

Access to protection in Europe

Borders and entry into the territory



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The information contained in this report is up-to-date as at 30 June 2018, unless otherwise stated.

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. An overview of the country reports can be found [here](#).

- ❖ **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](#) and [detention](#).

- ❖ **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](#) and [France](#).

- ❖ **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 and the first half of 2018.

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Glossary

Acquis	Accumulated legislation and jurisprudence constituting the body of European Union law.
(recast) Asylum Procedures Directive	Directive 2013/32/EU on common procedures for granting and withdrawing international protection.
Asylum Procedures Regulation	European Commission proposal for a Regulation establishing a common procedure for international protection in the Union and repealing the recast Asylum Procedures Directive, tabled on 13 July 2016.
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.
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 .
(recast) Reception Conditions Directive	Directive 2013/33/EU laying down standards for the reception of asylum seekers.
Refusal of entry	Decision refusing entry into the territory of the Member States in the Schengen area under the Schengen Borders Code.
Schengen Borders Code	Regulation (EU) 2016/399 on a Union Code on rules governing the movement of persons across borders.

List of abbreviations

AIDA	Asylum Information Database
AMIF	Asylum, Migration and Integration Fund
ANSA	Agenzia Nazionale Stampa Associata (Italy)
ASGI	Association for Legal Studies on Immigration Associazione per gli Studi Giuridici sull'Immigrazione (Italy)
CEAR	Spanish Commission of Aid to Refugees Comisión Española de Ayuda al Refugiado (Spain)
CEAS	Common European Asylum System
Ceseda	Code on the entry and residence of foreigners and the right to asylum Code de l'entrée et du séjour des étrangers et du droit d'asile (France)
CJEU	Court of Justice of the European Union
CPT	European Committee for the Prevention of Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRE	European Council on Refugees and Exiles
EDAL	European Database of Asylum Law
EPIM	European Programme for Integration and Migration
EU	European Union
Eurostat	European Commission Directorate-General for Statistics
FARR	Swedish Network of Refugee Support Groups Flyktinggruppernas Riksråd (Sweden)
Frontex	European Border and Coast Guard
JRS	Jesuit Refugee Service
NGO(s)	Non-governmental organisation(s)
PIC	Legal-Informational Centre for non-governmental organisations (Slovenia)
UNHCR	United Nations High Commissioner for Refugees

The interplay between refugee protection and border control raises complex legal questions, as well as often conflicting policy considerations. On the one hand, states are required to grant access to an asylum procedure to those seeking protection, both under international law and the European Union (EU) asylum *acquis*, namely the recast Asylum Procedures Directive. The Directive specifies obligations to inform people in need of protection of the possibility to apply for asylum, as well as to promptly register claims when they are made.¹ On the other hand, states must deny entry into their territory to those who do not fulfil the conditions set out in EU law such as the Schengen Borders Code, though a derogation may be made “on humanitarian grounds, on grounds of national interest or because of international obligations.”²

The EU policy discourse places particular emphasis on combatting irregular migration and strengthening the control of external borders.³ This is currently reflected in legislative measures,⁴ dialogues with third countries,⁵ and funding priorities.⁶ Yet, as the vast majority of refugees can only enter European countries irregularly, they are primarily affected by different sets of measures seeking to prevent their entry rather than benefitting from unhindered access to protection. While the Schengen Borders Code requires border control to be in line with Member States’ international obligations, reconciling the objective of deflection with that of protection remains a significant challenge in practice.

Notwithstanding that the issue of refugees’ access to the territory has traditionally been associated with the external borders of the EU (and therefore a handful of countries), the reintroduction of internal border controls in the Schengen area in the last three years has resulted in border control becoming a regular activity throughout the continent. The intra-Schengen dimension of the debate, and practice in countries such as France, Austria, Sweden or Germany, remain highly pertinent in the light of successive prolongations of border controls.⁷

The analysis section of this report will discuss the legal standards and safeguards pertaining to procedures of refusal of entry at the border, and the obstacles to access to the territory for the purpose of seeking asylum stemming from domestic frameworks and practice across 23 European countries. An analysis of countries’ border monitoring mechanisms and of guarantees for access to the asylum procedure, namely information provision, interpretation and assistance at the border, will follow.

A final part draws conclusions and makes targeted recommendations for practice and policy reform.

¹ See Articles 6 and 8 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60.

² Articles 14(1) and 6(5)(c) Regulation (EU) No 2016/399 of the European Parliament and of the Council of 9 March 2016 on the rules governing the movement of persons across borders (Schengen Borders Code), OJ 2016 L77/1.

³ For a recent illustration, see European Council, *Conclusions 28 June 2018*, 421/18, para 1.

⁴ See e.g. European Commission, *Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast)*, COM(2018) 624, 12 September 2018.

⁵ European Council, *Conclusions 28 June 2018*, 421/18, para 5.

⁶ European Commission, ‘EU budget: Commission proposes major funding increase for stronger borders and migration’, IP/18/4106, 12 June 2018, available at: <https://bit.ly/2NaloPT>.

⁷ European Commission, *Temporary reintroduction of border control*, available at: <https://bit.ly/2kFAQ84>.

The following section deals with the interplay of the right to asylum in refusal of entry and return procedures at the border, followed by an analysis of border monitoring mechanisms and arrangements made by national law and practice to ensure information, interpretation and assistance at the border.

1. Refusal of entry and return

The Schengen Borders Code regulates the conditions for entry into the territory of EU Member States and Schengen Associated States and to the procedures for verifying those at the external borders. An individual who does not fulfil the conditions for entry into the Schengen area is issued a refusal of entry decision at the external borders.⁸

Primarily a tool to stem irregular migration flows, the Schengen Borders Code includes various provisions aiming at reconciling border controls performed on behalf of all Member States with their obligations under international human rights and refugee law, in particular the principle of *non-refoulement*.⁹ The Regulation applies to persons crossing internal and external borders of Member States without prejudice to the rights of refugees and persons requesting international protection, while a general fundamental rights clause requires Member States to act in compliance with the EU Charter of Fundamental Rights, the Refugee Convention and “obligations related to access to international protection, in particular *non-refoulement*”. Beyond this general safeguard, the Regulation explicitly allows a Member State to authorise third-country nationals not fulfilling one or more of the entry conditions, to enter its own territory on humanitarian grounds or because of international obligations.¹⁰ The latter provision clearly includes obligations vis-à-vis refugees and presumptive refugees as the Commission Schengen Handbook includes asylum applications as being covered by the concept “international obligations”.¹¹ Whereas Article 6(4) of the Schengen Borders Code maintains discretion for states to authorise applicants for international protection arriving at an external border to enter their territory, Article 9 of the recast Asylum Procedures Directive provides a right to remain in such a case as borders and transit zones are explicitly included in the scope of the Directive.

The Schengen Borders Code also includes specific safeguards where Member States and third countries have established “shared border crossing points” on the basis of bilateral agreements. Shared border-crossing points are defined as areas at the common border of the Member State and third country where “Member State border guards and third-country border guards carry out exit and entry checks one after another in accordance with their national law on the territory of the other party”.¹² Where such a shared border-crossing point is located on the territory of a Member State, any request for international protection, including to a third-country border guard, automatically triggers the procedures, procedural safeguards and referral obligations under the EU asylum *acquis*. If the shared border-crossing point is located on the territory of the third country, this entails an

⁸ Article 14(1) Schengen Borders Code.

⁹ Article 4 Schengen Borders Code.

¹⁰ Article 6(5)(c) Schengen Borders Code.

¹¹ European Commission, Commission Recommendation of 6 November 2006 establishing a common “Practical Handbook for Border Guards (Schengen Handbook)” to be used by Member States’ competent authorities when carrying out the border control of persons, C(2006) 5186, 39. Moreover, reiterating safeguards under the EU asylum *acquis*, the Schengen Handbook furthermore explicitly requires borders guards to consult the determining authority in case of doubt whether a person has expressed a wish to seek international protection and not to issue a return decision.

¹² Annex VI, 1.1.4. Schengen Borders Code.

authorisation for the Member State border guards to perform their tasks, including upholding refusal of entry obligations, on the territory of the third country. Where a request for international protection is made to a Member State border guard on the territory of the third state, but after having passed the exit control by the third country border guard, the individual must be given access to the Member State's asylum procedure, while the third country concerned is under an obligation to accept the person's transfer into the Member States' territory. This additional guarantee only applies in shared land border-crossing points, the designation of which is not subject to publicity requirements under EU law, but could potentially be relevant to any border-crossing point at common external land borders between an EU Member State and a third country, although no figures are available as to the number of asylum requests made under this arrangement.

