (2016), [The reception of asylum seekers in Europe: failing common standards](#) (last accessed 14.9.23).

<sup>456</sup> AIDA (2019), [Housing out of reach? The reception of refugees and asylum seekers in Europe](#), p.21.

<sup>457</sup> Art.18(9), [Directive 2013/33/EU](#) laying down standards for the reception of applicants for international protection (recast), adopted on 26 June 2013.

<sup>458</sup> AIDA (2019), [Housing out of reach? The reception of refugees and asylum seekers in Europe](#), p.20.

<sup>459</sup> European Asylum Support Office (2020), [EASO Asylum Report 2020: Annual Report on the Situation of Asylum in the European Union](#), p.147.

<sup>460</sup> AIDA (2019), [Housing out of reach? The reception of refugees and asylum seekers in Europe](#), p.6 and 16.

<sup>461</sup> [AMIF Interim Evaluation Report](#), p.524.

## Harmonisation of reception conditions

The Funds did not effectively support increased harmonisation of national reception conditions, due both to uneven implementation of the AMIF across EUMS,<sup>462</sup> and to the impact the Funds' longer term objectives of using AMIF and ESF as crisis response tools.

### Factors limiting the Funds' effectiveness

Insufficient budget allocations, distributed in a way that did not take account of changing needs.

The effectiveness of both Funds was limited by insufficient initial budget allocations (in particular that initially programmed for AMIF EMAS), by budget allocation data and distribution modalities that did not adequately take account of a rapidly changing migration landscape,<sup>463</sup> and (for the AMIF) limited to flexibility to amend national programmes in response to prevailing circumstances.<sup>464</sup>

### 3.1.7. Support from EU Agencies (focus on current mandates)

The European Union Agency for Asylum (EUAA or "the Agency") is specifically mandated to improve the functioning of the CEAS through, *inter alia*, the provision of operational and technical assistance to EUMS, including to their reception systems.<sup>465</sup> The European Border and Coast Guard Agency (Frontex) does not have a mandate involving support on reception activities of EUMS,<sup>466</sup> while the Fundamental Rights Agency (FRA) collects information on reception conditions including capacity in specific countries, usually with a focus on cases where there are challenges in terms of respect for fundamental rights.<sup>467</sup>

As per its founding regulation, the EUAA may provide direct support on its own initiative with the agreement of the Member State concerned, or at the request of a Member State(s). The Operational Plans signed by the EUAA and EUMS set out in binding provisions the modalities of the Agency's support to the national authorities and may include a wide array of measures, notably aimed at assisting national authorities establish, reform, and strengthen their overall asylum system and within in it their reception system.<sup>468</sup>

The EUAA first started providing support to EUMS in 2011 when it launched the operation in EL.<sup>469</sup> Since then, the Agency's assistance has switched from technical support to capacity-building and information gathering activities, to focusing on direct operational and reception-related support, which has been scaled up in recent years. The EUAA's operations currently take place in 160 locations across 13 EUMS, all of which include activities related to reception.<sup>470</sup>

<sup>462</sup> Rubio, E., *ibid.*, pp.8-9.

<sup>463</sup> [AMIF Interim Evaluation Report](#), p.204 and Rubio, E., *ibid.*, p.5.

<sup>464</sup> [AMIF Interim Evaluation Report](#), p.369.

<sup>465</sup> [Regulation \(EU\) 2021/2303](#) of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 467, 30 December 2021, Article 1.

<sup>466</sup> [Regulation \(EU\) 2019/1896](#) of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.

<sup>467</sup> See for example, FRA, [2023 fundamental rights report](#), 2023, pp.158, 208, 217; FRA, [Migration Key Fundamental Rights Concerns](#), 2022, p.18.

<sup>468</sup> [Regulation \(EU\) 2021/2303](#) of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 467, 30 December 2021, Articles 16-18.

<sup>469</sup> AIDA (June 2023), [Country Report Greece](#), p.26.

<sup>470</sup> Information provided by EUAA to ECRE.

In view of the temporary nature of EUAA's direct support, which is designed to address exceptional situation of disproportionate pressure on national asylum and reception systems,<sup>471</sup> Operational Plans are revised on a regular basis to adapt to the constantly evolving European context. For example, in 2022, the EUAA amended its Operational Plans with ES, EL, MT and BE to take into account the changes in national operational contexts in light of the invasion of Ukraine and the ensuing influx of protection applicants.<sup>472</sup> The EUAA's activities in BG, CZ and RO are exclusively designed to support the national authorities with the implementation of the Temporary Protection Directive (TPD), including reception. Similarly, the sharp increase in arrivals following the 2021 crisis at the EU external border with Belarus prompted LT to formally request EUAA assistance to address the exceptional pressure on its national reception system.<sup>473</sup> Countries such as the NL<sup>474</sup> and BE<sup>475</sup> have also requested the Agency's support given heightened pressure on their reception systems. Conversely, in 2022, the Operational Plan with MT was amended to allow the scaling down of the Agency's activities to reflect the decrease in the population of the country's reception centres.<sup>476</sup>

According to the Agency's founding Regulation, support to EUMS may be operational or technical and include a wide array of measures ranging from the provision of ICT equipment to the conduct of vulnerability assessments with applicants.<sup>477</sup> In practice, the scope and form of the EUAA's support to a particular Member State will vary depending on needs and political support. With regards to reception, the EUAA currently carries out the activities below.

### Operational support

In terms of reception-related operational activities, EUAA's support primarily aims at increasing and improving national reception capacities, notably through the provision of containers and other material equipment to reception facilities and the funding of infrastructure costs. Examples include:

- In ES, the EUAA has provided containers to help the country address the 2021 increase in arrivals on the Canary Islands.<sup>478</sup>
- In CY, the Agency provided 20 containers to be installed in the Pournara First Reception Centre's "Safe Zone" for vulnerable applicants.<sup>479</sup>

<sup>471</sup> EUAA, [Operational Assistance](#).

<sup>472</sup> See e.g., EUAA (May 2022), [Operational Plan 2022 Agreed by the European Union Agency for Asylum and Belgium Amendment 1](#), p.2.

<sup>473</sup> EUAA (June 2023), [Operational Plan 01 July 2023 – 31 December 2024 Agreed by the European Union Agency for Asylum and the Ministry of Interior of the Republic of Lithuania and the Ministry of Social Security and Labour of the Republic of Lithuania](#), p.19.

<sup>474</sup> EUAA (May 2022), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and the Netherlands](#), p.4.

<sup>475</sup> AIDA (April 2023), [Country Report Belgium](#), p.106.

<sup>476</sup> EUAA (April 2022), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and Malta](#).

<sup>477</sup> [Regulation \(EU\) 2021/2303](#) of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 467, 30 December 2021, Article 16.

<sup>478</sup> AIDA (April 2023), [Country Report: Spain](#), p.106. See also, EUAA (May 2021), [EASO Executive Director welcomes Spain's commitment to reform reception system](#) and EUAA (June 2023), [Operational Plan 2023-2026 agreed by the European Union Agency for Asylum and Spain](#), pp.23, 26, 28, 30.

<sup>479</sup> AIDA (April 2023), [Country Report: Cyprus](#), p.97.

- In the NL<sup>480</sup> and BE,<sup>481</sup> at the request of each country, the EUAA was set to provide the authorities with, respectively, 160 and 150 containers, to address critical accommodation shortages.
- In EL, in 2022, the EUAA donated 60 containers.<sup>482</sup>
- In RO, in 2022, the EUAA provided 74 containers.<sup>483</sup>

With regards to the EUAA's operational and material assistance to improve or enhance existing national reception facilities and services, the Agency's Operational Plans with RO, BE, ES, CY, EL, MT, NL, AT, LT, SI, BG, and CZ<sup>484</sup> all include the possibility to provide the authorities with equipment and financial support, including IT equipment, infrastructure costs and funding of various trainings, where such support is required for the joint EUAA and national authorities' activities. In addition, among the 1,038 personnel currently deployed across 13 EUMS, the EUAA has provided MS with both reception experts and interpreters.<sup>485</sup>

### Technical support

Besides operational support, the EUAA carries out a wide variety of reception-related technical activities, notably to assist EUMS establishing new reception systems, national reception agencies, or when they are improving or expanding capacity in existing systems.

- In LT,<sup>486</sup> the EUAA assists national authorities with the conceptualisation, design, and development of a new national Reception Agency, and with technical support including the delivery of training sessions and drafting of Standard Operating Procedures (SoPs).
- In ES,<sup>487</sup> the EUAA assists with the design and implementation of a new reception model.
- In RO,<sup>488</sup> it is supporting on legislative initiatives, including procedural and legal changes aimed at reforming the country's reception system.
- In CY,<sup>489</sup> it supports with the design of SOPs and guidelines on registration procedures.
- In IT,<sup>490</sup> it supports the reception of unaccompanied children in first reception centres.

<sup>480</sup> EUAA (May 2022), [Operational Plan 2022 Agreed by the European Union Agency for Asylum and The Netherlands](#), p.16.

<sup>481</sup> AIDA (April 2023), [Country Report Belgium](#), p.106. The report further mentions that "[i]n March of 2023, the government announced that it will install an additional 600 container units provided by the EUAA to house 750 persons in emergency shelter".

<sup>482</sup> AIDA (June 2023), [Country Report Greece](#), p.145.

<sup>483</sup> EUAA (December 2022), [Operational Plan 2023 Agreed by the European Union Agency for Asylum and Romania](#), p.19.

<sup>484</sup> EUAA, [Archive of Operations](#).

<sup>485</sup> Information provided by the EUAA to ECRE, 28 February 2023.

<sup>486</sup> EUAA (June 2023), [Operational Plan 01 July 2023 – 31 December 2024 Agreed by the European Union Agency for Asylum and the Ministry of Interior of the Republic of Lithuania and the Ministry of Social Security and Labour of the Republic of Lithuania](#), pp.4-5, and 17.

<sup>487</sup> AIDA (April 2023), [Country Report Spain](#), p.40. See also, EASO (May 2021), [EASO Executive Director welcomes Spain's commitment to reform reception system](#).

<sup>488</sup> EUAA (December 2022), [Operational Plan 2023 Agreed by the European Union Agency for Asylum and Romania](#), p.18.

<sup>489</sup> EUAA (2022), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and the Republic of Cyprus Amendment 2](#), pp.4, 32.

<sup>490</sup> AIDA (May 2023), [Country Report Italy](#), p.173.



- In RO<sup>491</sup> and CY<sup>492</sup> it provides support on procurement processes.
- In ES<sup>493</sup> and LT,<sup>494</sup> it provides support on contingency planning.

With regards to reception conditions, the EUAA regulation also mandates the Agency to monitor the operational and technical application of the CEAS to prevent and identify possible shortcomings in, *inter alia*, reception systems of the EUMS.<sup>495</sup> In this context, the EUAA has supported countries, including ES,<sup>496</sup> EL<sup>497</sup> and RO,<sup>498</sup> with the implementation of its Assessment of Reception Conditions (ARC) tool,<sup>499</sup> to facilitate national authorities' self-assessment of their own reception facilities. The Agency is also expected to activate its monitoring mechanism,<sup>500</sup> and conduct periodic monitoring visits to EUMS' reception facilities in 2024.<sup>501</sup>

However, in terms of reception-related technical support, the bulk of the Agency's activities consists in the design and often delivery of trainings and thematic workshops to build and strengthen the capacity of national reception centre personnel. In this context, the Agency has been conducting Needs Assessments Analysis in EUMS,<sup>502</sup> and provided trainings - either directly or through materials and online modules - to national reception staff on vulnerability identification (RO, BE, NL, DE, HG, SI, PT, HR)<sup>503</sup> age assessment and standards for the reception of unaccompanied minors (LT, BE, ES)<sup>504</sup> and on reception of temporary protection beneficiaries (BG, RO, SI, CZ).<sup>505</sup> In addition, the Agency

<sup>491</sup> EUAA (December 2022), [Operational Plan 2023 Agreed by the European Union Agency for Asylum and Romania](#), p.18.

<sup>492</sup> EUAA (2022), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and the Republic of Cyprus Amendment 2](#), p.26.

<sup>493</sup> EUAA (June 2022), [Operational Plan 2023-2026 agreed by the European Union Agency for Asylum and Spain](#), pp. 27, 29-30.

<sup>494</sup> EUAA (June 2023), [Operational Plan 01 July 2023 – 31 December 2024 Agreed by the European Union Agency for Asylum and the Ministry of Interior of the Republic of Lithuania and the Ministry of Social Security and Labour of the Republic of Lithuania](#), p.17.

<sup>495</sup> [Regulation \(EU\) 2021/2303](#) of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 467, 30 December 2021, Recital (20).

<sup>496</sup> EUAA (2022), [Asylum Report 2022](#), p.63.

<sup>497</sup> EUAA (2022), [Asylum Report 2022](#), p.63.

<sup>498</sup> EUAA (December 2022), [Operational Plan 2023 Agreed by the European Union Agency for Asylum and Romania](#), p.18.

<sup>499</sup> See, e.g., EUAA (2022), [Practical tools and guidelines](#), p.35.

<sup>500</sup> [Regulation \(EU\) 2021/2303](#) of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 467, 30 December 2021, Article 14.

<sup>501</sup> Information provided by EUAA to ECRE.

<sup>502</sup> See e.g., EUAA (May 2022), [Operational Plan 2022 Agreed by the European Union Agency for Asylum and Belgium Amendment 1](#), p.19.

<sup>503</sup> EUAA (December 2022), [Operational Plan 2023 Agreed by the European Union Agency for Asylum and Romania](#), p.18; AIDA (April 2023), [Country Report Belgium](#), p.75; AIDA, [Country Report The Netherlands](#), p.65; AIDA (April 2023), [Country Report Germany](#), p.84; AIDA (April 2021), [Country Report Hungary](#), p.19; EUAA (December 2022), [Operational Plan 2022 Agreed by the European Union Agency for Asylum and the Republic of Slovenia](#), p.17; AIDA (May 2023), [Country Report Portugal](#), p.73; AIDA (June 2023), [Country Report Croatia](#), p.67.

<sup>504</sup> EUAA (June 2023), [Operational Plan 01 July 2023 – 31 December 2024 Agreed by the European Union Agency for Asylum and the Ministry of Interior of the Republic of Lithuania and the Ministry of Social Security and Labour of the Republic of Lithuania](#), p.18; AIDA (April 2023), [Country Report Belgium](#), p. 75; EUAA, 'Operational Plan 2023-2026 agreed by the European Union Agency for Asylum and Spain', 12 June 2023, p. 29, at: <https://bit.ly/3RKjdai>.

<sup>505</sup> EUAA, 'Operational Plan 2022-2023 Agreed by the European Union Agency for Asylum and Bulgaria', December 2022, p. 18, at: <https://bit.ly/46wdfyf>; EUAA (December 2022), [Operational Plan 2023 Agreed by the European Union Agency for Asylum and Romania](#), p.15; AIDA (May 2023), [Country Report Slovenia](#), p. 18; EUAA (May 2023), [Operational Plan 2022-2023 Agreed by the European Union Agency for Asylum and Czechia Amendment 1](#), p.17.

also assists EUMS identifying and standardizing best practices by facilitating exchange visits and missions across the EU (LT, MT, SI, BE).<sup>506</sup>

Finally, in some EUMS, EUAA personnel also carry out reception activities with applicants directly. These include the provision of information on reception to applicants (*inter alia* in LT, ES, RO, CY, EL)<sup>507</sup> registration of new arrivals (GR, MT, RO)<sup>508</sup> vulnerability screenings and referrals (AT, SI, MT, GR)<sup>509</sup> support to referrals, transfers, accommodation and cash assistance schemes as well as with the identification and referral of Dublin cases (EL)<sup>510</sup>.

Limited assessment of the effectiveness of EUAA support on reception is publicly available, at least not since the transformation of EASO into the EUAA. An independent assessment of EASO's operations was carried out in 2019.<sup>511</sup> In 2023, a Fundamental Rights Officer was appointed and is developing a fundamental rights strategy, which is likely to include tools for assessment of the fundamental rights impact of the EUAA's work including its role in reception.<sup>512</sup>

### 3.2. Enforcement measures

#### Key findings

- Infringement procedures do not necessarily lead to improvements in reception standards:** The Commission's infringement-related actions do not appear to lead to significant improvements in the implementation of the Reception Conditions Directive. Whether it is a long infringement case with a combination of managerial and coercive measures (Greece) or a more vigorous and targeted infringement (Hungary), there is little practical impact. This lack of practical impact does not mean that infringement actions lack value. Although real improvement is not present, the political message of the opening of an infringement case or the referral of a country to the CJEU in order to establish a violation is clear. It is highly likely that the situation would have been worse without the monitoring and sanctioning action of the Commission. In addition, (re)action to

<sup>506</sup> EUAA (June 2023), [Operational Plan 01 July 2023 – 31 December 2024 Agreed by the European Union Agency for Asylum and the Ministry of Interior of the Republic of Lithuania and the Ministry of Social Security and Labour of the Republic of Lithuania](#), p.17; EUAA (December 2022), [Operational Plan 2022 Agreed by the European Union Agency for Asylum and the Republic of Slovenia](#), p.17; EUAA (May 2022), [Operational Plan 2022 Agreed by the European Union Agency for Asylum and Belgium Amendment 1](#), p.18.

<sup>507</sup> EUAA (June 2023), [Operational Plan 01 July 2023 – 31 December 2024 Agreed by the European Union Agency for Asylum and the Ministry of Interior of the Republic of Lithuania and the Ministry of Social Security and Labour of the Republic of Lithuania](#), p.18; EUAA (June 2023), [Operational Plan 2023-2026 agreed by the European Union Agency for Asylum and Spain](#), pp.23-26; EUAA (December 2022), [Operational Plan 2023 Agreed by the European Union Agency for Asylum and Romania](#), p.14; EUAA (2022), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and the Republic of Cyprus Amendment 2](#), pp.29-30; EUAA (March 2023), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and Greece Amendment 2](#), pp.22-28.

<sup>508</sup> EUAA (March 2023), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and Greece Amendment 2](#), p.22; EUAA (April 2022), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and Malta Amendment 1](#), p.20; EUAA (December 2022), [Operational Plan 2023 Agreed by the European Union Agency for Asylum and Romania](#), p.14.

<sup>509</sup> EUAA (December 2023), [Operational Plan 2022-2023 Agreed by the European Union Agency for Asylum and Austria](#), p.18; EUAA (December 2022), [Operational Plan 2022 Agreed by the European Union Agency for Asylum and the Republic of Slovenia](#), p.17; EUAA (April 2022), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and Malta Amendment 1](#), p.19; EUAA (March 2023), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and Greece Amendment 2](#), p.22.

<sup>510</sup> EUAA (March 2023), [Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and Greece Amendment 2](#), p.22.

<sup>511</sup> ECRE (2019), [The Role of EASO Operations in National Asylum Systems](#).

<sup>512</sup> As communicated to the EUAA Consultative Forum.

unlawful situations has an inherent value in reducing the sense of impunity, a value that has become crucial in the recent context of the rule of law crisis in Europe.

- **The EU's overall policy on asylum may undermine enforcement of the RCD:** In the area of migration and asylum, the Commission's infringement stance is inconsistent, not least in the case of Greece which has become an illustrative example of substandard reception conditions. The launch of procedures, the duration and lack of culmination, as well as the Commission's own contradictory assessment of the country's reception system as compliant with EU law indicate that the aforementioned political factors interact with intensity.
- **Political factors have a strong influence on the Commission's approach to enforcement:** External political factors affect the Commission's enforcement approach both in terms of the chosen tool and in the way enforcement is pursued. When enforcing EU law in a specific policy area, the Commission develops its activities on the basis of different political considerations in addition to its own priority setting mentioned above.
- **Enforcement is pursued more aggressively when faced with deliberate and intransigent non-compliance**
- **Success factors: certain factors can improve the impact of the infringement actions, notably good governance standards and the skilful use of non-coercive compliance tools:** Despite the shortcomings identified, certain factors can increase the impact of the Commission's infringement actions or ensure general compliance in the long term. Given the importance of the procedures in the application of EU law, high levels of good governance are required. Consistency, transparency and a fundamental rights focus can lead to more successful enforcement. In addition, non-coercive, constructive tools should be promoted and deployed consistently and regularly.

### 3.2.1. Case-Law on the RCD

The RCD has been the subject of CJEU interpretation in several cases in the past decade. A summary table of the case law, including the details of every case described in this section, can be found in Annex V. The case law covers the following elements of the RCD.

#### Detention

Detention has been the most frequent subject of preliminary questions. The validity of Article 8(3) was confirmed in *J.N and K.*, where the Court found that the provision is in line with the EU Charter of Fundamental Rights (CFREU) because its strictly circumscribed framework fulfils the requirements of proportionality. In *Arslan*, the Court clarified the relationship for the legal basis of detention under the Return Directive and the Reception Conditions Directive, emphasising the individual and comprehensive assessment of every case when a detention measure is imposed.

The legal basis for detention was clarified by the Court in two important cases. In *Ministerio Fiscal*, the Court found that a third-country national without a legal right of residence who has expressed a wish to apply for international protection before an authority that is not designated to receive asylum applications can only be detained on the basis of the RCD provisions. Regarding the possibility to disregard the detention grounds of Article 8 in situations of emergency, the Court confirmed in *M.A.* that even in a situation of mass influx an asylum seeker cannot be placed in detention solely because they are illegally staying in the territory of the Member State.

The concept of detention was clarified in a landmark judgment in *Commission v Hungary*, where the Court ruled that the confinement of asylum seekers in the Hungarian transit zones constituted detention under Article 8 RCD. The judgment departed from the European Court of Human Rights judgment in *Ilias and Ahmed v Hungary*, where the Court did not find that the confinement

constituted detention. In practical terms, the Court's judgment led to the closure of the country's transit centres.

Lastly, in terms of the review of the lawfulness of detention, the Court considered in *C, V and X* that a national authority can raise of its own motion, on the basis of the case files, any failure of the authorities to comply with the immigration detention even if the person has not invoked it. This decision concerned any EU law basis for immigration detention, including RCD, the Dublin III Regulation and the Return Directive.

### Provision of material reception conditions

Another major issue often referred to the CJEU concerns the provision of material reception conditions. The Court has relied on the CFREU to conclude that the obligation to provide material conditions begins from the moment a person applies for asylum (*Cimade*), the reception conditions in the form of allowance must ensure a dignified standard of living (*Saciri*) and the withdrawal of reception conditions cannot include withdrawing housing, food or clothing, even if temporary (*Haqbin*).

### Employment

In *K.S. and others*, the CJEU interpreted Article 15 of the RCD as precluding EUMS from excluding applicants from accessing the labour market solely on the basis that a Dublin transfer decision had been made.

#### 3.2.2. The European Commission role in ensuring compliance with EU rules on reception conditions<sup>513</sup>

Article 17 of the Treaty of the European Union (TEU)<sup>514</sup> designates the Commission as the institution that promotes the general interest of the Union, ensures the application of the Treaties and oversees the application of EU law. To fulfil this task, the Commission can deploy various compliance tools that range from monitoring activities, and technical/financial support to legal action and punitive measures.

As will be explained below, some of these tools aim to achieve compliance through dialogue, support and assistance while others are coercive in nature. This division reflects the different approaches that have been identified in international law to support state compliance with regulatory regimes. Each approach – persuasive or coercive – aims to address non-compliance in the context of international or supranational cooperation through means that respond to the perceived reason for the non-compliant behaviour.<sup>515</sup>

The *management* approach addresses non-compliance as the result of a problem, either with the capacity of a given state to enforce the legal obligation or with the clarity of the legal rule that imposes it; a cooperative approach that focuses on dialogue, assistance and transparency is therefore warranted. A related approach is based on *persuasion*, suggesting that compliance stems from a state's perception of a given rule's legitimate and appropriate. It should therefore deploy dialectical tools that focus on understanding and accepting the values behind the norms, often

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<sup>513</sup> Background research support provided by Caoimhe of Gent University.

<sup>514</sup> [Consolidated version of the Treaty on the European Union](#), OJ C 326, 26.10.2012, pp.13-390.

<sup>515</sup> Tallberg, Jonas (2002), [Paths to Compliance: Enforcement, Management, and the European Union](#), International Organization, 56:3, pp.609-643.

through contact between national and supranational stakeholders, although in practice it may be difficult to distinguish from the management approach.<sup>516</sup>

The *enforcement* approach, alternatively, seeks to achieve compliance through punitive and coercive means, on the basis that states stop complying when a situation makes that option more beneficial; the best course of action is, therefore, to create a system that makes non-compliance non-attractive by introducing negative consequences for non-compliance.

The different compliance tools that the Commission are incorporated into a strategy that covers all the elements from above international legal theories. The Commission's 2022 Communication on its enforcement strategy<sup>517</sup> focuses on the correct implementation of EU law through a "combined effort" of EU and national stakeholders, prevention through "smart enforcement", early detection through monitoring activities, and, lastly, infringement procedures. This diversity also indicates that the Commission is attuned to a reality where the reasons for non-compliance might diverge on the basis of the Member State or the policy area concerned and flexibility in compliance is necessary. Lastly, the order of presentation of these tools in the Commission's abovementioned Communication underlines that a certain level of restraint in the use of coercive measures is to be expected when the institution acts in compliance cases with the infringement procedure taking the place of a measure of last resort. In the Communication itself, it is clarified that "[...] *the figures of infringement procedures alone are not necessarily a good measure of the Commission's enforcement efforts, which seek to avoid breaches from materialising and, if they occur, to bring these to an end as quickly as possible.*"

The Commission's presentation of its enforcement efforts does not differentiate between coercive and non-coercive measures, nor does it follow a strict division of strategy on the basis of the three theories described above. On the contrary, the Commission's description of its enforcement strategy as "smart" and "combined" indicates an understanding of enforcement as a dynamic scale, an "enforcement management ladder" as described in academic literature.<sup>518</sup>

However, for the purposes of the present analysis, the Commission's compliance toolbox will be assessed in line with the theories mentioned above.

A first section will analyse the Commission's monitoring activities, as these are necessary to gather evidence and support actions in every compliance activity, regardless of whether it is based on persuasion, management or enforcement. The tools that fit under the categories of persuasion and management will then be analysed. Finally, a section will look at enforcement, i.e. measures that involve a more forceful and coercive approach

### Monitoring activities

Evidence is an essential component of compliance both in order to establish the risk or occurrence of a violation and as a guiding element in the design of compliance actions. It is evidence that will reveal whether the violation is related to capacity issues, whether it is part of a systemic dysfunction, whether it is serious and persisting, and whether it is linked with a general lack of willingness to conform with EU law. Monitoring activities allow the Commission to gather the necessary evidence

<sup>516</sup> Julia Schmälter (2018), [A European response to non-compliance: the Commission's enforcement efforts and the Common European Asylum System](#), West European Politics, DOI: 10.1080/01402382.2018.1427947.

<sup>517</sup> European Commission (November 2023), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Enforcing EU law for a Europe that delivers, Brussels, ([COM\(2022\) 518 final](#)).

<sup>518</sup> Tallberg, Jonas (2002), [Paths to Compliance: Enforcement, Management, and the European Union](#), International Organization, 56:3, p.610.

to identify and respond to conduct that indicates the existence of any of the above characteristics. Such activities include implementation reports, evaluation tools and audits.<sup>519</sup>

Assessment reports on the implementation of a given EU legal instrument are crucial in this respect and are often an obligation for EU EUMS or the Commission under the provisions of the instrument itself. A similar obligation exists under Article 30 of the Reception Conditions Directive but the Commission has not conducted such a report as of September 2023. Other instruments of interest in the area of asylum and migration have been subject to more consistent and transparent monitoring. The implementation of Directive 2003/86/EC (Family Reunification Directive) has been reviewed twice<sup>520</sup> while the application of the Schengen acquis is subject to a verification mechanism on the basis of a dedicated regulation,<sup>521</sup> the functioning of the latter is also consistently reviewed.<sup>522</sup> The Dublin III Regulation has been the subject of an external evaluation commissioned by the Commission.<sup>523</sup>

### Compliance through management and persuasion

A number of the tools available to the Commission to ensure compliance with reception standards fit into the categories of compliance through management and persuasion. For example, high-level bilateral meetings<sup>524</sup> between national and EU officials work both towards consolidating the perception of the specific EU rule as suitable, appropriate and meaningful and towards decreasing gaps in expertise and technical know-how to ensure situations covered by that EU rule will be managed better. The same can be said for more structured tools such as committees, expert groups, networks, trainings and cooperation with EU agencies.<sup>525</sup> Through such activities contact between officials from different EUMS, as well as contact between officials of national administrations and EU officials, seeks to foster a common culture of EU law and governance and contributes to increased knowledge and capacity to respond to the requirements of the implementation of specific EU rules.

Another reason for the joint analysis of persuasion and management-based action is that the use of pure persuasion-based tools is reported to be rare in the Commission's compliance activities. According to officials involved in compliance, the Commission does not seek to persuade EUMS of the normative value of a specific EU legal instrument, including in areas covering fundamental rights.<sup>526</sup> While persuasion may be used to promote the appropriateness of EU law in general, it is rarely used for specific legal instruments.

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<sup>519</sup> European Commission (October 2022), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Enforcing EU law for a Europe that delivers, Brussels, 13.10.2022 ([COM\(2022\) 518 final](#)), p.15.

<sup>520</sup> European Commission, [Report on the implementation of Directive 2003/86/EC on family reunification](#), 29 March 2019; [Report on the implementation of Directive 2003/86/EC on the right to family reunification](#), 8 October 2008.

<sup>521</sup> [Council Regulation \(EU\) 2022/922](#) of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013, ST/7609/2022/INIT, OJ L 160, 15.6.2022.

<sup>522</sup> European Commission, [Schengen evaluation and monitoring](#).

<sup>523</sup> DG Migration and Home Affairs (March 2016), [Evaluation of the Implementation of the Dublin III Regulation](#).

<sup>524</sup> European Commission (January 2017), Communication from the Commission — EU law: Better results through better application, [C/2016/8600](#).

<sup>525</sup> Ibid.

<sup>526</sup> Julia Schmälter (2018): [A European response to non-compliance: the Commission's enforcement efforts and the Common European Asylum System](#), West European Politics, DOI: 10.1080/01402382.2018.1427947, pp.15-16.

In line with the above, the following compliance tools have been identified in the context of the Commission's compliance efforts in respect of asylum and migration: training activities, practical guidance, meeting-based activities, technical and financial assistance and the EU Pilot Procedure.

### Training activities

In order to address compliance issues before they arise, the Commission has developed actions to increase knowledge and expertise in the practical application of legal provisions, to foster cross-border communication on implementation issues, as well as to avoid rule ambiguity and divergence in interpretation and application of EU law. Training activities target members of the judiciary, asylum officials and lawyers. On a general level, a European judicial strategy promotes training for justice practitioners as an important tool in securing the necessary expertise to apply EU law in a more coherent and consistent manner, including in asylum.<sup>527</sup> In addition to allowing judicial professionals and lawyers to properly interpret EU law, the strategy has an overarching aim to foster a common rule of law culture across the EU, which is described as "*crucial for the effective application of EU law*".

In this context, dedicated entities offer asylum-specific training. The European Judicial Training Network (EJTN) delivers trainings to judges on EU administrative law, including EU asylum and migration law, and offers study visits to the Court of Justice of the EU along with exchange programmes between European judges.<sup>528</sup> Although the EJTN's work is not exclusively addressed to the judiciary of the Union's EUMS, it has developed a large number of training programmes on EU matters, works together with the Commission and receives financial support from the Justice Programme of the European Union.<sup>529</sup> The Academy of European Law is also covering EU asylum law training needs in cooperation with EU institutions.<sup>530</sup> Lastly, a European training platform contains materials, handbooks and courses dedicated on EU law with regular contributions from the Commission.<sup>531</sup>

The European Union Agency on Asylum provides training to asylum and reception professionals in activities that aim to generally develop the EU law expertise of national officials, as well as to address situations where implementation gaps may arise. European asylum curricula include training modules to support the uniform application of the CEAS in national asylum systems; specific complementary trainings may be deployed in the context of operational or technical assistance where a Member State is subject to disproportionate pressure.<sup>532</sup>

It is important to emphasise that the Commission's training strategy does not only target institutional actors, such as judges and asylum/reception officers, but also lawyers and civil society stakeholders. According to the judicial strategy mentioned above, lawyers have an important role in the practical implementation of EU law and more support is envisaged because their training needs have not been addressed as needed.<sup>533</sup> In addition, specific funds are allocated for training-related

<sup>527</sup> European Commission (December 2020), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Ensuring justice in the EU — a European judicial training strategy for 2021-2024, Brussels, ([COM\(2020\) 713 final](#)).

<sup>528</sup> Information from the [website](#) of the European Judicial Training Network.

<sup>529</sup> Information from the [website](#) of the European Judicial Training Network.

<sup>530</sup> Information from the [website](#) of the Academy of European Law.

<sup>531</sup> European training [platform](#).

<sup>532</sup> EUAA (March 2022), [EUAA Training and Learning Strategy](#), pp.8-9.

<sup>533</sup> See European Commission, [Training of justice professionals and training practices](#).

activities to civil society stakeholders, which the Commission considers as important actors in the monitoring of breaches of EU law<sup>534</sup> and as parties that are involved in the enforcement of EU law.<sup>535</sup>

### Practical guidance:

In addition to training activities, the Commission also promotes a harmonised understanding of EU law through the issuance of practical guidance on how to apply a specific legal instrument. The Return Handbook<sup>536</sup> provides authoritative guidance on how to apply Directive 2008/115/EC (Return Directive) and is addressed to all national actors that are involved in return procedures. The initial 2015 Handbook was revised in 2017 following CJEU jurisprudence and changes in the Commission's assessment of its return policy.<sup>537</sup> Similar guidance has been issued on the application of Directive 2003/86/EC (Family Reunification Directive).<sup>538</sup> Lastly, following Russia's invasion of Ukraine, the Commission issued Operational Guidelines on the application of Directive 2001/55/EC (Temporary Protection Directive) in March 2022.<sup>539</sup> The Commission has not issued such guidance on the Reception Conditions Directive but several practical guides on the subject have been developed by the European Union Agency on Asylum (EUAA).<sup>540</sup>

### Meeting-based activities

The principle of sincere cooperation is enshrined in Article 4 of the Treaty on the European Union (TEU)<sup>541</sup> and establishes an obligation on both the Union and the EUMS to assist each other in the fulfilment of the obligations arising out of the Treaties. A significant part of the Commission's compliance work is based on cooperation with EUMS, either in the form of networks of information exchange and knowledge sharing or in the form of direct cooperation between EU officials and Member State officials in the course of dedicated meetings.

Information from the Commission suggests that high-level meetings are a core component of its implementation efforts. These meetings aim to identify country-specific compliance issues by direct engagement with officials in EUMS and through the development of a relationship based on mutual understanding. The so-called "package meetings" constitute targeted efforts to discuss various non-compliance issues with a specific Member State.<sup>542</sup> Due to the highly confidential nature of those meetings, it is impossible to obtain information on the approach of the Commission in this exchange.

More structured meeting-based tools are also used in the form of policy-specific expert groups, committees, task forces and networks. The EUAA has developed several networks aimed at improving the efficiency and quality of asylum systems in the Union; a Network of Reception Authorities aims to contribute to the convergence of reception standards in line with the CEAS

<sup>534</sup> European Commission (October 2022), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Enforcing EU law for a Europe that delivers, Brussels, [COM\(2022\) 518 final](#), p.7.

<sup>535</sup> European Commission (December 2020), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, Brussels, [COM\(2020\) 711 final](#).

<sup>536</sup> [Commission Recommendation \(EU\) 2017/2338](#) of 16 November 2017 establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return-related tasks, C/2017/6505.

<sup>537</sup> Idem, see recitals 2, 3 and 4.

<sup>538</sup> European Commission (2014), Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, [COM/2014/0210 final](#).

<sup>539</sup> European Commission (March 2022), [Ukraine refugees: Operational guidelines to support Member States in applying the Temporary Protection Directive](#).

<sup>540</sup> EUAA, [Asylum Knowledge: Reception](#).

<sup>541</sup> Article 4, [Treaty on the European Union](#), OJ C 326, 26.10.2012, pp.13–390.

<sup>542</sup> Commission Staff Working Document, [Better Regulation guidelines](#), p.38.



guarantees.<sup>543</sup> The activities include, inter alia, thematic meetings, exchange visits, workshops, high-level meetings. The European Migration Network (EMN) coordinates a similar but wider network on asylum and migration which involves Commission officials and National Contact Points in each Member State. Its EU and national-level networks provide the EMN with information, evidence and other relevant data on information needs and challenges in EUMS in all EU matters relating to asylum and migration.

### Technical and financial assistance

One of the purest forms of management-based compliance tools are those that involve direct assistance to the Member State concerned to implement EU rules. Such activities aim to address the aspects of compliance that are related to the country's actual capacity to comply. In this sense, the assistance is adjusted to the country's ability to develop the systems, bodies or functions that EU law requires and can include both technical know-how and funding.

In respect of the Reception Conditions Directive, Greece is an illustrative example of how such assistance has been provided. After the Moria fire in 2020, the Commission awarded a 5 million EUR agreement to Greece for the purpose of supporting reconstruction efforts on Lesbos.<sup>544</sup> Since then, a Task Force has been established with the aim of coordinating efforts in the management of migration generally<sup>545</sup> and with specific support provided on reception issues in Greece.<sup>546</sup> According to the Memorandum of Understanding, the obligation of the reception structures to comply with EU law is the "guiding principle" of the project.<sup>547</sup> The support has a strong focus on the country's reception capacity, particularly the construction of new reception centres on the Greek islands, the management of overcrowding in the country's island reception centres and nation-wide reception conditions. A pilot project is also ongoing in Bulgaria and Romania on wider issues of asylum, migration and border management; the enhancement of the countries' capacity for reception is part of the project and the assistance includes financial support.<sup>548</sup>

Financial assistance is not only given in the context of country-specific pilot projects. A dedicated Asylum, Migration and Integration Fund (AMIF) has been set up by the Commission to enhance national capacity for migration management. Insofar as such financial assistance contributes to the creation of reception systems in line with the RCD obligations, it is part of the Commission's compliance logic. However, such measures are discussed separately and in more detail in Section 3.1.

The EUAA also offers operational assistance both in response to situations of disproportionate pressures to the reception system of a Member State and as a measure to support the implementation of a Member State's obligations under the CEAS.<sup>549</sup> The operational support can include direct assistance, such as equipment and personnel, as well as capacity-building activities to enhance the reception system on a long-term basis. Several reception-related country operations are

<sup>543</sup> EUAA, [Asylum Knowledge: Reception](#).

<sup>544</sup> European Commission, DG HOME, [Construction of new reception centres](#).

<sup>545</sup> European Commission, [Task Force Migration Management](#).

<sup>546</sup> European Commission, [Migration Management in Greece](#).

<sup>547</sup> Annex to the Commission Decision approving the Memorandum of Understanding between the European Commission, European Asylum Support Office, the European Border and Coast Guard Agency, Europol and the Fundamental Rights Agency, of the one part, and the Government of Hellenic Republic, of the other part, on a Joint Pilot for the establishment of a new Multi-Purpose Reception and Identification Centre in Lesbos, Brussels, 2.12.2020 [C\(2020\) 8657 final](#).

<sup>548</sup> European Commission (June 2023), [Press Release](#), Migration management: Update on progress made on the Pilot Projects for asylum and return procedures and new financial support for Bulgaria and Romania.

<sup>549</sup> EUAA, [Operations: Operational Assistance](#).

currently ongoing.<sup>550</sup> The EUAA's support to EUMS for the management of reception is discussed in more detail in Section 3.1.

### The EU Pilot procedure

Another process that the Commission singles out as an important step before – and as a way to avoid – the opening of an infringement case is the EU Pilot mechanism. Although closely linked with infringements, this tool has a largely managerial character as it creates a platform between the Commission and the Member State to discuss compliance with a view to solving the issue before it reaches the stage of infringement.

The EU Pilot was first proposed in 2007 as a way for the Commission to increase its efficiency in the application of EU law.<sup>551</sup> According to the Commission, it is often used when the issues are more technical, or where factual and legal information is needed to continue its compliance assessment.<sup>552</sup> However, it has been reported that this mechanism was introduced as a way for high-level officials and political actors to take control of infringement procedures and for EUMS to stop feeling threatened by EU enforcement actions.<sup>553</sup> In addition to concerns related to the de-legalisation of EU enforcement, the EU Pilot has also been criticized for its lack of transparency. Although the CJEU has recognised a general presumption of confidentiality for EU Pilot procedures, based on the fact that they share the same pre-litigation aspects of an infringement procedure,<sup>554</sup> the European Ombudsman has criticized the absence of even minimal information on the list of ongoing dialogues and their status.<sup>555</sup>

In March 2021, a pilot project was initiated by the European Commission on the implementation, inter alia, of the Reception Conditions Directive.<sup>556</sup> Due to the confidentiality of the dialogue between the Commission and EUMS involved in an EU Pilot procedure it is not possible to obtain information on the content of the exchange. It should be emphasized that, according to the Single Market Scoreboard one of the policy areas with the most EU Pilot cases proposed to be followed up by formal infringement procedures is Migration and Home Affairs.<sup>557</sup>

### Compliance through enforcement

As discussed in the introduction, the aim of enforcement is to make non-compliance an unavoidable, unattractive and costly choice for the state that does not conform with the international regulatory regime it belongs to. Coercion is therefore at the heart of enforcement measures. Three coercive tools at the disposal of the Commission have been identified as means to ensure compliance with EU law: the infringement procedure and the sanctioning measures under Articles 258 and 260 of the Treaty on the Functioning of the European Union (TFEU), the Article 7 TEU procedure on protecting EU

<sup>550</sup> EUAA, [Operations: Country Operations](#).

<sup>551</sup> European Commission (2007), Communication from the Commission - A Europe of Results – Applying Community Law, [COM/2007/0502 final](#).

<sup>552</sup> European Commission (November 2022), [Memo, Enforcement: Frequently Asked Questions](#).

<sup>553</sup> Kelemen, R. D. and Pavone, Tommaso (August 2022), [Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union](#), pp.25-28.

<sup>554</sup> CJEU, Judgment of 11 May 2017, [Sweden v Commission, C-562/14 P, ECLI:EU:C:2017:356](#), para. 45.

<sup>555</sup> European Ombudsman (12 September 2017), [Decision of the European Ombudsman setting out suggestions following her strategic inquiry OI/5/2016/AB on timeliness and transparency in the European Commission's handling of infringement complaints](#).

<sup>556</sup> RSA, Greek Council for Refugees, HIAS Greece, Danish Refugee Council (June 2021), [Comments on the Deportations and Returns Bill](#), p.2.

<sup>557</sup> European Commission, Single Market Scoreboard, [Enforcement tools: Main Messages](#).

values and Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget (the Conditionality Regulation).

### **Infringement procedures:**

An infringement action is one of the most coercive enforcement measures the Commission has at its disposal. Under Article 258 TFEU, the Commission can take legal action against a Member State that is not respecting its obligations under EU law.

The procedure starts with a letter of formal notice, whereby the Commission officially requests information from the Member State concerned. Complementary letters of formal notice may be issued. If the information provided by that Member State does not satisfy the Commission, a reasoned opinion is issued calling the Member State to comply with EU law and inform the Commission of the steps taken towards compliance. If the Member State does not achieve compliance, the Commission may decide to refer the Member State to the Court of Justice which can deliver a judgment on whether the Member State's actions constitute failure to comply with an EU law obligation and order it to comply. Where the Member State does not comply with the judgment, Article 260 TFEU provides the Commission with the possibility to refer that Member State to the CJEU and seek penalty payment.

It should be noted that the Commission enjoys a wide discretion on whether it needs to start an infringement procedure. In its enforcement strategy it has identified certain priorities in this respect, such as state conduct that undermines EU law or policy objectives and cases that underline the most important breaches of EU law and involve structural or systemic issues.<sup>558</sup> In addition, infringement is seen as a measure of last resort, to be avoided in favour of negotiation or prevention actions,<sup>559</sup> a perception that makes the deployment of this enforcement tool a less common choice.

