

Asylum authorities

An overview of internal structures and
available resources



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Glossary

Acquis	Accumulated legislation and jurisprudence constituting the body of European Union law.
Asylum seeker(s) or applicant(s)	Person(s) seeking international protection, whether recognition as a refugee, subsidiary protection beneficiary or other protection status on humanitarian grounds.
Beneficiary of international protection	Person granted refugee status or subsidiary protection in accordance with Directive 2011/95/EU .
Caseworker	Personnel of the determining authority responsible for examining and assessing an application for international protection and competent to take a decision at first instance in such a case.
Determining authority	Any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases.
Dublin system	System establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application, set out in Regulation (EU) No 604/2013 .
Humanitarian protection	National status afforded on humanitarian grounds to persons who do not qualify for international protection but whose removal may not be effected for legal or practical reasons. This is not to be confused with the designation “humanitarian status” given by Bulgaria and the United Kingdom for subsidiary protection status.
Lodging an asylum application	Term relevant to Directive 2013/32/EU and some countries: Formal submission of an application for international protection, which marks the start of its examination.
Making an asylum application	Expression of the intention to seek asylum. This can be done either orally or in writing before a public authority.
(recast) Reception Conditions Directive	Directive 2013/33/EU laying down standards for the reception of asylum seekers.
(recast) Asylum Procedures Directive	Directive 2013/32/EU on common procedures for granting and withdrawing international protection
(recast) Qualification Directive	Directive 2011/95/EU 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 the content of the protection granted.
Subsidiary protection	International protection status granted to persons who do not qualify for refugee status but are at risk of serious harm in the country of origin. The term is defined in Directive 2011/95/EU .
Vulnerable person	As defined in Article 21 Directive 2013/33/EU , 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.

List of abbreviations

AAU	Autonomous Asylum Unit Αυτοτελής Κλιμάκιο Ασύλου (Greece)
AIDA	Asylum Information Database
AIRE	Advice on Individual Rights in Europe
AMIF	Asylum, Migration and Integration Fund
BAMF	Federal Office for Migration and Refugees Bundesamt für Migration und Flüchtlinge (Germany)
BCHR	Belgrade Centre for Human Rights (Serbia)
BFA	Federal Agency for Immigration and Asylum Bundesamt für Fremdenwesen und Asyl (Austria)
BIA	Security Information Service Безбедносно-информативна агенција (Serbia)
BITO	Country of Origin Information Office (Romania)
CEAS	Common European Asylum System
CESEDA	Code of Entry and Residence of Foreigners and of the Right to Asylum Code de l'entrée et du séjour des étrangers et du droit d'asile (France)
CGRS	Office of the Commissioner General for Refugees and Stateless Persons Commissariat général aux réfugiés et aux apatrides Commissariaat-generaal voor Vluchtelingen en Staatlozen (Belgium)
CJEU	Court of Justice of the European Union
CIAR	Inter-Ministerial Commission on Asylum Comisión Interministerial de Asilo y Refugio (Spain)
CNDA	National Commission for the Right to Asylum Commissione nazionale per il diritto di asilo (Italy)
COI	Country of origin information
DGMM	Directorate General for Migration Management Göç İdaresi Genel Müdürlüğü (Turkey)
DIDR	Department of Information, Documentation and Research Division de l'information, de la documentation et des recherches (France)
EASO	European Asylum Support Office
EAST	Initial reception centre Erstaufnahmestelle (Austria)
EASY	Initial Distribution of Asylum Seekers Erstverteilung der Asylbegehrenden (Germany)
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Law
EUAA	European Union Agency for Asylum
EU	European Union
FGM	Female genital mutilation

FTE(s)	Full-time equivalent(s)
GCR	Greek Council for Refugees
IGI-DAI	General Inspectorate for Immigration – Directorate for Asylum and Integration Inspectoratul General pentru Imigrari – Directia Azil si Integrare (Romania)
JRS	Jesuit Refugee Service
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
IAO	Immigration and Asylum Office Bevándorlási és Menekültügyi Hivatal (Hungary)
IOM	International Organisation for Migration
IPO	International Protection Office (Ireland)
IND	Immigration and Naturalisation Service Immigratie en Naturalisatiedienst (Netherlands)
OAR	Office for Asylum and Refuge Oficina de Asilo y Refugio (Spain)
OHCHR	Office of the United Nations High Commissioner for Human Rights
OFF	Office for Foreigners Szef Urzędu do Spraw Cudzoziemców (Poland)
OFPRA	Office for the Protection of Refugees and Stateless Persons Office Français de Protection des Réfugiés et Apatrides (France)
OJ	Official Journal
PDMM	Provincial Departments for Migration Management Valilik il Göç İdaresi Müdürlüğü (Turkey)
PRC	Portuguese Refugee Council
PIC	Legal Information Centre for NGOs Pravno-informacijski center nevladnih organizacij (Slovenia)
RAO	Regional Asylum Office Περιφερειακό Γραφείο Ασύλου (Greece)
SANS	State Agency for National Security Държавна агенция "Национална сигурност (Bulgaria)
SAR	State Agency for Refugees Държавна агенция за бежанците (Bulgaria)
SEF	Immigration and Borders Service Serviço de Estrangeiros e Fronteiras (Portugal)
SEM	State Secretariat for Migration Secrétariat d'Etat aux migrations (Switzerland)
UKVI	Home Office Visas and Immigration
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

Introduction

Asylum authorities responsible for examining applications for international protection and competent to take decisions at first instance are at the core of asylum systems. For asylum seekers, they act as a focal point of contact, ensure their access to procedures and provide for adequate procedural guarantees to allow them to expose the circumstances of their application for international protection. For Member States, they are responsible for the correct recognition of those persons in need of protection, act as main actors of the implementation of the national asylum system and further contribute to the development of a fair and efficient Common European Asylum System (CEAS).

The asylum procedure is, however, a long administrative process that has to be carried out within certain time limits, at specific locations, and may involve a variety of authorities, thus creating a complex system where the distribution of tasks and responsibilities is a particular challenge for the asylum authority. This is particularly relevant in countries where the mandate of the authority responsible for asylum and status determination procedures extends to other issues e.g. migration, reception, and/or integration. Moreover, asylum authorities have a duty to work in cooperation with applicants to assess all the relevant elements of the application,¹ which includes providing the necessary guidance as to the procedure to be followed,² but may also include gathering information and producing evidence bearing on the application through their own means.³

Given the complexity of the tasks asylum authorities are entrusted with and the far-reaching effects their decisions have on the individual and/or family concerned, the European Union (EU) asylum *acquis* foresees a range of legal guarantees to ensure that they are able to carry out their duties efficiently. This includes the obligation on Member States to provide asylum authorities with appropriate means, including sufficient competent personnel,⁴ and to ensure that the staff has the appropriate knowledge or has received the necessary training in the field of international protection.⁵ A specialised and well-structured first-instance asylum authority, which is provided with adequate resources, is thus a key component of a fair and effective asylum system.

Despite these standards and the flexibility granted to Member States as to their implementation, asylum authorities continue to face important difficulties in carrying out their tasks. Figures in 2018 indicated that, although the number of applications lodged in the EU was back at the level of 2014, i.e. before the steep increases recorded in 2015 and 2016, the number of pending cases at the end of 2018 was considerably higher than at the end of 2014.⁶ The European Asylum Support Office (EASO) further reported that, during the first half of 2019, some 277,700 first-instance decisions were issued – down by 12% from the same period a year earlier – and that some 439,000 cases were awaiting a decision at first instance in the EU, which represents an increase compared to 2018.⁷ Difficulties for

¹ Article 4(1) 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 protection granted (recast) (hereafter “recast Qualifications Directive”).

² UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection*, February 2019, available at: <https://bit.ly/2GqKLg5>, para 192.

³ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection*, February 2019, available at: <https://bit.ly/2GqKLg5>, para 196; UNHCR, *Note on Burden and Standard of Proof*, 16 December 1998, available at: <https://bit.ly/2ITAkKf>, para 6; UNHCR, *Beyond Proof - Credibility Assessment in EU Asylum Systems*, May 2013, available at: <https://bit.ly/2kHcTDJ>, 126-133.

⁴ Article 4(1) 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) (hereafter “recast Asylum Procedures Directive”), OJ 2013 L180/60.

⁵ Articles 4(3) and 14(1) recast Asylum Procedures Directive.

⁶ EASO, *EU+ Asylum Trends 2018 overview*, February 2019, available at: <https://bit.ly/2X1pwHK>.

⁷ EASO, *Latest asylum trends – June 2019*, available at: <https://bit.ly/2bDsb3N>.

asylum authorities to process asylum applications are thus visible both in times of high and low pressure on their asylum systems, which necessarily raises questions as to their overall organisation and functioning.

Where asylum authorities are not well-prepared, under-staffed or lack the necessary expertise, asylum seekers face significant obstacles in accessing the asylum procedure and risk being confronted with deficient and long asylum procedures. This may result in a less thorough examination of their application and in unfair denials of international protection.

This comparative report aims to provide an overview of the structure, composition and functioning of asylum authorities in the countries covered by the Asylum Information Database (AIDA), with the aim to offer a better understanding of their operation. It looks exclusively at their role in the examination of applications for international protection and uses the terminology “determining authority” to refer to the asylum authority responsible for examining and deciding on applications for international protection at first instance.⁸ The report is divided into three Chapters:

- **Chapter I** describes the institutional architecture of determining authorities. It looks at their internal organisation, their supervision by branches of the executive and their coordination with other authorities entitled to intervene at first instance.
- **Chapter II** deals with the resources of determining authorities. It looks at their financing, staffing and training, thus providing an overview of their size and capacity.
- **Chapter III** focuses on the decision-making tools used by the staff of determining authorities to examine and decide on applications for international protection. It further looks at the quality assurance and control mechanisms that have been established by determining authorities to ensure quality of decisions.

A final part draws conclusions and puts forward recommendations to European countries and their respective determining authorities.

⁸ Article 2(f) recast Asylum Procedures Directive.

The recast Asylum Procedures Directive foresees that the determining authority can be established either as a quasi-judicial body or as an administrative body,⁹ but remains silent as regards its structure. In light of the flexibility that has thus been granted to Member States, this Chapter provides a detailed overview of the institutional architecture of determining authorities.

1. Organisation of determining authorities

While it is extremely difficult to provide a comprehensive overview of the organisational structure of determining authorities, *inter alia* because of their varying size, tasks and resources, the following section outlines some of the main organisational arrangements set up in determining authorities with a view to deal with different types of asylum applicants and/or different asylum procedures.

Scope of mandate

The mandate of determining authorities as defined by the recast Asylum Procedures Directive is primarily to be responsible for an appropriate examination of applications for international protection.¹⁰ In many European countries, however, the determining authorities' competence extends to other issues. The division of determining authorities into directorates and/or units which do not deal with the examination of asylum claims can thus be an indicator of the scope of their mandate and further explains their varying size and resources.

One issue that several determining authorities deal with is migration, which is an umbrella term referring both to regular and irregular migration, irrespectively of the causes and means used to migrate. Determining authorities covering migration are thus responsible for a wide range of tasks, which include the delivery of visas and residence permits to persons who wish to come to a country to visit, study or work, as well as naturalisation procedures. In the **Netherlands** for example, the Immigration and Naturalisation Service (IND) is responsible for applications for Dutch citizenship from persons who wish to settle in the country permanently.¹¹ In the **United Kingdom** (UK), the UK Visas and Immigration Unit (UKVI) of the Home Office further decides on applications from employers and educational establishments who want to join the register of sponsors and subsequently employ migrant workers or sponsor migrant students.¹²

Another activity covered by certain determining authorities are reception facilities for asylum seekers and beneficiaries of international protection. This mainly consists in managing the reception centres and ensuring that they provide for adequate living conditions, in accordance with the recast Reception Conditions Directive.¹³ In **Poland** for example, the Office for Foreigners (OFF) is responsible for the management of all the reception centres.¹⁴ While the OFF has delegated this responsibility to civil-society organisations and private contractors, it monitors the situation in the centres through the Office's employees working in the centres and through inspections that are conducted twice a year.¹⁵ Asylum seekers can further complain to the OFF about the situation in the centres.¹⁶

⁹ Article 2(f) recast Asylum Procedures Directive.

¹⁰ Article 4(1) recast Asylum Procedures Directive.

¹¹ Immigration and Naturalisation Service (IND), *Mission*, available at: <https://bit.ly/2kA9shZ>.

¹² UK Visas and Immigration Directorate, *Mission*, available at: <https://bit.ly/2lzZBJ7>.

¹³ 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) (hereafter 'recast Reception Conditions Directive'), OJ 2013 L180/96.

¹⁴ AIDA, Country Report Poland, 2018 Update, March 2019, available at: <https://bit.ly/2UWKw52>, 48-48.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

Other determining authorities are further involved in the integration of asylum seekers and beneficiaries of international protection. In **Germany** for example, the Federal Office for Migration and Refugees (BAMF) develops and implements integration courses, i.e. language courses combined with orientation courses on the German political system and society. It further coordinates advice services for adult immigrants and promotes projects as well as measures for integration within society.¹⁷ In **Romania**, the General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI) is responsible for implementing individual programmes that were established with beneficiaries of international protection to promote their integration.¹⁸ These programmes identify the assistance needed for their integration and set objectives and activities to be achieved within certain time limits.¹⁹

Units dealing with specific procedures

Some determining authorities have established units dealing with specific procedures to improve the efficiency of their asylum system and/or to speed up the asylum procedure. In certain countries, such arrangements mainly follow the objective to swiftly identify unfounded applications or applications with a low chance of success in order to avoid using resources on such claims.²⁰

In **Sweden**, applications for international protection are screened and sorted in different “tracks” based on their specific profile. Beyond the regular asylum procedure (“Tracks 1 and 2”), the Swedish “track policy” thus foresees specific tracks for manifestly unfounded cases (“Track 4A”) or cases coming from low-recognition-rate countries (“Track 4B”), Dublin cases (“Track 5A”) and inadmissibility cases (“Track 5B” and “Track 5C”).²¹ In other words, manifestly unfounded applications, applications with a low chance of success and applications falling under the Dublin procedure are transferred to dedicated units that can quickly handle these cases, while other cases are forwarded to the Distribution Unit. A steady flow of cases during the determination process is thus ensured when units request cases from the Distribution Unit.²²

Similarly in the **Netherlands**, the IND established a “Five Tracks” policy in 2016 whereby asylum seekers are channelled to a specific procedure track (“*spoor*”) depending on the circumstances of their case.²³ This includes tracks such as “Track 2” for applicants with a protection status in another EU Member State or coming from a “safe country of origin”.

In **Poland**, the Department on Proceedings in International Protection of the OFF is divided into three units handling regular procedures, while one unit is responsible for accelerated and inadmissibility procedures.²⁴

In **France**, OFPRA has a Unit entitled “asylum at the border”, responsible for claims lodged in waiting zones and detention centres.²⁵

The organisation of the determining authority into different units dealing with discrete procedures is particularly relevant when it comes to the Dublin procedure, as all Member States have dedicated units to that end. However, it should be noted that in some countries the Dublin procedure is handled by other entities that are detached from the determining authority, as will be discussed further below.

¹⁷ BAMF, *Promotion and coordination of integration*, available at: <https://bit.ly/2Jli2em>.

¹⁸ Articles 15-18, Romanian Government Ordinance No 44/2004 (“Integration Ordinance”).

¹⁹ AIDA, Country Report Romania, 2018 Update, March 2019, available at: <https://bit.ly/2Gnjawh>, 114.

²⁰ See e.g. Recital 20 recast Asylum Procedures Directive.

²¹ AIDA, Country Report Sweden, 2018 Update, April 2019, available at: <https://bit.ly/2jUnSsP>, 20.

²² *Ibid*, 14.

²³ AIDA, Country Report Netherlands, 2018 Update, March 2019, available at: <https://bit.ly/2VWHgn0>, 15.

²⁴ Information provided by the Helsinki Foundation for Human Rights, 7 August 2019.

²⁵ Information provided by Forum réfugiés - Cosi, 14 August 2019.

Units dealing with specific applicants

Another example is units which handle caseloads related to specific applicants, e.g. units dealing with applicants with special needs and/or gender units. As demonstrated in ECRE's report on the concept of vulnerability in European asylum procedures,²⁶ countries such as **Belgium**, **France** and **Hungary** have established dedicated units which deal *inter alia* with unaccompanied children, women, victims of torture as well as victims of human trafficking.

In **France**, since 2013, OFPRA has set up five thematic groups (*groupes de référents thématiques*) of about 20-30 staff each, covering the following topics: sexual orientation and gender identity; unaccompanied children; torture; trafficking in human beings; and violence against women.²⁷ The thematic groups follow internal guidelines developed by the *référents* and revised every year. OFPRA has also established a position of Head of Mission – Vulnerability as of 2016.²⁸ According to a report by the French Equality Council, OFPRA has demonstrated notable improvements in terms of sensitivity and professionalism *vis-à-vis* claims made by women.²⁹

In **Belgium**, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) has two vulnerability-oriented units that provide support to caseworkers dealing with specific cases. The first one is a “Gender Unit” which mainly handles gender-related applications e.g. applications based on sexual orientation or gender identity, applications concerning female genital mutilation (FGM), forced marriages as well as domestic violence and/or sexual abuse.³⁰ The second one is a “Minors Unit” headed by an appointed coordinator and composed of 3 officials as well as participating caseworkers.³¹ The Unit ensures a harmonised and child-sensitive approach, exchanges information and shares best practices. Moreover, it should be noted that the CGRS used to have a “Psy Unit” which assisted caseworkers in cases where psychological issues had an influence on the processing and/or assessment of the application. However, in September 2015 the CGRS abolished the Psy Unit given the increasing workload resulting from a rise in the number of applicants.³²

In **Hungary**, until July 2019, there was a specialised unit within the Immigration and Asylum Office (IAO) which dealt with asylum applications of unaccompanied children. It was part of the Regional Directorate of Budapest and Pest County Asylum Unit and it received regular training from the Litigation Unit of the Refugee Directorate of the IAO.³³ It is unclear, however, if a similar administrative arrangement has been or will be set up in the National Directorate General for Aliens Policing (*Országos Idegenrendészeti Főigazgatóság*), which is the new authority responsible for immigration and asylum-related tasks since July 2019, as will be explained further below.

In some countries where there are no specific units dealing with vulnerable groups, specialised staff are foreseen to that end. In **Germany**, the Federal Office for Migration and Refugees (BAMF), which is responsible for processing asylum claims, has “special officers” (*Sonderbeauftragte*) responsible for interviews and decisions on claims by applicants with special needs. This is also the case in **Poland**, where only qualified staff members of the OFF are allowed to decide on applications made by persons with special needs.³⁴ In **Switzerland**, the State Secretariat for Migration (SEM) has no

²⁶ AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, available at: <https://bit.ly/2f9gOmN>, 26-27.

²⁷ OFPRA, *Rapport d'activité 2016*, April 2017, available in French at: <http://bit.ly/2pHqMI7>, 28.

²⁸ AIDA, Country Report France, 2018 Update, March 2019, available at: <https://bit.ly/2UURYOp>, 65.

²⁹ Haut-Conseil à l'Égalité, *Situation des femmes demandeuses d'asile en France après l'adoption de la loi portant réforme du droit d'asile*, 18 December 2017, available in French at: <http://bit.ly/2mWvoBM>, 25.

³⁰ AIDA, Country Report Belgium, 2018 Update, March 2019, available at: <https://bit.ly/2PsRvgk>, 52.

³¹ *Ibid.*

³² Information provided by the CGRS, Contact meeting, 15 September 2015, available at: <http://bit.ly/1GymMYx>, 60.

³³ AIDA, Country Report Hungary, 2018 Update, March 2019, available at: <https://bit.ly/2Vlla0I>, 51.

³⁴ Information provided by the Helsinki Foundation for Human Rights, 7 August 2019.

dedicated unit for vulnerable persons, but it collaborates with experts within the SEM (“thematic specialists”) who provide advice and support to difficult cases, e.g. regarding unaccompanied minors, gender-specific violence or victims of trafficking.³⁵

The presence of specialised units and/or specialised staff within determining authorities allows for early identification of applicants with special procedural needs, which is a crucial aspect of fair and efficient asylum systems. It further contributes to the creation of formal and systemic identification mechanisms and helps to prevent the deterioration of health conditions of applicants.³⁶

Units organised according to geographical criteria

Another trend visible in some countries (e.g. in **Belgium, France, Germany, Greece, Poland, and Spain**) is the division of the determining authority into geographical departments. In **Spain** for example, officers of the Office for Asylum and Refuge (OAR) in charge of processing asylum claims are organised according to geographical criteria and each of them is thus responsible of a certain number of countries.³⁷ In **Poland**, the Department on Proceedings for International Protection is divided into Units handling asylum applications from persons originating from Chechnya (Unit II), from the former Soviet Union (Unit IV) and from other countries (Unit III).³⁸ Similarly in **Greece**, the Asylum Service has an Autonomous Asylum Unit (AAU) handling applications from Albania and Georgia as well as an AAU handling applications from Pakistan.³⁹

The division of the determining authority into geographical units enables caseworkers to gain in-depth knowledge of the general situation prevailing in the countries of origin of applicants, which helps to ensure an accurate and appropriate assessment of the circumstances surrounding the application. It further allows caseworkers to keep abreast of the developments in the countries they cover.