Whereas all countries' international airports (and ports in some cases) usually constitute external borders, several countries (e.g. Germany, France, Belgium, Netherlands, Italy, have no external land border and in principle conduct no border check on persons at the internal Schengen borders.¹³ As a rule, countries which have no external land borders cannot therefore apply Title II of the Schengen Borders Code, including entry conditions and refusal of entry provisions *inter se* for persons crossing by land. For example, **Romania** returns people to **Bulgaria** under a bilateral readmission agreement, as does **Slovenia** with regard to **Croatia**.¹⁴ The agreement between Slovenia and Croatia foresees an informal fast-track procedure ("shortened procedure"), whereby the parties can announce the return of an irregular entrant within 72 hours of border-crossing and, following immediate acceptance, return can be carried out within 24 hours. For this reason, statistical records of refusal of entry procedures may or may not be connected to the arrival of people seeking protection depending on the geography of the country concerned. In the case of countries such as **Hungary**, **Slovenia**, **Croatia**, **Romania**, the **United Kingdom** and **Malta**, the main nationalities of persons officially refused entry differ substantially from the main countries of origin of asylum seekers ([Annex I](#)).¹⁵

One important nuance is brought by the possibility for states to temporarily reintroduce internal border controls.¹⁶ At the moment, temporarily reintroduced internal border controls are maintained by **France** on all of its borders, **Austria** on the Hungarian and Slovenian land borders, **Germany** on its Austrian land border, **Denmark** on its German border, **Sweden** on nearly all of its borders, and **Norway** on all of its borders.¹⁷ With the exception of France which motivates the reintroduction of border controls on the basis of terrorist threats, these countries maintain internal border controls on the ground of "security threats" arising from "continuous secondary movements" of migrants in Europe.¹⁸ Where internal border controls are reintroduced, the relevant provisions of the Schengen Borders Code relating to controls at the external borders apply *mutatis mutandis* to such border crossings, implying that persons not complying with entry conditions and not belonging to one of the groups listed in Article 6(5) must be issued a refusal of entry.¹⁹

In practice, the vast majority of refusal of entry decisions are issued by **Spain**, followed by **France**, **Poland** and **Greece**. All four countries apply the procedure predominantly at their land borders (see [Annex I](#)). Other countries have recently started delivering refusal of entry decisions at land borders,

¹³ Article 22 Schengen Borders Code.

¹⁴ Agreement between the Republic of Slovenia and the Republic of Croatia on declaration and acceptance of persons whose entry or residence is illegal, Official Gazette of the Republic of Slovenia 33/2006, available in Slovenian at: <https://bit.ly/2zry5Cd>.

¹⁵ Given the prevalence of push backs in some countries, however, this does not mean that people seeking international protection are not prevented from entering into the territory.

¹⁶ Chapter II Schengen Borders Code.

¹⁷ European Commission, *Temporary reintroduction of border control*, available at: <https://bit.ly/2kFAQ84>. Whereas the Commission states that Sweden performs checks on all of its borders, information from the Swedish Police does not refer to the Norwegian or Finnish borders: Swedish Police, *Tillfälliga gränskontroller - polisens arbete*, available in Swedish at: <http://bit.ly/2PiJoCd>.

¹⁸ *Ibid.*

¹⁹ Article 32 Schengen Borders Code.

inter alia due to reintroduced controls at internal borders. While **Germany** took no refusal of entry decisions at land borders 2017 according to Eurostat data,²⁰ its practice has changed in 2018. Statistics from the Federal Police suggest that out of a total of 5,691 persons refused entry during the first half of the year, 2,844 were refused entry at the Austrian land border, 2,839 at airports and 8 at sea ports.²¹

Procedural guarantees

Refusal of entry decisions must be substantiated and state the reasons for which entry is refused.²² They must also be appealable, although the Schengen Borders Code precludes automatic suspensive effect in such cases,²³ and requires border guards to ensure that persons refused entry do not make it into the territory of the country.²⁴ However, it should be noted that states' obligations to refuse entry into the territory under the Schengen Borders Code are without prejudice to the application of special provisions concerning the right to asylum and to international protection.²⁵ Therefore, Article 13(3) of the Code must be read against the case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) regarding Article 13 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter, according to which automatic suspensive effect is required in order for a remedy to be effective in protecting the individual from *refoulement* and guaranteeing the right to asylum.²⁶

The effectiveness of the remedy is questionable in the light of the provisions of the Schengen Borders Code. Whereas the time limit to appeal a refusal of entry decision varies from one country to another, from three days in **Malta**, to five working days in **Switzerland**, two weeks in **Poland** and **Bulgaria**, four weeks in the **Netherlands**, and six weeks in **Austria**,²⁷ the lack of automatic suspensive effect means that individuals are usually removed from the border by the time their appeal is examined. The lack of information and understanding of the procedure may also be a factor undermining the effectiveness of appeals. For example, **Switzerland** provides individuals with the right to receive a formal decision on removal upon request.²⁸ However, most people are not aware of this right in practice and receive no official decision when being refused entry, thereby being unable to appeal the refusal of entry.²⁹ The Cantonal Court of Valais recently acknowledged the difficulty to lodge an appeal before the removal has taken place.³⁰

2. Push backs in law and practice

European countries systematically construe border controls as a process aimed at preventing irregular arrivals, even where people have valid claims to enter due to a need for international protection. Refusal of entry – or return in cases beyond the external borders – is often used as an

²⁰ Eurostat, *migr_eirfs*. These are collected pursuant to Article 14(5) Schengen Borders Code.

²¹ Information provided by Informationsverbund Asyl und Migration, 14 September 2018.

²² Article 14(2) Schengen Borders Code.

²³ Article 14(3) Schengen Borders Code.

²⁴ Article 14(4) Schengen Borders Code.

²⁵ Article 14(1) Schengen Borders Code.

²⁶ ECtHR, *Gebremedhin v. France*, Application No 25389/05, Judgment of 26 April 2007, EDAL, available at: <https://bit.ly/2QAYz9Q>, para 67; *Jabari v. Turkey*, Application No 40035/98, Judgment of 11 July 2000, EDAL, available at: <https://bit.ly/2RCsD6e>, paras 49-50; *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011, EDAL, available at: <https://bit.ly/2iVMaOG>, paras 387-388; CJEU, Case C-562/13 *Abdida*, Judgment of 18 December 2014, EDAL, available at: <https://bit.ly/2CxlLe0>, paras 52-53; C-239/14 *Tall*, Judgment of 17 December 2015, EDAL, available at: <https://bit.ly/2CwckKq>, para 54; Case C-181/16 *Gnandi*, Judgment of 19 June 2018, EDAL, available at: <https://bit.ly/2NymHli>, para 54.

²⁷ Information provided by the AIDA experts, September 2018.

²⁸ Article 64c Swiss Foreign Nationals Act.

²⁹ Information provided by the Swiss Refugee Council, 8 September 2018. A refusal of entry can be appealed within 5 working days without automatic suspensive effect.

³⁰ Cantonal Court of Valais, Decision A1 17 185, 13 March 2018.

automatic barrier at the border, without due regard to requests for asylum. In other cases, authorities physically remove persons from the border or territory without taking any administrative decision to that effect. For the purposes of this report, the term “push back” refers to practices removing people to a neighbouring country without offering them a prior opportunity to seek asylum.

Several countries have used domestic law to construct a basis for justifying push back policies denying asylum seekers the opportunity to register a claim after entering their territory, even where these are in clear dereliction of international refugee and human rights law. The following examples are illustrative:

Spain: An amendment to the Spanish Aliens Act, adopted in March 2015, has introduced a specific regime for the enclaves of Ceuta and Melilla on the Moroccan border. The reform provided the possibility of “rejection at the border” for persons detected at the border lines of Ceuta and Melilla, to avoid their irregular entry in Spain. “In practice, when a person is found within Spanish border territory, which includes the land between the Moroccan and Spanish border, he or she is taken outside the Spanish border through existing passages and doors controlled by border guards.”³¹ Following its condemnation by the ECtHR last year for unlawfully carrying out collective expulsions at the border,³² Spain made it clear that it would not revise its legislation to comply with the ECHR and appealed the ruling before the Grand Chamber of the Court.³³

France: The latest asylum and immigration law reform entering into force in September 2018 has introduced changes to the right to a “full day” (*jour franc*) of protection from removal for persons refused entry into the territory. The “full day” is no longer available to people refused entry at land borders, i.e. the overwhelming majority concerned by such decisions.³⁴

Hungary: As of the end of March 2017, irregularly staying migrants found anywhere in Hungary are escorted to the external side of the border fence with Serbia without any formal procedure. This includes persons who have never even been to Serbia before and have entered Hungary through Ukraine or Romania or by air.

Austria: Following a reform entering into force on 1 June 2016, the Austrian Asylum Act includes “special provisions to maintain public order during border checks”. This emergency regime, activated by federal decree when a maximum quota of asylum applications is reached, allows Austrian authorities to reject people who make an asylum application at the border before providing them with the opportunity to formally lodge their application.³⁵ Given that all countries neighbouring Austria are states applying the Dublin system, the emergency provision would also entail a derogation from the Dublin Regulation, since asylum seekers would be expelled from the territory without lodging a claim and following the applicable procedure. This special regime has not been activated to date, since the quotas of 37,500 applications set for 2016 and 30,000 for 2017 were not reached.³⁶

Slovenia: The reform of the Slovenian Aliens Act adopted in early 2017 includes a similar special regime applicable in situations posing “a serious threat to public order and security”. Under those measures to be adopted by the Parliament, any person expressing the intention to seek asylum in Slovenia would be returned without having his or her application examined, with the exception of persons in immediate danger of loss of life, persons facing torture or ill-treatment upon return, or

³¹ AIDA, Country Report Spain, 2017 Update, March 2018, available at: <https://bit.ly/2pIANDI>, 17.

³² ECtHR, *N.D. and N.T. v. Spain*, Application Nos 8675/15 and 8697/15, Judgment of 3 October 2017, EDAL, available at: <http://bit.ly/2xfSAjJ>.