The characteristics of the situation of non-compliance will also play a role in the launch of infringement action, particularly in the light of the Commission's stated priorities. Not every case of non-compliance will evidently fulfil the criteria (e.g. systemic breach, structural issues, conduct that undermines EU law), which means that time and evidence are necessary for Commission officials to substantiate a basis for infringement. This may be a frequent issue in situations where non-compliance emerges from fragmented practice at the national level or where it stems from policies that are not openly endorsed by national governments. On the contrary, outright and open disregard to EU rules is likely to attract infringement action faster.

In addition to the case characteristics, the Commission takes the political context into account before deciding to open an infringement procedure and assesses different factors, such as the impact of the infringement in other policy areas where the Commission might seek the consent of the Member State concerned or the sensitivity of the subject.<sup>560</sup> It is reported that infringement procedures have significantly decreased over the past two decades and the Commission's worry that the pursuit of

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<sup>558</sup> European Commission (October 2022), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Enforcing EU law for a Europe that delivers, Brussels, [COM\(2022\) 518 final](#), p.15; Communication from the Commission (January 2017), EU law: Better results through better application, [C/2016/8600](#).

<sup>559</sup> European Commission, Single Market Scoreboard, [Enforcement tools: Infringements](#).

<sup>560</sup> Julia Schmälder (2018), [A European response to non-compliance: the Commission's enforcement efforts and the Common European Asylum System](#), West European Politics, DOI: 10.1080/01402382.2018.1427947, p.11.

intense infringement action could threaten EUMS and fuel Euroscepticism has been cited as a main factor in the Commission's enforcement reluctance.<sup>561</sup>

According to research, ensuring support from EUMS was a key reason for reducing enforcement since the 1990s as the Commission sought to maintain political legitimacy as an institution with enforcement strategies that are more political rather than technocratic.<sup>562</sup> In this line, a political filter is applied in cases where an infringement is considered and in certain cases the political considerations may be sufficient to stall or block the launch of an infringement process. The introduction of the EU Pilot mechanism mentioned in the previous sub-section has been reported to contribute in the restricted use of infringements.<sup>563</sup> Indeed, on the Commission's website, where the EU Pilot is explained in the context of the assessment of EU enforcement tools, it is stated that the mechanism is used "to avoid infringement procedures as much as possible."<sup>564</sup>

The Commission's infringement actions in response of cases of non-compliance with EU standards on reception will be presented and analysed in the next section.

### Conditionality Regulation

Regulation 2020/2092<sup>565</sup> sets out the financial measures that the EU can take when breaches of the principles of the rule of law in a Member State may seriously affect the EU budget or financial interests. Under Article 6, the measures can be adopted by the Council of the EU following a proposal by the European Commission when the conditions are deemed to be fulfilled. Article 4 sets out a series of measures in respect of the EU budget implementation in the country of concern that include, inter alia, the suspension of payments, the prohibition of legal commitments and the reduction of pre-financing. In 2022, the Commission initiated procedures against Hungary under the Conditionality Regulation for issues related to corruption<sup>566</sup> and the Council of the EU decided to apply measures in December 2022.<sup>567</sup>

No similar measures have been taken in respect of the implementation of the CEAS. It should be noted that this instrument is relevant to situations of non-compliance with the EU asylum acquis as the rule of law definition under Article 2 includes values and principles that are connected with the CEAS, such as legal certainty, effective judicial protection and access to justice, fundamental rights, non-discrimination and equality. National migration and asylum management largely relies on financing through EU funds. Section 3.1 analyses EU funding for migration and asylum in more detail.

### Article 7 TEU

Under Article 7 TEU, the Commission can trigger a procedure for the suspension of voting rights for an EU Member State that risks breaching or has breached EU values. Different decision-making procedures are envisaged on the basis of whether the action concerns the existence of a risk or the

<sup>561</sup> Politico, R. Daniel Kelemen and Tommaso Pavone (January 2022), Opinion, [The curious case of the EU's disappearing infringements](#).

<sup>562</sup> Kelemen, R. D. and Pavone, Tommaso (August 2022), [Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union](#).

<sup>563</sup> Idem, p.25.

<sup>564</sup> European Commission, [Single Market Scoreboard, Enforcement tools](#).

<sup>565</sup> [Regulation \(EU, Euratom\) 2020/2092](#) of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 4331, 22.12.2020.

<sup>566</sup> European Commission (November 2022), Press Release, [Commission finds that Hungary has not progressed enough in its reforms and must meet essential milestones for its Recovery and Resilience funds](#).

<sup>567</sup> Council of the EU, [Council Implementing Decision \(EU\) 2022/2506](#) of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary.

existence of the breach. For the former, the Council decided by a majority of four fifths of the EUMS, whereas for the latter the European Council must determine the existence of a breach before the Council decides to suspend voting rights for the Member State concerned.

The guarantees embedded in the decision-making process for this enforcement tool underline its exceptional character. Although the Commission can trigger the procedure in both cases, the decision is reserved for cases of serious breaches of the Union values and not for every violation of EU law. The enforcement process is by definition highly political. In 2017, the Commission initiated a procedure under Article 7 TEU against Poland for rule of law breaches in respect of concerns on the independence of the judiciary.<sup>568</sup> In 2018, the Parliament initiated Article 7 procedures against Hungary citing several concerns, including those related to the fundamental rights of migrants, asylum seekers and refugees.<sup>569</sup> The Council is currently holding hearings on the cases.<sup>570</sup>

### 3.2.3. Infringement procedures and their role in ensuring compliance with EU standards on reception conditions

According to the Commission, there are four types of infringements of EU law:<sup>571</sup>

- Failure to notify – where EUMS do not communicate on time the measures they took to transpose a Directive;
- Non-conformity – where a Member State’s laws do not conform with requirements contained in directives;
- Infringement of treaties, regulations or decisions – where a Member State’s laws do not conform with requirements contained in the treaties, regulations or decisions;
- Incorrect application – where EU law is not applied or it is applied incorrectly by a Member State.

The Commission’s infringement actions in respect of the Reception Conditions Directive fall under the first, second and fourth of these examples.

#### Cases following failure to notify measures transposing the Reception Conditions Directive

Infringement cases for failure to notify transposition measures are opened as a separate package of decisions and reflect the Commission’s priority on the actual transposition of EU law before any step to confirm whether the national measures are in line with the instruments they intend to transpose. The Commission takes a strict stance on the matter and opens infringement cases on the subject of non-transposition automatically.<sup>572</sup> Where EUMS do not comply with the requests included in the infringement letters, the Commission “systematically” brings those cases to the CJEU seeking financial sanctions. According to the Commission’s 2022 Communication on the enforcement of EU

<sup>568</sup> European Commission (2017), Proposal for a COUNCIL DECISION on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, [COM/2017/0835 final](#).

<sup>569</sup> European Parliament, [Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7\(1\) of the Treaty on the European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded](#) (2017/2131(INL)).

<sup>570</sup> Council of the EU, [Rule of Law](#).

<sup>571</sup> European Commission (November 2022), Enforcement: [Frequently Asked Questions](#).

<sup>572</sup> European Commission (October 2022), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Enforcing EU law for a Europe that delivers, Brussels, [COM\(2022\) 518 final](#), p.8.

law, non-transposition cases have significantly decreased since the entry into force of the Lisbon Treaty.<sup>573</sup>

Under Article 31 of Directive 2013/33, EUMS were given until 20 July 2015 to transpose the Directive into national law and communicate those national measures to the Commission without delay. Having failed to do so, on 23 September 2015, 19 EUMS were issued a letter of formal notice by the Commission for failure to communicate national measures transposing Directive 2013/33. In this letter, the Commission urged the EUMS to fully outline the national measures that were being taken in order to fully transpose the Reception Conditions Directive.<sup>574</sup> The timeline of the infringement procedures for these cases is presented in the following table.

Table 11: Infringement measures following failure to notify measures transposing the Reception Conditions Directive

Member State	Letter of Formal Notice	Reasoned Opinion	Closure
Austria INFR(2015)0351	23 September 2015		25 July 2019 <sup>575</sup>
Belgium INFR(2015)0356	23 September 2015		25 July 2019
Bulgaria INFR(2015)0364	23 September 2015		25 July 2019
Cyprus INFR(2015)0372	23 September 2015		25 July 2019
Czechia INFR(2015)0380	23 September 2015		10 October 2019
Estonia INFR(2015)0397	23 September 2015		
France INFR(2015)0425	23 September 2015		
Germany INFR(2015)0387	23 September 2015	10 February 2016	10 October 2019 <sup>576</sup>
Greece INFR(2015)0403	23 September 2015	10 December 2015 <sup>577</sup>	25 July 2019
Hungary	23 September 2015		9 June 2021

<sup>573</sup> *Ibid.*

<sup>574</sup> European Commission (September 2015), Press Release, [More Responsibility in managing the refugee crisis: European Commission adopts 40 infringement decisions to make European Asylum System work.](#)

<sup>575</sup> European Commission (July 2019), Press Release, [July infringements package: key decisions.](#)

<sup>576</sup> European Commission (October 2019), Press Release, [October Infringements package: key decisions.](#)

<sup>577</sup> European Commission (December 2015), Press Release, [Implementing the Common European Asylum System: Commission escalates 8 infringement proceedings.](#)

INFR(2015)0433			
Latvia INFR(2015)0455	23 September 2015		25 July 2019
Lithuania INFR(2015)0443	23 September 2015	25 July 2019	14 May 2020
Luxembourg INFR(2015)0448	23 September 2015		25 July 2019
Malta INFR(2015)0460	23 September 2015	10 December 2015	10 October 2019
Poland INFR(2015)0470	23 September 2015		25 July 2019
Romania INFR(2015)0480	23 September 2015		25 July 2019
Slovenia INFR(2015)0494	23 September 2015	10 October 2019 <sup>578</sup>	14 May 2020
Spain INFR(2015)0414	23 September 2015		10 October 2019
Sweden INFR(2015)0487	23 September 2015		25 July 2019

The Commission's infringement cases on non-communication measures are automatic and refer to the technical nature of transposition and the respective obligation of communication. All EUMS transposed the Directive in the years that followed the opening of the infringement procedures. The automatic and technical nature of the obligation, which consists in the creation of national legislation transposing the Directive's provisions, is possibly the most important factor in the success of this implementation.

It should be noted that similar infringement cases had been opened by the Commission against Austria<sup>579</sup> and Greece<sup>580</sup> for failure to implement the previous Reception Conditions Directive (Directive 9/2003/EC). Both infringement cases resulted in a judgment by the CJEU finding that the two countries failed to transpose the Directive within the prescribed time-limit.<sup>581</sup> No further action has been identified.

### Cases following non-conformity with or incorrect application of the Reception Conditions Directive

According to the Commission's database, infringement procedures for the incorrect application of the Reception Conditions Directive have been opened in respect of Belgium, Greece, Hungary, Portugal and Spain.

<sup>578</sup> European Commission (October 2019), Press Release, [October Infringements package: key decisions](#).

<sup>579</sup> CJEU, [Case C-102/06, Commission v Austria](#).

<sup>580</sup> CJEU, [C-72/06, Commission v Greece](#).

<sup>581</sup> CJEU, [Judgment of 26 October 2006, Commission v Austria, C-102/06, ECLI:EU:C:2006:691](#); CJEU, [Judgment of 19 April 2007, C-72/06, Commission v Hellenic Republic, ECLI:EU:C:2007:234](#).

Table 12: Infringement measures following non-conformity with or incorrect application of the Reception Conditions Directive

Member State	Letter of Formal Notice (LFN) & supplementary letters (SL)	Issue	Reasoned Opinion	Referral to the CJEU & judgment
Belgium INFR(2022)2157	LFN: 26 January 2023		n/a	
Greece INFR(2009)4104	LFN: 2009 SL: 2010 SL: 23 September 2015	Serious deficiencies in the Greek reception system	n/a	
Greece INFR(2022)2156	LFN: 26 January 2023	Incorrect transposition (official information); reception management and de facto detention in Reception & Identification Centres (reported)	n/a	
Hungary INFR(2013)4062	LFN: 10 December 2015 SL: 17 May 2017	Systematic and indefinite confinement of asylum seekers in transit zones	7 December 2017	Referral: 19 July 2018 Judgment: 17 December 2020 (an action under Article 260 TFEU for failure to comply with this judgment is pending)
(same infringement procedure)	LFN: 19 July 2018	Criminalisation of activities in support of asylum seekers; Article 10 (4) RCD	24 January 2019	Referral: 25 July 2019 Judgment: 16 November 2021
Portugal INFR(2022)2153	LFN: 26 January 2023	Incorrect transposition	n/a	
Spain INFR(2022)2158	LFN: 26 January 2023	Incorrect transposition	n/a	



## Belgium – INFR(2022)2157

On the 26<sup>th</sup> of January 2023 the Commission issued Belgium a formal notice concerning incorrect transposition of Directive 2013/33.<sup>582</sup> The Press Release does not specify which provisions are included in the infringement action but it is possible that the Commission's move to instigate proceedings is connected to the well-documented Belgian reception crisis that started in 2021.<sup>583</sup> According to the Belgian Federal Agency for the reception of asylum seekers (FEDASIL), this infringement case is not connected to reception conditions but to the inability to provide accommodation to many applicants (mainly single men).<sup>584</sup>

It is clear that the Commission has monitoring activities focusing on the reception situation in Belgium. In a reply to a parliamentary question, Commissioner Johansson did not provide concrete nor extensive information but stated that the Commission is monitoring the reception situation in Belgium, is kept informed of Belgium's efforts to increase capacity and follows closely the implementation of the Operational plan concluded between Belgium and the European Union Agency for Asylum.<sup>585</sup> In addition, in the Country Chapter on the rule of law situation in Belgium, the Commission noted that a large number of judgments issued by Belgian courts are not complied with by the State, including decisions finding the State responsible for not providing adequate reception standards to asylum seekers.<sup>586</sup>

It is too early to analyse the impact of the Commission's monitoring actions on the reception situation in Belgium. The lack of specific information on the January 2023 infringement case or any other implementation-related exchanges between Belgium and the Commission further complicates the assessment of the situation. However, it is evident that no immediate improvements or changes in Belgian law and practice followed the opening of the infringement procedure. As of September 2023, the crisis in the country's reception system is ongoing and has recently intensified as the country announced the suspension of shelter provision for asylum-seeking single men due to the lack of capacity.<sup>587</sup> The fact that the main issue of the January infringement case (lack of housing capacity mainly for single men) is now part of a stated policy on behalf of the Belgian state underlines that compliance is not forthcoming.

## Greece – INFR(2009)4104

In September 2015, the Commission announced it was sending a second supplementary Letter of Formal Notice to Greece for the violation of certain provisions of the recast Reception Conditions Directive.<sup>588</sup> The content of the letter was not made publicly available but the Commission stated that it mainly concerned the "serious deficiencies in the Greek asylum system, notably with regard to the material reception conditions to applicants for international protection, particularly those with special reception needs and vulnerable persons, and structural flaws in the functioning of the

<sup>582</sup> European Commission (January 2023), Press Release, [January Infringements package: key decisions](#).

<sup>583</sup> AIDA (April 2023), [Country Report: Belgium](#), p.19; ECRE (January 2023), [Belgium: Failure to Deal with Persistent Reception Crisis is "Attack on Rule of Law" Human Rights Institutions Say, Situation in the Building of Palais des Droits is "Worse than that in Libya's Camps" Underline NGOs As Authorities Find No Solution](#).

<sup>584</sup> EUAA (2023), [Annual Asylum Report 2023](#), Section 4.7.2.4.

<sup>585</sup> [Reply to Parliamentary question E-002070/2023\(ASW\)](#), 15 September 2023.

<sup>586</sup> European Commission, 2023 Rule of Law Report: Country Chapter on the rule of law situation in Belgium, Brussels, 5.7.2023, [SWD\(2023\) 801 final](#), p.25.

<sup>587</sup> ECRE (September 2023), News, [Reception Crisis: Belgium Suspends Reception for Single Men Asylum Seekers, Wallonia Proposes Regularisation of Undocumented People to Fill Shortage in Labour Market](#).

<sup>588</sup> European Commission (September 2015), Press Release, [More Responsibility in managing the refugee crisis: European Commission adopts 40 infringement decisions to make European Asylum System work](#).

guardianship system or legal representation of all unaccompanied minors during the asylum procedure."<sup>589</sup>

This letter followed a first Letter of Formal Notice that had been sent to Greece in 2009 and a supplementary letter sent in 2010. According to the Commission's statement, those letters led to Greece's commitment to proceed to a major overhaul of its asylum system. The Commission continued its monitoring of Greece's reforms, which included an action plan in 2010 and subsequent revisions in 2013 and 2015, and provided financial and technical support. Despite this progress, the Commission states that "[...] *there is still a structural and persistent lack of reception capacity, independent of the large and unexpected influxes which have recently been observed. As a consequence, the European Commission still has serious concerns about the availability of adequate reception conditions for asylum applicants and the situation of unaccompanied minor asylum applicants.*" This case is still marked as Active on the Commission's infringement database with the last step being the second supplementary Letter of Formal Notice of September 2015.

The lack of information on the actions taken in the context of this infringement procedure render any analysis difficult. This procedure started in 2009 when the country's reception system was already under strain (the same year of the events that led to the first major judgment of the European Court of Human Rights on the deficiencies of the Greek reception system in 2011).<sup>590</sup> The reason for the length of the procedure and its active status since 2009 cannot be deduced from the available information. Greece's longstanding problems with the reception of asylum seekers are however well-documented<sup>591</sup> and the infringement's duration may simply reflect the ongoing situation of substandard conditions.

The information in the press releases mentioned above indicates that part of this infringement procedure includes management-based compliance activities, such as financial and technical assistance to the country to support the reception system.<sup>592</sup> However, this should be differentiated from the purely management approach discussed in the previous section. When such activities take place in the context of an ongoing infringement procedure, the threat of a referral to the CJEU in the event of non-compliance is present. It is possible therefore that the technical assistance in those cases is imposed rather than provided and the Commission's cooperation with national authorities can take a coercive character.

This combination of managerial measures in an enforcement process may also explain the length of the infringement procedure as the focus shifts from enforcement through court proceedings and sanctions to cooperation and support for the development of a compliant structure. As mentioned on the DG REFORM website, the technical assistance delivered to Greece under the Structural Reform Support Programme (SRSP) aims to support the country to "gradually" build a state-run reception system.<sup>593</sup> In addition, the potential lack of willingness of national authorities to work with imposed assistance is likely to further complicate and prolong the process.

An analysis of the Commission's communication and actions in Greece reveals an ambivalent stance on the situation of compliance. Despite the years-long case and the extensive deployment in the country, the Commission does not currently recognise a compliance issue on the reception

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<sup>589</sup> Idem, point 4.

<sup>590</sup> European Court of Human Rights, [M.S.S. v. Belgium and Greece, Application No 30696/09](#), 21 January 2011.

<sup>591</sup> For more information on the situation of the Greek reception system in the past years, see AIDA, [Country Reports: Greece](#).

<sup>592</sup> See, for example, details on the [financial support provided to Greece between 2014 and 2020](#).

<sup>593</sup> European Commission, Reform Support, [Reinforcing the reception capacity for asylum seekers in Greece](#).

conditions situation in Greece. In its 2022 Migration and Asylum Report, the Commission referred to the progress in the construction of new Reception and Identification Centres on the islands, as well as the transfers and relocations that eased the congestion in the Eastern Aegean, and underlined that “[r]eception conditions on the islands and on the mainland (shelter, hygiene, access to health and education for all children etc.) have been substantially improved and are in line with the European standards.”<sup>594</sup> Regardless of the rationale behind it, which will be discussed below, this stance is indicative of the less confrontational nature of this infringement case and explains the generally long duration of the Commission’s activities in Greece.

The Commission’s perspective is, however, contradicted by reports of civil society organisations<sup>595</sup> and other international organisations and bodies<sup>596</sup> which indicate that despite the assistance mentioned above and the Commission’s conclusions on the results of its actions in Greece, the Greek reception system has remained inadequate over the past decade with the problems taking new forms as Greece’s migration policies change. The number of asylum applicants on the Eastern Aegean islands has indeed decreased and the newly established Closed Control Access Centres (CCACs) do not resemble the Moria camp on Lesbos but a new set of problems has arisen, one that continues to undermine not only the Reception Conditions Directive but the entire Common European Asylum System (CEAS). A new reception approach that is based on camp proliferation, isolation, surveillance and de facto detention seems to have replaced the older policy of overcrowding and makeshift housing.

It should also be mentioned that the decrease in arrivals, which has relieved the islands of the congestion of past years, has been described as coinciding with a simultaneous exponential increase in reports of illegal returns at the country’s borders.<sup>597</sup> In spring 2023, Médecins Sans Frontières called for investigations into reports of hundreds of migrants missing from Lesbos amidst increased allegations of violent incidents, such as abductions and pushbacks.<sup>598</sup>

The fact that the impact of these actions is perceived differently by civil society, international organisations and the Commission underlines the political element that is embedded in EU law compliance mechanisms. The decision to start an infringement procedure and the assessment of its impact ultimately depends on the political perspective, approach and aim that the Commission has identified and employs. It seems that the Commission connects the Greek reception situation to the country’s capacity and resources and is therefore more willing to engage in less aggressive infringement actions, as opposed to the Hungarian cases that will be analysed below which are perceived as emerging from a lack of willingness to comply with EU law.

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<sup>594</sup> European Commission (January 2023), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the Report on Migration and Asylum, Brussels, [C\(2023\) 219 final](#), p.9.

<sup>595</sup> See the Reception Conditions chapter in: [AIDA, Country Report: Greece, 2021 and 2022 updates](#).

<sup>596</sup> OHCHR, Special Procedures (August 2023), [Greece: UN experts call for safe, impartial border policies and practices](#); See the statements of Council of Europe’s Commissioner for Human Rights (September 2021): [Greece’s Parliament should align the deportations and return bill with human rights standards](#); (January 2023) [Greek authorities should reverse the trend undermining the work of human rights defenders and journalists](#); (May 2021) [Greek authorities should investigate allegations of pushbacks and ill-treatment of migrants, ensure an enabling environment for NGOs and improve reception conditions](#); See also, Human Rights Watch (June 2023), [Greece: Food Cutoff for Refugees](#).

<sup>597</sup> AIDA (June 2023), [Country Report: Greece](#), p.168.

<sup>598</sup> Médecins Sans Frontières (May 2023), Press Release, [Pushbacks, detention and violence towards migrants on Lesbos](#).

## Greece – INFR(2022)2156

On 26 January 2023 the Commission issued Greece a formal notice concerning incorrect transposition of Directive 2013/33.<sup>599</sup> There have been no public updates on the Commission's website on the status of this infringement procedure. Information from civil society in Greece suggests that these procedures relate to the reception and detention of asylum seekers and refugees and de facto detention in the Reception and Identification Centres.<sup>600</sup>

The scarcity of information and the recent launch of the case does not allow for an extensive analysis of this action. The action, however, has not yet produced any immediate results. Since July 2023, the Eastern Aegean islands have registered high numbers of newly arrived third-country nationals and the conditions in the newly established CCACs on Samos and Lesvos are described as inhumane according to civil society organisations operating in Greece and other international organisations,<sup>601</sup> as of September 2023 the conditions on Samos and Lesvos are characterised by lack of access to medical services, extensive use of large tents, where children are housed in the same space with adults, and de facto detention.

## Hungary – INFR(2013)4062

On 10 December 2015, the Commission issued a letter of formal notice to Hungary regarding recently adopted asylum legislation.<sup>602</sup> The opening of this case against Hungary came after a full examination of Hungary's new legislative amendments in July and September of 2015.<sup>603</sup> The concerns related to the limited scope of appeals, the lack of automatic suspension of appeals, the right to interpretation and translation and the taking of judicial decisions by actors of sub-judicial level. Following a series of exchanges, Commission sent a complementary letter of formal notice on the 17 May 2017<sup>604</sup> stating that "the systematic and indefinite confinement of asylum seekers, including minors over 14, in closed facilities in the transit zone without respecting required procedural safeguards, such as the right to appeal, leads to systematic detention, which are in breach of the EU law on reception conditions and the Charter of Fundamental Rights of the EU."

The Commission remained unsatisfied with Hungary's compliance and issued Hungary with a reasoned opinion on 7 December 2017.<sup>605</sup> After analysing Hungary's reply to the reasoned opinion, the Commission decided to refer Hungary to the CJEU for non-compliance on the 19 July 2018.<sup>606</sup> The referral concerned Directive 2013/32 (Asylum Procedures Directive), Directive 2008/115 (Return Directive) and Directive 2013/33; in respect of the latter, the Commission noted that the indefinite detention of asylum seekers in transit zones constituted a failure to fulfil obligations under Article 2(h) and Articles 8, 9 and 11 of Directive 2013/33. The Court of Justice ruled on the matter on 17

<sup>599</sup> European Commission (January 2023), Press Release, [January Infringements package: key decisions](#).

<sup>600</sup> AIDA (June 2023), [Country Report: Greece](#), p.208.

<sup>601</sup> Joint Statement (September 2023), [Unlawful detention and worsening conditions: Over 4,000 asylum seekers unlawfully detained on Samos and Lesvos](#); Médecins Sans Frontières (May 2023), [Pushbacks, detention and violence towards migrants on Lesbos](#), [Press Release](#); Human Rights Watch (June 2023), [Greece: Food Cutoff for Refugees](#).

<sup>602</sup> According to the Commission's website, this case was first opened on the 17th of October 2013 but ECRE has not been able to find a press release corresponding to that date.

<sup>603</sup> European Commission (December 2015), Press Release, [Commission opens infringement procedure against Hungary concerning its asylum law](#).

<sup>604</sup> European Commission (May 2017), Press Release, [Commission follows up on infringement procedure against Hungary concerning its asylum law](#).

<sup>605</sup> European Commission (December 2017), Press Release, [Migration: Commission steps up infringement against Hungary concerning its asylum law](#).

<sup>606</sup> European Commission (July 2018), [Press Release, Migration and Asylum: Commission takes further steps in infringement procedures against Hungary](#).

December 2020 finding *inter alia* that Hungary's system of systematic detention of applicants for international protection in the transit zones of Röszke and Tompa, without observing the guarantees provided for in Article 24(3) and Article 43 of Directive 2013/32 and Articles 8, 9 and 11 of Directive 2013/33 was in violation of the Reception Conditions Directive.<sup>607</sup>

In the same press release of the 19 July 2018, the Commission announced that it also sent a letter of formal notice on new Hungarian legislation that criminalised activities that supported asylum and residence applications. Following several exchanges, on 25 July 2019 the Commission referred Hungary to the CJEU on the issue of criminalisation of activities in support of asylum applicants.<sup>608</sup> On the 16<sup>th</sup> of November 2021, the CJEU published its judgment on the matter.<sup>609</sup> In relation to Hungary's non-compliance with Directive 2013/33, the Court was mainly concerned with Article 10(4) of the Directive 2013/33 which ensures access to family members, legal advisers or counsellors and persons representing relevant non-governmental organisations for asylum applicants in detention. It held that Hungary's laws, which criminalised assistance to people seeking to apply for asylum where it could be proved that the person was aware that the application would not be accepted, constituted a failure to fulfil its obligations under that article.

It is clear that the procedures ended in legal success for the Commission: in both cases, the infringement of the Reception Conditions Directive was confirmed by the Court of Justice and added to the visibility surrounding Hungary's routine disregard towards the guarantees of the Common European Asylum System. It should be noted, however, that the closure of the transit zones of Röszke and Tompa was the result of a different CJEU judgment that was delivered following a preliminary reference by the Szeged Administrative and Labour Court in Hungary.<sup>610</sup> After the delivery of the judgment, Hungary closed the transit zones and transferred the people detained in them to open or semi-open facilities.<sup>611</sup>

Although the closure of the transit zones was a move toward a better implementation of the Reception Conditions Directive, Hungary's subsequent actions nullified any practical impact of the Commission's infringement actions or of the judgment following the referral by the Szeged court. Hungary did close the transit zones at the centre of these cases but it introduced a new asylum system which allows the lodging of an asylum application only after a declaration of intent is approved by the asylum authorities.<sup>612</sup> Consequently, since the introduction of this new asylum system the number of asylum applications remains extremely low: 117 applicants in 2020,<sup>613</sup> 38 applicants in 2021<sup>614</sup> and 44 applicants in 2022.<sup>615</sup> The measures have led to extremely low occupancy of reception centres with the open reception centre in Vámosszabadi remaining empty throughout 2022.<sup>616</sup>

The problems of this new system relate more to Directive 2013/32/EU (Asylum Procedures Directive) and the relevant guarantees ensuring access to asylum rather than the country's reception system.

<sup>607</sup> CJEU, [Judgment of 17 December 2020, C-808/18, European Commission v Hungary, ECLI:EU:C:2020:1029](#).

<sup>608</sup> European Commission (July 2019), Press Release, [Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones](#).

<sup>609</sup> CJEU, [Judgment of 16 November 2021, Case C-821/19, Commission v Hungary, ECLI:EU:C:2021:930](#).

<sup>610</sup> CJEU, [Judgment of 14 May 2020, Joined Cases C\\_924/19 PPU and C\\_925/19 PPU, FMS & FNZ, ECLI:EU:C:2020:367](#).

<sup>611</sup> AIDA (April 2021), [Country Report: Hungary](#), p.12.

<sup>612</sup> *Idem*, p.21.

<sup>613</sup> *Idem*, p.7.

<sup>614</sup> AIDA (April 2022), [Country Report: Hungary](#), p.8.

<sup>615</sup> AIDA (April 2023), [Country Report: Hungary](#), p.7.

<sup>616</sup> *Idem*, p.14.

However, it is evident that, insofar as the changes imply wider implementation issues of the entire Common European Asylum System in Hungary, better implementation of the Reception Conditions Directive has not been achieved. The new asylum system is now the subject of another infringement procedure against Hungary for unlawfully restricting access to the asylum procedure in breach of Article 6 of the Asylum Procedures Directive, interpreted in light of Article 18 of the Charter of Fundamental Rights of the European Union.<sup>617</sup> A judgment by the CJEU in June 2023 confirmed that the national measures constitute a violation of the Directive's provisions on access to asylum procedures.<sup>618</sup>

Given Hungary's lack of compliance, the Commission brought a new case against the country under Article 260 of the Treaty on the Functioning of the European Union<sup>619</sup> for failure to comply with the CJEU judgment in C-808/18.<sup>620</sup> In the action, the Commission asks the Court, inter alia, to order the country to pay a lump sum of EUR 5,468.45 daily from the date of the judgment until compliance (or a new judgment if it comes first).<sup>621</sup> As of September 2023, the case has not been adjudicated. It is an important step in the Commission's enforcement efforts as it takes the infringement procedure one step further and involves financial sanctions against the infringing Member State. Hungary's reaction in the event of a judgment ordering it to pay significant sums of money in the form of penalty for non-compliance will be an important element in any analysis of the impact of the Commission's enforcement actions when pecuniary tools are eventually deployed.

### Portugal & Spain – INFR(2022)2153 & INFR(2022)2158

On 26 January 2023 the Commission issued Portugal and Spain a formal notice concerning incorrect transposition of Directive 2013/33.<sup>622</sup> Information on the content of the letter has not been made available. The scarcity of information and the recent launch of these case does not allow for an analysis of the actions.

#### 3.2.4. Findings on enforcement

The analysis above demonstrates factors that can influence the Commission's decision to launch an infringement procedure and determine its impact, as well as the role of non-coercive compliance tools. The analysis of infringement cases on the RCD reveals that the impact of the Commission's actions is determined by limitations in the Union's compliance mechanism(s) and strategies. Dynamics that are policy-specific, i.e., EU asylum and migration law/policy, are important contributors. Following this analysis, a series of findings have been identified and are presented below.

**Finding 51:** Infringement procedures do not necessarily lead to improvements in reception standards

<sup>617</sup> European Commission (July 2021), Press Release, [Commission refers Hungary to the Court of Justice of the European Union for unlawfully restricting access to the asylum procedure](#).

<sup>618</sup> CJEU, [Judgment of 22 June 2023, C-823/21, Commission v Hungary, ECLI:EU:C:2023:504](#).

<sup>619</sup> Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union; Protocols Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, OJ C 202, 7.6.2016, pp.1–388.

<sup>620</sup> European Commission (November 2021), Press Release, [Migration: Commission refers HUNGARY to the Court of Justice of the European Union over its failure to comply with Court judgment](#).

<sup>621</sup> CJEU, [Action brought on 21 February 2022 – European Commission v Hungary, C-123/22](#).

<sup>622</sup> European Commission (January 2023), Press Release, [January Infringements package: key decisions](#).

The Commission's infringement-related actions do not appear to lead to significant improvements in the implementation of the Reception Conditions Directive. Whether it is a long infringement case with a combination of managerial and coercive measures (Greece) or a more vigorous and targeted infringement (Hungary), there is little practical impact.

As seen in the example of Greece, the Commission's infringement procedure does not always aim at drastic enforcement. An infringement action may be combined with assistance measures to increase compliance through enhanced capacity. Greece's situation as a small country at Europe's borders on one of the main migration routes to the continent and a decade of significant financial turmoil may have been able to support this perspective for a certain period of time. However, the continuous absence of meaningful improvement and the Commission's conviction that reception conditions in Greece are now in line with EU law indicate that infringement is not enough.

In the case of Hungary, the Commission has engaged in more aggressive infringement actions. The country has been referred to the CJEU and the latter has delivered judgments finding failure to fulfil obligations under the RCD. However, despite these actions and the Article 7 procedure mentioned in the previous section, the situation in Hungary has changed for the worse. Indeed, the transit zones may have closed in response to the CJEU judgment but other measures have replaced them with the aim of continuing the national policy of deterrence by restricting access to asylum and undermining the entire CEAS.

It is evident that, ultimately, the practical impact of infringement actions largely lies with the Member State's response and the political assessment it makes on the costs of non-compliance. EUMS will try to disapply EU law that is in conflict with their national interests.<sup>623</sup> So far, Hungary has not chosen compliance despite the intense enforcement efforts of the Commission. It remains to be seen whether other actions that can increase the economic and political cost of non-compliance will be more effective, e.g. the judgment of the CJEU in the action under Article 260 TFEU mentioned above, or measures taken under the Conditionality Regulation and Article 7 TEU. The effect of consistent deployment of one of these three tools, which entail serious financial (sanctions in the form of lump sums and EU funding restrictions) and political (exclusion from EU decision-making) consequences, will potentially be more significant than a simple finding of a violation in a CJEU judgment.

This lack of practical impact does not mean that infringement actions lack value. Although real improvement is not present, the political message of the opening of an infringement case or the referral of a country to the CJEU in order to establish a violation is clear. It is highly likely that the situation would have been worse without the monitoring and sanctioning action of the Commission. In addition, (re)action to unlawful situations has an inherent value in reducing the sense of impunity, a value that has become crucial in the recent context of the rule of law crisis in Europe.

#### **Finding 52:** The EU's overall policy on asylum may undermine enforcement of the RCD

The infringement procedure has been established in Article 258 TFEU as a legal action against a Member State that is not respecting its obligations under EU law. However, the Commission does not operate in a political vacuum even when it acts as an enforcer. Multiple political factors determine the choice of enforcement measures and influence the design of their deployment. Dynamics in the Union and in the EUMS can influence its enforcement strategy. The Commission is the sole institution

<sup>623</sup> Goldner Lang, Iris (2020), [No Solidarity Without Loyalty: Why Do Member States Violate EU Migration and Asylum Law and What Can Be Done?](#), *European Journal of Migration and Law* 22, pp.39–59, at 46.

of the Union that proposes laws and manages EU policies. Internal dynamics relating to its own policy priorities will have significant bearing on how it pursues enforcement in each policy area.

In the area of migration and asylum, the Commission's infringement stance is inconsistent, not least in the case of Greece which has become an illustrative example of substandard reception conditions. The launch of procedures, the duration and lack of culmination, as well as the Commission's own contradictory assessment of the country's reception system as compliant with EU law indicate that the aforementioned political factors interact with intensity.

The Commission's approach on Greece is shaped by an EU policy on asylum and migration management that is not based on an inclusive, pragmatic and clear-headed analysis of the phenomenon of displacement and continues to support deterrence instead of acceptance. The Commission's role in this EU policy is dominant and the ongoing reform of the CEAS confirms a conscious departure from the standards that the recast RCD has established. It is thus difficult for the Commission to attack all the elements of the Greek approach on reception management when its core elements coincide with proposals made in the New Pact on Migration and Asylum (the Pact).<sup>624</sup> Even if the new situation is characterised by increased use of measures restricting the applicants' freedom of movement, hostile environments, isolation and difficulties in access to services, the Commission is not likely to follow the most rigorous approach to address each one of them.

The proposed reforms contained in the Pact, which include less guarantees, more border containment, unworkable solidarity, increased returns and detention,<sup>625</sup> reinforce the idea that migration is a reality against which Europe must defend itself. The mere insistence on a far-reaching reform of the CEAS that lowers standards for everyone is at odds with and eventually undermines the Commission's enforcement efforts against EUMS that do not comply with the CEAS standards as they currently stand. In practical terms, the focus on reform absorbs time and resources that would have been likely to enhance enforcement.

Compliance with the RCD, and generally the CEAS, is not only undermined by the Commission's insistence on pursuing future reforms over enforcing current standards. The quality of the law itself is a major element in securing compliance. The Commission has emphasised that "[c]lear legal drafting and accessible texts contribute to legal certainty and better application"<sup>626</sup> but the proposed reforms have been criticized for lacking precisely these characteristics.<sup>627</sup> The procedure to adopt the reforms has been long and, despite recent progress, several issues remain unresolved.<sup>628</sup> The intense difficulties in the negotiations are likely to be indicators of future non-compliance, yet securing the latter is not the focus of the reforms.

### **Finding 53:** Political factors have a strong influence on the Commission's approach to enforcement

As noted in the previous finding, external political factors affect the Commission's enforcement approach both in terms of the chosen tool and in the way enforcement is pursued. When enforcing

<sup>624</sup> ECRE (June 2021), [Legal Note no 9, Asylum in Greece: a situation beyond judicial control?](#), p.18.

<sup>625</sup> ECRE has [published](#) extensive analysis of the proposed reforms.

<sup>626</sup> European Commission (January 2017), Communication from the Commission — EU law: Better results through better application, [C/2016/8600](#), OJ C 18, pp.10–20.

<sup>627</sup> Joint Statement (October 2017), [The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded](#); Euromed Rights (May 2021), [EU Pact on Migration and Asylum cannot work](#); RSA (June 2023), [The EU Council quagmire of procedures is a dire threat to the right to asylum](#).

<sup>628</sup> ECRE (August 2023), [Policy Note, Reforming EU Asylum Law: the Final Stage](#).



EU law in a specific policy area, the Commission develops its activities on the basis of different political considerations in addition to its own priority setting mentioned above.

The perception of a policy matter by the EUMS and their citizens is a factor that significantly impacts the enforcement approach and, ultimately, the outcome. Asylum and migration policy is a highly sensitive and politicised topic across Europe, one that challenges unity both inside EUMS and in the Union itself.<sup>629</sup> The Commission is not likely to engage in an aggressive infringement process in a policy area where EUMS struggle to find common ground, reject solidarity and seek the lowering of EU standards. According to research into the infringement landscape of the past two decades, the Commission's fear of diminished support by the Member State has led to the institutionalisation of forbearance.<sup>630</sup> Moreover, analysis of the Commission's overall infringement strategy suggests a certain reluctance in deploying infringement and other aggressive compliance tools where a highly sensitive topic is involved.<sup>631</sup> In the area of asylum and migration, infringement tolerance is therefore bound to be stronger.

The above considerations hold true as to the causes of infringement as well: the politically sensitive nature of asylum within the EUMS contributes to non-compliance. Problems with implementation of EU law are often connected with the expected negative reactions from constituents and the public perception of the controversial nature of the issue.<sup>632</sup> Where national reaction is high, implementation might falter. The perception and management of asylum and migration in different EU countries is quite fragmented as EUMS have their own national perspectives on displacement and react differently to increased arrivals of third-country nationals in their territory.<sup>633</sup> It is not the purpose of the present analysis to discuss the politics of displacement across Europe but it is evident that compliance – before or after infringement – will vary depending on the political, economic, social and geographical reality of each Member State.

**Finding 54:** Enforcement is pursued more aggressively when faced with deliberate and intransigent non-compliance

The conduct of the EUMS affects the Commission's compliance activities and approach. The case of Hungary is a good example of how deliberate and persisting circumvention of EU law is likely to attract more aggressive enforcement.

Hungary's lack of compliance with the CEAS is not perceived as an isolated incident but as part of a wider situation that is characterised by disregard towards both EU asylum law and the EU legal order in general. In addition to this, there is a wider situation of erosion of the rule of law in the country.<sup>634</sup> Multiple changes in national legislation and policy have led to the significant divergence of the country's asylum policy from CEAS standards.<sup>635</sup> The country's Prime Minister has publicly defied

<sup>629</sup> The Guardian (September 2023), [Migration could be 'dissolving force for EU', says bloc's top diplomat](#).

<sup>630</sup> Kelemen, R. D. and Pavone, Tommaso (December 2021), [Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union](#), p.21.

<sup>631</sup> Julia Schmälter (2018), [A European response to non-compliance: the Commission's enforcement efforts and the Common European Asylum System](#), West European Politics, DOI: 10.1080/01402382.2018.1427947, p.8.

<sup>632</sup> König, T., & Luetgert, B. (2008), [Troubles with Transposition? Explaining Trends in Member-State Notification and the Delayed Transposition of EU Directives](#), British Journal of Political Science, 39(01), p.165.

<sup>633</sup> Poitico (May 2022), [The EU's Real Refugee Policy: Division and Delay](#).

<sup>634</sup> European Parliament, Press Release (September 2022), [MEPs: Hungary can no longer be considered a full democracy](#).

<sup>635</sup> See AIDA, [Country Reports on Hungary](#).

CJEU jurisprudence,<sup>636</sup> while the Minister of Justice attempted to challenge the supremacy of EU law before the country's Constitutional Court.<sup>637</sup>

The situation allows the Commission to treat this infringement case as one that is connected to systemic breaches of EU law. In addition to the systemic criterion being a priority for the Commission's enforcement action, such cases are likely to attract far less criticism of the Commission as a technocratic enforcer. Due to the widespread or generalised nature of the violations, there is also a certain degree of facility in the pursuit of this type of cases due to the objective evidence and the positive case law by the CJEU.<sup>638</sup> Lastly, a state conduct with the above characteristics poses a serious – almost existential – threat to the Commission as it undermines its authority as the guardian of EU law and the motor in the Union's law-making mechanism. Against this threat, it is reasonable to expect a rigorous response.

**Finding 55:** Success factors: certain factors can improve the impact of the infringement actions, notably good governance standards and the skilful use of non-coercive compliance tools

Despite the shortcomings identified above, certain factors can increase the impact of the Commission's infringement actions or ensure general compliance in the long term. Given the importance of the procedures in the application of EU law, high levels of good governance are required. Consistency, transparency and a fundamental rights focus can lead to more successful enforcement. In addition, non-coercive, constructive tools should be promoted and deployed consistently and regularly.

These elements are mainly analysed as cross-cutting tools that need to inform the entire compliance action of the Commission (coercive and non-coercive), although in certain cases their use is suggested as a way to avoid violations from occurring.