Divisions of tasks between “interviewer” and “decision-maker”

Another administrative arrangement visible in some countries merits particular attention as it relates to the personal interview on the substance of the application for international protection. The personal interview is an essential component of the asylum procedure and, as such, it should provide the applicant with the opportunity to fully explain the circumstances of their application.⁴⁰ As a rule, the recast Asylum Procedures Directive foresees that the personal interviews should be conducted by the personnel of the determining authority – except when a large number of applications make it impossible in practice to conduct timely interviews and thus justify that the personnel of another authority is temporarily involved in conducting such interviews.⁴¹ However, the Directive does not indicate whether the caseworker conducting the interview should also be the one responsible for taking a decision on the asylum claim.

In many AIDA countries (**Austria, Belgium, Croatia, France, Greece, Poland, Portugal, Romania, Switzerland**) there is, in principle, a single caseworker responsible for performing both duties. This means that the same official is responsible for conducting the interview and taking account of the personal and general circumstances surrounding the application, as well as for drafting a motivated decision stating the reasons in fact and in law for granting or refusing international protection.

³⁵ AIDA, Country Report Switzerland, 2018 Update, February 2019, available at: <https://bit.ly/2Ksrle0>, 50.

³⁶ *Ibid*, 53.

³⁷ Information provided by Accem, 2 August 2019.

³⁸ Information provided by the Helsinki Foundation for Human Rights, 7 August 2019.

³⁹ AIDA, Country Report Greece, 2018 Update, March 2019, available at: <https://bit.ly/2GxoZWL>, 23.

⁴⁰ Article 16 recast Asylum Procedures Directive; Article 4(1) recast Qualification Directive.

⁴¹ Article 14(1) recast Asylum Procedures Directive.

This being said, the fact that both tasks are carried out by the same caseworker does not preclude the involvement of other officials of the determining authority at a later stage of the decision-making process. A caseworker's decision is in fact very often reviewed and validated by a supervisor, as will be discussed further below.

In other countries, the caseworker conducting the interview is not necessarily responsible for deciding on the asylum application (e.g. in **Germany, Slovenia, Sweden**). An interviewer thus takes account of the reasons for applying for asylum and drafts a report based on which a second official of the determining authority, the decision-maker, will decide whether to grant protection or to reject the application. However, different practices have emerged in that regard, as in some countries the interviewer does not only transmit a report of the interview but also provides recommendations to the decision-maker. This is the case in **Cyprus** and **Greece**, where the European Asylum Support Office (EASO) personnel is allowed to examine applications procedure and to provide an opinion to the Asylum services (see [Involvement of other actors](#)).⁴²

In **Slovenia**, the separation of tasks between an interviewer and a decision-maker was introduced in June 2016 with the aim to speed up and improve the efficiency of the asylum procedure. It was argued that about half of the applicants abscond soon after the lodging of the application and about 20% have their applications dismissed in Dublin procedures, with the result that many lengthy interviews on the grounds for asylum were conducted in vain.⁴³ Since then, when an application for international protection is lodged, a "first in-merit interview" is conducted, during which the applicant provides detailed grounds for applying for asylum. The case is then referred to a "decision-maker", who can either issue a decision on the asylum application or decide to conduct a second in-merit interview.⁴⁴ There is no official communication between the first interviewer and the decision-maker.⁴⁵

In **Sweden**, an interviewer of the Migration Agency is in charge of establishing the circumstances of the application for international protection in the presence of a legal representative, an interpreter and the applicant.⁴⁶ The assessment of the case and the decision on the merits of the asylum application is thus prepared by the interviewer, but the decision regarding the application lies with a second official, the decision-maker.⁴⁷

In **Germany**, the separation of these tasks was particularly applied in 2015 and 2016, when a large number of asylum claims were referred to so-called decision-making centres ("*Entscheidungszentren*"), which were set up to reduce the number of pending asylum cases.⁴⁸ These facilities do not conduct interviews. They are solely responsible for processing cases which can be decided on without further investigation e.g. for granting refugee status to Syrian and Iraqi nationals, or for rejecting applications of persons originating from so-called safe countries of origin.⁴⁹ The decision-making centres have been heavily criticised by civil society organisations, as their ultimate objective is to process a large number of asylum applications, which entails a risk of not thoroughly examining the individual circumstances of the claim.⁵⁰ Another critique raised is the fact that the personal component of interviews, during which an applicant might display a certain type and level of emotion, was undermined where a decision-maker based his or her decision solely on a report rather

⁴² Information provided by the Cyprus Refugee Council, 2 September 2019; Greek Council for Refugees, 2 September 2019. It should be noted, however, that according to Greek law, EASO's role is limited to conducting interviews. The fact that EASO may provide an opinion or a recommendation to the Greek Asylum Service thus results from practice rather than from Greek legislation.

⁴³ AIDA, Country Report Slovenia, 2018 Update, March 2019, available at: <https://bit.ly/2GAOZ3G>, 22.

⁴⁴ Information provided by PIC, 14 August 2019.

⁴⁵ *Ibid.*

⁴⁶ AIDA, Country Report Sweden, 2018 Update, April 2019, 22.

⁴⁷ Information provided by the Swedish Refugee Law Centre, 22 August 2019.

⁴⁸ AIDA, Country Report Germany, Fourth Update, November 2015, available at: <https://bit.ly/1OKvtyW>, 18.

⁴⁹ Information provided by Informationsverbund Asyl und Migration, 30 August 2019.

⁵⁰ Zeit, 'Behörde auf Speed', 20 March 2017, available in German at: <https://bit.ly/2m44JFI>.

than on a direct interaction with the applicant.⁵¹ Recent figures indicate, however, that referral of cases to decision-making centres is rarely applied nowadays, as it was done in only 7.8% of decisions in the first three months of 2019.⁵²

Although the division of tasks between an interviewer and a decision-maker is allowed under EU law, it may thus raise concerns where it follows the objective of speeding up the asylum procedure. Completing the examination of an asylum application quickly by dividing tasks amongst the staff of the determining authority and/or by omitting to conduct further investigation (i.e. a second interview with the decision maker) should not prevail over the asylum seekers' right to an appropriate examination of their claim. The personal interview is as a crucial opportunity for the asylum applicant to explain the reasons for the asylum application but also for the authorities to identify and assess them. Determining authorities should thus ensure that decision-makers pro-actively verify the accuracy and detail of written interview reports and provide asylum seekers the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in their statements, in accordance with Article 16 of the recast Asylum Procedures Directive.

Centralised and decentralised determining authorities

In Europe, some countries such as **Belgium, Croatia, Cyprus, France** and **Slovenia** have established their determining authorities as a single central authority responsible for examining and deciding on applications for international protection. Conversely, other countries such as **Austria, Germany, Greece, Italy, Romania, Spain, Sweden, Switzerland** and **Turkey** have established decentralised procedures at first instance *inter alia* for capacity and/or logistical reasons, but also with the aim to enhance the processing of applications for international protection throughout their respective territory. These decentralised offices are therefore located in different regions, provinces or states, thereby allowing to respond to delays in processing asylum applications and managing increasing numbers of asylum seekers spread out throughout a countries' territory.

In **Germany**, the BAMF has branch offices in all the Federal States. The branch offices process the asylum procedures, operate as "regional offices" to offer a point of contact for the organisations operating integration activities, and are responsible for the integration work on the ground, as well as for carrying out migration-related tasks.⁵³ In this context, the BAMF has established a distribution system of asylum seekers known as Initial Distribution of Asylum Seekers (*Erstverteilung der Asylbegehrenden*, EASY) system, which allocates places according to a quota system known as "*Königsteiner Schlüssel*" based on the capacities of the centres, which are in turn dependent on the size and the economic strength of the Federal States in which the centres are located. Furthermore, the system takes into account which branch office of the BAMF deals with the asylum seeker's country of origin.⁵⁴

In **Austria**, the Federal Agency for Immigration and Asylum (BFA) has its headquarters in Vienna and one regional directorate in each of the Provinces. Further organisational units of the BFA are the initial reception centres (EAST), which have been renamed "departure centres" in March 2019.⁵⁵ Additional field offices of the regional directorates may be established in the Provinces.⁵⁶

⁵¹ *Ibid.*

⁵² German Federal Government, Response to information request by The Left/Die Linke, No 19/11001, 19 June 2019, available in German at: <https://bit.ly/2jUa9Ck>, 51.

⁵³ BAMF, *Branch offices and regional offices*, available at: <https://bit.ly/2kIPxMD>.

⁵⁴ AIDA, Country Report Germany, 2018 Update, April 2019, available at: <https://bit.ly/2XlvJla>, 19.

⁵⁵ The renaming of EAST buildings into departure centres was ordered by the Ministry of Interior and has been criticised by civil-society organisations as there seems to be no clear legal basis for it. The law still refers to EAST and not to departure centres. See AIDA, Country Report Austria, 2018 Update, March 2019, available at: <https://bit.ly/2ID5uzH>, 21; Information provided by asylkoordination österreich, 1 October 2019.

⁵⁶ BFA, *Brochure*, available at: <https://bit.ly/2kjjwRUC>.

In **Romania**, the General Inspectorate for Immigration (IGI) is in charge of the asylum procedure through its Directorate of Asylum and Integration (DAI). IGI-DAI is also in charge of operating the Regional Centres for Asylum Seekers (“reception centres”). These reception centres are regional centres responsible both for asylum procedures and for the accommodation of asylum seekers. There are currently six centres, located in Timișoara, Șomcuta Mare, Rădăuți, Galați, Bucharest and Giurgiu.⁵⁷

In **Greece**, the Asylum Service is composed of the Central Service and the Regional Asylum Offices (RAO) and Autonomous Asylum Units (AAU) operating throughout the country. The Central Service plans, directs, monitors and controls the actions of the RAO and AAU and ensures the necessary conditions for the pursuance of their activities.⁵⁸ The law provides for 12 Regional Asylum Offices (RAO) to be set up in Attica, Thessaloniki, Thrace, Epirus, Thessaly, Western Greece, Crete, Lesbos, Chios, Samos, Leros and Rhodes.⁵⁹ The Greek Asylum Act further foresees the possibility to establish more than one RAO per region by way of Ministerial Decision for the purpose of covering the needs of the Asylum Service.⁶⁰ At the end of 2018, the Asylum Service operated in 23 locations throughout the country, compared to 22 locations at the end of 2017 and 17 locations at the end of 2016.⁶¹

In **Italy**, the Territorial Commissions are responsible for examining applications for international protection at first instance. The law foresees the creation of 20 Territorial Commissions and up to 30 sub-Commissions across the national territory,⁶² in order to boost and improve the management of the increasing number of applications for international protection.⁶³ As of December 2018, there were 20 Territorial Commissions and 28 sub-Commissions across Italy.⁶⁴

In **Turkey**, the Directorate General for Migration Management (DGMM) has Provincial Departments for Migration Management (PDMM) across the 81 provinces of Turkey.⁶⁵ A Council of Ministers Decision issued in February 2018 has established 36 District Directorates for Migration Management (*İlçe Göç İdaresi Müdürlüğü*) in 16 provinces, under the responsibility of the respective PDMM.⁶⁶ It should be noted that, in 2018, the functions and structure of DGMM were revised following the inauguration of the presidential system in Turkey. Presidential Decree No 4 abolished previously established councils within DGMM such as the Migration Policy Council and the Migration Advisory Council, which were responsible for developing policies in this area.⁶⁷

⁵⁷ AIDA, Country Report Romania, 2018 Update, March 2019, 15.

⁵⁸ Greek Asylum Service, *Asylum Service*, available at: <https://bit.ly/2OKhRsE>.

⁵⁹ Article 6(1) Greek Presidential Decree 104/2012, as amended by Greek Asylum Act.

⁶⁰ Article 1(3) Greek Asylum Act.

⁶¹ AIDA, Country Report Greece, 2018 Update, March 2019, 22.

⁶² Article 4(2) Italian Procedure Decree.

⁶³ Article 4(2-bis) Italian Procedure Decree.

⁶⁴ AIDA, Country Report Italy, 2018 Update, March 2019, available at: <https://bit.ly/2W31pHL>, 19.

⁶⁵ AIDA, Country Report Turkey, 2018 Update, March 2019, available at: <https://bit.ly/2GADPvV>, 21.

⁶⁶ Turkish Council of Ministers Decision 2018/11464, 19 February 2018. See also Anadolu, ‘36 ilçeye İlçe Göç İdaresi Müdürlüğü kurulacak’, 29 March 2018, available in Turkish at: <https://bit.ly/2TCRGWV>.

⁶⁷ Articles 158-167 Turkish Presidential Decree No 4, 15 July 2018, available in Turkish at: <https://bit.ly/2HHXsnG>.

2. Supervision of determining authorities

Executive branches supervising determining authorities

Determining authorities have been placed within different government departments and/or different ministries across Europe. Out of 23 states covered by AIDA, 15 have established a determining authority as an administrative body falling under the responsibility of the Ministry of Interior (**Austria, Belgium, Croatia, Cyprus, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Turkey, United Kingdom**).⁶⁸ Other Ministries responsible for the determining authority include the Ministry of Justice (**Ireland and Sweden**), the Ministry of Security and Justice (the **Netherlands**), the Federal Department of Justice and Police (**Switzerland**), the Council of Ministers (**Bulgaria**) the Ministry for Home Affairs and National Security (**Malta**) and the Ministry of Citizen Protection (**Greece**). While Member States have no obligations under EU law as regards the placement of the determining authority under a specific Ministry, the branch of the executive supervising the determining authority can have an important impact in practice.

An example illustrating the important impact that a governmental decision can have on the asylum procedure is the suspension of family reunification for beneficiaries of subsidiary protection and its effect on BAMF practice in **Germany**. Following the rise in the number of asylum applications as well as the growing number of family reunification applications that began to be registered as a result of the high number of persons being granted international protection, the German Parliament approved a temporary suspension of family reunification for beneficiaries of subsidiary protection who had been granted a residence permit based on this status after March 2016 and until July 2018.⁶⁹ The German Government argued that the suspension of family reunification was necessary “to safeguard the integration of those people who are moving to Germany under family reunification rules”.⁷⁰ During that period, a change of practice was observed within the BAMF, as the number of subsidiary protection status granted by the German determining authority rose significantly from 0.6% in 2015 to 22.1%, in 2016, while the granting of refugee status fell from 48.5% to 36.8% in 2016.⁷¹ In 2018, a new provision was introduced in the German Residence Act which sets a maximum quota of 1,000 relatives of beneficiaries of subsidiary protection per month who may be granted a visa to enter Germany under a family reunification procedure.⁷² This means that the privileged conditions that used to apply to family reunification have been abolished for beneficiaries of subsidiary protection and have been replaced with a “humanitarian clause” which places family reunification at the discretion of the authorities.⁷³

The key challenge for determining authorities falling under the responsibility of governmental departments is thus to guarantee the impartiality and independence of the staff responsible for processing applications for international protection as well as to ensure a proper conduct of the asylum procedure, which requires an objective and individual examination of the protection needs of the asylum seeker. At national level, **France**⁷⁴ and **Belgium**⁷⁵ are the only Member States in which the law explicitly regulates the institutional independence of determining authorities.

⁶⁸ See [Annex I – List of determining authorities](#). For the sake of simplicity, following Ministries have been categorised as Interior Ministries: Ministry of Interior and Administration (PL), Ministry of Home Affairs (PT), Ministry of Internal Affairs (RO), Home Office (UK).

⁶⁹ Section 104(13) German Residence Act, as amended by the Law of 8 March 2018.

⁷⁰ German Federal Government, Response to parliamentary question by The Left, No 18/9992, 17 October 2016, available in German at: <https://bit.ly/2kywm9g>, 5.

⁷¹ BAMF, *Das Bundesamt in Zahlen 2017: Asyl, Migration und Integration*, 2018, available in German at: <https://bit.ly/2lBCBtp>, 49.

⁷² Section 36a German Residence Act.

⁷³ AIDA, Country Report Germany, 2018 Update, April 2019, 116.

⁷⁴ Article L.721-2 French Code of Entry and Residence of Foreigners and of the Right to Asylum (CESEDA).

⁷⁵ Article 57/2 Belgian Aliens Act.

Guarantees of impartiality and independence are particularly important for determining authorities which form part of the governmental body responsible for matters relating to security and/or immigration and border control, and are thus likely to operate under EU and/or national objectives to prevent or reduce irregular migration.

In **Spain**, the Spanish Government announced in January 2019 its intention to reduce irregular migration by 50%, following a record number of 64,298 persons entering the country in 2018.⁷⁶ To that end, it designed a strategy plan aiming at avoiding active patrol of the Spanish sea search and rescue agency (*Salvamento Marítimo*) in the Mediterranean and at prohibiting access to the Spanish shores to rescue boats managed by NGOs.⁷⁷

In **Italy**, the Ministry of Interior issued a directive in 2019 to all Italian law enforcement agencies, inviting them to prevent the irregular entry of migrants into the national territory in order to protect order and security.⁷⁸ The directive classified rescue at sea carried out by NGOs as an activity carried out in an improper manner, in violation of international law, and prejudicial to the order and security of the State, as it is aimed at facilitating entry to the territory of persons violating immigration legislation.⁷⁹

In **Hungary**, a Government Decree established in July 2019 a National Directorate General for Aliens Policing (*Országos Idegenrendészeti Főigazgatóság*) under the management of the Police.⁸⁰ The Directorate General has thus replaced the Immigration and Asylum Office (IAO) and is now responsible for immigration and asylum-related tasks, while being governed by the Police Act. Staff of the Directorate General are thus part of the police personnel. Moreover, on 5 September 2019, the Government decided to extend the “state of crisis due to mass migration” until 7 March 2020 due to the number of irregular border crossing attempts.⁸¹ During the “state of crisis”, applications for international protection can only be submitted in the transit zones, with the exception of those staying lawfully in the country. This means that asylum seekers, except unaccompanied children below the age of 14, have to stay in the transit zones for the whole duration of their asylum procedure. Moreover, several provisions of the Hungarian Asylum Act are suspended, the rights of asylum seekers’ are seriously limited (e.g. with regard to material reception conditions, access to the labour market and financial support) and law enforcement authorities have increased powers.⁸²

In **Greece**, the Ministry for Migration Policy, responsible for the Asylum Service, was subsumed under the Ministry of Citizen Protection in July 2019.⁸³ The latter is primarily responsible for internal security, public order, natural disasters and border security. This institutional reform has led to strong criticism from civil society organisations, who raised concerns with regard to the fact that asylum and migration will no longer be treated as a separate portfolio, as was the case under the previous Ministry of Migration Policy.⁸⁴ The latter had been established in 2016 specifically with the aim to centralise all activities and policies on asylum and migration, which had been welcomed by several international

⁷⁶ El País, ‘El Gobierno traza un plan para reducir un 50% la migración irregular’, 30 January 2019, available in Spanish at: <https://bit.ly/2leZRrO>.

⁷⁷ AIDA, Country Report Spain, 2018 Update, March 2019, available at: <https://bit.ly/2IP8OaL>, 22.

⁷⁸ Italian Ministry of Interior, Directive 14100/141(8), 18 March 2019, available in Italian at: <https://bit.ly/2HHlxKm>.

⁷⁹ AIDA, Country Report Italy, 2018 Update, April 2019, 25-26.

⁸⁰ Hungarian Government Decree 126/2019, 1 July 2019, available in Hungarian at: <https://bit.ly/2FkTBuV>.

⁸¹ Hungarian Government Decree 217/2009 (IX.5.) concerning the prolongation of the state crisis due to mass migration, available in Hungarian at: <https://bit.ly/2nJHX71>; Daily News Hungary, ‘Government extends “state of crisis” due to mass migration’, 6 September 2019, available at: <https://bit.ly/2IAwWUj>.

⁸² AIDA, Country Report Hungary, 2018 Update, March 2019, 15, 22, 62-65.

⁸³ Article 2 Greek Presidential Decree 81/2019, 8 July 2019, available in Greek at: <https://bit.ly/2kl2wQ5>.

⁸⁴ Campaign for access to asylum, ‘Ξανά το Άσυλο και η Μετανάστευση στο Υπουργείο Προστασίας του Πολίτη - Μια θεσμική οπισθοδρόμηση’, 18 July 2019, available in Greek at: <https://bit.ly/2N12VIR>.

actors.⁸⁵ NGOs have further expressed their fear that allocating the responsibility for asylum to a Ministry primarily in charge of public order and security-related issues will contribute to stigmatise asylum seekers and puts them at risk of violent racist acts.⁸⁶

It should thus be acknowledged that the societal, political, and institutional context in which caseworkers operate, as well as the pressure put on determining authorities to prevent irregular migration and/or the abuse of the asylum system, may (or not) consciously or unconsciously influence their mind-set and attitudes.

Heads of the determining authorities

The staff of determining authorities are supervised by a Head. In many European countries, the Heads of determining authorities are appointed upon proposal of – or directly by – governmental bodies (**Belgium, Bulgaria, France, Germany, Greece, Hungary, Italy, Poland, Portugal, Romania, Serbia, Spain, Sweden**). In other countries such as **Austria, Croatia, Cyprus, the Netherlands, Switzerland** and the **United Kingdom**, the Head of the determining authority is appointed following a civil service appointment or an open application, while in **Slovenia** the candidate's qualifications are tested during an initial selection procedure and a subsequent admission procedure, conducted by an individual or special commission.⁸⁷

While the role of the Heads of determining authorities might be strictly limited to administrative and management tasks, they nonetheless act as representatives of the determining authority and may, in some countries, be responsible for setting priorities, establishing internal rules, appointing key officials or intervening in specific cases. In **Cyprus** and **Serbia** for example, all the decisions taken by caseworkers on asylum claims need to be confirmed by the Head of the determining authority.⁸⁸ In **Bulgaria**, the chairperson of the State Agency for Refugees (SAR) is responsible for taking the first instance decision on the asylum claim,⁸⁹ but also for appointing the officials responsible for taking decisions in the Dublin procedure⁹⁰ and in the accelerated procedure.⁹¹

3. Coordination with other authorities at first instance

Another fundamental aspect of the organisation of determining authorities relates to their close collaboration and coordination with other authorities that are allowed to intervene at first instance. This is explicitly foreseen by the recast Asylum Procedures Directive, which provides that other authorities may be responsible for the purposes of processing Dublin cases and granting or refusing permission to enter the territory in the framework of the border procedure, following a reasoned opinion of the determining authority.⁹² The role of these authorities in the asylum process is, however,

⁸⁵ Council of Europe, *Decisions adopted by the Committee of Ministers – Compilation 2014-2017*, available at: <https://bit.ly/2kkwqcG>, 269; European Commission, *Commission Regulation of 10.2.2016 addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013*, 10 February 2016, available at: <https://bit.ly/2m1NGE0>, para 13; Office of the United Nations High Commissioner for Human Rights (OHCHR), *Full text of the press statement delivered by the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance M. Mutuma Ruteere on 8 May 2015 in Athens, Greece*, 8 May 2015, available at: <https://bit.ly/2m3f708>.