³³ See e.g. The AIRE Centre et al., *Third party intervention in N.D. and N.T. v. Spain*, 6 April 2018, available at: <https://bit.ly/2z0cH8J>.

³⁴ Article L.213-2 French *Ceseda*, as amended by Law n. 2018-778 of 10 September 2018.

³⁵ AIDA, Country Report Austria, 2017 Update, March 2018, available at: <https://bit.ly/2tmJVfW>, 18.

³⁶ *Ibid.*

unaccompanied children. The assessment of these conditions is to be made by police authorities at the border.³⁷

Whereas some countries have “legalised” push backs through the adoption of national legislation, a large number of states view push backs as an informal yet fundamental element of their migration control apparatus. Strikingly, people seeking protection may be unlawfully prevented from entering the territory, whether arriving at external or internal EU borders.

Practices of push backs and unlawful denial of access to the territory, in contravention with fundamental rights including the prohibition of *refoulement* under Article 3 ECHR and the prohibition of collective expulsions under Article 4 Protocol 4 ECHR,³⁸ are commonplace in land border management throughout the European continent.

The following section highlights incidents, some more severe and systematic than others, reported currently across different regions in Europe.

Western Europe

Germany: The reintroduction of controls continues to give rise to risks of push backs at the Austrian land border.³⁹ In June 2018, the Federal Ministry of Interior announced that the Border Police had been instructed to generally refuse entry to persons who had previously been issued an entry ban – usually following deportation from Germany – even if they sought asylum. This measure took effect on 1 July 2018 and was applied to two persons during its first week of application.⁴⁰

In addition to refusal of entry at the border, recent media reports have noted that the Border Police carries out “pre-emptive border controls” on Austrian soil. These controls take place at Salzburg train station on the basis of an agreement between Germany and Austria and consist of passenger checks to verify if people have the right to lawfully enter Germany. Passengers who do not produce the necessary documentation are handed out a refusal of entry decision, are ordered to get off the train and are directed to the Austrian police.⁴¹

Switzerland: In the summer of 2016, a significant number of persons were refused entry at the Italian border and stranded in the town of Como. Swiss border guards allegedly operated with racial profiling as they reportedly picked out all black passengers from the train.⁴² Although individuals are subject to a formal removal procedure in these cases and are entitled to request a formal decision, most of them are unaware of their right to receive a decision.⁴³

³⁷ AIDA, Country Report Slovenia, March 2018, available at: <https://bit.ly/2tZwe6P>, 16.

³⁸ ECtHR, *N.D. and N.T. v. Spain*, Application Nos 8675/15 and 8697/15, Judgment of 3 October 2017; *Sharifi v. Italy and Greece*, Application No 16643/09, Judgment of 21 October 2014; *Hirsi Jamaa v. Italy*, Application No 27765/09, Judgment of 23 February 2012; *Conka v. Belgium*, Application No 51564/99, Judgment of 5 February 2002.

³⁹ Informal returns to Austria by the German Border Police were also reported in 2015: ECRE, *Navigating the maze: Structural barriers to accessing protection in Austria*, December 2015, available at: <https://bit.ly/2jyp4fZ>, 17-18.

⁴⁰ Information provided by Informationsverbund Asyl und Migration, 14 September 2018. For an overview and commentary, see Informationsverbund Asyl und Migration, ‘Stellungnahmen zu geplanten Zurückweisungen an der Grenze und Transitverfahren’, 9 July 2018, available in German at: <https://bit.ly/2zwUPTs>.

⁴¹ Taz, ‘Endstation Salzburger Bahnhof’, 16 August 2018, available in German at: <http://www.taz.de/15525353/>.

⁴² AIDA, Country Report Switzerland, 2017 Update, February 2018, available at: <https://bit.ly/2FoL9tg>, 16-17.

⁴³ Information provided by the Swiss Refugee Council, 10 September 2018.

France: The reinstatement of border controls on counter-terrorism grounds since the end of 2015 has led to a dramatic increase in the number of people returned to Italy without having had the opportunity to access the asylum procedure.⁴⁴ Even persons who explicitly express the intention to seek asylum are refused entry by the French authorities either following a pre-populated refusal of entry decision or without any decision at all, despite a series of condemnations of the Prefecture by the Administrative Court of Nice.⁴⁵ More recently in 2018, push backs following a similar pattern have been reported at the Spanish border.⁴⁶

Italy: Beyond well reported barriers to disembarkation in Italian ports in the course of 2018, access to the territory by land is equally problematic. Since the end of February 2017, readmission measures have been initiated against people arriving in Italy from Austria via train. Controls have reportedly been based on racial profiling, intercepting mostly Afghan and Pakistani nationals. Italian authorities apply more stringent controls on regional trains arriving from Austria. If people do not hold valid documentation to enter Italy, they are immediately directed back to the same train by which they arrived, to travel towards Innsbruck, Wörgl and Kufstein. People are not provided with written notifications or explanations of the reasons for their readmission. They are not allowed to seek asylum or to benefit from linguistic assistance and their individual circumstances are not examined.⁴⁷

As of 2018, push backs are also reported on the Slovenian border, under no formal readmission procedure. One incident reported in June 2018 involved 21 people held overnight in a police station in Trieste and then sent back to Slovenia the following morning.⁴⁸ Such incidents are likely to intensify given the increased presence of police as well as anti-migrant ‘vigilantes’ at the Slovenian border since September 2018.⁴⁹

Austria: A similar practice is applied vis-à-vis trains following the opposite direction along the Italian border. According to the testimonies of migrants returned to Italy, when police intercepts people coming from Italy, it orders them to return to Italy without starting of any formal procedure or without providing them with a written decision.⁵⁰ Migrants have reported not being able to communicate with the Austrian police and to express their intention to seek asylum or – in some cases – to declare their minor age, namely due to the absence of linguistic mediators.⁵¹

Central and Eastern Europe

Poland: Automatic refusal of entry to persons expressing the intention to apply for asylum continues to be standard practice at the Terespol border-crossing point on the border with Belarus, as well as Medyka on the border with Ukraine.⁵² In 2017, 34 complaints against the Border Guard were

⁴⁴ See *inter alia* ECRE, *Access to asylum and detention at France’s borders*, June 2018, available at: <https://bit.ly/2JaRrSu>; French General Controller of Places of Detention, *Rapport de visite des locaux de la police aux frontières de Menton (Alpes-Maritimes) – Contrôle des personnes migrantes à la frontière franco-italienne*, June 2018, available in French at: <http://bit.ly/2JjUpzY>; AIDA, Country Report France, 2016 Update, February 2017, available at: <http://bit.ly/2IPwbCv>, 22-23; Country Report France, 2017 Update, February 2018, 21-22; Forum réfugiés – Cosi, *Les obstacles à l’accès à la procédure d’asile dans le département des Alpes-Maritimes pour les étrangers en provenance d’Italie*, April 2017, available at: <http://bit.ly/2oWoa3P>.

⁴⁵ See e.g. Administrative Court of Nice, Order No 1701211, 31 March 2017, EDAL, available at: <https://bit.ly/2D5aZ80>; Order No 1801843, 2 May 2018.

⁴⁶ El País, ‘Francia usa una medida antiterrorista para devolver migrantes a España’, 1 September 2018, available in Spanish at: <https://bit.ly/2Cxr85Q>.

⁴⁷ AIDA, Country Report Italy, 2017 Update, March 2018, available at: <https://bit.ly/2Ga01zb>, 22.

⁴⁸ Information provided by ASGI, 11 September 2018. Some of them were subsequently pushed back to Croatia and then to Bosnia and Herzegovina.

⁴⁹ *Ibid.*

⁵⁰ Information provided by Asylkoordination, 10 September 2018.

⁵¹ AIDA, Country Report Italy, 23.

⁵² For a detailed account, see AIDA, Country Report Poland, 2017 Update, February 2018, available at: <https://bit.ly/2zqDYiY>, 14-16.

registered by the Voivodeship Administrative Court, while the Supreme Administrative Court recently ruled in twelve cases that the official notes (memos) issued and signed only by the Border Guard to substantiate refusal of entry decisions, referring solely to economic activity as the reason for foreigners' entry into the country, were not credible.⁵³ Four cases are also pending before the European Court of Human Rights, in which the Court ordered interim measures under Rule 39 to prevent the authorities from returning the individuals to Belarus.⁵⁴ Poland did not comply with the measures and returned the applicant to Belarus. The Ministry of Foreign Affairs stated that the person was not returned since he had not been admitted in the first place. In its statement, the Ministry noted that the foreigner had not crossed the Polish border and was hence not expelled and had not filed an application for international protection during a border check. The Ombudsman has also intervened in the cases of non-compliance with the measures issued by the Strasbourg Court.

