



Input by civil society to the EASO Annual Report 2016

EASO has started production of the Annual Report on the Situation of Asylum in the European Union 2016, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). The report will be finalised by collecting information from EU+ countries, civil-society stakeholders, UNHCR and other relevant sources on main developments in asylum policies and practices of EU+ countries in 2016.

Previous reports can be consulted on EASO's website: <https://www.easo.europa.eu/information-analysis/annual-report>

We would kindly like to ask you to provide your **observations**, - preferably bullet points to facilitate further processing of your input - **on developments in asylum law or practice in 2016 (and early 2017) in the areas listed below, reflecting the usual structure of the report**. Observations may concern national practices of specific EU+ countries or the EU as a whole.

The EASO Annual Report will not describe the national asylum systems in detail but present key developments in 2016, including **improvements and new/remaining concerns**. The topics listed below reflect the structure of chapter 4 of the EASO report on the 'Functioning of the CEAS'. We kindly ask all contributors to provide brief summaries only on those topics/issues that have seen important **improvements/deterioration as well as new concerns or where previous relevant concerns remained in 2016**.

Please bear in mind that the EASO Annual Report is a public document. Therefore, your input should be, whenever possible, supported with references to written sources to ensure transparency. That can be done by providing links to any documents such as position papers, important press releases, studies, comments, input to the other reports, public statements to government programs, etc.

While EASO endeavours to cover all relevant developments and strives to include as many references as possible, the final content of the EASO Annual Report remains bound by its terms of reference and volume. Therefore, while all contributions are gratefully received and recognised, EASO may edit contributions for length and clarity and use the submissions to best serve the objective of the Annual Report: to improve the quality, consistency and effectiveness of the CEAS.

Please provide your input by filling in this document (with attachments if required) and emailing it to ids@easo.europa.eu **AND** consultative-forum@easo.europa.eu **by 20 February 2017**.

Within the areas, please highlight the following **type of information**:

- NEW positive developments; improvements and NEW or remaining matters of concern;
- Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.
- Please use the topics listed below as a guide to providing input for each section. **DO NOT** provide information unrelated to relevant new developments.

Name of the contributing stakeholder: European Council on Refugees and Exiles (ECRE)

Contact details:

Minos Mouzourakis, AIDA Coordinator

Email: mmouzourakis@ecre.org

Tel: +32 2 212 0813

DISCLAIMER: The information submitted in this document to the EASO Annual Report on the situation on Asylum 2016 is only a selection of new and remaining concerns, positive developments and relevant new trends relating to a number of countries covered by the Asylum Information Database (AIDA), coordinated by ECRE. This document is therefore by no means to be considered as a comprehensive overview of key issues or challenges relating to the asylum systems in the countries concerned. For further and more detailed analysis, see www.asylumineurope.org.

1) Access to territory and procedure

1.1. Access to the procedure

Remaining concerns

Italy: Delays in the lodging of applications through the completion of the “C3” form persist, depending on different *Questure* across the country. The average waiting time has ranged from one week (e.g. Udine, Macerata, Lucca, Cosenza), up to two weeks (e.g. Siena, Savona, Perugia, Messina), one month (e.g. Torino, Rimini, Gorizia), two months (e.g. Agrigento, Palermo, Rome, Milan), three-four months (e.g. Verona, Trieste, La Spezia) to over six months (Naples).

Source: AIDA, Country Report Italy, 2016 Update, February 2017, <http://bit.ly/2maTfMw>, 24.

Note: There is also ample information on Greece, which we understand however will probably be covered already.

1.2. Access to the procedure from detention

Remaining concerns

Greece: The time period between the expression of intention to apply for asylum by a third-country national in detention and the official registration of the claim varies upon the circumstances of each case, and in particular the capacity of the competent authority and the number of the detainees willing to apply for asylum. For example, according to GCR’s experience from the field, in January 2017, an average period of about 2 months was needed for the registration of an application for a person detained in the Amygdaleza pre-removal centre. Respectively in Corinth pre-removal centre this period is reported to be shorter, depending on the availability of interpreters.

Source: AIDA, Country Report Greece, 2016 Update, March 2017; http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2016update.pdf

Croatia: A similar problem is reported in Croatia as regards the time lag between expression of intention to apply for asylum in the Ježevo detention centre and registration, which depending on the workload of the Asylum Department may take up to one week.

Source: AIDA, Country Report Croatia, 2016 Update, March 2017, <http://bit.ly/2n45FJn>, 70.