### Good governance

Both EU Pilot and infringement procedures are highly opaque mechanisms. Although their confidential nature has been confirmed by the CJEU, the secrecy around the dialogues that take place within these processes has been criticised.<sup>639</sup> Transparency in enforcement can enhance the Commission's authority and allow it to pursue infringements with political confidence and credibility; as the CJEU put it in *Sweden and Turco v Council*, openness confers "greater legitimacy on the institutions in the eyes of European citizens."<sup>640</sup> Within the limits of the relevant case law on infringement confidentiality, transparency in the opening and the evolution of infringement cases must be improved at least through administrative measures that provide sufficient and accessible information to citizens in line with the European Ombudsman's suggestions.<sup>641</sup>

Consistency is another element that can reinforce the Commission's enforcement efforts. As discussed above, different situations of infringements may need specific handling, inter alia, because

<sup>636</sup> Politico (December 2021), [Hungary won't abide by EU court ruling on migration, Orbán says](#).

<sup>637</sup> Verfassungsblog (December 2021), [Full Steam Back The Hungarian Constitutional Court Avoids Further Conflict with the ECJ](#).

<sup>638</sup> Prete, L. (2023), [The Systemic Criterion in the Use of Infringement Proceedings](#), German Law Journal, 24(6), 1011-1022. doi:10.1017/glj.2023.62.

<sup>639</sup> European University Institute (2016), EUI Papers, [Openness, Transparency and the Right of Access to Documents in the EU. In-Depth Analysis](#).

<sup>640</sup> CJEU, [Judgment of 1 July 2008, Sweden and Turco v Council, C 39/05 P and C 52/05 P, EU:C:2008:374](#), para 59.

<sup>641</sup> European Ombudsman (14 September 2017), [Decision of the European Ombudsman setting out suggestions following her strategic inquiry OI/5/2016/AB on timeliness and transparency in the European Commission's handling of infringement complaints](#).

EUMS may present different reasons for violations and face different challenges to compliance. There is a necessity for dynamic enforcement and flexibility when responding to different types of violations but this should not lead to an infringement strategy that lacks coherence. Contradictions in the Commission's policy, ambivalence in its stance and indications of reluctance to act were discussed in the previous sections.

These characteristics indicate a high degree of inconsistency that weakens the Commission's position as an enforcer in the public perception and, importantly, in the negotiation procedures that precede and accompany infringements. Without strategies that are and look robust non-compliance is likely to diffuse and become increasingly difficult to manage. Where contradictions emerge, or where an infringement case differs in its delivery, the Commission can maintain credibility by openly explaining why a certain course of action has been chosen. Its annual reports on the enforcement of EU law provide little information in this respect and fails to inform citizens fully on *how* it monitors the application of EU law, a weakness that has been emphasised by the European Ombudsman as well.<sup>642</sup>

Lastly, a focus on the full set of the Union values must be at the forefront of any approach that seeks to enforce EU law. Over the past years, rule of law has been at the centre of the Commission's efforts with good reason. Fundamental rights should also take a central role in the Commission's design of its future strategy. This would bring enforcement action in line with Article 2 TEU, whereby human rights and rule of law are values of equal weight and should be addressed as such. In addition to the Union values, the obligations enshrined in the EU Charter of Fundamental Rights imply a duty for the EU institutions to "*create the framework necessary for the realisation of human rights.*"<sup>643</sup>

The annual reports on the application of the EU Charter of Fundamental Rights<sup>644</sup> are a great start in this respect, principally for evidence gathering but the reports do not seem to inform enforcement actions nor do they lead to the development of more structured implementation frameworks. This contrasts with other highly developed implementation mechanisms, such as the Schengen Evaluation Monitoring Mechanism<sup>645</sup> and the Single Market Scoreboard.<sup>646</sup> Arguably, enforcement has been traditionally more robust in those areas as the EU started as a common market without borders; it is on the basis of a market logic that the discussion of rights emerged in the Union.<sup>647</sup>

However, this should not translate into poor enforcement in other areas of EU policy and law or in cases where fundamental rights are the only concern. Regardless of the starting point, fundamental rights have evolved to become a Union value and a constitutional obligation for the institutions and for EUMS when they implement EU law. An evolution in the way enforcement is pursued when non-compliance concerns fundamental rights, as is the case with the RCD, is warranted. The EU's Fundamental Rights Agency could have a prominent role in this regard not only as an agency that monitors the fundamental rights situation in each Member State but also as an agency that can provide specialised expertise in the Commission's enforcement strategies and actions.

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<sup>642</sup> Idem, see Suggestions for Improvement.

<sup>643</sup> European Ombudsman (January 2017), [The respect for and pursuit of fundamental rights, Thematic paper](#).

<sup>644</sup> European Commission, [Annual Reports on the application of the Charter](#).

<sup>645</sup> [Council Regulation \(EU\) 2022/922](#) of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013, ST/7609/2022/INIT, OJ L 160, 15.6.2022.

<sup>646</sup> European Commission, [Single Market Scoreboard](#).

<sup>647</sup> Augenstein, D. (2013), [Engaging the Fundamentals: On the Autonomous Substance of EU Fundamental Rights Law](#). German Law Journal, 14(10), 1917-1938. doi:10.1017/S2071832200002571.

An enforcement approach that focuses on fundamental rights is not only in line with the institutional duties of the Commission and good governance principles. It is also an approach that can send a clear message to EUMS that enforcement is not pursued *à la carte* and impunity is not tolerated in any situation that violates the Union's values. Moreover, it reinforces the global perception of the EU as a legal order that respects international legal principles in practice and increases trust among its citizens, ultimately offering more political legitimacy to the Commission.

### **The use of non-coercive tools**

The presentation of the Commission's compliance toolbox in the previous section included the use of non-coercive tools. These are many, dynamic and can contribute to the effective application of EU law by targeting the roots of non-compliance. Cooperation, guidance and monitoring have been singled out as the most likely to create the conditions for compliance.

The Commission's cooperative action is a crucial tool that ensures prevention or early detection of EU law breaches. As a prevention tool, it creates the opportunity and the space for EUMS to interact with the EU political and legal order in a way that increases the chances of acceptance of EU law obligations. More regular and more transparent cooperative action between EU and national officials can increase the public's understanding of "what the EU does for them" and minimise negative reactions to what is sometimes seen as Brussels-based technocracy. As a detection tool, it can help the Commission manage situations that indicate (a risk of) emergent non-compliance and deploy different managerial measures, as described above. Again, an opportunity is created for non-compliance to be analysed and resolved before being the subject of enforcement action.

Cooperation already has a central place in the Commission's compliance strategies but certain elements are missing. Serious engagement between Commission representatives, national authorities, EU agencies and civil society organisations must be the basis for such cooperation to result in real and practical impact. In respect of the implementation of the RCD, this should translate into closer links with actors who work inside the reception system and interact with its beneficiaries, i.e., asylum applicants. Such a collaboration can provide information on the actual state of implementation of EU law, a need that is more pronounced in the reception context because the reception of asylum seekers happens on the ground and the circumstances often change. In addition, the Commission's cooperation with authorities and the progress of its implementation activities must be subject to a high degree of transparency. As explained above, this is not the case today.

Practical guidance on the application of the Reception Conditions Directive can eliminate rule ambiguity as a source of non-compliance. The CJEU case law presented above reveals that there has been a need for rule clarity and a harmonised interpretation of the Directive's provisions, particularly in the use of detention and the interplay between reception conditions and the EU Charter's guarantees. Detailed, clear and authoritative practical guidance on the application of law is a necessary governance tool that should be used more regularly.

Such guidance must focus on the Commission's clarification of the minimum requirements that EU secondary law imposes and suggest recommendations that contextualise the Member State's discretion with reference to EU primary law. The EUAA can complement this guidance by focusing on more technical and professional guidelines. In addition, the guidance must cover real-time needs. Case-specific guidance should be issued immediately when developments in the reception situation of a given Member State require it, following the example of the Temporary Protection Directive guidelines. A regular review of the guidance, on the basis of implementation assessments and following important CJEU case law, is also necessary.

Lastly, monitoring and reporting mechanisms can be effective in establishing the implementation situation of the EU asylum acquis via thorough analysis on the basis of established scientific methods, including with the support of national competent actors, monitoring bodies or complaint mechanisms. The lack of evaluation reports on the implementation of the Reception Conditions Directive deprives the Commission of a useful, fact-based and to an extent less controversial resource to support its infringement efforts.

It is possible that such reports are used internally by the Commission but there is a need for making these assessments public. In addition to the obligation to report to the European Parliament and the Council under Article 30 RCD, the public nature of implementation assessments ensures their quality, relevance and credibility by allowing external scrutiny.

In the long term, these assessments can contribute to a deeper understanding of the structural reasons behind a specific legal instrument's poor compliance record. As noted above, the Commission's own strategy considers that better law-making ensures compliance. Implementation assessment reports should provide guidance in the Commission's reforms including by substantiating whether reform or enforcement is the best course of action. The use of these assessments in the Commission's legislative activity should be reflected in detail in the explanatory memoranda that accompany every proposal for a reform.

## 4. Part IV: Findings, implementation gaps and good practices

### Provision of material reception conditions

#### Findings

- **Finding 1:** *The national authorities usually have overall responsibility for reception, however there are exceptions where responsibility is shared among different authorities and actors.*
- **Finding 2:** *In most EUMS, the reception authorities work only on asylum; in a minority, the reception authorities have a broader mandate, going beyond asylum.*
- **Finding 3:** *The day-to-day management of reception facilities involves a range of actors in almost all cases.*
- **Finding 4:** *Most EUMS change the type of accommodation provided at different stages of the procedure.*
- **Finding 5:** *The types of accommodation provided for asylum applicants vary significantly across EUMS.*
- **Finding 6:** *Some EUMS are not providing one or more of the material reception conditions required by the RCD.*
- **Finding 7:** *A variety of (permitted) restrictions on freedom of movement are applied across the EUMS, including dispersal systems and reporting requirements.*
- **Finding 8:** *A variety of practices are used by the EUMS for ending reception after a final decision on the asylum application.*

#### Implementation gaps

- **Finding 9:** *Lack of access to the asylum procedure hinders access to (material) reception conditions.*
- **Finding 10:** *Delayed access to material reception conditions is common (i.e. material reception conditions not being available from the time of the making of the application).*
- **Finding 11:** *Incorrect decisions on ineligibility to access material reception conditions affect certain categories of asylum applicants.*
- **Finding 12:** *Inadequate reception capacity and poor planning has led to reception crises in at least six EUMS.*
- **Finding 13:** *Significant numbers of applicants have been reduced to destitution in recent years in at least eight EUMS.*
- **Finding 14:** *The poor quality of material reception conditions is a general problem across the EUMS.*
- **Finding 15:** *Applicants awaiting a Dublin transfer are often denied reception conditions in a number of EUMS.*
- **Finding 16:** *In some EUMS, reception conditions are withdrawn prematurely in practice, although not in law.*

- **Finding 17:** *Differential treatment may occur across a national territory, especially in federal states.*

## Use of detention

### Findings

- **Finding 18:** *Almost all EUMS detain asylum seekers, using a variety of the available grounds for detention.*
- **Finding 19:** *Most EUMS have provisions in law and policy on alternatives to detention, however their use is limited.*
- **Finding 20:** *Required guarantees for the use of detention are generally enshrined in law, including judicial review, legal assistance and representation, although challenges may arise in practice.*
- **Finding 21:** *Conditions in detention appear to be respected by most EUMS, although only limited information is available.*
- **Finding 22:** *Detention of vulnerable people is used by EUMS, including widespread detention of children when accompanied, and limited detention of unaccompanied children.*

## Implementation gaps

- **Finding 23:** *Systematic detention and the use of de facto detention are widespread across the EUMS.*
- **Finding 24:** *There is a lack respect for certain of the procedural guarantees related to detention in around half of EUMS.*
- **Finding 25:** *Poor conditions are found in detention in some EUMS.*
- **Finding 26:** *Vulnerability assessments are frequently not carried out prior to detention across the EUMS.*

## Access to socio-economic rights

### Findings

- **Finding 27:** *All EUMS enshrine in law the right to education for asylum-seeking children and access to preparatory classes.*
- **Finding 28:** *All EUMS provide access to the labour market within the 9 month limit.*
- **Finding 29:** *Most EUMS allow access in principle to vocational training, although it is not an obligation to do so.*
- **Finding 30:** *For access to both the labour market and to vocational training, practical obstacles derive from sectoral limitations and administrative requirements across the EUMS.*
- **Finding 31:** *Legal provisions enshrine provision of health care at or above the minimum standards required in all EUMS.*

## Implementation gaps

- **Finding 32:** *Structural and systemic problems limiting access to education, employment and health care disproportionately affect asylum applicants compared to the general population in certain EUMS.*
- **Finding 33:** *The complexity of administrative procedures is a major obstacle to accessing rights to education, work and health in many EUMS.*
- **Finding 34:** *Racial and religious prejudice may be a factor in limiting access to socio-economic rights in some EUMS.*

## Reduction and withdrawal of reception conditions

### Findings

- **Finding 35:** *A significant number of EUMS are going beyond what is allowed by the RCD in their legal provisions and/or practice on reduction and withdrawal of reception conditions.*

## Implementation gaps

- **Finding 36:** *Unlawful reduction or withdrawal of reception conditions and lack of individualised assessment appear to be commonplace across the EUMS.*
- **Finding 37:** *The consequences of reduction and withdrawal are severe in many cases, leading to suffering for applicants and social tension.*

## Treatment of vulnerable applicants

### Findings

- **Finding 38:** *Vulnerability assessments appear often to be inadequate in EUMS where information is available.*
- **Finding 39:** *All EUMS provide separate accommodation for families with children, mainly in separate areas of general facilities and in some cases in separate facilities.*
- **Finding 40:** *EUMS use a range of accommodation options for unaccompanied children. Some EUMS provide suitable reception for unaccompanied children; in other EUMS, unaccompanied children are housed in unsuitable facilities.*
- **Finding 41:** *Most EUMS provide specialised reception facilities for single women.*
- **Finding 42:** *Some EUMS provide specialised reception for vulnerable applicants other than families with children, unaccompanied children and single women, including, variously, victims of torture and violence, LGBT applicants, and people with disabilities.*

## Implementation gaps

- **Finding 43:** *Identification of vulnerabilities is often too late in many EUMS.*
- **Finding 44:** *There is a lack of adequate facilities and poor living conditions for vulnerable applicants in many EUMS.*



## EU support and enforcement: funding

### Findings

- **Finding 45:** EU funds have supported implementation of the RCD, however there is potential for funds to improve the current state of only partial implementation.
- **Finding 46:** AMIF EMAS has proven to be a multifunctional and flexible tool.
- **Finding 47:** There is a lack of transparency on the implementation of EU funds for reception.
- **Finding 48:** Inadequate investment in reception capacity creates a need for support from EU funds.
- **Finding 49:** EU funds support crisis response rather than structural improvement.
- **Finding 50:** There were insufficient initial budget allocations in the last MFF.

## EU support and enforcement: European Commission monitoring, management and infringement

### Findings

- **Finding 51:** Infringement procedures do not necessarily lead to improvements in reception standards.
- **Finding 52:** The EU's overall policy on asylum may undermine enforcement of the RCD.
- **Finding 53:** Political factors have a strong influence on the Commission's approach to enforcement.
- **Finding 54:** Enforcement is pursued more aggressively when faced with deliberate and intransigent non-compliance.
- **Finding 55:** Success factors: certain factors can improve the impact of the infringement actions, notably good governance standards and the skilful use of non-coercive compliance tools.

## 5. Part V: Recommendations

The recommendations are separated into the categories examined in the study; where there is a particular role for the European Parliament, that is highlighted, otherwise, recommendations target all relevant institutions.

### Recommendations: Provision of material reception conditions

- **Recommendation 1:** *Preserve the range of options used by EUMS for material reception conditions and support sharing of good practice.*

The study finds that the EUMS use a variety of options for provision of reception conditions. Given that the recast RCD remains in the form of a directive and maintains discretion for the EUMS, it is likely that this will continue.

The EUAA, the Commission and the European Parliament can monitor the impact of the choice of model, including the impact on cost effectiveness, the rights of applicants, efficiency, and so on.

- **Recommendation 2:** *As a matter of urgency, the relevant EUMS should address the failure to provide one or more of the required material reception conditions.*

The study demonstrates that a number of EUMS fail to provide one or more of the required reception conditions, which constitutes a major implementation gap. The implications of these failures likely include secondary movement and detrimental effects on the applicants.

Plans for increasing Commission support to implementation of the CEAS should involve enforcement measures to address these failures to provide required reception conditions.

The European Parliament should be ready to ensure adequate resources are available in the EU budget for implementation of the CEAS when the Pact is accepted and that longstanding weaknesses and violations are addressed, including such failures.

- **Recommendation 3:** *As a matter of urgency, EUMS should address the lack of access to the asylum procedure which is a major factor hindering access to (material) reception conditions.*

The study shows that denial of access to an asylum procedure has the indirect effect of a lack of access to reception conditions. While this is not a factor relating directly to implementation of the RCD, it is a major obstacle to reception conditions provision, so it is considered relevant.

The European Parliament should monitor the interaction between different elements of the CEAS, including the particular relationship between obligations on access to a procedure and its links with provision of reception conditions.

- **Recommendation 4:** *EUMS should tackle delayed access to material reception conditions, incorrect decisions on eligibility and poor quality of reception conditions, all of which are undermining implementation of the RCD.*

The study identifies a range of other implementation gaps which should be addressed by the EUMS including through availing themselves of the support of the EUAA, and working with local governments, NGOs and other providers of reception; incorrect decisions on eligibility.

After the conclusions of the reforms, the European Parliament should be ready to monitor in detail the implementation of the recast RCD, a process which should start from specific, identified implementation gaps, including those mentioned here.

- **Recommendation 5:** *All relevant actors should prepare for the increase in destitution of applicants likely to arise from the legislative changes contained in the recast RCD, and specifically the impact of Article 17a.*

With the introduction of Article 17a which allows for the removal of reception conditions in certain circumstances, it is likely that there will be an increase in destitution of applicants. Therefore, needs will increase for support from municipalities, non-governmental organisations, and faith-based organisations. Demands on EU funding are also likely to rise.

The European Parliament should be prepared to monitor the impact of Article 17a specifically, given the rationale behind the article and the risks that may arise.

- **Recommendation 6:** *Further research should be commissioned in the following areas:*
  - *The expanding phenomenon of applicants reduced to destitution, including establishing the numbers, causes and impact in more detail.*
  - *The effect of division of responsibility for reception among different actors, in terms of overall responsibility and day-to-day management of reception.*
  - *The effect of changing the type of accommodation provided at different stages of the procedure.*
  - *The effect of the use of (permitted) restrictions on freedom of movement on the integration and rights of applicants, and on EUMS' capacity.*

## Recommendations: Use of detention

- **Recommendation 7:** *Systematic detention and de facto detention, which are widespread, should not take place.*

The study finds that EUMS often resort to systematic use of detention and de facto detention. EUMS should be obliged to carry out individual assessments before applying detention, and cease the use of de facto detention, which is often unlawful. The RCD provisions on detention should always be read in conjunction with the Charter on Fundamental Rights.

In its monitoring of the implementation of the recast RCD, the European Parliament should pay particular attention to rules on the use of detention. It should request information as required from the European Commission and the EUAA on the use of detention by the EUMS.

- **Recommendation 8:** *Where detention is used, the EUMS should respect the procedural guarantees, which are long established in EU and international law.*

The study finds that the procedural guarantees required when detention is used are often not applied. It also finds that detention of vulnerable persons is taking place, including widespread detention of children when accompanied and some cases of detention of unaccompanied children. Proper use of the procedural guarantees could limit these phenomena.

For the European Parliament, monitoring the provisions on detention in the recast RCD should be informed by provisions in international law and EU law, and the relevant jurisprudence in relation to the necessary procedural guarantees which should be in place for detention to be lawful.

- **Recommendation 9:** *The EUAA in liaison with the European Commission should develop guidance on alternatives to detention and encourage their use by EUMS.*

The study shows that alternatives to detention are often provided for in law but are rarely used in practice. Increasing work by the EUAA could encourage the greater use of these alternatives.

The European Parliament should continue to request information on the use of alternatives to detention and encourage the activity of the Commission and the EUAA in supporting their use.

- **Recommendation 10:** *All institutions and actors involved in implementation of the CEAS should prepare to monitor and respond to the effects of the increased use of detention that is likely to result from legislative changes, and specifically the combined impact of recast RCD Article 8 and APR Article 41.*
- **Recommendation 11:** *Monitoring and oversight bodies should prepare for the risk that the unlawful use of detention will increase when legislative changes come into effect. Given the lack of clarity of some of the provisions, legal challenges may be required in order to ensure that the Courts decide on the parameters of the use of detention.*

The study finds that changes included in the compromise on the recast RCD expand the grounds in law for the use of detention, which will likely increase the numbers of people in detention. Other provisions are unclear and may be tested in courts. Before then, there is a risk that the use of detention increases.

Should the compromise as it stands be adopted, the European Parliament should be ready to monitor the impact of the revised articles that cover detention.

### Recommendations: Access to socio-economic rights

- **Recommendation 12:** *Granting of access to socio-economic rights on similar terms as for country nationals should be encouraged and replicated.*

The study finds that a good practice used by some EUMS is to grant access to socio-economic rights on similar terms as for country nationals, especially concerning health care. There is scope to replicate these practices more widely.

- **Recommendation 13:** *EUMS should actively seek to reduce the complexity of administrative procedures required for accessing rights to education, employment and health care.*

The study identifies administrative complexity as the most serious obstacle to accessing socio-economic rights for asylum applicants. There is significant scope for simplification.

### Recommendations: Reduction and withdrawal of reception conditions

- **Recommendation 14:** *As a matter of urgency, EUMS should cease unlawful withdrawal and reduction of reception conditions.*

The study finds that a number of EUMS go beyond what is allowed by the RCD in their legal provisions and/or practice on reduction and withdrawal of reception conditions, including the lack of individualised assessments.

For the European Parliament, any monitoring of implementation of the recast RCD should examine specifically whether the current practices – which involve unlawful reduction and withdrawal of reception conditions in some cases – persist.

- **Recommendation 15:** *Further research should explore the consequences of reduction and withdrawal of reception conditions, including in relation to Recommendation 6 above on destitution,*

The study finds that the consequences of reduction and withdrawal appear to be severe in many cases, and may lead to suffering of the applicant and social tension within the contexts affected. However, additional research is needed to establish the numbers and possible causal links.

The European Parliament could consider additional research that examines the consequences of reduction and withdrawal of reception conditions, including the consequences for the EU as a whole and the consequences for different EUMS.

- **Recommendation 16:** *Municipalities, NGOs and other actors should be prepared to deal with the increased use of reduction and withdrawal of material reception conditions which will result from the recast RCD.*

The study finds that the compromise text on the recast RCD, and specifically changes to Articles 17 and 19, will allow for increases in the use of reduction and withdrawal of material reception conditions.

Monitoring implementation of the recast by the European Parliament should cover the operation of the revised rules on reduction and withdrawal.

### Recommendations: Treatment of vulnerable applicants

- **Recommendation 17:** *As a matter of urgency, EUMS should ensure that vulnerability assessments take place in a timely manner and that they are of adequate quality. In relation to asylum-seeking children, improvements in age assessments should be made in most EUMS.*
- **Recommendation 18:** *As a matter of urgency, EUMS housing unaccompanied children in unsuitable reception conditions must be obliged to find suitable options.*
- **Recommendation 19:** *All EUMS should be able to provide specialised reception for vulnerable applicants in addition to families with children, unaccompanied children and single women, for example, for victims of torture and violence, LGBT applicants, and people with disabilities.*

The study finds a number of weaknesses in the implementation of the RCD provisions covering vulnerable applicants, although good practices were also identified and can be instructive in supporting the necessary improvements in the EUMS in question.

The European Parliament should review the specific provisions in relation to vulnerable groups and incorporate references in its reviews of the implementation of the CEAS.

### Recommendations: EU support and enforcement: funding

Given the particular role of the European Parliament in matters of EU funding and decision-making on the EU budget, all the recommendations below are directed at the European Parliament.

- **Recommendation 20:** *EU funds should not be used to support reception conditions that do not comply with legal obligations.*

The study found that EU funds are in some instances supporting reception conditions that do not meet legal obligations. Of particular concern is reception accommodation provided in lower standard temporary and/or detention facilities that do not meet the standards specified in the recast RCD, and the prolonged use of lower standard emergency accommodation within mainstream reception systems.

- **Recommendation 21:** *EU measures should focus on structural improvements, including through the use of contingency plans, in order to avoid more costly crisis response.*

The AMIF 2014-20 made a positive but uneven contribution to the implementation of reception conditions in the EU, with AMIF measures often prioritising basic reception over other aspects. The

ESF's contribution is less certain, although it is clear that asylum seekers were included in ESF measures on employment and training in some instances.

- **Recommendation 22:** *AMIF budget allocations should be commensurate with needs, including learning from the previous inadequate allocations.*

Allocation of AMIF and ESF shared management funds to EUMS for 2014-20 did not sufficiently capture changing national needs in relation to migration (including reception conditions) during the implementation period. Substantial budget increases for AMIF EMAS during 2014-20 demonstrate the extent to which initial budget allocations were insufficient to meet reception needs from 2015.

- **Recommendation 23:** *Adequate funding should be provided to the AMIF emergency fund facilities (EMAS or future equivalents) as it has proven to be an effective tool.*

The study found that AMIF EMAS was central to supporting responses to the crisis. Often the emergency support did not then lead to measures for longer term reception improvement or resilience. In contrast to the funding distribution and programme amendment modalities for AMIF national programmes, EMAS provided a route for the Commission to disburse funds directly and more quickly to individual EUMS, according to prevailing needs. EMAS was also an effective vehicle for securing large budgetary increases for reception conditions from within the Union budget in response to emergency needs.

- **Recommendation 24:** *Greater transparency on the implementation of EU funds for reception should be ensured through collection and publication of data from EUMS' national programmes.*

No systematic data on the contribution of ESF 2014-20 measures to implementing reception conditions is available, although it is clear that ESF funding did contribute to this area. For AMIF EMAS, a lack of publicly available information on grants, actions implemented and impact/results, at both EU and national level, mean the instrument remains highly un-transparent.

- **Recommendation 25:** *EU funding but also other EU resources such as training, guidance, advice and enforcement measures, should all be geared towards ensuring adequate investment in reception capacity in the long term, in order to minimise crises and to save EU funds.*

Inadequate reception capacity in EU EUMS pre-dates the 2015 crisis,<sup>648</sup> suggesting EU funds for reception were in many instances addressing long-term structural problems rather than emergencies. Additionally, in some EUMS significant AMIF EMAS resources were used to create/strengthen reception infrastructure and coordination where these elements were lacking.<sup>649</sup>

## Recommendations: EU support and enforcement: European Commission monitoring, management and infringement

- **Recommendation 26:** *Infringement procedures should be stepped up, given the limited number of procedures launched in contrast to the significant evidence of infringements found.*
- **Recommendation 27:** *Evaluation of infringement procedures should consider their direct impact but also consider the impact on the rule of law of launching procedures or – alternatively – the risks of **not** pursuing action in situations of ongoing lack of compliance.*

The study finds that the Commission's infringement-related actions do not always lead to significant improvements in the implementation of the RCD, however this lack of practical impact does not mean that infringement actions lack value.

<sup>648</sup> AIDA (2019) *Housing out of reach? The reception of refugees and asylum seekers in Europe*, p.13.

<sup>649</sup> [AMIF Interim Evaluation Report](#), pp.419, 451, 509.

Although real improvement is not present, the political message of the opening of an infringement case or the referral of a country to the CJEU in order to establish a violation is clear. It is highly likely that the situation would have been worse without the monitoring and sanctioning action of the Commission. In addition, (re)action to unlawful situations has an inherent value in reducing the sense of impunity, a value that has become crucial in the recent context of the rule of law crisis in Europe.

- **Recommendation 28:** *The impact of the EU's overall policy on asylum on enforcement of the RCD (and other CEAS measures) should be taken into account.*

The study found that external political factors affect the Commission's enforcement approach both in terms of the chosen tool and in the way enforcement is pursued. When enforcing EU law in a specific policy area, the Commission develops its activities on the basis of different political considerations in addition to its own priority setting mentioned above. The study found that, on the RCD and more widely in the area of migration and asylum, the Commission's infringement stance may be inconsistent.

- **Recommendation 29:** *The success factors that improve the impact of infringement actions, notably good governance standards and the skilful use of non-coercive compliance tools, should be built into enforcement strategies and be used to bolster the success of infringement procedures.*

Despite the shortcomings identified, certain factors can increase the impact of the Commission's infringement actions or ensure general compliance in the long term. Given the importance of the procedures in the application of EU law, high levels of good governance are required. Consistency, transparency and a fundamental rights focus can lead to more successful enforcement. In addition, non-coercive, constructive tools should be promoted and deployed consistently and regularly.

The European Parliament should monitor the use of infringement proceedings and liaise and question the European Commission on the use of enforcement tools to ensure better implementation of the RCD.

## ANNEX I – Reception for Beneficiaries of Temporary protection

### Key findings

- The **Temporary Protection Directive** provided a **flexible tool** for the reception of more than 4 million beneficiaries of temporary protection.
- Beneficiaries of temporary protection could **access the guaranteed rights immediately** upon arriving in the EU host country of their choice, and at the latest upon registering.
- The **rights of beneficiaries of temporary protection are broader than those of applicants for international protection**, but lower than those of beneficiaries of international protection.
- Broadly speaking, EUMS provided **access to all rights** as guaranteed under the Temporary Protection Directive. However, there are **discrepancies among EUMS in the quality and scope of services** provided.
- The most significant difference in **housing** under Temporary Protection Directive and the Reception Conditions Directive relates to the strong involvement of private volunteer hosts providing free or reduced-cost housing.
- In all EUMS, school children have **access to education**. However, some countries allow Ukrainian children to enrol in the Ukrainian online school system instead of attending national education programmes, resulting in low enrolment rates in national education systems.
- All EU MS provide emergency **health care**. Some grant beneficiaries of temporary protection with the same access to health care and insurance as their citizens.
- Access to **social welfare** varies among EUMS and is **often inadequate**, impacting the ability to sustain an acceptable quality of life.
- The **labour market integration** of beneficiaries of temporary protection has occurred more rapidly compared to other refugee groups. However, employment below qualifications (i.e., underemployment) is a challenge.

### 1. Legal framework for reception conditions under the Temporary Protection Directive

The reception of beneficiaries of temporary protection (BTP) is somewhat different than for applicants for international protection. The rights of BTP are broader than those of applicants for international protection, but lower than those of beneficiaries of international protection.<sup>650</sup> This is certainly true when it comes to the status, which is immediately granted without the need to wait an individual procedure, but it is temporary in nature. There is also a difference with regard to the EU legal basis: The reception of BTP is regulated under the Temporary Protection Directive (TPD), whereas the reception of applicants for international protection is regulated by the Reception Conditions Directive (RCD).

The 2001/55/EC Temporary Protection Directive (TPD)<sup>651</sup> was activated for the first time since its adoption by the Council Implementing Decision of 4 March 2022,<sup>652</sup> to provide protection to persons fleeing Russian military aggression against Ukraine. Its chapter III – in particular articles 12 to 14 – set out the minimum reception conditions for beneficiaries, mainly access to suitable accommodation,

<sup>650</sup> Kienast, J; Feith Tan, N; Vedsted-Hansen, J. (April 2022). [Preferential, differential or discriminatory? EU protection arrangements for persons displaced from Ukraine.](#)

<sup>651</sup> [COUNCIL DIRECTIVE 2001/55/EC](#) of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

<sup>652</sup> [Council Implementing Decision \(EU\) 2022/382](#) of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.



social welfare, emergency healthcare, the labour market and education. In turn, RCD Art. 3/3 explicitly excludes its applicability in events when temporary protection (TP) is triggered.

- **Residence permits** (Art. 8): MS shall provide BTP with a residence permit for the entire duration of TP.
- **Employment** (employed or self-employed activities) (Art. 12). While Art. 12 clarifies that MS shall authorise BTP to engage in employed or self-employed activities, the Directive does not indicate as of when this right needs to be granted. The European Commission (EC) suggests linking the right to employment with the time of registration,<sup>653</sup> hence, that BTP would not need to wait for the issuance of the residence permit. In October 2022, the EC and the European Labour Authority set up the **EU Talent Pool Pilot**,<sup>654</sup> under which an EU-wide platform was created to match displaced people from Ukraine with job vacancies posted on the EURES Portal.<sup>655</sup> Results or an evaluation of this initiative are not yet available. Additionally, efforts have been taken to facilitate the recognition of qualifications and skills between EUMS and other countries.<sup>656</sup>
- **Accommodation** (Art. 13/1): Art. 13/1 determines that BTP shall have access to *suitable* accommodation if necessary, to receive the means to obtain housing. The TPD does not offer any explanation of what suitable accommodation means, nor can this notion be clarified by related CJEU or ECtHR case law.<sup>657</sup> Also, the TPD was the first legal instrument of the Common European Asylum System (CEAS), and thus pre-dates related instruments such as the RCD. To ensure that the TPD continues to meet the changing needs and requirements of the EU asylum system, the TPD should therefore be interpreted in line with contemporary interpretation of other CEAS and EU instruments, particularly the EU Charter for Fundamental Rights,<sup>658</sup> which at minimum should be interpreted with a view to guaranteeing the right of each person to live in dignity and security, and in accordance with the principle of equal treatment and non-discrimination.<sup>659</sup> Addressing the lack of a workable definition of suitable housing, the European Union Asylum Agency (EUAA) published a guidance on emergency housing in private accommodations<sup>660</sup> and the EC on the provision of accommodation to BTP via its safe home initiative.<sup>661</sup>
- **Social welfare and means of subsistence** (Art. 13/2). The TPD requires MS to provide the necessary welfare and subsistence to BTP if they do not have sufficient resources.
- **Medical assistance/healthcare** (Art.13/2; 13/4). Art. 13 of the TPD sets only a *minimum standard* for health care, including emergency care and essential treatment of illness. For people with special needs like unaccompanied children or victims of violence, the *necessary* medical or other assistance shall be provided. While the EC encouraged MS to provide broad

<sup>653</sup> European Commission (2022). [Frequently asked questions received on the interpretation of the Temporary Protection Directive and Council Implementing Decision 2022/382](#), p 5.

<sup>654</sup> See European Commission. [EU Talent Pool](#), accessed 02.02.2023.

<sup>655</sup> Seven MS participate in the EU Talent Pool Pilot: Croatia, Czechia, Cyprus, Finland, Poland, Slovakia, and Spain.

<sup>656</sup> European Commission (January 2023). [Comparison report of European Qualifications Framework and Ukrainian National Qualifications Framework](#).

<sup>657</sup> See the detailed legal analysis by ECRE (March 2023). [The right to suitable accommodation under the Temporary Protection Directive](#).

<sup>658</sup> Ibid, p 6.

<sup>659</sup> Ibid, p18.

<sup>660</sup> EUAA (May 2022). [Practical recommendations on the provision of emergency placement in private accommodation for persons displaced from Ukraine](#), EUAA Practical Guide Series. <https://bit.ly/42K8ShP>.

<sup>661</sup> European Commission (July 2022). [Safe Homes initiative: guidance on the provision of accommodation to those fleeing Ukraine](#).

access to medical care and sickness benefits and to incorporate these persons into public health systems,<sup>662</sup> the full scope of coverage depends on the decision of national authorities.

- **Education opportunities for minors** (Art.14). Following Art. 14, MS *shall* provide access to education systems to BTP under 18 years of age under the same conditions as MS' own nationals and EU citizens. Given the large number of children concerned and the related logistical challenges for MS' education systems, the EC<sup>663</sup> issued guidance notes, as did the Fundamental Rights Agency (FRA) and EUAA.<sup>664</sup> The latter emphasised that the immediate right to access the education system in the context of minors shall mean as soon as it is materially possible and clear that the children meet temporary protection conditions, i.e. even when the procedure to issue the residence permit is still pending.<sup>665</sup>
- **Family unity** (Art.15). Both the Council Implementing Decision Art. 2.4 and the TPD Art. 15 define the term 'family' by referring to: a) the spouse of the sponsor or his/her unmarried partner in a stable relationship; b) the minor unmarried children of the sponsor or of his/her spouse; and c) other close relatives who lived together as part of the family unit at the time of the events leading to the mass influx, and who were wholly or mainly dependent on the sponsor at the time. Family ties should already exist in Ukraine before the beginning of the 'mass influx' on 24 February 2022. The EC clarifies further that those eligible for TP, as well as those who are not, can benefit from the Free Movement Directive<sup>666</sup> as well as the Family Reunification Directive<sup>667</sup> and that rights acquired under these do not end when TP ends.<sup>668</sup>
- **Legal guardianship of unaccompanied minors** (foster family, reception centres) (Art. 16 (1) (2)). The TPD defines unaccompanied minors (Art. 2/f) as third country nationals below the age of 18 who arrive on EU territory unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person, or children who are left unaccompanied after they have entered the territory of the Member State. MS *shall as soon as possible* take measures to ensure necessary representation of unaccompanied minors. To this end, FRA published practical tools for guardians.<sup>669</sup>
- **Reduction or withdrawal of reception conditions.** While the TPD determines that TP ends when the maximum duration elapses or TP is not extended until its maximum duration, it does not describe under which circumstances the rights of BTP may be withdrawn by MS. Equally, the directive's implementing decision is silent on this matter. However, the latter determines that the provision of temporary protection can be only enjoyed in the country that issued the residence permit (Recital 16 Council Implementing Decision) and clarifies that Ukrainians enjoy visa free travel for 90 days within 180 days within the EU, while MS agreed to not apply Art. 11 of the TPD, which states the duty to take back BTP should they be present in another MS. The EC clarifies further that TP is to be enjoyed in only one MS. In the MS in

<sup>662</sup> European Commission (2022). [Access to health care in EU countries for persons displaced from Ukraine](#).

<sup>663</sup> European Commission (June 2022). [Commission Staff Working Document. Supporting the inclusion of displaced children from Ukraine in education: Considerations, key principles and practices for the school year 2022-2023](#).

<sup>664</sup> EUAA and FRA (2022). [Practical Tool for Guardians Temporary protection for unaccompanied children fleeing Ukraine](#).

<sup>665</sup> FRA (November 2022). [Practical Tool for Guardians Temporary protection for unaccompanied children fleeing Ukraine](#), p.12.

<sup>666</sup> [DIRECTIVE 2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

<sup>667</sup> [COUNCIL DIRECTIVE 2003/86/EC](#) of 22 September 2003 on the right to family reunification.

<sup>668</sup> European Commission (2022). Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection ([2022/C 126 I/01](#)), p 5.

<sup>669</sup> FRA (November 2022). [Practical Tool for Guardians Temporary protection for unaccompanied children fleeing Ukraine](#).

which the person does not reside anymore, the residence permit should be withdrawn and the ensuing rights expire.<sup>670</sup> In the given framework, MS established different conditions under which the rights granted under TP are revoked or withdrawn, which relate to the time spent in another MS or in Ukraine, and under which parts of rights are revoked, such as material reception should the person earn a certain amount of money.

A fundamental part of the negotiation on the TPD referred to MS capacities for reception.<sup>671</sup> The TPD suggests regular cooperation and consultation to monitor the reception capacity of MS during a situation of mass influx. In the Ukrainian context, the exchange was fostered under the Solidarity Platform established by the EC. Established at the beginning of the war, the Solidarity Platform brings together EU institutions, EUMS, Schengen Associated Countries, EU Agencies, international organisations, Ukrainian and Moldovan authorities.<sup>672</sup> It offers an informal and flexible forum for discussion on operational matters to coordinate support on the ground. The Solidarity Platform met 38 times between 11 March 2022 and 12 July 2023.<sup>673</sup>

In conclusion, the reception of BTP is regulated as minimum standards in the TPD. Most provisions are vague and difficult to interpret considering the directive's adoption ahead of all other CEAS instruments and that it has not been recast. The TPD thus leaves a lot of discretion to MS, who have been provided with various guidance by the EC or EU agencies, mainly EUAA and FRA.

From the outset, it can be asserted that the TPD provided for all services listed in the Directive to be accessible from the earliest moment on. Most rights under the TPD are to be accessible at least at the time of registration for TP, while some services such as emergency medical care are meant to be accessible immediately.

## 2. Implementation of the reception of temporary protection beneficiaries

### 2.1. Access to education

The TPD mandates MS to provide children under TP with equal access to the education system as their own nationals. Consequently, all MS have moved to provide access to education, albeit in different ways. Many have established various forms of preparatory classes to prepare children for mainstream education.<sup>674</sup> In **Austria**, students who lack proficiency in German are frequently placed in separate temporary classes, and in certain instances, exclusive classes have been established specifically for Ukrainian students.<sup>675</sup> Similarly, in **Poland**, schools can create preparatory classes for Ukrainian children who face communication and adaptation challenges. These preparatory classes follow the standard curriculum, with Polish language instruction designed for speakers of other languages.<sup>676</sup> Some countries have invested in the establishment of new educational facilities. For example, in **Estonia**, the Freedom School was established as a state school with an Estonian-language curriculum that offers bilingual instruction in both Estonian and Ukrainian.<sup>677</sup> Others also boosted early childhood education and care (ECEC).

Accompanying measures to support enrolment include the provision of information, simplification of the recognition of prior education, language courses, and facilitating access to national exams. Another common measure is the development of teaching materials in the Ukrainian language. In

<sup>670</sup> European Commission (2022). [Frequently asked questions received on the interpretation of the Temporary Protection Directive and Council Implementing Decision 2022/382](#), p3.

<sup>671</sup> European Commission (2016). [Study on the Temporary Protection Directive](#) – Final Report. Hanne Beirens, Sheila Maas, Salvatore Petronella, Maurice van der Velden January, 2016.

<sup>672</sup> European Commission (2023). [EU welcoming those fleeing the war in Ukraine](#).

<sup>673</sup> [Meetings of the Solidarity Platform](#) 11 March 2022 to 12 July 2023.

<sup>674</sup> FRA (2023). [Fundamental rights implications for the EU of the war in Ukraine](#), p.22.

<sup>675</sup> OECD (2023). [Ensuring continued learning for Ukrainian refugees](#).

<sup>676</sup> Portal Oświatowy, [Oddział przygotowawczy dla uczniów z Ukrainy](#), 9.03.2022.

<sup>677</sup> [One of a kind: the Freedom School for children from Ukraine was opened in Tallinn](#), 01.12.2022.

addition, there are subsidies to boost access to ECEC and reduce kindergarten fees. Regarding higher education, many countries ensured equal access to universities, provided language training, and introduced various scholarships for students and researchers.<sup>678</sup> Typically, BTP are treated equally with MS nationals, but in some cases, third-country national regulations may apply with regard to enrolment fees (e.g., **Bulgaria** and **Sweden**).<sup>679</sup>

Efforts to facilitate enrolment for children with disabilities differ across countries. According to an OECD survey, most countries apply standard measures for all enrolled children, regardless of their status. However, a few countries have implemented specific measures for Ukrainian students with special education needs.<sup>680</sup>

Several MS have taken measures to tackle staff shortages among teachers, the need for which was exacerbated by the arrival of significant numbers of BTP. These measures include relaxing legal requirements for the recruitment of both Ukrainian teachers and support staff (e.g., **Czechia**, **Estonia**, **the Netherlands**, **Poland**, and **Slovakia**).<sup>681</sup> The most common approach is to enable Ukrainian teachers or assistants to work with BTP children temporary diploma recognition and without the need to speak or certify knowledge of the local language.<sup>682</sup> For instance, in **Czechia**, Ministry of Education data indicate a considerable increase in the number of Ukrainian citizens working in education (2,090 in spring 2023), reflecting an effective hiring policy.<sup>683</sup>

### **Enrolment rates**

Countries report significant disparities in enrolment rates, which, as a general trend, remain relatively low. Estimates based on available data indicate that Ukrainian children's current enrolment rates in national school systems across EU host countries average around 30% to 50%.<sup>684</sup> According to United Nations Educational, Scientific and Cultural Organization (UNESCO), in **Romania**,<sup>685</sup> 11% of Ukrainian children are fully enrolled (4,008 students; this figure does not include those with audients status<sup>686</sup>), whereas in **Slovakia**<sup>687</sup> (15,000 students), **Czechia**<sup>688</sup> (51,281 students) and **Poland**<sup>689</sup> (181,770 students) enrolment rates exceeded 50% as of spring 2023.