⁸⁶ Campaign for access to asylum, 'Ξανά το Άσυλο και η Μετανάστευση στο Υπουργείο Προστασίας του Πολίτη - Μια θεσμική οπισθοδρόμηση', 18 July 2019, available in Greek at: <https://bit.ly/2N12VIR>.

⁸⁷ Information provided by PIC, 13 August 2019.

⁸⁸ Information provided by the Cyprus Refugee Council, 2 September 2019; the Belgrade Centre for Human Rights, 19 July 2019.

⁸⁹ Article 2(3) Bulgarian Law on Asylum and Refugees.

⁹⁰ Chapter VI, Section 1a Bulgarian Law on Asylum and Refugees.

⁹¹ Article 70 Bulgarian Law on Asylum and Refugees.

⁹² Article 4(2) recast Asylum Procedures Directive.

strictly limited and excludes any participation in the examination of applications for international protection.

Involvement in the registration of applications for international protection

In Europe, registration of applications for international protection is often carried out by authorities other than the determining authority. They act as the first points of contact of applicants upon arrival in a Member State and avoid that asylum seekers face significant delays in having their asylum applications registered and subsequently lodged, which would deny them effective access to basic services and put them at risk of human rights violations.

However, as demonstrated in ECRE's report on the registration of asylum applications, some countries differentiate between "registration" and "lodging" as discrete stages with different legal effects in the procedure.⁹³ While a single authority carries out both steps in some countries (**Greece, Cyprus, Italy, Belgium, Poland**), registration and lodging lie with different entities in others, such as **France, Germany, Austria, Spain, and Slovenia**.⁹⁴ Three countries (**Belgium, Italy, Poland**) further entrust the lodging and examination of applications to different authorities who are responsible for transferring them to the determining authority for processing.

Given the practical challenges that might result from the involvement of different authorities, such as administrative delays or miscommunications due to inter-department coordination, registration should be seen as part of the protection process and, *a fortiori*, it should be entrusted to the authorities responsible for the examination of asylum applications. Where this is not possible because of capacity or logistical reasons, authorities other than the determining authority should always be strictly limited to collecting the applicant's personal information. This is particularly worrying in countries in which the police ask questions relating to the merits of the claim at the registration stage (e.g. **Austria, Italy, Spain, Slovenia**), thus going beyond the sole questions on identification and travel route. The determining authority should be the only competent entity to receive important details of the claim at the registration stage, given that its officials must be adequately trained in this regard.⁹⁵

Involvement in the Dublin Procedure

The Dublin procedure is carried out by the determining authority in most European countries, but it may also be conducted by a separate entity in certain Member States in accordance with the recast Asylum Procedures Directive.⁹⁶ This is the case in **Belgium, France and Italy**.

In **Belgium**, the examination of the Dublin procedure is conducted by the Aliens Office prior to transmitting the application to the CGRS.⁹⁷

In **France**, where the Dublin procedure is conducted by Prefectures and not OFPRA, in view of ensuring higher convergence across the country, it was decided in 2018 that the Dublin procedure would be carried out by one Prefecture per region.⁹⁸ This led to the creation of 11 specialised Dublin

⁹³ AIDA, *Access to protection in Europe: The registration of asylum applications*, October 2018, available at: <https://bit.ly/2McTruA>, 7.

⁹⁴ *Ibid*, 10-11.

⁹⁵ AIDA, *Access to protection in Europe: The registration of asylum applications*, October 2018, 11; ECRE, *Information Note on the recast Asylum Procedures Directive*, December 2014, available at: <http://bit.ly/2t36e8H>, 8-9.

⁹⁶ Article 4(2) recast Asylum Procedures Directive.

⁹⁷ AIDA, Country Report Belgium, 2018 Update, March 2019, 33.

⁹⁸ AIDA, Country Report France, 2018 Update, March 2019, 42.

Units, who are fully operational since 1 January 2019 and which replaced close to 100 prefectures which were responsible for implementing the Dublin Regulation.⁹⁹

In **Italy**, Territorial Commissions are responsible for the processing asylum applications in the regular procedure, but the Dublin procedure is handled by the Dublin Unit, which falls under the responsibility of the Ministry of Interior.¹⁰⁰ According to Article 11 of Decree Law 113/2018, the Ministry of Interior may establish a maximum of three branch offices of the Dublin Unit.¹⁰¹

It should be noted, however, that the application of the Dublin criteria is inextricably linked to a person's protection needs. Entitling determining authorities to be the only authority responsible for the Dublin procedure in all European countries would thus constitute a better guarantee to ensure that protection considerations are fully taken into account in Dublin procedures.¹⁰²

Moreover, it should be acknowledged that the Dublin Regulation is a key instrument for Member States to control migration as it enables them to allocate the responsibility for receiving asylum applicants to other Member States in cases where the Dublin procedure applies. Delegating the responsibility to conduct the Dublin procedure to a separate entity might thus be a conscious policy choice of Member States to get round of certain procedural guarantees, especially when taking into consideration that this is applied in **Belgium** and **France** which are the only two Member States where the institutional independence of the determining authority is explicitly guaranteed by law.

Involvement of executive branches

In some European countries, the Ministries responsible for the supervision of determining authorities may intervene at first instance in certain circumstances. They can thus have an important impact on the examination of asylum claims, notably by providing instructions to the staff and/or decisions in individual cases.

In the **Netherlands**, the Ministry of Justice and Security can issue country-specific policies which have to be followed by the determining authority.¹⁰³

In **France**, three representatives of the Ministry of Interior are part of OFPRA's Management Board which defines the list of safe countries of origin. Subsequently, their influence affects asylum seekers originating from one of the listed countries as they will fall under the accelerated procedure.¹⁰⁴

In **Germany**, guidance on the decision-making process usually lies with the BAMF, but the Ministry of Interior might also intervene in that regard. In April 2019, it was reported that following a change of country guidelines by the BAMF, a number of Syrian nationals were granted humanitarian status instead of the subsidiary protection status. The Ministry announced that further discussions within the government will have to take place, thus leading to the temporary suspension of the BAMF's guidelines. The asylum cases concerned were still pending at the end of June 2019.¹⁰⁵

Ministries may also be able to intervene and issue binding decisions in individual cases. The Ministry's involvement is explicitly foreseen by law and accepted as a normal step of the asylum

⁹⁹ EASO, *Annual Report on the Situation of Asylum in the European Union 2018*, June 2019, available at: <https://bit.ly/2XNKNba>, 75.

¹⁰⁰ AIDA, Country Report Italy, 2018 Update, April 2019, 50.

¹⁰¹ *Ibid.*

¹⁰² ECRE, *Comments on the Commission Proposal for an Asylum Procedures Regulation*, November 2016, available at: <https://bit.ly/2ui3Rw1>, 7.

¹⁰³ Information provided by the Dutch Council for Refugees, 12 August 2019.

¹⁰⁴ Information provided by Forum réfugiés – Cosi, 14 August 2019.

¹⁰⁵ Information provided by Informationsverbund Asyl und Migration, 30 August 2019.

procedure in **Portugal**, where the Asylum Act provides that the competence to issue decisions granting, refusing (except in accelerated and admissibility procedures), ceasing and withdrawing international protection lies with the Minister of Home Affairs.¹⁰⁶ The latter can decide on asylum applications regardless of the opinion of the Asylum and Refugees Department (SEF-GAR). In practice, however, the Minister follows the assessment and recommendations of the determining authority, which thus remains the main entity responsible for the examination of asylum claims.¹⁰⁷

In **Italy**, the Territorial Commissions are established under the responsibility of Prefectures and each of them is composed by at least six members, which includes a President appointed by the Ministry of Interior, one expert in international protection and human rights designated by UNHCR, as well as four or more highly qualified administrative officials of the Ministry of Interior, appointed by public tender.¹⁰⁸ The Ministry of Interior thus has several members sitting in the Territorial Commissions and can thereby influence the examination of asylum applications. In addition, the Territorial Commissions may be supplemented, upon request of the President of the National Commission for the Right to Asylum (CNDA), by an official of the Ministry of Foreign Affairs when, in relation to particular asylum seekers, it is necessary to acquire specific assessments of competence regarding the situation in the country of origin.¹⁰⁹ The CNDA not only coordinates and gives guidance to the Territorial Commissions in carrying out their tasks, but is also responsible for the withdrawal and cessation of international protection.¹¹⁰

In **Spain**, the Office for Asylum and Refuge (OAR) must follow any instruction and decision issued by the Ministry of Interior and a representative of the latter is present at the Inter-Ministerial Commission on Asylum (CIAR), thereby contributing to the decision-making process on asylum claims.¹¹¹ Moreover, in **Belgium**, the Ministry can request from the determining authority to prioritise a specific case,¹¹² while in **Hungary** the Minister of Interior has the power to grant asylum status to applicants under special circumstances.¹¹³

Involvement of law enforcement authorities

In some countries, police services, security agencies and other authorities responsible for maintaining the public order and the national security are allowed to conduct security checks on asylum applicants and subsequently to issue binding instructions for determining authorities.

In **Bulgaria**, the SAR must inform the State Agency for National Security (SANS) of the registration of every asylum application. The SANS then conducts security assessments based on interviews with applicants, which are often held as soon as they are arrested by police, border and immigration officers.¹¹⁴ In practice, the SAR follows these assessments without conducting further investigations and rejects applications accordingly, even when the information is classified.¹¹⁵ However, in two recent decisions, the Administrative Court of Sofia has ordered the SAR to assess and verify the facts and the security concerns based on which the applications were rejected.¹¹⁶

¹⁰⁶ Articles 29 and 43 Portuguese Asylum Act.

¹⁰⁷ Information provided by the Portuguese Refugee Council, 13 August 2019.

¹⁰⁸ Article 4(1-bis) Italian Procedure Decree.

¹⁰⁹ Article 4(3) Italian Procedure Decree.

¹¹⁰ AIDA, Country Report Italy, 2018 Update, April 2019, 20.

¹¹¹ Information provided by Accem, 2 August 2019.

¹¹² Article 57/6 §2(3) Belgian Aliens Act.

¹¹³ Sections 7(4) and (5) Hungarian Asylum Act.

¹¹⁴ Information provided by the Bulgarian Helsinki Committee, 31 July 2019.

¹¹⁵ *Ibid.*

¹¹⁶ Administrative Court of Sofia, 9th panel, Decision 2814, 24 April 2019; 14th panel, Decision 4841, 10 July 2019.

In **Serbia**, the Security Information Service (BIA) is also allowed to conduct security checks, based on which an application can be rejected. This was applied in one case concerning a Libyan family who had their asylum applications rejected because they were on the list of individuals whose presence on Serbian territory posed a threat to national security. The family has complained before the European Court of Human Rights (ECtHR) that their expulsion to Libya would violate Articles 2 and 3 of the European Convention on Human Rights (ECHR) due to their political affiliation, and under Article 13 ECHR due to an alleged lack of effective remedy in Serbia.¹¹⁷

Similar practices are visible in **Croatia**, where the determining authority is bound by the instructions issued by the Security and Intelligence Agency, without obtaining further information in case the asylum application is rejected,¹¹⁸ while in **Slovenia**, the rejection of an application for security reasons by the Criminal Police Directorate is part of the decision on international protection.¹¹⁹

Involvement of other actors

On top of the variety of national authorities which may intervene at first instance, agencies such as EASO and UNHCR are also allowed to provide assistance and support during the asylum procedure with a view to supporting the authorities and determining international protection needs.¹²⁰ Their respective role in enhancing the quality of asylum procedures and providing training will, however, be discussed in the next Chapters.

Involvement of EASO

Under the recast Asylum Procedures Directive, EASO mainly acts as an information provider, e.g. with regard to country of origin information (COI) and safe country concepts, and as a training provider, e.g. through the development of relevant guidelines, as will be discussed below.¹²¹ However, the Directive does not provide any legal basis for the provision of operational and technical support to Member States whose asylum and reception systems are experiencing particular pressure. Moreover, the EASO Regulation foresees that the Office has the mandate to “facilitate, coordinate and strengthen practical cooperation among Member States”,¹²² but it makes no reference to the direct involvement of EASO in conducting interviews and deciding on applications for international protection. On the contrary, it explicitly states that EASO “shall have no powers in relation to the taking of decisions by Member States’ asylum authorities on individual applications for international protection.”¹²³

Nevertheless, following the increase in arrivals in 2015 and 2016, and the resulting increase of asylum applications in the EU, EASO’s operational activities have grown significantly through its participation in special supportive measures in Member States such as **Cyprus**, **Greece** and **Italy**. The deployment of EASO Asylum Support Teams are based on Operating Plans which have been established by EASO in cooperation with each of these Member States. They set out in detail the conditions for deployment of EASO staff, identify targeted support measures and provide the

¹¹⁷ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, 30 June 2016, available at: <https://bit.ly/33xHp4r>.

¹¹⁸ Information provided by the Croatian Law Centre, 25 July 2019.

¹¹⁹ Information provided by PIC, 13 August 2019.

¹²⁰ For EASO, see Articles 1 and 2 of Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (hereafter “EASO Regulation”), OJ 2010 L132/11, available at: <https://bit.ly/33QH3FZ>; for UNHCR, see UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: <https://bit.ly/2ZiRnY7>, para 1.

¹²¹ Articles 4(3), 10(3), 37(3), 45(2) recast Asylum Procedures Directive.

¹²² Article 2(1) EASO Regulation.

¹²³ Article 2(6) EASO Regulation.

operational objective.¹²⁴ EASO's participation in different steps of the asylum procedure thus results from these Operating Plans as well as from domestic law provisions in some cases.

In **Greece**, the current Operating Plan foresees a role for EASO in conducting interviews in different asylum procedures, drafting opinions and recommending decisions to the Asylum Service,¹²⁵ as has been the case since 2016.¹²⁶ Moreover, following the amendments brought by Law 4540/2018, EASO is no longer restricted to the fast-track procedure and is now also involved in the regular procedure by conducting interviews and providing opinions to the Asylum Service. The role of EASO at first instance is thus explicitly foreseen in the Greek Asylum Act.¹²⁷

In **Cyprus**, the Operational and Technical Assistance Plan is valid until 31 December 2019 and expands the assistance that EASO has been providing to the country since 2014.¹²⁸ It aims at improving and enhancing the country's asylum and reception system, which includes providing support in the registration and examination of asylum applications. At national level, the Cypriot Refugee Law permits that EASO may be temporarily involved in conducting interviews.¹²⁹ This provision was triggered in 2017 through Ministerial Decree 187/2017 and thus enables EASO experts to conduct in-merit interviews.¹³⁰

In **Italy**, the Operating Plan of 2019 combines several targeted support measures and operational activities which aim *inter alia* at enhancing the capacity of the asylum system to prevent backlog of asylum claims and providing support to the quality and standardisation of asylum procedures.¹³¹ This includes helping with the lodging of applications for international protection. However, as opposed to its role in Greece and Cyprus, EASO's support to the determining authority in Italy does not involve conduct of interviews and drafting of opinions.

Moreover, a recent Operating Plan has been signed in June 2019 with **Malta**, which also foresees the provision of technical and operational assistance in the country until 31 December 2019.¹³² It mainly includes capacity building and backlog management support, as well as providing technical expertise and quality control tools.¹³³

Involvement of UNHCR

Many determining authorities also work in close collaboration with UNHCR. The UN Refugee Agency has been entrusted with the mandate to ensure international protection to refugees and, together with Governments, to seek solutions for refugees,¹³⁴ to ratify international conventions for the protection of refugees' and supervise their application,¹³⁵ and to issue interpretative guidelines on the meaning of provisions and terms contained in international refugee law instruments.¹³⁶

¹²⁴ Chapter 3 (Articles 13 to 18) of EASO regulation.

¹²⁵ EASO, *Operating Plan to Greece 2019*, December 2018, available at: <https://bit.ly/2W6vJB2>, 14.

¹²⁶ EASO, *Special Operating Plan to Greece 2017*, December 2016, available at: <http://bit.ly/2h1M2dF>, 9; EASO, *Operating Plan to Greece 2018*, December 2017, available at: <http://bit.ly/2BO6EAo>, 14.

¹²⁷ See Article 60(4)(b) Greek Asylum Act on the role of EASO in the fast-track procedure and see Article 36(11) L 4375/2016, inserted by Article 28(7) Greek Law 4540/2018, on the role of EASO in the regular procedure.

¹²⁸ EASO, *Operating Plan to Cyprus 2019*, December 2018 available at: <https://bit.ly/2CHCOAJ>.

¹²⁹ Article 13A(1A) Cypriot Refugee Law.

¹³⁰ Cypriot Ministerial Decree 187/2017, 9 June 2017, available in Greek at: <http://bit.ly/2G5dSDs>.

¹³¹ EASO, *Operating Plan to Italy*, December 2018; available at: <https://bit.ly/2MYTdqx>.

¹³² EASO, *Operating Plan to Malta 2019*, December 2019, available at: <https://bit.ly/2Z4nsP5>.

¹³³ *Ibid.*

¹³⁴ UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), <https://bit.ly/2ZbIQqv>, para 1.

¹³⁵ *Ibid.*, para 8(a).

¹³⁶ Such guidelines include the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status ("UNHCR Handbook") and subsequent "Guidelines on International Protection", as well as other

The recast Asylum Procedures Directive has further dedicated an Article to the role of UNHCR, which includes the right to have access to applicants and/or to information on individual applications for international protection, as well as to present its views to any competent authorities regarding individual applications for international protection at any stage of the procedure.¹³⁷

Accordingly, UNHCR has been granted an institutional role and competence in the asylum procedure at first instance in many AIDA countries.

In **Portugal**, the Immigration and Borders Service (SEF) is required to immediately inform UNHCR and the Portuguese Refugee Council (CPR), as an organisation working on its behalf, of all asylum applications lodged.¹³⁸ UNHCR and CPR are further entitled to provide their observations to the SEF at any time during the procedure.¹³⁹

In **Spain**, the OAR must inform UNHCR of all the asylum applications lodged and the latter participates in the asylum procedure by being part of the CIAR, where it has the right to intervene but not to vote.¹⁴⁰ Moreover, UNCHR may issue a binding opinion supporting the granting of protection during the border procedure. In such a case, the application cannot be considered as manifestly unfounded.¹⁴¹

In **Italy**, as explained above, each Territorial Commission is composed by at least 6 members, which includes an expert from UNHCR.¹⁴² UNHCR thus participates in the panel of the Territorial Commissions.

In **Austria**, UNHCR plays an active role in the processing of asylum applications in the airport procedure as it can issue binding opinions. Asylum applications can thus be rejected only upon approval of UNHCR, otherwise they must be processed in the regular procedure.¹⁴³

In **Belgium**, the law foresees that UNHCR may inspect all documents, including confidential documents, contained in the files relating to the application for recognition as a refugee, throughout the course of the procedure with the exception of the procedure before the Council of State.¹⁴⁴ It may further give an oral or written opinion to the Minister in so far as this opinion concerns the competence to determine the State responsible for the processing of an application for international protection, and to the CGRS, on his own initiative or at his request. If the CGRS deviates from this opinion, the decision must explicitly state the reasons for the deviation.¹⁴⁵

In **Romania**, UNHCR may intervene in certain cases to provide its views on applications and may be requested to confirm certain documents or other relevant information (e.g. registration of an applicant with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), refugee IDs issued by UNHCR etc.).

137 guidelines such as the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention ("2012 Detention Guidelines").
138 Article 39 recast Asylum Procedures Directive (Directive 2013/32/EU).
139 Articles 13(3), 24(1), 33 (3), 33-A(3) Portuguese Asylum Act.
140 Articles 17, 20, 28(5), 29, 37, 43, 82 Portuguese Asylum Act.
141 Information provided by Accem, 2 August 2019.
142 AIDA, Country Report Spain, 2018 Update, March 2019, 37.
143 Article 4(3) Italian Procedure Decree.
144 Information provided by asylkoordination österreich, 22 August 2019. See also Article 32(2) Austrian Asylum Act.
145 Article 57/23 bis Belgian Aliens Act.
145 *Ibid.*

In **Turkey**, prior to 2018, UNHCR assumed a key role in Turkey by assisting in the registration and interviews of international protection applicants.¹⁴⁶ However, UNHCR's role has been phased out in 2018, as it announced on 10 September 2018 the termination of its registration activities in Turkey.¹⁴⁷ DGMM thus took over all tasks relating to international protection. This being said, UNHCR maintains contact with the authorities and has a Host Country Agreement with Turkey, which was signed in 2016 and entered into force on 1 July 2018.¹⁴⁸ Moreover, UNHCR's operational update of June 2019 indicated that the Agency was still involved in the provision of support during interviews and drafting recommendations at the Ankara and Istanbul Decision centres,¹⁴⁹ but there is no further information available.