2) Access to information and legal assistance

2.1. Access to legal aid

Remaining concerns

Italy: Legal aid in appeals is granted following a “means and merits” test, where applications can be rejected if found to be manifestly unfounded. During 2016, the Bar Council of Milan started rejecting almost all the requests to access to free legal assistance, generally deeming the claims that the petitioners intended to rely on as manifestly unfounded. A similar situation occurred at the Bar Council of Trieste. ASGI sent a letter to the abovementioned Bar Councils, highlighting that any appeal should be assessed individually and not only as regards the possibility of obtaining refugee status, but also subsidiary and humanitarian protection. However, the intervention did not yield the desired results. In Trieste, the Bar Council accepted to review its approach to evaluating the applications, but basically decided to accept instances of Pakistanis and Nigerians and continued as before for the other nationalities.

Source: AIDA, Country Report Italy, 2016 Update, February 2017, <http://bit.ly/2maTfMw>, 34.

Cyprus: Legal aid is offered by the state only at the judicial examination of the asylum application before the Administrative Court, which has taken over the judicial review of asylum applications as of January 2016. As legal aid is still subject to a “means and merits” test, there has not been a substantial rise on the success rate of legal aid applications granted. Out of 22 decisions issued on legal aid in 2016, only 2 were granted.

Source: AIDA, Country Report Cyprus, 2016 Update, March 2017, <http://bit.ly/2mEU8zB>, 26-27.

Greece: Despite the publication of a Ministerial Decision setting out a legal aid scheme in September 2016, by the end of February 2017, no free legal aid was in place in practice under the auspices of the Greek authorities for appeal procedures.

Source: AIDA, Country Report Greece, 2016 Update, March 2017; http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2016update.pdf

New matters of concern

Italy: The new Decree-Law 13/2017 now states that when the applicant is granted free legal aid, the judge, when fully rejecting the appeal, has to explain why free legal aid is awarded, indicating the reasons why he or she does not consider the applicant's claims as manifestly unfounded. This has been criticised, among other provisions of the Decree-Law, by NGOs and practitioners.

Source: AIDA, Country Report Italy, 2016 Update, February 2017, <http://bit.ly/2maTfMw>, 34.

3) Providing interpretation services

4) Dublin procedure

4.1. Dublin statistics (to be cross-checked with Eurostat where available)

Source: AIDA, 2016 Dublin Update, March 2017, Forthcoming.

5) Specific procedures (border, accelerated, admissibility)

5.1. Accelerated procedure

Transposition of legislation

Sweden: The amendment to the Aliens Act, transposing the recast Asylum Procedures Directive and entering into force on 1 January 2017, has introduced suspensive effect in appeals lodged against negative decisions in the “manifestly unfounded procedure”. The procedure continues to be applied as a rule for nationals of countries in the Western Balkan region.

Source: AIDA, Country Report Sweden, 2016 Update, March 2017, <http://bit.ly/2IKGF9G>, 30-31.

New development

Germany: An accelerated procedure was introduced in Section 30a of the German Asylum Act in March 2016, which can only take place in a “special reception centre” (*Aufnahmeeinrichtung*). At the end of 2016, only two “special reception centres” were set up, in Bamberg and Manching/Ingolstadt, and both functioned as “special” and “regular” centres simultaneously.

Source: AIDA, Country Report Germany, 2016 Update, March 2017, p 38-39, http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2016update.pdf

New matters of concern

Italy: In some regions, ASGI has reported that asylum seekers whose application has been rejected as “manifestly unfounded” come to know that they have been involved in an accelerated procedure, and that they have half the time available (15 days) to appeal against the decision, only when they are notified of the rejection by the *Questura*. Moreover, in several cases, even if the law does not provide it, the rejection of an asylum request as “manifestly unfounded” has been automatically connected with the accelerated procedure, therefore applying the shorter appeal time limit for 15 days. During 2016, the Caserta Territorial Commission has rejected many asylum requests as “manifestly unfounded”, and most of the appeals were considered inadmissible by the Court of Naples because they were not lodged within the ostensible 15-day deadline. The judges, after refusing the suspensive request, give dates for the hearing one year later.

Source: AIDA, Country Report Italy, 2016 Update, February 2017, <http://bit.ly/2maTfMw>, 41-42.

6) Reception of applicants for international protection:

6.1. Accommodation

Remaining concerns

Greece: Despite the commitment of the Greek authorities to meet a target of 2,500 reception places dedicated to asylum seekers by the end of 2014, reiterated in August 2015, this number has not been reached to date. As of January 2017, a total 1,896 places were available in 64 reception facilities mainly run by NGOs, out of which 1,312 are dedicated to unaccompanied children. At the same time, the number of requests to the National Centre for Social Solidarity (EKKA) reached 14,873 in 2016, with a success rate of only 38%.