Hungary: The abovementioned changes to the domestic legal framework have sought to legitimise systematic resort to push backs to Serbia. In 2017, 9,136 migrants were pushed back from the territory of Hungary to the external side of the border fence and 10,964 migrants were blocked entry at the border fence.⁵⁵ In the first half of 2018, 1,714 people were pushed back from the territory to the external side of the fence and 1,098 were blocked entry at the fence.⁵⁶

Slovenia: Although a fast-track return procedure is conducted at the border under the Slovenia-Croatia bilateral readmission agreement, reports of push backs on the Croatian border surfaced in May 2018. According to cases documented by PIC, individuals processed under that procedure are not appropriately informed about the possibility to seek asylum. In two reported cases, the minutes of the police interviews conducted upon apprehension at the border explicitly stated the individuals' reasons for fleeing their home country, namely persecution and armed conflict. Even after being recorded at the apprehension interview, the reasons for flight were not stated in the return decisions issued by the police.⁵⁷

Croatia: Reports of *refoulement* or push backs at the border have increased in recent years, against the backdrop of a strict border management regime, under which access to the territory and the asylum system has been limited.⁵⁸ These concerns apply both to the Serbian border and as of 2018 to the Bosnian border as well. Push backs at the border or even from within the territory have been widely documented by various sources and routinely involve coercion, intimidation, confiscation or destruction of private valuables and disproportionate use of force by the police.⁵⁹ Some 2,500 people have been pushed back to Bosnia since the beginning of 2018, while 1,385 were expelled – often collectively – to Serbia in spring 2018 alone.⁶⁰ The persisting violations of human rights at the borders

⁵³ Helsinki Foundation for Human Rights, 'NSA stwierdził naruszenie przepisów prawa przez SG wobec uchodźców, którym wydano decyzje o odmowie wjazdu', 20 September 2018, available in Polish at: <https://bit.ly/2Nu4SKz>.

⁵⁴ ECtHR, *D.A. v. Poland*, Application No 51246/17, Communicated 7 September 2017; *M.A. v. Poland*, Application No 42902/17, Communicated 3 August 2017; *M.K. v. Poland*, Application No 43643/17, Communicated 21 July 2017; *M.K. v. Poland*, Application No 40503/17, Communicated 13 July 2017. See ECRE et al., *Third party intervention in M.A. v. Poland*, December 2017, available at: <https://bit.ly/2ONCjfl>.

⁵⁵ AIDA, Country Report Hungary, 2017 Update, February 2018, available at: <https://bit.ly/2Fnqu8V>, 19.

⁵⁶ Information provided by the Hungarian Helsinki Committee, 14 September 2018.

⁵⁷ Information provided by PIC, 10 September 2018. See also PIC, *Report on findings and observations on the implementation of return procedures in accordance with the principle of non-refoulement*, July 2018, available at: <http://bit.ly/2wUMZhQ>.

⁵⁸ AIDA, Country Report Croatia, 2017 Update, March 2018, available at: <https://bit.ly/2Hb4hvE>, 19-20.

⁵⁹ See e.g. Info Migrants, 'Red Cross accuses Croatia of violence against refugees', 23 July 2018, available at: <https://bit.ly/2LIAOe7>; Are You Syrious et al., *Izveštaj o nezakonitim i nasilnim protjerivanjima izbjeglica iz Republike Hrvatske*, February 2018, available in Croatian at: <https://bit.ly/2E6WkEw>; Amnesty International, *Annual Report 2017/18*, available at: <https://bit.ly/2HFODlw>.

⁶⁰ UNHCR, *Desperate Journeys: Refugees and migrants arriving in Europe and at Europe's borders*, January-August 2018, available at: <https://bit.ly/2O1NSj8>, 18; UNHCR, *Inter-Agency Operational Update: Serbia*, April-June 2018, available at: <https://bit.ly/2pvu1e8>.

have triggered debates in the Croatian Parliament,⁶¹ as well as investigations by the Ombudswoman.⁶² Note that the ECtHR has also granted interim measures in a case concerning a family summarily returned to Serbia and subsequently detained in Tovarnik.⁶³

Romania: Reports from UNHCR Serbia show an increasing number of push backs and collective expulsions from Romania, with a total 1,386 cases considered as collective expulsions occurring from April 2017 until the end of the year. A peak was noted in the last months of 2017, with 338 cases in September, 346 in October, 319 in November and 267 in December.⁶⁴ The number of people pushed back seems to have relatively decreased in 2018, with 318 collectively expelled from 7 January to 8 July according to UNHCR, while Jesuit Refugee Service (JRS) Romania has not received reports of push backs during this period.⁶⁵

Serbia: Incidents of push backs continue to be reported. In February 2017, for example, a group of 25 refugees from Afghanistan were collectively expelled to Bulgaria in a manner that can only be described as perfidious. After being arrested, detained and charged with misdemeanour for illegal entry, the persons were issued certificates of intention to seek asylum, but were subsequently loaded in the back of the police van, and instead of being taken to Reception Centre Divljana, they were left in the green border zone with Bulgaria, and violently ordered to go back.⁶⁶ This practice has continued into 2018.⁶⁷

Bulgaria: Although zero push backs were officially reported in the country throughout the whole of 2017, other indirect information from the media indicate a continuation of push backs at a large scale. Push backs, excessive use of force by Border Police and engagement of the authorities in refoulement, including in respect of individuals with specific needs or vulnerabilities, are also mentioned as a matter of concern by UN bodies in their monitoring of Bulgaria.⁶⁸ During the period May-July 2018 alone, a total of 39 push backs involving 457 persons were identified, following official reports of a decrease in arrivals that have been linked to requests from the Bulgarian government to Turkey to tighten border controls for the duration of the Bulgarian Presidency of the Council in the first half of the year.⁶⁹

Mediterranean region

Spain: Authorities continue to refuse access to the territory to persons jumping the fence in the enclaves of Ceuta and Melilla and to push them back without any formal procedure,⁷⁰ despite recent condemnation from the European Court of Human Rights.⁷¹ At the end of August 2018, Spain

⁶¹ Croatian Parliament, 'Izvešće Odbora za unutarnju politiku i nacionalnu sigurnost s rasprave o uskraćivanju međunarodne zaštite u Republici Hrvatskoj', 1 March 2018, available in Croatian at: <https://bit.ly/2xBinTu>; 100 Posto, 'UNHCR: "Ove godine primili smo prijave 700 migranata da ih je policija pretukla", 100posto doznaje: Sabor pokreće istragu', 5 September 2018, available in Croatian at: <https://bit.ly/2QRQmzd>.

⁶² Croatian Ombudsman, 'Ispitivanje pritužbi na policijsko postupanje prema migrantima', 28 August 2018, available in Croatian at: <https://bit.ly/2xHvIhT>.

⁶³ ECtHR, *M.H. v. Croatia*, Application No 15670/18, Communicated 11 May 2018.

⁶⁴ UNHCR, *Serbia Operational Update*, December 2017, available at: <http://bit.ly/2GYWxvk>.

⁶⁵ Information provided by Felicia Nica, 10 September 2018.

⁶⁶ AIDA, Country Report Serbia, 2017 Update, February 2018, available at: <https://bit.ly/2Gvg06U>, 15.

⁶⁷ Information provided by the Belgrade Centre for Human Rights, 9 September 2018.

⁶⁸ AIDA, Country Report Bulgaria, 2017 Update, February 2018, available at: <https://bit.ly/2ErP7Qz>, 17.

⁶⁹ Information provided by the Bulgarian Helsinki Committee, 10 September 2018.

⁷⁰ Information provided by Accem, 10 September 2018.

⁷¹ ECtHR, *N.D. and N.T. v. Spain*, Application Nos 8675/15 8679/15, Judgment of 3 October 2017, EDAL, available at: <https://bit.ly/2B56bty>. The case is now pending before the Grand Chamber of the Court.

collectively expelled a group of 116 persons to Morocco within 24 hours through a reactivation of a 1992 bilateral readmission agreement.⁷²

Greece: Throughout 2017 and 2018, cases of alleged push backs at the Greek-Turkish border of Evros have been systematically reported. According to these allegations, the Greek authorities follow a pattern of arbitrary arrest of newly arrived persons entering the Greek territory from the Turkish land borders, *de facto* detention in police stations close to the borders, and transfer to the border, accompanied by the police, where they are pushed back to Turkey.⁷³ Similar incidents are reported in more recent reports by UNHCR and the Council of Europe.⁷⁴

Turkey: Civil society organisations report multiple incidents of Syrian refugees apprehended and returned to Syria by Turkish authorities in 2017 and 2018. In that context, incidents of ill-treatment at the Syrian border, including push backs and shootings by border guards near Cilvegözü in Hatay, continue to be reported.⁷⁵ Afghan refugees arriving through the Iranian border have also been deported following detention in the Erzurum Removal Centre, though violent push backs do not appear to have been reported to an extent similar to the Syrian border.⁷⁶

The persisting practice of push backs does not operate in a vacuum. It is closely connected to policy discussions on the CEAS, and the EU's discourse shift from the plight of refugees to prevention of "illegal migration" at any cost.⁷⁷ This backdrop, coupled with strong hesitation of the European Commission to enforce human rights and asylum standards even in the face of blatant violations by Member States,⁷⁸ has provided politicians with space to hail measures pushing refugees as far from Europe as possible, through overt endorsement of push backs in some cases.⁷⁹

Support for push backs is also driven by misconceptions about the Dublin system and its impact on the right of any individual to seek asylum in a European country. The erroneous view that a person can be turned away at the border without being able to make an asylum claim due to another state being responsible under the Dublin Regulation is not only found in political statements such as the recently announced agreements between **Germany** and Greece, Spain, Portugal and Italy, ostensibly amid broader plans to turn away people attempting to enter Germany.⁸⁰ It also trickles down to police

⁷² Spanish Commission of Aid to Refugees (CEAR), 'CEAR muestra su preocupación tras la expulsión "acelerada" de las 116 personas migrantes que llegaron ayer a Ceuta', 23 August 2018, available in Spanish at: <https://bit.ly/2o2SgQf>.