¹⁴⁶ AIDA, Country Report Turkey, 2017 Update, March 2018, 18.

¹⁴⁷ *Ibid.*, 14.

¹⁴⁸ UNHCR, *Turkey: Operational Update 2018 Highlights*, available at: <https://bit.ly/2Cr3tBB>.

¹⁴⁹ UNHCR, *Turkey Operational Update*, June 2019, available at: <https://bit.ly/2kshFVo>.

Article 4(1) of the recast Asylum Procedures Directive foresees that Member States shall ensure that determining authorities are provided with appropriate means, including sufficient competent personnel, to carry out their tasks. In practice, the ability to conduct a rigorous and fair assessment of asylum applications and to maintain protection standards may be affected by a lack of resources, subsequently resulting in implementation gaps of the CEAS and/or of national asylum legislation. Following chapter thus looks at the resources of determining authorities in terms of financing and staffing, thereby providing an overview of their size and capacity.

1. Financing of determining authorities

Case law of the ECtHR has emphasised that the duty to substantiate the application rests only *in principle* with the applicant,¹⁵⁰ and has acknowledged the difficulties applicants face in providing information supporting their statements with documentary and other evidence.¹⁵¹ As a result, it is crucial that determining authorities have sufficient financial resources at their disposal to conduct a thorough and rigorous assessment of the application, especially where it includes gathering information and evidence by their own means. The budget is thus a determinant factor for creating adequate working conditions and contributes to ensuring a fair and efficient asylum procedure.

The budget of determining authorities is provided by national authorities and is further covered by the Asylum Migration and Integration Fund (AMIF) in certain countries.

Funding through national authorities

In almost all AIDA countries, determining authorities receive their funding from the Ministry which supervises them, with the exception of **Croatia, Cyprus and Serbia** where the budget is provided by the national Ministry of Finance, while in **Greece** it is provided both by the Ministry of Economy and Development and the Ministry of Citizen Protection.¹⁵²

Following table provides an overview of the annual budget provided by Ministries to determining authorities in selected countries in 2018:

Country	Annual Budget - 2018
SE	€ 3,080,341,404.58
DE	€ 1,800,000,000.00
AT	€ 114,071,000.00
PT	€ 92,957,952.00
FR	€ 71,420,000.00

¹⁵⁰ ECtHR, *R.C. v. Sweden*, No 41827/07, Judgment of 9 March 2010, EDAL, available at: <https://bit.ly/2kG4fFy>, para 50; See also: UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection*, February 2019, available at: <https://bit.ly/2GqKLg5>, paras 195-202; UNHCR, *Beyond Proof - Credibility Assessment in EU Asylum Systems*, May 2013, available at: <https://bit.ly/2kHcTDJ>, 86-89.

¹⁵¹ ECtHR, *Said v. The Netherlands*, No 2345/02, Judgment of 5 July 2005, EDAL, available at: <https://bit.ly/2mkHO97>, para 49; See also UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection*, February 2019, available at: <https://bit.ly/2GqKLg5>; UNHCR, *Beyond Proof - Credibility Assessment in EU Asylum Systems*, May 2013, available at: <https://bit.ly/2kHcTDJ>, 86-89.

¹⁵² Information provided by the Greek Council for Refugees, 4 September 2019.

PL	€ 23,784,357.55
GR	€ 10,257,739.90
RO	€ 7,015,014.16
ES	€ 6,404,530.00
BG	€ 4,358,973.30
CY	€ 1,106,851.00
MT	€ 1,000,000.00
HU	€ 321,676.17
SI	€ 181,073.71

Source: AIDA.

The table demonstrates significant differences in the budget of determining authorities. **Sweden**¹⁵³ and **Germany** are the countries where the determining authority has by far the largest budget, which exceeds by thousands of times the budget of the **Slovenian** Migration Office.

The amount of the budget of determining authorities can further be an indicator of their mandate. As already explained above, some of them are involved in a variety of tasks which do not relate to asylum and have thus understandably been granted a larger budget. In 2018, the budget of the **Portuguese** SEF exceeded the budget of the **French** OFPRA, although there were 120,425 asylum applicants in France compared to only 1,285 applicants in Portugal.¹⁵⁴ This is because, on top of its role in examining applications for international protection, the SEF is a service that is responsible for checking on persons at the border, preventing organised crime involving irregular migration and trafficking in human beings, issuing passports and identification documents to foreign nationals, as well as conducting any other tasks related to these activities and to migratory movements.¹⁵⁵ Similarly, because it is responsible *inter alia* for migration as well as for the management of reception centres and of the state-run legal assistance scheme, the budget of the **Polish** OFF more than doubled the budget of the **Greek** Asylum Service and more than tripled the budget of the **Spanish** OAR in 2018, although the number of asylum applicants was largely higher in **Greece** (66,965) and in **Spain** (54,050) than in **Poland** (4,110) during that same year.¹⁵⁶

While it is extremely difficult to obtain a comprehensive overview on how the budget of determining authorities is allocated, information gathered through AIDA indicates that it is mostly spent for staff expenses. In **France** for example, 69% of OFPRA's budget was allocated to staff expenses in 2018 and in **Austria**, it represented 61,7% of the BFA's budget.¹⁵⁷ Similarly for the Asylum Service in **Greece**, out of the €10.2 million, €7.7 million were spent for staff expenses,¹⁵⁸ and in **Bulgaria**, the

¹⁵³ In the national currency, the budget of the Swedish Migration Agency represented 33,358,000,000 SEK. The budget was allocated as follows: 5,316,000,000 SEK for the general costs of the Migration Agency; 8,101,000,000 for financial aid and housing costs; 13,000,000 SEK for measures relating to migration policies; 305,000,000 for legal aid; 87,000,000 SEK for the enforcement of expulsions; 195,000,000 SEK for temporary financial support to municipalities for unaccompanied minors. Information provided by the Swedish Refugee Law centre, 22 August 2019.

¹⁵⁴ Eurostat, *Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)*, available at: <https://bit.ly/2lPmJmR>.

¹⁵⁵ SEF, *Mission*, available at: <https://bit.ly/2kbsvyS>.

¹⁵⁶ *Ibid.*

¹⁵⁷ Information provided by Forum réfugiés – Cosi, 14 August 2019; asylkoordination österreich, 22 August 2019.

¹⁵⁸ Rounded. In absolute numbers, the staff costs represented €7,702,801.90 out of €10,257,739.90 in 2018: Information provided by the Greek Council on Refugees, 4 September 2019.

staff costs of the SAR represented €3.7 million out of €4.3 million of the total budget.¹⁵⁹ The amount of a determining authority's budget, and more particularly the part that is allocated to staff expenses, can thus also be an indicator as to the size and the number of staff of a determining authority.

Other expenses reported in AIDA countries mainly included operational costs and equipment (e.g. buildings and facilities, IT-related expenses etc.) and, in countries where the determining authority is involved in other activities, certain types of services (e.g. reception centres, translation services, social and medical assistance, pocket money etc.).

Funding through AMIF

AMIF is a financial instrument that was set up for the period 2014-2020 with a total of €3,137 billion for the seven years.¹⁶⁰ It supports national and EU initiatives that promote the efficient management of migration flows and the implementation, strengthening and development of a common Union approach to asylum and immigration.¹⁶¹

In some countries, determining authorities have thus benefited from this Fund to cover part of their budget. AMIF funding covered €14.4 million of the budget of the Migration Agency in **Sweden**,¹⁶² around €4.5 million of the total budget of the SEF in **Portugal**,¹⁶³ around €3.5 million of the total budget of OFPRA in **France**, around €1.5 million of the total budget of the Migration Office in **Slovenia**,¹⁶⁴ around €705,100 of the total budget of the OFF in **Poland**,¹⁶⁵ and around €300,000 of the total budget of the Asylum Service in **Cyprus**.¹⁶⁶

In other countries, AMIF funding provided to determining authorities has been used to finance certain projects. In **Bulgaria** for example, the SAR has been allocated around €1.4 million for the period 2018 to 30 June 2019 to finance different project aiming *inter alia* at improving the quality of status determination procedures and of the living conditions in reception centres.¹⁶⁷ In **Greece**, two emergency assistance programmes are funded exclusively by AMIF: the first one, which represents approximately €1.9 million, aims at ensuring a fair and efficient asylum procedure in the context of the implementation of the EU-Turkey statement; while the second one, which reaches up to €8 million, aims at ensuring and enhancing access to a fair and efficient asylum procedure in Greece.¹⁶⁸

A lack of AMIF funding might further result in the suspension of activities that play a crucial role in ensuring a fair and effective asylum procedure. This has been visible in particular with regard to the provision of legal assistance to asylum seekers. In **Cyprus**, a call for proposals under AMIF with regard to legal assistance has not been issued in years, resulting in a lack of assistance provided by the authorities as well as a lack of funding for non-state actors to provide such assistance.¹⁶⁹ Similarly in **Austria**, the suspension of the provision of AMIF funding to certain organisations responsible for

¹⁵⁹ Rounded. In absolute numbers, the staff costs represented €3,779,896.71 out of €4,358,973.30 in 2018: Information provided by the Bulgarian Helsinki Committee, 31 July 2019.

¹⁶⁰ European Commission, *AMIF*, available at: <https://bit.ly/2kXC4zW>.

¹⁶¹ Article 3 Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC ("AMIF Regulation").

¹⁶² In absolute number, this represented €14,379,812.59 out of €3,094,721,217.18 in 2018. Information provided by the Swedish Refugee Law Centre, 22 August 2019.

¹⁶³ Information provided by the Portuguese Refugee Council, 13 August 2019.

¹⁶⁴ Information provided by PIC, 14 August 2019.

¹⁶⁵ Information provided by Helsinki Foundation for Human Rights, 7 August 2019.

¹⁶⁶ Information provided by the Cyprus Refugee Council, 2 September 2019.

¹⁶⁷ Information provided by the Bulgarian Helsinki Committee, 31 July 2019.

¹⁶⁸ Information provided by the Greek Council for Refugees, 4 September 2019.

¹⁶⁹ AIDA, Country Report Cyprus, 2018 Update, March 2019, available at: <https://bit.ly/2GAzny5>, 32

legal assistance has resulted in limiting access to legal aid for asylum seekers.¹⁷⁰ In **Poland**, funding provided under AMIF for legal assistance has been suspended since mid-2015.¹⁷¹ NGOs, who reached out to the Ministry of Interior and the European Commission in vain, are thus forced to limit the provision of legal assistance.¹⁷² Instead, in 2018, AMIF funding has been distributed among local governors (*Voivodes*), who implemented 5 projects with NGOs involving migrants but not asylum seekers.¹⁷³ It should be noted, however, that a state-funded legal aid scheme was introduced allowing the participation of certain NGOs.¹⁷⁴ In **Hungary**, the Ministry of Interior withdrew all the calls for tenders funded by AMIF in the beginning of 2018.¹⁷⁵ The withdrawn calls concerned *inter alia* the improvement of reception conditions for unaccompanied children, the support of their integration, legal assistance to asylum seekers as well as housing and integration programmes.¹⁷⁶

2. Number of staff in determining authorities

Staff of the determining authority refers to all personnel working in the determining authority, which includes personnel in charge of interviewing applicants for international protection; personnel responsible for examining, assessing, and taking a decision on the application for international protection; supervisors of decision-makers and management staff; personnel responsible for providing country of origin information (COI); as well as legal representatives and advisers.

The following table provides a general overview of the evolution of the total number of staff in selected determining authorities across Europe, based on figures made available through AIDA:

Evolution of staff in selected determining authorities: 2015-2019					
*	End 2015	End 2016	End 2017	End 2018	End June 2019
DE	1,760	6,891	7,800	6,680	6,574.1 FTEs
SE	7,000	8,432	8,562	6,676	6,109
AT	750	1,284	1,383	1,355	1,121
FR	497	800	800	795	813.9 FTEs
GR	300	654	:	679	686
BG	303	357	303	402	382
ES	:	141	140	205	197
HU	:	234	434	302	128
CY	25	32	10	15	50
MT	24	19	13	13	32

Source: AIDA.

Two observations can be made from the table above. First, the number of staff has significantly increased in most countries since 2015. Second, the total number of staff in determining authorities

¹⁷⁰ AIDA, Country Report Austria, 2018 Update, March 2019, 30-31.

¹⁷¹ AIDA, Country Report Poland, 2018 Update, February 2019, 21-22.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ Information provided by the Helsinki Foundation for Human Rights, 29 September 2019.

¹⁷⁵ AIDA, Country Report Hungary, 2018 Update, March 2019, 119.

¹⁷⁶ BelügyiAlapok, *Tájékoztatás pályázati kiírások visszavonásáról*, 24 January 2018, available in Hungarian at: <http://bit.ly/2CzR1Nv>.

greatly varies across Europe. While the BAMF in **Germany** has as many as 6,574.1 full-time equivalent (FTE) staff as of June 2019, the Office of the Refugee Commissioner (RefCom) in **Malta** has as little as 32 staff members.

However, depending on the mandate of the determining authority, the staff may be involved in a variety of tasks unrelated to the examination of applications for international protection. The number of caseworkers responsible for processing asylum claims may thus be very little compared to the total number of staff in the determining authority. In **Sweden** for example, out of 6,109 officials, only 913 are caseworkers responsible for processing asylum applications.¹⁷⁷ This is also the case for many other determining authorities such as **Germany** (2,038.9 FTE caseworkers out of 6,574.1 FTE officials),¹⁷⁸ **Austria**, (488 caseworkers out of 1,121 officials)¹⁷⁹ or **France** (338.4 FTE caseworkers out of 813.9 FTE officials).¹⁸⁰

Furthermore, countries such as **Greece**, **Cyprus** and **Italy** receive extensive support from EASO experts, who are not counted as part of the staff in determining authorities in the above table. As of September 2019, EASO had deployed a total of 510 staff in **Greece**, 296 in **Italy**, 71 in **Cyprus** and 49 in **Malta**.¹⁸¹

Evolution of staff compared to number of applicants

The difference of staffing in determining authorities is due to a variety of factors such as the scope of the mandate of the determining authority, its tasks, the volume of cases of which it is responsible and the available financial resources. Nevertheless, the variation in the number of staff is also inevitably linked to the variation in the number of applications for international protection. In recent years, the EU as a whole has experienced a substantial increase and a subsequent steady decrease in the number of people seeking international protection.¹⁸² In this context, determining authorities have adapted their staffing levels in accordance with existing needs. Increasing the number of staff is considered by certain Member States as a way to improve the efficiency of national asylum systems and to optimise available resources, with the long-term aim to decrease backlog and processing times.

In 2018 for example, the asylum procedure ('track 4') in the **Netherlands** was significantly delayed by a lack of personnel within the IND - and the delay in the asylum procedure persisted in 2019.¹⁸³ The rest and preparation period, which should last maximum 6 days before the regular asylum procedure starts, took approximately 12 months in practice in 2018.¹⁸⁴ As a result, the IND significantly increased the number of its staff.¹⁸⁵ Similarly in **Belgium**, the Aliens Office and the CGRS decided to increase their staff throughout 2019, in order to decrease backlog and processing times.¹⁸⁶ Also relevant is the amended legislative framework in **Italy**, which allows for the temporary establishment of additional sections for the Territorial Commissions with a Ministerial Decree, should the caseload

¹⁷⁷ Information provided by the Swedish Refugee Law Centre, 22 August 2019.

¹⁷⁸ Information provided by Informationsverbund Asyl und Migration, 30 August 2019.

¹⁷⁹ Information provided by asylkoordination österreich, 22 August 2019.

¹⁸⁰ Information provided by Forum réfugiés - Cosi, 14 August 2019.

¹⁸¹ EASO, 'Over 900 EASO personnel deployed in operations in four EU Member States', 8 October 2019, available at: <https://bit.ly/2M46ux9>.

¹⁸² According to Eurostat figures, 602,920 applications were lodged in the EU in 2018, compared to 1,325,505 in 2015 and 1,236,285 in 2016.

¹⁸³ Information provided by the Dutch Council for Refugees, 30 September 2019.

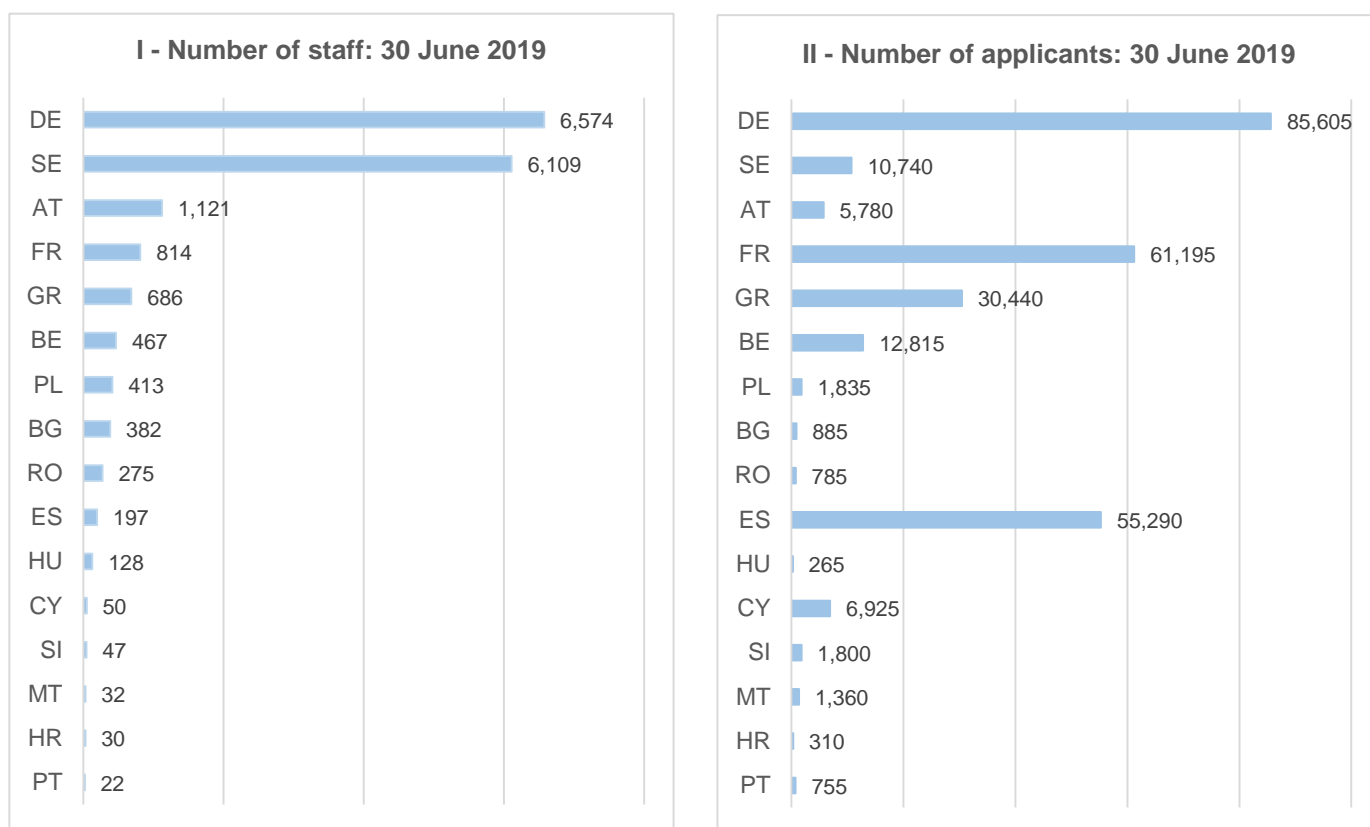
¹⁸⁴ AIDA, Country Report Netherlands, 2018 Update, March 2019, 19.

¹⁸⁵ EASO, *Annual Report on the Situation of Asylum in the European Union 2018*, June 2019, 104.

¹⁸⁶ *Ibid.*, 102.

so require.¹⁸⁷ In March 2019, five temporary sections have thus been established in Milan, Genova, Bologna, Florence and Rome. They will be operating until November 2019.¹⁸⁸

The following charts provide a general overview of the total number of staff in determining authorities compared to the number of asylum applications in selected EU Member States as of 30 June 2019:



Source: AIDA (I) and Eurostat (II).

The above charts demonstrate that determining authorities which have an important number of staff are, in principle, dealing with a higher volume of asylum applications. However, they also nuance the fact that the number of staff in determining authorities is defined by the number of applications of international protection, as some determining authorities have registered a higher number of asylum applications but have a lower number of staff and *vice-versa*. The **Swedish** Migration Agency for example has more than seven times the number of staff of the **French** OFPRA (6,109 staff in Sweden compared to 813.9 FTEs in France), but France registered a number of asylum applications that is five times higher than in Sweden (55,290 applications in France compared to 10,740 in Sweden as of June 2019). As already explained, this is due *inter alia* to the varying mandate of the respective determining authority. Similarly, despite the low number of staff within the OAR, **Spain** is dealing with a significantly higher amount of asylum applicants compared to other countries.

This being said, a correlation between the number of staff in determining authorities and the number of applicants for international protection is visible when looking at their fluctuations throughout the years.

In **France**, OFPRA has marked regular staff increases since 2015,¹⁸⁹ reaching 813.9 FTE as of 30 June 2019.¹⁹⁰ During that same period, the number of applicants in France increased for four

¹⁸⁷ Italian Decree Law 113/2018, implemented by Law 132/2018.