Source: AIDA, Country Report Greece, 2016 Update, March 2017; http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2016update.pdf

6.2. Access to the labour market

Positive development

Germany: In August 2016, an addendum to the Employment Regulation (*Beschäftigungsverordnung*) was introduced, according to which the “priority review” (labour market test) required before allowing an asylum seeker access to the labour market has been suspended for three years in most parts of Germany. This addendum lists 133 of 156 regions of the labour agency (areas to which a local labour office is assigned), so only in 23 regions the priority review still has to take place. These are areas in which the local labour market is considered to be “strained”, but the list actually does not seem to adhere to this principle. The priority review is still in place in parts of Bavaria (11 out of 23 regions), parts of Nordrhein-Westfalen (7 out of 30 regions) and in the Federal State of Mecklenburg-Vorpommern.

Source: AIDA, Country Report Germany, 2016 Update, March 2017, 66; http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2016update.pdf

7) Detention:

7.1. Detention statistics

According to information made available, the following number of **asylum applicants** were detained in the course of 2016 per country:

- Bulgaria: 11,314
- Cyprus: 187
- Spain: 769 (applying from CIE)
- Greece: 4,072
- Croatia: 50
- Hungary: 2,621
- Malta: 20
- Poland: 603
- UK: 13,230

Source: Relevant AIDA Country Reports.

7.2. Alternatives to detention

New matters of concern

Malta: Although the transposition of the recast Reception Conditions Directive has brought about welcome change by abolishing the former policy of automatic detention upon arrival, concerns were expressed by NGOs that alternatives to detention could be imposed when no ground for detention is found to exist. Concerns proved to be true, as in 2016, several persons were released from detention after 2 months and placed under alternatives to detention without any ground to extend the detention as they had already applied for protection and provided all the required information. According to the authorities, 5 asylum seekers in 2016 were released from detention and placed under alternatives to detention. They were requested to report regularly at the police station, to reside at an assigned place and to deposit some of their documents.

Source: AIDA, Country Report Malta, 2016 Update, February 2017, <http://bit.ly/2n5RU95>, 53.

7.3. Place of detention

New matters of concern

Germany: The number of deportations increased to 25,375 in 2016, in comparison to 20,888 in 2015, and the number of people in detention pending deportation seems to have risen as well. No countrywide statistics are available, but reports suggest that capacities of detention facilities are increasingly used. Facilities for detention pending deportation existed in seven Federal States in 2016. This includes Pforzheim, Baden-Württemberg, Mühldorf am Inn in Bavaria, Eisenhüttenstadt in Brandenburg, Bremen, Hannover (Langenhagen) in Lower Saxony, Büren in North Rhine-Westphalia, and Ingelheim am Rhein in Rhineland-Palatinate. Since detention pending deportation must not be carried out in other prisons since 2014 this means that the majority of Federal States did not have any facilities for this kind of detention in 2016. These Federal States therefore either did not make use of detention pending deportation at all, or they had to transfer deportees to other Federal States for this purpose.

Source: AIDA, Country Report Germany, 2016 Update, March 2017, 72-73, http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2016update.pdf

8) Procedures at First instance:

5.1 “Tracks” / “Cluster” policies

New developments

Germany: Germany revoked its prior policy of prioritisation of certain nationalities deemed manifestly well-founded (Syria, Eritrea, minorities from Iraq) in the second quarter of 2016. Since then, prioritisation has partially been replaced by “clustering” of cases in the new “arrival centres” (*Ankunftszentren*) set up to fast-track procedures. At the end of 2016, 24 out of approximately 65 BAMF branch offices functioned as arrival centres. In these centres, officials divide cases into different clusters: Cluster A for nationalities with a rate over 50%, Cluster B for nationalities with a rate of no more than 20%, Cluster C for “complex cases” and Cluster D for Dublin cases.

Source: AIDA, Country Report Germany, 2016 Update, March 2017, 19-20, http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2016update.pdf

Sweden: The Swedish Migration Agency has also established a similar approach, on the basis of a draft shared with stakeholders on 21 December 2016. The new organisation of workflow at the Migration Agency entails seven different tracks, including one dedicated track for relocation (Track 7), one for Dublin cases (Track 5), one for manifestly well-founded applications where the identity of the applicant has been established (Track 1), one for manifestly unfounded cases (Track 4A), and one for persons originating from countries with generally high rejection rates (Track 4B).