⁷³ AIDA, Country Report Greece, 2017 Update, March 2018, available at: <https://bit.ly/2G5vKP2>, 23; Greek Council for Refugees, *Reports of systematic pushbacks in the Evros region*, 20 February 2018, available at: <http://bit.ly/2FndTBN>.

⁷⁴ UNHCR, *Desperate Journeys: Refugees and migrants arriving in Europe and at Europe's borders*, January-August 2018, available at: <https://bit.ly/2O1NSj8>, 17-18; European Committee for the Prevention of Torture (CPT), *Preliminary observations made by the CPT which visited Greece from 10 to 19 April 2018*, CPT/Inf (2018) 20, 1 June 2018, available at: <https://rm.coe.int/16808afaf6>, 24.

⁷⁵ AIDA, Country Report Turkey, 2017 Update, March 2018, available at: <https://bit.ly/211S9fS>, 23; Human Rights Watch, 'Turkey: Mass Deportations of Syrians', 22 March 2018, available at: <https://bit.ly/21FZjr8>.

⁷⁶ Afghanistan Analysts Network, 'Mass Deportations of Afghans from Turkey: Thousands of migrants sent back in a deportation drive', 21 June 2018, available at: <https://bit.ly/2IMx4Ni>.

⁷⁷ The notion of "refugee crisis" and references to "refugees" seen in European Commission statements in 2015 ('Refugee Crisis: European Commission takes decisive action', IP/15/5596, 9 September 2015) have disappeared in more recent positions: 'European Agenda on Migration: Still fragile situation gives no cause for complacency', IP/18/3743, 16 May 2018. On the other hand, the European Council has consistently framed the arrival of refugees as an "illegal migration" and "uncontrolled flows" question: European Council, *Conclusions 25 and 26 June 2015*, EUCO 22/15, para 3; *Conclusions 28 June 2018*, 421/18, para 2.

⁷⁸ For a recent discussion, see Cathryn Costello and Elspeth Guild, 'Fixing the Refugee Crisis: Holding the Commission Accountable', *Verfassungsblog*, 16 September 2018, available at: <https://bit.ly/2MXR4ak>.

⁷⁹ On positions expressed by **Italy** and **Belgium**, see ANSA, 'Belgium backs Salvini line on migrants', 5 June 2018, available at: <https://bit.ly/2l68ilv>.

⁸⁰ For an overview and commentary, see Informationsverbund Asyl und Migration, 'Stellungnahmen zu geplanten Zurückweisungen an der Grenze und Transitverfahren', 9 July 2018, available in German at:

officials who refuse entry to persons arriving at the German borders after having applied for asylum, bypassing the guarantees set out in the Dublin Regulation. Similar practices are documented during border checks at air and land borders in **France**, where Border Police officers issue refusal of entry decisions without taking into account requests for asylum on the basis that Italy or other states are responsible under the Dublin system.⁸¹

3. Border monitoring

Oversight of border control activities to assess their compliance with international refugee and human rights law, commonly known as “border monitoring”, is a fundamental component of rights-compliant migration management systems.

No known official border monitoring activities are carried out in **Germany, France, Belgium, Switzerland, Austria, Italy, Malta, Cyprus, Spain, Portugal**, the **United Kingdom, Ireland** and **Serbia**. Other countries (**Greece, Sweden, the Netherlands**) limit monitoring of land, sea and air borders to the activities conducted by national authorities and the European Border and Coast Guard or the Schengen Evaluation Mechanism.

Border monitoring arrangements on the basis of agreements between national authorities, UNHCR and civil society organisations are only to be found in a few countries in Central and Eastern Europe:

Hungary: Under a 2006 tripartite agreement between the National Police, UNHCR and the Hungarian Helsinki Committee, with funding provided by UNHCR, the Hungarian Helsinki Committee was authorised to access border guards’ detention facilities, to contact detained persons and offer legal assistance, as well as to access anonymised documents in police records. 14 visits to border guards’ detention facilities on the Serbian border were held in 2017, and a total of 445 in the ten years of operation of the agreement. Joint reports on border monitoring were issued until 2014, while *ad hoc* reports were published by the separate entities from 2014 until 2017. The tripartite agreement was unilaterally terminated by the police on 21 September 2017 on the ground that the 2017 reform of the Asylum Act no longer permitted the detention of asylum seekers in police facilities.⁸² At the moment, UNHCR and the Red Cross conduct *ad hoc* border monitoring activities but do not publish findings.⁸³

Bulgaria: Under the 2010 tripartite Memorandum of Understanding between the Border Police, UNHCR and the Bulgarian Helsinki Committee,⁸⁴ with funding provided by UNHCR, the parties have access to any national border or detention facility at land and air borders, including airport transit zones, without limitations on the number of monitoring visits. Access to these facilities is granted without prior permission or conditions on time, frequency or circumstances of the persons detained. In 2017, the Bulgarian Helsinki Committee carried out 791 border monitoring visits, 516 of which concerned the border-crossing areas of Kapitan Andreevo and Novo Selo near Greece and Turkey, and 27 of which concerned Sofia Airport. During these visits, the organisation can also obtain information from police records when needed to cross-check individual statements, but has access only to border detention facilities, not to border-crossing points *per se*.⁸⁵

<https://bit.ly/2zwUPTs>. In the case of Portugal, the agreement expressly refers to the Dublin procedure and specific modalities under Article 36 of the Dublin III Regulation.

⁸¹ ECRE, *Access to asylum and detention at France’s borders*, June 2018, available at: <https://bit.ly/2JaRrSu>, 17 et seq. discussing the refusal to register asylum applications at the Italian land border and the waiting zone in Beauvais Airport.

⁸² Information provided by the Hungarian Helsinki Committee, 14 September 2018. See also Hungarian Helsinki Committee, *National authorities terminated cooperation agreements with the Hungarian Helsinki Committee*, October 2017, available at: <http://bit.ly/2sMyU7o>.

⁸³ *Ibid.*

⁸⁴ The Bulgarian Helsinki Committee had an agreement with the Border Police from 2004 to 2010.

⁸⁵ Information provided by the Bulgarian Helsinki Committee, 10 September 2018.

Romania: UNHCR has a Memorandum of Understanding with the Border Police, which it implements through JRS Romania as an implementing partner. Border monitoring consists of data collection on entry to and exit from the country from public sources, official statistics and visits to designated border areas. Visits are usually conducted by JRS and UNHCR, whether separately or jointly, focusing on border-crossing points with significant numbers of entries or exits. The Border Police is always notified of planned visits in advance. A total of 7 border monitoring visits have been conducted by JRS in the first half of 2018, of which 2 together with UNHCR.⁸⁶

Slovenia: UNHCR conducts monthly visits to selected border police stations under an agreement with the government. Until 2017, visits were carried out by PIC with UNHCR support.⁸⁷

Croatia: The tripartite agreement between the Ministry of Interior, UNHCR and the Croatian Law Centre, signed at the end of 2017, foresees 13 visits to selected police administrations in the course of 2018.⁸⁸

Poland: UNHCR has concluded an agreement with the Border Guard for monitoring to be conducted by an implementing partner, Centrum Pomocy Prawnej im. Haliny Nieć. The findings of border monitoring activities are not made publicly available, however.⁸⁹

In the absence of official border monitoring arrangements in other countries, civil society organisations have sought to fill gaps with limited capacity and access through small-scale activities. In **Italy**, some NGOs conduct border monitoring activities in the framework of ongoing activities or projects. ASGI monitors border areas such as Ventimiglia, Bardonecchia or Chiasso, often through cross-border activities coordinated with French, Swiss and Italian partners.⁹⁰ Another initiative is the “Frontiere e Minori” project funded by the Asylum, Migration and Integration Fund (AMIF) and implemented by the Italian Refugee Council, Nuovi Cittadini, Red Cross Gorizia and Istituto di Culture Mediterranee. This looks specifically at children pushed back to Austria or Slovenia from Friuli-Venezia Giulia, children intercepted in Verona following push back from Austria, and children disembarking in Apulia.⁹¹ A similar project was initiated in April 2018 by the Alexander Langer Foundation in **Austria**, which involves visits to the Brenner pass on a weekly basis, without however including access to police records or authorities’ premises.⁹²

NGOs such as the Helsinki Foundation for Human Rights and the Association for Legal Intervention (*Stowarzyszenie Interwencji Prawnej*) in **Poland** have held visits to Terespol, Medyka and Warsaw Airport on their own initiative. The Helsinki Foundation for Human Rights arrived without prior notification while the Association for Legal Intervention notified prior to its arrival, and both were not allowed to accompany the individuals during passport checks and first interviews with the Border Guard.⁹³

⁸⁶ Information provided by Felicia Nica, 10 September 2018.

⁸⁷ Information provided by PIC, 10 September 2018.

⁸⁸ AIDA, Country Report Croatia, 19.

⁸⁹ Information provided by Maja Lysienia, 10 September 2018.

⁹⁰ Information provided by ASGI, 11 September 2018.

⁹¹ Information provided by ASGI, 11 September 2018.

⁹² Information provided by Asylkoordination, 10 September 2018.

⁹³ Helsinki Foundation for Human Rights, *A road to nowhere: The account of a monitoring visit at the Brest-Terespol border crossing between Poland and Belarus*, October 2016, available at: <http://bit.ly/2l7nt2x>; Legal Intervention Association, *At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport*, 2016, available at: <http://bit.ly/2lPBrVE>.