Lower enrolment rates can be related to the fact that pupils can be exempted from compulsory mainstream education in some countries and may rely solely on remote education services in Ukraine. However, there are other factors that impact enrolment rates. For instance, families' hesitancy to enrol their children in local schools often arises from their intention to return to Ukraine in the future or the lack of information about education options for children. Consequently, many children, particularly those above 16 years old, choose to attend classes remotely through their home schools to minimise disruptions to their curriculum.<sup>690</sup>

<sup>678</sup> ICMPD (2023). [Creative approaches to boosting the employment of displaced Ukrainians in Central and Eastern Europe](#).

<sup>679</sup> ECRE (2023). [Access to socio-economic rights for beneficiaries of temporary protection, p.19](#).

<sup>680</sup> OECD (2023). [Ensuring continued learning for Ukrainian refugees](#)

<sup>681</sup> Netherlands, Government website, [Possibilities for the use of Ukrainian teachers](#), last accessed on 02.10.2023;

<sup>682</sup> ICMPD (2023). [Creative approaches to boosting the employment of displaced Ukrainians in Central and Eastern Europe](#).

<sup>683</sup> Czech Ministry of Education, Youth and Sports (2023). [The number of Ukrainian children in schools was almost unchanged compared to September](#).

<sup>684</sup> UNHCR (2023). [Education on hold, Addressing barriers to learning among refugee children and youth from Ukraine—challenges and recommendations](#), p.9.

<sup>685</sup> UNESCO (2023). [Romania's education responses to the influx of Ukrainian refugees](#).

<sup>686</sup> 'Audients' are individuals without permanent legal status or official grades, yet they can participate in lessons.

<sup>687</sup> UNESCO (2023). [Slovakia's education responses to the influx of Ukrainian refugees](#).

<sup>688</sup> UNESCO (2023). [Czechia's education responses to the influx of Ukrainian refugees](#).

<sup>689</sup> UNESCO (2023). [Poland's education responses to the influx of Ukrainian refugees](#).

<sup>690</sup> UNESCO (2023). [Mapping education responses for Ukrainian refugees](#).

### **Barriers in accessing education**

Despite numerous efforts to swiftly integrate children into the education system, significant challenges persist, as indicated by low school enrolment rates among displaced children. These include:

- **Language barriers.** Language remains the primary obstacle to accessing all levels of education for BTP. For example, in **Slovakia**, a survey conducted by the Comenius Institute revealed that 85% of teachers who worked with Ukrainian children identified language as the most significant obstacle to their integration.<sup>691</sup> This may lead to the need to repeat classes, to being demoted to a lower school level, or even dropping out of school altogether (e.g., **Austria** and **Romania**).<sup>692</sup>
- **Limited capacities.** In numerous cities and regions, particularly in areas hosting a significant number of displaced families, there has been a shortage of physical space and educational infrastructure (most pronounced in ECEC) and, as mentioned already, a shortage of teachers. This challenge was pronounced, for example, in **Czechia** and **Poland**, especially in bigger municipalities. In **Poland**, where opening preparatory classes is optional, many schools have chosen not to do so, often due to staffing or infrastructure limitations.<sup>693</sup> Similar pressures on school capacity have been noted in other MS.<sup>694</sup>
- **Lack of systematic approach and prior experience.** In EU countries with limited experience in integrating refugees and migrants into their education systems, teachers often feel unprepared to work effectively with diverse groups due to a lack of systematic integration approaches and adequate teacher training.<sup>695</sup>
- **Remote learning.** Many children face increased stress to simultaneously follow both the Ukrainian online curriculum and the host countries' in-person curriculum. However, solely adhering to the Ukrainian curriculum is also concerning, as physical school attendance is vital for integration and emotional well-being. Furthermore, available data indicate that a notable number of children assumed to join Ukrainian online schooling may not in fact engage in education, potentially due to issues like power outages in Ukraine, equipment shortages, or limited access to internet.<sup>696</sup>
- **Barriers in accessing vocational and tertiary education.** For those interested in vocational training and tertiary education, additional challenges (apart from language) include financial barriers, issues related to the recognition of prior learning, and administrative complexities. Additional barriers to accessing higher education include the mandatory requirement to pass an entrance or language exam as a condition for enrolment.<sup>697</sup>

## **2.2. Access to the labour market**

Differently from the RCD (for applicants for international protection), the TPD grants immediate access to employment for BTP. However, there are noticeable differences among MS in their implementation of this directive. The majority of EU MS allow BTP direct access to their labour markets, eliminating the need for work permits and simplifying bureaucratic processes. For example,

<sup>691</sup> The Comenius Institute (2022). [First representative survey on the inclusion of Ukrainian children in schools: What are teachers struggling with?](#)

<sup>692</sup> ECRE (2023). [Access to socio-economic rights for beneficiaries of temporary protection](#), p.32.

<sup>693</sup> Amnesty International (2023). [Jesteśmy tutaj razem. Uczniowie i uczennice z Ukrainy w polskich szkołach.](#)

<sup>694</sup> UNHCR (2023). [Education on hold, Addressing barriers to learning among refugee children and youth from Ukraine—challenges and recommendations](#), p.12.

<sup>695</sup> Center for Citizenship Education (2023). [Uczniowie uchodźczy w polskich szkołach.](#)

<sup>696</sup> Rzeczpospolita, [Zgubieni ukraińscy uczniowie. To może być problem dla polskiego społeczeństwa](#), 06.03.2023

<sup>697</sup> ECRE (2023). [Access to socio-economic rights for beneficiaries of temporary protection](#), p.37.

in **Poland**, employers only have the obligation to inform the local Public Employment Service (PES) about the employment of a BTP within 14 days,<sup>698</sup> which is applicable also to Ukrainians with other legal statuses. A similar procedure exists in **Czechia**<sup>699</sup> and **Slovakia**.<sup>700</sup> In **Sweden**, the sole administrative requirement for exercising the right to employment is registering<sup>701</sup> with the Swedish Tax Agency. In contrast, **Austria** only allowed unrestricted access since March 2023<sup>702</sup> (initially, BTP were required to obtain work permits issued by the Austrian PES). While the directive determines that MS shall allow individuals under TP to engage in self-employed activities subject to the rules applicable for the profession, not all EU countries allow for self-employment. For instance, **Slovakia** prohibits BTP from establishing businesses or engaging in self-employment.<sup>703</sup>

### **Skills assessment and recognition**

Some MS countries introduced changes in the area of skills assessment and recognition, including enhancing outreach and information efforts, simplifying bureaucratic requirements and decreasing/waiving costs related to recognition procedures (e.g. **Portugal**).<sup>704</sup> Numerous MS conduct skills assessments to identify suitable validation, training, or employment prospects. For example, the **German** Chambers of Commerce and Industry, as well as the Chambers of Crafts, have been offering an initial check of qualifications<sup>705</sup> for BTP. The **Austrian** PES broadened its existing competence checks, which involve assessing and documenting a wide range of skills.<sup>706</sup>

Certain MS have also relaxed formal skills requirements. These include waiving specific prerequisites (e.g., language), allowing for supervised employment, and simplifying qualification recognition, notably in the fields of education and healthcare. For instance, **Poland's** TP regulations include fast-tracking procedures allowing doctors and nurses with Ukrainian diplomas to practice conditionally without full diploma recognition or the need for Polish language proficiency.<sup>707</sup> Similar measures are also in place in **Estonia** and **Latvia**. In **Czechia**, Ukrainian teachers without Czech language proficiency can instruct Ukrainian students in their mother tongue. They can also fill non-teaching roles, such as pedagogical assistants or adaptation coordinators, without Czech language requirements.<sup>708</sup> In **Lithuania**, BTP are exempt from language requirements, leaving the employer to determine if Lithuanian language proficiency is necessary for the job.<sup>709</sup>

<sup>698</sup> Mazovian Voivodeship Office in Warsaw, [Dostęp do rynku pracy dla obywateli Ukrainy - Mazowiecki Urząd Wojewódzki w Warszawie - Portal Gov.pl \(www.gov.pl\)](#), 2023.

<sup>699</sup> European Labour Agency (ELA) (February 2023). [Overview of national measures regarding employment and social security of displaced persons coming from Ukraine Country Fiche – Czechia](#).

<sup>700</sup> European Labour Agency (ELA) (February 2023). [Overview of national measures regarding employment and social security of displaced persons coming from Ukraine Country Fiche – Slovakia](#).

<sup>701</sup> The Swedish Migration Agency (Migrationsverket). [Employing a person with a temporary residence permit under the Temporary Protection Directive - Migrationsverket](#). Accessed on 02.10.2023.

<sup>702</sup> Parlament Österreich, [Vertriebene Ukrainer:innen erhalten uneingeschränkten Zugang zum österreichischen Arbeitsmarkt \(PK0332/23.03.2023\) | Parlament Österreich](#). Accessed on 02.10.2023.

<sup>703</sup> IOM. [Information and assistance in connection with the war in Ukraine - IOM Migration information center](#).

<sup>704</sup> ECRE (2023). [Access to socio-economic rights for beneficiaries of temporary protection](#), p.25.

<sup>705</sup> Die Industrie- und Handelskammern (IHKs), [Erst-Check soll Ukraine-Geflüchteten Berufseinstieg erleichtern. Accessed on 02.10.2023](#).

<sup>706</sup> OECD (2023). [What we know about the skills and early labour market outcomes of refugees from Ukraine](#).

<sup>707</sup> [Act of March 12, 2022 on assistance to citizens of Ukraine in connection with an armed conflict on the territory of this country](#).

<sup>708</sup> Cedefop, 'Czechia: integration of Ukrainian refugees in VET and the labour market', [Czechia: integration of Ukrainian refugees in VET and the labour market | CEDEFOP \(europa.eu\)](#), accessed on 27 September 2023.

<sup>709</sup> Lithuanian National Radio and Television, [Lithuania grants temporary protection to Ukrainian refugees, exempts from language requirement - LRT](#).

### **Labour market outcomes thus far**

The labour market integration of BTP has occurred more rapidly compared to other refugee groups, with the share of working-age persons in employment exceeding 40% in some EU MS as of early 2023,<sup>710</sup> less than a year after most settled temporarily in EU MS. This can be attributed to factors like labour shortages (also related to Ukrainian men leaving the labour market), high education levels, prior experience hiring Ukrainians in neighbouring countries and the involvement of and support from personal networks, the diaspora, the private sector and civil society.<sup>711</sup> MS have reportedly expanded their PES activities to offer both mainstream and customised support for BTP, including Ukrainian-language services and digital job-matching platforms.<sup>712</sup> In addition, relatively high shares of BTP have been working remotely for Ukrainian employers.<sup>713</sup>

Despite numerous efforts to facilitate their labour market inclusion, BTP still face multiple barriers in accessing jobs, including:

- **Underemployment.** Employment often fails to align with the level of qualifications held by BTP (there is a high proportion of people with a tertiary education), presenting a significant challenge in securing suitable employment. BTP frequently find themselves in low-skilled occupations, with specialised professions being less common. Research conducted by PAQ Research revealed that 44% of interviewees working for Czech employers held positions that were lower qualified than their previous positions in Ukraine.<sup>714</sup> Skillset-job mismatches, skills recognition issues and easy access to low-skilled work contribute to this disparity. The current situation may be acceptable temporarily, but in the long run, it poses a risk of skill deterioration or loss, is a lost opportunity regarding additional income generation and could have a negative impact on future career prospects.
- **Language barriers to labour market integration.** Inadequate language skills pose the primary obstacle to fully utilising one's skills in the job market. In a survey by FRA and Eurofound,<sup>715</sup> 63% of respondents cited insufficient language proficiency as their most common challenge when seeking employment in host countries. In a comprehensive study conducted in Germany, only 4% of BTP rated their German language skills as good, while 14% marked them as average and 83% categorised them as poor.<sup>716</sup>
- **Informal employment.** There is concern that BTP are at a higher risk of being engaged in informal employment,<sup>717</sup> which in turn elevates the potential for labour exploitation. Although there is a lack of evidence supporting significantly increased rates of exploitation, the prevalence of low-paying<sup>718</sup> jobs in host countries suggests a potential risk of workplace abuse.
- **Care obligations.** Caregiving responsibilities, including for children, the elderly, and persons with disabilities, constitute another barrier to entering the labour market, especially since the overwhelming majority of adult BTP are women. For example, a Deloitte report

<sup>710</sup> OECD (2023). [‘What we know about the skills and early labour market outcomes of refugees from Ukraine’](#).

<sup>711</sup> ICMPD (2023). [Integration of Ukrainian refugees: The road ahead](#).

<sup>712</sup> OECD (2023). [‘What we know about the skills and early labour market outcomes of refugees from Ukraine’](#).

<sup>713</sup> ICMPD (2023). [Displacement, integration, and return: What remote work possibilities for Ukrainians?](#)

<sup>714</sup> PAQ Research (2023). [Nevyužití kvalifikace, malé mzdy a jazyková bariéra. Výzkum popsal problémy uprchlíků na trhu práce](#), p4.

<sup>715</sup> FRA (2023). [Barriers to employment of displaced Ukrainians | European Union Agency for Fundamental Rights](#).

<sup>716</sup> Bundesamt für Migration und Flüchtlinge (2023). [Geflüchtete aus der Ukraine in Deutschland: Ergebnisse der ersten Welle der IAB-BiB/FReDA-BAMF-SOEP-Befragung](#).

<sup>717</sup> European Union Agency for Fundamental Rights (FRA), [Fundamental rights implications for the EU of the war in Ukraine | European Union Agency for Fundamental Rights \(europa.eu\)](#), accessed on 27 September 2023, p.18

<sup>718</sup> ECRE (2023). [Access to socio-economic rights for beneficiaries of temporary protection](#), p. 29.

indicates that 53% of BTP in **Poland** (mostly single parents) travelled to Poland with children under the age of 16, and only 24% had access to childcare services.<sup>719</sup>

- **Temporary status.** Uncertainty regarding the future hinders the ability of BTP to commit to investing in longer-term employment prospects, including their readiness to take part in upskilling/reskilling courses or undertaking diploma recognition. The same is true for employers, who express a willingness to hire BTP but are uncertain about investing in training and support.<sup>720</sup>
- **Upskilling and reskilling challenges.** The engagement of BTP in job-related integration services differs widely among EU MS. Many prioritise the job search over course attendance and often accept immediate job opportunities for sustenance, making it difficult to combine work with training due to inflexible options.<sup>721</sup>

### 2.3. Access to accommodation

#### *Public accommodation*

In response to the large-scale displacement of persons from Ukraine, MS have established new reception centres or repurposed existing ones initially designed to cater to asylum seekers. These collective accommodation centres have been offering a range of accommodation, spanning from short-term centres to longer term group housing arrangements. Several MS have allocated additional funds to regions and municipalities for hosting purposes. Both state-owned and contracted private hotels and hostels have frequently been used as emergency accommodation options. Authorities have also repurposed public spaces, including facilities previously used as COVID-19 quarantine centres, converting them into supplementary emergency or temporary accommodations. These have included tents, sport halls, cultural centres and exhibition centres. These have served as registration centres or as a bridge to more permanent solutions.<sup>722</sup>

Various forms of public housing have been made available to BTP, but significant disparities in access criteria and the duration of stay exist among MS. For instance, access criteria in **Austria** include income-related requirements, while in **Poland** and **Czechia** only vulnerable BTP are eligible to stay in such places for free. Discrepancies also exist regarding access for Ukrainian nationals compared with other third-country nationals fleeing Ukraine.<sup>723</sup>

#### *Private housing*

Unlike many other refugee situations, private housing, including that from Ukrainian diaspora members, plays a substantial role in accommodating BTP, with private individuals providing free or reduced-cost housing. The percentage of BTP accommodated by private hosts ranged from 20% to 90% in early 2022.<sup>724</sup> In **Austria**, this share reached 78%, while in **Finland** and **Latvia**, it is estimated that around two-thirds of displaced persons were in private accommodation.<sup>725</sup>

To facilitate private hosting, some MS have implemented matching and vetting services. Some programs were launched by receiving-country governments with government oversight, while

<sup>719</sup> Deloitte (2023). 'Ukraine Refugee Pulse report' (2023), [Ukraine Refugee Pulse report | Deloitte](#), p.17.

<sup>720</sup> IAB (2023). [Knapp zwei Prozent der deutschen Betriebe haben bislang Geflüchtete aus der Ukraine eingestellt](#).

<sup>721</sup> Migration Policy Institute (MPI) (2023). [Displaced Ukrainians in European Labor Markets: Leveraging Innovations for More Inclusive Integration](#), p.19.

<sup>722</sup> ECRE (2023). [Access to socio-economic rights for beneficiaries of temporary protection](#), p.10.

<sup>723</sup> FRA (2023). [Fundamental rights implications for the EU of the war in Ukraine](#), p.15.

<sup>724</sup> EC (2022), [Solidarity and housing: Supporting Safe Homes Considerations, key principles and practices](#), p.2.

<sup>725</sup> AIDA (2023), [Country report: Austria](#); OECD (2022). [Housing support for Ukrainian refugees in receiving countries](#).



others had less government involvement. In some cases, NGOs played a leading role.<sup>726</sup> In **Belgium**, local authorities review the criminal records of adult host family members and assess housing quality. In **Austria**, provinces or designated organisations evaluate accommodation offers against specific criteria.<sup>727</sup>

Other MS offer or offered financial compensation or direct financial support to BTP. The approach, duration and level of financial assistance have varied from one country to another. Starting from July 1, 2023, in Czechia, the humanitarian benefit (subsistence allowance) will now include housing costs, amounting to 3000 CZK (€121) per person for apartments registered in the Housing Register. This marks a change from the previous practice of providing it directly to property owners who offer accommodations.<sup>728</sup>

In **France**, eligible hosts received €450 for the initial 90 days and €5 per day (€150 per month) for ongoing BTP accommodation, with applications accepted until 30 April 2023. In **Slovakia**, accommodation grants are available until 31 December 2023, with rates of €10 per adult and €5 per child per day for private accommodation, excluding hotels, boarding houses, and hostels.<sup>729</sup> In **Poland**, entities that have provided accommodation and meals to BTP may be granted a compensation of PLN 40/€8,60 per day per person, for a maximum of 120 days. For those hosting vulnerable individuals, this period may be extended.<sup>730</sup> Overall, there is a trend towards a decrease in this form of support over time within the EU, as it was initially intended as an emergency measure.

### **Housing situation thus far**

Several MS have been struggling to maintain expanded reception capacities, resulting in shorter stays or the closure of facilities, compounded by a decrease in the number of private volunteer hosts. Regular surveys conducted in **Czechia** confirm a declining proportion of collective and free-of-charge private accommodation. As of June 2023, nearly half of BTP were living in rented housing, a notable increase from 22% just one year prior. Additionally, 20% of BTP were still staying in hostels and hotels, while another 30% found free lodging via private volunteer hosts.<sup>731</sup>

While housing approaches across EU vary, several challenges are shared, making the development of mid- to long-term housing solutions difficult. These include:

- **Temporary status.** The time-limited duration of TP status complicates a shift to rental housing, as landlords tend to prefer longer-term leases. This creates difficulties in locating short-term rentals, ultimately hindering more sustainable housing solutions due to landlord concerns regarding legal status and income stability.<sup>732</sup>
- **Lack of affordable (private and public) housing.** The lack of affordable housing exacerbates reception challenges in European countries, especially in major cities, leading to unsustainable housing solutions. For instance, even before the war, **the Netherlands** already faced a housing crisis, marked by a scarcity of nearly 400,000 homes.<sup>733</sup> This is

<sup>726</sup> MPI (2023), [From Safe Homes to Sponsors: Lessons from the Ukraine Hosting Response for Refugee Sponsorship Programs](#), p.6.

<sup>727</sup> EC (2022), [Solidarity and housing: Supporting Safe Homes Considerations, key principles and practices](#), p.10.

<sup>728</sup> Finance.cz (2023), [Change in the provision of humanitarian benefits from 1 July 2023](#)

<sup>729</sup> Ukraineslovakia.sk. [Accommodation in Slovakia. People granted temporary refuge can apply for free housing. Accessed 08.10.2023.](#)

<sup>730</sup> Act on assistance to citizens of Ukraine in connection with an armed conflict in the territory of that state, 12 March 2022.

<sup>731</sup> PAQ Research (2023). [Integrace uprchlíků na trhu práce a v bydlení](#), p. 29.

<sup>732</sup> FEANTSA (2023). [Standards for reception conditions under the Temporary Protection Directive- Challenges and needs in accessing adequate accommodation](#), p.12.

<sup>733</sup> Forced Migration Review (2023). [A Dutch community's creative collaboration to host Ukrainian refugees](#)

particularly pressing in Central and Eastern European countries that heavily depend on home ownership, lack regulation in the private rental market, and have underdeveloped social sectors.<sup>734</sup>

- **Discrepancy between job availability and access to housing.** Many BTP prefer large cities but often encounter a significant gap between job opportunities and affordable housing. In urban areas with good job prospects, housing is limited, expensive and unsuitable for families. Conversely, in regions with fewer employment options, like smaller cities and rural areas, more affordable housing may be more accessible.
- **Reliance on private volunteer hosts.** Challenges arise due to the transient nature, unpredictability, cost of hosting and language barriers in such arrangements. Safety concerns, including trafficking and exploitation, are also significant.
- **Additional barriers faced by vulnerable groups and ethnic minority groups.** Vulnerable groups face additional challenges in accessing affordable and adapted accommodation. According to a UNHCR report, 22% of households include at least one member with specific needs, and 12% have at least one member with a disability.<sup>735</sup> Due to the scarcity of affordable housing, people with disabilities are more inclined to stay in collective accommodations (24%) or state-provided hostels (12%).<sup>736</sup> Meanwhile, certain ethnic groups face additional challenges in accessing affordable accommodation. For example, in **Poland**, **Czechia**, and **Germany**, Roma families have reportedly faced discriminatory attitudes and prejudice.<sup>737</sup>

## 2.4. Access to health care

### *Access to medical assistance and healthcare*

Access to public health care systems is determined by national authorities. Many MS offer full medical coverage within the public health care system, treating BTP on par with their own citizens (e.g., **Austria**, **Czechia**, **Germany**, **Italy**, **Latvia**, **the Netherlands**, and **Poland**).<sup>738</sup> At the same time, insurance coverage and accessibility can be contingent on one's employment status and contribution payments, with exemptions potentially applicable to specific groups like the elderly and children. In some MS, BTP may be entirely exempt from payments or eligible for reductions. In contrast, other MS provide healthcare at a level like asylum seekers (e.g., **Cyprus** and **Malta**).<sup>739</sup> Since 1 June 2022, **Germany** provides a complete medical coverage in the public health care system to BTP. In **Poland**, BTP are automatically granted unrestricted access to health care services without any contribution requirements.<sup>740</sup> Similarly, in **the Netherlands**, BTP are exempt from cost-sharing for services.<sup>741</sup> In **Estonia**, **Slovakia** and **Lithuania**, BTP have access to basic health checks and

<sup>734</sup> Habitat for Humanity (2023). [Housing of Ukrainian Refugees in Europe Options for Long-Term Solutions | Habitat For Humanity, p.7.](#)

<sup>735</sup> UNHCR (2023). [Acute needs of older Ukrainian refugees and those with disabilities must not be overlooked | UNHCR](#), p. 13.

<sup>736</sup> UNHCR (2023). [Acute needs of older Ukrainian refugees and those with disabilities must not be overlooked | UNHCR](#), p. 13.

<sup>737</sup> FRA (2023). [Fundamental rights implications for the EU of the war in Ukraine](#), p.17.

<sup>738</sup> ECRE (2023). [Access to socio-economic rights for beneficiaries of temporary protection](#), p.38.

<sup>739</sup> European Observatory on Health Systems and Policies (2023). [Access to health care one year on: Implementation of Temporary Protection Directive \(2001/55/EC\) in EU Member States](#), p.7.

<sup>740</sup> Polish Parliament (2023). [Act of March 12, 2022 on assistance to citizens of Ukraine in connection with an armed conflict on the territory of this country](#)

<sup>741</sup> European Observatory on Health Systems and Policies (2023). [Access to health care one year on: Implementation of Temporary Protection Directive \(2001/55/EC\) in EU Member States](#), p.41.

emergency care until they become eligible for full health insurance, which can be obtained by applying for an insurance, engaging in employment or unemployment registration.<sup>742</sup>

### **Access to mental health care**

Recognizing that many BTP also require mental well-being support, some MS have set up specific programmes for displaced individuals from Ukraine. Others have integrated these services into community mental health programmes, providing treatment to BTP similarly to the general population. Several MS are expanding the pool of available professions by permitting Ukrainian psychologists to provide psychological support to BTP, temporarily exempting them from local practice regulations.<sup>743</sup> In several EUMS, mental health care is also provided through private initiatives or non-governmental organizations (NGOs). For example, in **the Netherlands**, mental health services are aligned with national programmes that heavily involve NGOs.<sup>744</sup> To address the needs of BTP, some MS have adapted services, including language support. In **Austria**, both NGOs and public mental health facilities employ Ukrainian-speaking professionals or arrange translation services.<sup>745</sup>

### **Current situation**

Despite the comprehensive health care coverage in many MS, BTP face difficulties accessing health care services. According to a UNHCR assessment covering countries neighbouring Ukraine, nearly 25% of BTP reported difficulties in accessing medical services.<sup>746</sup> Meanwhile, the demand for health care remains high, with access to health care identified as a top priority after material assistance, food and employment.<sup>747</sup> Furthermore, a UNICEF study revealed that 30% of female BTP with children in **Poland** experience severe distress, and 53% are considering or already receiving psychological support.<sup>748</sup> In **Czechia**, PAQ Research estimated that 75,000 adults require professional mental health care, with only approximately 3% having received psychological support.<sup>749</sup> Although challenges may vary among EUMS, they typically revolve around the following issues:

- **Access to health and mental care services.** Challenges in several MS stem from geographic constraints and limited service availability. Others are linked to restrictions within health care coverage, encompassing services or medications not covered by the host country's fundamental benefits package. Capacity issues leading to prolonged waiting times are also a concern, affecting both BTP and the broader population (e.g., **Bulgaria, Czechia, Romania and Poland**). In Poland, extensive waiting times have compelled some BTP to seek medical care back in Ukraine.<sup>750</sup> These issues are particularly acute in the realm of mental health services.

<sup>742</sup> EMN (2022). [Access to services for beneficiaries of temporary protection](#), p.10.

<sup>743</sup> EMN (2022). [Access to services for beneficiaries of temporary protection](#), p.11.

<sup>744</sup> European Observatory on Health Systems and Policies (2023). [Access to health care one year on: Implementation of Temporary Protection Directive \(2001/55/EC\) in EU Member States](#), p. 40.

<sup>745</sup> [Access to health care one year on: Implementation of Temporary Protection Directive \(2001/55/EC\) in EU Member States](#), p.12.

<sup>746</sup> UNHCR (2023). [DISPLACEMENT PATTERNS, PROTECTION RISKS AND NEEDS OF REFUGEES FROM UKRAINE. Regional Protection Analysis #2 Hungary, Poland, Republic of Moldova, Romania and Slovakia](#), p. 19.

<sup>747</sup> UNHCR (2023). [DISPLACEMENT PATTERNS, PROTECTION RISKS AND NEEDS OF REFUGEES FROM UKRAINE. Regional Protection Analysis #2 Hungary, Poland, Republic of Moldova, Romania and Slovakia](#), p. 22

<sup>748</sup> UNICEF (2023). [Majority of Ukrainian refugee mothers in Poland experiencing high or severe levels of distress - UNICEF study](#)

<sup>749</sup> PAQ Research (2022). [Voice of Ukrainians: Education, Housing, Employment, Poverty, Mental Health \(paqresearch.cz\)](#), p.13.

<sup>750</sup> UNHCR Poland (2022). [Protection Monitoring Brief #1](#)

- **Differences in health systems.** Many MS also face challenges arising from disparities between the Ukrainian and host country health care systems, particularly concerning the referral process and the availability of specialised support.<sup>751</sup>
- **Lack of awareness among healthcare staff.** Based on available data<sup>752</sup>, BTP may encounter service refusals, often attributed to capacity constraints, uncertainty about care reimbursement and instances of discrimination. Additional obstacles include administrative complexities and the absence of interpretation services.
- **Limited information access and language barriers.** Language issues are the second most significant hindrance to refugees' healthcare access, according to a UNHCR survey.<sup>753</sup> BTP often also lack awareness of how to exercise their healthcare rights due to insufficiently tailored information and communication challenges. This becomes especially critical for mental health support, typically provided in local languages through group therapy and counselling.<sup>754</sup>

## 2.5. Access to general social welfare

Social benefits and financial allowances can offer crucial support to BTP, who may face challenges in sustaining themselves. MS offer social assistance to BTP in diverse forms and under varying conditions, often with the specific amounts contingent on the family size and living situation of the beneficiary. Many MS extend support through their general social welfare schemes under conditions like those for their own citizens (e.g., **Belgium, Bulgaria, Germany** and **the Netherlands**), while others offer allowances to BTP under conditions akin to those applied to asylum seekers (e.g. **Austria** and **Sweden**).<sup>755</sup> In **Austria**, BTP are part of the basic care system and receive allowances similar to applicants for international protection, varying based on family situation and type of accommodation. Those covering housing costs themselves receive a higher allowance.<sup>756</sup> Similarly, in **Sweden**, since they are not considered as residents, they are not entitled to benefits based on residency but have the right to daily allowances as applicants for international protection have.<sup>757</sup> Meanwhile, some MS have also created specific support programmes, which may involve regular, limited or one-time payments. For instance, in **Poland**, BTP have access to a dedicated allowance, which is a one-time cash benefit of PLN 300 (€62). They also have access to general social assistance, provided they meet the income-based eligibility criteria.<sup>758</sup> In **Portugal**, an extraordinary support allowance (€60 per family) was established in March 2022 for vulnerable families affected by rising food prices.<sup>759</sup>

The amount and scope of support have changed over time in certain MS. For example, in **Germany**, BTP started receiving basic income support like recognised refugees as of 1 June 2022; prior to that,

<sup>751</sup> WHO (2022/23). [Health service needs and access for refugees from Ukraine. Results of behavioural and cultural insights \(BCI\) studies in Poland, Romania, Slovakia and Slovenia](#), p.3.

<sup>752</sup> [European Observatory on Health Systems and Policies \(2023\). Access to health care one year on: Implementation of Temporary Protection Directive \(2001/55/EC\) in EU Member States](#), p. 11.

<sup>753</sup> UNHCR (2023). [DISPLACEMENT PATTERNS, PROTECTION RISKS AND NEEDS OF REFUGEES FROM UKRAINE. Regional Protection Analysis #2 Hungary, Poland, Republic of Moldova, Romania and Slovakia](#), p. 19.

<sup>754</sup> [European Observatory on Health Systems and Policies \(2023\). Access to health care one year on: Implementation of Temporary Protection Directive \(2001/55/EC\) in EU Member States](#), p. 10.

<sup>755</sup> FRA (2023). [Fundamental rights implications for the EU of the war in Ukraine](#), p.25; ECRE (2023). [Access to socio-economic rights for beneficiaries of temporary protection](#), p.42.

<sup>756</sup> AIDA (2022). [Country Report Sweden](#), p.14.

<sup>757</sup> UNHCR (2022). [Massflyktsdirektivet aktiveras– Tillfälligt skydd i Sverige](#), p.10.

<sup>758</sup> Polish Parliament (2023). [Act of March 12, 2022 on assistance to citizens of Ukraine in connection with an armed conflict on the territory of this country](#)

<sup>759</sup> ECRE (2023). [Access to socio-economic rights for beneficiaries of temporary protection](#), p.47.

they received support like applicants for international protection under the Asylum Seekers' Benefits Act.<sup>760</sup> In **Czechia**, in July 2023, the monthly amount of humanitarian financial support was revised. The benefit is now individually calculated for each household, considering factors like household income, duration of stay, subsistence minimum and housing costs.<sup>761</sup> For a period of 150 days, the humanitarian benefit is CZK 4,860 (€196) per adult and CZK 3,490 (€141) per child.<sup>762</sup> From the 6<sup>th</sup> month onward, the humanitarian benefit is reduced to the level of the subsistence minimum of CZK 3,130 (€126) per adult. Higher amounts are provided for vulnerable groups.<sup>763</sup>

At the same time, certain challenges persist, including the extent of assistance offered, delays in payment processing and factors that disqualify specific groups or practically limit their access to social allowances. In **Austria**, BTP receiving basic care face challenges when trying to integrate into the labour market. The cap on income was initially set at €110 per month, above which BTP automatically lost basic care. However, since early 2023, BTPs can remain in the system even if they earn over €110, retaining 35 cents for each Euro earned.<sup>764</sup>

The most frequently reported challenges for BTP in many MS include limited payment amounts that are deemed inadequate for maintaining an acceptable standard of living. For instance, in **Sweden**, the daily allowance is significantly lower than the financial support provided to Swedish residents under the Social Services Act. The daily allowance has remained unchanged since 1994.<sup>765</sup>

### 3. Funding

The EU has provided €17 billion in support for refugees within the EU since the start of Russia's war of aggression.<sup>766</sup> This includes around €7 billion of unspent cohesion policy funds from 2014-2020 and around €10 billion of funds earmarked for post-pandemic recovery under the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU).<sup>767</sup> Resources were freed to meet the growing needs for housing, education and healthcare for Ukrainians residing in MS. When freeing the resources, greater flexibility was built in to use EU cohesion policy funds by extending the possibilities to transfer resources between programmes and to obtain 100% EU financing.<sup>768</sup>

Like the cohesion funds, with regard to Home Affairs funds, the EC has built in more flexibility and allowed the use of past unused funds. As such, the EC extended the implementation period of the 2014-2020 Home Affairs funds,<sup>769</sup> which released around €420 million in additional support for hosting BTP. Additionally, the EC pledged an additional €400 million in emergency assistance, which was mobilised from the 2021-2027 Home Affairs funds.<sup>770</sup>

<sup>760</sup> The Federal Government (2022). [Basic income support for Ukrainian refugees](#).

<sup>761</sup> European Website on Integration: [Czech Republic: Changes to support for refugees from Ukraine | European Website on Integration \(europa.eu\)](#)

<sup>762</sup> Until the end of June 2023, the humanitarian benefit was CZK 5000 (ca €200) for 6 months. After the 7th month, if the household could not secure income for valid reasons, it was reduced to the subsistence minimum. See Finance.cz (13.06.2023). [Change in the provision of humanitarian benefits from 1 July 2023 | Finance.cz](#).

<sup>763</sup> Ministry of labour and social affairs of CZ: [Help for citizens of Ukraine and their employers \(uradprace.cz\)](#);

<sup>764</sup> ECRE (2023). [Access to socio-economic rights for beneficiaries of temporary protection](#), p.45.

<sup>765</sup> EUAA, [Information on temporary protection in Austria](#), p.11.

<sup>766</sup> European Council. [EU response to Russia's invasion of Ukraine](#), accessed on 17.10.2023.

<sup>767</sup> European Council. [EU response to Russia's invasion of Ukraine](#), accessed on 17.10.2023.

<sup>768</sup> [Regulation of the European Parliament and of the Council amending Regulations \(EU\) No 1303/2013 and \(EU\) 2021/1060](#) as regards additional flexibility to address the consequences of the military aggression of the Russian Federation.

<sup>769</sup> [Regulation of the European Parliament and of the Council amending Regulations \(EU\) No 514/2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, \(EU\) No 516/2014 establishing the Asylum, Migration and Integration Fund and \(EU\) 2021/1147 establishing the Asylum, Migration and Integration Fund](#)

<sup>770</sup> European Commission. [Solidarity with Ukraine: Commission will provide €248 million to support Member States welcoming those fleeing the war](#). Accessed on 14.10.2023.

In an early analysis of the funds made available for receiving BTP from Ukraine, ECRE and PICUM acknowledge the ambition to make the use of the available funds flexible, more accessible to civil society and less dependent on co-funding. However, they also remark that freeing up past funds does not inject support for reception, housing and other social inclusion needs. Additionally, the authors raise some doubts as to whether MS would have the capacity to make use of the funds in times of increased pressure on national capacities since they were not able to make use of them before.<sup>771</sup> Meanwhile, some MS adapted national programmes such as the reported 18 out of 27 MS who have amended their European Social Fund (ESF) 2014-2020 programmes, either by adding a new priority to support people fleeing Ukraine or by including explicit additions under existing priorities.<sup>772</sup>

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<sup>771</sup> PICUM and ECRE (2022). [Displacement from Ukraine: the EU's financial response - Policy Note](#).

<sup>772</sup> The 18 countries being BE, BG, CZ, DE, EE, ES, FR, HU, IE, IT, LT, LV, NL, PL, PT, RO, SE, SK. See Asscher, L (2023). [Integration of people fleeing Ukraine in the EU note to European Commission](#).

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## ANNEX II – Case studies

### 1. Methodological factors

This report mainly relies on desk research. Among the main sources of information used to conduct the three case studies are: the Asylum Information Database (AIDA), qualitative information on national practice extracted from AIDA country reports and comparative reports, the European Union Agency for Asylum (EUAA) Annual Reports on the situation of asylum in the European Union, Case law from the Court of Justice of the European Union (CJEU), the European Court of Human Rights (ECtHR) and domestic courts; statistics and reports provided by the national authorities and other relevant national stakeholders.

Two countries (Belgium and Italy) were selected as case studies against the backdrop of high numbers of arrivals and the need to accommodate significant fluctuations with regards to reception needs, and thus requiring a well-functioning contingency planning, and in view of assessing good practices in terms of effectiveness, fundamental rights (including procedural rights), efficiency and coherence with the aims of the RCD and the CEAS as a whole. The examples of good practices are listed at the end of each case study.

Information gaps beyond the existing literature and accessible data were tackled through targeted interviews with experts working on reception in different capacities, both at the EU and national level. 12 online interviews with different national experts from two countries were realised.

## 2. Case Study 1: Belgium

### *Glossary*

<b>127-bis Repatriation Centre</b>	Detention centre near Brussels National Airport
<b>CALL</b>	Council of Alien Law Litigation   Conseil du contentieux des étrangers   Raad voor Vreemdelingenbetwistingen
<b>Carda</b>	Centre d'accueil rapproché pour demandeurs d'asile en souffrance mentale
<b>CGRS</b>	Office of the Commissioner General for Refugees and Stateless Persons   Commissariat général aux réfugiés et aux apatrides   Commissariaat-generaal voor de vluchtelingen en de staatlozen
<b>CIRÉ</b>	Coordination et initiatives pour réfugiés et étrangers
<b>CJEU</b>	Court of Justice of the European Union
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EUAA</b>	European Union Agency for Asylum
<b>Evibel</b>	Registration database of the Immigration Office
<b>Fedasil</b>	Federal Agency for the Reception of Asylum Seekers
<b>FGM</b>	Female genital mutilation
<b>LGBTIQ+</b>	Lesbian, gay, bisexual, transsexual, intersex
<b>LRI</b>	Local reception initiative   Initiative locale d'accueil (ILA)   Lokaal opvang initiatief (LOI)
<b>OOC</b>	Observation and Orientation Centre for unaccompanied children
<b>PCSW</b>	Public Centre for Social Welfare   Centre public d'action sociale (CPAS)   Openbaar centrum voor maatschappelijk welzijn (OCMW)
<b>VVSG</b>	Association of Flemish Cities and Towns   Vlaamse Vereniging voor Steden en Gemeente

### 2.1 Overview of the national reception system

Fedasil is the Belgian reception authority for applicants for international protection. Reception for applicants present in the country starts at the arrival centre of Fedasil, at "Petit-Château / Klein Kasteeltje" in Brussels,<sup>773</sup> where the authority makes a first social and medical screening of the applicants and verifies whether they are entitled to and interested in reception. If so, they are

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<sup>773</sup> Fedasil, [Reception of asylum seekers | Fedasil](#)



accommodated in the arrival centre until a reception place adapted to their situation is found. Fedasil will then allocate them a reception place where the asylum seeker will benefit from material reception conditions (i.e. accommodation, meals, clothing, medical, social, and psychological assistance, a daily allowance and access to legal assistance and services such as interpretation and training). If the asylum applicants decide not to be accommodated by Fedasil, they are not entitled to these forms of material assistance with the exception of medical assistance.

Belgium has over 34,000 reception places in total.<sup>774</sup> The reception network comprises collective and individual reception structures, and is organised as a multi-phase system. During the first phase, which should last only one week, applicants are accommodated in first arrival centres while awaiting transfer to a longer-term accommodation centre. In the second phase, asylum seekers are housed in either collective or individual reception structures. Collective reception consists of reception centres managed by Fedasil, the Belgian Red Cross or other partners. Individual reception comprises housing managed by the Public Social Welfare Centre ('local reception initiatives') or NGOs.<sup>775</sup> The current reception model, the implementation of which began in 2016, generally assigns people to collective reception centres. Only asylum seekers with specific vulnerabilities or reception needs are directly transferred to specialised NGO reception structures or individual structures.<sup>776</sup>

### 2.1.1 Material Reception Conditions

#### **Reception authority**

Fedasil was established in 2001 to manage the network of reception centres and has fallen under the competence of the Secretary of State for Migration and Integration since the end of 2011. Fedasil is in charge of the management and coordination of the network, which includes collective and individual reception places, in addition to other responsibilities such as coordinating the voluntary return programs, the observation and orientation of unaccompanied children and the integration of reception facilities in municipalities.<sup>777</sup> To implement its coordinating and executing competences, Fedasil regularly issues instructions on the practice to be followed for different aspects of material reception conditions.

The practical organisation is carried out in partnerships between government bodies, NGOs and private partners.<sup>778</sup> Currently, the partners for collective reception are Croix Rouge,<sup>779</sup> Rode Kruis, AGAJ, AJW, Caritas International, Mutualité Socialiste, Privé and Samu Social.<sup>780</sup> The communal Public Centre for Social Welfare (PCSW) are important partners for individual reception.

#### **Access to reception conditions**

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<sup>774</sup> Statistics frequently provided by Fedasil at: [www.fedasil.be/en/statistics](http://www.fedasil.be/en/statistics). On 1 September 2023, the reception network consisted of 34,271 places.

<sup>775</sup> Fedasil, [Reception of asylum seekers | Fedasil](#).

<sup>776</sup> Interview with CIRé, Myria, Vluchtelingenwerk Vlaanderen.

<sup>777</sup> Article 56 Reception Act, [Law of 12 January 2007 regarding the reception of asylum seekers and other categories of third country nationals, amended by Law of 21 November 2017](#).

<sup>778</sup> Article 62 Reception Act.

<sup>779</sup> That managed 28 centres counting around 8,000 reception places in 2023. Interview with Croix Rouge de Belgique.

<sup>780</sup> Information provided by Fedasil, January 2021.

The national Reception Act provides that an asylum seeker has the right to shelter from the moment they make the asylum application, and not only from the moment the asylum application is registered,<sup>781</sup> in line with the RCD.