Source: AIDA, Country Report Sweden, 2016 Update, March 2017, <http://bit.ly/2IKGF9G>, 18-20.

Netherlands: The Secretary of State introduced the “Five Tracks” procedure on 1 March 2016. This includes a new process for nationals of “safe countries of origin” under Track 2. In practice, Tracks 3 and 5, dedicated to manifestly well-founded cases, are not used yet.

Source: AIDA, Country Report Netherlands, 2016 Update, March 2017, <http://bit.ly/2II2TJK>, 16-17.

5.2 Quality of the procedure

New/remaining matters of concern

Germany: In November 2016, an alliance of 12 German NGOs published a “Memorandum to enhance fair and diligent asylum procedures in Germany”. Based on an analysis of transcripts, decisions and reports from lawyers and NGOs, several recurring deficiencies were identified and observed in the interviews in asylum procedures at the BAMF: (1) Asylum seekers are not sufficiently informed about their rights and obligations during the interview; they often have no access to lawyers and/or advice centres before the interview; (2) BAMF staff uses inadequate communication techniques e.g. biased, ‘interrogation-like’ questioning of asylum seekers; (3) Asylum seekers are not given an opportunity to fully substantiate their applications or to clarify alleged inconsistencies or contradictions in their statements; (4) Mistakes occurring during translation or in the transcripts lead to credibility of asylum seekers’ statements being cast into doubt. The report states that the quality of procedures has deteriorated considerably in recent years, partially due to a large number of new staff members at the BAMF who were deployed with insufficient training.

Source: AIDA, Country Report Germany, 2016 Update, March 2017, 21-22, http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2016update.pdf

9) Procedures at Second Instance:

9.1. Upgrade appeals

New development

Germany: Due to a policy change in the first months of 2016, the BAMF granted subsidiary protection instead of refugee protection in a record number of cases. This policy change affected Syrian nationals in particular, but also asylum seekers from Iraq or Eritrea. For instance, 95.8% of Syrians had been granted refugee status in 2015, this rate dropped to 56.4% in 2016. Conversely, the rate of Syrians being granted subsidiary protection rose from 0.1% in 2015 to 41.2% in 2016. The policy change at the BAMF coincided with a legislative change in March 2016, according to which family reunification was suspended for beneficiaries of subsidiary protection until March 2018. Tens of thousands of beneficiaries of subsidiary protection appealed against the authorities' decisions in order to gain refugee status ("upgrade-appeals"), with a success rate of more than 75% in 2016.

Source: AIDA, Country Report Germany, 2016 Update, March 2017, 53, http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2016update.pdf

9.2. Appeal bodies

New matters of concern

Cyprus: Following the 2015 establishment of the Administrative Court, the intention has been to abolish the Refugee Reviewing Authority (RRA), which has been the second instance administrative authority, and in view of this the recent amendment to the Refugee Law in October 2016 has removed all articles that concern the operations of the RRA. However, the Refugee Law also states that the termination of operations of the RRA will enter into force on a date that is to be defined by the Council of Ministers and published in the Gazette, yet to date no such decision has been issued. Furthermore, in view of the intention to abolish the RRA in recent years, most officers of the RRA have been transferred to other authorities, leaving only five examining officers for a backlog of some 650 cases, many of which have been pending for several years. In practice, the RRA therefore continues operations.

Source: AIDA, Country Report Cyprus, 2016 Update, March 2017, <http://bit.ly/2mEU8zB>, 23-24.

10) Availability and use of Country of Origin Information:

11) Vulnerable applicants:

11.1 Age assessment of unaccompanied children

Positive development

Sweden: Following recent guidance from the National Board of Forensic Medicine (RMV) and a report by the Legal Unit of the Migration Agency, identifying shortcomings such as incorrect analysis of evidence and incorrect standard of proof in the age assessment procedure, Sweden has introduced a new procedure in February 2017. Under this age assessment procedure, if the proposed new tests do not give a clear indication of whether the person is under or over 18, the principle of the benefit of the doubt as per Article 25(5) of the recast Asylum Procedures Directive is to be respected. Age assessment decisions can also be appealed by the applicant under the new procedure.

Source: AIDA, Country Report Sweden, 2016 Update, March 2017, <http://bit.ly/2IKGF9G>, 33-34.