¹⁸⁸ Information provided by ASGI, 19 August 2019.

consecutive years, reaching 120,425 in 2018 - the highest level recorded so far - compared to 76,165 in 2015.¹⁹¹ As of 30 June 2018, there were 61,195 asylum applicants in France.¹⁹²

In **Greece**, the staff of the Asylum Service more than doubled from 300 persons in 2015 to 686 as of June 2019,¹⁹³ a period during which the number of applicants consistently increased. In 2018, Greece became the country with the third highest number of applications lodged in the EU (66,965) after France (120,425) and Germany (184,180).¹⁹⁴

Spain also recently experienced a significant increase in the number of asylum applicants, with applications doubling from 15,755 in 2016 to 36,605 in 2017 and consistently rising from 54,050 in 2018 to 55,290 as of June 2019.¹⁹⁵ Similarly, the number of staff in the OAR increased from 141 staff in 2016 to 205 in 2018. It should be noted that at the end of 2018, it was announced that 70% of the persons working at the OAR would cease their function due to the expiry and non-renewal of their contracts.¹⁹⁶ They have thus been replaced by personnel working within different departments of the Spanish administration.¹⁹⁷ As of 30 June 2019, there were 197 staff in the OAR and an extraordinary call for public employment that was published in July 2019 foresees the employment of an additional 70 persons.¹⁹⁸

Germany is the Member State where the increase of staff in the determining authority has been most striking, and thus merits particular attention.



Source: AIDA.

¹⁸⁹ According to EASO, OFPRA has seen regular staff increases since 2015 as a result of increases in its job ceiling (+55 FTEs in 2015, +140 FTEs in 2016, +115 FTEs in 2017 and +15 FTEs in 2018). The draft Finance Law of 2019 brings the job ceiling for the Office to 805 FTEs (+10 FTEs as part of the pilot in French Guiana). See EASO, *Annual Report on the Situation of Asylum in the European Union 2018*, June 2019, 103.

¹⁹⁰ Information provided by Forum réfugiés - Cosi, 14 August 2019.

¹⁹¹ Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded); available at: <https://bit.ly/2YwFJt1>.

¹⁹² Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Monthly data (rounded), available at: <https://bit.ly/2IYFjck>.

¹⁹³ Information provided by the Greek Council for Refugees, 4 September 2019.

¹⁹⁴ Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded); available at: <https://bit.ly/2YwFJt1>.

¹⁹⁵ Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Monthly data (rounded), available at: <https://bit.ly/2IYFjck>.

¹⁹⁶ El Mundo, *La Oficina de Asilo y Refugio, a punto de cerrar por colapso absoluto*, 19 November 2018, available in Spanish at: <https://bit.ly/2qRBgxM>.

¹⁹⁷ AIDA, Country Report Spain, 2018 Update, March 2019, 15.

¹⁹⁸ Information provided by Accem, 10 September 2019.

The chart above indicates that the number of staff within the BAMF was multiplied by four within a single year, as it increased from 1,760 staff in 2015 to 6,891 in 2016. This increase seems to correlate with the rise in the number of applicants in the country as a result of the increase in arrivals which led to an increase of 476,510 applications in 2015 to 745,155 in 2016.¹⁹⁹ In 2018, Germany was still the country receiving the most applications in the EU for the seventh consecutive year and, as of 30 June 2019, the staff of the BAMF remained stable at 6,574.1 FTEs.²⁰⁰ It should be noted, however, that the actual number of persons employed by the BAMF is likely to be significantly higher, as one “full time equivalent” might cover two or more staff members with part-time jobs. In addition, 154.7 FTEs have been delegated to the BAMF by other governmental entities.²⁰¹

Interestingly, the reverse trend, whereby the number of staff in the determining authority seems to have decreased following a drop in the number of applications, is also visible in some European countries. In **Sweden** for example, the number of asylum applicants decreased from 26,325 in 2017 to 21,560 in 2018, while the number staff equally decreased from 8,562 in 2017 to 6,676 in 2019.²⁰² Similarly in **Poland**, the number of staff went down from 45 in 2016 to 36 in 2018, along with the significant decrease of the number of asylum applicants (12,305 in 2016 to 5,045 in 2017 and 4,110 in 2018).²⁰³

¹⁹⁹ Eurostat, *Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)*, available at: <https://bit.ly/2YwFJt1>.

²⁰⁰ Information provided by Informationsverbund Asyl und Migration, 30 August 2019.

²⁰¹ *Ibid.*

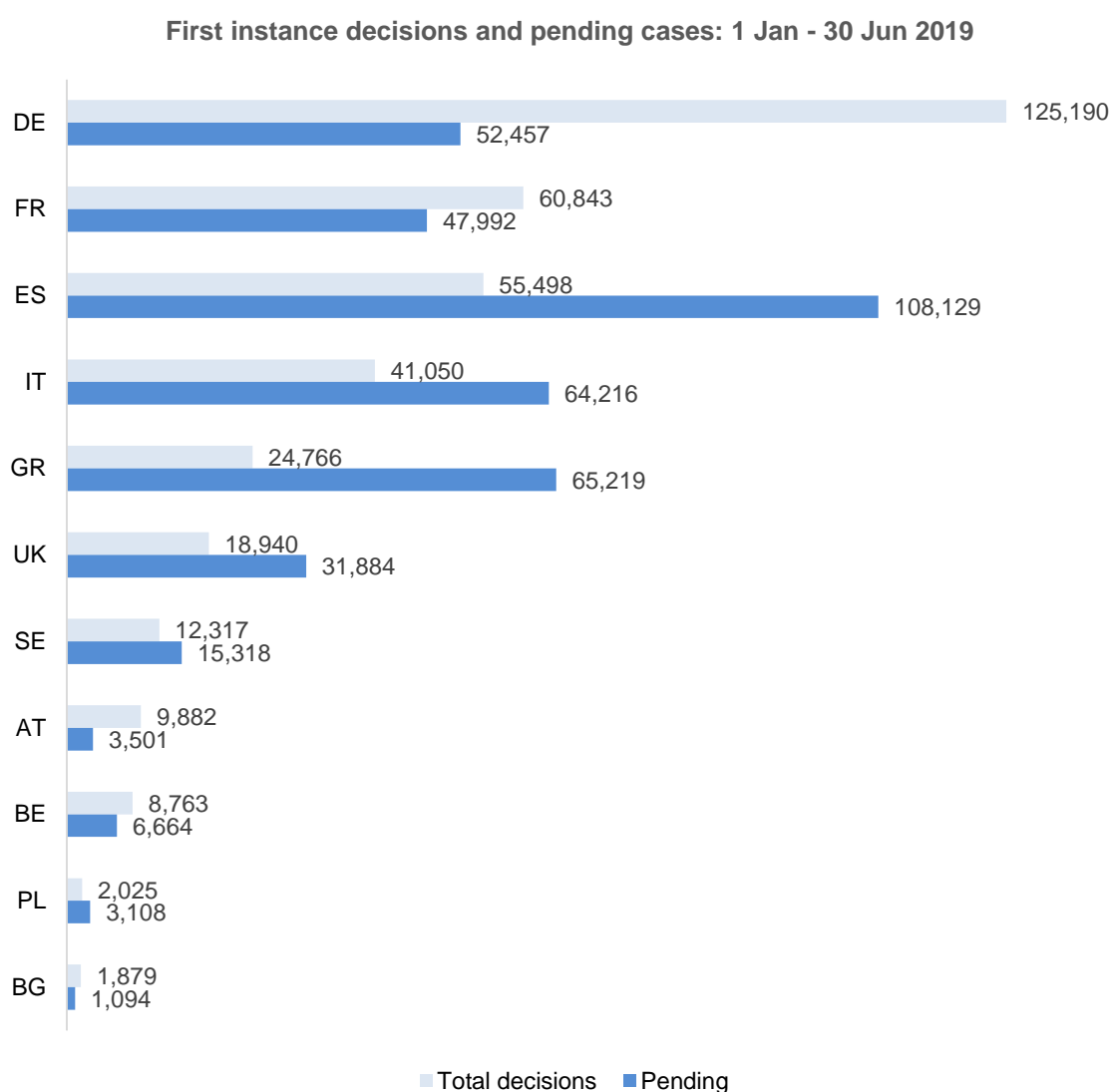
²⁰² Information provided by the Swedish Refugee Law Centre, 22 August 2019.

²⁰³ Eurostat, *Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)*; available at: <https://bit.ly/2YwFJt1>.

Backlog of pending cases and average processing times

Increasing or decreasing the number of staff in determining authorities depending on existing needs cannot be considered as a long-term solution to improve the national asylum system. Asylum caseloads in individual countries can fluctuate significantly within a relatively short period of time and backlogs of pending cases can increase or drop exponentially from one year to another.²⁰⁴ These fluctuations are reported in almost every Member State, regardless of the number of staff in their respective determining authority.

Following chart provides a general overview of the total number of first-instance decisions compared to the number of pending cases in selected countries during the first half of 2019:



Source: AIDA.

Figures of the number of pending cases provided in the chart above clearly indicate that determining authorities are facing important issues in processing applications for international protection. In several countries such as **Cyprus, Greece, Italy, Malta, Poland, Sweden, Spain, and the United**

²⁰⁴ ECRE, *Housing out of reach? The reception of refugees and asylum seekers in Europe*, May 2019, available at: <https://bit.ly/2RK0ivp>, 11.

Kingdom, the number of pending cases was significantly higher than the total number of decisions issued at first instance.

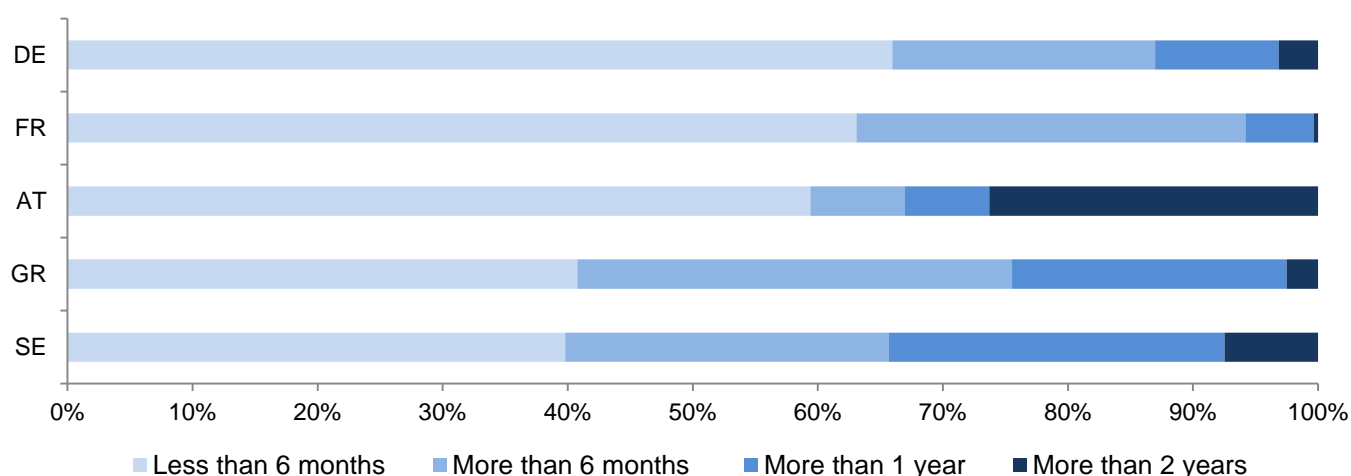
This is particularly striking in **Cyprus**, where the number of pending cases was more than eight times higher than the total number of decisions issued during the first six months of 2019. The number of pending cases more than tripled in the country in two years, as it concerned only 3,843 cases in 2017.²⁰⁵ In **Spain**, the number of pending cases also more than tripled since 2017, increasing from 35,261 to 108,129 as of 30 June 2019.²⁰⁶ Spain was by far the country with the highest number of pending cases as of 30 June 2019. **Greece** also reported a considerable absolute increase of pending cases in recent years, as it almost doubled within two years from 36,340 in 2017 to 65,219 as of 30 June 2019.²⁰⁷

In other countries, the number of pending cases did not necessarily exceed the number of decisions issued by determining authorities, but it remained at a very high level. This is the case in **France** and **Germany**, where the total of pending cases reached 47,992 and 52,457 respectively.²⁰⁸

Another important indicator of the determining authorities' activities are processing times. The recast Asylum Procedures Directive provides that Member States should conclude the examination procedure within the maximum six months' time of the lodging of the application,²⁰⁹ but in practice deadlines for examining an asylum claim are not strictly observed in most countries. For asylum seekers, however, the consequences of unduly lengthy procedures are crucial, as they leave them in a state of prolonged uncertainty and limbo.²¹⁰

Following chart provides an overview of the average processing time of pending cases in selected European countries from 1 January to 30 June 2019.

Average processing time of pending cases: 1 Jan - 30 Jun 2019



Source: AIDA.

²⁰⁵ AIDA, Country Report Cyprus, 2018 Update, March 2019, 23.

²⁰⁶ OAR, Asylum statistics, 1 January to 30 June 2019, available at: <https://bit.ly/2kD3qx2>.

²⁰⁷ AIDA, Country Report Greece, 2017 Update, March 2018, 8; Information provided by the Greek Council for Refugees, 4 September 2019.

²⁰⁸ Information provided by Forum réfugiés – Cosi, 13 August 2019; Informationsverbund Asyl und Migration, 30 August 2019.

²⁰⁹ Article 31(3) recast Asylum Procedures Directive.

²¹⁰ ECRE, *The length of asylum procedures in Europe*, October 2016, available at: <https://bit.ly/2LZvyDr>.

The chart demonstrates that most pending cases are processed within 6 months, but it also clearly indicates that the number of cases that are processed during an average period of more than 6 months remains significant and must therefore not be underestimated. In **France**, the average processing time was less than 6 months for a majority of cases (30,282 cases), but a considerable number of pending cases were processed during a period exceeding 6 months (17,710 cases).²¹¹ In **Sweden**, however, the average processing times was more than 6 months for most cases (9,223 cases compared to 6,095 cases which took less than 6 months).²¹² It should be noted that both had set an objective to shorten the asylum procedure: in **France**, the Government had fixed in 2017 a target processing time of 2 months for applications examined by OFPRA,²¹³ while in **Sweden** the Migration Agency launched in 2018 the pilot project ASYL 360 with the ambition to manage within 30 days at least 50% of the total asylum caseload.²¹⁴ Despite their willingness to speed up the asylum procedure, certain determining authorities thus seem to face important difficulties in addressing the number of applications for international protection.

Processing times further remain a serious matter of concern in **Cyprus** and **Greece**. In **Cyprus**, processing time exceeded the 6 months period in 2018 and, in cases of well-founded applications, the average time taken for the issuance of a decision took approximately 2-3 years.²¹⁵ Similarly in **Greece**, it was reported in 2018 that the interview of several asylum seekers had been scheduled between 2022 and 2025, i.e. several years after the lodging of their application.²¹⁶ During the first half of 2019, the average processing time exceeded 6 months in most cases in Greece (26,597 cases were processed within 6 months and 38,622 cases were processed for a period of more than 6 months).²¹⁷ More worryingly, it should be noted that the overall length of processing times was significantly higher than in other countries, as it took more than a year in 14,315 cases and more than two years in 1,639 cases.²¹⁸

While most determining authorities have increased their staff in recent years, the figures provided above demonstrate that both case processing times as well as the output of determining authorities in terms of decisions continued to be modest during 2018 and the first half of 2019.

²¹¹ Information provided by Forum réfugiés - Cosi, 14 August 2019.

²¹² Information provided by Swedish Refugee Law Centre, 22 August 2019.

²¹³ Le Monde, 'Le gouvernement fait de la réduction du délai de demande d'asile une des clés du plan migrants', 12 July 2017, available in French at: <https://goo.gl/rz18KD>.

²¹⁴ EASO, *Annual Report on the Situation of Asylum in the European Union 2018*, June 2019, 22.

²¹⁵ AIDA, Country Report Cyprus, 2018 Update, March 2019, 30.

²¹⁶ AIDA, Country Report Greece, 2018 Update, March 2019, 43.

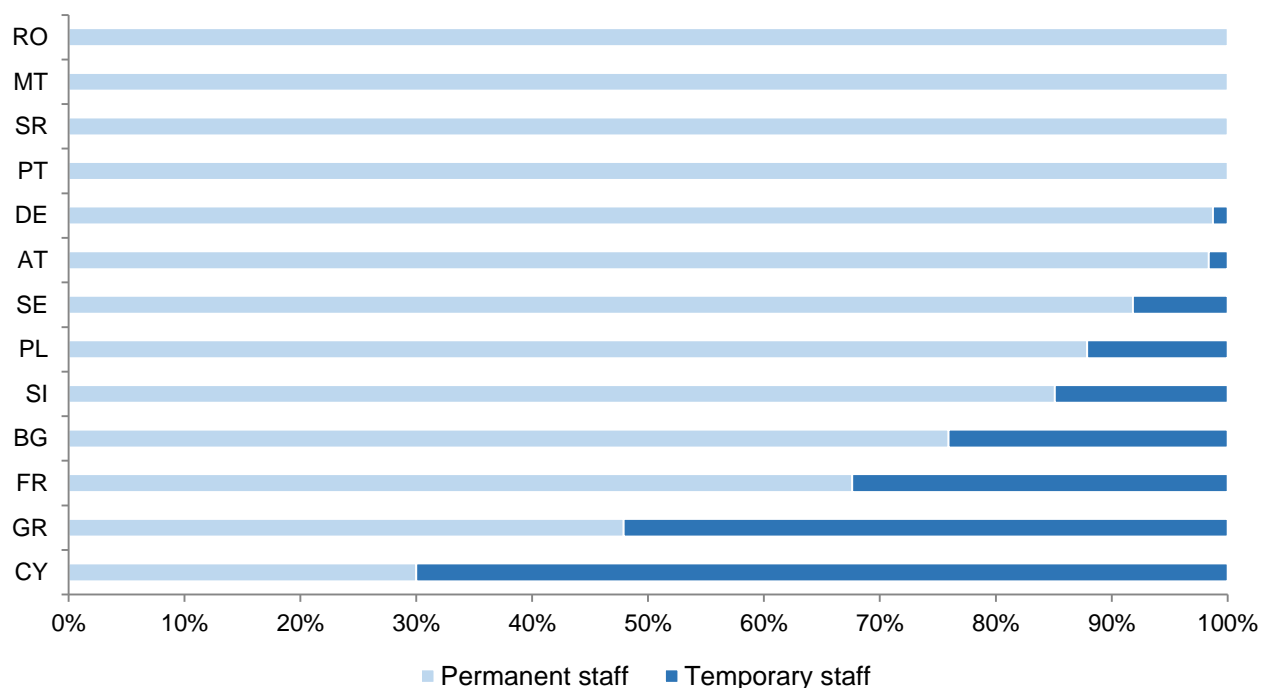
²¹⁷ Information provided by the Greek Council for Refugees, 4 September 2019.

²¹⁸ Information provided by the Greek Council for Refugees, 4 September 2019.

Type of employment

Another element that should be mentioned when looking at the staff in determining authorities is the type of employment. Following table provides figures on the number of permanent staff and temporary staff out of the total number of staff in selected AIDA countries:

Staff of determining authorities by type of employment - 30 June 2019



Source: AIDA.

The table indicates that in most determining authorities are either composed of a majority of permanent staff (**Germany, Sweden, Austria, France, Bulgaria, Poland, Slovenia**) or exclusively of permanent staff (**Romania, Malta, Serbia, Portugal**). Where the staff is permanently recruited, it means increased stability and ensures sustainable capacity for the determining authority, as the staff is, in principle, already trained and has enhanced its experience and knowledge in the field of international protection throughout the years.

On the contrary, the presence of temporary staff means less planning perspectives and less stability, resulting *inter alia* from regular rotations of staff. As indicated in the table above, **Greece** and **Cyprus** are the only countries where the number of temporary staff is higher than the number of permanent staff.

3. Profile of caseworkers in determining authorities

Another interesting aspect of the composition of a determining authority relates to the profile of caseworkers who are responsible for processing applications for international protection.

Gender of caseworkers

The recast Asylum Procedures Directive provides that examination procedures should be gender-sensitive, with a view to ensuring substantive equality between female and male asylum applicants.²¹⁹ In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution.²²⁰ This includes the obligation for Member States to provide, wherever possible, for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner.²²¹

Following table provides an overview of the number of male and female caseworkers based on figures made available in 7 AIDA countries:

Gender of caseworkers in selected countries: 30 June 2019		
*	Male	Female
AT	57%	43%
BG	47%	53%
FR	33%	67%
MT	32%	68%
PL	18%	82%
PT	40%	60%
SE	30%	70%
SE	31%	69%

Source: AIDA.

The table indicates that in a majority of countries, the number of female caseworkers is significantly higher than the number of male caseworkers, with the exception of **Austria**. The presence of a significant number of female caseworkers in determining authorities may thus facilitate the possibility to assign a female caseworker to a specific case, which is crucial taking into consideration that asylum cases involving gender-based violence often concern women and girls.²²² However, this does not mean that it is systematically applied in practice. In **Malta** for example, the practice of appointing an interviewer and an interpreter of the gender preferred by the applicant is not systematic. Instead, an explicit request to this end has to be made either by the applicant or by his or her legal representative before the interview is carried out.²²³ In **Sweden**, the Migration Agency is also not legally bound to provide an interpreter or interviewer of the gender that the asylum applicant requested.²²⁴

²¹⁹ Recital 32 recast Asylum Procedures Directive.

²²⁰ *Ibid.*

²²¹ Article 15(3) recast Asylum Procedures Directive.

²²² See European Fundamental Rights Agency (FRA), *Thematic focus: Gender-based violence*, 2016, available at: <https://bit.ly/2kjEsmm>; European Women's Lobby, *From conflict to peace? #womensvoices*, 2016, available at: <https://bit.ly/2k5Ci9M>, 4.