Until 29 August 2022, the registration centre for asylum applications was set at the first arrival centre of Klein Kasteeltje/'Petit Château. It was then moved, for security reasons connected to the impossibility for Fedasil to provide shelter to all applicants, to the Immigration Office's office at the 'Pacheco' centre, also located in Brussels.<sup>782</sup>

Applicants who are not immediately given access to the reception network are asked to register on a waiting list by the Immigration Office, and are registered as "no show 'waiting list'", and can receive a place at a later date. The "no show" category, per se, refers to "persons who do not want accommodation".<sup>783</sup> The separate category of "no show 'waiting list'" was created as a response to the reception crisis in the country, in particular to be able to provide applicants who could not be immediately accommodated at least with access to medical support,<sup>784</sup> to which applicants who refuse accommodation are entitled.<sup>785</sup>

Belgium has undergone, in recent years, several 'reception crises'. Already between 2018-2019 the first arrival centre lacked capacity to accommodate all incoming asylum seekers. Some limitations of access to the reception system were also reported in 2020.<sup>786</sup> In September 2021, Fedasil announced that the reception network was under pressure (having reached 96% capacity, the saturation capacity being 94%)<sup>787</sup> due to several factors, including the COVID-19 pandemic, the floods in southern part of Belgium in 2021 and the evacuation of Afghan nationals after the fall of Kabul.<sup>788</sup> Since January 2022, single men are generally unable to access reception from the moment of making their asylum application, as the Secretary of State for Asylum and Migration has confirmed on numerous occasions.<sup>789</sup> This is a consequence of the fact that, in case of pressure on the system, Fedasil prioritises vulnerable categories (unaccompanied minors, women, families with children) when granting access to accommodation.<sup>790</sup> At the end of 2022, there were also some cases of families with children and unaccompanied minors who could not immediately access housing.<sup>791</sup>

From November 2021, civil society organisations have filed collective appeals against the exclusion of asylum seekers from access to the reception network by the Belgian Secretary of State and Fedasil. Despite the rulings of national courts against Secretary of State and Fedasil, many applicants remained excluded from accessing reception conditions. Several individual legal cases were also brought to Belgian Courts.

In 2022 alone, Fedasil was condemned by Belgian labour courts 8,600 times. During just the first five months of 2023, Fedasil was condemned 1,324 times, receiving fines of a total amount of EUR

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<sup>781</sup> Article 6(1) Reception Act.

<sup>782</sup> The Brussels Times (August 2022), [Temporary solution proposed for migrant crisis at reception centre](#).

<sup>783</sup> In 2022, a total of 5,547 people were registered in the "no show 'waiting list'". See, Fedasil, [Annual Report 2022](#), p.11.

<sup>784</sup> Interviews with Vluchtelingenwerk Vlaanderen, VVSG.

<sup>785</sup> See below, "Material Reception conditions to fulfil basic needs".

<sup>786</sup> AIDA (April 2023), [Country Report Belgium](#), pp. 98-99.

<sup>787</sup> Myria (September 2021), [Contact meeting](#), p.45.

<sup>788</sup> Fedasil (November 2021), ['Additional reception places needed'](#).

<sup>789</sup> A recent example is that of the Chamber of Representatives, [CRIV 55 PLEN 235](#), 16 March 2023, p.18.

<sup>790</sup> Interview with CIRÉ and Vluchtelingenwerk Vlaanderen; see also Myria (June 2023), [Contact meeting](#), p.24.

<sup>791</sup> Brussels Times (November 2022), [Belgium's reception crisis: Over 100 families and children on the streets tonight](#); Myria (November 2022), [Contact Meeting](#), p.30.

460.436,48.<sup>792</sup> Some applicants also introduced requests for interim measures before the European Court of Human Rights (ECtHR). On several occasions between October 2022 and April 2023, the ECtHR stipulated that interim measures must be taken by the Belgian State concerning applicants who had obtained final domestic decisions from the competent Labour Court but were still excluded from reception. The first to be granted was in the case of *Camara v. Belgium* on 31 October 2022.<sup>793</sup> In June 2023, the Court decided to lift the interim measures that it had directed to the Belgian State in 1,350 cases and to strike the applications out of its list of cases because the applicants had not submitted application forms to the Court, while 312 interim measures remained in place in similar cases.<sup>794</sup>

The occupancy rate in reception centres remained high throughout 2023. According to Fedasil's statistics, in September the occupancy rate was 95%.<sup>795</sup>

By June 2023, 2,114 persons were still registered on the waiting list and had not been allocated a reception place. Among them, a significant number were not left on the streets, but housed in emergency reception facilities under an agreement with the Region of Brussels, comprising of around 1,500 places.<sup>796</sup> The so-called "Brussels Deal" is an agreement negotiated between the federal government and the Brussels Region, co-financing places in emergency shelters managed by different operators, such as the Red Cross, the Plateforme Citoyenne de Soutien aux Réfugiés and the Samu social.<sup>797</sup> These actors provide support, among others, also to asylum applicants before they have access to the national reception network.<sup>798</sup>

Fedasil also disposes of a number of "pre-reception" places, both in dedicated centres and through partnerships with youth hostels. These are only accessible to families which are not immediately provided with a reception place at the moment of making their application. Normally, families are hosted in such places only for few days, before being moved to the first phase of reception.<sup>799</sup>

At the end of August 2023, the Secretary of State for Asylum and Migration communicated in a press release the decision to temporarily stop receiving single men in the national network for the reception of asylum seekers, in view of the need to prepare to accommodate more vulnerable applicants in winter,<sup>800</sup> but Fedasil never in practice stopped registering applicants unable to access reception in a waiting list.<sup>801</sup> The decision was suspended soon after by the Belgian Council of State,<sup>802</sup> which ruling it was not in conformity with the national Reception Act. According to several stakeholders, asylum seekers who are not immediately integrated in the reception network continue to be registered in the waiting list.<sup>803</sup> At the moment, people spend an average of four months on the waiting list before being offered an accommodation place.<sup>804</sup>

<sup>792</sup> Myria (June 2023), [Contact meeting](#), p.27.

<sup>793</sup> ECtHR, *Camara v. Belgium*, no. 49255/22, 31 October 2022, available at: <https://bit.ly/3lfMJ1i>.

<sup>794</sup> ECtHR (June 2023), Press release, [Striking-out of the list and lifting of interim measures in respect of 1,350 incomplete applications from asylum-seekers in Belgium](#).

<sup>795</sup> Fedasil, [Statistics](#).

<sup>796</sup> Myria (June 2023), [Contact meeting](#), p.24.

<sup>797</sup> Interview with CIRÉ.

<sup>798</sup> Interview with the Plateforme Citoyenne de Soutien aux Réfugiés.

<sup>799</sup> Interview with Fedasil.

<sup>800</sup> The Brussels Times (August 2023), [Asylum and Migration: Belgium suspends reception of single men](#).

<sup>801</sup> Interview with Fedasil.

<sup>802</sup> Council of State, [Decision 257.300](#), 13 September 2023.

<sup>803</sup> Interviews with CIRÉ, Vluchtelingenwerk Vlaanderen, VVSG, and Myria.

<sup>804</sup> Interview with Fedasil.

*Applicants presenting a subsequent application*

The Reception Act provides the possibility for Fedasil to refuse reception to asylum seekers who lodge a second or further subsequent asylum application until their asylum application is deemed admissible by the Office of the Commissioner General for Refugees and Stateless Persons (CGRS).<sup>805</sup> These applicants maintain the right to medical assistance support and free legal representation.

*Applicants in a Dublin procedure*

During the examination of the Dublin procedure by the Immigration Office, asylum seekers are entitled to a reception place. Currently, asylum applicants who have received a Dublin transfer decision (annex 26quater) and who reside in the reception network receive a request to transfer to an 'open return centre'.<sup>806</sup> If the person is unwilling to accept the transfer, their right to reception can be suspended.<sup>807</sup> After the maximum period allowed by the Dublin Regulation to transfer the asylum seeker to the responsible Member State has passed (6 months, with a possible extension to maximum 18 months), a reception place is re-assigned upon request of the applicant to the Immigration Office.<sup>808</sup>

*Beneficiaries of protection in another EU Member State*

Based on an internal Fedasil instruction, in January 2020 beneficiaries of protection in a different EUMS were registered as 'code 207 no show' and no longer provided accommodation in the country, while remaining entitled to medical assistance. The policy was overturned by the Belgian courts, but a similar practice was reinstated between January and March 2022.<sup>809</sup>

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<sup>805</sup> Article 4(1)(3) Reception Act.

<sup>806</sup> See below, "Accommodation schemes".

<sup>807</sup> Fedasil (October 2015), [Instruction on the change of place of mandatory registration of asylum seekers having received a refusal decision following a Dublin take charge](#).

<sup>808</sup> AIDA (April 2023), [Country Report Belgium](#), p.110.

<sup>809</sup> AIDA (April 2023), [Country Report Belgium](#), p.110.

### **Accommodation phases**

Applicants who receive shelter are initially accommodated in Fedasil's dispatching centre at Petit Château/Klein Kasteeltje or another "first-phase centre" – currently, 8 first reception centres are present on the territory – in the first days of stay, where they undergo a medical screening.<sup>810</sup> They can choose to be vaccinated and have to take a tuberculosis test. Fedasil assesses whether special reception needs emerge and designates a reception centre for the second phase which lasts for the duration of the procedure.<sup>811</sup> The document of designation by Fedasil is called "Code 207". The length of stay in the arrival centre depends on how quickly Fedasil finds an adapted place in the reception network and how many requests for international protection are made in one day. 3,083 places for the first phase of reception are currently available.<sup>812</sup> People are supposed to be hosted for only around a week in the first phase; given the current situation however, most people spend up to several weeks in these centres before being moved to second-phase.<sup>813</sup>

Regarding the second phase of reception, originally, the Belgian reception system significantly relied on individual accommodation, which constituted 54% of the total reception capacity in 2007. After 2016, there was a shift in paradigm, and by 2021 most asylum seekers (around 80%) were hosted in collective centres.<sup>814</sup> Only asylum seekers with very specific vulnerabilities or reception needs, as well as nationals from a country with a high recognition rate, are directly assigned to specialised NGO reception structures or Local Reception Initiatives (LRI).<sup>815</sup>

For the assignment to a specific centre, Fedasil is obliged to consider the centre's occupation rate, the asylum seeker's family situation, age, health condition, vulnerability and the procedural language of their asylum case. There are no monitoring or evaluation reports about the assessment of these elements in practice.<sup>816</sup>

According to the law, all asylum seekers can apply to be transferred to an individual accommodation structure after 6 months in a collective centre.<sup>817</sup> Due to the high occupancy rate of the reception system and lack of individual places for reception, transfer applications of applicants whose procedure is still ongoing can rarely be answered favourably, and asylum seekers remain for longer periods (and often, for the whole duration of the asylum procedure and of the transition period) in collective structures.<sup>818</sup> The Croix Rouge reported that, regarding the collective centres it directly manages, around 60% of people who receive a positive asylum decision were sent to individual accommodation at the beginning of 2023.<sup>819</sup>

Specific rules concerning transfer to individual reception structures apply to persons with a recognition rate above 80%, who can apply to be assigned to LRI after a 2-month stay in collective reception centres, and persons granted legal stay for more than 3 months, such as beneficiaries of

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<sup>810</sup> Interview with Fedasil.

<sup>811</sup> Fedasil, [In a reception centre](#).

<sup>812</sup> Ibid.

<sup>813</sup> Interview with Fedasil.

<sup>814</sup> Myria (December 2022), [Le gouvernement fédéral en échec face à la crise de l'accueil : crise humanitaire et atteinte à l'Etat de droit](#), pp.15-16.

<sup>815</sup> Generally, this consists of small apartments for families or to share with other asylum seekers, managed by PCSW or NGOs. Interview with VVSG; see Myria (June 2016), [Contact meeting](#); see section 2.1.5 on Special reception needs of vulnerable applicants.

<sup>816</sup> AIDA (April 2023), [Country Report Belgium](#), p.114.

<sup>817</sup> Article 12 Reception Act.

<sup>818</sup> Interview with Myria, CIRé, Vluchtelingenwerk Vlaanderen.

<sup>819</sup> Interview with the Croix Rouge de Belgique.

protection, who are entitled to a two months stay in an individual reception structure after receiving a positive decision on their asylum application.<sup>820</sup>

In 2022, the Immigration Office opened a new 'Dublin reception centre' in Zaventem. This centre is a regular open centre which hosts applicants who have been channelled into the Dublin procedure.<sup>821</sup> Only applicants who have previously applied for international protection in Hungary, Bulgaria and Greece are not designated to this reception centre.<sup>822</sup> As previously mentioned, applicants who are assigned to this centre can refuse their transfer, but would then lose the possibility to enjoy material reception conditions, with the exception of medical support.<sup>823</sup>

### **Reception capacity**

Fedasil regularly provides public statistics on reception capacity and occupation rate of the reception network. On 1 September 2023, the total accommodation places were 34,271.<sup>824</sup>

The authority currently disposes of 3,083 places for the first phase of reception. Regarding the second phase, the latest statistics reported by Fedasil reflect the following:<sup>825</sup>

#### *Collective centres*

- Fedasil: 9,631 places
- Croix-Rouge francophone: 8,140 places
- Rode Kruis Vlaanderen: 5,058 places
- Private partners: 1,204 places
- Other partners: 1,557 places

#### *Individual accommodation*

- Local Reception Initiatives: 4,681 places
- Other partners: 557 places

#### *Open return places*

- Fedasil: 360 places.

### **Material reception conditions to fulfil basic needs**

According to the Reception Act, every asylum seeker has the right to material reception conditions from the moment he or she has made his or her asylum application, that allow him or her to lead a life in human dignity.<sup>826</sup>

In theory, no material reception conditions, with the exception of medical care, are due to a person with sufficient financial resources.<sup>827</sup> Expenses that have been provided in the context of reception

<sup>820</sup> AIDA (April 2023), [Country Report Belgium](#), p.115.

<sup>821</sup> The Brussels Times (July 2022), [Defence Ministry opens 750 places in military barracks for asylum seekers](#).

<sup>822</sup> Myria (September 2022), [Contact Meeting](#), p.13.

<sup>823</sup> AIDA (April 2023), [Country Report Belgium](#), p.109.

<sup>824</sup> Fedasil, [Statistics](#).

<sup>825</sup> Ibid.

<sup>826</sup> Article 3 Reception Act.

<sup>827</sup> Article 35/2 Reception Act.

can also be recovered in such cases.<sup>828</sup> Nevertheless, no assessment of the existence of sufficient financial resources or the actual risk of destitution of the person concerned is realised at the moment of the decision.<sup>829</sup>

Asylum seekers who stay at private addresses are similarly only entitled to medical care. Their right to have the assistance of a pro bono lawyer may also be affected if they live with someone who has sufficient means. These applicants can always request to re-access material reception support if their asylum procedure is pending.<sup>830</sup>

Since the adoption of the Reception Act, the system of reception conditions for asylum seekers shifted from financial assistance to purely material assistance. This includes accommodation, food, clothing, medical, social and psychological help, access to interpretation services and legal representation, access to training, a voluntary return programme, and a small daily allowance (so-called pocket money).<sup>831</sup> Nevertheless, the help can be partially delivered in cash, as is the case in the Local Reception Initiatives (LRI). Only in exceptional cases the social welfare services provided by the PCSW delivers financial aid to asylum seekers.<sup>832</sup>

### ***Freedom of movement***

Asylum seekers who stay in an open reception centre enjoy freedom of movement across the national territory without restrictions, excluding those who are detained. If the asylum application is refused, the rejected asylum seeker is transferred to an “open return place” in a regular centre, where they can enjoy full reception rights until the end of the right to reception. However, asylum seekers cannot choose their place of reception, and are only entitled to enjoy material reception conditions in the centre to which they are assigned.<sup>833</sup> Some issues may arise for cases in which the person is assigned to a centre which is distant from inhabited areas, both in terms of being able to reach the CGRS offices in Brussels for their asylum interviews, but also as that entails constraints for those who find work, and find difficulties in reaching their work place from the centres.<sup>834</sup>

### ***Conditions in reception centres***

The minimum material reception rights for asylum seekers are described in the Reception Act.<sup>835</sup> Among these, there are basic needs (a place to sleep, meals, sanitary facilities and clothing); guidance, including social, legal, linguistic, medical and psychological assistance; daily life, including leisure, activities, education, training, work and community services; and access to neighbourhood associations.

These are only provided – with the exclusion of medical and legal assistance – within collective reception centres or individual reception places. Common quality standards have been agreed upon

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<sup>828</sup> Article 35/1 Reception Act.

<sup>829</sup> Interview with Vluchtelingenwerk Vlaanderen.

<sup>830</sup> AIDA (April 2023), [Country Report Belgium](#), p.98.

<sup>831</sup> Ibid., p.114.

<sup>832</sup> Article 3 Reception Act. For example, this could be the case when the asylum seeker wants to live with their partner who already has a legal stay in Belgium.

<sup>833</sup> AIDA (April 2023), [Country Report Belgium](#), p.123.

<sup>834</sup> Interview with VVSG.

<sup>835</sup> Articles 14-35 Reception Act.

by Fedasil and its partners in 2018, although they are not publicly available. They contain minimum social and legal guidance standards, material assistance, infrastructure, contents, and safety.<sup>836</sup>

In 2015, Fedasil developed a framework to conduct quality audits based on these uniform standards. Other partners, such as the Red Cross, also developed their norms and standards.<sup>837</sup> Currently, the audits are still conducted by Fedasil - both in collective and individual centres - and are not made public, and instead just communicated to the reception facility involved.<sup>838</sup> According to Fedasil, 40 to 50 audits are carried out each year.<sup>839</sup>

In 2022, Fedasil conducted a study on its residents' wellbeing, comparing collective and individual reception facilities, highlighted that the residents of collective centres report several lacking privacy, a feeling of isolation and a lack of control over their day-to-day life. The overall conclusion is that collective reception facilities provide "a difficult environment". The residents of the individual reception facilities express an overall positive perception of their wellbeing. The residents obtain more freedom and autonomy in these facilities, which has a positive impact on their wellbeing. The study highlighted a risk of isolation in individual facilities. Residents who moved from collective to individual reception facilities experienced a positive change in their wellbeing.

In the past, the Belgian Court of Audit had calculated the cost of hosting people in individual accommodation to be inferior to that of hosting them in collective centres.<sup>840</sup> Regardless, and of the evaluation on the increased wellbeing of applicants hosted in individual reception facilities, the majority of reception places are currently within collective reception facilities. According to several stakeholders, collective centres present more challenges in terms of ensuring that each individual cases receives sufficient support, especially in terms of legal and psychological aid, but also in granting privacy, autonomy and sometime security to the persons hosted. All these issues result exacerbated by the high occupancy rate in recent years.<sup>841</sup> Some concerns were raised also regarding increased risks for asylum seekers to be subjected to forms of sexual harassment or violence while in the centres.<sup>842</sup> However, when individualised attention is ensured for all persons hosted in the centres, the conditions appear to be overall respecting set standards.<sup>843</sup>

### **Access to information and legal assistance**

The Reception Act requires Fedasil to provide the asylum seeker with an information brochure on the rights and obligations of the asylum seekers as well as on the competent authorities and organisations that can provide medical, social and legal assistance, in a language he or she

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<sup>836</sup> AIDA (April 2023), [Country Report Belgium](#), p.126.

<sup>837</sup> Interview with Croix Rouge de Belgique.

<sup>838</sup> AIDA (April 2023), [Country Report Belgium](#), pp. 125-126.

<sup>839</sup> Interview with Fedasil.

<sup>840</sup> «Le coût de l'accueil collectif n'est pas établi avec précision. Les différences entre les publics cibles des centres, notamment, compliquent les comparaisons de coûts. La Cour constate néanmoins que l'accueil individuel est moins cher que l'accueil collectif.» See: Cour des Comptes (September 2017), [Accueil des demandeurs d'asile](#).

<sup>841</sup> Interview with CIRÉ, Myria, and Vluchtelingenwerk Vlaanderen.

<sup>842</sup> Myria (2022), [La migration en chiffres et en droits 2022. Cahier protection internationale](#), p.24 ; The Labour Court of Brussels also issued a judgement on the case of an LGBTQI+ applicant had been a victim of rape in a reception centre, Labor Court of Brussels, [nr. 22/3209/K](#), 18 August 2022.

<sup>843</sup> Interview with Croix Rouge de Belgique.



understands.<sup>844</sup> The brochure “Asylum in Belgium” currently distributed is available in ten different languages<sup>845</sup> and in a DVD version. These brochures are being distributed in the reception facilities.

As for the specific rights and obligations concerning reception conditions, asylum seekers receive copies of the house rules available in different languages. Fedasil launched an AMIF-funded project (‘Amica’) in collaboration with some universities, in the context of which 3 videos about the “Day 0” (day of registration of the asylum application and first access to the reception network in the arrival centre) were developed that were made available on the Fedasil website in the course of 2022. The website is to be accessible via QR-codes displayed in and around the arrival centre. Audio-tours in 14 different languages are available in the arrival centre.<sup>846</sup>

The Reception Act provides for a guaranteed access to first- and second-line legal assistance.<sup>847</sup> In practice most centres refer to the free assistance of lawyers, although some of them provide first line legal advice themselves as well. Consequently, there are substantial differences between the different reception centres in the way the asylum seeker is assisted in the follow-up of his or her asylum procedure and in the contact with his or her lawyers.<sup>848</sup> Asylum seekers are entitled to public transport tickets to meet with their lawyer at the lawyer’s office.

Lawyers and UNHCR and implementing partners have the right to visit their clients in the reception facilities to be able to advise them. Their access can be refused only in case of security threats. Collective centres also have to make sure that there is a separate room in which private conversations can take place.<sup>849</sup>

### **Support from the European Union Agency for Asylum**

In December 2021, the EUAA signed the first operating plan with Belgium, focusing on increasing reception capacity and improving reception quality, in the short and medium term.<sup>850</sup> An amendment was signed in May 2022 following the full-scale invasion of Ukraine and subsequent displacement, adding a third pillar of enhancing the Belgian authorities’ capacity to implement the TPD effectively.<sup>851</sup> A second amendment was signed in November 2022, extending the operational support to 2023.<sup>852</sup>

Throughout 2022, the EUAA deployed 21 different experts in Belgium,<sup>853</sup> mostly external experts (17). Most of them were junior asylum information provision experts (11), along with 4 roving team

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<sup>844</sup> Article 14 Reception Act.

<sup>845</sup> Dutch, French, English, Albanian, Russian, Arabic, Pashtu, Farsi, Peul and Lingala, available on the website of Fedasil and of the [CGRS](#).

<sup>846</sup> Myria (January 2022), [Contact meeting](#), p.62.

<sup>847</sup> Article 33 Reception Act.

<sup>848</sup> In the Flemish Red Cross (Rode Kruis) centres, the policy of neutrality is interpreted as reticence to do more than point the asylum seeker to his or her right to a “pro-Deo” lawyer and the right to appeal.

<sup>849</sup> Article 21 Reception Act; Royal Decree on the system and operating rules in reception centres and the modalities for checking rooms, 2 September 2018.

<sup>850</sup> EUAA (December 2021), [Belgium: EASO launches operation to support reception authorities](#).

<sup>851</sup> EUAA (May 2022), [Operational Plan 2022 agreed by the European Union Agency for Asylum and Belgium, amendment 1](#).

<sup>852</sup> EUAA (November 2022), [Operational Plan 2022-2023 agreed by the European Union Agency for Asylum and Belgium, amendment 1](#).

<sup>853</sup> EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.

members, 2 intermediate reception child protection experts, 2 junior reception child protection experts and 2 senior social workers.<sup>854</sup>

As of 20 December 2022, a total of 20 EUAA experts were deployed in Belgium, out of which 11 were junior asylum information provision experts, 3 roving team members, 2 intermediate reception child protection experts, 2 junior reception child protection experts and 2 senior social workers.<sup>855</sup>

New EUAA experts and interpreters joined the operation in Belgium in 2023, namely 31 experts in the reception centres (child protection, information provision, social workers); 3 experts at the head office (public procurement, vulnerability expert, training support); 26 interpreters in reception centres.<sup>856</sup>

In 2022, the EUAA also provided Belgian national reception authorities with 150 containers, including 91 for accommodation use and 59 for other reception use.<sup>857</sup> These containers were installed in emergency shelter in Berlaar, an old military site. In 2023, 522 additional container units were requested by Belgian authorities to the EUAA to house asylum seekers in emergency shelters. There were initial delays due to difficulties in finding a suitable site, as an agreement must always be reached with local administrations, which were initially reluctant in providing authorisation.<sup>858</sup>

### ***End of reception for beneficiaries of protection***

The right to reception ends once the procedure for international protection is closed. In the event of a positive decision, refugees (or beneficiaries of subsidiary protection) receive a residence permit and may start to look for their own accommodation. They are entitled to remain within the reception network for two additional months, as to find suitable accommodation, or to request a temporary transfer. They may request assistance from a Public Social Welfare Centre.

Following a negative decision, the applicant receives an order to leave the territory. Those whose negative decisions are confirmed by the CALL are invited to go to one of the four Fedasil centres with 'open return places', where possibilities for voluntary return are discussed. In case applicants refuse to cooperate with their voluntary return, the Immigration Office is allowed to initiate a procedure of forced return, including the transfer of the person concerned to a closed centre. Fedasil does not manage the latter centres but the Immigration Office.<sup>859</sup>

### **2.1.2 Detention**

In the country, in recent years<sup>860</sup> the number of detained asylum seekers only represents around 10% of the total population of detained third country nationals, and most of them are detained at the border, with very small numbers of asylum seekers detained on the territory. However, it should be noted that persons detained on Dublin-related grounds are not listed among asylum seekers in national statistics, and are instead included among figures collected for repatriations.<sup>861</sup>

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<sup>854</sup> AIDA (April 2023), [Country Report Belgium](#), p.106.

<sup>855</sup> Ibid.

<sup>856</sup> Myria (June 2023), [Contact meeting](#), p.29.

<sup>857</sup> AIDA (April 2023), [Country Report Belgium](#), p.106.

<sup>858</sup> Myria (June 2023), [Contact meeting](#), p.29; Interview with VVSG.

<sup>859</sup> Article 6 Reception Act; AIDA (April 2023), [Country Report Belgium](#), p. 96.

<sup>860</sup> See AIDA ([2019](#), [2021](#), [2023](#)), Country Report on Belgium.

<sup>861</sup> DVZ, Terugkeer, available in Dutch at: <https://rb.gy/p63lrc>.

## Grounds of detention

National law contains grounds for detaining asylum seekers during the asylum procedure as set out by Article 8(3) of the recast Reception Conditions Directive, and includes the provision that a “third country national cannot be detained for the sole reason of having presented an application for international protection.”<sup>862</sup>

Detention at the border for persons without travel documents who present an asylum application is very common,<sup>863</sup> and the law does not provide specific guarantees such as the need to carry out an individual assessment or the obligation to consider less coercive measures.<sup>864</sup> Systematic detention of asylum seekers at the border drew the attention of the UN Committee against torture, that expressed concern regarding this practice.<sup>865</sup>

National legislation also provides for the grounds to detain an asylum seeker on the territory.<sup>866</sup> Asylum seekers can also be detained during the Dublin procedure if there are indications that another EU Member State might be responsible for handling their asylum claim, but before that State has accepted their responsibility.<sup>867</sup> The objective criteria for determining a “risk of absconding” are set out in Article 1(2) of the Aliens Act,<sup>868</sup> in line with the *Al Chodor* ruling of the CJEU.<sup>869</sup>

Civil society organisations have argued that it concerns overly broad criteria for the determination of a risk of absconding, especially as the criterion according to which a detention order can be issued if the applicant does not collaborate with the authorities competent for implementing and/or overseeing the provisions of the law, as the provision allows for an excessively wide interpretation.<sup>870</sup>

<sup>862</sup> Article 74/5(1) Aliens Act, Law of 15 December 1980 on the entry, residence, settlement and removal of aliens.

<sup>863</sup> AIDA (April 2023), [Country Report Belgium](#), p.96.

<sup>864</sup> Article 74/5 and 74/6 Aliens Act.

<sup>865</sup> CAT (July 2022), [Observations finales concernant le quatrième rapport périodique de la Belgique](#).

<sup>866</sup> Article 74/6(1) Aliens Act: a) In order to determine or verify his or her identity or nationality; (b) In order to determine the elements on which the asylum application is based, which could not be obtained without detention, in particular where there is a risk of absconding; c) When he or she is detained subject to a return procedure and it can be substantiated on the basis of objective criteria that he or she is making an asylum application for the sole purpose of delaying or frustrating the enforcement of return; d) When protection or national security or public order so requires.

<sup>867</sup> Article 51/5 Aliens Act.

<sup>868</sup> For cases in which the applicant: 1) Has not applied for a permit after irregularly entering the country or has not made an asylum application within the 8-day deadline set out by the law; 2) Has provided false or misleading information or false documents or has resorted to fraud or other illegal means in the context of an asylum procedure or an expulsion or removal procedure; 3) Does not collaborate with the authorities competent for implementing and/or overseeing the provisions of the law; 4) Has declared his intention not to comply or has already resisted compliance with measures including return, Dublin transfer, liberty-restrictive measures or alternatives thereto; 5) Is subject to an entry ban in Belgium or another Member State; 6) Has introduced a new asylum application immediately after being issued a refusal of entry or being returned; 7) After being inquired, has concealed the fact of giving fingerprints in another Dublin State; 8) Has lodged multiple asylum applications in Belgium or one or several other EUMS, which have been rejected; 9) After being heard, has concealed the fact of lodging a prior asylum application in another Dublin State; 10) Has declared – or it can be deduced from his or her files – that he or she has arrived in Belgium for reasons other than those for which he or she applied for asylum or for a permit; 11) Has been fined for lodging a manifestly abusive appeal before the CALL.

<sup>869</sup> CJEU, Case C-528/15 *Al Chodor*, Judgment of 15 March 2017.

<sup>870</sup> See e.g. Vluchtelingenwerk Vlaanderen, ‘Nieuw wetsontwerp betekent achteruitgang voor mensen op de vlucht’, 4 July 2017.

## Alternatives to detention

Several alternatives to detention have been tested in the national system.<sup>871</sup> In particular, families with minor children can access two alternatives: home accommodation<sup>872</sup> and return homes, also called family units or 'FITT'. For detention at the border, the Aliens Act does not contain any reference to less coercive measures or to an individual assessment prior to applying detention at the border. This was criticised by UNHCR, stating that this provision does not offer sufficient guarantees against arbitrary detention.<sup>873</sup>

## Detention of vulnerable applicants

Article 74/9(3)(4) of the Aliens Act allows the detention of the families with children, in a dedicated centre<sup>874</sup> - in case they do not respect the conditions they accepted in a mutual agreement with the Immigration Office to stay in their own house, and/or absconded from the return homes. In the context of the 'Migration Deal' of 9 March 2023, the government announced it would officially insert the prohibition of child detention in the law.<sup>875</sup>

The detention of unaccompanied children is explicitly prohibited by law.<sup>876</sup> When they arrive at the border, unaccompanied children are assigned to an "Observation and Orientation Centre" (OOC) for unaccompanied children.<sup>877</sup> An exception to the ban on detention of unaccompanied children is when doubts regarding the effective age exist. In this case, the person is held in detention for the duration of their age assessment procedure.<sup>878</sup> There is no similar provision in the law for unaccompanied children which are arrested on the territory during the age determination procedure in case of doubt about their age. In the past, there were cases in which they were held in detention centres.<sup>879</sup>

No other vulnerable category of asylum seekers is excluded from detention according to national law.<sup>880</sup>

### 2.2.3 Access to socio-economic rights

#### Access to education

Schooling is mandatory for all children between 6 and 18 in Belgium, irrespective of their residence status. Classes with adapted course packages and teaching methods, the so-called "bridging classes" ("DASPA", in the French speaking Community schools) and "reception classes" ("OKAN", in the Flemish

<sup>871</sup> AIDA (April 2023), [Country Report Belgium](#), pp. 144-146.

<sup>872</sup> In the context of an agreement under Article 74/9(3) of the Aliens Act.

<sup>873</sup> UNHCR (October 2017), [Commentaires relatifs aux](#) : Projet de loi 2548/003 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines catégories d'étrangers (ci-après « Projet de loi monocraméral »). - Projet de loi 2549/003 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (ci-après « Projet de loi bicaméral »).

<sup>874</sup> Arrêté royal du 22 juillet 2018 | Koninklijk besluit van 22 juli 2018.

<sup>875</sup> Move Coalition (March 2023), [One does not detain a child. Point.](#)

<sup>876</sup> Article 74/19 Aliens Act.

<sup>877</sup> Article 40, 41, §1 Reception Act.

<sup>878</sup> Article 41, §2 Reception Act.

<sup>879</sup> Information communicated to Myria during the visit to CIB on 24 May 2019 and during the visit of the centre 127bis on 27 May 2019.

<sup>880</sup> AIDA (April 2023), [Country Report Belgium](#), p.148.

Community schools), are organised for children of newly arrived third country nationals. Those children are later integrated in regular classes.<sup>881</sup>

In reception centres for asylum seekers, all residents can participate in activities encouraging integration and knowledge of the host country. They have the right to attend professional training and education courses.<sup>882</sup>

### **Access to work and vocational training**

Asylum seekers' access to the labour market is regulated by the Law of 9 May 2018<sup>883</sup> and the implementing Royal Decree of 2 September 2018.<sup>884</sup> Asylum seekers who have not yet received a first instance decision on their asylum case within 4 months following the lodging of their asylum application are allowed to work. The right to work is mentioned directly on their temporary residence permit (orange card), so a separate work permit is no longer needed. No limitations as to accessible areas of work are set by the law. The asylum seekers can work in the area he or she chooses. Asylum seekers have the right to work until a decision is taken by the CGRS, or in case of an appeal, until they receive a final negative decision. However, they are not allowed to work during the appeal procedure before the Council of Alien Law Litigation (CALL) if the procedure at the CGRS did not last longer than 4 months.<sup>885</sup> Asylum seekers who lodge a subsequent asylum application are not able to work until the CGRS declares the application admissible and until they receive an orange card.

Adult asylum seekers who have access to the labour market can register as jobseekers at the regional Offices for Employment and are then entitled to a free assistance programme and vocational training. They can be self-employed, can access voluntary work – as long as they have the right to reception –,<sup>886</sup> and are entitled to perform certain community services (maintenance, cleaning) within their reception centre to increase their pocket money.<sup>887</sup>

### **Access to healthcare**

Among material reception conditions, access to medical care is also included.<sup>888</sup> For asylum seekers, this entails some restricted limitations as compared to country nationals.<sup>889</sup>

In the past, it was reported that Fedasil had refused to pay for certain treatments when the cost was too high and depending on the procedural situation of the applicant. That was the case for the Hepatitis C treatment, that is very costly and loses its effects if not continued through time. For this reason, Fedasil sometimes refused to pay back expenses, or only offered to cover older treatments, despite it being included in the list of medical services to be provided to asylum seekers.<sup>890</sup>

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<sup>881</sup> Ibid., p.186.

<sup>882</sup> Article 35 Reception Act.

<sup>883</sup> Law of 9 May 2018, [Law on the occupation of third country nationals in a particular situation of residence](#).

<sup>884</sup> [Royal Decree of 2 September 2018](#).

<sup>885</sup> Article 18, 3° and article 19,3° Royal Decree on Foreign Workers, 2 September 2018.

<sup>886</sup> AIDA (April 2023), [Country Report Belgium](#), p.128.

<sup>887</sup> Article 34 Reception Act.

<sup>888</sup> Article 23 Reception Act.

<sup>889</sup> Article 24 Reception Act and Royal Decree of 9 April 2007 on Medical Assistance.

<sup>890</sup> Cour des Comptes (September 2017), [Accueil des demandeurs d'asile](#), p.57; Myria (October 2018), [Contact Meeting](#), paras 96-101.

Collective centres and individual shelters often work together with doctors or medical centres in the area of the centre or reception place. Asylum seekers staying in these places are generally not allowed to visit a doctor other than the one they are referred to by the social assistant, unless they ask for an exception. A doctor recruited by Fedasil is present in only 11 centres of Fedasil. This doctor may refer asylum seekers to a specialist where necessary. The other reception centres rely on the system of working with external doctors.<sup>891</sup> Fedasil also refunds the costs of all necessary psychological assistance for asylum seekers who fall under its responsibility. Most LRI also have agreements with local doctors and medical centres; expenses for those hosted in individual accommodation are covered by the PCSW.

When the asylum seeker is not staying in their assigned reception place when the material reception conditions are reduced or withdrawn, the right to health care is not affected.<sup>892</sup> Once the asylum application has been refused and the reception rights have ended, the person concerned will only be entitled to emergency medical assistance, for which they must refer to the local PCSW.<sup>893</sup>

Some specialised services – such as Solentra<sup>894</sup> – are dedicated assisting on mental health issues, but face difficulties coping with high demands of migrants, such as but they are not able to cope with the demand. In Wallonia, there is a specialised Red Cross reception centre (*Centre d'accueil rapproché pour demandeurs d'asile en souffrance mentale, CARDA*) for traumatised asylum seekers. In Flanders, there is a centre for the intensive assistance of asylum seekers with psychological and/or mild psychiatric problems (*Centrum voor Intensieve Begeleiding van Asielzoekers – CIBA*) in Sint-Niklaas.

In the first half of 2023, Fedasil piloted a project - funded by the European Recovery Fund - aimed at granting compulsory health insurance to all asylum seekers.<sup>895</sup>

## 2.2.4 Reduction or withdrawal of reception conditions

### **Grounds for reduction or withdrawal**

National law provides the grounds for reduction or withdrawal of reception conditions and material aid or even – in the case of material aid – requested to be returned by the asylum seeker.

One of the grounds is the violation of rules of the reception centre.<sup>896</sup> The rules include: a) the obligation to respect for the facility's infrastructure; b) no drugs, alcohol and smoking within the premises; c) the obligation to notify absence from the centre.<sup>897</sup>

Article 4(3) of the Reception Act prescribes that the decisions of revocation or limitation of reception conditions should always: be individually motivated; be taken with due regard to the specific situation of the person concerned, in particular where vulnerable persons are concerned, and to the principle of proportionality; to ensure access to medical care and a dignified standard of living.

<sup>891</sup> Information provided by Fedasil, March 2023.

<sup>892</sup> Article 45 Reception Act.

<sup>893</sup> Articles 57 and 57ter/1 of the Organic Law of 8 July 1976 on the PCSW.

<sup>894</sup> [Solentra](#).

<sup>895</sup> Information provided by Fedasil, March 2023.

<sup>896</sup> Royal Decree on the system and operating rules in reception centres and the modalities for checking rooms, 2 September 2018; Ministerial Decree on house rules in reception centres, 21 September 2018.

<sup>897</sup> The right to accommodation in the centre can be withdrawn if the asylum seeker is absent from the centre for more than 3 consecutive days without prior notice or more than 10 nights in one month, regardless of having notified their absence. The asylum seekers would then be able to request to be admitted to another centre at Fedasil's dispatching centre.

The procedure to apply the sanctions is established through a Royal Decree.<sup>898</sup> Sanctions are issued by the centre's managing director and have to be motivated; the sanctions that exclude the asylum seeker from the reception facilities (one month or permanently) must be confirmed within 3 days by the Director-General of Fedasil, otherwise have to be lifted. The person who receives a sanction has to be heard before the decision. Most sanctions can be appealed before the managing authority of that reception centre (the Director-General of Fedasil, the NGO partner or the administrative council of the PCSW). An onward non-suspensive appeal is possible in front of the Labour Court.<sup>899</sup> As with every other administrative or judicial procedure, the asylum seeker is entitled to legal assistance, free of charge if he or she has no sufficient financial means. During the time of exclusion, the asylum seeker retains the right to medical assistance from Fedasil.<sup>900</sup>

Possible sanctions - among which the temporary or definitive exclusion from material assistance in a reception facility - are listed in Article 45 of the Reception Act.<sup>901</sup> Permanent withdrawal can only be disposed for persons who had been temporarily excluded from reception in the past, or in serious cases of physical or sexual violence.

In March 2018, the Labour Court of Brussels referred preliminary questions to the CJEU regarding the circumstances under which material reception conditions under the Reception Conditions Directive may be reduced or withdrawn and the need to examine the consequences of such decisions, particularly about unaccompanied children.<sup>902</sup> In its decision *Haqbin* of 12 November 2019, the CJEU set several standards for MS to comply with when disposing withdrawal of material reception conditions, and established that, where house rules are breached or in case of violent behaviour, the sanction cannot be the withdrawal of material reception conditions relating to housing, food or clothing, even if temporary.<sup>903</sup> Based on this CJUE decision, in October 2021 the Labour Court of Brussels ruled against Fedasil for having excluded Haqbin from reception conditions, in violation of the RCD.<sup>904</sup> Notwithstanding these judgements, Fedasil continued to apply temporary and indefinite exclusion as sanctions for certain situations of violent behaviour, but indicated to be looking into alternative measures.<sup>905</sup>

In the case in which the asylum seeker does lodge their application on the established appointment date provided by the Immigration Office at the moment of making their application, they can be excluded from a reception centre. They retain the right to access medical assistance, and can request to be reinstated in another centre after receiving an "annex 26".<sup>906</sup>

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<sup>898</sup> Royal Decree of 15 May 2014 on the procedures for disciplinary action, sanctions and complaints of residents in reception centres.

<sup>899</sup> Article 47 Reception Act.

<sup>900</sup> AIDA (April 2023), [Country Report Belgium](#), p.119.

<sup>901</sup> Namely: 1) Formal warning with an entry in the social dossier; 2) temporary exclusion from the activities organised by the reception structure; 3) temporary exclusion from the possibility of doing paid community services; 4) restriction of access to certain services; 5) obligation to perform tasks of general benefit; 5) temporary suspension or reduction of the daily allowance, with a maximum period of four weeks; 6) transfer, without delay, to another reception structure; 7) temporary exclusion of the right to material assistance, for a maximum duration of one month; 8) definitive exclusion of the right to material assistance in a reception structure.

<sup>902</sup> Labour Court Brussel, [No 2017/AB/277](#), 22 March 2018.

<sup>903</sup> CJEU, Case C-233/18 *Haqbin*, Judgment of 12 November 2019.

<sup>904</sup> Labour Court Brussels, [No. 2017/AB/277](#), 7 October 2021.

<sup>905</sup> AIDA (April 2023), [Country Report Belgium](#), p.121.

<sup>906</sup> Instructions of Fedasil on the limitations on the right to reception in case of non-lodging an application for international protection, of 20 January 2020. An Annex 26 is proof of the registration of the asylum application at the Immigration Office. The applicant for international protection should present himself/herself to the local commune with this document and register for an orange card ('attestation d'immatriculation'). If the applicant is accommodated at a

If an asylum seeker resides in a reception facility (LRI or collective) and is employed, he or she has an obligation to contribute with a percentage of his or her income to the reception facility and is excluded from any material reception conditions if his or her income is higher than the social welfare benefit amounts mentioned above and the working contract is sufficiently stable.<sup>907</sup> According to the Reception Act, it is also possible to refuse, withdraw or reduce reception rights – with the exception of the right to medical assistance and the medical assistance already received – or even claim compensation if the asylum seeker has sufficient financial resources. The latter sanction can be imposed if the asylum seeker omitted to declare resources at the time of making the application.<sup>908</sup> In practice, the withdrawal of material aid is rarely applied.<sup>909</sup>

### 2.1.5 Special reception needs of vulnerable applicants

#### ***Vulnerability and assessment of special reception needs***

The Reception Act includes a non-exhaustive list of vulnerable persons under the scope of the Act, namely: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.<sup>910</sup>

The earliest possible stage to identify vulnerabilities is the moment of making the asylum application, as the Immigration Office can register evident vulnerabilities of the applicants in the "Evibel" database, to which Fedasil has access.<sup>911</sup> During the first phase of reception, the specific situation of the asylum seeker (e.g. family situation, age, health, medical condition) has to be taken into consideration before assigning them to a reception centre. Aside from unaccompanied minors, two categories of vulnerable applicants are considered to have special reception needs that make them unsuitable for accommodation in collective centres: medical problems - which are of importance to determine the right reception place (e.g. physical or cognitive disabilities, mental health issues, pregnancy) - and vulnerable women. Asylum seekers falling within these two categories are generally assigned to individual housing provided by NGOs or LRI.<sup>912</sup>

Within 30 calendar days after having been assigned a reception place (in the second phase of reception), the individual situation of the asylum seeker should be examined to determine if the accommodation is adapted to their personal needs. Particular attention has to be paid to signs of vulnerability that are not immediately detectable.<sup>913</sup> A Royal Decree formalised the procedure to follow in the evaluation, requiring an interview with a social assistant, followed by a written evaluation report within 30 days, which has to be continuously and permanently updated, and should lead to a conclusion within a maximum of 6 months. The evaluation should contain a

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reception centre, the competent commune is the one that is closest to the reception centre. The handwritten dates on the Annex 26 refer to the dates on which the applicants must present themselves to the Immigration Office (e.g. for interviews).