Civil society organisations also conduct cross-border monitoring activities, as was the case for PIC, which organised a visit to Bosnia and Herzegovina in 2018 to investigate the way border controls are carried out in **Slovenia**.⁹⁴

Nevertheless, NGOs are likely to face numerous obstacles to border monitoring, ranging from a general lack of financial capacity to monitor beyond *ad hoc* missions, to access to border-crossing points and detention facilities.⁹⁵ Organisations providing counselling and assistance may be authorised to be present in detention facilities near the border in some countries (**France, Netherlands, Belgium**) but are usually not allowed at border-crossing points *per se*.⁹⁶ Access to these locations may also be refused when requested. The Centre for Peace Studies in **Croatia**, for example, has often had requests to access border areas, the detention centre in Ježevu and those in Trilj and Tovarnik, refused by the authorities.⁹⁷

National monitoring bodies – Ombudspersons, National Preventive Mechanisms – also have the power to conduct monitoring visits and activities, although this is not done systematically.⁹⁸

There is a pressing need for border monitoring mechanisms. The persisting challenges to access to the territory reveal too well that European countries continue to see efficient border control and human rights protection as contradictory. This is a false dilemma, however. The right to asylum supersedes refusal of entry under the Schengen *acquis* and border control mechanisms which enable states to comply with their international obligations are both feasible and desirable.⁹⁹

To incorporate human rights into border control, monitoring mechanisms should be multi-actor, well-defined and adequately funded to allow for sustainable oversight of protection responsibilities at external and internal EU borders. Agreements involving national authorities, UNHCR and civil society organisations are an illustrative example of a structured and sustainable approach to border monitoring, bearing in mind however the need for independence and resources of all actors involved to carry out activities. The content and conditions of monitoring systems are also paramount to their effectiveness. Arrangements which entitle civil society to carry out unannounced and unlimited visits, as is the case in **Bulgaria**, would allow for genuine supervision of the situation prevailing at the border. Public accessibility of findings – for instance in Bulgaria and previously **Hungary** – is equally important a guarantee, to ensure that practice is amenable to review and that administrations remain accountable.

4. Guarantees for access to asylum at the border

With regard to the treatment of potential asylum seekers at the border, the recast Asylum Procedures Directive provides that:

⁹⁴ PIC, *Report on findings and observations on the implementation of return procedures in accordance with the principle of non-refoulement*, July 2018, available at: <http://bit.ly/2wUMZhQ>.

⁹⁵ Note that Article 8(2) recast Asylum Procedures Directive provides that such organisations should have effective access to asylum seekers at the border.

⁹⁶ AIDA, *Boundaries of Liberty: Asylum and de facto detention in Europe*, March 2018, available at: <https://bit.ly/2Epi5Qh>, 26.

⁹⁷ Information provided by the Croatian Law Centre, 20 September 2018.

⁹⁸ See e.g. Polish Ombudsman for Children, *Informacja o wynikach kontroli przeprowadzonej w dniu 10 stycznia 2017 r. na kolejowym przejściu granicznym Terespol - Brześć, obsługiwanym przez Placówkę Straży Granicznej w Terespolu*, 2017, available in Polish at: <https://bit.ly/2xldTcV>; French General Controller of Places of Detention, *Rapport de visite des locaux de la police aux frontières de Menton*, June 2018, available in French at: <https://bit.ly/2JjUpzY>; Portuguese Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available in Portuguese at: <https://bit.ly/2OHQpzf>.

⁹⁹ Articles 4 and 14(1) Schengen Borders Code.

“Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.”¹⁰⁰

The provision is at best permissive and stops short of imposing a general obligation on states to provide information on access to the asylum procedure at the border.¹⁰¹ It is also “unnecessarily complicated” insofar as it fails to usefully guide national authorities as to how they should respond to people arriving at the border.¹⁰² The wording suggests that the assessment of “indications” of a person’s intention to seek protection is to be made by border guards, without there being a framework or process for individuals to receive information in order to communicate such an intention.¹⁰³ EU agencies European Asylum Support Office (EASO) and European Border and Coast Guard (Frontex)’s own guidance takes a more pragmatic view, highlighting that, to comply with Article 8 of the Directive, border officials “have to be proactive in identifying such a person, inform him/her about the right to apply for asylum and advise him/her on how to make the application.”¹⁰⁴ Domestic courts have in turn clarified that, even without proactively informing the individual of the right to asylum, officials conducting border controls must assess whether he or she is in fact seeking asylum.¹⁰⁵

The transposition and implementation of this provision unsurprisingly leaves much to be desired. Domestic legislation and practice with regard to information provision and interpretation and other assistance at border-crossing points in most countries fail to adequately guarantee the right to comprehensible information on how to seek asylum.

Information provision

Individuals apprehended for irregular entry are informed about their rights and obligations in the process, but this information does not cover the right to seek asylum according to national law and in practice in most countries (**Austria, France, the Netherlands, Ireland, Slovenia, Croatia, Serbia, Malta and Cyprus**). While there are examples of such information being available at the border in some form, it is not necessarily comprehensible or effectively communicated to entrants:

Bulgaria: Information on the asylum procedure is provided through information boards and brochures produced by NGOs with UNHCR funding under a bilateral agreement. These are displayed at the main border-crossing points, namely Kapetan Andreevo, Elhovo, Lesovo, Bolyarovo and Malko Tarnovo, the main border exit point in Kalotina near Serbia, the border detention facility at the port of Burgas, and the Sofia Airport transit zone. The Bulgarian Helsinki Committee assisted the Border Police with a translation of the leaflet on the general rights of detained persons and the template content of detention orders in the main languages spoken by persons apprehended at the border.¹⁰⁶

¹⁰⁰ Article 8(1) recast Asylum Procedures Directive.

¹⁰¹ For a recent discussion of the importance of these guarantees, see ECtHR, *A.E.A. v. Greece*, Application No 39034/12, Judgment of 15 March 2018, EDAL, available at: <https://bit.ly/2pEJUIG>.

¹⁰² ECRE, *Information Note on 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)*, December 2014, available at: <https://bit.ly/2t36e8H>, 14.

¹⁰³ *Ibid.*

¹⁰⁴ EASO and Frontex, *Practical guide: Access to the Asylum Procedure*, 2016, available at: <https://bit.ly/2NZgLfV>, 4, 6.

¹⁰⁵ Slovenian Administrative Court, Decision I U 161/2013, 31 January 2013.

¹⁰⁶ Information provided by the Bulgarian Helsinki Committee, 10 September 2018.

Romania: The Border Police has indicated that information leaflets on the rights and obligations of asylum seekers are available at border-crossing points,¹⁰⁷ although this is not the case at the moment according to JRS. Leaflets are currently under preparation by JRS and UNHCR, to be distributed to all border-crossing points and airports in October 2018.¹⁰⁸ Reliable information provision remains a challenge at the border, given reported cases of misinformation of asylum seekers upon arrival.¹⁰⁹

Hungary: The following information is available at the border fence: “Loudspeakers on the border fence warn potential asylum seekers to keep their distance and not to cross the fence or damage it. Signs on the fence point to the closest transit zone where an asylum application can be submitted... Information leaflets are shown right beside the transit zones in several languages in an extremely inaccessible way... the information is printed in a small font on A4 sheets and can only be read from several metres away, since there is a razor wire barrier.”¹¹⁰

Croatia: Information leaflets on the asylum procedure have been prepared in several languages by UNHCR and the Croatian Law Centre in the framework of the border monitoring agreement with the authorities. Although the Ministry of Interior states that the leaflets are available in every police administration and detention centre, it is not clear whether they are made available to people at the border.¹¹¹

Spain: The law requires authorities to provide information as soon as an asylum application is made,¹¹² although it does not refer to proactive information provision prior to the making of a claim. However, compliance with this obligation is not consistent and varies depending on the border-crossing point.¹¹³

Portugal: Information provided in writing to persons refused entry at the airport to notify them of their rights (Annex II) contains a mere reference to asylum in a small-font footnote, mentioning: “without prejudice to the protection granted under the Asylum Act...” The information is superficial and far from understandable in practice.¹¹⁴

Belgium: Information leaflets *inter alia* on the asylum procedure are available in the Caricole detention centre near Brussels Airport, where persons refused entry (“inadmissible” persons) are held prior to departure from the airport. It is not clear, however, whether the Aliens Office ensures this information is given to people in practice. Information on the right to seek asylum is generally not available when refusal of entry is ordered at the airport.¹¹⁵

Poland: According to the Border Guard, short information on the possibility to apply for asylum is visibly displayed in English and Russian at every border-crossing point.¹¹⁶

Switzerland: Information on how to seek asylum is available in certain border facilities such as the Chiasso train station, by means of posters, infographics and a video in approximately 20 languages.¹¹⁷

¹⁰⁷ Information provided by the Romanian Border Police, 27 August 2018.

¹⁰⁸ Information provided by Felicia Nica, 10 September 2018.

¹⁰⁹ JRS, *Forgotten at the gates of Europe: Ongoing protection concerns at the EU's external border*, June 2018, available at: <https://bit.ly/2NcY0VL>, 17-20.