²²³ AIDA, Country Report Malta, 2018 Update, March 2019, available at: <https://bit.ly/2lyU9pU>, 20.

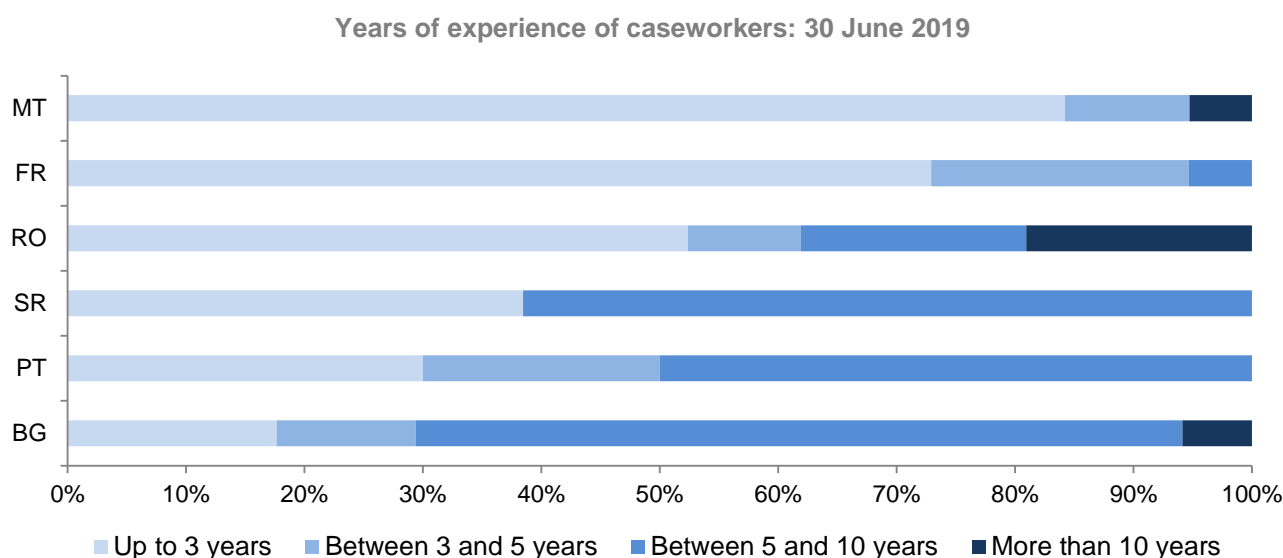
²²⁴ AIDA, Country Report Sweden, 2018 Update, March 2019, 22.

Nevertheless, in the countries mentioned in the table such as **Austria**,²²⁵ **Bulgaria**,²²⁶ **France**,²²⁷ and **Poland**,²²⁸ the law provides for a choice of interviewer and/or interpreter according to gender considerations. In **Austria** and **Bulgaria**, the law further provides that the authorities must demonstrate that they have informed the asylum applicant of the possibility to be interviewed by an official of the same sex.²²⁹

Years of experience of caseworkers

EU law obliges Member States to ensure that the personnel of the determining authority is adequately trained as will be discussed below,²³⁰ but it does not provide further specific requirements for caseworkers to be able to take over their duties, e.g. as regards academic and/or professional background. Nevertheless, looking at the years of experience of caseworkers in determining authorities can be an indicator as to their expertise and their knowledge of the field of international protection. It is not, however, an indicator of quality: a caseworker with little experience can take decisions meeting higher quality standards than a caseworker with extensive experience and *vice versa*.

Information on the years of experience of caseworkers as of 30 June 2019 was made available only in 6 AIDA countries and indicates different findings:



Source: AIDA.

In three of the above countries, namely **Malta**, **France** and **Romania**, it appears that most caseworkers have up to 3 years of experience. In **France** for example, out of the total of 338.4 FTEs caseworkers, 235.4 FTE have up to 3 years of experience.²³¹ Similarly in **Malta**, out of the 19

²²⁵ Article 20 Austrian Asylum Act.

²²⁶ Article 63(5) Bulgarian Law on Asylum and Refugees.

²²⁷ Article L.723-6 French CESEDA.

²²⁸ Article 69 Polish Law on Protection.

²²⁹ Article 20 Austrian Asylum Act; ; Article 58(8) Bulgarian Law on Asylum and Refugees.

²³⁰ Article 4(3) recast Asylum Procedures Directive.

²³¹ Information provided by Forum réfugiés – Cosi, 14 August 2019.

caseworkers responsible for processing asylum applications, 16 have up to 3 years of experience;²³² and out of the 21 caseworkers in **Romania**, 11 have also up to 3 years of experience.²³³

On the contrary, in **Serbia, Bulgaria** and **Portugal**, the majority of caseworkers have more than 3 years of experience. In **Bulgaria**, out of the total 34 caseworkers, 22 have between 5 years and 10 years of experience.²³⁴ Similarly in **Serbia**, out of the 13 caseworkers responsible for processing asylum applications, 9 have between 5 years and 10 years of experience,²³⁵ while in **Portugal**, out of 10 caseworkers, two caseworkers have between 3 to 5 years of experience and five have between 5 and 10 of experience.²³⁶

4. Training of staff in determining authorities

Training of caseworkers and other staff in determining authorities is a crucial component in the development of a fair and efficient CEAS. Given the complexity of the task the determining authorities are entrusted with and the impact their decisions have on individuals' lives, the importance of quality initial and refresher training cannot be overestimated.

This section will first look into the legal framework on training set out in EU law as well as the training tools developed by EASO, and subsequently provide an analysis of some key features of the training programmes used by the determining authorities in AIDA countries.

Training in the EU asylum *acquis*

The crucial role of training in asylum systems is acknowledged in the EU asylum *acquis*. On the one hand, the recast Asylum Procedures Directive, the recast Reception Conditions Directive, the Qualifications Directive and the Dublin III Regulation include obligations for Member States to provide staff of determining and reception authorities with the necessary training to perform their duties under the respective Directives and Regulation.²³⁷ The EASO Regulation, on the other hand, includes training in the areas of practical cooperation the Agency is required to provide support to.²³⁸

Training requirements for personnel of the determining authorities laid down in the recast Asylum Procedures Directive are defined in rather general terms. Member States are under an obligation to ensure that they are “properly trained”²³⁹ on a set of elements listed in the EASO Regulation.²⁴⁰ These include not only core aspects such as international human rights and the EU asylum *acquis*; interview techniques and the production and use of COI, but also issues related to the handling of applications of vulnerable applicants as well as the use of medical and legal reports in asylum procedures.

In line with the emphasis on identification of – and safeguards for – vulnerable applicants in the second generation of EU asylum instruments, and reflecting the core function of the personal interview in the asylum process, additional requirements are imposed on staff entrusted with

²³² Information provided by aditus foundation, 26 August 2019.

²³³ Information provided by Felicia Nica, 12 August 2019.

²³⁴ Information provided by the Bulgarian Helsinki Committee, 31 July 2019.

²³⁵ Information provided by the Belgrade Centre for Human Rights, 19 July 2019.

²³⁶ Information provided by the Portuguese Refugee Council, 13 August 2019.

²³⁷ Article 4(3) recast Asylum Procedures Directive; Article 29 recast reception Conditions Directive; Article 37 recast Qualifications Directive; Article 35(3) Dublin III Regulation No 604/2013/EU 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 Member States by a third-country national or a stateless person (recast) (hereafter ‘Dublin III Regulation’), OJ 2013 L 180/31.

²³⁸ Article 6 EASO Regulation.

²³⁹ Article 4(3) recast Asylum Procedures Directive.

²⁴⁰ See Article 6(4)(a) to (e) EASO Regulation.

conducting interviews with applicants for international protection. This includes, as already explained, adopting a gender-sensitive approach during interviews, with a view to enabling both female and male applicants to speak about their past experiences in cases involving gender-based persecution.²⁴¹ Moreover, Member States must ensure that such staff members have “acquired general knowledge of problems which could adversely affect the applicant’s ability to be interviewed, such as indications that the applicant may have been tortured in the past”.²⁴² It should be noted that the latter is not formulated explicitly as a training requirement in the Directive but, as discussed below, EASO training tools relating to interview techniques and vulnerable groups have now fully incorporated this aspect.

The establishment of specialised determining authorities is a key feature of the recast Asylum Procedures Directive and instrumental in achieving better quality first instance decisions. At the same time, the Directive also provides flexibility for Member States to cope with increasing caseloads or crisis situations. One such example, already mentioned above, is the possibility for Member States to temporarily involve personnel of another authority in conducting personal interviews on substance of applications, where they are confronted with large numbers of applicants applying for international protection simultaneously.²⁴³ The lack of expertise of such staff and the risks of lower quality interviews their involvement inevitably entails is partly anticipated in the directive. Under the Directive, these persons must have received training on the same topics and acquired the same knowledge on problems adversely affecting applicants’ ability to be interviewed as determining authorities’ staff, prior to their deployment. To ECRE’s knowledge, this provision has not been applied so far and therefore the feasibility in practice of providing full training to staff from other authorities on a complex area of law within a short period of time remains untested.

Beyond training requirements for staff of the determining authorities, and personnel tasked with interviewing applicants in particular, the EU asylum *acquis* also imposes training obligations at different levels, on Member States vis-à-vis staff members of other authorities engaging with applicants for international protection.

Firstly, staff of national authorities likely to receive asylum applications but not competent for their registration should receive training on how to refer applicants to the relevant authorities for the lodging of their claim. In this regard, proper training on their responsibilities in upholding the right to asylum guaranteed under Article 18 EU Charter of Fundamental Rights, in addition to straightforward instructions on their duty to inform third country nationals on where and how to lodge an application for international protection,²⁴⁴ is key. The standard set by the recast Asylum Procedures Directive for such training - “the necessary level of training which is appropriate to their tasks and responsibilities” – is rather obscure and therefore difficult to assess in practice.²⁴⁵

Secondly, in the spirit of addressing the special reception needs of vulnerable groups, staff of reception authorities working with unaccompanied minors or torture or serious acts of violence victims must have had and continue to have “appropriate training”, according to the recast Reception Conditions Directive,²⁴⁶ while the same standard is set with regard to staff of Dublin units working with unaccompanied children.²⁴⁷

²⁴¹ Recital 32 and Article 15(3) recast Asylum Procedures Directive.

²⁴² Article 14(1) recast Asylum Procedures Directive.

²⁴³ Allowed under the recast Asylum Procedures Directive where interviews cannot be timely conducted due to such situation, see Article 14(1) recast Asylum Procedures Directive.

²⁴⁴ Information provision at the border on the possibility to apply for international protection is non-existent in many AIDA countries, while it is not necessarily comprehensible in others. See AIDA, *Access to Protection in Europe*, October 2018, available at: <https://bit.ly/2kaGm8K>, 18-21.

²⁴⁵ Article 6(1) recast Asylum Procedures Directive.

²⁴⁶ Article 24(4) and 25(1) recast Reception Conditions Directive.

²⁴⁷ Article 6(4) Dublin III Regulation.

Thirdly, under the recast Reception Conditions Directive, authorities and other organisations implementing the Directive must have received “basic” training with regard to the needs of both male and female applicants.²⁴⁸

While setting three different standards for the level of training required – appropriate, necessary and basic – the respective asylum instruments lack any detail as to the type and content of the training required, unlike the relevant provisions for the staff of determining authorities. This leaves significant flexibility for Member States in fulfilling their training obligations with regard to the authorities other than the determining authorities.

EASO training methodology and tools

Since it became operational in 2011, supporting Member States in training activities has been a core activity for the Agency and has served training needs primarily of caseworkers and other staff involved in the examination of applications for international protection, but also of policy officers, COI experts and even managers and reception authorities.

The training curriculum remains EASO’s flagship training tool. Originating in a successful EU project managed by the Swedish Migration Board in cooperation with various non-governmental actors such as the academic network Odysseus, UNHCR and ECRE, the curriculum comprises a total 21 training modules, using a blending methodology of e-learning modules coupled with face-to-face sessions with individual trainees. Training modules are initially drafted and updated by Member State experts but are reviewed by a reference group including experts from the Odysseus network, UNHCR and civil society organisations. The latter is an important feature of the EASO training curriculum as it enables EASO to incorporate the views of non-governmental asylum experts and offers an opportunity to ensure that the modules flag various interpretations of key concepts in asylum law as well as good practices.

Undeniably, the EASO training curriculum has had a significant numerical impact. To date, over 8,200 asylum officials within and outside the EU have received training through curriculum since 2012,²⁴⁹ with over 6,200 participants being trained in the inclusion module between 2012 and 2017,²⁵⁰ one of the three core training modules in addition to evidence assessment and interview techniques.²⁵¹ Impact on convergence of decision-making, a key objective of EASO’s activities in training support,²⁵² is much more difficult to measure. Persisting divergences in recognition rates at first instance across the EU seem to question the harmonising effect of the EASO training curriculum so far. During the first half of 2019, **Malta, Cyprus, Portugal and Romania** continued to grant subsidiary protection over refugee status in most positive decisions. **Greece, Austria, the United Kingdom and Slovenia**, on the other hand, have mainly issued refugee status.²⁵³ However, it should be taken into account that Member States are encouraged but not obliged to make use of the training modules and other tools developed by EASO.

Should the inter-institutional agreement between EU co-legislators on the proposed European Union Agency on Asylum (EUAA) be formally adopted, such an obligation will be imposed. According to Article 7(3) of the compromise text, Member States shall develop the appropriate training for their staff

²⁴⁸ Article 29 recast Reception Conditions Directive.

²⁴⁹ EASO, Training, available at: <https://easo.europa.eu/training>.

²⁵⁰ EASO, *Annual Training Report 2017*, June 2018, available at: <https://bit.ly/2MwtmGO>, 8.

²⁵¹ A total 21 e-learning modules have been developed today. In addition to the three core modules, 9 in-depth modules, 2 introductory modules, 5 modules concerning vulnerable persons with special needs and 2 modules targeting managers and interpreters have been developed to date.

²⁵² See Article 6(5) EASO Regulation.

²⁵³ AIDA, *Asylum decisions in the first half of 2019: Unlocking statistics*, 10 September 2019, available at: <https://bit.ly/2md9yfZ>.

“on the basis of the European asylum curriculum and shall include core parts of that curriculum into that training”.²⁵⁴ Making the use of the Agency’s training material compulsory for Member States’ staff is likely to increase its impact on convergence of decision-making across the EU, and rendering upholding quality of its training material even more crucial.

While Member States have increasingly trained staff through EASO training materials in recent years, huge divergences in level of participation between Member States have been registered by EASO. Taking the EASO inclusion module as an example, according to the latest available EASO training report, the vast majority of caseworkers trained through this module originate from 9 countries, among which countries with well-resourced and long standing asylum systems such as **Germany** (1,491 participants), **Sweden** (1,036 participants), the **Netherlands** (742 participants), and **France** (404 participants) and countries receiving substantial operational support from EASO such as **Greece** (578 participants) and **Italy** (340 participants).²⁵⁵ The relatively low participation of staff members from certain regions such as Central and Eastern European Member States may be explained by a variety of factors, including low numbers of applicants for international protection, language barriers, lack of infrastructure or preference for national training programmes. However, given the persistent concerns raised over the quality of decision-making in certain countries, their low engagement with this (and other) core EASO training module is striking.

Training of determining authorities’ staff in AIDA countries

AIDA countries’ determining authorities’ approaches to training remain difficult to assess. While some authorities have shared a detailed overview of the training activities for their staff, others have only provided very general information on providers of training and the type of training material used. EASO training modules appear to be used in many AIDA countries but remain complementary to national training programmes.

Deeper analysis of national training practices provided by national authorities in AIDA countries reveals interesting trends as regards the training topics prioritised and the providers of training providers.

Training providers

In most AIDA countries training is provided by a variety of actors, including staff members of the determining authority itself, who may have followed the EASO train-the-trainer programme and UNHCR, while also other actors, including academics,²⁵⁶ the International Organisation for Migration (IOM) and non-governmental organisations, are involved in the training of determining authorities’ caseworkers.

In **Germany**, the BAMF provides in-house training programmes and has a dedicated centre which provides 12-week courses to newly employed decision-makers.²⁵⁷ However, in 2017, it turned out that many decision-makers were not fully qualified to carry out their duties as they had not completed the training modules of the BAMF.²⁵⁸ As of February 2018, 769 out of 2,139 staff members who were

²⁵⁴ See Council of the European Union, *Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (First reading)* = Endorsement, Doc. 14985/17, Brussels, 4 December 2017, available at: <http://bit.ly/2MsPNNp>.

²⁵⁵ EASO, *Annual Training Report 2018*, 22.

²⁵⁶ The involvement of certain academics in training has been controversial in Serbia. The restrictive interpretation of Article 36 of the Asylum Act relating to the time limit for lodging the asylum application promoted by some academics occasionally involved in training of the Asylum Office staff has been criticised by Serbian NGOs. See AIDA, *Country Report Serbia, 2018 Update*, March 2019, available at: <http://bit.ly/2vImR9q>, 25.

²⁵⁷ Information provided by Informationsverbund Asyl und Migration, 30 August 2019.

²⁵⁸ AIDA, *Country Report Germany, 2018 Update*, April 2019, 20.

deciding on asylum applications had not completed the full training programme.²⁵⁹ In July 2018, a leading member of the BAMF staff council (a body of staff representatives) stated that deficiencies in the training of decision makers persisted, with new staff members being provided with basic training and “crash courses” after having taken over their duties, i.e. after having issued decisions.²⁶⁰ The BAMF management acknowledged that training measures were ongoing, with 489 decision-makers undertaking “ongoing training” and a further 45 decision-makers being trained by colleagues who are more experienced.²⁶¹

In **Croatia**, in 2018, 13 caseworkers followed the national training on the EASO module on exclusion; 10 on inclusion, while 2 officials followed the EASO Interviewing Vulnerable Persons Module in Valetta. Beyond EASO training, officials of the Asylum Department and Reception Centre attended several workshops and conferences on a range of asylum-related topics organised by various actors, including NGOs such as the International Rescue Committee, the Centre for Peace Studies, the Office for Human Rights and Rights of National Minorities of the Republic of Croatia as well as the International Refugee Law Course organised annually by the International Institute of Humanitarian Law in San Remo.²⁶²

In **Poland**, according to OFF, caseworkers are trained on all aspects of the asylum procedure, in particular drafting of decisions and conducting interviews. The training is provided internally as well as through EASO. In addition, training for staff members conducted by UNHCR is envisaged, although no further information is available on which topics.²⁶³

In **Serbia**, non-governmental organisations such as the AIRE Centre and the Belgrade Centre for Human Rights (BCHR) have been facilitating trainings on various topics to the Asylum Office staff, including vulnerable applicants, the jurisprudence of the European Court of Human Rights etc.²⁶⁴

Also in **Bulgaria** (Red Cross on individual case management)²⁶⁵, **Croatia** (Centre for Peace Studies, Jesuit Refugee Service, JRS),²⁶⁶ **Romania** (JRS, Romanian National Council for Refugees, AIDRom, Save the Children),²⁶⁷ non-governmental organisations have provided training.

Training on vulnerable groups

The importance and relevance of specific training on interviewing vulnerable applicants and processing their applications is widely acknowledged among the determining authorities in AIDA countries, while the organisation of such training and target groups differ.

Croatia: While there is one person in the Unit for International Protection who has received training on vulnerable groups, it is unclear whether this person is solely responsible for deciding on applications submitted by vulnerable applicants or whether other caseworkers are entrusted with this task; and whether other staff members have also received training on issues related to vulnerable groups, by staff members who attended trainings on this topic.²⁶⁸

²⁵⁹ Wirtschaftswoche, *Eine Behörde arbeitet für die Statistik*, 4 February 2018, available in German at: <http://bit.ly/2oSbU2f>.

²⁶⁰ AIDA, Country Report Germany, 2018 Update, April 2019, 20.

²⁶¹ Merkur, ‘Das ist verantwortungslos...’: Bamf-Mitarbeiter nennt massive Wissenslücken bei Asyl-Entscheidern’, 17 July 2018, available in German at: <https://bit.ly/2T5WpPz>.

²⁶² Information provided by the Croatian Law Centre, 25 July 2019.

²⁶³ Information provided by the Helsinki Foundation for Human Rights, 7 August 2019.

²⁶⁴ Information provided by the Belgrade Centre for Human Rights, 19 July 2019.

²⁶⁵ Information provided by the Bulgarian Helsinki Committee, 31 July 2019.

²⁶⁶ Information provided by the Croatian Law Centre, 9 August 2019

²⁶⁷ Information provided by Felicia Nica, 12 August 2019.

²⁶⁸ Information provided by the Croatian Law Centre, 9 August 2019.