<sup>907</sup> Articles 35/1 Reception Act and Royal Decree, 12 January 2011, on Material Assistance to Asylum Seekers residing in reception facilities and are employed (original amounts without indexation).

<sup>908</sup> Articles 35/1 and 35/2 Reception Act.

<sup>909</sup> AIDA (April 2023), [Country Report Belgium](#), p.97.

<sup>910</sup> Article 36(1) Reception Act.

<sup>911</sup> EMN (July 2021), [Data management in the Belgian asylum procedure](#).

<sup>912</sup> AIDA (April 2023), [Country Report Belgium](#), p.133.

<sup>913</sup> Article 22 Reception Act.



conclusion on the adequacy of the accommodation to the individual medical, social and psychological needs, with a recommendation as to appropriate measures to be taken, if any.<sup>914</sup> If a specific vulnerability is detected, a transfer to another centre may be disposed.

There are a number of specialised centres or specific individual accommodation initiatives for:

- Unaccompanied minors;
- Pregnant minors;
- Vulnerable single women with or without young children;
- Young single women with children;
- Minors with behavioural problems (time-out);
- Persons with psychological problems;
- Victims of trafficking (although these places are not managed by Fedasil);
- Refugees who were resettled;
- Vulnerable persons who received refugee status or subsidiary protection and who are experiencing problems (linked to their vulnerability) with finding their own house and leaving the shelter.<sup>915</sup>

### ***Reception of families with children***

Families with children are placed in specific family rooms in collective reception centres.

Fedasil also has to ensure the reception of families with children without legal stay when the parents cannot guarantee their basic needs.<sup>916</sup> These families are sheltered in “open return houses” organised by the Immigration Office. These houses are also used as an alternative for detention for families with children.<sup>917</sup>

### ***Reception of unaccompanied minors***

Specific rules are set for the reception of unaccompanied minors, that can alternative be hosted in:

- Orientation and Observation Centres: Unaccompanied children should in principle first be accommodated in specialised reception facilities, the Orientation and Observation Centres (OOC). While in these centres, a decision should be made on which reception facility is most adapted to the specific child's needs.<sup>918</sup>
- Specific places in reception centres: There are some specialised centres and specific places in regular reception facilities such as collective centres, NGO centres and LRI.

<sup>914</sup> Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

<sup>915</sup> AIDA (April 2023), [Country Report Belgium](#), p. 134.

<sup>916</sup> Article 60 Reception Act and Royal Decree of 24 June 2014, about the conditions and modalities for reception of minors who reside in Belgium illegally with their families.

<sup>917</sup> See Section 2.1.2 Detention.

<sup>918</sup> Article 41 Reception Act; Royal Decree of 9 April 2007 on the centres for the orientation and observation of unaccompanied minors.

- Individual accommodation: Once a child - that is at least 16 years old and who is sufficiently mature - receives a positive decision, a transfer can be made to a specialised individual place. He or she will then have 6 months to prepare for living independently and to look for his or her own place. This stay can be prolonged until the child reaches the age of 18.

By June 2023, the following number of unaccompanied minors were hosted in the different phases: 564 (154 remaining) in the first phase; 2,443 (200 remaining) in the second and 344 in the third, with 154 (9 remaining).<sup>919</sup>

### **Reception of other vulnerable applicants**

#### *Reception of victims of trafficking, vulnerable women and LGBTQI+ applicants*

Some specialised centres, external to the Fedasil-run reception network, are available for victims of trafficking.

Some reception places for vulnerable and pregnant women are available in Louvranges, while some others are provided by the Croix Rouge in Yvoir and Jette.<sup>920</sup> In 2022, Fedasil established the first special reception facility for LGBTQI+ applicants with a total of 14 places in two secret locations in Brussels.<sup>921</sup>

Fedasil also cooperates with two organisations specialised in prevention against and support in case of female genital mutilation (FGM): [Intact](#) and [GAMS](#). In the framework of the project FGM Global Approach, funded by the Asylum, Migration and Integration Fund, they set up a process in the reception centres for early detection of FGM and social, psychological and medical support, and for the protection of girls who are at risk of FGM. In each collective Fedasil centre a reference person trained by these organisations is present. Each social assistant and the medical service of the centre need to conduct the identification within the first 30 days after the person's arrival in the centre. A checklist was created to guide the personnel of the centre through each step of the process. The guidelines were created both for collective reception centres and for individual shelters.<sup>922</sup>

#### *Persons with disabilities and special medical needs*

There are a certain number of "medical places"<sup>923</sup>) in the reception network adapted for people with specific medical needs and their family members. Persons with mental health issues can be referred to more specialised institutions such as retirement homes or psychiatric institutions outside of reception centres managed by Fedasil, such as the Carda centre managed by the Croix Rouge – partially financed through AMIF funds -<sup>924</sup>, or to specific reception conventions between Fedasil and NGOs (for example, CIRÉ coordinates around 270 individual places, part of which are reserved for people with specific psycho-medical needs).<sup>925</sup> However, these prove insufficient to cover all existing needs, and several persons with medical needs are thus unable to access suitable accommodation.<sup>926</sup>

<sup>919</sup> Myria (June 2023), [Contact meeting](#), pp.23-24.

<sup>920</sup> Information provided by Fedasil, March 2023.

<sup>921</sup> EUAA (June 2022), [Asylum Report 2022](#), p.265.

<sup>922</sup> Fedasil (September 2017), [Note on the FGM trajectory in the framework of the Gamsproject, steps and tasks for implementation within the federal centre](#).

<sup>923</sup> Information provided by Fedasil, March 2023.

<sup>924</sup> Interview with Croix Rouge de Belgique.

<sup>925</sup> Interview with CIRÉ.

<sup>926</sup> Information provided by Fedasil, March 2023.

## 2.2 Challenges and gaps

### **Insufficient reception capacity**

One of the main reception-related challenges in the country is the shortage of reception places registered in recent years. Between 2015 and 2022, the number of available places in the reception network underwent significant fluctuations. After a peak in 2016 – in response to increased arrivals – reception capacity steadily decreased in the following years, to reach 21,343 places in 2018, primarily due to the closure of several emergency shelters and individual reception locations. When applications for international protection began increasing in 2019, reception capacity was too limited to respond to the needs of incoming asylum seekers.<sup>927</sup>

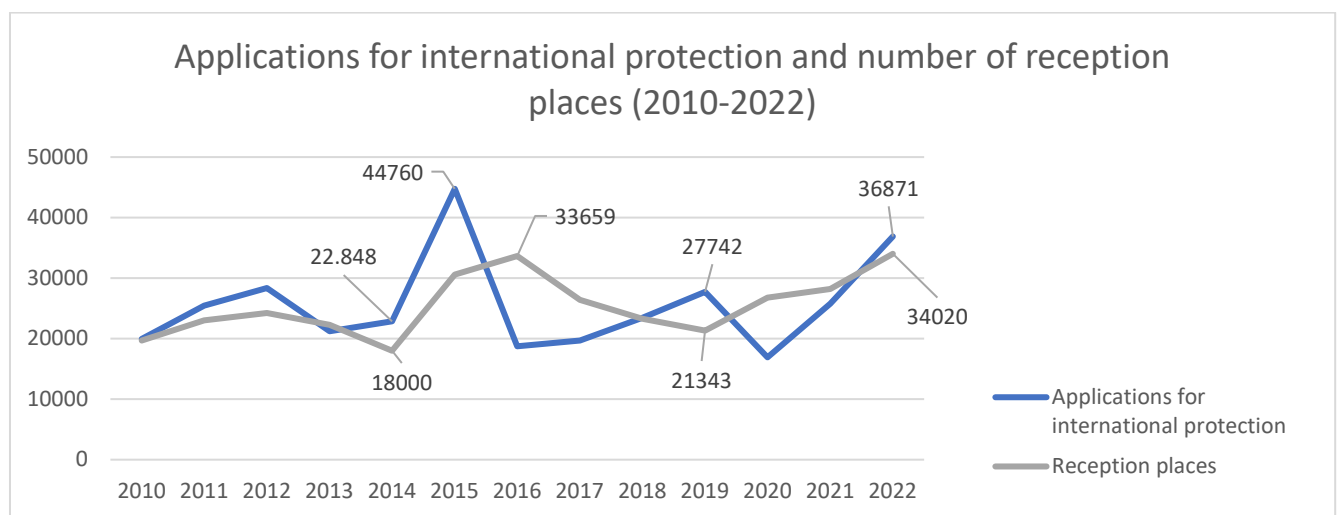


Figure X, applications for international protection and number of reception places in Belgium (2010 – 2022), based on data from CGRA and Fedasil.

Due to the constant change in capacity at federal level, local governments were often asked to open a reception facility, close it and re-open it again. They denounced this “yoyo-policy” in November of 2019, indicating that they were no longer willing to open new reception facilities. They demanded a structural, long-term policy for the reception network which would be able to managing fluctuating numbers.<sup>928</sup> This appears to remain a cause of concern. In particular for PCSW, responsible for individual accommodation of asylum applicants, which face difficulties in finding workers. This may be a consequence of the policy of frequently opening and closing reception places, as it does not allow for stable employment.<sup>929</sup>

As previously mentioned, since September 2021 the reception network has been under pressure. Despite an increase in the number of reception places and support received from the EUAA, some emergency shelters have opened in the past two years. However, these then proved insufficient to provide reception for all applicants needing shelter.<sup>930</sup> As a consequence, certain applicants (mainly single men) have been excluded from the reception system, some of whom have been forced to leave in the streets, makeshift camps or occupied buildings in Brussels. On multiple occasions,

<sup>927</sup> Fedasil (October 2018), [Sluiting 7 centra uitgesteld](#); De Morgen (November 2018), [Opvangcentra zitten overvol door grotere instroom: tenten voor asielzoekers weer in beeld](#).

<sup>928</sup> VVSG (November 2019), [Lokale besturen zijn jojo-effect federaal opvangbeleid beu](#).

<sup>929</sup> Interview vwith VVSG.

<sup>930</sup> The Brussels Time (December 2021), [Closed Hotel Mercure in Evere becomes reception center for asylum seekers](#), 9 December 2021; Bruzz (December 2021), [Gesloten Hotel Mercure in Evere wordt opvangplaats asielzoekers](#); Bruzz (December 2021), [Opvangcentrum voor 40 asielzoekers opent in Elsene](#).

medical organisations reported on the critical medical situation in which several destitute asylum seekers were forced to live.<sup>931</sup>

In December 2022, Dunja Mijatović, the Commissioner for Human Rights for the Council of Europe sent a letter to the Belgian secretary of state for asylum and migration, Nicole de Moor.<sup>932</sup> She expressed her concern about the deteriorating reception crisis in Belgium. She noted that the government's measures so far "do not appear to be sufficient to address the complexity and magnitude of the existing needs".

In January 2023, the Commission issued Belgium a formal notice concerning incorrect transposition of Directive 2013/33.<sup>933</sup> The Press Release does not specify which provisions are included in the infringement action but it is possible that the Commission's move to instigate proceedings is connected to the inability to provide accommodation to some applicants.<sup>934</sup> In September 2023, several national organisations working on human rights, including the national Ombudsperson, called on European institutions to examine the human rights violations occurring in the country as related to the humanitarian crisis.<sup>935</sup> Contextually, a group of constitutional specialist expressed their concerns regarding the rule of law state in the country, and called on the government to enforce the numerous court decisions on access to reception conditions.<sup>936</sup>

Among the causes of the crisis, some national stakeholders<sup>937</sup> highlight the lack of sufficient places in dispatching centres; the length of the asylum procedure; and the difficulties experienced by recognised beneficiaries of protection in exiting from the reception system and finding accommodation (meaning they stay in centres for longer). Other stakeholders<sup>938</sup> also point to the lack of willingness from the national and local governments<sup>939</sup> to open more individual reception places, and to address capacity issues in a structural way, instead of relying on crisis response. Fedasil also highlighted that negotiations with local administrations for the opening of new reception places have in some cases been challenging.<sup>940</sup>

According to the EUAA Annual Report on the situation of asylum in the EU, however, the Belgian reception system is not the only one under strain in Europe (similar concerns have been raised, about AT, IT, LUX, NL, SI, CH, inter alia),<sup>941</sup> due to increasing numbers of arrivals between 2022 and 2023.<sup>942</sup>

A knock-on effect of the reception crisis is the negative impact on access to health care for those excluded from the reception network, as asylum seekers not residing in a reception structure (be it by choice, following a sanction, or due to limited capacity) have to ask for a promise of repayment

<sup>931</sup> Doctors without Borders, [1 maand medische interventie aan Pacheco-registratiecentrum: cijfers, tendenzen en aanbevelingen](#); Doctors of the World (December 2022), [Belgique, personnes en marge de la société](#).

<sup>932</sup> Dunja Mijatovic (December 2023), [Letter to Belgium concerning reception of applicants for international protection](#), CommHR/DM/sf 040-2022.

<sup>933</sup> European Commission (January 2023), [January Infringements package: key decisions](#).

<sup>934</sup> EUAA (July 2023), [Annual Asylum Report 2023](#), Section 4.7.2.4.

<sup>935</sup> Institut Fédéral pour la Protection et la Promotion des Droits Humains (September 2023), [Crise de l'accueil : 8 institutions de défense des droits humains invitent l'Europe et les Nations unies à examiner les violations de droits humains](#).

<sup>936</sup> De Standaard (September 2023), [Is België nog wel een democratische rechtsstaat?](#).

<sup>937</sup> Interviews with Myria, EUAA, and VVSG.

<sup>938</sup> Interviews with CIRÉ, Vluchtelingenwerk Vlaanderen, and VVSG.

<sup>939</sup> De Standaard (December 2021), [Noodopvang in Glaaien kan morgen openen](#); De Tijd, [Mahdi krijgt voorlopig geen grip op opvangcrisis, 28 October 2021](#).

<sup>940</sup> Interview with Fedasil.

<sup>941</sup> EUAA (July 2023), [Asylum Report 2023](#), pp.173ff.

<sup>942</sup> Eurostat (September 2023), [Asylum applications - monthly statistics](#); EUAA (July 2023), [Annual Report on Asylum](#).

through an online form (*requisitorium*)<sup>943</sup> before going to a doctor.<sup>944</sup> This can be time-consuming, and when the workload is high, it can take a few weeks before the medical service of Fedasil answers.<sup>945</sup> In addition, asylum seekers who were initially excluded from the reception network often present serious psychological issues connected to the time spent on the streets once they access the first phase of reception.<sup>946</sup>

Public centres for mental health care are open to asylum seekers and have adapted rates, but may lack specific expertise. Additionally, there is a lack of qualified interpreters. The Reception Act allows Fedasil or reception partners to make agreements with specialised services. The Secretary of State accords funding for certain projects or activities by royal decree, but these are always short-term projects or activities, so the sector mainly lacks long-term solutions.<sup>947</sup>

On 29 October 2019, the Federal Knowledge Centre for Health Care (KCE) published the results of a field survey on the provision of health care to applicants for international protection, from which emerged that inequalities in the possibility to access the national healthcare system existed between asylum seekers and country nationals.<sup>948</sup>

### **Constraints in accessing socio-economic rights**

Some limited issues are registered regarding access to education for asylum-seeking children, as local schools do not always have the capacity to immediately include all those entitled to education. A greater concern is access to work. Single male applicants for international protection who do not receive accommodation often face difficulties obtaining their temporary residence permit (orange card), which limits their possibility to access the labour market in a regular manner.

Finding employment is can be difficult for asylum seeker for various reasons: their provisional and precarious residence status, the often very limited knowledge of national languages, the fact that many foreign diplomas are not considered equivalent to national diplomas, and labour market discrimination.<sup>949</sup>

### **Limited individualised responses for vulnerable applicants**

The lack of individualised assessment of vulnerabilities before issuing detention orders, mostly for cases at the borders, has been highlighted as an issue within the national system.<sup>950</sup>

Similar issues regarding difficulties in identifying vulnerabilities are also reported within the reception network. Some concerns emerge regarding the limited possibilities to address all special reception needs. In several cases, applicants who are found to have specific vulnerabilities cannot

<sup>943</sup> Available in Dutch, French or English. See: <http://bit.ly/3MawuX7>.

<sup>944</sup> Information about this process provided by Fedasil.

<sup>945</sup> Cour des Comptes (September 2017), [Accueil des demandeurs d'asile](#), p.58.

<sup>946</sup> Interview with Fedasil.

<sup>947</sup> Cour des Comptes (September 2017), [Accueil des demandeurs d'asile](#), 55-56.

<sup>948</sup> KCE (October 2019), [Asylum seekers: options for more equal access to health care. A stakeholder survey](#).

<sup>949</sup> AIDA (April 2023), [Country Report Belgium](#), pp.128-130.

<sup>950</sup> Interviews with CIRÉ, Vluchtelingenwerk, Myria. The Move Coalition, advocating against immigration detention, introduce a procedure for the screening of the vulnerability of the persons that will be detained and to attach appropriate consequences to a finding of vulnerability such as alternatives to detention, see: Move Coalition, [Hervorming van het Belgisch Migratiewetboek, zomer 2021](#), pp.18-19.

be transferred to specialised reception places due to lack of capacity.<sup>951</sup> Additionally, among those who do not immediately receive a reception place there are also vulnerable applicants, who are then subjected to conditions that only exacerbate their vulnerabilities.<sup>952</sup>

### 2.3 Good practices

Assessing the organisation of the Belgian reception system against respect for fundamental rights and overall coherence with the aims of the Reception Conditions Directive and the CEAS as a whole, several good practices can also be highlighted. The good practices are grouped into categories that correspond to key rights of asylum applicants as connected to reception.

#### ➤ Access to information and legal assistance

Access to information and to legal assistance is ensured for asylum seekers who access the reception network, albeit with differences between reception centres. Fedasil produces a variety of information materials and the presence of interpreters in the centres is ensured.

#### ➤ Freedom of movement

Freedom of movement within the country's territory is ensured, and asylum seekers receive economic support for transport to attend appointments with asylum authorities.

#### ➤ Detention

No cases of *de facto* detention are reported. Some alternatives to detention are provided, in particular for families with children. Unaccompanied minors are not detained as a rule. Even though some cases of unaccompanied children detained pending the result of their age assessment have been reported, detention did not extend for more than a few days.

#### ➤ Access to socio-economic rights

Asylum seeking children generally enjoy unrestricted access to education, despite some delays in access due to school capacity, and adults have access to vocational training. Adult asylum seekers can access work from four months after lodging their asylum application. Medical care is granted on similar grounds as country nationals and is not limited to emergency care.

#### ➤ Material reception conditions

The system provides a variety of accommodation options. Some reception centres are managed directly by the national reception authority while others are assigned to other partners, who are mainly NGOs with specific expertise in addressing asylum seekers' needs. The active involvement of individuals in their asylum path is sought, and good standards for reception are set by national authorities.

In addition, reception is provided both in collective centres and individual accommodation which allows for tailored support based on the needs of the applicant. and in the process on inclusion in the local society. Among those who can access individual accommodation are asylum seekers who are nationals from a country with a high recognition rate.

#### ➤ Vulnerable asylum seekers

<sup>951</sup> Fedasil (February 2017), [Study into vulnerable persons with specific reception needs](#); Fedasil (December 2018), [Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg](#); Interviews with CIRÉ, Myria, Vluchtelingenwerk Vlaanderen.

<sup>952</sup> Interview with CIRÉ.

Some dedicated reception places for vulnerable asylum seekers are provided, for example for single women, LGBT applicants, and applicants with specific medical needs. Specific reception places are provided for unaccompanied minors, who are hosted in separate centres from adult asylum seekers.

### 3. Case Study 2: Italy

#### *Glossary & List of Abbreviations*

<b>Decree Law</b>	Regulatory act which provisionally enters into force but requires the enactment of a legislative act in order to have definitive force.
<b>Questore</b>	Chief of the Provincial Police Office
<b>Questura</b>	Provincial Police Office
<b>ANCI</b>	National Association of Italian Municipalities   Associazione Nazionale Comuni Italiani
<b>ASGI</b>	Association for Legal Studies on Immigration   Associazione per gli Studi Giuridici sull'Immigrazione
<b>ASL</b>	Local Health Board   Azienda Sanitaria Locale
<b>CAF</b>	Fiscal Assistance Centre   Centro assistenza fiscale
<b>CARA</b>	Centre for the Reception of Asylum Seekers   Centro di accoglienza per richiedenti asilo
<b>CAS</b>	Emergency Accommodation Centre   Centro di accoglienza straordinaria
<b>CDA</b>	Accommodation Centre for Migrants   Centro di accoglienza
<b>CIE</b>	Identification and Expulsion Centre   Centro di identificazione ed espulsione
<b>CIR</b>	Italian Council for Refugees   Consiglio Italiano per i Rifugiati
<b>CPSA</b>	First Aid and Reception Centre   Centro di primo soccorso e accoglienza
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EUAA</b>	European Union Agency for Asylum
<b>IOM</b>	International Organisation for Migration
<b>MEDU</b>	Doctors for Human Rights   Medici per I diritti umani
<b>MRCC</b>	Maritime Rescue Coordination Centre
<b>SOPs</b>	Standard Operating Procedures
<b>SPRAR</b>	System of protection for asylum seekers and refugees   Sistema di protezione per richiedenti asilo e rifugiati
<b>SIPROIMI</b>	System of protection for beneficiaries of international protection and unaccompanied minors   Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati
<b>SAI</b>	System of Accommodation and Integration – Sistema di accoglienza e integrazione
<b>VESTANET</b>	Registration database for asylum applications

### 3.1 Overview of the national reception system

The Italian reception system for asylum seekers and beneficiaries of national/international protection is governed by Legislative Decree 142/2015 (from now on, "Reception Decree"), transposing into national law the recast Reception Directive. The model the Reception Decree initially outlined created a common reception system, articulated in different phases but centred on the Reception and Integration System (SAI, former SPRAR, then SIPROIMI) as the standard form of reception of asylum seekers. As will be properly detailed through the following sections, this model never reached its full realisation, partly due to structural problems, such as the merely voluntary participation of the municipalities in the SAI network, that were never properly addressed.<sup>953</sup>

Since 2015, the regulatory text underwent several reforms. The first through Decree Law 113/2018,<sup>954</sup> that excluded most categories of asylum seekers from the SAI system, which was followed by another Decree Law in 2020,<sup>955</sup> that partially restored the previous model, reintroducing a single reception system for both asylum seekers and beneficiaries of national and international protection.

After the 2020 reform, the Reception Decree articulated the reception system distinguishing between:<sup>956</sup>

1. First aid and identification activities, which take place in the First Aid and Reception Centres (CPSA)<sup>957</sup> close to the main disembarkation points.<sup>958</sup> These were created in 2006 for the purposes of first aid and identification, and currently formally operate as hotspots.<sup>959</sup>
2. First assistance in existing collective centres or in centres that can be established, in case of necessity, through specific Ministerial Decrees.<sup>960</sup> This includes the centres previously known as Governmental Reception Centres for Asylum Seekers (CARA) and Reception Centres (CDA). The law states that first assistance can also take place in Temporary Reception Centres (CAS).<sup>961</sup>
3. Reception in the SAI system (Reception and Integration System (SAI)), operated in small-scale centres, individual or collective apartments. It is referred to as the second phase of reception.

<sup>953</sup> For a detailed analysis on the 2015 reception model, see [AIDA](#) 2016 and the following updates (For a better understanding of its strengths and weaknesses, see: Morandi and Schiavone, *Analisi delle norme in materia di accoglienza dei richiedenti protezione internazionale e di procedura per il riconoscimento della protezione internazionale alla luce dell'entrata in vigore del d.lgs. n. 142/2015*, in *Diritto, immigrazione e cittadinanza* XVII, 3-4.2015. Penasa (January 2017), [L'accoglienza dei richiedenti asilo: sistema unico o mondi paralleli?](#), in *Diritto, Immigrazione e Cittadinanza*. Campomori, *Il sistema di accoglienza dei richiedenti asilo in Italia*, Osservatorio Internazionale per la Coesione e Inclusione Sociale, Policy memo, September 2016. Marchetti, *Le sfide dell'accoglienza. Passato e presente dei sistemi istituzionali di accoglienza per richiedenti asilo e rifugiati in Italia*, in *Meridiana*, n. 86, 2016. *Il diritto di asilo tra accoglienza e esclusione* (various authors), 2015.

<sup>954</sup> Implemented by Law 132/2018, also known as "Salvini Decree" or "Security Decree".

<sup>955</sup> Decree Law 130/2020, converted into Law 173/2020, also known as "Lamorgese Decree".

<sup>956</sup> For a description of the current model, see the following. Conti, *La protezione umanitaria e il nuovo Sistema di accoglienza e integrazione nel d.l. N. 130/2020*, in *Federalismi.it*, n. 35/2020, ISSN 1826-3534. Giovannetti, *Giro di boa. La riforma del sistema di accoglienza e integrazione per richiedenti e titolari di protezione internazionale*, in *Diritto, Immigrazione e Cittadinanza*, n. 1/2021, ISSN 1972-4799.

<sup>957</sup> L 563/1995.

<sup>958</sup> Article 8(2) [Reception Decree](#), as amended by DL 130/2020, which now directly recalls Article 10-ter TUI.

<sup>959</sup> Article 10-ter TUI, inserted by Article 17 Decree Law 13/2017 and L 46/2017.

<sup>960</sup> Article 8 (2) Reception Decree, as amended by DL 130/2020, and Article 9 Reception Decree.

<sup>961</sup> Article 8 (2) Reception Decree, as amended by DL 130/2020.



The law also provided that, after first assistance, in case of unavailability of places in the SAI system, reception for asylum seekers could also be provided in the Temporary Reception Centres (CAS).<sup>962</sup> This was however to be limited to the time strictly necessary for the transfers of the applicant in a SAI reception centre.<sup>963</sup>

In May 2023, Law 50/2023, which converted Decree Law 20/2023 (the ‘Cutro Decree’), came into force. Among the many changes to the national asylum system introduced by the Decree was the exclusion of most asylum seekers – with some limited exceptions – from the SAI system. The measure reproduces a similar approach as that adopted by the ‘Salvini Decree’. It establishes that, as a general rule, asylum seekers should be hosted in collective government centres and temporary facilities.

Consequently, the current SAI system is reserved mostly to beneficiaries of international protection and other forms of international protection, as well as unaccompanied minors. The only categories of asylum seekers who can access it are those identified as vulnerable and those who have entered Italy through complementary pathways (government-led resettlements or private sponsored humanitarian admission programs).

### 3.1.1 Material reception conditions

#### **Reception authority**

The Department of Civil Liberties and Immigration within Ministry of Interior, is responsible for the reception of asylum seekers. The department operates at the local level through branch offices of the Ministry of the Interior, the prefectures.

Reception centres are managed by several different actors. Most centres are run by NGOs, non-profit organisations or private companies, selected through a tendering process under the prefectures’ responsibility. Centres within the SAI system are managed by local governments, municipalities, non-governmental organisations, non-profit organisations and private companies.<sup>964</sup> These centres are opened based on the voluntary participation of local institutions in the network, which is coordinated and monitored by a Central Service (*Servizio Centrale SAI*). The Central Service is managed by ANCI, the National Association of Italian Municipalities, with operational support from Fondazione Cittalia. It also undertakes tasks involving information, promotion, consultancy, and technical assistance for local authorities and monitors the presence of applicants and beneficiaries of international protection in Italy.<sup>965</sup>

The Ministry of Interior is responsible for the overall management of the national reception system,<sup>966</sup> while its peripheral administrations, prefectures, or Local Government Offices, are in charge of managing reception on a local level, in their own Province. The law provides for a National Coordination Table to be set up at the Ministry of the Interior (Department for Civil Liberties and Immigration) and for Regional Coordination Tables to be established at every prefecture in the capital of each Region.<sup>967</sup> The National Table is responsible, *inter alia*, for defining the guidelines and

<sup>962</sup> Article 11(1) Reception Decree, as amended by Decree Law 130/2020.

<sup>963</sup> Article 11(3) Reception Decree, as amended by Decree Law 130/2020.

<sup>964</sup> EUAA (January 2023). [Reception Authorities](#), p.27.

<sup>965</sup> [Sistema Accoglienza e Integrazione \(SAI\)](#).

<sup>966</sup> The management and supervision of the entirety of the reception system are entrusted in particular to the Central Directorate of Immigration and Asylum Civil Services.

<sup>967</sup> The National Coordination Table is established pursuant to Article 29(3) of Legislative Decree 251/2007 (transposition of the recast Qualification Directive). As regards the reception, its duties are regulated by Article 9(1) and 16 of the

planning the interventions aimed at optimising the reception system. This includes the criteria for regional allocation of reception places. The Table develops, on a yearly basis, a National reception plan that identifies national reception needs, based on projections for new arrivals.<sup>968</sup>

Guidelines and programming prepared by the Table are then to be implemented at territorial level through Regional coordination tables, which identify the location criteria for CARA and CAS facilities as well as the distribution criteria within the Region. In the perspective of national coordination and multi-level governance of reception, several institutional acts have also been taken, beginning with the approval of a National Operational Plan by the Unified Conference<sup>969</sup> of 10 July 2014,<sup>970</sup> which represented a first attempt to develop a system of planning, organisation and national management of the reception of migrants and refugees.

### **Monitoring**

The legislation provides that the Ministry of Interior (Department of Civil Liberties and Immigration) is responsible for supervising and monitoring the management of reception facilities, both directly and via local Prefectures. As far as they are concerned, Prefectures may also avail themselves of the services of the social services of the relevant Municipality. Monitoring activities concern the verification of the quality of the services provided, as well as the procedures for the award of reception services.<sup>971</sup> Civil society has highlighted various issues connected to monitoring of governmental and emergency centres, in particular regarding lack of transparency, quality of the visits and the limited number of controls realised, often due to lack of capacity.<sup>972</sup>

Since 2021, the EUAA supported the Ministry of Interior in the development of a new methodology and tools to assess reception conditions, also through the use of a digital platform developed by the authority, and is being supporting its roll out and implementation at Prefecture level to ensure a standardized approach through the territory.<sup>973</sup>

The SAI Central Service is responsible for monitoring activities of SAI reception projects and to provide technical assistance to the local authorities sponsoring these projects.<sup>974</sup> The Ministerial Decree that regulates the SAI system provides that the activities of the Central Service accompany the entire life cycle of local reception projects; among these, on-site visits to support local authorities in the application of the relevant legislation and operational instructions can be carried out, also identifying the most appropriate corrective actions to increase the quality of reception services.<sup>975</sup> In practice, the Central Service mainly provides technical support in the realisation and in the practical management of the reception project, providing the local authority and the managing body of the

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Reception Decree, by Ministerial Decree 16 October 2014 and by the National Agreement of the Unified Conference of 10 July 2014.

<sup>968</sup> This plan was developed only once, in 2016, and has been largely unapplied. Source: Mol, Piano Accoglienza 2016.

<sup>969</sup> The Unified Conference (Conferenza Unificata) is a permanent body where the Central Government, Regions, Provinces and Municipalities are represented. It participates in decision-making processes involving matters for the State and the Regions, in order to foster cooperation between the State activity and the system of autonomies, examining matters and tasks of common interest, also carrying out advisory functions.

<sup>970</sup> Unified Conference (July 2014), [National Operational Plan](#).

<sup>971</sup> Article 20(1) Reception Decree.

<sup>972</sup> AIDA (May 2023), [Country Report Italy](#), pp.125-127.

<sup>973</sup> Interview with EUAA.

<sup>974</sup> Article 1-sexies (4 and 5) Decree Law 416/1989, converted with amendments into Law 39/1990, as last amended by Decree Law 130/2020, converted with amendments into Law 173/2020.

<sup>975</sup> Ministry of Interior Decree 18 November 2019.

project with advice, helping in the management of the most complex cases, facilitation in interfacing with other local and national realities.

### **Access to reception conditions**

Access to the national reception system is reserved to applicants for international protection and third-country nationals holding international or national complementary protection permits. According to the law, admission to reception should take place immediately after the making of the asylum application,<sup>976</sup> including at the borders and in the transit zones or in Italian territorial waters.<sup>977</sup>

It provides that reception conditions apply from the moment a third-country national manifests their will to apply for international protection and declares that they have no economic means to guarantee theirs and their family's survival,<sup>978</sup> without establishing additional requirements to access reception measures.<sup>979</sup> The criteria of destitution is to be evaluated by the Prefecture, by making a comparison between the financial resources of the applicant(s) and the amount of the annual social allowance.<sup>980</sup> In practice, no assessment of financial resources is carried out when the asylum seeker makes the application, or even at the moment of accessing the system; both Prefectures and the SAI Central Service customarily consider sufficient the self-declaration.<sup>981</sup>

Access to the reception system may follow different procedures:

- For those who reach the Italian territory after disembarkation from Search and Rescue operations, access to the initial step of system (in this case, hotspots) is automatic. When they make their asylum application, in case of not being channelled in the border procedure, they are allocated on the national territory according to a specific dispersal scheme.<sup>982</sup> Otherwise, their application can be processed in a pre-removal detention centre (CPR).<sup>983</sup>
- In cases where the asylum seeker is already present on the national territory, the request to access the system is processed by the national police office where the person is present or has their domicile.
- If the person in need to access the reception system already holds a protection permit, they must contact the SAI Central Service.

Barriers to access to reception in Italy mostly depend on bureaucratic and administrative obstacles to access to the international protection procedure and on shortages of available places and management issues within the various levels of the reception system.<sup>984</sup>

<sup>976</sup> Article 1 (2) Reception Decree.

<sup>977</sup> Article 1(1) Reception Decree.

<sup>978</sup> Article 1(2) Reception Decree.

<sup>979</sup> Article 4(4) Reception Decree.

<sup>980</sup> Article 14(1) and (3) Reception Decree. The Social Allowance is an economic contribution of a welfare nature provided by the National Institute for Social Security (Istituto Nazionale di Previdenza Sociale, INPS) for 13 months to all those who are in poor economic conditions. For the year 2022, the amount corresponded to € 6,097.39 and corresponds to € 6,542.51 for 2023.

<sup>981</sup> AIDA (May 2023), [Country Report Italy](#), p.128.

<sup>982</sup> Ibid, p.141.

<sup>983</sup> AIDA (May 2023), [Country Report Italy](#), p.87; see Section 3.1.2 Detention.

<sup>984</sup> See Section on 3.2 Challenges and gaps.

## **Accommodation schemes**

Asylum seekers may be accommodated in several different facilities, depending on the manner of their arrival or on their individual characteristics.

### **First aid and identification: CPSA / Hotspots**

The Reception Decree states that the first aid and identification operations take place in the centres set up in the principal places of disembarkation.<sup>985</sup> These are defined as First Aid and Reception Centres (CPSA),<sup>986</sup> which are now formally operating as hotspots.<sup>987</sup> According to the Standard Operating Procedures (SOPs), persons should stay in these centres “for the shortest possible time”.

Decree-Law 20/2023 provided that, up to 31 December 2025, the Lampedusa hotspot could be managed by the Italian Red Cross, in derogation from the rules on tendering procedures.<sup>988</sup> This provision was considered necessary following the continuous mismanagement concerns registered in the facility, in order to ensure the functionality of a structure considered fundamental for the Italian system. The same Decree also provided for the possibility for the Government to activate new hotspot facilities throughout the national territory, with the same functions of identification, selection and administrative detention, also in derogation from the rules relating to public tendering procedures.<sup>989</sup>

### **Governmental first reception centres**

The Reception Decree provides that the governmental first reception centres are managed by public local entities, consortiums of municipalities and other public or private bodies, specialised in the assistance of asylum applicants, selected through public tenders.<sup>990</sup> In 2020, the Ministry of Interior reported that 9 centres fell within this category.<sup>991</sup>

### **Temporary facilities (CAS)**

In case of temporary unavailability of places in the first reception centres, the Reception Decree provides the use of Emergency Reception Centres (*centri di accoglienza straordinaria*, CAS). The CAS system, originally designed as a temporary measure to prepare for transfer to the second phase of reception, expanded and became a substantial part of the ordinary system, as m. The legal changes occurred through the Cutro Decree, that once more exclude most asylum seekers from the SAI system, largely codifies the previous practice,<sup>992</sup> as even prior to the reform, CAS represented over 66% of all facilities used to accommodate asylum seekers in the country.<sup>993</sup>

The CAS are identified and activated by the Prefectures, in cooperation with the Ministry of Interior. Following Decree Law 113/2018, CAS facilities can be activated only after obtaining the opinion of

<sup>985</sup> Article 8(2) Reception Decree, as amended by DL 130/2020, which now directly recalls Article 10-ter TUI.

<sup>986</sup> L 563/1995.

<sup>987</sup> Article 10-ter TUI, inserted by Article 17 Decree Law 13/2017 and L 46/2017; see Section 3.1.2 Detention.

<sup>988</sup> Article 5-bis (2) Decree Law 20/2023 converted with modifications into Law 50/2023.

<sup>989</sup> Article 5-bis (3) Decree Law 20/2023 converted with modifications into Law 50/2023.

<sup>990</sup> Article 9(2) Reception Decree.

<sup>991</sup> Mol, [Centri per l'immigrazione](#).

<sup>992</sup> Interview with ASGI.

<sup>993</sup> Mol (February 2023), [Cruscotto statistico giornaliero](#).

the local authority on whose territory the structures will be set up.<sup>994</sup> Activation is reserved for emergency cases of substantial arrivals, but applies in practice to all situations in which capacity in ordinary centres is not sufficient to meet the reception demand.

The term CAS is a formal classification related to the temporary function of the reception facility, but does not in itself define its nature. The forms that CAS facility can take vary, going from small apartments that managing bodies rent from private citizens to collective centres obtained within entire buildings, from camps organised with containers and tents to former army barracks.<sup>995</sup> The tender specifications scheme, in fact, provides for the possibility of setting up CAS in "single housing units", in collective centres with less than 50 places, centres with a capacity between 50 and 300 places, or collective centres with more than 300 places.<sup>996</sup>

### **Provisional centres**

Law 50/2023 provided that, pending the identification of available places in governmental centres or in CAS, reception for asylum seekers may be arranged by Prefect, for the time strictly necessary, in provisional structures where food, lodging, clothing, health care and linguistic-cultural mediation are the services ensured.<sup>997</sup>

### **SAI system**

The system now called SAI<sup>998</sup> is, following reform of the system in 2023, dedicated mainly to beneficiaries of international protection and unaccompanied minors.<sup>999</sup> SAI projects can also accommodate vulnerable asylum seekers (as defined by Article 17(1) of the Reception Decree<sup>1000</sup>), asylum seekers who accessed the territory through legal pathways such as resettlement and humanitarian corridors and holders of national protection permits. The latter are: victims of trafficking; domestic violence and serious exploitation; persons issued a residence permit for medical treatment, or natural calamity in the country of origin, or for acts of particular civic value;<sup>1001</sup> holders of special protection, holders of a permit for special cases (former humanitarian protection),<sup>1002</sup> and former unaccompanied minors, who obtained a decision on the necessity to continue receiving assistance from a court are also entitled to accommodation in SAI.<sup>1003</sup> Holders of special protection to whom exclusion clauses for international protection applied cannot access the system.

<sup>994</sup> Article 11 (2) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018. Prior to the reform, the law provided that the local authorities should only be notified and issue a non-binding opinion.

<sup>995</sup> AIDA (May 2023), [Country Report Italy](#), p.150.

<sup>996</sup> See [Tender Specification Scheme](#), Ministerial Decree 29 January 2021.

<sup>997</sup> Article 11 (2 bis) Reception Decree introduced by L 50/2023.

<sup>998</sup> Reception and Integration System, Sistema di Accoglienza e Integrazione, formerly known as SPRAR and SIPROIMI.

<sup>999</sup> According to Article 1-sexies DL 416/1989, as amended by DL 130/2020, local authorities responsible for the SAI projects "can" host in such projects also asylum seekers and beneficiaries of special protection or other protection titles.

<sup>1000</sup> Article 17(1) provides a non-exhaustive list of vulnerable applicants under the scope of the Reception Decree: children, unaccompanied children, disabled persons, elderly people, pregnant women, single parents with minor children, persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence, victims of trafficking and genital mutilation, and persons affected by serious illnesses or mental disorders.

<sup>1001</sup> Article 1 sexies (1) DL 416/1989, as amended by DL 130/2020, citing Articles 18, 18-bis, 19(2)(d-bis), 20, 22(12-quater) and 42-bis TUI. The statuses in Articles 20 and 42-bis had been inserted by Decree Law 113/2018.

<sup>1002</sup> Ibid, mentioning Articles 1 (9) DL 113/2018 (special cases); Article 19, (1, 1.1) TUI, amended by DL 130/2020.

<sup>1003</sup> Article 1 sexies (1 bis) DL 416/1989, introduced by DL 130/2020. In some CAS, according to the law unaccompanied minors becoming adults can benefit from further assistance (accommodation and help) up to 21 years. It is called "proseguito amministrativo", administrative continuation.

As the changes introduced by the Cutro Decree do not have retroactive value, asylum seekers who do not fit into the categories currently admitted in SAI, but who were present in the network prior to the approval of the new legislation, maintain the right to remain in these reception structures.

The SAI network is mainly constituted by small facilities and rented apartments,<sup>1004</sup> located in – or close to – city centres or well connected to cities through public transport. The activation of SAI projects depends on funding provided directly by the Ministry of the Interior to local authorities. The latter must voluntarily apply to host a reception project on its territory and submit a detailed project to the Ministry, including a funding request. The application is evaluated by a commission and, if deemed appropriate, the local project is financed, usually for a period of 3 years, subject to renewal.<sup>1005</sup> The SAI system has been slowly but constantly expanded throughout the country in the 20 years since it was set up,<sup>1006</sup> even if the number of places still proved inadequate to meet existing needs in the country.<sup>1007</sup>

### ***Private accommodation with families and churches***

A network of private accommodation facilities outside of the national public reception system is also present in the country. In these cases, housing is mainly provided by churches or voluntary organisations. Due to their private nature, it is difficult to monitor the number of available places in these forms of accommodation.

Other projects on the territory, financed by municipalities or through AMIF funds, are specifically directed at accommodating families and unaccompanied minors.<sup>1008</sup>

### ***Reception capacity***

According to statistics from the Ministry of Interior,<sup>1009</sup> a total of 141,107 individuals were hosted in the national reception system at the end of September 2023. 599 were hosted in hotspots, 105,737 in first reception centres and 34,771 in the SAI network.

At the end of 2022, five hotspots were operating in the country.<sup>1010</sup> In addition, in the first reception centre of Crotona a space was set to carry out activities of first identification, fingerprinting and registration of asylum applications, as well as the formalisation of expulsion orders, which would mean that the facility is in practice used as an hotspot, without being formally identified as such.<sup>1011</sup> Preparatory activities directed at establishing a new hotspot at the first reception centre of Roccella Jonica Calabria were in progress at the beginning of 2023,<sup>1012</sup> and the national Government expressed interest in the activation of a new hotspot in Friuli Venezia-Giulia, point of access to Italy for those coming from the Balkan route.<sup>1013</sup>

<sup>1004</sup> In 2021, more than 84% of the facilities used in the SAI were apartments. See SAI, [Rapporto Annuale SAI 2021](#).

<sup>1005</sup> The funding application and assessment mechanism for the project is governed by the Ministerial Decree 18 November 2019.

<sup>1006</sup> SAI (2021), [Rapporto Annuale SAI](#); Interview with SAI Central Service.

<sup>1007</sup> Interview with ASGI.

<sup>1008</sup> AIDA (May 2023), [Country Report Italy](#), p.152.