¹¹⁰ Middlesex University and Hungarian Helsinki Committee, *Legal and procedural information for asylum seekers in Europe: Hungary Report*, April 2018, available at: <https://bit.ly/2QFjc5x>, 11-12.

¹¹¹ Information provided by the Croatian Law Centre, 20 September 2018.

¹¹² Article 19(2) Spanish Asylum Regulation.

¹¹³ Information provided by Accem, 10 September 2018.

¹¹⁴ Information provided by the Portuguese Refugee Council, 11 September 2018.

¹¹⁵ Information provided by Vluchtelingenwerk Vlaanderen, 10 September 2018.

¹¹⁶ Information provided by Maja Lysienia, 10 September 2018.

¹¹⁷ Information provided by the Swiss Refugee Council, 8 September 2018.

Sweden: Written information on the asylum procedure is not regularly made available at the border. When a person expresses the intention to apply for asylum, the Border Police orally informs him or her on how to approach the Migration Agency, and informs the latter via email.¹¹⁸

Interpretation and assistance

The interpretation limb of Article 8 of the recast Asylum Procedures Directive has been equally challenging to implement. The supply of interpretation services is not systematic and often depends on the location where an individual is apprehended. In **France**, for example, the Border Police uses interpretation by phone in the waiting zone of Roissy where most refusals of entry arise, but procedures are often conducted without interpretation in waiting zones such as Nice.¹¹⁹ Interpretation is rarely provided in **Romania** and also consists of telephone services, although an interpreter can be provided in person at the request of the asylum seeker.¹²⁰

Furthermore, the enjoyment of this guarantee may often depend on the readiness of border control officials to call in an interpreter for the interview. In **Poland**, interpretation is used if the Border Guard official interviewing the person does not speak his or her language. However, there have been reports of interviews conducted without interpretation even though officials did not sufficiently wield the language.¹²¹ Similarly in **Slovenia**, the police often conducts interviews in English without interpretation, even though the persons concerned do not sufficiently comprehend the process.¹²² In **Croatia**, the Border Police Directorate has indicated that a list of interpreters covering the main languages of people arriving at the border is available in police stations and detention centres.¹²³ In practice, however, border police officials also resort to tools such as Google Translate when interpreters are not available.¹²⁴

In that respect, the absence of effective information and communication on the right to asylum at the border stems both from the lack of straightforward obligations in EU law and from implementation in practice. In light of these, there is a potent risk that people seeking to enter the territory of European countries are refused entry or removed without being made aware of the opportunity to exercise a fundamental right.

It therefore seems no surprise that asylum applications are usually not registered at the border in most countries, albeit subject to exceptions. During the first half of 2018, the proportion of people claiming asylum at the border was only a small fraction of the total number of people lodging applications (*Annex I*). This could be an indication of the persisting difficulties in accessing the asylum procedure at the border.

Further challenges to accessing asylum stem from the difference in modalities of registration and at the border compared to applications on the territory, as detailed in the AIDA comparative report on registration of asylum applications.¹²⁵

¹¹⁸ Information provided by Lisa Hallstedt, 11 September 2018.

¹¹⁹ ECRE, *Access to asylum and detention at France's borders*, June 2018, 17.

¹²⁰ Information provided by Felicia Nica, 10 September 2018.

¹²¹ Information provided by Maja Lysienia, 10 September 2018.

¹²² Information provided by PIC, 10 September 2018.

¹²³ Information provided by the Croatian Law Centre, 20 September 2018.

¹²⁴ ECRE, *Balkan route reversed*, December 2016, available at: <https://bit.ly/2kueKpB>, 12.

¹²⁵ AIDA, *Access to protection in Europe: The registration of asylum applications*, October 2018, available at: <http://www.asylumineurope.org/2018-iii>.

Concluding remarks

This report has provided an analysis of legal frameworks and practice relating to access to the territory for the purpose of seeking asylum in 23 European countries. Based on an examination of practice relating to refusal of entry and push backs, border monitoring systems and information, interpretation and assistance arrangements at the border, the following conclusions and recommendations can be drawn:

1. Refusal of entry in line with the right to asylum

Where a person does not meet the conditions for entry into the territory or is found unlawfully on national territory, any decision of refusal of entry or return should be individualised, sufficiently motivated and consistent with states' obligations to receive asylum applications where a request for protection is made.

Persons subject to a refusal of entry or return decision, must be ensured access to an effective remedy in accordance with EU law and the ECHR.

Push backs through automatic refusal of entry or return, or without administrative formalities at all, are unlawful acts which should lead to accountability and condemnation. States should not condone or encourage those in their political discourse.

2. Structured and effective border monitoring

A legal framework for structured, systematic border monitoring by independent human rights experts must be established in all countries performing border checks on persons. Such a framework should allow for tripartite border monitoring arrangements involving border authorities, NGOs and UNHCR, which are multi-actor, well-defined and adequately funded to allow for sustainable oversight of protection responsibilities at external and internal EU borders.

Funding for tripartite border monitoring programmes, usually provided by UNHCR at the moment, should be foreseen in relevant EU funds such as the Integrated Border Management Fund recently proposed by the European Commission as part of the Multiannual Financial Framework 2021-2027.¹²⁶

The content and conditions of monitoring systems are also paramount to their effectiveness. Arrangements which entitle experts to carry out unannounced and unlimited visits to all facilities at the border allow for genuine supervision of the situation prevailing at the border. Public accessibility of findings must also be part of such mechanisms, to ensure that practice is amenable to review.

At the same time, consistent monitoring through national human rights institutions and international bodies should also be safeguarded. Border monitoring arrangements should not preclude the possibility of *ad hoc* visits by national and international human rights bodies, without notification in advance.

¹²⁶ European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa*, COM(2018) 473, 12 June 2018.

Border monitoring agreements between national authorities, UNHCR, civil society and/or other human rights experts should allow for unannounced visits without limitations as to the number or location of visits. Findings should be made publicly available.

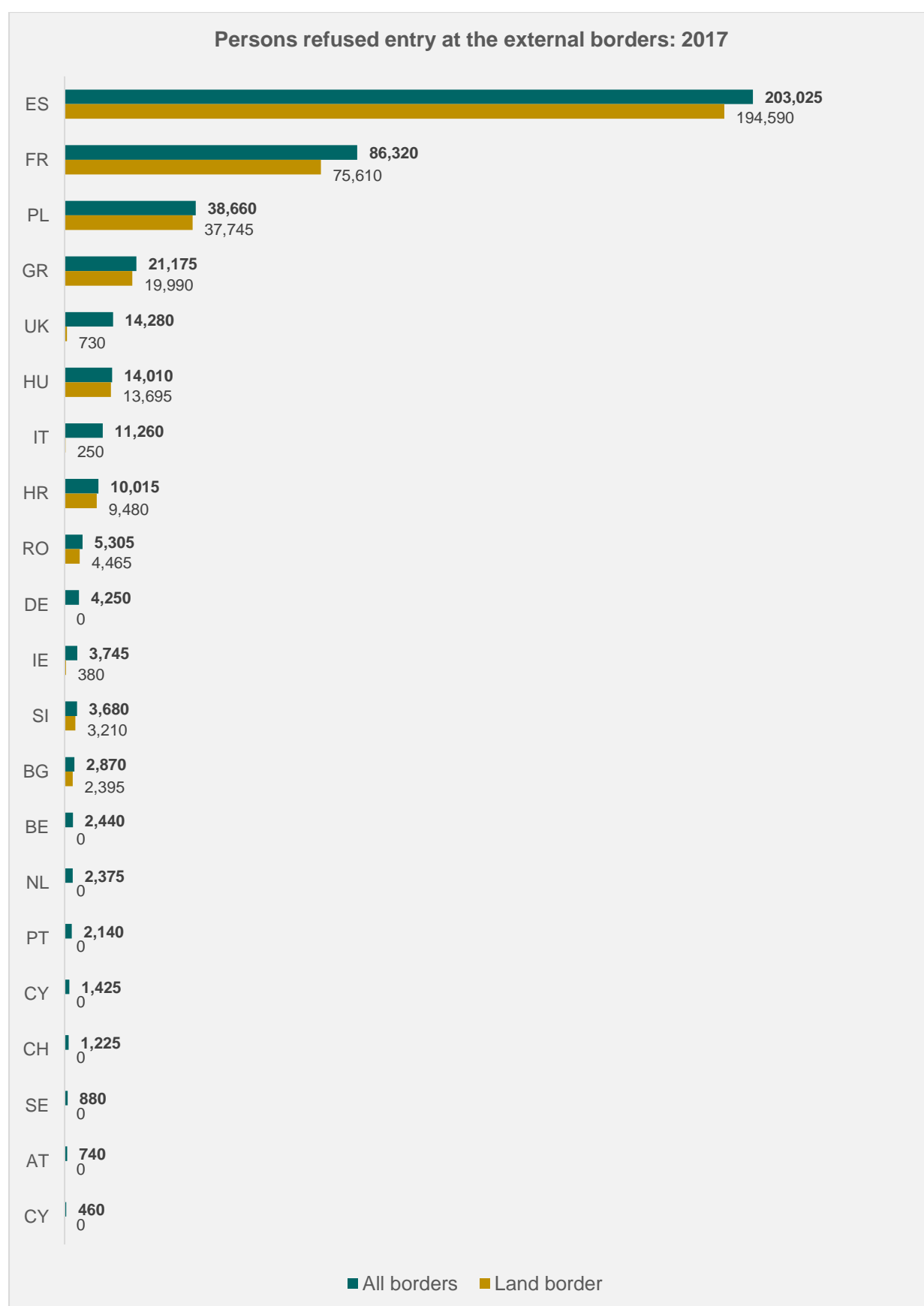
3. Genuine provision of information and assistance at the border

The limitations of the permissive formulation of states' duty to inform prospective asylum seekers of the right to international protection in Article 8 of the recast Asylum Procedures Directive have been exposed by national practice. As authorities refrain from proactively informing people arriving at the border of their right to seek asylum, and border guards may only rely on "indications" of protection needs to disclose information, access to the procedure is jeopardised at most border-crossing points.