Poland: Specific training is also provided by psychologists and EASO to staff members of the Department on Proceedings for International Protection on interviewing vulnerable groups immediately upon recruitment.²⁶⁹ Although there is no specialised unit for vulnerable groups within the OFF, only qualified staff members are allowed to decide on applications from persons with special needs.²⁷⁰ Generally caseworkers are responsible for conducting interviews and drafting decisions in the Polish system, but this is subject to exceptions.²⁷¹

Serbia: The Asylum Office also adopts an inclusive approach as regards training on vulnerable applicants, as all caseworkers, who are also responsible for making decisions – which can be overturned by the Head of the Asylum Office - receive such training and examine these cases in absence of a specialised unit.²⁷²

Portugal: The Asylum Act provides that the staff handling asylum applications of unaccompanied children must be specifically trained to that end.²⁷³

Slovenia: In absence of a specific unit responsible for applications from vulnerable persons,²⁷⁴ staff of the Sector for international protection of the Migration Office receive specific training by EASO on three modules: interviewing vulnerable groups, interviewing children and Gender, gender identity and sexual orientation. In addition, EASO trainings on victims of human trafficking and country of origin information were provided in the first half of 2019.²⁷⁵

A similar approach is followed in **Greece**, where all Asylum Service caseworkers are entitled to conduct interviews with all categories of applicants, including vulnerable persons in principle cases of vulnerable applicants may not be handled by staff specifically trained in interviewing vulnerable persons. Nevertheless, specific trainings on vulnerability are provided to a number of caseworkers.²⁷⁶

Moreover, in the course of 2018, important initiatives were undertaken by **Belgium** and **Sweden**, as updated instructions for national practitioners in the fields of asylum and protection were issued. Both countries organised trainings and published communication leaflets aiming at raising awareness and providing guidance on issues related to gender-based violence, physical and sexual violence, as well as female genital mutilation and discrimination against transgender people.²⁷⁷

Training in the framework of EASO special support

A number of AIDA countries receive or have received special support from EASO due to increased numbers of applicants for international protection (see *Involvement of other actors*). Training is invariably among the support measures rolled out through the operating plan. In the context of operational support provided by EASO in such countries with regard to taking decisions on individual asylum applications, training is provided both to staff members of the determining authority of the country concerned as well as to the caseworkers deployed by other Member States.

Extensive training support was provided by EASO between 2013 and 2016 to **Bulgaria** to assist the country with high numbers of arrivals in the midst of a reception crisis.²⁷⁸ As far as support to status

²⁶⁹ AIDA, Country Report Poland, 2018 Update, March 2019, available at: <http://bit.ly/2YXxdmn>, 33.

²⁷⁰ Information provided by the Helsinki Foundation for Human Rights, 7 August 2019.

²⁷¹ *Ibid.*

²⁷² Information provided by the Belgrade Centre for Human Rights, 19 July 2019.

²⁷³ Article 79(12) Portuguese Asylum Act.

²⁷⁴ AIDA, Country Report Slovenia, 2018 Update, February 2019, 37.

²⁷⁵ Information provided by the Legal-Information Centre for NGOs (PIC), 13 August 2019.

²⁷⁶ AIDA, Country Report Greece, 2018 Update, March 2019, 25.

²⁷⁷ EASO, *Annual Report on the Situation of Asylum in the European Union 2018*, June 2019, 121.

²⁷⁸ Prompting UNHCR to describe reception conditions in Bulgaria at the time “deplorable” and to call for the suspension of Dublin transfers to Bulgaria. See UNHCR, ‘*Bulgaria as a country of asylum*’, 2 January

determination activities of the SAR is concerned, training efforts, carried out in cooperation with UNHCR, concentrated on newly recruited staff using core EASO training modules on inclusion, interview techniques and evidence assessment.²⁷⁹ Today, training offered to the SAR's caseworkers covers a range of topics, including access to territory and to the procedure, sexual orientation, gender and converts as well as the identification of Dublin cases.²⁸⁰

Also in **Greece**, where EASO is present since 2011, training of Asylum Service staff is among the key priorities since the launch of its operations there. Training needs have significantly increased since the expansion of the Asylum Service and the Agency active involvement in the processing of asylum applications through seconded national experts as well as interim experts²⁸¹ both in the regular and the fast-track border procedure in Greece as already explained above. All EASO caseworkers receive a full 3-day induction training in Athens before being deployed to their workstation on one of the islands. Interestingly, their training includes simulation exercises and shadowing their personal mentor (a more experienced caseworker) for an initial period before they can operate autonomously and conduct interviews.²⁸²

Training delivery to the Asylum Service staff has become more challenging for EASO due to prioritisation of reducing the considerable backlog and the variety of locations Asylum Service staff is currently operational. In view of the lack of capacity to deliver training, UNHCR has stepped in to ensure training of newly recruited caseworkers.²⁸³ In **Cyprus**, training is provided jointly by EASO and UNHCR to future EASO and Asylum Service Caseworkers.²⁸⁴

2014 available at: <http://bit.ly/2OWIPn1>; ECRE, 'ECRE joins UNHCR in calling on EU Member States to stop sending asylum seekers to Bulgaria under the Dublin Regulation', 10 January 2014, available at: <http://bit.ly/2MjqmxA>.

²⁷⁹ EASO, *EASO Operating Plan to Bulgaria*. EASO Stocktaking report on the asylum situation in Bulgaria, available at: <http://bit.ly/3035opN>, 7.

²⁸⁰ Information provided by the Bulgarian Helsinki Committee, 31 July 2019.

²⁸¹ Greek-speaking staff who are locally recruited.

²⁸² Information provided by the Asylum Service, 10 July 2019.

²⁸³ Information provided by UNHCR, 9 July 2019.

²⁸⁴ Information provided by UNHCR, 27 November 2018.

Chapter III: Decision-making tools

The recast Asylum Procedures Directive provides that Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination and that decisions are taken individually, objectively and impartially.²⁸⁵ The requirement of objectivity and impartiality thus applies throughout the whole asylum procedure, i.e. from the gathering and assessing of evidence as well as to the examination of the application, regardless of the applicant's identity, background or circumstances.

The decision-making process of determining authorities is further shaped by a variety of tools which are used by caseworkers on a daily basis to examine and decide on applications for international protection. This Chapter provides an overview of these tools and looks at how they are implemented in practice, and analyses the quality assurance and control mechanisms applied by certain determining authorities.

1. Guidance on the decision-making process

Caseworkers and other staff of determining authorities involved in the decision-making process are regularly provided with instructions on how applications for international protection should be examined, with a view to continuously improve the quality of decisions.

Practical guides and country guidance documents by EASO

EASO has produced a variety of practical tools with the objective to contribute to a consistent and effective implementation of the CEAS. These practical tools have been developed with Member States and with relevant organisations depending on the topic and nature of the tool.

To date, EASO's practical tools have targeted primarily caseworkers conducting personal interviews with applicants for international protection and/or in charge of drafting first instance decisions. This includes several tools on the examination of the application for international protection, e.g. a practical guide on the personal interview,²⁸⁶ on evidence assessment,²⁸⁷ as well as on the qualification for international protection.²⁸⁸ EASO's practical tools also concern first-contact officials, in particular at the border or in transit zones and in detention facilities, as well as policy officers, COI experts and even managers and reception authorities.²⁸⁹

EASO has further published country guidance documents which represent the joint assessment of the situation in a particular country of origin by senior-level policy officials from Member States. The ultimate aim of country guidance is to foster convergence in the application of the criteria for qualification for international protection.²⁹⁰

²⁸⁵ Article 10 recast Asylum Procedures Directive.

²⁸⁶ EASO, *Practical Guide: Personal interview*, December 2014, available at: <https://bit.ly/2DSZn46>.

²⁸⁷ EASO, *Practical Guide: Evidence Assessment*, March 2015, available at: <https://bit.ly/2IMpw0f>.

²⁸⁸ EASO, *Practical Guide: Qualification for international protection*, April 2018, available at: <https://bit.ly/2PRGGnm>.

²⁸⁹ EASO, *Practical Guide: Access to the Asylum Procedure*, 2016, available at: <https://bit.ly/2NZgLfV>; EASO, *EASO guidance on reception conditions: operational standards and indicators*, September 2016, available at: <https://bit.ly/2gZbVz1>; EASO, *Tools and Tips for Online COI Research*, June 2014, available at: <https://bit.ly/2m7NumM>.

²⁹⁰ EASO, *Country Guidance*, available at: <https://bit.ly/2mhFekq>. See for example EASO, *Country Guidance Afghanistan*, June 2019, available at: <https://bit.ly/2L9801S>; EASO, *Country Guidance Iraq*, June 2019,

Given that both EASO guidelines and country guidance documents are made available online and can thus be consulted at any time by the staff of determining authorities, they are regularly used for the examination of applications for international protection across Europe.

Guidelines of determining authorities

Determining authorities have further developed their own internal guidelines. Although they exist in many determining authorities, guidelines on the examination of asylum claims are not consistently made public across the continent. Civil society organisations thus suspect or are aware of guidelines being applied in determining authorities in **Austria, Cyprus, Hungary, Malta, Portugal** and **Romania**, but do not have access to them, for instance.

In **Belgium**, internal guidelines of the CGRS cover a variety of issues such as the application of the first country of asylum criteria, the processing of subsequent applications, applications requiring special procedural needs or involving LGBTI persons, as well as the conduct of the border procedure.²⁹¹ These guidelines are, however, not made available to the public.

In **Bulgaria**, internal guidelines provide an extensive description of each procedural step and activity to be undertaken by all SAR staff involved in processing applications for international protection (e.g. registrars, social workers, caseworkers, officials of the legal department etc.) These guidelines are not made public but, if requested, they are usually shared with UNHCR and/or NGOs providing legal assistance.²⁹²

Similarly in **Greece**, guidelines are not made public, but the Asylum Service has published a number of circulars, such as the one of January 2018 on granting and revoking a protection status in case of serious crimes.²⁹³

In other countries, however, guidelines developed by determining authorities are made available to the public.

In the **United Kingdom**, the operational guidance of the UKVI is available online. It includes asylum instructions on the decision-making process, on screening asylum seekers and routing them to region asylum teams, as well as on asylum applications involving children or how to make decisions about detention of asylum seekers.²⁹⁴

In the **Netherlands**, the work instructions applied by caseworkers are published in Dutch on the IND's website. This includes procedural instructions *inter alia* on interviews, subsequent applications, age assessments, border procedures, but also on how to work with an interpreter, how to handle medical advice, how to decide in cases in which sexual orientation and gender identity issues are brought up as grounds for asylum, or how to conduct child-friendly interviews.²⁹⁵

In **Sweden**, the Lifos database contains most of the Swedish Migration Agency's material such as legal opinions, country of origin information (COI), judgments from the Migration Court of Appeal, important decisions from the ECtHR and governing and supportive guidelines for the Agency, including reports from the Ministry for Foreign Affairs, reports from other authorities and NGO reports.

available at: <https://bit.ly/2XuubBj>; EASO, *Country Guidance Nigeria*, February 2019, available at: <https://bit.ly/2NuZaty>.

²⁹¹ Information provided by Vluchtelingenwerk Vlaanderen, 12 August 2019.

²⁹² Information provided by the Bulgarian Helsinki Committee, 31 July 2019.

²⁹³ Greek Asylum Service, Circular No 1/2018 of 26 January 2018, available in Greek at: <https://bit.ly/2rPEkhh>.

²⁹⁴ UKVI, Visas and immigration operational guidance, available in English at: <https://bit.ly/2Z7HLzm>.

²⁹⁵ IND, Work instructions, available at: <https://bit.ly/2MtP0f7>.

The Lifos database is thus an important work tool for the Agency's staff and a large part of the material is available to the public.²⁹⁶

In **Switzerland**, guidelines and circulars of the State Secretariat for Migration (SEM) relating to the asylum procedure are also publicly accessible and can be consulted online.²⁹⁷

In **Italy**, the circulars issued by the CNDA are usually made public.²⁹⁸

Country of origin information (COI) reports

Another important component of the decision-making process is country of origin information (COI), which refers to information on countries from which asylum seekers originate. The quality and accuracy of COI play a crucial role in the decision-making process and taking into account COI is raised as a legal requirement under Article 4(2) of the recast Qualification Directive. The recast Asylum Procedures Directive further provides that, in determining whether a situation of uncertainty prevails in the country of origin of an applicant, Member States should ensure that they obtain precise and up-to-date information from relevant sources such as EASO and UNHCR and relevant international human rights organisations.²⁹⁹ COI is thus made available by these agencies and may be easily accessed by the staff of determining authorities.³⁰⁰

Nevertheless, many determining authorities also produce COI reports themselves. In **France**, COI documents edited by the department of information, documentation and research (DIDR) are made available on OFPRA's website.³⁰¹ Similarly in **Austria**, COI reports are published on the website of the BFA,³⁰² and in **Romania** a database dedicated to COI documents and relevant updates is also accessible online.³⁰³ In the **United Kingdom**, COI reports are also made available and are frequently quoted by other countries' authorities.³⁰⁴

However in other countries, COI reports are also not consistently made public. In **Italy**, around 160 COI reports have been produced in collaboration with EASO and published on the website of the Ministry of Justice, but only magistrates have access to them.³⁰⁵ In **Germany**, the NGO PRO ASYL requested the publication of COI guidelines (*Herkunftslanderleitsätze*) in accordance with the German Freedom of Information Act.³⁰⁶ While internal guidelines have been made public,³⁰⁷ the BAMF argued that COI must be considered as confidential and does not fall under the Freedom of Information Act.³⁰⁸

Given the key role of COI in the decision-making process, it is also crucial that caseworkers are regularly updated on the situation in certain countries. In this regard, some of the abovementioned websites and databases provide a search tool which allows to find recent updates, media articles and reports. However, this means that it is the caseworkers' duty to regularly check the available

²⁹⁶ The Lifos database is available in Swedish at: <https://bit.ly/2Nji60i>.

²⁹⁷ SEM, *Guidelines and circulars*, available in French at: <https://bit.ly/2IRH7nn>.

²⁹⁸ AIDA, Country Report Italy, 2018 Update, March 2019, 12.

²⁹⁹ Article 10(3)(b) recast Asylum Procedures Directive.

³⁰⁰ EASO, *Country of origin information*, available at: <https://bit.ly/2knPYgh>; UNHCR, Refworld - *Country of origin information*, available at: <https://bit.ly/2kOag2P>.

³⁰¹ OFPRA, *Country of origin information*, available in French at: <https://bit.ly/2P21qwG>.

³⁰² BFA, *Country of origin information*, available at: <https://bit.ly/33XqYia>.

³⁰³ Romanian National Council for Refugees, *Country of origin information portal*, available at: <https://bit.ly/30ob0v7>.

³⁰⁴ UKVI, *Country policy and information notes*, available at: <https://bit.ly/2jXrwIS>.

³⁰⁵ Information provided by ASGI, 21 August 2019.

³⁰⁶ German Freedom of Information Law of 5 September 2005, available in German at: <https://bit.ly/2HgNcBW>.

³⁰⁷ PRO ASYL, *BAMF Guidelines*, available in German at: <https://bit.ly/2ZiLEBE>.

³⁰⁸ Information provided by Informationsverbund Asyl & Migration, 16 August 2019.

resources, although there is no way to assess if and how often this is done in practice. Certain determining authorities have thus established mechanisms to ensure that caseworkers keep abreast of developments. In **Belgium** for example, new reports and policy changes are immediately communicated through an internal online network containing available COI and other relevant guidelines on certain countries.³⁰⁹ Similarly in **Romania**, caseworkers are regularly updated through the Country of Origin Information Office (BITO) within IGI-DAI.³¹⁰

Moreover, specific support and/or training courses on COI are provided in certain countries. In **France**, DIDR can respond to queries on individual cases and further held 37 training sessions in 2018 for OFPRA caseworkers.³¹¹ Similarly in **Belgium**, specific training courses are provided to caseworkers by the research service of the CGRS (the so-called “Cedoca experts”),³¹² and in **Hungary**, the Documentation Centre provides information on countries of origin and third countries.³¹³ In **Romania**, caseworkers also attend thematic conferences where the situation in certain countries is analysed.³¹⁴

2. Quality assurance and control

In the absence of standard terminology or an agreed framework, quality assurance, monitoring and control tend to be used interchangeably in asylum procedures. Assurance and control should be understood as distinct mechanisms, however. Quality assurance refers to a hands-on, time-limited engagement with the determining authority to identify gaps and prepare ways to address them, whereas quality monitoring and control aim at verifying that quality objectives continue to be met.

Actors involved in quality assurance and control

In Europe, the determining authority remains the main authority responsible for ensuring quality and monitoring decisions issued by its staff.

In **France**, quality control by OFRA was first introduced in September 2013 as part of the action plan to reform the determining authority and is now considered as a crucial tool for the Head to identify dysfunctions and address them accordingly, e.g. through enhanced training, information sharing and the issuance of instructions. To date, three quality controls have been conducted by OFPRA in 2013, 2015 and 2017.³¹⁵

In **Germany**, the BAMF’s central office in Nuremberg has a Quality Control Department which screens a “representative number” of decisions. In recent years, the quality of BAMF decisions has been much debated following several “scandals” which prompted extensive media coverage.³¹⁶ As a result, the BAMF is currently putting effort in enhancing quality and has established new mechanisms, as will be explained below.³¹⁷

³⁰⁹ Information provided by Vluchtelingenwerk Vlaanderen, 12 August 2019

³¹⁰ Information provided by Felicia Nica, 12 August 2019.

³¹¹ OFPRA, *Annual report 2018*, available in French at: <https://bit.ly/30tXdTQ>, 60.

³¹² Information provided by Vluchtelingenwerk Vlaanderen, 12 August 2019.

³¹³ Information provided by the Hungarian Helsinki Committee, 14 August 2019.

³¹⁴ Information provided by Felicia Nica, 12 August 2019.

³¹⁵ Information provided by Forum réfugiés - Cosi, 14 August 2019.

³¹⁶ In 2017, one of these cases became known as the “Franco A. scandal” and concerned a German soldier who had successfully posed as a Syrian refugee, allegedly preparing a terrorist attack. Moreover, in 2018, the BAMF in the Federal State of Bremen was accused of unlawfully granting the refugee status to 1,200 asylum seekers, although a re-examination demonstrated that these numbers had been overestimated. See AIDA, *Country Report Germany, 2018 Update*, April 2019, 20.

³¹⁷ Information provided by Informationsverbund Asyl und Migration, 30 August 2019.

In **Austria**, quality has been set as a priority of the year 2019 according to the BFA. The latter has thus established both quality assurance and quality control mechanisms, with quality assessors (*Qualitätssicherer*) specifically dedicated to that end.³¹⁸

In **Greece**, the Asylum Service has established quality assurance and control mechanisms throughout the whole asylum procedure and has a dedicated Training, Quality and Documentation Department.³¹⁹

In **Bulgaria**, the Quality of Procedure Directorate of the SAR is responsible for controlling the quality of first instance decisions adopted by the Agency.³²⁰

In **Romania**, the International Protection Service of IGI-DAI is responsible for controlling the quality of decisions issued by the 6 different Regional Centres.³²¹

Whereas the determining authority retains the primary responsibility of quality assurance, several countries involve other actors in the design and implementation of quality monitoring systems.

UNHCR

UNHCR exercises its supervisory responsibility under Article 35 of the Refugee Convention to promote quality in asylum systems. UNHCR conducts quality assurance internally in countries where it engages in mandate refugee status determination, as well as externally in different countries. UNHCR started external quality assurance activities in 2003 with a Quality Initiative Project in the **United Kingdom**,³²² and subsequently expanded those to other states.

In **Bulgaria**, UNHCR is authorised by law to monitor every stage of the asylum procedure.³²³ The Agency's implementing partner, the Bulgarian Helsinki Committee, also exercises this right on behalf of UNHCR.³²⁴

In **Austria**, there is an ongoing cooperation with UNHCR to develop specific assessment methods for the evaluation of asylum procedures.³²⁵ UNHCR selects the focus point for the assessment of the decisions and provides samples of interviews and decisions to train quality assessors of the BFA accordingly. UNHCR can further be consulted in specific procedures.³²⁶

In **Italy**, since 2015, the CNDA collaborates with UNHCR on a quality monitoring project, which includes case sampling and on-site visits to specific Commissions.³²⁷ In February 2019, the two interlocutors organised a European workshop on quality assurance, involving the Presidents of all Territorial Commissions, UNHCR representatives and asylum authorities from different European countries, as well as EASO and ECRE.³²⁸

³¹⁸ Information provided by asylkoordination österreich, 22 August 2019.

³¹⁹ Information provided by the Greek Council for Refugees, 4 September 2019.

³²⁰ Article 19(1)-(2) and (17) Bulgarian SAR Regulation, as amended by Regulation 100 of 30 April 2019, available in Bulgarian at: <https://bit.ly/339toK9>.

³²¹ Information provided by Felicia Nica, 12 August 2019.

³²² UNHCR, *Quality Assurance*, available at: <https://bit.ly/2kJ4VKa>.

³²³ Article 3(2) Bulgarian Law on Asylum and Refugees.

³²⁴ Information provided by the Bulgarian Helsinki Committee, 31 July 2019.

³²⁵ AIDA, Country Report Austria, 2018 Update, March 2019, 56.

³²⁶ Information provided by asylkoordination österreich, 22 August 2019.

³²⁷ AIDA, Country Report Italy, 2018 Update, April 2019, 20-21.

³²⁸ Information provided by ASGI, 19 August 2019.

In **Romania**, UNHCR is part of the Joint Quality Audit that has been established by IGI-DAI since October 2011 and which assesses 10 interview transcripts and 10 first instance decisions selected randomly from all Regional Centres every month.³²⁹

In **France**, UNHCR was part of the abovementioned quality controls implemented by OFPRA in 2013, 2015 and 2017.³³⁰ The results of the last quality control indicated diminishing disparities between OFPRA and UNHCR examiners' positions.³³¹

In **Spain**, UNHCR is present in the CIAR but has no binding voting power.³³²

In **Greece** UNHCR staff is appointed by the Asylum Service to collaborate with caseworkers when certain issues on the examination of an asylum claim arise.³³³

EASO

As already mentioned in [Involvement of other actors](#), EASO has a mandate to provide support to determining authorities at first instance in certain countries, which includes *inter alia* ensuring quality of decisions.