<sup>1009</sup> MoI (September 2023), [Cruscotto Statistico Giornaliero](#), p.5.

<sup>1010</sup> AIDA (May 2023), [Country Report Italy](#), p.148.

<sup>1011</sup> ASGI (September 2022), [Il centro di accoglienza di Crotona: dati generali, i minori e le procedure di redistribuzione](#); ASGI (October 2023), [Monitoraggio nel centro di Crotona: Se è questa accoglienza](#).

<sup>1012</sup> ASGI (February 2023), [Roccella Jonica: situazione attuale e implementazione "approccio hotspot"](#).

<sup>1013</sup> See RAI (January 2023), [Hotspot sulla Rotta balcanica. L'ex prefetto di Trieste Valenti pianifica struttura sul territorio](#).

By 2021, over 4,200 CAS centres were present on the territory.<sup>1014</sup> In 2018, tender specifications schemes opened by prefectures for reception services in governmental centres and CAS<sup>1015</sup> significantly reduced the amounts of the grants provided, eliminated core services that were previously covered and provided for a very limited number of staff when compared to the number of guests (1 operator per 50 asylum seekers) to be employed in these centres. In light of this, tender specification schemes tended to favour the creation of large collective centres, managed by private-sector organisations, while many small non-profit organisations and social cooperatives were or withdrew from the reception system.<sup>1016</sup>

As highlighted by ActionAid and Openpolis,<sup>1017</sup> between 2018 and 2021, over 3,500 reception facilities were closed in the country, and available reception places went from 169,471 to 97,670. Most of the centres that closed were small or medium sized while several larger CAS facilities increased their capacity in the same time frame.

Several operators withdrew due to the impossibility to provide services respecting minimum standards in terms of reception due to the limited funding provided by the tender.<sup>1018</sup> In many cases, small organisations and cooperatives refused to support a reception system that, according to their view, did not put fundamental rights of the people hosted at its centre.<sup>1019</sup> In Rome and Milan, accommodation of asylum seekers was mostly left to actors that provided their services in larger centres.<sup>1020</sup>

By the end of August 2023, the SAI network comprised 925 projects, for a total of 43,449 places financed, of which 671 projects (36,445 places) for ordinary beneficiaries, 213 (6,207 places) for unaccompanied minors and 41 projects (797 places) for people with mental health conditions or physical disabilities. The projects involve 785 local authorities and are distributed on the national territory. However, Southern Italian Regions continue to host proportionally more projects.<sup>1021</sup>

As evidenced by an Actionaid report,<sup>1022</sup> at the end of December 2021, the SAI system had more than 10 thousand funded but unavailable places. A more recent research showed that, in October 2022,

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<sup>1014</sup> Senate of the Italian Republic (2021), [2021 Governmental report on the situation of the reception system](#).

<sup>1015</sup> As per Ministerial Decree of 28 November 2018.

<sup>1016</sup> For a detailed analysis of the effects of Decree Law 113/2018 on the reception system, see: Acocella, The evolution of the Italian reception system for asylum seekers into a "non-place" for "non-subjects", in *Mondi migranti*: 1, 2022, DOI: 10.3280/MM2022-001011. Franzè, The '(In)security Decree': Undermining Practices of Reception in the Italian Hosting Mechanism, Refugee Law Initiative, Working Paper No. 66, October 2022. Giovannetti, La frontiera mobile dell'accoglienza per richiedenti asilo e rifugiati in Italia, in *Diritto, Immigrazione e Cittadinanza*, n. 1/2019, ISSN 1972-4799. Vettori, Servizio pubblico di accoglienza e diritti fondamentali dei richiedenti asilo. Profili di illegittimità della riforma introdotta dal D.L. n. 113/2018, in *Diritto, Immigrazione e Cittadinanza*, n. 3/2019, ISSN 1972-4799. See also: Guella, Sistema di accoglienza dei richiedenti asilo e disposizioni in materia di iscrizione anagrafica nel c.d. Decreto Sicurezza, in *Osservatorio Costituzionale*, 1-2/2019, ISSN: 2283-7515.

<sup>1017</sup> Actionaid and Openpolis (February 2023), [Centri d'Italia. Report 2022. Il vuoto dell'accoglienza](#).

<sup>1018</sup> Interview with ARCI.

<sup>1019</sup> Actionaid, Openpolis (December 2019), [La sicurezza dell'esclusione, Second part](#).

<sup>1020</sup> Openpolis and Actionaid report that in Rome 83.5% reception places are located in large centres. Medihospes manages 63% of all reception places. In Milan, 64% of reception places are provided in large centres; for a complete overview on the reception network in Milan see NAGA (December 2019), [Senza Scampo](#); see also Internazionale (February 2020), [Il decreto Salvini ha favorito il "business dell'accoglienza"](#).

<sup>1021</sup> SAI (August 2023), [I numeri del SAI – Progetti Territoriali](#).

<sup>1022</sup> ActionAid (February 2023), [Centri d'Italia. Mappe dell'accoglienza. Report 2022](#).

against over 44,000 funded places within the SAI system, only 35,000 of them were available and even fewer, 33,000, were actually used.<sup>1023</sup>

### **Material reception conditions to fulfil basic needs**

According to the law, the scope of material reception conditions and services offered to asylum seekers is defined through a decree of the Ministry of Interior, to guarantee uniform levels of reception across the territory, taking into account the peculiarities of each type of reception centre.<sup>1024</sup>

Under the tender specification schemes issued following Decree Law 113/2018<sup>1025</sup>, the daily amount per person awarded to the centres' management was reduced from approximately €35 to €21, forcing contractors to opt for larger centres, while reducing the number of operators and the services offered in said centres.<sup>1026</sup> The following tendering schemes also proved inadequate in facing the necessities connected to the management of these centres, which led also private actors from withdrawing from the management of the reception network,<sup>1027</sup> and to a deterioration of the services provided in governmental and CAS facilities.<sup>1028</sup>

The Reception Decree does not foresee a maximum time-limit for permanence in reception centres, but stipulates that access to reception must be provided from the moment the person expresses the will to apply for protection and throughout the whole asylum procedure. In practice, asylum seekers remain in reception centres throughout the whole asylum procedure, which may last several months, as well as during the appeal procedure, that can last up to 3-4 years, depending on the workload and backlog of the competent court.<sup>1029</sup>

Asylum seekers in reception centres receive pocket money for personal needs, each asylum seeker hosted in first reception centres receives €2.50 per day. Although the amount of pocket money in CAS is agreed with the competent Prefecture, according to the Decree of 24 February 2021, the amount received by applicants hosted in CAS should be €2.50 per day for single adults and up to €7.50 for families. No financial allowance is provided for asylum applicants who are not hosted in the reception network.

### **Freedom of movement**

Italian legislation does not foresee a general limitation to the freedom of movement of asylum seekers. Nevertheless, the law specifies that the competent prefecture may limit the freedom of movement of asylum seekers, delimiting a specific place of residence or a geographic area in which they are free to move.<sup>1030</sup> The national system also provides for a system for dispersal of asylum seekers among regions, based, among other criteria, on available funding and on the number of third

<sup>1023</sup> Altreconomia (February 2023), [Scarsa programmazione, posti vuoti e persone al freddo: così ai migranti è negata l'accoglienza](#).

<sup>1024</sup> Article 12(1) Reception Decree.

<sup>1025</sup> [Ministry of Interior Decree published on 20 November 2018](#).

<sup>1026</sup> See InMigrazione, [La nuova \(mala\) accoglienza. Radiografia del nuovo schema per gli appalti dei centri di accoglienza straordinaria per i richiedenti asilo](#); Avvenire (January 2019), [Centri di accoglienza straordinaria. È caos sui bandi: penalizzata l'integrazione](#).

<sup>1027</sup> Interview with ASGI.

<sup>1028</sup> Redattore Sociale (February 2020), [Accoglienza migranti, più fondi ma sui servizi non si cambia. "Solo maquillage"](#).

<sup>1029</sup> AIDA (May 2023), [Country Report Italy](#), p.153.

<sup>1030</sup> Article 5(4) Reception Decree; a provision that was never applied in practice.



country nationals already hosted in that specific territory. In practice, the system has not been fully implemented up to the moment.<sup>1031</sup>

The Reception Decree also establishes asylum applicants are free to exit from first reception centres during the daytime but they have the duty to re-enter during the night time. The applicant can request a temporary permit to the Prefecture to leave the centre at a different time for relevant personal reasons or for reasons related to the asylum procedure.<sup>1032</sup> Authorisation is usually granted with permission to leave for some days. In case a person leaves the centre without permission and does not return to the structure within a brief period of time (usually agreed with the management body and regulated by the "reception regulations" of each facility), that person cannot be readmitted to the same structure and material reception conditions can be withdrawn by the Prefecture. The law does not provide for similar limitations for people accommodated in CAS, but rules concerning the entry to / exit from the centre are laid down in the reception agreement signed between the body running the structure and the asylum seeker at the beginning of the accommodation period.

The SAI network is governed by different and more flexible rules.<sup>1033</sup> It provides that the hosted migrant loses the right to stay in reception after 72 hours of unjustified absence, where unjustified absence means a "voluntary removal, for more than 24 hours, without any agreement with the coordinator/ project manager for the local authority".

### **Conditions in reception centres**

Reception conditions vary considerably both among different reception centres and between the same type of facilities. While the SAI system publishes annual reports on its functioning, no comprehensive and updated reports on reception conditions are available for the entire Italian territory.

#### *Hotspots*

Current contracts provide that the following services should be delivered within hotspot facilities: information provision on the asylum procedure and the reception system, social assistance, psychological assistance, preparation and distribution of meals, health care, provision of clothing and personal hygiene products, telephone card.<sup>1034</sup> These services must be provided with the proper care and methodologies when working with unaccompanied minors or vulnerable individuals.

The stay within hotspots should be limited to the time strictly necessary to carry out the identification and initiation of legal procedures. Even so, national law does not provide for a maximum duration of stay, although these are closed structures in which personal freedom is limited.<sup>1035</sup>

As such, individuals have often been held in these centres for several weeks or even months. Faced with continuous arrivals after landings and internal organisational and management issues, hotspots

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<sup>1031</sup> AIDA (May 2023), [Country Report Italy](#), p.141.

<sup>1032</sup> Article 10(2) Reception Decree.

<sup>1033</sup> Rules on absence have been regulated through the technical-operational [note of the Central Service](#) 1/2018 of 12 April 2018.

<sup>1034</sup> See Mol Decree 29 January 2021, [Outline of tender documents for the supply of goods and services relating to the management and operation of the centres, attachment 6-bis](#).

<sup>1035</sup> See Section 3.1.2 Detention.

very often become severely overcrowded and their conditions severely deteriorate.<sup>1036</sup> This is particularly the case for the hotspot on the island of Lampedusa, which, in view of its official capacity of 389 places, has often accommodated much higher numbers of newly arrived migrants.<sup>1037</sup> Several times, between 2022 and the present – with a particularly dramatic peak in September 2023 –, hundreds of men, women and children were forced to sleep outdoors, on makeshift mattresses, at temperatures as low as six degrees. The centre has experienced a number of power outages and shortages of food, clothing and running water.<sup>1038</sup> In early 2023, three people died in the hotspot of Lampedusa.<sup>1039</sup>

### *First reception centres*

Legislative changes significantly affected, among other aspects of the national asylum system, the type of support provided to asylum seekers who access its reception network. Decree Law 130/2020 restored a number of services that had been previously removed from governmental centres and CAS tender specification schemes in 2018, namely: social and psychological assistance, cultural mediation, Italian language courses, legal information service and information on territorial services.<sup>1040</sup> According to the recent reform of the reception system through Law 50/2023, both governmental centres and CAS, will only provide – besides material reception conditions - health care, social assistance and linguistic-cultural mediation services.<sup>1041</sup>

These new regulations will be followed by a new set of tender schemes specifications for these centres.

According to the law, first reception centres offer accommodation to asylum seekers to complete procedures necessary for the determination of their legal status,<sup>1042</sup> realise medical tests – mainly aimed at detecting vulnerabilities –, and ensure that placement in the most suitable accommodation facility is granted.<sup>1043</sup>

First reception centres are collective centres, generally set in very large facilities, isolated from urban centres and with poor or otherwise difficult contacts with the outside world.<sup>1044</sup> They are often overcrowded, and the quality of the reception services offered is not equivalent to reception facilities of smaller size. In general, concerns have systematically been raised about the high variability in the standards of reception centres in practice, which may manifest itself in: overcrowding and limitations in the space available for assistance, legal advice and social life; physical inadequacy of the facilities

<sup>1036</sup> See La Nuova Calabria (October 2022), [Hotspot di Crotone al collasso, quasi mille migranti in 24 ore e casi di scabbia](#); Corriere della Sera (January 2023), [Pasti cotti a Bari e servizi poco igienici: ecco l'hotspot per i migranti a Taranto](#).

<sup>1037</sup> RSI (September 2023), [Lampedusa, arrivi in calo ma hotspot al collasso](#); Il Manifesto (September 2023), [Lampedusa, record di arrivi. Tensioni al molo e nell'hotspot](#).

<sup>1038</sup> See Il Fatto Quotidiano (July 2022), Lampedusa, ["È emergenza igienico-sanitaria all'hotspot dei migranti": materassi accatastati, rifiuti e sovraffollamento](#); Il Post (February 2023), [Nell'hotspot di Lampedusa manca il cibo e ci si riscalda con i falò](#); La Repubblica (March 2023), [Migranti, nell'hotspot di Lampedusa al collasso: "Sto all'aperto con mio figlio di 4 mesi"](#); SkyTg24 (September 2023), [Lampedusa, hotspot al collasso. Tensione migranti-polizia. Il parroco: "Qui l'apocalisse"](#).

<sup>1039</sup> La Repubblica (February 2023), [Lampedusa, giovane ivoriana muore nell'hotspot sovraffollato. Il terzo caso in tre mesi](#).

<sup>1040</sup> Article 10 (1) Reception decree, as amended by DL 130/2020.

<sup>1041</sup> Article 10 (1) Reception decree, as amended by DL 20/2023.

<sup>1042</sup> Article 9(1) Reception Decree.

<sup>1043</sup> Article 9(4) Reception Decree.

<sup>1044</sup> Interview with ASGI.

and their remoteness from the community; or difficulties in accessing appropriate information.<sup>1045</sup> The conditions vary also depending on the size of the centre, the occupancy rate, and the level and quality of the services provided by the managing operator.<sup>1046</sup>

#### *Temporary centres (CAS)*

According to the Reception Decree, services guaranteed in temporary centres (CAS) are the same as those guaranteed in first reception governmental centres.<sup>1047</sup> Following the reform, besides material reception conditions, only health care, social assistance and linguistic-cultural mediation will be provided in these centres.

CAS facilities were initially conceived as a temporary response in situations of emergency. Despite their designation however, they became the main form of accommodation for asylum seekers in the country. This often weighted on the quality of the services provided within these structures, but also in this case their functioning largely depended on the actor managing the centre.<sup>1048</sup>

#### *SAI Network*

The SAI network is mainly constituted by small facilities and rented apartments,<sup>1049</sup> located in – or close to – city centres or, alternatively, well connected to cities through public transport. There, asylum seekers can benefit from the so-called “first level services”, which include material reception services, health care, social and psychological assistance, linguistic-cultural mediation, Italian language courses, legal counselling, and orientation to territorial services.

Second level services, which include job orientation and professional training, are reserved to beneficiaries of international protection, unaccompanied minors, and beneficiaries of other forms of protection.<sup>1050</sup>

The fact that these projects are permanently structured and that the necessary resources are planned in time, and therefore not dependent on a downward bidding process, means that all these services can be promptly provided to those able to access this system, with no delay.

#### *Makeshift camps*<sup>1051</sup>

In 2022, at least 10,000 migrants live in informal settlements in Italy, often characterised by marginality, very poor access to services and exploitation.<sup>1052</sup> Among them, around 30% are asylum seekers or refugees. Another study<sup>1053</sup> documented the socio-health situation of informal settlements of migrants and refugees in the capital city of Rome, underlining how almost all the people assisted by the MEDU NGO indicated having been hosted only at former CARA or CAS centres, often in mega-structures isolated from population centres and lacking services to promote

<sup>1045</sup> This is a recurring concern: Council of Europe Commissioner for Human Rights, Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012, CommDH(2012)26, 18 September 2012, 36.

<sup>1046</sup> AIDA (May 2023), [Country Report Italy](#), p.141.

<sup>1047</sup> Articles 11(2) and 10(1) Reception Decree.

<sup>1048</sup> Interview with ARCI, ASGI and Altraeconomia.

<sup>1049</sup> In 2021, more than 84% of the facilities used in the SAI were apartments. See: SAI, [Rapporto Annuale SAI 2021](#).

<sup>1050</sup> Article 1-sexies (2 bis, b) DL 416/1989; interview with SAI Central Service.

<sup>1051</sup> For a more detailed overview, see AIDA (May 2023), [Country Report Italy](#), pp.157-158.

<sup>1052</sup> Ministry of Labour and Social Policies, National Association of Italian Municipalities (July 2022), [Le condizioni abitative dei migranti che lavorano nel settore agro-alimentare. Prima indagine nazionale](#).

<sup>1053</sup> MEDU and UNHCR, [Margini. Rapporto sulle condizioni socio-sanitarie di migranti e rifugiati negli insediamenti informali della città di Roma](#).

knowledge of rights, and inclusion in the local society. In Rome alone, there are an estimated 2,000 people, including asylum seekers, refugees, holders of international protection and migrants in transit, living in informal settlements.<sup>1054</sup>

### *Monitoring activities*

The Interior Ministry should report to the national Parliament on a yearly basis regarding its monitoring activities on reception centres.<sup>1055</sup> Questions regarding the transparency regarding the procedure to conduct inspections and the results of said visits have been raised.<sup>1056</sup> The recent Decree-Law 20/2023 provides that, in cases where in government centres or in the CAS there is a serious breach of the obligations arising from the service contract, but said services cannot be interrupted as necessary for the protection of fundamental rights, the Prefect appoints a Commissioner for the extraordinary and temporary management of the enterprise. At the same time, the Prefect starts the procedures for the direct award of a new contract for the supply of goods and services.

While existing legislation provides that the duty of conducting inspections regarding the entire reception system, including SAI projects, lies with the Ministry of Interior and its prefectures,<sup>1057</sup> in practice SAI monitoring has been carried out almost exclusively by the Central Service. The Central Service periodically carries out on-site monitoring visits to centres within the SAI network, to directly verify the progress of the reception project, the actual provision and quality of services, and the adequacy of the accommodation used. These activities are carried out by qualified and trained personnel. Officials specialised in reporting and administration, as well as officials from the Ministry of the Interior, the competent prefecture, UNHCR, and other relevant stakeholders, can participate in these missions based on existing needs. The SAI monitoring visits are particularly thorough and often last several days; a typical visit includes a visit to the reception facilities involved, interviews with the hosted beneficiaries with the help of cultural-linguistic mediators, a meeting with the staff directly managing the project and a final meeting with representatives of the local authority responsible for the project. After the visit, a follow-up report is produced, containing a descriptive part of its outcome, recommendations and tips for the services' improvement and mandatory requirements and requests for adjustment or correction, with respect to any findings on shortcomings detected during monitoring. Project managers are then given a date by which to submit their comments and provide evidence of the corrections that have been implemented. In this interlocution, which continues until a positive response is given by the Central Service, the Ministry of the Interior and the responsible prefecture are involved. Data relating to monitoring visits carried out by the Central Service is not publicly available.

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<sup>1054</sup> For further information on migrants' informal settlements in Italy, see: Mendola and Busetta, [Health and Living Conditions of Refugees and Asylum-seekers: A Survey of Informal Settlements in Italy](#), Refugee Survey Quarterly, vol. 37, no. 4, Oxford UP, Dec. 2018, pp. 477–505, available at: See also: Brovia and Piro, Ghettos, camps and dormitories. Migrant workers' living conditions in enclaves of industrial agriculture in Italy, in Rye and O'Reilly, "International Labour Migration to Europe's Rural Regions". Routledge, 2020. See also: Belloni, Fravega, Giudici, "Fuori dall'accoglienza: insediamenti informali di rifugiati tra marginalità e autonomia", in Politiche Sociali 2/2020, 225-244, DOI: 10.7389/97987. See also: Romeo (ed.), "Abbandoni. Assembramenti umani e spazi urbani: rifugiati e negligenti politiche di accoglienza", Turin, 2017.

<sup>1055</sup> 2020 and 2021 [reports](#).

<sup>1056</sup> For data on inspections carried out in 2019, see ActionAid (February 2023), [Centri d'Italia. Report 2022](#); AIDA (May 2023), [Country Report Italy](#), pp.125-127.

<sup>1057</sup> Article 20(1) Reception Decree.

### **Access to information and legal assistance**

According to the national Procedure Decree, upon submission of an asylum application, police authorities are obliged to provide information to applicants through a written brochure about their rights and obligations and the steps of the asylum procedures.<sup>1058</sup> The Reception Decree contains a provision on the right to information, establishing that the brochure should be provided in reception centres within 15 days from the registration of the asylum application. Information should be provided with the assistance of an interpreter.<sup>1059</sup>

Information provision on the asylum procedure and reception is also included among the activities to be conducted in hotspot facilities.<sup>1060</sup> However, certain concerns have emerged regarding practices of information provision in this type of facility.<sup>1061</sup>

The National Commission for the Right of Asylum edited a Practical Guide for Applicants for International Protection,<sup>1062</sup> currently available in 12 languages,<sup>1063</sup> in which the rights and duties of the applicant and the asylum procedures are illustrated in a simple and understandable way. The leaflet also includes information on health services and on the reception system, and on how these services can be accessed. In addition, it contains the contact details of UNHCR and other NGOs specialised on asylum and migration.

Upon arrival in the reception centres, asylum seekers should be properly informed on the benefits and level of material reception conditions. Depending on the type of centre and the rules adopted, asylum seekers may benefit from proper information of the asylum procedure, access to the labour market or any other information on their integration rights and opportunities.

According to the Reception Decree, applicants have the opportunity to communicate with UNHCR, NGOs with experience in the field of asylum, religious entities, lawyers and family members.<sup>1064</sup> The representatives of the aforementioned bodies are allowed to enter these centres, except for security reasons and for the protection of the structures and of the asylum seekers.<sup>1065</sup> The Prefect establishes rules on modalities and the time scheduled for visits by UNHCR, lawyers, NGOs as well as the asylum seekers' family members and Italian citizens who must be authorised by the competent Prefecture on the basis of a previous request made by the asylum applicant living in the centre. The prefecture notifies these decisions to the managers of the centres.

Article 15(5) of the Reception Decree, provides that lawyers and legal counsellors indicated by the applicant, UNHCR as well as other entities and NGOs working in the field of asylum and refugee protection, have access to these facilities to provide assistance to hosted asylum seekers. As

<sup>1058</sup> [Legislative Decree no. 25/2008 "Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status"](#) (from now on, referred to as "Procedures Decree", Article 10(1).

<sup>1059</sup> Article 3(3) Reception Decree and Article 10 Procedures Decree.

<sup>1060</sup> Article 10-ter (1, 3 and 4) Legislative Decree 286/1998. See also: [Hotspot Standard Operating Procedures](#), and the [6-bis attachment to Outline of contract documents for hotspots](#), Specifiche tecniche integrative dello schema di capitolato di appalto relative all'erogazione dei servizi di accoglienza ed alla fornitura di beni – lotto unico per centri di cui all'art. 10-ter del d.lgs. 25 luglio 1998, n. 286.

<sup>1061</sup> ASGI (March 2023), [Il diritto all'informazione nell'hotspot di Lampedusa: le responsabilità di UNHCR](#); Calarco R., [Managing Migration through Detention and Information-Giving Practices: the Case of the Italian Hotspot and Relocation System](#), in International Migration Institute working paper, volume 173/2022; Vianelli L. (January 2022), [The Implementation of the Hotspot Approach in Italy](#), CONDISOBS Policy Paper No. 2.

<sup>1062</sup> Ministry of Interior, [Guida pratica per i richiedenti protezione internazionale in Italia](#).

<sup>1063</sup> Italian, English, French, Spanish, Arabic, Somali, Kurdish, Amharic, Urdu, Bengali, Farsi and Tigrinya.

<sup>1064</sup> Article 10(3) Reception Decree.

<sup>1065</sup> Article 10(4) Reception Decree.

reception centres are open, asylum seekers are free to contact NGOs, lawyers and UNHCR offices independently.

Concerning the governmental first reception centres for unaccompanied children, the law allows entry into the centres for members of the National and European Parliament, as well as to UNHCR, IOM, EUAA and to the Children's Ombudsman, to the Mayor or a person delegated by them. Access is also allowed to persons who have a motivated interest, because of their institutional engagement within the region or the local authority where the centre is based, to child protection agencies with long experience, to representatives of the media, and to other persons who present a justified request.<sup>1066</sup>

### ***Support from the European Union Agency for Asylum***

Italy has received operational support from the EUAA (formerly EASO) on reception since 2017. Initially, the Agency deployed personnel to assist the national Department for Civil Liberties and Immigration mostly on data management, contractual and financial processes connected to the reception system, recent operating plans have significantly expanded the areas of assistance connected to reception.<sup>1067</sup>

Two measures of the latest Operating Plan regard support to the national reception system. These focus on several areas of work related to reception; *inter alia*, the EUAA provides support on data management, analysis and monitoring of the reception network; the processing of new arrivals and their allocation of international protection applicants and unaccompanied minors to the reception system on the territory. Another relevant area of support is that of vulnerability, where the Agency aims at strengthening the capacity of national actors for early identification of vulnerabilities, and to track applicants with special reception needs from arrival to the allocation in reception.<sup>1068</sup>

EUAA is also part of a national multi-stakeholder working group on vulnerability and special reception needs. Based on the exchanges among different actors, the Ministry of Interior recently published a handbook detailing the national legal framework and existing guidelines on vulnerability, as well as good practices on reception provision for cases of applicants with special reception needs.<sup>1069</sup> There are pilot projects – in Rome, Milan, Crotone, and Lampedusa - regarding the creation of vulnerability tables at the local level, which will also be joined by staff from the Agency.<sup>1070</sup>

### ***End of reception for beneficiaries of international protection***

Once having received a protection status, the beneficiary is not allowed to remain in first reception facilities or CAS. Instead, they have the right to access the SAI network. In practice, in some cases

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<sup>1066</sup> Article 7 Ministry of Interior Decree of 1 September 2016.

<sup>1067</sup> Interview with EUAA.

<sup>1068</sup> Measure IT4: Support to the quality management and monitoring of the Italian reception system; Measure IT6: Support the access to information provision for international protection applicants and the timely identification and referral of vulnerable applicants and persons with special needs. See: EUAA (May 2022), [Operational Plan 2022-2024 agreed by the European Union Agency for Asylum and Italy – Amendment 1](#).

<sup>1069</sup> Ministry of Interior (June 2023), [Vademecum per la rilevazione, il referral e la presa in carico delle persone portatrici di vulnerabilità in arrivo sul territorio ed inserite nel sistema di protezione e di accoglienza](#).

<sup>1070</sup> Interview with EUAA.

there are delays registered between the moment is in fact able to access it, being them temporarily left without access to material reception conditions.<sup>1071</sup>

Beneficiaries of protection accessing SAI are then entitled to remain for 6 months that can be extended up to one year and, in exceptional case, even beyond that limit. Beneficiaries can access both first and second level services in SAI. The latter are only available for beneficiaries of an international or special protection, and include support for integration, job research, job orientation and professional training.<sup>1072</sup>

### 3.1.2 Detention

#### ***Grounds for the use of detention***

The Reception Decree prohibits the detention of asylum seekers for the sole purpose of examining their asylum application.<sup>1073</sup> National legislation establishing grounds of detention for asylum seekers also underwent several changes in recent years. Law 50/2023 in particular included additional grounds for detention of asylum seekers. Currently, detention can be disposed for:

- Cases of international protection applicants in a border procedure;
- Necessity to determine the elements on which the international protection application is based (if they cannot be acquired without imposing a detention measure) and applicants present risk of absconding;<sup>1074</sup>
- Asylum seekers in a Dublin procedure;
- Identification purposes.<sup>1075</sup>

Among applicants that can be detained in the context of a border procedure are those coming from a country of origin designed as safe according to a Ministerial Decree.<sup>1076</sup>

The elements to take into account to evaluate the existence of the risk of absconding are:

- the absence of a passport or other equivalent document;
- having previously declared or falsely attested one's personal details;
- failure to comply with a previous detention order;
- violation of the measures ordered in the event of the granting of a time limit for voluntary departure.

Based on these elements, the risk of absconding must be assessed on a case-by-case basis.<sup>1077</sup>

The current version of the Reception Decree foresees the possibility to detain asylum seekers awaiting the Dublin transfer when there is a significant risk of absconding and unless alternative measures to detention can apply.<sup>1078</sup> The risk is assessed on a case-by case basis; it

<sup>1071</sup> AIDA (May 2023), [Country Report Italy](#), pp.233-234.

<sup>1072</sup> Article 1 sexies (2 bis) DL 416/1989, introduced by DL 130/2020.

<sup>1073</sup> Article 6(1) Reception Decree.

<sup>1074</sup> Article 6 (2) (d) of the Reception Decree as replaced by the L. 50/2023.

<sup>1075</sup> Article 6 (3-bis) as amended by the L. 50/2023 converting into law the DL 20/2023.

<sup>1076</sup> Article 28 bis Procedures Decree, as modified by Law 50/2023.

<sup>1077</sup> AIDA (May 2023), [Country Report Italy](#), p.178.

<sup>1078</sup> Article 6 ter (1) of the Reception Decree introduced by L. 50/2023 converting into law with amendments the DL 20/2023.

can be assessed only if the applicant has escaped a first transfer attempt or based on one of the following conditions:

- a) lack of a valid travel document;
- b) lack of a reliable address;
- c) failure to attend appointments set by the authorities;
- d) lack of financial resources;
- e) systematic false declarations about personal data.

Detention cannot last beyond the time strictly necessary for the execution of the transfer. The validation decision of the detention order allows to detain the applicant for a maximum of six weeks. In the event of serious difficulties concerning the execution of the transfer the judge, upon request from the responsible police commissioner (*Questore*), can extend the detention for 30 days, up to a maximum of six weeks. Before this deadline, the transfer can be carried out by the police, upon notification to the judge.<sup>1079</sup>

### **Alternatives to detention**

Article 6(5) of the Reception Decree refers to the alternatives to detention provided in the Consolidated Act on Immigration (TUI).<sup>1080</sup> To this end, authorities should apply Article 14 of the Consolidated Act to the compatible extent, including the provisions on alternative detention measures provided by Article 14(1-bis).

Civil society organisations have been advocating for a community-based approach to alternatives to detention, as commonly used alternatives to detention such as regular reporting, the request a person should surrender of passport and identity documents and home confinement) are indeed deemed to be coercive and not responsive to individual needs.<sup>1081</sup>

In September 2023, Decree Law 221/2023 was introduced, establishing that asylum seekers coming from a country of origin designated as safe should be detained when they have not submitted their passport to national authorities or do not provide 'an appropriate financial guarantee', quantifying the amount of the guarantee at 4,938 euros, specifying it 'is individual and cannot be paid by third parties'.<sup>1082</sup> Some national courts already established the measure had to be disapplied in the individual cases examined. Among other reasons, such as the consideration that Tunisia should not be regarded as a safe third country, the Courts considered the measure to be contrary to the RCD, as the guarantee could not be classified as a valid alternative to detention, but instead as an administrative requirement set for all applicants from designated safe third countries for the sole reason of having submitted an international protection application.<sup>1083</sup> At least regarding one of

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<sup>1079</sup> Article 6 ter ( 2 and 3) of the Reception Decree introduced by L. 50/2023 converting into law with amendments the DL 20/2023.

<sup>1080</sup> Legislative Decree no. 286/1998, [Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms](#).

<sup>1081</sup> AIDA (May 2023), [Country Report Italy](#), p.182.

<sup>1082</sup> Art. 3 (2), Decree Law 221/2023, 21 September 2023.

<sup>1083</sup> Sistema Penale (October 2023), [Il trattenimento dei richiedenti protezione internazionale provenienti da Paesi di origine sicura alla prova della giurisprudenza](#).



these decisions, the government announced the intention to present an appeal in front of the Supreme Court of Cassation.<sup>1084</sup>

### **Places of detention**

Under the Reception Decree, asylum seekers can be detained in pre-removal centres (CPRs), where third-country nationals who have received an expulsion order are also detained.<sup>1085</sup> 10 of these centres are currently present on the Italian territory.

Article 6(3-bis) of the Reception Decree foresees the possibility to detain asylum seekers in specific places for identification purposes. In a Circular issued on 27 December 2018, the Ministry of Interior specified that it will be the responsibility of the Prefectures in whose territories such structures are found to identify special facilities where this form of detention could be performed. As those dedicated premises have not been identified, detention for identification purposes occurs *de facto* in hotspots.<sup>1086</sup>

Among the modifications introduced by Decree-Law 20/2023, converted into Law 50/2023, are the additions introduced in Article 10-ter, par. 1-bis, of Legislative Decree no. 286/1998, part of the provisions for the identification of foreign nationals found to be illegally present in the national territory or disembarked following search and rescue operations at sea.

The first paragraph of Article 10-ter already provided for the detention in hotspots of foreign nationals found illegally crossing the internal or external border or arrived in the national territory following rescue operations at sea. The same, in fact, can be taken for rescue and first assistance within these centres, where the photo-dactyloscopy and signal data are then taken and where information on the right to asylum, on the relocation program within other EUMS and on the possibility of recourse to assisted voluntary return should be guaranteed.

The new paragraph 1-bis, expands the possibility of using *de facto* detention, within "similar facilities", providing that for the "optimal performance of the fulfilment of the tasks referred to in this Article, the third country nationals hosted at the crisis points referred to in paragraph 1 may be transferred to similar facilities on the national territory, for the performance of the activities referred to in the same paragraph", specifying that the identification of these facilities will be made in agreement with the Ministry of Justice.

Detention may take place within hotspots or pre-removal centres (CPR) located near borders and transit zones in cases where the applicant has not presented a valid passport or other equivalent document, or does not provide suitable financial guarantees. The detention measure in this case cannot extend beyond the time strictly necessary to carry out the border procedure pursuant to article 28-bis of Legislative Decree 25/2008 and must be subject to validation by a Judge. The validation hearing is held, where possible, remotely. In case of validation of the detention order by the Judge, the detention period would then be of a maximum of four weeks, which cannot be extended.<sup>1087</sup>

<sup>1084</sup> ANSA (October 2023), [Migranti, Meloni: 'Basita dalla sentenza di Catania', il governo decide di impugnarla. La giudice: 'Questione giuridica'](#).

<sup>1085</sup> Article 6(2) Reception Decree.

<sup>1086</sup> Guarantor for the rights of detained persons (June 2018), [Relazione al Parlamento](#), p.233.

<sup>1087</sup> AIDA (May 2023), [Country Report Italy](#), p.178.

## ***Detention of vulnerable applicants***

### *Detention of unaccompanied minors*

The law explicitly provides that unaccompanied children can never be detained.<sup>1088</sup> However, cases of unaccompanied children being placed in CPRs following an incorrect age assessment were reported, as well as cases of minors, both accompanied and unaccompanied, subjected to measures of de facto detention in hotspots and at the country's land borders.<sup>1089</sup> In addition, Decree Law 133/2023 from 5 October 2023, established that the application of anthropometric or other medical examinations, including radiographic examinations can be ordered directly by the public security forces in cases of mass arrivals,<sup>1090</sup> which raised concerns from civil society regarding the risks that hasty age assessment procedures can entail for unaccompanied minors, especially for those coming from countries designed as safe.<sup>1091</sup>

### *Detention of other vulnerable groups*

Families with children can be detained in CPRs. In 2022, the European Court of Human Rights granted a request for interim measures regarding a family held in the Lampedusa hotspot, ordering Italian authorities to transfer the family in a suitable accommodation.<sup>1092</sup>

Following a reform in 2017, the law also prohibits the detention of vulnerable persons.<sup>1093</sup> In the framework of the social and health services guaranteed in CPR, an assessment of vulnerability situations requiring specific assistance should be periodically provided.<sup>1094</sup> In CPRs, however, legal assistance and psychological support are not systematically provided. No protocol on early identification of and assistance to vulnerable persons, and on the referral system to specialised services and/or reception centres has been adopted to date. Although standards of services in CPR centres are planned following the national regulation on management of the centres, they are insufficient and inadequate, especially for vulnerable categories of individuals. Moreover, the quality of services may differ from one CPR to another.<sup>1095</sup> In this respect, the Reception Decree provides that, where possible, a specific place should be reserved to asylum seekers,<sup>1096</sup> and Article 4(e) of the Regulation of 20 October 2014 of the Minister of Interior provides the same for persons with special reception needs.

Issues with protection of persons with special needs in detention have been reported by the National Guarantor for the Rights of Detainees, who stressed the need for an enhanced referral mechanisms and continuous monitoring of health conditions of detained persons.<sup>1097</sup> There have been reports of vulnerabilities being often not properly addressed in CPRs, in particular due to the lack of dedicated

<sup>1088</sup> Article 19(4) Reception Decree.

<sup>1089</sup> See Section 3.2 Challenges and gaps.

<sup>1090</sup> [Law Decree 5 October 2023, n. 133](#).

<sup>1091</sup> ASGI (October 2023), [Minori stranieri non accompagnati, le associazioni sul comunicato del Governo: "Possibili gravi violazioni"](#).

<sup>1092</sup> ASGI (November 2023), [Diritti violati nell' hotspot di Lampedusa: per la CEDU il trattamento è disumano e degradante solo per le famiglie con minori](#).

<sup>1093</sup> Article 7(5) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

<sup>1094</sup> Article 7(5) Reception Decree.

<sup>1095</sup> AIDA (May 2023), [Country Report Italy](#), p.185.

<sup>1096</sup> Article 6(1) Reception Decree.

<sup>1097</sup> National Guarantor for the rights of detained persons, [Rapporto sulle visite effettuate nei CPR \(2019 - 2020\)](#).

spaces and to the fact that asylum seekers are held in these centres together with other third country nationals.<sup>1098</sup>

In recent years, a sharp decrease in the number of women detained in CPRs was observed. By 30 April 2022, only 15 women were detained in CPR; only 4 of them were returned, while 10 were released after the non-validation of the detention ordered by the judges, and 1 as she applied for international protection.<sup>1099</sup> Women also appear to be a minority in hotspots. For example, in 2021, they represented only 8% of the total number of persons present in such centres (3,432 out of 44,242).<sup>1100</sup>

### 3.1.3 Access to socio-economic rights

#### **Access to education**

Italian legislation provides that all children until the age of 16, both nationals and foreigners, have the right and obligation to take part in the national education system. Under the Reception Decree, unaccompanied asylum-seeking children and children of asylum seekers exercise these rights and are also admitted to the courses of Italian language.<sup>1101</sup> The Reception Decree refers to Article 38 TUI, which states that foreign children present on Italian territory are subject to compulsory education, emphasising that all provisions concerning the right to education and the access to education services apply to foreign children as well.

Third country national children with no regular residence permit also enjoy equal rights to education as Italian children.<sup>1102</sup> Asylum seeking children have access to the same public schools as Italian citizens and are entitled to the same assistance and arrangements in case they have special needs. They are automatically integrated in the obligatory National Educational System. No preparatory classes are foreseen at National level, but since the Italian education system envisages some degree of autonomy in the organisation of the study courses, it is possible that some institutions organise additional courses in order to assist social inclusion of migrant children.

#### **Access to work and vocational training**

According to the Reception Decree, an asylum seeker can start to work after 60 days from the moment they lodged the asylum application.<sup>1103</sup>

National law does not establish any limitation to right to access employment, and asylum seekers are entitled to register with Provincial Offices for Labour. However, in practice asylum seekers face difficulties in accessing work due to delays in registration and in receiving a residence permit.<sup>1104</sup>

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<sup>1098</sup> ASGI (September 2021), [The Black book on the Pre-Removal Detention Centre \(CPR\) of migrants in Turin – Corso Brunelleschi](#).

<sup>1099</sup> National Guarantor for the rights of detained persons (June 2022), [Report to Parliament Annexes](#).

<sup>1100</sup> ASGI (October 2021), [Una prospettiva di genere sull’Hotspot di Lampedusa: la sistematica e colposa violazione dei diritti delle donne](#).

<sup>1101</sup> Article 21(2) Reception Decree.

<sup>1102</sup> Article 45 PD 394/1999.

<sup>1103</sup> Article 22(1) Reception Decree.

<sup>1104</sup> See section 3.2 Challenges and gaps.

## Access to healthcare

Asylum seekers and beneficiaries of international protection are required to register at the National Health Service to access health care services.<sup>1105</sup> They enjoy equal treatment and full equality of rights and obligations with Italian citizens regarding the mandatory contributory assistance provided by the National Health Service in Italy.

There is no distinction between asylum seekers benefitting from material reception conditions and those who are out of the reception system, since all asylum seekers benefit from the National Health System.

The right to medical assistance is acquired at the moment of the lodging of the asylum application. Pending enrolment, asylum seekers only have access to medical treatment ensured by Article 35 TUI to irregular migrants: they have access to emergency care and essential treatments and they benefit from preventive medical treatment programmes aimed at safeguarding individual and public health.<sup>1106</sup>

Asylum seekers have to register with the national sanitary service in the offices of the Local Health Board (*Azienda sanitaria locale*, ASL) competent for the place they declare to have a domicile.<sup>1107</sup> Once registered, they are provided with the European Health Insurance Card (*Tessera europea di assicurazione malattia*, TEAM), whose validity is related to the one of the permits of stay. Registration entitles the asylum seeker to the following health services:

- Free choice of a general doctor from the list presented by the ASL and choice of a paediatrician for children (free medical visits, home visits, prescriptions, certification for access to nursery and maternal schools, obligatory primary, media and secondary schools);
- Special medical assistance through a general doctor or paediatrician's request and on presentation of the health card;
- Midwifery and gynaecological visits at the "family planning" (*consultorio familiare*) to which access is direct and does not require doctors' request; and
- Free hospitalisation in public hospitals and some private subsidised structures.

Medical assistance is extended to each regularly resident family member under the applicant's care in Italy and is recognised for new-born babies of parents registered with the National Health System.<sup>1108</sup>

Asylum seekers are exempted from the payment of healthcare services on the basis of a self-declaration of destitution submitted to the competent local health service (ASL) for the period of time in which they are not allowed to work.<sup>1109</sup> Afterwards, practices vary among regions. In some, asylum seekers are no longer exempted from the payment, while in others the exemption is extended until the asylum seeker effectively accesses the labour market.<sup>1110</sup>

<sup>1105</sup> Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.

<sup>1106</sup> Article 21 Reception Decree; Article 16 PD 21/2015.

<sup>1107</sup> Article 21(1) Reception Decree, citing Article 34(1) TUI; Accordo della Conferenza Stato-Regioni del 20 dicembre 2012 "Indicazioni per la corretta applicazione della normativa per l'assistenza sanitaria alla popolazione straniera da parte delle Regioni e Province Autonome italiane".

<sup>1108</sup> Article 22 Qualification Decree.

<sup>1109</sup> Ministry of Health Circular No 5 of 24 March 2000.

<sup>1110</sup> AIDA (May 2023), [Country Report Italy](#), p.163.

### 3.1.4 Reduction or withdrawal of reception conditions

#### **Grounds for reduction or withdrawal**

According to Article 23(1) of the Reception Decree, the Prefect of the region where the asylum seeker is hosted may decide, on an individual basis and with a motivated decision, to withdraw material reception conditions on the following grounds:<sup>1111</sup>

- The asylum seeker did not present him or herself at the assigned centre or left the centre without notifying the competent Prefecture;
- The asylum seeker did not present him or herself before the determining authorities for the personal interview even after receiving a notification;
- The asylum seeker lodged a subsequent asylum application after a final decision on a previous application had been taken;
- The asylum seeker possesses sufficient financial resources.