The duty to inform can only be genuinely discharged through proactive and comprehensible information on the possibility to apply for international protection at border-crossing points, transit zones and other detention facilities where individuals are placed following apprehension.

To be consistent with EU law and the ECHR, Article 8 of the recast Asylum Procedures Directive should be construed as a general positive obligation on states to provide information on access to the asylum procedure, and to make available interpretation and assistance services whether people proactively apply for asylum or are subject to a refusal of entry or return procedure.

Annex I – Statistics on refusal of entry and asylum at the border



Source: Eurostat, migr_eirfs

Persons refused entry at the external border by top countries of origin: 1 st half 2018							
	Total	1 st country of origin		2 nd country of origin		3 rd country of origin	
UK	8,961	USA	894	Brazil	872	Romania	854
HU	8,408	Serbia	2,763	Ukraine	2,202	Albania	1,309
HR	6,047	Bosnia	2,184	Albania	1,119	Serbia	635
DE	5,691	Albania	713	Nigeria	527	Afghanistan	407
CH	4,460	Nigeria	900	Gambia	386	Eritrea	352
SE	2,830	Syria	180	Serbia	157	Ukraine	153
RO	2,466	Moldova	753	Ukraine	645	Albania	230
SI	1,979	Albania	533	Bosnia	445	Serbia	369
BG	1,497	:	:	:	:	:	:
AT	524	Albania	95	Romania	51	Serbia	35
MT	236	Serbia	71	FYROM	25	Moldova	18


Source: AIDA. Note that some countries only provide the number of refusal of entry decisions in national statistics, where a person is potentially covered by multiple decisions. PL issued 72,704 such decisions in 2017 and 38,305 in the first half of 2018.

Applicants at the border and proportion of total applicants: 1 January – 30 June 2018			
	Applicants at the border	Total applicants	Percentage
BE	332	10,668	3.1%
BG	175	591	29.6%
GR	16,876	30,192	55.9%
HU	397	397	100%
IE	519	1,648	31.5%
PL	723	1,976	36.6%
RO	331	899	36.8%
UK	2,496	13,297	18.8%
CH	813	7,820	10.4%

Source: AIDA. Note that for PL the figure provided by the Border Guard (1,976) differs from that provided by the Office for Foreigners (2,119).

Annex II – Template documents

Document on rights of persons refused entry: Portugal

ANEXO I	PORTUGAL  Ministério da Administração Interna Serviço de Estrangeiros e Fronteiras	
Artigo 40.º		
<i>(Lei n.º 23/2007 de 04JUL, alterada e republicada pela Lei 29/2012 de 9 de Agosto - Act n. 23/2007 of July 4, amended by Act n. 29/2012 of August 9 - 40ème article (Loi n.º 23/2007 du 04 juillet, modifiée et republiée par la loi 29/2012 du 09 août - Ley n.º 23/2007 04Jul modificada e republicada por la Ley 29/2012 de 09Ago)</i>		
DIREITOS DO CIDADÃO ESTRANGEIRO NÃO ADMITIDO RIGHTS OF CITIZENS WHO HAVE BEEN REFUSED ENTRY - DROITS DU CITOYEN QUI N'EST PAS ADMIS - DERECHOS DE LOS CIUDADANOS EXTRANJEROS NO ADMITIDOS		
<p>1 — Durante a permanência na zona internacional do porto ou aeroporto ou em centro de instalação temporária ou espaço equiparado, o cidadão estrangeiro a quem tenha sido recusada a entrada em território português pode comunicar com a representação diplomática ou consular do seu país ou com qualquer pessoa da sua escolha, beneficiando, igualmente, de assistência de intérprete e de cuidados de saúde, incluindo a presença de médico, quando necessário, e todo o apoio material necessário à satisfação das suas necessidades básicas.</p> <p>2 — Ao cidadão estrangeiro a quem tenha sido recusada a entrada em território nacional é garantido, em tempo útil, o acesso à assistência jurídica por advogado, a expensas do próprio ou, a pedido, à proteção jurídica, aplicando-se, com as devidas adaptações, a Lei n.º 34/2004, de 29 de julho, no regime previsto para a nomeação de defensor do arguido para diligências urgentes.</p> <p>3 — Para efeitos do disposto no número anterior, a garantia de assistência jurídica ao cidadão estrangeiro não admitido pode ser objeto de um protocolo a celebrar entre o Ministério da Administração Interna, o Ministério da Justiça e a Ordem dos Advogados.</p> <p>4 — Sem prejuízo da proteção conferida pela lei do asilo, é igualmente garantido ao cidadão que seja objeto de decisão de recusa de entrada a observância, com as necessárias adaptações, do regime previsto no artigo 143.º.</p>		
<p>1 - During this period of stay in the international zone of the port or airport, in temporary accommodation centre or equivalent premises, foreign citizens whose entry in Portuguese territory has been refused have the right to communicate with the diplomatic representation their country or with any other person of their choice, and have the right to the assistance of an interpreter, to receiving medical care, including being examined by a doctor where necessary, as well as to all material support required to satisfy their basic needs. 2 - Foreign citizens whose entry in national territory has been refused shall have access to timely legal assistance by a barrister, at their own expense or, upon request, by a barrister appointed under the rules of legal aid, pursuant to the provisions of Act 34/2004 of July 29 - with the necessary adjustment - on appointing official counsel for urgent matters. 3 - For the purposes of the preceding paragraph, the guarantee of legal assistance to foreign citizens who have been refused entry can be subject of a protocol between the Ministry of Internal Security, the Ministry of Justice and the Bar Association. 4 - Without prejudice to the protection granted under the Asylum Act, foreign citizens who are refused entry are also covered by the provisions of Article 143 with the necessary adjustments.</p> <p>1 - Pendant le séjour dans la zone internationale du port ou de l'aéroport, ou dans un centre d'installation temporaire, ou endroit similaire, le citoyen étranger, auquel a été refusé l'entrée en territoire portugais, peut communiquer avec la représentation diplomatique ou consulaire de son pays, ou avec toute autre personne à son choix, bénéficiant de la même façon d'assistance au point de vue de la traduction et soins de santé, ainsi que de la présence d'un médecin et du matériel nécessaire pour faire face à ses besoins. 2 - Au citoyen étranger auquel a été refusée l'entrée en territoire national l'accès à l'assistance juridique est assuré dans les plus brefs délais, soit à travers un avocat, payé par lui-même, ou sur demande à la protection juridique, en accord avec la loi n.º 34/2004, du 29 juillet, dans le régime prévu pour la nomination d'un défenseur du défendeur pour les démarches urgentes. 3 - Suite aux conditions décrites ci-dessus, la garantie d'assistance juridique au citoyen étranger qui n'est pas admis, peut être objet d'un protocole à célébrer entre le "Ministério da Administração Interna", le "Ministério da Justiça" et l'Association du Barreau. 4 - Sans préjudice de la protection conférée par la loi de l'asile, le citoyen à qui on refuse l'entrée, est également assuré le maintien, avec les nécessaires adaptations, du régime prévu dans l'article 143.</p> <p>1 - Durante la estancia en la zona internacional del puerto o aeropuerto o en centro de instalación, el extranjero a quien haya sido denegada la entrada en territorio portugués puede comunicarse con el representante diplomático o consular de su país, o con cualquier persona de su elección, beneficiando también, de asistencia de intérprete y de asistencia a la salud, incluyendo la presencia de un médico cuando sea necesario, y todo el equipo de apoyo necesario para satisfacer sus necesidades básicas. 2 - Los ciudadanos extranjeros a quien haya sido denegada la entrada en el país, se garantiza el acceso oportuno a la representación legal de un abogado, a su costas o, si así lo solicita, a la protección legal, aplicando-se, con las debidas adaptaciones, la Ley n.º 34/2004, de 29 de julio, en las disposiciones para el nombramiento de los abogados de los acusados en las diligencias urgentes. 3 - Para los efectos del número anterior, la garantía de asistencia jurídica a los ciudadanos extranjeros que no fueran admitidos puede ser objeto de un protocolo firmado entre el "Ministerio de Administración Interna" y el "Ministerio de Justicia" y el Colegio de Abogados. 4 - Sin perjuicio de la protección prevista en la ley de asilo, también se garantiza al ciudadano a quien sea denegada a entrada, la observancia, con las necesarias adaptaciones, de lo previsto en el artículo 143.º.</p>		
Aeroporto General Humberto Delgado, .		
O INTERESSADO <small>Person concerned L'intéressé La interesado</small>	O Intérprete <small>The Interpreter L'interprète El traductor</small>	O AGENTE RESPONSÁVEL PELO CONTROLO <small>Officer responsible for checks L'agent présent au contrôle El agente responsable por el control</small>



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