In **Italy**, establishing a quality monitoring system at all stages of the procedure in which EASO intervenes is a key priority of the Operating Plan to Italy 2019.³³⁴ The objective is to develop and implement a quality management system for the asylum procedures and to improve the functioning of the Italian COI Unit ensuring standardised COI in asylum decisions to support the issuance of better quality asylum decisions at first and eventually second instance.³³⁵

In **Cyprus**, EASO is not involved in quality mechanisms led by the national authorities as those have not been formally established yet, but it is foreseen that the Quality Control Unit of the Asylum Service will be composed of an EASO expert.³³⁶

It should be noted that in **Greece** the quality of interviews conducted by EASO caseworkers has been criticised in 2018, in particular with regard to the lack of knowledge of countries of origin, the lack of cultural sensitivity as well as frequent interruptions and unnecessarily long interviews.³³⁷ The European Ombudsman stated in that regard that "there are genuine concerns about the quality of the admissibility interviews as well as about the procedural fairness of how they are conducted".³³⁸

EASO further published assessment forms and a Quality Assurance Tool (QAT) to guide quality assessors in evaluating the conduct of personal interviews and the first instance decisions issued by asylum authorities.³³⁹

³²⁹ Information provided by Felicia Nica, 12 August 2019.

³³⁰ Information provided by Forum réfugiés - Cosi, 14 August 2019.

³³¹ AIDA, Country Report France, 2018 Update, March 2019, 20.

³³² Information provided by Accem, 2 August 2019.

³³³ Information provided by the Greek Council for Refugees, 4 September 2019.

³³⁴ EASO, *Operating Plan to Italy 2019*, December 2018, Measure 3, available at: <https://bit.ly/2MYTdqx>.

³³⁵ *Ibid.*

³³⁶ Information provided by the Cyprus Refugee Council, 2 September 2019.

³³⁷ AIDA, Country Report Greece, 2018 Update, March 2019, 79.

³³⁸ European Ombudsman, *Decision in case 735/2017/MDC on the European Asylum Support Office's (EASO) involvement in the decision-making process concerning admissibility of applications for international protection submitted in the Greek Hotspots, in particular shortcomings in admissibility interviews*, 5 July 2018, available at: <https://bit.ly/2XVUfXq>, 33.

³³⁹ EASO, *Assessment Form: Personal interview*, available at: <https://bit.ly/2mdpvTf>; EASO, *Assessment Form: First-Instance Decision*, available at: <https://bit.ly/2kyTRzk>; EASO, *Quality Assurance Tool*, April 2018, available at: <https://bit.ly/2l8vSlp>.

Ex ante and ex post review mechanisms

Quality assurance and control can take place before the decision on an asylum application is issued (*ex ante*) or after the decision has been issued (*ex post*). The following table provides an overview of the review mechanisms in place for determining authorities in selected AIDA countries:

Quality assurance and control mechanisms			
*	<i>Ex ante</i> review	<i>Ex post</i> review	Results made public
AT	√	√	x
BE	√	√	x
BG	√	√	√
CY	x	x	x
DE	√	√	x
ES	x	x	x
FR	√	√	√
GR	√	√	x
HU	√	√	x
IT	x	√	x
MT	√	x	x
PL	√	x	x
PT	√	√	x
RO	x	√	x
SE	x	√	√
SI	√	x	x
SR	x	x	x

Source: AIDA.

The table indicates that most countries have established a quality assurance/control mechanism in one form or another. The only exceptions include **Cyprus**, **Spain** and **Serbia** where there are no dedicated mechanisms in place. However, the **Spanish** institutional framework within which asylum decisions are taken could *de facto* allow for quality assurance, insofar as draft decisions by the OAR are formally adopted by CIAR.³⁴⁰ Moreover, the **Cypriot** Asylum Service is currently in the process of establishing a Quality Control Unit which will be in charge both of quality assurance and control mechanisms.³⁴¹ This unit is meant to be composed of a representative of the Asylum Service, an EASO expert as well as a representative from UNHCR Cyprus,³⁴² which illustrates the different actors that may be involved in quality assurance and control as explained above.

³⁴⁰ Information provided by Accem, 2 August 2019.

³⁴¹ Information provided by the Cyprus Refugee Council, 2 September 2019.

³⁴² *Ibid.*

Ex ante review mechanisms

Where quality assurance is conducted *ex ante*, it usually involves double-checking and discussing the decision with a more experienced caseworker, a head of unit or the head of the determining authority.

In **Belgium**, at the CGRS, the caseworker's decision is discussed with a supervisor, reviewed by the head of the relevant geographical unit and finally approved by the Commissioner-General.³⁴³ The Commissioner-General thus reads and signs every decision, and can decide to further discuss any case if needed. At the Aliens Office, however, no institutional mechanisms are in place to control the quality of decisions relating to Dublin cases.³⁴⁴

In **Bulgaria**, the caseworker, the head of the respective reception centre and the legal department of the SAR must agree on a draft decision that is then transferred to the SAR's chairperson for the final decision.³⁴⁵

In **Hungary**, the caseworker transmits the draft decision to the Head of Unit for comments and instructions if relevant. When the final text is agreed upon, the decision is signed by the Head of Unit or the Director of the Asylum Directorate.³⁴⁶

In **Portugal**, each draft decision is reviewed by the Head of Unit of the Asylum and Refugees Department of the SEF before being adopted.³⁴⁷

In **Poland**, the caseworker fills in a special questionnaire which is made available to the Heads of Units and Departments of the OFF to review the activities of caseworkers.³⁴⁸

In **Slovenia**, each decision has to be authorised by a responsible official of the Sector for international protection procedures before it is issued. A review is thus conducted on the case files, the documentation, COI and the decision made in the individual case.³⁴⁹

In **Austria**, the quality assessors of the BFA are responsible for double-checking decisions, providing support and guidance to caseworkers and contributing to their development. They are present in all offices of the BFA and meet every three months in the form of a networking event.³⁵⁰

In **Greece**, caseworkers are advised to discuss their case with a supervisor or a more experienced caseworker in case of doubt or ambiguity regarding the examination of the asylum claim. Moreover, they have access to a database managed by the Training, Quality and Documentation Department of the Asylum Service, which contains selected first instance decisions that have met certain quality standards. The database is classified by country of origin and type of asylum claim.³⁵¹

In **Germany**, the BAMF's willingness to enhance quality has translated into the intention to double-check all written decisions before they are sent to applicants, which was a long-standing demand of PRO ASYL and other NGOs that had been ignored so far.³⁵² It is unclear whether this is currently being applied in practice. Similarly, a new IT system has been introduced in May 2019 to optimise and

³⁴³ Information provided by Vluchtelingenwerk Vlaanderen, 12 August 2019.

³⁴⁴ *Ibid.*

³⁴⁵ Information provided by the Bulgarian Helsinki Committee, 31 July 2019.

³⁴⁶ Information provided by the Hungarian Helsinki Committee, 14 August 2019.

³⁴⁷ Information provided by the Portuguese Refugee Council, 13 August 2019.

³⁴⁸ Information provided by the Helsinki Foundation for Human Rights, 7 August 2019.

³⁴⁹ Information provided by PIC, 14 August 2019.

³⁵⁰ Information provided by asylkoordination österreich, 22 August 2019.

³⁵¹ Information provided by the Greek Council for Refugees, 4 September 2019.

³⁵² Information provided by Informationsverbund Asyl und Migration, 30 August 2019.

supervise these quality assurance procedures, but there is no further information on this and it is unclear whether these mechanisms have already been implemented.³⁵³

In some countries however, the practice of reviewing a decision prior to its issuance is not always applied. In **France**, the caseworker's decision must be signed and validated by the Head of section, but in practice around one-third of caseworkers, who have significant professional experience, are allowed to sign their own decisions.³⁵⁴ Moreover in **Malta**, the caseworkers' decision is reviewed by a more experienced officer or manager and the Refugee Commissioner takes the final decision. Despite this review mechanism, aditus foundation Malta has regularly noted a number of basic mistakes with regard to the assessment of the application or the legal qualification.³⁵⁵

Ex post review mechanisms

In other countries where quality assurance and control takes place after a decision has been issued, it usually involves analysing a sample of interviews and first-instance decisions, with the aim to verify that quality objectives continue to be met and to be improved.

In **Bulgaria**, the Quality of Procedure Directorate of the SAR controls the quality of the procedure through regular and random sampling of decisions. On the basis of its findings, the Quality of Procedure Department issues guidance on the interpretation of legal provisions and the improvement of different stages of the procedure.³⁵⁶ On the other hand, the quality monitoring activities carried out by the Bulgarian Helsinki Committee on behalf of UNHCR involve evaluation of the following stages of the procedure: registration, interviews, first instance decisions, and appeal hearings in court.³⁵⁷

In **Greece**, the Training, Quality and Documentation Department conducts quality checks on a sample of interviews and first-instance decisions and provides opinions and recommendations on the latter. Quality reports based on first instance decisions are also drafted by RAOs, which may subsequently organise relevant sessions, although no further information was provided.³⁵⁸

In **Italy**, the CNDA and UNHCR review a sample of interviews and decisions from different Territorial Commissions every year.³⁵⁹

In **Sweden**, the Migration Agency established a series of mandatory indicators that are taken into consideration when monitoring and controlling decisions. They look at how the investigation of the case was conducted as well as other procedural aspects (e.g. the language used and the length of the procedure).³⁶⁰

In **Germany**, the BAMF indicated that an "additional percentage" of registrations of applications, interviews and first-instance decisions are randomly controlled.³⁶¹ It further indicated that it is introducing a rotation system whereby staff members who are responsible for quality control in certain branch offices will be tasked with controlling decisions issued by other branch offices for a duration of three months each year. It is unclear, however, if this is already applied in practice.³⁶²

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Ibid.

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Information provided by Forum réfugiés - Cosi, 14 August 2019.

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Information provided by aditus foundation Malta, 26 August 2019.

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Information provided by the Bulgarian Helsinki Committee, 31 July 2019.

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Bulgarian Helsinki Committee, *Annual Monitoring Report on status determination procedures in Bulgaria 2018*, available at: <https://bit.ly/2LZXaM3>, 2.

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Information provided by the Greek Council for Refugees, 4 September 2019.

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Information provided by ASGI, 19 August 2019.

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Information provided by the Swedish Refugee Law Centre.

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Information provided by Informationsverbund Asyl und Migration, 30 August 2019.

362

Ibid.

In **Portugal**, according to the SEF, quality control also takes place after the issuance of the decision, although no further details were provided.³⁶³

Products and transparency of quality assurance and control

The dissemination of quality control results depends on national practice. The outcome of quality control exercises in **Sweden** is only made public upon request,³⁶⁴ while in **Bulgaria**, the SAR only publishes a summary of its quality reports and measures in its annual activity report.³⁶⁵ The Bulgarian Helsinki Committee, however, publishes annual reports of its own quality monitoring activities.³⁶⁶ Out of the selected AIDA countries in the table above, **France** is thus the only country where the results of the monitoring are systematically published by the determining authority.³⁶⁷

It should be noted that the QAT developed by EASO recommends distribution of quality assessments to all staff within the determining authority to ensure maximum learning of good practices and errors. It stops short of recommending publication of quality assurance reports, however.³⁶⁸ Some determining authorities thus refrain from publishing quality control results but share them internally. In **Austria** for example, these results are shared with management staff and quality assessors, who subsequently discuss the results with caseworkers.³⁶⁹ In **Romania**, the results of the Joint Quality Audit implemented by UNHCR and IGI-DAI are discussed internally on a quarterly basis – or as often as needed – and translated into training plans, training events as well as internal guidelines for caseworkers.³⁷⁰

Quality assurance projects have also led to the production of practical tools to support actors in the asylum procedure. For example, OFPRA has developed an Code of Conduct for interpreters in **France**,³⁷¹ while the CNDA has established a Code of Conduct for chairs and members of Territorial Commissions in **Italy**.³⁷²

³⁶³ Information provided by the Portuguese Refugee Council, 13 August 2019.

³⁶⁴ Information provided by the Swedish Refugee Law Centre, 22 August 2019.

³⁶⁵ See e.g. SAR, доклад за дейността на държавната агенция за бежанците Министерския съвет за 2018 година, March 2019, available in Bulgarian at: <https://bit.ly/2T4JBeW>.

³⁶⁶ See e.g. Bulgarian Helsinki Committee, *Annual Monitoring Report on status determination procedures in Bulgaria 2018*, available at: <https://bit.ly/2LZXaM3>.

³⁶⁷ OFPRA, *Contrôle qualité: premier exercice d'évaluation*, September 2014, available in French at: <https://bit.ly/2KhfZZ6>; *Contrôle qualité: deuxième exercice d'évaluation*, May 2016, available in French at: <https://bit.ly/2kgUqvO>; *Contrôle qualité: troisième exercice d'évaluation*, November 2018, available in French at: <https://bit.ly/2GJPZmD>.

³⁶⁸ EASO, *Quality Assurance Tool*, April 2018, 15.

³⁶⁹ Information provided by asylkoordination österreich, 22 August 2019.

³⁷⁰ Information provided by Felicia Nica, 12 August 2019.

³⁷¹ OFPRA, *Charte de l'interprétariat*, September 2018, available in French at: <https://bit.ly/2MFCKYg>.

³⁷² CNDA, *Codice di condotta per i presidenti e i componenti delle Commissioni Territoriali per il riconoscimento della Protezione Internazionale e della Commissione Nazionale per il Diritto d'Asilo, nonché per gli interpreti, per il personale di supporto e per tutti gli altri soggetti che prestano le proprie attività, anche a titolo gratuito o occasionale, presso le medesime Commissioni*, November 2016, available in Italian at: <https://bit.ly/2KyluDD>.

Conclusion and recommendations

This report demonstrates that the ability for determining authorities to conduct a rigorous and fair examination of applications for international protection depends on a variety of factors that are inherent to their internal organisation, resources and functioning. ECRE has long advocated for the frontloading of asylum systems, the policy of investing in the quality of decision-making at first instance through the provision of sufficient resources for the competent authorities, training of their staff as well as key procedural guarantees to enable applicants to submit all elements of their claims at the earliest possible stage.

Institutional independence of determining authorities

- ECRE believes that caseworkers should work in an institutional environment that is adequately human rights and protection-oriented, regardless of any EU or national interest. The main objective for determining authorities should always be protection, namely to identify applicants who qualify for international protection. ECRE thus warns against the placement of determining authorities within Ministries which follow certain objectives at the expense of the asylum seekers' right to a fair and transparent asylum procedure. In order to enhance the determining authorities' independence and impartiality, ECRE recommends that guarantees are unequivocally and explicitly regulated at national level and that determining authorities take appropriate steps to ensure an institutional context that is protection-oriented.

Involvement of other actors at first instance

- ECRE considers that the separation of authorities at first instance can raise different issues in practice. First, it is counter-productive as it creates administrative delays resulting from more coordination within or between authorities and from the additional types of official acts and documents that may be produced. Second, the involvement of a variety of actors may create additional difficulties for asylum seekers to understand and navigate the asylum procedure. In turn, this may foster mistrust in the asylum process, thus impacting on the way they provide statements and other evidence. The determining authority should therefore be the only entity entitled to receive and process information necessary for the assessment of the application for international protection. This ensures consistency and contributes to fair and transparent asylum procedures, whereby the determining authority acts as a focal point of contact for asylum seekers.
- ECRE also warns against the involvement of law enforcement agencies at first instance. Security concerns should not prevail over international protection considerations, especially where they affect the asylum seekers' right to an appropriate examination of their application. To comply with EU law, the circumstances for conducting security checks must be well-defined and only allowed insofar as the information is relevant to examining the application for international protection, for example as regards exclusion. Moreover, where an application is rejected based on security grounds, the reasons in fact and in law should always be stated in the decision. Rejecting an application based on confidential information is a clear violation of the recast Asylum Procedures Directive.

Staffing in determining authorities

- ECRE considers that resorting to an increased or decreased number of staff in the determining authority as an *ad hoc* strategy to meet existing needs does not necessarily contribute to the efficiency of the asylum procedure. Determining authorities should avoid

frequent rotations of staff and enhance their capacity through long-term planning, thereby providing for more stability during the asylum procedure.

- Determining authorities should further systematically invest in the delivery of comprehensive and regular training courses to all staff. In this regard, ECRE welcomes the fact that the current inter-institutional agreement between EU co-legislators on the EUAA renders the use of the Agency's training material compulsory as it is likely to increase its impact on convergence of decision-making across the EU.

Quality mechanisms

- ECRE recommends that all determining authorities establish quality assurance and control mechanisms. These mechanisms help to promote the objective of ensuring high quality of decision-making at all stages of the procedure and achieve greater uniformity in the outcome of asylum procedures. Actors such as UNHCR can provide useful guidance and support in building such mechanisms.

Transparency

- Decision-making tools and quality reports should systematically be made public by determining authorities. This would ensure greater transparency of the asylum procedure and further enable external entities to contribute to quality monitoring.

Annex I – List of determining authorities

Determining authorities in AIDA countries as of 30 June 2019				
*	Name in English	Name in national language	Total number of staff	Ministry responsible
AT	Federal Agency for Immigration and Asylum (BFA)	Bundesamt für Fremdenwesen und Asyl (BFA)	1,121	Ministry of Interior
BE	Commissioner General for Refugees and Stateless Persons (CGRS)	Commissariat général aux réfugiés et aux apatrides (CGRA) Commissariaat-generaal voor Vluchtelingen en Staatlozen (CGVS)	467	Ministry of Interior
BG	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)	382	Council of Ministers
CY	Asylum service	Υπηρεσία Ασύλου	50	Ministry of Interior
DE	Federal Office for Migration and Refugees (BAMF)	Bundesamt für Migration und Flüchtlinge (BAMF)	6,574.1 FTEs	Federal Ministry of Interior
ES	Office of Asylum and Refuge Inter-Ministerial Commission on Asylum (CIAR)	Oficina de Asilo y Refugio Comisión Interministerial de Asilo y Refugio	197	Ministry of Interior
FR	Office for the Protection of Refugees and Stateless Persons (OFPRA)	Office Français de Protection des Réfugiés et Apatrides (OFPRA)	813.9 FTEs	Ministry of Interior
GR	Asylum Service	Υπηρεσία Ασύλου	686	Ministry of Citizen Protection
HR	Unit for international protection procedure, Directorate for immigration, citizenship and administrative affairs	Jedinica zaštite međunarodne zaštite, Uprava za imigraciju, državljanstvo i upravne poslove	30	Ministry of Interior
HU	National General Directorate for Immigration	Országos Idegenrendészeti Főigazgatóság	128	Ministry of Interior
IE	International Protection Office (IPO)	International Protection Office (IPO)	:	Department of Justice
IT	Territorial Commissions for the Recognition of International Protection	Commissioni Territoriali per il Riconoscimento della Protezione Internazionale	:	Ministry of Interior
MT	Office of the Refugee Commissioner	Uffiċċju tal-Kummissarju tar-Refuġjati	32	Ministry for Home Affairs and National

				Security
NL	Immigration and Naturalisation Service (IND)	Immigratie en Naturalisatiedienst (IND)	:	Ministry of Security and Justice
PL	Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców	413	Ministry of Interior and Administration
PT	Immigration and Borders Service (SEF)	Serviço de Estrangeiros e Fronteiras (SEF) Ministério da Administração Interna	22	Ministry of Home Affairs
RO	General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI)	Inspectoratul General pentru Imigrari – Directia Azil si Integrare (IGI-DAI)	275	Ministry of Internal Affairs
SE	Migration Agency	Migrationsverket	6,109	Ministry of Justice
SI	Migration Office	Urad za migracije	47	Ministry of Interior
UK	Home Office Visas and Immigration (UKVI), Asylum Casework Directorate	Home Office Visas and Immigration (UKVI), Asylum Casework Directorate	:	Home Office
CH	State Secretariat for Migration (Asylum Department)	Secrétariat d'Etat aux migrations (SEM)	650	Federal Department of Justice and Police
SR	Asylum Office	Kancelarija za azil / Канцеларија за азил	23	Ministry of Interior
TR	Directorate General for Migration Management (DGMM)	Göç İdaresi Genel Müdürlüğü (GİGM)	:	Ministry of Interior

THE ASYLUM INFORMATION DATABASE (AIDA)

The [Asylum Information Database](#) is a database managed by ECRE, containing information on asylum procedures, reception conditions, detention and content of international protection across 23 European countries. This includes 20 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia, United Kingdom) and 3 non-EU countries (Switzerland, Serbia, Turkey).

The overall goal of the database is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level. These objectives are carried out by AIDA through the following activities:

❖ **Country reports**

AIDA contains national reports documenting asylum procedures, reception conditions, detention and content of international protection in 23 countries.

❖ **Comparative reports**

Comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports published so far have explored topics including reception, admissibility procedures, content of protection, vulnerability, detention, entry into the territory, registration and reception.

❖ **Comparator**

The Comparator allows users to compare legal frameworks and practice between the countries covered by the database in relation to the core themes covered: asylum procedure, reception, detention, and content of protection. The different sections of the Comparator define key concepts of the EU asylum *acquis* and outline their implementation in practice.

❖ **Fact-finding visits**

AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in Greece, Hungary, Austria, Croatia, France, Belgium and Germany.

❖ **Legal briefings**

Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. Legal briefings so far cover: Dublin detention; asylum statistics; safe countries of origin; procedural rights in detention; age assessment of unaccompanied children; residence permits for beneficiaries of international protection; the length of asylum procedures; travel documents for beneficiaries of international protection; accelerated procedures; the expansion of detention; relocation; and withdrawal of reception conditions.

❖ **Statistical updates**

AIDA releases short publications with key figures and analysis on the operation of the Dublin system across selected European countries. Updates have been published for 2016, the first half of 2017, 2017, the first half of 2018, 2018 and the first half of 2019.

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