The law does not provide for any assessment of destitution risks when withdrawing reception. However, while assessing the withdrawal and the reduction of reception conditions, the Prefect must take into account the specific conditions of vulnerability of the applicant.<sup>1112</sup>

Asylum seekers may lodge an appeal before the Regional Administrative Court (*Tribunale amministrativo regionale*) against the decision of the Prefect to withdraw material reception conditions.<sup>1113</sup> To this end, they can benefit from free legal aid.

According to the Reception Decree, when asylum seekers fail to present themselves to the assigned centre or leave it without informing the authorities, the centre managers must immediately inform the competent Prefecture.<sup>1114</sup> In case the asylum seeker spontaneously presents him or herself before police authorities or at the accommodation centre, the Prefect could decide to readmit them to the centre if the reasons provided are due to *force majeure*, unforeseen circumstances or serious personal reasons.<sup>1115</sup> Certain Prefectures have interpreted this ground particularly strictly.<sup>1116</sup>

Law 50/2023 amended the Reception Decree by cancelling the provision according to which a serious violation of the internal regulation of the reception centre or violent behaviour by the asylum seeker could motivate the withdrawal of reception measures,<sup>1117</sup> in line with CJEU jurisprudence.

Currently, this behaviour can instead motivate a reduction of reception conditions.<sup>1118</sup> In particular, the following measures can be applied:

- temporary exclusion from participation in the activities organised by the managing body;
- temporary exclusion from one or more of the services required by law for asylum seekers, with the exception of material reception;

<sup>1111</sup> See also Article 13 Reception Decree.

<sup>1112</sup> Article 23 (2 bis) Reception Decree introduced by L. 50/2023.

<sup>1113</sup> Article 23(5) Reception Decree.

<sup>1114</sup> Article 23(3) Reception Decree.

<sup>1115</sup> Article 23(3) Reception Decree.

<sup>1116</sup> AIDA (May 2023), [Country Report Italy](#), p.136.

<sup>1117</sup> L. 50/2023 cancelled Article 23 (1) (e)

<sup>1118</sup> Article 23 (2) Reception Decree as amended by L. 50/2023.

- suspension, from 30 days to six months, of economic benefits.

According to the Reception Decree, if it is established that the applicant is not destitute, the applicant is required to reimburse the costs incurred for the measures from which he or she has unduly benefited.<sup>1119</sup> A connected challenge relates to withdrawal of reception conditions for reasons connected to possessing sufficient resources.

Prefectures use the annual social income level to evaluate the sufficiency of the applicant's financial resources to justify the withdrawal of reception conditions. In some cases however, reception conditions were withdrawn for applicants with a very low income, without taking into account the criteria of ensuring a dignified standard of living.<sup>1120</sup>

### 3.1.5 Special reception needs of vulnerable applicants

#### ***Vulnerability and assessment of special reception needs***

Article 17(1) of the Reception Decree establishes that reception is provided taking into account the special needs of the asylum seekers, in particular those of vulnerable persons such as children, unaccompanied children, disabled persons, elderly people, pregnant women, single parents with minor children, persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence, victims of trafficking and genital mutilation, as well as persons affected by serious illness or mental disorders.

The law does not regulate how the assessment should be carried out, nor does it provide a time limit within which it should be realised. The Reception Decree provides that asylum applicants should undergo a health check at the moment of entering the first reception centres and in temporary reception structures, to assess their health condition and evaluate whether special reception needs exist.<sup>1121</sup> The Decree provides that special services addressed to applicant with special needs have to be ensured in first reception centres.<sup>1122</sup>

Where possible, adult vulnerable people are placed together with other adult family members already present in the reception centres.<sup>1123</sup> The manager of reception centres shall inform the Prefecture on the presence of vulnerable applicants for the possible activation of procedural safeguards allowing the presence of supporting personnel during the personal interview.<sup>1124</sup>

Law 50/2023 established that, within governmental centres and CAS, psychological assistance and legal counselling will no longer be provided. Civil society organisations expressed concerns regarding the negative impact this will have on the possibility to identify vulnerabilities that are not immediately evident.<sup>1125</sup>

After the 2023 reform, only asylum seekers who are considered vulnerable according to the Reception Decree are entitled to access the SAI system. According to a recent Decree Law, still not converted into Law, all women are automatically considered vulnerable and have as such the right

<sup>1119</sup> Article 23(6) Reception Decree.

<sup>1120</sup> AIDA (May 2023), [Country Report Italy](#), p.136.

<sup>1121</sup> Articles 9(4) and 11(1) Reception Decree.

<sup>1122</sup> Article 17(3) Reception Decree.

<sup>1123</sup> Article 17(5) Reception Decree.

<sup>1124</sup> Article 17(7) Reception Decree.

<sup>1125</sup> Interview with ARCI and ASGI.

to access the SAI system.<sup>1126</sup> In the event of temporary unavailability of temporary facilities, the prefect would be able to order the temporary placement of the minor - who upon a first assessment appears to be over the age of sixteen - for a period not exceeding ninety days, in a specific section in centres and facilities other than those reserved for minors.<sup>1127</sup>

Ministerial Guidelines on assistance, rehabilitation and treatment of vulnerable migrants were published in 2017.<sup>1128</sup> While regarded as a high-quality document and an important reference by civil society, there have been concerns regarding the fact that they remained largely not enforced in the reception context, both because no reference is made to them within the Prefectures' tender specifications, and because, in adopting them, the Government has not provided any additional financial resources.<sup>1129</sup> As previously mentioned, the Ministry of Interior recently published a handbook on good practices and relevant national legislation on vulnerability and special reception needs which was realised in collaboration with several national stakeholders.<sup>1130</sup>

### ***Reception of families with children***

The Reception Decree specifies that asylum seekers are accommodated in facilities that ensure the protection of family unity, where spouses and first-degree relatives are to be hosted.<sup>1131</sup> The management body of the reception centres shall respect the family unity principle. Therefore, children have to be hosted with their parents when they in the same wing of the accommodation facility. In practice, it may happen that a father is accommodated in a wing for single men and his wife and children in the female wing of a centre. In general, dedicated wings are designed for single parents with children. It may also happen that parents are divided and placed in different centres; in this case, children are usually accommodated with the mother. In first reception centres, families might be divided in case accommodation conditions are deemed not adequate and suitable for children. In these situations, mothers and children are hosted in a facility, and men in a different one.<sup>1132</sup>

### ***Reception of unaccompanied minors***

The Reception Decree states that the best interest of the child has priority in the application of reception measures, in order to ensure living conditions suitable for a child with regard to protection, well-being and development, including social development, in accordance with Article 3 of the Convention on the Rights of the Child.<sup>1133</sup>

Since 2015, the management of the Fund for the reception of unaccompanied minors has been transferred from the Ministry of Labour to the Ministry of Interior.<sup>1134</sup> Through the Fund, the Ministry

<sup>1126</sup> Decree Law 133/2023, 5 October 2023; Labour and Social Policies Ministry, [Richiedenti asilo, minori non accompagnati e accoglienza, in vigore il DL 133/2023](#).

<sup>1127</sup> Article 5(1)(a), [Decree Law 133/2023](#), 5 October 2023.

<sup>1128</sup> Linee guida per la programmazione degli interventi di assistenza e riabilitazione nonché per il trattamento dei disturbi psichici dei titolari dello status di rifugiato e dello status di protezione sussidiaria che hanno subito torture, stupri o altre forme gravi di violenza psicologica, fisica o sessuale, adopted with [Decree of the Ministry of Health](#) on 3 April 2017.

<sup>1129</sup> AIDA (May 2023), [Country Report Italy](#), p.165.

<sup>1130</sup> Ministry of Interior (June 2023), [Vademecum per la rilevazione, il referral e la presa in carico delle persone portatrici di vulnerabilità in arrivo sul territorio ed inserite nel sistema di protezione e di accoglienza](#).

<sup>1131</sup> Article 10(1) Reception Decree.

<sup>1132</sup> AIDA (May 2023), [Country Report Italy](#), p.165.

<sup>1133</sup> Article 18(1) Reception Decree.

<sup>1134</sup> 2015 Stability Law (Law 190/2014, Article 1 (181-182)).

provides, with its own decree, after hearing the Unified Conference, to cover the costs incurred by local authorities for the reception of unaccompanied foreign minors, within the limits of the resources allocated. Interventions in favour of unaccompanied foreign minors are also funded through resources from the European Asylum, Migration and Integration Fund (AMIF) 2014-2020.<sup>1135</sup>

Italian legislation provides that unaccompanied minors that are third country nationals should be treated under the same conditions as minors of Italian nationality.<sup>1136</sup> The main reception response for unaccompanied minors should be the placement in family foster care, while placement in a community should be activated only to the extent that this is not possible. In this regard, national practices have changed considerably with the arrival of minors from Ukraine. While at the end of 2021 only 3% of unaccompanied foreign minors were entrusted to a family and 97% were placed in one of the different kinds of existing communities,<sup>1137</sup> on 31 December 2022 70% of the over 20,000 minors present in Italy were placed in reception facilities, while 23% were placed in a private subject. 92% of the children in family care are from Ukraine.<sup>1138</sup>

When accommodated in the national reception network, the law establishes that unaccompanied children have to be primarily hosted in the SAI network, regardless of whether they present an application for international protection.<sup>1139</sup> Children reaching adulthood in SAI centres can remain there until a final decision on their asylum application.<sup>1140</sup> Decree Law 130/2020 authorised the access to SAI for unaccompanied minors who became adults obtaining an administrative extension of their placement.<sup>1141</sup>

SAI Guidelines provide additional specific activities and services in favour of unaccompanied minors and in particular the activation of services aimed at promoting family foster care, supporting the paths of autonomy, also by promoting forms of support for housing autonomy in the transition to adulthood, encouraging the connection with the voluntary guardians. It also provides specialised services dedicated to minors with particular vulnerabilities.<sup>1142</sup>

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<sup>1135</sup> Chamber of Deputies (March 2020), [Study Service](#).

<sup>1136</sup> Open Migration (April 2021), [La legge Zampa sui minori stranieri non accompagnati in 5 punti](#).

<sup>1137</sup> See Children's Ombudsman, [2021 report to Parliament](#), p.184.

<sup>1138</sup> Ministry of Labour and Social Policies (December 2022), [Half-yearly review report on unaccompanied foreign minors in Italy](#).

<sup>1139</sup> Article 19(2) Reception Decree.

<sup>1140</sup> Article 12(5-bis) Decree Law 113/2018, as amended by L 132/2018.

<sup>1141</sup> DL 130/2020, Article 4 (3) b), amending Article 1-sexies (1 bis) DL 416/1989. In 2020 ASGI had underlined that, although the Ministry of Interior had not clarified it, it was not justified a different treatment of unaccompanied children who obtained an administrative extension of their placement but who, due to the unavailability of places in SIPROIMI, had not been included within this system during the minor age, see ASGI (March 2020), [Emergenza covid-19 e percorsi dei minori non accompagnati dopo i 18 anni](#).

<sup>1142</sup> MoI [Decree](#), 18 November 2019, Article 35.



As of February 2023, 6,299 places for unaccompanied foreign minors were financed in 214 SAI projects.<sup>1143</sup> The number of places dedicated to unaccompanied children within the SAI network of reception projects has been increased in 2021,<sup>1144</sup> but still feel short of existing needs.<sup>1145</sup>

For immediate relief and protection purposes unaccompanied children may be accommodated in governmental first reception facilities. As previously outlined, the system of first reception as conceived by the national framework<sup>1146</sup> was never fully implemented in practice. In the absence of the first government reception centres, this phase is in fact covered by different types of structures: the most similar in standards to the regulatory provision, the centres financed by the Migration and Integration Asylum Fund (AMIF) and centrally managed by the Ministry of the Interior; the extraordinary reception centres set up by the Prefects (c.d. CAS minor) and managed by the Prefectures; family homes and socio-educational communities managed by individual Municipalities; SAI structures that, unlike their natural destination, end up performing a function of first reception.

Where implemented, stay in first reception centres cannot exceed 30 days and must last for the strictly necessary time for identification, which must be completed within 10 days. This serves to identify and assess the age of the child and to receive any information on the rights recognised to the child and on the modalities of exercise of such rights, including the right to apply for international protection. Throughout the time in which the child is accommodated in the first reception centre, one or more meetings with an age development psychologist are provided, where necessary, in presence of a cultural mediator, in order to understand the personal condition of the child, the reasons and circumstances of departure from his or her home country and his or her travel, as well as his or her future expectations.<sup>1147</sup>

The Ministry of Interior Decree issued on 1 September 2016 has identified the structural requirements and the services ensured in such centres.<sup>1148</sup> The Decree states that these centres are located in easily accessible places in order to ensure access to services and social life of the territory and that each structure can accommodate up to a maximum of 30 children.<sup>1149</sup>

If first reception centres are saturated, reception must be temporarily assured by the Municipality where the child is present, without prejudice to the possibility of transfer to another Municipality, in accordance with the best interests of the child.<sup>1150</sup> According to Article 19(3-bis) of the Reception Decree, in case of mass arrivals of unaccompanied children and unavailability of the dedicated reception centres, the use of CAS to accommodate children is permitted.<sup>1151</sup> Similarly to temporary

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<sup>1143</sup> SAI (February 2023), [I numeri del SAI](#).

<sup>1144</sup> Ministerial Decree no. 19125 of 1 July 2021 funded 51 UFM projects, for a total of 855 new places, via the AMIF Fund. Ministerial Decree no. 23420 of 10 August 2021 funded 44 UFM projects, for a total of 662 new places, via the AMIF Fund. Ministerial Decree no. 23428 of 10 August 2021 funded the enlargement of 37 UFM already existing projects, for a total of 797 new places. Ministerial Decree no. 35936 of 17 November 2021 funded the enlargement of 1 UFM already existing project, for a total of 20 new places. For a comprehensive analysis of the evolution over time of the SAI system for unaccompanied minors, see the report from ANCI-Cittalia (2023), [Il Sistema di accoglienza e integrazione e i minori stranieri non accompagnati](#).

<sup>1145</sup> Data as of 31 January 2023, Ministry of Labour [report](#).

<sup>1146</sup> Law 47/2017 and Reception Decree.

<sup>1147</sup> Law 47/2017 and Reception Decree.

<sup>1148</sup> Ministry of Interior Decree of 1 September 2016 on the establishment of first reception centres dedicated to unaccompanied minors.

<sup>1149</sup> Article 3 Ministry of Interior Decree of 1 September 2016.

<sup>1150</sup> Article 19(3) Reception Decree.

<sup>1151</sup> Article 19(3-bis) Reception Decree, citing Article 11.

shelters for adults, these temporary centres (CAS) are established by Prefectures and directly managed by different stakeholders. The law states that each structure may have a maximum capacity of 50 places and may ensure the same services as governmental first reception centres dedicated to children.<sup>1152</sup> No maximum time limit for the period of stay in such centres is defined by the law; accommodation is limited to the time "strictly necessary" until the transfer to adequate structures.<sup>1153</sup> In any event, these temporary centres cannot host children under the age of 14. The accommodation of children has to be communicated by the manager of the temporary structure to the municipality where the structure is located, for coordination with the services of the territory.<sup>1154</sup> As previously mentioned, according to a recent Decree Law, unaccompanied minors above the age of 16 could be hosted in the same centres as adults in cases of emergency.

At the end of 2022, first reception centres accommodated 3,994 (19.9% of the total national figure) unaccompanied children. These centres include government centres financed by AMIF, CAS activated by the Prefects, first reception facilities authorised by the municipalities or regions and emergency and provisional centres. Out of these, 5 projects were in Sicily and one in Molise. In total, they offer 275 places (in 13 facilities) for male unaccompanied minors.

The Ministry of Interior, together with the EUAA, has developed guidelines for the accommodation of unaccompanied minors in first reception centres, with practical information on the procedures to be followed for daily work.<sup>1155</sup>

At the end of 2022, there were 1,533 reception facilities hosting unaccompanied children, of these, 136 are dedicated to the first reception, each able to host around 29 minors, and 1,397 in the second phase of reception, each able to host around 7 minors. Reception facilities are located throughout the country and, in line with the data of the arrivals of minors, while the first reception facilities are more present in Sicily, followed by Lombardy and Emilia Romagna.<sup>1156</sup>

Given the recent significant increase of arrivals, whereas the capacity of the child care system has increased only slightly in previous years, public authorities, especially in larger cities, have been struggling to find suitable places to accommodate minors and often lacking financial resources to fund these facilities. In an attempt to respond to the new emergency, the Government launched a number of interventions to ensure capacity was increased in order to address the existing needs regarding the accommodation of unaccompanied minors.<sup>1157</sup>

### **Reception of other vulnerable applicants**

#### *Reception of victims of trafficking, women and LGBTQI+ applicants*

Recognised victims of trafficking can be accommodated in SAI reception facilities during the asylum procedure, as they belong to the vulnerable asylum seekers groups allowed, according to L. 50/2023, to access this accommodation system before they have been recognised international protection.<sup>1158</sup>

<sup>1152</sup> Article 19 (3-bis) Reception Decree.

<sup>1153</sup> Article 19(3-bis) Reception Decree, citing Article 19(2)-(3).

<sup>1154</sup> Article 19(3-bis) Reception Decree.

<sup>1155</sup> [Mol Guidelines](#).

<sup>1156</sup> See: Defence for Children and Cespi Report (June 2022), [Minorenni stranieri non accompagnati, Legge 47/2017, rapid survey on Apulia, Marche, Liguria, Sicily](#).

<sup>1157</sup> See AIDA (2023), [Country Report on Italy](#), p.173.

<sup>1158</sup> Article 9 (1 bis) introduced by L 50/2023 which converted with amendments the DL 20/2023.

According to a recent Decree Law, all women asylum seekers should be considered inherently vulnerable, and as such have access to the SAI network.<sup>1159</sup>

Regarding the accommodation for LGBTIQ+ applicants, only a few reception places in dedicated public projects exist, led by Arcigay and Caleidos, in Modena, and by Quore Association (R.A.R.O. project) based in the Piedmont region.<sup>1160</sup> Another relevant experience is that of the network Rise the difference in Bologna, which launched a pilot project for the creation and management of a reception facility dedicated to LGBTIQ+ asylum seekers and refugees.<sup>1161</sup> In late 2022, the Municipality of Rome opened a call for tenders for a pilot SAI project dedicated to the reception of LGBTIQ+ migrants.<sup>1162</sup> As pointed out by legal practitioners, reception workers and lawyers, although LGBTIQ+ sexual orientation is a factor of persecution and can motivate the recognition of international protection, it is often hidden for a long time by asylum seekers who do not feel safe as they fear being discriminated against and attacked by other guests of the centres.<sup>1163</sup>

### **Persons with disabilities and special medical needs**

Disabled persons and persons affected by serious illness or mental disorders are entitled to access specific SAI places.<sup>1164</sup>

In August 2023, SAI Central Service reported that 41 among its projects specialised in the care of forced migrants with mental distress and disabilities, corresponding to 797 places.<sup>1165</sup>

The system of temporary reception (CAS facilities) controlled by prefectures does not dispose of *ad hoc* facilities. After the 2023 reform, psychological support is not provided in CAS and governmental centres, which makes it difficult to identify asylum seekers affected by mental health issues.

## **3.2 Challenges and gaps**

### **Delayed access to reception conditions**

In recent years, there have been reports of access to the asylum procedure being limited and delayed for applicants presenting their asylum applications on the territory at the offices of the Italian Police responsible for the registration of asylum applications (Questure).<sup>1166</sup> In some cases, these delays were due to the fact that documents which are not legally required to register the application – e.g. a domicile declaration – are requested in order to register the asylum application, and individuals might wait up to several months before being able to register their application.<sup>1167</sup> Even after registration, applicants who reached the country by land are often excluded from accessing the

<sup>1159</sup> Decree Law 133/2023, 5 October 2023. Labour and Social Policies Ministry, [Richiedenti asilo, minori non accompagnati e accoglienza, in vigore il DL 133/2023](#).

<sup>1160</sup> [RARO project](#) led by Quore.

<sup>1161</sup> [Rise the difference](#).

<sup>1162</sup> Comune di Roma, [Bando SAI, progetto pilota per migranti LGBT+](#).

<sup>1163</sup> Large movements (June 2021), [Prassi del sistema accoglienza e migranti LGBTQ+](#).

<sup>1164</sup> Article 34 MoI Decree 18 November 2019. According to an analysis from 2020, the places intended for the reception of vulnerable people were by that time insufficient; there were 734 places specialised in accommodation of vulnerable refugees, compared to the 2,000 who, according to the Ministry of the Interior, have been officially diagnosed with a disease. Only 2.3% of these people with severe mental illness are adequately assisted. See Linkiesta (December 2020), [La questione irrisolta dei migranti con disturbi mentali](#); Migranti Torino (January 2021), [La salute mentale nei rifugiati prima, durante e dopo la migrazione](#).

<sup>1165</sup> SAI (August 2023), [I numeri della rete SAI](#).

<sup>1166</sup> The registration and lodging phases are integrated as a single procedure in the country.

<sup>1167</sup> Interview with ASGI. See also: AIDA (May 2023), [Country Report Italy](#), pp. 51-53.

national reception network even when places are available because a certain percentage of places is left unoccupied in order to respond to emergency situations following disembarkations.<sup>1168</sup>

The Italian reception system often registers a shortage of places, especially because policies aimed at reducing public spending and a lack of medium to long-term planning has led the total number of places in the system continues to decrease and emergency situations are registered each summer.<sup>1169</sup>

Some issues are registered also for applicants who should be transferred from the first phase of reception to the SAI system, as the procedure does not appear completely transparent and is often lengthy, which leads to several unoccupied places in the system even in moments of high demand.<sup>1170</sup> This leads in some cases to applicants being excluded from CAS accommodation without yet having received a place in the SAI system. In addition, SAI projects, even if more stable than CAS as they are based on multi-annual funding that promotes the quality of interventions, are by nature "more fragile", as adherence to the SAI system and the maintenance of such projects are entirely dependent on voluntary adhesion from municipalities.<sup>1171</sup>

According to civil society actors, the challenges observed can, at least partially, be ascribed to the management of reception needs in view of an emergency response and the lack of coordination among different administration levels, as well among national and local actors, which shaped national reception policies almost from the creation of the national reception system.<sup>1172</sup>

### ***Lack of adequate services in reception***

From 2018 a marked change occurred in the overall approach to reception, which become more focused on the creation of large reception centres, in which the quality of services and general conditions for applicants are lower than in centres and individual accommodation solutions within the SAI network, and where quality of services varies between centres.

In 2021, the NGO "Doctors for Human Rights" published a study on post-traumatic stress disorder (PTSD) among refugees and asylum applicants in Italy. The study concluded that overcrowding, geographic isolation, prolonged stay, length of legal proceedings, and episodes of violence, particularly in large reception centres, have detrimental effects on asylum seekers' and refugees' mental health. In a public appeal, 18 civil society organisations, including MEDU, ASGI, Action Aid, Oxfam, and Refugees Welcome Italia, called for a policy that avoids the use of large reception facilities.<sup>1173</sup>

Due to the recent reform, governmental and CAS centres, previously intended only as an intermediate step before access to the SAI system, are now the main form of reception for asylum seekers in the country. In addition, the level of services provided has been lowered, and currently

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<sup>1168</sup> Altraeconomia (December 2022), [Inchiesta sull'accoglienza selettiva: chi arriva in Italia via terra resta fuori](#); Interview with ARCI.

<sup>1169</sup> Interview with ARCI and ASGI.

<sup>1170</sup> Altraeconomia (February 2023), [Scarsa programmazione, posti vuoti e persone al freddo: così ai migranti è negata l'accoglienza](#).

<sup>1171</sup> For a recent analysis of the impact of political preferences on the political willingness to open reception facilities, see the significant contribution from Gamalerio and Negri, [Not welcome anymore: the effect of electoral incentives on the reception of refugees](#), in Journal of Economic Geography.

<sup>1172</sup> Interview with ARCI and ASGI.

<sup>1173</sup> FRA (February 2021), [Migration: Key Fundamental Rights Concerns. Quarterly Bulletin](#), p.17.

only access to health care, social assistance and socio-linguistic mediation is granted in these centres. According to civil society organisations, the lack of psychological support will likely lead to cases of people with hidden vulnerabilities – such as victims of torture or violence – to remain undetected.<sup>1174</sup>

The lack of provision of legal aid within the centres without the creation of alternative services accessible to the applicants hosted – provided that asylum seekers are free to independently seek legal counsel - raises doubts of conformity of national legislation with the RCD.<sup>1175</sup> In addition, the quality of information provided to asylum seekers in reception centres has been questioned.<sup>1176</sup>

### **Conditions in hotspots and de facto detention**

Poor conditions in the Italian hotspots, and in particular that of Lampedusa, have been highlighted in recent years, including the recurring situation of extreme overcrowding and the lack of provision of basic services.<sup>1177</sup> Decree-Law 20/2023 provides that, up to 31 December 2025, the Lampedusa hotspot could be managed by the Italian Red Cross, in derogation from the rules on tendering procedures,<sup>1178</sup> as a response to the recurring problems of mismanagement of the facility.

Another of the issues registered in hotspots is the situation of undue restriction on freedom of movement. In March 2023, the ECtHR delivered its judgment in the case *J.A. and Others v. Italy*,<sup>1179</sup> concerning four Tunisian nationals who were rescued by an Italian ship and taken to the Lampedusa hotspot. The Court ruled that the applicants were subjected to inhuman and degrading treatment during their stay in the Lampedusa hotspot, in violation of Article 3 of the Convention. Additionally, it stated that the impossibility for the applicants to lawfully leave the closed area of the hotspot clearly amounts to deprivation of liberty under Article 5 of the Convention, especially considering that the maximum duration of their stay in the crisis centre was not defined by any law and that the regulatory framework did not allow the use of the Lampedusa hotspot as a detention centre for foreigners. The applicants were neither informed of the legal reasons for their deprivation of liberty nor able to challenge the grounds of their de facto detention. Hence, the Court held that Italy violated Article 5 §§ 1, 2 and 4 of the Convention.

According to the SOPs, all hotspots should guarantee *inter alia* “provision of information in a comprehensible language on current legislation on immigration and asylum”, as well as provision of accurate information on the functioning of the asylum procedure. In practice, however, concerns regarding access to information persisted recent years.<sup>1180</sup>

Vulnerable applicants are also accommodated in hotspots on a regular basis. By way of example, 8,934 children entered hotspots in 2021 (7,289 unaccompanied and 1,645 accompanied).<sup>1181</sup> It has been noted how the practice according to which, quoting the National Guarantor, “the foreign citizen is basically precluded from having correct personal data reported on the entry information

<sup>1174</sup> Interview with Altraeconomia, ARCI, and ASGI.

<sup>1175</sup> Interview with ASGI.

<sup>1176</sup> AIDA (May 2023), [Country Report Italy](#), p.174.

<sup>1177</sup> See: Save the Children (April 2023), [Hotspot sovraffollato a Lampedusa: le condizioni critiche dei minori](#); UNICEF (May 2023), [Cronache di frontiera. Lampedusa: vite in hotspot](#); ASGI (August 2022), [Report sulla visita al Centro hotspot di Lampedusa](#).

<sup>1178</sup> Article 5-bis (2) Decree Law 20/2023 converted with modifications into Law 50/2023.

<sup>1179</sup> *J.A. and Others v. Italy* (dec.), [no. 21329/18](#), 30 March 2023.

<sup>1180</sup> AIDA (May 2023), [Country Report Italy](#), p.47.

<sup>1181</sup> National Guarantor for the rights of detained persons (June 2022), [Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons](#).

sheet [foglio notizie]" in hotspots,<sup>1182</sup> may easily lead to unlawful deprivation of liberty in detention facilities, and to a delayed identification of vulnerabilities connected to age.

### **Constraints in accessing socio-economic rights**

#### *Access to work*

Asylum seekers have in some cases experienced difficulties in accessing work to the difficulty in obtaining their residence permit. This is generally due to the delay in the registration of their asylum applications, on the basis of which the permit of stay is issued, or to the delay in the renewal. Furthermore, employers are often wary of hiring asylum seekers who are in possession only of the asylum request receipt or the request for renewal of the six-month permit, since they present no expiry date, even if they are legally equal to the residence permit.

Additionally, several Provincial Labour Offices do not allow asylum seekers under the Dublin procedure to enrol on unemployed lists, despite the CJEU decision of 14 January 2021 establishing that Article 15 of the Directive 2013/33/EU must be interpreted as precluding national legislation which excludes an applicant for international protection from access to the labour market on the sole ground that a transfer decision has been taken in their regard under Dublin Regulation.<sup>1183</sup>

Additional factors limiting the opportunities to access work for asylum seekers are language barriers, the remote location of the accommodation and the lack of specific support in the job search based on their needs.

#### *Access to health care*

Despite asylum seekers having the right to access health care on the same basis as nationals, the exercise of this right is often delayed, depending on the attribution of the tax code assigned by Questure when lodging the asylum application. This means that it reflects the delay in lodging the asylum claim, which corresponds to several months in certain regions.<sup>1184</sup>

The right to medical assistance should not expire in the process of the renewal of the permit of stay.<sup>1185</sup> In practice, however, asylum seekers with an expired permit of stay have no guarantee of access to non-urgent sanitary treatments for a significant length of time due to the bureaucratic delays in the renewal procedure. This also means that where asylum seekers do not have a domicile to renew their permit of stay, for example if reception conditions were withdrawn, they cannot renew the health card.

Medical operators are not specifically trained on the diseases typically affecting asylum seekers and refugees, which may be very different from those affecting the Italian population. Among the obstacles for asylum seekers in need to access health services there are also language barriers, as many medical operators only speak Italian and there are no cultural mediators or interpreters to facilitate the necessary exchanges.<sup>1186</sup>

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<sup>1182</sup> National Guarantor for the rights of detained persons, [Rapporto sulle visite effettuate nei CPR \(2019 - 2020\)](#).

<sup>1183</sup> CJEU decision, joined cases C322/19 and C385/19, 14 January 2021.

<sup>1184</sup> See section on constraints to access socio-economic rights and AIDA (May 2023), [Country Report Italy](#), pp.51-53.

<sup>1185</sup> Article 42 PD 394/1999.

<sup>1186</sup> Marchetti F, Preziosi J, Zambri F, Tambascia G, Di Nolfi A, Scardetta P, Splendore F, Colaceci S, Coia M, Caredda E, Masi L, De Luca V, Perra A, Giusti A. [Health needs and perception of health care quality among Asylum Seekers and Refugees in an Italian local health authority: A qualitative study](#). *Front Public Health*. 2023 Apr 12;11:1125125.

### ***Insufficient capacity to address special reception needs***

While it should be regarded as positive that the country disposes of dedicated reception places for vulnerable applicants, not all needs can be covered due to capacity limits. For example, places for families are limited throughout Italy, both in CAS and within the SAI network. Some Italian regions almost entirely lack reception places suitable for families. This became even more evident in the 2021-2022 period, first with the arrival of the Afghan evacuees, among whom there were a number of large families, and then when people fled from Ukraine, among whom there were mainly single-parent households.<sup>1187</sup>

Despite national laws establishing unaccompanied minors who are not assigned to a family should be primarily hosted the SAI network, the percentage of minors that stay in first-reception facilities remains high.<sup>1188</sup> These include structures that are not suitable, as adults are also accommodated there (such as hotspots or hotels), with a negative impact on well-being and rights of minors. In other situations, due to the lack of places in reception facilities, minors are put on a waiting list and remain completely without reception or in precarious accommodation with relatives or compatriots. The sharp increase in the number of unaccompanied minors arriving in Italy is not matched by an adequate increase in the number of places available in facilities for minors.<sup>1189</sup>

In addition, some concerns emerge regarding the procedures used for age assessment which in turn have an effect on access to suitable reception conditions. On 21 July 2023, the ECtHR ruled against Italy in the case *Darboe and Camara v. Italy* (no. 5797/17),<sup>1190</sup> establishing that Italian authorities evaluated Mr. Darboe's age through anachronistic and unreliable medical tests, and failed to appoint a guardian who could represent him and prevent him from presenting the application for international protection without proper support. Furthermore, the erroneous age assessment led to his placement in the adult reception centre of Cona, known for its extreme overcrowding, violence, and sanitation deficiencies, for more than four months. In the light of these findings, the Court considered that the right to respect for Mr. Darboe's private and family life (Article 8 of the Convention) and the prohibition of being subjected to inhuman and degrading treatment (Article 3 of the Convention) had been violated.

### **3.3 Good practices**

Assessing the organisation of the Italian reception system against respect for fundamental rights and overall coherence with the aims of the Reception Conditions Directive and the CEAS as a whole, several good practices can also be highlighted. The good practices are grouped into categories that correspond to key rights of asylum applicants as connected to reception.

- Freedom of movement

Asylum seekers have freedom of movement within the country's territory, and receive economic support to pay for transport.

- Unaccompanied minors

As a rule, unaccompanied minors are not detained in the country. In addition, they are entitled to the same rights as underage Italian nationals. As such, they should primarily be assigned to foster care.

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<sup>1187</sup> AIDA (May 2023), [Country Report Italy](#), p.166.

<sup>1188</sup> Ministry of Labour (December 2022), [Monitoring report on unaccompanied foreign minors](#).

<sup>1189</sup> AIDA (May 2023), [Country Report Italy](#), p.171.

<sup>1190</sup> ECtHR, [Darboe and Camara v. Italy, Application No 5797/17](#), Communicated on 14 February 2017.

Where not possible, they have to be granted access to dedicated project of individual or small-scale collective accommodation within the SAI network.

- Access to socio-economic rights

Asylum seeking children generally enjoy unrestricted access to education, despite some delays in access due to schools' capacity.

Adult asylum seekers can access work from 2 months after lodging their asylum application. Medical care is granted on the same grounds as country nationals and is not limited to emergency care.

- SAI network and vulnerable applicants

The system provides a variety of accommodation schemes. The SAI network is a very positive example in terms of services provided, scale and opportunities for inclusion. SAI projects – which provide accommodation in individual apartments or small-scale centres – for vulnerable asylum seekers, offer targeted responses and support, and a wide variety of services directed at granting opportunities for contact with the local population. This is also facilitated by the fact that most of these projects are in city centres or in places that are easily reachable by public transport. There are SAI projects addressing a wide range of vulnerabilities, such as those for victims of trafficking, applicants living with disabilities and LGBT applicants.

These centres are generally managed by NGOs or other not-for profit actors which have specific expertise in the vulnerabilities addressed. The active involvement of individuals in their asylum path is sought, and good standards for reception are set by national authorities.



## ANNEX III – List of interview questions

### Information request on reception conditions for applicants of international protection

#### Role of the organisation

1. What is the role of your organisation as connected to the national reception system?
2. Does your organisation have access to all reception facilities? If so, is this access provided by law or by another type of agreement (e.g. a memorandum of understanding)?
3. How regularly does your organisation visit reception facilities?
4. Which other activities related to reception of international protection applicants does your organisation carry out?

#### Material reception conditions

5. Are some asylum seekers in the country not able to access reception conditions or are there any obstacles preventing access to reception conditions in practice (e.g. time to process files, lack of places, detention on arrival, etc.)? What are the consequences on the livelihoods of asylum seekers?
6. Which is your organisation's assessment of the conditions in reception facilities (e.g. living conditions, cleanliness, sleeping arrangements, location, remoteness, etc.)? Specify whether significant differences exist depending on the region/area in which the reception facility is located.
7. As far as you are aware, have there been any recent issues related to reception conditions (e.g. protests, hunger strikes, violence between residents or with reception staff etc.)?

#### Freedom of movement and detention

8. What is the situation regarding freedom of movement within the country for asylum seekers (excluding those detained)? Were there any relevant changes were observed in the last years?
9. Is your organisation aware of *de facto* detention practices applied to asylum seekers? If so, have these been observed throughout the national territory, or are they limited to certain regions/areas?

#### Reception for vulnerable applicants

10. Are there mechanisms to identify vulnerable persons for the purpose of addressing specific reception needs? Does your organisation contribute to the identification for this purpose?
11. What are the consequences of being identified as vulnerable in the context of provision of reception conditions (e.g. access to dedicated reception facilities)?

#### Implementation challenges and good practices

12. Which, according to the information gathered through your activities, would you describe as the main implementation challenges regarding reception of asylum seekers in the country?
13. Are there examples of good practices related to reception of asylum applicants?
14. The undergoing CEAS reform includes a recast version of the RCD, as well as other instruments that would bring to significant changes that would also affect national reception systems (e.g.

APR). Which is your assessment of the impact the reform would have on the country in which you are operating?

**ANNEX IV – List of interviews**

<b>Organisation/authority</b>	<b>Interview date</b>
<b>Belgium</b>	
CIRÉ	14/09/2023
Croix-Rouge de Belgique	21/09/2023
Fedasil	23/10/2023
MYRIA	21/09/2023
Plateforme Citoyenne de Soutien aux Réfugiés	06/10/2023
Vluchtelingenwerk Vlaanderen	21/09/2023
VVSG	19/09/2023
<b>Italy</b>	
Altraeconomia	13/09/2023
ARCI	12/09/2023
ASGI	13/09/2023
EUAA (IT Country Operation)	19/10/2023
Servizio Centrale SAI	05/10/2023
<b>Funding</b>	
Pro Asyl	21/09/2023

## ANNEX V – Summary of CJEU judgments on the Reception Conditions Directive

The following section provides a summary of relevant judgments on the Reception Conditions Directive delivered by the CJEU, including both the first Directive 9/2003/EC and the recast Directive 2013/33/EU.

Case	Provision(s)	Decision
Directive 9/2003/EC		
<a href="#">C-179/11 Cimade</a>	N/a	The obligation on the Member State in receipt of an asylum claim to grant those minimum reception conditions begins when the applicant 'applies for asylum', even if that State is not the Member State responsible for the examination of the application for asylum pursuant to the criteria laid down by the Dublin II Regulation.
<a href="#">C-534/11 Arslan</a>	7	A third-country national who has applied for asylum after having been detained under the Return Directive (2008/115) may continue being kept in detention under the Reception Conditions Directive (9/2003/EC) on the basis of a provision of national law, where it appears, after an assessment on a case-by-case basis of all the relevant circumstances, that the application was made solely to delay or jeopardise the enforcement of the return decision and that it is objectively necessary to maintain detention to prevent the person concerned from permanently evading his return.
<a href="#">C-79/13 Saciri</a>	13,	If a Member State chooses to provide material reception to asylum applicants in the form of a financial allowance rather than direct public services, the allowance must be enough to ensure a dignified standard of living, must be provided from the time at which the asylum application is made and should ensure that it is sufficient to enable minor children to be housed with their parents in order to maintain the family unity of the asylum seekers. The Directive does not preclude EUMS from referring asylum applicants to bodies within the general public assistance system if reception facilities are overloaded.
<a href="#">C-562/13 Abdida</a>	N/a	According to Directives 2003/9/EC, 2004/83/EC and 2005/85/EC, the procedural safeguards and social benefits established by the EU legislature therein are not applicable to an application for leave to reside on medical grounds under Article 9b of the Law of 15 December 1980 on entry to Belgian territory, residence, establishment and removal of foreign nationals.
Directive 2013/33/EU		
<a href="#">C-601/15 J.N</a>	8 (3)(e)	Article 8(3)(e) of the recast Reception Conditions Directive fulfils the requirements of proportionality by virtue of the strictly circumscribed framework regulating its use. In light of Article 52(3) of the Charter, Article 8(3)(e) therefore complies with Article 5(1)(f) of the ECHR.

<a href="#">C-18/16 K</a>	8(3)(a) and (b)	Articles 8(3)(a) and (b) of the Reception Conditions Directive are valid in the light of Articles 6 and 52(1) and (3) of the Charter of Fundamental Rights of the European Union.
<a href="#">C-233/18 Haqbin</a>	20(4) and (5)	A sanction imposed in response of serious breaches of the rules of the accommodation centre or of seriously violent behaviour on behalf of an applicant for international protection cannot include withdrawal of material reception conditions relating to housing, food or clothing, even if it is temporary. Authorities should take into particular consideration any such sanction in cases of vulnerable applicants and unaccompanied minors.
<a href="#">C-36/20 Ministerio Fiscal</a>	8	A third-country national without a legal right of residence who has expressed his or her wish to apply for international protection before 'other authorities', within the meaning of Directive 2013/32, cannot be detained on grounds other than those laid down in Article 8(3) of Directive 2013/33.
<a href="#">C-808/18 Commission v Hungary</a>	8, 9 and 11	Hungary failed to fulfil its obligation under the Reception Conditions Directive by establishing a system of systematic detention of applicants for international protection in the transit zones of Röszke and Tompa, without observing the guarantees.
<a href="#">C-322/19 KS and others</a>	15	Article 15 precludes national legislation that excludes an applicant from accessing the labour market, solely because a Dublin-transfer decision has been taken in his or her regard. Within the meaning of Article 14 (1), a delay in the adoption of a decision at first instance concerning an application for international protection, which results from a lack of cooperation by the applicant with the competent authorities, may be attributed to that applicant. A delay which results either from not lodging an application with the first Member State of entry, or from the lodging of an appeal against a Dublin transfer decision, cannot be attributed to the applicant.
<a href="#">C-186/21 J.A.</a>	8 (3) (d)	The fact that an applicant for international protection has already had the opportunity to access the asylum procedure constitutes an objective criterion for the purposes of point (d) of the first subparagraph of Article 8(3) of Directive 2013/33/EU.
<a href="#">C-821/19 Commission v Hungary</a>	10 (4)	Hungary failed to fulfil its obligations under Article 10 (4) of the Reception Conditions Directive and Articles 8(2) and 22(1) of the Directive 2013/32/EU by criminalising in its national law the actions of any person who, in connection with an organising activity, provides assistance in respect of the making or lodging of an application for asylum in its territory, where it can be proved beyond all reasonable doubt that that person was aware that that application could not be accepted under that law;
<a href="#">C-72/22 M.A.</a>	8(2) and (3)	EU law precludes legislation that provides that in the event of a declaration of martial law or of a state of emergency or in the event of a declaration of an emergency due to a mass influx of aliens, an asylum seeker may be placed in detention for the sole reason that he or she is staying illegally on the territory of that Member State.

<a href="#">C-422/21 TO</a>	20(4) and (5)	Article 20(4) of Directive 2013/33/EU applies to seriously violent behaviour engaged in outside an accommodation centre. A sanction following violent behaviour on behalf of an asylum applicant may not consist in the withdrawal of material reception conditions relating to housing, food or clothing, in so far as the applicant would not be able to meet their most basic needs. The imposition of other sanctions under Article 20(4) of the directive must, in all circumstances, comply with the conditions laid down in Article 20(5) thereof, including those concerning the principle of proportionality and respect for human dignity.
<a href="#">C-704/20 C, V and X</a>	9(3) and (5)	Article 9(3) and (5) of the Reception Conditions Directive, along with Article 15(2) and (3) of the Return Directive (2008/115/EC) and Article 28(4) of the Dublin III Regulation (No 604/2013) of the European Parliament read in conjunction with Articles 6 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a judicial authority's review of compliance with the conditions governing the lawfulness of the detention of a third-country national which derive from EU law must lead that authority to raise of its own motion, on the basis of the material in the file brought to its attention, as supplemented or clarified during the adversarial proceedings before it, any failure to comply with a condition governing lawfulness which has not been invoked by the person concerned.

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This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, is based on concrete quantitative and qualitative evidence, existing available data, studies and analysis from various sources and documents from national and international institutions.

It makes a legal and policy analysis of the EU and international standards applicable to the reception of applicants for international protection, and provides a comparative overview of the implementation of the Reception Conditions and Temporary Protection Directives and of further international norms across EUMS. Attention is also paid to how the EU supports and ensures EUMS' compliance with existing rules on reception conditions.

The study concludes with policy recommendations addressed to relevant actors – including at Member State and European institutions – involved in the provision of reception conditions across the EU.

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