Relevant national jurisprudence

Germany: The problem of questionable age assessments carried out by the authorities has been the subject of some court decisions in 2016. For instance, the Administrative Court Berlin criticised the authorities for an age assessment based only on outward appearances. This age assessment had been called into question by a paediatrician. The High Administrative Court of Bavaria, in a decision of 16 August 2016, set certain standards for age assessment by the authorities. According to the High Administrative Court, such an age assessment based only on outward appearances cannot be regarded as sufficiently certain if there is possibility that a medical examination might lead to a different result. This means that such an assessment could only be done in exceptional cases in which there can be no doubt that an asylum seeker is older than 18 years. All other cases should be treated as "cases of doubt" and a "grey area" (margin of error) of one to two years should be

taken into account in favour of the asylum seeker. Even following a medical examination a margin of error of another two to three years should be considered as a margin of tolerance, in order to avoid any risk of incorrect assessments.

Source: AIDA, Country Report Germany, 2016 Update, March 2017, 41, http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2016update.pdf

France: A Circular issued in January 2016, and welcomed by the Ombudsman, specifies that a social evaluation should prevail over medical bone examinations, especially when it cannot be established that available documentation is not authentic. This principle has been recalled by the Court of Appeal of Lyon in early 2017. However, practice is not uniform throughout the country and only a few *départements* have followed the guidance so far.

Source: AIDA, Country Report France, 2016 Update, February 2017, <http://bit.ly/2IPwbCv>, 57-58.

UK: The High Court ruled in June 2016 that a person cannot be treated as an adult on the basis of authorities' "reasonable belief", but only after majority has been established as a matter of fact. This was upheld by the Court of Appeal in March 2017.

Source: Refugee Council, Court confirms Government's age policy is unlawful: <http://bit.ly/2IWS1Yi>.

12) Content of protection – situation of beneficiaries of protection

12.1 Family reunification

New matters of concern

Sweden: Following the entry into force of the temporary law in 2016 until 20 July 2019, beneficiaries of subsidiary protection are not eligible for family reunification as a rule. The law has also introduced restrictive conditions for recognised refugees, who must apply within 3 months in order to be exempt from material requirements (income, accommodation).

Source: AIDA, Country Report Sweden, 2016 Update, March 2017, <http://bit.ly/2IKGF9G>, 68.

Germany: Family reunification was suspended for those beneficiaries of subsidiary protection who have been granted this status after 17 March 2016, until March 2018. This change came into effect only eight months after beneficiaries of subsidiary protection had rights in terms of family reunification.

Source, AIDA, Country Report Germany, 2016 Update, March 2017, http://www.asylumineurope.org/sites/default/files/report-download/aida_de_2016update.pdf

Ireland: The entry into force of the International Protection Act on 31 December 2016 introduced more restrictive provisions for family reunification. Under the new provisions, the definition of "member of the family" excludes such people as siblings and parents for adult beneficiaries of international protection, children over the age of 18 and dependents such as grandparents and other extended relatives. This is a significant step back from family reunification rights under Article 18 Refugee Act 1996 as amended. Furthermore, a 12-month time limit has been introduced for sponsors to submit an application.

Source: AIDA, Country Report Ireland, 2016 Update, March 2017, <http://bit.ly/2mttNU7>, 91-92.

Relevant national jurisprudence

Sweden: In a 2016 ruling from the Migration Court of Appeal, it is established that when circumstances are such that there are obstacles in obtaining proof of identity (such as in the case of Somalia), other circumstances can be enough. Such circumstances include the fact that both spouses have given the same information about their background, how they lived together, family bonds, etc.

Source: AIDA, Country Report Sweden, 2016 Update, March 2017, <http://bit.ly/2IKGF9G>, 69.

Positive development

Malta: The Family Reunification Regulations provide that family members shall be granted a first residence

permit of at least one year's duration which shall be renewable. In the past, the reuniting family members were given a one year residence document indicating "Dependant family member – refugee", causing difficulties when public service providers (e.g. hospitals) failed to recognise the holder's entitlements as being equal to those of his or her refugee sponsor. Policy has recently changed and reunited family members are now granted a residence permit of three years, with the mention "Dependant family member".

Source: AIDA, Country Report Malta, 2016 Update, February 2017, <http://bit.ly/2n5RU95>, 66.

12.2 Language courses / Integration

Remaining concerns

No language courses were organised by the state in 2016 in **Greece, Cyprus, Croatia, Hungary and Bulgaria.**

Source: Relevant AIDA Country Reports.

13) Return of former applicants for international protection

14) Resettlement and relocation

15) Other relevant developments